

***Exxon Valdez* Oil Spill**

**Federal Trial Transcript**

**Case Number A89-0095 civil**

**1994**

**Volume 13 - Volume 22**

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5-19-94

To: All Parties of Record - Federal Exxon Trial  
From: Marianne Lindley  
Re: 1) Tapes Played in Court/Transcripts Read in Court  
Exhibits Offered/Received

1) The video tapes played thus far have been very difficult to interpret by the reporter(s), most likely due to the editing and modulation changes, as well as generational degradation. We will continue to do our best in reporting them, but we're encountering several problems:

- the scripts you give us don't match the video;
- sections included in the scripts have been deleted from the video;
- sections included in the videos are missing from the scripts;
- late transcript delivery because we're having to re-read portions of the scripts against the reporter's transcripts since the audio quality is difficult to report.

The read depositions:

- the scripts are sometimes massively paraphrased;
- the readers are paraphrasing while reading quickly (although their words are comprehensible, there is no time to absorb what they're saying, lacking the voice and body inflections of the original proceedings, for our shorthand purposes);
- the scripts contain material deleted from the live reading;
- late transcript delivery because we're forced to re-read portions of the scripts against the reporter's transcripts.

Our requests: Have the readers stay a consistent, reportable speed in their "testimony"  
Have accurate scripts available for us of the videos

2) We're parenthetically noting exhibits as offered and/or received in court, as long as it's explicitly clear in the proceedings that this in fact has been done.

We understand that Tom Murtiashaw has asked all of you to clearly and formally offer exhibits. This would help the reporters out since the words are flying by (220 to 240 pages in six hours) and we have no time to go back a second time to re-review the transcripts before delivery.

Our request: Be sure the word "offered" is used immediately adjacent to the exhibit numbers.  
Read the exhibit numbers distinctly and clearly, remembering we can't see what you are referring to.  
If the Court is not completely clear that an exhibit has been "admitted" or "received", restate the exhibit numbers thus admitted.

Thank you in advance for your cooperation in these matters.



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1) I IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA  
In re ) Case No A89 0095 CIV (HRH)  
(5) ) Anchorage Alaska  
The EXXON VALDEZ ) Thursday May 19 1994  
(6) ) 8 00 a m  
TRANSCRIPT OF PROCEEDINGS  
(9) TRIAL BY JURY 13TH DAY  
(10) BEFORE THE HONORABLE H RUSSEL HOLLAND JUDGE  
VOLUME 13 Pages 1720 1926  
Realtime Transcription  
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(1) PROCEEDINGS  
(2) (Jury in at 8 00)  
(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 in case A89 0095 civil in re the Exxon  
(7) Valdez  
(8) MR JAMIN Let us start if we may by offering certain  
(9) exhibits which have been agreed upon the first is 3793 37 -  
(10) catch up 3793 3794 3795 3796 3799 3804 3805 3807 3808  
(11) and 3811  
(12) (Exhibits 3793 3794 3795 3796 3799 3804 3805 3807  
(13) 3808 and 3811 offered)  
(14) MR SANDERS We have no objection  
(15) THE COURT Thank you The exhibits announced by  
(16) Mr Jamin are admitted  
(17) (Exhibit 3793 3794 3795 3796 3799 3804 3805 3807  
(18) 3808 and 3811 received)  
(19) MR JAMIN At this time with the Court s permission  
(20) the plaintiffs will call Michael A Peat to testify  
(21) THE CLERK Would you raise your right hand  
(22) (The Witness Is Sworn)  
(23) THE WITNESS I do  
(24) THE CLERK Please be seated  
(25) For the record would you state your full name your

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(1) address and spell your last name  
(2) THE WITNESS Michael Allen Pete P e a t I reside  
(3) at 8408 Sterling Bridge Road Chapel Hill North Carolina  
(4) THE CLERK Thank you sir  
(5) DIRECT EXAMINATION OF MICHAEL A PEAT  
(6) BY MR JAMIN  
(7) Q Doctor Peat good morning  
(8) A Good morning  
(9) Q How are you currently employed?  
(10) A I am presently employed as an individual consultant  
(11) Q In what field?  
(12) A In the field of toxicology  
(13) Q In March of 89 after the wreck of Exxon Valdez were you  
(14) employed to perform some tests on Joseph Hazelwood s  
blood?  
(15) A Yes, they did  
(16) Q All right Let me take a moment to review your education  
(17) sir  
(18) As background can you tell us about your undergraduate  
(19) education?  
(20) A Yes I have an undergraduate degree in chemistry which  
was  
(21) awarded from in England in 1969, and under graduate  
doctoral in  
(22) pharmacology which was awarded from the University of  
Utah in  
(23) 1982  
(24) Q Can you give us a thumbnail sketch of your employment  
(25) history?

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- (1) **A Yes** From 1969 through 1972 I was employed at the metropolitan police forensic laboratory attached to New Scotland Yard in London From 1972 to 1976 I was with the University of London at one of their medical schools where I held both faculty positions and a staff position directing a clinical forensic toxicology laboratory From 1976 through 1984 I was with the Center for Human Toxicology at the University of Utah Salt Lake City From 1984 through 1986, I was with Chemical Toxicology Institute in Foster City, California And from 1986 through February of this year, I have been with CompuChem Laboratories
- (12) **Q** All right Now two words that you ve used forensic and toxicology Can you give the jury a brief description of what they are and how they work together?
- (15) **A Yes** Is the study the adverse effects of chemicals and drugs on the human body Forensic toxicology deals with the application of toxicology in the field of law, and in particular with the analysis of biological specimens of drugs or toxic chemicals
- (20) **Q** In March of 1989 where were you physically located in your employment?
- (22) **A** In Sacramento, California
- (23) **Q** And what is the name of the outfit specifically you were working for sir?
- (25) **A** It was known as ChemWest Analytical Laboratories

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- (1) **Q** We ve heard CompuChem and ChemWest before you testified
- (2) Can you explain the difference or relation?
- (3) **A** ChemWest is a - was a totally owned subsidiary of CompuChem Laboratories
- (5) **Q** And in March and April of 1989 were you employed as director of ChemWest?
- (7) **A** I was employed as director of the drug testing division of ChemWest
- (9) **Q** Now did ChemWest perform tests for the presence of alcohol and drugs in the blood of Joseph Hazelwood shortly after the Exxon Valdez disaster?
- (12) **A Yes, they did**
- (13) **Q** And did they do that for Gregory Cousins?
- (14) **A Yes**
- (15) **Q** And do so for Maureen Jones?
- (16) **A Yes**
- (17) **Q** And did they do so for Robert Kagan?
- (18) **A Yes**
- (19) **Q** At the time the tests were performed Doctor did ChemWest have any type of certification to do chemical testing?
- (21) **A** It was certified by the National Institute on Drug Abuse to perform drug abuse testing in urine specimens
- (22) **Q** All right And are there rigorous standards sir to get such certification?
- (25) **A Yes, they are**

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- (1) **Q** What are they?
- (2) **A** The process by which you obtain certification is that you analyze a series of test specimens sent to you by the National Institute Then you undergo an inspection for two days by three inspectors If you pass both those criteria you become certified
- (7) **Q** And are there continuing certification requirements once you get the original approval from NIDA?
- (9) **A Yes**
- (10) **Q** What are they?
- (11) **A** Every six months you undergo another two day inspection by three man team and every two months you analyze test specimens for the presence of drugs
- (14) **Q** Now with respect to your own credentials and certification are you presently certified as a forensic toxicologist?
- (16) **A Yes, I'm board-certified by the American Board of American Toxicology**
- (18) **Q** And are there state certifications as well?
- (19) **A** There are state licensures
- (20) **Q** Licenses And where are you licensed sir?
- (21) **A** In the state of California and the state of New York
- (22) **Q** All right Do you serve a review function at all for the development of national standards in this field?
- (24) **A Yes, I served on the advisory board to the National Institute for the certification of laboratories program**

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- (1) **Q** And in connection with that do you train inspectors who actually certify labs?
- (2) **A Yes, I do**
- (4) **Q** All right Can you give us some estimate of how many blood and urine samples you ve been involved with the testing of over the years?
- (7) **A** Either myself or a laboratories that I have directed and they number in the thousands
- (9) **Q** And how about tests for the presence of alcohol or drugs?
- (10) **A** Again, they would be in the thousands
- (11) **Q** All right I want to take a moment to discuss the business practices at ChemWest just a bit Can you describe the general activities of ChemWest?
- (14) **A Yes** ChemWest is split into two divisions One is the environmental testing division, which deals with the analysis of water, sludge, soils, et cetera for environmental toxins
- (17) **The other was the drug testing division which analyze biological specimens including blood and urine for the presence of drugs**
- (20) **Q** All right Now this second part of the lab that dealt with the blood and alcohol issues what sorts of clients were yours during that period?
- (23) **A** They were numerous They included law enforcement agency, federal agencies, state agencies, the state of California and private companies that did drug testing

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- (1) Q Did you work at all for the Alaska State Troopers?
- (2) A We did some referral work for the Alaska State Troopers
- (3) Q All right Now when you do these the tests that you ve described how do you generally get the samples to start with?
- (4) A Generally they re delivered by some overnight courier service such as Airborne or Federal Express or UPS
- (5) Occasionally they will be delivered by hand, particularly local
- (6) agency
- (7) Q And once received what s the general process by which the samples are dealt with in the lab?
- (8) A The specimens are first examined to insure the cells are intact, there s been no obvious signs of tampering to the cells
- (9) of the specimens They are then logged in on an internal chain
- (10) of custody document by the receivers who document date and
- (11) condition, general condition of the shipping containers
- (12) The
- (13) receiver s also required to give a general description of the specimen container
- (14) Q All right And how is the actual test for alcohol in blood?
- (15) A The actual test is performed by a technique known as gas chromatography which analyzed for ethanol and also determines
- (16) the amount of ethanol or in the -
- (17) Q We ve had some discussion about test tubes Do you use the
- (18) entire sample from the test tube for one of these blood alcohol tests?
- (19) tests?

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- (1) A No only a very small portion of the specimen not in the test tube is used
- (2) Q And can you give me some idea of how much is used for one of these alcohol blood tests?
- (3) A It s less than one milliliter
- (4) Q All right Now can you give me some idea of how much a milliliter actually is?
- (5) A If I can just demonstrate with my pen the pen could represent a test tube At the bottom of the test tube this black portion would be approximately one milliliter
- (6) Q All right
- (7) A And the test tube would be filled to about where the top of the pen sits
- (8) Q All right Good Now just for comparison purposes to check with something we all may know with the change to milliliters and things like that how many milliliters are in a fluid ounce?
- (9) A Approximately 30
- (10) Q And with a 32 ounce quart about how many milliliters would be in a quart?
- (11) A About a liter
- (12) Q About a liter?
- (13) A A thousand milliliters
- (14) Q About a thousand of these milliliters that you ve described with your pen in a quart?
- (15) tests?

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- (1) A Yes
- (2) Q All right Now if after one alcohol test has been done in your lab and there s a request for another one do you go to a second tube do you use the first tube is there a particular practice there?
- (3) A We would normally use the first tube the tube that we ve opened, for that retest And if that will leave the second tube or third tube, whatever, sealed, for the donors to retest if requested
- (4) Q All right Now as director of the lab that you ve described for us what were your general duties?
- (5) A I was responsible for management of the laboratory, including the procedures and protocols used, including staff
- (6) and other administration functions
- (7) Q And did you have any duties with respect to maintenance of records sir?
- (8) A I served as the custodian of business records
- (9) Q And what was the purpose within a forensic toxicology lab for maintenance of records?
- (10) A Those records can obviously be requested by various agencies for litigation purposes Therefore they have to be maintained in the appropriate fashion for a period of time
- (11) Q All right And who was ultimately responsible within ChemWest for the maintenance and preparation of records?
- (12) A I was

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- (1) Q All right Are you therefore familiar with the record retention system that was set up?
- (2) A Yes I established it when we opened the laboratory in 1986
- (3) Q All right Now when ChemWest gets a sample for testing for example a blood sample how is a file set up and what kinds of documents can we expect to find?
- (4) A A file is set up for a particular individual, so in this particular case a file was established for Joseph Hazelwood,
- (5) and within that file will be documentation of chain of custody,
- (6) documentation on the analytical tests that were performed and
- (7) generally and any other correspondence associated with that particular situation
- (8) Q And looking specifically now at the testing that was done in connection with the Exxon Valdez grounding were samples received in the Sacramento office?
- (9) A Yes they were
- (10) Q And were files opened?
- (11) A Yes
- (12) Q And were tests done?
- (13) A Yes
- (14) Q And were you asked to make available some of those records for copying in this litigation?
- (15) A Yes
- (16) Q And did you do so?

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- (1) **A Yes, I did**
- (2) **Q All right** Were the records that you looked at for
- (3) **purposes of this litigation from the Sacramento office?**
- (4) **A Yes, they were**
- (5) **Q And did you find them there?**
- (6) **A No, I did not**
- (7) **Q All right** Where did you find them sir?
- (8) **A I found them in CompuChem Laboratories in Research Triangle Park, North Carolina**
- (9) **Q And can you explain to the members of the jury why they were in North Carolina and not Sacramento?**
- (10) **A Yes** In August of 1990 the drug testing division of ChemWest was closed by CompuChem and the records were
- (11) **transferred back to North Carolina for secure and safe keeping**
- (12) **Q All right** Now did you have an opportunity to compare the original file with the various documents we were going to discuss this morning?
- (13) **A Yes, I did**
- (14) **Q All right** Now I'm going to show you sir if I may a series of documents that we're going to talk about
- (15) **May I approach the witness** Your Honor
- (16) **THE COURT** You may
- (17) **BY MR JAMIN**
- (18) **Q Ask if you could just first review those and indicate to us whether or not they are in fact copies from the file**

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- (1) **maintained by ChemWest?**
- (2) **A Yes, they are**
- (3) **Q All right**
- (4) **May I approach again** Your Honor?
- (5) **What I'm going to do** Doctor is use the projector to display the documents
- (6) **A Okay**
- (7) **Q I'm first going to refer** Doctor to what's been marked as 3793
- (8) **May we have it on?**
- (9) **Now** let me ask you first 3793 is a three page document
- (10) **What is that** sir?
- (11) **A It's what I would call a leaflet, which contains some information on a blood collection kit marketed by Beckton and Dickson VD (ph) for forensic purposes**
- (12) **Q All right** And did the document contain a consent form as well?
- (13) **A Yes, I believe page 3 of that document is a consent form**
- (14) **Q All right** Let's take a look at the upper left hand corner of page 3 I hope I have that centered on the screen
- (15) **Can you see that there** sir?
- (16) **A Yes, I can**
- (17) **Q All right** Now with respect to this document does it indicate what sorts of tubes were present in the kit that it describes?

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- (1) **A Yes, it indicates that it contains two ten milliliter vacutainer blood tubes which contain fluoride and oxide fluoride and disodium**
- (2) **Q All right** Now I'm going to switch you over to the right hand side of that document and let me ask if you can read the top part that appears to be called consent form
- (3) **A There is entry for a date which is 3/24/89 and a time which is 10 35 a m , and below that there is a statement, I have granted permission for blood samples to be taken, signature of**
- (4) **subject, it reads Joseph J Hazelwood**
- (5) **Q All right** And looking farther down on the right hand side of the form once again I will try and get that centered so we can see the whole thing Is there a form that's indicated as blood collection report?
- (6) **A Yes**
- (7) **Q And does it contain the name Joseph J Hazelwood?**
- (8) **A Yes, it does**
- (9) **Q And does it have date and time of incident 0004?**
- (10) **A It does**
- (11) **Q And the date** March 24 1989?
- (12) **A Yes**
- (13) **Q And the place of blood collection listed as Exxon Valdez** 3/24/89 10 35 a m
- (14) **A Yes**
- (15) **Q All right** Now are you able to read any of the signatures

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- (1) **farther down?**
- (2) **A I believe that one of the signatures, the one to the right of the slash, M J Delozier**
- (3) **Q And to the left** are you able to make out any of that?
- (4) **A No** I cannot make that signature out
- (5) **Q All right** Now going back to the left hand side at the bottom of the form does it also have the name Joseph J Hazelwood?
- (6) **A Yes, it does**
- (7) **Q And the same date and times?**
- (8) **A The same information is included**
- (9) **Q All right** And once again can we read the signature of M J Delozier?
- (10) **A Yes, I can read that one**
- (11) **Q And up above that we have the signature that's a little bit tough to read** but can you read after that USCG?
- (12) **A I can**
- (13) **Q All right** Thank you
- (14) **Now** did this document sir accompany the samples when they were received in the lab?
- (15) **A Yes it did**
- (16) **Q All right** Now let me show you next what's been marked 3794 and ask you - change the zoom on this a little bit Get a better feel for the whole document and then we'll come into the whole

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- (1) All right Now I'm going to scan in so that we can see  
 (2) the language more precisely but what is this sir?  
 (3) **A This is the requisition form from the American Institute  
 for Drug Detection, indicating a client name of Exxon U S A**  
 (4) **Q All right And did this too accompany the samples as they  
 (5) were received in ChemWest?**  
 (6) **A Yes, they did**  
 (7) **Q Let me see if I can work the zoom buttons right And we'll  
 (8) focus in on the portion of the form that seems to be a block  
 (9) called specimen change of custody?**  
 (10) **A Correct**  
 (11) **Q All right Can you read it looks as if with the xerox  
 (12) is - we may have lost the S from specimens and came out  
 (13) specimens but can you read that as best you can sir?**  
 (14) **A Yes It reads, specimen provided by Joseph J  
 (15) Hazelwood**  
 (16) **Q All right And again to the extent that you're able to  
 (17) can you read the rest of the writing on the form and the dates?**  
 (18) **A There are two sets of numbers both over the date 24  
 (19) March 89 The second set below the set is M J D, the first  
 (20) set appears to be an S followed by initial I cannot read and  
 (21) then a C**  
 (22) **Q All right Now let's take a look at a third document  
 (23) which has been marked 3795 Once again I'm going to get a  
 (24) feel  
 (25) for the whole of the document Can you tell me sir whether  
 this is a document that came along with the samples when they**

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- (1) were received at ChemWest?  
 (2) **A Yes, it did**  
 (3) **Q And what is this sir?**  
 (4) **A This is labeled a chain of custody card and I believe it  
 (5) originated with the Coast Guard office in Alaska**  
 (6) **Q All right And let's take a zoom on this focus on the top  
 (7) part at the beginning Does it indicate case title T/V Exxon  
 (8) Valdez?**  
 (9) **A Yes, it does**  
 (10) **Q And does it indicate for the item description sealed blood  
 (11) samples for Joseph Hazelwood?**  
 (12) **A Yes**  
 (13) **Q And is there some indication as to the custody chain ending  
 (14) with Ms Metcalf apparently receiving them and can you  
 (15) indicate the date for that sir and the time?**  
 (16) **A Yes, this form indicates that Ms Metcalf received them  
 (17) on  
 (18) March 28th, 1989, at 10 14**  
 (19) **Q All right Now let me ask if we can take a look at the  
 (20) second page of the same document using the zoom again get a  
 (21) feel for the whole  
 (22) is this another chain of custody card that came along with  
 (23) the samples?**  
 (24) **A Yes This chain of custody card covered six sets of  
 (25) specimens which include J Hazelwood**  
**Q All right Let me zoom in so we can take a closer look at**

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- (1) that So this involved six people and did they include sir  
 (2) Mr Kagan Mr Hazelwood Mr Cousins and Ms Jones?  
 (3) **A Yes, they did**  
 (4) **Q All right Now does this indicate when Ms Metcalf  
 (5) received this particular portion of the chain of custody form?**  
 (6) **A Yes, it indicates she received it at 9 30 on March 28th,  
 (7) 1989**  
 (8) **Q All right So between the two are we able to tell that  
 (9) apparently between 9 30 and 10 14 in the morning of March  
 (10) 28th  
 (11) Ms Metcalf was processing this group of samples?**  
 (12) **A Yes**  
 (13) **Q All right Now let me ask you next to take a look at  
 (14) what's been marked 3811 and we'll use the zoom again get a  
 (15) feel for the whole  
 (16) What is this sir?**  
 (17) **A It's a copy of the internal chain of custody relating to  
 (18) Joseph Hazelwood, blood specimen**  
 (19) **Q All right Now we talked about the previous chain of  
 (20) custody Would you use the term external chain of custody for  
 (21) that?**  
 (22) **A That's how we would describe that chain of custody card  
 (23) yes**  
 (24) **Q All right And then the internal chain of custody how  
 (25) does that differ?**  
**A It's an internal ChemWest document that documents  
 transfer**

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- (1) of specimens between either individuals or between storage  
 and  
 (2) individuals  
 (3) **Q All right Now Doctor at the top of this form zooming  
 (4) there is a section that we've already had some testimony about  
 (5) where it says specimen and do you see a three that's crossed  
 (6) out after ten milliliter red stoppered tubes of blood and then  
 (7) a notation above then and one on next line below that and two  
 (8) ten milliliter gray stoppered tubes?**  
 (9) **A Yes, I do**  
 (10) **Q Now are you able to tell us explain to us what was going  
 (11) on with that portion of the form?**  
 (12) **A Yes, I can**  
 (13) **Q Would you do so sir?**  
 (14) **A When the specimens were received, the initial blood  
 (15) specimens were received in March, the stoppers were  
 (16) covered  
 (17) extensively with red evidence tape And it was impossible  
 (18) to  
 (19) see the color of the stopper under that red evidence tape  
 (20) Ms  
 (21) Metcalf indicated that they were in fact three red stoppered  
 (22) tubes of blood because she could not ascertain the true  
 (23) color  
 (24) of the stopper**  
 (25) **Q All right And subsequent to the original receipt of the  
 tubes was a clerical correction made sir?**  
**A A correction was made to the clerical error May 1st, 1989**  
**Q And could you explain the circumstances for the correction?**  
**A Yes On the May 1st, 1989 Judy Peat my wife was**

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- (1) preparing the specimens for retesting at the center for  
 (2) toxicology in Salt Lake City She noticed there were in fact  
 (3) two gray-stoppered, one red-stoppered tubes of blood and  
 asked  
 (4) Karen and instructed Karen to correct the clerical error on the  
 internal chain of custody Karen performed that correction  
 by  
 (6) slashing through the three, indicating one and dating that  
 and  
 (7) initialing that She then added the statement two ten  
 (8) milliliter gray stoppered tubes of blood again initialed and  
 (9) dated  
 (10) That is the normal procedure for correction of clerical  
 (11) errors with our laboratory  
 (12) MR CHALOS I move to strike that testimony as being  
 (13) hearsay unless this gentleman can tell us personal knowledge  
 of  
 (14) that  
 (15) THE COURT Ask the question  
 (16) BY MR JAMIN  
 (17) Q Do you have personal knowledge of the events you just  
 (18) described Doctor?  
 (19) A Yes  
 (20) Q Thank you Let me ask you to take a look at 3796 just for  
 (21) a moment You mentioned that Ms Peat - I think it was Judy  
 (22) Peat sir?  
 (23) A Yes  
 (24) Q All right Let me just ask you a question about her  
 (25) Did your wife work in the lab with you?

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- (1) A Yes she did  
 (2) Q And how was she employed?  
 (3) A She was employed by ChemWest as a manager  
 (4) Q All right And had she training in the area?  
 (5) A Yes  
 (6) Q What was that sir?  
 (7) A She has a bachelors degree in medical technology and is  
 (8) licensed as a medical technologist and had worked in the  
 field  
 (9) of toxicology for approximately eight years at that time  
 (10) Q All right Now let's take a look just for a moment at  
 (11) 3796 before we come back further to - the previous exhibit  
 (12) And what is 3796?  
 (13) A 3796 is a copy of a chain of custody which documents the  
 (14) shipment of the specimen to Salt Lake City for retesting  
 (15) Q All right And was it in connection with the transfer of  
 (16) another sample to Salt Lake City that the clerical error was  
 (17) discovered?  
 (18) A Yes  
 (19) Q All right Now did you consider the error that was made a  
 (20) serious one sir?  
 (21) A No, I did not It is purely a clerical error and it did  
 (22) not impact the testing results that were reported to the  
 Coast  
 (23) Guard and to other agencies  
 (24) Q All right Do you know what color the tubes the stoppers  
 (25) were on the tubes actually as received as they were received?

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- (1) A I know that they contained two gray and one red stopper  
 (2) Q How do you know that Doctor?  
 (3) A I have personally examined those tubes and I have taken  
 (4) photographs or had photographs taken of the tubes  
 (5) Q All right And why did you have photographs taken of the  
 (6) tubes?  
 (7) A We took - photographs were taken prior to transfer of the  
 (8) specimens to the FBI  
 (9) Q All right Now was there any attempt made to cover up the  
 (10) clerical error that Ms Metcalf made?  
 (11) A There was no attempt made to cover up the clerical error  
 (12) Q Now let's get back to the - to the issue of the samples  
 (13) just a bit and the testing  
 (14) Was testing done on Captain Hazelwood's samples and the  
 (15) other samples that we've described?  
 (16) A Yes, it was  
 (17) Q All right And sir can you tell me exactly what the  
 (18) results led to for Mr Cousins?  
 (19) A No alcohol was detected in Mr Cousins' blood specimen  
 (20) Q And for Ms Jones?  
 (21) A The same result  
 (22) Q All right And for Mr Kagan?  
 (23) A The same result, no alcohol detected  
 (24) Q And for Captain Hazelwood?  
 (25) A Blood alcohol was detected in the blood specimen at a

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- (1) concentration of .06 one percent weight per volume  
 (2) MR JAMIN All right May I have just a moment Your  
 (3) Honor?  
 (4) Your Honor if you'll excuse me I seem to have misplaced  
 (5) what I was going to use I apologize for the delay Your  
 (6) Honor  
 (7) BY MR JAMIN  
 (8) Q Now what I'm going to do Doctor is show you Exhibit  
 (9) 3797 Now is 3797 - and we'll do the zoom again the report  
 (10) that was actually prepared by CompuChem laboratories  
 dealing  
 (11) with Mr Hazelwood's blood sample?  
 (12) A Yes  
 (13) Q All right Let me do a zoom if I may Was this  
 (14) particular document on the first page prepared at the request  
 (15) of the United States Coast Guard?  
 (16) A Yes, it was  
 (17) Q All right And are the results indicated down at the  
 (18) bottom portion of the page that you've already described for  
 (19) us?  
 (20) A Yes  
 (21) Q And what are those sir?  
 (22) A That the blood contained .061 percent ethanol  
 (23) Q All right The little W to V what does that refer to?  
 (24) A It's weight per volume  
 (25) Q And can you explain just a bit what that means?

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- (1) **A It's the weight of ethanol per certain volume of blood**  
 (2) **And that is the common unit that is used to report ethanol**  
 (3) **specimens**  
 (4) **Q Very well Let me turn to the second page if I may of**  
 (5) **3797 Now on this page was another report made to the**  
 (6) **National Transportation Safety Board sir?**  
 (7) **A Yes**  
 (8) **Q And did that involve separate testing at all of the**  
 (9) **captain's blood?**  
 (10) **A No, it was the same testing as reported to the U S Coast**  
 (11) **Guard**  
 (12) **Q All right And down at the bottom of the page then the**  
 (13) **same reference is indicated to the 061?**  
 (14) **A Yes**  
 (15) **Q All right And if we were to look further at 3797 would**  
 (16) **we see the similar reports for the other persons you've**  
 (17) **described?**  
 (18) **A Yes, you would**  
 (19) **Q All right Thank you**  
 (20) **Now did there come a time sir where you took some**  
 (21) **pictures of the samples that were received at ChemWest?**  
 (22) **A Yes**  
 (23) **Q All right And what were those pictures that were taken?**  
 (24) **A They were a number of pictures taken of the shipping**  
 (25) **container and specimen tubes for Captain Hazelwood**

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- (1) **Q All right I'm going to see whether the Elmo works for**  
 (2) **some of these The first one to which I'd like to refer is**  
 (3) **3808 Let's see if this works I guess it gives us a little**  
 (4) **bit of a feel**  
 (5) **Can you indicate to us what that picture represents?**  
 (6) **A It is a picture of a blood tube I cannot see it clearly**  
 (7) **I have to look**  
 (8) **Q May I approach the witness with the exhibit and what I'll**  
 (9) **be doing let the jurors look at them because the Elmo does not**  
 (10) **work particularly well**  
 (11) **A This is a picture of the blood tube, and if you look**  
 (12) **closely you can see a slit underneath the stopper You can**  
 (13) **see**  
 (14) **the red evidence tape around the stopper with a break in it**  
 (15) **showing the gray stopper underneath and at the bottom of**  
 (16) **tube you can see the initial CW 78**  
 (17) **Q All right May I approach Your Honor?**  
 (18) **And Your Honor may I show this to the jury?**  
 (19) **UNIDENTIFIED No objection**  
 (20) **THE COURT Objection 3708 is admitted**  
 (21) **(Exhibit 3708 received)**  
 (22) **BY MR JAMIN**  
 (23) **Q The pictures that we're going to talk about and we've**  
 (24) **already begun to talk about when were they taken sir?**  
 (25) **A In between August and October of 1990 I do not**  
**remember**  
 (26) **the exact dates**

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- (1) **Q Okay And what was the reason they were taken?**  
 (2) **A They were taken to maintain evidence of the specimens**  
 (3) **within Compuchem prior to shipment to the FBI**  
 (4) **Q All right Now had the FBI requested that the samples be**  
 (5) **transferred to them?**  
 (6) **A Yes, they had, in late August of 1990**  
 (7) **Q And prior to that time had the state of Alaska asked that**  
 (8) **the samples be maintained in the lab?**  
 (9) **A Yes**  
 (10) **Q And how were they maintained?**  
 (11) **A They were stored in a long term freezer storage**  
 (12) **Q All right I'm going to show you next two together which**  
 (13) **may have been pre admitted 3804 and 3805 - if I may**  
 (14) **approach**  
 (15) **Your Honor**  
 (16) **And can you tell us what those are sir?**  
 (17) **A These are two photographs of the white poly styrene box**  
 (18) **in**  
 (19) **which the specimens were received 3804 is a front-on**  
 (20) **photograph showing the label on front of the box, labeled**  
 (21) **Joseph Hazelwood, dated incident 24 March, '89, date blood**  
 (22) **drawn**  
 (23) **24 March, 89, 10 50 a m, location Exxon Valdez, blood**  
 (24) **drawn**  
 (25) **by Scott M Conner And then below that there's two lines**  
 (26) **of a**  
 (27) **chain of possession, one of which reads received from**  
 (28) **Joseph**  
 (29) **Hazelwood, slash, and then there's the initials J J H**  
 (30) **Next line is by Scott Conner Initial S something C, 24**  
 (31) **March, 89**

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- (1) **And then below that there's a received from Scott Conner**  
 (2) **again with the initials, by Lieutenant Gary Stock on the 25th**  
 (3) **of March, 89**  
 (4) **At either end of the white polystyrene box there is a red**  
 (5) **integrity seal, as it's called, and then on the left side of**  
 (6) **the box on the label is the CW 78-89 label with the initials**  
 (7) **K.L.M on it**  
 (8) **Q All right**  
 (9) **A 3805 is the same box but a side arm view showing an**  
 (10) **off-white seal that has been broken**  
 (11) **Q Very well I'm going to see if we can display these on the**  
 (12) **Elmo and get an overview of what they look like**  
 (13) **All right So the one that I'm pointing to right now is**  
 (14) **sort of the front on view from which you read**  
 (15) **A Yes, it is**  
 (16) **Q And the second photograph describes the seal that you were**  
 (17) **talking about?**  
 (18) **A Yes**  
 (19) **Q Is there a bit of blood on the styrofoam box there sir?**  
 (20) **A Yes, there is**  
 (21) **Q And can you explain how that might have developed?**  
 (22) **A Over time, the blood tubes inside the box and blood**  
 (23) **tubes,**  
 (24) **collected for any purposes, will crack and they'll be some**  
 (25) **blood leakage out of those tubes because of the freezing**  
 (26) **and**  
 (27) **thawing that goes on for handling the specimens over a**  
 (28) **long**



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- (1) **period of time**  
 (2) Q All right  
 (3) MR JAMIN Your Honor may I approach the jury with  
 (4) these two photographs as well?  
 (5) THE COURT You may  
 (6) BY MR JAMIN  
 (7) Q All right Doctor I have a fourth photograph And this  
 (8) one has been marked Did you check the back is it 3807?  
 (9) A Yes, it is  
 (10) Q Can you explain to us what this is?  
 (11) A This is a picture of two blood tubes that actually have  
 (12) been stuck together because there s been leakage of blood  
 (13) one so they've stuck together The one that s pointing up  
 (14) can  
 (15) be seen as a gray stopper tube with evidence tape around  
 (16) that  
 (17) tube Also wrapped around the top of the tube is a white  
 (18) label  
 (19) which you can see the letters H-a-z e-l w from You can see  
 (20) the initials M J D and may count something that begins with  
 (21) an  
 (22) S and ends with a C  
 (23) Q An S and a C  
 (24) A And then you can see the time 10 50 The lower end of  
 (25) that  
 (26) tube you can see seven eight eight, and M  
 (27) Q All right And is the tube that you can see more readily  
 (28) have the top broken at all?  
 (29) A No, this seal is intact  
 (30) Q All right And to your recollection were both of those

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- (1) test tubes intact as far as testing went in the lab?  
 (2) A Yes Both these test tubes, the seal is still intact  
 (3) Q Very well  
 (4) Sir may I publish this to the jury as well?  
 (5) Now Doctor finally as far as exhibits go I have 3799  
 (6) which has been pre admitted and I d like to put that on the  
 (7) screen with the zoom We ll get the whole and then we ll come  
 (8) in and focus a little bit better What is this document sir?  
 (9) A It s a copy of a memo for record prepared by Karen  
 (10) Metcalf  
 (11) on July 24th, 1990, that relates to CW 78 89 and the chain of  
 (12) custody of Joseph Hazelwood  
 (13) Q All right And was this a document that was prepared as  
 (14) part of the official records of the company?  
 (15) A Yes, it was  
 (16) Q All right Now I m going to focus this in so that you can  
 (17) read it to us if you would  
 (18) Is that adequate for reading sir?  
 (19) A Yes  
 (20) Q Please go ahead  
 (21) A 3/28/89, we received three ten milliliter tubes of blood on  
 (22) Joseph Hazelwood as well as the other specimens collected  
 (23) regarding the incident Upon initial inspection of Joseph  
 (24) Hazelwood s specimens, reference CW 78 89, I found all  
 (25) tubes of  
 (26) blood had red evidence tape covering the stoppers as well  
 (27) as  
 (28) the Coast Guard integrity seal which was - ran completely

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- (1) around the tubes including the sides of the stoppers  
 (2) Because of the red tape all three tubes appeared to be red  
 (3) stoppers May 1st, 1989 it was discovered that an error had  
 (4) been made on my part during the initial receipt, only one of  
 (5) the tubes was a red stoppered tube, the other tubes were  
 (6) gray  
 (7) Q Little anticipation go ahead  
 (8) A Gray stoppered This was found by cutting out a small  
 (9) section of the evidence tape on the top portion of the  
 (10) stopper On discovery of this error, the initial description  
 (11) of the stoppers on the chain of custody was changed to  
 (12) reflect  
 (13) the correct -  
 (14) Q All right go over to page 2  
 (15) A - information, dated and initialed Only one tube of  
 (16) blood was aliquotted from, it was a gray stoppered tube, the  
 (17) other two tubes remain sealed On May 2nd, 1989 an  
 (18) aliquot was  
 (19) sent to the Center for Human Toxicology in Salt Lake City,  
 (20) Utah This aliquot was removed from the same tube we had  
 (21) tested  
 (22) Q All right  
 (23) And then is Ms Metcalf certain that the statement she has  
 (24) given is true and accurate?  
 (25) A Yes  
 (26) Q And does she swear that statement in front of a notary?  
 (27) A She does  
 (28) Q Is Ms Metcalf s statement that you just read to us

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- (1) consistent with your own knowledge of the event?  
 (2) A Yes, it is  
 (3) Q All right And is there any question in your mind  
 (4) regarding ChemWest receiving anything other than two gray  
 (5) and  
 (6) one red stoppered tubes?  
 (7) A There is no question in my mind that we received two  
 (8) gray  
 (9) and one red stoppered tubes  
 (10) Q Is there any question in your mind that procedures that  
 (11) ChemWest effected in any way affect the validity of the test?  
 (12) A No, the testing results were valid  
 (13) Q If there was any question with your experience with the  
 (14) test would the testing have gone forward sir?  
 (15) A No, they would not Testing would not have been  
 (16) initiated  
 (17) if there had been any question of the sealed - of the blood  
 (18) tubes  
 (19) Q Occasionally are there questions that may affect the  
 (20) integrity of a test presented by receipt of the samples?  
 (21) A Yes, they are  
 (22) Q And what is done in that situation sir?  
 (23) A Normally in that situation the client or the requesting  
 (24) agency is contacted with regard to the discrepancy  
 (25) Q All right And the testing that was done by or excuse me  
 (26) the sample that was taken that was tested by the lab did the  
 (27) documents indicate it was taken about 10 30 in the morning of  
 (28) the 24th?

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- (1) **A The first document that we looked at today indicated a**  
 (2) **collection time, I believe, of 10 35 a m**  
 (3) **Q All right And did it indicate sample - for which sample?**  
 (4) **A For the sample Joseph Hazelwood**  
 (5) **Q And did it indicate an incident time shortly after**  
 (6) **midnight?**  
 (7) **A Yes, it did**  
 (8) **Q And coming up with the analysis 06 When ChemWest was**  
 (9) **doing the blood analysis is it performing an analysis of the**  
 (10) **blood as it existed at 10 30 in the morning on the 24th?**  
 (11) **A Yes**  
 (12) **MR JAMIN I have nothing further thank you Oh I**  
 (13) **may not have offered 3797 and counsel points out probably**  
 (14) **that**  
 (15) **I should**  
 (16) **(Exhibit 3797 offered)**  
 (17) **THE COURT I was going to point that out**  
 (18) **is there objection to 3797?**  
 (19) **MR CHALOS No objection Your Honor**  
 (20) **MR JAMIN Thank you Dr Peat**  
 (21) **THE COURT Admitted**  
 (22) **(Exhibit 3797 received)**  
 (23) **THE COURT You may cross examine**  
 (24) **MR CHALOS Good morning Your Honor**  
 (25) **THE COURT Good morning**  
 (26) **CROSS EXAMINATION OF MICHAEL PEAT**

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- (1) **BY MR CHALOS**  
 (2) **Q If it may please the Court Dr Peat I m Michael Chalos**  
 (3) **A Good morning**  
 (4) **Q How are you? I represent Captain Joseph Hazelwood Dr**  
 (5) **Peat when you told us that your lab was certified by the NIDA**  
 (6) **do you remember that?**  
 (7) **A Correct**  
 (8) **Q Your lab s not certified for blood alcohol testing is it?**  
 (9) **A No I indicated that was for urine and drugs abuse**  
 (10) **Q But not for blood alcohol?**  
 (11) **A That is correct That program does not cover blood**  
 (12) **alcohol**  
 (13) **Q Now you were in charge of ChemWest during March of 89**  
 (14) **right on through you said until August of 90?**  
 (15) **A Yes**  
 (16) **Q And at that time in March of 89 you had less than ten**  
 (17) **people working for you?**  
 (18) **A Yes**  
 (19) **Q Now let me just go back to the time that you got the two**  
 (20) **call from the Coast Guard That was on March 26 was it?**  
 (21) **A I did not receive a call on that particular day To the**  
 (22) **best of my recollection my first contact with the Coast**  
 (23) **Guard**  
 (24) **was on Monday the 27th**  
 (25) **Q The 27th And you spoke to Lieutenant Stock?**  
 (26) **A To the best of my recollection, yes**

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- (1) **Q And he told you that he was sending to you samples blood**  
 (2) **samples from the crew of the Exxon Valdez?**  
 (3) **A To the best of my recollection, yes**  
 (4) **Q And you knew at that time that the Exxon Valdez had run**  
 (5) **aground**  
 (6) **A Yes**  
 (7) **Q And did Lieutenant Stock tell you to be very careful with**  
 (8) **these samples it s an important matter?**  
 (9) **A I cannot recollect the conversation with Lieutenant Stock**  
 (10) **Q Did you understand that the grounding of the Exxon Valdez**  
 (11) **and the testing of the samples would be an important matter?**  
 (12) **A Yes, I did**  
 (13) **Q And did you understand that those samples had to be**  
 (14) **handled**  
 (15) **with care to make sure that the chain of custody was preserved?**  
 (16) **A As with every specimen**  
 (17) **Q And did you also understand that whatever came in had to**  
 (18) **be**  
 (19) **logged in properly?**  
 (20) **A Yes**  
 (21) **Q Did you convey that to Ms Metcalf?**  
 (22) **A I m sure I told Ms Metcalf that we were to receive**  
 (23) **specimens from the Exxon Valdez and appropriate care and**  
 (24) **attention should be paid to them**  
 (25) **Q In fact you told her to be very careful with them?**  
 (26) **A That s possible**  
 (27) **Q Now you don t have any knowledge sitting here today how**

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- (1) **these samples were handled before they came to your lab do**  
 (2) **you?**  
 (3) **A No, I do not**  
 (4) **Q And if they had been tampered with prior to your receiving**  
 (5) **them you have no knowledge of that do you?**  
 (6) **A That s correct**  
 (7) **Q Now on Exhibit 3793 that you were shown do you remember**  
 (8) **where it said Mr Delozier signed below Captain**  
 (9) **Hazelwood s - do you have that in front of you?**  
 (10) **A No Could you -**  
 (11) **MR CHALOS Your Honor may I approach the witness?**  
 (12) **THE COURT Yes**  
 (13) **BY MR CHALOS**  
 (14) **Q I m going to do two things I m going to give you a set of**  
 (15) **my exhibits**  
 (16) **A Thank you**  
 (17) **Q Which now 3793 was this document do you remember this?**  
 (18) **A Yes, I did**  
 (19) **Q You told us about Mr Delozier s signature?**  
 (20) **A Yes**  
 (21) **Q Okay Let me put this - what do you call this machine**  
 (22) **again?**  
 (23) **MR SANDERS Elmo**  
 (24) **MR CHALOS I ve been relegated to low tech Your**  
 (25) **Honor**

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- (1) Okay Here we are  
 (2) BY MR CHALOS  
 (3) Q This is the Delozier signature you re talking about?  
 (4) **A That s what it appears to be**  
 (5) Q And there s also a Delozier signature over here?  
 (6) **A Yes**  
 (7) Q Okay Does that signature indicate to you that  
 (8) Mr Delozier witnessed the drawing of the blood from Captain  
 (9) Hazelwood?  
 (10) **A Certainly the signature is below I believe on the left**  
 (11) **side of this, if we can move it this way**  
 (12) Q Okay Sorry let me try something now How do you like  
 (13) this? There you go  
 (14) Can you see it now?  
 (15) **A Yes**  
 (16) Q All right It says here I hereby assert that I have  
 (17) witnessed the actual withdrawal of blood and collection of  
 (18) urine - wait a minute sorry I m reading - let me read it  
 (19) again  
 (20) I hereby assert that I have witnessed the actual withdrawal  
 (21) of blood from the above subject by the person whose signature  
 (22) appears above Do you see that?  
 (23) **A Yes, I do see that**  
 (24) Q Okay Were you here during Mr Delozier s testimony?  
 (25) **A No, I was not**

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- (1) Q Let me represent to you that on the trial transcript page  
 (2) 365 and 366 Mr Delozier said that he witnessed three  
 (3) red stoppered tubes of blood being taken from Captain  
 (4) Hazelwood I m going to represent that to you  
 (5) Can you explain to me then if that s what Mr Delozier  
 (6) said and he was right there witnessing it why you say today  
 (7) that you saw two gray stoppers?  
 (8) **A We received two gray stoppers and one red stopper tube**  
 (9) **of**  
 (10) **blood**  
 (11) Q Let me ask you something sir When was the first time  
 (12) that you saw the samples?  
 (13) **A I believe in May of 1989**  
 (14) Q That s after May 1st Isn t it? Isn t that correct?  
 (15) **A I cannot recollect the exact day in May I saw the**  
 (16) **specimen**  
 (17) Q So you don t know you don t know what was received by  
 (18) your  
 (19) lab until after your wife changed the records isn t that  
 (20) correct?  
 (21) **A My wife performed - asked Karen to perform a collection**  
 (22) **on**  
 (23) **the -**  
 (24) Q Is the answer yes or no sir you don t know what was  
 (25) received by your lab until after your wife changed the  
 (26) records? Is that a yes or a no?  
 (27) **A It s a yes or a no**  
 (28) Q Now you say - were you here for Ms Metcalf s testimony?  
 (29) **A Yes, I was**

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- (1) Q Do you remember Ms Metcalf saying how she handled the  
 (2) samples when they came in?  
 (3) **A Generally, yes**  
 (4) Q And do you remember her testifying under oath that she  
 (5) looked at the samples very carefully because you told her to  
 (6) look at them very carefully?  
 (7) **A Generally yes**  
 (8) Q And do you remember her saying that she looked for the size  
 (9) of the tube that was part of her job and also for the color  
 (10) of the stoppers?  
 (11) **A Yes**  
 (12) Q And do you remember her also saying that she didn t believe  
 (13) she made a mistake on Captain Hazelwood s samples do you  
 (14) remember her testifying?  
 (15) **A I do not recollect that statement**  
 (16) Q Uh huh Do you remember her saying that other than that  
 (17) exhibit that we saw that memo that we re going to get to in a  
 (18) second that she made no mistake on any other sample of any  
 (19) other crew member other than the what you say now is Captain  
 (20) Hazelwood s samples? Isn t that correct?  
 (21) **A I remember that statement**  
 (22) Q And do you remember her testifying that she was able to  
 (23) distinguish between gray and red for everybody else?  
 (24) **A Yes**  
 (25) Q And do you remember her saying that she did someone else  
 a

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- (1) Mr Weidman before she did Captain Hazelwood s sample do  
 (2) you  
 (3) remember that?  
 (4) **A Yes**  
 (5) Q And do you remember that she was able to distinguish  
 (6) between gray and red on Mr Weidman?  
 (7) **A I remember that she did that, yes**  
 (8) Q Now sir when you saw the samples after May 1st were they  
 (9) all packed up the same way?  
 (10) **A They were in the white polystyrene box, yes**  
 (11) Q Did they all have this red tape that you re talking about?  
 (12) **A They all had the red tape around the stopper together**  
 (13) **with**  
 (14) **the white seal that was covering the red seal on the side of**  
 (15) **the stopper**  
 (16) Q So Captain Hazelwood s looked no different than the other  
 (17) samples did they?  
 (18) **A They were generally the same appearance**  
 (19) Q Let s talk about your wife for a second if we may  
 (20) please  
 (21) MR CHALOS Can I have Your Honor while we re  
 (22) waiting I would like to offer into evidence - here I am  
 (23) Exhibits DX9102 and through DX9112 so that would be 9102  
 (24) 3  
 (25) 4 5 6 and so on until we get to 9112  
 (26) (Exhibits 9102 9103 9104 9105 9106 9107 9108 9109  
 (27) 9110 9111 9112 offered)  
 (28) THE COURT Mr O Neill

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- (1) MR JAMIN No there is none  
 (2) THE COURT Exhibits DX9102 through 9112 both  
 (3) inclusive are admitted  
 (4) (Exhibit 9102 9103 9104 9105 9106 9107 9108 9109  
 9110 9111 9112 received)  
 (5) BY MR CHALOS  
 (6) Q Now can you see this?  
 (7) A Yes, I can  
 (8) Q All right okay Up until your wife changed the records  
 (9) or caused the records to be changed this is how the front  
 (10) portion of the chain of custody read wasn't it?  
 (11) A Yes  
 (12) Q It said three ten milliliter red stoppered tubes for  
 (13) Captain Joseph Hazelwood's isn't that correct?  
 (14) A Yes  
 (15) Q Now you said you've looked at the records before you came  
 (16) here today?  
 (17) A Yes  
 (18) Q How many times was Captain Hazelwood's blood sample  
 (19) handled  
 (20) by your lab people before your wife handled it May 1st?  
 (21) A I would have to refresh my memory  
 (22) Q Well let me show you  
 (23) May I approach Your Honor  
 (24) THE COURT Yes  
 (25) BY MR CHALOS

- (1) A Correct  
 (2) Q And he logs the times he returns the specimens?  
 (3) A Yes  
 (4) Q On this chain of custody form?  
 (5) A Yes  
 (6) Q Okay Now we'll go to the - here we go the samples were  
 (7) handled again on March 30th by Ms Metcalf for a half hour  
 (8) right?  
 (9) A Yes  
 (10) Q And again they were handled on April 17th by Ms Metcalf?  
 (11) A Yes  
 (12) Q And again -  
 (13) A Well, on April 17th, it's more than likely that only the  
 (14) boxes were handled because there was a transfer from  
 (15) temporary  
 (16) to long term storage  
 (17) Q Now let me ask you this  
 (18) It was during this period of time that we're talking about  
 (19) before May 1st that the samples were tested right?  
 (20) A Yes  
 (21) Q When we say samples were tested not all the samples were  
 (22) tested just one tube was tested isn't that correct?  
 (23) A That is correct  
 (24) Q You took a little bit of aliquot from one tube and that was  
 (25) what was tested?  
 (26) A Yes

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- (1) Q Exhibit 3468 which is already in evidence and I ask you  
 (2) to count on that sheet how many times that particular sample  
 (3) was handled before May 1st  
 (4) A There were four incidents five if you include the original  
 (5) receipt  
 (6) Q Okay So at least - may I have that back so I can - let  
 (7) me take this - or let's move this back I'll put this down for  
 (8) a second All right  
 (9) So Ms Metcalf handled it on March 28th right?  
 (10) A Yes  
 (11) Q All right The second one is a Matt Noedel handled it on  
 (12) the same date?  
 (13) A Yes  
 (14) Q And then he handled it later in that day as well?  
 (15) A No, he had possession of the specimens from 11 55 to  
 (16) three  
 (17) o'clock  
 (18) Q So he had it for a period of about three hours?  
 (19) A Approximately  
 (20) Q When he takes control he takes the specimen all right  
 (21) He's also got this chain of custody form with him doesn't he?  
 (22) A The chain of custody remains in the original receiving  
 (23) area  
 (24) and does not accompany the specimens He logs the  
 (25) specimens  
 (26) out of that chain of custody  
 (27) Q All right But Matt Noedel he logs the times that he's  
 (28) taking the specimens?

- (1) Q You weren't involved in that test were you?  
 (2) A That's correct  
 (3) Q Now aside from these particular handlings there were  
 (4) other handlings weren't there when you were using different  
 (5) batches?  
 (6) A Yes  
 (7) Q Okay  
 (8) A Of the aliquots  
 (9) Q Okay And that's logged on some other sheet but these  
 (10) samples themselves were handled by Mr Noedel and Ms  
 (11) Metcalf  
 (12) on other occasions besides the ones shown here am I correct?  
 (13) A No  
 (14) Q This is the only time they were handled?  
 (15) A Yes  
 (16) Q But the aliquots were handled?  
 (17) A The aliquots were handled the time of - the only tests  
 (18) that were performed on the blood specimen was the alcohol  
 (19) test  
 (20) performed by Mr Noedel, and there was another further test  
 (21) performed on the 30th  
 (22) Q Now the first time your wife's name appears on this is May  
 (23) 1st 1989 am I correct?  
 (24) A Yes  
 (25) Q And her name appears only once in all the time that you had  
 (26) Captain Hazelwood's blood samples am I correct on the chain  
 (27) of custody?

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- (1) **A I believe so**  
 (2) **Q That s that one day May 1st 1989 right?**  
 (3) **A Correct**  
 (4) **Q And according to this document she had the samples for a**  
 (5) **minute?**  
 (6) **A She transferred the specimens from long term storage**  
 (7) **freezer storage, to short term refrigerator storage**  
 (8) **Q She picked them up at 9 25 and she deposited them at 9 25**  
 (9) **am I correct?**  
 (10) **A Yes**  
 (11) **Q Incidentally you said that you had personal knowledge of -**  
 (12) **let me strike that and ask another question**  
 (13) **It s your understanding that at that point your wife went**  
 (14) **to Karen Metcalf and told her to change the records so now**  
 (15) **instead of reading - instead of reading three ten milliliter**  
 (16) **red stoppered tubes now the records read one ten milliliter**  
 (17) **red stopper tube and two ten milliliter gray stopper tubes**  
 (18) **right?**  
 (19) **A Yes**  
 (20) **Q That s what your wife told Karen Metcalf to change?**  
 (21) **A Correct**  
 (22) **Q You say you have some personal knowledge of that? The**  
 (23) **fact**  
 (24) **of the matter is this you didn t find out about this until**  
 (25) **after it was done isn t that correct?**  
**A That s correct**

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- (1) **Q So you don t have any personal knowledge as to what your**  
 (2) **wife was looking at what Karen Metcalf was looking at what**  
 (3) **your wife told Karen Metcalf to do and how these records were**  
 (4) **changed?**  
 (5) **A From how -**  
 (6) **Q You don t have any personal knowledge?**  
 (7) **A Well from conversations with both Karen and my wife I**  
 (8) **did**  
 (9) **Q That was the point of the objection Let me ask you this**  
 (10) **When something is moved from long term is it - long term**  
 (11) **storage to short term storage is that what your wife said she**  
 (12) **did? Let me take this down so you can see again**  
 (13) **Right your wife says she took it from long term storage**  
 (14) **and put it in short term right?**  
 (15) **A Yes**  
 (16) **Q Sir when you do that aren t you just taking the box and**  
 (17) **moving it from one place to the other?**  
 (18) **A That s normally what you do**  
 (19) **Q And that s the box that s covered - isn t that that white**  
 (20) **box?**  
 (21) **A It would be the white box Sometimes people would look**  
 (22) **at**  
 (23) **the specimens inside the box**  
 (24) **Q You don t know if your wife looked at all -**  
 (25) **A That s correct**  
**Q Now you were originally - your lab was originally hired**  
**by the Coast Guard right?**

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- (1) **A Yes originally**  
 (2) **Q And you sent them what you say your lab sent them the**  
 (3) **results of what s purported to be Captain Hazelwood s blood**  
 (4) **sample is that correct?**  
 (5) **A That s correct**  
 (6) **Q And at some point the National Transportation Safety Board**  
 (7) **got involved is that correct?**  
 (8) **A Yes**  
 (9) **Q And then you started dealing with them almost exclusively**  
 (10) **right?**  
 (11) **A Yes**  
 (12) **Q And you dealt with the Dr Burkey (ph)?**  
 (13) **A Yes**  
 (14) **Q Okay Now on you also sent them a report of what s**  
 (15) **purported to be Captain Hazelwood s sample?**  
 (16) **A Yes, I did**  
 (17) **Q And in addition to that some time around April 30th you**  
 (18) **sent to the NTSB documents relating to Captain Hazelwood s**  
 (19) **chain of custody forms did you not?**  
 (20) **A I believe it was on or about April 20th, yes**  
 (21) **Q Okay And then subsequently you sent them 36 pages of**  
 (22) **everybody s chain of custody including Captain Hazelwood am**  
 (23) **I**  
 (24) **correct?**  
 (25) **A I believe that I sent one package which included Captain**  
**Hazelwood s and the others**

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- (1) **Q Okay I want to show you what s been marked as DX 9042**  
 (2) **You have that in front of you?**  
 (3) **A Yes, I do**  
 (4) **Q Okay Good That s the package you sent?**  
 (5) **A Yes, it is**  
 (6) **Q Okay And according to this you sent it on April 25th**  
 (7) **1989 but it s your recollection that you had sent them a**  
 (8) **smaller package container just Captain Hazelwood?**  
 (9) **A No that is not my recollection**  
 (10) **Q We re going to get to it in a second but let s do something**  
 (11) **here Let me see if I can this is your signature?**  
 (12) **A Yes it is**  
 (13) **Q Okay You re telling the National Transportation Safety**  
 (14) **Board on April 25th 1989 that I hereby certify that the**  
 (15) **following 36 pages - which included Captain Hazelwood s**  
 (16) **chain**  
 (17) **of custody forms right?**  
 (18) **A Yes**  
 (19) **Q - are true and accurate copies of the chain of custody**  
 (20) **forms relating to the specimens received on March 28th 1989**  
 (21) **from Federal Express Right?**  
 (22) **A Yes True and accurate copies as of April 25th, 1989**  
 (23) **Q Right And then you have the fancy stamp and you re**  
 (24) **certifying it**  
 (25) **What you sent to them on April 25th and you represented to**  
 (26) **them was a true and accurate copy was this form wasn t it?**

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- (1) **A Yes, it was**  
 (2) **Q That said three ten milliliter red stoppered tubes of**  
 (3) **blood isn't that right?**  
 (4) **A Yes**  
 (5) **Q Did you look at them before you sent them?**  
 (6) **A No, I did not**  
 (7) **Q Well how did you certify them that they were true and**  
 (8) **accurate if you didn't look at them?**  
 (9) **A I certificated it true and accurate copies**  
 (10) **Q Did you look at the copies?**  
 (11) **A Did I look at the chain of custody copies? Yes**  
 (12) **Q You did?**  
 (13) **A Yes**  
 (14) **Q And saw this didn't you?**  
 (15) **A Yes**  
 (16) **Q Now sir after this date but prior to May 1st 1989 you**  
 (17) **received a call from the NTSB didn't you?**  
 (18) **A There was several calls through April of 1989**  
 (19) **Q You received a call from Mr Birky didn't you? Dr**  
 (20) **Burkey?**  
 (21) **A As I said, there was several calls from the NTSB, and my**  
 (22) **primary contact if not sole contact was Dr Birky**  
 (23) **Q And Dr Birky told you didn't he that they had interviewed**  
 (24) **Scott Conner and his description of what he sent - that is**  
 (25) **two gray stoppered tubes of blood and one red stoppered**  
**tubes**

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- (1) **of blood didn't match what you sent to them on the chain of**  
 (2) **custody? Didn't he tell you that?**  
 (3) **A I don't recollect that conversation**  
 (4) **Q You don't recollect that it happened or you don't have a**  
 (5) **recollection?**  
 (6) **A It could possibly have happened but I don't recollect it**  
 (7) **Q Okay Now I want to you taking a look at Exhibit 9104?**  
 (8) **A Is that a DX exhibit?**  
 (9) **Q Yes sir DX exhibit**  
 (10) **Do you have it?**  
 (11) **A Yes**  
 (12) **Q Incidentally did your wife speak to Dr Birky at all during**  
 (13) **this time?**  
 (14) **A I do not know**  
 (15) **Q Did you tell your wife that you had received a call from**  
 (16) **Dr Birky along the lines that we just discussed?**  
 (17) **A I do not recollect that**  
 (18) **Q Could have happened though?**  
 (19) **A Certainly**  
 (20) **Q You have 31 - sorry 9104 in front of you?**  
 (21) **A Yes**  
 (22) **Q Okay This is a letter dated May 1st from the National**  
 (23) **Transportation Safety Board right?**  
 (24) **A Yes**  
 (25) **Q And it's to you Dr Peat It says here as we discussed**

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- (1) **in a phone conversation previously the Safety Board may wish**  
 (2) **to have the alcohol measurements on the blood specimens**  
 (3) **taken**  
 (4) **from the captain of the Exxon Valdez confirmed by a second**  
 (5) **laboratory**  
 (6) **Do you see that?**  
 (7) **A Yes, I do**  
 (8) **Q Let me see if I can zoom in a little more all right?**  
 (9) **The decision has been made to go forward with this**  
 (10) **confirmation even though there is no reason whatsoever to**  
 (11) **question the findings**  
 (12) **You see that?**  
 (13) **A Yes**  
 (14) **Q That's May 1st 1989 I suppose it's a coincidence that's**  
 (15) **the date your wife changed the records is that right?**  
 (16) **A That's the date the correction was made to the records**  
 (17) **Q Now and of course the NTSB according to what they say**  
 (18) **had no reason to tell you to send it to another lab for**  
 (19) **confirmation is that what you understood?**  
 (20) **A That is certainly the inference from the letter**  
 (21) **Q Okay Now look here**  
 (22) **By the way this letter is from Mr Birky the fellow that**  
 (23) **you said you were speaking to So he says here let me - I'm**  
 (24) **getting good at this It says Subsequently I am requesting**  
 (25) **that you ship the gray stoppered tube of blood to the Center**  
**for Human Toxicology for confirmation of ethanol**  
**measurements**

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- (1) **Do you see that?**  
 (2) **A Yes**  
 (3) **Q He told you take a gray stoppered tube and send it to**  
 (4) **Utah right?**  
 (5) **A That's the message from the letter yes**  
 (6) **Q Did you do that?**  
 (7) **A No, we actually shipped an aliquot of the gray stoppered**  
 (8) **tube we had tested**  
 (9) **Q You didn't obey the NTSB orders?**  
 (10) **A If I remember correctly, I had some discussions with**  
 (11) **Dr Birky and it was decided that would be the course of**  
 (12) **action**  
 (13) **and leave the sealed gray stoppered tube for further testing**  
 (14) **if**  
 (15) **requested**  
 (16) **Q So what you did then was you took a little portion of the**  
 (17) **tube you had already tested right?**  
 (18) **A Yes**  
 (19) **Q And you sent it on to where Utah?**  
 (20) **A To the Center for Human Toxicology**  
 (21) **Q Now this place was a place that you used to work at**  
 (22) **wasn't it?**  
 (23) **A Yes it was**  
 (24) **Q And your wife used to work for these people in Utah right?**  
 (25) **A Yes**  
 (26) **Q And the person you sent it to was a guy named Crouch?**  
 (27) **A Mr Dennis Crouch**

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- (1) Q And you used to work for him and your wife used to work for  
 (2) him?  
 (3) **A We used to work with him**  
 (4) Q Now when you sent this little sample of what s purported  
 (5) to be Captain Hazelwood s blood?  
 (6) **A Yes**  
 (7) Q I m over here  
 (8) When you sent the sample it didn t have any of the indicia  
 (9) of whose blood it was or how it was sealed or anything like  
 (10) that of the original tubes right?  
 (11) **A That s correct**  
 (12) Q It was just put into another tube and sent on?  
 (13) **A Yes**  
 (14) Q Before I move on to another topic I want to ask you  
 (15) something  
 (16) You tested - in addition to Captain Hazelwood s blood you  
 (17) tested Gregory Cousins blood did you not?  
 (18) **A Yes**  
 (19) Q And Gregory Cousins s blood indicated presence of acetone  
 (20) and isopropanol is that right?  
 (21) **A There was some indications on the chromatographs to**  
 (22) **the best of my recollection, of trace or small amounts of those**  
 (23) **two materials**  
 (24) Q Well is acetone something that s normally in people s  
 (25) blood?

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- (1) **A No, it s not**  
 (2) Q How about isopropanol?  
 (3) **A Again, it is not normally in people s blood**  
 (4) Q So that particular sample to the extent it contained  
 (5) acetones and isopropanol was contaminated wasn t it?  
 (6) **A That s not necessarily the inference I would draw it s**  
 (7) **certainly a possibility**  
 (8) Q And that what you tested for Gregory Cousins was a  
 (9) gray stoppered tube isn t that true?  
 (10) **A Yes, I believe so**  
 (11) Q Now what is isopropanol?  
 (12) **A Isopropanol is rubbing alcohol and is used as a cleaning**  
 (13) **solution on skin**  
 (14) Q And sometimes it s used when you get a shot to sterilize  
 (15) the area?  
 (16) **A Yes**  
 (17) Q Now that s not supposed to be done when you take blood is  
 (18) it?  
 (19) **A For alcohol measurement**  
 (20) Q Yes?  
 (21) **A No**  
 (22) Q It s not?  
 (23) **A Correct**  
 (24) Q Incidentally you found these what you call traces of  
 (25) acetone and isopropanol but you didn t report that did you?

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- (1) **A No There was only very small amounts We did not**  
 (2) **report**  
 (3) Q But you didn t report it in any event?  
 (4) **A That s correct**  
 (5) Q Did you ever tell the Coast Guard or the NTSB that your  
 (6) wife directed Ms Metcalf to change the form?  
 (7) **A I believe that the first time those discussions came up**  
 (8) **were in 1990**  
 (9) Q And that would be around July of 1990?  
 (10) **A Yes**  
 (11) Q Right around the time that Ms Metcalf wrote that memo that  
 (12) you talked about this morning?  
 (13) **A Yes**  
 (14) Q So that was the first time you told them?  
 (15) **A Correct**  
 (16) Q Is there a federal regulation that requires you to report  
 (17) any changes in the chain of custody forms?  
 (18) **A No, there is not And again I would refer to this as a**  
 (19) **correction not a change**  
 (20) Q Did you tell anyone besides - well strike that  
 (21) Did anyone besides you Ms Metcalf and your wife know  
 (22) that these records were changed prior to July of 1990?  
 (23) **A To the best of my recollection, those three individuals**  
 (24) **including myself were aware of the correction**  
 (25) Q Just those three?

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- (1) **A I believe so**  
 (2) Q You testified at a proceeding involving Captain Hazelwood  
 (3) in February of 1990 did you not?  
 (4) **A Yes, I did**  
 (5) Q And at that time you testified under oath didn t you that  
 (6) there was no problem with the chain of custody on Captain  
 (7) Hazelwood s samples?  
 (8) **A That s correct**  
 (9) Q You didn t tell anybody at that hearing you were under  
 (10) oath you didn t tell anybody well what happened was we  
 (11) logged  
 (12) it in at three ten milliliter but really it was two gray- and  
 (13) one red you didn t tell anybody that?  
 (14) **A That s correct I could say correction was made in the**  
 (15) **normal course of business**  
 (16) Q Did you testify to that?  
 (17) **A No, I didn t**  
 (18) Q As a matter of fact let me read you what you testified -  
 (19) this is on page 4319 And you know what I m going to give  
 (20) you a copy so you can follow along  
 (21) **A Thank you**  
 (22) Q Mr Chalos Question And were there any problems with the  
 (23) condition of the packages that you received on that date?  
 (24) Answer Can I consult?  
 (25) Question Sure  
 Answer Each of the packages were received on that - on

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- (1) that day indicate – let me put it here so the jury can follow  
 (2) along as well  
 (3) **Okay** Your answer is Each of the packages were received  
 (4) on that day indicate that the shipment containers themselves  
 (5) were sealed and that the specimen containers were both sealed  
 (6) and labeled No problems were noted on the initial chain of  
 (7) custodies for any of those specimens  
 (8) isn t that what you say?  
 (9) **A That's what I said**  
 (10) **Q That wasn t a true statement in light of the change that**  
 (11) **you knew about and nobody else did isn t that correct?**  
 (12) **A I still believe that s a true statement**  
 (13) **Q Now Mr Peat you mentioned July – let me ask you this**  
 (14) **before I go to July**  
 (15) **You had a chance to look at the samples some time after May**  
 (16) **1st?**  
 (17) **A Yes**  
 (18) **Q Okay When you looked at those samples did the tubes**  
 (19) **appear to you to be hemolyzed?**  
 (20) **A Well, yes The blood was a dark red color**  
 (21) **Q We re talking about Captain Hazelwood s blood?**  
 (22) **A Yes**  
 (23) **Q Okay Could you tell all of us what hemolyzed means?**  
 (24) **A Hemolysis is the breakdown of the red blood cells of the**  
 (25) **blood and that adds a red color to blood over time**

R.

Vol 13 1777

- (1) **Q What happens in layman s terms is the red blood cells**  
 (2) **burst isn t that what happens?**  
 (3) **A Yes**  
 (4) **Q Okay**  
 (5) **All right Let s talk now about July 1990 What caused**  
 (6) **you in July of 1990 to ask Ms Metcalf to write a memo relating**  
 (7) **to this change of the records?**  
 (8) **A In July of 1990, there was some press coverage of a**  
 (9) **hearing**  
 (10) **In which the chain of custody documents were challenged**  
 (11) **Q Challenged by who?**  
 (12) **A By, I believe, yourselves**  
 (13) **Q And so what happened?**  
 (14) **A At that particular time as we were closing the lab for**  
 (15) **economic reasons, we were closing the lab I requested that**  
 (16) **Karen document on a memo for record her recollection of**  
 (17) **the**  
 (18) **events of May and March 1989**  
 (19) **Q That s Exhibit 3799 Plaintiffs Exhibit 3799**  
 (20) **What did you tell her to do just that?**  
 (21) **A That s exactly what I told her to do**  
 (22) **Q And what Ms Metcalf did was she wrote longhand what she**  
 (23) **said was the version of what happened right?**  
 (24) **A Yes**  
 (25) **Q And then she submitted that longhand memo that she wrote**  
 (26) **to**  
 (27) **you?**  
 (28) **A Correct and I made some grammatical changes to the**

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- (1) **longhand then it was typed up and signed by Karen**  
 (2) **Q You made grammatical changes and then gave it back to**  
 (3) **her?**  
 (4) **A Yes**  
 (5) **Q And then it was typed?**  
 (6) **A Correct**  
 (7) **Q And you reviewed it?**  
 (8) **A Yes I cannot remember if I reviewed it before or after**  
 (9) **Karen had signed it**  
 (10) **Q Sir you have that document in front of you?**  
 (11) **A No, I do not**  
 (12) **Q You don t have it in front of you there Do you have a**  
 (13) **copy? Okay why don t you read the screen?**  
 (14) **This document was prepared – let me see one year and**  
 (15) **about three months one year and two months after the event**  
 (16) **right?**  
 (17) **A Approximately**  
 (18) **Q Okay And it was done at your request?**  
 (19) **A Yes**  
 (20) **Q Reading this document okay is there any mention at all of**  
 (21) **your wife s involvement in the changing of the records?**  
 (22) **A No, there was not**  
 (23) **Q None whatsoever right?**  
 (24) **A No, there is no mention of my wife in that document**  
 (25) **Q Did you tell your wife since she was involved in the change**  
 (26) **to write a memo also?**

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- (1) **A No, I did not**  
 (2) **Q You didn t?**  
 (3) **A Correct**  
 (4) **Q At the time that Ms Metcalf wrote this memo you had**  
 (5) **received telephone calls from the NTSB about it?**  
 (6) **A We have received –**  
 (7) **Q About the change?**  
 (8) **A We had received telephone calls from the questions I**  
 (9) **don t know if one was from the NTSB or not**  
 (10) **Q And you knew at this time did you not that the Department**  
 (11) **of Justice through Mr Linsin whose name came up yesterday**  
 (12) **who was doing an investigation as to what happened?**  
 (13) **A I believe that investigation began after this memo after**  
 (14) **this time**  
 (15) **Q Uh huh Did you have a conversation with Mr Linsin about**  
 (16) **this time?**  
 (17) **A On – sometime in the summer of 1990, yes**  
 (18) **Q Okay Would that have been around August of 1990?**  
 (19) **A I would believe so**  
 (20) **Q And is that about the time that your lab closed down?**  
 (21) **A Yes**  
 (22) **Q Another coincidence?**  
 (23) **A As I indicated earlier it closed for economic reasons**  
 (24) **That decision had been made several weeks prior to July**  
 (25) **1990**  
 (26) **THE COURT Mr Chalos you ll save those kind of**



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- (1) remarks -  
 (2) MR CHALOS Yes I m sorry I withdraw that remark  
 (3) BY MR CHALOS  
 (4) Q Mr - Dr Peat you mentioned by the way that my firm  
 (5) was involved in the in the publicity surrounding this change  
 (6) Remember that?  
 (7) **A I m not sure that your firm was involved in the publicity**  
 (8) **but certainly you were involved, your firm was involved in**  
 (9) **several of the litigations**  
 (10) Q I want to show you what we marked as Defendant s Exhibit  
 (11) 9110 okay? This is a letter that we wrote to you on July  
 (12) 18th 1990 You see that?  
 (13) **A Yes**  
 (14) Q Okay And in that letter we enclosed a subpoena Do you  
 (15) remember that?  
 (16) **A Yes**  
 (17) Q You see that?  
 (18) **A Correct**  
 (19) Q And what we wanted was all the records relating to Captain  
 (20) Hazelwood s blood tests we wanted the chain of custody we  
 (21) wanted the records relating to the tests - you see all that?  
 (22) **A Yes I do**  
 (23) Q Okay You didn t respond to the subpoena did you?  
 (24) **A No, I contacted Lieutenant - If I can refer to another**  
 (25) **document that you gave me**

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- (1) Q Go ahead  
 (2) **A I contacted Lieutenant Campos of the U S Coast Guard**  
 (3) **who**  
 (4) **indicated this could be ignored**  
 (5) Q A subpoena could be ignored?  
 (6) **A That s what Lieutenant Campos told me**  
 (7) Q So you went ahead and you just ignored the subpoena?  
 (8) **A Correct**  
 (9) Q Even though it was issued by an administrative law judge?  
 (10) **A Yes**  
 (11) Q And you didn t provide anything to Captain Hazelwood for  
 (12) his use in determining whether his blood alcohol tests were  
 (13) done properly whether the chain of custody was proper? You  
 (14) didn t give them any information at all?  
 (15) **A We had previously supplied that information to the U S**  
 (16) **Coast Guard**  
 (17) Q You didn t respond to this subpoena?  
 (18) **A That s correct**  
 (19) Q Now you told us earlier today that one of the samples that  
 (20) you kept was for the donor s use in case he wanted to retest  
 (21) it didn t you?  
 (22) **A Yes**  
 (23) Q Well how is that - why don t you tell me how the donor is  
 (24) supposed to get that if you won t answer a subpoena?  
 (25) **A If the donor had subpoenaed or requested a retest of his**  
**own and then that would specimen would have been**  
**provided to**

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- (1) him  
 (2) Q You didn t supply the records that he was asking for is  
 (3) that correct pursuant to a subpoena?  
 (4) **A That s correct**  
 (5) Q Now at some point sir you went to the west - to the  
 (6) East Coast right?  
 (7) **A Yes**  
 (8) Q And you had the sample sent to you on the East Coast?  
 (9) **A Yes**  
 (10) Q And when you received those samples you wrote a memo on  
 (11) August 9th 1990?  
 (12) **A Correct**  
 (13) Q That s Exhibit 9108?  
 (14) **A Yes**  
 (15) Q Okay You see this Here you go  
 (16) This is a memo you wrote to file?  
 (17) **A Yes**  
 (18) Q Okay All right Let me read the first paragraph  
 (19) On August 8th 1990 I received from Airborne a brown box  
 (20) sealed with tape Inside the brown box was a white box sealed  
 (21) with tape and containing dry ice You see that?  
 (22) **A Yes**  
 (23) Q The dry ice was to keep the samples frozen isn t that  
 (24) correct?  
 (25) **A Correct**

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- (1) Q And that s the normal and customary way of sending  
 (2) samples  
 (3) through Federal Express blood samples?  
 (4) **A Not necessarily But those specimens that had been**  
 (5) **frozen**  
 (6) **and stored certainly recommended to do it this way**  
 (7) Q Okay Now look here You re describing Captain  
 (8) Hazelwood s samples right and you go ahead and you say two  
 (9) gray stoppered tubes one red stoppered tubes of blood - you  
 (10) see that?  
 (11) **A Yes**  
 (12) Q But look down here at C when you re describing  
 (13) Mr Kagan s you re describing it by size Is there a  
 (14) particular reason why you didn t put any size on Captain  
 (15) Hazelwood s blood samples?  
 (16) **A No, there s no particular reason**  
 (17) Q An oversight or something?  
 (18) **A There s no particular reason that I can recollect**  
 (19) Q I want to talk to you now about the pictures  
 (20) MR CHALOS Your Honor may I approach the witness  
 (21) please?  
 (22) THE COURT Yes  
 (23) MR CHALOS Thank you  
 (24) BY MR CHALOS  
 (25) Q I want to show you what s been marked as 3805 okay You  
 (26) see this?  
 (27) **A Yes**

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- (1) Q I m going to ask you some questions about it so go ahead  
 (2) and study it for a second particularly this area  
 (3) **A That s fine**  
 (4) Q Okay Now incidentally these pictures were taken you  
 (5) said in August or - August through October of 1990 right?  
 (6) **A Yes**  
 (7) Q That s about a year and a half after the samples were  
 (8) initially received?  
 (9) **A Yes**  
 (10) Q Okay Now what I m focusing in now is right here this  
 (11) area here okay? Are you with me?  
 (12) **A Yes**  
 (13) Q Okay Now there was a seal there before wasn t it?  
 (14) **A Yes, there appears to have been an off white seal, as I**  
 (15) **indicated earlier**  
 (16) Q That seal was ripped off? Doesn t it appear it was ripped?  
 (17) **A Certainly appears from that photograph to be ripped**  
 (18) Q Is that standard lab practice when they receive a  
 (19) specimen to rip a seal like that?  
 (20) **A No, it's to cut the seal**  
 (21) Q What you do is you take a knife and you cut along the edge  
 (22) here is that right?  
 (23) **A That s correct**  
 (24) Q That s not when what happened in this case?  
 (25) **A It appears to have been ripped**

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- (1) Q Does that indicate to you that that box was opened at some  
 (2) time before your lab received it - I m going to give you the  
 (3) benefit of the doubt that your lab didn t do that?  
 (4) **A I would believe my lab did not do that and that was done**  
 (5) **at**  
 (6) **some prior time**  
 (7) Q Now I want to put on here Exhibit 3808 okay? You  
 (8) identified that as a gray stoppered tube has a red - you see  
 (9) here where it s been nicked?  
 (10) **A Yes**  
 (11) Q Right And that s how you see the gray stopper?  
 (12) **A I cannot see that on that projection, but -**  
 (13) Q Okay Well you want me to hand it to you?  
 (14) **A I would appreciate that**  
 (15) MR CHALOS Your Honor with your permission I d like  
 (16) to give this back to the jury  
 (17) BY MR CHALOS  
 (18) Q I m going to hand it to you and then I ll go back Go  
 (19) ahead and study -  
 (20) Thanks Okay To the best of your recollection does this  
 (21) wrapping that you see on here comport with what you saw  
 (22) around  
 (23) May 1st 1989?  
 (24) **A Yes**  
 (25) Q It does Were you here for Mr Conner s testimony?  
 (26) **A Some of it, yes**  
 (27) Q Do you remember Mr Connors saying that when he sealed

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- (1) these tubes he put an orange seal from one side of the tube  
 (2) over the other side and then he pinched it? Do you remember  
 (3) that?  
 (4) **A Yes**  
 (5) Q He didn t say anything about any white tape going around  
 (6) like that did he?  
 (7) **A Not that I recollect**  
 (8) Q And you were here for Mr Stocks testimony were you not?  
 (9) **A Generally, yes**  
 (10) Q And Mr Stock said he put a thin - a thin white seal from  
 (11) one side of the tube over the top of the stopper and then down  
 (12) to the other side?  
 (13) **A Yes**  
 (14) Q And he put a red tape around the outside or at least  
 (15) that s how he recalled the thing Do you remember that?  
 (16) **A I remember the thin white seal I don t remember the red**  
 (17) Q That doesn t look like a thin white tape to me does it  
 (18) look to you -  
 (19) **A No, it does not**  
 (20) Q You said one of the tubes contained Captain Hazelwood s  
 (21) blood was cracked?  
 (22) **A At this juncture, yes Not cracked upon receipt**  
 (23) Q Let me ask you something There was a request that was  
 (24) made of your company some time in 1990 91 I think by Exxon  
 (25) for - let me not mix these up Put these over here

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- (1) There was a request by Exxon for these samples Do you  
 (2) remember that?  
 (3) **A I don t recollect the exact letter from Exxon I do have**  
 (4) **in my file a letter in response to that, references that**  
 (5) Q Okay I m going to show you that letter This is a letter  
 (6) from Compuchem dated September 23rd 1991 and it indicates  
 (7) up  
 (8) here on the right hand corner that a copy was given to you for  
 (9) your information?  
 (10) **A Yes**  
 (11) Q This is Exhibit 9111 Your Honor  
 (12) You see that?  
 (13) **A Yes**  
 (14) Q Okay And this was written by your boss?  
 (15) **A Correct**  
 (16) Q And according to your boss your lab was taking the  
 (17) position that they could not release anything because they were  
 (18) trying to protect the way I read it Captain Hazelwood s  
 (19) confidentiality and privacy right?  
 (20) **A You can certainly read it that way**  
 (21) Q Okay Earlier this year you got a letter from one of the  
 (22) lawyers who is a plaintiff s lawyer in this case right a  
 (23) Mr McCallion (ph)?  
 (24) **A I received a copy of a letter that was addressed to a**  
 (25) **Mr Erwin (ph)**  
 (26) Q Okay That s DX9112

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- (1) You saw this letter right?  
 (2) **A Yes**  
 (3) Q And they re asking you - they re asking Compuchem right  
 (4) or the successor of Compuchem -  
 (5) **A Well, Rocheby (ph) Chemical Labs bought ChemWest in 1992,**  
 (6) **February of 1992**  
 (7) Q To voluntarily turn over the information relating to  
 (8) Captain Hazelwood s samples You see that?  
 (9) **A Yes**  
 (10) Q They didn t issue a subpoena did they?  
 (11) **A No, they did not**  
 (12) Q And in fact you complied?  
 (13) **A Excuse me To the best of my knowledge they did not, I should say**  
 (14) **Q Okay In any event you complied with their request did you not?**  
 (15) **A After discussion I agreed and after consulting with Rocheby Medical attorneys, I agreed to testify as to the custodian of business records**  
 (16) **Q To bring the business records and to bring photographs?**  
 (17) **A Yes**  
 (18) **Q Okay So let me see if I got this right now**  
 (19) **You ignored Captain Hazelwood s subpoena right? You took the position with Exxon that this stuff was confidential you were going to protect Captain Hazelwood s confidentiality and**

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- (1) privacy but yet you voluntarily turn it over to the  
 (2) plaintiffs Is that a fair statement?  
 (3) **A That s the statement if you wish to make it in that manner**  
 (4) **that there was certainly various players involved beyond me in**  
 (5) **fact way beyond me in those decisions**  
 (6) Q It couldn t be could it Doctor that you did that because  
 (7) you re getting paid to come up here and testify?  
 (8) **A That is not by any means the reason**  
 (9) Q You are getting paid?  
 (10) **A Yes I am I m getting reimbursed for my time**  
 (11) Q And your expenses?  
 (12) **A Correct**  
 (13) Q And your time is worth I think you told us  
 (14) 1 000-something or something?  
 (15) **A 1,250 per day**  
 (16) Q Okay Doctor thanks a lot  
 (17) I have no further questions  
 (18) THE WITNESS Thank you  
 (19) MR JAMIN I have some very brief redirect Your  
 (20) Honor  
 (21) REDIRECT EXAMINATION OF MICHAEL PEAT  
 (22) BY MR JAMIN  
 (23) Q Dr Peat with respect to the subpoena that came from  
 (24) Mr Chalos s firm was that in connection with a Coast Guard  
 (25) proceeding?

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- (1) **A Yes, it was**  
 (2) Q And did either you or an attorney for your company call the  
 (3) Coast Guard?  
 (4) **A I - to the best of my recollection I believe I talked to**  
 (5) **Lieutenant Campos**  
 (6) Q Okay And after talking with the Coast Guard authorities  
 (7) was it only then that you made the decision not to follow the  
 (8) subpoena?  
 (9) **A Yes**  
 (10) Q And if the Coast Guard had said follow the subpoena would  
 (11) you have done so?  
 (12) **A Certainly**  
 (13) Q Because it was a Coast Guard proceeding?  
 (14) **A Correct**  
 (15) Q With respect to this suggestion about the isopropanol and  
 (16) the acetone was that in Mr Cousins sample?  
 (17) **A That was the only specimen that was present**  
 (18) Q All right And is your report on Mr Cousins sample that  
 (19) it is negative for alcohol sir?  
 (20) **A Yes, it is**  
 (21) Q All right So there s - there s no alcohol in  
 (22) Mr Cousins sample?  
 (23) **A Correct**  
 (24) Q It s just Captain Hazelwood s sample?  
 (25) **A That s correct**

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- (1) Q And there was no suggestion about any isopropanol or  
 (2) acetone in Captain Hazelwood s sample?  
 (3) **A Correct**  
 (4) Q All right  
 (5) Now with respect to the series of questions Mr Chalos has  
 (6) raised of you is there anything you have heard sir which  
 (7) suggested to you that the test results you did were  
 (8) compromised  
 (9) in any way with the samples that were in your custody?  
 (10) **A No The test results that we reported to the Coast Guard and to the NTSB were accurate**  
 (11) MR JAMIN Thank you sir I have nothing further  
 (12) Your Honor  
 (13) THE COURT Thank you sir you may step down  
 (14) (The Witness was Excused )  
 (15) THE COURT Will you call your next witness?  
 (16) MR MONTAGUE Your Honor Plaintiffs call Dr David  
 (17) Smith as an expert witness  
 (18) (The Witness Is Sworn)  
 (19) THE CLERK Please be seated  
 (20) For the record sir state your full name give your  
 (21) address and spell your last name please  
 (22) THE WITNESS David Smith S m i t h 409 Clayton  
 (23) street San Francisco 94117  
 (24) THE CLERK Thank you sir  
 (25) DIRECT EXAMINATION OF DR DAVID SMITH

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- (1) BY MR MONTAGUE  
 (2) Q Good morning Dr Smith  
 (3) A Morning  
 (4) Q Could you please state for us your educational background?  
 (5) A I graduated in 1960 with a bachelor of science in zoology  
 (6) from the University of California at Berkeley  
 (7) Between 1960 and '64, I attended University of California  
 (8) San Francisco medical school I was also enrolled in  
 graduate  
 (9) school in pharmacology which is the study of the effects of  
 (10) drugs  
 (11) 1964 to '65 I interned at San Francisco General Hospital  
 (12) 1965 to '76 I did a post doctoral fellowship in clinical  
 (13) toxicology  
 (14) In 1967 I started the Haight Ashbury free clinics in San  
 (15) Francisco and went on the faculty of UC San Francisco  
 (16) Q Okay So you are a medical doctor?  
 (17) A Yes I'm a physician licensed to practice in the state of  
 (18) California  
 (19) Q Thank you And could you tell us now what your current  
 (20) present - your current professional positions are?  
 (21) A I am the medical director of the Haight Ashbury free  
 (22) clinics in San Francisco which is a community based health  
 care  
 (23) and drug abuse treatment facility I am research director at  
 (24) Merritt Peralta chemical dependency recovery hospital and  
 I am  
 (25) an associate clinical professor of occupational medicine  
 and

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- (1) clinical toxicology at UC San Francisco  
 (2) Q Okay Do you currently hold any teaching positions?  
 (3) A Yes As I indicated, I am associate clinical professor at  
 (4) UC San Francisco I'm a visiting professor of the behavioral  
 (5) pharmacology at the University of Nevada medical school  
 (6) Q Do you do any consulting work have you done any  
 consulting  
 (7) work?  
 (8) A Yes, I've consulted with a wide variety of government  
 (9) agencies, including the Veterans Administration the  
 National  
 (10) Institute on Drug Abuse I've served as a consultant for the  
 (11) Department of Transportation in the alcohol testing area  
 and  
 (12) I've testified in front of the Department of Transportation  
 (13) alcohol testing committee relative to the alcohol testing  
 (14) regulations under the ombudsman transportation bill  
 (15) Q Are you a certified medical review officer?  
 (16) A Yes  
 (17) Q Could you tell us what that is?  
 (18) A A medical review officer was created by statute as a  
 result  
 (19) of the Drug Free Workplace Act to review specimens, to  
 evaluate  
 (20) their reliability and to make judgments I am certified in  
 (21) addiction medicine and certified as a medical review officer  
 (22) and practice in the medical review officer arena for three  
 (23) large utilities in the San Francisco Bay area including  
 PG&E  
 (24) and the Bay Area Rapid Transit system  
 (25) Q Who certified you Doctor?

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- (1) A There is a certification process through the American  
 (2) Society of Addiction Medicine  
 (3) Q Is that a national certification?  
 (4) A Yes  
 (5) Q Have you held any positions relating to government  
 (6) governmental positions or agency governmental agency  
 (7) positions?  
 (8) A I've interacted and served in a variety of capacities with  
 (9) government positions, including being on the U S Olympic  
 drug  
 (10) testing team, 1976, 1984, and I've served as a consultant on  
 (11) various health care reform substance abuse prescription  
 drug  
 (12) issue for a wide variety of government agencies, including  
 the  
 (13) Food and Drug Administration, where I served on the  
 controlled  
 (14) substance advisory committee in which we evaluated the  
 abuse  
 (15) potential of drugs  
 (16) Q Okay Have you written any articles or books?  
 (17) A Yes, I have authored or co authored approximately 300  
 (18) scientific articles dealing with a wide variety of alcohol and  
 (19) drugs topics, including alcohol and the interaction with  
 (20) alcohol and other drugs, including dependencies pain,  
 drugs  
 (21) like Librium and Valium, alcohol and cocaine, various types  
 of  
 (22) drug interactions in that capacity And then I've also  
 (23) authored articles on alcohol and substance abuse disorders  
 in  
 (24) the various textbooks of psychiatry including the Lang  
 (25) textbook on psychiatry in the recent American Psychiatric

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- (1) Association textbook on substance abuse disorders  
 (2) I've also written an article entitled Identifying and  
 (3) Responding to Drug Abuse in the Workplace as part of a  
 national  
 (4) conference that we had on therapeutic drugs and drugs of  
 abuse  
 (5) in the area of the drug-free workplace  
 (6) Q Now do you have experience and expertise as to the  
 (7) studying of the results of blood alcohol concentration tests?  
 (8) A Yes, I worked in this area for many years and as a medical  
 (9) review officer I've served as a medical review officer for  
 (10) approximately 500 cases, some of whom include alcohol  
 testing  
 (11) where I've had to go into arbitration hearings and present  
 my  
 (12) evaluation of the alcohol result and use techniques of  
 (13) retrograde extrapolation to interpret the results under the  
 (14) guidelines established by that company  
 (15) Q Could you can you tell us basically unless you already  
 (16) have covered it what you really do as a medical review  
 (17) officer when it comes to blood alcohol concentration tests?  
 (18) A The primary focus of a medical review officer is to an  
 (19) individual who is tested in the workplace for whatever  
 reason  
 (20) it might be for cost testing because there's an accident, an  
 (21) individual might have suspected of being involved with  
 alcohol  
 (22) because they have alcohol on their breath There may be  
 (23) behaviors that the supervisor identifies as being associated  
 (24) with some form of substance abuse, alcohol or the illicit  
 (25) drugs

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can

- (1) The company has regulations by which testing can occur  
 (2) Those regulations are implemented the biological appropriate  
 (3) biological specimen is collected it is sent to a certified lab  
 (4) where it is analyzed, and verified by the certifying  
 (5) scientists The medical review officer must evaluate that drug  
 (6) test, review all of the chain of custody documents in the  
 (7) laboratory procedure interact with the certifying scientists  
 (8) in the lab and then certify that specimen as a medical review  
 (9) officer  
 (10) Different specimens have different regulations For  
 (11) example the illicit banned drugs such as cocaine marijuana,  
 (12) opiates, amphetamines PCP are much more strictly regulated  
 (13) until very recently than were the testing of alcohol  
 (14) specimens  
 (15) So it is the medical review officer it is required to know  
 (16) the regulations that impact on that particular industry, the  
 (17) impact on that particular employee and what the company  
 (18) regulations are  
 (19) Different companies have different regulations For  
 (20) example, some companies did alcohol testing and involved the  
 (21) medical review officer whereas other companies only do testing  
 (22) for illicit drugs, not testing for alcohol Some companies  
 (23) involve the medical review officer in all aspects of testing,  
 (24) both alcohol and the illicit drugs  
 (25) Once I judge the specimen as reliable I report that to the

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- (1) company say this is a reliable specimen that the company  
 can  
 (2) act upon and then I implement whatever procedures are  
 indicated  
 (3) under company regulations And the company that I work  
 with  
 (4) one of the functions of the medical review officer is to  
 (5) participate in what we call the first time offender policy  
 (6) which means that if they come up positive in the workplace  
 the  
 (7) first time they have the option of treatment I evaluate the  
 (8) employee along with the employee assistance program  
 and the  
 (9) treatment program that we select  
 (10) The individual is entered into treatment Consistent with  
 (11) the company guidelines, I evaluate the treatment and then  
 (12) monitor the employee for five years in association with the  
 (13) employee assistance program counselor, the treatment  
 program  
 (14) and what monitoring guidelines exist by the company  
 (15) Q Now you mentioned amongst all those things you do as a  
 (16) medical review officer that one of the things you are concerned  
 (17) with is determining the reliability of the chain of custody of  
 (18) the blood sampling?  
 (19) A Yes, that is a responsibility the medical review officer we  
 (20) receive training in our medical review officer training as to  
 (21) chain of custody and we are required to check chain of  
 custody  
 (22) because like any medical test we must judge it reliable and  
 we  
 (23) must certify it adds a medical review officer In certain  
 (24) sense we put our medical certification and license behind  
 that,  
 (25) saying this is a reliable specimen upon which the company

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- (1) **act**  
 (2) **Q Okay And you also do an analysis and tell and determine**  
 (3) **what the meaning of the results of the blood test is is that**  
 (4) **correct?**  
 (5) **A Yes**  
 (6) **Q Okay**  
 (7) **A Once the test is judged to be reliable, then we interpret**  
 (8) **it relative to the clinical meaning of the test and different**  
 (9) **tests might have different clinical meanings or**  
**ramifications**  
 (10) **Q Now when you make these determinations are you required**  
 (11) **as a medical review officer to support it support your**  
 (12) **conclusions in proceedings or is it just made for textbook**  
 (13) **reasons?**  
 (14) **A No, I m required to defend that result in front of**  
 (15) **arbitration hearings The usual arbitration hearing that I**  
 (16) **participate is that the employee is on one side trying to**  
 (17) **invalidate the test, and the employer is on the other side**  
 (18) **trying to validate the test and implement whatever**  
**disciplinary**  
 (19) **reasons**  
 (20) **The medical review officer is to be an objective arbitrator**  
 (21) **reaching independent judgments dictated by our own**  
**standards**  
 (22) **of practice of objectivity and appropriate clinical practice**  
 (23) **Q Now as a medical review officer are you considered a**  
 (24) **neutral expert or are you hired by either the employer or the**  
 (25) **employee?**

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- (1) **A By the standard of practice of the medical review officer**  
 (2) **we are required to be neutral We may be contracted with**  
**the**  
 (3) **company and be paid by the company but our own**  
**standards of**  
 (4) **practice require that we be neutral and have no conflict of**  
 (5) **interest**  
 (6) **For example, under our code of ethics as a medical review**  
 (7) **officer we cannot refer our patients to any treatment**  
**program**  
 (8) **that we may be affiliated with So for example in my**  
 (9) **evaluation I might say inpatient treatment but there has to**  
**be**  
 (10) **a completely separate evaluation relative to what inpatient**  
 (11) **program that go into or the patient the employee goes into**  
**We**  
 (12) **have a code of ethics that require that we be neutral and**  
 (13) **objective**  
 (14) **Q Okay**  
 (15) **Your Honor the plaintiffs offer Dr Smith as an expert in**  
 (16) **substance abuse testing and medical review of substance**  
**abuse**  
 (17) **evidence including chain of custody documentation clinical**  
 (18) **toxicology and laboratory test results**  
 (19) **MR SANDERS Your Honor might I voir dire in the**  
 (20) **medical review officer area?**  
 (21) **THE COURT You may**  
 (22) **VOIR DIRE EXAMINATION OF DR DAVID SMITH**  
 (23) **BY MR SANDERS**  
 (24) **Q Good morning my name is Mr Sanders I don t think we ve**  
 (25) **ever met before**

- (1) **A Good morning**  
 (2) **Q The medical review officer function that you were just**  
 (3) **describing for the jury you started in that as the result of**  
 (4) **the enactment of the drug in the workplace act?**  
 (5) **A Correct**  
 (6) **Q When was that enacted?**  
 (7) **A 1989**  
 (8) **Q So how long have you been being a medical review officer**  
 (9) **since 90 or 1989?**  
 (10) **A About 1990**  
 (11) **Q And I take it from your description that some of the cases**  
 (12) **in which you have been involved in since 1990 perhaps 89 do**  
 (13) **involve blood alcohol tests?**  
 (14) **A Yes**  
 (15) **Q What percentage of the cases that you have heard or**  
 (16) **participated in as a medical review officer involve blood**  
 (17) **alcohol tests as compared with the other types of tests?**  
 (18) **A It would be somewhat hard for me to recall, because I ve**  
 (19) **been involved as a toxicologist, an addiction medicine**  
 (20) **specialist in blood alcohol for 25 years but I would say,**  
 (21) **strictly as a medical review officer in arbitration hearings,**  
 (22) **five or ten**  
 (23) **Q That would be a real small percentage then of these 500**  
 (24) **cases?**  
 (25) **A As a medical review officer yes**

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- (1) **Q And I believe if I understood you correctly when you were**  
 (2) **talking about how you went about doing your function and you**  
 (3) **told about looking over chain of custody forms and other things**  
 (4) **that you did you included the fact that you interacted with a**  
 (5) **person that did the testing the drug - the chemical testing**  
 (6) **right?**  
 (7) **A Yes**  
 (8) **Q Did you say that?**  
 (9) **A As part of our process, I will - I have questions or**  
 (10) **issues I call the certifying scientists at the NIDA certified**  
 (11) **lab that I use and interact with**  
 (12) **Q Now in the case here that you re getting ready to testify**  
 (13) **about you didn t interact with a man named Noedel did you?**  
 (14) **A No Who I interacted with was Dr Michael Peat**  
 (15) **Q And you heard - you were sitting right over there when Dr**  
 (16) **Peat testified he didn t do the test?**  
 (17) **A No I interacted with Dr Michael Pete in the past, last**  
 (18) **week and I ve interacted with him before**  
 (19) **Q But the question was Doctor Dr Peat didn t do the test**  
 (20) **on Captain Hazelwood s blood did he?**  
 (21) **A That s an incorrect characterization The certifying**  
 (22) **scientist is not the person that does the test The**  
**laboratory**  
 (23) **designated a certifying scientist, it s usually the head of the**  
 (24) **lab or some position - a person in the position of authority**  
 (25) **And a medical review officer is required to interact with the**

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- (1) **certifying scientist**  
 (2) **I can, if I so choose - and I have on occasion done that,**  
 (3) **actually contacted the person that did the test but that is -**  
 (4) **the person that did the test and the certifying scientist are**  
 (5) **not synonymous**  
 (6) Q All right In any event Doctor you didn't have any  
 (7) interaction with Mr Matt Noedel did you?  
 (8) **A I did not have any interaction with Mr Matt Noedel**  
 (9) Q And then I believe you said you had an interaction with Dr  
 (10) Peat but -  
 (11) **A Correct**  
 (12) Q But that was last week?  
 (13) **A Correct**  
 (14) Q You had already formed your opinion in this case before you  
 (15) ever talked to Dr Peat hadn't you?  
 (16) **A I interacted with Dr Peat following my usual procedures**  
 (17) **of**  
 (18) **going through all the forms and chain of custody with Dr**  
 (19) **Peat**  
 (20) **as the certifying scientist**  
 (21) Q I beg your pardon Doctor The question was hadn't you  
 (22) already formed your opinion and reported it to counsel and had  
 (23) your deposition taken and stated your opinion before you ever  
 (24) met Dr Peat?  
 (25) **A My interaction with Dr Peat verified my opinion, but I**  
 (26) **already presented my opinion in deposition**  
 (27) Q So the answer to my question is yes you had already formed

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- (1) your opinion?  
 (2) **A Well, I stick by my answer**  
 (3) Q Yes or no Doctor?  
 (4) **A I had an opinion I would not characterize it that way I**  
 (5) **had an opinion I presented it in deposition I went through**  
 (6) **the record with Dr Peat and verified that my opinion was**  
 (7) **reliable**  
 (8) Q That was afterwards?  
 (9) **A Correct**  
 (10) MR SANDERS No further questions  
 (11) Just a minute Your Honor Your Honor I would request a  
 (12) brief side bar and maybe we could do it at the break on the  
 (13) question of expertise and how far -  
 (14) THE COURT We're right at break time Let's take our  
 (15) recess ladies and gentlemen and I'll hear counsel  
 (16) (Jury out at 10 00 a m )  
 (17) THE COURT I assume due to the nature of this you  
 (18) probably wanted it on the record  
 (19) MR SANDERS I think that's a good idea  
 (20) THE COURT Go ahead  
 (21) MR SANDERS May it please the Court the problem I  
 (22) have with this is that I think that the plaintiffs are trying  
 (23) to have this man qualified as an expert on the question of  
 (24) evaluating the chain of custody And it strikes me as  
 (25) something not within the expertise certainly this person or

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- (1) anybody else to be an expert in the chain of custody I mean  
 (2) what one does with the chain of custody to determine whether  
 (3) it's valid or not is no different from what this jury is going  
 (4) to be asked to do with respect to that and I don't think there  
 (5) is any qualification possible to be an expert in that And  
 (6) second if there is this foundation hasn't been laid with this  
 (7) man  
 (8) Moreover it is - from the voir dire it is clear that the  
 (9) function that he performs as a medical review officer is  
 (10) different from what he's been asked to do here and what he's  
 (11) going to be asked to do here  
 (12) So I think there's serious questions about I think the man  
 (13) is an expert in his field My question is can there be and is  
 (14) he an expert as a medical review officer  
 (15) MR O NEILL In brief response Your Honor  
 (16) As a medical review officer he does review questions of  
 (17) chain of custody The fact that a jury in this case ultimately  
 (18) has to pass on chain of custody that line of argument we  
 (19) abolished years ago when we regularly started to use expert  
 (20) witnesses on questions that juries address - the purpose of  
 (21) his testimony is to aid the jury into coming to a conclusion  
 (22) about the chain of custody and as a medical review officer he  
 (23) has that experience for four or five years Indeed the  
 (24) experiences is unusual  
 (25) Now the fact that when he is a medical review officer he

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- (1) juries these things as opposed to appearing here as an expert  
 (2) witness doesn't strike me as germane one way or the other We  
 (3) do intend to offer him as an expert on the chain of custody in  
 (4) addition to retrograde extrapolation and some testimony on the  
 (5) physiological - the mechanical effects of alcohol on motor  
 (6) skills and the nerves in the nervous system But this is what  
 (7) we've done for years on these kind of issues  
 (8) MR SANDERS I have no quarrel with the -  
 (9) MR O NEILL I might just add -  
 (10) THE COURT We're not going to double team this wing  
 (11) Mr O Neill took up the ball but with him start and finish  
 (12) with him  
 (13) MR O NEILL I might add that he testified that he  
 (14) was trained to become a juror as a certified medical whatever  
 (15) the heck he is  
 (16) THE COURT Mr Sanders  
 (17) MR SANDERS I'm getting some help too Your Honor  
 (18) MR NEAL I'm not speaking though  
 (19) MR SANDERS May it please the Court I have no  
 (20) problem with this man testifying as to the retrograde  
 (21) extrapolation and some of these effects What concerns me is  
 (22) that - that he's being put forward as an expert in making  
 (23) factual judgments and that's exactly what they're going to do  
 (24) I think and while he may be able to testify about what he  
 (25) thinks about the chain of custody I don't think he's an expert

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- (1) in it I don't think we have such things as experts in  
 (2) judgments  
 (3) THE COURT Gentlemen it's a rut that I think we all  
 (4) tend to fall into that experts have to deal with things  
 (5) scientific and I think that's just not necessarily so Rule  
 (6) 702 speaks especially to the possibility of expert opinion  
 (7) testimony coming in on such things as the generalized category  
 (8) of quote specialized knowledge I think what I have heard in  
 (9) the voir dire and before that suggests that this doctor has  
 (10) specialized knowledge in an area that may be helpful and I so  
 (11) find to the jury in evaluating the evidence in this case and I  
 (12) will allow him to testify  
 (13) We'll be in recess for 15 minutes  
 (14) (Recess at 10 05 a m )  
 (15) (Jury in at 10 20 a m )  
 (16) THE CLERK All rise  
 (17) THE COURT Ladies and gentlemen I have ruled that  
 (18) Dr Smith has specialized knowledge about drug testing  
 (19) procedures and pharmacology matters as to which he may offer  
 (20) opinions You may inquire  
 (21) BY MR MONTAGUE  
 (22) Q Dr Smith I'd like to ask you some questions about the  
 (23) handling of the blood samples of Captain Hazelwood in this  
 (24) case Okay Have you - have you studied any information  
 (25) concerning the handling of those samples?

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- (1) A Yes  
 (2) Q And could you tell the jury what it is that you looked at?  
 (3) A I studied the chain of custody forms, the analytical  
 (4) procedures from both CompuChem and the Center for  
 Human  
 (5) Toxicology I looked at the depositions of Conner, Stock,  
 and  
 (6) Metcalf and discussed and reviewed the documents with the  
 (7) certifying scientists of CompuChem Laboratory Dr Peat  
 and I  
 (8) also reviewed the material with a consultant certifying  
 (9) scientist who had the record for the State of Alaska Dick  
 (10) Prouty  
 (11) Q And did you hear Dr Peat testify this morning? Were you  
 (12) here for that?  
 (13) A Yes  
 (14) Q And did you see the photographs that were used with  
 (15) Dr Peat -  
 (16) A Yes  
 (17) Q - this morning? And had you seen those before?  
 (18) A No  
 (19) Q Okay  
 (20) A Pardon me I did see them this morning Today was the  
 (21) first time I had actually seen the photographs  
 (22) Q Okay And have you reviewed the actual test reports -  
 (23) A Yes  
 (24) Q - that came out of the CompuChem Laboratory?  
 (25) A Yes

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- (1) MR MONTAGUE May I approach the witness Your  
 (2) Honor?  
 (3) THE COURT You may  
 (4) BY MR MONTAGUE  
 (5) Q I'd like to show you a copy of Plaintiff's Exhibit 3797  
 (6) which has already been admitted and ask you if that - that  
 (7) represents the test results of CompuChem that you previously  
 (8) seen?  
 (9) A Yes  
 (10) Q Okay Now what does NIDA stand for?  
 (11) A The National Institute of Drug Abuse  
 (12) Q And what is a NIDA certified laboratory?  
 (13) A The National Institute of Drug Abuse, using specific  
 (14) proficiency testing techniques, certifies a laboratory may  
 be a  
 (15) NIDA certified lab A medical review officer is required to  
 (16) have the specimen analyzed by a NIDA certified laboratory  
 (17) Q Now are you finished?  
 (18) A Yes  
 (19) Q Now does NIDA certify laboratories for blood alcohol  
 (20) testing?  
 (21) A Yes The NIDA certification applies to the testing of  
 (22) illicit drugs, but in general, forensic testing of illicit  
 (23) drugs, they have a forensic capability for doing alcohol  
 blood  
 (24) testing Not all NIDA certified labs do alcohol blood testing  
 (25) but they do have the capability in terms of technique

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- (1) Q All right As a medical review officer and as someone  
 (2) experienced in the area of toxicology for 25 years does - is  
 (3) there any significance to you when you received a blood  
 alcohol  
 (4) concentration test from a NIDA certified laboratory?  
 (5) A Yes Receiving it from a NIDA certified laboratory is a  
 (6) stamp of approval that they have met certain standards and  
 (7) proficiency testing And as I indicated, we're only to have  
 (8) our specimens tested at a NIDA certified lab, because it is a  
 (9) quality assurance measure that is required when you re  
 working  
 (10) in this area  
 (11) Q Okay Now you have reviewed the chain of custody in  
 (12) approximately 500 cases involving alcohol and/or drug abuse  
 (13) cases?  
 (14) A Yes  
 (15) Q And is there a difference in the chain of custody in  
 (16) those - those type of testings whether it's for drugs or for  
 (17) alcohol?  
 (18) A The medical review officer process of reviewing the chain  
 (19) of custody is the same, but there are much stricter  
 standards  
 (20) for chain of custody for illicit banned drugs They call them  
 (21) the NIDA five I've already reviewed them These would be  
 (22) cocaine, marijuana, opiates, PCP, amphetamines The  
 alcohol  
 (23) testing area was much less regulated, although that  
 increase in  
 (24) regulation is occurring now with the recent passage of the  
 (25) Omnibus Transportation Act and the alcohol testing  
 measures



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- (1) **that I ve previously alluded to**  
 (2) **Q Well in each of those cases the drug cases and I think**  
 (3) **you said there were ten alcohol cases that you re involved?**  
 (4) **A Approximately, yes**  
 (5) **Q In each of those cases were you?**  
 (6) **THE COURT Excuse me I think he said five or ten**  
 (7) **percent if I understood him**  
 (8) **THE WITNESS That s correct Your Honor**  
 (9) **BY MR MONTAGUE**  
 (10) **Q I m sorry five or ten percent In the cases that included**  
 (11) **both alcohol testing and drug abuse testing were you required**  
 (12) **as a medical review officer to reach a conclusion as to the**  
 (13) **reliability of the chain of custody leading up to the actual**  
 (14) **testing?**  
 (15) **A Yes**  
 (16) **Q And have you done that in this case?**  
 (17) **A Yes**  
 (18) **Q And what is your conclusion?**  
 (19) **A In my opinion this chain of custody is intact All**  
 (20) **procedures were properly followed There was no what we**  
 (21) **call**  
 (22) **a fatal flaw, which would be a reason to reject a specimen,**  
 (23) **and**  
 (24) **this is a reliable specimen that can be acted upon**  
 (25) **Q Is the fact that the seals around the tube were intact on**  
 (26) **the Hazelwood tubes does that have a significance to you in**  
 (27) **reaching your result?**

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- (1) **A Yes The most critical element is that the integrity of**  
 (2) **the specimen must be intact There can be other issues, but**  
 (3) **these relative evaluations of chain of custody are**  
 (4) **considered**  
 (5) **relatively minor in relationship to what we call fatal flaw**  
 (6) **If the integrity of the specimen is intact the evidence**  
 (7) **seal is intact, it s properly initialed, then this meets the**  
 (8) **chain of custody standards and is a specimen that I not only**  
 (9) **do but must judge reliable If I rejected this specimen I**  
 (10) **would be medically negligent and subject to legal action**  
 (11) **Q Have you ever heard of the term no test report?**  
 (12) **A Yes**  
 (13) **Q What is that?**  
 (14) **A What happens is that the laboratory received a specimen**  
 (15) **and**  
 (16) **determines that there has been a fatal flaw, the evidence**  
 (17) **seal**  
 (18) **has been violated, the integrity of the specimen has been**  
 (19) **invaded, and again that s the seal over the tube that has the**  
 (20) **blood in it That s the critical one That, because the**  
 (21) **integrity of the specimen has been violated, there is the**  
 (22) **potential for tampering and they no test it and what is**  
 (23) **reported to the medical review officer, depending on the**  
 (24) **reporting procedures In the companies that I work with no**  
 (25) **test is reported to the medical review officer, and we take**  
 (26) **clinical action For example, we may increase the**  
 (27) **frequency of**  
 (28) **testing, have the individuals see the employee counselor,**  
 (29) **something of this nature because it s usually the employee**

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- (1) **that tampers with the specimen but I cannot act on a no test**  
 (2) **by any procedure I can have a clinical response to a no**  
 (3) **test,**  
 (4) **but not a legal or regulatory response**  
 (5) **Q Okay And if there was any evidence of tampering at all**  
 (6) **with the seal around the tube would you expect to receive a no**  
 (7) **test from the laboratory?**  
 (8) **A Yes The lab is required to no test the specimen, and**  
 (9) **then**  
 (10) **whatever reporting requirements are in effect, the**  
 (11) **regulations**  
 (12) **vary depending on the different specimens being tested**  
 (13) **They re much stricter, for example, with the illicit drugs**  
 (14) **Q Okay Now there s been talk about red stoppers and gray**  
 (15) **stoppers and the difference between what is supposed to be**  
 (16) **put**  
 (17) **in those tubes**  
 (18) **A Yes**  
 (19) **Q Am I correct one has serum and - the red stopper is**  
 (20) **supposed to have serum in it and the gray stopper blood**  
 (21) **whole**  
 (22) **blood?**  
 (23) **A What happens is that in the gray stoppered tubes they**  
 (24) **have**  
 (25) **a preservative and anticoagulant that prevents the blood**  
 (26) **from**  
 (27) **clotting The red stoppered tube does not have the**  
 (28) **preservative and anticoagulant, and therefore it can clot,**  
 (29) **which is the red - the clot of the blood separates from the**  
 (30) **serum and the serum is clear**  
 (31) **In general the test is serum for the banned drugs, and**  
 (32) **they test the whole blood for alcohol And the standards**  
 (33) **that**

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- (1) **are reported are whole blood standards For example if in**  
 (2) **the**  
 (3) **state of Alaska your drunk driving level is 08 or 10, then**  
 (4) **that is a whole blood standard**  
 (5) **The technician knows when they pick up the gray stoppered**  
 (6) **tube and look in it that it s whole blood and it hasn t**  
 (7) **separated into the clot with serum The serum is a**  
 (8) **straw colored liquid that s easily discernible when you pick**  
 (9) **up**  
 (10) **the tube**  
 (11) **Q And in fact the difference between the serum and the whole**  
 (12) **blood is easily discernible Is that another safeguard as far**  
 (13) **as you re concerned that these tests were done?**  
 (14) **A In a NIDA lab, skilled lab, they have done thousands of**  
 (15) **these specimens They know what is appropriate**  
 (16) **procedure And**  
 (17) **laboratory - if a technician picks up what s supposed to be**  
 (18) **a**  
 (19) **whole blood sample, they re going to see that is, in fact,**  
 (20) **serum and then whatever reporting procedures are**  
 (21) **implemented**  
 (22) **would be implemented**  
 (23) **Q Now I handed you earlier exhibit - was it 3797 I**  
 (24) **believe?**  
 (25) **A Yes**  
 (26) **Q And that is the CompuChem test results?**  
 (27) **A Yes**  
 (28) **Q Do you have - do you have an understanding of what time**  
 (29) **the blood samples were taken from Captain Hazelwood?**  
 (30) **A Yes**

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- (1) Q And on what date?  
 (2) A 10 50 a m , March 24th 1989?  
 (3) Q Now what does that - what does the test report from  
 (4) CompuChem show as to the blood alcohol concentration of  
 Captain  
 (5) Hazelwood s and the blood sample taken 10 50 a m on March  
 24  
 (6) 1989?  
 (7) A 061 percent  
 (8) Q May I borrow that please since we don t have a spare one  
 (9) so I can put it on the machine?  
 (10) Dr Smith I m showing the first page of 3797 Is that the  
 (11) report that you were referring to?  
 (12) A Yes  
 (13) Q Okay And that is the report for Captain Hazelwood?  
 (14) A Yes  
 (15) Q All right Now I would like to call your attention to the  
 (16) part under - where it says ethanol parenthesis WV and then  
 (17) blood 061 percent Do you see that?  
 (18) A Yes  
 (19) Q Could you tell us what that represents - strike that Let  
 (20) me ask you another question  
 (21) Does that indicate that at the time the - this blood  
 (22) sample was drawn there was alcohol in the blood of Captain  
 (23) Hazelwood?  
 (24) A Yes  
 (25) Q Okay And what does that number at that point 061

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- (1) percent mean?  
 (2) A 061 percent weight by volume is the standard way a  
 (3) laboratory reports a specimen to in this case for purposes  
 of  
 (4) our discussion, to the clinician myself in this context, or  
 (5) whoever they report it to  
 (6) Q Okay Now this blood was the blood sample was drawn at  
 (7) 10 50 a m and were you asked to make a determination as to  
 (8) what Captain Hazelwood s blood alcohol concentration was at  
 a  
 (9) time earlier than 10 50 a m on March 24th 1989?  
 (10) A Yes  
 (11) Q And can you tell us what method or technique you use to do  
 (12) that?  
 (13) A The method that I used is a technique called retrograde  
 (14) extrapolation which is a standard clinical technique that is  
 (15) acceptable, for instance, particularly in terms of calculating  
 (16) what the level of blood alcohol is at some time prior to when  
 (17) the specimen was analyzed The technique of retrograde  
 (18) extrapolation is part of our training as a medical review  
 (19) officer and is generally accepted by laboratories and clinics  
 (20) to answer certain questions that might be posed whether it  
 be  
 (21) in a company situation, which is where I work mostly or a  
 (22) drunk driving situation Things of that nature  
 (23) Q Okay And that s an accepted method methodology?  
 (24) A Yes  
 (25) Q Okay Now were you asked to form an opinion as to what

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- (1) Captain Hazelwood s blood alcohol concentration was at or  
 about  
 (2) the time of the grounding of the Exxon Valdez on - around  
 (3) midnight? I don t know whether it s midnight the 23rd or  
 (4) midnight the 24th the evening morning midnight between the  
 (5) 23rd and the 24th?  
 (6) A Yes  
 (7) Q Okay And did you make any such calculation?  
 (8) A Yes  
 (9) Q Could you just tell us the result of that calculation?  
 (10) A Using the method of retrograde extrapolation and taking  
 (11) into consideration the variables that we were trained to  
 (12) include, my professional opinion is that his blood alcohol at  
 (13) the time of the grounding was 226  
 (14) Q That s 226 percent?  
 (15) A Yes  
 (16) Q Okay  
 (17) A 226 percent weight by volume  
 (18) Q And did we ask you also to make a similar calculation  
 (19) for - for an earlier time?  
 (20) A Yes  
 (21) Q And what time - and actually you selected the time?  
 (22) A One hour earlier  
 (23) Q Okay That would be 11 00 p m ?  
 (24) A Yes  
 (25) Q On the 23rd of March?

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- (1) A Yes  
 (2) Q Okay And did you make such a calculation?  
 (3) A Yes  
 (4) Q What was the result?  
 (5) A Using the same method, taking into consideration the  
 same  
 (6) variables, my opinion my professional opinion is that the  
 (7) blood alcohol at the 11 00 p m area was approximately  
 241  
 (8) Q Okay Now could you tell us the significance of those  
 (9) numbers?  
 (10) A Again you have certain standards For example, in the  
 (11) transportation industry for individuals that transport  
 (12) commercial vessels, other than recreational vehicles,  
 (13) recreational vessels, the acceptable level is 04, so this  
 (14) would be approximately six times the acceptable 04 level  
 (15) Drunk driving in different states it might be either 08  
 (16) or 10 but this would be two and a half times the drunk  
 (17) driving level  
 (18) Q Okay To reach those numbers you used this retrograde  
 (19) extrapolation technique?  
 (20) A Yes  
 (21) Q And can that - you ve gone back approximately 11 or 12  
 (22) hours isn t that correct?  
 (23) A Yes  
 (24) Q And is it possible - is it proper to use that retrograde  
 (25) extrapolation technique to go back so far?

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- (1) **A Yes** You have to assume a number of variables which I  
 (2) will present the variables that we assume in using  
 retrograde  
 (3) extrapolation  
 (4) First of all, when alcohol gets into the body it's  
 (5) absorbed into the gastrointestinal tract into the blood  
 (6) stream and then into after an equilibrium throughout the  
 (7) body, it's absorbed into the brain. The brain is the target  
 (8) organ, because that's the organ that produces the  
 intoxication  
 (9) and impairment  
 (10) Blood is the closest approximation that we can have of the  
 (11) brain level. So the focus is on blood and in this case for  
 (12) each ounce of alcohol that the individual drinks, we use an  
 (13) average of .03 up. This absorption rate is influenced by a  
 (14) variety of factors. For example, if there's no food in the  
 (15) stomach - the stomach empties in about an hour - if there is  
 (16) food in the stomach, it might take up to four hours. So one  
 of  
 (17) the key assumptions is that you have to select a time in  
 which  
 (18) you believe all the alcohol has been absorbed from the  
 stomach  
 (19) into the blood stream  
 (20) Retrograde extrapolation is a valid technique only when  
 (21) you're on the descending curve of the metabolism of  
 alcohol  
 (22) Alcohol elimination and the way had alcohol is eliminated  
 is  
 (23) it passes through the liver and the liver enzymes break it  
 down  
 (24) and then it is excreted. And alcohol metabolism is a steady  
 (25) state elimination with the average elimination rate

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- (1) being .015  
 (2) So in retrograde extrapolation we are trained and use an  
 (3) elimination of .015 on the descending curve. Therefore if I  
 (4) can have the screen I can show how I made the calculation  
 (5) MR MONTAGUE Okay. Can we put the flag screen up  
 (6) and the stylus  
 (7) BY MR MONTAGUE  
 (8) Q Before you do that I would like to just ask you one  
 (9) question though. You said you used the term in order to do  
 (10) the retrograde extrapolation you have to be on the down  
 curve?  
 (11) **A Yes**  
 (12) Q Does that mean that you can only go back up to the - up to  
 (13) the - you can only go back to the time where the alcohol level  
 (14) has already peaked?  
 (15) **A Yes**  
 (16) Q You can't go past the peak time? Is that what you're  
 (17) saying?  
 (18) **A Correct** You have to make an assumption and you can  
 (19) entertain different scenarios and assumptions, but when  
 you're  
 (20) asked to render a professional opinion you must select a  
 (21) particular assumption in order to give a response. And the  
 (22) assumption would be at the time you believe that all of the  
 (23) alcohol is absorbed into - from the stomach into the blood  
 (24) stream and you're on the descending curve of the  
 elimination  
 (25) rate

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- (1) Q Okay Now could you show the jury how you reach - how  
 (2) you reached the numbers 226 percent at midnight and 241  
 (3) percent at 11:00 from the .061 percent that came out of the  
 (4) blood samples taken at 10:50 that following morning? Could  
 you  
 (5) do that on the screen?  
 (6) **A Yes** Again what you do is you take the hours times the  
 (7) elimination rate. You come up with a figure. And then you  
 add  
 (8) the known level that you have from the test result, in this  
 (9) case .061. So if you have an 11 hour retrograde  
 extrapolation,  
 (10) which is the first question that I was asked, it would be 11  
 (11) times .015, equals 165. You add .061 and you come up  
 (12) with 226  
 (13) Q And that's the number for midnight?  
 (14) **A That's the 11 hour -**  
 (15) Q Okay That's the midnight number?  
 (16) **A That is correct**  
 (17) Q Okay Now could you do the same calculation for 11:00?  
 (18) **A In the 11:00 it would be 12 times .015 equals 180. Add the**  
 (19) **.061 and you get a 241 at the 12 hour rate which is the**  
 (20) **11:00 p.m. time period**  
 (21) Q Okay And that's - those - that's the mathematical  
 (22) calculations of how you reached those figures?  
 (23) **A Yes**  
 (24) MR MONTAGUE Could we get a printout of that  
 (25) please?

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- (1) BY MR MONTAGUE  
 (2) Q Now in picking the 11:00 figure did you make any  
 (3) assumptions?  
 (4) **A Yes** As I've indicated, you need to make a - an  
 (5) assumption that best fits your perception of the information  
 (6) that you're provided. And the key assumption here is that  
 you  
 (7) must assume that all of the alcohol has been absorbed from  
 the  
 (8) stomach and that you're on the descending limb of the  
 (9) elimination curve. I made the assumption that all of the  
 (10) alcohol had been absorbed by 11:00 p.m. and that he was on  
 the  
 (11) descending limb of the elimination curve  
 (12) Q Okay And are you - by the way is there any margin of  
 (13) error for those calculations?  
 (14) **A Yes** There is substantial biological variability in  
 (15) elimination rates producing a substantial range. However  
 the  
 (16) figure of .015 is accepted and is part of our training, and the  
 (17) error rate would be plus or minus ten percent, so that with  
 (18) great reliability I can say this figure plus or minus ten  
 (19) percent in the sense that a majority of individuals will have  
 (20) an elimination rate, absorption rate, all the other variables  
 (21) that you have to consider, and that we're required to  
 consider  
 (22) as part of our training and education in this area, so that a  
 (23) majority of individuals, the vast majority of individuals,  
 (24) would be within plus or minus ten percent of this figure  
 (25) There's a few that will scatter out on either side, either

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- (1) **be higher or lower, but given the assumptions and the**  
 (2) **elimination rates and understanding of biological variables**  
 in  
 (3) **absorption and metabolism, I believe this is a reliable figure**  
 (4) **plus or minus ten percent**  
 (5) Q Okay Now let's get back to the original figure of 061  
 (6) Did you - excuse me  
 (7) Did you see any other tests from any other labs that  
 (8) confirm that number for you?  
 (9) MR SANDERS Your Honor we're going to object to the  
 (10) other tests No foundation  
 (11) MR MONTAGUE This is something relied on as an  
 (12) accurate period of time or I'll establish I'm not offering it  
 (13) into evidence  
 (14) THE COURT I'll allow you to proceed  
 (15) BY MR MONTAGUE  
 (16) Q Are there any other tests that you viewed?  
 (17) A Other lab -  
 (18) Q Yes  
 (19) A Yes The standard procedure, particularly if there's  
 (20) appeal or some forensic issue  
 (21) MR SANDERS I'll object to this as being  
 (22) non responsive Your Honor  
 (23) THE COURT Try the question again  
 (24) BY MR MONTAGUE  
 (25) Q Was there any other test results from another lab upon

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- (1) which you relied?  
 (2) A Yes  
 (3) Q And what was that lab report?  
 (4) A Center for Human Toxicology  
 (5) Q Do you recall what the result was that they had from their  
 (6) blood test?  
 (7) A 06  
 (8) Q Okay And was that consistent with what the CompuChem  
 test  
 (9) was?  
 (10) A Yes The verifying lab Center for Human Toxicology  
 (11) verified the CompuChem lab  
 (12) Q Okay Now Doctor I want to ask you some questions  
 (13) strictly from a - I hope I'm using the right word -  
 (14) physiological point of view  
 (15) A Yes  
 (16) Q A medical point of view?  
 (17) A Yes  
 (18) Q If a person has a blood alcohol concentration of let's  
 (19) take the higher number the 1100 241 do you have an  
 (20) opinion again from a physiological point of view as to  
 (21) whether that blood alcohol concentration would have impaired  
 (22) that person's cognitive functions?  
 (23) A Yes  
 (24) Q Now that I've asked the question can you tell the jury  
 (25) what cognitive functions are?

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- (1) A Cognitive functions are the higher cerebral cortex  
 (2) functions that involve judgment analysis, ability to react to  
 (3) new situations  
 (4) Q Okay Now at that same level the blood alcohol  
 (5) concentration of 0 241 is it possible again from a  
 (6) physiologic point of view that a person's motor controls would  
 (7) not be affected?  
 (8) A Yes An individual can have substantial tolerance to the  
 (9) motor effects of alcohol, but not the cognitive effects, and I  
 (10) would like to diagram this to better explain my presentation  
 (11) Q Okay Before that's removed has that been printed out?  
 (12) Okay  
 (13) A This is the blood which is the specimen that you're  
 (14) measuring with a blood alcohol concentration As you have  
 (15) increasing blood alcohol, you will have increasing  
 impairment  
 (16) because the brain is affected differently by an increasing  
 (17) blood alcohol We call this progressive CNS depression  
 (18) At the lower levels, the higher thinking levels of the  
 (19) brain, this is a schematic representation of the brain This  
 (20) is the cerebral cortex, which is the higher levels Then this  
 (21) is the mid brain which deals with more basic vegetative  
 (22) functions, and the spinal cord which deals with reflex action  
 (23) and the cerebellum that deals with coordination So the  
 (24) initial impact of alcohol is on the cerebral cortex, or the  
 (25) higher thinking centers

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- (1) As the blood alcohol level goes up, you then have  
 (2) progressive CNS depression of the mid brain, which can  
 produce  
 (3) a variety of different responses It can produce, for  
 example,  
 (4) a sensation of the vomiting center in the mid brain, and the  
 (5) individual will vomit This is actually a protective  
 mechanism  
 (6) of the brain to rid the body of the toxic alcohol You can  
 (7) produce motor impairment so that you can have an  
 individual  
 (8) that has tolerance, impairment of cognitive function, which  
 (9) involves the judgment and the ability to analyze, without  
 (10) impairment of motor coordination  
 (11) There is substantial tolerance to this motor impairment  
 (12) The tolerance is determined by genetic factors There are  
 (13) certain individuals that have a past or family history of  
 (14) alcoholism that have what we call an inborn tolerance  
 They  
 (15) will take more of the drug without having impairment and  
 that  
 (16) will be demonstrated with the first drink  
 (17) Then there is pharmacological tolerance, which the  
 (18) individual repeatedly administers higher doses of the drug  
 (19) There is a neuroadaptation that occurs in the brain and the  
 (20) body, and this is called pharmacological tolerance meaning  
 that  
 (21) it requires more of a drug to achieve the same effect  
 (22) And finally there is behavioral tolerance, which is the  
 (23) experienced drinker, who will learn to moderate their  
 behavior  
 (24) in part to escape detection so that they may be able to walk  
 (25) and function in a motor fashion at a level that to the

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- (1) **inexperienced drinker would produce great motor impairment**
- (2) **However this tolerance does not occur to the cognitive or judgmental areas and of course if the blood alcohol goes high**
- (4) **enough, you can actually die of acute alcohol poisoning**
- This**
- (5) **is why we call it progressive CNS depression, of which the effects of the alcohol start at the higher centers As blood alcohol goes up, the CNS depression goes down through the**
- (8) **higher centers down through the mid brain and impairment goes**
- (9) **up**
- (10) **Q Doctor during that discourse you used the word sometimes drug instead of alcohol Were you referring to the same are they interchangeable?**
- (12) **they interchangeable?**
- (13) **A Alcohol is a drug**
- (14) **Q Could we have a printout please?**
- (15) **MR MONTAGUE Doctor thank you very much Your Honor I would like to offer these two created exhibits by the doctor The first being the calculations which I understand will be Exhibit PX3812 and the sketch of the brain which would be PX3813 I d like to offer them into evidence**
- (19) **be PX3813 I d like to offer them into evidence**
- (20) **(Exhibit PX3812 and PX3813 offered)**
- (21) **MR SANDERS No objection Your Honor**
- (22) **MR MONTAGUE I need stickers**
- (23) **THE COURT Plaintiffs 3812 and 3813 are admitted**
- (24) **(Exhibit 3812 and 3813 received)**
- (25) **THE COURT You may cross examine**

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- (1) **MR SANDERS Thank you Your Honor**
- (2) **MR SANDERS May it please the Court?**
- (3) **THE COURT Mr Sanders**
- (4) **CROSS EXAMINATION OF DAVID E SMITH**
- (5) **BY MR SANDERS**
- (6) **Q Dr Smith you have done quite a bit of writing as you testified earlier today correct?**
- (8) **A Yes**
- (9) **Q And did you have occasion to write a chapter in a book called The Review of General Psychiatry?**
- (10) **called The Review of General Psychiatry?**
- (11) **A Yes**
- (12) **Q And was that chapter 18?**
- (13) **A Yes**
- (14) **Q And you wrote that along with another doctor I assume?**
- (15) **A Yes**
- (16) **Q Dr Landry?**
- (17) **A Yes**
- (18) **Q And I believe the edition I have in front of you and this is Defendant s Exhibit 9093 Your Honor if you would look at page 176 of Exhibit 9093 there s a chart that appears in the bottom right hand corner May I have the Elmo please?**
- (20) **page 176 of Exhibit 9093 there s a chart that appears in the bottom right hand corner May I have the Elmo please?**
- (21) **bottom right hand corner May I have the Elmo please?**
- (22) **That s a chart that you included within the chapter that you co wrote is that right?**
- (23) **you co wrote is that right?**
- (24) **A Yes**
- (25) **Q Now that chart is a description I assume for a normal**

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- (1) **person -**
- (2) **A Yes**
- (3) **Q - of the different stages of blood alcohol content and what kinds of signs of intoxication there are is that correct?**
- (4) **what kinds of signs of intoxication there are is that correct?**
- (5) **A Yes**
- (6) **Q That s from your chapter from this book?**
- (7) **A Yes**
- (8) **Q When did you publish this chapter? Was it about 1988?**
- (9) **A Yes**
- (10) **Q And then it s been - there s been another edition since then in 1993?**
- (11) **then in 1993?**
- (12) **A Yes**
- (13) **Q And does this chart appear in that book?**
- (14) **A Yes**
- (15) **Q Now these numbers over here on the left hand side these that I m pointing to with the pen**
- (16) **that I m pointing to with the pen**
- (17) **A Yes**
- (18) **Q For our purposes here we ve been talking about 061 and 10 This is a different measure but if we just considered this to be 020 to 099 and then 100 to 199 that would put us in the right framework for what we ve been talking about correct?**
- (22) **correct?**
- (23) **A That is correct**
- (24) **Q Now from - you re going to have to help me with some of the reading here I m not familiar with these terms I can do**

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- (1) **okay from 100 to 199**
- (2) **A Yeah**
- (3) **Q The signs are marked mental impairment?**
- (4) **A Yes**
- (5) **Q And coordination?**
- (6) **A Yes**
- (7) **Q What s that?**
- (8) **A That s impairment of gross motor performance with impairment of coordination**
- (9) **impairment of coordination**
- (10) **Q Okay Those are the motor skills you were talking about?**
- (11) **A Correct**
- (12) **Q And then there s prolonged reaction time That s pretty self explanatory**
- (13) **self explanatory**
- (14) **A Yes**
- (15) **Q And then there s a phrase here Ataxia?**
- (16) **A Yes**
- (17) **Q What s ataxia?**
- (18) **A Ataxia would be, ilke in balance staggering gait**
- (19) **Q Stumbling staggering?**
- (20) **A Yes**
- (21) **Q And then from 200 to 299 there s nausea and vomiting first?**
- (22) **first?**
- (23) **A Yes**
- (24) **Q What s this next one?**
- (25) **A Diplopia would be blurred vision**

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- (1) Q Would be what? I m sorry  
 (2) A Blurred vision  
 (3) Q And then the next one is marked ataxia?  
 (4) A Yes  
 (5) Q What is the difference between regular old ataxia and  
 (6) marked ataxia?  
 (7) A You stumble more  
 (8) Q It s a pronounced state of staggering stumbling?  
 (9) A Right  
 (10) Q In balance?  
 (11) A Yes  
 (12) Q And then when you get to 30 to 399 there are severe  
 (13) symptoms correct?  
 (14) A Yes  
 (15) Q Hypothermia?  
 (16) A Yes  
 (17) Q What s the next one?  
 (18) A Severe dysarthria  
 (19) Q What s that?  
 (20) A That s slurred speech, very slurred speech  
 (21) Q Easily recognizable?  
 (22) A Yes  
 (23) Q Amnesia?  
 (24) A Yes That would be the alcohol black out  
 (25) Q And stage one anesthesia What s that?

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- (1) A Comatose You pass out There s a difference between a  
 (2) black out and a pass out  
 (3) Q Okay This is a pass out as opposed to a black out?  
 (4) A Yes  
 (5) Q And then when you get from 400 above you can even have  
 (6) death can t you?  
 (7) A Yes  
 (8) Q If i might I think i ll go to the retrograde extrapolation  
 (9) first and i m going to - i m not going to compete with you on  
 (10) drawing or figuring but i m going to try to - i thought -  
 (11) can i use these?  
 (12) MR O NEILL That s my exhibit  
 (13) MR SANDERS I m just using the back of it  
 (14) MR O NEILL This is the Graves report  
 (15) MR SANDERS I just wanted the back of it  
 (16) MR O NEILL I object  
 (17) MR SANDERS Quit being so picky  
 (18) THE COURT Your objection is being cured I think  
 (19) BY MR SANDERS  
 (20) Q Now first i want to make sure Doctor that we all  
 (21) understand the assumptions that go into this extrapolation  
 (22) back And the first assumption is and you correctly  
 (23) identified this as a key assumption that you re assuming that  
 (24) the alcohol has been absorbed?  
 (25) A Yes

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- (1) Q And that you are on the downward curve?  
 (2) A Yes  
 (3) Q In other words remembering your little chart the blood  
 (4) alcohol not going up the elimination is starting and  
 (5) therefore the blood alcohol is going down?  
 (6) A Yes  
 (7) Q And in fact when you made this analysis for counsel you  
 (8) were asked to assume then that there was no drinking by  
 (9) Captain Hazelwood certainly after 11 00 p m correct?  
 (10) A Wasn t asked by counsel I made that assumption after  
 (11) analyzing all the facts and reviewing all the scenarios That  
 (12) was the assumption i arrived at as the most reliable  
 (13) assumption  
 (14) Q So you re assuming - as the most reliable assumption  
 (15) you re assuming no drinking at least after 11 00?  
 (16) A Yes  
 (17) Q Okay And as a matter of fact it goes back a little  
 (18) further than that doesn t it because you ve got at least an  
 (19) hour with an empty stomach it takes for alcohol to be absorbed  
 (20) after you drink it so the time of no drinking moves on back  
 (21) some more doesn t it?  
 (22) A Yes At least an hour, because an empty stomach, you ll  
 (23) have all the alcohol absorbing in an hour Food in the  
 (24) stomach, it may be as long as four hours  
 (25) Q So your assumption of no drinking by Captain Hazelwood

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- (1) perhaps goes as far back as before going to the security gate  
 (2) at 8 30 in the evening and boarding the ship?  
 (3) A My assumption is no drinking after 11, and then all  
 (4) alcohol  
 (5) absorbed by 11  
 (6) Q But the assumption of no drinking has to go back before  
 (7) 11 00 right?  
 (8) A That is correct  
 (9) Q At least an hour?  
 (10) A At least an hour  
 (11) Q All right Now let s start at the bottom There s no  
 (12) telling how this is going to look Let s say if the time that  
 (13) the consent form was signed which is before you take the  
 (14) blood  
 (15) sample was 10 35 and the time at which the blood sample was  
 (16) taken at about 10 55 can we use 10 45 as our time for the  
 (17) taking of the sample?  
 (18) A Depends on the question you re going to ask, but let me  
 (19) accept that depending on the question you re asking  
 (20) Q Well let s have a working hypothesis 10 45 And we know  
 (21) from the test results that you say are reliable that the  
 (22) figure for 10 45 is 061?  
 (23) A Yes  
 (24) Q And you using your standard elimination rate and your  
 (25) expertise you say that when you go back to approximately  
 (26) midnight is that correct?  
 (27) A Yes

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- (1) Q - the blood alcohol content of Captain Hazelwood s blood  
 (2) if this is reliable was 226?  
 (3) **A Yes**  
 (4) Q And then at 11 00 it was 241?  
 (5) **A Yes**  
 (6) Q I put that down correctly?  
 (7) **A Yes**  
 (8) Q And you arrive at that that s not - that s a calculation  
 (9) even I can do You just take the number of hours you use the  
 (10) basic elimination rate and you get a sum then you add it to  
 (11) the 061 and there you have it?  
 (12) **A Yes I even demonstrated how I arrived at that**  
 (13) **calculation**  
 (14) Q Let s fill in another time here Let s fill in the time  
 (15) that the United States Coast Guard came on board and just to  
 (16) make it easy for me at least let s say it was 3 45  
 (17) approximately And if you take that as seven hours seven  
 (18) times 015 plus 061 comes up to 166 Does that sound right  
 (19) to you?  
 (20) **A Yes**  
 (21) Q Now if we compare those readings using your method of  
 (22) retrograde extrapolation with what s on this chart Exhibit  
 (23) 9064 what we have at the time that the Coast Guard comes  
 (24) on board according to this chart there is marked mental  
 (25) impairment in coordination prolonged reaction time and ataxia

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- (1) correct?  
 (2) **A No that s not correct As you ve indicated, and as I**  
 (3) **indicated, this is a standard chart that relies and focuses on**  
 (4) **the average clinical response in social drinkers This all**  
 (5) **has**  
 (6) **to be modified when you re applying it to a specific case**  
 (7) **particularly if that specific individual has a history of**  
 (8) **alcohol problems because these figures, particularly the**  
 (9) **motor**  
 (10) **impairment figures would not apply So you ve gone from**  
 (11) **the**  
 (12) **general to the specific, and I wouldn t want to agree with**  
 (13) **that**  
 (14) **characterization**  
 (15) Q So are you assuming there is this alcohol history here or  
 (16) are you just saying I can t assume that so therefore I can t  
 (17) tell you?  
 (18) MR MONTAGUE Your Honor the questions that were  
 (19) posed to Dr Smith were hypothetical and I think the cross  
 (20) exam should be kept in that way and not have him apply it to a  
 (21) specific person  
 (22) MR SANDERS I m seeking a clarification what he is  
 (23) saying  
 (24) THE COURT I think the question is proper and you may  
 (25) proceed  
 (26) BY MR SANDERS  
 (27) Q Do you have the question?  
 (28) THE COURT Give it again  
 (29) BY MR SANDERS

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- (1) Q Are you assuming this kind of alcohol history here for your  
 (2) calculations and for your testimony or are you simply saying  
 (3) I m not so therefore I can t compare?  
 (4) **A That would be difficult, Your Honor I need your guidance**  
 (5) **on this I listened to Captain Hazelwood s testimony last**  
 (6) **week**  
 (7) **with the history of the alcohol problems, and I ve indicated**  
 (8) **in**  
 (9) **my presentation if you have a history of alcohol problems,**  
 (10) **you**  
 (11) **have increased tolerance and for me to respond to that**  
 (12) **specific question, I have to take into account the**  
 (13) **information**  
 (14) **that I have heard in the testimony in the depositions so I -**  
 (15) **move from a general to a specific question So before I can**  
 (16) **respond, I need guidance**  
 (17) THE COURT Well I think you re going to have to look  
 (18) for it from the examiner I think he s given a partial answer  
 (19) to the question and why don t you pose another question  
 (20) MR SANDERS Well let me go at it this way first  
 (21) BY MR SANDERS  
 (22) Q It is true at least for a normal person and without regard  
 (23) to these other factors which may or may not be present that  
 (24) those conditions that I read to you would apply to a 166?  
 (25) **A Yes This chart which correlates with the 166 applies to**  
 (26) **a normal person that has no evidence of tolerance, which**  
 (27) **would**  
 (28) **include no evidence of genetic tolerance, pharmacological**  
 (29) **tolerance as indicated by past alcohol exposure or**  
 (30) **behavioral**  
 (31) **tolerance But I do not believe that you can take a general**

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- (1) **chart for the average person that has no evidence of**  
 (2) **tolerance**  
 (3) **and apply it to specific signs and symptoms of a specific**  
 (4) **individual and ask for an opinion on my part unless I am**  
 (5) **allowed to take into consideration facts that are known**  
 (6) **about**  
 (7) **that individual which is the fact that he does have a past**  
 (8) **history of alcohol problems and therefore would have**  
 (9) **tolerance So if I can t take that into consideration I have**  
 (10) **to say no opinion**  
 (11) Q Let s just - so I understand doctor we re talking about  
 (12) what you heard in the court room the other day?  
 (13) **A Correct**  
 (14) Q Or the other days when you were here?  
 (15) **A Correct**  
 (16) Q That s it right?  
 (17) **A I have listened to Captain Hazelwood s testimony last**  
 (18) **week,**  
 (19) **and I ve reviewed his deposition and that information**  
 (20) **influences me relative to his tolerance to alcohol**  
 (21) MR SANDERS Your Honor I think we need a minute  
 (22) please  
 (23) (At side bar off the Record)  
 (24) BY MR SANDERS  
 (25) Q Dr Smith we re going to leave it to the jury to determine  
 (26) from the testimony of Captain Hazelwood and the other  
 (27) information exactly whether he falls within one of your  
 (28) exceptions or not but let me ask you specifically Let s just

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- (1) assume a normal person a normal person at 166 this morning of
- (2) March the 24th 1989 would be exhibiting those characteristics that you listed in your chapter in the book for the range of
- (3) 100 to 199 correct?
- (4) **A Yes**
- (5) **Q** And then at this level that hypothetical normal person would be exhibiting nausea and vomiting diplopia is that right? Did I say it right?
- (6) **A Yes**
- (7) **Q** Is that blurred or double vision?
- (8) **A Blurred and double, same thing**
- (9) **Q** Both?
- (10) **A Yeah**
- (11) **Q** As well as marked ataxia at this level?
- (12) **A Yes**
- (13) **Q** Stumbling and staggering?
- (14) **A Yes**
- (15) **Q** Now you understand based on your review of the testimony that when the Coast Guard came aboard at this time that they were investigating the grounding? You understand that do you not?
- (16) **A Yes**
- (17) **Q** And you also understand that they had the power and the duty to remove Captain Hazelwood from the command of that ship
- (18) if they saw grounds for it? You understand that?

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- (1) **A Yes**
- (2) **Q** And you also know that when they made the decision they made not to remove him they also were putting their lives or safety on the line when they did that You understand that?
- (3) **A I have no opinion on that**
- (4) **Q** Well you do understand that they're more than casual observers there at 3:30 or 3:45 in the morning?
- (5) **A My understanding, based on my review of the record is that they have the authority to remove him Why they didn't I have no opinion on that It's outside of my area of expertise**
- (6) **Q** Now you mentioned other factors Who is Dr Worlett (ph)?
- (7) **A Worlett? Dr Worlett is our medical review, officer training, which I also teach in the same course He presents the alcohol testing and to keep the medical review officers updated on the latest science and testing in alcohol**
- (8) **Q** And as I understand you then as a matter of fact you've attended some of his training sessions?
- (9) **A** On a regular basis, and I also ask him specific questions, Dr Worlett keeps us, all the people that participate in our American Society of addiction medical courses and the medical review officer up to date on alcohol testing So he presents the material that is in our syllabus, and we ask him questions
- (10) **Q** And in the training you've attended and the training materials you've gotten as being a part of this isn't it a fact that Dr Worlett says that if you have a person who is a

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- (1) smoker that you should add another 40 percent to the elimination rate?
- (2) **A That would be an inaccurate characterization What - in the alcohol testing, what Dr Worlett did is present certain scientific factors that could produce alteration of metabolism Smoking increases metabolism in certain individuals, alcoholism does So that was information presented in the medical review officer manual by Dr Worlett**
- (3) **Q** Well isn't it a fact - well first you understand from Captain Hazelwood's testimony that he's a smoker?
- (4) **A Yes**
- (5) **Q** And isn't it a fact that Dr Worlett said that for smokers you would increase this standard rate of zero - 0.15 by 40 percent?
- (6) **A** I believe that's a mischaracterization of the training In fact, at the end of the training manual, Dr Worlett indicated that that - what you presented was in the scientific part of the training
- (7) **And at the end he presented the rate of 0.15 is the one used, and even has a case example We are given specific cases of an employee by which we use the 0.15 So he presented evidence that smokers can have an increased metabolic rate, but the 0.15 figure was not altered, and in fact, in the case example that we were given in the alcohol testing schedule they used a 0.15**

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- (1) **Q** Would you look please at the exhibit I have in front of you up there exhibit - defense Exhibit 9048?
- (2) **A** I'll need some help from you They're a little out of order
- (3) **Q** If I can approach I might help This is a big volume of materials that's in that - there's the page Now I'll represent to you Dr Smith that that page comes from this big thing right here
- (4) **A** That is correct Now all I have to have is my copy
- (5) **Q** Now this page says alcohol metabolism does it not?
- (6) **A** That is correct
- (7) **Q** And at the bottom there let me zoom in on it It says smokers have a 40 percent increased metabolism?
- (8) **A** That is correct
- (9) **Q** Now metabolism is the same thing as elimination?
- (10) **A** That is correct
- (11) **Q** Now let's assume for just a minute with me Doctor that you do increase the rate of elimination of 0.15 by 40 percent and let's see what kind of numbers that gives us
- (12) **A** I cannot accept that assumption based on the document that you presented and I have evidence in the same document that directly contradicts what you've just said
- (13) **Q** What is that evidence?
- (14) **A** Under the alcohol elimination, which is the next page you have referred to the page of alcohol metabolism smokers 40



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- (1) **percent increased metabolism** But on the next page it says
- (2) **saturated kinetics, 015 grams per deciliter per hour**
- (3) **Given all of that scientific information, Dr Worlett still**
- (4) **says 015, and in the final paragraph of that same manual page**
- (5) **nine, it gives us the case example that we train on** But it
- (6) **says, in the employment setting there have been concerns**
- (7) **regarding alcohol tests** If one considers that the average
- (8) **rate of alcohol elimination is about 015 percent 15**
- (9) **milligrams per deciliter per hour, and then it goes on to give**
- (10) **an example of retrograde extrapolation with the final case**
- (11) **It**
- (12) **is reasonable for an employer not to want an employee in a**
- (13) **safety sensitive task that day** An employer could use a
- (14) **cutoff**
- (15) **level above 04 percent when there s documented evidence**
- (16) **of**
- (17) **current impairment** So you have taken one scientific fact
- (18) **that**
- (19) **is used as the introduction to suggest that our elimination**
- (20) **rate is to be changed for the purpose of retrograde**
- (21) **extrapolation and that is inaccurate**
- (22) **After you receive all of that scientific information the**
- (23) **015 still holds and the case example holds** So as I ve said
- (24) **here, I do not change the 015 even taking into**
- (25) **consideration**
- (26) **these other scientific facts**
- (27) **Q All right** And I understand You re saying that you don t
- (28) **accept that** but assume hypothetically for a moment that it is
- (29) **increased by 40 percent** the numbers and you can check my
- (30) **math**
- (31) **on this** that would come from increasing 015 by 40 percent

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- (1) **and I ll just round it** it actually comes to 021 and I ll
- (2) **just use 02** You get a reading of 200 at 3 45 and a little
- (3) **15 minutes beyond 12 00 you would get 280** and if you went
- (4) **on**
- (5) **back to 7 45 you would get 360**
- (6) **Now** if the assumption - you re forced to make this
- (7) **assumption** I know you don t want to but if you re forced to
- (8) **do those numbers look reasonable to you?**
- (9) **A Based on your assumption you ve made the**
- (10) **mathematical**
- (11) **calculations correctly** but I do not accept the assumption
- (12) **and**
- (13) **therefore cannot say that this is my opinion**
- (14) **Q Doctor** who is Dr Donna Smith?
- (15) **A Dr Donna Smith is the individual at the Department of**
- (16) **Transportation that teaches in our course and that we**
- (17) **interact**
- (18) **with relative to medical review officer guidelines** alcohol
- (19) **testing regulations, things of this nature**
- (20) **MR SANDERS** Your Honor might I put a number on this
- (21) **as we use this** and then I can take it down can we put the
- (22) **number on later?**
- (23) **Q Let me go to the** - one of the other areas that you ve
- (24) **testified about** and that is your - the basis for your opinion
- (25) **concerning the chain of custody**
- (26) **You ve testified that in making** or giving this opinion to
- (27) **the ladies and gentlemen of the jury** what you did was you
- (28) **reviewed the chain of custody documents?**
- (29) **A Yes**

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- (1) **Q And you reviewed certain deposition testimony?**
- (2) **A Yes**
- (3) **Q And then you ve talked to Dr Peat?**
- (4) **A Yes**
- (5) **Q A week ago?**
- (6) **A Yes**
- (7) **Q And I believe you talked to somebody else?**
- (8) **A Dr Richard Prouty**
- (9) **Q Dr Prouty?**
- (10) **A Yes**
- (11) **Q When did you talk to him?**
- (12) **A Talked with him three times** I think the first time was in
- (13) **October and the last time was last week**
- (14) **Q I believe you ve also talked to Dr O Conner (ph)?**
- (15) **A Yes not about this matter** but I have talked with
- (16) **Dr O Conner**
- (17) **Q You ve talked to him about this case and his testimony in**
- (18) **this case** haven t you?
- (19) **A Not in any great depth, because his area of testimony will**
- (20) **be very different than this** The individuals that I have
- (21) **talked to about this** my specific portion of my testimony,
- (22) **relative to alcohol testing** have been Drs Peat and Richard
- (23) **Prouty**
- (24) **Q Well** did you have a conversation with Dr O Conner and
- (25) **perhaps others in Mill Valley** where you suggested that they

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- (1) **could use an expanded definition of alcoholism that you had**
- (2) **kind of been involved in expanding that definition?**
- (3) **A Yes**
- (4) **Q And I want to ask you a couple of questions about that**
- (5) **The field in which you are involved in addictive medicine**
- (6) **generally and alcohol definition** diagnose - diagnoses and
- (7) **criteria is an area that has seen a great deal of evolution and**
- (8) **change in the very recent past** hasn t it?
- (9) **A That is correct** The specialty of addiction medicine has
- (10) **been recently, in the last several years recognized by the**
- (11) **A M A** in our American Society of Addiction section of
- (12) **which**
- (13) **I m president elect, is one of the newer specialties** so that
- (14) **would be a correct characterization**
- (15) **Q And as almost in any other field** I think a science that
- (16) **grows like this has grown** there are areas where there are lots
- (17) **of disputes among reasonable** qualified professions as to what
- (18) **is the proper definition** what is the proper diagnosis what is
- (19) **the proper elimination rate** those kinds of things?
- (20) **A That is correct**
- (21) **Q And there are legitimate differences** then are there not
- (22) **into all these areas?**
- (23) **A That s the nature of science, is to have good faith debate**
- (24) **and peer review**
- (25) **Q Now science** which is your major area of expertise being
- (26) **a doctor** being in addictive medicine and having all of this

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- (1) experience science didn't play much of a role in your  
 (2) assessment of the chain of custody did it?  
 (3) **A I followed the chain of custody procedures that I use in  
 my**  
 (4) **practice as a medical review officer and the guidelines as I**  
 (5) **understood them from the training So I believe it is a**  
 (6) **clinical practice that's a valid clinical practice**  
 (7) **Q I'm not disparaging the clinical practice I'm asking you**  
 (8) **about your review of the chain of custody in this particular**  
 (9) **case Your review of your the documents your review of the**  
 (10) **deposition testimony that these ladies and gentlemen have**  
 (11) **heard and talking to Dr Peat You didn't do any tests did**  
 (12) **you scientific tests?**  
 (13) **A No**  
 (14) **Q You didn't do any scientific measurements?**  
 (15) **A No**  
 (16) **Q And did you ever go to the lab?**  
 (17) **A That particular lab?**  
 (18) **Q ChemWest Sacramento?**  
 (19) **A Actually physically visited?**  
 (20) **Q Right**  
 (21) **A No**  
 (22) **Q Did you ever see the testing facilities?**  
 (23) **A That I can't recall We've referred specimens there,**  
 (24) **sometime in the past totally unrelated to this matter I don't**  
 (25) **think I've ever seen the lab in Sacramento**

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- (1) **Q It's closed now isn't it?**  
 (2) **A That's correct**  
 (3) **Q And you didn't talk to the guy who actually did the**  
 (4) **testing physically did the testing Mr Noedel - or**  
 (5) **Dr Noedel?**  
 (6) **A In this case I didn't Who I talked to was the certifying**  
 (7) **scientist Dr Michael Pete of ChemWest**  
 (8) **Q Right And you heard him testify he had - he had never**  
 (9) **seen the samples until some time after May 1st correct?**  
 (10) **That's your understanding?**  
 (11) **A That is my recollection of his testimony**  
 (12) **Q All right And what you're telling us is that from your**  
 (13) **review of the chain of custody in your opinion there's no**  
 (14) **fatal flaw? Right?**  
 (15) **A Correct**  
 (16) **Q That's your words?**  
 (17) **A Correct**  
 (18) **Q And second that you see no evidence of tampering?**  
 (19) **A That is correct**  
 (20) **Q All right And those two may be synonymous right?**  
 (21) **A The fatal flaw is basically if you have violation of the**  
 (22) **actual integrity of the specimen to demonstrate that there**  
 (23) **might be adulteration of the specimen It doesn't mean the**  
 (24) **bottle or anything of that nature You have to have the**  
 (25) **direct**  
 (25) **evidence of the violation of the integrity of the specimen**

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- (1) **Q All right What you have is no testimony that you saw and**  
 (2) **nothing in the records that say there was tampering right?**  
 (3) **A That's correct**  
 (4) **Q You just don't have that you didn't see it anywhere?**  
 (5) **A That is correct**  
 (6) **Q But you didn't physically examine these tubes to look at**  
 (7) **those seals did you?**  
 (8) **A The only thing I have seen has been the photographs of**  
 (9) **the**  
 (9) **tubes**  
 (10) **Q Well those were taken a year and a half afterwards after**  
 (11) **the seals had been broken so that they could do the testing and**  
 (12) **checking two or three different times right?**  
 (13) **A I did not actually see the tubes**  
 (14) **Q You don't know whether the seals were intact do you**  
 (15) **except as if somebody said somewhere No they weren't**  
 (16) **right? That's what you're relying on?**  
 (17) **A I think that mischaracterized my process My process is**  
 (18) **reliance on clinical information and certified custodians**  
 (19) **that**  
 (19) **document this, which is the same procedure I use with any**  
 (20) **specimen**  
 (21) **Q Well but let me ask you about that Doctor What you're**  
 (22) **really saying is this lab was a certified lab and you would**  
 (23) **assume that a certified lab would act like a certified lab all**  
 (24) **the time particularly with respect to this particular set of**  
 (25) **samples and tests and handling Isn't that what you're saying?**

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- (1) **A NIDA certified lab has certain standards and ethics, and if**  
 (2) **they don't conduct themselves based on these standards**  
 (3) **and**  
 (3) **ethics, they could you know, lose their license and**  
 (4) **certification, and so when they put that - when the**  
 (5) **certifying**  
 (5) **scientist puts his signature and verifies that, that is**  
 (6) **extremely important Now, I independently check it as I do**  
 (7) **all**  
 (7) **the specimens, but I don't - I'm not the one that does the**  
 (8) **test**  
 (9) **Q But you didn't independently check these specimens did**  
 (10) **you the ones in the Hazelwood case?**  
 (11) **A I used my standard procedure of the chain of custody,**  
 (12) **analyzing the results and talking to the certifying scientists**  
 (13) **Q We're going to be here a long time Doctor My question is**  
 (14) **did you independently check these specimens in the Hazelwood**  
 (15) **case That's the question**  
 (16) **A Well, if I -**  
 (17) **Q Would you answer that question?**  
 (18) **A You must I think I've already answered it I did not in**  
 (19) **this case or any case actually see the tube and the test**  
 (20) **That's if this is what you're asking, of course, the answer is**  
 (21) **no, I'm not the analyzing toxicologist**  
 (22) **Q You're saying since I know this is a NIDA certified lab**  
 (23) **that I assume these guys did what they're supposed to do and**  
 (24) **there's no evidence that you see from any of these documents**  
 (25) **that they didn't but you're just assuming they did what they**

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- (1) were supposed to do?  
 (2) **A I have no evidence to the contrary but I m assuming that**  
 (3) **they followed the procedures that they ve outlined**  
 (4) **Q Right**  
 (5) **A But I didn t do the test myself**  
 (6) **Q And you didn t see it done?**  
 (7) **A No**  
 (8) **Q And in part you re relying on the truthfulness of Dr Peat**  
 (9) **that he s telling you the truth and he s telling these ladies**  
 (10) **and gentlemen the truth?**  
 (11) **A I believe Dr Peat is telling the truth and conforming to**  
 (12) **professional standards and ethics**  
 (13) **Q That s based on his talking to you and the fact that at one**  
 (14) **time he was running a NIDA certified lab?**  
 (15) **A That s a mischaracterization Dr Peat has an**  
 (16) **outstanding**  
 (17) **reputation in the field I ve heard him lecture He s been in**  
 (18) **this area for a long period of time It s not just those**  
 (19) **particular issues It s his reputation and experience in the**  
 (20) **field I - a person wouldn t risk their entire career to do**  
 (21) **what you re suggesting**  
 (22) **Q I m not suggesting anything I m asking you questions**  
 (23) **I m asking you did you know what he did or didn t do or what**  
 (24) **his people did or didn t do?**  
 (25) **A Based on the material that I ve reviewed which I ve**  
**already stated and my interaction with Dr Peat and my**

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- (1) **consultation with Dick Prouty, I arrived at that decision But**  
 (2) **as I ve said several times I did not do the test I am not**  
 (3) **the analytical toxicologist**  
 (4) **Q And in addition then looking at the records not knowing**  
 (5) **what you can t know and don t know you resolved some**  
 (6) **disparities among witnesses and between witnesses and the**  
 (7) **records correct?**  
 (8) **A Yes**  
 (9) **Q That s what you essentially did?**  
 (10) **A Yes**  
 (11) **Q And I want to talk to you about that a second Do you**  
 (12) **understand that this styrofoam container that contained the**  
 (13) **samples of Captain Hazelwood was according to Ms Metcalf**  
 (14) **sealed when she received it and logged it in that very first**  
 (15) **day March the 28th 1989?**  
 (16) **A That is my recollection of her deposition, yes**  
 (17) **Q All right And well in - and her trial testimony her**  
 (18) **deposition was played in the trial so trial testimony?**  
 (19) **A It s my understanding that a deposition is like a trial**  
 (20) **testimony under the same oath**  
 (21) **Q And you further understand that Lieutenant Stock s**  
 (22) **testimony was that he himself opened up that styrofoam**  
 (23) **container so he could look in and see what these vials looked**  
 (24) **like and he opened it up in Anchorage Alaska on the 25th of**  
 (25) **March 1989 and went through it looked at the vials Do you**

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- (1) understand that?  
 (2) **A That is my recollection of his deposition**  
 (3) **Q But that doesn t affect your opinion that the chain of**  
 (4) **custody is that right?**  
 (5) **A There was no violation of the integrity of the actual**  
 (6) **specimen itself That does not, in my opinion, represent a**  
 (7) **fatal flaw**  
 (8) **Q Well if the chain of custody is broken and the box itself**  
 (9) **and containers does Dr Donna Smith say you should reject**  
 (10) **that?**  
 (11) **A Dr Donna Smith in her guidelines was for drug testing,**  
 (12) **not**  
 (13) **alcohol testing The standards are much stricter for drug**  
 (14) **testing Those standards apply to drug testing, not alcohol**  
 (15) **testing, and were not in application at this particular time**  
 (16) **Q All right So what you re saying is that you would agree**  
 (17) **with me that Dr Donna Smith says if this box was opened up by**  
 (18) **Lieutenant Stock and this was for a drug test it should be**  
 (19) **rejected?**  
 (20) **A No, I would not I think you mischaracterize the Donna**  
 (21) **Smith s presentation because Mr Stock was an authorized**  
 (22) **custodian These guidelines are for unauthorized**  
 (23) **custodians**  
 (24) **The employee breaking in or an unauthorized individual, if**  
 (25) **an**  
 (26) **authorized individual opens it to check it this is not**  
 (27) **applicable in my opinion to the portion that you re talking**  
 (28) **about for either drug testing or alcohol testing**

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- (1) **Q All right Let s go then to the next step Do you**  
 (2) **understand the chain of custody was broken when Mr Conner**  
 (3) **went**  
 (4) **to the galley in Valdez and put this styrofoam box in an**  
 (5) **unlocked refrigerator that nobody signed for And then the**  
 (6) **next morning comes back and gets it It sat there all night in**  
 (7) **an open refrigerator in an open galley I don t mean open I**  
 (8) **mean unlocked Unlocked refrigerator and open galley and**  
 (9) **there s a break there in the chain of custody Do you agree**  
 (10) **with that? Do you understand that?**  
 (11) **A I believe that you mischaracterized what happened The**  
 (12) **authorized custodian put it in a refrigerator The**  
 (13) **refrigerator is supposed to be locked, but the actual tube**  
 (14) **itself that had the appropriate initials and social security**  
 (15) **number wasn t violated, and the integrity of the specimen**  
 (16) **was**  
 (17) **not violated**  
 (18) **Q And you know that from what?**  
 (19) **A Based on the testimony and depositions that I ve**  
 (20) **reviewed**  
 (21) **Q You didn t see it?**  
 (22) **A No**  
 (23) **Q Now you also understand that Scott Conner describes**  
 (24) **shipping - well strike that**  
 (25) **Do you understand from being here in court this morning and**  
 (26) **perhaps from meeting Ms Metcalf that just before Ms Metcalf**  
 (27) **was to log in these samples from the Valdez crew that she was**  
 (28) **specifically told be extra special careful? Do you understand**

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- (1) that was told that by Dr Peat?  
 (2) **A I don't recall that specific statement, but in general the**  
 (3) **technician should exercise appropriate care for forensic**  
 (4) **sample**  
 (5) **Q Well of course they should My point is do you understand**  
 (6) **that at this particular instance she was given a specific**  
 (7) **special instruction just before she logged in these to be extra**  
 (8) **careful Do you understand that?**  
 (9) **A I'm not disputing what you're saying What I'm saying is**  
 (10) **that I did not recall that in my deposition review**  
 (11) **Q And do you further understand that what she logged in that**  
 (12) **day March the 28th 1989 was three red stopper tubes? You**  
 (13) **understand that?**  
 (14) **A Yes**  
 (15) **Q You further understand that Mr Delozier testified that**  
 (16) **that's what was put in the styrofoam box in the first place**  
 (17) **three red stoppered tubes?**  
 (18) **A Yes**  
 (19) **Q And you further understand that Mr Conner first time he**  
 (20) **gave sworn testimony testified that those tubes were different**  
 (21) **sizes?**  
 (22) **A Yes**  
 (23) **Q And then after a visit from his Department of Justice he**  
 (24) **changed his testimony and he said they were all the same size**  
 (25) **right?**

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- (1) **A Well I think that mischaracterizes it In the deposition**  
 (2) **he indicated that his memory was that they were different**  
 (3) **sizes, but that was based on his past training He refreshed**  
 (4) **his memory again what happens in these situations is that**  
 (5) **you**  
 (6) **have many, many specimens, and then you're required to**  
 (7) **recall**  
 (8) **the size and this that and the other time and - and at a later**  
 (9) **time so**  
 (10) **Q So you disagree with what I've said is the testimony? We**  
 (11) **just disagree on that right?**  
 (12) **A I - my recollection of the testimony is that it had a very**  
 (13) **different flavor than what you've just described**  
 (14) **Q To you it had a different flavor?**  
 (15) **A Correct**  
 (16) **Q And these different flavors that you get they go into your**  
 (17) **judgments that you're making about how good this line of**  
 (18) **custody is?**  
 (19) **A Oh yes if I felt - if I felt that the specimen had been**  
 (20) **tampered with my reputation and license is on the line and**  
 (21) **I**  
 (22) **would reject it So in reading the record I have to believe,**  
 (23) **based on my professional analysis, that this specimen was**  
 (24) **not**  
 (25) **tampered with or otherwise I would not give such a**  
 (26) **professional opinion**  
 (27) **Q Well as I go through this any of these others if you get**  
 (28) **a different flavor you tell us about that we need to know**  
 (29) **about your different flavor**

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- (1) Now do you also understand that when Ms Metcalf changed  
 (2) this chain of custody form she did so at the direction of the  
 (3) wife of the director of the lab?  
 (4) **A That is correct But when the specimens were received**  
 (5) **they were wrapped in red evidence tape, and she**  
 (6) **miscalculated**  
 (7) **that they were red stoppered tubes**  
 (8) **Q Do you also understand Dr Smith that all the other**  
 (9) **samples that she got that morning on March the 28th were**  
 (10) **likewise wrapped with red evidence tape?**  
 (11) **A That would be my assumption The only specimens that I**  
 (12) **have seen were the photographs of the Hazelwood, and in**  
 (13) **trying**  
 (14) **to validate my own opinion when I called our own lab and**  
 (15) **just**  
 (16) **checked this out Many times what happens when they are**  
 (17) **first**  
 (18) **received, and they're covered with red evidence tape,**  
 (19) **they're**  
 (20) **logged in as red stoppered, but when they were opened up,**  
 (21) **they**  
 (22) **see it gray stoppered, and they change it So in my opinion**  
 (23) **it's a correction rather than any sort of fatal flaw in the**  
 (24) **chain of custody**  
 (25) **Q Doctor the question was do you understand that the other**  
 (26) **vials from the other crew members likewise were sealed with red**  
 (27) **evidence tape? Do you understand that? Yes or no**  
 (28) **A That is my recollection of the testimony**  
 (29) **Q And do you further understand that before logging in**  
 (30) **Captain Hazelwood's files and after logging in Captain**  
 (31) **Hazelwood's files that Ms Metcalf was able to distinguish**

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- (1) between gray stoppered and red stoppered tubes for example  
 (2) before Mr Weidman and after Mr Kagan Mr Cousins Ms  
 (3) Jones? Do you understand that?  
 (4) **A That would be my recollection, but none of the other**  
 (5) **specimens were sent off for clear verification to another lab**  
 (6) **because they weren't positive**  
 (7) **Q Well let me ask you about that verification to the other**  
 (8) **lab Do you understand that what was done for this so called**  
 (9) **verification was to take the vial that had been used in the**  
 (10) **very first instance out of refrigeration and - of a freezer**  
 (11) **and simply take another drop out of the very same vial an**  
 (12) **aliquot put it in another to be and send it off for**  
 (13) **verification?**  
 (14) **A Yes That's standard procedure**  
 (15) **Q Well wouldn't it have been standard to send the sealed one**  
 (16) **that hadn't been broken yet that was also has the blood that**  
 (17) **was supposed to be in a gray stoppered tube?**  
 (18) **A That's a decision made at the laboratory level, but**  
 (19) **aliquotting the same specimen there's support for doing**  
 (20) **that**  
 (21) **too**  
 (22) **Q Well let's get back to Ms Metcalf Do you understand**  
 (23) **from Ms Metcalf testimony and indeed affidavit that she**  
 (24) **didn't individually go and say I better go look and make sure**  
 (25) **that what I'm correcting here is correct She didn't even go**  
 (26) **back and look at the vial? She just simply did what she was**

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- (1) told?
- (2) **A My recollection of the testimony was because Judy Peat was the one that pulled them out to send them to the verification lab, and that s when she saw that it was two gray, one red**
- (3) **Checked the record and had it corrected So she was the one that noticed the clerical error, and you are had it corrected**
- (4) **Q Do you understand Doctor that Ms Metcalf didn t go confirm that she simply made the correction based on the word of Ms Peat?**
- (5) **A I don t recall anything in the record where Karen Metcalf actually went and looked at the tubes themselves**
- (6) **Q But none of all that effects your opinion anyway does it?**
- (7) **A I do not believe that the integrity of the specimen was violated, nor do I believe these were fatal flaws in the chain of custody**
- (8) **Q What s a fatal flaw?**
- (9) **A Fatal flaw is the documented evidence of tampering, the basis of which the specimen would be rejected**
- (10) **Q Okay So in other words your opinion in this case is that you find no evidence of tampering with the vials of Captain Hazelwood That s what it really is isn t it?**
- (11) **A Correct**
- (12) **Q That s all it is?**
- (13) **A Well that s a very important professional opinion**
- (14) **Q All right Well there s more to this gray stoppered red**

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- (1) **stoppered tube than just colors isn t there? You ve testified a little bit about this on direct There is a question with any sample is there not whether or not the alcohol of the blood - let me strike that start again**
- (2) **Is there not a question that you haven t reached in this case that has to do with whether the blood has broken down because of some processor contaminates that makes the result unreliable even if it hadn t been tampered with?**
- (3) **A That has been raised, but I don t find any scientific validity with that**
- (4) **Q Well there s no evidence in the chain of custody is there one way or the other?**
- (5) **A You ll need to rephrase the point that you re driving at Maybe I m not understanding the question**
- (6) **Q I m asking you - you say there is no evidence that this blood was contaminated?**
- (7) **A Correct**
- (8) **Q And the chain of custody doesn t tell you that one way or the other does it?**
- (9) **A No You have to have intact chain of custody and you have to have validation that the integrity of the specimen was not violated**
- (10) **Q And even if it s not there can be - there can be mistakes made with respect to preservatives and anticoagulants putting it in the wrong tube where the blood will break down and**

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- (1) **therefore not be a reliable sample for a test isn t that - can t that happen?**
- (2) **A I think what you re trying to say is when you separate the serum from the clot, there can be the hemolysis of the red blood cells of the clot and the content of the red blood cells leaked up into the serum**
- (3) **Q Maybe this would be a good time to break Your Honor**
- (4) **THE COURT Let s take our secondary recess ladies and gentlemen We ll be in recess for 15 minutes**
- (5) **THE CLERK This court will be in recess for 15 minutes**
- (6) **(Jury out at 12 00 noon)**
- (7) **(Recess at 12 00 noon)**
- (8) **(Jury in at 12 15 p m )**
- (9) **THE CLERK All rise**
- (10) **MR SANDERS May it please the Court may I move in the admission of 9093 and if we could substitute that one page with the chart on it for the whole exhibit**
- (11) **MR MONTAGUE No objection**
- (12) **THE COURT It was 9093**
- (13) **MR SANDERS Yes Your Honor it s page 176 of chapter 18**
- (14) **THE COURT What is being admitted is the simply the one page**
- (15) **MR SANDERS Yes Your Honor with the chart**

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- (1) **THE COURT Thank you**
- (2) **(Exhibit 9093 received)**
- (3) **BY MR SANDERS**
- (4) **Q With respect to this I wanted to ask you one more question about this With respect to this disparity between the original log in of the Hazelwood blood tubes and the correction that was made as Doctor Peat called it a correction that was made on May the 1st 1989 Don t you agree that it would have been good clinical practice to have reported that?**
- (5) **A There is no regulatory requirement covering alcohol testing, to report it, but in general if there is an issue like this, as an MRO I d like to hear about it for me to make a judgment on it And therefore it s not required, it s not a fatal flaw, but I think it is good clinical practice to report alterations in the paperwork so there can be a decision made**
- (6) **Had I received word of this, my decision would have still been the same This was just a correction**
- (7) **Q At least you say as an MRO you would like to have heard about it?**
- (8) **A I like to hear about issues on the paperwork, yes**
- (9) **Q What is neogenesis of alcohol?**
- (10) **A Neogenesis of alcohol is a phenomenon in which there is spontaneous generation of alcohol It usually occurs in certain biological specimens in which, for example, a diabetic might secrete glucose into urine and then there is organisms**

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- (1) that get in there that produce this spontaneous neogenesis  
 (2) that's where the issue comes up the most It requires the  
 (3) glucose in the biological fluid that usually comes about  
 (4) because the person is a diabetic and then it requires  
 (5) organisms like candidiasis to get in there and it -  
 (6) Q Ferments?  
 (7) A - ferments, correct  
 (8) Q So what you need is sugar glucose?  
 (9) A Correct  
 (10) Q Some sort of microorganism contaminant?  
 (11) A Correct  
 (12) Q And the process of those microorganisms working on the  
 (13) sugar will produce or generate alcohol?  
 (14) A Correct  
 (15) Q And if that occurs - can it occur in blood?  
 (16) A It is my understanding in review of the literature, that  
 (17) it cannot occur when the blood is in a sealed vacuumed  
 tube,  
 (18) because the reaction cannot occur And there is much less  
 (19) evidence of this in the literature that we are presented  
 (20) relative to blood It is primarily an issue relative to  
 (21) hearing  
 (22) Q Are you familiar with the work of Dr Rosalki?  
 (23) A In general yes but you'd have to show me the specific  
 (24) citation  
 (25) Q Let me ask you to turn to Exhibit 9074

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- (1) A It's about midway through that stack  
 (2) Q May I approach maybe I could speed it up a little bit  
 (3) A Yes Clinical Biochemistry of Alcoholism  
 (4) Q Yes  
 (5) A Okay  
 (6) Q Would you turn over to page 52  
 (7) MR MONTAGUE What page?  
 (8) MR SANDERS Page 52  
 (9) BY MR SANDERS  
 (10) Q And at the bottom of the page just above the new  
 (11) classification subheading methods for measuring alcohol  
 (12) there's a paragraph concerning this process of problems with  
 (13) neogenesis in the blood caused by strings of yeast or other  
 (14) things?  
 (15) A Are you referring to the paragraph that begins with  
 (16) preservation of samples?  
 (17) Q Yes  
 (18) A Okay These slides were studied by Corry in '91 Some  
 (19) strings of yeast however are capable of increasing the  
 (20) concentration of ethanol even in the presence of  
 preservatives  
 (21) Q Correct  
 (22) A Yes  
 (23) Q And the last two sentences of that paragraph?  
 (24) A The next paragraph or the paragraph -  
 (25) Q Bottom of that paragraph the last two sentences in the

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- (1) paragraph from which you were just reading  
 (2) A Preservation of samples which have to be stored prior to  
 (3) analysis is essential and great variations can occur in  
 ethanol  
 (4) levels if this is not done Some strings of yeast however th  
 (5) capable of increasing the concentration of ethanol even in  
 the  
 (6) presence of preservatives  
 (7) Q In other words this study that he's citing in this work by  
 (8) Doctor Rosalki if you got preservatives you can have this  
 (9) process of blood breaking down and producing alcohol from  
 (10) sugar correct?  
 (11) A Yeah, this is mostly focused on -  
 (12) Q Well correct or not Doctor?  
 (13) A Well, it is - there is - some literature that he cites  
 (14) that relates to blood  
 (15) Q And then at the bottom of the next paragraph there are two  
 (16) sentences concerning what should be done in order to avoid  
 this  
 (17) problem correct could you read those for us?  
 (18) A Classification of methods for measuring alcohol, very  
 wide  
 (19) range  
 (20) Q I'm sorry I'm sorry Let me show you I think that's  
 (21) another new paragraph that starts right under what I asked you  
 (22) to read And I want you to read these last two sentences  
 (23) A Starts with confidence?  
 (24) Q Yes sir  
 (25) A Okay Confidence in the integrity of samples and the

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- (1) analytical values obtained can only be established if the  
 (2) essential features of preservation and refrigeration are  
 (3) adhered to Failure to do this must inevitably open the door  
 (4) to speculation on the validity of the analytical results  
 (5) Q Now pressure separation in part goes to the question of  
 (6) whether it's a gray stoppered tube or red stoppered tube  
 (7) right that's one part of the issue correct?  
 (8) A The gray stoppered tube has the preservative and the  
 (9) anticoagulant  
 (10) Q And you produced or yourself with Doctor Peat some  
 (11) evidence of how much sodium fluoride which is the  
 preservative  
 (12) in the stoppers the gray stoppered tube from the Exxon  
 Valdez?  
 (13) A Yes  
 (14) Q You don't know how much preservative was in the gray  
 (15) stoppered tubes from the Valdez Community Hospital?  
 (16) A No  
 (17) Q And the second part of the issue is refrigeration Now  
 (18) are you aware in this case that from the time that the blood  
 (19) was taken roughly 10:50 on the morning of the 24th until  
 (20) some time in the afternoon the blood wasn't refrigerated  
 (21) correct the samples weren't refrigerated?  
 (22) A Say that again  
 (23) Q Are you aware of the fact that from 10:00 - 10:50 in the  
 (24) morning to some time in the late afternoon let's say 4:00 or  
 (25) you can be more precise if you recall from your review that

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(1) this blood was not - these blood samples of Captain Hazelwood  
 (2) were not refrigerated?  
 (3) **A My recollection of the record is that there were periods of**  
 (4) **time in which they were not refrigerated I know there was**  
 (5) **Q Well let s take them one at a time I m asking you do**  
 (6) **you realize that they weren t refrigerated that first day?**  
 (7) **A I took into consideration periods of lack of refrigeration**  
 (8) **in my opinion yes**  
 (9) **Q And part of the time they were walking around with Scott**  
 (10) **Conner part of the time they were checking into the hotel and**  
 (11) **part of the time they were on the windowsill in his room and**  
 (12) **part of the time they were walking back over to MSO and the**  
 (13) **galley correct?**  
 (14) **A Window sill in March on a cold Arctic March afternoon**  
 (15) **Q What was the temperature of that cold Arctic March**  
 (16) **afternoon?**  
 (17) **A My assumption**  
 (18) **Q Do you know what it was?**  
 (19) **A No**  
 (20) **Q How do you know it was a cold Arctic afternoon?**  
 (21) **A That s my assumption**  
 (22) **Q Right Well let s not - I m not asking you for what your**  
 (23) **assumption was now Do you know what the temperature of**  
 (24) **that**  
 (25) **blood was from 10 50 in the morning until it went into that**  
**refrigerator?**

(1) **my opinion**  
 (2) **Q And then from the time that it was taken out of the**  
 (3) **refrigerator and taken to the ship and you are shipped down to**  
 (4) **Sacramento California it was not refrigerated is that your**  
 (5) **understanding?**  
 (6) **A Correct**  
 (7) **Q So there s about 24 hours right there where this blood was**  
 (8) **not refrigerated correct?**  
 (9) **A There were periods of time that approximate that figure of**  
 (10) **periods of lack of refrigeration**  
 (11) **Q You don t know what temperature that blood vial - those**  
 (12) **blood vials saw during that 24 hours without refrigeration?**  
 (13) **A No**  
 (14) **Q And you don t know as a matter of fact Doctor Smith**  
 (15) **whether that blood had any sugar in it or not do you when it**  
 (16) **was collected?**  
 (17) **A There is no evidence of sugar in the blood but -**  
 (18) **Q Well there s no evidence that there was not any sugar in**  
 (19) **the blood either is there?**  
 (20) **A I saw no medical report**  
 (21) **Q Either way?**  
 (22) **A Correct**  
 (23) **Q So you don t know?**  
 (24) **A No**  
 (25) **Q And you don t know whether this lack of refrigeration -**

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(1) **A No**  
 (2) **Q When it was taken out of the refrigerator on the next**  
 (3) **morning on March the 25th it was then flown in Mr Conner s**  
 (4) **lap to Anchorage?**  
 (5) **A Correct**  
 (6) **Q Do you know how long that flight was do you know how long**  
 (7) **it was not refrigerated in that period of time?**  
 (8) **A There was a period of lack of refrigeration I don t know**  
 (9) **exactly how long it was**  
 (10) **Q Right And you don t know the temperature that blood saw**  
 (11) **in that period do you?**  
 (12) **A No**  
 (13) **Q And I think there s testimony that he may have put it in**  
 (14) **the refrigerator in his house until he went down to the office**  
 (15) **to meet with Lieutenant Stock?**  
 (16) **A Correct**  
 (17) **Q And during the time that it was out of the refrigerator**  
 (18) **before it ends back up in the refrigerator that evening on**  
 (19) **March the 25th you don t know how long that was do you?**  
 (20) **A No, there was a period of lack of refrigeration**  
 (21) **Q You don t know how long it was?**  
 (22) **A No**  
 (23) **Q And you don t know what temperature that blood vials saw**  
 (24) **that afternoon?**  
 (25) **A No but I took all that information into consideration for**

(1) **you don t know whether there was any kind of contamination**  
 (2) **microorganism in mind because there s no report one way or**  
 (3) **the**  
 (4) **other?**  
 (5) **A No I very much disagree It s in some of the literature**  
 (6) **including some of the literature you gave me, clearly states**  
 (7) **red vacuum tube with sealed evidence tape you can have**  
 (8) **neither**  
 (9) **contamination nor spontaneous generation**  
 (10) **Q Well Cousins had contamination in it do you understand**  
 (11) **that it was in a vac tube?**  
 (12) **A If you have a sealed vac tube you cannot have organisms**  
 (13) **spontaneous generation glucose because they can t live**  
 (14) **The**  
 (15) **fermentation reaction cannot occur in a vacuum**  
 (16) **Q You think Doctor Rosalki and what was the other doctor s**  
 (17) **name Corry they weren t using vacu tubes?**  
 (18) **A It is my opinion and it is stated in the literature**  
 (19) **including some of the literature that you have cited, that if**  
 (20) **it s in a red sealed vac tube the spontaneous generation**  
 (21) **cannot**  
 (22) **occur**  
 (23) **Q What literature is that?**  
 (24) **A It s on the literature that I was reading in my experience**  
 (25) **in this arena**  
 (26) **Q Well what is?**  
 (27) **A It's in my professional opinion -**  
 (28) **Q Excuse me a minute Excuse me what literature what**  
 (29) **article?**

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- (1) **A I can't make - I can't recall the exact citation without**  
 (2) **having to go back to my material. But it is my professional**  
 (3) **opinion, based on my knowledge of the field and the**  
 (4) **literature**  
 (5) **that I reviewed and I cannot give you the exact citation right**  
 (6) **now, that spontaneous generation does not occur in a**  
 (7) **vacuum, in**  
 (8) **a sealed vacutainer tube**  
 (9) **Q Do you concede Doctor that that might be another one of**  
 (10) **these areas where there's a difference of opinion between some**  
 (11) **of you alcohol experts?**  
 (12) **A Yes**  
 (13) **Q And isn't it a fact Doctor that one of the reasons that**  
 (14) **refrigeration is absolutely required under certain regulations**  
 (15) **and under certain procedures is because of this very problem**  
 (16) **that's why you refrigerate blood?**  
 (17) **A Yes, but refrigeration of blood alcohol specimens is not**  
 (18) **required in fact, the evidence is for example, one**  
 (19) **experience by Dick Prouty is he put a tube of blood on his**  
 (20) **bench for a month and did saline serum alcohol testing, and**  
 (21) **it**  
 (22) **didn't change one bit. So because a blood alcohol**  
 (23) **specimen is**  
 (24) **not refrigerated is in no way a basis for rejection or even**  
 (25) **periods of lack of refrigeration**  
 (26) **Q Doctor doesn't Doctor Prouty refrigerate his blood**  
 (27) **samples?**  
 (28) **A In general, we all try to refrigerate**  
 (29) **Q And you do that in order that you can't have the kind of**

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- (1) **problems that I'm asking you about here that's a reason isn't**  
 (2) **it?**  
 (3) **A In good clinical practice we try to refrigerate whenever**  
 (4) **possible**  
 (5) **Q Other than your assumptions about the sealing you have**  
 (6) **about the sealing you have no idea about whether there was**  
 (7) **because of this long time and the lack of refrigeration**  
 (8) **whether this neogenesis this fermentation occurred or not do**  
 (9) **you just can't know that?**  
 (10) **A I disagree with that I think the possibility is so**  
 (11) **unlikely as to be out of the realm of any medical probability**  
 (12) **Q And that's your opinion and you admit other people could**  
 (13) **disagree with you on that?**  
 (14) **A Yes**  
 (15) **MR SANDERS Could I have just a moment? I have**  
 (16) **nothing further right now Your Honor**  
 (17) **MR MONTAGUE No redirect Your Honor**  
 (18) **THE COURT Thank you sir that concludes your**  
 (19) **examination**  
 (20) **MR O NEILL Plaintiffs call Doctor Hunter Montgomery**  
 (21) **as an adverse witness for cross examination**  
 (22) **THE CLERK Raise your right hand**  
 (23) **(The Witness Is Sworn)**  
 (24) **THE WITNESS I do**  
 (25) **THE CLERK For the record state your name state**

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- (1) **your full name your address and spell your last name please**  
 (2) **THE WITNESS Charles Hunter Montgomery 6134 Doliver**  
 (3) **Houston Texas 77057**  
 (4) **THE CLERK Spell your last name please**  
 (5) **THE WITNESS M-o n t g o m e r y**  
 (6) **THE CLERK Thank you sir**  
 (7) **DIRECT EXAMINATION OF CHARLES HUNTER**  
 (8) **MONTGOMERY**  
 (9) **BY MR O NEILL**  
 (10) **Q Sir we've never met My name is Brian O Neill and I**  
 (11) **represent the fisherman and the Natives who are plaintiffs in**  
 (12) **this case Just so we know who you are you're the one that**  
 (13) **did the fitness determination for Captain Hazelwood in 1985**  
 (14) **isn't that correct?**  
 (15) **A I was involved in that decision, yes**  
 (16) **Q From '60 to - 1960 to 1992 you were employed by Exxon**  
 (17) **Corporation?**  
 (18) **A That is correct**  
 (19) **Q And you were in the medical department of Exxon U S A**  
 (20) **A That's correct**  
 (21) **Q And would it be fair to say that Exxon Shipping Company**  
 (22) **didn't have its own medical department so Exxon Shipping**  
 (23) **Company had to use the medical department at Exxon U S A**  
 (24) **A I think that's basically correct**  
 (25) **Q And you worked with the Doctor Nealy and a Doctor Gould?**  
 (26) **A Yes I did**

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- (1) **Q In and around 1985?**  
 (2) **A Yes**  
 (3) **Q And Doctor Nealy reported to you and then you reported to**  
 (4) **Doctor Gould?**  
 (5) **A Yes at one time frame that's true**  
 (6) **Q How about '85 time frame is that a fair statement?**  
 (7) **A No I think it was more '86 and later a little later**  
 (8) **than '85**  
 (9) **Q Were all three of you there in '85 that's the important**  
 (10) **thing?**  
 (11) **A No, Doctor Nealy was still in Baton Rouge at that time**  
 (12) **Q Was he working for Exxon Corporation?**  
 (13) **A Yes**  
 (14) **Q So we have three doctors that we're going to hear from**  
 (15) **you Doctor Nealy Doctor Gould and all three of you are**  
 (16) **medical doctors?**  
 (17) **A That's correct**  
 (18) **Q And you all worked for Exxon Corporation?**  
 (19) **A That's correct**  
 (20) **Q This is now - sir would it be fair to say that you had no**  
 (21) **specialized training at all with regard to addiction medicine?**  
 (22) **A No, that would not entirely be true I did get some**  
 (23) **training in medical school I got some during my internship**  
 (24) **and I would say I got some on the job training during my**  
 (25) **period**  
 (26) **with Exxon**



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- (1) Q My question was do you have any specific training in  
 (2) alcohol and drug addiction?  
 (3) A I guess the answer - could you re - could you define  
 (4) specific for me?  
 (5) Q Let's go back to your transcript and let's go to page 18  
 (6) of your transcript And at line 20 of your transcript are you  
 (7) there?  
 (8) A Yes  
 (9) Q You were asked the question okay do you have any training  
 (10) in the area of alcohol and drug addiction and on line 22 you  
 (11) answered Not specifically  
 (12) Was that the question asked and was that the answer given  
 (13) at your deposition?  
 (14) A I did not take any specialized training in this area I  
 (15) think is what I meant at that time  
 (16) Q My question was were you asked that question and did you  
 (17) give that answer?  
 (18) A Yes  
 (19) Q Thank you Now there was at least one instance in your  
 (20) duties at Exxon in which in your own department you had a  
 (21) situation with someone who had an alcohol problem Is that a  
 (22) correct statement?  
 (23) A Yes at least one  
 (24) Q And at least one occasion you took it upon yourself to  
 (25) essentially monitor that problem Isn't that a correct

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- (1) statement?  
 (2) A Yes I continued to meet with that employee on occasion  
 (3) It was a case in Houston in the building where I was  
 (4) working,  
 (5) and I did do that  
 (6) Q And when you met with him you talked with him about his  
 (7) alcohol problem that's a correct statement?  
 (8) A That's correct  
 (9) Q You talked with him directly about his alcohol problem?  
 (10) A That's correct  
 (11) Q And you checked into his aftercare and his AA Isn't that a  
 (12) correct statement?  
 (13) A I talked to him about them I didn't do any checking that  
 (14) I can recall with the institution  
 (15) Q I know but at least you called the man in and you said  
 (16) how's your aftercare coming how's your AA coming that kind  
 (17) of  
 (18) thing?  
 (19) A That's right  
 (20) Q And even despite the man had problems with a relapse Isn't  
 (21) that a correct statement?  
 (22) A That's correct  
 (23) Q Do you recall about when that was?  
 (24) A I have to estimate but I would say it might have been  
 (25) mid- 70s  
 (26) Q So at least by 1985 you had at least gone through the  
 (27) situation one time where in your opinion at least you thought

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- (1) you did it right?  
 (2) A Well let me put it this way In this instance that you re  
 (3) talking about I was requested by management to do this and  
 (4) we  
 (5) did this for a period of time  
 (6) Q And you dealt with the individual honestly and openly and  
 (7) directly?  
 (8) A Right  
 (9) Q And there was no sneaking around behind his back it was  
 (10) call him in how are you doing?  
 (11) A Right  
 (12) Q Now with regard to Exxon Corporation would it be fair to  
 (13) say that in 1985 Exxon Corporation had no policy with regard to  
 (14) screening for medically unfit sea going personnel?  
 (15) A No that would not be correct if I understood the  
 (16) question  
 (17) Q Did Exxon Corporation in 1985 have any procedure or  
 (18) requirement with regard to the physical - medical physicals  
 (19) for masters on a regular basis or an irregular basis?  
 (20) A No  
 (21) Q And at some point in time in the 80s was there a  
 (22) significant problem on the West Coast with regard to  
 (23) depression  
 (24) and/or the mental fitness of Exxon seafarers?  
 (25) A I don't recall that particular problem I think you may be  
 (26) referring to the problem that occurred on the Exxon New  
 (27) Orleans  
 (28) that's in the deposition

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- (1) Q Yeah  
 (2) A That was not a depression problem That is as I best can  
 (3) recall it, was a problem of an individual who, if anything, had  
 (4) the reverse but more of a manic behavior who is  
 (5) concerned a  
 (6) threat to the people on the ship, and they were concerned  
 (7) about  
 (8) how they could safely get that individual removed from the  
 (9) ship  
 (10) Q Would you go to page 273 of your transcript What's  
 (11) EHAP?  
 (12) A What's excuse me  
 (13) Q EHAP?  
 (14) A Employee Health Advisory Program  
 (15) Q On page 273 in your transcript line nine the question  
 (16) reads were any of EHAP activities directed towards safety  
 (17) issues such as whether vessels might be jeopardized if  
 (18) individuals had problems And your answer was No I don't -  
 (19) didn't really think don't think so I have to say no I  
 (20) don't think that was the issue  
 (21) The question then becomes And that was not something that  
 (22) you were involved with in with EHAP Answer no  
 (23) And the question is what does the strike that -  
 (24) Why would there be concern about depression and the mental  
 (25) fitness of seafarers And your answer is If my memory has  
 (26) it there had been a significant problem on the West Coast and  
 (27) I think this was written for - I think Harvey Morgan was out

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(1) on the West Coast at the time he wrote this as the manager out  
 (2) there  
 (3) My question was Was there a significant problem with  
 (4) regard to depression and the mental fitness of seafarers on the  
 (5) West Coast?  
 (6) A I would state at this time that I ve reflected more on that  
 (7) particular issue than I was in that letter, and my recollection  
 (8) at this point was that it was not a depression problem but  
 (9) more of a manic problem that was considered a concern to  
 the  
 (10) ship rather than depression  
 (11) Q Is your testimony today different than your testimony at  
 (12) the time of your deposition?  
 (13) A On that particular issue yes  
 (14) Q Yes it is And at the time of your deposition do you  
 (15) recall raising your hand and taking the same oath that you took  
 (16) here today in the courtroom?  
 (17) A Yes, sir  
 (18) Q Now would you agree with the assumption that updated  
 (19) medical records are important it was important for Exxon  
 (20) medical to have updated medical records?  
 (21) A It had some relative importance yes We tried to keep  
 our  
 (22) records as up to date as we could  
 (23) Q And in 1985 you had a problem with that didn t you?  
 (24) A Not just 1985 It s always been a problem because you  
 do  
 (25) not know every time anyone goes to see a physician You  
 don t

(1) bring the individual in and examine him?  
 (2) A No  
 (3) Q Was there a specific individual - was there a specific  
 (4) policy that required the medical department to play a role in  
 (5) for example whether he would be reassigned to a safety  
 (6) sensitive position?  
 (7) A No  
 (8) Q What is a safety sensitive position?  
 (9) A Well, in my opinion many of the positions, most of the  
 (10) positions really within Exxon were safety sensitive  
 (11) Q Is a tanker captain a safety sensitive position?  
 (12) A Yes in my opinion  
 (13) Q But a tanker captain the fellow who is in charge of a 125  
 (14) million dollar supertanker has a lot of responsibility doesn t  
 (15) he?  
 (16) A Yes, sir  
 (17) Q Now some time in 1985 someone from Exxon Shipping  
 Company  
 (18) asked you for a clarification with regard to Hazelwood s need  
 (19) for treatment that s a correct statement isn t it?  
 (20) A That s correct.  
 (21) Q And at some point in time you got what we referred to as  
 (22) the IDR which is in front of you as Exhibit 10 Not in the  
 (23) volume it s a clean sheet of paper up there  
 (24) A Correct  
 (25) Q You ve seen the IDR before?

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(1) get a report on every instance that occurred We did have a  
 (2) program of doing preplacement exams on all the seaman  
 we did  
 (3) have a program of offering periodic exams throughout their  
 (4) career in order to obtain some information but if a man got  
 (5) off sick unless it was something of some magnitude we did  
 not  
 (6) necessarily hear about it or had a blood pressure change,  
 we  
 (7) didn t necessarily change, so not everything was always up  
 to  
 (8) date  
 (9) Q Are you finished sir?  
 (10) A Yes  
 (11) Q In 1985 with regard to Captain Hazelwood s medical records  
 (12) let s take a specific example would it be fair to say that  
 (13) Captain Hazelwood s medical records in 1985 were 12 years  
 out  
 (14) of date?  
 (15) A I don t know whether they were - you could say they were  
 (16) out of date There had been no entries into his medical  
 record  
 (17) In 12 years  
 (18) Q Thank you sir Now at the time someone let s take a  
 (19) hypothetical someone coming back from treatment from  
 alcohol  
 (20) treatment was there a specific written policy at Exxon  
 (21) Corporation or Exxon U S A or Exxon Shipping Company that  
 (22) required you to bring the individual in and talk to him about  
 (23) it?  
 (24) A No  
 (25) Q Was there a specific written policy that required you to

(1) A Yes, I have  
 (2) Q You saw it in 1985?  
 (3) A Yes I did  
 (4) Q And you studied it before your deposition?  
 (5) A Yes  
 (6) Q And you studied it before coming in here today?  
 (7) A Yes  
 (8) Q I want to go over the IDR if we could Up on the top -  
 (9) this is an Exxon form isn t it an Exxon Shipping Company  
 (10) form  
 (11) A Yes, sir  
 (12) Q And up on the top there s a check mark there that says Mr  
 (13) Hazelwood was in a sea going position?  
 (14) A Yes it did  
 (15) Q Is that what it indicates? And then your initials are on  
 (16) the bottom of the IDR?  
 (17) A That is correct  
 (18) Q And you got this IDR in May of 1985?  
 (19) A That s correct  
 (20) Q And you read it?  
 (21) A Yes  
 (22) Q And you called or have a faint recollection of calling a  
 (23) Doctor Vallury?  
 (24) A That is correct  
 (25) Q And you had or may have had a five minute telephone

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- (1) conversation with Doctor Vallury -  
 (2) **A That is correct**  
 (3) Q - in May of 1985 And your recollection with regard to  
 (4) the telephone conversation is faint?  
 (5) **A The details of the call are faint let s put it that way**  
 (6) **I could not give any quotations from what I heard**  
 (7) Q Now with regard to the Vallury conversation would it be  
 (8) fair to say that you didn t document it?  
 (9) **A Well as you said, my initials are at the bottom of the**  
 (10) **sheet I did not make a specific documentation I must**  
 (11) **admit**  
 (12) Q In point of fact I think I m not arguing that you didn t  
 (13) call him or not his phone call is on the bottom?  
 (14) **A Right**  
 (15) Q My point is with regard to what you and he talked about  
 (16) there s no memo for the file?  
 (17) **A That is correct We've been unable to find any memos**  
 (18) **Q And you ve looked?**  
 (19) **A And we ve looked**  
 (20) Q With regard to a specific written fitness for duty  
 (21) determination we can t find a memo or a fitness for duty  
 (22) determination either can we a written one?  
 (23) **A Not within the medical department**  
 (24) Q So we have in the medical department the IDR and a  
 (25) conversation with Doctor Vallury and on the basis of the IDR  
 and the one five minute phone call for Doctor Vallury you made

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- (1) a fitness determination?  
 (2) **A Let me rephrase that If I may Doctor Vallury made the**  
 (3) **fitness determination I tended to agree with it, accepted it**  
 (4) **but I felt it was his determination I had not seen**  
**Hazelwood**  
 (5) **I had not talked to Captain Hazelwood I had to rely on his**  
 (6) **individual physician who had been treating him for at least a**  
 (7) **month we know in the hospital**  
 (8) Q We ll talk about that  
 (9) **A Okay**  
 (10) Q But in point of fact you had one five minute phone call  
 (11) and this piece of paper and at least with regard to Exxon was  
 (12) concerned you made the fitness determination You were the  
 (13) person in Exxon to clear the fitness determination?  
 (14) **A That would be true**  
 (15) Q And you re a medical doctor?  
 (16) **A That s right**  
 (17) Q Now let s talk for a minute about what the IDR told you  
 (18) about Captain Hazelwood It told you that at some point in  
 (19) time he had or was going to have individual psychotherapy  
 (20) treatment?  
 (21) **A Right**  
 (22) Q And he had or was going to have group therapy treatment?  
 (23) **A Uh huh**  
 (24) Q That s a correct statement?  
 (25) **A That s right**

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- (1) Q And he had or was going to have marital therapy That s a  
 (2) correct statement?  
 (3) **A Right**  
 (4) Q And there was a prescription for AA Alcoholics Anonymous  
 (5) that s a correct statement?  
 (6) **A That s correct**  
 (7) Q And he was to either attend in the future or had attended  
 (8) lectures seminars workshops pertaining to alcoholism?  
 (9) **A Right**  
 (10) Q You see that? And there was a diagnosis on it from the DSM  
 (11) that was 300 40 and 300 52 do you see that on the form?  
 (12) **A That s correct**  
 (13) Q And the first is for dysthymia?  
 (14) **A That s right**  
 (15) Q And with regard to dysthymia that s a form of depression?  
 (16) **A It s a subtle mild depression it s on a wave, comes and**  
 (17) **goes**  
 (18) Q Comes and goes but lasts a lifetime doesn t it?  
 (19) **A It lasts pretty much a lifetime**  
 (20) Q And episodic alcohol abuse is the only one -  
 (21) **A That s correct**  
 (22) Q That s a correct statement And on the bottom of the form  
 (23) you were advised Mr Hazelwood will complete our 28 day  
 (24) program do you see that?  
 (25) **A Yes**

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- (1) Q Are you aware of the fact that at least in the alcohol  
 (2) rehabilitation business a 28 day program is a term of art?  
 (3) There is such a thing as a 28 day program and people who are  
 (4) in  
 (5) the business refer to it as that?  
 (6) **A Yes, I would say that s correct**  
 (7) Q And it s an alcohol rehabilitation program isn t it  
 (8) **A That s correct**  
 (9) Q And it was recommended given the nature of his job that  
 (10) after discharge Mr Hazelwood be given leave of absence to get  
 (11) involved with AA and aftercare And that recommendation was  
 (12) made on the IDR and -  
 (13) **A That s correct**  
 (14) Q And you reviewed that recommendation?  
 (15) **A That s right**  
 (16) Q And he was in fact given a 90-day leave of absence that s  
 (17) a correct statement?  
 (18) **A To the best of my knowledge, that s correct**  
 (19) Q And he wasn t paid during that leave of absence?  
 (20) **A I don t know**  
 (21) Q Okay Now let s talk about the things that you may or may  
 (22) not have done with regard to the fitness for duty  
 (23) determination Did you look at his job evaluations?  
 (24) **A No, they were not available to me**  
 (25) Q Did you have an updated medical file on Captain  
 Hazelwood?  
 (26) **A As I ve indicated earlier, there had not been an entry in**

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- (1) **the file in 12 years**
- (2) Q Did you talk to Captain Hazelwood?
- (3) **A No, I didn't**
- (4) Q Did you evaluate Captain Hazelwood?
- (5) **A No, sir**
- (6) Q Did you allow for or direct an examination of Captain Hazelwood?
- (7) **A Say that again**
- (9) Q Did you say to a bunch your colleagues or to an outside person let's get an independent evaluation of Captain Hazelwood?
- (11) **A No, I did not**
- (13) Q And indeed up to the time of your deposition you'd never even met Captain Hazelwood?
- (14) **A Not to my knowledge I might have visited with him in a group meeting when captains might have come to Houston and I might have been invited, but I do not recall having met him**
- (18) Q Now at the same time that the individual disability report was in your office we have what we refer to as the Graves report over at Exxon Shipping Company and you're aware of that aren't you?
- (22) **A I'm aware of it now I was not aware of it at that time**
- (23) Q Okay I understand that and I'm not trying to trick you
- (24) My question was that is over in your office this is over at the shipping company?
- (25)

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- (1) **A Okay**
- (2) Q That's a fair statement isn't it you're aware of that?
- (3) **A That would be true**
- (4) Q And in the Graves report there is a report that Mr Hazelwood occasionally drank aboard ship and that he came back to the ship from port drunk on several occasions?
- (7) **A That's what the exhibit says**
- (8) Q Would it be fair to say that in 1985 if you had known about the Graves report you would have had further misgivings with regard to Captain Hazelwood's fitness for duty determination?
- (11) **MR NEAL** Objection to the form of the question Your Honor further misgiving
- (13) **THE COURT** Change the wording around a little bit
- (14) **BY MR O NEILL**
- (15) Q Would you have - would it be fair to say you would have been concerned more concerned about Captain Hazelwood's fitness duty determination it was a relevant piece of information?
- (19) **A Yes**
- (21) Q And putting the two together may very well have resulted in a different fitness determination?
- (22) **A I guess that's possible**
- (24) Q In 1985 if an employee at Exxon Corporation was caught as opposed to self-identifying with regard to alcohol that was
- (25)

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- (1) grounds for termination wasn't it?
- (2) **A I believe that's correct I think the wording of the policy was that it was grounds for discipline up to and including termination**
- (4) **Q** But the policy draws a distinction between those who self identify that come in and say I have a problem and those whom the company goes to and says either we're investigating you or you have a problem there's a distinction between the two?
- (9) **A Right the distinction was there**
- (10) Q Did I state the distinction fairly?
- (11) **A I think so**
- (12) Q Thank you Now let's talk a little bit about Alcoholics Anonymous In 1985 you knew that alcoholism was a disease a continuing disease that like dysthymia may last a lifetime?
- (15) **A Yeah, may**
- (17) Q And you'd read literature while you hadn't had any specialized training you had read the literature you were a medical doctor and you kept yourself up to date?
- (18) **A Certainly tried to**
- (20) Q And you were aware of Alcoholics Anonymous?
- (21) **A Yes**
- (22) Q And its successes with regard to the treatment of alcoholics?
- (23) **A Yes**
- (24)
- (25)

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- (1) Q And that those who attended Alcoholics Anonymous had a better chance of success than those who didn't?
- (2) **A Yes**
- (3) Q And that Alcoholics Anonymous believed that people who have the problem of alcoholism or the disease of alcoholism should go to Alcoholics Anonymous for life?
- (5) **A By large that's the belief of the organization**
- (7) Q And they shouldn't drink?
- (8) **A They shouldn't drink**
- (9) Q And that family support was important to recovery?
- (10) **A That's correct**
- (11) Q And at the time you made the fitness for duty determination you knew it had recommended that Captain Hazelwood participate in Alcoholics Anonymous?
- (12) **A That's right**
- (13) Q And you did not discuss with anybody at Exxon Shipping Company the recommendation that he participate in Alcoholics Anonymous?
- (14) **A No that would not be correct I think I did**
- (15) Q Let me ask it this way You didn't think that if Captain Hazelwood stopped going to AA that would have any impact whether or not he remained fit for duty?
- (16) **A I don't recall saying that but actually I supported strongly the recommendation that he be given the leave of absence to attend AA I thought was my testimony**
- (17)
- (18)
- (19)
- (20)
- (21)
- (22)
- (23)
- (24)
- (25)

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- (1) Q Okay Let s go to page 447 of your deposition transcript  
 (2) Beginning at line 12 the question was I m sorry you didn t  
 (3) think that if Captain Hazelwood stopped going to AA that that  
 (4) would have an impact on whether or not he remained fit for  
 (5) duty  
 (6) And your answer was At that point in 1985 I didn t That  
 (7) was not really the custom that was taking place nor that was  
 (8) carried out Do you see that?  
 (9) A Yes I don t think that I felt that his continued  
 (10) attending AA was a criteria on which he would be judged as  
 to  
 (11) whether he was fit for duty  
 (12) Q It was even worse than that wasn t it In point of fact  
 (13) you knew in 1985 that because Captain Hazelwood was being  
 (14) reassigned to sea duty that he couldn t attend AA?  
 (15) A That was the reason I was supporting the leave of  
 absence  
 (16) was to allow him to opportunity to get an enhancement to  
 the  
 (17) program he had received while in the hospital  
 (18) Q So he could go to AA for 90 days and then return to sea and  
 (19) not go to AA?  
 (20) A Well -  
 (21) Q Is that a correct statement?  
 (22) A He would have had - he has leaves of absence, or leaves  
 -  
 (23) paid leave I guess what I mean to say after between sea  
 duty  
 (24) There might have been occasions when he arrived in port  
 where  
 (25) he might have been able to attended AA I do not know for

- (1) Q That was what you did some years earlier when you had an  
 (2) employee that had a drinking problem isn t it?  
 (3) A That was done at that time at the request of management  
 (4) that I do so I had no such request in this case  
 (5) Q It wasn t your problem it wasn t your watch?  
 (6) MR NEAL Objection argumentative  
 (7) THE COURT Sustained  
 (8) MR O NEILL I will move on  
 (9) BY MR O NEILL  
 (10) Q Now would it be fair to say that in 1985 there was no good  
 (11) reason that you could think of not to give him a shoreside  
 (12) assignment so he d have the opportunity to go to AA isn t that  
 (13) right You could not think of a good reason not to give him a  
 (14) shore side assignment? You want me to re ask it so there  
 (15) aren t two negatives?  
 (16) A Re-ask it so I don't get those notes in there  
 (17) Q Let me re ask it  
 (18) Have you ever said quote there was no good reason not to  
 (19) give him a shoreside assignment  
 (20) MR NEAL What page  
 (21) THE WITNESS I would say he could have been given a  
 (22) shoreside assignment let s put it that way  
 (23) BY MR O NEILL  
 (24) Q Would you go to page 461 of your deposition transcript and  
 (25) we ll go to line 24 and I ll read the question and answer and

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- (1) sure It would have depended on the port perhaps  
 (2) Q Have you ever made the statement that the nature of the  
 (3) occupation does not allow for AA? You made that statement in  
 (4) your deposition?  
 (5) A I think that s in the deposition yes  
 (6) Q That was a statement you made the nature of the occupation  
 (7) does not allow for AA?  
 (8) A If I may?  
 (9) Q Did you make the statement?  
 (10) A Yes I made the statement  
 (11) Q And you knew that AA was part of his treatment plan?  
 (12) A That s right  
 (13) Q And you knew that AA recommended that people go on a  
 (14) lifetime basis?  
 (15) A That s correct  
 (16) Q And you knew that AA was part of recovery?  
 (17) A That is correct  
 (18) Q Did you make any provision with Exxon Shipping Company  
 to  
 (19) insure that Captain Hazelwood attended aftercare other than  
 (20) the 90 day leave of absence?  
 (21) A No, not other than the 90 day leave of absence  
 (22) Q Did you make any provision with Exxon Shipping Company  
 to  
 (23) meet with Captain Hazelwood face to face and talk about his  
 (24) recovery his AA his aftercare?  
 (25) A No sir

- (1) if you could follow me and make sure I read the question and  
 (2) answer correctly  
 (3) A Wait a minute  
 (4) Q 461 It s in volume two You got two volumes up here  
 (5) A Yeah  
 (6) Q Line 24 question by Mr Nolting As you sit here today  
 (7) can you think of any good reason why Joe Hazelwood was not  
 (8) given a shoreside assignment in 1985 when he returned to  
 work?  
 (9) Your answer was I don t know You see that?  
 (10) A Yes  
 (11) Q Now after May of 1985 you had no discussions with anyone  
 (12) concerning drinking reports?  
 (13) A You mean referable to Captain Hazelwood?  
 (14) Q Yes sir  
 (15) A I don t recall any  
 (16) Q The medical department in fact had the power to yank  
 (17) somebody off of a ship didn t they?  
 (18) A I m sure we had the authority, but whenever I had asked,  
 (19) you know literally, but whenever I had suggested or  
 (20) recommended that someone be taken off the ship, they took  
 -  
 (21) they were off the ship  
 (22) Q After you made the fitness determination in May of 1985  
 (23) did you take any other further action with respect to Captain  
 (24) Hazelwood or this particular claim or situation?  
 (25) A I don t recall that I did And shortly thereafter,

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- (1) probably early 86 actually I no longer had direct  
 (2) responsibility for the shipping company, Doctor Nealy then  
 took  
 (3) it on  
 (4) Q Okay and would it be fair to say that other than the one  
 (5) conversation with Doctor Vallury that we talked about you had  
 (6) no further conversations with Doctor Vallury?  
 (7) A It s possible I only recall the one  
 (8) Q And you were not aware of yourself with regard to Captain  
 (9) Hazelwood the installation of any monitoring program no one  
 (10) talked to you about it at that time?  
 (11) A You mean referable to Hazelwood  
 (12) Q Hazelwood?  
 (13) A No, I did not recall any  
 (14) Q And you didn t have any conversations from May of 85  
 (15) thereon with regard to Exxon Shipping Company with regard to  
 (16) monitoring Hazelwood?  
 (17) A I do not recall any  
 (18) Q And from May of 85 thereon until - was it Doctor Nealy  
 (19) took over in 86?  
 (20) A I think it was early 86 I could be off a little  
 (21) Q Nobody from Exxon Shipping Company came to you with  
 any  
 (22) reports of or rumors of Captain Hazelwood drinking?  
 (23) A I do not recall any at all no  
 (24) Q Now if there had been reports of drinking such as ordering  
 (25) beer over a walkie talkie or that he was allegedly drunk or

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- (1) that he was loud or abusive and that had been reported to you  
 (2) at a minimum you would have brought him in and evaluated  
 him  
 (3) is that a correct statement?  
 (4) MR NEAL I ll object to that Your Honor if he s  
 (5) asking a hypothetical I object to mischaracterizing the  
 (6) record He s not -  
 (7) MR O NEILL If that resolves the objection I will  
 (8) ask the hypothetical  
 (9) BY MR O NEILL  
 (10) Q Let s assume hypothetically that a port steward comes in  
 (11) and reports he s fallen off the wagon he s drinking again the  
 (12) cure didn t take because of what the port steward says are  
 (13) drinking incidents At a minimum hypothetically you d bring  
 (14) the man in and interview him and possibly evaluate him  
 (15) wouldn t you?  
 (16) A That s a possibility Another possibility under those  
 (17) circumstances would be my judgment as to the nature of  
 what I  
 (18) had heard You made it sound fairly severe if that was the  
 (19) case I think I would have gone back to someone in  
 management  
 (20) who was aware of the problem and called it to their  
 attention  
 (21) what I had heard  
 (22) Q How about calling the man in and talking to him and just  
 (23) getting his side of the story?  
 (24) A That s a possibility I could have done  
 (25) Q That s a decent thing to do?

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- (1) A That s a decent thing to do One of those two would  
 (2) probably have happened But if I brought him in and it was  
 as  
 (3) severe as you claim I think I still would have wanted to talk  
 (4) to someone in management who was aware that this  
 problem  
 (5) occurred  
 (6) Q The rumors may indicate a serious problem?  
 (7) A That s correct  
 (8) Q Let s assume we had a second hypothetical situation in  
 (9) which a port steward comes in and says I was on a launch with  
 (10) him I was on a launch with him and he was loud and abusive  
 (11) and smelled of alcohol so now we have cumulative a second  
 (12) situation problem s more serious isn t it?  
 (13) A Yes, and I think the answer would probably be pretty  
 much  
 (14) the same as on the first instance  
 (15) Q And let s throw a third instance on top of that to where  
 (16) you get a report that A management knows he s drinking  
 again  
 (17) and B he orders beer over a walkie talkie from a company  
 (18) ship  
 (19) MR NEAL Objection unless it s a hypothetical  
 (20) MR O NEILL Hypothetical  
 (21) THE WITNESS I think in that instance we re talking  
 (22) about a violation of company policy and I would probably have  
 (23) called it to management s attention that I felt there had been  
 (24) a violation of company policy  
 (25) BY MR O NEILL

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- (1) Q Now with regard to somebody who s been through  
 treatment  
 (2) and who has had a recommendation for Alcoholics Anonymous  
 a  
 (3) recommendation to go through individual psychotherapy  
 group  
 (4) therapy marital therapy all of these things his off duty  
 (5) drinking is a concern isn t it?  
 (6) A Well yes It might be of concern  
 (7) Q You need to know whether the cure takes don t you?  
 (8) A Can you rephrase that?  
 (9) Q You need to know whether the cure takes don t you?  
 (10) A I d have to keep in mind here that this man, if we re  
 (11) talking about Hazelwood has really not been diagnosed as  
 (12) alcoholic diagnosis was alcohol abuse episodic  
 (13) Q Episodic?  
 (14) A Which means it periodically you know it might even be  
 (15) years between the periods I don t know  
 (16) Q It s kind of interesting that you pointed that out  
 (17) MR NEAL Let him finish his answer Mr O Neill  
 (18) BY MR O NEILL  
 (19) Q Do you have any more to say Doctor?  
 (20) A No, I think that pretty well said it  
 (21) Q Let s talk about that for just a minute I was going to sit  
 (22) down but you raised a question and it - these questions are  
 (23) your fault sir  
 (24) Let s see if I can find my notes on this topic You re  
 (25) talking about now his diagnosis as being episodic alcohol  
 abuse

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1 or alcohol abuse episodic At the time that you reviewed these  
 (2) documents you interpreted this entire piece of paper here not  
 (3) quite so carefully But you thought in reading this that it  
 (4) was just one episode of alcohol abuse didn't you?  
 (5) **A There was one episode of treatment of which I was aware**  
 (6) **That's all the record had**  
 (7) **Q So you certified the captain is fit for duty a sea going**  
 (8) **master is fit for duty on the basis of this red flag and a**  
 (9) **five minute phone conversation that you can't remember the**  
 (10) **details of?**  
 (11) **MR NEAL Objection asked and answered**  
 (12) **THE COURT I'll allow it**  
 (13) **BY MR O NEILL**  
 (14) **Q And a minimization of the fact that you thought there was**  
 (15) **just one episodic instance of alcohol abuse is that a fair**  
 (16) **statement?**  
 (17) **A The fact that it was said to be episodic I would have**  
 (18) **assumed there was more than one I don't think you would**  
 (19) **get**  
 (20) **that diagnosis with just one But I had evidence of only one**  
 (21) **treatment of anything and that even in that the primary**  
 (22) **diagnosis was dysthymia and the secondary diagnosis was**  
 (23) **the**  
 (24) **alcohol abuse episodic**  
 (25) **MR O NEILL Thank you sir Thank you Judge**  
 (26) **THE COURT You may cross**  
 (27) **CROSS EXAMINATION OF CHARLES HUNTER**  
 (28) **MONTGOMERY**

Vol 13 1899

(1) **BY MR NEAL**  
 (2) **Q Doctor I will be hopefully and mercifully brief but I do**  
 (3) **want to know something about your background How old are**  
 (4) **you**  
 (5) **A 66**  
 (6) **Q And what we heard the other day once you reach 65 with**  
 (7) **Exxon you are retired?**  
 (8) **A That's correct**  
 (9) **Q And so are you retired from Exxon now?**  
 (10) **A Yes**  
 (11) **Q Quickly how long were you employed by Exxon**  
 (12) **Corporation?**  
 (13) **A 32 years five months**  
 (14) **Q 32 years five months Let's see when did you start your**  
 (15) **employment then? Will you count it up for me?**  
 (16) **A July 1st, 1960**  
 (17) **Q And retired this year or last year?**  
 (18) **A December the 1st 1992**  
 (19) **Q 1992 Where did you receive your - I don't want to go**  
 (20) **through all of it but you are a medical doctor?**  
 (21) **A That right**  
 (22) **Q Where did you receive your medical training?**  
 (23) **A At the University of Virginia I graduated from the**  
 (24) **University of Virginia in 1953 M D Degree I did an**  
 (25) **internship at the University of Virginia Hospital continued**  
 (26) **two additional years in internal medicine at the University of**

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(1) **Virginia went into the United States Public Health Service**  
 (2) **where I stayed for two and a half years and during that**  
 (3) **time**  
 (4) **frame served a chief residency in internal medicine at the**  
 (5) **Baylor University College**  
 (6) **Q In Waco?**  
 (7) **A No Houston**  
 (8) **Q The medical college of Baylor is in Houston?**  
 (9) **A Yes**  
 (10) **Q The regular college is in Waco?**  
 (11) **A The regular college is in Waco**  
 (12) **Q All right Now then I want to go right to the**  
 (13) **conversation that Mr O Neill brought up and he said that some**  
 (14) **time in 1985 you had a conversation with an Exxon Shipping**  
 (15) **Company official regarding Captain Hazelwood is that correct?**  
 (16) **A That's correct**  
 (17) **Q And would you tell us approximately when that conversation**  
 (18) **was and with whom you had the conversation if you**  
 (19) **remember?**  
 (20) **A Well let me cover that subject Within the Exxon**  
 (21) **Shipping**  
 (22) **Company, there was a disability management section -**  
 (23) **Q Okay**  
 (24) **A - who tried to keep up with the disabilities of the**  
 (25) **seaman They were strayed all over the country They had**  
 (26) **no**  
 (27) **regular supervisor because they joined different ships at**  
 (28) **different times And we had close contact with them**  
 (29) **regarding**  
 (30) **disability management Reports such as the individual**

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(1) **disability report form which you saw a few moments ago**  
 (2) **comes**  
 (3) **into that section from the physician and they look at it to**  
 (4) **determine what they need from it and then send it into the**  
 (5) **medical department from this individual disability report**  
 (6) **Q We'll put that up so it will be easy to fix it up here and**  
 (7) **I'll put it up here**  
 (8) **A Oh it's over here**  
 (9) **Q Oh okay Thank you Mr O Neill**  
 (10) **A I as best I can recall remind you nine years later and**  
 (11) **four years before this even came up, I think an individual in**  
 (12) **that section probably -**  
 (13) **Q Excuse me let me put this up on the screen because this is**  
 (14) **only part of it except for a little card Would you flash**  
 (15) **that up here okay Now -**  
 (16) **A This form as I say came into shipping and then it's sent**  
 (17) **to medical The medical department received the form on**  
 (18) **May**  
 (19) **the 14th 1985 and following that stamp it was sent to me**  
 (20) **for**  
 (21) **review**  
 (22) **After that I believe that a woman by the name of Gabby**  
 (23) **Guerra as best I can recall, was the one who called and**  
 (24) **asked**  
 (25) **me if I would call and talk to Doctor Vallury I'm busy and**  
 (26) **that wasn't the prime thing one likes to have to do on the**  
 (27) **spur**  
 (28) **of the moment I said fine, I will but I have some concern**  
 (29) **because actually this form has more detail completed on it**  
 (30) **than**  
 (31) **I generally got on this type of form And she explained to**  
 (32) **me**

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- (1) that there was a special reason they had that I needed to make
- (2) this call to Doctor Vallury
- (3) If you look at the form it says, the beginning date of
- (4) Captain Hazelwood's disability was April the first, which was
- (5) the date he went in the hospital
- (6) Q Okay
- (7) A The form was completed on April the 16th at a time when he
- (8) was still in the hospital I was receiving the form a month
- (9) later I do not know why it was such a delay, I cannot answer
- (10) that The problem they had in that disability section revolved
- (11) around the fit for duty status The form indicates that
- (12) Captain Hazelwood was not fit for duty Well, obviously on
- (13) April the 16th he was not fit for duty, he was in the
- (14) hospital Okay
- (15) There is a benefit plan arrangement with regard to leaves
- (16) of absence, that one really cannot grant a leave of absence
- (17) unless one is not disabled, or in other words is not - is fit
- (18) for duty, so that this question needed to be resolved before
- (19) they could grant the leave of absence
- (20) Myself or anyone that I know of at least in the shipping
- (21) company, took no exception to the leave of absence
- (22) because they
- (23) needed to clarify this issue They also wanted to know how
- (24) he
- (25) was doing, if I could get the information So I placed a call
- (26) to Doctor Vallury
- (27) Q While we were on that let me see if I can - you've got

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- (1) this form in front of you right?
- (2) A Right
- (3) Q And it's received on May the 14th?
- (4) A Right
- (5) Q The date of the form is May 1?
- (6) A The date of the form is May 1 Where do you see that?
- (7) Q The date that he's entering the hospital
- (8) A April 1
- (9) Q I'm sorry And he's to be there you can tell by the
- (10) writing for 28 days is that correct?
- (11) A That's correct
- (12) Q The date that Doctor Vallury signed this form is April
- (13) 16th?
- (14) A That's correct
- (15) Q So when he signs this form and presumably sends it to Exxon
- (16) Shipping Company Captain Hazelwood is in the middle of his
- (17) South Oak stay is that correct?
- (18) A That would be correct
- (19) Q However by the time you get it on May 14 presumably he
- (20) has completed that stay of 28 days?
- (21) A That's correct
- (22) Q All right Now you're asked to call Doctor Vallury You
- (23) have this form in front of you What do you do?
- (24) A I call Doctor Vallury and talk to him I can't - you
- (25) know it's been a long time but the gist of the conversation

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- (1) the best I can recall it is that he indicates that Captain
- (2) Hazelwood had done well in the program that he had
- (3) entered it
- (4) voluntarily of his own free will, that he had participated well
- (5) in the program, he felt his outlook or his prognosis, if you
- (6) want, was good but that because of the nature of his job
- (7) meaning that he could not get to AA meetings, not attend
- (8) the
- (9) things that - the aftercare program that he wanted him to
- (10) attend, that he had recommended that he take the leave of
- (11) absence
- (12) Q Now at that time did he say - did he tell you that he was
- (13) fit for sea duty?
- (14) A At that time we discussed the fit for duty, and he
- (15) indicated to me that he was fit for duty And I in turn then
- (16) called back, I assume Gabby Guerra, as I'm not sure which
- (17) person it might have been, and advised them that on the
- (18) basis
- (19) of that, that I agreed with that determination and that I
- (20) recommended that he get the leave - they grant the leave of
- (21) absence And I remember this better than average, I guess
- (22) because when I did get to them, and I'm not sure of the
- (23) exact
- (24) time, how long it took to do this but I think it was the
- (25) latter part of May, when I got back to them
- (26) Q To them you mean back to Exxon Shipping Ms Guerra?
- (27) A Back to Exxon Shipping They'd already granted the
- (28) leave
- (29) of absence which sort of hacked me a little bit which is why
- (30) I
- (31) remember this call as well as I do

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- (1) Q All right So then Doctor Vallury called you as I
- (2) understand it he says Captain Hazelwood is fit for duty?
- (3) A That's right
- (4) Q But I recommend that he be given a leave of absence so that
- (5) he can have the AA and aftercare is that correct?
- (6) A That's correct
- (7) Q All right Did you understand that AA and aftercare was a
- (8) condition to be fit for duty or he was fit for duty but it was
- (9) a recommendation that he continue that?
- (10) A I thought he was fit for duty and that it was a
- (11) recommendation that he be given this leave of absence so
- (12) that
- (13) he could stay shoreside and get that AA and other aftercare
- (14) Q Now Doctor Montgomery Mr O'Neill kept saying you
- (15) determined that he was fit for duty that's that a fair
- (16) statement or did Doctor Vallury determine - his physician
- (17) determine that he was fit for duty?
- (18) A His physician determined he was fit for duty, and I
- (19) accepted that as adequate for Exxon's purposes to allow
- (20) him to
- (21) be declared fit for duty
- (22) Q All right And then you called Ms Guerra of Exxon
- (23) Shipping Company and told her that you - in effect that his
- (24) doctor says he's fit for duty his doctor recommends this leave
- (25) of absence and you endorse that?
- (26) A That's right
- (27) Q Doctor Mr O'Neill said that pulled up an Exhibit 160



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- (1) I'll try it again here and said that this information was over  
 (2) at Exxon was over in the offices of Exxon Shipping Company  
 (3) Do you recollect that exhibit?  
 (4) **A Yes**  
 (5) **Q All right Captain Hazelwood according to your testimony**  
 (6) **voluntarily entered South Oaks on April 1 1985 correct?**  
 (7) **A That's correct**  
 (8) **Q Would you look at the date up here that's dated May 19 or**  
 (9) **May 28 1985 Was that the date that the information was**  
 (10) **received by the Exxon Shipping Company to your knowledge**  
 (11) **or do**  
 (12) **you know?**  
 (13) **A I don't know**  
 (14) **Q All right If Exxon Shipping Company had received this**  
 (15) **information after Captain Hazelwood went into or sought**  
 (16) **voluntarily sought treatment are you with me?**  
 (17) **A Uh-huh**  
 (18) **Q Then he would be a voluntary declare or self identifier**  
 (19) **even though they later learned out - learned that he had**  
 (20) **violated the policy prior to seeking help is that correct?**  
 (21) **A I think that is correct**  
 (22) **Q Doctor Exxon Shipping Company employees I suppose like**  
 (23) **all employees are entitled to have their own doctor correct?**  
 (24) **A Encouraged**  
 (25) **Q Encouraged to have their own doctor And the medical**  
 (26) **department is there for - to aid but not as a substitute for**

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- (1) **their own doctors?**  
 (2) **A That is correct**  
 (3) **Q All right Is there anything - if a person - if an Exxon**  
 (4) **Shipping Company employee had some kind of medical**  
 (5) **problem and**  
 (6) **went to his doctor and then his doctor - you talked to his**  
 (7) **doctor and his personal doctor said he's fit for duty would**  
 (8) **you be inclined to accept that?**  
 (9) **A Yes I would Unless I saw some reason to really take**  
 (10) **exception to it That was generally the accepted program**  
 (11) **Q Now Mr O Neill asked you to assume certain things and he**  
 (12) **told you some things like this Mr Shaw said and so forth**  
 (13) **Let's assume you know that you have this diagnosis of Captain**  
 (14) **Hazelwood correct?**  
 (15) **A Right**  
 (16) **Q And the primary diagnosis is dysthymia correct?**  
 (17) **A That's right**  
 (18) **Q And only the secondary diagnosis is some sort of alcohol**  
 (19) **abuse episodically?**  
 (20) **A That's right**  
 (21) **Q You've testified that dysthymia is a mild form - mild form**  
 (22) **of depression?**  
 (23) **A That is correct**  
 (24) **Q All right If you go to - if you go to a doctor and you**  
 (25) **ask him what's wrong with you and the doctor makes a**  
 (26) **diagnosis do they - do they find out determine that - and**

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- (1) give you an order of diagnoses that is the major problem and  
 (2) the less major problem and they do it in that order?  
 (3) **A Not always**  
 (4) **Q Okay But did you understand that this was the primary**  
 (5) **diagnosis of dysthymia in this case and the secondary**  
 (6) **diagnosis**  
 (7) **of alcohol abuse episodically?**  
 (8) **A Yes**  
 (9) **Q Mr O Neill asked you to assume that you had - stroke**  
 (10) **that**  
 (11) **I think I'm going to have no further questions Doctor**  
 (12) **Montgomery**  
 (13) **THE COURT Redirect Mr O Neill**  
 (14) **REDIRECT EXAMINATION OF CHARLES HUNTER**  
 (15) **MONTGOMERY**  
 (16) **BY MR O NEILL**  
 (17) **Q Do you want me to ask you questions or not ask you**  
 (18) **questions Doctor? I'll give you a choice**  
 (19) **MR SANDERS Can I vote?**  
 (20) **BY MR O NEILL**  
 (21) **Q You have to answer the question**  
 (22) **A Excuse me Phrase that again**  
 (23) **Q Do you want me to ask you some more questions or not ask**  
 (24) **you any more questions?**  
 (25) **A I'd just as soon you not ask any more questions**  
 (26) **MR O NEILL I have no further questions**  
 (27) **MR NEAL Man I hope we can do that for everybody**

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- (1) I'd like to see everyone do that  
 (2) **THE COURT You may call your next witness**  
 (3) **MR O NEILL The plaintiff calls Kenneth G Gould as**  
 (4) **an adverse witness for cross examination and on a videotape**  
 (5) **DIRECT EXAMINATION OF KENNETH D GOULD**  
 (6) **BY VIDEO EXAMINER**  
 (7) **Q You've stated your full name for the record already It's**  
 (8) **Doctor Kenneth G Gould Junior?**  
 (9) **A Correct**  
 (10) **Q Could you tell us where you presently reside?**  
 (11) **A I currently reside in Houston Texas**  
 (12) **Q Are you currently employed by Exxon Corporation?**  
 (13) **A No I'm employed by Exxon Company USA, which is a**  
 (14) **company**  
 (15) **of the Exxon Corporation**  
 (16) **Q In what capacity are you employed by Exxon Company USA?**  
 (17) **A My current title is director of health services**  
 (18) **Q How long have you held that position?**  
 (19) **A Since December 1st, 1985**  
 (20) **Q I'd like to now turn to the matter of an employee who was**  
 (21) **entering rehabilitation for alcohol dependency My question**  
 (22) **is what are the different ways in which the medical department**  
 (23) **might learn that an employee was in or about to begin**  
 (24) **rehabilitation for alcohol dependency? Well let me refer you**  
 (25) **to the time period of 1985**  
 (26) **A We might learn if the employee tells us We might learn if**

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- (1) the employee through the individual disability report has his
- (2) physician send us a report of his having been disabled for a
- (3) period of time, and that that may or may not be listed on that
- (4) particular sheet Or we may be told by management if they've
- (5) learned about it in some way
- (6) We will not be told about such a rehabilitation if the
- (7) employee has instructed the folks in the rehabilitation not to
- (8) tell us
- (9) Q What was the medical department's routine procedure if
- (10) there was one with respect to an employee who it had learned
- (11) had been newly admitted to alcohol rehabilitation and again
- (12) with regard to the time period 1985?
- (13) A Perhaps it would be better to state in a generic fashion
- (14) when we learn that anyone is in a hospital situation, we would
- (15) generally, unless requested to perform some service, merely
- (16) make a note in the record if the time that we heard about that,
- (17) I would think at that time Probably not deal with the
- (18) rehabilitation any differently than we dealt with the
- (19) notification of any other sort of hospitalization unless there
- (20) was some specific restriction of duty which were indicated in
- (21) some way by the notification that we got that it was necessary
- (22) Q You had referred to a disability report What is an
- (23) individual disability report?
- (24) A They go by different names, and it's sometimes called an
- (25) ER-5, sometimes referred to as an IDR or individual disability

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- (1) report When an employee is absent from work for five or more
- (2) days, the employee's supervisor will initiate a form in which
- (3) he sends the form to the employee at the top stating that
- (4) before the employee should come back to work, that the employee
- (5) should sign the middle part of the form which is essentially
- (6) release of information and give that to his physician to
- (7) provide two things
- (8) it's a form with, essentially two pages to it In the
- (9) first page, then, the physician would indicate that the
- (10) employee - he had first seen the employee on a certain date
- (11) and may be the last date that he saw the employee And he
- (12) would also indicate the duration of any disability which he
- (13) expected to occur, that the person would not be able, for
- (14) instance, return to work, fit to return to work, not fit to
- (15) return to work, and any short explanation in that form, then
- (16) would wind up in the personnel records
- (17) This underneath form which is a carbon copy of the top
- (18) material provides some additional room for the physician to
- (19) fill out data regarding history and physical examination and
- (20) results and so on which the physician would then forward to
- (21) the medical department
- (22) Now, much of the time we get the same information that the
- (23) employee relations department gets with regard to the length of
- (24) the disability and with regard to the generic fit to work or
- (25) not fit to work without any specific medical data and doctors

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- (1) have become more and more chary about giving us any
- (2) information, even though they have a release on that form
- (3) Q Let me step back for a moment What were the general ways
- (4) that the medical department in 1985 may have learned about an
- (5) employee coming out of a rehabilitation program for alcohol?
- (6) A I may have been confused earlier when I answered with
- (7) regard to the three days that I said I thought the department
- (8) might have learned about it when they went in And because I'm
- (9) not usually used to hearing about it at that point, but when
- (10) they come out, and I may have misspoke in that regard - but I
- (11) think we said that the employee would tell us, we would get a
- (12) note from the doctor or we might hear about it from management
- (13) Q Are you referring now - you say - are you saying that
- (14) that's the way you might learn about - are you saying that
- (15) those are the three ways that the medical department might
- (16) typically learn about an employee emerging from an alcohol
- (17) rehabilitation program?
- (18) A Yes
- (19) Q Are you saying that it's very possible that the medical
- (20) department would not even learn about the fact that an employee
- (21) had been admitted himself to a rehabilitation program until
- (22) after he completed the program?
- (23) A Yes and I'm not excluding the fact that we might not have
- (24) learned about it at all
- (25) Q Now assuming an employee has been admitted to an alcohol

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- (1) rehabilitation program and has now emerged from the
- (2) rehabilitation program and has been absent from work during
- (3) that period of time and is returning to his place of
- (4) employment what procedure would the medical department
- (5) undertake at that time?
- (6) A 1985?
- (7) Q Yes
- (8) A The procedure is as previously described when somebody is
- (9) absent from work, his supervisor will send or give the absent
- (10) employee the form for the absent employee to sign the release
- (11) and for the doctor then to complete it and send it back I
- (12) told you about the ways we would learn about it There's no
- (13) other mysterious way I would know about it
- (14) Q Would the medical department in the instance of an
- (15) employee who had undergone rehabilitation for alcohol have
- (16) conducted its own examination to ascertain whether that
- (17) employee had successfully completed his alcohol rehabilitation
- (18) before allowing him to return to his job in 1985?
- (19) A I think that the forms that we get are subscribed to by the
- (20) physician an M D Our general process whether it's related
- (21) to alcohol or a hernia or something else is to take the word
- (22) of the physician and his description of fitness to work The
- (23) one major exception to that is when we have someone who has
- (24) seen a chiropractor we may in fact refer people who have been
- (25) treated by chiropractors for another opinion by a physician

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- (1) with an estimate of potential disability  
 (2) Q In 1985?  
 (3) A Right  
 (4) Q Was it necessary that - that there be a determination of  
 (5) fitness for work before an employee who had undergone  
 alcohol  
 (6) rehabilitation could return to his job?  
 (7) A Not if the physician said he was fit to return to his  
 (8) position You got to remember we have five doctors  
 (9) essentially reviewing all the absences for the company of  
 (10) 20 000 plus people And we cannot see everybody who  
 comes back  
 (11) for something  
 (12) Now if management decides that they want to have that  
 (13) person further evaluated, they may contact the medical  
 (14) department and say Please evaluate so and so for his  
 fitness  
 (15) to work  
 (16) Q My question was literally was there no requirement that  
 (17) the medical department itself make a determination of fitness  
 (18) before an employee who had been rehabilitated for alcoholism  
 (19) could return to his job?  
 (20) A Not that I m aware of  
 (21) Q One should look at that answer in the light of the fact  
 (22) that where we found out about it through the process of an  
 (23) individual disability report or ER 5 that we would have on  
 (24) record a physician s signature which the physician said he was  
 (25) fit to return to work or not fit to return to work And if the

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- (1) physician said that he was not fit to return to work and he  
 (2) shows up to work then we might get involved  
 (3) Is that a clarification which helps?  
 (4) A I suppose  
 (5) Q My question is then -  
 (6) A But see management would know that at that time  
 because  
 (7) they would have had their part of the form which the  
 physician  
 (8) would say he s fit to work or not fit to work  
 (9) Q Where the medical department had received notice of an  
 (10) employee s determination of his fitness to return to work in  
 (11) the instance of his having completed alcohol rehabilitation  
 (12) would the medical department ever speak to that employee s  
 (13) private physician about his determination?  
 (14) A Unless there was some unusual facet, probably not  
 (15) Q My question is simply did the medical department  
 (16) independently have a requirement about the level of detail that  
 (17) it would have wanted to receive or needed to receive in terms  
 (18) of that determination of fitness for work by that employee s  
 (19) private physician?  
 (20) A I think practicing law or medicine or driving a bus or  
 (21) whatever you're doing, there s a certain degree of judgment  
 (22) which enters the picture And if one lays down restrictive  
 (23) criteria or instructive criteria one frequently misses the  
 (24) essence of the problem  
 (25) We try to stay alert to unusual situations but there were

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- (1) no jot and tittle requirements on each and every person  
 who  
 (2) comes back to work  
 (3) Again I reiterate that if there was some unusual facet  
 (4) mentioned in the diagnosis or in the information we were  
 given  
 (5) we may or we may not choose to try to get in touch with a  
 (6) physician or get in touch with the employee and to clarify  
 that  
 (7) depending on the judgment of the individual reviewing  
 health  
 (8) practitioner  
 (9) Q In 1985 did the medical department consider that it was  
 (10) important in terms of successful rehabilitation of alcoholism  
 (11) employees that they receive counseling after their return to  
 (12) employment?  
 (13) A I think as a general rule we would have felt that  
 (14) counseling would be wise after such a visit but then you  
 have  
 (15) to describe what you mean by counseling In a certain  
 (16) celebrated case I recall that, you know what is usually -  
 (17) what was usually the recommendation of - of rehabilitation  
 (18) programs was that someone participate after that  
 rehabilitation  
 (19) in a 90-and 90, which is 90 visits to Alcoholics Anonymous  
 (20) chapter in the next 90 days in order to solidify the gains  
 made  
 (21) with regard to the individual s thinking during the  
 (22) rehabilitation process  
 (23) I don t think anybody considered even in 1985 the  
 (24) rehabilitation was complete complete when you stop the  
 (25) hospitalization or the outpatient phase of the rehabilitation

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- (1) treatment, that this was an ongoing life situation in which  
 one  
 (2) needed to continue to strengthen one s resolve not to  
 return to  
 (3) the bottle or the pills  
 (4) Q Did the medical department in 1985 have any system in place  
 (5) to determine for itself that an employee who had undergone  
 (6) alcohol rehabilitation on an outpatient basis had followed his  
 (7) program before returning to work?  
 (8) A No I don t know how you can determine that today  
 (9) Q Doctor Gould after reassignment of an employee who had  
 (10) completed alcohol rehabilitation did anyone within the medical  
 (11) department have a responsibility to monitor that employee to  
 (12) detect relapse possible signs of relapse? And I m talking  
 (13) about the period 1985 to 1988  
 (14) A No  
 (15) Q Do you have an understanding about whether or not anyone  
 (16) else within the Exxon organization other than the medical  
 (17) department had such a responsibility - and again I m  
 (18) referring to that period of time 1985 to 1988?  
 (19) A It is the responsibility of the first-line supervisor to  
 (20) determine the fitness of his employees to do the job that  
 (21) they re supposed to be doing In the sense that he s with  
 them  
 (22) and he s observing them If he has a problem, he s  
 supposed to  
 (23) get in touch with the medical department or with his  
 (24) supervisor in order to determine if any other procedure  
 needs  
 (25) to be followed

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- (1) Q With regard to that situation is it important in your  
 (2) opinion that the supervisor have knowledge that the employee  
 (3) that he is monitoring is a rehabilitated alcoholic?  
 (4) A I think it would be useful if the first line supervisor  
 (5) knew that somebody had been to rehabilitation that he then  
 was  
 (6) able to have that information in order to attempt to  
 understand  
 (7) what action his employee was taking  
 (8) Q In terms of the medical department evaluating an employee  
 (9) who had returned to the job but undergone alcohol  
 (10) rehabilitation is it correct based on your testimony that the  
 (11) medical department was essentially relying on the non medical  
 (12) supervisors to alert it to the problem concerning use of  
 (13) alcoholism - alcohol?  
 (14) A I believe this was the tact that management had decided  
 to  
 (15) take  
 (16) Q In the period between 1985 and prior to the time of the  
 (17) spill did the medical department have any policy or  
 (18) requirement that an employee who had undergone  
 rehabilitation  
 (19) for alcohol be abstinent and refrain totally from use of  
 (20) alcohol when he returned to his position?  
 (21) A No  
 (22) Q Did the medical department in this same time period  
 (23) between 1985 and up until the time of the spill have any  
 (24) requirement of its own that an employee who had undergone  
 (25) rehabilitation for alcoholism attend Alcoholics Anonymous or

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- (1) similar meetings before being returned to his job?  
 (2) A No  
 (3) Q Do you have an opinion about whether or not an alcoholic  
 (4) can suffer a loss of cognitive efficiency but at the same time  
 (5) not exhibit any overt signs of gross motor impairment?  
 (6) A Yes I have an opinion  
 (7) Q Would you please explain it?  
 (8) A I believe it can happen I also believe that the other  
 (9) half of that is true that you can suffer motor inabilities and  
 (10) not be able to show any cognitive difficulties And I don't  
 (11) know which one is dominant in an individual - given  
 (12) individual, because of the variation within individuals  
 (13) Q Doctor do you have an opinion about whether or not the  
 (14) greater number of drinks that a rehabilitated alcoholic  
 (15) consumes following rehabilitation the greater likelihood of  
 (16) relapse?  
 (17) A I know about the arguments that have gone on in some of  
 the  
 (18) literature with regard to this kind of thinking There are  
 (19) some folks some experts who believe that any amount of  
 (20) alcohol in fact indicates a relapse and others who feel that  
 (21) after rehabilitation is complete that some small amount of  
 (22) alcohol can be periodically drunk by someone who s  
 previously  
 (23) been designated as an alcoholic I don't know what the  
 (24) long term outcome of these academic deliberations will be  
 but  
 (25) it seems to me that from the standpoint of operational

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- (1) efficiency within the corporate setting, that abstinence is to  
 (2) be desired  
 (3) Q Could you tell me what role if any the medical department  
 (4) played in the development of the alcohol and drug policy that  
 (5) came into effect in 1985?  
 (6) A We were asked our opinion on various parts of the  
 proposed  
 (7) policy and provided that opinion Principally through the  
 (8) manager of the human resources department  
 (9) Q Do you recall the opinions that you offered at that time in  
 (10) terms of the development of the policy?  
 (11) A Without having my notes in front of me I m really unable  
 to  
 (12) state with clarity the individual comments that I offered  
 (13) Q Do you have any recollection about whether or not your  
 (14) opinion was solicited with regard to institution of an  
 (15) aftercare or follow up program for rehabilitated alcoholics who  
 (16) have been returned to the job?  
 (17) A I don't believe in 1987 that our concept of aftercare  
 (18) within the medical department was well enough developed  
 for us  
 (19) to have provided any particular input with that - with regard  
 (20) to that subject  
 (21) MR NEAL Can we cut him off here sir?  
 (22) THE COURT Fine  
 (23) MR O NEILL Thank you  
 (24) THE COURT Please remember my instructions about not  
 (25) listening to your reading anything about this case? We will

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- (1) adjourn at this time until 8 00 The jury is excused  
 (2) If counsel would stay for just a moment sir  
 (3) (Jury out at 2 00 p m )  
 (4) THE COURT Just a couple of administrative things  
 (5) I ve received notification from the defendants or certification  
 (6) from the defendants that they ve destroyed the copies of the  
 (7) jury questionnaires that they had  
 (8) MR SERDAHELY That s correct  
 (9) THE COURT Have the plaintiffs taken care of that?  
 (10) MR OESTING We delivered them to Mr Murtiashaw  
 (11) before we got note that we destroyed them We were  
 previously  
 (12) told to deliver them all back here  
 (13) I ll give them to the clerk  
 (14) THE COURT Thank you very much The second thing is  
 (15) that I think both sides have offered exhibits that run past the  
 (16) end of any exhibit list that I ve got from you  
 (17) MR O NEILL Well Mr Jamin will take care of  
 (18) getting exhibit lists for those exhibits by tomorrow morning  
 (19) MR LYNCH Every morning we gave Mr Murtiashaw an  
 (20) update we gave you this morning a new list that had all of our  
 (21) lists and I think what happened was that Mr Sanders created  
 (22) an exhibit that didn't exist until he recreated it  
 (23) THE COURT More than just one There s a half dozen  
 (24) of them I think that run past the end of the list I had It  
 (25) would be helpful to me if I had a complete set

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- (1) That s all I have
- (2) MR O NEILL We have nothing else Judge
- (3) THE COURT We will be in recess until tomorrow
- (4) morning
- (5) THE CLERK Court is in recess until 8 00 a m
- (6) tomorrow
- (7) (Proceedings recessed at 2 00 p m )

- (1) DIRECT EXAMINATION OF CHARLES HUNTER MONTGOMERY 1872
- (2) BY MR O NEILL 1872
- (4) CROSS EXAMINATION OF CHARLES HUNTER MONTGOMERY 1898
- (5) BY MR NEAL 1899
- (7) REDIRECT EXAMINATION OF CHARLES HUNTER MONTGOMERY 1908
- (8) BY MR O NEILL 1908
- (10) DIRECT EXAMINATION OF KENNETH G GOULD 1909
- (11) BY VIDEO EXAMINER 1909

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- (1) INDEX
- (2) Page
- (4) PLAINTIFF S WITNESSES
- (7) DIRECT EXAMINATION OF MICHAEL A PEAT 1723
- (8) BY MR JAMIN 1723
- (10) CROSS EXAMINATION OF MICHAEL PEAT 1752
- (11) BY MR CHALOS 1753
- (13) REDIRECT EXAMINATION OF MICHAEL PEAT 1789
- (14) BY MR JAMIN 1789
- (16) DIRECT EXAMINATION OF DR DAVID SMITH 1791
- (17) BY MR MONTAGUE 1792
- (19) VOIR DIRE EXAMINATION OF DR DAVID SMITH 1799
- (20) BY MR SANDERS 1799
- (22) CROSS EXAMINATION OF DAVID E SMITH 1827
- (23) BY MR SANDERS 1827

- (2) EXHIBITS
- (3) 3793 3794 3795 3796 3799 3804 3805 3807 3808 and
- (4) 3811 offered 1722
- (5) 3797 offered 1752
- (6) 9102 9103 9104 9105 9106 9107 9108 9109 9110
- (7) 9111 9112 offered 1759
- (8) PX3812 and PX3813 offered 1826
- (12) 3793 3794 3795 3796 3799 3804 3805 3807 3808 and
- (13) 3811 received 1722
- (14) 3708 received 1745
- (15) 3797 received 1752
- (16) 9102 9103 9104 9105 9106 9107 9108 9109 9110
- (17) 9111 9112 received 1760
- (18) 3812 and 3813 received 1828
- (19) 9093 received 1861

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- (1) STATE OF ALASKA )
- (2) Reporter s Certificate
- (3) DISTRICT OF ALASKA )
- (6) I Karyn H Chalem 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) KARYN H CHALEM RPR
- Notary Public for Alaska
- (22) My Commission Expires 4 8 95

Look-See Concordance Report

UNIQUE WORDS 2 782
TOTAL OCCURRENCES 13,349
NOISE WORDS 385
TOTAL WORDS IN FILE 40,968

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 27

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 WITNESSES [1] 1923 4  
 witnesses [3] 1804 20,  
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 witnessing [1] 1757 6  
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 won't [1] 1781 23  
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 wording [2] 1887 14, 1888 2  
 words [6] 1724 12 1832 3  
 1847 16 1858 19 1864 7  
 1902 17



**work** [41] 1724 14 1728 1 2  
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 1771 19 22 1772 1 3  
 1793 6, 7, 1797 3, 1811 21  
 1815 21, 1862 22, 1864 7  
 1893 8 1911 1 4 14 15 24  
 25 1913 2 9 22 1914 5 15  
 25 1915 1 2 8, 10 18  
 1916 2 1917 7  
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**working** [7] 1724 24 1753 17  
 1809 9 1833 18 1862 12  
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 1795 3  
**workplace** [4] 1795 5, 19  
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**workshops** [1] 1884 8  
**Worlett** [10] 1839 11 12 19  
 25 1840 4 8 12 16 1842 3  
**worse** [1] 1890 12  
**worth** [1] 1789 13  
**wouldn't** [4] 1835 9 1850 19  
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**wrapped** [3] 1748 15 1856 5  
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 1827 9  
**writing** [3] 1736 17 1827 6  
 1903 10  
**written** [8] 1787 13 1794 16  
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 1882 19 21  
**wrong** [2] 1859 25 1907 24  
**wrote** [9] 1774 11 1777 20  
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 16, 1827 14 1878 1  
**WV** [1] 1814 16

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- X -

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**xerox** [1] 1736 12

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- Y -

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**yank** [1] 1893 16  
**Yard** [1] 1724 3  
**Yeah** [6] 1829 2 1838 13  
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 1893 5  
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 1787 20 1899 16  
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 1848 10  
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 1804 19 23 1805 7 1809 2  
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 1892 1 1897 15 1899 12 13  
 25 1900 2 1901 9 10  
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**yesterday** [1] 1779 11  
**York** [1] 1726 21  
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 1888 17 1895 13  
**You'll** [1] 1859 13  
**you'll** [3] 1743 4 1779 25  
 1832 22

**You've** [6] 1843 22 1844 17  
 1859 1 1880 25 1907 20  
 1909 7  
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 1728 3 1729 24 1730 10  
 1743 18 1744 16 1760 16  
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 1839 16 23 24 1841 22  
 1843 8 19 1844 3 14  
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**yourselves** [1] 1777 11

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- Z -

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**zero** [1] 1840 13  
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**zoom** [11] 1735 23 1736 8  
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 1743 9 13 1749 7 1770 7  
 1841 12  
**zooming** [1] 1739 3

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- (1) IN THE UNITED STATES DISTRICT COURT
- (2) FOR THE DISTRICT OF ALASKA
- (3) In re: ) Case No. A89-0075 CIV (HRH)
- (4) ) Anchorage, Alaska
- (5) The Exxon Valdez ) Friday, May 20 1994
- (6) ) 8:00 a.m.
- (7) TRANSCRIPT OF PROCEEDINGS
- (8) TRIAL BY JURY 14TH DAY
- (9) BEFORE THE HONORABLE H. RUSSEL HOLLAND, JUDGE
- (10) VOLUME 14 Pages 1927 2163
- (11) Realtime Transcription
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- (26) U.S. District Court
- (27) 222 W 7th Avenue #4
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- (29) Ph. 907/271-6529
- (30) Reported by. KARRIN H. CHALEM RFR
- (31) Registered Professional Reporter
- (32) Midnight Sun Court Reporters
- (33) 2550 Denali Street Suite 1505
- (34) Anchorage AK 99503
- (35) Ph. 907/258-7100

Vol 14 1929

- (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
- (7) The Exxon Valdez When we left off I don't remember whether
- (8) we were in the middle of something or not
- (9) MS WAGNER Yes we were Your Honor We'll continue
- (10) with the deposition videotape of Kenneth Gould
- (11) CONTINUED DIRECT EXAMINATION OF KENNETH G. GOULD
- (12) (Video)
- (13) BY VIDEO EXAMINER
- (14) Q Okay
- (15) A To the best of my remembrance
- (16) Q Do you recall that topic coming up in discussion with you
- (17) with the medical department at any time between 1985 and
- (18) prior
- (19) to the oil spill?
- (20) A No - are you talking about between me and upper level
- (21) management?
- (22) Q Yes
- (23) A As opposed to me and between Dr. Stockman or HAI or a
- (24) discussion I might have had an academic discussion
- (25) Q Let's break it down I was asking first between you and
- (26) management in terms of any such discussion
- (27) A I don't recall a discussion with management with regard
- (28) to

Vol 14 1930

- (1) aftercare before the Valdez spill
- (2) Q Do you have an understanding about whether or not the
- (3) 1987
- (4) alcohol and drug policy prohibited testing of employees who
- (5) are
- (6) rehabilitated alcoholics and had returned to their positions?
- (7) A Doesn't say anything about that
- (8) Q Is it correct then that because the policy in your
- (9) opinion - that because the policy is silent with regard to
- (10) testing after rehabilitation that it was permissible under the
- (11) policy?
- (12) A I don't think the policy in my own view does not prohibit
- (13) testing of somebody in a rehabilitation program, but it also
- (14) doesn't speak to it
- (15) Q Let me refer you to document number 18 which should be a
- (16) memorandum dated October 5th 1988 from J.C. Bowen to a
- (17) number
- (18) of individuals attaching the then latest revision of the drug
- (19) and alcohol use package
- (20) A Uh huh
- (21) Q You're noted as being a recipient on that document?
- (22) A That's right
- (23) Q Do you recall receiving this?
- (24) A Yes indeed
- (25) Q In terms of your understanding today about the treatment of
- (26) alcoholism how important is in your opinion is aftercare
- (27) follow up in terms of a successful recovery process?
- (28) A From alcohol'

Vol 14 1931

- (1) Q Yes
- (2) A I think it's exceedingly important I think that's one of
- (3) the things we learned in the middle '80s We learned a
- (4) lesson
- (5) and we brought it
- (6) Q Did you testify earlier today about a conversation with
- (7) Mr Iarossi after the oil spill?
- (8) A That's correct
- (9) Q What did the discussion concern?
- (10) A I can't remember the details of the discussion but I can
- (11) remember that Captain Hazelwood entered into the
- (12) discussion
- (13) Q Do you recall whether or not you discussed with
- (14) Mr Iarossi after the time of the spill whether or not the
- (15) alcohol and drug policy in effect at the time of the spill had
- (16) mandated that an employee who had undergone rehabilitation
- (17) for
- (18) alcoholism be returned to the exact position that employee had
- (19) held before rehabilitation?
- (20) A I don't think I ever had that conversation
- (21) Q Did Mr Iarossi if you recall as part of these
- (22) discussions ever express concern to you that Exxon Shipping
- (23) Company had believed that the medical department was in
- (24) some
- (25) fashion conducting continuous monitoring of employees who
- (26) had
- (27) been returned to employment after undergoing alcohol
- (28) rehabilitation?
- (29) A No
- (30) Q Do you recall having any discussion with anyone in

Vol 14 1932

- (1) management in either Exxon Company USA or Exxon Shipping
- (2) Company concerning that last topic?
- (3) A In the medical department? I think there probably were
- (4) some discussions around that issue with others
- (5) Q Do you recall what their reaction may have been after you
- (6) shared information about the fact that the medical department
- (7) does not undertake to perform continuous monitoring of
- (8) employees that are returned to their positions after alcohol
- (9) rehabilitation?
- (10) A Well I think that the general appreciation was that they
- (11) knew that we were not but they were just verifying with us
- (12) that we were not and in fact that was a management
- (13) responsibility
- (14) Q Have you looked at any documents to prepare for this
- (15) continued deposition today?
- (16) A Yes
- (17) Q What have you looked at?
- (18) A I looked at the IDR relating to Captain Hazelwood's
- (19) hospitalization in 1985
- (20) Q Would you like to look at the IDR?
- (21) A Yeah
- (22) Q Let me show you a marked copy rather than have you pull
- (23) your copy I think that will work better - actually I was
- (24) going to get to this later but since we are on the topic I
- (25) thought it would make sense to mark this now

Vol 14 1933

- (1) Are there references that you mentioned earlier under the
- (2) column entitled diagnosis and that then is indicated 300 40 and
- (3) 305 02 DSM Roman three closed paren?
- (4) A That's correct
- (5) Q And do you recall what those diagnoses refer to?
- (6) A In general terms the 300 40 is dysthymia and the 305 02
- (7) is
- (8) substance abuse alcohol intermittent
- (9) Q Is there another diagnosis in DSM III that involves
- (10) alcohol?
- (11) A I think that there are a number of items in the DSM-III
- (12) that relate to substance abuse to alcohol use and that one
- (13) would need to understand specifically what that question
- (14) referred to
- (15) Q Would you equate the diagnosis of 305 02 in DSM III to
- (16) alcoholism?
- (17) A It's not what it says
- (18) Q You would not use the term alcoholism and whatever the
- (19) diagnosis is -
- (20) A It says alcohol abuse
- (21) Q That does not to you equate to alcoholism? You can
- (22) answer
- (23) A The term alcoholism is an indefinite one It refers to
- (24) different things for different people at different times and
- (25) even in various legal jurisdictions it has a different
- (26) meaning
- (27) Q Okay

Vol 14 1934

- (1) A It's an inaccurate term from the standpoint of saying that
- (2) generically one would entitle something, I think, to be
- (3) alcoholism when in fact one can be more specific which is
- (4) what
- (5) the DSM III tends to do
- (6) Q Would in your view someone who was subject to a
- (7) diagnosis
- (8) of 305 02 be suffering from alcoholism?
- (9) You can answer
- (10) A I think it's possible that some people might consider that
- (11) to be true
- (12) Q Would a diagnosis of 305 02 in DSM III mean that someone
- (13) was an alcoholic?
- (14) A I think that some people might consider that to be so
- (15) Q Incidentally Doctor have you seen this document 64416
- (16) at any time before you looked at it when your lawyer showed it
- (17) to you?
- (18) A Yes
- (19) Q When did you first see it?
- (20) A I cannot give you an exact date, but it was several years
- (21) ago, probably in 1989 that Dr Montgomery showed me a
- (22) copy of
- (23) our fiche record We have our medical records on fiche and
- (24) he
- (25) showed me the fact that he had put his initials in one corner
- (26) of this document
- (27) Q Okay But this was after the oil spill?
- (28) A After the oil spill
- (29) Q And in the normal day to day practice of the head services

Vol 14 1935

- (1) department for the time you have been there is it the custom  
 (2) for physicians in the department to be in contact with  
 (3) hospitals or facilities who are treating Exxon employees?  
 (4) **A Yes**  
 (5) **Q** What would be the circumstances under which this contact  
 (6) would be made?  
 (7) **A** To clarify a medical matter return to work  
 (8) **Q** Would that type of conversation normally be noted in a  
 (9) medical file?  
 (10) **A** It's not always noted, but sometimes it is noted  
 (11) **Q** Would it be good medical procedure to note it in a medical  
 (12) file?  
 (13) **A** Yes, I would think so  
 (14) **Q** By noted in the medical file I mean a notation or a record  
 (15) of a conversation along the lines we discussed  
 (16) **A** I would put it in terms it's preferred to have interactions  
 (17) which relate to an individual in some way entered into a  
 (18) medical file, so additional files from time to time can  
 (19) understand what went on  
 (20) **Q** In the conversation or the discussion that you had with Dr  
 (21) Montgomery when you first saw 64416 after the grounding did  
 (22) you ask Dr Montgomery or did he indicate to you that he being  
 (23) Dr Montgomery had ever followed up with anyone not just Dr  
 (24) Vallury to ascertain whether the recommendations set forth in  
 (25) 64416 had been followed?

Vol 14 1936

- (1) **A** No  
 (2) **Q** Would it have been appropriate procedure for the Exxon  
 (3) medical department or health services department to conduct  
 (4) that type of follow up?  
 (5) **A** You mean to make a phone call to the doctor who was the  
 (6) **Q** To take some action to insure that in a situation where  
 (7) aftercare such as that described in 64416 was recommended  
 (8) that that recommendation was followed?  
 (9) **A** I think he acted appropriately  
 (10) **Q** Okay But you didn't answer my question which is whether  
 (11) it would be appropriate procedure in your department to do that  
 (12) follow up  
 (13) **A** I would think so  
 (14) **Q** Okay Your testimony that Exxon was reviewing possible  
 (15) modifications of its alcohol policy with respect to aftercare  
 (16) before the oil spill?  
 (17) **A** Yes  
 (18) **Q** And were you directly involved in those discussions or  
 (19) review?  
 (20) **A** Not directly involved but I was advising some of those  
 (21) who  
 (22) were directly involved and I was - I was working back and  
 (23) forth with the information shall we say as consultants and  
 (24) things like that  
 (25) **Q** What - what was being considered to be changed in the  
 (26) policy with respect to aftercare?

Vol 14 1937

- (1) **A** Well the addition of a company sponsored aftercare  
 (2) portion  
 (3) of the program a very formal one I would consider for  
 (4) instance that Captain Hazelwood had an aftercare program  
 (5) of a  
 (6) type where he was given time off from duty to go to AA and  
 (7) that  
 (8) in fact was an aftercare program as it was conceptualized in  
 (9) the '80s  
 (10) There may have been others that would have held different  
 (11) opinion at that time that that was not the most advanced  
 (12) program but then on the other hand, there were a lot of  
 (13) places  
 (14) where there would have been no consideration for that as  
 (15) well  
 (16) so -  
 (17) **Q** Did the discussions that you have referred to culminate in  
 (18) any change of policy prior to the oil spill?  
 (19) **A** No  
 (20) **Q** I assume though it was appropriate that the IDR and the  
 (21) information provided in the IDR was submitted to your  
 (22) department?  
 (23) **A** At that point what you're talking about is an interface  
 (24) which is then created to summarize to codify and to provide  
 (25) subsequent direction I think that is in an appropriate  
 (26) interface and I would tell you that in all honesty it is  
 (27) unusual for us to get that much data from somebody who's  
 (28) been  
 (29) in the psychiatric institution We generally don't get  
 (30) diagnoses, we generally get recommendations without  
 (31) diagnosis  
 (32) **Q** So it's really that that's the case that Captain

Vol 14 1938

- (1) Hazelwood - about more than information about the captain's  
 (2) condition in 1985?  
 (3) **A** I'm talking about psychiatric consultants in general  
 (4) **Q** Well in the specific case of Captain Hazelwood based on  
 (5) what you've now seen is it your view that Exxon medical had an  
 (6) unusual amount of information about Captain Hazelwood in this  
 (7) context in his medical situation in 1985?  
 (8) **A** I think it was appropriate for our ability to understand  
 (9) and to -  
 (10) **Q** I'm not asking whether it was appropriate I'm trying to  
 (11) follow up on your previous question I think you said it was  
 (12) not that usual or rather infrequent -  
 (13) **A** I accept - I put myself into and I agree that it is more  
 (14) than we generally get  
 (15) **MS STEWART** Your Honor defendants have no cross for  
 (16) Dr Gould  
 (17) **THE COURT** That completes Dr Gould's testimony  
 (18) **MS WAGNER** Plaintiffs call Dr Wendell Nealy by  
 (19) deposition  
 (20) **DIRECT EXAMINATION OF WRENDELL NEALY (Video)**  
 (21) **BY VIDEO EXAMINER**  
 (22) **Q** Good morning Dr Nealy  
 (23) **A** Good morning  
 (24) **Q** Can you state your name for the record and home residence  
 (25) for the record please?

Vol 14 1939

- (1) **A Wrendell Nealy Senior Home address is 795 Leeward Drive**
- (2) **Baton Rouge Louisiana 70808**
- (3) **Q Why don't we first review your educational background starting with college please Please tell me the college you attended the years that you attended and your major**
- (4) **A The first B S degree in 19 - well I began school at**
- (5) **LSU Louisiana State University in 1951 through about the middle of '54 and came back to LSU in '58 through '60 and got**
- (6) **a B S degree**
- (7) **Then proceeded to LSU Medical School in New Orleans got my**
- (8) **M D degree in 1963 And you want to go further than that?**
- (9) **Q Can you please describe briefly your educational history since UCSF?**
- (10) **A In 1980 - 1980, I joined Exxon Company USA as a plant physician at Baton Rouge refinery One to two years later was**
- (11) **promoted to medical director of that refinery**
- (12) **Q Did you in your family practice or in your practice prior to 1980 did you have any experience treating an alcoholic?**
- (13) **A Well yes I did I was the medical director for a treatment center in Salem Oregon, rehabilitation center I forget the name of the center but I held that position as a part time job probably I would guess three years Other than**
- (14) **that, treating alcoholics in my practice**
- (15) **Q Did you at Dammasch and then at the rehabilitation center in Oregon come to any conclusions with respect to the rate of**

Vol 14 1940

- (1) **recidivism of alcoholics?**
- (2) **A Only that it was high**
- (3) **Q At that time what was your position with Exxon?**
- (4) **A When I went to Houston in 1986 I was associate - assistant medical director of Exxon Company USA and I remained**
- (5) **that title through until I resigned so that was my primary title I was also medical director for Exxon Shipping Company**
- (6) **at that time and that was more a contact for Exxon Shipping on**
- (7) **medical issues**
- (8) **Q In 1986 when you went to Houston did you take over Dr Montgomery's duties and responsibilities?**
- (9) **A With regard to?**
- (10) **Q To the role of contact for refining and shipping**
- (11) **A Yes and then I - and initially I reported to him At some point in time that reporting relation changed where I reported directly to Dr Gould I don't remember exactly when**
- (12) **that was Certainly by the time I was - by the time I was full time contact for Exxon Shipping Company my recollection**
- (13) **is that that reporting relationship changed to Dr Gould**
- (14) **Q Upon discharge of your patients at Dallas and at the Salem center and I'm talking about your patients who were inpatients with respect to alcoholism did you recommend or recommend that**
- (15) **they remain abstinent thereafter?**
- (16) **A Certainly**
- (17) **Q Why did you make that recommendation? As a preliminary**

Vol 14 1941

- (1) **question and I say abstinent as opposed to would it be sufficient that they just drank in moderation thereafter as**
- (2) **opposed to remaining abstinent?**
- (3) **A No**
- (4) **Q Why should they not drink in moderation?**
- (5) **A Even - well we say in general that an alcoholic or substance abuser is not ever cured that they're always in recovery, those words taken broadly to mean that one can be**
- (6) **cured of all the medical symptomatology, all the affects and effects-of alcoholism but never escapes the susceptibility**
- (7) **unique susceptibility to the addictive substance again**
- (8) **Is that clear enough?**
- (9) **Q Why don't we be more specific and talk about a - alcoholism**
- (10) **A Okay**
- (11) **Q From your time at Exxon which I guess is from - for the decade almost 1980 to 19 -**
- (12) **A '90**
- (13) **Q 1990 a little beyond there were I understand a number of alcohol policies promulgated by Exxon USA Is that correct?**
- (14) **A I think so**
- (15) **Q Okay**
- (16) **A I know there were more than -**
- (17) **Q There was more than one?**
- (18) **A I guess it's more or less a gradual evolution of a policy**

Vol 14 1942

- (1) **that continually changed and when it was - at some point it became so different that it was, you know some major change**
- (2) **was made to call it a different policy but it was a state of gradual evolution from the early '80s**
- (3) **Q Just as a definition do you have a definition of what an alcoholic what does it mean to be an alcoholic?**
- (4) **A Yes my own opinion based on - and you asked me where I read it and where I got it that would be hard to say Over time it's - it's a disease a primary kind of disease, not as a result of other things I mean by primary, comma, it has its**
- (5) **own symptomatology It is usually chronic and accelerating if**
- (6) **treatment is not sought, and one of the - one of the many addictive processes that follows the same line, the addictive**
- (7) **substance being alcohol instead of some other addictive substance but in every other way pretty much the same as having**
- (8) **chronic and physical mental and societal effects And ultimately unchecked, leading to death**
- (9) **Q How do you determine that an individual is in fact an alcoholic?**
- (10) **A That's very difficult Let me say that the surest way to determine, the only real sure way probably, to determine that**
- (11) **an alcoholic is an alcoholic in the stages other than the end skid-row stages, are based on an intervention, and the employee**
- (12) **admits that he is an alcoholic Breaking through the denial of**
- (13) **alcoholism or addiction to the point where the patient**

admits

Vol 14 1943

- (1) themselves that they are
- (2) Q Without the admission of the individual that he or she is
- (3) an alcoholic can you define or identify somebody as being
- (4) addicted based on certain behaviors of that individual?
- (5) A Well, we say it's more characteristic of them You know
- (6) these behaviors are more characteristic of but they may not be
- (7) an alcoholic The person may not be an alcoholic Drinking,
- (8) heavy drinking is one of these heavy constant drinking, but
- (9) then there are alcoholics who don't drink heavily only -
- (10) episodically They may go for long periods of time no
- (11) drinking, and then binge be a binge drinker They begin to
- (12) get into all kind of difficulties through behavioral acting out
- (13) problems while under the influence and so they have social
- (14) problems and family problems and tend to lose important
- (15) supportive structure
- (16) I'm not going in any directive way with this, I'm just -
- (17) any one of the things that you attribute - you know liver
- (18) disease or any of the other things that you - that may be
- (19) characteristic of an alcoholic may be present and the person
- (20) not being an alcoholic
- (21) Q You use the phrase they would lose important supportive
- (22) structure What does the supportive structure provide to the
- (23) alcoholic and why is it important? It's a compound question
- (24) but if you could answer why is it important that he retain that
- (25) structure?

Vol 14 1944

- (1) A Some of the things that promote or make it more likely that
- (2) an alcoholic in recovery will relapse are being alone
- (3) boredom
- (4) being with people who are old buddies who were alcoholics or
- (5) girl friends who were alcoholics and having nothing to do but
- (6) drink or having no stress reliever other than drinking so they
- (7) go back to that activity
- (8) And so the opposite of that is the support structure that
- (9) you want which promotes - a strong support from a wife who is
- (10) not an enabler and friends who aren't and change of friends and
- (11) change of activities and so that they're not easily sucked back
- (12) into the - go - you know going to a lot of AA meetings
- (13) where you have the support group of other alcoholics
- (14) AA is not - the main purpose of AA is not to - how should
- (15) I say, to get you to quit drinking, it's mostly to keep you
- (16) from going back to it to help you and support you in
- (17) recovering
- (18) Q What is the medical department's routine procedure with
- (19) respect to an employee newly emerged from alcohol
- (20) rehabilitation?
- (21) A You said what is?
- (22) Q Yes
- (23) A You mean currently now?
- (24) Q Well prior to the grounding All of these questions now
- (25) will relate to the grounding
- (26) A Okay

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- (1) Q I'll limit my questions to Exxon Shipping
- (2) A And it's due to the remoteness not of the job but of where
- (3) the people live from me as the doctor, so people going into a
- (4) rehabilitation facility I might not even know about it It
- (5) was - in fact there are probably more people going into
- (6) rehabilitation facilities that I medical, would never know
- (7) about than the opposite case And on occasion I would refer
- (8) someone to a therapist who recommended and they
- (9) accepted
- (10) treatment but when upon returning from rehabilitation they
- (11) didn't have to come through Exxon medical so I would not see
- (12) them Usually if they presented again if management had
- (13) no
- (14) problem with their - the fact of whether or not they were fit
- (15) for duty, they had the option to have them come see me for
- (16) assessment and for me to be involved in calling a doctor for
- (17) treatment and seeing whether they had completed a course or
- (18) not But it was totally up to management
- (19) Q So it was management's option to determine whether a
- (20) rehabilitated alcoholic should see medical upon return from
- (21) rehabilitation?
- (22) A It was medical's option of whether they needed the
- (23) medical
- (24) department's assistance in determining fit for duty
- (25) Q Were you aware of the criteria management used to determine
- (26) whether to refer the rehabbed alcoholic to medical?
- (27) A No
- (28) Q Did you have any discussions with Exxon Shipping Company

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- (1) management on the types of rehabbed alcoholics you would
- (2) like
- (3) to see upon return from rehab?
- (4) A No
- (5) Q Did you have an understanding as to which rehabbed
- (6) alcoholics what categories of rehabbed alcoholics were
- (7) referred to medical subsequent to rehab?
- (8) A No
- (9) Q Who at Exxon Shipping and I'm referring from let's say
- (10) 1984 to 1989 made this determination that is to refer the
- (11) rehabbed alcoholic to medical for re evaluation?
- (12) A I don't know I mean I don't know that they did
- (13) Q Have you ever seen a rehabbed alcoholic referred to you by
- (14) Exxon Shipping - again in the time period 84 to the
- (15) grounding in 89?
- (16) A I don't believe
- (17) Q You don't believe you -
- (18) A That I have ever seen an alcoholic who had been
- (19) rehabbed
- (20) returning I don't believe that I had seen him on their return
- (21) from rehabilitation, that's the context in which I view this
- (22) Q Earlier you testified that you were responsible for
- (23) determining fitness for duty?
- (24) A When asked by management
- (25) Q When you got to headquarters that was approximately
- (26) 1985?
- (27) A No that was August of 86
- (28) Q 86 Did you in fact make a strong recommendation to get

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- (1) an aftercare or follow up program so that you'd give employees  
 (2) more help in remaining abstinent in 1986 or thereafter?  
 (3) **A To my boss Dr Gould on the way to the cafeteria I**  
 (4) **remember saying one of my goals is to get an aftercare**  
**program**  
 (5) **started And he said what do you mean by this And I said**  
 (6) **some kind of program so that people returning from rehab**  
 (7) **centers would be followed up, there would be some**  
**structured**  
 (8) **follow up and suggested that probably the EHAP counselor**  
**would**  
 (9) **be the people to do that**  
 (10) **Q What if anything did Dr Gould say to you or suggest to**  
 (11) **you?**  
 (12) **A My recollection then was he said that's not our job we're**  
 (13) **not - that's not the medical department's job That's about**  
 (14) **as strongly as it was presented and as far as it went**  
 (15) **Q Did he indicate to you why it was not medical department's**  
 (16) **job?**  
 (17) **A I don't recall I think the brunt of that the gist of**  
 (18) **what his opposition was that medical department can't be**  
 (19) **checking into everybody to find out what kind of therapy**  
 (20) **they're in and if they're going to their AA meetings or if**  
 (21) **they're going to groups, and you know relatively the**  
 (22) **policeman function That's a line management function**  
 (23) **more or**  
 (24) **less**  
 (25) **Q Did you disagree with Dr Gould?**  
 (26) **A Yes I disagree and did disagree that but I don't recall**

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- (1) **that I disagreed with him verbally or certainly wrote no**  
**memo**  
 (2) **to the effect It was my feeling that there was a need to put**  
 (3) **together a program to more closely follow and give added**  
 (4) **motivation and support to people in recovery**  
 (5) **Q Why did you feel there was that need?**  
 (6) **A Well almost - all the treatment centers that I had been**  
 (7) **connected with very closely - here in Baton Rouge for**  
 (8) **example - have an aftercare policy and some range from**  
 (9) **six**  
 (10) **months to two years in which they have regular groups that**  
**meet**  
 (11) **and people at discharge are required to sign up for that**  
 (12) **program and that helps them maintain their sobriety**  
 (13) **However there is no - there's no way to check to see and**  
 (14) **there's nobody checking to see that people comply with**  
**those**  
 (15) **programs And to my - in my view since the cost of the**  
 (16) **inpatient therapy covers the cost of the outpatient**  
**follow up**  
 (17) **they get no more money whether the follow-up is completed**  
**or**  
 (18) **not, and so nobody has much of a motivation to go back**  
 (19) **It's left up - it's provided the employee can do it or**  
 (20) **not and I thought we needed something a little more**  
**structured**  
 (21) **so that -**  
 (22) **Q By something more structured do you mean that**  
**attendance**  
 (23) **would be required or mandated by the employer?**  
 (24) **A Right**  
 (25) **Q And that there would be some sort of if you want to call**  
 (26) **it police function to -**

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- (1) **A Right**  
 (2) **Q - understand that an employee did or did not attend?**  
 (3) **A Yeah bring a note from the AA meeting that he did attend**  
 (4) **for example if he was recommended to have 90 days and 90**  
 (5) **visits he had to produce some kind of documentation that**  
**he**  
 (6) **could It's not very practical but I was trying to work with**  
 (7) **some way to achieve some sort of order and structure to**  
**that**  
 (8) **Q Have you ever met Joseph Hazelwood?**  
 (9) **A Not to my knowledge**  
 (10) **Q Prior to the grounding had you ever heard of Joseph**  
 (11) **Hazelwood?**  
 (12) **A No, I don't think so**  
 (13) **Q Subsequent to the grounding did you have conversations**  
 (14) **with other doctors at Exxon USA's medical unit with respect to**  
 (15) **Joseph Hazelwood?**  
 (16) **A Yes**  
 (17) **Q Who did you speak to?**  
 (18) **A Spoke with Dr Montgomery and probably - I can't think**  
**of**  
 (19) **any of the doctors specifically excluded Surely Dr**  
**Douglas**  
 (20) **and Dr Montgomery, and probably Dr Gould but I can't - I**  
 (21) **don't remember the - it would have been infrequent but it**  
 (22) **would have been possible that Dr Gould was in the**  
 (23) **conversations**  
 (24) **Q Did Dr Douglas have knowledge of Joseph Hazelwood's**  
 (25) **rehabilitation prior to the grounding?**

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- (1) **A No not - well I don't know if he did or not**  
 (2) **Q Did you ever learn that he did?**  
 (3) **A No**  
 (4) **Q Okay Is it your testimony that Dr Montgomery told you**  
 (5) **and Dr Douglas at the same time in the same room that he had**  
 (6) **knowledge of Joseph Hazelwood's rehabilitation prior to the**  
 (7) **grounding?**  
 (8) **A Yeah That's what I think I said**  
 (9) **Q In the course of this conversation with Dr Montgomery**  
 (10) **about the rehab program did he mention the fact to the best of**  
 (11) **your recollection that it was alcohol rehabilitation?**  
 (12) **A Yes**  
 (13) **Q Have you ever consulted with any Exxon manager with**  
**respect**  
 (14) **to the monitoring of a rehabilitated Exxon Shipping Company**  
 (15) **employee?**  
 (16) **COLLOQUY Prior to 1989**  
 (17) **Q Prior to 1989**  
 (18) **A No not that I recall**  
 (19) **Q Did Exxon USA's medical department provide any**  
**information**  
 (20) **hold any seminars hold discussions with respect to how a**  
 (21) **manager should supervise an employee of Exxon Shipping**  
**Company**  
 (22) **that had been rehabilitated?**  
 (23) **A Not that I'm aware**  
 (24) **Q Do you agree with the statement that post rehabilitation**  
 (25) **testing aids successful rehabilitation?**

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- (1) A Yes
- (2) Q Are there schools of thought that say that part of any
- (3) rehabilitation can be - making that particular person a social
- (4) drinker rather than a person who drinks to excess?
- (5) A I've never heard of any rehabilitation program s goals
- that
- (6) would make them a social drinker
- (7) Q Maybe I phrased that wrong In the other schools of
- (8) thought that you spoke about is there a view that you can take
- (9) an alcoholic and they can drink again and they can do it in a
- (10) moderate way where they become social drinkers and not
- (11) necessarily alcoholics?
- (12) A I don't know that there's not some people that hold that
- (13) view I've never heard it I would disagree with it You
- (14) know, you don't ever - having been an alcoholic you don't
- (15) ever go back - we can cure pretty much the pathology and a
- lot
- (16) of the social ills and the financial problem we get that all
- (17) straight and we can even get to the point in my view in my
- (18) belief that the person never wants a drink any more but I
- (19) don't believe that you ever overcome the susceptibility to if
- (20) you do have a drink to the high risk of getting the full blown
- (21) addiction back again
- (22) Q You re not suggesting that someone who has been through
- (23) alcohol rehab cannot ever become a social drinker?
- (24) A I am suggesting that I don't believe that's really so
- (25) Q Are you suggesting that someone who s been through

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- (1) alcoholic rehab cannot stop and have one or two drinks?
- (2) A Excuse me
- (3) Q That s what I m talking about social drinkers
- (4) A That's not entirely true what I said When you limit it
- (5) to people that have been through rehab in my view there
- are
- (6) people who have been through rehab who are not
- alcoholics I
- (7) believe that a person who is a full blown alcoholic cannot go
- (8) back to being a social drinker
- (9) Q I see So you re making a distinction -
- (10) A Between rehab and alcoholism
- (11) Q If you had known that Captain Hazelwood had been in
- (12) rehabilitation and heard subsequent to his return as a captain
- (13) that he had been drinking what would you have done?
- (14) A Nothing
- (15) Q Why do you say that?
- (16) A I would have no responsibility to do anything I would
- (17) base that on similar kinds of things that I had heard about
- (18) other people and I don't have any responsibility to do
- (19) anything in that - in that area
- (20) Q So did you mean by I you personally or did you mean your
- (21) department or did you mean both?
- (22) A I mean in general that's not my job It's not covered in
- (23) my job description at all When asked to evaluate someone
- I
- (24) do that and otherwise we have no call in people for - or
- (25) responsibility stated to do anything

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- (1) Q Okay and whose job would that have been at the time?
- (2) A Whose responsibility would it have been? My - I'm not
- (3) sure but I would assume that my assumption has always
- been it
- (4) was his supervisor's job
- (5) Q Do you recall any written procedure that defined the
- (6) responsibility for either monitoring or reacting or responding
- (7) in the event that someone back from rehabilitation began
- (8) drinking again in the mid 80s while you were at Exxon from
- (9) 1985 on?
- (10) A The short answer is no There was some policy that we
- had
- (11) in Baton Rouge at the Exxon refinery that described a
- (12) supervisor's responsibility if he perceived someone at work
- who
- (13) seemed to be behaviorally impaired Other than that very
- (14) narrow instance I don't recall
- (15) Q Did you ever discuss Captain Hazelwood with Dr
- Montgomery?
- (16) A Yes
- (17) Q And could you tell me the nature of those discussions?
- (18) A Dr Montgomery mentioned to me that - that Joe
- Hazelwood
- (19) had been into a treatment facility
- (20) Q Was there more than one conversation?
- (21) A I'm sure there was more than one Surely two or three
- (22) times the subject came up
- (23) The only thing that I recall Dr Montgomery's discussion or
- (24) comments about was the fact that he didn't see in the
- medical
- (25) chart a release a fit for duty release That was a concern

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- (1) and he was somewhat concerned about that because he -
- he
- (2) recalled that and by - not specifically but by general
- (3) process he would have gotten or assured himself that there
- was
- (4) a release for return to duty before Captain Hazelwood had
- (5) returned to duty and that's the gist and sum and substance
- of
- (6) it
- (7) Q Is there a form that Exxon medical used that you would -
- (8) would be the equipment what you just referred to was fit for
- (9) duty release or determination?
- (10) A Well there are many forms probably much more than
- Exxon
- (11) Exxon USA or Exxon Shipping would use There are many
- forms
- (12) and releases to duty come in many shapes and forms from
- the
- (13) treating physician usually on their own forms rather than
- (14) Exxon's all of which are usually acceptable, something to
- write
- (15) saying, that they are released fit for duty or they're not
- (16) released fit for duty and if they're released with or without
- (17) restrictions That's what I recall
- (18) Q Now this is something that would be an Exxon generated
- (19) document or form?
- (20) A No These would almost always come to the medical
- (21) department from outside the medical department and from
- outside
- (22) the company
- (23) Q Is Exhibit 66142 such a form?
- (24) A I think it is
- (25) Q Did this document - strike that



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- (1) This document was in the medical file kept on Captain  
 (2) Hazelwood correct?  
 (3) A Yes  
 (4) Q This document has been referred to as an IDR Does that  
 (5) term mean anything to you?  
 (6) A Yes  
 (7) Q What does it stand for?  
 (8) A Individual Disability Report  
 (9) Q If Dr Montgomery had already consulted the medical file  
 (10) prior to this conversation with you could you then conclude  
 (11) that he did not believe that Exhibit 66142 was a fitness for  
 (12) duty release form?  
 (13) A Well I believe his concern was not over whether this  
 (14) document was a release fit for duty but whether he had - he  
 (15) had given something to Exxon Shipping Company or  
 (16) reviewing this  
 (17) document had been written something himself saying fit for  
 (18) duty  
 (19) Q Would it have been normal procedure in the medical  
 (20) department for an Exxon doctor to have done that in other  
 (21) words to have written something himself with respect to  
 (22) fitness for duty in the time frame we're talking about?  
 (23) COLLOQUY The question is -  
 (24) Q In the time frame we're talking about  
 (25) A It carries all kind of answers to that It would have been  
 (26) very normal for an Exxon doctor Sometimes people return

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- (1) for - from lack of fitness for duty back to duty with no  
 (2) consultation at all with the medical department or any  
 (3) Exxon  
 (4) physician although it - a document like this coming into the  
 (5) medical department would usually flow to the doctor that's  
 (6) the  
 (7) contact for that function, Dr Montgomery in this case It  
 (8) would be certainly normal for him to either communicate  
 (9) with  
 (10) shipping verbally depending on the nature of the question  
 (11) from  
 (12) the shipping company or to make some mark on the form  
 (13) itself  
 (14) if he had any question about the physician's - the treating  
 (15) physician's fitness for duty release  
 (16) If he had any question of that, it would be totally normal  
 (17) for him to clarify that question and make some note of it  
 (18) Q And in that context to the best of your recollection what  
 (19) was Dr Montgomery's concern with respect to Captain  
 (20) Hazelwood?  
 (21) A That he hadn't made a clearer note in saying I have  
 (22) called  
 (23) the treating physician and I release this patient fit for duty  
 (24) Q Did he express any concern that - as to whether or not  
 (25) there had been a determination of release for fitness for duty?  
 (26) A I don't believe that was his concern It was just the -  
 (27) the documentation of that  
 (28) MS WAGNER Nothing further Your Honor  
 (29) MS STEWART Your Honor defendants would like to  
 (30) present their examination by videotape  
 (31) CROSS EXAMINATION OF WRENDELL NEALY (Video)  
 (32) BY VIDEO EXAMINER

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- (1) Q Are you currently employed Dr Nealy?  
 (2) A Yes  
 (3) Q By whom are you employed?  
 (4) A Ethyl Corporation  
 (5) Q Could you spell that please?  
 (6) A E t h y l  
 (7) Q When were you first employed by Ethyl Corporation?  
 (8) A May 1 '91  
 (9) Q What is your current title with Ethyl Corporation?  
 (10) A I'm a corporate medical director  
 (11) Q Is that the title that you've held since May 1 1991?  
 (12) A Yes  
 (13) Q Pre grounding were you employed in drug testing of Exxon  
 (14) Shipping Company employees - I will be more explicit drug or  
 (15) alcohol testing?  
 (16) A Yes  
 (17) Q Did you have an ongoing concern about the mental and  
 (18) emotional fitness of the seagoing personnel?  
 (19) A The way I take that question to mean did I have some  
 (20) knowledge that made me concerned about other than a  
 (21) general  
 (22) concern that I would have for anyone's fitness emotional or  
 (23) physical to do whatever job, but no, no more concerned  
 (24) about  
 (25) the fleet or seagoing personnel than shore duty personnel  
 (26) or  
 (27) refinery workers or anything else and nothing else that  
 (28) overall  
 (29) fitness for duty unless asked specifically by management to

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- (1) evaluate one individual employee on an individual  
 (2) case-by-case  
 (3) basis  
 (4) Q Well you would agree that the seagoing personnel in  
 (5) contrast to shore personnel were out of their let's say  
 (6) day to day work home environment for substantial periods of  
 (7) time Was this a concern of yours?  
 (8) A Well as it relates to - we tended to have - some people  
 (9) shall - let's say that some employee who could work in a  
 (10) refinery situation where we would have accessed medical  
 (11) care  
 (12) rapid access could do that job and could not do the job on a  
 (13) seagoing vessel where he may be at sea even though his  
 (14) tour of  
 (15) duty may be to 20 to 45 days he was rarely away from port  
 (16) over  
 (17) two days, two and a half days Most trips were, you know  
 (18) from  
 (19) San Francisco to Valdez is about five hours, and so you're  
 (20) away  
 (21) from shore adequate medical care is not - you know  
 (22) usually  
 (23) over about two hours if the need is there  
 (24) Q You previously mentioned -  
 (25) A I think of the case of diabetics taken as a  
 (26) representative  
 (27) Go ahead  
 (28) Q I was referring more to emotional and mental fitness of  
 (29) seagoing personnel?  
 (30) A Never had any concern that it was less or that it was there  
 (31) was any restriction - I don't recall any restricting anybody  
 (32) from mental reasons for not sailing because of remoteness

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- (1) Q You did mention previously I thought you were going to  
 (2) say - and correct me if I'm misinterpreting your testimony  
 (3) that there was a concern for substance abuse individuals and  
 (4) the remoteness issue?  
 (5) A I'd like to address that by saying in both mental and  
 (6) physician actual, physical mental and emotional stability  
 (7) requirements I never had any concern that there was any  
 greater  
 (8) concern among seagoing fleet than refinery worker  
 population  
 (9) for example  
 (10) Q What about for those individuals who had been an alcohol  
 (11) rehab program?  
 (12) A No, I didn't have any more than I would have had in a  
 (13) refinery population, either  
 (14) Q Is remoteness an issue?  
 (15) A No  
 (16) Q More central to a seagoing personnel rather than a refinery  
 (17) personnel?  
 (18) A But remoteness is not central to alcoholism which a  
 (19) rehabilitated alcoholic who is in recovery I don't believe  
 (20) Q Isn't it environmental?  
 (21) A Environmental is what I was going to respond to  
 (22) Environmental always has a lot of other meaning to me so I  
 (23) need to be specific what you mean by environmental  
 (24) Q You earlier testified that through boredom or perhaps even  
 (25) lack of stress an individual could turn back towards drinking

( 5) one man to try to come see me you know once a month  
 would be

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- (1) Is it the - isn't this then a concern of yours for an ongoing  
 (2) for seagoing employees?  
 (3) A The issue of remoteness of the vessel is not synonymous  
 (4) with boredom of the employee on the vessel It's not a very  
 (5) boring job I've sailed ten days and worked as an A B  
 aboard a  
 (6) vessel and time is pretty well taken up They have the  
 (7) usual - it's a more home environment in fact and you have  
 the  
 (8) remoteness can be taken as an advantage because you  
 can't go  
 (9) down to the local bar and if you can't take alcohol on board  
 (10) with you, you're in a pretty controlled environment for a  
 bunch  
 (11) of days  
 (12) Q Did you have any role in reviewing the legitimacy of the  
 (13) rehabilitation program the legitimacy of the leave itself?  
 (14) A In some - in some cases when employees were referred  
 by  
 (15) supervision particularly, supervision wanted me to manage  
 (16) interface with the treatment facility and one of the stated  
 (17) purposes were to make sure that the person was in and  
 getting  
 (18) the required treatment and that I would take broadly to  
 mean  
 (19) they wouldn't get the disability if they weren't complying  
 with  
 (20) medical treatment  
 (21) Q What procedures did you take with respect to the remaining  
 (22) employees newly emerged from alcohol rehab?  
 (23) A Welcome them back encouraged them to come to see me  
 if  
 (24) they had any continuing problems On occasion I recall  
 telling

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- (1) appropriate to come check in more often if you have problems
- (2) Q Did you conduct a full medical examination of these individuals?
- (3) A No
- (4) Q When you say welcome them back what did welcoming these employees back entail -
- (5) A Encouragement and support that they had gone through the rehabilitation process and had achieved sobriety and were on the path and encourage them that they had every capability to overcome this and continue to be sober and encourage them to do that, and offering them any support that I could in that regard
- (6) Q You indicated that approximately five refinery rehabbed employees were referred to you
- (7) A No I said the total amount that I saw was five Some of those were not referred to me by management Two of them at least were people who I had referred into rehab and they came back to see me after they got out of rehab
- (8) It wasn't the best of management
- (9) Q The ones that were referred to you at management did you have an understanding as to why management referred these post rehab employees to you?
- (10) A This is again - you skip back to the pre
- (11) Q Yes that's right
- (12) A Okay At the refinery I think more of an administrative

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- (1) go by and you know would you see them and more of a perfunctory thing on management's part saying go back through medical and make sure Dr Nealy thinks you're okay
- (2) Q Were you asked to perform a fitness for duty on these individuals?
- (3) A Not specifically no Some of it was to document that I agreed with their return to duty and that didn't require an examination It might have just required talking to them what they had done I recall a particular individual who had been in rehabilitation and when I asked him how many - how long they had been in the rehab facility, it was five days, and I asked why he was out in five days and he said the counselor said he didn't need any more intensive therapy than that and he was okay to be released and I said oh wait a minute let's check that out who was the counselor
- (4) I called him and he said well that's a totally different story than really transpired We told him we absolutely recommended that he not leave the facility, that he wasn't at all ready to go back to work and but that if he - it was his choice and if he did leave the facility we would support him best as an outpatient
- (5) I said no you're not going back to work until you go back and satisfy the counselor that you you know jump through all the hoops and done all the requirements of the program
- (6) And 30 days later he came back and expressed how - what a great

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- (1) impact that made on him that he was glad I done that
- (2) Q You have that in front of you?
- (3) A Yes
- (4) Q Specifically I'm referring to the third full paragraph where it says employees - you see this?
- (5) A Yes
- (6) Q That reiterates the policy in fact the confidentiality aspect of the policy?
- (7) A Yes
- (8) Q HAI is the human affairs Were they part of that sir?
- (9) A No-
- (10) Q Who were they?
- (11) A They are the company contracted by Exxon to administer and be the employee health advisory program Our employee assistance program was run by them and their counselors
- (12) Q What could an employee expect once he identified himself to you as having a problem?
- (13) A He could if he - if he accepted the be supported in a rehabilitation program to not lose seniority and not lose his job and he returned to the job without a future career development being threatened by having gone in for rehabilitation
- (14) Q And did that -
- (15) A And/or treatment
- (16) Q Could that employee also expect that whatever medical

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- (1) diagnosis may have been relayed to the medical department would be kept confidential?
- (2) A Yes
- (3) Q Now is it true then that even the mere fact that someone was undergoing rehab would be kept confidential itself?
- (4) A Yes As far as the medical department is concerned
- (5) Q Yes
- (6) A We had - our knowledge would not be divulged He may - his supervisor may know that from other places but not from us, and usually I mean obviously the goals in the treatment, in the 12 steps are to admit you have a problem and to admit it to anybody and that you need help including gods, et cetera
- (7) and to be not so confidential but that had to come from the employee but from the medical
- (8) MS STEWART Your Honor due to the miracles of modern technology we've managed to skip part of the disk If you'll bear with us for just a moment we'll go back to the part of the disk that we skipped in this cross examination and take just a moment to fast forward to the spot
- (9) MR SANDERS And we didn't skip that much Your Honor
- (10) MS STEWART Just a moment or two
- (11) MR SANDERS Just to add could we just read it it's just a page
- (12) MR O NEILL Just read it Do you want me to be the

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- (1) witness?
- (2) MR SANDERS Sure I'll read you the questions
- (3) MR O NEILL No thanks He's too mean for me
- (4) MS STEWART And when technology fails -
- (5) (The Witness Is Sworn)
- (6) THE WITNESS I do
- (7) THE CLERK Please take a seat and would you state
- (8) your full name?
- (9) THE READER My name is Jim F Sanders
- (10) CONTINUED CROSS EXAMINATION OF WRENDELL NEALY (Read)
- (11) BY MS STEWART
- (12) Q Dr Nealy had any of those employees requested confidence
- (13) when they spoke to you vis a vis their supervisors?
- (14) A They - nobody specifically requested, however, that was
- (15) assumed, I would think, it's my assumption they all
- (16) knew that it was confidential
- (17) Q Do you have this understanding that an individual who
- (18) self-identifies and enters a rehabilitation program will not be
- (19) penalized or punished at Exxon Shipping for entering that
- (20) program?
- (21) A Well I was trying to clarify Self identification
- (22) broadly meaning an employee could decide without telling
- (23) anyone
- (24) they want - they need help and go to a rehabilitation facility
- (25) and come back to work and it's at least possible no one
- (26) would
- (27) ever know that they went into a rehab facility So if that's

- (1) (The Reader Is Sworn)
- (2) THE WITNESS I do
- (3) THE CLERK Please take the stand Would you state
- (4) your full name address and spell your last name please
- (5) THE READER Michael Woerner 1629 204th Avenue
- (6) Northeast Redmond W o e r n e r
- (7) DIRECT EXAMINATION OF MICHAEL EMEL (read)
- (8) BY MR COHEN
- (9) Q Would you state and spell your name for the record?
- (10) A My name is Michael M Emel E m e l
- (11) Q And where is your home?
- (12) A 3626 211th Place Northeast Redmond Washington 98053
- (13) Q Now what's the first vessel you ever worked at?
- (14) A First vessel was the Galveston
- (15) Q So you never worked for any other vessels for any other
- (16) companies other than Exxon?
- (17) A Before I got hired with Exxon I was a chief engineer on a
- (18) private yacht
- (19) Q In 1982 then was the first time you went to work for
- (20) Exxon is that right on the Galveston?
- (21) A Right That would be on the discharge slip, would be the
- (22) specific date
- (23) Q Now did you ever see anyone drinking on an Exxon vessel
- (24) ever?
- (25) A Yes

Vol 14 1966

Vol 14 1968

- (1) what's covered under self identification and if that's what
- (2) you're talking about -
- (3) Q Well in the context of self identifying that I spoke of
- (4) nobody would know it - excuse me That's your answer?
- (5) A You're right In that context of self identifying that I
- (6) spoke of nobody would know it so there wouldn't be
- (7) anything,
- (8) but even if prior to the grounding even if they had identified
- (9) to the company and said I need help and/or the company
- (10) referred
- (11) them to EHAP and on into a rehabilitation facility or if the
- (12) company or supervisor or self or wife referred that person
- (13) because they had quote self identified referred them to
- (14) the
- (15) medical department and the medical department referred
- (16) them to
- (17) a rehab facility in any of those instances would anybody
- (18) receive any punishment for that act alone
- (19) MS STEWART Thank you
- (20) MR SANDERS Thanks Your Honor
- (21) MS WAGNER Is that the end?
- (22) MS STEWART That concludes our cross
- (23) (The reader stepped down )
- (24) THE COURT Thank you Next witness
- (25) MR COHEN Next witness Your Honor will be the
- (26) deposition upon oral examination of Michael Emel
- (27) THE COURT Last name again was -
- (28) MR COHEN Emel E m e l
- (29) THE CLERK Would you raise your right hand please

- (1) Q And when is the last time you ever saw someone drinking on
- (2) an Exxon vessel?
- (3) A A couple of years ago
- (4) Q And which vessel was that?
- (5) A Exxon San Francisco
- (6) Q And who did you see drinking on that vessel?
- (7) A Pump man
- (8) Q The pump man?
- (9) A Yes
- (10) Q You remember his name?
- (11) A No
- (12) Q Was he ever discharged?
- (13) A For drinking?
- (14) Q Yes
- (15) A No
- (16) Q And when did you see him drinking?
- (17) A In his room
- (18) Q Was there anyone else in his room with this pump man at the
- (19) time?
- (20) A Me
- (21) Q Were you drinking?
- (22) A Yes
- (23) Q Now were there ever any occasions on any Exxon vessels
- (24) where in the evenings when all the work was all done you guys
- (25) would get on the fantail or something and you guys would have
- (26) a

Vol 14 1969

- (1) couple of beers?  
 (2) A No  
 (3) Q Generally people if they did drink they just drank in  
 (4) their rooms?  
 (5) A I can't state one way or the other I don't know who  
 (6) you're talking about there but not as a general thing  
 (7) Q You're just not aware of that?  
 (8) A I'm not aware of it  
 (9) Q How often did you drink on vessels?  
 (10) A Occasionally  
 (11) Q Occasionally on every vessel you've worked on?  
 (12) A No, not every vessel  
 (13) Q Most of them?  
 (14) A Maybe half of them  
 (15) Q Did a lot of other people do that?  
 (16) A Not that I was aware of  
 (17) Q Did you usually drink alone?  
 (18) A Yes  
 (19) Q Now other than this pump man on the San Francisco you  
 (20) don't recall ever having a drink with any other individual on  
 (21) an Exxon vessel?  
 (22) A No  
 (23) Q Now the last time we spoke here before the break we were  
 (24) talking about drinking on board and you said that you have on  
 (25) occasions had a drink Now did that ever happen when you  
 were

Vol 14 1970

- (1) in Valdez?  
 (2) A Yes  
 (3) Q On the vessels in Valdez?  
 (4) A Yes  
 (5) Q Did you ever bring any alcohol on board the vessel from the  
 (6) Port of Valdez?  
 (7) A Never  
 (8) Q You know of anyone who ever has?  
 (9) A No  
 (10) Q So when you brought something aboard it was in San  
 (11) Francisco say?  
 (12) A Yes  
 (13) Q Now I think we established previously that you started  
 (14) sailing with Captain Hazelwood on the Valdez let's just call  
 (15) it January of 1989 Do you recall an incident following that  
 (16) time that you went to see Captain Hazelwood about a pay  
 (17) voucher?  
 (18) A Yes  
 (19) Q And where did you see him?  
 (20) A In his office  
 (21) Q Was there anyone else anybody else there?  
 (22) A No  
 (23) Q What was the question about the pay voucher?  
 (24) A I was asking to get a draw on a check to probably go to  
 (25) shore or something, an advancement

Vol 14 1971

- (1) Q And do you remember the time of day?  
 (2) A Probably it was in the evening - no it very possibly  
 (3) could have been around noon or something If I knew I was  
 (4) going to go to shore that afternoon or evening or  
 something I  
 (5) would probably try to get it taken care of before I left So  
 (6) it would probably be around noon or something, afternoon  
 maybe  
 (7) Q Now do you recall during the course of that meeting  
 (8) concluding that Captain Hazelwood had been drinking?  
 (9) A I can't conclude that  
 (10) Q I'm not asking you if you can conclude it now I'm asking  
 (11) you if you at any time or at the time at the time concluded  
 (12) that Captain Hazelwood had been drinking?  
 (13) A I may have thought that he had been drinking  
 (14) Q You did think he had been drinking at the time didn't you?  
 (15) A Yes  
 (16) Q Mr Emel on what did you base that conclusion at that  
 (17) time?  
 (18) A His mannerisms  
 (19) Q Could you be more specific what mannerisms?  
 (20) A His movement  
 (21) Q What kind of movement?  
 (22) A It just seemed slow  
 (23) Q Did his ability to walk seem impaired?  
 (24) Mr Thomas Well I object to the extent it assumes  
 (25) assumes the witness saw the captain walking

Vol 14 1972

- (1) Mr Sherman You can answer the question?  
 (2) A He walked a little different not a lot of bounce in his  
 (3) steps so to speak  
 (4) Q Was your conclusion based in part on his speech?  
 (5) A No just on the way he moved  
 (6) Q Now without wanting to put words in your mouth would it  
 (7) be fair to say that at the time you concluded that he just  
 (8) looked like he'd been drinking?  
 (9) A Yes  
 (10) Q Has your conclusion changed since then?  
 (11) A No  
 (12) Q So you still think as we sit here today back then he  
 (13) looked like he'd been drinking?  
 (14) A Yeah  
 (15) Q Now what is the Westar Terminal?  
 (16) A That's a terminal down in San Francisco where the motor  
 (17) launch comes out and ferries you from the ship to the shore  
 (18) Q Is the launch operated by Westar?  
 (19) A Yes  
 (20) Q It's not an Exxon operation then as far as you know?  
 (21) A As far as I know no  
 (22) Q Now when entering the Westar Terminal at any time prior to  
 (23) getting in the launch is there any security are there any  
 (24) security measures in effect in terms of searches or looking for  
 (25) contraband?

Vol 14 1973

- (1) A No  
 (2) Q To your knowledge were there any such security measures  
 (3) during the time that you sailed on the Valdez starting in  
 (4) January of 1989?  
 (5) A No  
 (6) Q Were there any security checks or searches in place at the  
 (7) Valdez terminal that people had to pass through on returning to  
 (8) the vessel?  
 (9) A Yes  
 (10) Q Do you know why there was such a system in Valdez but not  
 (11) in San Francisco?  
 (12) A No  
 (13) Q You know whether or not there is such a security system in  
 (14) place in San Francisco now?  
 (15) A I have no idea  
 (16) Q In regard to the Valdez run on which you served on those  
 (17) occasions in which you brought alcohol on board where did you  
 (18) bring it on board?  
 (19) A It would be San Francisco  
 (20) Q In all occasions?  
 (21) A Yes if I was in that port  
 (22) Q Sure You don't recall bringing any alcohol anywhere else  
 (23) in any other port in other words?  
 (24) A If the ship went to say maybe Long Beach or something  
 (25) like that or possibly there

Vol 14 1974

- (1) Q Would it be accurate to say that between the time you  
 (2) signed on the Valdez in January of 1989 and the time of the  
 (3) grounding that you consumed roughly a gallon of alcohol?  
 (4) A Yes  
 (5) Q Would you at any time share any of that alcohol with  
 (6) anybody?  
 (7) A No  
 (8) Q And in the same time frame on how many separate occasions  
 (9) did you bring alcohol on board the vessel?  
 (10) A Maybe twice  
 (11) Q Half a gallon at a time?  
 (12) A Yes  
 (13) Q Now just a couple more questions Mr Emel The alcohol  
 (14) that you drank on board the Exxon Valdez was that vodka?  
 (15) A Yes  
 (16) Q Anything but vodka?  
 (17) A No  
 (18) MR COHEN Your witness  
 (19) CROSS EXAMINATION OF MICHAEL EMEL (read)  
 (20) BY MR SANDERS  
 (21) Q Do you ever recall anytime anyone ever getting fired for  
 (22) drinking that worked for Exxon?  
 (23) A Yes  
 (24) Q Who?  
 (25) A I can't recollect any names but I know that there were

Vol 14 1975

- (1) people that were fired  
 (2) Q Any vessels that you were on?  
 (3) A Yes  
 (4) Q Can you think of the vessel?  
 (5) A Exxon Princeton  
 (6) Q Roughly when was that?  
 (7) A I would have to look at my discharge slips to see when I  
 (8) was on the vessel, but there was an individual on that ship  
 (9) that was fired taken off in cuffs for drinking and marijuana  
 (10) Q Do you remember where this happened?  
 (11) A He was taken off in New York I believe He was an older  
 (12) Q You say he was caught with marijuana and with alcohol?  
 (13) A Yes  
 (14) Q Who took him off in cuffs?  
 (15) A The authorities the Coast Guard, I believe Exxon - I  
 (16) don't know who I wasn't -  
 (17) Q Do you recall any other situation where someone was fired  
 (18) for drinking?  
 (19) A I heard of occasions of people being fired for drinking  
 (20) Q What did you hear of?  
 (21) A I heard that a man got fired because of drinking  
 (22) Q Just once or more than once?  
 (23) A A couple of times different people maybe in the same  
 (24) incident or other people, maybe three different occasions  
 (25) where  
 (26) I've heard that people were - that was public knowledge

Vol 14 1976

- (1) through the ESA and through Exxon  
 (2) Q Did you ever hear any of rumors of the Exxon Valdez of  
 (3) people drinking on the vessel?  
 (4) A No  
 (5) Q Did you ever hear of any rumors of any captains or officers  
 (6) having drinks on any other Exxon vessels?  
 (7) A Rumors of it no  
 (8) Q You never saw Captain Hazelwood have a drink on the  
 (9) vessel  
 (10) then I take it?  
 (11) A No  
 (12) Q Not counting yourself during your employment with Exxon  
 (13) how many times approximately do you estimate that you've  
 (14) witnessed other persons drinking on board vessels drinking  
 (15) alcohol?  
 (16) A How many times in an eight year period did I witness  
 (17) somebody else drinking?  
 (18) Q Correct  
 (19) A I can't - a few times  
 (20) Q Does that mean more than ten less than ten?  
 (21) A A few Two three four maybe  
 (22) Q Did you ever witness an officer drinking alcohol on board  
 (23) an Exxon vessel?  
 (24) A No  
 (25) Q Did you ever see any licensed member of the crew drinking  
 (26) on board an Exxon vessel?

Vol 14 1977

- (1) A No  
 (2) Q Did you ever receive either directly or through the mail  
 (3) written copies of Exxon alcohol policies?  
 (4) A I believe when I first started with Exxon we received  
 (5) information along those lines and I've received more than  
 (6) one  
 (7) thing pertaining to those things, yes I think that I have  
 (8) another letter I can recall another letter at some point in  
 (9) time restating the drug and alcohol/substance-abuse-type  
 (10) things  
 (11) on Exxon vessels  
 (12) Q Restating? Did you say restating or reinstating?  
 (13) A Restating, just in case you forgot  
 (14) Q Let me back up a little bit Mr Emel I want to refer  
 (15) again to the time you went to Captain Hazelwood's quarters in  
 (16) regard to the pay voucher question After reaching the  
 (17) conclusion about which you've testified already did you report  
 (18) that to any other person employed by or associated with Exxon?  
 (19) A No  
 (20) Q Did you ever subsequent to that time have any discussions  
 (21) with Exxon management about that issue?  
 (22) A No One thing when I observed the captain I'm no  
 (23) expert  
 (24) on the condition of a person you know I don't know one  
 (25) way or  
 (26) the other with just an observation I'm no expert in saying a  
 (27) man is one way or the other It may have been his natural  
 (28) habits I don't know It was an observation I made He may  
 (29) have been just fine, he may or may not have been It was an

Vol 14 1978

- (1) observation I can't conclude one way or the other on that if  
 (2) he was or wasn't or if he had or had not been drinking  
 (3) Q But you concluded at the time that he had been drinking  
 (4) correct?  
 (5) A Yeah  
 (6) MR SANDERS That's all we have Your Honor  
 (7) (The Reader stepped down)  
 (8) MS WAGNER Your Honor plaintiffs call William  
 (9) Masciarelli by witness and the witness is coming to the  
 (10) stand I'm going to get Plaintiffs Exhibit 847 it's the chart  
 (11) of Prince William Sound  
 (12) THE CLERK Will you raise your right hand?  
 (13) (The Reader Is Sworn)  
 (14) THE CLERK Please be seated  
 (15) For the record state your full name address and spell  
 (16) your last name  
 (17) THE READER Barry Klinkhardt 100 North Broadway  
 (18) St Louis Missouri It s K l i n k h a r d t  
 (19) DIRECT EXAMINATION OF WILLIAM MASCIARELLI (read)  
 (20) BY MS WAGNER  
 (21) Q Please state your name and your home address?  
 (22) A William Masciarelli 1409 Northeast Boat Boat Street  
 (23) Seattle 98105  
 (24) Q What age are you?  
 (25) A 47

Vol 14 1979

- (1) Q Can you describe the license you have for the record?  
 (2) A Well it's a third mate's license issued by the Coast  
 (3) Guard It was issued in 1986 It is my first third mate's  
 (4) license  
 (5) Q Can you start with your education and bring us up to - in  
 (6) other words could you start with high school? You graduated  
 (7) from high school?  
 (8) A I graduated from high school attended a four-year  
 (9) college  
 (10) graduated from college  
 (11) Q What college?  
 (12) A Fordham University Fordham College in New York  
 (13) Q Now from 1981 to the present can you run through your  
 (14) employment?  
 (15) A Exxon Shipping Company until - I have to get the right  
 (16) date I guess October 10th of 1990  
 (17) Q Are you employed by Exxon today?  
 (18) A No I'm not  
 (19) Q Have you been employed by Exxon since October 10 1990?  
 (20) A No I haven't  
 (21) Q Do you still hold your third mate's license?  
 (22) A Yes I do  
 (23) Q Did you pass celestial the second time? What was the time  
 (24) period there - I don't know whether you told us before when  
 (25) did you get your third mate's license?  
 (26) A '86 I believe

Vol 14 1980

- (1) Q You sailed with Captain Hazelwood?  
 (2) A I sailed with Captain Hazelwood  
 (3) Q Is that the only time you sailed with Hazelwood?  
 (4) A No I was with him for I think about three days in San  
 (5) Francisco We have to look at the discharges, but -  
 (6) Q What year?  
 (7) A Just a month before the Valdez went aground, so January  
 (8) of  
 (9) 1989  
 (10) Q You say you were with him for three days Was that in  
 (11) port?  
 (12) A It was in port I was the third mate on the Valdez for -  
 (13) I think about a month and then was transferred from the  
 (14) Valdez  
 (15) to the Exxon Baton Rouge and Greg Cousins came on board  
 (16) to  
 (17) relieve me on the Valdez, and it was Captain Hazelwood  
 (18) came on  
 (19) the ship after the Valdez had arrived in San Francisco and I  
 (20) was with him - it might have been only been two days It  
 (21) might have been three days before I was transferred also in  
 (22) San  
 (23) Francisco to the Baton Rouge  
 (24) Q Do you remember what month that was?  
 (25) A I can tell you the exact date if you want  
 (26) Q Mr Gerry January 20 to February 20?  
 (27) A Well the date I got off the Valdez was February 20th  
 (28) Captain Hazelwood I don't know when Captain Hazelwood  
 (29) joined  
 (30) It might have been February 18th or 19th So we had two  
 (31) days  
 (32) together

Vol 14 1981

- (1) Q So it was in February?
- (2) A In San Francisco in February, yeah
- (3) Q Did you have occasion to see him during that three day period?
- (4) A I did I did I saw him every day
- (5) Q More than one time a day?
- (6) A Yes
- (7) Q Did you see him aboard the vessel or ashore or both?
- (8) A Only aboard the vessel
- (9) Q Did you see him in his cabin?
- (10) A No, I didn't Well, not that I remember I remember specifically seeing him at dinner on the bridge, in the officer's lounge I don't know if he was in his cabin
- (11) Q Was there any time during this period that you made a judgment that he was impaired Hazelwood?
- (12) A Well, Captain Hazelwood was ashore for part of the time and had come back to the ship It seemed to me that he had been drinking I don't know about impaired I never saw him his work so -
- (13) Q Maybe it's what -
- (14) A So I didn't have any standard to say was he impaired to walk down the corridor or to drive a car or to pilot a ship
- (15) Q When you made the judgment you said it seemed to you that he had been drinking What factors were involved that you reached that conclusion?

Vol 14 1982

- (1) A Gee I'm trying to picture him He looked like somebody who had been drinking
- (2) Q Did you ever during this three day period see any alcohol or beer aboard the vessel?
- (3) A Well I did And that was the only - that - and that was the one time I had alcohol myself on the ship Captain Hazelwood offered me a glass of wine and I took it and drank a glass of wine with him
- (4) Q And what were the circumstances of this offering you a glass of wine where did it take place?
- (5) A We were in the chart room In the back of the bridge I should say the ship was at anchor there was nothing going on on the ship at that time
- (6) Q You were at anchor outside San Francisco or in San Francisco Bay?
- (7) A In San Francisco Bay
- (8) Q When you went in the chart room were you in there by yourself with Hazelwood?
- (9) A Yes
- (10) Q Did Hazelwood have a bottle of wine there in the chart room so that he could offer you a drink?
- (11) A I don't remember if he had two glasses of wine that he had brought up, say, to the bridge or whether he had two empty glasses and a bottle I don't remember
- (12) Q Did you accept?

Vol 14 1983

- (1) A I did
- (2) Q And did you have just the one drink with him?
- (3) A I did
- (4) Q How long did that session take place roughly a few minutes or -
- (5) A It could have been a half hour We were just talking and -
- (6) Q Now did Hazelwood have more than one glass of wine during that half hour period?
- (7) A He didn't
- (8) Q Did you other than this wine during the three day period see any beer or any alcohol aboard the vessel?
- (9) A I didn't
- (10) Q When Hazelwood offered you this glass of wine did he indicate to you what were the circumstances of why he was doing this just to be social or for what?
- (11) A He didn't indicate, but Captain Hazelwood and I liked one another very much and from my point of view it might have been a friendly gesture
- (12) Q Was there any indication to you when he offered this to you that he had been drinking before this?
- (13) A Not at all
- (14) Q Let's talk about Prince William Sound and Valdez Arm
- (15) When you were standing the third mate watch in Valdez was it ever going into Valdez?

Vol 14 1984

- (1) A Yes
- (2) Q And what about coming out?
- (3) A Also
- (4) Q Now how many times in your career did you go into Valdez and come out of Valdez with Exxon on any vessels?
- (5) A As third mate or able seaman also
- (6) Q Let's just stay with third mate for a while then we'll get all the rest
- (7) A Let me just take a look
- (8) Q Just approximately
- (9) A Somewhere between seven and ten times
- (10) Q That would be trips there?
- (11) A One way, either in or out
- (12) Q I see That you actually stood a watch either in or out?
- (13) A That's right So we could say 14 times in and out
- (14) Q And now that's as of third mate Whatever overall [sic] in your experience into Valdez not as a third mate? Had you been up there numerous times?
- (15) A Many times Probably 20 or 30 times
- (16) Q When you were in Valdez and you came out and the pilot was dropped at Rocky Point from that point while you were still in the traffic separation scheme - you would still be in the traffic separation scheme is that correct?
- (17) A Yeah there were a couple times when we might not have been because of ice



Vol 14 1985

- (1) Q Just take in general from that point to past Bligh Reef  
(2) down in this sector here Was the captain always on the bridge  
(3) while you were serving as third mate on watch?  
(4) A To the best of my recollection he was  
(5) Q That is Watch Type C as far as Exxon is concerned?  
(6) A Yes  
(7) Q So coming in and going out while you were in the traffic  
(8) separation scheme in the area we re describing would you  
(9) agree  
(10) that Exxon s policy is there should be two officers on the  
(11) bridge?  
(12) A Yes I would  
(13) Q In addition to the pilot when the pilot comes aboard too  
(14) is that correct it s Watch Type C - let me rephrase it  
(15) Watch type C might embrace a period of time when the pilot  
(16) is aboard and when he s not aboard isn t that correct? You  
(17) could still be coming into the port before you picked the pilot  
(18) up?  
(19) A Yes it's true The Exxon manual as far as I remember  
(20) and  
(21) as I see here doesn't mention whether or not the pilot's on  
(22) board  
(23) Q But in your opinion as a third mate do you think it s  
(24) proper for the captain to be on the bridge except for when he  
(25) has to go to the bathroom or get binoculars for a brief period  
(26) of time for the period he s coming in or going out of the  
(27) Valdez for the brief period when I ve been describing?

Vol 14 1986

- (1) A Yes  
(2) Q Have you ever as a third mate with Exxon on the Exxon  
(3) Valdez or any other vessel even when you were sailing A B  
(4) have you ever seen the captain leave the bridge for a  
(5) substantial period of time meaning for over an hour during  
(6) this passage that we ve been describing with the pilot on the  
(7) bridge?  
(8) A Not that I can recall  
(9) Q Would you agree with me for that to happen that would be  
(10) unusual?  
(11) A In my experience it would have been unusual  
(12) Q Well what I simply wanted to know is the situation of  
(13) having a third mate up here by himself with no senior officer  
(14) there number one required by Watch Condition C which you  
(15) agreed to and without the captain there would you agree that  
(16) that s unusual?  
(17) A I would agree it's unusual although as I said there might  
(18) have been circumstances where a captain might have  
(19) stepped off  
(20) the bridge to go down to his office to get his binoculars or  
(21) something So if I were on the bridge and that circumstance  
(22) had happened I might have been surprised but it wouldn't  
(23) have  
(24) been unprecedented  
(25) However and I have to say given the conditions that  
(26) might, I would have been very surprised  
(27) Q And then if we add the fact to it that you re not only left

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- (1) up there by yourself but I want you to assume what about the  
(2) condition if you re left up there by yourself and then you  
(3) were instructed to maneuver while the captain was not on the  
(4) bridge in that same area where Watch Condition C is supposed  
(5) to  
(6) be in effect?  
(7) A Even in those circumstances if it was a clear night and  
(8) no  
(9) ice in the traffic lanes it would have been very, very  
(10) unusual and I would have scratched my head and say - and  
(11) said gee what's going on But I wouldn't have been  
(12) shocked  
(13) at the circumstance  
(14) Q Now if you re going to leave the entire scheme - you  
(15) never did that is that correct?  
(16) A Never did  
(17) Q Would it be your understanding you would have to report  
(18) that to the vessel traffic center?  
(19) A Yeah Actually on the way in We did leave the entire  
(20) scheme at one time south of Bligh Reef because of ice that  
(21) had  
(22) drifts south and we were out of the scheme to the east  
(23) instead  
(24) of the separation scheme and we notified them about that  
(25) Q Are you familiar with the load up program of the engine?  
(26) A Yes  
(27) Q And can you just describe briefly for the record what is  
(28) the load up program?  
(29) A Well it's a computer driven speed increase on the diesel  
(30) designed to put least wear and tear on the diesel as it  
(31) comes

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- (1) to sea speed  
(2) Q And it s done automatically as soon as you set the vessel  
(3) [sic] in force?  
(4) A Yes  
(5) Q In your experience going into Valdez and coming out of  
(6) Valdez - let s narrow it down Ever on your trips coming out  
(7) of Valdez while you were on watch was the load up program  
(8) put  
(9) in place while you were still up in an area above Bligh Reef?  
(10) A I don't remember  
(11) Q You don't know whether that would be unusual or not?  
(12) A My sense is that it would not that on other ships that I  
(13) was on they would start to come up to sea speed as soon as  
(14) they  
(15) could as soon as the pilot was dropped  
(16) Q How about the ice conditions? Would that change it if I  
(17) asked you the same question with ice conditions putting the  
(18) vessel into load up program into place when the pilot is  
(19) dropped?  
(20) A I don't remember ever seeing that happened  
(21) Q Do you remember whether you felt overworked?  
(22) A I often felt tired  
(23) Q Is that because you had worked more than say an  
(24) eight hour day?  
(25) A Yes  
(26) Q And can you give me any idea within a 24 hour period of how  
(27) many hours you might work?

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- (1) **A It's difficult to say because it depended on upon - it**  
 (2) **depended on where on my watch or where my watch fell and**  
 (3) **the**  
 (4) **time the ship arrived in Valdez If I was on watch on the**  
 (5) **bridge and the tying up took place during a normal work**  
 (6) **period**  
 (7) **for me and the strain of being in port wouldn't be as great**  
 (8) **If I was asleep and was called out to go on watch and then**  
 (9) **sent**  
 (10) **back to sleep and then called to go on my cargo watch and**  
 (11) **then**  
 (12) **back to sleep and then called at a sleep break to help let the**  
 (13) **ship go, then it could get to be quite a strain**  
 (14) **Q What about the chief mate the hours he worked as you**  
 (15) **observed when you were in Valdez when the vessel was in port?**  
 (16) **Can you give me an idea of the hours he worked?**  
 (17) **A Well I can't He was the man responsible for everything**  
 (18) **Ultimately he had to be on deck when cargo was started,**  
 (19) **when it**  
 (20) **ended, any problems that came up So he worked harder**  
 (21) **than I**  
 (22) **did I can't tell you exactly**  
 (23) **Q Would you agree that of the officers on turn around the**  
 (24) **chief mate was - probably works the longest hours?**  
 (25) **A Without question**  
 (26) **Q Do they juggle his watch at all his sea watch because of**  
 (27) **this knowledge that he's going to have to work long hours on**  
 (28) **the turn around in port?**  
 (29) **A Well as I said on the way out the captain often stood his**  
 (30) **sea watch on the way out to make up for the fact that he had**  
 (31) **been exhausted in the port turn around As far as on the**  
 (32) **way**

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- (1) **in I don't recall any instances which he was given more**  
 (2) **sleep**  
 (3) **where they tried to prepare him**  
 (4) **Q While we were on the subject of juggling watches in your**  
 (5) **experience with Exxon on any of their vessels was there any**  
 (6) **juggling of watches done other than what you've described with**  
 (7) **the chief mate because of overworked conditions of the officers**  
 (8) **involved?**  
 (9) **A Yeah It wasn't at all unusual for someone who had an**  
 (10) **easy**  
 (11) **turn around - for example if I had been the one who had the**  
 (12) **easy turn around in Valdez - to stay on the bridge longer to**  
 (13) **allow my relief whether it was the chief mate or the second**  
 (14) **mate to get some more sleep if I knew he had [sic] had a lot**  
 (15) **of sleep, so I might hold over a couple of hours into the**  
 (16) **departure**  
 (17) **Q Was that a common practice would you say?**  
 (18) **A Yeah It wasn't unusual**  
 (19) **Q Was that individually done so that the - or in other**  
 (20) **words what sort of arrangement is made on that just between**  
 (21) **the two officers themselves the one who's to be relieved and**  
 (22) **the one who is relieved?**  
 (23) **A Yeah Often there's no arrangement at all just the**  
 (24) **officer on the bridge doesn't bother to call his relief**  
 (25) **because**  
 (26) **he knows his relief has had a hard turn around**  
 (27) **Q Would the captain be advised of this to see if he arrived?**  
 (28) **A In all of my experience the captain was on the bridge at**

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- (1) **the time**  
 (2) **Q Let me talk about fatigue a little bit In your opinion**  
 (3) **was fatigue among deck crew a problem on Exxon oil tankers?**  
 (4) **A What do you mean by "deck crew"?**  
 (5) **Q Let me first limit it to deck officers**  
 (6) **A Yes**  
 (7) **Q Was fatigue in your opinion a problem with regard to deck**  
 (8) **officers?**  
 (9) **A Yes**  
 (10) **Q Just for clarity when we talk about deck and crew - when**  
 (11) **we talk about deck crew and deck officers the deck officers**  
 (12) **would be who the first second and third mates?**  
 (13) **A Chief mate second mate third mate**  
 (14) **Q The deck crew would be constituted as who?**  
 (15) **A The six A B's**  
 (16) **Q In your opinion did deck officers experience fatigue from**  
 (17) **overwork?**  
 (18) **A In some circumstances yes In other circumstances -**  
 (19) **well**  
 (20) **always from overwork, yes**  
 (21) **Q When you say that you feel fatigue among deck officer crew**  
 (22) **[sic] was a problem in what way was it a problem?**  
 (23) **A Well, that led to lower - I don't know how to say it**  
 (24) **Lessened people's ability to work safely I guess is the thing**  
 (25) **to say**  
 (26) **Q In your view was it primarily a safety issue?**

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- (1) **A Yes**  
 (2) **Q You may have answered this Was it your testimony that you**  
 (3) **don't recall the autopilot ever being utilized in Prince**  
 (4) **William Sound when you were on board?**  
 (5) **A That's correct**  
 (6) **Q But based on your experience in transiting Prince William**  
 (7) **Sound the Exxon vessels involved in those transits utilized**  
 (8) **the vessel traffic center on the VTS?**  
 (9) **A I don't know what you mean by "utilized"**  
 (10) **Q Did they rely on them to get information?**  
 (11) **A The only information we had relied on them for was ice**  
 (12) **conditions**  
 (13) **Q Was there ever any time that an Exxon vessel relied on the**  
 (14) **vessel traffic center for information about where they were in**  
 (15) **the Sound?**  
 (16) **A Never**  
 (17) **Q Let's factor in your observation yesterday that Kagan**  
 (18) **needed supervision and your observation that in the normal**  
 (19) **course of your changeover with Cousins you would have told**  
 (20) **Cousins that can you still imagine Cousins had he done things**  
 (21) **properly would not have picked up on the fact that Kagan**  
 (22) **failed to make a course change in six minutes?**  
 (23) **A I'll tell you that I can imagine the circumstances Kagan**  
 (24) **and Greg hadn't been together very long at that point as far**  
 (25) **as I can tell And let me say that I'm not simply trying to**

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(1) defend a fellow third mate, I can imagine the fact that the  
 (2) concern with the ice was so overwhelming that he would not  
 have  
 (3) checked that rudder angle indicator  
 (4) Now in my trips into and out of and I did a lot of trips  
 (5) in the two months prior to the grounding on both the Valdez  
 and  
 (6) the Baton Rouge the captain was the guy who watched the  
 ice  
 (7) and I got to do everything else which included looking at  
 that  
 (8) rudder angle indicator The third mate's job is to do that  
 (9) when the captain is taking care of conning the ship or  
 making  
 (10) sure the ship isn't running into anything  
 (11) When the captain or pilot is not on board and the third  
 (12) mate has to do everything else it's very conceivable to me  
 (13) that that is one of the things that the third mate wouldn't  
 (14) follow up on  
 (15) Q Are you saying Cousins had too much to do on board the  
 (16) bridge that night?  
 (17) A Yes yes  
 (18) Q One of the reasons let's assume that he did not realize -  
 (19) let's assume first of all that the course command that he gave  
 (20) was not carried out by Kagan and let's assume he didn't pick  
 (21) it up - pick that up for six minutes What I asked him I think  
 (22) was is one of the reasons he didn't pick it up because he was  
 (23) too busy with other tasks?  
 (24) A I believe that's the case  
 (25) Q And is the reason that he was too busy with other tasks

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(1) because Captain Hazelwood was not on the bridge?  
 (2) Do you remember the question now or do you want it read  
 (3) back again?  
 (4) A Well I think you're asking was the reason that I think the  
 (5) third mate was overworked the fact that the captain was not  
 on  
 (6) the bridge I can only say that if I had been on the bridge  
 (7) in those circumstances and I was five or six times in the two  
 (8) months prior with that much ice if my captain had left the  
 (9) bridge because he - in both cases with two captains they  
 had  
 (10) been looking at the radar while I did everything else If the  
 (11) captain had not been on the bridge I would have felt  
 (12) overwhelmed  
 (13) Q Under those circumstances as you understand them?  
 (14) A Yes  
 (15) Q Based on your experience as a third mate and based on the  
 (16) knowledge that you have of the facts and circumstances that  
 (17) took place that night could fatigue have been a factor in  
 (18) Cousin's performance?  
 (19) A I can imagine that it would have been yes Might have  
 (20) been  
 (21) MS WAGNER Nothing further Your Honor  
 (22) THE COURT Cross?  
 (23) MR SANDERS Just briefly Your Honor  
 (24) CROSS EXAMINATION OF WILLIAM MASCIARELLI (read)  
 (25) BY MR SANDERS

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(1) Q When you were a crew man sailing with Hazelwood did you  
 (2) ever observe him to be impaired within four hours of leaving  
 (3) port when he was standing watch?  
 (4) A No I never did  
 (5) Q Did you ever drink ashore with Hazelwood?  
 (6) A Never did  
 (7) Q Did you ever see him drinking ashore?  
 (8) A No  
 (9) Q And the only time you drank with him was the one you have  
 (10) testified to the wine?  
 (11) A Yes  
 (12) Q Did you ever hear from the other officers or crew members  
 (13) any rumors or any statements concerning Hazelwood being  
 (14) impaired?  
 (15) A Never  
 (16) Q Did you have any knowledge when you spent those three  
 days  
 (17) with him that Hazelwood had been in a rehab program?  
 (18) A No  
 (19) Q What is Exxon's policy as you understand it concerning  
 (20) drinking on board?  
 (21) A That there is none  
 (22) Q Would you mind reading that again I think the accent is on  
 (23) the last word?  
 (24) A That there is none  
 (25) Q And it was Greg Cousins that replaced you on the 20th of

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(1) February?  
 (2) A That's correct  
 (3) Q Where did that replacement take place?  
 (4) A San Francisco Bay at anchor  
 (5) Q Did you meet Mr Cousins at the time?  
 (6) A Yes  
 (7) Q Did you have any conversations with him?  
 (8) A Yes  
 (9) Q What was the nature of the conversation?  
 (10) A Oh what the assignment had been like let's see let me  
 (11) think a second There's a standard conversation that takes  
 (12) place between officers when they're relieving one another  
 (13) Anything special in the equipment on the bring, anything  
 not  
 (14) functioning, anything I should know about in the cargo  
 system  
 (15) anything special about the crew that I should know about,  
 so  
 (16) just basically turning over the job  
 (17) Q There's a standard conversation when one officer replaces  
 (18) another on the vessel?  
 (19) A When I say "standard conversation" there are areas that  
 you  
 (20) could have been yeah  
 (21) Q So we're not talking about just watch changes  
 (22) A No I'm talking about replacing  
 (23) Q Do you remember any particular concerns that Mr Cousins  
 (24) passed on to you during the course of that conversation?  
 (25) A No

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- (1) Q Do you remember any particular specifics about the
- (2) conversation?
- (3) A No
- (4) Q Mr Cousins has testified on a couple of occasions
- (5) previously that he let the second mate Lloyd LeCain sleep
- (6) in Have you ever been in the times that you have left the
- (7) Port of Valdez has it ever been during the 8 to 12 watch?
- (8) A Oh, yes
- (9) Q So you were the watch officer on the bridge?
- (10) A Yes
- (11) Q Had you ever left your relief - had you ever let your
- (12) relief sleep in late?
- (13) A I have
- (14) Q Would you say that is uncommon or common?
- (15) A I would say that it's not uncommon
- (16) Q Why did you leave Exxon?
- (17) A I was terminated by Exxon Shipping Company
- (18) Q So your leaving was not voluntary?
- (19) A That's correct
- (20) Q Does that mean you were fired?
- (21) A Yes
- (22) MR SANDERS No further questions
- (23) THE COURT You may call your next witness
- (24) (The Witness Stepped Down)
- (25) MR MONTAGUE Your Honor plaintiffs call as their

- (1) A We've been in existence as a firm like this since 1975
- (2) Q Okay And what is your position in that firm?
- (3) A I'm the vice-president and general manager
- (4) Q Okay Could you please give us sort of a rundown of your
- (5) formal education?
- (6) A I went to college in - I started going to college in
- (7) 1977 I went to Virginia Tech which is in Lakesburg (ph),
- (8) Virginia I studied aerospace engineering While I was
- (9) going
- (10) to college, I was also in co op program, work study program
- (11) and I worked for alternating quarters I worked for a
- (12) company
- (13) named MAR Incorporated a firm that dealt with the
- (14) analysis of
- (15) and design in ocean related problems mostly for U S Navy
- (16) I
- (17) graduated in 1982
- (18) In 1982 I started working for the American Bureau of
- (19) Shipping The American Bureau of Shipping is sort of like
- (20) the
- (21) FAA, the Federal Aircraft Administration, for shipping, but
- (22) they set standards for the construction of ships I worked
- (23) for
- (24) the American Bureau of Shipping until 1984
- (25) In 1984 I moved to Newport Rhode Island where I started
- (26) working for a firm named Johan Valentju Incorporated
- (27) Johan
- (28) Valentju Incorporated was a design firm and they were - at
- (29) that time they were involved with the design of American
- (30) Cup
- (31) sailboats and I worked for that firm as an engineer too
- (32) And
- (33) when the America s Cup was over in 1988 I started working
- (34) for
- (35) Martin - at that time Francis Martin, Ottaway and Van
- (36) Hemmen

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- (1) next witness as an expert Mr Rick Van Hemmen
- (2) THE CLERK Would you raise your right hand?
- (3) (The Witness Is Sworn)
- (4) THE CLERK Please be seated
- (5) For the record sir state your full name and your address
- (6) THE WITNESS My name is Hendrik Van Hemmen My
- (7) address is 50 Statestur (ph) Place Middletown New Jersey
- (8) The zip code is 07701 and my last name is spelled V a n s p a c e
- (9) H e m m e n
- (10) THE CLERK Thank you sir
- (11) DIRECT EXAMINATION OF HENDRIK VAN HEMMEN
- (12) BY MR MONTAGUE
- (13) Q Good morning Mr Van Hemmen?
- (14) A Good morning sir
- (15) Q Could you tell the jury a little bit about your employment?
- (16) A I work for Martin Ottaway and Van Hemmen I am an
- (17) engineer
- (18) and our firm deals with marine transportation problems
- (19) Q Could you be more explicit as to what your firm does?
- (20) A Yes we're a marine consulting firm We work for
- (21) underwriters and for attorneys for ships owners and for
- (22) investors and we get engaged to analyze problems in
- (23) marine
- (24) transportation They could be collisions or they could be
- (25) groundings They could be structural failures They could
- (26) be
- (27) problems relating to the operation of ships
- (28) Q And how long has that firm been in existence?

- (1) Q Are you a registered professional engineer?
- (2) A Yes, sir
- (3) Q In what venue?
- (4) A I'm registered as a professional engineer in the state of
- (5) New York
- (6) Q Now again could you tell us since you have joined the
- (7) Martin Ottaway firm what is it - do you have a specialty?
- (8) A Within the firm the firm consists of many different
- (9) specialties and we have people that have experience in
- (10) operating ships, both on board the ship and from the shore,
- (11) and
- (12) we have people that deal with regulations construction
- (13) regulations or safety regulations And within the firm I deal
- (14) with analytic issues that is investigation calculations
- (15) point of view
- (16) Q Are you a forensic engineer?
- (17) A Yes sir
- (18) Q And could you tell the jury what sort of things that a
- (19) forensic engineer is called upon to do?
- (20) A Well a forensic engineer - as a member of the National
- (21) Academy of Forensic Engineers which is an organization
- (22) which
- (23) has certain requirements for a member to be able to join
- (24) which
- (25) includes having prepared cases for court testimony actual
- (26) court testimony and certain academic background
- (27) requirements
- (28) the - most of that is to be a registered professional
- (29) engineer

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- (1) **And forensic engineer investigates disasters investigates**  
 (2) **problems that take place in engineering systems**  
 (3) **Q As part of that do you try to simultaneous problems or**  
 (4) **recreate problems or the movement of vessels?**  
 (5) **A Yes sir**  
 (6) **Q And have you done that as part of your duties in the past?**  
 (7) **A Yes sir**  
 (8) **Q Okay Have you testified as an expert before?**  
 (9) **A Yes sir**  
 (10) **Q And can you tell us on what subject?**  
 (11) **A Collisions sinkings capsizings structural failure**  
 (12) **Q And in so testifying were you using those skills of a**  
 (13) **forensic engineer as you just described them?**  
 (14) **A Yes sir**  
 (15) **Q Could you tell us some of the - some of the examples of**  
 (16) **the work that you do as it relates to specific incidents or**  
 (17) **specific vessels?**  
 (18) **A We sit in our office and we get called by a client and the**  
 (19) **client says, well might have a ship that has hit an iceberg, I**  
 (20) **would like you to go - this might be a ship owner - would**  
 (21) **like you to go out and investigate the cause and if you**  
 (22) **properly document the damage so we can make a**  
 (23) **presentation to**  
 (24) **underwriters or we can deal with subsequent actions that**  
 (25) **might**  
 (26) **be related to his problem**  
 (27) **Or I might be asked by an underwriter to go on board a ship**

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- (1) **that has run aground to make sure the ship comes off the**  
 (2) **obstacle that it ran onto That would require engineering -**  
 (3) **you know engineering skills investigations as to how the**  
 (4) **ship**  
 (5) **was off ground what type of flotation a ship has what would**  
 (6) **be a proper route for getting the ship off the rocks**  
 (7) **Q Have you ever been a salvage master?**  
 (8) **A Yes sir**  
 (9) **Q Could you tell us what a salvage master is?**  
 (10) **A A salvage master is a semi official term What happens**  
 (11) **ship is on the rocks and many people interested in getting**  
 (12) **the**  
 (13) **ship off the rocks, and quite often there's somebody will**  
 (14) **say,**  
 (15) **I want somebody to be in charge and then there's a general**  
 (16) **agreement as to who will be the person in charge and that is**  
 (17) **called the salvage master**  
 (18) **Q And that is somebody other than the master of the vessel?**  
 (19) **A Yes sir It is the person who directs the salvage effort**  
 (20) **Q By the way you're not a licensed mariner are you?**  
 (21) **A No, sir**  
 (22) **Q Okay Have you ever heard the term discharge**  
 (23) **calculations ?**  
 (24) **A Yes sir**  
 (25) **Q Do you do discharge calculations?**  
 (26) **A Not on a regular basis as like on board a ship, but we do**  
 (27) **the discharge calculation when a ship has a problem**  
 (28) **Q Could you tell the jury what discharge calculations are?**

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- (1) **A A ship is - only has limited strength When a ship is**  
 (2) **being loaded with cargo you cannot put the cargo all on one**  
 (3) **tank and ignore the rest of the ship The ship gets**  
 (4) **overstressed then It's important that the cargo gets**  
 (5) **brought**  
 (6) **in in the right place at the right time so you don't overstress**  
 (7) **the ship And these calculations organizing this type of**  
 (8) **discharge or loading is called loading or discharge**  
 (9) **calculations**  
 (10) **Q Now Mr Van Hemmen do you teach?**  
 (11) **A-Yes sir**  
 (12) **Q Could you tell us where you teach and what you teach?**  
 (13) **A I teach marine surveying at the College of Insurance in**  
 (14) **New**  
 (15) **York City**  
 (16) **Q Okay And what is marine surveying?**  
 (17) **A Marine surveying marine surveying is the inspection of**  
 (18) **ships for - with regard to their condition or with regard to a**  
 (19) **certain amount of damage they have**  
 (20) **Q Okay At our request in this case have you undertaken a**  
 (21) **study of the use of the Exxon Valdez's engine and its**  
 (22) **movements**  
 (23) **after it ran aground at Bligh Reef?**  
 (24) **A Yes sir**  
 (25) **Q And in doing so did you use the skills and the expertise**  
 (26) **that you've described?**  
 (27) **A Yes sir**  
 (28) **MR MONTAGUE Your Honor I would offer Mr Van**

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- (1) **Hemmen as an expert naval architect and engineer as a**  
 (2) **forensic**  
 (3) **engineer for the purposes that I just described in the last**  
 (4) **question**  
 (5) **MR CHALOS Your Honor we have a serious doubt about**  
 (6) **his expertise and qualifications but I would like to save that**  
 (7) **for cross I'll let him in at that point**  
 (8) **VOIR DIRE EXAMINATION OF HENDRIK VAN HEMMEN**  
 (9) **BY THE COURT**  
 (10) **Q Mr Van Hemmen what is your degree?**  
 (11) **A It's a bachelor of science degree in aerospace and ocean**  
 (12) **engineering**  
 (13) **Q Do you have any advanced degrees?**  
 (14) **A No sir**  
 (15) **Q Tell me something about your experience in the area of**  
 (16) **marine architecture**  
 (17) **A I presume you mean the term "naval architecture"**  
 (18) **Q If that's the word yes**  
 (19) **A My experience is that I am - I in my aerospace and ocean**  
 (20) **engineering training, I dealt with naval architecture on a**  
 (21) **daily basis The course that I took is really a vehicle design**  
 (22) **course and it deals in the vehicle in the air below, the**  
 (23) **ocean or the interface So the - so that's my training and**  
 (24) **then working for MAR, Incorporated I dealt with naval**  
 (25) **architectural issues almost daily Working for the American**  
 (26) **Bureau of Shipping those two years I would say this wasn't**

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- (1) necessarily the case daily Naval architecture they were a  
 (2) little more disconnected because it dealt with more  
 machinery  
 (3) items  
 (4) With Johan Valentju, Incorporated I dealt with naval  
 (5) architecture issues on almost a daily basis In other words  
 I  
 (6) designed ships, I dealt with calculations, hydrostatic  
 (7) calculations, discussions with classification societies  
 (8) construction supervision the welding of ships and things  
 like  
 (9) that  
 (10) Then I started working for Martin & Ottaway and again I  
 (11) deal with naval architecture almost daily  
 (12) THE COURT Okay I will accept the witness  
 (13) qualifications as a naval architect  
 (14) MR MONTAGUE Thank you Your Honor  
 (15) RESUMED DIRECT EXAMINATION OF HENDRIK VAN  
 HEMMEN  
 (16) BY MR MONTAGUE  
 (17) Q Now Mr Van Hemmen let's go back again What is it that  
 (18) the plaintiffs asked you to do in this case?  
 (19) A They asked me to take a look at the course recording  
 deep  
 (20) tape and the bell tape testimony general arrangement of  
 the  
 (21) vessel and to bell log and to investigate what type of actions  
 (22) were taken by Captain Hazelwood while the ship was off  
 ground  
 (23) Q Okay And did you do that?  
 (24) A Yes sir  
 (25) Q And were you able to find all of the materials that you

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- (1) needed to do that?  
 (2) A Yes to the extent they were available  
 (3) Q Okay Was there anything missing that you felt you had to  
 (4) see?  
 (5) A Well, I would have liked to have seen some record of the  
 (6) rudder excursions of the vessel rudder movements on the  
 (7) vessel but I understand there's no such record  
 (8) Q Now as a result of your studying those materials that you  
 (9) just identified were you able to recreate the movement of the  
 (10) Exxon Valdez once it was aground Bligh Reef?  
 (11) A Yes sir within a reasonable extent  
 (12) Q And with the help of a videographer were you able to put  
 (13) that recreation on a videotape simulation?  
 (14) A Yes sir  
 (15) Q And have you viewed that simulation?  
 (16) A Yes sir  
 (17) Q And are you satisfied that it's accurate?  
 (18) A To an again fair and reasonable degree yes sir  
 (19) MR MONTAGUE May we make the request put that  
 (20) videotape on but if you could put the controls so that Mr Van  
 (21) Hemmen can start and stop - you can't do that You have -  
 (22) I'll try to give you signals then or Mr Van Hemmen if you  
 (23) want the video stopped at any point why what I would like you  
 (24) to do is when the picture first goes on stop it so we can  
 (25) have a still okay

Vol 14 2007

- (1) THE WITNESS Stopped on the first frame  
 (2) BY MR MONTAGUE  
 (3) Q It's a little trembly but could you explain what this  
 (4) depicts?  
 (5) A This is a top view of the Exxon Valdez just like the model  
 (6) is over there If you look from the top, you would see about  
 (7) the same thing  
 (8) Q This would be looking down on the top?  
 (9) A Yes, sir  
 (10) Q Okay  
 (11) A And the deck of the ship is the dark red area, the deck  
 (12) house the accommodation is the white area with the little  
 (13) black squares Maybe I can stand over there and point at  
 the  
 (14) video That would be easier  
 (15) THE COURT Pointer on there that he can use  
 (16) THE WITNESS Does this work?  
 (17) THE COURT Give him a pointer That should work  
 (18) MR MONTAGUE I don't know what this is  
 (19) THE COURT Isn't there an electronic pointer?  
 (20) MR MONTAGUE You can't put the - no he can't do  
 (21) that  
 (22) THE COURT Somebody was doing it the other day  
 (23) MR MONTAGUE Your Honor you're asking the wrong  
 (24) person  
 (25) MR LYNCH Your Honor the - when the information is

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- (1) stored inside the computer you can do that When it's - this  
 (2) is a videotape it's just like a videotape player and the  
 (3) computer can't do that  
 (4) THE COURT Sorry  
 (5) MR MONTAGUE We have this the next best thing Your  
 (6) Honor  
 (7) THE WITNESS My hand has to be steady here Let me  
 (8) see if I can get this lined up again Can you see the little  
 (9) red dot? That's the stack the deck that's the back that's  
 (10) the stern that's the bow the black area is what is basically  
 (11) the tunnel that - what's forced into the ship when the ship  
 (12) ran aground when she ran aground there was a large area of  
 (13) damage It ended up to going to about that spot over there  
 (14) The white lines the ones that look dashed and the ones that  
 (15) are going across are the outlines of the various tanks in the  
 (16) ship the cargo tanks and then the yellow line which I think  
 (17) was yellow it looks a little white over here is the  
 (18) centerline of the ship  
 (19) On the bottom over there - don't want to shine - that's  
 (20) the rpm which is the tachometer the revolution counter of the  
 (21) ship the register the speed of the engine Then that is the  
 (22) time which is 12:30 at this stage and that's compass rose  
 (23) north southeast and that says 270 that's 270 degrees  
 (24) BY MR MONTAGUE  
 (25) Q As the vessel grounded on the reef it was facing

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- (1) approximately 270 degrees?  
 (2) A No it was facing a bit further north than that It was  
 (3) facing about 290  
 (4) Q Okay Now without - have you described what - does this  
 (5) mean anything?  
 (6) A The little white dot is what we assume is the rotational  
 (7) point of the ship the ship that - the point of the ship is  
 (8) rotating about That point is the afterpoint of the damage  
 (9) about the middle of the damage and it also corresponds to  
 (10) Captain Hazelwood's testimony where he says they felt the  
 ship  
 (11) was rotating about its normal rotation point  
 (12) Q Now could you tell us before we run this what is the  
 (13) purpose of this videotape?  
 (14) A This videotape shows that once the Exxon Valdez was  
 (15) aground the engines were started again and Captain  
 Hazelwood  
 (16) undertook some maneuvers on the ship that made the ship  
 move  
 (17) side to side made it swing back and forth around the  
 (18) obstruction  
 (19) Q All right And was there any - and this depicts that  
 (20) movement is that what this simulation does?  
 (21) A Yes sir from the top view of the movement  
 (22) Q And was there any cause of that ship moving as it is  
 (23) depicted in this simulation as we'll see than the engine  
 (24) running and the movement of the rudder?  
 (25) A There might have been some tidal movement The ship  
 might

Vol 14 2010

- (1) have moved due to the tide It goes back and forth  
 (2) Q Now does this videotape when we run it will that show  
 (3) any actual rudder movement?  
 (4) A No sir  
 (5) Q And is that because you said you couldn't get an accurate  
 (6) source for -  
 (7) A Well there was no accurate source for a rudder  
 movement  
 (8) In my opinion there was rudder movement but there was no  
 (9) accurate source that depicted how far the rudder went to at  
 (10) each time  
 (11) Q And how did you determine the movement of the vessel?  
 (12) A From the bell loader and from the course to course plot  
 (13) Q And are you satisfied it was accurate?  
 (14) A These two instruments and they just record what goes  
 on  
 (15) They're not particularly subject to any type of mistake  
 (16) Q I'd like to run this and I'd like Mr Van Hemmen anytime  
 (17) you want it stopped just signal over there and we'll -  
 (18) A Before we start maybe we can run it just once The  
 yellow  
 (19) line that goes down the centerline of the ship we use that to  
 (20) kind of show the range that the ship rotated through So  
 (21) you'll see the line swing up and it stays there and it comes  
 (22) down and it you end up with a wedge that - the angle ship  
 (23) rotated through  
 (24) Also at the stern of the ship you'll start to see a little  
 (25) white wedge that is a depiction of the weight coming off the

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- (1) propeller That wedge will get bigger when the rpm's  
 increase  
 (2) on the ship In real life the wedge moves back and forth  
 (3) because you would use the rudder  
 (4) In this video it doesn't show In this particular  
 (5) video - go ahead At this stage the ship she's not moving  
 (6) She's still rotating probably probably from the tide here  
 (7) The engine starts and she's going slow rpm right now 25  
 rpm  
 (8) The speed goes up to 31 but now 12 45 the time This is  
 sped  
 (9) up of course This is an hour and a half process and we  
 sped  
 (10) it up to slightly more than an hour We sped it up to a  
 minute  
 (11) and a half  
 (12) Now you can see this is the extreme port and the start of  
 (13) the vessel's swing at the time the engine is being used  
 Right  
 (14) now 55 rpm This is full maneuvering speed You see the  
 (15) vessel goes back and forth one side the other side one  
 side  
 (16) the other side In real life the swinging back and forth goes  
 (17) very slow of course  
 (18) Q Now is that every time there's a swing back and forth does  
 (19) that mean there was a change in the rudder?  
 (20) A Yes It would have had to be a change in the rudder  
 angle  
 (21) Q And again is there any other explanation for that ship  
 (22) moving that far?  
 (23) A No sir  
 (24) Q How many degrees do you estimate that swing is?  
 (25) A That is best measured from the actual voice recorded  
 tape

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- (1) and that comes to about 14 degrees  
 (2) Q Okay Now it's shut off?  
 (3) A That's the end The engineer stopped and the ship has  
 come  
 (4) to rest a little bit further south than when she started with  
 (5) Q Can you tell what if it - if it's important I don't know  
 (6) that it is what degree it's facing what course it's facing?  
 (7) A I think it was something like 280 degrees  
 (8) Q Okay thank you Now you recall that when the - when  
 (9) Exxon when the Exxon Valdez first went aground that the  
 (10) engines ran for a little while and then they were shut off?  
 (11) A Yes sir  
 (12) Q At that point when the engines were shut off do you have  
 (13) an opinion from the materials that you studied as to whether  
 (14) the Exxon Valdez at that point was solidly aground?  
 (15) A From what I studied I would conclude that she was  
 solidly  
 (16) aground  
 (17) Q And why do you say that?  
 (18) A Because she was not moving any way by herself  
 (19) Q And that's a pretty simple answer What does that mean?  
 (20) A Well, a ship's either afloat or either aground And if  
 (21) she's afloat when the engine is stopped, she can float in  
 (22) whatever direction she wants to float or whatever direction  
 the  
 (23) wind and tide takes her When she's aground, she doesn't  
 move  
 (24) anywhere and that appeared to be the situation  
 (25) Q Okay Now let's - the question I'm going to ask you now

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- (1) relates to the movement that we've just seen on the simulation?  
 (2) A Sure  
 (3) Q Was there a chance that if the Exxon Valdez was not  
 (4) steadily aground that that movement that we've just seen could  
 (5) have - would have caused the vessel to come off the reef?  
 (6) A Well, that maneuvering would have taken her off if she  
 (7) wouldn't have been solidly off the ground  
 (8) Q That confirms also solidly off the ground?  
 (9) A Yes, sir  
 (10) Q In your - now you weren't on the bridge that night?  
 (11) A No sir  
 (12) Q So all you've been able to do is reconstruct?  
 (13) A Yes, sir  
 (14) Q And Captain Hazelwood was - after the grounding he was  
 (15) on  
 (16) the bridge?  
 (17) A Yes sir  
 (18) Q Okay In your opinion did Captain Hazelwood being on the  
 (19) bridge after the grounding did he know any more about the  
 (20) condition of the Exxon Valdez as it rests - as it was on Bligh  
 (21) Reef than you know by looking back at everything that was  
 (22) available?  
 (23) MR CHALOS Your Honor I object He has no basis  
 (24) for answering that question  
 (25) THE COURT Well I will allow an expert witness to  
 answer that question

Vol 14 2014

- (1) MR MONTAGUE Thank you Your Honor  
 (2) THE WITNESS If I remember your question correctly  
 (3) at that - maybe I should recreate what Captain Hazelwood - or  
 (4) try to recreate what Captain Hazelwood knew from what was  
 (5) discussed and from testimony and from evidence we have that  
 (6) is as an engineer Captain Hazelwood knew that oil cargo  
 (7) tanks all the way back his cargo tanks were ruptured on one  
 (8) side and also the centerline He knew that he was moving He  
 (9) knew there was oil coming out of the ship and he knew he still  
 (10) had some tide coming up The tide wasn't quite all the way to  
 (11) high tide yet That I think is all the information he had  
 (12) and that's all the information we have right now He also  
 (13) could have measured the heel line and the heading he had and  
 (14) on  
 (15) the standard he felt he had one degree heel to port side  
 (16) Q You said the tide hadn't reached its height yet?  
 (17) A That's what I said yet  
 (18) Q And he knew that?  
 (19) A He knew that  
 (20) Q You made a determination of how much higher the tide was  
 (21) going to get?  
 (22) A Again through the best of what's around everybody  
 (23) agrees  
 (24) it was a foot and a half or two feet of tide left  
 (25) Q That was still too -  
 (26) A Yes that was still going to lift the ship up higher  
 (27) Q Okay Now you heard Captain Hazelwood describe a one

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- (1) degree list to the port side of the vessel after the grounding?  
 (2) A Yes sir  
 (3) Q As an engineer is it surprising to you that upon the Exxon  
 (4) Valdez going up on Bligh Reef that there was a list to the port  
 (5) side and the list was one degree?  
 (6) A No, sir  
 (7) Q Why not?  
 (8) A Well, if you run a ship aground, part of the ship gets  
 (9) punctured It leans on the structure The other side of the  
 (10) ship is afloat It would be very unusual exact even keel  
 (11) Q Is a one degree list significant?  
 (12) A No, sir You can consider yourself lucky if the ship runs  
 (13) aground with only one degree list  
 (14) Q Is it something to be concerned about?  
 (15) A No, sir  
 (16) Q Is it something that would cause one to do the maneuvering  
 (17) that was depicted on the videotape?  
 (18) A If a ship ran aground there was only one degree list,  
 (19) there wouldn't be any reason to take any action at all  
 (20) Q Now tell us if you can and again from a forensic  
 (21) engineering or an engineering point of view what are the  
 (22) benefits of moving the vessel in the manner shown on the  
 (23) simulation once it ran aground on Bligh Reef?  
 (24) A Well there are no benefits to it really  
 (25) Q Okay What about assuring that the vessel was hard

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- (1) aground?  
 (2) A Well if you're aground you're aground There's no  
 (3) reason  
 (4) to do anything else  
 (5) Q What about changing the one degree port side list to a one  
 (6) degree starboard list?  
 (7) A It wouldn't help either way You just one degree list  
 (8) stay there and do nothing If you do anything else, you  
 (9) might  
 (10) disturb the situation as it is which is at that stage, from a  
 (11) grounding point of view pretty good  
 (12) MR MONTAGUE Okay Your Honor I didn't realize  
 (13) it - should I keep going?  
 (14) THE COURT Oh Let's get back on schedule a little  
 (15) bit We'll take our first recess at this point for 15 minutes  
 (16) (Jury out at 10 15 a m )  
 (17) (Recess at 10 15 a m )  
 (18) (Jury in at 10 30 a m )  
 (19) THE CLERK Please be seated  
 (20) BY MR MONTAGUE  
 (21) Q Mr Van Hemmen again referring to the movement depicted  
 (22) on the simulation in your opinion were there any risks were  
 (23) there any risks in maneuvering the vessel as it was shown on  
 (24) that simulation?  
 (25) A Yes sir  
 (26) Q And what kind of risks in your opinion were there?  
 (27) A Well at that stage the situation was stable prior to the



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(1) maneuvering and when the maneuvering started the maneuvering  
 (2) of the vessel basically caused it to grind on the reef and the  
 (3) grinding on the reef caused additional damage to the ship  
 and  
 (4) therefore additional pollution or it could have in an extreme  
 (5) case caused the ship to fracture and the fracturing could  
 (6) result in the ship breaking apart capsizing or whatever takes  
 (7) place and also the ship could actually come free it could  
 (8) work its way free from the reef and the ship could actually  
 (9) sink or capsize  
 (10) Q And is that a something that should -- are those risks that  
 (11) should be considered at the time those maneuvers were taken?  
 (12) A Yes sir  
 (13) Q And were those possibilities of things that could really  
 (14) happen?  
 (15) A They were all possibilities Especially because the damage  
 (16) situation was not all that clear at that stage so you start to  
 (17) take an action after that You don't have that much  
 (18) information You take an action basically shooting in the  
 (19) dark  
 (20) Q May I have Elmo? I'd like to show you Mr Van Hemmen  
 (21) some testimony given in this court room by Captain Hazelwood  
 (22) And I'd like you to -- can you see that okay?  
 (23) A Yes sir  
 (24) Q Can you see this is at page 633 of the trial transcript  
 (25) Captain Hazelwood was asked the following questions and gives

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(1) the following answers What would you have done if you wanted  
 (2) to get her off the reef And the answer if I wanted to  
 (3) attempt to get off I could have pushed two buttons and gone  
 (4) sea speed full astern in about two minutes You didn't do  
 (5) that No  
 (6) Do you have any opinion about that statement by Captain  
 (7) Hazelwood?  
 (8) A Yes sir  
 (9) Q Could you tell us what your opinion is?  
 (10) A Well the two things that are not entirely realistic first  
 (11) of all the vessel at this stage the stage that you were  
 (12) stopped was pointing towards a channel she was not  
 (13) pointing  
 (14) towards a reef she was pointing to its channel And also at  
 (15) that stage Captain Hazelwood must have thought that he  
 (16) was hung  
 (17) up somewhere further out because he had damage so far  
 out all  
 (18) the way to the last cargo tank To back her up he would go  
 (19) backwards and he would have worked his way backwards  
 (20) through  
 (21) the entire reef before he could get to the water go to the  
 (22) reef turn around get back to deep water so it was quite a  
 (23) lengthy course to take  
 (24) The other thing that I find is not entirely realistic is  
 (25) that Captain Hazelwood states that he could have gone sea  
 speed  
 (26) full astern in about two minutes When the ship is aground  
 (27) when a commercial ship or tanker like that is aground it is  
 (28) impossible for the propeller to come up to full revolutions

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(1) It's like taking your car putting it in drive putting foot on  
 (2) the brake and the other foot hit the throttle If the you hit  
 (3) the throttle engine speed up but never to full speed and  
 (4) that's the same thing with the tanker you can't get to full  
 (5) speed Full maneuver is about the max you can get without  
 (6) getting overload or overheating conditions and you can  
 push a  
 (7) little bit beyond that but to get full speed is it's just not  
 (8) possible  
 (9) Q So could you tell us in your opinion based on what you  
 (10) said -- the statement I could have pushed two buttons and  
 (11) gone sea speed full astern in about two minutes is that a  
 (12) correct or an incorrect statement?  
 (13) A That's incorrect technically incorrect  
 (14) Q Now you have -- based on the simulation and the movement  
 (15) of the vessel at 55 rpm and side to side did that cause any  
 (16) stresses on the vessel?  
 (17) A Yes sir  
 (18) Q And could you explain what they are?  
 (19) A They're -- well it's -- if you just go ahead just push  
 (20) ahead against the rock -- say, this is a rock and the ship is  
 (21) around the rock and you just push you're just pushing, you  
 (22) can bring up as much propeller rpm as the ship can bring It  
 (23) doesn't bother it too much It's a very long ship, as you can  
 (24) see over there and you see -- take this reef it's like a  
 (25) wrench and that causes the grinding motion which can put a lot

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(1) of stress on the vessel  
 (2) Q And what kind of stress on the frame of the vessel?  
 (3) A On the structure of the vessel stress on the steel The  
 (4) ship's built out of steel and the steel could break away and  
 (5) fracture and bend distort it  
 (6) Q Now you heard -- have you read the communications  
 between  
 (7) Captain Hazelwood and the VTS after the grounding?  
 (8) A Yes sir  
 (9) Q And you're familiar with those communications where he  
 (10) referred to extracting the vessel from the rock?  
 (11) A Yes sir  
 (12) Q Okay I want to ask you if the actions which Captain  
 (13) Hazelwood took as depicted on that simulator are they  
 (14) inconsistent with trying to get the vessel off the rock?  
 (15) A They --  
 (16) Q Do you understand that question?  
 (17) A There's two sides to that question Maybe if you could  
 (18) restate it maybe I can give a clearer answer to it  
 (19) Q All right If Captain Hazelwood -- the movements that the  
 (20) ship took as shown on the simulation is that inconsistent with  
 (21) telling -- with trying to get the vessel off of Bligh Reef?  
 (22) A No If you look at what actually exists, that is the  
 (23) course of quarter to VTS transcript where Captain  
 Hazelwood  
 (24) says I'm trying to get it off That type of maneuvering could  
 (25) be -- somebody would make would try to get the vessel off  
 not

Vol 14 2021

- (1) realizing what the actual risk of doing that is  
 (2) Q Well could you explain how that would get the vessel off  
 (3) the reef?  
 (4) A Well, it was pointing in the direction of the channel and  
 (5) the moving back and forth that sawing back and forth is not  
 an  
 (6) uncommon way of getting ships off obstructions  
 (7) MR CHALOS Your Honor I would like to move to  
 (8) strike his testimony I think this is going way beyond his  
 (9) forensic engineering expertise he was qualified for Now he s  
 (10) talking about maneuvering this ship This man doesn t hold any  
 (11) licenses for that  
 (12) THE COURT Sounds to me like it s passed naval  
 (13) architecture  
 (14) MR MONTAGUE It s not architecture Your Honor it s  
 (15) engineering as to whether that movement could result in the  
 (16) ship going off the rock  
 (17) MR CHALOS That sounds to me like that s navigation  
 (18) and ship handling  
 (19) THE COURT Sounds to me like ship handling  
 (20) MR MONTAGUE Okay In that case Your Honor I have  
 (21) no further questions  
 (22) THE COURT You may cross  
 (23) MR CHALOS Thank you Your Honor  
 (24) CROSS EXAMINATION OF RIK F VAN HEMMEN  
 (25) BY MR CHALOS

Vol 14 2022

- (1) Q Well they ve taken the snakes away here Your Honor Now  
 (2) they ve given me a ledge to fall off of  
 (3) Good morning Mr Van Hemmen  
 (4) A Good morning, Mr Chalos  
 (5) Q The Van Hemmen and the Francis - what is it Francis  
 (6) Martin Ottaway Van Hemmen?  
 (7) A Today it's Martin Ottaway & Van Hemmen  
 (8) Q That Van Hemmen is your dad right?  
 (9) A Yes sir  
 (10) Q By the way say hello for me when you get back  
 (11) A I'll do that  
 (12) Q Thank you Just one question You said in your office you  
 (13) sit around and people call you up and say my ship just hit an  
 (14) iceberg will you come down and take a look do you remember  
 (15) that?  
 (16) A Yes, sir  
 (17) Q You never got that kind of a call did you?  
 (18) A Yes I did  
 (19) Q You did for an iceberg?  
 (20) A Yes, sir  
 (21) Q Where?  
 (22) A The Oversea Sohio last January  
 (23) Q Up here?  
 (24) A Yes in the Valdez terminal  
 (25) Q Did you go to that ship?

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- (1) A Yes sir  
 (2) Q You yourself?  
 (3) A Yes, sir  
 (4) Q Now let me ask you this The engineering license that you  
 (5) hold right that s a stationary engineer s license?  
 (6) A No sir  
 (7) Q What kind of an engineering license?  
 (8) A It's a design engineering license It's a license that  
 (9) allows you to design structures that could cause harm to  
 (10) people In other words, if I have to build a building and I  
 (11) put a steel structure in that an engineer like me has to  
 (12) approve that particular structure before it can be built  
 (13) Q That s what I meant by stationary we re talking about  
 (14) building?  
 (15) A I thought you meant stationary operators license  
 (16) Q I meant building design right?  
 (17) A It's not stationary the Coast Guard now requires BE  
 (18) licenses now for designing ships  
 (19) Q Let me ask you this You do not hold a seagoing engineers  
 (20) license do you?  
 (21) A Absolutely not  
 (22) Q As a matter of fact you ve never sailed as a crew member  
 (23) on any commercial vessel have you?  
 (24) A That's right, sir  
 (25) Q And you ve never sailed on a tanker as a crew member have

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- (1) you?  
 (2) A I've never sailed on a tanker as a crew member no  
 (3) Q Okay And you ve never been an officer on a ship that s  
 (4) run aground have you?  
 (5) A I'm not sure I have never been an officer on a ship, so  
 (6) therefore I have never been an officer on a ship that ran  
 (7) aground  
 (8) Q And you ve never been on the Exxon Valdez have you?  
 (9) A No sir  
 (10) Q You have no idea how the Exxon Valdez plant worked on that  
 (11) ship do you?  
 (12) A I'm not sure what you're talking about  
 (13) Q You never heard the term plant?  
 (14) A I'm not sure what you re talking about I have no idea  
 how  
 (15) the plant worked To what extent are we talking about?  
 (16) Q You ve never seen the Exxon Valdez engines have you?  
 (17) A I've never seen the Exxon Valdez engines  
 (18) Q You never worked the engines did you?  
 (19) A No sir  
 (20) Q You haven t been up in the bridge to find out how you push  
 (21) a button to get the engine working have you?  
 (22) A No sir  
 (23) Q Let s talk about your extensive experience as a salvage  
 (24) master Shall we?  
 (25) A Okay

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- (1) Q Okay That was on one ship?
- (2) A As than official salvage master one ship yes sir
- (3) Q And you were on there when the ship ran aground or after?
- (4) A After the ship ran aground
- (5) Q The ship had already been aground when you got there?
- (6) A Yes it had been aground for two or three hours
- (7) Q And you don't know what maneuvers the captain made before
- (8) you got up there did you?
- (9) A Up to what stage?
- (10) Q Before you got on the vessel you don't know what maneuvers
- (11) were made by the captain after you ran aground?
- (12) A After it ran aground made no maneuvers whatsoever
- (13) Q You weren't there though?
- (14) A No Sufficient people around to make sure that nothing
- (15) happened
- (16) Q Okay Now you went on board for a different reason you
- (17) didn't go on board as a salvage master you went on board on
- (18) behalf of the insurance company right?
- (19) A That's right
- (20) Q And then while you were there they said why don't you
- (21) become the salvage master?
- (22) A No that's not the way it went
- (23) Q Tell us how it went
- (24) A The United States Coast Guard officer on board of the
- (25) ship
- (26) said no action gets taken until the salvage master gets

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- (1) appointed then the owner said who had made salvage
- (2) master
- (3) and the underwriters said -
- (4) I let me start from the beginning Ran aground the Coast
- (5) Guard came on board the vessel and the Coast Guard said
- (6) nothing gets done until salvage master gets appointed
- (7) Which
- (8) is not always the case I mean many groundings that
- (9) salvage
- (10) master never gets appointed Then the owner said well
- (11) who
- (12) should we appoint as the salvage master, and they talked to
- (13) the
- (14) underwriters and the underwriter said well Mr Van
- (15) Hemmen
- (16) whose on board the ship, who has sufficient experience to
- (17) act
- (18) as salvage master and that's how I became the salvage
- (19) master
- (20) Q Okay In that particular case the vessel had run aground
- (21) in Rhode Island right?
- (22) A Yes sir
- (23) Q Okay And after you got on board the vessel was refloated
- (24) within a couple hours?
- (25) A Yeah I think it was maybe five six hours or so
- (26) Q Okay So you were on board the tide came up right you
- (27) got a couple tugs alongside she came right off right?
- (28) A No
- (29) Q That's not what happened?
- (30) A No
- (31) Q What happened?
- (32) A The ship was on the rocks she had run into a - part way
- (33) on the rocks part way on a jetty a stone jetty and we had to

- (1) reballast the ship We had to move ballast from one side to
- (2) another side We had to do some pumping take some water
- (3) up so
- (4) when the tide came up we could tow her
- (5) Q The ballast done by the crew?
- (6) A Under my direction yes
- (7) Q And then the ship just floated off and was taken off?
- (8) A That's the best way to do it
- (9) Q And as a matter of fact you waited for the tide to come up
- (10) to high tide and then you pulled her off?
- (11) A Yes sir
- (12) Q And the damage that that ship suffered was minor wasn't
- (13) it?
- (14) A It was a gash in the side that was about I think about
- (15) 150 feet long and it was damaged to the bottom And the
- (16) how I
- (17) wouldn't call it minor we had to make temporary repairs
- (18) before
- (19) ship moved
- (20) Q Then sailed on to the next port?
- (21) A We made a huge cement box
- (22) Q Okay So that was the only time we were ever a salvage
- (23) master right?
- (24) A Officially appointed as salvage master yes sir
- (25) Q Now let's talk about the Exxon Valdez Could I have that
- (26) tape played You went over something real quick and I want to
- (27) slow it down because I want to ask you some questions about
- (28) it Is that?

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- (1) A Maybe go ahead you have just a little bit It will stop
- (2) Q Does it go back any further? Is that where it starts at
- (3) 12 30?
- (4) Now Mr Van Hemmen you know from the testimony do you
- (5) not that the engine on this ship was shut down the first time
- (6) at 12 20 you remember that?
- (7) A Yes
- (8) Q Okay I noticed here that you don't show anything from
- (9) 12 20 to 12 30 In other words you didn't do an analysis of
- (10) what the ship was doing between 12 20 and 12 30 right?
- (11) A Obviously it starts at 12 30
- (12) Q Okay But the fact of the matter is you didn't analyze
- (13) whether the ship was moving at all due to tide?
- (14) A Oh, she hit the rocks and she kept swinging right through
- (15) there
- (16) Q So that ten minutes that we're talking about the ship was
- (17) swinging?
- (18) A Yes
- (19) Q Let's start it up here because I want to ask you some
- (20) questions
- (21) Now before I ask you hold on a second At this point
- (22) there's no engine and there's no rudder being used?
- (23) A She's just stopped that right
- (24) Q Go ahead and start her up Let me get out of your way I'm
- (25) sorry Okay Stop Stop That ship is moving, wasn't it?

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- (1) A Yes sir
- (2) Q And it was moving for about two minutes wasn't it?
- (3) A Yes
- (4) Q And the two minutes you were talking about before that you said she was swinging still?
- (5) A Yes
- (6) Q Now when you said she was hard aground and Captain Hazelwood should have known it was hard aground what Captain
- (7) Hazelwood was seeing at that time for about 15 minutes before he started up his engine again was this ship moving wasn't it?
- (8) A Yes it was the ship was still moving but it was not moving across the ground it was hung up on something
- (9) Q But the ship was moving I mean he's standing on the bridge?
- (10) A It was rotating, yeah
- (11) Q But it was moving?
- (12) A Yes
- (13) Q By the way you said that Captain Hazelwood knew certain things that night right?
- (14) A Uh huh
- (15) Q One of the things that you left out that he knew was that you weren't on the bridge that night right?
- (16) A Yeah obviously
- (17) Q All right But he was?
- (18) A Yes he was

- (1) Hazelwood if he wanted to go full ahead maneuvering?
- (2) A If he wanted to go full ahead maneuvering
- (3) Q Let me take that back How much horsepower would have been available if he wanted to go full ahead emergency?
- (4) A I would say that the engine -
- (5) Q Well do you know Do you know?
- (6) A Nobody knows
- (7) Q What do you mean nobody knows? Isn't this ship rated to go 33 000 horsepower at full emergency?
- (8) A No, sir Only when she's steaming She could be rated anything you want to but she can't develop that horsepower
- (9) Q Develop something pretty close to it once full ahead emergency?
- (10) A Once she's steaming on the way and running, you can drive past the normal full speed setting and you can go faster but also you end up in a condition, depending whether the ship is in ballast or fully loaded you get conditions overheat situations overheat exhaust gas temperature And it's just not the way to do it
- (11) Q The reason that engines are rated to certain horsepowers because that the max horsepower depends if you go to situation you get in a situation not even normal operating speed?
- (12) A Anything can happen anything is possible
- (13) Q But what I'm asking you what is the rating of this ship at full ahead emergency do you know?

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- (1) Q And as between you someone who doesn't have a merchant marine license who's never been to sea as a crew member who's never really been aground on a ship that's run aground and Captain Hazelwood who's the master of that ship who was in a better position to judge the best course of action you or him?
- (2) A Once you're talking aground I think I have a lot more experience
- (3) Q That one time that you were on the ship in Rhode Island?
- (4) A Many ships that were aground
- (5) Q Mr Van Hemmen at the moment that that ship ran aground and decisions had to be made and information had been gathered who was in the better position to evaluate that position? I don't mean in a courtroom five years later as a paid consultant At that moment?
- (6) A Captain Hazelwood is the only person on board the ship to evaluate information on board the ship
- (7) Q Now you talked about the use of the rudder and the engine by the captain?
- (8) A Yes sir
- (9) Q Okay Did you do any analysis of the power curves of this vessel?
- (10) A No
- (11) Q You did not?
- (12) A No
- (13) Q Well how much horsepower was available to Captain

- (1) A Captain Hazelwood testified 33 000 horsepower
- (2) Q Do you have any reason to dispute that?
- (3) A No
- (4) Q Do you have rated horsepower as full ahead maneuvering?
- (5) A Captain Hazelwood testified 8500 horsepower
- (6) Q This is a diesel engine right?
- (7) A Yes sir
- (8) Q So the point is that Captain Hazelwood at no time during the time that he was using his engines right exceeded 25 percent of what he believed was his available horsepower isn't that correct?
- (9) A No if you say what he believes was his available horsepower I have that's perfectly correct
- (10) Q Now let me ask you this You heard Captain Hazelwood? Were you here for Captain Hazelwood's testimony?
- (11) A Yes sir
- (12) Q So you heard him say that when he was maneuvering the vessel at starting at 12 I think it was what did we say 12 36?
- (13) A Yes might have been 12 40
- (14) Q When he started maneuvering the vessel at that point he used five degrees and ten degrees of rudder is that right?
- (15) A Yes sir
- (16) Q He had available to him did he not 35 degrees either way if he wanted?

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- (1) A Yes sir
- (2) Q Hard over 35 degrees to go to one side and 35 degrees to
- (3) go to the other side right?
- (4) A Yes
- (5) Q So he used 15 percent 20 percent of his available rudder
- (6) isn't that right?
- (7) A I listened to Captain Hazelwood's testimony and that's
- (8) what
- (9) he said that's what he said yes
- (10) Q Do you have reason to doubt that?
- (11) A Yes I do
- (12) Q You do based on what?
- (13) A Well first of all there was also testimony about a
- (14) helmsman who testified rudder all the way over The other
- (15) thing is that if you put only five to ten degree rudder but at
- (16) the same time you go full ahead that doesn't seem to make
- (17) a
- (18) lot of sense Well that seems to be saying I use a blow
- (19) torch
- (20) to light my stove or something like that
- (21) Q Let's you and I -
- (22) MR MONTAGUE Excuse me Mr Chalos has been cutting
- (23) off Mr Van Hemmen
- (24) MR CHALOS I apologize
- (25) BY MR CHALOS
- (26) Q Go ahead Mr Van Hemmen
- (27) A The rudder is the device you use in conjunction with the
- (28) propeller and the rudder is more sensitive than a propeller

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- (1) To start the engine takes a while to get up to speed takes a
- (2) while to slow down To say I first do 25 rpm and I only do
- (3) five to ten degree rudder but then I don't do anything else
- (4) but then I go to a higher speed and I only use five to ten
- (5) degree rudder it doesn't make my sense
- (6) MR CHALOS Did I cut him off?
- (7) MR MONTAGUE Restrain yourself
- (8) THE WITNESS I'm not sure what completes my answer to
- (9) your question I am not a mariner I am a naval architect I'm
- (10) very experienced in grounded situations And I know what kind
- (11) of force it takes to move a vessel a certain way and what kind
- (12) type of rudder angle you use for that Based on that it's my
- (13) opinion more rudder angle was used
- (14) BY MR CHALOS
- (15) Q You don't have any evidence of that?
- (16) A No just my opinion
- (17) Q You didn't do any calculations did you?
- (18) A It doesn't take calculations
- (19) Q You say you're a naval architect but in fact you don't
- (20) have a degree in naval architecture do you?
- (21) A If you add up all the numbers
- (22) Q It's either a yes or no Do you have a degree?
- (23) A No I don't have a naval architecture degree
- (24) Q And the naval architectural experience that you had when
- (25) you worked for Valentine that you told us about?

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- (1) were relatively slow in real life I think you said that?
- (2) A Yes
- (3) Q Is that right?
- (4) A Yes sir
- (5) Q Now you listened to Captain Hazelwood's testimony did
- (6) you
- (7) not about what he perceived to be his concerns at that
- (8) particular moment immediately after running aground?
- (9) A Yes sir
- (10) Q Okay And you remember his saying that he was concerned
- (11) based on what he was seeing about a one degree list port
- (12) right?
- (13) A Yes sir
- (14) Q Do you remember him saying that?
- (15) A Yes sir
- (16) Q He was concerned about his ship sliding off the reef?
- (17) A Yes sir
- (18) Q Right he was concerned about the tide coming up?
- (19) A Yes sir
- (20) Q Lifting him off the reef do you remember all that?
- (21) A That's what he said
- (22) Q And do you remember him saying that what he wanted to do
- (23) was try use the ship's engines and use the ship's rudder
- (24) traditionally to try to get the ship to attain a starboard
- (25) attitude that is come to the right side instead of leaning to
- (26) the left do you remember that?

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- (1) A Yes sir  
 (2) Q And do you remember him also saying to the chief mate get ready to ballast down do you remember that?  
 (3) A Yes, sir  
 (4) Q And do you remember him telling the chief mate get ready to drop the anchors because we re staying right here?  
 (5) A That's what he said  
 (6) Q It was right in the middle of all this maneuvering that was going on do you remember?  
 (7) A I don't think that was entirely clear from the testimony  
 (8) If you can help me out I mean check it but I don't remember that  
 (9) Q I appreciate the invite It was right in the middle of all that maneuvering?  
 (10) A If that's what it says that's what it said  
 (11) Q And do you remember Captain Hazelwood and the chief mate  
 (12) saying that at some point after they were maneuvering the  
 (13) vessel she settled down to starboard?  
 (14) A Yes, sir  
 (15) Q And came down on the reef  
 (16) A Yes, sir  
 (17) Q And then everything was shut down do you remember all that?  
 (18) A Yes sir  
 (19) Q Now and I take it you also remember the testimony of Chief

- (1) A Yes sir  
 (2) Q Okay What that means is if a ship is aground to get her  
 (3) off the ground you ve got to come back right?  
 (4) A Yes sir  
 (5) Q Okay Look at this data logger In all the time that this  
 (6) engine was on from 12 36, right here you see it?  
 (7) A Yeah I can see it now  
 (8) Q Right up to 1 41 when it was finally stopped did Captain  
 (9) Hazelwood ever put the engine in reverse?  
 (10) A No, sir  
 (11) Q In fact at no time after the grounding did Captain  
 (12) Hazelwood ever put the engine in reverse isn't that right?  
 (13) A That's right  
 (14) Q Now you say that the use of the rudder and the engine by  
 (15) Captain Hazelwood could have resulted in additional damage?  
 (16) A Yes  
 (17) Q Do you remember that? Do you recall telling me at the  
 (18) deposition that there was no additional damage caused by the  
 (19) use of the rudder and the engine?  
 (20) A I don't think I told you that  
 (21) Q Well why don't we just read so we re clear as to what you  
 (22) said about that  
 (23) A Sure  
 (24) Q Can I have in my book - I m sorry I am going to show it  
 (25) to him and I m going to let it you know I got so excited

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- (1) Mate Kunkel who said that the captain had to use in his  
 (2) testimony he s a chief mate a licensed captain sailing as a  
 (3) chief mate the captain had to use the engine and the rudder to  
 (4) try and evaluate and assess the situation do you remember  
 (5) that?  
 (6) A I don't remember that no  
 (7) Q You don't remember him saying it Okay Let me ask you  
 (8) this You had an opportunity to read the bell logger on this  
 (9) vessel?  
 (10) A Yes sir  
 (11) Q Let me get it  
 (12) A Well I read  
 (13) Q I want to show it to you I m not trying to trick you  
 (14) A Okay  
 (15) Q I don't want your father getting mad at me  
 (16) A Okay  
 (17) Q I m going to show you the bell logger which has been  
 (18) previously marked as plaintiffs exhibit 81 in evidence This  
 (19) is actually a blowup of the bell logger  
 (20) A Uh huh  
 (21) Q You see that? Do you remember in your deposition and in  
 (22) your report to the plaintiffs making a statement as follows  
 (23) First in refloating unless there is a compelling technical  
 (24) reason a vessel should be refloated along the same path that  
 (25) the vessel grounded do you remember saying that?

- (1) about examining you I left half my things behind Here I am  
 (2) I m going to tell you what page Let me make sure I got the  
 (3) right pages Okay That s it  
 (4) Would you go to page 224 please Okay Are you there?  
 (5) A Yes sir  
 (6) Q So I was reading from your report let s go to line five  
 (7) A Yes  
 (8) Q I m sorry we have to really go back to page 223 line 24  
 (9) Are you there with me?  
 (10) A Yes  
 (11) Q Okay The question was did you express any opinion to  
 (12) Mr Blank who is an attorney for the plaintiffs as to whether  
 (13) the vessel incurred additional damage as a result of the use of  
 (14) the rudder or engine after the grounding? Your answer was  
 (15) yes  
 (16) I did It s listed in my letter  
 (17) Question What is your opinion  
 (18) Answer It s on the second page The second paragraph  
 (19) from the bottom From a structural point of view especially  
 (20) the change in heading under power as can be noted from the  
 (21) course recorder puts great strain on the vessel structure and  
 (22) it might have resulted in additional damage to the vessel s  
 (23) bottom and tank  
 (24) Question So I take it you don't know whether it caused  
 (25) any damage or not  
 (26) Answer No I don't

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- (1) Is that a fair reading?  
 (2) A That's perfect  
 (3) Q Okay So you don't know if the use of the engines and the  
 (4) rudder caused any additional damage?  
 (5) A As to that question I agree yes  
 (6) Q But Mr Blank told you did he not that he had hired  
 (7) another expert by the name of Mr Harrison who went to see the  
 (8) vessel when it was in dry dock in San Diego right?  
 (9) A Yes sir  
 (10) Q And he told you that Mr Harrison told his expert told him  
 (11) that there was no additional damage done as a result of the use  
 (12) of the engine and rudder do you remember that?  
 (13) A Just a couple times he told -  
 (14) Q Mr Blank - let me start again I don't want to lose  
 (15) this Mr Blank told you that Mr Harrison his other expert  
 (16) who had been on the ship in San Diego when the ship was up in  
 (17) dry dock after the damage?  
 (18) A Uh huh  
 (19) Q And who had looked at the ship?  
 (20) A Uh huh  
 (21) Q Had told Mr Blank that there was no additional damage  
 (22) caused by the use of the rudder and the engine isn't that  
 (23) correct?  
 (24) A Well it's correct but at the time Mr Harrison saw it  
 (25) there was 100 tons of steel

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- (1) Q You didn't see the ship at San Diego?  
 (2) A I didn't see the ship  
 (3) Q Mr Harrison did see the ship?  
 (4) A Mr Harrison did see the ship  
 (5) Q He expressed an opinion?  
 (6) A But it's from his inspection That's what I want to make  
 (7) sure He expressed an opinion that the damage was done  
 (8) Q An inspection that you didn't make?  
 (9) A Absolutely not  
 (10) Q Now you said that one of the other things that might have  
 (11) happened by the use of the rudder and the engine was that  
 (12) there  
 (13) would be additional stresses put on there I'm talking about  
 (14) your testimony here  
 (15) A I see yes  
 (16) Q Do you remember that?  
 (17) A Yes sir  
 (18) Q Did you do any calculations to determine where the stresses  
 (19) were put on?  
 (20) A It's impossible to do The obstruction the shape of the  
 (21) obstruction is unknown You don't know where the forces  
 (22) actually hook up  
 (23) Q So it follows then that you don't know without doing any  
 (24) calculations whether in fact any stresses were put on at all?  
 (25) A That's exactly why I say it might have put additional  
 stresses

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- (1) Q But you don't know?  
 (2) A I know for sure that it might have done it I don't know  
 (3) exactly what stresses were put on the vessel  
 (4) Q Now you mentioned that the American Bureau of Shipping is  
 (5) like I think you said the Federal Aviation Agency in that  
 (6) they supervise ship building design and things like that?  
 (7) A Very simplified version that's correct It has absolutely  
 (8) no requirement that a ship has to be inspected by American  
 (9) Bureau of Shipping while you are required to have airplanes  
 (10) inspected by the FAA but the functioning is similar yes  
 (11) Q Do you know who Mr Larossi is?  
 (12) A Yes sir  
 (13) Q Isn't he the president now of American Bureau of Shipping?  
 (14) A Yes after he stopped working for Exxon he became the  
 (15) president of ABS  
 (16) Q He used to be the president of Exxon Shipping right?  
 (17) A Yes sir  
 (18) MR CHALOS Mr Van Hemmen thank you very much I  
 (19) have no further questions  
 (20) THE COURT Redirect?  
 (21) MR MONTAGUE I have no further questions Your  
 (22) Honor Thank you  
 (23) THE COURT Thank you sir You may step down  
 (24) Before we move on I didn't pick up an exhibit number for your  
 (25) simulation

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- (1) MR JAMIN 122 That has been pre admitted, on I  
 (2) believe that was on the original list on May 9th Your Honor  
 (3) at this time we have three additional exhibits to offer into  
 (4) evidence we believe without objection 154 155 and 1793  
 (5) (Exhibit 154 1793 offered)  
 (6) MR LYNCH 155 is for identification only  
 (7) MR JAMIN That's correct Your Honor I would like  
 (8) to confirm that the court's records indicate that number 3 was  
 (9) admitted There was some ambiguity in the transcript  
 (10) THE COURT I have a note in my registry of exhibits  
 (11) that says the second section admitted  
 (12) MR JAMIN Two sections yes sir  
 (13) THE COURT Two sections admitted  
 (14) MR JAMIN What happens the Court indicated we will  
 (15) be publishing that next week through an agreement with the  
 (16) defendants thank you Your Honor  
 (17) THE COURT Let's get straight where we are on these  
 (18) three exhibits 154 is admitted without objection  
 (19) MR LYNCH Yes sir  
 (20) THE COURT 1793 is admitted without objection  
 (21) MR LYNCH Right  
 (22) (Exhibits 154 & 1793 received)  
 (23) THE COURT 155 is merely identified  
 (24) MR LYNCH Identification only The same arrangement  
 (25) that Mr O Neill has to some of the other exhibits

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- (1) MR JAMIN Thank you Your Honor  
 (2) MR O NEILL The plaintiffs call as an adverse  
 (3) witness and for cross examine Mr Dan Paul  
 (4) THE CLERK Would you raise your right hand  
 (5) (The Witness Is Sworn)  
 (6) THE WITNESS I do  
 (7) THE CLERK Please be seated Would you for the  
 (8) record sir state your full name your address and spell your  
 (9) last name  
 (10) THE WITNESS My name is Daniel John Paul Junior  
 (11) P a u l 5414 Windy Lake Drive Kingwood Texas  
 (12) DIRECT EXAMINATION OF DANIEL JOHN PAUL JR  
 (13) BY MR O NEILL  
 (14) Q Sir we ve never met before my name is Brian O Neill and  
 (15) I represent fisherman and Natives who are the plaintiffs in  
 (16) this case against Exxon Corporation You work for Exxon  
 (17) Shipping Company?  
 (18) A I worked for the shipping company in that period yes  
 (19) Q Do you work for Exxon now?  
 (20) A Yes, I do  
 (21) Q What do you do now?  
 (22) A I'm with Sea River Maritime now  
 (23) Q Sea River Maritime is what Exxon Shipping Company is now  
 (24) called?  
 (25) A That's correct, yes sir

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- (1) Q And let's just sort of put you in a couple of jobs in  
 (2) context so we know what role you have to play in this case.  
 (3) Let's take 1985 What was your job in 1985?  
 (4) A I was fleet services manager for Exxon Shipping  
 (5) Q And at some point in time did your job position change?  
 (6) A Yes it did  
 (7) Q And it changed to director of the human resources  
 (8) department?  
 (9) A Human resources manager yes  
 (10) Q What is a human resources manager?  
 (11) A I was responsible for manning the ocean ships for  
 (12) benefits  
 (13) and compensation training labor relations and some  
 (14) administrative duties  
 (15) Q And that was from 1986 until when?  
 (16) A Until 1990  
 (17) Q Did that include responsibility with regard to alcohol  
 (18) policy and those kind of things?  
 (19) A Yes it did  
 (20) Q For the shipping company?  
 (21) A For the shipping company yes  
 (22) Q Now I put in front - I've put in front of you the tools  
 (23) of the trade which are some exhibits and a deposition  
 (24) transcript and that's the big stack over there is your  
 (25) deposition transcript three volumes So if you want to use  
 any of the tools of the trade that you've got up there you just

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- (1) tell me and we'll go ahead and dig them out for you Okay?  
 (2) A All right  
 (3) Q The first thing I want to talk about are two exhibits that  
 (4) should be in that stack up there One of them is plaintiffs  
 (5) exhibit number 1024 and the next one is plaintiffs exhibit  
 (6) number 154 And they both have to do with the rating of  
 (7) masters and they look so you can pull them out of the stack  
 (8) like this You got them?  
 (9) A Yes I have them  
 (10) Q And what is Exhibit 104?  
 (11) A 104 is a 1987 rank list for ocean fleet officers  
 (12) Q And that includes masters or ship captains?  
 (13) A Yes, it does  
 (14) Q And what is exhibit 154?  
 (15) A It's a ~~seriatim~~ rating summary of Joseph Hazelwood  
 (16) Q And would it be fair to say that using these two documents  
 (17) one could put together these two Exxon documents one could  
 (18) put together where Captain Hazelwood ranked vis a vis other  
 (19) masters in the fleet from 1981 to 1988? Is that a fair  
 (20) statement?  
 (21) A Yes it is  
 (22) Q And we've attempted to put these two documents in a  
 (23) graphic  
 (24) form So we have nowhere to put it on the chart Idiot lines  
 (25) there  
 THE COURT See if you can make it work

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- BY MR O NEILL  
 Q And does this chart fairly reflect where his rankings were  
 from '81 to '87?  
 A Not exactly no  
 Q What are we missing?  
 A I think the 1981 data on Exhibit 154 is 25 of 39  
 Q Oh so it should be this green bar should be down here a  
 little bit farther?  
 A That's correct And another problem is 1987 This  
 exhibit  
 says 24 of 29  
 Q 1987 24 of 29? So this should go down to here Like  
 that?  
 A Yes  
 Q And then this is 24 of 29 so we ought to cut it off right  
 about here?  
 A That would make it consistent with this exhibit yes  
 Q Okay Would it be fair to say that he generally ranked in  
 the bottom half?  
 A Yes it would during that time period  
 Q Now in going through these documents I was unable to find  
 a ranking for harbor master in 1985 Do you know why that  
 could  
 be?  
 A Yes We didn't have a ranking that year  
 Q Okay You testify in court rooms on behalf of Exxon  
 Shipping Company in a variety of matters don't you because



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- (1) you re human resources director?  
 (2) A I wouldn't characterize it that way no  
 (3) Q Have you testified in court rooms on occasion on behalf of  
 (4) Exxon Shipping Company or Exxon Corporation?  
 (5) A Yes, I have  
 (6) Q Do you know how many times?  
 (7) A Twice I believe  
 (8) Q How about in arbitrations?  
 (9) A I don't recall ever testifying in an arbitration no  
 (10) Q Okay At some point in time - would it be fair to say  
 (11) that if someone in management gets a tip that a master of a  
 (12) vessel is drinking aboard a company vessel that that is  
 (13) something that management cannot afford to take lightly?  
 (14) A That's a fair statement yes  
 (15) Q And if a fleet manager gets a rumor or a tip that one of  
 (16) his masters is drinking that it would be a prudent thing to do  
 (17) to investigate that rumor?  
 (18) A That's correct  
 (19) Q That s just common sense and sound business practice?  
 (20) A It's prudent yes uh huh  
 (21) Q And would it be fair to say that you can think of no  
 (22) circumstances in your judgment that would excuse a fleet  
 (23) manager who has received some sort of rumor regarding one of  
 (24) his masters drinking you can t think of a circumstance that  
 (25) would excuse him from conducting an investigation can you?

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- (1) A I think that s what my deposition said yes that s  
 (2) correct  
 (3) Q But the matter of a ship master because of his  
 (4) responsibility using alcohol is a serious topic isn t it?  
 (5) A It certainly is yes  
 (6) Q Now at some point in time you became aware of the Graves  
 (7) report and I m going to put it up here I assume that when  
 (8) you became aware of it it wasn t in this heavy form But at  
 (9) some point in time you became aware of the Graves report?  
 (10) A Yes I did  
 (11) Q And about when was that?  
 (12) A It was some time the late spring early summer of 1985  
 (13) Q And you had learned that Captain Hazelwood had consumed  
 (14) alcohol prior to the date of the Graves report?  
 (15) A Yes  
 (16) Q And when you became aware of the Graves report and the  
 (17) substance of the Graves report that was in about 1986 is  
 (18) that about right?  
 (19) MR LYNCH I think he just answered the summer  
 (20) of 85  
 (21) BY MR O NEILL  
 (22) Q The summer of 85?  
 (23) A Yes  
 (24) Q In the summer of 85 when you became aware of the Graves  
 (25) report the thought crossed your mind with regard to Captain

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- (1) Hazelwood that he was able Captain Hazelwood was able to  
 (2) allude monitoring didn t it?  
 (3) A I'm sorry ask that again  
 (4) Q Let me try again When you saw the Graves report you  
 (5) became aware of or at that point in time knew that Captain  
 (6) Hazelwood specifically and - you had had prior dealings with  
 (7) Captain Hazelwood was able to avoid monitoring for alcohol  
 (8) use?  
 (9) A It appeared that that was the case yes  
 (10) Q And that was the thought you had at that point in time?  
 (11) A I don't recall today whether I had that thought then or  
 (12) not  
 (13) Q It s apparent isn t it?  
 (14) A It's not apparent no  
 (15) Q At some point in time did you form a conclusion in your own  
 (16) mind some time after 1985 did you form a conclusion that  
 (17) Captain Hazelwood had lied to you about his drinking?  
 (18) A No, I didn't  
 (19) Q You didn't?  
 (20) A No  
 (21) Q Let s go to your deposition transcript and little go to  
 (22) page 614 lines one through five And why don t you just read  
 (23) that to yourself and refresh your recollection go back to -  
 (24) A I see the answer  
 (25) Q Okay At some point in time you formed a conclusion in

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- (1) your own mind that Captain Hazelwood had been less than  
 (2) truthful with you in the past about his drinking is that a  
 (3) fair statement?  
 (4) A I said that in my deposition I did  
 (5) Q Okay  
 (6) A Upon further reflection the time period was not clear  
 (7) Q So at the time of your deposition you told the examiner my  
 (8) partner Mr Nolting that you formed the conclusion that Captain  
 (9) Hazelwood had lied to you about drinking in the past and today  
 (10) you have a different version?  
 (11) A I have a different reflection of that because the time  
 (12) period that we're talking about here was not clear  
 (13) Q Would it be fair to say that when you read Mr Graves  
 (14) report that you knew that Captain Hazelwood had alluded your  
 (15) particular personal efforts to monitor him?  
 (16) A It was not clear to me when he reported that he was  
 (17) drinking  
 (18) Q At your deposition?  
 (19) A He might have been drinking after the time I was  
 (20) monitoring  
 (21) him he may have been drinking before It wasn't clear  
 (22) Q I m going to ask one more question and I m going to move on  
 (23) to a new subject Would it be fair to say that at your  
 (24) deposition you testified that Captain Hazelwood in your view  
 (25) when you saw the Graves report you formed the conclusion that  
 (26) Captain Hazelwood had alluded your prior efforts to monitor

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- (1) him?
- (2) **A Yes**
- (3) **Q** Thank you And let s talk for a minute about what
- (4) documents the company had at about this point in time We know
- (5) we have the Graves report You re aware of the existence of
- (6) the Graves report because you reviewed it in the summer
- (7) of 85?
- (8) **A I was in a meeting when it was discussed**
- (9) **Q** And we have what everybody refers to as the IDR which is
- (10) Exhibit 20 - this version of it is Exhibit 208 and the IDR is
- (11) Exhibit 10 And you re aware of the existence of the IDR in
- (12) the company files?
- (13) **MR LYNCH** This question is as of today?
- (14) **MR O NEILL** Yes
- (15) **THE WITNESS** I m sorry repeat the question
- (16) **BY MR O NEILL**
- (17) **Q** You re aware of that existence back in 1985 at some point
- (18) in the company files You didn t know in 85 but now you know
- (19) it was in the company files?
- (20) **A That's correct yes**
- (21) **Q** Third time is the charm
- (22) **A Got you**
- (23) **Q** And there s one other document I want to ask you about and
- (24) I have it up there And it s in the form of a document that s
- (25) got a seal on the front of it NTSB seal and it s Exhibit 745

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- (1) **A Yes I see it**
- (2) **Q** And this is a document which we got from the National
- (3) Transportation Safety Board and the page the first page after
- (4) the certificate from the transportation safety board is a
- (5) letter that you wrote to a Dr Birky in August of 1989
- (6) enclosing a benefit record sickness report of Joseph
- Hazelwood**
- (7) do you see that?
- (8) **A Yes I do**
- (9) **Q** And the next page is the benefit record sickness report
- (10) Do you see that?
- (11) **A Yes**
- (12) **Q** Let me see if I can actually - let s switch back and see
- (13) if I can pull this up
- (14) I m going to put it up on the T V screen and see if we can
- (15) get a good look at you Now where did this benefit record
- (16) sickness report come from?
- (17) **A I believe it came from our benefits administrator file**
- (18) **Q** And in the upper left hand corner there is an entry that
- (19) says has Joseph Hazelwood and it has got a diagnosis ALC
- (20) treatment do you see that?
- (21) **A Yes**
- (22) **Q** And then right over here it has got an entry 4/16/85 hos
- (23) through 4/29 then LOA for group something else marilax
- (24) therapy AA lectures et cetera do you see that?
- (25) **A I see something like that yeah it's hard to read it**

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- (1) **Q** Do you know what LOA means?
- (2) **A Leave of absence**
- (3) **Q** How about marilax do you know what that is?
- (4) **A I have no idea**
- (5) **Q** Oh the marital therapy I m sorry What a dummy
- (6) Jesus Okay marital therapy So would it be fair to say that
- (7) this entry 4/16/85 hospital through 4/29 then leave of
- (8) absence group whatever the next word is marital therapy that
- (9) was in the Exxon Shipping Company files in the benefits -
- (10) **A That is my understanding**
- (11) **Q** Did you actually have somebody pull this file out of the
- (12) benefits department so you can send it over to the national
- (13) safety transportation board?
- (14) **A Yes**
- (15) **Q** At the time we now have three documents that we ve seen
- (16) from the records of the company we have the Graves report
- (17) we
- (18) have Exhibit 10 which is the IDR and we have this document
- (19) that we just talked about With regard to Captain Hazelwood
- (20) and his treatment are these the only three documents you
- (21) know
- (22) of that come out of the company files with regard to his
- (23) treatment?
- (24) **A That's all I'm aware of yes**
- (25) **Q** And at some point in time you did some kind of a search so
- (26) that you could respond to the National Transportation Safety
- (27) Board?

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- (1) **A Yes**
- (2) **Q** And would it be fair to say that in doing your search you
- (3) turned up no documents in the Exxon Shipping Company files
- (4) or
- (5) for that case in any Exxon Corporation files that formally
- (6) reflected a determination that he was fit for duty?
- (7) **A I believe I was responding to a specific request here from**
- (8) **Admiral - or from Mr Birky**
- (9) **Q** Let me ask another question then Do you know of any
- (10) documents that formally reflect a fitness for duty
- (11) determination?
- (12) **A I'm not - I don't recall any no**
- (13) **Q** And do you know any documents that formally reflect any
- (14) monitoring of Captain Hazelwood after 1985?
- (15) **A The documents'**
- (16) **Q** Yes sir
- (17) **A I'm not aware of any**
- (18) **Q** And?
- (19) **A C in I add to that statement'**
- (20) **Q** Sure
- (21) **Q** Other than the general performance evaluations of any of
- (22) our employees
- (23) **Q** So we have the performance evaluations in the file too?
- (24) **A Yes**
- (25) **Q** And in 1986 the year after treatment Captain Hazelwood s
- (26) performance was such that he was ranked 35 out of 37 masters

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- (1) isn't that correct? You want to check?
- (2) **A In 1986?**
- (3) **Q Yes sir**
- (4) **A 35 of 37 that's correct**
- (5) **Q So with regard to the issue of what we have in the files**
- (6) **that concern Captain Hazelwood drinking alcoholism**
- (7) **treatment that core set of facts we've covered the universe**
- (8) **of documents?**
- (9) **A We may have**
- (10) **Q That you know of?**
- (11) **A The ones I'm aware of**
- (12) **Q Thank you sir**
- (13) **A Could I add another -**
- (14) **Q Sure**
- (15) **A - to my statement Other than the underlying**  
**evaluations**
- (16) **of course on Captain Hazelwood**
- (17) **Q And the performance evaluations don't talk one way or the**
- (18) **other about alcoholism recovery AA treatment return to**
- (19) **fitness fitness for duty do they what?**
- (20) **MR CHALOS Your Honor I move to strike any**
- (21) **reference to alcoholism There's been no records and there's**
- (22) **been no testimony of that**
- (23) **THE COURT I'm not going to strike the reference**
- (24) **We've had testimony on that subject and the jury will have to**
- (25) **decide what the issues are and what the answers are I will**

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- (1) **decide what the issues are the jury will decide what the facts**
- (2) **are**
- (3) **THE WITNESS Could you repeat the question please**
- (4) **BY MR O NEILL**
- (5) **Q Other than the document the performance evaluations don't**
- (6) **address this subject do they?**
- (7) **A They address the employee's performance on the job**  
**and**
- (8) **part of his performance on the job is being able to perform**  
**the**
- (9) **job in a fit manner**
- (10) **Q Is there anything on any of the performance evaluations**
- (11) **that says I talked to the captain about his recovery**
- (12) **treatment problems with alcohol I followed up with them about**
- (13) **any of those things is there anything in any of those**
- (14) **documents in that tone or tenor that you're aware of?**
- (15) **A Not that I'm aware of**
- (16) **Q As the human resources manager of Exxon Shipping and**  
**now**
- (17) **what is -**
- (18) **A Sea River Maritime**
- (19) **Q - you have a responsibility for issues dealing with the**
- (20) **subject of alcoholism don't you?**
- (21) **A I'm not currently the human resources manager**
- (22) **Q When you were?**
- (23) **A When I was yes I had that responsibility**
- (24) **Q Had you realized that people who have a problem with**
- (25) **alcohol in the workplace don't always fit the stereotype of a**

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- (1) **skid row hump or falling down drunk that's a correct**  
**statement?**
- (2) **A I'm aware of that statement**
- (3) **Q And indeed such stereotypes really don't help our solutions**
- (4) **with those problems a heck of a lot do they?**
- (5) **A No they don't**
- (6) **Q And your understanding of the disease of alcoholism is that**
- (7) **you're always recovering and you must abstain from alcohol**  
**use?**
- (8) **A That's my understanding of alcoholism yes**
- (9) **Q Now would it be fair to say that Exxon medical department**
- (10) **in your view was responsible for determining whether Captain**
- (11) **Hazelwood successfully completed his alcoholism**  
**rehabilitation?**
- (12) **A Yes we rely when there's a question of - from the**
- (13) **benefits group If there's a question about the individual**
- (14) **doctor's concern or you know diagnosis then we refer that**  
**to**
- (15) **the medical department and rely ultimately on their**  
**judgment**
- (16) **Q And at no time after Captain Hazelwood left alcohol**
- (17) **rehabilitation did you as the human resources manager ask**  
**him**
- (18) **whether he completed any aftercare program?**
- (19) **A That's correct**
- (20) **Q And as the human resources manager of Exxon Shipping**
- (21) **Company and prior to the grounding you're not aware of**  
**anyone**
- (22) **from Exxon Shipping Company who spoke to the medical**  
**department**
- (23) **about what type of aftercare Captain Hazelwood should have?**
- (24) **A I'm not aware of any no**

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- (1) **Q And at no time in fact at no time prior to the grounding**
- (2) **did you know whether Captain Hazelwood was in any kind of**
- (3) **aftercare program at all?**
- (4) **A Yes**
- (5) **Q But you had heard at some point in time a rumor about AA**
- (6) **that he might have attended AA?**
- (7) **A I might have**
- (8) **Q So that was something you had in your mind prior to this**
- (9) **grounding that this captain might be going to AA?**
- (10) **A I believe that's correct yeah**
- (11) **Q And would it be fair to say that you never discussed with**
- (12) **Captain Hazelwood whether he was attending AA on a regular**
- (13) **basis?**
- (14) **A No I never discussed that with him**
- (15) **Q In fact you never discussed the subject of AA with Captain**
- (16) **Hazelwood at all did you?**
- (17) **A No I didn't**
- (18) **Q At some point in time after leaving alcohol rehabilitation**
- (19) **Captain Hazelwood was assigned to the Exxon Yorktown is that**  
**a**
- (20) **correct statement?**
- (21) **A Yes**
- (22) **Q Was it your understanding that the fleet manager that**
- (23) **Captain Hazelwood worked for was responsible for monitoring**  
**his**
- (24) **performance and abstinence?**
- (25) **A For his performance and he monitors the abstinence of**

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- (1) everybody that's working on board a ship while they're working  
 (2) on the ship  
 (3) Q While they were he working on the ship?  
 (4) A Yes  
 (5) Q That's a qualification to the answer you gave in your deposition isn't it?  
 (6) A I don't recall exactly what I said in the deposition  
 (7) Q Would you go to page 164 of your deposition transcript Go to page 163 I'm sorry sir Line 16 to line 20 and I'll read the question and answer and if you could follow along and make sure that I get it right  
 (8) And the question was referring to Captain Hazelwood and the question was Were you aware of his monitoring while he was on the job  
 (9) Answer I was aware that the fleet manager that he worked for was responsible for monitoring his performance and abstinence Do you see that?  
 (10) A Yes, I do  
 (11) Q Did I read the question and answer fairly?  
 (12) A You did  
 (13) Q I think I said the same thing And a recovering alcoholic is supposed to be abstinent in your view?  
 (14) A The question was aware of his monitoring while he was on the job, and that's the way I answered the question  
 (15) Q Would it be fair to say that you assume that the medical

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- (1) department evaluated Joe Hazelwood after his rehabilitation program?  
 (2) A I assumed that I think yes  
 (3) Q And in fact you assumed that was the normal procedure didn't you?  
 (4) A Where it was requested by our people it was yes  
 (5) Q Now you were the human resources manager from '86 to '87?  
 (6) A Yes during that period of time from fall of '86  
 (7) Q And Dwight Koops was in what position during that period of time?  
 (8) A '86 to '87  
 (9) Q Yes sir  
 (10) A Dwight would have been the gulf coast fleet manager at that time  
 (11) Q And that's where Captain Hazelwood was?  
 (12) A Yes I believe - I believe he was in that for part of '87  
 (13) Q And at that point in time you were the director of human resources for Exxon Shipping Company?  
 (14) A Human resources manager  
 (15) Q I keep on getting that wrong don't I? Is that a promotion or a demotion?  
 (16) A I have no idea  
 (17) Q And would it be fair to say that you don't recall ever discussing Captain Hazelwood's alcohol rehabilitation with Dwight Koops?

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- (1) A True  
 (2) Q And you never discussed monitoring Captain Hazelwood's drinking with Dwight Koops?  
 (3) A That's correct  
 (4) Q Did you ever tell Dwight Koops about your concerns about the problems in monitoring Captain Hazelwood at all?  
 (5) A Not that I recall  
 (6) Q Did the Exxon Shipping Company officers who reassigned Captain Hazelwood to the Exxon Valdez in 1987 consult with you about that reassignment?  
 (7) A Not that I recall, no  
 (8) Q Do you recall if they consulted the medical department about that reassignment?  
 (9) A I don't know  
 (10) Q Now there was one instance in which you did get involved in monitoring Captain Hazelwood?  
 (11) A Yes uh huh  
 (12) Q And that was at the 1988 fleet conference?  
 (13) A Fleet officer conference yes I was asked to monitor him  
 (14) Q And that was by Mr. Larossi and he asked you and Harvey Borgen to monitor him just at the fleet conference?  
 (15) A We were attending the fleet conference together, yes  
 (16) Q And did you tell Mr. Borgen that you had had reservations about your ability to successfully monitor Captain Hazelwood at or about this 1988 fleet conference time? Do you understand

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- (1) the question?  
 (2) A I'm not sure that I do  
 (3) Q Are there too many words in that question?  
 (4) A I'm not sure of the time frame you're talking about  
 (5) Q You and Borgen are going to monitor Hazelwood pursuant to Larossi's request at this conference in 1988?  
 (6) A Yes  
 (7) Q Did you tell Harvey I tried to monitor this guy before I had problems it didn't work out or words to that effect?  
 (8) A No I don't believe I did uh uh  
 (9) Q Now how long was this fleet conference?  
 (10) A About a week  
 (11) Q And other than this request from Larossi and this one week fleet conference that's the sum and substance of your knowledge with regard to monitoring Captain Hazelwood?  
 (12) A I did on my own without mentioning it to anybody monitor him in the 1987 officer conference as well which I attended, also held in Houston about a week long conference and because of the knowledge I had I did observe him more carefully and was aware of his past problem  
 (13) Q And you weren't monitoring him for mild depression were you you were monitoring for alcohol use?  
 (14) A That's correct uh huh  
 (15) Q And that was sort of done on your own?  
 (16) A Yes

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(1) Q Nobody asked you to do it?  
 (2) A No  
 (3) Q It was common sense because we had a potential problem  
 (4) here?  
 (5) A I just felt that it would be prudent for me to do it  
 (6) Q Because a drinking ship captain is a dangerous thing isn't  
 (7) that right?  
 (8) A Can be  
 (9) Q Now let me ask a little bit as the human resources  
 (10) manager you never told anyone that Captain Hazelwood - up  
 to  
 (11) the time of the grounding you never told Captain Hazelwood -  
 (12) you never told anyone that Captain Hazelwood had alluded  
 your  
 (13) attempts to monitor his use of alcohol did you?  
 (14) A Well, I wasn't sure that he alluded my attempts  
 (15) Q You had concerns didn't you?  
 (16) A I had concerns  
 (17) Q And after Captain Hazelwood returned from alcohol  
 (18) rehabilitation you never asked him if he had resumed drinking  
 (19) did you?  
 (20) A No just observed when I could  
 (21) Q You didn't go in and say Joe how's your recovery doing  
 (22) how's AA how's aftercare have you resumed drinking you  
 (23) didn't do that did you?  
 (24) A No I sure didn't  
 (25) Q And indeed you're not aware of anyone from Exxon who  
 asked

(1) describe to us all what the memo discusses?  
 (2) A It discusses the proposal to enhance the professionalism  
 of  
 (3) our masters by allowing them to receive compensation for  
 using  
 (4) pilotage in certain cases  
 (5) Q So that if a master had a pilotage endorsement for Prince  
 (6) William Sound he could use that pilotage endorsement it  
 (7) would - the policy would encourage him to go out and get the  
 (8) pilotage endorsement that kind of thing were the ones that  
 (9) already had the pilotage endorsement would use it this would  
 (10) compensate them for that and encourage others to go out and  
 do  
 (11) this same kind of professional thing?  
 (12) A Yes  
 (13) Q And indeed the company by using or qualifying its captains  
 (14) as pilots could not only enhance their professionalism but  
 (15) could save some money?  
 (16) A In that period of time that's correct  
 (17) Q And how much?  
 (18) A It depended on the port and how often it was used  
 (19) Q Let's talk about Valdez  
 (20) A I don't have any specific recollection right now  
 (21) Q Thousands of dollars?  
 (22) A It was a fairly you know several hundred thousand a  
 year  
 (23) I think Or a few hundred thousand  
 (24) Q Would it be fair to say that two of the disadvantages or  
 (25) limitations on the utilization of employee pilots were that it

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(1) Captain Hazelwood after he got out of rehabilitation whether  
 (2) he had resumed drinking?  
 (3) A I'm not aware of anyone no  
 (4) Q Was turn around time one of the criteria used in evaluating  
 (5) masters?  
 (6) A It was a very minor part of an overall performance  
 (7) evaluation of all of our officers that were involved in running  
 (8) a ship  
 (9) Q That's because turn around time is related to profit isn't  
 (10) it?  
 (11) A It's one of many factors yes  
 (12) Q Now I want to go exhibit 1793 It's a memo of yours or  
 (13) appears to be a memo of yours dated 3/27/1980 on the subject  
 (14) of the employee pilot proposal Do you have that?  
 (15) A Which exhibit again please?  
 (16) Q It's 1793?  
 (17) A Yes, I see that  
 (18) Q And what is 1793?  
 (19) A It's a memorandum I wrote to Jim Swartz on an employee  
 (20) pilot proposal in 1980  
 (21) Q And did it deal with among other things the subject of  
 (22) pilotage in Prince William Sound?  
 (23) A Yes, it did  
 (24) Q Put the first page of the exhibit up on the screen twice  
 (25) Now basically what does the memo discuss if you could

(1) would result in the loss of an extra advisor in the master on  
 (2) the bridge that's a disadvantage?  
 (3) A That was a potential disadvantage  
 (4) Q And media criticism for not taking a local pilot in the  
 (5) event of a serious casualty?  
 (6) A That was mentioned as a down side  
 (7) Q You mention that as a down side?  
 (8) A I did yes uh huh  
 (9) Q At some point in time you consulted with Frank Larossi  
 (10) president of Exxon Shipping Company regarding the decision  
 to  
 (11) terminate Captain Hazelwood Is that a correct statement?  
 (12) A Yes I did  
 (13) Q Did you review the press release?  
 (14) A No, I did not  
 (15) Q Did you approve his termination?  
 (16) A I didn't - wasn't in a position to approve it, no  
 (17) Q Did you see the press release?  
 (18) A Not before it was sent out no  
 (19) Q Did you see it after it was sent out?  
 (20) A I've seen it recently  
 (21) Q This is a terrible copy but I think it says Frank the  
 (22) middle paragraph reads Frank Larossi president of Exxon  
 (23) Shipping Company said that the decision to terminate the  
 (24) employee was made because he violated company policy  
 concerning  
 (25) alcohol Do you see that?

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- (1) **A That's on Exhibit 173?**  
 (2) **Q Yes sir**  
 (3) **A Yes I see that uh huh**  
 (4) **Q Is it your understanding that this press release was issued**  
 (5) **to the press the world and that in fact was a statement made**  
 (6) **in the press release?**  
 (7) **A I don't have an understanding about that All I see is**  
 (8) **that this says it was a press release from shipping company**  
 (9) **Q This is in evidence and I want to read the next paragraph**  
 (10) **and I want to ask you whether you agree with the paragraph or**  
 (11) **not I m going to read the last paragraph and I m going to**  
 (12) **say do you agree or do you not**  
 (13) **We are all extremely disappointed and outraged that an**  
 (14) **officer in such a critical position would have jeopardized his**  
 (15) **ship crew and the environment through such actions Our**  
 (16) **policies in this area are very clear Larossi explained do you**  
 (17) **see the statement?**  
 (18) **A I see the statement**  
 (19) **Q Do you agree with the statement or disagree with the**  
 (20) **statement?**  
 (21) **A I don't except the predicate to the statement so I can't**  
 (22) **agree with the statement**  
 (23) **MR O NEILL Nothing further Judge thank you**  
 (24) **THE COURT Cross**  
 (25) **MR LYNCH Your Honor at your convenience I d like**

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- (1) **to have a short side bar at your convenience It doesn't have**  
 (2) **to be right away**  
 (3) **THE COURT Go ahead and we'll take care of it when we**  
 (4) **take our recess at noon**  
 (5) **MR LYNCH Thank you**  
 (6) **CROSS EXAMINATION OF DANIEL JOHN PAUL JR**  
 (7) **BY MR LYNCH**  
 (8) **Q Mr Paul I represent the shareholders of Exxon and we have**  
 (9) **met probably more than you wish?**  
 (10) **A Yes sir**  
 (11) **Q I d like to ask you first of all just to fill out your**  
 (12) **work history at Exxon a little further Mr O Neill began with**  
 (13) **you in 1985 Prior to that time was it true that you had been**  
 (14) **for a while the West Coast fleet manager?**  
 (15) **A That's true yes**  
 (16) **Q And what period of time did that cover?**  
 (17) **A That was from 1977 the start up of the operation on the**  
 (18) **West Coast until the summer of 1982**  
 (19) **Q And at the time that you wrote the memorandum about**  
 (20) **pilotage that Mr O Neill showed you Toward the end you were**  
 (21) **the West Coast fleet manager?**  
 (22) **A That's true**  
 (23) **Q For a period of time did Captain Hazelwood report directly**  
 (24) **to you?**  
 (25) **A Yes he did**

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- (1) **Q Did he report directly to you during the 1985 1989 period**  
 (2) **that Mr O Neill was asking you about?**  
 (3) **A No**  
 (4) **Q Now I m going to address my questions at this point to**  
 (5) **that period that Mr O Neill was asking you about basically**  
 (6) **1985 through March 23 or March 24 1989**  
 (7) **Your Honor may I approach the witness**  
 (8) **THE COURT Uh huh**  
 (9) **BY MR LYNCH**  
 (10) **Q I d like to hand you what I believe is marked as DX170**  
 (11) **Would you identify that for the record?**  
 (12) **A Yes This is the Exxon Shipping Company safety credo**  
 (13) **Q And was that an credo adopted by the company about 1984?**  
 (14) **A Yes, it was**  
 (15) **Q Do you recognize that plaque?**  
 (16) **A This is a plaque that is posted on each of the vessels in**  
 (17) **our fleet**  
 (18) **Q And was that - does that plaque basically state the**  
 (19) **management position on the role that safety should play in**  
 (20) **running the ships and running the company?**  
 (21) **A Yes, this is kind of our bible**  
 (22) **MR LYNCH I'll offer DX170 Your Honor I don't**  
 (23) **believe there's an objection**  
 (24) **(Exhibit DX170 offered)**  
 (25) **MR O NEILL No objection**

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- (1) **THE COURT DX170 is admitted**  
 (2) **(Exhibit DX170 received)**  
 (3) **BY MR LYNCH**  
 (4) **Q Now in connection with carrying out the Exxon Shipping**  
 (5) **Company safety credo what steps did Exxon Shipping**  
 (6) **Company**  
 (7) **take to promote consciousness of safety within its fleet and**  
 (8) **among it's people?**  
 (9) **A The credo was just the next step we took in a long, long,**  
 (10) **history of trying to promote safety in our fleet but with the**  
 (11) **credo we did announce it to all the employees put it in our**  
 (12) **company newspaper we visited ships and had meetings**  
 (13) **with**  
 (14) **employees and encouraged them to discuss it in their safety**  
 (15) **meetings when it was first announced And then in 1987 we**  
 (16) **had**  
 (17) **a safety initiative as another step in trying to reinforce our**  
 (18) **commitment to safety and keep it foremost in people's**  
 (19) **minds**  
 (20) **Q What was the safety initiative?**  
 (21) **A Safety initiative was a program we had We sent our**  
 (22) **senior**  
 (23) **marine advisor Bill Duncan to each of the ships in the fleet**  
 (24) **with another group of people from our company We**  
 (25) **stopped the**  
 (26) **operation of each vessel for about a day**  
 (27) **Q When you say you stopped the operation dropped the**  
 (28) **anchor**  
 (29) **and tied it up somewhere?**  
 (30) **A Well the vessels were in port at a dock typically maybe at**  
 (31) **anchor and we shut down the operation the cargo**  
 (32) **operations**  
 (33) **left just a safety watch on the bridge and brought the rest of**

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- (1) the crew in to a lengthy meeting to describe the reinforcement
- (2) of the safety program we have to reinforce the safety credo
- (3) and to implement some new programs that we were sponsoring
- (4) under this safety initiative
- (5) Q Did - was there an ongoing effort to promote consciousness and awareness of safety?
- (6) A Yes there was
- (7) Q And what form did that take? How do you keep people alert to the concept of safety?
- (8) A We use every means available to us basically to try to do that Our supervisors enforce the safe acts concept As they
- (9) assign work to people we have job hazard analysis steps that we
- (10) take in the beginning of each significant job to walk through the safety aspects of potential problems We have a lot of
- (11) postures and bulletin boards and themes of the month and things
- (12) like that we put on the ships and just to try to keep safety foremost in everybody's mind
- (13) Q And do you give awards and recognize to people for safety performance?
- (14) A Yes we do
- (15) Q And let me direct your attention to what I believe is marked as DX9118 This is a Mr Murtiashaw tells me a montage
- (16) of photos of awards issued to various ships and people Is that correct sir?
- (17) A That's correct yeah

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- (1) Q And is that - that's the type of award that the company offers and bestows on ships or crews or people?
- (2) A That's an example of them There are other awards beyond
- (3) that too
- (4) Q Okay And are those awards taken seriously?
- (5) A I think they are yes
- (6) Q Are they important to the people who are working on the ships do they have career and pay and rating significance to people?
- (7) A Well the awards themselves I think just represent recognition There are other ways to recognize them as well
- (8) through pay
- (9) MR LYNCH May I offer Exhibit 9118 Your Honor (Exhibit 9118 offered)
- (10) MR O NEILL Oh objection
- (11) THE COURT Admitted
- (12) (Exhibit 9118 received)
- (13) BY MR LYNCH
- (14) Q Has Exxon Shipping been recognized by any outside agency?
- (15) A Yes we have a reputation of probably being the premiere operator in the industry
- (16) Q Let me ask you to look at Exhibit 9117 for identification at the moment Could you describe that for the record
- (17) Mr Paul?
- (18) A Yes That's a three different kinds of awards that

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- (1) shipping company receives for participation in safety programs
- (2) and for safety excellence
- (3) Q And are those issued by outside agencies or by Exxon Shipping Company?
- (4) A These are outside agencies Two of them are jointly issued
- (5) each year awarded each year by the American Institute of Merchant Shipping and the National Safety Counsel
- (6) Q What award is that?
- (7) A The Jones Devlyn award which is on the left hand - top left hand side
- (8) Q These awards here?
- (9) A Yes
- (10) Q What are those for?
- (11) A Those are awarded to a vessel for having no disabling injuries for a period of either one two four or five years we have one ship there that shows I think didn't have a disabling injury for a period of five years
- (12) Q And how does Exxon Shipping performance for the Jones Devlyn award compare with other U S flag companies?
- (13) A Any shipping company that wants to participate in that program can nominate vessels for it and we typically bring a
- (14) large majority of those awards back to our fleet, a large percentage of the ones that are awarded
- (15) MR LYNCH Offer 9117 Your Honor
- (16) (Exhibit 9117 offered)

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- (1) MR O NEILL No objection
- (2) THE COURT Admitted
- (3) (Exhibit 9117 received)
- (4) MR LYNCH If this is a good time I could stop here
- (5) THE COURT We'll be in recess for 15 minutes and counsel standby for a minute take up the matter We'll break at this time
- (6) THE COURT Does this need to be on the record for off?
- (7) MR LYNCH No Your Honor
- (8) THE COURT We're off the record
- (9) (Jury out at 12 00 p m)
- (10) (Recess at 12 00 p m)
- (11) (Jury in at 12 17 p m)
- (12) MR LYNCH May I proceed Your Honor
- (13) THE COURT You may
- (14) BY MR LYNCH
- (15) Q Mr Paul you said that when you were made I hope I get it right manager of human resources in 1986 was it?
- (16) A Yes
- (17) Q That your responsibility was for manning or seeing that Exxon Shipping ocean vessels had proper crews is that correct?
- (18) A That's correct yes
- (19) Q And how did Exxon Shipping go about doing that?
- (20) A We have unlike a lot of companies in our industry who draw

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(1) their employees out of union hauls by seniority we have the  
 (2) benefit of having the company employees running our ships  
 so we  
 (3) can really hand pick each one of them and train them and  
 put  
 (4) them on the same vessels and have much better continuity  
 and  
 (5) therefore we think a safer operation  
 (6) Q So other U S flagships don't have permanent full time  
 employees on their crews?  
 (7) A Most companies in the industry have contracts with  
 national  
 (8) unions that represent most of the employees When they  
 when a  
 (9) company needs a seafarer they go to the union hall and the  
 union assigns an employee to fill their billet  
 (10) Q What is the advantage of Exxon Shipping of having full time  
 permanent employees as opposed to going to an union hall?  
 (11) A I think we maintain better quality control over our people  
 (12) that way we can hand pick them We can select maritime  
 academies We can license people in independent union  
 they're  
 (13) still company employees and we can pick them each one  
 individually  
 (14) We can train the people on our programs and policies and  
 (15) best in training them because we know that they're here for  
 a  
 (16) career basically We're hiring the employees for a career  
 and  
 (17) we can assign them to the same vessels so they can get to  
 know  
 (18) the vessel get to know each other is a team and we think  
 that  
 (19) provides us a better operation

~~(20) Q Just a couple quick points Did I hear you say it's your~~

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(1) policy to keep the same people on the same ships on a regular  
 basis?  
 (2) A Yes particularly the officers and on few key people  
 (3) Q To keep the same crews together generally speaking from  
 trip to trip?  
 (4) A Yes We don't have a blue team and a gold team they all  
 get off at once They stagger their rotations but the same  
 people share the same assignment on a ship  
 (5) Q Now for deck officers - first of all what is a deck  
 officer could you just clear that up for the record?  
 (6) A A deck officer is a master a chief mate second mate or  
 third mate and they're responsible for the navigation of the  
 vessel and for cargo handling  
 (7) Q What other kind of officer is there?  
 (8) A There's an engineering officer and there are four of them  
 or five of them on a ship, depending on the design They're  
 responsible for the propulsion system on the ship  
 (9) Q The deck officers are they supposed to work in the  
 propulsion area?  
 (10) A No they can't by Coast Guard regulations  
 (11) Q The deck officers may only be involved in deck duties?  
 (12) A Deck and cargo  
 (13) Q And the engineering officers may also have propulsion  
 duties?  
 (14) A Propulsion and cargo They can't navigate the ship

Vol 14 2079

(1) Q There's been good evidence that training - do you - let  
 me ask you to look at Exhibit 3439 At my request did you pull  
 (2) together a list of some training courses that Exxon provided to  
 (3) its people?  
 (4) A Yes I did  
 (5) Q And are these courses that were provided by Exxon itself  
 (6) inhouse?  
 (7) A Some of these were inhouse most of the ones on this  
 page,  
 (8) though, are from third party providers other companies that  
 (9) provide these services  
 (10) Q Some school or some other agency to provide teaching?  
 (11) A Yes  
 (12) MR LYNCH I will offer 3439  
 (13) (Exhibit 3439 offered)  
 (14) MR O NEILL No objection  
 (15) THE COURT Defendants 3439 is admitted  
 (16) (Exhibit 3439 received)  
 (17) BY MR LYNCH  
 (18) Q Now with reference to the people you were talking about  
 (19) the full time employees who are aboard ships is there  
 (20) something called industrial due process in the human  
 resources  
 (21) field?  
 (22) A Yes there is  
 (23) Q Could you explain for the jury what you mean by that  
 phrase?

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(1) A It provides a framework legal framework under which we  
 (2) must deal with our employees Deal with things like  
 respecting  
 (3) their rights of privacy certain labor laws that dictate how we  
 (4) must handle people's disputes or handicap laws there's a  
 lot  
 (5) of laws we have to abide by and under that framework  
 (6) Q Specifically - is it manager of human resources or human  
 (7) resources management?  
 (8) A Whichever is easier for you to say  
 (9) Q Did you have to take into account the rehabilitation act in  
 (10) your staffing of Exxon Shipping Company ships?  
 (11) A Yes we did  
 (12) Q And how did that act affect treatment of people who had a  
 (13) history of alcohol treatment?  
 (14) A Well it required you not to discriminate against those  
 (15) people and to keep their problems confidential  
 (16) Q Were people in that category classified as handicap people?  
 (17) A They were classified as that handicap  
 (18) Q Was Exxon Shipping Company required to make jobs  
 available  
 (19) to them if they were up to doing those jobs?  
 (20) A Yes if they were otherwise qualified  
 (21) Q Was that a factor that affected the way you implemented as  
 human resources manager the operation of the manning of the  
 (22) fleet overall?  
 (23) A Yes it is  
 (24) Q What other restrictions or what other effects did



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- (1) industrial due process have on how Exxon Shipping could man  
and  
(2) operate its fleets?  
(3) **A Well there were privacy rules that we had to abide by that**  
(4) **basically limited how much information we could know**  
**about an**  
(5) **individual**  
(6) **Q And did those rules also affect what you – what you could**  
(7) **use as a basis for job action?**  
(8) **A Other rules not the privacy rules but other rules did I**  
(9) **think yes**  
(10) **Q Mr O Neill for example asked you whether checking people**  
(11) **went to AA programs is that something that an employee is**  
(12) **typically entitled to take into account in a job related**  
(13) **arrangement?**  
(14) **A No**  
(15) **Q Now with reference to the deck complement what types of**  
(16) **tankers did Exxon Shipping operate?**  
(17) **A We operate both crude and product tankers**  
(18) **Q Now could you explain the difference between those two?**  
(19) **A A product tanker is a tanker that carries refined products**  
(20) **or intermediate feed stocks or chemicals like gasoline**  
(21) **heating oil jet fuel from refineries typically to marketing**  
(22) **terminals where they're further distributed to the customer**  
(23) **Q And a crude tanker carried only crude oil?**  
(24) **A Instead of having several grades of cargo on a ship you**  
(25) **would typically only have one grade Valdez**

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- (1) **Q And that is?**  
(2) **A That's crude oil**  
(3) **Q Exxon Valdez was a crude oil tanker?**  
(4) **A That's correct yes**  
(5) **Q In connection with your West Coast fleet manager**  
(6) **experience**  
(7) **and your experience as manager of human resources did you**  
(8) **become acquainted with the way that companies other than**  
(9) **Exxon**  
(10) **Shipping staff those ships as far as deck officers were**  
(11) **concerned?**  
(12) **A Yes I did**  
(13) **Q And what was the industry standard staff arrangement for a**  
(14) **crude oil tanker?**  
(15) **A A master and three mates**  
(16) **Q And what did Exxon Shipping use?**  
(17) **A A master and three mates**  
(18) **Q Now were there statistics available to you published by**  
(19) **the government relating to the shipments that call at Valdez**  
(20) **Alaska?**  
(21) **A Yes there are**  
(22) **Q And at my request did you examine those statistics as they**  
(23) **relate to the year 1988?**  
(24) **A Yes, I did**  
(25) **Q And did you determine from those government sources what**  
(26) **the staffing was of the typical crude oil tanker calling at**  
(27) **Valdez Alaska?**

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- (1) **A I did yes**  
(2) **MR LYNCH I believe you have no objection but let**  
(3) **me know you Exhibit 3431B as in haker**  
(4) **(Exhibit 3431B offered)**  
(5) **MR O NEILL No objection**  
(6) **MR LYNCH I'll offer it Your Honor**  
(7) **THE COURT 3431B is admitted**  
(8) **(Exhibit 3431B received)**  
(9) **BY MR LYNCH**  
(10) **Q Could you just explain briefly what this chart illustrates?**  
(11) **A-Yes it states in 1988 there were 55 tankers that were**  
(12) **called at Valdez and based on the government reports 50 of**  
(13) **those tankers were manned with master and three mates**  
(14) **and five**  
(15) **of them were manned with a master and four mates**  
(16) **Q So the names of the various ships that had the three mate**  
(17) **and master complements are in the blue?**  
(18) **A That's correct**  
(19) **Q And the five ships that had four mates in addition to a**  
(20) **master in red is that correct?**  
(21) **A That's correct**  
(22) **Q Were you acquainted with both of the job capacities I**  
(23) **referred with a Coast Guard regulation that is commonly**  
(24) **called the six hour rule?**  
(25) **A Yes I am**  
(26) **Q And that rule requires that there be six hours off duty**

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- (1) **time for mates who are going to assume a watch at the time of**  
(2) **leaving port?**  
(3) **A That's correct six hours**  
(4) **Q To your knowledge did Exxon Shipping Company take any**  
(5) **steps to assure that its shipments and its crews were in**  
(6) **compliance with that regulation?**  
(7) **A Yes we did**  
(8) **Q What actions did Exxon Shipping take to assure compliance**  
(9) **with that regulation?**  
(10) **A We had a number of discussions with our senior officers**  
(11) **in**  
(12) **the fleet at these officer conferences that I mentioned**  
(13) **earlier A number of those conferences we talked about six**  
(14) **hour rule and other rules that the masters must comply**  
(15) **with**  
(16) **We told them that it was their responsibility for assuring**  
(17) **that**  
(18) **the six hour rule was complied with as any other law that**  
(19) **they're supposed to be operating under We also did an**  
(20) **analysis with regard to the ability of our company to meet**  
(21) **the**  
(22) **six hour requirements at Valdez**  
(23) **Q Did you have any policy for should a case arise where for**  
(24) **some reason the normal complement wasn't able to comply**  
(25) **with**  
(26) **the six hour rule?**  
(27) **A There was a lot of flexibility in the master's discretion**  
(28) **to rearrange the work schedule of the people or to stop the**  
(29) **ship at the dock or to do whatever he thinks is prudent to**  
(30) **comply with the law**

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- (1) Q What was your understanding of how a – the off duty time  
 (2) was to be calculated? How did one determine whether you  
 were  
 (3) on or off duty for purposes of that statute as you understood  
 (4) it?  
 (5) A If work was assigned to an individual to do during that  
 (6) period of time, it was considered to be work  
 (7) Q What if an individual had the discretion either to do it in  
 (8) that time or some other different time and chose to do it that  
 (9) time?  
 (10) A Then that would not be considered as duty time  
 (11) Q Beyond the question of application of the six hour rule  
 (12) did you as manager of human resources in Exxon Shipping  
 (13) Company evaluate whether the – whether fatigue overworked  
 (14) tiredness was a problem returning ships on the three mate –  
 (15) one captain master three mate complement for crude oil traffic?  
 (16) A Yes, I did  
 (17) Q And what steps did you take to evaluate that question?  
 (18) A We did a study in 1984 on work load redistribution within  
 (19) the officer group We also talked a good bit through our  
 (20) operations managers as they visited vessels and talked to  
 (21) masters and other officers about fatigue levels and work  
 load  
 (22) on the vessel for officers and unlicensed for that matter  
 and  
 (23) made it clear that we expected the senior officers on the  
 vessel by the master to insure that the people were not  
 (24) fatigued when they were doing their job  
 (25)

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- (1) Q I think you mentioned fleet officers conferences Could  
 (2) you tell the jury what a fleet officer conference was how it  
 (3) was done?  
 (4) A Yes Fleet officer conference is an – it's a conference  
 (5) that we typically held every year to invite all of all of our  
 (6) senior officers into the fleet into Houston and to meet for  
 (7) about a week with our management group and we covered  
 a broad  
 (8) range of topics in those meetings Some of them were –  
 some  
 (9) of the topics were to – to review with the officers the  
 (10) overall state of the business other purposes were to  
 introduce  
 (11) them to new policies and rules that we were implementing,  
 and to  
 (12) describe to them what their roles were as supervisors on  
 the  
 (13) ship We also provided training of them on how to carry out  
 (14) those duties and to provide an opportunity for them to talk  
 (15) about professional topics that they were interested in as  
 senior We asked for their input on what that agenda would  
 be  
 (16) Q Professional topics what are you talking about?  
 (17) A We talked about things ranging from fatigue or how to run  
 (18) an engine room to typically – we had our admiralty attorney  
 (19) come out and talk to them about navigation and bring  
 (20) organization issues and laws and how they should comply  
 with  
 (21) them  
 (22) Q Now you mentioned a study that you did to balance the work  
 (23) load What did that study indicate to you?  
 (24) A The study indicated to us that the work hours that our

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- (1) officers were working were not unreasonable and gave us  
 no  
 (2) concern about fatigue It also indicated however that  
 when  
 (3) our officers were immediately removed from rested status  
 in the  
 (4) early '80s that there was some imbalance in the work load  
 (5) between the engine department the deck department and  
 between  
 (6) some of the senior officer responsibilities and the junior  
 officer responsibilities  
 (7) Q And what was done about that imbalance?  
 (8) A We took steps to redistribute the work load as best we could  
 (9) given the Coast Guard restrictions on who can do what on a  
 (10) ship, and tried to balance out the work load more evenly to  
 (11) assist in the fatigue situation  
 (12) Q Now let's just talk about the working conditions aboard  
 (13) these tankers and particularly a tanker like the Exxon  
 (14) Valdez Obviously the people who worked there didn't have  
 any  
 (15) commute time  
 (16) A Right  
 (17) Q What did they have to do about food?  
 (18) A Their food was prepared by the steward department on  
 board  
 (19) the ship  
 (20) Q There was some suggestion by another witness that if you  
 (21) came off watch or at a certain time of the day you had to be  
 (22) there at a certain time to eat meals is that a true statement?  
 (23) A Well the formal meals are served at certain times of the  
 (24) day but there's food available throughout the night for  
 (25)

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- (1) anybody that wants it  
 (2) Q And we say food available Suppose I came off watch or  
 (3) didn't want to go to dinner at the prescribed time What kind  
 (4) of an arrangement could I make to eat at whatever time suits  
 (5) me?  
 (6) A We have what we call a night lunch and there's food  
 (7) prepared in the refrigerator or a chull box and you can get  
 the  
 (8) food there We have microwaves to heat it up if you want  
 (9) It's very broad variety of food on board  
 (10) Q What about housecleaning?  
 (11) A Housecleaning is done by the steward department  
 (12) Q Now from the studies that you did did that indicate that  
 (13) the typical mate or the typical master worked in excess of  
 (14) eight hours a day when on duty  
 (15) A Typically they did yes  
 (16) Q What was the normal tour of duty?  
 (17) A About 60 days on the ship  
 (18) Q And how was that decided? In other words if it went more  
 (19) than 60 or less than 60 what factors accounted for whether  
 (20) someone would stay on the ship less than or more than 60  
 days?  
 (21) A Well there are a number of factors Our senior officers  
 (22) in particular since they were paired up and shared a job,  
 (23) because of the contingency that I mentioned earlier we're  
 free  
 (24) to work with counterparts within reasonable limits Other  
 (25) things that were affected work schedule would be whether the

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(1) ship was in port or not Obviously you can't get off at sea  
 (2) even though 60 days are up  
 (3) Q There's been a suggestion in 1985 in the gulf coast when  
 (4) Captain Hazelwood returned to the Exxon Yorktown that there  
 (5) was  
 (6) a shortage of masters and a shortage of captains Have you  
 (7) looked into that question?  
 (8) A Yes I have  
 (9) Q And at that time was there a shortage of captains available  
 (10) to Exxon?  
 (11) A From the study I did I saw no reason to suspect that at  
 (12) all  
 (13) Q And by that you mean that if somebody if somebody wants  
 (14) to  
 (15) cut their tour short or limit themselves to 60 days that there  
 (16) was a captain available to assign?  
 (17) A Yes  
 (18) Q Now what would be you said that you know people might  
 (19) especially the two alternating captains might change their  
 (20) schedules what kinds of things would lead to that in your  
 (21) experience?  
 (22) A Sometimes they wanted to alternate holidays at home  
 (23) with  
 (24) their family and they would rotate adjust their schedule  
 (25) One  
 (26) person could be home at Christmas morning or the next  
 (27) year  
 (28) someone had a family event a birth or birthday that they  
 (29) wanted to go to a number of things like that  
 (30) Q Suppose somebody for whatever stayed longer than 60

(1) A That's correct  
 (2) Q And then gradually that changed?  
 (3) A Yes  
 (4) Q Okay Was that done so you could figure out some way to  
 (5) get overtime out of these people without paying for it?  
 (6) A No  
 (7) Q What was the reason for going to a straight salary system?  
 (8) A Provide a framework where the officers could feel they  
 (9) could work more efficiently and be rewarded for their work  
 (10) Q Under the previously existing system how did the hourly  
 (11) rate get set?  
 (12) A The hourly rate was set based on our survey of  
 (13) competition  
 (14) and when they were represented then we guaranteed that  
 (15) rate  
 (16) with their union  
 (17) THE COURT Mr Lynch  
 (18) MR LYNCH Yes sir  
 (19) THE COURT There's a naturalization ceremony going on  
 (20) next door and I could see everybody's wondering what they're  
 (21) hearing that and it was distracting a little bit It won't  
 (22) last the singing won't last but a few minutes and I think you  
 (23) can probably tune it out now that you know what it is  
 (24) MR LYNCH I didn't even hear it Your Honor  
 (25) THE COURT You were busy listening  
 (26) MR LYNCH I saw you smiling and I thought maybe it  
 (27) was my question

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(1) days How would that affect their vacation days or off days?  
 (2) A They earned approximately one day of paid leave for  
 (3) every  
 (4) day that they worked on a ship So if they worked five days  
 (5) they'd earn an extra five days of paid leave  
 (6) Q 65 days on supposed to be entitled to 65 days off?  
 (7) A Approximately yes  
 (8) Q Just approximately what kind of salary range would people  
 (9) masters for example make?  
 (10) A Well in the 100 000 range  
 (11) Q Now how did the work schedule you have occasion to know  
 (12) from the union and contract negotiation work you did the  
 (13) salary administration work you did how Exxon's work hours  
 (14) compared with work hours in other tanker operators in the U S  
 (15) fleet?  
 (16) A Best I can tell they were comparable  
 (17) Q Now we've also heard indeed heard a lot this mention  
 (18) about with a I think is call the forced ranking system Can I  
 (19) just put this back up I'll promise not to write on the back  
 (20) of it so you know where it goes on the easel In 1985 you  
 (21) didn't have a forced ranking system?  
 (22) A That's correct  
 (23) Q I guess I should go back for a minute?  
 (24) A We had a system we didn't have the ranking  
 (25) Q At one point in time Exxon Shipping did not have a straight  
 (26) salary system for its deck officers is that correct?

(1) THE WITNESS I thought the angels were coming  
 (2) BY MR LYNCH  
 (3) Q I may be repeating myself but in the -- under the previous  
 (4) system you paid the masters and mates by the hour?  
 (5) A We paid them a flat rate or daily rate for their eight  
 (6) hours and we paid them a rate for each overtime hour they  
 (7) worked  
 (8) Q And within say the group of masters did everybody get the  
 (9) same no matter they were both the best or the poorest?  
 (10) A The masters did not get overtime They were on a flat  
 (11) salary but their individual contribution was not  
 (12) differentiated at that time  
 (13) Q That was at that time before you went to the salary system?  
 (14) A Right  
 (15) Q The mates got overtime?  
 (16) A The mates got overtime  
 (17) Q How was that overtime kept?  
 (18) A Well we again we did a competitive survey to see what  
 (19) the  
 (20) rates would be  
 (21) Q I guess what I'm asking among rates did they all get the  
 (22) same rates?  
 (23) A They all got the same rates  
 (24) Q When you went to the merit salary system did everybody get  
 (25) the same?  
 (26) A No

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- (1) Q How did you differentiate between people?
- (2) A Well we evaluated their performance and then we force
- (3) rank the people on a particular classification like the
- (4) masters list or the mate one of the mate list, and we put the
- (5) top performers, the guys that did the best job in our
- judgment**
- (6) at the top of the list and we ranked them down to the person
- (7) that made the least contribution or did the poorest job
- (8) Q When you say forced ranking there could be no ties?
- (9) A We forced ourselves to put one person behind another
- (10) Q Somebody had to be one?
- (11) A Somebody had to be one
- (12) Q And somebody had to be ten?
- (13) A That's correct
- (14) Q So if you had Captain Cook and Captain Nelson and all the
- (15) greatest mariners in the world somebody would have to end up
- (16) as ten?
- (17) A Somebody would have to end up as ten
- (18) Q Even if Captain Hazelwood was in that group?
- (19) A Even if Hazelwood was there, that's right, no matter how
- (20) good they were somebody had to be at the bottom of the
- list**
- (21) Q In making up that list what factors did you take into
- (22) account?
- (23) A Well we took into account a broad range of factors but
- (24) including their professional skills their ability to manage
- (25) the vessel their ability to manage the people on the ship

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- (1) Q I'm referring now to Plaintiff's Exhibit 155 is it? These
- (2) indicate that Captain Hazelwood was below half in the second
- (3) half of Exxon captains in essentially all the years we're
- (4) talking about correct?
- (5) A Yes it does
- (6) Q Have you had occasion - plaintiffs send over as a possible
- (7) exhibit Captain Hazelwood's personnel file?
- (8) A Yes
- (9) Q Did you have occasion to review that?
- (10) A Yes I did
- (11) Q Now if you were ranking Captain Hazelwood if these yellow
- (12) tapes were going to be based on the basis of the appraisal of
- (13) Captain Hazelwood for a ship operating that is his seamanship
- (14) and his ship handling and his knowledge of ships how would
- (15) you
- (16) expect him to be ranked in terms of a forced rank list?
- (17) A He would be very close to the top of that list
- (18) Q What was it that pulled him down into the lower half of
- (19) that list?
- (20) A His attitude towards assuming a broader management
- responsibilities on the ship**
- (21) Q Broader management responsibilities meaning like
- (22) paperwork
- (23) and things like that?
- (24) A Yeah paperwork controlling the costs and managing the
- overall operation of the ship**
- (25) Q Now are you acquainted with suggestions that were made
- from

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- (1) time to time to give Captain Hazelwood a shore based job like
- (2) port captain or something of that kind?
- (3) A Proposals were made yes
- (4) Q And what was the basis for making those proposals as you
- (5) understand them?
- (6) A They were to try to give Joe a closer view of the shoreside
- (7) management challenges in the organization so that he
- could take**
- (8) those back to the ship and be a better overall manager
- (9) Q You were hoping he'd catch the corporate scent and follow
- (10) that aroma off?
- (11) A We helped make him a corporate guy, that's right
- (12) Q And what was - Captain Hazelwood worked directly for you
- (13) for a while is that right?
- (14) A Yes, he did
- (15) Q What was your impression of Captain Hazelwood's interest in
- (16) having that chance to come ashore and spend more of his time
- (17) on
- (18) paperwork?
- (19) A I'd say it was pretty much slim to none from his point of
- view**
- (20) Q Let's if I may just try to verify what the arrangements
- (21) were with the port captain if Captain Hazelwood had come
- (22) ashore to be a port captain would he work 60 days off and then
- (23) 60 days on rather and then have 60 days off to go home?
- (24) A No our shoreside organization is much like you know I'd
- (25) like to say a nine to five job but it's a lot more than that

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- (1) But it is typically a five six day a week job We have our
- (2) offices in Houston and Benicia California just outside of
- San**
- (3) Francisco
- (4) Q Or Baton Rouge or whatever Gulf coast?
- (5) A Were in Baytown which is a suburb of Houston for
- somebody**
- (6) to take that kind of a job they would have to and they're
- (7) typically two to three year jobs they would have to either
- (8) relocate their family to Houston or San Francisco area or
- come**
- (9) by themselves without their family
- (10) Q By the way over the span of time that we're talking about
- (11) was that a continuing negative factor in Captain Hazelwood's
- (12) ranking under the forced ranking was it consistently a question
- (13) of his paperwork that was causing ranking to be pulled down?
- (14) A Yes
- (15) Q I note there's a fairly significant jump in Captain
- (16) Hazelwood's ranking between 1986 and 1987 as indicated on
- (17) this
- (18) chart Were you a part of the process that led to the forced
- (19) ranking of the masters?
- (20) A No At that time I did not know the masters' performance
- (21) well enough to contribute
- (22) Q And were you involved in reviewing the forced ranking
- (23) process at the - at the end of the day in setting up the
- (24) salary system?
- (25) A Yes
- (26) Q And was it your understanding and impression that Captain

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- (1) Hazelwood's job performance was improving as indicated by the relatively higher ranking in 1987?
- (2) **A It was improving but as I indicated earlier that last line on the chart is an error. It's really 24 out of I think we said 29. So there was some improvement but not as much indicated there.**
- (3) **Q** But he had gone from basically being second to last on the list, he moved quite a way up the list in the meantime, is that correct?
- (4) **A That's correct.**
- (5) **Q** And that reflected that even his paperwork was getting better, is that right?
- (6) **A Yes.**
- (7) **Q** Enough, you indicated that you - since we're on this topic that during that point in time you had kept an eye on Captain Hazelwood when you had occasion to see him at fleet officer conferences?
- (8) **A Yes.**
- (9) **Q** When you kept an eye on him, what were you looking for?
- (10) **A I was seeing if he showed any signs of having been drinking.**
- (11) **Q** And where - when he showed any signs of having been drinking, were there things going on at the ship officers conference that gave you a chance to watch for that?
- (12) **A Yes, there were. We had cocktail hour in the evening.**

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- (1) **Occasionally after one of the sessions you can watch for people coming in late, see how attentive they are in the morning and things like that.**
- (2) **Q** Okay. So you were watching for any signs that indicated to you that Captain Hazelwood might be drinking, period, is that correct?
- (3) **A Yes.**
- (4) **Q** And what did you observe?
- (5) **A I didn't observe any signs at all.**
- (6) **Q** In the public occasions when you had cocktails, you did offer cocktails, is that correct?
- (7) **A Yes, we did.**
- (8) **Q** As I understand it, the people attending this conference were the senior officers?
- (9) **A Yes.**
- (10) **Q** So at least a high percentage of them were themselves, masters?
- (11) **A Anywhere from a half to a fourth of them, yes.**
- (12) **Q** If you looked around you would see a number of drinking captains, is that correct?
- (13) **A We would.**
- (14) **Q** Were you hurried when you saw that?
- (15) **A No.**
- (16) **Q** Did you think I'm seeing a drinking captain that's a dangerous thing?

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- (1) **A No, they weren't working, they weren't on the bridge of a ship.**
- (2) **Q** When Mr. O'Neill asked you if it was a dangerous thing, do you think it's dangerous to force a person who has the job of tanker captain to drink socially?
- (3) **A No.**
- (4) **Q** At these conferences Exxon sponsored serving drinks to masters, is that correct?
- (5) **A Yes.**
- (6) **Q** Is it unusual for people in the seagoing trades to drink socially or at dinner?
- (7) **A No, it's not.**
- (8) **Q** At other times when the rest of us exercise that privilege?
- (9) **A No, it's not.**
- (10) **Q** Now, you didn't actually see the so-called - could I see PX10, please, I'm going to try this once, I'm going to try this then, when I fail you can - you didn't actually see the IDR which has been marked as PX10, you see these numbers?
- (11) **A Yes, I do see them.**
- (12) **Q** Do they mean anything to you?
- (13) **A Not a thing.**
- (14) **Q** Does DSM III mean anything to you?
- (15) **A No.**
- (16) **Q** You're not a doctor, are you?
- (17) **A No.**

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- (1) **Q** You gave some testimony I think about what a recovering alcoholic can do. Do you have any training on what a recovering alcoholic can do?
- (2) **A No, I don't know.**
- (3) **Q** Would it be fair to say that you were repeating what you've heard, whether it's valid or invalid?
- (4) **A That's true, true.**
- (5) **Q** And you don't have any information to indicate that Captain Hazelwood is an alcoholic, do you?
- (6) **A No, I don't.**
- (7) **Q** Recovering or otherwise, right?
- (8) **A No, that's true.**
- (9) **Q** Would you have any reason to dispute Dr. Vallury's diagnosis of Captain Hazelwood?
- (10) **A No.**
- (11) **Q** Now, you indicated I think that you had - at your deposition, you had some concern, you felt some concern that at a prior time when you were monitoring Captain Hazelwood, he'd evaded your monitoring, do you remember that line of questioning from Mr. O'Neill?
- (12) **A Yes, I remember that.**
- (13) **Q** Now, first of all, the prior time would have been the 1980 time frame?
- (14) **A '81 and '82, yes.**
- (15) **Q** That's when you were west coast fleet manager?

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- (1) **A That's correct**
- (2) **Q** At that time Captain Hazelwood sailed under your direct supervision?
- (3) **A That's correct**
- (4) **Q** And as his direct supervisor you were responsible for monitoring his performance?
- (5) **A Yes**
- (6) **Q** You monitored him as you would other employees to assure that he was not violating company policy about drinking?
- (7) **A That's right**
- (8) **Q** Is that a true statement?
- (9) **A That's true**
- (10) **Q** And on one occasion you had - you specifically asked Captain Hazelwood about a rumor that he might have been drinking and he told you he had not been?
- (11) **A That's right**
- (12) **Q** Now then at your deposition when you were shown the Graves report you saw that he had made a statement to Mr Graves that at some unspecified prior time he had come back to the ship drunk or he might have had a drink aboard the ship is that right?
- (13) **A That's true**
- (14) **Q** Could you explain to the jury what you meant by saying you were concerned that he evaded your monitoring?
- (15) **A** If the drinking that he had talked about to Graves

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- (1) occurred during the period of time that I was monitoring him,
- (2) then you know clearly he would not have been truthful with me. If it occurred after that time period then he could have been truthful with me at the time and still have had a drink afterwards
- (3) **Q** So at the time of the deposition you what assumed that Graves was referring to while he was working on the west coast under your supervision?
- (4) **A** I didn't think about the timing well enough to answer that question accurately
- (5) **Q** But you answered that you were concerned is that correct?
- (6) **A** I would have been concerned yes
- (7) **Q** And your concern was that comment referred to a time working directly for you?
- (8) **A** Yes
- (9) **Q** And during that time you did exactly what you told Mr O Neill you thought a person supervising Captain Hazelwood should do?
- (10) **A** That's correct
- (11) **Q** You monitored him?
- (12) **A** Right
- (13) **Q** You heard any indication that he was violating your alcohol rules you checked into it?
- (14) **A** That's correct
- (15) **Q** And on one occasion you did?

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- (1) **A** Yes
- (2) **Q** Could you look at - this is going back to this forced ranking thing But could you look at Plaintiff's Exhibit 154 for a second
- (3) **A** Okay
- (4) **Q** Mr Chalos reminds me that has one further year on it than I see on this chart I believe If I'm reading this chart
- (5) **This chart ends in 1987?**
- (6) **A** That's correct
- (7) **Q** Does PX154 have a column for 1988?
- (8) **A** Yes, it does
- (9) **Q** What does that show?
- (10) **A** It shows he was 23 of 38 in 1988
- (11) **Q** Okay So this was a larger number?
- (12) **A** Right
- (13) **Q** And this was a larger number so he had gone up another notch in 1988?
- (14) **A** That's correct
- (15) **Q** On a longer team?
- (16) **A** Two notches right
- (17) **Q** Now just to be clear from your experience with the quality of people at Exxon Shipping Company what do you think of the guy who's 37 of 37 is he a bad captain?
- (18) **A** No If he was bad he wouldn't be there
- (19) **Q** So everybody on that chart is in your judgment a well

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- (1) qualified seaman?
- (2) **A** Yes
- (3) **Q** But Captain Hazelwood over the period between 1986 and 1988 was making constant improvement in his job performance?
- (4) **A** Yes he was
- (5) **Q** I'd like to ask you if you would to take a look at a page out of DX4471 I'll just put it on this so called Elmo This is the form that - I apologize for the legibility of this - you want a copy Mr Paul?
- (6) **A** I'm going to need some help
- (7) **Q** Well I'm not sure I can?
- (8) **A** This isn't a whole lot better
- (9) **Q** I'm not sure I can offer you much help on that I wanted to ask you - this is the form that was used for ranking mates is that correct?
- (10) **A** Evaluating mates this was input to that process
- (11) **Q** This was in fact the particular form that was used with Greg Cousins is that right?
- (12) **A** Yes it is
- (13) **Q** And I want to see if we can try to get to the point where we can - I'm looking for - the item I'm looking for I don't find here Excuse me one second
- (14) **MR LYNCH** Your Honor I'm going to ask Mr Justice to get me a different document In the meantime I'm on to another subject I got Mr Justice's name in the record so he

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(1) can send a transcript home to his wife and family Fivnn  
 (2) Justice  
 (3) BY MR LYNCH  
 (4) Q Let s go to the Exxon drug and alcohol policy You told  
 (5) Mr O Neill you were responsible for administering that policy  
 (6) is that correct?  
 (7) A Yes when I was human resources manager  
 (8) Q I d like to show you Exhibit 3619 I ll bring you a copy  
 (9) if I may Your Honor and put a copy on the -  
 (10) MR LYNCH I ll offer 3619  
 (11) (Exhibit 3619 offered)  
 (12) MR O NEILL No objection  
 (13) THE COURT That s defendant 3619?  
 (14) MR LYNCH Yes Your Honor  
 (15) (Exhibit 3619 received)  
 (16) BY MR LYNCH  
 (17) Q First of all Mr Paul could you tell the jury just  
 (18) basically what this document is and why as you understand it  
 (19) was written?  
 (20) A It's a revision to our 1984 alcoholism policy  
 (21) Q And why what was the occasion of making that revision?  
 (22) A There were a couple reasons for it One was we wanted  
 (23) to expand the scope of the Exxon policy to include drugs as a  
 (24) treatment illness and under the policy we wanted to  
 (25) formally  
 (26) introduce a search program unannounced search program  
 (27) that we

(1) concept?  
 (2) A That's correct  
 (3) Q In other words you found someone in possession of alcohol  
 (4) or drugs you told them they were fired demoted They said we  
 (5) disagree with you?  
 (6) A That's correct  
 (7) Q Basically you didn t have a right to search us?  
 (8) A They were disputing at that time on the basis that we had  
 (9) not notified them that we were going to search and what the  
 (10) consequences would be  
 (11) Q Okay And so what happened?  
 (12) A Once the items finally got to arbitration which is the last  
 (13) step in the dispute process the arbitrator ruled in the favor  
 (14) of the employee and said in fact we had not given due  
 (15) notice  
 (16) Q Okay So this letter was designed to cure that so that  
 (17) from then on nobody could say they hadn t gotten notices is  
 (18) that correct?  
 (19) A That's true  
 (20) Q And otherwise in other respects did it continue the policy  
 (21) that it had as existed before?  
 (22) A Yes it did  
 (23) Q I wonder if you would read the first paragraph for the  
 (24) record down to the sub part two there  
 (25) A The potential danger to employees and facilities resulting  
 (26) from the use of drugs or alcohol in the workplace has  
 (27) become a

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(1) had in place on our vessels since 1982 but had not formally  
 (2) notified employees that we were doing that  
 (3) Q Now let me take that one step at a time You had an  
 (4) unannounced search program Could you tell the jury what that  
 (5) was?  
 (6) A Yes We from time to time would show up unannounced  
 (7) to a  
 (8) ship in port and we would bring investigators with us and  
 (9) dog  
 (10) team and we would search the vessel for drugs or alcohol  
 (11) and we  
 (12) would search without touching anybody we would search  
 (13) the  
 (14) individuals as well and their procession  
 (15) Q So this began in 1982?  
 (16) A Yes it did  
 (17) Q And this was random I mean did you have -  
 (18) A They were unannounced They would pick a ship for a  
 (19) variety of reasons and go unannounced  
 (20) Q As a result of this search program did you catch anybody  
 (21) in possession of items that were contrary to Exxon policy?  
 (22) A We did on a few occasions yes  
 (23) Q And did you take action when you caught those individuals?  
 (24) A Yes we did  
 (25) Q Okay And what happened when you took those actions?  
 (26) A The individuals if they were unlicensed employees would  
 (27) typically dispute the action we took and carry it forward  
 (28) through their union  
 (29) Q And I mean this is part of the industrial due process

(1) major concern of companies Exxon Corporation including  
 (2) Exxon  
 (3) Shipping Company is one of the many employers that have  
 (4) programs to deal with this potential problem Within the  
 (5) shipping company this program has two basic concepts  
 (6) One  
 (7) company sponsored medical support available on a  
 (8) confidential  
 (9) basis for individuals who request help in combating drug or  
 (10) alcohol dependency And two workplace guidelines which  
 (11) permit  
 (12) on the job - prohibit excuse me workplace guidelines  
 (13) which  
 (14) prohibit on the job possession or use of drugs or alcohol  
 (15) Q Maybe that s where your notice problem came up You said  
 (16) permit and you meant prohibit The prohibition that you had on  
 (17) the job possession of alcohol and drugs how far did that go  
 (18) back?  
 (19) A Oh it went back well before I ever joined the shipping  
 (20) company  
 (21) Q Was there any doubt about the fact that all the employees  
 (22) had been notified of that fact?  
 (23) A No doubt at all  
 (24) Q Let me show you Exhibit 9113 ask you if you can identify  
 (25) that for the record?  
 (26) A Yes I can  
 (27) Q What is it?  
 (28) A It's a list of posted offenses that are on each of the  
 (29) ships  
 (30) MR LYNCH Offer 9113 Your Honor that s defendants

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- (1) (Exhibit 9113 offered)  
 (2) MR O NEILL No objection  
 (3) THE COURT Defendants 9113 is admitted  
 (4) (Exhibit 9113 received)  
 (5) BY MR LYNCH  
 (6) Q And would you read item 14 of DX9113?  
 (7) A Introduction, possession or use on the property of the  
 (8) company of intoxicating liquors or habit forming drugs  
 (9) Q Is it prohibited?  
 (10) A It is an offense for which members of the unlicensed  
 (11) personnel may be discharged without further notice  
 (12) Q Did this prohibition also apply to officers and mates?  
 (13) A Yes it did  
 (14) Q That prohibition that Exxon had was that something that  
 (15) was required by law by the Coast Guard  
 (16) A No this was a company policy  
 (17) Q Was it something that was uniform in other U S flag  
 (18) competitors of Exxon Shipping Company?  
 (19) A No, we were the exception  
 (20) Q When you say that what do you mean?  
 (21) A Most other companies allowed social drinking on board  
 (22) their  
 (23) ships  
 (23) Q How long had that been Exxon Shipping companies policy?  
 (24) A Again for as long as I can remember  
 (25) Q I gather from some of the testimony we heard this morning

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- (1) that every once in a while someone must have gotten away with  
 (2) sneaking a bottle or some beer aboard the ship When you  
 (3) were  
 (4) responsible for supervising Exxon Shipping Company ships  
 (5) what  
 (6) did you do to try to make that rule stick?  
 (7) A Well we as part of a supervisors normal job  
 (8) responsibilities he's always alert to the fitness of the  
 (9) people that he supervises to see if they're able to do the job  
 (10) and do it safely So we had that ongoing supervisory  
 (11) oversight We also visited the ships and as I mentioned  
 (12) earlier we had this unannounced search program underway  
 (13) Q How often did those ships come into port? How often did  
 (14) the chance -  
 (15) A It varied The Valdez traders as we called them call  
 (16) them go to California or back in California about every two  
 (17) weeks a round trip  
 (18) Q And did you have other people who went out for other  
 (19) reasons who were responsible to keep their eye open for any  
 (20) sign?  
 (21) A Yes  
 (22) Q That alcohol was aboard the ship?  
 (23) A Yes  
 (24) Q What kind of contact would you have with a ship in that  
 (25) connection?  
 (26) A Well when I was on the west coast I had port captain and  
 (27) a  
 (28) port engineer who were my senior advisors professional

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- (1) advisors on how to run the fleet, and they were on board the  
 (2) ship an awful lot as well talking to the officers about  
 (3) professional topics  
 (4) Q Was it a part of their responsibility to be on the watch  
 (5) for any sign that people had alcohol or were using alcohol  
 (6) aboard ships?  
 (7) A Yes  
 (8) Q And did you if you caught people what did you do?  
 (9) A We would discipline them  
 (10) Q Now the other aspect of the policy that is described in  
 (11) this letter is company sponsored medical support available on a  
 (12) confidential basis for individuals who request help in  
 (13) combatting drug or alcohol dependency Was that new with the  
 (14) April 1985 letter?  
 (15) A No it wasn't  
 (16) Q And what was - how far back did that go to your  
 (17) knowledge?  
 (18) A The alcohol support went back to 1977, and the drug  
 (19) support  
 (20) went back to I think the fall of 1984 when we had  
 (21) implemented  
 (22) a pilot employee assistance program  
 (23) Q Now those - that program included a provision which I'm  
 (24) pointing to let me highlight it no employee - woops no  
 (25) wonder you can't see it there Suffering from alcoholism or  
 (26) drug dependency will jeopardize his or her job security if help  
 (27) is requested or if an individual enrolls to rehabilitation

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- (1) program prior to being involved in an incident which violates  
 (2) company policy  
 (3) I'd like to ask you about that aspect of the program  
 (4) First of all from the standpoint of the safety credo running  
 (5) the safest company in its industry?  
 (6) A Uh huh  
 (7) Q - was it your view that this provision contributed to the  
 (8) safe operation -  
 (9) A Yes  
 (10) Q - of Exxon Shipping Company?  
 (11) A Yes it did  
 (12) Q And how did it do that?  
 (13) A Well it provided an employee help to solve a problem  
 (14) before it resulted in an incident on board the ship safety  
 (15) incident  
 (16) Q By promising or at least giving assurance that an  
 (17) individual could get his job back did you recognize that there  
 (18) would be people coming back to Exxon ships who if they took  
 (19) advantage of this provision had been through rehabilitation  
 (20) for an alcohol problem?  
 (21) A Yes we did  
 (22) Q And did you consider that allowing those people back on the  
 (23) ship was nevertheless consistent with safety?  
 (24) A Yes we did  
 (25) Q How did you draw that conclusion?



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- (1) **A Assuming they successfully completed the program they would**  
 (2) **come back as a better employee and not have the problem**  
 (3) **have**  
 (4) **it put behind them or under control and from that**  
 (5) **standpoint**  
 (6) **they would be a safer employee than they been - had they**  
 (7) **continued to drink or have the abuse problem on board the**  
 (8) **vessel**  
 (9) **Q Did you recognize however that there was some chance that**  
 (10) **there might be a relapse?**  
 (11) **A Some chance yes**  
 (12) **Q And how did you - what about the risk of relapse how did**  
 (13) **you reconcile that with your safety credo?**  
 (14) **A Well the risk of relapse would be less after treatment**  
 (15) **than the risk of an accident caused by drinking if a person**  
 (16) **never went to seek help to begin with**  
 (17) **Q Let me ask you a few questions about how this process**  
 (18) **worked Is that process what's been referred to as self**  
 (19) **identification?**  
 (20) **A The process of an employee going**  
 (21) **Q Employee seeking before - yes**  
 (22) **Q Have you heard the term self referral?**  
 (23) **A Yes**  
 (24) **Q Are those different or the same or?**  
 (25) **A They're the same to me**  
 (26) **Q Okay What is the identification or what is the referral**  
 (27) **that that's talking about?**

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- (1) **A It's an employee recognizing that he needs help with a**  
 (2) **problem and going to medical assistants for help**  
 (3) **Q Does this policy mean in order for an employee to take the**  
 (4) **benefit of this policy that he has to come to the company and**  
 (5) **say Dan or Mr Larossi or somebody at Exxon Shipping I'm**  
 (6) **identifying myself as a person who has problems with alcohol?**  
 (7) **A No they don't have to identify themselves to us they can**  
 (8) **go to a private provider of those services**  
 (9) **Q To be a self identifier you don't have to identify yourself**  
 (10) **to the company?**  
 (11) **A You have to identify the problem in yourself**  
 (12) **Q Were there other kinds of referrals or identification other**  
 (13) **than self identification?**  
 (14) **A There were supervisory referrals yes**  
 (15) **Q What is a supervisory referral?**  
 (16) **A Well there is really two kinds One kind of supervisory**  
 (17) **referral would be a supervisor counseling with an individual**  
 (18) **before he had a work performance problem to say that you**  
 (19) **know as a friend you looked at me like you may need some**  
 (20) **help**  
 (21) **with a personal problem of some kind and we have this**  
 (22) **service**  
 (23) **available to you we'd like to remind you about and I think it**  
 (24) **would be a good idea if you go to it but still the employees**  
 (25) **choice to go**  
 (26) **Q So like a Dutch uncle?**  
 (27) **A Right**

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- (1) **Q You don't have to do this it's just my advice to you as a**  
 (2) **person to person?**  
 (3) **A Right**  
 (4) **Q What other kind of supervisory -**  
 (5) **A The other kind is when the supervisor has identified a**  
 (6) **problem with work performance that he expects as a result**  
 (7) **of**  
 (8) **drug or alcohol abuse and refers the employee to EHAP for**  
 (9) **medical evaluation Again the supervisor is not trying to**  
 (10) **play**  
 (11) **doctor he's just saying you know your performance isn't**  
 (12) **good**  
 (13) **and I suspect for whatever reason that it may be related to**  
 (14) **drugs or alcohol So I want you to go see a doctor and let**  
 (15) **him**  
 (16) **evaluate whether or not you have a problem**  
 (17) **Q Okay Now in that case what rights does the employee**  
 (18) **have or what expectation does the employee have regarding his**  
 (19) **ability to return to work and let's assume he goes to the**  
 (20) **medical department or wherever he's referred to and they say**  
 (21) **yeah you should go get some professional help and he does**  
 (22) **go**  
 (23) **to rehab?**  
 (24) **A He goes to rehab and completes the program comes**  
 (25) **back to**  
 (26) **work and the supervisor judges that he's okay to come back**  
 (27) **into**  
 (28) **that job then he comes back to the job**  
 (29) **Q So in that instance the employee would also be entitled to**  
 (30) **this provision of the policy?**  
 (31) **A Yes he would be**  
 (32) **Q That assures him job - is he guaranteed that he goes back**

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- (1) **in the very same job position?**  
 (2) **A That's been our practice**  
 (3) **Q When a person comes back how do you make the decision?**  
 (4) **A The - from a supervisory referral?**  
 (5) **Q From any referral In other words a person comes back and**  
 (6) **you're faced with whether they are entitled to get their job**  
 (7) **back what factors do you take into account or do you just**  
 (8) **automatically put him back in the job?**  
 (9) **A The supervisor would discuss with the employee his**  
 (10) **ability**  
 (11) **to handle a job and when he was satisfied that the**  
 (12) **employee**  
 (13) **could then he'd let him back on the job**  
 (14) **Q Now Mr O'Neill showed you the Graves report -**  
 (15) **A Yes**  
 (16) **Q - earlier today?**  
 (17) **A Uh huh**  
 (18) **Q And you understood that Captain Hazelwood went to a**  
 (19) **private**  
 (20) **hospital and received therapy You also saw some other**  
 (21) **documents about that How would you classify his case was**  
 (22) **he**  
 (23) **a self referral or a supervisory referral?**  
 (24) **A He was a self referral**  
 (25) **Q Okay I want to go into one more sort of technicality**  
 (26) **here but to try to clear up this terminology Have you ever**  
 (27) **heard of EHAP?**  
 (28) **A Yes**  
 (29) **Q What is EHAP?**

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- (1) **A It's an employee assistance program**  
 (2) **Q What is an employee assistance program?**  
 (3) **A It's within Exxon it's a contract service that we have**  
 (4) **hired to - that employees can go to a confidential basis to**  
 (5) **receive help for a broad range of personal problems drug**  
 (6) **and**  
 (7) **alcohol financial planning concerns problems with kids**  
 (8) **things that would detract his attention from operating safely**  
 (9) **in his job**  
 (10) **Q Let me show you Exhibit 9122**  
 (11) **MR LYNCH Your Honor I will offer 9122**  
 (12) **(Exhibit 9122 offered)**  
 (13) **MR O NEILL No objection**  
 (14) **THE COURT Admitted**  
 (15) **(Exhibit 9122 received)**  
 (16) **BY MR LYNCH**  
 (17) **Q Is this a letter that announces in 1985 the availability of**  
 (18) **an employee health assistance program?**  
 (19) **A Yes, it is**  
 (20) **Q The employee health assistance program as contemplated**  
 (21) **by**  
 (22) **the Exxon drug and alcohol policy does it have to be involved**  
 (23) **in any way in the employees decision to go out and seek help?**  
 (24) **A No**  
 (25) **Q Can it be?**  
 (26) **A Can be yes**  
 (27) **Q Who makes that decision?**

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- (1) **A The employee**  
 (2) **Q Okay Was it available as a resource for the employee?**  
 (3) **A Yes it is**  
 (4) **Q Was it ever mandatory for the employee to go to EHAP?**  
 (5) **A No it was strictly voluntarily**  
 (6) **Q What about when the employee returns is EHAP available to**  
 (7) **the employee if he feels that would be helpful to him?**  
 (8) **A Yes it is**  
 (9) **Q Is he required to go to EHAP for his aftercare?**  
 (10) **A No**  
 (11) **Q Is he required by - to go to the medical care for his**  
 (12) **aftercare?**  
 (13) **A No**  
 (14) **Q What's the theory behind that?**  
 (15) **A Well, within our company we believe that the employee**  
 (16) **has**  
 (17) **responsibility for his own health care and our focus is how**  
 (18) **well he performs his work on the job**  
 (19) **Q Do you - apart from responsibility do you think that the**  
 (20) **employee - that Exxon could consistent with the restrictions**  
 (21) **on an employer get involved in prescribing medical care for an**  
 (22) **employee who's voluntarily gone for medical treatment?**  
 (23) **A I think that would be a matter of medical confidentiality**  
 (24) **between the employee and his doctor**  
 (25) **Q Now just some side questions here**  
 (26) **We talked about the fact that there's prohibition against**

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- (1) **alcohol on company vessels?**  
 (2) **A Yes**  
 (3) **Q Do you remember that that was Exxon's policy but not**  
 (4) **everybody else's policy?**  
 (5) **A Right**  
 (6) **Q For a period of time I gather you served wine once in a**  
 (7) **while to employees?**  
 (8) **A Yes we called it a holiday wine policy**  
 (9) **Q Could you just describe that policy quickly?**  
 (10) **A Well three times a year Thanksgiving Christmas and**  
 (11) **New**  
 (12) **Years we did provide wine on a limited basis to our**  
 (13) **employees**  
 (14) **to help them celebrate the holiday since away from family**  
 (15) **Q I take it you tried to provide good wine on those**  
 (16) **occasions?**  
 (17) **A We did have a taste testing committee**  
 (18) **Q You didn't intentionally get interior wine?**  
 (19) **A Right**  
 (20) **Q I can always recommend Gallo myself but was that policy**  
 (21) **continued?**  
 (22) **A It was continued until 1988**  
 (23) **Q What was the last holiday on which wine was served?**  
 (24) **A It was New Years of '88**  
 (25) **Q New Year's Day 1988?**  
 (26) **A Yes**  
 (27) **Q It was discontinued at that time?**

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- (1) **A It wasn't discontinued officially at that time but there**  
 (2) **were no holidays between then and when it was**  
 (3) **discontinued**  
 (4) **Q So after January 1 1988 Exxon no longer offered holiday**  
 (5) **wine is that correct?**  
 (6) **A That's correct**  
 (7) **Q Now there's also been some testimony about a mysterious**  
 (8) **brew called Moussy which I happen to know from trying to find**  
 (9) **a bottle for my opening statement is very hard to find in the**  
 (10) **market today What is Moussy?**  
 (11) **A It's a non alcoholic beer**  
 (12) **Q What does non alcoholic mean?**  
 (13) **A Federal government sets maximum alcohol content**  
 (14) **limitations**  
 (15) **on it and I believe it's no more than .5 or .05 I believe**  
 (16) **alcohol content**  
 (17) **Q Meaning that it is a soft drink?**  
 (18) **A Yes**  
 (19) **Q Now I'd like to just quickly move forward from**  
 (20) **Mr. Larossi's letter 1985 letter up to March of 1989 Could**  
 (21) **you give because we're running out of time and I'd like to**  
 (22) **get you out of here could you give us just a quick survey of**  
 (23) **what if anything transpired over that time in terms of**  
 (24) **changes to Exxon - the policy that Mr. Larossi stated in his**  
 (25) **April 24th letter?**  
 (26) **A In 1987 we expanded the policy to include for cause**  
 (27) **search**  
 (28) **on the vessels and also to include the coverage of**  
 (29) **contractors**

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(1) coming on the ship in the search provisions and the prohibition

(2) provisions and in 1988 we -

(3) Q Let me stop you for a second

(4) MR LYNCH Your Honor could I offer DX3614 which is the statement of the 1987 policy

(5) (Exhibit DX3614 offered)

(6) MR O NEILL No objection

(7) THE COURT Defendant s DX3614 is admitted

(8) (Exhibit DX3614 received)

(9) BY MR LYNCH

(10) Q I interrupted you

(11) A We also in 1988 voluntarily signed an agreement with the U S Custom Service to enhance our searching capability on vessels coming into the U S from foreign ports

(12) Q Was that called the Sea Carrier Initiative?

(13) A Yes yes it was

(14) Q And it had to do with the governments efforts to prevent importation of drugs since you had ships?

(15) A Yes zero tolerance policy implemented we cooperated

(16) MR LYNCH I offer DX3609 which is a contract entered pursuant to the Sea Carrier Initiative

(17) (Exhibit DX3609 offered)

(18) MR O NEILL No objection

(19) THE COURT Exhibited 3609 is admitted

(20) (Exhibit DX3609 received)

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(1) BY MR LYNCH

(2) Q Did there come a time when the Coast Guard issues recommendations related alcohol use aboard or around vessel?

(3) A Yes it did

(4) Q And what steps did Exxon take to comply with that regulation?

(5) A We notified our employees on our ships about the new regulations and assigned the masters to enforce him them on board the ships

(6) Q And did you provide equipment and materials for testing aboard ship if there was a violation?

(7) A We had the testing equipment required at that time on board the ship as a result of our 1987 for cause testing policy

(8) MR LYNCH And Your Honor I offer DX3618 as notice to the fleet of the Coast Guard regulations

(9) (Exhibit DX3618 offered)

(10) MR O NEILL No objection

(11) THE COURT Defendants 3618 is admitted

(12) (Exhibit DX3618 received)

(13) BY MR LYNCH

(14) Q Now let s go back to - to the 87 policy for a second Exhibit DX3614 I m showing you a page from the written guidelines for supervisors Can you see that I want to focus on paragraph D there

(15) A Okay

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(1) Q And would with Mr O Neill s permission I ll lead into this There were written guidelines prepared and given to supervisors?

(2) A Yes

(3) Q And those guidelines related in part to the supervisors role in monitoring for alcohol?

(4) A Yes

(5) Q And could you just give in a summary what the guidelines that you gave to your managers were with regard to what the supervisors role was?

(6) A They were to look for unsatisfactory performance of the employees on the job as an indication of non-compliance

(7) Q Did the policy have a reason for focusing on job performance as opposed to calling people and asking them about their personal habits at home?

(8) A Yes There was - some of the limitations we had imposed on us we mentioned earlier but our interest was trying to provide a safe workplace and that involved contacting the employee at work

(9) Q There were those guidelines developed?

(10) A In Exxon USA

(11) Q By whom?

(12) A By the employee relations department

(13) Q And was that staff larger than your own staff?

(14) A Yes

(1) Q And they engaged in a study to develop what the appropriate guidelines would be to implement this policy?

(2) A Yes

(3) Q Now under this policy what was the responsibility of Exxon Shipping Company people in the case of an employee who took advantage of the opportunity to return to his job after alcohol rehabilitation what was the company supposed to do in that case carry out the policy?

(4) A We were supposed to evaluate the employee s performance on the job

(5) Q And what about relapse what about the risk that you know you d have Mr O Neill talk to you about you know the person whose got an alcohol problem is not necessarily a falling down drunk Was there any step taken to watch out for that risk of relapse?

(6) A Well we monitor the employees performance

(7) Q And in that monitoring did you just monitor that look at that employee the same as any other employee?

(8) A If we knew he had come back from rehab we would look more carefully for signs of drugs and alcohol abuse

(9) Q Were your people trained to do that?

(10) A Yes they were

(11) Q Where did they get that training?

(12) A In 1984 in one of the fleet officer conferences that we had almost yearly we did offer a drug awareness training

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- (1) program to better familiarize our officers of what to look for
- (2) drug and alcohol abuse in the workplace and we also had
- (3) training in 1987 with the implementation of this policy
- (4) Q Now I d like to go back to that subject that I started
- (5) with you on This is exhibit 4471 That s the appraisal form
- (6) that was used for mates is that correct?
- (7) A That's correct, yes
- (8) Q And can you read it - try your screen there Are you able
- (9) to read that?
- (10) A This is real, that's good willing to assume additional
- (11) responsibilities beyond normal job requirements
- (12) Q First of all were you involved in the development and use
- (13) of these forms?
- (14) A Yes, I was
- (15) Q Were supervisors instructed as to what the form was suppose
- (16) to mean? Let me take this down I guess I m kind of defeating
- (17) my purpose
- (18) THE COURT Has 4471 been admitted
- (19) MR LYNCH Yes that s the one I had the wrong page
- (20) to show but I did move its admission
- (21) MR O NEILL Offer it?
- (22) MR LYNCH Offer it
- (23) (Exhibit 4471 offered)
- (24) MR O NEILL No objection
- (25) THE COURT It s admitted

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- (1) (Exhibit 4471 received)
- (2) MR LYNCH Thank you Your Honor
- (3) BY MR LYNCH
- (4) Q What was that - what was this factor designed to take
- (5) account of?
- (6) A It was intended to take into account the employee's
- (7) initiative and willingness to go beyond the narrow focus of
- (8) his
- (9) job and look for more creative ways to get the job done to
- (10) basically improve the quality of the job to look around him
- (11) what other things are going around on the ship
- (12) Q Was this a sneaky way to encourage people to work
- (13) overtime?
- (14) A No
- (15) Q Would you look at the first item What is that?
- (16) A Maintains a high level of safety awareness
- (17) Q Was that - was that made first for a reason?
- (18) A Yes it was That particular one was made first to
- (19) re-emphasize the role of safety
- (20) Q In the evaluation of a mate or an employee was it a
- (21) master s duty to consider whether the employee was in good
- (22) shape and was getting proper rest and appropriate rest?
- (23) A Yes it was
- (24) Q Was there - was there specific facts for measuring the
- (25) mates performance in that regard?
- (26) A The third line item is always in fit condition alert
- (27) vigilant on watch and at work

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- (1) Q Would a mate who regularly worked to excess be entitled to
- (2) a high rating under this form?
- (3) A No
- (4) Q Did the captain have a responsibility to evaluate his
- (5) people for their completing or their keeping proper rest
- (6) opportunities or managing their time to insure they got proper
- (7) rest?
- (8) A Yes, he was
- (9) Q Now I d like to refer you to Plaintiff's Exhibit 1793
- (10) Could you put that up Is that coming up? This is a real old
- (11) document yes or no it will take a long time to dig it up
- (12) I think you may have that right there in front of you
- (13) Mr Paul This is your memo of March 27 1980 to Mr Shartz?
- (14) A Okay, yes I have that
- (15) Q Now this document was written by you in 1980 when you
- (16) were west coast fleet manager is that correct?
- (17) A Yes
- (18) Q And at that time there were certain pilotage federal
- (19) pilotage requirements in force in Prince William Sound
- (20) A Yes
- (21) Q Even at that time it was Exxon s practice to have its
- (22) captains if possible obtain or some officer on the ship
- (23) obtain a pilotage endorsement from the United States Coast
- (24) Guard is that correct?
- (25) A Yes

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- (1) Q Could you read the last paragraph of your recommendation
- (2) well the one we re getting indented paragraphing beginning
- (3) personnel and vessel safety are the two most important items?
- (4) A Which page are you on?
- (5) Q The first page advantages and disadvantages?
- (6) A Okay Personnel and vessel safety are the two most
- (7) important items considered while weighing the advantages
- (8) and
- (9) disadvantages in utilizing employee pilots Based on
- (10) operating
- (11) experience utilizing competence employee pilots will
- (12) result
- (13) in equal or greater safety for our vessels than the use of
- (14) local pilots
- (15) Q So your recommendation for having employees obtain this
- (16) certification was driven by your view that that would be a
- (17) safety promoting move?
- (18) A Yes
- (19) Q And by the way the decision as to whether or not there
- (20) should be pilotage in those water was not made by Exxon
- (21) Shipping Company?
- (22) A That s correct
- (23) Q It was made by the United States Coast Guard
- (24) A Yes
- (25) Q Were you aware that later in the 1980s the United States
- (26) Coast Guard recommended elimination of the pilotage
- (27) requirements?
- (28) A I had heard that yes

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(1) Q And based on the conclusion and operating experience that  
 (2) pilotage as far as down as Hinchinbrook was not required for  
 (3) safety reasons?  
 (4) A Yes  
 (5) Q Now could you look at the second page sir and I'd  
 (6) like - may I approach just for - let me direct your attention  
 (7) to this paragraph here Would you read the second paragraph  
 (8) the paragraph beginning because of the unavailability?  
 (9) A Because of the unavailability of local federal pilots  
 (10) vessels have been forced to use state pilot service for  
 (11) Hinchinbrook to Rocky Point pilotage whenever employed  
 (12) pilots  
 (13) are not on board This is a three hour run which costs  
 (14) approximately \$4500 round trip including a \$3 000 launch  
 (15) fee  
 (16) During severe weather conditions a follow me approach  
 (17) should  
 (18) be - has been utilized to minimize vessel delay However  
 (19) recently the charter boat Blue Moon which was used by the  
 (20) local pilots to board vessels at Cape Hinchinbrook  
 (21) foundered  
 (22) and sank As a result the USCG has issued certain rules  
 (23) under  
 (24) which vessels may enter and transit Prince William Sound  
 (25) to the  
 (26) state pilot station without a pilot It says without a  
 (27) pilot -  
 (28) Q This is in 1980 correct?  
 (29) A That's correct  
 (30) Q And even at that time the Coast Guard had issued rules  
 (31) which permits ships to operate from Hinchinbrook up to the

(1) Q The captain did not self identify did he?  
 (2) A Which captain?  
 (3) Q Hazelwood?  
 (4) A Yes he did  
 (5) Q Let's talk about that You're aware that while the Graves  
 (6) investigation was going on that a Mr Tompkins who is  
 (7) Mr Sheehy's boss was directed to let the captain know he was  
 (8) being investigated?  
 (9) A I'm aware of that  
 (10) Q The captain didn't come in and say I drank aboard the  
 (11) ship - came back from ship drunk There was an investigation  
 (12) ongoing and Mr Tompkins went to Mr Sheehy and said tell  
 (13) the  
 (14) man we're investigating him You're aware of that fact aren't  
 (15) you?  
 (16) A I'm not aware of how he - how he communicated to Joe  
 (17) no  
 (18) Q Mr Tompkins was told to tell the captain he was under  
 (19) investigation that's a correct statement isn't it?  
 (20) A As far as I know yes  
 (21) Q He was caught wasn't he?  
 (22) A No  
 (23) Q And Captain Hazelwood has testified that before he went  
 (24) into treatment indeed before he made the decision to go into  
 (25) treatment he was contacted by Mr Sheehy and informed by  
 (26) Mr Sheehy that something was wrong?  
 (27) A MR NEAL Not Mr Sheehy Captain Pierce

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(1) state pilot station without a federal pilot aboard is that  
 (2) correct sir?  
 (3) A Yes  
 (4) Q If I can just be one quick moment sir  
 (5) MR LYNCH I have no further questions  
 (6) MR O NEILL I may not finish  
 (7) REDIRECT EXAMINATION OF DANIEL JOHN PAUL JR  
 (8) BY MR O NEILL  
 (9) Q We've talked both about safety and about the Graves  
 (10) report?  
 (11) A Yes  
 (12) Q And what does it say right above safety is for everyone  
 (13) every year in the Graves report? I asked Joe if he ever drank  
 (14) aboard the ship he commented that he occasionally drank  
 (15) aboard  
 (16) the ship but not frequently He also indicated that he came  
 (17) back to the ship from port drunk on several occasions?  
 (18) A Uh huh  
 (19) Q That's right over safety is for everyone every year do you  
 (20) see that?  
 (21) A Yes  
 (22) Q That's a firing offense isn't it?  
 (23) A Which is a firing? Offense  
 (24) Q Coming back to ship from port drunk?  
 (25) A Depending on what time of year you talked - what time  
 (26) period you're talking about, it could be

(1) BY MR O NEILL  
 (2) Q That something was wrong that something was affecting his  
 (3) job performance and that he better do something about it He  
 (4) was caught wasn't he?  
 (5) A No he wasn't caught I wouldn't consider that being  
 (6) caught  
 (7) Q Did he walk in the door and say I have an alcohol problem?  
 (8) A No he didn't  
 (9) Q It is in Exxon's interest as you sit here today to be  
 (10) able to pigeon hole him into self identification isn't it?  
 (11) A I'm not trying to pigeon hole him into anything  
 (12) Q With regard to returning him from duty returning him to  
 (13) duty there was no company requirement when he returned to  
 (14) duty  
 (15) that he be reinstated immediately as a ship captain was there?  
 (16) A Our practice had been to return people to the job they  
 (17) came  
 (18) from when they completed rehabilitation  
 (19) Q I want you to listen to the question I didn't ask you  
 (20) what your practice was I said there was no company  
 (21) requirement to return him to the safety sensitive position as a  
 (22) ship captain when he returned from his treatment was there?  
 (23) A I think there was, yes  
 (24) Q Is it in any of the policies written?  
 (25) A It's inferred in the policies  
 (26) Q Is it written in any of the policies?  
 (27) A Not in direct words

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- (1) Q It is in Exxon's interest as you sit here today for you
- (2) to take that position isn't it?
- (3) A Yes, it is
- (4) Q We talked about you started with the safety awards your
- (5) statement that you made when you started with the safety awards
- (6) was we have a reputation we have a reputation as the premiere
- (7) safety operator in the industry do you see that?
- (8) A Yes
- (9) Q Exxon Shipping Company changed its name between the date of
- (10) the Valdez and today to what?
- (11) A Sea River Maritime
- (12) Q You talk about industrial due process and the legal
- (13) framework of industrial due process Industrial due process
- (14) does not keep you from firing a drinking alcoholic in a safety
- (15) sensitive position does it?
- (16) A If he's not performing his job duties it does not prohibit
- (17) you from firing them
- (18) Q And indeed in the '85/'86 time frame you fired people for
- (19) violating the alcohol policy isn't that a correct statement?
- (20) A That's true
- (21) Q And the Americans with Disabilities Act on a variety of
- (22) occasions didn't keep you from firing him did it?
- (23) A That's true
- (24) Q The rehabilitation act - I'm sorry The rehabilitation
- (25) act doesn't keep you from firing them does it?

- (1) was - a theme was fatigue at sea?
- (2) A We had in 1988 we had a professional topic that dealt
- (3) with fatigue That was not a theme of the conference trying
- (4) to
- (5) educate our supervisors about how to identify fatigue and
- (6) how
- (7) to manage it
- (8) Q You talked a little bit about the straight salary system
- (9) and you talked a little bit about Captain Hazelwood and Captain
- (10) Hazelwood's ratings And in both of these the subject of
- (11) management came up and that he was a poor manager Under
- (12) Mr. Iarossi's vision of the Exxon Shipping Company Mr. Iarossi
- (13) implemented a number of management initiatives The purpose
- (14) of
- (15) which was to turn the captains from driving the vessels into
- (16) the managers of the vessel's business units isn't that a
- (17) correct statement?
- (18) A I wouldn't characterize it that way no
- (19) Q Did he ever do that? Did you ever read his speech on that
- (20) topic? Do you recall that speech?
- (21) A Surrendering Memory
- (22) Q Do you recall that speech?
- (23) A I do
- (24) Q That's one of the things he talked about in that speech
- (25) isn't it?
- (26) A It is not turning them from - he was turning - he was
- (27) adding to their professional responsibility
- (28) Q He was adding to their professional responsibilities so

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- (1) A They were not handicapped
- (2) Q You talked for a minute about the six on/six off rule Do
- (3) you recall that?
- (4) A Yes
- (5) Q That is an important safety requirement isn't it?
- (6) A It's a Coast Guard regulation that was implemented
- (7) presumably for safety yes
- (8) Q It goes into the early part of the century isn't that
- (9) correct?
- (10) A I don't know how far back it goes
- (11) Q And would it be fair to say that in Exxon Corporation
- (12) Exxon Shipping Company in 1988 1989 there was no way the
- (13) company could monitor through recordkeeping the work hours of
- (14) the deck mates?
- (15) A That's correct yes We didn't see a need to do that
- (16) Q You talked a little bit about fatigue And fatigue is a
- (17) problem with regard to ocean going vessel isn't it?
- (18) A It is a potential concern I wouldn't call it a problem
- (19) Q More than a potential concern what was the theme of the
- (20) 1988 fleet officer conference?
- (21) A Future manning was one of the themes Safety was
- (22) another
- (23) There were a number of themes to that conference
- (24) Q How about fatigue at sea was that a theme?
- (25) A I don't recall that
- (26) Q Have you had a fleet officer conference where the theme

- (1) that they would assume responsibility for the management of
- (2) the
- (3) ship essentially as a business entity?
- (4) A Right but not to the degradation of their professional
- (5) responsibilities
- (6) Q It was a way to enhance their professional esteem so they
- (7) were in essence a professional manager and a seagoing
- (8) captain?
- (9) A They were a supervisor of the unit
- (10) Q Did Mr. Iarossi in Surrounding the Memories describe them
- (11) as a manager of this business unit? You were there -
- (12) A I think he may have
- (13) Q He did didn't he? You were there for that speech?
- (14) A He may have I don't recall his exact words
- (15) Q Now you talked a little bit about your monitoring of
- (16) Captain Hazelwood on your own We have two instances We
- (17) have
- (18) the '88 fleet conference but when Mr. Lynch was talking to
- (19) you you talked a little bit about the incident where you
- (20) watched him Do you recall that?
- (21) A I also said I monitored him at the '87 conference
- (22) Q His drinking was of such concern to you that you went out
- (23) of your way to monitor him isn't that a correct statement?
- (24) A His drinking was of no more a concern to me than any
- (25) other
- (26) rumor of a master that I would hear but I did monitor him
- (27) which I thought was prudent right
- (28) Q And with regard to your concerns about the ability to
- (29) monitor him you never past them on to any other members of
- (30) the

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- (1) management team did you?  
 (2) **A Not that I recall**  
 (3) **Q** Now in response to Mr Lynch's question your answer was  
 (4) something that puzzles me You said I had no training with  
 (5) regard to recovering alcoholics or alcoholism Do you recall  
 (6) saving that?  
 (7) **A Yes**  
 (8) **Q** You were the director of human resources for Exxon  
 Shipping  
 (9) Company and that subject matter was within your  
 (10) responsibilities wasn't it?  
 (11) **A That's right**  
 (12) **Q** I want to talk for a minute about the safety credo the  
 (13) plaque  
 (14) **A Uh huh**  
 (15) **Q** The first item in the safety credo is accidents and  
 (16) injuries are preventable Do you see that?  
 (17) **A Sure do**  
 (18) **Q** Accidents and injuries are preventable and one of the ways  
 (19) that we prevent accidents and injuries is through the careful  
 (20) selection and evaluation of seagoing masters is that a correct  
 (21) statement?  
 (22) **A One of many ways yes**  
 (23) **Q** That's a very very important subject isn't it?  
 (24) **A Certainly is**  
 (25) **MR O NEILL** I have no further questions

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- (1) **THE COURT** Thank you sir You may step down  
 (2) **MR LYNCH** Your Honor could I -  
 (3) **MR O NEILL** I forgot to offer exhibits I will  
 (4) offer them for him The defendants offer 3487  
 (5) **THE COURT** This is defendants 3487?  
 (6) **MR LYNCH** Let me take one second with Mr O'Neill I  
 (7) want to make sure that he understands  
 (8) **MR O NEILL** Wants to put more paper in I don't  
 (9) care  
 (10) **THE COURT** Defendants exhibit -  
 (11) **MR O NEILL** 3587 and 3509 and we have no  
 (12) objection  
 (13) (Exhibit 3587 & 3509 offered)  
 (14) **THE COURT** Defendants 3487 and 3589 - no 3509 are  
 (15) admitted Thank you sir  
 (16) (Exhibit 3587 & 3509 received)  
 (17) **MR O NEILL** Thank you sir  
 (18) **THE COURT** Call your next witness  
 (19) **MS WAGNER** Your Honor plaintiffs call Mary  
 (20) Williamson by deposition  
 (21) **THE CLERK** Raise your right hand  
 (22) (The Witness Is Sworn)  
 (23) **THE CLERK** For the record would you state your name  
 (24) address and spell your last name please  
 (25) **THE READER** Sarah Armstrong A r m s t r o n g

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- (1) Minneapolis Minnesota  
 (2) **THE CLERK** Thank you  
 (3) **DIRECT EXAMINATION OF MARY WILLIAMSON (Read)**  
 (4) **BY MS WAGNER**  
 (5) **Q** Could you please state your name for the record  
 (6) **A Mary Robin Williamson**  
 (7) **Q** Where do you presently reside Ms Williamson?  
 (8) **A Houston Texas**  
 (9) **Q** By whom are you presently employed?  
 (10) **A Exxon Shipping Company**  
 (11) **Q** In what capacity?  
 (12) **A Catering buyer**  
 (13) **Q** By whom were you employed in 1980?  
 (14) **A Exxon Shipping Company**  
 (15) **Q** In what capacity?  
 (16) **A 1980 I believe I was on the utility mess utility list**  
 (17) **Q** How long have you been employed by Exxon Shipping?  
 (18) **A Since 1978**  
 (19) **Q** What job positions did you hold with Exxon Shipping from  
 (20) 1978 until 1990?  
 (21) **A I held a job as mess man mess utility person ship's  
 cook**  
 (22) **fleet chef those are the job titles**  
 (23) **Q** In any of these assignments Miss Williamson were you on  
 (24) board a vessel?  
 (25) **A Yes**

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- (1) **Q** Were you on board a vessel at any time which was captained  
 (2) by Joseph Hazelwood?  
 (3) **A I didn't sail on the vessel but I was aboard on temporary  
 (4) vessel assignment**  
 (5) **Q** Can you please explain that please when that was and what  
 (6) vessel?  
 (7) **A The vessel was on the west coast and it was one of the  
 big**  
 (8) **ones I'll say the Valdez It may have been the Long Beach**  
 (9) **but I think the Valdez I'm not real sure But Captain**  
 (10) **Stalzer was the other captain so it was the Valdez I**  
 (11) **relieved in the west coast office for the port steward**  
 (12) **Q** You relieved?  
 (13) **A Yes Temporary shore assignment temporary special  
 (14) assignment is what we call it**  
 (15) **Q** At any time that you were fleet chef or on temporary  
 (16) special assignment as port steward did you receive any reports  
 (17) of intoxication by any captains on board any Exxon vessel  
 (18) shipping vessel  
 (19) **A No ma'am the one incident that I perceived as alcohol  
 (20) being involved was on the launch in San Francisco**  
 (21) **Q** And could you explain that please in terms of when?  
 (22) **A You want a date? Somewhere there is a date on this**  
 (23) **Q** Even just a year  
 (24) **A A year okay It had to be - it was March I think, March  
 (25) or April March of '89 and I was on board the Exxon**

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(1) Galveston And I took a launch ashore it was at night and I  
 (2) had not heard any comments about the Exxon Valdez crew  
 or  
 (3) Captain Hazelwood up to that time  
 (4) I came back on what is called a midnight launch It gets  
 (5) back to the ship about midnight I think it leaves at about  
 (6) 11 30 At that point I met Captain Hazelwood at the  
 Weststar  
 (7) launch  
 (8) Q What happened?  
 (9) A He came up and he spoke to me and they - a  
 conversation  
 (10) ensued I - we were inside the building We later went  
 (11) outside I stepped back toward the door so it was fairly - by  
 (12) then there was a group of people but it's my perception that  
 I  
 (13) smelled alcohol on his breath  
 (14) Q On whose breath?  
 (15) A Captain Hazelwood's I don't know for sure but that's  
 (16) only my perception And we had a conversation and we  
 stepped  
 (17) outside and we got on the launch And that conversation  
 (18) continued briefly not long because he was out on the open  
 (19) deck area and I went in the cabin  
 (20) Q Of the launch?  
 (21) A Yes ma'am  
 (22) Q And that was your only contact with Captain Hazelwood at  
 (23) that time?  
 (24) A That was my only contact with Captain Hazelwood  
 inside a  
 (25) building by the door of a building and the conversation  
 was

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(1) finished up on the deck of a launch  
 (2) Q Now is Weststar launch the same as Weststar terminals?  
 (3) A I know it as Weststar Marine Services and Weststar  
 launch  
 (4) is the same thing It is at Pier 46 in San Francisco So is  
 (5) that what you're talking about?  
 (6) Q And at this time did you advise Captain Hazelwood that you  
 (7) thought that he was intoxicated?  
 (8) A I didn't say to Joe Hazelwood I think you're drunk no  
 (9) ma'am I said something to the effect - he wanted he to  
 relay  
 (10) a message to the captain of the Galveston and I said well  
 (11) Captain I don't think I can do that I think maybe in the  
 (12) morning if you feel better you can relay that message  
 (13) Q What message did he want you to relay to the captain of the  
 (14) Galveston?  
 (15) A It wasn't entirely clear and I wasn't entirely letting him  
 (16) finish his statements because he seemed to be upset with  
 (17) Captain Reeder and that was the master of the Galveston at  
 (18) that time and wanted me to tell Captain Reeder that he was  
 (19) upset with him and I didn't think that was my place to do  
 (20) that  
 (21) Q Now at this time that you smelled alcohol on the breath of  
 (22) Captain Hazelwood in March or April of 19 -  
 (23) A I think it was March I got off the ship in April It was  
 (24) March  
 (25) Q Did you feel that you had a duty to report Captain

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(1) Hazelwood to other authorities in Exxon?  
 (2) A It was my impression that I smelled alcohol It was my  
 (3) impression that I thought he had been drinking I got back  
 to  
 (4) the Galveston that night and I'm aware of Exxon Shipping  
 (5) Company policy I gave it a lot of thought that night I  
 (6) didn't talk to anyone else on the vessel about it I was  
 (7) deciding what to do in the - and the next morning there was  
 (8) some A B's talking about something that had happened  
 during the  
 (9) night which I slept through when the ship let go from the  
 (10) Valdez And I was wondering what I should do or if I should  
 do  
 (11) anything And I still didn't go to anybody But we were at  
 (12) anchor doing some repairs and a gentleman by the name of  
 Steve  
 (13) Day, who worked in the west coast office whom I know  
 came on  
 (14) board and - well and I didn't want anybody violating  
 company  
 (15) policy I couldn't prove the man had been drinking, but I  
 (16) thought something should be said So I took Steve Day  
 aside  
 (17) alone in the officer's room on the Exxon Galveston in the  
 (18) afternoon I'm not sure of the date I think it was the  
 (19) second day of repairs I said when you get some time I  
 need  
 (20) to talk to you confidentiality about something And I went in  
 (21) and said it is my impression I was ashore the other night  
 and  
 (22) this is what I think and I think that Joe Hazelwood was  
 (23) drinking Now I don't know any more about that and I didn't  
 (24) pull anybody to see if he had been drinking but it's my  
 (25) impression And Steve if you think anything should be done

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(1) about this would you take it back and talk to somebody  
 And I  
 (2) didn't tell him who to go talk to but I felt - whether  
 (3) anybody agrees with me I felt like I did what I had to do and  
 (4) I trusted Steve Day to address or at least see if the issue  
 was  
 (5) checked out  
 (6) Q Was the issue checked out?  
 (7) A I did not talk to Steve Day after that I assumed it was  
 (8) Q And you said nothing to anyone that night?  
 (9) A No, ma'am I did not  
 (10) Q Do you know anyone else who saw Captain Hazelwood the  
 night  
 (11) he left the launch in March 1989 from San Francisco and  
 boarded  
 (12) the vessel?  
 (13) A There were crew members and some licensed from the  
 Exxon  
 (14) Valdez on that launch that went back on the ship with him  
 and  
 (15) there was another crew member from the Exxon Galveston  
 on board  
 (16) that launch  
 (17) Q Did you discuss your beliefs regarding Captain Hazelwood's  
 (18) possible state of drunkenness with any of the Exxon Valdez  
 (19) members?  
 (20) A No I didn't  
 (21) Q Did you board the Exxon Valdez that night?  
 (22) A No ma'am  
 (23) Q Along with Captain Hazelwood?  
 (24) A No ma'am It went to the Exxon Galveston the launch  
 went  
 (25) to the Galveston prior to going to the Exxon Valdez I went



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1 out  
 (2) Q As a port steward would you have expected someone on board  
 (3) a vessel to report someone else on board the vessel as a crew  
 (4) member being drunk?  
 (5) A I would think some people would and I would think some  
 (6) people wouldn't  
 (7) Q Why wouldn't some people do that and why would some  
 (8) people  
 (9) do it?  
 (10) A This is my opinion  
 (11) Q I know I'm asking for it please  
 (12) A Okay Some people would do it because company policy  
 (13) you  
 (14) should follow And some would do it because they probably  
 (15) thought there was another way and - you don't want to turn  
 (16) somebody in And if they were drinking and not drunk and  
 (17) there was no harm done even though it was a violation of  
 (18) company policy it's not - I didn't say anything that first  
 (19) night because I'm not a hundred percent convinced Joe  
 (20) Hazelwood  
 (21) was drunk I thought he was drinking Then I had to debate  
 (22) company policy is a serious thing and to go to somebody  
 (23) and  
 (24) say, hey by the way I think your captain over there was  
 (25) drinking I had to think long and hard about that And I  
 (26) think there are other people that probably have to think long  
 (27) and hard whether it is a captain or somebody else but in  
 (28) the  
 (29) end we try to do the right thing in most cases and what I did  
 (30) I feel like I was in the wrong place at the wrong time and I

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(1) tried to do the right thing And maybe I didn't do it in a  
 (2) timely fashion but I think I'm just like most other people out  
 (3) there Sometimes you may take too long but you don't  
 (4) deliberately violate company policy If I had seen the man  
 (5) stumbling falling down drunk yes ma'am I would have  
 (6) made a  
 (7) fuss over it But that's not what I saw  
 (8) Q And you said Captain Reeder was the master of the Exxon  
 (9) Galveston at this time?  
 (10) A Yes ma'am  
 (11) Q Were you made aware at any time as to whether or not  
 (12) Captain Hazelwood and Captain Reeder had a verbal  
 (13) altercation  
 (14) on the radio at about this time?  
 (15) A The morning after I came back on the launch ride that  
 (16) night that next morning at breakfast I heard people talking  
 (17) about when the Galveston and the Valdez had let go And  
 (18) this  
 (19) is talk because the chef didn't have to get up for those  
 (20) things so I wasn't up for that that there had been profanity  
 (21) used on the radio  
 (22) Q Well when you became aware of this cursing between  
 (23) Captain  
 (24) Reeder who is the master of the vessel you were on -  
 (25) A Yes ma'am  
 (26) Q - and Captain Hazelwood did you in any way feel any  
 (27) obligation to tell captain Reeder of your observations or  
 (28) perceptions the night before?  
 (29) A I won't say the thought didn't cross my mind We were

(1) underway Captain Reeder was on the bridge Captain  
 (2) Reeder  
 (3) was busy and I still hadn't made up my mind what to do  
 (4) about  
 (5) it So I didn't tell Captain Reeder maybe I should have  
 (6) hindsight is always better than foresight but no I did not  
 (7) tell Captain Reeder  
 (8) Q If you can - and I appreciate the difficulty in doing so  
 (9) - internally what was going through your mind when you  
 (10) judged whether you shouldn't or you should tell Captain  
 (11) Reeder—  
 (12) about your perception with regard to Captain Hazelwood?  
 (13) A It's perception I can't tell you the man was falling down  
 (14) drunk He got on the launch just fine And if there was an  
 (15) incident with profanity or cursing over the radio then that is  
 (16) between Captain Reeder and Captain Hazelwood and that's  
 (17) up to  
 (18) them to settle I don't know if I was right or wrong in doing  
 (19) what I did I'm telling you what I did If I had thought the  
 (20) man was totally incompetently drunk I would have handled  
 (21) it  
 (22) different I thought he had been drinking And I had a hard  
 (23) time deciding what to do about it and, yes, ma'am I was  
 (24) fully  
 (25) aware of the company's policies  
 (26) Q Well the company policy doesn't make a distinction between  
 (27) drinking and falling down drunk do they?  
 (28) A No ma'am  
 (29) Q It prohibits drinking am I correct?  
 (30) A You're right  
 (31) Q Well what was the company policy? Did it allow crew

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(1) members to have one drink as you understood it?  
 (2) A As I understood it you could not come back to a ship  
 (3) inebriated You could not have alcohol aboard a vessel  
 (4) You  
 (5) could not drink aboard a vessel If you went ashore and had  
 (6) dinner and had a beer or a glass of wine and you didn't have  
 (7) to  
 (8) go on watch for several hours then you could do that That  
 (9) was my interpretation of it  
 (10) Q Yes At the point of the launch in March of 1989 was there  
 (11) any person representing Exxon Shipping who if they perceived  
 (12) a  
 (13) crew member might be drunk could administer a test to  
 (14) determine whether or not that crew member was drunk or how  
 (15) drunk they were?  
 (16) A That night that I went to the Weststar launch, there was a  
 (17) Weststar lunch driver and there were people going back to  
 (18) ships And I don't know about any breathalyzer test, but  
 (19) nobody said anything about any breathalyzer test and only  
 (20) Exxon  
 (21) people that were there were people that were A going to  
 (22) the  
 (23) Valdez, B going to the Galveston I didn't see anybody else  
 (24) who worked for Exxon Shipping  
 (25) Q Were you aware of any company policy in effect at that time  
 (26) which would have stationed some Exxon Shipping  
 (27) representative  
 (28) at the site of a launch to determine whether or not returning  
 (29) crew members were drunk and/or how drunk they may have  
 (30) been?  
 (31) A I don't know of one There might have been but I don't  
 (32) know of one

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(1) Q Was there any Exxon Shipping representative on board a  
 (2) vessel whose function was to determine whether or not  
 returning  
 (3) crew members were drunk or how drunk they were?  
 (4) A I assumed it was the mate on watch or if you were on -  
 (5) you know, if somebody saw you they would tell the mate or  
 the  
 (6) captain or a chef if you were an oiler or an engineer  
 (7) Q And that's all you were aware of that's the only procedure  
 (8) you were aware of?  
 (9) A That's the only procedure I was aware of There might  
 have  
 (10) been more but you're asking me what I knew  
 (11) Q Miss Williamson let me ask it directly then At the time  
 (12) you were on the launch with Captain Hazelwood in March of  
 1989  
 (13) and you perceived he had been drinking did you also perceive  
 (14) that his drinking may have been in violation of company policy?  
 (15) A I know you want a clear-cut answer but I didn't think  
 (16) about it that way  
 (17) Q Why not?  
 (18) A I don't know how to explain this I didn't perceive Joe  
 (19) Hazelwood was a danger to his vessel or anybody else And  
 I  
 (20) didn't discuss with him if he had been drinking I didn't see  
 (21) him take a drink Now in the back of my mind yeah I knew  
 (22) what company policy was and how precise or how right I  
 was or  
 (23) how wrong I was and I gave it a lot of thought And maybe if  
 (24) I hadn't of heard there had been an incident with profanity  
 on  
 (25) the radio maybe I would have never said a word to anybody  
 I

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(1) don't know that That played a part in it and then I still  
 (2) didn't say it to the captain Then I waited for someone to  
 (3) come show up from the office that I trusted that I thought  
 (4) would just take this and pass it on and that's an assumption  
 (5) on my part that he passed it on  
 (6) Q You said that the incidence of profanity somehow connected  
 (7) in your mind to -  
 (8) A Our captains don't normally use profanity on the radios  
 (9) Q In your mind did you associate the use of profanity by  
 (10) Captain Hazelwood with regard to your perceptions the night  
 (11) before?  
 (12) A Something was wrong I didn't know if he had been  
 drinking  
 (13) or not But something - captains don't use profane - I m  
 not  
 (14) saying a captain never used a dirty word on the radio I'm  
 (15) saying our captains don't pick up radios and use - and  
 curse  
 (16) other people out another captain or a line handler or  
 (17) whatever They don't do that That is not normal  
 (18) Q I'm just trying to find out honestly what you were thinking  
 (19) at the time and if I can ask maybe directly then when you  
 (20) heard of the incident of Captain Hazelwood using profanity in  
 (21) your mind did that raise another question as to whether or not  
 (22) he might be drunk?  
 (23) A It raised a question of this is odd and I wonder if I  
 (24) know something that impacts any of this And I wonder  
 what I  
 (25) should do about it It raised -

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(1) Q Mr Thomas interjects I believe she's finished  
 (2) It raised it internally?  
 (3) A It raised it internally for me I didn't assume - I mean  
 (4) you can get angry I don't say profanity is not used on Exxon  
 (5) Shipping ships and I don't say that everybody didn't use it  
 (6) time and again I'm saying on the radio that's just not  
 (7) routine That's not normal That doesn't mean somebody is  
 (8) drunk, that means somebody is annoyed or upset If I had  
 (9) really been concerned, I guess I would have gone to Captain  
 (10) Reeder and I didn't do that I just kept thinking about it,  
 (11) and that was strictly - I don't know how to explain to you  
 what  
 (12) I felt or how I thought, and maybe you don't understand it  
 but  
 (13) I didn't assume Joseph Hazelwood was drunk I assumed  
 (14) something was wrong with him concerning - and I assumed  
 that  
 (15) - well I knew what my perception was and maybe I had  
 better  
 (16) say something And the best thing maybe to do would be to  
 say  
 (17) something to somebody in the office if I could get off the  
 ship  
 (18) and go to a telephone I didn't get off the ship We were at  
 (19) anchor And then Steve Day showed up and I thought well  
 (20) Steve Day's here and I'll just tell him  
 (21) MS WAGNER There's about two more pages left finish  
 (22) it up?  
 (23) THE COURT Finish it up  
 (24) Q I'm just trying to understand -  
 (25) A In effect I passed the problem on whether I was right or

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(1) not And it was only my perception of the problem  
 (2) Q What was the problem you understood you were passing on?  
 (3) A That I thought he had been drinking I didn't know if  
 (4) this - I didn't know how this played into profanity on the  
 (5) radio or anything else but you know here Steve I don't  
 (6) know what it means or if it means anything, and I did it  
 (7) confidentially and I did it to him alone and I said if you  
 (8) would take it out back and see if anybody in the office wants  
 (9) to check it out He told me he would take care of it He  
 (10) didn't get real specific but he said he'd take the information  
 and I assumed he did  
 (11) Q Can you tell me to the best that you can recall what you  
 (12) said to Mr Day and what Mr Day said to you?  
 (13) A I told Steve Day that I had been ashore that I had come  
 (14) back It was the Weststar it was the launch, I had a  
 (15) conversation with Joe Hazelwood It was my impression  
 that Joe  
 (16) Hazelwood was drinking And I didn't see him falling down  
 (17) drunk or anything and I didn't - you know I don't know what  
 (18) this meant but I had heard of an incident of profanity on the  
 (19) radio and I didn't know if Steve knew about and that if he  
 (20) wanted to know about that he could go ask some crew  
 members or  
 (21) go ask a captain I wasn't a witness to that And that I  
 (22) would be more comfortable if he would just pass it on to  
 (23) somebody in the office and check it out or have somebody  
 check  
 (24) it out I don't think I asked Steve to check it out

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(1) Q Check what out?  
 (2) A To check to see if the profanity or anything else if Joe  
 (3) Hazelwood had been drinking or if it was all linked together  
 or  
 (4) what was going on I mean they could have - they could  
 call  
 (5) the ship up they could do something So he told me he  
 would  
 (6) take that back to the west coast office and I don't - I don't  
 (7) specifically remember him telling me who he would tell I  
 just  
 (8) remember he said he would do it and I - I believed he would  
 (9) do it So I didn't - I didn't run after him to see if he  
 (10) really did it I just assumed he would take it back to whoever  
 (11) he thought was appropriate in the west coast office It  
 would  
 (12) be checked out  
 (13) Q At the time you observed Captain Hazelwood on this launch  
 (14) outside San Francisco did you hear any retaliation from Exxon  
 (15) Shipping if you - or Captain Hazelwood if you actually  
 (16) officially reported the incident?  
 (17) A Official retaliation no ma'am  
 (18) Q Well even unofficial retaliation?  
 (19) A If I had been wrong and reported him I thought they  
 would  
 (20) there would - thought there would probably be some  
 unofficial  
 (21) and not from top down from the people you sail with Being  
 (22) ostracized but that's human nature and I could be wrong  
 about  
 (23) that Everybody wants to get along with who they sail with  
 (24) Q Why did you feel there would be this peer pressure if you  
 (25) reported -

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(1) A Joe Hazelwood was a nice - probably is a nice man and  
 he  
 (2) was liked by people out there I never sailed with him but I  
 (3) always heard people liked Joe Hazelwood And I liked Joe  
 (4) Hazelwood He was always very nice when he dealt with me  
 in  
 (5) the office I had nothing against this man so why are you  
 (6) going to take this nice person and say well I think you are  
 (7) but I'm not sure and I want to make a big mess of this  
 Maybe  
 (8) somebody else would have I didn't Maybe I should have  
 I  
 (9) didn't  
 (10) MS WAGNER That's all Your Honor  
 (11) MR SANDERS Fast Eddie one page  
 (12) THE COURT Let's keep it together  
 (13) CROSS EXAMINATION OF MARY WILLIAMSON  
 (14) BY MR SANDERS  
 (15) Q Ms Williamson just briefly I think you said you first  
 (16) encountered Joseph Hazelwood in the office where exactly did  
 (17) you encounter him?  
 (18) A In the open warehouse building itself There is little  
 (19) glassed in office and I had been in there It's warmer than  
 (20) the big open - I had come out of here and there were several  
 (21) people out there We were saying hello and I encountered  
 him  
 (22) in the warehouse itself  
 (23) Q Who all was there that you presently recall in the open  
 (24) warehouse area at the time and specifically - well never  
 (25) mind Whoever was there?

(1) A Did you skip somewhere?  
 (2) Q Yeah Read line 19 the answer  
 (3) A Sever it people Okay I remember second mate Nate  
 Carr  
 (4) because I knew him I remember a Melanie Wright from the  
 (5) steward's department coming in I was introduced to an A B  
 who  
 (6) was female I forget her name Chief mate Guy Kless was  
 (7) there There was a tall guy I had never met I think he was  
 (8) in the engine department I mean they said hello and they  
 (9) said his name but I don't remember I never sailed with  
 him  
 (10) There was several people, there was Betsy, there was  
 someone  
 (11) else an engineer A female engineer I don't know her I  
 (12) don't remember her name But people said hello and  
 people  
 (13) introduced each other  
 (14) Q At the time in March 1989 that you were on board the launch  
 (15) in San Francisco with Captain Hazelwood did you perceive that  
 (16) Captain Hazelwood had had more than just a beer or glass of  
 (17) wine at dinner? I'm asking you only your perception  
 (18) A My perception was I smelled alcohol on this man's  
 breath  
 (19) He could have had a beer five minutes before he showed up  
 for  
 (20) the launch He didn't slur his words he didn't stumble he  
 (21) wasn't as nice as he had always been on the phone with me,  
 but  
 (22) I didn't take that directed at me that's what I perceived I  
 (23) didn't perceive this fumbling person going back to the ship  
 (24) MR SANDERS That's all we have Your Honor  
 (25) THE COURT Ladies and gentlemen I have a note from

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(1) earlier telling me something about pictures having been taken  
 (2) out in front of the courthouse this morning I don't know what  
 (3) was going on this morning what was going on out there I don't  
 (4) have much control over what goes on  
 (5) I wish you would keep me posted though I think I have an  
 (6) understanding with the local press that your names - and we  
 (7) can talk about it specifically but I think I have an  
 (8) understanding with the press is not going to identify you in  
 (9) the paper So if that's a concern I have some hope that  
 (10) that's not going to happen Beyond that I don't know what was  
 (11) going on out there this morning If you perceive any problem  
 (12) let me know about it  
 (13) We will be adjourning for the day in just a second Please  
 (14) remember my instructions about not listening to or not reading  
 (15) anything about this case Don't go off on your own  
 (16) investigating or reading up about anything  
 (17) We'll see you at 8:00 Monday morning  
 (18) Counsel will stay for a minute  
 (19) (Jury out at 2:10 p.m.)  
 (20) THE COURT Somebody has left their notebook there  
 (21) Would you haul that back to the jury room It's in that first  
 (22) chair isn't it? I'm seeing something  
 (23) MR O'NEILL They all left them Judge I think Tom  
 (24) takes care of them  
 (25) THE COURT I will have Mr. Murtiashaw take care of

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(1) that I thought they were carrying them out  
 (2) Just a couple of administrative things We've had some  
 (3) paper exchange about the instruction I gave concerning the  
 role  
 (4) and responsibility whatever of the Coast Guard in this  
 (5) matter I've been asked to give an additional instruction on  
 (6) that subject I don't intend to give any further instruction  
 (7) on that subject at this time I will consider a request for  
 (8) something specific on that in connection with the final  
 (9) instructions  
 (10) We have pending a Motion for Summary Judgment that has to  
 (11) do with certain landowners having what I've referred to as  
 (12) quote unestablished end quote claims That's related to an  
 (13) earlier motion that frankly I'm still sitting on because it's  
 (14) a really tough nut to crack  
 (15) I would like to see counsel who are involved in this motion  
 (16) having to do with unestablished claims in chambers Tuesday at  
 (17) 2:00 I want to discuss that with the people that are directly  
 (18) involved with it informally to see if we can figure out somehow  
 (19) to break the problems down and deal with them  
 (20) Third thing I guess is how are we doing timewise Mr  
 (21) O'Neill?  
 (22) MR O NEILL We're on my schedule I think much to  
 (23) Mr Lynch's surprise  
 (24) THE COURT Are we on my schedule?  
 (25) MR O NEILL Yes sir It looks like we're going to

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(1) rest on Tuesday and that's within a couple hours of where I  
 (2) thought we'd be And in addition we've allowed them to get  
 (3) some witnesses in during our case That ought to help the  
 (4) time  
 (5) MR NEAL I think that we will - well we'll be able  
 (6) to start the conclusion of their case I guess that I would  
 (7) request if they - if they conclude their case at 12:00 or  
 (8) something like that I might ask for the rest of that day but  
 (9) start the next day But we'll be ready if Your Honor says you  
 (10) start immediately we'll start immediately And I think we can  
 (11) conclude our case in - certainly in ten trial days  
 (12) THE COURT Thank you sir  
 (13) Anything else?  
 (14) MR LYNCH That's all Your Honor  
 (15) MR O NEILL No sir  
 (16) THE COURT Have a good weekend  
 (17) We're in recess until Monday at 8:00 a.m.

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(18) 154 & 1793 received 2044  
(19) DX170 received 2072  
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(1) STATE OF ALASKA )  
(2) Reporter s Certificate  
(3) DISTRICT OF ALASKA )  
(6) I Karyn H Chalem 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) KARYN H CHALEM  
Notary Public for Alaska  
(17) My Commission Expires 4 8 95

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(1) 3431B received 2083  
(2) 3619 received 2105  
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Look-See Concordance Report

UNIQUE WORDS 3,247
TOTAL OCCURRENCES 15,436
NOISE WORDS 385
TOTAL WORDS IN FILE 48,387

SINGLE FILE CONCORDANCE

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NOISE WORD LIST(S)
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Vol 15 2164

(1) IN THE UNITED STATES DISTRICT COURT  
 (2) FOR THE DISTRICT OF ALASKA  
 In re: ) Case No. A89-0095 CIV (HRM)  
 (3) ) Anchorage, Alaska  
 The Exxon VALDEZ ) Monday, May 23, 1994  
 (4) ) 8:00 a.m.

TRANSCRIPT OF PROCEEDINGS  
 TRIAL BY JURY 15th DAY  
 (5) BEFORE THE HONORABLE H. RUSSEL HOLLAND, JUDGE  
 (6) VOLUME 15, Pages 2164 - 2572  
 Realtime Transcription

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 Registered Professional Reporter  
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 2500 Denali Street, Suite 1505  
 Anchorage, AK 99503  
 Ph. 907/259-7100

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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  
 (8) Mr O Neill will you call your next witness?  
 (9) MR O NEILL Thank you Judge The plaintiffs call  
 (10) by videotape, Steve Day  
 (11) DIRECT EXAMINATION OF STEVE DAY (Video)  
 (12) BY VIDEO EXAMINER  
 (13) Q Mr Day for the record would you state your full name  
 (14) please?  
 (15) A Steven Morgan Day  
 (16) Q And where do you currently reside sir?  
 (17) A At 2920 Sombrosa Street in Carlsbad, California  
 (18) Q By whom are you currently employed?  
 (19) A Exxon Shipping Company  
 (20) Q What is your current position with Exxon Shipping Company?  
 (21) A I'm a first assistant engineer  
 (22) Q When you were initially hired in November of '84 by Exxon  
 (23) Shipping Company what position did you hold?  
 (24) A Second assistant engineer  
 (25) Q And were you assigned to any particular vessel at that

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(1) time?  
 (2) A Just briefly, not to a permanent vessel, just to the Exxon  
 (3) Baytown  
 (4) Q Were you subsequently assigned to a different vessel?  
 (5) A No I was sent - after that assignment I was moved  
 (6) ashore as machinery inspector for the construction of the  
 Exxon  
 (7) Valdez and the Exxon Long Beach, spent four months in  
 Houston  
 (8) in the headquarters office, and about, oh 18 months here in  
 (9) San Diego on-site, as on site inspector  
 (10) Q What was the next position you held then with Exxon  
 (11) Shipping Company?  
 (12) A When the ships were completed I sailed the Exxon Long  
 (13) Beach as first assistant engineer for approximately one  
 year  
 (14) Q Who was the master at that time?  
 (15) A Marshal Price was one Bill Deppe and Tom Calle were  
 the  
 (16) three masters that I sailed with on that ship  
 (17) Q And was the Exxon Long Beach involved in the Valdez run?  
 (18) A Yes  
 (19) Q You did that for about a year?  
 (20) A Yes  
 (21) Q So does that bring us up to sometime in late '85?  
 (22) A No, actually '88 ship was completed in April of '87 May  
 (23) of '88 I came ashore once again as a repair superintendent  
 on a  
 (24) temporary shore assignment  
 (25) Q Where was that shore assignment?

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- (1) **A Benicia California, west coast fleet office**  
 (2) **Q And as a repair superintendent what were your duties?**  
 (3) **A To assist the vessel with voyage repairs in port to**  
 (4) **coordinate and essentially run the shipyard repairs when**  
 (5) **the**  
 (6) **vessels enter the shipyard and then assist the chief**  
 (7) **engineer**  
 (8) **and the captain as required you know as far as getting**  
 (9) **parts**  
 (10) **or labor to accomplish different tasks on the vessel**  
 (11) **Q Was Harvey Borgen assigned to the west coast fleet office**  
 (12) **during the time you were there in 1988?**  
 (13) **A Yes**  
 (14) **Q What was his position at that time?**  
 (15) **A He was the west coast fleet manager**  
 (16) **Q Would you report to him?**  
 (17) **A It was my recollection that I reported to the ship group**  
 (18) **coordinator for the individual vessel that I was working on**  
 (19) **Q Okay And that would be either Stuart McRobbie or Bill**  
 (20) **Deppe?**  
 (21) **A Yes**  
 (22) **Q Would they report to Harvey Borgen?**  
 (23) **A Yes**  
 (24) **Q How long were you the repair superintendent at Benicia**  
 (25) **California?**  
 (26) **A From April of '88 until approximately August of 1989**  
 (27) **Q And what position did you take in August of '89?**  
 (28) **A At that time I was assigned as repair superintendent for**

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- (1) **the repair of the Exxon Valdez here in San Diego**  
 (2) **Q From April - excuse me from November of '84 when you**  
 (3) **first were hired by Exxon Shipping Company until the present**  
 (4) **have you been informed of the existence of an alcohol policy**  
 (5) **that the company had?**  
 (6) **A Yes**  
 (7) **Q Now has it been reminded you attended the fleet**  
 (8) **management conference in March of 1988 and there was a**  
 (9) **discussion during that conference regarding the alcohol**  
 (10) **policy?**  
 (11) **A Yes, I believe that was part of the presentation**  
 (12) **Q Do you recall who gave the presentation in regards to the**  
 (13) **alcohol policy during that conference?**  
 (14) **A No, I don't**  
 (15) **Q Who attended - to your knowledge, who was to attend the**  
 (16) **fleet management conference?**  
 (17) **A Senior officers first assistants chief engineers chief**  
 (18) **mates and captains**  
 (19) **Q Did captains attend this management conference as well?**  
 (20) **A Yes**  
 (21) **Q Do you recall which captains were there?**  
 (22) **A Some of them I don't remember everyone that was there**  
 (23) **Q Okay Do you recall any names?**  
 (24) **A Captain Hazelwood was there**  
 (25) **Q What vessel was Captain Hazelwood sailing at that time if**

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- (1) **you know?**  
 (2) **A I believe he was assigned the Exxon Valdez That's my -**  
 (3) **Q You talked about a group of conference attendees in the**  
 (4) **hotel room in March of 1988 Can you recall - other than**  
 (5) **Captain Hazelwood can you recall the names of anyone else**  
 (6) **who**  
 (7) **was present in that room?**  
 (8) **A Andy Dunn**  
 (9) **Q Anyone else you can recall?**  
 (10) **A No**  
 (11) **Q Is there any particular reason over five years after the**  
 (12) **conference you can recall Captain Hazelwood and Andy Dunn**  
 (13) **being**  
 (14) **present in the room?**  
 (15) **A I've been asked about this conference a lot by various**  
 (16) **attorneys you know in the last five years**  
 (17) **Q Is that the only reason you recall Captain Hazelwood and**  
 (18) **Andy Dunn drinking Perrier?**  
 (19) **A No From my recollection they were the only ones not**  
 (20) **drinking alcohol**  
 (21) **Q After the management conference when was the next time**  
 (22) **you**  
 (23) **would have had occasion to see or hear of Captain Hazelwood?**  
 (24) **A May of '88**  
 (25) **Q Okay In May of 1988 you came across Captain**  
 (26) **Hazelwood s**  
 (27) **name again or you heard about him again?**  
 (28) **A I worked with him**  
 (29) **Q Where was this?**

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- (1) **A In West State Shipyard in Portland Oregon**  
 (2) **Q You were the repair superintendent at that time?**  
 (3) **A I was an assistant to Jack King**  
 (4) **Q And at that time was Captain Hazelwood the master of the**  
 (5) **Exxon Valdez?**  
 (6) **A Yes**  
 (7) **Q You say you worked with him What exactly did you do with**  
 (8) **Captain Hazelwood or how did your duties coincide with**  
 (9) **Captain**  
 (10) **Hazelwood s?**  
 (11) **A Well it was - it was in both of our interests to get the**  
 (12) **vessel back into service, you know**  
 (13) **Q Let me - the Exxon Valdez was in dry dock?**  
 (14) **A Yes undergoing repair**  
 (15) **Q Do you recall specifically how long the Exxon Valdez**  
 (16) **dry docking lasted in May of 1988?**  
 (17) **A I believe it was about eight weeks**  
 (18) **Q Was there any reason it was longer than the general?**  
 (19) **A Because there was this guarantee dry docking, as I**  
 (20) **mentioned, the scope of work was larger, a lot of guarantee**  
 (21) **related items were repaired or altered**  
 (22) **Q Could you tell us what kind of contact you had with Captain**  
 (23) **Hazelwood during this time?**  
 (24) **A Primarily working the - my responsibility was to monitor**  
 (25) **the repairs and then work with him coordinate with him to**  
 (26) **be**  
 (27) **sure that he was satisfied that repairs were complete and**  
 (28) **then**

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- (1) get the vessel back into service, you know
- (2) Q Did you see Captain Hazelwood on a daily basis?
- (3) A Yes, I would - I would say that's how I remember it
- (4) Q Did you socialize with Captain Hazelwood at all during this time?
- (5) time?
- (6) A No
- (7) Q During the time of the Exxon Valdez dry docking did anything happen concerning Captain Hazelwood which you subsequently reported to a superior of yours?
- (8) A Yes
- (9) Q Okay Could you tell us what occurred?
- (10) A I overheard on the walkie-talkie radio someone call the ship superintendent for the vessel, yard person, indicating that we're out of Henry's up here " It was my impression that the voice calling was Captain Hazelwood
- (11) Q You heard Captain Hazelwood's voice before?
- (12) A Yes
- (13) Q Okay You said that you heard this voice which you believed to be Captain Hazelwood saying we're out of Henry's up here ?
- (14) A Yes
- (15) Q What does that phrase mean to you?
- (16) A It sounded to me like he was referring to Henry Weinhart's beer
- (17) Q You identified the position before I think but to whom

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- (1) was Captain Hazelwood speaking at this time?
- (2) A The ship superintendent
- (3) Q And who was that?
- (4) A Person named Bill Timmons
- (5) Q Do you recall what Mr Timmons' response was?
- (6) A I believe it was something to the effect Roger - Roger captain I'll see what I can do about that Something like that
- (7) Q How was it that you happened to overhear this conversation?
- (8) A I was in the shipyard office - the port engineer's office and it was my habit to leave the radio on in case the shipyard needed me or people on the ship needed to ask me something
- (9) Q Did this exchange cause you any concern?
- (10) A Yes
- (11) Q And why did it cause you concern?
- (12) A I was concerned that others might draw the conclusions I had drawn
- (13) Q You had drawn some conclusions from this exchange?
- (14) A That Henry's meant Henry Weinhart's I was concerned the way it sounded over the radio
- (15) Q Why did that concern you the way it sounded?
- (16) A Well we try to keep the radio conversation to work related business and it didn't sound work related to me
- (17) Q Did it concern you that an Exxon Shipping Company captain was ordering beer over the radio?

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- (1) A I would have to say I was concerned that that might be the case
- (2) Q Did you do anything to follow up on your concerns?
- (3) A Yes, I spoke to Herb Leyendecker
- (4) Q Who is Herb Leyendecker?
- (5) A At that time, he was the repair manager I believe was his title He was my boss, essentially, as repair superintendent overseeing the repairs of the vessel
- (6) Q What did you tell Herb Leyendecker?
- (7) A From my recollection, I told him essentially what we've just - what I've just told you
- (8) Q Where was Herb Leyendecker?
- (9) A He was in the office with me
- (10) Q So he overheard the conversation as well?
- (11) A It's very possible that he did
- (12) Q Did he indicate to you that he'd overheard the conversation?
- (13) A My recollection is that I didn't have to do much explaining, so he was in an office that was just a few feet away and probably could have heard the same radio that I heard, or even had one on in that adjacent office
- (14) Q Was there anybody else in the office besides you and Mr Leyendecker?
- (15) A Not that I recall no
- (16) Q Can you tell us what it was you discussed with

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- (1) Mr Leyendecker?
- (2) A As I stated earlier, you know, we like to keep the radio for the business of the repair And that there might be a possibility that what we heard was ordering beer
- (3) Q What did Herb Leyendecker say in response to your concerns?
- (4) A My recollection is that he said that he would speak to Captain Hazelwood about what I had heard or we had heard And he didn't really want me to get involved I think being a fleet - fleet person
- (5) Q I didn't understand what you meant being a fleet person
- (6) A This - the job that I was doing in Portland and the entire two years I was ashore, still essentially a first assistant engineer who was working temporarily as a repair superintendent or new construction inspector but eventually as we've seen in my bio I do have to go back to sea and work with the rest of the fleet as a peer or as a junior officer to some of these people It was his desire to keep me out of any potential conflicts or discussions of that nature
- (7) Q Did he tell you that that was his desire?
- (8) A Yes that's my recollection that -
- (9) Q He said don't get - don't get involved you're going to be sailing with these people I'll handle it?
- (10) A That's my recollection
- (11) Q Okay As a result of the concerns that you told us about

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- (1) any action that you took in regards to this incident after you  
 (2) spoke with Herb Leyendecker using that understanding of  
 follow  
 (3) up did you do anything to follow up on your concerns?  
 (4) A Well, I spoke to Herb about - as I said and I believe he  
 (5) did speak with Captain Hazelwood at some point I can't  
 recall  
 (6) whether it was that day or the following day  
 (7) Q Okay Let me ask you did you speak with Mr Leyendecker  
 (8) about his conversation with Captain Hazelwood?  
 (9) A Yes  
 (10) Q What did he tell you about that conversation?  
 (11) A From what I recall he indicated he - he asked Captain  
 (12) Hazelwood if there was drinking going on on the ship, and  
 (13) Captain Hazelwood said there wasn't This is from what I  
 (14) remember of him debriefing me afterwards He asked  
 Captain  
 (15) Hazelwood if he was drinking again, and from what I recall  
 his  
 (16) reply was no  
 (17) And then I believe Herb indicated that if there was any  
 (18) drinking going on on the ship, that he wanted it stopped  
 And  
 (19) if there was any booze on the ship, he wanted it off, you  
 know  
 (20) kind of - kind of a warning or a - some guidance that if this  
 (21) was some kind of indication of a problem that he expected  
 the  
 (22) captain to take care of it  
 (23) Q Anything else you can recall about what Herb Leyendecker  
 (24) told you in regards to his conversation with Captain  
 (25) Hazelwood?

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- (1) A No that's - that's all I can -  
 (2) Q You said that Herb Leyendecker asked Captain Hazelwood if  
 (3) he was drinking again?  
 (4) A That's - that's my recollection yes  
 (5) Q Did you have an understanding as to why Herb Leyendecker  
 (6) would ask him if he was drinking again?  
 (7) A My understanding was that you know possibly at some  
 time  
 (8) in the past Captain Hazelwood had an alcohol problem or  
 been a  
 (9) heavy drinker and as - you know as I stated earlier the only  
 (10) time I had met him, he was not drinking  
 (11) Q Prior to this incident had someone told you or had you  
 (12) learned from some source that Captain Hazelwood had had an  
 (13) alcohol problem or was a heavy drinker?  
 (14) A Nothing specific  
 (15) Q Mr Day did you want to clarify that answer?  
 (16) A Yes I would say the impression that I had regarding you  
 (17) know what I said previously, possibly being a heavy  
 drinker,  
 (18) probably came from Herb, you know in, you know  
 discussing the  
 (19) incident or in his decision to speak to Captain Hazelwood  
 (20) That's my recollection, that that's where I kind of became  
 (21) aware that, you know, there might be something in his past  
 (22) Q Was this an indication that you'd received from Herb prior  
 (23) to this incident?  
 (24) A No, I think kind of during Yeah Prior, I would have to  
 (25) state, you know say the same as I did just a few minutes  
 ago,

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- (1) there was nothing specific to indicate that  
 (2) Q Okay  
 (3) A You know the only other thing I can add is you know I  
 (4) did attend this conference and with a group of sea going  
 (5) people and did notice that he wasn't drinking So maybe  
 (6) here's a guy who had realized it was in his best interest not  
 (7) to You know that's probably the only other place I could  
 (8) have drawn that conclusion  
 (9) Q Do you recall thinking that at the time that maybe here's  
 (10) a guy who doesn't want to drink?  
 (11) A Yes He and Andy, both you know They'd made a  
 choice of  
 (12) some - you know  
 (13) Q Do you know whether Herb Leyendecker spoke with anyone  
 else  
 (14) regarding this incident?  
 (15) A No I do not  
 (16) Q Do you want to clarify?  
 (17) A Well there's a time frame involved  
 (18) Q Okay And I had limited my question to -  
 (19) A Right So it's wide open and in that time frame you know  
 (20) no But -  
 (21) Q It's your understanding that sometime later Herb  
 (22) Leyendecker spoke with someone else about this incident?  
 (23) A Yes  
 (24) Q Do you recall when that was that Herb would have had that  
 (25) conversation?

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- (1) A I don't know exactly when he had the conversation I do  
 (2) know when he told me that he had had the conversation  
 (3) Q Okay And when was that?  
 (4) A After the grounding  
 (5) Q Okay But when he told you about the conversation he  
 (6) didn't indicate when it was he had had - had discussed this  
 (7) incident with anyone?  
 (8) A Not specifically, no  
 (9) Q Did he indicate to you that this subsequent conversation he  
 (10) had had was - occurred prior to the grounding?  
 (11) A Yes, that was my - that was my impression  
 (12) Q Did he tell you who he spoke with?  
 (13) A Yes  
 (14) Q Who did he speak with?  
 (15) A Harvey Borgen  
 (16) Q Did he tell you what he told Harvey Borgen?  
 (17) A No, not specifically, just gave him a description of - of  
 (18) essentially what I've testified here  
 (19) Q Okay And did he tell you what Harvey Borgen's response  
 (20) was?  
 (21) A No, he didn't  
 (22) Q Now you've told us that you spoke with Herb Leyendecker  
 (23) about this incident Have you spoken with anyone else about  
 (24) this incident excluding the lawyers - well excluding your  
 (25) lawyer and Exxon Shipping Company counsel have you  
 spoken with

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- (1) anyone else about this incident?  
 (2) **A Yes**  
 (3) **Q And who have you spoken to?**  
 (4) **A Paul Myers**  
 (5) **Q Let's go back to the conversation you can recall with Paul Myers -**  
 (6) **A Yes**  
 (7) **Q - regarding this incident When did that conversation occur?**  
 (8) **A My best recollection is that when I - when I returned to Benecia after the vessel sailed from Portland, I remember discussing this incident with him It's also very possible prior to the ship sailing from Portland in speaking with Paul regarding preparations to complete the repairs and go to sea that I mentioned it as well**  
 (9) **Q Okay You told us the ship was dry docked in Portland for approximately eight weeks?**  
 (10) **A Yes**  
 (11) **Q So in the May or June 1988 period you think it's possible you spoke to Paul Myers regarding this incident?**  
 (12) **A Yes**  
 (13) **Q And then you say when you went back to Benecia you had a conversation with Paul Myers?**  
 (14) **A Yes**  
 (15) **Q And when would that have been?**

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- (1) **A Approximately May 23rd**  
 (2) **Q So we can be a little more specific you think you may have had a conversation with Paul Myers between May 20th and May 22nd while you were still in Portland and you recall a conversation on May 23rd 1988 when you returned to Benecia with Paul Myers**  
 (3) **A The telephone conversation that I don't really recall you know that vividly probably occurred sometime between May 11th and 20th That would be the proper time frame for that**  
 (4) **Q What was Paul Myers position with Exxon Shipping Company in May of 1988?**  
 (5) **A He was ship group coordinator**  
 (6) **Q He was not your immediate boss?**  
 (7) **A No Well not normally In his capacity as ship group coordinator for the Exxon Valdez I as repair superintendent was obligated to keep him informed and so solely for the purposes of that 20 days or so that I was involved in the Valdez repair, he was a supervisor on the operation site**  
 (8) **Q Do you recall what you told Mr Myers regarding this incident during the telephone conversation that you believe occurred sometime between May 11 and May 20 1988?**  
 (9) **A What I recall is essentially informing him what I've told you today, what occurred Herb was involved Herb followed up on the vessel, spoke to the captain**  
 (10) **Q Did you tell Paul Myers that you heard Captain Hazelwood**

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- (1) ordering beer over the radio?  
 (2) **A I can't recall my specific words Probably the best is to say I relayed to him what I've told you today**  
 (3) **Q Do you recall what Paul Myers response was to the information that you were telling him?**  
 (4) **A No, I don't**  
 (5) **Q Did Paul Myers indicate to you that he would take any action based upon what you told him?**  
 (6) **A No, he didn't**  
 (7) **Q Was there something that specifically concerned you about that incident that led you to discuss this with Paul Myers?**  
 (8) **A It was Paul's policy to request feedback on all of the people on the vessel from the repair superintendent, so I felt this was part of giving him that feedback, you know, regarding events or people and their performance**  
 (9) **Q You mentioned before that Herb had told you to stay out of this because you're not - may have to sail with these people Was that a concern that you had when you were discussing this with Paul Myers on the telephone conversation?**  
 (10) **A Yes**  
 (11) **Q Did you discuss that with Paul Myers?**  
 (12) **A I would say yes**  
 (13) **Q What did you tell him in that regard?**  
 (14) **A I would say discussion - I mean - my recollection is that Paul understood the position I was in and that - I kind of -**

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- (1) **I got the impression - or my feeling after talking was that he agreed with what Herb had done, to keep me out of it and take the issue himself**  
 (2) **Q In May of 1988 were you aware of any instances where Exxon Shipping Company employees suffered consequences even informally from their fellow employees or from the company for reporting violations of company policy alcohol or otherwise?**  
 (3) **A In that - at that time, no**  
 (4) **Q Subsequent to that time have you become aware of such?**  
 (5) **A Nothing specific Our promotion system within the shipping company including the sea going employees is based upon performance only and that performance is evaluated by senior officers on the vessel, so it's easy to understand how crossing a certain group or - or sea officer could come back to haunt you or prevent you from being promoted or getting, you know salary increases or whatever It's something everyone's pretty conscious of**  
 (6) **Q Whether or not you discussed it with Paul Myers was that a concern - was that a concern that you held that your reporting this incident could cause certain negative ramifications to you in future evaluations?**  
 (7) **A Yes**  
 (8) **Q I may have asked you this already and I apologize Did Paul Myers indicate to you whether he was going to take any action as a result of your report during the telephone**



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- (1) conversation?  
 (2) **A Not that I recall**  
 (3) **Q You said you had another conversation with Paul Myers on**  
 (4) **May 23rd or 24th when you returned to Benecia?**  
 (5) **A Yes**  
 (6) **Q Was that a conversation that you initiated?**  
 (7) **A I can't recall whether he did or I did**  
 (8) **Q What was the subject of that conversation? Was it this**  
 (9) **incident?**  
 (10) **A No, actually most of it was updating him on the -- how the**  
 (11) **repair finished up, kind of nuts and bolts of how the repair**  
 (12) **was completed This was just part of that general**  
 (13) **conversation**  
 (14) **Q Now you say you recall this in person conversation better**  
 (15) **than you do the telephonic conversation you had with**  
 (16) **Mr Myers What do you recall about your conversation with**  
 (17) **Paul Myers on May 23 or 24 1988 as it relates to this**  
 (18) **incident?**  
 (19) **A What I recall is pretty much just restating the**  
 (20) **circumstances and Herb's involvement and his debriefing**  
 (21) **to me**  
 (22) **That's pretty much it**  
 (23) **Q I understand Other than this incident did you report**  
 (24) **anything else to Paul Myers during this conversation regarding**  
 (25) **Captain Hazelwood's performance during the dry docking of the**  
**Exxon Valdez?**

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- (1) **A I reported his performance generally was quite -- we had**  
 (2) **quite a good relationship, very cooperative seemed to work**  
 (3) **well together to get the repair completed**  
 (4) **Q Did you have any heightened concerns about this incident**  
 (5) **because it was Captain Hazelwood involved as opposed to**  
 (6) **John**  
 (7) **Doc involved?**  
 (8) **A I would say no You know the problem I had was using**  
 (9) **the**  
 (10) **radio for some purpose such as that where it could be heard**  
 (11) **by**  
 (12) **all the shipyard employees as well as the ship's crew**  
 (13) **Q Did you have any further conversation with Paul Myers**  
 (14) **regarding this incident?**  
 (15) **A What time frame?**  
 (16) **Q Well since the May 23 24 1988 conversation?**  
 (17) **A Yes**  
 (18) **Q When did that conversation occur?**  
 (19) **A It was in 1989 approximately two months after the**  
 (20) **grounding**  
 (21) **Q Where did that conversation occur?**  
 (22) **A In my office in the west coast fleet office in Benecia**  
 (23) **Q Who initiated that conversation?**  
 (24) **A Mr Myers**  
 (25) **Q Was your report of this incident the subject of that**  
**conversation?**  
 (26) **A Not -- not really**  
 (27) **Q What was the subject?**

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- (1) **A It was more the incident itself not my report of it**  
 (2) **Q What was said at that time with regards to the incident by**  
 (3) **Mr Myers?**  
 (4) **A He indicated that he had passed on that information that I**  
 (5) **had told him to Harvey Borgen**  
 (6) **Q During this conversation what else did he say?**  
 (7) **A He said that there had been another incident in which --**  
 (8) **that he did not remember**  
 (9) **Q Now you have confused me He told you that there was**  
 (10) **another incident? What type of incident?**  
 (11) **A We're going to get to it I'm sure It's in all the other**  
 (12) **depos**  
 (13) **Q That's the Mary Williamson incident?**  
 (14) **A Yes He mentioned there was an incident reported**  
 (15) **apparently reported to him that he did not remember He**  
 (16) **didn't**  
 (17) **remember that occurring**  
 (18) **Q He didn't recall having received a report of that is that**  
 (19) **correct?**  
 (20) **A That's correct**  
 (21) **Q Anything else that Paul Myers said during this conversation**  
 (22) **that you can recall?**  
 (23) **A No it was very short**  
 (24) **Q Whether Mr Myers told you or otherwise are you aware**  
 (25) **whether Mr Myers took any steps other than reporting to**  
**Mr Borgen in response to your report of this incident?**

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- (1) **A No I'm not aware of any steps**  
 (2) **Q And do you have any knowledge as to what Mr Borgen did**  
 (3) **if**  
 (4) **anything in response to Paul Myers report of this incident to**  
 (5) **him?**  
 (6) **A No I'm not**  
 (7) **Q Are you aware of any other Exxon Shipping Company**  
 (8) **employee**  
 (9) **having knowledge of this incident other than those that you've**  
 (10) **told us about today?**  
 (11) **A Just -- just Herb and myself**  
 (12) **Q And Harvey Borgen and Paul Myers?**  
 (13) **A Yes**  
 (14) **Q Okay Your discussion with Herb Leyendecker --**  
 (15) **Leyendecker excuse me did you discuss whether there had**  
 (16) **been**  
 (17) **beer on board the vessel?**  
 (18) **A Yes**  
 (19) **Q And what was discussed in that regard?**  
 (20) **A Herb asked if I had seen any beer on the vessel My reply**  
 (21) **was that I had seen beer bottles, empty beer bottles on**  
 (22) **board**  
 (23) **the vessel**  
 (24) **Q Where were these empty beer bottles that you had seen on**  
 (25) **board the vessel?**  
 (26) **A In the dumpster or garbage can in the computer control**  
 (27) **room which was kind of public areas**  
 (28) **Q What kind of beer bottles had you seen?**  
 (29) **A Henry Weinbart's**

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- (1) Q When had you seen those beer bottles?
- (2) A My recollection is that it was - it was sometime between
- (3) the time I arrived there May 2nd or 3rd whenever that was
- (4) and the time of the radio call, sometime in that first week,
- (5) ten days
- (6) Q Okay Had you seen the beer bottles on more than one
- (7) occasion?
- (8) A I can't say I specifically recall I saw them in two
- (9) different locations that I mentioned, which had to be a little
- (10) bit apart, you know, it was - saw them in the dumpster, saw
- (11) them in the chart controller room, so I don't know
- (12) specifically
- (13) if it was, you know, successive days or every day or once
- (14) Q Do you recall how many beer bottles you saw?
- (15) A Best recollection is possibly four to six total in both
- (16) locations That's the best I can think or remember
- (17) UNIDENTIFIED SPEAKER I m sorry Four to six in each
- (18) of the locations?
- (19) THE WITNESS No total Maybe two in one four in
- (20) the other or two and two
- (21) BY VIDEO EXAMINER
- (22) Q Did you see any other alcohol containers aboard the
- (23) vessel?
- (24) A No
- (25) Q When you discussed this incident with Paul Myers did you
- (26) tell Paul Myers that you had seen beer bottles aboard the

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- (1) vessel?
- (2) A My recollection is that I would have - I would have told
- (3) him that or I did tell him that during that discussion
- (4) Q Was Captain Hazelwood on board the Exxon Valdez on a
- (5) regular basis during the time it was in dry dock and you were
- (6) there?
- (7) A Yes
- (8) Q When was the next time that you would have come in contact
- (9) with him or his name would have come up?
- (10) A March of '89
- (11) Q Where were you at that time?
- (12) A On the Exxon Galveston
- (13) Q Who was the captain of the Exxon Galveston at that time?
- (14) A Captain Craig Reeder
- (15) Q And what type of vessel was the Exxon Galveston?
- (16) A It's a small 25 000 dead weight ton lightering vessel
- (17) Stayed in San Francisco Bay
- (18) Q Stayed in San Francisco Bay for the purpose of lightering
- (19) other vessels?
- (20) A Yes
- (21) Q What were your duties at that time?
- (22) A I was still repair superintendent working out of the west
- (23) coast fleet office
- (24) Q Could you tell us about the circumstances surrounding your
- (25) either contact or Captain Hazelwood coming out in March of

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- (1) 1989?
- (2) A I didn't meet Captain Hazelwood at that time I was
- (3) involved in a conversation about him
- (4) Q When did this conversation occur?
- (5) A I'm going to say it was approximately March 13th or 14th
- (6) 1989
- (7) Q What time of day do you recall?
- (8) A Oh, about 11 00 in the morning, 11 a m
- (9) Q Were you a direct participant in the conversation or did
- (10) you overhear a conversation?
- (11) A I was a direct participant
- (12) Q Who was the conversation with?
- (13) A Mary Williamson
- (14) Q This is a conversation you initiated or had Mary
- (15) Williamson come to you?
- (16) A Mary had come to me
- (17) Q What did she say to you?
- (18) A She said she had something she needed to talk to me
- (19) about
- (20) Q Okay And what was your response?
- (21) A We were both very busy at the time I said, okay, when I
- (22) get a chance I'll stop by, or we'll get together and she could
- (23) pass on this information
- (24) Q Did you make time during that initial contact to speak with
- (25) Mary Williamson?
- (26) A Actually, my recollection is the initial contact was - I'm

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- (1) going to say it was the - a Monday or the first day of my
- (2) involvement with the Galveston on that repair, and I - I
- (3) didn't really get a chance to speak with her that day I had
- (4) been on a ship all night, a different ship, and just came out
- (5) in the morning and then went home It was the following
- (6) day,
- (7) so it was about say, a 24 hour time period from the initial -
- (8) well, when she said she had something she wanted to tell
- (9) me and
- (10) when we actually got together
- (11) Q And just so I m clear at that initial contact she didn't
- (12) mention Captain Hazelwood's name?
- (13) A No
- (14) Q What was the next occasion when Captain Hazelwood's
- (15) name
- (16) came up or you had contact with her?
- (17) A After speaking with Mary'
- (18) Q Well let me ask you have you told us everything you can
- (19) recall in regards to your conversation with Mary Williamson
- (20) that initial contact?
- (21) A Oh yes yes Initial contact was just Steve I need to
- (22) tell you something when you get a chance Okay She went
- (23) her
- (24) way I went mine We had lots to do
- (25) Q You didn't speak with her again?
- (26) A Until about 24 hours later the following day at lunch
- (27) Q What was the next occasion after that initial contact that
- (28) you had with Mary Williamson where Captain Hazelwood was
- (29) discussed?

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(1) A I believe it would have been the 11 00 conversation that we had That's my recollection I don't remember it coming up at all in the interim

(4) Q Could you tell us the circumstances around your subsequent conversation with Mary Williamson?

(6) A I finally had the time to - to break away went up to the - she was the fleet chef on the Galveston the cook and she pulled me aside into a private area one of the lounges adjacent to the galley and told me you know what she had to say

(11) Q What did she have to say?

(12) A As best I can recall, she had been on a launch from Westar going out to the Galveston At the time she was on that launch, the Galveston was alongside the Exxon Valdez and the Valdez was discharging cargo to the Galveston And she said she had met Captain Hazelwood on that launch and had a conversation with him on the launch on the way back to the ship She said that in her opinion that he might have been drinking and that he was being kind of loud and directing most of his comments toward her and so she you know continued the conversation with him out on the deck of the launch to try and minimize the number of people who would overhear what was being spoken about And she thought this might be a problem you know, that maybe someone should be made aware of the circumstances that she had described

(25) Q Did - you said that Mary Williamson indicated that she believed Captain Hazelwood may have been drinking?

(3) A Yes

(4) Q Was she any more specific than that? Did she give you any indication as to what it was what was said or appearance or demeanor that led her to believe that Captain Hazelwood may have been drinking?

(8) A I'm trying to be sure I distinguish between what I've read in designated documents and you know from what I was told at the time Takes a little while to sift it through Certainly I think the loudness was - I think my impression was that was an indication of something, being very vocal and I believe that she also indicated that she smelled alcohol And I believe the substance of the conversation was regarding Captain Reeder who was Mary's captain on the Galveston, that's the main reason she tried to you know move away from the rest of the group on the launch It wasn't very favorable That's - that's all I can remember right now

(19) Q Do you recall any - did Mary Williamson give you any of the specifics of what Captain Hazelwood was saying?

(21) A I - I don't recall very many specifics, just Captain Reeder's name and Dan Paul as two people who were objects of his anger or displeasure, or whatever he was vocalizing, just the individual stuff more than any description as to what the complaint was I just seem to remember the - the names

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(1) Q Did you report what Mary Williamson had told you to anyone?

(3) A Yes

(4) Q And who did you report it to?

(5) A Paul Myers

(6) Q When did you make that report?

(7) A It would have been the following day one day after my conversation with Mary

(9) Q What did you tell Paul Myers?

(10) A From what I recall I - I initiated the conversation went into Paul's office in Benecia shut the door and related to him essentially what I've - what I've told you here what Mary observed and thought he should know about it

(13) Q Do you recall what if anything Paul Myers said in response to your report?

(16) A He didn't - didn't say very much my recollection anyway I vaguely remember some you know questions of when what day and you know but that's about - that's about all it was very short actually

(20) Q At the time that you were making this report to Paul Myers did you have the same concerns that you had discussed previously about reporting activity of a senior officer and how that may impact upon your subsequent evaluations?

(24) A Yes

(25) Q Do you know whether Paul Myers did anything in response to

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(1) your report?

(2) A No, I don't know

(3) Q At the time that you had had the conversation with Mary Williamson on March 13 or 14 was the Exxon Valdez still in port or had it departed?

(6) A We were still in port

(7) Q At the time that you had the conversation with Paul Myers was the Exxon Valdez still in port or had it departed?

(9) A They were still in port

(10) Q When you had the conversation with Mary Williamson had you been informed of any verbal altercation that Captain Reeder and Captain Hazelwood had had?

(13) A At the time that I spoke with Mary?

(14) Q Right

(15) A It's kind of tough to sort out you know, because as you know there's a lot of testimony about that

(17) Q Right

(18) A My best recollection is that there was some indication that some kind of altercation had taken place over the radio It kind of all runs together, you know, it's - there's the grounding, it was all within a week's time Very busy time I would say in answer to the question, yes, I think somewhere either from Mary in our conversation by inference or somebody telling me on the launch or the launch driver telling me on the way to or from the ship, you know somehow I got some kind of

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- (1) feel that there was some kind of friction there between these
- (2) two people
- (3) Q You said that Mary Williamson had reported to you that
- (4) Captain Hazelwood had said less than kind things about Captain
- (5) Reeder and Dan Paul?
- (6) A I believe so, yes
- (7) Q What led you to report the information that Mary Williamson
- (8) had told you to Paul Myers?
- (9) A Well Paul was his supervisor
- (10) Q Paul was not your immediate supervisor though is that
- (11) right?
- (12) A No
- (13) Q Who was your immediate supervisor at that time?
- (14) A Depended which vessels I was responsible for At that
- (15) time I believe for most of the time I was in that office it
- (16) was Stuart McRobbie and Bill Deppe maybe three shifts with
- (17) one two with the other it kind of shifted around That's why
- (18) I reported it to Paul
- (19) Q Did you report it to Paul Myers because you had made the
- (20) previous reports to Paul Myers as well about Captain
- (21) Hazelwood?
- (22) A Not really He was - he was Captain Hazelwood's
- (23) supervisor at the time of the shipyard repair also so I
- (24) would - I would say that the reason for telling Mr Myers is
- (25) he was Mister - Captain Hazelwood's supervisor in both cases

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- (1) Q When you made the report to Paul Myers did he indicate to
- (2) you that he would do anything with the report?
- (3) A Not that I recall no
- (4) Q At this time on March 13th or 14th of 1989 were you
- (5) concerned that Captain Hazelwood had a drinking problem?
- (6) A I would say that my feelings were that you know something
- (7) was going on with this individual that his supervisor ought to
- (8) be made aware of if I can do that and as I said I chose to
- (9) do that I don't know that I m qualified to hear a secondhand
- (10) report and determine if someone has a drinking problem or not
- (11) So it's kind of hard to come out and say that
- (12) Q Do you believe that you did all that you could to inform
- (13) Paul Myers Captain Hazelwood s supervisor of the concerns that
- (14) you have stated that you had about Captain Hazelwood?
- (15) A Yes
- (16) Q And those concerns were that something was going on with
- (17) this individual?
- (18) A Yes
- (19) Q Was that something in your mind a potential alcohol
- (20) problem?
- (21) A Could have been - could have been a lot of things Could
- (22) have been you know family problems Could have been a number
- (23) of things that were bothering this guy But I just felt that
- (24) what I was hearing from others he should be made aware of as
- (25) his supervisor so if he needed to speak with him or

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- (1) investigate he could
- (2) Q After your conversation with Paul Myers when was the next
- (3) time that Captain Hazelwood s name came up or that you had
- (4) contact with him?
- (5) A March 24th, the grounding was the next time really I
- (6) heard
- (7) his name
- (8) Q Was there any problem with the Exxon Valdez when it was in
- (9) port in San Francisco any mechanical problem?
- (10) A We were having some problems with the turbo chargers
- (11) on the
- (12) main engines
- (13) Q Okay And what was that problem?
- (14) A I believe it was surging
- (15) Q What was your first thought when you heard the Exxon
- (16) Valdez
- (17) had gone aground?
- (18) A Thought it was a mistake
- (19) Q Why did you think it was a mistake?
- (20) A I just didn't feel that with, you know one of the newest
- (21) and most modern ships, well maintained ship, that our
- (22) company
- (23) would have a problem like that You know, with the care that
- (24) we took in our operation that we would be the ones to hit
- (25) Bligh Reef Frankly I thought it would be somebody else you
- (26) know, a fly by night operation
- (27) Q When you heard that the vessel had been grounded did it
- (28) cross your mind that Captain Hazelwood might have been
- (29) drinking?

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- (1) A No Initially - to answer your question, initially, no
- (2) Q Okay
- (3) A Could have been a mechanical problem you know
- (4) Q You say initially no At some subsequent point in time
- (5) did it cross your mind?
- (6) A Heard an awful lot of media reports that immediately
- (7) brought that to the forefront you know News we got in the
- (8) office
- (9) Q So that morning -
- (10) A Yes
- (11) Q - when you got to the office?
- (12) A Yeah
- (13) Q And that thought was as a result of the media reports you
- (14) heard?
- (15) A I believe so yes
- (16) Q When those media reports started coming across did you
- (17) discuss with anybody either the Mary Williamson report to you
- (18) or the ordering of the beer in Portland shipyard?
- (19) A That day?
- (20) Q We can begin with that day
- (21) A Any time - yeah Not that I can specifically recall on
- (22) that day you know we were kind of busy with getting
- (23) drawings
- (24) of the ship, getting people prepared to go up there
- (25) Q Okay Subsequent to that day did you discuss either of
- (26) the incidents the Mary Williamson report or the ordering beer

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- (1) in the Portland shipyard as it related to the media speculation  
 (2) that alcohol had been involved in the grounding of the Exxon  
 (3) Valdez?  
 (4) A Every neighbor on my street that wanted to know the real  
 (5) story There was an awful lot of hallway talk as you can  
 (6) imagine about every -- all different theories on what  
 (7) happened Then there were the media reports that may or  
 (8) may  
 (9) not have been correct, you know  
 (10) I do remember, you know talking to -- it's kind of hazv  
 (11) but I do remember talking to Stuart McRobbie about it He  
 (12) was  
 (13) running the office after the grounding I also may have  
 (14) mentioned you know these incidents to Tom Shearer who  
 (15) worked  
 (16) in our office  
 (17) Q Anyone else you can recall?  
 (18) A Those are the -- the only people that I really have any  
 (19) recollection of Like I said there was an awful lot of  
 (20) hallway talk and I heard about you know everything you  
 (21) can  
 (22) imagine  
 (23) Q You said that you had a conversation with Stuart McRobbie  
 (24) but it was kind of fuzzy Do you recall anything about your  
 (25) conversation with Stuart McRobbie?  
 (26) A Not -- not too much Essentially as I said he was  
 (27) running the office and he was I'm sure being asked for  
 (28) information by the company if there was any information out  
 (29) there So what I recall is just, you know meeting with him

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- (1) briefly and relating to him what we've talked about here  
 (2) today  
 (3) Q Do you recall any comments he made?  
 (4) A No I believe he was just a messenger He was a conduit  
 (5) to  
 (6) pass information on to someone else  
 (7) Q How about your conversation with Tom Shearer do you  
 (8) recall  
 (9) any specifics of that?  
 (10) A Say it was pretty -- pretty much the same as the  
 (11) conversation with Stuart maybe a little less formal Tom  
 (12) was  
 (13) just more of a peer than an individual in the office I would  
 (14) say the same facts  
 (15) Q Did you express to either of these two individuals or to  
 (16) anyone other than your lawyers any concern you had that you  
 (17) had  
 (18) made reports to Paul Myers about Captain Hazelwood's  
 (19) activities and yet to your understanding nothing was done in  
 (20) regards to those reports?  
 (21) A Well, first I'd like to say, you know something very well  
 (22) may have been done with the information that I passed  
 (23) along I  
 (24) just was not aware of it I also, you know, after the  
 (25) grounding, I think there -- you've spoken to most of the --  
 (26) most of the people involved I think everyone had some  
 (27) feelings that gee what could I have done to have prevented  
 (28) this thing? And I was no different than anybody else in that  
 (29) regard And in hindsight I think I tried to do what -- what I  
 (30) could, you know by informing Mr Myers of what I told him

Vol 15 2202

- (1) Q Paul Myers would he be considered Exxon Shipping  
 Company  
 (2) management?  
 (3) UNIDENTIFIED SPEAKER By whom?  
 (4) VIDEO EXAMINER By this witness  
 (5) THE WITNESS Yes  
 (6) BY VIDEO EXAMINER  
 (7) Q Do you believe that Paul Myers should have taken some  
 (8) measures to investigate the reports you gave him?  
 (9) A Yeah As I said I think he very well could have that I  
 (10) was not aware of I think by virtue of the fact that I  
 (11) reported the information to him that I felt it was important  
 (12) enough to be looked into  
 (13) Q What did you -- was there a message you were trying to get  
 (14) across to Mr Myers that perhaps was not expressed in what you  
 (15) were telling him?  
 (16) A Sometimes, Mr Myers -- I don't know if you've met him --  
 (17) tends to have a very flat affect And when you speak to him,  
 (18) you can't determine whether it bounced off or sunk in  
 (19) sometimes you know Whether he's preoccupied with  
 (20) something  
 (21) else he just -- as Mr Klinckhardt asked what was his  
 (22) response and there really wasn't much of a response and  
 (23) that's why I said you know in thinking about it and trying to  
 (24) answer truthfully can I really be sure that he heard me or  
 (25) was  
 (26) he thinking so much about something else that was going  
 (27) on that  
 (28) day that, you know he maybe didn't

Vol 15 2203

- (1) Q So then perhaps --  
 (2) A I was speaking that you know I'm fairly certain he heard  
 (3) the spoken words the words that I enunciated but they may  
 (4) not  
 (5) have registered or sunk in He may have been -- as an  
 (6) example  
 (7) when -- when I reported the Mary Williamson/Westar  
 (8) incident he  
 (9) was at that time very involved with trying to get the turbo  
 (10) chargers repaired satisfactorily on the ship so that the ship  
 (11) could sail We'd been delayed a couple days already and he  
 (12) --  
 (13) so it's very possible that's one -- I think that's kind of the  
 (14) conversation that you know sparked me to make that  
 (15) statement  
 (16) to you is that I know on that particular day he was very busy  
 (17) and I was very busy as well And maybe in the -- all the other  
 (18) things that were going on in his mind at that time trying to  
 (19) get the ship out of port that didn't register  
 (20) Q Why was he concerned about getting those turbo chargers  
 (21) operational?  
 (22) A So that the ship could sail and pick up its next cargo  
 (23) Q Was it costing you money for the vessel to be at the yard?  
 (24) A The ship was in service in -- at the time of the Westar  
 (25) incident in March of '89, so every day that it sat in San  
 (26) Francisco without heading towards Valdez was a day off  
 (27) hire for  
 (28) the vessel which costs a lot of money  
 (29) Q You testified earlier that in your -- one of your  
 (30) discussions with Mr Leyendecker -- Leyendecker?  
 (31) A Leyendecker

Vol 15 2204

- (1) Q Leyendecker that there might be repercussions to your  
 (2) career if you reported a concern about alcohol abuse of an  
 (3) officer such as Captain Hazelwood do you recall that  
 (4) testimony?  
 (5) A Yes  
 (6) Q Notwithstanding that concern you reported what you  
 learned  
 (7) on several occasions to Mr Myers correct?  
 (8) A Yes  
 (9) Q Why did you do that notwithstanding the fact that you knew  
 (10) there might be repercussions on your career?  
 (11) A I felt it was information that - that Paul should have  
 (12) you know, as his supervisor And I also felt that Paul would  
 (13) be discreet enough not to reveal his sources, you know,  
 having  
 (14) known him for a while  
 (15) Q Mr Day the Exxon Valdez when it left San Francisco Bay  
 (16) how many days behind schedule was it do you know?  
 (17) A My recollection is that they sailed on Saturday, whatever  
 (18) day that was, probably the 18th somewhere in there and  
 that  
 (19) they were probably - had they not been experiencing these  
 (20) turbocharger problems probably could have left possibly I  
 (21) think the 14th so it was probably four days  
 (22) Q You believe they were four days behind schedule?  
 (23) A Yeah four or five best I can recall  
 (24) Q Were you aware of a telex that Captain Martineau had sent  
 (25) down during the week prior to the grounding warning of the ice

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- (1) conditions and advising only daylight transit?  
 (2) A I believe I did hear that telex yes  
 (3) Q You believe you heard about that telex?  
 (4) A Yes I can't - I'm not sure whether I heard about it when  
 (5) it came in or after the grounding There was an awful lot of  
 (6) talk about that telex after the grounding, I'm sure you can  
 (7) imagine  
 (8) Q And was there any discussion as to why that - the  
 (9) information in that telex had not been conveyed to the Exxon  
 (10) Valdez prior to the grounding?  
 (11) A I didn't - I wasn't aware that was the case I'm not sure  
 (12) what kind of distribution it received  
 (13) Q You had no knowledge that that information was in fact  
 (14) conveyed to the Exxon Valdez prior to the grounding is that  
 (15) correct?  
 (16) A That's correct  
 (17) Q And as you sit here today do you have any sort of  
 (18) understanding at all as to what happened to that telex when it  
 (19) came in the week before the grounding?  
 (20) A I don't have any specific knowledge of what happened to  
 (21) that specific telex I can tell you how the normal telex  
 (22) routing in that office worked, if that's helpful  
 (23) Q How does it typically work Mr Day?  
 (24) A There's a central kind of a telex file room where there's  
 (25) a copy machine a telex machine and files that are used by

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- (1) everyone in the office So the messages come in and  
 they're  
 (2) printed out on a long sheet that the secretaries would tear  
 (3) off And then each individual had a box you know, all the  
 (4) ship group coordinators, such as Paul Myers myself, the  
 repair  
 (5) people Harvey Borgen and then depending on the vessel  
 that  
 (6) the message came from or - or what the nature of the  
 message  
 (7) was, the message would then be put in the appropriate  
 person's  
 (8) box and they would - when they came in in the morning or a  
 (9) couple times a day wander through and pick up the  
 messages that  
 (10) were in there  
 (11) Q Were there discussions any time the week before the  
 (12) grounding regarding limiting transit in and out of Valdez to  
 (13) daylight transit?  
 (14) A Not that I'm aware of, no  
 (15) Q Typically would that be something that you would be  
 (16) involved in or not?  
 (17) A No I was primarily mechanical type you know, taking  
 (18) after - looking after the repair of the vessels the  
 (19) navigation aspects would be handled probably by the  
 agency  
 (20) group and the SGCs with maybe Harvey Wouldn't have  
 involved  
 (21) the repair group  
 (22) Q Would that typically involve Mr Borgen and people like  
 (23) Mr Myers?  
 (24) A Yes  
 (25) Q They'd be involved in discussions like that?

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- (1) A Yes  
 (2) Q Now did Exxon Shipping Company management ever do  
 anything  
 (3) to encourage reporting violations of the alcohol policy?  
 (4) A Not that I'm aware of  
 (5) Q You believe it's realistic to expect a junior officer  
 (6) someone like yourself to report violations of the alcohol  
 (7) policy to superior officers? Are you aware of anyone else  
 (8) Mr Day other than you any junior officer ever reporting  
 (9) violations of a senior officer?  
 (10) A No, not that I'm aware of  
 (11) Q Now you testified earlier today that you had no knowledge  
 (12) that Hazelwood was monitored regarding his use of alcohol  
 Do  
 (13) you remember that testimony?  
 (14) A Yes  
 (15) Q Okay  
 (16) A Up until the time of the grounding and everything became  
 (17) public and there was a lot of public -  
 (18) Q Well are you aware of Captain Hazelwood being treated  
 (19) differently in any way by Exxon Shipping Company  
 management?  
 (20) A Up to the time of the grounding?  
 (21) Q Yes  
 (22) A Not that I could discern  
 (23) Q The contention that Captain Hazelwood was the most closely  
 (24) monitored man in the fleet do you have any information or any  
 (25) evidence that would support that contention?

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- (1) A The only thing I think I could add on that is that  
 (2) Mr Myers who is the SGC for the Exxon Valdez was very  
 (3) diligent in visiting the vessel He was - of the SGCs that I  
 (4) saw work in that office spent much more time on the ships  
 (5) talking to the people What he was doing there I really  
 (6) couldn't, you know, couldn't say  
 (7) Q How long was Hazelwood in Portland during April and May  
 (8) of  
 (9) 1988?  
 (10) A I really - I'm not aware of when he joined the vessel I  
 (11) know when I arrived on the second or third day of May, he  
 (12) was  
 (13) there as captain  
 (14) Q Okay And how long did he remain before you went back?  
 (15) A He sailed with the vessel In the first voyage I  
 (16) believe  
 (17) Q So how long a period of time would that have been that he  
 (18) was there and you were there before he sailed?  
 (19) A Probably 20 days 18 days somewhere in there  
 (20) Q And during that 18 to 20 days you had daily contact with  
 (21) Hazelwood did you?  
 (22) A Yes for the most part  
 (23) Q Okay And you're saying that no one ever told you to  
 (24) monitor or check on his drinking during that period of time is  
 (25) that true?  
 (26) A That's correct  
 (27) Q Did Harvey Borgen ever come to the Portland shipyard  
 (28) during

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- (1) that 18 to 20 day period of time?  
 (2) A No not in the period I was there no  
 (3) Q Did Paul Myers?  
 (4) A No  
 (5) Q My question is you had - in March of '88 it was your  
 (6) belief that Hazelwood had stopped drinking is that right?  
 (7) A Yes  
 (8) Q And after either the incident in May of '88 or Mary  
 (9) Williamson's report a week before the grounding did you  
 (10) consider the fact that Hazelwood had relapsed and he'd started  
 (11) drinking again?  
 (12) A I thought that might be a possibility, yes  
 (13) Q That's why you reported it to Exxon Shipping Company  
 (14) management true?  
 (15) A The way I put it earlier was that I reported the  
 (16) information to Paul Myers because I felt as - as his  
 (17) supervisor, he should be aware of - of this information I  
 (18) believe that's the way I put it Certainly as his supervisor  
 (19) hopefully he had a lot more information about this  
 (20) individual  
 (21) than I did I didn't know Joe Hazelwood very well and he  
 (22) could  
 (23) draw those conclusions as to what that information - what  
 (24) you  
 (25) know, what that meant to him or to his - in his job as his  
 (26) supervisor more than myself As I said, I felt that could  
 (27) have  
 (28) been a possibility  
 (29) Q Okay And it was on each occasion when you went to Paul

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- (1) Myers it was your hope or your belief that Mr Myers was going  
 (2) to act on your report and do something true?  
 (3) A Yes he - you know, I passed the information to him so  
 (4) that he could take that information into account in  
 (5) supervising  
 (6) this individual however he chose to do it  
 (7) Q Mr Myers Paul Myers in March of 1989 when you made that  
 (8) report to him the Exxon Valdez was still sitting there in San  
 (9) Francisco Bay wasn't it?  
 (10) A That's correct  
 (11) Q It hadn't taken off?  
 (12) A That's correct  
 (13) Q How many days did it continue to sit there before it took  
 (14) off?  
 (15) A I believe I told him on Wednesday afternoon, ship sailed  
 (16) Saturday  
 (17) Q So it sat there for what three or four days?  
 (18) A At least two full days, yeah  
 (19) Q Okay And had Mr Myers chosen to remove Hazelwood as  
 (20) master he had at least two or three days to do that didn't  
 (21) he?  
 (22) A Yes  
 (23) MR O NEILL That concludes our examination  
 (24) MS STEWART Your Honor defendants would like to  
 (25) present Mr Day's cross-examination by videotape  
 (26) CROSS EXAMINATION OF STEVEN DAY (Video)

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- (1) BY VIDEO EXAMINER  
 (2) Q From November of '84 when you first were hired by Exxon  
 (3) Shipping Company until the present have you been informed  
 (4) of  
 (5) the existence of an alcohol policy that the company had?  
 (6) A Yes  
 (7) Q When did you first become aware of that alcohol policy?  
 (8) A I believe it - as best I can recall it was possibly  
 (9) during the interview process for employment which took  
 (10) place  
 (11) in August of '84 August September  
 (12) Q So on those occasions that you were informed of the alcohol  
 (13) policy as we previously discussed you also were informed that  
 (14) if someone went through rehabilitation that would be kept  
 (15) confidential?  
 (16) A Yes I believe that was my understanding of it  
 (17) Q Do you recall specifically any names of people who told you  
 (18) that rehabilitation would be confidential?  
 (19) A No  
 (20) Q You had mentioned previously that the policy was posted on  
 (21) some of the vessels if not all of the vessels you were on  
 (22) Was the confidentiality of rehab an element that was also in  
 (23) this posting?  
 (24) A As I recall it, yes, it was part of the policy  
 (25) Q Do you recall specifically what was to be kept  
 (26) confidential?  
 (27) A My understanding was that the person's identity and any

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- (1) details of their problem would be completely confidential
- (2) Q Did anyone ever inform you as to why that information was kept confidential?
- (3) A I don't recall anyone specifically informing me My understanding was that it was personal in nature and wasn't to be - wasn't company information to be distributed
- (4) Q So from the time of your initial interview up to - we re in March of '88 or 1988 period now - your understanding of part of the Exxon Shipping Company alcohol policy was that alcohol or drug use was considered an illness?
- (5) A I think they used the word "problem"
- (6) Q Were you informed during that time frame as to how Exxon Shipping Company would treat that illness?
- (7) A Yes I'm not sure where I was informed or how My understanding was that the person would be treated for their illness and with the idea that they could then return to their normal position with the company after being treated -
- (8) Q Okay
- (9) A - on the job
- (10) Q Was there any discussion as to how a person with an alcohol problem would be identified?
- (11) A Not that I can recall You were encouraged to kind of identify yourself You know that was one of the parts of the program was to come forward we'll help you and we'll return you you know back to the work place in a better condition

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- (1) MS STEWART The next part of this examination is going to deal with Mr Day's previous testimony regarding the radio message he heard in Portland shipyard
- (2) Q Mr Day do you understand my - Mr Day do you understand my question -
- (3) A Just -
- (4) Q - that the ordering of the beer for possession aboard the vessel do you believe that that violated company policy subject to the objection?
- (5) A What type of policy? Drug and alcohol policy or -
- (6) Q Yes sir
- (7) A Just normal operating policy
- (8) Q Let's start with drug and alcohol policy
- (9) A My opinion just ordering it, having it - having it not physically be aboard or be brought aboard I would say no it wouldn't violate the drug and alcohol policy
- (10) Q Okay If the -
- (11) A As I understood it in other words as I understood then
- (12) Q If the alcohol had in fact been brought aboard pursuant to Captain Hazelwood ordering it over the radio would that have violated company policy alcohol policy?
- (13) A I'm not - I'm not sure that that would either because it had not been consumed you know on the vessel Maybe it was going to be taken back to an apartment or something after work or something So my opinion on that would also be no at least

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- (1) my opinion or my understanding of it
- (2) Q Who else was aboard the vessel on a regular basis during that time frame? And just so I'm clear you first came onto the scene on May 2nd 1988 is that right?
- (3) A Approximately, 2nd or 3rd
- (4) Q And you believe this incident happened within the first seven days - seven to ten days?
- (5) UNIDENTIFIED SPEAKER What incident? His discovery of the empty beer bottles?
- (6) VIDEO EXAMINER Correct
- (7) THE WITNESS It was sometime between the time I arrived and the walkie talkie incident which was probably the second weekend I was there
- (8) BY VIDEO EXAMINER
- (9) Q Okay
- (10) A So sometime in that time period
- (11) Q During that time frame do you recall who else was aboard the Exxon Valdez on a regular basis?
- (12) A Assigned Exxon employees?
- (13) Q Yes sir
- (14) A The chief engineer was Chuck Kuntus, chief mate was George Dowdle There were other personnel on our repair team, shipping company employees and contract employees Jack King was the repair superintendent Dave Ian was a contract coating professional who was overseeing the - overseeing the paint

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- (1) application Bob Kaneely (ph) was a machinery contract inspector also not a shipping company employee Nathan Carr
- (2) was the second mate I didn't see too much of him, he was on swing shift
- (3) That's - that's about all I can remember at the moment that - you know, crew that were assigned and repair people
- (4) UNIDENTIFIED SPEAKER Excuse me did you mean to exclude the yard workers themselves? I mean how many of the yard workers were on board?
- (5) BY VIDEO EXAMINER
- (6) Q No I didn't mean to
- (7) A Oh, okay At any time during the repair there were probably working at least two shifts, 50 to 100 yard workers both on day shift and evenings It might end up being, you know 75 on days 50 on nights They tend to slow down a little bit at night
- (8) MS STEWART Your Honor that concludes defendants cross examination of Mr Day
- (9) THE COURT Call your next witness
- (10) MR JAMIN Your Honor at this time the plaintiffs would call Ronald Lunt to testify
- (11) THE CLERK Raise your right hand please sir
- (12) (The Witness Is Sworn)
- (13) THE CLERK Please be seated for the record sir
- (14) State your full name Give us your address and spell your last



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- (1) name please  
 (2) **THE WITNESS** Ronald Scott Lunt 155 Gulkana Street  
 (3) Valdez Alaska L U N T  
 (4) **THE CLERK** Thank you  
 (5) **DIRECT EXAMINATION OF RONALD SCOTT LUNT**  
 (6) **BY MR JAMIN**  
 (7) Q Mr Lunt when and where were you born sir?  
 (8) A I was born in Topeka Kansas, October 22 1959  
 (9) Q How old are you now?  
 (10) A 34  
 (11) Q And where did you live as a kid?  
 (12) A We bounced around quite a bit My father was in the Air Force  
 (13) **Force**  
 (14) Q How about high school where did you go?  
 (15) A I attended Meade High School in Spokane Washington  
 (16) Q When did you graduate sir?  
 (17) A 1978  
 (18) Q And when did you move to Alaska?  
 (19) A I believe it was in '82  
 (20) Q All right And where have you lived here in Alaska?  
 (21) A Spent the whole time in Valdez  
 (22) Q Are you married sir?  
 (23) A Yes, I am  
 (24) Q Have children?  
 (25) A Three

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- (1) Q How old are they?  
 (2) A Ten six and two  
 (3) Q What sort of work have you been involved with since you've been up here in Alaska and Valdez specifically?  
 (4) A Specifically either been a cook or shipping agent  
 (5) Q Okay And for whom have you cooked?  
 (6) A Valdez City Schools and Harborview Developmental Center  
 (7) **Center**  
 (8) Q All right And are you currently at Harborview?  
 (9) A Yes I am  
 (10) Q What is that sir?  
 (11) A It's a state facility for people who are mentally impaired  
 (12) **impaired**  
 (13) Q And you serve as a cook there?  
 (14) A Yes  
 (15) Q All right Now was there a period that you worked for an outfit called Alamar?  
 (16) A Yes there was  
 (17) Q And is Alamar shorthand for something else?  
 (18) A It's short for Alaska Maritime Agencies  
 (19) **Agencies**  
 (20) Q And what was the period sir that you worked at Alamar?  
 (21) A It was - I can't remember the exact month but from '86 till - till the end of April about of '89  
 (22) **till - till the end of April about of '89**  
 (23) Q And what was Alamar's general purpose?  
 (24) A General purpose was to assist the ships and the captains who came into port that were hired by their companies  
 (25) **companies**

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- (1) Q All right And were these the ships and captains that were in the Valdez crude trade?  
 (2) A Yes  
 (3) **Yes**  
 (4) Q And the vessels would come up with ballast and leave Valdez with crude?  
 (5) A Correct  
 (6) **Correct**  
 (7) Q Now within Alamar was there a particular person who was the boss?  
 (8) A Yes Bob Arts was the manager of the officers  
 (9) **managers**  
 (10) Q How many employees were there?  
 (11) A Six total  
 (12) **Six total**  
 (13) Q And what was your - what was your job title if you had one?  
 (14) A I was titled an operations agent  
 (15) **agent**  
 (16) Q How many operations agents were there?  
 (17) A There were four of us  
 (18) Q So if Mr Arts is the boss and there's four agents what were the other two people?  
 (19) A Secretaries  
 (20) **Secretaries**  
 (21) Q All right Now as an agent what kind of workday would you have? What kind of workweek would you have?  
 (22) A Basically depended on which type of ships we had coming  
 (23) **coming**  
 (24) in Normal day would be a couple three ships in port If there weren't any requests from the captains or generally it was just maybe somebody to the doctor or securing stores for

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- (1) the steward's department or basically like that would be a basic day  
 (2) **basic day**  
 (3) Q All right So would it be fair to say you were a support person for the vessels as they came in?  
 (4) A That would be a good description  
 (5) **description**  
 (6) Q All right Would you meet ships when they docked sir?  
 (7) A Yes  
 (8) Q Was that part of the job?  
 (9) A Yes Every time one of our ships came in, we'd meet them  
 (10) **them**  
 (11) as soon as they got gangway on board  
 (12) Q All right Were you there shortly prior to their departure as well?  
 (13) A Yes We'd come on board and get any last minute mail that had to come off and collect copies of oil reports from the gaugers  
 (14) **gaugers**  
 (15) Q I think we've talked a little bit about ullage reports but that's how much room is left in the vessel after it's filled up with oil?  
 (16) A Well, how much is left and how much crude oil is actually in each particular tank  
 (17) **in each particular tank**  
 (18) Q All right Now was - was Exxon one of Alamar's clients?  
 (19) A Exxon was the largest principal Alamar had  
 (20) **largest principal Alamar had**  
 (21) Q So you would deal with the various Exxon vessels as they came into port?  
 (22) A Correct  
 (23) **Correct**

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- (1) Q During the course of your work at Alamar did you come to  
 (2) meet Joe Hazelwood?  
 (3) A Yes  
 (4) Q All right And can you estimate for us how many times you  
 (5) might have interacted with Mr Hazelwood during that period  
 (6) that you were at Alamar?  
 (7) A I'd estimate 15 times maybe  
 (8) Q All right Now this may seem a little strange but how do  
 (9) you know you were interacting with Joe Hazelwood? How do  
 you  
 (10) know it was Joe?  
 (11) A He was the captain of the ship That was who I dealt with  
 (12) when I went on board, or he was the first person I'd go see  
 (13) Q All right So as I asked you some questions about Joe  
 (14) Hazelwood you re sure it was Joe when you re talking about?  
 (15) A Yes  
 (16) Q All right Now did you have an opportunity sir to go to  
 (17) Mr Hazelwood's cabin at all?  
 (18) A When you say exactly his cabin his office was outside of  
 (19) his cabin and that's where we would conduct business  
 (20) Q So you had an opportunity to go to the office part of his  
 (21) suite then?  
 (22) A Yes  
 (23) Q All right And what brought you there sir?  
 (24) A Oh, Exxon shipped all their mail to our office for the crew  
 (25) members and whatnot, and we'd always take that on board  
 And

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- (1) then I'd sit down with the captain and discuss any  
 requirements  
 (2) he had of myself or our office when the ship was in port  
 (3) Q So you actually got to know him a bit?  
 (4) A Yes  
 (5) Q Let me talk just a bit about your responsibilities if any  
 (6) at Alamar for crew people Would you - and this is with  
 (7) respect to the Valdez your time in Valdez and talking about  
 (8) crew members from the vessels  
 (9) Would you on occasion take crew members to bars?  
 (10) A Yes  
 (11) Q And on occasion would you pick crew members back up  
 from  
 (12) bars?  
 (13) A Yes  
 (14) Q And did you ever see crew members from Exxon vessels  
 return  
 (15) to ships noticeably drunk?  
 (16) A Yes  
 (17) Q And how could you tell sir?  
 (18) A Just - it was about a 15 20 minute ride from town to  
 (19) Alyeska and just being loud boisterous having fun or  
 (20) whatever I mean just a different attitude than when I  
 brought  
 (21) them to town  
 (22) Q All right And were those crew members that you found  
 (23) noticeably drunk or determined were noticeably drunk were  
 they  
 (24) able to get through the security gate at Alyeska?  
 (25) A Yes

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- (1) Q And were they able to walk back to the vessels?  
 (2) A Yes  
 (3) Q Now are you familiar with how one had to go from shore  
 (4) over some sort of apparatus to get to the vessel?  
 (5) A Yes  
 (6) Q All right Was there a name for that sir?  
 (7) A Oh there's four berths there and each one had a  
 walkway  
 (8) down to the ship And then there was a gangway once you  
 got to  
 (9) the end of the - end of the berth onto the ship  
 (10) Q So gangway is the right word then?  
 (11) A Yes  
 (12) Q All right And were these men that you had seen as  
 (13) noticeably drunk able to make it over the gangway?  
 (14) A Yes  
 (15) Q Did you ever see anyone actually pass out once they had  
 (16) gone through security?  
 (17) A Yeah, one - one time, but it was not a - an Exxon  
 (18) employee  
 (19) Q Not an Exxon employee but that person had been able to  
 get  
 (20) through security?  
 (21) A Yes  
 (22) Q Let's just talk about some of your contacts with Captain  
 (23) Hazelwood What sorts of contacts would you have with the  
 (24) captain? What kinds of things would you do?  
 (25) A Oh I'd go on board like I said, and deliver the mail and

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- (1) usually - or most of the time, if it was still business hours  
 (2) in town, he'd ask for a ride to town And a couple of the  
 crew  
 (3) members would come and I'd drop them off downtown and  
 more  
 (4) times than not, we'd set up a range of time for me to pick  
 them  
 (5) back up take them back to the ship after a few hours  
 (6) Q All right Were there particular locations to which they  
 (7) were dropped off when you would bring them downtown?  
 (8) A Yeah I'd say most of the time it was either in the  
 (9) parking lot of the Pipeline Club or the parking lot of the  
 (10) grocery store directly across the street from there  
 (11) Q All right And were you also involved in picking up when  
 (12) vessels would leave?  
 (13) A Yes  
 (14) Q All right And from where if there was a normal place  
 (15) from where would you pick him up sir?  
 (16) A Best I can recall, it was either at the Pipeline Club or  
 (17) there's another business in town called The Pizza Club  
 where  
 (18) sometimes they'd pick up pizzas for the crew members and  
 take  
 (19) them back  
 (20) Q All right And on such occasions when you were picking  
 (21) Captain Hazelwood up to return him to the vessel did you ever  
 (22) go actually into the bar to pick him up?  
 (23) A Yes  
 (24) Q And can you explain how that would happen?  
 (25) A Well, like I stated earlier, we'd just arrange a time for

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- (1) me to pick him up and I'd just pull up go in and see if he  
 (2) was ready to go  
 (3) Q All right And were there times when he would tell you  
 (4) that he wanted you to pick him up at a certain time at a bar?  
 (5) A Yeah  
 (6) Q All right Now did you ever actually see Joe Hazelwood  
 (7) drinking alcoholic beverages in Valdez?  
 (8) A Yes  
 (9) Q And can you explain the circumstances as to how you would  
 (10) see that?  
 (11) A Well I'd just locate him inside the bar and walk up to  
 (12) him whether he's sitting at a table or at the bar and ask him  
 (13) if he was ready to go  
 (14) Q All right Now how do you know that it was alcohol that  
 (15) he was drinking sir?  
 (16) A Well I don't know for a fact but just - like I say I've  
 (17) lived there for 12 years and frequented the Pipeline Club,  
 (18) seen  
 (19) what's called like a rocks glass in front of him and I just  
 (20) assumed that that's what was in the glass  
 (21) Q How many times do you think that you saw Joe Hazelwood  
 (22) drinking in these circumstances where you'd pick him up before  
 (23) he went back to the vessel?  
 (24) A Four or five maybe  
 (25) Q And can you estimate how many times that you picked up  
 (26) Mr Hazelwood from the Pipeline Club to bring him back to the

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- (1) vessel during this period?  
 (2) A I thought that was what you just asked, four or five times  
 (3) I mean  
 (4) Q Okay Now would you also get other materials to bring  
 (5) back to the vessel at Mr Hazelwood's request?  
 (6) A Yes  
 (7) Q What sorts of things were they?  
 (8) A Oh what sticks out most in my mind is during the summer  
 (9) months we would get fresh seafood that was available in  
 (10) town  
 (11) and take that back on board  
 (12) Q And were there other stores you'd bring back as well?  
 (13) A Occasionally they'd run out of bacon or something like  
 (14) that  
 (15) Q Now during the period prior to the shipwreck do you know  
 (16) whether it was possible to bring alcoholic beverages through  
 (17) the Alyeska security gate?  
 (18) A Yes, it was possible  
 (19) Q And how do you know that sir?  
 (20) A I've seen it happen  
 (21) Q What were the circumstances?  
 (22) A Guys I'd take back they had arrived would have a bottle  
 (23) on them and they would just put it inside a - inside coat  
 (24) pocket or put it in a boot or something and just hide it from  
 (25) the security people  
 (26) Q Now other than the crews of the vessels - and I want to

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- (1) focus exclusively on Exxon right now Exxon vessels other than  
 (2) the crews of the vessels by which I mean the masters and the  
 (3) mates and the seamen the engineers the radio people the  
 (4) crew did you ever see other Exxon people from shore side  
 (5) management in Valdez?  
 (6) A There was only one occasion that I can remember where  
 (7) a  
 (8) couple of people came up that were interested in the  
 (9) steward's  
 (10) department They stayed in town for two or three days and  
 (11) boarded several ships to check out their facilities in the  
 (12) kitchen  
 (13) Q All right Besides them did you see any other Exxon  
 (14) management in Valdez?  
 (15) A No  
 (16) Q All right Were you ever aware that there was any program  
 (17) to monitor or keep an eye on Joseph Hazelwood while he was in  
 (18) Valdez?  
 (19) A Not to my knowledge, there wasn't  
 (20) Q All right Now did you have contacts other than in person  
 (21) with Exxon people on a regular basis?  
 (22) A Pardon?  
 (23) Q Did you have contacts other than personal contacts where  
 (24) you would actually interact with someone and other than crew  
 (25) with shore side management?  
 (26) A Strictly through telephone conversations yes  
 (27) Q And what was the nature of those telephone conversations?

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- (1) A Generally it was due to a sick crew member who was  
 (2) unfit  
 (3) for duty or if there was an emergency to get somebody off  
 (4) the  
 (5) ship or somebody that was meeting the ship in Valdez  
 (6) Q And how often would you - would you have these contacts  
 (7) or perhaps how many contacts did you have over the time that  
 (8) you were in Valdez?  
 (9) A Several hundred times maybe I'd talk to somebody in  
 (10) Benecia  
 (11) Q In Benecia sir?  
 (12) A Yeah  
 (13) Q And did you understand that was near San Francisco and it  
 (14) was the west coast office?  
 (15) A Right west coast fleet office  
 (16) Q During those conversations did anyone ever ask you to keep  
 (17) an eye on Joseph Hazelwood and/or his drinking?  
 (18) A Never  
 (19) Q Did Hazelwood have a reputation among Alamar people for  
 (20) being a sailor who liked to drink?  
 (21) A Most of them  
 (22) MR CHALOS Your Honor I object Hearsay  
 (23) MR JAMIN I think Your Honor it's relevant as to  
 (24) whether or not it would have been possible to monitor Joseph  
 (25) Hazelwood and if Exxon was interested what they would have  
 (26) found out if they explored it for drinking in Valdez  
 (27) THE COURT I'll allow the testimony as to

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- (1) reputation  
 (2) MR JAMIN Sir let me repeat the question as I  
 (3) recognize that may be a little bit disquieting  
 (4) BY MR JAMIN  
 (5) Q Did Joseph Hazelwood have a reputation among Alamar  
 people  
 (6) as a sailor who liked to drink?  
 (7) A Yes  
 (8) MR JAMIN I have nothing further  
 (9) Thank you Your Honor  
 (10) CROSS EXAMINATION OF RONALD SCOTT LUNT  
 (11) BY MR NEAL  
 (12) Q Mr Lunt I'm Jim Neal I don't think we've ever met  
 (13) A No we haven't  
 (14) Q Is that right?  
 (15) A That's correct  
 (16) Q Although I have asked somebody to interview you Do you  
 (17) know a Mr Brian Dougherty (ph)?  
 (18) A Yes, I spoke with him, to him on the phone two times  
 (19) Q And he talked to you about asking you about your proposed  
 (20) testimony here?  
 (21) A Correct  
 (22) Q Was he polite to you?  
 (23) A Yes sir  
 (24) Q Did he try to intimidate you in any way?  
 (25) A No sir

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- (1) Q He simply asked you to tell him what you knew about this  
 (2) matter correct?  
 (3) A Correct  
 (4) Q Now then you said you interacted with Captain Hazelwood  
 (5) some 15 times am I correct about that?  
 (6) A Yes  
 (7) Q I would assume that when you - when you say interaction  
 (8) you mean when he'd come in on a trip you'd interact with him  
 (9) is that one interaction?  
 (10) A Yes  
 (11) Q When did these interactions start?  
 (12) A I couldn't give you an exact date  
 (13) Q Well to make it 15 trips it would have to start back in  
 (14) what '86 I guess would it not?  
 (15) A '80 - I - I don't know When I say 15 times I'm saying  
 (16) maybe they were in port seven times then I interacted with  
 (17) him when the ship came in and then I interacted with him  
 (18) when the ship sailed  
 (19) Q You call that - then that's two separate occasions?  
 (20) A Two separate ones yes  
 (21) Q So it would be - when you say 15 interactions you're  
 (22) talking about that would be seven voyages?  
 (23) A Yes  
 (24) Q When did these voyages start do you know?  
 (25) A I have no idea

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- (1) Q As a matter of fact you're pretty foggy about the times  
 (2) are you not?  
 (3) A I couldn't give you consistent dates on when any ship  
 came  
 (4) to port  
 (5) Q Could you give us even the year of these events?  
 (6) A Just between my time of employment  
 (7) Q Which was when in '86?  
 (8) A I couldn't give you the exact date then either  
 (9) Q Well could you tell me was it winter spring, fall or  
 (10) summer when you started work there?  
 (11) A I couldn't tell you for sure  
 (12) Q You couldn't even tell me the period the season of the  
 (13) year?  
 (14) A No  
 (15) Q You couldn't tell me whether it was the last half of '86  
 (16) you started working there or the first half of '86?  
 (17) A I'll say it was the first half of '86  
 (18) Q First half of '86 okay Let's say - can you tell me  
 (19) whether it was between January the 1st and March 31st?  
 (20) A No, I couldn't  
 (21) Q Well was it between March 31st and June the 30th?  
 (22) A It was between January and July, is about as close as I  
 can  
 (23) get  
 (24) Q Between January - okay Between January and July, you  
 (25) started working at Alamar is that correct?

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- (1) A I believe so  
 (2) Q And that's the best you can tell us?  
 (3) A Yes  
 (4) Q All right And how long was it after that that you  
 (5) interacted as you say with Captain Hazelwood?  
 (6) A I couldn't even come close to telling you  
 (7) Q Well was it a month?  
 (8) A I couldn't even come close to telling you  
 (9) Q Was it two months?  
 (10) A I couldn't even come close to telling you a date on the  
 (11) first time I saw Captain Hazelwood  
 (12) MR JAMIN Your Honor I object to continuing  
 (13) questions I think they've been asked and answered  
 (14) MR NEAL Your Honor this is cross examination  
 (15) THE COURT You may proceed Mr Neal  
 (16) BY MR NEAL  
 (17) Q Let's say you went there in sometime between January of '86  
 (18) and - and the first of July of '87 okay?  
 (19) A That I met Captain Hazelwood?  
 (20) Q Well no I was going to say - I was going to say you've  
 (21) placed your time of going to work for Alamar as sometime  
 (22) between January 1 '86 and July 1 - July 1 '86 am I  
 (23) correct?  
 (24) A Yeah  
 (25) Q Okay Now then would it have been six months before you

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- (1) met Captain Hazelwood?  
 (2) A I have no idea  
 (3) Q Would it have been a year before you met Captain Hazelwood?  
 (4) A I have no idea It's like asking me eight years from now  
 (5) when I met you I couldn't remember  
 (6) Q Well truth of the matter is you don't know whether you  
 (7) met Captain Hazelwood in the first half of '86 the first half  
 (8) of '87 the second half of '87 is that correct?  
 (9) A That's correct  
 (10) Q Or the first half of '88 or the first half of '89?  
 (11) A Like I said I could not give you an exact date of when I  
 (12) met Captain Hazelwood for the first time  
 (13) Q Isn't it a fact Mr Lunt that - let me - let's ask this  
 (14) right away Do you remember the trip that resulted in the  
 (15) grounding?  
 (16) A Do I remember the trip?  
 (17) Q Yes sir  
 (18) A No I don't I was on vacation at the time of the  
 (19) grounding  
 (20) Q Okay You do remember it was in '89 don't you?  
 (21) A Yes  
 (22) Q You weren't in Valdez - you weren't in Valdez around the  
 (23) grounding trip were you?  
 (24) A No I was in Washington State  
 (25) Q So how long were you in Washington State?

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- (1) A It was maybe ten days, thereabouts Couple days either  
 (2) way  
 (3) Q When did you come back to Valdez?  
 (4) A I believe I got back two days after the spill had  
 (5) occurred  
 (6) Q Okay All right So you had been - you were out of  
 (7) Valdez from eight days before the spill occurred and you didn't  
 (8) get back until after the spill occurred is that correct?  
 (9) A That's correct  
 (10) Q Mr Lunt how many other companies did you work for as an  
 (11) agent during this period of time?  
 (12) A There was only one other maritime outfit I worked for  
 (13) That was Valdez maritime, and that's - I believe I started in  
 (14) about November of '89 there  
 (15) Q Mr Lunt you would never take an Exxon captain or officer  
 (16) back to the vessel just before sailing time would you?  
 (17) A There was a couple of occasions where that occurred  
 (18) Q How often - how soon before sailing time did you take an  
 (19) Exxon captain master or officer back to the vessel?  
 (20) A It just depended on when the ship sailed If it sailed at  
 (21) noon in the daytime sometimes they'd come into port that  
 (22) morning for an hour or two make some calls and go back  
 (23) Q My question was when prior to sailing When was the  
 (24) latest prior to sailing that you ever took a master or an  
 (25) officer of Exxon back to the vessel?

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- (1) A Maybe an hour before sailing time  
 (2) Q You're sure of that?  
 (3) A Yes  
 (4) Q All right Would you ever take Captain Hazelwood back that  
 (5) late?  
 (6) A There could have been an occasion I did  
 (7) Q Do you remember being interviewed by Mr Dougherty and  
 (8) being asked how late it was or how - how soon before sailing  
 (9) you ever took an Exxon captain or officer back to the vessel?  
 (10) A Yes  
 (11) Q Let me say one that you say had been drinking?  
 (12) A Pardon me?  
 (13) Q One that had been drinking?  
 (14) A No I couldn't - I don't think I could ever say I ever  
 (15) took one back an hour before sailing that was drinking  
 (16) Q So when you're saying you took them back an hour - as  
 (17) much  
 (18) as or as late as an hour before sailing it would be one that  
 (19) hadn't been drinking is that correct?  
 (20) A That's correct  
 (21) Q All right Let's say you said that some of them would be  
 (22) drinking How soon before sailing did you ever take one of  
 (23) those people back to an Exxon vessel?  
 (24) A Any of the captains that I'd ever picked up in a bar that  
 (25) were - had a beer or drink in front of them I don't think I  
 (26) ever took one back that way - well I know I never took one

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- (1) back just prior to sailing  
 (2) Q How far - how soon prior to sailing?  
 (3) A Oh that's tough to say I'd say on the average from  
 (4) anywhere from eight to 12 hours  
 (5) Q In each case if somebody'd been drinking right?  
 (6) A Yes  
 (7) Q Now did you ever see Captain Hazelwood take any liquor  
 (8) aboard a vessel?  
 (9) A Never  
 (10) Q Did you ever see any Exxon master or officer take any  
 (11) liquor aboard a vessel?  
 (12) A Never  
 (13) Q As a matter of fact you were being paid by a company that  
 (14) was being paid for efforts by Exxon weren't you?  
 (15) A Correct  
 (16) Q All right And you were aware Mr Lunt that Exxon had a  
 (17) very rigid alcohol policy weren't you?  
 (18) A On board yes  
 (19) Q As a matter of fact you were aware at the time that Exxon  
 (20) absolutely prohibited the - the possession or drinking of  
 (21) alcoholic beverages aboard one of its vessels weren't you?  
 (22) A On board their ships yes  
 (23) Q Did you ever see then an officer master officer or a  
 (24) member of the crew of Exxon take any alcoholic beverages  
 (25) aboard  
 (26) vessel?

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- (1) A Not on board no  
 (2) Q Did you ever see them - well now wait a minute Did you  
 (3) ever see them heading back towards the vessel and take  
 anything  
 (4) through security?  
 (5) A I've seen crew members do it before, yes  
 (6) Q Exxon crew members?  
 (7) A I can't exactly say that, but as many times as I've seen it  
 (8) happen, I'd have to say there was a time when an Exxon  
 crew  
 (9) member did, yes  
 (10) Q I see You've seen others you're sure of but because  
 (11) you've seen others employed by other companies you've seen  
 a  
 (12) lot of that, right?  
 (13) A Right  
 (14) Q You're assuming because you've seen so much of that some  
 of  
 (15) it must have been Exxon crew members is that correct?  
 (16) A Seeing how those were most of the ships we handled  
 were  
 (17) Exxon, yes  
 (18) Q So you're saying that you did see Exxon crew members take  
 (19) alcoholic beverages through security headed to the vessel  
 (20) right?  
 (21) A Correct  
 (22) Q Did you ever - and you were aware of the alcohol policy  
 (23) right?  
 (24) A Yes  
 (25) Q And you were being paid by Exxon is that correct?

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- (1) A Correct  
 (2) Q Did you ever report that to anybody at Exxon?  
 (3) A At Exxon, no  
 (4) Q Now as I understand your testimony then you would have  
 (5) seen Captain Hazelwood at the Pipeline Club on four or five  
 (6) occasions between whenever you started the work and March  
 of  
 (7) 89 is that correct?  
 (8) A Correct  
 (9) Q And in none of those - and you don't know whether that was  
 (10) 86 87 or 88?  
 (11) A Not a clue  
 (12) Q But it was four or five times during all those years  
 (13) correct?  
 (14) A Correct  
 (15) Q And in each and every occasion when you've taken him back  
 to  
 (16) the vessel it was many hours before sailing time?  
 (17) A Yes nine times out of ten definitely  
 (18) Q Pardon me?  
 (19) A Nine times out of ten yes  
 (20) Q Wait a minute What do you mean nine times out of ten?  
 (21) Was it nine times out of ten or ten times out of ten?  
 (22) A Well I can remember one occasion taking the captain  
 back  
 (23) on board at sailing time gathering mail and getting the  
 ullage  
 (24) report and leaving  
 (25) Q Was that an occasion when you picked him up at the Pipeline

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- (1) Club?  
 (2) A No, it wasn't  
 (3) Q Oh where did you pick him up?  
 (4) A I believe on that occasion we were dealing with a sick or  
 (5) injured crew member  
 (6) Q A sick or an injured crew member?  
 (7) A Right  
 (8) Q As a matter of fact on that occasion he came in  
 (9) delivered the sick - or came in with the sick or injured crew  
 (10) member and turned around went back to the vessel isn't that  
 (11) correct?  
 (12) A Yeah I believe what he did was come to the office and  
 (13) spoke to somebody on the shore side about this matter, and  
 we  
 (14) returned to the ship  
 (15) Q And never went to the Pipeline Club or anything else?  
 (16) A No  
 (17) Q All right Let's leave that one alone At any other time  
 (18) when you picked up - that means there are three or four times  
 (19) then you picked him up at the Pipeline Club then right?  
 (20) A No, there's four or five times, I'd say, at the Pipeline  
 (21) Club  
 (22) Q Okay Let's say four or five times over these years  
 (23) A Um hum  
 (24) Q Any of those four or five times did you ever take him back  
 (25) to the vessel shortly before sailing?

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- (1) A No  
 (2) Q It was always a number of hours before sailing wasn't it?  
 (3) A Correct  
 (4) THE COURT Are we at a good stopping point  
 (5) Mr Neal?  
 (6) MR NEAL Sure Your Honor and that'll help me  
 (7) THE COURT We'll take our first recess ladies and  
 (8) gentlemen  
 (9) We'll be in recess for 15 minutes  
 (10) (Jury out at 10:01 a.m.)  
 (11) (Jury in at 10:17 a.m.)  
 (12) THE CLERK All rise His Honor the Court this  
 (13) United States District Court is again in session  
 (14) Please be seated  
 (15) MR NEAL May I proceed Your Honor?  
 (16) BY MR NEAL  
 (17) Q Mr Lunt you talk about how foggy your memory is and I  
 (18) appreciate that Isn't it a fact - and you've talked about  
 (19) the four or five times that you may have picked up - or picked  
 (20) up Captain Hazelwood at the Pipeline Club and brought him  
 back  
 (21) to the vessel long before sailing time and these occurred  
 (22) between January 1 1986 and March of '89 is that a fair  
 (23) statement?  
 (24) A Yes it is  
 (25) Q All right Isn't it a fact that on these occasions when

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- (1) you picked up a -- an Exxon master or officer at the Pipeline Club and took them back to the vessel you don't know whether this was before January '88 or after January of '88?
- (4) **A That's correct**
- (5) **MR NEAL** Thank you Mr Lunt
- (6) **MR JAMIN** I have no redirect Your Honor
- (7) Thank you sir
- (8) **THE COURT** Thank you sir You may step down
- (9) Call your next witness
- (10) **MR MONTAGUE** Your Honor the plaintiffs call
- (11) **Dr Garrett O Connor** as an expert witness
- (12) **THE CLERK** Would you raise your right hand please
- (13) sir
- (14) **(The Witness Is Sworn)**
- (15) **THE CLERK** Please be seated For the record sir state your name give us your address and spell your last name please
- (16) **THE WITNESS** Garrett O Connor O C O N N O R 9100 South Sepulveda Boulevard Los Angeles California 90045
- (17) **THE CLERK** Thank you sir
- (18) **DIRECT EXAMINATION OF GARRETT O CONNOR M D (Live)**
- (19) **BY MR MONTAGUE**
- (20) **Q** Good morning Dr O Connor
- (21) **A** Good morning
- (22) **Q** Could you give us a little background of your education

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- (1) please?
- (2) **A** Yes I -- my medical school education was in Dublin Ireland at the Royal College of Surgeons in Ireland where I received my medical degree in 1960 I then came to the United States from Ireland and did an internship in the Union Memorial Hospital in Baltimore Maryland one year And I then attended John Hopkins University School of Medicine for a residency training in psychiatry for three years from 1961 through '64
- (3) **Q** So is it correct that you're both a medical doctor and a psychiatrist?
- (4) **A** That's correct
- (5) **Q** What is your current practice?
- (6) **A** Well, my current practice -- I perhaps should add that prior to getting to my current practice there's about 25 years intervening in which I was first of all on the faculty of John Hopkins University from 1964 through 1972 as an instructor and professor of psychiatry in the department of psychiatry and in the school of public health
- (7) During that time I directed the psychiatric emergency service at John Hopkins and also between 1969 and '72 the John Hopkins Drug Abuse Center in Baltimore I was also the chief of the Acute Treatment Clinic and taught community psychiatry in Baltimore
- (8) I then moved to Los Angeles in 1972 where I joined the faculty of UCLA And I taught psychiatry on the faculty of

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- (1) UCI A from 1972 until 1976 And for a period of one year there
- (2) was the medical director of the UCLA VA Drug Abuse Center at the hospital in Los Angeles
- (3) **Q** Are you still affiliated with UCLA?
- (4) **A** Yes I am Not full time anymore since 1976 but I am an associate clinical professor at UCLA where I teach courses regularly to medical students and residents on alcoholism and drug-abuse
- (5) **Q** Does that bring us now up to your current practice?
- (6) **A** I think so
- (7) **Q** Okay And could you tell the jury what you do today?
- (8) **A** Yes I am in the private practice of psychiatry and addiction medicine and in that role I see -- I am referred and I evaluate patients for possible alcoholism drug abuse or other forms of chemical dependence And I evaluate them make a diagnosis, if a diagnosis is to be made and then make recommendations for treatment
- (9) **Q** And do you have anything to do with these patients after treatment?
- (10) **A** Well I do Sometimes I participate in their continuing evaluation and extended care over a two or three year period as they are recovering from -- they continue to recover from their alcoholism or their other forms of chemical dependence
- (11) **Q** And sometimes are you consulted to evaluate persons who have been through -- who have already been through alcoholic

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- (1) treatment?
- (2) **A** Yes The patients come to me at different times Sometimes they come before they're gone to treatment They may be referred by a company by the FAA for example I do a lot of work with pilots and so the FAA or the airlines will refer me patients about whom they have a question employees about whom they have a question refer them to me to evaluate their status to see if there is a diagnosis of chemical dependence and if so what to do about it
- (3) So then I will make a diagnosis, make a recommendation, perhaps for inpatient treatment, for outpatient treatment, plus a program of on going care
- (4) Then in the case of -- most of the patients I see, I should say are people in safety sensitive positions Pilots are the -- not the bulk of my practice but 50 percent of my practice I also see air traffic controllers I also see physicians including surgeons and thoracic surgeons I also see attorneys, and an occasional judge
- (5) **THE COURT** Whoa
- (6) **THE WITNESS** It's true Your Honor
- (7) Occasional judge I also see firefighters from the Los Angeles Fire Department consult members of the police officers most of the people -- flight attendants from all of the airlines
- (8) So most of the people I see are in fact in safety

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- (1) sensitive positions I myself am a pilot so that also gives  
 (2) me a little bit of an edge with the airline pilots  
 (3) particularly  
 (4) And so after they come - if they go for treatment then  
 (5) they re sent back to me after their treatment to see if the  
 (6) treatment took as it were if the vaccination took and they re  
 (7) in recovery, and I make an assessment of their recovery status  
 (8) and then make recommendations to the company or the FAA  
 or  
 (9) the Board of Medical Quality of California if it s a doctor  
 (10) or the state bar association if it s an attorney  
 (11) I deal with these regulatory agencies a good deal around  
 (12) issues of safety and fitness  
 (13) Q Is that your specialty doctor?  
 (14) A That's the bulk of my practice is in that area and that's  
 (15) what I think I'm -  
 (16) Q And how long have you been doing that that specific  
 (17) specialty?  
 (18) A Since 19 - the early '80s, since about 1982 '83  
 (19) Q Do you have any licenses?  
 (20) A Yes, I do  
 (21) Q Other than a pilot s license?  
 (22) A Yes, I do  
 (23) Q Could you tell us?  
 (24) A I - I'm licensed by the Educational Council on Foreign  
 (25) Medical Graduates anyone who goes to medical school at a

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- (1) foreign country has to - in order to practice in America has  
 (2) to do a special exam, so I did that exam when I came here  
 (3) I also have a Maryland license to practice medicine which  
 (4) I got in 1965 I am a specialist in psychiatry, it's called  
 (5) board certified in psychiatry by the American Board of  
 (6) Psychiatry and Neurology which I received in 1970  
 (7) I also have a California license to practice medicine  
 (8) which I received when I - after I went to California in 1980  
 (9) and in addition I have been certified in addiction medicine  
 (10) by the American Society of Addiction Medicine in 1986 by  
 (11) examination  
 (12) I think that covers the licenses as far as I remember  
 (13) Q Okay Have you authored any publications?  
 (14) A Yes I have  
 (15) Q Any to do with the - your specialty?  
 (16) A Yes several One was called A Drug Abuse Industry  
 which  
 (17) was published in the early '70s which showed that the  
 heroin  
 (18) addiction and particularly other forms of drug addiction  
 were a  
 (19) pillar of the nation's economy and there was a whole  
 economic  
 (20) substrate connected to addiction and that was published in  
 a  
 (21) variety of different places  
 (22) Then there was another one in the early '80s that I  
 (23) published, was published of mine It was in a book about  
 (24) training in alcoholism and drug dependence university  
 (25) training, and I wrote the chapter on training psychiatrists  
 and

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- (1) psychiatric residents I think that's any of note that I  
 (2) published with respect to the field  
 (3) Q Have you been involved at all in any educational - or  
 (4) preparing any educational or training materials?  
 (5) A Yes Films I've been always interested in films, and  
 (6) I've prepared a number of training films in the area of  
 (7) alcoholism and also was fortunate enough to be able to  
 have  
 (8) some influence on some network television shows where we  
 were  
 (9) able to put material in about alcoholism, how to treat it, how  
 (10) to recognize it And shows like Archie Bunker's Place, for  
 (11) example, which had millions of people looking at it and  
 where  
 (12) we could, in a sense make some educational message to  
 people  
 (13) Oh, there was also a show on public television about  
 (14) doctors and pilots and lawyers and policemen in which I  
 (15) participated and was the medical advisor for  
 (16) Q In describing your specialty does that include evaluating  
 (17) persons who have gone through treatment for return to their  
 (18) jobs?  
 (19) A Yes  
 (20) Q Do you do that?  
 (21) A Yes  
 (22) Q On a regular basis?  
 (23) A On a very regular basis Most of my work is indeed  
 (24) either sending them for treatment or deciding if they should  
 go  
 (25) for treatment and then after treatment seeing, as I said if

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- (1) the treatment took  
 (2) Sometimes people go for treatment and it doesn't take  
 (3) Sometimes people do - you want to be able to evaluate their  
 (4) recovery status to see what they've learned, to see have  
 they  
 (5) accepted the fact that there is a problem are they still in  
 (6) denial  
 (7) Q How many of those have you done Doctor? How many of  
 (8) those?  
 (9) A How many of those?  
 (10) Q The evaluations for fitness?  
 (11) A Oh at least 500, I should say Up to - I do about, oh,  
 (12) 50 or 75 a year Over a ten year period I would say a  
 minimum  
 (13) of 500  
 (14) Q How do these people come to you?  
 (15) A Well, they're referred to me Some of them come on their  
 (16) own because they're worried about themselves There are  
 very  
 (17) few Most of them come because they were referred by  
 somebody  
 (18) else by management As I said by the FAA by the Medical  
 (19) Board of Quality by the fire department by the union,  
 airline  
 (20) pilots association I conduct and maintain relationships  
 with  
 (21) all of those groups  
 (22) Q Doctor are you yourself an alcoholic?  
 (23) A Yes, I am  
 (24) Q Are you what you refer to in recovery?  
 (25) A Yes I am a recovering alcoholic



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- (1) Q And from what period have you been in recovery?  
 (2) A My sobriety date is March 6th 1977  
 (3) Q And have you been sober since?  
 (4) A Yes I have been abstinent and sober from all alcohol and  
 (5) other mind altering drugs since that time  
 (6) Q Are you a member of Alcoholics Anonymous?  
 (7) A Yes I am  
 (8) Q Do you still attend Alcoholics Anonymous meetings?  
 (9) A Yes, I do  
 (10) Q Approximately how many Alcoholics Anonymous AA  
 meetings  
 (11) have you attended in your lifetime?  
 (12) A I just - more than 3000  
 (13) Q And have you ever spoken at AA conventions?  
 (14) A Yes I have  
 (15) MR MONTAGUE Your Honor I -  
 (16) THE WITNESS I was just going to say I've spoken at  
 (17) quite a number of AA conventions including the - several  
 (18) times at the annual convention of Birds of a Feather which is  
 (19) AA for pilots And this August I will be one off the speakers  
 (20) at International Doctors in AA in Atlanta  
 (21) MR MONTAGUE Your Honor I would offer Dr O Connor  
 (22) as an expert in psychiatry and addiction medicine and  
 (23) specifically diagnosis and treatment of alcohol abuse problems  
 (24) evaluation for fitness for duty interventions and substance  
 (25) abuse education

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- (1) MR SANDERS We have no objection  
 (2) THE COURT Thank you Court accepts Dr O Connor's  
 (3) qualifications  
 (4) BY MR MONTAGUE  
 (5) Q Let's get down to basics Doctor What is alcoholism?  
 (6) A Oh well there are many definitions for alcoholism and I  
 (7) will try to make it clear to you what some of the most recent  
 (8) ones are Alcoholism first of all is a disease It's a  
 (9) biological disease a psychological disease and a social  
 (10) disease And that means that it is a disease which affects  
 (11) your body, your mind your emotions and your  
 relationships  
 (12) wherever they - at home, or work or wherever they may be  
 (13) Now, because there are so many definitions of alcoholism  
 (14) everybody in a sense has their own way of thinking about it  
 (15) Our society, the American Society of Addiction Medicine  
 and  
 (16) this is the definition I'm going to give you because I think  
 (17) it's a very good one spent two years assembling all of the  
 (18) information on definitions, and we came up with - I was a  
 (19) board member of the society at the time We came up with a  
 (20) 1990, a definition which that was later published in the  
 (21) Journal of American Medical Association, very prestigious  
 (22) journal  
 (23) That definition, I'll go through it with you, is as  
 (24) follows Alcoholism is a primary disease of its own  
 (25) Biological psychological and social And its major

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- (1) characterizations are - or manifestations are episodic or  
 (2) impaired loss of control over drinking So the impaired  
 (3) control over your drinking can be episodic or continuous  
 (4) Preoccupation with alcohol is the next thing Alcoholics  
 (5) naturally think a lot about alcohol, and alcohol is a central  
 (6) part of their life experience The third thing is continuing  
 (7) to drink despite adverse consequences Continuing to  
 drink  
 (8) despite adverse consequences That means an alcoholic  
 will no  
 (9) matter if he gets - say something happens at home or  
 (10) disasters in his life or her life as there often are he  
 (11) continues to drink any way even though they know the  
 drinking  
 (12) is causing a problem  
 (13) And the fourth thing is distorted patterns of thinking In  
 (14) other words mental disease as well as everything else  
 (15) Distorted patterns of thinking Most notably denial  
 (16) You heard Mr O'Neill talk about denial is not a river in  
 (17) Egypt, that's a common phrase that came out of AA As a  
 matter  
 (18) of fact it's a good one because denial is one of a central  
 (19) mental components of alcoholism The alcoholic is last to  
 (20) know he or she is an alcoholic Everybody else knows  
 they're  
 (21) an alcoholic first  
 (22) So episodic or impaired - episodic or continuing, impaired  
 (23) control continuing to drink despite adverse consequences  
 (24) preoccupation with alcohol and mental patterns, distorted  
 (25) mental thinking, most notably denial

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- (1) Q Is it a progressive disease?  
 (2) A Yes it's most often progressive In that it gets worse  
 (3) the longer it goes and the more you drink basically and  
 very  
 (4) frequently fatal if not treated It's a very serious disorder  
 (5) Q Is it chronic?  
 (6) A Yes chronic in that it tends to go on most times for a  
 (7) lifetime, if not treated so yes it goes on over a long period  
 (8) of time  
 (9) Q Is there a way to stop it or arrest it?  
 (10) A Well, it's a closely guarded secret that alcoholism is  
 (11) caused by alcohol That's the most important thing to  
 (12) remember Some people say it's caused by unhappiness or  
 bad  
 (13) childhood, in fact it's caused by alcohol So the way to  
 (14) arrest alcoholism - you can't cure alcoholism Once an  
 (15) alcoholic always an alcoholic But you can arrest it and in  
 (16) my opinion the best way to arrest alcoholism is to stop  
 (17) drinking  
 (18) Q Total abstinence?  
 (19) A Total abstinence That's just the drinking part of the  
 (20) disease And following that, of course, you'll have to  
 (21) institute treatment and support and so on, and perhaps  
 we'll  
 (22) talk about that later for the other part of the disease the  
 (23) physical parts, the psychological parts and so on  
 (24) Q Is there another school of thought other than total  
 (25) abstinence?

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- (1) A Yes, there is There's a controversy in the field There are a lot of people, mostly psychologists some physicians, but
- (2) mostly psychologists who believe that many alcoholics can return to social or controlled drinking, and that controversy has been raging for, oh, some 20 years
- (3) The other side of the controversy is that with alcoholics, the proper treatment and the safest possible treatment and most
- (4) conservative treatment and most successful treatment is abstinence, and that is the position that's taken by AA
- (5) The group of people in research who expose controlled drinking would maintain that, as I said it's possible for alcoholics to go back to drinking, and the other side of the controversy says it isn't, and that abstinence is what you have
- (6) to achieve and maintain
- (7) Q Is that an accepted position?
- (8) A Which one, Mr. Montague?
- (9) Q Social drinking for an alcoholic?
- (10) A No it's not generally accepted in the main stream of medicine, and certainly in the field of addiction medicine and
- (11) generally in psychiatry it's not widely accepted at all In fact, may we say this at the beginning Doctor -
- (12) MR SANDERS Your Honor I'm going to object to the
- (13) continuing narratives If Mr. Montague could interrupt every now and then with a question
- (14) THE COURT I think we're doing all right

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- (1) You may continue Mr. Montague.
- (2) MR MONTAGUE Thank you
- (3) THE WITNESS Well just to reiterate that the problem with the controlled drinking issue is that even if you can show that some very few maybe one two three four percent of alcoholics could go back to controlled drinking how do you know in advance which ones they're going to be? If 96 percent of them can't - and Dr. Mark Shockerd (ph) one of the world's greatest authorities in alcoholism says there is no data - although some alcoholics may be able to go back to controlled drinking there is no data that permits us to tell in advance which ones they will be so that a recommendation or prescription of an alcoholic to go back to controlled drinking can under certain circumstances in my opinion be tantamount to a death sentence because you give the alcoholic the idea he or she can go back to controlled drinking they try the disease takes them over and continues on the inexorably fatal destructive process of alcoholism So that's the problem with that
- (10) Q You used the figure of three or four percent may - three or four percent of alcoholics in recovery may be able to go back to social drinking Where did that number come from?
- (11) A Well, there's a major study called the Rand report which came out in the 1970s which has been actually widely criticized I do not subscribe to the findings of the Rand

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- (1) report, but I can tell you that when corrected down for errors
- (2) of various times, the final distillation of their results was that about four percent of their alcoholics could go back to some sort of controlled drinking
- (3) A better study conducted in 1985 by a man called Helsler (ph), and his group showed that only 1.6 percent of their alcoholics could resume moderate, stable drinking And let me tell you what moderate stable drinking was by them They said that moderate stable drinking was six drinks a day plus three episodes of intoxication per month That was what they called
- (11) moderate stable drinking, the 1.6 percent of alcoholics who they said could return to drinking So that's where those figures come from
- (12) Q Is the social drinking concept an accepted premise for persons in sensitive - in safety sensitive positions?
- (13) A Not anywhere that I know of Obviously, it's a risky business and I don't know in any of the groups that I work with who would accept social drinking as an outcome
- (14) Q Now you treat people every day?
- (15) A Yes
- (16) Q And what do you recommend?
- (17) A I recommend total abstinence And if a person is not willing to commit to total abstinence and show that they can maintain it I will not recommend them for a return to a safety sensitive position
- (25) sensitive position

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- (1) Q Are there symptoms - I guess that's the right word not being a medical person Are there symptoms of alcoholism?
- (2) A Yes there are
- (3) Q And are they susceptible to description?
- (4) A I'll try I'll give a fairly abbreviated version here as they, I think apply to this particular case that we're in
- (5) And, before I do let me say that the symptoms of alcoholism -
- (6) alcoholics are just human beings like me and everybody else so
- (7) the behavioral symptoms that we'll describe everybody has had
- (8) them to some degree or another But in an alcoholic, they are
- (9) clustered and they're more severe, and they're severe enough
- (10) their ordinary human conflicts and behaviors They're clustered in such a way as to cause pain and suffering and dysfunction so they're exaggerations of what everybody here
- (11) has felt I'm sure, at one time or another
- (12) The first symptom of alcoholism is, of course drinking, abnormal drinking, heavy drinking, binge drinking, and there
- (13) are different kinds of drinking Drinking that's enough to cause a problem in marriage, in family, in your own self, relationship with yourself or relationships at work That's the first as I said alcoholism cause of - alcohol is the cause of alcoholism
- (14) Then there is low self esteem depression Alcoholism is a depressing disease You lose things, not only your memory but
- (15) sometimes your job and your dignity, and so people are often

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(1) depressed Resentment - Bill Wilson the founder of  
 (2) Alcoholics Anonymous said resentment was the greatest  
 enemy of  
 (3) all alcoholics Tolerance - tolerance is something that  
 (4) develops over time in an alcoholic and that means that  
 when a  
 (5) disease is progressing the alcoholic has to drink more over  
 (6) time to get the same effect  
 (7) Most alcoholics looking back in their lives would be able  
 (8) to say I remember I used to be - I was the one that could  
 (9) drink people under the table I could drive people home  
 when  
 (10) everybody else was drunk I could drink a lot hold my  
 liquor  
 (11) whole syndrome  
 (12) What else - oh denial as I mentioned before which is a  
 (13) whole range of psychological mechanisms We'll talk about  
 that  
 (14) for a minute because it's so important  
 (15) Denial helps the alcoholic to reduce awareness of the fact  
 (16) that alcohol is the cause of his or her problems rather than  
 (17) the solution An alcoholic, when they're drinking, thinks  
 that  
 (18) alcohol is going to solve problems when in fact it really is  
 (19) the cause of them So denial keeps the alcoholic drinking  
 by  
 (20) preventing him or her from knowing that alcohol is the  
 cause  
 (21) And denial is an integral part of the disease the mental  
 (22) disease of alcoholism and it becomes inevitably an  
 obstacle to  
 (23) recovery because the alcoholic isn't in touch with the fact  
 (24) that I am an alcoholic That's what the whole treatment is  
 (25) about

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(1) Explosive behavior impulsive behaviors of all kinds  
 (2) Lying about drinking, about your drinking is part of the  
 (3) denial Alcoholics like to deceive or not like to - they  
 (4) have to deceive people in order to cover up how much  
 they're  
 (5) drinking So alcoholics live a double life really, a life  
 (6) that they know about and a life we let you know about as it  
 (7) were  
 (8) I remember my own if I may digress here because I think  
 (9) in trying to explain to the jury these symptoms, it's very  
 (10) important to be in a sense as specific as we can But in my  
 (11) own alcoholism, I used to be like a spy I knew that I was an  
 (12) alcoholic and I knew that I had all of these problems, but I  
 (13) wouldn't let you know about it, and I could pretend and I  
 could  
 (14) create an image of function whether in my work or with my  
 (15) family but in order to do so I had to lie tell lies about my  
 (16) drinking and pretend And eventually like any alcoholic I  
 (17) moved from telling a lie to living a lie when it becomes part  
 (18) of your whole system part of your whole character  
 (19) So they're the main things Of course I was also -  
 (20) alcoholics also are full of shame and guilt because of the  
 (21) things they know they did and that they're hiding from you  
 so  
 (22) that you don't know what it is we did, and that leads to  
 (23) anxiety and a state of generally poor morale Again, you  
 cover  
 (24) up with pseudo image of function and good fellowship But  
 (25) beyond that there's an enormous amount of loneliness and

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- (1) alienation in the sense of despair and feeling of not belonging
- (2) to anything
- (3) Q Once an alcoholic does drinking have any effect on your
- (4) cognitive functions or your thinking powers?
- (5) A Yes
- (6) Q And does one have to be drunk for that adverse reaction to
- (7) take place?
- (8) A Cognitive functions, I think - thanks for bringing that
- (9) up, because I had - I didn't mention it in my list of
- (10) symptoms
- (11) Cognitive functions are when the alcohol affects your
- (12) brain, and the ones we would be most concerned with would
- (13) be
- (14) poor judgment, effects on judgment effects on memory,
- (15) faulty
- (16) memory blackouts, for example, that alcoholics get from
- (17) drinking too much And there are many studies that show
- (18) that
- (19) these cognitive effects are not just associated with drinking
- (20) or being drunk or using intoxication, but because of the
- (21) chronic effect of alcohol on the brain they persist even at
- (22) times when the alcoholic is sober
- (23) And when we're evaluating - I'm evaluating pilots or
- (24) doctors or police officers or others after treatment one of
- (25) the things that I do is evaluate their cognitive functions
- (1) They may have been sober for two or three months by this
- (2) time
- (3) but they still may have cognitive deficits from the chronic
- (4) effects of drinking which have to be evaluated

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- (1) Q Is someone - in medical terms is someone who is suffering
- (2) from alcoholism an alcoholic? Is there a difference between
- (3) the disease of alcoholism and labeling somebody an alcoholic?
- (4) A No People with alcoholism in my opinion and in medical
- (5) terms are alcoholics yes
- (6) Q And I know we've all seen various movies which depict
- (7) alcoholics does one have to be alcohol dependent to be an
- (8) alcoholic?
- (9) A No not in my opinion These days, the term alcohol
- (10) dependent alcohol abuse are used interchangeably and we
- (11) would
- (12) call anybody with any of those problems an alcoholic
- (13) Q Does one have to be a continuous heavy drinker to suffer
- (14) from alcoholism?
- (15) A No Most alcoholics - vast majority of alcoholics are not
- (16) continuous heavy drinkers The pattern of drinking is more
- (17) usually episodic Alcoholics can stop drinking for periods
- (18) give up for Lent Many people say I can't be an alcoholic I
- (19) give up drinking every year for Lent 40 days
- (20) Q Does being an alcoholic mean that you reach for the bottle
- (21) first thing in the morning?
- (22) A No Only a very small - that's part of the stereotype of
- (23) the sort of gamut alcoholic The Last Weekend Alcoholic
- (24) wonderful film with Ray Miland (ph) Days of Wine and
- (25) Roses
- (1) with Jack Lemon These are very serious films with end
- (2) stage
- (3) gamut alcoholics type of people just about to become skid
- (4) row

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- (1) bums in an advanced stage where they have to because
- (2) they're
- (3) shaking and want to take a drink early in the morning just to
- (4) get going for the day
- (5) I had to do that literally, sometimes I'd shake a little in
- (6) the morning, but I never had to take a drink for it But that
- (7) is the very severe kind of alcoholic that you're talking about
- (8) there
- (9) Q Now in your opinion can someone who is a - an episodic
- (10) alcohol abuser - by the way what does that term mean to you
- (11) episodic alcohol abuser?
- (12) A Well, episodic alcohol abuse, that means that a person
- (13) abuses alcohol on an episodic basis, which means that
- (14) there
- (15) would be periods of sobriety between periods of abuse, and
- (16) it's
- (17) a very - it's a term in the diagnostic manuals that in a sense
- (18) has gone out of favor It was used more in the early '80s
- (19) than
- (20) it is now But you still would see episodic alcohol abusers,
- (21) but now they would be called something else in the
- (22) diagnosis
- (23) Q Well can a quote episodic alcohol abuser end quote be
- (24) an alcoholic?
- (25) A Yes I think Dr Gould as I sat here in the Court last
- (1) week said that people with alcohol abuse, some people
- (2) would
- (3) call them alcoholics, some people with that diagnosis and
- (4) alcohol abuse, some people would call it alcoholism, and I
- (5) happen to be one of those "some" people
- (6) Q Which do you call it?

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- (1) A Well, I call it alcoholism, yes
- (2) Q Now you mentioned in describing yourself that you have
- (3) been in recovery since 1976 I think it was?
- (4) A '77
- (5) Q '77?
- (6) A Yeah
- (7) Q What does that term mean in recovery?
- (8) A In recovery means basically that a person is clean and
- (9) sober from all mind altering drugs, including alcohol And
- (10) that in addition to that, they are participating in a program
- (11) of activities designed to help them to stay sober It's one
- (12) thing to stay sober To get sober, it's much more harder
- (13) thing
- (14) to stay sober because alcoholism is a relapsing disease
- (15) You
- (16) tend to go back to it You need a program of recovery that's
- (17) specifically designed to keep you sober to prevent relapse,
- (18) so
- (19) that can be - of course most commonly, AA, with 17 million
- (20) people in AA worldwide It can be other programs, such as
- (21) rationale recovery, which is a non spiritual form of AA Or it
- (22) can be other forms of support groups that help a person to
- (23) stay
- (24) sober but they ought to be focused on precisely that so that
- (25) they understand the process of alcoholism and relapse and
- (1) can
- (2) provide a person with the tools that they need to stay sober
- (3) Recovery, so that's what being in recovery really means
- (4) Q Doctor excuse me are there observable signs that - so
- (5) that one trained such as yourself or any trained professional

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(1) can determine whether someone who has gone through alcohol  
 (2) treatment has achieved a successful recovery at the time  
 (3) they re evaluated has achieved a successful recovery?  
 (4) A Yes Well maybe the best way to explain that would be to  
 (5) say what it is I look for when I'm evaluating say a pilot or  
 (6) a police officer or air traffic controller somebody like that  
 (7) who's been through treatment and they will be sent back to  
 me  
 (8) prior to - to get my recommendation to see if they're fit for  
 (9) duty in the safety sensitive position That means are they  
 (10) in my terms in recovery  
 (11) So in order to do that, what I - I have a procedure  
 (12) First of all I will have a face-to face meeting with the  
 (13) individual, but not only with the individual but with his  
 (14) family, and I will have his or her permission to talk to their  
 (15) colleagues at work their managers their supervisors as  
 well  
 (16) as talk to the people in the hospital the rehabilitation  
 (17) center where they've been as well as have all of their  
 (18) hospital records for me to look at Because you really need  
 to  
 (19) make sure that a person is in fact clean and sober And  
 not  
 (20) only that but enthusiastically and sincerely committed to a  
 (21) program to stay that way  
 (22) So what I look for in a person I look for is he or she  
 (23) number one sober Number two are they committed to  
 (24) sobriety Number three, what are they doing to  
 demonstrate  
 (25) that commitment? Is their family behind them? Do they  
 have a

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(1) support group? Are they going to AA? Or, if they don't like  
 (2) AA, are they going to another group, such as rationale  
 (3) recovery? If so what is the quality of their participation in  
 (4) those groups? And I know how to ask the questions to find  
 out  
 (5) if they really are indeed participating actively in AA and  
 (6) doing the 12 steps and if they have a sponsor I want to talk  
 (7) to the sponsor to see what the - it's a really thorough  
 (8) evaluation here I want to see that they're if not happy in  
 (9) their sobriety at least relieved and grateful for the  
 (10) opportunity to be sober and return to work and not be fired  
 or  
 (11) terminated or something like that  
 (12) I want to see that they're willing to comply with whatever  
 (13) company or government regulations may be facing them  
 Because  
 (14) often alcoholics feel that they're constricted and they have  
 to  
 (15) do this and they have to go to meetings and they have to  
 (16) report they have to document their attendance Well  
 (17) alcoholics are kind off free spirits when they're drinking  
 you  
 (18) know, and they don't like to be pinned in And I need to  
 (19) evaluate the extent to which they're willing to comply and  
 (20) whether they're enthusiastic about complying because they  
 know  
 (21) this is the best treatment for their disease  
 (22) I want to know if they're being open and candid about their  
 (23) drinking, no longer lying about it Willing to talk about the  
 (24) shameful episodes openly willing to make amends to  
 people If  
 (25) not then sometime later be prepared to make amends to  
 people

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(1) they've hurt Their families their work friends friends and  
 (2) foes  
 (3) I need to also inspect their cognitive functions And I  
 (4) don't do that myself except in a cursory clinical evaluation  
 (5) but I refer them to a psychologist for that who does an  
 (6) extensive battery of tests to make sure the thinking  
 judgment  
 (7) perception memory all of those things are back to normal  
 (8) And I can tell you often we don't send people back to work  
 (9) yet We have to wait If their program isn't in good shape, I  
 (10) will delay my recommendation to send them back to work  
 and will  
 (11) give them instructions to tighten it up to increase it to  
 (12) wait until their brain functions settle down come back in  
 (13) three months six months communicate that to the agency  
 or the  
 (14) work people and then send them back  
 (15) Q Doctor are those signs that you were talking about what  
 (16) you look for?  
 (17) A Yes  
 (18) Q Were those signs that were recognized by your profession  
 (19) back in 1985?  
 (20) A Yes  
 (21) Q You mentioned - I think you used the word relapse?  
 (22) A Yes I did  
 (23) Q What does that mean?  
 (24) A Well relapse really means a return to the previous  
 pattern  
 (25) of abnormal drinking People - essentially what it means -

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(1) Q Are there studies made or is it known in your profession  
 (2) basically what the relapse rate is or the parameters of the  
 (3) relapse rate for an alcoholic?  
 (4) A Well Mr Montague that question really can't be  
 answered  
 (5) very simply but I could answer it briefly in the following  
 (6) way That untreated relapse rates for alcoholics tend to be  
 (7) very high up to 60 or 70 percent if you don't treat people  
 (8) However - and of course it depends on age and amount of  
 (9) drinking and type of alcoholism and whether or not a person  
 has  
 (10) a social support group whether they're jobless, whether  
 (11) they - all of those things come into play in assessing  
 relapse  
 (12) rates but in general they're very high However with  
 proper  
 (13) treatment they can be reduced substantially  
 (14) Q Okay Now are there - just as there were signs for  
 (15) successful recovery being successful in this recovery are  
 (16) there specific recognized signs for relapse?  
 (17) A Yes  
 (18) Q And could you tell us briefly what they are?  
 (19) A Well I don't seem to be able to tell anything briefly, but  
 (20) I'll do my best They're in a way the opposite to the  
 (21) successful signs as you might imagine There is a  
 syndrome  
 (22) called a protracted abstinence syndrome it's a technical  
 term  
 (23) for negative thinking, irritability, sober alcoholic, an  
 (24) alcohol who's dry rather is kind off uptight, doesn't like  
 (25) it, negative thinking, unwilling to deal with his or her

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- (1) **drinking, really not in any sense of recovery, that sort of**  
 (2) **resentful, bitter angry attitude that you sometimes see**  
**That**  
 (3) **would be a major sign of impending relapse**  
 (4) **Of course any kind of drinking controlled or otherwise as**  
 (5) **the alcoholic might say, is a sign of relapse Alcoholics**  
 (6) **believe that they, you know have an obsession with the**  
**idea**  
 (7) **that they can return - can return to drinking like a normal**  
 (8) **person, we can't, so that any kind of going back to drinking**  
**is**  
 (9) **a sign of relapse**  
 (10) **Failure to follow up with recommended prescriptions for**  
 (11) **aftercare, for treatment, for counseling, that kind of thing**  
 (12) **Willingness, unwillingness to deal with the aftermath of**  
**damage**  
 (13) **in the family All of those things are signs of a person who**  
 (14) **is not in recovery**  
 (15) **Q Are all these signs things that you relied on in your**  
 (16) **evaluation of patients over the past - since the early 80s?**  
 (17) **A Yes And continuing denial of course is the principle**  
 (18) **one Person may be through treatment and still says**  
**they're**  
 (19) **not alcoholic even though all the signs and symptoms are**  
 (20) **available for inspection**  
 (21) **Q Now the fact that a person suffering from alcoholism self**  
 (22) **identifies rather than being involuntarily given treatment or**  
 (23) **introduced to treatment the fact that a person self**  
 (24) **identifies does that change the signs that you look for in**  
 (25) **evaluating the success or failure of someone in recovery?**

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- (1) **A No How a person gets to treatment and subsequently is**  
**not**  
 (2) **relevant to - that doesn't change how I would see or how I**  
 (3) **would look for the signs of recovery or what prescriptions**  
 (4) **recommendations I might give for extended treatment**  
 (5) **Q Now Doctor let's - we've got a background and that's**  
 (6) **what I was hoping we could get to give to the jury Let's turn**  
 (7) **to this case now**  
 (8) **A Yes sir**  
 (9) **Q Have you reviewed any materials specific to this case?**  
 (10) **A I have**  
 (11) **Q And could you tell us what you've reviewed?**  
 (12) **A Summarize I read all I think of the Exxon policies with**  
**respect to alcohol alcoholic behavior and employees back**  
**to**  
 (14) **1977 I think And I read a lot of - number of letters and**  
 (15) **other memoranda internal to Exxon and between Exxon and**  
**the**  
 (16) **government after the oil spill**  
 (17) **I also read some documents of the NTSB National Training**  
 (18) **and Safety Board - Transport and Safety Board after the oil**  
 (19) **spill I then read a lot of testimony I won't go through it**  
 (20) **all but it was testimony of various Exxon managers**  
**Captain**  
 (21) **Sheehy Captain Tompkins Captain Pierce Mr Iarossi,**  
 (22) **Mr Myers Mr Steve Day and of course all of the 2400**  
**pages**  
 (23) **of Captain Hazelwood's testimony as well**  
 (24) **In addition I have been sitting in this courtroom since**  
 (25) **last Monday and have heard all of the testimony that you**  
**have**

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- (1) **heard So I won't go through all of the names You know**  
 (2) **ourselves what else**  
 (3) **Q Have you ever been to Valdez?**  
 (4) **A Oh, yes, I did Last Sunday, I rented a plane and I flew**  
 (5) **myself to Valdez because I was just curious it was a**  
**gorgeous**  
 (6) **day and I was curious to see what it was like there**  
 (7) **Naturally, having a particular interest, I retraced Captain**  
 (8) **Hazelwood's steps as I understood them from the testimony**  
**on**  
 (9) **March 23rd, 1989, and it was very helpful to me in**  
 (10) **understanding the circumstances of this case to walk**  
**around**  
 (11) **Valdez, see the various places, and then fly over the**  
**Alyeska**  
 (12) **terminal and see the walkways and gantries that Mr Lunt**  
**was**  
 (13) **talking about see the ships parked there, see the distances**  
 (14) **and then fly the course of the - of the Exxon Valdez that**  
 (15) **night and see Busby Island and the reef and Reef Island and**  
 (16) **Goose Island It was really very helpful to me in putting it**  
 (17) **altogether in my own mind**  
 (18) **Q And from the materials that you've just described by the**  
 (19) **way did they - have you seen the - what's called the IDR?**  
 (20) **A Oh yes the IDR**  
 (21) **Q Individual Disability Report have you seen that?**  
 (22) **A Yes I have seen that**  
 (23) **Q Have you seen the Sickness Benefits Report?**  
 (24) **A Yes, I have seen that, too**  
 (25) **Q And have you seen what we've been referring here as the**

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- (1) **Graves report or Graves memo?**  
 (2) **A Thank you Also the Graves report I've seen that**  
 (3) **Q From all of the materials you've described have you been**  
 (4) **able to form certain opinions?**  
 (5) **A I have**  
 (6) **Q Let's get them Do you have sufficient information to form**  
 (7) **an opinion as to whether Captain Hazelwood suffered from the**  
 (8) **disease of alcoholism as of 1985?**  
 (9) **A I do**  
 (10) **Q And have you formed such an opinion?**  
 (11) **A I have**  
 (12) **Q And can you tell us what that opinion is?**  
 (13) **A Yes In my belief Captain Hazelwood suffered from the**  
 (14) **disease of alcoholism since 1985**  
 (15) **Q Could you tell the jury the basis for that opinion?**  
 (16) **A Yes The basis of my opinion is largely based on the**  
 (17) **materials that we just reviewed and perhaps the best way**  
**to**  
 (18) **talk about it is to divide it up into three time periods,**  
 (19) **really The signs and - that were apparent prior to Captain**  
 (20) **Hazelwood's entry into South Oaks Hospital, and then**  
 (21) **hospitalization itself, and the period after his**  
 (22) **hospitalization and then, finally, the period towards the end**  
 (23) **of his employment with Exxon prior to the oil spill**  
 (24) **Prior to the hospitalization, what - what did he have?**  
 (25) **Well he himself complained that he and his wife had been**

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- (1) talking about getting some help for eight months prior to his  
 (2) going into the hospital He also complained of moodiness  
 and a  
 (3) mid life crisis There was an investigation going on into  
 (4) Captain Hazelwood's drinking by Exxon in the early part of  
 (5) 1985 Captain Pierce called him said there's an  
 undercurrent  
 (6) of some kind going on here and maybe you better do  
 something  
 (7) about it  
 (8) The Graves report which indicated that Captain  
 (9) Hazelwood - of course Exxon didn't know about that until a  
 (10) little later but looking back on it Captain Hazelwood had  
 (11) come back drunk to the ship on - I think intoxicated on  
 (12) several occasions and had also been drinking on board So  
 they  
 (13) were the main things I think prior to - in addition to of  
 (14) course the principal thing Of course Captain  
 Hazelwood's  
 (15) own account of as he said abusive drinking for four years  
 (16) once a week with his wife at home heavy drinking, we would  
 (17) say four to five doubles before dinner wine with dinner  
 two  
 (18) to three doubles after that Which would make him as he  
 said  
 (19) in his testimony and his deposition testimony giddy or  
 jokey  
 (20) or a little clumsy So there was that and this obviously as  
 (21) he indicated did not help his relationship with his wife And  
 (22) led to subsequent treatment  
 (23) Q If I may divert for a minute Did you notice any change in  
 (24) Captain Hazelwood's testimony with respect to the time of what  
 (25) he said in his deposition and what he said here in court?

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- (1) MR SANDERS Objection Your Honor as to relevance  
 (2) MR MONTAGUE Well Your Honor the witness just said  
 (3) that he relied in forming his opinion on his deposition  
 (4) testimony  
 (5) THE COURT Mr Sanders anything else?  
 (6) MR SANDERS Your Honor I question the relevance of  
 (7) a comparison  
 (8) THE COURT Well I'll allow the witness to testify as  
 (9) to the comparison and you may cross examine as to whether  
 (10) there's any basis for it if it isn't brought out  
 (11) You may testify  
 (12) MR MONTAGUE Thank you Your Honor  
 (13) THE WITNESS Well yes there were - I think a  
 (14) couple or three different versions of Captain Hazelwood's  
 (15) account of his drinking with his wife In his first - in his  
 (16) deposition testimony he said in response to the questions that  
 (17) it was once a week for three to four years Then I think in  
 (18) two different parts of his trial testimony he said on one  
 (19) occasion that it was sometimes weekly and sometimes kind of  
 (20) every three weeks Now a different pattern given And then  
 (21) on another occasion he said that the time interval between his  
 (22) heavy drinking at home was I think several months Several  
 (23) weeks or several months Any way there was again a third  
 (24) version of the same account  
 (25) BY MR MONTAGUE

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- (1) Q Is that - I'm sorry  
 (2) A Yes go ahead  
 (3) Q Does that have a significance to you the fact that that  
 (4) story would change from his deposition in January of this year  
 (5) and at the trial?  
 (6) A Yes it does It makes it difficult to rely upon Captain  
 (7) Hazelwood for accounts of his drinking for me in trying to  
 (8) think about the significance of Captain Hazelwood's  
 drinking,  
 (9) what it means the vitality of it the centrality of it in this  
 (10) case when you get a person giving three different versions  
 (11) under oath in a two or three month period It makes it  
 (12) difficult to rely upon whatever he says about his drinking,  
 (13) especially is he - also basic to that opinion is his own  
 (14) admission in his deposition testimony that he lied about his  
 (15) drinking several times and there was other information  
 which  
 (16) perhaps we'll generate here that he lied about his drinking  
 on  
 (17) other occasions throughout this time  
 (18) MR SANDERS May it please the Court I renew my  
 (19) objection move to strike the comparison of testimony  
 (20) THE COURT I'll allow the testimony to stand  
 (21) MR MONTAGUE Thank you Your Honor  
 (22) BY MR MONTAGUE  
 (23) Q Let's get back from my diversion You were giving the  
 (24) basis for your opinion as to why you had concluded that  
 Captain  
 (25) Hazelwood was suffering from alcoholism or was an alcoholic  
 as

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- (1) of 1985 and I believe you had finished his - the events - or  
 (2) had you finished the pre events before he entered South Oaks  
 (3) Hospital?  
 (4) A Yes Oh one more I forgot about that he didn't tell his  
 (5) doctor about any of this Why is that significant?  
 (6) MR SANDERS Your Honor may we have a side bar?  
 (7) (At side bar off the Record)  
 (8) THE COURT Ladies and gentlemen you will please  
 (9) ignore and disregard totally the last question and answer that  
 (10) was given  
 (11) Dr O Connor at this stage of your testimony we need to  
 (12) tighten things up a little bit and do it more in a specific  
 (13) question and a specific answer When you're giving the broad  
 (14) background material I've allowed you to give narrative broad  
 (15) answers but we're into the case specific part of your  
 (16) testimony now and we need to tighten it up some  
 (17) THE WITNESS Yes Your Honor  
 (18) BY MR MONTAGUE  
 (19) Q Dr O Connor in reaching your opinion on whether Captain  
 (20) Hazelwood that he was an alcoholic and suffered from  
 (21) alcoholism in 1985 did you consider the fact that he attended  
 (22) a 28 day inpatient alcohol rehabilitation program?  
 (23) A Yes I did  
 (24) Q And what is the significance of that?  
 (25) A Well it was in an alcoholism rehabilitation center and he

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- (1) was admitted to that for treatment  
 (2) Q Okay Did you consider the information that was on the  
 (3) IDR which is Plaintiff's Exhibit 10?  
 (4) A Yes, I did  
 (5) Q And the statements on that made by Dr Vallury?  
 (6) A I'm sorry The statements made on it by Dr Vallury, yes  
 (7) MR MONTAGUE That's not facing too good Thank  
 (8) you Can you see that?  
 (9) THE WITNESS Yes I can  
 (10) BY MR MONTAGUE  
 (11) Q And what is it on that report which supports your opinion  
 (12) or from which you formed your opinion or contributed to your  
 (13) opinion that Captain Hazelwood was an alcoholic in 1985?  
 (14) A Well, the - do you want me to -  
 (15) Q By the way -  
 (16) A This IDR or this abbreviation of that  
 (17) Q You look at Exhibit 10 if you want and if you could put  
 (18) Exhibit 10 on the - I guess we can't get - PX10?  
 (19) MR SANDERS Don't we have a blow up of that  
 (20) somewhere?  
 (21) MR MONTAGUE Can everybody see the screen?  
 (22) BY MR MONTAGUE  
 (23) Q You want to tell us what we're going to refer to and I'll  
 (24) try to make it more legible for everybody  
 (25) A Yes I was going to refer at some point to the code

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- (1) numbers at the top of the diagnosis section  
 (2) Q Is that what you're referring to?  
 (3) A Yes Where it says 300 40 and 305 42 They are typed  
 (4) Q What is it about those that you relied upon in reaching  
 (5) your -  
 (6) A Well one of them is the code number for dysthymic  
 (7) disorder and the other is the code number for alcohol  
 (8) abuse  
 (9) Q Yes And what is the significance of that to you?  
 (10) A Well alcohol abuse episodic is a diagnosis which  
 (11) indicates  
 (12) a form of alcoholism Furthermore the handwritten  
 (13) information  
 (14) below individual psychotherapy group therapy marital  
 (15) therapy, AA and lectures seminars and workshops  
 (16) pertaining to  
 (17) alcoholism is a classical description of the treatment in an  
 (18) inpatient 28 day program for alcoholism following what is  
 (19) called a Minnesota model which was the traditional form of  
 (20) treatment for alcoholism at that time And indeed today as  
 (21) well So that the - what is described for treatment is the  
 (22) treatment for alcoholism  
 (23) And then further down Dr Vallury looks like his writing,  
 (24) has said that Mr Hazelwood will complete our 28 day  
 (25) program  
 (26) that's the - the only thing - alcoholism is the only thing  
 (27) for which a 28 day program exists It is recommended  
 (28) given  
 (29) the nature of his job that after discharge Mr Hazelwood  
 (30) will  
 (31) be given a leave of absence to get involved in AA and

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- (1) aftercare  
 (2) Again, that is an absolutely classical prescription for  
 (3) extended care and aftercare for somebody with a diagnosis  
 (4) of  
 (5) alcoholism We note in item five there that workshops  
 (6) pertaining to alcoholism is what's used And going back to  
 (7) the  
 (8) diagnosis part there it's typed, and that's probably Captain  
 (9) Hazelwood It indicates at the top, was admitted on the 1st  
 (10) of  
 (11) April, and this form is the 16th of April, just 16 days, so  
 (12) this diagnosis is no doubt provisional And it's typed here  
 (13) MR SANDERS Objection Objection to the  
 (14) speculation  
 (15) THE COURT Sustain the objection  
 (16) The jury will disregard the comment about the nature of the  
 (17) diagnosis  
 (18) BY MR MONTAGUE  
 (19) Q Doctor in your opinion would any trained practicing  
 (20) professional in your area know that Captain Hazelwood was  
 (21) treated for alcoholism by looking at that document?  
 (22) A Yes, in my opinion, would know  
 (23) Q Is there a treatment for dysthymia - dysthymia which is  
 (24) it? Dysthymia dysthymia which is it?  
 (25) A Dysthymia I think is how it's pronounced Yes, there is a  
 (26) treatment for dysthymia and that is individual  
 (27) psychotherapy  
 (28) for 18 months to two years with what's called cognitively  
 (29) based  
 (30) behavioral psychotherapy, which helps a person recognize the

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- (1) signs and symptoms of their depression and helps them do  
 (2) something about it to engage in behaviors that will prevent  
 (3) it  
 (4) Q And from that exhibit the IDR can you determine whether  
 (5) Dr Vallury prescribed that type of treatment for dysthymia?  
 (6) A There is no evidence to - no, there is no prescription for  
 (7) that type of treatment  
 (8) Q Are there any other bases for your conclusion that in 1985  
 (9) Captain Hazelwood suffered from alcoholism?  
 (10) A Well Dr Vallury's deposition, we heard in the Court here  
 (11) where he indicated that the - with respect that he - he  
 (12) advocated, any cases of alcoholism, he said, that  
 (13) abstinence  
 (14) should be the recommended treatment, as he has indicated  
 (15) here  
 (16) by recommending AA and aftercare  
 (17) He also said that the - in this instance the treatment  
 (18) for dysthymia and alcoholism would be the same He  
 (19) recommended as did the hospital recommend a - as  
 (20) Captain  
 (21) Hazelwood said in his testimony, too there was a general  
 (22) recommendation not to drink and he had committed himself  
 (23) not to  
 (24) drink for a while  
 (25) Q Okay So your opinion is that in 1985 Captain Hazelwood  
 (26) was an alcoholic?  
 (27) A That is my opinion  
 (28) Q Do you have any doubt about that conclusion?  
 (29) MR SANDERS Objection Your Honor  
 (30) THE COURT Sustain the objection



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(1) MR MONTAGUE Okay

(2) BY MR MONTAGUE

(3) Q Do you have - in the materials you've reviewed and what

(4) you've heard in this court have you found that you have

(5) sufficient information to form an opinion of Joe Captain Joe

(6) Hazelwood's status in recovery from alcoholism after his

(7) inpatient treatment and up to the time of the grounding of the

(8) Exxon Valdez in March of 1989?

(9) A Yes I do

(10) Q And have you formed such an opinion?

(11) A I have

(12) Q And what is that opinion?

(13) A It is my opinion that Captain Hazelwood never really got

(14) into a state of recovery and therefore that he did not

(15) achieve a state of stable recovery following his discharge

(16) from South Oaks between that and the time of the oil spill

(17) Q Okay And could you tell us - well let me ask you some

(18) specifics so maybe we can shorten things

(19) The fact that Captain Hazelwood left his aftercare program

(20) after two months did that have any significance?

(21) A Yes it does

(22) Q And what is that significance?

(23) A Well he was prescribed to attend extended and aftercare

(24) sessions and he told us that he had dropped out of those in

(25) late June or early July about six weeks after his

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(1) prescription and he didn't tell anybody about that Except

(2) dropping out of treatment dropping out of recommended

(3) treatment without telling anybody is often a sign of the

(4) beginning of the end of an alcoholic who will sometimes

(5) return to drinking because they have cut themselves off from

(6) professional contact and support

(7) Q Does the fact that after finishing treatment he had no

(8) further contact with an alcohol abuse professional have a

(9) significance?

(10) A To my - to my knowledge that's the case

(11) Q And why? Why does that have a significance?

(12) A Well, again the treatment had been prescribed by

(13) Dr Vallury, and one of the symptoms of a return or an

(14) eventual return to drinking or poor recovery status is the alcoholic's

(15) belief that they can do it on their own and that they have a

(16) better way of going about recovery than professionals or

(17) other people who know what they're doing

(18) Q What about Captain Hazelwood's attendance at AA meetings

(19) and his description of participation at those meetings?

(20) A When Captain Hazelwood began he says he attended AA

(21) meetings for - 90 meetings in 90 days but his description of

(22) his attendance in AA I have found very difficult to

(23) understand For example he has said that he has never

(24) shared in an AA meeting in four years He has said that despite the

(25) fact that he does not now or then ever thought of himself as an

(1) alcoholic he has been attending closed meetings of AA

(2) and

(3) closed meetings of AA are for alcoholics only He says that

(4) he

(5) has had three temporary sponsors The concept of a

(6) temporary

(7) sponsor that I'm familiar with is one that you meet in a

(8) hospital who helps you get established in AA and then you

(9) get

(10) a permanent sponsor I've never heard of somebody having

(11) three - -

(12) temporary sponsors for three years even though sponsors

(13) may

(14) move you get another one but they're permanent response

(15) source And then finally the only requirement for

(16) membership

(17) in AA is a desire to stop drinking Doesn't mean everybody

(18) who

(19) joins AA stops drinking but they have a desire to stop

(20) drinking and when they go back to drinking, they generally

(21) talk about it in AA with their sponsor but as he didn't share

(22) ever in AA he apparently didn't talk about it in AA

(23) So persons who continue to drink in AA and particularly

(24) who

(25) come to closed meetings and don't display any desire to

(26) stop

(27) drinking in AA are not generally well accepted because

(28) everybody in AA has a desire to stop drinking and wants to

(29) stay

(30) sober so people who don't demonstrate that in my

(31) experience

(32) are frequently not terribly welcome So that's why his

(33) description of his membership in AA is puzzling to me

(34) Q Does his description of his participation in AA meetings

(35) comport with your experience in attending over 3,000

(36) meetings?

(37) A No, it does not

(38) Q I'm sorry, could you say that again?

(39) A Yes, and you mentioned he resumed drinking Did that have a

(40) Q Yes his resumed drinking

(41) A Yes his resumed drinking He - he did resume drinking

(42) after a statement that he would remain abstinent and it was

(43) about a year later that he did so And the way he did so is

(44) very typical of how any alcoholics go back to drinking just

(45) sitting there at dinner suddenly it seems like a good idea to

(46) have a drink No - nothing major going on in his life just

(47) had a drink and to me that means that the denial process

(48) had

(49) begun to set in again and the vigilance that he may have

(50) been

(51) taught at the treatment center about returning to drinking,

(52) the

(53) consequences of drinking the knowledge that he had about

(54) what

(55) would happen if he violated policy because of his meetings

(56) with

(57) Captain Tompkins and others all of that information was

(58) not

(59) there as he just took up the first drink It just happened

(60) like that

(61) And from there on out his resumption of drinking over the

(62) next two and a half years between then and the oil spill it

(63) seems to me we can detect a pattern or a progression of

(64) just

(65) having one drink, which is a lapse or a slip, but then over

(66) time relapse - just like recovery, relapse is a process not

(67) an event, it goes on over time And he continued to drink, it

(68) was wine and beer and Bloody Mary's on planes and

(69) drinking with

(70) colleagues And then by September 1988 he had a period

(71) of

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(1) heavy drinking in which he drank a lot of - I think ten drinks  
 (2) and then drove a car afterwards which might suggest again  
 a  
 (3) return - or the development of what I talked about  
 tolerance,  
 (4) be able to drive a car after drinking ten drinks in a short  
 (5) period of time  
 (6) Then the pattern continued He began to violate alcohol  
 (7) policy even knowing that that would result in termination of  
 (8) his job, and at Portland where Mr Carr talked about having  
 a  
 (9) drink on board with Captain Hazelwood We heard about  
 the  
 (10) walkie-talkie episode this morning for Mr Day We also  
 then  
 (11) heard about the Captain Reeder episode, Ms Wilhamson's  
 (12) report, all of these things were contributing to my  
 conviction  
 (13) that Captain Hazelwood had by that time returned to an  
 abnormal  
 (14) pattern of drinking, under the circumstances, given his  
 (15) treatment and given what was known In addition, he was  
 (16) leading a double life Heavy drinking after work for a while,  
 (17) but he concealed that from his wife who herself was in  
 Al Anon  
 (18) and who had been in marital therapy with him in the  
 hospital,  
 (19) which most of these things were to be talked about which  
 you do  
 (20) in marital therapy, he didn't drink at home for all this period  
 (21) of time and yet he was drinking on the road on board, with  
 (22) colleagues and so on  
 (23) And then finally, on March 23rd, 1989 there was his  
 (24) drinking in Valdez prior to the oil spill with the violation of  
 (25) the Coast Guard rule

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(1) Q Okay Now have you formed an opinion Doctor as to  
 (2) whether Captain Hazelwood's alcoholism was the cause of his  
 (3) leaving the bridge on the Exxon Valdez on March 23 1989  
 while  
 (4) the vessel was outside of the traffic lanes diverting ice and  
 (5) heading towards Bligh Reef?  
 (6) A I have  
 (7) MR SANDERS Objection Your Honor I think this is a  
 (8) little far outside the expertise that he's stated here in this  
 (9) courtroom  
 (10) THE COURT Mr Montague it strikes me that it goes  
 (11) beyond  
 (12) MR MONTAGUE Let me ask it a different way if I  
 (13) might  
 (14) THE COURT All right  
 (15) BY MR MONTAGUE  
 (16) Q Doctor have you formed an opinion as to whether Captain  
 (17) Hazelwood's alcoholism impaired his judgment on the night of  
 (18) March 23 1989?  
 (19) MR SANDERS It's closer Your Honor but -  
 (20) THE COURT I'm going to let him try it  
 (21) BY MR MONTAGUE  
 (22) Q Have you formed an opinion first?  
 (23) A About whether alcoholism impaired -  
 (24) Q No impaired his judgment?  
 (25) A I have

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- (1) Q And what is your opinion?  
 (2) A I believe it did  
 (3) Q And can you tell us in succinct terms how you reached that  
 (4) opinion?  
 (5) A Well it - obviously basic to that opinion is the fact  
 (6) that I think that Captain Hazelwood had returned to an  
 abnormal  
 (7) pattern of drinking by that time and that he was actively  
 (8) alcoholic and in full relapse of his drinking, for all the  
 (9) reasons that I've given On the afternoon - and was  
 (10) exercising poor judgment both with respect to his drinking  
 and  
 (11) with respect to his activities  
 (12) On the afternoon of March 23rd he drank an unknown  
 amount  
 (13) of alcohol in Valdez in the company of his chief radio  
 operator  
 (14) and his chief engineer and led them in a violation of the  
 Coast  
 (15) Guard rule It seems to me that for -  
 (16) MR SANDERS Now we're far afield now It's not his  
 (17) field of expertise as to whether there's a violation of the  
 (18) four hour rule and those kind of things and I think he's  
 (19) answered the question  
 (20) MR MONTAGUE He's stating his basis  
 (21) THE COURT He's stating his basis  
 (22) Ladies and gentlemen you are the deciders of the facts in  
 (23) this case and you all have a dispute in the evidence that  
 (24) you're going to have to deal with as to whether or not the  
 (25) Coast Guard rules were violated That's a decision you're

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- (1) going to have to make at some point  
 (2) This witness is going to offer some testimony about that  
 (3) but whether or not - he isn't the one who's going to decide  
 (4) whether those rules were violated You're the ones that are  
 (5) going to do that  
 (6) Go ahead Mr Montague  
 (7) THE WITNESS Perhaps I could say by drinking within  
 (8) four hours of going back on the ship And then coming back on  
 (9) the ship Captain Hazelwood is - his behavior in leaving the  
 (10) bridge that night was so uncharacteristic he is known as a -  
 (11) MR SANDERS Objection again Now he's  
 (12) testifying over in the area of seamanship  
 (13) MR MONTAGUE Okay Okay  
 (14) BY MR MONTAGUE  
 (15) Q Apart from - we've heard all kinds of testimony about what  
 (16) happened on the ship that night and I'm asking you Doctor if  
 (17) you can - as on the basis of his behavior leading up to that  
 (18) night not what happened once he got on the bridge but his  
 (19) behavior leading up to the night he boarded the vessel if  
 (20) that's sufficient for you to form an opinion as to whether his  
 (21) judgment was impaired that evening?  
 (22) A Yes  
 (23) Q Okay Can you do that and can you tell us?  
 (24) A I can try yes  
 (25) Q Thank you

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- (1) A Well I would be repeating myself to say that I think his  
 (2) judgment was impaired by the way that I have heard the  
 accounts  
 (3) of - the various accounts of his drinking that afternoon  
 And  
 (4) so that in itself under the circumstances of his  
 backgrounds  
 (5) treatment development of his disease progression of it  
 would  
 (6) indicate to me that his judgment that afternoon was indeed  
 (7) impaired  
 (8) Q Now the fact that he was able to walk up the gangplank  
 (9) when he boarded the ship does that have an effect on your  
 (10) judgment?  
 (11) A No  
 (12) Q And the fact that persons on the vessel will testify that  
 (13) they saw him and he looked perfectly fine does that have an  
 (14) effect on your opinion?  
 (15) A No  
 (16) Q Captain - Dr O Connor have you formed an opinion as to  
 (17) whether Exxon's - Exxon contributed in Captain Hazelwood's  
 (18) failure in recovery?  
 (19) MR SANDERS I object to that question  
 (20) Contributed?  
 (21) THE COURT Try the question another way There may  
 (22) be a way that you could get at this from a medical standpoint  
 (23) but that's where your focus needs to be  
 (24) MR MONTAGUE That's correct  
 (25) BY MR MONTAGUE

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- (1) Q Dr O Connor have you reviewed Exxon's reactions to  
 (2) Captain Hazelwood from 1985 up to March 23 1989?  
 (3) A Yes I have  
 (4) Q And do you have an opinion as to how those actions affected  
 (5) Captain Hazelwood in his alcoholism?  
 (6) A Yes I do  
 (7) Q Could you tell us that briefly?  
 (8) A It goes back initially to the return to work of Captain  
 (9) Hazelwood in August of 1985 when the criteria for return to  
 (10) work was successful completion of treatment for his  
 (11) alcoholism And Captain Hazelwood has himself said that he  
 (12) dropped out of treatment after six weeks and therefore, in  
 my  
 (13) opinion -  
 (14) MR SANDERS Object to this as the  
 (15) mischaracterization of the testimony Again I - maybe the  
 (16) jury should -  
 (17) THE COURT The jury will have to decide what the  
 (18) facts are but I'm going to allow the Doctor to testify as to  
 (19) his opinion but if his recitation of the facts does not  
 (20) comport with yours you will have to ignore the opinion  
 (21) You may go ahead  
 (22) THE WITNESS Yes sir That he had dropped out of  
 (23) treatment at the end of June or the beginning of July and that  
 (24) he had indicated to Captain Mark Pierce that his medical  
 (25) treatment had been curtailed over the summer And that

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- (1) indicates to me that he had not in fact successfully  
 (2) completed -  
 (3) **MR SANDERS** Objection Your Honor That s not only  
 (4) a mischaracterization of the evidence it s a making up of  
 (5) evidence  
 (6) Can we approach the bench Your Honor?  
 (7) **THE COURT** No I m going to allow him to testify  
 (8) But I say again if his recollection or recitation of the facts  
 (9) does not comport with yours you will ignore his opinion on  
 (10) this subject  
 (11) Why don t you ask another question Mr Montague and help  
 (12) focus this  
 (13) **MR MONTAGUE** Okay  
 (14) **BY MR MONTAGUE**  
 (15) Q Specifically let me ask you this question Based on your  
 (16) experience if Captain Hazelwood had been properly evaluated  
 (17) before being assigned to the Yorktown in 1985 could Exxon  
 have  
 (18) discovered the signs of his failure in recovery?  
 (19) A I believe so  
 (20) Q And do you have an opinion as to whether there were  
 (21) sufficient signs available to Exxon to detect Captain  
 (22) Hazelwood s failure to recover when Exxon reassigned the  
 (23) captain to the Exxon Valdez in 1987?  
 (24) A I believe there were  
 (25) Q And had Exxon looked properly could they have found  
 those

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- (1) signs?  
 (2) A I believe they could  
 (3) Q By the way is it accepted professional conduct in your  
 (4) field to require an evaluation of someone who has gone  
 through  
 (5) alcohol treatment on the basis of rumor?  
 (6) A Yes  
 (7) Q Particularly with when that person is in a safety sensitive  
 (8) position?  
 (9) A That s correct  
 (10) Q Is that normal in your experience?  
 (11) A Yes it is normal Aggressive investigation of rumors  
 (12) about drinking ought to, under circumstances of a person  
 after  
 (13) evaluation trigger a medical evaluation of their recovery  
 (14) status at the time  
 (15) Q Okay Now one last question Based upon all of your  
 (16) testimony today and what you ve heard in this courtroom and  
 (17) based on the signs that were available to Exxon do you have an  
 (18) opinion as to whether Exxon should have allowed Captain  
 (19) Hazelwood to be the master on the Exxon Valdez as it left San  
 (20) Francisco in March of 1989?  
 (21) A I do  
 (22) Q And what is your opinion?  
 (23) A I believe that Exxon should not have permitted him to  
 leave  
 (24) San Francisco as master of the Exxon Valdez on that date  
 (25) **MR MONTAGUE** Thank you very much Doctor

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- (1) **THE COURT** You may cross examine  
 (2) **MR SANDERS** Your Honor I ll need a second to  
 (3) collect things  
 (4) **THE COURT** Sure  
 (5) **MR SANDERS** May I approach the witness Your Honor?  
 (6) **THE COURT** You may  
 (7) **MR SANDERS** I have here a copy of your deposition  
 (8) transcript You might need that I would also like  
 (9) to have handy a copy of Exhibit 10 to put up on the screen at  
 (10) some point  
 (11) **CROSS EXAMINATION OF GARRETT O CONNOR M D**  
 (12) **BY MR SANDERS**  
 (13) Q Dr O Connor I was watching you while you testified and I  
 (14) remember your testimony about being involved in the  
 production  
 (15) of some films and I was watching you look over talking to the  
 (16) jury You re an actor aren t you?  
 (17) A I have been an actor in the past, yes I m not doing  
 (18) acting these days  
 (19) Q Well is there any treatment for getting over the disease  
 (20) of acting? Do you relapse into acting?  
 (21) A I am not familiar with acting as a disease That s a new  
 (22) concept to me  
 (23) Q As a matter of fact you were an actor in certain  
 (24) television shows?  
 (25) A That s true

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- (1) Q You were an actor on the stage?  
 (2) A That s true  
 (3) Q You were an actor in the movies?  
 (4) A That s true  
 (5) Q And as a matter of fact you re a member of the Actors  
 (6) Equity?  
 (7) A That s correct  
 (8) Q Still a member?  
 (9) A That s correct  
 (10) Q And the Actors Equity is what?  
 (11) A The Actors Equity is an associate - professional  
 (12) association of actors in the United States  
 (13) Q Does that include actors who have speaking roles as well  
 (14) as just actors who don t speak?  
 (15) A Yes it does  
 (16) Q Is the Actors Equity is that just for actors with speaking  
 (17) roles?  
 (18) A I m not sure of that but it certainly is for actors with  
 (19) speaking roles  
 (20) Q Now you have - you have had - you are a paid expert here  
 (21) for the - for the plaintiffs and these lawyers here right?  
 (22) A That s correct  
 (23) Q And in addition to that you have also attended other  
 (24) depositions of other people in the case correct?  
 (25) A Yes I have

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- (1) Q And at times you've suggested questions for the lawyers to ask at these depositions have you not?
- (2) A Well I've attended depositions and - of Dr Mendelsohn an expert witness in the case and I have advised the lawyers during - as an expert during those depositions about topic material that might be coming up
- (3) Q Did you suggest any questions that was my question
- (4) A Passed notes to my - the attorney taking the deposition about areas that might be coming up topic areas and I think I did probably suggest a question from time to time about what might lead to further clarification of the facts
- (5) Q From time to time right?
- (6) A From time to time
- (7) Q And you also participated did you not in some - shall we call them strategy sessions with the lawyers for the plaintiffs?
- (8) A I did not
- (9) Q You did not? Did you help select Dr Smith who testified here the other day?
- (10) A The - yes I did
- (11) Q And did you help -
- (12) A Well I did not help select Dr Smith
- (13) Q Well you suggested his name?
- (14) A I recommended Dr Smith when I was asked if I knew experts in the field Yes I recommended his name

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- (1) Q And you also suggested Dr Masters who may testify here tomorrow?
- (2) A The same reason knowing him to be an expert in that particular area I suggested his name I also suggested the names of others
- (3) Q And so you're - are you a - could we also call you a consultant in - as well as an expert in this case?
- (4) A Well I called myself a consultant at one point in this case in a deposition when asked because I had made these recommendations
- (5) Q Do you get paid differently for being a consultant than from an expert?
- (6) A No, sir
- (7) Q Now your practice that you were talking about your current practice and I'm talking about your medical practice now that's - that's a one man practice in Los Angeles right?
- (8) A Yes it is
- (9) Q And you've been up here since what first of May?
- (10) A No I arrived here on I think the 9th of May
- (11) Q Been up here since then?
- (12) A Yes
- (13) Q Who's minding the store?
- (14) A Sorry?
- (15) Q Back in L A
- (16) A I have two people who are standing in for me two

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- (1) colleagues for emergencies as my practice is essentially an evaluation and referral practice I have no on-going treatment
- (2) responsibilities and so these physicians are standing in for me to take care of any emergencies that might arise That's routine practice when a physician is away from the office
- (3) MR SANDERS Could I have a picture of Plaintiffs Exhibit 10 please sir?
- (4) BY MR SANDERS
- (5) Q Doctor I'm going to ask that they bring up on the screen Plaintiffs Exhibit Number 10 which we've all started to refer to as the IDR And if you could if someone with know how would blow up the typed portion there in the middle of the page
- (6) MR CHALOS You need my help?
- (7) MR SANDERS No thank you Mr Chalos Thank you I can operate this
- (8) BY MR SANDERS
- (9) Q This refers right after these code numbers that you talked about in your direct to DSM III?
- (10) A Yes
- (11) Q You are familiar with what DSM III is are you not Doctor?
- (12) A I am
- (13) Q And what is - what does DSM stand for?
- (14) A Diagnostic and Statistical Manual

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- (1) Q And is that a publication that is put out for doctors for diagnosis and guidance and to put - well just tell us
- (2) What's the purpose of DSM?
- (3) A The Diagnostic and Statistical Manuals, it's a series of manuals that are put out by the American Psychiatric Association for - as guides to diagnosis of psychiatric disorders They are specifically for the use of doctors, clinicians therapists insurance companies and anybody else concerned with these matters
- (4) Q And is one of the purposes of this so everybody knows what doctors are talking about when they say that somebody is diagnosed as this or that or something else?
- (5) A They are guides to diagnosis
- (6) Q And they're also guides to understanding what a diagnosis is once the doctor has made the diagnosis aren't they?
- (7) A They have a symptom - they set out signs and symptoms and set out parameters boundaries for making a diagnosis of behavior in patients yes
- (8) Q But my question to you is people like government and insurance companies and maybe even lawyers every now and then will - can use this to determine what a doctor meant when he said this patient is diagnosed as a so and so right?
- (9) A Yes
- (10) Q Have some uniformity of definition correct?
- (11) A An attempt to achieve uniformity of definition would be a

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- (1) better way to put it  
 (2) Q And DSM III has - has undergone changes has it not?  
 (3) A Yes, it has  
 (4) Q And in 1985 DSM III was the - the bible correct?  
 (5) A That is not the way any - I've ever heard it described  
 (6) before In fact, it is specifically not described as the  
 (7) bible It is an attempt to achieve and approximate some  
 kind  
 (8) of way of understanding these very complex issues which,  
 as Dr  
 (9) Gould said in his testimony are indeed complex and  
 (10) indefinite  
 (11) Q The Diagnostic and Statistical Manual the only one of  
 (12) these DSMs that was in existence in 1985 in the areas that  
 (13) we ll dealing with was DSM III right?  
 (14) A Of the DSMs There were other diagnostic manuals in  
 (15) existence and used widely elsewhere yes  
 (16) Q The only one of the DSMs was DSM III right?  
 (17) A At that time in 1985  
 (18) Q Right And then later on in I think 1987 there was a  
 (19) revision to DSM III and that was DSM III R right?  
 (20) A That's correct  
 (21) Q Now under DSM III which was in existence in 1985 did  
 (22) DSM III refer to alcohol dependence and alcoholism as  
 (23) synonymous terms?  
 (24) A As I recall from DSM III in 1985 what it said was that  
 (25) alcohol dependence was sometimes called alcoholism

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- (1) Q All right In other words as you ve testified in your  
 (2) deposition those were used synonymously in DSM III?  
 (3) A Just said what the DSM III said yes  
 (4) Q Did you testify Doctor at your deposition that they re  
 (5) used synonymously?  
 (6) A Oh I beg your pardon in my deposition you'd have to  
 show  
 (7) me my deposition to -  
 (8) Q Well look at page 197 lines like two and a half to first  
 (9) word in line five '  
 (10) A Page 197?  
 (11) Q Yes sir And I ll ask you if you didn t say in there -  
 (12) well let me give you a chance to get there first Are you at  
 (13) page 197?  
 (14) A Yes  
 (15) Q And looking on about halfway down line two in DSM III the  
 (16) term alcoholism it is noted that the term alcoholism and  
 (17) alcohol dependence are often used synonymously right? Isn t  
 (18) that what you said?  
 (19) A May I just look at the context here?  
 (20) Q It was kind of a side comment you made in describing  
 (21) something else Didn t you use those words that I just read?  
 (22) A Well I was talking about -  
 (23) Q Well Doctor I m not asking you what you were talking  
 (24) about  
 (25) A Well I need to put it in context Mr Sanders

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- (1) MR SANDERS Well you can ask the Court s permission  
 (2) for that but I would like to stick this witness particularly  
 (3) Your Honor to what he actually said  
 (4) MR MONTAGUE I think he s entitled to put his answer  
 (5) in context  
 (6) THE COURT He s entitled to have the entire answer  
 (7) put in if there s more to the answer than just what was cited  
 (8) Is there more to the answer?  
 (9) MR SANDERS Well it s - he can read it if you -  
 (10) the Court wishes I will need to be careful about this in  
 (11) other areas But there s no problem with him reading - I ll  
 (12) read the whole answer if the Court wishes  
 (13) THE COURT All right  
 (14) MR MONTAGUE Your Honor maybe we ought to have a  
 (15) side bar because I see that this is one of those troubled  
 (16) areas we were talking about  
 (17) THE COURT Well if it gets into an area that I ve  
 (18) ruled out it s going to have to stay out  
 (19) Doctor review your entire answer and then tell us whether  
 (20) or not you -  
 (21) THE WITNESS I could not answer the question without  
 (22) getting into one of those areas Your Honor It is  
 (23) specifically mentioned here in the answer  
 (24) MR SANDERS I ll move on  
 (25) THE COURT Thank you sir

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- (1) BY MR SANDERS  
 (2) Q Well you can t - you can t go into the context without  
 (3) getting into these other areas You could answer the question  
 (4) did you say those words?  
 (5) A The context is in the same sentence Mr Sanders  
 (6) Q Okay okay  
 (7) A Not the same paragraph or page same sentence  
 (8) Q Now isn t it a fact Doctor that Captain Hazelwood did  
 (9) not meet the definition of alcohol dependence alcoholism in  
 (10) the 1985 DSM III? Isn t that a fact?  
 (11) A I have no idea as to whether it's a fact or not  
 (12) Q Well didn t you say that about three or four times in your  
 (13) deposition that he did not meet that definition?  
 (14) A You'd have to show me where I said that and let me  
 inspect  
 (15) the context  
 (16) MR SANDERS Can we have a side bar?  
 (17) (At side bar off the Record)  
 (18) THE COURT We re going to take our second break now  
 (19) ladies and gentlemen I think we have this matter sorted out  
 (20) but we re going to take our break now any way to make sure  
 (21) Please don t have any discussions about the case during our  
 (22) recess and we ll reconvene in 15 minutes  
 (23) THE CLERK This court is in recess for 15 minutes  
 (24) (Jury out at 11 55 a m )  
 (25) (Jury in at 12 12 p m )

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(1) **THE CLERK** All rise His Honor the Court this  
 (2) United States District Court is again in session  
 (3) Please be seated  
 (4) **BY MR SANDERS**  
 (5) Q Dr O Connor let me attempt to repeat my last question to  
 (6) you Didn t you in fact say at your deposition on the 22nd of  
 (7) April 1994 that Captain Hazelwood did not in my opinion meet  
 (8) the criteria under alcohol dependency DSM III at that time  
 (9) referring to 1985?  
 (10) A Yes, I did as you showed me  
 (11) Q Now I think it s obvious but I want to make sure  
 (12) DSM III R was not in existence in 1985 when Captain  
 Hazelwood  
 (13) sought treatment was diagnosed and treated by Dr Vallury?  
 (14) A That's correct  
 (15) Q All right And then you also mentioned another definition  
 (16) or basis for your definition of alcoholism and that was one  
 (17) that your society worked two years on right?  
 (18) A That's correct  
 (19) Q And that wasn t published until 1992 was it?  
 (20) A I think it was earlier than that but certainly in the  
 (21) '90s yes  
 (22) Q Wasn t it published by the Journal of American Medicine in  
 (23) 1992?  
 (24) A No it was published originally by the American Society of  
 (25) Addiction Medicine in 1990 and it was commented upon  
 and

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(1) **republished in the Journal of the American Medical  
 Association**  
 (2) **in 1992**  
 (3) Q In any event whether it was five or seven years it was  
 (4) long after 1985 correct?  
 (5) A It was 1990 yeah  
 (6) Q And certainly after the grounding?  
 (7) A Yes  
 (8) Q Now you mentioned during your direct that you recognized  
 (9) that there were - on the question of whether someone who has  
 (10) had an alcohol problem can return to social drinking or  
 (11) controlled drinking there were two schools of thought right?  
 (12) A Actually, I said that alcoholics - I was talking about  
 (13) alcoholics being able to return to social or controlled  
 (14) drinking, yes  
 (15) Q Be even more true for people that had a drinking problem  
 (16) that didn t reach the level of alcoholism wouldn t it I would  
 (17) assume?  
 (18) A What would be more true that they could return to social  
 (19) drinking?  
 (20) Q Right  
 (21) A Well, in my belief there is no good evidence to suggest  
 (22) as I said that you can tell in advance who can return to  
 (23) social drinking and who can't  
 (24) Q I understand what your position is but I m only asking you  
 (25) if you recognize that there is a school of thought that is not

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(1) like yours?  
 (2) A Well of course there is  
 (3) Q Yeah  
 (4) A But in response to your question -  
 (5) Q That was my question There is one isn t there? And you  
 (6) said most of the people in it are psychologists but there are  
 (7) psychiatrists in that school of thought aren t they?  
 (8) A I mentioned them too  
 (9) Q And those psychiatrists in that school of thought are in  
 (10) fact well respected well educated highly trained doctors?  
 (11) A-That's true  
 (12) Q And you mentioned the Rand report Now the Rand report  
 (13) was a study of only alcoholics primary diagnosis of  
 (14) alcoholics right that s all they studied?  
 (15) A The Rand report, the subjects were mostly alcoholics,  
 (16) that's true  
 (17) Q Mostly weren t they all alcoholics primary diagnosis of  
 (18) alcoholic ?  
 (19) A Of alcohol dependence  
 (20) Q So the answer to my question is yes?  
 (21) A Yes  
 (22) Q All of them were correct?  
 (23) A That's true  
 (24) Q Now you have told us an awful lot about AA in connection  
 (25) with your various and sundry opinions and you talk about

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(1) membership in AA Is there a membership right for AA? Do you  
 (2) get a card?  
 (3) A No  
 (4) Q Membership in AA is going to AA meetings correct?  
 (5) A And participating in the program  
 (6) Q Right?  
 (7) A The other aspects of AA yes  
 (8) Q But there s no formal thing as a membership in AA?  
 (9) A There is no rule for membership no  
 (10) Q And the fact that -  
 (11) A Except the desire to stop drinking  
 (12) Q And as a matter of fact people can go to AA for whatever  
 (13) purpose they wish do they not?  
 (14) A That's true  
 (15) Q Matter of fact there are people with problems which have  
 (16) nothing to do with alcohol that regularly go to AA?  
 (17) A I don't know that to be a fact  
 (18) Q Do you know it to be a fact that there are people who do go  
 (19) to AA who do not have any alcohol problem whatsoever?  
 (20) A I don't - I don't know anybody of that sort  
 (21) Q Well when someone goes to AA AA does not ask them why  
 (22) they are there does it?  
 (23) A AA does not have the capacity to ask anybody AA is  
 simply  
 (24) an organization of people It has no official position to ask  
 (25) anybody anything

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- (1) Q Well is it a principle of AA that goes all the way back to  
 (2) the gentleman that you referred to earlier that you  
 (3) shouldn't - people in AA shouldn't ask people why they are  
 (4) there?  
 (5) A I do not know of such a principle  
 (6) MR SANDERS If you'd indulge me just a moment Your  
 (7) Honor  
 (8) BY MR SANDERS  
 (9) Q Let me ask you to refer to your deposition page 1372?  
 (10) A 1372?  
 (11) Q 1372 The date - it is the last volume about a month  
 (12) ago Are you having trouble locating it?  
 (13) A I have it here I had the wrong package Yes  
 (14) Q Let me ask you if the following question was asked and the  
 (15) following answer given by you after some discussion between  
 (16) the  
 (17) lawyers  
 (18) Question What if a person goes to AA and has a desire to  
 (19) cut down drinking, that's why he goes to cut down not to stop  
 (20) completely and as a result of going to AA does in fact cut  
 (21) down on drinking would he meet the criteria under this  
 (22) diagnostic criteria if that were the case  
 (23) Answer Well the answer to that question the best I can  
 (24) do is that people go to AA for their own purposes One of the  
 (25) things about AA it never asks why a person is there Bill  
 (26) Wilson the founder of AA said that what kind of an

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- (1) organization do we have that a person can be a member just  
 (2) because they say they are  
 (3) Was that question asked and did you give that answer on  
 (4) April the 22nd 1994?  
 (5) A I did but I would - I did give that answer as you read  
 (6) it but in the context of what comes before and afterwards I  
 (7) think there would be some illumination of that answer, but  
 (8) that  
 (9) is certainly what Bill Wilson said but it couldn't affect what  
 (10) I've already said I believe  
 (11) Q You said that didn't you?  
 (12) A I did say that yes and Bill Wilson said it too  
 (13) Q Now you've also mentioned denial Well let me back up  
 (14) I got one more question on AA The fact that a person goes to  
 (15) AA or the fact that a person is referred to AA is certainly not  
 (16) the equivalent of a diagnosis of alcohol dependence is it?  
 (17) A No it is not  
 (18) Q All right Let me go to denial In fact Doctor denial  
 (19) is universal in the psychology of almost all individuals that  
 (20) you're familiar with?  
 (21) A Yes it is  
 (22) Q All of us have denial?  
 (23) A That's true  
 (24) Q All of us experience denial?  
 (25) A That's true  
 (26) Q It's a defense mechanism isn't it?

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- (1) A As I said it was yes  
 (2) Q And it's by no means a condition specific to alcohol  
 (3) problems is it?  
 (4) A No It exists in other problems as well  
 (5) Q Now let me understand let all of us understand what  
 (6) you're doing here What you've testified to  
 (7) Captain Hazelwood went to treatment at a psychiatric  
 (8) hospital is that correct is that a fair characterization of  
 (9) South Oaks?  
 (10) A An alcoholism treatment unit in a psychiatric hospital  
 (11) It's a comprehensive psychological treatment center  
 (12) Q Comprehensive alcohol treatment center diagnostic alcohol  
 (13) treatment center?  
 (14) A Correct  
 (15) Q Did that in 1985?  
 (16) A That's correct  
 (17) Q And when he went in there he was seen treated for 28  
 (18) days?  
 (19) A In a 28 day alcoholism rehabilitation program  
 (20) Q Stayed there for 28 days?  
 (21) A Yes  
 (22) Q And his treating physician Dr Vallury - can I have PX10  
 (23) again - made a diagnosis correct?  
 (24) A That's correct  
 (25) Q And that doctor's diagnosis was right up here on this IDR

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- (1) right?  
 (2) A That's where it is, yes  
 (3) Q And 300 40, as you've said in your earlier testimony is  
 (4) dysthymic disorder?  
 (5) A Dysthymic disorder and mild depression yes  
 (6) Q And 305 02 is alcohol abuse episodic?  
 (7) A That's correct  
 (8) Q Which is different under DSM III than alcohol dependence or  
 (9) alcoholism is it not?  
 (10) A Under DSM III, yes, it is  
 (11) Q That's what Dr Vallury was using isn't it?  
 (12) A That's true  
 (13) Q Quite obviously?  
 (14) A That's true  
 (15) Q Couldn't have used DSM III yet because it wasn't there yet?  
 (16) A That's correct  
 (17) Q Couldn't use your societies definition because it wasn't  
 (18) there yet?  
 (19) A That's correct  
 (20) Q So what you're doing is you're coming in here now nine  
 (21) years later and saying you disagree with that diagnosis  
 (22) correct?  
 (23) A That is a - in my opinion because it is a diagnosis that  
 (24) exists only 16 days after Captain Hazelwood's admission to  
 (25) the  
 (26) hospital is at this point and two weeks before his  
 discharge



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- (1) still a provisional diagnosis  
 (2) Q As far as that IDR is concerned?  
 (3) A As far as the IDR's concerned yes  
 (4) Q Now you have never had Captain Hazelwood as a patient  
 (5) have you?  
 (6) A No I have not  
 (7) Q And you have never seen him except in this courtroom or  
 (8) maybe out there in the hallway have you?  
 (9) A That's true  
 (10) Q And moreover you're using a definition that wasn't even in  
 (11) existence in the DSM III at the time the doctor made the  
 (12) diagnosis isn't that a fact?  
 (13) A In the DSM III the diagnosis of alcohol abuse episodic  
 (14) was  
 (15) in existence as also dependence And as I said earlier on  
 (16) Dr Gould - the terms alcoholism alcohol abuse were in  
 (17) general use clinical use widely used interchangeably, even  
 (18) though the parameters in the DSM III were as they - are as  
 (19) we're discussing but the terms alcoholism alcoholic and  
 (20) so on  
 (21) were even then very widely used interchangeably In fact  
 (22) the  
 (23) reference here on the IDR is indeed to alcoholism on the  
 (24) IDR  
 (25) lectures for alcoholism  
 (26) Q Doctor let me try it again The definition that you gave  
 (27) this jury just this morning was a definition that you said came  
 (28) from your society that worked on it in 1990 isn't that  
 (29) correct?

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- (1) A That's correct  
 (2) Q And that definition quite obviously was not in existence  
 (3) in 1985?  
 (4) A That's correct but as I -  
 (5) Q And in fact Doctor DSM III which was in existence in  
 (6) 1985 made a distinction between alcohol dependence and  
 (7) alcohol  
 (8) abuse episodic did it not?  
 (9) A It did and the connection between the definition I gave  
 (10) today and the definitions in DSM III R was because of  
 (11) dissatisfaction with that distinction in DSM III and the  
 (12) definition I gave today takes that into account and updates  
 (13) the  
 (14) signs and symptoms and the clinical situation to make it  
 (15) more  
 (16) understandable  
 (17) Q Well you have no idea whatsoever whether Dr Vallury was  
 (18) dissatisfied with that definition or not do you?  
 (19) A I do not know  
 (20) Q Now -  
 (21) A Dr Vallury said as a matter of fact in his deposition  
 (22) that any alcoholism - and he used the word any alcoholism  
 (23) -  
 (24) in his view would merit treatment, a prescription as he  
 (25) gave,  
 (26) which is classical for alcoholism And he also said that, in  
 (27) his view lifetime abstinence was indicated for any  
 (28) alcoholism  
 (29) and to him it didn't seem to make any difference  
 (30) Q Well the jury has heard Dr Vallury's testimony and if  
 (31) you'll recall Doctor after he said that he said I'm just

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- (1) being general now I'm not being specific because I don't  
 (2) recall Captain Hazelwood or his treatment or what I told him  
 (3) Do you remember that?  
 (4) A Well he said he would say to anybody that they should  
 (5) have  
 (6) lifetime abstinence a day at a time and he said he would say  
 (7) that generally but he said it would indeed apply to Captain  
 (8) Hazelwood He didn't use him by name but he implied that  
 (9) Q You inferred it he didn't comply it?  
 (10) A No he complies it through his IDA His prescription here  
 (11) is for AA which is obviously for abstinence aftercare and  
 (12) his  
 (13) prescription for lectures on alcoholism and he  
 (14) recommends  
 (15) lifetime abstinence for people with that diagnosis  
 (16) Q Are you finished Doctor?  
 (17) A Yes I am  
 (18) Q Let me ask you about your testimony about Exxon Now do  
 (19) you believe it is good for a company to have an alcohol  
 (20) (17) policy?  
 (21) A Yes I do  
 (22) Q And do you believe it is good for a company to prohibit the  
 (23) use of alcohol on company property like a ship?  
 (24) A Yes I do  
 (25) Q You agree with that don't you? And do you believe that  
 (26) it is good for a company to encourage people who think they  
 (27) may  
 (28) have a problem to come forward for treatment to get help?  
 (29) A Yes I do

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- (1) Q And do you believe it is good for that company which has  
 (2) encouraged those people to come forward to treat the fact that  
 (3) they came forward the fact of whatever the problem is and  
 (4) whatever treatment they get as a matter of confidentiality?  
 (5) That's good isn't it?  
 (6) A When they come forward and are describing their  
 (7) problems in  
 (8) a medical sense and in the therapeutic sense of the  
 (9) employee  
 (10) assistance program confidentiality should be maintained  
 (11) Q And it also is good is it not for a company to say to a  
 (12) person who came forward that the fact that you're coming  
 (13) forward is not going to jeopardize your job security or your  
 (14) job future that mere fact that you came forward and sought  
 (15) help for a problem isn't that good?  
 (16) A Well that depends  
 (17) Q Well did you say it depended in your deposition or did  
 (18) you say that it was good for no employee - for no employee to  
 (19) have job security or future job opportunities jeopardized  
 (20) because of treatment?  
 (21) A Yes In general I think that's the case, but I say it  
 (22) depends because there are some small exceptions to that  
 (23) But  
 (24) in general it is the case  
 (25) Q It is the case?  
 (26) A Yes  
 (27) Q And it's also good is it not for supervisors of employees  
 (28) who have had problems and had treatment and had aftercare  
 (29) for

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- (1) those supervisors to look only at job performance and not get  
 (2) into the business of trying to diagnose people for which they  
 (3) are absolutely unqualified?  
 (4) A Well, again, I said that in my deposition and, in general,  
 (5) supervisors should oversee performance. It's slightly  
 (6) different after known treatment when supervisors who may  
 be  
 (7) looking for not only just performance on the job but  
 (8) performance in recovery when they know that an individual  
 has  
 (9) been in rehabilitation and part of his responsibility as a  
 (10) professional is to comply with the recovery requirements,  
 as  
 (11) well as the ordinary requirements of his job. In that case,  
 (12) people who are working with him ought to know of course  
 (13) about his rehabilitation and ought to be in a position not to  
 (14) make a diagnosis, because that's a medical function, but  
 (15) certainly to oversee and supervise not only his strict job  
 (16) performance, part of his job performance after  
 rehabilitation  
 (17) becomes responsible performance in recovery, which must  
 be then  
 (18) supervised  
 (19) Q In light of that and in light of your testimony that you  
 (20) gave about what Exxon could have seen - by the way, did you  
 (21) ever talk to any Exxon people about what they saw?  
 (22) A I beg your pardon?  
 (23) Q Did you ever talk to any of these Exxon people?  
 (24) A No, I did not.  
 (25) Q But in light of what you've said about those people that

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- (1) you never talked to or met and in light of what you just said  
 (2) let me ask you about your own experience. Now you - you  
 (3) diagnosed yourself as an alcoholic in 1977, that's your  
 (4) testimony?  
 (5) A 1976  
 (6) Q 76-77, whatever, 76 now?  
 (7) A Well, I diagnosed myself as an alcoholic and left my job at  
 (8) UCLA because of that diagnosis and in the period between  
 (9) November 1976 when I resigned my faculty position at  
 UCLA  
 (10) because of the trouble in my life because of my alcoholism  
 I  
 (11) then - it was two or three months before I joined AA but by  
 (12) that time I had diagnosed myself as an alcoholic. My  
 sobriety  
 (13) date was 1977  
 (14) Q 77?  
 (15) A Yeah  
 (16) Q That's what caused me to wonder about that  
 (17) A I understand  
 (18) Q You didn't go into any treatment, did you?  
 (19) A No, I did not. I went straight to Alcoholics Anonymous  
 (20) Q And -  
 (21) A At that time I had treatment later on  
 (22) Q And in 1980 I believe you applied for a medical license  
 (23) in California?  
 (24) A That's true  
 (25) Q And at the time that you applied, you didn't tell them you

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- (1) were an alcoholic, did you?  
 (2) A Nobody asked me  
 (3) Q But you didn't tell them, did you?  
 (4) A There was no way to do so  
 (5) Q Just absolutely impossible for you to have communicated  
 (6) that fact to the authorities in California?  
 (7) A I was a recovering alcoholic with three years of sobriety  
 (8) at the time, and there was no particular reason to tell  
 anybody  
 (9) about that  
 (10) Q And I believe also in 1980 you applied for a pilot's  
 (11) license?  
 (12) A That's true  
 (13) Q All right. Now would you agree with me, Doctor, that a  
 (14) physician who has the authority, the power, the privilege to  
 (15) prescribe medication to patients and to see patients who have  
 (16) trouble in their lives is a safety sensitive job?  
 (17) A Yes, indeed  
 (18) Q And I assume you would likewise agree with me that a pilot  
 (19) of an airplane of whatever size, is in a safety sensitive job  
 (20) correct?  
 (21) A That's correct  
 (22) Q And when you applied for your FAA license, you didn't tell  
 (23) them you were an alcoholic, did you?  
 (24) A There was no requirement that I should do so. I told them  
 (25) later on in 1983. There was no requirement in 1980 that I

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- (1) should do so  
 (2) Q Doctor, did you tell them? Did you tell them?  
 (3) A There was no requirement that I should do so  
 (4) Q Yes or no?  
 (5) A I did not. There was no way I could have told them  
 (6) Q Now, after you became a doctor - well, at some point you  
 (7) did tell the California authorities that you were a recovering  
 (8) alcoholic, right?  
 (9) A That's correct  
 (10) Q And that's the medical authorities, within a year or so  
 (11) when you - they were hiring you to do some of this work with  
 (12) treatment at that point, you did tell them?  
 (13) A They were not hiring me. I was doing voluntary work at  
 (14) that time for the California State Diversion Program  
 (15) Q All right. You eventually told the FAA, too, when they  
 (16) hired you to be a consultant, that you were a recovering  
 (17) alcoholic?  
 (18) A That's not true. I told the FAA that I was an alcoholic  
 (19) when I was first asked to see pilots, and I felt that because  
 (20) of the integrity of my position that I should not see any pilot  
 (21) for an evaluation in a safety sensitive position without  
 (22) divulging by alcoholism to the FAA. At that time there was  
 no  
 (23) requirement that a self-diagnosed alcoholic should report  
 (24) anything to the FAA. The requirement was if you've had a  
 (25) diagnosis of alcoholism in a medical chart. And when I was

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- (1) asked to see the first alcoholic pilot who was paying his fees
- (2) not hired by the FAA I first of all asked - went to the medical director of the FAA and said I'm a recovering alcoholic with now five years of sobriety, what should I do?
- (3) Should I have a letter of authority in order to confirm my professional integrity? And I was given a sanction by the FAA
- (4) to perform that particular evaluation And since then I have worked closely with the FAA with full knowledge of my recovery, and they asked me to demonstrate as a matter of fact to them the reality of my successful recovery at that time before they said go ahead
- (5) Q Isn't it a fact Doctor that the FAA never monitored you?
- (6) A Monitoring was decided - it was decided that monitoring was not necessary because of my demonstrated five years of successful recovery in Alcoholics Anonymous
- (7) Q And isn't it a fact Doctor that the State of California the medical authority never monitored you?
- (8) A Medical authority hired me because I was a recovering alcoholic and in other areas at least permitted me to work voluntarily for them because I was a recovering alcoholic who
- (9) did not require monitoring because of demonstrated recovery in Alcoholics Anonymous
- (10) Q They didn't monitor you did they?
- (11) A There was no witness for them to do so and they didn't
- (12) MR SANDERS Can I have just a moment Your Honor?

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- (1) BY MR SANDERS
- (2) Q There's one piece of confusion here Didn't I understand you to say that an alcoholic is never cured?
- (3) A Once an alcoholic always an alcoholic yes
- (4) MR SANDERS No further questions
- (5) THE COURT Redirect?
- (6) MR MONTAGUE No questions Your Honor
- (7) THE COURT Thank you Dr O Connor You may step down
- (8) MR O NEILL Your Honor we're going to play the videotaped deposition of Ben Graves and just so that there's no confusion or tumult in the courtroom the deposition goes on for a while and then the witness looks different to an extent to where you don't think it's the same guy It is the same person Mr Graves was deposed in one setting and then three weeks later he was deposed again and his physical appearance
- (9) is different so just so that when you see it you don't say they goofed up on this tape I didn't goof up on the tape
- (10) THE COURT Okay
- (11) MR O NEILL I didn't goof up
- (12) DIRECT EXAMINATION OF BENJAMIN GRAVES (Video)
- (13) BY VIDEO EXAMINER
- (14) Q Mr Graves, for the record would you state your full name please?
- (15) A Benjamin Carter Graves Jr

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- (1) Q Sir where do you currently reside?
- (2) A I reside in Kingwood Texas
- (3) Q Could you tell us by whom you're currently employed?
- (4) A Exxon Company U S A
- (5) Q And in 1984 you were transferred to Exxon Shipping Company
- (6) here in Houston?
- (7) A Yes
- (8) Q Did you request that transfer?
- (9) A No It was -
- (10) Q Was that considered a promotion demotion any change in status at all?
- (11) A It wasn't a demotion It was either a lateral move or a promotion I don't remember
- (12) Q And what was the title you were to assume in 1984 with Exxon Shipping Company?
- (13) A Administrative manager
- (14) Q What were your duties as administrative manager with Exxon Shipping Company in 1984 through 1986?
- (15) A I was basically the human resource organization for Exxon Shipping Company
- (16) Q Can you be a little more specific as far as what your duties with human resource would entail at that time?
- (17) A Well it involved the labor relations activities compensation benefit administration general personnel activity manpower accounts let's see there was a personal

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- (1) staff I was involved in some safety and environmental issues
- (2) I think that's about it
- (3) Q Within the parameters of your duties during that time frame were you concerned with the safety and prevention of oil spills and safety of vessels and their crew?
- (4) A Oh well I guess everyone in the company is concerned about those types of things It wasn't one of our primary functions
- (5) Q Not a primary function but certainly something that you were of course cognizant of and concerned about?
- (6) A I'm sure
- (7) Q And then in July of 1986 you went back to Exxon U S A ?
- (8) A Yes
- (9) Q Since '86 - you might have already told me this I apologize if you have Since 1986 have you held the same position?
- (10) A Yes
- (11) Q Have your duties changed at all?
- (12) A Well, the organization's expanded quite a bit, but the essential duties are the same
- (13) Q While you were administrative manager with Exxon Shipping Company did you work with the drug and alcohol policy in existence for the company at that time?
- (14) A What do you mean work with?
- (15) Q Well were you familiar with the policy?

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- (1) A Yes yes  
 (2) Q Mr Graves let me hand you what we just had marked as  
 (3) Exhibit 31876 and ask you if that s a copy of the drug and  
 (4) alcohol policy in existence for Exxon Shipping Company as of  
 (5) September 28 1984?  
 (6) A That's what it says yes  
 (7) Q Do you recognize this exhibit to be that drug and alcohol  
 (8) policy?  
 (9) A Yes  
 (10) Q Do you recall whether this particular policy Exhibit  
 (11) 31876 issued September 28 1986 contained any what you  
 would  
 (12) consider material changes for the drug and alcohol policy  
 (13) existing for Exxon Shipping Company prior to the issuance of  
 (14) this document?  
 (15) A I really don't know My recollection is that the policy  
 (16) from 1979 through this duration was essentially the same  
 kind  
 (17) of policy  
 (18) Q If you would for the record would you read the first  
 (19) sentence on the complete policy underneath the heading  
 number  
 (20) one policy?  
 (21) A The company recognizes alcoholism as a treatable  
 illness,  
 (22) characterized by an inability to control the repeated  
 (23) consumption of alcohol causing impairment of job  
 performance  
 (24) Q Is that the - is that your understanding of the company s  
 (25) definition of alcoholism throughout your time as administrative

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- (1) manager with Exxon Shipping Company?  
 (2) A Yes, I suppose so  
 (3) Q Is it your understanding that this drug and alcohol policy  
 (4) prohibited the possession and use of alcohol on board vessels?  
 (5) A Yes  
 (6) Q And has it always been the intent of Exxon Shipping  
 Company  
 (7) drug and alcohol policies to prohibit employees from reporting  
 (8) to work in an intoxicated condition?  
 (9) A I would assume that to be the case yes  
 (10) Q What I m trying - what I m trying to ask you is whether  
 (11) this particular policy encouraged Exxon Shipping Company  
 (12) employees to report violations of the drug and alcohol policy  
 (13) that those employees were aware of?  
 (14) A I don't know that it specifically said that it encourages  
 (15) employees who suspect they have a problem to take some  
 action  
 (16) Q Do you know if that - if that fact reporting of a  
 (17) violation of a drug and alcohol policy to a supervisor if  
 (18) that s a normal situation if that fact was made aware to - to  
 (19) Exxon Shipping Company employees?  
 (20) A I m not sure whether it was or not  
 (21) Q Well I m specifically referencing whether or not there was  
 (22) a formal mechanism an established mechanism for an  
 unlicensed  
 (23) person to report what he or she perceived to be misconduct on  
 (24) the part of a licensed officer?  
 (25) A I don't recall anything written in terms of formality but

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- (1) it was generally understood through Exxon Shipping  
 Company and  
 (2) other Exxon organizations that the company operates on an  
 open  
 (3) door policy If you've got a problem talk to somebody  
 about  
 (4) it  
 (5) Q And are you aware of whether the licensed officers or crew  
 (6) people were informed of these opportunities to report masters  
 (7) who had violated the Exxon Shipping Company drug and  
 alcohol  
 (8) policy?  
 (9) A I don't know that they were informed My - my  
 assumption  
 (10) is that they knew they could  
 (11) Q You don t base that assumption on any particular facts?  
 (12) A No  
 (13) Q During your time as administrative manager are you aware  
 (14) of any crew members or licensed officers reporting alcohol  
 (15) abuse by a master of a vessel to management?  
 (16) A Well, that was - I was aware of one case where there was  
 (17) an allegation  
 (18) Q Mr Graves let me hand you what s been marked as Exhibit  
 (19) 31880 and ask if you can identify that document?  
 (20) A Yes, I can  
 (21) Q And what is that sir?  
 (22) A It's a report that I issued -  
 (23) Q This document Exhibit 31880 is a document you created?  
 (24) A Yes  
 (25) Q And the last paragraph in this memo does deal with Captain

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- (1) Hazelwood s use of alcohol on board a vessel?  
 (2) A That's right  
 (3) Q Would you read that last paragraph for the record please?  
 (4) A I asked Joe if he ever drank aboard the ship He  
 commented  
 (5) that he occasionally drank aboard the ship but not  
 frequently  
 (6) He also indicated that he came back to the ship from port  
 drunk  
 (7) on several occasions  
 (8) Q Let me ask you Mr Graves did Captain Hazelwood say to  
 (9) you that he Captain Hazelwood had come back to the ship from  
 (10) port drunk on several occasions?  
 (11) A Yes  
 (12) Q Let me ask the question again then Do you recall whether  
 (13) Captain Hazelwood said anything to you regarding alcohol  
 other  
 (14) than that he drank aboard the ship and that he came back to the  
 (15) ship from port drunk on several occasions?  
 (16) A Nothing specific no  
 (17) Q Did you ask Captain Hazelwood what time frame it was that  
 (18) he would have either drank aboard the ship or come back to the  
 (19) ship from port drunk?  
 (20) A Trying to think And I can't be sure, but generally  
 (21) speaking, my impression from Joe was that this was - when  
 I  
 (22) say historical I mean not necessarily current day  
 situations,  
 (23) but back several years back in his earlier career in the '70s,  
 (24) early '80s kind of thing  
 (25) Q Was he able to tell you which ports it was that he would

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- (1) come back to the ship in an intoxicated condition?
- (2) A I didn't ask him that
- (3) Q How is it determined that your report would be directed to
- (4) these three individuals W J Davis law department Frank
- (5) Iarossi and Paul Revere?
- (6) A Just seemed logical Iarossi is the president of the
- (7) company Revere is the vice-president of the company Bill
- (8) Davis was the attorney involved both our - some of our
- labor
- (9) relation activities as well as any personnel type issues we
- had
- (10) to deal with including harassment disability and et cetera
- (11) Q During the same time frame did you have any conversations
- (12) with Frank Iarossi regarding Captain Hazelwood's alcohol
- (13) rehabilitation?
- (14) A Well I think - I think shortly after the May 28th letter
- (15) I think Frank asked me to reconfirm again what the company
- (16) policy was on employees completing rehabilitation And -
- and
- (17) I think as a result of that request of Frank's and the ordinary
- (18) follow up, what you do in a situation like this I contacted
- (19) the HR department and contacted the medical department
- to give
- (20) Frank back a complete story
- (21) Q And would you just tell us generally what the substance
- (22) of the conversation was with Dr Montgomery?
- (23) A Well generally the substance was was the medical
- (24) department aware that Hazelwood had been in
- rehabilitation and
- (25) the answer was yes to that and that he told me that
- Hazelwood

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- (1) had completed his rehabilitation successfully And that Joe
- (2) was attending AA meetings on a regular basis I don't
- remember,
- (3) I think he said three times a week or something like that I
- (4) think I said he'd successfully completed the program and
- that
- (5) was about the sum and substance of the conversation
- (6) Q Did Mr Iarossi ask you to do anything else in regards to
- (7) follow up on the issue of Captain Hazelwood's alcohol
- (8) rehabilitation?
- (9) A I don't know whether it was at that particular time or
- (10) subsequent to that but Frank asked me to ensure that John
- (11) Tompkins the gulf coast fleet manager counsel with Joe
- before
- (12) he went back aboard a ship as a master
- (13) Q Let me ask it again Was it your understanding that
- (14) Captain Hazelwood attending the AA meetings was a part of his
- (15) alcohol rehabilitation program?
- (16) A Yes
- (17) Q For instance was there anyone at Exxon Shipping Company
- (18) who was assigned to your knowledge assigned the duty to
- make
- (19) sure that Captain Hazelwood was attending his AA meetings?
- (20) A Not to my knowledge
- (21) Q Was there anyone within Exxon Shipping Company who was
- (22) assigned the task of monitoring Captain Hazelwood during his
- (23) leave of absence time to determine whether he was drinking or
- (24) not?
- (25) A Not that I'm aware of

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- (1) Q Was there a concern?
- (2) A Well again it's hard to answer that question in today's
- (3) environment Probably not
- (4) Q After Exxon Shipping Company had learned through Captain
- (5) Hazelwood's own admission that he had drank while aboard the
- (6) vessels and that he had gone through alcohol rehabilitation
- (7) was it a concern at any time after that that Captain Hazelwood
- (8) may be drinking whether it is on board the vessel or at home?
- (9) A Oh I'm sure that some of Captain Hazelwood's
- supervisors
- (10) were interested and concerned about that
- (11) Q Okay
- (12) A I certainly would have assumed that they were any way
- (13) Q Did you have any conversations with Frank Iarossi regarding
- (14) that topic?
- (15) A Only to the extent that Frank asked me to be sure that
- John
- (16) Tompkins counseled with Hazelwood before he was
- reassigned to a
- (17) vessel That his assignment travel plans routed him
- through
- (18) Houston so that he in fact could talk with John before being
- (19) assigned to the vessel and John was to counsel with
- Captain
- (20) Hazelwood about maintaining his non drinking status and
- to be a
- (21) solid employee and manager of the ship
- (22) Q You say non drinking status Does that mean non drinking
- (23) status both on board the vessel and off the vessel?
- (24) A I presume from an alcoholic standpoint once you are
- you
- (25) can't pick up a drink thereafter I don't know That's just

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- (1) what I hear But John was to advise him that any infractions
- (2) that the company became aware of would subject Captain
- (3) Hazelwood and subject him to discipline up to and including
- (4) termination
- (5) Q Did your conversations with Frank Iarossi regarding this
- (6) topic include conversations that once you're an alcoholic you
- (7) can't pick up another drink -
- (8) A No
- (9) Q - that abstinence was important?
- (10) A No
- (11) Q Did you ever have any conversations like that with
- (12) Mr Iarossi?
- (13) A No
- (14) Q Did you take any steps to attempt to determine the extent
- (15) of Captain Hazelwood's alcoholism?
- (16) A No, that would have been the medical department, if they
- 
- (17) I mean wouldn't be something I would be able to evaluate
- (18) Q Do you know whether they attempted to evaluate that?
- (19) A I have no idea what conversations took place between
- our
- (20) medical department and his facility
- (21) Q Did you speak with anyone in an attempt to discover
- (22) generally what's involved with alcohol rehabilitation?
- (23) A No Again, I don't consider myself an expert in that
- (24) It's like whether I know whether the ship is being navigated
- (25) properly or not It mean it's a doctor's prerogative as far

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- (1) as I'm concerned
- (2) Q Did you speak with anyone in an attempt to determine
- (3) information regarding how from a human resources perspective
- a
- (4) company should deal with an alcoholic?
- (5) A Not that I can recall
- (6) Q Did you speak with either Frank Iarossi or Paul Revere
- (7) regarding how the company should deal with Captain
- Hazelwood
- (8) having gone through alcohol rehabilitation and reporting back
- (9) to work?
- (10) A I don't recall speaking specifically to them about it I
- (11) mean it's - alcoholism as a - as the company viewed it is a
- (12) treatable illness, is kind of a job performance issue as much
- (13) as anything else and you know, how a person's illness
- affects
- (14) their ability to do their job is part of the on going
- (15) supervisory responsibilities that any supervisor in the
- company
- (16) would have, stay close, you know, close to observe the
- employee
- (17) as possibly and determine what their performance levels
- are
- (18) Q Did you discuss with either Mr Iarossi or Mr Revere that
- (19) it would be necessary to closely observe Captain Hazelwood as
- (20) much as possible and evaluate his performance?
- (21) A I didn't but I think that was clearly Frank's intent of
- (22) having John Tompkins talk to Hazelwood before he went
- back
- (23) aboard the vessel to let him know that his performance was
- (24) going to be watched and the company wished him well and
- (25) expected him to have a full and total rehabilitation

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- (1) Q Do you know what background if any John Tompkins has in
- (2) regard to problems associated with alcoholism?
- (3) A No I don't
- (4) Q Do you know whether John Tompkins sought the advice of
- (5) anyone to determine generally the problems associated with
- (6) alcoholism or how a company generally should deal with an
- (7) alcoholic employee?
- (8) A I don't know You'd have to ask Mr Tompkins that
- (9) Q Was there any discussion that you were a party to with
- (10) either Mr Iarossi or Mr Revere where it was discussed whether
- (11) Captain Hazelwood should have a shore side assignment at
- least
- (12) initially?
- (13) A No
- (14) Q Is it your testimony that you believe a shore side
- (15) assignment would have been punitive in nature?
- (16) A No I do not believe it would have been punitive in nature
- (17) Q Do you believe a shore side assignment would have violated
- (18) the alcohol policy?
- (19) A No
- (20) Q It's just a subject that never came up as far as you know?
- (21) A As far as I know
- (22) Q After your May 19 1985 conversation with Joe Hazelwood
- (23) did you have any further conversations with him regarding
- (24) either his rehabilitation or his use of alcohol on vessels?
- (25) A Not that I recall I guess it's possible but the only

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- (1) significant conversation I remember with Joe was the
- interview
- (2) that I did with him on May 19th
- (3) Q From the summer of 1985 until you left Exxon Shipping
- (4) Company did you have any involvement whatsoever regarding
- (5) follow up on Captain Hazelwood and his alcohol rehabilitation?
- (6) A Did I? No
- (7) Q And did you ever ask Captain Hazelwood any questions
- about
- (8) his home life?
- (9) A No
- (10) Q And do you have any knowledge of either Mr Tompkins or
- (11) Mr Sheehy or anyone who was watching Captain Hazelwood
- asking
- (12) him questions about his home life?
- (13) A No
- (14) Q Do you have any knowledge of anyone ever from the time
- (15) Captain Hazelwood returned from his leave of absence up to
- the
- (16) time of the grounding, of anyone asking Captain Hazelwood
- (17) whether he had resumed drinking?
- (18) A I have no knowledge of that
- (19) Q Did Captain Hazelwood tell you that he had come back to the
- (20) ship drunk on several occasions?
- (21) A Yes
- (22) Q Did you ask him on how many occasions he was referring to
- (23) whether it was five times ten times 20 times?
- (24) A No, I did not
- (25) Q And did you ask him when these occasions had occurred?

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- (1) A I don't recall asking him specifically, no
- (2) Q And did he tell you specifically when these occasions had
- (3) occurred?
- (4) A Not that I recall
- (5) Q And did you - was it your understanding that attendance at
- (6) AA meetings was - by a recovering alcoholic was an important
- (7) element in the rehabilitation program?
- (8) A Our presumption is that that would be a reasonable thing
- (9) for any substance abuse person to be involved in, some
- (10) continuing support activity
- (11) Q Between mid May and August did anyone monitor whether
- he
- (12) was going to AA meetings three times a week?
- (13) A I don't know
- (14) Q As he had indicated?
- (15) A I don't know that they did or did not
- (16) Q Did you suggest to anyone that that might be a good idea?
- (17) A I personally did not no
- (18) Q Was that matter discussed by anyone to your knowledge?
- (19) A Not to my knowledge
- (20) Q Now did you understand that that outside doctor would be
- (21) making a decision as to whether or not Captain Hazelwood was
- (22) fit to return to duty as a master of an Exxon vessel?
- (23) A Well, my memory's a little fuzzy on the disability
- (24) situations but I think the outside doctor may be able to take
- (25) a position that the person is fit for duty, but generally

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- (1) speaking someone in our medical department may have the  
(2) authority to approve overrule or say yes or no to that  
(3) Q All right Now no one at Exxon Shipping to your  
(4) knowledge had any contact with the – the outside doctor who  
(5) was treating Captain Hazelwood is that correct?  
(6) A Not to my knowledge  
(7) Q To your knowledge however someone in the medical staff  
(8) of  
(9) Exxon U S A did have contact with this outside physician is  
(10) that correct?  
(11) A That was my understanding yes  
(12) Q And was it your understanding that that intermediate  
(13) from – that person from the Exxon U S A medical staff was  
(14) Dr Montgomery or someone else?  
(15) A As I recall I was unclear as to whether that person was  
(16) Dr Montgomery or someone on the medical staff Dr  
(17) Montgomery  
(18) was the person I talked to  
(19) Q And Dr Montgomery is the person who said to you that in my  
(20) judgment Captain Hazelwood is fit to return to duty?  
(21) A I guess he told me that he had completed his program in  
(22) the  
(23) hospital he was continuing to go to the AA sessions and  
(24) had  
(25) done what he should do relative to the rehabilitation effort  
(26) Q Did Dr Montgomery indicate to you that anyone from Exxon  
(27) U S A s medical staff had interviewed Captain Hazelwood since  
(28) he had undertaken this rehab course?  
(29) A No he did not

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- (1) Q Were you ever laboring under the impression that anyone  
(2) from Exxon U S A s medical staff had any contact with Captain  
(3) Hazelwood concerning his medical treatment after he entered  
(4) the  
(5) rehab clinic?  
(6) A No  
(7) Q Do you know if any system was set up at that juncture to  
(8) advise others what to do in the event Captain Hazelwood  
(9) relapsed into drinking?  
(10) A No I'm not sure what system was or was not in place  
(11) Q What system was implemented to closely monitor Captain  
(12) Hazelwood while he – while he was out at sea?  
(13) A I do not know  
(14) Q Was any system of closely monitoring Captain Hazelwood at  
(15) sea ever discussed with you?  
(16) A Not with me  
(17) Q Did you ever hear of any discussion that anyone had with  
(18) regard to establishing a monitoring system for Captain  
(19) Hazelwood while he was at sea?  
(20) A No  
(21) Q How about shore side was any monitoring system discussed  
(22) concerning Captain Hazelwood s behavior and performance  
(23) while  
(24) he was not at sea?  
(25) A Not with me It may have been discussed in the  
(26) operations  
(27) group, but not – I don't recall anything about it  
(28) MR SERDAHELY Your Honor we have no cross of this

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- (1) witness  
(2) THE COURT All right  
(3) MR O NEILL I get to do the videotapes today  
(4) Something I m able to handle The plaintiffs call William  
(5) Deppe by videotape deposition  
(6) DIRECT EXAMINATION OF WILLIAM DEPPE (Video)  
(7) BY VIDEO EXAMINER  
(8) Q Captain Deppe what is your first recollection of hearing  
(9) about the Exxon Valdez on March 24th 1989?  
(10) A I got a phone call from Paul Myers early that morning  
(11) telling me that the vessel had gone aground near Bligh  
(12) Reef  
(13) Q And who s Paul Myers?  
(14) A Paul Myers is a ship group coordinator and in the west  
(15) coast fleet office  
(16) Q What happened after that?  
(17) A I helped arrange for flights up to Alaska for Harvey  
(18) Borgen Paul Myers and myself We – we – I packed a bag  
(19) and  
(20) shortly after that drove to Oakland Airport and met them at  
(21) Oakland and we flew up to Alaska  
(22) Q Okay And was it Harvey or Dave Borgen?  
(23) A Harvey  
(24) Q Harvey Borgen And what was his position at the time?  
(25) A He was the west coast fleet manager  
(26) Q And what position did you have at that time with Exxon?  
(27) A I was a ship group coordinator

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- (1) Q Before we get to your conversation with the senior  
(2) officers what positions have you held with Exxon from the time  
(3) you started just to the best of your recollection?  
(4) A I've been third mate through master on different vessels  
(5) that Exxon s had I've been an analyst in the west coast  
(6) office I've also been a port captain and a ship group  
(7) coordinator in the west coast office  
(8) Q Now during 1982 and 1989 March what other duties did  
(9) you  
(10) have other than being a master on a ship?  
(11) A 1987 I was assigned as port captain in the west coast  
(12) fleet office From 1988 –  
(13) Q Was port captain what?  
(14) A Port captain in the west coast fleet office  
(15) Q Let me stop you there for a second What were your duties  
(16) as port – port captain in the west coast office?  
(17) A Port captain was somewhat as an advisor type position  
(18) It's someone who would handle professional topics and  
(19) operational type topics for the fleet manager and deal with  
(20) the  
(21) deck operations on board the vessel, things that relate to  
(22) navigation the cargo operations with our vessels on the  
(23) west  
(24) coast  
(25) Q In that job do you have to – or did you interact with  
(26) other captains other masters?  
(27) A Yes  
(28) Q In what way did you interact with them?

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- (1) A I'd go aboard and talk to them about company policies  
 (2) instruct them on what - what the latest directives might be  
 (3) from the company or information that they might want to  
 (4) disseminate throughout the fleet I would go on board and  
 do  
 (5) stewardship reviews with the - with the senior personnel on  
 (6) board for end of the year reviews and mid year reviews If  
 (7) there were any operational type problems or incidents that  
 (8) might have occurred, I would - I would go do an  
 investigation  
 (9) on - or I might be asked to do an investigation on those  
 types  
 (10) of things If there are any personnel type problems on  
 board,  
 (11) I might be asked to get involved in trying to find out what  
 (12) happened and settle these types of things  
 (13) Q How long did you hold that position?  
 (14) A Until early 1988  
 (15) Q And then what happened in 1988?  
 (16) A The - the job was changed to a different concept and the  
 (17) port captains became ship group coordinators  
 (18) Q Ship group -  
 (19) A Coordinators  
 (20) Q And did you take on the job then as -  
 (21) A Yes  
 (22) Q - ship group coordinator?  
 (23) A I did  
 (24) Q To what extent did the duties change with the job if at  
 (25) all?

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- (1) A As a ship group coordinator the - the captains and chief  
 (2) engineers reported to the ship group coordinator at that  
 point  
 (3) became more of a line position than a staff position so  
 (4) instead of the senior officers reporting to the fleet manager  
 (5) they reported to the ship group coordinator for the ship so  
 (6) instead as port captain I didn't have captains reporting to  
 me  
 (7) directly as ship group coordinator I did I also got more  
 (8) involved in engineering type operations Previously the  
 chief  
 (9) engineers reported to port engineer or at least dealt with  
 the  
 (10) port engineer for engineering type problems and the ship  
 group  
 (11) coordinator handled both deck and engine type problems  
 on board  
 (12) the vessel  
 (13) Q You held that job for how long?  
 (14) A Let me see Until January 1991  
 (15) Q And what job did you take on in '91?  
 (16) A I went back to sea was captain of the Exxon Long Beach  
 (17) Well actually I was captain of the Exxon Mediterranean  
 first  
 (18) and then I went to the Long Beach after that  
 (19) Q What was your alcohol policy in 1987 by your I mean  
 (20) Exxon?  
 (21) A Are you talking about the corporate policy?  
 (22) Q Corporate policy yes  
 (23) A From what I understand, the policy the way it applied to  
 (24) the shipping company was that anyone who was caught  
 drunk or -  
 (25) or with alcohol on board on board the vessel would be

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- (1) terminated from the vessel At that point it would - the  
 (2) case would be referred to a - a review type board and they -  
 (3) in I think Houston here and a decision would be made about  
 (4) disciplining that person  
 (5) Q In doing the reviews that you referred to as a port  
 (6) captain it was part of your job to keep an eye on the captains  
 (7) and the masters to make sure they didn't drink on board or have  
 (8) alcohol on board ship?  
 (9) A Well, it - that was - that would be part of the job,  
 (10) yes  
 (11) Q And would part of your job be to monitor any captains or  
 (12) masters who might be suspected of having a drinking problem?  
 (13) A Part of the job is to monitor all the masters and chief  
 (14) engineers to - if anyone is having a problem with anything  
 to  
 (15) do something about it  
 (16) Q In any time did anyone or anything make you aware that  
 (17) Captain Hazelwood might have a drinking problem?  
 (18) A I knew that Captain Hazelwood had been through a  
 (19) rehabilitation program  
 (20) Q Did you know what the rehabilitation program was for?  
 (21) A Yeah, it seemed to be pretty common knowledge in the  
 fleet  
 (22) that Captain Hazelwood had been through a rehabilitation  
 (23) program for alcohol  
 (24) Q What was the basis for your knowledge that Captain  
 (25) Hazelwood had been through an alcohol rehabilitation  
 program?

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- (1) A I don't know how I found out I just knew  
 (2) Q That would be back - do you remember the time that was?  
 (3) A It was - it was before I got in the office as port  
 (4) captain  
 (5) Q Now during the time that you were either port captain or  
 (6) shipping group coordinator were you given any instructions  
 (7) regarding the monitoring of Captain Hazelwood?  
 (8) A Not that I can recall  
 (9) Q I don't mean this in an argumentative way but when you say  
 (10) not that I can recall you've had a long time to think of  
 (11) this Can you - does any situation at all occur to you where  
 (12) somebody in Exxon Shipping or Exxon or Exxon U S A asked  
 you  
 (13) or asked anyone else about whom you have knowledge to keep  
 an  
 (14) eye on Captain Hazelwood in regard to his - regard to his  
 (15) drinking?  
 (16) A I knew that he had been through rehabilitation How I  
 (17) found out about it I'm not sure If a conversation took place  
 (18) in the office with anyone about it I - it didn't stand out in  
 (19) my mind because I knew already but I - I was aware of  
 (20) Hazelwood's problem and I would have been aware of him  
 (21) drinking if I was in a situation with him and he was drinking  
 (22) I would have - that would have been something that would  
 have  
 (23) stood out in my mind  
 (24) Q At the time that the alcohol policy was issued which you  
 (25) described earlier was there any discussion on monitoring any



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- (1) employees or officers who were thought to have an alcoholic problem?  
 (2) A No  
 (3) Q In the various meetings that you attended in 19 - in 1987 up to the time of the grounding do you recall any discussions about monitoring persons that were thought or known to have alcoholic problems?  
 (4) A No  
 (5) Q Did any of your superiors ever ask you to keep - to monitor or keep your eye on Captain Hazelwood in regard to any drinking problems?  
 (6) A Not that I can recall  
 (7) Q During the same period of time have you - did anyone ever bring to your attention any complaint regarding Captain Hazelwood?  
 (8) A From 1987 -  
 (9) Q To the time of -  
 (10) A - to the time of the spill?  
 (11) Q Yeah  
 (12) A In a disciplinary nature?  
 (13) Q Any nature  
 (14) A Well there was some complaints about some of his management style but those were - those were in ranking type situations But as far as any disciplinary type things there was nothing brought to my attention during that period

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- (1) Q If you know during the same period of time 87 through the spill was anyone Exxon Exxon Shipping or Exxon U S A given an assignment to keep an eye on Captain Hazelwood relating to drinking problems?  
 (2) A No I wasn't aware of anyone  
 (3) Q Now you have - you have taken vessels through the Valdez Narrows is that correct?  
 (4) A Yes  
 (5) Q Have you ever taken vessels through the Valdez Narrows when you weren't on deck at the time?  
 (6) UNIDENTIFIED SPEAKER On deck?  
 (7) THE WITNESS On the bridge  
 (8) BY VIDEO EXAMINER  
 (9) Q On the bridge I'm sorry  
 (10) A No  
 (11) Q Did you consider it to be your obligation or your duty to be on the bridge during the time that you - during the times that you trans - that you've taken a ship through Valdez Narrows?  
 (12) A Yes  
 (13) Q The question was when you were - you were in a supervisory capacity did - would not you expect any reasonably prudent captain to be on the bridge during such a transit?  
 (14) A I would expect most captains would be on the bridge during

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- (1) those transits yes  
 (2) Q Since - I'm going to read a question and answer and ask you if this is still your opinion I'm looking at the hearings page 1096 Question is could you tell me what Exxon does to ensure that six hours of rest are given to ship's personnel to the deck watch officer prior to getting underway  
 (3) Answer we don't have any program to give six hours of rest to any dock - deck hand or officer before we get underway On the ships that I've been on we make sure that - or I've been made sure that once we have taken departure if no one has had rest then I'll stay up on the bridge and I'll stand the watch until someone who has had enough rest to come and take the watch and meet the law  
 (4) Still believe that's a correct answer?  
 (5) A Yes  
 (6) Q You still stand by that answer right?  
 (7) A Yes I'll elaborate a little bit on that  
 (8) Q Sure  
 (9) A The master and the individual officer is responsible to make sure that he's getting that rest also  
 (10) Q Let me turn to our designation Number 32 which is a letter - no it's not it's a memo dated July 15th 1986 and called west coast fleet letter 10/86 vessel physical and operating condition report and it's addressed to masters of

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- (1) Exxon Shipping Company west coast fleet owned vessels and it's signed by A P Martineau Have you seen this? That is now Exhibit 39606 I believe  
 (2) A Yes I've seen this  
 (3) Q Do you have pilotage license?  
 (4) A No I don't  
 (5) Q For the Valdez Narrows?  
 (6) A No  
 (7) Q Who on your ship had one when you were taking ships or taking vessels up to - I'm sorry through the Valdez area Prince William Sound?  
 (8) A Before the accident?  
 (9) Q Yeah  
 (10) A The - there were several cases where the chief mate had pilotage and there were a couple of cases where no one had pilotage on board  
 (11) Q And when no one had pilotage what rules if any did you follow?  
 (12) A When we made our pre call or our check in there was an extended list of questions that was asked that we had to answer compared to vessels that did have pilotage Between Cape Hinchinbrook and Montague Island we were required to check in every ten minutes where a vessel with pilotage was not required to do that  
 (13) We were also not allowed to enter I believe if the

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- (1) visibility was less than two miles and we had to pick up the  
 (2) pilot at Bligh Reef instead of at Rocky Point I think those  
 (3) were the differences  
 (4) Q And what were the regulations leaving Valdez or without  
 (5) anyone on board with pilotage who met the pilotage  
 (6) requirements?  
 (7) A The pilot would - the Alaska state pilot would stay on  
 (8) board till Bligh Reef and we would make the check in every  
 ten  
 (9) minutes between Montague Island and Cape Hinchinbrook  
 and I  
 (10) believe those are the only two differences  
 (11) Q Now you testified earlier that it was common knowledge in  
 (12) the fleet that Hazelwood had been through alcohol  
 (13) rehabilitation do you recall that?  
 (14) A Yes  
 (15) Q When you made that statement when do you believe it was  
 (16) common knowledge?  
 (17) A In 1986 and 1987  
 (18) Q So it was well known within the fleet at least by the time  
 (19) of the meeting in 1988 that you were present at where he was  
 (20) ranked?  
 (21) A Yes  
 (22) Q Was the subject of Hazelwood's having been through  
 alcohol  
 (23) rehabilitation mentioned in any way in the 1988 ranking  
 (24) meeting?  
 (25) A I don't think so

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- (1) Q Captain Hazelwood had never told you that he had been  
 (2) through rehab had he?  
 (3) A No  
 (4) Q And you spoke about common knowledge are you talking  
 about  
 (5) yourself that you know about it?  
 (6) A Yes  
 (7) Q And I take it you didn't have conversations with other  
 (8) people about the fact that Captain Hazelwood had been  
 through  
 (9) rehab?  
 (10) A No  
 (11) Q You gave a presentation did you not in November 1989  
 (12) regarding the Exxon Valdez incident?  
 (13) A Yes  
 (14) Q And what was the occasion of that?  
 (15) A There was a meeting of our - of some of our senior  
 (16) officers in New Jersey to go over the - the facts that were  
 (17) known about the Exxon Valdez up to that point to just  
 (18) communicate with those people what we knew  
 (19) Q In the course of your presentations did you express any  
 (20) opinions with respect to the cause of the grounding?  
 (21) A No I kept away from expressing opinions  
 (22) Q Wasn't the subject of the cause of the grounding an area of  
 (23) concern to the people at that meeting?  
 (24) A My job was just to present the facts that occurred that  
 (25) night and not - and keep away from expressing opinions

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- (1) Q Were you instructed -  
 (2) A Yes  
 (3) Q - that you were to stay away from opinions?  
 (4) A That's right  
 (5) Q Who instructed you to stay away from opinions?  
 (6) A Legal counsel  
 (7) Q Did you have any other relationship at all with Captain  
 (8) Hazelwood either professionally or socially?  
 (9) A In 1987, when I first became port captain, I took him out  
 (10) to supper one night  
 (11) Q And where was that?  
 (12) A In Long Beach  
 (13) Q Any other social things that you did with Hazelwood?  
 (14) A No  
 (15) Q I take it that Hazelwood did not have anything to drink at  
 (16) that dinner glass of wine or anything?  
 (17) A He did not  
 (18) Q Did you talk to him at all about his alcohol  
 (19) rehabilitation?  
 (20) A No It stood out in my mind that he didn't drink, though,  
 (21) that night The other three people there were drinking and  
 he  
 (22) did not drink He drank Coca Cola  
 (23) Q After you became port captain in 1987 at any time did you  
 (24) personally do anything to monitor Captain Hazelwood to see  
 (25) whether the alcohol rehabilitation he'd gone through was

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- (1) holding?  
 (2) A I visited the vessel I would have noticed if he had been  
 (3) drinking aboard the vessel If he was drinking aboard the  
 (4) vessel I would have seen that, but that's the extent of what I  
 (5) did to monitor him  
 (6) Q You were never instructed that you should do that?  
 (7) A Not that I can recall  
 (8) Q Now how many times did you actually board the vessel?  
 (9) A At least twice  
 (10) Q And that would be in the course of the time period 1987  
 (11) until March of 1989?  
 (12) A No, 1987 through early '88  
 (13) Q Okay and what you're saying is that on those two occasions  
 (14) you simply didn't observe visible drinking?  
 (15) A That's right  
 (16) Q And apart from that you have no other observations or  
 (17) reports to make with respect to monitoring of Hazelwood after  
 (18) his alcohol rehabilitation correct?  
 (19) A That's correct  
 (20) MR SERDAHELY Your Honor again no  
 (21) cross examination  
 (22) THE COURT All right  
 (23) MR O NEILL Great Plaintiffs call Gregory Cousins  
 (24) by his deposition  
 (25) DIRECT EXAMINATION OF GREGORY COUSINS (Video)

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- (1) BY VIDEO EXAMINER  
 (2) Q Please state your full name and home address?  
 (3) A Gregory Thomas Cousins reside at 13966 Fletcher's Mill  
 (4) Drive Tampa Florida  
 (5) Q And you were with Exxon from 1980 up through 1990 is that  
 (6) correct?  
 (7) A Correct  
 (8) Q When you were sailing as a third mate which you ve  
 (9) testified to on the four vessels with Exxon did you go do  
 (10) Valdez?  
 (11) A Yes  
 (12) Q Now on the - these vessels the North Slope and the New  
 (13) Orleans and the Exxon Valdez what was the total number of  
 (14) trips you made to the Port of Valdez approximately? I think  
 (15) you previously have testified about a dozen would that be  
 (16) about right?  
 (17) A That would be yes fair I think  
 (18) Q About how many of the trips that you made to Valdez were  
 (19) you a watch stander in Prince William Sound? Of say of the  
 (20) approximate dozen?  
 (21) A How many transits did I make on the bridge?  
 (22) Q Yeah that you were actually watch standing going in or  
 (23) coming out?  
 (24) A Well I would say a portion of all of the times but at  
 (25) least - at least half

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- (1) Q How many trips did you make with - on the Exxon Valdez  
 (2) prior to the - not counting the grounding trip in or out?  
 (3) Did you make a trip prior to that trip?  
 (4) A Yes  
 (5) Q How many trips did you make prior to that trip do you  
 (6) recall?  
 (7) A I believe there were three or four total  
 (8) Q How many trips prior to that trip the grounding trip we'll  
 (9) call it the grounding trip in and out did you make with  
 (10) Captain Hazelwood?  
 (11) A One or two  
 (12) Q Now in your experience in going into Valdez and coming  
 (13) out again the same parameters I gave you before and we're  
 (14) always talking about Hinchinbrook to Valdez and from Valdez to  
 (15) Hinchinbrook what type steering was used on the vessels you  
 (16) served on?  
 (17) A Hand steering  
 (18) Q Did you ever in any of your trips while you were a watch  
 (19) officer see the steering put in any type of auto mode in those  
 (20) waters?  
 (21) A Well the - one time  
 (22) Q When was that?  
 (23) A That was the evening of - or the morning of the  
 (24) grounding  
 (25) Q Now you had no pilotage endorsement on your license or  
 you

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- (1) have none today?  
 (2) A No  
 (3) Q For Prince William Sound?  
 (4) A No  
 (5) Q Are you familiar with the requirements for a pilotage  
 (6) endorsement on a license in Prince William Sound?  
 (7) A No  
 (8) Q What I'm trying to do is really save time Mr Cousins  
 (9) Instead of asking you take me through your day you have the  
 (10) eight to twelve that morning is that correct?  
 (11) A Yes  
 (12) Q This is on the 23rd of March?  
 (13) A Right  
 (14) Q In essence what I'm concerned with is when you're working  
 (15) when you're not working So you're on duty from 0800 to 1200  
 (16) is that a correct statement?  
 (17) A Correct  
 (18) Q What did you do your recollection between 12 and 1300 do  
 (19) you remember on March 23rd?  
 (20) A Well I had lunch then I did the salinity test and I  
 (21) returned to - I went to my room  
 (22) Q How long did you take for lunch do you recall about a  
 (23) half hour?  
 (24) A No Well 10 15 minutes  
 (25) Q All right

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- (1) A Actually the - the twelve is the watch I'm relieved  
 (2) actually at 10 minutes before  
 (3) Q You also relieve 10 minutes before eight do you not?  
 (4) A Correct  
 (5) Q So you stand a full four hour watch?  
 (6) A Yes  
 (7) Q So you do this salinity test after lunch?  
 (8) A Yes  
 (9) Q And does that take you up to about 1300 would that be  
 (10) about right?  
 (11) A Just a little bit - around 1300 Actually a little bit  
 (12) before 1 00  
 (13) Q What is a salinity test?  
 (14) A Measuring water density  
 (15) Q And is that the density of the sea water around the  
 (16) vessel?  
 (17) A Yes sir  
 (18) Q And what's the purpose of that?  
 (19) A That is used by the chief mate to calculate what - what  
 (20) drafts we'll be able to load to  
 (21) Q How do you get sea water to take the test?  
 (22) A On the Valdez, we - we would go down into the engine  
 (23) room  
 (24) and take water from a small spigot that was fitted into one of  
 (25) the sea suction  
 (25) Q So is that part of your normal - your normal operation of

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- (1) the vessel?
- (2) A What taking a salinity?
- (3) Q Yes
- (4) A Yes, when you're loading um hum
- (5) Q It s needed information in order to put a proper load
- (6) aboard the vessel?
- (7) A Yes
- (8) Q This paperwork you did in your office?
- (9) A Yes
- (10) Q In your room?
- (11) A Yes
- (12) Q That paperwork was paperwork which you connected with
- (13) the
- (14) vessel right? You weren t writing love notes to your wife or
- (15) anything?
- (16) A Well actually, it may have been, but there was some
- (17) paperwork that was connected with the vessel's safety
- (18) Q All right and you were the safety officer aboard?
- (19) A Yes
- (20) Q Do you have a good estimate of how much time you spent
- (21) with
- (22) that paperwork?
- (23) A It wasn't long I'd usually -- well sit down work on it
- (24) 10 or 15 minutes and set it aside and do something else
- (25) Q So it may have been 10 or 15 minutes?
- (26) A Yes
- (27) Q So let s pick it up from 1315 -- okay -- 1315 on you slept

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- (1) until about when? You can look at the testimony and notes?
- (2) A Whenever they called me for supper relief A few minutes
- (3) before 1700
- (4) Q All right and you then did what?
- (5) A Relieved the chief mate for supper
- (6) Q When you relieved the chief mate where did you go?
- (7) A Cargo control
- (8) Q And then you had to observe gauges or whatever?
- (9) A Yes monitor the load
- (10) Q Okay do you agree that 1730 was about the time the chief
- (11) mate relieved you in the cargo control room?
- (12) A Approximately Jim -- Jim was like the rest of us pretty
- (13) quick eater but generally
- (14) Q That s about right?
- (15) A Well the normal normal the normal supper hour lasts 20
- (16) minutes
- (17) Q All right And then what did you do?
- (18) A I went back do bed as far as I -- I can remember I
- (19) returned to --
- (20) Q According to Delozier s -- I ll let you look at the
- (21) document -- 1745 he says cargo control room Does that
- (22) refresh your --
- (23) A You're referring to his report?
- (24) Q His notes yes You see 1745 he has cargo control room?
- (25) Does that refresh your recollection?

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- (1) A Probably yes I remember sticking my head in the
- (2) control
- (3) room and spoke to Jim Kunkel chief mate briefly about the
- (4) topping off and that's when he told me that I would be
- (5) assisting him
- (6) Q And you stay in the cargo control room?
- (7) A No, I went to my room
- (8) Q Before you give me an answer let me ask you can you try
- (9) and place times on these different events that you re giving
- (10) us?
- (11) A I will attempt to Can I -- I'll begin with I relieved the
- (12) chief officer at approximately 1700
- (13) Q Okay
- (14) A He had supper I remained in the cargo control room
- (15) monitoring the load while he ate After he returned, I had
- (16) my
- (17) meal I returned briefly to the cargo control room and I
- (18) guess
- (19) this Delozier has almost a log entry type thing here of 1745
- (20) I don't know where he got that Maybe it's in the testimony,
- (21) but I don't recall, but I don't think that it is
- (22) I spoke briefly with the chief officer and that's when he
- (23) told me that he will use me to assist him in the topping off
- (24) I left I did not remain in the cargo control room from
- (25) that brief conversation on, because the topping off didn't
- (26) begin until sometime later
- (27) Q What time?
- (28) A Much later Almost -- well, I don't know

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- (1) Q Finished cargo was 1924 does that help you?
- (2) A Correct So Mr Delozier has a 1900, chief mate called
- (3) cargo control room for topping off So at 1900, this -- the
- (4) chief mate called me in my room
- (5) Q Let me just go on and then I ll get back to that Your
- (6) testimony is for a brief time you had this conversation with
- (7) the chief mate and then you went to your room?
- (8) A Yes
- (9) Q And what did you do in your room?
- (10) A I don't recall I normally don't sleep that time of day
- (11) I may have read a book sat down in the recliner and
- (12) digested
- (13) my meal
- (14) Q Up to this point of 1900 when you start working again
- (15) does that -- approximately 1900 did you agree with that?
- (16) A Right
- (17) Q Chief mate called you for cargo for topping off?
- (18) A Yes
- (19) Q Was this period that we ve been going over up till 1900
- (20) was this sort of typical for a turn around period in Valdez?
- (21) A Yes Yes I would say that
- (22) Q Now from 1900 which we took you up to up to the time of
- (23) grounding you were doing work up on the bridge and/or on
- (24) watch is that correct?
- (25) A From 1900 on, yes
- (26) Q When the vessel got underway and you ultimately returned

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- (1) from your docking station to the bridge?  
 (2) A Yes  
 (3) Q When you returned to the bridge who was on the bridge?  
 (4) A The pilot I believe the captain I relieved the chief  
 (5) mate Jim Kunkel and I don't right offhand recall who the  
 (6) helmsman was  
 (7) Q Well without reading your testimony Radtke you testified  
 (8) in the Hazelwood trial does that refresh your recollection?  
 (9) A Yes  
 (10) Q You relieved Kunkel and he went below?  
 (11) A Yes  
 (12) Q And you are now the watch officer?  
 (13) A Yes  
 (14) Q Now after you returned to the bridge did Captain  
 (15) Hazelwood leave the bridge?  
 (16) A At - yes at some time later he did  
 (17) Q When he left the bridge was it prior to the Narrows?  
 (18) A Yes  
 (19) Q And when he left the bridge did he say anything to you  
 (20) about he was going to leave the bridge or why he was going to  
 (21) leave the bridge?  
 (22) A Yes he - he told me he was leaving the bridge and he told  
 (23) me why but I don't remember why  
 (24) Q All right Now my question to you today thinking back on  
 (25) it are you saying he did give you a reason?

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- (1) A The reason - the reason was he - was that he needed to  
 (2) discuss something that was bothering the chief engineer  
 (3) Q That's why he told you he was leaving the bridge?  
 (4) A Yes  
 (5) Q Did the captain tell - tell you or did you hear him  
 (6) announce when he was going to return?  
 (7) A I don't recall  
 (8) Q Prior to the Narrows ultimately isn't it correct that you  
 (9) were asked by the pilot to call the captain because the pilot  
 (10) was going to leave the vessel?  
 (11) A I called the captain on my own before we entered the  
 (12) Narrows I said he was almost finished doing what he  
 (13) needed to  
 (14) do that he'd be up directly and later sometime later after  
 (15) we had transited the Narrows, and I can't say exactly when I  
 (16) think the pilot mentioned said you ought to have the  
 (17) captain  
 (18) up here for debarking the pilot  
 (19) Q So it's correct that the pilot ultimately asked you to have  
 (20) the captain come to the bridge isn't that correct?  
 (21) A Yes  
 (22) Q So you're saying you had a conversation with Captain  
 (23) Hazelwood in the interim?  
 (24) A Yes  
 (25) Q And that conversation tell me again what did you say and  
 (26) what did the captain say?  
 (27) A I informed the captain that we were approaching the  
 (28) Narrows

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- (1) and he asked if there was any problems any traffic and of  
 (2) course there wasn't and he said that he'll be up as soon as  
 (3) he  
 (4) finishes doing whatever he was doing and I don't recall  
 (5) what  
 (6) he said as far as what he was doing  
 (7) Q In any event as you recollect it back as you're sitting  
 (8) here right now the period of time Captain Hazelwood was off  
 (9) the bridge would you agree was not a short time?  
 (10) A I would say it was longer than - than I was used to  
 (11) Q In your experience on these other vessels in Valdez did  
 (12) you ever experience when you had that same watch let's say  
 (13) coming through the Narrows as you're going out -  
 (14) A Um hum  
 (15) Q - did you ever experience a captain walking off the bridge  
 (16) and staying off the bridge through the Narrows?  
 (17) A I can't recall no  
 (18) Q You say you can't recall you mean no you do not?  
 (19) A I can't recall having been on the bridge with - without a  
 (20) master present through the Narrows  
 (21) Q Now when you called Captain Hazelwood to come back to  
 (22) the  
 (23) bridge you remember what you said to him?  
 (24) A Yes  
 (25) Q After the pilot the pilot said to get the captain you  
 (26) telephoned Captain Hazelwood?  
 (27) A Yes  
 (28) Q And what did you say to him the pilot wants you back or -

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- (1) A I told him that we're getting close to the pilot station  
 (2) that we need him on the bridge and he said I'm on my way  
 (3) Q Okay From the time you - of that telephone call about  
 (4) what was the interval of time between that call and Captain  
 (5) Hazelwood arriving on the bridge?  
 (6) A I don't recall  
 (7) Q Now you took Cousins - you took LeCain's watch that  
 (8) evening the mid watch at least the beginning of it?  
 (9) A Yeah  
 (10) Q After you stood your watch?  
 (11) A I was standing part of his watch yes  
 (12) Q Why did you do that?  
 (13) A Because he didn't get called when you normally call the -  
 (14) the relieving watch  
 (15) Q Maybe you didn't understand my question Did LeCain ask  
 (16) you to take his watch for him because he was tired?  
 (17) A No  
 (18) Q Why did you take LeCain's watch?  
 (19) A Because when I returned to the bridge he wasn't there  
 (20) So  
 (21) I had no choice I can't just leave the bridge without being  
 (22) relieved  
 (23) Q When you returned to the bridge you mean after dropping  
 (24) the pilot off?  
 (25) A Correct yes sir  
 (26) Q But isn't it normal for you to send someone down to wake

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- (1) the watch officer?  
 (2) A No, the - the watch is called from the bridge  
 (3) Q Well who calls it from the bridge?  
 (4) A Normally I would  
 (5) Q You didn't though did you that evening?  
 (6) A Well I didn't have a telephone with me out on deck I was  
 (7) out on deck during the time that - the relieving watch would  
 (8) be called The A Bs called their relief No one called my  
 (9) relief  
 (10) Q All right but then you got back do the bridge did you  
 (11) not?  
 (12) A Yes  
 (13) Q And you could have called LeCain when you returned to the  
 (14) bridge could you not?  
 (15) A I could have yes  
 (16) Q But you didn't?  
 (17) A I did not  
 (18) Q Why didn't you?  
 (19) A Because I was busy  
 (20) Q Now getting back to where we were on the document the  
 (21) next document I have which they call it the bridge rough log  
 (22) and then in parentheses bell book Better name for it is the  
 (23) bell book?  
 (24) A Yes  
 (25) Q This is the document you were just referring to is it not

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- (1) that you said the chief mate would have put entries in when he  
 (2) was on the bridge?  
 (3) A Yes  
 (4) Q When you make the entries in the bell book here like the  
 (5) pilot aboard and you're up on the bridge would you make it in  
 (6) the bell book and then make it in the log at the same time?  
 (7) A Not at the same time no Later  
 (8) Q You make your entries in the log later?  
 (9) A At the end of the watch  
 (10) Q Okay so did you make all your entries for the 20 to 2400  
 (11) watch that were in the bridge log after the grounding?  
 (12) A Yes  
 (13) Q You copied them from the bell book were you looking at?  
 (14) A Yes sir  
 (15) Q Now from 2220 down through what entry is your  
 handwriting?  
 (16) A 2253  
 (17) Q Potato Point abeam?  
 (18) A Yes  
 (19) Q Whose entry is the next entry 2314 slow ahead symbol?  
 (20) A I don't know I assume it was the captain's  
 (21) Q 2324 pilot off full ahead the entry for pilot off would  
 normally be made when the pilot gets into his boat' Is that  
 (23) when it's made?  
 (24) A Yes  
 (25) Q And you were down there with him at that time were you

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- (1) not?  
 (2) A Yes  
 (3) Q And can you tell from the handwriting that's not your  
 (4) writing?  
 (5) A That's not my writing  
 (6) Q What about the next entry indicating 2352 LPU?  
 (7) A That is not mine  
 (8) Q At that time 2352 what officers were on the bridge just  
 (9) you and Captain Hazelwood?  
 (10) A Correct  
 (11) Q So that would be Captain Hazelwood as far as you know?  
 (12) A Yes  
 (13) Q Did you see him put the entry in the book?  
 (14) A No  
 (15) Q And in fact you didn't know it had been put in Load Program  
 (16) Up did you?  
 (17) A No  
 (18) Q Tell us what Load Program Up is?  
 (19) A It's a computer controlled system bringing - bringing the  
 (20) rpm engine rpms up gradually to prevent damage to the  
 engine  
 (21) It's just a - a program to - bringing the engine up to full  
 (22) sea speed  
 (23) Q So you were at that time based on your recollection you  
 (24) were full ahead maneuvering speed is that correct at 2352?  
 (25) A When I returned to the bridge, I had no idea where we -

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- (1) what was going on I didn't know what was going on with  
 the  
 (2) engines  
 (3) Q When you first returned to the bridge you didn't know it  
 (4) was in Load Program Up but the captain told you it was in Load  
 (5) Program Up is that what you're saying?  
 (6) A Yes yes  
 (7) Q Now the next document I'd like to show you in the sequence  
 (8) of events here we want to refer to is this VHF radio  
 (9) communication transfer Did you ever see this before?  
 (10) A Parts of it I have  
 (11) Q This is pre-designated Number 16 and I'd like to have this  
 (12) marked as the next Exhibit Number  
 (13) UNIDENTIFIED SPEAKER That would be 48792  
 (14) BY VIDEO EXAMINER  
 (15) Q Okay now turning to the 2330 and 54 second transmission  
 (16) that's recorded there it's on - it's on Page 4 I think  
 (17) of - their numbered Page 4 do you see up there the entry on  
 (18) the top of the page is 2326 They go in sequence  
 (19) A 2326 is the top  
 (20) Q The first yeah and if you look a little down from there  
 (21) you see a 2330 54?  
 (22) A Yes  
 (23) Q And it's from the Exxon Valdez?  
 (24) A Yes  
 (25) Q And it says at the present time I'm going to alter my

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- (1) course to 200 and reduce speed to about 12 knots to ah wind  
 (2) my way through the ice ah Naked Island and ETA might be a  
 (3) little out of whack but ah once we re clear of the ice out of  
 (4) Columbia Gla - just has G l a with some dots - Bav we ll  
 (5) give you another shout over you see that transmission?  
 (6) A Yes  
 (7) Q Did you hear Captain Hazelwood make this transmission?  
 (8) A No no I did not  
 (9) Q In connection with his advising he s going to reduce speed  
 (10) I want you to look at the previously - we looked at the bell  
 (11) logger can you put that exhibit out there?  
 (12) A Yes  
 (13) Q Do you see any speed reduction that Captain Hazelwood is  
 (14) advising vessel traffic of in his 2330 and 54 second  
 (15) transmission reflected on the bell logger?  
 (16) A No  
 (17) Q And in fact while we re on this subject isn t it a fact  
 (18) and we ve already covered this that at 2352 according to the  
 (19) log entry Captain Hazelwood put the engine in Load Program  
 (20) Up isn t that correct?  
 (21) A Correct  
 (22) Q He did that on his own and then told you about it isn t  
 (23) that correct?  
 (24) A Yes  
 (25) Q And you ve already described what Load Program Up is and

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- (1) Load Program Up was increasing speed was it not?  
 (2) A Yes  
 (3) Q When you returned do the bridge after dropping the pilot  
 (4) off did you know what course the vessel was on once you made  
 (5) this 200 course change or not?  
 (6) A When I first returned to the bridge no I did not know  
 (7) what the course was  
 (8) Q Did you subsequently find out what the course was?  
 (9) A Yes  
 (10) Q What was it?  
 (11) A I don't recall I can tell you that when I returned to the  
 (12) bridge and fixed the - took a fix off of - I don't even  
 (13) recall the time that as I was plotting that the vessel was  
 (14) beginning to turn to course whether it was the course of  
 (15) 200,  
 (16) I don't recall  
 (17) Q Do you recall a course change to 180 that followed after  
 (18) that after the 200 course change?  
 (19) A Yes I do  
 (20) Q You were on the bridge then and you remember that course  
 (21) change?  
 (22) A Yes  
 (23) Q Did the captain order that course change?  
 (24) A Yes, he did  
 (25) Q Now looking at the transcript again which we have marked  
 (26) didn t we mark it? Did I mark that transcript? Yeah 48792

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- (1) do you see any transmission from Captain Hazelwood advising  
 (2) Vessel Traffic Center that the vessel has changed course after  
 (3) the 2330 54 advises about the 200 course change?  
 (4) A No  
 (5) Q Advising them about the 180 course change?  
 (6) A I don't see it anywhere in here  
 (7) Q And based on your knowledge of the regulations for Vessel  
 (8) Traffic Center that course change should have been recorded  
 (9) is that correct?  
 (10) A I assume that it already - that it had been  
 (11) Q ~~Yes~~ but in answer to my question based on your  
 (12) understanding of the regulation which I read to you before the  
 (13) course change to 180 should have been reported?  
 (14) A Yes  
 (15) Q Is that your understanding? Now when Captain Hazelwood  
 (16) changed course to 180 up to that time had he said anything to  
 (17) you about his intention to give you the con turn the con over  
 (18) to you or was it after the course change to 180?  
 (19) A First mention of that was after the course change  
 (20) Q Okay And tell us what the captain said to you  
 (21) A When?  
 (22) Q This first mention after the course change the first  
 (23) indication that you have that Captain Hazelwood intends to  
 (24) leave the bridge and turn the con over to you What did he say  
 (25) to you first that you remember?

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- (1) A As far as turning the con over to me we had - we had  
 (2) discussed what - what he had intended asked me if I was  
 (3) comfortable with that I told him what I thought and what I  
 (4) saw and how much room we had between the reef and the  
 (5) ice had - I don't want to characterize it as being surprised  
 (6) but I had not seen the ice on radar up until the time that I  
 (7) returned to the bridge from dropping the pilot off So we  
 (8) had  
 (9) some discussion about that He asked me again if I was  
 (10) comfortable with that our attempt to get around the ice and  
 (11) that he wanted to leave the bridge for just a few minutes did  
 (12) I feel comfortable and I said yes  
 (13) Q Okay would you be able to indicate on this chart -  
 (14) MR O NEILL That s a good place to stop in the tape  
 (15) sir  
 (16) THE COURT Ladies and gentlemen please remember my  
 (17) oft repeated instruction that you not read or listen to  
 (18) anything about the case We ll be in recess now until 8 00  
 (19) tomorrow morning  
 (20) MR LYNCH Your Honor -  
 (21) MR SANDERS Your Honor Mr Lynch is trying to  
 (22) communicate  
 (23) MR LYNCH I just have a minor administrative matter  
 (24) one sentence matter  
 (25) THE COURT Jury is excused at this time and I ll see  
 (26) counsel

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- (1) (Jury out at 2 00 p m )
- (2) THE COURT Is it something we need on the record?
- (3) MR LYNCH I misidentified an exhibit Your Honor I
- (4) just wanted to recite it
- (5) MR LYNCH Your Honor I m advised that I identified
- (6) Exhibit 3451B as 3431B and I d like to ask that the record be
- (7) corrected to reflect admission of 3451B as offered with Mr
- (8) Bell
- (9) THE COURT You re going to have to say that again I
- (10) confused the numbers in listening to you The correct number
- (11) is 3451?
- (12) MR LYNCH 51
- (13) THE COURT And you called it -
- (14) MR LYNCH 31 3431 Baker in both cases
- (15) THE COURT Okay
- (16) MR O NEILL We have no objection
- (17) THE COURT We ll make that change thank you
- (18) MR O NEILL I have one minor thing We have about
- (19) five minutes of slides tomorrow of the Valdez on the rock with
- (20) the oil coming out and we re going to put them on with a slide
- (21) projector Could we with your permission turn down the
- (22) lights for those five minutes so that the slides - is that
- ( 3) okay sir?
- ( 4) THE COURT We can handle that
- (25) MR NEAL Could Mr O Neill and I have a word with

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- (1) you just as you re going out? It s purc housekeeping
- (2) THE COURT Sure We re in recess now
- (3) THE CLERK This court is in recess until eight a m
- (4) tomorrow morning
- (5) (Recess at 2 02 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  
(16) JOY S BRAUER RPR  
Notary Public for Alaska  
(22) My Commission Expires 5 10 97

**Look See Concordance Report**

UNIQUE WORDS 2,844  
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**SINGLE FILE CONCORDANCE**

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 2301 3 2307 21 2314 7  
 2316 4 14 2323 23  
 Yorktown (1) 2288 17  
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 you'd (7) 2177 22 2184 15

Vol 16 2373

(1) IN THE UNITED STATES DISTRICT COURT  
 (2) FOR THE DISTRICT OF ALASKA  
 In re: ) Case No. A89-0095 CIV (RRH)  
 (3) ) Anchorage, Alaska  
 The EYON VALDEZ ) Tuesday May 24, 1994  
 (4) ) 8:00 a.m.

TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE H. RUSSEL HOLLAND, JUDGE  
 VOLUME 16, Pages 2373 2385  
 Realtime Transcription

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(1) PROCEEDINGS  
 (2) (Jury in at 8 00 a m )  
 (3) (Call to Order of the Court )  
 (4) THE COURT Good morning, ladies and gentlemen This  
 (5) is the continuation of trial in case A89 0095 Civil in re The  
 (6) Exxon Valdez  
 (7) We re ready for another witness  
 (8) MS WAGNER Actually Your Honor we were in the  
 (9) middle of Greg Cousins deposition and the following question  
 (10) had been posed I believe  
 (11) Question Would you be able to indicate on this chart  
 (12) 16708 which we previously marked where you saw the ice on  
 the  
 (13) radar  
 (14) CONTINUED DIRECT EXAMINATION OF GREGORY COUSIN  
 (Video)  
 (15) BY VIDEO EXAMINER  
 (16) Q Would you be able to indicate on this chart 16708 which we  
 (17) previously marked where you saw the ice on the radar?  
 (18) A Approximately, not with any degree of accuracy, no I  
 (19) think it was - I drew the best picture that I could draw on  
 (20) the original chart that was produced in the NTSB hearings  
 (21) Q Can you give us an idea on this chart your recollection of  
 (22) where that ice was?  
 (23) A Vague  
 (24) Q Can you take a pencil and draw where the leading edge of  
 (25) the ice was as you recollect it when Captain Hazelwood was up

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In Court  
 (15) Deputy Clerk. TOM MURTIASHAW  
 U.S. District Court  
 222 W 7th Avenue #6  
 Anchorage AK 99513  
 Ph. 907/271-4529  
 (16) Reported by JOY S. BRALER, RPR  
 Registered Professional Reporter  
 Midnight Sun Court Reporters  
 2500 Denali Street, Suite 1505  
 Anchorage, AK 99503  
 Ph- 907/288-7100

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(1) there and in the process of turning the con over to you?  
 (2) A Wait a minute now As I saw it on the radar '  
 (3) Q Well before you mark the chart what I m interested in  
 (4) you have just testified that in this discussion with Captain  
 (5) Hazelwood -  
 (6) A Yes  
 (7) Q - your testimony was that you told him about the ice and  
 (8) where you saw it?  
 (9) A Yes, yes  
 (10) Q And that s what I want you to tell me now and to mark on  
 (11) the chart if you can where you saw the ice as you were  
 (12) describing it to Captain Hazelwood the leading edge  
 (13) A I'm not measuring any distances here  
 (14) Q No I understand you re doing this free hand on the chart  
 (15) A Something like that  
 (16) Q Could you make that line a little darker so we can see  
 (17) where the leading edge of the ice was?  
 (18) A Actually it kind of fell off more like this  
 (19) Q And the ice is so we all understand is south of that  
 (20) line southrly of that line? Is that the leading edge towards  
 (21) your vessel - westerly? It s across the channel?  
 (22) A Across  
 (23) Q So maybe you could draw some hash lines on that to indicate  
 (24) ice  
 (25) Thank you As you saw the ice then when Captain

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- (1) Hazelwood was about to turn the con over to you - I m going to  
 (2) hold this up so that the camera can pick up what was drawn -  
 (3) is it correct then that you saw the ice extending out the  
 (4) easterly limit of the traffic separation scheme as you ve  
 (5) drawn it and going all across the entire traffic separation  
 (6) scheme in the area you ve drawn it is that correct?  
 (7) A It's approximate I don't know that it was across the  
 (8) entire scheme but - today I didn't even measure what is  
 (9) this distance here I thought I said it was less than -  
 (10) approximately a mile We had a mile clearance to get  
 between  
 (11) Bligh Reef light or something like that  
 (12) Q You had a mile clearance between the buoy?  
 (13) A That's kind of what I recall now  
 (14) Q Now when the captain was going to leave to go below he  
 (15) just before leaving put it on load program up which you ve  
 (16) told us about?  
 (17) A Right  
 (18) Q So in other words Captain Hazelwood left the bridge and  
 (19) correct me if I m wrong two minutes before your vessel was  
 (20) going to be abeam of the position that you re testifying to  
 (21) that he told you to make the turn in?  
 (22) A Yes  
 (23) Q Is that correct?  
 (24) A Yes  
 (25) Q 120 seconds?

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- (1) A Right  
 (2) Q What was the urgency as you understood it in what Captain  
 (3) Hazelwood told you why he left the bridge at this time two  
 (4) minutes before the turn that you ve testified he told you to  
 (5) make at Busby Island light?  
 (6) A I don't know that I ever understood the urgency, but I  
 (7) understood that he needed to gather figures to pass on to  
 (8) Alyeska or whatever the name of our agent is up there  
 (9) Q Did he use the word messages to you when he said I got to  
 (10) send some messages or do you recall the term he used?  
 (11) A I don't recall specifically if he used that term  
 (12) Q And you just testified just a minute ago you said you  
 (13) weren't sure if you ever understood the urgency of it What  
 (14) did you mean by that? Is it that you questioned the urgency?  
 (15) A In comparison to what we were doing Who cares about  
 cargo  
 (16) figures? I mean that's my opinion, but evidently he felt  
 (17) comfortable I indicated to him that it's not a  
 (18) particularly - should not have been a particularly tricky  
 (19) maneuver  
 (20) Q On that evening when you were thinking of your mind set  
 (21) right then did you question the necessity of Captain Hazelwood  
 (22) leaving the bridge for the reason that he gave to you in the  
 (23) circumstances the vessel was in which you ve testified to  
 (24) outside the traffic separation scheme?  
 (25) A I didn't really have time to - I didn't really have - I

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- (1) was a bit busy with navigating the vessel to concern myself  
 (2) with whether it was unusual or not It was just that's the  
 (3) captain that s what he's doing  
 (4) Q Now your prior testimony that you just gave as you  
 (5) reflect on it now you find it to have been unusual is that  
 (6) what you re saying?  
 (7) A Yes I'm sure he does too  
 (8) Q I show you 32504 This is a photograph taken at night in  
 (9) the wheelhouse of the Exxon Valdez Do you recognize the  
 (10) photograph as being somewhat representative of what you had  
 on  
 (11) the evening of March 23 24?  
 (12) A Somewhat The lights are a little bit too bright but  
 (13) Q You like them dimmer than that?  
 (14) A Yes it was quite a dark evening  
 (15) Q Okay And this photograph shows this overhead rudder  
 angle  
 (16) indicator is illuminated?  
 (17) A Yes  
 (18) Q So you can readily see that can you not?  
 (19) A Yes  
 (20) Q You already testified that Captain Hazelwood knew because  
 (21) you discussed it with him that you were outside the traffic  
 (22) separation scheme when he was turning the con over to you?  
 (23) A Yes  
 (24) Q He further knew the vessel was on a course of 180?  
 (25) A Yes

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- (1) Q He also knew that the vessel s course of 180 was heading if  
 (2) continued down toward the Bligh Reef area?  
 (3) A Yes  
 (4) Q He also knew that there was ice in the channel which you  
 (5) previously discussed and have marked on the chart?  
 (6) A Yes  
 (7) Q Across the traffic separation scheme?  
 (8) A Yes  
 (9) Q He knew that you were a Navy third mate had come up from  
 a  
 (10) seaman up to a third mate about when you had made your third  
 (11) mate?  
 (12) A Yes  
 (13) Q Got your third mate license?  
 (14) A Yes  
 (15) Q He further knew that when he was turning the con over to  
 (16) you that it was Second Mate LeCain s watch?  
 (17) A Yes, he did  
 (18) Q He further knew that the steering was on auto gyro because  
 (19) he had put it in auto gyro?  
 (20) A Yes  
 (21) Q And by the way did Captain Hazelwood before he left the  
 (22) bridge tell you it was auto gyro?  
 (23) A I only knew when the watch was changing out Mr Carr  
 (24) informed me that it had been put on  
 (25) Q Did you find it unusual that Captain Hazelwood had ordered

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- (1) the engines to be put in load program up under the conditions  
 (2) that existed that evening where the vessel was located outside  
 (3) the traffic separation scheme and with ice in the traffic  
 (4) separation scheme ahead of you?  
 (5) A Yeah Yes I did  
 (6) Q After he departed can you tell us what you did next?  
 (7) A I went to the steering console and put the steering into  
 (8) hand mode helm mode  
 (9) Q Did you do that yourself?  
 (10) A Yes  
 (11) Q And you've already testified that you confirmed by looking  
 (12) at the indicators on the SRP 2000 that that switch had been  
 (13) made?  
 (14) A Yes  
 (15) Q Then what did you do next?  
 (16) A I - I believe that's when I took the fix or shortly  
 (17) thereafter, I was headed out to the port bridge wing, took a  
 (18) visual bearing of Busby light  
 (19) Q Okay And what did you use for the time that you were  
 (20) doing this? Did you use your wristwatch?  
 (21) A Yes  
 (22) Q And had you previously synchronized your wristwatch with  
 (23) the bridge watch?  
 (24) A Yes  
 (25) Q You do that as a matter of routine when you come on watch?

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- (1) A Yes And also the gear test requires that  
 (2) Q The first thing you did was take a bearing with an azimuth?  
 (3) A Yes  
 (4) Q I'm going to ask you prior to that and in your sailing  
 (5) experience have you ever utilized any other method to  
 (6) determine when a navigational aid was abeam when you  
 (7) needed to  
 (8) do it rapidly?  
 (9) A Yes  
 (10) Q What method did you use?  
 (11) A I've used radar for that purpose I've also just in  
 (12) conjunction with the radar placed an azimuth circle set up  
 (13) on - with the vanes set so I could actually take a rough sight  
 (14) of it from inside the wheelhouse  
 (15) Q Why did you in this situation take the time to take an  
 (16) azimuth bearing to make it precise as opposed to doing it in a  
 (17) rougher manner like I described?  
 (18) A I can't give you a satisfactory answer for that It  
 (19) puzzles me also  
 (20) Q Now after you took the azimuth bearing you then walked  
 (21) into the wheelhouse from the port wing?  
 (22) A Yes  
 (23) Q And what did you do next?  
 (24) A I read the range radar range off of Busby Island the  
 (25) point - the point  
 (26) Q And then what did you do after you got that distance?

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- (1) A I plotted the fix  
 (2) Q So you walked back into the chart room and while you were  
 (3) in this position we mentioned yesterday that you couldn't see  
 (4) anything up ahead?  
 (5) A Correct  
 (6) Q Okay Now you have plotted the fix and tell me from the  
 (7) time you walked out on the port wing of the bridge to take the  
 (8) azimuth bearing that time at that time was 55 the time you  
 (9) started this process?  
 (10) A Yes  
 (11) Q Can you tell us when did you receive a first report from  
 (12) the lookout?  
 (13) A I had just finished plotting position at the 2355 fix as  
 (14) the lookout came into the chart room and reported Bligh  
 (15) Reef light She gave the color and characteristics of the light  
 (16) Q Did she tell you where the light was in bearing with  
 (17) reference to your heading?  
 (18) A Yes  
 (19) Q What did she say?  
 (20) A I believe she said it was a point on the port bow - a  
 (21) point on the starboard bow, excuse me  
 (22) Q And the point in nautical terms for those that don't know  
 (23) is how many degrees?  
 (24) A 11 and a quarter degrees  
 (25) Q Now when she made that report to you did you reach a

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- (1) conclusion as to what light she was reporting?  
 (2) A I - I knew what light it was I'd seen it before she had,  
 (3) actually  
 (4) Q Okay And did she make a subsequent report to you?  
 (5) A She - yes Some moments later and I can't say how  
 (6) much  
 (7) later she corrected her initial report and the characteristic  
 (8) of the light  
 (9) Q Do you remember what the correction was or -  
 (10) A I think she'd reported it as six or seven second light and  
 (11) then she corrected hers to a five second light  
 (12) Q To what it actually was on the chart?  
 (13) A Yeah yeah  
 (14) Q Where were you when she made that second report? Had  
 (15) you  
 (16) come out of the chart room or were you still in the chart room?  
 (17) A I was in the wheelhouse  
 (18) Q You plotted the position she had made the first report  
 (19) while you were in the chart room?  
 (20) A Yes  
 (21) Q You walked out of the chart room now what did you do  
 (22) next?  
 (23) A That's when I approached the radar It was giving the  
 (24) command - I was giving the command when she made her  
 (25) second  
 (26) report as I recall  
 (27) Q Giving what command?  
 (28) A The rudder order the ten degree right rudder

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- (1) Q I see Okay So you gave that order then you went – you  
 (2) went to the telephone?  
 (3) A I went to a bulkhead  
 (4) Q Got the light?  
 (5) A Right, flashlight went to the telephone It's on the  
 (6) bulkhead separating the chart room and the wheelhouse  
 and  
 (7) called the captain's office  
 (8) Q Were you in the wheelhouse when you were making that call  
 (9) or were you in the chart room?  
 (10) A I was in the wheelhouse  
 (11) Q And then I think we talked about before you turned around  
 (12) to make the telephone call to Captain Hazelwood and you  
 didn't  
 (13) watch the – you didn't watch the helmsman?  
 (14) A I turned to take a flashlight from a holder that was on an  
 (15) opposite bulkhead and I called Captain Hazelwood as he  
 had  
 (16) instructed me to do  
 (17) Q Okay And again you agree you did not watch I think you  
 (18) testified you did not watch Kagan to see if he executed the  
 (19) order?  
 (20) A No, I did not  
 (21) Q You got on the phone with Captain Hazelwood Can you tell  
 (22) us to the best of your recollection what did you say and what  
 (23) did he say?  
 (24) A I told Captain Hazelwood that we had initiated our turn  
 (25) back to the traffic lanes and that it appeared to me that we

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- (1) may still get into some of the ice And he said do you think  
 (2) that – are they real big? Well I couldn't see them And he  
 (3) said do you think there's any problem? And I said I – I  
 (4) didn't know That was the gist of the conversation This is  
 (5) not verbatim I don't recall  
 (6) Q Okay Now you have testified you're having this  
 (7) conversation with Captain Hazelwood About how long would  
 you  
 (8) estimate you were on the telephone with him?  
 (9) A Quite frankly, I think I lost track of time  
 (10) Q Mr Cousins just focusing on Kagan when you ordered  
 Kagan  
 (11) to go right ten degrees rudder you then turned around and  
 went  
 (12) to the telephone?  
 (13) A Yes  
 (14) Q You did not watch to see if he executed the order and  
 (15) you –  
 (16) A Right  
 (17) Q – you did not watch the rudder angle indicator Would you  
 (18) have done things differently in that respect just those few  
 (19) moments with respect to that order?  
 (20) A I would never make that mistake again with any  
 helmsman,  
 (21) not just Mr Kagan But I –  
 (22) Q All right With any helmsman but if you had had that  
 (23) knowledge it would have motivated you to watch him is that  
 (24) correct?  
 (25) A I would not have bothered to turn my back on the – the

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- (1) whole process in piloting the vessel which is essentially  
 what  
 (2) I did when I turned to make the telephone call  
 (3) Q After you make the call to Captain Hazelwood then tell us  
 (4) what you did?  
 (5) A After the call?  
 (6) Q Yes You hang up?  
 (7) A I hang up and the sequence of my movements from then  
 on are  
 (8) not clear  
 (9) Q Did you?  
 (10) A I – I approached – I recall going to the radar From  
 (11) then on I can – I can tell you what I did I don't know that  
 (12) the sequence is correct That's as I recall the first moment  
 (13) of great concern that I had –  
 (14) Q When you looked at the radar?  
 (15) A – when I returned  
 (16) Q What gave you great concern?  
 (17) A Well nothing had happened as far as a heading change  
 (18) Q How did you –  
 (19) A Or not much  
 (20) Q How did you make the judgment that nothing had happened  
 as  
 (21) far as a heading change?  
 (22) A Well, looking at the radar, the heading flasher the  
 (23) bearing of Bligh Reef light in relation to the heading there's  
 (24) a heading readout display from the radar  
 (25) Q All right Can you tell us what did you do next?

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- (1) A As I recall I told the helmsman to get the rudder over to  
 (2) ten right and immediately I turned and looked out went out  
 to  
 (3) the port bridge wing and looked back at Busby Island light  
 (4) Q And where did you see Busby Island light?  
 (5) A It was –  
 (6) Q Do you want to look at this chart?  
 (7) A – abaft the port beam  
 (8) Q Abaft the port beam?  
 (9) A Abaft the port beam Perhaps broad on the port quarter,  
 as  
 (10) I recall  
 (11) Q Were you able to tell from looking at the light whether you  
 (12) were in the white sector or the red sector just from looking  
 (13) at it?  
 (14) A It observed a white light  
 (15) Q You're out on the port wing and you looked back at Busby  
 (16) light what did you do next?  
 (17) A I entered the wheelhouse I'm not real clear on this I  
 (18) approached the three centimeter radar I don't know  
 whether  
 (19) when I went into the chart room I don't recall it For some  
 (20) reason at some point I thought that I had gone back to the –  
 (21) the chart just briefly, but I'm not sure about that at all  
 (22) There's the 20 degree rudder command also was given at  
 about  
 (23) that time when I re-entered the wheelhouse  
 (24) Q Okay You gave a 20 degree right rudder order to Kagan  
 (25) and can you tell me what did you do then? Did you – in



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- (1) connection with did you observe - what did you observe right  
 (2) after you gave him the order? Did you watch him?  
 (3) **A I'm afraid that I - this is where I may have returned to  
 (4) the chart room**  
 (5) **Q So is it correct that when you gave him the 20 degree right  
 (6) rudder order you did not observe whether he put the wheel  
 (7) further to starboard?**  
 (8) **A Correct**  
 (9) **Q And you did not observe the rudder angle indicator to see  
 (10) if it increased from its position you last saw it at at six?**  
 (11) **A No I observed it moving from six towards ten and I didn't  
 (12) stand there and watch it I don't recall watching it until it  
 (13) stopped on ten I returned my attention to either the rock or  
 (14) the radar or I would imagine the radar**  
 (15) **Q And you may have gone in the chart room you said is that  
 (16) correct?**  
 (17) **A It - to the best of my - my recollect - I actually don't  
 (18) remember going back into the chart room but I - I have a  
 (19) sense that I did and I just don't recall it because the  
 (20) circumstances that I found myself in That I may have  
 (21) neglected observing the swing from ten to twenty also**  
 (22) **Q On the rudder angle indicator is what you're saying?**  
 (23) **A Correct yes**  
 (24) **Q All right So after the hard right did you then make a  
 (25) telephone call to Captain Hazelwood that you just mentioned?**

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- (1) **A Yes**  
 (2) **Q And what did you say to him?**  
 (3) **A I told the captain that we're in serious trouble And he  
 (4) says what do you mean? I said we're in very serious  
 (5) trouble  
 (6) that we are probably going to ground or something to that  
 (7) effect**  
 (8) **Q What did he say?**  
 (9) **A And he said well where's the rudder? And I said it's  
 (10) hard right rudder And then I looked at the rudder angle  
 (11) indicator and it was still at 20 and I told the helmsman to  
 (12) get the rudder over to hard hard right That's probably the  
 (13) only time I watched him that evening**  
 (14) **Q And then you hung up or did you actually feel or hear the  
 (15) grounding while you still had the telephone in your hand?**  
 (16) **A We were making - there are a series of - of shocks to the  
 (17) vessel It felt as I recall three - it was - gave me the  
 (18) sensation on the bridge of having run over speed humps  
 (19) That's  
 (20) exactly what it felt like and I - actually the captain was  
 (21) still on the phone and I said we're going aground and I just  
 (22) hung up and he was on the bridge -**  
 (23) **Q Okay**  
 (24) **A - immediately thereafter**  
 (25) **Q Did you give any further orders to Kagan after the hard  
 (26) right?**  
 (27) **A Yes I did The picture I had in my mind of where the -**

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- (1) **the position of the vessel was the - that the north -  
 (2) northernmost point of the reef My fear was that as the  
 (3) vessel  
 (4) continued to swing, and we were still - seemed to be making  
 (5) way through over the reef My concern was that the vessel  
 (6) if  
 (7) it continued to swing as it was was going to hole the engine  
 (8) room and I ordered a hard left As I did that, the captain  
 (9) was right there, and after that he really took control of  
 (10) anything that went on**  
 (11) **Q I'm just asking do you have any explanation why the course  
 (12) recorder does not indicate any change off of 180 shortly after  
 (13) your 2356 or 2357 ten degree right rudder order? Based on  
 (14) your  
 (15) testimony those were the times that you would have given the  
 (16) order but it indicates the turn commencing at sometime by  
 (17) your estimate at 002 or 003 which is a gap of five to six  
 (18) minutes?**  
 (19) **A Yes**  
 (20) **Q Do you have any explanation for that?**  
 (21) **A It appears that we were just - we were still steering  
 (22) 180**  
 (23) **Q Now turning to the bell logger can you tell us what was  
 (24) the first time that there was any reduction of speed ordered by  
 (25) Captain Hazelwood as shown on the bell logger at least  
 (26) reflected there after the grounding?**  
 (27) **A That's half ahead at 18 minutes after midnight 18 54  
 (28) Q 18 and 54 seconds is that correct?**

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- (1) **A Um hum**  
 (2) **Q So the bell logger shows that it's almost at 19 is that  
 (3) correct?**  
 (4) **A Correct**  
 (5) **Q And if the grounding occurred at 008 just based on your  
 (6) best estimate before that first bump on the course recorder  
 (7) just assuming that to be the initial grounding there was an  
 (8) interval of about nine minutes after the initial grounding that  
 (9) the engine was put to half ahead?**  
 (10) **A Yes**  
 (11) **Q Now who ordered the engines ultimately stopped which is  
 (12) indicated on the bell logger at time 19 and 49 seconds which  
 (13) is 19 minutes after midnight and 45 seconds is that correct?**  
 (14) **A Yes**  
 (15) **Q Who gave that order you or Captain Hazelwood do you  
 (16) recall?**  
 (17) **A I don't recall Somebody up there the captain or myself  
 (18) regained some composure and realized that we needed to  
 (19) do  
 (20) something to the engine I believe it was probably the  
 (21) captain He instructed me to call the engine room I may  
 (22) have  
 (23) called the engine room before or I just - I don't remember  
 (24) I remember being on the phone with them twice**  
 (25) **The captain as I recall gave the commands for engine  
 (26) speed reduction**  
 (27) **Q Did you at any time after the grounding smell crude oil**

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- (1) vapors?
- (2) **A Yes They were very strong**
- (3) **Q And what was the interval of time between the grounding and**
- (4) **your smelling this?**
- (5) **A Almost immediately**
- (6) **Q And in your mind did you make a judgment that there was**
- (7) **danger of a fire?**
- (8) **A Yes, that possibility crossed my mind**
- (9) **Q Now were you on the bridge when Captain Hazelwood**  
started
- (10) **maneuvering the vessel's engines?**
- (11) **A Yes**
- (12) **Q After the grounding?**
- (13) **A Yes**
- (14) **Q And on the bell logger it indicates that the first engine**
- (15) **maneuver was at time 0935 and 57 seconds when the vessel's**
- (16) **engine was put dead slow ahead Do you see that number**  
towards
- (17) **the top of the second column? It's about six entries down**
- (18) **It's this one right here**
- (19) **A The dead -**
- (20) **Q The dead slow ahead you see that?**
- (21) **A Slow ahead that's at 0935 57**
- (22) **Q Yes**
- (23) **A Yes**
- (24) **Q And to bring that to local time that's 0935 and 57**  
seconds is that correct?
- (25) **seconds is that correct?**

- (1) **A Yes**
- (2) **Q And do you see where he is twice in that transmission he**  
says we are working our way off the reef and then a little
- (3) **below that he says again we're trying to just get her off the**  
reef Do you see that?
- (4) **A Yes**
- (5) **Q What does that indicate to you he was trying to do?**
- (6) **A Could be meaning he was trying to get her off the reef**
- (7) **Q Were you on the bridge when Captain Hazelwood ultimately**  
stopped the engine after this commencement of the maneuvers
- (8) **at**
- (9) **about 0036 and the maneuvers -**
- (10) **A Yes**
- (11) **Q You were on the bridge?**
- (12) **A Yes**
- (13) **Q The maneuvers continued did they not from 0036 to time**  
1040 and 50 seconds where there's a stop and we're indicating
- (14) **the left hand column on that page can you look at that about**  
midway below the center Do you see that?
- (15) **A Yes**
- (16) **Q And is that correct then that the maneuvers continued for**  
about an hour and four or five minutes?
- (17) **A Yes**
- (18) **Q And is it also correct if you look down a little bit in**  
that column that on three occasions there's entries of full
- (19) **ahead on the engine?**

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- (1) **A Yes**
- (2) **Q Did Captain Hazelwood did you hear him say anything that**  
indicated to you what he was trying to do while he put his
- (3) **engines ahead?**
- (4) **A I heard part of a radio transmission And I assume it was**  
with vessel traffic that he thought perhaps there was a
- (5) **chance**
- (6) **to extricate the vessel from the reef**
- (7) **Q When you say extricate you mean free the vessel from your**  
strand?
- (8) **A Yes correct**
- (9) **Q I'm going to read you transmissions here that he gave and**  
then ask you your interpretation It was your understanding he
- (10) **was trying to get underway?**
- (11) **A I really didn't know what he was trying to do**
- (12) **Q But you did mention that you had heard part -**
- (13) **A I mean the - the definition of extricate is to pull**  
something out right?
- (14) **Q Yeah I want you to turn over to page nine on this same**  
exhibit
- (15) **A Um hum The transmissions'**
- (16) **Q Yes And I want you to look at the transmission that was**  
of 0107 29 when he's talking to the captain of the port?
- (17) **A Yes**
- (18) **Q Were you on the bridge when Captain Hazelwood had this**  
transmission with the captain of the port?
- (19) **transmission with the captain of the port?**

- (1) **A I see full ahead yes**
- (2) **Q Did you hear Captain Hazelwood during this hour and four or**  
five minutes giving orders to the helmsman?
- (3) **A Yes**
- (4) **Q And what orders did you hear that were given?**
- (5) **A I don't recall**
- (6) **Q During any of your studies did they ever teach you about**  
proper maneuvers when your vessel goes aground if you're
- (7) **going**
- (8) **to attempt to free your vessel from a strand?**
- (9) **A Yes**
- (10) **Q And what were you taught?**
- (11) **A Stay aground**
- (12) **Q And what - were you ever taught anything that if you were**  
going to risk trying to free yourself from a strand did you
- (13) **ever receive any instruction as to what steps you should take**  
to try and do that?
- (14) **A I can't recall having read anything recommending pulling a**  
grounded vessel in the condition that we were in from a
- (15) **ground,**
- (16) **but any - any text that I've read on those matters suggest**  
extreme caution and number of safety precautions
- (17) **Q And in connection with use of the engines if you go**  
forward - if you go aground in the forward part of your vessel
- (18) **forward of your engine room aft would it be more prudent to**  
back your engines rather than try and go ahead to free your
- (19) **vessel from a stern strand?**

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- (1) A If someone was trying to pull the ship off the reef?  
 (2) Q Yes  
 (3) A I remember - regardless of whether he thought that was a  
 (4) good thing to do or not you would back the engines  
 (5) Q And by going forward on the engines in the situation you  
 (6) were in if the vessel were able to have been freed from the  
 (7) strand might you not endanger tearing your engine room  
 apart?  
 (8) A Yes  
 (9) Q Now just directing your attention a moment to the course  
 (10) recorder tape again Do you have a copy of that over there in  
 (11) front of you? It's on that same page we were looking at  
 (12) before Just look and I want to direct your attention to time  
 (13) Greenwich time 936 approximately which is local time 0036  
 (14) Do you see that?  
 (15) A Yes  
 (16) Q And you see the heading of the vessel there at that time  
 (17) the heading was about 255? In the 180 to 170 quadrant?  
 (18) A Yes  
 (19) Q Now taking that time and the time that Captain Hazelwood  
 (20) was maneuvering the engine for the next hour and four minutes  
 (21) approximately the heading of the vessel changed while he was  
 (22) maneuvering the vessel did it not?  
 (23) A Yes  
 (24) Q And if we watch the swing of the vessel from the 255  
 (25) position she swings both port and starboard numerous times

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- (1) does she not?  
 (2) A Yes  
 (3) Q And the range of the swing the furthest it swings to  
 (4) starboard is over about 263 degrees 264 degrees do you see  
 (5) that?  
 (6) A Yes  
 (7) Q And the furthest she swings to port is over about up on  
 (8) top I guess it's about 249 degrees?  
 (9) A Yes  
 (10) Q So during this period of time that Captain Hazelwood was  
 (11) maneuvering the vessel in effect that was taking place and  
 (12) also using the helm was the vessel's heading was actually  
 (13) changing while she was on the reef between those -  
 (14) A Yes  
 (15) Q - degrees we just discussed?  
 (16) A Yes  
 (17) Q When the master turned the con over to you just before the  
 (18) grounding you said you were - you said you were busy?  
 (19) A Certainly  
 (20) Q Okay You were still - you still had the duty to navigate  
 (21) the vessel even though the master was aboard right?  
 (22) A Correct  
 (23) Q I mean was on the bridge?  
 (24) A Right  
 (25) Q And you were carrying out those duties?

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- (1) A Yes  
 (2) Q All right At the time that the master turned the con over  
 (3) to you and told you to - what did he actually say about the  
 (4) next course other than the one you were on? You were on 180  
 (5) is that right?  
 (6) A Yes  
 (7) Q Did he give you a next course to steer?  
 (8) A No  
 (9) Q Isn't that somewhat unusual?  
 (10) A Not in this circumstance no  
 (11) Q So he just told you when you came abeam of Busby Island  
 (12) what do what?  
 (13) A Start bringing the ship back into the lanes  
 (14) Q And left it to your discretion as to what courses to steer  
 (15) and what helm orders to give?  
 (16) A Yes  
 (17) Q Did he - had you ever been in that situation before where  
 (18) the master left you headed directly at a reef and left to your  
 (19) discretion what courses to steer and how much helm to use?  
 (20) A No  
 (21) Q Do you have an opinion about whether or not that's good  
 (22) maritime practice?  
 (23) A I wouldn't do it  
 (24) Q Did you have in mind the time he turned the con over to you  
 (25) and told you to make the turn at Busby Island what course you

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- (1) would steer to bring it back into the lanes?  
 (2) A Yes I had already formulated my approach to this - our  
 (3) passage between the reef and the ice back into the lanes  
 (4) Q What course did you in your mind - you didn't mark it on  
 (5) the chart?  
 (6) A No  
 (7) Q And what course did you have in your mind that you would  
 (8) steer to go from abeam of Busby Island between the ice and  
 (9) the reef?  
 (10) A It was not so much a course It was a series of headings  
 (11) Q And did you have those plotted out in your mind?  
 (12) A In my mind yes  
 (13) Q What were they?  
 (14) A I cannot recall My intent was because of the extent of  
 (15) the ice and how it appeared on radar that the reason for me  
 (16) not using more rudder angle more rudder initially was that I  
 (17) wanted a somewhat more gradual rate of change, heading  
 change  
 (18) so I didn't end up in the midst of the ice  
 (19) Q Okay Now where the ice was did not encroach on the red  
 (20) sector of Busby Island did it?  
 (21) A No  
 (22) Q So that there was room between the red sector and the front  
 (23) edge of the ice for the vessel to go through?  
 (24) A Yes there was plenty of room  
 (25) Q Did the master tell you before leaving the bridge anything

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- (1) about how you should – should steer the vessel or order the  
 (2) vessel steered to do that to avoid the ice?  
 (3) A As far as courses or rudder orders no  
 (4) Q He told you he was leaving for a few minutes did you  
 (5) expect him to be back on the bridge during these maneuvers?  
 (6) A Well I wasn't sure When he – when he first asked if I  
 (7) felt comfortable that he wanted to – would like to leave the  
 (8) bridge for a few minutes said if I'm not back in a few  
 (9) minutes give me a call So it was somewhat vague as to  
 (10) whether he was going to come up on his own or if he wanted  
 (11) me  
 (12) to give him a call when we were abeam Busby Which was  
 (13) only a  
 (14) couple of minutes, anyway  
 (15) Q Why didn't you turn when you were abeam Busby?  
 (16) A I thought I was That was the intent  
 (17) Q Well my understanding –  
 (18) A Oh okay  
 (19) Q – was that some time had passed from abeam Busby to your  
 (20) first helm order?  
 (21) A I can't give you a good explanation That was just poor  
 (22) seamanship on my part Lack of experience perhaps, in  
 (23) that  
 (24) situation I don't know But in situations where I  
 (25) maneuvered  
 (1) a vessel before I had never done anything like that  
 (2) Q The master was aware of your experience wasn't he?  
 (3) A I don't know  
 (4) Q He had evaluated you on a number of occasions at least

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- (1) two?  
 (2) A Yes  
 (3) Q Now you mentioned I believe Mr Cousins it was  
 (4) Tuesday You said looking back there a number of things you  
 (5) would have done differently and I think it was in response to  
 (6) a question about making sure that Kagan in fact followed your  
 (7) order to turn Could you describe for me sitting here in  
 (8) hindsight what things you would have done differently on the  
 (9) evening of the 23rd and early on the 24th?  
 (10) A I would never have bothered to go out and take a visual  
 (11) bearing from a repeater I would not have left the three  
 (12) centimeter radar I would not even have bothered to go  
 (13) back  
 (14) into the chart room I already knew where I was I would not  
 (15) have left the helmsman unattended as I did I would have  
 (16) taken  
 (17) a visual bearing but I wouldn't have – would not have  
 (18) walked  
 (19) out to the repeater and sighted it It was not necessary  
 (20) Q Why did you do it that evening?  
 (21) A I can't answer that  
 (22) Q You said you would have stayed at the radar?  
 (23) A I would have maintained the radar watch and right there  
 (24) where I can watch the helmsman the rudder angle  
 (25) indicator I  
 (1) can watch – I had fairly decent visibility, as far as viewing  
 (2) the lights the navigation lanes, Bligh Reef light I could see  
 (3) that I saw that before the lookout did  
 (4) There was just no reason for me to do what I did that

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- (1) evening as far as plotting the fix going out and sighting it  
 (2) turning my back on the helmsman calling the captain If he  
 (3) wasn't there who cares I mean obviously he had  
 (4) something  
 (5) else to do I should not have allowed myself to become  
 (6) inattentive to more serious –  
 (7) Q Mr Cousins you were telling us a number of things that  
 (8) weren't necessary on hindsight such as going out and taking a  
 (9) visual bearing and going in the chart room?  
 (10) A Correct  
 (11) Q Do you believe as you sit here today that one of the  
 (12) reasons you may have been doing that is because you were  
 (13) nervous at the time?  
 (14) A No  
 (15) Q Had you ever been in a situation that you were in at that  
 (16) time where you were conning a vessel by yourself outside of the  
 (17) traffic separation scheme?  
 (18) A Not in that particular situation Maybe briefly headed  
 (19) towards an anchorage somewhere approaching Long Beach  
 (20) or  
 (21) approaching the dock down – or the port in Panama but  
 (22) those  
 (23) are fairly straightforward approaches but certainly nothing  
 (24) like this  
 (25) Q Did that concern you that you were put into a situation  
 (1) that you had never had any experience in before?  
 (2) A I would have to say that I was – I was too busy with  
 (3) trying to navigate the – the vessel to experience concern If

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- (1) there was concern it was buried quite deeply under  
 (2) everything,  
 (3) other thought processes that were necessary to do the job  
 (4) Q All right Now the fact is one of the reasons you were so  
 (5) busy was because you were the only officer on the bridge is  
 (6) that right?  
 (7) A The workload increases somewhat when you find  
 (8) yourself in  
 (9) this type of situation I'm not used to being a pilot I have  
 (10) never seen a pilot for example in the Mississippi River  
 (11) have  
 (12) to walk back into the chart room to look at a chart So  
 (13) perhaps I was not accustomed although I knew or I should  
 (14) have  
 (15) known better than to take my attention away from the  
 (16) progress  
 (17) of the vessel, instead of plotting the progress of the vessel  
 (18) Q Now had Hazelwood been on the bridge I take it that some  
 (19) of these responsibilities would have been spread out?  
 (20) A He would not have walked back into the chart room He  
 (21) would not have left what I'll call the conning station He  
 (22) would not have left the – I would not say that he would have  
 (23) left the wheelhouse I observed Captain Hazelwood  
 (24) maneuver a  
 (25) vessel before and I don't recall him ever taking his attention  
 (1) away from piloting a piloting profile is how you might  
 (2) describe it  
 (3) Q If he had wanted those things done he would have had you  
 (4) do them?  
 (5) A Correct  
 (6) Q But since you were the only person there you had to do

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- (1) everything right?
- (2) **A I didn't have to - I did not have to do what I did Or in**
- (3) **walking out taking visual bearing It was not necessary It**
- (4) **really was not necessary As a matter of fact it was**
- (5) **considering the number of people on the bridge it was poor**
- (6) **practice**
- (7) **Q At that time though you had to do - you had to do what**
- (8) **in your judgment was necessary right?**
- (9) **A Obviously my judgment was flawed**
- (10) **Q Well I m not talking about looking at it today I m**
- (11) **talking about at that time when Hazelwood left the bridge you**
- (12) **had to do what you thought was necessary right?**
- (13) **A Correct**
- (14) **Q And at that time you did what you thought was necessary**
- (15) **right?**
- (16) **A Correct**
- (17) **Q And it wasn't Captain Hazelwood up there to question you or**
- (18) **tell you that you were doing something wrong was it?**
- (19) **A Correct**
- (20) **Q And on no occasion did Hazelwood call you to see how you**
- (21) **were doing did he?**
- (22) **A No he didn't**
- (23) **Q How long does it take to get from the captain's quarters to**
- (24) **the bridge?**
- (25) **A I don't know An estimate of - I would say if you were in**

- (1) **A Correct**
- (2) **Q And the pilot was on the bridge before Captain Hazelwood**
- (3) **and Captain Hazelwood came up later?**
- (4) **A Correct**
- (5) **Q Is that correct?**
- (6) **A Correct**
- (7) **Q Okay Let's go to the next thing You testified that**
- (8) **Captain Hazelwood after getting underway at some period of**
- (9) **time before the Narrows left the bridge?**
- (10) **A Yes**
- (11) **Q And you further testified that in your experience your**
- (12) **experience in Valdez you have never seen a captain who had**
- (13) **not**
- (14) **been on the bridge through the Narrows do you recall that?**
- (15) **A Correct**
- (16) **Q You further testified that you have never seen load program**
- (17) **up used before when there was ice in the traffic separation**
- (18) **scheme do you recall that?**
- (19) **A Correct**
- (20) **Q You further testified that the con was turned over to you**
- (21) **by Captain Hazelwood at a time in which the vessel was outside**
- (22) **the traffic separation scheme in which the vessel's heading was**
- (23) **in the general area of Bligh Reef that the vessel's steering**
- (24) **was in auto gyro the vessel's engine was in load program up**
- (25) **and that you had no pilotage?**
- (26) **A Correct**

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- (1) **a hurry you could do it in ten or 15 seconds**
- (2) **Q In the circumstances in which Captain Hazelwood had**
- (3) **placed**
- (4) **auto gyro I think I went over this with you and after going**
- (5) **to 180 with the vessel heading out of the channel and indeed**
- (6) **still on auto gyro when the vessel was out of the channel and**
- (7) **he turned the con over to you -**
- (8) **A Yes**
- (9) **Q - in your judgment should the vessel have been in auto**
- (10) **gyro at that time?**
- (11) **A In my opinion no**
- (12) **Q Now is one of the reasons that you say no because you were**
- (13) **instructed by him as you testified that you were going to**
- (14) **make a course change in about two minutes after he was**
- (15) **walking**
- (16) **off the bridge and he walked off the bridge with the steering**
- (17) **still in auto gyro which would require it to have been put in**
- (18) **helm is that one of the reasons?**
- (19) **A That's part of it As a matter of practice even though**
- (20) **there's a - in some portions of the Sound a lot of room to**
- (21) **maneuver just as - as a normal practice I would not ever**
- (22) **put**
- (23) **it in - put a vessel in auto - auto steering**
- (24) **Q Mr Cousins you can tell me but in summarizing quickly**
- (25) **what you testified to on these different points starting out**
- (26) **Captain Hazelwood returned to the vessel and you didn't know**
- (27) **whether he would return before or after the pilot was aboard**
- (28) **is that correct?**

- (1) **Q In violation of your vessel organization manual the**
- (2) **requirement for two officers to be on the bridge?**
- (3) **A Assuming the Watch Condition C?**
- (4) **Q Yes**
- (5) **A Yes**
- (6) **Q With which you said in your judgment existed?**
- (7) **A In my judgment yes**
- (8) **Q You further testified that the captain went below to his**
- (9) **cabin and remained there until about the time of the grounding,**
- (10) **which was a period of - we had about 15 minutes I believe**
- (11) **from 2353 to 0008 or thereabouts?**
- (12) **A Correct**
- (13) **Q Now do you have an explanation knowing Captain**
- (14) **Hazelwood**
- (15) **and knowing what you knew of him before the grounding and**
- (16) **reflecting back on this what caused this captain - you**
- (17) **believed him to be a competent captain did you not I gather?**
- (18) **A Yes**
- (19) **Q What caused this competent captain in a sequence of acts**
- (20) **over a period of few hours to be performing acts which you have**
- (21) **given - the record speaks for itself - a description of? Do**
- (22) **you have any answer to that?**
- (23) **A I have no idea**
- (24) **Q Did you ever see Captain Hazelwood drinking ashore?**
- (25) **A One time yes**
- (26) **Q And when was that?**

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- (1) **A I couldn't give you the date** It was - the vessel was in  
 (2) **a shipyard and I'd stopped by his apartment briefly, he and**  
 (3) **myself and one of the other officers and I think we had a**  
 (4) **beer**  
 (5) **together**  
 (6) **Q Do you recall what shipyard?**  
 (7) **A Portland** But I don't - WSI I think was the contract  
 (8) **Q Do you recall what year that was?**  
 (9) **A I guess it must have been sometime in 1988**  
 (10) **Q Do you recall who the other officer was?**  
 (11) **A No I don't**  
 (12) **Q Did you have anything other than a beer as you described?**  
 (13) **A No**  
 (14) **MS WAGNER** Nothing further Your Honor  
 (15) **MR SANDERS** May it please the Court We have  
 (16) **cross examination or examination of Mr Cousins by video**  
 (17) **With the Court's permission and to save time we can start**  
 (18) **it up I have some charts to bring up and I'll do that while**  
 (19) **it's playing**  
 (20) **CROSS EXAMINATION OF GREGORY COUSINS**  
 (21) **BY VIDEO EXAMINER**  
 (22) **Q Did you bring any documents with you?**  
 (23) **A My license**  
 (24) **Q Could I see that? This is a second mate's license of ocean**  
 (25) **steam or motor vessels of any gross tons radar observer**  
 (26) **unlimited and it's dated January 12 1992 is that correct?**

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- (1) **A That's correct**  
 (2) **Q When did you get this license?**  
 (3) **A February of 1990 I believe or '89**  
 (4) **Q '89 that was your first issue of the second mate's**  
 (5) **license?**  
 (6) **A Yes**  
 (7) **Q When did you take the exam for the second mate's license?**  
 (8) **A In February**  
 (9) **Q The year was what again?**  
 (10) **A I believe it was '89**  
 (11) **Q Now just to put it in perspective was that a month**  
 (12) **before the grounding of the Exxon Valdez -**  
 (13) **A Right**  
 (14) **Q - you took the exam What age are you sir?**  
 (15) **A 42**  
 (16) **Q So as of March of '89 you were 39?**  
 (17) **A 39**  
 (18) **Q Now between high school and Page Navigation that you**  
 (19) **went to which we'll get to did you have any formal education?**  
 (20) **A Through Litton Industries I attended**  
 (21) **Q I'm sorry strike that because you said college I meant**  
 (22) **between college and Page Navigation I should say Did you**  
 (23) **have any formal education?**  
 (24) **A I attended courses that were offered by Litton Industry**  
 (25) **Engineers That was in context with my - my employment**  
 (26) **with**

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- (1) **them**  
 (2) **Q What did those courses relate to?**  
 (3) **A Mechanical engineering**  
 (4) **Q Okay Now Page Navigation school tell us about that**  
 (5) **Where is the school located that you went to?**  
 (6) **A It's - when I attended he was located in the City of New**  
 (7) **Orleans It has since moved**  
 (8) **Q Okay And how long did you attend that school?**  
 (9) **A I spent less than a month actually in the classrooms He**  
 (10) **prepares videotaped lectures and home study packages**  
 (11) **because - -**  
 (12) **my home is in Tampa that suited my needs**  
 (13) **Q And so you do the video study at home?**  
 (14) **A Yes**  
 (15) **Q When did you start at that school? What month do you**  
 (16) **remember?**  
 (17) **A I don't recall**  
 (18) **Q Well do you remember what is the length of the course**  
 (19) **including this home session and the less than a month you had**  
 (20) **at Page?**  
 (21) **A They usually recommend a minimum of a year study**  
 (22) **Q Did you do that?**  
 (23) **A Oh yes I studied on my own for sometime**  
 (24) **Q Well if you started Page in '86 is that correct did you?**  
 (25) **A Um hum yes**  
 (26) **Q Do you remember the time of year spring fall summer?**

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- (1) **A What I'm saying is that I can - my studies began long**  
 (2) **before I contacted Page Navigation I had my own**  
 (3) **textbooks I**  
 (4) **pursued my studies on my own I attended Page so that the**  
 (5) **instructors there could help me focus on exactly what I**  
 (6) **needed**  
 (7) **for the third mate exam instead of studying everything that**  
 (8) **I**  
 (9) **may need later on instead of right now**  
 (10) **Q So you didn't do the home study that Page recommended**  
 (11) **after**  
 (12) **the Page?**  
 (13) **A Yes I did**  
 (14) **Q Well let me just finish my question that Page recommended**  
 (15) **be done through its tapes and its studies you did it on your**  
 (16) **own before you went to Page is that what you're saying?**  
 (17) **A I really did it twice yes I did my own studies for**  
 (18) **probably more than a year I would estimate two years on**  
 (19) **my**  
 (20) **own before I even contacted Page When I went to Page I**  
 (21) **reviewed all of his material and at an accelerated rate**  
 (22) **because**  
 (23) **I was already quite familiar with most of the material**  
 (24) **anyway**  
 (25) **because I had studied it**  
 (26) **Q The material that you studied before you contacted Page**  
 (27) **was it Page's material?**  
 (28) **A No it was standard maritime textbooks**  
 (29) **Q Geared for a third mate study and for third mate license?**  
 (30) **A Well no it wasn't**  
 (31) **Q Well tell me what textbooks did you study then that you**  
 (32) **did this studying for about two years before any contact with**

Vol 16 2413

- (1) Page?
- (2) A Well standard marine text such as Bowditch Dutton's many of the Cornell maritime naval publications
- (3) Q Okay Then when you - you went to Page do you remember what time of the year that was that you actually came to New Orleans and went to the school?
- (4) A No I don't
- (5) Q Do you remember after you left the schooling and they gave you the videotapes and home study how long did you do that before you took your third mate's exam?
- (6) A Several months
- (7) Q Okay And then you took your third mate's exam?
- (8) A Yes
- (9) Q Did you pass it?
- (10) A Yes
- (11) Q And that was sometime in 1986? Is that correct?
- (12) A As I recall, yes, sir
- (13) Q And during that period you were a seaman what vessels did you sail on when you were a seaman a number of vessels?
- (14) A A number of them
- (15) Q And all tankers?
- (16) A All tankers
- (17) Q What was the overall length?
- (18) A I think they were close to 900 feet
- (19) Q About almost the same size as the Valdez?

Vol 16 2414

- (1) A Almost
- (2) Q And when you sailed just as an A B now before you were an officer did you ever go to Valdez the Port of Valdez?
- (3) A Yes many times
- (4) Q When you were issued your license did you immediately start sailing with Exxon as a third mate or was there some lapse in there where you were sailing as a seaman?
- (5) A I believe there was one assignment that I sailed in an unlicensed capacity and then I - as I recall it may have been the next assignment that I was stepped up
- (6) Q Do you remember would that have been in about 1987?
- (7) We'll
- (8) get to your service record later and maybe you can refresh your recollection This is just general right now that might have been around 1987 would that be about right?
- (9) A Perhaps the end of '86 beginning of '87
- (10) Q Do you remember any of the vessels you served on as a third mate?
- (11) A Yes
- (12) Q Do you remember all of them?
- (13) A Yes there weren't that many The Exxon Galveston Exxon -
- (14) Q Tell me the size of each as you're going along
- (15) A I couldn't
- (16) Q What was the overall length of the Galveston do you remember?

Vol 16 2415

- (1) A I have no idea It's probably - it was a converted tug barge lighter vessel so it's relatively small
- (2) Q Okay And then the next one?
- (3) A The Exxon Charleston
- (4) Q All right
- (5) A It was a private carrier approximately 600 feet long
- (6) Q Okay
- (7) A The Exxon New Orleans
- (8) Q All right
- (9) A Let's see
- (10) Q What was her size the New Orleans?
- (11) A 700 feet
- (12) Q Okay And the next one?
- (13) A The Exxon Valdez
- (14) Q Okay There's a total of four up through the grounding would that be correct as an officer?
- (15) A Right
- (16) Q All as a third mate?
- (17) A Yes, sir
- (18) Q When you sailed as an A B did you have occasion to go up to Prince William Sound?
- (19) A Yes
- (20) Q How many occasions?
- (21) A I think the estimate was perhaps 26 voyages or so, like that

Vol 16 2416

- (1) Q During the course of your service as an A B in Prince William Sound did you have occasion to steer up there?
- (2) A Yes
- (3) Q Did you stand the lookout watch during those -
- (4) A Yes
- (5) Q - those trips as well?
- (6) A Yes
- (7) Q You had a chance to observe the topography of the area?
- (8) A Yes
- (9) Q You knew where Bligh Reef was?
- (10) A Yes
- (11) Q You knew where the Bligh Reef buoy was?
- (12) A Yes
- (13) Q You knew where Busby Island was?
- (14) A Yes
- (15) Q You knew where Naked Island was?
- (16) A Yes
- (17) Q How about Rocky Point?
- (18) A Yes
- (19) Q Potato Point?
- (20) A Yes
- (21) Q The Narrows?
- (22) A Yes
- (23) Q Little Rock?
- (24) A Yes

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- (1) Q Now can you recall who the captains were that you sailed with into Valdez while you were an officer?
- (2) A Yes
- (3) Q Tell me who they were
- (4) A Captain Grove Captain Wallace Captain Hazelwood Captain
- (5) Stalzer Captain Hoye Captain Witty
- (6) Q Now when you sailed as an officer where did you pick up and drop off the pilot?
- (7) A Rocky Point
- (8) Q Was that on every single trip that you were involved with dropping off and picking up the pilot?
- (9) Let me rephrase that That was a bad question
- (10) When you were involved in the picking up or dropping off of the pilot did you always pick him up at Rocky Point and drop him off at Rocky Point?
- (11) A Yes
- (12) Q When you - when you acted as a lookout when you were an A B in Prince William Sound did you report the various navigation aids that you spotted?
- (13) A Yes
- (14) Q Now I'd like to focus on your service record for a second Can we have that put in front of the witness please?
- (15) A That's Exhibit 48786
- (16) UNIDENTIFIED SPEAKER What is the predesignation number?

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- (1) BY VIDEO EXAMINER
- (2) Q Number 11 I know you guys are trying to confuse me but I'm ready Could you turn to the service record covering the period February 13th 1987 to April 7th 1987 under Captain Wallace
- (3) A Yes
- (4) Q You have it in front of you?
- (5) A Yes
- (6) Q Is it correct that under the category maintains cooperative working relationship - sorry sorry Strike that Under the category willingness to assume additional responsibilities beyond normal job requirements Captain Wallace gave you what? A strong point performs very well?
- (7) A Correct
- (8) Q Under the category carries out thoroughly the commitments and duties of position with attention to necessary details what did Captain Wallace give you? What kind of rating?
- (9) A Strong point performs very well
- (10) Q Is that the highest you could have gotten highest rating you could have gotten?
- (11) A On this form yes
- (12) Q Under the category is always fit - sorry is always in fit condition alert and vigilant on watch what did Captain Wallace give you?
- (13) A Same rating

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- (1) Q The highest rating?
- (2) A Yes
- (3) Q Under the category acts quickly and effectively in emergencies or pressure situations what did Captain Wallace say about that?
- (4) A No opportunity to observe
- (5) Q Okay And under the category going down to deck officers only you see that?
- (6) A Yes
- (7) Q The second category under navigates in an accurate reliable manner making optimum use of all available navigation equipment and aids what did Captain Wallace say?
- (8) A Moderately strong point performs well
- (9) Q Okay Was this the first time you were rated as a third mate?
- (10) A Yes
- (11) Q Let's go to the next one which covers the period of June 19th 1987 to August 19th 1987 You have it? This is Captain Wallace grading you again?
- (12) A Yes
- (13) Q Okay Again he gave you the highest mark under the category willingness to assume additional responsibilities beyond normal job requirements is that correct?
- (14) A Yes
- (15) Q And he also gave you the highest mark under carries out

Vol 16 2420

- (1) thoroughly the commitments and duties of position with attention to necessary details?
- (2) A Yes
- (3) Q And under the category is always in fit condition alert and vigilant on watch again he gave you the highest mark?
- (4) A Yes
- (5) Q And he gave you the highest mark on maintains a high level of safety awareness i.e. cargo work emergency drills?
- (6) A Yes
- (7) Q And now this time he had an opportunity to observe you with respect to - or at least he rated you with respect to the category of acts quickly and effectively in emergencies or pressure situations What did Captain Wallace grade you on that?
- (8) A Strong point
- (9) Q Okay And again with respect to navigates in an accurate reliable manner making optimum use of all available navigation equipment and aids Captain Wallace said that it is a moderately strong point performs very well?
- (10) A Correct
- (11) Q Second highest category am I correct?
- (12) A Correct
- (13) Q All right Can we go to the performance evaluation that Captain Hazelwood gave you during the period of December 11th
- (14) 1987 and January 12th 1988?



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- (1) A Yes  
 (2) Q The form changed a little bit now did it not?  
 (3) A Yes  
 (4) Q Okay With respect to the category is always in fit  
 (5) condition alert and vigilant on watch and on board what did  
 (6) Captain Hazelwood give you?  
 (7) A I don't know what line you're on  
 (8) Q It's the third line down  
 (9) A Yes  
 (10) Q You have it? Captain Hazelwood gave you generally  
 exceeds  
 (11) requirements am I correct? No sorry?  
 (12) A No, there's two Xs there major - oh job profile  
 (13) major - and I can't read my copy  
 (14) Q Okay Well let me read you what I have here There are  
 (15) two different categories There's a check with respect to job  
 (16) profile and says it's a major which I take it as a major part  
 (17) of your - of your job am I correct?  
 (18) A Yes  
 (19) Q And as far as the category as far as Captain Hazelwood's  
 (20) evaluation he says here generally exceeds requirements am I  
 (21) correct?  
 (22) A Yes  
 (23) Q Okay Going down you see about this far down to the  
 (24) category of seeks advice or guidance at the appropriate time  
 (25) and informs supervisors when appropriate that's also a major

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- (1) part of your job?  
 (2) A Yes  
 (3) Q And Captain Hazelwood gave you an exceptional rating for  
 (4) it?  
 (5) A Yes  
 (6) Q And with respect to the navigates portion that's the deck  
 (7) officer's portion a little bit further down?  
 (8) A Yes  
 (9) Q It says navigates in an accurate reliable manner making  
 (10) optimum use of all available navigational equipment and aids  
 (11) that's also a major part of your job?  
 (12) A Yes  
 (13) Q And Captain Hazelwood gave you an exceptional on that as  
 (14) well?  
 (15) A Yes  
 (16) Q Did you have any discussions with either Captain Wallace or  
 (17) Captain Hazelwood about your navigation abilities?  
 (18) A With Captain Wallace  
 (19) Q What did Captain Wallace tell you about your ability to  
 (20) navigate?  
 (21) A I don't recall the conversation specifically I questioned  
 (22) the captain on his evaluation of my abilities as a navigator  
 (23) asked him if he saw any major problems with my routine my  
 (24) ability to evaluate information Generally that was the  
 (25) context of the conversation

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- (1) Q Did you receive a generally favorable reply?  
 (2) A As I recall yes  
 (3) Q As of March 23rd 1989 were you confident in your  
 (4) abilities to navigate in an accurate reliable manner?  
 (5) A Yes  
 (6) Q And in making optimum use of all available navigation  
 (7) equipment and aids?  
 (8) A Yes  
 (9) Q As an officer aboard the Exxon Valdez had you had  
 occasion  
 (10) to observe the maneuvering characteristics of the vessel under  
 (11) various speeds and loads?  
 (12) A By maneuvering characteristics you mean what?  
 (13) Q Well for instance -  
 (14) A Was I ever up there when we made a course change or -  
 (15) Q Yes right  
 (16) A Yes  
 (17) Q So you had a chance to observe the - how the vessel  
 (18) handled when course change was made using a certain amount  
 of  
 (19) rudder?  
 (20) A Correct  
 (21) Q Have you had occasion to observe how the vessel handled  
 (22) using ten degrees of rudder?  
 (23) A Probably  
 (24) Q Have you had occasion to observe how the vessel reacted  
 and  
 (25) handled using ten degrees of rudder with almost a full load?

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- (1) A Probably  
 (2) Q Did you ever see anyone from management come aboard?  
 (3) A Frequently Yes  
 (4) Q Who?  
 (5) A I forget the fellow's name He was the ship group  
 (6) coordinator, Paul something or other One of those guys  
 from  
 (7) the office It's routine for them to come on board the  
 vessels  
 (8) when we make a port call in the L A or San Francisco area  
 (9) Q You said in answer to Mr Noltings question that you were  
 (10) confused about the pilotage regulations up there in March of  
 (11) 1989?  
 (12) A Yes  
 (13) Q Had you ever seen a letter from Alamar agencies to -  
 (14) addressed to various steamship companies?  
 (15) A Yes I recall  
 (16) Q Or addressed to whom it may concern dated September  
 (17) 19th 1986?  
 (18) A I recall having seen that letter yes  
 (19) Q Okay Let me put the letter in front of you I put before  
 (20) you the letter dated September 19th 1986 from Alaska Maritime  
 (21) Agencies to whom it may concern?  
 (22) A Yes  
 (23) Q Had you read this letter prior to March 23rd 1989?  
 (24) A Yes  
 (25) Q Were you aware prior to that date that there were

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- (1) proposals made by the Coast Guard to change the pilotage regulations in Prince William Sound?
- (2) **A Yes**
- (3) **Q** And did you understand that they wanted to waive pilotage from Rocky Point down to Cape Hinchinbrook?
- (4) **A Well I probably did at the time** yes
- (5) **Q** When you received this letter – when you read this letter did you have any understanding as to whether this letter was advising its recipients that the pilotage requirements had been waived?
- (6) **A That was my understanding of the – the letter**
- (7) **Q** When you took the con of the vessel after Captain Hazelwood left the bridge just north of Busby?
- (8) **A Yes**
- (9) **Q** And south of Rocky Point?
- (10) **A Yes**
- (11) **Q** Did you believe that you were qualified to con the vessel in those waters without a pilotage endorsement?
- (12) **A Yes**
- (13) **Q** On the night of the grounding when you had Kagan up there and we'll get to the details later but just on Kagan did it concern you at all that Kagan is not your regular helmsman when Captain Hazelwood left you with the con?
- (14) **A No it did not**
- (15) **Q** Let's talk about your workday your normal workday as you

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- (1) look back on it As an officer when you were at sea can you – can you take me through a workday what it was like?
- (2) **A For the Valdez? I had different watches on different ships so the – the watch schedule on the Valdez was a little bit easier for me just because the – the eight to twelve is a nice time to be up and working**
- (3) **Q** And the 20 to 24 in the evening?
- (4) **A Yes**
- (5) **Q** And on the other ships you have what watches?
- (6) **A Twelve to four**
- (7) **Q** You had the mid watch huh?
- (8) **A It's a miserable watch, yeah**
- (9) **Q** You were on – you were on a total of five ships I think you gave us including the North Slope?
- (10) **A Yes**
- (11) **Q** So the other four ships you had the midnight to four in the morning and – I'm sorry let's see the noon to four in the afternoon is that correct?
- (12) **A Yes but I'm trying to recall what watches I had on the Exxon Charleston I believe that was the – the eight to twelve**
- (13) **Q** On the Charleston?
- (14) **A On the Charleston It's – it had been a custom to sail third mates on the eight to twelve because those are what we would call normal working hours the captain is up, the chief**

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- (1) mate is usually up and third mates usually are the ones with the least experience so if there are problems he needs the captain captain doesn't have to be woken up
- (2) **Q** And that's – that requirement you just said is not just Exxon is it as far as you know? That's pretty standard throughout the maritime world in the United States that third mates are given the eight to twelve watch?
- (3) **A No**
- (4) **Q** The other companies you sailed with you have had different watches?
- (5) **A Yes-**
- (6) **Q** This is on the 23rd of March?
- (7) **A Right**
- (8) **Q** If you add up these roughly four four and a half hours you were off we're adding another half hour on for your nap period would you say that's about right ten of eight in the morning up until 1900 I'm talking about would that be approximately correct? Is it approximately correct four to four and a half hours?
- (9) **A Well you know I sat down and added up the times and I came up with a bit more rest so I – I don't – I wouldn't say that's just right no**
- (10) **Q** Well do you want to add up the times sir take a sheet of paper and show me how you're adding up the time up to – from ten of eight in the morning take a sheet of paper and you do

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- (1) your own calculations with everything you have in front of you?
- (2) **A This is how I do it**
- (3) **Q** Now can you tell us what this means?
- (4) **A From – from noontime twelve o'clock until 1700 I am off duty off work That's my free time From 1745 after I finished my meal until I was called out that's my personal time that's my – my rest time I was not required or requested to do anything else That's my rest period How I rest is how I rest**
- (5) **Q** Okay Now Mr Cousins you – I don't want to belabor this whole point I want to just ask you one other thing This is your interpretation of your free time?
- (6) **A Correct**
- (7) **Q** It's correct that during this period of time is it not that you've testified that you had this 1200 to –
- (8) **A 17**
- (9) **Q** – 1700 that you took a salinity test is that correct?
- (10) **A That's correct**
- (11) **Q** The first thing I would like to ask you about is you remember the little yellow piece of paper that you wrote on which is Exhibit 4878?
- (12) **A Yes**
- (13) **Q** That is your description of the time that you were off duty on the day of the 23rd correct?

Vol 16 2429

- (1) A Yes sir
- (2) Q And I believe on there you said you were off duty from 12
- (3) to 1700?
- (4) A Yes
- (5) Q Which is from noon to five o'clock p.m.?
- (6) A Right
- (7) Q And in fact I believe you testified at one point that you
- (8) had gotten off probably about ten minutes till 12?
- (9) A Yes
- (10) MR SANDERS Now the next part of the testimony goes
- (11) to the time Mr Cousins is on the bridge before getting
- (12) underway
- (13) BY VIDEO EXAMINER
- (14) Q And I want to know at that point in time had you made any
- (15) arrangement with LeCain that you were going to let him sleep
- (16) in?
- (17) A No
- (18) Q So as far as you're concerned it was going to be a normal
- (19) watch change?
- (20) A Yes
- (21) Q Did you see Chief Mate Kunkel come to the bridge?
- (22) A Yes, he relieved me
- (23) Q Did you hear Chief Mate Kunkel and Captain Hazelwood
- (24) having
- (25) a discussion concerning Captain Hazelwood agreeing to take
- (26) Chief Mate Kunkel's morning watch?

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- (1) A No I was not - party to that
- (2) Q I was just focusing on that point taking it as a fact that
- (3) there's been testimony by Chief Mate Kunkel that Captain
- (4) Hazelwood told him he would - that he Captain Hazelwood
- (5) would take Kunkel's watch would that be normal?
- (6) A It would be kind I don't know that it's normal no
- (7) Q Well because of the long hours that Chief Mate Kunkel
- (8) works in port what I'm asking for some arrangement for this to
- (9) have been made is that normal have you seen that done
- (10) before?
- (11) A Some captains would be kind enough to do that Most
- (12) captains would not
- (13) MR SANDERS Your Honor this next part is - goes to
- (14) the subject of Captain Hazelwood's condition on the bridge just
- (15) before the Valdez got underway the night of March 23rd
- (16) BY VIDEO EXAMINER
- (17) Q Did you observe any staggering?
- (18) A No
- (19) Q Did you believe Captain Hazelwood was impaired or
- (20) intoxicated in any way?
- (21) A No
- (22) Q Now he left before you went through the Narrows and do
- (23) you know whether he said anything to the pilot about his
- (24) leaving the bridge?
- (25) A I recall some conversation with the - with the pilot yes
- (26) Q Are you aware - pardon me are you finished?

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- (1) A I don't know what context of the conversation was but
- (2) that
- (3) he - there was mention that he was leaving When he
- (4) announced
- (5) that he was leaving, it was loud enough spoken loud
- (6) enough
- (7) where the pilot as well as myself could hear
- (8) Q Do you recall when you came back you said that Captain
- (9) Hazelwood was on the bridge the chief mate was there the
- (10) pilot was there and the helmsman was there as well?
- (11) A Correct
- (12) Q Okay Do you remember when Captain Hazelwood left after
- (13) 2151?
- (14) A I couldn't give you a specific time Somewhere in the
- (15) transit of the arm before the Narrows, that's all I can -
- (16) specific as I can be
- (17) Q Okay In your testimony you - in your trial testimony
- (18) you said approximately 10 to 15 minutes thereafter Does
- (19) that -
- (20) A Okay
- (21) Q - jibe with what you just said?
- (22) A Probably, yes
- (23) Q Okay After Captain Hazelwood left what were you doing
- (24) specifically?
- (25) A Monitoring the vessel progress taking any engine orders
- (26) that may have been given and observing the actions of the
- (27) helmsman in regards to commands and steering
- (28) Q Were you standing in one particular spot while you were

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- (1) doing this?
- (2) A Yes
- (3) Q Where were you standing?
- (4) A By the ten centimeter radar
- (5) Q And were you facing forward at that point?
- (6) A Yes
- (7) Q If someone were to come up into the chart room for
- (8) instance unless you knew he was there you wouldn't -
- (9) A No
- (10) Q - necessarily look back to see if they were there?
- (11) A No correct
- (12) Q Now do you remember what time Captain Hazelwood came
- (13) back
- (14) to the bridge?
- (15) A I do not recall a time no
- (16) Q You mentioned in your trial testimony that it was - that
- (17) the pilot had told you to call him as you were approaching
- (18) Potato Point?
- (19) A Yes
- (20) Q Do you recall that?
- (21) A Yes He didn't tell me to call him As I - as I recall
- (22) it he - his words were to the effect that we ought to get the
- (23) captain back up here pretty soon
- (24) Q Was that as you were approaching Potato Point?
- (25) A Yes
- (26) Q What time according to the bell book did you - did you

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- (1) get to Potato Point?  
 (2) A 2253 Potato Point abeam  
 (3) Q Is it your recollection that the captain was back on the  
 (4) bridge by the time you – you got to Potato Point?  
 (5) A I'm not sure It was shortly after I called him the second  
 (6) time  
 (7) Q You testified that you received – you made the call to the  
 (8) captain?  
 (9) A Right  
 (10) Q Sorry I stand corrected You called the captain and told  
 (11) him that you were in the Narrows is that correct?  
 (12) A Yes  
 (13) Q And what did the captain say to you?  
 (14) A He – he asked me if there was any inbound traffic was I  
 (15) having any problems everything look okay that he he'd be  
 (16) up  
 (17) on the bridge shortly  
 (18) Q And the captain had previously told you he had to go down  
 (19) because of some problem or he indicated that the chief  
 (20) engineer  
 (21) was having some problem?  
 (22) A Correct  
 (23) Q And how did you answer the captain's questions?  
 (24) A The phone – on the phone –  
 (25) Q Yes  
 (26) A – I told him that we had the escort tug everything was  
 (27) proceeding along pretty smoothly we'd reduced speed no

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- (1) traffic that's it  
 (2) Q And no problems?  
 (3) A No problems  
 (4) Q Was the passage through the Narrows a routine passage?  
 (5) A Yes  
 (6) Q No problems at all?  
 (7) A No problems  
 (8) UNIDENTIFIED SPEAKER This is on what date?  
 (9) VIDEO EXAMINER This is on the 23rd going out  
 (10) UNIDENTIFIED SPEAKER Outbound passage  
 (11) BY VIDEO EXAMINER  
 (12) Q The outbound passage yes that's the one I'm referring to  
 (13) Mr Cousins  
 (14) A Yes  
 (15) Q You understood that?  
 (16) A Yes  
 (17) Q I'd like to focus now on the period of time after you came  
 (18) back to the bridge after you had dropped off the pilot Are  
 (19) you with me?  
 (20) A Um-hum  
 (21) Q Okay When you came back to the bridge what did you do?  
 (22) A Well, it was a better recollection that I could get at  
 (23) reading my previous testimony I – you want me to just  
 (24) generalize today?  
 (25) Q Well –

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- (1) A I approached the radar observed what I determined to be  
 (2) ice There was a few words exchanged with the captain as I  
 (3) recall He was standing over the console I don't know the  
 (4) chronology of this is –  
 (5) Q I don't want to make this a memory test I'm just trying to  
 (6) put everybody in the –  
 (7) A I was familiarizing myself with the position of the vessel  
 (8) the targets that were on radar that sort of thing  
 (9) Q Okay Do you have a recollection of about what time you  
 (10) got back to the bridge?  
 (11) A Not really I'd have to look at past testimony  
 (12) Q All right Let me see if I can help you While I'm  
 (13) looking for that let me ask you this at which radar did you  
 (14) go to when you observed the radar?  
 (15) A Ten centimeter  
 (16) Q That's over on the starboard side?  
 (17) A Yes  
 (18) Q Where was the captain?  
 (19) A When I first re entered the wheelhouse –  
 (20) Q Yes  
 (21) A – from dropping the pilot off? I believe he was at the  
 (22) console bridge console I'm not absolutely positive He  
 (23) may  
 (24) have been in front of the console  
 (25) Q Did there come a time when the captain came over and stood  
 (26) next to you?

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- (1) A Yes  
 (2) Q Did that occur shortly after you got back to the bridge?  
 (3) A Some minutes later yes  
 (4) Q When you say some minutes later do you –  
 (5) A I had plotted a position  
 (6) Q You did?  
 (7) A Yes  
 (8) Q Which position did you plot by then?  
 (9) A I guess it – what was it the 2339 or something like that  
 (10) Q Okay May we have the original chart Mr Blank?  
 (11) Mr Cousins I'm putting in front of you – what's the  
 (12) Exhibit Number?  
 (13) UNIDENTIFIED SPEAKER On the back blue tag right  
 (14) there  
 (15) BY VIDEO EXAMINER  
 (16) Q Can you tell?  
 (17) A 1614  
 (18) Q Now 1614 which is the original chart off the Exxon Valdez  
 (19) and you mentioned that you laid the 2339 fix which is on here?  
 (20) A Yes  
 (21) Q Okay So in terms of the time that we're talking does  
 (22) this refresh your recollection that at least you were on the  
 (23) bridge before 2339?  
 (24) A Yes  
 (25) Q Okay And you told us yesterday how you obtained that fix

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- (1) you said you took a range and a bearing?
- (2) A Yes
- (3) Q Was that off this buoy right here?
- (4) A It was a visual bearing I believe that I may have taken
- (5) a - a radar bearing and range
- (6) Q Also?
- (7) A Yes
- (8) Q I'm sorry and what did you use for that?
- (9) A I don't - this looks like a range off of this Rocky Point light here
- (10) Q Okay It also looks to me like you may have taken a bearing off Busby Island light?
- (11) A Yes
- (12) Q Does that look to you -
- (13) A Yes sir
- (14) Q Okay So at this point you knew the position of the vessel?
- (15) A Yes
- (16) Q Okay After you took this 2339 bearing is that when Captain Hazelwood came over to the radar scope with you?
- (17) A Yes
- (18) Q Both of you were standing over at the ten centimeter radar?
- (19) A Yes
- (20) Q Close to each other?
- (21) A Just about shoulder to shoulder yes

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- (1) Q Okay Now did you - you discussed with Captain Hazelwood
- (2) this ice condition was he in agreement with you as to where you saw the ice? You say you discussed with him when he was turning the con over the situation with the ice?
- (3) A I don't - I can't really answer that question He - he saw the ice The conversation as I recall it was that this is - if we're going to avoid the ice we're going to be out of the scheme altogether and he said yeah we'll - we'll just start bringing it back when we get down abeam Busby and swing it back into the lanes
- (4) Q Okay And what did you take those directions to mean as to where you were to make the turn? You said you'd go down around abeam of Busby?
- (5) A Get abeam of Busby Abeam of Busby alter course to get back to the traffic lanes
- (6) Q Yes What I'm asking you he said abeam of Busby he used that general term what was your general understanding that he meant Busby is an island?
- (7) A Yes Busby Island light
- (8) Q You say when he left he said he was only going to go for a few minutes he used the word fewer minutes?
- (9) A Yes
- (10) Q You actually used that expression didn't you?
- (11) A Yes
- (12) Q Now I believe your testimony is that you had two meetings

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- (1) at the radar two separate meetings is that correct?
- (2) A Yes
- (3) Q Was this the first meeting that you had?
- (4) A I believe it was
- (5) Q Tell me what you and Captain Hazelwood discussed at that meeting the first meeting
- (6) A He explained to me what he had intended as far as the deviation out of the traffic scheme to avoid the ice That was the first that he spoke of coming abeam Busby Island and then begin the turn back into the lanes
- (7) Q Okay He told you that was his intention?
- (8) A Yes
- (9) Q At this point were you able to see any of the ice on the radar?
- (10) A Yes
- (11) Q Did you see it in the form that you drew on Exhibit 48785 at that point?
- (12) A No, that was a bit later The targets that we had identified as ice, the radar was picking up the chunks of ice that were to the north and not all of the - not -
- (13) Q Okay - don't get anything - can we have a blue marker or red one red one's even better
- (14) Would you mind marking on Exhibit 48785 in red pen what you observed during your first conference at the radar -
- (15) A At -

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- (1) Q - with respect to the ice?
- (2) A Okay Fairly large targets like this standing down into here, down into the southern lane, something like that Right
- (3) here
- (4) Q Okay Would you just - all right Would you initial in the area that you made those?
- (5) A (Witness complies)
- (6) Q Okay Good
- (7) UNIDENTIFIED SPEAKER I think we should either hold that up to the camera or let the record show that he put on numerous red circles
- (8) VIDEO EXAMINER Let the record show do you see that? Yeah that the witness put a series of red circles representing the ice -
- (9) MR SANDERS Your Honor we apologize We thought we had a blowup of that over here with the red circles and we didn't We'll just have to show it a little bit later and I apologize I know you can't see it on the screen
- (10) VIDEO EXAMINER - that they observed the first time that they stood at the radar okay
- (11) BY VIDEO EXAMINER
- (12) Q Now you said there was a second meeting at the radar
- (13) When did that occur in relation to the first meeting?
- (14) A Minutes later I returned to the chart room I don't know if there was - if I actually put a fix down I had taken some

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- (1) ranges to determine exactly how far the ice was across the  
 (2) lanes if it was in fact across all of the lanes or whether we  
 (3) really needed to go out of the lanes to give me a better idea  
 (4) as to what the captain was talking about I just - I hadn't  
 (5) been on the bridge that long So I returned to the chart  
 room  
 (6) briefly, picked off some distances that I had gotten from the  
 (7) radar went back to the radar and I believe that's when  
 (8) Captain Hazelwood and I spoke again He was standing on  
 the  
 (9) forward side of the radar That's when I said it looks like  
 (10) we're going to be - the ice is all across both of the lanes  
 (11) and that we're going all the way out of the lanes He said  
 (12) yeah that's the point we have to go out of the lanes to get  
 (13) around the ice  
 (14) Q Okay You had made a determination by taking bearings  
 and  
 (15) ranges?  
 (16) A Ranges yeah  
 (17) Q Oh sorry ranges that in fact the ice that you observed  
 (18) on the radar extended across both lanes inbound and the  
 (19) outbound?  
 (20) A Yes Yes  
 (21) Q And in terms of when Captain Hazelwood left can you place  
 (22) the time that the second meeting took place?  
 (23) A Terms of when he left?  
 (24) Q Yes  
 (25) A It was shortly before he left

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- (1) Q Okay Now you said that Captain Hazelwood was standing  
 in  
 (2) front of the console and you were standing behind it?  
 (3) A No  
 (4) Q I'm sorry  
 (5) A I was standing facing the radar at the radar looking at  
 (6) the scope and -  
 (7) Q Yes  
 (8) A - and he was standing in front of the radar  
 (9) Q Near the - the front windows of the bridge?  
 (10) A Actually he was bent over the radar looking at  
 (11) presentation as I was  
 (12) Q Oh okay All right tell me as best as you can recall  
 (13) what you two discussed at that point?  
 (14) A I reiterated his commands or his idea of passage around  
 (15) the ice I said well you know, here's Bligh Reef, Bligh Reef  
 (16) buoy was a nice target and he said yes, very nasty spot  
 (17) Q You pointed to it on the radar?  
 (18) A Um hum  
 (19) Q You could see it on the radar at that point?  
 (20) A Yes  
 (21) Q All right What else did you discuss?  
 (22) A He said - he asked me how I felt about it and I said that  
 (23) it's the only way around the ice as I see it I said it's  
 (24) going to take us well out of the lanes He says yes I know  
 (25) I said as I see it the ice is across both of the lanes and he

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- (1) said he agreed and he reiterated his instructions and he  
 said  
 (2) how do you feel about that and I said that's the best that  
 we  
 (3) can do right now  
 (4) Q Okay Let's slow down here a second The instructions  
 (5) that he reiterated were that he wanted you to come to Busby  
 and  
 (6) then start easing her back into the lanes?  
 (7) A He said come back to - when we get abeam Busby Island  
 you  
 (8) have to - you'll have to start bringing the vessel back  
 (9) towards the lanes  
 (10) Q Okay Did you know by the second meeting what course you  
 (11) were steering?  
 (12) A I did at the time I don't now But I - we were on 180  
 (13) as I recall  
 (14) Q Did you concur with the course of 180 to accomplish the  
 (15) maneuver that you wanted to accomplish?  
 (16) A Yes  
 (17) Q As a matter of fact 180 is a cardinal course is it not?  
 (18) A Yes  
 (19) Q It's on the cardinal point?  
 (20) A Yes  
 (21) Q Which makes it easier to figure out your bearings?  
 (22) A Yes  
 (23) Q When you want to take a bearing?  
 (24) A Certainly beam bearings yeah very easy  
 (25) Q When Captain Hazelwood told you the entire plan which is

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- (1) to come down abeam of Busby and then turn back into the  
 lanes  
 (2) in order to avoid the ice did you concur with that plan?  
 (3) A Yes  
 (4) Q Did you in fact feel comfortable with it?  
 (5) A Yes  
 (6) Q When you looked at the radar you could see - you could  
 (7) see Busby Island light?  
 (8) A Yes  
 (9) Q Could you see it visually at that point?  
 (10) A Yes  
 (11) Q You could see Bligh Reef light on the radar?  
 (12) A On the radar, yes  
 (13) Q You could see the ice as you told us about?  
 (14) A I could - I observed targets of the ice I never visually  
 (15) saw the ice until after the grounding  
 (16) Q Okay You could - were you able to make out the land  
 (17) presentation of - of Rocky Point the Tatitlik Narrows Bligh  
 (18) Island?  
 (19) A Yes  
 (20) Q Did you understand the orders and the discussion that you  
 (21) had with Captain Hazelwood as to what he wanted you to do?  
 (22) A Yes  
 (23) Q What I wanted to ask you was that when you originally  
 (24) heard from Captain Hazelwood what his plan was for departing  
 (25) the lanes and skirting the ice he told - or he asked you or

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- (1) told you to take a fix is that correct?  
 (2) **A Correct**  
 (3) **Q** And in the course of preparing yourself though for the  
 (4) plan itself you went and did some other things didn't you?  
 (5) **A Yes**  
 (6) **Q** And he didn't tell you to do that did he?  
 (7) **A No**  
 (8) **Q** But one of the other things included attempting a visual  
 (9) sighting of the ice?  
 (10) **A Yes**  
 (11) **Q** You even tried to use binoculars to do that didn't you?  
 (12) **A Yes**  
 (13) **Q** And you also looked at the radar to try to determine how  
 (14) much room there was to maneuver?  
 (15) **A Yes**  
 (16) **Q** Those kind of things?  
 (17) **A Yes**  
 (18) **Q** Got some ranges on how far the ice was from the reef and  
 (19) how far it was from you and those kinds of things?  
 (20) **A Correct**  
 (21) **Q** And the purpose of all that was what?  
 (22) **A** To ascertain whether the maneuver was going to be  
 (23) successful or if there was any danger that we weren't going  
 (24) to  
 (25) be able to safely pass between the reef and the ice  
 (26) **Q** When you had your second conversation well after you had

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- (1) completed your work to prepare you to - to give input to the  
 (2) captain?  
 (3) **A Yes**  
 (4) **Q** You knew that the plan called for the Valdez to go outside  
 (5) the traffic separation scheme correct?  
 (6) **A Yes** after - well not - not until after I had completed  
 (7) my attempts at positioning the ice in relation to the reef  
 (8) after the initial instructions by the captain You could be  
 (9) abeam you can be abeam Busby Island and still be in the  
 (10) lanes Once I went back into the chart room with the  
 (11) information that I'd gathered that's - that's when I  
 (12) recognized the - where the track line was going to take us in  
 (13) relation to everything else  
 (14) **Q** And this is before you had your second conversation with  
 (15) him though?  
 (16) **A That's correct**  
 (17) **Q** So at that point you know you were going outside the  
 (18) lanes?  
 (19) **A Yes**  
 (20) **Q** And indeed that's one thing you said to him when you had  
 (21) the second conversation we're going to be outside the lanes?  
 (22) **A Yes**  
 (23) **Q** And indeed when you took your fix at 2250 - 2355 that  
 (24) was in fact outside the lanes wasn't it?  
 (25) **A Yes**

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- (1) **Q** So you didn't have any problem during this period of time  
 (2) knowing where you were in relation to the lanes?  
 (3) **A Correct**  
 (4) **Q** Now at the time of the last two conversations with Captain  
 (5) Hazelwood before he left the bridge did you know what the  
 (6) speed of the vessel was? Approximately?  
 (7) **A I knew the approximate speed yes**  
 (8) **Q** All right At what point did you know that it was in load  
 (9) program up? Was it between the two conversations or before  
 (10) both of them or - the two that I'm now talking about the last  
 (11) two before he left the bridge if you know?  
 (12) **A I knew at the time I don't know now**  
 (13) **Q** Okay All right And load program up calls for the engine  
 (14) to be increased gradually over a period of time?  
 (15) **A Correct**  
 (16) **Q** And that period of time is how much?  
 (17) **A Between 40, 42 to 48 minutes in that time frame**  
 (18) **Q** And in that time range approximately what knots to what  
 (19) knots does that encompass approximately?  
 (20) **A I really don't recall what the maneuvering speeds of the**  
 (21) **Valdez were I believe full maneuvering may have been 11**  
 (22) **knots It could have been more Our top designed speed I**  
 (23) **believe was 16 I'm not real clear on that**  
 (24) **Q** Okay Well let's - using those numbers then your  
 (25) understanding as you now recall it was that the load program up

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- (1) would take the vessel from a speed of around 11 knots?  
 (2) **A Correct**  
 (3) **Q** To 16 knots in a period of 40 some minutes?  
 (4) **A Yes**  
 (5) **Q** Does that do that on a straight line or is it more at the  
 (6) beginning or more at the end or can you - can you recall  
 (7) that? Where do you get more of the increase in speed?  
 (8) **A I don't recall It is not a - a linear increase as I**  
 (9) **recall That there is a critical range where the rpm may be**  
 (10) **slowed or advanced in rate but I - I really don't recall the**  
 (11) **specifics**  
 (12) **Q** Did you have when you - at what - at that time that you  
 (13) learned that the vessel was going to be in load program up and  
 (14) knowing approximately what your speed was at that time did you  
 (15) think that the speed at which you were going to do this  
 (16) maneuver was appropriate or imprudent or prudent?  
 (17) **A If you asked me that question that evening, I would have**  
 (18) **responded that I took the - the increase in speed to**  
 (19) **facilitate maneuvering**  
 (20) **Q** And did you think that was a good idea that was an  
 (21) appropriate plan a prudent thing to do?  
 (22) **UNIDENTIFIED SPEAKER** At that time that night or -  
 (23) **BY VIDEO EXAMINER**  
 (24) **Q** At that - that night  
 (25) **A I would have reserved that judgment to the captain He**  
**was**

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- (1) **certainly a more skilled navigator and ship handler with the vessel knew the vessel characteristics more - in more detail**
- (3) **than I did I did not question the increase in speed**
- (4) **Q Stated another way you didn't think it was imprudent at the time he told you what you were going to do and knowing what you were going to do?**
- (7) **A Um hum**
- (8) **Q Is that correct?**
- (9) **A Correct**
- (10) **Q Is one effect of increasing the speed to tighten the radius of the circle for the turn?**
- (11) **A Correct**
- (13) **Q I'd like to ask you about Captain Hazelwood's management style How would you describe it?**
- (15) **A Captain Hazelwood was a very relaxed easy individual to work for I did not know him well We didn't have many conversations The - in the professional vein I had met only two other individuals that could explain and define situations and/or questions as thoroughly as - as he did I mean if - if encountered a problem or encountered something that was unusual that we had not experienced or that I had not experienced he is the type of individual that was willing to share his knowledge and the manner in which he shared his knowledge was on a level that you don't often find**
- (25) **Q When you stood at the radar with Captain Hazelwood those**

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- (1) **both times did you feel that he was asking you for input as to the maneuver that was being proposed?**
- (3) **A I don't know if he was asking but I was giving it to him**
- (4) **Q You were?**
- (5) **A It's expected That's part of my job That's why I'm there**
- (7) **Q If you felt uncomfortable with the situation and told Captain Hazelwood you were uncomfortable do you believe he would have stayed on the bridge?**
- (10) **A Yes**
- (11) **Q I'd like to talk to you -**
- (12) **A He intimated that if I had not felt comfortable that he would indeed remain**
- (14) **Q He told you that?**
- (15) **A In a sense not those direct words but he said if I minded In other words if I - if I did mind that he left the bridge, he would have stayed**
- (18) **MR SANDERS Your Honor I think that's a good point to have the break If that's all right**
- (20) **THE COURT Thank you We'll take our first recess ladies and gentlemen**
- (22) **We'll reconvene in 15 minutes please**
- (23) **THE CLERK This court is in recess for 15 minutes**
- (24) **(Jury out at 10:00 a.m.)**
- (25) **(Jury in at 10:17 a.m.)**

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- (1) **THE CLERK All rise**
- (2) **MR SANDERS May it please the Court before we start anew I have - I haven't somebody better than I am has retrieved the exhibit that I am responsible for having over here and this is the exhibit with the - the red dots or the red circles that were drawn on the chart**
- (7) **Let me turn it a little bit so Your Honor can see it**
- (8) **THE COURT I don't need to see it They need to see it**
- (10) **MR SANDERS These are the circles that Mr Cousins drew at the point where Mr Chalos was asking him to draw in red on the original chart and this is obviously a blowup of that chart and these are the circles that were filled in in red so they'd be easier to see representing the ice he saw at the radar at that point**
- (16) **Thank you Your Honor and again I apologize**
- (17) **BY VIDEO EXAMINER**
- (18) **Q Let's talk a little bit about the vessel being on autopilot in this particular situation**
- (20) **A Yes**
- (21) **Q Do you know at what time the automatic pilot was put on?**
- (22) **A No I do not**
- (23) **Q Do you have a general knowledge of when it was put on?**
- (24) **A When the ship was steadied up on 180**
- (25) **Q I think there was some testimony that that was around 2345**

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- (1) **or so?**
- (2) **A Okay**
- (3) **Q When you took the vessel off the gyro when you pushed the gyro button how soon after Captain Hazelwood left the bridge did you do that?**
- (6) **A I don't think that he was - he wasn't visible he was walking out As he was leaving I was approaching the steering console telling the helmsman that we were putting in hand steering**
- (9) **Q Would you say it's within five to ten seconds after he started to walk away?**
- (12) **A Yes**
- (13) **Q Okay Mr Cousins sitting here today did the fact that the vessel was on gyro for a period of time approximately eight to ten minutes did that have anything to do with the grounding of this vessel?**
- (17) **A No**
- (18) **Q Okay Now you testified that you took your 2355 fix by doing the things that you already told us about Now is it your belief that had the maneuver the ten degrees right rudder been used at the time you gave the order which was about a minute or two after you took the fix is it your belief that the vessel would have cleared Bligh Reef comfortably?**
- (24) **A Yes**
- (25) **Q Is - under the circumstances did you believe going around**



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- (1) the ice was a prudent move to make? As opposed to going  
 (2) through the ice?  
 (3) A Yes  
 (4) Q Is - based on your experience - is a command to turn the  
 (5) wheel ten degrees right - is that a fairly simple command?  
 (6) A Yes it is  
 (7) Q Is it a fairly simple order to carry out?  
 (8) A Yes it is  
 (9) Q Now - when you gave the order to the helmsman - did you feel  
 (10) comfortable with the situation at that point?  
 (11) A Yes  
 (12) Q Did you also feel at that time that it -  
 (13) A Perhaps rephrase that - instead of comfortable, maybe  
 (14) confident  
 (15) Q I'll accept that - Did you feel confident?  
 (16) A I don't know that - the comfort thing, came out of - out  
 (17) of Captain Hazelwood's, that's language he used - I would  
 have  
 (18) to say that I felt confident, not so - I don't know if I've  
 (19) ever been comfortable  
 (20) Q All right - Did you also feel that if you were unconfident  
 (21) that you could call Captain Hazelwood and tell him you felt  
 (22) unconfident?  
 (23) A Sure  
 (24) Q And you felt that he would return to the bridge at that  
 (25) point?

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- (1) A Yes  
 (2) Q When Captain Hazelwood left the bridge - did you - did you  
 (3) have any doubt as to where the vessel was?  
 (4) A No  
 (5) Q Okay - I'd like to ask you now about the famous 38 fathom  
 (6) mark  
 (7) A Yes  
 (8) Q Did Captain Hazelwood tell you to start your turn at the 38  
 (9) fathom mark?  
 (10) A No  
 (11) Q Did you tell Delozier that you started your turn at the 38  
 (12) fathom mark?  
 (13) A No  
 (14) Q In your experience - have you ever received an order to make  
 (15) a course change at a - at a fathom mark?  
 (16) A No  
 (17) Q You mentioned that when you came back and laid down the  
 (18) 2355 fix as you were walking back to give the order to the  
 (19) helmsman - Maureen Jones came in and reported a light to you?  
 (20) A Yes  
 (21) Q And at that time she reported it with the wrong  
 (22) characteristics - am I correct - the first time?  
 (23) A I don't know what time it was  
 (24) Q But you know what light she was referring to?  
 (25) A Yes

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- (1) Q Because you had seen it before?  
 (2) A Yes, I expected it and I visually observed the light  
 (3) Q You saw it with your own eye?  
 (4) A Yes  
 (5) Q And what light was that?  
 (6) A Bligh Reef light  
 (7) Q So you knew where that light was in relation to your vessel  
 (8) at that time?  
 (9) A Yes  
 (10) Q So when she came back the second time and corrected it  
 you-  
 (11) knew what she was talking about again?  
 (12) A Yes  
 (13) Q Did you expect that light at that point in time to be on  
 (14) your starboard bow?  
 (15) A Yes  
 (16) Q Was it where you expected it to be?  
 (17) A Yes  
 (18) Q All right - Now - you mentioned that you got on the phone  
 (19) with Captain Hazelwood?  
 (20) A Yes  
 (21) Q And you told him that - well - strike that - Can you tell  
 (22) me what he said to you and what you said to him?  
 (23) A Which time?  
 (24) Q This is the first time - right after the 2355 fix and after  
 (25) you had given the order for ten degrees right rudder?

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- (1) A I couldn't give you verbatim - but the general context of  
 (2) the conversation, I informed him that - him being Mister - or  
 (3) Captain Hazelwood - that we were beginning our turn back  
 towards  
 (4) the lane - that I had seen more targets that I identified as ice  
 (5) further across - actually out of the - the easternmost  
 boundary  
 (6) of the northbound lane - and that perhaps we might - we  
 might  
 (7) judge a piece of ice or two, and he said - he queried me as  
 to  
 (8) whether I thought that we were going to be okay - I said well,  
 (9) we're going to be okay - I don't know how large these  
 chunks of  
 (10) ice are - You cannot tell by the return alone - It's very  
 (11) unreliable to try to judge the size of an object - especially  
 (12) ice - by the -  
 (13) Q This is what you were telling Captain Hazelwood or is this  
 (14) what you're telling us?  
 (15) A No - this is what I'm telling you - I'm explaining - but he  
 (16) understood that  
 (17) Q Okay  
 (18) A But I explained to him that there was more ice than I had  
 (19) seen earlier  
 (20) Q Okay  
 (21) A And that's the reason that - that I thought that we might  
 (22) get into a little bit of ice  
 (23) Q Did he ask you at that point if you thought it would be any  
 (24) problem?  
 (25) A Yes

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- (1) Q And what did you tell him?  
 (2) A I said that well we might nudge a piece of ice or two  
 (3) And he said okay do you think that's going to be a problem?  
 (4) I said well I don't know I don't think that it is But at  
 (5) that point it didn't really make any difference whether the  
 (6) ice was going to be a problem If it was going to be a  
 (7) problem it just had to be a problem  
 (8) Q Were you still confident at that point that you would be  
 (9) able to carry out your maneuver?  
 (10) A At that point I thought we were - we were carrying out  
 (11) the maneuver  
 (12) Q Okay Were you confident that you would be able to get  
 (13) around the ice and into the lanes with no problems?  
 (14) A Other than what I just stated that we - that I expressed  
 (15) to Captain Hazelwood that we might - we might actually  
 (16) encounter a chunk or two  
 (17) Q When you were telling Captain Hazelwood what you just told  
 (18) him was there any anxiousness in your voice?  
 (19) A No  
 (20) Q You were calm about it?  
 (21) A Yes  
 (22) Q I'm not quite sure but at what point in time did you first  
 (23) become concerned that things weren't going as you - you had  
 (24) planned?  
 (25) A Shortly after the telephone conversation

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- (1) Q That's when you went over to the radar and you saw the -  
 (2) the heading flasher and the heading weren't changing?  
 (3) A Correct  
 (4) Q Did you at that point consider calling Captain Hazelwood to  
 (5) come back to the bridge?  
 (6) A I don't know that I thought about it I - as I recall I  
 (7) was concerned with trying to - to figure out the source of  
 (8) my anxiety and that being where is - where are we in relation to  
 (9) the reef and I - the chronology is not correct it's - but  
 (10) at some time in this - within this time after the  
 (11) conversation, I stepped out onto the bridge make another  
 (12) real quick check turned to the radar I believe that's when I  
 (13) finally looked at the rudder angle indicator indicated a  
 (14) number of degrees less than - the ten right Gave the ten  
 (15) right, and after that I'm not sure of my movement I  
 (16) suspect - I really believe that that is when I returned to the  
 (17) chart room  
 (18) Q For a second time? Or a third time?  
 (19) A I cannot - I cannot be absolutely beyond a doubt positive  
 (20) about that but I - I strongly suspect that I did  
 (21) Q How much time elapsed between that of the - I know you re-  
 (22) not going to be able to tell me but I have to ask the  
 (23) question between that - that event that you just described  
 (24) and the second call to Captain Hazelwood?  
 (25) A I don't know Probably a minute or two I really don't

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- (1) know Maybe perhaps less than two minutes no longer  
 (2) than  
 (3) that  
 (4) Q Okay Did I understand you correctly that when you were on  
 (5) the phone with Captain Hazelwood you felt the first jolt of the  
 (6) running aground?  
 (7) A In the second conversation?  
 (8) Q Yes  
 (9) A While we were still on the phone?  
 (10) Q Yes  
 (11) A Yes  
 (12) Q And did Captain Hazelwood come up immediately?  
 (13) A He didn't feel it It wasn't - I don't think anyone else  
 (14) did feel it  
 (15) Q But yourself?  
 (16) A Well I think the people on the bridge did  
 (17) Q Did you tell him to come up right away? Or did he just do  
 (18) that on his own?  
 (19) A He just did that on his own I told him that we're in  
 (20) serious trouble and the question was what's - what's  
 (21) wrong  
 (22) and I said we're about to go aground And he said well  
 (23) what  
 (24) did you do with the rudder where's the rudder at? And I  
 (25) said  
 (26) it's at - it's hard right, and I looked up, we skipped a  
 (27) rudder order in here and it was still at 20 degrees right  
 (28) Q You had previously given a 20 degrees right?  
 (29) A Yes

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- (1) Q After you felt concerned?  
 (2) A Yes  
 (3) Q Did Captain Hazelwood come up to the bridge immediately  
 (4) after you hung up the phone?  
 (5) A Yes  
 (6) Q I'd like to ask you just a few questions peripheral  
 (7) questions You mentioned that you didn't think the fathometer  
 (8) alarm was of great use in Prince William Sound Do you  
 (9) remember that?  
 (10) A Yes  
 (11) Q Is that because the bottom in Prince William Sound is a  
 (12) rocky jagged bottom?  
 (13) A It's because our transit is through relatively deep water  
 (14) even at the extremes of the traffic system it's very deep  
 (15) water By the time an alarm would sound in the areas that  
 (16) we  
 (17) transit you'd already be aground It's a very -  
 (18) Q By the time it grounded?  
 (19) A It's steep, it's steep too Yes  
 (20) Q When Captain Hazelwood came back up on bridge after you  
 (21) made the call to him did he take command of the vessel at that  
 (22) point?  
 (23) A Yes  
 (24) Q Did he start giving orders?  
 (25) A Yes  
 (26) Q Do you remember him giving you an order to take a fix?

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- (1) A Yes  
 (2) Q Did you in fact take the fix?  
 (3) A Yes  
 (4) Q Do you remember him telling the helmsman to put the rudder  
 (5) amid ships?  
 (6) A No, I don't recall that  
 (7) Q Did he tell you to call the chief mate on the phone?  
 (8) A He may have I don't recall  
 (9) Q He did give you an order to take Maureen Jones and go  
 down  
 (10) and wake up the crew?  
 (11) A Yes  
 (12) Q Were his orders clear?  
 (13) A Yes  
 (14) Q Were they concise?  
 (15) A Yes  
 (16) Q Were they given with authority?  
 (17) A Yes  
 (18) Q Now with respect to the - to the engine and helm  
 (19) maneuvers that Captain Hazelwood was making after the  
 (20) grounding did he discuss those with you?  
 (21) A No  
 (22) Q Did he tell you what was in his mind at that point?  
 (23) A No  
 (24) Q Did he tell you what he was trying to do?  
 (25) A No

- (1) A Yes  
 (2) Q That he'd been standing there when nothing was  
 happening?  
 (3) A Yes  
 (4) Q Now going back to the - to the amount of time you had off  
 (5) duty and on duty or while you were resting or not resting at  
 (6) the time that you stood your watch the night of the grounding  
 (7) starting sometime before 8 00 that night?  
 (8) A Right  
 (9) Q Did you feel like you were affected by any fatigue?  
 (10) A No  
 (11) Q At the time that you took over the con some eight or nine  
 (12) minutes before midnight did you feel fatigued?  
 (13) A No  
 (14) Q Did you feel like fatigue had anything to do with your  
 (15) performance that evening? That night or that morning?  
 (16) A No I don't think it did  
 (17) Q Now at any time in the next three four or six or seven  
 (18) hours did you ever have the opportunity to be able to sit down  
 (19) and collect your thoughts and try to jot down what you had  
 done  
 (20) and when you had done it?  
 (21) A No  
 (22) Q At some point fairly early on after the grounding people  
 (23) started coming to the ship correct? Coast Guard  
 (24) investigators?  
 (25) A Yes

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- (1) Q Did you believe the captain was after the grounding trying  
 (2) to ascertain how much damage was done and where the  
 damage  
 (3) was?  
 (4) A He directed the chief officer to do a stability survey  
 (5) Q You heard him tell him that?  
 (6) A Yes  
 (7) Q And you knew - and you understood that to mean he wanted  
 (8) to know how badly he was damaged?  
 (9) A Yes  
 (10) Q And where?  
 (11) A Yes  
 (12) Q Now you were asked some questions both yesterday and  
 (13) today I believe about a comment that you overheard Mr  
 Kagan  
 (14) get from Captain Hazelwood after the grounding  
 (15) A Yes  
 (16) Q And I think at one point you mentioned you were kind of  
 (17) frustrated at the way the questions were coming about that?  
 (18) A Yes  
 (19) Q Is it correct that this comment by Captain Hazelwood came  
 (20) after a period in which Mr Kagan was standing at the helm?  
 (21) A Yes  
 (22) Q And during that period of time after the grounding there  
 (23) was nothing going on?  
 (24) A Correct  
 (25) Q Did you understand the sarcasm to be directed at that fact?

- (1) Q And there were drug and alcohol tests and questions asked  
 (2) correct?  
 (3) A Yes  
 (4) Q And then the next day and thereafter there was a great deal  
 (5) of pressure and publicity was there not?  
 (6) A Yes  
 (7) Q And within a little over a month you were subjected to  
 (8) testimony before the NTSB?  
 (9) A Yes  
 (10) Q And at some point in this time interval you were requested  
 (11) or summoned to talk to the attorneys for the Department of  
 (12) Justice?  
 (13) A Correct  
 (14) Q And did you understand they were conducting a criminal  
 (15) investigation?  
 (16) A Yes  
 (17) Q Did you also understand that there was a state criminal  
 (18) investigation on going?  
 (19) A Yes  
 (20) Q And did you ultimately testify before a federal grand jury?  
 (21) A Yes I did  
 (22) Q Was that in Anchorage?  
 (23) A Yes  
 (24) Q Did you also testify in front of a state grand jury if you  
 (25) recall?

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- (1) **A I did not**  
 (2) **Q And on the occasions – and you of course testified in the next year in – early in the next year in the Hazelwood trial?**  
 (3) **A Correct**  
 (4) **Q Which was a criminal trial?**  
 (5) **A Yes**  
 (6) **Q Now on all of these occasions you've been asked many many**  
 (7) **times about at what time certain things occurred?**  
 (8) **A Yes**  
 (9) **Q Just prior to the grounding and after the grounding**  
 (10) **correct?**  
 (11) **A Um hum yes**  
 (12) **Q You've been asked how long it took to do a certain thing**  
 (13) **correct?**  
 (14) **A Yes**  
 (15) **Q And how long it took to go from this thing to the next**  
 (16) **thing?**  
 (17) **A Yes**  
 (18) **Q Have you not?**  
 (19) **A Yes**  
 (20) **Q And you've also asked to try to put the things in order?**  
 (21) **A Yes**  
 (22) **Q What happened first second third fourth and fifth isn't**  
 (23) **that correct?**  
 (24) **A Correct**

- (1) **A Yes**  
 (2) **Q For example the time that you took the fix at 2355 you**  
 (3) **know that time don't you?**  
 (4) **A Yes**  
 (5) **Q Why?**  
 (6) **A Because I logged it That's a landmark time certain of –**  
 (7) **certain events in a time span would stand out more than**  
 (8) **others**  
 (9) **just because of their relative importance to me**  
 (10) **Q Well also didn't you look at your watch?**  
 (11) **A Yes–**  
 (12) **Q When you did that?**  
 (13) **A Yes put it on the chart**  
 (14) **Q And as a matter of fact isn't that the only time from the**  
 (15) **time the captain left the bridge till sometime after the**  
 (16) **grounding that you ever had a chance to look at your watch?**  
 (17) **Or you ever looked at your watch?**  
 (18) **A Yes**  
 (19) **Q That night do you recall what kind of watch you had?**  
 (20) **A It was a digital display lighted display**  
 (21) **Q Did it show hours and minutes or hours minutes and**  
 (22) **seconds?**  
 (23) **A Hours minutes and seconds**  
 (24) **Q Did you have to punch it to show seconds?**  
 (25) **A No**  
 (26) **Q When you arrived were out there on the wing when you**

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- (1) **Q And have you attempted to do that?**  
 (2) **A I have attempted**  
 (3) **Q Do you have as you sit here today having – you have I**  
 (4) **assume had the opportunity over the past months to look at**  
 (5) **your NTSB testimony?**  
 (6) **A I've had the opportunity I haven't done it**  
 (7) **Q But at some point did you ever read your NTSB testimony?**  
 (8) **A Yes**  
 (9) **Q And did you ever read your Hazelwood trial testimony or**  
 (10) **parts of it?**  
 (11) **A Parts of it**  
 (12) **Q And do you realize there are differences between those?**  
 (13) **A Yes**  
 (14) **Q As to the sequence and the times and everything?**  
 (15) **A Yes**  
 (16) **Q Is it a fair statement that you've had a great deal of**  
 (17) **difficulty under these particular circumstances as we've**  
 (18) **described them remembering the times at which things**  
 (19) **occurred?**  
 (20) **A Correct**  
 (21) **Q All right And that is in no small part due to what you**  
 (22) **had to go through that night the grounding and the aftermath?**  
 (23) **A Correct**  
 (24) **Q Now there are some times that are pretty clear in your**  
 (25) **mind though aren't there?**

- (1) **looked at your watch could you see how many seconds there**  
 (2) **were**  
 (3) **on it or did you remember how many seconds there were on it?**  
 (4) **A I would have been able to see it but with difficulty**  
 (5) **Q Do you remember seeing how many seconds it was after**  
 (6) **2355?**  
 (7) **A No**  
 (8) **Q As you sit here today do you have an independent**  
 (9) **recollection that you can sit here and recall the order in**  
 (10) **which all these things were done?**  
 (11) **A Not an exact chronology no**  
 (12) **Q And is it possible that certain things in the way you**  
 (13) **recite them here today or at the NTSB or at the Hazelwood trial**  
 (14) **were out of order from where they actually occurred?**  
 (15) **A Yes**  
 (16) **Q And is it also possible that your estimates of the time it**  
 (17) **took to do things could be inaccurate?**  
 (18) **A Certainly I – I wish I'd made that more clear in my**  
 (19) **previous testimonies, that I really was not sure, that they**  
 (20) **were purely estimates**  
 (21) **Q When you were testifying before the NTSB?**  
 (22) **A Yes**  
 (23) **Q Were you attempting to give them an estimate about how**  
 (24) **long**  
 (25) **the tasks took or were you actually giving them from**  
 (26) **recollection the time it actually took you?**  
 (27) **A Those were my best estimates of – of time intervals other**  
 (28) **than – placed within times that I could verify from – from**

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- (1) fixes or important events such as the beginning of a the load
- (2) program up, and I tried to fix everything within those - those
- (3) landmark times
- (4) Q Doing the best you would put them in there?
- (5) A Yes
- (6) Q Between the landmark times that you know of?
- (7) A Correct
- (8) Q And as a matter of fact at the time you testified in front of the NTSB did you still think the time of the grounding was approximately 0004 on the 24th of March?
- (9) A I thought it was - that also to be an approximation
- (10) Q Mr Cousins do you recall testifying to the NTSB in May of 1989 that after you ordered the 20 degree right rudder and witnessed the rudder angle indicator changing that you observed it go to right 20 and then stop reading from the top of page 66 question is after you put on the right 20 degrees rudder and witnessed the rudder indicator changing did you observe it go to right 20 and stop?
- (11) Answer yes I believe I did I can't specifically recall but - that it did but I would have looked at the rudder angle indicator at that time yes
- (12) Question you would have looked at it?
- (13) Answer yes
- (14) Question that would have been your practice?
- (15) Answer yes

- (1) Q And you -
- (2) A After - after the conversations with Captain Hazelwood and
- (3) my return to the chart during the first and second conversation
- (4) with the captain
- (5) Q Am I correct in reading this chart and I am not a mariner
- (6) that - that right south of the 2355 the spot that you fixed
- (7) at 2355 you were about to enter water that was about 29
- (8) fathoms in depth?
- (9) A Right here? Yes I see 29 fathom mark there
- (10) MR SANDERS Your Honor that concludes the examination of Mr Cousins
- (11) THE COURT Thank you
- (12) MR O NEILL The plaintiffs call William Sheehy
- (13) THE CLERK Raise your right hand please
- (14) (The Witness Is Sworn)
- (15) THE CLERK For the record sir state your full name
- (16) your address and spell your last name please
- (17) THE WITNESS My name is William Sheehy I live at
- (18) 1301 Berging Road Hastings Nebraska 68901 Last name is
- (19) S H E E H Y
- (20) THE CLERK Thank you sir
- (21) MR O NEILL Your Honor we offer Plaintiffs
- (22) Exhibits 224 and 355 I understand there is no objection 224
- (23) and 355
- (24) MR SANDERS No objection Your Honor

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- (1) Do you recall those questions and answers?
- (2) A Vaguely yes
- (3) Q And then later on the next page on page 67 at line 9 the
- (4) question was asked now about how long was the vessel on
- (5) right
- (6) 20 degrees before you did something else?
- (7) And the answer was I estimate two minutes
- (8) Do you recall that?
- (9) A Yes
- (10) Q At the time that you talked to Captain Hazelwood about the
- (11) maneuver you were going to make you fully expected that you
- (12) would be traveling through water that might be 50 fathoms or
- (13) less isn't that true?
- (14) A Yes
- (15) Q And isn't it true that if you look at the 2355 plot that
- (16) even after giving a ten degree right rudder command you
- (17) almost
- (18) certainly would have passed over areas that were less than 50
- (19) fathoms?
- (20) A Yes
- (21) Q And you would have had a fathometer alarm going off on -
- (22) A Yes
- (23) Q And would that - would the addition of that alarm with the
- (24) other things that you were doing have been of assistance to
- (25) you?
- (26) A In that perspective no Not really I mean I knew the
- (27) depths of water that we were going to traverse anyway

- (1) THE COURT Thank you Plaintiffs Exhibits 224 and
- (2) 355 are admitted
- (3) MR O NEILL I'm sorry it's 3551 I misspoke
- (4) (Exhibits 224 and 3551 offered)
- (5) MR SANDERS No objection to that one either Your
- (6) Honor
- (7) THE COURT 3551 and 224 are admitted
- (8) (Exhibits 224 and 3551 received)
- (9) MR O NEILL Your Honor we're calling - excuse me
- (10) We're calling Mr Sheehy for cross examination That means I
- (11) get to ask leading questions And we'll use your deposition
- (12) transcript
- (13) CROSS EXAMINATION OF WILLIAM SHEEHY (Live)
- (14) BY MR O NEILL
- (15) Q Could you tell us where you work
- (16) A Right now I work for Sea River Maritime
- (17) Q That's the old Exxon Shipping Company?
- (18) A Exxon Shipping correct
- (19) Q And when did you start with them?
- (20) A I started with them in I believe it was July of 1974
- (21) Q And was that after graduation from some maritime academy?
- (22) A Yes
- (23) Q And what academy was that?
- (24) A The Federal Maritime Academy, Kings Point New York
- (25) Q And that's the sort of top of the line maritime academy

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- (1) isn't it?
- (2) **A Some people think that**
- (3) **Q Do people who graduate from Kings Point wear their rings on**
- (4) **their left hand like they do at West Point?**
- (5) **A I don't know I don't have one**
- (6) **Q I asked that I'm a West Pointer and in the years since**
- (7) **I've graduated I've put on so much weight that I can't get my**
- (8) **ring on anymore**
- (9) **You were the port captain of the gulf coast fleet at some**
- (10) **point in time weren't you?**
- (11) **A Yes sir**
- (12) **Q And about when was that?**
- (13) **A I started I believe in June of '85**
- (14) **Q And the primary job of the port captain was to act as the**
- (15) **liaison between ships masters and shore side management?**
- (16) **A That's correct when I started the job yes**
- (17) **Q At some point in time were the responsibilities enhanced?**
- (18) **A Yes, during the time that I was there I actually held**
- (19) **three different jobs**
- (20) **Q Could you tell us what the three different jobs were and**
- (21) **when you held them?**
- (22) **A Well the first one when I started I was port captain for**
- (23) **all 12 of the vessels there I'm going to say somewhere**
- (24) **around**
- (25) **the first of '87 we changed the structure a little bit and**
- (26) **added a second port captain so I had half as many vessels**

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- (1) **after that time and the job description changed a little bit**
- (2) **Not a lot And then in the - I think the first of '88 that**
- (3) **structure was changed and we - I went from being port**
- (4) **captain**
- (5) **to ship group coordinator and that was the biggest change**
- (6) **in**
- (7) **job descriptions was going from port captain to ship group**
- (8) **coordinator**
- (9) **Q Now at the same time that these management changes were**
- (10) **taking place shore side would it be fair to say that**
- (11) **Mr. Larossi who was the president of Exxon Shipping Company**
- (12) **was implementing management changes with regard to the**
- (13) **responsibilities of tanker masters?**
- (14) **A I do not recall any real changes with regards to the**
- (15) **masters on the ships**
- (16) **Q Have you ever heard him or seen his speech surrendering**
- (17) **the**
- (18) **memories?**
- (19) **A Yes**
- (20) **Q And in that speech doesn't he talk about how he at least**
- (21) **through the 1980s created a shipboard management team with**
- (22) **regard to these vessels?**
- (23) **A Well what he discussed was ideas for the future and**
- (24) **possibilities for changing I don't recall that he**
- (25) **specifically changed anything in that time period**
- (26) **Q Do you recall him when he made the speech saying - or**
- (27) **when you read the speech - did you hear it or read it or both?**
- (28) **A Both I think**

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- (1) **Q The latest and perhaps most significant step in the**
- (2) **evolution to the new fleet officer involved the development of**
- (3) **the shipboard management team and the concept of business**
- (4) **unit**
- (5) **stewardship do you recall him saying that?**
- (6) **A Not specifically but -**
- (7) **Q Did you attend the 1988 fleet management conference?**
- (8) **A Yes I probably did**
- (9) **Q Was a topic of discussion at the 1988 fleet management**
- (10) **conference fatigue at sea?**
- (11) **A I don't remember if that was or not**
- (12) **Q Do you recall a topic at fleet management - at a fleet**
- (13) **management conference prior to the grounding being fatigue at**
- (14) **sea?**
- (15) **A No**
- (16) **Q Let me show you 224 which has been admitted Have you**
- (17) **ever seen a handout like Exhibit 224?**
- (18) **You've got a screen right there sir You got your own**
- (19) **private screen**
- (20) **A Okay I don't really remember this but I may have seen it**
- (21) **and not -**
- (22) **Q Does this -**
- (23) **A And I generally remember I guess the subject but -**
- (24) **Q Does this at all refresh your recollection that in 1988 a**
- (25) **topic at the fleet management conference may have been**
- (26) **fatigue**
- (27) **at sea?**

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- (1) **A It may have been yes**
- (2) **Q In August of 1985 when you were the - you were then the**
- (3) **gulf coast fleet manager?**
- (4) **A No I was the port captain**
- (5) **Q Gulf coast - the port captain?**
- (6) **A Yes**
- (7) **Q Someone in personnel told you that Captain Hazelwood**
- (8) **would**
- (9) **be returning to duty as the master of the Yorktown is that a**
- (10) **correct statement?**
- (11) **A That's correct**
- (12) **Q And you were later told by your boss who was John**
- (13) **Tompkins to meet with Captain Hazelwood?**
- (14) **A Yes**
- (15) **Q And Tompkins told you that Hazelwood had been**
- (16) **determined to**
- (17) **be fit for duty in a medical sense?**
- (18) **A Yes Tompkins told me that he was returning to sea Yes**
- (19) **I**
- (20) **believe he said that**
- (21) **Q And he was going to be assigned to the Exxon Yorktown?**
- (22) **A Yes**
- (23) **Q And the sum and substance of this conversation was about**
- (24) **two minutes?**
- (25) **A Approximately**
- (26) **Q And Tompkins never told you the reason for Captain**
- (27) **Hazelwood's leave of absence?**
- (28) **A When - when Tompkins and I had that conversation we**
- (29) **were**

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(1) both going to the same meeting We were driving up north  
of  
(2) town I don't believe that he told me any reason then  
(3) Q And you didn't ask him about the nature of Captain  
(4) Hazelwood's medical leave?  
(5) A No  
(6) Q And you learned later on that Mr Tompkins was in fact  
(7) aware of the reason for Captain Hazelwood's medical leave?  
(8) A I - I assumed that he was aware of it, yes  
(9) Q Now after your discussion with Mr Tompkins and before  
(10) your meeting with Captain Hazelwood you called a Mark Pierce  
(11) to find out what the situation was with Captain Hazelwood you  
(12) were curious?  
(13) A Yes I called Mark Pierce because I had just relieved  
(14) Captain Pierce and so I decided to - before I left for the  
(15) meeting, to call Captain Pierce and just probe the issue a  
(16) little bit  
(17) Q And Pierce told you that Captain Hazelwood had been in  
some  
(18) kind of alcohol rehabilitation?  
(19) A Yes  
(20) Q And that he described Captain Hazelwood's problem as  
(21) drinking problems?  
(22) A I can't recall for sure - I believe he said that yes  
(23) Q And Captain Pierce was of the opinion that Captain  
(24) Hazelwood's drinking may have been interfering with Captain  
(25) Hazelwood's job?

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(1) A No I believe that what Captain Pierce told me was that -  
(2) something along the lines that Captain Hazelwood went  
(3) voluntarily to a rehabilitation program before it interfered  
(4) with his job performance  
(5) Q Did he at some subsequent time tell you that Joseph  
(6) Hazelwood's drinking problems interfered with the performance  
(7) of Captain Hazelwood's job?  
(8) A I believe that Mark did not tell me that that he said  
(9) there may have been a potential for it but I don't believe he  
(10) ever said that there were any performance problems  
(11) Q Okay sir would you go to page 116 of your deposition  
(12) transcript? And on page 116 of your deposition transcript at  
(13) line 21 through page 117 line 5 would you read that?  
(14) A Starting on which line line -  
(15) Q Line 21 there's a question on line 21  
(16) MR SANDERS Your Honor I'd ask that question go  
(17) back to 116 line 5 Make it complete  
(18) MR O NEILL This is my examination Judge If he  
(19) wants to redirect him -  
(20) THE COURT Well I think the rule says that you need  
(21) to pick the relevant part Take a look at it and see see if  
(22) you're getting all that's relevant  
(23) MR O NEILL The top of page 116 deals with the first  
(24) Pierce conversation I believe my question was at any time  
(25) after 1985 Did Mark Pierce at any time after 1985 tell you

(1) how Joseph Hazelwood's drinking problem interfered with the  
(2) performance of Hazelwood's job  
(3) BY MR O NEILL  
(4) Q Sir Mr Sheehy Captain Sheehy when I asked you the  
(5) question I want you to know I read it out of the transcript  
(6) A Oh, I'm sure you did  
(7) Q That's how I do it I don't have the confidence to ask  
(8) questions I don't know the answer to  
(9) A Well, the thing that's relevant is he asks up on line 5  
(10) about problems interfering with Joe's job, and I said no, I  
(11) don't think there were any problems interfering with Joe's  
job  
(12) and I believe this - this is down -  
(13) Q Let's read the questions and answers out loud I'll read  
(14) the question an answer out loud  
(15) A Okay  
(16) Q And you tell me whether I read it out loud right or not  
(17) A Okay  
(18) Q Question, did Mark Pierce at any time after 1985 tell you  
(19) how Joseph Hazelwood's drinking problems interfered with the  
(20) performance of Hazelwood's job?  
(21) Answer I believe that a subsequent time he did tell me  
(22) something about it  
(23) Question what did he tell you?  
(24) Answer seems to me like he told me something about some  
(25) problems on one of the vessels Joe was on and that was what

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(1) actually precipitated his involvement with Joe and  
(2) encouragement to go to a program  
(3) Were those questions asked and were those answers given?  
(4) A Yes  
(5) Q And indeed Captain Pierce told you that he was  
(6) instrumental in getting Captain Hazelwood to seek help for his  
(7) drinking problem?  
(8) A Captain Pierce said that he had some involvement with  
(9) Captain Hazelwood going into a program I don't believe he  
(10) said he was instrumental but he did say that he had some  
(11) involvement with that due to some problems that he had  
seen  
(12) that I don't think were job related  
(13) Q Are you at all aware of the Graves report?  
(14) A First time I saw that was when it was one of the  
(15) predesignated documents  
(16) Q It would appear from the Graves report that Captain  
(17) Hazelwood's drinking was job related wouldn't it?  
(18) A Maybe at some point I don't know  
(19) Q Would you go to page 113 of your deposition transcript  
(20) line 19 and with regard to the word instrumental was the  
(21) question asked - let's start on line 20 There are a variety  
(22) of questions and you eventually answer  
(23) The question is yes but the answer is I believe that Mark  
(24) said that he - he was involved in Joe's drinking problem and  
(25) that he had told or that he had been instrumental in Joe

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- (1) seeking help and that it was a good thing that he did and  
 (2) that you know he needed to seek this help and successfully  
 (3) complete this program in order to remain employed with the  
 (4) company something along those lines that in the context of  
 (5) this last chance thing came in  
 (6) Did you say that?  
 (7) A Yes I believe so  
 (8) Q And the word instrumental was your word wasn't it?  
 (9) A Yes  
 (10) Q Did Mr. Pierce or Captain Pierce tell you that he hoped  
 (11) that Captain Hazelwood had been rehabilitated?  
 (12) A I believe he made a comment something like that  
 (13) Q And did he tell you that it was a good thing that Captain  
 (14) Hazelwood had stopped drinking because that Captain  
 Hazelwood  
 (15) wouldn't remain an employee if he continued the way that he  
 (16) was?  
 (17) A Captain Pierce may have been speculating that there was  
 (18) potential for problems if - if Captain Hazelwood was not  
 (19) rehabilitated I recall something like that  
 (20) Q And did he tell you that Captain Hazelwood needed to seek  
 (21) this help and successfully complete the alcohol rehabilitation  
 (22) program in order to remain employed?  
 (23) A He told me that if he didn't seek some sort of  
 (24) rehabilitation that - that there was a potential for him to  
 (25) do something that may jeopardize his employment

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- (1) Q Indeed Captain Pierce told you that this would probably be  
 (2) Captain Hazelwood's last chance?  
 (3) A He made some comment like that  
 (4) Q And this was in 1985 this last chance comment was in  
 (5) 1985?  
 (6) A Yes  
 (7) Q So you had - at this point in time in 1985 prior to your  
 (8) meeting with Captain Hazelwood you had had a telephone  
 (9) conversation with or a conversation with Tompkins may have  
 (10) been in the car?  
 (11) A No it was in my office  
 (12) Q It was in your office and then you had this follow up  
 (13) conversation with Captain Pierce?  
 (14) A Yes  
 (15) Q And then you met with Captain Hazelwood at a - at the  
 (16) Windham Hotel in where?  
 (17) A That's the Windham Hotel near the airport Houston  
 (18) Q In Houston?  
 (19) A Intercontinental yes sir  
 (20) Q And Captain Hazelwood was going to come in for this  
 meeting  
 (21) and then the next day he was going to be reassigned to the  
 (22) Exxon Yorktown?  
 (23) A That's correct  
 (24) Q And the meeting has been described as having taken place  
 in  
 (25) a variety of different environments Would you - would it be

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- (1) fair to say that it was in the open lobby of the Windham Hotel?  
 (2) A The way I recall that meeting was I met Captain  
 Hazelwood  
 (3) right by the entrance and we sat down at the closest  
 (4) available - I believe it was a couch and a table in the lobby  
 (5) there  
 (6) Q And that's - you could describe it as the lobby bar an  
 (7) open lobby bar would that be fair?  
 (8) A Yeah You could get beverages sitting there yes  
 (9) Q Captain Hazelwood testified that you had a beer there?  
 (10) A I may or may not have had a beer I don't really recall  
 (11) what I had  
 (12) Q But it's one of those places that we all know in hotel  
 (13) lobbies where the tables out there and there's a bar set up  
 (14) and it's out in the atrium?  
 (15) A It's in the atrium  
 (16) Q Is that a fair statement?  
 (17) A Yes that's correct  
 (18) Q Now Captain Hazelwood has testified that in his  
 (19) conversation with you the subject of drinking did not come  
 (20) up Okay? Your recollection of that is different isn't it?  
 (21) A Yes  
 (22) Q So we have two versions as to what took place We have  
 (23) whatever he testified to here in the courtroom and your  
 (24) recollection is that Captain Hazelwood told you that he was no  
 (25) longer drinking?

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- (1) A That's correct  
 (2) Q And you told Captain Hazelwood that this was your last  
 (3) chance?  
 (4) A When we were sitting there at the table and I can't recall  
 (5) for sure what precipitated the comment but I believe  
 Captain  
 (6) Hazelwood proffered that to me that he was not drinking  
 and I  
 (7) said good I understand that - that this - that you  
 (8) shouldn't be or this is your last chance or something along  
 (9) those lines  
 (10) Q So that in 1985 at least as you and I are talking and your  
 (11) recollection of the conversation goes Captain Hazelwood was  
 (12) told that this was his last chance?  
 (13) A I don't think I ever said Captain Hazelwood was told it  
 was  
 (14) his last chance  
 (15) Q Did you say I understand that this is your last chance this  
 (16) time?  
 (17) A I may have said that yes sir  
 (18) Q You're careful in your speech and if I overstate feel free  
 (19) to come back and -  
 (20) A Okay  
 (21) Q All right?  
 (22) A Okay  
 (23) Q You did not ask Captain Hazelwood anything about his  
 (24) aftercare AA mental or emotional help family support  
 (25) structure those kinds of things did you?



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(1) A No My understanding was that Mr Tompkins had already met  
 (2) with him As a matter of fact that was the agreement that I  
 (3) had with John Tompkins was that I was really only to meet with  
 (4) Captain Hazelwood if he did not make it to the Windham  
 (5) I did know that Mr Tompkins did meet with Joe so in  
 (6) actuality, my meeting with Captain Hazelwood was redundant at  
 (7) that point  
 (8) Q Would it be fair to say that in the summer of 1985 you  
 (9) were on notice of a potential problem that is Captain  
 (10) Hazelwood alcohol rehabilitation and what Captain Pierce had  
 (11) told you?  
 (12) A Captain Pierce - yes Captain Pierce had - when - I  
 (13) believe that perhaps also when I relieved Captain Pierce in  
 (14) June, several months before the Windham meeting I believe that  
 (15) Captain Pierce said something to me about Captain Hazelwood  
 (16) being on medical leave We didn't get down to the details of  
 (17) any of it nor did we discuss when he would be back  
 (18) Q And you understood during the period of time that you  
 (19) worked with Captain Hazelwood on the gulf coast that there was  
 (20) a fairly high likelihood that someone with an alcohol problem  
 (21) would start drinking again?  
 (22) A I don't know if I was aware of what that likelihood was  
 (23) I'm not sure if I could assign a percentage to it but I  
 (24) certainly recognized that it was something to be concerned  
 (25) about

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(1) Q The term fairly high the reason that I used that is that  
 (2) was the phrase that you used in your deposition Would you  
 (3) take issue with that now?  
 (4) A I'd have to read that  
 (5) Q Let's find it  
 (6) A Okay  
 (7) Q Let's go to page 285 line 16 The question was and what  
 (8) was your understanding as to the rate of recidivism? And your  
 (9) answer was that it was fairly high Do you see that?  
 (10) A Yes That refreshes my memory the discussion about  
 (11) recidivism a little bit  
 (12) Q We can take - we can take our time We can go back here  
 (13) and take a look at what you need to look at because there  
 (14) are - there's like 400 or 500 pages of transcript there  
 (15) A Yeah  
 (16) Q And you knew that a follow up program was a necessary part  
 (17) of Captain Hazelwood's alcohol rehabilitation?  
 (18) A The details to my knowledge about Captain Hazelwood's  
 (19) program were very limited because it was a confidential  
 (20) matter  
 (21) that really only a supervisor would be privy to so the details  
 (22) of his program and of his aftercare situation I was not privy  
 (23) to  
 (24) Q You know as a general proposition that a follow up program  
 (25) was a necessary part of an alcohol rehabilitation program?  
 (26) A I know in - yes in most cases it is yes

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(1) Q And that was your belief at the time that Captain Hazelwood  
 (2) was under your watch?  
 (3) A Yes, I believe that he was in some sort of program, yes  
 (4) Q And you made no attempt to determine if Captain Hazelwood  
 (5) could attend AA or aftercare meetings during his tours at sea  
 (6) did you?  
 (7) A The details of Captain Hazelwood's aftercare program as I  
 (8) said, were not - not matters that I was privy to I was still  
 (9) on the peer level with Captain Hazelwood What his  
 (10) program  
 (11) was, how frequently, what - I didn't even know what group  
 (12) he  
 (13) was going to, whether it was AA or rapid recovery or any of  
 (14) those  
 (15) Q That's - that's fine In fact let's take that one step  
 (16) further Would it be fair to say that no one ever told you to  
 (17) monitor Captain Hazelwood regarding his use of alcohol?  
 (18) A Well, the fact of the matter is is that I don't recall  
 (19) specifically being told and I think it's probably because I  
 (20) recognize that such monitoring of like that that you speak  
 (21) was  
 (22) part of my job in the base case I did not recall of  
 (23) specifically being told to do anything other than what I felt  
 (24) like I was doing already  
 (25) Q Well my statement is correct you were never told by  
 (26) anyone at Exxon to monitor Joseph Hazelwood regarding the  
 (27) use  
 (28) of alcohol?  
 (29) A I - I may or may not have been told that I don't recall

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(1) being told that I may have been  
 (2) Q Okay Would you go to page 218 of your deposition  
 (3) transcript and I'm going to read from line 2 to line 5 and you  
 (4) can follow along with me  
 (5) Okay were you ever told by anyone at Exxon to monitor  
 (6) Joseph Hazelwood regarding use of alcohol and your answer  
 (7) was  
 (8) no  
 (9) Do you see that?  
 (10) A Yes But then on the same page I specifically say that I  
 (11) wouldn't necessarily be told that because it was part of my  
 (12) job  
 (13) to monitor that  
 (14) Q Well you were concerned about this man weren't you just  
 (15) on your own? Your own investigation without being told to  
 (16) monitor him puts you on notice of a potential problem didn't  
 (17) it?  
 (18) A I felt like it was my job to - to monitor him yes  
 (19) Q And would it be fair to say that you don't know whether  
 (20) anybody else specifically monitored Joseph Hazelwood  
 (21) regarding  
 (22) his use of alcohol?  
 (23) A I don't know specifically what other monitoring plans or  
 (24) programs were  
 (25) Q Now at some point in time a Mr Jim Shaw comes to you with  
 (26) regard to Captain Hazelwood?  
 (27) A Yeah  
 (28) Q Is that a correct statement?

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(1) **A Yes**  
 (2) **Q** And he was a port steward while you were the port captain  
 (3) of the gulf coast fleet?  
 (4) **A That's correct**  
 (5) **Q** And you view Mr. Shaw as being an honest man?  
 (6) **A I believe my testimony was that he is - he's honest and**  
 (7) **well intentioned but he also is prone to gossip to**  
 (8) **exaggerate**  
 (9) **things rather - he lacks in credibility sometimes simply**  
 (10) **because of his gossiping and exaggeration**  
 (11) **Q** He had never - are you finished?  
 (12) **A Yes**  
 (13) **Q** He had never before or after reported any out of school  
 (14) drinking problems that he had. This is the only drinking  
 (15) report that Mr. Shaw ever brought to you, isn't it?  
 (16) **A I had had a lot of contact with Jim Shaw over the years**  
 (17) **and I think he - he talked about all aspects of people's**  
 (18) **private lives over the years. I think I may have - I don't**  
 (19) **think I, while port captain, ever heard any other rumors from**  
 (20) **Jim, but I think perhaps when I sailed with him I had**  
 (21) **Q** When you were port captain Mr. Shaw didn't come in and  
 (22) tell you any other out of school drinking stories, did he?  
 (23) **A I can't positively say that he didn't but I don't recall**  
 (24) **that he did**  
 (25) **Q** And Mr. Shaw told you that Captain Hazelwood was acting  
 (26) funny?

(1) Jim Shaw expressed concern that a lot of people saw Joseph  
 (2) Hazelwood drunk. question. And your answer was I believe he  
 (3) said something like hey this man - this isn't too cool. I  
 (4) mean we have all the people storing the vessel and Joe was he  
 (5) said misbehaving or I can't remember exactly what  
 (6) terminology  
 (7) he used but something like that. Like I say it was somewhat  
 (8) cryptic and I may have said what do you mean you mean he  
 (9) was  
 (10) drunk and he said yes or I can't remember how it went but  
 (11) that ended up being the bottom line so to speak. Jim alleging  
 (12) that  
 (13) Is that a - does that fairly state what happened?  
 (14) **A I think so yes**  
 (15) **Q** It's a touchy thing for a port steward to report a master  
 (16) being drunk, isn't it?  
 (17) **A I don't think it's so touchy for Jim Shaw because he**  
 (18) **regularly gossips about people's personal lives and things**  
 (19) **like**  
 (20) **that. I don't think that he felt uncomfortable about doing**  
 (21) **that at all**  
 (22) **Q** At the time that Mr. Shaw brought this information to you  
 (23) you had - you knew that Captain Hazelwood had been through  
 (24) the  
 (25) program and you, according to your testimony, had told him  
 (26) this  
 (27) was his last chance?  
 (28) **A I told him that I understood it was his last chance yes**  
 (29) **Q** Now let's talk about the things that you didn't do after  
 (30) the Shaw report. You didn't go and interview anybody else on

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(1) **A Yes**  
 (2) **Q** And you had to press him to get the story up, didn't you?  
 (3) **A Yes**  
 (4) **Q** And you did press him?  
 (5) **A Yes**  
 (6) **Q** And Mr. Shaw told you that Captain Hazelwood was drunk  
 (7) over  
 (8) in Baton Rouge when Mr. Shaw was on the ship?  
 (9) **A I believe that he alluded to that fact that my discussion**  
 (10) **with Mr. Shaw - he was being so cryptic and so ambiguous**  
 (11) **in**  
 (12) **what he was saying. I can't recall that he specifically said**  
 (13) **he was drunk. I think he said that he thought Captain**  
 (14) **Hazelwood had fallen off the wagon or something like that.**  
 (15) **I**  
 (16) **continued to question him about what he meant by that.**  
 (17) **Q** Did Mr. Shaw tell you that Captain Hazelwood was drunk?  
 (18) **A** Like I say as - as near as I can recall right now he  
 (19) **said that he had fallen off the wagon or that he was acting**  
 (20) **funny.**  
 (21) **Q** The cure didn't work?  
 (22) **A** May have said that  
 (23) **Q** And did he tell you that he was concerned about Captain  
 (24) Hazelwood being drunk on board ship?  
 (25) **A I don't know if he said that he was concerned**  
 (26) **Q** Would you go to page 156 of your deposition transcript  
 (27) line 16 and I'm going to read the 157 line 2 and why don't  
 (28) you follow along

(1) the ship, did you?  
 (2) **A** By the time I got the Shaw report the ship had left  
 (3) **Q** At no time after that did you go and did you talk to the  
 (4) people that were on the ship and ask them about the Shaw  
 (5) allegations, did you?  
 (6) **A** Subsequent to the Shaw allegations I did go over to the  
 (7) vessel, talked to Captain Hazelwood and I made myself  
 (8) available  
 (9) to other crew members  
 (10) **Q** You made yourself available. Did you go and ask any of the  
 (11) other crew members anything specifically about the Shaw  
 (12) allegations?  
 (13) **A I did not specifically ask anybody if they had seen**  
 (14) **Captain**  
 (15) **Hazelwood drunk or anything like that.**  
 (16) **Q** And anything to the potential witnesses, crew members  
 (17) there were a variety of other potential witnesses, the  
 (18) stevedores, isn't that right?  
 (19) **A** Well, there were some stevedores on there but my  
 (20) feelings  
 (21) about that whole report, due to Mr. Shaw's lack of  
 (22) credibility  
 (23) I thought that it would be inappropriate to launch into an  
 (24) investigation that could possibly undermine Captain  
 (25) Hazelwood's  
 (26) authority based on such a scurrilous report from basically a  
 (27) non-credible source. So I felt that it was prudent to take  
 (28) other avenues before I did anything that I thought might  
 (29) have  
 (30) been an overreaction  
 (31) **Q** Would it be fair to say that with regard to the potential

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- (1) witnesses with regard to the Shaw event that is the other  
 (2) crew members and the stevedores you didn't go and interview  
 (3) them?  
 (4) **A I did not interview the stevedores, no**  
 (5) **Q Now Captain Hazelwood - you took this seriously enough**  
 (6) **the situation seriously enough to call Mark Pierce didn't**  
 (7) **you?**  
 (8) **A Yes I called Captain Pierce Probably immediately after**  
 (9) **Jim Shaw told me the - the story**  
 (10) **Q And Pierce told you that if Captain Hazelwood was drinking**  
 (11) **again he was going to be in big trouble?**  
 (12) **A He said something like that Yes I'm not sure what the**  
 (13) **trouble was referring to if it was a professional or a**  
 (14) **personal sense**  
 (15) **Q Well let's talk about that because during that same phone**  
 (16) **call didn't Captain Pierce tell you that Captain Hazelwood's**  
 (17) **drinking problems had interfered with his job performance at**  
 (18) **another time?**  
 (19) **MR SANDERS Your Honor this has been asked and**  
 (20) **answered We've spent quite a bit of time on it**  
 (21) **MR O NEILL It's another time**  
 (22) **THE COURT My sense of it is this is another time**  
 (23) **but the jury will have to make that call for themselves based**  
 (24) **on the testimony**  
 (25) **BY MR O NEILL**

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- (1) **Q Did he inform you of that in that telephone conversation?**  
 (2) **A I believe that in that telephone conversation here again**  
 (3) **there was the one at this time and the one in August of '85 I**  
 (4) **don't believe that he ever said that there were any**  
 (5) **professional problems that - that has at yet affected**  
 (6) **Captain**  
 (7) **Hazelwood's job performance He may have alluded to**  
 (8) **personal**  
 (9) **problems or problems in general but I don't believe that he**  
 (10) **ever specifically told me that - he may have said there were**  
 (11) **some problems maybe even problems on the ship but - but**  
 (12) **nothing that had really negatively impacted performance at**  
 (13) **that**  
 (14) **point**  
 (15) **Q Did he tell you that there had been drinking problems that**  
 (16) **interfered with the performance of Hazelwood's job?**  
 (17) **A I don't recall if he said that for sure**  
 (18) **Q Let's go to page 116 of your deposition transcript**  
 (19) **MR SANDERS Your Honor this is exactly what we did**  
 (20) **before exact same page exact same line**  
 (21) **THE COURT Is that the same page?**  
 (22) **MR O NEILL It is the same page but the man is -**  
 (23) **MR SANDERS Same question there were two**  
 (24) **conversations The answer to the first one is on line 5 and**  
 (25) **this one is where he's referring to again It's the very same**  
 (26) **thing**  
 (27) **THE COURT If we've been over it Mr O'Neill let's**  
 (28) **don't do it again**

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- (1) **MR O NEILL I'll move on Judge I'll move on**  
 (2) **BY MR O NEILL**  
 (3) **Q At some time you also talked to an Ivan Mihajlovic?**  
 (4) **A Correct**  
 (5) **Q And he is a friend of Captain Hazelwood's?**  
 (6) **A Yes, I think I think they live near each other I'm not**  
 (7) **sure how close they are**  
 (8) **Q And it crossed your mind that Captain Hazelwood would**  
 (9) **tip - that Captain Mihajlovic would tip off Captain Hazelwood**  
 (10) **about your investigation wouldn't it?**  
 (11) **A Captain Mihajlovic was a classmate of mine through all**  
 (12) **four**  
 (13) **years of school and I believe that I could trust Captain**  
 (14) **Mihajlovic to discuss an issue with him if I wanted to I may**  
 (15) **have had some concern about that, but I believe that I felt**  
 (16) **that over all, it would be better to - to discuss this with**  
 (17) **Captain Mihajlovic**  
 (18) **Q But it did cross your mind didn't it?**  
 (19) **A It may have crossed my mind, yes**  
 (20) **Q Then you testified that you went to see Captain Hazelwood**  
 (21) **isn't that right about the Shaw incident?**  
 (22) **A This was the same time, that you were talking about, with**  
 (23) **the stevedores**  
 (24) **Q About the same time?**  
 (25) **A It was exactly the same time**  
 (26) **Q Now Captain Hazelwood doesn't recall this conversation?**

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- (1) **A Well, about eight years ago**  
 (2) **Q And you can't really remember who said what to whom can**  
 (3) **you in the conversation?**  
 (4) **A I can't really remember what was said I can remember**  
 (5) **after I called Pierce after I called Mihajlovic I can**  
 (6) **remember I got a great deal of satisfaction from Mihajlovic**  
 (7) **on**  
 (8) **a very personal level that Captain Hazelwood was not**  
 (9) **drinking**  
 (10) **and that was my chief reason for calling Mihajlovic because**  
 (11) **I**  
 (12) **knew they lived close to each other and that - that Captain**  
 (13) **Mihajlovic would certainly know that**  
 (14) **I - with that background, I did go over to the vessel I**  
 (15) **think I spent about six or eight hours on the ship First**  
 (16) **place I went was Captain Hazelwood's office What I said to**  
 (17) **Captain Hazelwood as near as I can recollect was I informed**  
 (18) **him**  
 (19) **that I had heard these allegations I don't believe I told him**  
 (20) **who made them regarding his last port call**  
 (21) **My recollection is that we did not have a lengthy**  
 (22) **conversation about it but I told him that this had come up I**  
 (23) **don't know if I talked to him or not about any of the other**  
 (24) **things I did but I was comfortable at the end of my**  
 (25) **conversation with Captain Hazelwood that the allegations**  
 (26) **were**  
 (27) **untrue based on - on everything else**  
 (28) **Q Did you know that Captain Hazelwood had resumed drinking**  
 (29) **in**  
 (30) **1986?**  
 (31) **A No**

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- (1) Q And you reported all of this to the gulf coast fleet  
 (2) manager Dwight Koops?  
 (3) A That's correct  
 (4) Q And you had never talked to Mr Koops before about  
 (5) Hazelwood's alcohol rehabilitation?  
 (6) A I'm a little unclear about the temporal sequence of all  
 (7) this I - I don't recall specifically talking to Dwight about  
 (8) Captain Hazelwood's rehabilitation but as I had said this -  
 (9) this was a confidential matter that I would have made the  
 (10) assumption that whatever arrangements that Captain  
 Hazelwood  
 (11) had would have been with Mr Koops and it would have been  
 in a  
 (12) confidential status  
 (13) Q Would it be fair to say that you had never talked to  
 (14) Mr Koops before about Hazelwood's alcohol rehabilitation?  
 (15) A Before?  
 (16) Q This report  
 (17) A Before this report, I - I may have talked to Dwight about  
 (18) it I - I don't specifically recall discussing anything about  
 (19) Joe's aftercare or his rehabilitation program with Dwight  
 (20) Q And you made this report that s - to Mr Koops?  
 (21) A Yes  
 (22) Q And after you told Mr Koops about the Shaw report you  
 (23) assumed that the ball was in Mr Koops' court?  
 (24) A I assumed that as far as further action on this specific  
 (25) allegation that the ball was then in Mr Koops' court yes

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- (1) Q And he was the gulf coast fleet manager?  
 (2) A Yes  
 (3) Q And he reported directly to the company president?  
 (4) A Yes  
 (5) Q And after Mr Shaw's report about Captain Hazelwood you  
 (6) can't recall doing anything different yourself in terms of  
 (7) watching Captain Hazelwood can you?  
 (8) A Well I think from the very beginning when you know  
 (9) subsequent to my first conversation with Captain Pierce  
 you  
 (10) know I probably had a heightened awareness or recognized  
 the  
 (11) need to be more alert I think it would be fair to say that  
 (12) with Captain Hazelwood's incident with Jim Shaw if that  
 would  
 (13) have maybe been some other person that Jim Shaw was -  
 was  
 (14) saying that about I may not have - have even reacted as  
 (15) strongly as I did with that  
 (16) So I don't think it's a fair characterization to say that I  
 (17) never did anything different with Captain Hazelwood,  
 because I  
 (18) always subconsciously knew of his background  
 (19) Q You knew that he was an accident waiting to happen didn't  
 (20) you?  
 (21) A No  
 (22) Q Let's go to Page 323 of your deposition transcript line 8  
 (23) and I'll read from line 8 to line 13  
 (24) A Which page was that sir?  
 (25) Q 323 sir

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- (1) MR SANDERS Give us a second counsel  
 (2) BY MR O NEILL  
 (3) Q Question did you do anything different - did you do  
 (4) anything differently after the Shaw report in terms of  
 (5) monitoring or watching Hazelwood?  
 (6) Answer here again I may have but I don't recall of  
 (7) anything that significant that I can specifically tell you that  
 (8) I did do something different  
 (9) Do you see that?  
 (10) A Yes  
 (11) Q And would it be fair to say that Mr Koops you're unaware  
 (12) as to whether Mr Koops did anything differently? After the  
 (13) Shaw report?  
 (14) A I'm not sure what Mr Koops did no  
 (15) Q And you don't recall ever discussing with Mr Koops about  
 (16) whether you and he should watch Captain Hazelwood more  
 closely?  
 (17) A The - typically when I would visit the ships, Dwight or  
 (18) Mr Koops required us to make a report back to him That  
 was a  
 (19) one page written form that covered a number of issues I  
 know  
 (20) that I - they were called vessel visitation reports and I'm  
 (21) sure I wrote those when I visited the Yorktown Dwight and I  
 (22) may have talked about it or we may not I can't specifically  
 (23) remember  
 (24) Q Okay Let's go to the same page 323 of your deposition  
 (25) transcript and I'll read from line 17 to line 21 and you see

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- (1) if I get it right  
 (2) Question I take it you never discussed with Koops sat  
 (3) down and said maybe we ought to watch him a little more  
 (4) closely  
 (5) or something like that?  
 (6) And your answer was I can't remember having a conversation  
 (7) like that  
 (8) Did I get it right?  
 (9) A Yes  
 (10) Q And indeed this was the only discussion that you had with  
 (11) Mr Koops about Hazelwood and alcohol this one discussion?  
 (12) A Well, as I say, I know that I discussed a lot of issues  
 (13) with Dwight especially each time I - I visited the vessel  
 (14) I'm sure I discussed Captain Hazelwood with Dwight I'm  
 sure  
 (15) Dwight asked me how Captain Hazelwood was doing and I  
 reported  
 (16) on that I think that Mr Koops and I had an understanding  
 (17) between the two of us what that meant but specifically, I  
 can't remember a date and a time when I discussed that  
 (18) specific  
 (19) issue with him  
 (20) Q Now sometime in 1987 the issue of Captain Hazelwood  
 being  
 (21) reassigned to the west coast fleet comes up do you recall  
 (22) that?  
 (23) A Yes  
 (24) Q And you had a conversation with a Mr Andy Martineau?  
 (25) A Yes  
 (26) Q And Mr Martineau was in the course of this conversation

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- (1) at least concerned enough about Captain Hazelwood to ask the
- (2) question whether Joe was drinking?
- (3) A Yes He - he initiated this conversation with me
- (4) regarding Captain Hazelwood's transfer to the Exxon
- (5) Valdez We
- (6) discussed some of the - as well as some other
- (7) reassignments
- (8) that were being made at that time and I believe after we
- (9) discussed some of the other aspects of assigning Captain
- (10) Hazelwood to the Valdez he asked me if we had had any
- (11) problems
- (12) with Captain Hazelwood drinking
- (13) Q Wasn't the question he asked you whether Joe was drinking
- (14) over there?
- (15) A Something like that
- (16) Q And you told Captain Martineau that he wasn't drinking?
- (17) A I told Captain Martineau that his performance had been
- (18) in
- (19) my opinion, above average, and in all respects that I saw no
- (20) signs of him drinking I may or may not have said there was
- (21) one incident that we investigated we found no substance to
- (22) it
- (23) and I believe Captain Martineau was satisfied with - with
- (24) what
- (25) I had told him
- (26) Q Did you know that by 1987 Captain Hazelwood had in fact
- (27) resumed drinking?
- (28) A No I had no reason to suspect that at all as I said his
- (29) job performance was above average I felt
- (30) Q His ratings weren't were they?
- (31) A No

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- (1) Q In fact in 1986 the year prior to this 1987 conversation
- (2) his ratings were the worst that they had ever been weren't
- (3) they 35 out of 37?
- (4) A I was not privy to the list exactly I - I understand
- (5) that he was in the final outcome of the seriatim he was
- (6) quite
- (7) low on it
- (8) Q So now would it be fair to say that Captain Martineau was
- (9) on notice that there was this incident?
- (10) A No I don't think that would be fair to say I - I said
- (11) that I may or may not have mentioned the Jim Shaw incident
- (12) to
- (13) Captain Martineau As a matter of fact I may have said
- (14) well,
- (15) we had one incident which we investigated we found it not
- (16) to
- (17) be factual and so in my opinion everything with Captain
- (18) Hazelwood was fine and that there would be no problems
- (19) transferring him
- (20) Q In point of fact over the one year period prior to that
- (21) conversation you had never asked Captain Hazelwood are you
- (22) drinking are you in AA how's your rehabilitation going how's
- (23) your family going is that a fair statement?
- (24) A During that time period I had numerous conversations
- (25) with
- (26) Captain Hazelwood I'm not sure that - I think we may have
- (27) discussed his family we may have discussed how he was
- (28) doing in
- (29) general
- (30) I do not specifically remember talking about his aftercare
- (31) or his rehabilitation program I - I felt that I had somewhat

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- (1) of a rapport with Joe but I also felt that that was a
- (2) confidential matter and that in my opinion his performance
- (3) was
- (4) such that it didn't warrant delving into his personal life
- (5) Q It was a confidential matter You know about it isn't
- (6) that right?
- (7) A Yes
- (8) Q Pierce knew about it?
- (9) A Yes
- (10) Q Koops knew about it?
- (11) A Well, Koops knew about it because he was his supervisor
- (12) I
- (13) knew about it
- (14) Q Did Koops know?
- (15) A I knew about it on a more personal level
- (16) Q You found out about it from Pierce Andy Martineau knew
- (17) about it didn't he?
- (18) A I think he may have, yes
- (19) Q Are you aware that it was a rumor in the fleet?
- (20) A I'm aware that there's not a lot of secrets in the fleet,
- (21) so -
- (22) Q So it wasn't as confidential as one might think by just
- (23) saying it was a confidential matter isn't that right?
- (24) A Well you know I think you know most individuals
- (25) especially Captain Hazelwood's peers his colleagues
- (26) would take
- (27) the rumors for what they were worth I always felt that that
- (28) was a personal matter If Captain Hazelwood wanted to
- (29) dispel

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- (1) or discuss these - these rumors, that was his business I -
- (2) I felt that from my point of view, Captain Hazelwood was
- (3) doing
- (4) an excellent job and that there were no signs of any
- (5) problems
- (6) associated with anything
- (7) Q I want to - so then Captain Hazelwood gets transferred to
- (8) the west coast that's a correct statement?
- (9) A Eventually, yes
- (10) Q And you didn't tell Andy Martineau that he needed to
- (11) monitor Captain Hazelwood did you?
- (12) A Well -
- (13) Q Did you?
- (14) A I made the assumption that Captain Martineau knew what
- (15) his
- (16) job was and it's very explicit in the written job description
- (17) that we monitor activities of the vessels and the masters
- (18) and
- (19) we also ensure that they comply with all the company and
- (20) statutory type regulations so I assumed that he knew that
- (21) Q You assume that but you didn't say he had been through
- (22) rehabilitation we'd had a drinking report you better keep an
- (23) eye on him did you?
- (24) A I told him that we had one report
- (25) Q I want to go to a conference that you attended in 1989
- (26) after the grounding of the Valdez
- (27) A Okay
- (28) Q At which Mr Frank Larossi spoke and Frank Larossi was at
- (29) that point in time the president of Exxon Shipping Company is

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- (1) that a correct statement?  
 (2) **A That's correct**  
 (3) **Q And who was at the conference?**  
 (4) **A Probably about half the -- the masters in the fleet a**  
 (5) **bunch of the managers more senior managers There were**  
 (6) **a**  
 (7) **couple of -- kind of ex Coast Guard captains that were going**  
 (8) **to**  
 (9) **be on contract for Exxon That's about it**  
 (10) **Q Those are the guys essentially?**  
 (11) **A That's the guys**  
 (12) **Q The guys who were running the company?**  
 (13) **A I guess yeah**  
 (14) **Q And at this meeting of the guys who were running the**  
 (15) **company would it be fair to say that Mr Iarossi said that**  
 (16) **Captain Hazelwood -- Mr Iarossi couldn't believe that Captain**  
 (17) **Hazelwood went ashore so soon after the vessel tied up?**  
 (18) **A I believe that Mr Iarossi said something like that I**  
 (19) **know he discussed a lot of the events surrounding or**  
 (20) **leading up**  
 (21) **to the grounding**  
 (22) **Q Okay I want to focus on three of them Mr Iarossi said**  
 (23) **that he couldn't believe that Hazelwood left the ship as soon**  
 (24) **as it tied up?**  
 (25) **A I believe he said that yes**  
 (26) **Q Mr Iarossi said that they had been ashore in Valdez all**  
 (27) **day and at several different bars during the day of March 23rd**  
 (28) **to 24th and that he couldn't believe he did this?**

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- (1) **A Mr Iarossi was -- was giving a speech about that I -- I**  
 (2) **can't recall now what all he said, but eventually it was**  
 (3) **something along those lines**  
 (4) **Q And he couldn't believe Mr Iarossi the president of**  
 (5) **Exxon Shipping Company couldn't believe that they came back**  
 (6) **so**  
 (7) **close to sailing time?**  
 (8) **A I believe he said something like that**  
 (9) **MR O NEILL Thank you sir**  
 (10) **You got to stay there and he's going to ask you some**  
 (11) **questions**  
 (12) **THE WITNESS I was just about ready to run off here**  
 (13) **THE COURT Don't do that yet**  
 (14) **DIRECT EXAMINATION OF WILLIAM SHEEHY**  
 (15) **BY MR SANDERS**  
 (16) **Q Good morning Captain Sheehy**  
 (17) **A Good morning counselor**  
 (18) **Q Let me start if I may with the summer of 1985 You were**  
 (19) **transferred and I'll lead a little here with the Court's and**  
 (20) **counsel's indulgence**  
 (21) **You were transferred from being a ship captain with Exxon**  
 (22) **Shipping Company to a port captain in the summer of 1985?**  
 (23) **A Correct**  
 (24) **Q You took over for Captain Mark Pierce who had been the port**  
 (25) **captain before that?**  
 (26) **A That's correct**

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- (1) **Q What was your ship before that?**  
 (2) **A My ship was --**  
 (3) **Q Or ships?**  
 (4) **A My most immediate prior ship was the Exxon Lexington**  
 (5) **Q Was the assignment to the port captain's job considered a**  
 (6) **good thing by you or a bad thing by you or was it a mixed**  
 (7) **bag?**  
 (8) **A Really the job was a mixed bag The -- it was not an**  
 (9) **increase in my level within the company You did have to**  
 (10) **uproot your family and move them somewhere temporarily**  
 (11) **for a**  
 (12) **couple years but yet it was a change It was something**  
 (13) **different so I think it would depend on the individual how it**  
 (14) **suted his particular stage in life whether it was a plus or a**  
 (15) **minus**  
 (16) **Q You considered it a plus didn't you?**  
 (17) **A Yes**  
 (18) **Q At the time?**  
 (19) **A At the time**  
 (20) **Q All right Now when you took over that job there was**  
 (21) **some transition period in which you spoke with Captain Pierce**  
 (22) **about the job and the people that you would be liaison with and**  
 (23) **what your responsibilities would be is that right?**  
 (24) **A Yes**  
 (25) **Q And at the time you were -- was there one port captain for**  
 (26) **the gulf coast?**

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- (1) **A At that time there was just one port captain and I**  
 (2) **believe that lasted for a year maybe a little longer**  
 (3) **Q All right And when that stopped what was the change?**  
 (4) **A When -- when that stopped we actually got another port**  
 (5) **captain and another port engineer and divided up the ships**  
 (6) **that**  
 (7) **we had so one person didn't have all of the ships that**  
 (8) **responsibility**  
 (9) **Q Did this other group the port engineer and the port**  
 (10) **captain go to the west coast fleet is that what happened or**  
 (11) **did you divide up a fleet that was in the gulf coast?**  
 (12) **A Well at that time we had about 12 ships in the gulf coast**  
 (13) **and only about half as many on the west coast, so -- so there**  
 (14) **were two of each in Baytown and one of each on the west**  
 (15) **coast,**  
 (16) **which would have been in the west coast fleet**  
 (17) **Q I'm not doing a very good job of drawing the distinctions**  
 (18) **here When you first started in the gulf coast there was a**  
 (19) **west coast fleet office?**  
 (20) **A Yes**  
 (21) **Q With a port captain and a port engineer?**  
 (22) **A Yes**  
 (23) **Q And then the gulf coast had a port captain and port**  
 (24) **engineer?**  
 (25) **A Correct**  
 (26) **Q And then a year or so later you divided that gulf coast**  
 (27) **port captain's job and created another section the river fleet**

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- (1) or something like that? What was it called?
- (2) **A Well, the river fleet was a different section No**
- (3) **actually it was because we had twice as many ships on the gulf**
- (4) **coast as we did on the west coast the decision was made to add**
- (5) **a port captain and port engineer just for the ocean going**
- (6) **ships So myself and the port engineer were - prior to that**
- (7) **change, we'd each had a dozen ships, now we only had six**
- (8) **but**
- (9) **we didn't add any Still the inland and the river fleet was a**
- (10) **separate -**
- (11) **Q Okay I don't know whether I clarified it or not**
- (12) **A I'm not sure if you did either**
- (13) **Q Captain when you - when you were in the office on a**
- (14) **summer day in August in Baytown Texas you mentioned that**
- (15) **you**
- (16) **had this conversation with John Tompkins?**
- (17) **A Correct**
- (18) **Q And he was what?**
- (19) **A At that time, John Tompkins was my boss and also the**
- (20) **immediate supervisor of the captains on the ships He was the**
- (21) **gulf coast fleet manager**
- (22) **Q He was the fleet manager there?**
- (23) **A Yes**
- (24) **Q And you had a brief conversation with him about meeting,**
- (25) **with Captain Hazelwood?**
- (26) **A Yes my - my understanding when we separated that**
- (27) **conversation was basically what Mr Tompkins told me was**
- (28) **that**

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- (1) **Captain Hazelwood was rejoining the fleet he's going to be**
- (2) **joining the Yorktown the next day that he was going to try to**
- (3) **talk to Captain Hazelwood and he had every intention of**
- (4) **talking**
- (5) **to Captain Hazelwood but he would either like me to go**
- (6) **along or**
- (7) **be a back up in case he didn't make it We were both going**
- (8) **up**
- (9) **to the Woodlands (pb) and that was the way we left it was**
- (10) **that I would meet with Captain Hazelwood at the Windham**
- (11) **Hotel**
- (12) **Q All right Before - that was the day you were going to**
- (13) **meet with him you and Mr Tompkins or just Mr Tompkins**
- (14) **correct?**
- (15) **A Correct**
- (16) **Q But during that day you made that call to Captain Pierce**
- (17) **correct?**
- (18) **A Immediately after the discussion with Mr Tompkins yes**
- (19) **Q And based on your call with Captain Pierce what did you**
- (20) **know about Captain Hazelwood and what did you know your**
- (21) **responsibilities were going to be if any?**
- (22) **A Well based on that conversation and here again I did**
- (23) **talk to Captain Pierce when I relieved him a little bit about**
- (24) **the situation with the masters but after that conversation I**
- (25) **became aware of the fact that Captain Hazelwood had been**
- (26) **to**
- (27) **some sort of alcohol rehabilitation program so in effect**
- (28) **Captain Pierce was informing me of another issue on my**
- (29) **plate**
- (30) **that I should be aware of and I should take responsibility for**
- (31) **watching this potential issue or whatever so - so Captain**

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- (1) **Pierce basically told me in a little bit more detail where**
- (2) **Captain Hazelwood had been**
- (3) **Q Did you believe it was your responsibility to watch Captain**
- (4) **Hazelwood in regard to the alcohol issue?**
- (5) **A Yes**
- (6) **Q Did you do that?**
- (7) **A Yes**
- (8) **Q All right Now let's find out what you were looking for**
- (9) **What did you believe right or wrong was the disease or the**
- (10) **condition that Captain Hazelwood had based on this brief**
- (11) **conversation with Captain Pierce?**
- (12) **A Based on this conversation with Captain Pierce I - I**
- (13) **believed that Captain Hazelwood was just, I guess, the**
- (14) **classic**
- (15) **alcoholic in that he had to abstain from drinking**
- (16) **Q All right That was the assumption that you made about**
- (17) **Captain Hazelwood?**
- (18) **A Right, based on what I had got from Captain Pierce, yes**
- (19) **Q All right Did you have any assumption about what would**
- (20) **happen in the event that Captain Hazelwood started to drink?**
- (21) **A Well, here again, we had - we had some training on that,**
- (22) **but basically, I felt that Captain Hazelwood had to be**
- (23) **abstinent**
- (24) **Q All right But I'm asking you -**
- (25) **A In other words I felt that perhaps if he started drinking**
- (26) **at all that it might become uncontrolled**

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- (1) **Q All right now and what was your - as port captain now**
- (2) **what was your thought about that situation?**
- (3) **A Well my thought about that was that it could cause a lot**
- (4) **of problems for me that - you know as far as my**
- (5) **management**
- (6) **of the operations of the vessel I had to make sure that they**
- (7) **operated safely and efficiently, and that I didn't want**
- (8) **anything to interfere with that**
- (9) **Q All right So what you were looking for was any sign of**
- (10) **drinking by Captain Hazelwood?**
- (11) **A Yes**
- (12) **Q And did you do that?**
- (13) **A As much as I looked in those years there was only one**
- (14) **incident and that was -**
- (15) **Q Well now wait a minute Stay with me here Did you do**
- (16) **that? Did you do that job?**
- (17) **A I believe so yes**
- (18) **Q At least you did to the best of your ability?**
- (19) **A Yes**
- (20) **Q And did you do it throughout the time that Captain**
- (21) **Hazelwood sailed as a captain in the gulf coast fleet for Exxon**
- (22) **Shipping Company?**
- (23) **A Right from 1985 through 1980 - middle of '87**
- (24) **Q All right Now after you talked to Captain Pierce is**
- (25) **that when you went to meet with Captain Hazelwood?**
- (26) **A I talked to Captain Pierce pretty early in the morning,**

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(1) maybe 8 00 in the morning even 7 30 then I left to go to the  
 (2) meeting and it was early evening before I talked to Captain  
 (3) Hazelwood  
 (4) Q Okay But it is that day that you went out there?  
 (5) A Same day yes just later on the same day  
 (6) Q Now my friend Mr O Neill has said in his opening  
 (7) statement that the first meeting he has with the representative  
 (8) of Exxon Shipping Company is where? It is in a bar The first  
 (9) meeting he has on return from his disability leave is in a  
 (10) bar Let me ask you I have a couple pictures here  
 (11) Start with this one Your Honor this is Defendants  
 (12) Exhibit 9127  
 (13) Captain Sheehy do you recognize what is portrayed in  
 (14) Defendants 9127?  
 (15) A Yes that's the lobby of the Windham Hotel  
 (16) Q Is that the lobby where you met Captain Hazelwood?  
 (17) A I believe so Yes  
 (18) Q With the Court's permission would you come down here and  
 (19) point to various things on here so you can show the Ladies and  
 (20) Gentlemen of the Jury where you had this meeting?  
 (21) MR SANDERS Is that all right Your Honor? Give you  
 (22) my handy dandy pointer  
 (23) BY MR SANDERS  
 (24) Q Would you first point out where the front entrance is?  
 (25) A Oh kind of right in between these two pillars here As

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(1) you can see it sort of goes on out of the picture but this is  
 (2) the main entrance right in here and when I came in that  
 (3) evening -  
 (4) Q Wait just a minute Let me get you to tell a few more  
 (5) things Above that on the picture as we're looking at it  
 (6) where is the registration desk?  
 (7) A All in here is the registration  
 (8) Q All right And you've pointed out the front entrance  
 (9) Would you point out please sir where was Captain Hazelwood  
 (10) standing when you first came in? Did you meet him there in the  
 (11) lobby?  
 (12) A Yes  
 (13) Q Where was he standing?  
 (14) A I believe when I came in through these doors here where I  
 (15) first saw him was right in here And as soon as I scanned the  
 (16) lobby I saw him standing right here  
 (17) Q Okay And where did you go and sit down and talk with  
 (18) Captain Hazelwood?  
 (19) A Well we may have talked a minute or two standing right  
 (20) there and then he just walked right around the corner and sat  
 (21) down right here  
 (22) Q There?  
 (23) A At that table Actually, where the people are here at that  
 (24) table I can't remember which of us were in which seats but  
 (25) it was at that table It was actually the closest table to

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(1) where we were standing  
 (2) Q There's something kind of yellowish or goldish there Is  
 (3) that a railing?  
 (4) A This thing here? Yeah it's a brass railing  
 (5) Q Are there stairs there?  
 (6) A Yes  
 (7) Q And is that where you sat with Captain Hazelwood?  
 (8) A Yes  
 (9) Q And that's where you met him?  
 (10) A Yes  
 (11) MR SANDERS Move the admission of this exhibit Your  
 (12) Honor  
 (13) (Exhibit 9127 offered)  
 (14) MR O NEILL No objection  
 (15) THE COURT Defendants Exhibit 9127 is admitted  
 (16) (Exhibit 9127 received)  
 (17) MR SANDERS Just a couple more questions Your Honor  
 (18) and it will be break time if that's all right  
 (19) THE COURT Sure  
 (20) BY MR SANDERS  
 (21) Q Captain Sheehy in fact also when you got there did you  
 (22) understand - well did you understand whether or not Captain  
 (23) Hazelwood had met with Mr Tompkins already?  
 (24) A I understood that Captain Hazelwood had met with  
 (25) Mr Tompkins just as Mr Tompkins had told me he would

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(1) probably do  
 (2) Q Who told you that?  
 (3) A Captain Hazelwood did  
 (4) Q Did he tell you where he met him?  
 (5) A I don't think he told me that no  
 (6) MR SANDERS Your Honor this is a good time for a  
 (7) break  
 (8) THE COURT We'll take our second recess ladies and  
 (9) gentlemen  
 (10) We'll reconvene in 15 minutes please  
 (11) THE CLERK Court is in recess for 15 minutes  
 (12) (Jury out at 12 00 p m )  
 (13) (Jury in at 12 16 p m )  
 (14) THE COURT Mr Sanders  
 (15) MR SANDERS May I proceed Your Honor?  
 (16) BY MR SANDERS  
 (17) Q Captain Sheehy before we leave this subject do you  
 (18) recognize this picture which is Defendants Exhibit 9126 as a  
 (19) closer up view of the area we were talking about in your  
 (20) testimony?  
 (21) A I think so yes  
 (22) Q All right Now this area right here this is a place  
 (23) where one could order a drink correct?  
 (24) A Yes  
 (25) Q And has a piano there?



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- (1) A Well actually a waitress goes up there so you don't  
 (2) really go up there but -  
 (3) Q Okay But alcoholic beverages and other beverages are  
 (4) obtainable right here?  
 (5) A Yes  
 (6) MR SANDERS I move the admission of Defendants  
 (7) Exhibit 9126  
 (8) (Exhibit 9126 offered)  
 (9) MR O NEILL I wish I would have moved its  
 (10) admission No objection  
 (11) THE COURT Defendants 9126 is admitted  
 (12) (Exhibit 9126 received)  
 (13) BY MR SANDERS  
 (14) Q Now Captain Sheehy when you met with Captain Hazelwood  
 (15) there seated in the lobby of the hotel did you ask him if he  
 (16) was drinking or not?  
 (17) A I believe the way it came up was Captain Hazelwood  
 (18) volunteered that to me I didn't ask him Matter of fact  
 (19) we - he may have ordered a coke or a seltzer water or  
 (20) something, and that may have precipitated him telling me  
 (21) that  
 (22) I can't recall for sure  
 (23) Q Now between the time that you had this meeting with the  
 (24) captain - well let s put it in perspective Let me strike  
 (25) that and go back  
 (26) Is it your understanding that after these meetings that he

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- (1) had with you and Mr Tompkins that he was then going to get on  
 (2) his ship at some other port?  
 (3) A I believe he was going to Tampa the next day  
 (4) Q All right And do you know how long it was from the time  
 (5) you had this meeting to the time you had this conversation  
 (6) about which you've testified with Mr Jim Shaw?  
 (7) A I would say it was probably a year at least  
 (8) Q Okay How good is your recollection on that? Is that an  
 (9) estimate?  
 (10) A That's purely an estimate  
 (11) Q You don't know the date or the time?  
 (12) A No  
 (13) Q And of course you didn't write this down?  
 (14) A No  
 (15) Q All right Let me go into that business just a tiny bit  
 (16) because it's already been covered but you had this  
 (17) conversation with Mr Shaw?  
 (18) A Yes  
 (19) Q And he was very cryptic correct?  
 (20) A Correct  
 (21) Q All right When you got into it and pressed him what was  
 (22) your concern?  
 (23) A My concern first of all was that if in fact what he was  
 (24) saying was true my concern was that - that Joe may have  
 (25) fallen off the wagon or may - may have started drinking  
 again

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- (1) so my concern was how that would affect the operation of  
 the  
 (2) vessel  
 (3) Q All right Did you think you had any duty or obligation to  
 (4) do something about that?  
 (5) A Well, yeah, obviously I did because I did And I felt  
 (6) that that was squarely within my job responsibilities to  
 (7) investigate that  
 (8) Q All right And did you investigate it?  
 (9) A Yes  
 (10) Q All right And as part of this investigation you called  
 (11) Captain Pierce and Captain Mihajlovic?  
 (12) A Yes  
 (13) Q Now let me ask you Mr O Neill asked you a question about  
 (14) calling Captain Mihajlovic and knowing that he was a friend of  
 (15) Captain Hazelwood's and that it entered your mind that he  
 (16) would  
 (17) tip - he might tip Captain Hazelwood off Is that why you  
 (18) called Captain Mihajlovic so he would tip off Captain  
 (19) Hazelwood?  
 (20) A No, that's not it at all The reason I called Captain  
 (21) Mihajlovic was because I, too, know Mihajlovic very well  
 Like  
 (22) I say, I went to school with him I felt that Captain  
 (23) Mihajlovic would tell me the truth Part of it was on a  
 (24) personal level and I felt that on that personal level Captain  
 (25) Mihajlovic would not do anything that would jeopardize a  
 ship  
 (26) or jeopardize any of the operations and I felt like Captain

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- (1) Mihajlovic would - would level with me  
 (2) Q All right What did he tell you specifically as best you  
 (3) can recall?  
 (4) A He told me that he was good friends with Joe, spent a lot  
 (5) of time with him at home and that he was definitely not  
 (6) drinking and that - that there was no question in his mind  
 (7) that he was in some sort of aftercare or that he was still  
 (8) dry  
 (9) Q All right Now we'll get to Captain Mihajlovic again in a  
 (10) minute After talking with Captain Mihajlovic and Captain  
 (11) Pierce you've testified that you went to Baton Rouge?  
 (12) A Yes  
 (13) Q Why did you go to Baton Rouge?  
 (14) A I went to Baton Rouge because the vessel was on that  
 (15) run  
 (16) it went down to Chiriqui Grande and back and I knew that  
 (17) would  
 (18) be the next U S port that it would be in I went there  
 (19) because of what I heard and I wanted to ask Captain  
 (20) Hazelwood  
 (21) about these allegations and make him -  
 (22) Q All right Now -  
 (23) A - make him aware that these had been presented to me  
 (24) Q When you met with Captain Hazelwood did you ask him if he  
 (25) had been drinking or if these allegations from Shaw were true?  
 (26) A I told Captain Hazelwood what the allegations were, just  
 as  
 (27) Mr Shaw had told me and Captain Hazelwood said that -  
 (28) that  
 (29) basically it was all fabricated, it was not true

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- (1) Q What did he say? Don't tell us basically. If you can call  
(2) any specifics.
- (3) A I can't really recall what he said, but I know I was very  
(4) comfortable with the fact that he was telling me the truth  
(5) and  
(6) that what Jim Shaw had told me was basically not true. I felt  
(7) comfortable with that as I left the vessel some six or seven  
(8) hours later.
- (9) Q Did you spend six or seven hours on the vessel?  
(10) A Yes.
- (11) Q And you've already testified as to what you didn't ask  
(12) What was the purpose of staying on the vessel for six or seven  
(13) hours?  
(14) A Well, I probably talked to the chief engineer, chief mate  
(15) Probably ate lunch on the ship. Probably talked to some of  
(16) the  
(17) unlicensed crew members. I can't recall specifically what  
(18) any  
(19) of the issues were, but I probably saw most of the people on  
(20) the ship during that time.
- (21) Q Captain Sheehy, is it realistic, your view in 1985 or '86  
(22) whenever this happened, is it realistic or was it realistic in  
(23) your view to expect that if there had been a drinking problem  
(24) with Captain Hazelwood on board that ship that somebody on  
(25) board the ship would have told you?
- (1) A I think that rumors like that always fly pretty fast, yes.
- (2) Q All right. Now you came back after this and I believe you  
(3) testified you met with Mr. Dwight Koops?

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- (1) A Yes.
- (2) Q Let me ask you first, before you get into that, Mr. Koops  
(3) was at that time the Gulf Coast fleet manager, he had by that  
(4) time taken over Mr. Tompkins' job?  
(5) A Yes.
- (6) Q Matter of fact, he had stepped in about a month after you  
(7) got in as port captain? Two months?  
(8) A Little longer than that, yeah, couple months.
- (9) Q Did you tell Mr. Koops what you were investigating, and what  
(10) your conclusion was?  
(11) A Yes, I pretty much discussed everything with him. I  
(12) believe that Jim Shaw came in and sat in with us when I had  
(13) that discussion with Koops. I can't remember for sure, but I  
(14) think that Jim Shaw came in, too, and added whatever he  
(15) felt  
(16) appropriate.
- (17) Q What was that?  
(18) A He basically, when we got done, he said that he was  
(19) comfortable with what - you know, what we had done.
- (20) Q All right. Did you later hear on this issue? Did you  
(21) later hear again from Captain Mihajlovic?  
(22) A Yes, somewhere along the way, and I can't remember  
(23) exactly  
(24) what point in time it was, if it might have been before I went  
(25) over to Baton Rouge - as a matter of fact, I think it was  
(1) captain -
- (2) Q But it was after the Shaw - after you called Mihajlovic?

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- (1) A After the Shaw report, after I called Mihajlovic, but I  
(2) think prior to me going over to the vessel, Captain  
(3) Mihajlovic  
(4) called me back and I believe that Captain Mihajlovic was on  
(5) the  
(6) Exxon San Francisco at the time, and that they were  
(7) anchored  
(8) together when they left the dock in Baton Rouge and they  
(9) went  
(10) down, they were both anchored in Chiriqui Grande, waiting  
(11) to - --
- (12) Q Excuse me just a minute. Could you tell the ladies and  
(13) gentlemen of the jury what Chiriqui Grande is?  
(14) A That's the port they loaded down in Panama. It's about a  
(15) five day trip, five and a half day trip, and the ships wait in  
(16) this lagoon to go and load from a pipeline down there.
- (17) Q Sorry for the interruption. They were together there near  
(18) the lagoon in Panama. Go ahead.  
(19) A They were probably - might have been within a half a mile  
(20) of each other, actually. But Captain Mihajlovic told me he  
(21) went over to Captain Hazelwood's ship and searched  
(22) through his  
(23) room and that he felt that everything he had told me over  
(24) the  
(25) phone still held and that there was - that he found no  
(1) alcohol  
(2) in Captain Hazelwood's room.
- (3) Q All right. Did you pass that along, that information  
(4) along?  
(5) A Yes. Mr. Koops and I discussed every aspect of all this.
- (6) Q All right. Now, and I believe you've testified and made it  
(7) clear, but let me ask you so that it is clear. After this time  
(8) that you got this report and did this investigation, did you

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- (1) receive any report concerning Captain Hazelwood drinking?  
(2) A I did not ever receive any more reports about Captain  
(3) Hazelwood.
- (4) Q Did you receive any sort of an indication or a sign that  
(5) Captain Hazelwood was drinking? -  
(6) A No.
- (7) Q - while on the Gulf Coast?  
(8) A No. As a matter of fact, it was just the contrary.
- (9) Q All right. What do you mean by that?  
(10) A I felt that Captain Hazelwood did an above average job in  
(11) the professional and technical aspects of being a ship  
(12) master.  
(13) You know, over the years, he had - he maybe had some  
(14) problems  
(15) with being too outspoken with management or perhaps  
(16) being  
(17) critical of some of the policies or something like that, but he  
(18) was always, as far as the professional and technical  
(19) aspects of  
(20) running a ship, I felt that he was above average - matter of  
(21) fact, considerably above average and that was always what  
(22) my  
(23) input was in the rating process, and Mr. Koops and I  
(24) discussed  
(25) that before when we did the ratings, and it was - it was told  
(1) to me that most of management recognized Joe's  
(2) professional  
(3) ability but - but he needed to polish his image a little bit  
(4) so to speak.
- (5) Q And that image was his corporate image?  
(6) A Or lack of.
- (7) Q Right. And is that your understanding of why he was ranked

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(1) 35th out of 37 in 1986?  
 (2) A Yeah I - I didn't really recall that till I saw this  
 (3) sheet they gave me here but I knew it was down there  
 (4) somewhere '86 and then it went up - well by '88 quite a  
 (5) bit, but yes, that was - that was my understanding  
 (6) Q As a matter of fact Captain Sheehy did you recommend in  
 (7) your suggested ranking that he be ranked higher than that in  
 (8) 1986?  
 (9) A The - my recollection of when Mr Koops asked me to  
 (10) rank  
 (11) the masters he asked me to give him a penciled list of the -  
 (12) in that year, I think there were 29 and I gave him that list  
 (13) and he says well, we're going to the ranking session where  
 (14) he  
 (15) would typically meet with the other managers at his level  
 (16) and  
 (17) also the president, Mr Larossi, and that he would take my  
 (18) list  
 (19) into consideration, and that they would have to work out a  
 (20) seriatim that was agreeable to all parties there  
 (21) A few days passed, four or five, maybe, and Mr Koops then  
 (22) came back to me with my penciled list and told me that it  
 (23) was  
 (24) exactly as I had given to him other than that he had taken  
 (25) Captain Hazelwood's name he had a circle around it and it  
 (26) was  
 (27) put from maybe the - oh the top 25 percent or top 30<sup>pc</sup>  
 (28) percent  
 (29) down to - I can't remember how far down there and he said  
 (30) that where I had him would not fly with the other managers  
 (31) Q You had ranked him without regard to his perception by  
 (32) other managers right?

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(1) A I suppose that would be fair to say  
 (2) Q Now Captain did you try to put some sort of white wash on  
 (3) this report that you got from Jim Shaw in your investigation of  
 (4) it?  
 (5) A White wash?  
 (6) Q Yeah Sweep it under the rug?  
 (7) A No I - initially I felt because of my personal knowledge  
 (8) with Jim both in the office and on the ships that you know  
 (9) he  
 (10) was prone to grossly exaggerating things, whether it be  
 (11) operationally on a vessel or personal matters that once he  
 (12) had  
 (13) given me enough information about what he was trying to  
 (14) do and  
 (15) that did take some coaxing I said well Jim let me take the  
 (16) lead on this issue I'll investigate it as I see fit and I  
 (17) don't really think that - that you should be involved with it  
 (18) anymore because this is a touchy and a confidential matter  
 (19) and  
 (20) that I certainly didn't want Captain Hazelwood's authority  
 (21) undermined by these rumors being spread further by  
 (22) somebody in  
 (23) the office without investigation  
 (24) But I never - I actually encouraged Jim to tell me all he  
 (25) knew about it and I never discouraged him from going  
 (26) directly  
 (27) to Mr Koops but I told him he shouldn't be telling the  
 (28) secretaries or ever listen to them in the hall  
 (29) Q Why did you not ask questions of Captain Hazelwood during  
 (30) the period of - from 1985 summer of '85 to late spring or  
 (31) summer of 1987 why didn't you go up and ask him about  
 (32) whether

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(1) he was drinking?  
 (2) A Well the knowledge that I had of Captain Hazelwood's  
 (3) rehabilitation was that - that number one that he self  
 (4) identified and it was voluntary, that there were no  
 (5) performance  
 (6) problems that dictated he go to it so it was strictly  
 (7) voluntary And number two that it was - like any other  
 (8) medical records that it should have been confidential, that  
 (9) situation  
 (10) Q Let me stop you there for a second Did you know what his  
 (11) diagnosis was in fact?  
 (12) A In fact, I did not know what his diagnosis was I had an  
 (13) idea I made an assumption When Captain Pierce told me  
 (14) he  
 (15) had been in alcohol rehab, I assumed that he was  
 (16) diagnosed as  
 (17) an alcoholic  
 (18) So you know, getting back to your question, I felt that  
 (19) because Captain Hazelwood had self identified before and  
 (20) it was  
 (21) a confidential matter, that the operation of the ship would  
 (22) best be served by me doing my job of watching for  
 (23) operational  
 (24) problems or operational concerns or anything that would  
 (25) affect  
 (26) or compromise that but I saw no need to breach this  
 (27) confidentiality, to query Captain Hazelwood about  
 (28) something  
 (29) that could have been a touchy matter that should have been  
 (30) reserved for fewer high level people and physicians I saw -  
 (31) there were no incidents that would have prompted me to  
 (32) launch  
 (33) into anything like that other than Mr Shaw's incident

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(1) Q All right And when Mr O Neill asked you did you do  
 (2) anything any different other than the Shaw investigation, was  
 (3) there ever a time when you were called upon to do anything?  
 (4) A No There - I never had any reason to do anything  
 (5) different with Captain Hazelwood I believe that in my mind  
 (6) I  
 (7) was aware of his situation  
 (8) Q Did you watch him?  
 (9) A Yes I had that awareness in my mind I tried my best to  
 (10) visit him as much as I could I think it might have been a  
 (11) little bit more than other ships I'm not sure I couldn't  
 (12) say that specifically, but I think it might have been a little  
 (13) bit more I had seen Captain Hazelwood on quite a number  
 (14) of  
 (15) occasions both on the ships and in other functions  
 (16) I know one time I drove him to the airport from Texas  
 (17) City All this time I never saw any signs of - of any  
 (18) recidivism  
 (19) Q All right I have - I have one other little area of  
 (20) questions and then I'm through  
 (21) When Captain Hazelwood was transferred to the - to the  
 (22) Exxon Valdez let me just ask you straight out did you want to  
 (23) get rid of him?  
 (24) A No I - and to me I had no desire to move Captain  
 (25) Hazelwood The issue of transferring him was - was  
 (26) initiated  
 (27) by Captain Martineau He called and told me that Captain  
 (28) Deppe  
 (29) was coming into the office I believe from the Exxon Valdez

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- (1) **and that he needed somebody that would be qualified for that**
- (2) **ship or that would fit in well and Captain Hazelwood had you**
- (3) **know experience on the North Slope with his big ship Prince**
- (4) **William Sound pilotage lot of experience running in the heavy**
- (5) **Gulf of Alaska weather so it was a very natural thing for**
- (6) **Captain Hazelwood to go to the Exxon Valdez Matter of fact**
- (7) **Captain Martneau really wanted him**
- (8) **Q All right Now when you - when you - excuse me when**
- (9) **Captain Hazelwood was in fact transferred to the Exxon Valdez**
- (10) **in 1987 under whose jurisdiction did he come as far as fleet**
- (11) **offices port captains et cetera?**
- (12) **A Well typically with the captains myself and Martneau**
- (13) **would work the details of the assignments but they would be**
- (14) **fully discussed and it would be under the auspices of the fleet**
- (15) **manager**
- (16) **Q I m sorry let me interrupt you because that s not the**
- (17) **question I intended to ask**
- (18) **As far as watching Captain Hazelwood or as people have used**
- (19) **the word monitoring under whose jurisdiction would Captain**
- (20) **Hazelwood come when he transferred to the Exxon Valdez?**
- (21) **A When he was transferred to the Exxon Valdez he would have**
- (22) **come under Harvey Borgen's jurisdiction**
- (23) **Q And where was Harvey Borgen?**
- (24) **A Harvey Borgen was the west coast fleet manager**
- (25) **Q That was in Benecia?**

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- (1) **A Benecia**
- (2) **Q And when that occurred you were in the gulf coast in**
- (3) **Baytown Texas weren t you?**
- (4) **A Yes**
- (5) **Q You stayed in Baytown Texas from that time to the time**
- (6) **you went back to sea?**
- (7) **A Yes**
- (8) **Q And when you went back to sea was when?**
- (9) **A The winter of '88**
- (10) **Q And what ship did you sail on?**
- (11) **A The Exxon Baytown**
- (12) **Q All right Did you have any occasion or any opportunity to**
- (13) **ask or learn about any monitoring that was done after Captain**
- (14) **Hazelwood left you?**
- (15) **A After Captain Hazelwood left me, I really had no occasion**
- (16) **to learn of any monitoring I made the assumption that**
- (17) **Captain Martneau and Mr Borgen knew the issues**
- (18) **Q Why did you think - why did you make the assumption that**
- (19) **Captain Martneau knew?**
- (20) **A Well I made the assumption that Captain Martneau knew**
- (21) **because he asked me if Joe was drinking anymore**
- (22) **MR SANDERS Could I have just a moment Your Honor?**
- (23) **No further questions Your Honor**
- (24) **THE COURT Redirect Mr O Neill?**
- (25) **MR O NEILL Thank you Judge**

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- (1) **RE CROSS EXAMINATION OF WILLIAM SHEEHY**
- (2) **BY MR O NEILL**
- (3) **Q With regard to all of this talk about Captain Hazelwood**
- (4) **would it be fair to say that you re not aware of one piece of**
- (5) **paper in the entire world that reflects any monitoring of**
- (6) **Captain Hazelwood?**
- (7) **A Any monitoring regarding -**
- (8) **Q Alcohol?**
- (9) **A Alcohol? As far as the paperwork on that I would not have**
- (10) **the opportunity to see that I would not be privy to that**
- (11) **Q Well you would have had the opportunity to write up a memo**
- (12) **with regard to Mr Shaw and you didn t did you?**
- (13) **A I did not write a memo regarding the Shaw report no**
- (14) **Q Now you were - the chain of command was Frank Jarossi**
- (15) **the president then who was your boss?**
- (16) **A It changed a little bit from time to time**
- (17) **Q Let s talk about the day of the Shaw incident that Mr Shaw**
- (18) **comes in**
- (19) **A The day of the Shaw incident it went straight from Jarossi**
- (20) **to Koops to the ship masters and myself**
- (21) **Q And you?**
- (22) **A Yes**
- (23) **Q So you were three steps removed the day of the Shaw**
- (24) **incident from the top of the structure?**
- (25) **A Well really one step removed**

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- (1) **Q One step removed And you were on notice of the fact it**
- (2) **was your opinion that the man suffered from the disease of**
- (3) **alcoholism? At that point in time that was your opinion?**
- (4) **That s a correct statement isn t it?**
- (5) **A Oh I assume that he had been diagnosed as an alcoholic**
- (6) **because he had been to a rehabilitation program**
- (7) **Q And you knew that alcoholics could cause a lot of problems**
- (8) **for you? You testified to that a couple minutes ago?**
- (9) **A I knew that an alcoholic could cause a problem if he**
- (10) **resumed drinking yes**
- (11) **Q That he could cause a problem for the vessel that he was in**
- (12) **charge of?**
- (13) **A He could, yes**
- (14) **Q And the environment surrounding the vessel?**
- (15) **A Whatever associated with it, yes**
- (16) **Q Now let s talk for a minute about - is this the picture**
- (17) **of the joint? I never -**
- (18) **MR SANDERS Now it s a joint?**
- (19) **MR O NEILL I have a real good question about it I**
- (20) **want to ask - I don t like it when people take potshots at**
- (21) **me**
- (22) **BY MR O NEILL**
- (23) **Q Is this area right here like - you see what I m pointing**
- (24) **to? Is this like where you pick up your macaroni and cheese?**
- (25) **It isn t is it?**

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- (1) A That's a waitress station there  
 (2) Q It's a bar isn't it?  
 (3) A Yeah  
 (4) Q And there is a cocktail lounge isn't it?  
 (5) A I don't know The people conduct all kinds OF business in  
 (6) that area  
 (7) Q I understand that and you did too and you had a beer  
 (8) when you were conducting business with Captain Hazelwood  
 (9) didn't you?  
 (10) A I don't believe I had a beer  
 (11) Q So he's wrong and you're right?  
 (12) A Yes  
 (13) Q And you - right here is where you sat where these people  
 (14) are sitting?  
 (15) A Yes  
 (16) Q Right next to this bar?  
 (17) A Yes  
 (18) Q And you were careful when you referred to the waitress as a  
 (19) waitress When I go to a place like this I refer to her as a  
 (20) cocktail waitress Have you ever heard that expression?  
 (21) A Jeez I don't know I might have  
 (22) Q You knew did you not sir when you sat down right next to  
 (23) this bar right here with Captain Hazelwood that he had just  
 (24) come out of alcohol rehabilitation didn't you?  
 (25) A Yes

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- (1) Q Would you agree with me that that is a relatively  
 (2) insensitive thing for you to do?  
 (3) A Not at all Not at all  
 (4) Q Okay That's fine  
 (5) A You have to remember Captain Hazelwood was being  
 (6) assigned  
 (7) as master of a merchant vessel the next day I would have  
 (8) had  
 (9) a lot of alarm if he would become skittish over sitting in a  
 (10) bar He was going to take command of the vessel be on his  
 (11) own At that point he - I felt that if he had any problem  
 (12) with that it might just as well come out in the open now I  
 (13) don't think he did  
 (14) Q So your approach to sensitivity with regard to this man who  
 (15) had just gotten out of an alcohol rehabilitation program was to  
 (16) bring him into a bar and test him?  
 (17) A I didn't bring him into the bar  
 (18) Q Could have met him in a conference room or hotel room?  
 (19) A Well I could have but the fact of the matter was as soon  
 (20) as I talked to Captain Hazelwood he informed me that the  
 (21) meeting was not necessary because John Tompkins had  
 (22) already  
 (23) covered the - the subject matter that he wanted to cover  
 (24) with  
 (25) him and that we had no reason to meet  
 (26) Q Okay I have a little problem with that because Captain  
 (27) Hazelwood when he testified here under oath testified that he  
 (28) met with you first and with Tompkins second Now who's  
 (29) right? Or is anybody right?

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- (1) A Well one of us has to be right  
 (2) Q That's right Now you talk about this being confidential  
 (3) and when I was talking with you we - we ran over a list of  
 (4) names who knew about it Pierce Koops and Martineau and  
 (5) you  
 (6) and then in listening to your testimony and response to the  
 (7) Exxon lawyers we add Mihajlovic to that he knows about it  
 (8) right?  
 (9) A He probably knew about it more on a human or personal  
 (10) sense  
 (11) because they were neighbors  
 (12) Q You knew about it on a professional basis?  
 (13) A I knew about it more on a personal basis because I was  
 (14) friends with Captain Pierce  
 (15) Q And the other person who had notice of this that you know  
 (16) about it - now I've got it up to five we know that Jim Shaw  
 (17) had notice of it too don't we?  
 (18) A I don't think Jim Shaw had any real notice of it I think  
 (19) he was just speculating like he so often did  
 (20) Q Didn't Jim Shaw tell you that Joe had quote fallen off  
 (21) the wagon?  
 (22) A He may have said that but I don't think that he had any  
 (23) details regarding Captain Hazelwood's rehab or how the  
 (24) company  
 (25) had dealt with that  
 (26) Q And we talk about Andy Martineau you've now said that  
 (27) Andy  
 (28) Martineau - you assume that Andy Martineau's boss Borgen  
 (29) knew about it?

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- (1) A Yes  
 (2) Q So everybody we - have you Mihajlovic Koops Martineau  
 (3) Shaw Borgen all knew about this problem is that a correct  
 (4) statement?  
 (5) A They all knew about it at different levels I would say  
 (6) the level that Martineau and Shaw knew about it was purely  
 (7) based on rumor or sketchy information that they may have  
 (8) picked  
 (9) up at the water cooler or something I don't know  
 (10) Q You mentioned in response to the Exxon lawyer's questions  
 (11) that you had received some training by the company with  
 (12) regard  
 (13) to alcoholism?  
 (14) A Yes  
 (15) Q Did you see a movie?  
 (16) A No it was I think almost every year the senior officers  
 (17) took a - a day long course on identification of substance  
 (18) abuse alcohol abuse  
 (19) Q Yeah but did you ever see a movie on it?  
 (20) A I may have - a movie may have been part of one of those  
 (21) courses  
 (22) Q Do you recall what the name of the movie was?  
 (23) A Yes  
 (24) Q What is the name of the movie?  
 (25) A Everything Looks So Normal  
 (26) Q I'm sorry I didn't hear you  
 (27) A Everything Looks So Normal

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- (1) Q And you saw this movie Everything Looks So Normal and you
- (2) knew that alcoholics hide their drinking didn't you? At the
- (3) time you talked with Captain Hazelwood you knew that
- (4) alcoholics hide their problems didn't you?
- (5) A Some alcoholics do
- (6) Q And at the time you met with Captain Hazelwood knowing that alcoholics hide their problems and having seen the movie
- (7) Everything Looks So Normal you disregarded Mr Shaw who had
- (8) no reason to lie and you took Captain Hazelwood's version of the story?
- (9) A I didn't I didn't
- (10) MR SANDERS Object to that
- (11) THE WITNESS I didn't
- (12) THE COURT Mr Sheehy
- (13) MR SANDERS Object to that Mischaracterizes the testimony evidence and his testimony with regard to Mr Shaw
- (14) MR O NEILL I don't think it does
- (15) THE COURT I think it was pretty close to the line
- (16) Try the question again
- (17) BY MR O NEILL
- (18) Q At the time you met with Captain Hazelwood you'd seen the movie Everything Looks So Normal you knew that alcoholics
- (19) hide their problems you'd gotten a report from Mr Shaw about drinking that's all correct isn't it?
- (20) A That movie probably spent just as much time talking about

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- (1) alcoholics crying out for help as it did talking about alcoholics hiding it I don't think that - that alcoholics
- (2) hiding it was any more specific to Captain Hazelwood than - than the normal averages And that's not correct that I
- (3) ignored the Shaw report
- (4) Q At the end of your testimony I wrote down what you said but you said in response to your activities after the Shaw
- (5) report you said I never had any reason to do anything different with regard to Captain Hazelwood That was in
- (6) response to Mr Sanders questions
- (7) A I said that I never had any reasons to - for increased alarm or increased - I never saw any problems was what I
- (8) told
- (9) Mr Sanders I saw no -
- (10) Q I wrote it down says I never had any reason to do anything different with Captain Hazelwood?
- (11) A I think I said I didn't ever have any problems with Captain Hazelwood
- (12) Q And you were never told to monitor Captain Hazelwood weren't you - you were never told to monitor him?
- (13) MR SANDERS Objection This has been asked and answered
- (14) MR O NEILL He raised the question again I'm about done I'll -
- (15) THE COURT Once more and then we're through with it
- (16) MR O NEILL Well I can -

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- (1) THE WITNESS Well my testimony about being told to monitor was that I understood that to be a basic part of my
- (2) job I cannot recall specifically of discussing that with Mr Koops but I feel like he probably did tell me but I just
- (3) don't remember
- (4) BY MR O NEILL
- (5) Q You don't know?
- (6) A I don't recall him telling me that
- (7) Q And indeed as you sit here today you'd sort of like to have it both ways wouldn't you? You'd like to have it so that
- (8) you monitored him but you'd like to have it so that you didn't monitor him so he wouldn't be an alcoholic you'd like to have
- (9) it both ways?
- (10) MR SANDERS Objection
- (11) MR CHALOS Objection
- (12) THE WITNESS I don't understand that at all
- (13) MR O NEILL I have one more question
- (14) THE COURT I'll allow the question and the answer
- (15) BY MR O NEILL
- (16) Q Isn't that right?
- (17) A No that's not right
- (18) MR O NEILL Well I won't even ask anymore
- (19) questions
- (20) THE COURT Thank you Captain you may step down
- (21) Call your next witness

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- (1) MR O NEILL Plaintiffs call Paul Myers as an adverse witness
- (2) THE CLERK Would you raise your right hand sir
- (3) (The Witness Is Sworn)
- (4) THE CLERK Please be seated For the record sir state your full name your address and spell your last name
- (5) THE WITNESS My name is Paul Myers M Y E R S I live at 219 Roy Street in Houston Texas
- (6) DIRECT EXAMINATION OF PAUL MYERS (Live)
- (7) BY MR O NEILL
- (8) Q How are you sir?
- (9) A Fine Thank you
- (10) Q Tell us who you are if you would?
- (11) A My name is Paul Myers
- (12) Q And where do you work?
- (13) A I live - work for Sea River Maritime formerly Exxon Shipping Company
- (14) Q And when did you first go to work for any member of the Exxon family of companies?
- (15) A May 25th 1970
- (16) Q And from 1970 to today have you worked for one Exxon entity or another?
- (17) A Yes sir
- (18) Q Let's - to put it in context why you're here what was your job in 1987?

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- (1) A I finished up a job in San Diego California as  
 (2) superintendent engineer during the construction of the  
 Exxon  
 (3) Long Beach and Exxon Valdez And about mid year I was  
 (4) assigned to the west coast fleet office in Benecia  
 California,  
 (5) as port engineer  
 (6) Q Did you supervise the construction of the Exxon Valdez?  
 (7) A I was in charge of the inspection team  
 (8) Q And were there captains that were involved in the  
 (9) construction of - what is it - the Valdez and the Long  
 (10) Beach? Were there captains assigned to the construction of  
 (11) those vessels?  
 (12) A There came a period of time, about May 1986 when you  
 got to  
 (13) the point in construction where you were doing significant  
 (14) amount of operational testing At that point in time officers  
 (15) and some of them were captains were brought down to the  
 (16) shipyard number one, to get - to - I guess you'd call it  
 (17) on the-job training to familiarize themselves with the ship,  
 as  
 (18) well as to participate in the work intensive effort of  
 (19) operational testing  
 (20) Q When you finished working with regard to the building of  
 (21) these ships then you were assigned to where?  
 (22) A The west coast fleet office in Benecia California  
 (23) Q And you were the - the what?  
 (24) A Port engineer  
 (25) Q Port engineer?

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- (1) A Yes sir  
 (2) Q And then you eventually became ship group coordinator?  
 (3) A Yes sir  
 (4) Q And your boss was Harvey Bergen?  
 (5) A Yes, sir  
 (6) Q And Captain Hazelwood was the master of the Exxon Valdez  
 (7) when you became the ship group coordinator?  
 (8) A That is correct  
 (9) Q And you became Captain Hazelwood's supervisor did you  
 (10) not?  
 (11) A That is correct  
 (12) Q You kept notebooks with regard to your duties?  
 (13) A Yes sir  
 (14) Q Is that a correct statement? And at some point after the  
 (15) grounding of the Exxon Valdez you entrusted those notebooks  
 to  
 (16) your personal lawyer?  
 (17) A Yes sir  
 (18) Q And after some litigation the notebooks were produced in  
 (19) discovery that's a correct statement?  
 (20) A I believe it is  
 (21) Q And you had a notebook that you kept generally up to about  
 (22) the time of the grounding?  
 (23) A Yes sir  
 (24) Q And you had a second notebook that you essentially started  
 (25) at or about a day or two after the grounding?

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- (1) A Yes sir  
 (2) Q And immediately after the grounding you received a call  
 (3) from Captain Hazelwood?  
 (4) A No sir  
 (5) Q Okay What was the first - did you call Captain  
 (6) Hazelwood?  
 (7) A Yes, sir  
 (8) Q So you called Captain Hazelwood on the vessel and you  
 (9) talked to him?  
 (10) A Yes, sir  
 (11) Q And did you keep notes of that conversation?  
 (12) A Yes, sir  
 (13) Q And you kept the notes in your notebook?  
 (14) A Yes, sir  
 (15) Q And would it be fair to say and I've got it up on the  
 (16) monitor you've got a monitor there if you want to - can you  
 (17) see that?  
 (18) A Yes, sir  
 (19) Q That this is the copy of your notes of that telephone  
 (20) conversation?  
 (21) A That's correct  
 (22) Q And in taking these notes you tried to be accurate?  
 (23) A Is that a question or a statement?  
 (24) Q Yes sir it is  
 (25) A When I was on the telephone with Captain Hazelwood I  
 kept

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- (1) notes on a - what you might call these sticky things post it  
 (2) notes and by the time the conversation was over they were  
 all  
 (3) over the kitchen table  
 (4) Q So -  
 (5) A And this is transcribed from them not necessarily in the  
 (6) order that it was actually spoken  
 (7) Q But these subjects were discussed?  
 (8) A Yes  
 (9) Q And at least with regard to the entries for each of these  
 (10) subjects you tried to be accurate?  
 (11) A Yes sir  
 (12) Q And Captain Hazelwood reported to you - well you spoke to  
 (13) him personally?  
 (14) A Yes sir  
 (15) Q And let's just take a section of this if we can We'll do  
 (16) it in parts  
 (17) A Oh, now I can see it  
 (18) Q Just stick with me and I'll help you out a little bit It  
 (19) says here right here where the arrow is spoke to Joe  
 (20) Hazelwood do you see that?  
 (21) A Yes sir  
 (22) Q And he told you that he was hung up aground?  
 (23) A Yes sir  
 (24) Q On Bligh Reef?  
 (25) A Yes

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- (1) Q And it says here zig for ice third mate Joe just went  
(2) below do you see that?  
(3) A Yes  
(4) Q Is that what he told you?  
(5) A Yes sir  
(6) Q And says Joe just went below to do paperwork Is that what  
(7) he told you?  
(8) A That's correct  
(9) Q And Joe my fault I m the blame and then I can t read  
(10) that  
(11) A Neither can I  
(12) Q With regard to Joe my fault I m the blame is that what  
(13) Captain Hazelwood told you?  
(14) A Yes sir He indicated that he'd just gone down below to  
(15) do paperwork when this happened and my impression was  
(16) the third mate made an error and he said he should have been  
(17) on the  
(18) bridge  
(19) Q Thank you And there is a comment right here concerned  
(20) about stability?  
(21) A Yes sir  
(22) Q Is that a comment he made to you?  
(23) A Yes sir  
(24) Q And what is the should keep yap shut?  
(25) A At one point in time he indicated that he perhaps had  
(26) said  
(27) too much and perhaps needs a lawyer

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- (1) Q Okay And did he tell you that he thinks he can get it  
(2) off?  
(3) A That was really the last thing that was said and certainly  
(4) in retrospect that was a - from where I'm standing a  
(5) pleasant way of ending the conversation There was no -  
(6) that  
(7) was the last thing he said it was don't worry we'll get it  
(8) off it's not the end of the world type that was the last  
(9) thing he said before we hung up  
(10) Q Have you ever heard the expression you can t change the  
(11) written word?  
(12) A No I haven't  
(13) Q Your notes at least reflect the fact that he said thinks  
(14) he can get it off do you see that?  
(15) A Yes  
(16) Q And then he also said right below that after departure  
(17) programming up to full speed do you see that?  
(18) A Yes  
(19) Q Is that what he told you?  
(20) A I had asked how fast were you going and his response  
(21) were - was that we were programming up so I knew the ship  
(22) had  
(23) to be going more than 55 rpm  
(24) Q And you transcribed these notes at some later point to  
(25) start your second notebook?  
(26) A Yes sir  
(27) Q And with regard to your transcription the second time is

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- (1) it fair to say that the transcription of your notes the second  
(2) time is essentially - you had time to reflect and the entries  
(3) are essentially the same?  
(4) A With one exception I think I wrote down twice that  
(5) Captain  
(6) Hazelwood mentioned the - the third mate twice something  
(7) about I can't let the third mate take all this by himself I'm  
(8) partially to blame something to that effect  
(9) Q Doesn't say at least in your notes I m partially to blame  
(10) does he?  
(11) A No -  
(12) Q He says my fault I m the blame?  
(13) A Yeah there's another entry lower somewhere as well  
(14) Q Okay My fault  
(15) A My fault can't pin on - let s see can't pin on third  
(16) mate normal operation  
(17) Q Says my fault can t pin on third mate normal operation  
(18) should keep yap shut?  
(19) A Um hum  
(20) Q Okay And on both of those entries there is an indication  
(21) that he was - think he can get it off?  
(22) A Those were the words that I wrote down and I just  
(23) transcribed as I said  
(24) Q Now you talked to him over the phone?  
(25) A That's correct  
(26) Q And how did he sound?

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- (1) A Just as we're talking now  
(2) Q Okay  
(3) A Calm  
(4) Q I want to play another conversation that he had at about  
(5) the same time and ask you whether the tone intonation pacing  
(6) speech style is the same as when he talked to you okay?  
(7) A Yes sir  
(8) MR O NEILL Can you play that?  
(9) (Audiotape Played)  
(10) BY MR O NEILL  
(11) Q Can you compare his tone intonation pace diction and the  
(12) phone call with you and what we just heard there?  
(13) A They sound completely different  
(14) Q Thank you You were of the view that the grounding  
(15) wouldn't have happened if Captain Hazelwood would have  
(16) been on  
(17) the bridge aren't you?  
(18) A Yes sir  
(19) Q You became Captain Hazelwood's supervisor in early 1988?  
(20) A Took effect March 1st 1988 but I was preparing for it in  
(21) January and February  
(22) Q And would it be fair to say that you got had vibes from  
(23) Captain Hazelwood?  
(24) A Yes sir  
(25) Q And you thought that there might be a problem down the  
(26) road  
(27) with regard to Captain Hazelwood because of these had vibes?



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- (1) A Once the – as I met Captain Hazelwood sometime in the  
 (2) summer or fall of 1988 in my capacity as port engineer on  
 the  
 (3) Exxon Valdez, and during the period of time from then up  
 until  
 (4) I think my February visit I found him to be very interested in  
 (5) the ship and very knowledgeable. And at that point in time  
 (6) which is after the announcement of the new organization I  
 felt  
 (7) that he was somewhat put off by the fact that Number one  
 I  
 (8) have an engineering background number two I am from  
 outside  
 (9) of then Exxon Shipping Company, I'm an outsider, and  
 number  
 (10) three, I was in a peer position and now I'm going to be in a  
 (11) supervisory position  
 (12) Q But all of that being taken into consideration you've got  
 (13) these bad vibes and they were sufficient enough to where you  
 (14) went to Mr Borgen your boss to discuss the subject the bad  
 (15) vibes subject with him?  
 (16) A That is correct  
 (17) Q As Clint Eastwood would say you wanted to discuss an  
 (18) attitude problem?  
 (19) A Oh this was a concern that was discussed with the other  
 (20) ship group coordinators as well as Mr Borgen and  
 although  
 (21) this was the highest level if you will there was some of  
 (22) this – I could feel some of this from some of the other  
 (23) masters but it wasn't as extreme  
 (24) Q And Mr Borgen told you that Captain Hazelwood had gone  
 (25) through alcohol rehabilitation?

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- (1) A During the conversation when I related what I just related  
 (2) to you he indicated that – or told me that Captain  
 Hazelwood  
 (3) had undergone some sort of rehabilitation relative to  
 alcohol  
 (4) as well as some emotional concerns  
 (5) Q Okay Now I'm interested in the way you just put that  
 (6) Because you used the words indicated and told  
 (7) A Um hum  
 (8) Q He whispered it to you didn't he?  
 (9) A Well the door – actually when I went into his office and  
 (10) started speaking to him the door was open and when he got  
 to  
 (11) the point where he discussed this he looked at the door  
 (12) because it is a confidential matter and spoke in a low voice  
 (13) Q He whispered it didn't he?  
 (14) A Spoke in a low voice  
 (15) Q Whose term is whispered?  
 (16) A I – I've used that term  
 (17) Q So we have two full grown Exxon executives whispering  
 about  
 (18) alcohol rehabilitation?  
 (19) A I wasn't whispering  
 (20) Q He was?  
 (21) A He spoke in a low voice  
 (22) Q And you may have had one other discussion with Mr Borgen  
 (23) about Hazelwood and drinking is that right?  
 (24) A About actual drinking?  
 (25) Q Yeah

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- (1) A I don't think the discussion had to do with actual  
 (2) drinking  
 (3) Q In the whole time between the time you became member of  
 the  
 (4) management team and the time of the grounding how many  
 (5) discussions did you have with Harvey Borgen about Joe  
 Hazelwood  
 (6) and alcohol drinking?  
 (7) A I would monitor Captain Hazelwood and I would come  
 back to  
 (8) Mr Borgen each time I visited the ship, and in essence  
 report  
 (9) to him my observations so that he was aware of them If  
 that's  
 (10) what you're referring to  
 (11) Q My – did you come back repeatedly and say to Harvey  
 (12) Borgen I checked on Joe and he isn't drinking? You didn't do  
 (13) that did you?  
 (14) A Not in those words, no, sir  
 (15) Q You – your understanding was that Captain Hazelwood was  
 (16) alcohol dependent?  
 (17) A That is correct  
 (18) Q And he couldn't drink?  
 (19) A Or if he did he would be – he would be addicted to it  
 (20) yes  
 (21) Q And he had emotional problems?  
 (22) A Yes  
 (23) Q And he was supposed to abstain from drinking whether on or  
 (24) off duty? That's a correct statement?  
 (25) A Well if you – yeah if you're an alcoholic in essence

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- (1) you have to abstain  
 (2) Q Okay And you – let's – do you know of anybody else who  
 (3) was monitoring him other than you or Harvey Borgen? You  
 don't  
 (4) do you?  
 (5) A No, sir  
 (6) Q And you didn't document any of the monitoring did you?  
 (7) A There wasn't really anything to document  
 (8) Q Okay We'll come to that in just a minute But there is  
 (9) no document is there?  
 (10) A Not to my knowledge  
 (11) Q Not one piece of paper that you're aware of in the Exxon  
 (12) Corporation that reflects any monitoring?  
 (13) A No sir  
 (14) Q Okay And you never visited the Exxon Valdez in the Port  
 (15) of Valdez did you?  
 (16) A Not in the port no  
 (17) Q And did you ever ask of the Alamar people we had a fellow  
 (18) from Alamar here yesterday did you ever ask anybody at  
 Alamar  
 (19) whether Hazelwood had a reputation for drinking or was  
 (20) drinking?  
 (21) A No sir  
 (22) Q How about anybody at Alyeska did you ask anybody at  
 (23) Alyeska?  
 (24) A No sir  
 (25) Q And there were never any random searches of Hazelwood's

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- (1) quarters?  
 (2) A Not when he was master of the Exxon Valdez that I'm aware  
 (3) of  
 (4) Q And you never asked anyone at Exxon about past incidents?  
 (5) A No sir  
 (6) Q And you never asked any other supervisors of the west coast  
 (7) office about Hazelwood and alcohol did you? Other than  
 (8) Borgen?  
 (9) A That is correct My understanding of this whole rehab  
 (10) situation is that the procedures that I have read indicated  
 (11) that there'll be no discussion on rehab or the details of it or  
 (12) any such thing and such as that unless the employee  
 (13) chooses to  
 (14) do so himself  
 (15) Q So it's top secret is that right?  
 (16) A That's my impression  
 (17) Q You never told Captain Hazelwood or you never asked  
 (18) Captain  
 (19) Hazelwood if he was in treatment Alcoholics Anonymous how  
 (20) his  
 (21) recovery was did you?  
 (22) A No But I did - not in those words but I did ask Captain  
 (23) Hazelwood if he had any personal problems and he said no  
 (24) I  
 (25) asked him if he had any problems at all and he said no And I  
 (26) believe that Captain Hazelwood knew that I was talking  
 (27) about  
 (28) alcohol  
 (29) Q So it's sort of kind of a thing that you'd understand or  
 (30) whisper?

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- (1) A Well as I said there's this confidentiality issue about  
 (2) rehab and I didn't feel it appropriate to go down and say  
 (3) well Joe, how's rehab going, how was the last AAA [sic]  
 (4) Meeting I chose not to be a bull in a china shop but to  
 (5) handle it a little bit differently  
 (6) Q And in May of 1988 you got a call from Steve Day who told  
 (7) you that he heard Hazelwood order beer over the ship  
 (8) walkie talkie?  
 (9) A I did not receive to my recollection a call from Steve  
 (10) Day that addressed that issue There was however a  
 (11) conversation in late May of 1988 where Steve did tell me  
 (12) that  
 (13) Q There was a call in May of 1988 where Steve Day told you he  
 (14) heard Hazelwood order beer over a ship walkie talkie?  
 (15) A Not a telephone call no sir, there was a conversation  
 (16) Q Conversation?  
 (17) A In Mr Day's office where he related that to me  
 (18) Q Did he tell you he found empty Henry Weinhard's bottles on  
 (19) the vessel?  
 (20) A No sir  
 (21) Q Did he tell you that the walkie talkie incident had to do  
 (22) with Henry Weinhard's beer?  
 (23) A No sir  
 (24) Q Mr Day testified that he came in and reported this to you  
 (25) did he?  
 (26) A He - he reported to me that he heard Captain Hazelwood

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- (1) over the walkie-talkie asking for beer And at that point in  
 (2) time I said did you go over and investigate? He said no I  
 (3) asked him a series of other questions and I can't remember  
 (4) specifically what was said but the last question I said is  
 (5) did you see anybody drinking and he said no  
 (6) Q So for - does that allow you to wash your hands?  
 (7) A No I went in to Mr Borgen after this this conversation  
 (8) and - and spoke to him about the possibility that Captain  
 (9) Hazelwood might be drinking  
 (10) Q And Mr Borgen already knew about it didn't he?  
 (11) A That is correct  
 (12) Q And you were shocked weren't you?  
 (13) A I was sort of surprised that I didn't know about it  
 (14) Q Everybody knew about it?  
 (15) MR NEAL Objection  
 (16) THE COURT Sustained Jury will disregard that  
 (17) BY MR O NEILL  
 (18) Q The word shocked is your word isn't it?  
 (19) A Yeah I was surprised Here I am three months on the  
 (20) job  
 (21) I find this information out go to my boss and he is already  
 (22) aware of it so yeah I was a little surprised  
 (23) Q So would it be fair to say that at this point in time you  
 (24) knew that captain - you were of the view that Captain  
 (25) Hazelwood was an alcoholic he had to abstain he ordered  
 (26) beer  
 (27) over a walkie talkie in the Portland shipyard and that you and

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- (1) your boss both knew about it?  
 (2) A Well when I left the conversation with Mr Borgen my  
 (3) understanding was that he had done - or some sort of  
 (4) investigation was done and there was nothing to tie Captain  
 (5) Hazelwood with drinking during that incident  
 (6) Q So you -  
 (7) A And one other thing that I would continue to watch  
 (8) Captain  
 (9) Hazelwood closely  
 (10) Q And then at some point in time you talked to Messrs  
 (11) Kimtis and Glowacki isn't that right?  
 (12) A Separately, yes  
 (13) Q And did you know that Mr Kimtis was the one that Captain  
 (14) Hazelwood was drinking beer with in Portland?  
 (15) A No I did not know that  
 (16) Q Did you know that Mr Glowacki - at that point in time you  
 (17) wouldn't know that Glowacki was in Valdez drinking before the  
 (18) grounding Did you know that Hazelwood and Glowacki drank  
 (19) on  
 (20) occasion?  
 (21) A Not until the - after the incident  
 (22) Q Now Captain Hazelwood said in his testimony we talked at  
 (23) great length about his conversation with you?  
 (24) A Which conversation?  
 (25) Q The one in May or June of 1988?  
 (26) A I talked to Captain Hazelwood I think in May he called me  
 (27) from the shipyard and in June I was on board the ship for  
 (28) the

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- (1) **stewardship review and to give him performance feedback**  
 (2) **Q Okay** And he says that you and he talked at least at one  
 (3) **point in time in his testimony** he said that you and he talked  
 (4) **and he told you that he was drinking beer with Chuck Kimtis**  
 (5) **back at his apartment?**  
 (6) **A That -**  
 (7) **MR NEAL** Objection to that unless Mr O Neill  
 (8) **brings out the fact that makes that misleading** really  
 (9) **Mr O Neill** knows what that story is I'll get to it never  
 (10) **mind** I withdraw my objection  
 (11) **THE COURT** Thank you sir  
 (12) **MR O NEILL** So we can get it clearly in mind  
 (13) **(Portion of video of Captain Hazelwood played as follows)**  
 (14) **BY VIDEO EXAMINER**  
 (15) **Q Did Mr Myers** discuss this event with you?  
 (16) **A I think it was the subsequent voyage** We left Portland  
 (17) **loaded, dropped a bunch of people off that had ridden with**  
 (18) **us**  
 (19) **in Long Beach** Went to Panama and returned I think it was  
 (20) **our last run to Panama**  
 (21) **Q And where did the discussion take place?**  
 (22) **A As I recall,** Anchorage and San Francisco  
 (23) **Q And what did he say to you and what did you say to him?**  
 (24) **A He was - it was part of a general commentary on how did**  
 (25) **things go to the yard and, you know** it basically was a  
 (1) **shakedown voyage for all this repair work that had been**  
 (2) **done**

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- (1) **and I don't know if it was the beginning or the end - I have a**  
 (2) **feeling it was the middle of this discussion** went on for  
 (3) **about**  
 (4) **five or six hours** about all the concerns in the yard and he  
 (5) **says** I got a report from Herb Leyendecker about some beer  
 (6) **being ordered or referred to on the walkie-talkie** and in sum  
 (7) **and substance** I told him the same thing I've testified to  
 (8) **today** what happened said okay  
 (9) **Q Did he say anything else besides okay** when you gave him  
 (10) **the -**  
 (11) **A No** He just said I just wanted to be sure there was no  
 (12) **violation of the alcohol policy** and I said as to my way of  
 (13) **thinking,** there was none  
 (14) **Q Did he - at this point** did you tell him that you had  
 (15) **consumed some of that beer later?**  
 (16) **A I believe I did** I said Chuck Kimtis and I went and  
 (17) **watched the Bruins play** whoever they were playing in the  
 (18) **Stanley Cup finals** I think it was I explained the whole  
 (19) **scenario to him**  
 (20) **Q You explained the scenario** including the fact that you  
 (21) **subsequently drank some of the beer while watching the**  
 (22) **football**  
 (23) **game?**  
 (24) **A Hockey game**  
 (25) **Q Hockey game?**  
 (1) **A I believe I did** yeah  
 (2) **Q You refer to Mr Timmons** I forget he was on the other end

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- (1) **of the walkie talkie during the - during the conversation?**  
 (2) **A Summons Timmons** something like that I've forgotten  
 (3) **Q Who was he again** remind me?  
 (4) **A I think he was a rigger foreman** He was in charge of the  
 (5) **riggers for the day shift at that time**  
 (6) **Q Did you tell Mr Myers** how much beer you drank during the  
 (7) **hockey game?**  
 (8) **A I don't think specifically** I think it was a six pack of  
 (9) **beer and I think we indicated to him that we finished it or**  
 (10) **drank it**  
 (11) **(Portion of video of Captain Hazelwood concluded)**  
 (12) **BY MR O NEILL**  
 (13) **Q Have you ever seen that before?**  
 (14) **A No, sir**  
 (15) **Q In the conversation** would it be fair to say that he does  
 (16) **say that he related to you the fact that he drank beer with**  
 (17) **Kimtis back in his apartment?**  
 (18) **A Well, that's what he said, but-**  
 (19) **Q That's what he says?**  
 (20) **A That's what he said, but -**  
 (21) **Q I'm going to let you - I'll give you a chance** Go  
 (22) **A Number one, I never had a conversation with Mr**  
 (23) **Leyendecker**  
 (24) **in relationship to this and I think Captain Hazelwood is**  
 (25) **mistaken because that discussion never took place** With  
 (1) **Captain Hazelwood** It just didn't take place

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- (1) **Q Okay** That's fine Would it be fair to say as you sit  
 (2) **here today** you thought he was an alcoholic you knew he  
 (3) **wouldn't be - he shouldn't be drinking** those are correct  
 (4) **statements?**  
 (5) **A Yes**  
 (6) **Q And you knew that a drinking alcoholic captain** master of a  
 (7) **vessel** presented a risk to the vessel and the environment  
 (8) **around it** okay? Is that all fair so far?  
 (9) **A Yes**  
 (10) **Q If Captain Hazelwood's version of this facts is correct**  
 (11) **assume it is - may or may not be** but let's assume it is -  
 (12) **your not doing something about that would have been**  
 (13) **reckless?**  
 (14) **A Well first off** it wasn't It didn't happen  
 (15) **Q I'm asking you to assume it was**  
 (16) **A Well, since it didn't happen** it's sort of difficult  
 (17) **Q Let's say it's somebody else** say it's Mr X same context  
 (18) **that we're talking about** knowledge of alcoholism knowledge  
 (19) **with regard to shouldn't be drinking** knowledge with regard to  
 (20) **tanker risks** and Mr X gets a report as we saw Captain  
 (21) **Hazelwood give him a report** if Mr X didn't take action  
 (22) **wouldn't it be fair to describe that conduct as reckless?**  
 (23) **A Well in Captain Hazelwood's situation, I do not believe**  
 (24) **perhaps**  
 (25) **he wasn't an alcoholic** Because I was on the ship all the  
 (1) **time** Every time it came in the ship came into Northern

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- (1) California or Long Beach I was in there for extended periods
- (2) of time and I know what to look for and I ensured that every time I came on board the ship I got close enough to him to smell his breath I talked to him I made myself available to other members of the crew And I got a number of unsolicited positive comments more than I had for anyone else And it didn't -
- (8) Q Let me ask the question a different way
- (9) A Okay
- (10) Q If we assume Captain Hazelwood's version of the facts which we all just looked at
- (12) MR NEAL Your Honor this is too much Can we approach the - approach the side bar?
- (13) approach the - approach the side bar?
- (14) THE COURT Not at this point Let's see what the next question is
- (16) MR NEAL Then I'll have to set up the video again where Mr. Hazelwood comes back and corrects this Apparently
- (18) Mr. O'Neill is not going to do that
- (19) THE COURT You'll have your chance
- (20) MR O NEILL Thank you Judge
- (21) BY MR O NEILL
- (22) Q If we assume Captain Hazelwood's - that version of Captain Hazelwood's testimony and I'm happy to admit that there are at least four versions okay there are four versions two in which he says that two in which he says the conversation

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- (1) didn't take place happy to admit that We've got four versions of the same conversation but let's assume the version that we just looked at If we assume that that version is the one that took place you're partially responsible for the Exxon Valdez aren't you?
- (6) A No
- (7) Q Okay Now at some point in 1988 you attempted to get Captain Hazelwood transferred didn't you?
- (9) A No
- (10) Q You didn't?
- (11) A No
- (12) MR NEAL Page Mr. O'Neill
- (13) MR O NEILL 169
- (14) BY MR O NEILL
- (15) Q Would it be fair to say that there was a meeting in August of 1988?
- (17) A That's correct
- (18) Q And there were ship group coordinators there including Deppe McRobbie and Sheehy?
- (20) A That's correct
- (21) Q And you were talking personnel matters because people were being promoted at that point in time?
- (23) A Right There was the ranking and rating in June and as a result of the ranking and rating, there were people that were promoted and the object was to even out the personnel on the

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- (1) fleet so there was a meeting and Captain Deppe said that he needed somebody for the - I think it's the Yorktown that was working for I think PRI which is a customer of ours and he indicated that - or said that he needed a good ship handler and everybody's told me that Captain Hazelwood is the best probably the best ship handler Exxon Shipping Company had so I said do you want to take him on that ship It wasn't - it was more like looking at the general interest of the company rather than saying get this guy off my ship
- (10) Q Did you suggest that he go to another vessel?
- (11) A Other than that conversation no
- (12) Q That conversation did you discuss that he go to another vessel?
- (14) A I suggested that if Mr. Deppe wanted him for the Yorktown that would be okay Because of the requirements he had
- (16) Q And Captain Deppe didn't want Captain Hazelwood did he?
- (17) A No Because he's not politic
- (18) Q He's a wise guy?
- (19) A Not a wise guy
- (20) Q Now at some point in time you get a report do you not with regard to a second incident concerning Captain Hazelwood in San Francisco Bay concerning Captain Reeder and Mary Williamson?
- (24) A Captain Reeder I - I had a conversation in March of 1989 where Steve Day said officers busting Reeder's chops To my

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- (1) knowledge and recollection there was nothing said about Captain Hazelwood
- (3) Q So it's your testimony as you sit here today - well let's see what Steve Day said and then you can deny it not deny it okay?
- (6) A Um hum
- (7) (Portion of video of Steve Day played as follows)
- (8) BY VIDEO EXAMINER
- (9) Q What did you tell Paul Myers?
- (10) A From what I recall I - I initiated the conversation went into Paul's office in Benecia shut the door and related to him essentially what I've - what I've told you here what Mary observed and thought he as - he should know about it
- (14) Q Do you recall what if anything Paul Myers said in response to your report?
- (16) A He didn't say very much, from my recollection Vaguely remember some, you know, questions of when, what day and you know, but that's about - yeah, that's about all It was very short actually
- (20) (Portion of Video of Steve Day concluded)
- (21) BY MR O NEILL
- (22) Q The Mary Williamson incident is the incident Mr. Day had previously talked about concerning whether Captain Hazelwood had been drinking aboard a launch that evening, and here he reports that he reported it to you or testifies that E reported

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- (1) it to you My question is simply did he?
- (2) A He did not mention Captain Hazelwood My recollection is
- (3) that during that time frame we had a turbocharger problem and
- (4) I'm sure you're aware that the Exxon Valdez was delayed from
- (5) the Monday I guess that would be the 13th through Saturday
- (6) the 18th because of a turbocharger problem and I was dealing
- (7) with this, which I normally wouldn't have done and Steve is a
- (8) hot shot engineer, diesel engineer and I went into Steve's
- (9) room and asked him some questions about if he could help me
- (10) with the turbocharger or if he had any ideas because I had
- (11) three different firms, one Sulzer, one our own people and one
- (12) the turbocharger manufacturer all saying that they were
- (13) different things, trying to find out which one it was so
- (14) things were a little tense for me
- (15) And Steve was busy and he really didn't have anything to
- (16) offer and there was a lull in the conversation and I remember
- (17) him saying after that officer's busting Reeder's chops, and
- (18) someone else came into the room and I left and got back on the
- (19) turbocharger case
- (20) Q So just so the record is clear you deny that Mr Day told
- (21) you about what we - about Mary Williamson observing Captain
- (22) Hazelwood in a possibly inebriated state?
- (23) MR NEAL Objection Your Honor to total
- (24) misquotation of the record
- (25) MR O NEILL Well I think that

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- (1) MR NEAL Possibly inebriated state she said she
- (2) couldn't say that-
- (3) THE COURT Mr O Neill - Mr Neal - I knew I did do
- (4) that sooner or later - just take it a little bit easy
- (5) please The jury will decide for themselves what the testimony
- (6) of these various witnesses were
- (7) You may continue Mr O Neill
- (8) MR O NEILL Thank you Judge
- (9) BY MR O NEILL
- (10) Q Mary Williamson describes an incident aboard a launch
- (11) with - right before the Valdez leaves north to go on the
- (12) fateful voyage And she reports it to Mr Day whatever the
- (13) characterization of it is Mr Day has testified that he
- (14) reported both the Williamson incident to you and a heated
- (15) conversation between Captain Hazelwood and Captain Reeder in
- (16) which profanity was used Mr Day's testified that he reported
- (17) that to you My question for you sir is did he?
- (18) A You said just before the ship left I was on board the
- (19) ship the 17th overnight to the 18th
- (20) Q My question is did Mr Day report that to you?
- (21) A Not that - not that I'm aware of no sir
- (22) Q Why would Mr Day lie about that if you know?
- (23) A Certainly on the surface I have - I have no explanation
- (24) on why he would
- (25) Q Now knowing what your state of mind then was with regard

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- (1) to Captain Hazelwood and his treatment and his alcoholism and
- (2) the fact that he wouldn't be drinking if indeed Mr Day made
- (3) this report to you and you didn't act on it that would be
- (4) reckless wouldn't it?
- (5) A Well yeah, I think if he said that to me and I didn't,
- (6) yeah, I would be a bad boy, so to speak
- (7) Q Reckless?
- (8) A No question
- (9) Q No question?
- (10) A It would have been - it would have been wrong But I do
- (11) not remember him saying anything about Captain Hazelwood I
- (12) don't remember anything about profanity All I remember saying
- (13) is officer's busting Reeder's chops, and this was old news
- (14) MR O NEILL Sir I'm not going to argue with you
- (15) about it
- (16) THE WITNESS Fine
- (17) MR O NEILL Okay thank you
- (18) THE COURT You may cross examine
- (19) MR NEAL Mr Myers I'm Jim Neal I represent Exxon
- (20) defendants Let me start with one of the latter things that
- (21) Mr O Neill asked you about
- (22) CROSS EXAMINATION OF PAUL MYERS
- (23) BY MR NEAL
- (24) Q He said that you recommended a transfer of Captain
- (25) Hazelwood from the Valdez do you remember that?

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- (1) A Yes sir
- (2) Q And you said he did - you did and he said and Captain
- (3) Deppe wouldn't take him isn't that correct?
- (4) A That's correct
- (5) Q And he dropped it there?
- (6) A Yes, sir
- (7) Q Let me ask you this if you didn't testify Captain Deppe
- (8) did not want Captain Hazelwood on that run primarily because
- (9) Captain Hazelwood is quite outspoken and I think he was
- (10) looking for someone that was a bit more diplomatic because you
- (11) had - it was - you had to deal with the third party
- (12) occasionally?
- (13) A That's correct
- (14) Q Mr O Neill didn't bring that out did he?
- (15) A No sir
- (16) Q He tried to make it appear that Captain Deppe rejected
- (17) Captain Hazelwood because there was something extraordinarily
- (18) wrong about Captain Hazelwood or he was drinking or something
- (19) like that correct?
- (20) A That's correct
- (21) Q Isn't that right below where Mr O Neill could not have
- (22) missed it when he asked you that question?
- (23) A I believe so sir
- (24) Q Now and isn't it a fact - well let me ask you have you
- (25) seen - Mr O Neill played for you what Captain Hazelwood said

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- (1) at one time about telling you about the Henry s and that he and  
 (2) Mr - chief mate somebody had consumed that six pack back -  
 (3) six pack back at the apartment while watching a hockey game  
 do  
 (4) you remember that?  
 (5) A Yes sir  
 (6) Q All right Did he tell you that shortly within a few  
 (7) minutes after that Captain Hazelwood continued in his  
 (8) deposition to come back in and say you know I think I better  
 (9) correct something I don't believe I had that conversation or  
 (10) told Mr Myers that I consumed those beers He didn't show  
 you  
 (11) that did he?  
 (12) A No sir  
 (13) Q We'll try to show that before we conclude this case Now  
 (14) you said that you understood that Captain Hazelwood was an  
 (15) alcoholic or alcohol dependent or something like that Where  
 (16) did you get that information?  
 (17) A That's the impression that I got from the discussion I had  
 (18) with Mr Harvey Borgen I'd say it was in February of 1988  
 (19) when Harvey had told me that Joe had undergone some sort  
 of  
 (20) rehabilitation for alcohol  
 (21) Q So you assumed that he had been diagnosed as an alcoholic  
 or alcohol dependent because you were told by Mr Borgen that  
 (23) he had gone through some sort of alcohol rehabilitation is  
 (24) that correct?  
 (25) A That is correct

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- (1) Q Pardon me?  
 (2) A Yes, that is correct  
 (3) Q And that is all you knew at the time correct?  
 (4) A Yes sir  
 (5) Q All right Have you seen plaintiffs Exhibit Number 10 in  
 (6) this case which is a diagnosis of Captain Hazelwood?  
 (7) A No sir  
 (8) Q You were not aware that his physician after attending him  
 (9) for 28 days diagnosed him as suffering or having a case of  
 (10) dysthymia which is a mild depression we talked about and  
 (11) secondary alcohol abuse episodic you were not aware of that?  
 (12) A No sir  
 (13) Q Now you also testified under questioning by Mr O Neill  
 (14) that the captain says he thinks he can get it off is that  
 (15) correct?  
 (16) A That's correct that's correct  
 (17) Q That was a conversation that was a part of a conversation  
 (18) you had with Captain Hazelwood sometime after the grounding  
 is  
 (19) that correct?  
 (20) A Yes sir  
 (21) MR NEAL Could you bring that back up that portion  
 (22) of Mr Myers notebook Exhibit Number - well I'll give you  
 (23) this It doesn't have an exhibit number on it Matter of  
 (24) fact I don't think they were ever introduced into evidence  
 (25) but I will give you what I've got

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- (1) Okay let me see if I can zoom in if I can even see that  
 (2) thing  
 (3) BY MR NEAL  
 (4) Q Okay it says USCC or USCG?  
 (5) A USCG on board soon  
 (6) Q On board soon they're on their way out?  
 (7) A Tugs on way out  
 (8) Q Pardon me?  
 (9) A Tugs on way out  
 (10) Q Tug on way out?  
 (11) A Tug on way out  
 (12) Q Think he can get it off?  
 (13) A Right  
 (14) Q Did you think that he - did you take from that that he was  
 (15) going to try to rock the boat off?  
 (16) A No sir  
 (17) Q This comes after him telling you that the Coast Guard was  
 (18) on the way out tugs were on the way out and they think they  
 (19) can get it off correct?  
 (20) A Right and that - those words are verbatim words from -  
 (21) from what I wrote and I was certainly not the calmest in the  
 (22) world during this conversation and that was what he said  
 and  
 (23) the inflection and everything else was the last thing, it was  
 (24) like the last thing he said before we're leaving, like keep  
 (25) your chin up type of thing It was a bad situation it's not

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- (1) the end of the world but -  
 (2) Q You didn't take that to mean that he was going to alone try  
 (3) to get the boat off the rock?  
 (4) A No he had - he had already told me in so many words  
 that  
 (5) he's concerned about stability He's telling me that half the  
 (6) bottom of the ship is torn away and you got water in the  
 (7) forepeak of the ballast tanks and if it wasn't supported it  
 (8) would have sank  
 (9) Q Thank you I'll take that off I think Thank you  
 (10) Mr O Neill also - oh I'm sorry I'm going to get to that  
 (11) Mr O Neill also asked you to listen to a conversation that  
 (12) Captain Hazelwood had with the VTC immediately after the  
 (13) grounding you remember that?  
 (14) A Yes sir  
 (15) Q And then he asked you to compare that with what you  
 (16) remember of the conversation when you had a conversation  
 with  
 (17) Captain Hazelwood?  
 (18) A That's correct  
 (19) Q All right now let's assume that Captain Hazelwood had that  
 (20) conversation immediately after the grounding something a few  
 (21) minutes 15 17 minutes as I remember after midnight on  
 (22) March  
 (23) 24 When was your conversation with Captain Hazelwood?  
 (24) A Roughly an hour and a half later  
 (25) Q An hour and a half later?  
 (26) A Yes sir

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- (1) Q Would you - would you think that the circumstances under  
(2) which Captain Hazelwood was talking to the VCR - VCT (sic)  
(3) and  
(4) the circumstances under which he was talking to you would be  
(5) considerably different?  
(6) A Yeah, he had to be very upset right after that happened, I  
(7) would think  
(8) Q Now you said there were difference in the various things in  
(9) the conversation Would you believe that the difference in  
(10) circumstances at the time could account for those differences?  
(11) A I would think so It's possible  
(12) Q Now Mr Myers you've been employed for - by Exxon for  
(13) some almost 24 years now is that correct?  
(14) A Yes, sir  
(15) Q Would you just because you didn't go over this just  
(16) briefly tell us the jobs you had up to 1987?  
(17) A From 1970 to 1973, I was technical assistant, which was  
(18) really a training position From '73 to '77, I was repair  
(19) superintendent From '77 to '80, I was an operations  
(20) superintendent From '80 to '82, I was a repair planner  
(21) From  
(22) '82 to '84, I was superintendent engineer during the  
(23) construction of three vessels in Avondale shipyard for  
(24) Exxon  
(25) Shipping Company and from '84 to '87 I was  
(26) superintendent  
(27) engineer in San Diego California during the construction  
(28) of  
(29) the Exxon Valdez and Exxon Long Beach  
(30) Q Now to pass over this quickly and get to the point you

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- (1) joined the west coast fleet sometime in 1987 as port engineer?  
(2) A About mid year yes sir  
(3) Q And then you next took over the position of ship group  
(4) coordinator?  
(5) A Yes sir  
(6) Q What vessels did you have - oh by the way did you have  
(7) supervisory authority then over certain vessels?  
(8) A Yes sir  
(9) Q What vessels?  
(10) A The Exxon Benecia the Exxon Long Beach the Exxon  
(11) North  
(12) Slope, and the Exxon Valdez  
(13) Q Limit ourselves to the Valdez for a moment what trade was  
(14) it in when you became ship group coordinator?  
(15) A It would take cargo from Valdez Alaska and go to  
(16) Panama  
(17) and come back to Valdez with a stop in Long Beach where  
(18) they  
(19) pick up fuel provisions and spare parts  
(20) Q Did that type of trade change any during the time you were  
(21) ship group coordinator?  
(22) A Yes sir Toward the end of 1988 the trade changed  
(23) where  
(24) the ship was no longer going to Panama It would come into  
(25) San  
(26) Francisco Bay where the cargo was discharged into a  
(27) smaller  
(28) ship  
(29) Q Okay Let me go back for a moment to the - to Captain  
(30) Hazelwood You had occasion to meet Captain Hazelwood of  
(31) course?

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- (1) A Yes, sir  
(2) Q When did you first meet him?  
(3) A Late summer, early fall of 1987  
(4) Q All right Now from that time until February of 1988 when  
(5) you said you had occasion to have a conversation with  
(6) Mr Borgen did you work with Captain Hazelwood?  
(7) A Yes As port engineer, I was involved and responsible for  
(8) the guaranty administration and although the chief engineer  
(9) was  
(10) the person on board coordinating this it had been my  
(11) practice  
(12) in the past to bring in the captain in these discussions  
(13) because he's responsible for the ship, and I found Captain  
(14) Hazelwood more than cooperative and more than willing to  
(15) participate  
(16) Q In February, Mr O Neill asked you if you became upset with  
(17) Captain Hazelwood or Captain Hazelwood became upset with  
(18) you  
(19) Tell us about that  
(20) A I don't even remember the situation, all I can say is that  
(21) it was my feeling that he'd found out or it had been  
(22) announced  
(23) of the impending organizational change and he sort of  
(24) resented,  
(25) as I said before, the fact I'm an engineer I'm an outsider  
(26) and  
(27) I was a peer and now I'm going to be a supervisor  
(28) Q And following your belief that he had some irritation with  
(29) you as you described you had a conversation with Mr Harvey  
(30) Borgen the man you reported to?  
(31) A That's correct

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- (1) Q He told you that Captain Hazelwood had gone through some  
(2) sort of alcohol rehabilitation from which you assumed that he  
(3) was some sort of alcoholic or alcohol dependent?  
(4) A That's correct  
(5) Q From that point on from the time you had the conversation  
(6) with Mr Borgen did you consider yourself a monitor of Captain  
(7) Hazelwood?  
(8) A Yeah when I left the - the conversation with Harvey I  
(9) felt it was my responsibility to watch Captain Hazelwood  
(10) very  
(11) closely  
(12) Q Did you all discuss that?  
(13) A Yes, but I can't remember the details of the conversation  
(14) Q Now then did you monitor him?  
(15) A Yes, sir  
(16) Q Tell me how you went about that  
(17) A Well I went down to the ship every time it came to the  
(18) west coast And I would talk with Captain Hazelwood I  
(19) would  
(20) notice his behavior or I would see how he interacted with  
(21) other  
(22) people I would manage to get close enough to him where I  
(23) could smell his breath each time I'd make myself available  
(24) for you know to other crew members ask them how they  
(25) were  
(26) doing, and by the way, I did get a number of unsolicited  
(27) positive comments about him  
(28) I asked both chief engineers if he was drinking and they  
(29) had said no, and I'd also monitor the performance of the  
(30) ship

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- (1) and as we – as is a matter of record that ship with him on  
 (2) it won the fleet manager's award in 1987 as well as 1988  
 (3) Q I'll get to that Let's – let's flesh that out a little  
 (4) bit The vessel – where would you board the – where was your  
 (5) office during this period of time? Let's start early '88  
 (6) now when you were Captain Hazelwood's supervisor where  
 was  
 (7) your office?  
 (8) A In Benecia California  
 (9) Q Where would the vessel come to? You said you'd board it  
 (10) every time it came into port?  
 (11) A Right  
 (12) Q You're talking about a California port?  
 (13) A Yes sir either be –  
 (14) Q Where would it – where would it come to and let's talk  
 (15) about the early part of '88 when he was trading in Panama  
 (16) where would it come to?  
 (17) A Long Beach California to pick up fuel and supplies and  
 (18) spare parts  
 (19) Q And you were in Benecia where is Benecia? In San  
 (20) Francisco?  
 (21) A Yes sir  
 (22) Q How far is it from Benecia to Long Beach?  
 (23) A About what 500 miles  
 (24) Q Would you get on a plane and fly down to Long Beach?  
 (25) A Yes sir

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- (1) Q Every time the vessel came in?  
 (2) A To the best of my recollection yes sir  
 (3) Q All right and you'd board the vessel?  
 (4) A Yes sir  
 (5) Q How much time would you spend with Captain Hazelwood?  
 (6) A I'd say anywhere from two hours to the whole day  
 (7) Q Did you ever spend the night with him? I don't mean – I  
 (8) mean on the vessel with him  
 (9) MR CHALOS I'm going to object to that Your Honor  
 (10) MR NEAL I am too I withdraw it  
 (11) MR O NEILL That is not what this trial is about  
 (12) BY MR NEAL  
 (13) Q Somewhere on this big ship at night were you at one place  
 (14) and Captain Hazelwood another place over the night?  
 (15) A Yes sir  
 (16) MR NEAL Did that straighten it out all right  
 (17) Mr O'Neill  
 (18) MR O NEILL Yes sir  
 (19) MR NEAL Thank you  
 (20) BY MR NEAL  
 (21) Q Did you do this in these ways we talked about now from  
 (22) the time of early '88 until the grounding?  
 (23) A Yes, sir  
 (24) Q Captain Hazelwood testified in this case that you mother  
 (25) henned him shadowed him I believe he used the name  
 Lamont

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- (1) Cranston that some of us remember as being The Shadow?  
 (2) A I wouldn't exactly use those words but I do take my job  
 (3) seriously or I did take my job seriously and I saw him at  
 (4) every opportunity  
 (5) Q At any time during the period from early 1988 up until the  
 (6) time of the grounding did anybody ever report to you that  
 (7) Captain Hazelwood was drinking alcoholic beverages?  
 (8) A No sir  
 (9) Q Anybody?  
 (10) A No sir  
 (11) Q All right Let's talk about this Henry's incident or the  
 (12) beer incident I guess although you didn't hear the word  
 (13) Henry's you heard from Mr Day that he allegedly heard  
 Captain  
 (14) Hazelwood ordering beer?  
 (15) A That's correct  
 (16) Q And you say this occurred in a conversation that you had  
 (17) with Mr Day person to person?  
 (18) A That is correct  
 (19) Q In Benecia?  
 (20) A That is correct  
 (21) Q Wait a minute what did you say to Mr Day and what did he  
 (22) say to you in substance?  
 (23) A Well I asked him if he had gone – he was writing a  
 (24) specification for the next ship and he was not on the ship  
 and  
 (25) he'd heard this and I said well did you go over and see  
 what

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- (1) was going on and he said no and I know I asked him a  
 number  
 (2) of other questions and the last thing I can remember asking  
 him  
 (3) was did you see anybody drinking and his answer was no  
 (4) Q Now he testified at this trial that he also told you that  
 (5) Mr Leyendecker had told him that he had investigated had  
 gone  
 (6) aboard the vessel asked Captain Hazelwood if he was drinking  
 (7) Captain Hazelwood said no and that he – he Leyendecker told  
 (8) Mr Day and Mr Day allegedly told you that he saw no sign of  
 (9) drinking although he did see some empty beer cans  
 somewhere on  
 (10) the vessel  
 (11) Did Mr Day tell you about Mr Leyendecker's investigation  
 (12) to your recollection?  
 (13) A No, sir  
 (14) Q But he did tell you about ordering the beer?  
 (15) A Yes sir  
 (16) Q All right Did you do anything thereafter with respect to  
 (17) this incident?  
 (18) A Yes sir  
 (19) Q What?  
 (20) A I went down to speak to Mr Borgen  
 (21) Q You and Mr Borgen have a conversation about this ordering  
 (22) of beer?  
 (23) A Yes sir  
 (24) Q In substance what was that conversation?  
 (25) A Well in substance Harvey related that this had been



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- (1) looked at and nothing had been found to - to connect  
**Captain**  
 ( ) Hazelwood with drinking any beer and that I would continue  
 a  
 (3) close eye on him, meaning Captain Hazelwood  
 (4) Q So you concluded from this investigation that the matter -  
 (5) from this conversation that the matter had been investigated?  
 (6) A Yes, sir  
 (7) Q And it turned up not to be justified?  
 (8) A Right  
 (9) Q Or not to involve drinking by Captain Hazelwood?  
 (10) A That's correct  
 (11) Q Now then following this incident did you have a  
 (12) conversation to get with Captain Hazelwood on board the  
 vessel?  
 (13) A Several conversations, yes  
 (14) Q When was the next time after - by the way when was -  
 (15) when did you hear about this Henry's incident we've referred  
 (16) to?  
 (17) A It was the latter part of May 1988  
 (18) Q When was the next time you saw Captain Hazelwood?  
 (19) A It was roughly a month later  
 (20) Q And where did you see him and under what circumstances?  
 (21) A It was in Long Beach and it was the time of the - what you  
 (22) might call the mid year stewardship review and time that I  
 was  
 (23) going to give some feedback to both Captain Hazelwood  
 and Chief  
 (24) Engineer Kimtis on the performance of the -  
 (25) Q Was it aboard the Valdez?

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- (1) A Yes sir  
 (2) Q Now were you still - did you still have in your memory  
 (3) this recollection of ordering beer?  
 (4) A Yes sir  
 (5) MR NEAL Just two questions Your Honor  
 (6) BY MR NEAL  
 (7) Q You went aboard the vessel?  
 (8) A Yes sir  
 (9) Q What was the first thing you did?  
 (10) A I went to see the captain and said hello  
 (11) Q And what was the second thing you did?  
 (12) A After a few salutations and whatnot I went to see the  
 (13) chief engineer And -  
 (14) Q What did you say to him and what did he say to you?  
 (15) A Well, apart from hello how are you type of thing I asked  
 (16) him pointblank with the Henry's thing on my mind and if  
 (17) Hazelwood was drinking and he said no  
 (18) THE COURT We'll recess now for the day ladies and  
 (19) gentlemen Please remember my instructions that you not  
 listen  
 (20) to or read anything about this case and we'll resume tomorrow  
 (21) morning at 8:00  
 (22) Would counsel stay for just a moment  
 (23) (Jury out at 2:02 p.m.)  
 (24) THE COURT We're off the record now  
 (25) (Recess at 2:02 p.m.)

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 (2) CONTINUED DIRECT EXAMINATION OF GREGORY COUSINS  
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- (1) EXHIBITS  
 (2) 224 and 3551 offered 2472  
 (3) 9127 offered 2515  
 (4) 9126 offered 2517  
 (6) 224 and 3551 received 2472  
 (7) 9127 received 2515  
 (8) 9126 received 2517

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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
- ( 1 ) JOY S BRAUER RPR
- Notary Public for Alaska
- ( 2 ) My Commission Expires 5 10 97

Look-See Concordance Report

UNIQUE WORDS 2,457
TOTAL OCCURRENCES 12,180
NOISE WORDS 385
TOTAL WORDS IN FILE 42,957

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 20

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(1) IN THE UNITED STATES DISTRICT COURT  
 ) FOR THE DISTRICT OF ALASKA  
 ) In re ) Case No A89 0095 CIV (HRH)  
 (5) ) Anchorage Alaska  
 The EXXON VALDEZ ) Wednesday May 25 1994  
 (6) ) 8 00 a m  
 TRANSCRIPT OF PROCEEDINGS  
 TRIAL BY JURY 17th day  
 BEFORE THE HONORABLE H RUSSEL HOLLAND JUDGE

(1) VOLUME 17 Pages 2586 2802  
 Realtime Transcription

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 (5)

(1) PROCEEDINGS  
 (2) (Jury in at 8 02 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 a continuation of trial in case A89 0095 in re The Exxon  
 (7) Valdez  
 (8) Mr Neal you were up I believe  
 (9) MR NEAL Yes sir  
 (10) THE COURT You may continue  
 (11) MR NEAL May it please the Court Witness Myers  
 (12) While he s coming up Your Honor I ve talked to  
 (13) Mr O Neill and I understand without objection we offer Defense  
 (14) Exhibits 9123 9128 3509 3487 We offer those in evidence  
 (15) (Exhibits 9123 9128 3509 and 3487 offered)  
 (16) MR O NEILL No objection  
 (17) THE COURT Thank you The exhibits announced by  
 (18) Mr Neal are admitted  
 (19) MR NEAL Mr Myers as we concluded yesterday -  
 (20) THE COURT Excuse me sir You understand you re  
 (21) still under oath?  
 (22) THE WITNESS Yes sir  
 (23) THE COURT Mr Neal  
 (24) CROSS EXAMINATION OF PAUL MYERS  
 (25) BY MR NEAL

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 (15) Deputy Clerk TOM MURTIASHAW  
 U S District Court  
 (16) 222 W 7th Avenue #4  
 Anchorage AK 99513  
 Ph 907/271 4529  
 (17) Reported by JOY S BRAUER RPR  
 Registered Professional Reporter  
 (9) Midnight Sun Court Repo ters  
 2550 Denali Street Suite 1505  
 Anchorage AK 99503  
 (20) Ph 907/258 7100

(1) Q As we concluded yesterday you d had a conversation with  
 (2) Mr Steve Day about what we ve come to call here as the  
 Henry s  
 (3) matter  
 (4) A Yes, sir  
 (5) Q And you d had a conversation with Mr Borgen following that  
 (6) when you concluded that that had been investigated and it  
 (7) turned up negative?  
 (8) A Yes sir  
 (9) Q And we ve gone to the - sometime after that the next time  
 (10) the vessel Valdez was in port you d gone aboard the vessel?  
 (11) A That s correct  
 (12) Q And you said hello to the captain I believe and you  
 (13) immediately went down and had a conversation with a chief  
 mate  
 (14) is that correct?  
 (15) A No, sir, that was the chief engineer  
 (16) Q Chief engineer? And you asked this chief engineer if  
 (17) Hazelwood had been drinking?  
 (18) A That is correct  
 (19) Q And his answer was?  
 (20) A No  
 (21) Q All right Now then tell me what you did next on the  
 (22) Valdez after having your conversation with the chief engineer?  
 (23) A We got together with the captain and the chief and we  
 went  
 (24) through what is called the stewardship review  
 (25) Q Let me stop you right there and for the benefit of myself

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- (1) and the Court and the Members of the Jury what is a  
 (2) stewardship review?  
 (3) **A It s really the way we take care of business and we look at**  
 (4) **various things that are under control of the ship compare**  
 (5) **them**  
 (6) **to what they had forecast, and the same criteria that is used**  
 (7) **during the stewardship review is also a criteria for the ship**  
 (8) **manager s award**  
 (9) Q All right How long did this stewardship review take  
 (10) place? How long did it take to have this?  
 (11) **A I d say at least all morning Might have gone into the**  
 (12) **afternoon I know I was on the ship all day**  
 (13) Q Some several hours then?  
 (14) **A Yes, sir**  
 (15) Q Thereafter - who was present by the way during this  
 (16) stewardship review?  
 (17) **A To my recollection, it was Captain Hazelwood Chuck**  
 (18) **Kimtis**  
 (19) **and myself**  
 (20) Q All right Thereafter did you have an occasion to speak  
 (21) with Captain Hazelwood alone?  
 (22) **A Yes, sir**  
 (23) Q All right Did you - what did you say to - let me - I  
 (24) know you said a lot of things but did you ask Captain  
 (25) Hazelwood if he d been drinking?  
 (26) **A Not in those words sir**  
 (27) Q What did you ask him?

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- (1) **A I asked him if he had any personal problems or any**  
 (2) **problems**  
 (3) **at all and he said no**  
 (4) Q What did you mean by that?  
 (5) **A I meant specifically when I said personal problems I was**  
 (6) **speaking of alcohol, and just so that there was no**  
 (7) **misunderstanding, I said any problems at all to cover**  
 (8) **anything**  
 (9) Q Did you think he understood that you were referring to  
 (10) include alcohol?  
 (11) **A I m sure he did**  
 (12) Q Now then Mr O Neill played something yesterday for you  
 (13) regarding what - I ll pick up his term and say a version of  
 (14) Captain Hazelwood s testimony regarding the Henry s do you  
 (15) remember that?  
 (16) **A Yes, sir**  
 (17) Q Let me play another version of that  
 (18) (Portion of Video Testimony of Captain Hazelwood played as  
 (19) follows)  
 (20) BY VIDEO EXAMINER  
 (21) Q You want to make a clarification Captain?  
 (22) **A Yeah I m trying to recall my answer It was t nearly**  
 (23) **as - my recounting of the event was not as specific as it was**  
 (24) **to Mr Leyendecker It was - you know, it was more part and**  
 (25) **parcel of out in the (video noise) type of exchange**  
 (26) Q Okay Captain I think the record s going to be a little

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- (1) confused Make sure you tell Mr Kende exactly what it is  
 (2) you re referring to that you re correcting  
 (3) **A In the sense that Mr Leyendecker in Portland the day**  
 (4) **after**  
 (5) **asking me I believe I told him that I d consumed the beer**  
 (6) **with**  
 (7) **Chief Engineer Kimtis and Mr Myers, when he questioned**  
 (8) **me**  
 (9) **about it a month or six weeks later, whenever that was in**  
 (10) **later**  
 (11) **June, I m not sure if I got that specific with my recounting of**  
 (12) **the Henry s alleged event And I m not sure how I answered**  
 (13) **it**  
 (14) UNIDENTIFIED SPEAKERS (Indiscernible)  
 (15) **A Well it was n t a specific question and answer about that**  
 (16) **specific event as it was with Mr Leyendecker**  
 (17) Q Well did you - did you indicate to him that you had  
 (18) consumed alcohol whether or not you were specific in your  
 (19) discussion?  
 (20) UNIDENTIFIED SPEAKER Objection insofar as the word  
 (21) indicate It is vague and ambiguous Did he tell him did he  
 (22) tell him if he consumed alcohol?  
 (23) BY VIDEO EXAMINER  
 (24) Q You understand what the word indicate means?  
 (25) **A Yes**  
 (26) Q Okay Thank you  
 (27) **A I don t recall specifically telling him that I told him**  
 (28) **that the beer I d gotten was in at Mr - Chief Engineer**  
 (29) **Kimtis behest, basically and there was no violation of the**

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- (1) **alcohol policy that I was aware of**  
 (2) Q What - did anything spark your recollection of that  
 (3) discussion over the lunch hour to change it from what it was  
 (4) this morning?  
 (5) **A Nothing sparked it except in the sense that thinking**  
 (6) **about**  
 (7) **It It was more that he was going down I think he had a**  
 (8) **checklist or something of all the repairs that were made in**  
 (9) **the**  
 (10) **yard, and this was on his checklist somewhere**  
 (11) (Portion of Video Testimony of Captain Hazelwood concluded)  
 (12) BY MR NEAL  
 (13) Q Now that testimony was not played for you yesterday?  
 (14) **A No, sir**  
 (15) Q When you had your separate conversation with Captain  
 (16) Hazelwood and you asked him if he had any personal problem  
 (17) or  
 (18) any problem at all as you phrase it did he tell you that he  
 (19) had consumed any of these Henry s beers?  
 (20) **A No sir I d like to add that the Henry s beer incident**  
 (21) **was not discussed at all**  
 (22) Q Now by the way later on you had another conversation with  
 (23) another - sometime later on not that day but several weeks  
 (24) later or some weeks later you had another conversation in  
 (25) which you asked another crew member if Captain Hazelwood  
 (26) was  
 (27) drinking didn t you?  
 (28) **A Yes, sir**  
 (29) Q Let me - I ll get to that Let me ask you back when you

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- (1) asked Chief Engineer Kimtis if Hazelwood had been drinking why
- (2) did you go to the chief engineer? Is there a reason you d go
- (3) to him?
- (4) **A Like the captain, he in essence is what you might call a**
- (5) **management representative on board He s head of the**
- (6) **engine**
- (7) **department In addition to that, Chuck Kimtis was with me**
- (8) **in**
- (9) **San Diego three or four months from out of six or seven**
- (10) **from**
- (11) **May 1986 through December when the ship was delivered**
- (12) **and I d**
- (13) **developed somewhat of a rapport with him having worked**
- (14) **with**
- (15) **him, and I felt I could speak to him in confidence**
- (16) **Q You re both engineers?**
- (17) **A Yes, sir**
- (18) **Q Now let s go to the meeting with Mr Day in March of**
- (19) **1989 Do you remember being examined about that?**
- (20) **A Yes, sir**
- (21) **Q Mr O Neill asked you yesterday a question - just so the**
- (22) **record is clear you deny that Mr Day told you about what**
- (23) **we - about Mary Williamson observing Captain Hazelwood in a**
- (24) **possibly inebriated state Do you remember that question?**
- (25) **A Yes sir**
- (26) **Q All right I m going to read you the testimony of - I**
- (27) **hope it s basically a summary of her testimony on this subject**
- (28) **that s presented to this jury**
- (29) **My perception - this is - I m reading Mary Williamson s**
- (30) **testimony My perception was I smelled alcohol on this man s**

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- (1) **breath He could have had a beer five minutes before he**
- (2) **showed**
- (3) **up for the launch He didn t slur his words he didn t**
- (4) **stumble He wasn t as nice to me as he d always been on the**
- (5) **phone with me but I didn t take that directed at me That s**
- (6) **what I perceived I didn t perceive a fumbling person going**
- (7) **back to the ship**
- (8) **Now did you hear anywhere in there about any inebriated**
- (9) **state or possibly inebriated state?**
- (10) **A No, sir**
- (11) **Q Now you were also played a portion of Mr Day s testimony**
- (12) **yesterday in which he recollects at that point telling you**
- (13) **about the - whatever Mary Williamson told him Do you**
- (14) **remember that?**
- (15) **A Yes sir**
- (16) **MR NEAL Let me play a portion that was not played**
- (17) **yesterday**
- (18) **(Portion of Video Testimony of Steve Day played as follows)**
- (19) **BY VIDEO EXAMINER**
- (20) **Q You said a few moments ago in response to one of Mr**
- (21) **Klinckhardt s questions that you didn t know whether Mr Myers**
- (22) **had heard or understood what you were telling him about**
- (23) **Captain**
- (24) **Hazelwood is that accurate summary of what you said**
- (25) **paraphrasing?**
- (26) **A Yeah I hope it agrees I hope it agrees with the record**
- (27) **but yeah**

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- (1) **Q Okay What I m interested in is what you meant by heard**
- (2) **I take it you didn t mean there was noise in the room and he**
- (3) **didn t hear the words?**
- (4) **A Right, no**
- (5) **Q What did you - was there a message you were trying to get**
- (6) **across to Mr Myers that perhaps was not expressed in what you**
- (7) **were telling him?**
- (8) **A Well, sometimes Mr Myers, I don t know if you ve met**
- (9) **him,**
- (10) **tends to have a very flat affect, and when you speak to him**
- (11) **you can t determine whether it bounced off or sunk in**
- (12) **sometimes, you know Whether he s preoccupied with**
- (13) **something**
- (14) **else you just - as Mr Klinckhardt asked, what was his**
- (15) **response and there really wasn t much of a response and**
- (16) **that s**
- (17) **why I said, you know, in thinking about it and trying to**
- (18) **answer**
- (19) **truthfully, can I really be sure that he heard me or was he**
- (20) **thinking so much about something else that was going on**
- (21) **that**
- (22) **day that you know he maybe (indicating) passed through**
- (23) **(Portion of Video Testimony of Steve Day concluded)**
- (24) **BY MR O NEILL**
- (25) **Q Mr Myers what was what was - did you have problems on**
- (26) **that day and surrounding that day?**
- (27) **A Yes, sir**
- (28) **Q Explain to the jury what you were working on?**
- (29) **A As I mentioned yesterday, the Exxon Valdez, I believe,**
- (30) **tried to leave San Francisco on the Monday - I think it was**

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- (1) **Monday the 13th of March and I got a call at 7 30 at night**
- (2) **and the chief engineer told me that they d had some**
- (3) **vibration**
- (4) **and we - the ship came back and we spent all week trying to**
- (5) **determine what the problem was and having to do with the**
- (6) **turbocharger and it surging and vibration**
- (7) **Q Were you working on that?**
- (8) **A Yes sir**
- (9) **Q Now I believe in answer to Mr O Neill s question**
- (10) **yesterday you said you didn t hear Mr Day say anything about**
- (11) **Captain Hazelwood is that correct?**
- (12) **A That s correct**
- (13) **Q You heard something would you explain what you heard?**
- (14) **A I heard the words officer s busting Reeder s chops**
- (15) **Q Officer s busting Reeder s chops What did that mean to**
- (16) **you?**
- (17) **A In the context of what was going on at that time, it meant**
- (18) **relatively little and it referred to what is old business I**
- (19) **don t know whether it s healthy competition between ships**
- (20) **but**
- (21) **this has been going on or had been reported to me for two**
- (22) **or**
- (23) **three months and I d also spoken to Mr McRobbie about it**
- (24) **as**
- (25) **well**
- (26) **Q What had been going on?**
- (27) **A A friction between the lightering vessel and, not only the**
- (28) **Valdez, but the other vessels that I dealt with that lightered**
- (29) **to the Galveston**
- (30) **to the Galveston**

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- (1) Q Some of us and I guess up till a few months ago I was one  
 (2) of them didn't understand what lightering a vessel meant  
 (3) means. What does that mean?  
 (4) **A Well the - the larger ships that I dealt with were too**  
 (5) **big to go to a berth in the San Francisco Bay area so they**  
 (6) **would come in and anchor and then they would bring a**  
 (7) **smaller**  
 (8) **ship alongside and then they would attach hoses and they**  
 (9) **would**  
 (10) **fill that ship up. That ship would go away and discharge**  
 (11) **cargo, and then it would come back and they would do the**  
 (12) **same**  
 (13) **operation again. That's called lightering smaller ship**  
 (14) **taking**  
 (15) **cargo from a bigger one**  
 (16) Q Unlike the Port of Valdez where you can move your big ship  
 (17) right up to the berth and put it right beside the berth you  
 (18) can't do that in the port of San Francisco?  
 (19) **A That's correct**  
 (20) Q You have to anchor out in the bay and have smaller ships  
 (21) come out, unload your cargo into smaller ships and they take it  
 (22) into the berth?  
 (23) **A That's correct**  
 (24) Q All right. And Captain Reeder you referred to was the  
 (25) master of one of those smaller lightering vessels is that  
 correct?  
 (26) **A The Exxon Galveston that is correct**  
 (27) Q And the other officers or masters you talk about were the  
 (28) officers or people who had to leave San Francisco go various

- (1) right?  
 (2) **A Yes sir**  
 (3) Q And you had certain vessels under you. Were there other  
 (4) ship group coordinators in the west coast fleet?  
 (5) **A Yes sir**  
 (6) Q And they had certain vessels under their jurisdiction?  
 (7) **A Yes sir**  
 (8) Q Up until 1988 had you had anything to do with the ranking  
 (9) of masters of the Exxon west coast fleet or the gulf coast  
 (10) fleet?  
 (11) **A No, sir**  
 (12) Q Did you have anything to do with the ranking of masters for  
 (13) 1988?  
 (14) **A Yes sir**  
 (15) Q Let me show you Defense Exhibit 9123 and ask if you  
 (16) recognize that. Could we put that up? I'll try to bring this  
 (17) in but maybe I'll not be able to  
 (18) **A I can read it**  
 (19) Q Huh?  
 (20) **A I can read it. That's a - a ranking list of west coast**  
 (21) **fleet masters**  
 (22) Q For what year?  
 (23) **A 1988**  
 (24) Q All right. Do you see Captain Hazelwood on that?  
 (25) **A Yes sir**

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- (1) places and come back?  
 (2) **A That is correct**  
 (3) Q The Galveston never left San Francisco Bay?  
 (4) **A Not in her role as lightering vessel. Occasionally, she**  
 (5) **would make specific cargo moves to other locations**  
 (6) Q Now Mr. Myers let me ask you this question had you -  
 (7) what would you have done - I have played you or read to you  
 (8) what Mrs. Williamson said about smelling alcohol on Captain  
 (9) Hazelwood's breath not slurring his words or anything like  
 (10) that but smelling alcohol and Mr. Day has testified that  
 (11) basically he had said to you whether you heard it or not what  
 (12) Mrs. Williamson had said to him  
 (13) What would you have done had you heard - assuming Mr. Day  
 (14) said it had you heard it what would you have done?  
 (15) **A I would have asked Mr. Day to accompany me to Mr**  
 (16) **Borgen's**  
 (17) **office and we would have got to the bottom of what he knew**  
 (18) **we**  
 (19) **would have, I'm sure, brought in Mary Williamson to find out**  
 (20) **exactly what she did know and what her story was. And**  
 (21) **depending upon what came out of that, I can see bringing**  
 (22) **Captain Hazelwood into the office and discussing to**  
 (23) **determine**  
 (24) **what exactly his side of the issue was**  
 (25) Q Let me move on to another subject Mr. Myers You  
 became - I guess you started working on the job in January  
 February of 1988 and you became on March 1 1988 the ship  
 group - effective March 1 the ship group coordinator is that

- (1) MR NEAL Your Honor if this trial lasts long  
 enough I might even get to be adequate on this  
 (2) BY MR NEAL  
 (3) Q That's Captain Hazelwood?  
 (4) **A Yes sir**  
 (5) Q Where is he - if I've counted that correct there are  
 (6) what 21 masters?  
 (7) **A I believe there's 21 there, yes sir**  
 (8) Q And Captain Hazelwood is ranked 13 on this?  
 (9) **A Yes, sir**  
 (10) Q Is that the way you ranked him?  
 (11) **A There's one difference here. Captain Deppe, who is on**  
 (12) **the**  
 (13) **list, was part of making up the list and I believe his**  
 (14) **placement was later given by Mr. Borgen, so with the**  
 (15) **exception**  
 (16) **of that, it would be like, I believe 12 out of 20**  
 (17) Q Okay if you leave out Captain Deppe who was shoreside  
 as far as you were concerned you didn't put him on the list?  
 (18) **A That's right**  
 (19) Q If you leave him out it's 12 out of 20?  
 (20) **A That's right**  
 (21) Q Mr. Myers following this ranking did you make any  
 (22) memorandum regarding the ranking as it pertained to Captain  
 (23) Hazelwood?  
 (24) **A Yes, sir**  
 (25) Q And did you send a copy to Captain Hazelwood?

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- (1) **A Yes sir**  
 (2) **Q Let me show you what is Defense Exhibit 9128 and ask if you**  
 (3) **recognize that**  
 (4) **A Yes I do**  
 (5) **Q What is that?**  
 (6) **A It s a memo that I wrote to Captain Hazelwood that**  
**summed**  
 (7) **up the discussion that I had with him, the feedback**  
**discussion**  
 (8) **I had with him with his performance and the ranking that**  
**had**  
 (9) **just taken place**  
 (10) **Q Joe was complimented on his professional expertise**  
 (11) **leadership and interdepartmental cooperation?**  
 (12) **A Yes sir**  
 (13) **Q What did you mean interdepartmental cooperation?**  
 (14) **A Traditionally, you ve got a deck department and an**  
**engine**  
 (15) **department on board the ship, and also a steward**  
**department and**  
 (16) **In - on many ships, these departments really didn t work**  
**well**  
 (17) **together It was like a them and us the deckies against the**  
 (18) **engine guys My observation on board the Exxon Valdez is**  
**they**  
 (19) **worked as a team and there was very good cooperation and**  
 (20) **communication between the departments**  
 (21) **Q I believe you say here if I m correct that I indicated**  
 (22) **that Joe ranked in the lower half of the third quarter of the**  
 (23) **WCFM is that west coast fleet -**  
 (24) **A Yes sir**  
 (25) **Q - masters? And had the potential to be ranked higher?**

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- (1) **A That is correct**  
 (2) **Q This is what you communicated to Captain Hazelwood?**  
 (3) **A Yes sir**  
 (4) **Q Now bring it back up one more time and ask you about the**  
 (5) **last paragraph here**  
 (6) **Joe can improve his performance by directing his energy**  
 (7) **towards constructive activities within the framework of the**  
 (8) **organization as Joe has much to contribute What did you**  
**mean**  
 (9) **by that?**  
 (10) **A Well Joe s not politic He s a good seaman and a very**  
 (11) **good ship handler but he s got a little trouble or had a**  
 (12) **little trouble with shoreside management**  
 (13) **Q If you had been - if you had thought that - never mind**  
 (14) **Let me go to one last thing and I think we can - maybe two**  
 (15) **last things and we can wind this up**  
 (16) **During the time 1988 that you were ship group coordinator**  
 (17) **for certain vessels of the west coast fleet was there any**  
 (18) **company pressure for rapid turn around in the Port of Valdez?**  
 (19) **A No, sir**  
 (20) **Q You know what I mean by rapid turn around?**  
 (21) **A Yes sir**  
 (22) **Q What do I mean?**  
 (23) **A From the time the ship gets there to when it leaves to**  
 (24) **hurry up and let s go by a certain time or within a certain**  
 (25) **number of hours or -**

- (1) **Q All right I m going to show you - and I ask the Court s**  
 (2) **permission to approach the witness and hand them to you**  
**because**  
 (3) **they re a little more bulky than the others**  
 (4) **I m going to show you what is in evidence as Defendants**  
 (5) **Exhibit 3509 and 3487**  
 (6) **Do you recognize those?**  
 (7) **A Yes, sir**  
 (8) **Q All right Tell the ladies and gentlemen of the jury what**  
 (9) **this one shows**  
 (10) **A Well this is a Valdez position report which lists the**  
 (11) **vessels in various times and arriving at Hinchinbrook,**  
**berthing**  
 (12) **and unberthing, and this one says that the Exxon Valdez did**  
 (13) **leave berth 5 at 20 - at 9 00 in the evening on the 23rd, and**  
 (14) **what it says here is the next ship was due at that berth at**  
 (15) **1400 the next day, and that means to me that the Exxon**  
**Valdez**  
 (16) **could have stayed at least 12 to 15 more hours at berth**  
 (17) **number 5**  
 (18) **Q What I m circling here on the monitor is the Exxon Baton**  
 (19) **Rouge and it says arrives Hinchinbrook - arrive Hinch?**  
 (20) **A Yes that s correct**  
 (21) **Q And that s 240800 What does that mean?**  
 (22) **A That s 8 00 in the morning on the 24th**  
 (23) **Q And arrive berth at 2400 that means 2 00 in the afternoon**  
 (24) **on the 24th?**  
 (25) **A Yes that s correct**

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- (1) **Q And you re telling the jury that berth five - I think**  
 (2) **we ve already established this was the berth that had the**  
 (3) **Valdez right?**  
 (4) **A That is correct**  
 (5) **Q And so there was no vessel that would be needing that berth**  
 (6) **until two p m on the 14th?**  
 (7) **A That is correct**  
 (8) **Q The Exxon Valdez however left at approximately 9 20 on**  
 (9) **the 23rd 9 20 p m ?**  
 (10) **A Yes, sir**  
 (11) **Q Now let s go to the next vessel the next document Can**  
 (12) **you tell me what this is?**  
 (13) **A This shows all the ships on the west coast basically**  
**where**  
 (14) **they are, arrival date arrival time, estimated time at the**  
 (15) **next port and when it would depart the next port It s**  
 (16) **basically a position sheet on all ships in the west coast**  
 (17) **fleet**  
 (18) **Q Okay When was the - I m not sure I ve got this right**  
 (19) **Take it off and you ll put it up there? Okay You take care**  
 (20) **of it Would you go ahead and do the rest? I can t see this**  
 (21) **Tell me the Valdez could have remained at the berth until**  
 (22) **two p m on March 24 you say?**  
 (23) **A That is correct**  
 (24) **Q Some - oh gosh how many hours is that after nine p m**  
 (25) **the previous day?**



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- (1) **A At least 15**  
 (2) **Q Now my question to you is when was the Valdez due to arrive at its destination that is Long Beach California?**  
 (3) **A It says on this sheet the 31st of March**  
 (4) **Q If it had waited overnight and left the next day would it have plenty of time to reach its destination by March 31 1989?**  
 (5) **A If it had gone full speed it would have arrived the 30th a day earlier than that**  
 (6) **Q Even earlier?**  
 (7) **A The answer to your - that s right**  
 (8) **Q Leaving on the 24th?**  
 (9) **A That s correct**  
 (10) **Q What happens if a vessel like the Valdez with North Slope crude arrives at its destination in this case Long Beach before its scheduled date?**  
 (11) **A At Long Beach it would go to an anchorage and anchor and wait for the availability of a berth**  
 (12) **Q And just simply be out of operation?**  
 (13) **A That is correct**  
 (14) **MR NEAL Would Your Honor indulge me a moment?**  
 (15) **BY MR NEAL**  
 (16) **Q Just briefly did you - Mr Myers did you ever receive any information you yourself that you heard that Captain Hazelwood was drinking?**

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- (1) **A No, sir**  
 (2) **Q Whether on duty off duty whether you could have done anything about it or not?**  
 (3) **A No sir**  
 (4) **Q Had you tried your best to find out whether he was drinking?**  
 (5) **A Yes, sir**  
 (6) **Q Asking crew members?**  
 (7) **A Not specifically if he was drinking other than the two chief engineers but I certainly -**  
 (8) **Q But you did ask two chief engineers?**  
 (9) **A That's right and I asked other crew members how things were going**  
 (10) **Q March of 89 was approximately four years after Captain Hazelwood went through rehabilitation as has been discussed here is that correct?**  
 (11) **A Yes, sir**  
 (12) **Q Did you think even four years later that Captain Hazelwood was drinking or had started drinking?**  
 (13) **A No, sir**  
 (14) **Q As a matter of fact - as a matter of fact let me close by asking this you went to fleet officers conferences with Captain Hazelwood in 1988 did you not?**  
 (15) **A Yes, sir**  
 (16) **Q Several days?**

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- (1) **A Yeah it was a whole week**  
 (2) **Q Whole week And I assume you got to see him every day?**  
 (3) **A Yes sir**  
 (4) **Q Did you go to places where alcohol was being served?**  
 (5) **A Yes sir**  
 (6) **Q Did you have a drink?**  
 (7) **A Yes sir**  
 (8) **Q Did Captain Hazelwood have a drink?**  
 (9) **A Not alcohol**  
 (10) **Q What did he have?**  
 (11) **A I think bubbling water or sparkling water**  
 (12) **Q And as a matter of fact sometime in 1988 you had occasion to have a luncheon to celebrate some event with Captain Hazelwood did you not?**  
 (13) **A That is correct**  
 (14) **Q What was that event?**  
 (15) **A It was the event of his 20 years with the company**  
 (16) **Q And you all were celebrating his 20th year at this luncheon was there anything alcoholic served?**  
 (17) **A Yes, sir**  
 (18) **Q Did Captain Hazelwood drink alcohol?**  
 (19) **A No sir**  
 (20) **MR NEAL Thank you Thank you Mr Myers**  
 (21) **THE COURT Redirect?**  
 (22) **MR O NEILL Thank you Judge**

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- (1) **REDIRECT EXAMINATION OF PAUL MYERS**  
 (2) **BY MR O NEILL**  
 (3) **Q We started yesterday and the Exxon Corporation counsel came back to the phone call that you had with Captain Hazelwood**  
 (4) **after the vessel was aground and I played you an audio tape of a VTC conversation that was at about midnight Alaska time which would make it about 1 00 west coast time do you recall that?**  
 (5) **A Yes sir**  
 (6) **Q And the question and answer was well this isn t close to the time this VTC tape is not close to the time that you had your conversation with Captain Hazelwood do you recall that?**  
 (7) **A It s about an hour and a half difference, I believe**  
 (8) **Q Let s see if we can find the VTC tape Your notes indicate that the call took place at 2 30?**  
 (9) **A I believe that s when I woke up I think it was a little later than that but it s close enough**  
 (10) **Q Close enough Let s see if we can - there is a VTC transmission at 1 07 Alaska time which would make it 2 07 your time within a half an hour of the phone call that s a fair - the times are fair Let s listen to the transmission**  
 (11) **Can you play the transmission?**  
 (12) **MR NEAL Your Honor we re back to the problem area here I don t have a chance to get back up I don t recollect going into that in my - my examination I covered the - just**

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- (1) asked him the same questions that he d asked on direct  
 (2) MR O NEILL He went into the topic of his voice the  
 (3) voice on the tape being different than the voice in the phone  
 (4) call to explain it away So he went into the subject matter  
 (5) Now I have a tape at 2 07 within 23 minutes  
 (6) MR NEAL I thought he d gone into this is the  
 (7) reason I asked it  
 (8) MR O NEILL It s a separate transmission  
 (9) MR NEAL Oh I m sorry I m sorry  
 (10) MR O NEILL Can you play the transmission?  
 (11) (Audio played off record)  
 (12) BY MR O NEILL  
 (13) Q Now that s within about a half hour of your conversation  
 (14) with him Was the quality of his voice timber spacing  
 (15) speech mannerisms at that time about the same as when you  
 (16) talked to him?  
 (17) **A I d say no, that sounded still different than certainly the**  
 (18) **telephone line Certainly the telephone line was also**  
 (19) **clearer,**  
 (20) **but the – the pacing of our conversation was much –**  
 (21) **seemed to**  
 (22) **be much smoother than that I d ask a question he would**  
 (23) **answer it**  
 (24) Q So would it be fair to say that when you talked to him at  
 (25) 2 30 his voice his voice mannerisms his pacing were  
 distinctly different than when you talked to him the first time  
 and the second time?

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- (1) **A I only talked to him once**  
 (2) Q I mean from the first VTC transmission and the second VTC  
 (3) transmission we ve listened to?  
 (4) **A I certainly sounded different the pace was different and**  
 (5) **of course it was on a telephone line**  
 (6) MR O NEILL Could we have the Elmo please? I would  
 (7) like to offer exhibits 1805 page 180 and 1806 page 2 which  
 (8) are the two pages that we ve talked about from his notebook  
 (9) Is there any objection?  
 (10) (Exhibits 1805 and 1806 offered)  
 (11) MR NEAL The pages that you – that you showed  
 (12) yesterday?  
 (13) MR O NEILL Yes sir  
 (14) MR NEAL Were there two of them? I only remember  
 (15) one But we have no objection to the pages that were  
 (16) published  
 (17) yesterday  
 (18) THE COURT I understand those were exhibit –  
 (19) plaintiffs exhibit or defendants exhibit?  
 (20) MR O NEILL Plaintiffs Exhibit 1805 page 180 and  
 (21) 1806 page 2  
 (22) THE COURT All right I understand there are no  
 (23) objections to those two pages and they are admitted  
 (24) MR NEAL That is correct  
 (25) (Exhibits 1805 and 1806 received)  
 BY MR O NEILL

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- (1) Q Do you know when Mr Glowacki was assigned to the Exxon  
 (2) Valdez?  
 (3) **A He, I believe, left with the ship when it went on its**  
 (4) **maiden voyage That would be December I think 11th,**  
 (5) **1986**  
 (6) Q And his first tour with Captain Hazelwood was in February  
 (7) of 1989?  
 (8) **A If you say so**  
 (9) Q And I think that s what he indicated in his deposition  
 (10) that his first tour with Captain Hazelwood was in February  
 (11) of 89 and that causes me to ask something about your  
 (12) testimony yesterday  
 (13) You testified yesterday that as a follow up to the Henry s  
 (14) incident you talked to Kimtis and Glowacki do you recall  
 (15) that?  
 (16) **A Yes, sir**  
 (17) Q But Mr Glowacki wasn t serving with Captain Hazelwood  
 (18) until February of 1989?  
 (19) **A That s correct**  
 (20) Q Now you testified that when you talked to Mr Kimtis and  
 (21) Captain Hazelwood about this review that you talked to them  
 (22) because they were quote the management representatives on  
 (23) board do you recall saying that this morning?  
 (24) **A We re talking about captain – I mean Chief Engineer**  
 (25) **Kimtis**  
 Q And Hazelwood?

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- (1) **A Yes**  
 (2) Q And they were the management representatives on board?  
 (3) **A Yes, sir**  
 (4) Q Would you explain that to us?  
 (5) **A The captain and chief engineer are certainly responsible**  
 (6) **for their – their various departments and in relationship to**  
 (7) **this, if you will the stewardship or the management of the**  
 (8) **vessel the stewardship activity I believe started roughly**  
 (9) **ten years – no – yes – let s see About late 70s early**  
 (10) **80s when it was determined that the folks that ran the**  
 (11) **respective departments would be management on board the**  
 (12) **ship**  
 (13) **and the stewardship process started**  
 (14) Q To some extent that s what Mr Larossi talks about in his  
 (15) talk surrounding the memories have you ever heard that or  
 (16) read that?  
 (17) **A I ve read it, but I don t remember the details**  
 (18) Q But in any event the concept was to change the role the  
 (19) traditional role of the captain from someone who drove the boat  
 (20) to someone who managed the vessel and its activities as  
 (21) essentially an economic unit?  
 (22) **A I think that s what I was getting at when I mentioned that**  
 (23) **each individual fleet office for – since the late 70s or**  
 (24) **early 80s this is my understanding I wasn t there had**  
 (25) **specific stewardship activities I think the thing that**  
**changed in the time frame that I came into the organization**  
**is**

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- (1) that the stewardship requirements were going to be the same for
- (2) both fleets of ships, rather than a little different for one
- (3) fleet than the other, and the other aspect that was cranked
- (4) into this is the safety aspect that wasn't actually part of the
- (5) stewardship before. It was like a separate entity
- (6) Q So at least by the time by 1988 1989 the captain and the
- (7) chief engineer were the management of the company on board
- (8) the ship?
- (9) A I wouldn't - management of Exxon Shipping Company, is that
- (10) what you're saying?
- (11) Q The management representative on board the ship?
- (12) A Yeah I would say so
- (13) Q Now I want to talk to you for a minute about this Mr. Day
- (14) coming in to talk to you about the Mary Williamson incident and
- (15) the possibility that you may have been less than attentive
- (16) during the conversation if in fact the conversation took
- (17) place. Does that make sense?
- (18) A Yes, with the exception I was - I went to him on another
- (19) topic
- (20) Q Okay
- (21) A There's a little disagreement there
- (22) Q The issue of Captain Hazelwood and drinking was an
- (23) important issue in your mind wasn't it?
- (24) A I would say so
- (25) Q And the issue of a drinking captain who had gone through

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- (1) alcohol treatment was one that you knew could present dangers
- (2) to the vessel to the safety of the vessel to the environment
- (3) surrounding the vessel. You were aware of the risks?
- (4) A I was aware of the policy
- (5) Q You were aware of the risks too weren't you?
- (6) A I was also aware of the policy
- (7) Q Were you aware of the risks?
- (8) A What risks are we talking about?
- (9) Q That a captain who had an alcohol problem who suffered
- (10) from alcoholism of a supertanker presented a clear and present
- (11) danger to the vessel if he was drinking again to the vessel
- (12) and the environment -
- (13) A If he was drinking if anybody was drinking, actually
- (14) Q Now the rankings that you looked at today where you had
- (15) him in the middle those were not the final rankings were
- (16) they? Those were your recommendations?
- (17) A That was the - I believe the final ranking for the west
- (18) coast fleet
- (19) Q Was that the final Exxon Shipping Company ranking for that
- (20) year?
- (21) A I believe they were melded with the gulf coast masters
- (22) Q Would it be fair to say from your testimony today that on
- (23) the evening of the 23rd there was no need for the Valdez to go
- (24) out at night and there was no need for the Valdez to have run
- (25) the risk of that ice at night that it could have waited for

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- (1) another day?
- (2) A If there was a specific reason the ship could have stayed
- (3) Q Are you aware at all of the ice telex?
- (4) A Which ice telex?
- (5) Q Captain Martineau sending an ice telex on or about
- (6) March 16 1989 to some part of the west coast fleet
- (7) recommending that Exxon Shipping Company vessels only take
- (8) passage because of ice conditions during the day?
- (9) A I've heard about that but I don't remember seeing it
- (10) Q You've heard about it though?
- (11) A Yes, from counsel
- (12) Q You testified that you monitored Captain Hazelwood and I'm
- (13) just going to ask a series of questions that all have to do
- (14) with monitoring whether you did or didn't do it okay? Did
- (15) you ever talk to anybody in the medical department about
- (16) Captain Hazelwood?
- (17) A No sir
- (18) Q Did you ever talk to anybody in the - what is it human
- (19) resources section or department that Dan Paul heads up about
- (20) Captain Hazelwood and drinking?
- (21) A No, sir
- (22) Q Did you document any of the so called monitoring of Captain
- (23) Hazelwood?
- (24) A There's nothing to document
- (25) Q Okay Did you ever inquire of the Exxon Shipping Company

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- (1) agent Alamar in Valdez about Captain Hazelwood and
- (2) drinking?
- (3) A No sir
- (4) Q Did you ever do a random search of Captain Hazelwood's
- (5) quarters?
- (6) A No sir
- (7) Q Did you ever search the ship?
- (8) A No sir However the - all of the ships in the west
- (9) coast fleet in the - I believe in 1989, were going to be
- (10) randomly searched and one had been scheduled for the
- (11) Exxon
- (12) Long Beach and then canceled just prior to the incident
- (13) because
- (14) they couldn't get the dogs, but this was - this was planned
- (15) Q Would it be fair to say that during your tenure there were
- (16) no searches of the Exxon Valdez with regard to alcohol?
- (17) A That I am aware of that's correct
- (18) Q And you never asked anyone at Exxon Corporation other
- (19) than
- (20) the conversation you related with regard to Mr. Borgen about
- (21) Captain Hazelwood and drinking on duty did you about his
- (22) history?
- (23) A About his history?
- (24) Q Yes sir
- (25) A No, sir
- (26) Q And you never discussed Captain Hazelwood's - the issue of
- (27) Captain Hazelwood's alcohol problems with other supervisors
- (28) in
- (29) the west coast fleet office other than Mr. Borgen did you?
- (30) A My understanding was that Mr. Borgen told me that in

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- (1) **confidence and the policy is clear that the whole issue of**  
 (2) **rehab is not to be discussed unless the employee brings it**  
 (3) **up**  
 (4) **Q And you never discussed the issue of rehabilitation with**  
 (5) **Captain Hazelwood did you?**  
 (6) **MR NEAL Your Honor this is getting repetitive now**  
 (7) **from his examination yesterday Maybe I waste more time**  
 (8) **making**  
 (9) **the objection than letting him go ahead but I object on**  
 (10) **repetition covering the same ground**  
 (11) **THE COURT I'll allow it**  
 (12) **MR O NEILL Thank you Judge**  
 (13) **I'm sorry Could you read back that question?**  
 (14) **(Requested testimony read)**  
 (15) **THE WITNESS No sir I think I explained that**  
 (16) **yesterday**  
 (17) **BY MR O NEILL**  
 (18) **Q And you were provided with no professional training**  
 (19) **regarding how to monitor a recovering alcoholic were you?**  
 (20) **A Well, the thing is that during the 87 and 88 time frame**  
 (21) **the Exxon Shipping Company organization was inundated**  
 (22) **with**  
 (23) **documentation, much of it sent at home, about alcohol,**  
 (24) **alcohol**  
 (25) **policy actually what to look for what the criteria is It**  
 (26) **was covered in fleet conferences it was covered in**  
 (27) **seminars**  
 (28) **and finally, it was covered on board the ships with**  
 (29) **discussions with the ships They were requested as well to**  
 (30) **discuss the whole issue during their safety - safety**  
 (31) **meetings**

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- (1) **so that everybody would be aware of the issues**  
 (2) **Q Sir would you go to page 144 of your deposition**  
 (3) **transcript? It's right over there to the left It's in the**  
 (4) **big volumes**  
 (5) **A Hundred and what?**  
 (6) **Q 144**  
 (7) **A Yes sir**  
 (8) **Q And I'm going to read the question at line 18 and your**  
 (9) **answer The question at line -**  
 (10) **MR NEAL Excuse me just one moment May I have that**  
 (11) **page again?**  
 (12) **THE WITNESS 144**  
 (13) **BY MR O NEILL**  
 (14) **Q Why don't you read the question and answer from line 18 to**  
 (15) **line 21**  
 (16) **A Did you ever receive any kind of professional training by**  
 (17) **Exxon regarding how to monitor a recovering alcoholic I**  
 (18) **said**  
 (19) **no sir**  
 (20) **You want me to continue?**  
 (21) **Q No Well you can read - I mean if you want to**  
 (22) **A Asked if I went to an AA meeting**  
 (23) **Q It's another topic Have you ever been to an AA meeting?**  
 (24) **A No I think the point I'm getting at is I was looking at**  
 (25) **this -**  
 (26) **Q My point is were you asked the question and did you give**

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- (1) **the answer?**  
 (2) **A I mean a doctor did not discuss this with me but there**  
 (3) **was a tremendous amount of information that was**  
 (4) **disseminated,**  
 (5) **the issues were covered in fleet conferences, there were**  
 (6) **also**  
 (7) **seminars And as I also explained in and relevant to myself**  
 (8) **my father was as close to an alcoholic as you can get, and I**  
 (9) **have seen people that have had the problems that have**  
 (10) **actually**  
 (11) **been retired because of it in the early 70s where I worked**  
 (12) **So I've got a lot of information and, prior to this, I did not**  
 (13) **study the alcohol policy I was given certain things to study**  
 (14) **that were - that were called for and for this presentation I**  
 (15) **have this - I have gone back and looked at some of the**  
 (16) **documentation that I had seen, and that I certainly didn't**  
 (17) **remember at the time of the deposition**  
 (18) **Q What did you just call this?**  
 (19) **A The alcohol policy -**  
 (20) **Q No Didn't you just refer to your appearance here today as**  
 (21) **this presentation?**  
 (22) **A I beg your pardon?**  
 (23) **Q Did you just refer to your appearance here today as this**  
 (24) **presentation?**  
 (25) **A I was thinking of the presentations about alcohol I may**  
 (26) **have misspoke**  
 (27) **MR O NEILL I have nothing further**  
 (28) **MR NEAL I guess Your Honor wouldn't want me to ask**

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- (1) **one more - one question? I'm not pushing it Your Honor**  
 (2) **THE COURT Then let's go to another witness**  
 (3) **MR NEAL All right What would you say if I'd said**  
 (4) **I was pushing it let's go to another witness?**  
 (5) **THE COURT Right**  
 (6) **MR NEAL Okay Your Honor could I just move over**  
 (7) **here just one minute?**  
 (8) **THE COURT I'm sorry What do you want to do?**  
 (9) **MR NEAL Could I move over with Mr O'Neill to the**  
 (10) **side bar just one second while he's getting ready?**  
 (11) **(At side bar off the Record)**  
 (12) **THE WITNESS I can leave?**  
 (13) **MR SANDERS You can step down**  
 (14) **THE WITNESS Thank you**  
 (15) **THE COURT You're through sir Thank you**  
 (16) **Mr Montague?**  
 (17) **MR MONTAGUE Your Honor Plaintiffs call as their**  
 (18) **next witness Dr Richard Masters as an expert witness**  
 (19) **THE CLERK Raise your right hand please sir**  
 (20) **(The Witness Is Sworn)**  
 (21) **THE CLERK Please be seated For the record sir**  
 (22) **state your full name give us your address and spell your last**  
 (23) **name please**  
 (24) **THE WITNESS My name is Richard L Masters My**  
 (25) **address is 5299 DTC Boulevard Englewood Colorado And my**

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- (1) name is spelled M A S T E R S  
 (2) THE CLERK Thank you sir  
 (3) DIRECT EXAMINATION OF RICHARD L. MASTERS (Live)  
 (4) BY MR MONTAGUE  
 (5) Q Dr Masters could you please tell the jury your  
 (6) educational background?  
 (7) A I went to college at Wayne University in Detroit, Michigan,  
 (8) where I received a bachelor's degree in psychology I then  
 (9) started work on a master s degree and had a teaching  
 fellowship  
 (10) in psychology I did not complete the master s degree  
 because  
 (11) I had an opportunity, somewhat unexpected opportunity to  
 enter  
 (12) medical school and I went to the University of Michigan for  
 (13) four years and graduated from there  
 (14) Q Doctor could you keep your voice up a little bit? I think  
 (15) we re having trouble hearing you  
 (16) THE COURT Doctor that silver microphone will  
 (17) amplify If you get it over in front of you and speak into it  
 (18) it ll broadcast your voice  
 (19) THE WITNESS Thank you  
 (20) MR MONTAGUE Thank you very much  
 (21) THE WITNESS I graduated from the University of  
 (22) Michigan in 1957 with an M D degree took an internship then  
 (23) entered the United States Air Force  
 (24) I was in the Air Force for a total of nearly ten years  
 (25) During my work in the Air Force I took a master s degree in

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- (1) public health preventive medicine and occupational medicine  
 at  
 (2) Harvard University and completed my residency training for my  
 (3) board certification  
 (4) BY MR MONTAGUE  
 (5) Q What is occupational medicine Doctor?  
 (6) A That s the study of the diseases of work environments as  
 (7) they affect humans and the - and the effect of humans in  
 their  
 (8) work environment  
 (9) Q Okay And today do you have a specialty?  
 (10) A Yes  
 (11) Q Could you tell us what it is?  
 (12) A I m a special - I m board certified by the American Board  
 (13) of Preventive Medicine in aviation medicine, and my  
 specialty  
 (14) is preventive medicine, aviation and occupational medicine  
 (15) Q Do you have any special expertise in alcohol abuse  
 (16) programs?  
 (17) A Yes  
 (18) Q And does that include the monitoring of employees in safety  
 (19) sensitive positions?  
 (20) A Yes  
 (21) Q Could you tell us how you developed that expertise?  
 (22) A Well, skipping anything that I might have had contact with  
 (23) in the Air Force I start with my assignment or my work after  
 I  
 (24) left the Air Force at the Lovelace Foundation for Medical  
 (25) Education and Research At that organization I became the

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- (1) chairman of the department of preventive medicine and as  
 a  
 (2) part of that work there I was responsible for a number of  
 (3) consulting contracts with various organizations probably  
 the  
 (4) most significant being the - what we called then the atomic  
 energy commission  
 (5) Q And what did you do with respect to the atomic energy  
 (6) commission?  
 (7) A Well I had a number of roles there, but -  
 (8) Q I mean relating to an alcohol abuse program?  
 (9) A Yes sir relating to that I was a consultant to the  
 (10) commission in drawing up and enhancing the standards for  
 the  
 (11) selection for the continued duty and for special evaluations  
 of  
 (12) the persons who had hands on contact with nuclear  
 weapons, the  
 (13) couriers who transported those weapons and the methods  
 of  
 (14) transportation by land, sea and air  
 (15) Q Have you received any grants from the National Institute of  
 (16) Alcohol Abuse and Alcoholism?  
 (17) A Yes  
 (18) Q What is that what is that institute?  
 (19) A That s one of the national institutes of health that deals  
 (20) with, as the name says alcoholism and alcohol abuse  
 (21) Q And could you tell us if that grant included within it the  
 (22) area of monitoring of safety sensitive positions?  
 (23) A Yes it did  
 (24) Q And when did you get that grant?  
 (25)

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- (1) A The grant - the grant began on September 11th, 1974  
 (2) Q And when did you finish your work officially under that  
 (3) grant?  
 (4) A The official cessation of the grant was December 31st,  
 (5) 1982  
 (6) Q So that was approximately an eight year project?  
 (7) A Yes sir  
 (8) Q Okay Now can you tell us what you just - very briefly  
 (9) what you did under that grant?  
 (10) A Basically, we developed a program for the dealing of  
 (11) alcoholism in the safety sensitive positions in the airline  
 (12) industry  
 (13) Q And does that - the study that came out of that grant  
 (14) does that have a name?  
 (15) A Yes We called it the Human Intervention and Motivation  
 (16) Study, and the acronym for that is just HIMS, HIMS  
 (17) Q Okay And as a result of HIMS-Doctor have you had  
 (18) occasion to familiarize yourself with alcohol programs  
 (19) including monitoring programs in industries other than  
 (20) aviation?  
 (21) A Oh yes Before you get a grant for example you have to  
 (22) provide a very detailed written request detailing precisely  
 (23) what you re going to do and we did a great deal of study of  
 (24) programs that were in effect before the onset of the grant,  
 and  
 (25) then as a consequence of having the grant, we did a wide  
 study,

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- (1) collected hundreds of programs from major industries around the
- (2) country
- (3) Q Now with respect to your study of - which we'll call
- (4) HIMS have you had requests from other industries for copies of
- (5) that?
- (6) A Yes
- (7) Q I mean when I say other industries I mean industries
- (8) outside of the airline industry?
- (9) A Yes
- (10) Q And can you estimate how many?
- (11) A In a rough way, yes
- (12) Q Could you tell us?
- (13) A Well the National Institute of Alcohol Abuse and
- (14) Alcoholism provided our name to a number of industries who were
- (15) inquiring about these types of programs, so we really got some
- (16) inquiries before the completion of the program, but once we
- (17) completed the program we printed a thousand copies of the
- (18) report
- (19) And then I recall that we had to go back and do a second
- (20) printing of another 500 copies I would estimate that maybe
- (21) 500 copies went to the aviation industry in general so there
- (22) were probably about a thousand copies that got distributed
- (23) one way or the other including these numerous requests we have
- (24) various groups
- (25) Q Okay Now are you yourself involved in actual

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- (1) monitoring of employees in safety sensitive positions where
- (2) employees have returned from some form of alcohol treatment
- (3) program?
- (4) A You mean right now?
- (5) Q Yes
- (6) A Yes
- (7) Q And have you been doing that for a while?
- (8) A Yes a long time
- (9) Q For how long?
- (10) A For about 27 years - or 17 years, I'm sorry
- (11) Q 17 years? Okay And do the principles of monitoring that
- (12) you apply do they also apply to other industries involving
- (13) safety sensitive positions?
- (14) A Yes
- (15) MR MONTAGUE Your Honor I would offer Dr Masters
- (16) as an expert in occupational and preventive medicine and
- (17) specifically in monitoring procedures for employees in safety
- (18) sensitive positions with alcohol abuse problems and other
- (19) substance abuse problems
- (20) MR LYNCH Your Honor I'll reserve any questions I
- (21) have on that subject for cross
- (22) THE COURT Thank you The Court will accept Dr
- (23) Masters qualifications
- (24) MR MONTAGUE Thank you
- (25) BY MR MONTAGUE

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- (1) Q Doctor I'd like to now turn to monitoring We've heard a
- (2) lot about that the last couple of days and the questions -
- (3) I'd like you to understand that the questions I ask you are
- (4) going to not just relate to monitoring generally but to
- (5) monitoring of employees who return to a safety sensitive
- (6) position after having completed some form of alcohol treatment
- (7) program Okay?
- (8) A Yes
- (9) Q Can you keep that in mind? Okay By the way is the
- (10) captain of a large oil tanker considered a safety sensitive
- (11) position?
- (12) A I would consider him so yes
- (13) Q Okay Now in the context that I've placed this for
- (14) employees who return to safety sensitive positions after
- (15) completing some form of alcohol treatment in that context
- (16) could you tell us what the word monitoring means to you?
- (17) A Yes It has a rather specialized meaning because
- (18) monitoring really is the overall technique that you use to
- (19) prevent and deal with anything that might lead to a relapse
- (20) Q Okay And can you tell us does monitoring require some
- (21) kind of formal program to be effective?
- (22) A Yes We certainly believe that
- (23) Q And going back I want to go back now to 1985 and even
- (24) before then was monitoring for people returning to these
- (25) positions after treatment was that a recognized concept?

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- (1) A Yes I believe so
- (2) Q And in 1985 were there widely known methods for
- (3) monitoring
- (4) that were employed by corporations and other organizations?
- (5) A Yes
- (6) Q And if a corporation or an organization in 1985 wanted to
- (7) find out what those methods are were there sources that were
- (8) readily available?
- (9) A Yes
- (10) Q And could you tell us what some of those sources were?
- (11) A Well, I think the first place you would consider looking
- (12) would be to the National Institute of Alcohol Abuse and
- (13) Alcoholism, which had a very large occupational programs
- (14) division and an established clearinghouse for information
- (15) that
- (16) was available to any corporation or even the general public
- (17) Q Are there any other organizations that would have
- (18) information available as to methods of monitoring by
- (19) corporations or other organizations back in 1985?
- (20) A The National Council on Alcoholism would have some
- (21) information on that or would have had information on that
- (22) at
- (23) that time
- (24) Q Anything else that comes to mind?
- (25) A Yes. There is an organization called the Association of
- (26) Labor Management Consultants and Advisors in
- (27) Alcoholism an
- (28) acronym for that is ALMCAA and they would have had
- (29) information
- (30) available at that time In fact, actually, publications

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- (1) Q So back in '85 or before if a corporation wanted to have a  
(2) monitoring program especially for persons in safety sensitive  
(3) positions and especially where they've returned from some form  
(4) of alcohol treatment that information was readily available  
(5) is that a fair statement?  
(6) **A Yes From those organizations, as well as interchange of**  
(7) **information between corporations or organizations**  
(8) Q Is that the sort of information alcohol abuse programs and  
(9) ways to do it and monitoring is that the type of information  
(10) in your experience that large corporations are willing to  
(11) share amongst themselves?  
(12) **A I've rarely seen anyone refuse to share that information**  
(13) Q Okay Now can you describe for us as you understand it  
(14) and based on your experience the major features of a  
(15) monitoring program? And I'd like you to do that if you can  
(16) based on what was available in the early '80s or at least  
(17) 1985 And again relating to employees in safety sensitive  
(18) positions who have returned from some form of alcohol  
(19) treatment  
(20) **A Well monitoring is a concept that needs to be formalized**  
(21) **in a plan, and it needs to involve a relationship between the**  
(22) **operational supervisors and the medical department and the**  
(23) **individual or individuals being monitored**  
(24) Q And can you tell us - can you sort of tell us the roles  
(25) that each of those - well first of all when you say a

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- (1) formalized plan what's that supposed to set forth?  
(2) **A Well, it should be a written plan and it should be**  
(3) **explained very carefully the relationship between**  
(4) **supervisory**  
(5) **personnel and the medical department personnel and what their**  
(6) **specific roles are**  
(7) Q Okay Could you tell us for example what the - what the  
(8) role of the supervisor is and what - and its relation - and  
(9) the supervisor's relationship to the medical department?  
(10) **A Well, the supervisor is responsible for looking at the**  
(11) **overall behavior of an employee who has returned to work**  
(12) **and**  
(13) **for keeping in mind that you have to have a broad concept in**  
(14) **dealing with this He has to understand the employee as**  
(15) **well**  
(16) **as he can, he has to be concerned about the employee, and**  
(17) **he**  
(18) **has to be alert to any observations that he might make**  
(19) **about**  
(20) **changes in that employee's behavior, the way he**  
(21) **approaches his**  
(22) **job, that type of thing**  
(23) Q Okay And does the supervisor get any - should there be  
(24) interaction between the medical department and the supervisor  
(25) before the supervisor begins to watch that particular employee  
or keep an eye on him?  
(1) **A Yes The medical department would play a very key role**  
(2) **in**  
(3) **this, assuming for example that they would have made a**  
(4) **return**  
(5) **to work or fitness for duty determination after the person**  
(6) **comes out of the inpatient treatment program The medical**  
(7) **department would interact with the supervisor of a given**

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- (1) individual and together they would talk about what the  
 (2) monitoring program should be The medical department  
 should  
 (3) meet with the individual before he s returned to duty, and  
 then  
 (4) should have periodic meetings with him throughout the time  
 of  
 (5) his monitoring, as should supervisors  
 (6) Q Okay Now would it be fair to characterize the supervisor  
 (7) as the eyes and ears of the medical department?  
 (8) A That s a  
 (9) Q Is that a fair -  
 (10) A Yeah, that s a good term yeah  
 (11) Q Now when the supervisor sees something that is unusual or  
 (12) notices something in behavior or hears a report about behavior  
 (13) or drinking or whatever what - how does he then interact with  
 (14) the medical department?  
 (15) A I think the medical officer should be consulted by the  
 (16) supervisor They should have a conference discuss the -  
 the  
 (17) findings or observations of the supervisor We re certainly  
 (18) assuming that the supervisor will have done some  
 preliminary  
 (19) investigation of the problem and can give a fairly good  
 (20) description to the medical officer of what the problem might  
 (21) be  
 (22) Q Okay Now is it monitoring - is it monitoring if the  
 (23) supervisor never reports anything to the medical department?  
 (24) A No not under the plan that I ve described  
 (25) Q And why not?

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- (1) A Well, the - the whole monitoring program is aimed toward  
 (2) prevention What you re looking at is making sure that the  
 (3) person has continued in his progress and his aftercare  
 program  
 (4) is in continuing care and is being observed very closely in  
 (5) every way Medical department may have information  
 pertaining  
 (6) to this particular case which might cause them to have  
 reason  
 (7) to perform a formal professional evaluation for example  
 (8) Q And might that be information that is not available outside  
 (9) of the medical department?  
 (10) A Yes, they had - would have the records from the  
 treatment  
 (11) center They would have the frequent reports from the  
 (12) aftercare program all of those types of things  
 (13) Q And what if they didn t have those records?  
 (14) A Well I think they would have to have them I don t think  
 (15) it would be an adequate monitoring program if they didn t  
 (16) Q Does a - in a responsible monitoring program is the - is  
 (17) it proper for the medical department to require the employee  
 (18) who has been in treatment to make his records available? As a  
 (19) condition of returning to his safety sensitive position?  
 (20) A I believe it is I believe that it would be quite  
 (21) important I can t conceive of how the medical department  
 (22) could make judgments without having that information  
 available  
 (23) to them  
 (24) Q Would it at least be appropriate to ask for them?  
 (25) A More than appropriate

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- (1) Q Okay Now let s get back on the beat here Once the  
 (2) supervisor spots something and reports it to the medical  
 (3) department someone in the medical department - and I take it  
 (4) that s a doctor?  
 (5) A Yes  
 (6) Q Okay Then what s the next step?  
 (7) A Well -  
 (8) Q In this -  
 (9) A Let me interrupt you, if I may That could be the  
 (10) physician or he might have assigned a particular employee  
 (11) assistance person program person to accept the initial  
 (12) reports like that, but generally it would be the physician  
 himself, especially in the role of great responsibility  
 (13)  
 (14) Q Would it be fair to say it would be a physician or someone  
 (15) especially trained?  
 (16) A In all cases, yes  
 (17) Q Now let s assume that the report is made then to that -  
 (18) to the medical department and the person within it who should  
 (19) receive it What happens next in the medical department?  
 (20) A The medical officer should review the report carefully,  
 (21) discuss it carefully with the supervisor, make any  
 (22) determination that he feels able to make at that point in  
 time,  
 (23) but most likely should see the employee face to face  
 (24) Q And that s the person in the medical department?  
 (25) A Yes

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- (1) Q And after that then is it the person in the medical  
 (2) department that determines what steps should be taken with  
 (3) respect to the employee in that safety sensitive position?  
 (4) A Well it always has -  
 (5) Q Do you understand that?  
 (6) A I think I do It would always have - It would always have  
 (7) to be done in conjunction with the supervisor Medical  
 (8) department interactions involve the responsibility of  
 making  
 (9) recommendations  
 (10) Q Okay And then that s - the medical department would make  
 (11) its recommendation after it s interviewed the employee?  
 (12) A Well, it may do more than that You know the medical  
 (13) department would have to perform a professional  
 evaluation of  
 (14) this individual in their meeting with this individual, and  
 (15) there s a whole gamut of things that, you know, the medical  
 -  
 (16) you know the medical department might need to do The  
 outcome  
 (17) of this meeting in the medical department could be anything  
 (18) from go back to work, calling the supervisor saying look I  
 (19) don t think this is important I see no evidence of a problem  
 (20) here, or they might say well, look, he s having some  
 problems  
 (21) with - with one of his children, we re going to get some  
 (22) family counseling introduced Or he s got financial  
 problems,  
 (23) we re going to get one of our financial people, all of those  
 (24) types of things, or the medical department may wish to have  
 a  
 (25) more specialized professional evaluation on the individual  
 and



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- (1) **may call in other people or send the individual to - to**  
 (2) **another type of specialist maybe a psychiatrist, whatever**  
 (3) **call the aftercare monitoring counselor see if he s got any**  
 (4) **input what he thinks He might want to you know, increase**  
 (5) **the monitoring program He might want to enhance it so to**  
 (6) **speak He might say look let s, in conjunction, say with the**  
 (7) **counselor at the aftercare program he might say, well, let s**  
 (8) **go ahead**  
 (9) Q Might he pull him off the job say wait until we get the  
 (10) evaluation?  
 (11) **A I was talking about a gamut, and that s sort of the end of**  
 (12) **the road, but if he has to go that far yes, he would pull him**  
 (13) **off the job, do whatever is necessary have other**  
 (14) **evaluations**  
 (15) **and so forth, sure**  
 (16) Q Okay Now have you reviewed Exxon s alcohol policies and  
 (17) their supervisors guidelines with respect to those policies?  
 (18) **A Yes, I have**  
 (19) Q And have you heard the testimonies in this courtroom of  
 (20) Drs Montgomery Gould and Nealy?  
 (21) **A Yes, I have**  
 (22) Q And have you looked at their depositions?  
 (23) **A Yes**  
 (24) Q And have you heard the testimony of Mary Williamson last  
 (25) Friday and Steve Day?  
 (26) **A That was read**

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- (1) Q Yes  
 (2) **A Yes**  
 (3) Q And the video deposition of Steve Day on Monday?  
 (4) **A Yes, yes**  
 (5) Q And were you here to hear the testimony of Captain Sheehy  
 (6) and Paul Myers?  
 (7) **A Yes for both gentlemen**  
 (8) Q And on that based on that information in your opinion  
 (9) did Exxon - did Exxon s alcohol policy and program whatever  
 (10) it was provide for monitoring?  
 (11) **A I found nothing in the paperwork that I didn t find - I**  
 (12) **didn t find the word monitoring in any of the provisions so**  
 (13) **I would have to say no**  
 (14) Q All right  
 (15) In your opinion what captain Hazel - I m sorry what  
 (16) Exxon did as to Captain Hazelwood as described by Captain  
 (17) Sheehy and Paul Myers does that constitute monitoring?  
 (18) **A No, it does not**  
 (19) Q I d like to - I d like to take some notes this morning and  
 (20) you recall Mr Myers testifying that with respect to the  
 (21) Portland Shipyard incident he said I spoke to Hazelwood  
 (22) alone  
 (23) I asked Hazelwood if he had any personal problems or any  
 (24) problems at all and he said no  
 (25) Do you recall that testimony?  
 (26) **A Yes, sir**

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- (1) Q Is that what a professional in the medical department would  
 (2) do if he were interviewing Hazelwood Captain Hazelwood after  
 (3) that type of report?  
 (4) **A No It s not even what a supervisor should do**  
 (5) Q Okay And I also - Mr Myers was asked by Mr Neal what  
 (6) would you have done had you heard Steve Day when he - when  
 (7) he  
 (8) mentioned the San Francisco Bay Mary Williamson story and  
 (9) he  
 (10) said I would have asked Day to accompany me to Mr Borgen s  
 (11) office—we would have brought in Mary Williamson we would  
 (12) have  
 (13) brought Captain Hazelwood in Captain Hazelwood to hear his  
 (14) side of the story Is that what a medical department would do  
 (15) if it were reported that incident?  
 (16) **A No I don t - I don t - I wouldn t - I wouldn t take**  
 (17) **that type of action**  
 (18) Q Well is that what you would expect?  
 (19) **A No, it s not what I would expect**  
 (20) Q Is it correct that people in the medical department are  
 (21) trained to know how to determine if a person who has been  
 (22) through alcohol treatment and who is in a safety sensitive  
 (23) position that they re trained to be able to ferret out if  
 (24) someone is in denial or whether they re actually - they re  
 (25) more apt to be able to ferret out what s really going on?  
 (26) **A They should be if they re going to make monitoring work**  
 (27) **effectively**  
 (28) Q And is that normally the case?

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- (1) **A That, in my experience, yes**  
 (2) Q And monitoring as you ve described it is it effective?  
 (3) **A I think it s quite effective, yes**  
 (4) Q Okay Now I want to turn for a minute to job performance  
 (5) and you ve heard testimony that Exxon in their alcohol policy  
 (6) their supervisors were looking to job performance as the main  
 (7) criteria as to whether someone was okay and is that a proper  
 (8) criteria on which to base a monitoring program?  
 (9) **A No it s not It s - I would characterize it as even**  
 (10) **dangerous to base everything on that**  
 (11) Q Dangerous?  
 (12) **A Yes**  
 (13) Q Why would you say it s dangerous?  
 (14) **A Well first of all, it s not preventively oriented You**  
 (15) **need to take in all elements of the person s conduct and**  
 (16) **behavior and the way he approaches his work I feel that**  
 (17) **both**  
 (18) **performance and skill in professionals is one of the last**  
 (19) **things to go, and I really wouldn t want to have that happen**  
 (20) **when a safety sensitive person is driving a train controlling**  
 (21) **a ship, flying an airplane**  
 (22) Q In other words the first - the first mistake that  
 (23) manifests itself could be the big one is that what you mean?  
 (24) **A Yes I don t want to see that happen, you know, on**  
 (25) **approach to Kennedy airport with a load of passengers, for**  
 (26) **example**

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- (1) Q Okay Now I want to turn for a second to monitoring -  
 (2) monitoring program and paperwork and if a monitoring  
 program  
 (3) is in effect would you expect - you testified that there  
 (4) would be a written plan?  
 (5) A Yes, sir  
 (6) Q And would that include written guidelines as to what the  
 (7) medical department should do and what the supervisors should  
 do  
 (8) and how they interact?  
 (9) A Yes, sir  
 (10) Q That would be explicit?  
 (11) A Yes  
 (12) Q And did you find that in Exxon?  
 (13) A No  
 (14) Q And would you expect also to find paperwork documenting  
 the  
 (15) activities of the supervisors if they found anything or  
 (16) reported anything to the medical department?  
 (17) A Yes  
 (18) Q And would you expect to find anything when the - in the  
 (19) files of the employee in the safety sensitive position when the  
 (20) medical department made its evaluation of that report?  
 (21) A Yes the file would start with you know a  
 (22) fitness for duty and then make any further reports of any  
 (23) special evaluation conducted which were brought to their  
 (24) attention or that they found out in their interviews with the  
 (25) person But those reports would have to be handled in a  
 very

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- (1) confidential manner and the report itself merely would be a  
 (2) record of what was done That s all that would get to the  
 (3) personnel file I ve examined this person and I find him fit  
 (4) for duty, or this person was removed for duty for a period  
 and  
 (5) so forth  
 (6) Q And when there are no such records either a written plan  
 (7) or guidelines telling employees how to act both the medical  
 (8) department and the supervisor s department and where there s  
 (9) nothing in the files of the employee either the personnel  
 (10) files or the medical records or anything like that does that  
 (11) suggest to you that there s no effective monitoring program in  
 (12) place?  
 (13) A Yes  
 (14) MR MONTAGUE Thank you very much Dr Masters  
 (15) THE COURT You want to cross examine?  
 (16) MR LYNCH Let me have just a moment  
 (17) THE COURT Certainly  
 (18) MR LYNCH May I approach the witness Your Honor?  
 (19) Your Honor if I may I ll offer Defendants Exhibit 9147  
 (20) (Exhibit 9147 offered)  
 (21) MR MONTAGUE No objection  
 (22) THE COURT Defendants 9147 is admitted  
 (23) (Exhibit 9147 received)  
 (24) BY MR LYNCH  
 (25) Q I handed you Dr Masters a document marked as Exhibit

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- (1) 9147 now in evidence entitled An Employee Assistance  
 Program  
 (2) for Professional Pilots an Eight Year Review See that  
 (3) document sir?  
 (4) A I have that  
 (5) Q And is this the document that you referred to in your  
 (6) direct testimony as having printed first a thousand and then  
 (7) another 500 copies?  
 (8) A Yes, sir  
 (9) Q And this is the outcome of your grant from the National  
 (10) Institute of Alcohol Abuse and Alcoholism is that correct?  
 (11) A It s a final report There were a number of other reports  
 (12) submitted as interim reports that were required over the  
 eight  
 (13) years  
 (14) Q And -  
 (15) A More detailed  
 (16) Q This report relates does it not sir to a program that  
 (17) you developed as aeromedical consultant to the Airline Pilot s  
 (18) Association and would you say that when you spoke about  
 your  
 (19) view of monitoring and what would make a good monitoring  
 aspect  
 (20) of an alcohol policy for safety sensitive positions that this  
 (21) program as spelled out in this report reflects your views on  
 (22) that subject?  
 (23) A Well as I said, this is a general report There s not a  
 (24) great deal of detail in this report on the program of - for  
 (25) monitoring That was developed in the years from 1974 to  
 1975

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- (1) and 76 and those were years that were covered by the  
 interim  
 (2) reports detailed reports to the National Institute of Alcohol  
 (3) Abuse and Alcoholism The monitoring material would be -  
 (4) would be found more in those interim reports  
 (5) Q So is it your testimony that this 1982 document does not  
 (6) contain disclosure of your views on monitoring?  
 (7) A It has - it has comments on monitoring, yes, sir  
 (8) Q And is it fair when you talked about this document having  
 (9) been disseminated to other industries and so forth that you  
 (10) were referring to this document as a document which would  
 (11) disclose your views on the conduct of monitoring?  
 (12) A Yes it - it would do that and this is a document that  
 (13) was produced and then any special or specific questions  
 that  
 (14) may come up, we would handle as inquiries came in  
 (15) Q Okay now your own direct involvement in monitoring the 17  
 (16) or so years that you spoke about is that monitoring involved  
 (17) in the field of airline pilots and airline flight attendants?  
 (18) A Certainly for the first - no, I - did you say flight  
 (19) attendants?  
 (20) Q I did sir  
 (21) A Then the answer would be no  
 (22) Q The answer would be no it s not involving that field?  
 (23) A I have never monitored flight attendants  
 (24) Q Okay if I limit the question to airline pilots -  
 (25) A Yes, we - we certainly help the flight attendants develop

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- (1) **their monitoring programs but yes, my monitoring would be of**
- (2) **airline pilots**
- (3) Q So when you spoke of 17 years of experience in monitoring
- (4) people in safety sensitive position in the airline industry
- (5) you were talking about air monitoring airline pilots?
- (6) **A No, I d have to go back to my work with the Atomic Energy**
- (7) **Commission because we monitored there with possible**
- (8) **problems of**
- (9) **alcohol and drug abuse**
- (10) Q And you were directly involved in that?
- (11) **A Yes, sir**
- (12) Q So your experience involves airline pilots and couriers of
- (13) nuclear weapons?
- (14) **A Yes, and then in my work with the National Aeronautics**
- (15) **and**
- (16) **Space Administration, it involves monitoring of persons in**
- (17) **safety sensitive positions at NASA, at the flight research**
- (18) **facility**
- (19) Q Was that work before you joined ALPA or was that during the
- (20) time you were area medical advisor for ALPA?
- (21) **A Well both I guess I d have to explain to you that, when I**
- (22) **came to Lovelace out of the Air Force, I was then**
- (23) **responsible**
- (24) **for monitoring and other types of programs to assure**
- (25) **fitness**
- (26) **for duty in sensitive - safety sensitive positions for the**
- (27) **entire operations surrounding the test pilot work for NASA**
- (28) **development of new aircraft, modifications, development of**
- (29) **various systems and so on, and I was the supervisor of the**

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- (1) **clinic at the Dryden Flight Research Center for a number of**
- (2) **years while all the time I was at Lovelace and for two years**
- (3) **thereafter, and then I ceased interacting with that, because**
- (4) **the new chairman of the department after I left Lovelace**
- (5) **took**
- (6) **over that role gradually**
- (7) Then I got back into that work in, I believe 1986 I
- (8) wouldn't be quite positive on that without looking, but I got
- (9) into that role then in 1986 as the flight surgeon for the NASA
- (10) Ames Research Center and the facility at Dryden
- (11) Q Do you recall testifying at your deposition that the only
- (12) time you've been employed in the development of alcohol
- (13) monitoring policies is for airline pilots?
- (14) **A I very well may have, not thinking in terms of anything**
- (15) **else but my airline pilot's association work**
- (16) Q Is it fair to say the bulk of your experience and views
- (17) that you formed were formed with your work through the airline
- (18) pilot's association?
- (19) **A Within monitoring, sir or --**
- (20) Q I include monitoring in the broad topic of alcohol policy
- (21) but I don't limit it to that certainly
- (22) **A I developed a lot of my ideas about monitoring in my work**
- (23) **with the Atomic Energy Commission, carried that over to the**
- (24) **airline pilot's association and bulk of the work is with**
- (25) **airline pilot's, yes**
- (26) Q Now you would agree don't you that it's a good thing for

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- (1) a corporation to have a policy for dealing with employees who
- (2) have an alcohol problem?
- (3) **A Yes sir**
- (4) Q You generally agree that it's a bad thing to deal with the
- (5) problem of alcoholism or alcohol problems by simply I think
- (6) you called it the knee jerk reaction of firing people?
- (7) **A Yes**
- (8) Q And in fact that's what you've devoted your career to
- (9) isn't it sir - trying to save the career of pilots in
- (10) particular who otherwise would have a problem with alcohol?
- (11) **A Well I've - alcohol has not been my entire career, sir**
- (12) **You know I deal with all types of occupational problems**
- (13) **related to aviation I would say the alcohol cases would**
- (14) **involve about 10 percent of all of the medical cases that I've**
- (15) **had over the years involving pilots and associated people**
- (16) Q Well do you really disagree with the premise that one of
- (17) the things you sought to achieve as aeromedical advisor of the
- (18) airline pilot's association was to save the job and careers of
- (19) pilots who otherwise would not have a license?
- (20) **A That's correct**
- (21) Q And you've never been employed to develop an alcohol
- (22) policy
- (23) outside government or the airline industry is that correct?
- (24) **A Employed, no**
- (25) Q Now you're being paid today for your testimony is that
- (26) correct?

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- (1) **A Yes sir**
- (2) Q And your agreement to make yourself available to the
- (3) plaintiffs to testify is something that you did reluctantly is
- (4) that correct?
- (5) **A Yes In fact there is no written agreement at all**
- (6) Q Well but - but you were approached by Dr O Connor and
- (7) asked to testify or to -
- (8) **A Yes, sir**
- (9) Q - to cooperate with the plaintiffs in this case?
- (10) **A Yes, sir**
- (11) Q And your first reaction was that's something you didn't
- (12) want to do?
- (13) **A Yes, sir**
- (14) Q Did your prior association with air Captain - Captain
- (15) Hazelwood Captain Hazelwood of Pan American have anything
- (16) to
- (17) do with your decision to -
- (18) **A Absolutely not**
- (19) Q You did have a previous professional experience with
- (20) Captain Hazelwood's father did you not?
- (21) **A Not exactly a professional experience, I was involved in**
- (22) **the interchange of some communications He was never a**
- (23) **patient**
- (24) **of mine I didn't have any direct medical involvement with**
- (25) **him**
- (26) Q As a member of the airline pilots association he asked you
- (27) to support an application to change a FAA rule that related to

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- (1) mandatory retirement at age 60 is that correct?  
 (2) **A By letter yes**  
 (3) **Q And you refused to do that?**  
 (4) **A Well, the refusal was handled through -**  
 (5) **Q Could you answer the question Did you refuse to do it?**  
 (6) **A No, I did not refuse to do it I - there s -**  
 (7) **Q Excuse me sir Could you turn to page 668 of your**  
 (8) **deposition? It s in volume four sir**  
 (9) **A In this one here?**  
 (10) **Q I doubt if it s -**  
 (11) **A The green ones?**  
 (12) **Q Yes Let me - maybe this would speed it up**  
 (13) **A I have it, sir**  
 (14) **Q Okay Referring to air Captain Hazelwood s request to you**  
 (15) **what was his - the result of his request to you That was the**  
 (16) **question Could you read the answer?**  
 (17) **MR MONTAGUE Could you read the request?**  
 (18) **BY MR LYNCH**  
 (19) **Q Captain Hazelwood Pan Am Captain Hazelwood was an**  
 (20) **adamant**  
 (21) **supporter of the FAA age 60 rule Captain Hazelwood to my**  
 (22) **recollection -**  
 (23) **A That s not quite right Adequate supporter of the**  
 (24) **dissolution**  
 (25) **Q I thought I said that**  
 (26) **A I didn t hear it**

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- (1) **Q An adamant supporter of the dissolution - why don t you**  
 (2) **read it?**  
 (3) **A You read better than I do, but I ll be glad to Captain**  
 (4) **Hazelwood Pan Am Captain Hazelwood was an adamant**  
 (5) **supporter of**  
 (6) **the dissolution of the FAA age 60 rule Captain Hazelwood,**  
 (7) **to**  
 (8) **my recollection provided me with certain information**  
 (9) **pertaining to his good health and then asked that I petition**  
 (10) **the Federal Aviation Administration for an exemption from**  
 (11) **the**  
 (12) **age 60 rule that would apply to him**  
 (13) **Q Question And what was the result of his request to you?**  
 (14) **A I refused to do that to comply with his request**  
 (15) **Q So you did refuse?**  
 (16) **A That was my recollection at the time Subsequent to that,**  
 (17) **I was able to find the record on the original Captain**  
 (18) **Hazelwood - and I would have to elaborate on that a bit**  
 (19) **Q I guess my question is do you now say you didn t refuse**  
 (20) **the request?**  
 (21) **A No, I m not saying that I m saying there s a lot of**  
 (22) **involved reasons for -**  
 (23) **Q I m sure Mr Montague can bring it out if he wishes to but**  
 (24) **you did refuse that request is that correct?**  
 (25) **A No, the president of the airline pilots association refused**  
 (26) **the request**  
 (27) **Q Is that after Captain Hazelwood complained about your**  
 (28) **refusal?**

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- (1) **A I did not respond to Captain Hazelwood The legal**  
 (2) **department of the airline pilots association responded to**  
 (3) **Captain Hazelwood**  
 (4) **Q Well did your altercation with Captain Hazelwood -**  
 (5) **A I didn t have an altercation with Captain Hazelwood**  
 (6) **Q - have anything to do with your ultimate choice to -**  
 (7) **A Well, that s a mischaracterization I did not have an**  
 (8) **altercation This was not a face to face thing at all It was**  
 (9) **all correspondence**  
 (10) **Q You recall that or you ve now looked at correspondence**  
 (11) **which changed your memory?**  
 (12) **A Yes, it s changed my memory because I - now I m not**  
 (13) **saying I never met Captain Hazelwood I probably did I**  
 (14) **had**  
 (15) **no idea who he was I made no connection, but in - in the**  
 (16) **Exxon Captain Hazelwood s deposition, he said that his**  
 (17) **father**  
 (18) **had made some disparaging remarks about me that caused**  
 (19) **me to**  
 (20) **think back and I said my goodness there was a Hazelwood**  
 (21) **in**  
 (22) **the airline pilots association**  
 (23) **Q At your deposition did you testify that you told him he**  
 (24) **didn t have a right to demand that I do this so he took it to**  
 (25) **the president of the association wrote some derogatory**  
 (26) **comments about me to the president? Did that come from you**  
 (27) **or**  
 (28) **from the Exxon lawyer?**  
 (29) **A No that came from the legal department of the airline**  
 (30) **pilots association**

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- (1) **Q Could you look at page 669 and if you will will you look**  
 (2) **at lines 20 through 24?**  
 (3) **A Yes sir That was my recollection at the time before I**  
 (4) **consulted the records**  
 (5) **Q All right and was that your recollection when the**  
 (6) **plaintiffs approached you in this case?**  
 (7) **A I had nothing - I had no recollection at all I knew of**  
 (8) **no connection between the man who was -**  
 (9) **Q Captain Hazelwood at Pan Am had no involvement in your**  
 (10) **decision to take on this matter?**  
 (11) **A Oh, absolutely not**  
 (12) **Q Okay**  
 (13) **A I didn t even remember about it**  
 (14) **Q With reference to follow up on employees who have been**  
 (15) **treated for alcohol problems is it the case Dr Masters that**  
 (16) **you do not favor alcohol testing?**  
 (17) **A Yes sir that is the case**  
 (18) **Q Is it -**  
 (19) **A But that s related to alcohol testing of whole**  
 (20) **populations It would not necessarily be the case with**  
 (21) **safety sensitive positions if it were felt to be indicated by**  
 (22) **the medical officer at the time of a reported problem**  
 (23) **Q Okay let me - let me just go into that for a second**  
 (24) **Your view is that you re opposed to periodic or unannounced or**  
 (25) **random testing is that correct?**

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- (1) **A That has been my view for years especially of alcohol testing**
- (2) **testing**
- (3) Q Of alcohol testing in particular correct?
- (4) **A Yes, sir**
- (5) Q And you re also opposed to random testing for other drugs of abuse?
- (6)
- (7) **A Yes I d say my view may have moderated a bit on that but**
- (8) **yes**
- (9) Q Your former view was it could be called medical McCarthyism?
- (10) **McCarthyism?**
- (11) **A That wasn t my – I wish I could have claimed that term**
- (12) **It was a term I adopted from an article I read**
- (13) Q You did embrace it is that correct?
- (14) **A Yes sir**
- (15) Q As to testing for drugs other than alcohol?
- (16) **A Yes, sir**
- (17) Q In your view about testing for alcohol is that you didn t support it because testing for alcohol really measures an alcohol state at a moment in time isn t that correct?
- (18) **A Measures an – it measures an alcohol concentration at a point in time and most importantly, though, alcohol testing, I**
- (19) **have not felt was sustainable for large groups of people In**
- (20) **other words, random alcohol testing, just going out and**
- (21) **randomly alcohol testing I didn t think it was sustainable**
- (22) **for a large group of people as a type of screening evaluation**

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- (1) **because I – I would – I would not feel that – that breath**
- (2) **testing, which is the only reasonable mass screening, it would**
- (3) **be up to the standard that drug testing is**
- (4) Q Now with reference to backward extrapolation of alcohol tests it s your view that that s guesswork not science?
- (5) **A Of what kind of tests?**
- (6) Q Backward extrapolation of alcohol test?
- (7) **A What kind of alcohol –**
- (8) MR MONTAGUE Excuse me Your Honor this is far afield of from the direct examination
- (9) MR LYNCH I don t believe so Your Honor This relates to what is appropriate monitoring I mean the fact that – the fact that Dr Masters testified that he used certain procedures I m exploring with him the – whether this is –
- (10) THE COURT I ll allow the question
- (11) THE WITNESS Could you repeat it or have it read back?
- (12) BY MR LYNCH
- (13) Q Is it your view that backward extrapolation of alcohol tests is a matter of guesswork not science?
- (14) **A Again, I can t answer that unless you say what type of alcohol test**
- (15) Q Do you recall being asked this subject at your deposition sir?

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- (1) **A Not specifically I don t deny it was asked**
- (2) Q Could you please turn to page 612? You have that sir?
- (3) **A 612 yes**
- (4) Q Yes sir And the question to you was on page 612 at line 16 just before we broke you answered a question I asked you with respect to whether you had criticisms of Exxon s approach to drug testing during the 1980s In the course of your answer you said that one of the aspects that you might comment on was using alcohol tests What did you mean by that?
- (5) Then there s some interjection and your answer is at page 613 beginning at line 15 The criticisms that I was referring to were generic in nature even as related to the Exxon program They re just philosophical problems that I have with doing testing and which especially I think that would be that I believe that the levels of what is termed a positive test probably should have been brought into line with federal standards With regard to alcohol testing I am not a proponent of alcohol testing under any standard that would cause random testing or periodic testing The reason for that is that a positive alcohol test is a very nebulous thing that alcohol testing is not as standardized as the extremely accurate laboratory testing of drugs which are – where you use qualified laboratorones approved by the department of health education and welfare and so on Breathalyzers are there are a lot of pro and con arguments about the quality and

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- (1) standardization of breathalyzers Alcohol blood test s interesting but as opposed to blood testing alcohol testing is something that measures something at the instant you take that test it doesn t have any capability of being extrapolated back if your test comes off – comes out below a given level that is agreed to as a cutoff It comes out to a level above the cutoff then you maybe able to do some extrapolating back but that s more guesswork than science
- (2) Isn t that what you testified sir?
- (3) **A Yes And that was all related to the context of breathalyzers**
- (4) Q Did the question ask you about breathalyzers only?
- (5) **A No But the way I answered it, there's a –**
- (6) Q Your testimony –
- (7) **A There s comment that breathalyzers, is what I was thinking about**
- (8) Q So the testimony now say is you now think extrapolation back is something other than guesswork?
- (9) **A I still have a problem with breathalyzers, sir**
- (10) Q You don t have a problem with other kinds of alcohol tests is that your testimony today?
- (11) **A Blood alcohol tests are more accurate, far more accurate in my mind at least**
- (12) Q It s true in the airline program that you supervised the only type of alcohol testing that was pursued was for cause

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- (1) testing by whatever means Breathalyzer blood alcohol or  
 (2) anything else?  
 (3) **A Try that again?**  
 (4) Q In the airline pilot monitoring program that you  
 (5) supervised isn't it true that you absolutely did not test  
 (6) pilots with alcohol problems except for cause?  
 (7) **A Yes, that's true**  
 (8) THE COURT Stopping place Mr Lynch?  
 (9) MR LYNCH That would be fine Your Honor  
 (10) THE COURT We'll take our first recess ladies and  
 (11) gentlemen We'll be in recess for 15 minutes  
 (12) (Jury out at 10 00)  
 (13) (Recess )  
 (14) (Jury in at 10 16)  
 (15) THE COURT Mr Lynch  
 (16) BY MR LYNCH  
 (17) Q Dr Masters directing your attention to your testimony  
 (18) about what you would consider to be appropriate monitoring  
 (19) procedures for a company employing people who have  
 (20) safety sensitive jobs first of all is it your testimony that  
 (21) you know that the standards that you described are followed in  
 (22) industry generally?  
 (23) **A It is my testimony that I know of the wide dissemination of**  
 (24) **the information It is my testimony that I know**  
 (25) **organizations**  
**that use this technique and I don't - I don't know what you**

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- (1) mean by "widely disseminated"  
 (2) Q I said used in the industry generally  
 (3) **A Generally**  
 (4) Q Used in industry generally?  
 (5) **A I couldn't answer that because I don't know about all**  
 (6) **industry**  
 (7) Q You did a lot of work with United Airlines is that  
 (8) correct?  
 (9) **A Yes**  
 (10) Q And isn't it a fact that you don't know for sure that these  
 (11) procedures are followed for people for example who maintain  
 (12) 747s?  
 (13) **A I have only the assurance of that from the medical**  
 (14) **department**  
 (15) Q But you haven't seen any written program applicable to  
 (16) United Airlines employees other than pilots?  
 (17) **A I've seen their flight attendant program**  
 (18) Q And their flight attendant program both of those are  
 (19) covered by special FAA regulations are they not?  
 (20) **A There are no FAA regulations that apply to flight**  
 (21) **attendants having to do with this particular area, and there**  
 (22) **is**  
 (23) **no FAA regulation requiring monitoring of airline pilots by**  
 (24) **companies**  
 (25) Q There are FAA regulations that will not permit any pilot  
 who has ever been diagnosed to have - with alcoholism to - to

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- (1) resume flying without monitoring provisions isn't that  
 (2) correct sir?  
 (3) **A No, that's not correct**  
 (4) Q Isn't the FAA - well we'll get into that Is it your  
 (5) testimony that these procedures that you described should be  
 (6) followed for any alcohol related problem of any kind?  
 (7) **A In safety sensitive positions?**  
 (8) Q Yes sir  
 (9) **A Yes**  
 (10) Q Does it make a difference to you whether the diagnosis is  
 (11) alcoholism or alcohol abuse?  
 (12) **A No not if the - not if the condition is serious enough to**  
 (13) **have required treatment**  
 (14) Q So in your view even if the alcohol problem was secondary  
 (15) to some other matter you would - you believe that these  
 (16) monitoring procedures should be followed?  
 (17) **A Yes sir**  
 (18) Q Okay Is it your view - strike that  
 (19) Isn't it true that in the middle to late 80s there was a  
 (20) general school of thought that employers should be limited to  
 (21) evaluation of job performance of employees in determining  
 (22) whether an employee who had returned to work from alcohol  
 (23) treatment was subject to any job action by the employer  
 (24) including reassignment?  
 (25) **A That concept predated the late 80s by a long time**

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- (1) Q And it continued into the late 80s isn't that true sir?  
 (2) **A In safety sensitive positions, I believe that that concept**  
 (3) **was gradually replaced**  
 (4) Q Gradually replaced but in the mid to late 80s that was a  
 (5) concept that was broadly accepted in the industry isn't that  
 (6) true sir?  
 (7) **A For safety sensitive positions?**  
 (8) Q Yes sir  
 (9) **A No, I don't think so**  
 (10) Q What's the basis for your statement?  
 (11) **A Because most safety sensitive industries by that time**  
 (12) **were**  
 (13) **developing concepts of monitoring**  
 (14) Q Well isn't it true Dr Masters that you just told us  
 (15) that you don't have personal knowledge about what industries  
 (16) other than those with which you've been directly involved with  
 (17) were doing in the middle to late 80s?  
 (18) **A No, I'd have to modify that to the degree that I mentioned**  
 (19) **very early on in response to a question from Mr Montague**  
 (20) **that**  
 (21) **we developed first of all had on hand at the Lovelace**  
 (22) **Foundation It's a research institution had a large library**  
 (23) **and we developed a program to collect programs from all**  
 (24) **types**  
 (25) **of industry and it is my testimony that many types of**  
**industry**  
**involving safety sensitive positions had monitoring**  
**programs of**  
**one sort or another in effect by the mid 80s**  
 Q Would you look at page 588 of your deposition?

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- (1) Were you asked this question Would you agree that during  
 (2) the mid to late 80s 1980s there was a substantial school of  
 (3) thought in the employee assistance program field that job  
 (4) performance was a key component of the approach to  
 prevention  
 (5) and treatment of alcohol problems in the workplace? And  
 (6) there s a comment by counsel and this answer is given I would  
 (7) agree that is the case and also qualify the answer with my  
 (8) feeling that that is an extremely limited point of view and was  
 (9) rather narrow - was a rather narrow concept which I think has  
 (10) become outmoded  
 (11) Was that question asked and that answer given?  
 (12) **A Yes**  
 (13) **Q Did you say anything at that time to the examiner about**  
 (14) **your view that that didn t apply to safety sensitive**  
 (15) **positions?**  
 (16) **A Not in this testimony no**  
 (17) **Q Now you understood - let me - your direct involvement**  
 (18) **full time involvement at that time was with airline pilots**  
 (19) **correct?**  
 (20) **A Yes**  
 (21) **Q And the federal aviation regulations in effect specified**  
 (22) **that if an airline pilot had a diagnosis of alcoholism - key**  
 (23) **word alcoholism - that pilot could no longer hold his**  
 (24) **license isn t that correct?**  
 (25) **A An established clinical history - diagnosis or history**

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- (1) **Q Of alcoholism?**  
 (2) **A Alcoholism**  
 (3) **Q Correct?**  
 (4) **A Correct**  
 (5) **Q As opposed to alcohol abuse?**  
 (6) **A The term was alcoholism because that was the definition**  
 (7) **that they were using based on DSM II**  
 (8) **Q And in the federal -**  
 (9) **And the Federal Aviation Administration distinguished**  
 (10) **alcohol abuse from alcoholism did they not?**  
 (11) **A No, they didn t**  
 (12) **Q Could you turn -**  
 (13) **A They didn t distinguish it because they had a definition in**  
 (14) **DSM II that didn t distinguish it**  
 (15) **Q Could you turn to the appendix to your eight year report**  
 (16) **sir and specifically if you would to appendix page G 1**  
 (17) **A Yes**  
 (18) **Q Can you read that on that? Is that clear? See the**  
 (19) **language under diagnosis?**  
 (20) **A I have it right here on the screen, is that -**  
 (21) **Q Yes And would you look at the second paragraph some of**  
 (22) **which is highlighted there?**  
 (23) **A Yes**  
 (24) **Q It says Alcoholism is usually characterized by an**  
 (25) **evolutionary development preceded by a long period of**

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- (1) increasing abuse There may not be a precisely identifiable  
 (2) point in time beyond which an individual is clearly an quote  
 (3) alcoholic end quote As a consequence there is often some  
 (4) justifiable confusion in distinguishing between alcohol abuse  
 (5) and alcoholism  
 (6) That s an FAA document isn t it sir?  
 (7) **A Yes**  
 (8) **Q By the way when I asked you earlier about the FAA**  
 (9) **requiring monitoring for a pilot who wanted to return to duty**  
 (10) **in this memorandum the FAA set up standards in which it would**  
 (11) **grant exemptions to pilots who had a diagnosis of alcoholism**  
 (12) **did it not?**  
 (13) **A That s the general purpose of this document**  
 (14) **Q And that document specified that in order for a pilot to**  
 (15) **receive that exemption he would have to be subjected to**  
 (16) **monthly monitoring meetings of the type you described in your**  
 (17) **direct testimony isn t that true sir?**  
 (18) **A That s true**  
 (19) **Q By the way this document evolved from a grant you received**  
 (20) **from the National Institute for Alcohol Abuse and Alcoholism?**  
 (21) **A Yes**  
 (22) **Q Now with reference to the diagnosis of alcohol abuse**  
 (23) **if - if a pilot in 1982 had been diagnosed as having - as**  
 (24) **having a case of secondary alcohol abuse secondary to**  
 (25) **dysthymia that would not require his license to be revoked by**

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- (1) the FAA isn t that correct?  
 (2) **A No that s not correct He would have to report his**  
 (3) **inpatient treatment and the FAA would have probably**  
 (4) **required**  
 (5) **the documentation and would have reviewed the medical**  
 (6) **records**  
 (7) **In great detail and would have made an individual**  
 (8) **determination**  
 (9) **on that case**  
 (10) **Q Is it true that if the FAA determined that the diagnosis**  
 (11) **was alcohol abuse secondary to dysthymia that that would not**  
 (12) **require the pilot s license to be suspended or revoked?**  
 (13) **A If they determined that that was the exact diagnosis that**  
 (14) **could be the case But they would make an individual**  
 (15) **determination based on their review of all of the medical**  
 (16) **records**  
 (17) **Q So if they made the determination that a pilot was**  
 (18) **suffering from dysthymia primary problem alcohol abuse**  
 (19) **episodic secondary problem then that pilot could continue to**  
 (20) **fly isn t that correct?**  
 (21) **A That requires a lot of assumptions that you haven t given**  
 (22) **me**  
 (23) **Q It is true is it not Dr Masters that that is - that if**  
 (24) **the FAA concurred in a diagnosis of dysthymia and alcohol**  
 (25) **abuse**  
 (26) **episodic that the FAA regulations would not call for the**  
 (27) **cancellation of that pilot s license?**  
 (28) **A If the FAA concurred in that, yes**  
 (29) **Q And in this case you have no - you re offering no opinion**

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- (1) about the accuracy of the diagnosis of Captain Joseph  
 (2) Hazelwood are you?  
 (3) **A No sir**  
 (4) **Q Now talking about sea Captain Joseph Hazelwood**  
 (5) **A I understood it that way**  
 (6) **Q By the way from the fact that captain - air Captain**  
 (7) **Hazelwood was flying at or near age 60 under these**  
**regulations**  
 (8) **we can assume he didn't have a alcohol problem or history of**  
 (9) **diagnosis of alcoholism isn't that correct sir?**  
 (10) **A No you can't**  
 (11) **Q You can't?**  
 (12) **A No**  
 (13) **Q Isn't it true that it's required by law that a pilot report**  
 (14) **if he has any clinical history of alcohol history?**  
 (15) **A It's required He may not have reported it I have no**  
 (16) **idea I don't want to get into that captain situation at all**  
 (17) **But I'm saying it is possible**  
 (18) **Q So you would have to assume -**  
 (19) **A I would have to assume that he didn't report it**  
 (20) **Q For a period of 60 years?**  
 (21) **A That there was no diagnosis that there would be no**  
**problem**  
 (22) **Q That he had flown for a career running to mandatory**  
 (23) **retirement age correct?**  
 (24) **A Yes that's the mandatory**  
 (25) **Q And that under - that throughout that time he had not**

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- (1) **reported a clinical history of alcoholism is that what you're**  
 (2) **surmising?**  
 (3) **A I have absolutely no evidence that he did or didn't I**  
 (4) **mean, he might have reported it and -**  
 (5) **Q From the fact that he was flying?**  
 (6) **A He might have been reporting it and had a - an**  
**exemption**  
 (7) **I don't know that**  
 (8) **Q You don't know that one way or the other your problems**  
 (9) **with him had nothing to do with that?**  
 (10) **A Absolutely nothing, no**  
 (11) **Q Now you know of South Oaks Hospital don't you?**  
 (12) **A Yes, sir**  
 (13) **Q And indeed you have a high opinion of South Oaks Hospital**  
 (14) **is that correct?**  
 (15) **A In my experience during the time that we referred pilots**  
 (16) **there, we got good reports**  
 (17) **Q In a - in fact that's where you sent your tough cases?**  
 (18) **A There and a couple of other places**  
 (19) **Q And you knew Dr Vallury?**  
 (20) **A Yes, I met Dr Vallury I would not say that he was a**  
 (21) **personal friend of mine or anything like that I knew better**  
 (22) **the medical director and the executive director Drs**  
**Corrone**  
 (23) **(ph) and Crinsky (ph)**  
 (24) **Q And you had reports - in the course of your monitoring**  
 (25) **you received reports from Dr Vallury?**

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- (1) **A Oh not now no, not at all**  
 (2) **Q But in the past?**  
 (3) **A I don't have any direct recollection of that, no No**  
 (4) **Q Give me a second here**  
 (5) **A It's possible I did when I was - when I was with the**  
 (6) **airline pilots association as their aeromedical advisor, it's**  
 (7) **possible I did, but I don't have a direct specific**  
 (8) **recollection**  
 (9) **Q Let me see if I can refresh your recollection Could you**  
 (10) **turn to page 268 of your deposition? Were you asked the**  
 (11) **question Did you have - have you had any dealings whether it**  
 (12) **was reviewing reports or otherwise with Dr Vallury in the**  
 (13) **same sense that you had dealings with Dr Persh (ph) and**  
 (14) **Dr O Connor that we went over yesterday**  
 (15) **Answer I can't recall any instance in which I received a**  
 (16) **report from Dr Vallury that wasn't complete enough that I**  
 (17) **didn't need to call him [sic] I don't recall ever having had**  
 (18) **to raise questions with him His reports were well written**  
 (19) **Does that refresh your recollection?**  
 (20) **A Yes I don't believe I testified that I didn't have**  
 (21) **respect for Dr Vallury I just cannot tell you - I cannot**  
 (22) **bring up in my mind a specific case**  
 (23) **Q But generally you remember reviewing reports that he**  
 (24) **wrote?**  
 (25) **A Oh yes sir Yes sir**

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- (1) **Q And you remember that they were well written?**  
 (2) **A Oh, yes**  
 (3) **Q And that they were complete?**  
 (4) **A Yes**  
 (5) **Q And that you relied on them?**  
 (6) **A And they were reviewed, too, by people at South Oaks,**  
 (7) **generally**  
 (8) **Q At least that's your understanding from your knowledge of**  
 (9) **South Oaks?**  
 (10) **A Yes, sir**  
 (11) **Q But you relied on those reports correct?**  
 (12) **A Yes**  
 (13) **Q As a medical -**  
 (14) **A With regard to the treatment program, a report of the**  
 (15) **treatment program, they were always accurate and**  
 (16) **complete**  
 (17) **Q And you didn't need to call Dr Vallury the reports were**  
 (18) **adequate for you to rely on them?**  
 (19) **A Because of the very long association we had with that**  
 (20) **institution, he knew precisely what kinds of reports we**  
 (21) **required**  
 (22) **Q And by the way when did you give the deposition where you**  
 (23) **gave that answer?**  
 (24) **A January 28th**  
 (25) **Q Of what year?**  
 (26) **A Of this year 1994**



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- (1) Q Now you re acquainted with the fact are you not Dr  
 (2) Masters that for employers not subject to the federal air  
 (3) regulations the rehabilitation act forbids an employer from  
 (4) discriminating against an employee solely on the basis of a  
 (5) history for treatment of alcohol problems?  
 (6) **A Yes, but I wouldn't say it doesn't apply to the airline  
 (7) industry**  
 (8) Q I didn't say it didn't apply to the airlines industry I  
 (9) said for employees that don't have this federal air regulation  
 (10) they have to - they are not allowed to act on the basis of a  
 (11) mere clinical history of alcoholism isn't that true?  
 (12) **A You mean an employment application?**  
 (13) Q I mean in job assignments I mean in - in the treatment of  
 (14) that employee on the job?  
 (15) **A That's correct**  
 (16) Q But in the federal in the pilot area there is a  
 (17) regulation that says a pilot can't hold a license to fly with  
 (18) that unless he gets an exemption if he has a clinical history  
 (19) of alcoholism?  
 (20) **A I would merely state that they no longer give exemptions  
 (21) It's called special issuance Comes under paragraph 6719  
 (22) of**  
 (22) **the federal aviation regulations**  
 (23) Q I appreciate the -  
 (24) **A It's just a term of art**  
 (25) Q Terminology correction?

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- (1) **A Yes**  
 (2) Q I appreciate that Dr Masters With that clarification  
 (3) there is a federal air regulation that says to the airlines  
 (4) that the mere fact of a clinical history of alcoholism  
 (5) disqualifies a pilot from holding a license isn't that  
 (6) correct?  
 (7) **A Yes there - there are federal restrictions in the - in  
 (8) the air regulations and medical section air regulations for  
 (9) ten**  
 (9) **or 11 very serious disqualifying conditions**  
 (10) Q And that's one of them?  
 (11) **A Yes sir**  
 (12) Q So in the case of an airline the mere history for  
 (13) alcoholism disqualifies the pilot as a matter of federal law  
 (14) from having a license unless he gets a special issuance isn't  
 (15) that correct?  
 (16) **A Not quite**  
 (17) Q What's quite? What did I miss?  
 (18) **A Regulation itself allows for two contingencies First  
 (19) contingency is that the individual can present information  
 (20) satisfactory to the federal air surgeon, which allows the  
 (21) federal air surgeon to make a determination and provide for  
 (22) this thing that you have called an exemption which proper  
 (23) terminology years ago, special issuance we call it now**  
 (24) Q Right And I thought I put -  
 (25) **A Or he can wait for two years and provide evidence that he**

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- (1) **has two years of sobriety and does not need a special  
 (2) issuance**  
 (2) **or exemption**  
 (3) Q Let's take the first My question - my question included  
 (4) special issuances  
 (5) Unless there's a special issuance an airline has to report  
 (6) any - any employee it knows who has a history clinical  
 (7) history of alcoholism correct?  
 (8) **A No**  
 (9) Q Airline doesn't have to -  
 (10) **A Airline has no requirement under federal law to report  
 (11) that**  
 (11) **person**  
 (12) Q It is not required to advise the FAA Federal Aviation  
 (13) Administration if it becomes aware of information that the  
 (14) pilot?  
 (15) **A No sir absolutely not**  
 (16) Q Okay The pilot has that duty?  
 (17) **A Yes sir**  
 (18) Q It's a crime if he fails to do it?  
 (19) **A If he exercises his certificate and fails to do it under  
 (20) the provisions of the questionnaire he has to fill out  
 (21) every - - oh periodically at different airlines then that  
 (22) would be a - a crime**  
 (23) Q Do you know of any similar regulation that applies to  
 (24) holders of masters licenses?  
 (25) **A No, I don't**

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- (1) Q Okay Now you said at the end of two years if a pilot  
 (2) can show that he's remained sober - is that correct is that  
 (3) what you said?  
 (4) **A Yes the - the language pertains to documented evidence  
 (5) satisfactory to the federal air surgeon of a period of  
 (6) sobriety I think the word sobriety is important there of two  
 (7) years And we have a pilot going through that process right  
 (8) now**  
 (9) Q And the regulations specify that sobriety means total  
 (10) abstinence don't they?  
 (11) **A No they don't**  
 (12) Q Could you look at -  
 (13) **A That's not the regulation, Mr Kerry [sic], that's the  
 (14) problem I'm talking about the regulation And on the  
 (15) regulation, I know the regulation very well**  
 (16) Q Okay so is it your position just so we're not -  
 (17) **A If you're referring to 1976 letter**  
 (18) Q - we're not playing games -  
 (19) **A That's not the regulation**  
 (20) Q Let's not play games with each other  
 (21) Is it the fact that in interpreting the regulation and  
 (22) deciding whether evidence sufficient to satisfy the agency has  
 (23) been presented the agency takes the position that only total  
 (24) abstinence will satisfy?  
 (25) **A That is a decision that rests solely with the federal air**

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- (1) **surgeon and it s decided individually And I can tell you what**
- (2) **the current practice is If you d like to know that**
- (3) **Q Could you turn to page G 4 of appendix G of your eight year**
- (4) **report? Referring to the very last - this is a memorandum**
- (5) **from the Federal Aviation Administration describing how it is**
- (6) **going to interpret the regulations Isn t that correct?**
- (7) **A In general, yes That s a good explanation**
- (8) **Q And it says with regard to the person who wants a special**
- (9) **issuance the sine qua non for continued exemption -**
- (10) **old fashioned word - is total abstinence is that correct**
- (11) **sir?**
- (12) **A Yes It does**
- (13) **Q Is it your testimony that that position has changed?**
- (14) **A It is the sine qua non for a special issuance It is not**
- (15) **the sine qua non if the person has a demonstrated period of**
- (16) **sobriety of two years because he doesn t then get a special**
- (17) **issuance**
- (18) **Q So just so -**
- (19) **A He meets the standards**
- (20) **Q So just so I understand an airman who had had - a pilot**
- (21) **who had had his license to fly suspended or revoked because**
- (22) **of**
- (23) **a clinical history of alcoholism and remained sober for two**
- (24) **years could get his license reissued even if he told the**
- (25) **agency that he occasionally had wine with dinner is that accurate?**

4

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- (1) **A Yes Since he wouldn t get a special issuance, I believe**
- (2) **that would be accurate**
- (3) **Q Now going to the subject of how you would monitor you**
- (4) **assume in your program the plan that you ve set up you**
- (5) **assume**
- (6) **that the medical department would get access to the treatment**
- (7) **records of the individual?**
- (8) **A Yes, I do**
- (9) **Q Now you re aware are you not Dr Myers [sic] that there**
- (10) **are federal statutes that protect the confidentiality of those**
- (11) **records?**
- (12) **A I m aware of those**
- (13) **Q And are you aware that under those statutes the agency**
- (14) **the treating entity that holds those records may not release**
- (15) **them to an employer without the written and free consent of the**
- (16) **employee?**
- (17) **A I would agree with that**
- (18) **Q Okay And as of 1985 those regulations put a burden on**
- (19) **the entity to establish that the consent was freely given**
- (20) **Isn t that correct?**
- (21) **A I don t recall that at this moment but I wouldn t doubt**
- (22) **that**
- (23) **Q And one of the things that would vitiate the consent was if**
- (24) **the employer exacted consent to release of the records over**
- (25) **against the employee s free will as a condition of giving the**
- (26) **employee his job back Isn t that true?**

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- (1) **A All I can say about that is that you re getting into a**
- (2) **legal area that I don t think I m qualified in I know in the**
- (3) **airline pilots association that the department would not**
- (4) **view**
- (5) **it that way**
- (6) **Q In case of the airline pilots association the instances of**
- (7) **consent that you were familiar with involved pilots who were**
- (8) **seeking a special issuance Isn t that true?**
- (9) **A Yes**
- (10) **Q And in order to get their license back from the federal**
- (11) **government they had to meet - they had to give that consent**
- (12) **or they d do without their license Isn t that correct sir?**
- (13) **A That is correct**
- (14) **Q Now you also assume that the medical department of the**
- (15) **corporation would take over get involved in the aftercare of**
- (16) **the employee?**
- (17) **A That the medical department would be involved directly,**
- (18) **yes**
- (19) **Q There is a school of thought isn t there Dr Masters**
- (20) **that it is not the place of the employer to get involved in the**
- (21) **doctor patient or clinician patient relationship of the**
- (22) **employee and his aftercare provider?**
- (23) **A Yes A fairly outmoded school of thought, yes**
- (24) **Q And there was a substantial body of medical opposition to**
- (25) **any employer involvement in aftercare through the mid to late**
- (26) **80s that you now think is outmoded?**

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- (1) **A I would have no reason to say that were so**
- (2) **Q You think it was outmoded even then?**
- (3) **A Oh, yes**
- (4) **Q You d agree don t you wouldn t you that medical records**
- (5) **should not be provided to supervisors?**
- (6) **A Absolutely**
- (7) **Q Okay And you d agree would you not that supervisors**
- (8) **should not be expected to act as diagnosticians?**
- (9) **A Absolutely**
- (10) **Q Would you also agree that they should not be expected to**
- (11) **act as clinicians?**
- (12) **A That s correct**
- (13) **Q Or therapists?**
- (14) **A Of course not**
- (15) **Q You talked about supervisors being the eyes and ears of the**
- (16) **medical department as a part of monitoring?**
- (17) **A That was Mr Montague s characterization and, in a**
- (18) **sense**
- (19) **they can fill that role**
- (20) **Q In a sense they can fill that role?**
- (21) **A Yes**
- (22) **Q Okay now does that mean that you think that a good**
- (23) **monitoring program obligates a supervisor to pass on to the**
- (24) **medical department every rumor that they hear?**
- (25) **A No**
- (26) **Q You think it is fair to the employee who has been treated**

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- (1) for an alcohol problem to post his name on the bulletin board  
 (2) and ask people to call a 1 800 Exxon or 1 800 pilot or  
 (3) something?  
 (4) **A Did I say that was proper?**  
 (5) Q No I m asking you a question  
 (6) **A Of course not**  
 (7) Q That wouldn t be a very sensible way to try to help a  
 (8) person return to work would it?  
 (9) **A No that would be a terrible abuse of people s rights, and**  
 (10) **I would never agree to that**  
 (11) Q And with reference to rumors do you recognize and did you  
 (12) recognize in your experience that one of the problems with peer  
 (13) identification is the possibility that charges or allegations  
 (14) of improper conduct would be made because of recrimination  
 or  
 (15) personal animosities or things of that kind?  
 (16) **A Yes sir That s why you have professional evaluations to**  
 (17) **take care of that problem**  
 (18) Q Let me see if I understand this If a supervisor received  
 (19) a rumor from a notonous gossip and the supervisor didn t  
 (20) believe the rumor is it your testimony that that supervisor  
 (21) should call the medical department and drag this employee in  
 (22) for a medical evaluation?  
 (23) **A No, it s not my testimony**  
 (24) Q Okay  
 (25) **A And drag in I think that s rather strident**

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- (1) Q Oh I m sorry I didn t mean to be strident Invite the  
 (2) employee in for a medical evaluation?  
 (3) **A Yes**  
 (4) Q Now is it your view that the supervisor should do that?  
 (5) **A Under the circumstance you suggested?**  
 (6) Q Yes sir  
 (7) **A A rumor? No I suggest the supervisor investigate the**  
 (8) **rumor, if he doesn t think there s anything to it that s**  
 (9) **fine**  
 (10) Q I take it that one of the drawbacks you think of relying  
 (11) on supervisors is that to judge whether there is a recurrence  
 (12) of an alcohol problem is the difficulty of the supervisor  
 (13) detecting medical signs of reuse or relapse to using alcohol?  
 (14) **A Yes That s why they have to be extensively trained**  
 (15) Q And in particular you d consider relying on the smell of  
 (16) alcohol on the breath to be unreliable isn t that true?  
 (17) **A If the supervisor experienced it directly or if somebody**  
 (18) **reported it to him?**  
 (19) Q Either Don t you consider it to be an unreliable  
 (20) indicator of alcohol use?  
 (21) **A Well, a lot of people put a lot of stock in it I think it**  
 (22) **would certainly raise some question**  
 (23) Q But it is capable of being misused isn t that true sir?  
 (24) You don t advocate that?  
 (25) **A Capable of being misused Yes, it s capable of being**

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- (1) **misused yes**  
 (2) Q Excuse me a second Going to one of my folders for this  
 (3) one 636 Would you turn to 636 of your deposition? I m going  
 (4) to refer you to your testimony question begins at line 2 where  
 (5) you re referring about criticisms of supervisor - supervisor  
 (6) monitoring and you say - the question is any additional  
 (7) criticisms  
 (8) Answer Well the crying need for educational supervisory  
 (9) personnel is obvious because they put in here some very  
 (10) misleading and easily misunderstood information on how  
 you re -  
 (11) supposed to detect alcohol and drugs  
 (12) Question What are you referring to specifically?  
 (13) Answer Well specifically it talks about judgments that  
 (14) the supervisory personnel are and masters for example are  
 (15) supposed to make on persons to indicate that they might have  
 (16) alcohol or drug involvement and you know there could be  
 other  
 (17) reasons for some of those symptoms that they point out There  
 (18) could be another reason for maintaining - inability to  
 (19) maintain your normal balance or poor coordination slurred  
 (20) speech inability to understand and connect thoughts smell of  
 (21) alcohol on breath is even debatable and fairly easily covered  
 (22) these days by some mouth sprays that you can buy in almost  
 any  
 (23) bar and there s low alcohol beers -  
 (24) Question And there s low alcohol beer as well isn t  
 (25) there Doctor?

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- (1) Answer Oh yes there s low alcohol beer That s a good  
 (2) example  
 (3) You believe that reliance on those kinds of tests for  
 (4) monitoring by supervisors are ill advised do you not?  
 (5) **A This was in the context of the intensive and very careful**  
 (6) **training program that I was advocating for supervisors and**  
 (7) **those were examples of what s - of what Exxon put in their**  
 (8) **policy as advice to supervisors and I think that you can t**  
 just  
 (9) **lay that sort of thing on a policy and then not provide**  
 (10) **extensive training in order to expect them to understand the**  
 (11) **condition they re supposed to be observing**  
 (12) Q All right let s deal with that  
 (13) You were referring in that testimony to some written Exxon  
 (14) documentation that you had reviewed isn t that correct sir?  
 (15) **A Yes**  
 (16) Q Those were the guidelines those were the guidelines that  
 (17) supervisors were to use  
 (18) I can t see the doctor through my framework Your Honor  
 (19) Those were the guidelines that the supervisors were to use  
 (20) in implementing their part of the alcohol policy isn t that  
 (21) correct?  
 (22) **A I believe that s the case, yes**  
 (23) Q And those guidelines said that the supervisor s job was to  
 (24) judge by job performance isn t that correct sir?  
 (25) **A Yes**

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- (1) Q And that part of job performance was to look for signs
- (2) that - of on the job in the workplace signs of possible
- (3) misuse of alcohol such as slurred speech lack of balance
- (4) uncoordinated speech and the like correct?
- (5) **A Yes**
- (6) Q And you were saying that you thought those could be
- (7) misleading correct?
- (8) **A In the hands of a layman, yes**
- (9) Q And were you assuming that the only information that the
- (10) Exxon supervisors had was in what was in that written set of
- (11) guidelines?
- (12) **A No, I wouldn't assume that necessarily I'm just saying**
- (13) **that the guidelines seemed to be, you know not extensive**
- (14) **enough**
- (15) Q Well I understood your earlier statement to say that it
- (16) wasn't so much that you disagreed with using those tests as
- (17) that you thought the supervisor needed training on how to use
- (18) those tests? Did I misunderstand you?
- (19) **A Well, no, I just - I don't - tests? You know, they're**
- (20) **not - you're not giving them an exam This isn't, this isn't**
- (21) **a paper and-pencil written thing These are observations**
- (22) **that**
- (23) **supervisors can be trained to make and all that leads to is a**
- (24) **consultation with the medical department by the supervisor**
- (25) **Do**
- (24) **you think there is anything, Doc - should we do something**
- (25) **about it? Well let's talk about it back and forth well,**

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- (1) **send him in, let's talk to him directly**
- (2) Q Isn't it a fact Dr Masters that the guidelines you
- (3) looked at advise Exxon supervisors to do exactly that?
- (4) **A To refer the person to the medical department**
- (5) Q To the medical department or consult themselves with the
- (6) medical department?
- (7) **A Yes**
- (8) Q And you heard Mr Myers and while you've been in this
- (9) courtroom you've heard other people from Exxon say that
- (10) annually at the Exxon Shipping officers' conferences they were
- (11) given training on how to apply these guidelines didn't you?
- (12) **A I did**
- (13) Q And you don't have any knowledge about whether or not
- (14) those - that training that which you call the detailed
- (15) standards of training that you were advocating in your
- (16) deposition?
- (17) **A No I would not know that**
- (18) Q But you do agree that a good monitoring program would
- (19) involve advising the supervisor to watch and be the eyes and
- (20) ears of the medical department in the workplace correct?
- (21) **A Yes**
- (22) Q And that they should look for such things as slurred speech
- (23) or absenteeism or frequent injuries or other signs that the
- (24) profession has recognized as indicative of the possibility of
- (25) alcoholism isn't that true sir?

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- (1) **A Yes**
- (2) Q And rather than trying to diagnose it they should refer it
- (3) to the medical department?
- (4) **A By all means**
- (5) Q And the writings that you saw in Exxon recommended that
- (6) Exxon supervisors do exactly the - follow exactly those
- (7) standards isn't that true sir?
- (8) **A Yes**
- (9) MR LYNCH I have no further questions Your Honor
- (10) THE COURT Redirect?
- (11) MR MONTAGUE I have just a few questions Your
- (12) Honor
- (13) REDIRECT EXAMINATION OF RICHARD L MASTERS
- (14) BY MR MONTAGUE
- (15) Q Dr Masters you reviewed the guidelines for masters
- (16) captains and managers and supervisors is that one of the
- (17) things -
- (18) **A Yes, sir**
- (19) Q - for Exxon and their policy statement on employee alcohol
- (20) and drug abuse?
- (21) **A Yes, sir**
- (22) Q And those - there was nothing in those that related to
- (23) safety sensitive positions was there?
- (24) **A Nothing**
- (25) Q And there was nothing in there that related to monitoring

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- (1) was there?
- (2) **A Nothing**
- (3) Q And isn't what Mr Lynch is referring to in his last series
- (4) of questions didn't they relate to the general policy of
- (5) alcohol of when a supervisor sees something in the workplace
- (6) with respect to a person that then they should go to see the
- (7) medical department if they have a question about it?
- (8) **A Yes**
- (9) Q As an initial - as an initial matter?
- (10) **A Yes, sir**
- (11) Q Has nothing to do with monitoring?
- (12) **A No**
- (13) Q There were no guidelines in those papers with respect to
- (14) monitoring is that correct?
- (15) **A The word - I could not find the word**
- (16) Q Now with respect to - this will just be quick
- (17) The impression that I got from Mr Lynch's questions was an
- (18) implication that you never performed monitoring on a pilot who
- (19) had gone through a rehabilitation once he got his license back
- (20) is that a correct - is that a correct impression that we
- (21) should have?
- (22) **A No, not at all**
- (23) Q How long do you monitor pilots? Do you monitor pilots
- (24) after they get their license back?
- (25) **A Oh yes I've got about 20 I'm monitoring right at the**

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- (1) moment
- (2) Q And is that under the system that you ve described to us?
- (3) A Yes sir
- (4) Q One last question - one last series of questions
- (5) You were asked about Dr Vallury and getting reports from
- (6) him?
- (7) A Yes
- (8) Q What kind of reports - do you recall the type of reports
- (9) that you d get from Dr Vallury?
- (10) A Oh yes complete medical records with discharge
- (11) summary
- (12) and it s one of the characteristics of a good record It -
- (13) there s psychiatric reports, reports of psychological
- (14) testing,
- (15) frequently, if required, and in a case where that would be
- (16) indicated we d expect to get that Even down to the
- (17) progress
- (18) notes and sometimes the nursing notes
- (19) Q Okay And is that a report you received from Dr Vallury
- (20) after the inpatient treatment is finished?
- (21) A Well you couldn't produce it before then, no
- (22) MR MONTAGUE Thank you very much
- (23) THE COURT Thank you Doctor you may step down
- (24) (The Witness Stepped Down )
- (25) THE COURT Call your next witness?
- (26) MR O NEILL Your Honor I have some documents to
- (27) offer all by agreement Redacted copies of Plaintiffs
- (28) Exhibits 16 18 and 19 which are responses for request to

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- (1) admission Exhibit 795A 795 Alpha which is Surrendering the
- (2) Memories Exhibit 1705 Exhibits 827 828 and 829 Exhibit
- (3) 103 Exhibit 6000 for identification only - and one matter of
- (4) record clarification in our review of the transcript it
- (5) appears that an Exhibit 292 Alpha may have been admitted
- (6) That
- (7) should be 92 Alpha
- (8) (Exhibit 16 18 19 795A 1705 827 828 829 103
- (9) 92A offered)
- (10) MR SANDERS Your Honor I have no objection to those
- (11) that Mr O Neill listed and I agree to the clarification as to
- (12) Exhibit 92 Alpha
- (13) I too have a clarification that I have discussed with Mr
- (14) O Neill That clarification is that the - in Dr Smith s
- (15) cross examination I intended to offer the page from the
- (16) chapter that he wrote in the book and the chart that - a copy
- (17) of the chart that I wrote up as two independent exhibits and I
- (18) think the record probably through my fumbling around reflects
- (19) that they came in as one exhibit and I would like the record to
- (20) reflect that they are two separate exhibits
- (21) The numbers that I wrote up there on the backwards
- (22) extrapolation is Exhibit 9000 and the exhibit which was the
- (23) page from chapter 18 was Defendants Exhibit 9093
- (24) (Exhibit DX9093 offered)
- (25) MR O NEILL We have no objection and assume that
- (26) there s been bedtime reading

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- (1) THE COURT Let me play this back and see if we have
- (2) everyone on the same track
- (3) The plaintiffs are offering and defendants do not object to
- (4) redacted Plaintiffs 1618 and 1619
- (5) MR SANDERS No I think that s 16 18 and 19 isn t
- (6) that right?
- (7) MR O NEILL Yes sir 16 comma 18 comma and 19
- (8) THE COURT When you ve got so many exhibits -
- (9) MR O NEILL I goofed up and I should have put the
- (10) commas in
- (11) THE COURT It s a little hard Okay 16 comma 18
- (12) comma and 19 all redacted?
- (13) MR O NEILL Yes sir
- (14) THE COURT Are admitted okay
- (15) (Exhibit 16 18 and 19 received)
- (16) THE COURT Going on Plaintiffs 795 A 1705 827
- (17) 828 829 103 are all admitted by agreement
- (18) (Exhibit 795A 1705 827 828 829 103 received)
- (19) MR SANDERS Correct
- (20) THE COURT Exhibit 6000 has been identified but is
- (21) not being offered and is not being admitted
- (22) MR SANDERS Correct Your Honor
- (23) THE COURT As to Exhibit 292 Alpha I do not show
- (24) that as having been admitted
- (25) MR O NEILL Good

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- (1) THE COURT But I understand that 92 Alpha has been
- (2) admitted
- (3) (Exhibit 92A received)
- (4) MR SANDERS That s our understanding Your Honor
- (5) THE COURT As to the defendants exhibits
- (6) defendants 9000 and 9093 are admitted
- (7) (Exhibit 9000 and 9093 received)
- (8) MR SANDERS Thank you Your Honor
- (9) MR O NEILL Your Honor the plaintiffs would like to
- (10) offer pursuant to Rule 103 (a)(2) what has been marked as
- (11) Court Exhibit 1
- (12) (Exhibit Court 1 offered)
- (13) THE COURT That s the material that s being submitted
- (14) under seal?
- (15) MR O NEILL Yes sir
- (16) THE COURT That s being offered under seal It s
- (17) being received and will be held by the Court for possible use
- (18) as a part of the record in the case
- (19) MR O NEILL That s correct
- (20) THE COURT But it is not admitted
- (21) MR O NEILL It is not admitted It is being offered
- (22) pursuant to 103 (a)(2) which deals with offers of proof
- (23) MR LYNCH Those are federal rules of evidence
- (24) MR O NEILL Of the federal rules of evidence
- (25) MR LYNCH As opposed to the federal air regulations

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- (1) MR O NEILL Which we ve heard enough about in one  
 (2) day  
 (3) THE COURT Court will receive Plaintiffs Exhibit 1  
 (4) for part of the record  
 (5) (Exhibit Plaintiffs Exhibit 1 received)  
 (6) MR O NEILL Thank you Judge  
 (7) Your Honor Plaintiffs Exhibit 3 has previously been  
 (8) admitted without objection Pursuant to an agreement reached  
 (9) with the defendants the plaintiffs would like your authority  
 (10) to publish portions of the exhibit to the jury in conjunction  
 (11) with Defendants Exhibit 3902A May we publish the exhibits to  
 (12) the jury?  
 (13) THE COURT It s agreed?  
 (14) MR LYNCH So agreed Your Honor  
 (15) THE COURT Do it  
 (16) MR O NEILL Ladies and gentlemen Plaintiffs  
 (17) Exhibit 3 is a part of the oil spill contingency plan for  
 (18) Prince William Sound that was in effect at the time of the  
 (19) spill It had been promulgated by Alyeska Pipeline Service  
 (20) Company of which Exxon Pipeline Company a division of  
 Exxon  
 (21) is an approximate 20 percent owner The plan was approved  
 by  
 (22) the State of Alaska Department of Environmental Conservation  
 (23) and the federal government as required by law There are two  
 (24) portions in addition to the cover page which have been  
 (25) admitted The first two portions are pages 3 through 7<sup>1/2</sup> are

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- (1) pages 3 7 through 3 8 and 3 24 through 3 43 It describes the  
 (2) concept exclusion action under the contingency plan  
 (3) It contains a map of exclusion sites a map of Prince  
 (4) William Sound and the dots are sensitive areas listed and  
 (5) describes 136 exclusion sites listed on the map  
 (6) The second part of the plan is the 200 000 barrel spill  
 (7) scenario and contains paragraphs relating to assumptions  
 (8) conditions and immediate response actions And  
 environmental  
 (9) considerations  
 (10) Defendants Exhibit 3901A is a May 1 1986 letter from Paul  
 (11) O Brien manager for oil pollution control of the State of  
 (12) Alaska Department of Environmental Conservation to Alyeska  
 In  
 (13) the letter Mr O Brien asked Alyeska to develop three  
 (14) scenarios for its Prince William Sound contingency plan  
 (15) including that for a 200 000 barrel spill  
 (16) MR O NEILL Ladies and gentlemen you will have both  
 (17) exhibits with you in the jury room in their entirety This  
 (18) brief display has allowed us to introduce them to you Thank  
 (19) you  
 (20) Your Honor again with the agreement of the defendants we  
 (21) would like permission to publish Exhibit 268 to the jury It  
 (22) is a videotape If there s no objection Your Honor we d like  
 (23) to play seven and a half minutes of 268 and the seven and a  
 (24) half minutes have been agreed to with the defendants  
 (25) MR SANDERS That is correct No objection Your

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- (1) Honor  
 (2) THE COURT Fine proceed  
 (3) THE COURT Do you want it reported? Or - well it s  
 (4) an admitted exhibit It doesn t need to be reported  
 (5) MR O NEILL I don t think we need it reported do  
 (6) you?  
 (7) MR SANDERS I do not  
 (8) THE COURT It will not be reported  
 (9) (Videotape Played Exhibit 268)  
 (10) MR O NEILL Thank you Your Honor We have one last  
 (11) witness to call and she ll take about five minutes If we  
 (12) could take a stretch so we could set up the slide projector?  
 (13) Thank you Judge  
 (14) THE COURT We ll just stand in place but we ll be off  
 (15) the record for a moment  
 (16) THE CLERK Raise your right hand please  
 (17) (The Witness Is Sworn)  
 (18) THE CLERK Please be seated  
 (19) For the record state your full name give us your address  
 (20) and spell your last name please  
 (21) THE WITNESS My name is Natalie Fobes F o b e s  
 (22) I m from Seattle Washington  
 (23) THE CLERK Thank you  
 (24) DIRECT EXAMINATION OF NATALIE FOBES  
 (25) BY MR O NEILL

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- (1) Q And ma am what do you do for a living?  
 (2) A I m a freelance photographer  
 (3) Q And who do you sell your pictures to?  
 (4) A I work for a number of magazines including National  
 (5) Geographic Geo Newsweek U S News, Time, and a  
 number of  
 (6) other smaller magazines in addition to some companies  
 (7) Q At or about the time of the spill of the Exxon Valdez did  
 (8) you have occasion to take some photographs of the vessel?  
 (9) A Yes I did  
 (10) Q And when was that?  
 (11) A I arrived in Valdez on the -- the day after the spill,  
 (12) which was the 25th of March 1989, and I left about a month  
 (13) later, the first time And then I came back after about a  
 week  
 (14) break for about another month  
 (15) Q Exhibit 228 which have been admitted are your slides  
 (16) And rather than ask you a bunch of questions we d just like  
 (17) you to run the slide projector and tell us what the slides are  
 (18) and then that ll be the end of your testimony  
 (19) A Oh great I m a little nervous  
 (20) Q How can you cross examine a slide projector?  
 (21) A I been worrying about it  
 (22) MR O NEILL Tom could we get the lights down?  
 (23) THE WITNESS I guess we should probably turn it on  
 (24) sorry  
 (25) MR SANDERS Well I object to that Your Honor

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- (1) THE WITNESS This photograph was taken on the 26th  
 (2) which was Easter Sunday It shows of the Alyeska Terminal  
 (3) where my understanding is that they load the tankers with the  
 (4) oil  
 (5) This was taken the day after the spill which was the 25th  
 (6) and was taken in the afternoon I had chartered an aircraft  
 (7) fixed wing aircraft for a couple hours in the afternoon  
 (8) Let me focus that  
 (9) The larger tanker is the Exxon Valdez and there s a tanker  
 (10) next to it which is off loading or where the oil is being  
 (11) off loaded onto that tanker  
 (12) You also might want to take a look at the boat that is  
 (13) leaving a clean water wake through the oil and the  
 (14) discoloration on top of the water is all oil  
 (15) You ll notice quite a bit of photographs from just flying  
 (16) around and that s part of my job is to get as many different  
 (17) angles and as many different aspects of it so again looking  
 (18) back the first island there that kind of the long skinny one  
 (19) is Reef Island and then behind that is Bligh Island and  
 (20) again you can see that same boat leaving that wake through  
 (21) the  
 (22) oil And the thick - thickness of oil varies depending on  
 (23) where it is at that point Again this is the day after the  
 (24) spill  
 (25) The edge of Reef Island is that land over there and again  
 (26) that same boat going through the oil The oil one of the

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- (1) reasons that I take a lot of different photographs from  
 (2) different angles is so that I can really get an idea of what s  
 (3) going on where and in this photograph in particular you can  
 (4) see that the oil has hit the beach on Reef Island All of  
 (5) these photographs were taken above 1500 feet because Coast  
 (6) Guard had asked that - or I guess it wasn t - they weren t  
 (7) asking us the pilots they were actually telling the pilots  
 (8) not to go below 1500 feet and our pilot of course complied  
 (9) with that regulation But even at that altitude the fumes  
 (10) were nauseating and after a while I developed a headache  
 (11) MR SANDERS Your Honor can we just restrict this to  
 (12) her explaining what s in the picture?  
 (13) THE COURT I think probably that would be a good  
 (14) idea  
 (15) A (Continuing) Here again you can see the Reef Island with  
 (16) the oil coming off of the beach there and the various  
 (17) thicknesses of the oil, and again, that same boat going  
 (18) through  
 (19) the oil leaving the clean water wake behind  
 (20) Again, looking back toward Reef Island and Bligh Island  
 (21) and  
 (22) In this photograph, you can see that the oil is in between  
 (23) the - the islands at that point  
 (24) A little bit further back shot These were all taken,  
 (25) again, at 1500 feet, and using a wide angle lens trying to  
 (26) show  
 (27) as much of the spill as possible, but that wasn t possible for  
 (28) me to do I couldn t see the end of the spill

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- (1) And again, a little bit different angle looking back toward  
 (2) the ship the two tankers there and the clean water wake  
 (3) the  
 (4) boat is now out of the photograph  
 (5) The oil, the thickness of the oil varied on the top of the  
 (6) water and that gives the discoloration of it  
 (7) The clean water wakes kind of form a triangle and you can  
 (8) see that in the darker shade, which - right there that you  
 (9) can actually see the wake going through that dark spot  
 (10) indicating that it is oil  
 (11) And again, a little bit further back taking a little bit  
 (12) more of a look at it the oil continues on throughout the  
 (13) bottom of the frame and as I said before I could not see the  
 (14) end of the oil slick at that point  
 (15) This shows - this is taken with a more of a telephoto  
 (16) lens, like an 85 millimeter, and it shows the boom that was  
 (17) in  
 (18) place at that point around the two ships And you can see  
 (19) the  
 (20) oil at the - the down current end of the boom, but obviously  
 (21) the boom is not holding the oil in in place within itself  
 (22) A little bit further back showing the oil tendrils coming  
 (23) out from the boom and the oil continuing out throughout the  
 (24) frame, throughout the photograph  
 (25) This shows a little bit more of the way the off loading was  
 (26) happening and the thickness of the oil right around the  
 (27) tankers  
 (28) Again, a little bit further back

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- (1) There s that same clean water wake through the oil These  
 (2) tankers, I have no idea how big they are, but they are very  
 (3) very big, and in these photographs they may look a little  
 (4) small  
 (5) but again, that was because I was trying to show the scope  
 (6) of  
 (7) the oil  
 (8) This was taken on the next day It was a beautiful Easter  
 (9) Sunday, and I went out early in the morning, just crystal  
 (10) clear  
 (11) conditions, and you can see the difference in the coloration  
 (12) of  
 (13) the water and the thick, thick oil that s going from the  
 (14) tankers the same two tankers that were there Also the  
 (15) discoloration on top of the water is all oil at this point  
 (16) The white things there are pieces of ice and we re again  
 (17) looking back toward Bligh Reef - or, I m sorry, toward Bligh  
 (18) Island and Reef Island  
 (19) Sorry about the shakiness  
 (20) This shows a little bit more of the booming, the boom and  
 (21) how the oil has down stuck in the boom a little bit but also is  
 (22) traveling out throughout the boom The boom wasn t  
 (23) holding,  
 (24) wasn t containing the oil at this point  
 (25) And again, a little bit further view showing a little bit  
 (26) more of the scope of the oil with the tankers on the reef  
 (27) there And the dark oil leading from the tankers off into the  
 (28) dark blue, the bottom of the frame  
 (29) That s it  
 (30) MR SANDERS I have one question if you through

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- (1) MR O NEILL I m done go ahead  
 (2) CROSS EXAMINATION OF NATALIE FOBES  
 (3) BY MR SANDERS  
 (4) Q Do you happen to remember the name of the vessel the  
 (5) smaller vessel that was off loading the oil from the Valdez?  
 (6) **A I can t recall it right now I can look in my notes and**  
 (7) **see if it s in my notes**  
 (8) Q What about the Exxon Baton Rouge?  
 (9) **A Sounds familiar but again I d want to check my notes**  
 (10) MR SANDERS I have nothing further  
 (11) MR O NEILL I didn t either  
 (12) Thank you ma am  
 (13) THE COURT Thank you you may step down  
 (14) (The Witness Stepped Down )  
 (15) THE COURT Mr O Neill just before we started up  
 (16) Mr Murtiashaw asked me a question about Exhibit - I think  
 (17) it s 3902 A We aren t clear as to whether that one has been  
 (18) admitted or not  
 (19) MR O NEILL 3902 A?  
 (20) MR LYNCH Yes it is  
 (21) THE COURT I m assuming that that s a plaintiffs  
 (22) exhibit number  
 (23) MR O NEILL It is 3902 A  
 (24) MR LYNCH Such as they are Your Honor our records  
 (25) do not indicate that it has not been admitted

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- (1) THE CLERK This is the one in conjunction with  
 (2) Plaintiffs Exhibit 3 Didn t you indicate it was 39902 A  
 (3) Defendants Exhibit  
 (4) THE COURT No no No I understood it was a  
 (5) Plaintiffs exhibit  
 (6) MR JAMIN I think - I know what it is Your Honor  
 (7) MR O NEILL Oh the letter is Defendants Exhibit  
 (8) 3902 A  
 (9) MR JAMIN And that is admitted by agreement  
 (10) MR O NEILL That is admitted by agreement  
 (11) MR LYNCH Yes sir  
 (12) THE COURT If not before then now Defendants 3902 A  
 (13) is admitted  
 (14) (Exhibit Defendants 3902A received)  
 (15) MR O NEILL The Plaintiffs rest Your Honor  
 (16) MR LYNCH And we ll defer any motion and I think  
 (17) we re ready to call our first witness  
 (18) MR CHALOS It s nice to be back Your Honor  
 (19) THE COURT Mr Chalos nice to have you here  
 (20) MR CHALOS Defendants call for their first witness  
 (21) Jerzy Glowacki  
 (22) THE CLERK Raise your right hand sir  
 (23) (The Witness Is Sworn)  
 (24) THE CLERK Please be seated  
 (25) For the record state your full name your address and

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- (1) spell your last name please  
 (2) THE WITNESS My name is Jerzy Glowacki I reside in  
 (3) Raleigh North Carolina and the spelling is J e r z y  
 (4) G l o w a c k i  
 (5) THE CLERK Thank you sir  
 (6) DIRECT EXAMINATION OF JERZY GLOWACKI  
 (7) BY MR CHALOS  
 (8) Q Hello Mr Glowacki  
 (9) **A Good morning**  
 (10) Q What is your present occupation?  
 (11) **A I m presently self employed and I m also on the faculty of**  
 (12) **an engineering department at State University of New York**  
 (13) **Maritime College**  
 (14) Q What is your present employment?  
 (15) **A As self employed?**  
 (16) Q Yes  
 (17) **A Yes I do consulting work in the maritime engineering**  
 (18) **field**  
 (19) Q How long have you been doing that?  
 (20) **A Since 1990**  
 (21) Q And how long have you been in an instructor at Maritime  
 (22) College?  
 (23) **A Since about two years ago**  
 (24) Q Can you give us just briefly your educational background?  
 (25) **A I graduated from State University of New York maritime**

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- (1) **college in 1970 with a bachelor of engineering degree**  
 (2) Q That s Fort Schuyler is it not?  
 (3) **A Yes, it is**  
 (4) Q As opposed to Kings Point?  
 (5) **A That s correct**  
 (6) Q Mr O Neill said the other day that Kings Point was the top  
 (7) shelf - is that what you called it?  
 (8) MR O NEILL I hope so  
 (9) MR CHALOS Something like that  
 (10) BY MR CHALOS  
 (11) Q How do you feel about Fort Schuyler as a maritime college?  
 (12) **A Well Fort Schuyler is the only academy both federal and**  
 (13) **state that gives accredited degrees**  
 (14) Q College degrees?  
 (15) **A College degrees**  
 (16) Q So we re smarter than the Kings Pointers right?  
 (17) **A I hope so**  
 (18) Q Can you tell us a little bit about your employment  
 (19) background starting with after you graduated college?  
 (20) **A I was given employment by Exxon in 1970 following**  
 (21) **graduation and I joined Exxon the day after graduation**  
 (22) Q And you worked with Exxon until when December of 1990  
 (23) you  
 (24) said?  
 (25) **A That s correct**  
 (25) Q What did you do for Exxon in that period of 20 years?



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- (1) **A Most of the time I was involved in the fleet I sailed in engineering positions and out of the 20 years I spent perhaps five or more years in special office and shoreside assignments**
- (4) Q Let s start with your seagoing career I take it you started out as a third assistant engineer?
- (6) **A That s correct**
- (7) Q Is that a license that you received from the Coast Guard upon graduation from -
- (9) **A Upon graduation from any academy, graduates receive a third engineer s or third mate s license that s correct**
- (11) Q And in your case you received a third engineer s license?
- (12) **A That s correct**
- (13) Q Did there come a time when you advanced that license to a second engineer s license?
- (15) **A Perhaps two years later**
- (16) Q That would be 1972?
- (17) **A Correct**
- (18) Q You sailed for two years as a third assistant engineer?
- (19) **A That is correct**
- (20) Q And did there come a time when you advanced to the second engineer s license to a first engineer s license?
- (22) **A That s correct That took approximately three years**
- (23) Q That would be 1975?
- (24) **A In that ballpark, yes**
- (25) Q Did you sail for those three years?

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- (1) **A Yes, I did**
- (2) Q As a second assistant?
- (3) **A Both second and third**
- (4) Q Okay And did there come a time when you advanced that first assistant s license to a chief engineers?
- (6) **A Yes I did I received my chief engineer s license in the latter part of 77**
- (8) Q What is the - what is that license that you hold presently - strike that Let me back up
- (10) Do you still hold that license?
- (11) **A Yes, I do**
- (12) Q Same license since 1977?
- (13) **A That s correct**
- (14) Q And what is that license?
- (15) **A It s a chief engineer of motor vessels and steam vessels unlimited horsepower**
- (17) Q Is there a difference between steam and diesel?
- (18) **A Yes, Coast Guard differentiates between the two different types of propulsion and different tests are given to applicants for the licenses, that s correct**
- (21) Q And you hold both a chief engineer s license for steam vessels and chief engineer s license -
- (23) **A That s correct**
- (24) Q - for motor or diesel vessels?
- (25) **A That s correct**

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- (1) Q The Exxon Valdez was a diesel vessel was it not?
- (2) **A It was a diesel vessel yes**
- (3) Q Now you stated that you did - in addition to sailing for Exxon you did some special projects for them?
- (5) **A That s correct**
- (6) Q What kind of special projects?
- (7) **A I worked for six months in the shipping company s marine department at the time office in Baton Rouge as a so called transportation allocator That was in 1972 Then I was transferred for one year 81 through 82 to our office in Benicia as an engineering analyst I spent roughly a year in 82 83 in Louisiana and New Orleans when we were building three motor tankers there at the time Then I was involved in for about six months in a design - latter design stages of the Exxon Valdez, and then I was a machinery superintendent during construction of the Exxon Valdez and the sister ship, the Exxon Long Beach**
- (18) Q Let me ask you about the construction projects that you were involved with That s three different construction projects?
- (21) **A That s correct**
- (22) Q The first one involved the Exxon Benicia is that what you said?
- (24) **A Yes that was in 1979**
- (25) Q And the other one involved you said three diesel

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- (1) vessels Which vessels were those?
- (2) **A These were the Exxon Charleston Exxon Wilmington and Exxon Baytown**
- (4) Q And how much time did you spend during their construction working on the construction project?
- (6) **A In 1979 with the Exxon Benicia was only in the shipyard for maybe two three months prior to delivery of the vessel I was there in the position of the chief engineer In 82 83 I was also assigned as a - in a position of chief engineer to the Wilmington I was there approximately a year**
- (12) Q And you said you also worked in the construction of the Exxon Long Beach and Exxon Valdez?
- (14) **A That s correct**
- (15) Q How long were you in - what did you do in regards to that?
- (17) **A As I said I was in Houston late 84 for approximately six months I was involved in the latter stages of the machinery design, planning and then we moved to San Diego where the vessels were built when the construction started**
- (21) Q I see With respect to the machinery design you had a hand in designing the engine of this vessel?
- (22) **A No**
- (24) Q This auxiliary machinery?
- (25) **A I m sorry?**

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- (1) Q The auxiliary machinery is that what you're talking about?  
 (2) A Some, yes  
 (3) Q Now were you present during the construction of the vessel?  
 (4) A I was  
 (6) Q The entire time?  
 (7) A That's correct  
 (8) Q Let me ask you this. In the years that you worked for Exxon, did they ever send you to any courses?  
 (9) A I attended many courses, yes  
 (11) Q What type of courses were you sent to?  
 (12) A I attended several courses in Kings Point  
 (13) Q The other school?  
 (14) A That's correct  
 (15) Q That's right, okay  
 (16) A I also attended many courses given by different manufacturers of marine type equipment, engine manufacturers, that type of thing  
 (19) Q And this was - these were courses that Exxon sent you to at their expense?  
 (21) A That's correct  
 (22) Q These were intended to increase your knowledge of - of new products and how new products worked?  
 (24) A I wouldn't say new products. These are courses to further our professionalism basically

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- (1) Q Did Exxon do that for other chief engineers besides yourself?  
 (2) A Yes  
 (4) Q And first engineers as well?  
 (5) A Yes, I believe so  
 (6) Q Now once the Exxon Valdez was constructed, did you sail on her as a chief engineer?  
 (8) A Yes, I sailed on her from the maiden voyage on that's correct  
 (9) Q When did the vessel come out of the yard?  
 (11) A Mid December '86. I don't recall the exact date  
 (12) Q And you were the permanent chief engineer on that vessel from 1986 until the grounding?  
 (14) A One of the two, that's correct  
 (15) Q Who was the other chief engineer?  
 (16) A Chuck Kimtli  
 (17) Q Now when was the first time that you sailed with Captain Hazelwood?  
 (18) A About a month after I joined the vessel in 1989  
 (20) Q Well when did you join the vessel in 1989?  
 (21) A Sometime in January 1989  
 (22) Q So would mid February sound about right?  
 (23) A It's very possible, yes  
 (24) Q Was that the first time you sailed with Captain Hazelwood in your 20 year career?

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- (1) A That is correct  
 (2) Q You were already on board when Captain Hazelwood arrived?  
 (3) A That's correct  
 (4) Q Now between mid February when you first encountered Captain Hazelwood and the day of the grounding - let's say March 22nd so we're clear - from mid February to March 22nd, did you have occasion to interact with Captain Hazelwood on a daily basis?  
 (8) A Continuously  
 (10) Q Did you see him more than once a day?  
 (11) A Yes  
 (12) Q Did you ever drink with Captain Hazelwood during that period that we just talked about?  
 (14) A No, I did not  
 (15) Q Did you ever see Captain Hazelwood drink aboard the ship during that period of time?  
 (17) A I did not  
 (18) Q Did you ever see Captain Hazelwood impaired or intoxicated at all during that time?  
 (20) A I did not  
 (21) Q Did you have occasion during that period of time to go into his office?  
 (23) A Many times  
 (24) Q Did you ever see any evidence of alcohol use by Captain Hazelwood while you were in his office?

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- (1) A No, I did not  
 (2) Q Did you see any containers or - or liquor bottles or anything like that?  
 (4) A No, excuse me. I don't recall anything of that nature.  
 (5) Q Now you were in charge during that period of time of the engine department, were you not?  
 (7) A That's correct  
 (8) Q And under you was the first assistant. What was his name?  
 (9) A At that time, it was Ray Jones  
 (10) Q And who was the second assistant?  
 (11) A Graeme Oldham  
 (12) Q And who was the third assistant?  
 (13) A Katherine Haven  
 (14) Q There's been some testimony here by Ms. Haven that there were parties on board the Exxon Valdez during that period of time. Did you ever see any parties on the Exxon Valdez in the engineering department?  
 (18) A I did not  
 (19) Q Did you ever see any parties at all?  
 (20) A No, I didn't  
 (21) Q Did you ever see Mr. Oldham, Mr. Jones or Ms. Haven drinking on board the vessel?  
 (22) A No  
 (24) Q Did you ever see Captain Hazelwood socializing with those three in a drinking party?

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- (1) **A No**  
 (2) **Q Did you ever hear of anything like that?**  
 (3) **A No**  
 (4) **Q You have a chance to interact as the head of the**  
 (5) **engineering department with Mr Oldham Mr Jones and Ms**  
 (6) **Haven on a daily basis?**  
 (7) **A Continuously, yes**  
 (8) **Q Did you ever see any of them under the influence of**  
 (9) **alcohol?**  
 (10) **A Not that I could determine no**  
 (11) **Q You worked pretty closely with them in the engine room**  
 (12) **didn t you?**  
 (13) **A Worked very closely**  
 (14) **Q Okay I d like to go - Mr Glowacki I d like to direct**  
 (15) **your attention to say mid March of 1989 when the vessel was**  
 (16) **in San Francisco Do you remember that period?**  
 (17) **A Yes**  
 (18) **Q Okay you had some problems with the engine did you not?**  
 (19) **A I had a - we had problems with the main engine**  
 (20) **turbochargers, yes**  
 (21) **Q Tell us a little bit about that You re the chief**  
 (22) **engineer so you re in a position to tell us What happened?**  
 (23) **A Well, the sister vessel the Exxon Long Beach, had severe**  
 (24) **problems with the turbochargers prior, let s say couple**  
 (25) **months prior to that period and manufacturer of the turbochargers**

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- (1) **came back - as a result of these problems on the sister**  
**ship**  
 (2) **came back to Exxon with a proposed modification to the**  
 (3) **turbochargers and however the Exxon Valdez really had**  
**not had**  
 (4) **any of the same problems that the Long Beach had had**  
 (5) **After the modifications were made on the Exxon Long**  
**Beach,**  
 (6) **it was decided to perform the same modifications on Exxon**  
 (7) **Valdez whether we needed them or not, they were**  
**performing**  
 (8) **One turbocharger was completely overhauled and**  
 (9) **modifications were made I d say early February or**  
**something of**  
 (10) **that sort, so at that time we had - one turbocharger was**  
 (11) **overhauled and one as originally built, and then the period**  
**of**  
 (12) **time I assume you re talking about in San Francisco again**  
**was**  
 (13) **when the second turbocharger was modified And -**  
 (14) **Q Mr Glowacki?**  
 (15) **A Yes**  
 (16) **Q Sorry I know I went to that smart school but I don t**  
 (17) **know what turbochargers are Can you tell us?**  
 (18) **A Okay**  
 (19) **Q What do they do?**  
 (20) **A It s a exhaust -**  
 (21) **Q Do you know?**  
 (22) **A I m sorry?**  
 (23) **Q Do you know?**  
 (24) **A I hope so**  
 (25) **Q I hope so too**

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- (1) **A It s an exhaust gas driven turbine which also has a**  
 (2) **compressor or another turbine wheel attached on the other**  
**end**  
 (3) **of the shaft which compresses air which is used in a**  
**combustion**  
 (4) **process in the engine**  
 (5) **Q Sounds good to me**  
 (6) **So you fixed - you overhauled the turbochargers and then**  
 (7) **what happened?**  
 (8) **A After we finished discharging cargo, we were going to go**  
**to**  
 (9) **Valdez to - another voyage, pick up another load We left**  
 (10) **anchorage and after we got out the gate Golden Gate -**  
 (11) **Q Anchorage you re talking about the anchorage in San**  
 (12) **Francisco?**  
 (13) **A In San Francisco, that s right**  
 (14) **Q Not the Anchorage in Alaska?**  
 (15) **A Right**  
 (16) **Q Go ahead**  
 (17) **A Discharged the cargo in San Francisco all of the cargo**  
**was**  
 (18) **lightered we were proceeded to start our voyage to Valdez**  
 (19) **And after we dropped the pilot off in San Francisco, instead**  
**of**  
 (20) **speeding up to sea speed we started experiencing severe**  
 (21) **turbocharger vibrations**  
 (22) **Q Were you in the engine room at the time?**  
 (23) **A That s correct**  
 (24) **Q What did you do?**  
 (25) **A Well we investigated the situation and perhaps after -**

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- (1) **Initially I thought could be a transient a different rpm of**  
 (2) **the turbocharger or different conditions they might go**  
**away,**  
 (3) **and after a short period of time seeing that it wasn t going**  
 (4) **away I called the captain and told him that we re having**  
 (5) **problems and we have to go back in**  
 (6) **Q That s Captain Hazelwood?**  
 (7) **A That s correct**  
 (8) **Q What did Captain Hazelwood say to you?**  
 (9) **A Okay**  
 (10) **Q And did you in fact go in?**  
 (11) **A We turned the ship around we called the company and**  
**told**  
 (12) **them we re going back to anchorage**  
 (13) **Q You called the company?**  
 (14) **A We made contact I don t remember exactly whether it**  
**was**  
 (15) **Captain Hazelwood or both of us but we did notify the**  
**company**  
 (16) **that we were turning the ship around, we re going back to**  
 (17) **anchorage and that we will require representatives of the**  
 (18) **turbocharger and manufacturers to meet us in anchorage**  
**when we**  
 (19) **landed**  
 (20) **Q Did that happen? Did the representatives come down?**  
 (21) **A That is correct**  
 (22) **Q Okay Did there come a time when the problem was**  
 (23) **corrected?**  
 (24) **A Well, they performed some repairs, changed some parts**  
**You**  
 (25) **want me to go into specifics?**

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- (1) Q No no no it's okay I just want to move along I want to  
 (2) get on this voyage  
 (3) A Yes  
 (4) Yes, they changed some parts There was evidence of  
 severe  
 (5) wear on the bearings, and put new bearings in and after I  
 (6) don't know, perhaps 24 hours we decided to start our  
 voyage  
 (7) again  
 (8) Q Okay What happened then?  
 (9) A We left anchorage again, and this time we didn't get past  
 (10) Alcatraz Island until same thing, same thing occurred, so  
 (11) again we turned the ship back around, back to anchorage  
 Same  
 (12) scenario  
 (13) Q Okay And ultimately that problem was corrected?  
 (14) A Well, the second time we didn't just look at the bearings,  
 (15) we disassembled the entire turbochargers and the rotor to  
 shore  
 (16) up the balancing, and it was much lengthier a process  
 (17) Q How long did the entire process take of repairing whatever  
 (18) the problem was?  
 (19) A From the first - from the first attempt of trying to  
 (20) leave? From the first attempt of trying to leave San  
 Francisco  
 (21) to the time we finally did leave was approximately six days  
 (22) Q There's been some suggestion here that when your vessel  
 (23) sailed when the vessel sailed finally after the problems were  
 (24) corrected that she was running behind schedule Is that  
 (25) correct?

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- (1) A Not that I'm aware of it no  
 (2) Q Why do you say that?  
 (3) A I don't follow you I'm sorry  
 (4) Q In other words was the vessel five days or six days behind  
 (5) schedule at that point or had there been other arrangements  
 (6) made to send another vessel in your place?  
 (7) A There probably would have been yes because we were  
 out of  
 (8) service for six days, and if there was cargo consigned to us  
 (9) it was Exxon's obligation to provide the tonnage to lift it  
 (10) yes So some other arrangements would have to be made  
 that's  
 (11) true  
 (12) Q Is it your understanding that your vessel was taken out of  
 (13) rotation at that point and another ship was substituted for the  
 (14) Valdez?  
 (15) A It wasn't my understanding at the time, but that was the  
 (16) procedure one would have to follow if there was cargo  
 (17) available, that's correct  
 (18) Q So based on your understanding then when you left San  
 (19) Francisco you were in a different rotation for another load  
 (20) not the load that you were originally destined for?  
 (21) A That's a realistic assumption, yes  
 (22) Q Okay Mr Glowacki I'd like to go now to March 22nd  
 (23) 1989 The vessel arrived on the - in Valdez on the evening of  
 (24) March 22nd am I correct?  
 (25) A That's correct

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- (1) Q Okay And I take it once the vessel was tied up you went  
 (2) to bed?  
 (3) A Yes  
 (4) Q All right You woke up the next day I take it March  
 (5) 23rd?  
 (6) A That's correct  
 (7) Q Did you have any discussions with Captain Hazelwood about  
 (8) going ashore?  
 (9) A Yes, we discussed going ashore to the agent's office We  
 (10) had some business to take care of, communicate -  
 telephone  
 (11) calls - telephone calls to the office yes  
 (12) Q Did you have that discussion with Captain Hazelwood?  
 (13) A That's correct  
 (14) Q Did he indicate to you that he needed to go ashore to take  
 (15) care of some business?  
 (16) A That's correct  
 (17) Q And did you tell him that you had some business to take  
 (18) care of as well?  
 (19) A That's correct  
 (20) Q What was your plan at this point after you had this  
 (21) discussion?  
 (22) A We planned to leave the vessel somewhere between 10  
 11 00  
 (23) and go to the agent's office in Valdez  
 (24) Q Did that in fact happen?  
 (25) A That's correct

Vol 17 2715

- (1) Q Tell me what time did you physically leave the vessel?  
 (2) A We left the vessel somewhere around 10 30 in the  
 morning  
 (3) Q What we're talking about now is you stepping on the  
 (4) gangway the gantry?  
 (5) A Yes leaving the vessel yeah  
 (6) Q All right Was - before you left the vessel before you  
 (7) started going up the gangway did you happen to notice  
 whether  
 (8) there was a sailing board?  
 (9) A Yes there was  
 (10) Q There was a sailing board posted?  
 (11) A That's correct  
 (12) Q Could you tell please the ladies and gentlemen of the  
 (13) jury what a sailing board is?  
 (14) A A sailing board is a physical board on which there are  
 (15) certain legends, such as the name of the vessel, the date  
 the  
 (16) vessel will sail, the destination of the vessel, and what time  
 (17) the crew is to be back on board, and that's usually posted  
 by  
 (18) the gangway where one either comes on or off the vessel  
 (19) Q On the morning of March 23rd as you were about to depart  
 (20) the vessel did you happen to look at the sailing board?  
 (21) A Yes  
 (22) Q What was the sailing time that was shown on there?  
 (23) A It was 9 00 p m 2100  
 (24) Q Now after you got off the vessel you went up the gantry  
 (25) right came down on the other side? You walked down the long

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- (1) jetty?  
 (2) **A That s correct**  
 (3) Q Okay What happened when you got to the end of the jetty?  
 (4) **A Captain Hazelwood made arrangements with one of the pilots**  
 (5) **to give us a ride into town and I believe we waited for him for a little bit**  
 (7) Q At the end of the jetty?  
 (8) **A That s correct**  
 (9) Q Did anyone besides yourself and Captain Hazelwood decide to  
 (10) go to town?  
 (11) **A Yes the officer radio operator**  
 (12) Q That was Mr Roberson?  
 (13) **A That s correct**  
 (14) Q What was he going to do in town?  
 (15) **A He just came along with us and had opportunity to get a free ride into town**  
 (17) Q Now you say you were picked up by a pilot?  
 (18) **A That s correct**  
 (19) Q Do you remember his name?  
 (20) **A Bradford I never met him prior to that time**  
 (21) Q Let me suggest a name Bradley?  
 (22) **A Fine**  
 (23) Q That sound correct?  
 (24) **A Fine**  
 (25) Q Where did Mr Bradley take you after he picked you up in

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- (1) his car?  
 (2) **A He took us to - obviously out of the terminal into downtown Valdez to our agent s office Alaska Maritime Services**  
 (5) Q Before we get to the Alaska Maritime Office you checked out through the gate I take it?  
 (7) **A That s right**  
 (8) Q When you got to the gate did you have to log out?  
 (9) **A I don t recall physically signing out no Or individually signing out**  
 (11) Q Do you remember what time you left the gate?  
 (12) **A It had to be shortly before 11 00**  
 (13) Q We have evidence here and we put it up before that you left at 10 59 Does that comport with your recollection?  
 (15) **A It is with the sign out sheets, yes**  
 (16) Q Now you said you went to the Alamar office Did you go to the Alamar office directly?  
 (18) **A That s correct**  
 (19) Q You were driven by Pilot Bradley directly to the Alamar office?  
 (21) **A That is right**  
 (22) Q All three of you?  
 (23) **A That s right**  
 (24) Q What did you - what did you do when you got to the Alamar office?  
 (25)

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- (1) **A Their office on the second story, so we all went to their office and they provided us with a couple desks where we could**  
 (3) **use the phones and Captain Hazelwood proceeded to make his**  
 (4) **phone calls and I proceeded to make my phone calls, plus I had**  
 (5) **some lubricating oil samples from the turbochargers that I had**  
 (6) **to have Fed Ex d to San Francisco for analysis and that was basically the nature of the business what I had to do there**  
 (7) **Q Did Pilot Bradley go up to the Alamar offices with you?**  
 (9) **A I don t recall He didn t stay with us If that s what you mean**  
 (11) Q Yes that s what I was driving at  
 (12) **A No, I don t recall that**  
 (13) Q So the three of you got out of his car and walked upstairs to the Alamar office?  
 (14) **A That s correct**  
 (16) Q What time did you get to the Alamar office?  
 (17) **A Have to be about 11 30**  
 (18) Q And how long did you remain in the Alamar office?  
 (19) **A Approximately an hour**  
 (20) Q Till about 12 30?  
 (21) **A Correct**  
 (22) Q During that period of one hour did any of you leave the other site or to say it a different way did you all stay together?  
 (24) **A That s correct**  
 (25)

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- (1) Q You all stayed at the Alamar office?  
 (2) **A That s my recollection yes sir**  
 (3) Q Now you said you had to make some phone calls as well?  
 (4) **A That s correct**  
 (5) Q Who did you call?  
 (6) **A I called our repair superintendent out of the Benicia office, all regarded the turbochargers and I also called turbocharger manufacturer s representative And there might**  
 (9) **have been a couple others, I don t recall**  
 (10) Q And plus you made arrangements to send the samples by Federal Express?  
 (11) **A That s correct**  
 (13) Q So that whole thing took a period of time I take it and then you were waiting you said for Captain Hazelwood at this point to finish what he was doing?  
 (16) **A I was done with whatever I had to do earlier than Captain Hazelwood was yes**  
 (17) **Hazelwood was yes**  
 (18) MR CHALOS Your Honor this may be a good time  
 (19) THE COURT Take our second recess ladies and gentlemen We ll be in recess for 15 minutes  
 (20) gentlemen We ll be in recess for 15 minutes  
 (21) THE CLERK This court is in recess for 15 minutes  
 (22) (Jury out at 12 02 p m )  
 (23) (Recess)  
 (24) (Jury in at 12 17)  
 (25) THE COURT Mr Chalos

Vol 17 2720

- (1) MR CHALOS Thank you Your Honor  
 (2) BY MR CHALOS  
 (3) Q Mr Glowacki before we go back to the Alamar office I  
 (4) notice you speak with a slight brogue is that a Bronx accent?  
 (5) **A No, it s not a Bronx accents**  
 (6) Q Where were you born?  
 (7) **A I was born In Poland**  
 (8) Q You immigrated to the United States?  
 (9) **A I m sorry**  
 (10) Q Did you immigrate to the United States?  
 (11) **A That s correct I did**  
 (12) Q Just one more question When you left Exxon - in 1990  
 (13) you said?  
 (14) **A Yes I did**  
 (15) Q - was that a retirement on your part?  
 (16) **A I had the opportunity of taking 20 year retirement and I**  
 (17) **took it, yes**  
 (18) Q Okay back to the Alamar office when you were there for the  
 (19) one - one hour from 11 30 to 12 30 you said?  
 (20) **A Yes**  
 (21) Q Did there come a time when you overheard a radio  
 (22) transmission from the vessel regarding the sailing time?  
 (23) **A Yes, the vessel did get in touch with the agent and did**  
 (24) **notify the agent of a change in sailing time**  
 (25) Q From what to what?

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- (1) **A It was moved back one hour to 10 00**  
 (2) Q So when you left the Alamar office at 12 30 in the  
 (3) afternoon was it your understanding and Captain Hazelwood s  
 (4) understanding that the vessel s sailing time had been pushed  
 (5) back one hour to 10 00 from 9 00?  
 (6) **A Yes it was**  
 (7) Q Incidentally we spoke a little bit about the sailing  
 (8) board Is the sailing board the time that s listed on the  
 (9) sailing board for sailing is that something that people who  
 (10) are going ashore can rely on?  
 (11) **A It has been my experience that s correct**  
 (12) Q Okay So what happens that 12 30?  
 (13) **A Captain Hazelwood and Pilot Murphy made arrangements**  
 (14) **to**  
 (15) **have lunch together and myself and Mr Roberson were**  
 (16) **also**  
 (17) **invited to lunch**  
 (18) Q Did - Captain Murphy was a pilot up in Valdez was he not?  
 (19) **A Yes he was**  
 (20) Q Did there come a time when Captain Murphy picked you up  
 (21) the three of you up?  
 (22) **A After we got done with whatever we had to do at the**  
 (23) **agent s**  
 (24) **office, we went downstairs and we waited for Pilot Murphy**  
 (25) **to**  
 (26) **pick us up, that s correct**  
 (27) Q Where did you go downstairs?  
 (28) **A I m sorry**  
 (29) Q Where at the Alamar office?

Vol 17 2722

- (1) **A At the Alamar office**  
 (2) Q And did you wait in the parking lot?  
 (3) **A We waited in front of the office**  
 (4) Q Did you go anywhere else during that period of time while  
 (5) you were waiting for Pilot Murphy?  
 (6) **A No, we just stood outside the office downstairs**  
 (7) Q And did the three of you stay together?  
 (8) **A Yes, we did**  
 (9) Q And did Pilot Murphy come directly to pick you up at that  
 (10) point?  
 (11) **A I believe we waited a few minutes something of that**  
 (12) **order**  
 (13) **but yes, he did, did actually come and pick us up**  
 (14) Q And did he - did he drive you somewhere?  
 (15) **A We all - yes He drove us to the place where we was**  
 (16) **going**  
 (17) **to lunch**  
 (18) Q What was the name of that place?  
 (19) **A Pizza Palace**  
 (20) Q And did you in fact have lunch at the Pizza Palace?  
 (21) **A Yes we did**  
 (22) Q Did you drink anything at the Pizza Palace?  
 (23) **A Yes, I did**  
 (24) Q What did you drink?  
 (25) **A I had beer**  
 (26) Q How many beers?  
 (27) **A I believe two**

Vol 17 2723

- (1) Q How about Mr Roberson did he drink?  
 (2) **A I believe he also drank beer**  
 (3) Q How many beers?  
 (4) **A I don t know**  
 (5) Q Did Captain Hazelwood drink?  
 (6) **A Yes, he did**  
 (7) Q What did he drink?  
 (8) **A He had ice tea**  
 (9) Q Did he drink anything of an alcoholic nature?  
 (10) **A At the Pizza Palace?**  
 (11) Q Yes  
 (12) **A No he did not**  
 (13) Q How about Captain Murphy? Did he have any alcohol at the  
 (14) Pizza Palace?  
 (15) **A No he did not**  
 (16) Q How long did the lunch take?  
 (17) **A I would say slightly over an hour**  
 (18) Q Let me ask you this  
 (19) During this lunch that you said took slightly over an hour  
 (20) did any of the three of you get up and leave to go any place?  
 (21) **A No**  
 (22) Q You remained together?  
 (23) **A Yes, that s correct**  
 (24) Q All right After lunch was finished where did you go?  
 (25) **A Pilot Murphy took us back in his car to - back to the**

Vol 17 2724

- (1) **center of town**  
 (2) Q And all three of you?  
 (3) A That s correct  
 (4) Q Did he drop you off somewhere?  
 (5) A I believe there was a supermarket there in front of the  
 (6) supermarket, which is - to me is the center of town, Valdez  
 (7) Q To the best of your recollection about what time would  
 (8) that have been?  
 (9) A Around 2 00 or shortly after  
 (10) Q Now what did you do - did Pilot Murphy get out with you  
 (11) there or did he just drop the three of you?  
 (12) A I believe he just dropped us off  
 (13) Q What did the three of you do after you were dropped off?  
 (14) And I m talking now initially I don t want you to give me a  
 (15) long recitation We ll get into that  
 (16) A Seems I recall that we sort of hung loose there for a  
 (17) while, not knowing what to do, or to decide, and then  
**Captain**  
 (18) **said - Captain Hazelwood said he had something else to**  
**take**  
 (19) **care of, and I wanted to get some papers for the - I was**  
**asked**  
 (20) **prior to leaving the ship to get the newspapers for some of**  
**the**  
 (21) **other crew members, some of the engineers, and I don t**  
**recall**  
 (22) **Mr Roberson saying anything that he had to do**  
 (23) Q Okay How long did this discussion take?  
 (24) A Perhaps a few minutes  
 (25) Q Okay And did there come a time when you split up?

Vol 17 2725

- (1) A Then we decided to part, and we parted  
 (2) Q Did you have a general plan as to where you were going to  
 (3) meet up again?  
 (4) A Yeah prior to parting, we did say we d - we ll meet in  
 (5) the Pipeline Club  
 (6) Q Did you say about what time you would meet in the Pipeline  
 (7) Club?  
 (8) A Within a couple hours  
 (9) Q Was there any plan to meet there at any specific time?  
 (10) A I don t -  
 (11) Q Or around a specific time?  
 (12) A I m sorry?  
 (13) Q Or around a specific time?  
 (14) A I don t recall any specifics being talked about, no  
 (15) Q Now did you walk away from the other two at that point?  
 (16) A Yes, I did  
 (17) Q Where did you go?  
 (18) A I believe I went to the drugstore, which also sells  
 (19) newspapers They didn t have any So I bought some news  
 (20) magazines, and then I was told that the only place you can  
 (21) buy  
 (22) papers in Valdez is from an automatic dispensers, so at the  
 (23) drugstore, I believe they told me where a couple of them  
 (24) could  
 (25) be located, and I proceeded to look for papers  
 (26) Q How long did that walk take you from the drugstore to  
 (27) wherever the papers -

Vol 17 2726

- (1) A Well I also went to - there s a hotel in Valdez  
 (2) Westmark, I believe or something of that sort  
 (3) Q The one down by the small boat harbor?  
 (4) A By the yacht basin in the small harbor yes  
 (5) Q Why did you go there?  
 (6) A I couldn t find newspapers anywhere else all the  
 (7) machines  
 (8) were empty, so I went over there and I hung around the  
 (9) harbor  
 (10) for a little while, just taking in the sights  
 (11) Q Anything else?  
 (12) A That s about it  
 (13) Q Okay did you eventually make your way to the Pipeline  
 (14) Club?  
 (15) A Yes, I did  
 (16) Q What time did you arrive there?  
 (17) A Approximately four in the afternoon  
 (18) Q So you walked around town? Is it your testimony you walked  
 (19) around town for about two hours?  
 (20) A About an hour and a half plus yes  
 (21) Q When you arrived at the Pipeline Club - you said about  
 (22) 4 00?  
 (23) A Yes  
 (24) Q Was that the first time you were in the Pipeline Club that  
 (25) day?  
 (26) A That day, yes  
 (27) Q Was there - was Captain Hazelwood or Mr Roberson in the

Vol 17 2727

- (1) Pipeline Club when you arrived?  
 (2) A No, they were not  
 (3) Q Did there come a time when Captain Hazelwood joined you  
 (4) at  
 (5) the Pipeline Club?  
 (6) A Yes He joined me about 20 minutes to half an hour after I  
 (7) showed up, after I went to the Pipeline  
 (8) Club  
 (9) Q What time would you say he came in?  
 (10) A Approximately 4 30  
 (11) Q Had you already ordered a drink by the time Captain  
 (12) Hazelwood arrived?  
 (13) A I did yes  
 (14) Q What did you order?  
 (15) A Gin and tonic  
 (16) Q Did you get a gin and tonic?  
 (17) A Yes, I did  
 (18) Q When Captain Hazelwood came in did he come over to  
 (19) speak  
 (20) to you?  
 (21) A Yes, he came toward me, that s correct  
 (22) Q Okay What did he say to you and what did you say to him?  
 (23) A I don t believe we said anything other than How you  
 (24) doing,  
 (25) something like  
 (26) Q Did he ask you if you wanted a drink?  
 (27) A I m sorry  
 (28) Q Did he ask you if you wanted a drink?  
 (29) A No, I still had the drink I ordered

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- (1) Q So he didn't buy you a drink at this point?  
 (2) A No I don't recall anything of that sort no  
 (3) Q Did Captain Hazelwood go up and order a drink for himself?  
 (4) A Yes, I believe so  
 (5) Q Did you hear what he ordered?  
 (6) A I believe he ordered vodka yes  
 (7) Q And did he come back with the vodka?  
 (8) A That's right  
 (9) Q Now you said about 20 minutes later Mr Roberson arrived?  
 (10) A He did, yes About 20 minutes after Captain Hazelwood  
 (11) Q At that point did Mr Roberson come over and ask you if  
 (12) you wanted a drink?  
 (13) A He might have, yes  
 (14) Q Do you remember what you said to him?  
 (15) A I don't believe we got around for it because we still had  
 (16) our drinks  
 (17) Q You were still working on your first drink at that point?  
 (18) A I might have been working on the second one, I don't  
 know  
 (19) Q How about Captain Hazelwood?  
 (20) A I don't recall  
 (21) Q Now when Mr Roberson arrived did he go up and order  
 (22) something to drink?  
 (23) A Yes, he did  
 (24) Q What did he order?  
 (25) A He ordered a beer

Vol 17 2729

- (1) Q Now did there come a time when there was another drink  
 (2) bought by either yourself or Captain Hazelwood?  
 (3) A Yes  
 (4) Q Let me ask you this How many drinks did you have in the  
 (5) Pipeline Club that day?  
 (6) A I believe it was three  
 (7) Q Three what gin and tonics?  
 (8) A Three gin and tonics  
 (9) Q How many drinks did Captain Hazelwood have in the  
 Pipeline  
 (10) Club?  
 (11) A I also recall three  
 (12) Q Do you remember what Mr Roberson had?  
 (13) A I don't remember how many beers he had, no  
 (14) Q Okay How long did you remain in the Pipeline Club?  
 (15) A We left approximately 7:30 - I'm sorry, around 7:00  
 (16) Q Okay now when you said Captain Hazelwood had three  
 (17) drinks -  
 (18) A Yes  
 (19) Q - were they three vodkas?  
 (20) A I would believe so yes  
 (21) Q Three single vodkas as best as you can recall?  
 (22) A I have no reason to believe anything else  
 (23) Q You're familiar with what a double glass looks like - when  
 (24) you order doubles?  
 (25) A I assume it's larger than a single

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- (1) Q The glass that Captain Hazelwood was drinking from was  
 (2) that a single glass as best you recall?  
 (3) A It was the same size mine was, yes  
 (4) Q And you were drinking singles?  
 (5) A Yes, that's correct  
 (6) Q Now did any of you during that period of time that you  
 (7) were together in the Pipeline Club - that is you and Captain  
 (8) Hazelwood were together you said from about 4:30 to  
 (9) approximately 7:00? Do you remember that?  
 (10) A Yes  
 (11) Q Okay Did either one of you ever leave the other's sight?  
 (12) A No  
 (13) Q Did anybody leave that place and go somewhere else during  
 (14) that period of time?  
 (15) A No  
 (16) Q How about when Mr Roberson arrived did any of you leave  
 (17) any of the three of you leave?  
 (18) A No, we did not  
 (19) Q Okay what did you do at 7:00?  
 (20) A We left the Pipeline Club and we were going to go back to  
 (21) the ship  
 (22) Q Your plan was to go back to the ship at that point?  
 (23) A That's correct However I asked Captain Hazelwood and  
 Mr  
 (24) Roberson if they wouldn't mind if we stopped over at the  
 Pizza  
 (25) Palace so I could buy a couple pizzas and bring them back  
 to

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- (1) the ship for the other engineers  
 (2) Q That was your suggestion?  
 (3) A That's correct  
 (4) Q The other two were ready to go back?  
 (5) A Well we were all ready to go back  
 (6) Q When you left the Pipeline Club - at approximately 7:00  
 (7) you said - what did you believe at that point was the sailing  
 (8) time of this vessel?  
 (9) A 10:00  
 (10) Q All right  
 (11) Now how long did it take you to go from the Pipeline Club  
 (12) to the Pizza Palace?  
 (13) A About 20 minutes  
 (14) Q What was the condition of the road do you remember?  
 (15) A It was winter It was icy and packed snow  
 (16) Q You guys were walking I take it carefully?  
 (17) A As one does on uneven icy slippery surface, yes  
 (18) Q Did any of the three of you have any problem negotiating  
 (19) the icy road to walk from the Pipeline Club to the Pizza  
 (20) Palace?  
 (21) A I don't believe so no  
 (22) Q Anybody stumble?  
 (23) A No  
 (24) Q Anybody fall?  
 (25) A No I don't recall anything like that



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- (1) Q When you left the Pipeline Club did you feel impaired?  
 (2) A No  
 (3) Q Did Captain Hazelwood appear impaired to you?  
 (4) A No  
 (5) Q Did Mr Roberson appear impaired?  
 (6) A No  
 (7) Q In addition to three drinks that you had at the Pipeline  
 (8) Club you also had two beers earlier in the afternoon right?  
 (9) A That s correct  
 (10) Q Now what happened when you got to the Pizza Palace?  
 (11) A Well, we were going to go inside so I could order the  
 (12) pizza, and I seem to remember the - lot of people standing  
 (13) around in the cashier s area where I was going to order the  
 (14) pizza so Captain Hazelwood and Mr Roberson did not go  
 in,  
 (15) they decided not to go in, they stayed outside, and I went in  
 to order the pizza  
 (16) Q How long did that process take?  
 (17) A Few minutes  
 (18) Q Okay Then what happened?  
 (19) A Well, I - I guess the - prior to them leaving, it was -  
 (20) I believe it was starting to drizzle, drizzle outside so they  
 (21) decided that I ll meet them next door, which was a bar, while  
 (22) we were waiting for the pizza  
 (23) Q Let me see if I understand this right You went in to  
 (24) order the pizza they were standing outside?  
 (25)

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- (1) A Right  
 (2) Q And some point they went into the Club Bar?  
 (3) A That s correct  
 (4) Q And then you went in and joined them?  
 (5) A That s correct  
 (6) Q What happened in the Club Bar?  
 (7) A After I walked back in there?  
 (8) Q Yes  
 (9) A Captain Hazelwood and Mr Roberson was sitting there at  
 the  
 (10) bar, and I joined them there  
 (11) Q Did the three of you order drinks?  
 (12) A I ordered a drink, and they had already ordered a drink  
 (13) prior to me arriving, that s correct  
 (14) Q And three drinks were served to the three of you?  
 (15) A Yes  
 (16) Q What did you order?  
 (17) A Another gin and tonic  
 (18) Q What did Captain Hazelwood order?  
 (19) A I wasn t there when he ordered  
 (20) Q How about Mr Roberson do you know what he ordered?  
 (21) A I believe he had a beer in front of him, so -  
 (22) Q Now did you finish your drink?  
 (23) A Not that one, no  
 (24) Q What was the answer?  
 (25) A Not that one, no

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- (1) Q What do you mean not that one ?  
 (2) A The one we just ordered  
 (3) Q You only ordered one drink is that right?  
 (4) A That s correct  
 (5) Q And you didn t finish the drink?  
 (6) A That s correct  
 (7) Q Why did you not finish the drink?  
 (8) A Well by the time we got the drinks that took - by the  
 (9) time I got the drink, that took a few minutes and by that time  
 (10) was about 15 minutes or so after I ordered the pizza, I went  
 (11) back to the - next door to the Pizza Palace to find out  
 (12) whether the pizza was ready and also I wanted to call a cab  
 (13) for us to go back to the ship to take us back to the ship  
 (14) Q And did you do that?  
 (15) A Yes, I did  
 (16) Q What happened?  
 (17) A When I went back to the Pizza Palace yes indeed the  
 pizza  
 (18) was ready and I asked the cashier to also call us a cab  
 which  
 (19) she did and I have to assume that cabs were in radio  
 contact  
 (20) and she told me there was a cab waiting outside, there  
 happened  
 (21) to be a cab outside where we were  
 (22) Q So the pizza and the cab were all there at the same time?  
 (23) A Almost happened simultaneously, that s correct  
 (24) Q Okay What did you do then?  
 (25) A I went got the pizzas and went, paid for the pizzas and

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- (1) went next door and told Captain Hazelwood and the radio  
 officer  
 (2) that Cab is here let s go  
 (3) Q Do you know whether or not either one of them finished  
 (4) their drink?  
 (5) A I don t believe so I have no way of knowing  
 (6) Q Do you know whether either one of them even started their  
 (7) drink?  
 (8) A Again, I have no way of knowing  
 (9) Q But you know you didn t finish your drink?  
 (10) A Yes Yes I do know I did not finish my drink  
 (11) Q What happened when the taxi picked you up? Where d you  
 go  
 (12) next?  
 (13) A He had to pick up another passenger  
 (14) Q Where was that?  
 (15) A I believe it was Pipeline Club, but I wasn t sure at the  
 (16) time  
 (17) Q When you arrived the three of you were in the taxi - and  
 (18) you drove over to the Pipeline Club is that what you re  
 (19) saying?  
 (20) A That s correct  
 (21) Q And did you in fact pick up another passenger?  
 (22) A Yes  
 (23) Q Did any one of the three of you get out of the taxi at the  
 (24) Pipeline Club and go into the Pipeline Club?  
 (25) A No we did not

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- (1) Q Did you remain in the taxi the entire time that you were there?
- (2) **A That s correct**
- (4) Q Did there come a time when the taxi took you back to the terminal?
- (5) **A Yes**
- (7) Q How long was the taxi ride?
- (8) **A Approximately half an hour**
- (9) Q According to the gate log at Alyeska you and the other two - three gentlemen arrived there around 8 24 does that comport with your recollection?
- (11) **A It s in the ballpark yes**
- (13) Q Now when you arrived at the Alyeska gate check tell us what happened What s the procedure there?
- (15) **A The general procedure is that the cab -**
- (16) Q Excuse me don t tell us the general procedure tell me what happened on that particular night if you recall
- (17) **A Okay Well, the general procedure was followed which happens to be -**
- (20) Q You re - you re not only a good engineer but a better lawyer
- (21) **A Well, the cab driver generally collects everyone's I D s and passes them to security guard who takes them and checks**
- (22) **them off at the list of names that when people left and then**
- (23) **you re asked to get out of the car or the cab and go through**

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- (1) **security building where there s a metal detector and whatever**
- (2) **packages people have are also looked at**
- (3) Q Are you - are you being observed by the outside security guard as you re walking from the car around and into the security building?
- (5) **A I have to assume they re watching, yes**
- (7) Q And there are two security guards inside the security building?
- (8) **A That evening there were yes**
- (10) Q What s their job as you understand it?
- (11) **A Well, as I said they look through packages that people are**
- (12) **bringing in, and that s part of the security detail What**
- (13) **their specific functions orders are I really wouldn t know**
- (14) Q Do you know whether they re looking for alcohol?
- (15) **A It is - well, it s very possible because it is a policy that no alcohol can be brought into the terminal**
- (17) Q Did you have a conversation with these guards? Did they engage you in conversation?
- (18) **A I don t know who engaged whom but there were**
- (19) **pleasantries**
- (20) **exchanged that s all**
- (21) Q Are you fairly close to them as you re talking to them?
- (22) **A Yeah I d say so**
- (23) Q Now did - were you able to go - incidentally what packages did you have?
- (24) **A I had the magazines that I bought in the bag plus the two**

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- (1) pizza
- (2) Q In boxes?
- (3) **A Yes**
- (4) Q Like we know pizzas okay
- (5) What did Captain Hazelwood have? Did he have any packages?
- (6) **A I believe he had some sort of attache case that he brought**
- (7) **with him, with his papers**
- (8) Q After you came out of - now they didn t stop you at the security gate I mean they didn t hold you up or not permit you to come in did they?
- (10) **A No, we just went through the metal detectors and just went**
- (12) **through the normal security procedure**
- (13) Q Okay Where did you go next?
- (14) **A Back into the cab and the cab took us to the dock**
- (15) Q Did you drop off the other fellow first?
- (16) **A That I don t recall**
- (17) Q Okay You were at berth 5 that night am I correct?
- (18) **A That s correct**
- (19) Q And where does the cab drop you off at the foot of the jetty?
- (20) **A Yes**
- (22) Q And then you have to make that long walk Do we have that? Let me just - watch this here we go
- (23) Does that s accurately represent the jetty that you had to walk down that night?

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- (1) **A Yes it does**
- (2) Q Now what was the state of the weather do you remember?
- (3) **A I believe it was drizzling, light snow was beginning to fall**
- (4) **fall**
- (5) Q You were walking with the two two pizzas?
- (6) **A Yes**
- (7) Q And Captain Hazelwood has his attache case?
- (8) **A Yes**
- (9) Q All right Now when you get to the end the end in the case happens to be here you have to negotiate a gangway do you not a gantry?
- (11) **A Well, there s a structure from which the gangway is suspended yes**
- (13) **suspended yes**
- (14) Q All right Let me show you what we ve previously marked as - it s in evidence DX155 - no that s the video is that one 55 or am I wrong?
- (17) I want to show you a video that we have of the gangway and ask you if the video accurately represents the situation as it existed that night as you recall Shall -
- (19) Is this the one that shows - no just the nighttime one
- (20) I ve been relieved of all responsibility for working the electronics They don t trust me with it
- (22) **MR SANDERS Kind of the master of understatement**
- (24) **BY MR CHALOS**
- (25) Q Okay Mr Glowacki can you make it out from where you

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- (1) are?  
 (2) **A Yes**  
 (3) Q You can look at your screen there  
 (4) **A No this is fine**  
 (5) Q This gentleman is walking down the catwalk at this point  
 (6) right the jetty that we've been talking about?  
 (7) **A Yes**  
 (8) Q Okay Now this is the beginning of the gangway?  
 (9) **A There are two sets of stairs actually two stories**  
 (10) Q This is the first story?  
 (11) **A One leading to a platform and then another to another platform**  
 (12) **platform**  
 (13) Q So far does it comport with your recollection of the  
 (14) situation as it existed that night?  
 (15) **A Yes That's correct**  
 (16) Q Now you're headed down?  
 (17) **A That is the gangway, that's correct**  
 (18) Q Were you also negotiating this with one hand?  
 (19) **A I was carrying the pizzas yes**  
 (20) Q Did you stumble or fall or anything like that?  
 (21) **A No**  
 (22) Q Did any of the other two gentlemen stumble or fall?  
 (23) **A No**  
 (24) Q Everybody was able to go up and go down the gangway  
 fairly  
 (25) easily?

- (1) **9 00**  
 (2) Q Did that surprise you?  
 (3) **A Yes, it surprised us that's correct**  
 (4) Q That's because you expected to sail at 10 00 based on what  
 (5) was told to you at the Alamar office?  
 (6) **A That's correct**  
 (7) Q Now Mr Glowacki you've sailed for approximately 20  
 (8) years It is usual or unusual that the sailing board would  
 (9) have been moved up from 10 00 to 9 00 once it was set at  
 (10) 10 00?  
 (11) **A It's highly unusual to move the board up It's generally**  
 (12) **moved back**  
 (13) Q To a later time?  
 (14) **A To a later time**  
 (15) Q Okay So you're on board Now you go to your room you  
 (16) call the first engineer Eventually you make your way down to  
 (17) the engine room?  
 (18) **A I asked him, you know - knowing we had to sail shortly, I**  
 (19) **asked him, Are we ready Is the engine ready to go, and are**  
**we**  
 (20) **ready, and I told him I'll be down there shortly**  
 (21) Q And did you in fact go down there?  
 (22) **A I went down after - right - not right away, but just as**  
 (23) **we started pulling away from the dock**  
 (24) Q Now did there come a time after the vessel departed from  
 (25) the Alyeska Terminal that you went up to the bridge to talk

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- (1) **A That's right**  
 (2) Q Was it steep as you recall it?  
 (3) **A Well the ship was loaded**  
 (4) Q This kind of -  
 (5) **A Sorry?**  
 (6) Q Go ahead I'm sorry  
 (7) **A The ship was loaded at that time so the gangway had a**  
 (8) **sharp downward angle**  
 (9) Q Once you got on deck you had to negotiate over some -  
 some  
 (10) piping and some ropes as well?  
 (11) **A Yeah the mooring wires plus piping that's correct**  
 (12) Q Anybody trip or stumble or anything like that?  
 (13) **A I don't recall anybody tripping, no**  
 (14) Q Okay What did you do once you arrived on the vessel?  
 (15) **A I went to the galley to drop the pizzas off and then I went**  
 (16) **upstairs to my room and, first thing I did, called up the first**  
 (17) **engineer who was on watch in the engine room, told him I'm**  
 (18) **back**  
 (19) **on board, and when we came on board, we also found out**  
 (20) **that the**  
 (21) **sailing board has been moved up to - moved back to 9 00**  
 (22) Q Let me ask you about that  
 (23) When you came on board at about 8 30 or so what was going  
 (24) on on the ship at that time?  
 (25) **A Well at that time when we arrived, we found out that the**  
**loading had been finished that the pilot has been ordered**  
**and**  
**the tugs were ordered and the ship was supposed to leave**  
**at**

- (1) with Captain Hazelwood?  
 (2) **A Yes there was**  
 (3) Q What time was that?  
 (4) **A I'd say sometime after 10 00**  
 (5) Q Why did you go up to the bridge?  
 (6) **A We have a requirement to send certain information to the**  
 (7) **company after loading or after discharge, after any port**  
**visit,**  
 (8) **with certain information so I went and gave the captain the**  
 (9) **information that was required of me for him to include in his**  
 (10) **message**  
 (11) Q What type of information?  
 (12) **A How much fuel we have on board at departure what -**  
**how**  
 (13) **many lube oil - quantity of lube oil is on board, quantity of**  
 (14) **water on board**  
 (15) Q And the captain needs this information to put into a  
 (16) departure message to send to the company?  
 (17) **A That's correct**  
 (18) Q Now you say you got up there sometime after ten little  
 (19) bit after ten?  
 (20) **A That's correct**  
 (21) Q Was the captain on the bridge at that time?  
 (22) **A Yes, he was**  
 (23) Q How long did you remain on the bridge?  
 (24) **A Perhaps five minutes, ten minutes**  
 (25) Q Now did there come a time when you and Captain  
 Hazelwood

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- (1) left the bridge together?  
 (2) A Yes  
 (3) Q About what time was that?  
 (4) A Shortly after I came up and whatever time it was that I  
 (5) lingered on the bridge, the five or ten minutes, that's when  
 we  
 (6) left together  
 (7) Q Do you have a recollection of approximately what time it  
 (8) was when you left the bridge?  
 (9) A I would say somewhere between 10 15 to 10 30  
 (10) Q Where did you go?  
 (11) A I went back to my room to put the same information into  
 my  
 (12) records, same information I gave the captain into my  
 records  
 (13) Captain went to his room his office  
 (14) Q And you don't know what the captain was doing in his  
 (15) office?  
 (16) A No  
 (17) Q But he had the information you gave him?  
 (18) A That's correct  
 (19) Q All right Did you see the captain at all at any time  
 (20) after that prior to the grounding?  
 (21) A No, I did not  
 (22) Q Let's talk about the period of time around say eight  
 (23) minutes or ten minutes after midnight Tell us where you were  
 (24) and what you observed or what you felt  
 (25) A Well after the time that we just talked about previously,

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- (1) I went back to my office I probably spent about another ten  
 (2) minutes in my office or that - whatever the paperwork I had  
 (3) to finish, and I went back down to the engine room  
 (4) Q All right What did you do down there - I mean don't  
 (5) tell us everything you did I'm trying to focus you now at the  
 (6) moment of the grounding I know you didn't know that you  
 were  
 (7) aground initially but you felt something you observed  
 (8) something did you not?  
 (9) A Well prior, around midnight that's when the watch is  
 (10) changed, meaning that different engineer comes on duty, so  
 at  
 (11) that time both the first engineer who was going off and the  
 (12) third engineer who was coming on watch were in the engine  
 room,  
 (13) so there were actually three of us in the engine room at the  
 (14) time So I was in the control room and they were down on  
 the  
 (15) lowest level of the engine room performing some of the  
 routine  
 (16) tests we normally do on the way out of port and by the time  
 (17) that you're referring to which I assume is the grounding  
 (18) moment 12 08 -  
 (19) Q Incidentally did you know at that moment that you were  
 (20) aground?  
 (21) A No I did not  
 (22) Q Okay Tell us what you observed and what you felt  
 (23) A I heard some muffled rumbling noises in the control room  
 (24) emanating from the engine room, and the first thought that  
 came  
 (25) to my mind was that it was the turbochargers surging based  
 on

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- (1) our previous turbocharger problem So I went out of the  
 (2) control room and went toward the turbochargers, checked  
 certain  
 (3) things on the turbochargers left hand side to them, and it  
 (4) wasn't - the noises were not coming - at that time the noise  
 (5) had subsided and obviously they were not coming from the  
 (6) turbochargers  
 (7) I went back to the control room and very shortly after  
 (8) that, within a couple minutes the first engineer walked in the  
 (9) control room -  
 (10) Q That's Mr Jones?  
 (11) A That's correct  
 (12) Q Okay and -  
 (13) A When I - before Mr Jones walked into the control room  
 (14) and when I went back to the control room, I noticed that  
 main  
 (15) engine one of the instruments on the main engine was  
 reading  
 (16) something was unusual for that - for the speed that the  
 main  
 (17) engine was doing at the time And instinctively, the deck  
 (18) didn't feel right to me  
 (19) Q What do you mean by that?  
 (20) A Just didn't feel the same as it was when I walked out or  
 (21) feeling as before  
 (22) Q Yes  
 (23) A It just felt differently and it's instinctive I can't  
 (24) explain it any further  
 (25) Q Did you do any investigation trying to find out -

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- (1) A Well after that, looking at the - that instrument on main  
 (2) engine, the instinctive feeling that the deck didn't look right  
 (3) I looked at an inclinometer, and I noticed we had a, I believe  
 (4) it was one or two degree list  
 (5) Q What's an inclinometer?  
 (6) A It's an instrument made out of a glass tube shaped in an  
 (7) arc filled with fluid with an air bubble in the middle, so if  
 (8) you're tilted and which way, the bubble will tend to seek the  
 (9) center And there's a graduation in degrees so if there's a  
 (10) difference in attitude you can see what the angle of the list  
 (11) is  
 (12) Q You said you noticed a one or two degree list?  
 (13) A That's correct  
 (14) Q Which side of the ship?  
 (15) A Port  
 (16) Q So the ship was leaning to port?  
 (17) A Right  
 (18) Q What happened next?  
 (19) A Well, when - at that time I believe the first engineer  
 (20) Ray Jones walked in to the control room, and I - I said to  
 (21) him something to the effect that There's something wrong  
 I  
 (22) know we didn't leave port with a couple degree list  
 (23) Q Okay Did there come a time when you received a phone call  
 (24) from the bridge?  
 (25) A Very shortly after that the bridge called down that's

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- (1) correct
- (2) Q Do you remember who called you?
- (3) A It was the third mate Greg Cousins
- (4) Q And what did he say to you?
- (5) A He said that we re going to stop the engines
- (6) Q Say anything else?
- (7) A No not at the time
- (8) Q Did you question him?
- (9) A No
- (10) Q Why?
- (11) A The bridge is in control and if they have a reason to stop the engine I assume they have a good reason It s not the time to discuss things
- (12) Q Okay and what did you tell him?
- (13) A I said, Go ahead but do it slowly
- (14) Q Now did there come a time when you received a second call from the bridge?
- (15) A Yes
- (16) Q When was that?
- (17) A It was I d say perhaps five minutes later maybe between five and ten minutes later
- (18) Q Who was on the phone this time?
- (19) A It was Captain Hazelwood
- (20) Q What did Captain Hazelwood say to you and what did you say
- (21) to him?

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- (1) A Captain told me that We have a problem we re aground He
- (2) also asked me if he can use the engine to which at that time
- (3) from altercations and the information we had at our disposal
- (4) and on the console for the main engine I saw no reason why the
- (5) engine could not be used And he also asked whether everything
- (6) is all right down there
- (7) Q Did you discuss about getting the engine room crew alerted to the fact that you were aground?
- (8) A Yes We - we discussed the fact that I told him since we re aground I m going to have someone sound all the engine
- (9) room tanks to make sure there was no ingress of water at the -
- (10) that the levels were where they should have been, and that I will wake up all the engine department personnel
- (11) Q Okay When Captain Hazelwood called you on phone did his
- (12) voice sound impaired?
- (13) A No
- (14) Q Did he sound sad?
- (15) A He sounded to me like Captain Hazelwood
- (16) Q Did he slur his words at all?
- (17) A No
- (18) Q Did he - the discussion you had with him and the instructions he was giving you were they clear?
- (19) A Yes
- (20) Q Did he appear to be at least on the telephone appear to be in control of his faculties?

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- (1) A Yes I have to say that because he was concerned he asked
- (2) how things were in the engine room He was concerned about us
- (3) and the machinery and the crew
- (4) Q Okay You told Captain Hazelwood that based on what you
- (5) were reading on your control board that he could use the engines if he wanted?
- (6) A And I believe we also told - obviously told him that we will make thorough inspection rounds of machinery spaces and I
- (7) will let him know what we have
- (8) Q Did there come a time when you called him up and conveyed the information to him?
- (9) A Yes, there was
- (10) Q You gave him all the information relating to the condition of the engine?
- (11) A That's correct
- (12) Q Now with respect to starting up the engine again did there come a time when Captain Hazelwood started up the engine?
- (13) A Yes
- (14) Q At this point was the control of the engine still up with the bridge?
- (15) A It was
- (16) Q So they had control over how this engine worked?
- (17) A The bridge had control of the engine that s correct
- (18) Q There is a method by which the engine room can take over and run the engine from down there is that correct?

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- (1) A There are four methods of control ultimately but -
- (2) Q Tell us about those
- (3) A One which we use most of the time, which that s the way this being a highly automated vessel it was designed to be controlled from the bridge, that s what we use most of the -
- (4) practically all the time And the other was - another was from the engine control room and also in the engine site
- (5) There were two methods, locally, on the engine
- (6) Q But in this instance Captain Hazelwood had the control on the bridge?
- (7) A The control remained on bridge, that s correct
- (8) Q Let me ask you something about this engine
- (9) What is the maximum available horsepower on this engine if you wanted to run it you know -
- (10) A This engine was rated at 31 4 - 400 or 600 horsepower I don t know exactly which
- (11) Q What is the available horsepower at let s say full ahead maneuvering 55 rpms?
- (12) A I'd say somewhere between eight, 8,000 and 9,000 horsepower
- (13) Q What is the - the rpms if you were going full ahead sea speed as opposed to full maneuvering?
- (14) A It was 79 rpm
- (15) Q If you re running the engine at 55 rpm you re only using about 8500 horsepower and you have available to you

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- (1) approximately 31 400 you said?  
 (2) **A That s correct**  
 (3) MR CHALOS This is my able assistant You re much  
 (4) better at electronics than you are manual stuff  
 (5) BY MR CHALOS  
 (6) Q Mr Glowacki this is exhibit - Plaintiffs Exhibit 81 in  
 (7) evidence  
 (8) You recognize this as being the data logger or a copy of  
 (9) the data logger from your ship?  
 (10) **A That s correct**  
 (11) Q This information that we have here is printed down in the  
 (12) engine room is it not?  
 (13) **A Yes**  
 (14) Q You have a machine that prints this out?  
 (15) **A It s automatically printed on a roll of tape like on a**  
 (16) **calculator type thing**  
 (17) Q Okay  
 (18) You recognize this as being the data logger from the Exxon  
 (19) Valdez do you not - or a copy of it?  
 (20) **A Yes yes**  
 (21) Q All right Captain Hazelwood initially stopped the engine  
 (22) after you got that call you told us about at 12 20 and then he  
 (23) restarted the engine at 12 36?  
 (24) **A That s correct**  
 (25) Q Just so the jury understands what he was doing can you

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- (1) tell us what he did starting let s say at 12 36 and working  
 (2) its way up to 12 56? That s a period of about 20 minutes  
 (3) What did Captain Hazelwood do?  
 (4) **A Well, if you look at -**  
 (5) Q Excuse me one second  
 (6) Your Honor with your permission maybe we could have him  
 (7) come down it might be easier  
 (8) Mr Glowacki incidentally let me ask you something about  
 (9) diesel engines Do they thrust the same horsepower whether  
 (10) they re in the forward direction or the reverse direction?  
 (11) **A Yeah The characteristic of a diesel propulsion is such**  
 (12) **that you have the maximum horsepower available in both**  
 (13) **directions**  
 (14) Q Okay As opposed to a steam engine where you only have a  
 (15) percentage of your power if you go astern right?  
 (16) **A Steve driven propulsion only gives one - is designed to**  
 (17) **only give maybe 30 to 40 percent of max power in the stern**  
 (18) **direction It's not the same as on the motor ship**  
 (19) Q So on the stern - for instance if you wanted to go full  
 (20) astern - right not full astern maneuvering but full  
 (21) astern - you would have available to you 31 400 horsepower in  
 (22) the full maximum stern?  
 (23) **A That s correct**  
 (24) Q And if you were going full astern maneuvering that would  
 (25) be again 8400?

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- (1) **A It would be the same The engine doesn t really care**  
 which  
 (2) **way it s running**  
 (3) Q Okay all right  
 (4) So he starts the engine up at nine - at 12 36 What s he  
 (5) doing now?  
 (6) **A He s starting right here**  
 (7) Q Right okay  
 (8) **A And it s running, he started at dead slow at 9 35, 57**  
 (9) **seconds which is - I m sorry, this is Greenwich mean time**  
**So**  
 (10) **it s actually -**  
 (11) Q Convert it to 12?  
 (12) **A Actually midnight And then at 40 minutes after midnight,**  
 (13) **went to slow ahead**  
 (14) Q So for four minutes he s running in the dead slow ahead?  
 (15) **A That s correct**  
 (16) Q Is that proper procedure if you re bringing your engine up  
 (17) slowly?  
 (18) **A It s certainly wiser I mean more prudent than to just go**  
 (19) **in large increments, yes**  
 (20) Q What does he do then from 40 minutes after midnight to  
 (21) let s say -  
 (22) **A Okay, still slow ahead At midnight 48 minutes it s half**  
 (23) **ahead**  
 (24) Q Okay What does half ahead represent in rpms?  
 (25) **A I believe it was 45**

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- (1) Q Right here see this - well she s climbing at this point?  
 (2) **A She s climbing**  
 (3) Q So he s down around 32 and climbing up towards 45?  
 (4) **A From slow ahead to half ahead, that s correct**  
 (5) Q Then he s at full ahead at 12 56 and 19 seconds?  
 (6) **A Right Right**  
 (7) Q Now that full ahead maneuvering is that correct?  
 (8) **A That s 55 revolutions, that s correct**  
 (9) Q And then he continues on this full ahead maneuvering until  
 (10) 1 40 approximately?  
 (11) **A That s right**  
 (12) Q When he goes to slow slow ahead and then he stops the  
 (13) engine in that one minute at 1 41?  
 (14) **A That s correct**  
 (15) Q Okay Thank you very much  
 (16) Mr Glowacki based on what you just told us what was the  
 (17) maximum percentage of horsepower that Captain Hazelwood  
 used as  
 (18) opposed to what was available to him?  
 (19) **A Well I said before, 55 rpm is somewhere between 8,000**  
 (20) **9 000 horsepower, let s say 8500 horsepower**  
 (21) Q What was that in terms of percentage of what was available  
 (22) to him?  
 (23) **A Of 31 000**  
 (24) Q Yeah  
 (25) **A Roughly 26 27 percent**

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- (1) Q So in this whole period of time he didn't use any more  
 (2) than about 26-27 percent of the power available to him?  
 (3) **A That's correct**  
 (4) Q Did - reading this data logger did Captain Hazelwood at  
 (5) any time from the grounding over here which was - well they  
 (6) have it here as the grounding but assume it was at eight  
 (7) minutes after midnight  
 (8) From that moment until he stopped finally stopped the  
 (9) engine at 1:41 did he use any reverse on the engine at all?  
 (10) **A No All the speeds were in the ahead direction There**  
 (11) **were no astern calls**  
 (12) Q He never put the engine astern did he that whole time?  
 (13) **A No no**  
 (14) Q Have you had a chance to review Mr Van Hammen's  
 (15) testimony?  
 (16) **A I've read it, yes**  
 (17) Q Mr Van Hammen was an expert that was called by the  
 (18) plaintiffs And do you remember his testimony contrary to  
 (19) what Captain Hazelwood had said? Captain Hazelwood had  
 (20) said  
 (21) that if he wanted to get full maximum horsepower on this  
 (22) vessel all he had to do was press two buttons on the bridge  
 (23) and within two minutes he could get it up to the full maximum  
 (24) horsepower available all right?  
 (25) Now Mr Van Hammen testified that that wasn't possible  
 (26) You remember that testimony?  
 (27) **A Yes**

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- (1) Q Okay You also remember reading his testimony that he had  
 (2) never been on board the Exxon Valdez do you not?  
 (3) **A Yes**  
 (4) Q That he wasn't familiar with its engines?  
 (5) **A Yes**  
 (6) Q And that he did not hold a seagoing engineer's license?  
 (7) **A Yes**  
 (8) Q Based on your experience you - you were there when they  
 (9) built the ship you ran the ship for three years as its chief  
 (10) engineer Do you agree or disagree with Mr Van Hammen's  
 (11) testimony on this issue?  
 (12) **A I disagree**  
 (13) Q Tell us why  
 (14) **A Well, the captain had actually two means of going up to**  
 (15) **maximum horsepower as quickly as he wished to**  
 (16) Q Tell us about it  
 (17) **A Even though the engine was already speeding up to**  
 (18) **speed -**  
 (19) **sea speed was in the preprogrammed program so to**  
 (20) **speak, there**  
 (21) **is a button that you can hold, he could have held down**  
 (22) **which is**  
 (23) **called "find setting up and all you had to do was hold it**  
 (24) **down**  
 (25) **and the engine would have sped up in a couple two, three**  
 (26) **minutes to whatever - to ultimately maximum horsepower**  
 (27) **Or he could have thrown another switch and given a control**  
 (28) **to us in the engine room and we could have done it even**  
 (29) **faster,**  
 (30) **if he wanted to**

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- (1) Q How much faster?  
 (2) **A Perhaps half that time even less than that**  
 (3) Q Incidentally when Captain Hazelwood was using the engine  
 (4) for this approximately one hour and five minutes did you have  
 (5) any problems at all with the engine?  
 (6) **A There was some transient alarms but they were not**  
 (7) **outside**  
 (8) **of - they did not reach the limits where the engine was**  
 (9) **overloaded no**  
 (10) Q Was there any damage caused to the engine by the use of  
 (11) the  
 (12) engine at this point?  
 (13) **A No**  
 (14) Q Now Mr Van Hammen also testified that because the vessel  
 (15) was aground that the engine could not thrust its maximum  
 (16) horsepower Do you remember that testimony?  
 (17) **A Yes**  
 (18) Q Do you agree or disagree with that testimony?  
 (19) **A I disagree**  
 (20) Q Tell us why  
 (21) **A The engine doesn't care**  
 (22) Q But I do so tell us about it  
 (23) **A Well, let me put it this way The engine is a dumb**  
 (24) **obedient animal that wants to please and if you give it**  
 (25) **enough**  
 (26) **fuel and air it will run as fast as you allow it to until it**  
 (27) **could eventually self destruct**  
 (28) **So being a caring, loving master design engineer who**

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- (1) **designed - would incorporate in the engine design features**  
 (2) **to**  
 (3) **protect itself such as governors overspeed trips and limit**  
 (4) **it**  
 (5) **to certain parameters so it doesn't self destruct**  
 (6) **But no, certainly the maximum horsepower could certainly**  
 (7) **have been developed even though we were aground**  
 (8) Q Okay I have one more area -  
 (9) **A Engines like this I've testified ashore in shop trials**  
 (10) **where they're not going anywhere, not hooked up to**  
 (11) **propellers**  
 (12) **at first horsepower**  
 (13) Q That is when you're testing it you're not at sea?  
 (14) **A That's correct**  
 (15) Q And you're still developing the maximum horsepower?  
 (16) **A That's correct**  
 (17) Q Okay Mr Glowacki one more area I want to go back to  
 (18) that time when you were in San Francisco when you had the  
 (19) problem with the turbochargers  
 (20) **A Yes**  
 (21) Q You decided on two separate occasions to bring the ship  
 (22) back right? In other words you discussed it with Captain  
 (23) Hazelwood and you brought the ship back for further repairs?  
 (24) **A Yes**  
 (25) Q Did anyone from Exxon ever criticize you for that?  
 (26) **A Not for that no**  
 (27) Q Did you believe Exxon had given you the authority if you  
 (28) felt that there was something wrong with the engine to either

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- (1) stop the ship or bring her back to port and take whatever time  
 (2) was necessary and repair the problem?  
 (3) **A I ve never had that type of judgment questioned in my  
 (4) career, no**  
 (5) MR CHALOS Thank you Mr Glowacki Your witness  
 (6) CROSS EXAMINATION OF JERZY GLOWACKI  
 (7) BY MR O NEILL  
 (8) Q Sir my name is Brian O Neill and we ve never met before  
 (9) I want to ask you some questions follow up on some of the  
 (10) questions that you were asked by counsel And I ve put in  
 (11) front of you your deposition transcript some transcript in a  
 (12) state trial the transcript of your testimony before the  
 (13) National Transportation Safety Board and some interviews you  
 (14) gave to the FBI the state troopers - and we ll use those as  
 (15) we proceed okay?  
 (16) Now you graduated from New York Maritime Academy when in  
 (17) 1970?  
 (18) **A That s correct**  
 (19) Q And you knew Captain Hazelwood at the academy?  
 (20) **A He was at the school at the same time I was yes**  
 (21) Q And you and him go back 24 25 years?  
 (22) **A Yes**  
 (23) Q Did Kimtis go to that academy too?  
 (24) **A No he didn t, no**  
 (25) Q When did you first meet Mr Kimtis?

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- (1) **A While employed at Exxon**  
 (2) Q About what year?  
 (3) **A I have to say maybe late 80s mid to late 80s**  
 (4) Q Mid to late 80s And Captain Hazelwood was a friend of  
 (5) Mr Kimtis too wasn t he - you know that?  
 (6) **A What do you mean by friend versus acquaintance?**  
 (7) Q Drinking buddy  
 (8) **A I wouldn t know that**  
 (9) Q Were you at all aware of the fact that at some point in  
 (10) 1988 Captain Hazelwood and Mr Kimtis went out drinking one  
 (11) afternoon and Captain Hazelwood had eight to ten drinks and  
 (12) drove a car thereafter? Were you at all aware of that?  
 (13) **A No sir**  
 (14) MR CHALOS Your Honor I object That s a  
 (15) mischaracterization of the evidence Mr Kimtis had passed  
 (16) away by that time  
 (17) MR O NEILL I m sorry he wasn t with Mr Kimtis  
 (18) He was with - going to Mr - That s right going to Mr  
 (19) Kimtis funeral he had eight to ten drinks and drank - was  
 (20) he -  
 (21) Have you ever heard about that?  
 (22) **A No sir**  
 (23) Q You knew though that Captain Hazelwood had a reputation  
 (24) for partying didn t you?  
 (25) **A I wouldn t say that I knew, no**

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- (1) Q Had you heard rumors prior to the grounding that Hazelwood  
 (2) had a chemical dependency problem?  
 (3) **A No sir, first time I learned of that was after the -  
 (4) after the grounding and there were hearings and testimony  
 was**  
 (5) **given**  
 (6) Q Would you go to your NTSB testimony at page 865?  
 (7) **A 65? 865?**  
 (8) Q 865  
 (9) **A Yes**  
 (10) Q And let me read the questions and answers and you tell me  
 (11) if I read them right  
 (12) When did you become aware that Captain Hazelwood may  
 have  
 (13) had a chemical dependency problem? That was the question  
 (14) Answer I can t say exactly but being - working for a  
 (15) company for 19 years you hear certain rumors but these are  
 (16) innuendoes and rumors and I cannot exactly answer you  
 (17) Question When did you first hear a rumor to that effect?  
 (18) Answer I don t recall sir  
 (19) Question Was it prior to the grounding?  
 (20) Answer Yes It could have been a few years before that  
 (21) I can t tell you  
 (22) Question But you think it would have been before the  
 (23) grounding?  
 (24) Answer Oh yes certainly  
 (25) Were those the questions asked and the answers that you

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- (1) gave?  
 (2) **A Yes**  
 (3) Q Thank you  
 (4) Now you testified at the beginning of your testimony about  
 (5) the fact that the Valdez had to go back twice with regard to  
 (6) the turbocharger?  
 (7) **A That s correct**  
 (8) Q And there was some questions at that point in time about  
 (9) whether other arrangements had been made for another vessel  
 or  
 (10) whether it had been put on quote a different rotation Do  
 (11) you recall that?  
 (12) **A Yes**  
 (13) Q And I listened carefully to your answers as you tried to  
 (14) help counsel You don t know one way or the other do you?  
 (15) **A It certainly - all I know that all I knew at the time is  
 (16) that every oil company in the consortium of Alyeska has to  
 lift**  
 (17) **certain number of barrels in certain amount of time and in  
 (18) order to do that they have to provide the tonnage in Valdez  
 to**  
 (19) **do that, and since we were obviously delayed Exxon would  
 have**  
 (20) **to make some other arrangements That was the premise of  
 my**  
 (21) **answer yes, sir**  
 (22) Q It was an assumption about something you didn t know  
 about  
 (23) one way or the other you don t know whether they made the  
 (24) other arrangements do you?  
 (25) **A That s correct, right**



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- (1) Q And you ve socialized with Captain Hazelwood since the  
 (2) grounding haven t you?  
 (3) **A We ve seen each other, yes**  
 (4) Q Would socialized be a correct word?  
 (5) **A We ve had dinners together, yes**  
 (6) Q And let s talk a little bit about the day – the day spent  
 (7) in Valdez on the 23rd That s where I m going to go right  
 (8) now  
 (9) You left at 10 30 and you went to the agent s office  
 (10) That s a correct statement?  
 (11) **A Yes sir**  
 (12) Q And at some point in time you make it over to the Pizza  
 (13) Palace and your testimony is that you were at the Pizza Palace  
 (14) for slightly over an hour?  
 (15) **A From somewhere around 12 30 or after that**  
 (16) Q 12 30 to 1 30 or 1 40?  
 (17) **A About 2 00 or shortly thereafter**  
 (18) Q Or shortly there before you said about an hour little  
 (19) over an hour?  
 (20) **A I believe I also said that we stayed there till shortly –**  
 (21) **till approximately 2 00**  
 (22) Q Okay  
 (23) You had two beers there  
 (24) **A Yes**  
 (25) Q And then you walked around town?

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- (1) **A Yes**  
 (2) Q And one of the places you walked to was the Westmark?  
 (3) **A Right**  
 (4) Q They have a bar at the Westmark don t they?  
 (5) **A That s correct**  
 (6) Q And you arrived at the Pipeline Club sometime after 4 00?  
 (7) **A That s correct**  
 (8) Q And you believe that you had three gin and tonics while at  
 (9) the Pipeline Club?  
 (10) **A That s correct**  
 (11) Q And when the FBI asked you it was three or four gin or  
 (12) tonics is that a correct statement?  
 (13) **A I might have said that, yes**  
 (14) Q And had you ever been in the Pipeline Club before?  
 (15) **A Some time prior to that, yes**  
 (16) Q Why don t you describe the Pipeline Club to us  
 (17) **A It s a bar restaurant, and they have tables plus a bar**  
 (18) **seating**  
 (19) Q The restaurant is in another room?  
 (20) **A It s separated, yes There s a partition between the two**  
 (21) Q It s a pretty – it s a regular old dark bar?  
 (22) **A It s a dark place yes**  
 (23) Q And Mr Roberson was drinking beer is that a correct  
 (24) statement?  
 (25) **A Yes**

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- (1) Q And your testimony here today was I also recall three  
 (2) when you were talking about how much Captain Hazelwood  
 had to  
 (3) drink That s a fair statement of what your testimony was  
 (4) today isn t that correct?  
 (5) **A Yes**  
 (6) Q And in the past when you ve been asked questions about  
 (7) this including questions under oath you ve said you didn t  
 (8) know the total number of drinks Hazelwood had because you  
 were  
 (9) not counting  
 (10) **A That s correct, I was not counting but at the time –**  
 (11) **period of time that we both all of us had spent there and**  
 (12) **knowing – remembering what I had to drink leads me to**  
 believe  
 (13) **It was the same amount**  
 (14) Q So you re guessing?  
 (15) **A It leads me to believe that yes sir**  
 (16) Q And you were there for two hours more than two hours two  
 (17) and a half hours?  
 (18) **A That s right**  
 (19) Q So you were there for two and a half hours and you re  
 (20) guessing how much Captain Hazelwood had to drink?  
 (21) **A I believe that that s what he had yes**  
 (22) Q Now you also made a statement about or volunteered  
 (23) information about whether he was drinking singles or doubles  
 (24) And you said that your glass was the same size as his glass?  
 (25) **A I believe that yes**

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- (1) Q And I found that a very interesting comment because in  
 (2) your glass there was gin and tonic and in his glass  
 (3) according to you there was just vodka?  
 (4) **A Yes**  
 (5) Q Is that a correct statement?  
 (6) **A That s a correct statement**  
 (7) Q So that part of what was taken up in his glass – in your  
 (8) glass was the tonic?  
 (9) **A Yes, sir**  
 (10) Q And with regard to what was poured into his glass you  
 (11) really don t know one way or the other other than the fact you  
 (12) had the same size glasses his was vodka and yours was gin  
 and  
 (13) tonic?  
 (14) **A That s correct**  
 (15) Q And then you went to the Pipeline Club – I m sorry  
 (16) Then you left the Pipeline Club and went over to the Pizza  
 (17) Palace?  
 (18) **A Yes**  
 (19) Q And you ordered the pizza and then you went they had  
 (20) already gone next door?  
 (21) **A Yes**  
 (22) Q And you went next door and you ordered a gin and tonic?  
 (23) **A That s correct**  
 (24) Q And your testimony today is you don t – you didn t finish  
 (25) your drink?

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- (1) **A Yes**  
 (2) Q And when you were interviewed by the United States Coast  
 (3) Guard your testimony was you drank your drink?  
 (4) **A I drank some of it yes I did not finish it**  
 (5) Q And your testimony today is you were in there for 15  
 (6) minutes but your testimony before the National Transportation  
 (7) Safety Board was you waited for 20 to 25 minutes  
 (8) **A Sir, all of these times were always approximate**  
 (9) Q Then let s - I won t - if the times are approximate and  
 (10) you say they re approximate I ll move on I ll do you the  
 (11) courtesy of moving on to another subject  
 (12) **A Sir the point is we re really -**  
 (13) Q It s tough to remember isn t it?  
 (14) **A It certainly is**  
 (15) Q And indeed if it hadn t been for the grounding there  
 (16) would have been no reason to remember and it would have  
 (17) drifted  
 (18) away and -  
 (19) **A Certainly wouldn t be**  
 (20) Q I want to talk for a minute about whether Captain Hazelwood  
 (21) drank his drink over at the Harbor Club And what s your  
 (22) testimony today did he drink his drink at the Harbor Club or  
 (23) not?  
 (24) **A He drank some of it yes, but I know that none of us**  
 (25) **finished all of our drinks**  
 (26) Q Okay Were you sitting there monitoring him as he drank

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- (1) his drink?  
 (2) **A No, sir I wasn t**  
 (3) Q You really don t know whether he finished it off or not do  
 (4) you?  
 (5) **A No, I don t**  
 (6) Q And indeed when you talked to the Coast Guard  
 (7) investigators your description was he drank his drink  
 (8) **A Meaning past tense?**  
 (9) MR CHALOS Excuse me Mr O Neill May we have a  
 (10) reference of what you re referring to?  
 (11) MR O NEILL I wasn t referring to anything I asked  
 (12) him if that s what he told the Coast Guard investigators I  
 (13) hadn t yet made the decision to go to the transcript  
 (14) MR CHALOS Okay  
 (15) BY MR O NEILL  
 (16) Q And now I m going to ask you a question from the - the  
 (17) transcript of the interview by the state guys and when you  
 (18) were interviewed by the State troopers in answer to the  
 (19) question Would you have any idea whether it was one or two  
 (20) drinks over at the Harbor Club your answer was I couldn t  
 (21) tell you  
 (22) Is that a correct statement?  
 (23) **A That s what I had - that s what I said yes**  
 (24) Q In point of fact it s really - I mean let me cut through  
 (25) it and I ll move on to another topic But with regard to how

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- (1) much he drank at one joint or another joint as you sit here  
 (2) today all games aside it s tough to reconstruct isn t it?  
 (3) **A It certainly is, sir But I know I only ordered one drink**  
 (4) **and we weren t there long enough really to - knowing that I**  
 (5) **did not finish my drink, ergo we weren t there long enough**  
 (6) **to**  
 (7) **have two drinks**  
 (8) Q Let s talk about that for a minute You were there 15  
 (9) minutes to 25 minutes isn t that right?  
 (10) **A Yes, sir**  
 (11) Q Now my recollection in my better days was I could drink a  
 (12) drink or two drinks or three drinks in 15 to 25 minutes how  
 (13) about you?  
 (14) MR CHALOS Your Honor I object We don t know  
 (15) about Mr O Neill s drinking habits  
 (16) MR O NEILL I ll reask the question  
 (17) BY MR O NEILL  
 (18) Q Would it be fair to say sir that it isn t that hard in 15  
 (19) to 25 minutes to drink one drink or two drinks or three  
 (20) drinks?  
 (21) **A If one really wants to yes**  
 (22) Q And then one last topic  
 (23) When you went through the Alyeska Terminal just so we re  
 (24) clear and again I - I listened to your answers on the  
 (25) questions with regard to going through the Alyeska Terminal  
 (26) very very carefully You don t know one way or the other what

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- (1) they monitor for there do you you don t know?  
 (2) **A What the guards are trained for specifically, no I don t**  
 (3) **know**  
 (4) Q You don t know And then you were able to after having  
 (5) five or six or possibly more drinks you were able to carry two  
 (6) pizzas across the causeway up the gantry down the gantry  
 (7) and  
 (8) onto the ship?  
 (9) **A I did**  
 (10) MR O NEILL Thank you sir  
 (11) REDIRECT EXAMINATION OF JERZY GLOWACKI  
 (12) BY MR CHALOS  
 (13) Q Mr Glowacki Mr O Neill showed you some NTSB testimony  
 (14) where the question was asked you about some drug  
 (15) dependency?  
 (16) **A Yes**  
 (17) Q Did you understand that to be alcohol?  
 (18) **A I assumed that, yes**  
 (19) Q You don t know of and you never heard of any rumors that  
 (20) Captain Hazelwood had a drug dependency drugs as we  
 (21) understand  
 (22) drugs?  
 (23) **A No Not drugs, no**  
 (24) Q Now in answer to counsel s question you were talking  
 (25) about your own personal knowledge as opposed to rumors that  
 (26) you  
 (27) heard isn t that correct?  
 (28) **A That s correct**  
 (29) Q Let me ask you this

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- (1) When you were at the Pipeline Club with Captain Hazelwood  
 (2) and Mr Roberson describe to us how you - what you were  
 doing  
 (3) there besides having your drinks? Were you talking with each  
 (4) other?  
 (5) **A Yes**  
 (6) Q Were you drinking socially at that point?  
 (7) **A That s the only way I recall drinking yes,**  
 (8) Q I mean nobody was there throwing shots down their throat  
 (9) were they?  
 (10) **A No they were not**  
 (11) Q No quick drinking stuff?  
 (12) **A No, they were not**  
 (13) Q Now with respect to the times we spoke about you said  
 (14) they were estimates?  
 (15) **A Yes**  
 (16) Q You ve had a chance because of this grounding and  
 because  
 (17) of the publicity and because you ve been called upon to testify  
 (18) any number of times you ve had a chance to reflect haven t  
 (19) you?  
 (20) **A Certainly**  
 (21) Q You ve reconstructed the situation the day as best as you  
 (22) could?  
 (23) **A I hope so yes**  
 (24) Q And your recollection is after having a chance to  
 (25) reconstruct and think about it because you ve been asked  
 about

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- (1) it so many times your best recollection is that Captain  
 (2) Hazelwood had three drinks at the Pipeline Club am I correct?  
 (3) **A Yes**  
 (4) MR CHALOS Thank you no further questions  
 (5) THE COURT Thank you sir you may step down  
 (6) MR O NEILL I don t get another shot sir  
 (7) MR CHALOS No the reason I m standing here is I  
 (8) have the next witness  
 (9) THE COURT You re all through  
 (10) (The Witness Stepped Down )  
 (11) THE COURT You may call your next witness  
 (12) MR CHALOS Your Honor defendants call for reading  
 (13) of the deposition Ms Emily Kaiser  
 (14) THE CLERK She s going to be reading the deposition  
 (15) of Emily Kaiser?  
 (16) MR CHALOS Yes  
 (17) THE CLERK Would you raise your right hand please?  
 (18) (The Witness Is Sworn)  
 (19) THE CLERK Please be seated  
 (20) For the record state your full name address and spell  
 (21) your last name please  
 (22) MR CHALOS That s your real name  
 (23) THE WITNESS My real name Glenda Fair (ph) English  
 (24) E n g l i s h  
 (25) DIRECT EXAMINATION OF EMILY KAISER (Read)

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- (1) BY MR CHALOS  
 (2) Q Would you state full name for the record - this is your  
 (3) deposition name now  
 (4) **A My name is Emily Kaiser**  
 (5) Q Where do you currently work?  
 (6) **A I own the Hobby Hut and Kelly s Floral**  
 (7) Q Is the Hobby Hut and Kelly s Floral one place of business?  
 (8) **A Correct**  
 (9) Q And there are two aspects of the business that go on in the  
 (10) same place?  
 (11) **A Correct**  
 (12) Q Was that with what you were doing at the time - well let  
 (13) me just say March of 1989?  
 (14) **A Yes**  
 (15) Q And were you the owner at that time as well?  
 (16) **A That s correct**  
 (17) Q Now did there come a time in March of 1989 when a man  
 (18) named Hazelwood came into your place of business?  
 (19) **A That s correct But I didn't know who he was at the time**  
 (20) Q Okay what day or date was that that you recall?  
 (21) **A The spill was on the 24th?**  
 (22) Q Yes  
 (23) **A Then it was the day before**  
 (24) Q If the spill was on the 24th what day would it have been?  
 (25) **A It was in the daytime before the spill**

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- (1) Q So that would have been March 23 1989?  
 (2) **A Yeah right Right, the 23rd**  
 (3) Q What are you looking at ma am?  
 (4) **A I m looking at the telephone bill where I put his credit  
 (5) card through to make sure I m right**  
 (6) MR CHALOS I m showing DX - let me see if I have  
 (7) this yeah DX3456 And DX3457 Alpha  
 (8) Oh wait that s because I m fooling with the focus instead  
 (9) of the zoom  
 (10) MR SANDERS On the job training  
 (11) THE COURT We all got to learn sometime  
 (12) MR CHALOS Can you see? Is that clear? I thought I  
 (13) knew how to do this one  
 (14) BY MR CHALOS  
 (15) Q All right well before - well before we get into that  
 (16) let me ask you about Mr Hazelwood s visit  
 (17) A gentleman came into the store?  
 (18) **A Correct**  
 (19) Q What do you recall by his appearance how he was dressed?  
 (20) **A Very well dressed He was very pleasant, he looked  
 around**  
 (21) **the shop He walked around He came up to the counter  
 which**  
 (22) **was - I was closer to him than I was to you, you know like**  
 (23) **about one table away And he spoke to me, and the only  
 reason**  
 (24) **he stood out in my mind is I used to live in Long Island and**  
 (25) **when he sent flowers to Huntington, I tried to be congenial**

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- (1) with all my customers I asked him how Long Island was and we
- (2) discussed Huntington And I lived in Malverne which is in Long
- (3) Island and we discussed Long Island And if he d been drinking, I would have smelled it And he could not - and he
- (4) was not drinking at the time he was in my shop
- (5) Q In addition to talking about your respective homes in Long
- (6) Island did Captain Hazelwood buy anything from you?
- (7) A Yes He sent - he wired flowers and I put his credit card
- (8) through the machine
- (9) Q To where did he wire the flowers?
- (10) A To Huntington Long Island
- (11) Q All right Now let me show you another piece of paper
- (12) which is Exhibit 3456
- (13) Have you had a chance to look at it?
- (14) A Yes
- (15) Q Have you seen this before Ms Kaiser?
- (16) A Well, yes I wrote it
- (17) Q This is all your handwriting?
- (18) A All my handwriting
- (19) Q What is this form?
- (20) A Okay, every person that comes in, I write an order out for
- (21) them so I have a record \$45 was what he bought a dozen
- (22) long stem red roses What they cost in Long Island eight is
- (23) for the phone call and the delivery and it comes to \$53
- (24) Q A total of 53?
- (25)

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- (1) A Right
- (2) Q And the message in that section - let me start again
- (3) That telephone number is at the top is what what number
- (4) ma am?
- (5) A The number of the person that it s going to
- (6) Q That it s going to okay And they delivered to Mrs Susan
- (7) Hazelwood that s the person to whom it was sent is that
- (8) right?
- (9) A Right
- (10) Q And when you said you didn t know what the relationship
- (11) was you just knew it was a woman s name?
- (12) A Yeah I didn t know if it was his mother or his wife
- (13) Q And then the florist is listed there?
- (14) A Main Street Floral, and the lady I spoke to was Jean
- (15) Q And what did Captain Hazelwood order looking at this?
- (16) A A dozen long stem red roses arranged in a vase
- (17) Q What was the occasion for sending this do you know?
- (18) A I don t know if it was Easter or - I don t remember I
- (19) really don t remember I do so many
- (20) Q Do you recall that this was Easter weekend?
- (21) A I think it was over Easter weekend but I don t remember
- (22) I d be lying if I say I know definitely what he sent it for
- (23) Q Let me do this Ms Kaiser Let me go - before I get to
- (24) this telephone bill how long would you say Captain Hazelwood
- (25) spent in the store from the time he came in until the time -

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- (1) A He looked all around all the way around, up and down the
- (2) aisles And I would say he was there anywhere between
- (3) three quarters of an hour to an hour
- (4) I ve got a lot to see
- (5) Q Can you tell me approximately as best as you recall what
- (6) time of day this was?
- (7) A Sometime between - I guess it was around two and three
- (8) 2 30 and three, because I don t watch the clock when I m
- (9) working, you know
- (10) Q Two and three 2 30 and three something like that?
- (11) A In the afternoon
- (12) Q In the afternoon?
- (13) A Something like that In the afternoon
- (14) Q Okay let s go back to what you said about your being close
- (15) to him and having a considerable conversation with him
- (16) A We were face to face
- (17) Q And being face to face you smelled no alcohol on Captain
- (18) Hazelwood s breath?
- (19) A No, I did not
- (20) Q Was he sober ma am?
- (21) A Yes, he was sober And I know the difference because I
- (22) had
- (23) an alcoholic husband so I know the difference between -
- (24) and I
- (25) see a lot of people that drink in my shop and I can tell the
- (26) difference He hadn t been drinking I mean if he did he
- (27) was hiding it But he didn t reek from alcohol and when you

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- (1) talk to something that close, you can tell
- (2) Q There was no sign that he was intoxicated?
- (3) A No sign
- (4) Q And you just said a moment ago that there was no sign that
- (5) he had been drinking in any way at all?
- (6) A Correct
- (7) Q Now you said that you ve had people come into your shop
- (8) that had been drinking you had a family experience with it
- (9) What do you look for in trying to detect whether somebody s
- (10) been drinking or not?
- (11) A Well, at that particular moment, I wasn t looking for
- (12) anything He was just another customer
- (13) Q Right I m not - I m not even asking now about this
- (14) particular moment I m just asking you generally what are the
- (15) kind of things that you would see generally in somebody who
- (16) might come into your shop or you might otherwise run across
- (17) who
- (18) had been drinking?
- (19) A They don t usually - they re not usually able to carry on
- (20) a normal conversation, be polite sometimes
- (21) Q So it may affect their courtesy?
- (22) A Correct
- (23) Q Or their manner of speaking?
- (24) A That is correct
- (25) Q You saw nothing like that in Captain Hazelwood is that
- (26) right?

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- (1) **A Not a thing Nothing no**  
 (2) **Q You said a moment ago or a few minutes ago something about**  
 (3) **if he were he might have been hiding it You didn t see any**  
 (4) **sign that he was trying to hide that he had been drinking had**  
 (5) **you?**  
 (6) **A No he was doing everything every other customer comes in**  
 (7) **my shop does just looking around**  
 (8) **Q All right Let me get to the telephone charge with you -**  
 (9) **and let me mark one last piece of paper as an exhibit and have**  
 (10) **you look at this too Ms Kaiser And we ll mark this as 3457**  
 (11) **A**  
 (12) **Ms Kaiser you can see that this exhibit I just put in**  
 (13) **front of you has atop across the top Cooper [sic] Valley**  
 (14) **Telephone Cooperative - or that s the top printing on it?**  
 (15) **A Correct**  
 (16) **Q And there is a bill that you - you look down I think it s**  
 (17) **seven lines from the bottom?**  
 (18) **A Right**  
 (19) **Q There s a telephone charge for a call to Huntington?**  
 (20) **A Right**  
 (21) **Q All right Ms Kaiser let s look at the exhibit we ve**  
 (22) **marked for the deposition and one that was used at the**  
 (23) **Hazelwood trial**  
 (24) **This is a copy of some of your telephone calls in March of**  
 (25) **1989 is that right?**

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- (1) **A Correct**  
 (2) **Q And these are all calls made from the Hobby Hut Kelly s**  
 (3) **Floral?**  
 (4) **A Correct**  
 (5) **Q Now -**  
 (6) **A Excuse me can I tell you it s also my home phone**  
 (7) **number**  
 (8) **It s the same one**  
 (9) **Q All right Now let s go left to right across this bill**  
 (10) **and see what you can tell me about it**  
 (11) **Down the left hand column - we re going to look at the**  
 (12) **Huntington New York entry okay? Are you with me?**  
 (13) **A Right**  
 (14) **Q Let s look at the left hand come first where it says 03**  
 (15) **slash 23?**  
 (16) **A Correct**  
 (17) **Q What does that mean to you?**  
 (18) **A The date I put his credit card into my machine and made**  
 (19) **the**  
 (20) **call**  
 (21) **Q All right What is the second entry telephone number the**  
 (22) **835 4483?**  
 (23) **A That s my telephone number**  
 (24) **Q And the third entry says Huntington New York?**  
 (25) **A That s the place I called at the time**  
 (26) **Q And what s the telephone number next to Huntington New**  
 (27) **York the 516/271 0160?**

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- (1) **A The number of the shop that I called to order the flowers**  
 (2) **Q And then there s a column labeled MINS and there s a**  
 (3) **Number 2 in this Huntington New York entry You see that?**  
 (4) **A Yes**  
 (5) **Q Do you know what that stands for?**  
 (6) **A That it took two minutes to call**  
 (7) **Q All right The next one says time and the entry is 14 02?**  
 (8) **A Correct**  
 (9) **Q What does that mean to you?**  
 (10) **A The hour that it was placed**  
 (11) **Q All right So does that mean 14 hours into the day two**  
 (12) **minutes after the 14th hour of the day 1402? Is that what it**  
 (13) **means to you?**  
 (14) **A I guess that s what it means yes**  
 (15) **Q Would that be 2 02 p m ?**  
 (16) **A Correct**  
 (17) **Q And you said before this call - before this - wait a**  
 (18) **minute let me start again**  
 (19) **And you said before that this call represented your putting**  
 (20) **the card through Is that how you put it?**  
 (21) **A Yes**  
 (22) **Q What do you mean by that?**  
 (23) **A I have a machine that processes credit cards, and it went**  
 (24) **through the credit card machine plus my telephone bill**  
 (25) **Q And that s something you do routinely when you get a credit**

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- (1) **card charge?**  
 (2) **A Right I phone in as fast as I can**  
 (3) **Q Okay At the time that you go through this exercise of**  
 (4) **putting the card through and having the credit card charge**  
 (5) **verified I guess it was Captain Hazelwood was still in the**  
 (6) **store?**  
 (7) **A I m pretty sure he was yes I put it through right away**  
 (8) **yes**  
 (9) **Q You used the card physically to do it didn t you?**  
 (10) **A I used it physically, right, so he had to be there**  
 (11) **Q So he must have left sometime after this?**  
 (12) **A Right Correct**  
 (13) **MR CHALOS Your Honor that ends our direct**  
 (14) **examination of this witness**  
 (15) **MS HANSON Plaintiffs have a brief cross Your**  
 (16) **Honor**  
 (17) **CROSS EXAMINATION OF EMILY KAISER (Read)**  
 (18) **BY MS HANSON**  
 (19) **Q Now your store was quite busy that day?**  
 (20) **A We were really busy Because it was just -**  
 (21) **Q Just before a holiday?**  
 (22) **A Yes really busy**  
 (23) **Q When Mr Hazelwood came into your shop did you take note**  
 (24) **of him walking into the shop?**  
 (25) **A No I didn t even know who he was He was just another**

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- (1) **customer**  
 (2) Q And at that time you had a conversation with him?  
 (3) **A Yeah a nice conversation**  
 (4) Q Do you know how long that conversation lasted?  
 (5) **A Well it was a little while it had to be at least ten**  
 (6) **minutes, 15 minutes, and then he gave me his order and I**  
 (7) **wrote that up And I was asking him questions while I was talking**  
 (8) **to him and trying to be friendly, as I try to be with most of my**  
 (9) **customers**  
 (10) Q But at the end of the conversation is when he gave you his  
 (11) credit card and paid for his purchase?  
 (12) **A Correct**  
 (13) Q And then after paying for his purchases he left?  
 (14) **A Yes**  
 (15) Q Okay and you didn't know where he went after that?  
 (16) **A Nope I don't follow them They walk out the door and**  
 (17) **they're gone I don't even ask them where they're going**  
 (18) MS HANSON That concludes the cross Your Honor  
 (19) (The Reader Stepped Down )  
 (20) MR SANDERS May it please the Court we call Mr Ron  
 (21) French by deposition  
 (22) THE CLERK Would you raise your right hand please  
 (23) sir?  
 (24) (The Witness Is Sworn)  
 (25) THE CLERK Please be seated

- (1) **A You mean what kind of work do I normally do?**  
 (2) Q Of what kind of work you did before that  
 (3) **A When I was in the military and for the first two years**  
 (4) **after I got out of the military let's say from 1960 to 1970 I**  
 (5) **was an institutional cook**  
 (6) Q Okay  
 (7) **A Eight years in the military and two years working for**  
 (8) **Universal Services, Incorporated and Boatel and those**  
 (9) **people that cater to the pipeline crews and stuff like that**  
 (10) Q All right And then from 70 until you started driving a  
 (11) cab again - I don't need to know everything but -  
 (12) **A I was a cook at the state hospital here in Valdez Well, I**  
 (13) **was from 1970 to 72 - or 69, the last few months of 69 to**  
 (14) **72 I was a Yellow Cab driver in Anchorage**  
 (15) **Around 1972 I moved to Valdez and I went to work at the**  
 (16) **hospital here, Harborview Working for the state of Alaska**  
 (17) **And I worked there six or seven years And -**  
 (18) Q Okay What did you do there at the hospital?  
 (19) **A I was a cook And then I went to college and learned you**  
 (20) **know, trade school I learned how to be an auto body repair**  
 (21) **man I got chemical pneumonia so I had to quit that, so I**  
 (22) **went back to driving a cab again**  
 (23) Q Did you make trips to the Alyeska Terminal on the evening  
 (24) of March 23 1989?  
 (25) **A Yes**

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- (1) For the record sir state your full name address and  
 (2) spell your last name  
 (3) THE READER Howard Naughton N a u g h t o n  
 (4) Houston Texas  
 (5) THE CLERK Thank you  
 (6) DIRECT EXAMINATION OF RONALD FRENCH (Read)  
 (7) BY MR SANDERS  
 (8) Q Mr French would you state your full name for the record?  
 (9) **A My name is Ronald Lloyd L I o y d French F r e n c h**  
 (10) Q Where are you currently employed?  
 (11) **A I drive a Yellow Cab in Valdez**  
 (12) Q Was that your job in March of 1989?  
 (13) **A Yes, it was I been doing it for nine years**  
 (14) Q You said that you've been a cab driver for how long sir  
 (15) nine years?  
 (16) **A Nine years here in Valdez and three years in Anchorage**  
 (17) Q So -  
 (18) **A 12 years altogether**  
 (19) Q In the spring of 1989 March of 1989 how long had you been  
 (20) a cab driver?  
 (21) **A Counting the time in Anchorage?**  
 (22) Q Counting the time you drove in Anchorage  
 (23) **A Nine years**  
 (24) Q And what had you done - I don't want a complete  
 (25) recitation but can you give me a little bit of a description?

- (1) Q How many trips did you make?  
 (2) **A About three But I didn't pick them up at the Pizza**  
 (3) **Palace I picked them up at the Club Bar**  
 (4) Q Let's focus on that trip - let me rephrase it  
 (5) Was there a trip in which you took three passengers from  
 (6) the Club Bar next to the Pizza Palace and a fourth passenger  
 (7) from another location to the Alyeska Terminal?  
 (8) **A Yes It was the Pipeline Club**  
 (9) Q The Pipeline Club is where the fourth passenger came from?  
 (10) **A Yes sir**  
 (11) Q Did you see your passengers inside the Club Bar or in the  
 (12) Pizza Palace?  
 (13) **A I didn't pay any attention Paul said, They're down at the**  
 (14) **end down there, and I said Okay, fine And I went ahead**  
 (15) **and got my money from Terry I looked out the window and you**  
 (16) **could see out the windows of the bar there to the cab And the**  
 (17) **passengers were getting in the cab So I hurried out and**  
 (18) **got in the cab and took them across the bay**  
 (19) Q So you came out of the Club Bar and the passengers were  
 (20) already in your cab?  
 (21) **A They were getting in my cab, yes**  
 (22) Q And there were three passengers?  
 (23) **A Yes**  
 (24) Q Where did the three passengers sit? Were they all in the  
 (25) back or was one in the front or what was the arrangement?

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- (1) **A One of them was sitting in the front and two of them in the back**
- (2) **Q Did one of the passengers have the pizza on him?**
- (3) **A The one in the front seat had a large combination pizza**
- (4) **Q What about the passengers in the back? Did they have pizza also?**
- (5) **A No**
- (6) **Q And did you then go to the Pipeline Club directly to pick up the other passenger?**
- (7) **A Yes because I had another call at the Pipeline Club to go across the bay**
- (8) **Q So you went to the Pipeline Club and -**
- (9) **A I went inside and asked the bartender who the cab was for and she said That guy down on the end down there And I went over to the fellow and I says, Your cab s here, and I walked out and got in the cab and he came out And he was sitting in the back seat**
- (10) **Q In other words that passenger also got in the cab without your really talking to him inside?**
- (11) **A I knew him**
- (12) **Q Okay**
- (13) **A He s a steward off of the Arco one of - one of the - one of the Arco ships**
- (14) **Q How long were you stopped altogether at the Pipeline Club to the best of your recollection?**

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- (1) **A Well long enough for me to walk in ask the bartender who the cab was for go over and tell the guy his cab was there, walk back out and get in my cab About - about 45 seconds maybe 60 at the most**
- (2) **Q And then did you drive directly from the Pipeline Club over to the Alyeska Pipeline terminal?**
- (3) **A Yes I did**
- (4) **Q Did the three passengers not the - let me exclude from this question the man from the Arco ship?**
- (5) **A The man from the Arco ship**
- (6) **Q Right Did the three other passengers talk among themselves about anything while they were in your cab?**
- (7) **A Well something was said about some kind of shaft or something being ready rotated or some damn thing or something**
- (8) **I don t know I really wasn t paying much attention**
- (9) **There was a radio - we was busy that night and our radio was calling We was getting, you know sometimes two or three phone calls every five minutes**
- (10) **Q Okay**
- (11) **A You know**
- (12) **Q But it was some talk about business or something mechanical?**
- (13) **A Yeah They were - the guy in the front seat was talking to the guy right directly behind me and the other guy off the**

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- (1) **Exxon ship you know They were all three talking about something And it was going in one ear and out the other because I was listening to my cab radio I was listening to AM radio and I was trying to keep my mind off from that guy that was eating the pizza in the front seat you know and all that you know**
- (2) **I mean after all I m only human I m like a little puppy dog, you know what I mean? I mean it s - somebody sticks something in front of me and I m hungry, you know, I would like -**
- (3) **to have a piece of it but I m not going to beg for it, you know what I mean?**
- (4) **Q Right**
- (5) **MR SANDERS I m getting hungry up here Your Honor**
- (6) **THE COURT I m glad I had my sandwich**
- (7) **MR SANDERS This is a good time for a break**
- (8) **BY MR SANDERS**
- (9) **Q Again excluding the man from the Arco ship from this question did the three other passengers in any way appear intoxicated to you intoxicated with alcohol or any other substance that would do that?**
- (10) **A I m not really qualified to make such judgments or anything**
- (11) **else All I can say is I did not see them drink anything and I couldn t smell any alcohol because of the pizza And without being some kind of a doctor or something, I couldn t tell you whether they were just tired or whether they were drinking or**

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- (1) **what And I drink myself you know I have no idea whether they d been drinking or not**
- (2) **Q Did they act in any way like they were intoxicated?**
- (3) **A No, they didn t act any kind of unusual to me Of course there was no reason to pay any attention**
- (4) **Q Right**
- (5) **A There was nothing - you know nothing had happened nothing had happened I mean they didn t spill no oil out there in the bay yet or anything else and why should I pay - why should I have paid any attention to them I was just driving the cab minding my own business, whenever I got them from point A to B, they were to pay me and that was my job**
- (6) **Q While they were in the cab they didn t act unruly?**
- (7) **A No they were talking some kind of business between the three of them and I do remember something said about a shaft being rotated or something like that Maybe it was a shaft on a pump or something, you know that the pump man wanted done and asked the engineer for or something like that I don t really know**
- (8) **Q I understand They didn t act boisterous?**
- (9) **A No**
- (10) **Q And they didn t act in any way out of the ordinary you said is that right?**
- (11) **A Just acted like seamen**
- (12) **Q Now you said you did not smell alcohol because of the**

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- (1) pizza I think that s the way you put it?  
 (2) **A Right**  
 (3) **Q** And you spoke to the passenger behind you the man who  
 (4) asked about paying you and getting the receipt Did you turn  
 (5) around?  
 (6) **A I probably handed him the receipt over my shoulder like**  
 (7) **that (indicating), same way he handed me the money you**  
**know**  
 (8) **Q** Did you smell any alcohol when either of those things  
 (9) happened?  
 (10) **A No**  
 (11) **Q** Now when you got to the Alyeska Terminal gate would you  
 (12) describe for me what happened there?  
 (13) **A It was a normal routine, they all - all of them handed me**  
 (14) **their identification cards and they got out and they walked**  
 (15) **through the building I got out of the cab I handed the**  
 (16) **security guard my identification badge and handed him**  
 (17) **I D s and told him what berths they were off from and the**  
**guys**  
 (18) **went in and got - went through the metal detector got their**  
 (19) **bags checked and all that kind of stuff And he checked my**  
 (20) **cab, they searched the cab, underneath the seat in the**  
 (21) **box the back luggage compartment, inside and all that It s**  
**a**  
 (22) **station wagon, checked around the spare tire and**  
 (23) **everything**  
 (24) **else make sure they re not hauling any alcohol in and then**  
 (25) **they opened up the gate and they let me go through and I**  
**give**  
 (26) **the guys back their identification cards when they come**  
**back in**

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- (1) and I go on up to the berth  
 (2) **Q** They walked in and they walked right back out - I m sorry  
 (3) I just read your line  
 (4) **A They walked in and they walked right back out**  
 (5) **Q** Did you see them walk?  
 (6) **A Yeah**  
 (7) **Q** And any unsteadiness in their walk? And again I m  
 (8) excluding from this question the man from the Arco ship I  
 (9) want to know about the other three  
 (10) **A There was no problem**  
 (11) **Q** Where did you go from the gate?  
 (12) **A I stopped at berth 4 and let the man off from the Arco**  
 (13) **ship and he paid me**  
 (14) **Q** Okay  
 (15) **A I drove up to berth 5 and pulled up there and the guy**  
 (16) **behind me says How much do we owe you, and I told him**  
 (17) **and he**  
 (18) **went and asked me for a receipt so he could get it back from**  
 (19) **the old man**  
 (20) **Q** Mr French at berth 5 did you know on that evening what  
 (21) ship was berthed at berth 5?  
 (22) **A Yeah, it was the Exxon Valdez**  
 (23) **Q** In your experience as a cab driver and adding any of those  
 (24) other experiences including the hospital experiences - you ve  
 (25) had many opportunities I would think - to see people who were  
 (26) intoxicated or drunk haven t you?

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- (1) **A Yeah**  
 (2) **Q** Do they have a program in Valdez called a Safe Drive  
 (3) Program?  
 (4) **A Yes, they do**  
 (5) **Q** How long has that been in operation?  
 (6) **A Three four years something like that Three years four**  
 (7) **years at the most**  
 (8) **Q** What is that program Mr French?  
 (9) **A Well that s if a person drives his car to town and he goes**  
 (10) **to a bar or two and he gets all messed up and he has too**  
**much**  
 (11) **to drink to where he can t pass the Breathalyzer, all he has**  
 (12) **to do is call a cab and the cab comes and picks him up and the**  
 (13) **bartender signs a little card and we take him home The**  
 (14) **next**  
 (15) **morning, he calls the cab and says Well, I took a safe ride**  
 (16) **home He signs the little card we take him back to the bar**  
 (17) **so**  
 (18) **he can get his car That s to keep drunk drivers from driving**  
 (19) **drunk**  
 (20) **Q** And as a result of that program did you pick up additional  
 (21) business from people who had had something to drink?  
 (22) **A Yeah, yeah the ones that normally are hard core and**  
 (23) **would**  
 (24) **drive you know they drove anyway and got DWIs anyway**  
 (25) **yeah,**  
 (26) **but some of them that we would - could talk into it - and**  
 (27) **yes, I ve talked quite a few of them into it, you know Hey**  
 (28) **are you sure you re okay, let me take you home you know**  
 (29) **and**  
 (30) **all that yeah You know I ve done that I mean I m sure**

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- (1) that s what you're getting towards Can I tell whether  
 (2) somebody is drunk or not? **Yes**  
 (3) **Q** All right Now let me go back to their demeanor and  
 (4) behavior while in the cab That s all I m asking you did  
 (5) anybody appear to be intoxicated?  
 (6) **A No They did not appear to be drunk to me - drunk to me**  
 (7) **and I - no I did not see them drink anything and no they did**  
 (8) **not drink anything in my cab and the guy didn t drink a beer**  
 (9) **with his pizza in my front seat, no**  
 (10) **MR SANDERS** That concludes the direct Your Honor  
 (11) **MS HANSON** Plaintiffs have brief cross - has  
 (12) nothing to do with pizza  
 (13) **MR SANDERS** I object -  
 (14) **CROSS EXAMINATION OF RONALD FRENCH (Read)**  
 (15) **BY MS HANSON**  
 (16) **Q** All right Now let me ask you this about berth 5 Did  
 (17) you see any of the three Exxon Valdez passengers walking  
 (18) away  
 (19) from the cab or walking anywhere at that point?  
 (20) **A I wasn t paying any attention**  
 (21) **Q** Do you have any recollection of any of those three men  
 (22) walking in any way unsteadily at berth 5?  
 (23) **A I had no reason to pay attention to them**  
 (24) **Q** Now did you subsequently become aware of the identity of  
 (25) any of those - any of the passengers after the trip?  
 (26) **A Yeah - no because I already knew who the guy was off**  
**the**



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(1) **Arco ship you know and no I didn't - well I don't know how**  
 (2) **to answer your question because no I did not find out who**  
**any**  
 (3) **of them were afterwards but I did find out who one of them**  
**was**  
 (4) **not**  
 (5) **Q All right You made some reference to this before we**  
 (6) **started What do you mean by that?**  
 (7) **A I found out later that I did not have Captain Hazelwood in**  
 (8) **my cab I was led to believe by the newspaper - by the Daily**  
 (9) **News okay - and I was led to believe by one of the TV**  
 (10) **channels I believe it was ESPN, that I had Captain**  
**Hazelwood**  
 (11) **In my cab, but nobody would show me a picture of Captain**  
 (12) **Hazelwood, okay until after they took interviews and stuff**  
**and**  
 (13) **all that and after they asked me questions about what I -**  
**you**  
 (14) **know what happened that night and Did you take - you**  
**know**  
 (15) **how did I know I said I took three people back to the ship,**  
 (16) **to the Exxon Valdez and I didn't know who they were**  
 (17) **Q You described for us in detail what they did on that night**  
 (18) **when you came up with your cab and you asked for**  
 (19) **identifications is that -**  
 (20) **A Before the oil spill, if a person didn't look overly**  
 (21) **intoxicated or anything like that there was no problem**  
**They**  
 (22) **let them on the ship, let him in the terminal and everything**  
 (23) **else**  
 (24) **Q When the three passengers went through the security gate**  
 (25) **and they were walking back from security to the cab did you**

(1) MS HANSON Nothing further thank you  
 (2) THE COURT We'll suspend for the day now  
 (3) Ladies and gentlemen please remember my instructions about  
 (4) not reading or listening to anything concerning this case We  
 (5) will reconvene at 8 00 tomorrow morning Court is in recess at  
 (6) this time  
 (7) THE CLERK This court is in recess until eight a m  
 (8) tomorrow  
 (9) (Jury out at 2 02 p m )  
 (10) (Recess at 2 02 p m )

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(1) have much opportunity to observe them?  
 (2) **A Uh uh**  
 (3) **Q You'll have to say yes or no**  
 (4) **A No The guy from the Arco ship was already back in**  
 (5) **Q Now in your six years experience before the spill would**  
 (6) **it be out of the ordinary if you were to take a person you knew**  
 (7) **to be a - or take let's say someone back to one of the**  
 (8) **berths would it be out of the ordinary if that person was**  
 (9) **intoxicated?**  
 (10) **A Well that depends Depends whether I went into the bar**  
 (11) **and the guy had a beer in front of him and I says to him I**  
 (12) **says, Hey your cab's here and then I went outside or**  
**whether**  
 (13) **I pulled up in front of the bar and the guy was standing**  
 (14) **outside in front the bar with a newspaper in his hand and a**  
**bag**  
 (15) **full of stuff that he got at the market across the street, you**  
 (16) **know it would be - it wouldn't be - I guess it wouldn't**  
 (17) **be - if the guy was falling down drunk, yeah I would notice**  
 (18) **that But if the guy was - had, say he went in the bar and**  
 (19) **had a couple of drinks and he met me at the door, there**  
**would**  
 (20) **be no reason for me to pay any attention**  
 (21) **Q Have you ever taken an intoxicated individual back over**  
 (22) **to -**  
 (23) **A Yes**  
 (24) **Q - to get onto one of the vessels?**  
 (25) **A Yes**

(1) I N D E X  
 (2) CROSS EXAMINATION OF PAUL MYERS  
 2588  
 (3) BY MR NEAL 2588  
 (5) REDIRECT EXAMINATION OF PAUL MYERS  
 2609  
 (6) BY MR O NEILL 2609  
 (8) DIRECT EXAMINATION OF RICHARD L MASTERS  
 (Live) 2622  
 (9) BY MR MONTAGUE 2622  
 (11) REDIRECT EXAMINATION OF RICHARD L  
 MASTERS 2682  
 (12) BY MR MONTAGUE 2682  
 (14) DIRECT EXAMINATION OF NATALIE FOBES  
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 (15) BY MR O NEILL 2690  
 (17) CROSS EXAMINATION OF NATALIE FOBES  
 2696  
 (18) BY MR SANDERS 2696  
 (20) DIRECT EXAMINATION OF JERZY GLOWACKI  
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 (21) BY MR CHALOS 2698  
 (23) CROSS EXAMINATION OF JERZY GLOWACKI  
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 (24) BY MR O NEILL 2760

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(1) REDIRECT EXAMINATION OF JERZY GLOWACKI  
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(2) BY MR CHALOS 2771  
(4) DIRECT EXAMINATION OF EMILY KAISER (Read)  
2773  
(5) BY MR CHALOS 2774  
(7) CROSS EXAMINATION OF EMILY KAISER (Read)  
2783  
(8) BY MS HANSON 2783  
(10) DIRECT EXAMINATION OF RONALD FRENCH  
(Read) 2785  
(11) BY MR SANDERS 2785  
(13) CROSS EXAMINATION OF RONALD FRENCH  
(Read) 2795  
(14) BY MS HANSON 2795

(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 25th day of May 1994  
(20) JOY S BRAUER RPR  
Notary Public for Alaska  
(21) My Commission Expires 5 10 97

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(1) EXHIBITS  
(2) 9123 9128 3509 and 3487 offered 2588  
(3) 1805 and 1806 offered 2611  
(4) 9147 offered 2641  
(5) 16 18 19 795A 1705 827 828 829 103  
(6) 92A offered 2685  
(7) DX9093 offered 2685  
(8) Court 1 offered 2687  
(10) 1805 and 1806 received 2611  
(11) 9147 received 2641  
(12) 16 18 and 19 received 2686  
(13) 795A 1705 827 828 829 103 received 2686  
(14) 92A received 2687  
(15) 9000 and 9093 received 2687  
(16) Plaintiffs Exhibit 1 received 2688  
(17) Defendants 3902A received 2697

Look-See Concordance Report

UNIQUE WORDS 2,930
TOTAL OCCURRENCES 13,101
NOISE WORDS 385
TOTAL WORDS IN FILE 42,675

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 21

LIST OF THRESHOLD WORDS

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Captain [168]
COURT [59]
department [66]
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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 26, 1994  
 (4) ) 8:00 a.m.  
 TRANSCRIPT OF PROCEEDINGS  
 (5) ^  
 (10) BEFORE THE HONORABLE H. RUSSEL HOLLAND JUDGE  
 VOLUME 18, Pages 2803 3023  
 Realtime Transcription  
 (12) APPEARANCES  
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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  
 (8) Mr Lynch  
 (9) MR LYNCH Michael Craig Your Honor  
 (10) Your Honor to speed things up I believe there is no  
 (11) objection to the admission of Exhibits DX3459 3454 3463 and  
 (12) 3462  
 (13) (Exhibits 3459 3454 3463 and 3462 offered)  
 (14) MR O NEILL No objection to any of the three and  
 (15) with regard to 3463 as redacted  
 (16) THE COURT Actually there are four  
 (17) MR O NEILL No objection to any of the four  
 (18) THE COURT Okay 3463 is a redacted exhibit of some  
 (19) sort?  
 (20) MR O NEILL Yes sir It's -  
 (21) MR LYNCH It's just a - there were a number of  
 (22) pictures and only three are coming in Your Honor And I'll  
 (23) mark them A B and C  
 (24) THE COURT The exhibits announced by Mr Lynch are  
 (25) admitted

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 In Court  
 (15) Deputy Clerk. TOM MURTAUGH  
 U.S. District Court  
 222 W 7th Avenue #4  
 Anchorage AK 99513  
 Ph 907/271-4529  
 (17) Reported by JOY S. BRAUER RFR  
 Registered Professional Reporter  
 Midnight Sun Court Reporters  
 2550 Denali Street Suite 1505  
 Anchorage, AK 99503  
 Ph 907/259-7100

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(1) (Exhibits 3459 3454 3463 and 3462 received)  
 (2) THE COURT Have we sworn the witness?  
 (3) THE CLERK Mr Craig would you stand please and  
 (4) raise your right hand  
 (5) (The Witness Is Sworn)  
 (6) THE CLERK For the record state your full name your  
 (7) address and spell your last name please  
 (8) THE WITNESS Michael Edward Craig last name  
 (9) C R A I G Address Box 1825 Valdez Alaska  
 (10) THE CLERK Thank you sir  
 (11) DIRECT EXAMINATION OF MICHAEL CRAIG (Live)  
 (12) BY MR LYNCH  
 (13) Q Mr Craig do you remember what job you had on the night of  
 (14) March 23 1989?  
 (15) A Yes sir I was supervisor of the night shift  
 (16) Q Where? For whom?  
 (17) A At the Valdez terminal for American Guard and Alert  
 (18) contracted to the Alyeska Pipeline Service Company  
 (19) Q Did you say American Guard and Alert?  
 (20) A Yes  
 (21) Q What job or responsibility did American Guard and Alert  
 (22) have at the Alyeska Pipeline Service Company on March 22  
 (23) 1989?  
 (24) A Specifically access control and Emergency Medical  
 (25) Services  
 (26) Q What do you mean by access control?

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- (1) A It's - it's a restricted facility so only people with
- (2) proper - proper Alyeska badge government officials or
- (3) authorized visitors could enter the facility in addition to
- (4) ship's personnel returning to their vessels
- (5) Q Was that access control task of yours did that include
- (6) evaluating whether or not people were bringing in unauthorized
- (7) materials on the Alyeska premises?
- (8) A Yes it did
- (9) Q Let me show you a portion of DX3459 I'll put it up on the
- (10) screen I only have one copy with me
- (11) Reading this note Exhibit 3459 is part of the Alyeska Port
- (12) Information Manual Was it your understanding that possession
- (13) of firearms illegal knives illegal drugs or alcoholic
- (14) beverages was strictly prohibited?
- (15) A Yes
- (16) Q And what was your responsibility with regards to carrying
- (17) out that prohibition?
- (18) A We would search the incoming baggage bags luggage
- (19) that
- (20) sort of thing for the incoming ships personnel
- (21) Q The next line down reads tanker personnel Does that refer
- (22) to people who work on tankers?
- (23) A Yes
- (24) Q Returning to the terminal in such a condition that they
- (25) might require assistance to ensure their safe return to the
- (26) tanker will be detained at the gate until the guard is

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- (1) satisfied that a member of the ship's company is with the
- (2) person and will escort them directly to the vessel Did you
- (3) have that responsibility as part of your access security role?
- (4) A Yes
- (5) Q And how did you carry that out?
- (6) A By initial observation of the individual when they
- (7) returned
- (8) from town in a cab or any other mode of transportation
- (9) We'd
- (10) watch them for any of these signs of intoxication until they
- (11) passed through our screening If we felt that this existed
- (12) then we would notify the vessel to provide either one or two
- (13) people to help the individual get to the vessel if the person
- (14) was in such a state that they were argumentative or
- (15) combative
- (16) or that sort of thing, then we would transport them down to
- (17) the - to the gangway ourselves and then the vessel would
- (18) provide people to help them get over
- (19) Q On that night did you say you were supervisor?
- (20) A Yes
- (21) Q And who was working with you that night?
- (22) A Man named Charles Dudley was at the gate for vehicular
- (23) traffic There was a Cary Shoop who was in the CCTV
- (24) monitor
- (25) room and there was a Boyd Norton (ph) who was another
- (26) patrolman
- (27) in addition to myself
- (28) Q This is Exhibit 9030 Can you identify this individual?
- (29) A That's Charles Dudley
- (30) Q What was Mr Dudley's background?

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- (1) A He was 20 plus year retired Coast Guard chief petty
- (2) officer
- (3) Q And had he been employed for American - is it guard and
- (4) alert?
- (5) A Yes American Guard and Alert
- (6) Q Had he been employed at the Alyeska terminal for a period
- (7) of time?
- (8) A I believe it was somewhere close to a year at that point
- (9) Q And what was his job assignment that night March 23 1989?
- (10) A That night he conducted the identification process for
- (11) the
- (12) incoming individuals and would also do the vehicular
- (13) searches
- (14) MR LYNCH Excuse me Your Honor I apparently
- (15) misread that That is 9130 and I'd like to offer it as
- (16) 9130 A I have a photo of Officer Craig which I'll offer as
- (17) 9130 B
- (18) (Exhibits 9130 A and 9130 B offered)
- (19) MR O NEILL No objection
- (20) THE COURT 9130 A and B are admitted
- (21) (Exhibits 9130 A and 9130 B received)
- (22) MR LYNCH Thank you Your Honor
- (23) BY MR LYNCH
- (24) Q Now let me show you if I may a page from Exhibit DX3454
- (25) in evidence and ask you if you can identify that
- (26) A That's a copy of our gate register that documents the
- (27) activity through the main gate

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- (1) Q Can you looking at your screen identify this signature
- (2) down here?
- (3) A That would be mine
- (4) Q And what is your procedure with reference to keeping this
- (5) gate register or gate log?
- (6) A The log is initiated at just after midnight 001 and runs
- (7) for a 24 hour period
- (8) Q And is it the responsibility of the persons at the gate to
- (9) make entries noting the arrival or departure of anyone who
- (10) passes through the gate?
- (11) A Yes it is
- (12) Q And is it necessarily the same person who makes each of
- (13) those entries?
- (14) A No, it's not People work a six hour shift so four people
- (15) would have access to the log, in addition to anybody who
- (16) might
- (17) provide them a relief situation, and traffic might come
- (18) through
- (19) at that time as well
- (20) Q Let me now refer you if I can to page 9 of Exhibit 3454
- (21) and specifically let me direct your attention to the entries
- (22) at the top of the page where the entries read Roberson J
- (23) Glowacki J and Hazelwood J?
- (24) A Yes
- (25) Q Were you present at the Alyeska security gate on the
- (26) evening of March 23?
- (27) A I was in the security office It was just adjacent to the

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- (1) gate at that time  
 (2) Q And did you participate in the process of returning Messrs  
 (3) Roberson, Glowacki and Hazelwood when they returned to the  
 (4) terminal that evening?  
 (5) A Yes I did  
 (6) Q Are you able to tell either from your recollection or from  
 (7) this record at what time they returned?  
 (8) A 2024  
 (9) Q Not even looking?  
 (10) A No it's right there  
 (11) Q Could you point out where that is?  
 (12) A This  
 (13) Q See if the light pen will work  
 (14) A I'm not sure how this works but -  
 (15) Q Let me just - have I highlighted the correct entries?  
 (16) A Yes you have  
 (17) Q Do you have any way to tell from this document how or  
 (18) when - who arrived with them or how they arrived?  
 (19) A They arrived at that time There's a - should be another  
 (20) cab driver entry on another page which would show the time  
 (21) that the cab arrived and was screened and how many people  
 (22) was in  
 (23) the - that were in the cab and what the dispatch -  
 (24) Q Let me show you page 11 of 3454 Can you find that entry  
 (25) there?  
 (26) A It's - I may need your help in

- berth 4 The next one over would represent it went to 5  
 and 4  
 (3) Q Now what does this line entry indicate?  
 (4) A The in would show how many people came in when the  
 driver  
 (5) drove in and how many people went out when the driver  
 drove  
 (6) out  
 (7) Q Out - this is in this is out?  
 (8) A Yes  
 (9) Q So is this the entry that refers to the arrival at 2024?  
 (10) A Yes it is  
 (11) Q And what does that tell you about what Mr French did on  
 (12) that trip out to the Alveska Terminal?  
 (13) A At 2024 he arrived with four people and went to berth 5  
 (14) Q Went to berth 5 and left with zero?  
 (15) A Yes  
 (16) Q Okay Who was the fourth person Do you know or  
 remember?  
 (17) A Fourth person was an Alan McGregor  
 (18) Q And is Alan McGregor was he part of the crew of the Exxon  
 (19) Valdez?  
 (20) A He was on the Arco Independence  
 (21) Q Now you've told us where you were and you've told us  
 where  
 (22) Mr Dudley was Was there anyone else in the security detail  
 (23) on duty that night at the Alveska gate?  
 (24) A We have a monitor communications room that is in the  
 same  
 (25) building that I was in where they monitor you know various

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- (1) Q Is that the entry?  
 (2) A Yes it is  
 (3) Q Now could you perhaps interpret for the - is there any  
 (4) way you can - not in the Elmo it doesn't - I'll try to point  
 (5) for you as you recall Mr Craig  
 (6) Could you tell us what the - what these entries are?  
 (7) Let's start here What does that tell us  
 (8) A Okay The 2024 is the time that the vehicle was cleared  
 (9) through the gate  
 (10) Q And that coincides with the time that you told us  
 (11) Messrs Hazelwood, Glowacki and Roberson  
 (12) A Yes it does  
 (13) Q And then?  
 (14) A That's the time the cab departed the facility  
 (15) Q And that's the name of the driver?  
 (16) A Yes it is  
 (17) Q Yellow Cab what does this entry refer to?  
 (18) A That's the cab driver's badge number Alveska badge  
 number  
 (19) Q Alveska issues a badge to cab drivers -  
 (20) A Yes they do  
 (21) Q - who operate in Valdez?  
 (22) A That's the license number of the vehicle  
 (23) Q And what are these entries over here?  
 (24) A The B stands for berth which is the destination of the cab  
 (25) at the time So the 4 would represent that that it went to

- (1) camera I think at that time we had just less than 30  
 cameras  
 (2) throughout the terminal one which would view the security  
 (3) office and Gary Shoop worked there at that time  
 (4) Q And let me see if I understand this Mr Shoop was sitting  
 (5) in a room that had monitors for television cameras these  
 (6) remote cameras that - might be one in here or something?  
 (7) A Yes there was  
 (8) Q That covered the room where incoming personnel tanker  
 (9) people or other people would be - would be observed?  
 (10) A Yes in addition to the gate activity  
 (11) Q What other areas could Mr Shoop observe using these  
 (12) cameras if you or he wished to do so?  
 (13) A In addition to the gate activity at the security office  
 (14) there was cameras throughout the terminal on each berth  
 at  
 (15) the head of the berth and at the end of the berth which  
 would  
 (16) be the shore side and the ship side essentially cameras at  
 (17) different facilities and up in the tank farms variously placed  
 (18) throughout the terminal  
 (19) Q So if Mr Shoop wished to do so he could switch the camera  
 (20) on at berth 5 and watch the cab arrive and people disembark?  
 (21) A Yes We actually maintained a separate monitor for each  
 (22) berth  
 (23) Q I seem to have mislaid my photos again  
 (24) Did you have any procedure or any capability to videotape  
 (25) people who you had on these remote cameras?



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- (1) **A There is capability to videotape if the officer is**  
 (2) **monitoring the access and feels that the situation in the**  
 (3) **office is somehow either out of control or could get out of**  
 (4) **control then he would initiate a video process at that time**  
 (5) Q Now do you – do you recall being involved in the  
 (6) screening of the four individuals who were in Mr. French's cab  
 (7) when it arrived at 2024 that is 8 24 –  
 (8) A Yes  
 (9) Q – in normal time reporting?  
 (10) A Yes  
 (11) Q 8 24 p m ?  
 (12) A Yes  
 (13) Q Do you recall being involved in the screening of those  
 (14) individuals?  
 (15) A Yes  
 (16) Q And could you tell the jury what you did? I'm going to try  
 (17) to – let me put a picture up here – not up there. You need  
 (18) it again it's coming in it's coming.  
 (19) Could you identify this picture?  
 (20) A Yes I can  
 (21) Q Could you just describe what we're looking at here?  
 (22) A That's the security office at the Alyeska marine terminal  
 (23) Q And just in terms of when the cab arrives at the Alyeska  
 (24) Terminal it arrives at a gate facility?  
 (25) A Yes

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- (1) Q Where would that be in relation to this office space?  
 (2) A Just to the left  
 (3) Q Out here?  
 (4) A Yes  
 (5) Q What about –  
 (6) A Well there's a land – there's an express lane and then you  
 (7) have a main gate guard shack  
 (8) Q We'll get to that in a minute but if you were looking at  
 (9) it from this window it would be out this window?  
 (10) A Yes  
 (11) Q And where were you at the time that you learned the cab  
 (12) arrived?  
 (13) A At the time that the cab arrived I was at the desk just in  
 (14) the foreground of the photo  
 (15) Q This desk?  
 (16) A Yes  
 (17) Q And then what happened?  
 (18) A When I heard that the cab was arriving I went to the other  
 (19) side of the room to get on the other side of the counter  
 (20) Q So you went what out?  
 (21) A Out to the right  
 (22) Q Like this?  
 (23) A Yes and down to the left and back around  
 (24) Q Out here and then what?  
 (25) A Then I observed the cab pull up to the gate and watched  
 the

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- (1) individuals get out  
 (2) Q Where were you when you did that?  
 (3) A Back in the corner there's a printer I was just standing  
 (4) next to it  
 (5) Q This printer here?  
 (6) A Yes  
 (7) Q You were standing here?  
 (8) A Yes  
 (9) Q And looking out this window?  
 (10) A Yes  
 (11) Q Could you clearly see the cab when it arrived?  
 (12) A Yes  
 (13) Q And what did you observe?  
 (14) A I observed one individual get out of the back of the cab  
 (15) and then three start to exit the other doors of the cab  
 (16) watched the identification – identification process with the  
 (17) first gentleman and then he walked – you know he did the  
 (18) identification process walked straight past those windows  
 that  
 (19) are in the background  
 (20) Q These windows here?  
 (21) A Yes The entry door to come into the office is –  
 (22) Q Here?  
 (23) A Not that door but just – just a few feet over  
 (24) Q Further off camera?  
 (25) A Yes So I watched him go over to there and come into the

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- (1) office  
 (2) Q And could you just – you said the identification process  
 (3) could you just very briefly tell us what you mean by that?  
 (4) A When a ship arrives at the terminal they have to provide  
 (5) a  
 (6) crew manifest listing all the people on the vessel For them  
 (7) to depart that person has to be on the crew list and when  
 they  
 (8) arrive they have to be on the crew list So they must  
 provide  
 (9) photo identification or official identification to return so  
 (10) the officer at the gate actually verifies the identification  
 before they are allowed to come into the office  
 (11) Q Okay So if I understand you you watched out the window  
 (12) you observed one person get out of the cab and walk toward  
 your  
 (13) security checkpoint correct?  
 (14) A He got out of the cab and went to meet with the security  
 (15) officer for the identification process yes  
 (16) Q And then after completing that walked over past these  
 (17) windows and into the security office?  
 (18) A Yes  
 (19) Q What about the other people in the cab?  
 (20) A As I watched they were getting out of the cab this person  
 (21) went right to the officer and – and finished that process and  
 (22) as he walked in I watched him walk over towards the front  
 of  
 (23) the door and then has as he came in I initiated a screening  
 (24) process for him When that was complete I didn't see the  
 (25) other three guys come in the door so I looked back out  
 there

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- (1) and they were still standing outside with the security officer  
 (2) at the gate with the identification process  
 (3) Q Now up to this point in time - first of all did you -  
 (4) were you able to identify any of those four individuals by name  
 (5) or did you know them independently?  
 (6) A No, I did not  
 (7) Q They were just four people?  
 (8) A Yes  
 (9) Q Did you see or observe anything which caused you concern  
 (10) from your point of view of security that you either had a  
 (11) problem with someone introducing contraband or that you had a  
 (12) problem with somebody who might be in a state where they  
 (13) wouldn't be safe on the property?  
 (14) A No I did not  
 (15) Q Did you see any stumbling or any other sign that would  
 (16) cause you concern?  
 (17) A No I did not  
 (18) Q None of the four?  
 (19) A No  
 (20) Q Did you have reason to be concerned about Mr French?  
 (21) A Mr French had been reported sometime earlier as being  
 (22) a  
 (23) **conduit to bootleg booze in for seamen We had initiated a**  
 (24) **process sometime before that for a tighter screening of the**  
 (25) **cabs and even hand wand screening of the cab drivers but**  
 (26) **nothing had turned up in any of those searches**

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- (1) Q So when Mr French arrived he was someone who at least  
 (2) you  
 (3) had concern might be involved in trying to bring contraband  
 (4) onto the property?  
 (5) A The officer at the gate would have had that concern yes  
 (6) Q I used the you meaning the American guard?  
 (7) A Oh okay yes  
 (8) Q And Mr Dudley was the officer at the gate?  
 (9) A Yes he was  
 (10) Q And his responsibility was to check the cab driver and the  
 (11) cab?  
 (12) A Yes  
 (13) Q And then what next happened with the three individuals who  
 (14) stayed out or who didn't come in with the first person?  
 (15) A Once the identification process was complete then they  
 (16) followed the same route as Mr McGregor walked past  
 (17) those  
 (18) window - those windows excuse me watched them walk by  
 (19) the  
 (20) windows they came into the office door one peeled off to  
 (21) go  
 (22) to the restroom which is farther off to the right down a short  
 (23) hallway The other two presented their baggage onto the  
 (24) counter and I give them separate trays for metal objects  
 (25) that  
 (26) they might have on their person I instructed them in that  
 (27) process and then screened their baggage  
 (28) Q Bear with me just one second while I see if I can get a new  
 (29) picture here  
 (30) Is this an accurate picture of the gate structure as it

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- (1) existed on March 23 1989?  
 (2) A Yes it is  
 (3) Q And the arriving cab would come in here?  
 (4) A Yes  
 (5) Q And then you observed the people - the cab was a station  
 (6) wagon or something?  
 (7) A Yes  
 (8) Q And one got out of the back door?  
 (9) A Yes  
 (10) Q Was it one of those back doors that open sideways?  
 (11) A Yes  
 (12) Q And then the others got out of the passenger area?  
 (13) A Yes  
 (14) Q And where would Mr Dudley have been? Here?  
 (15) A He would actually have been out of the - that shack to  
 (16) meet the vehicle  
 (17) Q About here?  
 (18) A Physically outside yes  
 (19) Q And then you observed the first fellow walk over what in  
 (20) through here?  
 (21) A Yes  
 (22) Q And then you watched the other three walk through there?  
 (23) A Yes  
 (24) Q Okay Now did you observe the other three from the time  
 (25) they left the island here until they passed out of your sight

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- (1) past those windows?  
 (2) A Yes  
 (3) Q And that was because you were wondering why they were  
 (4) delayed and hadn't come in with the first individual?  
 (5) A Well I would normally try to observe that process  
 (6) Q Now in watching them walk did you see yet any sign to  
 (7) cause concern on your part about whether they might be  
 (8) impaired  
 (9) or a danger to themselves or danger to the property?  
 (10) A No I did not  
 (11) Q So neither the first fellow nor the other three caused you  
 (12) any - gave you any reason up to that point to be concerned?  
 (13) A Correct  
 (14) Q Okay Then they're in the - in the security room Could  
 (15) you describe then what process you went through with the three  
 (16) who came in afterwards?  
 (17) A As I touched on earlier they came in through that door  
 (18) that has the window in it and the crash bar One of them  
 (19) peeled off to the left as they arrived - would be the right on  
 (20) that picture - two of them approached the counter set some  
 (21) baggage and I believe a couple of pizzas on the counter I  
 (22) gave them two small trays to you know put personal metal  
 (23) objects in went through the bags the gentlemen went  
 (24) through  
 (25) the screening which is similar to an airport metal detector  
 (26) They picked up their personal effects on the other side and  
 (27) once I finished screening the baggage then handed that  
 (28) back to

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1) them as well and then they stood right in between the two  
 2) counters waiting for the other gentleman to come out of the  
 3) restroom at which time we just initiated some small talk  
 not  
 4) about anything that I can remember just stood there and  
 talked  
 6) Q Did you notice - first of all did you know at this point  
 who any of those three individuals were?  
 8) A No I did not  
 9) Q Did you later learn who those three individuals were?  
 10) A Yes I did  
 11) Q And how did you ascertain that?  
 12) A With the gate register log  
 13) Q That's the log that we looked at before?  
 14) A Yes  
 15) Q 3454?  
 16) A Yes  
 17) Q And do you have any information or any way to ascertain  
 18) where Captain Hazelwood was or who Captain Hazelwood was  
 among  
 19) the three?  
 20) A No  
 21) Q Do you have any way to identify whether he's the individual  
 who went to the restroom?  
 22) A I don't have recollection of which one it was  
 23) Q So the third individual came out of the restroom?  
 24) A Yes

1) people come through who you observed to be and judged to be  
 2) affected by alcohol?  
 3) A Yes  
 4) Q Had you observed people who were - who you observed to  
 5) have had something to drink but were not - were not so  
 6) impaired that they were unsafe?  
 7) A Yes  
 8) Q And had you observed people who were - not only had  
 9) something to drink but impaired and you judged them to be a  
 10) danger to themselves?  
 11) A Yes  
 12) Q Now if you observed someone in that condition was it your  
 13) practice to try to videotape the behavior of the people in  
 14) the - in the security office?  
 15) A Which condition  
 16) Q In a condition where their impairment might present a risk  
 17) to themselves or a risk to the property?  
 18) A Yes  
 19) Q That would have been Mr. Shoop's responsibility?  
 20) A Yes  
 21) Q And he was working under your supervision?  
 22) A Yes  
 23) Q As of that time were you - well strike that  
 24) Approximately how often or how frequent did you observe  
 25) indications of alcohol consumption on incoming tankers?

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1) Q What happened then?  
 2) A Then he presented a bag of some sort that I went through  
 3) as well. Provided him a singular tray for his personal metal  
 4) objects. They talked to him at the time you know he was  
 5) going through. He proceeded through. I handed him his  
 personal  
 6) stuff. They all three stood there and waited for him to get  
 7) you know the things out of the tray talked a little bit then  
 8) they proceeded out the door and reentered the cab.  
 9) Q Now from the time you saw them arrive to the time they  
 10) spent with you in the security office to the time they exited  
 11) and went to the cab did you see anything which suggested to  
 12) you if any of them was under the influence or impaired by  
 13) alcohol?  
 14) A No I did not  
 15) Q Did you see anything to indicate that they were in any way  
 16) lacking in coordination stumbling or walking funny?  
 17) A No I did not  
 18) Q Anything about their speech that indicated to you that they  
 19) might be using alcohol?  
 20) A No I did not  
 21) Q Okay Now at that point in time March 1989 was it a  
 22) regular part of your responsibility at the security gate to  
 23) watch for alcohol signs of alcohol on incoming tanker people?  
 24) A Yes  
 25) Q And did you observe that occurring? I mean had you seen

1) A Specifically on the night shift as the night crew later  
 2) say after 10:00 when everything else is pretty much closed  
 3) except for the bars and particularly after midnight it was  
 4) very common  
 5) Q So it was not uncommon for you to observe people and  
 judge  
 6) them to have had something to drink?  
 7) A Yes  
 8) Q And again sometimes they were under control and  
 sometimes  
 9) they weren't?  
 10) A Correct  
 11) Q By either test did you judge these four individuals to  
 12) have had enough to drink to be noticeably affected by what  
 they  
 13) may have drunk?  
 14) A No I did not  
 15) Q Did you ever have occasion to discuss with Mr. Shoop  
 16) whether he should have videotaped what he observed while the  
 17) four individuals were in the - in the office with you?  
 18) A We discussed it the following morning when we learned  
 19) that - that that might have been you know part of the  
 20) problem and none of the three of us either myself Dudley  
 or  
 21) Shoop felt that there was anything that we saw or should  
 have  
 22) done or any other thing that particular night for that  
 23) incident  
 24) Q Could you identify this structure for us Mr. Craig?  
 25) A That's the gangway structure for berth at the Alyeska

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- 1 Terminal  
 (1) Q Did you have occasion to use those gangway structures from  
 (2) time to time?  
 (3) A Yes  
 (4) Q How did you find them - well when you used them had you  
 (5) been drinking?  
 (6) A No  
 (7) Q And how did you find them to navigate?  
 (8) A That had to be - your concentration - you couldn't really  
 (9) be thinking of much else than that The first set of stairways  
 (10) wasn't too bad other than just how steep they are but the  
 (11) next set -  
 (12) Q That's these?  
 (13) A Correct The next set depending on you know how  
 (14) loaded  
 (15) the tanker was they have a much narrower step and they  
 (16) are  
 (17) reasonably difficult to navigate  
 (18) Q Are these steps on the down side - let me call it the  
 (19) backside of the gantry Are they fixed in place or do they  
 (20) rotate?  
 (21) A They're fixed  
 (22) Q And when you've - when you've done it without having had  
 (23) anything to drink have you found it necessary to take care  
 (24) for - because of the coordination it takes?  
 (25) A I've found it necessary to hold onto both handrails  
 Q Now when you've been involved in passing through when

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- (1) have you had occasion to have to help them use the gantry?  
 (2) A Yes  
 (3) Q And what have you - what was your experience in that  
 (4) connection?  
 (5) A It was a difficult situation to do it by yourself and even  
 (6) more so to help somebody over  
 (7) Q In your opinion is it - would it be possible - from your  
 (8) own experience would it be possible for someone who's been  
 (9) impaired by consumption of alcohol to navigate the gantry  
 (10) without noticeable stumbling or noticeable navigation  
 (11) problems?  
 (12) A I don't think so  
 (13) Q Have you ever - did you need to use the handrails when you  
 (14) used the gantry?  
 (15) A Yes  
 (16) Q Would it be more difficult if you were carrying baggage or  
 (17) something else in your hand?  
 (18) A Yes  
 (19) Q Now on that occasion did you did you try to monitor  
 (20) these individuals when they arrived at the point where they  
 (21) where the cab would let them off at the berth?  
 (22) A I did not The monitor room officer Shoop in my view but I  
 (23) don't recall whether he said he did or not  
 (24) Q Was there anything that indicated to you that it would be  
 (25) necessary to monitor that the disembarkation point?  
 (26) A No there wasn't

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- (1) Q Now subsequently have you had occasion to get - be  
 (2) involved in testing arriving tanker men -  
 (3) A Yes  
 (4) Q - for blood alcohol level or breath alcohol level?  
 (5) A Yes I have  
 (6) Q And have you - have you had occasion to see what test  
 (7) results you get with what signs of alcohol consumption that you  
 (8) observe?  
 (9) A Yes  
 (10) Q Let me see if I can follow this Your practice is - is  
 (11) your practice to test every arriving tanker man at present?  
 (12) A The tanker men that depart  
 (13) Q That are coming into the Alyeska Terminal?  
 (14) A Not every one We don't test every one of them, no  
 (15) Q You test them if you see something that leads you to think  
 (16) you should?  
 (17) A For probable cause, yes  
 (18) Q And based on the standards that you would use probable  
 (19) cause standards that you would use do you believe that you  
 (20) would have tested these individuals - that you had any  
 (21) probable cause to test these three individuals on the night of  
 (22) March 23?  
 (23) A No  
 (24) Q One last question Have you ever discussed with Mr French  
 (25) his role or his involvement in the delivery of Captain

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- (1) Hazelwood and Messrs Glowacki and Roberson to the Alyeska  
 (2) Terminal that night?  
 (3) A Yes I believe it was the next day or shortly after, I had  
 (4) an interview with him where he provided a statement and I  
 (5) discussed with him the situation At that time he didn't feel  
 (6) like he was the driver who brought the - the particular  
 (7) individuals back He did say that he brought people back  
 (8) that  
 (9) night the time frame wasn't exactly the same as what we  
 (10) had  
 (11) but he didn't think that it was those particular individuals  
 (12) Q And did you - did you check in to determine whether to  
 (13) your own satisfaction you had correctly described identified  
 (14) French as the cab driver who brought -  
 (15) A Yes  
 (16) Q - those three people?  
 (17) A Yes  
 (18) Q What was your conclusion?  
 (19) A That he was the cab driver who brought in those  
 (20) individuals  
 (21) MR LYNCH I have no further questions Your Honor  
 (22) THE COURT You may cross examination  
 (23) MR O NEILL Keep that in your hand  
 (24) THE WITNESS Thank you  
 (25) CROSS EXAMINATION OF MICHAEL CRAIG  
 (26) BY MR O NEILL  
 (27) Q Sir my name is Brian O Neill We met yesterday for about

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- (1) ten minutes  
 (2) A Yes we did  
 (3) Q And I even told you what questions I was going to ask you  
 (4) didn't I?  
 (5) A Yes  
 (6) Q Now I am curious I had understood that you had met  
 (7) briefly with the - the Exxon Defendants at some point in time  
 (8) is that a correct statement?  
 (9) A Yes  
 (10) Q Where did you learn how to use the trial link pen that you  
 (11) have in your hand?  
 (12) A Have I - I don't know if I've used it Just previous to  
 (13) arriving here said I might have to point out you know  
 (14) something with it but I don't know  
 (15) Q And you knew how to click twice on the left hand side to  
 (16) bring up the color?  
 (17) A They said something would come up on the side but I  
 (18) haven't been able to figure it out  
 (19) Q You were ready you had the pen in your hand and you knew  
 (20) where the bar codes were on the left hand side and I didn't go  
 (21) into that with you did I?  
 (22) A (Shakes head from side to side )  
 (23) Q You're an Alyeska security guard that's a correct  
 (24) statement isn't it?  
 (25) A I'm a security officer with American Guard and Alert for

- (1) did you?  
 (2) A That's correct  
 (3) Q And if they were unsteady on their feet or their speech  
 (4) were slurred you didn't log that in either did you?  
 (5) A Correct  
 (6) Q Now we talked for a minute that it took two or three  
 (7) minutes this procedure and you don't know who was who  
 (8) which  
 (9) one was Hazelwood which one was Glowacki which one was  
 (10) Roberson just don't know?  
 (11) A Correct  
 (12) Q And one of them went - came in and went immediately to the  
 (13) bathroom?  
 (14) A Yes  
 (15) Q And would it be fair to say at that point in time in March  
 (16) of 1989 when people came in you didn't screen them  
 (17) purposefully as to whether they'd been drinking or not did  
 (18) you?  
 (19) A I'm not sure I understand the question  
 (20) Q Now when somebody goes through you testified that you  
 (21) have these breathalyzers and stuff?  
 (22) A Yes  
 (23) Q And now in 1994 when somebody goes through the terminal  
 (24) you do purposefully check them in and out to see whether  
 (25) they'd  
 (26) been drinking?  
 (27) A Yes

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- (1) Alyeska yes  
 (2) Q Who works for Alyeska And Alyeska is a consortium of oil  
 (3) companies and 20 percent of Alyeska is owned by Exxon  
 (4) Pipeline  
 (5) Corporation which is a wholly owned subsidiary of Exxon  
 (6) Corporation that's a correct statement isn't it?  
 (7) A I'm not sure what the percentage breakdown is but I do  
 (8) know that they are one of the owner companies  
 (9) Q You have given a variety of interviews and have been  
 (10) deposed and have testified and I don't recall the subject of  
 (11) the two pizzas coming up in any of your prior testimony do  
 (12) you?  
 (13) A Yes  
 (14) Q It does?  
 (15) A Yes  
 (16) Q Your testimony about this cab going through was a little  
 (17) over 30 minutes In point of fact they were there for two or  
 (18) three minutes isn't that right?  
 (19) A It was a short period of time  
 (20) Q Very brief short period of time And your testimony about  
 (21) it was ten times longer than they were there isn't that a  
 (22) correct statement?  
 (23) A Yes it is  
 (24) Q And with regard to the log the Alyeska log if someone  
 (25) came back in March of 1989 and had a few drinks and you  
 (26) noticed  
 (27) that they had alcohol on their breath you didn't log it in

- (1) Q And that procedure is new since the grounding isn't it?  
 (2) A Yes  
 (3) Q And at the time of the grounding you didn't do that  
 (4) purposefully did you?  
 (5) A We didn't do the actual testing no  
 (6) Q And you didn't regularly and programmatically screen them  
 (7) for whether they'd been drinking or not did you?  
 (8) A Not just for drinking no  
 (9) Q And indeed on the night shift when people came through  
 (10) the night shift they'd come back after drinking and that was a  
 (11) very very common occurrence wasn't it?  
 (12) A Yes  
 (13) Q And they'd go through the gate?  
 (14) A Yes  
 (15) Q And many of these people who had been drinking made it  
 (16) down  
 (17) the long causeway and made it up the gantry over to their  
 (18) vessels like sailors have done for years isn't that right?  
 (19) A Yes it is  
 (20) Q And would it be fair to say sir you talked about your  
 (21) perceptive abilities and recognizing somebody who had been  
 (22) drinking and you have a little more training than most in  
 (23) that don't you?  
 (24) A Little more yes  
 (25) Q And it's harder to tell if someone's - the Coast Guard  
 (26) limit is .04 isn't it?

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- (1) A Yes it is  
 (2) Q So if somebody's above the Coast Guard limit but below the  
 (3) 10 drinking limit it's hard to tell isn't it?  
 (4) A Yes it is  
 (5) Q And indeed people have gone through - prior to 1989  
 (6) people have gone through the Alyaska security terminal who  
 had  
 (7) been drinking and nobody smelled alcohol on their breath did  
 (8) they?  
 (9) A Yes  
 (10) Q And I want to go to your specific experience Let's  
 (11) assume if we could that someone who had developed - let's  
 (12) assume an alcoholic who had been drinking that afternoon  
 came  
 (13) through your terminal Would you agree with the proposition  
 (14) that you're an alcoholic then you're going to react at the  
 (15) point - at that point way different than I would I might be  
 (16) drunk I might be I might not be able to carry myself but you  
 (17) very well could and then you'd have to go you know the next  
 (18) step farther with the next amount of drinks maybe an equal  
 (19) amount farther and so although you have the same level of  
 (20) impairment you're used to it your body's used to it you know  
 (21) how to - to - like instead of falling off balance you know  
 (22) how to alter yourself how to change so that you actually are  
 (23) walking straight or talking right or that sort of thing  
 (24) whereas I wouldn't be able to even with the same amount of  
 (25) drinks Would you agree with that statement?

- (1) bunch more questions but I'll just tie it up  
 (2) With regard to whether these men were impaired or not  
 (3) without knowing them you don't know do you?  
 (4) A They did not appear to be impaired  
 (5) Q My question was without knowing them and their past and  
 (6) their habits you don't know whether they were impaired or not  
 (7) do you?  
 (8) A Okay Right  
 (9) MR O NEILL Thank you  
 (10) MR LYNCH Couple more questions Your Honor  
 (11) REDIRECT EXAMINATION OF MICHAEL CRAIG  
 (12) BY MR LYNCH  
 (13) Q Mr O Neill mentioned that you'd had training is that  
 (14) correct?  
 (15) A Yes  
 (16) Q There was a time when you worked in an alcohol  
 (17) rehabilitation center is that correct sir?  
 (18) A Yes I did  
 (19) Q And part of your time there you took a course on  
 (20) identifying and dealing with alcohol problems is that correct  
 (21) sir?  
 (22) A Yes  
 (23) Q Was part of that course - did that involve being able to  
 (24) spot the signs of alcohol consumption in people who otherwise  
 (25) might be trying to mask it?

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- (1) A Yes  
 (2) Q Would it be fair to say and you talked about with  
 (3) Mr Lynch's question the fact that you do it different now than  
 (4) you did before?  
 (5) A Yes  
 (6) Q Would it be fair to say that you do it right now and you  
 (7) didn't do it right before?  
 (8) A Both ways were right for the time  
 (9) Q At the time in 1989 March of 1989 you weren't screening  
 (10) for alcohol were you?  
 (11) A We were screening for alcohol intoxication so  
 drunkenness  
 (12) so not just the drinking portion  
 (13) Q And sailors as they have for years come through the  
 (14) terminal after drinking some you smelled some you didn't  
 (15) that's a correct statement?  
 (16) A Yes  
 (17) Q And in light of your experience depending upon their  
 (18) drinking habits their constitution whether they're an  
 (19) alcoholic or not whether they were impaired some you could  
 (20) tell some you couldn't?  
 (21) A I don't have any idea whether they were alcoholics or  
 (22) whatever  
 (23) Q You don't know?  
 (24) A Yeah I don't know  
 (25) Q You don't know - let me just tie this up There's a

- (1) A Yes there was some involvement there  
 (2) Q Now you mentioned that today and Mr O Neill brought out  
 (3) that today you do testing is that correct?  
 (4) A Yes  
 (5) Q And you have observed signs of alcohol consumption that  
 (6) only slightly affect people's demeanor isn't that correct?  
 (7) A Yes  
 (8) Q He asked you for example if it was harder to find someone  
 (9) whose blood alcohol level was .04 than it is to find someone  
 (10) whose alcohol consumption is .10 correct?  
 (11) A Correct  
 (12) Q And you've observed people where you've seen the signs of  
 (13) impairment - rather you've seen the signs of consumption that  
 (14) were sufficient to tip you that maybe you ought to test them  
 (15) for being .04 correct?  
 (16) A That's correct  
 (17) Q And you test if you have the slightest suspicion that  
 (18) someone might be under that low low standard is that correct?  
 (19) A That's correct  
 (20) Q And some of the people that you've submitted for testing  
 (21) have in fact proved to have a blood alcohol level as zero  
 (22) four correct?  
 (23) A Yes  
 (24) Q And even lower?  
 (25) A And even lower

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- (1) Q And in this situation you didn't see signs to cause you to  
 (2) test even if you were using the zero four standard is that  
 (3) correct?  
 (4) A That is true  
 (5) Q Now let's assume for purposes of this discussion even if  
 (6) the person had blood alcohol level of .10 based on your  
 (7) training and experience do you believe you would have  
 (8) observed  
 (9) signs of blood alcohol level of .10 in any of these  
 (10) individuals?  
 (11) A Yes I do  
 (12) Q What if the alcohol level of one or more of them were .20  
 (13) do you believe it's possible that someone with a .20 could have  
 (14) walked through that checkpoint and you not observe it?  
 (15) A It would be very unlikely  
 (16) Q And did you see anything - you didn't know who Captain  
 (17) Hazelwood was did you?  
 (18) A I did not  
 (19) Q And you didn't know Mr. Glowacki or Mr. Roberson or what  
 (20) was the - Mr. McGregor?  
 (21) A Yes  
 (22) Q Did you see any reason to differentiate between them?  
 (23) A No I did not  
 (24) Q You didn't have any reason to think that all of them were  
 (25) alcoholics did you?  
 (26) A No I did not

- (1) A ABS yes  
 (2) Q What's the function - this has been mentioned before here  
 (3) by a Mr. Rick Van Hammen What's the function of the  
 (4) American  
 (5) Bureau of Shipping? He described it as kind of the FAA of the  
 (6) maritime industry How would you describe it?  
 (7) A Our role is to set design standards and construction  
 (8) standards for merchant vessels of all types worldwide  
 (9) We're  
 (10) one of about four organizations worldwide recognized to set  
 (11) standards for the design and construction of vessels  
 (12) marine  
 (13) vessels  
 (14) Q All right sir  
 (15) A And also for the main lands  
 (16) Q We're not going to spend anymore time with the American  
 (17) Bureau of Shipping but we are going to a time when you were  
 (18) employed by Exxon But before that could you tell - describe  
 (19) for the Ladies and Gentlemen of the Jury your education  
 (20) background educational backgrounds?  
 (21) A Yes I graduated from the U S Coast Guard Academy in  
 (22) 1959 I sailed aboard Coast Guard vessels for about four  
 (23) years  
 (24) Q Wait a minute When you graduated from the United States  
 (25) Coast Guard Academy - where is that located?  
 (26) A Connecticut New London Connecticut  
 (27) Q New London Connecticut And did you come out of there  
 (28) with a degree or a license or how did you emerge from that

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- (1) MR LYNCH Thank you sir  
 (2) THE COURT You may step down sir Thank you  
 (3) Call your next witness - we're through with you aren't  
 (4) we?  
 (5) MR O NEILL They're all my witnesses  
 (6) MR NEAL May it please the Court  
 (7) THE COURT Mr Neal  
 (8) MR NEAL Call Mr. Frank Iarossi  
 (9) THE CLERK Would you raise your right hand sir  
 (10) (The Witness Is Sworn)  
 (11) THE CLERK For the record sir state your full name  
 (12) give us your address and spell your last name please  
 (13) THE WITNESS My name is Frank James Iarossi I'll  
 (14) spell it I A R O S S I I live at 501 San Felipe in Houston  
 (15) Texas  
 (16) THE CLERK Thank you sir  
 (17) DIRECT EXAMINATION OF FRANK IAROSSO (Live)  
 (18) BY MR NEAL  
 (19) Q You're the same Frank Iarossi who's appeared on this silver  
 (20) screen in front of this jury is that correct?  
 (21) A I believe so  
 (22) Q Mr. Iarossi where are you employed now?  
 (23) A I am the chairman and chief executive officer of the  
 (24) American Bureau of Shipping  
 (25) Q Sometimes abbreviated to ABS?

- (1) institution other than tired?  
 (2) A I had an ensign commission I was commissioned as an  
 (3) ensign in the U S Coast Guard I had a bachelor of science  
 (4) degree in engineering I also was a - I was qualified for  
 (5) both deck operation and engineering operation I was - I  
 (6) was  
 (7) what's called a double ender We came out both qualified  
 (8) to  
 (9) handle deck and engine operation of vessels  
 (10) Q Now I came out of Officers Candidate School in the Marine  
 (11) Corps as second lieutenant Is an ensign the same thing?  
 (12) A Yes same thing  
 (13) Q For those who may have been in the Army or Air Force?  
 (14) A Yes same grade  
 (15) Q After you got out of there where did you work?  
 (16) A I had positions afloat on three different vessels over a  
 (17) course of about four years First year as a deck officer  
 (18) deck  
 (19) watch officer the last three years as an engineering watch  
 (20) officer up to equivalent of a first assistant engineer in a  
 (21) merchant type of connotation  
 (22) Q And this was for the United States Coast Guard?  
 (23) A Yes Sailing aboard Coast Guard vessels  
 (24) Q All right sir So you were with the Coast Guard for about  
 (25) nine years?  
 (26) A Yeah, the - after the four years afloat the Coast Guard  
 (27) assigned me to the University of Michigan for two years  
 (28) where  
 (29) I received a master's degree in naval architecture and in

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(1) mechanical engineering during that four year period -  
 during  
 (2) that two year period  
 (3) Following the University of Michigan, I was assigned by the  
 (4) Coast Guard to marine technical work for four years  
 primarily  
 (5) federal regulation activity associated with the design and  
 (6) construction of U S merchant vessels I did that for four  
 (7) years  
 (8) Sometime during the course of the last year I enrolled in  
 (9) an evening program at New York University and I continued  
 that  
 (10) evening program for about five years and graduated in 1971  
 with  
 (11) a master's degree in international business  
 (12) In 19 - the end of 1968 which was after about almost ten  
 (13) years on active duty, I resigned my commission And a  
 short  
 (14) time after that I took a position with ESSO International  
 (15) which was an affiliate of Exxon and I was a marine research  
 (16) engineer  
 (17) Q Before we go into that you went into the Coast Guard as an  
 (18) ensign equivalent of a second lieutenant What was your rank  
 (19) when you ten years later or almost ten years later when you  
 (20) resigned from the Coast Guard?  
 (1) A Lieutenant commander which is equivalent in your  
 marine  
 (1) life to a major  
 (2) Q Well I'm not sure it's equivalent but the rank is  
 (3) equivalent  
 (4) All right You became employed by Exxon then in 1968

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(1) Very briefly because I want to go through this describe your  
 (2) job experiences with Exxon?  
 (3) A Well I - I was hired -  
 (4) Q Or ESSO International same thing?  
 (5) A I was hired by ESSO International in marine research and  
 to  
 (6) study the safety aspects of transporting liquefied natural  
 (7) gas At that time the company had a big program to  
 develop  
 (8) and build what was known as LNG tankers and they were  
 concerned  
 (9) about the safety of the design of the vessel and they wanted  
 an  
 (10) outside look so I was hired My first project was - was the  
 (11) safety aspects of LNG transportation That lasted about -  
 (12) that particular project lasted about two years and I don't  
 (13) know if you want me to go through -  
 (14) Q Just quick  
 (15) A Okay I - I then moved into a commercial position a  
 (16) little bit later 1971 I was moved to Japan where I headed  
 up  
 (17) a team of about 44 engineers where we reviewed the design  
 and  
 (18) then the construction of a number of large tankers for  
 Exxon  
 (19) I came back to New York in '76 I was in a marketing  
 (20) position and then in a corporate staff position in New York  
 (1) with responsibility for reviewing the overall operational  
 (2) safety of Exxon's fleets worldwide  
 (3) 1979 I was assigned to what was then the Exxon - or Exxon  
 (24) U S A marine department and I was in charge of planning  
 and  
 (1) engineering had a one year assignment assistant manager  
 of



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(1) the corporate planning department for Exxon Then in 1982  
I  
(2) became the president of Exxon Shipping Company -  
actually I  
(3) became the general manager of the marine department and  
a few  
(4) months later I became the president of Exxon Shipping  
Company  
(5) Q In 1982 then to get down to it you became president of  
(6) Exxon Shipping Company?  
(7) A Yes sir  
(8) Q And Exxon Shipping Company is the company that owned  
the  
(9) Exxon Valdez as of March 23 1989?  
(10) A That's correct  
(11) Q When did you leave the Exxon companies?  
(12) A I believe it was April 2nd of 1990  
(13) Q And became chairman of the board of ABS?  
(14) A Yes At that time I was chairman president and chief  
(15) executive officer  
(16) Q When you became - and let's expand now We've been  
(17) talking taking little bits of what Exxon Shipping Company was  
(18) or little stories here or there When you became president of  
(19) Exxon Shipping Company what was the mission of Exxon  
Shipping  
(20) Company?  
(21) A It was our role to transport crude oil and refined  
(22) products primarily for Exxon but we also handled some  
smaller  
(23) magnitudes of product for other companies I'd say 95  
percent  
(24) of our job was associated with moving Exxon oil and  
products  
(25) Q When you say oil and products you would transport the

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(1) crude oil to a refinery in some of your vessels?  
(2) A Yes  
(3) Q And some of your vessels would come out the other end  
take  
(4) the product from the other end of that refinery gasoline jet  
(5) fuel et cetera and transport those products to some other  
(6) location?  
(7) A Yes Both refined petroleum products and also chemical  
(8) products  
(9) Q And chemicals All right sir How was the company over  
(10) the years you were there Exxon Shipping Company  
organized?  
(11) A Your headquarters unit was in Houston We had four  
field  
(12) offices New York Baton Rouge Baytown Texas and San  
(13) Francisco In each of those field offices we had the people  
(14) that primarily interfaced with the ships Houston was  
(15) primarily corporate function and a lot of our time was spent  
(16) interfacing with our client our customer Exxon Company  
U S A  
(17) The operations were really controlled out of those four  
(18) field offices  
(19) Q And were they different - did you have different fleets?  
(20) A Yes We - we actually divided the operation into a - a  
(21) gulf coast fleet which we managed out of - primarily out of  
(22) Baytown Texas a west coast fleet which we managed  
primarily  
(23) out of San Francisco and we also had an inland fleet which  
was  
(24) managed both out of New York and Baton Rouge Louisiana  
(25) Q And an inland fleet that means a fleet of tugs tugboats

(1) and barges that operate on the inland waterways the  
(2) Mississippi the Ohio and so forth?  
(3) A That's correct That's right  
(4) Q We'll leave that one alone When you said that the west  
(5) coast fleet was operated out of San Francisco the name of  
(6) Benicia has been mentioned here  
(7) A Yes the - Exxon has a large refinery in Benicia and  
(8) that's where our vessels dock to discharge their crude oil to  
(9) the refinery Benicia California And our office the Exxon  
(10) Shipping Company office also was in Benicia  
(11) Q And the headquarters of the shoreside people of the west  
(12) coast fleet be at Benicia?  
(13) A Yes  
(14) Q Now you said the gulf coast fleet was at Baytown?  
(15) A Yes Baytown Texas  
(16) Q Where - tell me something I would recognize that Baytown  
(17) is close to  
(18) A Well it's partway between Houston and Galveston I  
don't  
(19) know if that helps  
(20) Q Well not a lot But down there near Galveston?  
(21) A It's close to the San Jacinto Monument  
(22) Q Not much help but I have read the book What was the size  
(23) of the total fleet now? Leaving out the inland barges and  
(24) tugs but the total of the west coast fleet and the gulf coast  
(25) fleet when you became president?

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(1) A I think we had - I don't recall exactly when I became  
(2) president but shortly thereafter we had 20 ocean tankers  
that  
(3) we were operating and we also had 43 chartered vessels  
that  
(4) were under our control but we were not operating those  
with  
(5) our people  
(6) Q So you had 20 vessels you owned and operated and then  
you  
(7) chartered some vessels from other companies?  
(8) A Yes sir  
(9) Q Now when you - how many people were employed when  
you  
(10) first joined Exxon Shipping Company?  
(11) A In both the inland and ocean fleet together was about  
1500  
(12) people I think about 1200 were in the ocean fleet  
(13) Q And when you - when you resigned I guess retired would be  
(14) a good word you'd been there 20 some years hadn't you?  
(15) A Yes but I resigned I did not retire I had to be 55 to  
(16) retire and I was 52 when I left  
(17) Q Good for you When you resigned from Exxon Shipping  
(18) Company what was the size of the - leaving aside the inland  
(19) barges what was the size of the Exxon Shipping Company  
fleet?  
(20) A I believe we still had 20 vessels at that time  
(21) Q And how many people did you employ?  
(22) A I believe it was still around 1200 in the ocean fleet  
(23) Q Okay Mr. Jarossi when you joined Exxon Shipping  
Company  
(24) was there a first principal under which you sought to operate  
(25) the company and the transportation services provided by the

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- (1) company?
- (2) A Yeah our - our mission was to move Exxon's product in
- (3) absolutely the safest manner we could so our first objective
- (4) was safe operations
- (5) Q What Mr. Larossi did you do to make sure the company
- (6) operated under that first principal of safety?
- (7) Could I have the - I'd like to show - maybe I'll show it
- (8) before I show -
- (9) MR NEAL There's no objection to this so I'll offer
- (10) Defendants 9131 into evidence Your Honor
- (11) (Exhibit 9131 offered)
- (12) MR O NEILL No objection Your Honor
- (13) THE COURT Defendants 9131 is accepted
- (14) (Exhibit 9131 received)
- (15) MR NEAL While I'm here I also offer Defendants
- (16) Exhibit 3679 and then Plaintiffs Exhibits 798 and 797
- (17) (Exhibits 3679 798 and 797 offered)
- (18) MR O NEILL No objection Judge
- (19) THE COURT Defendants 3679 is admitted Plaintiffs
- (20) 798 and 797 - did I get those right?
- (21) MR SANDERS That's correct
- (22) THE COURT - are admitted
- (23) (Exhibits 3679 798 and 797 received)
- (24) BY MR NEAL
- (25) Q Mr. Larossi you said you tried to operate the vessel under

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- (1) safety Does safety make good sense just in a business aspect?
- (2) A Oh, absolutely I think most businesses recognize that a
- (3) safe operation makes a lot of sense from a business
- (4) standpoint The costs of handling problems are very very
- (5) high, so if you were to look at - at operations of any
- (6) business strictly from a cost standpoint you'd come out
- (7) with
- (8) the same answer and that is a safe operation is -
- (9) Q You can't -
- (10) A - is a successful operation
- (11) Q You can't have an efficient practice without having a safe
- (12) operation is that what you're saying?
- (13) A You can't have an efficient operation you also can't have
- (14) a successful operation
- (15) Q What steps did you take to operate the company under this
- (16) principal first principal of safety? And let's go over them
- (17) and then we'll go back and talk about each one
- (18) A Okay The first concept was that we needed to have a
- (19) commitment throughout the organization that safety was its
- (20) number one objective and we needed to have agreement
- (21) that that
- (22) throughout the organization that that commitment was its
- (23) number
- (24) one We needed to have both variable programs and
- (25) awareness
- (1) programs that keyed always in the employee's mind that
- (2) this was
- (3) our objective and to do that we needed to really be dealing
- (4) with permanent employees and that may seem rather
- (5) obvious but
- (6) in the marine industry a lot of times companies deal - do
- (7) not

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- (1) deal with permanent employees Within Exxon Shipping
- (2) Company
- (3) all of our seagoing employees were permanent employees
- (4) They
- (5) had the same rights and benefits that any Exxon employee
- (6) had
- (7) Q All right
- (8) A Also, we had to - to deal with in my view it was very
- (9) important to deal not only with permanent employees, but to
- (10) make sure that the crews on our vessels served
- (11) continuously
- (12) In other words we had a continuity within the crew as
- (13) contrast to some companies where every time a seaman
- (14) comes off
- (15) leave he would go to a different ship
- (16) What we were trying to do in Exxon Shipping Company was
- (17) always return the officers and crew members back to the
- (18) same
- (19) ship because we felt that was very important to the safe
- (20) operation of the ship, particularly if anything was to go
- (21) wrong, because in a response situation when there's a lot
- (22) of
- (23) pressure it's very important to know what other people in
- (24) the
- (25) team are doing and how they're responding, and that you
- (1) can
- (2) only get by familiarization by training as a team and by
- (3) having that experience and confidence
- (4) So not only was it permanent employees, but it also was
- (5) continuity of crew members
- (6) Q I was going to come back to this but since we've gone in
- (7) a little bit of depth on permanent employees and continuity of
- (8) crew I take continuity of crew means if you're going to assign
- (9) two masters to the Valdez -

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- (1) A Yes
- (2) Q - so that they alternate with each other 60 days on 60
- (3) days off they will stay on the Valdez and not - for a long
- (4) period of time and not go to some other vessel?
- (5) A When they finish - for instance when they would finish
- (6) their 60 days on board they would go on vacation 60 days
- (7) When they would come back from vacation they would go
- (8) back to
- (9) the same ship
- (10) Q Would that be true of the other officers the first second
- (11) and third mate?
- (12) A The chief mate chief engineer, first assistant engineer
- (13) second mate, we had a high degree of continuity When we
- (14) get
- (15) down to third mates and third engineers I'd say we were not
- (16) as
- (17) fully utilizing continuity Maybe 50 60 percent of the time
- (18) you'd go back to the same ship whereas the higher officers
- (19) almost a hundred percent
- (20) Q But you could do it with the higher officers and the
- (21) masters?
- (22) A Yes
- (23) Q Now you talked about permanent employees Mr. Larossi
- (24) During your period of time and up to the grounding where did
- (25) most maritime companies get their employees shipping
- (1) companies?
- (2) A Most of the shipping companies drew their employees
- (3) from
- (4) unions from the maritime unions out of - assigned out of

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(1) **union halls or through some agreement**  
 (2) Q Let's take Mr. Kunkel who testified here and your  
 (3) captains such as Captain Stalzer or Captain Hazelwood they  
 (4) were full time employees paid an annual salary is that  
 (5) correct?  
 (6) A Yes They were hired most of them right out of the  
 (7) merchant marine academies and then came up the ranks  
 (8) within  
 (9) **Exxon**  
 (10) Q Let's take these companies that you said where most of the  
 (11) shipping companies who used the national union How did -  
 (12) how  
 (13) would they get a first mate or a second mate or a third mate  
 (14) for example?  
 (15) A They would usually call the union and say they needed a  
 (16) first mate on such and such a ship leaving such and such a  
 (17) day  
 (18) Q In other words if one of these type of companies had a  
 (19) trip to go from Long Beach to Valdez they would go out and  
 (20) call and get a first mate to come from the hiring hall and get  
 (21) on the vessel?  
 (22) A Yes Maybe for one trip or maybe for a period of time  
 (23) whatever he was assigned  
 (24) Q Would the master - would the master for example  
 (25) necessarily know about the qualifications or training of these  
 (26) officers?  
 (27) A Well he would know what their Coast Guard license was  
 (28) or

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(1) what their rating was  
 (2) Q In other words he would know they were licensed as a third  
 (3) mate?  
 (4) A Yes sir  
 (5) Q Or licensed as a second mate?  
 (6) A Yes  
 (7) Q But he wouldn't know any more than that necessarily?  
 (8) A Unless he knew the individual personally I don't know  
 (9) whatever information he would have  
 (10) Q How about able bodied seamen who would go on the ship  
 (11) and  
 (12) act as helmsmen would they also be taken from a hiring hall  
 (13) for say one trip or two trips and that sort of thing?  
 (14) A In the case of Exxon Shipping Company no  
 (15) Q No no the other companies?  
 (16) A Other companies I would say for the most part by and  
 (17) large they also drew from union union halls union ranks  
 (18) Q So in the case of an A B able bodied seaman who was going  
 (19) to be a helmsman what would the master know about that A B  
 (20) when he came out from the hiring hall?  
 (21) A He would know he had an able bodied seaman in his  
 (22) papers  
 (23) from the Coast Guard  
 (24) Q Certificate?  
 (25) A Certificate  
 (26) Q And the Coast Guard would say they were an able bodied  
 (27) seaman and that's all they'd know unless he knew the man?

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(1) A My understanding is he would know he's an A B certified  
 (2) by  
 (3) the Coast Guard  
 (4) Q We've gone through agreement on the goal of safety  
 (5) permanent employees continuity and motivation What's  
 (6) well trained employees? Talk about that  
 (7) A Well we knew to have a truly safe operation we had to  
 (8) provide proper training and that was our obligation to  
 (9) provide  
 (10) training to our employees so they could do the job safely  
 (11) and -  
 (12) it meant we needed to have a very wide range of training  
 (13) programs  
 (14) Q Let me go back up there to agreement on safe operations  
 (15) and  
 (16) ask to show you Defendants Exhibit Number 1 - number 70 -  
 (17) 170 I believe Yes Defendants Exhibit 170  
 (18) MR NEAL May I approach Your Honor?  
 (19) THE COURT Yes  
 (20) BY MR NEAL  
 (21) Q And ask if you recognize that?  
 (22) A Yes This is the safety credo of Exxon Shipping  
 (23) Company  
 (24) Q Was that something that was your idea?  
 (25) A The idea to create a safety credo was partly mine and  
 (26) partly other managers in the shipping company The words  
 (27) of  
 (28) the credo itself were developed through a -  
 (29) Q Excuse me just a moment I'll put this up so you can see  
 (30) that  
 (31) A The actual words of the credo were developed by a group  
 (32) of

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(1) employees both fleet operating employees and shoreside  
 (2) employees They got together and established the wording  
 (3) of  
 (4) the credo and it was a fairly large group and I think they  
 (5) also sent out drafts of the credo fleet wide and asked for  
 (6) suggestions from - from anybody in the company and what  
 (7) came  
 (8) out was -  
 (9) Q Can't come up? Okay Well just hold that up there while  
 (10) you talk there Mr. Larossi  
 (11) A This happens to be the words printed on a steel plate and  
 (12) put on a board and it was the type of thing that hung in all  
 (13) of our offices and all of our ships to remind people There  
 (14) were different versions of this they were printed on posters  
 (15) and -  
 (16) Q What does that - what does that say Mr. Larossi?  
 (17) A It starts out safety credo It says we the management  
 (18) and employees of Exxon Shipping Company believe that  
 (19) while  
 (20) risks exist and then there's a list of six pointed items The  
 (21) first one says accidents and injuries are preventable each  
 (22) of  
 (23) us has a personal responsibility for our safety and the  
 (24) safety  
 (25) of others both on and off the job No business objective is  
 (26) so important that it will be pursued at the sacrifice of  
 (27) safety safe conduct of operations is a condition of  
 (28) employment  
 (29) at Exxon Shipping Company  
 (30) Q What was meant by that is that if you don't carry out your  
 (31) activities safely it was a potential for termination The

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- (1) words - I'm trying to explain to you the words say safe  
 (2) conduct of operations is a condition of employment at  
 Exxon  
 (3) Shipping Company The fifth item says a job is well done  
 only  
 (4) if it is done safely And the last one says Exxon Shipping  
 (5) Company should have the best safety performance in the  
 (6) industries in which we do business  
 (7) Q And that was the safety credo that you and others developed  
 (8) when you became president of Exxon Shipping Company?  
 (9) A Yes I - I took part in the idea of creating the safety,  
 (10) credo I did not take part in the words that were actually  
 (11) developed  
 (12) Q What did you do with that?  
 (13) A We gave it very great publicity within the company We  
 (14) made sure that everyone in the company was aware of their  
 (15) safety credo We had plaques made up like this which were  
 (16) posted on all vessels, in all offices We had very big posters  
 (17) made up about it and we actually went over it in safety  
 (18) conferences and shipboard conferences went over the  
 words  
 (19) what they meant how that - how these words pertained to  
 (20) individual activities that different employees carried out  
 and  
 (21) we basically tried to get everybody to understand not only  
 what  
 (22) the credo was but what it meant to them and how they do  
 their  
 (23) jobs  
 (24) Q You mentioned that you would try to - one step you would  
 (25) take for safety was to motivate the employees to follow the

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- (1) safety credo or the goal of safety How did you motivate  
 (2) employees?  
 (3) A We had - we had a number of programs programs which  
 (4) recognized the vessels Each year we would recognize at  
 least  
 (5) two vessels one from the gulf coast fleet one from the west  
 (6) coast fleet which had the highest safety record for the year  
 (7) and we would send award plaques to the vessel We would  
 also  
 (8) have - as I recall there was also a cash contribution to the  
 (9) ship's morale fund The ships that received the award for  
 the  
 (10) year would get money to spend whether to buy new books  
 for  
 (11) their library or a new TV or something like that  
 (12) We would also send all of the - to all of the employees  
 (13) that sailed on that vessel for that year that particular year  
 (14) that the vessel received the safety award they would get  
 (15) bronze gold buckles with an inscription of the ship and the  
 (16) time and the safety award for the year  
 (17) We would also have different awards during the course of  
 (18) the year in which we would recognize superior safety for  
 (19) different circumstances and we would award baseball caps  
 with  
 (20) the names of the vessels and jackets with the safety awards  
 (21) embellished on them and we did a whole lot of things to try  
 (22) and keep awareness and attention focused on safety  
 (23) We also had a program to - to try to improve safety at  
 (24) home And once a quarter we would send to all the  
 employees'  
 (25) homes sometimes different gadgets I remember one time  
 we

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- (1) sent a fire extinguisher like type thing you should keep in  
 (2) your kitchen Along with it we sent the booklet that  
 described  
 (3) the risks of fire in kitchen and how to handle it And another  
 (4) time we sent a flashlight home and we described what to do  
 when  
 (5) power's out at home Another time we had a few injuries  
 from  
 (6) lawnmowers so we sent the little cartoon booklet home  
 (7) Q We're getting a little far now from the - from the  
 (8) supertankers  
 (9) A You get me started, you have to tell me when to stop  
 (10) Q Let me show you Defendants Exhibit 9118 I won't take a  
 (11) lot of time with this It's in evidence  
 (12) Is this an example of some of your internal awards that you  
 (13) would give to motivate people for safety?  
 (14) A Yes Each of those plaques represents an award  
 assigned or  
 (15) given to a vessel for one year, whether it was the gulf coast  
 (16) fleet or west coast fleet The plaques up on the top there,  
 (17) you see that little rectangular brass plaque, the buckles  
 (18) actually duplicated that award at the top Those were given  
 to  
 (19) each of the employees on the ship  
 (20) Q So the Exxon Valdez the record reflects got the fleet  
 (21) manager's award for 1987 and '88 the employees on that  
 vessel  
 (22) got one of these belt buckles -  
 (23) A Yes  
 (24) Q - as well  
 (25) A Yes

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- (1) Q Now Mr O'Neill brings this out I've looked through here  
 (2) and I've looked through here and I don't see the Exxon Valdez  
 (3) on this Why not?  
 (4) A I can only tell you I suspect that may have been taken off  
 (5) the ship with a whole lot of other items and evidence that  
 were  
 (6) taken off the ship  
 (7) Q There's no question however that the Exxon Valdez got the  
 (8) fleet manager's award for 1987 1988?  
 (9) A Yes As I remember it was - there were two vessels who  
 (10) received an award in 1987 in the west coast fleet the Valdez  
 (11) and one other vessel it was decided to recognize both And  
 (12) then in 1988 the Valdez won the award by itself in the west  
 (13) coast fleet  
 (14) Q Now Mr Larossi did you also in order to motivate the  
 (15) employees to the goal of safety did you include this as an  
 (16) item on the evaluation of employees' performances?  
 (17) A Yes safety awareness and safety consciousness is one  
 of  
 (18) the 20 or 25 items that each officer and shoreside employee  
 was  
 (19) graded on on roughly a two year frequency  
 (20) Q Let me see if I can raise this up  
 (21) A Yes Safety awareness  
 (22) Q Now these are in alphabetical order not necessarily order  
 (23) of importance but alphabetical order?  
 (24) A I believe so but I'd have to look at the whole chart again  
 (25) to tell you

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(1) Q Well you've got K L M N O that looks like  
 (2) alphabetical order to me  
 (3) A Okay  
 (4) Q Was this - was this an element of evaluation for all the  
 (5) officers then and the crew?  
 (6) A Yes Of all the officers I'm not sure if the crew's form  
 (7) was different  
 (8) Q You also say - you can take that away  
 (9) You say you want a fleet wide clear set of operating  
 (10) instructions how did you attempt to do that?  
 (11) A Well we felt we had to establish safe operations and safe  
 (12) operating procedures for all of what we felt were the critical  
 (13) aspects of ship operation Probably the most important  
 (14) initiative we took was development of what we call the  
 (15) bridge  
 (16) organization and navigation manual which was very  
 (17) extensive  
 (18) undertaking, started back in 1977 as I recall went through  
 (19) a  
 (20) major revision in around 1983 or so but it was a manual  
 (21) which  
 (22) outlined the responsibilities and roles and approach and  
 (23) procedures that needed to be followed for the operation and  
 (24) navigation of our vessels  
 (25) Q And were the masters and officers required to follow the  
 (26) instructions in this manual?  
 (27) A Yes It was - it was put forward as the manner in which  
 (28) the company wanted its vessels operated Certain  
 (29) segments of  
 (30) it were guidance certain segments of it were requirements

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(1) Q Now was - did this bridge navigation manual was it  
 (2) required to be read and studied by every officer and was it  
 (3) required to be placed on every vessel?  
 (4) A Yeah there were two copies assigned to every vessel  
 (5) One  
 (6) was to be in the master's cabin and one was to be on the  
 (7) bridge The officers being assigned to the vessel there was  
 (8) a  
 (9) signed sheet in the front of the manual where they had to  
 (10) sign  
 (11) that they read it and understood it  
 (12) Q All right Let us - did this manual have this first  
 (13) principal safety in it?  
 (14) A Yes  
 (15) Q Could we have that 1 1 1 2?  
 (16) I'm going to show you the part of the manual that's already  
 (17) in evidence and ask if you recognize this  
 (18) Go ahead to the section first page Do you recognize  
 (19) that?  
 (20) A Yes  
 (21) Q Is that part of the manual you're talking about?  
 (22) A Yes absolutely  
 (23) Q And what does this say right here?  
 (24) A Purpose of the navigation bridge organization manual is  
 (25) to  
 (26) assist the master and deck officers in planning for safe  
 (27) operation of their vessel  
 (28) Q All right Now look down at the 1 2 Is this a part of  
 (29) the manual?

(1) A Yes sir  
 (2) Q Read that for us please?  
 (3) A Says the prime objective when navigating company  
 (4) vessels is  
 (5) the safety of personnel vessel and cargo Speed and  
 (6) economy  
 (7) while important are secondary to safe operations  
 (8) Q Mr Larossi as long as you were president of Exxon  
 (9) Shipping Company is this something that you personally  
 (10) insisted upon?  
 (11) A Absolutely Without exception  
 (12) Q Mr Larossi you had these - you had these steps to ensure  
 (13) safety including agreement on the goal motivation  
 (14) well trained employees By the way - let's go - we didn't  
 (15) talk about well trained employees was that step to ensure  
 (16) safety?  
 (17) A Yes We recognized it was the company's operation to  
 (18) provide the training necessary so that operating - fleet  
 (19) operating employees could carry out their functions safely  
 (20) and  
 (21) it started - there were many different facets to the  
 (22) training It started with basic skills training for A Bs We  
 (23) had a very extensive firefighting program where all the  
 (24) employees went through two or three days of actual  
 (25) firefighting  
 (26) exercises live fire exercises It went through deck watch  
 (27) officer courses we used simulator many of our courses  
 (28) were  
 (29) simulator based and our navigating officers were required  
 (30) to  
 (31) go through simulator training

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(1) We also for senior deck officers sent - sent the senior  
 (2) deck officers especially those slated to be masters to  
 (3) France  
 (4) for a two to three week program in Grenoble France which  
 (5) was  
 (6) a ship maneuvering and ship handling exercise in which  
 (7) they  
 (8) actually were on models of vessels the motions of the  
 (9) vessels  
 (10) duplicate the motions of actual maneuvering characteristics  
 (11) of  
 (12) actual vessels  
 (13) Q Mr Larossi could anyone regardless of whether they had a  
 (14) license as a master or not sail for Exxon Shipping Company  
 (15) without going to this ship handling school in Grenoble France  
 (16) for a week?  
 (17) A I - I don't know that there were any exceptions It was  
 (18) certainly our objective that every master go through the  
 (19) Grenoble training program I can't swear that at some time  
 (20) we  
 (21) might not have had one exception but we - we quickly  
 (22) trained  
 (23) up every one I think with reasonable certainty I could say  
 (24) that every one of our masters went through Grenoble  
 (25) Q All right Let's move to another subject now  
 (26) When you became president of Exxon Shipping Company did  
 (27) the company have an alcohol policy?  
 (28) A Yes, there was a - when I took over the company it was a  
 (29) part of Exxon Company U S A and Exxon Company U S A  
 (30) had an  
 (31) alcohol policy which was created in 1977 When we became  
 (32) Exxon  
 (33) Shipping Company in 1982 that policy was adopted from  
 (34) the

5) first day So we were following the same policy

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- (1) Q Did you have AN occasion to read and study that policy when  
(2) you became president?  
(3) A Yes  
(4) Q Would you describe for the Ladies and Gentlemen of the  
Jury  
(5) just the significant features of that policy as it existed when  
(6) you became president?  
(7) A The policy started with - the first premise was that  
(8) alcoholism was a treatable illness If the illness was not  
(9) controlled it could impair job performance that the best  
way  
(10) to - to cure the illness was through enrollment in one of the  
(11) many rehabilitation programs that the company would  
financially  
(12) support and pay for the rehabilitation programs that the  
best  
(13) way to get - and these are all tenets within this program the  
(14) best way to get people to enroll in the program was through  
(15) self identification, by the way, that was more important in  
the  
(16) shipping company than probably any other part of Exxon,  
because  
(17) we had little opportunity to really - on a management side  
to  
(18) really see the employees on their vessels so self  
(19) identification was a very important feature of it  
(20) In order to encourage self identification the same policy  
(21) ensured the individual employee of total confidentiality It  
(22) also ensured the individual that his job security - his or her  
(23) job security or future opportunities would not be in any way  
(24) reduced or affected by self identification and it also stated  
(25) that alcoholism itself was not a reason for termination

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- (1) although if that alcoholism led to a reduction in job  
(2) performance or an impairment in job performance that that  
was  
(3) a reason for termination  
(4) Q So it in effect said look if you've got a problem seek  
(5) help and we won't punish you is that correct?  
(6) A Yes sir  
(7) Q Now was that thought - did you think that was a good  
(8) policy when you became president?  
(9) A Yes  
(10) Q Why?  
(11) A Well because particularly in the shipping company we  
had  
(12) very very little activity as managers to observe the  
(13) performance of our people on vessels and therefore it was  
(14) important to the extent we had a problem that the only way  
we  
(15) were going to get at it was if we could encourage self  
(16) identification and we had to - to really get people to  
(17) understand the connection between impairment and job  
(18) performance and vessel safety so it really was associated  
in  
(19) some way to our whole safety effort  
(20) Q Did there come a time Mr. Larossi when you changed or  
(21) modified this policy for your company after 1982?  
(22) A Yes in 1985 I think it was April of '85 a couple things  
(23) were going on One we had started a - a search program of  
(24) our vessels and some of the results of this indicated that  
we  
(25) had on different occasions found marijuana on board So I

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- (1) became concerned that job impairment also could come as  
a  
(2) result of drug abuse and therefore we had to - to extend the  
(3) policy or to make the policy in the self identification and the  
(4) rehabilitation also available to employees who had a drug  
abuse  
(5) problem as opposed to an alcohol abuse problem  
(6) Also at the same time because we had started these  
(7) searches on the vessels in 1982, we were beginning to get  
(8) increasing resistance from our unlicensed union and a  
charge  
(9) that what we were doing was illegal So in this policy, in  
(10) this letter - it really wasn't a policy change but it was a  
(11) letter to all employees, I tried to get across the point that  
(12) they may in fact, be inconvenienced from time to time as a  
(13) result of these searches but I asked them to understand  
what  
(14) our objective was that it was very, very important to their  
(15) safety and to the safety of the vessel to the safety of the  
(16) environment that these searches be carried out and we do  
(17) everything we can to ensure that our vessels were alcohol  
free  
(18) and drug free That I wrote in a letter  
(19) Q So you added drugs and you reaffirmed your intent to  
(20) conduct searches of vessels?  
(21) A Yes and I tried to get the employees the seagoing  
(22) employees to understand the reason behind why we had to  
do it  
(23) Q What kind of searches did you mention?  
(24) A We beginning in 1982 -  
(25) Q Wait a minute In your letter did you - did you refer to

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- (1) certain type of searches?  
(2) A I think I may have called them random searches  
(3) Q Random searches?  
(4) A Yes  
(5) Q Now what do you mean by random searches?  
(6) A Random random search would come about periodically  
when  
(7) one of the two fleet managers either the gulf coast fleet  
(8) manager or the west coast fleet manager would select a  
vessel  
(9) for whatever reason we had a criteria that was used, we had  
(10) agreed that each fleet would two or three times a year  
randomly  
(11) select a vessel and that we would look at certain criteria  
(12) One of the criteria was whether or not the vessel was  
trading  
(13) in and out of Panama because Panama was reported to be a  
place  
(14) where drugs were easy to get so that was kind of part of the  
(15) targeting  
(16) Q Well would you -  
(17) A Well what happened was the - the fleet manager would  
(18) select a vessel and select a port time He would call me up  
(19) for permission to carry out the search and I would - I would  
(20) always grant that request and usually, the fleet manager  
and  
(21) myself were the only ones other than the agent team that  
knew  
(22) about the selection of the vessel  
(23) Q Is there something called a for cause search?  
(24) A Yes For cause is different to random and a for cause  
(25) search there is some very clear reason either a suspicion

(1) drugs were found or alcohol was found or some suspicion  
 either  
 (2) a tip off of a crew member but some reason to believe we  
 had a  
 (3) problem In that case they didn't have to call me That was  
 (4) automatic They had the - they had the names and numbers  
 and  
 (5) the ability to just call and search themselves  
 (6) Q And with respect to random searches you would just decide  
 (7) to do it because you were trying to enforce your policy there  
 (8) was no particular cause for doing it?  
 (9) A That's right  
 (10) Q All right Now when did you start these random searches?  
 (11) A As I recall it was either late '82 or early '83  
 (12) Q Okay Did you continue those up to the time of the  
 (13) grounding?  
 (14) A For - yes we did with the exception of a period th it  
 (15) maybe was close to about two years  
 (16) Q When was that? When did you have this period that you  
 (17) didn't conduct random searches when did you stop the first  
 (18) time conducting random searches?  
 (19) A As I recall it was late '86 or early '87  
 (20) Q Why did you stop?  
 (21) A The unions had continued to push the legal proceedings  
 that  
 (22) what we were doing was not legal and we kind of got tied up  
 in  
 (23) a couple arbitration cases and it was the opinion of the  
 Exxon  
 (24) law department that until the legal aspects of random  
 searches  
 (25) was defined in the courtroom or through legal proceedings  
 or

(1) through government regulations that we just needed to  
 back off  
 (2) and wait for a legal definition  
 (3) Q All right Did there come a time then when you  
 (4) recommenced these random searches that is before the  
 (5) grounding in this case?  
 (6) A Yes it was late '88  
 (7) Q And were these random searches continuing up to the time  
 of  
 (8) the grounding?  
 (9) A Yes  
 (10) Q Mr Jarossi now between the time of the April you said  
 (11) 85 letter and the time of the grounding was there a further  
 (12) modification of your alcohol policy?  
 (13) A Yes I believe that occurred in 1987  
 (14) Q What were the significant features of this policy?  
 (15) A As I recall the policy change - I'm a little vague on  
 (16) this As I recall the policy change at that time - could I  
 (17) take a look at that policy?  
 (18) Q Sure Let's have Defendants Exhibit 3614 We can either  
 (19) put it up or I can hand it -  
 (20) MR NEAL May I approach the witness Your Honor?  
 (21) THE COURT You got it  
 (22) BY MR NEAL  
 (23) Q I show you what is received in evidence as Defendants  
 (24) Exhibit 3614 and ask you to see if you recognize that  
 (25) A Yes This is a letter I wrote in 1980 - March 11th 1987

which distributed the revised policy on alcohol and drug  
 use  
 (1) This policy reiterated that it was not intended to infringe on  
 (2) employees privacy or off the job activities but it does  
 (3) establish specific standards for on the-job behavior It  
 (4) reemphasized the opportunities available to the employee  
 (5) for  
 (6) both drug and alcohol This - this was the first time that  
 (7) the policy officially the policy itself officially included  
 (8) drugs although my letter for the shipping company my  
 letter  
 (9) in 1985 also extend it but this was the first time the policy  
 (10) of the company included drugs  
 (11) We also initiated pre employment drug testing  
 (12) Q Let top right there Mr Jarossi  
 (13) A Yes  
 (14) Q At this point now you have a policy you promulgate the  
 (15) policy you have random testing?  
 (16) A Yes  
 (17) Q And now you have introduced pre employment drug testing?  
 (18) A Yes  
 (19) Q I mean you've had random searches right?  
 (20) A We had random searches that's right  
 (21) Q And you now introduced pre employment drug testing is  
 that  
 (22) correct  
 (23) A Yes This policy for the first time established that new  
 (24) employees coming into the shipping company would have  
 to go  
 (25) through a pre employment drug test We also established a

(1) training drug awareness program for all of our supervisors  
 all  
 (2) of our fleet officers and shoreside supervisors and we used  
 (3) policemen and consultants who specialized in drug  
 awareness  
 (4) training and our people learned to recognize the smell of  
 (5) marijuana the effects visual effects of drug impairment  
 (6) That was all in a training program they received  
 (7) Q I notice here it says expansion of the employee health  
 (8) advisory EHAP program What was the EHAP program?  
 (9) A Well Exxon itself did not run any rehab programs What  
 (10) was provided to the employee through - what was called the  
 (11) employee health advisory program was in fact advice from  
 the  
 (12) medical department as to where to go to find appropriate  
 (13) rehabilitation programs and then any other counseling the  
 (14) employee decided the medical department through what in  
 each  
 (15) company we called an FHAP counselor So for instance in  
 the  
 (16) shipping company we had one of the managers in this case  
 it  
 (17) was the employee relations manager was identified as the  
 FHAP  
 (18) counselor so any - any employee who felt that - that he had  
 (19) a problem either drug either alcohol or nervous disorder or  
 (20) stress and quite frankly, I think 85 percent of the  
 employees  
 (21) who came forward really were stress related in some way  
 that  
 (22) the employee could go to the EHAP counselor he could go  
 to the  
 (23) Exxon medical department or quite frankly he could seek  
 help

(24) **totally on his own without the knowledge of the company by**  
 (25) **enrolling into a rehab rehabilitation of his choice or her**  
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- (1) **choice**  
 (2) **Q Mr Larossi did this program also reaffirm your right to**  
 (3) **continue random searches?**  
 (4) **A Yes In the program and in my letter of - of March 1987**  
 (5) **we reaffirmed that - that the company - that it was the**  
 (6) **company's right to conduct random searches of its**  
**property of**  
 (7) **its facilities**  
 (8) **Q Did it - did it - did this policy also affirm the right**  
 (9) **to test for drugs and alcohol?**  
 (10) **A Yes We for the first time said that for cause the**  
 (11) **company had the right to initiate testing of individuals**  
**where**  
 (12) **we felt there were cause to carry out that testing**  
 (13) **Q Now you've got a policy - now you've got in place the**  
 (14) **policy you've got random searches you've got**  
**pre employment**  
 (15) **drug testing and now you are saying you are affirming the**  
 (16) **right to test for drugs or alcohol in limited circumstances or**  
 (17) **when there's some cause How would that cause develop?**  
 (18) **A Well many of our - some of our vessels of company**  
 (19) **vessels would uncover a small quantity of marijuana or a**  
**half**  
 (20) **opened bottle of liquor in someplace other than a**  
**stateroom**  
 (21) **of an individual So we then had evidence that there was**  
**some**  
 (22) **abuse of alcohol or drugs on board but we had no way to**  
**find**  
 (23) **out who the individual was**  
 (24) **So at that point we decided that we had to add to our**  
 (25) **program for cause testing of employees primarily urine**

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- (1) **analysis**  
 (2) **Q Now did this policy and the guidelines attached to this**  
 (3) **policy have anything to say about how supervisors should**  
 (4) **monitor employees for alcohol or drug problems?**  
 (5) **A Yes We had - we had one the training programs I was**  
 (6) **talking about earlier but also in addition to that we had**  
 (7) **guidelines for supervisors and also fleet officers as to how**  
**to**  
 (8) **recognize signs of alcohol or drug abuse and when to do**  
**when**  
 (9) **there was suspicion of use**  
 (10) **Q Did this - what were they supposed to look for or look at**  
 (11) **in monitoring employees?**  
 (12) **A Well the key was job performance and how the individual**  
 (13) **performed his or her job**  
 (14) **Q All right Let's look to see what - go ahead**  
 (15) **A And was there - was there any sign in the way they**  
**carried**  
 (16) **out their duties that they were in fact impaired**  
 (17) **Q Read what I've just underlined there and explain that**  
 (18) **beginning with -**  
 (19) **A The policy is not intended to infringe on employee**  
**privacy**  
 (20) **or off the job activities but does establish specific**  
 (21) **standards for on the job behavior**  
 (22) **Q Now thinking about that a minute let's go to - let's go**  
 (23) **to the page of the guidelines that say it D paragraph D**  
 (24) **Let me - okay Let's look at this a minute When an**  
 (25) **employee's unsatisfactory performance is believed to be the**

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- (1) **result of alcohol and drug dependency - Mr Larossi was that**  
 (2) **what you were talking about when you said they must monitor**  
**job**  
 (3) **performance for drug and alcohol problems?**  
 (4) **A Yeah within Exxon we had a very very rigorous job**  
 (5) **performance appraisal system in which every supervisor**  
**had a**  
 (6) **responsibility to be carefully watching monitoring the**  
 (7) **performance of the people under his - his authority and, in**  
 (8) **fact, had a responsibility that they carry out their**  
 (9) **assignments appropriately**  
 (10) **So what we were really saying is part of that performance**  
 (11) **appraisal system that was ingrained in all of us that at any**  
 (12) **time unsatisfactory performance was evidenced, we needed**  
**to -**  
 (13) **or the individual supervisor needed to - to reflect upon**  
 (14) **whether that unsatisfactory performance could be the result**  
**of**  
 (15) **drug or alcohol abuse**  
 (16) **Q Did you consider - did you intend or consider that your**  
 (17) **supervisors would monitor an employee when he's off duty or at**  
 (18) **home that sort of thing?**  
 (19) **A No I - my personal feeling, I think it was the company's**  
 (20) **position very definitely that we had no business in the**  
 (21) **employee's private life In fact it was probably illegal, and**  
 (22) **therefore all of our activities were associated with**  
 (23) **on the-job performance or time periods when the employee**  
**was on**  
 (24) **Exxon facilities**  
 (25) **Q The policies that you've discussed here - one thing I**

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- (1) **didn't ask you about In all of these policies the policy**  
 (2) **that was there when you became president the policy or the**  
 (3) **letter letter policy or policy letter when in '85 and the**  
 (4) **'87 modifications did all of those policies say anything**  
 (5) **about the possession or consumption of alcohol on board**  
 (6) **vessels?**  
 (7) **A Yeah there were - there were tenets of the entire**  
 (8) **policy One was that it was against company policy, a**  
 (9) **violation of company policy to possess or use alcohol and**  
**later**  
 (10) **drugs on company facilities and that included company**  
 (11) **vessels It was against company policy to be carrying out**  
 (12) **company functions while under the influence of drug or**  
 (13) **alcohol**  
 (14) **So it was while carrying out company functions so it was**  
 (15) **associated with use or possession on company facilities or**  
 (16) **being impaired in any way while carrying out company**  
**duties**  
 (17) **Q Regardless of where you got the alcohol huh?**  
 (18) **A Yes**  
 (19) **Q Mr Larossi prior - turning to a different subject prior**  
 (20) **to 1985 were you aware of a captain by the name of Joseph**  
 (21) **Hazelwood?**  
 (22) **A Yes I was aware that Captain Hazelwood was one of the**  
 (23) **members of the Exxon Shipping Company and one of the**  
**captains**  
 (24) **in our fleet**  
 (25) **Q In 1985 did he particularly come to your attention?**



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- 1) **A Yes I believe it was late May of 1985**  
 Q How did it come to your attention?
- 3) **A The then the employee relations manager his name was Ben Graves informed me that he had had a discussion with Captain Hazelwood had questioned Captain Hazelwood found out that Captain Hazelwood had voluntarily entered a rehabilitation program near his home in Long Island and that subsequent to Hazelwood's release from that rehabilitation program Graves had had a discussion with Hazelwood about the rehabilitation program and about Hazelwood's status**
- 11) Q Let me have Plaintiff's Exhibit 160 if I may  
 1) Is that something you've got? The Graves report  
 13) MR SANDERS I think it's back here  
 14) MR NEAL Here we go  
 15) BY MR NEAL  
 16) Q Mr Tarossi when Captain Hazelwood was brought to your attention were you aware of this?  
 17) attention were you aware of this?  
 18) **A Yes This is the first -**  
 19) Q Who is this right here?  
 20) **A I believe that's Ben Graves signature I believe it says Ben**  
 21) Q All right Let me go to the next part of this Would you bring up the next part second page  
 4) Okay When you were having the - when you were having the conversation with Mr Ben Graves were you aware that

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- 11) Mr Graves had had this conversation with Captain Hazelwood and had been told by Captain Hazelwood that he commented that he occasionally drank aboard the ship but not frequently Hazelwood indicated he came back to ship from port drunk on several occasions Were you aware of this in your conversation with Mr Graves?  
 16) Mr Graves?  
 17) **A Yes I had read - before the conversation Ben Graves had sent me a one page memo outlining his conversation with Captain Hazelwood and the fact that he had entered himself - Captain Hazelwood had entered himself in a rehabilitation program The very last sentence at the bottom of the page and I think that's what this is is the last sentence in the bottom of that memo Ben Graves said in the course of conversation he asked Joe if he ever drank aboard ship and he meaning Hazelwood commented that he occasionally drank aboard ship but not frequently**
- 17) Q Now this is dated May 28 1985 Was your conversation somewhere around that time your conversation with Mr Graves?  
 19) **A Yeah I believe it was within a week of this when I received this memo**  
 21) Q All right At that time you understood that Captain Hazelwood had prior to his conversation with Mr Graves in which he admitted this had prior to that voluntarily entered some sort of rehabilitation clinic?  
 24) **A Yes It was not clear to us what the circumstances were**

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(1) We talked about alcohol rehabilitation but I recall Ben at the  
 (2) time telling me that actually the program was associated  
 with  
 (3) some mild depression that Captain Hazelwood apparently  
 had,  
 (4) which was then associated whenever he had these  
 depressive  
 (5) bouts, apparently associated with excessive drinking  
 (6) Q Now when you -  
 (7) A I don't know whether he was being treated for the  
 (8) depression or the drinking  
 (9) Q When you had this discussion with Mr Graves and he s -  
 (10) you have this information about the conversation Mr Graves  
 has  
 (11) with Captain Hazelwood did you have the - did you understand  
 (12) or were you told by Mr Graves that Captain Hazelwood had  
 (13) already gone through this rehabilitation program by the time he  
 (14) had the conversation with Captain Hazelwood?  
 (15) A Yes I recall Ben telling me that he had tried to get hold  
 (16) of Hazelwood earlier but was in inpatient treatment and he  
 (17) really could not carry on an extensive discussion with him  
 (18) until Hazelwood had been released from the program I  
 think he  
 (19) was released sometime around mid May as I recall  
 (20) Q When Mr Graves is telling you and you're having this  
 (21) conversation about Captain Hazelwood did you understand  
 from  
 (22) Mr Graves that the conduct that Mister - that Captain  
 (23) Hazelwood was telling about had occurred some years earlier?  
 (24) A Yeah the - the subject that caused Ben to get in contact  
 (25) with Hazelwood had to do with an incident that occurred

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(1) sometime prior to - to '82 and so the whole context of  
 (2) discussion that Ben was relating to me was some years  
 prior to  
 (3) the incident  
 (4) Q All right Now Mr Graves is coming to you and he's  
 (5) telling you all this he's giving you the report he's telling  
 (6) you this what was the purpose of the conversation?  
 (7) A We had to decide now that Captain Hazelwood had self  
 (8) identified what - what do we do  
 (9) Q What do you do about what?  
 (10) A What do we do about his future employment And of  
 course  
 (11) the question we had to face was do we put him back on a  
 (12) vessel  
 (13) Q Did you make the decision to put him back on the vessel?  
 (14) A Ultimately yes  
 (15) Q Would you tell the Ladies and Gentlemen of the Jury how  
 you  
 (16) came about making that decision?  
 (17) A Well my first response very definitely was -  
 (18) Q You're sitting here with Mr Graves you've gotten this  
 (19) information we talked about you've been told that Captain  
 (20) Hazelwood was a self identifier and he's completed  
 (21) rehabilitation right?  
 (22) A Yes  
 (23) Q For some sort of depression or alcohol problem associated  
 (24) with that that's all in your mind correct?  
 (25) A Yes, sir

(1) Q All right Now go ahead  
 (2) A My first emotional response was we couldn't put him back  
 on  
 (3) the ship I sometimes have an emotional response What  
 we  
 (4) then talked a little bit about and -  
 (5) Q It's kind of unusual for an engineer isn't it? Go ahead  
 (6) I'm sorry  
 (7) A We then started talking about and examining what the  
 (8) alcohol policy stated, what the basis of the policy was We  
 (9) went through the fact that if an employee self identified, he  
 (10) was essentially guaranteed as part of the contract that it  
 (11) would be held confidential He was guaranteed that his job  
 (12) security and his future opportunities would not be impaired  
 (13) We then had a discussion as to what that really meant, that  
 (14) that - did that mean we had to give him his exact job back  
 (15) Ben told me that in the seven years of this - this program  
 (16) had been in place, all of the employees throughout Exxon  
 who  
 (17) had so self identified had gotten their exact job back And  
 to  
 (18) Ben's knowledge, there was no exception to that So the  
 (19) interpretation that the company had put upon it, and that  
 the  
 (20) employees had assumed was that the individual who self  
 (21) identified having gone successfully through rehabilitation  
 (22) having been declared fit for duty would then get his job  
 back  
 (23) back  
 (24) We - I still wasn't convinced, and we talked a little bit  
 (25) more, and Ben Graves told me that I had to understand a  
 little

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(1) bit of the law associated with disabled persons and how that  
 (2) impacted people with alcohol problems He told me that the  
 (3) Federal Disability Act cover employees with disabilities and,  
 (4) in fact the company was prohibited from denying  
 employment or  
 (5) denying a job to an individual solely on the basis of that  
 (6) disability  
 (7) Q Solely on the basis that he'd sought help and gone through  
 (8) rehabilitation?  
 (9) A Yes, or had been identified as having that disability  
 (10) And in fact, while it had not been tested in the courts, the  
 (11) interpretation of outside legal counsel and the  
 interpretation  
 (12) of Exxon counsel was that an individual with an alcohol  
 (13) problem  
 (14) was considered to be disabled and was considered to fall  
 under  
 (15) the Federal Disability Act  
 (16) And at one point Ben said you know whether you like it  
 (17) or not you really don't have a decision It's spelled out  
 (18) very clearly both in policy that we could not deny Captain  
 (19) Hazelwood his job solely on the basis of the fact that he had  
 (20) an alcohol problem although if his performance was  
 impaired,  
 (21) then we could And he said actually the federal law followed  
 (22) exactly the same way that simply because an individual had  
 an  
 (23) alcohol problem we could not deny him or her a job On the  
 (24) other hand if they could not perform or if their performance  
 (25) was impaired then we had the right to remove them from  
 that  
 position

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(1) And we hemmed and hawed and I recall that Ben said to me  
 (2) in the course of the conversation toward the end he said  
 (3) Frank you know what will happen if we deny Captain  
 Hazelwood  
 (4) his job back? And I told him yes Captain Hazelwood would  
 be  
 (5) the last individual we would ever see in Exxon Shipping  
 Company  
 (6) who would self identify  
 (7) And I think more than company policy more than what the  
 (8) law said or didn't say, that last fact that our whole efforts  
 (9) to bring under control or to control alcohol and drug abuse  
 (10) within the company our whole effort was based on self  
 (11) identification of the employee I think that weighed  
 absolutely  
 (12) the most in my decision and I recognized and Ben  
 recognized  
 (13) that we were in a very tough spot No matter what we did  
 (14) there were risks If we put Captain Hazelwood back on the  
 (15) ship, we had a risk If we denied Captain Hazelwood his job  
 (16) we had a totally different kind of risk And being an  
 (17) engineer the logic of the decision was putting Hazelwood  
 back  
 (18) on the ship was a risk it was a risk we knew and  
 understood  
 (19) It was one individual and what we had to do was make sure  
 we  
 (20) did everything possible to ensure that Joe's performance  
 was  
 (21) not in any way impaired We had to look for any signs that  
 he  
 (22) was consuming alcohol or was not following through with  
 his -  
 (23) had not completed his rehabilitation  
 (24) On the other hand the other risk if we denied him the job  
 we would never get anybody to self identify  
 (25) Q Is it -  
 (1) A We didn't know what that risk was It was undefined so  
 we  
 (2) made a choice between a risk we understood and a risk we  
 knew  
 (3) we potentially had but did not know the magnitude of  
 (4) Q So the risk on the one hand was that whatever problem  
 (5) Captain Hazelwood had would reemerge is that correct?  
 (6) A That was a risk  
 (7) Q And on the other hand was a risk that if you don't give him  
 (8) his job back there may be other people unidentified people  
 (9) with alcohol problems out there who may - who were also a  
 (10) risk is that correct?  
 (11) A That's true absolutely correct  
 (12) Q And if you give him his job back and run that risk then  
 (13) maybe you've eliminated this other risk or reduced it?  
 (14) A We will have gone a long way to convincing the  
 employees  
 (15) that we would live by our side of the bargain because after  
 (16) all, that policy was essentially a contract If you identify  
 (17) we will do these things And if we didn't do our part of it  
 (18) that would be - that policy would be over, that contract  
 would  
 (19) be over  
 (20) Q You really weighed this is that correct Mr. Iarossi?  
 (21) A Yeah, it was not an easy decision  
 (22) Q Tough decision for you?  
 (23) A Yes, yes  
 (24) Q But you finally decided to return him to his vessel?

(1) A We decided to return him back to the position of master  
 (2) MR NEAL Your Honor is this a good time?  
 (3) THE COURT We'll take our first recess at this time  
 (4) ladies and gentlemen  
 (5) We'll be in recess for 15 minutes  
 (6) THE CLERK This court is in recess for 15 minutes  
 (7) (Jury out at 10:02 a.m.)  
 (8) (Jury in at 10:17 a.m.)  
 (9) MR NEAL May I proceed Your Honor?  
 (10) THE COURT Yes  
 (11) BY MR NEAL  
 (12) Q Mr. Iarossi having made this decision however torturous  
 (13) or tough what did you do then?  
 (14) A Told Ben that it was important that we watch Hazelwood  
 (15) closely that we make sure he completed the rehabilitation  
 (16) program was fit for duty and that subsequent to that we  
 (17) watched his job performance and any sign that - that he  
 was  
 (18) drinking  
 (19) Q Did you understand that - did you instruct Mr. Graves  
 (20) anything about having his personal - Captain Hazelwood's  
 (21) personal doctor do or say anything?  
 (22) A Well, Ben was the EHAP coordinator so it was his  
 (23) responsibility to keep in touch with the medical department  
 (24) and it was my understanding the medical department kept  
 in  
 (25) touch with the personal physician or whoever was in charge  
 of

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(1) the rehabilitation  
 (2) Q Was it your understanding that Captain Hazelwood's  
 personal  
 (3) physician advised the medical department that Captain  
 Hazelwood  
 (4) was fit to return to sea duty?  
 (5) A Sometime after this discussion when I inquired I was told  
 (6) that he was declared fit for duty and that the medical  
 (7) department concurred with that  
 (8) Q All right Now did you have any conversation about - you  
 (9) said you wanted him watched was that the word you used?  
 (10) A I said we had to watch his performance very carefully  
 (11) Q Watch his performance?  
 (12) A Yes  
 (13) Q Did you intend or expect anybody to monitor his private  
 (14) life or the times he was off duty and at home?  
 (15) A No absolutely not  
 (16) Q You said you expected them to monitor him primarily for job  
 (17) performance?  
 (18) A And job performance and any sign - I think I used the  
 term  
 (19) that he was off the wagon was the exact term I used  
 (20) Q Mr. Iarossi are the supervisors or were the supervisors of  
 (21) Exxon Shipping Company trained to monitor people for job  
 (22) performance?  
 (23) A Yes absolutely from - from the time we come into the  
 (24) company the job appraisal and performance appraisal  
 system  
 (25) within Exxon is very rigorous At this time has a couple

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- (1) parts The first part is what I call moment of fact appraisal  
 (2) which is -  
 (3) Q What term is that?  
 (4) A Moment of fact, which that's my term What it means is  
 (5) that job performance is an ongoing operation that takes  
 place  
 (6) 24 hours a day If at any time you see things that are  
 (7) exceptionally good it's the responsibility of the supervisor  
 (8) to tell the individual hey that's a good job Don't wait two  
 (9) weeks, don't wait a month or a year When it happens, tell  
 (10) them it's good  
 (11) If, on the other hand, something doesn't go right at that  
 (12) point in time exactly is the time when you take the guy aside  
 (13) and say, look, that one didn't go right, we got to sit down  
 and  
 (14) decide what we learned from that And in my vernacular, I  
 call  
 (15) that moment of fact appraisal There are probably other  
 terms  
 (16) for it But it is a performance appraisal that is ongoing  
 (17) every day, day in day out  
 (18) Then there's another facet of the program which is an - I  
 (19) will call after the fact which occurred one year or maybe  
 two  
 (20) years and you look at performance over a long period of  
 time  
 (21) So there's two aspects, moment of fact and after the fact  
 and  
 (22) that's what we're all trained in being able to do  
 (23) Q Would you have expected that if there was any - by the  
 (24) way you don't -  
 (25) A Takes a little courage by the way because you have to

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- (1) look at somebody and say that was not right that did not  
 meet  
 (2) standards now we have to talk about why it happened and  
 how to  
 (3) improve on it  
 (4) Q Well that's what you're paid for isn't it?  
 (5) A That's right We aren't even marines  
 (6) Q That's right Marines weren't paid  
 (7) Back to the time when you were making the decision to  
 (8) return Captain Hazelwood to duty were you aware of the - what  
 (9) we've referred to here as the IDR the individual disability  
 (10) report that contains the diagnosis of Captain Hazelwood?  
 (11) A I was not familiar with the term IDR I've learned that  
 (12) subsequent to the grounding But I do know there was  
 something  
 (13) called a fit for duty slip I think it's the same thing  
 (14) Q And that it's your understanding you mentioned this  
 (15) before your understanding that Captain Hazelwood had some  
 sort  
 (16) of depression and an alcohol problem associated with it? That  
 (17) was your state of mind?  
 (18) A Yes As I recall he was diagnosed as having - I don't  
 (19) remember the medical term but I was told it meant a mild  
 (20) depression and that during those periods of mild  
 depression he  
 (21) was subject to excessive drinking and that was -  
 (22) Q That was your state of mind?  
 (23) A That was my state of mind That's what I was told and  
 (24) understood  
 (25) Q All right Now did you have - in regard to watching or

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- (1) monitoring or whatever word you want to use of Captain  
 (2) Hazelwood after he returned did you tell Mr Graves to tell  
 (3) anybody about watching or monitoring?  
 (4) A I told him to make sure John Tompkins who was the - the  
 (5) gulf coast fleet manager to make sure that John was fully  
 (6) aware of the circumstances and Ben and I also talked about  
 the  
 (7) policy position on confidentiality We needed to do this and  
 (8) carry this activity out with a proper element of  
 (9) confidentiality, but we also needed to make sure that his  
 (10) supervisors were fully aware of the circumstance and what  
 their  
 (11) roles were  
 (12) Q All right Did you instruct Mr Graves or Mr Tompkins or  
 (13) anybody to have any meeting with Captain Hazelwood before  
 he  
 (14) returned to duty?  
 (15) A What I had told Ben in that same conversation was that  
 we  
 (16) had to make sure that he was in fact declared fit for duty  
 (17) Some weeks after this discussion, as I recall it was - may  
 (18) have in fact been sometime early September, I learned  
 through a  
 (19) meeting on fleet operations that Captain Hazelwood had  
 been  
 (20) returned to the fleet and was now the master of Exxon  
 (21) Yorktown And I was a little upset at the time that I had not  
 (22) been warned about that so I jumped on Graves and he told  
 me to  
 (23) relax that he had been declared fit for duty and he told me  
 (24) that John Tompkins and Bill Sheehy had personally carried  
 out  
 (25) an interview of Captain Hazelwood

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- (1) So I then called John Tompkins and I proceeded to read  
 him  
 (2) out because he didn't keep me informed of what was going  
 on  
 (3) and he told me that they on purpose had flown Captain  
 Hazelwood  
 (4) to Houston that both Bill Sheehy who was the port captain  
 for  
 (5) the gulf coast group and he himself John Tompkins who  
 was  
 (6) the fleet manager had personally interviewed Hazelwood  
 (7) Tompkins told me he personally had warned Hazelwood  
 about the  
 (8) fact that any return to drinking or any evidence that he was  
 (9) drinking on board or violating company policy would -  
 would  
 (10) result in termination And John told me that - that  
 Hazelwood  
 (11) clearly understood this  
 (12) John's evaluation and Bill Sheehy's evaluation both,  
 (13) according to John Tompkins was that Joe Hazelwood  
 clearly  
 (14) understood the situation clearly understood that he in fact  
 (15) was going to be watched very carefully and had to - had to  
 be  
 (16) living within the letter of the Exxon policy  
 (17) Q Did you understand that shortly after - oh I don't know  
 (18) shortly after but sometime after still in 85 that  
 (19) Mr Tompkins - by the way Mr Tompkins was the gulf coast  
 (20) fleet manager?  
 (21) A Yes  
 (22) Q Did you understand that sometime after Captain Hazelwood  
 (23) returned to duty aboard the Yorktown that a Mr Koops was  
 (24) replacing Mr Tompkins as gulf coast fleet manager?

(15) A Yes I was I was aware that John was actually being  
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(1) relieved by Dwight Koops Dwight Koops was going to become the  
(2) gulf coast fleet group manager John Tompkins was taking an  
(3) assignment in headquarters as I believe it was fleet services  
(4) manager And I told John specifically to make absolutely sure  
(5) that Dwight Koops was briefed on all of the circumstances and  
(6) that Dwight understood the role he had to play in this  
(7) Subsequent to that I had a discussion directly with Dwight  
(8) Koops and I wanted to make sure he understood the need to watch  
(9) Captain Hazelwood very carefully and what the circumstances  
(10) were  
(11) During this conversation -  
(12) Q This is a conversation with Mr Koops now?  
(13) A Yes And it took place maybe October, November of this  
(14) year, of 1985 I don't recall exactly But it was sometime  
(15) during the course of the conversation in which I was talking to  
(16) him about Hazelwood the need to watch Joe very carefully  
(17) Dwight revealed to me that he had a personal situation in his  
(18) family, his father was an alcoholic and Dwight told me he  
(19) said, Frank don't worry he said I know all the signs I've  
(20) lived with it for years I know all the signs And he said I  
(21) know all the ways they try to hide it he said so I'm going to  
(22) be - I'm going to stick very close to Joe is what he said  
(23) Q Did you have - okay This is your first conversation with  
(24) Mr Koops then regarding Captain Hazelwood?  
(25) A Yeah. And I don't recall exactly when the conversation  
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(1) was but it was sometime following the return of Hazelwood to  
(2) the fleet  
(3) Q But this was the first conversation regarding Captain  
(4) Hazelwood? With Mr Koops?  
(5) A As I recall, yes  
(6) Q All right Did you have any occasion to have any further  
(7) conversations with Mr Koops regarding Captain Hazelwood?  
(8) A Yes I - I had a number of conversations with him One  
(9) in the gulf coast fleet office in Baytown when I was visiting  
(10) the office, I asked him particularly about Joe He told me  
(11) that Joe was clean that he was performing very well  
(12) We had another conversation sometime later when I asked  
him  
(13) again how Joe was doing, Dwight told me that he and Joe  
had  
(14) developed - now this is maybe six months or more after  
(15) Hazelwood had gone back to the fleet Mr Koops told me  
that he  
(16) and Joe had developed a very close relationship, that Joe  
(17) really was very open with Dwight and that was somewhat  
(18) surprising, because Joe tended to be not known to be open  
and  
(19) very communicative but Dwight said he felt that he really  
had  
(20) established a very close relationship with Joe And then he  
(21) says, you know Frank I really like the guy  
(22) Q Let me ask you this During the course of these  
(23) conversations with Mr Koops, did the name - did the name of  
(24) Jim Shaw or James Shaw ever come up?  
(25) A I remember Dwight telling me - and he was very  
concerned

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(1) that I would hear it from someone else or from rumor and he  
(2) wanted to tell me first that he had Jim Shaw who was -  
(3) worked for Dwight was the gulf coast fleet steward had  
been  
(4) aboard the Yorktown while it was in Baton Rouge  
Louisiana and  
(5) that Jim had subsequently come back to the office and  
mentioned  
(6) to either Dwight or Bill Sheehy I don't remember that Joe  
(7) Hazelwood was acting I think the term he used was kind of  
(8) strange  
(9) Dwight told me he said Frank I immediately sent Sheehy  
(10) to Baton Rouge and Sheehy stayed with Hazelwood for a  
number of  
(11) hours I think he said six or eight hours but I don't recall  
(12) exactly and that Sheehy came back and said that there was  
(13) absolutely no evidence that - that Hazelwood was in any  
way  
(14) acting out of sorts or any sign that he was drinking and  
(15) Dwight said I just - just want to let you know that - that  
(16) that thing did go on  
(17) There was - there was another occasion when I asked  
Dwight  
(18) whether he was watching Hazelwood closely, and he told  
me  
(19) Frank if I can't get on the ship Sheehy gets on the ship and  
(20) we meet him practically every time he comes into port  
Dwight  
(21) told me when he himself went on board he not only talked to  
(22) Hazelwood but he also made it a point to go around to the  
(23) other crew members to try to open up discussions and so  
that if  
(24) they had anything on their mind is there anything they  
wanted  
(25) to tell him or pass on they had plenty of opportunity to do  
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(1) that and he made a point to tell me that  
(2) In all of this, the scenario is that they're trying to  
(3) convince me that they're doing the job and they're watching  
(4) very closely So these are all stories or events that they're  
(5) recurring to me that they are giving me  
(6) Q In the course of these conversations did the name of a  
(7) Captain Ivan Mihajlovic come up?  
(8) A Yes In one of these conversations that - between myself  
(9) and Dwight Koops he told me that Captain Mihajlovic had  
heard  
(10) a rumor in the fleet and had personally gone to the  
Yorktown  
(11) and, in Dwight's words, ransacked Captain Hazelwood's  
stateroom  
(12) looking for alcohol and had found none And I don't know  
(13) whether Mihajlovic had then reported back to Koops or  
whether  
(14) he passed it on to Sheehy but Koops had found out about  
this  
(15) for cause search or informal search of Captain Mihajlovic  
(16) That was during the course of another discussion I had with  
(17) Dwight  
(18) Q All right Now Mr Larossi did you yourself have  
(19) occasion to interact or contact or have contact with Captain  
(20) Hazelwood on a person to person basis?  
(21) A I did on two or three occasions and all of the occasions  
(22) were during the course of the once a year senior officer  
(23) conferences that we would have As part of our training and  
(24) system within Exxon Shipping Company, once a year we  
would  
(25) invite all of the fleet managers and all of the ship captains,

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(1) the chief engineers chief mates we would invite them to  
 (2) Houston for a one week conference and we would talk  
 about a  
 (3) whole range of subjects during the course of that We  
 would  
 (4) talk about safety program we would talk about Exxon  
 policy,  
 (5) we'd talk about bridge and navigation policies  
 (6) We would also give the officers opportunities to exchange  
 (7) views exchange their experiences If during the course of  
 that year there were any incidents within the fleet that gave  
 (8) us concern we would have what we called lessons learned  
 (9) sessions where we would go over the event and all of the  
 (10) circumstances as we understood it and then we would have  
 (11) sessions to define, okay, what did we learn from this how  
 do  
 (12) we change our policy, how do we adjust to this so we don't  
 ever  
 (13) see this, this type of incident again  
 (14) Q Mr Iarossi, I'm pointing down here now to Defendants  
 (15) Exhibit 9131 under the caption steps to ensure safety It  
 (16) says opportunity for officers to share experiences and lessons  
 (17) learned Was that a safety step?  
 (18) A Oh yeah it was an important step Not only - it was an  
 (19) important step in the safety program not only to look at what  
 (20) you learn from - from specific incidents but also to  
 exchange  
 (21) near misses In fact in a safety program you learn more  
 from  
 (22) near misses because you tend to have more of those than  
 you do  
 (23) incidents so we - part of the program was to get the  
 officers  
 (24) to talk about difficult situations they were in what we called

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(1) a near miss and how they handled it and how other officers  
 who  
 might find themselves in the same position could handle it  
 (2) Q I don't want to divert too much on this but is this the  
 (3) opportunity to share experiences and lessons learned was that  
 (4) in effect the purpose of the fleet conferences that we started  
 (5) to talk about?  
 (6) A It was one of the purposes yes  
 (7) Q All right Now then did you at these fleet conferences  
 (8) have occasion to see and be with Captain Hazelwood?  
 (9) A Yes I remember especially subsequent to the  
 (10) rehabilitation  
 (11) Q I'm talking about subsequent to the rehabilitation  
 (12) A Yes I - there was one fleet conference in March of 1988  
 (13) that I recall because of a specific incident related to  
 (14) Hazelwood I then there was another one it was either the  
 (15) 86  
 (16) conference or the 87 conference I don't recall which one  
 and  
 (17) during those times I - I made it a point during those five  
 (18) days to watch Joe not only to see whether - how he was  
 (19) participating in the program one of the things that I was  
 (20) curious about was whether Joe was fully participating in the  
 (21) program how he was behaving during the course of the five  
 (22) days, but also what he was consuming as far as liquid  
 (23) refreshment and I never at any time saw Joe consume any  
 (24) alcohol during that time whether it was during meals - he  
 was  
 (25) not drinking wine was not drinking beer during meals or

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(1) anything  
 (2) Q These were over five days each time?  
 (3) A Yes  
 (4) Q Now Mr Iarossi did there come a time that you learned  
 (5) that Captain Hazelwood then had been transferred from the gulf  
 (6) coast fleet and the Yorktown to the west coast fleet?  
 (7) A Yes I believe I learned of that in I believe it was  
 (8) August of 1987  
 (9) Q All right How did you learn about it?  
 (10) A I had called Harvey Borgen Harvey Borgen was the west  
 (11) coast fleet manager I called Harvey and told him that  
 (12) Mrs Margaret McVicker (ph) who was a director of Exxon  
 (13) Corporation and also was the sponsor of Exxon Valdez, she  
 (14) christened the bottle - christened the vessel and broke the  
 (15) bottle of champagne At the time of the christening of the  
 (16) vessel, that she - she and her father wanted to make a  
 voyage  
 (17) on Exxon Valdez from San Francisco - from San Francisco  
 to  
 (18) Valdez and that she - Margaret McVicker was a professor at  
 MIT  
 (19) University and she had a break in late August and wanted  
 us to  
 (20) arrange a trip on the vessel for she and her father  
 (21) And at that time I told Harvey about that we had to make  
 (22) the arrangements and we had to make sure that all the  
 (23) arrangements were made I asked him who the master of  
 the  
 (24) vessel was and he said well let's see by that time  
 (25) Hazelwood will be on vacation and I think he said Stalzer  
 will

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(1) be the master  
 (2) I asked him when Hazelwood had become the master of the  
 (3) Exxon Valdez and he told me it was some months earlier, I  
 (4) think April or May Again I was a little surprised that I  
 (5) wasn't informed about it and I asked Harvey how they  
 arrived  
 (6) at that decision, and he told me that they had reviewed all  
 the  
 (7) masters in the fleet They had an opening in the fleet  
 because  
 (8) one master, Captain Bill Greg (ph) had left the company to  
 take  
 (9) up a position with the San Francisco pilot's association and  
 (10) Bill Greg was the previous master of Exxon Valdez so they  
 had  
 (11) to shift some masters around to fill that vacancy  
 (12) They had convened a group of port captains the port  
 (13) captains had reviewed all of the candidates for that job and  
 (14) had selected Hazelwood as the best qualified master for  
 Exxon  
 (15) Valdez and Harvey went on to tell me the reasons for that  
 (16) that, number one Captain Hazelwood had more experience  
 (17) operating big ships in and out of Valdez than any other  
 master  
 (18) in our fleet Captain Hazelwood was the first master in the  
 (19) Exxon fleet and to our knowledge the first master in any -  
 (20) any fleet to qualify as a Prince William Sound pilot and  
 (21) receive his pilot certificate and Harvey told me that thirdly  
 (22) he had been assured by Dwight Koops that Joe Hazelwood  
 was  
 (23) absolutely clean and performing quite well  
 (24) And on that basis he and Dwight Koops together had  
 made  
 (25) the decision to shift Captain Hazelwood from the Exxon

Yorktown

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(1) to the Exxon Valdez  
 (2) Subsequent to that decision or hearing that from Harvey I  
 (3) called up Dwight and I asked Dwight what his view of this is  
 (4) and was he sure that this was the right move to make and  
 he  
 (5) told me he concurred totally that he said Joe is absolutely  
 (6) clean There's no reason not to put him on the Valdez He  
 has  
 (7) all the experience and all the background that's the right  
 (8) place for me  
 (9) Q And this is - this occurred more - considerably more than  
 (10) two years after his rehabilitation is that correct?  
 (11) A Yes Dwight told me that he had watched Joe perform for  
 (12) two years and he was convinced Joe was clean and that he  
 did  
 (13) not see any problem In fact he fully endorsed shifting Joe  
 (14) from the Yorktown to the Valdez  
 (15) Q All right Now then Mr Jarossi from the time - from  
 (16) the time Captain Hazelwood returned to duty in something like  
 (17) August of 1985 to the time of the grounding with the  
 (18) exception of this one Shaw thing you've talked about did you  
 (19) ever get any report that Captain Hazelwood was drinking or  
 (20) violating company policy or anything like that?  
 (21) A Absolutely not Never  
 (22) Q And the - the one thing you got you were told it was  
 (23) reported that it was investigated and that even a search by  
 (24) Mister - or Captain Mihajlovic had been carried out is that  
 (25) correct?

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(1) A That's correct  
 (2) Q And nothing had been found?  
 (3) A That's correct  
 (4) Q Now I want to go to something I want to be very brief  
 (5) and I'm sure that plaintiffs' counsel will want to go into it  
 (6) and I'll just touch on it  
 (7) Did you terminate Captain Hazelwood as employee some days  
 (8) following the grounding?  
 (9) A Yes I did  
 (10) Q When?  
 (11) A I believe it was on Thursday following the grounding  
 early  
 (12) Saturday morning  
 (13) Q All right There's been some statement made here that you  
 (14) didn't give him a chance or an opportunity to state his case  
 (15) Did you try to give him an opportunity to state his case?  
 (16) A Yes  
 (17) Q And what happened?  
 (18) A We couldn't find him He had - I had - when I - when I  
 (19) got to Valdez Friday afternoon I met Paul Myers and  
 Captain  
 (20) Bill Deppe At that point they - they told me what they knew  
 (21) of the - of the grounding up to that point They told me that  
 (22) Captain Hazelwood was not on the bridge at the time of the  
 (23) grounding And I at that point told Captain Deppe that I  
 (24) wanted him to proceed directly to the vessel to relieve  
 Captain  
 (25) Hazelwood and I also sent a lawyer from Exxon Shipping  
 Company

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(1) by the name of Bob Nicholas to proceed to the vessel to  
 (2) question Hazelwood and also the other crew members and  
 to let  
 (3) me know what the circumstances were surrounding the  
 grounding  
 (4) There was a discussion about whether we should leave Joe  
 on  
 (5) the vessel and it was decided at this point he was under  
 such  
 (6) strain and stress from the grounding that it was much  
 (7) preferable to bring him back to Valdez and I felt at that  
 (8) point I would have an opportunity to speak to him directly  
 and  
 (9) also to - to convene a personnel board and allow - to go  
 (10) through a procedure that we had in the shipping company to  
 (11) allow the personnel board to also interview Joe Hazelwood  
 (12) because from my perspective and in my mind if it was  
 confirmed  
 (13) he was not on the bridge then that was grounds for firing  
 (14) Captain Hazelwood It was not the first time I would have  
 (15) faced that decision So it was not a unique situation for me  
 (16) Q Not with Captain Hazelwood?  
 (17) A Not with Captain Hazelwood but there was another  
 (18) circumstance previous to that and I had reacted the same  
 way  
 (19) That - but I clearly wanted an opportunity and I felt  
 (20) strongly that before making that decision I had to - I had to  
 (21) hear from Joe Hazelwood if there was any - any plausible  
 (22) reason in defense as to why he was not on the bridge  
 (23) But before I got to Joe the NTSB had convened its - its  
 (24) hearing and subsequent to the NTSB interview with  
 Hazelwood  
 (25) which I think occurred on Monday morning or something  
 like

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(1) that that after that we - NTSB released Hazelwood in the  
 (2) cognizance of his attorney and we did not see or hear from  
 (3) him We could not locate him We did find that he had left  
 (4) Valdez and Anchorage by plane He was somewhere in the  
 Lower  
 (5) 48 but we could not find out where  
 (6) Q Mr Jarossi one more thing I want to clear up then I'm  
 (7) going to turn you over to the tender mercies of Mr O'Neill  
 (8) here  
 (9) There's been some suggestion that Exxon Shipping Company  
 (10) had its masters get a pilotage endorsement for Prince William  
 (11) Sound in order to save money By 1986 87 88 89 was  
 (12) having Exxon masters obtain a pilotage endorsement was that  
 to  
 (13) save money?  
 (14) A No Actually I think it cost us money because we gave  
 (15) them a \$300 bonus Any master traveling in and out of  
 Prince  
 (16) William Sound who had a pilotage certificate received a  
 \$300  
 (17) bonus for the round trip  
 (18) Q The testimony's been 350 would you quarrel with that?  
 (19) A No, I won't 350 On the other hand where we had  
 masters  
 (20) that did not have a pilotage certificate it was the same  
 (21) circumstance The only thing we had to do was to notify the  
 (22) Coast Guard in advance We still had to take a pilot from  
 (23) Rocky Point whether our master had a Prince William Sound  
 (24) pilotage or not There wasn't any savings It clearly was to  
 (25) our benefit to have masters with that experience and with  
 that

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- (1) certification And I think at the time of the grounding we  
 (2) only had one master assigned to a Prince William Sound  
 vessel  
 (3) who did not have a pilotage certificate Everybody else did  
 (4) MR NEAL Mr Iarossi thank you very much  
 (5) Look what he's got prepared over here to bring you  
 (6) MR O NEILL It's my biggest stack so far sir  
 (7) MR NEAL Thank you Mr Iarossi  
 (8) You may examine Mr O'Neill  
 (9) MR O NEILL How are you sir?  
 (10) THE WITNESS Fine thank you  
 (11) CROSS EXAMINATION OF FRANK IAROSSO  
 (12) BY MR O NEILL  
 (13) Q We met once before a number of years ago  
 (14) MR NEAL Don't tell him you don't remember Mr  
 (15) Iarossi he'll even be tougher on you  
 (16) BY MR O NEILL  
 (17) Q I have placed in front of you your testimony in this case  
 (18) under deposition your testimony before the National  
 (19) Transportation Safety Board and a number of exhibits and we  
 (20) may want to use those as tools as we proceed here for the next  
 (21) hour or so  
 (22) The first thing I'd like to do is just figure out the chain  
 (23) of command It's going to be on the monitor right next to  
 (24) you This is great  
 (25) Just prior to the grounding you were the president FJI

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- (1) that's a correct statement right?  
 (2) A Yes  
 (3) Q And then reporting to you with regard to the west coast was  
 (4) Borgen?  
 (5) A Yes Harvey Borgen  
 (6) Q And he had a ship group coordinator named Myers?  
 (7) A Yes that's correct  
 (8) Q And then there was a Captain Hazelwood is that correct?  
 (9) A Myers actually had an assistant called a port captain but  
 (10) under Myers were a series of masters who - actually pairs  
 of  
 (11) masters who alternately were in charge of vessels and  
 Hazelwood  
 (12) was one of two masters in charge of Exxon Valdez  
 (13) Q And Mr Cousins was on the bridge at the time of the  
 (14) grounding?  
 (15) A Cousins was one of the deck officers assigned to the  
 Valdez  
 (16) at the time of the grounding  
 (17) Q And he was the deck officer who was on the bridge at the  
 (18) time of the grounding?  
 (19) A Yes that's correct  
 (20) Q Now you left Exxon Shipping Company three years before  
 (21) retirement in 1990?  
 (22) A April of 1990  
 (23) Q And Mr Borgen was transferred to special projects in  
 (24) Houston within a month or two after the grounding?  
 (25) A Yes

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- (1) Q And Mr Myers was transferred to Houston within a month or  
 (2) two after the grounding?  
 (3) A No actually Myers was assigned first out of San  
 Francisco  
 (4) for the repair of - of Exxon Valdez which took three or four  
 (5) months  
 (6) Q Then he went to Houston?  
 (7) A Then he went to Houston  
 (8) Q And Captain Hazelwood was terminated?  
 (9) A Yes  
 (10) Q And Mr Cousins I guess quit?  
 (11) A I'm not sure of that  
 (12) Q He left?  
 (13) A Yes I guess  
 (14) Q Now you talked a little bit about the safety credo and  
 (15) belt buckles and that topic do you recall that? Do we have  
 (16) the safety credo?  
 (17) A Yes sir  
 (18) Q And the safety credo starts out with the precept that  
 (19) accidents and injuries are preventable?  
 (20) A Yes  
 (21) Q And you believe that?  
 (22) A Absolutely  
 (23) Q And each of us has a personal responsibility for our safety  
 (24) and the safety of others both on and off the job it's a  
 (25) personal responsibility isn't it?

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- (1) A Yes sir  
 (2) Q I'm going to keep this  
 (3) Now the Exxon Valdez won the fleet manager - or the fleet  
 (4) award in 1977 and '88?  
 (5) A Yes  
 (6) Q And it didn't win it in '89 did it?  
 (7) A No  
 (8) Q And indeed somehow or another the awards it got were  
 (9) pulled off of the vessel weren't they?  
 (10) A Yes sir  
 (11) Q Now on the bridge manual the bridge manual is an  
 (12) important document isn't that correct?  
 (13) A Yes  
 (14) Q And after the grounding you made the determination that  
 (15) Captain Hazelwood was not on the bridge when he should have  
 (16) been on the bridge?  
 (17) A I was told that Captain Hazelwood had told Paul Myers  
 that  
 (18) he was not on the bridge at the time of the grounding  
 (19) Subsequent to that Exxon lawyer had told me Bob Nicholas  
 had  
 (20) told me that he had asked Hazelwood where he was and  
 Hazelwood  
 (21) had confirmed he was not on the bridge and that other crew  
 (22) members also confirmed that Hazelwood was not on the  
 bridge  
 (23) Q And not being on the bridge at that point in time was such  
 (24) a serious breach of the bridge organization manual that that in  
 (25) and of itself was sufficient reason to terminate him from his



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(1) job?  
 (2) **A It was part of the policy that there were certain times**  
 (3) **when the navigation and bridge organization manual stated**  
 (4) **that**  
 (5) **the master had to be on the bridge and there were certain**  
 (6) **circumstances defined In my judgment this particular**  
 (7) **passage**  
 (8) **would have qualified as one of those times**  
 (9) **Q And it was reckless not to be on the bridge wasn't it?**  
 (10) **A No I just said that it was my judgment that - that the**  
 (11) **captain should have been on the bridge at this time**  
 (12) **Q And it was a serious enough breach in your judgment to**  
 (13) **terminate the man's job?**  
 (14) **A He had failed in my view to - to live up to a policy and**  
 (15) **that clearly the - the result of not living up to that policy**  
 (16) **included termination**  
 (17) **Q You stated that with regard to the seagoing employees**  
 (18) **quote there is very little opportunity as managers to observe**  
 (19) **them on vessels and quote we have so little opportunity to**  
 (20) **see the employees on the vessels do you recall that**  
 (21) **testimony?**  
 (22) **A Yes**  
 (23) **Q Those are true statements?**  
 (24) **A Yes Most - you know the opportunity to see a master**  
 (25) **perform really is primarily associated with either in port**  
 (26) **periods while the vessel is discharging or other**  
 (27) **opportunities such as conferences or things like that But**

(1) Q Would you go to page 196 of your deposition transcript  
 (2) A Yes  
 (3) Q And page 196 line 20 and I'm going to go through 197  
 (4) line 6  
 (5) At the time you discussed Captain Hazelwood's condition  
 (6) with Mr. Graves and made the decision then to return him to  
 (7) duty -  
 (8) MR NEAL Excuse me Could we hold on? What page?  
 (9) MR O NEILL 196 line 20  
 (10) BY MR O NEILL  
 (11) Q At the time you discussed Captain Hazelwood's condition  
 (12) with Mr. Graves and made the decision then to return him to  
 (13) duty would it be fair to say that you at that point in time  
 (14) didn't know whether Captain Hazelwood had self-identified?  
 (15) Answer it was my assumption that he had identified his  
 (16) problem to Ben Graves and that he had some contact to the  
 (17) medical department because the medical department had  
 (18) awareness of the problem as I understand it  
 (19) Question do you know?  
 (20) Answer exactly what the contact was no  
 (21) Do you see that?  
 (22) A Yes that was my statement  
 (23) Q Now Captain Hazelwood has testified here on the same  
 (24) topic  
 (25) and the question was you didn't self-identify did you?  
 (26) Answer no no

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(1) you can't watch his vessel performance  
 (2) Q Now you talked - I want to go to the topic of self  
 (3) identification  
 (4) A Yes  
 (5) Q You talked at great length about self-identification?  
 (6) A Set the basis of the whole program  
 (7) Q With Captain Hazelwood you opined that he self-identified?  
 (8) A Yes absolutely  
 (9) Q Would it be fair to say that with regard to exactly how  
 (10) Captain Hazelwood's - and how Captain Hazelwood and the  
 (11) subject of alcohol came to the attention of Exxon Shipping  
 (12) Company that specific topic you don't know about you're  
 (13) surmising -  
 (14) A The first -  
 (15) Q - or guessing or putting together what people may have  
 (16) told you including lawyers but you don't know how Captain  
 (17) Hazelwood either brought it to the attention of Exxon Shipping  
 (18) Company or was caught do you one way or the other you  
 (19) don't  
 (20) know?  
 (21) A What I was told first through the memo of May 29th or  
 (22) whatever the date was 1985 from Ben Graves was that he  
 (23) Ben  
 (24) had found out and I don't know how that Hazelwood had  
 (25) turned  
 (26) himself in to a rehabilitation program subsequent to that  
 (27) Ben  
 (28) had had the conversation which was the - the point of the  
 (29) memo  
 (30) that he wrote to me

(1) You got a call from Exxon Corporation through Captain  
 (2) Pierce who said you have a problem I think you ought to get  
 (3) some help or work it out or -  
 (4) Yeah  
 (5) And at the time Mr. Graves was reporting Mr. Graves was  
 (6) investigating instances of drinking prior to going to South  
 (7) Oaks?  
 (8) Judging from the date of the report yeah  
 (9) So you didn't self-identify?  
 (10) Answer no  
 (11) You see that?  
 (12) A I'm reading it yeah  
 (13) Q Are you aware of - were you aware before you came in here  
 (14) today of that testimony?  
 (15) A Absolutely not  
 (16) Q You've also testified that you became aware of the fact  
 (17) that Captain Hazelwood was going through treatment I think it  
 (18) was just by chance? Do you recall that to the NTSB?  
 (19) A Well I found out about it from Graves who informed me of  
 (20) his discussion with Hazelwood after Hazelwood had  
 (21) completed the  
 (22) program and what Ben told me was that - try and recall the  
 (23) exact words Told me that Joe had turned himself in for  
 (24) rehabilitation  
 (25) Q Why don't you go to page 921 of your testimony before the  
 (26) National Transportation Safety Board Your testimony now is

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(1) that - well let's read what your testimony was then  
 (2) Beginning on line 19 I'll read the question and then why  
 (3) don't you read the answer  
 (4) Question - how did you become aware of that after he got  
 (5) out? And what was your answer?  
 (6) A I said we learned through I think it was just by chance  
 (7) one - I believe the administrative manager had been trying  
 to  
 (8) get ahold of Captain Hazelwood and as I remember it had  
 (9) learned that he was in the hospital in New York Long Island  
 I  
 (10) believe it was, and tracing it down across this situation  
 (11) Q Now I'm going to state another proposition with regard to  
 (12) how you found out I'm going to tell - I'm going to say that  
 (13) you found out because of an investigation that was going on  
 (14) Okay? Not an investigation that happened after but you found  
 (15) out because of an investigation that was going on Would you  
 (16) agree with that statement or not?  
 (17) MR NEAL Your Honor could we approach the side  
 (18) bar?  
 (19) THE COURT I'll allow the question But simply a  
 (20) straightforward answer to nothing but that question  
 (21) THE WITNESS Yeah there was - Ben Graves was  
 (22) following up on a complaint  
 (23) BY MR O NEILL  
 (24) Q Would it be fair to say that the risk of Captain  
 (25) Hazelwood's continued use of alcohol brought in the question  
 of

(1) A Me personally?  
 (2) Q Yes sir  
 (3) A No  
 (4) Q Do you know or are you aware of whether Captain  
 Hazelwood  
 (5) after his rehabilitation in 1985 received any health advisory  
 (6) services from the medical department of Exxon U S A ?  
 (7) A I do not know  
 (8) Q Now you testified here today that this conversation that  
 (9) took place with Mr Graves dealt with the subject of depression  
 (10) and then some kind of associated drinking do you recall that  
 (11) testimony?  
 (12) A What - what I was told was that the actual symptom, I  
 (13) don't remember the medical term was a mild depression  
 and  
 (14) during the periods of mild depression Joe drank I think the  
 (15) term was excessive drinking  
 (16) Q You were told that he went through alcohol abuse  
 (17) treatment?  
 (18) A I was told he went through rehabilitation  
 (19) Q Alcohol abuse treatment?  
 (20) A I don't recall that  
 (21) Q Okay Let's go to page 76 of your deposition transcript  
 (22) The question is okay And he voluntarily went for alcohol  
 (23) abuse treatment in 1985? This is at line 10  
 (24) And your answer at line 12 was yes I learned that  
 (25) subsequently

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(1) safety to the vessel?  
 (2) A I think the risk of anyone using alcohol or drugs while on  
 (3) duty brings in a safety question  
 (4) Q Let me ask - reask the question would it be fair to say  
 (5) that the risks of Captain Hazelwood's continued use of alcohol  
 (6) after 1985 was that it brought into question the safety of the  
 (7) vessel?  
 (8) A If it was on duty yes  
 (9) Q Let's go to your deposition transcript This is going to  
 (10) be a long day Let's go to page 87 of your deposition  
 (11) transcript line 15?  
 (12) A Yes  
 (13) Q And the question was and the risk of the using alcohol  
 (14) were what what were the risks if he continued to use alcohol?  
 (15) Answer well the risk if he continued to use alcohol was  
 (16) that it brought in the question whether he could discharge his  
 (17) responsibilities  
 (18) Question it brought in the question of the safety of the  
 (19) vessel?  
 (20) Answer yes  
 (21) Do you see that?  
 (22) A Yes  
 (23) Q You never received any report from the medical department  
 (24) of Exxon Shipping Company related to Captain Hazelwood up  
 and  
 (25) through the time of the grounding did you?

(1) Do you see that?  
 (2) A No I'm not with you  
 (3) Q Okay Page 76 of the deposition not the NTSB testimony  
 (4) A I'm on page 76  
 (5) Q And the question on line 10 is okay And he voluntarily  
 (6) went for alcohol abuse treatment in 1985?  
 (7) And your answer was yes I learned that subsequently  
 (8) Do you see that?  
 (9) A Yes  
 (10) Q And when you get over to the next page on line 9 now you  
 (11) say you learned of his going for alcohol abuse treatment six to  
 (12) eight weeks after he commenced it?  
 (13) Answer was yes I think it was late May when I first  
 (14) learned of it and I think his treatment started sometime in  
 (15) April  
 (16) Do you see that?  
 (17) A Yes  
 (18) Q I was interested when you said and you were talking about  
 (19) Ivan Mihajlovic and you testified Ivan Mihajlovic here in  
 (20) court said he heard a rumor in the fleet do you recall that?  
 (21) A Yes there are often rumors in the fleet  
 (22) Q But because of this rumor of Mihajlovic he went and did  
 (23) some investigation?  
 (24) A Yeah I believe it was the same rumor of Jim Shaw saying  
 (25) that Hazelwood was acting kind of crazy or kind of strange

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- (1) Q You talked at some length about this Shaw matter and I'd like you to go to 961 of your deposition transcript - I'm
- (2) sorry 961 of your NTSB testimony and the NTSB asked you when
- (3) you were under oath before the NTSB about whether you heard of
- (4) any allegations and the question put to you before the National
- (5) Transportation Safety Board was has Exxon Shipping ever been
- (6) made aware of allegations of Captain Hazelwood's drinking or
- (7) abuse or failure to follow any other company policies and your
- (8) answer was subsequent to rehabilitation no Is that what you
- (9) mean subsequent to rehabilitation do you see that?
- (10) **A Yes**
- (11) Q And the question concerned merely allegations of Captain
- (12) Hazelwood's drinking or abuse isn't that right?
- (13) **A Yes**
- (14) Q And that was the answer to the question you gave before the
- (15) National Transportation Safety Board when you were under
- (16) oath
- (17) isn't that correct?
- (18) **A That's correct**
- (19) Q And you did not mention the Shaw situation is that
- (20) correct?
- (21) **A Shaw situation mentioned nothing about alcohol**
- (22) **Somehow**
- (23) **what was reported to me he came back and he said**
- (24) **Hazelwood's**
- (25) **acting kind of strange**
- (26) Q Would it surprise you to know or would you be concerned if
- (27) indeed Mr. Shaw said and to use a term that you used today

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- (1) Hazelwood has fallen off the wagon?
- (2) **A That was not reported to me that way**
- (3) Q It wasn't?
- (4) **A No Absolutely not**
- (5) Q If indeed there was a report in the company that Hazelwood
- (6) had fallen off of the wagon that he was drinking on board the
- (7) vessel that there was a party on board the vessel in
- (8) Hazelwood's room those are serious allegations aren't they?
- (9) **A If those were the allegations they were serious**
- (10) **allegations yes**
- (11) Q And the people who were witnesses to that situation
- (12) participants in that situation under your company policy
- (13) should have been brought in and asked about them isn't that
- (14) right?
- (15) **A If it was known by company management yes**
- (16) Q And indeed if it was known by company management and
- (17) those
- (18) people weren't brought in and interviewed that's wrong isn't
- (19) it?
- (20) **A Clearly if anyone knows of drinking on board they**
- (21) **should**
- (22) **make it known to the supervisor yes The policy was clear**
- (23) **as**
- (24) **to that**
- (25) Q Were you aware of the agent - we had testimony from a
- (26) fellow who worked with your agent in Valdez Alamar Were you
- (27) aware that Exxon Shipping Company had an agent in Valdez
- (28) Alamar Alaska maritime agency?

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- (1) **A I learned after the grounding**
- (2) Q This fellow came in and testified I can't recall his name
- (3) but he testified that Captain Hazelwood had a reputation at
- (4) least among the Alamar employees as a drinker Are you
- (5) aware
- (6) at all of that?
- (7) **A No**
- (8) Q Now you testified and I - you may have misspoke on this
- (9) because this is not a subject that you know a lot about but in
- (10) the IDR just so you know I can't read this copy
- (11) Can we bring it up the IDR See if this is any better
- (12) Do you know whether on the IDR there's any notation as to
- (13) whether he's fit for duty or not?
- (14) **A I have never seen an IDR**
- (15) Q Okay So when you testified with regard to what in fact
- (16) is on the IDR you'd never seen the IDR Have you ever seen it
- (17) up to today other than the fact that it's before you?
- (18) **A I don't recall ever seeing it but certainly before the**
- (19) **incident I had never seen one**
- (20) Q Captain Hazelwood has testified here that no one from Exxon
- (21) Shipping Company told him not to drink that he resumed
- (22) drinking in 1986 and that he didn't hide it from anybody
- (23) Does that surprise you?
- (24) **A Yes**
- (25) Q Now you testified this morning that you had told your
- (26) subordinates to make sure that Captain Hazelwood completed
- (27) the

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- (1) rehabilitation plan?
- (2) **A The program**
- (3) Q The program Captain Hazelwood has testified that after
- (4) about a month or a month and a half he quit his aftercare
- (5) program Is that something that you would - his aftercare
- (6) program as prescribed by South Oaks Is that something that
- (7) you would have expected your subordinates or people under
- (8) their
- (9) control to follow up on to make sure that he completed his
- (10) aftercare program?
- (11) **A What I told Ben was to make sure that he was fit for duty**
- (12) **and that the medical department agreed with that or**
- (13) **concluded**
- (14) **with that evaluation**
- (15) Q My notes and I wrote them right here on my outline You
- (16) can see my outline is not much use to me but my notes this
- (17) morning were that you testified to make sure that he completed
- (18) his rehab plan Is that now not your testimony?
- (19) **A What I meant was that he went fully through the program**
- (20) **and**
- (21) **was declared fit for duty**
- (22) Q Now -
- (23) **A I'm talking about the program leading to a fit for duty**
- (24) **determination**
- (25) Q Do you know whether there is a fit for duty determination
- (26) in any of Exxon Corporation's or Exxon Shipping Company's
- (27) records anywhere?
- (28) **A I was told that he was declared fit for duty by his - by**

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(1) his private physician and that the medical department  
concluded

(2) with that conclusion

(3) Q My question is do you know if there is a piece of paper  
(4) anywhere that documents that?

(5) A I do not know I don't know what the files are

(6) Q Do you know if there is a piece of paper anywhere in your  
(7) company or your then company Exxon Shipping Company  
that

(8) details any of this monitoring stuff anywhere?

(9) A I would be surprised if there is because we were trying to  
(10) handle it strictly confidential I didn't write anything  
(11) down

(12) Q You didn't write anything down?

(13) A No

(14) Q Sir was there a rehabilitation plan for Captain  
(15) Hazelwood?

(16) A There were two facets to -

(17) Q My question was was there a plan?

(18) A A written plan that said we do this and do that?

(19) Q That is right

(20) A No

(21) Q I want to if we could - your testimony also today was you  
(22) had directed your employees to make sure that there were no  
(23) signs that he was quote off the wagon lose quote do you  
(24) recall that?

(25) A Yes I told that to Ben Graves

(1) Q You didn't supervise the monitoring either did you?

(2) A I did not supervise the monitoring directly but I kept in  
(3) contact periodically with John Tompkins Dwight Koops,  
later

(4) Harvey Borgen and I left each of those contacts with the  
clear

(5) direction or direction to them that if they came across  
(6) anything of significance on this subject I was to be  
(7) informed

(8) Q Let's just take a look at your - you've been asked the  
(9) question it's deposition transcript

(10) MR NEAL What page?

(11) MR O NEILL I don't know We're going to play it on  
(12) the screen Is that coming up?

(13) (Portion of Video of Frank Iarossi played as follows)

(14) BY VIDEO EXAMINER

(15) Q And is it fair to say that other than the conversations  
(16) that you detailed to us you did not supervise the monitoring?

(17) A I was not a supervisor, I was the president of the  
(18) company

(19) (Portion of Video of Frank Iarossi concluded)

(20) BY MR O NEILL

(21) Q And the conversations you referred to there were  
(22) conversations you had with Harvey Borgen and Dwight Koops?

(23) A And John Tompkins yes

(24) Q Now I'd like to if we could go over some of your  
(25) policies Well let me just ask you while we're on this

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(1) Q And -

(2) A Later to John Tompkins

(3) Q And if somebody's off the wagon it means they're drinking  
(4) again isn't that right?

(5) A That's what I meant yes sir

(6) Q So any drinking again he off the wagon you want to  
(7) know about it?

(8) A Yes sir

(9) Q And indeed if your employees Ben Graves Jim Shaw Andy  
(10) Martineau Harvey Borgen Herb Leyendecker if any of those  
(11) people knew or had reason to suspect or heard rumors that this  
(12) man was drinking again they should tell you shouldn't they?

(13) A Well, the management - the people that reported to me  
were

(14) Ben Graves John Tompkins Dwight Koops Harvey Borgen  
They

(15) were the people who communicated to me who reported to  
me and

(16) who I consulted with on this project The other people that  
(17) you talked about I had essentially no contact or very little  
(18) contact and no direct management contact I may have  
seen them

(19) in the halls

(20) Q You didn't actively participate in the monitoring program  
(21) at all yourself did you?

(22) A The two or three occasions during those management  
(23) conferences that I talked about and spoke about where I  
was in

(24) Joe's presence on and off for four or five days at a time

(25) That's the only opportunity I had

(1) subject

(2) Was an incident - did Mr Herb Leyendecker ever make a  
(3) report to you with regard to an incident in the Portland  
(4) Shipyard?

(5) A No

(6) Q With regard to Captain Hazelwood ordering beer over a  
(7) walkie talkie?

(8) A No

(9) Q Did anybody from the west coast fleet ever make a report to  
(10) you that beer was ordered over a walkie talkie and there were  
(11) Henry Weinhard's bottles found on board the Valdez and Henry  
(12) Weinhard's were ordered over the walkie talkie anybody report  
(13) that to you?

(14) A No

(15) Q At the time when Captain Hazelwood was on board the  
vessel

(16) anybody report that to you?

(17) A No First time I heard about it was after the grounding

(18) Q They should have reported it to you shouldn't they?

(19) A If there was any evidence yes

(20) Q And they should have reported it?

(21) A I instructed Harvey Borgen that anything out of the  
ordinary let me know

(22) Q And indeed your policies require that in situations where  
(23) there's allegations of alcohol use that's in violation of a  
(24) company policy drinking on ship that the suspect or the

(1) person in question is supposed to be questioned by two members

(2) of management isn't that right? Do you know what your policies dictate with regard to that?

(3) **A Perhaps I'd have to review it. I knew it required follow up but I can't tell you exactly what the follow up was.**

(4) Q Was a situation ever brought to your attention with regard to San Francisco Bay a week or two before the Valdez - a week before the Valdez started up north on its fateful voyage concerning a Marv Williamson and a Captain Redder?

(5) A No

(6) Q After this -

(7) **A Following subsequent to the grounding I heard about it at NTSB or something like that.**

(8) Q And should have been brought to your attention shouldn't it?

(9) **A If there was anything to it yes.**

(10) Q And it was reckless not to have if there was any substance to it?

(11) **A The instructions that I left with Harvey very clearly would have said that if - if he found out about any - any violation of company policy he had to let me know I had to be informed.**

(12) Q Now I want to go back to the time when you talked to Ben Graves and the concept of a rehabilitation plan. You were of the view that part of Captain Hazelwood's rehabilitation was to

(1) Q It's dated October of 1988?

(2) A Yes I have it

(3) Q And the section of the document that I'm interested in is the section that I've got highlighted on my copy which says post rehabilitation testing not addressed in current policy variation in application across company commonly done in industry aids successful rehabilitation recommendation revise guidelines to incorporate post rehabilitation testing do you see that?

(4) **A I'm not familiar at all with this document.**

(5) Q You've never seen the document before?

(6) A No

(7) Q Well let me ask you another question. Have you ever seen Defendants Exhibit 3683 which I've put up on the screen?

(8) **A I don't believe I ever saw this.**

(9) Q What's the management committee?

(10) **A That's Exxon Company U S A management committee which is the - the president of Exxon Company U S A and three or four senior vice presidents of Exxon Company U S A. I was not a member of the management committee.**

(11) Q With regard to people who violated the company's alcohol policy in 1985 you regularly terminated people who violated the company's alcohol policy didn't you?

(12) **A We had I believe from about 1982 to the time of the grounding**

(1) attend AA meetings when he was at home isn't that right?

(2) **A I - I don't believe I ever was told of any AA meetings or what it was. What I was told is that he was going on 90 day leave of absence during which he was going to attend AA meetings.**

(3) Q Did you tell the National Transportation Safety Board that to your knowledge part of his rehabilitation was to attend AA meetings when he was at home?

(4) **A During this 90 day period.**

(5) MR NEAL Page?

(6) MR O NEILL 926

(7) THE WITNESS The context I remember of Ben Graves discussion of AA was during this same first meeting. He said at that time Hazelwood was already out that he had requested 90 day leave of absence which we had granted and that he was going to be attending AA meetings while he was at home.

(8) BY MR O NEILL

(9) Q Now with regard to your company policies I want you to if you would to take a look at Exhibit 3617 Defendants Exhibit 3617 which is an Exxon document. Do you have that?

(10) And I'm going to -

(11) **A I'm going through.**

(12) Q I'll put the page up on the screen then and we can take a look at it the document so we can put it in date context.

(13) **A I have it.**

(1) Q 55?

(2) **A I was going to say about 37 terminations I think is what I recall. We had another 24 suspensions without pay for certain periods. Those are the statistics I remember over that seven year period.**

(3) Q So if in fact somebody was violating company policies with regard to drinking on vessels or returning to vessels drunk you had the power and in fact you did terminate them?

(4) **A Yeah the - the violations clearly were possessing or using alcohol on board or being impaired in the course of duties. Those were the two company violations. And where we found people drinking on board possessing alcohol on board or being impaired or intoxicated during duty, during a watch, then clearly we were not very easy on people and we terminated a number of people. Some of which by the way, were returned to the fleet after arbitration and arbitrators forced us to take them back.**

(5) Q But you did do it?

(6) **A Yes we were not easy on them.**

(7) Q And indeed it was the company's policy that if an employee's request for rehabilitation is made after the company's discovery of a violation of the policy the company will take disciplinary action which may include termination?

(8) **A That was our policy.**

(9) Q So if you got caught you were going to be subject to some

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- (1) kind of disciplinary action and that disciplinary action could include termination?
- (2) A Yes
- (3) Q Does Captain Hazelwood's personnel file or any other company record that you're aware of reflect any adverse personnel action with regard to the Graves report?
- (4) A This occurred - this statement in this conversation between Ben Graves and Captain Hazelwood occurred after Hazelwood's rehabilitation
- (5) Q Could you answer my question?
- (6) A Would you ask it again?
- (7) Q Was there any adverse personnel action taken as a result of this?
- (8) A None was required
- (9) Q None was taken whether it was required or not?
- (10) A None was taken none was required
- (11) Q Now with regard to Captain Hazelwood's assignment to the Yorktown you discussed this anguish about that in point of fact you found out that Captain Hazelwood was assigned to the Yorktown four weeks after he was already on board the vessel didn't you?
- (12) A Yes I think it was in September
- (13) Q And when you found out you were upset?
- (14) A I was upset that I hadn't been told beforehand
- (15) Q And with regard to his reassignment to the Valdez you were

- (1) shipping company to meet with the man and in order to make that determination as to whether he was fit for duty I would get - that would entail a lengthy heart searching conversation to get to the bottom of what happened how he was now his treatment his rehabilitation?
- (2) A I didn't specify
- (3) Q Whether it would be perfunctory or detailed careful or not careful?
- (4) A I think a face to face meeting would have helped us understand whether Joe was clear whether he understood whether he recognized the problems he had and clearly one of the things we were looking for is would he in fact - was he out of the denial phase
- (5) Q Was he clear?
- (6) A Was he clean
- (7) Q Was he clean was he out of the denial phase and that's what - those are the subjects that you wanted your people to go into when they had this face to face with him before he was reassigned to the Yorktown that's what you expected of them?
- (8) A I didn't spell it out in detail
- (9) Q But that's what you expected?
- (10) A Yes
- (11) Q Just good common sense care care for the individual care for the situation carefulness?
- (12) A Yes

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- (1) told that after the fact?
- (2) A Yes
- (3) Q After he was on board the vessel?
- (4) A Yes
- (5) Q And you were quote shocked?
- (6) A I was surprised that he had been re assigned without them informing me without either Harvey or Dwight informing me
- (7) Q I want to go back to if we could for a minute our earlier discussion about aftercare Was it your understanding that after the 60 day outpatient period Captain Hazelwood would be evaluated again?
- (8) A I did not know that Other than the fact that - that I wanted somebody in the shipping company to - to interview Joe and make a decision that - that he was fit for duty if that's what you mean clearly that's what I wanted
- (9) Q Let's go - do you know that following the inpatient treatment there would be a 60 day outpatient period and then he would be evaluated at that point?
- (10) A I don't know if there was a medical evaluation or whether his physician - the evaluation I wanted was for somebody in the shipping company before we gave him an assignment was to meet with him and clearly make a decision based on that face to face meeting that he was fit for duty Irrespective of what the doctor said
- (11) Q Okay And what kind of - you wanted somebody from the

- (1) Q What is the denial phase? You used the expression denial phase What is that?
- (2) A I'm not a - I don't have a medical background at all I - the little I know about - about rehabilitation is that the first sign you look for is does the individual acknowledge that he has the problem And it's important - apparently an important outcome of rehabilitation is that the individual acknowledges that there was a problem and that he has to now address it That is what I understand the denial phase - or getting out of the denial phase
- (3) Q Getting out of the denial phase Somebody is open about their problem and is talking about it working on it that's getting out of the denial phase?
- (4) A Yes as I understand it
- (5) Q If it had been brought to your attention that Captain Hazelwood had had a prescribed aftercare treatment program and he had quit going to that would that have given you cause for concern?
- (6) A If I understood it was a mandatory part of his program he wasn't following I think I would have been a little concerned
- (7) yes I would certainly ask some questions
- (8) Q Now you related to us a discussion that you had with Mr. Graves about the Federal Disabilities Act?
- (9) A Yes
- (10) Q You did not go to your lawyers and say hey lawyers with

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1 regard to Captain Hazelwood tell me what the law is about  
 2 that did you?  
 3 A No Ben told me he had conferred with the Exxon lawyers  
 4 and that was the opinion of the Exxon lawyers  
 5 Q So we ought to ask Ben then as to whether he conferred  
 6 with them and if neither you nor he conferred with the Exxon  
 7 lawyers about this particular topic and a decision was made on  
 8 this assumed law that nobody ever asked about something  
 9 wrong right? You expected him to take care of it for you?  
 10 A He was my expert on -- on employee relations matters  
 11 including contact with law and if he told me that that was  
 12 the  
 13 opinion of the Exxon lawyers I believed him  
 14 Q And at that point in time while you were having this  
 15 discussion with Mr Graves you knew that if you caught  
 16 somebody in violation of company policy with regard to alcohol  
 17 you could terminate them and you did?  
 18 A If we -- if it was a clear case where we could prove  
 19 violation of the policy we did I believe on 37 occasions  
 20 Q Now I do want to ask you a question or two about the press  
 21 release I wasn't going to ask you about it but after  
 22 Mr Neal's introduction if I don't people will think I'm not  
 23 doing my job  
 24 MR NEAL We won't If you want to just move along  
 25 I'll withdraw that invitation to you I wasn't trying to bait  
 26 you Mr O'Neill

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1 MR O NEILL Do we have that? Can you pull that up  
 2 for me?  
 3 MR NEAL Plaintiffs Exhibit 173  
 4 BY MR O NEILL  
 5 Q Here is Plaintiffs Exhibit 173 Is that the press  
 6 release?  
 7 A I believe so  
 8 Q And you cleared the press release didn't you?  
 9 A I authorized its release  
 10 Q And in the press release there is a statement Frank  
 11 Larossi president of Exxon Shipping Company said that the  
 12 decision to terminate the employee was made because he  
 13 violated  
 14 company policy concerning alcohol do you see that?  
 15 A Yes  
 16 Q And that was what you told the world about why you fired  
 17 Captain Hazelwood?  
 18 A It was the press release yes  
 19 Q Now with regard to this topic -- because you talked to the  
 20 core group of Exxon Shipping Company officers in the summer  
 21 of  
 22 fall of 1989 do you recall that?  
 23 A I believe I had a meeting with a group of officers  
 24 Q And it was -- was it to -- among other things address the  
 25 Exxon Valdez situation?  
 26 A We certainly talked about that as part of your lessons  
 27 learned and how to make sure it doesn't happen again

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1 Q It has been reported to us here by one of the participants  
 2 in the conference that you made a statement to the following  
 3 effect that you couldn't believe that they had spent the  
 4 afternoon in Valdez at a number of bars Did you make that  
 5 statement?  
 6 A I don't believe I made that statement no  
 7 Q You deny it?  
 8 A I don't recall making that statement  
 9 Q Okay Now were you disappointed and outraged that an  
 10 officer in such a critical position would have jeopardized the  
 11 ship crew and the environment through such actions?  
 12 A I was very angry I guess I could certainly use the word  
 13 outraged Outraged at the fact that the vessel was -- had  
 14 grounded the fact that there were 32 square miles of oil all  
 15 over Prince William Sound the fact that I was spending five  
 16 hours a day in front of the press answering questions I  
 17 was -- I was outraged  
 18 Q You still can't get away from answering questions today  
 19 can you?  
 20 A No  
 21 Q And I'm interested in the second paragraph the last  
 22 paragraph where it says critical position you see that?  
 23 A I -- yes I see critical position  
 24 Q Is a ship captain a critical position?  
 25 A With regard to operation of the vessel he is the most

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1 critical member of the crew With regard to operation of  
 2 that  
 3 vessel yes  
 4 Q And indeed he was also part of the management team and  
 5 part of management wasn't he?  
 6 A He was part of the management of that vessel He was  
 7 not  
 8 part of Exxon Shipping Company management He had no  
 9 responsibilities outside of that vessel when he was on  
 10 board  
 11 that vessel  
 12 Q With regard to the vessel wasn't it a major program of  
 13 yours as related in Surrendering the Memories to turn the  
 14 ship captains from people who drove boats into people who  
 15 participated in the management of this vessel as an economic  
 16 unit?  
 17 A Actually went well beyond the ship master It included the  
 18 entire what we call the shipboard management team was  
 19 the --  
 20 the senior officers the four senior officers assigned to the  
 21 vessel at that time and then their counterparts so there  
 22 were  
 23 really eight They formed what we call the shipboard  
 24 management team and their role was to manage the  
 25 activities of  
 26 that vessel  
 27 Q So we had four members of this management team who  
 28 managed  
 29 this vessel as a business unit economic unit safety unit for  
 30 Exxon Shipping Company?  
 31 A They were responsible for the safety and whatever took  
 32 part They weren't responsible -- I have to hedge on

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- (1) economics because they weren't responsible deciding what
- (2) cargos they carried or what rates they got for it
- (3) Q No but within the context of safety?
- (4) A Yes They were responsible for the safety of the vessel
- (5) yes
- (6) Q And they were also responsible for within the context of
- (7) safety getting the vessel moving being - being prudent with
- (8) regard to ship stores that were put on - not put on the
- (9) management of the personnel on the vessel all those kinds of
- (10) things?
- (11) A Yes
- (12) Q And one of your contributions as the president of Exxon
- (13) Shipping Company was through the years to upgrade these
- (14) guys
- (15) from ship drivers to this management team?
- (16) A Yes We were trying to give them a broader perspective
- (17) and
- (18) understanding of their - of their role as it related to all
- (19) facets safety safe operation
- (20) Q And at the time of the grounding of the Exxon Valdez you
- (21) had a member of this management team and indeed the key
- (22) manager
- (23) of the vessel who violated his duty under your policy manual
- (24) when he left the bridge?
- (25) A The - yeah the bridge navigation manual in my view
- (26) required his presence there I here are other opinions who
- (27) say,
- (28) no My opinion is -
- (29) Q I understand at that time -

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- (1) A - opinion he should have been on the bridge
- (2) MR NEAL Let him finish Mr O'Neill
- (3) BY MR O NEILL
- (4) Q Are you finished sir? I wasn't trying to cut you off
- (5) Are you finished?
- (6) A Yes
- (7) Q So we have a management team member who in your
- (8) opinion
- (9) violated the bridge policy manual by leaving the bridge?
- (10) A In my opinion one of the circumstances - the
- (11) circumstances of the vessel were in - were one of those
- (12) circumstances which required his presence on the bridge
- (13) Q And the reason for that is - to you - can have four eyes on the
- (14) bridge instead of two?
- (15) A That's true
- (16) Q And in fact there weren't four eyes on the bridge instead
- (17) of two?
- (18) A That's correct
- (19) Q And the vessel ran aground without the help and
- (20) assistance of this additional pair of eyes?
- (21) A In my view it was a contributing factor
- (22) MR O NEILL Thank you I'm going to quit while I'm
- (23) ahead okay?
- (24) I could go on for hours but they've heard it before and
- (25) he's heard it before and thank you sir
- (26) THE COURT Mr Neal'

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- (1) MR NEAL Well notwithstanding that stack of papers
- (2) that wasn't so bad was it Mr Iarossi?
- (3) THE WITNESS No
- (4) MR NEAL I'm going to be as kind I believe
- (5) REDIRECT EXAMINATION OF FRANK IAROSSI
- (6) BY MR NEAL
- (7) Q You talked about management of the ship management
- (8) team of
- (9) the ship Was Captain Hazelwood a part of the management of
- (10) Exxon Shipping Company?
- (11) A No not at all He took part in no decisions or
- (12) conferences or meetings on anything other than that ship
- (13) Q You're talking about saying you know don't be a driver of
- (14) the vessel think about all aspects of the vessel but only
- (15) that vessel that's what you're talking about?
- (16) A Yes sir
- (17) Q All right Now then you - this press release talked
- (18) about violation of alcohol policy or - what - what was that?
- (19) PX173 could we have that again? Maybe I can read this This
- (20) fine print I believe it may be easier to do this
- (21) Failed - something about termination followed the
- (22) announcement by government investigators that the employee
- (23) had
- (24) failed the blood alcohol test administered on the Exxon Valdez
- (25) last Friday
- (26) Was this press release or the writing of this press release
- (27) relying on these tests that we've discussed in court here for

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- (1) so long now to your knowledge?
- (2) A Yes The results of the tests and the public furor
- (3) after - following it in my view prompted the release I had
- (4) no intention of terminating Joe Hazelwood's employment
- (5) until I
- (6) talked to him and that's what I steadfastly held out for
- (7) Q This press release came after the government and
- (8) ChemWest
- (9) and all these people came out with this so called blood alcohol
- (10) test content right?
- (11) A Yes In my view it preempted what I was trying to do
- (12) Q Let me see that transcript page 87 deposition page 87
- (13) You said that in answer to Mr O'Neill's question that you did
- (14) not supervise Captain Hazelwood's monitoring
- (15) Was there any other master in your career at Exxon Shipping
- (16) Company that you told them to give me regular reports on?
- (17) A No
- (18) Q Just Captain Hazelwood?
- (19) A Yes
- (20) Q Now you were also asked by Mr O'Neill to look at page 86
- (21) of your deposition and see if this question wasn't asked and
- (22) these answers given okay?
- (23) Question okay And the risk of his using alcohol were
- (24) what what were the risks if he continued to use alcohol
- (25) continued to use alcohol?
- (26) Answer well the risk if he continued to use alcohol was
- (27) it brought into question whether he could discharge his



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- (1) responsibilities  
 (2) Question it brought in the question of safety of the vessel?  
 (3) vessel?  
 (4) And you answered yes  
 (5) What was not read is this  
 (6) Question okay And the risk of - risks of not returning  
 (7) him were that it would be a signal to others who might have a  
 (8) problem not to seek help on their own is that correct?  
 (9) And your answer in a long way was yes that's correct  
 (10) Were you asked those questions and gave those answers?  
 (11) A Yes  
 (12) Q So you were weighing the risk again as you discussed now?  
 (13) A It's the same answer I tried to give earlier about the different risks  
 (14) different risks  
 (15) Q One more question I believe In talking about Joe  
 (16) Captain Joe Hazelwood and - and monitoring and so forth one  
 (17) more time Did you intend that he be monitored while he's at  
 (18) home?  
 (19) A No  
 (20) MR NEAL Thank you Thank you Mr Jarossi  
 (21) THE COURT Thank you sir  
 (22) MR O NEILL You've got to go sir I don't get  
 (23) another chance  
 (24) THE COURT You may step down sir Thank you  
 (25) MR SANDERS May it please the Court our next

- (1) Q Do you remember about what time that was?  
 (2) A I went in oh I guess about six o'clock  
 (3) Q And that would have been six p.m.?  
 (4) A Yeah 1800  
 (5) Q Could you tell me when you were returning did you take a  
 (6) taxicab to return to the ship?  
 (7) A Yes  
 (8) Q About what time was that?  
 (9) A Between eight 2000 and 2013 2030  
 (10) Q Where did you catch the taxicab at?  
 (11) A At the Pipeline Cafe or whatever it is in Valdez  
 (12) Q When you got into the taxi were there already other  
 (13) people fares in the taxi?  
 (14) A Yes  
 (15) Q And do you remember how many there was?  
 (16) A I think there were three I'm not certain It might have  
 (17) been four  
 (18) Q When you - where did you sit in the cab?  
 (19) A Tail end Charlie They have a reverse seat facing aft and  
 (20) I was the only one in that  
 (21) Q Then there were two people just in front of you that would  
 (22) be facing forward?  
 (23) A I think so  
 (24) Q And -  
 (25) A It might have been three

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- (1) witness is Mr Alan McGregor and in order to be able to  
 (2) present Mr McGregor we are presenting questions and  
 (3) answers  
 (4) read back and forth a taped interview not a deposition a  
 (5) taped interview and the interview occurred on March the 27th  
 (6) 1989 at 9 30 p.m.  
 (7) THE COURT Go ahead  
 (8) MR SANDERS I think we should still swear the  
 (9) witness  
 (10) THE COURT Do the same drill that he should well and  
 (11) truly read the answers  
 (12) THE CLERK Raise your right hand please  
 (13) (The Witness Is Sworn)  
 (14) THE CLERK For the record state your full name  
 (15) address and spell your last name please  
 (16) THE WITNESS Martin Casey New York New York  
 (17) C A S E Y  
 (18) THE CLERK Thank you  
 (19) DIRECT EXAMINATION OF ALAN MCGREGOR (Read)  
 (20) BY MR SANDERS  
 (21) Q Mr McGregor who do you work for?  
 (22) A Arco Marine Inc  
 (23) Q And what ship are you attached to right now?  
 (24) A Arco Independence  
 (25) Q And on Thursday night did you go into town into Valdez?  
 (26) A Yes

- (1) Q You're not sure where the other three people were sitting?  
 (2) A I think there were three people One in the front seat  
 (3) with the driver and two in the immediately rear seat but I'm  
 (4) not sure It might have been four I don't think so but  
 (5) I'm - I'm not - I'm not trying to get in where I know is a  
 (6) case after the fact  
 (7) Q Right right I want just from your memory not possibly  
 (8) what somebody else said or anything else what you know?  
 (9) A Yeah  
 (10) Q The two people that were sitting in front of you is there  
 (11) anything you remember about them as far as the type of  
 (12) clothes  
 (13) they wore whether they wore glasses were tall short had a  
 (14) beard mustache anything like that? Is there -  
 (15) A Nothing at all It was dark I really couldn't see them  
 (16) that well and I wasn't that interested  
 (17) Q Did you - were they talking among themselves?  
 (18) A Yes  
 (19) Q Did they say anything that you heard?  
 (20) A No I could hear their voices but I wasn't - as I say I  
 (21) was not interested I put my head back and dozed  
 (22) Q How long did it take you to get from Valdez out to the  
 (23) terminal?  
 (24) A Oh I suppose 20 minutes  
 (25) Q The normal ah -  
 (26) A Half an hour I don't know

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- (1) Q The normal procedure once you get to the gate here coming  
 (2) out to where the ship is - well why don't you just tell me  
 (3) what happens there  
 (4) A Well, this was - this was a new - it was a new situation  
 (5) to me I - the cab driver got out and opened the back door  
 SO  
 (6) I can get out, and I gave my identification card to the guard  
 (7) and he gave it immediately back Usually in the past we  
 have  
 (8) all given - all the occupants in the cab have given their  
 (9) cards their Z cards or what have you to the driver and gone  
 (10) through the metal detector or what have you and have them  
 given  
 (11) back to the driver This time it was changed We gave our  
 (12) Z cards to the guard and he gave them immediately back  
 Then  
 (13) we went through the metal detector got back in the cab and  
 (14) went on our way  
 (15) Q All - all of you did that?  
 (16) A As far as I can remember yeah  
 (17) Q When you were in the cab was there anything you noticed  
 (18) as far as whether the other people had been drinking?  
 (19) A No  
 (20) Q I'm not saying that they were drunk but had they been  
 (21) drinking?  
 (22) A No I have no occasion to notice any - they - the other  
 (23) people seemed to be perfectly standard type people coming  
 back  
 (24) to the ship I didn't know who they were or I - I had no  
 (25) occasion to remark on their condition one way or the other

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- (1) Q So there was nothing that stood out to you as far as any  
 (2) of the other people?  
 (3) A No  
 (4) Q And you didn't talk to any of the other people during  
 (5) this -  
 (6) A Well I think I probably said hello and thank you or one  
 (7) thing or another  
 (8) Q Who did they let out - they let them out first?  
 (9) A No I was first out  
 (10) Q You were out first and they went to -  
 (11) A Yeah I was surprised at that because I was dozing and I  
 (12) thought - I don't know why I thought it but I thought that  
 (13) they were from the other ship that's still here and when the  
 (14) cab stopped I was told it was berth 4 okay I got out  
 (15) Q When they paid for the bill were you in the cab when they  
 (16) paid for their part of the bill?  
 (17) A No  
 (18) Q You paid yours?  
 (19) A Yeah  
 (20) Q Just about when they were in this security building when  
 (21) you were in the security building going through the metal  
 (22) screen or whatnot were you right with the other three guys  
 (23) where you might observe them walking and moving in there ah  
 (24) or were you alone?  
 (25) A I was in their company but not with them

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- (1) Q You were in the same general area?  
 (2) A Yes  
 (3) Q The point is did you have an opportunity to see them if  
 (4) they were ah stumbling or whatever or did you not even have  
 (5) the opportunity to see them?  
 (6) A Oh I had the opportunity to see them but I think -  
 (7) but - and I think I'm not sure but I - as I said to the  
 (8) security man last night I had nothing to cause me to notice  
 (9) what they were doing  
 (10) Q Nothing triggered your interest?  
 (11) A No  
 (12) Q You -  
 (13) A They behaved like people coming back to a ship  
 (14) Q You had went off for I believe approximately two hours?  
 (15) A Yeah two two and a half something like that  
 (16) Q Did you - well when you were downtown did you drink?  
 (17) A Oh, yeah  
 (18) Q Did you have anything to drink that night?  
 (19) A Of course  
 (20) Q Did you - would it be like one drink or two drinks?  
 (21) A Oh, I may have had three or four I don't know  
 (22) Q But still there wasn't anything noticeable to you about  
 (23) the other three?  
 (24) A No  
 (25) Q Is there anything that you can think of that you would want

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- (1) to say before I turn the tape recorder off?  
 (2) A About their condition or - or -  
 (3) Q Anything? Or if you have a question?  
 (4) A The only thing I can remember that actually had to be  
 (5) brought to my attention last night when the security guys,  
 they  
 (6) had a couple of pizzas with them When I climbed into the  
 (7) backs seat I was careful not to sit on one  
 (8) Q Okay I'm going to conclude the tape at 9:21 p.m.  
 (9) A Fine  
 (10) MR SANDERS Good timing Your Honor  
 (11) THE COURT Good timing and especially when they  
 (12) start discussing pizzas again  
 (13) Ladies and gentlemen -  
 (14) MR NEAL Makes you hungry about 12:00  
 (15) THE COURT We'll take our second recess at this  
 (16) point Would counsel standby at this point? There are a  
 (17) couple things I want to say to counsel  
 (18) (Jury out at 12:02 p.m.)  
 (19) THE COURT When we conclude at 2:00 this afternoon I  
 (20) want to meet briefly in chambers with as few people as possible  
 (21) but enough to cover three subjects One where we're going to  
 (22) go from here with the procedure for finalizing jury  
 (23) instructions  
 (24) Point number two that I want to discuss is a couple of  
 (25) appeals that have been taken from discovery master order 247

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1 And then I have a copy of request for Plaintiffs Exhibits  
 2 that s been made by a nonparty and I want to discuss that with  
 3 whoever from you all s sides that will have some information  
 4 about duplicating exhibits  
 5 We ll be in recess now for 15 minutes  
 6 MR NEAL Your Honor could we have that ruling  
 7 again the number of the -  
 8 THE COURT Discovery master 247  
 9 MR NEAL Thank you  
 10 THE COURT We ll be in recess for 15 minutes  
 11 (Recess at 12 03 p m )  
 12 (Jury in at 12 18)  
 13 MR NEAL We call Mr Harry Jack Claar  
 14 THE CLERK Would you raise your right hand please  
 15 (The Witness Is Sworn)  
 16 THE CLERK For the record sir state your full name  
 17 address and spell your last name  
 18 THE WITNESS Harry Lamoyne Claar Box 7673 Incline  
 19 Village Nevada  
 20 DIRECT EXAMINATION OF HARRY CLAAAR (Live)  
 21 BY MR NEAL  
 22 Q Is it Mr Claar or Mr Claar?  
 23 A Claar  
 24 Q Mr Claar I m going to set a record with you on the  
 25 fastest on and of the stand of this trial

1 today?  
 2 A Yes sir  
 3 Q Captain Hazelwood Greg Cousins and you and for a brief  
 4 period of time the pilot is that correct?  
 5 A Yes  
 6 Q The record reflects in this case that the pilot got off  
 7 about around 11 20 okay? Now during the ten - during the  
 8 hour period that you were on the bridge with Captain  
 Hazelwood  
 9 did you see - did he give you orders?  
 10 A Yes  
 11 Q All right Tell us quickly what orders he gave you  
 12 A We had a course change from 219 to 200 and from 200 to  
 13 180  
 14 Q He gave you from 219 he said come to 200?  
 15 A 200 yes  
 16 Q 200 and then he later on said come to 180 degrees?  
 17 A Yes  
 18 Q That s the course you were on right?  
 19 A Yes  
 20 Q Did he give you any other orders?  
 21 A He instructed me when I came steady up on 180 to put it  
 on  
 22 the mike  
 23 Q Put it on the mike what does that mean? We ve talked  
 24 about here the mike the gyro the automatic pilot To put the  
 25 vessel on automatic pilot right?

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1 You re a seaman right?  
 2 A Yes  
 3 Q You re now employed by Arco?  
 4 A Yes  
 5 Q As of the date of grounding in this case you were employed  
 6 by Exxon Shipping Company?  
 7 A Yes  
 8 Q And you were on the grounding voyage?  
 9 A Yes  
 10 Q All right From - from 10 50 to approximately 11 50 you  
 11 were on the bridge of the Valdez is that correct?  
 12 A Correct  
 13 Q And you had the - you so called had the helm is that  
 14 right?  
 15 A Yes  
 16 Q And the helm as you re standing right here - I m pointing  
 17 now to Defendants Exhibit 225 correct?  
 18 A Yes  
 19 Q You re standing there with the wheel Okay Who else -  
 20 during that approximate hour period who else was on - who  
 21 else was on the bridge with you?  
 22 A The third mate Greg Cousins pilot and the captain  
 23 Q Captain Hazelwood?  
 24 A Yes  
 25 Q You recognize Captain Hazelwood in the courtroom here

1 A Automatic pilot yes sir  
 2 Q To put a vessel on automatic pilot what do you do?  
 3 A Steady up on the course and there s a couple of buttons  
 on  
 4 the bridge there that - they re on the console there that you  
 5 push  
 6 Q Okay Is it fair to say to put a vessel - when you steady  
 7 up to 180 degrees to put a vessel on the mike or put it on  
 8 automatic pilot you punch this button right here?  
 9 A I don t know I can t read that what s there  
 10 Q Well it s on this - what do you call it up here?  
 11 A Okay That s looks familiar  
 12 Q Any event you punch a button?  
 13 A Yes  
 14 Q And it goes to automatic pilot instantly?  
 15 A Yes  
 16 Q And then you punch a button to take it off?  
 17 A Yes  
 18 Q And it comes off instantly?  
 19 A Yes  
 20 Q Can you read that button right - I can t read it either  
 21 You punch a button take it off?  
 22 A Yes  
 23 Q Were Captain Hazelwood s orders crisp clear?  
 24 A Yes they were -  
 25 Q Authoritative?

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- (1) A - clear Yes  
 (2) Q During the time you were on the bridge - during the time  
 (3) you were on the bridge with Captain Hazelwood in addition to  
 (4) issuing orders crisp clear authoritative did you see any  
 (5) sign whatsoever of any impairment?  
 (6) A No  
 (7) Q You had a chance to observe him?  
 (8) A Yes  
 (9) Q All right Matter of fact you were standing here tell  
 (10) me - Captain Hazelwood I believe you said was all around  
 (11) here walking by you coming over to the port radar going to  
 (12) the starboard radar et cetera?  
 (13) A Yes  
 (14) Q All right Did you - did you see any difference  
 (15) whatsoever in captain - strike that  
 (16) Were you with Captain Hazelwood on the way in on - to  
 (17) Valdez on the 22nd March 22nd?  
 (18) A Yes  
 (19) Q Did you see any difference whatsoever in Captain  
 Hazelwood  
 (20) between the time you were with him on March 22nd and the  
 hour  
 (21) you were with him from 10 40 - 10 50 to 11 50 on March 23 on  
 (22) the outward voyage?  
 (23) A No  
 (24) Q At the request of Mr Chalos I will ask you You said you  
 (25) saw no sign of any impairment was his speech slurred in any

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- (1) way?  
 (2) A No  
 (3) Q Was his movements unsteady?  
 (4) A No  
 (5) MR NEAL Thank you Mr Claar  
 (6) THE COURT You may cross examine  
 (7) MR O NEILL Thank you Judge  
 (8) CROSS EXAMINATION OF HARRY CLAAAR  
 (9) BY MR O NEILL  
 (10) Q You left the employ of Exxon Shipping Company some  
 months  
 (11) after the grounding?  
 (12) A Yes  
 (13) Q And you work for Arco now?  
 (14) A Yes  
 (15) Q Before you sailed with Captain Hazelwood you knew that he  
 (16) had a reputation as a partier didn't you?  
 (17) A I had heard that  
 (18) Q And this evening when you were on the bridge with him  
 (19) would it be fair to say that at no time did you get close to  
 (20) him?  
 (21) A I don't know what you mean by close to him How close is  
 (22) close?  
 (23) Q I don't know Let's go to your National Transportation  
 (24) Safety Board testimony and see what you meant when you said  
 (25) that?

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- (1) A Okay  
 (2) Q They asked you to same question when you appeared before  
 (3) the National Transportation Safety Board It's page 237 and  
 (4) it's at lines 15 and 16 Do you see that?  
 (5) A Yes  
 (6) Q And when you were before the National Transportation  
 Safety  
 (7) Board the question was directly asked to you did you get  
 (8) close to him at any time and you answered no?  
 (9) A Okay  
 (10) Q You see that? And then the question was asked and that was  
 (11) the answer that you gave isn't that right?  
 (12) A That was the answer that I gave  
 (13) Q And you were under oath at that time?  
 (14) A Yes  
 (15) Q Now you testified here today that Captain Hazelwood asked  
 (16) you to put it steady up on 180 and put it on mike is that  
 (17) correct?  
 (18) A Yes  
 (19) Q And when he said put it on mike he meant on the autopilot  
 (20) or the auto gyro?  
 (21) A Right  
 (22) Q And at the time you thought that was a little unusual  
 (23) didn't you?  
 (24) A Yes  
 (25) Q Because in your experience it was unusual to put it on mike

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- (1) while -  
 (2) MR NEAL Your Honor if he's going to take him over  
 (3) as his witness he must quit the leading I merely asked him  
 (4) as a fact witness  
 (5) MR O NEILL He testified about the putting it on  
 (6) mike  
 (7) MR NEAL I withdraw the objection I withdraw the  
 (8) objection  
 (9) THE COURT Thank you thank you Go ahead  
 (10) BY MR O NEILL  
 (11) Q You thought it was unusual because from your experience  
 (12) it was unusual to put it on mike while you were still in Prince  
 (13) William Sound is that right?  
 (14) A Yes  
 (15) MR O NEILL Thanks  
 (16) THE WITNESS That's it?  
 (17) MR O NEILL Yes sir  
 (18) THE COURT Unless Mr Neal has something further  
 (19) Mr Neal anything further?  
 (20) MR NEAL Yeah just - just one question  
 (21) Would you put the bridge up - never mind Never mind  
 (22) Never mind  
 (23) No further questions  
 (24) THE COURT Thank you Mr Claar  
 (25) MS STEWART Defense calls -

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THE COURT I'm sorry I didn't -  
 MS STEWART - Edward Murphy by deposition  
 testimony  
 THE COURT Thank you  
 THE CLERK Raise your right hand sir  
 (The Witness Is Sworn)  
 THE CLERK For the record sir state your full name  
 your address and spell your last name  
 THE WITNESS Michael Silver S I L V E R and I'm  
 from Houston Texas  
 THE CLERK Thank you  
 DIRECT EXAMINATION OF WILLIAM MURPHY (Read)  
 BY MS STEWART  
 Q Would you please state your full name and spell your last  
 name?  
 A William Edward Murphy M U R P H Y  
 Q Mr Murphy I see you brought a copy of the trip tickets of  
 the Southwest Alaska Pilots used for billing purposes today  
 With the small print is the pilotage clause - what's known as  
 the pilotage clause statement of liability limitations It's  
 hard to read but is that correct? Is it the back of the  
 ticket?  
 A That is the back there Each trip ticket there's a white  
 cover and two - I don't know if you call them carbons  
 anymore  
 we don't actually use carbon Under the white ticket is a

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yellow and a pink and we write on the white of course and  
 it  
 goes through to the yellow and the pink After the master  
 signs we deliver the pink copy to him We send or take to  
 our  
 office the white and yellow copies which are used I believe  
 one copy is retained in our records and the other copy is  
 sent  
 along with the bill to the shipper  
 On the back of each of those individual pages is the thing  
 you're referring to  
 Q And this ticket it's signed What are the two  
 signatures?  
 A The upper signature in this case is mine or whomever the  
 pilot would be and the lower signature is the master's  
 signature In this case Captain Hazelwood  
 Q And were they both signed this is the inbound transit  
 3/22/89?  
 A Yes both of those are signed  
 Q Shall I call it the Southwest Alaska Pilots Association  
 ticket would that be correct or what do you call it?  
 A Trip ticket probably  
 Q Okay Trip ticket Okay And that's DX3460 There is a  
 ticket for the outbound transit is that correct?  
 A Yes sir That's correct  
 Q And it's similar to this and - and with your signature and  
 Captain Hazelwood's?  
 A Correct

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Q It will be marked DX3461 As to the timing of the signing  
 when and where does it take place on March 22nd?  
 A Well generally speaking when the pilotage is completed  
 and before the pilot disembarks the vessel whether  
 inbound or  
 outbound we ask the master to sign the trip slip In some  
 cases the pilot has filled out the upper part of the trip slip  
 sometime during the transit and the master may just see it  
 laying there and he'll sign it prior to the pilot getting off  
 Sometime during the transit but always before the pilot  
 disembarks the master signs it  
 Q In your recollection as to the outbound transit slip  
 DX3461 when was that signed by Captain Hazelwood?  
 A Well I have to say I think just prior to my getting off  
 but I cannot remember observing him sign the trip slip so I  
 can't say with any precision  
 Q As a professional pilot for Prince William Sound do you  
 feel that it's part of your responsibility to be familiar with  
 the operation of the VTS system?  
 A Yes I do  
 Q Could you tell me sir based on your experience or what  
 your understanding is of the purpose of the VTS system how it  
 works?  
 A My understanding it was established for the purposes of  
 safety It's to advise vessels of traffic and to provide radar  
 surveils and alert them if they stray out of whatever  
 navigable

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bounds the Coast Guard has set That's my understanding  
 Q And is there any particular reason why it was the summer of  
 1977 when this system was put into place?  
 A Well it was put into place to coincide or precede by a  
 short time the opening of the TransAlaska Pipeline terminal  
 Q What's your understanding as a pilot of the range of the  
 radar monitors which were in effect as of the time of this  
 accident?  
 A There are two Were I believe and still are two radar  
 scanners One is on the breakwater at the tower of Valdez  
 at  
 the small boat harbor the other is at Potato Point So the  
 entirety of the Port Valdez the green area is monitored and  
 my understanding was and is that the radar at Potato Point  
 monitors vessels down as far as Bligh Reef or possibly a  
 little  
 bit south of that  
 Q Based on your understanding of the VTS system what would  
 you expect the watch standers to do if they viewed a vessel  
 approaching known hazard on their radar?  
 A I would expect that they would transmit their observation  
 to the ship via the VHF radio  
 Q Would you check your position?  
 A Yes  
 MS STEWART Thank you Mr Murphy  
 CROSS EXAMINATION OF WILLIAM MURPHY  
 BY MS HANSON

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- (1) Q When did you initially get your pilotage endorsement on
- (2) your federal license for Prince William Sound approximately?
- (3) A I think about sometime in 1974
- (4) Q In order to get that endorsement can you tell us what
- (5) training you underwent? You told us about Cook Inlet Do you
- (6) have a required number of trips you had to make for your
- (7) federal endorsement for Prince William Sound?
- (8) A To obtain federal - the federal -
- (9) Q Yes
- (10) A And Coast Guard endorsement? Yes I can't recall how
- (11) many
- (12) there were, but as is typical with Coast Guard pilotage
- (13) requirements, the applicant is required to document a
- (14) certain
- (15) number of observed trips over the pilotage ground When
- (16) he's
- (17) satisfied that requirement he takes a written examination
- (18) Q Now you have a certain number of trips that you re
- (19) required These trips are they round trips whatever number a
- (20) day?
- (21) A Yes they are
- (22) Q That s up and back and with respect to Prince William
- (23) Sound was it - you tell me where was it from like
- (24) Hinchinbrook all the way into the Port of Valdez or where was
- (25) it from and to?
- (26) A I can't remember with any precision what the Coast
- (27) Guard
- (28) pilotage requirements for Prince William Sound were in
- (29) 1974
- (30) but they required a certain number of round trips into the

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- (1) principal ports in the Sound which would be Whittier
- (2) Valdez
- (3) and Cordova and they also required a certain number of
- (4) round
- (5) trips through the ocean entrances to Prince William Sound
- (6) How
- (7) many trips were required I don't remember
- (8) Q Now after you ve made the number of trips that are
- (9) required you have to take a written exam?
- (10) A Yes sir
- (11) Q And can you tell us what that exam consists of generally?
- (12) A Okay After producing evidence that one has made the
- (13) required observed trips there is an examination I believe
- (14) on - a written examination on ship handling perhaps on
- (15) seamanship I don't recall Then there s a chart sketch of
- (16) the area in question
- (17) Q So for Prince William Sound you were saying they make you
- (18) prepare a chart Can you tell us what they make you put on the
- (19) chart?
- (20) A They call it a chart sketch and I haven't written - I
- (21) finished writing my pilotage a number of years ago so it
- (22) may
- (23) have changed but at the time the Coast Guard gives the
- (24) applicant a piece of paper with the land contours of the area
- (25) in question They direct you to take that piece of paper and
- (26) draw in all the principal - mark the principal points of land,
- (27) capes and label them draw in all the dangers usually the
- (28) ten
- (29) fathom curve any draw in sands draw in the main ship
- (30) routes
- (31) with distances off course soundings along those routes
- (32) the

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- (1) magnetic variation for the area and so forth Then you turn
- (2) the sheet of paper over On the back of it, you - excuse me,
- (3) as part of the chart sketch you also draw in all the aids to
- (4) navigation
- (5) Q Like for this area Busby Island light you d have to put
- (6) in -
- (7) A Sure
- (8) Q And its characteristics?
- (9) A That's right
- (10) Q And you d have to put in the Bligh Reef buoy?
- (11) A Yes
- (12) Q With its characteristics?
- (13) A That's correct
- (14) Q And when you put it in they have you put in its exact
- (15) location?
- (16) A Yes, they do
- (17) Q Go on What else would you put in?
- (18) A So when you're finished with that chart sketch you turn
- (19) the
- (20) sketch over and on the back of it, you write from memory the
- (21) complete light list for the area The light list is all
- (22) navigation aids in addition to lights buoys day markers
- (23) and
- (24) so forth The location of those devices, the characteristics
- (25) of any lights fog horns and so forth That pretty much
- (26) completes the chart sketch and lists of aids of navigation
- (27) MS HANSON Thank you and that completes the

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- (1) cross examination
- (2) MR RUSSO Your Honor the defendants call by
- (3) deposition Paul Radtke
- (4) THE CLERK I m sorry I didn t catch that last name
- (5) MR RUSSO Paul Radtke R A D T K E
- (6) THE CLERK Raise your right hand please
- (7) (The Witness Is Sworn)
- (8) THE CLERK For the record state your full name
- (9) address and spell your last name
- (10) THE WITNESS Malcomb Flynn Justice J U S T I C E
- (11) New Port Beach California
- (12) THE CLERK Thank you
- (13) DIRECT EXAMINATION OF PAUL RADTKE
- (14) BY MR RUSSO
- (15) Q Please state your full name
- (16) A Paul R Radtke
- (17) Q Your home address?
- (18) A 1832 East Fourth Street Superior Wisconsin
- (19) Q What age are you?
- (20) A 34
- (21) Q You also produced a copy of your third mate s license?
- (22) A Yes
- (23) Q And you received this license when?
- (24) A August of '87
- (25) Q Was that upon graduation?

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- (1) A Yes  
 (2) Q From where?  
 (3) A Texas Maritime Academy  
 (4) Q You also got a degree when you graduated from Texas  
 (5) Maritime?  
 (6) A That is correct  
 (7) Q What was your degree in?  
 (8) A Bachelor of science in marine science  
 (9) Q And this license this is the first issue?  
 (10) A Yes that is correct  
 (11) Q Now your resume covers your education For the record  
 (12) can you tell us what your formal education has been?  
 (13) A Yes I have a bachelor of arts from Valparaiso University  
 (14) in English I have a bachelor of science from Texas A & M in  
 (15) marine science  
 (16) Q You got your bachelor of arts degree after your graduated  
 (17) from Texas Maritime Academy?  
 (18) A No sir  
 (19) Q I m sorry Vice versa It was - there was quite an  
 (20) interval of time there?  
 (21) A Yes  
 (22) Q You got your BA in 1978?  
 (23) A Correct  
 (24) Q And between 1978 and then graduating from Texas maritime  
 (25) what did you do during the interval between 1978 and going  
 into

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- (1) Texas?  
 (2) A I was a junior high English teacher from 1978 until 1981 I  
 (3) believe Then I spent a year of both working part time and  
 (4) going to school part time here in Superior Wisconsin prior  
 (5) to  
 (6) attending Texas Maritime Academy in '83 or '84  
 (7) Q And you were employed by Exxon Shipping to start with in  
 (8) 1987 is that correct?  
 (9) A That is correct  
 (10) Q As an able bodied seaman?  
 (11) A That's correct  
 (12) Q And did you apply with them to become a licensed officer  
 (13) but they just didn't have an opening and they hired you as an  
 (14) A B?  
 (15) A I was hired as an A-B and I believe it was company policy  
 (16) at that time that they were not directly hiring licensed  
 (17) officers They were requiring people to work on the deck for  
 (18) a  
 (19) certain period of time I think for evaluation reasons prior  
 (20) to sailing as an officer  
 (21) Q Just turning for the present to the period of time that you  
 (22) were on the Exxon Valdez and you were in Valdez and then you  
 (23) sailed with the vessel you were aboard at the time of the  
 (24) grounding is that correct?  
 (25) A That is correct  
 (26) Q Prior to the Exxon Valdez grounding had you ever sailed as  
 (27) a licensed officer?

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- (1) A No sir  
 (2) Q When you were aboard the Exxon Valdez you had what  
 (3) watches?  
 (4) A I was assigned to the eight to 12 watch  
 (5) Q The morning to 2400 in the evening?  
 (6) A That's correct  
 (7) Q What was your watch partner?  
 (8) A Harry Claar from - from the time I joined the ship to the  
 (9) time I left the ship  
 (10) Q Mr Kagan was aboard while you were aboard?  
 (11) A That's correct  
 (12) Q Did you ever observe him steering?  
 (13) A No sir  
 (14) Q Did you ever hear anything about his ability to steer?  
 (15) A No sir  
 (16) Q Did you ever hear anything about his - about the  
 (17) evaluations he received?  
 (18) A No sir  
 (19) Q You received evaluations while you worked with Exxon?  
 (20) A Yes I did  
 (21) Q And how were they and in what general range?  
 (22) A I believe from very good to exceptional  
 (23) Q Were you ever while you were aboard the Exxon Valdez on  
 (24) watch when Cousins was the mate?  
 (25) A Yes In fact he was the mate on my watch

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- (1) Q You had the eight to 12?  
 (2) A Correct  
 (3) Q Was this the first encounter you had had with Cousins  
 (4) during your employ with Exxon?  
 (5) A Yes  
 (6) Q When you get an order as a normal practice when you get  
 (7) an  
 (8) order ten degrees right rudder -  
 (9) A Yes  
 (10) Q - would you repeat the order?  
 (11) A Yes  
 (12) Q After you put the wheel over ten degrees would you tell  
 (13) the mate that your wheel is over ten degrees so that you not  
 (14) only repeated the orders but you tell him again?  
 (15) A Sometimes yes, sometimes no Depending on the  
 (16) circumstances  
 (17) Q Would the mate watch you to - during this process as a  
 (18) matter of routine when you were given an order whether it was  
 (19) by the mate or captain or pilot would they watch what you did?  
 (20) A I believe so  
 (21) Q They'd be watching you wouldn't they? In essence no  
 (22) matter what the order was to make sure number one you put  
 (23) the  
 (24) wheel in the right direction?  
 (25) A Correct  
 (26) Q And number two to see that you put it to the proper number  
 (27) of degrees he's told you to put it so if he gave you a number

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- (1) of degrees of the rudder correct?
- (2) **A That's correct**
- (3) **Q** So it doesn't make any difference if you're given a right
- (4) five degree rudder order or a right 15 degree rudder order or a
- (5) right 30 degree rudder order it's important for the mate on
- (6) watch to watch to see that you put that wheel in the right
- (7) direction that is to the right for that order not to the
- (8) left?
- (9) **A Yes**
- (10) **Q** And the second thing he's to see that you put it to the
- (11) number of degrees you've been told to put it to correct?
- (12) **A Correct**
- (13) **Q** What I'm wondering is you're steering a steady course
- (14) whatever it is You're trying to hold it to that course and
- (15) let's say you're quite successful There are times aren't
- (16) there when you're steering you're able to hold it almost
- (17) right on the gyro heading that you're on is that correct?
- (18) **A Yes**
- (19) **Q** Then you're given a rudder order in this example I gave
- (20) you a right rudder order let's say it's right ten degrees
- (21) rudder I would like to know the interval of time from the
- (22) moment you turn your wheel in response wheel - I mean the
- (23) helm in response to the order you're given to turn the wheel
- (24) from that being the starting point the interval of time from
- (25) that point to when you're looking at the gyro and you start to

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- (1) see the gyro responding to your moving the wheel over going
- (2) to
- (3) 181 182 so the minute you see it move off 180 what is that
- (4) interval of time?
- (5) **A It's been so long since I have had - had a feel for that**
- (6) **ship that I don't think I can give you a good answer for that**
- (7) **Q** Would you agree that it would only be a matter of seconds?
- (8) In other words it's not a matter of minutes for sure?
- (9) **A Yes, I'd agree with that**
- (10) **Q** Did you find that the Exxon Valdez as compared to other
- (11) vessels you served on to be a more difficult vessel to steer
- (12) easier the same or is there any comparison you can make?
- (13) **A I was aware that she was a much larger ship than I had**
- (14) **steered prior to that time The sheer momentum of the ship**
- (15) **was**
- (16) **something that the helmsman certainly had to bear in mind**
- (17) **in**
- (18) **terms of responsiveness I didn't know that she was any**
- (19) **more**
- (20) **difficult to deal with than let's say a small ship**
- (21) **Q** Did you find that she was an easy ship to steer easy to
- (22) hold onto a course that you were given a steady heading?
- (23) **A In all waters that I happened to be helmsman on Yes I**
- (24) **believe she was an easy ship to steer**
- (25) **Q** You were in the Port of Valdez how many times prior to the
- (1) grounding let's say?
- (2) **A I'll guess five times**
- (3) **Q** So you were there maybe anywhere from two to four times
- (4) within that range?

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- (1) **A Yes**
- (2) **Q** With respect to Captain Hazelwood when you were serving
- (3) with him did you ever see him ashore?
- (4) **A No**
- (5) **Q** Did you ever see him when you made a judgment that he was
- (6) impaired from drinking?
- (7) **A No, sir**
- (8) **Q** You said you sailed with Captain Hazelwood for a period of
- (9) about 30 days 35 days?
- (10) **A I think that's correct yes**
- (11) **Q** During that period of time did you ever observe any
- (12) alcohol on Captain Hazelwood's breath?
- (13) **A No, sir**
- (14) **Q** Did you ever see Captain Hazelwood impaired by alcohol?
- (15) **A No, sir**
- (16) **Q** Did you ever see him intoxicated?
- (17) **A No, sir**
- (18) **Q** Do you know based on your own personal experience the
- (19) signs of when one is impaired by alcohol?
- (20) **A I've never gone through any normal training to recognize**
- (21) **the signs, but I think I have a basic idea of when**
- (22) **somebody's**
- (23) **impaired**
- (24) **Q** And would the answer be the same for someone being
- (25) drunk?
- (1) **A Yes**
- (2) **Q** And your answer is at no time did you see Captain
- (3) Hazelwood

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- (1) either impaired or intoxicated?
- (2) **A That is correct**
- (3) **Q** Did you ever drink aboard the Exxon Valdez?
- (4) **A No, sir**
- (5) **Q** Did you ever drink aboard any Exxon vessel?
- (6) **A No, sir Outside of a holiday dinner where I believe wine**
- (7) **was served, New Year's Eve and Christmas Eve, I believe,**
- (8) **and**
- (9) **that was some years shortly after I joined as an A B I**
- (10) **believe they discontinued that practice**
- (11) **Q** Before you were employed by Exxon did you undergo any
- (12) testing for drugs or anything of that nature?
- (13) **A Yes, I did**
- (14) **Q** What sort of testing did you undergo?
- (15) **A My interview in Houston I was given a drug test a drug**
- (16) **screening**
- (17) **Q** Now referring to the evening of March 23rd 1989 do you
- (18) recall when you were at the stern that - maybe not necessarily
- (19) at the stern but do you recall that Cousins contacted the
- (20) second mate? Were you aware that there was a - there were
- (21) discussions between Cousins and the second mate concerning
- (22) Cousins staying up on the bridge into part of the second mates
- (23) watch?
- (24) **A Actually, I remember that discussion when I was on the**
- (25) **bridge I overheard Greg talking to the second mate**
- (1) **Q** When was that? About what time?



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- (1) **A I believe it was either moments before leaving the dock or**  
 (2) **possibly shortly after leaving the dock The guys would still**  
 (3) **have been down on the deck securing for sea even after we**  
 (4) **departed the dock**  
 (5) **Q That was a radio conversation was it or was the second**  
 (6) **mate on the bridge?**  
 (7) **A It was a radio conversation**  
 (8) **Q Do you recall what was said by Cousins or the essence of**  
 (9) **what was said?**  
 (10) **A As I recall it was just a - I believe Greg offered so he**  
 (11) **initiated the conversation just saying I feel pretty good If**  
 (12) **you want to catch some extra sleep go ahead I'll take part**  
 (13) **of**  
 (14) **your watch**  
 (15) **Q And obviously the second mate must have said yes or do**  
 (16) **you know?**  
 (17) **A Uh-huh I think he did**  
 (18) **Q All right When did you take over the wheel right after**  
 (19) **leaving the dock?**  
 (20) **A I would have been at the wheel shortly before the vessel**  
 (21) **cast off her last few lines**  
 (22) **Q When you went to the bridge who was there? What other**  
 (23) **individuals?**  
 (24) **A The chief mate the captain and the pilot**  
 (25) **Q Okay As far as the chief mate went was he subsequently**  
 (26) **relieved by Cousins?**

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- (1) **A Yes**  
 (2) **Q When did that take place?**  
 (3) **A Sometime after leaving the dock**  
 (4) **Q Was it before going through the Narrows?**  
 (5) **A I believe so yes**  
 (6) **Q Further concerning the evening of March 23rd 1989**  
 (7) **And what was the captain's demeanor on the bridge during**  
 (8) **this initial period when you took over the wheel?**  
 (9) **A What do you mean by demeanor?**  
 (10) **Q First of all let me ask you could you see him? It was**  
 (11) **nighttime it was dark?**  
 (12) **A I do recall receiving orders from him and I do recall**  
 (13) **seeing him as we were leaving the dock and I recall seeing**  
 (14) **him**  
 (15) **at the window for some period of time after leaving the**  
 (16) **dock**  
 (17) **Q Was he giving you the orders to the wheel or was the**  
 (18) **pilot?**  
 (19) **A He was relaying orders to the chief mate who was in turn**  
 (20) **relaying orders to me At the time we left the dock the pilot**  
 (21) **and the captain were on the wing relaying orders by radio**  
 (22) **Q Who initiates those orders? Are they initiated by the**  
 (23) **pilot and then relayed through his offices to you?**  
 (24) **A My assumption was that the pilot was initiating those**  
 (25) **orders**  
 (26) **Q Did you notice anything unusual about the captain at all in**  
 (27) **his speech?**

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- (1) **A No sir**  
 (2) **Q Did you get close enough to him to smell his breath while**  
 (3) **you were on the bridge?**  
 (4) **A I don't believe so**  
 (5) **Q Did you hear any conversation between the captain and the**  
 (6) **pilot?**  
 (7) **A Yes**  
 (8) **Q What did you hear if you can remember the essence of it?**  
 (9) **A I recall them swapping a sea story leaving Valdez**  
 (10) **together**  
 (11) **and the helmsman making some steering mistakes I recall**  
 (12) **the**  
 (13) **captain on the radio to someone I'm not sure who I do**  
 (14) **recall some inbound traffic I believe it was a ferry And I**  
 (15) **recall some radio traffic with that ferry Again I don't**  
 (16) **remember if it was the pilot or the captain**  
 (17) **Q Would that be within the Port of Valdez?**  
 (18) **A Yeah before the Narrows**  
 (19) **Q Backing up to the conversation with Hazelwood when you**  
 (20) **were**  
 (21) **on the bow was there anything you noticed in the conversation**  
 (22) **that you thought was unusual about his voice?**  
 (23) **A No**  
 (24) **Q When he spoke with you on the walkie talkie when you were**  
 (25) **on the bow did he talk with you slowly then?**  
 (26) **A I did not notice any difference if that's what you're**  
 (27) **getting at no**  
 (28) **Q Now on the night coming out of Valdez that is the evening**

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- (1) **of March 23rd you had a chance to observe Captain**  
 (2) **Hazelwood**  
 (3) **walking pacing the bridge?**  
 (4) **A I would not say observe I saw him on the bridge**  
 (5) **Q Did you notice anything unusual about his walk?**  
 (6) **A No sir**  
 (7) **Q Was he stumbling?**  
 (8) **A No sir**  
 (9) **Q Was he weaving?**  
 (10) **A No**  
 (11) **Q When you heard him speaking to the pilot did you observe**  
 (12) **any slurring of his words?**  
 (13) **A No, I didn't**  
 (14) **Q When he spoke to you on the radio at least on one**  
 (15) **occasion did you notice any slurring of his words?**  
 (16) **A No, sir**  
 (17) **MR RUSSO Your Honor that concludes the direct**  
 (18) **examination of Paul Radtke**  
 (19) **MS HANSON A brief cross Your Honor**  
 (20) **CROSS EXAMINATION OF PAUL RADTKE**  
 (21) **BY MS HANSON**  
 (22) **Q Did you ever see any shipboard searches made by the**  
 (23) **captain**  
 (24) **of the ship for alcohol or drugs?**  
 (25) **A None that I can recall**  
 (26) **MS HANSON Thank you Nothing further**  
 (27) **MR CHALOS Good afternoon**

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- (1) Your Honor the defendants call Jack Stewart live  
 (2) **THE CLERK** Would you raise your right hand please  
 (3) **(The Witness Is Sworn)**  
 (4) **THE CLERK** For the record state your full name  
 (5) address and spell your last name please  
 (6) **THE WITNESS** Name s Jack Stewart S T E W A R T I  
 (7) live at 1399 Sacramento Avenue West Sacramento  
 (8) **THE CLERK** Thank you sir  
 (9) **DIRECT EXAMINATION OF JACK STEWART (Live)**  
 (10) **BY MR CHALOS**  
 (11) Q Mr Stewart what do you do for a living?  
 (12) A Right now I'm transporting propane  
 (13) Q As a driver?  
 (14) A Right  
 (15) Q How long have you had that job?  
 (16) A About three years  
 (17) Q What did you do before that?  
 (18) A I was a seaman  
 (19) Q How long were you a seaman for?  
 (20) A Almost my life on and off  
 (21) Q How many years would you say?  
 (22) A Oh, 25 30 years  
 (23) Q Did you have a job as a seaman at a specific rank or  
 (24) rating?  
 (25) A Yes I sailed pumpman for Exxon

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- (1) Q Did you say pumpman?  
 (2) A Yes  
 (3) Q Is that a rating that the Coast Guard gives?  
 (4) A Yes  
 (5) Q You have a certificate as a pumpman?  
 (6) A Yes I have all engine room endorsement  
 (7) Q What did you do as a pumpman what is your job?  
 (8) A To assist the chief mate in the loading discharging all  
 (9) deck machinery Of course it s chief engineers but I  
 worked  
 (10) under the chief on the deck machinery  
 (11) Q As a pumpman you worked for the engine department of the  
 (12) ship is that right?  
 (13) A Engine and deck I kind of went both of them In the port  
 (14) you'd usually work for the chief mate  
 (15) Q Okay At sea you were working for the chief engineer?  
 (16) A Yes in most cases  
 (17) Q Now you worked for Exxon for a period of time did you  
 (18) not?  
 (19) A Yes  
 (20) Q What years did you work for Exxon?  
 (21) A I worked for them in the early part of '74 and then from  
 (22) '81 to '90 I think  
 (23) Q 1981 to 1990?  
 (24) A Yeah  
 (25) Q When was the first time you met Captain Hazelwood?

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- (1) A It was on Exxon North Slope in 1980  
 (2) Q He was captain at the time?  
 (3) A Yes, he was  
 (4) Q When was the next -- and you made a trip with him on that  
 (5) occasion?  
 (6) A Uh huh yes Panama  
 (7) Q Was that for about 30 days?  
 (8) A Yes  
 (9) Q Okay When was the next time you met Captain Hazelwood?  
 (10) A It was a trip I made on the Valdez about -- it was prior to  
 (11) the grounding, a year or so prior to it  
 (12) Q Would that be 1988?  
 (13) A Yes, must have been  
 (14) Q Where did you go on that occasion?  
 (15) A Panama Valdez to Panama  
 (16) Q How long -- how long were you on the ship that time with  
 (17) Captain Hazelwood?  
 (18) A Approximately the same time  
 (19) Q 30 days or so?  
 (20) A 30 days give or take  
 (21) Q During that 30 day period during that 30 day period that  
 (22) we're talking about did you ever observe Captain Hazelwood  
 (23) drinking on the ship?  
 (24) A No  
 (25) Q Did you ever smell any alcohol on his breath?

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- (1) A No  
 (2) Q Did you ever see him impaired?  
 (3) A No  
 (4) Q I'm talking now about that 30 day trip?  
 (5) A Yeah  
 (6) Q You got off in Long Beach did you not?  
 (7) A Yes  
 (8) Q Did you drink anything when you got off in Long Beach?  
 (9) A No I didn't  
 (10) Q Did Captain Hazelwood get off with you in Long Beach?  
 (11) A No not with me  
 (12) Q All right When was the next time you saw Captain  
 (13) Hazelwood after that trip?  
 (14) A It was close to a year later, I believe I went back on  
 (15) the Valdez  
 (16) Q Would that have been in February of 1989?  
 (17) A Yes  
 (18) Q And you -- so you were on board about a month before the  
 (19) ship ran aground?  
 (20) A Yes, I joined down in Los Angeles I think  
 (21) Q During that period of time you had occasion to interact  
 (22) with Captain Hazelwood?  
 (23) A Yes quite a bit We were lightering up north  
 (24) Q Okay Now did you ever see Captain Hazelwood drinking  
 (25) on board the ship during that 30 day period before the grounding?

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- (1) **A No**  
 (2) **Q Did you ever see him impaired?**  
 (3) **A No**  
 (4) **Q Intoxicated?**  
 (5) **A No**  
 (6) **Q Now you said at sea you were assigned to the engine department Did you work for Chief Glowacki?**  
 (8) **A Yes**  
 (9) **Q Are you familiar with a first assistant by the name of Ray Jones?**  
 (11) **A Yes I am**  
 (12) **Q How about a second assistant named Oldham?**  
 (13) **A Yes**  
 (14) **Q And third assistant named Katie Havens?**  
 (15) **A Yes**  
 (16) **Q Did you ever see any of those three people drinking on the ship?**  
 (18) **A No, I didn't see any drinking on that ship**  
 (19) **Q Did you see any parties on that ship?**  
 (20) **A No**  
 (21) **Q Did you hear any rumors of any parties?**  
 (22) **A No, no**  
 (23) **Q You dealt with these people on a regular basis?**  
 (24) **A Almost every night I worked over time in the engine room**  
 (25) **Q You got close to these three people from time to time?**

- (1) **once when one was going on**  
 (2) **Q They were in your room without you being there you mean?**  
 (3) **A Yeah**  
 (4) **Q And did you see these searches on more than one occasion?**  
 (5) **A I knew they took place on more than one occasion yeah**  
 (6) **Q I'd like to direct your attention to March 23rd now the night that you left Valdez?**  
 (8) **A Yes**  
 (9) **Q Okay Just before you left you were on deck were you not?**  
 (11) **A Right**  
 (12) **Q Did you have occasion to see Captain Hazelwood Chief Engineer Glowacki and Mr Roberson coming on board?**  
 (14) **A I saw the captain I didn't pay attention to the chief**  
 (15) **He may have been a little ways behind but I was at the manifold and the forward line on the manifold and I saw the captain coming on the last leg down to the deck**  
 (18) **Q That's that steep leg?**  
 (19) **A Right**  
 (20) **Q Did you have a chance to observe -**  
 (21) **A I just -**  
 (22) **Q Did you have a chance to observe him coming down?**  
 (23) **A Yeah**  
 (24) **Q Notice him stumbling?**  
 (25) **A No**

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- (1) **A All the time**  
 (2) **Q Did you smell any alcohol on their breath?**  
 (3) **A Never**  
 (4) **Q Now you said that you never saw any liquor on board the Exxon Valdez?**  
 (6) **A No I haven't**  
 (7) **Q Now in the period of time that you worked for Exxon did you ever see the ship searched for drugs or alcohol?**  
 (9) **A Yeah a lot of times they'd call it a sanitary inspection and they'd shake down the rooms and it was a search And also**  
 (11) **a sanitary inspection**  
 (12) **Q Well during the sanitary inspection what were they searching for?**  
 (14) **A Anything that was contraband according to their rules and**  
 (15) **regulations**  
 (16) **Q Including liquor?**  
 (17) **A Oh yeah absolutely**  
 (18) **Q Alcohol of any kind?**  
 (19) **A Certainly**  
 (20) **Q Who conducted the search?**  
 (21) **A It was usually an officer chief mate and the captain supposedly Ideally there would be a ship's delegate from the**  
 (23) **union along with them and maybe one other officer**  
 (24) **Q And you saw these searches on more than one occasion?**  
 (25) **A I knew they took place In fact, I think I came in my room**

- (1) **Q Or in any way appear to lose his balance?**  
 (2) **A No**  
 (3) **Q Now did you watch him did you watch him when he came on**  
 (4) **deck?**  
 (5) **A No I didn't sit there and you know watch him I later**  
 (6) **on the air line to the impact gun is on the aft end of the manifold and I walked back from where I was to the aft end and**  
 (8) **as I was walking back I seen the captain going towards the**  
 (9) **spring lines They're on the port side the spring lines**  
 (10) **There's two wings aft and he was going aft**  
 (11) **Q Tell us what's on deck is there any clutter on deck?**  
 (12) **A Oh there's all kinds of clutter**  
 (13) **Q What kind of clutter?**  
 (14) **A Oh there's piping and gas piping cargo piping**  
 (15) **Q Piping you said?**  
 (16) **A Piping, yes**  
 (17) **Q Yes go ahead**  
 (18) **A And then when you tie up on that side you have two winches**  
 (19) **that run lines to the dock Spring lines and there's - you**  
 (20) **got to go around the winches to get around those lines**  
 (21) **usually You're not supposed to climb over these, it's too**  
 (22) **dangerous**  
 (23) **Q Did you observe Captain Hazelwood negotiating his way**  
 (24) **through this clutter?**  
 (25) **A Yes I saw him going back there towards the winches yes**

Vol 18 2983

- (1) Q Did you notice any stumbling on his part?  
 (2) A No  
 (3) Q Any unsteady movements?  
 (4) A No  
 (5) Q Now I'd like to direct your attention to the period of  
 (6) time after the grounding?  
 (7) A Yes  
 (8) Q Did you have occasion to see Captain Hazelwood again?  
 (9) A Yes, later on after the grounding  
 (10) Q Say within an hour hour and a half after the grounding?  
 (11) A Something like that Sometime's pretty murky  
 (12) Q Where did you see Captain Hazelwood at that time?  
 (13) A I was coming back up out of the pump room and he was  
 out on  
 (14) the main deck and I mentioned to him as I went by that the  
 pump  
 (15) room was intact but I'd already informed the mate of this  
 and  
 (16) I'm sure the captain had known, but just in passing I told  
 (17) him  
 (18) Q All right I want to concentrate on your meeting with  
 (19) Captain Hazelwood  
 (20) A Uh huh  
 (21) Q You got close to him at that point?  
 (22) A Yes we were fairly close  
 (23) Q Did he appear to you to in any way be impaired by alcohol?  
 (24) A Not to me he didn't at all  
 (25) Q Did you observe him walking at that period of time?

Vol 18 2984

- (1) A He was still there when I left  
 (2) Q When he - and he spoke to you?  
 (3) A Uh huh  
 (4) Q Did he slur his words at all?  
 (5) A No no  
 (6) Q Did he appear to you to be calm under the circumstances?  
 (7) A I've sailed with Captain Hazelwood and I think he's one of  
 (8) the best captains I've sailed with he's very focused There  
 (9) was no panic among the crew or the captain Everything  
 was in  
 (10) pretty bad shape at that time but everybody seemed to  
 have a  
 (11) good handle on it  
 (12) Q Did you have - at that point in time I take it you were  
 (13) pretty shook yourself?  
 (14) A Oh sure  
 (15) Q Did you have faith that Captain Hazelwood would handle the  
 (16) situation and do the right thing by way of the ship and the  
 (17) crew and the cargo and the environment?  
 (18) A Yeah it's something that you're not going to sit there and  
 (19) articulate, but you have the feeling that what Captain  
 (20) Hazelwood would do would be the right thing, so that's a  
 burden  
 (21) off you, you go about your -  
 (22) Q That's how you felt at that time?  
 (23) A Absolutely  
 (24) MR CHALOS Thank you Mr Stewart  
 (25) THE COURT You may cross examine

Vol 18 2985

- (1) MR O NEILL Thank you Judge  
 (2) CROSS EXAMINATION OF JACK STEWART  
 (3) BY MR O NEILL  
 (4) Q Sir you receive a pension from Exxon Corporation?  
 (5) A Yes, ten year pension  
 (6) Q You're loyal to both Exxon and to Captain Hazelwood aren't  
 (7) you?  
 (8) A I'm not loyal to Exxon I - I admire Captain Hazelwood  
 (9) I respect him  
 (10) Q And you testified here today that you had the opportunity  
 (11) to observe Captain Hazelwood as he came on board the vessel  
 (12) You said I had the opportunity to observe him?  
 (13) A Did I say that?  
 (14) Q Yes you did  
 (15) A Okay I think that question was asked if I had an  
 (16) opportunity to observe him  
 (17) Q Yeah  
 (18) A I didn't say I observed him I saw the captain when he  
 (19) came down the gangway  
 (20) Q You didn't observe him?  
 (21) A I saw him yes  
 (22) Q You had been awake for 39 hours?  
 (23) A 36 off and on  
 (24) Q You had started work you went on duty the morning of the  
 (25) 22nd at six that morning and you worked through and you got  
 no

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- (1) sack time in that 36 hours?  
 (2) A Yeah that - but this is not like standing a watch You  
 (3) know, I had breaks in between there  
 (4) Q I'm not -  
 (5) A Yeah, that's right  
 (6) Q I'm talking about your condition at the point in time?  
 (7) A Yeah  
 (8) Q The question was did you observe - I understand that the  
 (9) question was did you observe Captain Hazelwood You're not  
 (10) testifying that you observed Captain Hazelwood are you? You  
 (11) had been up for 36 hours?  
 (12) A No, I - you talk observe like I was sitting there watching  
 (13) him particularly It wasn't I happened to notice him coming  
 (14) down the gangway  
 (15) Q That's my point  
 (16) A Hey I did  
 (17) Q That's my point  
 (18) A Yeah I saw him  
 (19) Q And you were busy?  
 (20) A Yes  
 (21) Q And you were quite a ways away from him?  
 (22) A Yeah 20, 30, 40 feet  
 (23) Q You were doing something else you wave here he comes  
 you  
 (24) wave hi and then you go on with your business?  
 (25) A Yeah

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- (1) Q As I turn these pages over it means you re lucky I m not  
 (2) as bad as I seem sir  
 (3) And when you ran into Captain Hazelwood later on again  
 (4) that was just for a moment wasn't it?  
 (5) A Yes it wasn't any length of time no lengthy conversation  
 (6) Q So the two situations that you ve just been questioned  
 (7) about were two very brief moments one in which you were tired  
 (8) 30 to 40 feet away and then the one after the incident you  
 (9) passed him in the hallway?  
 (10) A No it was on deck  
 (11) Q You passed him on deck?  
 (12) A Yeah and talked for a brief moment  
 (13) Q Brief moment five seconds ten seconds?  
 (14) A Yeah something like that  
 (15) MR O NEILL Thank you  
 (16) MR CHALOS No redirect Your Honor  
 (17) THE COURT You may step down sir Thank you  
 (18) MS STEWART Your Honor defendants call Ray Jones to  
 (19) the stand By deposition  
 (20) THE CLERK Was that Ray Jones' Excuse me is that  
 (21) Ray Jones?  
 (22) MS STEWART Ray Jones by deposition  
 (23) THE CLERK Would you raise your right hand please  
 (24) (The Witness Is Sworn)  
 (25) THE CLERK For the record sir state your full name

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- (1) your address and spell your last name  
 (2) THE WITNESS Mike Stehle S T E H L E Anchorage  
 (3) Alaska  
 (4) THE CLERK Thank you  
 (5) DIRECT EXAMINATION OF RAY JONES (Read)  
 (6) BY MS STEWART  
 (7) Q There s an interjection at the beginning off the deposition  
 (8) that says this is the deposition of Raymond Jones  
 (9) A Ray  
 (10) Q Ray Jones I take it you have a license?  
 (11) A I do  
 (12) Q Could you describe your license?  
 (13) A It's a chief engineers steam and diesel unlimited  
 (14) horsepower upon oceans  
 (15) Q You graduated from Kings Point?  
 (16) A Yes  
 (17) Q And you had the dual degree engineer and third mate?  
 (18) A Yes I do  
 (19) Q What year did you graduate from Kings Point?  
 (20) A 1976  
 (21) Q You graduated from Kings Point in 1976 What was your  
 (22) first job upon graduation?  
 (23) A My first employment was with Exxon U S A that was the  
 (24) name of the company at that time Exxon Company U S A  
 (25) as a third assistant engineer

Vol 18 2989

- (1) Q You never sailed as a mate did you?  
 (2) A No I did not  
 (3) Q Did you work for anyone besides Exxon?  
 (4) A No I did not  
 (5) Q When did you get a chief's license?  
 (6) A Approximately two years after that  
 (7) Q What year would that be?  
 (8) A 1986 thereabouts  
 (9) Q What was the first vessel you worked on with Exxon U S A ?  
 (10) A The Exxon Chester  
 (11) Q Did you work on quite a few Exxon vessels?  
 (12) A Yes I did  
 (13) Q You were on the Exxon Valdez when she was christened  
 (14) right?  
 (15) A Yes I was  
 (16) Q Were you generally a regular crew member of the Exxon  
 (17) Valdez?  
 (18) A Yes I was  
 (19) Q Well from 1986 until 1989 did you ever work on any other  
 (20) vessels other than the Exxon Valdez?  
 (21) A No I didn't  
 (22) Q Generally what were the duties of a first engineer?  
 (23) A First engineer is responsible for the overall running of  
 (24) machinery plant He's responsible - he's the primary  
 (25) supervisor of all the other engine department personnel  
 and he

Vol 18 2990

- (1) reports directly to the chief engineer under his supervision  
 (2) Q What was your next assignment with Exxon after you left  
 (3) Exxon  
 (4) A I took the SPOSA the early retirement after that  
 (5) Q What s that?  
 (6) A It was a program they were offering money or incentive  
 (7) to retire or terminate employment  
 (8) Q How long had that program been in effect?  
 (9) A It was just being offered They were laying up some ships  
 (10) and they had a surplus of people  
 (11) Q I m not going to hold you to these specific times so you  
 (12) don't necessarily have to refer to that but can you just give  
 (13) us a chronology of the whole time you were in Valdez and when  
 (14) you sailed? And take your time and be as specific as you can  
 (15) A That morning we had had some turbocharger problems  
 (16) when we left San Francisco So my intention that day was to open up  
 (17) the oil sumps up on those and inspect them, which I  
 (18) proceeded to do And that took basically the entire day That  
 (19) afternoon I was in the engine room basically the whole time  
 (20) doing those inspections That afternoon I can't be specific  
 (21) about the time but I was notified that there was a telephone  
 (22) call for the chief engineer in the radio officer's room I  
 (23) went up there to talk to Paul I can't even remember his last  
 (24) name now the port engineer from San Francisco wanted to talk  
 (25) to the chief engineer about this turbocharger problem

Vol 18 2991

(1) I went up, I had a conversation with him I went back  
 (2) below I finished the turbocharger inspections and  
 proceeded  
 (3) to get the plant ready to leave that night  
 (4) Q This is the 23rd now?  
 (5) A This is the 23rd, Thursday, standby leaving the dock was  
 at  
 (6) 2054 That was uneventful Everything proceeded  
 normally  
 (7) Q Had you seen Joe Hazelwood any time that evening?  
 (8) A No I hadn't I talked to him on the telephone After we  
 (9) were clear, it was our usual procedure as a routine to wash  
 the  
 (10) efficiency boosters on the main engine and before I did that,  
 I  
 (11) always informed the bridge that I was going to do it I talked  
 (12) to him I called the bridge to let them know that I was going  
 (13) to proceed to do this Captain Hazelwood answered the  
 phone  
 (14) Informed him of my intentions he said fine, go ahead Then  
 we  
 (15) joked This was - I think Pete Rose had just gone through  
 his  
 (16) problems and I made a comment about that and we laughed  
 I  
 (17) hung the telephone up and I went below and proceeded to  
 wash  
 (18) the turbochargers  
 (19) After this was completed and I was headed up when I got  
 (20) back to the control room the chief engineer was there Mr  
 (21) Glowacki  
 (22) Q Before you get to that did Joe Hazelwood talk about what  
 (23) he had done ashore?  
 (24) A No he didn't  
 (25) Q Did he sound in any way impaired at all?

Vol 18 2992

(1) A No he didn't  
 (2) Q Going to page 49 Ms Haven is asked if there was any  
 (3) liquor on board the Exxon vessels she serves on She testifies  
 (4) that there was - that there was including the Exxon Valdez  
 (5) Do you agree with her that there was liquor on board the Exxon  
 (6) Valdez while you were aboard it?  
 (7) A I never saw it  
 (8) Q Is it your testimony that you've never seen liquor on the  
 (9) Exxon Valdez?  
 (10) A I've never seen liquor on the Exxon Valdez  
 (11) Q Ms Haven testified that she saw on page 50 line 11 she  
 (12) said can you tell me - can you tell me in whose quarters you  
 (13) saw that liquor and she answers the first assistant's second  
 (14) assistant's and the captain's Did you ever have liquor in  
 (15) your room on board the Exxon Valdez?  
 (16) A No I did not  
 (17) Q Do you know whether or not there was ever liquor on board  
 (18) the Exxon Valdez while you were there?  
 (19) A I never saw any liquor  
 (20) Q Did you ever see anyone drink aboard the Exxon Valdez  
 while  
 (21) it was at sea?  
 (22) A No I did not  
 (23) Q You mentioned you received a call from Captain Hazelwood  
 (24) prior to the grounding?  
 (25) A I called him

Vol 18 2993

(1) Q I see to tell him you were washing the turbochargers Do  
 (2) you recall what time that was?  
 (3) A It was just before the vessel began to load program up It  
 (4) was after the pilot was away It has to be that because we  
 (5) can't wash during maneuvering  
 (6) MS STEWART Thank you That concludes defendants  
 (7) direct examination  
 (8) MR O NEILL No questions  
 (9) MR LYNCH I have the honor to call Admiral Clyde  
 (10) Robbins by deposition video deposition Your Honor  
 (11) DIRECT EXAMINATION OF CLYDE ROBBINS  
 (12) BY VIDEO EXAMINER  
 (13) Q Would you state your full name FOR the record please?  
 (14) A I'm Clyde E Robbins  
 (15) Q And by whom are you currently employed?  
 (16) A I'm employed by - I'm active duty Coast Guard officer  
 (17) assigned to the Department of Transportation  
 (18) Q At the time of the Exxon Valdez spill you were commander  
 (19) of the Pacific area?  
 (20) A That's correct  
 (21) Q What were your duties in that post?  
 (22) A Well, they were for the overall supervision of Coast  
 Guard  
 (23) duties west of the Rockies throughout the Pacific, Asia and  
 (24) over to the center line of Africa any responsibilities the  
 (25) Coast Guard had shipbuilding supervision law  
 enforcement

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(1) responsibilities in the areas around, for instance, Guam and  
 (2) other fisheries areas that the United States has  
 responsibility  
 (3) for and of course, search and rescue aids to navigation, all  
 (4) of the Coast Guard duties  
 (5) Q In that position did you report directly to the  
 (6) commandant?  
 (7) A Yes  
 (8) Q And how many areas are there for the United States?  
 (9) A There's two areas one on the east coast, one on the west  
 (10) coast  
 (11) Q Admiral how did you first learn that the Exxon Valdez had  
 (12) run aground in Prince William Sound?  
 (13) A I got a phone call at the office that the - actually,  
 (14) the - my chief of staff briefed me upon going to work on  
 (15) Friday morning that we'd had a problem there and - and  
 gave me  
 (16) a rundown on what was going on  
 (17) Q I'd like to show you a memorandum dated August 30 1989  
 (18) from Admiral Robbins to Admirals Yost and Lusk which we'll  
 (19) mark as 46521 This is pre-designated Exhibit 164  
 (20) A Okay  
 (21) Q Did you send Exhibit 46521 to Admirals Yost and Lusk on or  
 (22) about August 30 1989?  
 (23) A I did  
 (24) Q And at about this time Senator Stevens from the State of  
 (25) Alaska was visiting Valdez?

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- (1) **A Yes**
- (2) **Q** And did he pose a question to you as to whether the third mate on the Exxon Valdez had broken any regulations in failing to report the movement of the ship on the night of March 23 March 24?
- (3) **A Yes he did - he did ask some questions about it in a general discussion**
- (4) **Q** Did he ask you whether any regulations had been broken when
- (5) the ship did not report that it had gone outside the inbound lane?
- (6) **A I'm - I don't remember you know exactly what the conversation was but I am - I'm sure that he was of - that it concerned him as to whether a regulation had been broken or**
- (7) not, and in my discussions with various people you can't be around an operation such as that and not pick up some sorts of
- (8) information, even though I wasn't deeply involved with it
- (9) **And**
- (10) my answer to that was to the best of my knowledge he did not
- (11) break a regulation
- (12) **Q** Did you have any discussion with Admiral Yost about paragraph three of your memo in which you indicate you got that
- (13) inquiry from the senator and what your response was?
- (14) **A I don't - as far as I recall it that's the only time I broached the issue was right there**
- (15) **Q** Did anyone subsequently tell you that you'd been incorrect in advising the senator that no regulations had been broken

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- (1) when the third mate failed to report that the ship had gone outside of the inbound lane?
- (2) **A No one ever did and I still don't know to this day whether that is correct or not**
- (3) **Q** I take it it's still your belief that no violation occurred?
- (4) **A To my knowledge it was no violation**
- (5) **Q** Can you take a look at Exhibit 46521 please
- (6) **A Yes**
- (7) **Q** In particular paragraph three can I just read that into the record? This is the memo from yourself to Admirals Yost and Lusk dated 30 August 1989 I want to read paragraph three
- (8) into the record
- (9) **I also told him that Cousins broke no specific VTS regulation when he failed to report passing through the upbound**
- (10) lane The senator assumed a regulation was broken Not so from what I can determine He may ask you about it
- (11) **Admiral, my only question is with regard to your statement there from what I can determine did you look at any regulations regarding the VTS procedures at all before you'd spoken to the senator?**
- (12) **A I'm sure I had read them over and - and talked to some of the people that were involved that had more expert knowledge of**
- (13) what the regulations were than I did and I was told that he had not broken a regulation by not reporting passing through

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- (1) the upbound lane
- (2) **Q** During part of the interrogation yesterday you provided us some comments on navigating in Prince William Sound and I want
- (3) to go back and touch briefly on that
- (4) I believe you gave us a figure yesterday of how many transits had been made of Prince William Sound in the TAPS tanker trade prior to this incident Do you recall how many
- (5) safe passages had occurred -
- (6) **A I believe it was -**
- (7) **Q - prior to this incident?**
- (8) **A - close to 9 000**
- (9) **Q** To your knowledge are there any particularly difficult navigational problems in navigating from the Gulf of Alaska into the port or out?
- (10) **A The one that we were very concerned with from the very beginning was the Narrows as one approaches the Valdez Harbor**
- (11) there's a little rocky island there that's as I recall very near the center of the Narrows and it makes maneuvering difficult There was - there was great concern about that
- (12) **Q** Once a master has taken his ship out of the Port of Valdez and through the Narrows are there any particular great difficulties or navigational problems in taking the ship from Valdez Arm past Hinchinbrook out to the Gulf of Alaska?
- (13) **A Navigating a vessel from after the Narrows out to the Gulf of Alaska has never been considered a great problem**
- (14) There is

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- (1) one obstacle that was considered early on in the development of
- (2) the traffic patterns out of Prince William Sound and that was
- (3) the - the growlers that come off the -
- (4) **Q** Columbia Glacier?
- (5) **A** The glacier right The name - the word slipped me for a moment And those small growlers find their way out into the
- (6) in and outbound lanes of the Prince William Sound
- (7) **Q** Well let me ask you this you were twice the district commander correct?
- (8) **A Yes**
- (9) **Q** And as part of those commands you commanded vessels correct?
- (10) **A Right**
- (11) **Q** And you had to be concerned with the safety of those vessels correct?
- (12) **A Right**
- (13) **Q** And I take it you informed yourself as to where there were easier or more difficult passages that your ships would regularly traverse?
- (14) **A Surely**
- (15) **Q** And did you have - when you were Pacific area commander you had ships in your command did you not?
- (16) **A Yes**
- (17) **Q** Did you come to an understanding as to whether there were any places known generally by mariners to be difficult to

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(1) transit in the Pacific?  
 (2) A I think if you're looking to my experience in comparison of  
 (3) channels and entries into areas I will - I can only compare  
 (4) it to my duties as captain of the port and responsible for the  
 (5) aids to navigation going in and out of Houston and  
 (6) Galveston,  
 (7) and the navigation problems of going in and out of there  
 (8) were  
 (9) overwhelming in comparison to going in and out of Prince  
 (10) William Sound  
 (11) MR O NEILL We have no cross examination  
 (12) THE COURT Okay  
 (13) MR LYNCH Your Honor may I offer DX3523 which is  
 (14) the paragraph of the August 30 memorandum which was  
 (15) referenced  
 (16) in Admiral Robbins deposition testimony  
 (17) (Exhibit DX3523 offered)  
 (18) MR O NEILL We have no objection  
 (19) THE COURT DX3523 is admitted  
 (20) (Exhibit DX3523 received)  
 (21) MR SANDERS May it please the Court our next  
 (22) witness is Mr Gordon Taylor I have to do a little staging  
 (23) here It is by video but there is a minor problem and I have  
 (24) to put up a chart  
 (25) May it please the Court there was a problem with the  
 (26) videotape in reproducing it or something and the first several  
 (27) lines are missing from the videotape and with your permission  
 (28) and I hope no objection from the plaintiffs I would like to

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(1) simply read the introductory questions and answer and then  
 (2) we'll start the tape at the first place where we have  
 (3) something  
 (4) MR O NEILL No objection  
 (5) THE COURT Fine go ahead  
 (6) MR SANDERS The first question is would you state  
 (7) your name for the record please The answer is Gordon Paul  
 (8) Taylor  
 (9) Question what did you do in terms of employment after -  
 (10) immediately after graduating from high school  
 (11) Answer Coast Guard  
 (12) Question and did you go to the Coast Guard as an enlisted  
 (13) man The answer was yes  
 (14) Question and then what did you do  
 (15) Answer then I worked as a civilian watch stander for the  
 (16) Department of Transportation in Valdez Alaska  
 (17) Question that's from '87 until when sir  
 (18) Answer to '89 approximately  
 (19) Question when in 1989 did you leave that job  
 (20) Answer oh about July  
 (21) Now I think we have tape from that point on Your Honor  
 (22) DIRECT EXAMINATION OF GORDON PAUL TAYLOR (Video)  
 (23) BY VIDEO EXAMINER  
 (24) Q Do you recall - what shift did you work on March 23 1989?  
 (25) A Four p m to midnight 1600 to 2400

(1) Q When to your recollection did you report to work at the  
 (2) Vessel Traffic Center the day of March 23rd 1989?  
 (3) A Approximately what time did I get there?  
 (4) Q Yes  
 (5) A 1530 1545, that's just what time you show up  
 (6) Q Who did - who did you relieve as watch stander?  
 (7) A I believe it was Frank Shepard  
 (8) Q Was there a vessel called Arco Juneau that was transiting  
 (9) outbound in the system during your watch on March 23 1989?  
 (10) A I believe there was Outbound at the start of my watch  
 (11) was.  
 (12) Arco Juneau  
 (13) Q Okay have you ever listened to any portion of the March  
 (14) 23 1989 tape recording that deals with communications any  
 (15) communications you may have had with the - with the Arco  
 (16) Juneau?  
 (17) A No, I have not  
 (18) Q Okay Let's continue talking about the Arco Juneau Do  
 (19) you recall receiving an ice report from the Arco Juneau on  
 (20) March 23 1989?  
 (21) A I believe I did  
 (22) Q What was the content of that ice report to the best of  
 (23) your recollection?  
 (24) A Let's see Best I can remember is it was - they said the  
 (25) ice was extending extending down from Point Freemantle  
 (26) across  
 (27) to Glacier Island across to Bligh Reef I believe that's what

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(1) they said And I believe they even had to deviate a little  
 (2) bit I don't know if they went - how far out they had  
 (3) deviated but they had to do some course changes and  
 (4) speeds to  
 (5) get down through the ice That's all I remember on that  
 (6) Q Do you recall how many different times you talked to the -  
 (7) to the Arco Juneau on its outbound voyage?  
 (8) A No I don't  
 (9) Q Did you follow the Arco Juneau on radar?  
 (10) A Yes I did  
 (11) Q How far did you follow the Arco Juneau on radar?  
 (12) A I don't recall As far down as I could but I can't tell  
 (13) you exactly where  
 (14) Q You said a moment ago that you recall that the Arco Juneau  
 (15) had to deviate to some extent although you said you couldn't  
 (16) recall the particulars Do you recall whether you were able to  
 (17) follow the Arco Juneau during all or part of its deviation?  
 (18) A I don't think I recall being able to plot them or follow  
 (19) them on any other than just the radio radio calls There's  
 (20) nothing that I - you know no visual or anything like that  
 (21) It was all radio done by the radio  
 (22) Q Are you saying that as you sit here today you didn't see  
 (23) any part of the course of the Arco Juneau that represented a  
 (24) deviation from the outbound lane on radar?  
 (25) A Not that I recall not that I recall  
 (26) Q Okay Do you recall anything further about what the Arco



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- (1) Juneau reported to you about its intentions in deviating from  
 (2) its assigned lane?  
 (3) **A No I don't**  
 (4) **Q Mr Taylor at sometime after the transit of the Arco**  
 (5) **Juneau the outbound transit of the Arco Juneau did you pass**  
 (6) **on to the Exxon Valdez the ice report that you had received**  
 (7) **from the Arco Juneau?**  
 (8) **A I believe I did**  
 (9) **Q What did you pass on to the - to the Exxon Valdez?**  
 (10) **A I recall I passed on to them that there was ice extended**  
 (11) **completely across the lanes and that was - and that I had**  
 (12) **gotten a report a lot earlier and that I would request a report**  
 (13) **from them when they got down to there**  
 (14) **Q You testified earlier in this deposition that the Arco**  
 (15) **Juneau told you that the ice was all the way across the lanes**  
 (16) **didn't you?**  
 (17) **A That's what I recalled yeah**  
 (18) **Q And if that's the ice report that you got that's the ice**  
 (19) **report that you should have conveyed to the Exxon Valdez isn't**  
 (20) **it?**  
 (21) **A If that's the ice report I got then that's the ice report**  
 (22) **I should have conveyed**  
 (23) **Q I asked you earlier whether you recalled how far you**  
 (24) **plotted the Arco Juneau on radar and whether you could pick**  
 (25) **up**  
 (26) **the deviation on radar Do you recall that?**

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- (1) **A Yes**  
 (2) **Q Do you recall that testimony?**  
 (3) **A I recall**  
 (4) **Q And I believe your testimony was that you did not observe**  
 (5) **the deviation on radar?**  
 (6) **A I don't recall observing the deviation on radar**  
 (7) **Q You're saying now that you don't recall observing it**  
 (8) **A Right**  
 (9) **Q Okay I thought you testified earlier that you recalled**  
 (10) **that you did not observe it?**  
 (11) **A Well I didn't observe it that I recall how's that sound**  
 (12) **Q Okay Turn over to page 499 in the same exhibit starting**  
 (13) **at line 2 down to line 12 question even under - you just**  
 (14) **can't remember whether you plotted it you can't remember**  
 (15) **whether you monitored them at all and this is referring to the**  
 (16) **Arco Juneau?**  
 (17) **A Yes**  
 (18) **Q Okay Answer I monitored it I can remember monitoring**  
 (19) **it yes however I lost this - from what I recall I lost it**  
 (20) **on radar somewhere at the ten to twelve mile range**  
 (21) **Question did you observe the vessel alter course into the**  
 (22) **northbound lane at that point**  
 (23) **Answer the Arco Juneau**  
 (24) **Question yes**  
 (25) **Answer yes I did**

- (1) Now does that change your testimony or refresh your  
 (2) recollection with regard to what you observed the Arco Juneau  
 (3) do and how far you followed it?  
 (4) **A No**  
 (5) **Q Again do you have any reason to doubt the accuracy of this**  
 (6) **transcript as to what you recalled on May 17th 1989 under oath**  
 (7) **to the NTSB?**  
 (8) **A No**  
 (9) **Q Again would you turn to page 522 again in the NTSB**  
 (10) **transcript Were you asked these questions and did you give**  
 (11) **these answers I'm going to read over to line 5 on the next**  
 (12) **page**  
 (13) **Question okay so did you observe the Arco Juneau**  
 (14) **leaving where you figured the traffic lanes were**  
 (15) **Yes I did I saw it make its turn when they said they**  
 (16) **were going to cut over towards Bligh Reef buoy I saw it make**  
 (17) **its turn towards Bligh Reef yeah I saw that**  
 (18) **Question did you see it long enough to see that it had**  
 (19) **actually crossed the northbound line and left the TSS**  
 (20) **entirely**  
 (21) **Answer I do not know if it left the TSS They did not**  
 (22) **pass it on to me**  
 (23) **Now did you give those answers to those questions?**  
 (24) **A I could have**  
 (25) **Q Okay You don't recall?**

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- (1) **A No**  
 (2) **Q Any reason to doubt you gave that testimony?**  
 (3) **A No**  
 (4) **Q What did you mean when you said I do not know if it left**  
 (5) **the TSS they did not pass it on to me?**  
 (6) **A That means if they leave the traffic separation scheme**  
 (7) **they're supposed to let you know prior to doing that and**  
 (8) **they**  
 (9) **didn't pass it on to me**  
 (10) **Q Now when you say I do not know if it left the TSS did you**  
 (11) **mean left the TSS entirely outside the -**  
 (12) **A Right**  
 (13) **Q - eastbound lane?**  
 (14) **A Yeah**  
 (15) **Q The northbound lane?**  
 (16) **A Well all of the lanes**  
 (17) **Q All of the lanes okay**  
 (18) **Now did there come a point in your watch when your relief**  
 (19) **Mr Blandford arrived?**  
 (20) **A Yes there did**  
 (21) **Q What time did he arrive?**  
 (22) **A Somewheres around 2330 2335**  
 (23) **Q I'm sorry what did you say?**  
 (24) **A 2330 or 2335**  
 (25) **Q Was Mr Blandford very predictable in his arrival time?**  
 (26) **A Yes**

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- (1) Q And what was the predictable time that he arrived?
- (2) A From what I recall about 15 minutes prior to the watch relief, which is a quarter of, so somewhere around 2330
- He
- (4) liked to get there a little bit in advance you know
- (5) Q Did he follow a routine when he came in?
- (6) A Well, yeah, I guess he followed a routine You ask what's going on
- (7) Q Now when Mr Blandford came in to relieve you what did you - what did you tell him?
- (8) A I don't recall my exact words
- (9) Q I'm sorry did you say you -
- (10) A I don't recall my exact words
- (11) Q - don't recall your exact words?
- (12) A Yeah
- (13) Q In words or substance what did you tell him?
- (14) A I told him what was happening as far as the vessels in the system If vessels, gear how the gear what gear was up, what gear was down Who was the OOD Basically that's about it, I would think
- (15) Q And you said - well let me take those in reverse order
- (16) Who was the OOD?
- (17) A I don't recall
- (18) Q Was it John Gonzales?
- (19) A I don't recall
- (20) Q Okay What gear - you said you told him what gear was up

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- (1) and what gear was down What - what did you tell him about the gear that was up and gear that was down? What specifically did you tell him?
- (2) A I don't actually know I remember Cape Hinchinbrook site
- (3) was down That's the VHF site
- (4) UNIDENTIFIED SPEAKER Is that radio
- (5) THE WITNESS Yes I believe that was - I think it was down Naked Island there was something wrong with Naked Island also I didn't - that's about it that I can recall
- (6) BY VIDEO EXAMINER
- (7) Q Then you said you told him what was going on with the vessels in the system?
- (8) A Right what vessel inbound what vessels outbound
- (9) Q What vessels did you have in the system at this time?
- (10) A Oh I don't recall exactly which ones they were I think I had four I think I had the Bartlett the Valdez California and another one behind that or ahead of it There was two of them outbound - or inbound outside of Cape Hinchinbrook
- (11) Q All right So including those two vessels that were outside Cape Hinchinbrook but were - let me strike that I
- (12) A I hadn't checked the system yet
- (13) Q Let me - let me establish this a little better Did you consider the two vessels that were outside Cape Hinchinbrook in the system at that point?
- (14) A They call in on a three our precall which is three hours

- (1) outside of Cape Hinchinbrook Then they are in the system and
- (2) then one hour and then at Cape Hinchinbrook
- (3) Q And were those vessels within that time frame after the three hour precall?
- (4) A I believe so yes
- (5) Q So they were in the system in the terminology that was used?
- (6) A Yes
- (7) Q And you had two vessels outbound the Exxon Valdez and the Bartlett?
- (8) A I believe so
- (9) Q Those are the two vessels that you meant?
- (10) A Yes
- (11) Q What did you tell Mr Blandford about those vessels?
- (12) A Just their locations, where they were at, what was going on I don't know what - recall what I told him about the Bartlett I told him Valdez was outbound going through the ice right now and would give me an updated ETA to Naked Island
- (13) as soon as they got through the ice and also give an updated ice report
- (14) Q Did you tell him anything else about the Exxon Valdez?
- (15) A Not that I recall
- (16) Q Did you tell - did you tell him what course the Exxon Valdez was on at that point?
- (17) A I don't recall

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- (1) Q Did you know what course the Exxon Valdez was on at that point?
- (2) A I believe the last course they gave me was 200 Now if I passed that on then I did and if I didn't I didn't I don't recall
- (3) Q Now when Mister - I had asked you a minute ago if you had related to Mr Blandford what the Exxon's course was do you recall that?
- (4) A Uh huh
- (5) Q And you say you didn't recall?
- (6) A Right
- (7) Q How long did you and Mr Blandford take to go through your relief procedures before you left that evening?
- (8) A 15 20 minutes
- (9) Q What time did you leave?
- (10) A I don't recall what time I left but I'm just by it usually takes us 15 20 minutes to do it
- (11) Q At the time Mr Blandford arrived at the station and the relief procedures began was the Exxon Valdez visible on radar?
- (12) A I don't recall I don't think it was though I think it had already - I'd already lost it on the screen by the time Skip came in
- (13) Q What happened?
- (14) A It just started getting intermittent readings every other

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- (1) sweep and the data data logger would not hold onto it And
- (2) then it just disappeared from the screen
- (3) Q Let me show you this document which has previously been
- (4) marked 24040 to the deposition of Lieutenant Commander
- (5) Falkenstein It s predesignated document 21 for this
- (6) deposition Go past the first page That s the copy of the
- (7) vessel data sheet is that right?
- (8) A Uh huh
- (9) Q And the second page is the vessel data sheet with an
- (10) authentication stamp at the bottom with Mr. DeLozier s name do
- (11) you see that?
- (12) A Uh huh Yes I do
- (13) Q The page after that?
- (14) A Oh the next page
- (15) Q Yeah See next two pages?
- (16) A Yes, I do
- (17) Q That begins at 2044 does it not that s the data logger
- (18) and goes to 2256?
- (19) A Yes
- (20) Q As a matter of routine at this time at the VTC was the
- (21) data logger in its entirety stapled or otherwise attached to
- (22) the vessel data sheet?
- (23) A Yes I believe so
- (24) Q Mr. Taylor what did you tell Mr. Blandford about the radar
- (25) status of the Exxon Valdez?

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- (1) A I can't recall what I told him
- (2) Q What did you do with the data logger?
- (3) A What'd I do with it? I just shut it off
- (4) Q And did you do - did you do anything else other than shut
- (5) the data logger off during this period of time between the -
- (6) when the - when the image became intermittent and when you
- (7) saw
- (8) it disappear from the screen?
- (9) A No I switched over to the 12 mile scale trying to pick it
- (10) up and there was nothing on the 12 mile scale So I
- (11) switched
- (12) back do the six mile and this was the time when it was
- (13) intermittent It was still intermittent at the time and I
- (14) could see it better on the six mile because I was getting an
- (15) intermittent - what do you call it there return no return on
- (16) the 12 mile scale So I - it was offset and so I just
- (17) watched it on the offset six miles and - let me see yeah
- (18) because it was no - I couldn't see it on the 12 well that's
- (19) about all I did switch it back and forth that I can recall
- (20) Q When you say switch it back and forth -
- (21) A From the six mile to the twelve mile
- (22) Q From the six to the twelve that s what you meant?
- (23) A Yes
- (24) Q When you say switch it back and forth from the six to the
- (25) twelve how many times did you try the twelve mile scale?
- (26) A Couple of times
- (27) Q Couple times? Why did you try it more than once?

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- (1) A I just did I remember switching switching it over it's
- (2) not there bring it back to the six and see a little bit
- (3) Bring it back to the 12 it's just a click of the wrist It's
- (4) no big deal It's not a major evolution
- (5) Q Did you do anything else during that period of time?
- (6) A I messed with the gain a little bit trying to tune up the
- (7) radar as much as possible Sometimes if you turn the gain
- (8) up a
- (9) little bit you ll get a little more power going down little
- (10) better return you might be able to see it you know if you
- (11) turn the gain up but didn t work
- (12) Q Is that a single knob the gain knob?
- (13) A Yes yes
- (14) Q Did you do anything else?
- (15) A As I recall I remember I cursed
- (16) Q Did you describe to Mr. Blandford your efforts to switch
- (17) out to the 12 mile scale?
- (18) A I can't remember if I did or not
- (19) Q Did - do you recall preparing a statement of the events of
- (20) your watch with regard to the Exxon Valdez on March 24 1989
- (21) the day of the grounding?
- (22) A Yes I do
- (23) Q Did you describe in that statement that the Exxon Valdez
- (24) had disappeared from radar before the end of your watch?
- (25) A I don t recall if I did or not
- (26) Q When you say - you told us before as you know that you

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- (1) cursed when you lost it?
- (2) A Uh huh
- (3) Q Did - explain to me a little bit more why you cursed when
- (4) you lost it?
- (5) A Because I thought - well it went off a little sooner I
- (6) lost it a little sooner than I usually do Now if that was
- (7) due to a snow storm moving through or whatever you know
- (8) I
- (9) lost it before I usually do
- (10) Q Now a snow storm or a similar kind of squall that could
- (11) cause interference that makes the vessel disappear doesn t it?
- (12) A Yes if it gets - if your vessel's in the snow storm or it
- (13) gets between you and the radar you can definitely lose the
- (14) whole nine yards just gone disappears
- (15) Q Were there snow storms or squalls in the area that evening?
- (16) A I didn't see any I ater I'd heard that - that the tanker
- (17) had reported it or something like that I don't know where I
- (18) got this from but there was a pretty severe snow squall
- (19) down
- (20) in the Potato Point area that I attributed this problem with
- (21) that moved - that moved out and it actually got clear that
- (22) night So -
- (23) Q Now if - if a squall is interfering with radar reception
- (24) that ll improve if the storm moves out -
- (25) A Yes
- (26) Q - isn t that right? I m going do hand you the O Donovan
- (27) report again and it s open to enclosure nine - I m sorry

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- (1) enclosure eight which is statement is dated March 24 1989  
 (2) and a - and amendment to that statement dated April 17 89  
 (3) Did you prepare both both the March 24 statement and the  
 (4) April 17 statement?  
 (5) A Yes I did  
 (6) Q Mr Taylor those are your signatures at the bottom?  
 (7) A Yes sir  
 (8) Q Before we get into the March 24 statement let me ask you  
 (9) about the April 17 statement What were the circumstances that  
 (10) led to your preparing the April 17 amendment?  
 (11) A I had my points mixed up, my Rocky Point and my Busby  
 (12) Island  
 (13) Q And you made a correction with regard to that?  
 (14) A Yes, yes  
 (15) Q Did you offer it on your own or did somebody else ask you  
 (16) to do this?  
 (17) A I believe somebody else asked me I they brought it to my  
 (18) attention and I went oops sorry So I made this amendment  
 (19) up  
 (20) Q Who was that somebody else?  
 (21) A I do not recall  
 (22) Q In the March 24 statement - strike that let me ask you  
 (23) this When you prepared this had you reviewed the vessel data  
 (24) sheet for the Exxon Valdez?  
 (25) A I don't believe I did

- (1) traffic lane when the pilot disembarked?  
 (2) A Uh huh yes  
 (3) Q Now there was a - there was an overlay that could be used  
 (4) at that time to be superimposed on the radar screen wasn't  
 (5) there?  
 (6) A Yes  
 (7) Q You were not using that that night though were you?  
 (8) A No, I was not  
 (9) Q Then the statement goes on at approximately 2330 the tank  
 (10) vessel Valdez informed me that they were going to course 200  
 (11) degrees at 12 knots to go into the traffic separation zone and  
 (12) northbound lanes to try to skirt the ice and they will give me  
 (13) a call with an ice report and updated ETA to Naked Island when  
 (14) they get through the ice The radar was on the six mile scale  
 (15) at this time and I watched the vessel until it was in the  
 (16) traffic separation zone abeam the southern tip of Busby  
 (17) Island  
 (18) Now let me take that last sentence a piece at a time and  
 (19) ask you about several things in it  
 (20) Is it your recollection today that as you got the call at  
 (21) approximately 2330 the radar was on the six mile scale?  
 (22) A I believe so  
 (23) Q Okay And is it your recollection today that you watched  
 (24) the vessel until it was in the traffic separation zone?  
 (25) A I don't recall that

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- (1) Q Had you reviewed either the tape recording of outbound  
 (2) transit of the Exxon Valdez or a transcript based on that tape  
 (3) recording?  
 (4) A No I did not  
 (5) Q You see at about two thirds of the - I'm sorry about five  
 (6) or six lines down starting on the fourth line let me read  
 (7) this it says at approximately 2200 the pilot on board the  
 (8) vessel asked via channel 13 for an ice report The vessel was  
 (9) still in the port at this time I told him there was ice  
 (10) reported from Point Fremantle and all the way across the Bligh  
 (11) Reef buoy and that the vessel through T V Area Juneau had to  
 (12) deviate in into the northbound lanes to the Bligh Reef buoy  
 (13) and I got a roger out  
 (14) Now in view of the transcript we've reviewed in this  
 (15) deposition would you agree that that statement is in error?  
 (16) A This statement I wrote down is an error?  
 (17) Q Little bit farther down it says - at approximately nine  
 (18) or ten lines down start reading there says I then received a  
 (19) call from tank vessel Exxon Valdez at Rocky Point informing me  
 (20) that the pilot was away and they gave me an ETA to Naked  
 (21) Island  
 (22) to be approximately 0100 The vessel appeared to be on the  
 (23) western edge of the southbound traffic lane when the pilot  
 (24) disembarked  
 (25) Is that your recollection today Mr Taylor that the image  
 (26) of the Exxon Valdez was at the western edge of the southbound

- (1) Q Any reason to doubt that you did that given that you said  
 (2) so in this statement?  
 (3) A No  
 (4) MR SANDERS Your Honor that's a good stopping  
 (5) point  
 (6) THE COURT All right We'll recess now for the day  
 (7) ladies and gentlemen Please remember my instructions about  
 (8) not reading or listening to anything about this case during our  
 (9) recess We'll reconvene at 8 00 tomorrow morning and as I  
 (10) indicated earlier there are some things I need to talk to  
 (11) counsel about in chambers  
 (12) We'll be in recess now subject to call  
 (13) THE CLERK This court is in recess until eight a m  
 (14) tomorrow  
 (15) (Jury out at 2 00 p m )  
 (16) (Proceedings recessed at 2 00 p m )

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(12) DX3523 received 2999

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- (1) STATE OF ALASKA )
- (2) Reporter's Certificate
- (3) DISTRICT OF ALASKA )
- (4) I Joy S Brauer a Registered Professional
- (5) 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) JOY S BRAUER RPR
- (15) Notary Public for Alaska
- (16) My Commission Expires 5 10 97

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TOTAL OCCURRENCES 14,148
NOISE WORDS 385
TOTAL WORDS IN FILE 45,160

SINGLE FILE CONCORDANCE

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

1 In re ) Case No. A89 0095 CIV (HRH)  
 (5) ) Anchorage Alaska  
 The EXXON VALDEZ ) Friday May 27 1994  
 (6) ) 8 00 a m

(10) TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE M RUSSEL HOLLAND JUDGE  
 VOLUME 19 Pages 3024 3272

(12) Realtime T onsc lption

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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 Friday morning This is the  
 (6) continuation of trial in case A89 0095 Civil in re the Exxon  
 (7) Valdez  
 (8) MS STEWART Your Honor defendants would like to  
 (9) continue with Gordon Taylor this time by read deposition  
 (10) THE COURT Are we completed with the video portion?  
 (11) MS STEWART We are completed with the video portion  
 (12) of Mr Taylor  
 (13) MR LYNCH Your Honor in an effort to speed it up  
 (14) we ve substituted the reading for the video the video has some  
 (15) delays in it  
 (16) THE COURT We thank you  
 (17) MR O NEILL We re real happy  
 (18) THE CLERK Raise your right hand please  
 (19) (The Reader is Sworn)  
 (20) THE CLERK For the record state your full name  
 (21) address and spell your last name please sir  
 (22) THE WITNESS I m Daniel Gage Taft Houston Texas  
 (23) T A F T  
 (24) DIRECT EXAMINATION OF GORDON TAYLOR (Read)  
 (25) BY MS STEWART

Vol 19 3025

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(1) Q All right Mr Taylor now let me - I m not finished with  
 (2) the March 24 statement but I want to ask you about the April  
 (3) 17th amendment because it deals with this Busby Island Rocky  
 (4) Point  
 (5) A moment ago you said that somebody you didn t recall who  
 (6) asked you to prepare the April 17 statement because you had  
 (7) your - I forget whether you said my islands mixed up or  
 (8) something like that?  
 (9) A My points  
 (10) Q Your points mixed up  
 (11) When you prepared the April 17th statement did you think  
 (12) that you had made a slip of the pen on this point of Busby  
 (13) Island versus Rocky Point a slip of the typewriter?  
 (14) A No I was just wrong It wasn t a slip of anything I was  
 (15) just wrong  
 (16) Q Do you recall being interviewed by Captain Douglas  
 (17) O Donovan?  
 (18) A I don t even - no no I don t  
 (19) Q Do you remember a Coast Guard captain who came up to -  
 (20) came up to Valdez to carry out an internal investigation for  
 (21) the commandant?  
 (22) A No, I do not I can recall about 25 or 30 Coast Guard  
 (23) people standing around at ungodly times and hours asking  
 (24) questions but I don t recall anything - any specific  
 (25) captain There was probably ten of them there

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- (1) Q Well is it your testimony as you sit here today that on  
 (2) this point of whether you watched the vessel to abeam the  
 (3) southern tip of Busby Island or watched it to abeam the  
 (4) southern tip of Rocky Point you don't know which is correct?  
 (5) A Right now, no I can't recall I'm just going by what I  
 (6) have here  
 (7) Q On March 24th '89 did you believe that the southern tip  
 (8) of Busby Island was correct?  
 (9) A Well, that's what I put down here I don't know What can  
 (10) I say  
 (11) Q On April 17 '89 do you believe that it was correct that  
 (12) you had watched the vessel only to the southern tip of Rocky  
 (13) Point?  
 (14) A You know, I don't know  
 (15) Q Did you make the April 17 change only because you were  
 (16) asked to?  
 (17) A I was shown on a chart that that's where it was I  
 (18) can't - trying to think Might have been an NTSB guy  
 (19) because  
 (20) I remember he had the chart there and the - the positions  
 (21) that  
 (22) the tank vessel had had, you know, on there that somebody  
 (23) had  
 (24) plotted is on this - the tank vessel plotting machine you  
 (25) know that runs all the time when they're underway And I  
 recall he showed me that and said that this is where they  
 were  
 at the time, so this can't be correct  
 So I said, well, you're absolutely right, I had my points

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- (1) mixed up So I made this amendment I think it was a guy  
 from  
 (2) the NTSB I can't be sure, but he had the plots of the tanker  
 (3) and the times and all that he showed me  
 (4) Q Where did this conversation about the plots with the NTSB  
 (5) man take place?  
 (6) A In the traffic center  
 (7) Q In the VTC?  
 (8) A Yes  
 (9) Q Okay Let me just - I think you omitted a word It may  
 (10) not be terribly important but reread the first sentence of  
 (11) that again  
 (12) A Due to a poor radar return, the vessel started blinking on  
 (13) and off the radar screen  
 (14) Q And then the next sentence of what we're reading says I  
 (15) was then relieved by Bruce Blandford at 2340 is that right?  
 (16) A Yes  
 (17) Q Now does this statement say that the vessel was lost to  
 (18) radar?  
 (19) A It doesn't say it was lost to radar It was lost, then it  
 (20) wasn't lost, then it was lost, then it wasn't lost  
 (21) Q And would you open this to page 36 Mr Taylor the  
 (22) context here is that you're describing to the NTSB questioners  
 (23) what occurred at the time at the time that we're talking  
 (24) about close to the watch relief by Mr Blandford  
 (25) Let me start at line 25 at the bottom The questioner says

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- (1) right  
 (2) Then you say starting on line one on page 36 So he said  
 (3) he might be going out of the traffic separation scheme into the  
 (4) northbound lanes you know to get through this ice I will  
 (5) give you a call when I get down through there  
 (6) Now at this time you know he is starting to come up and  
 (7) down on my radar screen and I'm starting to lose him and  
 (8) everything So he says he's going to 200 at 12 knots and pick  
 (9) his way through the ice there and he would call me with an  
 (10) updated ETA to Naked Island and an undated ice record And  
 at  
 (11) that time I said Roger out Well that was probably about  
 (12) 2330 somewheres in that vicinity close quote  
 (13) And then the tape gets changed and you say quote so at  
 (14) this time Skip is in there to relieve me and he is putting his  
 (15) stuff away and is getting ready for him to relieve me and takes  
 (16) me aboard to see where everything is at moving the little  
 (17) tanker stickers so it does help me have that stuff in order and  
 (18) the big work in order  
 (19) I'll repeat the question You didn't say anything to the  
 (20) NTSB interviewer at this point about the Exxon Valdez  
 (21) disappearing from radar did you?  
 (22) A Doesn't seem to be, no  
 (23) Q Do you recall speaking by telephone with Matt Kinney within  
 (24) a few days after the Exxon Valdez grounding?  
 (25) A No, I do not

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- (1) Q At the time of the Exxon Valdez grounding was Mr Kinney  
 (2) living in Valdez?  
 (3) A I believe so  
 (4) Q I'm going to read you - well let me ask you this Do you  
 (5) recall that you said you don't recall speaking to Mr Kinney by  
 (6) telephone Do you recall ever telling Mr Kinney that at the  
 (7) time you left the MSO Valdez the vessel traffic center on the  
 (8) night of the grounding the Exxon Valdez was still held on  
 (9) radar?  
 (10) A I don't recall no  
 (11) Q You don't recall?  
 (12) A No  
 (13) Q Well question that was put to you earlier quote so as  
 (14) you sit here today is it correct that you don't recall whether  
 (15) Gordon Taylor told you as to whether or not the image of the  
 (16) Exxon Valdez which as he last saw it was a clear image or  
 (17) whether it was unclear or intermittent image close quote  
 (18) You answered quote he told me he had the tanker on radar  
 (19) when he was relieved close quote  
 (20) Now Mr Taylor did you have that conversation with  
 (21) Mr Kinney?  
 (22) A I don't recall  
 (23) Q Mr Taylor isn't it true that the first time you ever told  
 (24) any authority investigating the NTSB accident that the Exxon  
 (25) Valdez went off radar was at the NTSB hearing in Anchorage on

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- (1) May 17th 1989 nearly two months after the grounding?  
 (2) **A I don t recall**  
 (3) **Q Mr Taylor** the last question I asked you let me restate  
 (4) it Was it your March 28 interview by the NTSB that you  
 (5) said - didn t you say at that time that you had lost the Exxon  
 (6) Valdez from radar did you?  
 (7) **A I don t recall**  
 (8) **Q All right** When you were interviewed by the state  
 (9) troopers Burke and Grimes on April 10 you didn t tell them  
 (10) the Exxon Valdez was lost from radar did you?  
 (11) **A I don t recall**  
 (12) **Q When you made the amendment to your March 24th**  
 statement on  
 (13) April 17 you didn t add that the vessel was lost from radar  
 (14) did you?  
 (15) **A I don t believe I did**  
 (16) **Q Isn t it a fact sir** that the first time that you ever  
 (17) told any authority investigating the Exxon Valdez grounding  
 (18) that you tried the 12 mile scale was on May 17th 1989 at the  
 (19) NTSB hearings in Anchorage?  
 (20) **A I don t recall**  
 (21) **Q About how big was the target of Bligh Reef buoy?**  
 (22) **A Well, you want me to estimate the target, estimate the**  
 (23) **size?**  
 (24) **Q Yeah**  
 (25) **A I don t know it might be 12 feet across maybe And**  
 maybe

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- (1) **10 feet tall, 12 feet tall**  
 (2) **Q Okay**  
 (3) **A Somewhere in that vicinity**  
 (4) **Q And to your knowledge** about how big a target would the  
 (5) stern end of a vessel such as the Exxon Valdez be?  
 (6) **A Could be maybe 75 feet wide Loaded? Talking loaded**  
 now?  
 (7) **Q Sure**  
 (8) **A Maybe 75 feet wide right at the stern and maybe 75 feet**  
 (9) **tall**  
 (10) **Q Okay** So it s fair to say just as a rough approximation  
 (11) four five times as big as the image of the - as the target  
 (12) presented by the Bligh Reef buoy? I m talking the target the  
 (13) size of the actual target Bligh Reef buoy versus the stern of  
 (14) a vessel the size of Exxon Valdez?  
 (15) **A Lots bigger**  
 (16) **Q Given the discussion we have had about the relative sizes**  
 (17) of the Bligh Reef buoy versus the size of the - of a tanker  
 (18) the size of Exxon Valdez 75 by 75 ballpark versus I think  
 (19) you said 10 or 15 - 10 or 15 -  
 (20) **A Sure**  
 (21) **Q - if you can see the image of the Bligh Reef buoy on**  
 (22) **radar and you ve got a tanker stern on same distance or even a**  
 (23) **little closer than where the Bligh Reef buoy is would you**  
 (24) **expect that you would be able to see the image of the stern of**  
 (25) **the tanker?**

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- (1) **A I would expect to see it Yes I would**  
 (2) **MS STEWART** Thank you That concludes our direct  
 (3) **MS WAGNER** Your Honor we have about five minutes of  
 (4) video  
 (5) **CROSS EXAMINATION OF GORDON TAYLOR (Video)**  
 (6) **BY VIDEO EXAMINER**  
 (7) **Q Did you ever have any discussion as to whether or not it**  
 (8) **was appropriate for watch standers to give directions to a**  
 (9) **vessel that was standing into danger?**  
 (10) **A You guys have all asked me how come we didn t call this**  
 (11) **vessel and how come we didn t tell the vessel they re**  
 standing  
 (12) into danger You know, if I knew they were standing into  
 (13) danger, I probably would have told them But you don t - as  
 (14) soon as you tell a vessel to do something you take  
 command of  
 (15) that vessel That s not what we re there for  
 (16) **Q I m going to shift gears one last time I think here**  
 (17) **Mr Taylor** It s a subject that you touched on earlier today  
 (18) but to your understanding who has control over the vessels as  
 (19) they participate in the system?  
 (20) **A The master has control over his vessel**  
 (21) **Q Do you have an understanding as to whether the VTC can**  
 (22) **issue specific letter commands to a vessel participating in the**  
 (23) **system?**  
 (24) **A Did you say, specific rudder commands?**  
 (25) **Q Yes sir**

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- (1) **A I don t think they can As far as I m concerned or know**  
 (2) **Q Are you aware of any occasions in which the VTC ordered a**  
 (3) **vessel traveling in the arm to take a specific action for any**  
 (4) **reason other than the presence of conflicting traffic?**  
 (5) **UNIDENTIFIED SPEAKER** Are you talking about rudder  
 (6) commands or what do you mean by specific action?  
 (7) **BY VIDEO EXAMINER**  
 (8) **Q What I mean is** where the VTC orders a vessel not  
 (9) necessarily just rudder commands but orders a vessel to take  
 (10) some action specified by the VTC for reasons other than the  
 (11) presence of conflicting traffic?  
 (12) **A It could possibly happen**  
 (13) **Q Are you aware of any occasions where that occurred?**  
 (14) **A No, usually it was conflicting traffic**  
 (15) **Q What I d like to do now Mr Taylor** is refer you back to  
 (16) the O Donovan report enclosure 16 which is the VTS operating  
 (17) manual And I ve opened it up to section 4 7 4  
 (18) **What I d like to do Mr Taylor** is read two sentences in  
 (19) that - that section in the middle of the paragraph 4 7 4  
 (20) right after the close of the parentheses states a vessel  
 (21) without radar in conditions of severely limited visibility  
 (22) would almost always be better off at anchor than underway  
 with  
 (23) or without VTS assistance Skip the next - skip the next  
 (24) sentence and read the following one  
 (25) The VTC does not have the advantage of immediate on scene

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- (1) information which the master or pilot has and will not attempt  
 (2) to con the vessel  
 (3) Are you familiar with this provision of the operating  
 (4) manual?  
 (5) **A Fairly familiar yes**  
 (6) Q Do you agree with those sentences that I ve just read that  
 (7) that s the role of the VTS? Well let me - let me focus on  
 (8) the last sentence I read  
 (9) Do you - what is your understanding of the phrase at that  
 (10) time the VTC does not have the advantage of immediate  
 on scene  
 (11) information?  
 (12) **A That s information that is on the scene**  
 (13) Q Okay Do you have an understanding of the portion of the  
 (14) statement that says that the VTC will not attempt to con the  
 (15) vessel?  
 (16) **A Yes I understand what con means**  
 (17) Q And what s your understanding of that?  
 (18) **A Its to navigate the vessel**  
 (19) Q Do you agree with the statement that the VTC does not have  
 (20) the advantage of immediate on scene information?  
 (21) **A Yes I do**  
 (22) Q And do you believe that that is pertinent information that  
 (23) should be considered in the operation of the vessel?  
 (24) **A Yes, I do**  
 (25) Q And do you agree with the statement that the VTC will not

- (1) the grounding?  
 (2) **A Something to that effect yes**  
 (3) Q Now there s a reference to the inbound lane To your  
 (4) understanding would the inbound lane still be within the TSS?  
 (5) **A Yes**  
 (6) Q Do you recall receiving any transmission from the Exxon  
 (7) Valdez when they in fact did cross over the separation zone?  
 (8) **A No I do not**  
 (9) Q To your understanding would that have been a requirement  
 (10) for a vessel operating within the system to in fact contact  
 (11) the VTC and let them know when they were leaving one lane of  
 (12) travel and exiting out of the traffic separation scheme?  
 (13) **A What I recall that s one of the requirements**  
 (14) UNIDENTIFIED SPEAKER I would ask you under Rule 106  
 (15) to - either for you to read it or ask the witness to read the  
 (16) 2330 54 communication from the Exxon Valdez  
 (17) BY VIDEO EXAMINER  
 (18) Q At the present time uh I m going to alter my course to  
 (19) 200 and reduce speed to about 12 knots to uh wend my way  
 (20) through the ice and Naked Island ETA might be a little out of  
 (21) whack but uh once we re clear of the ice out of Columbia Bay  
 (22) we ll give you another shout over  
 (23) Mr Klinckhardt asked you some questions putting in front  
 (24) of you the exhibit that was predesignated document 28 that  
 (25) short transcript of the communications between the Exxon  
 Valdez

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- (1) attempt to con the vessel?  
 (2) **A Yes, I do**  
 (3) Q Mr Taylor what I wanted to ask you about is regards to  
 (4) the Exxon Valdez transmissions to the VTC regarding their  
 (5) intentions on the night of the grounding and you have  
 (6) previously this document has previously been identified as a  
 (7) transcript of the vessel radio communications between the  
 Exxon  
 (8) Valdez and the VTC What I d like to do is refer your  
 (9) attention on the first page of the document to where it s  
 (10) marked from vessel time 2325 24?  
 (11) **A I see that**  
 (12) Q Okay The vessel the transcript at least states the  
 (13) vessel communication to be okay I was just about to tell you  
 (14) that uh judging by our radar I will probably divert from  
 (15) uh the TSS and end up in the uh inbound lane if there s no  
 (16) conflicting traffic over  
 (17) And then if you drop down to 2325 53 the vessel says  
 (18) that d be fine yeah we may end up in the uh inbound lane  
 (19) outbound transit We ll notify when we leave the uh and I  
 (20) cross over the separation zone over  
 (21) UNIDENTIFIED SPEAKER (Indiscernible)  
 (22) BY VIDEO EXAMINER  
 (23) Q Okay It s not on my copy Will notify you when we leave  
 (24) the TSS and cross over the separation zone over  
 (25) Do you recall receiving that transmission on the night of

- (1) and - and the VTC Could you put that back back in front of  
 (2) the witness  
 (3) My question is going to be about the passage that I read at  
 (4) the end of that line of questioning That s the 2330 54  
 (5) communication from the vessel the one that begins at the  
 (6) present time I m going to alter my course to 200  
 (7) **A Yes**  
 (8) Q You see that? Now given the time of that transmission  
 (9) 2330 54 you held the vessel on radar at that point did you  
 (10) not sir?  
 (11) **A I believe so**  
 (12) Q Where was the vessel within the TSS at that time?  
 (13) **A It was on, I d say, the eastern side of the outbound lane**  
 (14) Q So it was - it was through the separation zone at that  
 (15) point?  
 (16) **A No It was not**  
 (17) Q Didn t you say east side of the outbound lane?  
 (18) **A East side of the outbound lane which would be on the**  
 (19) **Inboard side closest to the separation zone**  
 (20) Q Just about to cross the boundary of the separation zone?  
 (21) **A Yes from what I recall, yes**  
 (22) MS WAGNER That concludes it Your Honor  
 (23) MR LYNCH Your Honor we ll call Coast Guard Watch  
 (24) Stander Bruce Blandford regrettably by deposition as well  
 (25) Your Honor defendants would like to offer Exhibit 3512

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- (1) which is the vessel traffic center manual I understand there  
 (2) is no objection  
 (3) (Exhibit 3512 offered)  
 (4) MR O NEILL No objection  
 (5) THE COURT Defendants Exhibit 3512 is admitted  
 (6) (Exhibit 3512 received)  
 (7) MR LYNCH I m going to display a couple of portions  
 (8) of that manual which will be discussed but not quoted in the  
 (9) testimony if I may This is just the front page indicating  
 (10) that the manual provides instructions for operation of the  
 (11) vessel traffic center Provisions that will be relevant to the  
 (12) testimony and inquiry of Mr Blandford are section 2 3 2 which  
 (13) specifies that there should be positive identification of all  
 (14) radar targets when the watch is replaced or relieved  
 (15) Provision 3 12 17 which was discussed in the Taylor testimony  
 (16) and will also be somewhat discussed in the Blandford testimony  
 (17) relating to what the watch stander should do in a case where a  
 (18) vessel is observed on radar to be standing into danger or  
 (19) heading into a dangerous situation Provision 3 - 4 2 6  
 (20) which relates to plotting the location of the vessel on paper  
 (21) as you heard in the prior testimony that s done by an  
 (22) automatic machine which was shown yesterday by Mr Sanders  
 (23) And provision 4 9 4 c which has to do with advising the  
 (24) officer of the day in any case where a vessel needs to deviate  
 (25) out of the traffic lanes because of the presence of ice and

4 02

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- (1) permission to do that is given  
 (2) MR LYNCH These are all excerpts from exhibit  
 (3) Defendants 3512  
 (4) THE CLERK Sir would you stand and raise your right  
 (5) hand  
 (6) (The Reader Is Sworn)  
 (7) THE CLERK For the record sir state your full name  
 (8) address and spell your last name  
 (9) THE WITNESS My name is Wolfgang Johan Konkell My  
 (10) address is 40 Gatehouse Road Holland path  
 (11) THE CLERK Spell your last name  
 (12) THE WITNESS The last name is spelled K O N K E L  
 (13) MR LYNCH One question before we go to deposition  
 (14) Mr Konkell you re not related to Jim Kunkel who testified here  
 (15) earlier?  
 (16) THE WITNESS No I m not  
 (17) DIRECT EXAMINATION OF BRUCE BLANDFORD (Read)  
 (18) BY MR LYNCH  
 (19) Q Okay All right Just for the record Mr Blandford your  
 (20) full name is?  
 (21) A Bruce Leonard Blandford  
 (22) Q Have you finished?  
 (23) A Yes  
 (24) Q And where do you live now?  
 (25) A Valdez

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- (1) Q And where are you currently employed?  
 (2) A At the Coast Guard, at the traffic center  
 (3) Q And what is your position?  
 (4) A Vessel traffic controller  
 (5) Q When did you begin your current employment?  
 (6) A August, August 13 I think  
 (7) MR LYNCH And Mr Berns the lawyer from the Coast  
 (8) Guard intervened  
 (9) What year?  
 (10) THE WITNESS 1986  
 (11) BY MR LYNCH  
 (12) Q On March 23 1989 what was your assigned shift?  
 (13) A That would have been the midnight to eight  
 (14) Q Okay What time did you arrive at MSO Valdez that night?  
 (15) MSO stands for marine safety office  
 (16) A As best I can recall, it was about 2335  
 (17) Q Now when you - when you arrived at the MSO Valdez who  
 (18) did you see?  
 (19) A The off-going watch stander whom I was relieving,  
 (20) Mr Taylor  
 (21) Q All right And what did Mr Taylor tell you?  
 (22) A Okay I have not - I have not reviewed any of my previous  
 (23) testimony Okay? I'm just thinking of what I remember that  
 -  
 (24) without reviewing anything that I ve said previously As  
 best  
 (25) I can recall he told me that there was - the Exxon Valdez  
 was

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- (1) outbound There was ice in the traffic lanes He told me  
 that  
 (2) the Exxon Valdez had dropped their pilot and that they were  
 (3) altering course to 200 to avoid ice They had given a new -  
 ■  
 (4) new ETA at Naked Island of 0100, but they said that they  
 would  
 (5) call when they were free of the ice, when they had - when  
 they  
 (6) had successfully weaved their way through the ice they  
 would  
 (7) call with an updated ETA for Naked Island He also told me  
 (8) that the ice was reported across both traffic lanes or there  
 (9) was - there was ice I don t recall exactly what he said, as  
 (10) far as the concentration or the size of the ice, but he told me  
 (11) that a couple of hours prior to that or a few hours prior to  
 (12) that that the Arco Juneau had gone out successfully without  
 ■  
 (13) problem They had maneuvered over into the inbound lane  
 in the  
 (14) vicinity over by the buoy and had Bligh Reef buoy, and had  
 not  
 (15) experienced any problems He'd sailed right on through  
 (16) Q I m sorry what else did he tell you?  
 (17) A This is out of order He probably told me this first, that  
 (18) the Exxon Valdez was gone from the scope or had gone from  
 (19) radar  
 (20) Q So are you saying that when you first came in when you  
 (21) first went by the status board -  
 (22) A Uh huh  
 (23) Q - or the board as you call it you probably looked at the  
 (24) status board is that - I m not sure I understand what you re  
 (25) saying

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- 1 **A Probably**  
 (2) **Q Okay** When was the first time you looked at the PPI radar screen?  
 (3) **A Probably right after I got there**  
 (4) **Q Do you remember looking at the radar screen?**  
 (5) **A Yes that I remember**  
 (6) **Q Now** you said that Mr Taylor told you that the Exxon Valdez was gone from the scope I think that was the way you put it?  
 (7) **A Okay** He said either gone from the scope or gone from the radar I can't - it was one of the two  
 (8) **Q Now** when he said that to you had you looked at the radar by that time?  
 (9) **A Yes**  
 (10) **Q And what** - and what scale was the - was the PPI scope set on at that time?  
 (11) **A Six mile**  
 (12) **Q Did Mr Taylor** leave immediately after that?  
 (13) **A I think he left somewhere in the neighborhood of 2340 to 2345**  
 (14) **Q All right** After Mr Taylor left what did you then do?  
 (15) **A After I** - I probably spent about five minutes familiarizing myself with what was going on around me the different - looking over the different data sheets and after  
 (16) **I** - after a short period of time when I felt as though I

- (17) **and making the mid watch log entry which included checking the**  
 (18) **bearing and range on middle rocks to make sure that the radars**  
 (19) **were calibrated** This usually took about oh anywhere - well it really depends on how involved the tape changing process could be Those three jobs could take up to 20 minutes  
 (20) **Q Now** was it your - your practice to accomplish those tasks at the same time during your watch as a matter of routine?  
 (21) **A Uh-huh**  
 (22) **Q And when did you usually do that?**  
 (23) **A Right after midnight, started on the tapes**  
 (24) **Q Did the tape** the new 24 hour tape it's a communications tape I guess right?  
 (25) **A Uh-huh**  
 (26) **Q You said** sometimes it started automatically and sometimes it didn't?  
 (27) **A Uh-huh**  
 (28) **Q Why was that?**  
 (29) **A I think it's the way the thing is hooked up** One of them, regardless of how it's set you get an alarm at midnight and you have to physically go over there and turn it off I don't remember which reels was going, but which reel was on standby - and which reel was on standby, but it's always been  
 (30) **a good idea to be there to deal with it at midnight**  
 (31) **Q In case it doesn't start automatically?**

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- (1) **had** - was well aware of everything that was going - was happening I went out to get a cup of coffee At that time we had no - there was no kind of coffee There was no coffee facilities or anything like that We had to go downstairs to get a cup of coffee I went down to get a cup of coffee and I stopped at the weather office on the way back to see what the weather was forecast was because we'd had some periods of typically crummy weather and I wanted to apprise myself of what was going on in that regard and I probably got back into the traffic center maybe five minutes to midnight I can't say for sure -  
 (2) **Q How long** -  
 (3) **A** - on the timing  
 (4) **Q All right**  
 (5) **A I do know that I was there at midnight when the tapes** - when the - when the alarm on the tape machine goes off  
 (6) **Q Okay**  
 (7) **A Tells you the reels** - you got to stop the reel, wind it and start the other one  
 (8) **Q All right** Now you said you got back to the VTC sometime before midnight?  
 (9) **A Right**  
 (10) **Q And what did you do then?**  
 (11) **A I started in on my mid watch chores, which at that time were** - or involved changing the tape, filing the day's traffic

- (12) **A Right**  
 (13) **Q On this night** the night of the Exxon Valdez grounding did the tape in fact start automatically?  
 (14) **A I believe it did**  
 (15) **Q Now the other** - in addition to the standard entry including the bearing range range of middle rock -  
 (16) **A Uh huh**  
 (17) **Q** - and seeing that tape starts automatically doing something if it doesn't what else - what else did you attend to in these minutes after midnight? Was there anything else?  
 (18) **A Filing the traffic**  
 (19) **Q Filing the** -  
 (20) **A The day's traffic**  
 (21) **Q All right** That's March 23 traffic?  
 (22) **A Uh huh**  
 (23) **Q And what does that entail?** You have to gather forms?  
 (24) **A We gather the data sheets that have been completed during**  
 (25) **the day and tabulate them as far as the different vessel categories, and then we have another form that we fill out to keep tallies on all the different vessel categories** It gets logged in there, they get stapled together and then filed in a file  
 (26) **Q How long does that take?**  
 (27) **A It all depends on how many** - how many day sheets there are you know It might take three four minutes



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- (1) Q Now what was your reason for doing that at the beginning  
 (2) of the shift as opposed to some later time?  
 (3) A Well, again, they go on this completed board and if you  
 (4) start - if you keep going, adding - we'd be adding more  
 (5) vessels to it for the current day, like March 24th, that would,  
 (6) you know, they may get mixed up in there and so you have  
 to do  
 (7) that right away, too. If you've got - particularly if you've  
 (8) got somebody current in the system  
 (9) Q All right. Have we gone through each of the tasks that you  
 (10) performed after you returned to the VTC?  
 (11) A I believe so.  
 (12) Q Okay. How long did all that take?  
 (13) A It probably took me 15 minutes.  
 (14) Q All right. So approximately when then would you have  
 (15) finished those tasks?  
 (16) A Probably at 0015, anywhere from - I'm going to say a  
 (17) minimum of 10 minutes a maximum of 20.  
 (18) Q Okay. What did you do from that point whether it was 0015  
 (19) or plus or minus a few minutes from your estimate what did you  
 (20) do then when you came back - I'm sorry when you finished  
 with  
 (21) those tasks?  
 (22) A I don't - I don't recall exactly what I may have looked at  
 (23) or occupied myself with. All I can remember is that about 20  
 (24) minutes after is that I was beginning to wonder why I hadn't  
 (25) heard from the Exxon Valdez in light of what Mr Taylor told  
 me

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- (1) that he would be calling me with a new ETA for Naked  
 Island, I  
 (2) was expecting that call, and shortly after I finished dealing  
 (3) with the - those duties, I was beginning to wonder when I  
 (4) would hear from the tanker with their new ETA  
 (5) Q Okay. I think I asked you what you then did after you  
 (6) finished the routine tasks and you said well I began to  
 (7) wonder when I was going to hear from the Exxon Valdez?  
 (8) A Uh huh  
 (9) Q Did you take any action on that wondering?  
 (10) A No, it was - no, it was just moments later that he called  
 (11) Q When did the Exxon Valdez call you?  
 (12) A I don't know 0028 or something like that  
 (13) Q After Mr Taylor left and up to the time that you got a  
 (14) call from the Exxon Valdez you said earlier that the radar was  
 (15) on the six mile scale when Mr Taylor left?  
 (16) A Uh huh  
 (17) Q What changes did you make to the scale?  
 (18) A At midnight, I had to put the radar with the data logger on  
 (19) it on the three mile scale in order to calibrate it  
 (20) Q Which radar has the data log on it?  
 (21) A I'm having a hard time remembering that  
 (22) Q Whichever radar that was master or slave you shifted it  
 (23) from the six mile to the three mile is that what you're  
 (24) saying?  
 (25) A Uh huh

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- (1) Q And you did that as part of your -  
 (2) A Uh-huh  
 (3) Q - routine range and bearing on middle rock?  
 (4) A Uh huh  
 (5) Q Did you make any other changes to the radar?  
 (6) A Not that I recall  
 (7) Q Okay. All right. Tell me about the call you got from the  
 (8) Exxon Valdez  
 (9) A Okay. He called and he said, oh, jeez. He said something  
 (10) to the effect he's fetched up aground north of Goose Island  
 (11) which kind of blew me away because Goose Island is ten  
 plus  
 (12) miles from there and it's not normally used as a reference  
 (13) Okay? If you were in this area, you wouldn't normally use  
 (14) Goose Island as a reference point. Okay?  
 (15) Q What else did he say?  
 (16) A If he were coming from Anchorage, maybe you would use  
 it as  
 (17) a reference, but - and there was some - that he was  
 aground,  
 (18) reference to Goose Island, and that there was oil in the  
 water  
 (19) Q Okay  
 (20) A There was some oil in the water  
 (21) Q All right. What did you do in response to that call?  
 (22) A Okay. I tried to find him on the radar and then I -  
 (23) because of what he said about Goose Island, I was trying to  
 (24) clarify it with what I saw on the scope, with what he said,  
 and  
 (25) it didn't jibe

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- (1) Q All right  
 (2) A He was north of Bligh Reef, he wasn't north of Goose  
 (3) Island  
 (4) Q Now when you say I tried to find him on the radar what  
 (5) did you do?  
 (6) A Okay. I turned to the center console again on the center  
 (7) indicator  
 (8) Q Uh huh  
 (9) A And I put it on the 12 mile scale. Now whether it was the  
 (10) slave or the master I don't remember. And what I had to do  
 to  
 (11) get a picture on it, I don't remember  
 (12) Q Is that the first adjustment you made you changed the  
 (13) scale to 12 mile?  
 (14) A Right  
 (15) Q And what - what you did was you changed the scale on the  
 (16) center radar to 12 miles?  
 (17) A That's correct  
 (18) Q And then what happened? What did you see?  
 (19) I guess that's still question. Excuse me  
 (20) Whether the center radar was the master and that - whether  
 (21) the center radar was the master that was the only change you  
 (22) needed to make or whether - or whether the center was the  
 (23) slave and therefore you had to change both the master and the  
 (24) center slave once you made the range change to 12 by either  
 of  
 (25) those two techniques what did you then see?

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- (1) **A Okay I saw a - a foreign blip, if you will, which was**  
 (2) **over in the area of - north of Bligh - north of the reef**  
 (3) **which is not normally there**  
 (4) **Q Mr Blandford what else did you do with the radar if**  
 (5) **anything after you acquired the target by shifting up to the**  
 (6) **12 mile scale as you told us?**  
 (7) **A Well, I used it to determine just by sighting relative -**  
 (8) **the relative position that the ship was to the buoy Now**  
 (9) **whether it was to the actual target of the buoy or the circle**  
 (10) **it's unclear, but I do remember that I estimated that it was**  
 (11) **probably a mile, a mile or so north of the area of the buoy**  
 (12) **And then I asked Captain Hazelwood if he was in that**  
 (13) **position**  
 (14) **about a mile or so north of the buoy, and he said, yes So**  
 (15) **that's how I positively identified the Exxon Valdez**  
 (16) **Q Did you at any time from the time you came top the VC -**  
 (17) **VTC that night until after you had gotten a report from the**  
 (18) **Valdez and acquired it on radar**  
 (19) **A Uh-huh**  
 (20) **Q Did you at any time contact the officer of the day?**  
 (21) **A No**  
 (22) **Q Who was the officer of the day?**  
 (23) **A I believe it was petty officer Gonzales**  
 (24) **Q Were you required as a civilian watch stander to notify**  
 (25) **the officer of the day if a vessel was deviating from its**  
 (26) **assigned course?**

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- (1) **A I believe we were**  
 (2) **Q Is that requirement in the VTC manual?**  
 (3) **A I believe it is**  
 (4) **Q Did you at any time from the time you came to the VTC that**  
 (5) **night until you received the report from the Exxon Valdez**  
 (6) **attempt to identify the target on the 12 mile scale of radar?**  
 (7) **A Okay You want to say that one more time?**  
 (8) **Q I'll ask it again Did you at any time from the time you**  
 (9) **arrived at the VTC center that night until the time you**  
 (10) **received a report from the Exxon Valdez try to identify the**  
 (11) **target of the Exxon Valdez on radar by using the 12 mile scale?**  
 (12) **A No**  
 (13) **Q Were you required to attempt to identify the Exxon Valdez**  
 (14) **on the 12 mile scale during that time period?**  
 (15) **A I was - as part of relief procedure, I was required to**  
 (16) **identify all of the - along with the off-going watch, all**  
 (17) **targets held on radar Sorry, that's a requirement in the**  
 (18) **VTC**  
 (19) **manual Sorry, that's a requirement in the VTC manual**  
 (20) **Q And then it continues adds an answer**  
 (21) **A I believe so**  
 (22) **Q All right Now did you - are you saying that you don't**  
 (23) **believe that that requirement is in the VTC manual that**  
 (24) **requirement in the VTC manual applied to you?**  
 (25) **A No, I'm saying - what I'm saying is that at the time of**  
 (26) **relief, the target was not held on radar**

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- (1) **Q At the time of relief you've testified here today I think**  
 (2) **you said it before you were told that the vessel was gone from**  
 (3) **the scope and gone from the radar isn't that right?**  
 (4) **A Right, one of the two**  
 (5) **Q The radar was on the six mile scale was it not?**  
 (6) **A Uh huh**  
 (7) **Q Have you ever tried to raise the vessel on the 12 mile**  
 (8) **scale?**  
 (9) **A No**  
 (10) **Q Let me ask you about the circumstances With the**  
 (11) **information that Mr Taylor had made available to you on that**  
 (12) **evening did you feel that operations were normal at the time**  
 (13) **that you relieved him with respect to the Exxon Valdez?**  
 (14) **A Okay Prior to that time, it was not unusual for people to**  
 (15) **deviate, if you will, from their traffic lane to avoid ice It**  
 (16) **was not at all unusual It wasn't unusual for them to go into**  
 (17) **the inbound lane In this particular circumstance the**  
 (18) **master**  
 (19) **had outlined exactly what he intended to do, which was**  
 (20) **even -**  
 (21) **probably in most cases you wouldn't even have that**  
 (22) **thorough of**  
 (23) **information In most cases, probably the master would**  
 (24) **have**  
 (25) **said, I'm going to be going into - into the - into the**  
 (26) **inbound lane to skirt this ice That's probably all he would**  
 (27) **have said He wouldn't have given a specific course or a**  
 (28) **specific - specific speed**  
 (29) **Now with that - with that information in hand, I saw no -**

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- (1) **nothing out of the ordinary, under those particular**  
 (2) **circumstances with ice in the lanes in the traffic lanes In**  
 (3) **other words, there was no - there was nothing to send up a**  
 (4) **red**  
 (5) **flag, okay Although it wasn't - obviously it wasn't a**  
 (6) **routine transit, if it were routine, the guy would have stayed**  
 (7) **in his lane and, you know, gone the whole course through**  
 (8) **the**  
 (9) **rest of the system You know this is - it was not are you -**  
 (10) **it was not routine in that regard but it still did not raise**  
 (11) **cause for alarm Okay**  
 (12) **Q So it was not routine but it was not unusual?**  
 (13) **A That's correct.**  
 (14) **Q Mr Blandford if on the night of the grounding during your**  
 (15) **shift before you got the report from the Exxon Valdez if you**  
 (16) **had turned the radar scale up to the 12 miles and had seen the**  
 (17) **target of the Exxon Valdez and had gotten a contact that**  
 (18) **indicated to you that the vessel might be standing - steering**  
 (19) **it says into danger what would you likely have done?**  
 (20) **A I probably would have called on the radio if he would have**  
 (21) **been doing something other than what he had related to us,**  
 (22) **he**  
 (23) **had related that to Mr Taylor which was in turn relayed to**  
 (24) **me,**  
 (25) **okay, if the ship had - were doing something other than -**  
 (26) **than what he had told us he intended to do, I probably would**  
 (27) **have told him where he held - where we held him on radar**  
 (28) **if**  
 (29) **we held him on radar and asked him what his intentions**  
 (30) **were**  
 (31) **Q And is that approach consistent with the policies of the**

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- (1) VTC and the practices that were in effect during your time as a watch stander?
- (2) **A Yes, it is We can't - we can't on other people's vessels**
- (3) **Q Right**
- (4) **A Nor can we give them course of speeds or anything**
- (5) **MR LYNCH There's a fragment question which I won't read**
- (6) **That concludes our reading of the testimony of Bruce Blandford Your Honor**
- (7) **MR O NEILL Your Honor by way of correction when Mr Lynch read section 3 12 17 and described it he described it as talking about standing in danger and the word standing in danger doesn't appear in that section of the manual**
- (8) **MR LYNCH You want to show it again?**
- (9) **MR O NEILL No We have a short video cross-examination**
- (10) **CROSS EXAMINATION OF BRUCE BLANDFORD (Video)**
- (11) **BY VIDEO EXAMINER**
- (12) **Q You've said today and you've said before I think that the ratio of the returns of the Valdez when broadside viewed broadside in your view would be about ten to one is that right?**
- (13) **A Probably**
- (14) **Q And what would be the relative size of the return of stern**

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- (1) **on - viewed stern on Exxon Valdez and the Bligh Reef buoy?**
- (2) **A Maybe three to one**
- (3) **Q Three to one?**
- (4) **A That's just a guess**
- (5) **Q Now if the weather were clear enough to see the end return on 12 mile scale and the Bligh Reef buoy is it then -**
- (6) **A A reasonable assumption**
- (7) **Q - a reasonable assumption that you would get a return from a stern on vessel in the same area?**
- (8) **A That's a - that's a reasonable assumption that one could draw However, there are - this has never been brought out before but since the accident in the intervening years I've watched closely inbound tankers particularly coming in at ballast, which are presenting far more surface area to be - as presented as a target, and in the vicinity of the buoy, which is just maybe five degrees in from the traffic lane particularly when they're making that corner that dogleg in the traffic lane, they'll just disappear**
- (9) **Q At the dogleg?**
- (10) **A Right And it - it doesn't seem to be consistent with any type of weather conditions We do have some interference in the arm if you turn the - the gain up on the - if you overdrive the gain on the 12 mile scale for instance there's interference which is always in the same place going down the outbound lane and it looks like ice but it's not it's not**

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- (1) **really ice and we've - it's happened to the extent we've - myself and some of the operators have asked a tanker, you see**
- (2) **ice and they say, no, there's no ice out here, well, we think we see some ice on the radar, well, it's not there**
- (3) **Q Mr Blandford the dogleg is south of Bligh Reef buoy is it not?**
- (4) **A Uh-huh**
- (5) **Q It's past the Bligh Reef buoy?**
- (6) **A Uh huh**
- (7) **Q The Exxon Valdez on the night of the grounding -**
- (8) **A You originally asked me if it was a reasonable assumption that I'd be able to pick up a tanker on the same - at the same time that I was picking up the buoy**
- (9) **Q That's right**
- (10) **A Okay Now what I'm - the point I'm trying to make is maybe not, okay, at the same range as the buoy, maybe not And for conditions unknown**
- (11) **Q Are you saying that during these observations that you made since the time of the grounding that you're seeing the target of an inbound tanker become lost in the area of the dogleg?**
- (12) **A In the vicinity of the buoy, from the dogleg up to the buoy**
- (13) **Q Up to the buoy?**
- (14) **A Uh huh**
- (15) **Q Let me read to you from a transcript of the - this is a**

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- (1) **predesignated document number 3 page 11 Starting at line 13 and I'm going to read over to page 14 line five Page 14 line 5 All right**
- (2) **Question this is policy this is stated procedure here once a vessel is not - is not actively maneuvering for ice that you no longer monitor is that correct?**
- (3) **Answer no**
- (4) **Question beyond a certain range?**
- (5) **Answer right**
- (6) **Question I'm confused by that**
- (7) **Answer well -**
- (8) **Question Mr Blandford under what conditions would you watch a ship that has dropped the pilot and is proceeding outbound?**
- (9) **Answer okay Just as a personal watch standing habit I make a practice to if I believe that there's a great deal of ice if the traffic lanes are completely plugged and the - or if the visibility is poor or if we have conflicting traffic those people could use some assistance then I actively watch them as far as I can**
- (10) **Question and about how far can you usually watch?**
- (11) **Answer oh at least past Bligh Reef buoy under the optimal weather conditions If it's snowing hard we are lucky if we can see past Busby Island But if we have clear weather meaning it is not snowing or raining heavily we can see**

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- (1) generally down to Bligh Reef buoy That is also providing the  
 (2) equipment is working up to par  
 (3) Question okay You explained the reason you usually watch  
 (4) a vessel based on your own initiative so to speak?  
 (5) Answer right This is not a requirement of the watch  
 (6) standing procedures this is strictly my personal method of  
 (7) operating a watch  
 (8) Question what is the policy - under established policy  
 (9) what must you watch?  
 (10) Answer that we physically plot them and observe them for  
 (11) the transit out of the Narrows  
 (12) Question let me ask this The reason you did not do this  
 (13) why it is not normal watch standing procedure is that it is  
 (14) clear weather is that correct that there is no real reason  
 (15) for you to be attending traffic routinely in that area?  
 (16) Answer I hate -  
 (17) Question we are trying to see why there is a policy  
 (18) Answer I hate to really hypothesize on the whys Can I  
 (19) explain?  
 (20) Question sure  
 (21) Answer the whole purpose of the VTS is to ensure one way  
 (22) traffic through the Narrows This is the area that is the  
 (23) responsibility of the vessel traffic service It is not a  
 (24) vessel traffic control This is a navigation service provided  
 (25) to mariners It is not the responsibility of the VTS to

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- (1) control the operation of the vessel only to provide service to  
 (2) the vessel to ensure there is only a one way operation that  
 (3) they use the correct speed and to advise them of traffic coming  
 (4) in either direction  
 (5) So once they are outside of this vessel traffic service  
 (6) area the rest of it is purely check in points so that they can  
 (7) advise other ships that will be going through the VTS of the  
 (8) location of other vessels in the system  
 (9) Question so the whole focus of this thing is the Narrows  
 (10) Answer correct And the only reason they check in and you  
 (11) have the traffic separation scheme through the rest of Prince  
 (12) William Sound is to provide - is to maintain spacing adequate  
 (13) enough so that you can allow the one way traffic  
 (14) Question so once they are through the Narrows it's just  
 (15) primarily keeping a rough track of where the vessel is in the  
 (16) system?  
 (17) Answer right Any assistance I can give further down the  
 (18) line whether it be inside or outside the port I figure is  
 (19) more or less of a bonus  
 (20) Now having heard me read and having looked on at the  
 (21) transcript as I did so do you stand by everything you said in  
 (22) that interview?  
 (23) A As far as the way we were - what I said at the time, I'm  
 (24) sure that's what I meant at the time  
 (25) Q I also wanted to try and get a better understanding of the

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- (1) relationship between the vessel - vessel traffic center and  
 (2) vessels transiting in the area Could you just tell me briefly  
 (3) your understanding of what the relationship is? And by that I  
 (4) mean does the vessel traffic center have any control over the  
 (5) operation of vessels within the - within the system or is it  
 (6) an advisory system?  
 (7) A It's strictly an advisory system to the extent of apprising  
 (8) the vessels of potential hazards and other traffic and we  
 (9) are  
 (10) not similar at all to air traffic control where there are  
 (11) specific flight levels given courses to steer et cetera In  
 (12) no way do we attempt to give out directions of that nature  
 (13) Q In your years working at the vessel traffic center have  
 (14) you ever directed a vessel to follow a particular course?  
 (15) A No  
 (16) Q Are you aware of any of the watch standers at the vessel  
 (17) traffic center ever directing a vessel to follow a particular  
 (18) course?  
 (19) A No, I'm not aware of and had they been found out, they  
 (20) would have been chastised  
 (21) Q Who's in the best position to navigate a vessel operating  
 (22) within the system?  
 (23) A The person at the con of the ship  
 (24) Q That would be either the master or the pilot?  
 (25) A Or whoever is piloting the vessel at the time  
 (26) Q Why do you say that that individual would be in the best

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- (1) position to navigate the vessel?  
 (2) A Because he has a better vantage point We cannot see  
 (3) what  
 (4) he sees nor what his radar sees  
 (5) Q Did you receive any calls from the Exxon Valdez on the  
 (6) night of the grounding indicating to you that the Exxon Valdez  
 (7) was going to deviate outside the northbound lane of travel?  
 (8) A No  
 (9) Q Did you receive any calls from the Exxon Valdez on the  
 (10) night of the grounding indicating that the Exxon Valdez was  
 (11) going to leave the TSS completely?  
 (12) A No  
 (13) Q Did you get any calls from the master of the Exxon Valdez  
 (14) indicating that he was leaving the bridge and that he wanted  
 (15) you to watch over his tanker while he was away?  
 (16) A No  
 (17) UNIDENTIFIED SPEAKER Objection  
 (18) BY VIDEO EXAMINER  
 (19) Q Do you believe that masters transiting in the - in the  
 (20) system know or rather knew that the VTC would not direct a  
 (21) particular course for them to follow?  
 (22) A Yes  
 (23) Q Now what do you base that belief on?  
 (24) A All of the companies, to my knowledge, had copies of our  
 (25) -  
 (26) our VTC manual, the one we have been referring to, and all  
 (27) of  
 (28) the vessels for certain had copies of the user manual and I

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- (1) **think it refers to that in the user manual itself**  
 (2) **Q Mr Blandford Mr Klinckhardt asked you whether the VTC**  
 (3) **manual or the - or the users manual provided for a watch**  
 (4) **stander such as yourself to give directions to a vessel Isn t**  
 (5) **it a fact sir that there is a specific example in the VTC**  
 (6) **manual of a vessel being directed to take corrective action for**  
 (7) **being inside the separation zone in the Valdez arm?**  
 (8) **A An example?**  
 (9) **Q Yes sir Open enclosure 16 VTC manual to section**  
 (10) **3 12 17 page 18**  
 (11) **A 3 2 17 Okay**  
 (12) **Q Isn t it true sir this section which is titled VTC**  
 (13) **directions gives a specific example of a specific order to a**  
 (14) **vessel regarding its movement? And I direct your attention to**  
 (15) **the third example would you read the Trenton example Mr**  
 (16) **Blandford?**  
 (17) **A Trenton, this is Valdez traffic, our radar shows you one**  
 (18) **hundred yards to the left of the traffic lane inside the**  
 (19) **separation zone You are directed to take corrective action**  
 (20) **MR O NEILL That concludes our cross-examination**  
 (21) **Your Honor**  
 (22) **MR LYNCH Your Honor I have the honor to invite yet**  
 (23) **another Coast Guard official to testify by deposition**  
 (24) **I think it is Lieutenant Commander Michael Cavett I may**  
 (25) **have his rank wrong**

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- (1) **THE CLERK What was the last name?**  
 (2) **MR LYNCH Cavett C A V E T T**  
 (3) **THE CLERK Raise your right hand please sir**  
 (4) **(The Reader Is Sworn)**  
 (5) **THE CLERK For the record sir state your full name**  
 (6) **address and spell your last name**  
 (7) **THE WITNESS It s Kevin Michael Harr It s 1101**  
 (8) **Cordova Anchorage Alaska It s H A R R**  
 (9) **THE CLERK Thank you sir**  
 (10) **MR LYNCH Your Honor defendants will offer DX3495**  
 (11) **which is a letter signed by Commander I now understand**  
 (12) **Cavett dated August 29 1984 And Exhibit 3496 which is an**  
 (13) **undated letter signed by Commander Cavett**  
 (14) **(Exhibits 3495 and 3496 offered)**  
 (15) **MR O NEILL No objection**  
 (16) **THE COURT Defendants Exhibits 3495 and 3496 are**  
 (17) **admitted**  
 (18) **(Exhibits 3495 and 3496 received)**  
 (19) **MR LYNCH I think Your Honor we are going do break**  
 (20) **Mr Neal s shortest time on the stand record but this may**  
 (21) **not - this may get an asterisk in the book**  
 (22) **DIRECT EXAMINATION OF MICHAEL CAVETT (Read)**  
 (23) **BY MR LYNCH**  
 (24) **Q Would you state your name for the record**  
 (25) **A Michael Gary Cavett, C A V E T T**

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- (1) **Q Let me ask one preliminary question and then I m going to**  
 (2) **ask you to go over in kind of a summary fashion what your**  
 (3) **career in the Coast Guard has been Were you the**  
 (4) **commanding**  
 (5) **officer for the Coast Guard in Valdez between 1982 and 1985?**  
 (6) **A Yes**  
 (7) **Q Let me return to MSO Valdez when did you receive orders to**  
 (8) **go to MSO Valdez?**  
 (9) **A It was in December of 81**  
 (10) **Q The other end of your tenure in Valdez who was your**  
 (11) **successor as commanding officer?**  
 (12) **A Steve McCall**  
 (13) **Q Now you said I believe that you took over the duty of**  
 (14) **commanding officer on April 1 1982 When did you leave**  
 (15) **Valdez?**  
 (16) **A I left in 1985 And I think it was the last part of June,**  
 (17) **June, July time frame**  
 (18) **Q What was the Columbia Glacier Research Project?**  
 (19) **A Can you more specific?**  
 (20) **Q Well these - these documents are progress reports on**  
 (21) **something called the Columbia Glacier Research Project and**  
 (22) **report certain activities that were engaged in What do you**  
 (23) **recall about this research project as it affected you as CO of**  
 (24) **MSO Valdez?**  
 (25) **A As it affected me, I was the recipient of the information**  
 (26) **As I recall, it was funded by industry folks with the**

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- (1) **understanding that any kind of information that was**  
 (2) **developed**  
 (3) **would be available to us in order to enhance and facilitate**  
 (4) **safe transit of the area by tank vessels Essentially, vessels**  
 (5) **that came to Alyeska That s pretty much all I recall about**  
 (6) **it**  
 (7) **Q All right So far as you recall were you provided the**  
 (8) **information that this group was able to gather?**  
 (9) **A I m sure we were given all the information they had**  
 (10) **MR LYNCH Your Honor the next question and answer**  
 (11) **relate to Exhibit 3496 which is a letter to Alyeska Pipeline**  
 (12) **Service Company**  
 (13) **I can t get it all on the screen and have it legible and**  
 (14) **there is one question and answer**  
 (15) **BY MR LYNCH**  
 (16) **Q Did that meeting actually take place?**  
 (17) **A I believe it did**  
 (18) **MR LYNCH The next series of questions relate to the**  
 (19) **Exhibit DX3495 which followed that same meeting**  
 (20) **BY MR LYNCH**  
 (21) **Q Captain you attended this meeting correct?**  
 (22) **A Yes**  
 (23) **Q Who prepared this summary?**  
 (24) **A Looks like Ray Engel did**  
 (25) **Q Did you review it before it was sent out?**  
 (26) **A I m sure I would have, yes**

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- (1) Q Having reviewed it and in light of your best recollection  
 (2) today as - as it may be aided by anything else we've looked at  
 (3) today does it appear to you to be an accurate summary of what  
 (4) occurred at that meeting?  
 (5) **A I don't recall everything that happened at the meeting,  
 but**  
 (6) **I have no reason to doubt that this is an - that this is an**  
 (7) **accurate reflection of that**  
 (8) Q On page 2 in the third paragraph down there's some  
 (9) discussion about unpredictability and forecasting the future of  
 (10) the glacier. Then there's a sentence that begins no  
 (11) evidence. Do you see that?  
 (12) **A Yes**  
 (13) Q Would you read that sentence that begins with no evidence?  
 (14) **A No evidence is available for anyone to say that a situation**  
 (15) **is going to be created by the ice where there is a danger to**  
 (16) **the shipping traffic that can't be safely handled under the**  
 (17) **present traffic system structure**  
 (18) Q Now is that a tenet that was voiced either by yourself or  
 (19) somebody else on behalf of the Coast Guard at that meeting?  
 (20) **A That was my ongoing sentiment. Whether that was a**  
 (21) **collection of sentiments at the meeting, I can't say**  
 (22) Q But it's set forth in this and you believed that at the  
 (23) time?  
 (24) **A Yes**  
 (25) Q Would you read into the record on the second to last

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- (1) paragraph and last paragraph of the summary just the last  
 (2) paragraph that begins in summary?  
 (3) **A In summary -**  
 (4) MR LYNCH I'll put that on the screen before you  
 (5) start Mr. Harr. I hope I'll put it on the screen before you  
 (6) start.  
 (7) All right, sir, would you read it?  
 (8) **A In summary it was generally agreed that operations will**  
 (9) **continue as at present. Ice reports will be requested from a**  
 (10) **hundred percent of the vessels transiting the area. Vessels**  
 (11) **will be allowed to divert out of the lanes to transit around**  
 (12) **ice plumes. If the situation develops, the lanes will be**  
 (13) **considered close to a specific vessel if the master of that**  
 (14) **vessel feels the transit of the ice field is unsafe. The Coast**  
 (15) **Guard will continue to provide the best information**  
 (16) **available**  
 (17) **and then let the master make his own decisions**  
 (18) Q Is that an accurate summary of what was voiced at the  
 (19) meeting?  
 (20) **A Yes**  
 (21) Q Also during your tenure did you ever develop an opinion  
 (22) as to whether masters should maneuver tankers around ice or  
 (23) slow down and go through them?  
 (24) **A I developed the opinion that the master should take**  
 (25) **whatever course of action they deemed prudent to safely**  
**navigate their vessel through the ice**

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- (1) Q But you didn't have an opinion one way or the other what  
 (2) you thought was the best course of action?  
 (3) **A What I thought was the best course of action was to let  
 the**  
 (4) **person on the scene make up his own mind**  
 (5) MR LYNCH I believe we made the record. Your Honor.  
 (6) MS WAGNER Excuse me we have a brief cross.  
 (7) Do you have a copy of the script?  
 (8) THE WITNESS No I don't.  
 (9) CROSS EXAMINATION OF MICHAEL CAVETT (Read)  
 (10) BY MS WAGNER  
 (11) Q Captain I'd like to ask you to look at Exhibit 36105  
 (12) which was number 16. Do you have the exhibit in front of you  
 (13) Captain?  
 (14) **A Yes, I do**  
 (15) Q Paragraph Number 3 the last sentence says quote two oil  
 (16) companies Exxon and Mobile limited their tank vessels to  
 (17) daylight transit of Valdez Arm and one company SOHIO  
 (18) placed a  
 (19) six knot speed limit on their tank vessel transits. Do you see  
 (20) where I'm reading?  
 (21) **A Yes**  
 (22) Q Do you have any recollection of Exxon limiting their tank  
 (23) vessels to daylight transit when ice existed in the traffic  
 (24) separation scheme?  
 (25) **A I recall that daylight transits were common and six knots  
 was a common speed that some vessels slow to when  
 there's ice**

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- (1) conditions  
 (2) Q Is it easier to see the ice during the daytime?  
 (3) **A The ice was pretty much undetectable by radar so the  
 daylight was the best time you had to see it. You had to see  
 it visually**  
 (4) Q If you would turn to Exhibit 36114 which you  
 (5) pre-designated document 42. If you turn to what I believe is  
 (6) the fourth page of that exhibit you testified about this  
 (7) exhibit earlier and I believe this is a summary of a  
 (8) conference that was held in August of 1984 regarding the  
 (9) disintegration of Columbia Glacier is that correct?  
 (10) **A That's correct**  
 (11) Q Now on the first page of this document there's a list of  
 (12) attendees to that conference is that right?  
 (13) **A Yes**  
 (14) Q About halfway down the list the name Captain Seth  
 (15) Hargrave Exxon Shipping Company appears. Do you see  
 (16) where  
 (17) I'm referring?  
 (18) **A Yes**  
 (19) Q Do you recall Captain Hargrave being present at that  
 (20) conference?  
 (21) **A No**  
 (22) Q If you turn to the third page of the summary itself about  
 (23) two thirds of the way down there's a paragraph that reads  
 (24) quote Seth Hargrave Exxon Shipping believes the safety  
 (25)

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- (1) record and safety precautions of the masters can be relied on  
 (2) He does not foresee the ice causing any problems for shipping  
 (3) and would like to see things continue to operate as they are  
 (4) close quote  
 (5) Do you see where I'm reading?  
 (6) **A Yes, I do**  
 (7) Q Do you recall Seth Hargrave making that comment at the  
 (8) conference?  
 (9) **A No, I don't**  
 (10) Q Do you recall anyone from Exxon making that comment or a  
 (11) similar comment at the conference?  
 (12) **A No, I don't**  
 (13) Q Do you have any reason to believe that Captain Hargrave did  
 (14) not make this comment at the conference?  
 (15) **A I believe that this is a truthful and accurate account of**  
 (16) **what happened by a very responsible officer that says if he**  
 (17) **did - says if he said that, I believe he did**  
 (18) Q You agree with the statement that at least as exhibited to  
 (19) Captain Hargrave in this summary that the safety record and  
 (20) safety precautions of the masters can be relied on?  
 (21) **A Yes**  
 (22) Q What were the safety precautions of the masters that were  
 (23) occurring at the time of this conference?  
 (24) **A From my conversations with the masters and other**  
 (25) **people in the shipping world the safety precautions they're talking**

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- (1) **about were their decisions to reduce speed or to make**  
**daylight**  
 (2) **transits or otherwise ensure that they could see what was**  
**going**  
 (3) **on through this area before they made a transit**  
 (4) Q And in your experience those precautions were effective in  
 (5) providing for safe navigation when ice was present in the  
 (6) traffic separation?  
 (7) **A Yes**  
 (8) Q To your knowledge was Exxon involved in the industry study  
 (9) on the retreat of Columbia Glacier?  
 (10) **A It was my impression that each member of the consortium**  
**was**  
 (11) **involved**  
 (12) MS WAGNER Thank you  
 (13) MR SANDERS Your Honor the defendants call Maureen  
 (14) Jones Higgins  
 (15) THE CLERK Is this another deposition?  
 (16) MR SANDERS Yes I'm sorry by deposition  
 (17) THE COURT I thought I had a live one  
 (18) THE CLERK I need you to stand and raise your right  
 (19) hand please Witness  
 (20) (The Reader is Sworn)  
 (21) THE CLERK State your full name address and spell  
 (22) your last name please  
 (23) THE WITNESS Patricia Bailie 2861 West International  
 (24) Airport Road Anchorage B A I L I E  
 (25) THE CLERK Thank you

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- (1) DIRECT EXAMINATION OF MAUREEN HIGGINS (Read)  
 (2) BY MR SANDERS  
 (3) Q Could we have your full name for the record?  
 (4) **A Maureen Louise Higgins**  
 (5) Q You also have a United States Coast Guard license Number  
 (6) 664145 issued to Maureen L Higgins which finds you  
 (7) competent  
 (8) to serve as a master on ocean vessels of not more than 1600  
 (9) gross tons and secondly on ocean vessels of any gross  
 (10) tonnage I assume those are on any waters?  
 (11) **A Yes**  
 (12) Q And also as a radar observer?  
 (13) **A Yes**  
 (14) Q When did you first get your Z card?  
 (15) **A In April 1987**  
 (16) Q And when did you first become licensed as a merchant  
 (17) officer?  
 (18) **A In April 1987**  
 (19) Q Was that when you graduated from Maine Marine Academy?  
 (20) **A Maritime Academy**  
 (21) Q You obtained a bachelor's degree at the academy didn't  
 (22) you?  
 (23) **A Yes**  
 (24) Q And what kind of courses do you take besides maritime  
 (25) courses?  
**A You have to get economics English literature, physics and**

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- (1) **calculus**  
 (2) Q Kind of a science oriented course?  
 (3) **A Natural science is the degree - is what the degree is in**  
 (4) **but you have to take the regular stuff for a bachelor's**  
**degree,**  
 (5) **history**  
 (6) Q And then do you - if you graduate do you then have to sit  
 (7) for an exam to get a merchant mariner's license?  
 (8) **A Yes**  
 (9) Q You actually shipped on your license the first time in  
 (10) October of 1988 did you on the Exxon Charleston?  
 (11) **A Yes**  
 (12) Q And you shipped with Exxon on the Exxon Boston the  
 (13) Charleston the Baton Rouge the Baytown and the Valdez is  
 (14) that correct?  
 (15) **A Yeah, and the Jamestown**  
 (16) Q Jonestown?  
 (17) **A Jamestown**  
 (18) Q The last discharge I see here from Exxon Shipping Company  
 (19) is the Baytown in February of 1990 Did you then leave the  
 (20) employ of Exxon Shipping Company at that time?  
 (21) **A Yeah I believe it's in March There's a few of them there**  
 (22) **from the Baytown but when I quit I think it was about the**  
 (23) **middle of March**  
 (24) Q You're right 7th of March or sometime around there?  
 (25) **A Sometime around there**

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- (1) Q And why did you leave Exxon?  
 (2) A Because I wanted a third mate's job  
 (3) Q And they didn't have one for you?  
 (4) A Well, they were stepping me up, up scaling me third mate  
 (5) then putting me down A B It was nothing permanent and I  
 (6) wasn't promoted to a permanent third mate's position  
 (7) Q You had shipped at third mate on the Baton Rouge and the  
 (8) Baytown?  
 (9) A And the Charleston  
 (10) Q And then you would go up and then back down to A B?  
 (11) A Yes  
 (12) Q So you're kind of a replacement mate when the permanent  
 (13) mate was off the vessel?  
 (14) A Yes, basically when they needed somebody  
 (15) Q You then went to work with the American Trading Transport  
 (16) Company What kind of vessels?  
 (17) A Tankers  
 (18) Q And those discharges are all west coast discharges also  
 (19) right?  
 (20) A One is on the east coast, I believe Well, we started on  
 (21) the east coast We went over to the west coast, though  
 (22) Q You went to work with them as a third mate and then the  
 (23) last discharge I see here is July of 1991 Is that the last  
 (24) vessel you were on the Delaware Trader?  
 (25) A Yes

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- (1) Q And that was a second mate?  
 (2) A Yes  
 (3) Q Have you ever - have you been on any other vessels other  
 (4) than tankers?  
 (5) A Yes, sir I was on a container vessel  
 (6) Q What?  
 (7) A Container ship  
 (8) Q And was the largest tanker that you were on the Exxon  
 (9) Valdez?  
 (10) A Yes, sir  
 (11) Q How many voyages into Valdez had you made prior to the  
 (12) grounding in March of 1989?  
 (13) A I believe it was about five  
 (14) Q And how many of those were on the Valdez?  
 (15) A All of them  
 (16) Q Was Hazelwood the master on the vessel at all times or was  
 (17) Stalzer the master on some of the trips?  
 (18) A One trip the other captain was on there for a while  
 (19) Q Had you ever shipped with Hazelwood except on the Exxon  
 (20) Valdez?  
 (21) A No, sir  
 (22) Q Have you ever seen Hazelwood take a drink?  
 (23) A Of water, a drink of what?  
 (24) Q A drink of booze?  
 (25) A No, sir

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- (1) Q Beer wine any kind of liquor?  
 (2) A No sir  
 (3) Q How did you learn to steer?  
 (4) A On board vessels as a cadet  
 (5) Q Did you - as part of that did you learn how to use the  
 (6) iron mike the autopilot?  
 (7) A How to use it?  
 (8) Q Yes  
 (9) A How to put a vessel into the autopilot mode, yes, sir  
 (10) Q And how to take it off?  
 (11) A Yes, sir  
 (12) Q Did you ever use that autopilot aboard the Exxon Valdez  
 (13) while you were steering?  
 (14) A Yes, sir  
 (15) Q Did you yourself ever put it into the autopilot or take  
 (16) it off the autopilot?  
 (17) A Yes sir  
 (18) Q Did you ever have any difficulty with that at all?  
 (19) A No, sir  
 (20) Q Is it a fairly simple procedure?  
 (21) A Yes sir  
 (22) Q Was there a set system on the Valdez as to whether the  
 (23) helmsman could put the autopilot on or whether the mate had to  
 (24) do it?  
 (25) A The helmsman could only do it under a direct order from  
 the

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- (1) mate and the mate would be right there watching  
 (2) Q Having stood watch with Kagan for quite a while have you  
 (3) come to any opinions or conclusions about his ability to steer  
 (4) prior to the grounding of the Exxon Valdez?  
 (5) A No sir  
 (6) Q How would you - if you had to have a couple of words to  
 (7) describe somebody how would you describe Kagan?  
 (8) A As a person?  
 (9) Q Intelligence quotient?  
 (10) A His intelligence quotient who am I to say? I would  
 (11) consider he's an average guy  
 (12) Q Was he a little slower than average in his ability to  
 (13) understand orders and carry them out?  
 (14) A Not to my knowledge  
 (15) Q What do you do on a watch in port on the Valdez?  
 (16) A Do the few valves that are hand turned valves If a  
 (17) situation arises that they need opened or closed we do that  
 or  
 (18) we walk around the deck, make sure that all the scuppers  
 are  
 (19) in Make sure you're not leaking oil anywhere Just watch  
 the  
 (20) general deck  
 (21) Q The vessel is almost totally automatic loading isn't it?  
 (22) A Yes, sir  
 (23) Q The loading is controlled from a panel?  
 (24) A Yes, sir  
 (25) Q Is that done by the mate?



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- (1) **A Yes sir with the help of your A B You verify your fact that the valve is actually open They push the button but**
- (2) **you re out on deck and you tell them if the valve has opened**
- (3) **or**
- (4) **not**
- (5) **Q He pushes a button you check the valve to be sure it s open and you report back?**
- (6) **A Yes, sir**
- (7) **Q You observed Captain Hazelwood return to the vessel didn t you?**
- (8) **A Yes, sir**
- (9) **Q And who came back with him do you remember?**
- (10) **A The chief engineer and the radio reporter**
- (11) **Q You had a brief discussion with him?**
- (12) **A With Captain Hazelwood, yes**
- (13) **Q And then did the vessel leave the dock shortly thereafter?**
- (14) **A That evening we were preparing to leave, securing the deck,**
- (15) **which is the one thing you do before you leave out of there**
- (16) **Q Then after you undocked you then went in and took a nap?**
- (17) **A After we finished undocking and finished securing the deck,**
- (18) **then I went to my room**
- (19) **Q And when you undocked and isn t it - and it isn t on your watch do you get overtime for that?**
- (20) **A Yes, sir**
- (21) **Q You were then called at 11 20?**
- (22) **A Yes, sir**

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- (1) **Q Is that the normal time to be called to go up on watch?**
- (2) **A Yes sir**
- (3) **Q You got up dressed go in get a cup of coffee?**
- (4) **A No sir, I went directly to watch from my room**
- (5) **Q Approximately what time did you arrive?**
- (6) **A On the bridge?**
- (7) **Q On the bridge**
- (8) **A 2347 2348**
- (9) **Q And when you went onto the bridge who was present on the bridge?**
- (10) **A Mr Claar Mr Cousins and the captain**
- (11) **Q Where were they located?**
- (12) **A Mr Claar was behind the helm the wheel, and the third mate and the captain were on the starboard side forward**
- (13) **Q You didn t hear - did you hear anything at all that the captain may have said while you were on the bridge between 11 47 - 2347 and the grounding?**
- (14) **A On my way out to the bridge wing he commented on - I have**
- (15) **a big snow suit, all nylon, and it makes a lot of noise when**
- (16) **you walk and reflective stripes made a comment how I couldn t**
- (17) **sneak up on anybody**
- (18) **Q Other than that any conversation at all?**
- (19) **A No sir**
- (20) **Q So you came to the bridge you had the one brief conversation with the captain about the snow suit and then you**

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- (1) **went outside?**
- (2) **A It was just said while I was passing It wasn t even a conversation It was a comment**
- (3) **Q And then you went outside?**
- (4) **A Yes**
- (5) **Q Were you aware that the captain left the bridge?**
- (6) **A I wasn t aware, no**
- (7) **Q The next time you came in was he there or not there?**
- (8) **A I wouldn t know for sure**
- (9) **Q Well did you see him when you came in?**
- (10) **A No, sir**
- (11) **Q And between the time of the comment by the captain and the time you came in to report a light did you have any discussion with anybody any talk with anybody?**
- (12) **A No, sir**
- (13) **Q Did you hear anybody talk?**
- (14) **A No, sir**
- (15) **Q Fine When you looked ahead you saw a light?**
- (16) **A Not when I immediately went to the bridge wing**
- (17) **Q How long were you on the bridge wing before you saw a light?**
- (18) **A I don t know**
- (19) **Q Approximately?**
- (20) **A A guess?**
- (21) **Q An estimate**

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- (1) **A An estimate I would estimate, guess it was - it was**
- (2) **before midnight, so that would be approximately 13 minutes, in**
- (3) **that time period**
- (4) **Q And was the bearing of that light constant or changing?**
- (5) **A It changes somewhat**
- (6) **Q Where did you first see it?**
- (7) **A Broad on the starboard bow**
- (8) **Q And how did it change was it apparently moving forward or aft?**
- (9) **A It was apparently dead in the water the light**
- (10) **Q Broad on the starboard bow?**
- (11) **A Yes**
- (12) **Q When you first reported the red light that you saw you reported the flashing interval of the light didn t you?**
- (13) **A Yes, sir**
- (14) **Q What did you report it as?**
- (15) **A Every five seconds**
- (16) **Q And did you later change that report?**
- (17) **A Yes, sir**
- (18) **Q To what?**
- (19) **A Every four seconds**
- (20) **Q And why did you make that change?**
- (21) **A When I went back out - when I went back out there -**
- (22) **Q You counted it?**
- (23) **A - I had more time**

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- (1) Q When you first saw the light you had been out on the  
 (2) bridge wing how long?  
 (3) **A Somewhere between 2347 and I would guess before  
 midnight,**  
 (4) **so that s 13 minutes, somewhere in that time frame**  
 (5) Q And you went in and reported it to someone?  
 (6) **A Yes, sir**  
 (7) Q To whom?  
 (8) **A Mr Cousins**  
 (9) Q Where was Mr Cousins at the time you reported it?  
 (10) **A Behind the chart table**  
 (11) Q And behind the curtain then?  
 (12) **A Yes**  
 (13) Q Did you go into the chart room to report it?  
 (14) **A I just pulled the curtain back**  
 (15) Q What did you say to him?  
 (16) **A I said, red light flashing, broad on starboard bow,  
 flashing every five seconds**  
 (17) Q Is that exactly what you said?  
 (18) **A In that order, or flashing red light, every five seconds,  
 broad on the starboard That was the content of the words I  
 said to him**  
 (19) Q What did he say?  
 (20) **A He acknowledged my reply**  
 (21) Q How?  
 (22) **A Either he repeated it or he said red flashing light He**

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- (1) **just acknowledged my report**  
 (2) Q But whatever he said led you to believe that he understood  
 (3) what you said to him?  
 (4) **A Yes, sir**  
 (5) Q Did you stay there? Did you go immediately back to the  
 (6) bridge wing?  
 (7) **A I went immediately back to the bridge wing**  
 (8) Q What was Cousins doing when you looked in?  
 (9) **A I don t know**  
 (10) Q Well was he at the chart table?  
 (11) **A He was behind the chart table**  
 (12) Q Was he looking at the chart table when you pulled the  
 (13) curtain aside?  
 (14) **A Yes, sir**  
 (15) Q Did he have navigational instruments in his hands?  
 (16) **A I don't know I just saw him, reported it and left I  
 didn t study him**  
 (17) Q When you left did he leave with you?  
 (18) **A No, sir I left and he was still behind the chart table**  
 (19) Q You went back out on the bridge wing?  
 (20) **A Yes, sir**  
 (21) Q Did you have any discussions with the helmsman?  
 (22) **A On the way out to the bridge wing, no, sir**  
 (23) Q Or on the way in?  
 (24) **A No, sir**

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- (1) Q When you went back out on the bridge wing what did you  
 do?  
 (2) **A Looked again**  
 (3) Q At the light?  
 (4) **A Yes, sir, and all around**  
 (5) Q Did you see any other lights other than the red light on  
 (6) the starboard bow?  
 (7) **A I don t recall if there were lights abeam or astern The  
 one I definitely remember in my mind is the light I reported**  
 (8) Q You recounted the sequence of the flashes?  
 (9) **A Yes, sir**  
 (10) Q And when you discovered that it was a different sequence  
 (11) than you had reported you decided to report it again?  
 (12) **A Yes, sir**  
 (13) Q When you went back into the bridge your purpose was to  
 (14) report the light again?  
 (15) **A Yes, sir**  
 (16) Q And did you do so?  
 (17) **A Yes, sir**  
 (18) Q To whom?  
 (19) **A To Mr Cousins**  
 (20) Q Where was he?  
 (21) **A On the port side of the bridge behind the radar**  
 (22) Q And what did you say this time?  
 (23) **A I said, the light the flashing every four seconds sir,  
 Greg, or something like that Flashing every four, not every**

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- (1) **five**  
 (2) Q What did he say?  
 (3) **A He acknowledged what I told him**  
 (4) Q So you were of the opinion from what he said that he  
 (5) understood what you told him?  
 (6) **A Yes, sir**  
 (7) Q Did you see him do anything about it?  
 (8) **A I walked right back out on the bridge wing**  
 (9) Q When you walked back out on the bridge as far as you  
 know  
 (10) did he remain at the console?  
 (11) **A I had my back to him I wouldn t know what he did**  
 (12) Q When you walked back out on the bridge did you continue  
 to  
 (13) observe the light?  
 (14) **A Yes, sir**  
 (15) Q For how long?  
 (16) **A All the time I was out on the bridge wing I was observing  
 it all along with everything else around me**  
 (17) Q Did that light continue to remain at the same position  
 (18) relative position or did it move in relative position after  
 (19) you went back out on the bridge for the second time?  
 (20) **A For how long?**  
 (21) Q At any time while you were out there  
 (22) **A I noticed the light coming to port after I was out on the  
 bridge, after the second report**  
 (23) Q How long after you got out on the bridge the second time

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- (1) did you notice that the relative position of the light had  
 (2) begun to swing toward the bow?  
 (3) **A I don't know**  
 (4) **Q Approximately?**  
 (5) **A Approximately after my second report**  
 (6) **Q Yes**  
 (7) **A I don't know**  
 (8) **Q When you went back out on the bridge the second time you**  
 (9) **continued to watch the light and at some time did the light**  
 (10) **remain relatively stationary for a period of time after you**  
 (11) **went back?**  
 (12) **A For a short period, yes**  
 (13) **Q Do you know how long?**  
 (14) **A No, sir**  
 (15) **Q What's your best estimate of how long the light remained**  
 (16) **fairly stationary in its relative position?**  
 (17) **A A guess would be - a guess would be less than five**  
 (18) **minutes**  
 (19) **Q Ma'am we're talking about the time involved between the**  
 (20) **time you went out on the bridge and the time you saw the**  
 (21) **relative heading of the vessel and the light. You've told us**  
 (22) **that it was in your opinion less than five and more than one?**  
 (23) **A It's a guess less than five and more than one**  
 (24) **Q Were you aware that the vessel went aground?**  
 (25) **A Yes, sir**

1 Hz

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- (1) to starboard wouldn't it?  
 (2) **A Correct**  
 (3) **Q Could you give us any idea of the rate of turn of the**  
 (4) **vessel?**  
 (5) **A No, sir**  
 (6) **Q From where you were on the wing of the bridge you didn't**  
 (7) **hear any of the - did you hear any of the orders that were**  
 (8) **given in the bridge between the mate and the helmsman?**  
 (9) **A No, sir**  
 (10) **Q And the two times you went into the bridge the first time**  
 (11) **when Cousins was in the bridge in the chart room and the**  
 (12) **second**  
 (13) **time when he was on the bridge looking at the radar did you**  
 (14) **see the captain present?**  
 (15) **A No, sir I did not see the captain**  
 (16) **Q When is the first time you did see the captain after first**  
 (17) **reporting the light?**  
 (18) **A The first time I saw he was there after the grounding**  
 (19) **Q Do you have any estimate as to how long after?**  
 (20) **Q Did you hear - after the grounding did you go into the**  
 (21) **bridge house?**  
 (22) **A Yes, sir**  
 (23) **Q How soon after? Right away?**  
 (24) **A Soon yes As soon as I verified we were stopped, I went**  
 (25) **into the bridge**

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- (1) **Q How did you become aware of that?**  
 (2) **A When we hit the reef**  
 (3) **Q What was the sensation that you had? What did you feel or**  
 (4) **hear or see?**  
 (5) **A I heard a scraping sound I saw a light up around the bow**  
 (6) **and I felt a gradual stopping**  
 (7) **Q You felt the vessel stopping Were the engines continuing?**  
 (8) **A Yes sir**  
 (9) **Q Have you ever figured out what the light was you saw on the**  
 (10) **bow?**  
 (11) **A Did I figure out?**  
 (12) **Q Yes**  
 (13) **A Since the event yes**  
 (14) **Q What was it?**  
 (15) **A The light was Bligh Reef light**  
 (16) **Q When the vessel went aground what did you do?**  
 (17) **A What did I do?**  
 (18) **Q Yes**  
 (19) **A Immediately after the vessel went aground I looked at the**  
 (20) **land around me and verified that we were stopped and I**  
 (21) **went**  
 (22) **into the bridge**  
 (23) **Q Before the vessel ran aground did the relative position of**  
 (24) **the light begin to change?**  
 (25) **A I told you earlier it started swinging towards the bow**  
 (26) **Q And that would indicate to you that the vessel was turning**

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- (1) **Q At that point did you hear anybody saying anything?**  
 (2) **A Not that I recall No, sir**  
 (3) **Q Did you see Mr Cousins using the telephone?**  
 (4) **A I believe so**  
 (5) **Q Did you overhear what he said?**  
 (6) **A No, sir**  
 (7) **Q Do you know who he called?**  
 (8) **A No, sir**  
 (9) **Q Did you have any discussion with him at any time before you**  
 (10) **left the bridge?**  
 (11) **A Discussion? No, sir He said a couple of words in**  
 (12) **passing**  
 (13) **Q What were those?**  
 (14) **A When he walked out to the bridge wing, and he also**  
 (15) **verified**  
 (16) **the fact that the vessel was stopped and later when there**  
 (17) **was**  
 (18) **some oil spewing out of the coffer dam, I said to him we**  
 (19) **have**  
 (20) **pulled all the scuppers do you want me to go down and put**  
 (21) **the**  
 (22) **scuppers back?**  
 (23) **Q What did he tell you?**  
 (24) **A He said I think it's useless now, too late**  
 (25) **Q Were you present when the captain returned to the bridge?**  
 (26) **A I was present when the captain came out from behind the**  
 (27) **chart - chart room**  
 (28) **Q And you don't know whether he had been there before or**  
 (29) **not?**  
 (30) **A No sir**

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- (1) Q But when he came out from the chart room what did he say?  
 (2) A What did he say?  
 (3) Q Yes  
 (4) A I don't believe he said anything  
 (5) Q He didn't talk to you at all?  
 (6) A I don't believe so no sir  
 (7) Q Didn't talk to Kagan at all?  
 (8) A I didn't overhear any conversation  
 (9) Q Did he talk to Cousins?  
 (10) A At one time, the chief mate came up and he spoke He was speaking with the two of them  
 (11) speaking with the two of them  
 (12) Q With Cousins and -  
 (13) A I believe he was talking with both of them  
 (14) Q Did you overhear any of the conversations?  
 (15) A No, sir  
 (16) Q Where were you?  
 (17) A I was on the bridge  
 (18) Q Do you know whether or not Captain Hazelwood took any steps to sound the area around the perimeter of the vessel prior to initiating rudder orders?  
 (19) to sound the area around the perimeter of the vessel prior to  
 (20) initiating rudder orders?  
 (21) A Sound the water around the vessel?  
 (22) Q Yes  
 (23) A I'm not aware of any  
 (24) Q So do you know if he took any steps to sound the perimeter of the vessel the area around the vessel?  
 (25) of the vessel the area around the vessel?

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- (1) A No, I don't know if he took any I don't know how he could  
 (2) could  
 (3) Q Were you given any orders by the captain or Greg Cousins or anyone else for that matter after the grounding?  
 (4) anyone else for that matter after the grounding?  
 (5) A Was I given any orders?  
 (6) Q Yes  
 (7) A Greg had gone down and notified some people and he told me  
 (8) who he did and I went down and notified some other on his suggestions, some other people I was given the order to go  
 (9) suggestions, some other people I was given the order to go  
 (10) out and rig a pilot ladder for the Coast Guard and that's all I can recall  
 (11) can recall  
 (12) Q You mentioned earlier that on the evening of March 23 1989 you had occasion to observe Captain Hazelwood as he came  
 (13) 1989 you had occasion to observe Captain Hazelwood as he came  
 (14) on board the Exxon Valdez Do you recall that?  
 (15) A Yes, sir  
 (16) Q Can you please describe for us approximately where you were  
 (17) and where he was when you first saw him arrive on board the Exxon Valdez?  
 (18) Exxon Valdez?  
 (19) A On the port side of the vessel on the stern alongside the house  
 (20) house  
 (21) Q And did you actually see him come off the gangway?  
 (22) A No, sir, not that I can recall  
 (23) Q Approximately how far from you was he when you first saw him?  
 (24) him?  
 (25) A Well, I just spoke to him I can give you a guess, two or

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- (1) three feet  
 (2) Q Now I'm talking now about the first time you saw him when he came on board the vessel I think you may have been a little confused in your last answer as to what I was referring to  
 (3) he came on board the vessel I think you may have been a little confused in your last answer as to what I was referring to  
 (4) little confused in your last answer as to what I was referring to  
 (5) to  
 (6) A Yes, sir  
 (7) Q So let me clarify that again for you I'm talking about the first time you saw Captain Hazelwood come on board the Valdez on March 23 1989 do you recall that?  
 (8) the first time you saw Captain Hazelwood come on board the Valdez on March 23 1989 do you recall that?  
 (9) Valdez on March 23 1989 do you recall that?  
 (10) A Yes I recall him coming on board and I don't know where -  
 (11) how far aft he was I recall seeing him and I made a point of speaking to him as he came back to the house  
 (12) speaking to him as he came back to the house  
 (13) Q Now did you see him come off the gangway at that time?  
 (14) A No sir I don't believe I did I don't recall seeing that  
 (15) that  
 (16) Q Do you recall seeing him being about 40 feet away from you when you first saw him?  
 (17) when you first saw him?  
 (18) A 40 feet? Yes, well, he was away I would say 40 feet  
 (19) Q And at the time you saw him did you observe him walking towards you?  
 (20) towards you?  
 (21) A Yes, sir He was walking aft  
 (22) Q And in addition to Captain Hazelwood did you see anybody else walking with him at that particular point in time?  
 (23) else walking with him at that particular point in time?  
 (24) A In front of him was the chief engineer and the radio operator  
 (25) operator

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- (1) Q Did you notice anything unusual about the way Captain Hazelwood was walking during this period of time that you observed him walking towards you?  
 (2) Hazelwood was walking during this period of time that you observed him walking towards you?  
 (3) observed him walking towards you?  
 (4) A No, sir  
 (5) Q Did he stagger?  
 (6) A No sir  
 (7) Q Was there any sway in his walk?  
 (8) A No  
 (9) Q Was there any - was there anything about the way he walked which would indicate to you that he was in any way impaired by alcohol?  
 (10) which would indicate to you that he was in any way impaired by alcohol?  
 (11) alcohol?  
 (12) A No, sir  
 (13) Q Now was he walking towards you?  
 (14) A He was walking to his destination, was where I was working  
 (15) Q And where were you working?  
 (16) A Just by the door on port side The hatch that goes into the house  
 (17) the house  
 (18) Q And was that the door he was walking toward?  
 (19) A Well there's a ladder also right there that goes up to the cargo control room deck or the door, I don't recall which he went into, but he was walking back there for the purpose of getting into the house  
 (20) cargo control room deck or the door, I don't recall which he went into, but he was walking back there for the purpose of getting into the house  
 (21) went into, but he was walking back there for the purpose of getting into the house  
 (22) getting into the house  
 (23) Q Did there come a time when he passed you?  
 (24) A Yes After we spoke in crossing, he crossed  
 (25) Q Before he passed you did he in fact stop and talk to you?

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- (1) **A He stopped I don t know if I - if I walked up to him or - I think I walked up to him and he stopped**
- (2) **Q And where was that?**
- (3) **A That was just outside the house**
- (4) **Q And approximately how close to Captain Hazelwood were you**
- (5) **when you walked up to him to talk to him at this particular point in time?**
- (6) **A I guess about two to three feet**
- (7) **Q And did in fact you have a conversation with him at that time?**
- (8) **A I just joked with him**
- (9) **Q Can you recall as best you can what you said to him and what he said to you at that particular point in time?**
- (10) **A Only part It was very short Just in passing, I recall I said to him, asked him if he had a good time, and he had a briefcase, and he showed me his briefcase and I said something**
- (11) **about business and something about him having red suspenders on**
- (12) **and always working even when he was going ashore, you know, a**
- (13) **power tie I asked him if he had a power tie on or something,**
- (14) **just making fun of the fact that he was doing business while he**
- (15) **was ashore**
- (16) **Q And did he respond to your remarks?**
- (17) **A I don t remember what he said or if he just chuckled or what I don t remember**
- (18) **Q Was there anything about your conversation with him at that**

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- (1) **time which led you to believe that he was in any way impaired by alcohol?**
- (2) **A No**
- (3) **Q Was his speech slurred when he was - when he was speaking**
- (4) **with you at this time?**
- (5) **A No, sir**
- (6) **Q Was there anything about his demeanor which would indicate**
- (7) **to you that he was intoxicated?**
- (8) **A No sir**
- (9) **Q At approximately**
- (10) **And approximately how long would you say this interchange or this brief conversation with him lasted?**
- (11) **A A guess of maybe 30 seconds, 45 seconds I guess It was**
- (12) **just in passing**
- (13) **Q After this conversation with Captain Hazelwood did you observe where he went?**
- (14) **A No sir**
- (15) **Q Well what did you do after you had this conversation with Captain Hazelwood?**
- (16) **A I was in the process of securing fire hoses and rolling them up and I don t know what step of the process I was in when**
- (17) **I spoke with him Either I finished rolling the hose or I took it into the phone room inside the - right inside the hatch there I was securing fire hoses at the time**
- (18) **Q Did you observe him going into the house?**

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- (1) **A I don t recall**
- (2) **Q After this interchange with Captain Hazelwood when was the next time that you saw Captain Hazelwood?**
- (3) **A On my way out to the starboard bridge wing**
- (4) **Q At that time if I recall your testimony you say you passed Captain Hazelwood in the wheelhouse?**
- (5) **A Yes, sir**
- (6) **Q I would like you to describe for us in detail that episode Specifically if you recall where was Captain Hazelwood standing when you passed him in the wheelhouse?**
- (7) **A Captain Hazelwood and the third mate were standing on the**
- (8) **starboard side facing out facing out towards the window, more**
- (9) **over to the starboard side And I walked up to the bridge, went around the port side, and from the aft side of the console**
- (10) **saw the door was closed Then I crossed the console and as I**
- (11) **was walking out to the bridge wing, he was there on the starboard side**
- (12) **Q When you passed him did you pass behind him in front of him or behind him?**
- (13) **A Behind him**
- (14) **Q And when you passed him did he have occasion to turn around?**
- (15) **A Well, he spoke to me I imagine he looked towards me He**
- (16) **spoke how my stripes were reflected in the dark on my snow suit He mentioned that fact, so he looked at me**

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- (1) **Q Approximately how close were you to Captain Hazelwood at that particular point in time if you recall?**
- (2) **A Once again I will guess two to three feet**
- (3) **Q Was there anything about his demeanor or anything about him**
- (4) **which would have indicated to you at that time he was in any way impaired by alcohol at that time?**
- (5) **A No, sir**
- (6) **Q Did he appear sober to you at that time?**
- (7) **A Yes, sir**
- (8) **Q When you first encountered him on the deck when he arrived**
- (9) **on the vessel did he appear sober to you at that time?**
- (10) **A Yes, sir**
- (11) **Q Now you ve just stated that you went up to the bridge dressed in this suit this heavy weather suit I suppose**
- (12) **right?**
- (13) **A Yes, sir**
- (14) **Q Now you also testified to what you observed after the grounding of the Exxon Valdez correct?**
- (15) **A Correct**
- (16) **Q I would like to draw your attention to your observations after the grounding during the time that Captain Hazelwood was on the bridge and various engine commands were being given and**
- (17) **also helm commands Were these engine and helm commands being**
- (18) **given at the same time?**
- (19) **A From what I can recall engine command was given and then**

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- (1) **hard right or hard left while the engine command was still in process**
- (2) **Q And the commands were being given by whom?**
- (3) **A The captain was giving all commands**
- (4) **Q And who was he giving the commands to?**
- (5) **A Mr Kagan in the helm and Mr Cousins on the telegraph**
- (6) **Q After Captain Hazelwood gave the command did either Mr Kagan or Mr Cousins acknowledge the order?**
- (7) **A I don't remember distinctly, but from sailing, that is always done Every time an order is given you repeat the order as you do it I don't remember in my mind them saying**
- (8) **it**
- (9) **Q At this time you could hear Captain Hazelwood giving these orders?**
- (10) **A When I was - yes**
- (11) **Q And did you hear him give these orders many times while you were in the wheelhouse during this episode?**
- (12) **A All the orders he gave while we were maneuvering I was there for the full time period**
- (13) **Q Did you also observe Captain Hazelwood physically see him while he was giving these orders?**
- (14) **A Yes, sir**
- (15) **Q And approximately how close to him were you at the time?**
- (16) **A I don't recall I believe I was - it was in the wheelhouse in the pilot house I think I was behind the**

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- (1) **console but I don't remember exactly where I was seeing him**
- (2) **Q Were you standing in the same place all during this time or were you moving around?**
- (3) **A I was probably moving around**
- (4) **Q And where was he standing at that time?**
- (5) **A I believe he was over on the port side by the helmsman**
- (6) **Q Was there anything about him at that time which indicated to you that he was in any way impaired by alcohol?**
- (7) **A No, sir**
- (8) **Q Did he appear sober to you at that time?**
- (9) **A Yes sir**
- (10) **Q Were his commands clear?**
- (11) **A Yes, sir**
- (12) **Q Did you notice any slurring of his speech during those exchanges?**
- (13) **A No, sir**
- (14) **Q Did he sound normal to you?**
- (15) **A Yes, sir**
- (16) **Q Did he seem to you to be in control of the situation insofar as giving the orders to Kagan and to Cousins?**
- (17) **A In control, I don't know how in control you can be in that situation, but he seemed to be sure of himself and what he was doing He wasn't running around like a chicken with his head cut off, what am I going to do, what am I going to do He seemed sure of himself and completely - handling himself in a**

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- (1) **professional manner**
- (2) **Q He never told you what the purpose of the orders were that he was giving up there at that time did he?**
- (3) **A No sir**
- (4) **Q Do you recall whether or not you had observed the ship's heading during the time that these orders were being given?**
- (5) **A I was watching the heading, yes, sir**
- (6) **Q And do you have any recollection at this point in time as to what the heading was?**
- (7) **A Just from reading my reports I believe I said in there 289 I don't remember the number in my head now**
- (8) **Q Do you recall during all of these engine and helm maneuvers whether or not that heading changed?**
- (9) **A What I was watching, the sensors, it's got if your ship's bow is turning to the right or to the left along with your heading, and I was watching the forward one - I don't know You could either set it to the forward or to the aft doppler sounding thing And I don't know - on that ship you could either switch it to the forward or aft one I don't know if it was on the forward one but I was watching that and there was maybe two degrees at the most There was a little change in the heading and I was also looking out and seeing that we didn't go forward or astern I was watching to see if we were moving**
- (10) **Q Well did the heading of the ship change from 289 or did it**

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- (1) **remain on 289 as all this was going on?**
- (2) **A If it changed at all, it would have been one or two degrees It didn't change significantly No**
- (3) **Q Now there was also some testimony concerning the VTS system and about what you would think the VTS system would do relative to informing you of the ship's location Do you recall that?**
- (4) **A Yes**
- (5) **Q At the time of the grounding of the Exxon Valdez you were aware in general terms of what the VTS system was supposed to do?**
- (6) **A In general terms, yes**
- (7) **Q Were you aware that one of the purposes of the VTS was to help ships prevent collisions and groundings?**
- (8) **A Yes, sir**
- (9) **Q And you also were under the impression at that time that ships in Prince William Sound were being tracked by radar at VTS?**
- (10) **A Well I'm aware of the fact that there was a radar system that VTS operated and also you have call-in points where every ship calls in and they tell their position and their course and their speed That's another way that VTS keeps track of the vessel**
- (11) **Q Well let me ask you this question In conjunction with the VTS's mission of helping to prevent collisions and**

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- (1) groundings were you aware of the fact that the VTS was also  
 (2) tracking ships on radar?  
 (3) **A Would you repeat that, please?**  
 (4) **Q Maybe I'll ask it again. Were you aware of the fact that**  
 (5) **there is a radar facility in VTS?**  
 (6) **A Yes, sir.**  
 (7) **Q And did you think that in conjunction with this radar**  
 (8) **facility ships in Prince William Sound were being tracked by**  
 (9) **radar by VTS?**  
 (10) **A Did I think that they were tracking the vessels on the**  
 (11) **radar system?**  
 (12) **Q Yes.**  
 (13) **A Yes.**  
 (14) **Q Now at the time of the grounding of the Exxon Valdez**  
 (15) **based upon what you were led to believe relative to the VTS**  
 (16) **system would you expect VTS to warn a ship if it was tracking**  
 (17) **it on radar and saw that it was about to have a collision with**  
 (18) **another ship?**  
 (19) **A Do I think it will be the responsibility of the VTS to**  
 (20) **inform a ship if a collision is pending?**  
 (21) **Q Yes?**  
 (22) **A Yes, sir. I believe that would be the VTS's job.**  
 (23) **Q And if you thought that and if the VTS had a ship on radar**  
 (24) **and saw that there was a collision about to occur would you**  
 (25) **expect that they would radio the ship to warn the ship of that**

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- (1) **A I asked Mr. Cousins what it was and he told me, yes. It**  
 (2) **was**  
 (3) **ice.**  
 (4) **Q And at that time the ice was somewhere two and three miles**  
 (5) **from the vessel or five miles depending on which testimony**  
 (6) **prior testimony -**  
 (7) **A I never - I don't think I ever gave any miles away. I**  
 (8) **don't know what range the radar was on, what scale**  
 (9) **Q When you first went out on the bridge wing what did you**  
 (10) **do?**  
 (11) **A Looked.**  
 (12) **Q Where did you look?**  
 (13) **A Forward.**  
 (14) **Q Did you look any place else other than forward?**  
 (15) **A Yes.**  
 (16) **Q Where else?**  
 (17) **A Along the sides, you look astern.**  
 (18) **Q When you looked astern did you see any lights?**  
 (19) **A I don't recall.**  
 (20) **Q Are you aware of THE characteristics of the Busby light?**  
 (21) **A Yes, sir.**  
 (22) **Q Do you remember what they are?**  
 (23) **A There's a green sector, I believe. I don't have it**  
 (24) **memorized, no, sir.**  
 (25) **Q But there are two sectors in any event one color and one**  
 (26) **another right?**

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- (1) possibility?  
 (2) **A Yes, sir. If the VTS was aware of the collision were going**  
 (3) **to happen they were tracking it on their radar. I would think**  
 (4) **that the VTS would call the ship and notify them of the**  
 (5) **situation and make sure they were aware and see what they**  
 (6) **were**  
 (7) **going to do, yes, sir.**  
 (8) **Q Now let me take this question one step further. If the**  
 (9) **VTS had a ship on radar and saw that it was about to go**  
 (10) **aground**  
 (11) **on Bligh Reef or Bligh Island or any point in Prince William**  
 (12) **Sound would you expect that they would also notify the ship of**  
 (13) **that by radio?**  
 (14) **A From the pamphlets and other VTS systems up in the**  
 (15) **Straits**  
 (16) **of Juan de Fuca, if you go out of the travel lane or you go**  
 (17) **out**  
 (18) **of the southern or northern boundary the VTS calls you up,**  
 (19) **and**  
 (20) **I would definitely think if they saw your vessel heading for**  
 (21) **an**  
 (22) **object in the water they would tell you. That is their job.**  
 (23) **That is what they're there for.**  
 (24) **MR SANDERS: You may ask**  
 (25) **CROSS EXAMINATION OF MAUREEN HIGGINS (Read)**  
 (26) **BY MS WAGNER**  
 (27) **Q Had you ever seen ice on the radar before you looked at the**  
 (28) **radar whenever you did look at it?**  
 (29) **A I'd never encountered ice before on the trip to Valdez.**  
 (30) **Q When you did look at the radar and you saw what you**  
 (31) **thought**  
 (32) **was ice did you talk with somebody and say is that ice?**

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- (1) **A Yes, sir.**  
 (2) **Q Are you aware of what it means to go from a white sector**  
 (3) **into a red sector in a light?**  
 (4) **A Yes, sir.**  
 (5) **Q What does it mean?**  
 (6) **A It means that you're in a danger area.**  
 (7) **Q When you looked astern do you recall seeing a red light?**  
 (8) **A No, sir.**  
 (9) **Q Do you recall not seeing a red light?**  
 (10) **A I don't recall what lights I saw what color they were.**  
 (11) **Q You just don't recall either way?**  
 (12) **A Right.**  
 (13) **Q Did you consider yourself friends with Hazelwood before**  
 (14) **this accident?**  
 (15) **A Yes, sir.**  
 (16) **Q Before the captain came up to the bridge were the engines**  
 (17) **stopped?**  
 (18) **A Not that I recall.**  
 (19) **Q Were you present when the engines were stopped?**  
 (20) **A I was present during the time but I don't know when it**  
 (21) **happened. I saw they were full ahead and next time that I**  
 (22) **remember looking at the telegraph it was off, stopped.**  
 (23) **Q Between the time that the vessel was - well there was a**  
 (24) **period of time that's been reported when the captain was**  
 (25) **maneuvering with the engines. He'd used various speeds and**  
 (26) **so**

Vol 19 3108

- (1) on Before that time before the time when the vessel ran  
 (2) aground and the time when the captain commenced to do this  
 did  
 (3) the engines go dead?  
 (4) **A I believe so sir**  
 (5) Q And were you still on the bridge when that happened  
 (6) whether you know how it happened?  
 (7) **A Yes, sir**  
 (8) Q And this is a fully automated vessel You run the engines  
 (9) from the bridge is that what that means?  
 (10) **A You either have bridge control or engine room control It**  
 (11) **can be run from either place**  
 (12) Q So that you can basically like you would on a small boat  
 (13) tell the engines from the bridge what to do without the  
 (14) intervention of an engineer in the engine room?  
 (15) **A If you re on bridge control, yes sir**  
 (16) Q Do you know if that s how the engines were stopped whether  
 (17) there was an engineer in the engine room?  
 (18) **A Someone on the bridge would have to put the telegraph**  
 to  
 (19) **stop It doesn t move automatically**  
 (20) Q But you don t know who did it?  
 (21) **A No, sir**  
 (22) Q Do you know who started the engines again?  
 (23) **A When we were maneuvering, Mr Cousins was on the**  
 telegraph  
 (24) Q Was he receiving orders from the captain?  
 (25) **A Yes, sir**

Vol 19 3109

- (1) Q Were you present while those orders were being given?  
 (2) **A Yes, sir**  
 (3) Q And what of those orders do you remember?  
 (4) **A Dead slow half ahead and full ahead**  
 (5) Q So you remember there was dead slow half ahead full  
 (6) ahead?  
 (7) **A Yes**  
 (8) Q Was someone on the helm at the time those were being  
 given?  
 (9) **A Yes, sir**  
 (10) Q Who was that?  
 (11) **A Mr Kagan**  
 (12) Q And was he also being given orders?  
 (13) **A Yes, sir**  
 (14) Q Did you hear those orders?  
 (15) **A Yes, sir**  
 (16) Q What were those orders?  
 (17) **A Hard right hard left to the best of my recall, and then I**  
 (18) **think they were east to ten, right and ten left**  
 (19) Q Pardon I didn t hear  
 (20) **A I think he eased it to ten right and ten left also**  
 (21) Q At the time he was giving those orders of hard right hard  
 (22) right or ten right ten left were the engines running?  
 (23) **A Yes, sir, I believe so**  
 (24) Q Where were you during this period?  
 (25) **A I was on the bridge**

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- (1) Q During the course of maneuvering did the heading of the  
 (2) vessel change?  
 (3) **A Slightly a couple of degrees maybe**  
 (4) Q Is that all?  
 (5) **A As a guess yes sir**  
 (6) MS WAGNER Thanks  
 (7) MR SANDERS May it please the Court we call  
 (8) Mr Lloyd LeCain by deposition  
 (9) THE CLERK Raise your right hand please sir  
 (10) (The Reader is Sworn)  
 (11) THE GLERK For the record sir state your full name  
 (12) address and spell your last name  
 (13) THE WITNESS Robert Hilliard Scott 318 East  
 (14) Broadway Glendale California S C O T T  
 (15) DIRECT EXAMINATION OF LLOYD LECAIN (Read)  
 (16) BY MR SANDERS  
 (17) Q Please state your full name and home address  
 (18) **A Lloyd LeCain 416 Evesham Place Longwood California**  
 -  
 (19) **Longwood Florida**  
 (20) Q Are you aware of the vessel organization manual  
 encouraging  
 (21) masters to conduct training exercises?  
 (22) **A Yes, I believe**  
 (23) Q Did you say you couldn t remember reading that?  
 (24) **A No, I can t recall**  
 (25) Q Well how about if I ask you whether or not you remember

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- (1) any master actually conducting training exercises?  
 (2) **A Oh, yes**  
 (3) Q What did they consist of?  
 (4) **A There was firefighting training There was - I used to be**  
 (5) **in charge of giving training in firefighting Sound damage to**  
 (6) **people's ears**  
 (7) Q You mentioned also participating in the EXCEL program?  
 (8) **A Yes**  
 (9) Q Can you explain your participation?  
 (10) **A It was sort of like a problem thing You would solve**  
 (11) **problems by working together as a team A lot of**  
 corporations  
 (12) **use that**  
 (13) Q Did you have a certain amount of training for EXCEL?  
 (14) **A No, no some of the stuff is ridiculous It seemed**  
 (15) **ridiculous Later on when we looked at it, it - like**  
 (16) **everybody would cover themselves with the black hood and**  
 we  
 (17) **would all try to get in a box and it was - like they would**  
 (18) **have these problems you would solve, like people put hoods**  
 over  
 (19) **their heads and - and can i see a little bit and I - I could**  
 (20) **see a little bit, and we would all try to get ropes to do that,**  
 (21) **and another one was we would try to jump over some ropes**  
 We d  
 (22) **have a rope course and you have to figure how to get people**  
 (23) **over these ropes Seemed silly at the time But it was a way**  
 (24) **to work together as a team**  
 (25) Q Was this mandatory training that you went through?



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- (1) **A It was mandatory for captains and chief mates I had**  
 (2) **Mr Iarossi tell me As for other officers, they would like**  
 (3) **you to go to it You didn't have to but they would like you**  
 (4) **to**  
 (5) **Q How long did it take?**  
 (6) **A I believe that was a week also**  
 (7) **Q And then was there follow up EXCEL work that you did or**  
 (8) **was**  
 (9) **that it?**  
 (10) **A That was it Oh wait a minute There was an EXCEL**  
 (11) **program on the ship because we did have these**  
 (12) **brainstorming**  
 (13) **ideas for improving the fleet We'd try to implement these**  
 (14) **things on the ship using the resources we have on the ship**  
 (15) **And so some of the stuff was real good on the fleet and**  
 (16) **some of**  
 (17) **it wasn't good It was input from the people below in**  
 (18) **management**  
 (19) **Q I don't want to spend a lot of time on this but could you**  
 (20) **just give me some idea of the brainstorming that you you're**  
 (21) **talking about ideas that you implemented on the ship?**  
 (22) **A One trouble we have when a ship goes alongside the**  
 (23) **dock is**  
 (24) **the lining up with the risers which is where you load the**  
 (25) **ship, with the arms on the dock Okay? It's often hard when**  
 (26) **you're 60 feet up in the air on a loaded ship to see exactly**  
 (27) **where the arm is What we did on the ship I was on we drew**  
 (28) **circles on the side of the ship exactly at the same position**  
 (29) **as**  
 (30) **the arms were on the ship and we put the diameter of the**

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- (1) **reducer on it We would paint this on the ship so when we**  
 (2) **came**  
 (3) **alongside the ship the guys down there could see where**  
 (4) **your**  
 (5) **arm was That was one of my ideas and we did try it on the**  
 (6) **ship and it worked pretty good There were other ideas that**  
 (7) **people had I don't recall**  
 (8) **Q And then as part of EXCEL would you communicate your**  
 (9) **good**  
 (10) **ideas to other -**  
 (11) **A Yeah, what you did was you'd come up with the ideas and**  
 (12) **then somebody from management and engineering would**  
 (13) **come or**  
 (14) **engineering would come and talk to you about it and see if it**  
 (15) **was feasible to do that It was nice It was nice to have**  
 (16) **input from the officers It was an interesting program**  
 (17) **Q What sort of training did Exxon have for helmsmen? In**  
 (18) **other words you talked about Kagan before But can you tell**  
 (19) **us how a man ends up being a qualified helmsman?**  
 (20) **A Well Coast Guard document says you're a qualified**  
 (21) **helmsman**  
 (22) **if you're an able seaman an A B you're automatically**  
 (23) **qualified But go back you're a qualified helmsman if you're**  
 (24) **an able seaman**  
 (25) **Q An A B you're automatically qualified but did Exxon have**  
 (26) **any check in addition to that that they went through or any**  
 (27) **type of training they put the A B through if he was a new A B**  
 (28) **or did they just put him on the helm?**  
 (29) **A We would put him on the helm but I want to qualify it I**  
 (30) **know Joe Hazelwood and a number of captains like the**  
 (31) **guys to**

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- (1) **steer half an hour in the manual steering at night so they get**  
 (2) **practice at sea and there was no set rule but we always**  
 (3) **tried**  
 (4) **to do it and it helped the guys steer**  
 (5) **Q That was when you were on a steady course at sea?**  
 (6) **A Right**  
 (7) **Q So he could practice trying to hold it on that course?**  
 (8) **A Right And any time I'd change course at sea of course**  
 (9) **we would put it on manual and we would have a quarter**  
 (10) **master on**  
 (11) **the wheel at that time and he would be steering**  
 (12) **Q Was there any pressure put on you that you were aware of**  
 (13) **when I say you I mean the ship to have a fast turn around**  
 (14) **time?**  
 (15) **A Not -**  
 (16) **Q To meet the schedule let's put it that way?**  
 (17) **A I would say no more than normal**  
 (18) **Q Well what do you mean by that?**  
 (19) **A Well, the owners of the ship expect the ship to turn**  
 (20) **around**  
 (21) **with maximum efficiency within safety guidelines, that's it**  
 (22) **I mean we always had safety first in my company**  
 (23) **Q Now you mentioned the safety drills and fire drills?**  
 (24) **A Uh huh**  
 (25) **Q Can you tell me first of all how often these were**  
 (26) **conducted?**  
 (27) **A Well at least once a week We always had them on every**  
 (28) **trip As soon as we got out to sea if the weather was good**  
 (29) **we**

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- (1) **would have a fire drill and then an abandon ship drill Test**  
 (2) **the equipment, and then he we would have a demonstration**  
 (3) **afterwards and usually the second or third mate gave a**  
 (4) **demonstration**  
 (5) **Q Do you know whether Exxon had any policy concerning**  
 (6) **fatigue**  
 (7) **or stress?**  
 (8) **A Well, Exxon is always safety first so I mean if you were**  
 (9) **really tired, you could say I'm really tired and they could**  
 (10) **work something out**  
 (11) **Q Mr Blank asked you a bunch of questions about your duties**  
 (12) **and the hours you worked on the 22nd and 23rd I don't want to**  
 (13) **go back through all of that but what I want - what I do want**  
 (14) **to ask you is whether or not the work routine that you**  
 (15) **described is typical of what you would have normally done in**  
 (16) **the Port of Valdez?**  
 (17) **A It could be depending on which watch we tied up at**  
 (18) **What**  
 (19) **I'm saying is some officers would catch it wrong, you know,**  
 (20) **there are only so many hours in a day and you tied up at the**  
 (21) **wrong watch, you got hit That's the way it works**  
 (22) **Q To use your words did you catch it wrong this time in**  
 (23) **Valdez?**  
 (24) **A No I just caught a lot of work that's all I didn't**  
 (25) **feel tired or anything I paced myself**  
 (26) **MS WAGNER Do you have a cross examination script?**  
 (27) **CROSS EXAMINATION OF LLOYD LECAIN (Read)**

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- (1) BY MS WAGNER  
 (2) Q You have another document here that s been marked as 20036  
 (3) which is a memorandum to Paul Myers from Captain Stalzer  
 Did  
 (4) you ever sail with Captain Stalzer?  
 (5) A Yes  
 (6) Q Do you know who Paul Myers is?  
 (7) A Yes  
 (8) Q This is dated January 22 1989 and it s entitled safety  
 (9) fatigue concerns And I ll let you look at this but in  
 (10) summary Captain Stalzer points out a period of three days in  
 (11) which a chief officer worked over 60 hours and had only a few  
 (12) hours off in a 60 hour period And Captain Stalzer is  
 (13) complaining about it and then he makes some  
 recommendations  
 (14) And I ll ask you a question about it after you look at it  
 (15) Actually it s 62 hours and he had I believe nine hours  
 (16) off in a 62 hour period  
 (17) Okay The question I have for you did you find this to be  
 (18) common with chief mates in port to be working hours like  
 (19) this?  
 (20) A Not necessarily It depends on the officers on the ship  
 (21) and how everything goes He may have said 62 hours but  
 maybe  
 (22) the second mate relieved him for a while Maybe he rested  
 in a  
 (23) chair That doesn t tell you anything  
 (24) Q Well if you take what s being said here by Captain  
 (25) Stalzer he s complaining about this and he itemizes the

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- (1) periods of time In taking Captain Stalzer s calculations as  
 (2) fact all right just for purposes of the question I m asking  
 (3) you did you encounter other chief mates that worked these  
 (4) types of hours in port?  
 (5) A Not that many hours  
 (6) Q This is an unusual situation?  
 (7) A That would be an unusual situation I might add that I  
 was  
 (8) on the Exxon San Francisco and we had a lot of hours  
 sometimes  
 (9) and the chief mate and I would spell each other sometimes  
 cargo officers  
 (10) Q So when you spelled each other how many hours a day  
 were  
 (11) each of you working?  
 (12) A It - I might get an extra hour or two That s purely  
 (13) circumstantial How do you feel, do you feel awake do you  
 (14) feel that you can handle the cargo, good give me a little  
 (15) spell, a little rest, I'm sure you would do it in your job  
 (16) spell each other  
 (17) Q What was Exxon s policy concerning watch officers standing  
 (18) watch leaving port as far as when they are on duty leaving  
 (19) port not having been on duty for six hours out of the required  
 (20) 12 hour period? Do you understand what I m saying? Did you  
 (21) ever hear any regulation?  
 (22) A I heard a Coast Guard regulation, something about it  
 (23) Q Do you know what the regulation is?  
 (24) A No Like I say, I really don t know I don t know about

- (1) that  
 (2) Q Did you ever stand a watch leaving port with Exxon you  
 (3) said you did on occasion where you had not been off duty for  
 (4) more than six hours in the 12 hour period preceding -  
 (5) preceding period?  
 (6) A Many times  
 (7) Q So that was a violation of the regulation as you  
 (8) understand it?  
 (9) A No that s what you re telling me  
 (10) Q Well assuming there is a regulation that says you re not  
 (11) to have been on duty for at least six hours within a 12 hour  
 (12) period when leaving port you either - there were occasions  
 (13) when you had been on duty for more than six hours in a 12 hour  
 (14) period when leaving port isn t that correct?  
 (15) A Occasionally  
 (16) Q And Exxon Shipping Company - does Exxon Shipping  
 Company  
 (17) pay its deck officers for overtime?  
 (18) A No  
 (19) Q Did they ever do so?  
 (20) A Yes but that needs explanation What happened was we  
 had  
 (21) a base salary and we had an overtime company made us  
 managers  
 (22) and incorporated the overtime into the base salary, which in  
 (23) actuality is more when you go to retire because your  
 (24) retirement is based on your base salary  
 (25) Q Okay When did they do this?

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- (1) A Oh, I would say - I'm going to be in the ballpark -  
 (2) seven eight years I may be off on that  
 (3) Q Are you aware of the practice of Exxon captains bringing  
 (4) the ships out of Prince William Sound alone to let deck  
 (5) officers sleep?  
 (6) A I don't know It didn't happen when I was on the ship  
 (7) Q So you never heard of that happening?  
 (8) A No, I've heard, like I say, no, I would say no There's  
 (9) usually two officers on the bridge but I don t know what  
 goes  
 (10) on  
 (11) Q Are you trained to recognize the physical and psychological  
 (12) effects of fatigue or chronic fatigue in your own self?  
 (13) A No  
 (14) Q There was never any training about that now I mean just  
 (15) within Exxon Shipping Company?  
 (16) A No  
 (17) Q Did you ever complain about your working conditions?  
 (18) A What do you mean by working conditions?  
 (19) Q Well did you ever complain for example about your  
 (20) working hours?  
 (21) A Yes, you know, there were a lot of hours sometimes  
 That s  
 (22) all  
 (23) Q Who did you complain to?  
 (24) A Just talk between the officers  
 (25) MS WAGNER Thank you

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- (1) MR SANDERS Your Honor I m pleased to announce we  
 (2) have a live witness We call Mr Greg Ferrone  
 (3) THE CLERK Would you raise your right hand please  
 (4) sir Witness  
 (5) (The Witness is Sworn)  
 (6) THE CLERK For the record state your full name your  
 (7) address and spell your last name  
 (8) THE WITNESS My name is Gregory John Ferrone I m  
 (9) from North Hampton Pennsylvania My last name is spelled  
 (10) F E R R O N E  
 (11) THE CLERK Thank you sir  
 (12) DIRECT EXAMINATION OF GREGORY FERRONE (Live)  
 (13) BY MR SANDERS  
 (14) Q Mr Ferrone you re employed by Exxon Shipping Company  
 now  
 (15) Sea River Maritime?  
 (16) A That s correct  
 (17) Q And let me take you briefly before we go to our break  
 (18) through your background How long have you worked for  
 Exxon?  
 (19) A 13 and a half years  
 (20) Q And before you started work with Exxon where were you?  
 (21) A College  
 (22) Q All right Where did you go to college?  
 (23) A New York Maritime College, Fort Schuyler  
 (24) Q All right Now I want you the talk a little bit slower so  
 (25) we can all hear you You went to what college?

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- (1) A New York Maritime College in Fort Schuyler Bronx, New  
 (2) York  
 (3) Q You don t have to talk as slow as I do And you  
 (4) graduated -  
 (5) A New Yorkers don t do that  
 (6) Q And you graduated from Fort Schuyler in what year?  
 (7) A May of 1981  
 (8) Q And as a graduate did you have a license?  
 (9) A Yes sir  
 (10) Q And what was that license?  
 (11) A Third mate s license  
 (12) Q And then you came to Exxon as a third mate?  
 (13) A That s correct  
 (14) Q How long did you sail as a third mate for Exxon?  
 (15) A Until 1984  
 (16) Q All right And in 1984 what did you become?  
 (17) A Second mate  
 (18) Q And prior to that had you gotten a license sat for a  
 (19) license exam with the U S Coast Guard?  
 (20) A Yes sir  
 (21) Q And how long did you sail for Exxon as a second mate?  
 (22) A For two years until 1986  
 (23) Q And in 1986 had you - by 1986 had you received your  
 (24) license as a chief mate?  
 (25) A Yes sir

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- (1) Q And did you then start sailing on that license or sail as a  
 (2) chief mate for Exxon?  
 (3) A Yes sir  
 (4) Q Now you are currently assigned to what ship?  
 (5) A Right now I m assigned to the Exxon Philadelphia Sea  
 River  
 (6) Philadelphia  
 (7) Q And you are currently employed by Exxon?  
 (8) A That s correct  
 (9) Q Now in the Exxon way of doing things the Exxon Shipping  
 (10) Company way of doing things were you called upon over your  
 (11) career to do performance evaluations of people that you were  
 (12) supervising?  
 (13) A Yes, sir  
 (14) Q And you were supervising?  
 (15) A Yes, sir  
 (16) Q And in fact were you by your supervisors?  
 (17) A Yes, sir  
 (18) Q Is that - well how long has that gone on?  
 (19) A As long as I ve been with the company  
 (20) Q All right And in the course - how often were these  
 (21) evaluations done? For example A Bs or people sailing as  
 (22) ordinary seamen or maintenance seamen?  
 (23) A Well, the guidelines were 28 days there was review at  
 (24) least 28 days, be prudent to do evaluation but there were  
 (25) instances where if an individual was with you for a shorter

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- (1) period of time, an evaluation or just input for that period of  
 (2) time would not be out of the norm  
 (3) Q Okay And did you use a particular form to do these  
 (4) evaluations?  
 (5) A Yes, sir there s a particular form for the unlicensed  
 (6) individual  
 (7) Q And where did you get that form?  
 (8) A It s in all the officer s files  
 (9) Q Exxon -  
 (10) A Yes correct  
 (11) Q - gave you the form to use to do these evaluations?  
 (12) A That s correct  
 (13) MR SANDERS Your Honor would this be a good time  
 (14) to -  
 (15) THE COURT We ll take our first recess ladies and  
 (16) gentlemen We ll be in recess for 15 minutes  
 (17) THE CLERK This court is in recess for 15 minutes  
 (18) (Jury out at 9 59 a m )  
 (19) (Jury in at 10 16 a m )  
 (20) BY MR SANDERS  
 (21) Q Now Mr Ferrone there has been testimony in this case  
 (22) concerning Mr Bob Kagan and indeed Bob Kagan was at the  
 helm  
 (23) at the time the Valdez ran aground on March 24th 1989 I want  
 (24) to ask you do you know Bob Kagan?  
 (25) A Yes, sir

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- (1) Q Have you sailed with Bob Kagan?  
 (2) A Yes sir  
 (3) Q And indeed have you done performance evaluations on Bob Kagan?  
 (4) A Yes sir  
 (5) Q And in the course of doing these performance evaluations or preparing to do performance evaluations did you take care to look at how Mr Kagan was performing various parts of the job that he was performing?  
 (6) A Yes, sir  
 (7) Q All right Let me ask you specifically when did you do performance evaluations on Mr Kagan how many times?  
 (8) A Two times  
 (9) Q When was the first one?  
 (10) A 1984  
 (11) Q And the second one?  
 (12) A 1987  
 (13) Q And in either/or both of those occasions what time frame did those evaluations cover?  
 (14) A Two months or 60 days  
 (15) Q Both times?  
 (16) A Yes sir  
 (17) Q Two times - two months in 84 two months in 1987?  
 (18) A That s correct  
 (19) Q And in those times - those tours of duty let s call it -

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- (1) did Mr Kagan steer?  
 (2) A Yes sir  
 (3) Q Was he sailing as an able bodied seaman on either of those two occasions?  
 (4) A No sir  
 (5) Q And generally it is the able bodied seaman who steers correct?  
 (6) A Yes sir  
 (7) Q Why did Mr Kagan steer on those occasions?  
 (8) A Because he had asked permission to do so  
 (9) Q And was that granted?  
 (10) A Yes, sir  
 (11) Q And did Mr Kagan steer with you watching him in 1984?  
 (12) A Yes, sir  
 (13) Q Can you - I know it s a long time ago but can you estimate on how many occasions you watched him steering?  
 (14) A Four times  
 (15) Q All right And in 1987 can you tell us how many times you watched him steer?  
 (16) A Two times  
 (17) Q All right In 1984 can you recall the location or locations where you had Mr Kagan at the helm?  
 (18) A The Mississippi River  
 (19) Q All right Now is the Mississippi River an easy or a hard place to navigate and to steer?

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- (1) A Hard  
 (2) Q And was he steering a tanker?  
 (3) A Yes sir  
 (4) Q Which tanker?  
 (5) A The Exxon Huntington  
 (6) Q How did Mr Kagan do steering on the Mississippi River?  
 (7) A Very well  
 (8) Q Now on the occasion that you had him steering in 1987 can you remember where he steered on those occasions?  
 (9) A The Ambrose Channel which is the approach channel to New York Harbor  
 (10) Q Are those pilotage waters?  
 (11) A Yes sir  
 (12) Q Are those within the definition of confined waters?  
 (13) A Yes sir  
 (14) Q And how did Mr Kagan do?  
 (15) A Very well  
 (16) Q Let me ask that two pages of exhibit - Plaintiffs Exhibit Number 69 be brought up please  
 (17) MR SANDERS Your Honor I misspoke and I ve been corrected Plaintiffs Exhibit 69 I don t believe is in evidence What I would like to do is offer the two pages of which Mr Ferrone has knowledge of that exhibit I d like to offer that as an exhibit Can we call that 69 or should I give it a new number?

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- (1) MR O NEILL How about 69 Alpha?  
 (2) MR SANDERS Is that all right Mr Murtiashaw? Your Honor?  
 (3) THE COURT Mr Murtiashaw will that confuse things?  
 (4) MR O NEILL Let me - before we get to that Exhibit 69 is Mr Kagan s service record as provided by Exxon Corporation to the National Transportation Safety Board It s his complete service record as produced by Exxon Perhaps we should just offer Exhibit 69  
 (5) MR SANDERS Well it was - it was referenced during the course of his deposition and I have no - I have no objection to putting this in I do want to correct something though I do not believe it is a complete service record It doesn t go back beyond about 1984 or 5 It s not complete but -  
 (6) MR O NEILL It s as provided to the NTSB Why don t we just offer 69?  
 (7) (Exhibit 69 offered)  
 (8) THE COURT Plaintiffs Exhibit 69 is admitted  
 (9) (Exhibit 69 received)  
 (10) BY MR SANDERS  
 (11) Q As I was saying two pages of Exhibit 69 I wish you would look at the first page please - and let me bring it up a little bit You have a screen right to your left or you can use this one over here

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- (1) **A I can see that**  
 (2) **Q Now is that your name at the top of this?**  
 (3) **A Yes, sir**  
 (4) **Q And is that the evaluation you did of Mr Robert Kagan in 1987?**  
 (5) **A Yes, sir**  
 (6) **Q And what ship was that on?**  
 (7) **A The Exxon Charleston**  
 (8) **Q And the time frame of that evaluation was from June 10th 1987 to August 4th 1987 is that correct?**  
 (9) **A That s correct**  
 (10) **Q Now this portion that I ve highlighted or brought out this is the evaluation part for the deck department?**  
 (11) **A That s correct**  
 (12) **Q Now there is a section here that s very hard to read I m going to underline it and ask if you from memory or from any other copy that you have up there can tell the ladies and gentlemen of the jury and the Court what that - what is written there?**  
 (13) **A It pertains to his abilities at the helm of the vessel**  
 (14) **Q But what does it actually say?**  
 (15) **A I can't recall from the specific -**  
 (16) **Q Can I help you? Steers in confined waters ?**  
 (17) **A Steers in confined waters**  
 (18) **Q Now there is an X mark in the column opposite steers in**

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- (1) **confined waters correct?**  
 (2) **A That s correct**  
 (3) **Q Now let me go up here to this part so we know what that X mark means The third column in from the left does that say above normal ?**  
 (4) **A Yes, sir**  
 (5) **Q Going back then to this block this X mark being the third in from the left you rated him as above normal?**  
 (6) **A That s correct**  
 (7) **Q All right**  
 (8) **Now in your practice or in the practice of the people who do these evaluations like yourself is it appropriate or do you from time to time make comments?**  
 (9) **A Yes, sir**  
 (10) **Q And if the comment has to do with his steering where would you put that comment?**  
 (11) **A To the right of where the box is for boxes for the X are as you can see on this form**  
 (12) **Q I m underlining the comment section opposite steers in confined waters What did you put there?**  
 (13) **A Steers well to pilot s orders**  
 (14) **Q Now you used the word pilot s there Does that have a specific meanings?**  
 (15) **A That s correct**  
 (16) **Q Does that mean that Mr Kagan was steering with a pilot**

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- (1) **aboard?**  
 (2) **A That s correct**  
 (3) **Q In pilotage waters?**  
 (4) **A That s correct**  
 (5) **Q In confined waters?**  
 (6) **A Yes, sir**  
 (7) **Q And your comment was that he steered well to pilot s orders?**  
 (8) **A Yes, sir**  
 (9) **Q Now this - this concerns one aspect of the job for which he was being evaluated correct?**  
 (10) **A That's correct**  
 (11) **Q Now let s go to some other aspects because some of your comments were not that favorable and let s bring those out The second item on the list has to do with quantity of work is that correct?**  
 (12) **A That's correct**  
 (13) **Q And opposite that you wrote this comment - would you read that for the ladies and gentlemen of the jury? It s not - doesn t come through very well**  
 (14) **A Volume of his work is borderline**  
 (15) **Q And underneath that you make another comment What is that?**  
 (16) **A Bob must be supervised constantly**  
 (17) **Q And then underneath that another comment is what?**

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- (1) **A Tends to detract from productive operations**  
 (2) **Q And then under that you say he acts quickly on counseling correct?**  
 (3) **A That s correct**  
 (4) **Q Let s go to the second page of this evaluation Now this is the page where you talk about the employee s strengths and weaknesses correct?**  
 (5) **A That s correct**  
 (6) **Q And at one point you mention that At times and with supervision Mr Kagan is a productive member of the deck force correct?**  
 (7) **A That's correct**  
 (8) **Q And then on down here you say that he must learn to concentrate to maintain his attention span and then later you say he needs to avoid being a distraction and become more productive?**  
 (9) **A That s correct**  
 (10) **Q Now tell the ladies and gentlemen of the jury what were you referring to here in respect to Mr Kagan s needing supervision maintaining his attention span and avoiding distraction?**  
 (11) **What did Bob Kagan do that caused these comments?**  
 (12) **A Bob tends to like to talk to people, a great deal, as a matter of fact And in his work area, should someone wander through it for any reason he would tend to go off of the job**

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- (1) that he was assigned and tend to talk to that individual  
 (2) whether that person wanted to be talked to or not thus not  
 (3) only reducing his productivability [sic], also the person that  
 (4) he was talking to That was basically the gist of that  
 (5) description  
 (6) Q All right Now at this time - in 87 and I think in 84  
 (7) also - Mr Kagan was wanting to be able to sail as an  
 (8) able bodied seaman right?  
 (9) A That s correct  
 (10) Q And for that reason and because of these - well strike  
 (11) that  
 (12) For that reason did you make a comment about whether he  
 (13) was ready to sail as an A B in the summer of 1987?  
 (14) A Yes, I did  
 (15) Q And that comment I m underlining right now you said he s  
 (16) not ready at this time to sail as an A B?  
 (17) A That s correct  
 (18) Q Now what was the reason that you made that comment?  
 (19) A Because I felt that Bob at that time was unable to fulfill  
 (20) the duties as able seaman and he should continue in the  
 (21) position as ordinary seaman continue his training  
 (22) Q All right Now let s talk a little bit about this tour of  
 (23) duty with Mr Kagan and this evaluation and this ship What is  
 (24) the Exxon Charleston?  
 (25) A Exxon Charleston is a clean products carrier carries

- (1) officer and a helmsman relate when they re doing their jobs  
 (2) A All right  
 (3) Q Whose job is it to give the commands?  
 (4) A Whoever has the con and closed - in a channel or narrow  
 (5) channel or a river it would be the pilot  
 (6) Q Either the pilot or the watch officer or let s call him  
 (7) the conning officer - or her the conning officer?  
 (8) A That s correct  
 (9) Q What happens when a conning officer gives a command to  
 (10) the  
 (11) helmsman?  
 (12) A The helmsman repeats back the order to him and then  
 (13) follows  
 (14) out the command  
 (15) Q What is the responsibility then of the conning officer?  
 (16) A Conning officer responsibility, utmost responsibility is to  
 (17) make sure that that order was followed out correctly  
 (18) Q All right  
 (19) Now is that just a good idea or is that a common practice  
 (20) or a necessary practice on board any ship?  
 (21) A That is a vital practice aboard any ship  
 (22) Q Are there helmsmen who make mistakes?  
 (23) A Yes sir  
 (24) Q What kind of mistakes are made?  
 (25) A Misunderstanding the order or going the wrong direction  
 with the wheel or not hearing him  
 Q All right is that the reason then for the

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- (1) refined solvents and lubricating oils on the East Coast to  
 (2) ports in the Gulf of Mexico all along the east coast of the  
 (3) United States  
 (4) Q All right And at any given time how many different clean  
 (5) products would the Charleston be carrying say in the summer  
 (6) of 1987?  
 (7) A On average, about 30 and could be as much as 35  
 (8) Q And it makes port calls all up and down the East Coast?  
 (9) A That s correct  
 (10) Q Would you compare the work aboard the Charleston with  
 (11) the - or can you compare the work aboard the Charleston as  
 (12) compared with a crude oil carrier that trades between Valdez  
 (13) Alaska Benicia or San Francisco Long Beach or Panama?  
 (14) A I would say that the work and the workload and the  
 (15) demands  
 (16) on an individual on a clean products carrier are greater than  
 (17) that than on a crude oil carrier  
 (18) Q What about steering?  
 (19) A The demands on a helmsman would be greater on the  
 (20) East  
 (21) Coast, the clean products carrier, due to the fact of the  
 (22) more  
 (23) numerous port calls and the more narrow channels  
 (24) Q Would you compare steering in the Mississippi River with  
 (25) steering on the Pacific runs?  
 A Yes, the Mississippi River demands I feel a greater  
 degree of concentration it is less forgiving of errors  
 Q All right Now let me ask you about the way that a watch

- (1) responsibility being placed on the conning officer to ensure  
 (2) that the order is being carried out?  
 (3) A Yes sir  
 (4) Q Does the helmsman have any say so about that order when  
 (5) to  
 (6) stop when to start when to do it?  
 (7) A No, sir  
 (8) Q Now is that what you would call a close super -  
 (9) supervised activity?  
 (10) A Yes, sir  
 (11) Q In other words when a helmsman when an A B or ordinary  
 (12) seaman is at the helm he is required to be closely supervised  
 (13) -  
 (14) A Absolutely  
 (15) Q - correct?  
 (16) Is there a difference with respect to commands giving -  
 (17) given to a helmsman between a rudder command and a course  
 (18) command?  
 (19) A Yes sir  
 (20) Q What is the difference? What s a - tell us what a rudder  
 (21) command is  
 (22) A A rudder command is simply a order to bring the rudder  
 (23) to a  
 (24) specific angle and hold -  
 (25) Q What is required what do you have to do in order to pull  
 that off?  
 A You give the order to the helmsman of right ten left ten

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- (1) whatever it may be He repeats it he goes to that angle as  
 (2) represented on the rudder angle indicator, and then he repeats  
 (3) back that the order has been done, and that is it  
 (4) Q Does the helmsman do anything other than put it on that  
 (5) number that s given him right or left? Is he required to do  
 (6) anything else other than just keep it there?  
 (7) A A good helmsman – and I venture to say it may not be  
 (8) required, but a good helmsman would notify the bridge that  
 the  
 (9) ship is beginning to turn or is passing a certain number on  
 the  
 (10) compass  
 (11) Q Okay I – I beg your pardon I was asking with respect to  
 (12) the helm  
 (13) After say if it s right ten degrees after turning it to  
 (14) the ten does – is he required to do anything else other than  
 (15) just hold it on that ten?  
 (16) A No, sir  
 (17) Q Is he allowed to do anything else?  
 (18) A No, sir  
 (19) Q Other than hold it on that ten?  
 (20) A No, sir  
 (21) Q All right  
 (22) Now a course order though is different What is that?  
 (23) A Course order is when the pilot or the conning officer  
 would  
 (24) direct the helmsman to bring it to a particular number on the  
 (25) compass helmsman would repeat that and depending on  
 how the

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- (1) pilot wants that done the pilot would say, Bring it over  
 (2) smartly or easy, which would be, you know, quickly or  
 slowly  
 (3) He would follow through and bring the ship over to that  
 (4) course  
 (5) Q And once having gotten it to that compass heading does the  
 (6) helmsman have further responsibilities?  
 (7) A Just to maintain that course Other than that, no  
 (8) Q And if the current or the wind causes the ship to vary from  
 (9) that course he has to get it back on there right?  
 (10) A That s correct  
 (11) Q On his own?  
 (12) A That s correct  
 (13) Q Now in the situation where Mr Kagan would be at the helm  
 (14) and you were the conning officer do you have an opinion as to  
 (15) whether or not Mr Kagan needed extra supervision in that  
 (16) particular setting?  
 (17) A No sir he did not  
 (18) Q Could you compare Mr Kagan to other helmsmen who  
 sailed  
 (19) with Exxon as far as steering ability?  
 (20) A He was a little above average  
 (21) Q Now could you compare sailors who sailed with Exxon with  
 (22) those who sail for other companies or for other entities like  
 (23) the Coast Guard or the Navy or something like that?  
 (24) A Yes, sir I believe they re above average  
 (25) Q Exxon sailors?

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- (1) A Exxon employees are a better breed for lack of a better  
 (2) term, than those I d seen on other companies and other  
 vessels  
 (3) Q Let me ask you one final question  
 (4) Did you come to any sort of conclusion from your time  
 (5) serving with Mr Kagan that there was a better way or a good  
 (6) way to supervise Mr Kagan?  
 (7) A Could you –  
 (8) Q What did he respond to?  
 (9) A Mr Kagan responded to – as I said in my evaluation, he  
 (10) responded well to a good supervisor, a person that would –  
 (11) gave him the respect any person would deserve, positive  
 (12) feedback Treat him like a human being and he'd respond  
 very  
 (13) well  
 (14) MR SANDERS You may ask  
 (15) MR O NEILL Work with me sir and we ll have you out  
 (16) of here in five minutes  
 (17) THE WITNESS I ve got all the time you need  
 (18) CROSS EXAMINATION OF GREGORY JOHN FERRONE  
 (19) BY MR O NEILL  
 (20) Q On your evaluation your 1987 evaluation of Mr Kagan you  
 (21) made the comment Bob always tries his best despite personal  
 (22) discomfort past illness Do you recall that?  
 (23) A Yes, sir  
 (24) Q What kind of past illness did he have?  
 (25) A At the time, I believe he was suffering from contact

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- (1) dermatitis caused by exposure to paint – paint thinner, I  
 (2) believe  
 (3) Q He had a history of problems including sinus problems  
 (4) allergy problems hay fever vision problems hearing  
 problems  
 (5) isn t that right?  
 (6) A I m unaware of those  
 (7) Q I was interested when you were testifying about your  
 (8) evaluation that you made the comment Kagan must learn to  
 (9) concentrate to maintain his attention span Do you recall  
 (10) that?  
 (11) A Yes, sir  
 (12) Q And Kagan is not ready at this time to sail as an A B?  
 (13) A Yes, sir  
 (14) Q Do you recall that?  
 (15) A Yes, sir  
 (16) Q Now Exhibit 69 which is in front of you is a collection  
 (17) of evaluations?  
 (18) A Yes, sir  
 (19) Q And Mr Kagan was evaluated at various times according to  
 (20) Exhibit 69 by a fellow named McDonald Do you know him  
 (21) Michael G McDonald?  
 (22) A Yes sir  
 (23) Q And he was evaluated by a fellow named George Maynard  
 Do  
 (24) you know him?  
 (25) A Yes, sir

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- (1) Q And he was evaluated by a David Witherall Do you know  
 (2) him?  
 (3) A Yes sir  
 (4) Q He was evaluated by a Rafael Rojana (ph) Do you know  
 him?  
 (5) A Yes sir  
 (6) Q He was evaluated by you and evaluated by Bill Regan do  
 you  
 (7) know him William Regan first engineer?  
 (8) A No sir  
 (9) Q And he was evaluated by Michael Stalzer who came here  
 and  
 (10) testified and Stalzer s evaluation didn t have him as  
 (11) above average steerer are you aware of that?  
 (12) A No sir  
 (13) Q Are you aware of any of the evaluations that are in Exhibit  
 (14) 69?  
 (15) A Other than mine, no, sir  
 (16) Q Were the contents of Exhibit 69 or these other evaluations  
 (17) made available to you?  
 (18) A No sir  
 (19) Q Were they kept from you?  
 (20) A Yes, sir  
 (21) Q And indeed do you know why the other evaluations were  
 kept  
 (22) from you?  
 (23) A No, sir, other than proprietary information  
 (24) Q Would it surprise you to find out that the other  
 (25) evaluations with regard to steering were not favorable?

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- (1) MR SANDERS I ll object to that both as a  
 (2) mischaracterization and he s already brought out that there s  
 (3) no foundation for asking him that question  
 (4) THE COURT Sustained You can ask specific  
 (5) questions  
 (6) MR O NEILL I ll ask some specific questions  
 (7) BY MR O NEILL  
 (8) Q McDonald rated Kagan as cannot rate in the following  
 (9) areas steering in confined waters were you aware of that?  
 (10) A No, sir  
 (11) Q That isn t consistent with your evaluation was it?  
 (12) MR SANDERS I object to that Your Honor That -  
 (13) the testimony is that he asked Mr Kagan about that at the  
 (14) deposition that he didn t steer in confined waters That s  
 (15) why he couldn t rate him  
 (16) MR O NEILL I ll try another one  
 (17) THE COURT Try another one  
 (18) BY MR O NEILL  
 (19) Q David Witherill said Needs to practice steering in  
 (20) confined waters before steering as A B Were you aware of  
 (21) that?  
 (22) A No sir  
 (23) Q He had an attention span problem?  
 (24) A Yes, sir  
 (25) Q What is the difference between being an ordinary seaman  
 and

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- (1) then stepping up to A B or sailing as an A B?  
 (2) A You mean the difference in the positions the  
 (3) responsibilities?  
 (4) Q Yes sir  
 (5) A An ordinary seaman has menial tasks such as cleaning,  
 (6) whatever maintenance may be assigned to him An able  
 seaman  
 (7) has much more responsibility in that he's expected to know  
 a  
 (8) certain amount about the cargo system, be able to operate  
 (9) valves on deck, in the wheelhouse he should be able to  
 maintain  
 (10) a helm provide a good lookout and be dependable in those  
 (11) duties at all times  
 (12) Q And at the time that you were of the view that he was not  
 (13) ready to step up to A B how old was he?  
 (14) A I -  
 (15) Q In his 40s?  
 (16) A I have no idea sir I don't know his age  
 (17) Q He wasn t a young man was he?  
 (18) A No sir  
 (19) Q You ever talk to Captain Stalzer about Bob Kagan and  
 (20) steering?  
 (21) A No sir  
 (22) Q Captain Stalzer s evaluation was within a couple of months  
 (23) of the grounding of the Valdez Are you aware of that?  
 (24) A No, sir  
 (25) MR O NEILL Thank you

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- (1) THE WITNESS Thank you  
 (2) REDIRECT EXAMINATION OF GREGORY JOHN FERRONE  
 (3) BY MR SANDERS  
 (4) Q Do you have Exhibit 69 up there with you?  
 (5) A Yes, sir  
 (6) Q Would you look please to the evaluation that is done by  
 (7) Mr Maynard which is I think about the third page down that  
 (8) Mr O Neill asked you about?  
 (9) A Third page down from the front cover?  
 (10) Q Yes sir  
 (11) A One two - yes sir I m there  
 (12) Q All right Do you have that evaluation in front of you?  
 (13) A Yes, sir  
 (14) Q Look please opposite steers in confined waters ?  
 (15) A Yes, sir  
 (16) Q Do you find that?  
 (17) A Yes, sir  
 (18) Q Is there anything written there?  
 (19) A No sir  
 (20) Q No good no bad just nothing right?  
 (21) A That s correct nothing  
 (22) Q And at the bottom of the page is there a place for an  
 (23) overall evaluation by the evaluator?  
 (24) A Yes, sir  
 (25) Q And what does Mr Maynard say?



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- (1) **A He s got an X in the box above normal 2 5**  
 (2) **Q What do the other boxes say?**  
 (3) **A At the bottom of the page?**  
 (4) **Q Yeah The general categories reading from left to right?**  
 (5) **A The first box says outstanding 1 0 Next to that to the**  
 (6) **right is high, 2 0 Box that he has checked is above normal**  
 (7) **2 25, followed by normal, 3 0, and below normal 3 5, and**  
 (8) **finally inadequate, 4 0**  
 (9) **Q Okay let s go to the next one**  
 (10) **He asked you about Mr Witherill Would you look in the**  
 (11) **evaluation of Mr Witherill the next one down?**  
 (12) **A I see it, sir**  
 (13) **Q What box does he check under steers in confined waters ?**  
 (14) **A Cannot rate**  
 (15) **Q What does cannot rate mean?**  
 (16) **A That he has not**  
 (17) **Q In the evaluation system at Exxon?**  
 (18) **A That he has not had the opportunity to observe that**  
 (19) **operation**  
 (20) **Q All right**  
 (21) **Go down to the next one He mentioned Mr Rojana**  
 (22) **A Yes, sir**  
 (23) **Q Under steers in confined waters on Mr Rojana s**  
 (24) **evaluation what does it say?**  
 (25) **A There is an X in cannot rate**

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- (1) **Q And is there a comment?**  
 (2) **A Yes sir**  
 (3) **Q What does it say?**  
 (4) **A Not observed**  
 (5) **Q And then the next one down is yours right?**  
 (6) **A Yes, sir**  
 (7) **Q And then the one beyond that is by Mr Regan William**  
 (8) **Regan?**  
 (9) **A Yes, sir**  
 (10) **Q Is there a block on this evaluation which says steers in**  
 (11) **varying - various conditions and situations i e confined**  
 (12) **waters heavy weather et cetera?**  
 (13) **A Yes, sir I see it**  
 (14) **Q Have you found that?**  
 (15) **A Yes, sir**  
 (16) **Q Is there anything marked in those blocks?**  
 (17) **A No sir They're all blank**  
 (18) **Q Now you were also asked by Mr O Neill about whether**  
 (19) **evaluations were kept from you correct?**  
 (20) **A Yes, sir**  
 (21) **Q Remember that?**  
 (22) **A Yes sir**  
 (23) **Q Now when you answered that question were you referring**  
 (24) **to**  
 (24) **the time when you were on the vessel?**  
 (25) **A No sir I m talking about at all times**

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- (1) **Q Now when you were on a vessel were you given these**  
 (2) **evaluations past evaluations to look at?**  
 (3) **A Absolutely not**  
 (4) **Q Is that what you mean by kept from you ?**  
 (5) **A Yes, sir**  
 (6) **MR SANDERS No further questions**  
 (7) **THE COURT Thank you sir you may step down**  
 (8) **THE WITNESS This Exhibit 69 should I leave it up**  
 (9) **here?**  
 (10) **MR SANDERS Give it to Mr O Neill**  
 (11) **MR O NEILL We ll give it to the jury**  
 (12) **MR SANDERS Give it to Mr O Neill and let him read**  
 (13) **it**  
 (14) **(The Witness Stepped Down )**  
 (15) **MR LYNCH I get to take us back to the deposition**  
 (16) **trail Your Honor Call Commander Steven McCall by**  
 (17) **deposition**  
 (18) **THE CLERK Was that last name McCall or Call?**  
 (19) **MR LYNCH McCall**  
 (20) **THE CLERK Would you raise your right hand please?**  
 (21) **(The Witness is Sworn)**  
 (22) **THE CLERK For the record state your full name**  
 (23) **address and spell your last name please sir**  
 (24) **THE READER My name is Gary Howard Haney spelling is**  
 (25) **H A N E Y Address is 6411 South River Road Tempe Arizona**

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- (1) **THE CLERK Thank you sir**  
 (2) **DIRECT EXAMINATION OF COMMANDER MCCALL**  
 (3) **BY MR LYNCH**  
 (4) **Q Commander McCall you like this tie my wife gave me?**  
 (5) **A I would like to have one just like it myself**  
 (6) **Q I had to get that in the record**  
 (7) **THE COURT I was going to comment on it if you**  
 (8) **didn t**  
 (9) **MR LYNCH My wife is in the room Your Honor**  
 (10) **THE COURT Then I won t say what I was going to say**  
 (11) **BY MR LYNCH**  
 (12) **Q Would you state your full name for the record?**  
 (13) **A Steven Alexander McCall**  
 (14) **Q Commander would you describe your education let s say**  
 (15) **beginning with high school?**  
 (16) **A I went to Archbishop Malloy High School in Kew Gardens**  
 (17) **New**  
 (17) **York 1961 to 1965, and then I went, upon graduation of high**  
 (18) **school I went to the State University of New York Maritime**  
 (19) **College at Fort Schuyler from 65 to 69 and then Coast**  
 (20) **Guard**  
 (20) **in 1969 and stayed in the Coast Guard for 22 years**  
 (21) **Q And what was your next assignment after that?**  
 (22) **A Valdez Alaska, commanding officer for the marine safety**  
 (23) **office**  
 (24) **Q All right So do you recall the date of your retirement?**  
 (25) **A July 1st, 1991**

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- (1) Q And you retired with what rank sir?  
 (2) A Commander  
 (3) Q What was your position in Valdez when you arrived position  
 (4) or positions?  
 (5) A Okay, I was the commanding officer of the marine safety  
 (6) office, which also included captain of the port and  
 (7) responsibilities for Prince William Sound, the officer in  
 (8) charge of maritime inspection for the Valdez marine  
 (9) inspection zone, and there was various maritime defense zone  
 (10) responsibilities, basically wartime or time of conflict roles  
 (11) Q With regard to the VTS - and I m going to be as I said  
 (12) focused -  
 (13) A Okay  
 (14) Q - in large part on VTS for my questioning Before you  
 (15) came aboard in Valdez other than the career we have traced  
 (16) did you have any other - any specific orientation to the  
 (17) Vessel Traffic Service responsibilities either shortly before  
 (18) you arrived or shortly after you got there in terms of  
 (19) refresher training orientation whatever?  
 (20) A Formal training, no Familiarization training from the -  
 (21) from the prior commanding officer, Mike Cavette, and  
 (22) obviously  
 (23) upon arrival, reporting detailed briefings and various staff  
 (24) as  
 (25) to what their duties were, what their thoughts were on their  
 (26) duties And somewhere along the line, I can't remember  
 (27) exactly, but I did attend a course, I believe down there in

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- (1) Alameda on radar, on radar therapy application  
 (2) Q Theory?  
 (3) A Theory, excuse me, theory application I know that - I  
 (4) know it was after I arrived at Valdez  
 (5) Q What was the overall purpose of the Vessel Traffic Service  
 (6) in Valdez?  
 (7) A The purpose of the VTS in Valdez was to assist the  
 (8) vessels  
 (9) in arriving and parting safely In simplest terms it was to  
 (10) keep two ships from meeting in the Narrows It was well  
 (11) recognized that ships could not see through the mountain  
 (12) and  
 (13) see who was coming through the other side either into the  
 (14) port  
 (15) or out of the port, so a system had to be established to  
 (16) ensure  
 (17) that basically vessels didn t meet in the narrows and take  
 (18) precautions to avoid that from happening  
 (19) Q Now if vessels - by vessels meeting in the narrows do you  
 (20) mean collisions?  
 (21) A Oh, yes, or running aground to avoid a collision or  
 (22) running  
 (23) aground as a result of trying to avoid a collision, put it that  
 (24) way  
 (25) Q Okay recalling the discussion we had about the objectives  
 (26) of preventing groundings on the one hand or collisions on the  
 (27) other what would you say was the principal objective of the  
 (28) Traffic Separation Scheme with respect to groundings versus  
 (29) collisions?  
 (30) A Well, the Traffic Separation Scheme was designed to keep

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- (1) the traffic separated, separated vessel traffic separated  
 (2) Q Wasn t then the principal objective of the Traffic  
 (3) Separation Scheme to prevent collisions?  
 (4) A It was to keep the ships a distance apart to avoid them in  
 (5) becoming situations where they would have to take evasive  
 (6) actions to avoid each other which could result in a collision  
 (7) or grounding or near miss  
 (8) Q Okay What were the elements that made up the Vessel  
 (9) Traffic Service in Valdez? What were its parts?  
 (10) A Well, the most-used parts was the radio network, where  
 (11) we  
 (12) spoke to the ships while coming - you know, prior to coming  
 (13) into Prince William Sound They had various check-in times  
 (14) and  
 (15) check in locations to let us know where they were, where  
 (16) they  
 (17) were coming in, and then that was supplemented as the  
 (18) vessels  
 (19) approached the Valdez Narrows with a radar site at Potato  
 (20) Point  
 (21) and a radar site at the spit site in Valdez  
 (22) Q What was the designed range for the radar covering Valdez  
 (23) Arm?  
 (24) A I don t know the technical status of what the radar  
 (25) coverage is  
 (26) Q What was your understanding of what the area was that was  
 (27) actually covered in general?  
 (28) A Before the grounding, routinely, my best answer would be  
 (29) routinely in the vicinity of Bligh Reef  
 (30) Q Okay Are you familiar with the Vessel Traffic Center

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- (1) manual?  
 (2) A I was  
 (3) Q In Valdez what was generally the traffic center manual?  
 (4) A It was a publication put together for the personnel in the  
 (5) vessel traffic control center to I guess you d say explain  
 (6) their duties and give them some potential scenarios and  
 (7) situations as to what might go on during their watch, an  
 (8) inhouse document designed for their use  
 (9) Q Would you consider it to be a fair authoritative source  
 (10) for information about something like the operating objectives  
 (11) of the Vessel Traffic System?  
 (12) A In conjunction with the other documents, you know other  
 (13) regulations, the marine safety manual guidance, it was not a  
 (14) stand alone document  
 (15) Q Let me ask that this document be passed to the witness  
 (16) This is enclosure 16 from the O Donovan report and I believe  
 (17) it s Exhibit 101 PX 101 in this case which is the edition of  
 (18) the VTC manual that was in effect at the time of the  
 (19) grounding  
 (20) Commander the first page of that document is a cover  
 (21) letter from yourself isn t it?  
 (22) A Yes, I signed the cover letter yes  
 (23) Q And that s a letter dated November 2 1988?  
 (24) A Correct  
 (25) Q And did that place the manual into effect as of that date?

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- (1) **A Yes**
- (2) **Q Was this the edition of the VTC manual that was in effect at the time of the Exxon Valdez grounding in March of 1989?**
- (3) **A I believe so, yes**
- (4) **Q Would you turn to page 21 Would you just read into the record Section 4 3 2 - just the title and the first sentence**
- (5) **would be sufficient**
- (6) **A Section 4 3 2 reads, Operating objectives the principal objectives of the TSS is to prevent collisions The rules themselves are sufficient to control the vessel movement within**
- (7) **the traffic lanes during routine transits Active control should be kept to a minimum unless deviations or potential conflicts are observed**
- (8) **Q When did you first learn of the grounding of the Exxon Valdez?**
- (9) **A I guess a little after midnight I guess the phone rang at home, woke me up**
- (10) **Q Going back to your conversation with Mr Blandford was that basically it in substance what you have told us?**
- (11) **A Yeah, I spoke - he told me we had an exchange about - Are you kidding, I think - I think his phrase was I m as serious as a heart attack, and then I said, All right contact the XO get him up tell him I ll swing by and pick him up on the way in**
- (12) **I may have told him then or after I got to the office to**

- (1) **questions you asked when you first came in the door did you ask Mr Blandford what was happening what was going on?**
- (2) **A I'm sure I did yeah**
- (3) **Q What did he say in response?**
- (4) **A I don t recall his exact words, but he showed me, you know,**
- (5) **It s over there, and I, you know, I was - I was - probably showed surprise and shock at How the heck did he get over there You know, at the time it was - my concern was what kind of situation we had with the ship, you know, how d it - how it got there, how it ended up at the time didn't really, you know cross my mind What crossed my mind was an event,**
- (6) **actually it was - well, it was what s the status on the ship, you know, are we aground or are we hard aground There is a big difference**
- (7) **Q So is it your recollection that - let me withdraw that question**
- (8) **Did you discuss at this time with Mr Blandford whether he had made any observations of the vessel before the grounding?**
- (9) **A I don t recall We talked about it sometime, but at that - you know, prior to contacting the ship and during those initial minutes I don t think I asked too many questions about how it got where it was My main focus was, you know is what s the situation now that - now that it s where it is**
- (10) **Q Commander I m going to read you from a transcript of a press conference in Valdez on March 25 1989 This was Exhibit**

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- (1) **notify the other people, Mr Delozier Mark Delozier, I don t know who else but within a fair amount short order most people were contacted either at my direction or at the XO s or**
- (2) **Delozier s direction**
- (3) **Q You are saying that you or either somebody at your direction notified those others And then what did you do next?**
- (4) **A Proceeded into the office myself and Falkenstein I picked him up and we drove in, you know trying to get our thoughts together as to how the heck could a ship end up where it ended up unless something - something drastically was wrong And we got to the office and -**
- (5) **Q What happened when you got to the office?**
- (6) **A Went upstairs probably proceeded directly into the Vessel Traffic Center I don t know my exact words but What s going on what s happening what s up, and - and we, you know looked at the radar and saw the image of the Exxon Valdez in the vicinity of Bligh Reef, you know basically broadside, broadside to the channel or the inbound lane I don t know whether or not Blandford was already on the horn talking to Captain Hazelwood whether or not I - well, it s on the tape I m sure whether I initiated the call to Captain Hazelwood or to the ship at the time I didn t know who the captain of the ship was at that time**
- (7) **Q Before we get to that call with regard to the question or**

- (1) **26808 to the larossi deposition in this case - and it s predesignated document 134 counsel I m going to be looking at page 53 page 53 line 191**
- (2) **Your answer continues but to answer your question specifically once that vessel had cleared the pilot station and was entered into the traffic lanes departing he was not under constant radar coverage as were all the other vessels in the area He was in an area where he has entered - as he dropped the pilot the distance from bank to bank was over three miles and - there s an inaudible entry the sound I m not sure what the next word is looks like stand - standardize or something like that - standardize it over six miles**
- (3) **Speaker Are you saying then that he couldn t see the vessel on radar then commander?**
- (4) **A No**
- (5) **Q No I m reading - no I m not saying that Speaker what are you saying then inaudible inadequate**
- (6) **Commander McCall No the vessel at the point in time after the pilot had departed the radar watch unit did not have the vessel under its constant radar surveillance after he had entered into the traffic stream and was departed Prince William Sound**
- (7) **Speaker May I ask you why?**
- (8) **Commander McCall It s not mandated not mandated according to the EPS I think probably VTS traffic rules**

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- (1) **Speaker** If it was under surveillance probably could have  
 (2) avoided this whole situation?  
 (3) **Commander McCall** I wouldn't say that  
 (4) Do you recall making those statements at a press conference  
 (5) in Valdez on March 25 1989?  
 (6) **A** In general terms, this is the first time I have actually  
 (7) seen a transcript of what was said  
 (8) **Q** I want to -  
 (9) **A** I was very tired  
 (10) **Q** Pardon me sir?  
 (11) **A** Never mind nothing  
 (12) **Q** Do you recall making those remarks?  
 (13) **A** I remember the press conference and I remember having  
 (14) exchange of question and answer with an individual sitting  
 (15) out  
 (16) in the audience who I didn't know at the time  
 (17) **Q** Do you have reason to doubt that you said what I read to  
 (18) you?  
 (19) **A** I believe I said words - yeah, I believe I said these  
 (20) words There's some inaccuracies in them  
 (21) **Q** But the thrust of what you said -  
 (22) **A** Given the intensity level of the day, it's not too bad  
 (23) **Q** I'm going to show you another transcript and I would like  
 (24) to have this marked as the next numbered exhibit This is  
 (25) predesignated document 221  
 (26) Before we look at this **Commander** are you saying about the

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- (1) previous transcript that we looked at that you misspoke in some  
 (2) way didn't mean to say what you said there?  
 (3) **A** No basically I said what was said there was said I  
 (4) imagine, I'm sure in all honesty But other things were on  
 (5) my  
 (6) mind at the time and I felt I'd answered the individual's  
 (7) question, you know, satisfactory enough at the time without  
 (8) getting into great detail  
 (9) **Q** Up to the time of the Valdez grounding and around that time  
 (10) in March of 1989 - of '89 was it the responsibility of the  
 (11) watch stander to discover that a vessel had gone outside of the  
 (12) boundary of the TSS?  
 (13) **A** That phrase sounds familiar, like it's written in some  
 (14) publication, so I vaguely recall it  
 (15) **Q** Is your answer yes?  
 (16) **A** Yes I recall the phrase you used It triggers a thought  
 (17) that's in either the user's manual or some instruction, so I  
 (18) would say yes, that's correct  
 (19) **Q** Is it the responsibility of the watch stander to discover a  
 (20) vessel that has gone outside the TSS?  
 (21) **A** Within his capabilities, yes  
 (22) **Q** Now if a - if a watch stander should become aware that a  
 (23) vessel within the VTS area is standing into danger what is the  
 (24) responsibility of the watch stander to do in that case?  
 (25) **A** If he's aware that the vessel is standing into danger?  
 (26) **Q** Yes sir or suspects it

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- (1) **A** Well, if he suspects it or he's concerned about the  
 (2) progress of any vessel, whether he sees it visually you  
 (3) know,  
 (4) or if he saw it on radar, it would be to inquire what the  
 (5) vessel is up to you know, what are the vessel's intentions  
 (6) **Q** Does the watch stander in that situation have the authority  
 (7) to direct the vessel to get back in the traffic lanes?  
 (8) **A** Authority common sense whatever  
 (9) **Q** Under the provisions of -  
 (10) **A** He should, yes I say he should  
 (11) **Q** How far out was the responsibility of the VTC on the night  
 (12) of the Valdez to attempt to keep the image of the - I'm not  
 (13) sure this is a correct transcription but I'll read it as it's  
 (14) typed How far out with the responsibility of the VTC on the  
 (15) night of the Valdez to attempt to keep the image of the Exxon  
 (16) Valdez on radar?  
 (17) **A** Port Valdez Narrows and Valdez Arm until the vessel -  
 (18) until the image was lost in the arm  
 (19) **Q** As far as you could track it?  
 (20) **A** Well, through the arm I mean, once they got out, even -  
 (21) even if you could cover them further out what was the  
 (22) benefit?  
 (23) **Q** As far as Bligh Reef?  
 (24) **A** Yeah I think the phrase we normally used was the  
 (25) vicinity  
 (26) of Bligh Reef, and again some of that depends on  
 (27) congestion  
 (28) traffic, what's more important If you got traffic in other

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- (1) parts of the port, then, depending on the congestion or lack  
 (2) of  
 (3) congestion in Valdez Narrows, Valdez Arm, you may not pay  
 (4) attention to that one because you've got other traffic in  
 (5) Valdez Narrows or in port  
 (6) **Q** Was there any other traffic in the system in the areas  
 (7) you've just referred to during the Exxon Valdez's outbound  
 (8) passage past Potato Point?  
 (9) **A** I don't believe so, no  
 (10) **Q** Well let me ask you this Was Mr Taylor required to  
 (11) continue to attempt to hold the vessel on radar past Rocky  
 (12) Point?  
 (13) **A** Was he required to attempt to hold it on radar? What do  
 (14) you mean to attempt to hold it on radar? You mean make  
 (15) adjustment to the screen to see if it would remain on the  
 (16) scope?  
 (17) **Q** Yes sir  
 (18) **A** Yes  
 (19) **Q** **Commander** you said a few moments ago that your principal  
 (20) focus when you arrived at the VTC was the status of the vessel  
 (21) and in particular you were concerned with whether the vessel  
 (22) was aground or hard aground and that was an important  
 (23) distinction in your mind between the two How long after you  
 (24) arrived at the VTC did you contact the vessel with that in  
 (25) mind?  
 (26) **A** I'd say almost immediately As far as trying to contact

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- (1) **the vessel and I did - spoke with Captain Hazelwood**  
 (2) **Q Now what was - what was Captain Hazelwood's demeanor**  
**as**  
 (3) **you spoke to him during this conversation?**  
 (4) **A Not happy**  
 (5) **Q What gave you that impression?**  
 (6) **A Very serious, you know, as expected I mean he came**  
**across to me like a master who was concerned with - with**  
**his**  
 (8) **ship Yeah, that just he was concerned with the ship and**  
**was**  
 (9) **passing the information I didn't you know think much into**  
 (10) **it other than he passed on the information**  
 (11) **Q Did he sound calm to you?**  
 (12) **A Yes**  
 (13) **Q Did he sound like he was in control of himself?**  
 (14) **A Yes Like I said the perception I had was that he was in**  
 (15) **control but something was going on with the third mate I**  
 (16) **didn't know whether the third mate was injured or, you**  
**know,**  
 (17) **getting overly nervous whatever, but something**  
 (18) **Q What was your perception of what Captain Hazelwood was**  
 (19) **attempting to do with respect to the - with respect to**  
 (20) **determining the status of the vessel that is the aground**  
 (21) **versus hard aground?**  
 (22) **A At the time it was kind of like you know he may have**  
 (23) **just been in a situation where he may have been just you**  
**know**  
 (24) **in his mind he may not have felt like he was hard aground**  
**and**  
 (25) **he was trying to assess Well am I on it or am I not am I**

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- (1) **going to slide off, if I'm going to slide off the reef I'd**  
 (2) **rather slide off with my hands on the sticks where I still have**  
 (3) **some power before I shut down the engines and worry about**  
 (4) **salvage**  
 (5) **So that was you know my thinking the comment about**  
 (6) **rocking or whatever it was I forgot the particular words**  
 (7) **Basically wanted to make sure of what you've got There's**  
 (8) **nothing worse than thinking you're aground and all of a**  
**sudden**  
 (9) **you know you're FWE and all of the sudden you're finished**  
**with**  
 (10) **the engines and all the sudden the ship starts to shift on**  
**you**  
 (11) **or slip and you've got no - you know no control over the**  
 (12) **events So that's basically when you know at the time that**  
 (13) **kind of - that's all that went through my mind**  
 (14) **Q FWE?**  
 (15) **A Finished With Engines Basically all stopped you know**  
 (16) **Q What would be the problem with having the engines off in a**  
 (17) **situation where the ship was coming off the reef?**  
 (18) **A Well in my opinion it's like if in fact you'd shut down**  
 (19) **the engines or had no one in the immediate vicinity of the**  
 (20) **engines to take positive control and be able to put motion**  
**on**  
 (21) **the vessel then you are basically at the mercy of the**  
 (22) **elements, whatever they may be**  
 (23) **Q Commander McCall my questions are going to relate to**  
**some**  
 (24) **text on page 14 You might want to look at the first couple of**  
 (25) **pages and familiarize yourself with the document I'm just**

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- (1) **trying to determine if you recognize this as a transcript -**  
 (2) **A Yes, I do**  
 (3) **Q - of your radio conversation with Captain Hazelwood?**  
 (4) **A Yes**  
 (5) **Q And is this the conversation to which you referred in your**  
 (6) **colloquy with Mr. Carey that you had to determine what the**  
 (7) **ship how the ship was doing?**  
 (8) **A Yes**  
 (9) **Q Is it correct that you concluded as a result of this**  
 (10) **conversation that the captain was attempting to verify that he**  
 (11) **was whether he was merely aground or whether he was hard**  
 (12) **aground?**  
 (13) **A Correct**  
 (14) **Q That - that was your understanding of what the captain**  
 (15) **told you he was doing correct?**  
 (16) **A Yes**  
 (17) **Q Did you consider that to be a reasonable thing in fact a**  
 (18) **prudent thing to do under the circumstances?**  
 (19) **A Yes, I did**  
 (20) **Q My question to you really as you look back on that**  
 (21) **conversation and the efforts of Captain Hazelwood relating to**  
 (22) **that conversation do you have any different view today as to**  
 (23) **what Captain Hazelwood was trying to do?**  
 (24) **A No**  
 (25) **Q This is a February 1990 article from Life Magazine You**

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- (1) **were authorized to give at least some interviews in connection**  
 (2) **with your duties with regard to the Valdez grounding?**  
 (3) **A You mean as far as guidance from the Coast Guard?**  
 (4) **Q Yes sir**  
 (5) **A Yes, I was pretty much to fully cooperate with everybody**  
 (6) **Q See there is a numbered - there is a paragraph numbered**  
 (7) **three numbered three about halfway down the page?**  
 (8) **A Yes**  
 (9) **Q And that's entitled the hours after the wreck?**  
 (10) **A Okay**  
 (11) **Q Let me read into the record let me read this into the**  
 (12) **record Number three the hours after the wreck Hazelwood is**  
 (13) **accused of tearing a bigger gash in the ship and making the**  
 (14) **spill worse by running the engines Coast Guard Commander**  
 (15) **Steven McCall backs the captain open quote He was trying to**  
 (16) **assure himself the vessel was hard aground says McCall**  
 (17) **Continuing the quote He didn't do anything reckless**  
 (18) **unquote Do you recall saying these words to a reporter about**  
 (19) **around this time?**  
 (20) **A Yeah, I don't recall talking to this reporter, Pope Brock**  
 (21) **The words and phrases seem similar to something I may**  
**have said**  
 (22) **earlier in - you know, earlier on in the casualty, yes**  
 (23) **Q You have reason to believe you're not being quoted**  
 (24) **accurately here?**  
 (25) **A Do I have reasons to believe? No I don't have any**  
**reasons**

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- (1) to believe that I m being quoted accurately either I mean  
 (2) it s a toss up, 50/50 whether I m quoted accurately or not  
 from  
 (3) the reporter  
 (4) Q After looking at this does it refresh your recollection  
 (5) about whether you were quoted back in this time period as  
 (6) saying Captain Hazelwood didn t do anything reckless?  
 (7) A I said words to that effect, yes, early, you know, sometime  
 (8) during this I mean, obviously not February '90 when this  
 was  
 (9) done, I wasn t even there, but during this stage of the  
 (10) casualty, probably yes  
 (11) Q Do you feel any differently today?  
 (12) A No  
 (13) Q Can you recall did you recall expressing the opinion in  
 (14) mid 1989 that the allegation that Captain Hazelwood had been  
 (15) drinking as far as being a cause of the grounding was just  
 (16) smoke?  
 (17) A I may have expressed that, yeah  
 (18) Q Just look at the face of the page of it page one  
 (19) Commander Do you see the date of this record of phone  
 (20) interviews on Monday July 11?  
 (21) A Um hum  
 (22) Q Does that comport with your recollection when this  
 (23) occurred?  
 (24) A That would be about right I left a few days later  
 (25) Q And did you go on to say I mean that s the whole cause of

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- (1) the problem this smoke about Hazelwood had been drinking  
 and  
 (2) Hazelwood had done this and Hazelwood had done that  
 period  
 (3) The biggest mistake Hazelwood made was having too much  
 (4) conference in his third mate and leaving the bridge when he  
 (5) thought the third mate could steer it out of port  
 (6) Do you recall saying that?  
 (7) A Yes  
 (8) Q Was that your view at the time?  
 (9) A Yes  
 (10) Q I ve handed the witness a transcript of what appears to be  
 (11) his file of documents produced for this deposition and ask that  
 (12) it be marked as Exhibit 47276 This is a six page transcript  
 (13) that appeared in Captain - Commander McCall s box of  
 documents  
 (14) produced in response to the subpoena  
 (15) Are you ready Commander?  
 (16) A Yes  
 (17) Q Have you seen this transcript before?  
 (18) A This one here?  
 (19) Q Yes How did the creation of this transcript come about?  
 (20) A I don't recall specifically  
 (21) Q You told us yesterday that some transcripts from VTC  
 (22) telephone recordings were made in your office at your  
 (23) direction Is this one such transcript?  
 (24) A Can you repeat that?  
 (25) Q You testified yesterday that some transcripts of telephone

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- (1) conversations on the recorded lines in your office were made at  
 (2) your direction by others within the VTC and I m asking you  
 (3) whether this is one such transcript prepared in your office?  
 (4) A I can t say for sure  
 (5) Q If you turn to page six you see there s a - there s what  
 (6) appears to be the beginning of a transcript with a time code  
 (7) over it halfway down the page quote call to GS-9 end quote  
 (8) Taylor  
 (9) A Yes  
 (10) Q Let me ask you this Do you know whether this was the  
 (11) entire six pages of transcript that appeared in your  
 (12) documents? Do you know whether there are more of this  
 (13) particular set of pages?  
 (14) A No I don t know  
 (15) Q Looking at the transcript that appears at the bottom of  
 (16) page six do you recall whether you have ever reviewed it  
 (17) before I mean the one that says call to GS 9 Taylor and what  
 (18) follows?  
 (19) A I can t recall specifically, but I probably did  
 (20) Q Okay Would you read for the record beginning about  
 (21) halfway down beginning with where it says Uh she said she  
 (22) was going slow down to the word lanes about four lines  
 (23) below - I m sorry down to the word did five lines below  
 (24) A Okay I see He starts out by saying, uh, she said she  
 (25) was going slow because she was picking her way through  
 ice

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- (1) Yeah And she was - and she way - was going to divert to  
 the  
 (2) northbound lane Right  
 (3) Q And the next two lines?  
 (4) A Oh  
 (5) Did she ever request to leave the lanes? Uh, they said  
 (6) they were going to, yeah, as a matter of fact they did  
 (7) Q Now at the time you reviewed this transcript the one  
 (8) you re looking at now was it your understanding that the  
 (9) speaker for the line uh they said they were going to yeah  
 (10) as a matter of fact they did was Mr Taylor speaking to you?  
 (11) A Yes  
 (12) Q Do you have any reason to doubt the accuracy of this  
 (13) transcript with respect to the lines that we have just read  
 (14) that you ve just read aloud?  
 (15) A No  
 (16) Q Okay I m going to pick up near the bottom of that first  
 (17) page?  
 (18) A Which document?  
 (19) Q I m - only 47276 not the government transcript  
 (20) A Oh, 275 then  
 (21) Q 275 you are right Defendants transcript  
 (22) Taylor quote They said they were going to depart the  
 (23) TSS Those are his exact words end quote  
 (24) McCall quote Oh depart the TSS yeah That s the  
 (25) separation scheme end quote

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- (1) Taylor quote But he did not say the lanes he said the  
 (2) TSS He said depart the TSS on 200 I believe was his -  
 (3) inaudible end quote  
 (4) McCall quote On 200 Ends quote  
 (5) Taylor quote Right end quote  
 (6) McCall quote Okay This is when he was in the  
 (7) northbound lane end quote  
 (8) Taylor quote He had just dropped off the pilot when this  
 (9) happened that s when he called me He said he - and says he  
 (10) called me back up and says he s going to divert over uh into  
 (11) the northbound lane and that looks like the way to come  
 (12) through That s what I told him earlier that they d come up  
 (13) through the northbounds That s what the last guy did The  
 (14) southbounders got over in the northbound lane end quote  
 (15) McCall quote Yeah yeah but it sounds like he went out  
 (16) of the northbound lane is what happened  
 (17) Taylor quote Oh okay  
 (18) Okay does that refresh - does that passage refresh your  
 (19) recollection further about your discussion with Mr Taylor  
 (20) about whether the Valdez had requested to depart from the  
 TSS?  
 (21) A Okay, this is not a yes or a no answer This brings back  
 (22) memories, recollections of conversations to this extent I  
 (23) mean, you know, on the subject matter from various  
 sources that  
 (24) I can recall, voice tapes were later, you know - Captain  
 (25) Hazelwood type of thing Simplest way to describe it

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- (1) obviously I read the rest of this document while  
 discussions  
 (2) were going on If you imagine three lanes one two and  
 three  
 (3) and four lines one two three and four I m being careful  
 (4) with I m on camera All right separation scheme, TSS,  
 (5) separation, separation The operative word is separation as  
 (6) in - as people used it Separation, the lane in the middle,  
 (7) going down a three lane highway with your car, right lane  
 left  
 (8) lane the left turn lane whatever you want to call it the  
 (9) middle versus lines or lanes  
 (10) But there s no curb in the water If we had a curb out  
 (11) there, he would have felt a bump when he went over the  
 curb  
 (12) Anyway, what he s saying here but he did not say lanes he  
 (13) said the TSS the lanes did not say leave the lanes but  
 leave  
 (14) the TSS separation end up in the inbound lane That is my  
 (15) recollection uh what he meant by this that with everything  
 (16) else that I can recall  
 (17) Q Did you become aware that vessels were deviating in  
 (18) February March 1989 time frame were deviating either within  
 (19) the lanes you know in the - from the southbound lane into  
 (20) the northbound lane into the separation zone or outside the  
 (21) lanes completely because of the ice situation in Valdez Arm?  
 (22) A You re putting a lot of caveats into this To the best of  
 (23) my recollection I can recall that the vessels had deviated -  
 (24) you know crossed the lanes or transited across the lanes  
 you  
 (25) know on occasion during the whole time I was there You  
 know

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- (1) I mean, on occasion, vessels - vessels would deviate and  
 go  
 (2) outside lanes to pick up a pilot on the inbound lane So yes  
 (3) it was It was - vessels were known to be crossing  
 throughout  
 (4) the lanes on and off, occasion, yes  
 (5) MR LYNCH I believe the cross will be by video Your  
 (6) Honor  
 (7) MS WAGNER Cross will be by video Your Honor  
 (8) CROSS EXAMINATION OF COMMANDER MCCALL  
 (9) BY PLAINTIFF EXAMINER  
 (10) Q Was there a period of time following the grounding when you  
 (11) were under the impression from looking at the statements of Mr  
 (12) Blandford and Mr Taylor and your interviews with them that one  
 (13) of those two possibilities I mentioned was in fact the case  
 (14) that is that the vessel had gone off the edge of the six mile  
 (15) screen and not disappeared from it?  
 (16) A It is my recollection that's - that the image was - was  
 (17) erratic and irregular on the six mile scale during Mr  
 Taylor s  
 (18) watch, not - not to mention in here was Taylor's comments  
 that  
 (19) he attempted to acquire the target on the 12 mile scale,  
 could  
 (20) not and therefore was not on the screen any longer  
 (21) Q I m not sure that I understand your answer Were you under  
 (22) the impression that the image should not actually disappear  
 (23) from the six mile other than traveling off its edge?  
 (24) A I don t think that thought process about disappearing off  
 (25) the edge or disappearing from the screen came - came into  
 play

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- (1) as far as a distinct difference between the two The image  
 was  
 (2) no longer reliable on the radar screen It was fading in and  
 (3) out it was unreliable Whether it was off the edge of the  
 (4) screen or disappeared from the screen, the image was  
 unreliable  
 (5) in Taylor's mind  
 (6) Q Did you ever discuss with Mr Taylor whether he tried to  
 (7) make any adjustments to the - either the six mile scale or the  
 (8) 12 mile scale the radar while he - the scale was turned to  
 (9) either six- or twelve ?  
 (10) A I can t recall whether I did  
 (11) Q Did you ever talk to Mr Blandford about whether he made  
 (12) any adjustments to the radar for turning it up from six mile to  
 (13) twelve mile immediately after he received the report of the  
 (14) grounding?  
 (15) A I can t recall  
 (16) Q And the transcript identifies Captain Deppe as being an  
 (17) employee of Exxon Shipping corporation Did you know  
 Captain  
 (18) Deppe prior to this occasion when he questioned you?  
 (19) A Yes  
 (20) Q And did you know him to be an Exxon Shipping Corporation  
 (21) employee?  
 (22) A Yes Well, I mean backtrack on that I knew him to be a  
 (23) master I believe, you know - I believe he was employed by  
 (24) Exxon  
 (25) Q Okay Captain Deppe asked you the question the following

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- (1) question quote Commander McCall the Exxon Valdez is a VLCC  
 (2) a very big beam very high structure Whether it was abeam of  
 (3) the radar or astern to the radar it seems like it should be a  
 (4) pretty big radar target Is it possible that Mr Taylor  
 (5) just - once it got beyond the six mile scale just stopped  
 (6) monitoring the vessel and didn't really lose it on the radar  
 (7) screen?  
 (8) And your answer according to the transcript was no Is  
 (9) that still your view today?  
 (10) **A Yes**  
 (11) **Q** Let me ask you to look at page 1358 of the same  
 (12) transcript At this point in the proceeding you were being  
 (13) questioned by Dr LeResche Dr LeResche asked you down  
 (14) toward  
 (15) the bottom of page 1358 Did Mr Taylor in fact grant  
 (16) permission for the Exxon Valdez to leave the Traffic Separation  
 (17) Scheme entirely?  
 (18) And you answered No he did not It was never requested  
 (19) Is that still your view today as to what the facts are? -  
 (20) **A Yeah**  
 (21) **Q** - in that regard?  
 (22) **A Yes**  
 (23) **Q** Mr Taylor by the way was he - is that the Mr Taylor  
 (24) who is a watch stander at the Vessel Traffic Center?  
 (25) **A Yes**  
 (26) **Q** Let me direct your attention to page 1362 of this

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- (1) transcript of your testimony at the National Transportation  
 (2) Safety Board where you were asked by Commander Waldron  
 (3) quote  
 (4) Is there anything in the VTS is there anything that the VTS  
 (5) could have done that would have prevented the grounding?  
 (6) And your answer was No Is that still your view today?  
 (7) **A Yes**  
 (8) **Q** Sitting here today Commander McCall do you believe that  
 (9) anything that the VTC watch standers Mr Blandford and Mr  
 (10) Taylor did or did not do on March 23 1989 contributed in any  
 (11) way to causing the grounding of the Exxon Valdez?  
 (12) **A No**  
 (13) **Q** I want to take you back to the - the morning of the  
 (14) grounding and you previously have testified that after you  
 (15) arrived at the MSO in the morning after being awoken you sent  
 (16) Mr Delozier and Falkenstein to the vessel Is that correct?  
 (17) **A Correct, yes**  
 (18) **Q** Once Mr Delozier and Mr Falkenstein arrived on the  
 (19) vessel did you have any conversations with them?  
 (20) **A Yes**  
 (21) **Q** What was the purpose of that telephone conversation?  
 (22) **A** Again, to I guess update me on the situation, and the  
 (23) only  
 (24) thing I can recall right now is - is the bomb, so to speak,  
 (25) that was dropped when Commander Falkenstein said that  
 (26) apparently the master had been drinking  
 (27) **Q** Okay I want to focus for a minute on - on that

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- (1) conversation When Commander Falkenstein informed you of  
 (2) this  
 (3) fact do you recall what he told you about what he observed?  
 (4) **A** Okay As best as I can recall right now, he indicated  
 (5) that in a very deadpan voice that - words to the effect of  
 (6) **Boss, we got another problem And I said, What's that And**  
 (7) **he**  
 (8) **said The master's been drinking And I - probably said, Oh,**  
 (9) **shit or words to that effect**  
 (10) **Q** Did he tell you how he determined that the master had  
 (11) allegedly been drinking?  
 (12) **A** By the aroma of alcohol in the vicinity of Captain  
 (13) Hazelwood The aroma of - at least that he smelled alcohol  
 (14) **Q** Let's go back to Mr Taylor On what was your testimony to  
 (15) Mr Adams based when you said that in your view Mr Taylor  
 (16) had lost the vessel to radar rather than simply stopped  
 (17) following it?  
 (18) **A** On the information that I received from Mr Taylor  
 (19) **Q** What Mr Taylor told you?  
 (20) **A** Um-hum  
 (21) **Q** Okay You believe Mr Taylor?  
 (22) **A** Yes  
 (23) **MS WAGNER** That's it Your Honor  
 (24) **MR LYNCH** Your Honor we'll call Admiral Paul Yost  
 (25) by deposition  
 (26) **THE CLERK** Raise your right hand please  
 (27) (The Reader Is Sworn)

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- (1) **THE CLERK** For the record sir state your full name  
 (2) address and spell your last name please  
 (3) **THE READER** My name is Charles Loggie L o-g-g i e  
 (4) I live at 4 Hillshire Grove Lane in Houston Texas  
 (5) **THE CLERK** Thank you sir  
 (6) **DIRECT EXAMINATION OF PAUL YOST (Read)**  
 (7) **BY MR LYNCH**  
 (8) **Q** Would you state your name for the record sir?  
 (9) **A** Paul A Yost, Junior  
 (10) **Q** What is your current business address Admiral Yost?  
 (11) **A** 2000 K Street, Northwest, Washington, D C , Suite 303  
 (12) **Q** Are you the former Commandant of the United States Coast  
 (13) Guard?  
 (14) **A** I am  
 (15) **Q** And what is the correct title by which you are known at  
 (16) present Admiral Yost?  
 (17) **A** I'm known as Admiral Yost, yes  
 (18) **Q** Admiral Yost I wonder if you'd look at - I wonder if you  
 (19) would take a look at Exhibit 40415 which for convenience is  
 (20) predesignated document Number 111 I'd like to specifically  
 (21) refer you to the first sheet under the cover sheet of that  
 (22) document Mr Yost which appears to be a resume or  
 (23) curriculum  
 (24) **Q** Are you acquainted with that document?  
 (25) **A** Yes, that's the - that's a bio and yes, I'm familiar with



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- (1) it
- (2) Q Does it accurately describe your education in the military service up to the present up to approximately 1989?
- (4) A I haven't read it recently but I think it does yes
- (5) Q And subsequent to that date subsequent to the date of this document - which for purposes of this discussion we'll assume
- (6) was May 10 1989 which is the cover sheet the date on the cover sheet - what changes have occurred?
- (9) A I finished my four-year term as a commandant at the Coast
- (10) Guard in the end of May 1990 The next day I assumed the responsibilities and position as president of the James Madison
- (11) Memorial Fellowship Foundation here in Washington D C I
- (12) think that's the major change or addition to this bio
- (13) Q That has been your sole employment since the completion of
- (14) your -
- (15) A It has
- (16) Q - your service
- (17) Are you currently an active officer in the United States
- (18) Coast Guard or is your status Retired?
- (19) A I am currently retired
- (20) Q Do you have any current assignments from the Coast Guard in
- (21) your retired position?
- (22) A I've had no official contact with the Coast Guard since my retirement
- (23) Q Admiral Yost I note that on Exhibit 40415 it's indicated

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- (1) that you were chief of staff and chief of operations for the
- (2) 17th Coast Guard district in Alaska in 1975 How long did that
- (3) continue?
- (4) A I served in Alaska for three years, one of those as chief
- (5) of operations, two of the remaining two [sic] as chief of
- (6) staff
- (7) Q Sir can you tell me what factors you determined as
- (8) Commandant of the United States Coast Guard to have caused the
- (9) grounding of the Exxon Valdez?
- (10) A I formed the opinion that the causal relationship here -
- (11) I'm not sure I'm using the term word causal in the legal
- (12) sense
- (13) that - that all of you are used to, so not being a lawyer, I'm
- (14) treading on thin ground, but in my view, the primary cause or
- (15) the causal effect of that grounding was a perfectly qualified
- (16) third mate on a bridge of a ship that, through a period of a
- (17) few minutes of inattention to duty or lack of knowledge of
- (18) exactly where he was, ran the ship aground on a clear night
- (19) with all the navigational aids watching him That's the -
- (20) that's the primary cause
- (21) Now, there are a whole bunch of secondary causes and
- (22) everybody's pointing their finger Pilotage a man was on the
- (23) ship who had pilotage and wasn't on the bridge as required,
- (24) that maybe would have kept him from grounding I think
- (25) that -
- (26) you know I'm speculating now And I don't know whether I
- (27) ought to speculate but I'm wondering if there was a proper

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- (1) relief of command that when the third mate assumed the
- (2) con of
- (3) the vessel that the commanding officer, if he fully knew
- (4) where
- (5) he was where he was supposed to turn the speed and
- (6) course of
- (7) the vessel, all of those things Did he fully know all of
- (8) those things before he was - the vessel was turned over to
- (9) him
- (10) There's probably some secondary responsibilities there
- (11) There's all kinds of secondary and tertiary responsibilities
- (12) I come back to the primary cause of that grounding was a
- (13) perfectly competent, apparently competent third mate who
- (14) for a
- (15) period of a few minutes, lost track of the ship's position and
- (16) the proximity of Bligh Reef
- (17) Q Sir did you ever look into whether or not the captain was
- (18) on the bridge of the ship at the time of the grounding?
- (19) A Well, I looked into it only from the viewpoint that the
- (20) investigations that were done and the briefings that I was
- (21) given said that the master had turned the con of the ship
- (22) over
- (23) to the third mate and the master had gone below to do his
- (24) paperwork in his cabin He was available, he was on the
- (25) phone
- (26) when called, he came to the bridge as soon as he was
- (27) called et
- (28) cetera So yes, those - that's my understanding
- (29) Q Your understanding is that -
- (30) A That the master was in his cabin doing paperwork at the
- (31) time and had turned the con of the ship over to the third
- (32) mate
- (33) giving him some instruction regarding the turn point and to
- (34) go

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- (1) out the inbound lane That's my understanding
- (2) Q Yesterday you testified about your opinion regarding the
- (3) causal effect of this grounding Can do you recall whether -
- (4) do you recall the testimony in which you stated that you
- (5) believe the causal effect to be a third mate who through
- (6) inattention to duty or lack of knowledge of where he was ran
- (7) the ship aground?
- (8) A That - that was my opinion, still is, and when I say
- (9) inattention to duty, I ought to - I ought to categorize that
- (10) with a little explanation I think that - that he was not
- (11) attentive to that part of the duty that required him to know
- (12) exactly where his vessel was regarding, vis a vis shoal
- (13) water
- (14) and other dangers
- (15) I think that he was actively engaged in his duty, which was
- (16) conning the ship and trying to fix his position and doing a
- (17) number of other things, but he obviously wasn't aware that
- (18) he
- (19) had overshot his turn point And so that is where I'm at
- (20) when
- (21) I said inattention to duty
- (22) Q Do you have an understanding as to whether one of the
- (23) reasons for requiring the pilotage endorsement in these
- (24) particular waters is to make sure that you have a pilot on the
- (25) bridge of the vessel who will have knowledge of where the
- (26) vessel is and will understand the shoals and so forth that you
- (27) just mentioned?
- (28) A Well that's - that's the reason for having somebody on

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- (1) **the bridge who has – who has pilotage for those waters He would be able to fix his position probably faster than somebody**
- (2) **who didn't have pilotage just because he s more familiar with**
- (3) **the aid and the area and would know what to look for**
- (4) **I also think that the third mate had made several transits He just didn't have his 24 transits I don't know how many he had**
- (5) **Q Following the grounding of the Exxon Valdez in March of 1989 you had occasion from time to time to comment on the accident is that correct sir?**
- (6) **A I did**
- (7) **Q And you testified in Congress –**
- (8) **A Yes, I did**
- (9) **Q – among other places about that?**
- (10) **A I did**
- (11) **Q Let me refer you to what I think was marked as Exhibit 40414 If you look at page eight of that document sir let me first of all refer you to the second sheet of this exhibit which begins with the words the White House Office of the Press Secretary**
- (12) **Have you had a chance to look at that sir?**
- (13) **A (Nodding head up and down)**
- (14) **Q Admiral Yost do you recall giving or taking part in a press briefing given at the White House on or about March 30 1989?**

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- (1) **A I do**
- (2) **Q And in connection with that did you have occasion to comment on the navigation existing in the localities where the Exxon Valdez ran aground?**
- (3) **A I did**
- (4) **Q Now I return to – refer you then back to page seven In particular I ask you if you would look at the second paragraph of the statement attributed to you which reads as follows and I m now quoting – I being Admiral Yost will look at the response of the Vessel Traffic Service itself but that s a very wide roadstead Remember we ve got miles of open water here For that vessel to have come over and hit the reef is almost unbelievable It s not something that the Vessel Traffic System is designed to keep vessels from doing You would need vessel traffic systems up and down the coast of the United States if you re going to try to keep every vessel from hitting the beach You can t do that**
- (5) **This is not a treacherous area as you people in the press have called it It is not treacherous in the area they went aground It s ten miles wide Your children could drive a tanker through it**
- (6) **Did you make that statement sir?**
- (7) **A I did**
- (8) **Q The last sentence of that statement your children could drive a tanker through it I think you testified earlier that**

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- (1) **you received some feedback from various sources in regards to that comment Is that a fair statement?**
- (2) **A Yes That comment was an overstatement It was an obvious exaggeration and well there should have been laughter as it overstated my position considerably**
- (3) **Q In regards to the remaining portion of that statement do you still stand by what you said there?**
- (4) **A I do**
- (5) **Q Now is it also your belief that a person who had received a license properly issued by the Coast Guard as a third mate on a vessel like the Exxon Valdez should have no difficulty navigating a vessel in that area?**
- (6) **A That was my feeling at the time and it s my feeling at this time as well**
- (7) **Q Did you ever look into whether or not crew fatigue was a factor in the grounding of the Valdez on Bligh Reef?**
- (8) **A Only to the extent that I was briefed on the manning of the bridge at the time of the accident The fact that the crew had been working all day and loading the tanker and getting ready for sea, which is normal, that they had departed Port Valdez in the early evening after dark and had been at sea for – had departed about three or four hours earlier, prior to the accident, three or four, so it s likely that any ship that departs the port in the early morning, that there might be some fatigue in the crew but that is normal operating practice on**

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- (1) **every Coast Guard ship, Navy ship, merchant ship in the world, that when the time – when the ship is loaded and it's time to go, you sail Time and tide waits for no man came out of the sea, but I m going away – but I'm not aware that fatigue was a factor in this ship going aground**
- (2) **Q Let me refer you to Exhibit 40414 which was the press release press briefing at the White House on March 30 1989 and specifically page 7**
- (3) **When you gave this answer on March 30 1989 it was your understanding that what you testified here was correct with respect to the nature of Prince William Sound?**
- (4) **A That was at that time and is my opinion of that particular part of Prince William Sound The answer here indicated it s ten miles wide I think at that point, at Bligh Reef, it's something less than ten miles, but it s a very wide roadstead, so the impact of what I said is still my opinion**
- (5) **Q So basically it s my understanding that the area we re talking about here is the area around Bligh Reef the same would apply to the whole of Pnnce William Sound south of Rocky Point and north of Hinchinbrook Entrance is that true?**
- (6) **A All of that area is relatively wide, most of it ten miles or greater Yes**
- (7) **Q And it s your testimony that that s a very very simple place to navigate very wide?**
- (8) **A That part of Prince William Sound is not treacherous I**

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- (1) think was my comment not treacherous and by that I meant
- (2) It s very deep, it s very wide, the shores are very steep, so
- (3) that they paint on it, radar set very well It s from that
- (4) point of view that I m talking about
- (5) Q Is it a correct statement that in saying that you re
- (6) really expressing a sentiment that it wasn t a very difficult
- (7) place to navigate and it didn t require any particular
- (8) expertise to steer a tanker in that particular area?
- (9) A That was my opinion A competent mariner, one who is
- (10) qualified and so licensed ought not have any problem
- (11) navigating
- (12) that particular body of water, because it was not
- (13) treacherous
- (14) Q When you say a competent man so licensed would that be
- (15) someone with a Coast Guard issued mate s license?
- (16) A Yes, it s -
- (17) Q Either the third mate second mate chief mate or a master?
- (18) A Yes, yes
- (19) Q And they wouldn t require any particular pilotage
- (20) endorsement?
- (21) A I didn t say that
- (22) Q Well I m saying from the expertise required in that
- (23) particular area didn t require any particular knowledge or
- (24) particular expertise other than what an ordinary mariner would
- (25) have?
- (26) A What I intended there is that this water was not a
- (27) particularly treacherous piece of water, that a competent

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- (1) mariner holding a mate s or a master s ticket for a
- (2) supertanker size vessel should not have any trouble
- (3) navigating
- (4) that particular piece of water That was my intention
- (5) Q Let me ask you one more question about this exhibit for
- (6) the time being one more question I ll probably come back to
- (7) it At page 1896 -
- (8) A Okay
- (9) Q 69 excuse me This is a briefing paper from G MV - is
- (10) that P?
- (11) A Yeah, MVP
- (12) Q Marine safety vessel?
- (13) A Probably vessel personnel would be the division that
- (14) would
- (15) have cognizance over manning standards perhaps
- (16) pilotage that
- (17) kind of thing
- (18) Q And the question was quote The Coast Guard has currently
- (19) posed as a quote as current end quote - start over again
- (20) I could have skipped that
- (21) The Coast Guard currently has a proposed rule making which
- (22) if finalized will eliminate the requirement for pilotage on
- (23) PWS - meaning Prince William Sound - quote between the
- (24) high
- (25) seas and Rocky Point
- (26) Why have you made this proposal? In view of the Exxon
- (27) Valdez incident do you feel that this is a good proposal?
- (28) And the major points are first quote statutes require
- (29) the secretary to designate the waters of Prince William Sound

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- (1) upon which a vessel will not require a pilot end quote
- (2) Do you have a recollection of that statute sir?
- (3) A Not specifically the statute but I m aware of the impact
- (4) of it, yes
- (5) Q And that was a statute sponsored by Congressman Young of
- (6) Alaska?
- (7) A I don t know whether Congressman Don Young, that was
- (8) his
- (9) statute, what Don - the initiative by Don Young in support of
- (10) the Alaska Pilots was to eliminate pilotage in that particular
- (11) piece of water
- (12) Q And that was the water in which the Exxon Valdez evidently
- (13) ran aground is that correct?
- (14) A I think it was That s a very long piece of water and the
- (15) Exxon Valdez went aground on a rock in a part of it
- (16) Q Okay And that was the part we discussed earlier that was
- (17) ten miles wide and in many places 500 600 feet deep is that
- (18) right?
- (19) A It was at least at least ten miles wide in many places,
- (20) yes
- (21) Q And item two of the major points is quote Opinion of the
- (22) maritime community and Alaska state pilots is that pilotage is
- (23) not necessary seaward of Rocky Point end quote Is that
- (24) statement correct to the best of your knowledge?
- (25) A When you talk about the maritime community I don t
- (26) know
- (27) who all that is But the State pilots went to Don Young, as I

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- (1) understand, and asked him to propose this They had
- (2) specific
- (3) reasons for wanting to do so and perhaps valid reasons,
- (4) and
- (5) when it went out as a proposed rule making, the Coast
- (6) Guard put
- (7) it out as proposed rule making, I understand that nobody
- (8) commented on it That means either the maritime
- (9) community
- (10) didn t have any problems with it or didn t take any notice of
- (11) it, it was just not a major issue
- (12) Q Is it accurate to say that the Coast Guard in formulating
- (13) a proposal rule making about pilotage would use its best
- (14) judgment the best judgment of its staff and its experts as to
- (15) whether or not pilotage was objectively required is that -
- (16) A That s correct And the major input would be from the
- (17) captain of the port in the area
- (18) Q Well my point is - but I guess my point is the Coast
- (19) Guard would not simply issue a rule making to eliminate
- (20) pilotage requirements on the ground that the Alaska pilots had
- (21) some reason for wanting to do it that way?
- (22) A No, I think before the Coast Guard would even go out with
- (23) an advance notice or proposed rule making that they would
- (24) have
- (25) to feel that there was some justification and they would
- (26) want
- (27) them to get comments from a much wider group, which they
- (28) did
- (29) Q So the fact that the Coast Guard issued an advanced notice
- (30) of proposal rule making indicates that within the Coast Guard
- (31) taking into account the special local knowledge of the captain
- (32) of the port it was believed that there was no - that there

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- (1) were no conditions that mandated the need for pilotage south of  
 (2) Rocky Point  
 (3) Is that a fair statement?  
 (4) **A No, that s probably an overstatement It would indicate**  
 (5) **that within the Coast Guard there was no adamant opinion**  
 (6) **that**  
 (7) **we had to have pilotage in this area A suggestion had been**  
 (8) **made by the pilots association, the Coast Guard was not**  
 (9) **adamantly opposed and, therefore, it decided to get further**  
 (10) **input from a much wider range But the Coast Guard mind**  
 (11) **was**  
 (12) **far from made up**  
 (13) **Q I understand that But I guess my question to you**  
 (14) **Commandant Yost is the standard that the Coast Guard would**  
 (15) **use**  
 (16) **in deciding whether it the Coast Guard was opposed - as to**  
 (17) **whether it was opposed as to whether in it judgments there**  
 (18) **were local conditions that required a pilot to be aboard is**  
 (19) **that right?**  
 (20) **A That s - yeah, that s - that s a fair - probably a fair**  
 (21) **statement**  
 (22) **Q I mean isn t that the service that a pilot or an endorsed**  
 (23) **pilot -**  
 (24) **A Yes**  
 (25) **Q - brings to a ship?**  
 (26) **A Yes**  
 (27) **Q And the fact that the proposed rule making issue would**  
 (28) **indicate that no one in the Coast Guard was aware of local**

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- (1) conditions that suggested to them the need for a pilot in the  
 (2) waters below Rocky Point between Rocky Point and the sea?  
 (3) **A It certainly an indication that, in the captain of the**  
 (4) **port's mind, the mind of the office of M at the district level**  
 (5) **and in the much - and in the mind of the office of M at the**  
 (6) **headquarters level there was reason to believe that they**  
 (7) **ought**  
 (8) **to go out with a proposal rule, proposed notice of**  
 (9) **rule making**  
 (10) **and that being that nobody was adamantly opposed within**  
 (11) **the**  
 (12) **Coast Guard and nobody saw a major reason why that**  
 (13) **particular**  
 (14) **piece of water would require pilotage, but they needed a**  
 (15) **much**  
 (16) **wider input and it really means they were vanilla on this at**  
 (17) **this point and their mind was open**  
 (18) **Q Admiral do you recall in April of 1989 giving testimony**  
 (19) **before Congress which you refer - in which you refer to the**  
 (20) **Vessel Traffic System as an advisory system?**  
 (21) **A I don t specifically remember the testimony, but I have**  
 (22) **often described the Vessel Traffic System as an advisory**  
 (23) **system**  
 (24) **Q Would you just explain to us what you mean when you use**  
 (25) **the**  
 (26) **phrase advisory system ?**  
 (27) **A Yes, that the Vessel Traffic System is one more aid to the**  
 (28) **master in safety of navigation It advises him It advises**  
 (29) **him of other traffic in the area It advises him of hazards**  
 (30) **that he may encounter It advises him of weather**  
 (31) **situations,**  
 (32) **conditions, fog, it advises him of navigation aids that may**  
 (33) **be**

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- (1) **out, not working properly It advises him of anything that**  
 (2) **they - that the Vessel Traffic Center feels would be an**  
 (3) **assistance to the person on the bridge of the ship**  
 (4) **Q Let me ask to have the next document marked as the**  
 (5) **numbered**  
 (6) **exhibit**  
 (7) **Do you recall making a comparison between the Seattle VTS**  
 (8) **and at Valdez yesterday in your testimony?**  
 (9) **A I do, and I think the thrust of that comment was that the**  
 (10) **Seattle Vessel Traffic System was much more complex and**  
 (11) **the**  
 (12) **reason for that is the Port of Seattle is very busy port**  
 (13) **There will be tens of ships in the system at any one time**  
 (14) **The**  
 (15) **Valdez traffic system is the separation scheme is in very**  
 (16) **open**  
 (17) **water in a very little used body of water where it is**  
 (18) **uncommon**  
 (19) **to have even more than one ship in the system at any one**  
 (20) **time**  
 (21) **let alone tens of ships**  
 (22) **Q Have those differences resulted in differences in the**  
 (23) **design of the two systems?**  
 (24) **A Each system is designed for the port that it s in and the**  
 (25) **systems that were designed for most ports matched the**  
 (26) **complexity of the port**  
 (27) **However, in Valdez the system was mandated by law as a**  
 (28) **part of the vessel - as a part of the oil terminal if**  
 (29) **anything, it was probably an overkill both in coverage and**  
 (30) **complexity**  
 (31) **Take out the word if anything It definitely was an**

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- (1) **overkill in terms of coverage and complexity**  
 (2) **Q In what way was it an overkill?**  
 (3) **A It had a watch system around the clock and radar**  
 (4) **coverage**  
 (5) **of a more dangerous part of the system which was Valdez**  
 (6) **Narrows**  
 (7) **in a system that seldom had more than one major vessel in**  
 (8) **it at**  
 (9) **a time, where you had a three-section watch that sat for**  
 (10) **hours**  
 (11) **and hours and hours with absolutely nothing to do and no**  
 (12) **ships**  
 (13) **in the system It was required by law and that's the reason**  
 (14) **it**  
 (15) **was put in**  
 (16) **Q Would you say that as between groundings and collisions**  
 (17) **there s a higher relative risk of groundings in the Prince**  
 (18) **William Sound VTS when compared to the higher traffic VTSs**  
 (19) **such**  
 (20) **as Seattle?**  
 (21) **A Except in Valdez Narrows, it is very difficult to go**  
 (22) **aground in the rest of the system It s very deep water The**  
 (23) **water falls off precipitously right next to the beach, the**  
 (24) **shore It s very difficult to put a ship aground in open water**  
 (25) **like that, notwithstanding it was done in the Exxon Valdez**  
 (26) **case It s also, when there are almost no other ships in the**  
 (27) **system, very difficult to hit somebody So it's a simple**  
 (28) **piece**  
 (29) **of water where we had an overkill, in my view, of a traffic -**  
 (30) **of a Vessel Traffic System and in which we had a terrible**  
 (31) **incident, accident that caused the biggest oil spill in the**  
 (32) **history of the United States So it's a real - it's a real**  
 (33) **problem and that s why we re all here agonizing about it, I**

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- (1) **guess**
- (2) **Q Was it your understanding at the time that you testified**
- (3) **before the House subcommittee on April 6th 1989 that the**
- (4) **watch standers had no duty to observe a vessel after it had**
- (5) **cleared the approach to the Narrows on an outbound voyage?**
- (6) **There s an objection calls for a legal conclusion**
- (7) **When I say duty I mean according to the procedures that**
- (8) **were in effect**
- (9) **A It was my understanding of the procedures that were in**
- (10) **effect in 1989 that, once a vessel arrived at the pilots**
- (11) **station in the vicinity of Rocky Point and discharged the**
- (12) **plot that the procedures of the Vessel Traffic System did**
- (13) **not**
- (14) **require radar tracking from that point on out past Bligh Reef**
- (15) **and on out past Hinchinbrook**
- (16) **Q Now when you say radar tracking what do you mean by**
- (17) **that?**
- (18) **A I mean for the radar to be turned on a scale that would -**
- (19) **that would paint the vessel, would print the vessel s**
- (20) **position**
- (21) **and track it out It certainly wasn t their procedure to plot**
- (22) **it at this point They had an automatic data plotter that**
- (23) **recorded digitally the location of the vessel any time it was**
- (24) **under - whether it was in the narrows or whether it wasn t**
- (25) **Q And when you say radar tracking you mean have the radar**
- (26) **on**
- (27) **a scale so that the target could be painted?**
- (28) **A Yes**

- (1) **A Or if the officer felt that something was so important that**
- (2) **he needed to talk to me directly That wasn t the case I**
- (3) **most**
- (4) **certainly requested this for this to have come to me**
- (5) **Q Let me refer you to the document that Mr Carey referred**
- (6) **you to last week Exhibit 40430 it s predesignated document**
- (7) **100**
- (8) **Now is it your understanding that the procedures followed**
- (9) **by the watch standers on the night of the grounding were in**
- (10) **accord with the requirements Commander McCall sets forth in**
- (11) **his**
- (12) **memorandum?**
- (13) **A The memorandum states hat the watch stander was still**
- (14) **required to track all participating vessels out to the Bligh**
- (15) **Reef buoy area He just did not have to record the six -**
- (16) **minute fixes That is Commander McCall s description of**
- (17) **the**
- (18) **requirements on the watch stander**
- (19) **Q Is it your understanding that that practice was followed on**
- (20) **the night of the grounding from your observation in the Vessel**
- (21) **Traffic System when you were there?**
- (22) **A I m not sure The watch - I m not sure The watch**
- (23) **stander reported that he was unable to track the vessel out**
- (24) **to - out to Bligh Reef and was not tracking the vessel out to**
- (25) **Bligh Reef I think the watch stander said that he didn t**
- (26) **have**
- (27) **the radar even on the scale it was going out there, because**
- (28) **he**
- (29) **didn t have a requirement to plot the vessel out that far**
- (30) **Whether the data plotter was on or not I don t know, and**

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- (1) **Q Do you mean painted also so that it could be observed by**
- (2) **the watch stander?**
- (3) **A I think, yes, so that it could be observed which could**
- (4) **also - also say so that the data plotter whatever that piece**
- (5) **of equipment was would in fact record its position**
- (6) **numerically**
- (7) **Q All right Just let me ask this first question Do you**
- (8) **recall getting this document?**
- (9) **A I don t specifically recall getting it It s a document**
- (10) **that came directly from Commander McCall directly to me**
- (11) **It**
- (12) **was probably the result of one of my visits to the Vessel**
- (13) **Traffic Center where I expressed some surprise and**
- (14) **concern at**
- (15) **the change in procedures and, as a result of that asked**
- (16) **Commander McCall if he would write me a memo tracing**
- (17) **through**
- (18) **the changes since I had not had any contact with this**
- (19) **system**
- (20) **since 1977 This appears to be his response to that and it**
- (21) **appears to have come directly to me and I have no doubt but**
- (22) **that I got it because some of the things here are at least**
- (23) **vaguely familiar**
- (24) **Q It s unusual in its form isn t it without any Coast Guard**
- (25) **organization designations at the top?**
- (26) **A It s unusual in that it was a memo directly to me not**
- (27) **through the chain of command and would only have**
- (28) **happened had I**
- (29) **specifically requested it**
- (30) **Q All right**

- (1) **whether the data plotter works when the radar is on a**
- (2) **different**
- (3) **scale, I don t know**
- (4) **Q What about the monitoring requirement that Commander**
- (5) **McCall**
- (6) **sets forth in his memorandum?**
- (7) **A You re asking me to interpret McCall s memo to me I**
- (8) **don t**
- (9) **remember how I interpreted it at the time except to feel that**
- (10) **this wasn t the way that I now wanted to operate the system**
- (11) **He was trying to tell me how the system was operating and**
- (12) **he**
- (13) **seems to be saying that the watch stander did not have to**
- (14) **plot**
- (15) **the vessel but he had to track the vessel because he had a**
- (16) **radar watch on the vessel Tracking is not a term that I fully**
- (17) **understand here particularly when he says in other parts of**
- (18) **the memo that the reason they put in the plotter is so if the**
- (19) **watch officer had to take a radio call, he wouldn t miss any**
- (20) **data points Which indicates that the watch stander had**
- (21) **other**
- (22) **things to do besides watch the radar scope**
- (23) **So what he meant by tracking apparently, does not mean**
- (24) **watching the radar scope He s talking about the radar**
- (25) **tracking the vessel but there was no six minute plot**
- (26) **required That s how I interpret this memo to me**
- (27) **Q You interpreted this to mean that they weren t required to**
- (28) **observe the vessel on radar after Rocky Point is that correct?**
- (29) **A No, I said that s the - my perception of the understanding**
- (30) **of the watch stander McCall s understanding was that the**
- (31) **radar**
- (32) **would be on and the vessel would be tracked, but that there**

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- (1) wasn't a requirement to plot it Neither a requirement for the
- (2) watch officer to sit and watch the radar continuously as the
- (3) vessel went out
- (4) Q So it appears there's some discrepancy between what McCall
- (5) is looking for and what the watch standers understood they were
- (6) required to do?
- (7) A I - that may be an appearance
- (8) Q You say that the Vessel Traffic Service did not have a
- (9) plotting requirement but based on McCall's memorandum to you
- (10) they had had a monitoring or tracking requirement correct?
- (11) A His feeling was in his memo as I read it, that they had a
- (12) tracking requirement That term, he doesn't define, and I can
- (13) only assume in the way he uses it and in the context that it
- (14) does not involve manual plotting, that it involves the radar
- (15) tracking the vessel while the watch officer attends to his
- (16) duties, whatever they might be, including watching the radar
- (17) but not solely watching the radar That's how I interpret his
- (18) memo
- (19) Q Admiral let me refer you to enclosure 16 of the O Donovan
- (20) report which is the manual in effect at the time of the
- (21) grounding and specifically to Chapter 4 Section 4 4 1
- (22) That's a part of Exhibit 3512 that we offered this morning
- (23) Your Honor
- (24) Your answer?
- (25) A Well, given that understanding, this - the operative

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- (1) sentence in Section 4 1 on page 19 is quote, in certain
- (2) circumstances recommendations will not be sufficient and it
- (3) will be necessary for the Vessel Traffic Center to direct or
- (4) prohibit vessel movement, end quote
- (5) Now, let me explain that a little in context with what I
- (6) just said Most vessel traffic centers do not contemplate
- (7) and
- (8) the United States do not contemplate rudder commands
- (9) What
- (10) they contemplate, as it says here and I quote again to direct
- (11) or prohibit vessel movement, end quote and that's normally
- (12) meant to tell the vessel to Do not proceed into a certain
- (13) area
- (14) that may have a danger in it and that would be the direction
- (15) or
- (16) prohibiting They might even direct the vessel to stop and
- (17) anchor, but it's never been considered that they would give
- (18) rudder commands for the vessel
- (19) I don't know that that's important, but go ahead
- (20) Q Well the preceding sentence says that the VTC should
- (21) recognize potential trouble spots and recommend any practice
- (22) which could result in danger of collision or grounding?
- (23) A Yes, I agree with that
- (24) Q If the watch stander were plotting or tracking the vessel
- (25) while it is in the system and it were to see the vessel were
- (26) standing into danger did the watch stander have an obligation
- (27) to advise the vessel of the fact that it was standing into
- (28) danger?
- (29) A If the watch stander was aware that the vessel was
- (30) standing

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- (1) into danger he had an obligation to inform the vessel of the
- (2) situation and even to recommend action If the vessel the
- (3) master or the watch officer on the vessel disagreed he was
- (4) not
- (5) to become argumentative he was to make
- (6) recommendations if he
- (7) became aware that the danger existed He was then to
- (8) inform
- (9) the officer of the day at the Vessel Traffic Center or at the
- (10) MSO that he had made a recommendation, the master had
- (11) not
- (12) agreed and was not taking them
- (13) That's my understanding of the system
- (14) Q Is it also your understanding that the watch stander had an
- (15) obligation to direct the vessel to stand away from that danger
- (16) as opposed to just recommend it?
- (17) A Enlarging the testimony I just gave, the watch stander
- (18) had
- (19) the responsibility to inform the master if he felt the master
- (20) was standing into danger or entering a dangerous situation
- (21) and
- (22) he had the obligation to make recommendations to the
- (23) master how
- (24) to mitigate that danger
- (25) Q The answer continues
- (26) A There's been a discussion an argument from the very
- (27) inception of Vessel Traffic Services in this country what the
- (28) mission of that Vessel Traffic Service was, as far as
- (29) directing
- (30) the master or the vessel It's pretty widely accepted that
- (31) rudder commands are not given by the Vessel Traffic
- (32) Service
- (33) Information is given to avoid hazards, but that the person
- (34) on the bridge of that vessel is far better able to make a
- (35)

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- (1) decision on actual maneuvers than the Vessel Traffic
- (2) Service
- (3) MR LYNCH I have about this much Your Honor
- (4) BY MR LYNCH
- (5) Q Okay let's go to page 18 which is the one previous to -
- (6) A I got it I'm there
- (7) Q Okay under VTC directions the third example down it states
- (8) as follows quote Trenton this is Valdez Traffic Our radar
- (9) shows you 100 yards to the left of the traffic lane inside the
- (10) separation zone You are directed to take corrective action
- (11) Over end quote
- (12) Is that the type of recommendation you are referring to?
- (13) Mr Klinckhardt says Let me -
- (14) A It is This is an illustrative example of the kind of
- (15) direction that the Vessel Traffic System might give, and the
- (16) following paragraph is an explanation of the words, quote,
- (17) directive, end quote So this example says, quote, Our
- (18) radar
- (19) shows you a hundred yards to the left, you are directed to
- (20) take
- (21) corrective action, over, end quote
- (22) It doesn't say, quote, You are directed to stop, quote It
- (23) doesn't say You are directed to stop, you are directed to
- (24) take
- (25) right full rudder It doesn't say, You're given direction to
- (26) drop the anchor It tells him to take corrective action
- (27) Now, the direction in the next paragraph is explained,
- (28) quote, Watch standers are not to argue or try to convince a
- (29) master that the orders are necessary However, if the
- (30) master

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- (1) **disagrees, no further attempt should be made to justify the action taken and the OD should be contacted end quote**
- (2) **MR LYNCH** This would be a good place to stop Your Honor
- (3) **THE COURT** We'll take our second recess ladies and gentlemen We'll be in recess now for 15 minutes
- (4) **(Jury out at 12 02)**
- (5) **(Recess)**
- (6) **(Jury in at 12 17)**
- (7) **THE COURT** Could I see Mr O Neill and Mr Lynch behind the cabinet please
- (8) **(At side bar off the Record)**
- (9) **THE COURT** We have a couple of questions from one of your jurors One of the questions is in substance and I may be paraphrasing it too grossly but is - basically how come there are so many depositions But believe me these attorneys and I know how difficult it is to be attentive to depositions it's not the best way to take testimony We all know that But there a couple of problems that these people have to deal with one of which is that this court's subpoena powers - that is the power to require someone to come here and testify - in a civil case doesn't reach past the boundaries of the state of Alaska I can't require somebody to come from New York or Washington or whatever if they don't want to come So the attorneys have to go there depose them and

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- (1) we wind up reading and you wind up listening to a deposition
- (2) In some instances there are federal regulations that have to do with whether or not you can subpoena Government witnesses That's probably the case that we're up against here there's - I think there's probably a government regulation that precludes Admiral Yost from being here to testify or anybody else from the Coast Guard to testify So we had to use depositions There just wasn't any choice about it
- (3) As to the second question about readers being from out of state Frankly there are a lot of people on both sides of the case who are in town from other places who are working on the case and it's simply people who happen to be handy who are working in some way or another on the case otherwise who are being used as readers
- (4) **Mr Lynch**
- (5) **MR LYNCH** We didn't leave the office early enough Your Honor Pick it up with the examination of Admiral Yost
- (6) **BY MR LYNCH**
- (7) **Q** Okay Are you aware that the Coast Guard in Valdez had been for some years routinely authorizing deviations from the traffic lanes from the assigned traffic lanes?
- (8) **A** Yes
- (9) **Q** As a result of ice coming down into the lanes from the glacier?

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- (1) **A** I'm aware that deviations were authorized by the Vessel Traffic Service
- (2) **Q** My question was are you aware that those deviations were authorized routinely?
- (3) **A** Yes
- (4) **Q** The last question I have about your testimony - I have about your testimony to the House committee on April 6th is about your statement quote I am not convinced however that the vessel could not have been tracked had the procedure directed that it be tracked
- (5) **What did you mean by that?**
- (6) **A** I meant by that the area of Bligh Reef and that far out the arm if you will, that far out, the radar tracking is not - my understanding was that it was problematical whether you could be able to track a ship that far out It would depend on how well the radar was picked up It would depend on whether it would
- (7) **It would depend on the aspect of the vessel but it might be possible that, had the watch officer been plotting this vessel all the way out, that he might have been able to track it**
- (8) **When you're plotting a vessel on radar every three minutes you can sometimes pick up a target on radar that, if you haven't been plotting and you just walked over to the radar, you wouldn't see because you wouldn't know about where to look and**
- (9) **that - that little echo you're getting back is that target you**

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- (1) **had been tracking**
- (2) **So I wasn't convinced that it could not have been tracked but neither was I convinced that it could have been We're out at the extent of the radar's range and it's going to be very problematical out there That was my understanding**
- (3) **Q** Did you have an understanding whether the vessel was visible immediately after the grounding when the watch stander came back and looked for it?
- (4) **A** It was my understanding, when he got the communications report that the vessel was aground that he walked over to the radar, it was either on the 12 mile scale or the - an upper scale or he flipped it on the upper scale, and it was my understanding he turned it to the upper scale and the vessel was clearly visible on Bligh Reef
- (5) **Q** Now did you not - did that not indicate to you that the vessel could have been seen shortly prior to the grounding had the same maneuver been carried out?
- (6) **A** I was told that it was visible because it was abeam aspect and therefore I would assume had it been going out the channel sideways he certainly would have been able to track it But it wasn't It was going out with an end on stern aspect, and my understanding was that it was very difficult to pick up targets at that range, but that was what was reported to me and I was just kind of regurgitating what my understanding was at that time

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- (1) Q All right Are you familiar with a buoy in that area the  
 (2) Bligh Reef buoy?  
 (3) A I am  
 (4) Q Do you know how big it is approximately?  
 (5) A It s very small compared to any aspect of a supertanker  
 (6) It s more the size of a - a fishing vessel  
 (7) Q If the Bligh Reef buoy were visible on radar would you  
 (8) conclude that an end on tanker could be seen on radar?  
 (9) A I would  
 (10) Q In the same area?  
 (11) A Yes I would  
 (12) Q Inasmuch as we have testimony that after the grounding that  
 (13) Lieutenant Blandford rather Mr Blandford at that time  
 (14) switched the scale was able to observe to determine whether or  
 (15) not he could observe the vessel after it was reported to have  
 (16) been grounded he testified that he was able to see the Bligh  
 (17) Reef buoy at that time at that point in time Would it be a  
 (18) safe assumption that if he had been able to see the Bligh Reef  
 (19) buoy he should have been able to - should have been capable  
 (20) of tracking the vessel up to that point in time?  
 (21) A It s my understanding, my feeling, that if you can see a  
 (22) lighted buoy on the radar scope, you would be able to see a  
 (23) supertanker in an end on or any other aspect the same  
 range  
 (24) Q As of 1989 Admiral Yost did the United States Coast Guard  
 (25) have in place any programs for united - for Coast Guard

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- (1) officers or enlisted persons who had substance abuse  
 problems?  
 (2) A What year?  
 (3) Q As of 1989?  
 (4) A Yes  
 (5) Q What was that program?  
 (6) A Program for substance abuse within the military  
 personnel  
 (7) within the Coast Guard was broken down into basically two  
 (8) areas, one, alcohol, and that policy was basically to afford  
 (9) the person if he was addicted to alcohol or an alcoholic to  
 (10) attend a substance abuse program to rehabilitate him or  
 her, as  
 (11) the case may be I ve agonized the same way about  
 somebody  
 (12) recovering from alcohol problem and you have - and you  
 (13) rehabilitate them and you bring them back on duty and you  
 sit  
 (14) there as the separate leader and decide do I let this guy go  
 (15) back to his job or do I ruin his life and his career when he s  
 (16) just made a great effort to be rehabilitated, and it s a very  
 (17) difficult corporate decision  
 (18) With drugs, the position of the Coast Guard was not to  
 (19) attempt rehabilitation Anybody who was found using drugs  
 (20) would be discharged from the service  
 (21) Q I assume when you say drugs - well strike that With  
 (22) reference to alcohol what career effect did an individual s  
 (23) obtaining rehabilitation treatment have on their future  
 (24) assignments in the Coast Guard if any?  
 (25) A It was the intention of the top management of the Coast

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- (1) Guard that it would have none that there would be no  
 (2) recriminations for a person turning himself in or even being  
 (3) turned in by his CO who then completed rehabilitation and  
 came  
 (4) back and in fact had gotten rid of his abuse problem  
 (5) I can say that at least in most cases, this was in fact  
 (6) the case And there is at least one flag officer who went to  
 (7) the program prior to being selected for flag and so it was -  
 (8) certainly didn t hurt his career  
 (9) Q Was advanced to a flag office after a flag -  
 (10) A Yes  
 (11) Q - what do you call it rank?  
 (12) A Yes yes It was a very successful program in those who  
 (13) successfully completed it but there was some, there was a  
 (14) failure rate as well but the feeling was that in drugs that  
 (15) the failure rate would be so high that it was not worth the  
 (16) rehabilitation effort and so we separated those people from  
 the  
 (17) service  
 (18) Q Did your policy for providing rehabilitation for Coast  
 (19) Guard officers have any provision with regard to respecting the  
 (20) confidentiality of those who elect to take part in the program?  
 (21) A That was the intent to provide confidentiality I would  
 (22) say practically it was very difficult to do that for a person  
 (23) suddenly to disappear from his unit, go into what we will  
 call,  
 (24) quote, the dry dock quote, for several weeks and then to  
 (25) reappear at his unit without somebody saying, Where have  
 you

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- (1) been what's going on  
 (2) So though confidentiality was maintained up to a point, it  
 (3) was not - it was not perfect  
 (4) Did the Coast Guard -  
 (5) Q I think that s me  
 (6) A Oh, that s you  
 (7) Q Did the Coast Guard have a policy for random testing of  
 (8) rehabilitated alcoholics?  
 (9) A When a person went through rehabilitation and came  
 back to  
 (10) duty, the Coast Guard did not put them in a separate  
 category  
 (11) so they joined the rest of the forces and the random -  
 (12) randomness of the test put them at risk for tests as well, but  
 (13) I don't remember that we gave them a special increased  
 (14) randomness on the test or anything  
 (15) Q Do you know if any attempts were made to monitor the  
 (16) sobriety of recovering alcoholics while you were Commandant  
 of  
 (17) the Coast Guard?  
 (18) A I don t remember whether we had a program of  
 monitoring the  
 (19) rehabilitated people or not I just don t remember  
 (20) Q Sir? -  
 (21) A We may have had  
 (22) Q - I wanted to clarify something I m through with the  
 (23) report  
 (24) You told Mr - one of the plaintiffs counsel that there  
 (25) was a requirement in the Coast Guard with respect to its own



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- (1) personnel for random testing and I believe your testimony was  
 (2) there was a requirement for random testing for drugs and  
 (3) alcohol When did that requirement go into effect?  
 (4) **A Very shortly after I became - very shortly after secretary  
 (5) Samuel Skinner became secretary - well, before that  
 before**  
 (6) **that, must have been very shortly after I became  
 commandant**  
 (7) **Somewhere around 86 is my memory**  
 (8) Q Did the requirement implement random testing for those two  
 (9) different classes of substance and I mean non alcohol drugs  
 (10) and then alcohol at the same time?  
 (11) **A Do you mean were the tests done at the same time, both  
 (12) drugs and alcohol?**  
 (13) Q Let me rephrase the question  
 (14) Did the requirement for random testing for drugs and the  
 (15) requirement for random testing for alcohol go into effect at  
 (16) the same time?  
 (17) **A I don't remember First I don't think - I may have  
 (18) misspoken myself, I don't think that there was ever a  
 random**  
 (19) **testing or alcohol I don't think you can really random test  
 (20) for alcohol It's done on an incident basis**  
 (21) MR LYNCH That completes our deposition examination  
 (22) of Admiral Yost Your Honor  
 (23) MS WAGNER Your Honor our cross will be by  
 (24) videotape  
 (25) CROSS EXAMINATION OF ADMIRAL PAUL YOST (Video)

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- (1) BY PLAINTIFF EXAMINER  
 (2) Q What I'd like to do first Admiral is direct your  
 (3) attention to Exhibit 40420 which was pre-designated document  
 (4) 225 I believe it's the rubberband material in the stack of  
 (5) documents you have there in front of you  
 (6) **A Thanks**  
 (7) Q I'd ask you Admiral to turn to page 1751 I've got some  
 (8) questions about that page  
 (9) **A All right**  
 (10) Q Okay Admiral now to put this document in context I  
 (11) believe that you testified that this document is a briefing  
 (12) book that would be prepared for you by your staff for your  
 (13) review prior to your providing testimony is that correct?  
 (14) **A Yes**  
 (15) Q Okay So I'm sure we're on the same page does the page  
 (16) that you're looking at have the heading VTS Control of Course  
 (17) Recommendations?  
 (18) **A Yes**  
 (19) Q Admiral what I'd like to do is refer you to a portion of  
 (20) this page that under the heading major points number one  
 and  
 (21) I'd like to read some of this into the record and then ask you  
 (22) questions about the information here Underneath that  
 (23) paragraph is the heading answer major points no VTS watch  
 (24) standers are prohibited from issuing specific course speed and  
 (25) rudder orders to vessel operators

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- (1) In the right hand column I'll just read portions of this  
 (2) it says The Coast Guard policy is VTS is never to make  
 (3) specific course recommendations The VTS radar should be  
 made  
 (4) available to the mariner who is having navigational  
 (5) difficulty VTS making course recommendations is not prudent  
 (6) seamanship The VTS does not take - does not have  
 (7) immediate - let me begin again  
 (8) The VTS does not have advantage of immediate quote  
 (9) on scene info which master and pilot have The VTS only has  
 (10) radar info Ship has that and much more The VTS does not  
 (11) have intimate knowledge of the vessel's design or actual  
 (12) handling characteristics and limitations The responsibility  
 (13) for safe navigation rests with the master  
 (14) Admiral my question to you I understand that this was  
 (15) put together by your staff Are you in agreement with those  
 (16) points that are out - outlined on page 1751 that I've read?  
 (17) **A Yes, I am**  
 (18) Q In specific are you in agreement with those three bullets  
 (19) that I read which give the reasons that the VTS making course  
 (20) recommendations is not prudent seamanship?  
 (21) **A Yes**  
 (22) Q The document continues on point two VTS control vastly  
 (23) different from air traffic control The right hand column it  
 (24) says No comparison valid The VTS may direct a vessel to slow  
 (25) down or wait to avoid congestion and facilitate the flow of

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- (1) traffic VTS never issues helm orders Directions given in  
 (2) terms of specific time prior to which the vessel should not  
 (3) arrive at a point of reference And Admiral my question is  
 (4) just again are you in agreement with the statements contained  
 (5) in point two of this paper?  
 (6) **A Yes**  
 (7) Q You have previously testified about your position with the  
 (8) Coast Guard at the time that the VTS was initially accomplished  
 (9) in Valdez and your involvement in that Without going back  
 (10) through that testimony let me ask you Based upon that  
 (11) involvement do you recall whether there was any consideration  
 (12) given at that time for the VTS to exercise further control over  
 (13) vessels participating within the system?  
 (14) **A There's been - at the time of inception of vessel traffic  
 (15) systems including the initial one which was in Seattle  
 (16) mandated by law there has been a discussion of how much  
 (17) quote, control, unquote, the Vessel Traffic Services should  
 (18) have over a vessel And although some systems have been  
 (19) mandatory and some systems voluntary, the amount of  
 control has  
 (20) not changed By mandatory, means the vessel must  
 participate  
 (21) In the system, voluntary means the vessel may participate  
 in  
 (22) the system if the vessel desires  
 (23) But regardless of whether a system is mandatory or  
 (24) voluntary, the control has remained the same, which is you  
 (25) don't give rudder orders you don't give speed changes  
 What**

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- (1) **you do is - is give times of arrival and advise - advise of**  
 (2) **hazards and maybe prevent access to certain areas at**  
 (3) **certain**  
 (4) **times**  
 (5) **Q And are the reasons for those limitations on a VTS s**  
 (6) **control of a vessel the same reasons that we had referred to**  
 (7) **earlier on page 1751 of this document that the VTS does not**  
 (8) **have the advantage of immediate on scene information that the**  
 (9) **VTS only has radar information and the ship has much more**  
 (10) **information and that the VTS does not have intimate knowledge**  
 (11) **of the vessel s design and actual handling characteristics?**  
 (12) **A Yes**  
 (13) **Q Are there additional reasons that you can think of as you**  
 (14) **sit here today?**  
 (15) **A I don t think there are additional reasons, however, the -**  
 (16) **all of those reasons are steeped in the tradition that the**  
 (17) **master or the officer of the deck has full responsibility for**  
 (18) **the navigation of his vessel And that no aid to navigation**  
 (19) **or**  
 (20) **pilot or outside radar can relieve him of that responsibility**  
 (21) **it s a - it s a accountability thing that is steeped in the**  
 (22) **maritime tradition**  
 (23) **Q During Mr Carey s questioning last week you testified**  
 (24) **that it was your opinion that neither the Vessel Traffic**  
 (25) **Service or the Coast Guard in general had any negligence in the**  
 (26) **grounding is that correct?**  
 (27) **A That may be the exact of my - of my testimony I think I**

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- (1) **was a little more specific in saying I didn t see a causal**  
 (2) **relationship, but maybe I didn t say that but I don t see a**  
 (3) **causal relationship between the grounding and the**  
 (4) **performance**  
 (5) **of the Vessel Traffic Service**  
 (6) **At the time, as I told you, I was very concerned that the**  
 (7) **Vessel Traffic Service may have in some way contributed to**  
 (8) **this**  
 (9) **accident and for that reason, I asked National**  
 (10) **Transportation**  
 (11) **Safety Board to investigate the accident so if the Vessel**  
 (12) **Traffic System had a part in it, that the Coast Guard would**  
 (13) **not**  
 (14) **be investigating itself in a marine board**  
 (15) **But after seeing the investigations seeing O Donovan s**  
 (16) **study, talking to Vessel Traffic Service commanding officer,**  
 (17) **it s my feeling that the Vessel Traffic Service did not in any**  
 (18) **way contribute to the vessel grounding**  
 (19) **Q What facts do you rely on to make that conclusion?**  
 (20) **A That the vessel was in clear water on a clear night with**  
 (21) **all of the aids to navigation watching properly, that it had on**  
 (22) **the - on its bridge a competent third mate who should have**  
 (23) **been able to navigate without any problem in that kind of an**  
 (24) **area, and it had aboard a master who held pilotage in that**  
 (25) **area, and who had a requirement to be on the bridge**  
 (26) **Somebody**  
 (27) **is at fault when a ship goes aground, in this case, it is not**  
 (28) **the Vessel Traffic Service**  
 (29) **MS WAGNER That concludes the cross Your Honor**  
 (30) **MR CHALOS Good afternoon**

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- (1) **Good afternoon Your Honor**  
 (2) **THE COURT Mr Chalos**  
 (3) **MR CHALOS I m happy to report to you and to the**  
 (4) **jury I have a live witness Having said that watch me annoy**  
 (5) **him now The defendants called Julius flights to the stand -**  
 (6) **that is your first name isn t it?**  
 (7) **THE WITNESS Yes**  
 (8) **(The Witness Is Sworn)**  
 (9) **THE CLERK Please be seated**  
 (10) **For the record sir state your full name your address and**  
 (11) **spell your last name**  
 (12) **THE WITNESS Full name is Julius Herman Leitz Leitz**  
 (13) **spelled L e i t z I m from Portland Oregon**  
 (14) **DIRECT EXAMINATION OF JULIUS HERMAN LEITZ**  
 (15) **BY MR CHALOS**  
 (16) **Q And I forgot the Herman You go by the name Mick Mick**  
 (17) **Leitz?**  
 (18) **A That s correct**  
 (19) **Q I don t blame you**  
 (20) **What s your occupation?**  
 (21) **A I m a heavy marine salvor**  
 (22) **Q How long have you been a manne salvor?**  
 (23) **A I ve been in the salvage industry for about 35 years**  
 (24) **Q Are you an owner of a company that does salvage work?**  
 (25) **A Two companies that do salvage work**

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- (1) **Q What s the name of those two companies?**  
 (2) **A My primary company that I own a hundred percent of is**  
 (3) **J H**  
 (4) **Leitz and Associates Incorporated And then I m also**  
 (5) **co owner**  
 (6) **of Fred Devine Diving and Salvage, Incorporated**  
 (7) **Q What does a manne salvor do?**  
 (8) **A Marine salvor goes to the aid of any kind of a vessel**  
 (9) **that s in trouble It includes groundings sinkings, fires**  
 (10) **all manner and form of distress that floating objects can get**  
 (11) **themselves involved in**  
 (12) **Q You were the salvage master for the Exxon Valdez were you**  
 (13) **not?**  
 (14) **A That s correct**  
 (15) **Q In your career how many vessels have you salvaged from**  
 (16) **groundings collisions strandings?**  
 (17) **A Approximately 150 vessels of consequence I ve done**  
 (18) **many**  
 (19) **many jobs on small vessels**  
 (20) **Q When you say a hundred and fifty vessels of consequence**  
 (21) **what do you mean?**  
 (22) **A Well, the larger-type vessels, freighters and bulk**  
 (23) **carriers, tankers drill rigs, that type of thing**  
 (24) **Q How many - how many tankers have you salvaged in your**  
 (25) **career?**  
 (26) **A Four, including the Exxon Valdez**  
 (27) **Q How many of the vessels that you salvage did you salvage**  
 (28) **from groundings on rocks?**

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- (1) **A In excess of 20**
- (2) **Q And how many of those were tankers?**
- (3) **A Two - two of them That s including the Exxon Valdez**
- (4) **Q You - you salvage vessels all over the world parts of the world?**
- (5) **A Well, not all over the world There s an economic limitation as to how far I can go I ve been as far west as Guam I ve done several jobs in Guam, quite a few done work**
- (9) **in Mexico and as far east as Trinidad**
- (10) **Q And have you done work up here in Alaska?**
- (11) **A Quite a bit of work in Alaska**
- (12) **Q Now in the salvage jobs that you were involved with did you ever have occasion to use the vessel s engines?**
- (14) **A Yes, I do use a vessel s engines if the engines are operative and if the vessel in fact has engines**
- (16) **Q And the rudder?**
- (17) **A And the rudder**
- (18) **Q Mr Leitz based on your experience what is the traditional way of removing a vessel from a grounding a vessel that has grounded going ahead?**
- (21) **A About 90 percent of the time vessels that run aground under power are extracted in the same direction that they ran**
- (23) **in in other words they go in forwards they go out backwards**
- (24) **Q So if you re using the vessel s engines and rudder to get the vessel off the ground if you will that has run aground**

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- (1) **going forward you would back up?**
- (2) **A That s correct**
- (3) **Q Now in connection with your salvage job on the Exxon Valdez when did you arrive in Alaska for that job?**
- (5) **A On Easter Sunday I believe it was the 26th**
- (6) **Q Where did you go?**
- (7) **A I went to Exxon s office at the hotel there in Valdez**
- (8) **Q When did you first get out to the ship?**
- (9) **A My naval architect arrived on Tuesday and that s when we went out to the ship**
- (11) **Q That would have been the 28th?**
- (12) **A Yes**
- (13) **Q Between the 26th and the 28th what did you do?**
- (14) **A Well after I arrived in Valdez I met with a lot of the Exxon people and reviewed blueprints of the ship and just plain gathered data about a 16 hour a day basis and polished up a salvage plan or made the pretty complete outline of it, you know subject to a little modifications as you learn more about the vessel as time goes on, but that was all - and order equipment and order people to come up to participate**
- (21) **Q All right Was part of the information that you received some soundings that s had been taken at the request of Captain Hazelwood on the 24th of March?**
- (24) **A That s correct**
- (25) **Q Let me show you those soundings**

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- (1) **Could I have one of those - I ve lost my license to operate this machine so I m going manually now**
- (2) **I want to show you what we ve marked as Defendants 9171 which I offer into evidence at this time**
- (5) **(Exhibit DX 9171 offered)**
- (6) **MR MONTAGUE No objection**
- (7) **THE COURT Defendants 9171 is admitted**
- (8) **(Exhibit DX 9171 received)**
- (9) **BY MR CHALOS**
- (10) **Q Now I know you didn t get it in this form but you recognize this don t you?**
- (12) **A Yes, I do**
- (13) **Q These were soundings that were taken at 9 45 on March 24th**
- (14) **1989?**
- (15) **A Right**
- (16) **Q Can you tell the jury please what we re looking at here?**
- (17) **A Well, that s a - just a rough sketch of the Exxon Valdez and I believe some of these were taken by the pilot boat up there, and what they did was just made a sketch, recorded the depths of water certain distances out from the side of the ship and I think this particular on the starboard side -**
- (22) **Q So this is - now we re looking at the right side of the ship?**
- (24) **A That s right**
- (25) **Q And I see here these are in feet - right these**

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- (1) **soundings?**
- (2) **A Yes**
- (3) **Q Over here looking on the starboard side starting with around number three three tank?**
- (5) **A I would say so**
- (6) **Q Three tank forward?**
- (7) **A Yeah**
- (8) **Q We have 35 feet 46 feet 50 feet 50 feet and 60 feet at the bow?**
- (10) **A Yes**
- (11) **Q That s the place where the vessel was aground?**
- (12) **A That s where it was hardest aground, that s correct**
- (13) **Q The ship - because the ship was drawing something like 57 feet at the time she went aground?**
- (15) **A Yes**
- (16) **Q And the general indication from these soundings here the general indication is that there was shallow water on the starboard side of the ship am I correct?**
- (19) **A That confirms it yes**
- (20) **Q Now let me show you this is - let me find is this the same exhibit this is the second page of the same exhibit 9171 What does this depict?**
- (23) **A The same thing on the port side of the vessel**
- (24) **Q And now we re looking at on the left side of the vessel?**
- (25) **A Yeah, the left side of the vessel**

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- (1) Q On this one it looks like it's all pretty good water on the  
(2) left side except near the bow right?  
(3) A That's correct  
(4) Q And the general depth of the water away from the ship is -  
(5) is fairly deep except for some shallow spots here right?  
(6) A That's correct  
(7) Q Okay When you formulated your salvage plan you had this  
(8) information at hand as well?  
(9) A Yes I did  
(10) Q And you took that into account?  
(11) A Yes, I did  
(12) Q Okay Now you got out to the ship on the 28th?  
(13) A Yes  
(14) Q Tell us - tell us what your plan was Tell us how you  
(15) salvaged this vessel  
(16) A Well, the plan basically -  
(17) Q Can I just interrupt I got ahead of myself  
(18) Tell us about the type of damage that you found when you  
(19) went out there before - before you formulated your - and put  
(20) your plan into operation?  
(21) A Okay I was fairly aware of most of the damage to the  
(22) bottom of the vessel even before I went out on - on  
Tuesday  
(23) This information came from diver's reports, they had a diver  
(24) out there early on and I interviewed him and found out what  
(25) part of the ship was actually bearing on the rock We also

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- (1) took other soundings besides the ones that were  
mentioned I  
(2) had the ship's crew take the soundings on every frame  
space  
(3) down both sides of the ship and these soundings were all -  
a  
(4) profile was made from them so you could see the  
relationship of  
(5) the bottom of Prince William Sound there in relationship to  
the  
(6) bottom of the ship, and put those two together, the  
(7) descriptions of the divers on the area they can see  
(8) You got to understand that there's a - there was some  
(9) 30 000 square foot of the bottom, bottom of the ship that  
was  
(10) actually in contact with rocks so there was no way for divers  
(11) to take a look at that, and that was all on the - in way of  
(12) number one starboard tank, number two starboard tank,  
and parts  
(13) of one and two center tanks, that's where the ship was  
actually  
(14) resting on the bottom  
(15) Q Let me - if I may approach the witness Your Honor I want  
(16) to bring over a model It's Exhibit 154 into evidence This  
(17) is a model of the ship Maybe if you can just sort of stand up  
(18) and demonstrate for the ladies and gentlemen of the jury  
where  
(19) where the vessel was damaged and while you do that let me  
(20) put up one other exhibit  
(21) This is the one where - the damage exhibit and this way  
(22) they can follow along on the schematic as well I think I'm  
(23) going to have to bring this up a little closer  
(24) Your Honor this is Defendant's Exhibit 35B1 which I offer  
(25) into evidence at this time

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- (1) (Exhibit DX 3581 offered)  
 (2) MR MONTAGUE No objection  
 (3) THE COURT Defendants 3581 is admitted  
 (4) (Exhibit DX 3581 received)  
 (5) BY MR CHALOS  
 (6) Q Mr Leitz before you describe the damage can you tell us  
 (7) what 3581 represents?  
 (8) A Yes During the course of the salvage operation we kept  
 a  
 (9) running drawing and this is a copy of it This drawing was  
 (10) manufactured on butcher paper to be honest with you it  
 was  
 (11) eight feet long And each day as the divers did their work  
 (12) down there and reported information back to us my naval  
 (13) architect and I would we would interrogate them at the end  
 of  
 (14) the day and plot the information on the drawing  
 (15) And it was necessary to keep doing this thing, you know,  
 (16) sometimes the divers would get confused about which  
 frame space  
 (17) they were on We d have to erase something we d get the  
 same  
 (18) type of damage described 20 foot from where we seen it  
 before  
 (19) so pretty soon you get this thing you know massaged down  
 to  
 (20) something that s halfway reliable, you know and that s -  
 make  
 (21) a lot of decisions based on the information the divers give  
 you  
 (22) you  
 (23) We also use a rove vehicle which is an  
 underwater operated  
 (24) vehicle to do a lot of the measuring and investigation  
 (25) Q Mr Leitz just so I can help the jury what I m pointing

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- (1) to here on the right side of the exhibit is the bow right?  
 (2) A That s right  
 (3) Q And back here is the stern?  
 (4) A No it doesn t quite -  
 (5) Q It doesn t go all the way Where s it go back to number  
 (6) five?  
 (7) A Back to the number five tank  
 (8) Q Is this the house the white structure?  
 (9) A There was no damage after that  
 (10) Q Okay And this area here where you have all the squiggly  
 (11) marks that represents the area of damage?  
 (12) A That s correct  
 (13) Q Am I correct that it looks like there was no damage to the  
 (14) left side or the port side of the center tanks?  
 (15) A Yeah the bottom of the port tanks that port side were  
 (16) untouched  
 (17) Q So the oil that was in the port tanks was still intact?  
 (18) A That s correct  
 (19) Q It remained there What was lost was the oil coming out of  
 (20) the starboard side and the center tanks one two three four  
 (21) and partially five right?  
 (22) A Well all of the center tanks lost oil Number one lost  
 (23) oil Number two is a - is a segregated ballast tank that was  
 (24) empty and it actually took on oil As the oil poured out of  
 (25) number one perhaps or number two center or whatever it

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- (1) actually spilled into the empty tanks  
 (2) The same thing is true of the forepeak which is a  
 (3) segregated ballast tank  
 (4) Q Over here?  
 (5) A And number four starboard - yeah Number four  
 starboard  
 (6) is also a designated ballast tank that was empty, and it did  
 (7) take on some oil too  
 (8) Also, underneath the number five slop tank is a void and it  
 (9) was ruptured in the incident and it took on oil also So there  
 (10) was quite a bit of oil trapped in empty tanks in the ship at  
 (11) the time that it collided with the rock  
 (12) Q Could you show the ladies and gentlemen of the jury where  
 (13) the ship was hung up where she was resting aground?  
 (14) A Well, just the area - well, basically on the starboard  
 (15) side over to - not quite the center in an irregular fashion  
 (16) all the way up through number one tank and some up  
 underneath  
 (17) the bow  
 (18) So it would be starting about in - let s see, what have I  
 (19) got here - well, starting at about this area in here on the  
 (20) bottom, going across here and up through in here and out  
 (21) through in here near number one is roughly the affected  
 area  
 (22) that was still bearing on the rock that we couldn t - while it  
 (23) was on Bligh Reef we couldn t get in there to actually take a  
 (24) real look at it you know  
 (25) Q So except for that area where she was resting on the rock

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- (1) where she was aground the rest of the ship was floating free  
 (2) in deeper water am I correct?  
 (3) A That s right  
 (4) Q Okay You can put that down Let me move this back  
 (5) Okay tell us about your plan how you got the vessel off  
 (6) the reef  
 (7) A Well, it was pretty obvious that there wasn t any way to  
 (8) patch the bottom of the ship considering the extent of  
 damage  
 (9) to it, so a common salvage practice is to seal up the top of a  
 (10) vessel and inject a gas in it normally it s air In this  
 (11) particular case, we used inert gas out of the ship s - she  
 had  
 (12) a SS system that protects you from explosions and stuff  
 from  
 (13) the oil inside the ship The whole idea was to make  
 adapters  
 (14) that could be fitted to the ship to inject this - this gas  
 (15) from portable salvage equipment and all the stuff was  
 planned  
 (16) and done Equipment was brought up to Alaska and hauled  
 out to  
 (17) the ship  
 (18) Q When you did the salvage job did you have sufficient  
 (19) equipment - was sufficient equipment made available to you?  
 (20) A Absolutely I have access to a lot of salvage equipment  
 (21) Exxon was excellent about bringing things in from god  
 knows  
 (22) where, you know copious quantities If you asked for one  
 you  
 (23) usually got two  
 (24) Q What did you do with the oil - when you first got on  
 (25) there what was being done with the oil that was in the ship?

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(1) A The lightering operation was underway I can't remember  
 (2) which ship was there I think it was Baton Rouge the day I  
 went  
 (3) out there  
 (4) Q Yes?  
 (5) A And they were pumping oil off of the Exxon Valdez with  
 (6) portable pumps into the Baton Rouge I observed that  
 (7) operation The only part of the lightering operation I really  
 (8) got into was early on, just some advisory type thing where  
 we  
 (9) had to work out a plan so as to not disturb the equilibrium of  
 (10) the ship on the rock Actually the starboard and center  
 tanks  
 (11) were an easy thing to pump out because you lowered the  
 pump  
 (12) into the oil and start pumping Oil is lighter than water so  
 (13) the water is - sea just brings the oil right up to the pump  
 (14) and the ship doesn't change anything The only effect you  
 have  
 (15) is the tide rocking it up and coming down every six hours  
 (16) The port tanks on the other hand were intact, so therefore  
 (17) a plan had to be developed so that we could pump the oil  
 out of  
 (18) those tanks and at the same time put water back in the  
 spaces,  
 (19) you know for example the number two port segregated  
 ballast  
 (20) tank was empty so it could be ballasted down as oil was  
 pumped  
 (21) out in the adjacent tank  
 (22) Same thing with number four port ballast tank  
 (23) That's basically how it was done until we established a toe  
 (24) hold until we could get something out to pump out water  
 into  
 (25) ~~the actual starboard tanks.~~

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(1) Q You talk about the center and the starboard tanks having  
 (2) water in them Was that because the damage was such as that  
 (3) the bottom was ripped up and you had holes in the bottom?  
 (4) A Most of the damage to the bottom of the ship was caused  
 by  
 (5) the initial collision with the rock, sliding up on the rock  
 (6) That's what stopped the ship  
 (7) You got to keep in mind, you got a 214 000 ton deadweight  
 (8) vessel being driven at 11 knots that suddenly comes to an  
 (9) abrupt stop That takes a lot of friction, interference  
 (10) whatever you want to call it, it stops in a very short  
 (11) distance  
 (12) Q The point is that the bottom in this area was open to the  
 (13) sea?  
 (14) A Yes, it was  
 (15) Q All right You got the oil off you got all the oil off  
 (16) before you started your refloating procedure?  
 (17) A Yes The oil was taken off from, I guess - let's see  
 (18) They started the 25th, I believe, and it was completed April  
 (19) the 4th  
 (20) Q All right And then once you got the oil off you said you  
 (21) closed the valves the deck valves and you put inert gas into  
 (22) the ship?  
 (23) A That's right During this period of time adapters were  
 (24) made We had to remove the - let's see, let me back up here  
 a  
 (25) little bit To put the fittings in to inject the gas into the

(1) ship we removed something called the gems (ph) which are  
 the  
 (2) top alarms in the tank There's an alarm system on the top  
 of  
 (3) the tanks that only goes down like 10 or 15 feet It's kind of  
 (4) an emergency alarm when they're filling loading the ship  
 (5) There's other measuring systems but when the oil gets to a  
 (6) certain level the gem systems come in So we removed  
 those  
 (7) and that gave us an orifice or hole in the deck that we could  
 (8) bolt these adapters into  
 (9) So all that kind of stuff was done Equipment was going  
 (10) out, hoses were connected up - there was some 3 000 foot  
 of  
 (11) hoses - or 13 000 foot of hoses used to connect all the  
 (12) systems to make this thing float  
 (13) All that stuff was done prematurely and we had to plan  
 (14) on - April 5th was the date to refloat it and step by step  
 (15) and we had people stationed all over the ship to close  
 valves  
 (16) and do this and do that and we started injecting gas and  
 she  
 (17) floated  
 (18) Q She came up off the reef?  
 (19) A Yes  
 (20) Q On high tide?  
 (21) A No, it was actually planned to refloat at half tide and  
 (22) did exactly that  
 (23) Q And ultimately you towed the ship somewhere to another  
 (24) place in Prince William Sound?  
 (25) A Yeah To Naked Island outside the bay

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(1) Q Was this ship towed with the holes in the bottom still?  
 (2) A Yes  
 (3) Q And then there came a time when the ship was taken from  
 (4) Naked Island down to San Diego right?  
 (5) A That's correct  
 (6) Q And she was towed down to San Diego?  
 (7) A Yes  
 (8) Q Again with the holes in the bottom?  
 (9) A Yes  
 (10) Q How come the ship didn't sink?  
 (11) A Because it was floating on this air that was trapped inside  
 (12) of it See the - the thing that - on a ship this size you  
 (13) got so darn much area - you know, a 900 foot ship, 166 foot  
 (14) wide it only takes a relatively little skinny block of  
 (15) buoyancy through here to make the thing float. The hull of  
 (16) the - the hull of the ship weighs roughly 30,000 tons and it's  
 (17) kind of a hydraulic you divide that up to the whole deck and  
 (18) the amount of pressure required to float this thing, it's very  
 (19) very low  
 (20) The actual pressures we used to refloat the Exxon Valdez  
 (21) was about - varied from about, oh, about one pound, in  
 some of  
 (22) the center tanks because they were so large up to five and  
 (23) three quarters pounds was the highest pressure we used  
 And  
 (24) they were all stages the different levels to protect the  
 (25) vessel, you know, the longitudinal bending problem, you  
 know

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- (1) **We could actually ease the pressure on the - on the hull**
- (2) **Q You said one and a quarter pound or one and a half pounds**
- (3) **to about five pounds?**
- (4) **A To about five and three quarters was the highest pressure**
- (5) **Q Let me see just out of curiosity I put 32 pounds of**
- (6) **pressure in my car tires?**
- (7) **A Yeah**
- (8) **Q So you re talking about what one tenth of that one sixth**
- (9) **of that?**
- (10) **A Yeah, yeah It was very - actually very, very low pressure**
- (11) **pressure**
- (12) **Another interesting thing if you re interested in it you**
- (13) **could take an air gauge and blow into your mouth and blow**
- (14) **roughly two and a half pounds and if you blow hard into an air**
- (15) **gauge you can check them that way It should read two and a**
- (16) **half pounds**
- (17) **Q That s all it took to refloat it?**
- (18) **A That's right**
- (19) **Q Now Mr Leitz based on what you saw out there based on**
- (20) **the experience you had with this vessel and based on your**
- (21) **previous experience with grounded vessels in your opinion had**
- (22) **this vessel come off the reef at any time after the grounding**
- (23) **do you believe that she would have sunk or capsized?**
- (24) **A No, I don t**
- (25) **Q Why do you say that?**

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- (1) **A Well we run some calculations on the thing, my naval**
- (2) **architect and I - I should give him credit his name is Donald**
- (3) **R Hudson, I been using him for about 30 years - but we run**
- (4) **some calculations on that**
- (5) **The PV valves on all the cargo tanks are a Waukeshau type**
- (6) **valve and they re set at set points about two and a half psi**
- (7) **Now when the cargo - after the thing ran aground the**
- (8) **bottom was wiped out and the cargo went out that tripped the**
- (9) **liquid PV system which is a prevention system in the IG**
- (10) **system It s actually water filled and it s designed to**
- (11) **prevent a vacuum from - or an excessive vacuum from**
- (12) **forming in**
- (13) **the tanks**
- (14) **Just basically what I told you a few minutes ago about the**
- (15) **amount of pressure it took to float this ship, we had them**
- (16) **adjust it very selectively to minimize the bending problem with**
- (17) **the ship in the sea wake But the thing - whether it was**
- (18) **still water or whatever probably sea weight would have**
- (19) **stayed**
- (20) **together Two and a half pressure is designed in - the**
- (21) **Waukeshau PV valves is plenty of trapped air to keep the**
- (22) **vessel**
- (23) **from sinking**
- (24) **Now this would require minimum intervention by the crew to**
- (25) **close the slider valves, which is the valve that shuts the IG**
- (26) **system off from the cargo tanks The IG system isn t**
- (27) **hooked to**
- (28) **the segregated ballast tanks so they would have to go out -**
- (29) **they didn t have to worry about the port side they would**
- (30) **have**

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- (1) **had to close the sliders on one through five center and one**
- (2) **three and five starboard and that s all on God s green earth**
- (3) **they would have had to have done**
- (4) **The ship would have rolled approximately - the maximum it**
- (5) **would have laid over would have been about 12 degrees**
- (6) **That s**
- (7) **all that needed to be done to keep it afloat They would**
- (8) **have**
- (9) **had more than enough time to go out and do those things**
- (10) **Another interesting twist to all this is I had some -**
- (11) **before we refloated it I had soundings made in a great fan**
- (12) **shape off the port side of the ship to find out exactly what**
- (13) **direction were we going to remove it from the reef in, how**
- (14) **much**
- (15) **water was out there We didn t want to run over another**
- (16) **rock**
- (17) **so we went a thousand foot and took soundings all around**
- (18) **there,**
- (19) **and for as much as a thousand foot away from the ship, that**
- (20) **soundings that they had there kind of indicates a little bit,**
- (21) **only about, oh, 60, 70 - 75 foot of water**
- (22) **It could have went quite a ways sideways, and it didn't**
- (23) **have enough water to stick over because it would have sat**
- (24) **down**
- (25) **and the deck would have stuck out That s 88 foot, so it**
- (26) **could**
- (27) **have sit down in 87 foot of water and still stick out**
- (28) **Q Mr Leitz you ve had an opportunity to read some of the**
- (29) **testimony that s been given in this trial?**
- (30) **A Yes**
- (31) **Q You read Captain Hazelwood s testimony?**
- (32) **A Yes**

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- (1) **Q Portions of Captain Hazelwood s testimony?**
- (2) **A Portions**
- (3) **Q Portions of Mr Kunkel s testimony?**
- (4) **A Yes**
- (5) **Q And I think you read some of Mr Van - did you read Mr**
- (6) **Van Hammen s testimony?**
- (7) **A Yes, I did**
- (8) **Q You read that Captain Hazelwood used his rudder and the**
- (9) **engine after the grounding?**
- (10) **A Yes**
- (11) **Q Do you remember that?**
- (12) **A Yes, I do**
- (13) **Q Did you have a chance to review Mr Van Hammen s video?**
- (14) **A Yes I did**
- (15) **Q Let me put this on and ask you some questions about it**
- (16) **You remember Mr Van Hammen testified that while the**
- (17) **engine was shut down from about 12 20 to 12 36 the vessel**
- (18) **was**
- (19) **moving?**
- (20) **A From 12 20 -**
- (21) **Q 12 20 in the morning to about 12 36?**
- (22) **A Yes**
- (23) **Q There was no engine rudder being used at that time the**
- (24) **vessel was swinging do you remember that?**
- (25) **A Yeah**
- (26) **Q I want to show you - can we cue that up? I want to show**

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- (1) you the video which starts at 12 30 but Mr Van Hammen states  
 (2) there was movement about four minutes before that - and I m  
 (3) just going the run the first six minutes and show you how the  
 (4) vessel was swinging  
 (5) Can you go back to 12 30?  
 (6) VIDEO TECHNICIAN That s where it starts  
 (7) MR CHALOS At 12 31 okay We ll start at 12 31  
 (8) You can run it a little faster  
 (9) BY MR CHALOS  
 (10) Q You see the vessel swinging?  
 (11) A Yes  
 (12) Q Okay stop  
 (13) Now sir based your experience and based on what you  
 (14) observed with this vessel when you got out there do you  
 (15) believe it to have been unreasonable for Captain Hazelwood to  
 (16) think that his vessel during those 15 minutes when the vessel  
 (17) was moving without the use of the engine or the rudder do you  
 (18) think that it was unreasonable for him to believe that he was  
 (19) not hard aground at that time?  
 (20) A No I don't believe it s unreasonable for him to believe he  
 (21) wasn t hard aground  
 (22) Q You think it was reasonable for him given the testimony  
 (23) and given what I ve just showed you to think that he needed to  
 (24) take some action at that point?  
 (25) A Well, I think that any prudent master needs to if he runs

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- (1) aground like in this case he needs to evaluate the situation  
 (2) as best he can with the tools he has available And I think  
 (3) that -  
 (4) Q You heard Captain - or Commander McCall this morning?  
 (5) A Yes  
 (6) Q He said that - he made a distinction between hard aground  
 (7) and just aground Do you remember that?  
 (8) A Right  
 (9) Q And you remember he said you have to - to do something to  
 (10) find out if you re hard aground or just aground?  
 (11) A That s correct  
 (12) Q And he also said that if you re just aground as opposed to  
 (13) hard aground he d rather have the stick in his hand right?  
 (14) A He s exactly right  
 (15) Q Does that mean to you that he wanted to have his engines on  
 (16) and his rudder going to assess the situation?  
 (17) A Yes  
 (18) Q Okay Did you read the testimony of Captain Hazelwood  
 (19) where he said I started my engines at 12 36 brought them up  
 (20) slowly to half ahead maneuvering because I was trying to  
 (21) assess  
 (22) the situation?  
 (23) A Yes, I read that  
 (24) Q And do you agree with that or disagree based on your  
 (25) experience?  
 (26) A Absolutely agree with it

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- (1) Q Captain Hazelwood testified that one of the things he took  
 (2) into account he had a rising tide in about an hour hour and a  
 (3) half he was coming up to high water?  
 (4) A Yes  
 (5) Q Would that be one of the factors you would consider in  
 (6) determining whether you were aground just aground as  
 (7) opposed  
 (8) to hard aground?  
 (9) A I think he was trying to determine - where he was  
 (10) aground  
 (11) in the middle of night, it s hard to do much In the dead of  
 (12) night it s hard to take soundings, especially when you got  
 (13) oil  
 (14) coming out of the ship For soundings to be meaningful,  
 (15) they d  
 (16) have to be taken some distance away from the ship so he  
 (17) was  
 (18) justified in being concerned about this thing sliding back  
 (19) off He didn t know what was out any distance from him  
 (20) from  
 (21) the side of the ship so he had to determine that  
 (22) And Commander McCall made a very good point there that  
 (23) you  
 (24) better have your hands on the control if something was  
 (25) going to  
 (26) go haywire than to just sit there and watch  
 (27) Q So I take it that you - you make no criticism of Captain  
 (28) Hazelwood using his rudder and his engines the way he did?  
 (29) A No It was the right thing to do  
 (30) Q You also read I take it that Captain Hazelwood used only  
 (31) full ahead maneuvering speed?  
 (32) A That s right  
 (33) Q You had an opportunity to check the power curves of this

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- (1) vessel when you went on board?  
 (2) A Yes I did  
 (3) Q What did you determine was the full available horsepower to  
 (4) him?  
 (5) A You mean at that speed?  
 (6) Q Full ahead full astern whatever  
 (7) A Absolute full ahead, you got about 31 000 32,000  
 (8) horsepower You d have something less than that, certainly  
 (9) have that much horsepower on the engines but the  
 (10) propellers  
 (11) are inefficient going backwards because you got a different  
 (12) thrust There s propellers and thrust going together here  
 (13) Q You had a chance to look at the data logger for this  
 (14) vessel?  
 (15) A Yes  
 (16) Q Did Captain Hazelwood ever put this in reverse?  
 (17) A No, he didn t  
 (18) Q Based on removing this vessel from the reef would you  
 (19) expect he d go in reverse even once?  
 (20) A Yes or more than one time  
 (21) Q He didn t even go in reverse is that right?  
 (22) A That s right  
 (23) Q 85 horse - did you say maneuvering was 8500 or did I say  
 (24) that?  
 (25) A My calculations come up to -  
 (26) Q I said that okay



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- (1) **A** - about 9 000 but that s pretty close  
 (2) **Q** You read Captain Hazelwood s testimony he used five and  
 (3) ten-degree rudder when he was maneuvering?  
 (4) **A** Yes  
 (5) **Q** Do you have any opinions as to how much power or how  
 much  
 (6) rudder he was using in terms of what he had available to him?  
 (7) **A** Yeah, the 9,000 horsepower - two things you have to  
 (8) consider is the engine curves and then the propeller curves  
 (9) for the propeller The thing is standing still mode, the  
 (10) propeller on a ship is designed to screw its way through the  
 (11) water at its designed speed if it s designed to go ten knots  
 (12) it s efficient at ten knots not standing still  
 (13) So taking both those things into consideration going  
 ahead  
 (14) at 55 turns, which is full maneuvering, produces something  
 like  
 (15) 112 long tons - now 112 long tons is not very much you  
 know,  
 (16) it s - it s about what a large tug would have as a large  
 (17) assist tug that comes out to assist this about 9 000  
 (18) horsepower That s about what he - that or a little less  
 (19) These are all charts you take this stuff off and there s a  
 (20) little variance  
 (21) **Q** Let me see if I can clear up what you re saying  
 (22) Did you make a determination as to how many tons the ship  
 (23) was aground how heavy it was on the rocks?  
 (24) **A** That s right  
 (25) **Q** What did you find?

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- (1) **A** Well after the oil belched out of the ship and everything,  
 (2) the pressure against the rock was in the neighborhood of  
 9200  
 (3) long tons  
 (4) **Q** So if we were to put a scale under the ship at that moment  
 (5) that s what she would read?  
 (6) **A** Yeah that s the bearing on the rock The rest of the -  
 (7) the rest of the 30 000 tons of ship and the oil that s stacked  
 (8) up higher than the water line outside - which now is only in  
 (9) the port tanks not - all of these are self supporting, by the  
 (10) bottom of the ocean we got 30 000 tons of hull to support  
 (11) About 9200 tons of it is resting on the rocks the rest is  
 (12) being supported by buoyancy on the port side and in the  
 engine  
 (13) room spaces  
 (14) That s what held the ship there but the thing bearing down  
 (15) on the rocks, 9200 tons were long tons worth  
 (16) **Q** Now let me see if I understand this Mr Leitz The  
 (17) engine at 8500 or 9 000 horsepower full ahead maneuvering is  
 (18) only thrusting you said about 160 tons?  
 (19) **A** 112  
 (20) **Q** Hundred and 12 tons?  
 (21) **A** Long tons  
 (22) **Q** Okay Well talking again in layman terms if he wanted -  
 (23) if Captain Hazelwood wanted to remove this ship forward  
 would  
 (24) he have to then thrust 9 201 tons to get it moving?  
 (25) **A** That s an interesting question If - if the surface of

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- (1) the rock was - is that a question?  
 (2) **Q** No no I m just patting myself on the back Go ahead  
 (3) **A** If the bottom of the ocean - of that rock was perfectly  
 (4) flat when the ship drove up on it and the ship comes  
 cruising  
 (5) along and starts running on the rocks and the pressure gets  
 (6) more and more still the ship comes to a stop - if that all is  
 (7) perfectly flat, the bottom of the ship was smooth, you d end  
 up  
 (8) with a friction coefficient which means you could extract  
 that  
 (9) thing with something probably less than 9200 tons  
 (10) In the case of the Exxon Valdez when it ran in there, the  
 (11) thing actually slid, slid up on the rock to some extent, but  
 (12) you know they noted it was listed to port and then  
 eventually  
 (13) it came back, I think it was one degree to port In this  
 (14) particular ship it s - in the beam of the ship you re looking  
 (15) at about three foot of - of difference across the deck, you  
 (16) got one degree of list, you got roughly three foot tilt in the  
 (17) ship, so when it slid up over the - actually lifted a little  
 (18) bit, not much, big ships like this don t drive up over rocks  
 (19) particularly, they - the rock either goes through them or  
 move  
 (20) the ship out of the road or move the rock out of the road but  
 (21) it don t just climb up on it  
 (22) What happened on this ship to make it shorter is the bottom  
 (23) of the ship was actually humped up in the area of number  
 one -  
 (24) well bulkhead 13 up between bulkhead 13, bulkhead 23  
 bottom  
 (25) of the ship was humped up about three or four foot  
 irregular

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- (1) So the ship was really kind of over the top of the rocks like  
 (2) that, had slid up over it and the structure failed and the  
 (3) thing evidently settled down  
 (4) So it was a mechanical connection so there s no - you  
 (5) can t use a true friction coefficient, it s mechanical The  
 (6) thing can t get loose from it  
 (7) That s a long answer to your question  
 (8) **Q** It s interesting  
 (9) **A** It would have taken way in excess of 9200 tons is what  
 I m  
 (10) saying to get this thing to come out of there because it isn t  
 (11) a one on one friction situation it s an actual mechanical  
 (12) connection  
 (13) **Q** Given the fact that at full ahead maneuvering the thrust  
 (14) was 112 tons?  
 (15) **A** Yes  
 (16) **Q** Is there any way that using the engines on this ship the  
 (17) use of the engines on this ship by Captain Hazelwood that he  
 (18) could have moved this ship even an inch?  
 (19) **A** I doubt it I don t think it - you could rotate it a  
 (20) little bit because of the lever that you have from where it s  
 (21) impaled up here, if you will back to where the engine is like  
 (22) a long handle on a pipe wrench, but as far as moving this  
 thing  
 (23) anywhere I doubt it other than being able to twist it  
 (24) **Q** Okay We saw in this video that I put up that there was  
 (25) swinging during the period of an hour and five minutes that

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- (1) Captain Hazelwood was using the engine and the rudder You saw
- (2) the ship at Bligh Reef and you also saw it down in San Diego
- (3) once you got it down there?
- (4) A That s right
- (5) Q You had a chance to observe the bottom?
- (6) A Inside and out yes
- (7) Q Now in your opinion was there any additional damage done by the use of the rudder and the engine that Captain Hazelwood used?
- (8) A I don t think there - no, I don t think there was any
- (9) damage done at all and even if you want to say that if you
- (10) move it, it s got to do something, it would be minuscule I
- (11) mean totally insignificant The damage was darn massive
- (12) You
- (13) couldn t tell a little deal like that is nothing
- (14) Q There s been a suggestion by Mr Van Hammen that the use of
- (15) the rudder and the engine would have put additional stresses on
- (16) the hull of this ship Did you do any stress calculations in
- (17) that regard?
- (18) A Again, it ends up really being an insignificant number
- (19) You're putting 112 tons of load - obviously if you run the
- (20) engine, it's going to push a little bit on the thing But in
- (21) relationship to the structure that s down there, it isn t
- (22) anything This ship s made out of - it s a high tensile
- (23) steel, I think the designation is A-50, which is a very high
- (24) steel Normal is A 36, and it's got a minimum yield of 36,000
- (25)

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- (1) pounds per square inch
- (2) This ship, it s in excess of 50 000 pounds per square
- (3) inch In other words 112 tons if you had three square
- (4) inches
- (5) of this material you couldn t - that much force wouldn t
- (6) break it in tensile
- (7) Q Are you saying that the rudder and the engine used by
- (8) Captain Hazelwood whatever stress was put on would be taken
- (9) up
- (10) by three square inches of the hull of the ship?
- (11) A That s just an example It would be taken up by a little
- (12) speck against a rock here and a little speck against a rock
- (13) over there You got lots of area down there
- (14) Q So the bottom line in your opinion was that there was no
- (15) additional or minuscule additional stresses if any?
- (16) A I think the term is minuscule
- (17) MR CHALOS Did I get it wrong?
- (18) MR SANDERS Oh no
- (19) MR CHALOS You got me
- (20) BY MR CHALOS
- (21) Q Mr Lertz okay based on the information that you saw when
- (22) you were on board and based on the testimony that you heard
- (23) and
- (24) based on your experience Mr Lertz do you have an opinion as
- (25) to whether Captain Hazelwood was trying to extract this vessel on the reef by the maneuvers he was making?
- (1) A Yeah, I do have an opinion
- (2) Q What s your opinion?

- (1) A There was - everything that he was doing was trying to
- (2) keep it on the reef not to get it off the reef
- (3) Q Why do you say that? What do you base that opinion on?
- (4) A Well the ship grounded going forward at 64 turns which
- (5) that also - that works out in the neighborhood of about
- (6) 13 000 13 500 horsepower
- (7) Q 64 turns means 64 rpms on the propeller?
- (8) A Yes And it ran aground going frontwards and at this
- (9) time
- (10) had to stop at 211 000 deadweight ton It wouldn't have
- (11) been
- (12) quite that high because they were short loaded, but it was
- (13) still you know 185 000 or something deadweight tons plus
- (14) the
- (15) force of the engines driving it, and it came to a complete
- (16) halt
- (17) so you don t have to be a brain surgeon to figure out that
- (18) you
- (19) can t - I mean, it s like driving a truck against the side of
- (20) a brick wall and decide you re going to go ahead with it
- (21) brick wall has already stopped you and you are going to put
- (22) it
- (23) in drive and drive through it not going to happen
- (24) Ship came up stopped and to operate that engine in a
- (25) forward mode especially at 55 turns or thereabouts or
- (1) actually
- (2) quite of bit of time It was lesser turns than that, dead slow,
- (3) slow, half and so on, lesser powers and all that during that
- (4) period of time there s no way the thing can move forward
- (5) It's illogical
- (6) Q Are you saying that Captain Hazelwood did not use - or the
- (7) power that he used was less than the power that was being
- (8) used

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- (1) when the vessel came to a complete stop?
- (2) A That s right
- (3) Q And what do you deduce from that?
- (4) A That there s no - I mean what I can deduce from that is
- (5) you wouldn t have to be very smart that - to figure out
- (6) you re
- (7) not going to drive the thing ahead If you want to get off,
- (8) you're going to have to go backwards, the way you came in
- (9) And
- (10) he never did go backwards
- (11) Q Well let me ask you this Mr O Neil has played a tape
- (12) which was a transmission that Captain Hazelwood made to the
- (13) Coast Guard At 1 07 he was talking to Commander McCall and
- (14) he
- (15) told Commander McCall that I m trying to extract this vessel
- (16) from the reef
- (17) You read those transmissions?
- (18) A Yes
- (19) Q How do you square what you just said with what he s telling
- (20) Commander McCall?
- (21) A Well I think that Captains Hazelwood was still in the
- (22) throes of - I think he was very upset He was still in the
- (23) throes of trying to evaluate the situation Mr Kunkel, the
- (24) chief mate, was busy taking readings in the control room
- (25) which
- (1) tells you, you know, what liquids are coming in and what
- (2) liquids are going out Basically telling you what tanks are
- (3) breached, and looked over the side and he seen lots of oil
- (4) coming out He knew he was losing oil I think that - two

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- (1) things, I suppose
- (2) Part is I think he was trying to tell the Coast Guard a
- (3) little bit that - what they wanted to hear or what he thought
- (4) they wanted to hear Other thing, I don't think he had a full
- (5) grasp of the situation I also don't think he knew what the
- (6) full situation or the severity of the situation was right then,
- (7) and I also - you know, kind of wonder if he really had
- (8) accepted it in his own mind that he might be in one hell of a
- (9) pickle out there
- (10) Q Based on your experience you've seen you said a hundred
- (11) and fifty or so strandings Have you seen this kind of
- (12) behavior before -
- (13) A Yes
- (14) Q - after a stranding?
- (15) A Yeah, I've seen - a lot of the hundred and fifty vessels
- (16) I've worked on are large barges or unmanned vessels
- Some of
- (17) them have been abandoned vessels But I've also gone on
- quite
- (18) a few vessels that were still manned, and it depends, the
- (19) condition of the captain - call it a condition - varies
- (20) sometimes If the accident is directly related to weather
- (21) causes or mechanical causes or something like that, you
- don't
- (22) see too much change in him but if the accident is a result in
- (23) of an error in judgment or somebody's judgment then you
- see a
- (24) huge reaction
- (25) You know I've seen - I had a Greek ship one time called

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- (1) the Captianos around the mouth of the Columbia River
- Greek
- (2) captain on board He entered the Columbia no navigation
- (3) charts didn't get a pilot didn't - didn't do anything right
- (4) drove up on Clatsop Spit which is south side of the
- entrance
- (5) of Columbia River
- (6) We got on board that ship, coming through the top of it
- (7) what have you This fellow locked himself in his room He
- (8) wasn't violent or anything like that, he locked himself in the
- (9) room After a couple of days had a Coast Guard helicopter
- (10) come out and put a man down there and opened the door
- and
- (11) forcefully removed him He was a nice guy, you know, he
- was
- (12) just was a little upset
- (13) Q This is all because of the shock and stress of the
- (14) grounding?
- (15) A That ship ended up being total loss it was fish meal the
- (16) total cargo was lost I think the fellow didn't have a pilot
- (17) or anything was because he didn't have any money
- (18) Q You heard Commander McCall testify today that he heard the
- (19) same transmission but he didn't believe that Captain
- Hazelwood
- (20) was trying to extract the vessel Do you remember that?
- (21) A Yes, I do
- (22) Q Those were his words But were his deeds consistent with
- (23) those words?
- (24) A No they weren't at all If you're going to - everything
- (25) that he did out there is the type of things that you would do

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- (1) if you wanted to keep the ship on the beach
- (2) Q Such as what?
- (3) A Or on the rock Pardon?
- (4) Q Like what such as what?
- (5) A Well, work the engine ahead The ship grounded he
- didn't
- (6) know how well it was ground for sure he wanted to make
- sure it
- (7) didn't slide off by itself on a rising tide He hadn't -
- (8) there was no time to do soundings, it was - high tide was I
- (9) think 0157 or something that - that it was only a hour and a
- (10) half away, so there was precious little he could have done
- away
- (11) from the ship, so you have to do what you can on the ship
- (12) He also talked to Mr Kunkel about ballasting and he -
- (13) really, the thing was pretty well ballasted and ballasting
- (14) itself I don't even know whether that dawned on him, but
- he
- (15) had one tank on the starboard side he could have put water
- in,
- (16) which was number four, segregated ballast tank, also he
- had the
- (17) anchors lowered down - If you're going someplace why
- lower
- (18) the anchors you know
- (19) Q You heard Ms Jones Maureen Jones the lookout state
- (20) today that she was told to rig the pilot ladder for the Coast
- (21) Guard Does that sound to you like something somebody
- would do
- (22) if they were planning to take off?
- (23) A Well probably not I mean the pilot ladder goes when
- (24) you're underway so the pilot can get on and off the ship,
- and
- (25) they do that while the ship's moving so I don't know

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- (1) Q You don't attach any significance to that?
- (2) A Not a lot
- (3) MR CHALOS Mr Leitz thank you very much Before I
- (4) let you go let me just confer one second
- (5) Thank you very much
- (6) THE COURT You may cross examine
- (7) MR O NEILL We're both going to get you
- (8) THE COURT No you're not
- (9) THE WITNESS Thank you
- (10) THE COURT One at a time
- (11) MR MONTAGUE We're not going to use all these
- (12) Mr Leitz but just in case
- (13) CROSS EXAMINATION OF JULIUS LEITZ
- (14) BY MR MONTAGUE
- (15) Q You're very proud of the job you did salvaging the Exxon
- (16) Valdez I can see that?
- (17) A Yeah
- (18) Q You did a good job I think everybody's thankful for that
- (19) A We also did it without any serious injuries whatsoever in
- a
- (20) four and a half month operation so that makes you feel
- good to
- (21) itself
- (22) Q That was a four and a half months operation?
- (23) A Yeah From beginning to end
- (24) Q Now let's - did I hear you say correctly that the - one
- (25) of the reasons why you thought Captain Hazelwood may be
- saying

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- (1) things different than he was doing was because that the  
 (2) accident was an error in judgment? Is that what I heard you  
 (3) say?  
 (4) **A Yeah you did hear me say that I mean as opposed to  
 the**  
 (5) **steering breaking or something I m not trying to say that -**  
 (6) **I m not somebody else to decide, I m not deciding whether  
 he**  
 (7) **made an error in judgment or not, somebody did**  
 (8) **Q And you used that error in judgment as a basis for**  
 (9) **explaining away why the transmissions and the things that**  
 (10) **Captain Hazelwood said to others as to what he was doing was**  
 (11) **actually different from what you say he intended to do?**  
 (12) **A Yeah everything he did about the safety of the ship and**  
 (13) **the people that were on it was the correct thing to do And  
 on**  
 (14) **the other hand, he s busy telling the Coast Guard that trying**  
 (15) **to get it off or all sorts of things Actually he minimized**  
 (16) **the amount of damage in those transmissions rather than -  
 it s**  
 (17) **like he really wasn't facing reality**  
 (18) **Q Okay Well let s look at what he said okay and that s**  
 (19) **the first transmission through to the captain of the port was**  
 (20) **at - it started at 1 07 in the morning okay?**  
 (21) **A Yes**  
 (22) **Q And let s see what - what was said He says that first -**  
 (23) **well the question was - go back a minute**  
 (24) **The question was This is the captain of the port**  
 (25) **Commander McCall good evening Do you have any more of  
 an**

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- (1) estimate as to your situation at this time?  
 (2) And Captain Hazelwood answers Not at the present uh  
 (3) Steve or uh a little problem here with the third mate but  
 (4) uh we are working our way off the reef We ve uh the  
 (5) vessel s been holed uh and we re ascertaining right now  
 (6) we re trying to just get her off the reef And uh we ll get  
 (7) back to you as soon as we can over  
 (8) Do you remember that?  
 (9) **A Yes**  
 (10) **Q And do you recall it s your - excuse me**  
 (11) **it s your opinion is it not that at the time he said**  
 (12) **that in fact he thought he could get the vessel off the reef?**  
 (13) **A No, I don t think he thought that at all I know he said**  
 (14) **that, but you have to - in my business, you know, I got to**  
 (15) **look at real life You got to look at what he did, deeds not**  
 (16) **words if you will And because that s the only concrete -**  
 (17) **Q You have before you - may I approach the witness a**  
 (18) **moment**  
 (19) **Your Honor?**  
 (20) **THE COURT Yes**  
 (21) **BY MR MONTAGUE**  
 (22) **Q - some testimony you gave at a previous proceeding do you**  
 (23) **recall that? Could you turn to page 4902? I want you to make**  
 (24) **sure that that s your testimony under oath you have 4902**  
 (25) **A Oh My testimony okay**  
 (26) **Q And would you look at - there s a question that begins -**

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- (1) I don t know how that color got in it - begins at the bottom  
 (2) at line 23 where Mr Chalos asks you So my question to you  
 (3) is Captain Hazelwood is based on your opinion trying to keep  
 (4) the vessel on the reef but he s telling the Coast Guard at  
 (5) about the same time that he s trying to get the vessel off the  
 (6) reef Do you have an opinion as to why there s a difference  
 (7) between those two?  
 (8) Do you see that question?  
 (9) **A Um hum**  
 (10) **Q And your answer is Yeah Well okay the first**  
 (11) **conversation that I think he still thought he could get the**  
 (12) **thing off I don t think the severity of the situation had**  
 (13) **sunk in**  
 (14) **Did you - were you asked that question and did you give**  
 (15) **that answer?**  
 (16) **A That s the answer I gave last time**  
 (17) **Q Now let s go on to the conversations - and this is still**  
 (18) **during the same conversation with - with the commander of the**  
 (19) **port The second - the next statement made by Captain**  
 (20) **Hazelwood is Okay we re uh pretty good shape right now**  
 (21) **stable - stability - wise we re uh just trying to extract**  
 (22) **her off uh the shoal here and uh you can probably see me on**  
 (23) **your radar And once we get underway I ll let you know**  
 (24) **Had you read that?**  
 (25) **A Yeah**

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- (1) **Q And then that conversation continues a third - there s a**  
 (2) **third part of Captain Hazelwood s conversation in that**  
 (3) **repartee and he says Yeah I think it s uh major damage has**  
 (4) **kind of been done We kind of rock and rolled over it and uh**  
 (5) **we re just kind hung up in the stern here**  
 (6) **That s the back of the ship -**  
 (7) **A Yes**  
 (8) **Q - for us land lubbers?**  
 (9) **A Yes**  
 (10) **Q Well just uh we ll drift over it I ll get back to you**  
 (11) **Okay did you read that?**  
 (12) **A Yes**  
 (13) **Q Now do you recall that - that after the maneuvering of**  
 (14) **the vessel stopped by Captain Hazelwood there was a further**  
 (15) **communication there was a further communication with the**  
 (16) **captain of the port Do you remember that?**  
 (17) **A Yes**  
 (18) **Q Let s look at that**  
 (19) **Captain of the port - and this is at almost 2 00 in the**  
 (20) **morning right? And the engines stopped around**  
 (21) **1 40 something?**  
 (22) **A 1 41**  
 (23) **Q And the captain of the port says And you re still working**  
 (24) **at trying to get off over?**  
 (25) **And Captain Hazelwood his answer is No our engines are**  
 (26) **stopped right now Uh we re going to wait till there s uh a**

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- (1) little more water underneath us  
 (2) Okay did you read that when you reached your conclusion?  
 (3) **A Yes, I did**  
 (4) **Q And are you aware that about half an hour after that or so**  
 (5) **some time around that time Captain Hazelwood received a call**  
 (6) **from Paul Myers of Exxon on the ship? Were you aware of that?**  
 (7) **A Well, I don't know anything about the call from Paul**  
**Myers,**  
 (8) **no**  
 (9) **Q Did you consider what Captain Hazelwood had told Paul**  
**Myers**  
 (10) **during his conversation?**  
 (11) **A No**  
 (12) **MR CHALOS Your Honor may we approach have a side**  
 (13) **bench for just one second?**  
 (14) **(At side bar off the Record)**  
 (15) **BY MR MONTAGUE**  
 (16) **Q I m told that this call with Mr Myers was somewhere**  
 (17) **between around 1 30 between one and 1 30 and Mr Myers**  
**wrote**  
 (18) **down during his conversation with Captain Hazelwood think**  
**he**  
 (19) **can get it off**  
 (20) **Were you aware of that when you made your decision?**  
 (21) **A No, I was not**  
 (22) **Q And are you aware that the next day and the next - I guess**  
 (23) **it was the next early afternoon the early afternoon of the**  
 (24) **24th - that Captain Hazelwood was interviewed by Mark**  
**Delozier**  
 (25) **from the Coast Guard Have you seen that?**

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- (1) **A No**  
 (2) **Q And this is what he told Lieutenant Delozier Oh I was -**  
 (3) **I tried the rudder and engines for a few minutes to see if we**  
 (4) **could extract it from the situation but then I got my**  
 (5) **faculties about me I was a little upset of course and then**  
 (6) **I thought just about - I thought about it and driving her off**  
 (7) **might not be the best way to go because it just asserbate**  
 (8) **[sic] the damage so I just stopped the engines**  
 (9) **Have you seen that before?**  
 (10) **A Yeah**  
 (11) **Q You had?**  
 (12) **A Do I eventually get to comment on some of the things**  
**you re**  
 (13) **saying or -**  
 (14) **Q Well wait till I ask you a question I want to ask you a**  
 (15) **question now**  
 (16) **I just want to know that it seems to me there are two**  
 (17) **conclusions that can be drawn there One either by**  
 (18) **maneuvering the vessel the way he was Captain Hazelwood**  
**was**  
 (19) **trying to extract the vessel from Bligh Reef And you ve**  
 (20) **stated that would have been absolutely the wrong thing to do?**  
 (21) **A Well so two things He s better off leaving the ship on**  
 (22) **the reef until professional help comes but then the second**  
 (23) **part of it, probably more important than that, is the fact that**  
 (24) **what he was doing is not the way you go at it It was**  
 (25) **impossible to move the ship forward over the reef**

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- (1) **Q What I m saying is he was doing what he said he was doing**  
 (2) **in all those communications that s would have been absolutely**  
 (3) **the wrong thing to do?**  
 (4) **A That's right**  
 (5) **Q And in your view it would have been reckless?**  
 (6) **A No**  
 (7) **Q It wouldn t have been reckless to -**  
 (8) **A Well now, let s get it straight I don t want to be**  
 (9) **misquoted here**  
 (10) **What he was doing was not reckless -**  
 (11) **Q No no wait a second**  
 (12) **A If he had 3200 horsepower on that reef and tried to drive**  
 (13) **her off -**  
 (14) **MR CHALOS Your Honor Your Honor -**  
 (15) **THE COURT I don t want - we re all talking at once**  
 (16) **now**  
 (17) **MR MONTAGUE Let me ask you a question -**  
 (18) **THE COURT And let him finish And let me finish**  
 (19) **too**  
 (20) **MR MONTAGUE It s just that he was unresponsive to**  
 (21) **the question I don t think he heard the answer**  
 (22) **THE COURT Talk one at a time and the reporter will**  
 (23) **be able to report everything because she can t do that when**  
 (24) **you re talking over one another**  
 (25) **BY MR MONTAGUE**

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- (1) **Q I want you to listen to the question I said if Captain**  
 (2) **Hazelwood intended to do what he told the VTS he was doing**  
 (3) **through the communications and that he told the others if he**  
 (4) **was intending to do that - that is to remove the vessel from**  
 (5) **the reef - you agree that that was absolutely wrong?**  
 (6) **A It wouldn t be the prudent thing to do, but a minute ago**  
 (7) **you used the word reckless and I wouldn t go nowhere**  
**nears that**  
 (8) **far**  
 (9) **Q So it wouldn t have been reckless to try to remove it from**  
 (10) **the reef is that your testimony?**  
 (11) **A Pardon?**  
 (12) **Q So it would not have been reckless to try to remove it from**  
 (13) **the reef?**  
 (14) **A Well, depends under what circumstances I sat here a**  
**few**  
 (15) **minutes ago and the calculations showed the things, the**  
**ship**  
 (16) **could have been kept afloat If it d have slipped off, there**  
 (17) **would have been plenty of time to take some corrective**  
**action,**  
 (18) **so it wouldn t have laid over or capsized or sunk or any of**  
 (19) **those things So I don't know how reckless it would have**  
 (20) **been**  
 (21) **There was a few things that needed to be done I can t**  
 (22) **help but think an experienced tanker crew would have done**  
 (23) **them**  
 (24) **Q Okay Now if he was telling everybody that he spoke to**  
 (25) **that morning that he really didn t mean what he was doing what**

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- (1) he was saying but he was doing something else that s - that s
- (2) what you subscribe to is that correct?
- (3) **A I really do because I ve seen - I ve seen captains act**
- (4) **much like this before where you go out go to the aid of the**
- (5) **thing and the captain refuses to take a towline because I**
- (6) **says**
- (7) **I can handle this thing and I ve got it under control we re**
- (8) **going to have it fixed in a few minutes and none of these**
- (9) **things happen, and, I don t know, imagine shock or**
- (10) **whatever**
- (11) **causes these guys to act that way but they - it does happen**
- (12) **and this isn t really unusual at all It s just a bigger**
- (13) **incident**
- (14) **Q And that s particularly true as you said before when an**
- (15) **error of judgment caused the grounding right?**
- (16) **A When something - yeah, yeah, being blamed, if it s the**
- (17) **weather or something s out of everybody s control and**
- (18) **everybody s kind of half dumb and happy, I guess**
- (19) **Q Now I just have a few other things**
- (20) **The grounding - the soundings that you opened up with**
- (21) **taken by Captain Hazelwood?**
- (22) **A Yes**
- (23) **Q Those were taken at 9 45 in the morning isn t that**
- (24) **correct?**
- (25) **A According to the radio transmissions they were ordered**
- (26) **at**
- (27) **8 44, I believe and the time on them is 9 40 They were**
- (28) **taken**
- (29) **during a period from 8 44 until 9 45 I believe is what it says**

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- (1) **on there**
- (2) **Q So the soundings you referred to were ordered to be taken**
- (3) **by someone?**
- (4) **A By Captain Hazelwood**
- (5) **Q With the Coast Guard?**
- (6) **A And it s in the radio transmissions here I think it was**
- (7) **8 44 that he requested the pilot take the soundings, and the**
- (8) **soundings of course say 9 45**
- (9) **Q So that was - okay so that was about eight eight and a**
- (10) **half hours after the grounding is that correct?**
- (11) **A Yeah**
- (12) **Q And he didn t have that information when he was**
- (13) **maneuvering**
- (14) **the vessel?**
- (15) **A No he didn t He was maneuvering the vessel right after**
- (16) **it went aground and the soundings would have become**
- (17) **more**
- (18) **important before high water If he had any intentions of**
- (19) **refloating the ship, that information would be really useful**
- (20) **before high water because, if you re going to refloat, you**
- (21) **want**
- (22) **to do it at high water so once high water passes there s no**
- (23) **great urgency to do these things Once the ship sits there**
- (24) **and**
- (25) **goes through high water, nothing horrible s happened you**
- (26) **can**
- (27) **relax a little bit and do things in a more logical fashion**
- (28) **Q Do you recall what the high water the difference between**
- (29) **the high water mark and the level of the water the tide at the**
- (30) **time of the grounding what that was?**

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- (1) **A Well I think high water was about 12 and a half feet**
- (2) **Q Do you know the difference between what it was at the time**
- (3) **of the grounding and what high tide would have been?**
- (4) **A I d just be guessing, probably about two foot maybe two**
- (5) **and a half foot would be the difference I didn t plot it**
- (6) **no But that s roughly what it would be**
- (7) **Q If it was anything less than two feet would that sound**
- (8) **right?**
- (9) **A Could have been**
- (10) **Q Is that significant?**
- (11) **A Two foot s quite a bit of lift that s right**
- (12) **Q Now when the vessel went aground Captain Hazelwood**
- (13) **didn t**
- (14) **know that it was impaled right? He found that out?**
- (15) **A Yeah No he would have had no way of knowing that**
- (16) **Q And by moving the vessel anything could have happened**
- (17) **isn t that correct?**
- (18) **A No, the one - I mean, you have to back up now He knew**
- (19) **one thing, is that ship was heading on - I think it ran**
- (20) **aground on a course on a heading of about 290 degrees,**
- (21) **and**
- (22) **after she hit I think it had hard right rudder so it went to**
- (23) **305 and it came back somewhat I can t remember how far it**
- (24) **came back, but the one thing he did know is that that ship**
- (25) **drove into something strong enough to stop it And so**
- (26) **working**
- (27) **the engine ahead was a low risk, I would say The risk of not**
- (28) **knowing if it could slip back off was a greater risk**

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- (1) **Q It was low risk but there was some risk?**
- (2) **A There s always some**
- (3) **Q You agree with that?**
- (4) **A Yeah, sure There s always some risk in doing anything**
- (5) **Q And in fact the vessel between the time that it hit the**
- (6) **rock and the time that it - the engines were turned off and**
- (7) **the engines were on load program up you testified the rpm was**
- (8) **up to what 64 rpm at the time they were shut off?**
- (9) **A That s correct**
- (10) **Q Those engines ran for approximately 11 minutes isn t that**
- (11) **correct? Between the time of the impact on the rock and the**
- (12) **time the engines were shut off they ran for about 11 minutes?**
- (13) **A Yeah, the - the official time for the grounding is 0009,**
- (14) **isn t it, or 10?**
- (15) **Q Well it depends who you talk to - Exxon s expert says 7**
- (16) **minutes after and for my purposes I ll accept that And the**
- (17) **engines started slowing down at 18 after so that s about 11**
- (18) **minutes?**
- (19) **A Yeah**
- (20) **Q And did you calculate anything about the damage or what**
- (21) **was**
- (22) **done during those 11 minutes while that engine was going at -**
- (23) **A 64**
- (24) **Q Up to 64 rpm?**
- (25) **A I just kind of considered that to be part of initial**
- (26) **casualty thing come steaming in there 11 knots and stopped**
- (27) **and**

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(1) engine going and rudder hard over and so that damage or the  
 (2) fact that the engine was running would be reflected in the  
 (3) original damage, really part of the original damage  
 (4) Q All right Now do you recall testifying that there wasn't  
 (5) any damage caused by the maneuvering done by Captain  
 (6) Hazelwood?  
 (7) A Yes  
 (8) Q Would you agree that any evidence of damage that was  
 caused  
 (9) by Captain Hazelwood's rotating - that is turning the vessel  
 (10) that morning - very likely would have been lost by the  
 (11) crushing effect that occurred due to subsequent events? Do  
 you  
 (12) agree with that statement?  
 (13) A No, I don't  
 (14) Q Could you turn -  
 (15) A I think that -  
 (16) Q Go ahead  
 (17) A - what you're saying is probably possible, but the  
 (18) crushing would just shove any kind of evidence further up in  
 (19) the hull I mean, if you had some scratches of some kind of  
 (20) significance, they would just merely be pushed up  
 (21) Another thing that happened out there is on the - I don't  
 (22) know who's going to look at the stuff while it was on the  
 rock  
 (23) there was no way for divers or anybody else to get in  
 between  
 (24) the ship and the rock but on - I think it was a Sunday they  
 (25) had something like 60 mile an hour winds and the ship  
 moved 14

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(1) degrees and was pushed back by tugs again so the  
 maneuvering  
 (2) that Captain Hazelwood did during that period of time was  
 from  
 (3) one side to the other about 13 degrees you know six and a  
 (4) half degrees both sides of center if you will  
 (5) Also when the ship ran aground, it came in at a heading of  
 (6) 290 degrees went to 305 and then came back and when he  
 (7) straightened the rudder up the thing came back - I don't  
 (8) remember just what number it is but around 290 292 or  
 (9) something So it made a 15 degree sashay on grounding  
 which  
 (10) would have been a rotating motion there too so I don't  
 know  
 (11) how you - how this can be important, important because  
 you're  
 (12) looking for a rotating type damage in a place that's -  
 (13) that's -  
 (14) Q That there's been a lot of rotations?  
 (15) A Lots of rotations yeah  
 (16) Q And that's what you testified to earlier isn't it that  
 (17) you really couldn't tell - and that was my question that you  
 (18) really couldn't tell what damage was done by Captain  
 (19) Hazelwood's maneuvering because there was so much other  
 (20) rotation as well as what he did isn't that correct?  
 (21) A You're talking about evidence of damage but you can  
 (22) look -  
 (23) Q Evidence of damage?  
 (24) A But you can look at this from another standpoint and that  
 (25) is how much horse was being applied and what would the  
 effect

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(1) of that be and the effect on that particular structure would  
 (2) have been in my opinion insignificant  
 (3) Q Okay Now one last question  
 (4) All these calculations and the information you got from the  
 (5) divers none of that was available to Captain Hazelwood when  
 he  
 (6) was on the vessel correct?  
 (7) A Not that night, no  
 (8) Q When he was doing his maneuver he didn't have any of that  
 (9) information?  
 (10) A No, he didn't  
 (11) MR MONTAGUE Thank you very much  
 (12) REDIRECT EXAMINATION OF JULIUS LEITZ  
 (13) BY MR CHALOS  
 (14) Q Mr Leitz Captain Hazelwood knew on that night did he  
 (15) not that he was damaged on the starboard side and that he was  
 (16) not damaged on the port side?  
 (17) A Yes, he knew he was damaged in the center tanks, as  
 well  
 (18) Q And he knew that his vessel was moving?  
 (19) A That's right  
 (20) Q Now is there anything that he did the deeds that he did  
 (21) that suggests to you that he was trying to get this vessel off  
 (22) the reef?  
 (23) A He did absolutely nothing that would suggest to me he  
 was  
 (24) trying to get off the reef  
 (25) Q Mr Montague read to you something from the interview that

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(1) Captain Hazelwood had with Mr Delozier You remember that?  
 (2) A Yes, yeah Yeah  
 (3) Q The context of that was that - and there's been testimony  
 (4) to this - was that Captain Hazelwood said to Mr Delozier  
 (5) When I ran aground in the first ten minutes I had a fleeing  
 (6) thought to get the vessel off the reef but then I said no no  
 (7) that's not the right thing to do so I shut my engine  
 (8) The engine he shut down was at 12 20 okay? That's the  
 (9) context  
 (10) Based on your experience is it a strange thought that a  
 (11) mariner would have initially after he's grounded to say What  
 (12) am I doing here let me try and get off Is that a strange  
 (13) thought to have?  
 (14) A No, it isn't That's the first thing that would go through  
 (15) the mariner's head  
 (16) Q You would expect that wouldn't you?  
 (17) A Yes, I would  
 (18) Q And what he said to Mr Delozier was After I had that  
 (19) thought I decided I'm not going to do that And that was at  
 (20) 12 20?  
 (21) A Um hum  
 (22) Q Is that something that's consistent with what he was doing  
 (23) then thereafter?  
 (24) A Yes  
 (25) MR CHALOS I have no further questions thank you

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- (1) THE COURT You may step down sir thank you  
 (2) (The Witness Stepped Down )  
 (3) MR LYNCH Your Honor we never thought that Mr  
 (4) Chalos would be able to finish this early and I m afraid to say  
 (5) we don t have another examination  
 (6) MR CHALOS Wait a minute wasn t that a signal for  
 (7) me to stop? I had a few more questions I looked over they  
 (8) were signaling  
 (9) THE COURT I think it is time to quit I do need to  
 (10) see counsel for just a minute I will be brief with you  
 (11) Ladies and gentlemen you will recall I assume that  
 (12) Monday is Memorial Day I hope you all enjoy the holiday But  
 (13) please remember my instructions that you not listen to or read  
 (14) anything about our case and we will see you at 8 00 on  
 Tuesday  
 (15) morning You re excused until that time  
 (16) (Jury out at 1 53)  
 (17) THE COURT The one thing that I need to do is call up  
 (18) the motion people again We have a - we have a motion by the  
 (19) Chugach Alaska Corporation et al plaintiffs to remand their  
 (20) case to state court We re - we ve tried to put that on sort  
 (21) of a fast track What I would like to do is - is hear any  
 (22) oral presentation anyone has We ll take ten or 15 minutes  
 (23) from each side at two p m or as soon thereafter as we adjourn  
 (24) for the trial day on Tuesday which is I think the 31st  
 (25) Again that s Tuesday the 31st at two p m

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- (1) And Mr Murtiashaw if you would be sure to notify Mr  
 (2) Petumenos who is counsel for the plaintiffs that are involved  
 (3) in this I haven t seen him here today and since he doesn t  
 (4) want to be here he probably isn t here If you d notify him  
 (5) MR JAMIN I ll let him know as well Your Honor  
 (6) THE COURT Fine I appreciate that  
 (7) Is there anything else we need to do?  
 (8) MR O NEILL No sir  
 (9) MR SANDERS No Your Honor  
 (10) THE COURT All of you have a good weekend and we ll  
 (11) see you on Tuesday We re adjourned now  
 (12) (Proceedings recessed 2 02 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

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- (1) EXHIBITS  
(2) 3512 offered 3040  
(3) 3495 and 3496 offered 3065  
(4) 69 offered 3127  
(5) DX 9171 offered 3218  
(6) DX 3581 offered 3222  
(8) 3512 received 3040  
(9) 3495 and 3496 received 3065  
(10) 69 received 3127  
(11) DX 9171 received 3218  
(12) DX 3581 received 3222

Look-See Concordance Report

UNIQUE WORDS 3,344
TOTAL OCCURRENCES 16,289
NOISE WORDS 385
TOTAL WORDS IN FILE 52,324

SINGLE FILE CONCORDANCE

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 3219 24 3251 5 6, 3252 20  
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 3068 2 3181 11 3218 3,  
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 3060 14 3099 14 3114 25  
 3145 12 3189 24 3246 20  
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- Z -

**zone** [12] 3037 20 24  
 3038 7 3039 14 19 20,  
 3064 7, 19, 3148 9 3169 20,  
 3199 9

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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 (RR)  
 (4) ) Anchorage, Alaska  
 (5) The EXXON VALDEZ ) Tuesday, May 31, 1994  
 (6) ) 8:00 a.m.  
 (7) TRANSCRIPT OF PROCEEDINGS  
 (8) TRIAL BY JURY 20TH DAY  
 (9) BEFORE THE HONORABLE H. RUSSEL HOLLAND, JUDGE  
 (10) VOLUME 20, Pages 3273-3699  
 Realtime Transcription

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(1) PROCEEDINGS  
 (2) (Jury in at 8:01 a.m.)  
 (3) (Call to Order of the Court)  
 (4) THE CLERK All rise  
 (5) THE COURT Good morning ladies and gentlemen  
 (6) This is the continuation of the trial in case A89 0095  
 (7) civil in re the Exxon Valdez Mr Russo?  
 (8) MR RUSSO Judge before we call the first witness  
 (9) may I make a request to have a brief side bar with the Court?  
 (10) (At side bar off the record)  
 (11) MR RUSSO Your Honor the defendants call Jack  
 (12) Mendelson as an expert  
 (13) THE CLERK Raise your right hand please  
 (14) (The Witness Is Sworn)  
 (15) THE CLERK Please be seated  
 (16) For the record sir state your full name your address and  
 (17) spell your last name please  
 (18) THE WITNESS My name is Jack H Mendelson My  
 (19) address is 1010 Memorial Drive Cambridge, Massachusetts  
 My  
 (20) name is spelled M e n d e l - s o n  
 (21) THE CLERK Thank you sir  
 (22) THE COURT Mr Russo  
 (23) DIRECT EXAMINATION OF JACK MENDELSON  
 (24) BY MR RUSSO  
 (25) Q Good morning Dr Mendelson?

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(1) A Good morning  
 (2) Q Dr Mendelson what is your present position?  
 (3) A Presently I am professor of psychiatry and neuroscience  
 at  
 (4) the Harvard Medical School and director of the alcohol and  
 drug  
 (5) abuse treatment center and research center at the McLean  
 (6) Hospital in Belmont Massachusetts  
 (7) Q Doctor are you licensed to practice medicine?  
 (8) A Yes I am  
 (9) Q And how long have you been licensed to practice medicine?  
 (10) A I've been licensed to practice medicine since 1956  
 (11) Q And do you have any areas of specialization?  
 (12) A Yes my area of specialization is psychiatry  
 (13) Q Mr Mendelson I'd like you to tell the jury a little bit  
 (14) about your educational background Start off with your  
 (15) college your medical school training please  
 (16) A Yeah a standard undergraduate school at the Johns  
 Hopkins  
 (17) University following my undergraduate education I went  
 to  
 (18) medical school at the University of Maryland I received my  
 (19) doctor of medicine in 1955 Following completion of  
 medical  
 (20) school I had a medical internship at the Boston City  
 Hospital  
 (21) and following completion of my medical internship I  
 undertook a  
 (22) three-year period of residency training in psychiatry at the  
 (23) Massachusetts General Hospital in Boston Massachusetts  
 (24) That three year period of psychiatric residency training  
 (25) was required for certification by the American Board of



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- (1) **Neurology and Psychiatry** I received my certificates in 1963
- (2) Q Can you tell the jury what it means to be certified in
- (3) psychiatry?
- (4) A It means that one has to complete a prerequisite amount of
- (5) training, and also pass both written and practical examinations
- (6) which indicate that you're competent to practice the specialty
- (7) of psychiatry
- (8) Q After you completed your residency what did you do?
- (9) A After I completed my residency training I had a tour of
- (10) duty in the United States Navy as a medical officer My
- (11) responsibilities as a medical officer in the Navy were to carry
- (12) out diagnoses and treatment for medical personnel and naval
- (13) personnel who had problems with psychiatric disorders
- (14) Q And in conjunction with your duties and responsibilities in
- (15) the Navy did you also have occasion to treat people with
- (16) alcohol problems?
- (17) A Yes frequently
- (18) Q Subsequent to the Navy tell us what you did
- (19) A Subsequent to my tour of duty in the Navy I began a
- (20) five-year post doctoral training program specializing in the
- (21) diagnosis and treatment of alcohol-related disorders and
- (22) substance abuse related disorder I was sponsorship of a
- (23) special training grant award from the National Institute of Health
- (24) Health
- (25) Q Where did you do that training?

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- (1) A I completed that five-year training period at the
- (2) Massachusetts General Hospital in Boston, Massachusetts
- (3) Q During that time that you were doing this post doctoral
- (4) work that you described were you also on the faculty of
- (5) Harvard University Medical School?
- (6) A Yes at what time I was appointed as an associate
- (7) professor
- (8) of psychiatry at the Harvard Medical School
- (9) Q After completing this post doctoral study that you just
- (10) mentioned what did you do next?
- (11) A I then was invited to become the chief of the National
- (12) Center for the Prevention and Control of Alcoholism an
- (13) organization established within the National Institutes of Health
- (14) Q Can you describe this institution a little bit for us?
- (15) A Yes, this institution was the predecessor agency for the
- (16) National Institute on Alcohol Abuse and Alcoholism And it's
- (17) establishment by the National Institutes of Health was
- (18) analogous to the accomplishment of other institutes such
- (19) as the
- (20) cancer institute
- (21) Q When you say you were the chief of this agency does that
- (22) mean that you were the head of the agency?
- (23) A Yes, I was the chief or director of the agency
- (24) Q How long did you remain in that position?
- (25) A I remained in that position for three years
- (26) Q What was the mission of this particular agency?

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- (1) A Well the mission of the agency generally was to improve
- (2) our knowledge about the causes and consequences of
- (3) alcoholism
- (4) with the hope that we could improve both prevention and
- (5) control
- (6) of the problem
- (7) Q Did there come a time that you left that position?
- (8) A Yes
- (9) Q Where did you go then?
- (10) A I was appointed as a professor full tenured professor of
- (11) psychiatry at the Harvard Medical School and I also
- (12) concurrently was chief of the department of psychiatry at the
- (13) Boston City Hospital
- (14) Q When you became a full tenured professor of psychiatry at
- (15) the Harvard Medical School did you also receive an honorary
- (16) degree from Harvard Medical School at that time?
- (17) A Yes I received a honorary degree from Harvard at that
- (18) time
- (19) Q Why did you receive that degree?
- (20) A The honorary degree was awarded as a consequence of the
- (21) research which I had reported on the causes of alcohol
- (22) related
- (23) problems
- (24) Q Now as a full tenured professor at Harvard Medical School
- (25) in addition to instructing students what duties and
- (26) responsibilities did you have?
- (27) A My responsibilities included supervision of a department
- (28) which had as its primary goal the diagnosis and treatment
- (29) of

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- (1) persons with psychiatric disorders which included
- (2) alcohol related and substance abuse disorders in both
- (3) outpatient and inpatient clinical facility
- (4) Q In conjunction with your duties and responsibilities did
- (5) you have the duties and responsibility to diagnose and treat
- (6) people with alcohol related problems and other psychiatric
- (7) problems?
- (8) A Yes I did Many individuals
- (9) Q Did there come a time that you left City Hospital?
- (10) A Yes when I left the City Hospital I went to the alcohol
- (11) and drug abuse research and treatment center was
- (12) established
- (13) by Harvard Medical School at the McLean Hospital which is
- (14) an
- (15) affiliate of the Massachusetts General Hospital
- (16) Q All right And the McLean Hospital is also affiliated with
- (17) Harvard Medical School is it not?
- (18) A Yes it is a major psychiatric teaching hospital for
- (19) Harvard Medical Hospital
- (20) Q What was your position at the McLean Hospital?
- (21) A I was director of the alcohol and drug abuse research
- (22) center and also director of their substance abuse treatment
- (23) program
- (24) Q And that is your present position today up until today?
- (25) A Yes, my present position which I have held for 20 years
- (26) Q In conjunction with your duties and responsibilities at the
- (27) McLean Hospital do you have occasion to diagnose and treat

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- (1) patients who have alcohol related problems?
- (2) **A Yes, we admit approximately 800 patients a year to our inpatient facility, and our outpatient treatment facility has approximately eight to 10 000 outpatient visits**
- (3) **Q Doctor can you estimate for us approximately how many patients you've had occasion to treat and diagnose for alcohol related problems?**
- (4) **A Well, over the past 20 years those patients that I have been intimately involved with - that is I provided the diagnostic evaluations and the treatment recommendations - I would say about two to 3 000 patients**
- (5) **Q Doctor do you belong to any national or international associations?**
- (6) **A Yes**
- (7) **Q Can you name a few of the more significant ones for us?**
- (8) **A American Psychiatric Association which I hold a life fellowship I also am a member of the Society for Clinical Pharmacology and Therapeutics This organization is an organization which consists of physicians from medical - and scientists from many disciplines and the purpose is to improve our knowledge about drug treatment for a variety of conditions including psychiatric facilities**
- (9) **I am a member of the American Society for Pharmacology and Experimental Therapeutics I have been elected to membership in the Psychoneuroendocrinology Society which is a special**

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- (1) **organization that consists of physicians who are interested in how hormones function may affect the compromise of an individual's ability to work and to remain well**
- (2) **Q Doctor do you hold any editorial positions on peer review journals?**
- (3) **A Yes I've held editorial responsibilities for a number of journals including the period of time when I was coeditor of the Journal of Studies and Alcohol This journal is one of the oldest and most widely circulated journals of reporting alcohol related studies including studies on treatment and diagnosis throughout the world**
- (4) **Q Can you explain briefly for the jury what a peer review journal is?**
- (5) **A It is a journal in which a person submitting an article to that journal has that article reviewed anonymously by two expert individuals who make judgments about its validity and suitability for publication**
- (6) **Q Have you yourself authored and had articles published in peer review journals?**
- (7) **A Yes I have**
- (8) **Q Approximately how many?**
- (9) **A Well I've had a total of about 400 articles published in a variety of journals as well as in texts**
- (10) **Q Approximately how many of the articles - what percentage of the articles that you have published have to do with**

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- (1) alcohol related problems?
- (2) **A Roughly, I'd say about 75 to 80 percent**
- (3) **Q In addition to articles have you also authored books?**
- (4) **A Yes I've authored textbooks on The Diagnosis and Treatment of Alcoholism and I've also contributed chapters to textbooks of internal medicine on this topic**
- (5) **Q The textbook that you have written on alcoholism what is the name of that book?**
- (6) **A The most recent version is the Medical Diagnosis and Treatment of Alcoholism**
- (7) **Q Is that a textbook that's widely used in medical schools?**
- (8) **A It is my understanding that it's a textbook most widely used in medical schools It is the companion volume to a textbook entitled Harrison's Principles of Internal Medicine which is a text that is very widely used in medical schools and throughout the world**
- (9) **Q Just one more short thing about your credentials Have you received any honors or awards?**
- (10) **A Yes, I have**
- (11) **Q Can you tell us what honors and awards you have received related to your experience in alcohol related problems?**
- (12) **A Yes I have received the major award from the American Psychiatric Society their major research prize for studies, which I and my colleagues carried out relating to the diagnosis and treatment of alcohol related problems**

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- (1) **I have also received an award from the Research Society on Alcoholism which is the major research institutional group in the United States for investigative work which I have carried out with my colleagues in alcohol related areas**
- (2) **I've received the Jellinek award which is the major international prize given for investigators throughout the world who have conducted work in alcoholism**
- (3) **I have also served as a member of the nominating committee for the Nobel Prize in physiology or medicine**
- (4) **Q Just so the jury is clear on that doctor you haven't received the Nobel Prize?**
- (5) **A No I haven't I've been on the nominating committee**
- (6) **MR RUSSO Your Honor I'd like to offer Dr Mendelson as an expert in psychiatry and the diagnosis and treatment and prevention of alcohol related problems**
- (7) **MR O NEILL No objection**
- (8) **THE COURT The doctor's qualifications are accepted**
- (9) **BY MR RUSSO**
- (10) **Q Dr Mendelson in conjunction with your preparation for testifying in this case have you had occasion to review the document known as the Individual Disability Report?**
- (11) **A Yes I have**
- (12) **Q Have you also had occasion can to review a book or manual known as the DSM III?**
- (13) **A Yes I have**

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- (1) Q I d like to have put up on the screen PX10 Plaintiff's  
 (2) Exhibit 10  
 (3) You ll notice there is a video screen right next to you  
 (4) also one here too (indicating) if you prefer to look at this  
 (5) one  
 (6) I d like you to look at this document that s been displayed  
 (7) up on the screen Is that the individual disability report  
 (8) that you reviewed?  
 (9) A Yes it is  
 (10) Q It is your understanding that this is the individual  
 (11) disability report that was sent to Exxon Corporation by  
 (12) Dr Vallury?  
 (13) A Yes  
 (14) Q Is it possible to have that brought up a little bit in the  
 (15) center?  
 (16) Doctor in looking at this particular individual disability  
 (17) report can you see an area here which relates to Captain  
 (18) Hazelwood s diagnosis?  
 (19) A Yes I can  
 (20) Q Can you tell us where that is?  
 (21) A I am sorry I don't have a pointer but it's the line -  
 (22) yes, that is it  
 (23) Q (Indicating) Now what is it that you see here that you  
 (24) say is the diagnosis?  
 (25) A Those are two diagnostic code numbers which are  
 derived

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- (1) from the Diagnostic and Statistical Manual III which is in  
 (2) parentheses DSM III  
 (3) Q There s here right this little thing here DSM III in  
 (4) parenthesis?  
 (5) A That's correct  
 (6) Q And those are code numbers?  
 (7) A Those are code numbers  
 (8) Q So if one wanted to determine what Captain Hazelwood s  
 (9) diagnosis was in looking at this form you would look at these  
 (10) code numbers and you would go to the manual DSM III?  
 (11) A That is correct  
 (12) Q And that would tell you correct?  
 (13) A Yes  
 (14) Q Now can you tell the jury what DSM III is?  
 (15) A Diagnostic and Statistical Manual III was a publication  
 (16) compiled by the American Psychiatric Association following  
 (17) contributions by experts in the field for describing the  
 (18) diagnostic criteria for establishment of a diagnosis of an  
 (19) individual who had a psychiatric illness  
 (20) Q Now in 1985 Doctor was DSM III the primary diagnostic  
 (21) manual for individuals in the United States?  
 (22) A It was the - not only primary but I would say the  
 (23) exclusive diagnostic manual which achieved consensus in  
 (24) most  
 (25) inpatient and outpatient settings in the United States  
 (26) Q Now in terms of this diagnosis right here on the

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- (1) diagnosis section 300.40 and 305.02 according to the  
 (2) diagnostic manual DSM III what is this diagnosis?  
 (3) A That diagnosis is dysthymia  
 (4) Q That s 300.40?  
 (5) A That's correct  
 (6) Q And this diagnosis 305.02 what is that diagnosis?  
 (7) A That is alcohol abuse episodic  
 (8) Q Now in conjunction with the fact that the dysthymia is  
 (9) listed first and the alcohol abuse episodic is listed second  
 (10) is there any medical significance to that?  
 (11) A Yes the primary diagnosis in any medical record is  
 usually  
 (12) the first listed diagnosis  
 (13) Q So you would conclude then that the primary diagnosis on  
 (14) this form is what?  
 (15) A Dysthymia  
 (16) Q And the second carry diagnosis is what?  
 (17) A It would be alcohol abuse episodic  
 (18) Q And Doctor in terms of DSM III what it says in DSM III  
 (19) the manual is that diagnosis a diagnosis for alcoholism?  
 (20) A It is absolutely not a diagnosis for alcoholism  
 (21) Q Why is that not a diagnosis for alcoholism?  
 (22) A Because in order to achieve the diagnostic criteria for  
 (23) alcoholism the diagnosis would have to include criteria  
 which  
 (24) indicate either alcohol withdrawal or significant alcohol  
 (25) intolerance

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- (1) Q In conjunction with that Doctor under the criteria of  
 (2) DSM III if that were the case diagnosis would be alcohol  
 (3) dependency as opposed to alcohol abuse episodic?  
 (4) A That is correct DSM III states explicitly that alcoholism  
 (5) is - alcoholism is alcohol dependency  
 (6) Q As opposed to -  
 (7) A Which is not alcoholism  
 (8) Q Now I d like you to explain as best you can in layman s  
 (9) terms what is dysthymia? What is the primary diagnosis  
 (10) dysthymia? What does that mean?  
 (11) A Well dysthymia is a form of depression It's relatively  
 (12) common, many many individuals have experienced it It's  
 (13) characterized by feelings of sadness at times, by inability to  
 (14) sleep well either sleeping too short a time or sleeping too  
 (15) long a time It's characterized by difficulties that  
 (16) individuals may have in their perception of happiness or  
 (17) sadness in the world about them They may have  
 difficulties  
 (18) eating they may have difficulties sleeping as I mentioned  
 (19) It is not a severe depressive disorder but a relatively  
 (20) common one  
 (21) Q So would you say that it s a mild form of depression?  
 (22) A It's a mild form of depression  
 (23) Q All right Now the secondary diagnosis there alcohol  
 (24) abuse episodic Will you please explain to the members of the  
 (25) jury what that is?

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- (1) **A Well alcohol abuse episodic is basically inappropriate use**
- (2) **of alcohol on an episodic basis It is alcohol abuse but not**
- (3) **alcohol dependence or alcoholism**
- (4) Q Now you have testified and noted that there is a primary
- (5) and a secondary diagnosis here the primary being dysthymia
- and
- (6) the secondary being alcohol abuse episodic What is the
- (7) significance of the primary diagnosis being dysthymia and the
- (8) secondary being alcohol abuse episodic?
- (9) **A Well the general significance of a primary and secondary**
- (10) **diagnosis is that the secondary diagnosis is the result of**
- the
- (11) **primary diagnosis**
- (12) Q So in a situation where you have dysthymia and alcohol
- (13) abuse episodic is it your opinion that in that particular
- (14) situation the person would be drinking because they're
- (15) depressed?
- (16) **A That is correct**
- (17) Q Now Doctor you mentioned a term before when you were
- (18) talking about alcohol dependence the term being tolerance
- Do
- (19) you recall that?
- (20) **A Yes I did**
- (21) Q All right Under DSM III how is tolerance defined?
- (22) **A Tolerance is primarily defined as the need of an**
- individual
- (23) **to ingest an increasing amount of ethanol in order to**
- achieve
- (24) **the desired effect**
- (25) Q And in terms of DSM III if a person is diagnosed as

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- (1) alcohol abuse episodic as opposed to alcohol dependent that
- (2) means that they do not exhibit signs of tolerance is that
- (3) correct?
- (4) **A That is correct If they did exhibit it they wouldn't**
- (5) **achieve a diagnosis of alcohol abuse episodic**
- (6) Q Now before we leave the term tolerance I would like to
- (7) talk to you just a little bit about the physiological effect or
- (8) the metabolic effect of tolerance
- (9) If a person exhibits tolerance as defined in DSM III does
- (10) their ability to eliminate alcohol from their blood system
- (11) change?
- (12) **A It does significantly**
- (13) Q There has been some testimony in this case about the
- (14) average elimination rate being zero one five?
- (15) **A Yes**
- (16) Q Is that consistent with your perception of what an average
- (17) elimination rate would be?
- (18) **A That's a conservative but a reasonable estimate of an**
- (19) **average elimination rate in a nontolerant individual**
- (20) Q In a person that is tolerant to alcohol and would be
- (21) dependent under the criteria of DSM III what would be the rate
- (22) of elimination in such a person?
- (23) **A It could easily double and there are a variety of studies**
- (24) **which have been carried out under very carefully controlled**
- 
- (25) **that is to determine that they eliminate the alcohol from**

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- (1) **their body about twice the rate of a nontolerant person**
- (2) Q So if we assume then that the elimination rate for a
- (3) average person is zero one five what would be the rate for a
- (4) person exhibiting tolerance in accordance with DSM III?
- (5) **A Zero three zero**
- (6) Q Now I'd like you to look at this form a little further
- (7) and I call your attention now to the treatment section Do you
- (8) see that? Do you see these various things listed under one
- (9) two three four and five?
- (10) **A Yes**
- (11) Q Are these listings under the treatment section in your
- (12) opinion consistent with treatment for alcohol Doctor for
- (13) dysthymia and alcohol abuse?
- (14) **A Yes, they are**
- (15) Q Could you look at those particular categories of treatment
- (16) and tell the jury what in your opinion is consistent say
- (17) with treatment of the primary diagnosis dysthymia?
- (18) **A Treatment of the primary diagnosis of dysthymia would**
- (19) **involve individual psychotherapy, group therapy, and, if the**
- (20) **individual were a married person, marital therapy**
- (21) Q Those particular treatments that you have just described
- (22) are in fact treatments number one two and three on this
- (23) treatment section is that not correct?
- (24) **A Yes they would be**
- (25) Q In fact the first treatment is individual psychotherapy

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- (1) is that correct?
- (2) **A Yes**
- (3) Q Is individual psychotherapy particularly consistent with a
- (4) diagnosis of dysthymia as a primary diagnosis?
- (5) **A It's the major form of therapy that you utilize for**
- (6) **treatment of dysthymia**
- (7) Q Now looking once again at the overall treatment section
- (8) what categories of treatment in your opinion are consistent
- (9) with treatment for alcohol abuse episodic?
- (10) **A Well item number four AA which is Alcoholics**
- Anonymous**
- (11) **but I think it's only fair to point out that many persons who**
- (12) **have sustained problems psychiatric problems which have**
- never
- (13) **involved alcohol — an alcohol problem have often gained a**
- (14) **great deal of benefit by going to AA There are persons**
- (15) **that — patients that I have known who have held AA**
- membership**
- (16) **who have not had alcohol problems but have felt that**
- (17) **participation in that group activity is very helpful and very**
- (18) **supportive**
- (19) Q Doctor does a patient or person have to be alcohol
- (20) dependent to be referred to AA?
- (21) **A No absolutely not**
- (22) Q And it's consistent with a diagnosis of dysthymia and
- (23) alcohol abuse?
- (24) **A It would be I would say about a 50 percent consistency**
- (25) **yes**

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- (1) Q The fifth one there lectures seminars workshops  
 (2) pertaining to alcoholism Is that consistent with a diagnosis  
 (3) of dysthymia and alcohol abuse episodic?  
 (4) A Yes, I think that those - that last item would be  
 (5) perceived at least in my opinion to be an effort to prevent  
 (6) the occurrence of alcoholism  
 (7) Q Now Doctor looking at this treatment section would you  
 (8) say that this treatment would be consistent if the diagnosis  
 (9) were alcohol dependence or alcoholism?  
 (10) A It - no, it would not  
 (11) Q Why not?  
 (12) A Because if an individual or person had alcohol  
 (13) dependence  
 (14) or alcoholism from a medical and psychiatric point of view  
 (15) item one would not be individual psychotherapy  
 (16) Q What would item one be?  
 (17) A Item one would be pharmacotherapy  
 (18) Q What is?  
 (19) A Pharmacotherapy is a medical management for use of a  
 (20) medication, and there are and have been medications  
 (21) available  
 (22) for the treatment of persons who have alcohol dependence  
 (23) in  
 (24) order to prevent the emergence of alcohol withdrawal  
 (25) Q Doctor I'd like you now to look a little further down on  
 (26) this form where it says Mr Hazelwood will complete our 28 day  
 (27) program  
 (28) Do you see that?

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- (1) A Yes Yes  
 (2) Q Is a 28 day program that's referred to here is that  
 (3) consistent with treatment for dysthymia and alcohol abuse  
 (4) episodic?  
 (5) A Yes It would be  
 (6) Q Okay Is there anything in your opinion magical about a  
 (7) 28-day program being limited to just treatment for alcoholism?  
 (8) A Absolutely not At our inpatient treatment facilities and  
 (9) in many inpatient treatment facilities throughout the world  
 (10) persons with mild or moderate or severe depression receive  
 (11) 28  
 (12) days of inpatient treatment  
 (13) Q Now following along further on this particular entry you  
 (14) see Mr Hazelwood will be given a leave of absence to get  
 (15) involved in AA and aftercare What is aftercare what is your  
 (16) understanding of aftercare? Why is that relative to someone  
 (17) with a diagnosis of dysthymia and alcohol abuse episodic?  
 (18) A Well, aftercare could vary quite widely It could range  
 (19) from continuation of individual psychotherapy, to  
 (20) occasional  
 (21) attendance at group meetings in which there was no  
 (22) professional  
 (23) personnel at all supervising the treatment  
 (24) Q In your experience Doctor what is the normal length of  
 (25) time that a patient with a - with a diagnosis of dysthymia  
 (26) primary and alcohol abuse episodic would attend an aftercare  
 (27) program?  
 (28) A Period ranging from two to eight weeks

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- (1) Q And what would be the - how would it be decided that a  
 (2) patient would stop going to such a program?  
 (3) A Well the basic decision of any patient to either enter or  
 (4) remain in aftercare is based upon the patient's decision  
 (5) And  
 (6) the patients usually continue an aftercare treatment  
 (7) program  
 (8) based upon how they're feeling and how well they have  
 (9) resolved  
 (10) the problem which brought them into the aftercare program  
 (11) Q Doctor do you have an opinion concerning whether or not a  
 (12) person who has been treated for dysthymia and alcohol abuse  
 (13) episodic can resume drinking after treatment resume social  
 (14) drinking after treatment?  
 (15) A Yes I think someone who has had -  
 (16) Q What is your opinion relative to that? What is your  
 (17) opinion relative to that?  
 (18) A Well my opinion would be that an individual who has had  
 (19) dysthymia and episodic alcohol abuse could resume social  
 (20) drinking following completion of treatment  
 (21) Q Why do you believe that? What is the basis of your  
 (22) opinion?  
 (23) A Well, as I mentioned previously, dysthymia is a very, very  
 (24) frequent occurrence in the world And episodic alcohol  
 (25) abuse  
 (26) associated with dysthymia is also a very very frequent  
 (27) occurrence Many persons will drink too much and  
 (28) inappropriately in the context of experiencing dysthymia  
 (29) People drink to alleviate sorrow

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- (1) Q So there is no medical reason then that you're aware of  
 (2) why a person who has undergone treatment for dysthymia and  
 (3) alcohol abuse episodic could not after treatment resume  
 (4) social drinking?  
 (5) A That is correct  
 (6) Q Doctor in conjunction with your experience and your  
 (7) research are you familiar with the signs of intoxication in  
 (8) alcohol dependent people?  
 (9) A Yes I am  
 (10) Q And you mentioned before we discussed tolerance  
 (11) something  
 (12) about elimination rates And you said that the elimination  
 (13) rate for an alcoholic person would be double that of an average  
 (14) person?  
 (15) A That is correct  
 (16) Q You are talking about the rate per hour right?  
 (17) A Right Clearances or the disappearance of alcohol from  
 (18) the  
 (19) body over an hour - or over hourly intervals  
 (20) Q Do you have an opinion as to whether - as to whether an  
 (21) alcohol dependent person would show signs of intoxication if  
 (22) they had a high blood alcohol level of say .35 to .4?  
 (23) A Any individual with or without tolerance at a blood  
 (24) alcohol  
 (25) level of zero - I'm sorry?  
 (26) Q .35 to -  
 (27) A .3 to point -  
 (28) Q Four

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- (1) A Four yes would probably be either comatose or very close
- (2) to coma The lethal - you're now approaching the - an almost
- (3) lethal dose of alcohol
- (4) Q What about level of 25 to 30?
- (5) A Most individuals would be in incipient coma at that point
- (6) Certainly near coma or just prior to coma at those blood
- (7) alcohol levels
- (8) Q All right And what about at 226?
- (9) A Severely intoxicated
- (10) Q Can you describe what you expect to observe in such a
- (11) person?
- (12) A They would be unable to walk and to move about in a
- (13) coordinated manner Their speech would be drastically
- (14) slurred They would be virtually incapacitated
- (15) Q What about at 241?
- (16) A That's - the phenomena would be relatively similar at that
- (17) point
- (18) MR RUSSO Thank you Dr Mendelson Your witness
- (19) THE COURT You may cross examine
- (20) MR O NEILL Thank you
- (21) CROSS EXAMINATION OF JACK MENDELSON
- (22) BY MR O NEILL
- (23) Q How are you sir?
- (24) A Fine
- (25) Q I took the occasion last night to read your books

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- (1) You testified briefly about - well let me ask you a
- (2) question
- (3) What does it mean to be an auditor of a book like the
- (4) diagnosis and treatment of alcoholism which says edited by
- (5) Jack
- (6) Mendelson M D and Nancy Mello Ph D ? What does it mean
- (7) to
- (8) be the coeditor of the book?
- (9) A Well editing that specific text was based upon the
- (10) request
- (11) made by the publisher and I think was - don't recall who the
- (12) publisher was - through Harvard to publish a text on the
- (13) diagnosis and treatment of alcoholism
- (14) Q Now you testified today that you believed that some body
- (15) who suffered from dysthymia and alcohol abuse episodic could
- (16) return to drinking That's a correct statement?
- (17) A They could return to social drinking
- (18) Q Social drinking And indeed at certain times in the past
- (19) you have taken the position that people who suffer from
- (20) alcoholism can return to social drinking haven't you?
- (21) A We have quoted work completed by investigators who
- (22) have
- (23) ascertained that certain persons can return to work
- (24) following
- (25) drinking
- (1) Q And would those be Rand investigators or the Rand
- (2) Corporation investigators among others?
- (3) A The grant to the Rand Corporation for the study that I
- (4) think you're referring to was provided by the National
- (5) Institute on Alcohol Abuse and Alcoholism and the Rand

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- (1) Corporation subcontracted the study to faculty from
- (2) Washington
- (3) University School of Medicine, Mt Sinai Hospital, the
- (4) University of California, and the major portion of the study,
- (5) the clinical portion of the study was carried out by
- (6) investigators from Johns Hopkins University
- (7) Q With regard to your book The Diagnosis and Treatment of
- (8) Alcoholism who made possible the preparation of the text was
- (9) there a grant involved?
- (10) A Oh, yes I believe we acknowledged in the preface to the
- (11) text the grant provided to Harvard, to Harvard by a number
- (12) of
- (13) entities, including the Distilled Spirits Council of the United
- (14) States
- (15) Q And the front page of the text there's an acknowledgment
- (16) and the acknowledgment reads Preparation of this text was
- (17) made
- (18) possible by a grant from the Distilled Spirits Council of the
- (19) United States Inc Washington D C
- (20) Who is the distilled spirits Council of the United States
- (21) Inc ?
- (22) A They were a trade organization which provided funds to
- (23) the
- (24) Harvard Medical School for the preparation of the text
- (25) Q They're a trade organization that is essentially the
- (1) industry that makes hard liquor is that correct?
- (2) A They make wine distilled spirits and beer
- (3) Q Okay Now as the coeditor of this book you testified a
- (4) little bit about your expertise with regard to observing

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- (1) alcoholics what they can do what they can't do or observing
- (2) people under the influence of alcohol And there were a couple
- (3) of these ranges
- (4) Telling whether somebody is drinking or not drinking is a
- (5) difficult thing to do isn't it?
- (6) A No
- (7) Q Do alcoholics give an accurate histories of how much
- (8) they've had to drink?
- (9) A Sometimes they do and sometimes they don't
- (10) Q What are the NCA criteria for the diagnosis of alcoholism?
- (11) A This is the National Council on Alcoholism?
- (12) Q Out of your book it's table one NCA criteria for the
- (13) diagnosis of alcoholism
- (14) A Well I just responded the NCA stands for the National
- (15) Council on Alcoholism
- (16) Q Would it be fair to say that if you talk about tolerance
- (17) a factor with regard to tolerance is the fact that an
- (18) alcoholic can have a blood alcohol level of greater than 15
- (19) without gross evidence of intoxication?
- (20) A According to the NCA criteria, that is what the NCA has
- (21) stated There is significant disagreement with those
- (22) criteria
- (23) that those are accurate
- (24) Q Would you agree with the statement that the conviction that
- (25) tolerance to alcohol may be linked to development and
- (1) maintenance of abusive consumption patterns is not a new
- (2) one?

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- (1) **A I'm sorry?**  
 (2) **Q The conviction that tolerance to alcohol may be linked to**  
 (3) **development and maintenance of abusive consumption**  
 (4) **patterns is**  
 (5) **not a new one?**  
 (6) **A That is correct**  
 (7) **Q Aftercare as you talked about on Exhibit 10 the IDR is**  
 (8) **associated also with alcoholism isn't it?**  
 (9) **A I'm sorry?**  
 (10) **Q Aftercare is a prescription for people who suffer from the**  
 (11) **disease of alcoholism**  
 (12) **A Persons who suffer from a variety of diseases including**  
 (13) **alcoholism**  
 (14) **Q Including alcoholism?**  
 (15) **A Could receive aftercare**  
 (16) **Q And they could have the prescription to attend Alcoholics**  
 (17) **Anonymous?**  
 (18) **A I wouldn't call it a prescription to attend**  
 (19) **Q You wouldn't?**  
 (20) **A I would call it - excuse me I would call it a discussion**  
 (21) **that they would engage in with their therapist, and if both of**  
 (22) **them deemed that that would be helpful and useful, that**  
 (23) **would**  
 (24) **be undertaken**  
 (25) **Q Would you agree with the proposition that abstinence is a**  
 (26) **goal appropriate for all alcoholics one would certainly not**  
 (27) **want one's alcoholic taxi driver pilot or accountant to**

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- (1) **aspire to anything else?**  
 (2) **A The problem that I have is the term alcoholic Which is a**  
 (3) **generic - generic term that doesn't really specify alcohol**  
 (4) **abuse or alcoholism**  
 (5) **Q Are you aware that Peter Nathan (ph) a colleague in your**  
 (6) **book published a chapter which states Abstinence - and in**  
 (7) **the chapter that statement is made Abstinence is a goal**  
 (8) **appropriate for all alcoholics One would certainly not want**  
 (9) **one's alcoholic taxi driver pilot or accountant to aspire to**  
 (10) **anything else**  
 (11) **Are you aware of the statement being made in your book?**  
 (12) **A Yes and I know Dr Nathan, and quite well and he would**  
 (13) **define alcoholic as alcoholism**  
 (14) **Q Does Dr Nathan take the position that alcoholics who have**  
 (15) **achieved sobriety must not be lead to believe that they can**  
 (16) **either drink in a controlled fashion no available data suggest**  
 (17) **that we have the means to enable an alcoholic to achieve that**  
 (18) **goal Is that Dr Nathan answer's position in your book?**  
 (19) **A That could be Dr Nathan's position What year was that**  
 (20) **text published, sir?**  
 (21) **Q I'm working on this one and I'll eventually get to the**  
 (22) **other one Is this - 1985 1979 is this the right one?**  
 (23) **A That's right**  
 (24) **Q Psychotherapy is in fact prescribed - you talked about the**  
 (25) **IDR number one psychotherapy Psychotherapy is in fact**

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- (1) **prescribed for alcoholism isn't it?**  
 (2) **A Yes but it would not be the primary listing under**  
 (3) **treatment regimen Primary regimen would be formative**  
 (4) **therapy**  
 (5) **Q What is the third tradition of Alcoholics Anonymous do you**  
 (6) **know?**  
 (7) **A I haven't memorized the traditions no**  
 (8) **Q Have you even looked at them?**  
 (9) **A Of course I have**  
 (10) **Q If I were to state that the third tradition was something**  
 (11) **along the lines of the requirement for membership in**  
 (12) **Alcoholics Anonymous - is a desire to stop drinking the only**  
 (13) **requirement? Is the desire to stop drinking would that accord**  
 (14) **with your recollection?**  
 (15) **A That would accord with my recollection but it would not**  
 (16) **accord with my knowledge that persons can attain**  
 (17) **participation**  
 (18) **in Alcoholics Anonymous and never be asked what their**  
 (19) **problem**  
 (20) **is In fact anonymity and the option to remain silent is a**  
 (21) **wonderful and standard procedure in Alcoholics**  
 (22) **Anonymous**  
 (23) **Q Sir I have a book here called Medical Diagnosis and**  
 (24) **Treatment of Alcoholism and I think you mentioned this in your**  
 (25) **direct testimony**  
 (26) **A Yes**  
 (27) **Q This is a book that you wrote?**  
 (28) **A This is a book which I and my colleague friend and wife**  
 (29) **edited**

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- (1) **Q This one you edited?**  
 (2) **A Yes**  
 (3) **Q Okay**  
 (4) **A It's an edited text that have contributions by 22 other**  
 (5) **individuals**  
 (6) **Q You're right This text I - as I look at the preface -**  
 (7) **was facilitated a grant from the Licensed Beverage Information**  
 (8) **Council**  
 (9) **A That is correct**  
 (10) **Q What is that?**  
 (11) **A Licensed Beverage Information Council is a trade**  
 (12) **organization that is based in Washington D C Their**  
 (13) **activities include providing a better fund of information to**  
 (14) **individuals in order to reduce the prevalence of**  
 (15) **alcohol-related problems**  
 (16) **Q Who gives them their money -**  
 (17) **A Who gives who their money?**  
 (18) **Q - the Licensed Beverage Information Council?**  
 (19) **A You would have to ask them that**  
 (20) **Q Do you know?**  
 (21) **A I don't know**  
 (22) **Q The text was also facilitated by the Distilled Spirits**  
 (23) **Council of the United States**  
 (24) **A That is correct**  
 (25) **Q Okay**

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- (1) A May I add again that these grant funds were provided to  
 (2) Harvard and were not used for payment of anyone who  
 contributed  
 (3) to the text They were for secretarial service and say, for  
 (4) editing  
 (5) And with respect to that particular text there is one other  
 (6) thing that I should add There was a very explicit agreement  
 (7) between Harvard and the royalty funds which are received  
 from  
 (8) the publisher to be used for a very specific purpose That  
 (9) purpose was to provide educational support for women and  
 in  
 (10) particular minority women who had lacking financial  
 resources  
 (11) for their medical training  
 (12) Q You wrote the grant proposal or participated in writing of  
 (13) the grant proposal for the Distilled Spirits Council of  
 (14) America didn't you?  
 (15) A I did not I should add, the grants are not given either  
 (16) by the National Institute of Health or by most  
 organizations,  
 (17) to individuals, they're given to institutions The institution  
 (18) is the recipient to the grant  
 (19) Q With regard to your two books on alcohol you got grants  
 (20) from the liquor industry?  
 (21) A No Harvard Medical School received funds from two  
 (22) organizations plus many other organizations to prepare  
 these  
 (23) texts  
 (24) Q I want to talk for a minute if we could before we get on  
 (25) to the second book about DSM III and about what alcohol  
 abuse

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- (1) episodic is  
 (2) Episodic is a form as I understand it in DSM III of  
 (3) alcohol abuse It's one of three kinds of alcohol abuse - at  
 (4) least in DSM III?  
 (5) A That is correct  
 (6) Q And alcohol abuse includes among other things the need  
 (7) for the daily use of alcohol for adequate functioning  
 (8) A It could but doesn't specifically require it  
 (9) Q Okay I'm going to read through what is in DSM III and  
 (10) you tell me whether it's this is your recollection of what's in  
 (11) DSM III  
 (12) The need for the daily use of alcohol for adequate  
 (13) functioning is that in DSM III for alcohol abuse?  
 (14) A Would you read in DSM III -  
 (15) Q I'm going to read the whole thing  
 (16) A Excuse me Would you read the fact that each of the  
 items  
 (17) that you are reciting is not a requirement but that there can  
 (18) be alternate items that are required?  
 (19) Q Okay That's fine  
 (20) A In other words what you're reading implies that everyone  
 (21) with alcohol abuse has to have this particular symptom  
 (22) Q We looked at the diagnosis on the IDR The diagnosis on  
 (23) IDR includes alcohol abuse That's a correct statement?  
 (24) A It is alcohol abuse episodic  
 (25) Q DSM III defines first alcohol abuse in a general format

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- (1) doesn't it?  
 (2) A It defines it in a general format but specifies how many of  
 (3) those conditions must be present If you -  
 (4) Q Let's discuss the conditions first -  
 (5) MR RUSSO I object The witness must be allowed to  
 (6) finish the answer He was in the middle of an answer and he  
 (7) was interrupted  
 (8) THE COURT You're going already  
 (9) BY MR O NEILL  
 (10) Q In fact you listed - and you tell me if I'm wrong on a  
 (11) factor DSM III include the need for daily use of alcohol for  
 (12) adequate functioning Is that a factor to look at?  
 (13) A It is a factor that would not be required for all persons  
 (14) who are diagnosed as alcohol abuse  
 (15) Q Is it in the DSM?  
 (16) A Of course it is Hypertension is in there too  
 (17) Q Inability to cut down or stop drinking Is that in the DSM  
 (18) for alcohol abuse?  
 (19) A That is there  
 (20) Q Repeated effort to control or reduce excess drinking by  
 (21) going on the wagon Periods of abstinence or restricting  
 (22) drinking to certain times of the day, is that in there?  
 (23) A That is in  
 (24) Q Binges is that in there?  
 (25) A That's in there

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- (1) Q Occasional consumption of a fifth of spirits or its  
 (2) equivalent in wine or beer Is that in there?  
 (3) A That is in there  
 (4) Q What is the equivalent of a fifth of spirits in wine or  
 (5) beer?  
 (6) A I don't know what the equivalent of a fifth of spirits in  
 (7) beer is  
 (8) Q Amnesic periods for events occurring while intoxicated  
 (9) blackouts is that in there?  
 (10) A That's in there  
 (11) Q Continuation of drinking despite a serious physical  
 (12) disorder that the individual knows is exacerbated by alcohol  
 (13) abuse Is that in there?  
 (14) A Yes  
 (15) Q Is drinking of nonbeverage alcohol in there?  
 (16) A That is there  
 (17) Now only one of those entities only one of all of those  
 (18) entities which you read would be required to establish a  
 (19) diagnosis of alcohol abuse A young person consuming  
 (20) mouthwash which is a nonbeverage alcohol, could be  
 diagnosed  
 (21) as alcohol abuse by those criteria  
 (22) Q So your position is that a young person who consumes  
 (23) mouthwash can be diagnosed as an alcohol abuse episodic  
 person?  
 (24) A Yes  
 (25) Q The IDA has on it listed lectures seminars workshops



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- (1) pertaining to alcoholism Do you recall that?  
 (2) A Yes  
 (3) Q It has on it under treatment Alcoholics Anonymous or AA  
 (4) Do you recall that?  
 (5) A Yes  
 (6) Q Are you aware of the fact that the Hazelton (ph) model with  
 (7) regard to treatment is often referred to as a 28 day treatment?  
 (8) A I have not seen that in the biomedical literature  
 (9) Q Have you ever heard it among colleagues?  
 (10) A No  
 (11) Q Scuttlebutt?  
 (12) A No  
 (13) Q With regard to the prescription there for aftercare you  
 (14) testified with regard to aftercare that the proper time with  
 (15) regard to the termination of aftercare in part depends upon  
 (16) where the patient thinks that he s done with aftercare Do you  
 (17) recall that?  
 (18) A That's correct  
 (19) Q Do you know in this case whether Captain Hazelwood quit  
 (20) aftercare didn t quit aftercare or were you trying to justify  
 (21) him quitting aftercare?  
 (22) THE WITNESS Your Honor may I ask the question? I  
 (23) believe this pertains -  
 (24) MR RUSSO May we have a brief side bar? I believe  
 (25) the witness read -

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- (1) MR O NEILL I believe the testimony from Captain  
 (2) Hazelwood in this courtroom is that he quit going to aftercare  
 (3) because the people in the aftercare sessions were preoccupied  
 (4) with alcohol That is the force and effect of my question  
 (5) BY MR O NEILL  
 (6) Q Did you know that?  
 (7) THE COURT Does that help you answer the question?  
 (8) THE WITNESS Yes it helps me answer the question  
 (9) A If his primary diagnosis was dysthymia and he perceives  
 (10) that the primary in aftercare was alcoholism or alcohol  
 (11) dependence, he may have decided not to continue  
 participation  
 (12) BY MR O NEILL  
 (13) Q Would you agree with the comment made in chapter one of  
 (14) Medical Diagnosis and the Treatment of Alcohol the book that  
 (15) you and your wife edited the acceptance of a commonly  
 (16) recognized term with regard to alcohol related problems has  
 not  
 (17) resulted in commonly accepted diagnostic criteria Would you  
 (18) agree with that comment?  
 (19) A That comment was made in the context of the fact that  
 most  
 (20) medical organizations throughout the world do not ill use  
 the  
 (21) same diagnostic criteria  
 (22) Q Thank you  
 (23) What is ICD 10?  
 (24) A ICD 10 was the international classification of diseases  
 (25) Q That also has a separate classification scheme with regard

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- (1) to alcoholism doesn t it?  
 (2) A Yes it is the - it is the format that is used primarily  
 (3) in European and Scandinavian countries  
 (4) Q With regard to may be physical behavioral or psychological  
 (5) is that a correct statement?  
 (6) A That is correct  
 (7) Q A clear example would be the consumption of amounts -  
 (8) e g a quart of vodka that would be sufficient to incapacitate  
 (9) or kill nontolerant drinkers  
 (10) Is that an example of tolerance?  
 (11) A Yes  
 (12) Q Marked tolerance is suggested by little or no impairment  
 (13) even at high blood alcohol concentrations Is that a correct  
 (14) statement?  
 (15) A With the qualification of the word "high" High being in  
 (16) excess of 100 milligrams per decimeter but when one  
 reaches  
 (17) levels of two to 300 milligrams per decimeter or 2 to 3  
 (18) your terminology very few individuals could conceal severe  
 (19) intoxications  
 (20) Q People who go in for treatment for alcoholism often go in  
 (21) because of a precipitating event a life crisis such as an  
 (22) accident increased difficulties with the spouse job or legal  
 (23) problems Is that a correct statement?  
 (24) A That can occur  
 (25) Q There are - in Chapter 11 of the book that you edited

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- (1) there s a description of an inpatient treatment program for  
 (2) alcoholism that includes group therapy individual  
 (3) psychotherapy Alcoholics Anonymous and group lectures or  
 (4) discussions concerning alcoholism  
 (5) Are you aware of that?  
 (6) A Yes I was Or I am  
 (7) Q Is it a correct statement to say that because alcohol  
 (8) problems generally go on for a long time before the patient is  
 (9) confronted or confronts the problem that it is not surprising  
 (10) that the recovery process tends to occur over a long difficult  
 (11) period?  
 (12) A For some individuals but not for all  
 (13) Q You had - you re - you were questioned by Captain  
 (14) Hazelwood s lawyer here today?  
 (15) A I beg your pardon?  
 (16) Q The person who put on your direct testimony was one of the  
 (17) lawyers for Captain Hazelwood?  
 (18) A I assume so  
 (19) Q Why didn t you just examine Captain Hazelwood and give  
 him  
 (20) a mass (ph) test?  
 (21) A Because I wasn't asked to examine Captain Hazelwood  
 and I  
 (22) think that a request to do so would be medically - not be  
 (23) medically ethical unless the patient requested it  
 (24) Q Let me talk to you a little bit about medical ethics or  
 (25) ethics common decency Captain Hazelwood was given a  
 90 day

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- (1) leave of absence to get involved in AA and aftercare Do you  
(2) recall that?  
(3) A Yes  
(4) Q Did you know he wasn't paid during that leave of absence?  
(5) MR RUSSO I object Judge Beyond the scope  
(6) MR O NEILL He's right  
(7) THE COURT I think so too Sustained  
(8) BY MR O NEILL  
(9) Q Should have waited and see what the answer was  
(10) Definitions - here is a - a statement in general  
(11) Alcoholism alcohol dependencies and alcoholics are used to  
(12) describe the more severe disease forms of this disorder  
(13) specifically repeated harm from drinking Johnson and Clark  
(14) 1989  
(15) Do you recall that statement it's in Chapter 14 of your  
(16) book?  
(17) A I think the description is the statement what is people -  
(18) what terms people use The adequacy or correct use of  
those  
(19) terms is not discussed People talk about heart attacks A  
(20) heart attack can be widely varying from severe myocardial  
(21) infarction to transient pain from which recovery occurs very  
(22) promptly  
(23) Q I don't have - you're going to be disappointed in me on  
(24) this one because I didn't buy the hard paper copy I mean the  
(25) hard bound copy See have we looked at alcohol use and  
abuse

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- (1) in America yet?  
(2) A Yes  
(3) Q Have we looked at - is this a book that - is this a book  
(4) that you wrote completely or is this also a collection of  
(5) articles?  
(6) A No this is a book that I wrote with my colleague and wife  
(7) Dr Nancy Mello  
(8) Q I enjoyed reading your books  
(9) Here is page 268 of your book At page 268 the statement  
(10) is made Alcohol addicts also develop tolerance for many  
(11) toxics such as methanol and others that would be fatal to  
(12) others  
(13) Do you see that?  
(14) A That's correct  
(15) Q And then the next paragraph The fact that the alcoholic  
(16) can tolerate blood alcohol levels in a 200 to 400 milligram  
(17) per - is that deciliter or decaliter?  
(18) A Deciliter  
(19) Q - deciliter range that separate him or her from occasional  
(20) social drinkers Alcoholics may show minimal behavioral signs  
(21) of intoxication at these blood alcohol levels whereas social  
(22) drinkers may be severely intoxicated at blood alcohol levels  
(23) above 100 milligrams per deciliter Do you see that?  
(24) A Yes  
(25) Q 200 to 400 milligrams per deciliter which Exxon applies

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- (1) as 20 to 40 alcohol level isn't it?  
(2) A That's correct  
(3) Q In here you and/or your wife make the statement that  
(4) Alcoholics may show minimal behavioral signs of intoxication at  
(5) these blood alcohol levels 2 to 4 Isn't that right?  
(6) A We say "may show", but you also didn't read the  
paragraph  
(7) before which says, The alcoholic rarely develops blood  
alcohol  
(8) levels above 450 milligrams per deciliter Respiratory  
(9) depression and death can occur at a concentration above  
500 to  
(10) 600 milligrams per deciliter  
(11) Q But I'm concerned about 2 to 4  
(12) At 2 to 4 in your book your words are that Alcoholics  
(13) may show minimal behavioral signs of intoxication at these  
(14) blood alcohol levels  
(15) A These refer to the term alcoholic or alcohol-dependent  
(16) persons Alcoholism is alcohol dependence  
(17) Q Let's put it up and we'll show everybody in its context so  
(18) that everybody can put it into context because it's an  
(19) important statement  
(20) A If I may just emphasize you're reading the words in the  
(21) middle of the page Alcohol addicts is the reference  
Alcohol  
(22) addicts that is those persons who are addicted to alcohol  
(23) alcoholism  
(24) Q Let's assume that Let's assume that a person is an  
(25) alcohol addict or addicted to alcohol That person can

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- (1) function at blood alcohol levels of 2 to 4 and show minimal  
(2) signs of impairment whereas the rest of us cannot Is that a  
(3) correct statement an alcohol addict -  
(4) A An alcohol addict could show tolerance to alcohol  
(5) Q Now with regard to this book there is an acknowledgment  
(6) to the Economic Research Department of the Wine Institute the  
(7) United States Brewers Association and the Distilled Spirits  
(8) Council of the United States and the Brewers Association of  
(9) Canada  
(10) Did they provide assistance in the preparation of this  
(11) text?  
(12) A They did not provide assistance If you read it briefly,  
(13) they provided tables and figures published in one of the  
(14) chapters describing the role of psychiatry and the  
regulators  
(15) Q I'm interested in a statement in your book perhaps alcohol  
(16) first affects the cortical centers believed to be involved in  
(17) cognitive function then progressed to lower brain centers  
(18) involved in motor control then respiration  
(19) Is that a correct statement?  
(20) A That's a supposition  
(21) Q Supposition a supposition that you made?  
(22) A A supposition that we made based upon hypotheses  
which have  
(23) been generated by people examining the field  
(24) Q And the supposition the conclusion at least in layman's  
(25) terms from the supposition that alcohol affects judgment and

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- (1) then thereafter affects motor skills Is that a fair  
 (2) conclusion to draw assuming the supposition is right?  
 (3) **A Yes**  
 (4) **Q Alcoholics may develop enormous tolerance for alcohol Is**  
 (5) **that a correct statement?**  
 (6) **A That is correct**  
 (7) **Q There is increasing evidence that alcohol and intoxication**  
 (8) **is associated with a great increase in the risk taking and of**  
 (9) **aggression while driving Is that a correct statement?**  
 (10) **A That is correct**  
 (11) **Q And the chronic alcoholic can assume far higher doses of**  
 (12) **alcohol than the casual social drinker without appearing to be**  
 (13) **intoxicated or exhibiting gross motor discoordination**  
 (14) **Is that a correct statement?**  
 (15) **A That is correct for someone who would be diagnosed a**  
 (16) **alcohol dependent**  
 (17) **Q Now I want to talk for a minute about alcohol and**  
 (18) **depression Okay that's where we're going to a new subject**  
 (19) **Alcohol and depression - alcoholism and depression often**  
 (20) **coexist?**  
 (21) **A That's correct**  
 (22) **Q Indeed chronic heavy drinking may result in depression?**  
 (23) **A For some individuals, yes**  
 (24) **Q And indeed research has shown that repeated - has shown**  
 (25) **repeatedly that alcohol may produce profound dysphoria**  
**anxiety**

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- (1) and tension  
 (2) **A That is correct**  
 (3) **Q Statistics show the blood alcohol levels in deceased**  
 (4) **drivers are above .15 The nontolerant individual would**  
 (5) **probably be able - unable to drive at these blood alcohol**  
 (6) **levels**  
 (7) **Is that a correct statement?**  
 (8) **A That's correct**  
 (9) **Q So we have people who have a tolerance able to drive**  
 (10) **automobiles at .15 is that a correct statement?**  
 (11) **A I'm sorry?**  
 (12) **Q Somebody who has a tolerance to alcohol can drive a car**  
 (13) **there are people who have a tolerance to alcohol that can drive**  
 (14) **automobiles at .15?**  
 (15) **A Persons could do that but persons who have intolerance**  
 (16) **for**  
 (17) **alcohol could probably do it, too**  
 (18) **Q What would it take how many drinks would it take over**  
 (19) **three four five hours to get up to a .15?**  
 (20) **A Well, it depends on the body weight of an individual total**  
 (21) **body mass**  
 (22) **Q 160 pounds 170 pounds?**  
 (23) **A 170 pounds male or female**  
 (24) **Q Male?**  
 (25) **A To achieve a blood alcohol level of -**  
**Q About - let's say .15?**

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- (1) **A 15' 170 pounds - oh 11 to 12 drinks**  
 (2) **Q Maybe ten?**  
 (3) **A If you want ten you can - you can have ten**  
 (4) **Q Okay thank you That gets us through about six pages so**  
 (5) **I appreciate it**  
 (6) **A Maybe 14**  
 (7) **Q It depends on the person?**  
 (8) **A For you today**  
 (9) **Q Yeah**  
 (10) **Now you talked for a minute about the fact that - let me**  
 (11) **go back to a subject that we talked about**  
 (12) **It is difficult if not impossible to decide if alcoholism**  
 (13) **followed depression or if depression emerged as a**  
 (14) **consequence**  
 (15) **of alcoholism**  
 (16) **A That statement is true within the context of talking about**  
 (17) **depression is major depression And that is depression**  
 (18) **including depression only severe or manic depressive**  
 (19) **episodes**  
 (20) **Q I'm a little bit interested in your comment that people who**  
 (21) **have developed tolerance for alcoholism metabolized at a**  
 (22) **different rate than people who don't have that tolerance**  
 (23) **That's sort of a general statement so we can get into the**  
 (24) **subject matter**  
 (25) **A There is a form of tolerance called metabolic tolerance**  
 (26) **which involves an increased elimination rate of alcohol**  
 (27) **Q But after a period of sobriety if somebody drinks**

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- (1) **episodically - drinks for a while doesn't drink for a while**  
 (2) **drinks for a while doesn't drink for a while - during the**  
 (3) **nondrinking periods their metabolism moves back as to where**  
 (4) **a**  
 (5) **normal drinker's are and their rate moves back to where normal**  
 (6) **drinker's rates are**  
 (7) **Isn't that a correct statement?**  
 (8) **A That is correct**  
 (9) **Q In other words what you're saying is that if anyone has**  
 (10) **an alcohol related problem and they abstain from drinking for a**  
 (11) **long enough period of time their ethanol breakdown or**  
 (12) **elimination rate would be more back toward where the norm**  
 (13) **would**  
 (14) **be?**  
 (15) **A That is correct**  
 (16) **MR O NEILL I have nothing further Thank you**  
 (17) **Thank you Doctor**  
 (18) **REDIRECT EXAMINATION OF JACK MENDELSON**  
 (19) **BY MR RUSSO**  
 (20) **Q I just have a few questions for you Doctor just to**  
 (21) **clarify a couple of things**  
 (22) **Mr O Neill went through the - mentioned some of the**  
 (23) **diagnostic criteria of DSM III for alcohol abuse Do you**  
 (24) **recall that?**  
 (25) **A Yes**  
 (26) **Q The diagnosis on the IDR that we've been discussing was**  
 (27) **alcohol abuse episodic Is that correct?**

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- (1) **A That's correct**  
 (2) Q Now those items that he read to you were a number of items  
 (3) that are included in - as part of the diagnostic criteria for  
 (4) alcohol abuse correct?  
 (5) **A That's correct**  
 (6) Q You don't have to meet all of those items that he read to  
 (7) you -  
 (8) **A Absolutely not**  
 (9) Q - as to be diagnosed as alcohol abuse?  
 (10) **A That is correct**  
 (11) Q Now one of the things he read to you was need for daily  
 (12) use for alcohol for adequate functioning Do you recall that?  
 (13) **A Yes**  
 (14) Q Now in terms of alcohol abuse episodic would it be your  
 (15) understanding that a person who was diagnosed as alcohol  
 (16) abuse  
 (17) episodic would not meet that criteria?  
 (18) **A By definition they couldn't meet that criterion because**  
 (19) **that refers to episodic not daily**  
 (20) Q Isn't it a fact that in this diagnostic manual DSM III  
 (21) there are categories Episodic is one another one is  
 (22) continuous correct?  
 (23) **A Right**  
 (24) Q So there's significance to the fact that the diagnosis of  
 (25) Captain Hazelwood in the IDR is alcohol abuse episodic as  
 (26) opposed to alcohol abuse continuous correct?

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- (1) **A Yes**  
 (2) Q And episodic means that episodically or on occasion that  
 (3) person would abuse alcohol or drink too much?  
 (4) **A That's correct**  
 (5) Q And that would satisfy the diagnosis criteria in and of  
 (6) itself for alcohol abuse episodic correct?  
 (7) **A That is correct**  
 (8) Q Now there's maybe a little confusion about some of the  
 (9) terminology  
 (10) You're using 100 to 200 milligrams per deciliter Do you  
 (11) recall what you said that?  
 (12) **A That's correct**  
 (13) Q We've been using terms like 1 and 2 so could you just  
 (14) define - I'd like you to explain to the jury how 100 to 200  
 (15) milligrams per deciliter translates into blood alcohol levels  
 (16) that we've been discussing in this case -  
 (17) **A I apologize if I've introduced any confusion but the way**  
 (18) **blood alcohol levels are reported in medical literature is**  
 (19) **different than the way they're discussed often is a function**  
 (20) **of**  
 (21) **legal limits of intoxication**  
 (22) **For example a hundred milligrams per deciliter would be**  
 (23) **equivalent to 1 200 milligrams per deciliter would be**  
 (24) **equivalent to 2 300 milligrams per deciliter would be 4**  
 (25) **equivalent to 3 400 milligrams per deciliter would be 4**  
 (26) **and**  
 (27) **500 milligrams per deciliter would be 5**

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- (1) Q Mr O'Neill also questioned you about the relationship  
 (2) between depression and alcoholism Do you remember that?  
 (3) **A Yes**  
 (4) Q Okay Now we've discussed what dysthymia is but is there  
 (5) a distinction between dysthymia and depression as used in your  
 (6) book that Mr O'Neill was talking about?  
 (7) **A Yes there is There's a distinction between dysthymia**  
 (8) **and**  
 (9) **major depression in DSM III**  
 (10) Q So in other words depression from a psychiatrist's point  
 (11) of view is a different diagnosis than dysthymia is it not?  
 (12) **A Yes**  
 (13) Q And it's a much more serious diagnosis much more serious  
 (14) problem is it not?  
 (15) **A That is correct**  
 (16) Q Now DSM III in the diagnostic criteria for dysthymia does  
 (17) DSM III not recognize that a person that has dysthymia -  
 (18) meaning mild depression - that that dysthymia or mild  
 (19) depression can cause substance abuse or alcohol abuse?  
 (20) **A It's very specifically stated in DSM III that dysthymia can**  
 (21) **induce or result in substance abuse and can include alcohol**  
 (22) **abuse That's in the text**  
 (23) MR RUSSO Thank you Doctor  
 (24) THE COURT Thank you  
 (25) Doctor you may step down  
 (26) Call your next witness

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- (1) MS STEWART Michael Fox to the stand by reading the  
 (2) deposition  
 (3) THE CLERK Raise your right hand  
 (4) (The Witness Is Sworn)  
 (5) THE CLERK For the record sir state your full name  
 (6) address and spell your last name please  
 (7) THE READER James R Baker B a k e r Houston  
 (8) Texas  
 (9) THE CLERK Thank you  
 (10) DIRECT EXAMINATION OF MICHAEL FOX (read)  
 (11) BY MS STEWART  
 (12) Q When did you begin your training as an Alaska state  
 (13) trooper?  
 (14) **A I was hired more or less by accident first summer I was**  
 (15) **here to work on a seasonal basis for the department of**  
 (16) **public**  
 (17) **safety division of fish and wildlife protection I was hired**  
 (18) **to be an aide that was the time of the job, to fish and**  
 (19) **wildlife protection officers as they were called at that**  
 (20) **time I was an assistant maintenance person assistant law**  
 (21) **enforcement guy Just a summer hire**  
 (22) Q And at some point I take it then you were commissioned  
 (23) as a full time?  
 (24) **A I spent a second summer in doing the same work, and**  
 (25) **then**  
 (26) **that fall of '78 I went through the hiring process And I was**  
 (27) **hired and sent to the state trooper academy in Sitka in**  
 (28) **January**

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- (1) of 1979
- (2) Q Have you been continuously employed by the department of public safety since January of 1979?
- (3) A Yes
- (4) Q What is your rank in the department at this point?
- (5) A Trooper
- (6) Q Trooper Fox when did you first hear about the grounding of the Exxon Valdez?
- (7) A It was about 2 30 in the morning approximately
- (8) Q How did you hear about it?
- (9) A Phone call from the Coast Guard
- (10) Q Was there another phone call between or phone conversation
- (11) between you and the Coast Guard and the marine safety office
- (12) later that morning?
- (13) A Yes
- (14) Q What was the nature of that call?
- (15) A They wanted me to go out to the ship
- (16) Q Do you recall who you were speaking with in that conversation?
- (17) A That was with Commander McCall
- (18) Q Trooper Fox about what time was it when you made it aboard? I understand there was some problem about actually getting on board the Valdez but what time was it when you arrived on deck on the deck of the Valdez?
- (19) A Just after seven

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- (1) Q Who do you recall talking to you once you got on board the Valdez?
- (2) A My first contact was with two seamen who met me at the top of the ladder
- (3) Q Did they take you to Mr Delozier or Mr Falkenstein?
- (4) A They escorted me to near the bridge I think I got kind of near the bridge and they said you know down this hall and through that door-type of thing
- (5) Q Who was on the bridge at that time?
- (6) A If I remember correct there was one of the mates I think was the second mate, the two Coast Guard guys Delozier and Falkenstein, and Mr Lawn of the Alaska Department of Environmental Conservation
- (7) Q Now although you've described what you perceive as your role in cooperating with the Coast Guard officers were you still interested as a state law enforcement officer in developing and preserving evidence of a possible crime?
- (8) A Oh, sure
- (9) Q In other words you never took off your hat as a state law enforcement officer?
- (10) A No
- (11) Q And indeed you took certain steps to investigate the possibility of a crime and to preserve evidence did you not?
- (12) A Yes
- (13) Q Would you tell us what you did?

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- (1) A One example is I noticed there was some Moussy or Moussy
- (2) beer don't know the correct pronunciation we'll call it
- (3) Moussy in the refrigerator in the officers' mess and I took some of that
- (4) Q Why did you think that might be significant?
- (5) A Because it was mentioned as something that the Captain had
- (6) consumed on the vessel with alcohol in it It has alcohol in it
- (7) Q Yes- sir When you say that it was mentioned did Captain Hazelwood himself say that he had consumed some Moussy beer?
- (8) A Yes, he did
- (9) Q Before the Cousins interview did you have an encounter with Captain Hazelwood?
- (10) A Yes
- (11) Q Tell us about that
- (12) A I literally bumped into him in the companionway
- (13) Q To Captain Hazelwood?
- (14) A We were face to face
- (15) Q I'm sorry if you already testified to that but were you actually on board the vessel? Where were you exactly on board the vessel?
- (16) A My memory is we were in the companionway between the bridge
- (17) and the stateroom I'm not absolutely certain that's the case
- (18) but I think that's where it was
- (19) Q Were you close enough to smell his breath?

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- (1) A Yes
- (2) Q Did his breath have any odor to it?
- (3) A Lots
- (4) Q How would you describe that odor?
- (5) A Bad
- (6) Q When you say bad can you be more specific? I mean what -
- (7) A Bad Sour Bad
- (8) Q Would you describe it or have you described it in the past as morning breath?
- (9) A Sure It could be described as morning breath
- (10) Q At that point were you trying thinking to yourself that you need to look for signs of alcohol impairment?
- (11) A Sure
- (12) Q Did you see any?
- (13) A No
- (14) Q Now at some point Trooper Fox you actually obtained a bottle of the Moussy beer and asked Mr Delozier and Mr Falkenstein to smell it did you not?
- (15) A Yes I did
- (16) Q Do you recall asking both Mr Delozier and Mr Falkenstein to smell the Moussy beer?
- (17) A Yes
- (18) Q How did you present it to them for them to smell it?
- (19) A On my hand

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- (1) Q On your hand? Let me ask you this. What prompted you to  
(2) ask them to smell it?  
(3) A What prompted me? My experience that in investigating  
(4) a  
(5) statement or a claim you can investigate a negative as well  
(6) as  
(7) a positive fashion. And if a person claims to have drunk  
(8) Moussy beer to explain the presence of that alcohol breath  
(9) on  
(10) their breath, it would only make sense to have the people  
(11) who  
(12) witnessed that smell to smell the control, which is the  
(13) Moussy  
(14) beer, and either retain it as a possibility, confirm it or  
(15) discard it as not a possibility.  
(16) Q Did you ask both the Coast Guard officers if the Moussy  
(17) beer odor was the odor they had smelled on Captain  
(18) Hazelwood's  
(19) breath?  
(20) A Yes.  
(21) Q Okay, let's take Mr. Delozier first. What did he say?  
(22) A He said that it could be.  
(23) Q Was there any more discussion about it between you and  
(24) Mr. Delozier?  
(25) A Not really, no.  
(26) Q What about Mr. Falkenstein? What did Mr. Falkenstein say?  
(27) A He said it could be.  
(28) Q Again, same question. Was there any more discussion about  
(29) it between you and Mr. Falkenstein that you recall?  
(30) A No, not that I recall.  
(31) Q I take it from your previous testimony that you didn't

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- (1) smell any - well, let me just ask it. When you smelled  
(2) Captain Hazelwood's breath that morning, did it smell like any  
(3) alcohol - alcoholic beverage that you could -  
(4) A No.  
(5) Q All right.  
(6) So there wouldn't have been any purpose - so you didn't  
(7) check yourself as to whether the Moussy beer smelled like  
(8) Captain Hazelwood's breath?  
(9) A Correct.  
(10) Q All right. Did you maintain a sample of the Moussy beer  
(11) and take it with you after you left the Valdez?  
(12) A Yes.  
(13) Q Did you observe any part of the actual process of drawing  
(14) Captain Hazelwood's blood?  
(15) A Yes, I did - oh, Captain Hazelwood?  
(16) Q Captain Hazelwood?  
(17) A No, I didn't.  
(18) Q Did you happen to observe any part of the process of  
(19) drawing blood sample of any other crew member?  
(20) A Yes, I did.  
(21) Q Who was that?  
(22) A That was the lady, Maureen Jones, think I her name is.  
(23) Q What did you observe? What did you see about Ms. Jones  
(24) blood drawing?  
(25) A She was seated in the captain's office area. He has his

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- (1) suite has a little desk, a little lounge, kind of couch area,  
(2) and then a separate stateroom, and she was at - the desk is  
(3) in  
(4) the little office area in his office. And a corpsman was  
(5) taking the blood out of her arm.  
(6) Q Did you ever see Captain Hazelwood's blood samples?  
(7) A I don't think so.  
(8) Q In addition to Maureen Jones' blood samples, did you ever  
(9) see anybody else's blood samples?  
(10) A Not that I remember.  
(11) Q I would like to explore with you a little bit more this  
(12) procedure that you described relative to Moussy beer that was  
(13) on board the Valdez. I believe you testified this morning that  
(14) you took some of this Moussy beer and placed it on your hand  
(15) and then questioned Lieutenant Commander Falkenstein and  
(16) Mr. Delozier about its odor. Is that correct?  
(17) A Yes.  
(18) Q Do you recall approximately what time of day that - that  
(19) you did this?  
(20) A It had to be after lunch.  
(21) Q After lunch.  
(22) In relation to the interview of Captain Hazelwood, how soon  
(23) after the interview with Captain Hazelwood did you do this?  
(24) A Well, I can just figure that his interview was after lunch  
(25) and I left about 2:30 or three, so it had to be between his  
(26) interview and my departure.

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- (1) Q All right.  
(2) A That's a pretty narrow time.  
(3) Q Do you recall where you conducted this experiment?  
(4) A I believe one of them was in the radio operator's office  
(5) right across the hall from the captain's stateroom. I  
(6) remember  
(7) talking with the others there about the Moussy beer, and I  
(8) think that might have been where at least I did one of them.  
(9) Q Was that the first one that you did?  
(10) A I don't remember.  
(11) Q Who were you talking to about the Moussy beer in the radio  
(12) officer's room?  
(13) A I don't remember for sure.  
(14) Q Do you recall where you conducted tests on Lieutenant  
(15) Commander Falkenstein?  
(16) A No, I couldn't say which one was where.  
(17) Q So we have one of them in the radio officer's quarters and  
(18) the other one was conducted at a different location?  
(19) A I don't remember. It could have been right there.  
(20) Q Do you recall if both Lieutenant Commander Falkenstein and  
(21) Mr. Delozier were together when you conducted the test?  
(22) A No, I don't remember.  
(23) Q Can you describe for us in detail exactly how you recall  
(24) performing the test?  
(25) A How I did it?  
(26) Q Yes.

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- (1) **A I splashed some on my hand out of the bottle so it would be**
- (2) **warmed, because it's my impression that warm stuff smells**
- (3) **different than cold stuff And then I held the palm of my hand**
- (4) **in front of their face and asked them to smell it**
- (5) **Q And you have a recollection that each of them did that**
- (6) **they did in fact smell the palm of your hand?**
- (7) **A Yes**
- (8) **Q Do you have a recollection if either of them smelled - in**
- (9) **addition to that smelled the Moussy out of the bottle?**
- (10) **A I can't say May have, may not**
- (11) **Q Do you have a recollection of Mr Delozier also smelling**
- (12) **the Moussy out of the bottle?**
- (13) **A I can't remember He may have, he may not have**
- (14) **Q Do you recall whether or not the Moussy that you used for**
- (15) **this test was out of the same bottle for both individuals or**
- (16) **did you use a new bottle for each individual?**
- (17) **A I opened one bottle**
- (18) **Q After this test was completed did you take any action to**
- (19) **remove any of the Moussy beer present on the ship to**
- (20) **safeguard**
- (21) **it?**
- (21) **A Yes I took two bottles**
- (22) **Q What did you do?**
- (23) **A I had one bottle already in my pocket that was unopened**
- (24) **and then Delozier went and got another bottle and gave it to**
- (25) **me, so then I had two bottles, and I took those two bottles**

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- (1) **back to Valdez**
- (2) **Q And when you took them back to Valdez what did you do to**
- (3) **safeguard it? Did you did you voucher them?**
- (4) **A One of them I dropped off at the Valdez marine safety**
- (5) **office with instructions that it was from Delozier And the**
- (6) **second one I entered into evidence at the state troopers**
- (7) **office**
- (8) **Q As a result of the conversations with Mr Delozier did you**
- (9) **go down to the captain s quarters to see the blood testing?**
- (10) **A I don't remember It was specifically as a result of that**
- (11) **conversation but he told me while I was in the radio room**
- (12) **and**
- (13) **the captain's quarters were directly across the hall so it**
- (14) **wouldn't have been a long walk or anything**
- (14) **Q So obviously subsequent to this conversation you had**
- (15) **occasion to go across the hall and view what you testified to**
- (16) **earlier here?**
- (17) **A Right**
- (18) **Q Did you actually walk into the room where the blood testing**
- (19) **was being conducted?**
- (20) **A Yes, I did**
- (21) **Q You have already described Maureen Jones sitting at the**
- (22) **desk and having blood drawn in her arm In addition to that**
- (23) **can you describe what else you observed when you walked into**
- (24) **the room?**
- (25) **A There was a number of people in there It was't private**

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- (1) **I know that**
- (2) **Q Who was in there?**
- (3) **A I can't say exactly who it was but there was a number of**
- (4) **people in there**
- (5) **Q Were these crew members or Coast Guard people who?**
- (6) **A I just don't remember**
- (7) **Q Approximately how many people would you say were in the**
- (8) **room?**
- (9) **A With the understanding that it's just a complete guess I'd**
- (10) **say six or eight**
- (11) **Q Is this in addition to the medics and Maureen Jones or in**
- (12) **total?**
- (13) **A Yes**
- (14) **Q In addition?**
- (15) **A In addition yes**
- (16) **Q To your knowledge did there come a time when Mr Delozier**
- (17) **searched the captain s quarters?**
- (18) **A Yes**
- (19) **Q How did that come about do you know?**
- (20) **A He searched it**
- (21) **Q Did he consult with you before he searched the captain s**
- (22) **quarters?**
- (23) **A Yes**
- (24) **Q Can you relate to us the nature of the conversation that**
- (25) **you had with him about searching the captain s quarters?**

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- (1) **A We talked about what we might find of value we talked**
- (2) **about whether or not he had the authority to conduct that**
- (3) **search and then I was present in the doorway to the main**
- (4) **entrance of the captain's suite when he did the search so I**
- (5) **observed him going about the room and I talked to him**
- (6) **during**
- (7) **the search about what he found or didn't find**
- (7) **Q This conversation that you had with him relative to what**
- (8) **authority he had to conduct the search can you relate to us**
- (9) **what he said about his authority and what you said to him**
- (10) **relative to that?**
- (11) **A He said that he could do it And I said that I thought it**
- (12) **was a good idea that he went ahead and do it**
- (13) **Q Did he say on what authority he could do it?**
- (14) **A No I don't remember that**
- (15) **Q Did he ask you whether you had the authority to do it?**
- (16) **A I don't remember that I don't think so**
- (17) **Q Did you ever tell him - did you ever discuss with him**
- (18) **whether you had the authority to search the captain s room?**
- (19) **A I don't remember**
- (20) **Q Did you ever give him any instructions of what to look for**
- (21) **when he searched the captain s room?**
- (22) **A Yes**
- (23) **Q What types of things did you tell him to look for?**
- (24) **A I asked him if he found any alcohol**
- (25) **Q Just so the record is clear I m talking now about before**

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- (1) he searched the captain's room not afterwards Did you give  
 (2) him any instructions or advice as to what to look for?  
 (3) A Before I would say you should look for alcohol or signs of  
 (4) alcohol  
 (5) Q After you had this conversation with him he went into the  
 (6) room and started the search?  
 (7) A Yes  
 (8) Q Where were you standing?  
 (9) A I was right in the doorway by the hall  
 (10) Q And were you watching him do this?  
 (11) A He would disappear, you know there were different  
 rooms in  
 (12) there  
 (13) Q But you were looking in the room?  
 (14) A Sometimes in, sometimes out I was just standing there  
 (15) Q However did you not go into the room - you did not go into  
 (16) the room and search correct?  
 (17) A I didn't search, right  
 (18) Q Why didn't you go there and help him search?  
 (19) A It was his search It was his  
 (20) Q Do you recall whether or not Mr. Delozier came out of the  
 room and you directed him to go back into the room and  
 continue  
 (21) with the search?  
 (22) A Yes  
 (23) Q What did you say to him and what did he say to you when he  
 (24) came out of the room?  
 (25)

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- (1) A About what I remember is Did you look in the bathroom?  
 (2) Did you look here there did you look in the waste basket?  
 He  
 (3) said no I said -  
 (4) Q Well let's break it down What did he say about did he  
 (5) look in the bathroom? Did he say he looked in the bath room?  
 (6) A I think he said yes but I don't really remember And I  
 (7) remember asking him if he looked in the waste basket  
 (8) Q What did he say to that?  
 (9) A He said no  
 (10) Q Did you ask him if he looked anywhere else?  
 (11) A I said look in the waste basket  
 (12) Q As a result of that did you direct him to go back in look  
 (13) in the waste basket?  
 (14) A Well he - he was already in there there was -  
 (15) Q Did you ever push him back into the room?  
 (16) A No  
 (17) Q As a result of searching the room did he ever come out with  
 (18) any - did he ever bring anything out of the room as a result  
 (19) of this search?  
 (20) A I didn't see anything that he brought it  
 (21) MS STEWART Thank you that concludes defense  
 (22) direct  
 (23) CROSS EXAMINATION OF MICHAEL FOX (read)  
 (24) BY MS WAGNER  
 (25) Q What else can you tell us that you did either at that -

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- (1) the time or as a follow up to your time on board the Valdez in  
 (2) your capacity as a state law enforcement officer?  
 (3) A I was out there for eight or ten hours I don't remember  
 (4) I was there from 7 00 until 2 30 so I did a lot of things I  
 (5) suppose some of the important things I could remember  
 would be  
 (6) that I checked to make sure that the evidence was sealed  
 (7) correctly in the Styrofoam kits that contained the blood  
 (8) samples I thought that I better make sure that the Coast  
 (9) Guard was correctly handling that evidence I  
 tape-recorded  
 (10) the captain's interview without any instructions or approval  
 or  
 (11) help from the Coast Guard I took notes of the - the other  
 (12) two interviews I made phone calls from the  
 communications  
 (13) center to my office - not my office but my supervisor's  
 office  
 (14) in Palmer and recommended some courses of action that  
 we  
 (15) should start moving on  
 (16) Q Did you have any conversation with Captain Hazelwood?  
 (17) A Yes I did  
 (18) Q Tell us then about the conversation you had with the  
 (19) captain  
 (20) A I introduced myself and told him that I was on the boat  
 (21) representing the State of Alaska, and that we were going to  
 be  
 (22) trying to figure out what happened I don't know if I used  
 the  
 (23) word investigator or not And after that I just looked into  
 (24) his eyes and said what the heck is the problem here? And  
 he  
 (25) said You're looking at it

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- (1) Q What did the captain - how would you describe his  
 (2) appearance?  
 (3) A Tired red eyes depressed Quiet He was smoking and  
 (4) drinking a soft drink can  
 (5) Q Trooper Fox and you've already made reference to this but  
 (6) I'll ask this anyway Were blood samples finally drawn from  
 (7) Captain Hazelwood and certain of the other crew members?  
 (8) A Yes  
 (9) Q Who finally drew the samples?  
 (10) A A medic from the United States coast guard  
 (11) Q Because the name Scott Conner sound right?  
 (12) A Yeah It sounds familiar  
 (13) Q All right Well how would you describe what you saw your  
 (14) function as at that time relating to the blood testing?  
 (15) A Evidence handler  
 (16) Q Evidence handler all right What does that mean to you?  
 (17) A That it's secured  
 (18) Q So my question to you is What did you do when you went  
 (19) into that room to perform that function that you just  
 (20) described?  
 (21) A I asked the medic how he was securing the kits  
 (22) Q What did he say to you?  
 (23) A He showed me how he was doing it by holding up a  
 package  
 (24) and showing me the seals that he had placed over the crack  
 of  
 (25) the Styrofoam container and how he signed and marked the  
 seals



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- (1) Q And you had had training I assume in maintaining a chain  
(2) of custody for physical evidence?  
(3) A Yes  
(4) Q And not just training you had also had experience over the  
(5) course of your employment as a fish and wildlife trooper in  
(6) maintaining and preserving and taking steps to ensure that you  
(7) had a good chain of custody for physical evidence?  
(8) A Yes  
(9) Q Were you interested to see the procedure he was following  
(10) as it related to the chain of custody?  
(11) A Yes  
(12) Q In other words you took a professional interest in how he  
(13) was going about this would that be a fair statement?  
(14) A Sure Yes  
(15) Q Did you see anything about the procedure that he was  
(16) following that in any way troubled you?  
(17) A No  
(18) Q Did it appear that he knew what he was doing?  
(19) A Yes  
(20) Q And then I think you have testified that after lunch  
(21) around 1 00 you participated in an interview of Captain  
(22) Hazelwood?  
(23) A Correct  
(24) Q Who was present at that interview?  
(25) A Me and Delozier

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- (1) Q About how long did that interview take?  
(2) A Boy, I just can't guess It wasn't very long  
(3) Q Was that interview tape recorded?  
(4) A Yes  
(5) Q Why was that one tape recorded?  
(6) A Because I tape-recorded it  
(7) Q Do you do so over Mr Delozier's objections or how did  
(8) that come about?  
(9) A I didn't ask him I just did it  
(10) Q Did Mr Delozier know you were taping it?  
(11) A Yes  
(12) Q How would he have known it?  
(13) A I sat the tape recorder on the table on the table in front  
(14) of all three of us turned it on, and then there's a red light  
(15) on it that it was lit  
(16) Q Did Mr Delozier make any kind of protest about  
(17) tape-recording the interview?  
(18) A No  
(19) Q What about Captain Hazelwood?  
(20) A No  
(21) Q Did you capture the entire interview on this tape  
(22) recording?  
(23) A The interview? Yes  
(24) MS WAGNER Thank you Nothing further  
(25) MR SANDERS May it please the Court defendants call

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- (1) Captain Mark Pierce  
(2) THE CLERK Raise your right hand  
(3) (The Witness Is Sworn)  
(4) THE CLERK For the record sir state your actual  
(5) full name your address and spell your last name please  
(6) THE WITNESS Mark R Pierce 474 Lake Shore  
(7) Boulevard Incline Village Nevada P i e r c e  
(8) DIRECT EXAMINATION OF MARK PIERCE  
(9) BY MR SANDERS  
(10) Q Good morning Captain  
(11) A Morning  
(12) Q Captain Pierce by whom were you are you employed?  
(13) A Previously by Sea River Maritime  
(14) Q Is Sea River Maritime the successor company or the name  
(15) change from Exxon Shipping Company?  
(16) A That is correct  
(17) Q And as a captain are you assigned to a particular vessel?  
(18) A Yes I am  
(19) Q What is your vessel assignment at this time?  
(20) A The S/R Mediterranean  
(21) Q And that is of course the former Exxon Valdez?  
(22) A Yes  
(23) Q Captain Pierce would you tell a little - a little to us  
(24) about your educational background?  
(25) A I am a graduate from the marine Maritime Academy in  
1971

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- (1) Subsequently went to sea with masters mates and pilots  
the  
(2) union organization through '71 and '72 and joined Humble  
Oil  
(3) Company at the time in early '73  
(4) Subsequently that became Exxon subsequently Sea River  
(5) Maritime I started out as third mate sailed second mate  
(6) chief mate and in 1980 began to sail as master  
(7) Q And when did you get your Coast Guard license as a master?  
(8) A 1979  
(9) Q And you began to sail sometime in 1980 as a master or  
(10) captain for Exxon Shipping Company or Exxon Marine?  
(11) A Yes as a relief captain at that time  
(12) Q And as - let me ask you a question I want to take a  
(13) short diversion here  
(14) There's been some testimony in this case that calls into  
(15) question the weather on the trip that the Exxon Valdez took  
(16) from San Francisco which began approximately the 18th of  
March  
(17) and ultimately resulted of course in the grounding on March  
(18) the 24th Is it possible to look at the deck log of a ship for  
(19) a given voyage or trip and tell what the weather conditions  
(20) were?  
(21) A Yes a deck log provides space records, the weather  
hourly  
(22) and then in more severe weather I'm sure every four hours  
for  
(23) the watch- in severe weather we go ahead and record it  
hourly  
(24) MR SANDERS May I approach the witness Your Honor?  
(25) THE COURT You may

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- (1) BY MR SANDERS  
 (2) Q Captain I have here what I am told is the deck log of the  
 (3) Valdez - which Your Honor I believe is admitted in evidence  
 (4) on May the 9th first day of trial as Plaintiff's Exhibit  
 (5) 140  
 (6) Now is it customary for there to be a recording of this  
 (7) weather every four hours while on watch?  
 (8) A Yes  
 (9) Q That's a normal thing that is done on a ship at least an  
 (10) Exxon ship?  
 (11) A It's a normal duty of the watch officer  
 (12) Q Would you turn please to the portions of this deck log  
 (13) Plaintiff's Exhibit No 140 which is the deck log for the  
 (14) Valdez in March of 1989 Would you turn to the page that  
 (15) starts the voyage from San Francisco which I believe to be on  
 (16) or about March the 18th  
 (17) A Yes, the deck log indicates that the vessel was anchored  
 in  
 (18) San Francisco on March 18th  
 (19) Q Can you tell -  
 (20) A For the entire day  
 (21) Q For the entire day all right  
 (22) Turn then to the page where the voyage starts  
 (23) A Sorry these are out of order  
 (24) Q Captain I apologize Have you found it?  
 (25) A Not yet Okay starting on the 23rd it says - of

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- (1) February I'm sure -  
 (2) Q I think we need to go into - to the middle of March  
 (3) Tell you what if the Court would permit me I take that  
 (4) exhibit back have somebody find the right place and we can  
 (5) talk about something else instead of wasting everybody's time  
 (6) with this  
 (7) A We're in February  
 (8) Q That always happens when I detour  
 (9) Captain Pierce we left off before our detour with the fact  
 (10) that you were a captain from 1980 forward I wanted to ask  
 (11) you Are you a friend of Captain Hazelwood's?  
 (12) A Yes  
 (13) Q And how long have you and Captain Hazelwood been  
 friends?  
 (14) A I met Captain Hazelwood in the early '70s and  
 subsequently  
 (15) our friendship started about the mid 1970s forward  
 (16) Q And has that friendship continued through the years?  
 (17) A Yes it has  
 (18) Q And you're still a friend of Captain Hazelwood's?  
 (19) A I consider him a friend yes  
 (20) Q Would you describe to the ladies and gentlemen of the jury  
 (21) and the Court that friendship what kind of friendship was it?  
 (22) A The friendship started when Captain Hazelwood was in  
 the  
 (23) Valdez trade I believe on the Exxon Baton Rouge as chief  
 (24) mate And I was mate on the Exxon Galveston which was a  
 (25) lighter vessel So it pretty much started as a working

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- (1) relationship over the rail Develop -  
 (2) Q What rail is that?  
 (3) A The rail of the two ships as they're side by side in San  
 Francisco Bay, transferring cargo  
 (4) Q Okay  
 (5) A And it started with passing back and forth things to read,  
 (6) primarily our deep interest in maritime industry, and it  
 (7) continued on to - enjoyed sense of humor, and then we had  
 the  
 (8) opportunity to meet at company-sponsored training  
 programs and  
 (9) conferences, so it was pretty much a working relationship  
 and  
 (10) working friendship  
 (11) Q Do you and he correspond?  
 (12) A Yes, we did  
 (13) Q Wrote letters back and forth?  
 (14) A That's correct  
 (15) Q Talk on the phone?  
 (16) A Very rarely  
 (17) Q Talk on the radio?  
 (18) A Again, very rarely  
 (19) Q Did you ever visit in his home?  
 (20) A I have not  
 (21) Q As a matter of fact you ever meet his wife?  
 (22) A I have not  
 (23) Q Has he visited in your home?  
 (24) A On one occasion when I was port captain, he visited us,  
 but

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- (1) he's never been to my home in Nevada  
 (2) Q That was your home in Houston?  
 (3) A Yes  
 (4) Q During the time you were port captain?  
 (5) A Correct  
 (6) Q Now you mentioned the time you were port captain When  
 (7) did you become a port captain?  
 (8) A It was in the summer of 1983  
 (9) Q 1983?  
 (10) A Yes  
 (11) Q I didn't hear you I'm not questioning you  
 (12) A Yes, 1983  
 (13) Q And you were port captain where?  
 (14) A In the Baytown office, Baytown, Texas  
 (15) Q And as port captain were there certain ships that you  
 (16) were in the sense of being port captain responsible for?  
 (17) A Yeah I basically liaised with 13 different ships  
 (18) Q Was one of those ships or one of the masters on one of  
 (19) those ships Captain Hazelwood?  
 (20) A Yes he was  
 (21) Q As a matter of fact did you have occasion during your  
 (22) tenure as port captain to make comments in respect to  
 (23) evaluations that were being done for Captain Hazelwood?  
 (24) A On occasion I was asked as a - as part of port captain to  
 (25) come on to comment on strengths and weaknesses of  
 individual

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- (1) captains for the fleet manager Again I was considered a peer
- (2) to those captains so it was not a formal type evaluation it
- (3) was more of what were the strengths and weaknesses of that
- (4) master in dealing with me and his crew as I saw them and to
- (5) that job
- (6) Q But in any event did you understand that these comments
- (7) you were making were being -- were part of the evaluation
- (8) process?
- (9) A Yes It was to help the fleet manager make those kind of
- (10) determinations
- (11) Q And the evaluation process had effects as far as I
- (12) suppose promotion some affect on pay and those kinds of
- (13) things right?
- (14) A Yes, it did
- (15) Q Okay And who asked you to do that do you recall?
- (16) A Mr Tomkins, gulf coast fleet manager at the time
- (17) Q Was Mr John Tomkins the gulf coast fleet manager during
- (18) the entire time that you were the port captain?
- (19) A He was
- (20) Q And jumping ahead a bit after you completed this tour of
- (21) duty ashore as a port captain, did you ever go back and be a
- (22) port captain again?
- (23) A No, I did not
- (24) Q You went back to sea and stayed at sea?
- (25) A That's correct

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- (1) Q Let me ask you You testified that you had this friendship
- (2) and you described it You described this commenting on
- (3) evaluations Did you find it difficult to make comments about
- (4) Captain Hazelwood's strength and weaknesses knowing that he
- (5) was
- (6) a friend of yours?
- (7) A No I didn't I felt I could divorce the two One was
- (8) professional and one was very much a personal
- (9) relationship
- (10) Q As a matter of fact Captain you made some criticisms of
- (11) Captain Hazelwood in your comments correct?
- (12) A Yes
- (13) Q And what were your criticisms give us the time frame if
- (14) you can recall it?
- (15) A It was 1984 and then again in '85 but the one in '84
- (16) probably the more prevalent one, and criticism basically
- (17) revolved around communications between our shore
- (18) management and
- (19) Captain Hazelwood
- (20) Q What did you say what did you say in your comments? Did
- (21) you make those comments in writing?
- (22) A They were on a blank sheet that I had for all masters all
- (23) 26 that I went to at the time, doing it, and they were on a
- (24) form that then went to Mr Tomkins to be completed
- (25) Q Do you remember what you said what you wrote or the gist
- (26) of it?
- (27) A I remember two parts of it One was the communications
- (28) aspect that I felt that Joe was a bit misunderstood by

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- (1) management and vice versa in that he worked there and
- (2) that
- (3) the second part that Joe really needed -- needed a challenge
- (4) and perhaps wasn't at all achieving his potential
- (5) Q Did you use the words did not even remotely approach
- (6) achieving his potential ?
- (7) A I believe those were the words that I used
- (8) MR SANDERS Now Your Honor I'm getting ready to
- (9) change topics would this be a good time or --
- (10) THE COURT Let's take our first recess ladies and
- (11) gentlemen We'll be in recess for 15 minutes
- (12) (Jury out at 9 58 a m )
- (13) (Recess at 10 00 a m )
- (14) (Jury in at 10 15 a m )
- (15) MR SANDERS May I proceed Your Honor?
- (16) THE COURT You may
- (17) BY MR SANDERS
- (18) Q Let's take another look at these deck logs Captain
- (19) Pierce
- (20) Have you located the right deck log? I gave you the wrong
- (21) ones
- (22) A We have March 18th and now so we're in the right month
- (23) any
- (24) way
- (25) Q Would you tell us according to the deck log when the
- (26) voyage started?
- (27) A They departed on the 18th of March 1989

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- (1) Q And that's 2 00 in the afternoon?
- (2) A Correct
- (3) Q Where is the first recording of any sort of weather
- (4) information on the deck logs?
- (5) A The weather is recorded on the left hand page in about
- (6) the
- (7) middle and it's recorded again throughout the entire day
- (8) Q So these weather reports what time do you get the first
- (9) weather recordation?
- (10) A 0400 in the morning for that day As I said again unless
- (11) it's severe weather So from the start of the voyage we have
- (12) the first recorded outside weather would be at 1600
- (13) Q Now I'm not going to try to pass the chart around or blow
- (14) it up and put it on the screen or anything but on this -- this
- (15) deck log there is a page for every day Is that correct?
- (16) A That is correct
- (17) Q And there are on the left hand half of the page are
- (18) various columns for information and initials and comments
- (19) correct?
- (20) A Yes
- (21) Q And then on the right half or third of the page are lines
- (22) where written entries are put in and kind of a line form is
- (23) that correct?
- (24) A That is correct
- (25) Q And the weather information is on the left hand side of the
- (26) page about in the middle of these columns correct?

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- (1) A Yes
- (2) Q What three types of columns are there that would pertain to weather conditions?
- (3) A The direction the velocity of the wind the weather formula which is the cloud state the visibility the state of sea relating to how rough the sea or smooth the sea would be
- (4) Barometric pressure air temperature and water temperature
- (5) Q And can you as an experienced captain or mariner are you able to look at this information on the deck log and tell the jury what the weather was like whether it was good or bad weather what the state of the sea was those kinds of things?
- (6) A Yes
- (7) Q And more specifically there has been a suggestion in kind of a hypothetical way in this case that if you were in an area where there were 40 foot seas that it would seriously disturb one's ability to sleep and you would be exhausted after a voyage like that?
- (8) A Yes
- (9) Q So -
- (10) A Uncomfortable on those seas
- (11) Q That's the context for these questions
- (12) Now could you look at the weather information that you've just described for the jury for the 18th of March Saturday 1989 and after you have had a chance to look at it could you explain to the jury what the weather conditions were as

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- (1) recorded on this deck log?
- (2) A For the 18th of March, leaving - leaving San Francisco so
- (3) this would be on the north coast approximately off of Point Rays (ph) at southerly winds fairly light they're force three so less than ten knots per hour
- (4) Q Let me just stop you a second That has gone beyond what I understand
- (5) Is there a code on this weather for these different columns that gives you a range?
- (6) A Yes in the beginning of the log book we have a code by which these columns are filled out and we're using a Beaufort
- (7) Scale (ph) which is the normal maritime scale for wind velocity
- (8) Q So when you say force three that means something on a Beaufort Scale?
- (9) A Basically a breeze
- (10) Q Okay all right That's good
- (11) And as far as like the cloud conditions is there a letter code for that that tells you if you put an M in there or whatever that is there's a legend at the beginning of the deck log which tells you exactly what that letter means?
- (12) A That's correct
- (13) Q And is there any other code or legend that the ladies and gentlemen of the jury should be aware of when they look at these deck logs?

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- (1) A Sea state is also that format
- (2) Q In other words there is a code a number or letter code that you write down in that column and you have to go back to the legend if you're - you don't know the legend and see what that corresponds to?
- (3) A Correct
- (4) Q Okay I'm sorry to interrupt you Go back to the 18th and describe the weather Now I'm going to ask you to do this on a day-to-day basis and I don't want to spend all day, so - I know there's a reading every four hours If there's a change in the weather tell the ladies and gentlemen of the jury of that but if it's pretty constant just tell us a constant weather won't be a forecast, it would be a back-cast, wouldn't it?
- (5) A All right Back-cast would be a moderately high pressure ridge was in evidence in there The winds were southerly but brought about some fog Some overcast And then towards the end of the day the wind came around to the north, northeast,
- (6) which cleared up and the seas were very moderate Some ground swelling
- (7) Q When you say the seas are moderate describe for the jury what you mean by that Quantify that for us
- (8) A Moderate sea would be in the four- to five-foot root range, so it would be comfortable to be out there in a small sailboat,
- (9) provided you didn't get sea sick

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- (1) Q And on a tanker the size of the Exxon Valdez would four or five foot seas be noticeable if you were trying to sleep?
- (2) A Be very pleasant day
- (3) Q Would you turn to the 19th?
- (4) A The morning of the 19th, the northwesterly wind continued
- (5) again on a breeze basis The sea state was moderate, and it was blue skies with some clouds, so pretty constant weather
- (6) pretty normal for that time of year
- (7) Q Did that weather stay the same throughout the day on the 19th?
- (8) A No, it came to the southerly and calmed - calmed very much
- (9) down Again, that high pressure still in evidence, but with the wind coming south then you could expect some - pretty soon
- (10) you're going to have fog But the sea state again was very moderate
- (11) Q So it went from moderate to even better -
- (12) A Yes
- (13) Q - during the day?
- (14) A Correct
- (15) Q What about the 19th?
- (16) A That was the 19th
- (17) Q I'm sorry the 20th
- (18) A Again the 20th looks to be exactly the same sort of weather Towards the afternoon the winds started picking up
- (19) and the barometer began to drop slightly

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- (1) Q What about the state of the sea?
- (2) A As recorded here it's still, all moderate A little bit of chop, which is a shorter sea, developed in the afternoon
- (3) Q What do you mean by a shorter sea?
- (4) A Pacific has a long swell to it and then when you get the wind progressing, especially over a great period of time it can get choppy So it's - what you see in late afternoon breeze, probably on Cook Inlet breeze comes up it's a real short, choppy sea
- (5) Q Does that affect the way the boat will ride a ship the size of the Valdez? Does a short chop affect the ship as far as going up and down?
- (6) A Not until it gets exasperated and you get up around 15 foot sea, then you'll start to notice it
- (7) Q And what was the - what was the - I don't know how you refer to it but what was the height of the sea on the afternoon of the 20th?
- (8) A We're still seeing moderate sea, so four five feet
- (9) Q Would you turn then to the 21st?
- (10) A Okay The 21st it was starting to get closer to Alaska Wind has come around to the northwest we're up to now a full breeze or a force four So a 15 20 knot wind
- (11) As recorded here, that the sea state is still moderate and the barometer is fairly constant getting a little colder
- (12) weather

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- (1) Towards the afternoon - around 1800 1900 the wind does pick up some more and we're starting to see the ground swell
- (2) that comes across from the Asian Continent down off of Canada and Cape Flattery (ph) so we're getting more of a developed swell
- (3) Q All right And what would be the extent of a developed swell in these waters this time of the year how high?
- (4) A Ten to 15 feet Very long So ship would be in motion but it wouldn't be that uncomfortable or unpleasant
- (5) Q And in the late afternoon did the seas then calm back down again on the 23rd?
- (6) A It indicates about midnight then it went back to moderate and the swell was not in evidence
- (7) Q Would you turn please to the 23rd?
- (8) On the 23rd can you tell from the deck log where the ship was?
- (9) A Yes The ship was approaching Hinchinbrook in the morning They were testing gear What time of - they took arrival about 5 30 in the afternoon What we're seeing is the wind is coming back to the west, west northwest and pretty much the same kind of weather
- (10) Q During any time - and then of course on the 22nd you enter Prince William Sound or the ship enters Prince William Sound?
- (11) A That's correct
- (12) Q And the state of the sea and the chop in Prince William

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- (1) Sound is less than out in the Gulf of Alaska?
- (2) A On most occasions
- (3) Q On this occasion what was it?
- (4) A On this occasion in particular
- (5) Q Now at any time did the Valdez Sea and the Gulf of Alaska or in the Pacific Ocean be rough any more than that short period where there was perhaps a 10 to 15 foot sea?
- (6) A The indication of my log deck book is it was a pleasant trip for that kind of year and with the exception of the ground swell for at least 12 hours or so pretty nice trip weather wise
- (7) MR SANDERS May I approach Your Honor?
- (8) THE COURT You may
- (9) BY MR SANDERS
- (10) Q Captain in the spring of 1985 were you still the port captain for the gulf coast fleet?
- (11) A Yes I was
- (12) Q In the spring of 1985 did you have a conversation with Captain Joseph Hazelwood?
- (13) A Yes
- (14) Q Was this conversation face to face or some other way?
- (15) A It was a telephone conversation
- (16) Q Who called whom?
- (17) A I called Captain Hazelwood
- (18) Q Why did you call Captain Hazelwood?

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- (1) A I had received an anonymous phone call by an officer of a ship showing concern and I called -
- (2) Q Let me stop you just a second Let's take it slowly and one step at a time You said you received an anonymous call?
- (3) A Correct
- (4) Q Was it usual or unusual for you to receive calls from people who didn't want to give their name?
- (5) A On occasion it did happen Not on a daily basis but in the course of a month or so you may have it happen
- (6) Q Obviously the anonymous caller didn't tell you who he or she was Could you tell whether it was a he or a she?
- (7) A I believe was a male
- (8) Q Male Did that person tell you anything about who they were who he was?
- (9) A No all he said he was an officer who had sailed with Captain Hazelwood
- (10) Q Tell the jury as best you can what this caller said
- (11) A As I said before he said before he identified himself as an officer he had sailed with Captain Hazelwood and he wasn't going to give his name but he was calling me as a friend of Captain Hazelwood saying that I needed to talk to him basically of concern that things weren't going well for Joe or things weren't right for Joe He's different than he had been
- (12) Q Did you ask this caller any questions?
- (13) A I don't recall that

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- (1) Q Did this caller say to you that what was not right with Joe  
(2) had to do with the way he was doing his job?  
(3) A No it seemed like it was more on a personal level  
(4) Q You said he called you as a friend meaning he called you  
(5) as a friend or the caller was Joe's friend?  
(6) A No that I was Joe's friend  
(7) Q Is there anything else that you can recall of significance  
(8) that the caller told you?  
(9) A No  
(10) Q All right Now at the time that you received this  
(11) information this call had you had any other information  
(12) indicating to you that things weren't right with Joe Hazelwood?  
(13) A I had no concrete incident so to speak I did have a  
(14) feeling or an undercurrent that something wasn't going  
(15) right  
(16) with Joe  
(17) Q Is there anything or any person you can put your finger on  
(18) here to tell the ladies and gentlemen of the jury the source or  
(19) the nature of this what you call an undercurrent?  
(20) A No, I can't Not at this time  
(21) Q I guess it's hard to describe or pull apart an  
(22) undercurrent but did the undercurrent as you perceived it  
(23) have anything to do with Joe's job performance?  
(24) A No that was never mentioned job performance in the  
(25) professional sense It's more on a dealing with people  
Q Captain had you been in the office continuously through

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- (1) this period of time? I forgot to ask you Can you fix the  
(2) date of this call from the anonymous caller?  
(3) A I believe it was late March  
(4) Q All right And in a minute we're going to get to the call  
(5) to Captain Hazelwood Was it the same day?  
(6) A Yes it was  
(7) Q So after you got the call from the anonymous caller you  
(8) then called Captain Hazelwood?  
(9) A That's correct  
(10) Q And this was in late March?  
(11) A Yes  
(12) Q Had you been in the office prior to late March? Had you  
(13) been in the office at Baytown continuously going backwards?  
(14) A No I had not  
(15) Q How long had you been in the office when this call came in?  
(16) A Probably less than a week  
(17) Q All right Where had you been?  
(18) A Starting in late fall, '84 we had entered into union  
(19) negotiations with our unlicensed personnel took through  
(20) November December I had taken a holiday at Christmas  
(21) and  
(22) then we reached negotiations in January February right up  
(23) into March So I had just recently come back into the office  
(24) Q Where had these negotiations occurred at least in '85?  
(25) A Like they were split between Texas and New Jersey area  
Q And in the winter and early spring of 1985 had you been in

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- (1) New Jersey?  
(2) A Yes  
(3) Q So where you had this call you had come from New Jersey  
(4) back to the office in Baytown Texas Was that your regular  
(5) office as port captain?  
(6) A Yes  
(7) Q And you had been there about a week when you got this  
(8) call?  
(9) A Correct  
(10) Q And this undercurrent that you have told us about when did  
(11) you pick that up?  
(12) A When I came back to the office As a routine, even  
(13) though  
(14) I was checking in with secretaries and shift, I went through  
(15) all the masters, what all the ships were doing And again,  
(16) there was nothing definite, but it just seemed like there was  
(17) something not quite right with Joe, then though he was on  
(18) vacation at that time  
(19) Q All right Now, let's go to the call to Captain  
(20) Hazelwood This is in late March?  
(21) A That's correct  
(22) Q You called him?  
(23) A Yes  
(24) Q Where did you call him?  
(25) A At his home in Huntington, New York  
Q Did you reach him?  
A Yes, I did

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- (1) Q Did you have a conversation with him?  
(2) A Yes  
(3) Q Would you tell the ladies and gentlemen of the jury the  
(4) conversation that you had with Captain Hazelwood?  
(5) A Very short conversation He learned that I had received a  
(6) anonymous phone call And basically said, if something is  
(7) troubling you Joe you need to seek help, if it is not, we  
(8) need to understand what is going on  
(9) Q Did you say anything more?  
(10) A No, I did not  
(11) Q What did he say?  
(12) A Said I'll think about it  
(13) Q Did he say anything else?  
(14) A No  
(15) Q Did you say anything else?  
(16) A No  
(17) Q After you had this phone - that ended the call I guess?  
(18) A That ended the call  
(19) Q After you had this call - well let me ask you In your  
(20) anonymous call with the officer the male officer was the word  
(21) alcohol ever used?  
(22) A No it was not  
(23) Q Was there any suggestion that you could detect from the  
(24) anonymous caller that any of this had anything to do with  
(25) alcohol?

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- (1) **A No sir**
- (2) **Q In your detection of this undercurrent did it have anything to do with so far as you could perceive it with alcohol?**
- (3) **A No**
- (4) **Q And obviously given your recounting of the conversation with Captain Hazelwood alcohol was not mentioned in that call correct?**
- (5) **A That's correct**
- (6) **Q At the time you called Captain Hazelwood and told him what you told him did you have an opinion to the extent we lay people can have opinions about what was troubling Joe?**
- (7) **A Yes, I did**
- (8) **Q What was that opinion and if you would tell the jury not only what your opinion was, but what you base that on**
- (9) **A Having known Joe as I did through the years, and also having mutual friends with Joe, often talked about him, we all knew that he was given to what we call black moods or dark moods, and he would go into these purple funks and tend to be a little bit more reclusive than normal He could become very sarcastic, not very pleasant to be around So my feeling was that - and it's extremely noticeable in the master's position when all of a sudden gregarious caring persons becomes affected like that, it affects his crew treatment And I felt that's probably what was happening**

- (1) you made to Captain Hazelwood and the call that he made back
- (2) to you all occurred on the same day?
- (3) **A Yes**
- (4) **Q In this next call would you tell the ladies and gentlemen of the jury what the discussion was who said what?**
- (5) **A Again it was a very short conversation and Captain Hazelwood agreed that perhaps he should seek some help**
- (6) **Q Wait a minute Try not to summarize - try to say as best you can - what did he say actually and what did you say actually?**
- (7) **A He called back and said that he was going to seek help and how to go about doing that**
- (8) **Q All right Did he say what kind of help?**
- (9) **A No he didn't**
- (10) **Q Did you ask him what kind of help?**
- (11) **A No I did not**
- (12) **Q Why didn't you ask him?**
- (13) **A I felt it was a private matter Both of us being private people that if he wanted to tell me he would have or he would tell me at the appropriate time**
- (14) **Q You didn't ask him?**
- (15) **A I did not ask him**
- (16) **Q Did you ask any questions kind of designed to slip around the edges of it and try to find out what it was?**
- (17) **A No**

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- (1) **Those moods were coming more and more frequently and it was troubling to people that were sailing with him**
- (2) **Q Is that what you thought the anonymous caller was telling you?**
- (3) **A Yes**
- (4) **Q Is that what you thought the undercurrent was?**
- (5) **A Yes**
- (6) **Q Now when you finished the telephone call with Captain Hazelwood did you report either your anonymous call or this undercurrent or your call to Captain Hazelwood to anyone?**
- (7) **A No, I did not**
- (8) **Q Why not?**
- (9) **A Well, I felt that the anonymous caller was calling me to let them know that a friend of mine basically was having problems of some sort And I was calling Joe to let him know that it was becoming prevalent and noticeable Again as a friend**
- (10) **Q Did you have anything to report?**
- (11) **A And I had nothing to report**
- (12) **Q All right Did Captain Hazelwood - did you talk to Captain Hazelwood again after this call?**
- (13) **A Later that afternoon, Captain Hazelwood called me**
- (14) **Q This is the same day now?**
- (15) **A That's - the same day**
- (16) **Q In other words the anonymous call the - the call that**

- (1) **Q When he said that he had decided to seek help he asked you what to do?**
- (2) **A Yes he asked how to go about doing it**
- (3) **Q And what did you take that to mean?**
- (4) **A Well who does he contact within the organization to get approval for the medical process**
- (5) **Q Captain Pierce in the spring of 1985 was there a process or a program in Exxon Shipping Company for a person who had some sort of a medical problem?**
- (6) **A Yes**
- (7) **Q All right And what was the - would you describe briefly what that program was? What benefit was there to the employee?**
- (8) **A In addition to the normal surgical physical dental programs the company had what we called an employee assistance program or help And that revolved around dependency or counseling -**
- (9) **Q When you say dependency what do you mean drugs or alcohol?**
- (10) **A Drugs and alcohol dependency**
- (11) **Q All right Counseling?**
- (12) **A Counseling And for mental health or for a myriad of reasons**
- (13) **Q Was there a specific person at that time in Exxon Shipping Company that was kind of the contact point for an employee who wished to avail himself or herself of such benefits?**

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- (1) A That's correct The administrative manager was the  
 (2) contact  
 (3) Q And when he asked you who to contact or how to go about  
 (4) doing it what was your response to him?  
 (5) A I told him to contact a Mr Ben Graves in the Houston  
 (6) office, and he would lay out the paperwork and the process  
 to  
 (7) go about getting help  
 (8) Q By the way, did you make a response to the news that he was  
 (9) going to seek help?  
 (10) A I just remember saying good  
 (11) Q Now did you say anything else in this conversation or did  
 (12) he say anything else in this conversation?  
 (13) A No again it was a very short conversation  
 (14) Q All right You gave him the name of Ben Graves?  
 (15) A Yes  
 (16) Q Did you yourself contact Ben Graves?  
 (17) A Yes, I did I called Ben shortly after, basically make  
 (18) sure he was in the office for Joe's call  
 (19) Q Did you talk to Ben Graves?  
 (20) A Yes  
 (21) Q What did you say to him?  
 (22) A I said one of - one of my masters would be calling him  
 (23) shortly in relation to this EHAP thing  
 (24) Q Did he make a response to that?  
 (25) A He says Does the captain's name start with H

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- (1) Q And your response?  
 (2) A Yeah  
 (3) Q Did you ask Mr Graves how he was able to guess the first  
 (4) initial?  
 (5) A No I did not  
 (6) Q Did you have any idea of how he would have come up with  
 (7) that response?  
 (8) A No unless it was associated again with this undercurrent  
 (9) we seemed to be having  
 (10) Q But other than that you don't know why Ben Graves would  
 (11) have asked that question?  
 (12) A No I do not  
 (13) Q But you answered the question?  
 (14) A Yes  
 (15) Q Did you have any further conversation with Mr Graves?  
 (16) A No  
 (17) Q Did you have any further conversation on this date or later  
 (18) on with Captain Hazelwood?  
 (19) A Yes a couple of days later when Captain Hazelwood  
 entered  
 (20) into the medical facility he called me to let me know that he  
 (21) was going in And at that time I initiated his leave for  
 (22) medical purposes  
 (23) Q While we're there how did you - well no Let me back  
 (24) up  
 (25) At the time that Captain Hazelwood told you he was going to

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- (1) a hospital did he give you the name of the hospital?  
 (2) A No, I don't recall him giving me that name  
 (3) Q Did he tell you what kind of hospital it was?  
 (4) A No  
 (5) Q Did he tell you what kind of treatment he thought he was  
 (6) going to receive in that hospital?  
 (7) A No  
 (8) Q At that time did he tell you what he perceived to be his  
 (9) problem or problems?  
 (10) A He did not  
 (11) Q Did you ask him?  
 (12) A No  
 (13) Q Did you inquire indirectly to try to determine what kind of  
 (14) problem or what kind of treatment he was going to have?  
 (15) A No, I didn't Again, I felt that was a very private affair  
 (16) and he would tell me when he felt it was appropriate to do  
 so,  
 (17) if ever  
 (18) Q All right As port captain - not as Mark Pierce friend of  
 (19) Joe Hazelwood but as Port Captain Mark Pierce - did you think  
 (20) you should ask him any of those questions at the time that he  
 entered or was going to enter this facility?  
 (21) A Not at that time  
 (22) Q Why not?  
 (23) A Basically taking that giant step, that realizing he may  
 (24) need help I thought that was enough for him to deal with.  
 And

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- (1) hopefully that would resolve whatever the problem was  
 (2) Q All right I take it you didn't want to rock the boat?  
 (3) A Correct  
 (4) Q Now up until this time then of course alcohol is not  
 (5) mentioned in any of the conversations you're having with  
 (6) anybody Captain Hazelwood the anonymous caller or Ben  
 Graves?  
 (7) A Yes that is correct  
 (8) Q Did you find out from either Captain Hazelwood or  
 (9) Mr Graves whether or not Captain Hazelwood had called  
 (10) Mr Graves?  
 (11) A No, I didn't  
 (12) Q Okay What is the next contact that you had in respect to  
 (13) Captain Hazelwood?  
 (14) A Talking to him personally?  
 (15) Q Yes  
 (16) A When he -  
 (17) Q Or if anyone else in the company or any friend contacted  
 (18) you What is the next thing that happened?  
 (19) A Well I called shortly thereafter and talked to Mrs  
 (20) Hazelwood Again that conversation revolved more around  
 how  
 (21) she was doing than Joe was doing Then he contacted me  
 either  
 (22) after he had gotten out of the program or shortly thereafter,  
 (23) regarding a leave of absence  
 (24) Q Now let me - I'm going to come back to this in a minute  
 (25) but let's go back to the call to Mrs Hazelwood



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- (1) Did Mrs Hazelwood - you asked her how she was doing?  
 (2) A Yes  
 (3) Q And then you asked her - did you ask her if you could get  
 (4) in contact with Captain Hazelwood?  
 (5) A I believe I did She said no he was - some sort of  
 (6) facility  
 (7) Q Did she tell what you kind of facility it was?  
 (8) A No  
 (9) Q Did you ask her?  
 (10) A No  
 (11) Q Did you get any sort of date from her as to when he might  
 (12) be out of the facility or able to be contacted?  
 (13) A She said it was about a month  
 (14) Q Okay Did you have more than one conversation with her  
 (15) over this month period of time?  
 (16) A Yes, I did I think I called her two or three times  
 (17) Q In any of these conversations did she ever tell you  
 (18) exactly where Joe Hazelwood was?  
 (19) A No  
 (20) Q Did she ever tell what you kind of treatment he was  
 (21) receiving?  
 (22) A No  
 (23) Q All right Did you - when did you find out what kind  
 (24) of - or anything about the treatment that Captain Hazelwood  
 (25) was undergoing?

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- (1) A Specifically or -  
 (2) Q Well anything about it  
 (3) A - anything about it?  
 (4) Q (Nods head)  
 (5) A When Captain Hazelwood called me in relation to the  
 (6) leave  
 (7) of absence it was - as I recall him saying was to attend  
 (8) meetings, you'd be a patient in meetings like an AA  
 (9) Q And by AA you took that to mean Alcoholics Anonymous?  
 (10) A Yes  
 (11) Q And he said meetings like AA?  
 (12) A Right  
 (13) Q And under the Exxon process let's call it at that time  
 (14) was a person who was receiving medical treatment entitled to  
 (15) be  
 (16) paid during that?  
 (17) A Yes  
 (18) Q All right And if a person was going on a leave of  
 (19) absence would they be paid?  
 (20) A Not necessarily  
 (21) Q Okay In any event Captain Hazelwood was calling you  
 (22) to - he wanted to you help him get this leave of absence is  
 (23) that the gist of it?  
 (24) A The gist of it is he didn't want to go back to see he  
 (25) needed some more time  
 (26) Q Did you in fact intercede on his behalf and see if you  
 (27) could arrange a leave of absence?

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- (1) A Yes I did  
 (2) Q Do you remember how long that leave of absence was your  
 (3) best recollection?  
 (4) A My recollection it was two months 60 days  
 (5) Q Did you contact anybody?  
 (6) A Yes I called our fleet manning person in Houston  
 (7) Q Who was that do you remember?  
 (8) A Helen Surret And alerted her that Captain Hazelwood  
 (9) wouldn't be available for another two months  
 (10) Q Captain Pierce when you had the conversation with Captain  
 (11) Hazelwood in which he told you that he was going to attend  
 (12) among other things meetings like AA did he tell you anything  
 (13) else about his treatment?  
 (14) A No he did not  
 (15) Q Did you ask him anything else about his treatment?  
 (16) A No  
 (17) Q Did you infer or deduce anything from the fact that he said  
 (18) he was going to attend meetings like AA?  
 (19) A Well the inference was a support group outside of  
 (20) whatever  
 (21) treatment he had had And the fact that he used AA I may  
 (22) have  
 (23) associated that may have been a component of it also  
 (24) Q You thought that this treatment or this problem did involve  
 (25) alcohol in some way or another?  
 (26) A At that point it may have been a component of that  
 (27) Q Did that change your opinion as to what the problem was

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- (1) that he needed help for?  
 (2) A No it didn't  
 (3) Q But you were aware at least that there was some involvement  
 (4) with alcohol at some level in his treatment or program  
 (5) correct?  
 (6) A At that point  
 (7) Q Now if the record in this case and all the other records  
 (8) show that this leave of absence was 90 days would you  
 (9) disagree  
 (10) with that You said your recollection is 60 If it's 90  
 (11) would that -  
 (12) A Could be 90  
 (13) Q Okay  
 (14) Counsel - my friend counsel have said at various times in  
 (15) this case starting from the beginning that the information  
 (16) that you got and the reason you called Captain Hazelwood in  
 (17) the  
 (18) first place had to do with job performance True or untrue?  
 (19) A Untrue I had nothing indicating Captain Hazelwood's  
 (20) performance was any different as it related to the  
 (21) profession  
 (22) he was employed  
 (23) Q Now Captain Pierce when did you leave your job as gulf  
 (24) coast port captain?  
 (25) A Mid June of '85 That same year  
 (26) Q Now this then is about a month or so after you have this  
 (27) call with Captain Hazelwood about the leave of absence?  
 (28) A Yes

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- (1) Q And you make the call to Helen Surret to advise her that  
 (2) he is requesting this leave of absence  
 (3) A Yes  
 (4) Q Was the leave of absence granted as far as you know? You  
 (5) can recall?  
 (6) A As far as I know it was  
 (7) Q From the time that you had this conversation with Captain  
 (8) Hazelwood and this conversation with Helen Surret do you  
 (9) recall having any other communication with Captain Hazelwood  
 (10) before you left this job as port captain?  
 (11) A No  
 (12) Q When you left the job as port captain in the middle of June  
 (13) of 1985 did you go straight back to a ship?  
 (14) A No I did not Returned to my home in Nevada and took a  
 (15) lot of accrued time off  
 (16) Q Did you ultimately get back to the ship?  
 (17) A Yes, I did  
 (18) Q What ship?  
 (19) A The Exxon Boston  
 (20) Q And do you remember when that was?  
 (21) A Either be the September time frame of '85  
 (22) Q So from the time that you left the job at port captain in  
 (23) the middle of June through August were you more or less  
 (24) around  
 (25) home?  
 (26) A Yes

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- (1) Q Now before you left did you have any occasion to have any  
 (2) discussions about masters in the gulf coast fleet with your  
 (3) successor?  
 (4) A I did  
 (5) Q Who was your successor?  
 (6) A Captain William Sheehy  
 (7) Q And did you have any conversation with Captain Sheehy  
 (8) about  
 (9) Captain Hazelwood?  
 (10) A I did At the time we were going through all our masters  
 (11) and when we came to Captain Hazelwood I told Captain  
 (12) Sheehy  
 (13) that he was on medical leave and would be available  
 (14) sometime  
 (15) later in the summer and he would let them know  
 (16) Q Did you tell Captain Sheehy anything more than that in  
 (17) let's say early June when you had this conversation? Did you  
 (18) tell him anything more than that the captain was on medical  
 (19) leave?  
 (20) A No  
 (21) Q Why?  
 (22) A As I understood the policy at the time there was a  
 (23) confidentiality part to it And again as I previously stated  
 (24) both Captain Hazelwood and I are private people and I  
 (25) respected that very much And tried to abide by it  
 (26) Q Did there come a time however when you did tell Captain  
 (27) Sheehy more about Captain Hazelwood and the medical leave?  
 (28) A Later that day Captain Sheehy called me about a meeting

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- (1) that he had had or was requested to have with Captain  
 (2) Hazelwood  
 (3) Q Are - let me ask you about that  
 (4) Did he call you you think before the meeting or after the  
 (5) meeting or do you know?  
 (6) A Well I believed it was after the meeting  
 (7) Q In any event tell the ladies and gentlemen of the jury as  
 (8) best you can recall what he called you about What did he say?  
 (9) A He was a little bit confused why he was meeting with  
 (10) Captain Hazelwood, what the gist was And he was calling  
 (11) to  
 (12) find out if I could impart more of that information to him  
 (13) Q And did you?  
 (14) A I think in a very vague way but I was still under this  
 (15) confidentiality thing, trying to protect that privacy  
 (16) Q Were you also as a friend trying to protect Joe's  
 (17) privacy?  
 (18) A Correct  
 (19) Q Well did you tell Captain Sheehy in vague or otherwise  
 (20) terms that this treatment did involve or this program or this  
 (21) problem whatever words you used involve alcohol?  
 (22) A Not that I'm readily aware of, in those terms That he had  
 (23) been in a counseling program Captain Sheehy may have  
 (24) inferred  
 (25) or maybe I used words that would allow him to infer, but I  
 (26) don't remember again coming right out and saying  
 (27) Q Did you say anything about this being Captain Hazelwood's

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- (1) last chance?  
 (2) A I don't recall saying those words  
 (3) Q Did you say anything to him in the way of asking Captain  
 (4) Sheehy to let Captain Hazelwood know something like that?  
 (5) A I think in the discussion we were having, I was a little  
 (6) bit misunderstood why Captain Sheehy was having this  
 (7) discussion It wasn't taking place with somebody from line  
 (8) management and I may have inferred to Captain Sheehy  
 (9) that I  
 (10) hope somebody in that line management position would  
 (11) have told  
 (12) Captain Hazelwood this was his last chance if, in fact,  
 (13) alcohol  
 (14) was involved  
 (15) Q I take it you were somewhat critical of the fact that it  
 (16) was Captain Sheehy having this conversation instead of  
 (17) someone  
 (18) in line management?  
 (19) A I felt that it was really a line management, administrative  
 (20) manager's point to have that discussed and let Captain  
 (21) Hazelwood know what happens from this point forward  
 (22) Q Did you have any further conversations with Captain Sheehy  
 (23) that you can recall concerning Captain Hazelwood?  
 (24) A Not that I recall  
 (25) Q Now did you have further communications after Captain  
 (26) Hazelwood returned to duty with Captain Hazelwood?  
 (27) A Well through the summer and until I returned to sea I  
 (28) called him on occasion just to see how he was doing  
 (29) Q And how was he doing?

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- (1) **A He appeared to be doing well**
- (2) **Q All right After he returned to sea and after you returned to sea did you maintain this friendship with him?**
- (3) **A Yes And the - the correspondence continued and the book**
- (4) **exchange between us**
- (5) **Q What kind of books did you all exchange?**
- (6) **A Books like Between the Deep Blue Water and the Devil things like that again maritime history type books**
- (7) **Q Did you have an occasion in this succeeding period of time to see and observe Captain Hazelwood?**
- (8) **A Occasionally we would meet at company sponsored supported**
- (9) **conferences meetings and training session**
- (10) **Q Let's take conferences first Do you have a recollection of seeing Captain Hazelwood at any fleet conferences in '85 '86 '87 '88?**
- (11) **A Don't remember the specific year but I know we attended at**
- (12) **least one of those type of conferences together yes**
- (13) **Q Did you other than these conferences training sessions et cetera did you see him at any other place or any other occasion?**
- (14) **A We were together for an extended period of time in Dallas Texas in -**
- (15) **Q I'm going to get do that That's in '89 Let me stay on this side of 1989 for a second**
- (16) **A Okay**

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- (1) **Q Other than fleet conference and say training sessions did you - did you have occasion to see Captain Hazelwood face to face in person?**
- (2) **A I think there was one occasion where I relieved him in Baton Rouge That was a brief exchange over - he was flying**
- (3) **out almost immediately and I got on the - I believe it was the Yorktown or the Princeton one or the other**
- (4) **Q Did you all have time to have dinner?**
- (5) **A No we didn't**
- (6) **Q How did he look to you when you saw him on those occasions**
- (7) **let's say prior to January 1 1989?**
- (8) **A He looked good**
- (9) **Q And from the tone of the conversations that you had with him and from the tone of the letters exchanged and the correspondence how did you think he was doing?**
- (10) **A It seemed that the relationship was as it had been before He had entered into treatment He seemed to be in good spirits**
- (11) **Q At these fleet conferences or meetings did you happen to have occasion to see Captain Hazelwood in a social setting?**
- (12) **A Yes**
- (13) **Q Did you happen to see Captain Hazelwood in a setting where alcohol was either provided or available?**
- (14) **A Yes**
- (15) **Q Do you have a recollection as to whether or not Captain**

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- (1) **Hazelwood drank at any of these occasions?**
- (2) **A I can -**
- (3) **Q Drank alcohol?**
- (4) **A Never drank alcohol in my presence yeah His preference**
- (5) **was the tonic water with a piece of lime in it**
- (6) **Q Now let's go to 1989**
- (7) **Did you - you mentioned attending some sort of training session with Captain Hazelwood Would you tell the ladies and gentlemen of the jury what that was?**
- (8) **A A group of masters in '89 in the winter of '89 were sent to Dallas to FCC federal communications course**
- (9) **Q Was Captain Hazelwood in that group?**
- (10) **A And he was part of that group yes**
- (11) **Q How long did that course last?**
- (12) **A Seemed like forever**
- (13) **Q But in fact how long did it last?**
- (14) **A More than two weeks**
- (15) **Q Over two weeks**
- (16) **In Dallas in the wintertime?**
- (17) **A Right**
- (18) **Q Attending a radio course?**
- (19) **A Yes a radio electronics course**
- (20) **Q And how many hours a day would you have to spend in the classroom or in the course?**
- (21) **A Seemed like we were there in the beginning at least eight**

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- (1) **hours in a classroom setting Fight to nine hours Towards the end of the second week course shortened we were supposed**
- (2) **to study on our own**
- (3) **Q Did you have a chance to observe Captain Hazelwood on a almost minute by minute basis over this two week period?**
- (4) **A I did We - in fact in the afternoons when we were supposed to be studying usually went to the movie and we also**
- (5) **had dinner**
- (6) **Q Are you trying to tell us you didn't study at the end of this course?**
- (7) **A We passed the course**
- (8) **Q Did you have occasion to go out and socialize?**
- (9) **A Yes we did**
- (10) **Q Did you do that just you and Captain Hazelwood or were other people in the group?**
- (11) **A Usually a large section of the group went out each night to**
- (12) **dinner**
- (13) **Q At these dinners did anyone partake of alcoholic beverages?**
- (14) **A Usually there was a cocktail and then a bottle of wine that we split around**
- (15) **Q Did Captain Hazelwood have any wine or any cocktail?**
- (16) **A No he did not In fact we kiddingly called him the designated driver, and that's what he was**
- (17) **Q Now were you with him at each - at each evening for**

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- (1) dinner or were there times when he stayed away or you stayed  
(2) away?  
(3) A Yes, I'm - there were both those over that extended  
period  
(4) of time  
(5) Q All right But did you have a fair number of times where  
(6) you actually went out for an evening and had a meal had a  
(7) cocktail and had a glass of wine or maybe even two glasses of  
(8) wine?  
(9) A Yes  
(10) Q And so during this entire period in early 1989 Captain  
(11) Hazelwood did not drink when others did?  
(12) A That's correct  
(13) MR SANDERS Thank you captain  
(14) THE COURT You may cross examine  
(15) CROSS EXAMINATION OF MARK PIERCE  
(16) BY MR O NEILL  
(17) Q You have said in the courtroom as counsel said that your  
(18) call to Captain Hazelwood was job related and work related  
(19) And I'm going to explore that subject with you right now  
(20) Your understanding of Captain Hazelwood's problems by the  
(21) summer of 1985 the problems that led him to go on medical  
(22) leave was that he was having some family problems marital  
(23) problems depression problems and job problems Is that a  
(24) correct statement?  
(25) A I think with the job portion of it - previous to that

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- (1) that is all correct The job portion it was more of an  
(2) administration part of the job not the technical part  
(3) Q You were deposed in this lawsuit civil action on August  
(4) 3rd 1993 Isn't that correct?  
(5) A Yes that's correct  
(6) Q And you took an oath to tell the truth That's a correct  
(7) statement?  
(8) A Yes  
(9) Q And at that deposition you were asked the question Okay  
(10) by the summer of 1985 did you have an understanding as to  
what  
(11) Captain Hazelwood's problems were that led him to go on  
medical  
(12) leave?  
(13) Answer No definitely no  
(14) Okay did you have a general understanding?  
(15) Yes  
(16) What was your general understanding of those problems?  
(17) Answer I think he was having some family problems  
(18) marital problems Again I think there was some depression  
(19) problems job problems I think we could add them all up  
(20) Do you see that testimony?  
(21) A Yes I do  
(22) Q Was that the question asked and was that the answer given?  
(23) A So it's stated here  
(24) Q Let's go to page 87 of your deposition transcript Go to  
(25) line 6 and we'll go all the way through 88 on line 1

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- (1) Line 16  
(2) The question was When did you speak to him about his job  
(3) performance?  
(4) And the answer was I believe it was last - the last week  
(5) of March 1985 first week of April 1985  
(6) What caused you to have this conversation with Captain  
(7) Hazelwood?  
(8) Answer I received an anonymous telephone call from an  
(9) officer That's how he identified himself It was a phone  
(10) call of concern that something was troubling Hazelwood to the  
(11) extent it was affecting the way he conducted business on the  
(12) ship  
(13) Do you see that?  
(14) A Yes, I do  
(15) Q And that was the question that was asked you and the  
answer  
(16) that you gave?  
(17) A That's correct  
(18) Q And in your testimony here today would it be fair to say  
(19) that you studiously avoided bringing to the attention of the  
(20) jury the fact that the anonymous caller told you that something  
(21) was troubling Captain Hazelwood to the extent that it was  
(22) affecting the way he conducted business on the ship?  
(23) A I don't believe "avoid" is particularly correct Let me  
(24) clarify that  
(25) As master my opinion is you have to have three spheres

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- (1) You have a private sphere behind your closed door, you  
have a  
(2) professional sphere which is operation the safe conduct of  
the  
(3) vessel, and then there's a business sphere which is your  
(4) interaction with people And that's what I inferred from that  
(5) statement -  
(6) Q Is that statement -  
(7) A - is his interaction with people was being affected  
(8) Q My question for you sir is did you studiously avoid  
(9) telling us here today that part of the report from you or the  
(10) report to you from the anonymous caller? Did you avoid telling  
(11) us that?  
(12) A No I did not  
(13) Q Now we have seen at least three times in your deposition  
(14) transcript where you talk about job problems job performance  
(15) and now getting a report that something was troubling  
Hazelwood  
(16) to the extent that it was affecting the way he conducted  
(17) business on the ship Do you see that?  
(18) A Yes  
(19) Q Now after this telephone call you called Captain  
(20) Hazelwood and you told Captain Hazelwood - your testimony  
here  
(21) today was We need to understand what's going on and your  
(22) testimony at the time of your deposition transcript was If he  
(23) didn't feel that there was any problem or he was performing  
(24) his job as he always had then let's talk about that why other  
(25) people perceived that there had been a change

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- (1) Those other people were people on the job weren't they?  
 (2) A Yes  
 (3) Q And then after you talked to Captain Hazelwood that same day you called Ben Graves Is that a correct statement?  
 (4) A After Captain Hazelwood had called me back  
 (5) Q I'm sorry you're correct  
 (6) Now Ben Graves is the author of the Graves report you're aware of the Graves report - although you didn't see it at the time is that a correct statement?  
 (7) A Just in conference with counsel the only time I've seen it  
 (8) Q And I won't get into that  
 (9) But this is the same Ben Graves isn't it B C Graves Junior?  
 (10) A Yes  
 (11) Q And Mr Graves report has a date of May 19 and May 28 but your call to him had to be in early April isn't that correct?  
 (12) A Yes  
 (13) Q And Mr Graves said to you when you said I have trouble with a captain Mr Graves said to you Does his name start with H?  
 (14) A That's correct  
 (15) Q And Mr Graves was over the human resources department?  
 (16) A Yes he was in charge of that department  
 (17) Q Now there's another telephone call that takes place

- (1) A That's incorrect  
 (2) Q His ship didn't fall under your responsibility at all?  
 (3) A I wasn't a ship group coordinator  
 (4) Q I'm sorry what were you?  
 (5) A I was a port captain and as such I liaised between the ships and line management  
 (6) Q Including Captain Hazelwood's ship?  
 (7) A Including his ship yes  
 (8) Q And that was part of your duties?  
 (9) A That's correct  
 (10) Q And the anonymous telephone caller who called if in fact he was a ship's officer and working with Captain Hazelwood was  
 (11) a part of his duties?  
 (12) A Yes  
 (13) Q And I want to - you tell this series of events in 1985 but other people have come in here and have said that Captain Hazelwood was the most monitored man in the fleet Okay?  
 (14) You're aware of no monitoring are you?  
 (15) A In what time period?  
 (16) Q Time period that you worked - the time period that you worked with Captain Hazelwood  
 (17) A Well we had contact with Captain Hazelwood as we would any  
 (18) other master during that time frame  
 (19) Q You're aware of no monitoring are you?  
 (20) A No

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- (1) sometime thereafter and that is to Mr Tomkins And that's to inform Mr Tomkins that Captain Hazelwood was going on leave or  
 (2) on disability leave?  
 (3) A That was not a phone call  
 (4) Q It was?  
 (5) A It was a conversation with person in the office in Baytown  
 (6) and I informed Mr Tomkins that Captain Hazelwood was going on  
 (7) medical leave  
 (8) Q And Mr Tomkins was your boss and his boss?  
 (9) A That is correct  
 (10) Q And Mr Tomkins had a one word answer or a one word response to this information and his one word was -  
 (11) A As I recall was "good"  
 (12) Q Good  
 (13) And the anonymous caller who - the anonymous caller called you in a situation where you already had full some  
 (14) undercurrent that something was wrong?  
 (15) A That's correct  
 (16) Q And the anonymous caller identified himself as an officer at Exxon - Exxon Shipping Company?  
 (17) A Just said an officer who had sailed with Captain Hazelwood  
 (18) Q An officer who sailed with Captain Hazelwood And you were the - at that time you were the ship group coordinator and as  
 (19) part of your duties Captain Hazelwood's ship was a ship  
 (20) that - whose activities you coordinated?

- (1) Q And indeed you had information with regard to Captain Hazelwood and Captain Hazelwood going into a hospital for some  
 (2) kind of treatment and later on that Captain Hazelwood had something to do with Alcoholics Anonymous and you passed that  
 (3) on in one cryptic conversation to Mr Tomkins and you passed it on to nobody else did you?  
 (4) A I'm not aware that I passed it on to Tomkins other than he was going on medical leave  
 (5) Q Thank you  
 (6) REDIRECT EXAMINATION OF MARK PIERCE  
 (7) BY MR SANDERS  
 (8) Q Captain Pierce you left the gulf coast fleet port captain's job in June of 1985 correct?  
 (9) A Yes  
 (10) Q And Captain Hazelwood didn't return to his job as the master of the Yorktown until August of 1985 - 85 isn't that correct?  
 (11) A Yes  
 (12) Q So therefore there was no monitoring that could have happened in the gulf coast that you would have known anything about correct?  
 (13) A That's correct  
 (14) Q Where were you in the fall of 1985 and all through 1986 and all through 1987?  
 (15) A Attending my own ship the Exxon Boston

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- (1) Q And what waters were you sailing in?
- (2) A At that time she was sailing from Baytown Texas to Santa Barbara on the Hondo trade and subsequently in '87 tramp trade
- (3) most everywhere including Valdez
- (4) Q Is there any way in this world that you would have monitored Captain Hazelwood aboard the Yorktown while you were sailing on the Exxon Boston in the Hondo trade or in the tramp trade?
- (5) A I had my hands full with my own ship couldn't have monitored his
- (6) Q Now you were asked a series of questions and shown your deposition by Mr. O'Neill and he wants to suggest that you're coming in here and holding your punches and not telling the jury everything. As a matter of fact, Captain Pierce did you not tell them in your deposition exactly what you have told this jury?
- (7) A That's correct
- (8) Q And at page 92 which is two or three pages beyond pages 86, 7 and 8 were you asked this question and did you give this answer?
- (9) Question - I'm reading down from line 21
- (10) Question - Let me begin again just so we're clear. I guess what I'm asking you is, was there something that - something in Captain Hazelwood's job performance, something in his mannerisms, something that Captain Hazelwood had done which

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- (1) led to this undercurrent that something was just not right with Joe?
- (2) Answer - No
- (3) Was that question asked and that answer given?
- (4) A That's correct
- (5) Q And then again over at page 234 beginning at line 16 was this question asked and this answer given?
- (6) Question - Now - this is referring to the anonymous caller
- (7) Now why do you think this individual called you?
- (8) Answer - I truly believe he called me because he felt I was a friend of Captain Hazelwood's. The context of the call as I expressed earlier was one of concern for an individual for a human being versus the professional end of it.
- (9) And then - was that question asked you at your deposition the very same day -
- (10) A Yes
- (11) Q - as these other questions and did you give that answer?
- (12) A Yes I did
- (13) Q And then again at page 243 line 24 question
- (14) Did you at any time have any reason to believe that there were issues relating to safety given Captain Hazelwood's job that was involved here?
- (15) Answer - I did not
- (16) And then finally at 246 - excuse me

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- (1) Did they ask you that question and did you give them that answer?
- (2) A Yes I did
- (3) Q And then at page 246 - this gets right to the nub of it
- (4) Captain question again at line 22
- (5) Okay well now you're using the word acting. But you did use the word performing in the earlier answer correct?
- (6) Answer - I know I did. That is correct. I had nothing to indicate that his performance as master or doing the job as master had changed.
- (7) Was that question asked and did you give that answer?
- (8) A Yes
- (9) Q Nothing further Your Honor
- (10) THE COURT Captain you may step down
- (11) (The witness stepped down)
- (12) THE COURT You may call your next witness
- (13) MS STEWART Your Honor the defendants call Dan Lawn Dan Lawn by video tape deposition
- (14) DIRECT EXAMINATION OF DAN LAWN (Video)
- (15) BY VIDEO EXAMINER
- (16) Q When did you become the supervisor in the Valdez district office?
- (17) A In the early '80s
- (18) Q Prior to January of 1983?
- (19) A I don't recall

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- (1) Q Why don't you look at exhibit 1081 then?
- (2) A Okay
- (3) Q So that indicates that as of July of 1982 you were the district office supervisor in Valdez correct?
- (4) A That's correct
- (5) Q And you remained the supervisor of that office at least up through the approval of the 1987 plan didn't you?
- (6) A I did
- (7) Q When did you cease to be the supervisor in that office?
- (8) A Summer to fall of '89 I don't recall the specific date
- (9) Q Sometime after the grounding of the Exxon Valdez?
- (10) A That's correct
- (11) Q Where did you actually board the pilot boat that went out to the Valdez?
- (12) A I believe it was at the dock that the Coast Guard uses which is an old ferry dock right below the Coast Guard station
- (13) Q How long was the ride out to the Valdez?
- (14) A I - wasn't real long, that - that boat was pretty fast as I recall
- (15) Q Was it two hours?
- (16) A Oh no it was in a matter of minutes
- (17) Q Minutes?
- (18) A Well I mean you know half an hour to an hour
- (19) Something like that is my best recollection I just - you know I don't recall real clearly

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- (1) Q Now let's point down who was on the boat with you. I believe it was yourself. It was Delozier from the Coast Guard?
- (3) A Delozier.
- (4) Q Delozier. What's his - what was his title?
- (5) A My recollection, he was in the Mess shop and dealt with oil pollution. He may have dealt with marine inspection too. I just don't recall.
- (8) Q And it was - the XL Falkenstein?
- (9) A Yes. Tom Falkenstein.
- (10) Q Did you find your way to the bridge on your own?
- (11) A I had been on enough vessels that I can find my way to the bridge on my own. I wasn't on my own as I recall. I was in the two Coast Guard people. I don't know whether there was a crewman there or not.
- (15) Q Now you went up to the bridge?
- (16) A I did.
- (17) Q And tell me who you saw as soon as you entered the bridge?
- (18) A My recollection of - the first person I remember is Captain Hazelwood.
- (20) Q What was he doing?
- (21) A As I recall, he was looking - I have a notion that he was looking out over the deck.
- (3) Q You recall that or this is -
- (4) A My - the thing that I remember most is when I saw him. He said Hi Dan. I believe I said Hi captain. I didn't

- (1) A I believe my testimony was my recollection - and my recollection is that he was pensive and - my recollection and my sense of Mr. Hazelwood was that he was pensive and that -
- (4) concerned about what had happened.
- (5) Q Would you consider that to be a normal reaction to -
- (6) A Hell yeah.
- (7) Q - the situation at hand? Sorry?
- (8) A Yes.
- (9) Q Did you can notice any impairment in a physical way on Captain Hazelwood? By that were his motor functions in any way impaired as best as you can tell from that initial meeting?
- (11) A I believe I earlier said that I - that wasn't the focus of what I was doing. I didn't recall anything that came to mind.
- (14) Q Did you notice any unusual speech patterns in the course of speaking with him in your initial -
- (16) A Not that I recall.
- (17) Q - contact?
- (18) Have you ever seen anyone intoxicated or under the influence of alcohol?
- (19) influence of alcohol?
- (20) A I have.
- (21) Q You've seen someone drunk basically?
- (2) A Yes.
- (3) Q Who - where has that happened?
- (4) A Well in the - life.
- (5) Q Did there come a time when you needed to use the MARSAT

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- (1) recognize him.
- (2) Q You hadn't recognized him when you first saw him?
- (3) A Yeah.
- (4) Q Didn't you just testify the first person you saw on the bridge was the captain?
- (6) A Well, what I'm saying is I learned that he - you know learned that it was at captain.
- (8) Q Did someone introduce him to you at that time?
- (9) A I don't have a good notion on that.
- (10) Q Now how close did you get to him?
- (11) A A few feet.
- (12) Q Did you shake his hand?
- (13) A I don't recall.
- (14) Q Now my question now related to your meeting on the bridge. That was what I asked you. And I asked you what you had testified at an earlier time I think in response to the question whether you had smelled alcohol on his breath or person and I believe your testimony at that time was that no you did not. Is that correct?
- (20) A That's - I think that's what I said just now too.
- (21) Q The other question I have and this is something I believe you've testified to earlier besides not smelling any alcohol on his breath or person at the time did you notice any unusual - anything else unusual about the captain at that time?

- (1) phone on the vessel?
- (2) A I did.
- (3) Q Did you not?
- (4) A Yes. I have some vague notion that the captain helped or at least made it possible for me to use the phone.
- (6) Q What do you mean made it possible? Did he hand you the phone?
- (8) A I have some notion that there was some instructions given to the radio officer or something of that nature.
- (9) to the radio officer or something of that nature.
- (10) Q Was he there physically when that happened?
- (11) A I have a recollection that I saw Captain Hazelwood in the radio room and on places other than just the bridge.
- (12) Q When you met the captain in the radio room did you smell alcohol on his breath or person?
- (14) alcohol on his breath or person?
- (15) A I don't recall that.
- (16) Q Did you see him acting in any - did you see any physical impairment about any of his actions?
- (17) impairment about any of his actions?
- (18) A I don't recall.
- (19) Q Did you see him speaking in a slurred manner?
- (20) A I don't recall no.
- (21) Q Now that's at least two times we've said that you've seen the captain on board the vessel right? Now you've mentioned a third time or - I'm not trying to suggest it's in this chronology by the way but you did mention passing him by in the stairs or -

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- (1) A I have a recollection of - I was either going downstairs  
(2) and he was coming up or vice versa and it's a very narrow  
(3) companionway and that is the first time that I was within a  
(4) foot or so of him  
(5) Q Now how soon after the initial meeting on the bridge was  
(6) that?  
(7) A I think it was sometime afterwards but I don't recall  
(8) the -  
(9) Q Was he going up the stairs or going down the stairs?  
(10) A I don't recall  
(11) Q Well let's see Let's turn to your - were you going up  
(12) and down stairs? By the way -  
(13) A Yes  
(14) Q - someone was going up and someone was going down?  
(15) A That's just what I testified to, yes, sir  
(16) Q Okay Did you see Captain Hazelwood having any difficulty  
(17) going up or down the stairs that you're referring to?  
(18) A I don't recall  
(19) Q Did he fall at any point or stumble that you recall?  
(20) A Not that I recall  
(21) Q By the way that passing in the stairway did that occur  
(22) before or after you were in the radio room with him during your  
(23) efforts to use the MARSAT phone?  
(24) A I don't know  
(25) Q You don't recall You don't recall -

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- (1) A I don't recall excuse me  
(2) MS STEWART Your Honor that concludes direct  
(3) examination of Dan Lawn of the Department of Alaska  
(4) Department  
(5) of Environmental Conservation  
(6) MS WAGNER Your Honor we have a short video  
(7) cross examination  
(8) CROSS EXAMINATION OF DAN LAWN (Video)  
(9) BY VIDEO EXAMINER  
(10) Q So is it fair to say that you eventually came to know as  
(11) Captain Hazelwood because you were either told that or you  
(12) had  
(13) that recognition at some point?  
(14) A Yes  
(15) Q One of those two possibly?  
(16) A Yes  
(17) Q And you don't recall which it is right now  
(18) A I don't It's been three years ago  
(19) Q Right  
(20) If it were the fact that you suddenly recognized him do  
(21) you assume that you got pretty close though him [sic] to  
(22) look - did you look him in the face did you look at his face  
(23) when you boarded the bridge?  
(24) A No more so than I would look to somebody's face that I  
(25) was  
(26) saying hello to or saying Hi I'm Dan Lawn or words to that  
(27) effect  
(28) Q Did he stick his hand out to shake your hand?

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- (1) A I don't have a good recollection of that  
(2) Q Okay How far apart do you think you were at your closest  
(3) point?  
(4) A I don't recall being closer at that point in time than a  
(5) couple of arm lengths  
(6) Q Okay That is what you meant by a couple of arm lengths?  
(7) A That's my recollection I believe my earlier testimony  
(8) was  
(9) I wasn't real close to him until several hours later or  
(10) sometime later  
(11) Q So if you shook his hand you would not consider that to be  
(12) real close to him is that what your testimony is?  
(13) A I guess the testimony I'm giving had to do with whether I  
(14) had my nose in his - around his breath close enough to  
(15) smell  
(16) alcohol and I testified that no that I didn't at that time  
(17) Q Now you just said you testified You mean at some prior  
(18) time you testified?  
(19) A I believe that in - at court in the Hazelwood matter  
(20) Q And you testified when asked whether you had smelled  
(21) alcohol on his breath or person you answered no that you did  
(22) not?  
(23) A My recollection is that I had two portions of that  
(24) testimony one being I didn't notice it until he and I passed  
(25) in a companionway or in the stairs which was sometime  
(26) later  
(27) when we were very close together  
(28) MS WAGNER That concludes the cross Your Honor

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- (1) MR SANDERS May it please the Court the defendants  
(2) call Ms Gabriella Guerra  
(3) THE CLERK Raise your right hand  
(4) (The Witness Is Sworn)  
(5) THE CLERK Please be seated  
(6) For the record please state your full name your address  
(7) and spell your last name please  
(8) THE WITNESS My full name is Gabriella Maria Guerra  
(9) My address is 5811 Valley Forge in Houston Texas My name  
(10) is  
(11) spelled G u e r r a  
(12) DIRECT EXAMINATION OF GABRIELLA GUERRA  
(13) BY MR SANDERS  
(14) Q Miss Guerra where are you employed?  
(15) A I'm with Sea River Maritime Incorporated  
(16) Q And that's Exxon right?  
(17) A That's correct  
(18) Q And before that how long have you been employed by  
(19) Exxon?  
(20) A I joined Exxon September 8th of 1969  
(21) Q Would you tell the ladies and gentlemen of the jury about  
(22) your educational background?  
(23) A I graduated from the University of Houston in secondary  
(24) education with chemistry and math is my teaching fields  
(25) and I  
(26) have some course work after that in computer science  
(27) Q Now in the spring of 19 and 85 what was your job at  
(28) Exxon?



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(1) A I was with Exxon Shipping Company in the administrative  
(2) department in human resources section there and I  
coordinated  
(3) the merit compensation program and administered the  
savings and  
(4) investment plan benefits and the disability benefits for the  
(5) ocean fleet  
(6) Q Now I want to ask you some questions today before I ask  
(7) you to put on your disability section hat  
(8) A All right  
(9) Q Okay  
(10) Now as the person who – were you the only person  
(11) responsible for disabilities the disabilities section for  
(12) Exxon Shipping Company?  
(13) A For the ocean fleet yes  
(14) Q What is in the ocean fleet?  
(15) A The deep sea tankers and the men and women that crew  
those  
(16) tankers  
(17) Q All right Was the Exxon Yorktown part of the ocean fleet?  
(18) A Yes sir  
(19) Q And was Captain Hazelwood a person as master of the  
(20) Yorktown that was within your realm there as the disabilities  
(21) person?  
(22) A Yes  
(23) Q Now tell the ladies and gentlemen of the jury what you did  
(24) as disabilities person  
(25) A Well, I, in administering the benefits I would determine

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(1) based on employee information or information from one of  
the  
(2) fleet officers whether a person was entitled to receive  
(3) disability benefits Based on initial information I would  
(4) submit the paperwork that would change their pay status  
from  
(5) either being on the ship or being at home on paid leave to  
one  
(6) of receiving disability benefits  
(7) Q Now when we talk about disability benefits is that when  
(8) somebody gets sick or needs help they go in and seek that  
(9) help? Is that what you mean by the disability?  
(10) A That's right They're seeing a doctor for treatment and  
(11) our benefits allow that you don't lose pay status based on  
your  
(12) service You receive pay during the time you're receiving  
(13) treatment  
(14) Q Now in the – and you were in that job in the spring of  
(15) 1985?  
(16) A Yes I was  
(17) Q And in that capacity and in that particular job did you  
(18) have a communication with someone regarding Captain Joseph  
(19) Hazelwood?  
(20) A Yes I did  
(21) Q Do you recall from whom that communication came?  
(22) A Yes that was from Ben Graves  
(23) Q Who was Ben Graves?  
(24) A He was administrative manager of Exxon Shipping  
Company  
(25) Q Is he the person to whom you reported?

(1) A I had a supervisor in between  
(2) Q Who was that?  
(3) A Mel Dravton (ph)  
(4) Q But on this occasion Mr Graves came to you?  
(5) A Came directly to me yes sir  
(6) Q Did he come by telephone or did he come in person?  
(7) A No he asked me to come to his office  
(8) Q All right and what did he tell you?  
(9) A He asked me to come in and close the door and he said  
that  
(10) Captain Hazelwood needed to be placed on disability  
benefits  
(11) I asked for what and as of what day And he said for  
alcohol  
(12) treatment and that – the date – the first day of disability  
(13) would be April 1st  
(14) Q Now I'm going to jump ahead a little bit in order that we  
(15) can put a date on this  
(16) In your job as the disabilities person for the ocean fleet  
(17) do you start a record when a person starts a disability?  
(18) A Yes I do  
(19) Q Could I have Defendant s Exhibit 3471 please?  
(20) And in this particular instance with Captain Hazelwood did  
(21) you in fact start a record?  
(22) A Yes I did  
(23) Q What is that record called?  
(24) A A benefit records card  
(25) Q Snappy name

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(1) I'm going to show you Defendant s Exhibit 3471 First I'm  
(2) going to show you the top part so that we can all read it  
(3) A Okay  
(4) Q Is this the benefit sickness record?  
(5) A Yes it is  
(6) Q The record that you started for Captain Hazelwood in 1985?  
(7) A Yes it is  
(8) Q And is this the card that you started as a result of your  
(9) communication with Ben Graves?  
(10) A Yes it is  
(11) Q Can you look on the card and tell the ladies and gentlemen  
(12) of the jury of the approximate date – let me back up  
(13) After you started this record what is the first thing that  
(14) you need to do in order to do your job?  
(15) A The first thing I do is complete a – it's called a  
(16) personnel change notice which is referred to on the card as  
a  
(17) PCN  
(18) Q All right Hold on just a minute  
(19) A That –  
(20) Q (Indicating) Is that PCN?  
(21) A Right  
(22) Q All right And what does a personnel change notice do?  
(23) A It informs the fleet manning group that their pay status  
(24) should be paid to 5105 and that tells them what date to put  
(25) them on that pay status

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- (1) Q Now does your record on Captain Hazelwood tell you what  
(2) date you did this very first thing?  
(3) A Yes On April 9  
(4) Q Is this the date I've circled the second circle?  
(5) A Yes and then I initial it  
(6) Q Is that a five there 5105?  
(7) A 5105  
(8) Q What does that mean?  
(9) A That means it's a non industrial disability does not  
(10) commence on a ship  
(11) Q Now let's me go up here to the top part  
(12) A All right  
(13) Q This information here (indicating) where did you get that?  
(14) A Combination of places Ben Graves told me that Joe  
(15) Hazelwood was the person who was being placed on  
(16) alcohol treatment so I got - I had that from Ben Then the  
(17) next to that, M 100 is just the - what we call the rating or  
(18) classification That meant he was a master and then the  
(19) pay  
(20) system That code is 100 for a master and I needed that  
information for the PCN I usually recorded it on the card  
(1) Q I'm going to draw another what might look a little bit like  
(2) a rectangle  
(3) MR NEAL That is a Tennessee rectangle  
(4) MR SANDERS Would you admonish counsel?  
(5) THE COURT He's your buddy no min

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- (1) MR SANDERS I want him disciplined  
(2) BY MR SANDERS  
(3) Q Now this other information up here at the top first it's  
(4) hard to read what this block is?  
(5) A All right I did that from my records the microfiche and  
(6) the top line is his social security number  
(7) Q His being Captain Hazelwood?  
(8) A Him being Captain Hazelwood And the PI means paid  
(9) leave  
(10) that means that was the pay status he was on before going  
(11) on  
(12) disability And '85  
(13) Q What about this number on the far right hand side?  
(14) A That's the year 1985  
(15) Q So you filled out on this very - well first let me ask  
(16) you Do you have a specific recollection of when you filled  
(17) this card out?  
(18) A Well I - it would have been on April 9th That's the  
(19) date I put on there  
(20) Q And what information did you put in all this information  
(1) that I have just asked you about the PCN and the what -  
(2) what is in these two Tennessee rectangles is that the  
(3) information you put on the card at first?  
(4) A That plus the 4/1 date on the lower - that one right  
(5) there  
(6) Q That number?  
(7) A That number That would have been the start date of the

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- (1) disability  
(2) Q What about this next number did you have that number  
(3) then?  
(4) A No, I did not  
(5) Q Okay So the information you got as to alcohol treatment  
(6) came from Mr Graves on or about April the 9th 1985?  
(7) A That is correct  
(8) Q Now we want to spend a little bit more time on this card  
(9) but is this a card that you kind of keep as a running record?  
(10) A Right I kept all of the active disability cases together  
(11) and that - I use them to record what was going on with him  
(12) Q Is there any particular reason that you keep those  
(13) together?  
(14) A Well I needed to know who was on disability, and I  
(15) needed  
(16) to monitor to make sure that they were seeing their  
(17) physician  
(18) and that I was receiving physician's reports doctor's  
(19) reports  
(20) Q With these kinds of records do you take any special care  
(1) with respect to these records?  
(2) A They were considered confidential because I did record  
(3) the  
(4) sort of - my interpretation of the diagnosis on it  
(5) Q Okay And - well let me back up since you said that  
(6) Did Mr Graves tell you that that was the diagnosis?  
(7) A I don't know that he used the word diagnosis He just  
(8) said  
(9) that Captain Hazelwood was entering an alcohol treatment  
(10) facility  
(11) Q Okay

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- (1) Or had entered?  
(2) A Or had entered that's right  
(3) Q As a matter of fact you had to backdate that to start the  
(4) benefits is that correct?  
(5) A Yes I did have to backdate that  
(6) Q So can you recall whether Mr Graves said this is the  
(7) diagnosis or he simply said he's going into an alcohol  
(8) treatment center?  
(9) A I think he just said he's going into an alcohol treatment  
(10) center  
(11) Q But you did put this in the block where it says diagnosis?  
(12) A I did  
(13) Q While we're on that can I have the IDR please  
(14) Plaintiff's Exhibit 10?  
(15) I have before you Plaintiff's Exhibit 10 which has been  
(16) admitted into evidence as the Hazelwood individual disability  
(17) report or the IDR Do you recognize that?  
(18) A I do  
(19) Q Let me ask you if there is a place where the diagnosis is  
(20) put?  
(1) A It's supposed to be put in the lower part of what you're  
(2) showing there The first part is history the second part is  
(3) diagnosis  
(4) Q Okay And is this the diagnosis (indicating) on the IDR?  
(5) A It's supposed to be

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- (1) Q Ms Guerra do you know what that is?
- (2) A I do not
- (3) Q Are you familiar with the DSM?
- (4) A I am not
- (5) Q And you don't know what those numbers means?
- (6) A I do not
- (7) Q Is there any other place from which you got any information as to the diagnosis?
- (8) A No
- (9) Q And from this form you don't know what that diagnosis was?
- (10) A That's correct
- (11) Q All right Now after you started your - leave the 3471 Back up please
- (12) After you started your benefit sickness record for Captain Hazelwood and you - and you had changed the - what's called the PCN?
- (13) A That's correct I completed that PCN uh huh
- (14) Q What did you do next?
- (15) A I complete the PCN and I mail the person - and I mailed to Joe Hazelwood the individual disability report form
- (16) Q Why do you do that?
- (17) A So that they can authorize a doctor to release information to Exxon Shipping Company and for them to give that to the doctor so that we will get a report of the treatment
- (18) Q And what is the purpose of this individual disability

- (1) is information you took off the IDR?
- (2) A That's correct
- (3) Q Do you keep the IDR?
- (4) A No I forwarded that to Dr Montgomery
- (5) Q Do you make a copy of it?
- (6) A I do not
- (7) Q Keep a copy?
- (8) A No
- (9) Q Why is that?
- (10) A Because that is confidential medical information and I had -
- (11) all the information I needed for my job
- (12) Q All right I'm not sure whether I asked you this or not but do you - because it's medical confidential information even on this benefit sickness form do you take steps to make sure that people don't have access to that but you?
- (13) A I did
- (14) Q All right and how did you do that?
- (15) A Well it stayed in my office in a closed box in my office
- (16) Q My office?
- (17) A If I left the office I closed the door and it locks and at night I would lock it up in a cabinet
- (18) Q All right Do you recall getting the individual disability report back from Dr Vallury taking down what information you needed from it and sending it on to the medical department?
- (19) A I would have done that

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- (1) report IDR which is Plaintiff's Exhibit 10?
- (2) A To validate that the person is seeing a physician is in treatment and to get an idea of how long the length of that treatment will be
- (3) Q Did you in fact send a blank IDR to Captain Hazelwood?
- (4) A I did
- (5) Q And did you get back what was up on the screen a while ago a filled out portion of the IDR from Dr Vallury?
- (6) A I did
- (7) Q Now when you got that what do you do with it?
- (8) A I record anything that I consider pertinent information as far as how long their length of treatment will be and sometimes if there was a diagnosis I could read I would - I had something to add to my section then I would -
- (9) Q In this case you didn't do that?
- (10) A No I did not
- (11) Q Do you put any other information down from the IDR?
- (12) A No the date that the doctor completed it and any notes Which is on the part there
- (13) Q Hold on a second there
- (14) A Below Tennessee
- (15) Q This part right there (indicating)?
- (16) A That - right
- (17) Q So this information that you put on your benefit sickness record for Captain Hazelwood which is Defendant's Exhibit 7674

- (1) Q Do you recall doing it?
- (2) A Yes
- (3) Q Do you recall to whom in the medical department you sent it?
- (4) A Dr Charles - Dr Hunter Montgomery
- (5) Q And at that time was he the primary contact in the medical department for Exxon Shipping Company?
- (6) A Yes he was our medical director
- (7) Q Did you have any conversation with Dr Montgomery about this IDR?
- (8) A I would have - I don't remember exactly when but it - I did have a conversation with Montgomery
- (9) Q Do you recall why you had that conversation or the - what prompted you to have the conversation?
- (10) A I had received a call from Captain Pierce to extend Captain Hazelwood's disability benefits to May 15
- (11) Q Let me stop you just a second
- (12) Had you talked to Captain Pierce prior to this time that you got this call?
- (13) A I - not - no
- (14) Q All right So this is the first time that you had talked to Captain Pierce in regard to Captain Hazelwood?
- (15) A Right
- (16) Q Do you know do you recall when Captain Pierce called you?
- (17) A I didn't write the date down so I don't remember exactly

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- (1) It would have been probably prior to April 29th  
 (2) Q But in any event whatever that date is you didn't write  
 (3) it down on your form?  
 (4) A That's right  
 (5) Q And this form has down at the remarks section starts out  
 (6) saying per Mark Pierce  
 (7) A Per Mark Pierce extend to 5/15 then check on SA shore  
 (8) assignment or LOA which is leave of absence  
 (9) Q All right Do you have a recollection of your conversation  
 (10) with Captain Pierce?  
 (11) A Yes I do  
 (12) Q You mention in here and I'll put a little circle around  
 (13) it SA what is that?  
 (14) A That's a shore assignment  
 (15) Q What did Captain Pierce ask you about in regard to a shore  
 (16) assignment?  
 (17) A That we were to look for and I think they were involved in  
 (18) looking for an assignment for Captain Hazelwood in a - in  
 (19) one of the offices versus one of the ships so that's what we  
 (20) called shore assignment  
 (21) Q For what period of time?  
 (22) A For about 90 days  
 (23) Q In other words a shore assignment during this leave of  
 (24) absence correct?  
 (25) A Right

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- (1) Q Were there any limits on where this shore assignment could  
 (2) be?  
 (3) A Well later it was - it needed to be near where he could  
 (4) continue getting his individual and group therapy  
 (5) Q So it had to be somewhere around Long Island?  
 (6) A Right  
 (7) Q Did you look into whether or not there was such a -  
 (8) assignment near Long Island for Captain Hazelwood for 90  
 (9) days?  
 (10) A I discussed it with Ben Graves I believe  
 (11) Q Did you all find one?  
 (12) A No  
 (13) Q Now then the next part is LOA Does that mean leave of  
 (14) absence?  
 (15) A Yes sir  
 (16) Q Now I'm going to lean up here a little bit and go back  
 (17) The second line is a note which had a little bit of Guerra  
 (18) code on it Can you interpret that for us?  
 (19) A Checked with B Duke which is Bob Duke regarding sick  
 (20) leave or sick leave is the term I use sometimes to mean  
 (21) disability benefits  
 (22) Q Now what does that note mean?  
 (23) A Well typically for treatment only the in hospital time  
 (24) was considered eligible for payment of disability benefits  
 (25) Mark had asked me to extend it beyond the hospital  
 (26) treatment  
 (27) time So I was checking with Bob Duke who was at that time

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- (1) kind of a benefits expert with Exxon USA He was an  
 (2) advisor to  
 (3) the field units where I could extend it to May 15th  
 (4) Q As a result of your conversation or after your  
 (5) conversation with Mr Duke did you in fact extend the leave  
 (6) for 15 more days?  
 (7) A Right I did  
 (8) Q All right Now in regard to the - to the conversation  
 (9) you had regarding the leave of absence for 90 days with  
 (10) Captain  
 (11) Pierce you were - I think you were mentioning that in the  
 (12) context of talking to Dr Montgomery and I kind of sidetracked  
 (13) you there Why did that prompt you to call Dr Montgomery?  
 (14) A Then I needed to find out from the doctor the information  
 (15) I  
 (16) then got from - Bob Dukes said if you're medical director  
 (17) and  
 (18) management people like he's still not able - not able to  
 (19) return to work then he can continue to receive disability  
 (20) benefits So I checked with Dr Montgomery to see if that  
 (21) was  
 (22) indeed the situation should he still be on disability  
 (23) Q Is there also under your pay system and benefits system  
 (24) is it necessary to end a disability period before you can start  
 (25) a leave of absence?  
 (26) A Yes  
 (27) Q Okay  
 (28) A Can't -  
 (29) Q Was that also part of your call to Dr Montgomery to  
 (30) determine that when - whether the disability period was up

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- (1) and so therefore you could start a leave of absence?  
 (2) A Right  
 (3) Q Now that's kind of hyper technical but you're changing  
 (4) pay scales correct?  
 (5) A Right - well in other words yes because now if -  
 (6) during disability he is receiving pay because he is unable to  
 (7) do his job After April - May 15th he - was no longer  
 (8) eligible for disability benefits not considered disabled and  
 (9) therefore if he needed more time off it was leave of absence  
 (10) Q Didn't get paid for that?  
 (11) A No he did not get paid for that  
 (12) Q Under the system is that was in force at that time?  
 (13) A That's right  
 (14) Q But in order to end the disability period you had to have  
 (15) something from Dr Montgomery to say Well the disability  
 (16) period is over?  
 (17) A That's right  
 (18) Q And you called Dr Montgomery?  
 (19) A That's right  
 (20) Q Did you make a request of him?  
 (21) A Well I called for advice and - from him and that's the  
 (22) information he gave me  
 (23) Q Did you ask him to get in touch with Dr Vallury?  
 (24) A I don't know whether I asked him to do that or whether he  
 (25) had already done that

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- (1) Q Okay In any event were you able to at least for pay  
(2) purposes for disabled benefits purposes were you able to  
(3) terminate this disability?  
(4) A Yes  
(5) Q And is there a specific form that you use or as in -  
(6) A Yes  
(7) Q - all other things in life are there some initials you  
(8) use to do that?  
(9) A It's a DTR disability termination report form  
(10) Q And I'm circling DTR issued and there's a date beside  
(11) that  
(12) A May 20th 1985  
(13) Q Does that show the date that you terminated the disability  
(14) termination - or let me start again  
(15) The initials have gotten me confused  
(16) Is that the date on which the disability termination report  
(17) was done by you?  
(18) A Yes sir  
(19) Q All right Now down here at the bottom let me clean this  
(20) up  
(21) Down here at the bottom after it says come off leave of  
(22) absence around 8/15/85 you've written something else here  
(23) What is that?  
(24) A Come back through send medical reported to Dr CHM  
(25) [sic]  
(26) Q Are those two related?

- (1) or -  
(2) A I went to his office  
(3) Q All right And did you tell him that you were reminding  
(4) him?  
(5) A Right  
(6) Q What did he tell you?  
(7) A That he would call Hazelwood tomorrow which was  
(8) 8/1/85  
(9) Q Did you make a note of your reminding Mr Graves?  
(10) A I did  
(11) Q Is that note this last thing at the bottom of the benefit  
(12) sickness record?  
(13) A It is  
(14) Q And after you did that and filled that out did you then  
(15) put this - did you close this file out?  
(16) A Well I - yes I moved the card over to the inactive  
(17) Q All right Are those kept confidential?  
(18) A Yes  
(19) Q Did you have any further involvement with Captain  
(20) Hazelwood  
(21) or his treatment or his disability period from then on?  
(22) A I did not  
(23) MR SANDERS Your Honor I move the admission of  
(24) Defendant Exhibit 3471 and I have no further questions  
(25) MR O NEILL That's already in as a plaintiff's  
(26) exhibit but we have no objection to it coming in a second  
(27) time

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- (1) A The first one was from Ben Graves He had asked me -  
(2) when  
(3) I told him we were going to put Joe on leave of absence he  
(4) wanted me to let him know two weeks in advance so that he  
(5) could  
(6) have him come back through Houston  
(7) Q Now the second one what is that?  
(8) A I - that was - I think that was in my conversations with  
(9) Dr Montgomery if I got any more medical reports to be sure  
(10) and send them to him  
(11) Q Then finally at the very - now what time period - by  
(12) May the 20th you have completed the period of disability and  
(13) all the paperwork that goes with it for Captain Hazelwood am I  
(14) correct?  
(15) A Right  
(16) Q And in the normal situation or in your usual situation  
(17) that would be the end of it would it not be?  
(18) A That's right  
(19) Q But in this case it's not and the question is Why not?  
(20) A Because I - I wanted to keep it in my suspense file to  
(21) remember to tell Ben Graves when Joe was due back He  
(22) asked me  
(23) to tell him about two weeks before he was due back from  
(24) leave  
(25) of absence  
(26) Q Did you in fact let Ben Graves know two weeks before  
(27) Captain Hazelwood was to return?  
(28) A On July 31  
(29) Q When you - did you call up Ben Graves or go to his office

- (1) (Exhibit 3471 offered)  
(2) THE COURT Defendant Exhibit 3471 is admitted  
(3) (Exhibit 3471 received)  
(4) MR SANDERS Thank you Your Honor  
(5) THE COURT And we'll take our recess Be back in 15  
(6) minutes  
(7) (Jury out at 12:01 p.m.)  
(8) (Recess at 12:01 p.m.)  
(9) (Jury in at 12:17 p.m.)  
(10) THE CLERK All rise  
(11) THE COURT Cross examine?  
(12) MR O NEILL Thank you Judge  
(13) CROSS EXAMINATION OF GABRIELLA GUERRA  
(14) BY MR O NEILL  
(15) Q Ma'am?  
(16) A Yes  
(17) Q Let's take a look on this form if we could for a moment  
(18) We'll go the same thing we did before?  
(19) A All right  
(20) Q Where it says diagnosis it says alcohol treatment You  
(21) testified that you got that information from Ben Graves who  
(22) told you that the captain was entering an alcohol treatment  
(23) facility or center?  
(24) A That's correct  
(25) Q So the company's state of mind at the time you made this

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- (1) entry was the captain was entering an alcohol treatment  
 (2) facility or center?  
 (3) **A That's what I understood from Ben Graves**  
 (4) **Q Okay and you dutifully made the entry in the company**  
 (5) **record the best you could?**  
 (6) **A Yes sir**  
 (7) **Q And then this says 4 16 85 through hospital through**  
 (8) **4/20/89 and then leave of absence for group - and then what**  
 (9) **does that say?**  
 (10) **A IND for individual**  
 (11) **Q Yes**  
 (12) **A And then marital therapy**  
 (13) **Q I want to admit I once thought that was marital axe?**  
 (14) **A Marital**  
 (15) **Q Marital therapy So the records reflect he would be**  
 (16) **hospitalized through 4/29 and then after 4/29 he would be in**  
 (17) **for group - he would have a leave of absence for group**  
 (18) **individual and marital therapy and Alcoholics Anonymous and**  
 (19) **lectures?**  
 (20) **A I copied that from the individual disability report**  
 (21) **Q You testified that these records are confidential**  
 (22) **A Yeah**  
 (23) **Q And just so we know it is possible to commit things to**  
 (24) **writing on subjects like alcohol treatment and those kinds of**  
 (25) **things within the records of the company and keep them**

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- (1) **confidential isn't it?**  
 (2) **A Yes**  
 (3) **Q And in your business you do it all the time?**  
 (4) **A At that - uh huh yeah In it it - yeah**  
 (5) **Q And then there's a notation come back through right there**  
 (6) **(indicating)?**  
 (7) **A Right**  
 (8) **Q And that's for Captain Hazelwood to come back through**  
 (9) **right?**  
 (10) **A That's correct**  
 (11) **Q Then the next thing is send medical report to Dr**  
 (12) **Montgomery?**  
 (13) **A That's correct**  
 (14) **Q Do you have an understanding of why you were to do that or**  
 (15) **were you just supposed to send it to him?**  
 (16) **A Well I always did that**  
 (17) **Q Did you know what Dr Montgomery did it with or not do with**  
 (18) **it?**  
 (19) **A He was to review all of them**  
 (20) **Q He was to review them okay Wasn't so bad was it?**  
 (21) **A No**  
 (22) **MR O NEILL I have no further questions Thank**  
 (23) **you**  
 (24) **MR SANDERS You may come down Miss Guerra**  
 (25) **THE COURT You may call your next witness**

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- (1) **MS STEWART Defendants call Ben Graves by video**  
 (2) **deposition**  
 (3) **DIRECT EXAMINATION OF BEN GRAVES (Video)**  
 (4) **BY VIDEO EXAMINER**  
 (5) **Q Mr Graves for the record would you state your full name**  
 (6) **please?**  
 (7) **A Benjamin Carter Graves Junior**  
 (8) **Q Sir where do you currently reside?**  
 (9) **A I reside in Kingwood Texas**  
 (10) **Q Could you tell us by whom you're currently employed?**  
 (11) **A Exxon Company USA**  
 (12) **Q Just generally could you give us an idea of what your**  
 (13) **educational background is?**  
 (14) **A Graduated from College of William and Mary in 1963 with**  
 (15) **a**  
 (16) **bachelor degree in economics**  
 (17) **Q Any postgraduate work?**  
 (18) **A No**  
 (19) **Q And also generally could you give us a rundown on what**  
 (20) **your employment history has been?**  
 (21) **A Came to work for Exxon in 1963 out of college Worked**  
 (22) **various assignments in the marketing organization, until -**  
 (23) **in**  
 (24) **and around Virginia and West Virginia until 1975 I guess**  
 (25) **and**  
 (26) **transferred again with the marketing operation to region**  
 (27) **office**  
 (28) **in Baltimore Maryland Was there for a couple of years and**  
 (29) **-**  
 (30) **then came to Houston in 1977**

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- (1) **Worked in Exxon Shipping Company from 1977 through**  
 (2) **1979**  
 (3) **I then had employee relation assignment in Houston before**  
 (4) **transferring to Norwalk Connecticut Human resources job**  
 (5) **for**  
 (6) **the marketing department 1983, transferred to the**  
 (7) **corporation's headquarters in Manhattan And then in 1984**  
 (8) **transferred back to Houston with the Exxon Shipping**  
 (9) **Company I**  
 (10) **think that was in August or -**  
 (11) **Q What was the title you were to assume in 1984 with Exxon**  
 (12) **Shipping Company?**  
 (13) **A Administrative manager**  
 (14) **Q What were your duties as administrative manager with Exxon**  
 (15) **Shipping Company in 1984 through 1986?**  
 (16) **A It was basically the human resource organization for**  
 (17) **Exxon**  
 (18) **Shipping Company**  
 (19) **Q Could you be a little more specific about what your duties**  
 (20) **with human resource would entail at that time?**  
 (21) **A Well it involved the labor relations activities**  
 (22) **compensation and benefit administration general**  
 (23) **personnel**  
 (24) **activity man power accounts - let's see**  
 (25) **That was personnel staff that was involved in some safety**  
 (26) **and environmental issues I think that's about it**  
 (27) **Q Preceding page to this memo is your memo dated May 28**  
 (28) **1985**  
 (29) **concerning your discussion with Joseph Hazelwood on May 19**  
 (30) **1985?**  
 (31) **A That's it**

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(1) Q This was the first opportunity you had to speak with  
 (2) Captain Hazelwood?  
 (3) A Yes  
 (4) Q Was this a face to face or was this over the telephone?  
 (5) A Telephone  
 (6) Q You don't recall reporting any of your findings to the  
 (7) medical department for instance?  
 (8) A I had a conversation with Dr Montgomery about Captain  
 (9) Hazelwood's hospitalization Now whether you call that  
 (10) reporting or not -  
 (11) Q So that conversation would have just been in regards to  
 (12) Captain Hazelwood's alcohol rehabilitation?  
 (13) A That's correct That's my recollection of that  
 (14) conversation  
 (15) Q You talked before about your belief that the medical  
 (16) department would have known because of the way the  
 (17) company does  
 (18) things and I - I didn't touch on that comment at the time Do  
 (19) you recall making that statement?  
 (20) A Yes  
 (21) Q What did you mean by that?  
 (22) A Well subsequent to - I mean initiation is in any number  
 (23) of ways If it's a serious illness or something like  
 (24) rehabilitation sometime during that process and generally  
 (25) before the employee is out of the hospital the medical  
 (26) department will have some type of form that routes through  
 (27) them

(1) Frank hack a complete story  
 (2) Q Could you just tell us generally what the substance of your  
 (3) conversation was with Dr Montgomery?  
 (4) A Generally the substance was was a medical department  
 (5) aware that Hazelwood had been in rehabilitation And the  
 (6) answer was yes to that and that - he told me that Hazelwood  
 (7) had completed his rehabilitation successfully That he was  
 (8) attending an - and that Joe was attending AA meetings on a  
 (9) regular basis Don't remember I think he said three times a  
 (10) week or something like that  
 (11) I think I said he's successfully completed the program and  
 (12) that was about the sum and substance of the conversation  
 (13) Q Did you report the findings from your conversation with Mr  
 (14) Duke as well as Dr Montgomery back to Frank Larossi?  
 (15) A I believe so I know I reported back to Duke the  
 (16) conversation and I'm pretty sure I reported - yes Yes  
 (17) Q Okay Was that by way of verbal communication or was that  
 (18) a written document?  
 (19) A Verbal  
 (20) Q Did Mr Larossi ask you to do anything else in regards to  
 (21) follow up on the issue of Captain Hazelwood's alcohol  
 (22) rehabilitation?  
 (23) A I don't remember whether it was at that particular time or  
 (24) subsequent to that but Frank asked me to ensure that John  
 (25) Tomkins the gulf coast fleet manager counseled with Joe

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(1) or to them about the employee disability They may not  
 (2) necessarily know in advance what was going on but they  
 (3) would be  
 (4) advised sometime along the way  
 (5) Q Did you ever speak with anyone in the medical department  
 (6) who indicated to you that in fact that process had occurred in  
 (7) the case of Captain Hazelwood's hospitalization?  
 (8) A Yes  
 (9) Q Who did you speak with if you recall?  
 (10) A Dr Hunter Montgomery  
 (11) Q When was the conversation with Dr Montgomery?  
 (12) A Few things I wish I had kept better notes on I don't know  
 (13) exactly when it took place It was obviously sometime after  
 (14) I  
 (15) knew he was in the hospital and sometime - and I hate to be  
 (16) so vague as before he went back on the vessel or a vessel  
 (17) in  
 (18) August My recollection is that it's sometime in the June  
 (19) kind  
 (20) of time frame  
 (21) Q That same time frame did you have any conversations with  
 (22) Frank Larossi regarding Captain Hazelwood's alcohol  
 (23) rehabilitation?  
 (24) A Well I think he - I think shortly after the May 28th  
 (25) letter I think Frank asked me to reconfirm again what the  
 (26) company policy was on employees completing  
 (27) rehabilitation And  
 (28) I think as a result of that request of Frank's and the ordinary  
 (29) follow up that you do in a situation like this I contacted the  
 (30) HR department and contacted the medical department to  
 (31) give

(1) before he went back aboard a ship as a master  
 (2) Q Did you ask Gabriel (ph) Guerra to notify you two weeks  
 (3) before Captain Hazelwood was due to come back from his  
 (4) leave of  
 (5) absence?  
 (6) A I could have I mean I don't really recall that but I  
 (7) very well could have  
 (8) Q Do you know why you would have made that request if you  
 (9) did?  
 (10) A Well it would seem fairly logical that if Frank wanted to  
 (11) ensure that Hazelwood was talked to before he went back  
 (12) aboard  
 (13) the vessel we wanted to be sure we could in fact  
 (14) orchestrate  
 (15) that and make it happen  
 (16) Q And I'm just not clear You were the one responsible for  
 (17) coordinating that to make sure that Tomkins spoke with Captain  
 (18) Hazelwood?  
 (19) A I'm not sure whether I was the original one or not but  
 (20) certainly Frank reminded me to be sure, you know Don't  
 (21) forget  
 (22) that somebody tells Tomkins to talk to Hazelwood before he  
 (23) goes  
 (24) back aboard the ship He may have had similar discussions  
 (25) with  
 (26) Revere (ph) or anybody else for that matter I think it was  
 (27) Frank's clear intent that Joe get the benefit of some  
 (28) conversation before he went back aboard the vessel  
 (29) Q And it's your understanding that that conversation and  
 (30) counseling did occur?  
 (31) A Yes

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(1) Q And do you get that understanding – did Tomkins tell you  
 (2) he had a conversation with Hazelwood?  
 (3) A Yes and he also told me that Sheehy had talked with  
 (4) Hazelwood  
 (5) Q Did Tomkins tell you what it was he had discussed with  
 (6) Captain Hazelwood?  
 (7) A He didn't given me all the specifics. He generally I  
 (8) think said that he told Joe that – the company hoped that he  
 (9) would do a good job and that he would continue with a  
 (10) rehabilitation program and looked forward to him having a  
 (11) long, successful career and that he was going to be  
 (12) watched  
 (13) pretty closely  
 (14) Q Did you tell John Tomkins about the desire to have close  
 (15) monitoring of Captain Hazelwood?  
 (16) A Yes, I think that's one of the things that Frank asked me,  
 (17) to remind – to ensure that John talked to Hazelwood about  
 (18) when  
 (19) he came through Houston on the way to assignment after  
 (20) his  
 (21) vessel  
 (22) MS STEWART Your Honor that concludes defendants  
 (23) direct examination  
 (24) MS WAGNER There's a short video for cross  
 (25) CROSS EXAMINATION OF BEN GRAVES (Video)  
 (26) BY VIDEO EXAMINER  
 (27) Q Would you read this last paragraph for the record please?  
 (28) A I asked Joe if he ever drank aboard the ship. He  
 (29) commented

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(1) that he occasionally drank aboard the ship but not  
 (2) frequently  
 (3) He also indicated that he came back to the ship from port  
 (4) drunk  
 (5) on several occasions  
 (6) Q Let me ask you Mr. Graves. Did Captain Hazelwood say to  
 (7) you that he, Captain Hazelwood, had come back to the ship  
 (8) from  
 (9) port drunk on several occasions?  
 (10) A Yes  
 (11) Q I took the initiative – your understanding was he took the  
 (12) initiative to go into rehabilitation. Did you speak with  
 (13) anyone in an attempt to discover generally what's involved with  
 (14) alcohol rehabilitation?  
 (15) A No. Again – I don't consider myself an expert in that  
 (16) It's like whether I know whether the ship is being navigated  
 (17) properly or not. I mean it's doctor's prerogative as far as  
 (18) I'm concerned  
 (19) MS WAGNER That concludes the cross Your Honor  
 (20) MR SANDERS May it please the Court the next live  
 (21) witnesses we have all respond to various portions of Mr. Shaw's  
 (22) testimony. Thankfully three of them are live but  
 (23) unfortunately the first two we call by videotape deposition  
 (24) and the first of those Mr. Jose DeOliveira  
 (25) MR SANDERS He's coming from a long way  
 (26) DIRECT EXAMINATION OF JOE DeOLIVEIRA (Video)  
 (27) VIDEOGRAPHER This is case number A 89 095 entitled  
 (28) Exxon Valdez oil spill litigation and the witness Mr. Jose

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(1) P DeOliveira. The video deposition is requested by  
 (2) plaintiff  
 (3) BY VIDEO EXAMINER  
 (4) Q Are you currently employed by  
 (5) A I'm retired  
 (6) Q When did you retire?  
 (7) A First of '89 January 1st  
 (8) Q And who were you working for before your requirement?  
 (9) A Exxon  
 (10) Q What was the specific company if you know that you were  
 (11) working for?  
 (12) A That – before I retired?  
 (13) Q Yes  
 (14) A Exxon Company  
 (15) Q Exxon Company  
 (16) A Yes  
 (17) Q What was your last position with Exxon Company before you  
 (18) retired?  
 (19) A Fleet chef  
 (20) Q Could you tell me what a fleet chef does?  
 (21) A Does all the cooking for the – on the ships  
 (22) Q Does he cook for more one ship at a time?  
 (23) A One ship at a time  
 (24) Q How long had you been working for Exxon before your  
 (25) retirement?

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(1) A 19 years and a half  
 (2) Q Was there a policy that Exxon would allow wine at certain  
 (3) holidays to be served with meals?  
 (4) A Yes  
 (5) Q And what was that?  
 (6) A For Thanksgiving Christmas and New Years  
 (7) Q And how did that work Exxon provided wine and –  
 (8) A Yes  
 (9) Q – it was served?  
 (10) A Yes  
 (11) Q And how long did that – was that policy still in effect  
 (12) when you retired?  
 (13) A No it was stopped in '88  
 (14) Q Do you remember when in '88?  
 (15) A That's the New Year's and the Thanksgiving Christmas in  
 (16) '88  
 (17) Q That was the last time?  
 (18) A Yes that's when they stopped  
 (19) Q And how did that wine get ordered?  
 (20) A It came by cases  
 (21) Q Did the mess person or the cook order it or did Exxon just  
 (22) send it?  
 (23) A The port steward used to order the wine for the holidays  
 (24) Q Okay would it be fair to say then when you were serving  
 (25) on the Exxon Valdez that this policy was still in effect?



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- (1) A Until - until 1988  
 (2) Q So on your last voyage on the Exxon Valdez wine was served?  
 (3) A No  
 (4) Q Your last voyage was in 1988?  
 (5) A '88 Was no more wine that year  
 (6) Q Let me just clarify with him because I understood you to previously say and I may have misunderstood you that the practice ended at the end of 1988 and at the beginning of 1989?  
 (7) A No no  
 (8) Q That's not right?  
 (9) A No that was the year that they stop  
 (10) Q So the last time -  
 (11) A It was '87  
 (12) Q It was in '87?  
 (13) A Right  
 (14) Q And then new year's eve 1987 '88?  
 (15) A For the '88 on was no more  
 (16) Q Okay  
 (17) A No more wine  
 (18) Q Did you ever serve on the Exxon Valdez during the time that this policy was in effect?  
 (19) A I was there but was no more wine served that year  
 (20) Q That was the 1988 run?  
 (21) A '88 right

- (1) Q West coast or gulf?  
 (2) A Just - east coast  
 (3) Q East coast?  
 (4) A Yeah Back here from here to -  
 (5) Q Okay And?  
 (6) A New York  
 (7) Q What was your - what was your - did you meet with Mr. Shaw from time to time?  
 (8) A Well when he comes aboard  
 (9) Q And how often did he come aboard?  
 (10) A If he comes to Baytown he will come aboard If it's Baton Rouge maybe once once in a while He didn't go there too often  
 (11) Q Do you recall ever drinking with Captain Hazelwood now?  
 (12) A No sir  
 (13) Q I asked you earlier about meeting with Mr. Thomas yesterday  
 (14) A Uh huh  
 (15) Q For this deposition  
 (16) A Uh huh  
 (17) Q Did he show you any papers or documents?  
 (18) A This (indicating)  
 (19) Q What are you referring to?  
 (20) A The question is in here about Mr. Jim Shaw made a statement  
 (21) that I drink with Mr. Hazelwood

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- (1) Q And you never were on the Exxon Valdez before that?  
 (2) A No I was only one time I was there  
 (3) Q That was the first time?  
 (4) A Yeah  
 (5) Q Okay First and last?  
 (6) A First and last  
 (7) Q When you sailed on board the Exxon Valdez in 1988 was Captain Hazelwood the captain of the vessel?  
 (8) A Yes  
 (9) Q So is it fair to say that you sailed with him on the Valdez in 1988?  
 (10) A Yes sir 30 days or 33 days Somewheres in there  
 (11) Q 33 days?  
 (12) A Somewheres in there I'm not exactly sure one day or more It was just -  
 (13) Q That was your last voyage for Exxon?  
 (14) A Right  
 (15) Q If I've got that straight  
 (16) A (Nods head)  
 (17) Q Do you know a gentleman named James Shaw?  
 (18) A Oh yes  
 (19) Q Who is he?  
 (20) A He used to be the port steward  
 (21) Q For which fleet?  
 (22) A Exxon fleet

- (1) Q Well let me interject I have handed the witness a copy of the - or the documents that were predesignated for this deposition  
 (2) Thank you  
 (3) And that's what you reviewed with him that's what - okay that's what you looked at?  
 (4) A Yeah  
 (5) Q So I take it you have read the - the reference to yourself in Mr. Shaw's deposition?  
 (6) A Right Right  
 (7) Q Without recasting it what do you recall Mr. Shaw saying?  
 (8) A James Shaw said that I had a drink the night before with Hazelwood which he is a liar The only time I -  
 (9) Q Let him finish the sentence  
 (10) A The only time I saw Mr. Jim Shaw he was on the Exxon Galveston tied up next to Exxon Valdez I was in the gallery around 10:00 before noontime meal and they sent one of the  
 (11) A B's on the Exxon Valdez he wants talk to me I went on the deck I saw Mr. Jim Shaw and he says, I'm low in eggs and something else Can you supply me with some eggs  
 (12) I says sure So I went back and I got the second cook they carried half a dozen - it was five six sheets of eggs and left them on the deck  
 (13) I asked one of the A B's on the other side to call Jim Shaw to come pick it up He didn't show up so I left the eggs on

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- (1) the deck and whatever was the other item And that's the only
- (2) time I saw Mr Shaw And he made a statement that he saw me
- (3) next day on Exxon Valdez that I made that statement about that
- (4) I had a drink with the - Joe Hazelwood on which Mr Jim Shaw
- (5) was not - he did not come aboard that morning
- (6) I remember it was Mary Williamson that came in I was helping her the fleet chef in the morning before 6 00 She says you got your relief to take your shower and after the lunch pick you up
- (7) So I wait until 8 00 and I did see Mr Jim Shaw Period
- (8) Q You were sailing with Captain Hazelwood in 1988 on the Valdez right?
- (9) A Right, uh huh
- (10) Q And did Mr Shaw ever come on board the Valdez while you were sailing with Captain Hazelwood?
- (11) A No sir
- (12) Q In 1988
- (13) Now during the time that you sailed on the Valdez in 1988 with Captain Hazelwood was it common for people to bring alcohol on board the vessel?
- (14) A No sir
- (15) Q Did anybody ever tell you they did that
- (16) A No sir
- (17) Q Did you hear any rumors about people bringing alcohol aboard?

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- (1) A No sir
- (2) Q And you yourself never drank on board that vessel?
- (3) A No sir
- (4) MS STEWART Your Honor that concludes defendants direct examination
- (5) MS WAGNER We have another short video cross
- (6) CROSS EXAMINATION OF JOSE DO OLIVEIRA (Video)
- (7) BY VIDEO EXAMINER
- (8) Q Do you know of anybody who was ever fired for having alcohol on board an Exxon vessel while you were there?
- (9) A No
- (10) Q Do you know of anybody being caught with alcohol on board a vessel while you were serving on an Exxon vessel?
- (11) A No
- (12) Q Did you hear about anybody having alcohol found or being caught drinking by an officer or by Exxon management on board a vessel?
- (13) A No sir
- (14) Q Never heard about that in all the time you -
- (15) A No
- (16) Q - sailed aboard the vessels
- (17) In 1988 you knew that if you had alcohol or drank on board you'd be fired?
- (18) A Right
- (19) Q Now you said earlier that you came to learn that alcohol

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- (1) was being brought on commonly back before the policy was directly enforced?
- (2) A Right
- (3) Q Okay Because people told you that right?
- (4) A Uh huh
- (5) Q And now that the policy was supposed to be strictly enforced your understanding is that if he told you that you were required to report to them right?
- (6) A Right
- (7) Q Okay Did you ever ask any of those people you worked with after the conversation with Shaw about the strict enforcement of the policy -
- (8) A Uh huh
- (9) Q - whether they continued to bring alcohol on board?
- (10) A No, sir
- (11) Q Did you want to know?
- (12) A Yeah
- (13) Q Okay if you wanted to know why then didn't you ask any of these people whether they continued to bring alcohol on board?
- (14) A I don't know I'm not going to ask them if they bring or not alcohol If they tell me that they have it I have to report it but they never told me that they bring it If they did if I ever find out I'd have to report yeah
- (15) Q In your 19 years of employment are you aware of any Exxon Shipping Company employee ever reporting that another employee

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- (1) had used alcohol in violation of the company's policies?
- (2) A No
- (3) MS WAGNER That concludes the cross Your Honor
- (4) MR SANDERS May it please the Court we call
- (5) Mr Jesse Watts by video deposition
- (6) DIRECT EXAMINATION OF JESSE WATTS (Video)
- (7) BY VIDEO EXAMINER
- (8) Q How long have you been with Exxon Shipping Company?
- (9) A A total of 23 years one month and a few days I started February 7th - 9th 1970
- (10) Q Okay Why don't we have you state your full name for the record and your residence address also?
- (11) A Jesse Ray Watts
- (12) Q And your residential address?
- (13) A 1035 Charlotte Street that's Roanoke Rapids
- (14) Roanoke Rapids North Carolina 27870
- (15) Q Have you ever testified before in a case?
- (16) A No sir
- (17) Q Would you give us a brief description of your educational background?
- (18) A I've - I finished grammar school eighth grade and went into the ninth I quit several times and decided I didn't need no more education and then went back in 1991 early part of '91 and got GED 31 years later
- (19) Q And through what program did you do that?

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- (1) A I went through the local community college in Halifax  
 (2) County near Roanoke Rapids where I live  
 (3) Q That's at your home?  
 (4) A Yes sir  
 (5) Q And you indicated that you've been with Exxon for 23  
 (6) years. Has that been your only employer or have you had other  
 (7) employers?  
 (8) A No sir. I was with the Roanoke Rapids textile mills from  
 (9) 1959 till about 1966 off and on - give or take - and -  
 (10) Q And I'm sorry?  
 (11) A And then I was in the cigarette factory for a couple of  
 (12) months and then I done odd jobs in food lines - I mean food  
 (13) service  
 (14) Q What did you do in the textile factory?  
 (15) A I run - I operated tanners, dryers and loop dryers which  
 (16) is drying tiles and so forth - running - basically I had to do  
 (17) with tiles  
 (18) Q And approximately what year did you first become involved  
 (19) with activities involving the sea or shipping company?  
 (20) A 1967 or '8 - I believe it was '68 - Decided to leave cotton  
 (21) mill and cigarette factory and all that stuff and go and find a  
 (22) job. And I did. I found a position I wanted and I stayed with  
 (23) it. And that with the U.S. Department of Commerce which  
 (24) was  
 (25) NONOR - NORA. I believe it was at the time  
 (26) Q Do you know what that stands for?

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- (1) A Yeah. National Ocean Graphic - I forgot all the names to  
 (2) it. It was out of Rockville, Maryland. It was still part of  
 (3) the government.  
 (4) Q It was part of the federal government?  
 (5) A The federal government, yes.  
 (6) Q And what were you doing with NORA?  
 (7) A I was on mess man part time in the steward's department  
 (8) and I was also a wiper part time in the engine room.  
 (9) Q So NORA had a fleet of vessels I assume?  
 (10) A Yes sir, and at the time they did research.  
 (11) Q And you were sailing?  
 (12) A Yes sir, ah, all research.  
 (13) Q And type of vessels were these?  
 (14) A They were all research.  
 (15) Q And for what period of time did you sail with -  
 (16) A I stayed with them until February of 1970.  
 (17) Q I was asking you how long I think you were sailing with  
 (18) vessels that were run by NORA.  
 (19) A Well, approximately two and a half years.  
 (20) Q Did you have any qualification requirements to get this  
 (21) job, any kind of licensing requirements?  
 (22) A No, sir. Sorry, no sir.  
 (23) Q Was this your first sea experience?  
 (24) A Yes sir.  
 (25) Q Okay. Had you ever sailed before, either as a hobby or for

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- (1) remuneration prior to your job with NORA?  
 (2) A No sir.  
 (3) Q And where did you go after the two and a half years between  
 (4) February 1970 and 1972, 1973, you joined Exxon in February  
 (5) 1970?  
 (6) A Yes sir.  
 (7) Q And what was your position with them at that time?  
 (8) A I was mess man.  
 (9) Q And who - what company was your employer, if you recall  
 (10) in 1970? Who did you work for?  
 (11) A Exxon, oh, ESSO. I'm sorry.  
 (12) Q It was called ESSO then?  
 (13) A Right.  
 (14) Q Do you remember when the name changed?  
 (15) A I believe it was '77, '78 or somewhere along there, '76  
 (16) maybe. I don't remember for sure.  
 (17) Q What kind of vessel did you sail for ESSO when you first  
 (18) started working for them?  
 (19) A All tankers.  
 (20) Q What size tankers?  
 (21) A I started with the T2s. I believe that's right.  
 (22) Q And what is your current position?  
 (23) A I'm retired as of right now. I'm on medical disability.  
 (24) Q Okay. Let me ask what the disability is?  
 (25) A Yes sir. Right knee replacement didn't take and I could

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- (1) not work on the ships any more because of it.  
 (2) Q And when did you retire?  
 (3) A The official retirement, April 1st of this year, of 1993.  
 (4) Q And what were you before you retired?  
 (5) A Fleet chef.  
 (6) Q Do you remember the time frame during which you sailed on  
 (7) the Yorktown?  
 (8) A Yes, I do.  
 (9) Q When was that?  
 (10) A That would have been December the 21st of 1984 till the  
 (11) middle of February of 1985.  
 (12) Q Why is it that you recall so specifically those dates?  
 (13) A I - my baby hit me in the eye with a Christmas card and  
 (14) scarred the cornea about 95 percent of it. They were trying  
 (15) to push me into going back to work before I was ready. And I  
 (16) had  
 (17) about four days off because of it. And I was still not  
 (18) completely well. I mean the eye was not completely healed  
 (19) when  
 (20) I went back and I remember very well. That's what brought  
 (21) it  
 (22) out.  
 (23) Q Do you remember sailing on the Yorktown before 1985?  
 (24) A No sir, I never sailed on it again.  
 (25) Q You sailed with Captain Hazelwood at various times, did you  
 (26) not?  
 (27) A Twice.  
 (28) Q And could you tell us those two times?

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- (1) A Yes sir The Yorktown which I just mentioned and also  
 (2) on the Valdez in October of 1988 to November of 1988  
 (3) Q And could you tell us specifically the time frame you  
 (4) sailed with Captain Hazelwood on the Yorktown? Was it the  
 time  
 (5) that you gave us before?  
 (6) A Yes sir  
 (7) Q So he was the captain of the Yorktown during that whole  
 (8) period?  
 (9) A Yes sir  
 (10) Q And then you also sailed with him on the Valdez through  
 (11) October 88 to November 88?  
 (12) A Yes, sir  
 (13) Q Now during the time that you were on the Valdez with  
 (14) Captain Hazelwood did you ever observe him drinking?  
 (15) A No sir  
 (16) Q Did you ever observe - did you ever have a - did you ever  
 (17) smell alcohol on his breath?  
 (18) A No sir  
 (19) Q Did you ever see him with alcohol?  
 (20) A No sir  
 (21) Q Did you ever give him any alcohol?  
 (22) A No sir  
 (23) Q Did you see anybody drinking on board the Valdez in 1988?  
 (24) A No sir I did not  
 (25) Q Did you drink with anybody on board?

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- (1) A No sir  
 (2) Q Okay Did anybody ever tell you that there was alcohol on  
 (3) board the Valdez when you were sailing in 88?  
 (4) A Not to my knowledge no sir  
 (5) Q Getting back to the period that you were on the Yorktown  
 (6) did you - were you permanently assigned to that vessel or how  
 (7) did you get assigned to it? Let me rephrase the question  
 (8) because that was two questions  
 (9) How did you end up getting assigned to that vessel?  
 (10) A It was Christmas and they needed somebody on there I  
 was  
 (11) elected to go And I was the first one available from paid  
 (12) leave so I was the one elected to go  
 (13) Q Do you remember where you got on board the vessel?  
 (14) A Yes sir I sure do  
 (15) Q Where was it?  
 (16) A In Bayway New Jersey  
 (17) Q Please let me rephrase that  
 (18) A Bayonne New Jersey I believe it was  
 (19) Q Bayonne?  
 (20) A Yes sir  
 (21) Q Now to your knowledge was there alcohol on board the  
 (22) Yorktown during the time you were sailing?  
 (23) A None that I saw no sir None that I saw  
 (24) Q You didn't see any alcohol -  
 (25) A No sir

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- (1) Q - on board  
 (2) Who was the port steward during that period if you  
 (3) remember?  
 (4) A Yes sir Jim Shaw  
 (5) Q And who was the fleet chef?  
 (6) A Warren Adams  
 (7) Q Did you read the deposition of Mr Shaw?  
 (8) A Yes, sir, I did  
 (9) Q Did you read the part about Mr Shaw having observed  
 (10) Captain Hazelwood with alcohol smell on his breath according  
 (11) to Mr Shaw?  
 (12) A Yes, sir I did  
 (13) Q Did you ever smell alcohol on Captain Hazelwood's breath  
 (14) while you were on the Yorktown?  
 (15) A No, sir  
 (16) Q Were you ever asked by Captain Hazelwood to buy alcohol  
 (17) bring it on board the vessel?  
 (18) A No, sir  
 (19) Q Well did you read what Mr Shaw said?  
 (20) A Yes sir I sure did  
 (21) Q And what do you think about that?  
 (22) A I don't think he told the truth to be honest with you  
 (23) Q So did you have a discussion with Mr Shaw about it at the  
 (24) time?  
 (25) A No sir Not at the time he said I did

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- (1) Q Do you remember talking to Mr Shaw about alcohol at all  
 (2) during that time?  
 (3) A Yes sir I sure do  
 (4) Q Tell us the best you can recall about that conversation?  
 (5) A Yes sir Let me go back from the beginning, okay?  
 (6) I joined the ship in New Jersey okay We went from there  
 (7) back to Texas From Texas we went back to New York  
 From New  
 (8) York we went up to Chalmette Louisiana Mr Shaw met the  
 ship  
 (9) in Chalmette Louisiana There's a walk way about almost a  
 (10) mile that you have to get from the shore to the ship Me and  
 (11) two other guys I can't recall the name the one was a utility  
 (12) and I don't remember who the other guy was, but two or  
 three of  
 (13) us was walking ashore to go out and have a beer or  
 whatever we  
 (14) wanted  
 (15) And Mr Shaw approached me and the other two guys went  
 on  
 (16) ahead and kind of slowed down and waited for me They  
 kept on  
 (17) walking and I told them I'd catch up with them and Mr Shaw  
 (18) said Jesse there will not be anymore drinking on the ships  
 (19) and if I do hear of you drinking you will not sail fleet chef  
 (20) again  
 (21) And I told him yes sir do whatever you have to do And  
 (22) that was the discussion as far as I'm concerned That I  
 (23) remember  
 (24) Q But you spoke to Jesse - to James Shaw directly about  
 (25) drinking, right cause -

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(1) A No sir James Shaw spoke to me directly about it  
 (2) Q And was Captain Hazelwood's name ever mentioned in that  
 (3) conversation?  
 (4) A Not that I recall sir No  
 (5) Q Do you know who Leslie Pennington is?  
 (6) A Yes sir very well I do  
 (7) Q Who is she?  
 (8) A She was a manning's assistant at the time handling the  
 (9) steward department  
 (10) Q Do you know anything about Mr Shaw talking to Leslie  
 (11) Pennington about this conversation you just described for us?  
 (12) A No sir because I feel like Miss Pennington would have  
 (13) told me if there was a problem with it  
 (14) Q Okay Let me just make sure it's clear With Mr Shaw's  
 (15) testimony in mind is it your testimony that Captain Hazelwood  
 (16) never asked you to bring alcohol on board the vessel?  
 (17) A Definitely yes He would never ask that question He  
 (18) would never have asked anybody to do something like that  
 (19) That's stupid any way  
 (20) Q Now going back to the Shaw conversation again did this  
 (21) conversation that you had with Mr Shaw occur on your way  
 (22) back  
 (23) to the vessel from that restaurant that you're referring to?  
 (24) A No sir It happened on the way to the restaurant He was  
 (25) coming from the shore I was going ashore  
 (26) Q Okay

(1) A True  
 (2) Q And one of the mess men stepped up to your job as cook?  
 (3) A Right  
 (4) Q When you stepped up to relieve Adams?  
 (5) A (Nods head)  
 (6) Q All right Is that right?  
 (7) A Yes sir  
 (8) Q And that was in February of 1985?  
 (9) A Right  
 (10) Q Now this conversation that you had with Mr Shaw that  
 (11) occurred where?  
 (12) A In Chalmette Louisiana  
 (13) Q All right was this before or after you had relieved Warren  
 (14) Adams?  
 (15) A Before  
 (16) Q Do you know how long before?  
 (17) A Somewhere in the neighborhood of January 20th to  
 (18) February  
 (19) 10th Somewhere in that neighborhood  
 (20) Q Okay And again that occurred in Chalmette Louisiana?  
 (21) A Yes sir  
 (22) Q All right Now after February the 21st 1985 did you ever  
 (23) sail with Captain Hazelwood on the Yorktown ever again?  
 (24) A No sir  
 (25) Q And the only time you sailed with Captain Hazelwood again  
 (26) on any ship was in October and November of 1988 is that right?

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(1) A And he was coming to the ship I was going back the  
 (2) other  
 (3) way  
 (4) Q Now when you joined the Yorktown your job was what?  
 (5) A Ship's cook  
 (6) Q Ship's cook And there was on board a fleet chef?  
 (7) A Yes sir  
 (8) Q Do you remember his name?  
 (9) A Yes sir Warren Adams  
 (10) Q And there came a time did there not when you relieved  
 (11) Warren Adams?  
 (12) A Yes sir Warren had his 60 days off approximately four  
 (13) days before I had mine over and he was getting off at Ft  
 (14) Lauderdale so I relieved him in Ft Lauderdale  
 (15) Q So you left on February the 21st 1985  
 (16) A Somewhere basically around that time yes  
 (17) Q All right So are you saying that it was within four or  
 (18) five days of that that Warren Adams left in Ft Lauderdale?  
 (19) A Yes  
 (20) Q So that would have been in February?  
 (21) A Right  
 (22) Q Of 1985?  
 (23) A '85 uh huh  
 (24) Q And you stepped up as fleet chef?  
 (25) A Right  
 (26) Q When you relieved Warren Adams?

(1) A Yes sir  
 (2) Q And that was on the Exxon Valdez?  
 (3) A Yes sir  
 (4) MR SANDERS Your Honor that concludes the direct  
 (5) examination  
 (6) MS WAGNER Your Honor until the moment Mr Sanders  
 (7) said video deposition I believed this was a read deposition  
 (8) Mr Jamin is going to help me with this We'll have a short  
 (9) cross  
 (10) THE CLERK Raise your right hand  
 (11) (The Witness Is Sworn)  
 (12) THE CLERK Please be seated  
 (13) For the record state your full name address and spell your  
 (14) last name please  
 (15) THE WITNESS Matthew D Jamin 323 Carolyn Street  
 (16) Kodiak Alaska  
 (17) CROSS EXAMINATION OF JESSE WATTS (read)  
 (18) BY MS WAGNER  
 (19) Q Tell me what your understanding was of the alcohol policy  
 (20) around the time of the Valdez spill before the spill like in  
 (21) 88 '89?  
 (22) A It was the same policy supposed to be the same policy it  
 (23) was in 1970 when I joined the ship but it was not enforced  
 (24) Q Do you recall while you were sailing at any time between  
 (25) 1970 and today any discussions with Exxon personnel about

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- (1) alcohol policy on board their vessels?
- (2) **A Yes sir and about 1986 is when - I'm sorry 85 '86**
- (3) **somewhere in the neighborhood is when it all started about the drinking yes sir**
- (4) **Q And could you tell us what you're referring to when you mentioned that something - something started or something happened in 1985 or '86**
- (5) **A There was rumors of the company cracking down on the drinking They had already started cracking down on drugs and this is about the time it started**
- (6) **Q Okay What do you mean by rumors? Is it that - is that something that you heard?**
- (7) **A It was going all over the fleet I can't give you a specific person or specific answer All you hear is they're cracking down on so and so for drinking**
- (8) **Q By cracking down what did you understand that to mean?**
- (9) **A Well that meant that there would be no more drinking on the ship eventually Before that it was overlooked**
- (10) **Q So there was drinking on board the ship before that?**
- (11) **A I'm sure there was I don't know about the rest of them but I know I did before and there was nothing that was said okay?**
- (12) **MS WAGNER Thank you**
- (13) **MR SANDERS May it please the Court we call Ms Leslie Pennington**

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- (1) **THE CLERK Raise your right hand**
- (2) **(Witness sworn)**
- (3) **THE CLERK For the record please state your full name your address and full your last name**
- (4) **THE WITNESS Leslie Denise Pennington 30636 John Drive Dunham Springs Louisiana My last name is spelled Pennington**
- (5) **DIRECT EXAMINATION OF LESLIE PENNINGTON BY MR SANDERS**
- (6) **Q I'm going to ask you to speak up so we can all hear you okay?**
- (7) **I think the silver one is the most operative one so if you could point that towards you a little bit?**
- (8) **A (Indicating)**
- (9) **Q Good By whom are you employed?**
- (10) **A Sea River Maritime**
- (11) **Q And where do you work now**
- (12) **A In Baton Rouge Louisiana**
- (13) **Q And how long have you worked for Sea River or for Exxon?**
- (14) **A About 13 years**
- (15) **Q And tell us a little bit about your educational background**
- (16) **A I graduated from Michigan State University with a bachelors degree in general business administration in 1980**
- (17) **Q And then in what year did you start with Exxon?**

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- (1) **A 1981**
- (2) **Q Right -**
- (3) **A May**
- (4) **Q Right after school?**
- (5) **A Right**
- (6) **Q Now I want to ask you about your job in the time period of 85 '86 and '87**
- (7) **What was your job then?**
- (8) **A I was fleet manning assistant**
- (9) **Q Okay And where were you located?**
- (10) **A In Houston Texas**
- (11) **Q And were you fleet manning assistant for Exxon Shipping Company?**
- (12) **A Correct**
- (13) **Q And what does a fleet manning assistant do or did one do in those - in those days?**
- (14) **A Our job was to crew the oceangoing tankers When someone was due off the vessel we would find a relief for them and the relief basically get them to the joining port**
- (15) **Q Now in the time frame of 1985 '86 '87 did you have responsibility at your desk for crew assignments for fleet charts and ship's cooks?**
- (16) **A At one point in time yes**
- (17) **Q Was that one point in time during this time frame?**
- (18) **A Yes it was**

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- (1) **Q And in that job did you know a man by the name of Jesse Watts?**
- (2) **A Yes I did**
- (3) **Q And did you know a man by the name of Jim Shaw?**
- (4) **A Yes I did**
- (5) **Q Now I want to get right to the point Miss Pennington Mr Shaw testified in this trial by way of video deposition to a - an incident let's call it alleged incident in which he said that Mr Watts told him that he was bringing booze a couple of bottles of booze back to the ship for Captain Hazelwood and he would drink and that Mr Watts invited Mr Shaw to join them And Mr Watts - Mr Shaw has further testified that following that conversation that he made a call to you and told you that you should not assign - or he would request that you not assign Mr Watts to any vessel involving Captain Hazelwood You got that?**
- (6) **A Uh huh Yes**
- (7) **Q And my question to you is did Jim Shaw ever call and you tell you anything like that about Jesse Watts and Captain Hazelwood?**
- (8) **A No he did not**
- (9) **Q He further testified that he told you that the reason for that was that Captain Hazelwood had asked him - asked Mr Watts to get booze for him and that's where he was making that long recommendation to you did he tell you that?**

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- (1) A No he did not  
 (2) Q Is that something you would recall if you had been told  
 (3) that by Mr Shaw?  
 (4) A Yes  
 (5) MR SANDERS No further questions You may ask  
 (6) CROSS EXAMINATION OF LESLIE PENNINGTON  
 (7) BY MR O NEILL  
 (8) Q This is your deposition transcript Let's see how quick we  
 (9) can do this  
 (10) At your deposition you testified on page 62 of - page 68  
 (11) and page 62 that in fact you may have had a conversation with  
 (12) Jim Shaw about Jesse Watts and Captain Hazelwood You  
 (13) don't  
 (14) particularly recall it Was that a fair statement?  
 (15) A Yes I may have had a - I had conversations with Jim  
 (16) Shaw I had conversations with Jim Shaw on a regular basis  
 (17) about the steward's department So I could have had a  
 (18) conversation about one or the other with him I don't  
 (19) remember  
 (20) any specific conversation  
 (21) Q You don't remember one way or the other and you could  
 (22) have  
 (23) had a conversation with Shaw about Watts and Hazelwood?  
 (24) A I may have  
 (25) Q Okay  
 (26) A Not one that I -  
 (27) MR O NEILL Thank you  
 (28) REDIRECT EXAMINATION OF LESLIE PENNINGTON

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- (1) BY MR SANDERS  
 (2) Q Miss Pennington the question is Did you have a  
 (3) conversation in which Mr Shaw told you that Jesse Watts was  
 (4) bringing booze back to Captain Hazelwood and that therefore  
 (5) you  
 (6) shouldn't assign Mr Watts to Mr Hazelwood's ship again? Did  
 (7) you have that conversation?  
 (8) A No sir I did not  
 (9) MR SANDERS No further questions  
 (10) THE COURT You may step down  
 (11) MR SANDERS Your Honor we call Ms Ellen Share  
 (12) THE CLERK Raise your right hand  
 (13) (The Witness Is Sworn)  
 (14) THE CLERK For the record state your full name your  
 (15) address and spell your last name please  
 (16) THE WITNESS My name is Ellen Share I live at 14914  
 (17) Barboula (ph) Houston Texas Spell my last name is  
 (18) S h a r e  
 (19) DIRECT EXAMINATION OF ELLEN SHARE  
 (20) BY MR SANDERS  
 (21) Q Ms Share I'm going to ask you to speak right out okay  
 (22) you have kind of a little voice quite unlike mine  
 (23) Ms Share by whom are you employed now?  
 (24) A Exxon Company USA  
 (25) Q And how long have you been with Exxon USA?  
 (26) A 21 years all told

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- (1) Q And before that did you go to school?  
 (2) A High school little college  
 (3) Q And did you go from a little college on into Exxon  
 (4) directly or were you -  
 (5) A No sir  
 (6) Q Did you work for other people?  
 (7) A I had other employment - life before Exxon yes  
 (8) Q You did have a - life before Exxon all right  
 (9) And let me take you straight to the time frame of 1985 -  
 (10) like the last half of 1985 or the year 1986 or the first half  
 (11) of 1987  
 (12) Do you recall where you were working in that time frame?  
 (13) A 85 - 84 and '85 I was in the gulf coast fleet office  
 (14) '86 I left I left Exxon Shipping in 1986 August to go to  
 (15) Exxon Company USA  
 (16) Q But in January through August of 1986 you did work for  
 (17) Exxon Shipping Company?  
 (18) A Yes  
 (19) Q And then in 1985 you worked for Exxon Shipping Company?  
 (20) A Yes  
 (21) Q Now in that time frame were you in the same job?  
 (22) A During that time yes I was in the gulf coast fleet  
 (23) office  
 (24) Q And what was your job in the gulf coast fleet office?  
 (25) A I was sent there basically as an extension of the benefits

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- (1) office to serve as a closer contact with Exxon employees  
 (2) ease  
 (3) coming on the vessels to do benefit related work  
 (4) Q Did you also have any function in terms of safety?  
 (5) A Attended safety meetings when they had them  
 (6) Q All right Where was your office?  
 (7) A In the Baytown office in the Baytown refinery  
 (8) Q Do ships come in to Baytown and dock there?  
 (9) A Yes sir  
 (10) Q Did you visit the ships?  
 (11) A Yes sir that was part of my responsibility to be there  
 (12) when - when possible to answer questions and help  
 (13) employees  
 (14) when the ships came?  
 (15) Q So do I understand you to say that you visited the ships  
 (16) every time the ships came in?  
 (17) A Yes sir  
 (18) Q And in visiting the ships did you happen to know a man by  
 (19) the name of Jim Shaw?  
 (20) A Yes sir  
 (21) Q What was Jim Shaw's job at that time?  
 (22) A He was at port steward He worked with stowing the  
 (23) vessels  
 (24) Q Did you have a lot of dealings with Mr Shaw?  
 (25) A Indirectly His office was located across from mine  
 (26) We - we visited when the ships weren't in And but  
 (27) basically  
 (28) his responsibility was totally different from mine

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(1) Q Did you have occasion to visit the ships at the same time  
 (2) that Mr. Shaw did?  
 (3) A Quite often.  
 (4) Q All right. Now let me ask you about a specific occasion.  
 (5) Sometime in this time frame - and if it's you, the Ellen  
 (6) Share that he's talking about, it has to be in '85 or up until  
 (7) August of 1986, correct?  
 (8) A Uh-huh.  
 (9) Q Mr. Shaw has testified that - let me just read it.  
 (10) Was any - counsel, I'm reading in the trial transcript  
 (11) page 1011 or 1011.  
 (12) The question: Was anybody with you that fourth time when  
 (13) you went aboard?  
 (14) Answer: When I went aboard the vessel, I had an assistant  
 (15) that would do several things with me. That person was Sam  
 (16) Pierpoint. Ellen Share was also in the company at that time.  
 (17) She had something to do with safety. She may have gone  
 (18) aboard  
 (19) with me at that time. Frank Pasolca (ph) worked for Ellen  
 (20) Mitchell, may have been may have gone aboard with me also.  
 (21) Question: Can I ask you to do something for me, Mr. Shaw?  
 (22) When you say she may have, it doesn't really give us your  
 (23) best recollection. Is your best recollection that she went  
 (24) aboard with you on that occasion?  
 (25) Answer: I think she did, yes.  
 (26) Then I'm going to skip a few lines, and go to line 21. On

(1) A No, sir, I do not.  
 (2) MR. SANDERS: You may ask.  
 (3) CROSS EXAMINATION OF ELLEN SHARE  
 (4) BY MR. O'NEILL  
 (5) Q Ma'am, would it be fair to say that you and Jim Shaw went  
 (6) on board Exxon vessels numerous times?  
 (7) A Yes.  
 (8) Q And would it be fair to say, with regard to this  
 (9) conversation that you don't recall this conversation one way  
 (10) or the other so that you can not realistically deny that the  
 (11) conversation took place?  
 (12) A I can not recall the conversation.  
 (13) Q You don't recall it one way or the other?  
 (14) A No.  
 (15) Q My statement - we have a double negative problem here.  
 (16) I'm not trying to badger you or anything. I just want to make  
 (17) sure that reads right on here, and I used a double negative.  
 (18) Let me, if I'm a good enough grammarian to figure this out,  
 (19) You can't - your recollection isn't such that you can  
 (20) recall one way or the other that this conversation took place.  
 (21) Is my statement correct?  
 (22) A Yes.  
 (23) Q Can't recall one way or the other?  
 (24) A I can't recall one way or the other, yes.  
 (25) Q Thank you very much.

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(1) that occasion did you go see Mr. Hazelwood?  
 (2) Answer: Yes, I did.  
 (3) Question: Could you see him?  
 (4) Answer: Not then. The door was locked on this occasion.  
 (5) Question: Was he aboard?  
 (6) Answer: To the best of my knowledge, he was. I don't know  
 (7) because the room was locked. I wasn't aware.  
 (8) Question: Did you find out why the room was locked?  
 (9) Answer: Well, the personnel aboard the vessel were making  
 (10) remarks to the point that there was a female companion or  
 (11) something in the room with him. And they were having a party  
 (12) and Joe was busy.  
 (13) Question: Okay, then did you finally see him that day?  
 (14) Answer: Yes, I did.  
 (15) Question: All right. And at that time, did you smell  
 (16) anything on his breath?  
 (17) Answer: Yes, I did.  
 (18) Question: What?  
 (19) Answer: Here again, I got the distinct odor of alcohol.  
 (20) Skipping down to page 1013. Question: Did you discuss  
 (21) this with Ellen Share?  
 (22) Answer: We had a conversation about it, yes.  
 (23) Now, my question to you, Ms. Share, is simply this:  
 (24) Do you have any recollection of that occurring while you  
 (25) were on board the Yorktown with Mr. Jim Shaw?

(1) And with regard to Mr. Shaw, you got to review Mr. Shaw's  
 (2) deposition testimony -  
 (3) A Yes.  
 (4) Q - when you were deposed.  
 (5) And you consider Mr. Shaw to be an honest man, don't you?  
 (6) A In my dealings with him, yes.  
 (7) Q And you consider him to be an honest man, and you do not  
 (8) doubt the truthfulness of his deposition testimony, do you?  
 (9) A During the dealings with me, I have no reason to doubt  
 (10) his  
 (11) honesty.  
 (12) MR. O'NEILL: Thank you, ma'am.  
 (13) REDIRECT EXAMINATION OF ELLEN SHARE  
 (14) BY MR. SANDERS  
 (15) Q Ms. Share, your answer about Mr. Shaw's honesty, that was  
 (16) based on your deposition - and in response to Mr. O'Neill  
 (17) based upon your own personal dealings with Mr. Shaw, is that  
 (18) correct?  
 (19) A That's correct, yes.  
 (20) Q And in your dealings with him, you didn't ever have an  
 (21) occasion to find that he was dishonest?  
 (22) A No.  
 (23) Q Let me take this a step further.  
 (24) If Mr. Shaw has testified in this case that Mr. Jesse Watts  
 (25) was bringing booze back to Captain Hazelwood after Captain  
 (26) Hazelwood returned from alcohol rehabilitation, which would



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(1) have occurred in August of 1985 and said that Mr Jesse Watts  
 (2) was doing that after Captain Hazelwood returned and if the  
 (3) records show that Mr Jesse Watts never even sailed with  
 (4) Captain Hazelwood -  
 (5) MR O NEILL Object to this question as being  
 (6) speculative invading the province of the jury and without  
 (7) foundation  
 (8) MR SANDERS I m following up on his question as to  
 (9) the honesty  
 (10) THE COURT You better get to it real quick it sounds  
 (11) to me like its pretty far out  
 (12) BY MS SANDERS  
 (13) Q If Mr Shaw made a claim like that would that be the claim  
 (14) of an honest man?  
 (15) MR O NEILL Same objection  
 (16) THE COURT I ll sustain the objection You may be  
 (17) able to approach the subject other way but not with a  
 (18) convoluted question like that  
 (19) BY MR SANDERS  
 (20) Q Is your opinion as to Mr Shaw s honesty based on anything  
 (21) other than your own personal dealings with him?  
 (22) A Absolutely no  
 (23) Q One final question Do you remember any description to you  
 (24) or my reading to you from the record of what Mr Shaw said?  
 (25) A Yes

(1) BY MR SANDERS  
 (2) Q There you are Ms Shorts where are you employed?  
 (3) A I m employed with Sea River Maritime Incorporated  
 (4) Q That is a good idea Stay close to that silver one and  
 (5) we ll be able to hear you  
 (6) How long have you been employed by Sea River or by Exxon?  
 (7) A 17 years  
 (8) Q Tell us your educational background?  
 (9) A Attended the University of Houston with approximately 86  
 (10) hours towards a degree  
 (11) Q Now what is your job with Sea River this time?  
 (12) A At this time my job assignment is a commercial assistant  
 (13) with the business development and commercial group  
 (14) Q And in that job are you the custodian of records of Sea  
 (15) River Maritime which concern assignment histories deck logs  
 (16) port logs that kind of information?  
 (17) A Yes  
 (18) MR SANDERS Your Honor may I approach the witness?  
 (19) THE COURT Yes  
 (20) BY MR SANDERS  
 (21) Q I am handing you what is a part of Plaintiff s Exhibit  
 (22) No 1 and this part is in four pages and it is the assignment  
 (23) history for Captain Joseph Hazelwood  
 (24) The page that I have opened up is the page that covers a  
 (25) time period Would you tell the ladies and gentlemen of the

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(1) Q If that had occurred do you think that is something you  
 (2) would remember?  
 (3) A Yes I would  
 (4) MR SANDERS No further questions  
 (5) THE COURT Thank you you may step down  
 (6) MR SANDERS Your Honor we call Ms Marsha Shorts  
 (7) (The Witness Is Sworn)  
 (8) MR SANDERS I seem to have inherited all the  
 (9) problems with documents today  
 (10) Our Exhibit 3476 A which is an assignment history for  
 (11) Jesse Watts was missing every other page I would like to -  
 (12) MR O NEILL I object to it as incomplete  
 (13) MR SANDERS And I join in that objection but I have  
 (14) a complete version here and I d like to move that into  
 (15) evidence  
 (16) MR O NEILL I have no objection to the complete one  
 (17) or the incomplete one for that matter  
 (18) (Exhibit 3476 A offered)  
 (19) THE COURT 3476 A is admitted  
 (20) (Exhibit 3476 A received)  
 (21) THE CLERK Would you state your full name your  
 (22) address and spell your last name  
 (23) THE WITNESS Marsha Renee Shorts 9110 Tavastock  
 (24) Drive in Houston Texas My last name is spelled S h o r t s  
 (25) DIRECT EXAMINATION OF MARSHA SHORTS

(1) jury what time period that covers?  
 (2) A The time period that s covered is from October 6th 1981  
 (3) through March 24th 1989  
 (4) Q All right What information is contained on this  
 (5) assignment history from Plaintiff s Exhibit No 11?  
 (6) A It contains the vessel s name the vessel code the  
 (7) rating - called the rating scale I m sorry The start date  
 (8) the stop date and the total days  
 (9) Q Can you look at that assignment history and find out when  
 (10) Captain Hazelwood was sailing aboard an Exxon ship?  
 (11) A Yes  
 (12) Q Can you tell what dates he sailed?  
 (13) A That is correct  
 (14) Q And how many days -  
 (15) A That s correct  
 (16) Q And does it give you the name of the ship?  
 (17) A Yes  
 (18) Q All right Would you start in about I guess halfway down  
 (19) the page and 1985 start with August of 1985 - well start  
 (20) with January of 1985  
 (21) How many ships did Captain Hazelwood sail on from 85  
 (22) through 89?  
 (23) A A total of two  
 (24) Q What were those two ships?  
 (25) A The Exxon Yorktown and the Exxon Valdez

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- (1) Q And the Exxon Yorktown the first - strike that  
 (2) Whether does - when is the last date on which Captain  
 (3) Hazelwood served aboard the Exxon Yorktown?  
 (4) A April 17th 1987  
 (5) Q What is the first date on which he sailed on the Exxon  
 (6) Valdez?  
 (7) A July 30th of 1987  
 (8) Q I ask you just kind of put that aside  
 (9) Did you also at my request consult with deck logs and  
 (10) port logs?  
 (11) A Yes  
 (12) Q And which port logs did you review for me?  
 (13) A I reviewed the Exxon Yorktown as it - and in Baytown  
 (14) Q Now the port log would have what information?  
 (15) A The port logs would have the information as to the time  
 (16) the vessel arrived in port all of the operations that occurred in  
 (17) port the product loaded or discharged  
 (18) Q All right Now you also mentioned and I also mentioned  
 (19) deck logs  
 (20) A That's correct  
 (21) Q What - where did the deck logs - which ships did I ask  
 (22) you to check on deck logs?  
 (23) A On the Exxon Yorktown and Valdez  
 (24) Q So the port logs were for what port?  
 (25) A Baytown Texas

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- (1) Q And the deck logs were for the - what ship?  
 (2) A For the Yorktown and the Valdez  
 (3) Q Is it possible to tell comparing those two - or using  
 (4) those two is it possible to tell when the Exxon Yorktown  
 (5) called at Baytown when Captain Hazelwood was the master of  
 (6) the vessel - using the assignment history the deck logs and the  
 (7) port logs?  
 (8) A Yes it is  
 (9) Q All right Is there - would the deck log of the Yorktown  
 (10) say when it was in York - when it was in Baytown?  
 (11) A Yes  
 (12) Q And would the port log from Baytown show when the  
 (13) Yorktown  
 (14) came into Baytown?  
 (15) A That's correct  
 (16) Q All right And in comparing those two was there - was  
 (17) there an agreement between the two or were there any  
 (18) disparities?  
 (19) A There was an agreement  
 (20) Q Now did I also ask you to double check that?  
 (21) A Yes  
 (22) Q And how did you double check that?  
 (23) A That was double checked by running an extracted report  
 (24) from  
 (25) our STAR System which is our Statistical and Revenue  
 (26) System for  
 (27) Sea River Maritime which would indicate all port calls that a  
 (28) vessel makes at port

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- (1) Q All right Did I ask you to then give me a listing of all  
 (2) the times that the Exxon Yorktown was in Baytown Texas with  
 (3) Captain Hazelwood as master of the Yorktown?  
 (4) A Yes  
 (5) Q And s Defendant Exhibit 7420 a blowup of your work on that?  
 (6) A That's correct  
 (7) Q Now you have on this information start thing August of  
 (8) 1985 through April of 1987  
 (9) The first time that the ship was in Baytown ship being the  
 (10) Yorktown at Baytown with Captain Hazelwood aboard or - this  
 (11) date right here August the 28th 1985 Correct?  
 (12) A That's correct  
 (13) Q And how long did the ship stay?  
 (14) A It stayed till April 30th of 1985  
 (15) Q To - see I lured you into an error?  
 (16) A Same thing you are -  
 (17) Q August -  
 (18) A August 30 1985  
 (19) Q All right And then from then on these are the dates  
 (20) through the 30th of March 1987 when the Yorktown was at  
 (21) Baytown with Captain Hazelwood aboard?  
 (22) A That's correct  
 (23) Q Now Mr Shaw has testified that there were three or maybe  
 (24) four times when the - the Yorktown was at Baytown they were  
 (25) all seven to 14 days apart

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- (1) What is the shortest interval of time between visits that  
 (2) was found by your research?  
 (3) A 26 days  
 (4) Q And this was the last one right before Captain Hazelwood  
 (5) left the ship in 1987 correct?  
 (6) A That's correct  
 (7) Q All right And then of course the next shortest is 51  
 (8) days and then the rest of them are a whole lot of days?  
 (9) A That's correct  
 (10) MR SANDERS Move the admission of defendant exhibit  
 (11) 7420  
 (12) (Exhibit 7420 offered)  
 (13) MR O NEILL No objection  
 (14) THE COURT Defendant 7420 is admitted  
 (15) (Exhibit 7420 received)  
 (16) BY MS SANDERS  
 (17) Q I also have here - and if I may approach the witness Your  
 (18) Honor I have Defendant Exhibit 3476 A?  
 (19) THE COURT 3476?  
 (20) MR SANDERS 76 A alpha That's in evidence  
 (21) BY MS SANDERS  
 (22) Q And that is the assignment history for Jesse Watts Is  
 (23) that right?  
 (24) A That's correct  
 (25) Q Now you have in front of you the assignment history for

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1) Captain Hazelwood?  
 2) **A That's correct**  
 3) Q Let me ask you to compare those two assignment histories  
 4) for the period starting with 1985  
 5) **A Okay**  
 6) Q And first let me ask you if those two sailed together in  
 7) January or February of 1985?  
 8) **A Yes**  
 9) Q And on what ship was that?  
 10) **A The Exxon Yorktown**  
 11) Q All right Now in 1985 after February did - do those  
 12) records reflect that Jesse Watts ever sailed on the Yorktown  
 13) when Captain Hazelwood was master again?  
 14) **A No they - they do not**  
 15) Q All right So I'm having Mr O'Neill's problem Is there  
 16) any evidence in those records that he ever sailed on the  
 17) Yorktown with Captain Hazelwood again? I've got a double  
 18) negative Not you me  
 19) Did he or didn't he?  
 20) **A He did not**  
 21) Q Thank you  
 22) Now do the records reflect that Mr Watts did sail with  
 23) Captain Hazelwood on board another ship in 1988?  
 24) **A Mr Watts did sail with Captain Hazelwood on board the**  
 25) **Exxon Valdez in 1988**

1) BY MR SANDERS  
 2) Q And this of course goes from August the 14th 1985 to the  
 3) date of the grounding in 1989?  
 4) **A Yes**  
 5) Q Is that correct?  
 6) And the total number of different people who sailed with  
 7) Captain Hazelwood during that time period was what?  
 8) **A 269**  
 9) Q Did I also ask you if it was possible to look at the deck  
 10) logs for the ships on which Captain Hazelwood was sailing to  
 11) determine how many visitors were recorded as having visited  
 12) the  
 13) vessel when Captain Hazelwood was aboard?  
 14) **A Yes**  
 15) Q Now to the deck - to the - excuse me  
 16) Do the deck logs - I'll get it right in about a half an  
 17) hour  
 18) Do the deck logs contain that sort of information?  
 19) **A That's correct**  
 20) Q Do you have an understanding as to why that information is  
 21) put in the deck logs?  
 22) **A It's required These are not normally Exxon employees**  
 23) **so**  
 24) **there needs to be a record as to who boards the ship that is**  
 25) **not an employee**  
 26) Q Did you go through the deck logs for the Yorktown during  
 27) the appropriate time period and the deck logs for the Exxon

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1) Q Can you tell the month there or is that -  
 2) **A Sure Mr Watts was on board the Exxon Valdez from**  
 3) **September 30th through October 25th**  
 4) Q Of 1988?  
 5) **A Of 1988**  
 6) Q Thank you Now I also asked you to do two other things  
 7) for me  
 8) Is it possible to take the information in your records and  
 9) determine how many crew - crew members - sailors - were on  
 10) board with Captain Hazelwood during a period of time?  
 11) **A Yes**  
 12) Q And in doing so did I give you any instructions about  
 13) making sure you didn't count anybody twice?  
 14) **A Yes**  
 15) Q And at my request did you go through the records and  
 16) compile a total number by year by time period for the total  
 17) number of different people who served on Exxon vessels with  
 18) Captain Hazelwood when he was a master?  
 19) **A Yes**  
 20) **MR SANDERS I move the admission of Defendant**  
 21) **Exhibit 7419**  
 22) (Exhibit 7419 offered)  
 23) **MR O NEILL No objection**  
 24) **THE COURT 7419 is admitted**  
 25) (Exhibit 7419 received)

1) Valdez during the appropriate time period and come up with a  
 2) number by year of visitors who came aboard those ships when  
 3) Captain Hazelwood was the master?  
 4) **A Yes**  
 5) Q And did you - does Defendant Exhibit 7424 accurately  
 6) portray your summary of that work?  
 7) **A That is correct**  
 8) **MR SANDERS I move the admission of Defendant**  
 9) **Exhibit 7424**  
 10) (Exhibit 7424 offered)  
 11) **MR O NEILL No objection**  
 12) **THE COURT Defendant Exhibit 7424 is admitted**  
 13) (Exhibit 7424 received)  
 14) **BY MS SANDERS**  
 15) Q And the total number of visitors is?  
 16) **A 272**  
 17) **MR SANDERS Thank you very much You may ask**  
 18) **CROSS EXAMINATION OF MARSHA SHORTS**  
 19) **BY MR O NEILL**  
 20) Q Got a couple of questions for you  
 21) Now Baytown is in Texas?  
 22) **A That's correct**  
 23) Q And ships come in to Baytown and this ship came in to  
 24) Baytown on these days (indicating) isn't that correct?  
 25) **A That's correct**

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- (1) Q Now the Baytown is one of several ports that are serviced  
 (2) by or were serviced by at this point in time the gulf coast  
 (3) fleet office isn't that right?  
 (4) A That's correct  
 (5) Q And there was - and listening to Mr DeOliveira testifying  
 (6) earlier today I heard him say that Shaw Jim Shaw the port  
 (7) steward not only visited ships at Baytown but they he visited  
 (8) them when they came in to Baton Rouge? Do you know that?  
 (9) A I'm - no I have no recollection of that  
 (10) Q The Baton Rouge is down in the general geographic area  
 near  
 (11) Baytown they're in adjoining states aren't they?  
 (12) A Baton Rouge is in Louisiana  
 (13) Q And where is Texas City?  
 (14) A I'm sorry  
 (15) Q Do you know where Texas City is?  
 (16) A I've heard of Texas City yes  
 (17) Q Do gulf fleet coast ships come in to Texas City too don't  
 (18) they?  
 (19) A I'm quite sure they do  
 (20) Q And this chart doesn't cover Baton Rouge when the Yorktown  
 (21) came in to Baton Rouge does it?  
 (22) A No it does not  
 (23) Q And it doesn't cover when the Yorktown came in to Texas  
 (24) City does it?  
 (25) A No it does not

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- (1) Q And you didn't purport to try to put on this chart you  
 (2) didn't try to put on this chart the number of times that  
 (3) Mr Shaw would have visited the Exxon Yorktown when the  
 Exxon  
 (4) Yorktown was in and around the gulf coast?  
 (5) MR SANDERS Object to that Assumes a fact not in  
 (6) evidence  
 (7) MR O NEILL I asked her whether they tried to -  
 (8) MR SANDERS I'm objecting to whether Mr Shaw would  
 (9) have visited those places There's certainly no proof of  
 (10) that  
 (11) MR O NEILL Mr DeOliveira has already testified to  
 (12) that  
 (13) THE COURT That's something the jury will have to  
 (14) decide  
 (15) BY MR O NEILL  
 (16) Q You didn't try to put that on this chart did you?  
 (17) A I was not asked to put that information on the chart  
 (18) Q You were not asked to put that information on the chart?  
 (19) A No  
 (20) Q Okay  
 (21) And we talked a little bit about Mr Watts vessel  
 (22) assignments and Captain Hazelwood's vessel assignments  
 Okay?  
 (23) Remember we talked about that?  
 (24) A Uh huh  
 (25) Q And I'm just about to get you off the stand

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- (1) You couldn't tell from the records or you weren't asked to  
 (2) tell from the records whether Captain Hazelwood and Mr Watts  
 (3) were in the same port together assuming they came in on  
 (4) different ships? Nobody asked you to do that did they?  
 (5) A I'm sorry could you repeat the question?  
 (6) Q Mr Watts and Captain Hazelwood - I'm going to try it with  
 (7) a couple of questions - could be in the same place and time  
 (8) because they came in on the same ship That's a correct  
 (9) statement? Or they could be in the same place at the same time  
 (10) because they came in on different ships that's a correct  
 (11) statement isn't it?  
 (12) A (Nods head)  
 (13) Q Two ships come in to Baytown at the same time two friends  
 (14) see each other they're at the same place at the same time Do  
 (15) you understand?  
 (16) A Yes, I understand  
 (17) Q You didn't attempt to investigate all of the times that  
 (18) Shaw and Hazelwood - I'm sorry all of the times that Watts  
 (19) and Hazelwood were at the same time in the same place  
 because  
 (20) they came in on different ships?  
 (21) MR SANDERS Object to that as assuming facts not in  
 (22) evidence  
 (23) THE COURT It's a fair cross exam You may answer  
 (24) it  
 (25) BY MR O NEILL

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- (1) Q I think it's a fair -  
 (2) A The information that I - reviewed indicated that Jesse  
 (3) Watts was assigned what his assignments were And in  
 comparing  
 (4) those assignments with the assignments of Captain  
 Hazelwood  
 (5) Jesse Watts and Captain Hazelwood sailed together on the  
 (6) Yorktown in 1985 and also on the Exxon Valdez  
 (7) Q In 88?  
 (8) A That's correct  
 (9) Q But I'm asking the question one step beyond that  
 (10) Let's assume I wanted to see whether they were together in  
 (11) Baytown or Texas City or Baton Rouge and came in on different  
 (12) ships Did you go and do any analysis of the possibility that  
 (13) they came in on different ships and were together? Was that  
 (14) something that you looked at as part of this analysis? Do you  
 (15) understand what I'm saying?  
 (16) A I understand what you're saying  
 (17) Q Do you want me to try it again?  
 (18) A According to the assignment masters they were not  
 They  
 (19) were on the same ship  
 (20) Q But I'm talking about times when they weren't on the same  
 (21) ship Let's take the second half of 1985 or the first half of  
 (22) 1986 Now we know they're not on the same ship Did you  
 (23) try - and I - maybe it's obvious You didn't try to figure  
 (24) out whether the ships that they were on came into the same  
 (25) port different ships came into the same port? That was not

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- (1) something that you analyzed was it?  
 (2) **A No it was**  
 (3) **MR O NEILL** Okay Thank you very much ma'am  
 (4) **REDIRECT EXAMINATION OF MARSHA SHORTS**  
 (5) **BY MR SANDERS**  
 (6) **Q Ms Shorts** I guess this is obvious also You don't know  
 (7) if it is so that those two people arrived at the same port on  
 (8) different ships?  
 (9) **A No I do not**  
 (10) **Q All right**  
 (11) **MR SANDERS** No further questions  
 (12) **THE COURT** Thank you you may step down  
 (13) **MS STEWART** Your Honor defendants call Lieutenant  
 (14) Commander Falkenstein by video deposition  
 (15) **THE COURT** I'm sorry the name again?  
 (16) **MS STEWART** Lieutenant Commander Falkenstein )  
 (17) **DIRECT EXAMINATION OF THOMAS FALKENSTEIN**  
 (18) **BY VIDEO EXAMINER**  
 (19) **Q** For the record commander would you identify yourself?  
 (20) **A** My name is Thomas G Falkenstein I'm a lieutenant  
 (21) commander in the United States Coast Guard  
 (22) **Q** When in 1987 did you arrive in Valdez?  
 (23) **A** I reported in on July 31st 1987  
 (24) **Q** And who was the commanding officer in Valdez at that time?  
 (25) **A** Steven McCall

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- (1) **Q** Did you remain in the position of executive officer during  
 (2) the entire time that you were stationed in Valdez?  
 (3) **A** Yes sir  
 (4) **Q** Can you describe what your duties were as executive officer  
 (5) in Valdez?  
 (6) **A** The executive officer runs the administration or  
 (7) administers the operation of the unit The commanding  
 (8) officer  
 (9) dictates what's to be done and the executive officer sees to  
 (10) it that it's carried out by the appropriate departments within  
 (11) the unit  
 (12) I was assigned as the alternate captain of the port and in  
 (13) the captain's absence or the commanding officer's absence  
 (14) I  
 (15) would be the acting officer in charge of marine inspection  
 (16) as  
 (17) well as acting commanding officer  
 (18) My duties required me to be fully aware of anything the  
 (19) commanding officer was aware of so that in the event of his  
 (20) inability to command or his absence that I would be able to  
 (21) step in and carry out his duties  
 (22) **Q** Did you have responsibility for the operation of the Vessel  
 (23) Traffic Service?  
 (24) **A** Not directly  
 (25) **Q** Did you have indirect responsibilities then?  
 (26) **A** The head of the department the division was  
 (27) responsible  
 (28) for the direct supervision and operation of the Vessel  
 (29) Traffic  
 (30) Center reported to me

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- (1) **Q** And who was that commander?  
 (2) **A** That was Lieutenant Rice  
 (3) **Q** When - when were you first notified of the grounding?  
 (4) **A** Approximately 12 30 in the morning  
 (5) **Q** Who called you?  
 (6) **A** Mr Blandford  
 (7) **Q** What did Mr Blandford tell you?  
 (8) **A** He informed me the Exxon Valdez had gone aground on  
 (9) Bligh  
 (10) Reef  
 (11) **Q** Now about what time did you arrive at the Vessel Traffic  
 (12) Center?  
 (13) **A** Approximately 12 40  
 (14) **Q** And who was present when you arrived?  
 (15) **A** Mr Blandford radio operator I believe that's all  
 (16) **Q** And was Commander McCall with you?  
 (17) **A** Yes sir  
 (18) **Q** On what - onto what part of the Exxon Valdez did you  
 (19) eventually board?  
 (20) **A** We boarded from the starboard side near midships  
 (21) **Q** And what did you do upon boarding the vessel?  
 (22) **A** The - the seaman at the head of the ladder directed us to  
 (23) the bridge We asked him where the captain was I believe  
 (24) and  
 (25) he indicated the bridge and we proceeded immediately to  
 (26) the  
 (27) bridge  
 (28) **Q** Now when you say we who - who else was with you?

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- (1) **A** Mr Lawn and Mr Delozier  
 (2) **Q** What did you do then?  
 (3) **A** We got up on the bridge I arrived on the bridge I  
 (4) believe there were three people on the bridge at the time  
 (5) the  
 (6) best of my memory One was near center line of the ship  
 (7) pacing There was another one in the corner and I believe  
 (8) the  
 (9) third was standing at the helm position  
 (10) I asked the one near the center line of the ship if he was  
 (11) the captain And he directed me toward the port corner -  
 (12) port  
 (13) forward corner of the pilot house  
 (14) **Q** And did you come upon the captain at that point?  
 (15) **A** Yes sir I went over and spoke to the captain  
 (16) **Q** All right Who was with you when you went over and spoke  
 (17) to the captain?  
 (18) **A** No one  
 (19) **Q** How long did this conversation last?  
 (20) **A** Three - five minutes maximum Probably about three  
 (21) minutes  
 (22) **Q** Did Mr Delozier come over and join you at some point?  
 (23) **A** No sir  
 (24) **Q** Was he continuing to talk to Mr Lawn?  
 (25) **A** Yes sir I believe so  
 (26) **Q** Then how did the conversation end? Did you walk away or  
 (27) did the captain walk away what happened?  
 (28) **A** I walked away sir

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- (1) Q You walked away. What did you do then?
- (2) A I went over to explain to Mr. Lawn what I had been told.
- (3) We discussed the situation a little bit between us.
- (4) Mr. Delozier. I believe then went and got into a discussion with the captain briefly.
- (5) Q And commander, did you – did you say anything to either Mr. Lawn or to Mr. Delozier when you first came over to them about smelling alcohol anywhere near Captain Hazelwood?
- (6) A No, sir.
- (7) Q Now, what happened next?
- (8) A After my discussion with Mr. Lawn, Mr. Delozier returned and indicated he wanted to talk to me on the bridge wing and we went outside.
- (9) Q And did you – what occurred then out on the bridge wing?
- (10) A Mr. Delozier asked me if I'd smelled the captain's breath.
- (11) And I indicated I had. I said yes. He said that we needed to – something along the lines of we needed to do blood test for drugs, alcohol.
- (12) Somewhere in there I – I suggested to him that maybe the captain had just seen his career go down the tubes and gone down do get a drink afterwards. I know that he pointed out that we had to consider the other possibility that he had been drinking before the ship went aground that we had to cover the – all possibilities by ordering the test.
- (13) And we then went back inside after that discussion and

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- (1) notified the commanding officer.
- (2) Q Now, you were Mr. Delozier's superior, correct?
- (3) A Yes, sir.
- (4) Q Who actually made the decision to proceed with the alcohol testing?
- (5) A I made the phone call to the commanding officer to request that we get the chemical tests or breathalyzer, if possible, the equipment out to the ship to make the tests.
- (6) Q What was the authority under which you were proceeding in making that recommendation?
- (7) A Under – I don't recall the number in the code of federal regulations under Title 46 which authorizes the Coast Guard to conduct chemical tests or to have the employer conduct the chemical test.
- (8) Q When did you make that phone call to Commander McCall?
- (9) A I don't recall the exact time. It was within one hour after we got aboard the ship.
- (10) Q Was it fairly immediately after this bridge wing conversation you described with Mr. Delozier?
- (11) A Yes, sir.
- (12) Q When you had this conversation with him relative to the blood test, under what authority were you thinking about taking this blood test at that time?
- (13) A Under the provision of the law which I can't quote exactly which permit the Coast Guard to order a test or have a

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- (1) test conducted after a major marine casualty.
- (2) Q So if I understand this correctly, this is a test that would be administered to all of the crew members that were on watch during that particular casualty, is that correct?
- (3) A Yes, sir.
- (4) Q It is clear in your mind that the suggestion for this test, then, came from Mr. Delozier, is that correct?
- (5) A Yes, sir. I think you could say that.
- (6) Q If Mr. Delozier had not spoken to you on the bridge wing at that particular point in time, would you have considered ordering a blood alcohol test at that particular point in time?
- (7) A Probably not.
- (8) Q Now, in your observation of Captain Hazelwood when you spoke to him in the wheelhouse, did you see any signs which led you to believe that he was intoxicated or under the influence of alcohol?
- (9) A Other than the odor of alcohol in and around the area of Captain Hazelwood alone, no.
- (10) Q Did he appear lucid to you?
- (11) A Yes, sir.
- (12) Q Was there anything about his – was there anything about him standing there which would lead you to believe he was unsteady or unable to stand properly?
- (13) A No, sir.
- (14) Q So there was nothing other than this alleged smell that you

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- (1) smelled to lead you to believe that the – that Captain Hazelwood had been drinking?
- (2) A No, sir. I smelled what I smelled and I did smell the odor of alcohol in and around the area of Captain Hazelwood and only Captain Hazelwood. But other than that, no, sir, there was no other indication that would lead me to believe he had consumed alcohol or was under the influence of alcohol.
- (3) Q You had not seen anything in Captain Hazelwood's behavior or demeanor to suggest that he was intoxicated, had you?
- (4) A From my observations, no.
- (5) Q Let me ask you specifically, at the time that you spoke to Captain Hazelwood aboard the vessel, did he appear to you in any way to be either in shock or incapacitated?
- (6) A When I initially spoke with him on the bridge right after I got aboard, he looked a little shocked or stunned or – understandably upset about the condition that he – his ship had come into.
- (7) Q Now, did he appear to be incapacitated?
- (8) A No, sir.
- (9) Q You, as the Coast Guard on scene investigator, had the authority to relieve the captain that you – if you felt that he was intoxicated or in any other way unable to command the vessel, is that correct?
- (10) A Yes, sir.
- (11) Q And it is also a fact that you did not relieve Captain

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- (1) Hazelwood of his command of the Exxon Valdez on that night is  
 (2) that correct?  
 (3) A Yes sir  
 (4) Q In fact Captain Hazelwood remained in command of the  
 Exxon  
 (5) Valdez until he was relieved by another Exxon master I believe  
 (6) it was Capt Deppe later on?  
 (7) A Friday evening yes, sir  
 (8) Q Right When you spoke with Captain Hazelwood regarding  
 his  
 (9) instructions to Cousins as to where to turn the vessel did  
 (10) either you or Captain Hazelwood indicate the position with  
 (11) reference to the chart?  
 (12) A Yes, sir, pointed it out with his finger  
 (13) Q And to what did he point to?  
 (14) A Pointed toward Busby Island  
 (15) Q Now do you recall what point if any Captain Hazelwood  
 (16) pointed to with regard to Busby Island?  
 (17) A No sir Busby Island is a very small island I  
 (18) understood that - you know abeam of Busby Island seemed  
 very  
 (19) clear to me So there was no point that I specifically asked  
 (20) him to point to  
 (21) Q As you sit here today commander what s your best  
 (22) recollection as to what Mr Delozier told you that Hazelwood  
 (23) had told him regarding Hazelwood s instructions to - to  
 (24) Cousins to turn the vessel?  
 (25) A To my best memory, Mr Delozier indicated that the  
 captain

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- (1) had directed the third mate Cousins to commence a turn  
 back  
 (2) into the shipping lanes at a mark and he indicated a - a 38  
 (3) fathom mark and Mr Delozier I believe said that Captain  
 (4) Hazelwood circled that particular mark That mark is abeam  
 (5) of - roughly abeam of Busby Island  
 (6) Q Now just to make it clear when you asked Captain  
 (7) Hazelwood where he had instructed Cousins to turn would it be  
 (8) correct to say that he did not point to that 38 fathom mark but  
 (9) he pointed to Busby Island?  
 (10) A He pointed toward Busby Island The island itself has a  
 (11) light on it That's an easy reference to figure out when  
 (12) you're abeam of Busby Island He didn't specifically point  
 to  
 (13) a 38 fathom mark he didn't circle anything when he was in  
 (14) discussion with me  
 (15) MS STEWART Your Honor it s that time We have  
 (16) about ten more minutes We can continue tomorrow  
 (17) THE COURT Ladies and gentlemen we will adjourn for  
 (18) the day Please remember my instructions not to read or listen  
 (19) to anything about the case We ll see you at 8 00 tomorrow  
 (20) morning Counsel remain for a few minimums please  
 (21) (Proceedings recessed at 2 00 p m )

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(1) STATE OF ALASKA )  
 (2) Reporter s Certificate  
 (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 31st day of May 1994  
 (20) MARIANNE Y LINDLEY RPR  
 Notary Public for Alaska  
 (21) My Commission Expires 8 21 95

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**Look-See Concordance Report**

UNIQUE WORDS 2,978  
TOTAL OCCURRENCES 14,135  
NOISE WORDS 385  
TOTAL WORDS IN FILE 43,888

SINGLE FILE CONCORDANCE

CASE SENSITIVE

NOISE WORD LIST(S)  
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INCLUDES ALL TEXT OCCURRENCES

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Witness [8] 3275 14 3324 4  
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- Y -

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- Z -

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work-related to zero

(1) IN THE UNITED STATES DISTRICT COURT  
 (2) FOR THE DISTRICT OF ALASKA  
 (3) In re ) Case No. 89-0095 CIV (HRH)  
 (4) ) Anchorage Alaska  
 (5) The EXXON VALDEZ ) Tuesday, May 31 1994  
 (6) ) 2:18 P.M.  
 TRANSCRIPT OF PROCEEDINGS  
 ORAL ARGUMENT RE MOTION TO REMAND AT CLERK'S COCKET NO. 5112  
 BEFORE THE HONORABLE H. RUSSEL HOLLAND, JUDGE  
 Pages 1 26  
 (12) Realtime Transcription  
 (14) APPEARANCES  
 (15) For Plaintiffs TIMOTHY J. PETUMENOS  
 Birch Horton Britner & Cherot  
 1127 West 7th Avenue  
 Anchorage Alaska 99501  
 (16) (907) 276-1550  
 For Defendant DOUGLAS J. SERDAHELY  
 (17) JOHN DALM  
 (18) Bogle & Gates  
 (19) 1051 W 4th Avenue Suite 600  
 Anchorage AK 99501  
 (20) Ph 907/276-4571  
 (21)

(1) PROCEEDINGS  
 (2) THE COURT We'll be back on the record at this time  
 (3) Court is ready to take up the motion of Chugach Alaska  
 (4) Corporation and certain others for remand of their case or  
 (5) cases to state court  
 (6) Mr. Petumenos are you going to lead the charge?  
 (7) MR. PETUMENOS I am Your Honor thank you  
 (8) THE COURT I wish in addressing this that you'd  
 (9) focus if on nothing else the matter that's of most concern to  
 (10) me which is the status of the stipulation that you all entered  
 (11) into in state court about the involvement of federal law  
 (12) Beyond that I think that needs to be the main focus of the  
 (13) thing. If you'd each take about 15 minutes to sum up your  
 (14) position.  
 (15) MR. PETUMENOS Very well Your Honor I'd like to  
 (16) address the stipulation certainly I'd also like to thank the  
 (17) Court for its handling of this matter in expedited review and  
 (18) its sensitivity to the calendaring issues that the motion  
 (19) presents and as you will hear I think at the end of my  
 (20) argument our rush to get these briefs to you if I do run over  
 (21) a few minutes we have by submittal today found out a few more  
 (22) things about the removal that we weren't aware of before  
 (23) THE COURT Don't run over Mr. Petumenos It's been  
 (24) a long day  
 (25) MR. PETUMENOS First of all quickly the standard of

(1) In Court  
 Deputy Clerk TOM MURTIASHAW  
 (2) U.S. District Court  
 222 W 7th Avenue #4  
 (3) Anchorage AK 99513  
 Ph 907/271-4529  
 Reported by JOY S. BRALER, RPR  
 (5) Registered Professional Reporter  
 Midnight Sun Court Reporters  
 (6) 2500 Denali Street Suite 1505  
 Anchorage AK 99503  
 (7) Ph 907/258-7100

(1) review is of course any doubt about this motion for remand  
 (2) that you have to remand. One of the things I wanted to state  
 (3) as a complete answer to Exxon's contentions is that we do not  
 (4) bring in the state court a negligence per se claim under a  
 (5) federal statute. We do not bring in the state court an implied  
 (6) cause of action under ARPA. We simply do not assert one. The  
 (7) context of the record the time that the April 15th paper was  
 (8) filed which Exxon contends creates the remand was this. We  
 (9) had a compensatory damages claim pending and a  
 (10) compensatory  
 (11) damages trial only pending in the State Superior Court  
 (12) Order Number 40 further restricted the issues and legal  
 (13) issues to be tried in that case. The motion for summary  
 (14) judgment that was brought by Exxon asserted that the  
 (15) defendants' claim for archaeological damages insofar as it  
 (16) purported to claim for artifacts that were not yet stolen -  
 (17) THE COURT Defendants or plaintiffs?  
 (18) MR. PETUMENOS The defendants' motion for summary  
 (19) judgment.  
 (20) THE COURT On whose claim your claim?  
 (21) MR. PETUMENOS On our claim for artifacts that  
 (22) weren't stolen yet was speculative and premature. The  
 (23) plaintiffs were responding that their claims under state law  
 (24) should be regarded as having asserted a property interest in  
 (25) confidentiality cited to ARPA and to the state statute  
 relating - regulating archaeological artifacts to persuade the

(1) Court in - under state law that there was a property interest  
 (2) that the Court should recognize under public policy and we  
 (3) stand or fall under state law on that motion for summary  
 (4) judgment  
 (5) If Judge Shortell determines under state law that claim of  
 (6) damages is too remote or too speculative we are prepared to  
 (7) lose the motion We do not rest upon negligence per se or an  
 (8) implied cause of action under ARPA to resist the motion You  
 (9) will find no cause of action like that in our state  
 (10) complaints You have reviewed our state complaints on a  
 number  
 (11) of occasions and have determined that those state complaints  
 (12) assert only state law and we have done nothing to change that  
 (13) Now one of the things that I wanted the Court to be sure  
 (14) of is that when the Court examines the record before it on a  
 (15) motion for remand you may also rely upon the representations  
 (16) of counsel who are here before you when we argue the motion  
 (17) This is not like a Groucho Marx comedy routine where a duck  
 (18) falls out of the sky and says you said the magic word you get  
 (19) a free trip to federal court if we are able to assert here  
 (20) today that we are not bringing negligence per se claims are  
 (21) bound by it are not bringing claims under ARPA  
 (22) I would cite the Court to follow the language from Coardus  
 (23) where the court heard similar argument to this and said  
 (24) likewise the court is unpersuaded that plaintiffs claim is in  
 (25) reality a claim under federal law Before the hearing

(1) plaintiffs had assured the state court that they were not  
 (2) urging a cause of action based upon the federal statute and  
 (3) reiterated this position at oral argument in this court  
 (4) Indeed counsel for defendant conceded that plaintiffs would  
 be  
 (5) bound by the representation to both the state and federal  
 (6) court  
 (7) We deny that we violated the stipulation or had any intent  
 (8) to do so We are - we feel bound and welcome the Court's  
 (9) order extinguishing any cause of action under ARPA and  
 (10) extinguishing any cause of action for negligence per se  
 (11) This is the complete answer to Exxon's motion for remand  
 (12) The rest of the briefs that go on at some length describing  
 (13) whether negligence per se creates a federal question and  
 (14) describing whether or not ARPA even allows for an implied  
 cause  
 (15) of action are totally unnecessary if this court comes to the  
 (16) conclusion that we are simply not bringing a claim under the  
 (17) federal statute  
 (18) The brief that was filed on April 15th was succeeded by  
 (19) another pleading In between the April 15th pleading the  
 (20) opposition the motion for summary judgment brought by the  
 (21) defendants there was a motion in limine that was brought by  
 (22) the defendants over a similar issue I've been looking forward  
 (23) to doing this all day Could I have the Elmo please? I could  
 (24) probably have handed this to you but this is just way too  
 (25) important

(1) There's a footnote here I don't know how to bring this  
 (2) down to a size you can see it but we dropped a footnote that  
 (3) said see the Archaeological Resources Protection Act ARPA  
 (4) Plaintiffs are not making a claim for damages under ARPA but  
 (5) rather refer to it as an example of proper archaeological  
 (6) damage assessment methodology This footnote was  
 presented in  
 (7) a pleading served on Exxon after the opposition for the motion  
 (8) for summary judgment and before the removal  
 (9) The point is I'm prepared to file an affidavit I am  
 (10) prepared to represent as an officer of the court we said it to  
 (11) Exxon and to the world we are not bringing a claim under  
 ARPA  
 (12) nor are we bringing a claim for negligence per se at all  
 (13) In the stipulation that was signed by the parties there  
 (14) was a letter that was sent with it and it said to Exxon we  
 (15) don't want to see in essence the Groucho Marx duck fall from  
 (16) the ceiling and have us removed to federal court If we wish  
 (17) to assert under state law that a federal statute relates to  
 (18) some of the things we do that is not removal and we made it  
 (19) clear We did no more than that in this instance  
 (20) Remember that this Court must remand if there is a doubt  
 (21) and in this instance Exxon even points to a footnote contained  
 (22) right in the pleading that they contend creates the removal in  
 (23) which we say we're not relying on federal law and federal law  
 (24) is not controlling here But it may help you Judge in terms  
 (25) of the issues that are before you under state law

(1) Exxon says that the footnote is ambiguous Well remember  
 (2) that you must remand if there is a doubt And there is no  
 (3) ambiguity certainly now that we are not asserting either  
 (4) negligence per se or an implied cause of action  
 (5) There are so many layers to what is wrong with this removal  
 (6) that it would take more than 15 minutes to describe them but  
 (7) the fact of the matter remains that if you go through all these  
 (8) cases and go through all this tortuous process even if we were  
 (9) doing what Exxon is saying it's still not removal and the  
 (10) reason for that is there is no substantial federal question  
 (11) presented Substantial federal questions of this nature you  
 (12) first look to the complaint to determine if anything there is  
 (13) alleged There's no dispute here that there's nothing in the  
 (14) complaint  
 (15) Exxon points to the other paper rule and makes a very  
 (16) disingenuous argument If you recall at the time that the  
 (17) stipulation was entered into we were given 48 hours to sign  
 (18) the stipulation or we would be removed and remember also that  
 (19) the grounds for the - for the alleged removal were briefs that  
 (20) we'd filed in front of the TAPA fund Exxon here contends  
 (21) well Judge that's not another paper filed in a state court  
 (22) that couldn't have triggered removal which raises the  
 (23) question why then were these plaintiffs subjected to a 48 hour  
 (24) demand that they sign a stipulation when there was no paper in  
 (25) the state court from which to bring the removal It's a bit

(1) inconsistent isn't it?  
 (2) But we signed the stipulation for the reason that once  
 (3) you're removed it can take you a bit of time to get back to  
 (4) state court and it can be very disruptive and the other reason  
 (5) is we weren't bringing a claim in that area. We were giving up  
 (6) nothing by signing the stipulation.  
 (7) Turning to the issue of Merrill Dow, Exxon concedes  
 (8) essentially that if Merrill Dow applies to this case and even  
 (9) if all of their arguments about bringing negligence per se  
 (10) claim were correct, they lose. And the reason that they say  
 (11) Merrill Dow doesn't apply, they state a couple of other reasons  
 (12) which are unpersuasive. Like maritime law applies that's a  
 (13) defense as you know and have ruled and you can't plead that  
 (14) as removal. Your Honor.  
 (15) They say it's because ARPA provides us with an implied  
 (16) cause of action under federal law. Well, it does no such  
 (17) thing. It does no such thing because ARPA doesn't apply to  
 (18) lands that are owned by a native corporation. ARPA by its  
 (19) terms says nothing in this chapter shall be construed to  
 (20) effect any land other than public land or Indian land or to  
 (21) effect the lawful recovery, collection or sale of  
 (22) archaeological resources from land other than public land or  
 (23) Indian land.  
 (24) THE COURT: What does the term Indian land mean  
 (25) there?

(1) MR. PETUMENOS: Section 470(b)(4) defines the term  
 (2) Indian land and it provides that it means land which has a  
 (3) restriction on alienation which is turned over. And now you  
 (4) have other cases I know where that issue has come up.  
 (5) THE COURT: That's why I asked.  
 (6) MR. PETUMENOS: Native corporation, the native  
 (7) corporation lands about which we claim in state court have no  
 (8) such restriction on alienation. It's been clear in other  
 (9) contexts that Indian lands are not native corporation lands  
 (10) and those are the lands over which we seek recovery. So we  
 (11) could go through together the Cort factors as we do in the  
 (12) brief as to whether there's a legislative intent and whether  
 (13) we're a class that's protected under the ARPA statute and so  
 (14) forth but it's unnecessary because the statute does not even  
 (15) purport to control the lands about which we claim.  
 (16) In the Cort case you will remember stockholders sued  
 (17) their corporation because their corporation was providing  
 (18) financing to a federal election and they went through the Cort  
 (19) factors to determine if there was an implied cause of action.  
 (20) It would be as if those stockholders had sued their corporation  
 (21) for giving money to a municipal school board election and they  
 (22) would have been out of court quick because the statute that  
 (23) was involved didn't even purport to cover anything other than a  
 (24) federal election. The ARPA statute does not cover the lands  
 (25) about which the claims are being brought in state court and

(1) Exxon should be out of court quick on the issue of the implied  
 (2) right of action under ARPA.  
 (3) So if the Merrill Dow case applies then one can take a  
 (4) look at the dissent in Merrill Dow and it reads just like  
 (5) Exxon's brief fairly well reasoned but in a stare decisis  
 (6) dissent before this court negligence per se necessarily  
 (7) includes a determination of federal law about which the  
 (8) plaintiffs' claims succeed or fail is the argument.  
 (9) Remember also under Merrill Dow that when you are talking  
 (10) about federal question jurisdiction and the complaint is only  
 (11) state law and there is some underlying principle of federal  
 (12) law behind the state law that is the basis for the  
 (13) jurisdiction Merrill Dow teaches that you are now Judge on  
 (14) the outer limits of the removal statute. In addition to having  
 (15) a doubt you - you find words and opinions like, now the Court  
 (16) is to be cautious now the Court is - has got sensitive issues  
 (17) of federal/state relations and the burden goes even higher.  
 (18) And there's more. Even if you were to find an implied  
 (19) cause of action somehow under these circumstances for a  
 (20) federal  
 (21) statute which doesn't concern these lands which has no  
 (22) legislative intent suggesting a private cause of action  
 (23) because there are criminal statutes, civil penalties all at  
 (24) the behest of the secretary even if all that were true the  
 (25) remedy in the implied cause of action has to be the same  
 (26) remedy  
 (27) as the remedy that's being sought in the underlying state

(1) case  
 (2) The remedy that we're speaking in the underlying state case  
 (3) is excavation of the sites because they've been discovered and  
 (4) there's a confidentiality property interest. How can ARPA  
 (5) serve a remedy of excavation on lands that ARPA doesn't  
 (6) cover?  
 (7) If that were true there'd be an implied cause of action on  
 (8) private lands. State of Alaska land, the house next door.  
 (9) Can't be.  
 (10) Finally even if there was a private right of action the  
 (11) Zeck case teaches that absent clear case law that that  
 (12) statute, existing case law intended to preempt the state  
 (13) court, the party's over and remand is to be granted.  
 (14) This distinguishes the situation you had in Order 61 where  
 (15) the plaintiffs remember actually pled in their complaint a  
 (16) negligence per se claim and lo and behold the federal  
 (17) statute that was underlying the negligence per se claim was  
 (18) TAPA itself a strict liability statute governing the very oil  
 (19) spill and that's the situation that the cases are talking  
 (20) about.  
 (21) Here by contrast we're talking about one damages remedy  
 (22) as to one part of a complaint remembering that the bulk of the  
 (23) native corporation complaint is for land claims unrelated to  
 (24) archaeology that most of the archaeological claims are related  
 (25) to direct impacts as opposed to secondary impacts that this  
 (26) one relates to secondary impacts and the paper that is alleged

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(1) to create the jurisdiction is an opposition paper responding to  
 (2) a defense and that sounds familiar Like Papadopoulos if you  
 (3) respond to something raised by the defense it's not  
 (4) removable  
 (5) As to an attempt to convince the state judge of a public  
 (6) policy grounds to recognize the property right under state law  
 (7) and if that is in fact what the plaintiffs are doing the case  
 (8) is virtually indistinguishable from the holding - I'll have it  
 (9) here in a minute in Donofrey (ph) which was cited in our  
 (10) opening brief  
 (11) The defendants quote from a case called Salvason which  
 (12) before discussing timeliness here I will quote from As the  
 (13) foregoing discussion shows the plaintiff's right to control  
 (14) his pleadings is firmly established and could not be curtailed  
 (15) by binding him to the characterization others may have placed  
 (16) on the same claims  
 (17) And what Salvason was about was a case in which the  
 (18) plaintiffs the ones that didn't get remanded had previously  
 (19) filed in federal court had suffered summary judgment and  
 (20) tried to recharacterize their claims in anti trust law as state  
 (21) claims and the court didn't allow it The case here couldn't  
 (22) be more different And the Salvason court was careful to note  
 (23) that the defendants cannot recharacterize the plaintiffs  
 (24) claims They are the masters over their claims  
 (25) And finally I'd like to tell the Court that there is yet

Page 14

(1) another ground and that would have to assume that everything  
 (2) I've just said to you just now is total nonsense that you  
 (3) don't believe me that you think that we're trying to raise  
 (4) negligence per se when we say we're not that you think we're  
 (5) trying to do a sort of implied cause of action when we say  
 (6) we're not and all of the rest If Exxon were right this  
 (7) removal petition is untimely because despite what they say in  
 (8) their papers they were served with the TAPA briefs as you  
 (9) will see in the submittals that were filed today fully years  
 (10) before or at least the year before they say they were served  
 (11) with them and after the stipulation which they say was entered  
 (12) into which they are so concerned that we violated In a  
 (13) pleading filed in March of 1994 before the discovery master  
 (14) they said indeed it is the alleged disclosure of such  
 (15) information in violation of ARPA that forms the basis of  
 (16) Mr Fortier's client's 45 million dollar claim for  
 (17) archaeological damage in this litigation  
 (18) Exxon made that statement in March of 1994 before the  
 (19) discovery master And if they thought it was true then it was  
 (20) time to get on their horse and file a petition for removal and  
 (21) as we learned I think last Friday the other paper rule  
 (22) insofar as it occurs for timeliness purposes is a double edged  
 (23) sword and it applies to the defendants as well That's  
 (24) another paper March of 1994 that would make this removal  
 (25) timely

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(1) I think that this is not a close question and the  
 (2) defendant's removal should be not sustained and our motion  
 (3) should be granted Thank you  
 (4) THE COURT Mr Daum?  
 (5) MR DAUM May it please the Court John Daum for  
 (6) Exxon Corporation We removed this case Your Honor for the  
 (7) very simplest of reasons Plaintiffs brought a claim which so  
 (8) far as we are aware cannot possibly be valid under state law  
 (9) and when they realized that state law did not support them  
 (10) they chose to rely on a provision of federal law the  
 (11) Archaeological Resources Protection Act We think federal law  
 (12) issues belong in federal court  
 (13) Now Mr Petumenos said at considerable length that the  
 (14) plaintiffs weren't asserting a claim based on negligence per  
 (15) se they weren't asserting a claim based on ARPA What he  
 (16) proved to mean by that was that there was no claim called that  
 (17) in the plaintiffs complaints and that's true But there was  
 (18) such a claim in the document on the basis of which we  
 (19) removed  
 (20) Mr Petumenos didn't talk about that document  
 (21) Now he quoted a great New Yorker Groucho Marx Let me  
 (22) quote another one Al Smith Let's look at the record Page  
 (23) 37 of their document Exhibit 4 says under Alaska law  
 (24) violation of a regulation or statute state or federal  
 (25) constitutes negligence per se and then they say a few lines  
 later below plaintiffs discuss the appropriate statutory and

Page 16

(1) regulatory standards of care as applied to archaeological sites  
 (2) and disturbance of those sites And then on the next page  
 (3) their heading says state law incorporated the appropriate  
 (4) standard of care and then they go on to talk about ARPA And  
 (5) then on page 39 toward the bottom of the page they say an  
 (6) examination of ARPA's statutory scheme as it is incorporated in  
 (7) the state law and then they go on  
 (8) So the proposition that there's nothing about negligence  
 (9) per se that there's no claim based on ARPA in this pleading  
 (10) in this memorandum is just not true And the fact that it's  
 (11) not in the complaint doesn't make any difference under Section  
 (12) 1446(b) The question is is it in another paper and if you  
 (13) read that paper it's there  
 (14) Now the second thing Mr Petumenos seemed to say is that  
 (15) he can stand up here and say oops we're sorry we didn't  
 (16) intend to make such a claim if you'll send us back we'll give  
 (17) it up We're sorry about that  
 (18) Well you can't do that It is absolutely clear that  
 (19) jurisdiction is judged at the time of removal that if there is  
 (20) jurisdiction at that moment there is jurisdiction and the  
 (21) fact that a plaintiff may give up a federal claim later on  
 (22) doesn't deprive the Court of jurisdiction once acquired and  
 (23) there are excellent policy reasons why that should be so  
 (24) Your Honor asked me to address the stipulation and let me  
 (25) do that The plaintiffs entered into a stipulation saying that



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(1) they would not make claims under ARPA in this litigation They  
 (2) have done that They said that they would not assert that ARPA  
 (3) was incorporated in the State law They have done that They  
 (4) said they would not assert that ARPA governed or controlled the  
 (5) damages they could recover They have done that They said  
 (6) that they would not argue that ARPA provided the appropriate  
 (7) standard of care and they have done that They have - we  
 (8) leaned over backwards Your Honor not to remove those cases  
 (9) When the materials came in from the TAPS fund those  
 (10) materials did not standing alone - Mr Putumenos is quite  
 (11) correct - standing alone the TAPA briefs did not provide a  
 (12) basis for removal but they certainly raised a concern in our  
 (13) mind that the plaintiffs were making these claims in the state  
 (14) court litigation That s why we proposed to them the  
 (15) stipulation They signed it they agreed to that We thought  
 (16) the claims were out of the state court litigation we relied on  
 (17) that We had every right to rely on that We had every reason  
 (18) to rely on that  
 (19) They have breached their word their stipulation and Judge  
 (20) Shortell s order It seems to me that ought not to be taken  
 (21) very lightly  
 (22) Now what the plaintiffs say is that they re entitled to  
 (23) breach their stipulation they re entitled to make this claim  
 (24) under ARPA and then they can come in here and say well we  
 (25) did agree to it but when we breached the stipulation you re not

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(1) entitled to remove your only remedy is to ask the state court  
 (2) to strike our pleading  
 (3) Well I submit to Your Honor that the statute says if a  
 (4) federal claim is made in another paper the defendant has a  
 (5) right to remove and it cannot be the case that a stipulation or  
 (6) even a state court order can deprive a defendant of a right  
 (7) provided by a federal statute and it cannot be equity that  
 (8) someone who makes an agreement who violates it who  
 (9) violates a  
 (10) court order is entitled to come in and say I m sorry  
 (11) defendants we get to choose what remedies you have for our  
 (12) breaches of our conduct That isn t right  
 (13) Now let me talk if I may for a moment about the real  
 (14) issue and that s whether their opposition to our motion in  
 (15) state court shows that they re making a claim which is in the  
 (16) original jurisdiction of this court because it arises under  
 (17) federal law We think it does Order 61 is squarely on  
 (18) point Plaintiffs say in their opposition to our motion the  
 (19) paper that gave rise to removal that they rely on the Alaska  
 (20) version of negligence per se and the statutory violation is a  
 (21) violation of ARPA Not every state treats negligence per se in  
 (22) the same way And that s important to understand in reading  
 (23) the cases But in Alaska negligence per se isn t a matter of  
 (24) evidence or a rebuttal presumption In Alaska all you have to  
 (25) show is a statutory violation and causation And in Order 61  
 (26) Your Honor held quite correctly that the Alaska version of

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(1) negligence per se is a form of strict liability and that when a  
 (2) plaintiff relies in whole or in part on a federal statute as  
 (3) negligence per se that the claim is a variety of strict  
 (4) liability under federal law and creates federal jurisdiction  
 (5) However you slice it the plaintiff whose sole claim is  
 (6) you violated a federal statute and that caused my harm I can  
 (7) recover that plaintiff in the most simple and direct sense  
 (8) is making a claim that s based on and arises under federal law  
 (9) there s federal jurisdiction That s what the Court held in  
 (10) Order 61 That s right  
 (11) Now let me move on from Order 61 because even apart from  
 (12) that there is federal jurisdiction here We cite Franchise  
 (13) Tax Board for the proposition that if a substantial proposition  
 (14) of federal law must be decided in order for the plaintiff to  
 (15) recover there is jurisdiction The plaintiffs principal  
 (16) argument in opposition to that is that the claim is not  
 (17) substantial and they rely on Merrill Dow which they  
 (18) mischaracterize but even on their theory the argument  
 (19) collapses if ARPA provides a private right of action and they  
 (20) don t really argue why it doesn t  
 (21) Congress passed ARPA precisely to provide protection to  
 (22) archaeological resources on federal land and Indian land It  
 (23) included native corporations in the definition of Indian tribes  
 (24) contrary to the usual rule that Section 470(b)(b)(5) of the  
 (25) statute specifically required federal land managers to consult

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(1) with native corporations  
 (2) Congress purpose was broad and sweeping It s almost  
 (3) inconceivable that congress intended that a tribe or a native  
 (4) corporation whose sites were desecrated by someone acting  
 (5) without the requirements created by ARPA would be left without  
 (6) the remedies if any are provided by state law We cited Cort  
 (7) versus Ash Your Honor works through that I think you ll  
 (8) find that the test for implication of a private right of action  
 (9) are clearly met  
 (10) But I do want to say in passing on this point that this is  
 (11) an extremely important point of issue for this state and all  
 (12) states that have substantial archaeological resources I m not  
 (13) going to say to Your Honor and it would not be proper for me  
 (14) to say that Exxon represents the interests of Native  
 (15) corporations or all the Indian tribes who aren t here today we  
 (16) don t But the odd rules of removal law put us in the position  
 (17) of defending that side of the argument and the zeal of  
 (18) plaintiffs counsel to avoid this court at all costs puts them  
 (19) in a position of acting against what I think any objective  
 (20) observer would see as the long term interests of their clients  
 (21) of every Native corporation in Alaska and of Indian tribes  
 (22) So I simply remind Your Honor that on the issue of whether  
 (23) there s a private remedy under ARPA you re making law for all  
 (24) Alaska on a matter of great potential importance and you need  
 (25) to consider the interests of all parties not just those who

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(1) are here but those who someday may be here and who are  
 (2) similarly situated who have valuable archaeological resources  
 (3) Now Mr. Petumenos did make one argument that I need to  
 (4) respond to. He says at some length that their lands are not  
 (5) Indian lands and therefore they are not entitled to sue under  
 (6) ARPA. Now I don't think that's right in terms of the specific  
 (7) definition of native corporations as a tribe under Section  
 (8) 470(b)(5) but even if they were right that wouldn't change  
 (9) the rule here. Under Merrill Dow the test is whether the  
 (10) statute provides a private remedy not whether a particular  
 (11) plaintiff has a valid claim.  
 (12) To take an example there's clearly a private remedy under  
 (13) Rule 10(b)(5) of the Securities Exchange Act and there's  
 (14) federal jurisdiction for that claim. That rule limits the  
 (15) private remedy to people who are purchasers or sellers but if  
 (16) someone who is not a purchaser or seller sues under Rule  
 (17) 10(b)(5) there's clearly jurisdiction even if later on the  
 (18) court has to say that there's no cause of action or at least no  
 (19) successful cause of action.  
 (20) So if there's a private right private remedy under ARPA  
 (21) even if plaintiffs don't fit within it there is still federal  
 (22) jurisdiction for the purposes of the Merrill Dow ruling and  
 (23) the reason for that brings me to the plaintiffs  
 (24) mischaracterization of that rule  
 (25) The plaintiffs oversimplify it. They say it's about

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(1) whether a private remedy exists. Well it's not. It's about  
 (2) the intent of congress. What Merrill Dow says is that when  
 (3) congress has affirmatively excluded a private remedy that  
 (4) decision is tantamount to a direction that only state courts  
 (5) should construe a particular statute and therefore the  
 (6) federal courts should not do so. When there is a private  
 (7) remedy that analysis doesn't follow even if the particular  
 (8) plaintiff may not be within the scope of the private remedy.  
 (9) That's why when there is a private remedy federal jurisdiction  
 (10) exists in this circumstance and Merrill Dow doesn't apply.  
 (11) And that's also relevant because this is a maritime case.  
 (12) Merrill Dow was not. We point out in our papers plaintiffs  
 (13) papers don't say otherwise that the rationale of Merrill Dow  
 (14) doesn't apply at all in a maritime case because in that kind of  
 (15) case the plaintiff can always come into federal court. In a  
 (16) maritime case a determination by congress not to provide a  
 (17) federal statutory remedy can't possibly be taken as a  
 (18) congressional directive that only state courts should interpret  
 (19) a particular federal statute. Quite the contrary congress  
 (20) intended that all such suits could be in federal court and the  
 (21) Merrill Dow exception to the general rule that there's  
 (22) jurisdiction when a federal statute is called into play simply  
 (23) doesn't apply in a maritime case.  
 (24) We ask that Your Honor - unless Your Honor has some  
 (25) questions I'll sit down. We ask that Your Honor deny the

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(1) motion to remand.  
 (2) THE COURT Thank you sir.  
 (3) MR. DAUM Let me point out just one brief thing.  
 (4) Excuse me Mr. Petumenos. They did file this last - last  
 (5) minute paper. Most of it is addressed to the TAPA fund  
 (6) documents. As I say nobody contends that the TAPA fund  
 (7) documents themselves created a right to remove. They  
 (8) weren't.  
 (9) in the paper. They also rely on one document of ours from  
 (10) March of this year. A defendant's document cannot create is  
 (11) not another paper for purposes of creating a right to remove.  
 (12) They don't suggest that at any time prior to April 15 they  
 (13) asserted a cause of action under ARPA and they haven't shown  
 (14) anything that suggests that the removal was untimely.  
 (15) Thank you.  
 (16) THE COURT Mr. Petumenos save your breath. I am  
 (17) going to grant the motion to remand. I'll give some thought to  
 (18) whether or not we should give a written decision on this or  
 (19) not because there are some aspects - there are some aspects  
 (20) of this situation that are a complete mystery to me and while  
 (21) it might be interesting to explore them I'm not sure it's  
 (22) worthwhile but I'll think about it.  
 (23) What I would have you understand is that I was totally  
 (24) perplexed by the position that the plaintiffs have taken here.  
 (25) It seems to me that the plaintiffs have been all over the yard  
 on their - their position about the federal statute. Had I

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(1) been a private attorney in Exxon's shoes faced with what they  
 (2) were faced with I surely would have removed this case also and  
 (3) tried as hard as I could to make it stick.  
 (4) But when all is said and done it's my view of this matter  
 (5) that the plaintiffs who are seeking remand entered into an  
 (6) agreement bound themselves not to assert a claim on federal  
 (7) law and I'm going to take the plaintiffs literally at their  
 (8) word on that. I take the position that you have no federal  
 (9) claim because you gave it up that you have no negligence per  
 (10) se claim in state court because you've disavowed it. All the  
 (11) talk about that kind of claim all the talk about the  
 (12) involvement of ARPA in your case to the contrary  
 (13) notwithstanding you've got no claim for either the federal  
 (14) statute or any theory based upon it. You've got no negligence  
 (15) per se claim based on federal law and on that basis I'm going  
 (16) to send you all back to state court with if nothing else a  
 (17) summary order that relates to Judge Shortell what I've said  
 (18) just now and quite frankly if you start talking about a claim  
 (19) based on ARPA or negligence per se based on ARPA again  
 (20) these  
 (21) folks are going to remove your case again and they may have  
 (22) you if it happens again because at this point I take the  
 (23) position that you're still bound by that stipulation. Even  
 (24) though it appears to me that you violated I think you're bound  
 (25) by it and because you're bound by it you're going back to  
 state court.

- (1) We ll be in recess subject to call
- (2) THE CLERK This court is in recess subject to call
- (3) (Recess at 2 45 p m )

- (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
- (16) JOY S BRAUER RPR
- (17) Notary Public for Alaska
- (18) My Commission Expires 5 10 97

Look-See Concordance Report

UNIQUE WORDS 786
TOTAL OCCURRENCES 2,123
NOISE WORDS 385
TOTAL WORDS IN FILE 5,706

SINGLE FILE CONCORDANCE

CASE SENSITIVE

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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 June 1, 1994  
 (4) ) 8:00 a.m.  
 TRANSCRIPT OF PROCEEDINGS

(5) ^  
 (6) BEFORE THE HONORABLE H RUSSEL HOLLAND, JUDGE  
 VOLUME 21, Pages 3500 3710

(7) Realtime Transcription  
 (8) APPEARANCES.

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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  
 (8) MR NEAL May it please the Court before we commence  
 (9) I d like to introduce to the Court and Jury Mr Lee Raymond  
 (10) who s testified here by deposition and who is the chairman of  
 (11) the board of Exxon Corporation  
 (12) THE COURT Good morning Mr Raymond  
 (13) MR RAYMOND Good morning  
 (14) MS STEWART Your Honor at this time we re ready to  
 (15) continue with the video deposition of Lieutenant Commander  
 (16) Falkenstein  
 (17) CONT D DIRECT EXAMINATION OF THOMAS FALKENSTEIN  
 (Video)  
 (18) BY VIDEO EXAMINER  
 (19) Q Who was present during that conversation?  
 (20) A To the best of my memory, just myself and Captain  
 (21) Hazelwood  
 (22) Q All right Mr Delozier was not present during that  
 (23) conversation?  
 (24) A I don t believe so no sir  
 (25) Q You also testified that there came a time when Mr Delozier

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 U.S. District Court  
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 Registered Professional Reporter  
 Midnight Sun Court Reporters  
 2550 Denali Street, Suite 1505  
 Anchorage, AK 99503  
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(1) told you something about the captain saying he had told the  
 (2) third mate to turn near or on a 38 fathom mark do you  
 remember  
 (3) that?  
 (4) A Yes sir  
 (5) Q When did Mr Delozier tell you that?  
 (6) A I don't remember whether it was very late during our stay  
 (7) on the ship or at sometime later the next week I don't  
 (8) remember when he told me that  
 (9) Q All right When you say late during your stay on the ship  
 (10) about what dates are we talking about?  
 (11) A Maybe Sunday Saturday night at the earliest, but maybe  
 (12) Sunday I think it was more later, the next week after we  
 were  
 (13) both back at the office but I don't remember for sure  
 (14) Q Okay And how did he come to tell you that?  
 (15) A He came and asked me if I'd had a conversation with the  
 (16) captain about where he had told the mate to turn, and I told  
 (17) him yes And he specifically asked me did he ever circle or  
 (18) mark that number I believe I think that's how it happened  
 (19) Q He asked you whether the captain had circled the 38 fathom  
 (20) mark?  
 (21) A Yes sir  
 (22) Q And you told him that he didn t?  
 (23) A Yes, sir  
 (24) Q Did you also tell him that the captain did not mention the  
 (25) 38 fathom mark to you?



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- (1) A Yes, sir, I believe so
- (2) Q You re aware of Mr Blandford s prior testimony and his
- (3) statements that he had a number of mid watch duties to
- (4) accomplish during this changeover period on the 23rd and
- (5) 24th?
- (6) A Yes, sir vaguely Vaguely
- (7) Q Are you aware of the – beyond what we ve already
- (8) discussed are you aware of any housekeeping tasks that he
- (9) needed to accomplish during that – in the neighborhood of that
- (10) changeover period that couldn t have waited until a later time?
- (11) A Not to my knowledge
- (12) Q Now commander these – these three tapes represent
- (13) March 23 24 and 25 is that right?
- (14) A Yes, sir, apparently
- (15) Q What about the March 22 1989 tape? Was that preserved?
- (16) A No, sir
- (17) Q And why was it not?
- (18) A The tapes are cycled through every 30 days and erased
- (19) and
- (20) reused They are preserved for 30 days and erased and
- (21) reused
- (22) If I remember correctly the tape for March 22nd was
- (23) requested
- (24) on April 21st and it was on the machine and in use at the
- (25) time
- (1) I got the request
- (2) Q Commander can you – do you recall seven to ten days
- (3) before the grounding of the Exxon Valdez getting – getting a
- (4) call from a Captain Andre Martineau?
- (5) A The office got a call I don't remember who got the call

(25) sure And I don't recall how I came to know about this

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- (1) though
- (2) Q Who is Captain Martineau?
- (3) A Captain Martineau is the master of another Exxon tanker
- (4) Q Now tell me what you recall about Captain Martineau s call
- (5) and how you know him?
- (6) A Let me preface it by saying Captain Martineau and I do
- (7) not
- (8) exactly have a good relationship so his call was over the
- (9) telephone I believe he was using satellite communications
- (10) phone to the office, talking about the extent of ice out into
- (11) Prince William Sound He was suggesting complete closure
- (12) of
- (13) port because of what he perceived as a significant ice
- (14) hazard
- (15) Of all the tanker captains coming in and out of there that
- (16) time
- (17) of year, he was the only one to give us that kind of report
- (18) that I recall Others would report heavy ice, but none went
- (19) so
- (20) far as to suggest closure They seemed to indicate that it
- (21) was
- (22) possible to – for a vessel to work its way through the ice
- (23) without any difficulty you just had to pay attention to what
- (24) you were doing
- (25) Captain Martineau I believe suggested closure of the
- (1) port And I believe we had one or two other Exxon tank
- (2) ships
- (3) either in the port at that time or shortly thereafter, shortly
- (4) before, who agreed there was heavy ice but didn't seem to
- (5) think
- (6) it was necessary to close the port down, which is something
- (7) I
- (8) believe Commander McCall spoke to them about, but I can't
- (9) be

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- (1) information But I don't - I don't know who talked to Captain  
 (2) Martineau  
 (3) Q Did you discuss the matter with Commander McCall?  
 (4) A I don't remember exactly, something like that ordinarily  
 (5) would have been discussed with the captain, commanding  
 officer,  
 (6) but I don't remember exactly whether I did or not  
 (7) Q One of the things you said was that as you recall one or  
 (8) more other Exxon tankers were in port and that Commander  
 McCall  
 (9) had discussed this request with them did I understand your  
 (10) testimony correctly?  
 (11) A Okay Generally speaking, Commander McCall would  
 have  
 (12) asked about that He may have had Lieutenant Rice or  
 someone  
 (13) else talk to the tanker masters to get their view of it I  
 (14) know other ships - the way I remember it, other ships'  
 masters  
 (15) were asked what they thought of the situation, and none  
 went so  
 (16) far as to suggest port closure, but they did agree that it was  
 (17) heavy  
 (18) Q Now you said other ships masters just now Do you  
 (19) know - do you know whether other Exxon tankers masters were  
 (20) consulted?  
 (21) A It was a question I believe asked of masters of any of  
 (22) the tankers that were available in port and I know - I do  
 (23) recall around that time, besides Captain Martineau's ship  
 which  
 (24) was the Exxon North Slope, that there were one or two other  
 (25) Exxon ships either before or immediately after him his  
 arrival

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- (1) and departure that discussed this so -  
 (2) Q Commander have you - is that something that you check on  
 (3) at the time the other Exxon vessels that were in before or  
 (4) shortly after Captain Martineau?  
 (5) A No sir There's several vessels that come in and out and  
 (6) they all run a similar schedule The Exxon North Slope had  
 (7) gotten held up because it experienced some storm damage  
 and had  
 (8) to undergo repair which is why Captain Martineau did not  
 have  
 (9) an amiable relationship The Exxon ships that come in and  
 out  
 (10) were Exxon North Slope, Exxon Baton Rouge, Exxon San  
 Francisco,  
 (11) Exxon Baytown All the Exxon ships would run in and out on  
 a  
 (12) periodic schedule Sometimes we'd have one or two in port  
 (13) sometimes we'd have none in port but they would all seem  
 to be  
 (14) on a consistent schedule and there'd always be an Exxon  
 ship in  
 (15) and out of there That's why I remember that there was  
 Exxon  
 (16) ships in between the time Captain Martineau made his  
 phone call  
 (17) and the Exxon Valdez went aground which would be - you  
 know  
 (18) Captain Martineau's report was early third part - the early  
 (19) part of March, and the Exxon Valdez went aground on the  
 23rd or  
 (20) 4th, whichever day you're looking at  
 (21) Q Did you or anybody else in the MSO give Captain Martineau  
 (22) an answer to his request?  
 (23) A It wasn't a request sir It was a suggestion And I

- (4) believe the answer was you know thanks for your input  
 But I  
 (25) don't know what exactly was said

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- (1) Q No - no change in procedures resulted from Captain  
 (2) Martineau's suggestion as you put it?  
 (3) A No sir  
 (4) Q Who made the decision not to take any action on Captain  
 (5) Martineau's suggestion?  
 (6) A Well, action was taken in that other captains were asked  
 (7) the same thing about how heavy is the ice. Their feeling  
 (8) was - is that it was heavy, but not such an impediment to  
 (9) navigation that they couldn't get through. So I believe the  
 (10) action was - the action was that other captains were asked the  
 (11) same question what did they think about is it necessary to  
 (12) close to port. And based on the input of several masters  
 (13) who  
 (13) navigate that area that no change was deemed necessary  
 (14) Q Did you write any report about this?  
 (15) A No, sir  
 (16) Q During the period of time that you were in the Port of  
 (17) Valdez and involved in this vessel traffic system had you ever  
 (18) known the traffic system to be shut down because there was too  
 (19) much ice in the system for the vessels to transit the area?  
 (20) A No, sir  
 (21) Q Within your experience in Prince William Sound have there  
 (22) been occasions when the ice would extend all the way across  
 (23) Valdez Arm and Columbia Bay to cover the - both the outbound  
 (24) lane the separation zone and the inbound lane?  
 (25) A Chunks of ice have drifted all the way cross I wouldn't

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- (1) use the word cover but there has been ice blown across in  
 (2) both  
 (3) lanes  
 (4) Q Are you familiar with vessels that have deviated on  
 (5) occasion outside the traffic lanes because of ice extending  
 (6) across those lanes?  
 (7) A Yes, sir They have deviated  
 (8) MS STEWART Your Honor that concludes defendants  
 (9) direct  
 (10) MS WAGNER Plaintiffs have a video cross  
 (11) CROSS EXAMINATION OF THOMAS FALKENSTEIN (Video)  
 (12) BY VIDEO EXAMINER  
 (13) Q Now were you - were you present during either the first  
 (14) or the second visits to the Vessel Traffic Center? Were you  
 (15) present during any radio communications between the Exxon  
 (16) Valdez and the Vessel Traffic Center?  
 (17) A Yes, sir  
 (18) Q How many?  
 (19) A I recall one for sure probably two or three  
 (20) Q And the one for sure that you recall between whom was that  
 (21) conversation?  
 (22) A It was between Commander McCall and Captain  
 (23) Hazelwood  
 (24) Q And what was the nature of their conversation?  
 (25) A Captain Hazelwood relayed that they were hard aground  
 (26) or  
 (27) aground, I believe He didn't use the words hard aground I  
 (28) believe he said something about having some problems  
 (29) with the

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- (1) third mate but he didn't elaborate and that he was going to  
 (2) try to get it off the reef  
 (3) Q And what did you do upon - upon boarding the vessel?  
 (4) A The seaman on - at the head of the ladder directed us to  
 (5) the bridge We asked him where the captain was I believe  
 (6) and  
 (7) he indicated the bridge and we proceeded immediately to  
 (8) the  
 (9) bridge  
 (10) Q Did you come upon the captain at that point?  
 (11) A Yes, sir I went over and spoke with the captain  
 (12) Q Do you recall what you said?  
 (13) A I introduced myself and asked him what the situation was  
 (14) Q And what did he tell you?  
 (15) A I believe he indicated that the ship was hard aground  
 (16) they  
 (17) were unsuccessful in - the engine was amid - engine was  
 (18) off  
 (19) shut down was amidships He may have given me the  
 (20) vessel's  
 (21) heading and told me that they were unsuccessful in trying  
 (22) to  
 (23) get it off the rock at high tide  
 (24) Q Commander you said when you went out on the bridge wing  
 (25) with Mr Delozier that he asked you if you - if you smelled  
 (26) alcohol and you said that you answered yes?  
 (27) A He asked me if I smelled the captain's breath, and I said  
 (28) yes  
 (29) Q Commander when you - when you say that you smelled  
 (30) alcohol what - can you be anymore specific than that?  
 (31) A No sir

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- (1) Q You just smelled alcohol?  
 (2) A I smelled like an alcoholic beverage had been consumed,  
 (3) yes  
 (4) sir  
 (5) Q Did that alcohol smell fresh?  
 (6) A No sir  
 (7) Q Did it smell stale?  
 (8) A Yes sir  
 (9) Q Didn't Trooper Fox ask you if the Moussy beer on his hand  
 (10) smelled similar to what Captain Hazelwood's breath -  
 (11) A He asked me if that smelled like the smell on the captain's  
 (12) breath not did I smell the captain's breath And I told him  
 (13) to the best of my recollection, it could be, but I didn't think  
 (14) so  
 (15) Q Why didn't you think so?  
 (16) A Just didn't smell the same way, exactly But that was  
 (17) poured freshly on the back of his hand so we're talking two  
 (18) different circumstances  
 (19) Q What was the smell up on the bridge when you were  
 (20) standing  
 (21) next to Captain Hazelwood?  
 (22) A Smelled like the captain had been consuming an  
 (23) alcoholic  
 (24) beverage  
 (25) Q Now I believe you testified that you were aware that there  
 (26) came a point in time when the Exxon Valdez notified the Vessel  
 (27) Traffic Center that it was leaving or intended to leave the  
 (28) outbound lane in the traffic separation scheme is that

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- (1) correct?
- (2) A Yes, sir
- (3) Q And I believe you also indicated that you were aware that
- (4) they informed the Vessel Traffic Center that they were changing
- (5) their heading to 200 degrees is that correct?
- (6) A Yes, sir
- (7) Q Now did it come to your attention that the Exxon Valdez
- (8) changed its heading at a point prior to the grounding from 200
- (9) degrees to 180 degrees?
- (10) A Not until after I got off the ship on Sunday
- (11) Q To your knowledge did the Exxon Valdez inform the Vessel
- (12) Traffic Center of any change in its heading from 200 degrees to
- (13) 180 degrees?
- (14) A If I remember correctly, after the Exxon Valdez indicated
- (15) that it was going to go out of the southbound traffic lane
- (16) that was the last communication from it until it called to
- (17) inform us it was aground
- (18) Q Okay I'd like to refer you to page six of the user's
- (19) manual section Roman numeral four sub 5 A
- (20) A All right, sir
- (21) Q Do you have that before you?
- (22) A Right
- (23) Q And could you just read what that provides?
- (24) A Radio equipped vessel may join cross or leave a traffic
- (25) lane only after the VTC has been notified of the point at
- which

- (1) designated traffic lanes which would be the southbound
- Prince
- (2) William Sound traffic lane on this chart it would be the
- (3) northern - northwestern traffic lane
- (4) Q If the vessel desires to deviate from that traffic lane is
- (5) there any requirement for reporting to the Coast Guard?
- (6) A Any deviations from the traffic lane or crossing of the
- (7) traffic lane must be reported to the Vessel Traffic Service
- (8) MS WAGNER That's the end Your Honor
- (9) MR NEAL May it please the Court Members of the
- (10) Jury we call Mr Charles Cushing
- (11) Your Honor I like Mr Chalos I like exhibits that I can
- (12) touch and feel so we cannot worry about the electronic gear
- (13) for this witness
- (14) THE CLERK Would you raise your right hand please
- (15) (The Witness Is Sworn)
- (16) THE CLERK Please be seated
- (17) MR NEAL May it please the Court Before I start I
- (18) have checked with Mr Montague and I now offer in evidence
- (19) Defendants Exhibits 1733 Able Defendants Exhibit 1736 Able
- (20) Defendants 1734-Able, and according to my record keeping
- (21) system Defendants Exhibit 1735 Able has been admitted
- (22) (Exhibits 1733 A 1736-A and 1734 A offered)
- (23) THE COURT Are there objections to any of these
- (24) exhibits Mr O'Neill?
- (25) MR MONTAGUE No Your Honor no objection

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- (1) the vessel will join cross or leave the traffic lane
- (2) Q And to your knowledge did the Exxon Valdez comply with
- (3) that requirement when it left the shipping lanes?
- (4) A No, sir
- (5) Q And is every tank vessel that loads in the Port of Valdez
- (6) required to have aboard it a manual for the use of that system
- (7) in the Port of Valdez?
- (8) A Yes, sir
- (9) Q And does that manual outline the relationship between the
- (10) Coast Guard and those vessels as they transit into and out of
- (11) the port?
- (12) A I believe it does, yes, sir
- (13) Q The - now does the Coast Guard ever tell any of those
- (14) vessels what courses to steer?
- (15) A No, sir
- (16) Q Does it tell them what speeds to run and elsewhere than in
- (17) the Narrows?
- (18) A No, sir they do not
- (19) Q And then as it continues outbound there are on the chart
- (20) various lines of zones marked southbound Prince William
- Sound
- (21) traffic lane sprays zone and northbound Prince William Sound
- (22) traffic lane Are the vessels going to the traffic separation
- (23) scheme supposed to remain within those - within a proper track
- (24) in those areas?
- (25) A Vessels that are outbound are supposed to stay within
- the

- (1) THE COURT Thank you Mr Montague Let me see as
- (2) to 17 -
- (3) MR NEAL 35 A able -
- (4) THE COURT Yeah my notes show that that's been
- (5) admitted also
- (6) MR NEAL Thank you Your Honor
- (7) THE COURT The first three exhibits 1733 A 1736 A
- (8) and 1734 A are also admitted
- (9) (Exhibits 1733-A 1736 A and 1734-A received)
- (10) MR NEAL Thank you Your Honor
- (11) DIRECT EXAMINATION OF CHARLES CUSHING (Live)
- (12) BY MR NEAL
- (13) Q You're Mr Charles Cushing?
- (14) A Yes, sir
- (15) Q Robert Charles Cushing?
- (16) A Charles Robert Cushing
- (17) Q Charles Robert all right What is your present
- (18) occupation?
- (19) A I'm President of C R Cushing and Company firm of
- naval
- (20) architects and marine engineers
- (21) Q Where is your business located?
- (22) A Our offices are in New York City
- (23) Q How long have you been in this present position as
- (24) president of Cushing Associates?
- (25) A The firm is a little over 26 years old

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- (1) Q Have you been there throughout that time?
- (2) A Yes, sir, I've been president of the company for that period of time
- (3) Q What is the business of this company?
- (4) A Our firm designs and supervises the construction and tests
- (5) vessels, cargo ships of all types tankers oil carriers gas carriers
- (6) carriers
- (7) Q Now prior to this 26 year career with your firm would you give us your educational background?
- (8) A Yes sir I'm a graduate of U S Merchant Marine Academy
- (9) at Kings Point bachelor of science degree in marine transportation, where I also obtained a U S Coast Guard third
- (10) officer's license and a commission in the naval reserve
- (11) I'm a graduate of the Massachusetts Institute of Technology
- (12) with a degree in naval architecture and marine engineering, and
- (13) also the State University of New York, the Maritime College at Fort Schuyler with a master of science degree
- (14) Q Before you - 26 years ago when you formed and joined your firm tell us your work experience
- (15) A Well, part of my work experience has been going to sea
- (16) I - before the Merchant Marine Academy, I sailed as an ordinary seaman on a Danish flagged vessel And then as a cadet midshipman I sailed as a deck cadet on ships of Pharaoh
- (17) Lines, U S Lines and Grace Lines then after graduation -
- (18) Q After graduation from the maritime academy?

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- (1) A Merchant Marine Academy I joined the masters mates and
- (2) pilots and sailed as a deck officer with U S Lines Steamship
- (3) and Pan Atlantic Steamship Companies In addition to that,
- (4) I've - on the ships that we've designed and supervised the construction of of which there's been a couple hundred many
- (5) of them have had sea trials where I've participated in the sea
- (6) trials of the ships
- (7) Q Have you done any work in or around Anchorage Alaska in the past?
- (8) A Yes, sir When I joined - after I went to sea and obtained the naval architecture degree I worked for Sea Land
- (9) Service starting in around 1961, and one of my assignments early on was to come up here to Anchorage to determine whether
- (10) Sea Land would be able to operate a year round service through the ice in Cook Inlet and I'm happy to say that the report was
- (11) and the decision was to operate that weekly service here into Anchorage
- (12) We also did other work up here relating to the port and also feeder ships for Dutch harbor and Bristol Bay and other
- (13) other small vessels operating in the Alaskan waters
- (14) Q Are you a member of any professional associations or organizations?
- (15) A Yes, sir I'm a member of the Society of Naval Architects and Marine Engineers, a fellow in the Royal Institute of

Naval

- (16) Architects a member of the Royal Institute of Navigation a

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- (1) member of - a fellow in the Society of Mechanical Engineers  
 (2) and many other organizations  
 (3) MR NEAL Your Honor I m not sure that the witness  
 (4) was sworn  
 (5) THE COURT That what?  
 (6) MR NEAL Not sure the witness was sworn in  
 (7) THE CLERK The witness was sworn I just never got  
 (8) his name on record but I think he probably clarified that  
 (9) unless the court reporter needs that information  
 (10) THE COURT To tell you the complete truth I have a  
 (11) complete blank on it I was doing some other things first  
 (12) thing this morning and was sort of on autopilot here  
 (13) MR O NEILL Aha  
 (14) MR NEAL Well I don t want you on autopilot when  
 (15) I ve got the con Your Honor  
 (16) THE COURT Point well taken  
 (17) MR NEAL Would it hurt to swear him in and I ll ask  
 (18) him if everything he said at this point was the truth  
 (19) THE CLERK I already administered the oath Your  
 (20) Honor we just never got his name on record  
 (21) MR NEAL Oh would you give us your name then  
 (22) THE WITNESS Yes My name is Charles Robert Cushing  
 (23) C U S H I N G  
 (24) THE COURT I heard that part because he corrected you  
 (25) on the order of his name

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- (1) BY MR NEAL  
 (2) Q All right Let s see if we can put this thing on helm now  
 (3) and move forward Where were we  
 (4) A You were asking me if I had any experience in Alaska, and  
 (5) then I think you asked what organizations I belonged to and  
 (6) I said many  
 (7) Q And you ve given us some of those?  
 (8) A Yes sir  
 (9) Q Are you or have you been a member of the United States  
 (10) Naval Reserves?  
 (11) A Yes sir, for a period of about 30 years  
 (12) Q Have you represented the United States Government on any  
 (13) technical committees?  
 (14) A Yes sir I've been a member of a number of U S Coast  
 (15) Guard safety committees been part of the U S delegation  
 (16) to the U N 's solace conventions, been a U S delegate to  
 (17) I S O ,  
 (18) International Standards Organizations and a number of  
 (19) other committees  
 (20) Q I have noticed in talking to you before that you are a  
 (21) fairly modest man but I m going to ask you not to be so modest  
 (22) here  
 (23) Have you won any awards?  
 (24) A Yes sir a number of awards The Admiral I and award for  
 (25) excellence in naval architecture at the Merchant Marine  
 Academy awards of also alumnus of the ye ir marine man  
 of the

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- (1) year, professional achievement award and a number of  
 other  
 (2) awards  
 (3) Q Have you published articles Mr Cushing?  
 (4) A Yes, sir over 50 articles and professional journals and  
 (5) trade publications  
 (6) Q On naval architecture?  
 (7) A On naval architecture  
 (8) Q And related subjects and safety on tank vessels?  
 (9) MR NEAL May it please the Court I tender this  
 (10) witness as an expert  
 (11) MR MONTAGUE Your Honor I have no objection as  
 (12) long as the expertise is limited to the area of his expert  
 (13) report  
 (14) THE COURT Which was?  
 (15) MR MONTAGUE Well I could read it  
 (16) THE COURT No what was the specialty naval  
 (17) architecture?  
 (18) MR MONTAGUE No the specialty was analyzing the  
 (19) track of the Exxon Valdez and certain other vessels  
 (20) MR NEAL That s what he s going to testify about,  
 (21) Your Honor  
 (22) THE COURT The track what does that mean?  
 (23) MR MONTAGUE The track line how it -  
 (24) reconstructing the voyage the track of the voyage  
 (25) BY MR NEAL

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- (1) Q Getting right to -  
 (2) THE COURT Well just a minute I m taken a bit by  
 (3) surprise here because I thought we were in for something about  
 (4) naval architecture about which this witness seems to have all  
 (5) kinds of wonderful qualifications but I didn t hear anything  
 (6) that relates to the subject of his report Can you help me  
 (7) with that?  
 (8) MR NEAL Sure I can  
 (9) BY MR NEAL  
 (10) Q Mr Cushing you have sailed a number of years as a deck  
 (11) officer?  
 (12) A Yes, I have  
 (13) Q In the merchant marine?  
 (14) A Yes sir  
 (15) Q You have also I gather had an occasion to review and  
 (16) study course recorders of vessels?  
 (17) A I've both studied and reviewed them and installed them  
 (18) on  
 (19) the ships, too  
 (20) Q And have you had occasion using those course recorders  
 (21) to  
 (22) determine track lines OF vessels at various times?  
 (23) A Yes sir I have In France and Mexico in the U S Gulf  
 (24) Copenhagen a number of places around the world  
 (25) MR NEAL Should I go further Your Honor?  
 (26) THE COURT Have you testified previously in a court  
 (27) proceeding on this subject?

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- (1) THE WITNESS Yes sir I have  
 (2) THE COURT And have been qualified as an expert to  
 (3) offer opinions as to the track or tracks of vessels?  
 (4) THE WITNESS Yes sir I have  
 (5) THE COURT I'll accept the witness qualifications  
 (6) BY MR NEAL  
 (7) Q Mr Cushing at my request have you conducted a study to  
 (8) determine the track line of the Exxon Valdez on the night of  
 (9) March 23 March 24 1989 and prepared a chart to demonstrate  
 (10) the course of your study?  
 (11) A Yes, sir, I have  
 (12) MR NEAL I'd like to have put up Exhibit 1733-Able  
 (13) if I could  
 (14) BY MR NEAL  
 (15) Q Mr Cushing I show you what is now in evidence as  
 (16) Defendants Exhibit 1733 Able and ask if you would explain to  
 (17) the Court and the Ladies and Gentlemen of the Jury what this  
 (18) represents?  
 (19) A This exhibit is a portion of the government NOAA chart  
 (20) showing Valdez Arm in Prince William Sound The blue  
 (21) trace on  
 (22) the chart represents the track of the vessel or the track line  
 (23) or the course that the vessel followed during that portion of  
 (24) the voyage  
 (25) MR NEAL Your Honor could the witness come down and  
 (26) now go through this chart with my pointer I brought with me?

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- (1) THE COURT Certainly  
 (2) MR NEAL I think the Court may want to see it  
 (3) Could you - would you stand over here?  
 (4) THE COURT It's okay  
 (5) BY MR NEAL  
 (6) Q Mr Cushing would you now go through what you testified as  
 (7) the track line of the Valdez for a certain portion of its  
 (8) voyage on the night of March 23 and the first few minutes of  
 (9) March 24 1989?  
 (10) A Yes, sir The - the course begins up with a position  
 (11) marked 2339 or 11 39 at night, where a fix had been taken  
 (12) and  
 (13) marked on the Exxon Valdez's chart The course continues  
 (14) in a  
 (15) southerly direction changing course to 180 degrees moving  
 (16) southward, where it moves out of the traffic separation zone  
 (17) and traffic lanes to a point at 2352  
 (18) Q Now it's on a course then of 180 degrees from what -  
 (19) from what point to 2352?  
 (20) A Well, from the point up about - about here where it's  
 (21) moving through the northbound - northbound lane  
 (22) Q All right Now stop at 2352 Why do you note 2352 there  
 (23) or 11 52 in the evening?  
 (24) A The vessel at this point, 2352, commenced a - an  
 (25) operation  
 (26) in its automation system called load program up  
 (27) Q Explain to the Members of the Jury what load program up  
 (28) was  
 (29) on this vessel

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- (1) A There is a - a system that's part of the engine control  
 (2) that will gradually increase the revolutions of the engine  
 (3) and  
 (4) gradually increase the speed of the engine from its normal  
 (5) maneuvering speed to its sea speed At the point at which  
 (6) the  
 (7) ship was traveling south here, she was traveling at full -  
 (8) full maneuvering speed about 55 rpms or about 11 knots  
 (9) Q Now just a moment Let's make sure the record indicates  
 (10) what a knot is Can you relate that to miles per hour of an  
 (11) automobile? What is a knot first?  
 (12) A A knot is one nautical mile per hour  
 (13) Q What does that translate to or relate to in miles on the  
 (14) ground roughly?  
 (15) A Well a nautical mile is about 15 percent more than a  
 (16) statute or a land mile so one knot is about 15 percent  
 (17) greater  
 (18) than a mile per hour  
 (19) Q All right So if it's going 11 knots what would be the  
 (20) speed on land miles then?  
 (21) A Maybe about 15 miles an hour  
 (22) Q About 15 miles an hour?  
 (23) A Oh, sorry, sorry, no, about 12 miles an hour  
 (24) Q About 12 miles an hour So going 11 knots it puts load  
 (25) program up and you said that gradually increased the speed of  
 (26) the vessel up to sea speed?  
 (27) A That's correct  
 (28) Q On this - you've said that full maneuvering speed was

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- (1) about around 11 knots and that's what he was going?  
 (2) A That's correct  
 (3) Q What is full sea speed or what was full sea speed on this  
 (4) vessel?  
 (5) A About 15.9 knots  
 (6) Q And then if it's about 12 you said about 12 land miles  
 (7) what would 15.9 knots be?  
 (8) A Be a little over 16 miles an hour  
 (9) Q Little over 16 miles per hour?  
 (10) A About  
 (11) Q So to go from 12 to 16 or 17 miles an hour, with load  
 (12) program up how long does it take to reach that five or six  
 (13) more miles per hour?  
 (14) A The system is - is adjusted to take about three-quarters  
 (15) of an hour to do - to step up that half an hour to do - to  
 (16) step up that five miles an hour  
 (17) Q So it increases that vessel about five or six miles per  
 (18) hour over 45 minutes?  
 (19) A Yes sir  
 (20) Q Would you consider that putting the pedal to the metal?  
 (21) A No, sir  
 (22) Q All right And load program up, then, was put on at 11 52?  
 (23) A Yes, sir  
 (24) Q Go ahead  
 (25) A At this position She was steaming south due south at  
 (26) 180

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- (1) degrees traveling up to this point at about 11 knots and 55  
 (2) rpm or 56 rpm once she put the load program up  
 (3) As she continued south she came to a point abeam of  
 Busby  
 (4) Island light at 2355  
 (5) Q Or about five minutes till midnight?  
 (6) A Five minutes to midnight  
 (7) Q All right sir  
 (8) A And she was a distance off of about one mile due west  
 At  
 (9) this point the vessel had increased speed because of load  
 (10) program up and she was now doing 11.1 knots The vessel  
 (11) continued moving south 180 degrees until at midnight,  
 almost  
 (12) precisely at midnight she crossed a sector known as the red  
 (13) sector, crossed into the red sector of Busby Island light  
 (14) Busby Island light shines white around most of its sector,  
 but  
 (15) at a certain portion, it's called a red sector or caution zone  
 (16) in here, and the vessel moved into that - that zone where  
 the  
 (17) light would change from white to appear to be red  
 (18) Q Now as I understand that if I may approach here when you  
 (19) get - as the vessel is traveling here along this line would  
 (20) you follow me?  
 (21) A Yes sir  
 (22) Q Along this line if it looked over to the Busby Island  
 (23) light it would see white is that correct?  
 (24) A That's correct  
 (25) Q Now if it moved along here to something after midnight or

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- (1) 0000 as you have there and looked at Busby Island light what  
 (2) would it see?  
 (3) A It would see red  
 (4) Q And that is a cautionary?  
 (5) A Yes  
 (6) Q Now 2355 to midnight in that five minutes there did you  
 (7) see any indication that there was any turn of the vessel?  
 (8) A No, sir The course recorder which is one of the  
 (9) documents we used showed that the vessel was moving  
 due south  
 (10) 180 degrees  
 (11) Q Continue on Mr Cushing  
 (12) A All right At this point the vessel had increased its  
 (13) speed even further now because of the load program up  
 The  
 (14) vessel was at this point traveling at 11.3 knots  
 (15) Q 11.3 It had increased then three tenths of a knot over  
 (16) that period of time over something like ten minutes?  
 (17) A Seven about seven minutes  
 (18) Q Seven minutes?  
 (19) A Yes sir or eight minutes  
 (20) Q All right  
 (21) A All right Just after midnight, then at about two minutes  
 (22) past midnight the vessel's head started to swing to the  
 right,  
 (23) and the vessel followed a -  
 (24) Q Now before you do that how would you know that at two  
 (25) minutes after midnight the vessel begins to swing to the right?

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- (1) A The vessel is equipped with a course recorder, and the  
 (2) course recorder which has a clock in it indicates the time  
 and  
 (3) it indicates that the direction of the vessel was pointed at  
 all times It's tied into the gyro system of the ship  
 (5) Q All right The vessel began to swing to the right or now  
 (6) as we've all learned swing to starboard at about two minutes  
 (7) after midnight is that correct?  
 (8) A That's correct, yes, sir  
 (9) Q All right Now if the bow - if the course recorder  
 (10) reflects the two minutes after midnight the bow begins to swing  
 (11) to the right okay when would the rudder have to be put on?  
 (12) Let's say it's ten degrees When would you have to put on the  
 (13) rudder on the helm ten degrees to get an indication on the  
 (14) course recorder that the vessel is beginning to swing to the  
 (15) right at two minutes after midnight?  
 (16) A That would have to have been done between 20 and 30  
 seconds  
 (17) before that  
 (18) Q All right So the rudder then was moved to right rudder  
 (19) at some degree about a minute and a half after midnight, is  
 (20) that correct?  
 (21) A That's correct  
 (22) Q And that is the first indication you have seen that the -  
 (23) that there was any rudder put on this vessel?  
 (24) A Yes, sir  
 (25) Q All right Now then - now then at that time were you

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- (1) able to determine the degree of right rudder that was put on  
 (2) the vessel?  
 (3) A Yes, sir, we have been  
 (4) Q All right What degree of right rudder was put on the  
 (5) vessel as you say a minute and a half after midnight so that  
 (6) you can see the bow turn on the course recorder at two minutes  
 (7) after midnight?  
 (8) A Well, we have determined that that rudder angle was ten  
 (9) degrees  
 (10) Q Ten degrees?  
 (11) A Yes, sir  
 (12) Q So according to your - in your opinion in your work  
 (13) rudder angle was put on of ten degrees right at a minute and a  
 (14) half after midnight and the vessel began to show some turn at  
 (15) two minutes after midnight?  
 (16) A Yes, sir  
 (17) Q All right Now, were you able to - how long did the ten  
 (18) degree right rudder continue in effect?  
 (19) A That continued at least through the period of - period of  
 (20) five minutes, at which point the vessel struck a pinnacle in  
 (21) Bligh Reef  
 (22) Q And is that represented by seven minutes after midnight on  
 (23) your chart?  
 (24) A Yes, sir, it is, at this point here  
 (25) Q Okay What happened at that point then in terms of the



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(1) rudder angle?  
 (2) A Well the trace on the course recorder shows an indication  
 (3) of an abrupt change in direction which could have been  
 (4) caused - I say abrupt, but very slight but abrupt change which  
 (5) could have been caused either by the vessel passing over the  
 (6) pinnacle off center causing the ship to skew as it passed over  
 (7) the pinnacle or by the application of additional rudder such  
 (8) as a 20 degree right rudder or a combination of both of those  
 (9) Q So you cannot determine whether 20 degree rudder right  
 (10) rudder was applied at seven minutes after midnight although  
 (11) that is a possibility?  
 (12) A That's a possibility  
 (13) Q All right What happened then?  
 (14) A Well the ship as it followed its track around had slowed  
 (15) from 11.4 at the point of which it started to turn and the  
 (16) ship when it goes into a turn does slow down, just naturally  
 (17) for hydrodynamic reasons When it passed over this  
 (18) pinnacle at seven minutes past it further slowed down because the  
 (19) sliced a long slice in the bottom of the ship and she came off  
 (20) the pinnacle about a minute later at eight minutes past and at  
 (21) that point she had slowed down from about 10.4 knots to about  
 (22) 7 knots as she came off the pinnacle She was still moving  
 (23) ahead though  
 (24) Q All right And then what happens?  
 (25) A Then the vessel continued moving along this course here  
 (1) about 248 degrees was her course at that point until she  
 (2) struck the - struck the reef at about nine minutes past,  
 (3) traveling at a speed of about 7 knots and then about a  
 (4) minute later her forward motion stopped when she was up on the  
 (5) reef at ten minutes past  
 (6) Q And so that is the track line of the Valdez as you  
 (7) determined it from 11.39 in the evening until ten minutes after  
 (8) midnight on the 24th?  
 (9) A Yes sir  
 (10) Q Mr Cushing I want you to assume - you have stated that  
 (11) ten degrees right rudder was applied at about a minute and a  
 (12) half after midnight so that the turn would begin to show at two  
 (13) minutes after midnight correct?  
 (14) A Yes sir  
 (15) Q All right Now I want you to assume certain facts for me  
 (16) that I believe are facts in the record in this case but you  
 (17) assume them okay? Let's assume that there was a lookout on  
 (18) the starboard bow of the vessel, as it moved down your track  
 (19) line okay?  
 (20) A On the starboard bow?  
 (21) Q On the starboard wing  
 (22) A All right  
 (23) Q Starboard wing And let's assume that that lookout came in  
 (24) and told Mr Cousins red light flashing every five seconds  
 (25) broad on the starboard bow Will you assume that?

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(1) A Yes sir  
 (2) Q Let's further assume that that lookout went back to the  
 (3) starboard wing looked again came back in and said red light  
 (4) flashing every four seconds broad on the starboard bow  
 (5) Now given the facts you have described here and assuming  
 (6) those facts do you have an opinion - oh one more fact to  
 (7) assume Assume that when the lookout on the bridge wing came  
 (8) in the second time and said red light flashing every four  
 (9) seconds broad on the starboard bow and assume that at that  
 (10) time that is the time Mr Cousins testified during that  
 (11) conversation he gave the order ten degrees right rudder You  
 (12) with me?  
 (13) A Yes sir  
 (14) Q Do you have an opinion then where that vessel was when  
 (15) the first order of ten degrees right rudder was given?  
 (16) A Yes sir I do  
 (17) Q Where was the vessel when the first order of ten degree  
 (18) right rudder was given?  
 (19) A The vessel was about a half a minute north of this point  
 (20) where the vessel actually started to swing at two minutes  
 (21) past In other words one and a half minutes after midnight  
 (22) Q And do you have an opinion then assuming the order to  
 (23) first be given at that time do you have an opinion whether  
 (24) that rudder order was properly carried out by the helmsman?  
 (25) A Yes I do

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(1) Q And what is that opinion?  
 (2) A That the vessel actually followed a course of ten degrees  
 (3) right rudder  
 (4) Q So the helmsman when given a ten degree right rudder put  
 (5) on a ten degree right rudder and what we have is the result is  
 (6) that correct?  
 (7) A Yes sir  
 (8) MR NEAL Can we take this one down for the time  
 (9) being Your Honor?  
 (10) Mr Cushing I show you what is in evidence now as  
 (11) Defendant's Exhibit - what have I got there?  
 (12) MS STEWART 1736 Alpha  
 (13) MR NEAL I'm sorry?  
 (14) MS STEWART 1736 Alpha  
 (15) BY MR NEAL  
 (16) Q And I'm going to ask you if what you see right now is  
 (17) simply the track line of the Valdez you've just described  
 (18) without the time entries?  
 (19) A Yes sir it is  
 (20) Q All right At my request did you prepare a chart or  
 (21) overlays showing what this vessel would have done had it  
 (22) started to come into - back to the lanes at abeam Busby Island  
 (23) light?  
 (24) A Yes sir we did  
 (25) Q All right And what is the rudder turn that you assumed on

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- (1) the first overlay?  
 (2) A The first overlay was ten degrees right rudder  
 (3) Q All right Let s show the Ladies and Gentlemen of the Jury  
 (4) that Now explain to the Members of the Jury and the Court  
 (5) what they re seeing here  
 (6) A Well the initial part of the track is the blue track we've  
 (7) just described, but at a point just south of abeam of Busby  
 (8) light, in other words 2355 30 We've shown a track where  
 the  
 (9) bow of the ship would have - the track the vessel would  
 have  
 (10) followed where the bow of the ship would have started to  
 swing  
 (11) at 25 - 2355.30, or five minutes, four minutes and 30  
 seconds  
 (12) before midnight  
 (13) Q All right Now you have said that the vessel was abeam  
 (14) Busby Island light at 2355?  
 (15) A Yes, sir  
 (16) Q Why do you have 2355 30 on there?  
 (17) A Because if the vessel were to have followed this - this  
 (18) red course here, the order would have had to have been  
 given at  
 (19) 2355 to cause the vessel to start swinging at this point  
 (20) Q So you re assuming this assumes a ten degree order was  
 (21) given and executed at 2355?  
 (22) A Yes, sir  
 (23) Q And what you re showing here is what the course - on the  
 (24) course recorder it would be approximately 30 seconds later  
 (25) before you d see the bow begin to swing?

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- (1) A Yes sir  
 (2) Q All right Now go ahead And the red line there what  
 (3) does that show?  
 (4) A Well, that is the track of the vessel if that ten degree  
 (5) right order, right rudder order had been given abeam of  
 Busby  
 (6) Island light and executed and you can see that the course  
 (7) actually curves well north of the - the track that the vessel  
 (8) actually took  
 (9) Q If that - if that had been carried out if a ten degree  
 (10) right rudder had in fact been carried out at abeam Busby Island  
 (11) light how much would the vessel have missed the grounding  
 (12) point?  
 (13) A By over a mile  
 (14) Q All right You re aware are you not that the testimony  
 (15) in this case is that Captain Hazelwood asked Mr Cousins to  
 (16) come back into the lanes at abeam Busby Island light?  
 (17) A Yes, sir  
 (18) Q Now at my request did you do something else did you  
 (19) assume a five degree turn?  
 (20) A Yes sir we did  
 (21) Q At abeam Busby Island light?  
 (22) A Yes sir we did  
 (23) Q Now would you explain to the Court and the Members of the  
 (24) Jury what you re demonstrating here?  
 (25) A Well the yellow - the yellow trace shows the track that

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- (1) the vessel would have followed if a five degree -  
 (2) Q Is that yellow?  
 (3) A Well dayglow or whatever  
 (4) Q All right  
 (5) A If a five degree order had been given and executed  
 abeam of  
 (6) Busby light, it would have followed this yellow track, just  
 (7) slightly, curving just slightly further south than the ten  
 (8) degree course  
 (9) Q Okay And if even a five degree turn had been put on at  
 (10) abeam Busby Island light, how far would the vessel have  
 missed  
 (11) the grounding spot?  
 (12) A By a little over eight-tenths of a mile  
 (13) Q Now I m going to ask one other - I m going to ask you to  
 (14) assume one other thing Let s assume that Mr Cousins went  
 (15) outside to the port wing, took a fix he s abeam Busby Island  
 (16) light at 11 55 He looks at his watch it has a second  
 (17) indicator on it but he can t see that so he s abeam Busby  
 (18) Island at 11 55 by his watch or somewhere between 11 55 and  
 (19) 11 56 He comes back he stops briefly at the port radar, then  
 (20) goes into the chart room plots that fix and just briefly for  
 (21) the Ladies and Gentlemen of the Jury for my benefit, you take  
 (22) a fix by either sight or instruments and then you come in and  
 (23) plot that fix What does plotting that fix mean?  
 (24) A Well that means taking a set of dividers and stepping off  
 (25) the distance and putting a position mark on the chart and  
 the

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- (1) time  
 (2) Q All right Let s assume then that the turn wasn't made  
 (3) at - or there was something that prevented the turn being made  
 (4) at precisely 2355 Have you constructed what would have  
 (5) happened given a turn of ten degrees right at say 11 58?  
 (6) A Yes, sir, I have  
 (7) Q All right Could we see that? Now would you explain what  
 (8) we re seeing here Mr Cushing?  
 (9) A The dark blue - the dark blue trace assumes the order -  
 (10) an order was given at 11 58 and was executed at 11.58, and  
 the  
 (11) bow starts to swing at 11 58 30 it would follow this dark  
 blue  
 (12) trace south of the other two traces we just described, but  
 (13) north of the actual trace of the ship  
 (14) Q And how much would that a ten degree right rudder at  
 (15) 11 58 have missed the grounding site?  
 (16) A A little over 45 miles  
 (17) Q Let s do one other thing Let s assume that there is -  
 (18) it s two minutes after midnight and let s - when the bow  
 (19) begins to turn correct according to your testimony?  
 (20) A Yes sir  
 (21) Q Let s assume that a 20 degree right rudder was put on  
 (22) rather than a ten degree Do we have that now?  
 (23) A Yes sir Orange I believe orange in color 20 degrees  
 (24) right rudder at two minutes after midnight would cause the  
 (25) vessel to follow this - this orange trace here

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- (1) Q And would it have missed the reef?  
 (2) A Yes sir by - close to it but by a tenth of a mile  
 (3) Q Mr Cushing the record in this case reflects that two  
 (4) other vessels went out of the - two other tankers went out of  
 (5) the Port of Valdez on March 23, preceding the Exxon Valdez  
 (6) Are you aware of that?  
 (7) A Yes, sir  
 (8) Q At my - and those vessels were the Brooklyn and the Arco  
 (9) Juneau At my request did you prepare a track line of the  
 (10) Brooklyn and the Arco Juneau as they exited Prince William  
 (11) Sound on the night or - day or night of March 23 1989?  
 (12) A Yes, sir, we did  
 (13) Q Would you looking at Defendants Exhibit 1735 Able A or  
 (14) Able, would you explain to the Court and the Jury what they re  
 (15) seeing there?  
 (16) A The orange trace again is the - a track of the tanker  
 (17) Brooklyn as she travels southward through Prince William  
 Sound,  
 (18) first in the traffic lane and then leaving the traffic lane to  
 (19) avoid reportedly or what I understand to be ice in the traffic  
 (20) lane  
 (21) Q Now is she - she is the Brooklyn totally outside of the  
 (22) traffic lanes itself?  
 (23) A She is at this point here  
 (24) Q And she continues on further out?  
 (25) A Yes, sir she does

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- (1) Q Or farther out? Okay  
 (2) A Until she's abeam of Bligh Island, Bligh Reef light  
 (3) Q How close does the Brooklyn come to Bligh Reef? Were you  
 (4) able to figure that out?  
 (5) A Yes, sir, we were  
 (6) Q And what is the distance?  
 (7) A The closest point of approach to Bligh Reef was about  
 (8) eight tenths of a mile  
 (9) Q Eight tenths of a mile?  
 (10) A Yes, sir  
 (11) Q All right sir And you testified that had the order been  
 (12) carried out on the Valdez you d been over a mile away on a ten  
 (13) degree right rudder?  
 (14) A Yes, sir  
 (15) Q All right By the way were you able to determine the  
 (16) times what times of the day do these tracks - let s start  
 (17) with the Brooklyn what times of the day are represented by the  
 (18) track line of the Brooklyn?  
 (19) A Well the Brooklyn left Port Valdez early in the morning  
 (20) around 8 00 in the morning and she was up - up at this point  
 (21) here about 10 47 in the morning, and her - her charts from  
 (22) which we got this information show the times at which she  
 was  
 (23) at the various points along the track and she arrived down  
 at  
 (24) this point here at about 11 26  
 (25) Q So you are representing on your chart here a time for the

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- (1) Brooklyn that begins at about 11 47 and ends up at - I mean  
 (2) 10 47 and ends up at what?  
 (3) A 11 26  
 (4) Q All right And let s take the Arco Juneau then What  
 (5) color represents the Arco Juneau then?  
 (6) A That's this kind of yellowish green dayglow color  
 (7) Q And does it go entirely out of the traffic separation  
 (8) scheme?  
 (9) A Yes sir The Arco Juneau was traveling southbound in  
 the  
 (10) northbound lane in this portion of the track, and she exits  
 (11) the lane also and obviously travels further, further away  
 from  
 (12) the traffic lane, curving back and then finally reentering the  
 (13) traffic lanes down here  
 (14) Q All right What time is represented - what time period is  
 (15) represented on your chart by the track line of the Arco Juneau?  
 (16) A The Arco Juneau left Port Valdez in the afternoon of the  
 (17) 23rd about 4 00 in the afternoon  
 (18) Q Okay And what time is represented there?  
 (19) A She arrives at this point here about 6 53 in the evening  
 (20) and travels through this course arriving down here at about  
 (21) 7 22 in the evening  
 (22) Q Now was the Arco Juneau put on a direct line to Bligh Reef  
 (23) at some point?  
 (24) A Well when she left the traffic lanes she was pointed  
 (25) directly at Bligh Reef on a course directly at Bligh Reef

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- (1) Q How close did the Arco Juneau come to Bligh Reef?  
 (2) A She came to within six tenths of a mile  
 (3) Q Six tenths of a mile?  
 (4) A Right  
 (5) Q Now Mr Cushing a Mr Jerry Aspland of Arco Marine  
 (6) testified in this case and I want to read you a question and  
 (7) answer Question did you have - was there ever - were there  
 (8) ever any rules as to what speed would be considered a prudent  
 (9) speed in transiting through ice in Prince William Sound and  
 (10) the answer I don t recall having put out a written memo but I  
 (11) do recall having discussed that we could go - if there was ice  
 (12) in the area we could go up to five knots  
 (13) Was there ice in the area when the Arco Juneau was  
 (14) transiting this part of the Prince William Sound you ve  
 (15) discussed?  
 (16) A That's my understanding, yes, sir  
 (17) Q Were you able nevertheless to determine the speed of the  
 (18) Arco Juneau as it transited that portion of Prince William  
 (19) Sound?  
 (20) A Yes sir we were  
 (21) Q And what was that speed?  
 (22) A That was 12 - sorry, 12 96 knots  
 (23) Q 12 96 knots?  
 (24) A Yes sir  
 (25) Q Now as a matter of curiosity did you ever determine the

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- (1) speed of the Brooklyn as it is transiting transiting this part  
 (2) of Prince William Sound?  
 (3) **A Yes, sir** Because we had the -- the positions and the  
 (4) **fixes and the times of both vessels, we were able to**  
**determine**  
 (5) **that the Brooklyn was traveling at 11.7 knots through this**  
 (6) **region**  
 (7) **Q Okay** Now another chart Mr Cushing I show you now  
 (8) **what is defense exhibit -- Mr Serdahely would you help me out**  
 (9) **there Defense Exhibit 1734 A?**  
 (10) **MR SERDAHELY 1734 A**  
 (11) **BY MR NEAL**  
 (12) **Q 1734 A** And to move things along a little bit that  
 (13) **reflects without any other notations the track line of the**  
 (14) **three vessels that left the Port of Valdez on March 23?**  
 (15) **A Yes, sir**  
 (16) **Q All right** Now let's put over the overlay reflecting a  
 (17) **ten degree turn at abeam Busby Island light Mr Cushing**  
 (18) **assume that Captain Hazelwood ordered Mr Cousins to**  
**commence**  
 (19) **this turn back into the traffic lanes abeam Busby Island light**  
 (20) **and considering the track lines of all three do you have an**  
 (21) **opinion as to which of these courses of the three vessels**  
 (22) **carried the least amount of risk as to the plan for exit?**  
 (23) **A Yes, sir I do**  
 (24) **Q Which one?**  
 (25) **A The Exxon Valdez**

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- (1) **Q And why do you say that?**  
 (2) **A Well for several reasons** First the Exxon Valdez in  
 (3) **traveling southward and executing her turn was in deep**  
**water**  
 (4) **with more -- more room to maneuver especially should**  
**anything**  
 (5) **go wrong with the -- the equipment on the ship, as compared**  
**to**  
 (6) **the Brooklyn and the Arco Juneau who were pointed right**  
**at**  
 (7) **Bligh Reef and came very close and had to maneuver at a**  
**later**  
 (8) **time or when they were closer**  
 (9) **The second thing is that the Exxon Valdez in making her**  
 (10) **turn up here would have been aligned in a more parallel**  
 (11) **direction earlier on to run between what was reportedly the**  
**ice**  
 (12) **in this region and the Bligh Reef so she would have been**  
**able**  
 (13) **to adjust herself and get herself lined up with a straight**  
 (14) **course earlier on rather than to maneuver between the ice**  
**and**  
 (15) **the reef at the last minute**  
 (16) **Q All right** I'm going to have one more chart put up there  
 (17) **let's leave that one up**  
 (18) **Mr Cushing I show you what is in evidence as Defendants**  
 (19) **Exhibit 1729 okay?**  
 (20) **A Yes sir**  
 (21) **Q Could I have my pointer back here? I'm going to ask you to**  
 (22) **assume -- can everyone see this? I'll go around this way**  
 (23) **I'm going to ask you to assume or I'm going to point out**  
 (24) **that the evidence in this case by Captain Hazelwood is that the**  
 (25) **leading edge of the ice when he left the bridge or when he was**

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- (1) **planning to leave the bridge was as I'm drawing here now Do**  
 (2) **you see?**  
 (3) **A Yes, sir**  
 (4) **Q Okay** Now you see Busby Island you see nobody's tried to  
 (5) **make this to scale but the letter D there represents the**  
 (6) **approximate location of the vessel All right Now I want**  
 (7) **you to consider where Captain Hazelwood saw the ice you got**  
 (8) **it?**  
 (9) **A Yes, sir**  
 (10) **Q And I want you to consider the planned course, according to**  
 (11) **Defendants Exhibit 1734-A and ask you if that was an**  
 (12) **appropriate course considering where Captain Hazelwood saw**  
**the**  
 (13) **ice?**  
 (14) **A I believe so, yes**  
 (15) **Q And why do you say that?**  
 (16) **A Well, the point at which he picked -- the point at which he**  
 (17) **picked to make the turn was the point at which the ice was**  
 (18) **closest to Busby -- Busby Island In other words, he came to**  
**a**  
 (19) **point of just about halfway between the two, as a point to**  
 (20) **commence his turn The ten degree right rudder turn would**  
**have**  
 (21) **started to align him with a course that would have brought**  
**him**  
 (22) **parallel to the ice and parallel to the edge of the reef at a**  
 (23) **point halfway between the two and he would have been able**  
**to**  
 (24) **bring himself back into the traffic lanes on a straight**  
 (25) **course**

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- (1) **MR NEAL** Excuse me just a moment Your Honor  
 (2) **MR NEAL** Thank you Mr Cushing  
 (3) **You may examine** Do you want me to leave Mr Montague  
 (4) **some of these up here?**  
 (5) **MR MONTAGUE** Yes sir  
 (6) **MR NEAL** Which one?  
 (7) **MR MONTAGUE** Both  
 (8) **CROSS EXAMINATION OF CHARLES CUSHING**  
 (9) **BY MR MONTAGUE**  
 (10) **Q We're going to have to just wait a second until the charts**  
 (11) **come up Mr Cushing**  
 (12) **Can you see this Mr Cushing?**  
 (13) **A Yes, sir, I can**  
 (14) **Q By the way I'm Laddie Montague we haven't met**  
 (15) **I'd like to just ask you a couple things about this chart**  
 (16) **This is the chart that -- your course line of the Exxon Valdez?**  
 (17) **A Yes sir it is**  
 (18) **Q Okay** And the 2355 is when the vessel was abeam Busby  
 (19) **Island light?**  
 (20) **A Yes, sir**  
 (21) **Q And do you recall that Captain Hazelwood left the bridge**  
 (22) **about two minutes before that about 2353?**  
 (23) **A Yes sir**  
 (24) **Q Now you say that the turn you agree that the turn was**  
 (25) **made the order was given around one and a half minutes after**

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- (1) midnight?  
 (2) A Approximately, yes  
 (3) Q Okay And that would be about six and a half minutes after  
 (4) Busby Island light was passed?  
 (5) A Yes, sir  
 (6) Q And about eight and a half minutes after Captain Hazelwood  
 (7) left the bridge?  
 (8) A Approximately Approximately  
 (9) Q And it was that time that after Captain Hazelwood left the  
 (10) bridge to the time of the turn, that was - that - over that  
 (11) eight and a half minutes there was no communication between  
 (12) Captain Hazelwood and Mr Cousins until Mr Cousins called  
 (13) him  
 (14) telling him that he had made the turn is that correct?  
 (15) A I'm not qualified to answer that  
 (16) Q You're not familiar with that information?  
 (17) A No, sir  
 (18) Q Okay Now these are your various hypotheticals that you  
 (19) made, right? The red the yellow the blue and the orange?  
 (20) A Yes, sir They are  
 (21) Q Okay Did anybody tell you that Lieutenant Delozier  
 (22) testified that when he interviewed both Mr Cousins and Captain  
 (23) Hazelwood that when they were asked where the turn was to be  
 (24) made they both circled the 38 fathom mark?  
 (25) A I had heard that  
 (26) Q Did you make any determination as to turns at that mark?

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- (1) A No, sir  
 (2) Q Now am I correct that for each of these hypothetical turns  
 (3) that you've indicated here there would have to be a counter  
 (4) rudder command in order to successfully complete the  
 (5) maneuver?  
 (6) A Not necessarily a counter rudder The rudder could have  
 (7) been brought back gradually to amidships  
 (8) Q There would have to be some work done on the rudder?  
 (9) A Yes, sir  
 (10) Q In other words it couldn't stay on ten degrees or five  
 (11) degrees forever, right?  
 (12) A That's correct  
 (13) Q And that is a navigator's job to determine how to handle  
 (14) that rudder?  
 (15) A Yes, sir, the person conning the ship  
 (16) Q How would you determine what to do?  
 (17) A Well, you would determine what your next course is going  
 (18) to be First determine where you're going to make your turn  
 (19) you then determine what your next course is going to be from  
 (20) that  
 (21) point, and then you bring the ship around to that course,  
 (22) and  
 (23) then you steady up on that course  
 (24) Q Have you made that determination with any of these?  
 (25) A No, sir, we haven't  
 (26) Q And that takes a little bit of thinking doesn't it to  
 (27) figure out how to get back on the right line?  
 (28) A Yes, it does

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- (1) Q Okay Now you testified that each of these four spots had  
 (2) a turn been made or each of these three spots had a turn been  
 (3) made in two different degrees there ten degrees here ten  
 (4) degrees there each of those times had the turn been made  
 (5) this - this wreck would have never happened is that correct?  
 (6) A That's correct yes, sir  
 (7) Q And am I correct that all during these three the times of  
 (8) these three dots we've established Captain Hazelwood was not  
 (9) on the bridge isn't that correct?  
 (10) A I'm not qualified to -  
 (11) Q Well we just said he was off the bridge from 12 53 to  
 (12) after - after the grounding?  
 (13) A Yes, sir that's what you told me  
 (14) Q Okay So it's possible then that had there been another  
 (15) person on the bridge like the master these turns might have  
 (16) been made and the whole wreck would have been avoided  
 (17) isn't that correct?  
 (18) A I'm not sure I understand your question You're saying if  
 (19) another person had been on the bridge they would have  
 (20) been made but they weren't because -  
 (21) Q No What I'm saying had someone else been on the bridge  
 (22) that was alert they might have caught this and those turns  
 (23) would have been made?  
 (24) A That's possible  
 (25) Q Okay Now lastly let's just look at the - one thing you

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- (1) didn't discuss at all with respect to the Valdez track line is  
 (2) the fact that once the course went to 180 the vessel was on  
 (3) autopilot?  
 (4) A Yes There were - yes, sir  
 (5) Q Did you make any determination as to whether these vessels  
 (6) were on autopilot?  
 (7) A No, sir we didn't We couldn't in fact All we had was  
 (8) the positions from the chart  
 (9) Q Okay Next - I'm sorry for these vessels what did you  
 (10) look at?  
 (11) A We looked at the copies for each of the charts from each  
 (12) of  
 (13) those two ships  
 (14) Q What do you mean the charts?  
 (15) A Each ship has a navigation chart on which they plot their  
 (16) fixes We were provided with copies of the navigation chart  
 (17) for the Arco Juneau and for the Brooklyn, which showed the  
 (18) positions that they had plotted and the times  
 (19) Q Okay By the way what did you look at to determine the  
 (20) speeds of the various times that you testified to for the Exxon  
 (21) Valdez? What did you look at what records did you look at to  
 (22) get those speeds?  
 (23) A Well, we had the - the engine bell logger, which is an  
 (24) automatic printout that shows the revolutions of the ship  
 (25) and  
 (26) at each time There was a sea trial conducted after the  
 (27) accident and repair of the ship that showed, and they  
 (28) simulated

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- (1) the - went through an entire sea trial and simulated both  
 (2) moving in straight directions and in various rudder curves  
 what  
 (3) the speed of the vessel would be, what tracks the vessel  
 would  
 (4) follow and what turning rates and what drift angles the ship  
 (5) would have for various revolutions  
 (6) Also it showed what the speeds of the vessel would be for  
 (7) the load program up, so that we were able to use the  
 identical  
 (8) conditions and data to establish what the speeds and tracks  
 (9) were  
 (10) Q Okay So you used all that in order to determine the  
 (11) speeds of the Exxon Valdez?  
 (12) A Yes, sir  
 (13) Q Did you have that information available for the Juneau or  
 (14) the Brooklyn?  
 (15) A No, but we had something even better We had the  
 position  
 (16) of the ship and we had the time of the ship, and knowing the  
 (17) position and the time, you can determine the speed  
 (18) Q So you - that was a calculation that you used, something  
 (19) different than what you used to determine the speed of the  
 (20) Exxon Valdez?  
 (21) A Yeah Well, there are many ways to determine speed  
 (22) Q I understand I just want to see that there were different  
 (23) methods used  
 (24) A Yes, sir  
 (25) Q Now one last question Are you aware that in both of the

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- (1) testimonies here in both of these cases has been that the  
 (2) captain or the master was on the bridge at all times?  
 (3) A I've heard that  
 (4) MR MONTAGUE Thank you very much  
 (5) MR NEAL No questions Your Honor  
 (6) THE COURT Thank you sir You may step down  
 (7) MR LYNCH Call Dr Gary Richardson Your Honor  
 (8) THE CLERK Would you raise your right hand please  
 (9) sir  
 (10) (The Witness Is Sworn)  
 (11) THE CLERK For the record sir state your full name  
 (12) your address and spell your last name please  
 (13) THE WITNESS Gary S Richardson The last name  
 (14) Richardson is spelled R I C H A R D S O N and I live at 94  
 (15) Wendell Street, W-E N D E-L-L in Cambridge Massachusetts  
 (16) THE CLERK Thank you sir  
 (17) MR LYNCH Your Honor may I approach the witness  
 (18) DIRECT EXAMINATION OF GARY RICHARDSON (Live)  
 (19) BY MR LYNCH  
 (20) Q Dr Richardson you've been employed by the defendants in  
 ( 1) this case to evaluate certain issues relating to the issues in  
 ( 2) this trial?  
 ( 3) A I have  
 ( 4) Q And what is your present employment?  
 (25) A I'm the director of the Sleep Disorder Service the clinic

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- (1) and the laboratory at Brigham and Women's Hospital in  
 Boston,  
 (7) Massachusetts  
 (3) Q Could you tell us a little bit about what Brigham and  
 (4) Women's Hospital is?  
 (5) A Brigham and Women's Hospital is one of three or four  
 (6) teaching hospitals in Boston, Mass It's a general medical  
 (7) hospital  
 (8) Q Are you a medical doctor?  
 (9) A I am  
 (10) Q And as director medical director of the Sleep Disorders  
 (11) Clinic at Brigham and Women's Hospital what's - what do you  
 (12) do when you go to work?  
 (13) A My duties as in that position involve both research and  
 (14) clinical care for patients with sleep disorders  
 (15) Q Could you - the word clinical care means actually treating  
 (16) patients?  
 (17) A That's correct I see patients in clinic, evaluate,  
 (18) diagnose and treat disorders  
 (19) Q And what does research basically consist of doing?  
 (20) A Our research interests are broad but much - all of our  
 (21) research is clinical research, meaning research on human  
 (22) subjects, and it covers a variety of subjects involving  
 (23) endocrinology, sleep disorders sleep, physiology  
 (24) Q Does it involve doing experiments?  
 (25) A Yes, it does

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- (1) Q Under controlled conditions and carefully recording those  
 (2) results?  
 (3) A The experiments we do are both in the laboratory,  
 (4) controlled conditions, and also worked on in the field  
 (5) Q Dr Richardson how long have you been at sleep disorder  
 (6) research or study?  
 (7) A I've been involved in this field for a very long time,  
 (8) since 1978 actually  
 (9) Q And how did you first get involved?  
 (10) A I did my undergraduate training and my medical training  
 at  
 (11) Stanford Medical School in California, and that facility is  
 one  
 (12) of the leading institutions in the evaluation of sleep,  
 (13) sleepiness and performance, and I first became involved as  
 a  
 (14) student in that laboratory  
 (15) Q And have you been working in that field continuously since  
 (16) that time?  
 (17) A Yes I have  
 (18) Q What professional degrees or educational degrees have you  
 (19) attained sir?  
 (20) A Well, I have my bachelor's degree in science from  
 Stanford  
 (21) and a medical degree and M D from Stanford, as well  
 (22) Q And for how long have you been practicing medicine?  
 (23) A My degree was granted in 1983 I was licensed at  
 Brigham  
 (24) and Women's Hospital the year after that and I've been  
 (25) practicing uninterrupted since that time

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- (1) Q Do you teach?  
 (2) A Yes, I do I'm an instructor in medicine at Harvard  
 (3) Medical School  
 (4) Q And what subjects - on what subjects do you teach?  
 (5) A I teach both endocrinology, which is my formal specialty,  
 (6) and sleep disorders medicine  
 (7) Q And at what schools? Harvard only or -  
 (8) A I teach at Harvard Medical School I've done lecturing  
 and  
 (9) brief teaching elsewhere  
 (10) Q Have you published in the field of sleep or sleep  
 (11) disorders?  
 (12) A Yes, I have  
 (13) Q And did that publication involve what was described  
 (14) yesterday as peer reviewed articles?  
 (15) A Yes, it does  
 (16) Q Without taking up a lot of time or without taking up as  
 (17) much time as it might otherwise take let me just display your  
 (18) resume for a second And I realize that this is hard for us  
 (19) all to see Are these a list of your publications?  
 (20) A That's a partial list, yes  
 (21) Q Do they include books that you've edited or authored sir?  
 (22) A In this case, the screen is focused on books that I've been  
 (23) involved in the preparation of either as an editor or  
 (24) contributor  
 (25) Q Then for the next several pages are lists of the articles

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- (1) abstracts and other learned materials that you've published  
 (2) sir?  
 (3) A Yes I apologize for the arcane organization of the  
 (4) curriculum vitae Harvard University requires that it be  
 (5) organized in that way  
 (6) MR LYNCH Well rather than run through the list I  
 (7) just thought it would be faster if we could show them but I'll  
 (8) offer Dr Richardson as an expert on the subjects of sleep  
 (9) disorders and sleep research Your Honor  
 (10) MR GERRY No objections Your Honor  
 (11) THE COURT Doctor's qualifications are accepted  
 (12) MR LYNCH Thank you Your Honor  
 (13) BY MR LYNCH  
 (14) Q Were you asked by counsel for the defendants to evaluate  
 (15) whether there's a scientific basis to conclude that lack of  
 (16) sleep affected the actions of third mate Gregory Cousins in the  
 (17) 30 minutes prior to the grounding of the Exxon Valdez?  
 (18) A I was  
 (19) Q And in that connection what procedure or steps did you  
 (20) follow to advise yourself about the facts and circumstances  
 (21) relating to Mr Cousins' sleep history and sleep situation at  
 (22) the time of the grounding of the Exxon Valdez?  
 (23) A I principally - I reviewed principally depositions  
 (24) testimony available from individuals involved,  
 reconstructing  
 (25) his schedule I also reviewed documents provided to me,

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- (1) including deck logs and other documents that provided  
 (2) quantitative estimates of his work schedule  
 (3) Q Now what technique do you use from your point of view in  
 (4) trying to analyze whether sleep or lack of sleep may have been  
 (5) a factor in various performance issues as they relate to  
 (6) Gregory Cousins?  
 (7) A Well, our - our take on sleep and sleepiness makes use of  
 (8) extensive data that we've collected using an objective test  
 of  
 (9) sleepiness One of the important components I think is to  
 try  
 (10) -  
 (11) and objectify, try and be objective about what is inherently a  
 (12) very subjective quantity We use a test called a Multiple  
 (13) Sleep Latency Test which is an objective test of sleepiness  
 (14) that measures how quickly someone can fall asleep The  
 (15) assumption underlying this is that the sleeper someone is  
 the  
 (16) faster they will fall asleep under standardized conditions  
 we  
 (17) put them in bed, turn out the lights and ask them to try and  
 (18) fall asleep, and then we can precisely measure the time it  
 (19) takes in minutes for them to actually fall asleep This test  
 (20) has been used now and is in widespread use and allows us  
 to  
 (21) make certain quantitative estimates about levels of sleep in  
 different conditions  
 (22) Q By whom was the Multiple Sleep Latency Test developed?  
 (23) A I was involved in its development along with Dr Bill  
 (24) Dement and Mary Carskadon  
 (25) Q Is that test used only in experimental purposes or

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- (1) practical purposes?  
 (2) A No As I mentioned, that test is now in very widespread  
 (3) use It's considered part of the standard approach to the  
 (4) diagnosis of sleep disorders so for example patients with  
 (5) sleep apnea insomnia or narcolepsy who complain of being  
 (6) excessively sleepy during the day are given this test as a  
 (7) means of objectively showing that they are sleepy  
 (8) Q Now if that little beep I heard is accurate we'll have a  
 (9) chart here  
 (10) MR MONTAGUE Excuse me  
 (11) MR LYNCH Excuse me Your Honor I failed the test  
 (12) here What it put up is Exhibit DX1744  
 (13) BY MR LYNCH  
 (14) Q Dr Richardson I wonder if you could explain to the jury  
 (15) what this chart depicts as it relates to the multiple sleep  
 (16) latency test?  
 (17) A Now, can I use this pointer? Which screen can I use this  
 (18) Okay Can I do that? Doesn't really show up well Can you  
 (19) see that?  
 (20) Q I can see it and I'll try and follow the bouncing ball  
 (21) A This is a study I did some years ago using this Multiple  
 (22) Sleep Latency Test to estimate how sleepy people are at  
 (23) different times of the day And if we can just orient the jury  
 (24) first to what we're showing here Along the horizontal axis  
 at  
 (25) the bottom if you will is the time of day, and you can see

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- (1) the times noted there, so it's an entire 24 hour a full day in  
 (2) the life of these individuals Along the vertical axis are the  
 (3) minutes that it takes someone to fall asleep and you can see  
 (4) about where we are right at the moment Normal adult  
 (5) individuals here, I guess it's roughly what 10 11 a m in the  
 (6) morning would take something on the order of 15 minutes -  
 now  
 (7) I can't see my pointer either, there we are - 15 minutes or so  
 (8) to fall asleep Older individuals differ somewhat from the  
 (9) young adults, but for the most part the pattern is the same  
 (10) Q Now these lines that are depicted on the exhibit what -  
 (11) where did you get the information that led to plotting those  
 (12) lines?  
 (13) A Okay This was a study that we did some years ago in  
 (14) which  
 (15) we actually performed the Multiple Sleep Latency Test and  
 (16) measured sleep latency at regular intervals across the  
 (17) entire  
 (18) day  
 (19) Q And when you talk about sleep latency you mean the time it  
 (20) takes people to fall asleep?  
 (21) A Exactly  
 (22) Q And your research indicates that by measuring that time you  
 (23) can determine how alert or sleepy they are?  
 (24) A Exactly, exactly  
 (25) Q Now you -  
 (26) A The longer it takes someone to fall asleep, the more alert  
 (27) they are

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- (1) Q You used the term sleepy I used the term tired Is there  
 (2) a correlation of those?  
 (3) A Well, I feel strongly that the term sleepy and alert, at  
 (4) least in the scientific arena, is a much more precise term  
 (5) than  
 (6) tired or fatigued or other terms that are in colloquial use,  
 (7) common use but don't have the same precise meaning that  
 (8) sleepiness does We use the term sleepiness to denote the  
 (9) state when an individual has inadequate sleep The other  
 (10) terms although they are in general use have much  
 (11) different  
 (12) definitions  
 (13) Q These lines were used to test people more or less sleepy  
 (14) more or less lacking in sleep?  
 (15) A Exactly  
 (16) Q If they were not sleepy then they were alert?  
 (17) A Right  
 (18) Q And on this chart the higher the number the higher the  
 (19) what?  
 (20) A The alertness  
 (21) Q And the lower - the more sleepy?  
 (22) A Exactly  
 (23) Q Now what - does this W shaped pattern have any  
 (24) significance?  
 (25) A This was a very important study I believe in that it was  
 (26) the first to describe the normal course of sleepiness across  
 (27) the day There are a couple of features that I think are

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- (1) important The first is that you can see at about two in the  
 (2) afternoon that all individuals undergo a decrease in  
 (3) alertness,  
 (4) a nap phase, where sleepiness increases and there's a  
 (5) tendency  
 (6) to fall asleep Then there's a rebound, so that in the late  
 (7) evening, really, sleepiness decreases and alertness peaks  
 (8) People are most alert and most functional in this regard at  
 (9) about eight to nine in the evening, actually Sleepiness  
 (10) then  
 (11) increases more or less linearly across the night and  
 (12) sleepiness, and with it problems performing, sleepiness is  
 (13) maximal actually well into the morning, between five and six  
 (14) in  
 (15) the morning typically for most individuals  
 (16) Q Is that pattern according to your research related to any  
 (17) biological processes?  
 (18) A Yes We've since been focused on in the years since this  
 (19) study is the role the body's internal clock has in fixing this  
 (20) pattern This is a remarkably consistent pattern from  
 (21) individual to individual, and that's because this pattern is  
 (22) fixed by a clock that we all have inside our heads, a  
 (23) circadian  
 (24) or biological clock that fixes this pattern in time and orients  
 (25) us to the external world  
 (26) Q Now looking at this chart alone if I were trying to  
 (27) predict what level of alertness or what level of sleepiness  
 (28) a - a nominal individual John Q Public would have at say,  
 (29) midnight what would this chart say about the probable level of  
 (30) alertness or sleepiness of an individual if that's all you

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- (1) knew was a hypothetical man?  
 (2) A We should step back one moment and say these data  
 (3) were  
 (4) collected on the assumption that individuals were sleeping  
 (5) reasonably well There are no patients, for example, with  
 (6) sleep disorders in this mixture, but if we can assume our  
 (7) John  
 (8) Q Public fit into that category alertness at midnight is  
 (9) actually fairly high As I mentioned the minimum of alertness  
 (10) the peak of sleepiness doesn't occur until many hours later  
 (11) MR LYNCH Your Honor one moment  
 (12) Your Honor may I approach? I'll just hand the witness a  
 (13) paper copy This is DX3495 Alpha [sic] For record keeping  
 (14) purposes Your Honor I will offer the exhibit on the screen  
 (15) (Exhibit 2495 offered)  
 (16) MR GERRY No objection Your Honor  
 (17) MR LYNCH Offer DX1744  
 (18) (Exhibit 1744 offered)  
 (19) THE COURT DX1744 is admitted  
 (20) (Exhibit 1744 received)  
 (21) MR LYNCH And I will offer - I believe Mr Gerry  
 (22) has no objection to 2495 Alpha  
 (23) (Exhibit 2495 offered)  
 (24) MR GERRY No objection Your Honor  
 (25) THE COURT Is it 24 or 34?  
 (26) MR LYNCH 2495 I misspoke Your Honor  
 (27) THE COURT Okay Defendants Exhibit 2495-A is also



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- (1) admitted
- (2) (Exhibit 2495 received)
- (3) BY MR LYNCH
- (4) Q Dr Richardson I put up on the screen another chart and
- (5) maybe you could try to help us make some sense out of it
- (6) First of all what - what are the axes what is portrayed on
- (7) the vertical axis?
- (8) A Well, here again, what we've attempted to do is - is
- (9) summarize the normal sequence of alertness in an
- individual, so
- (10) on the vertical axis, again, we have estimated sleep latency
- (11) which is the time it would take them to fall asleep under
- (12) standardized conditions
- (13) Q So this is the Multiple Sleep Latency Test time to fall
- (14) asleep?
- (15) A That's right
- (16) Q Ranging from zero minutes to 20 minutes?
- (17) A Exactly
- (18) Q And the longer it would take?
- (19) A More alert the individual would be that's correct
- (20) Q And then along the horizontal axis what have we presented?
- (21) A Here we've expanded the scale somewhat representing
- the
- (22) days in question, March 22 and 23 of 1989 and we have
- time
- (23) marked midnight, noon and then midnight again on the
- 24th
- (24) Q Have you made any specific assumptions about the
- (25) geographical location of the individual?

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- (1) A Yes, as I mentioned we've since learned that the body's
- (2) biological clock is important in fixing this pattern in time
- (3) determining when the peaks are going to occur and when
- the
- (4) troughs are going to occur We also know that the body's
- clock
- (5) is oriented by sunlight and recognizing that Mr Cousins
- was
- (6) in a fairly far northern latitude at the time this all
- (7) occurred, we attempted to ascertain whether the unusual
- (8) sunlight pattern at the far northern latitude should require
- (9) some adjustment in his sleepiness pattern What's I
- depicted
- (10) is nautical twilight and sunrise, and end of nautical twilight
- (11) at the latitude approximating the Valdez on the day in
- (12) question, and what we've done is adjust - using our
- (13) simulations, we've adjusted the position of this curve to fit
- (14) that sunlight pattern
- (15) Q This blue line what does the blue line represent?
- (16) A The blue line is an average of our data on young and old
- (17) individuals Mr Cousins is a little older than our younger
- (18) subjects and much younger than our older subjects, so we
- (19) weighted the two curves as an average to produce an
- estimate of
- (20) his normal alertness
- (21) Q This is an attempt to portray the probable alertness based
- (22) on generalized study?
- (23) A That's correct
- (24) Q Of a person who had normal rest is that correct?
- (25) A That's correct

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- (1) Q And trying to adjust for age because you didn't have
- (2) subjects who exactly matched Mr Cousins age -
- (3) A That's correct
- (4) Q - as of these dates? What are these red bars?
- (5) A Well the red bars encompass the period of relevant
- (6) sunlight meaning the twilight the twilight period between
- the
- (7) onset of nautical twilight and sunrise and the onset of
- sunset
- (8) and the end of nautical twilight in the evening
- (9) Q Now in this gray bar down here on the bottom there are
- (10) these boxes and would you explain what those represent?
- (11) A From the depositions testimony that I reviewed, we've
- (12) obtained the estimated times at which Muster - or the times,
- (13) rather, at which Mr Cousins worked and slept The first
- box,
- (14) then, is his p m watch from 2000 hours to midnight on the
- (15) night before the incident in question
- (16) Q So this would be from 8 00 p m to midnight on March 22nd?
- (17) A That's correct Midnight would be on the morning of the
- (18) 23rd Then his reported nocturnal sleep or nighttime sleep
- (19) episode when he reports that he went to sleep that night
- (20) Q How much sleep did you -
- (21) A Did we allow him?
- (22) Q Did you understand that he had then?
- (23) A He reported that he went to bed at approximately one and
- (24) was called for duty the next morning at 7 20 so we gave him
- (25) six and a third hours of sleep

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- (1) Q What's the next entry?
- (2) A The next entry is his morning watch on the 23rd,
- beginning
- (3) at eight in the morning and running until noon
- Subsequently,
- (4) the nap that he reported taking at roughly 1 00 in the
- (5) afternoon and lasting until he was called at 1700 hours
- (6) Q Now can you tell the jury what if any conclusions you
- (7) drew from the data represented on this exhibit?
- (8) A Yes The conclusions we drew was that based on this
- these
- (9) data we had every reason to expect that Mr Cousins
- should be
- (10) very alert Sleepiness was clearly not relevant in the
- (11) description of his behavior at the time, specifically for
- (12) several reasons, but briefly, because the - the nocturnal
- (13) sleep episode The nighttime sleep episode you'll note,
- (14) corresponds precisely with the optimal time of sleep, it
- (15) occurred right in the minimum of alertness and brackets
- that
- (16) minimum on either side in almost an ideal fashion
- (17) Q Let me just interrupt you for a second Is there a point
- (18) on this 20 to zero minutes spectrum where you begin to judge
- (19) people as being quite sleepy or very prone to go to sleep?
- (20) A The point at which someone can sleep is actually a very
- (21) individual issue Sleep becomes possible and sense of
- (22) sleepiness becomes real in most people somewhere below
- ten
- (23) minutes Performance real serious performance errors are
- (24) described in individuals below five minutes
- (25) Q So if I understand you correctly unless you get into the

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- (1) gray area which the line doesn't get into a person is able to
- (2) perform even if they may wish they could get to sleep?
- (3) A Well, we have to be careful there. The data on this
- (4) particular point are based on the facts that severely sleepy
- (5) individuals almost routinely will show sleep latency below
- (6) five minutes, and that has become a kind of marker. For
- (7) example, if
- (8) we have a patient who tells us that they're severely sleepy
- (9) because they have narcolepsy or sleep apnea syndrome, we
- (10) would
- (11) define sleepiness of a degree sufficiently severe to impair
- (12) their ability to drive a car, for example, as that sleepiness
- (13) which occurs below a Multiple Sleep Latency Test of five
- (14) minutes.
- (15) Q And in this time frame here, if - assuming that the
- (16) standard curve applied, the sleep latency would have gone
- (17) down
- (18) to a low about what, about five in the morning or something?
- (19) A That's correct.
- (20) Q And then gone up and now the same is true here, is
- (21) there - is there any cultural significance to the biological
- (22) fact that people have a tendency to sleep in the afternoon?
- (23) A Well, that's the origin, of course, of the siesta. Siesta
- (24) cultures make use of that increase in sleepiness in the
- (25) afternoon and routinely nap at that time. The interesting
- (26) aspect I think for western cultures, maybe a cautionary
- (27) lesson
- (28) is that that biology occurs in all of us, we all develop an
- (29) increase in sleepiness in the early afternoon hours. We as
- (30) a

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- (1) society have elected to ignore it.
- (2) Q Dr. Richardson, you made the comment that you don't
- (3) typically get into the five-minute sleep latency range unless
- (4) you've been deprived of sleep. Did you consider whether there
- (5) was any evidence that Third Mate Cousins was chronically
- (6) deprived of sleep as of March 23, 1989?
- (7) A We did. We reviewed the deck logs. The depositional
- (8) testimony on the days leading up to these days is limited.
- (9) There is little data, direct data on whether or how much he
- (10) slept. Inferring from his own testimony about how he was
- (11) doing
- (12) and his deck logs and his discussion of a typical day, we
- (13) were
- (14) able to conclude that it was reasonable to expect that he
- (15) was
- (16) sleeping a normal amount for the days leading up to the
- (17) time in
- (18) question.
- (19) Q Did you find any evidence from which you could conclude on
- (20) the basis of a scientific probability that he was - that he
- (21) was chronically deprived of sleep as of daybreak?
- (22) A No, sir.
- (23) Q Even March 23?
- (24) A No, sir, there was no reason to conclude that.
- (25) Q In your own opinion, is it appropriate to use the blue line
- (26) measuring the sleep latency of a person who has an adequate
- (27) history of sleep?
- (28) A We feel it is, yes.
- (29) Q Now, could you explain the eyebrow on the second pump of

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- (1) the -
- (2) A Yes, sir, the eyebrow is an attempt to - most of the data
- (3) that - or the data that we used in this model, in the
- (4) development of this estimate, were based on an individual
- (5) who
- (6) was sleeping at night but not napping for a long period of
- (7) time
- (8) during the day. So what we did in this case is we took data
- (9) actually that Dr. David Dinges and others have collected
- (10) showing that the nap occurring at that time will increase
- (11) alertness subsequent to the nap. So actually, napping for a
- (12) long period of time in the early afternoon will raise your
- (13) alertness levels beyond what they would normally be in the
- (14) early evening.
- (15) Taken from data by David and others, taking a conservative
- (16) estimate of what that increment would be, the top of the
- (17) eyebrow, the top of the yellow portion describes what we
- (18) would
- (19) conservatively estimate Mr. Cousins' alertness to be for the
- (20) hours following his nap.
- (21) Q Dr. Richardson, in connection with the analysis of
- (22) Mr. Cousins' situation that you did, were there other factors
- (23) which, in your professional judgment, would have contributed
- (24) to
- (25) an alertness on Mr. Cousins' part in the period from, say, ten
- (26) of 12 until ten after 12, around midnight of March 23?
- (27) A Well, I think it's significant to try and examine those
- (28) events in detail. We spend a lot of time working with shift
- (29) workers who are working much - in a much more - a much
- (30) later

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- (1) time of the night, helping them identify things that they can
- (2) do to minimize sleepiness. Many of those were inherent in
- (3) the
- (4) actions that Mr. Cousins took. From what we were able to
- (5) ascertain, for example, he was physically and mentally
- (6) active
- (7) during that entire period. The tasks he describes and which
- (8) others describe him performing include going out onto the
- (9) bridge wing into what really was rather bracing cold arctic
- (10) air
- (11) to take his sighting, his bearing on the Busby Island light.
- (12) This is something that we teach shift workers can result in a
- (13) significant improvement in alertness. The physical
- (14) movement
- (15) that he made around the bridge, all of that contributes to
- (16) alertness. We all know that sleepiness is more of an issue
- (17) when you're sitting rather than standing or walking around
- (18) and
- (19) physically active.
- (20) Q Would you recommend that the jury stand when watching
- (21) deposition?
- (22) A I was just going to say that actually some of this might be
- (23) relevant today.
- (24) THE COURT: Certainly relevant to what happens to me
- (25) after 12:00.
- (26) THE WITNESS: I think there are other aspects that
- (27) need to be considered about the alerting influence that
- (28) occurred at that time, allowing for the moment that sleepiness
- (29) might conceivably have been a factor, and I don't believe that
- (30) it was.

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- (1) The other thing to consider is that it is clear from the  
 (2) **depositional testimony** that this was not a boring situation for  
 (3) **Mr Cousins** Having responsibility lone responsibility for  
 (4) the ship was not something that he did routinely It was  
 (5) something that he clearly had to regard as a novel situation  
 (6) and under those circumstances it is reasonable to expect that  
 (7) the task itself would have some alerting impact just being  
 (8) in an unusual situation  
 (9) And then finally, there is a great deal of social  
 (10) interaction the idea that there were people coming and going  
 (11) the woman coming in to report the position of the - of the  
 (12) buoy the calls to the captain the interaction with the  
 (13) helmsman a fair degree of social interaction which is  
 (14) something we also teach shift workers can be alerting  
 (15) interacting with other individuals makes it much less likely  
 (16) that any sleepiness that might have been present would have  
 (17) impaired his performance  
 (18) Q Is there - you mentioned that you recommend getting fresh  
 (19) air and maybe stepping outside Is there a biological  
 (20) advantage or biological factor related to cold coldness the  
 (21) outside temperature?  
 (22) A Well, the mechanism whereby cold air alerts an individual  
 (23) is not entirely clear, but it is known that cold or stimulating  
 (24) air directly inhibits sleep and sleepiness that's been shown  
 (25) in several studies

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- (1) Q Did you see evidence that Mr Cousins like me was a heavy  
 (2) coffee user?  
 (3) A I have - I did come across that in the testimony, yes  
 (4) Q And what significance if any, did you see to that fact?  
 (5) A Well, coffee - we've studied a large number of shift  
 (6) workers and have heard very, very impressive accounts of  
 (7) coffee consumption, and there are several things that need to be  
 (8) considered about that rather limited description One of the  
 (9) things we found for example, is that when an individual  
 (10) reports drinking, particularly a shift worker, someone who's  
 (11) physically active and moving around as part of his job if he  
 (12) reports drinking five or six or ten or 20 cups of coffee a day,  
 (13) one has to be careful to question them about how much of a  
 (14) cup they actually get through The typical cup of coffee on a  
 (15) shift work situation gets thrown away half full or even more  
 (16) than that So being - one has to be very careful about  
 (17) extrapolating, about moving from a description of cups of  
 (18) coffee to any sort of estimate about how much caffeine they  
 (19) consumed  
 (20) More important, caffeine consumption on a regular day in,  
 (21) day out basis is very, very different than the individual who  
 (22) rarely drinks coffee and then has a large cup of coffee right  
 (23) before going to bed The adverse or the disruptive impact  
 (24) that coffee will have on sleep is significantly, even dramatically  
 (25) reduced in an individual who is used to that kind of caffeine

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- (1) consumption  
 (2) And finally, one of the things we've gone back and forth  
 (3) with shift workers is that it is possible that coffee can be a  
 (4) disruptive influence if it's alerting, but it's also a  
 (5) countermeasure It's also something you can do to improve  
 (6) alertness when sleepiness occurs So to the extent that  
 (7) Mr Cousins was drinking coffee at the time in question we  
 (8) would expect that to be yet another reason not to worry  
 (9) about  
 (10) sleepiness in this particular setting  
 (11) Q On the whole Dr Richardson do you believe there is a  
 (12) scientific basis to conclude that it is probable that any  
 (13) mistakes made by Third Mate Cousins on the night of March 23  
 (14) 24 were attributable to a lack of sleep?  
 (15) A No, sir, I don't think there's a basis for that  
 (16) MR LYNCH I have no further questions Your Honor  
 (17) THE COURT You may cross-examine  
 (18) Fine Okay Let's take our first recess rather than break  
 (19) things up We'll be in recess for 15 minutes  
 (20) THE CLERK This court is in recess for 15 minutes  
 (21) (Jury out at 9 56 a m )  
 (22) (Jury in at 10 13 a m )  
 (23) MR GERRY May I proceed Your Honor?  
 (24) THE COURT You may cross-examine Mr Gerry  
 (25) CROSS EXAMINATION OF GARY RICHARDSON (Live)  
 BY MR GERRY

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- (1) Q Dr Richardson my name is Dick Gerry and I represent the  
 (2) plaintiffs in this case I don't think we've ever met, have  
 (3) we?  
 (4) A We have not  
 (5) Q I understand that you're an instructor at the medical  
 (6) school in -  
 (7) A That's correct  
 (8) Q - Harvard, and you experiment in sleepiness lab Most of  
 (9) your experiments deal in your - in the relationship between  
 (10) sleepiness and your specialty of endocrinology, do they not?  
 (11) A I'm sorry, I couldn't understand your question  
 (12) Q Most of your experiments in - experiments in your  
 (13) laboratory deal with the relationship between sleepiness and  
 (14) your specialty of endocrinology is that correct?  
 (15) A No, sir, I wouldn't say that Most of the work we've been  
 (16) doing looks at the relationship between sleep and  
 (17) sleepiness in  
 (18) normal individuals  
 (19) Q Okay As it applies to the body then?  
 (20) A That's correct  
 (21) Q The exhibits that were on the board, they do not reflect  
 (22) any examination that you ever did of Mr Cousins do they?  
 (23) A I've never examined Mr Cousins  
 (24) Q And you do not have any personal knowledge of whether or  
 (25) not he is a normal individual, as far as sleep is concerned a  
 normal individual or whether he has any kind of abnormalities,

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- (1) is that correct?
- (7) A Beyond the depositions testimony that describes him as reporting that he feels well rested no sir, I do not
- (3) reporting that he feels well rested no sir, I do not
- (4) Q And what you have done is to take a series of experimental data which you have put up on the first exhibit and constructed another exhibit which is a hypothetical of what Mr Cousins may be like if he is a normal individual right?
- (6) another exhibit which is a hypothetical of what Mr Cousins may be like if he is a normal individual right?
- (7) be like if he is a normal individual right?
- (8) A That's a reasonable statement of a hypothetical situation, yes
- (9) yes
- (10) Q And it also does not take into account any variation in the fact that it may be caused by the fact that he doesn't work an eight hour day but works a split shift does it?
- (11) fact that it may be caused by the fact that he doesn't work an eight hour day but works a split shift does it?
- (12) eight hour day but works a split shift does it?
- (13) A On the contrary We did attempt to include that aspect of his day into the model and, as I mentioned, one consequence of
- (14) his day into the model and, as I mentioned, one consequence of
- (15) the split shift was the nap, and we attempted to add just the model for the sleep he obtained during the nap
- (16) model for the sleep he obtained during the nap
- (17) Q Dr Richardson you do not know of any studies of split shift workers do you?
- (18) shift workers do you?
- (19) A There are limited data on split shift workers I am aware of reports, actually, having to do with that shift
- (20) of reports, actually, having to do with that shift
- (21) Q And you - so what you did was to as you did with the entire model you attempted to determine without facts from studies what the situation would be with a split shift worker like Mr Cousins isn't that correct?
- (22) like Mr Cousins isn't that correct?
- (23) studies what the situation would be with a split shift worker like Mr Cousins isn't that correct?
- (24) like Mr Cousins isn't that correct?
- (25) A To the extent that we adjusted the model to fit his

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- (1) sleep/wake schedule and I think that's the relevant part of his shift work schedule We did extrapolate from data, from facts most of them provided in articles written by Dr Dinges
- (2) his shift work schedule We did extrapolate from data, from facts most of them provided in articles written by Dr Dinges
- (3) facts most of them provided in articles written by Dr Dinges
- (4) Dr Dinges
- (5) Q And Dr Dinges is an expert in the field of napping is he not?
- (6) not?
- (7) A I would consider him that yes
- (8) Q And he is also an expert in the field of fatigue?
- (9) A As I've mentioned I have trouble with that term He describes himself as an expert in the field of fatigue
- (10) describes himself as an expert in the field of fatigue
- (11) Q And you are not an expert in the field of fatigue are you?
- (12) A I would consider myself an expert in the field of sleepiness
- (13) sleepiness
- (14) Q And a person may be fatigued without being sleepy may they not?
- (15) not?
- (16) A Well now you're asking me to use what I consider to be a colloquial and imprecise term I say a person may describe themselves as being fatigued without being sleepy I would agree with that statement
- (17) now you're asking me to use what I consider to be a colloquial and imprecise term I say a person may describe themselves as being fatigued without being sleepy I would agree with that statement
- (18) themselves as being fatigued without being sleepy I would agree with that statement
- (19) agree with that statement
- (20) Q Is it a colloquial term when it is used by the governmental bodies who study fatigue for which Dr Dinges does his work?
- (21) bodies who study fatigue for which Dr Dinges does his work?
- (22) A It's a term like many others I mean when we use terms in research, we like to have them have very precise meanings The government also uses a term like rest or activity two things which also have very imprecise meanings I think the issue is
- (23) research, we like to have them have very precise meanings The
- (24) government also uses a term like rest or activity two things
- (25) which also have very imprecise meanings I think the issue is

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- (1) less whether the term is precise or not but simply that, in my view, the situation here is better described as a question of whether or not the individual was sleepy
- (2) view, the situation here is better described as a question of whether or not the individual was sleepy
- (3) whether or not the individual was sleepy
- (4) Q Would you - is it colloquial then if it is used by the governmental bodies in naming themselves? Is that what you mean by colloquial? That's the question
- (5) governmental bodies in naming themselves? Is that what you mean by colloquial? That's the question
- (6) mean by colloquial? That's the question
- (7) A I think we are forced to - we can't simply ignore the term and I'm not suggesting that we do We routinely, for example,
- (8) and I'm not suggesting that we do We routinely, for example,
- (9) ask our shift workers or our patients do you feel sleepy, do you feel fatigued, do you feel tired, because we know that individuals in general may use any one of those terms, and we have to be ready for a very broad and very general use of a concept that we're trying to get to, so that's what I mean by the term colloquial, forces us to address and use the term
- (10) you feel fatigued, do you feel tired, because we know that individuals in general may use any one of those terms, and we have to be ready for a very broad and very general use of a concept that we're trying to get to, so that's what I mean by the term colloquial, forces us to address and use the term
- (11) individuals in general may use any one of those terms, and we have to be ready for a very broad and very general use of a concept that we're trying to get to, so that's what I mean by the term colloquial, forces us to address and use the term
- (12) have to be ready for a very broad and very general use of a concept that we're trying to get to, so that's what I mean by the term colloquial, forces us to address and use the term
- (13) concept that we're trying to get to, so that's what I mean by the term colloquial, forces us to address and use the term
- (14) the term colloquial, forces us to address and use the term
- (15) Q My question -
- (16) A And the government used - I would just say that the government is being imprecise, something that I think they might not object to
- (17) government is being imprecise, something that I think they might not object to
- (18) might not object to
- (19) Q Not colloquial?
- (20) A Imprecise
- (21) Q But imprecise when they name their bodies to study fatigue okay Do people vary in their circadian clocks that you were talking about the clocks that are in their head?
- (22) okay Do people vary in their circadian clocks that you were talking about the clocks that are in their head?
- (23) talking about the clocks that are in their head?
- (24) A Individuals vary with regards to the precise parameters of those clocks
- (25) those clocks

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- (1) Q And isn't it a fact that you do not know whether or not Mr Cousins has a clock which fits within your norm or whether he has a clock that may be outside your norm?
- (2) Mr Cousins has a clock which fits within your norm or whether he has a clock that may be outside your norm?
- (3) he has a clock that may be outside your norm?
- (4) A I - before I left for Alaska, I stopped in to the laboratory where I work and asked them to estimate the total number of individuals of all ages in whom we have precisely characterized the circadian clock, and we've studied roughly 280 individuals and the variance around that, around those parameters is remarkably small in people who don't have severe neurologic problems So I think it's a reasonable assumption that although individuals vary from individual to individual, that that variance is small and that Mr Cousins, who I am presuming to be a normal individual would fall well within those parameters
- (5) laboratory where I work and asked them to estimate the total number of individuals of all ages in whom we have precisely characterized the circadian clock, and we've studied roughly 280 individuals and the variance around that, around those parameters is remarkably small in people who don't have severe neurologic problems So I think it's a reasonable assumption that although individuals vary from individual to individual, that that variance is small and that Mr Cousins, who I am presuming to be a normal individual would fall well within those parameters
- (6) number of individuals of all ages in whom we have precisely characterized the circadian clock, and we've studied roughly 280 individuals and the variance around that, around those parameters is remarkably small in people who don't have severe neurologic problems So I think it's a reasonable assumption that although individuals vary from individual to individual, that that variance is small and that Mr Cousins, who I am presuming to be a normal individual would fall well within those parameters
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- (8) 280 individuals and the variance around that, around those parameters is remarkably small in people who don't have severe neurologic problems So I think it's a reasonable assumption that although individuals vary from individual to individual, that that variance is small and that Mr Cousins, who I am presuming to be a normal individual would fall well within those parameters
- (9) parameters is remarkably small in people who don't have severe neurologic problems So I think it's a reasonable assumption that although individuals vary from individual to individual, that that variance is small and that Mr Cousins, who I am presuming to be a normal individual would fall well within those parameters
- (10) neurologic problems So I think it's a reasonable assumption that although individuals vary from individual to individual, that that variance is small and that Mr Cousins, who I am presuming to be a normal individual would fall well within those parameters
- (11) that although individuals vary from individual to individual, that that variance is small and that Mr Cousins, who I am presuming to be a normal individual would fall well within those parameters
- (12) that that variance is small and that Mr Cousins, who I am presuming to be a normal individual would fall well within those parameters
- (13) presuming to be a normal individual would fall well within those parameters
- (14) those parameters
- (15) Q A person can be a normal individual and have a circadian clock that doesn't fall within your parameters can't they?
- (16) clock that doesn't fall within your parameters can't they?
- (17) A I would find that surprising
- (18) Q Well normal in all other aspects besides having this -
- (19) A As I mentioned the only severe deviations we've seen from our understanding of the clock, occur in very old individuals and in individuals with neurologic disease
- (20) our understanding of the clock, occur in very old individuals and in individuals with neurologic disease
- (21) and in individuals with neurologic disease
- (22) Q Does that explain why I tend to doze off here when I'm supposed to be widest awake according to your clock?
- (23) supposed to be widest awake according to your clock?
- (24) A There may be several explanations for that, sir, but I don't think any of them have to do with your clock
- (25) don't think any of them have to do with your clock

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- (1) Q I see
- (2) THE COURT Show stopper wasn't it?
- (3) MR GERRY These young people don't contradict me that much
- (4) BY MR GERRY
- (5) Q It's interesting to me to note that you've increased
- (6) Mr Cousins' alertness. Is that what happens with your
- (7) eyebrow?
- (8) A The intention of the yellow portion of this figure is to
- (9) make use of data provided by Dr. Dinges and others to
- (10) estimate
- (11) what the increment in the Multiple Sleep Latency Test would
- (12) be
- (13) with a nap of this duration
- (14) Q But you don't know what the duration of the nap was, do
- (15) you?
- (16) A We know the reported duration of the nap, sir
- (17) Q In fact, you do not know how much sleep Mr. Cousins got
- (18) that day?
- (19) A We know the reported duration of sleep, sir
- (20) Q And it is - in your experience, those reports are not
- (21) totally accurate, isn't that correct?
- (22) A I think it is common for individuals to not precisely
- (23) estimate sleep. The error can vary from individual to
- (24) individual.
- (25) Q The - you are not an expert in the alerting factor of
- thermoregulation, are you?

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- (1) A My principal field of research is not thermoregulation. I
- (2) wouldn't describe myself as an expert in that area.
- (3) Q And you recall in your deposition you were asked whether or
- (4) not you were an expert. You said, well, I'm not an expert in
- (5) how thermoregulation is accomplished, is that correct?
- (6) A I have a very - I did say that in my deposition, yes, sir.
- (7) I have a very precise -
- (8) Q You want to contradict it now?
- (9) A No, I would only say that I - I did my undergrad honors
- (10) work for a man who is probably the leading expert in
- (11) thermoregulation and alertness, Dr. Craig Heller, and I'm
- (12) more
- (13) than passingly familiar with the principal, that I discussed
- (14) the relationship between cold and alertness.
- (15) Q Do you know whether or not Mr. Cousins drank any coffee
- (16) during the 15 or 20 minutes, half hour on the bridge that day?
- (17) A I do not know that, sir, no.
- (18) Q From what study did you get the fact that half of the
- (19) coffee that is poured on a ship is thrown out?
- (20) A I didn't say on a ship, sir. I said studies have shown
- (21) and our studies of shift workers where the amount of coffee
- (22) consumption was a very important issue, as we followed
- (23) shift
- (24) workers around typically, and then asked them the next day
- (25) to
- report how much coffee they would consume, our own
- people would
- report them throwing away cups that were more than half
- full
- and they would report that as, quotes, a cup of coffee

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- (1) Q You have no study or data at all as to whether or not that
- (2) is true of ships or, in particular, of Mr. Cousins, do you?
- (3) A No, sir, I do not.
- (4) Q Thank you. It's interesting to note on your chart here
- (5) that following the eight p.m. watch when he goes on watch, his
- (6) alertness is at the highest level of the day, right? According
- (7) to your chart?
- (8) A That's correct.
- (9) Q And it begins to fall from then until the vessel runs
- (10) aground, doesn't it?
- (11) A That's correct, it does.
- (12) Q And you were asked to determine whether or not sleepiness
- (13) was one of the causes of the - was one of the causes of any
- (14) errors that might have been made by Mr. Cousins, were you
- (15) not?
- (16) A It's one of the things I was asked to do, yes, sir.
- (17) Q And I'd like to read to you from page 293, 94 of your
- (18) deposition, 293, at page - at line 19 is your answer to - as
- (19) I mentioned repeatedly, these terms developed in the
- (20) laboratory
- (21) are extremely hard to apply in the real life setting, and
- (22) that's one of the reasons I feel so strongly that one cannot
- (23) infer that sleepiness was a cause of these errors because
- (24) they're not easily categorized as the type of error
- (25) characteristic of sleepiness.
- Q A Strictly speaking, the error simply is that a very complex
- task wasn't performed correctly and it's impossible in my
- view

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- (1) to dissect that task adequately and identify errors of
- (2) omission
- (3) that would have been characteristic of sleepiness. That's
- (4) your
- (5) conclusion, is it not?
- (6) A That's one of the conclusions. The specific context -
- (7) MR GERRY Thank you, sir. That's all.
- (8) REDIRECT EXAMINATION OF GARY RICHARDSON (Live)
- (9) BY MR LYNCH
- (10) Q Did you want to explain the context of the passage that
- (11) Mister -
- (12) A Yes, actually I did. The question I was asked to, which
- (13) that was the answer, was whether errors of omission,
- (14) sleepiness
- (15) related errors were committed. The problem I found was
- (16) that
- (17) Dr. David Dinges, in attempting to prove that point,
- (18) described
- (19) various actions taken by Mr. Cousins as errors of omission
- (20) which he failed to act. And in my view, one cannot look at
- (21) something as complex as piloting a ship and conclude that
- (22) anything that was done or wasn't done was an error of
- (23) omission.
- (24) Q Now, Mr. Gerry asked you some questions about whether you
- (25) had examined Third Mate Cousins, do you remember that
- question?
- A I do
- Q And whether you had information about his circadian clock
- and how it related to those that have been calibrated for other
- people, do you remember those questions?
- A Yes, I recall that

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- (1) Q Now first of all in science the process of the research  
 (2) you do is designed to enable you to apply or establish rules  
 (3) that you can apply to other people when they come in the door?  
 (4) A That's a fair statement  
 (5) Q And when you treat people you apply these general insights  
 (6) that you've learned from research to the people who come in for  
 (7) treatment?  
 (8) A Yes  
 (9) Q And they get better?  
 (10) A That's correct, when we're lucky, I would say they get  
 (11) better  
 (12) Q We hope they get better As a scientist are you satisfied  
 (13) that on the data available from the records that exist the  
 (14) conclusion that you testified to that there - that there's no  
 (15) basis to infer that sleepiness was a cause of any errors Third  
 (16) Mate Cousins may have committed is a scientifically accurate  
 (17) answer?  
 (18) A Yes, I believe that it's consistent and accurate to the  
 (19) best of our ability to do that  
 (20) MR LYNCH I have no other questions Your Honor  
 (21) THE COURT Thank you sir You may step down  
 (22) MR SANDERS May it please the Court we call  
 (23) Mr John Tompkins  
 (24) THE CLERK Raise your right hand please  
 (25) (The Witness is Sworn)

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- (1) THE CLERK For the record sir state your full name  
 (2) your address and spell your last name please  
 (3) THE WITNESS My name is John Tompkins it's  
 (4) T O M P K I N S I live at 2327 Willow Pass Kingwood Texas  
 (5) DIRECT EXAMINATION OF JOHN TOMPKINS (Live)  
 (6) BY MR SANDERS  
 (7) Q Mr Tompkins let me ask you to speak into that silver  
 (8) microphone or lean forwards so we can hear you a little bit  
 (9) better  
 (10) I'd like you to tell the jury your educational background  
 (11) first?  
 (12) A I'm a graduate of the United States Merchant Marine  
 Academy  
 (13) in 1965 I got a bachelor of science degree in engineering I  
 (14) then got a masters in business administration from Adelphi  
 (15) University in 1976  
 (16) Q The last university was Adelphi?  
 (17) A Adelphi University on Long Island  
 (18) Q Long Island Now when did you start working for Exxon?  
 (19) A In 1965  
 (20) Q All right And do you work for Exxon now?  
 (21) A I work for an affiliate of Exxon  
 (22) Q Sea River?  
 (23) A Sea River Maritime  
 (24) Q And from '65 to the present have you worked continuously  
 (25) with Exxon or one of Exxon's affiliates?

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- (1) A That's correct  
 (2) Q All right Would you briefly describe the jobs that you've  
 (3) had at Exxon and I'm going to stop you at about the time you  
 (4) get to 1983  
 (5) A In 1965, I sailed on the vessels of Exxon - or actually  
 (6) ESSO tankers, and I sailed until 1968, at which time I came  
 to  
 (7) Exxon International in New York, and I was there until 1976  
 and  
 (8) with various positions  
 (9) In 1976, I transferred to Exxon - or actually it was Exxon  
 (10) Company U S A Marine Department in Houston, and I  
 worked as an  
 (11) assistant to the operations manager at that time  
 (12) In 1977, I became the gulf coast fleet manager in that  
 (13) department, and I had that job until 1985  
 (14) Q Didn't get to stop you at 83 Roared right by me You  
 (15) were then the gulf coast fleet manager for the marine  
 (16) department of Exxon U S A and then for Exxon Shipping  
 Company  
 (17) between 1977, is that correct and 1985?  
 (18) A That's correct  
 (19) Q And as - what was - what were your duties as the fleet  
 (20) manager for the gulf coast during that time frame?  
 (21) A I had the overall responsibility for the operation of that  
 (22) fleet which included various aspects, safe operation, safety  
 (23) personnel, and cost control associated with that fleet  
 (24) Q All right And in doing that job did you have a staff  
 (25) under you to assist you in performing that job?

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- (1) A Yes, I did  
 (2) Q Now in the - in the years that you were the fleet manager  
 (3) for the gulf coast did you have two principal liaisons between  
 (4) you and the vessels?  
 (5) A Yes I did  
 (6) Q And they were what?  
 (7) A One was the port captain and the other one was the port  
 (8) engineer, both of which were people from the fleet  
 (9) Q Okay Now were they in the line of management or  
 (10) authority between you and the ship captains or were they kind  
 (11) of out to the side?  
 (12) A They were kind of out to the side Ship captains reported  
 (13) to myself  
 (14) Q In other words you were the direct supervisor of the  
 (15) captains in the gulf coast fleet during the time that you were  
 (16) the gulf coast fleet manager?  
 (17) A That's correct  
 (18) Q And in this time frame that we're talking about were you  
 (19) the supervisor for Captain Joe Hazelwood?  
 (20) A Yes, I was  
 (21) Q Do you remember the year or the approximate date which  
 (22) he - in which he came to the gulf coast as a captain?  
 (23) A He came to my fleet at the end of 1982 very, very early in  
 (24) '83  
 (25) Q Did he remain under your supervision from that time until

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- (1) the time you left the job of gulf coast fleet manager?  
 (2) **A Yes, he did**  
 (3) **Q All right And do you recall the exact date that you left**  
 (4) **as gulf coast fleet manager?**  
 (5) **A It was about September of 1985, I took on a new assignment**  
 (6) **Q What was your new assignment?**  
 (7) **A New assignment was to manage a special project for Exxon**  
 (8) **Shipping Company**  
 (9) **Q And what was that called?**  
 (10) **A That project was called EXCEL**  
 (11) **Q And I think there s been some testimony from Second Mate**  
 (12) **Lloyd LeCain that that involved exercises where people put**  
 (13) **hoods on, and is that part of your program at EXCEL?**  
 (14) **A Well, the design of the program was to enhance the**  
 (15) **leadership capability of our organization and to improve the**  
 (16) **teamwork and the decision making process**  
 (17) **Q How long did this EXCEL program last? How long did you**  
 (18) **head that up?**  
 (19) **A Until about 1986, the latter part of '86**  
 (20) **Q So this was a program to enhance and promote leadership**  
 (21) **and**  
 (22) **teamwork that consumed over a year of your life?**  
 (23) **A Yes, maybe a little more**  
 (24) **Q All right And in doing this program is that something**  
 (25) **that was used exclusively with the ships and ship personnel or**  
 (26) **was that for shoreside also?**

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- (1) **A That was all people that - employees of Exxon Shipping**  
 (2) **Company, including shoreside and seagoing**  
 (3) **Q Let me take you back to the spring of 1985 You were of**  
 (4) **course gulf coast fleet manager in the spring of 1985?**  
 (5) **A That's correct**  
 (6) **Q And Captain Hazelwood was a captain under your direct**  
 (7) **supervision in the spring of 1985 was he not?**  
 (8) **A Yes, he was**  
 (9) **Q Did you become aware in the spring of 1985 that Captain**  
 (10) **Hazelwood went on medical leave?**  
 (11) **A Yes, I did**  
 (12) **Q And did you become aware - do you know about when you**  
 (13) **found that out?**  
 (14) **A It was sometime in the latter part of March that I**  
 (15) **understood that, when I received a phone call**  
 (16) **Q Okay And from whom did you receive a call?**  
 (17) **A I received that call from Mister - Captain Hazelwood**  
 (18) **telling me that he was checking himself into rehabilitation**  
 (19) **Q Did he tell you what kind?**  
 (20) **A I'm sorry, I didn't hear the question**  
 (21) **Q I m sorry Did he tell you what kind of rehabilitation?**  
 (22) **A Yes, I do - I think I recall him saying for alcoholism**  
 (23) **Q In any event at some point thereafter you did understand**  
 (24) **that his treatment did involve alcohol is that correct?**  
 (25) **A Yes, I did**

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- (1) **Q So by the late spring of 1985 you knew that one of your**  
 (2) **captains that you supervised had gone into some sort of a**  
 (3) **treatment program which did involve alcohol am I right?**  
 (4) **A That's correct**  
 (5) **Q All right Now did Captain Hazelwood return to work while**  
 (6) **you were still his supervisor?**  
 (7) **A Yes, he did**  
 (8) **Q Prior to his returning to work did you do anything?**  
 (9) **A Yes I did I arranged to have a meeting with Captain**  
 (10) **Hazelwood**  
 (11) **Q Do you recall getting a phone call about having such a**  
 (12) **meeting?**  
 (13) **A Well I recall that - I believe it was Ben Graves had**  
 (14) **called me and suggested that I have a meeting with Captain**  
 (15) **Hazelwood before he returns He suggested that I make**  
 (16) **sure he**  
 (17) **understands that he only has one more chance when he**  
 (18) **comes**  
 (19) **back, and he also suggested that I should have some kind of**  
 (20) **way**  
 (21) **to keep an eye on him, make sure I monitor him when he is**  
 (22) **back**  
 (23) **in the fleet**  
 (24) **Q All right Did Mr Graves tell you that that - those**  
 (25) **suggestions came from someone else or did he just simply tell**  
 (26) **you I suggest this?**  
 (27) **A I don't recall I don't recall**  
 (28) **Q Okay Now had you had the experience and I'm not -**  
 (29) **don t want to ask you any names but had you had the**  
 (30) **experience**

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- (1) **by this time in the summer of 1985 of having someone who had**  
 (2) **some sort of a chemical problem chemical problem involving**  
 (3) **either abuse or dependency go away to treatment and then**  
 (4) **come**  
 (5) **back to work?**  
 (6) **A Yes I did**  
 (7) **Q All right Now based on that is the prompting that you**  
 (8) **got - was the prompting that you got from Mr Graves was that**  
 (9) **necessary?**  
 (10) **A Not really I had intended to meet with Captain**  
 (11) **Hazelwood I wanted to make sure that I had my own**  
 (12) **evaluation,**  
 (13) **that I knew that - I felt comfortable that he was in pretty**  
 (14) **good shape, how he looked, how he chatted**  
 (15) **I had some other things that I wanted to talk to him**  
 (16) **about I also wanted to make sure that he understood that**  
 (17) **he**  
 (18) **had his opportunity for rehabilitation and that he cannot**  
 (19) **afford to have any further problem with alcohol or he would**  
 (20) **be**  
 (21) **disciplined**  
 (22) **Q All right Now when you say you intended to do these**  
 (23) **things, did you form that intention sometime in the summer of**  
 (24) **1985?**  
 (25) **A Yes, that was -**  
 (26) **Q Or late spring?**  
 (27) **A I don't know about late spring, but I would say that would**  
 (28) **be my normal activity and I was planning on doing that**  
 (29) **Q In fact Mr Tompkins were arrangements made to have**

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- (1) Captain Hazelwood come through Houston on his way to his next  
 (2) assignment?  
 (3) A Yes, they were  
 (4) Q Did you make those arrangements or did you have somebody  
 (5) do that?  
 (6) A I can't recall I think I made those arrangements myself,  
 (7) but I could have asked someone to do them on my behalf  
 (8) Q Did there come a time when Captain Hazelwood actually came  
 (9) to Houston Texas, and you had a meeting with him?  
 (10) A Yes, there was  
 (11) Q All right Now at the time that this occurred your  
 (12) office as the gulf coast fleet manager was where?  
 (13) A In Baytown Texas  
 (14) Q Okay And do you recall where you met Captain Hazelwood?  
 (15) A Yes, I do  
 (16) Q Where is that?  
 (17) A That was at the Windham Hotel near the airport, Houston  
 (18) Intercontinental Airport  
 (19) Q Now prior to going to the Windham Hotel did a problem  
 (20) arise with respect to whether or not you thought you could make  
 (21) that meeting?  
 (22) A Yes, it did  
 (23) Q And as a result of that problem arising did you have a  
 (24) conversation with Captain Sheehy?  
 (25) A Yes I did

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- (1) Q Would you tell the Ladies and Gentlemen of the Jury as best  
 (2) you can recall what that conversation was or the gist of it?  
 (3) A Well, as mentioned, I was concerned that I may not be able  
 (4) to - to meet Captain Hazelwood so I asked Captain Sheehy who  
 (5) was my port captain to meet with him in case I can't get  
 (6) there And what I asked him to do was similar to what I  
 (7) mentioned to you before was that how does he act how does he  
 (8) look, how does he feel is he ready to come back make sure we  
 (9) kind of have the idea that - make sure he knows that he's -  
 (10) he's had his opportunity, he's had his chance and that he can't  
 (11) have any further problems in that type of area is what we  
 (12) talked about  
 (13) Q Mr Tompkins do you recall where you had this conversation  
 (14) with Captain Sheehy?  
 (15) A I believe it was in the Baytown office my office  
 (16) Q Were you on your way to go somewhere when you had this  
 (17) meeting?  
 (18) A Yes I -  
 (19) Q If you can recall  
 (20) A I was not too far away from going to this other activity  
 (21) that I was asked to come to  
 (22) Q Was there any sort of a rush in this meeting that you  
 (23) recall?  
 (24) A I think there may have been I can't recall totally, but I  
 (25) think so

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- (1) Q In any event did it turn out that you were able to meet  
 (2) with Captain Hazelwood?  
 (3) A Yes, I did  
 (4) Q Do you recall whether or not Captain Sheehy met with  
 (5) Captain Hazelwood that night also or that afternoon, whenever  
 (6) it was?  
 (7) A He did meet with him  
 (8) Q Do you recall who met with Captain Hazelwood first, you or  
 (9) Captain Sheehy?  
 (10) A I met with Captain Hazelwood first  
 (11) Q All right Do you recall what time of day this was?  
 (12) A Yes, it was in the very, very early evening of that  
 (13) particular day  
 (14) Q All right What time would that be in your -  
 (15) A I'd say it was around six, 6.30 something like that  
 (16) Q Mr Tompkins when you met with Captain Hazelwood, did you  
 (17) meet with him in a bar?  
 (18) A No, I didn't  
 (19) Q Where did you meet with him?  
 (20) A I met him in one of the conference rooms that was being  
 (21) used at that time, I think, if my recollection is correct, it  
 (22) was on the second floor in the Windham Hotel  
 (23) Q The potential conflict that you thought you might have that  
 (24) would have made you either late for the meeting with Captain  
 (25) Hazelwood or make you miss it do you recall what that was?

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- (1) A Yes, it - I don't recall exactly the details, but it had  
 (2) to do with a union related issue that I was called to - to get  
 (3) involved with  
 (4) Q Do you recall where that meeting was?  
 (5) A I think it was at the Woodlands which is a little ways  
 (6) away from the Windham Hotel  
 (7) Q Okay But fairly close?  
 (8) A Yeah I mean it's not too long, half hour  
 (9) Q All right You had - you then met with Captain Hazelwood  
 (10) in a conference room on the second floor of the Windham Hotel  
 (11) in Houston Texas near the airport Would you tell the Ladies  
 (12) and Gentlemen of the Jury, as best you recall it, what your  
 (13) conversation was with Captain Hazelwood?  
 (14) A Well again, what I wanted to do and what we did was to  
 (15) talk with each other, and my intent in the initial  
 (16) conversation  
 (17) was to see how Joe was, how he responded how'd he feel,  
 (18) and  
 (19) he - I thought he did quite well I asked him, I remember,  
 (20) was he ready to go back to work or something to that effect,  
 (21) and he was I also mentioned to him that - brought him up to  
 (22) date a little bit on the activities associated with the Exxon  
 (23) Yorktown, the ship he was going back to, and some of the  
 (24) things  
 (25) that had been going on in the fleet, and also my expectations,  
 (26) one of which was that he needs to understand that he's had his  
 (27) opportunity and that he cannot have any further problems with  
 (28) alcohol or he would have - he would be subject to discipline



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- (1) I also recall that we had a discussion about what type of  
 (2) support he may have or he may have planned was he  
 planning on  
 (3) going to any meetings when he got into port in order to  
 (4) continue to support his activity  
 (5) I don't recall all the details of the conversation but in  
 (6) general, that was what we talked about  
 (7) Q Well you just mentioned something about support Do you  
 (8) recall what his response was when you inquired about what  
 (9) support or meetings he intended?  
 (10) A Not really I really don't  
 (11) Q Now at the time that you had this meeting with Captain  
 (12) Hazelwood did you discuss with him what his diagnosis was?  
 (13) A No, I didn't  
 (14) Q Did you - at this time did you know what his diagnosis  
 (15) was?  
 (16) A Well, my understanding is he was treated for alcoholism  
 (17) Q All right But my question is did you know what the  
 (18) diagnosis was? I'm not asking your operating assumption  
 (19) A No, no I didn't know what the technical diagnosis was,  
 (20) no  
 (21) Q Had you discussed with the medical department anything  
 (22) about Captain Hazelwood?  
 (23) A No, I did not  
 (24) Q Had you seen any sort of a piece of paper like an  
 (25) individual disability report on which there was a diagnosis?

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- (1) A No, not that I can recall  
 (2) Q So then your - your assumption was that here was a guy who  
 (3) was an alcoholic right?  
 (4) A I would normally not see that kind of form, my assumption  
 (5) was he was treated and he was ready to come back to work  
 (6) Q And with that assumption did you have any sort of a plan  
 (7) to watch Captain Hazelwood?  
 (8) A Well I had a plan that when he comes into port, I would  
 (9) try to visit the ship as much as I could, recognizing that I  
 (10) was - very short period of time, I was transferring out of  
 (11) that job, but I had planned to do that and my recollection is  
 (12) I got to visit, I believe, on one occasion before I left my  
 (13) position  
 (14) Q Now I asked you about your plan or your intention Did  
 (15) you think that was adequate for the job?  
 (16) A Yes, if -  
 (17) Q Why do you think that your plan, your intent with respect  
 (18) to Captain Hazelwood was adequate to deal with the situation  
 (19) that you thought you had?  
 (20) A Well, if - if Captain Hazelwood, assuming he was an  
 (21) alcoholic, which that was my understanding, then if he  
 started  
 (22) to drink again, he wouldn't be able to - I don't believe he  
 (23) could control that So my visiting the ship, I would clearly  
 (24) learn that he had a problem and I most likely would have a  
 high  
 (25) probability of seeing that and talking with him

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- (1) Q All right Now would you rely solely upon your own  
 (2) observations?  
 (3) A Well I had planned primarily to do that I didn't ask  
 (4) anyone else to do that kind of thing  
 (5) Q But whether or not you asked them did you think that you  
 (6) would be able to detect other than from your own observations  
 (7) of him any sort of problems that might crop up?  
 (8) A Clearly When I go aboard the vessel I would be chatting  
 (9) with other folks and I know that I felt that I had the respect  
 (10) of others in the organization, that if there was a problem  
 that  
 (11) I would have - that I would be made aware of that  
 (12) Q You think it's realistic to expect that people in the  
 (13) fleet - was it realistic for you to expect that people in the  
 (14) fleet would let you know if they saw a problem with Captain  
 (15) Hazelwood?  
 (16) A I think so  
 (17) Q What's your basis for thinking that?  
 (18) A Because I have been told in the past when there was an  
 (19) individual that I referred to before that I had a - that had a  
 (20) problem, I was notified  
 (21) Q I want you to speak up a little bit more I'm having  
 (22) trouble hearing you and maybe some other people are too  
 (23) A Sorry  
 (24) Q My question is not your understanding of the disease of  
 (25) alcoholism My question is what basis did you have for

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- (1) believing that people that worked under you would let you know  
 (2) if they saw something amiss?  
 (3) A Well, I believe that I had the respect to the organization  
 (4) and the rapport with the folks that they would tell me  
 (5) Q How long had you been working with these people?  
 (6) A Quite some time I mean I had been in this job for -  
 since 1977  
 (8) Q All right You mentioned that you were transferring to  
 (9) your new job with project EXCEL and you mentioned that that  
 (10) occurred sometime in September of 1985 Do you recall the  
 (11) months in which you met with Captain Hazelwood at the  
 Windham  
 (12) Hotel?  
 (13) A Yes, I believe it was in August, very early August  
 (14) Q All right Now when you were being replaced by Mr Dwight  
 (15) Koops was there an opportunity for you and Mr Koops to have  
 (16) some sort of a transition?  
 (17) A Oh, clearly there was We did that  
 (18) Q And in the course of having that transition did you have  
 (19) an occasion to talk to Mr Koops about the masters that you had  
 (20) been and were supervising?  
 (21) A Yes, I did  
 (22) Q Did you talk about Captain Hazelwood?  
 (23) A Yes I did  
 (24) Q Did you tell Mr Koops anything about Captain Hazelwood?  
 (25) A Well, I told him what I knew about Captain Hazelwood,  
 that

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- (1) he was in rehabilitation and that he -  
 (2) Q Let me stop you You said rehabilitation Did you tell  
 (3) him what kind of rehabilitation?  
 (4) A I think I did, yes, for alcoholism That was my  
 (5) understanding  
 (6) Q All right And - and what else did you tell him?  
 (7) A Well, I told him that what my plans were, I was going to  
 (8) try to visit the vessel and he may - he may want to consider  
 (9) that type of follow up, and visit the vessel as much as I  
 (10) possibly could when Captain Hazelwood is on  
 (11) Q Now after you told Mr Koops about your understanding of  
 (12) what the treatment had been and - did you tell him when that  
 (13) treatment had occurred?  
 (14) A I probably did, but I don't really recall  
 (15) Q After you told him that Captain Hazelwood was treated for  
 (16) problems relating to alcohol and you had this transition then  
 (17) you went into the project EXCEL job is that correct?  
 (18) A That's correct In fact, I was actually doing a little bit  
 (19) of that at the time  
 (20) Q Now after that did you ever have any occasion to see  
 (21) Captain Hazelwood?  
 (22) A Yes, I did  
 (23) Q Where would you see him or where did you see him?  
 (24) A I remember seeing him at least at - at our officers'  
 (5) conferences that we had

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- (1) Q Did you take the trouble to make any observations about  
 (2) Captain Hazelwood and drinking?  
 (3) A I did  
 (4) Q And what did you observe?  
 (5) A I did not ever observe him drinking  
 (6) Q Drinking alcohol?  
 (7) A Drinking alcohol  
 (8) MR SANDERS May I have just a moment Your Honor?  
 (9) I don't have anything else Your Honor  
 (10) THE COURT You may cross examine  
 (11) MR O NEILL Thank you judge  
 (12) CROSS EXAMINATION OF JOHN TOMPKINS (Live)  
 (13) BY MR O NEILL  
 (14) Q My name is Brian O Neill sir we've never met before And  
 (15) it is my custom - let me give you a copy of your deposition  
 (16) transcript if I may approach  
 (17) You picked up the story with regard to Captain Hazelwood in  
 (18) the spring of 1985 but you left out the first step in the  
 (19) story didn't you?  
 (20) MR SANDERS I object to that  
 (21) A I don't understand what you mean  
 (22) Q Well would it be fair to say in February - in February of  
 (23) 1985 you knew that Captain Hazelwood was under some kind  
 (24) of  
 (24) investigation and you either caused Captain Hazelwood to be  
 (25) notified that he was under investigation or that you notified

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- (1) himself that he was under investigation and that indeed the  
 (2) date was about February 11th of 1985?  
 (3) A Yes, I - I knew that he had some - he was under  
 (4) investigation I had no idea what the investigation was  
 (5) about  
 (6) Q And you caused him to be notified or you notified him  
 (7) yourself with regard to the investigation at or about February  
 (8) 11th of 1985?  
 (9) A I was advised - requested by Mr Ben Graves to let  
 (10) Captain  
 (10) Hazelwood know that he, Mr Graves, was conducting an  
 (11) investigation, and I thought that's - and that Captain  
 (12) Hazelwood be aware that there may be some questions  
 (13) asked of  
 (13) other folks which he may hear about that associated with an  
 (14) investigation  
 (15) Q And Captain Hazelwood was given that information?  
 (16) A Best of my knowledge, yes  
 (17) Q So as of about February 11th of 1985, Captain Hazelwood  
 (18) knew that his company was investigating him for something?  
 (19) A Well, my understanding, it was some activity that took  
 (20) place in the past I don't know, but that's - yeah, he knew  
 (21) some investigation was taking place  
 (22) Q And this is the same Mr Ben Graves who appears in what we  
 (23) refer to as the Graves report?  
 (24) A That's Ben Graves' signature yes  
 (25) Q Did you know why he was under investigation?

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- (1) A No, I did not  
 (2) Q Did you ever acquaint yourself as to why he was under  
 (3) investigation?  
 (4) A Well because it was an issue that took place in the past,  
 (5) I understand, and nothing to do with my activities  
 (6) Q So would it be fair to say that you his direct supervisor  
 (7) knew he was under investigation by your company and you did  
 (8) nothing to acquaint yourself with regard to the facts of the  
 (9) investigation?  
 (10) A That's true I might add I - I asked that question and I  
 (11) recall that Mr Graves suggested that I didn't really need to  
 (12) know, it had nothing to do with my activities, so I left it at  
 (13) that  
 (14) Q Now I listened to your testimony as you started off today,  
 (15) and you testified that Captain Hazelwood told you that he was  
 (16) in treatment for alcoholism do you recall testifying to that  
 (17) today?  
 (18) MR SANDERS I object to that as a  
 (19) mischaracterization of his testimony  
 (20) THE COURT The jury will decide whether it is or  
 (21) isn't a mischaracterization of his testimony but you may  
 (22) inquire  
 (23) MR O NEILL Thank you Judge  
 (24) BY MR O NEILL  
 (25) Q That was your testimony today wasn't it?

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- (1) **A I think what I said was, what I recall is that I got a**  
 (2) **phone call from Captain Hazelwood that he told me he was**  
 (3) **checking into a rehabilitation for alcoholism as I recall it**  
 (4) **Q He was checking into a rehabilitation for alcoholism?**  
 (5) **A That's my understanding**  
 (6) **Q And that's what he told you over the telephone?**  
 (7) **A That's what I recall**  
 (8) **Q So at this point in time you were on notice that he in**  
 (9) **February was under some kind of investigation and now you**  
 (10) **were**  
 (11) **on notice that he had checked into a rehabilitation center for**  
 (12) **alcoholism?**  
 (13) **A That's correct**  
 (14) **Q And you were his supervisor?**  
 (15) **A That's correct**  
 (16) **Q Now prior to 1985 you had not received any training in**  
 (17) **the supervision of rehabilitated alcoholics?**  
 (18) **A No, I did not**  
 (19) **Q And when you received the call that Hazelwood was ready to**  
 (20) **come back to duty, you assumed that Hazelwood would be**  
 (21) **seen by**  
 (22) **the Exxon medical people before he came back to work?**  
 (23) **A That's the normal procedure, as I knew it**  
 (24) **Q But you never spoke with anybody in the medical department**  
 (25) **to make sure that they indeed interviewed him saw him**  
 (26) **touched**  
 (27) **him?**  
 (28) **A No, I was advised by the human resources group, who**  
 (29) **would**

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- (1) **be the direct contact with - with the medical department**  
 (2) **not**  
 (3) **myself Those are confidential issues and I did not get**  
 (4) **involved in the medical department**  
 (5) **Q And you didn't speak with anybody in the medical**  
 (6) **department**  
 (7) **about any special accommodations that might be made for**  
 (8) **Captain**  
 (9) **Hazelwood so that he could pursue an AA program or some**  
 (10) **other**  
 (11) **form of aftercare while he was at sea, did you?**  
 (12) **A Not that I can recall**  
 (13) **Q And indeed you as a supervisor made no provision for**  
 (14) **support or aftercare for Captain Hazelwood while he was at sea**  
 (15) **did you?**  
 (16) **A No, I did not I queried as to what his plans were, as I**  
 (17) **mentioned before, and -**  
 (18) **Q This was at the meeting in August?**  
 (19) **A That's correct**  
 (20) **Q I'm puzzled about the meeting in August Your partner was**  
 (21) **that Sheehy that met with him that same day?**  
 (22) **A Captain Sheehy was the port captain for me, yes**  
 (23) **Q And where did Sheehy meet with him do you know?**  
 (24) **A To the best of my knowledge, if I recall, it was in the**  
 (25) **Windham Hotel**  
 (26) **Q Down in the cocktail lounge?**  
 (27) **A I have no idea**  
 (28) **Q You don't know?**  
 (29) **A Not that I can recall that kind of comment**

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- (1) **Q Now what I'm puzzled about this is Captain Hazelwood's**  
 (2) **trial testimony we're going to go through his trial testimony**  
 (3) **for a minute and I'm trying to figure out who said what to**  
 (4) **who**  
 (5) **He's describing the conversation and he's - and I'm**  
 (6) **interested in - I want to ask you a series of questions about**  
 (7) **whether these topics were discussed at this meeting with**  
 (8) **Mr Tompkins Very well was AA discussed? No Was**  
 (9) **aftercare**  
 (10) **discussed? No Was the subject of your personal drinking**  
 (11) **discussed? No Was the subject of drinking on board vessels**  
 (12) **or returning to vessels after having drunk discussed? No**  
 (13) **Were you told not to drink - and then the testimony**  
 (14) **continues - with the exception of the parameters of the**  
 (15) **alcohol policy? No**  
 (16) **Were you told you were going to be monitored?**  
 (17) **Well in his inimitable fashion Mr Tompkins kind of**  
 (18) **indicated to me that I was going to be watched Did he tell**  
 (19) **you you were going to be watched? He didn't verbalize that**  
 (20) **no So he did not tell you that you were going to be watched?**  
 (21) **No**  
 (22) **Now Captain Hazelwood as he testified here said you**  
 (23) **didn't ask about AA you didn't ask about aftercare you didn't**  
 (24) **talk to him about his personal drinking Is that consistent**  
 (25) **with your story or do we have two different stories about the**  
 (26) **same event?**

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- (1) **A I don't think so because what I - I did not talk to him**  
 (2) **about what he did in the past I felt it was more important**  
 (3) **for us to look forward, and I also felt that I would close out**  
 (4) **that issue by just stating that - that he's had his chance and**  
 (5) **that he's had his opportunity and now he needs to take care**  
 (6) **of**  
 (7) **himself**  
 (8) **Q So you didn't discuss AA or aftercare?**  
 (9) **A So I didn't - well, I did not discuss him drinking in the**  
 (10) **past I did not discuss any reference to aftercare I don't**  
 (11) **recall that I do recall that I believe I discussed - asked**  
 (12) **him about what kind of monitoring he was - or what kind of**  
 (13) **support he was going to have or was he going to participate**  
 (14) **in**  
 (15) **any support efforts, whether I used AA - I think I did, but I**  
 (16) **can't a hundred percent recall**  
 (17) **Q So you don't recall?**  
 (18) **A I don't recall what I said at that time**  
 (19) **Q Would it be fair to say that with regard to the issues of**  
 (20) **past drinking AA aftercare personal drinking off the job**  
 (21) **that those were the subjects that you did not directly discuss**  
 (22) **with him?**  
 (23) **A I would say that that is fair to say, because I felt that**  
 (24) **they were in the past And that by giving him the comment**  
 (25) **that**  
 (26) **he had - he has his chance, I felt that was all we needed to**  
 (27) **do**  
 (28) **Q But there wasn't a detailed discussion about his care his**

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- (1) progress with regard to rehabilitation you just said Joe  
 (2) this is your last chance?  
 (3) A Yeah, it was a little more than that, but I just - I did  
 (4) not get into an aftercare program, no, sir  
 (5) Q And at the time you said Joe this is your last chance  
 (6) would it be fair to say that you as his manager were on  
 (7) notice it was your understanding that he had been treated for  
 (8) alcoholism and that the company had conducted some kind of  
 (9) investigation with regard to the man?  
 (10) A Could you repeat that again? I'm not quite sure exactly  
 (11) what you said  
 (12) Q At the time you said Joe this is your last chance you a  
 (13) management official with Exxon Shipping Company were  
 (14) aware  
 (15) that he had undergone treatment for alcoholism and that the  
 (16) company had conducted some kind of an investigation with  
 (17) regard  
 (18) to the man?  
 (19) A Well, the purpose of my statement was that he had  
 (20) undergone, the best of my knowledge, treatment for  
 (21) alcoholism  
 (22) and that once he's had that opportunity, which was the  
 (23) policy  
 (24) we had at the time then he could come back to work  
 (25) assuming  
 (26) he was classified as fit and he - best of my understanding  
 (27) he  
 (28) was, and then - but then he had no longer any chance If he  
 (29) had any further problems, then he would be disciplined  
 (30) Q Any further problems disciplined?  
 (31) A Associated with alcohol, yes

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- (1) Q Any association with alcohol on or off the job?  
 (2) A I didn't get into differentiating between the two I was  
 (3) primarily concerned about the general term on board the  
 (4) ship  
 (5) Q You knew that attending aftercare would be difficult for  
 (6) Captain Hazelwood because of the nature of his job didn't  
 (7) you?  
 (8) A Well, again I didn't get involved with discussions if I  
 (9) recall concerning aftercare  
 (10) Q My question was did you know that attending aftercare  
 (11) would be difficult because of the nature of his job?  
 (12) A Well certainly if - if he was to attend an AA meeting, he  
 (13) could only do that when he was in port, so I knew that  
 (14) Q With regard to Captain Hazelwood you were of the view that  
 (15) Captain Hazelwood could not drink period isn't that right?  
 (16) A Probably so yes  
 (17) Q You did cogitate come up with the idea of some kind of a  
 (18) monitoring plan isn't that correct?  
 (19) A My intent was to visit the vessel when he's on board as  
 (20) often as I could  
 (21) Q And you don't recall whether you in fact made a trip or  
 (22) two to his vessel before you turned the mantel over to  
 (23) Mr Koops?  
 (24) A I think I made one occasion, but I cannot be a hundred  
 (25) percent sure, but I think I did  
 (26) Q And with regard to implementing any monitoring plan with  
 (27) Captain Hazelwood you didn't get the chance to implement the

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- (1) plan or formalize the plan did you?  
 (2) A I didn't get to use it very long because -  
 (3) Q You were moving on to another assignment?  
 (4) A - I was moving on to another job  
 (5) Q I think Mr Koops is going to testify next so what happens  
 (6) there on out I should ask - I should spare you your time and  
 (7) ask Mr Koops questions, would that be a fair statement?  
 (8) A That would probably be more appropriate  
 (9) Q I do though, at the end of my outline want to ask you  
 (10) about your meeting with Mr Koops And would it be fair to say  
 (11) that you didn't have any special meeting about Captain  
 (12) Hazelwood with Koops but you had one meeting in which you  
 (13) discussed your ship's officers and the subject of Captain  
 (14) Hazelwood came up at that meeting?  
 (15) A My recollection, we had a couple of opportunities to get  
 (16) together and the time that we got together concerning the  
 (17) personnel of the gulf coast fleet, we pretty much reviewed  
 (18) all  
 (19) of the senior officers, captain and chief engineers At that  
 (20) time, I included the discussion with Captain Hazelwood or  
 (21) about  
 (22) Captain Hazelwood  
 (23) Q And when you discussed that with Mr Koops, you put Mr  
 (24) Koops on notice that Captain Hazelwood had gone through  
 (25) treatment for alcoholism?  
 (26) A I - yes, I did  
 (27) Q So Mr Koops knew this now too?

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- (1) A Yes, he did, best of my knowledge  
 (2) MR O NEILL Thank you sir  
 (3) THE WITNESS May I leave sir?  
 (4) THE COURT You're not quite through yet I suspect  
 (5) REDIRECT EXAMINATION OF JOHN TOMPKINS (Live)  
 (6) BY MR SANDERS  
 (7) Q Mr Tompkins other than the telephone call that you had  
 (8) with Captain Hazelwood do you have any sort of knowledge  
 (9) whatsoever as to what sort of treatment Captain Hazelwood  
 (10) had?  
 (11) A No, I never really discussed it  
 (12) Q And I think you've already testified you had no idea what  
 (13) the actual medical diagnosis for Captain Hazelwood was isn't  
 (14) that right?  
 (15) A That's correct I didn't see anything official  
 (16) Q Do you know or did you know then - let me ask you did you  
 (17) know then that there was a medical difference between alcohol  
 (18) abuse and alcoholism?  
 (19) A No, sir  
 (20) Q Do you know now that there is a difference between  
 (21) alcoholism - between -  
 (22) A No, sir  
 (23) Q - alcohol abuse and alcoholism?  
 (24) A No, sir  
 (25) Q And if somebody said they had an alcohol problem do I take  
 (26) it then that you simply assume that's alcoholism?

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- (1) **A** If you're sent to rehabilitation yes
- (2) **Q** So when you heard alcohol in the call with Captain Hazelwood you assumed alcoholism right?
- (3) **A** Yes
- (4) **Q** Because you don't draw any distinction?
- (5) **A** No, sir, I don't
- (6) **Q** Do you remember the exact words that Captain Hazelwood used
- (7) when he described the kind of treatment he was going in for?
- (8) **A** Not that I can recall, no, sir
- (9) **Q** Do you know whether he said alcohol problem? Do you know
- (10) whether he said alcohol abuse? Do you know whether he said
- (11) alcoholism or alcoholic?
- (12) **A** No, sir
- (13) **MR SANDERS** I have no further questions
- (14) **THE COURT** Thank you sir
- (15) Call your next witness
- (16) **MR SANDERS** May it please the Court we call
- (17) **Mr Dwight Koops**
- (18) **THE CLERK** Would you raise your right hand please
- (19) sir
- (20) (The Witness Is Sworn)
- (21) **THE CLERK** For the record sir state your full name
- (22) your address and spell your last name please
- (23) **THE WITNESS** My name is Dwight H Koops I live at
- (24) 692 Snapdragon Place in Benicia California My last name is
- (25)

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- (1) spelled K O O P S
- (2) **DIRECT EXAMINATION OF DWIGHT KOOPS (Live)**
- (3) **BY MR SANDERS**
- (4) **Q** Good morning Mr Koops Mr Koops where are you now
- (5) employed?
- (6) **A** I'm employed by Sea River Maritime
- (7) **Q** And what is your job at Sea River Maritime today?
- (8) **A** I'm the ocean fleet manager
- (9) **Q** All right And where is your office located?
- (10) **A** In Benicia, California
- (11) **Q** And as the ocean fleet manager what are your duties and
- (12) responsibilities?
- (13) **A** My primary duties are the safe and efficient operation of
- (14) the ocean fleet vessels that Exxon owns U S flagged, and
- (15) of
- (16) course supervisory responsibility for the people that man
- (17) those
- (18) vessels
- (19) **Q** Does the ocean fleet include oil tankers?
- (20) **A** Yes, it does
- (21) **Q** Does it include anything but oil tankers?
- (22) **A** Primarily oil tankers
- (23) **Q** Okay Now would you tell the Ladies and Gentlemen of the
- (24) Jury a little bit about your educational background?
- (25) **A** I graduated from the U S Merchant Marine Academy in 1962
- (26) I have a degree in marine engineering, and I went on for a
- (27) masters at night, a masters in engineering from the city

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- (1) **University of New York** I have further studies at NYU for an
- (2) **MBA masters in business**
- (3) **Q** Where did you grow up Mr Koops?
- (4) **A** I grew up in Brooklyn, New York
- (5) **Q** Thought we ought to clear that up Mr Koops when did you
- (6) start working for - or where did you start working when you
- (7) got out of school?
- (8) **A** When I graduated from Kings Point I had a license in the
- (9) **Coast Guard as an engineer and I sailed in the merchant**
- (10) **marine, I sailed for other than Exxon for approximately a**
- (11) **year,**
- (12) **and then I came ashore to continue my education at night**
- (13) **And**
- (14) **I worked for a - the naval shipyard right in New York for**
- (15) **about two to three years and from there, I moved to a small**
- (16) **naval architectural firm in downtown New York I was a**
- (17) **ship**
- (18) **surveyor for them and a marine designer and supervisor**
- (19) **My late 20s I joined ESSO International which eventually**
- (20) **became Exxon International I was with the tanker**
- (21) **department**
- (22) **of the international group for 13 years I held various**
- (23) **positions, construction and design, operations, research**
- (24) **and**
- (25) **development, and I transferred in 1980 down to Texas, to**
- (26) **Exxon**
- (27) **Company U S A**
- (28) **My last job with the international group was for about**
- (29) **three years, I was the administrative head for the fleet**
- (30) **which**
- (31) **numbered about 70 vessels And I moved down to Houston**
- (32) **with**
- (33) **Exxon Company then in the marine departments**

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- (1) **Q** All right And what job did you have with the marine
- (2) department or with what then became Exxon Shipping
- (3) Company in
- (4) the early 80s?
- (5) **A** I was the engineering manager for about five and a half
- (6) years
- (7) **Q** All right And as engineering manager did you participate
- (8) in the construction of some new vessels that were going to sail
- (9) for Exxon Shipping Company?
- (10) **A** Yes My primary duties as the engineering manager was
- (11) design and contracting and delivery of a number of vessels
- (12) that
- (13) we currently operate
- (14) **Q** Would you give the Ladies and Gentlemen of the Jury some
- (15) of
- (16) the names of those vessels that came on line in the 80s that
- (17) you worked on?
- (18) **A** Ones we built in the '80s included the Charleston, the
- (19) Wilmington, the Baytown and the Valdez and the Long
- (20) Beach, as
- (21) well In addition to a number of towboats and tugs that we
- (22) built for the inland fleet
- (23) **Q** Did there come a time when you took over the job of gulf
- (24) coast fleet manager for Exxon Shipping Company?
- (25) **A** Could you say that again, please?
- (26) **Q** Yes Did there come a time when you took on the job of
- (27) gulf coast fleet manager for Exxon Shipping Company?
- (28) **A** Yes, I transferred from the engineering manager's
- (29) position
- (30) to the gulf coast fleet manager position October 1st, 1985

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- (1) Q And who was your replacements - I mean who was your predecessor? Excuse me
- (2) A I replaced John Tompkins
- (3) Q All right Now, John Tompkins of course just testified (4) you were in the room when he testified?
- (5) A I was
- (6) Q Let s go straight to the transition period Did you in fact have a discussion with Mr Tompkins concerning Captain Hazelwood when you were in this transition period?
- (7) A Yes During the overlap period, primarily September, we reviewed of course all the business of the fleet and we talked
- (8) about each of the senior personnel, which of course included
- (9) the masters and that included Captain Hazelwood
- (10) Q All right And in discussing Captain Hazelwood did John Tompkins advise you that Captain Hazelwood had somewhat recently undergone treatment that included treatment for alcohol problems?
- (11) A Yes When we discussed Captain Hazelwood, Mr Tompkins
- (12) told me that Captain Hazelwood had been through alcohol rehabilitation in the spring of '85
- (13) Q All right Now at that time did you ask Mr Tompkins what Captain Hazelwood s diagnosis was?
- (14) A I did not
- (15) Q Did you ask him what his treatment regimen was?
- (16) A I did not

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- (1) Q Did you have any discussion with anybody in the medical department?
- (2) A No
- (3) Q Did you have any access to an actual diagnosis?
- (4) A No
- (5) Q What - am I correct in assuming that you take on this new job and you find out that one of the masters that you re going to directly supervise has recently been in some sort of treatment program or rehabilitation program for alcohol is that good news or bad news for you?
- (6) A Well it's bad news but I make the assumption that when I hear alcohol rehabilitation I assume that I have a captain that has a drinking problem and that assumption leads me to
- (7) the thought process that if he starts drinking again things will probably go pretty bad pretty fast and that's what I really needed to know
- (8) Q All right At the time 1985 did you think you needed to know more than that?
- (9) A No, because I was really assuming the worst case scenario
- (10) for the situation that Captain Hazelwood was in
- (11) Q All right And right or wrong you assumed that he had an alcoholism problem that would manifest itself in some sort of loss of control correct?
- (12) A That is correct
- (13) Q All right Now you don t know whether that s in accord

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- (1) with the diagnosis or treatment but you took the worst case scenario correct?
- (2) A I did
- (3) Q Given the fact that you had this problem and you had this assumption as to what the scope of the problem was, what did you do about it?
- (4) A Well, when John mentioned it to me, I - I really looked at the network of people that I have in my organization, I had then and I have now, and I knew I had to stay close to Joe -
- (5) Q Well now first - I ve jumped a little ahead of you Did you plan to watch Captain Hazelwood?
- (6) A Absolutely
- (7) Q And what were you watching for?
- (8) A To see if there were any signs that essentially Joe fell off the wagon, if he started drinking again
- (9) Q Okay Now having formed that intent or plan did you - I take you back to where you were before I so rudely interrupted you, but what did you plan to do to set that in motion? How were you going to do this?
- (10) A As I was saying, I started to look at the network of people that I have in my organization and as I said, I had it then and I have it today, if I start with myself and I go down through my organization which probably helps if - what my thought process was at that time, but I have line functional managers,
- (11) which I guess people refer to them as port engineers and port

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- (1) captains which in the primary reporting function to me, and then I have in the office personnel, people who handle personnel issues I have agents who deal with the ships seven
- (2) days a week, 24 hours a day, all sorts of questions and interface with them I have contractors running around the ships constantly, particularly when they're in our ports and even riding the ships We also have unannounced searches, we
- (3) did them with dogs and did them with people on a fairly frequent basis As part of the administrative load for managing the fleet, you have an awful lot of reports, performance reports that come in off the ships, and if you look
- (4) at them very closely you can tell an awful lot about them The
- (5) cost reports, requisitions performance of the vessel, and if you start to see things going a little bit screwy on them, then you start to become suspicious So I had really a multifaceted
- (6) organization that could reach out and stay close with the situation, I felt
- (7) Q All right Well let me ask you the obvious question At the time that you were following this plan of yours did you think you had the situation covered?
- (8) A Yes
- (9) Q Now looking back on it now did your plan work?
- (10) A I feel very strongly that it did If I look at the year and a half that I had Joe with me I only had one single report That report came to me very quickly and in enough

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- (1) detail that I was able to follow up on it which we did
- (2) Q Okay Let me stop you there What was this report that
- (3) you got?
- (4) A The report that I'm speaking about, it had come from the
- (5) port steward, which was Jim Shaw and Bill Sheehy, which
- (6) was my
- (7) port captain at the time, said that he had heard from Jim
- (8) Shaw
- (9) that Captain Hazelwood was acting a little weird
- (10) Q What did you think when you heard that?
- (11) A My immediate thought was that perhaps Joe's started
- (12) drinking again, and of course Captain Sheehy and I had
- (13) talked
- (14) about it previously when I first came into the job and so our
- (15) thoughts ran pretty much parallel
- (16) Q So you both had this thought or maybe even a fear that this
- (17) translated into Joe's drinking?
- (18) A Absolutely
- (19) Q Did you act on that?
- (20) A Yes
- (21) Q What did you do?
- (22) A I asked Captain Sheehy - I had spoken to Jim Shaw and
- (23) he
- (24) became a little evasive He didn't say alcohol, he became a
- (25) little more evasive so I said Bill, I said I really want you
- (26) to go over and catch the Baton - the Yorktown in Baton
- (27) Rouge
- (28) which, if you know, is fairly close I said, go over there
- (29) unannounced, and that was the next port of arrival for the
- (30) vessel, and I want you to spend as much time as possible on

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- (1) board the ship and see if things are okay
- (2) Bill, being a captain in the fleet, knows exactly what that
- (3) meant That meant to talk to a lot of people, to see Joe
- (4) himself and spend as much time as possible That's what
- (5) Bill
- (6) did and he came back to me, I recollect a phone call from
- (7) Bill
- (8) that told me that everything was in order based on his
- (9) evaluation and then he returned to the office And we had
- (10) some further conversations about the issue
- (11) Q All right In these further conversations did you ask or
- (12) suggest to him to do anything else?
- (13) A I asked Bill to talk to - on a low key basis, talk to
- (14) Captain Hazelwood's friends and associates and -
- (15) Q Let me interrupt you just a second Why would you ask -
- (16) why would you ask a guy's friends to find out if the guy was -
- (17) had fallen off the wagon?
- (18) A I knew - I knew Joe well enough, that there are enough
- (19) people that care about Joe and people who do know Joe, I
- (20) think
- (21) I had a strong enough reading on the situation that people
- (22) who
- (23) do care enough and who do know Joe would certainly say
- (24) something to - to Bill
- (25) Q Did you know who his friends were?
- (26) A Yes, I knew who many of his close associates were
- (27) Q Did you know those people?
- (28) A Yes
- (29) Q In fact were they employees of yours?

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- (1) A A lot of them were masters in the fleet and engineers
- (2) Q Did Captain Sheehy make those kinds of contacts?
- (3) A He did
- (4) Q Do you know specifically who he talked to or did you know
- (5) at the time?
- (6) A He spoke to a number of people When I spoke to Bill,
- (7) and
- (8) of course our offices physically were just a couple of doors
- (9) away from each other, and we would speak from time to time
- (10) about Joe Hazelwood and many indications I got from Bill
- (11) was
- (12) that Captain Hazelwood was fit he was working out he was
- (13) in
- (14) good shape
- (15) He did speak with one individual specifically, that I
- (16) found out after the grounding that was Captain Ivan
- (17) Mihajlovic
- (18) Q Let's make sure we don't get things muddled up here You
- (19) asked him to talk to Captain Hazelwood's friends and he did
- (20) and reported back to you?
- (21) A Yes
- (22) Q And later on after the grounding occurred some three
- (23) four years - well let me back up Strike all that
- (24) Do you know when this - when this report came from
- (25) Mr. Shaw and when this visit Captain Sheehy made to the
- (26) Yorktown at Baton Rouge do you know when that was?
- (27) A The time frame, based on my best recollection, is '86, '87
- (28) time frame
- (29)
- (30)

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- (1) Q Okay And so therefore the conversation you had with
- (2) Captain Mihajlovic was some couple or three years later?
- (3) A Yes, I - in speaking with Captain Mihajlovic, would you
- (4) like me to go into the details?
- (5) Q Wait a minute I want to back up though But at the time
- (6) that you asked Captain Sheehy to make these contacts he had
- (7) reported back to you the thoughts and observations of Captain
- (8) Hazelwood's friends?
- (9) A That's correct
- (10) Q But you didn't talk to Captain Mihajlovic at that time
- (11) correct?
- (12) A I did not
- (13) Q You did talk to him later?
- (14) A Yes
- (15) Q What did he tell you later?
- (16) A I was visiting Ivan's ship, the San Francisco down in
- (17) Baytown, and that was July of '89 This is after the
- (18) grounding
- (19) where I'm looking after the gulf coast fleet, but - and also
- (20) watching the west coast fleet So I was visiting the San
- (21) Francisco and Ivan and I go back a number of years, and I
- (22) knew
- (23) Ivan when he was a chief mate
- (24) It was my recommendation for him for a captain, so we had
- (25) a
- (26) close relationship and a great deal of respect for Ivan, and I
- (27) know that Ivan is a close friend of Captain Hazelwood's, in
- (28) fact, they live in the same area, and we talked about it

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(1) before  
 (2) And we were talking about the grounding and - and there  
 (3) were allegations, of course, in the newspapers about alcohol  
 (4) and so forth, and as I was speaking to Ivan I remember like  
 (5) it was yesterday We were having lunch on the ship at a table,  
 (6) and I said to Ivan I says, it is a shame you know And when  
 (7) he was - when Joe was with me for a year and a half in the  
 (8) gulf, I says, I had no indications, in fact, to the contrary  
 (9) I said, it was just one indication that we followed up on, and  
 (10) Captain Sheehy had come back and said it was okay, but then I  
 (11) asked him to talk to friends  
 (12) And Ivan said, yes, he says, I was one of those guys And  
 (13) he says - and you have to know Ivan to understand this, but he  
 (14) says, you know what I did, and Ivan, I think, has a very, very  
 (15) close and fond affection for Captain Hazelwood and very  
 (16) concerned about him and his family Captain Mihajlovic's ship,  
 (17) the San Francisco went down to Chiriqui Grande in Panama, this  
 (18) is where we used to pick up crude on the Atlantic side And he  
 (19) looked over and saw the Exxon Yorktown in anchor and Ivan got  
 (20) in a launch and went over to the Yorktown and went storming  
 (21) right up to Joe's quarters is the way Ivan relates it to me,  
 (22) and literally tore the place apart He was - he was looking  
 (23) for booze Didn't find any, checked Joe, Joe looked okay, and  
 (24) I think Joe probably had his mouth open by now and Ivan walked

(25) off the ship, got back on the launch and went back to his ship  
 (1) Q Did Captain Mihajlovic tell you at that time that he had  
 (2) reported that to Captain Sheehy at the time that it occurred?  
 (3) A I believe he said he mentioned it to Bill and that was part  
 (4) of his overall report to me I would assume when Bill reported  
 (5) back to me  
 (6) Q All right Now you've mentioned this but I want to make  
 (7) it clear and ask you the direct question Other than this one  
 (8) report which you and Captain Sheehy reacted to was there any  
 (9) other report during the time that Captain Hazelwood was on the  
 (10) gulf coast fleet in the gulf coast fleet that you got any sort  
 (11) of report about Captain Hazelwood drinking alcohol?  
 (12) A None  
 (13) Q Did you get any sort of sign or signal or any inkling from  
 (14) any sort whatsoever that there was any problem with Joe  
 (15) Hazelwood returning to drinking?  
 (16) A No As a matter of fact it would probably be worthwhile  
 (17) to the testimony here in speaking with Joe Joe and I  
 (18) developed a - I got to know Joe probably more than most  
 (19) skippers in the gulf coast fleet at the time I was the new  
 (20) kid on the block, I had come from engineering management and  
 (21) taking over gulf coast fleet I was the new kid on the block  
 (22) And Joe of course, being Joe was going to put me through my  
 (23) paces but coming from New York I was up to the challenge,  
 (24) so  
 (25) I took him on and we got to know each other pretty well We  
 (25) were fairly direct with each other as New Yorkers are and so

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(1) I - I asked him about a lot of things procedures and  
 (2) policies Being a little bit new to the game I asked him  
 (3) some  
 (4) thoughts, and of course he always volunteered his thoughts  
 (5) about some of the policies that were in place It was a good,  
 (6) frank relationship, and I liked Joe Joe was well read I  
 (7) liked his intellect I liked his frankness He was a good  
 (8) sounding board and so we -  
 (9) Q Did you form any - from this relationship did you form  
 (10) any opinion as to how he was doing with respect to this problem  
 (11) for which he had been treated?  
 (12) A Yeah, by talking the way we did, I got to know the man  
 (13) pretty well and I wouldn't - I wouldn't diminish the  
 (14) relationship by saying I was there to watch his eye/hand  
 (15) coordination, but obviously as I talked to him and got to know  
 (16) him a little bit better, I started to understand the man, I  
 (17) also understood his behavior So it became pretty easy for me  
 (18) or a little bit easier with him to see any aberrations or any  
 (19) changes in the behavior for the next year and a half  
 (20) Q Did you see any?  
 (21) A None In fact, if anything, I counseled Joe on some of his  
 (22) performance characteristics that are reported in his  
 (23) performance report and he was working on those, and in my  
 (24) estimation, in the year and a half, I saw a great deal of  
 (25) improvement, at least an effort to improve in those areas  
 (25) Q You were kind of tough on him though weren't you, on the

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(1) rankings?  
 (2) A I was Joe is a seaman and probably one of the finest that  
 (3) we had His seamanship skills were very, very good Some  
 (4) of  
 (5) his dislike for some of the paperwork and such, I needed to  
 (6) see  
 (7) some more improvement I didn't have a long enough  
 (8) running  
 (9) time on Joe You don't like to make major movements in  
 (10) seriatim rankings unless you're sure Worst you can do is  
 (11) move  
 (12) people out on the list, you want them to steer you out so I  
 (13) needed a little bit more running time on Joe I had seen him  
 (14) a  
 (15) year year and a half and you figure he's only on the vessel  
 (16) half that time, so before I made any major moves on Joe on the  
 (17) seriatim, I felt comfortable with where he was, which was  
 (18) the - the bottom third kind of in the upper part of the bottom  
 (19) third And I could see if we stayed together probably if he  
 (20) continued his progress, moving him a little bit more  
 (21) Q Now you have described for the Ladies and Gentlemen of  
 (22) the  
 (23) Jury the relationship that you had with Captain Hazelwood  
 (24) when  
 (25) you would visit the ship Did you try to visit his ship often?  
 (1) A Yes, I did My style of management in running a fleet is  
 (2) to visit ships as much as possible You need to smell and  
 (3) feel  
 (4) and touch, and I enjoy that part of the job I especially  
 (5) enjoyed visiting Joe and obviously with this knowledge, I  
 (6) tried  
 (7) to spend more time with Joe than the others  
 (8) Q When you say with this knowledge, what are you talking



(25) about?

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- (1) **A The fact that Joe had been through alcohol rehabilitation**  
 (2) **and I really wanted him not to start drinking again because**  
 of  
 (3) **the consequences and him as a human being**  
 (4) **Q All right Now did you ever ask him in these**  
 (5) **conversations did you ever ask him about how he was doing**  
 with  
 (6) **his alcohol problem?**  
 (7) **A I asked him how he was, but he gave me no indications**  
 that  
 (8) **he had fallen off the wagon, and at that point in time, I saw**  
 (9) **no reason to take the man's dignity away He was behaving**  
 (10) **himself, he was improving, he was fit, so why? There's just**  
 no  
 (11) **reason to do that**  
 (12) **Q I take it you didn't ask him specifically about his alcohol**  
 (13) **problem?**  
 (14) **A I did not**  
 (15) **Q Did you ask him anything about AA?**  
 (16) **A I did not**  
 (17) **Q Did you ask him anything about marital problems?**  
 (18) **A No**  
 (19) **Q I think you've answered this but let me just ask you**  
 (20) **directly why not?**  
 (21) **A These were private matters I was concerned about Joe's**  
 on  
 (22) **the job performance He gave me no indication that he'd**  
 (23) **started drinking again and I saw no reason to break that**  
 (24) **confidence and take the man's dignity**  
 (25) **Q If you had seen some sort of a problem some change**

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- (1) **whether it involved drinking or not would you then have**  
 (2) **followed up and asked those direct questions?**  
 (3) **A In a New York minute I would have been very direct**  
 (4) **with - with Joe Because then you're getting into not only**  
 (5) **Joe, but the very safety of that vessel and that's the primary**  
 (6) **concern to me**  
 (7) **Q By 1987 Captain Hazelwood had been with you some year**  
 and  
 (8) **a half Did you have a view on Captain Hazelwood and the past**  
 (9) **alcohol problem?**  
 (10) **A Could you try that on me again please?**  
 (11) **Q By 1987 say the spring of 1987 during which then you had**  
 (12) **been with Captain Hazelwood over a year and a half did you**  
 (13) **have a view or an opinion about how Captain Hazelwood was**  
 doing  
 (14) **in terms of this past alcohol problem?**  
 (15) **A Yes, I did A distinct feeling, a different feeling I had**  
 (16) **inside when I - when I first got introduced to the issue and**  
 (17) **Joe I felt a year and a half later he had made a great deal**  
 (18) **of progress, and since I only had one report that proved**  
 (19) **spurious, that I thought that the situation was very well**  
 under  
 (20) **control and hardly a problem at all if at all**  
 (21) **Q Mr Koops at that time did you know anything about**  
 (22) **alcohol problems?**  
 (23) **A Yes Unfortunately, growing up in Brooklyn, New York,**  
 and  
 (24) **I grew up in a tenement section, I guess polite people call**  
 (25) **them apartment houses we lived on top of each other and I**

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- (1) **don't want to give you the poor boy story, but I guess there**  
 (2) **wasn't a week that didn't go by that we didn't see families**  
 (3) **destroyed by alcohol People tended to lose themselves in**  
 (4) **alcohol and I have a very dear person in my life who had an**  
 (5) **alcohol problem I wasn't -**  
 (6) **Q Who was that?**  
 (7) **A That was my dad**  
 (8) **Q So you thought you had some basis for the opinion that you**  
 (9) **had about Captain Hazelwood in the spring of 1987?**  
 (10) **A I had a great deal of sensitivity to the issue**  
 (11) **Q Now in 1987 did you have any occasion to discuss the**  
 (12) **transfer of Captain Hazelwood?**  
 (13) **A Yes Port captain for the west coast Andy Martineau,**  
 and  
 (14) **my port captain, Captain Bill Sheehy discussed moves**  
 frequently  
 (15) **and they had a vacancy on the west coast The Exxon**  
**Valdez**  
 (16) **master - one of the masters resigned from the shipping**  
 (17) **company to become a San Francisco harbor pilot so they**  
 needed a  
 (18) **master to replace him They looked over the slate of**  
**masters**  
 (19) **that we had in the fleet and Captain Hazelwood was their**  
 (20) **recommendation to me I looked it over and based on what**  
 I  
 (21) **viewed as the appropriate background for the job spoke**  
 with  
 (22) **Harvey Borgen who was my counterpart on the west coast**  
 to  
 (23) **effect that transfer**  
 (24) **Q You agreed with the recommendation?**  
 (25) **A I did You know I looked at the - the background of**

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- (1) **Joe He was a skipper on a 160 - 165,000 ton ships, which**  
 is  
 (2) **our second largest He had traded into Valdez He was a**  
**good**  
 (3) **seaman I watched him for a year and a half and he had**  
**Prince**  
 (4) **William Sound pilotage, which - which was an asset And**  
 so it  
 (5) **looked like the right fit and the talent balance for the**  
**fleet**  
 (6) **Q All right Now you mentioned that you had**  
 (7) **conversations - a conversation or conversations with Harvey**  
 (8) **Borgen What job did Harvey Borgen have at the time of this**  
 (9) **conversation?**  
 (10) **conversation?**  
 (11) **A Harvey was my counterpart on the west coast He was**  
 the  
 (12) **west coast fleet manager and obviously, when we're**  
**transferring**  
 (13) **people throughout the fleet, we talk with each other on a**  
 (14) **regular basis, and so I purposely made a phone call on this**  
 (15) **transfer**  
 (16) **Q In the course of your conversation - excuse me for**  
 (17) **interrupting In the course of your conversation with**  
 (18) **Mr Borgen, did the subject of Captain Hazelwood and alcohol**  
 (19) **come up?**  
 (20) **A Yes, it did**  
 (21) **Q How did it come up?**  
 (22) **A Harvey asked me if Captain Hazelwood was having any**  
 (23) **problems with - with drinking, and I said, no, Harvey I**  
 (24) **said, for the past year and a half I've been observing Joe I**  
 (25) **might have even mentioned the one incident that we**  
**investigated**

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- (1) that proved to be nothing, and I said, as far as I'm concerned
- (2) he's clean, he hasn't fallen off the wagon and he's doing fine
- (3) Q Did you tell Mr Borgen what you knew as far as Captain Hazelwood receiving treatment involving alcohol back in the spring of 1985?
- (4) A No, since he mentioned had Captain Hazelwood had any problems with drinking, I assumed that he knew about the situation
- (5) Q Is it fair to say that you gave Mr Borgen a clean bill of health as far as Joe Hazelwood was concerned and the drinking issue?
- (6) A Yes
- (7) Q Did you give him any sort of a run down on how Captain Hazelwood had been performing as a ship captain?
- (8) A Yes
- (9) Q What did you tell him?
- (10) A Yes, obviously as a professional courtesy to Harvey, I felt it prudent on me to advise him of my observations of Joe for that year and a half I pointed out some of the good operations that Joe had had, some tricky operations with his vessel did an excellent job, and that he - he was good for the seamanship skills and I would recommend the move
- (11) Q Did you pass along any of the criticism that you had about Captain Hazelwood and his paperwork and his love of shoreside management?
- (12) management?

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- (1) A Absolutely Harvey and I know each other pretty well and Harvey and I both know Joe and we deal with Joe on that
- (2) Q Now in fact Captain Hazelwood was transferred from the gulf coast fleet to the west coast fleet in 1987 correct?
- (3) A The last time I saw Joe was from my fleet was at an officer's conference April '87 and then he went on leave and
- (4) joined the vessel in July of '87
- (5) Q All right From that point to the time of the grounding did you remain as the fleet manager for the gulf coast fleet?
- (6) A Yes I did
- (7) Q Located - your office was located in Baytown Texas?
- (8) A Baytown Texas
- (9) Q Now notwithstanding the fact that he was in another fleet did you have occasion to run into Captain Hazelwood be able to
- (10) and see and observe him at any functions?
- (11) A Yes I saw Joe at officer conferences As a matter of fact, Joe had called me, it was one of the nicest phone calls I've ever gotten, he had called me in fall of '87 his vessel was going north to Alaska and he had called just to tell me that he enjoyed the relationship he liked - he liked my style and we got along well and he'd miss the relationship
- (12) Q You think that was because he was a New Yorker don't you?
- (13) A Direct yes
- (14) Q Did you have a chance to observe him though at any of the conferences after he left your fleet?
- (15) conferences after he left your fleet?

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- (1) A I did
- (2) Q Did you notice whether or not Captain Hazelwood was drinking at these conferences?
- (3) A Only he had a passion for Perrier and ice tea, as I remember, and those are the only two drinks I ever saw him drunk
- (4) Q Did you take particular note of that?
- (5) A Yes
- (6) MR SANDERS You may ask
- (7) CROSS EXAMINATION OF DWIGHT KOOPS (Live)
- (8) BY MR O NEILL
- (9) Q This is your deposition transcript in case you need it
- (10) You have - you testified here today some knowledge with regard to alcoholism isn't that a correct statement?
- (11) A Yes
- (12) Q And you realize that alcoholics have to admit that they're alcoholics in order to move forward with their treatment?
- (13) A Yes
- (14) Q And you understand that alcoholics are in fact never cured?
- (15) A Yes
- (16) Q And you understand that the relapse rate for alcoholics is better than 50 percent?
- (17) A Yes
- (18) Q And you testified a little bit about these officer conferences that you'd go to and see Captain Hazelwood
- (19) You re

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- (1) aware of the fact that individuals who have an alcohol dependency problem attempt to hide that fact don't they?
- (2) A Yes
- (3) Q It's called masking isn't that right?
- (4) A That's correct
- (5) Q And at some point in time you were put on notice that Captain Hazelwood had gone through alcohol rehabilitation?
- (6) A Yes
- (7) Q And you don't know or you didn't follow up and ask when he'd been in rehabilitation did you?
- (8) A I was told that it was the spring of '85
- (9) Q Did you know the details of his program?
- (10) A I did not
- (11) Q Did you know the details of his aftercare program?
- (12) A I did not
- (13) Q Did you know whether he was attending AA or not?
- (14) A No
- (15) Q Did you know why he went into alcohol rehabilitation?
- (16) A No
- (17) Q Did you ever speak to anybody in your human relations department Dan Paul who came in here testified he was the -
- (18) the company officer charged with responsibility for this particular topic did you ever talk with Dan Paul about the subject of Captain Hazelwood and alcohol rehabilitation?
- (19) A No, I did not

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- (1) Q Now you testified here today you started off by saying it might help the testimony here and then you launched into a discussion in which you said we were direct with each other as New Yorkers are it was a good frank relationship Do you recall testifying to that today?
- (2) A Yes
- (3) Q Now did the two New Yorkers talk about, between each other the captain's alcohol rehabilitation?
- (4) A We did not
- (5) Q Did you talk about the subject of alcohol?
- (6) A No
- (7) Q Did you talk about the subject of AA or aftercare?
- (8) A No
- (9) Q Through the summer of 1987 you never spoke to Frank Iarossi about Hazelwood and alcohol did you?
- (10) A That is incorrect
- (11) Q When did you - when is your view now that you spoke to him?
- (12) A My recollection is that I spoke with Iarossi in the spring of '87 when we gathered together as managers and we were talking about transfers
- (13) Q Okay So let's focus on the spring of 1987 And you talked to Mr Iarossi in the spring of 1987 about the captain and the subject of alcohol?
- (14) A Yes

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- (1) Q Prior to that conversation had you ever spoken to Frank Iarossi about the subject of Joe Hazelwood and alcohol?
- (2) A No, other than I may have spoken to him about the - the trip that I asked Captain Sheehy to make to Baton Rouge and I believe I've been deposed on that and said I may have spoken to him about it That's my only recollection of a conversation
- (3) Q You were deposed on this subject do you recall that?
- (4) A Yes
- (5) Q And the question was fairly asked to you Prior to that conversation with Frank Iarossi that's the discussion in early to mid '87, had you had any discussions with Mr Iarossi about Joseph Hazelwood and drinking, and your answer to the question at that time was no
- (6) A If you look at the November - I had two separate days of deposition If you look at the November date of deposition in November, I believe my words were that I may have
- (7) Q You may have?
- (8) A Yes
- (9) Q So we have a version that started off with no and then we have a second version that started off with I may have?
- (10) A Yes We're talking about five years of time and probably a few years before that, and I was questioned one month and then, as human beings do, they start to think about their recollections and certainly five years later, perhaps I had a different recollection and I may have had a conversation when I

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- (1) gave my deposition in November of '92 I think
- (2) Q Now you testified here today that - I'm going to come back to that conversation in a minute but I want to put a couple of conversations together before I move on You testified here today and your words were I remember it like it was yesterday and this is a post grounding conversation that you had with Ivan - how do you pronounce his last name?
- (3) A Mihajlovic
- (4) Q Mihajlovic in which Mihajlovic told you about going aboard the vessel?
- (5) A Yes-
- (6) Q And that was the first time Mihajlovic told you about going aboard the vessel?
- (7) A Yes
- (8) Q So up to the time of the grounding you and Mihajlovic had never had a discussion about him going aboard the vessel?
- (9) A Right
- (10) Q Never? Ever?
- (11) A That is correct
- (12) Q Okay Here's what I don't understand Mr Iarossi has testified here that you did have such a conversation And he recalls it very specifically And I put it up on the screen for you And my question for you is who's right and who's wrong?
- (13) A I guess, after five years both of us think we're right,

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- (1) and I think probably both of us are trying our very sincerest to recollect conversations I feel that I did not have that conversation with Mr Iarossi based on what I just previously testified, that I had the conversation with Ivan Mihajlovic for the first time in July of '89
- (2) Q Now Mister - I don't want you to comment on what Mr Iarossi says but when you have two different versions of the story would you agree with that?
- (3) A From what you tell me yeah, I'm trying to read it and decide what you're after but obviously we do and I'm sure Mr Iarossi thinks his response is as sincere and honest as I do
- (4) Q Now we had talked for a minute about conversations with Mr Iarossi and you had - we'd gone through your no and then you'd gone through well maybe I had a conversation with him and maybe I didn't This is Mr Iarossi's version of the conversation that took place in October or November of 1985 with you in which he told you the need to watch Joe very carefully and then you related to him about your father
- (5) Now, when we got - did the conversation take place as Mr Iarossi said or did it not take place as you first said or did it maybe take place as you second said Or what is the story?
- (6) A My thoughts are very, very clear on this That's a fairly personal issue to me and I remember when I had a conversation

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- (1) like that with an individual my recollection I think  
 (2) Mr Iarossi is right I think the conversation did take  
 (3) place But the time frame we disagree on I spoke with  
 (4) Mr Iarossi about that issue and mentioning my dad It was  
 (5) either during the transfer time which was spring of '87 or it  
 (6) could have even been after the grounding, itself, when we  
 were  
 (7) talking about issues of monitoring and follow up that I  
 (8) mentioned my dad But it was clearly not the beginning of  
 my  
 (9) assignment  
 (10) Q So Mr Iarossi's testimony as we've just looked at it  
 (11) doesn't comport with your memory?  
 (12) A Mr Iarossi's testimony, I'm sure, is as honest and sincere  
 (13) as I think mine is  
 (14) Q If you had had a report to you I don't want to talk about  
 (15) the standards to which you bring to this situation you  
 (16) testified here today if there was any indication that Captain  
 (17) Hazelwood had resumed drinking you would have yanked him  
 in a  
 (18) New York minute do you recall that?  
 (19) A Yes  
 (20) Q What if it was reported to you that he was ordering beer  
 (21) over a walkie talkie at for example Portland Shipyard would  
 (22) you have yanked him in a New York minute?  
 (23) A Assuming that the facts that you cite are true what you  
 (24) need to do and what I'd do and what I would always do is  
 (25) investigate the situation I'd talk to the people involved,

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- (1) check the context in which that - that radio conversation or  
 (2) whatever you said it was took place I'd look at the whole  
 (3) situation  
 (4) Q Let's discuss that a little bit Talk to the people  
 (5) involved You'd talk to among other people the suspect  
 (6) because you're a direct and forthright individual you'd say I  
 (7) have a report that this incident happened what's up is that a  
 (8) good first step?  
 (9) A Absolutely You'd confront the individual directly  
 (10) Q Always confront the individual directly isn't that right?  
 (11) A Sir?  
 (12) Q Always confront the individual directly?  
 (13) A Well as part of the investigation I think that's an  
 (14) integral part of any question you have  
 (15) Q It's both good management and part of being a decent  
 human  
 (16) being?  
 (17) A That's correct  
 (18) Q Did you confront Captain Hazelwood about the Shaw  
 incident  
 (19) directly?  
 (20) A I did not  
 (21) Q Okay Now with regard to this hypothetical I've given you  
 (22) about the Portland Shipyard let's assume that you got a report  
 (23) not only that beer was ordered over the walkie talkie by for  
 (24) example Captain Hazelwood but there were - and the beer  
 was  
 (25) Henry Weinhard's but there was empty Henry Weinhard beer  
 cans

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- (1) in one or two locations on the ship heightened sense of  
 (2) awareness?  
 (3) A Yes  
 (4) Q Go talk to the man?  
 (5) A Part of the investigation  
 (6) Q Do you know with regard to the Jim Shaw incident whether  
 (7) other potential witnesses with regard to the situation as to  
 (8) Captain Hazelwood acting weird were interviewed? Do you  
 know?  
 (9) A I asked - I do not know specifically  
 (10) Q Now Mr Shaw testified here by deposition and he says  
 (11) that he reported - and I don't recall to who in management so  
 (12) I'm not going to say it was you or I'm not going to say it was  
 (13) your port captain, but Shaw says that the report consisted of  
 (14) Joe had fallen off of the wagon Joe was drinking was that  
 (15) ever reported to you?  
 (16) A Captain Sheehy reported what I testified, and I'm afraid  
 (17) I'm misleading the jury in my eagerness to try and give you  
 a  
 (18) response in that last question  
 (19) Captain Sheehy told me - when he came back he talked to a  
 (20) lot of people Now, Captain Sheehy and I know each other  
 very  
 (21) well and he knows what I require, as does everybody else in  
 the  
 (22) fleet, and he knows exactly what I'm looking for, so the  
 (23) response well were other people talked to or interviewed, I  
 (24) feel quite certain that Captain Sheehy talked to a number of  
 (25) people on the ship like I asked him to

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- (1) Q Let me ask you a question about that Captain Sheehy's  
 (2) testified here If Captain Sheehy did not investigate the  
 (3) people who were involved in the incident that Mr Shaw related  
 (4) witnesses participants would Captain Sheehy have been  
 remiss  
 (5) in his duties?  
 (6) A I don't know that he did that but the answer to your -  
 (7) Q Assume he didn't would he have been remiss in his duties?  
 (8) A The answer is yes  
 (9) Q That would have been a reckless act wouldn't it?  
 (10) A He would have been remiss in his duties  
 (11) MR O NEILL I'm about to move on to another subject  
 (12) can we take a break?  
 (13) THE COURT Take our second break ladies and  
 (14) gentlemen We'll be in recess now for 15 minutes  
 (15) THE CLERK This court is in recess for 15 minutes  
 (16) (Jury out at 11:58 a.m.)  
 (17) (Jury in at 12:15 p.m.)  
 (18) BY MR O NEILL  
 (19) Q Would it be a fair statement that no one from above no one  
 (20) from Exxon told you to monitor Hazelwood between 1985 and  
 1987?  
 (21) A Yes  
 (22) Q And that was a - to the extent that you performed that  
 (23) duty that was self-generated?  
 (24) A It was generated based on information that I got from my  
 (25) predecessor

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- (1) Q Okay And if Mr Iarossi came in here and said that he  
 (2) told you to that is at least not consistent with your  
 (3) recollection is it?  
 (4) A It's not consistent with my recollection, yes  
 (5) Q Now, you talk about visiting Hazelwood's vessel Would it  
 (6) be fair to say that you visited Hazelwood's vessel  
 (7) approximately six times a year?  
 (8) A Yes If you consider Baytown and the other ports where I  
 (9) also visit ships, which would be Baton Rouge and New York  
 (10) primarily  
 (11) Q Baton Rouge how about is there a place called Texas City?  
 (12) A There is  
 (13) Q Did you visit him at Texas City sometimes too?  
 (14) A I may have  
 (15) Q And with regard to the other masters vessels you visited  
 (16) them about five times a year?  
 (17) A Yes, approximately  
 (18) Q And when you visited the other vessels you also checked to  
 (19) see if those masters had been drinking?  
 (20) A I check everything when I'm on the vessels  
 (21) Q And you did not instruct anyone to make day to day  
 (22) observations of Hazelwood?  
 (23) A I did not  
 (24) Q And you're aware of no piece of paper that exists any place  
 (25) at Exxon Shipping Company that deals with this monitoring

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- (1) situation are you?  
 (2) A I'm not aware of a piece of paper for the - relative to  
 (3) monitoring for the period that is of immediate concern to  
 (4) this discussion, which was '85 to '87  
 (5) Q That's right You don't know of any paper?  
 (6) A I don't know, I'm not aware of one  
 (7) Q And prior to the transfer you yourself never asked  
 (8) anybody who interfaced if I can use a computer term with  
 (9) Captain Hazelwood people on the vessel or shoreside, you  
 (10) never  
 (11) asked anyone directly whether Hazelwood had resumed  
 (12) drinking  
 (13) did you?  
 (14) A Could you reframe that for me, please?  
 (15) Q Sure At no time prior to the transfer did you ask anyone  
 (16) interfacing with Captain Hazelwood people on vessel or  
 (17) shoreside whether Hazelwood had resumed drinking?  
 (18) A I hesitate to answer you because I had a number of  
 (19) discussions, obviously many discussions with Captain Bill  
 (20) Sheehy  
 (21) Q Exclude Sheehy  
 (22) A I may have heard - I can't answer you absolutely I may  
 (23) have had other discussions with peers, other managers,  
 (24) Harvey  
 (25) Borgen  
 (26) Q Okay Would you go to Page 304 of your deposition line 12  
 (27) to line 17 Are you on Page 304?  
 (28) A 304

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- (1) Q And I'm going to read the question at line 12 and I'm  
 (2) going to go through line 17 and you tell me if you were asked  
 (3) this question and you gave this answer Well at any time  
 (4) before this conversation with Borgen in 1987 did you ask  
 (5) anyone who was interfacing with Hazelwood be they people on  
 (6) the vessel or people on the shoreside whether Hazelwood had  
 (7) resumed drinking? And your answer was no  
 (8) Is that a fair reading?  
 (9) A My answer is no  
 (10) Q Now when Captain Hazelwood was transferred to the west  
 (11) coast you did not tell Borgen that he had to monitor Captain  
 (12) Hazelwood did you?  
 (13) A I did not  
 (14) Q And captain - Mr Borgen did not indicate to you that he  
 (15) was going to monitor Captain Hazelwood for alcohol use that's  
 (16) a correct statement isn't it?  
 (17) A That's a correct statement  
 (18) Q Now with regard to your observations of Captain  
 (19) Hazelwood  
 (20) you have testified here today that you got to know the man  
 (21) pretty well I got to understand him do you recall that?  
 (22) A Yes  
 (23) Q You car-pooled with a fellow named Ellenwood?  
 (24) A I did  
 (25) Q On a daily basis from October of 1985 to April of 1987  
 (26) isn't that a correct statement?

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- (1) A Yes I missed the days but I car-pooled with the  
 (2) gentleman  
 (3) Q On a daily basis you? May have missed a day here or there  
 (4) out of town?  
 (5) A Yes  
 (6) Q You had much more contact with Ellenwood than you had  
 (7) Captain Hazelwood?  
 (8) A On a day to-day basis yes  
 (9) Q And you were a friend of Ted Ellenwood?  
 (10) A As I am a friend of Joe Hazelwood  
 (11) Q Captain Hazelwood And it turned out that Ellenwood had an  
 (12) alcohol problem isn't that right?  
 (13) A In 1988, it was reported he turned himself in for a  
 (14) program  
 (15) Q You had daily contact with Ted Ellenwood and made no  
 (16) observations at all with regard to Ted Ellenwood's problems?  
 (17) A Made no observations of Ted Ellenwood because there  
 (18) was no  
 (19) knowledge, prior knowledge that he may have had a  
 (20) problem,  
 (21) where as there was that knowledge that I had of Hazelwood  
 (22) Q You were on notice with regard to Captain Hazelwood?  
 (23) A That is correct  
 (24) Q With regard - let's go to the Shaw incident and I didn't  
 (25) quite catch your testimony with regard to this today but when  
 (26) Sheehy came back to report to you about the individuals that he  
 (27) talked to he didn't tell you who those individuals were did

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- (1) he?
- (2) **A He did not**
- (3) **Q Now you spoke to Shaw?**
- (4) **A I did**
- (5) **Q And was Sheehy in the room when you spoke to Shaw?**
- (6) **A We may have been - all three of us may have been together,**
- (7) **but I remember talking to Jim about the issue**
- (8) **Q And where does Mr Shaw fit on the chain of command with regard to you and Sheehy?**
- (9) **A The port steward reported directly to me in the - in the office And physically, he's - he's located a couple doors down from where I was, Baytown Texas office**
- (10) **Q With regard to this Mihajlovic incident that we've talked to you didn't know about it until after the grounding we're clear on that?**
- (11) **A That is correct**
- (12) **Q With regard to the transfer of Captain Hazelwood from the Gulf Coast fleet to the West Coast fleet, was Mr Iarossi in agreement with the decision to transfer Captain Hazelwood?**
- (13) **A When he came up at the meeting that I testified to just a few minutes ago, he was**
- (14) **Q Did this meeting occur at the time of transfer?**
- (15) **A It occurred in the springtime It was after - on or about but I would say it was after April '87, perhaps May, June, early July time frame**

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- (1) **Q Had the decision been made to transfer Captain Hazelwood at that period in time or was the discussion with Mr Iarossi a decision making meeting or did it predate or postdate a decision making meeting? Do you understand what I'm talking about?**
- (2) **A Yes It was a meeting, I think the primary reason for the meeting was to discuss rankings of senior officers but at that point in time Harvey Borgen and myself advised Mr Iarossi of the transfer**
- (3) **Q Did Mr Iarossi tell you he was shocked?**
- (4) **A He did not**
- (5) **Q You testified about the Captain's job performance and that was something that you monitored in 1986 do you recall that?**
- (6) **A Yes You talking generally?**
- (7) **Q Yes sir**
- (8) **A Yes yes**
- (9) **Q And would it be fair to say and this is Exhibit 155 for identification that in 1986 at least with regard to the rankings that was his worst year?**
- (10) **A Yes**
- (11) **MR O NEILL I'm just about done**
- (12) **MR SANDERS I was trying to look at your chart**
- (13) **MR O NEILL Thank you sir**
- (14) **REDIRECT EXAMINATION OF DWIGHT KOOPS (Live)**
- (15) **BY MR SANDERS**

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- (1) **Q Mr Koops let me go to a couple of things that Mr O'Neill asked you about One thing he asked you about was whether you monitored other captains or whether you looked at all things on all ships do you remember that testimony?**
- (2) **A Yes**
- (3) **Q Now when you went to Captain Hazelwood did you look for things with Captain Hazelwood that you didn't look for in other masters?**
- (4) **A I think the issue is - is one of quality versus quantity I'm just one human being, and I spread myself as thin as I possibly can, but when it comes to, say, visiting Captain Hazelwood, although the numbers may be fairly close, the way I spread myself**
- (5) **Q You mean number of visits?**
- (6) **A Number of visits, frequency of visits to ships that I can physically get around to, that I would say my visits to Captain Hazelwood had an aspect of quality I was looking for something perhaps a little bit different with Captain Hazelwood**
- (7) **than I was with the other masters, and that's how I explain the difference**
- (8) **Q In that sense did you watch Captain Hazelwood differently than you watched other masters?**
- (9) **A I would say so**
- (10) **Q And in that sense did you watch him more closely than other masters?**

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- (1) **A In a sense, yes**
- (2) **Q Now Mr O'Neill has asked you about a couple of conversations with Mr Iarossi And the first one had to do with - with Captain Mihajlovic I want to make sure that we're clear on this Did you have a conversation sometime with Mr Iarossi in which you told him what Captain Mihajlovic had told you?**
- (3) **A Yes**
- (4) **Q Difference is you think your recollection is - your belief is that it happened after the grounding and Mr Iarossi's recollection is that it happened before correct?**
- (5) **A That's correct**
- (6) **Q No doubt that the conversation occurred?**
- (7) **A Yes**
- (8) **Q All right And the conversation that you had with him in which you mentioned your father is there any doubt in your mind that you had that conversation with Mr Iarossi at some time?**
- (9) **A That's correct**
- (10) **Q The only difference is when did it happen?**
- (11) **A Yes**
- (12) **Q Now you were - you were asked a couple of questions about whether you were told to monitor The point is did you monitor Captain Hazelwood in terms of alcohol use?**
- (13) **A Absolutely**

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- (1) Q So regardless of who or whether you were told something  
 (2) you did it?  
 (3) A Yes  
 (4) Q And did you do it the entire time that Captain Hazelwood  
 (5) was within your supervision that is from October 1 1985  
 (6) until the end of April 1987?  
 (7) A The entire period  
 (8) MR SANDERS I have no further questions  
 (9) THE COURT Thank you You may step down sir  
 (10) Call your next witness  
 (11) MR NEAL Call Captain Ivan Mihajlovic and I think  
 (12) Your Honor that this is one where I have a few brief  
 (13) questions but Mr Chalos I think will take us back  
 (14) THE COURT I understand I got your message about it  
 (15) yesterday which I appreciate  
 (16) THE CLERK Raise your right hand please  
 (17) (The Witness Is Sworn)  
 (18) THE CLERK For the record sir state your full name  
 (19) your address and spell your last name please  
 (20) THE WITNESS My name is Ivan S Mihajlovic It's  
 (21) M I H A - J - L O V I C I live at 31 Seaspray Drive in  
 (22) Centerport New York  
 (23) DIRECT EXAMINATION OF IVAN MIHAJLOVIC (Live)  
 (24) BY MR CHALOS  
 (25) Q Captain Mihajlovic are you the brute we've been hearing

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- (1) about?  
 (2) A I guess so, huh?  
 (3) Q You don't look so tough in person  
 (4) By whom are you employed?  
 (5) A Sea River Maritime  
 (6) Q How long have you been employed by Sea River?  
 (7) A Just under 20 years  
 (8) Q Sea River being the successor of Exxon?  
 (9) A Exxon, that's correct  
 (10) Q You hold a master's license?  
 (11) A That is correct  
 (12) Q What is your present ship?  
 (13) A Present ship is the Sea River Mediterranean, the "ex"  
 Exxon  
 (14) Valdez  
 (15) Q That's the former Exxon Valdez?  
 (16) A That's correct  
 (17) Q How long have you been the master of that ship?  
 (18) A About three and a half years, since it came out of San  
 (19) Diego  
 (20) Q Now prior to that you were a master of other ships for  
 (21) Exxon?  
 (22) A That's correct  
 (23) Q When did you first obtain your master's license?  
 (24) A 1983  
 (25) Q 83?

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- (1) A 1983 yes  
 (2) Q And when did you first start sailing as master?  
 (3) A In 1984  
 (4) Q Prior to that I take it you were a chief mate?  
 (5) A That's correct  
 (6) Q How long were you a chief mate?  
 (7) A I got my chief mate's license in 1978 and from about '78  
 (8) to '83 beginning of '84 I sailed chief mate  
 (9) Q And I take it prior to that you were second mate for a  
 (10) number of years?  
 (11) A That's correct  
 (12) Q And before that you were a third mate?  
 (13) A That is correct  
 (14) Q Now where did you go to school?  
 (15) A I went to school at the United States Merchant Marine  
 (16) Academy at Kings Point  
 (17) Q And you graduated there when?  
 (18) A 1974 In June  
 (19) Q How many times have you sailed with Captain Hazelwood in  
 (20) your career?  
 (21) A In my career two or three  
 (22) Q What was the last time you sailed with him?  
 (23) A About 19 - 1981 1982  
 (24) Q And you were chief mate at the time?  
 (25) A That's correct

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- (1) Q Now you - do you consider Captain Hazelwood to be a  
 (2) friend of yours?  
 (3) A Yes I do  
 (4) Q You live close to him?  
 (5) A Yes, next town  
 (6) Q I'd like to ask you some questions about your experience in  
 (7) Prince William Sound  
 (8) A Okay  
 (9) Q When did you first start sailing up there  
 (10) A I believe it was 1977 Back then as third mate  
 (11) Q Okay And did you continue for a period of time going up  
 (12) there on a regular basis?  
 (13) A Yes, I did  
 (14) Q Until when?  
 (15) A I was on the west coast trade until end of 1984 beginning  
 (16) of 1985  
 (17) Q So I take it you made trips up there as a third mate?  
 (18) A That's correct  
 (19) Q As a second mate?  
 (20) A That's also correct  
 (21) Q As a chief mate?  
 (22) A Yes  
 (23) Q And up till 1985 as a master?  
 (24) A Yes, I did  
 (25) Q Did you hold a pilotage endorsement for Prince William

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- (1) Sound?
- (2) A No, I do not have it
- (3) Q Do you have a pilotage endorsement today for Prince William Sound?
- (4) Sound?
- (5) A No, I do not
- (6) Q How many trips – incidentally, where did you go in 1985?
- (7) A In 1985, I went to the Houston office to work as an assistant marine advisor for Bill Duncan
- (8) Q How long – how long were you there?
- (9) A Six months
- (10) Q What does an assistant marine advisor do?
- (11) A Basically, it's port approvals for different ports for our charter vessels and anything that may come up, a little bit maybe on the bridge organization manual a little bit on other stuff, pilotage, federal regulations used to come by my desk and I'd have to read them
- (12) Q Let me ask you about that During your tenure in Houston in 1985 did you have occasion to see a proposed rule making by the Coast Guard relating to pilotage in Prince William Sound?
- (13) A I believe I did, yes
- (14) Q What do you recall about the proposal rule making that you saw?
- (15) A I recall that they were talking about abolishing pilotage in Prince William Sound completely
- (16) Q Had you heard talk to that effect that pilotage was going

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- (1) to be abolished in Prince William Sound?
- (2) A Yes I did And I heard talk about reasons for not abolishing would be some of the captains there that were getting extra money going in and out obviously they wouldn't want it abolished but there was a discussion period on it
- (3) Q Did you hear the reasons as to why they wanted to abolish it?
- (4) A I assume that they just felt that it wasn't necessary anymore
- (5) Q When you say you assume what do you mean? You assume it wasn't necessary? Why not?
- (6) A Well, there were a lot of captains running up there without pilotage
- (7) Q You being one?
- (8) A Me being one yes sir
- (9) Q Let me ask you something Where did you go when you left the office in 1985 or 1986?
- (10) A I went on the Exxon Benicia
- (11) Q And where did that ship trade?
- (12) A That ship traded into Alaska I only made one trip or so on it
- (13) Q Did you have occasion to go to the far east at some point before you went to Alaska?
- (14) A That's correct about 1986 After that Benicia I was transferred to the east coast and was on the Exxon San

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- (1) Francisco We were running between Baytown, Baton Rouge and Chiriqu Grande and about 1987, 1988, I can't remember exactly when, we went around – actually went around the world, just about, to Singapore up to the shipyard period for transfer to the west coast
- (2) Q Okay Did you come back to Alaska after Singapore?
- (3) A Yes, I did
- (4) Q Before we get to Alaska let me ask you this What was your understanding of the pilotage regulations in 1985 and 1986 for Prince William Sound?
- (5) A In 1985 and in 1986, they were going out the door They were going to be no more pilotage That's what I understood it to be
- (6) Q Now, when you came back from Singapore did you have occasion to ask anyone what the status of the pilotage regulations was for that time?
- (7) A When I left Singapore, I called up – well, let me clarify 1984, before, it used to be daylight only passages, referring –
- (8) Q What does that mean?
- (9) A That means that you could only, with non pilotage, go from Cape Hinchinbrook all the way to the dock at daylight and same thing going out, it was very, very rigid In 1986, when I went up to Singapore, I went to see if did that change or what, and basically they told me that, yes, you know, that's applicable

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- (1) anymore
- (2) Q Well let's slow down a second
- (3) A Okay
- (4) Q You were coming back from Singapore?
- (5) A Right
- (6) Q Going to Alaska?
- (7) A That's correct
- (8) Q To Prince William Sound this is your first trip back in what two years?
- (9) A Yes
- (10) Q And you said you made an inquiry to find out what the pilotage regulations were?
- (11) A That's correct
- (12) Q Who did you make that inquiry to?
- (13) A Alaska Maritime Agency
- (14) Q And who was Alaska Maritime?
- (15) A Alaska Maritime Agency was our agents in Valdez
- (16) Q How did you contact them?
- (17) A I believe I contacted them first by telex and then by telephone
- (18) Q And did Alaska Maritime respond?
- (19) A Yes
- (20) Q How did they respond?
- (21) A They responded by sending me a fax or a telex of a letter
- (22) Q Okay Let me put up what we previously marked as DX2476



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- (1) that s the Alamar letter  
 (2) MR CHALOS I misidentified the exhibit Your Honor  
 (3) It s 3483 DX3483 Not only have they taken the machines away  
 (4) from me now I can t get the exhibits right  
 (5) Your Honor I ve been told that this exhibit hasn t been  
 (6) offered  
 (7) THE COURT I m sorry give me that number again?  
 (8) MR CHALOS 3483 DX  
 (9) THE COURT That s a memo FROM Martineau to the  
 (10) masters of Exxon Shipping  
 (11) MR CHALOS This is the second page of that memo  
 (12) THE COURT It s not from Alamar  
 (13) MR CHALOS The cover sheet is from Martineau the  
 (14) second page is the Alamar letter I thought I offered it into  
 (15) evidence If I haven t I ll do that at this time No  
 (16) problem  
 (17) MR O NEILL Offer  
 (18) THE COURT My notes show that 3483 has been admitted  
 (19) MR CHALOS I ll offer it at this time Your Honor  
 (20) MR O NEILL You don t need to  
 (21) MR CHALOS Oh it s in?  
 (22) THE COURT It s in you got it  
 (23) BY MR CHALOS  
 (24) Q Let me ask you this Is this the letter that you got? Do  
 (25) you recognize this?

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- (1) A I recognize the letter yes  
 (2) Q Okay Do you recognize it as the letter that you received  
 (3) from Alaska Maritime?  
 (4) A Yeah Yes  
 (5) Q Now when you received this letter did you read it?  
 (6) A Yes, I did read it  
 (7) Q What did you conclude from reading this letter?  
 (8) A Well, I concluded basically that pilotage was no longer an  
 (9) issue, using this letter and stuff that I had seen before It  
 (10) wasn't the issue that it once was  
 (11) Q So your belief in 1988 - by the way, when did you come  
 (12) back to Alaska in 1988?  
 (13) A I believe it was September  
 (14) Q Of 88?  
 (15) A Yeah  
 (16) Q So your belief in September of 1988 was that pilotage had  
 (17) been waived in Prince William Sound?  
 (18) A Basically, yes  
 (19) Q Incidentally you said you didn t have a pilotage  
 (20) endorsement?  
 (21) A No  
 (22) Q Right Where did you pick up and drop off the pilot in  
 (23) Prince William Sound?  
 (24) A I dropped off the pilot either above Busby or just below  
 (25) Busby

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- (1) MR CHALOS Excuse me one second Your Honor just  
 (2) going to put up a chart I m going to use this chart because  
 (3) it has all of Prince - oh I guess not I ll use this that s  
 (4) fine  
 (5) BY MR CHALOS  
 (6) Q Captain can you see this?  
 (7) A Yes I can  
 (8) Q When you picked up the pilot and dropped off the pilot  
 (9) where did you pick him up? Can you - can you tell me? I ll  
 (10) point to it so you don t have to come down  
 (11) A Just above Busby in that little area between Busby and  
 (12) Rocky Point  
 (13) Q That s Rocky Point there?  
 (14) A So in there  
 (15) Q Just in there?  
 (16) A In there that's right, or just below Busby in that area  
 (17) Q What would that depend on?  
 (18) A That would depend on weather  
 (19) Q Mainly?  
 (20) A Mainly weather, yes  
 (21) Q As you understood the situation in 1988 where was the  
 (22) pilot station?  
 (23) A In 1988 Rocky Point  
 (24) Q Rocky Point being up here -  
 (25) A Yes

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- (1) Q - in this area? Before I put this up I just want to ask  
 (2) you something I want to put this off to the side for a  
 (3) second Oh I trapped myself Can we get the first paragraph  
 (4) blown up? You can look at it Can we make it a little bigger  
 (5) first paragraph? That s good  
 (6) Captain the first paragraph says and I ll read it  
 (7) effective September 1 1986 the U S Coast Guard requirement  
 (8) for daylight passage in Prince William Sound for vessels  
 (9) without pilotage has been waived see that?  
 (10) A Yes I do  
 (11) Q All non pilotage vessels will be able to transit from Cape  
 (12) Hinchinbrook to the pilot station and that we said was Rocky  
 (13) Point right?  
 (14) A Yes  
 (15) Q At all hours as long as visibilities remain at two miles  
 (16) or greater The same remains true for the outbound leg from  
 (17) the pilot station to Cape Hinchinbrook You see that?  
 (18) A Yes, I do  
 (19) Q Then there s some requirements for reporting in the last  
 (20) couple of paragraphs Those requirements for reporting can  
 (21) we  
 (22) go back to the - see where it says about notifying the Coast  
 (23) Guard and it says here number three yeah  
 (24) It talks about a bridge navigation team consisting of an  
 (25) extra watch stander under the direction of the deck officer  
 other than the one on watch must report the vessel s position

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- (1) every ten minutes while navigating from Cape Hinchinbrook to  
 (2) Montague Point you see that?  
 (3) A Yes, I do  
 (4) Q What did you understand that third requirement to be?  
 (5) A I don't understand  
 (6) Q What did you understand when they re talking about two  
 (7) officers on the bridge and reporting every ten minutes?  
 (8) A Well, just two officers  
 (9) Q Now is that in a specific area that they re talking about  
 (10) there?  
 (11) A Just in that area, just from Cape Hinchinbrook, Cape  
 (12) Hinchinbrook up to Montague Island, about 13 miles  
 (13) Q We don't have that but Cape Hinchinbrook is down here  
 (14) down here right?  
 (15) A I guess so, Mike  
 (16) MR CHALOS Do we have the other one?  
 (17) MR NEAL Don't you have it behind you there?  
 (18) MR CHALOS No that's the small one too  
 (19) BY MR CHALOS  
 (20) Q Let me ask you to assume that Cape Hinchinbrook is down  
 (21) here  
 (22) A Okay  
 (23) Q Is that right?  
 (24) A Yes  
 (25) Q And Montague Point is down there too?

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- (1) A That's correct  
 (2) Q And that's a short stretch about ten miles or so?  
 (3) A That's correct  
 (4) Q So what they re talking about there is having two watch  
 (5) standers on the bridge in that ten mile stretch isn't that  
 (6) correct?  
 (7) A That is correct  
 (8) Q Now there's nothing in this that talks about having two  
 (9) watch standers in all of Prince William Sound does it?  
 (10) A No  
 (11) Q Above that point?  
 (12) A No there's not  
 (13) MR CHALOS Oh look at this Your Honor I offer at  
 (14) this time DX9172 It's the chart of Prince William Sound  
 (15) (Exhibit 9172 offered)  
 (16) MR O NEILL No objection  
 (17) THE COURT DX9172 is admitted  
 (18) (Exhibit 9172 received)  
 (19) BY MR CHALOS  
 (20) Q Okay Captain the area that we re talking about is -  
 (21) here's Cape Hinchinbrook right?  
 (22) A That's correct  
 (23) Q And Montague Straits is right here?  
 (24) A Just the top piece here  
 (25) Q Right here?

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- (1) A Move your hands to the left  
 (2) Q To the left?  
 (3) A There you go  
 (4) Q So it's this area right in here?  
 (5) A That's correct  
 (6) Q That's the only area that that regulation or that letter  
 (7) said you had to have two officers?  
 (8) A That is correct  
 (9) Q Bligh Reef is way up here right?  
 (10) A That is correct  
 (11) Q Rocky Point is up here?  
 (12) A That's right  
 (13) Q Okay Now prior to the grounding, you operated on the  
 (14) principle that pilotage had been waived right?  
 (15) A That is correct  
 (16) Q And that just to recap, that you only needed one officer  
 (17) on the bridge in that area above Montague Point?  
 (18) A That's correct  
 (19) Q Now, Captain, going back to - to the letter from Alaska  
 (20) Maritime can we go back to the first paragraph that paragraph  
 (21) says - refers to non pilotage vessels right?  
 (22) A That's correct  
 (23) Q It doesn't refer to pilotage vessels does it?  
 (24) A No it does not  
 (25) Q Well did you assume that pilotage was waived also for

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- (1) pilotage vessels or just non pilotage vessels?  
 (2) A For both vessels  
 (3) Q Why do you say that?  
 (4) A Well you can't hold a pilotage vessel to a stricter  
 (5) compliance than a non pilotage vessel You know, if a  
 (6) person  
 (7) has the extra training, you would think that he would be let  
 (8) off easier  
 (9) Q Well let's see if I understand this right As you were  
 (10) interpreting this - as this letter is written, it talks about  
 (11) non pilotage vessels right?  
 (12) A That's correct  
 (13) Q And you re saying - you re saying what that pilotage  
 (14) vessels didn't have to comply either with the pilotage  
 (15) requirements?  
 (16) A That's correct  
 (17) Q And what's the basis of that?  
 (18) A I just feel that a pilotage vessel can't be held to a  
 (19) higher standard than a non-pilotage vessel  
 (20) Q Well it would be true wouldn't it the way you'd get  
 (21) around if you were a pilotage vessel and the fellow with the  
 (22) pilotage didn't want to stand the pilotage watch all he had to  
 (23) do under this regulation is declare his vessel a non pilotage  
 (24) vessel right?  
 (25) A That is correct  
 (26) Q Is that the basis for what you re talking about?

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- (1) **A That is correct**  
 (2) **Q Now subsequent to the grounding there was a chief mate assigned to your ship that had the pilotage endorsement?**  
 (3) **A After the grounding?**  
 (4) **Q Yeah subsequent?**  
 (5) **A Yes**  
 (6) **Q That means after?**  
 (7) **A Yes**  
 (8) **MR NEAL Your Honor could we approach the bench a moment?**  
 (9) **MR O NEILL They re objecting to each other This is great**  
 (10) **(At side bar off the Record)**  
 (11) **THE COURT The last question has been withdrawn and the jury will ignore it**  
 (12) **BY MR CHALOS**  
 (13) **Q Captain when you were operating in Prince William Sound -**  
 (14) **A Yes**  
 (15) **Q - with one officer on the bridge above Cape - above Montague Point?**  
 (16) **A Yes**  
 (17) **Q Did you believe that you were in compliance with the Exxon bridge organization manual having one officer on the bridge?**  
 (18) **A Yes**  
 (19) **Q You did?**

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- (1) **A Yes**  
 (2) **Q Have you ever gone below in Prince William Sound?**  
 (3) **A Yes, I have**  
 (4) **Q And left your mate in charge of the -**  
 (5) **A That's correct**  
 (6) **Q Have you ever gone below in a place above Bligh Reef?**  
 (7) **A Yes, I did once**  
 (8) **Q Have you ever gone below in the Narrows?**  
 (9) **A That's what I'm talking about, yes, sir**  
 (10) **Q How long did you stay off the bridge when you were in the Narrows?**  
 (11) **A It was just about the whole transit**  
 (12) **Q Of the Narrows?**  
 (13) **A That's correct**  
 (14) **Q You had something to do?**  
 (15) **A Yes, it was after the grounding**  
 (16) **Q This was after the grounding?**  
 (17) **A Yes**  
 (18) **Q Well my question to you is did you have something to do on that occasion that caused you to leave the bridge?**  
 (19) **A Yes, I did**  
 (20) **Q And you felt - you felt at that time confident enough to leave your mate and the pilot on the bridge?**  
 (21) **A Yes, I did**  
 (22) **Q Captain based on your experience is it the master s**

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- (1) **discretion as to when he should be on the bridge or when he should be off the bridge?**  
 (2) **A Yes**  
 (3) **Q He makes that decision?**  
 (4) **A Yes**  
 (5) **Q Is there any regulation that you re aware of in Prince William Sound that requires the master to be on the bridge at any time?**  
 (6) **A No**  
 (7) **Q Is that a no?**  
 (8) **A That's a no**  
 (9) **Q Is it a halfhearted no or do you know that to be true?**  
 (10) **A I haven't been there in three and a half years so -**  
 (11) **Q Based on the experience that you had up there did you know of any regulation -**  
 (12) **A No**  
 (13) **Q - that required the captain to be on the bridge?**  
 (14) **A No, I didn't**  
 (15) **Q Captain you ve sailed in areas other than Prince William Sound have you not?**  
 (16) **A Yes, I have**  
 (17) **Q How do you compare Prince William Sound in terms of navigational hazards to other areas that you might have sailed in where you would encounter restricted waters?**  
 (18) **A I would have to say that areas such as the Red Sea now**

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- (1) **Gibraltar, English Channel, I mean, there is no comparison to - for those areas than compared to Prince William Sound**  
 (2) **Q In what way?**  
 (3) **A Amount of traffic fishing boats just a lot closer traffic**  
 (4) **Q Just so I m clear are you saying those other areas that you re talking about are much more hazardous in terms of navigating than Prince William Sound?**  
 (5) **A Oh, yes, yes, the other areas are more hazardous than Prince William Sound**  
 (6) **Q There s been testimony by the commandant of the Coast Guard Admiral Yost that he believes this area to be a very easy area to navigate Do you agree or disagree with that?**  
 (7) **A I would agree**  
 (8) **Q Based on your experience are the navigational hazards in this area well-known?**  
 (9) **A Yes**  
 (10) **Q And well marked?**  
 (11) **A Yes they are**  
 (12) **Q Well lit at night? Well marked in the daytime?**  
 (13) **A Yes**  
 (14) **Q Captain have you ever used the autopilot in Prince William Sound?**  
 (15) **A I may have once**  
 (16) **Q Are you aware of any regulations that prohibit its use in**

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- (1) Prince William Sound?  
 (2) A At that time?  
 (3) Q Yes when you were there?  
 (4) A No  
 (5) Q And prior to the grounding is what I'm talking about  
 (6) A Prior to the grounding, no  
 (7) Q The use of the autopilot is in the discretion of the  
 (8) master is it not?  
 (9) A That's correct  
 (10) Q I'd like to ask you now about your relationship to the  
 (11) Vessel Traffic Center while you were up there  
 (12) A Yes  
 (13) Q You had occasion to communicate with them?  
 (14) A Yes, I did  
 (15) Q Okay What did you understand the function of the vessel  
 (16) traffic system to have been while you were up there?  
 (17) A The Vessel Traffic Center or any vessel traffic system is  
 (18) basically to keep the vessel in a safe condition, to assist the  
 (19) vessel  
 (20) Q Assist in what way?  
 (21) A Assist in the safety, safe transit of the vessel  
 (22) Q Did you believe while you were up there that you were being  
 (23) monitored by the Coast Guard?  
 (24) A Yes  
 (25) Q Let's stick to an area above Bligh Reef starting at Bligh

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- (1) Reef and above Did you believe you were monitored in that  
 (2) area?  
 (3) A Yes, I did  
 (4) Q What did you expect of the Coast Guard in respect to their  
 (5) monitoring you? Did you expect anything from them?  
 (6) A Well, I expected them to keep me informed if they were  
 (7) tracking me and I was standing into danger or something  
 (8) Q We've used that term before can you explain what standing  
 (9) into danger means?  
 (10) A Well standing into danger is a term that - let's say I'm  
 (11) proceeding towards oh I don't know  
 (12) Q Let's say Bligh Reef  
 (13) A Okay Bligh Reef  
 (14) Q Why not?  
 (15) A And I continue to proceed towards that course the traffic  
 (16) system would turn and explain to me captain you are  
 (17) standing into danger in other words captain you better do  
 (18) something  
 (19) you might want to change course or you're going to cause a  
 (20) grounding or whatever  
 (21) Q Would you expect - or did you expect while you were up  
 (22) there that they would call you and give you a helm order?  
 (23) A No  
 (24) Q You wouldn't expect that?  
 (25) A No  
 (26) Q That's up to you that's your discretion what helm to use

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- (1) right?  
 (2) A That's correct  
 (3) Q They're not going to call you up and say captain come  
 (4) right ten degrees?  
 (5) A That's correct  
 (6) Q Now there's been some testimony that the Coast Guard  
 (7) never  
 (8) gave speed orders either Did you have occasion up there to  
 (9) get a speed order or hear a speed order from them?  
 (10) A We were coming down once, and we had come into the  
 (11) northbound lane to avoid ice and the Coast Guard called the  
 (12) overseas Juneau, I believe, and it was - and told them to  
 (13) slow  
 (14) down and proceed towards the anchorage to allow me time  
 (15) to get  
 (16) back into my southbound lane And then the Valdez was  
 (17) behind  
 (18) that and told them to slow down  
 (19) Q I see You were on another ship at the time?  
 (20) A I was on the Exxon San Francisco outbound, yes  
 (21) Q I see So they ordered the two ships that were coming  
 (22) inbound to slow down to let you get back in the lanes?  
 (23) A That's correct, they told them to slow down  
 (24) Q Now Captain I want to ask you one last area There's  
 (25) been some testimony here by chief warrant officer -  
 (26) Mr Montague calls him Lieutenant Delozier but he was really a  
 (27) chief warrant officer - Delozier had said that when he  
 (28) interviewed Captain Hazelwood and Third Mate Cousins that  
 (29) they  
 (30) both told him that Captain Hazelwood ordered the mate to  
 (31) make

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- (1) his turn at the 38 fathom mark just below Busby over here  
 (2) okay I want you to assume that as a hypothetical Are you  
 (3) with me so far?  
 (4) A Yeah I can just hardly see that chart, though  
 (5) Q Right here Lieutenant Commander Falkenstein says no  
 (6) nobody ever told him that when he asked Captain Hazelwood  
 (7) he  
 (8) told him that he instructed the mate to turn at Busby Island  
 (9) light okay I want you to assume that fact as well  
 (10) A Okay  
 (11) Q In your - how many years did we say you're sailing 20  
 (12) years?  
 (13) A Close to 20 years, yeah  
 (14) Q Did you ever receive an order from a captain to make a turn  
 (15) at a fathom mark?  
 (16) A No  
 (17) Q Did you as a master or senior officer ever instruct a  
 (18) mate to turn your vessel at a fathom mark?  
 (19) A No  
 (20) Q Have you ever heard of anybody that you've sailed with give  
 (21) an order to turn at a fathom mark?  
 (22) A No  
 (23) MR CHALOS Thank you Captain  
 (24) Mr Neal? Your witness  
 (25) EXAMINATION OF IVAN MIHAJLOVIC (Live)  
 (26) BY MR NEAL

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- (1) Q Captain Mihajlovic I m Jim Neal I represent the Exxon  
 (2) defendants You and I have met?  
 (3) A Yes  
 (4) Q There s been some testimony here about a time down in  
 (5) Chiriqui Grande is that the way you pronounce it?  
 (6) A That's correct  
 (7) Q When you had occasion to search Captain Hazelwood s  
 (8) quarters - did you conduct such a search?  
 (9) A Yes, I did  
 (10) Q Would you tell us before we get to the search itself tell  
 (11) us how that came about  
 (12) A I was in Baton Rouge on the Exxon San Francisco  
 (13) Q You want to speak up just a little bit in what Mr Sanders  
 (14) calls the silver microphone?  
 (15) A Sure  
 (16) Q Use the silver microphone with your silver voice  
 (17) A Okay I was on the Exxon San Francisco in Baton Rouge  
 (18) Captain Sheehy had made one of his visits down to the  
 vessel  
 (19) Captain Sheehy is also a classmate of mine, so we were  
 talking  
 (20) about just what was going on on the ship and everything  
 else,  
 (21) just very casual, friendly And he had told me there that he  
 (22) knew I was friends with Captain Hazelwood and that he had  
 heard  
 (23) rumors there, predominantly from a guy by the name of Jim  
 Shaw,  
 (24) that Captain Hazelwood was drinking again and am I  
 familiar  
 (25) with the company policy, that if you get caught with alcohol  
 on

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- (1) the ship, you're going to get canned So I said, you know,  
 (2) I - I never heard anything, I was just curious how these  
 (3) rumors get started And he said, well, you know, if you  
 come  
 (4) across him, would you look into it And that's basically how  
 (5) Captain Sheehy talks  
 (6) Q Now you were in Baton Rouge and Captain Sheehy was the  
 (7) port captain?  
 (8) A That's correct  
 (9) Q His superior - well let me back that up because it may  
 (10) depend on the time Do you know approximately when this  
 (11) conversation with Captain Sheehy occurred?  
 (12) A I'd have to say summer of '86 It's been a long time  
 (13) Q Okay Summer of '86 When you had the conversation with  
 (14) Captain Sheehy he was the port captain of your fleet, the gulf  
 (15) coast fleet?  
 (16) A That's correct  
 (17) Q And you were a captain in that fleet and Captain Joseph  
 (18) Hazelwood was a captain in that fleet?  
 (19) A That is correct  
 (20) Q And Mr Sheehy s immediate superior was a man by the  
 name  
 (21) of Dwight Koops?  
 (22) A That's correct also  
 (23) Q You have a conversation with port Captain Sheehy he tells  
 (24) you about a rumor that Joe is drinking again or something like  
 (25) that, and he mentions a man named Shaw a Jim Shaw is that

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- (1) correct?  
 (2) A That is correct  
 (3) Q And he asked you to look into it when you get the chance  
 (4) or words to that effect?  
 (5) A Words to that effect yes  
 (6) Q All right Now then tell us then about from that point  
 (7) on how the search took place that is where did you find  
 (8) Captain Hazelwood and so forth?  
 (9) A All right I was on the San Francisco, once again, and we  
 (10) were at the loading buoy in Chiriqui Grande Loading  
 buoys,  
 (11) just one buoy, you tie up one line and they have a hose that  
 (12) comes around and they lift it up and put it on a manifold,  
 very  
 (13) simple system Captain Sheehy, Captain Hazelwood's ship  
 had  
 (14) just took arrival and had anchored at Chiriqui Grande it's a  
 (15) nice like bay I know the pilots we been running down  
 there  
 (16) quite often, so I said could I get a launch there and go over  
 (17) and see Joe Said no problem, you know, so they took me  
 over  
 (18) there When I went over there, I talked to Joe I said, hey  
 (19) Joe you know, I heard about this rumor This rumor's not  
 (20) good, you know this company is very adamant about this  
 and  
 (21) they're going to can you And Joe, figuring it's just another  
 (22) rumor and here we go again and all that, said something,  
 and  
 (23) people that know me know that I have occasional temper  
 (24) Q Occasional temper?  
 (25) A Occasional yeah

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- (1) Q That s good Occasional?  
 (2) A Occasional I'm not quite the beast you all heard before  
 (3) but I went over there, I talked to him and I started to get -  
 (4) you know, this is serious, you could lose your job And he  
 (5) said, hey, if you don't believe me, you're welcome to take a  
 (6) look in my room which I did  
 (7) Q A look in your room let s talk about that On the - he  
 (8) was on the Yorktown that s a smaller vessel than the Valdez  
 (9) is that correct?  
 (10) A That is correct  
 (11) Q On the Yorktown was there a - by the way something that  
 (12) may be not clear here most of us we go to work in the  
 (13) morning, we come home at night we have a workplace and a  
 place  
 (14) to come home and eat and sleep and have a drink or whatever  
 we  
 (15) do and when you re on board a vessel your workplace and  
 your  
 (16) home place is the same place is it not?  
 (17) A That is correct  
 (18) Q Now on the Valdez we ve learned there was a living  
 (19) room - or what do you call it stateroom?  
 (20) A They have a stateroom and they have your bedroom  
 (21) Q A bedroom?  
 (22) A Yeah, and then an office  
 (23) Q Okay So you have a little sitting room and a bedroom?  
 (24) A It would be the office, and a sitting room would be on the  
 (25) Yorktown, for example Then the bedroom is adjoined, but  
 just

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- (1) off to the side, that's your bedroom  
 (2) Q So you have two rooms?  
 (3) A Right  
 (4) Q You have what we'll call the office and what we'll call a  
 (5) bedroom?  
 (6) A Exactly  
 (7) Q Now did you search the office?  
 (8) A Yes, I did  
 (9) Q Did you look in drawers?  
 (10) A Yes, I did  
 (11) Q Did you look in refrigerators?  
 (12) A Yes, I did  
 (13) Q All right Did you then go into the bedroom?  
 (14) A Yes, I did  
 (15) Q Did you search the bedroom?  
 (16) A Yes, I did  
 (17) Q Did you find anything of alcoholic beverage at all?  
 (18) A No, I did not  
 (19) Q How did Joe look?  
 (20) A Kind of surprised  
 (21) Q Pardon me?  
 (22) A I said he looked kind of surprised  
 (23) Q Otherwise - I mean did he look like he might have been  
 (24) drinking?  
 (25) A No, not at all

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- (1) Q Anything like that?  
 (2) A No  
 (3) Q Good shape?  
 (4) A Good shape  
 (5) Q You think this was about the summer of 1986?  
 (6) A That is correct  
 (7) Q Now following this did you make any report on your what  
 (8) I'll call investigation?  
 (9) A I wouldn't call it investigation  
 (10) Q Well on your search?  
 (11) A On my search all right I went up - back to Baton Rouge,  
 (12) that was our regular run Chiriqui Grande up to Baton  
 (13) Rouge  
 (14) and Captain Sheehy happened to be up there again I can't  
 (15) recall whether it was the very next trip or the trip after but  
 (16) any way it was in Baton Rouge He came on and I said, you  
 (17) know that's a lot of baloney and, you know I just went on  
 (18) the  
 (19) ship there, and I don't know whether we're still friends or  
 (20) not, but there's nothing on here, there's nothing I've seen I  
 (21) mean he didn't know I was in port, we don't - can't keep in  
 (22) touch with each other so it was totally by surprise And  
 (23) that  
 (24) was it  
 (25) Q So you told him that this Shaw report rumor whatever  
 (26) you're talking about was a bunch of baloney?  
 (27) A In those words  
 (28) MR NEAL You may examine

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- (1) CROSS EXAMINATION OF IVAN MIHAJLOVIC (Live)  
 (2) BY MR O'NEILL  
 (3) Q You are a friend of Captain Hazelwood's?  
 (4) A That is correct  
 (5) Q And indeed you both live in the same part of the country  
 (6) in adjoining towns?  
 (7) A That's also correct  
 (8) Q And you've testified on his behalf before haven't you?  
 (9) A That's correct also  
 (10) Q Now, with regard to the pilotage endorsement of Prince  
 (11) William Sound you testified about a proposal rule making that  
 (12) you found out about and you used the expression proposed  
 (13) rule  
 (14) making isn't that right?  
 (15) A That's correct  
 (16) Q And a proposal rule making is when the government  
 (17) publishes  
 (18) in the federal register its intent to either come out with a  
 (19) new rule or change a rule but the notice with regard to the  
 (20) proposed rule making is not the rule is it?  
 (21) A That's correct also  
 (22) Q They put it out into the public and they say here, public,  
 (23) comment on this?  
 (24) A That's right  
 (25) Q And as you sit here today you know that that proposed rule  
 (26) was never adopted as the final rule don't you?  
 (27) A I don't know

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- (1) Q You don't know?  
 (2) A No, I been out of Alaska since 1990, after the accident I  
 (3) haven't been back there, sir  
 (4) Q Well you know through 1990 that that proposed rule was  
 (5) never adopted don't you?  
 (6) A That's correct  
 (7) Q So did - when you found out about the proposed rule  
 (8) through 1990 the proposed rule was never adopted?  
 (9) A That's correct  
 (10) Q And with regard to the notice that you got from Alamar can  
 (11) we bring that up, second page?  
 (12) MR CHALOS You need some help Mr O'Neill?  
 (13) MR O'NEILL Got it  
 (14) BY MR O'NEILL  
 (15) Q The Alamar document in point of fact only deals with  
 (16) non pilotage vessels isn't that correct?  
 (17) A That's correct  
 (18) Q And with regard to pilotage vessels it doesn't address the  
 (19) subject is that not correct?  
 (20) A That's also correct sir  
 (21) Q And with regard to your testimony about pilotage vessels  
 (22) those are assumptions that you made you didn't get that from  
 (23) this notice did you?  
 (24) A That's correct  
 (25) Q And you're aware of course that as - as - as the master

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- (1) of a vessel if in fact pilotage is required chapter 46 of the  
 (2) United States Code requires that the pilot be in direction and  
 (3) control of the vessel you re aware of that aren t you?  
 (4) A I guess I am now, yes, sir  
 (5) Q With regard to the Exxon bridge manual your employer you  
 (6) know takes the position - do you know that your employer  
 (7) takes the position that at or about the time of the accident  
 (8) the grounding of the Exxon Valdez that there was a  
 requirement  
 (9) that there be two officers on the bridge you know that s what  
 (10) your employer s position is don't you?  
 (11) A You were asking me what I did?  
 (12) Q My question is do you know what your employer s position  
 (13) is?  
 (14) A I don't remember, sir  
 (15) Q Your employer has stipulated binding stipulation on this  
 (16) jury, in this court that Captain Hazelwood was negligent in  
 (17) leaving the bridge of the Exxon Valdez at or about 11 53 and  
 (18) that such negligence was a proximate cause of the spill are  
 (19) you aware of that?  
 (20) A That's the first time I've seen it, sir  
 (21) Q Who's Mr Duncan?  
 (22) A Captain Duncan is - was the marine advisor and he was  
 the  
 (23) gentleman that I worked for  
 (24) Q You worked for Captain Duncan and Captain Duncan was  
 the  
 (25) author of the bridge manual wasn t he?

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- (1) A Yes, he was  
 (2) Q Captain Duncan has testified here about the question of  
 (3) discretion And this is Captain Duncan  
 (4) (Portion of Video of Captain Duncan played as follows)  
 (5) BY VIDEO EXAMINER  
 (6) Q The watch conditions as they are set forth in the manual  
 (7) are they absolute mandates in which the master is obligated to  
 (8) comply with?  
 (9) A They're Exxon guidelines  
 (10) Q So given the conditions as a master understanding them to  
 (11) be and the situation the vessel is in is it fair to say the  
 (12) master has the discretion as to what watch condition he would  
 (13) invoke for any given time period?  
 (14) A Yes, he can certainly increase as appropriate  
 (15) Q Captain did I just understand you to say that the watch  
 (16) types are only guidelines and that the master can increase  
 (17) them as appropriate?  
 (18) A Yes  
 (19) Q Can t decrease them?  
 (20) A No, sir  
 (21) Q Okay so Captain Hazelwood didn t have the discretion to  
 (22) decrease the watch (indiscernible) on the night of the  
 (23) grounding?  
 (24) A Yes  
 (25) BY MR O NEILL

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- (1) Q Now that is the man who wrote the bridge manual and that is  
 ( ) the man who is your boss?  
 (3) A That's correct  
 (4) Q And you re the designated hitter coming in here to muddy  
 (5) the water with regard to that subject?  
 (6) A Sir I -  
 (7) MR NEAL Objection Your Honor whose designated  
 (8) hitter?  
 (9) THE COURT I ll take that as an objection I ll  
 (10) sustain the objection Ask another question  
 (11) MR O NEILL Thank you Judge  
 (12) BY MR O NEILL  
 (13) Q Let s talk for a minute about the relationship of the VTC  
 (14) okay There is a VTC manual isn t that right?  
 (15) A That's correct  
 (16) Q And you re familiar with the VTC manual as it was in 1988?  
 (17) A I was sir I don't know whether I am now  
 (18) Q And I have two paragraphs of the VTC manual and are you  
 (19) aware of the paragraph in the VTC manual paragraph 4 which  
 (20) says nothing in this manual is intended to relieve any person  
 (21) from complying with any other laws and regulations? The  
 (22) manual s purpose is not to let you off of the hook with regard  
 (23) to other laws and regulations you re aware of that aren t  
 (24) you?  
 (25) A Yes

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- (1) Q But more specifically with regard to the subject that  
 (2) we re talking about here today the manual addresses that  
 (3) doesn t it? In paragraph 6 of the manual the manual states  
 (4) responsibility of the master or pilot for safe navigation and  
 (5) prudent maneuvering of his vessel is in no way lessened or  
 (6) relieved by this regulation The master is responsible isn t  
 (7) he?  
 (8) A Responsibility of the master or pilot for safe - or pilot  
 (9) for safe navigation and prudent maneuvering of his vessel  
 is in  
 (10) no way lessened or relieved by this regulation, yes  
 (11) Q And that s in the manual Its purpose in the manual is to  
 (12) make sure that people don t use the manual with regard to  
 (13) getting them off the hook with regard to responsibilities  
 (14) isn t that right?  
 (15) A I don't know The person who wrote the manual will have  
 to  
 (16) answer that  
 (17) Q Now with regard to your conversation with Captain  
 (18) Hazelwood when you boarded the vessel his reaction was  
 here  
 (19) we go again? When you boarded the vessel when you raised  
 the  
 (20) subject of these rumors it was here we go again?  
 (21) A Yes  
 (22) Q It was cavalier wasn t it?  
 (23) A No, I believe that rumors, both Captain Hazelwood and  
 (24) myself agree with that that rumors are started by - by just  
 (25) people, and they can get out of hand It's happened before  
 to

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- (1) a lot of good people and I think that was what he meant by  
 (2) that  
 (3) Q And he invited you in to search didn't he? You testified  
 (4) he said go ahead and search?  
 (5) A That's right  
 (6) Q So with regard to the search he knew the answer to the  
 (7) question didn't he when he invited you in and said go ahead  
 (8) and search he knew whether or not he had alcohol there?  
 (9) A I don't know what he thought or - he didn't know my ship  
 (10) was going to be in He didn't know I would be on that day,  
 so  
 (11) I don't understand what you mean by that sir  
 (12) Q Now with regard to your knowledge of Captain Hazelwood  
 (13) drinking, from '85 to '89 then we have this one search that  
 (14) you conducted for one brief point in time and that's it isn't  
 (15) it?  
 (16) A That's correct  
 (17) Q And whether there was two years after that or two years  
 (18) before that and what went on during those periods of time you  
 (19) just don't know do you?  
 (20) A I don't understand Could you kind of rephrase that?  
 (21) Q Were there other searches that you conducted?  
 (22) A No that was just the only one for me  
 (23) MR O NEILL Okay thank you I have nothing  
 (24) further  
 (25) REDIRECT EXAMINATION OF IVAN MIHAJLOVIC

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- (1) BY MR CHALOS  
 (2) Q Captain you are familiar are you not that the captain of  
 (3) the port in a port like Valdez or any other port in the United  
 (4) States has the authority to vary regulations by a local captain  
 (5) of the port order?  
 (6) A That is correct  
 (7) Q And did you believe, when you saw that Alamar letter that  
 (8) that was a local variance of the pilotage regulations?  
 (9) A That's correct  
 (10) Q I want to give you an example that I've used before I  
 (11) want you to assume two ships coming into Hinchinbrook at the  
 (12) same time Let me put up the chart I want you to assume two  
 (13) ships coming into Hinchinbrook at the same time One has  
 (14) pilotage meaning someone with a pilotage endorsement and  
 the  
 (15) other one does not have someone with a pilotage okay  
 (16) The first vessel with the pilotage endorsement if pilotage  
 (17) is not waived would have to have the person holding the  
 (18) pilotage endorsement on the bridge all the way up to Rocky  
 (19) Point right as you understood the pilotage requirements?  
 (20) A That is correct  
 (21) Q The second vessel doesn't have anybody with pilotage I  
 (22) want you to assume further has never been in Prince William  
 (23) Sound before that vessel would only need two people on the  
 (24) bridge through this strait right here and then from then on  
 (25) one person who may or may not know Prince William Sound at  
 all

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- (1) right?  
 (2) A That's exactly correct  
 (3) Q The hazards to navigation in Prince William Sound are the  
 (4) same are they not whether you're a pilotage vessel or  
 (5) non pilotage vessel?  
 (6) A That's correct  
 (7) Q Does it make any sense to you after reading that Alamar  
 (8) letter that the person who has the most knowledge of the area  
 (9) has to be on the bridge but someone who's never been there  
 (10) before doesn't have to be there?  
 (11) A Exactly That's what I tried to state before  
 (12) Q And that's why you believe that regulation waived pilotage  
 (13) for all vessels?  
 (14) A That's correct  
 (15) Q Captain you were asked about the - the bridge  
 (16) organizational manual?  
 (17) A Yes  
 (18) Q The Exxon bridge organizational manual I want you to know  
 (19) that Captain Hazelwood did not stipulate that Watch Condition  
 C  
 (20) applied on the night of the accident okay I want you to  
 (21) assume that  
 (22) A All right  
 (23) Q The bridge organization manual is a guide is it not to  
 (24) the masters?  
 (25) A That is correct

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- (1) Q And it's the captain who sets the watch conditions is it  
 (2) not?  
 (3) A Right  
 (4) Q That's in his discretion?  
 (5) A That is correct  
 (6) Q I want to put up for you - I want to put up an excerpt -  
 (7) can I have this thing whatever you call it? It's from DX  
 (8) Exhibit 3450 Okay let's go to the first paragraph This is  
 (9) section 8 I 3 okay? See what it says? Watch conditions are  
 (10) to be set by the master according to the actual or anticipated  
 (11) steaming situation You see that?  
 (12) A Yes, I do  
 (13) Q Okay Here's the definition of Watch Condition A and the  
 (14) one that applies is the second one in restrictive waters with  
 (15) clear visibility and little or no traffic you see that?  
 (16) A Yes, I do  
 (17) Q Now when you were in Prince William Sound Captain prior  
 (18) to the grounding you set Watch Condition A did you not?  
 (19) A That is correct  
 (20) Q Now Watch Condition C is this one here and it says - and  
 (21) this is what Exxon is relying on it's in restricted waters  
 (22) with clear visibility and high density traffic I want you to  
 (23) assume Captain -  
 (24) A Yes  
 (25) Q - for the moment that there were no other ships in the



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- (1) VTS system above Bligh Reef or even in Prince William Sound at  
 (2) the time that the Exxon Valdez was there Does the  
 (3) high density traffic portion apply in Watch Condition C?  
 (4) **A No, it does not**  
 (5) **Q** How about the next item here when entering or leaving  
 (6) port with clear visibility regardless of traffic Now let me  
 (7) put up this chart for you okay?  
 (8) **A Sure**  
 (9) **Q** Captain where is this Port of Valdez is it right up here?  
 (10) **A That's it up there, little circle**  
 (11) **Q** Once you get through the Narrows aren't you out of that  
 (12) port?  
 (13) **A That's it, you're out**  
 (14) **Q** Mr O Neill read to you from the bridge organization  
 (15) manual - sorry from the Prince William Sound user's manual  
 (16) second edition Let me read you the part that he didn't read  
 (17) to you okay? The purpose and applicability says this manual  
 (18) describes procedures to be followed by vessels operating in the  
 (19) Prince William Sound Vessel Traffic Service area parenthesis  
 (20) VTS area The purpose of the Prince William Sound traffic  
 (21) service - who's that? Who's the traffic service? Isn't that  
 (22) the VTS?  
 (23) **A VTS, that is correct**  
 (24) **Q** Is to enhance the safety of navigation in the VTS area -  
 (25) that's this whole area right? By reducing the potential for

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- (1) collisions and groundings see that?  
 (2) **A Yes, I do**  
 (3) **Q** And to protect the waters of the VTS area from  
 (4) environmental harm resulting from those mishaps see that?  
 (5) **A Yes I do**  
 (6) **Q** How does the VTS - let me use their words - reduce the  
 (7) potential for collisions and groundings? They do that by  
 (8) monitoring don't they?  
 (9) **A That's correct**  
 (10) **Q** And you told us that you expected if your ship is standing  
 (11) into danger of a collision or a grounding that they should warn  
 (12) you?  
 (13) **A That's right**  
 (14) **Q** Isn't that right?  
 (15) **A That's right**  
 (16) **Q** Is there any other purpose for them to be up there?  
 (17) **A No**  
 (18) **MR CHALOS** No further questions  
 (19) **THE COURT** I think that's it sir You can step  
 (20) down  
 (21) **MR NEAL** Judge while the next witness is coming up  
 (22) could Mr O Neill and I have a brief moment at the side bar?  
 (23) (Sidebar conference off the record)  
 (24) **MR CHALOS** I got so excited I forgot I had the next  
 (25) witness I'm back

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- (1) Your Honor the defendants call Mr Guy Kleess I should  
 (2) say Captain Guy Kleess  
 (3) **THE CLERK** Would you raise your right hand please?  
 (4) (The Witness Is Sworn)  
 (5) **THE CLERK** For the record sir state your full name  
 (6) your address and spell your last name please  
 (7) **THE WITNESS** My name is Guy G H Kleess That's  
 (8) **K L E E S S** I reside at 4100 Teton View Lane Jackson  
 (9) Wyoming  
 (10) **DIRECT EXAMINATION OF GUY KLEESS (Live)**  
 (11) **BY MR CHALOS**  
 (12) **Q** Guy Kleess sounds like a movie star name  
 (13) **A That's my real name, but nobody spells it right**  
 (14) **Q** That's a good one Better than Julius Herman  
 (15) **MR O NEILL** I object to that on behalf of Julius  
 (16) Herman  
 (17) **MR CHALOS** He's been tied up all weekend but that's  
 (18) another story  
 (19) **THE COURT** I'm not going to tell you what my H  
 (20) stands for You guys will make fun of me too  
 (21) **MR CHALOS** You're right you're right Your Honor  
 (22) I don't know  
 (23) **BY MR CHALOS**  
 (24) **Q** Captain Kleess who are you employed by?  
 (25) **A** Currently on contract Louisiana Offshore Oil Port I'm a

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- (1) mooring master  
 (2) **Q** You're a mooring master?  
 (3) **A Yes**  
 (4) **Q** You dock ships?  
 (5) **A** It's another term for pilot  
 (6) **Q** How big are the ships?  
 (7) **A** VLCC, ULCC, up to the largest in the world, 560 000 dead  
 (8) weight  
 (9) **Q** How long you been doing that?  
 (10) **A** I been doing that since - part-time since 1990 full time  
 (11) since 1991  
 (12) **Q** Prior to that were you employed by Exxon?  
 (13) **A Yes, I was**  
 (14) **Q** For how long?  
 (15) **A** Approximately 13 and a half years from 1976 to 1990  
 (16) **Q** Now you hold a masters license do you not?  
 (17) **A Yes, I do**  
 (18) **Q** You also hold an engineer's license?  
 (19) **A Yes, I do, second engineer's license**  
 (20) **Q** How long have you held - have you had the masters license?  
 (21) **A** I can't recall an exact date It would be the mid '80s,  
 (22) 1985 or so  
 (23) **Q** And prior to that I take it you sailed as a chief mate?  
 (24) **A Yes, I did**  
 (25) **Q** Second mate?

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- (1) **A Second mate third mate and I started off as a third engineer with Exxon in 1976**
- (2) **Q You're a graduate of Kings Point?**
- (3) **A I graduated from the U S Merchant Marine Academy, Kings Point, 1976**
- (4) **Q And you were one of those rare birds right? You came out with two two licenses?**
- (5) **A I graduated, yes, a bachelor of science degree in marine engineering and a bachelor of science degree in marine transportation and third engineer's license and a third mates license**
- (6) **Q Now you've sailed with Captain Hazelwood in your career have you not?**
- (7) **A Yes, I did**
- (8) **Q How many times?**
- (9) **A Just once**
- (10) **Q When was that?**
- (11) **A It was on the Exxon Valdez from approximately February to March of 1989**
- (12) **Q What length of time?**
- (13) **A Prior -**
- (14) **Q About three weeks you say?**
- (15) **A About three weeks**
- (16) **Q Okay Now when did you leave the Exxon Valdez?**
- (17) **A I departed the vessel March 13th 1989 in San Francisco**

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- (1) **Bay**
- (2) **Q And you were on for about three weeks with Captain Hazelwood before that?**
- (3) **A Correct**
- (4) **Q And prior to that you were on with Captain Stalzer for a period of time?**
- (5) **A Correct I joined the vessel I believe it was in January**
- (6) **Q In the three week period that you were on there with Captain Hazelwood did you ever see any alcohol aboard the vessel?**
- (7) **A No I didn't**
- (8) **Q Did you ever see Captain Hazelwood drinking aboard the vessel?**
- (9) **A No I didn't**
- (10) **Q Did you ever drink with Captain Hazelwood whether it was aboard or ashore?**
- (11) **A No I didn't**
- (12) **Q Did you ever see Captain Hazelwood intoxicated?**
- (13) **A No I did not**
- (14) **Q Did you ever see him impaired during that period?**
- (15) **A No I did not**
- (16) **Q Did you ever see any officers or crew drinking on the Exxon Valdez at all while you were there?**
- (17) **A No I did not**

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- (1) **Q I'd like to direct your attention to what we've called here as the launch incident the Mary Williamson launch incidents?**
- (2) **A Yes**
- (3) **Q This would have been around a couple days before you got off?**
- (4) **A The incident in question I think, took place on the evening of March 12th, approximately 11.30 p m**
- (5) **Q Okay So we'll set the date of March 12th Let me ask you some questions You have a recollection of that of that evening?**
- (6) **A Yes, I do**
- (7) **Q You have a recollection of seeing Captain Hazelwood that evening?**
- (8) **A I - I arrived at the launch terminal about 15 minutes prior to the launch leaving That would have been about 11 15 I can't recall whether Captain Hazelwood was at the terminal at the time or came in shortly afterwards, but -**
- (9) **Q Okay The terminal is that a warehouse or house?**
- (10) **A It's a warehouse, housing office of the Westar launch**
- (11) **Q And it had benches that you could sit there or you had to stand?**
- (12) **A I don't even think it had benches Think you just stood there**
- (13) **Q You have a recollection of talking with Captain Hazelwood on that occasion?**

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- (1) **A Yes Captain Hazelwood was there I believe this third engineer, Katie - Katie - Katie Havens was there The second mate I believe was Nathan Carr was there and I believe A-B Maureen Jones may have been - may have been there**
- (2) **Q Were they there when you arrived or did they come in -**
- (3) **A I can't recall if we were - but I do know we were all talking together for approximately 10 to 15 minutes prior to boarding the launch**
- (4) **Q How close were you to Captain Hazelwood during this period?**
- (5) **A About two to three feet**
- (6) **Q You were standing close to him?**
- (7) **A Yes**
- (8) **Q Were you talking with him?**
- (9) **A Yes, I was**
- (10) **Q And he talked to you?**
- (11) **A Yes he did**
- (12) **Q What were you talking about?**
- (13) **A Music I had just bought a bunch of tapes at the store in San Francisco and we were just talking about the tapes I bought**
- (14) **Q When Captain Hazelwood spoke to you did he slur his words?**
- (15) **A No, he did not**
- (16) **Q Did he appear to you to be impaired?**
- (17) **A No, he seemed fine**

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- (1) Q Seemed normal to you?  
 (2) A Seemed in good shape yes normal  
 (3) Q You had occasion to watch him walk from the office to the launch?  
 (4) launch?  
 (5) A Yes it - I guess about 20 feet from the door to the terminal to the ladder leading down to the launch I walked with him, about 20 feet  
 (6) terminal to the ladder leading down to the launch I walked with him, about 20 feet  
 (7) with him, about 20 feet  
 (8) Q You notice him stumbling?  
 (9) A No, I did not see him stumbling  
 (10) Q Unsteady in any way?  
 (11) A No seemed normal  
 (12) Q Climbed down the ladder onto the launch?  
 (13) A Yes  
 (14) Q Got onto the launch?  
 (15) A Yes sir  
 (16) Q Did that okay?  
 (17) A Yes, sir  
 (18) Q As far as you remember?  
 (19) A Yes, sir  
 (20) Q Now when you got onto the launch did you have occasion to see Captain Hazelwood?  
 (21) see Captain Hazelwood?  
 (22) A I don't recall seeing Captain Hazelwood after the launch departed the dock I stayed on deck I don't know where  
 (23) departed the dock I stayed on deck I don't know where  
 (24) Captain Hazelwood went I assume he went down below but I'm  
 (25) not sure

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- (1) Q Did you see Mary Williamson there that evening?  
 (2) A I remember some people from the Galveston there and I subsequently learned that Mary Williamson was there but I don't specifically recall her but I remember there was people from the Galveston there  
 (3) subsequently learned that Mary Williamson was there but I don't specifically recall her but I remember there was people from the Galveston there  
 (4) specifically recall her but I remember there was people from the Galveston there  
 (5) the Galveston there  
 (6) Q Did you see do you have any recollection of seeing Captain Hazelwood speaking with Mary Williamson?  
 (7) Hazelwood speaking with Mary Williamson?  
 (8) A No, I don't I don't recall  
 (9) Q Did you hear any raised voices on the launch?  
 (10) A On the launch, no, or in the terminal, no There was nothing untoward in the whole evening  
 (11) nothing untoward in the whole evening  
 (12) Q Now the launch took off from the pier went out to the ships did it not?  
 (13) ships did it not?  
 (14) A Yes  
 (15) Q Mary Williamson's ship was the Galveston?  
 (16) A I believe so  
 (17) Q And your ship and Captain Hazelwood's ship was -  
 (18) A Exxon Valdez  
 (19) Q - was the Valdez Did the launch go to the Galveston first?  
 (20) first?  
 (21) A Yes  
 (22) Q Did dropped off people there?  
 (23) A Yes  
 (24) Q Did you see anything untoward going on there at that time?  
 (25) A No, I did not

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- (1) Q After the launch dropped people at the Galveston you went over to the Valdez?  
 (2) over to the Valdez?  
 (3) A Yes  
 (4) Q Was the Valdez light at this point in time? In other words had it discharged most of its oil?  
 (5) words had it discharged most of its oil?  
 (6) A It had discharged most of the oil yes and it was the end of the port call and -  
 (7) of the port call and -  
 (8) Q Was he riding high in the water?  
 (9) A Yes  
 (10) Q Do you remember the companionway?  
 (11) A The accommodation ladder yes  
 (12) Q The accommodation ladder?  
 (13) A It was steep It was a long climb It was a long climb I remember it was a steep -  
 (14) I remember it was a steep -  
 (15) Q You have a recollection of the steepness?  
 (16) A Yes I can't recall the number of feet that the - you know, that her free board, the height of the deck above the water, I can't recall how high that was but it was very - the ship was very light  
 (17) know, that her free board, the height of the deck above the water, I can't recall how high that was but it was very - the ship was very light  
 (18) water, I can't recall how high that was but it was very - the ship was very light  
 (19) ship was very light  
 (20) Q Just so the Ladies and Gentlemen of the Jury understand when you're standing on this launch the launch is sort of going like this?  
 (21) going like this?  
 (22) A Uh huh  
 (23) Q And this -  
 (24) Q And this -  
 (25) A There's a little platform at the base of the accommodation

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- (1) ladder approximately three feet by three feet and you jump up  
 (2) ladder approximately three feet by three feet and you jump up  
 (3) onto that and you climb up the ladder  
 (4) onto that and you climb up the ladder  
 (5) Q You kind of have to stand on the rail of the launch and then jump?  
 (6) then jump?  
 (7) A Time your jump and everything  
 (8) Time your jump and everything  
 (9) Q You got to time it?  
 (10) You got to time it?  
 (11) A Yeah  
 (12) A Yeah  
 (13) Q Captain Hazelwood do that?  
 (14) Captain Hazelwood do that?  
 (15) A Yes, sir, he did  
 (16) A Yes, sir, he did  
 (17) Q You did it?  
 (18) You did it?  
 (19) A I did it  
 (20) A I did it  
 (21) Q Everybody else did it that was on the ship?  
 (22) Everybody else did it that was on the ship?  
 (23) A There were no incidents yeah  
 (24) There were no incidents yeah  
 (25) Q And Captain Hazelwood I assume went up the accommodation ladder or the gangway?  
 (1) ladder approximately three feet by three feet and you jump up  
 (2) onto that and you climb up the ladder  
 (3) Q You kind of have to stand on the rail of the launch and then jump?  
 (4) then jump?  
 (5) A Time your jump and everything  
 (6) Q You got to time it?  
 (7) A Yeah  
 (8) Q Captain Hazelwood do that?  
 (9) A Yes, sir, he did  
 (10) Q You did it?  
 (11) A I did it  
 (12) Q Everybody else did it that was on the ship?  
 (13) A There were no incidents yeah  
 (14) Q And Captain Hazelwood I assume went up the accommodation ladder or the gangway?  
 (15) ladder or the gangway?  
 (16) A Yes I didn't see him go up the ladder, but everybody got on the main deck in good order and there were no incidents  
 (17) on the main deck in good order and there were no incidents  
 (18) Q Nobody slipping?  
 (19) A No  
 (20) Q Nobody stumbling?  
 (21) A Nothing like that  
 (22) Q Now I know three weeks isn't a long time but you had a chance to observe Captain Hazelwood?  
 (23) chance to observe Captain Hazelwood?  
 (24) A Yes, sir  
 (25) Q You watched him operate at sea?

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- (1) A Yes, sir
- (2) Q You believe he was a good captain?
- (3) A Yes, I think Joe was - Captain Hazelwood is a very good captain
- (4) captain
- (5) Q You find him to be an even tempered fellow?
- (6) A I - yes, I don't recall any - any incidents where he lost his temper or raised his voice or anything like that, very calm, cool and collected
- (7) MR CHALOS Thank you Mr Kleess Your witness
- (8) MR NEAL Could we just hold one second Your Honor?
- (9) CROSS EXAMINATION OF GUY KLEESS
- (10) BY MR O NEILL
- (11) Q With regard to Captain Hazelwood and drinking which you ve
- (12) testified about here today when you came on to the Valdez your first assignment on the Valdez you knew that Captain Hazelwood had a reputation as a drinker didn t you?
- (13) A I had heard - you know when I joined the fleet in the early '80s that Captain Hazelwood had a - was a drinker, yes
- (14) I had also heard that - that he had gone through rehabilitation
- (15) Q So you knew also that he had gone through rehabilitation?
- (16) A Yes, I had heard that
- (17) Q That was widely known throughout the fleet wasn t it?
- (18) A Yes, sir it was
- (19) Q Thank you The Westar launch incident let me see if we

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- (1) can do this real quick and you can get out of here and I can
- (2) get out of here You were on the top of the vessel the
- (3) launch Hazelwood and Mary Williamson were not up there with
- (4) you that s a correct statement?
- (5) A I don't recall them on the deck
- (6) Q So whatever transpired between Captain Hazelwood and Mary
- (7) Williamson is something that you didn t see?
- (8) A Correct
- (9) Q So you can t testify one way or the other about what went on between the captain and Mary Williamson because you just don t know?
- (10) A Well I know that nothing happened in the terminal
- (11) Q But with regard to the ride over on the launch you don t know? It s sort of like trying to prove a negative isn t it?
- (12) A On the launch, you're correct I do not recall seeing Captain Hazelwood
- (13) MR O NEILL Thank you that s all there is
- (14) MR CHALOS No further questions Your Honor
- (15) THE COURT Thank you sir
- (16) I have the impression at this point that everybody wanted to get out of here today
- (17) MR NEAL Judge I m not - I m not - matter of fact I may be one of the authors of that
- (18) MR O NEILL And I think I m the co author of that
- (19) THE COURT We ll adjourn now for the day ladies and

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- (1) gentlemen Please enjoy the sunshine outside It s a
- (2) beautiful day, although we wouldn t know it in here Please don t read or look at anything about the trial of this case and we ll see you at 8 00 in the morning
- (3) Counsel stay for just a moment please
- (4) (Jury out at 1 40 p m )
- (5) THE COURT Do we happen to have the jury instruction people with us today or -
- (6) MR NEAL Judge? I couldn t - I didn t hear you
- (7) MR LYNCH Not here at the moment Your Honor
- (8) THE COURT Maybe the best thing to do is to simply say I want to see the people on each side who are working on your jury instructions at 2 00 or whenever we suspend tomorrow
- (9) okay?
- (10) MR O NEILL Yes sir
- (11) THE COURT Enjoy the afternoon
- (12) THE CLERK This court is now adjourned until eight a m tomorrow morning
- (13) (Recess at 1 43 p m )

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(12) 9172 received 3663

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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 2,858  
TOTAL OCCURRENCES 13,628  
NOISE WORDS 385  
TOTAL WORDS IN FILE 43,060

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 ) Thursday June 2, 1994  
(6) ) 8:00 A.M.

TRANSCRIPT OF PROCEEDINGS  
TRIAL BY JURY 22nd DAY  
(7) BEFORE THE HONORABLE H. RUSSEL HOLLAND, JUDGE  
VOLUME 22, Pages 3710 3753  
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

(8) Before we start this morning ladies and gentlemen we re

(9) going to have something just a little bit out of the ordinary

(10) happen this morning At somewhere around 8:30 this morning

(11) I'm going to need to excuse myself from you all in the

(12) courtroom and therefore things will have to stop for just a

(13) few minutes so that I can take care of something else

(14) It does involve this case although not what we re doing

(15) right now And I'll want to see three of you Mr Neal,

(16) Mr Lynch and Mr Chalos, I'll want to come with me It will

(17) just take three or four minutes, and we'll be back

(18) MR O'NEILL You want me to come too?

(19) THE COURT Neal See I did what the newspaper did

(20) MR O'NEILL I am hurt

(21) THE COURT You aren't supposed to be reading the

(22) newspaper You don't know what I'm talking about O'Neill

(23) Lynch and Chalos

(24) MR NEAL You got the wrong Neal Your Honor but if

(25) that's your wish then we've got a commitment to keep today

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(1) So shall I start?

(2) THE COURT You shall start

(3) MR NEAL We call Mr Harvey Borgen

(4) THE CLERK Would you raise your right hand please

(5) sir

(6) (The Witness Is Sworn)

(7) THE CLERK For the record state your full name your

(8) address and spell your last name please

(9) THE WITNESS My full name is Harvey Jensen Borgen B

(10) like in boy O R G E N 309 Sugar Berry Circle Houston

(11) Texas

(12) THE CLERK Thank you sir

(13) DIRECT EXAMINATION OF HARVEY BORGEN (Live)

(14) BY MR NEAL

(15) Q Mr Borgen how are you employed sir?

(16) A I'm employed by Sea River Maritime, Inc

(17) Q How long have you been employed by Sea River or Exxon

(18) Shipping Company or one of the Exxon entities?

(19) A It'll be 31 years this month

(20) Q So you first became employed by Exxon in 1963?

(21) A That's correct

(22) Q Prior to becoming employed by Exxon in 1963 give us your

(23) formal educational background

(24) A I went to New York State Maritime Academy, college, and

(25) graduated in 1963 with a bachelor of science degree in  
marine

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- (1) transportation an ensign commission United States Naval  
 (2) Reserve and a U S Coast Guard issued third mate's license  
 (3) Q All right sir Any other formal education?  
 (4) A Yes Between 1964 and 1969 I went to University of  
 (5) Houston night school to get my master's degree in business  
 with  
 (6) a major in management and finance  
 (7) Q And that was while you were employed by Exxon or one of  
 the  
 (8) Exxon companies?  
 (9) A Yes  
 (10) Q Who paid for that education for you Mr Borgen?  
 (11) A At that time the company paid 75 percent of my tuition  
 and  
 (12) books and costs  
 (13) Q Now then would you just very briefly describe your  
 (14) positions with Exxon or Exxon companies from 1963 and let s  
 (15) stop at 1982?  
 (16) A I was employed initially as an economic analyst in our  
 (17) planning group I was in the position for about five years I  
 (18) then moved into your labor relations group where I worked  
 as a  
 (19) labor relations analyst for two years I then moved to New  
 (20) Jersey and became our operations manager for our tug and  
 barge  
 (21) fleet that operated along the east coast of the United States  
 (22) Did that for a couple of years, and then transferred to the  
 (23) parent corporation in their long range marine worldwide  
 (24) planning group for two years  
 (25) I then moved back to Houston, and I worked in the group

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- (1) that was a support group for the management committee of  
 Exxon  
 (2) U S A and did that for about a year and a half, and then after  
 (3) that went back into the marine group as the repair manager  
 for  
 (4) the tanker fleet of Exxon at the time Did that for two years,  
 (5) and then I became maintenance and services manager for  
 the next  
 (6) five years and had responsibility for repairs, fleet manning,  
 (7) marine benefits And in August of 1982, I moved to the west  
 (8) coast to become the fleet manager  
 (9) Q In August of 1982 you moved to the west coast to become  
 (10) fleet manager of the Exxon Shipping Company west coast fleet?  
 (11) A Yes, sir  
 (12) Q All right Now I m going to ask you specifically about  
 (13) some conversation I m going to ask you what you said to  
 (14) somebody and what somebody said to you in substance okay?  
 (15) A Yes, sir  
 (16) Q In 1987 did there come a time when you were asked to  
 (17) consider Captain Hazelwood, who was on the gulf coast fleet at  
 (18) the time for a transfer to the west coast fleet and become  
 (19) what you call alternate captain of the Exxon Valdez?  
 (20) A Yes.  
 (21) Q With whom did you have the first conversation?  
 (22) A First conversation with Captain Andy Martineau, who was  
 my  
 (23) port captain  
 (24) Q You might lean forward a little bit so everybody can hear  
 (25) you

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- (1) A First conversation I had was with Captain Andy  
 Martineau  
 (2) Q Describe that conversation in substance I know it s a  
 (3) long time but in substance  
 (4) A We had a vacancy on the Exxon Valdez and I asked Andy  
 to  
 (5) get with the respective port staff from the gulf coast fleet to  
 (6) make a recommendation to me as to who the individual  
 ought to  
 (7) be to fill that position  
 (8) Q All right And did he later on come back to you and you  
 (9) have another conversation with him?  
 (10) A Yes He came back to me at a later time and said that the  
 (11) two port captains had gotten together  
 (12) Q Did he mention who the other port captain was?  
 (13) A Captain Sheehy  
 (14) Q All right He told you he and Captain Sheehy had gotten  
 (15) together and he was back to you to make a recommendation?  
 (16) A Yes, sir  
 (17) Q Go ahead  
 (18) A And he said between the two of them they felt the best  
 (19) qualified individual for this position ought to be Captain  
 (20) Hazelwood  
 (21) Q Did they tell you - go ahead just with the conversation  
 (22) but was there more to the conversation? Did he tell you why?  
 (23) A They said - I asked them why, and they said that they felt  
 (24) that because of his prior big ship experience his prior  
 (25) experience at Prince Wilham Sound and being - having an

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- (1) endorsement on his license for Prince Wilham Sound  
 pilotage,  
 (2) he was known as a fine seaman his navigational skills were  
 (3) well known, beyond reproach he had a good rapport with  
 the  
 (4) crew, and they felt that because of those qualifications he  
 (5) was the best one to fill that slot at the time  
 (6) Q Now you were speaking to Captain Martineau presumably  
 he  
 (7) was talking for both himself and Captain Sheehy but you re  
 (8) speaking to Captain Martineau is that correct?  
 (9) A Yes, sir  
 (10) Q What did you say to Captain Martineau in response?  
 (11) A I said that I would get back to him on that  
 (12) recommendation  
 (13) Q All right Did you then have a conversation with someone  
 (14) regarding Captain Hazelwood?  
 (15) A Yes  
 (16) Q Who was that?  
 (17) A I had a conversation with my counterpart, the gulf coast  
 (18) fleet manager, Dwight Koops  
 (19) Q And would you tell us in substance what Mr Koops said to  
 (20) you and what you said to Mr Koops and in substance what he  
 (21) said to you in this conversation?  
 (22) A I had known that Captain Hazelwood had gone through  
 some  
 (23) type of alcohol rehabilitation program, so I asked Dwight  
 Koops  
 (24) about Captain Hazelwood's performance, and he said he  
 was  
 (25) performing extremely well in the gulf coast fleet, he was

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- (1) not - they had been monitoring him they hadn't any indication
- (2) that he was drinking and he was clean And on that basis I said, thank you
- (3)
- (4) Q And then did you - was it your decision then to transfer
- (5) or to agree to the transfer of Captain Hazelwood to the west
- (6) coast?
- (7) A It was a joint decision between myself and Dwight and we agreed to it
- (8)
- (9) Q Now do you know a - do you know an individual by the name
- (10) of Doug Larsen?
- (11) A Yes sir
- (12) Q Who was at that time - now we're talking about 1987
- (13) July August 87 who was Doug Larsen? What position did he
- (14) have at that time?
- (15) A Doug Larsen was our operations supervisor for an office
- (16) that we had in Long Beach, California This office was the
- (17) office responsible for doing agency work for any of our vessels
- (18) that came into the Los Angeles, Long Beach area
- (19) Q While we're on that it's been stated in the record that at
- (20) this time the trade of the Valdez was to pick up North Slope
- (21) crude take it to Panama stop back at Long Beach and then go
- (22) back to Valdez Port of Valdez that is correct?
- (23) A That is correct
- (24) Q All right So the vessel would stop at Long Beach on the
- (25) way back from Panama?

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- (1) A Yes
- (2) Q All right Did you have a - did you happen to have a
- (3) conversation with Mr Doug Larsen about the time of the
- (4) transfer of Captain Hazelwood to the west coast?
- (5) A Yes
- (6) Q Would you tell us again now in substance what you said to
- (7) Mr Larsen and what he said to you?
- (8) A I told Mr Larsen that Captain Hazelwood was joining the
- (9) Exxon Valdez as an alternate master that he had had presumed
- (10) a drinking problem at one time I wanted Doug, each time the
- (11) ship came into port when he boarded the ship, to make an
- (12) observation as to how Captain Hazelwood's job performance was
- (13) how his paperwork was, just generally observe his behavior and
- (14) report back to me if he saw anything that warranted reporting
- (15) back
- (16) Q And did he make reports back to you?
- (17) A Yes
- (18) Q What were those reports?
- (19) A Reports were all very very good He said that Captain
- (20) Hazelwood's paperwork was impeccable he was a real team
- (21) player During a turn around time of that nature there's a
- (22) lot of activity goes on When the ship comes in the agent
- (23) Doug Larsen would board the vessel along with U S Customs
- (24) personnel U S Immigration personnel would come aboard We're
- (25) storing provisions food items on the ship we have repair work

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- (1) that may be going on We have bunkers of fuel oil being  
 (2) delivered so it's a very active time a lot of involvement,  
 (3) and it takes a real team effort to make that all come together  
 (4) smoothly  
 (5) Q Now what were the reports back from Mr Larsen other than  
 (6) that that he was doing well no problem et cetera?  
 (7) A That's correct  
 (8) Q Now then I want to direct your attention to a third  
 (9) thing There s been something in the testimony here about  
 (10) so called Henry s or somebody said to be Captain Hazelwood  
 (11) ordering Henry s aboard a walkie talkie - or through a  
 (12) walkie talkie You understand what I m talking about?  
 (13) A Yes sir  
 (14) Q Did you happen to have a conversation with a Mr Herb  
 (15) Leyendecker regarding this matter?  
 (16) A Yes, I did  
 (17) Q Was that in person or by phone?  
 (18) A By phone  
 (19) Q All right Again tell the Ladies and Gentlemen of the  
 (20) Jury and the Court in substance what Mr Leyendecker said to  
 (21) you and what you said to him?  
 (22) A Mr Leyendecker said that while he was aboard the Exxon  
 (23) Valdez at the Portland Shipyard -  
 (24) Q And by the way the Valdez was in dry dock at that time  
 (25) correct?

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- (1) A Yes  
 (2) Q All right Go ahead with the conversation  
 (3) A That he overheard on the walkie-talkie Captain  
 Hazelwood  
 (4) ordering beer Herb then the next day, confronted Captain  
 (5) Hazelwood and said he had overheard ordering beer and we  
 do not  
 (6) allow beer on our ships and Captain Hazelwood said, no it  
 (7) wasn't for the ship, I was ordering the beer for a crew party  
 (8) ashore and reassured Herb at that time that that's what he  
 was  
 (9) doing  
 (10) Q Did Mr Leyendecker say anything to you about whether he  
 (11) asked Captain Hazelwood if he were drinking or not?  
 (12) A Well I asked Herb if in his observations of Captain  
 (13) Hazelwood - because he had been there, this was a second  
 trip  
 (14) to the shipyard to visit, see how things were going, any  
 (15) indication in his eyes that Captain Hazelwood was drinking  
 or  
 (16) appeared to be impaired in any way, shape or form, and  
 Herb  
 (17) assured me that in his judgment, he was not  
 (18) Q Okay Following this conversation did you have occasion  
 (19) to meet or to talk to Mr Paul Myers your ship group  
 (20) coordinator regarding this?  
 (21) A We did have a discussion after about this specific  
 (22) incident  
 (23) Q Do you remember the - that conversation?  
 (24) A Well, I'm - I don't recall all the specifics of the  
 (25) conversation, but what I do recall telling Paul was as far as I

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- (1) was concerned, Herb's investigation of this particular  
 incident  
 (2) was satisfied - satisfactory  
 (3) MR NEAL You may examine  
 (4) Excuse me just a moment Your Honor Hold on just a  
 (5) moment Your Honor  
 (6) CROSS EXAMINATION OF HARVEY BORGEN  
 (7) BY MR O NEILL  
 (8) Q I am going to cover with you because of the rules of the  
 (9) game that we play with exactly the subjects that Exxon just  
 (10) covered with you okay?  
 (11) Now the first conversation that you just talked about was  
 (12) the 1987 conversation between Martineau and Sheehy  
 regarding  
 (13) Captain Hazelwood s proposed transfer to the west coast that s  
 (14) the first thing you talked about right?  
 (15) A Yes, sir  
 (16) Q Let s talk about that for a minute You stated that you  
 (17) had known that Captain Hazelwood had been through alcohol  
 (18) rehabilitation?  
 (19) A Correct  
 (20) Q And you learned that at a fleet conference sometime in 85  
 (21) or 86?  
 (22) A I want to say '86  
 (23) Q 86? And you don t specifically recall how you found out  
 (24) about it but it was in any event a subject of conversation  
 (25) between you and somebody else at a fleet conference in 1986?

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- (1) A Well, it would have been - I would have heard it from  
 (2) someone, yes  
 (3) Q Okay And then you had this conversation with your  
 (4) counterpart on the gulf coast and he said he was not drinking  
 (5) and clean Is that a correct statement?  
 (6) A That's correct  
 (7) Q So it was important to both of you I assume that he was  
 (8) not drinking and that he was clean?  
 (9) A Yes  
 (10) Q And then there was a joint decision made between you and  
 (11) Mr Koops to reassign Captain Hazelwood?  
 (12) A Yes, sir  
 (13) Q I want to talk briefly about that decision and what you  
 (14) did or didn t do with regard to that particular decision  
 (15) okay?  
 (16) You didn t talk to the human resources department about the  
 (17) rehabilitation did you?  
 (18) A I did not  
 (19) Q You didn t talk to the medical department about the  
 (20) rehabilitation did you?  
 (21) A I did not  
 (22) Q You didn t talk to the human resources department or the  
 (23) medical department with regard to what a proper monitoring  
 (24) program might be for this captain in this situation did you?  
 (25) A I did not

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- (1) Q You didn't go back and find out the details of his rehabilitation or the details of any of any aftercare program did you?
- (2) **A I did not. Other than the monitoring that Dwight Koops said that they had done.**
- (3) Q And you didn't talk to the man in person about how he was doing, how he was doing with regard to his recovery or that subject, the man in person, I mean, Captain Hazelwood?
- (4) **A No.**
- (5) Q In any event, you were on notice that he had gone through an alcohol rehabilitation program?
- (6) **A Yes.**
- (7) Q Second conversation, the Doug Larsen conversation, your instructions to Mr. Larsen were to take a look at job performance and paperwork when the ship came in?
- (8) **A Correct.**
- (9) Q And that was the sum and substance of your direction to him?
- (10) **A I also told him to observe him to see whether or not Captain Hazelwood appeared to have been drinking at all.**
- (11) Q While - but - okay, Thank you, Thank you, This was while the ship, though, came into the harbor?
- (12) **A And - yes, while it came into the harbor.**
- (13) Q Okay, And I listened to your testimony, you didn't have him check the captain or you didn't tell him to check the

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- (1) captain when the captain came back from leave or came back from shore to get on the ship, you were talking about when the ship came in?
- (2) **A And while it was in port.**
- (3) Q Do you know, is this in Long Beach?
- (4) **A Yes, sir.**
- (5) Q Do you know of a place in Long Beach called the Yankee Clipper or the Yankee Sailor, somewhere near where the terminal is?
- (6) **A I don't recall.**
- (7) Q Do you know if, in fact -
- (8) **A But it's not - the ship is not at a terminal, it's actually at anchor.**
- (9) Q Then they bring a launch in?
- (10) **A The launch comes in.**
- (11) Q And where the launch gets off, are you aware of a bar called the Yankee Clipper or Yankee Sailor, are you aware at all that your crew members get together there and have a couple of beers?
- (12) **A No.**
- (13) Q You're not aware of that?
- (14) **A No.**
- (15) Q And he reported to you that the paperwork was impeccable and that the captain was a team player and doing well?
- (16) **A Yes, sir.**

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- (1) Q But he never reported to you that he talked to the captain about his emotional health, emotional well-being, recovery, whether he was drinking or not drinking, did he?
- (2) **A That's correct.**
- (3) Q Now, I want to talk about the Henry's incident, briefly, and then we'll get you out of here, okay?
- (4) **A Fine.**
- (5) Q At the time of the Henry's incident, Steve Day worked for you or worked in the same area?
- (6) **A He - yes, he did.**
- (7) Q And -
- (8) **A Not directly for me, though.**
- (9) Q Sort of a different chain of command but co-located?
- (10) **A Yes.**
- (11) Q And Mr. Leyendecker was from what you guys call Mecca or Houston?
- (12) **A Yes.**
- (13) Q That is right?
- (14) **A Yes.**
- (15) Q He was there, too, in the Portland Shipyard?
- (16) **A Correct, He's the repair manager.**
- (17) Q And with regard to the report by Mr. Leyendecker to you, you testified today that Mr. Leyendecker reported to you that Mr. Leyendecker overheard Captain Hazelwood ordering beer?
- (18) **A Correct.**

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- (1) Q And was this done over the telephone?
- (2) **A Walkie-talkie.**
- (3) Q No, I mean, not the ordering but the Leyendecker report to you, was that done over the telephone?
- (4) **A Yes.**
- (5) Q And then Mr. Leyendecker - was there a second call with Mr. Leyendecker?
- (6) **A I believe it was only one.**
- (7) Q One call, so Mr. Leyendecker said, I heard Captain Hazelwood ordering beer, I followed up, and the captain told me that it was being ordered for a crew party ashore?
- (8) **A Correct.**
- (9) Q And then counsel for Exxon asked, did Mr. Leyendecker report to you that he'd talked to Captain Hazelwood about drinking, and your answers were that he made an observation of Captain Hazelwood?
- (10) **A Yes.**
- (11) Q And I assume because of your answer to the question that Mr. Leyendecker did not report to you that he, in fact, talked to Captain Hazelwood about whether he was drinking again or not?
- (12) **A I don't recall that.**
- (13) Q So with regard to the Henry's incident, the sum and substance of your investigation as the west coast fleet manager was fielding the call from Mr. Leyendecker and passing on the substance of what Mr. Leyendecker told you, and then coming to

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- (1) the conclusion that this is enough I m going to move on to something else?
- (2) A Correct
- (3) Q Now was Mr Steve Day - then there was a conversation with Myers Myers came in and reported this to you and then you told Mr Myers that it had been taken care of?
- (4) A What I told Mr Myers was that I knew about the incident and Herb had investigated that incident and I was satisfied with the investigation that he had undertaken
- (5) Q And then that was - and then that s it all of the conversations on the topic?
- (6) A Yes sir
- (7) Q Did Mr Steve Day s name come up -
- (8) A No sir
- (9) Q - at all in the reports to you?
- (10) A No
- (11) Q Now does Mr Leyendecker still work for Exxon?
- (12) A Yes, he does
- (13) Q Does Mr Day still work for Exxon?
- (14) A Yes
- (15) MR O NEILL Thank you sir
- (16) MR NEAL Just one question I didn t quite understand
- (17) REDIRECT EXAMINATION OF HARVEY BORGEN
- (18) BY MR NEAL

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- (1) Q Did you ask Mr Leyendecker if he had talked to Captain Hazelwood?
- (2) A Yes he had talked to Captain Hazelwood
- (3) Q Did you ask Mr Leyendecker if he d asked Captain Hazelwood whether he was drinking? I don t remember what you said about that
- (4) A I don t recall whether I asked that specific question at this time I can remember that, but -
- (5) Q Did you come away - excuse me
- (6) A But I do remember asking Herb, was there any indication in your eyes that Captain Hazelwood had been drinking at all at the times that you were aboard and observed and talked to him, and he said no
- (7) Q Did you get the impression from that conversation that as far as you re concerned Captain Hazelwood wasn t - had not been drinking?
- (8) A That s correct
- (9) MR NEAL Thank you
- (10) THE COURT Thank you sir
- (11) MR NEAL You want to stop now or -
- (12) THE COURT I m going to get a signal when -
- (13) MR NEAL We ll call the next witness then
- (14) THE COURT We can just go ahead
- (15) MR NEAL We call Mr Doug Larsen
- (16) THE CLERK Please raise your right hand

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- (1) (The Witness Is Sworn)
- (2) THE CLERK For the record sir state your full name
- (3) your address and spell your last name
- (4) THE WITNESS Douglas Paul Larsen Last name is Larsen L A R S E N Address is 1712 Coral Place C O R A L in Seal Beach California
- (5) DIRECT EXAMINATION OF DOUG LARSEN (Live)
- (6) BY MR NEAL
- (7) Q Mr Larsen did anybody ever tell you - I remember a quarterback named Jim Plunkett Anybody ever tell you you look -
- (8) a lot like Jim Plunkett?
- (9) A No sir
- (10) MR SANDERS No further questions
- (11) MR NEAL You may examine
- (12) MR O NEILL How well did you know Jim Plunkett?
- (13) MR NEAL Somebody told me one time that with my cigar in my mouth I looked like - what s his name?
- (14) MR CHALOS George Burns
- (15) MR NEAL George Burns I m not that old and I resented it too But Jim Plunkett was a great football player Moving on
- (16) BY MR NEAL
- (17) Q Mr Larsen where are you employed sir at the present time?
- (18) A I m employed by Wilmington Transportation Company, San

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- (1) Pedro California
- (2) Q Pardon me?
- (3) A Wilmington Transportation Company, San Pedro California
- (4) Q What is your position with Wilmington Transportation Company?
- (5) A I m president, chief executive officer
- (6) Q Mr Larsen were you ever employed by Exxon Corporation Exxon Shipping Company?
- (7) A I sure was
- (8) Q From what date to what date?
- (9) A From June of 1976 until February, March of 1991
- (10) Q All right Now in order to move on here let me say that you graduated from the California Maritime Academy in 1976?
- (11) A That is correct
- (12) Q With third mate license?
- (13) A That s correct
- (14) Q And then you sailed with Exxon as a third mate from 76 to 78?
- (15) A That is correct
- (16) Q And from - sailed as a second mate then, with Exxon from 78 to 79?
- (17) A That is correct
- (18) Q And then from 79 to 80 you were a temporary port captain?
- (19) A That s correct assistant port captain staff officer in

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- (1) **Houston**
- (2) **Q And what position did you assume in or around 1982?**
- (3) **A Following approximately a one to one and a half year period**
- (4) **of working in Ventura County area with production department, I**
- (5) **was transferred down promoted to position of operations**
- (6) **supervisor managing southern California operation for shipping**
- (7) **Q Where was that located?**
- (8) **A Located in Long Beach**
- (9) **Q Long Beach California?**
- (10) **A That's correct**
- (11) **Q What was the function of that office?**
- (12) **A When I was transferred, it was twofold, was to handle the**
- (13) **scheduling of the ships calling in Santa Barbara area which**
- (14) **were running on a shuttle to Baytown, Texas, but primarily,**
- (15) **which was the reason the office was originally opened, was to**
- (16) **attend to vessels calling in ports of Los Angeles and Long**
- (17) **Beach**
- (18) **Q Los Angeles and Long Beach?**
- (19) **A That is correct**
- (20) **Q All right sir Now let me direct your attention to the**
- (21) **year 1987 late summer early fall Were you still the**
- (22) **operations manager there located in Long Beach?**
- (23) **A Operations supervisor yes**
- (24) **Q Operations supervisor? All right sir And did you**
- (25) **have - how long did you stay in that position?**

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- (1) **A From July '82 until July August of '89 approximately**
- (2) **seven years**
- (3) **Q So you were there then during the entire period of time**
- (4) **that Captain Hazelwood was the master of the Long Beach from**
- (5) **July August '87 up to the date of the grounding the master**
- (6) **of the Exxon Valdez?**
- (7) **A That's correct**
- (8) **Q From July August of '87 up to the day of the grounding?**
- (9) **A That's correct**
- (10) **Q In that regard did you happen around July or August 1987,**
- (11) **happen to have a conversation with a Mr Harvey Borgen?**
- (12) **A I did**
- (13) **Q Did you recognize Mr Borgen as the west coast fleet**
- (14) **manager who just left the stand?**
- (15) **A I do**
- (16) **Q Would you tell us in substance the conversation you had**
- (17) **with Mr Borgen?**
- (18) **A Mr Borgen advised me that the - one of the alternate**
- (19) **positions of master of the Exxon Valdez was open was being**
- (20) **replaced by Mister - Captain Hazelwood He would be coming**
- (21) **out working on the west coast coming out from the gulf coast**
- (22) **further to that he advised me that Captain Hazelwood had a -**
- (23) **effectively, a substance abuse problem in the past and it**
- (24) **was indicated it was alcohol related and that he requested me**
- (25) **to monitor him while he was - while his vessel came into port to**

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- (1) **notify him if there was any problems, behavioral cues, his**
- (2) **paperwork was out of sync, if his arrivals were off his**
- (3) **performance was other than the normal expected of the position,**
- (4) **if I noted if he had been drinking on any occasion, along those**
- (5) **lines, again, just generically any problems**
- (6) **Q You understood what you were supposed to do?**
- (7) **A Yes, sir**
- (8) **Q All right Following that conversation did you undertake**
- (9) **to perform the task of monitoring Captain Hazelwood as**
- (10) **requested by Mr Borgen?**
- (11) **A I did**
- (12) **Q How would - what did you do to fulfill that role?**
- (13) **A Follow through with all aspects of his request I first**
- (14) **met Captain Hazelwood when he was - met with him when he**
- (15) **joined the west coast I don't know if he was already on the**
- (16) **ship or he was about to join the ship I had a lunch - a**
- (17) **lunch with him at a shoreside facility in Long Beach I met**
- (18) **with him and another captain from another ship, who was going**
- (19) **on a paid leave or leaving, and we had lunch That was a**
- (20) **Saturday I believe, Saturday afternoon**
- (21) **I had lunch with him I had a beer I think one of the**
- (22) **other captains had a beer possibly Captain Hazelwood had**
- (23) **Perrier As follow up, as an example, I notified Mr Borgen of**
- (24) **the lunch welcome to the west coast, and just told him that we**
- (25) **had lunch and he wasn't drinking, he was having Perrier**

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- (1) **During subsequent meetings during that roughly one and a**
- (2) **half year period the Valdez called into port roughly a dozen**
- (3) **times**
- (4) **Q Roughly how many times?**
- (5) **A A dozen Roughly on a one month cycle, the Valdez went to**
- (6) **Panama and stopped in Long Beach on the northbound trip for**
- (7) **ballast and coming from a foreign port customs clearance**
- (8) **needed to be taken care of, immigration work for the crew**
- (9) **leaving, being repatriated, crew that were joining and what**
- (10) **have you, had a close interface with Captain Hazelwood**
- (11) **preceding the actual arrival of the vessel, both in exchange of**
- (12) **telex communications, discussions on the MARSET radio about**
- (13) **the upcoming port call, attending to the - advising us of what**
- (14) **port requirements he was going to need repairs stores, fuel,**
- (15) **et cetera Boarded the vessel either myself or the agent who**
- (16) **reported to me his name was Rou Kelly the two of us went -**
- (17) **one or the other of us would attend to the entry of the vessel**
- (18) **seven days a week, 24 hours a day didn't matter what time it**
- (19) **was, one in the morning or whatever**
- (20) **Q Speak up just a little bit**
- (21) **A I'm sorry It could have been any time of the day We**
- (22) **boarded the ship with the customs and immigration personnel**
- (23) **Proceeded to the bridge and spent roughly one to two hours on**



- (4) board the ship in the master's office and stateroom area  
 (5) During that time I had - I was in close proximity the  
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 (1) occasions that I boarded personally boarded the vessel for  
 (2) customs entry I had - I was within inches or a foot of  
 (3) Captain Hazelwood Never had any odor of alcoholic  
 beverage on  
 (4) him at all completely control of his vessel always on time  
 (5) paperwork was absolutely impeccable the best I've ever  
 seen  
 (6) very well organized very well laid out quick turn around  
 (7) quick entries although I think Harvey Borgen mentioned  
 it's a  
 (8) real team - teamwork between all the - the agent the repair  
 (9) gangs, and everybody else that was attending the ship and  
 the  
 (10) ship's personnel trying to get the ship in attend to the  
 (11) various aspects that were going on, he managed his ship  
 very  
 (12) well in port  
 (13) Q Did you - so there are a number of occasions then when  
 (14) you spent a good bit of time with Captain Hazelwood in close  
 (15) contact?  
 (16) A That's correct  
 (17) Q And this is when the vessel was coming into port?  
 (18) A That is correct  
 (19) Q Would the vessel be in port at times several - several  
 (20) days at a time?  
 (21) A Typically the ship would come and spend between 12, 12  
 (22) hours unless there was extended repairs On occasion I  
 (23) believe the ship was in port up to maybe a week  
 (24) Q A week?  
 (25) A Correct

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- (1) Q On any of those occasions you were with Captain  
 Hazelwood  
 (1) did you see any sign of any untoward conduct any sign of  
 (3) drinking any sign of anything like that?  
 (4) A Absolutely not  
 (5) Q Did you report your observations to Mr Borgen?  
 (6) A I did  
 (7) Q And did you report that you had seen no sign that Captain  
 (8) Hazelwood was what you've just testified?  
 (9) A I reported thoroughly, yes  
 (10) Q Now I gather that you had an assistant by the name of Ron  
 (11) Kelly?  
 (12) A That's correct  
 (13) Q Did you talk to - did you inform Mr Ron Kelly about the  
 (14) fact that Hazelwood Captain Hazelwood had had some sort of  
 (15) rehabilitation in the past?  
 (16) A I was unaware that Captain Hazelwood had any  
 rehabilitation  
 (17) at all They just told me that he had a problem in the past  
 (18) and that he was out on the west coast at this time and keep  
 an  
 (19) eye on him As regards my discussion with Ron Kelly, no I  
 did  
 (20) not tell him specifically that Captain Hazelwood had - or I  
 (21) was informed or aware that he had a problem with alcohol,  
 what  
 (22) have you, but I did review with Ron Kelly, the agent, each  
 and  
 (23) every port call I made a point of looking at the paperwork  
 (24) and the voyage file It always came by me any ways as a  
 matter  
 (25) of recourse standard operating procedure I would review  
 the

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- (1) files before they would be put among the central files I  
 (2) would discuss with Ron each port call albert 12 hours or 7  
 (3) days, any problems not just with Captain Hazelwood but  
 any  
 (4) other ship that came into port as a matter of fact but for  
 (5) the Valdez probably a little bit closer than other ships yes  
 (6) Q Did Mr Kelly ever report to you that he saw anything  
 (7) untoward for lack of a better word unprofessional untoward  
 (8) any conduct that would - out of the way about Captain  
 (9) Hazelwood?  
 (10) A Absolutely not Just to the opposite of that We had  
 (11) discussions that the Valdez with both Captain Hazelwood  
 and  
 (12) Captain Stalzer were enjoyable to have come into port  
 because  
 (13) everything worked on clockwork it was well organized  
 (14) Q Did you ever inquire of anybody about Captain Hazelwood's  
 (15) conduct or performance?  
 (16) A Yes, I did  
 (17) Q With whom did you inquire?  
 (18) A Various pilots Long Beach pilots  
 (19) Q Did you inform them hey I understand that Captain  
 (20) Hazelwood may have had a problem with alcohol in the past  
 and  
 (21) therefore I want you to do anything or tell me anything?  
 (22) A No I did not  
 (23) Q Pardon me?  
 (24) A No, I did not  
 (25) Q Why not?

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- (1) A Well the discussion I had with Mr Borgen, it was treated  
 (2) in a very sensitive manner it was confidential information I  
 (3) felt that Mr Borgen passed on to me and the questions that  
 I  
 (4) directed or just talking casually with the various pilots the  
 (5) people in the port that I had acquaintances with that might  
 (6) have had dealings with Captain Hazelwood were very  
 generic, and  
 (7) discussion in text the reaction I got from the pilots along  
 (8) the lines was that they thought he was an excellent ship  
 (9) handler, great command of the vessel, very comfortable,  
 knew  
 (10) how the vessel handled very comfortable working with him  
 (11) Q Is it fair to say then you talked to these pilots and  
 (12) people about Captain Hazelwood's performance and asked  
 them  
 (13) about it without being so indelicate as to mention that your  
 (14) understanding he might have had some alcohol problem in the  
 (15) past?  
 (16) A That is correct  
 (17) Q Did you ever get any bad report from anybody about Captain  
 (18) Hazelwood in any of these pilots that you talked to?  
 (19) A No, I did not  
 (20) Q By the way on occasion was Mr Borgen down at the vessel  
 (21) also?  
 (22) A He boarded occasionally I know of -  
 (23) Q In Long Beach?  
 (24) A That's correct  
 (25) Q Thank you

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- (1) A Or outside Long Beach yes  
 (2) THE COURT Mr Neal this is the time  
 (3) MR O NEILL Oh time out  
 (4) THE COURT This is time out  
 (5) MR O NEILL Darn it  
 (6) THE COURT You ll get your chance I don t know  
 (7) whether you heard or not we have to take just a few moments  
 (8) Would everyone just please stand by be at ease for a few  
 (9) minutes and we ll be back just as quickly as we can  
 (10) (Recess taken at 8 44 a m to 8 55 a m )  
 (11) THE CLERK Court is back on the record  
 (12) THE COURT You may cross examine Mr Neal - oh I  
 (13) did it again I m sorry O Neill  
 (14) CROSS EXAMINATION OF DOUG LARSEN  
 (15) BY MR O NEILL  
 (16) Q Did you have anything to do at all with San Francisco? Did  
 (17) you ever go up to San Francisco and help the ships in San  
 (18) Francisco?  
 (19) A In what time frame, sir?  
 (20) Q 87 to 89?  
 (21) A No Late in '89, I was - I was promoted and transferred  
 (22) up to the San Francisco to operations supervisor for the  
 (23) entire  
 (24) west coast so at the tail end of 1989 yes, I did  
 (24) Q I m concerned about March of 1989  
 (25) A No

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- (1) Q In Long Beach the vessels are tied up out in the harbor  
 (2) and then there s a launch that comes to shore and shuttles back  
 (3) between the shore and the vessel is that right?  
 (4) A Roughly yeah They're at anchor they re secured by  
 (5) their  
 (6) own anchors  
 (7) Q And are you familiar with a bar called the Yankee Whaler or  
 (8) the Yankee Clipper at or near where the launch comes in?  
 (9) A I'm aware of it  
 (10) Q And are you aware that on occasion crew members when  
 (11) they re departing from a tour of duty would get together there  
 (12) and have a couple of beers?  
 (13) A (Shakes head from side to side)  
 (14) Q You re not aware of that at all?  
 (15) A Yankee Whaler Clipper is in a line of restaurants and  
 (16) boutiques called the San Pedro Ports of Call and crew  
 (17) members  
 (18) do get off with other visitors and tourists and they will go  
 (19) through the area do some shopping stop have lunch or  
 (20) dinner  
 (21) stop for beer or whatever I m sure they did I'm sure  
 (22) There's no general meeting spot for crew if that's the  
 (23) question no That I didn't know  
 (24) Q Here you were the monitor and you didn t know that?  
 (25) A That's correct  
 (26) Q Did you ever ask Chuck Kimtis the chief engineer on the  
 (27) Valdez if he ever drank with Captain Hazelwood at the Yankee  
 (28) Whaler or the Yankee Clipper?

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- (1) A No, I did not  
 (2) Q How about Nate Carr?  
 (3) A No, I did not  
 (4) Q How about Pat Enright?  
 (5) A No, I did not  
 (6) Q How about Katherine Haven?  
 (7) A No, not Katherine Haven  
 (8) Q How about Carlos Hogan?  
 (9) A No  
 (10) Q So as the monitor you were unaware that these crew  
 (11) members  
 (12) and the captain would go over to the Yankee Whaler and have a  
 (13) couple of beers?  
 (14) A I was unaware of that  
 (15) Q He wasn t hiding the fact that he had a couple of beers  
 (16) with anybody and indeed he s testified he openly did it you  
 (17) weren t aware of that?  
 (18) A I didn't follow Captain Hazelwood around if he came  
 (19) ashore,  
 (20) no, I did not  
 (21) Q Now was Kevin Dick or Bob Sturgis were they assigned to  
 (22) the Valdez when you had this 87 to 89 duty?  
 (23) A I don't recollect It's possible they did  
 (24) Q Did you ever ask them whether they drank with Captain  
 (25) Hazelwood?  
 (26) A No I did not  
 (27) Q How about Mr Kunkel did you ever ask Mr Kunkel if he

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- (1) drank with Captain Hazelwood?  
 (2) A No sir  
 (3) Q Did you ever receive any training in monitoring people  
 (4) who d been through alcohol rehabilitation?  
 (5) A I have had certain background training at the Merchant  
 (6) Marine Academy as far as general awareness of substance  
 (7) abuse  
 (8) problems Further to that when I first became employed  
 (9) with  
 (10) Exxon, was in the marine with Exxon Company U S A , at the  
 (11) time  
 (12) we had a one week orientation when I first came on board  
 (13) for  
 (14) anyone that was coming aboard in a sailing capacity  
 (15) During  
 (16) that orientation they had an overview of company policy  
 (17) and  
 (18) what was allowed what was not allowed and beyond that  
 (19) there  
 (20) was a - one - had a one week management course that we  
 (21) had  
 (22) with officers, engineers and deck officers to discuss in part,  
 (23) not specifically for that but part of that was to deal with  
 (24) identifying and how to handle problematic situations  
 (25) Q So you have had training?  
 (26) A Some Videos on board the vessels general awareness  
 (27) more  
 (28) than anything else  
 (29) Q So you re aware that with regard to alcoholics who have  
 (30) been through rehabilitation there s a high rate of relapse?  
 (31) A I was unaware that Captain Hazelwood had been through  
 (32) rehabilitation  
 (33) Q My question for you is are you aware of the fact that  
 (34) alcoholics who have been through rehabilitation have high rates

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- (1) of relapse?  
 (2) A Yes  
 (3) Q And you re aware that alcoholics learn to mask and that s  
 (4) the technical term used mask both their drinking and the  
 (5) effects of their drinking?  
 (6) A I assume so yes  
 (7) Q And now I want to come back to what you said in response to  
 (8) my question two or three questions back You said I was  
 (9) unaware of the fact that Captain Hazelwood had been through  
 (10) rehabilitation So you were the monitor and nobody told you  
 (11) that Captain Hazelwood had been through alcohol  
 rehabilitation?  
 (12) A I might -  
 (13) Q Is that a correct statement?  
 (14) A - take exception in stating that I was the quote  
 (15) unquote monitor  
 (16) Q You weren t the monitor -  
 (17) MR NEAL Let him finish  
 (18) MR O NEILL Go ahead Are you finished?  
 (19) THE WITNESS What was the question again if you want  
 (20) to rephrase it  
 (21) MR O NEILL I m happy to rephrase the question  
 (22) Could you go back and read what he was saying right before  
 (23) counsel s objection?  
 (24) (The last question and answer were read back)  
 (25) BY MR O NEILL

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- (1) Q Your statement was I take exception to stating that I was  
 (2) the quote unquote monitor She just read that back did you  
 (3) hear that?  
 (4) A Okay  
 (5) Q You were not the monitor were you?  
 (6) A Words in my mouth I was asked by Mr Borgen given the  
 (7) backdrop that Captain Hazelwood had a problem didn't go  
 into  
 (8) detail to it other than just to tell me there was a problem  
 (9) associated with alcohol and to keep a close surveillance,  
 (10) report anything concerning his performance if there was  
 any  
 (11) relapse or if there was a problem, whether it was drinking or  
 (12) the performance of bringing the ship in and out of port  
 (13) Q So you didn t consider yourself to be the monitor did you  
 (14) or a monitor and you weren t trained to be a monitor for  
 (15) somebody who had been through alcohol rehabilitation were  
 you?  
 (16) A That's kind of a vague question I don't know if I can  
 (17) answer that question  
 (18) Q Then don t  
 (19) A I was asked to monitor oversee to report and I did  
 (20) that  
 (21) Q You were - one of the things you looked at was his  
 (22) paperwork okay? Do you recall that?  
 (23) A Uh-huh  
 (24) Q And you said his paperwork was exceptional?  
 (25) A Uh huh

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- (1) Q Were you aware of the fact that Captain Hazelwood had been  
 (2) regularly rated at the bottom of the scale or level of masters  
 (3) in major part because he wasn't good at things like paperwork?  
 (4) A I was not privy to his performance evaluations, no, sir  
 (5) Q Okay  
 (6) A But as I indicated earlier, his paperwork relative to  
 (7) completing the required Coast Guard and immigration  
 forms, the  
 (8) various paperwork associated with his port call, telexes,  
 (9) exchange of communications was without - was flawless  
 (10) Q Now with regard to boarding these vessels that you did in  
 (11) Long Beach and checking the paperwork and coming on with  
 the  
 (12) customs and immigration agents that's something that you did  
 (13) for all of the vessels isn't it?  
 (14) A That is correct, the required paperwork  
 (15) Q So the number of times that you visited Captain Hazelwood's  
 (16) vessel when it was in port was something that you did for all  
 (17) of the vessels, that's a correct statement isn't it?  
 (18) A That's correct I probably boarded - I boarded his vessel  
 (19) more than was required, though  
 (20) Q How many more times? One? Two?  
 (21) A A few  
 (22) Q One or two times more?  
 (23) A Possibly one or two times  
 (24) MR O NEILL Okay thank you  
 (25) REDIRECT EXAMINATION OF DOUG LARSEN

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- (1) BY MR NEAL  
 (2) Q Mr Larsen in your activities and observations - did your  
 (3) activities and observations of Captain Hazelwood and your  
 (4) interaction with him differ from that with other masters?  
 (5) A I don't understand the question I'm sorry  
 (6) Q Maybe I don't either You had certain duties with respect  
 (7) to all masters?  
 (8) A That's correct  
 (9) Q Were you given an additional duty with respect to Captain  
 (10) Hazelwood that you were not given with respect to other  
 (11) masters?  
 (12) A Yes, sir  
 (13) Q That's the point  
 (14) A Yes sir I was  
 (15) Q And what was that duty?  
 (16) A To oversee to evaluate the effectiveness of his turn  
 (17) around in the port and report any abnormalities actually  
 (18) proceed to the west coast fleet  
 (19) Q Were you asked to do that with respect to any other master  
 (20) other than Captain Hazelwood?  
 (21) A No I was not  
 (22) THE COURT Thank you sir You may step down  
 (23) MR SANDERS May it please the Court defendants call  
 (24) Mr Tom Shearer  
 (25) THE CLERK Would you raise your right hand please

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- (1) sir  
 (2) (The Witness Is Sworn)  
 (3) THE CLERK For the record state your full name your  
 (4) address and spell your last name please  
 (5) THE WITNESS Grady T Shearer, S H-E A R E R 3768  
 (6) Grove Street Sonoma California  
 (7) THE CLERK Thank you sir  
 (8) DIRECT EXAMINATION OF GRADY T SHEARER (Live)  
 (9) BY MR SANDERS  
 (10) Q Good morning, Mr Shearer?  
 (11) A Good morning  
 (12) Q Let me guess you work for Sea River Maritime?  
 (13) A You got it  
 (14) Q How long have you worked for Sea River Maritime or Exxon  
 (15) Exxon Shipping Company?  
 (16) A Approximately 27 years  
 (17) Q All right And before coming to Exxon did you receive any  
 (18) formal education?  
 (19) A I have a business degree from Lamar Tech in Beaumont,  
 (20) Texas  
 (21) Q Did you grow up in Texas?  
 (22) A Yes  
 (23) Q And when you were employed with - by Exxon 27 years ago,  
 (24) where did you go to work?  
 (25) A I started in Baytown Texas, and worked there about  
 seven

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- (1) months  
 (2) Q And then where did you go?  
 (3) A Norfolk, Virginia  
 (4) Q And how long were you in Norfolk?  
 (5) A About seven, eight years, then I transferred to the west  
 (6) coast in about 1978  
 (7) Q All right Now when you transferred to the west coast  
 (8) fleet office where was it located?  
 (9) A At the time, it was located in Concord, California  
 (10) Q All right And at some time subsequent it moved to  
 (11) Benicia?  
 (12) A Yes, Benicia refinery  
 (13) Q And there was a break when it was in Emeryville?  
 (14) A Yes, it went to Emeryville in '90 or something like that  
 (15) Q Now it's back in Benicia?  
 (16) A Right  
 (17) Q Have you served continuously in that office since 1978  
 (18) wherever it happened to be located?  
 (19) A Yes sir I did  
 (20) Q What was your job?  
 (21) A I'm a personnel specialist and primarily handle employee  
 (22) relations labor relations issues for the ocean fleet  
 (23) Q And in the 1987 time frame did you have an office in the  
 (24) same location that the port captain's office was?  
 (25) A Yes, sir, I did

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- (1) Q And was it in the same location with the west coast fleet manager?
- (2) **A Yes**
- (3) Q And Mr Borgen was the west coast fleet manager correct?
- (4) **A Correct**
- (5) Q And then for a part of the year in 1987 Captain Andre Martineau was port captain correct?
- (6) **A That's correct**
- (7) Q All right Now you kind of were with the west coast fleet office ever since there was a west coast fleet office almost right?
- (8) **A That's - that's fair to say**
- (9) Q West coast fleet office was started up in around what 77 78?
- (10) **A Yes sir**
- (11) Q And you've been out there all that time?
- (12) **A I have**
- (13) Q Now I want to change sports here for a second I want to go way out in left field and ask you a question Are you familiar with the Exxon North Slope?
- (14) **A Yes**
- (15) Q Is the Exxon North Slope a west coast fleet ship?
- (16) **A Yes sir she is**
- (17) Q Do you have any recollection of there ever being a time when the North Slope was not in the west coast fleet?

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- (1) **A No**
- (2) Q Do you have any recollection of the North Slope ever sailing around and going to the port of Baytown?
- (3) **A Not that I'm aware of**
- (4) Q All right Mr Shearer let me take you to - or return you to 1987 and ask you if you remember a time when there was a
- (5) discussion in the west coast fleet office concerning the replacement of a master for the Exxon Valdez?
- (6) **A Yes I do**
- (7) Q And let me ask you a step further Was there a conversation that you had concerning Captain Hazelwood in that regard?
- (8) **A Yes**
- (9) Q Who was that conversation with?
- (10) **A Captain Martineau**
- (11) Q And Captain Martineau was the port captain?
- (12) **A He was**
- (13) Q And would you tell the Ladies and Gentlemen of the Jury as best you can recall what that conversation was?
- (14) **A Captain Martineau called me into his office and informed me that he and Captain Sheehy, who was the port captain of the east coast, were contemplating a move of Captain Hazelwood to the - to the Exxon Valdez and he said that Harvey Borgen, who was the fleet manager wanted him to check out make sure Joe was - was clean was doing a good job and wasn't drinking or**

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- (1) **anything**
- (2) Q Excuse me you dropped your voice What was the last part?
- (3) **A That he wasn't drinking**
- (4) Q That he was not drinking?
- (5) **A That he wasn't drinking**
- (6) Q And he told you that Mr Borgen asked him to check that out?
- (7) **A Yes**
- (8) Q Did he tell you anything further about how he was asked to check it out or how he was going to check it out?
- (9) **A Yes- He was going to talk to Captain Sheehy and get a good background from the east coast fleet and -**
- (10) Q Did he ask you any questions?
- (11) **A Yes**
- (12) Q What did he ask you?
- (13) **A He wanted to know if I'd heard anything because I dealt with a lot of different people and what I'd heard about Joe was, was he doing a good job was there any indication that I'd picked up that he was having a problem And I told him no, that everything I'd heard about him was good**
- (14) Q Okay Now this was in - this was in 87?
- (15) **A Right**
- (16) Q Do you know the time of the year? Can you remember now?
- (17) **A It was a few months before Joe came over I'm not sure I think it was spring or a few months before then**

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- (1) Q Now did you in that conversation or in a later conversation with Captain Martineau did he mention to you that he had in fact checked with Captain Sheehy?
- (2) **A Yes, just shortly after that conversation, the same day, he came down and said don't worry about making any calls I've checked with Captain Sheehy and Joe's doing a real good job and he doesn't drink anymore**
- (3) Q Now I want to ask you about one other conversation Do you happen to recall the time that - well strike that Did you have a conversation with Mr Borgen concerning Captain Hazelwood somewhere around the time that Captain Hazelwood came back out to the west coast?
- (4) **A I had many conversations with Mr Borgen like that**
- (5) Q Yeah but you know which one I'm going to ask you about Did you have a conversation about Captain Hazelwood as Captain Hazelwood was coming out to the west coast or just before?
- (6) **A Yes**
- (7) Q Okay Do you happen to recall the date that would have been?
- (8) **A No I don't recall**
- (9) MR SANDERS Your Honor might I approach the witness?
- (10) **BY MR SANDERS**
- (11) Q I'm going to hand you a page Captain Hazelwood's assignment history that comes out of Plaintiffs Exhibit

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- (1) Number 11 I believe it's already admitted in evidence and
- (2) I'm going to ask you to look down here at the first entry for
- (3) the Exxon Valdez Captain Hazelwood's assignment history,
- (4) and
- (5) does that indicate the first date that he joined the Exxon
- (6) Valdez?
- (7) A Yeah, July 30th, '87
- (8) Q Is that roughly the time frame in which you had this
- (9) conversation that I'm getting ready to ask you about?
- (10) A Yes
- (11) Q All right Now Mr Shearer this conversation was about
- (12) Captain Hazelwood?
- (13) A Correct.
- (14) Q With Mr Borgen?
- (15) A Right
- (16) Q And can you recall today the exact words of the
- (17) conversation?
- (18) A No
- (19) Q Did you have an understanding of what Mr Borgen wanted,
- (20) based on that conversation?
- (21) A Yes
- (22) Q What did he want?
- (23) A He wanted me to pay particular attention to Joe and make
- (24) sure that he was not drinking and that he -- he stayed
- (25) straight
- (26) Q Now as the personnel specialist in the west coast fleet

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- (1) office did you have an opportunity to talk to a lot of people
- (2) that were involved with the ships and with the masters of the
- (3) ships?
- (4) A Yes
- (5) Q And did you have a lot of -- in the '90s we called it
- (6) interface with people who boarded the ships who serviced the
- (7) ships who came from the shoreside office to the ships, as
- (8) well?
- (9) A Yes
- (10) Q Did you in fact pay particular attention to
- (11) Mr Hazelwood Captain Hazelwood in response to Mr
- (12) Borgen's
- (13) request?
- (14) A Yes
- (15) Q All right Did you ever notice anything that was -- that
- (16) would indicate to you that Captain Hazelwood was drinking
- (17) alcohol?
- (18) A None whatsoever
- (19) Q Did you go around asking people that question?
- (20) A No, I don't recall what I asked them, but I didn't --
- (21) probably wasn't that blunt, but I looked for signs, I didn't
- (22) see anything but good
- (23) Q Did you get any signs?
- (24) A Positive that he was doing a good job signs and people
- (25) were --
- (26) Q Did you get any signs that he was drinking?

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- (1) A None
- (2) Q All right Now from time to time would Mr Borgen ask you
- (3) about your observations of Captain Hazelwood?
- (4) A Yes
- (5) Q And would you give him the report that you just gave the
- (6) Ladies and Gentlemen of the Jury?
- (7) A Yes, I did, I did
- (8) MR SANDERS No further questions You may ask
- (9) CROSS EXAMINATION OF GRADY T SHEARER
- (10) BY MR O'NEILL
- (11) Q How are you sir?
- (12) A All right
- (13) Q Were you here for Mr Borgen's testimony?
- (14) A I was
- (15) Q You were sitting in the back, and in the conversations that
- (16) Mr Borgen related to us today I didn't hear your name come
- (17) up, did you?
- (18) A No, I didn't
- (19) Q So Mr Borgen didn't come in and tell us today about these
- (20) conversations that you and he -- that you've just testified to?
- (21) A That's correct
- (22) Q Let's talk about Captain Sheehy contemplating the move to
- (23) the Exxon Valdez that core set of conversations And you
- (24) testified that you were asked what you had heard, was there any
- (25) indication -- now at the time that this conversation takes

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- (1) place you're on the west coast aren't you?
- (2) A Yes
- (3) Q And you're the personnel director on the west coast and
- (4) Captain Hazelwood is over on the gulf coast isn't that right?
- (5) A That's correct
- (6) Q So he's asking somebody on the west coast about
- (7) somebody on
- (8) the gulf coast?
- (9) A That's correct
- (10) Q Okay Just so we're clear And with regard to any calls
- (11) that you were going to make you were going to make some
- (12) calls
- (13) and then that was cut off because Sheehy came in and said
- (14) don't worry about making any calls Joe doesn't drink anymore
- (15) so you didn't make any calls did you?
- (16) A I'm really not sure what -- it's been so long ago, whether
- (17) I didn't make calls or he stopped me from making more, I'm
- (18) not
- (19) sure about that, but I was convinced that everything was
- (20) okay
- (21) Q But in any event you were on one coast he was on the
- (22) other coast and you don't recall making any calls?
- (23) A That's correct
- (24) Q And at this point in time would it also be fair to say
- (25) that Sheehy, Borgen and you all knew that there was a potential
- (26) problem with regard to this captain and the subject of alcohol?
- (27) A That's correct
- (28) Q So you were on notice?
- (29) A That's correct

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- (1) Q And would it be fair to say that you and Sheehy and Borgen  
 (2) are all management level officials that were at that time  
 (3) management level officials with Exxon Shipping Company?  
 (4) A I think it's incorrect to say I'm management level I'm a  
 (5) staff person with the ocean fleet office  
 (6) Q How about Sheehy and Borgen?  
 (7) A Yes  
 (8) Q Are you aware of one piece of paper anywhere in the world  
 (9) that deals with the subject of monitoring Captain Hazelwood?  
 (10) I m sure they told you I d ask you that question  
 (11) A No, I'm not aware of any  
 (12) Q Now with regard to the - is it a July 87 conversation  
 (13) with Harvey Borgen is that about when it was?  
 (14) A Right  
 (15) Q You don t recall the details of the conversation?  
 (16) A No, I don't  
 (17) Q Then you testified that you had a lot of opportunity to  
 (18) talk to people and you don t recall any signs do you recall  
 (19) that testimony here today?  
 (20) A Yes  
 (21) Q Have you ever been trained in the monitoring of people who  
 (22) have been through alcohol rehabilitation or the monitoring of  
 (23) people who have alcohol problems?  
 (24) A At that time I - I have recently had some training in  
 (25) that, yes

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- (1) Q How about at that point in time?  
 (2) A Not specifically  
 (3) Q So it would be fair to say that at that point in time you  
 (4) were untrained with regard to the techniques used methods  
 (5) used  
 (6) in order to help somebody who had gone through alcohol  
 (7) rehabilitation stay clean that s a fair statement isn t it?  
 (8) A That's correct  
 (9) Q Now you re responsible for the whole west coast so  
 (10) you re - unlike your colleague who was a here a minute ago  
 (11) whose responsibilities were limited to Long Beach your  
 (12) responsibilities included Long Beach San Francisco Valdez?  
 (13) A Correct  
 (14) Q Now did your responsibilities span from the summer of 87  
 (15) through the grounding?  
 (16) A Yes  
 (17) Q In your talking to people and investigating, did an  
 (18) incident with regard to Henry s in Portland ever come up?  
 (19) A I - I heard about that today I didn't get involved in  
 (20) that  
 (21) Q Okay And did an incident with regard to a launch and a  
 (22) Mary Williamson and a Captain Reeder in San Francisco ever  
 (23) come  
 (24) to your attention?  
 (25) A After - after the grounding that came to my attention  
 (26) Q I m talking - let s just stick with the period 87 to 89  
 (27) at about the time it happened did it come to your attention?

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- (1) A Shortly after the grounding  
 (2) Q Let me try it again so the record - I m not trying to give  
 (3) you a hard time We re two ships passing in the night to use  
 (4) the right analogy  
 (5) At or about the time of the San Francisco launch incident  
 (6) Mary Williamson Steve Day Captain Reeder Captain  
 (7) Hazelwood  
 (8) did your activities turn up the fact that that incident  
 (9) occurred?  
 (10) A No  
 (11) Q Okay And I m going to mention a list of names of people  
 (12) and I m going to ask you with regard to each of those names  
 (13) were they on the west coast when you were on the west coast  
 (14) and then I ll ask you some questions about them just like I  
 (15) did with your colleague Chuck Kirtis?  
 (16) A Yes  
 (17) Q Did you ever ask Kirtis about Captain Hazelwood and  
 (18) alcohol?  
 (19) A No  
 (20) Q Nate Carr?  
 (21) A I don't recall  
 (22) Q Were you aware that crew members on occasion would  
 (23) gather  
 (24) at a place called the Yankee Clipper or the Yankee Whaler  
 (25) have  
 (26) a couple of beers?  
 (27) A No  
 (28) Q Captain Hazelwood would go over there and have a couple

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- (1) beers with them?  
 (2) A No  
 (3) Q Did so openly?  
 (4) A No  
 (5) Q Katherine Haven?  
 (6) A No  
 (7) Q Butch Ogren Butch Ogran or Ogren is that a new name to  
 (8) you?  
 (9) A I think you're pronouncing it wrong I know - but, no  
 (10) Q How should I pronounce it?  
 (11) A I think it's Ogen (ph), isn't it?  
 (12) Q It says here Ogen on my notes and -  
 (13) A I don't know  
 (14) Q You ever talk to him about the captain and drinking?  
 (15) A Not that I recall  
 (16) Q How about Jim Kunkel?  
 (17) A Not that I recall  
 (18) Q How about William Masciarelli? You ever talk to him?  
 (19) A No  
 (20) Q How about Joel Roberson?  
 (21) A No, I don't recall him  
 (22) Q You don t recall talking to him or you don t recall him?  
 (23) A I don't - no, I didn't talk to him about that  
 (24) Q But he was assigned to the Valdez during your watch?  
 (25) A Right, I don't recall talking to him

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- (1) Q How about Katie Haven you ever talk to her about the  
 (2) captain and alcohol?  
 (3) A No  
 (4) Q You mentioned that you d recently gotten some training on  
 (5) alcohol and alcoholism do you recall that a couple of minutes  
 (6) ago?  
 (7) A Yes  
 (8) MR SANDERS Your Honor if we re going to pursue  
 (9) this I think we ought to object This is after the grounding  
 (10) MR O NEILL I was - I give up  
 (11) THE COURT Sustained  
 (12) MR O NEILL You re a lucky man  
 (13) MR SANDERS It was going to be devastating wasn t  
 (14) it?  
 (15) MR O NEILL Thank you sir  
 (16) REDIRECT EXAMINATION OF GRADY T SHEARER  
 (17) BY MR SANDERS  
 (18) Q Are you familiar with a bar or restaurant called the Yankee  
 (19) Clipper or the Yankee Whaler?  
 (20) A No  
 (21) Q I was hoping we were going to get that straightened out  
 (22) whether it s clipper or whaler  
 (23) Now Mr O Neill asked you some questions about training  
 (24) Mr Shearer have you ever drunk any alcohol?  
 (25) A I have on occasion

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- (1) Q You ever been around anybody that drank alcohol while you  
 (2) were present?  
 (3) A Yes  
 (4) Q Would that be a usual or an unusual occurrence in your  
 (5) life?  
 (6) A Usual  
 (7) Q And in 1987 88 and 89 would that have been a usual  
 (8) occurrence in your life?  
 (9) A It would have been usual  
 (10) Q Have you ever ever had the occasion to see anybody that  
 (11) had too much to drink?  
 (12) A Yes  
 (13) Q Would that be unusual?  
 (14) A It would be - no, it would not be unusual I've seen  
 (15) people who've had too much to drink  
 (16) Q You know how to recognize -  
 (17) A Certainly  
 (18) Q - people who ve had too much to drink can t you?  
 (19) A Certainly  
 (20) Q You can recognize a bottle of wine you know what that  
 (21) looks like?  
 (22) A Certainly do  
 (23) Q You know what a can of beer looks like?  
 (24) A Yes  
 (25) Q You know what a bottle of liquor looks like?

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- (1) A I do  
 (2) Q Do you know what alcohol smells like?  
 (3) A I know what alcohol products smell like  
 (4) Q Did you ever see Captain Hazelwood on your visits with him  
 (5) any meetings, any other place, look like what some of these  
 (6) people you ve seen in your life who ve had too much to drink  
 (7) looked like?  
 (8) A No  
 (9) Q Have you ever been close enough to Captain Hazelwood to  
 (10) smell his breath?  
 (11) A Certainly  
 (12) Q Have you ever smelled alcohol on his breath?  
 (13) A No  
 (14) Q Have you ever been on a ship -  
 (15) A Yes  
 (16) Q Have you ever been in his cabin?  
 (17) A Yes  
 (18) Q Have you been in his stateroom?  
 (19) A Yes  
 (20) Q Have you been in his office?  
 (21) A Yes  
 (22) Q Did you ever see anything that looked like to you a  
 (23) container that contained alcohol?  
 (24) A No  
 (25) Q Did you ever see Captain Hazelwood take a drink of what you

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- (1) believed to be alcohol?  
 (2) A Never  
 (3) MR SANDERS No further questions  
 (4) THE COURT You may step down sir Thank you  
 (5) MR LYNCH Your Honor call James Rouse to testify  
 (6) Tempted to say he s an adverse witness but -  
 (7) THE CLERK Would you raise your right hand please  
 (8) 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 please  
 (12) THE WITNESS My name is James J Rouse that s  
 (13) spelled R-O U S E My address is 14927 Cindy Wood  
 (14) Texas  
 (15) THE CLERK Thank you sir  
 (16) DIRECT EXAMINATION OF JAMES ROUSE (Live)  
 (17) BY MR LYNCH  
 (18) Q Mr Rouse you re employed by Exxon?  
 (19) A Yes, sir, I am  
 (20) Q How long have you been with Exxon?  
 (21) A Joined Exxon 32 years ago this week  
 (22) Q And what is your current job, sir?  
 (23) A I am the manager of Exxon's public affairs department  
 (24) Q As of March 23, 1989 what was your job title?  
 (25) A I was the manager of the human resources department



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- (1) Q How long had you held that job prior to March 23 1989?
- (2) A I moved back into human resources and I had a human
- (3) resources background in the company as the assistant
- (4) manager of
- (5) the department in May of 1980, and took over general
- (6) management
- (7) responsibilities for the department in May of 1981
- (8) Q So you were manager from May of 1981 up to and including
- (9) the time of this accident?
- (10) A Yes, sir
- (11) Q And I think you said you had a human relations resources
- (12) background in the company what did you mean by that?
- (13) A Well, my degree is a bachelor of science in industrial
- (14) management and industrial engineering, and I joined the
- (15) company
- (16) in 1962 in a human resources capacity I worked in that
- (17) capacity for a year I had an Army commission went on
- (18) active
- (19) duty as a lieutenant in the Army for two years on military
- (20) leave from the company, returning in 1965 in human
- (21) resources
- (22) I worked in human resources then for another three or four
- (23) years at which time I joined the marketing department and
- (24) had
- (25) a series of management assignments in the marketing
- (26) department
- (27) over the next, oh, I'd say eight or nine years
- (28) I was then in what we call our supply or logistics function
- (29) for a couple of years, and then obviously returned to human
- (30) resources in 1980
- (31) Q Could you give the jury a very brief description of what
- (32) human resources included?

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- (1) A Yes sir
- (2) Q I might say that someone else from human resources has
- (3) been
- (4) here before you so you don't have to give the full nine yards
- (5) A My responsibilities included collective bargaining, which
- (6) is involvement with our unions, we have about 35 or 40
- (7) unions
- (8) at Exxon U S A They included professional recruiting
- (9) program We had a management training group we had a
- (10) compensation group that deals with pay and wages and
- (11) compensation We had a benefits group that had
- (12) responsibility
- (13) for administering our hospitalization plan, our retirement
- (14) plan, those kinds of benefit plans We had a group that was
- (15) responsible for what we call equal employment opportunity
- (16) and
- (17) diversity to ensure that we were bringing all types of people
- (18) from all types of backgrounds into the organization We
- (19) had a
- (20) group opportunity, part of the time I held this position that
- (21) had to do with safety, it was a staff group having to do with
- (22) safety, and we developed personnel policies in that group
- (23) Q Now you kept saying we had a group These were groups of
- (24) people who specialized in these various areas?
- (25) A Yes, sir, that's correct And then they ultimately
- (26) reported into the human resources department
- (27) Q And I think among the groups that you mentioned was a
- (28) group
- (29) or groups responsible for developing personnel policies?
- (30) A Yes, sir, that's correct
- (31) Q And did that include the alcohol policy of Exxon?

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- (1) A Yes sir indeed it did
- (2) Q Now Mr Paul was here earlier and testified that Exxon
- (3) Shipping Company relied on the expertise of the Exxon U S A
- (4) human relations department for policy development Could
- (5) you
- (6) explain how the work that your group did would find its way to
- (7) Exxon Shipping Company?
- (8) A Yes Exxon U S A at the point in time we're talking
- (9) about, had overall responsibility for developing personnel
- (10) policies on behalf of the corporation, and then if the
- (11) corporation adapted those policies they would be spread
- (12) out or
- (13) sent down to all the various regions and affiliates across
- (14) the
- (15) United States, and Exxon Shipping being one of those
- (16) organizations
- (17) Q Being an affiliated organization?
- (18) A Yes sir that's correct
- (19) Q You would develop the policy and that would be provided to
- (20) Exxon Shipping?
- (21) A Yes, sir, that's correct
- (22) Q And if they needed to make some changes or adjustments
- (23) for
- (24) their corporation they would do that?
- (25) A Certainly they could
- (26) Q On the assumption that the policies we're talking about
- (27) were substantially the same and I think the record reflects
- (28) that they were, my questions will relate for the period from
- (29) January 1 - could I have just a blank screen - January 1

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- (1) 1965 - 1985 excuse me until the date of the - the day
- (2) before the accident March 23 1989?
- (3) A Yes, sir
- (4) Q And I'd like to start with that January 1 1965 date just
- (5) for - I said it again
- (6) A 1985
- (7) MR LYNCH Thank you Your Honor I didn't even get
- (8) it out of the newspaper
- (9) BY MR LYNCH
- (10) Q January 1 1985 date and could you just briefly describe
- (11) the overall alcohol policy of Exxon Corporation Exxon
- (12) Company
- (13) U S A as it existed on that date?
- (14) A Well, if you - I guess you'd have to go all the way back
- (15) if we want to work it that way, we have had the issue of
- (16) drug - or rather alcohol - certainly alcohol and
- (17) subsequently
- (18) drugs and alcohol in our management systems, in our
- (19) management
- (20) philosophies for decades If you go back to the early '60s,
- (21) in
- (22) our union contracts we had provisions in there that had to
- (23) do
- (24) with possession use distribution of alcohol on company
- (25) premises
- (26) We have a comprehensive management training program at
- (27) Exxon U S A and in Exxon Corporation, and that involved
- (28) monitoring employee's job performance In our
- (29) organization and
- (30) our philosophy, the way people get paid the pay raises they
- (31) get, their promotions, their transfers are all tied to their

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- (1) job performance, so supervisors are trained extensively in how
- (2) to reevaluate job performance how to work with employees on a
- (3) day to-day basis in their development and in their
- (4) performance So in that regard, supervisors would be trained
- (5) in monitoring or observing or working with day-to-day
- (6) behavior
- (7) Now, in about 1977, to supplement those activities, we had
- (8) what we call the employee policy on alcoholism, and that was
- (9) just a sheet of paper that supplemented the things I've already
- (10) described
- (11) Q So those things were in place as of January 1, 1985?
- (12) A Yes, sir, they were
- (13) Q And as we understand it, that same set of principles, were
- (14) they applicable to Exxon Shipping Company?
- (15) A Yes, sir, they were
- (16) Q If I may approach Your Honor I'd like to hand - let me
- (17) show you Defendants Exhibit 9182 and ask you if you could
- (18) identify that for the record, sir?
- (19) A Yes, sir This is a letter that was dated March 20th,
- (20) 1984, to headquarters, department managers and
- (21) presidents of
- (22) affiliated companies, Exxon Shipping would be an affiliated
- (23) company and it's signed by me
- (24) Q And the purpose of this letter?
- (25) A Purpose of this letter is to outline for them a policy of progressive discipline that we would have for employees that

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- (1) were - they were called the progressive disciplinary
- (2) guidelines Again, these are guidelines that were in many of
- (3) our union contracts for many years but this was just kind of a
- (4) codification, if you will, of some practices that were already
- (5) in place
- (6) Q So taking the January 1 1985 start date that we've been
- (7) talking about this is the - does this document express the
- (8) list of rules and regulations that you had relating to alcohol
- (9) in part?
- (10) A Yes, sir, it does
- (11) Q And the procedures that management was given for
- (12) enforcement of those rules?
- (13) A Yes sir it does
- (14) Q Now let me direct your attention specifically to this
- (15) language Can you read that on your screen Mr Rouse?
- (16) A Yes, I can
- (17) Q On a screen?
- (18) A Right
- (19) Q Seems to be a little out of focus to me I can never tell
- (20) whether it's my glasses or if - are you able to read it Your
- (21) Honor?
- (22) THE COURT Don't worry about me
- (23) BY MR LYNCH
- (24) Q Mr Rouse you see the highlighted language there
- (25) A Yes

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- (1) Q Could you just expand on how it was that managers were
- (2) expected to watch for alcohol or watch for substances in the
- (3) workplace to the extent that they might pose a risk or danger
- (4) to employees of Exxon or employees of the public?
- (5) A Obviously what the words say - to begin with, it's
- (6) impractical to try to spell out every single thing you try to
- (7) do in this regard in some kind of printed rules If you did
- (8) that, you'd have a rule book that none of us would be able to
- (9) carry in this courtroom What it goes on to say is that even
- (10) though we can't cover all situations, the list attached is an
- (11) illustration of the kinds of violations that may result with
- (12) discipline without warning
- (13) Q Even though you had a process that called for gradual
- (14) warning to the employee the chances to clean up his act, if it
- (15) were, there were certain offenses that were automatically
- (16) subject to permanent discipline, is that -
- (17) A Yes, sir, that's correct
- (18) Q And referring to Exhibit A, among those were possession and
- (19) use of alcohol?
- (20) A Yes, sir Possession and use of alcohol or reporting for
- (21) work in an unfit condition, including under the influence of
- (22) intoxicants, narcotics or drugs
- (23) Q Let me just ask you if you can comment further This is in
- (24) the page preceding Exhibit A under the title important notes
- (25) Was the - was the policy of the Exxon human resources

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- (1) department personnel department that managers had no
- (2) discretion that if an employee stumbled or took a drink or had
- (3) an alcohol problem that he must be terminated in every case?
- (4) A No, sir And in fact as these guidelines state,
- (5) management has discretion, either to terminate the
- (6) employee or
- (7) employ lesser discipline based on the severity of the
- (8) deference, timing and other mitigating factors
- (9) Q And continuing on that I see that one of the
- (10) recommendations is that where - where it's a manager's
- (11) conclusion that it's not necessary on the spot to terminate the
- (12) employee that it's recommended that the employee be sent to
- (13) medical for evaluation?
- (14) A That's correct
- (15) Q Could you explain how that process was supposed to work?
- (16) A Well, what would happen there is if the supervisor had an
- (17) employee who he or she suspected that alcohol may have -
- (18) job
- (19) performance deteriorated and perhaps alcohol was an
- (20) issue, then
- (21) what they should do is send that employee to medical for an
- (22) evaluation
- (23) Q What was the purpose of sending them to medical?
- (24) A Medical could help determine whether it really was an
- (25) alcohol problem or some other type of situation
- (26) Q Now you mentioned that in 1977 - well first of all are
- (27) these - these the rules that you were referring to that went
- (28) back prior to the existence of an alcoholism policy?

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- (1) A Yes sir, that's correct
- (2) Q And in 1977 the company adopted an alcoholism policy And
- (3) I'll put up Plaintiffs Exhibit 158 in evidence ask you if
- (4) that's in substance the policy you were talking about?
- (5) A Yes, sir, that's correct That was our 1977 policy
- (6) Q And this problem relates to employees who have a problem
- (7) with alcoholism is that correct?
- (8) A That's correct, sir
- (9) Q Now suppose an employee thought that he had a problem and
- (10) went to a doctor for advice and it turned out the doctor didn't
- (11) diagnose him as having alcohol - in other words as being an
- (12) alcoholic was this policy available to that employee?
- (13) A Well, it would have been available, but I suppose if he was
- (14) not diagnosed as being an alcoholic you wouldn't be working
- (15) with him on a policy of alcoholism
- (16) Q Well if the employee went for alcohol treatment -
- (17) A Yes, sir
- (18) Q - but the doctor concluded you have an alcohol abuse
- (19) problem how would you deal with that?
- (20) A Well, then it would come under this policy as I would see
- (21) it
- (22) Q Even if it's not diagnosed as strict alcoholism is that
- (23) correct?
- (24) A That could be the case
- (25) Q Now in formulating this policy, that's when you were in

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- (1) marketing is that correct?
- (2) A The policy was actually formulated and released when I was
- (3) still in marketing that's correct
- (4) MR LYNCH Your Honor I don't believe I offered
- (5) 9182 and I do so at this time
- (6) (Exhibit 9182 offered)
- (7) THE COURT Is there objection?
- (8) MR O NEILL No objection
- (9) THE COURT Defendants 9182 is admitted
- (10) (Exhibit 9182 received)
- (11) BY MR LYNCH
- (12) Q When you became manager of the human resources department
- (13) you had a group that was involved with formulation of this
- (14) policy, among others?
- (15) A That's correct
- (16) Q And did you - as manager did your duties include
- (17) informing yourself on the state of the policy and whether it
- (18) was up to date and satisfactory?
- (19) A Yes, sir, it did
- (20) Q And was the - was this aspect of the overall alcohol
- (21) policy based on safety considerations?
- (22) A Yes, it was What we were really trying to do here in this
- (23) issue of alcoholism, is you're trying to balance the rights of
- (24) the employee and the public safety It's a very serious thing
- (25) to accuse somebody of - of having an alcohol problem if, in

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- (1) fact they do not At the same time you're trying to balance
- (2) that with the safety for the public We're not trying to be
- (3) big brother here Exxon has no responsibility and wouldn't want
- (4) to take on responsibility of monitoring an employee's personal
- (5) life When it affects job performance, when that job
- (6) performance could indeed affect the public safety, then
- (7) obviously it is an issue
- (8) Q Now I've highlighted the language which has been
- (9) discussed at length in this case which reads employees who
- (10) suspect that they may have an alcoholism problem are encouraged
- (11) to seek diagnosis and follow through with prescribed
- (12) treatment No employees with alcoholism will have their job
- (13) security or future opportunities jeopardized due to a request
- (14) for help or involvement in a rehabilitation effort
- (15) First of all what as the manager of the program the
- (16) policy what did that mean to the employee who went to an
- (17) alcohol treatment facility and admitted himself for
- (18) rehabilitation or treatment?
- (19) A Well, what it meant to that employee was if they self
- (20) referred themselves for alcohol treatment and we found out
- (21) about it, we weren't going to fire them, we were going to more
- (22) than likely return them to their job That was the norm at
- (23) that time, and certainly we were not going to hold that against
- (24) them, in terms of future promotion opportunities
- (25) We were trying to encourage people to come forward

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- (1) Q Now what about something like - you probably were sitting
- (2) in court when Mr O Neill asked the preceding witnesses well
- (3) did you ask him about how he was doing on his rehab was that
- (4) something that Exxon wanted its managers to do if someone
- (5) returned to the job after having treatment?
- (6) A No, sir, I don't think that we asked them to have a
- (7) specific responsibility to monitor just the activities that
- (8) related to rehabilitation Certainly on a day to-day basis
- (9) they interact with those people and they should be looking at
- (10) job performance The key to what that supervisor should be
- (11) looking at is how the individual is performing on the job
- (12) Q Now how in your opinion did telling the employee that if
- (13) he went out to rehab he would get his job back or be assured of
- (14) employment and I guess future status on the job wouldn't be
- (15) jeopardized how did that contribute to the safety of coworkers
- (16) and the public?
- (17) A Well, the view was that if you did not offer them the
- (18) opportunity to come back to their job, if in fact you penalized
- (19) them for coming forward and saying they had a problem then
- (20) they wouldn't come forward, then you got a situation where you
- (21) have somebody with a serious problem that you don't know about,
- (22) and that has a very, very deep concern for us from a safety
- (23) standpoint
- (24) Q Did you and the people in your department - Mr Rouse did
- (25) you reach that conclusion on your own or did you seek advice

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- (1) about this subject?
- (2) **A All the way through as we worked drug and alcohol issues,**
- (3) **we have had a number of advisors, resources that we depended on**
- (4) **to provide us information**
- (5) **Q Okay And with reference to the status of the policy as of**
- (6) **January 1 1985 could you just give us a general description**
- (7) **of how you went about determining where this policy fit in the**
- (8) **industry generally?**
- (9) **A Well obviously we had input from our medical department,**
- (10) **and I'm aware of the fact that they reached out to other**
- (11) **medical departments and other companies to see how they were**
- (12) **doing I'm personally involved in several groups, a group**
- (13) **called the Business Round Table Employer Relations Committee, a**
- (14) **business round table made up of perhaps a hundred CEOs of major**
- (15) **companies in the country I was on a committee called Employee**
- (16) **Relations and we frequently talked about substance abuse**
- (17) **policies, problems and that sort of thing I was chairman of**
- (18) **that committee in 1986 I'm in an organization of - Labor**
- (19) **Policy Association, and it does research on labor and personnel**
- (20) **policy issues had many discussions about drug and alcohol**
- (21) **policies so I was I think, generally familiar - my view would**
- (22) **be I was generally familiar with drug and alcohol policies of**
- (23) **other companies, as well as advice from medical experts and**
- (24) **others in the field**

(25) ~~Q Now a Dr. Masters has come into this court and he~~

- (1) testified that in the mid 80s there was a recognized standard
- (2) that employees who went out to rehab if they held a job in a
- (3) safety sensitive position that the employer should get
- (4) directly involved in supervising aftercare
- (5) In your research as of 1985 was it a standard in industry
- (6) that employers get involved in aftercare of employees who held
- (7) jobs in safety-sensitive positions?
- (8) **A I would say not I would say that this is - you're almost**
- (9) **saying shouldn't we be monitoring what they do on their**
- (10) **personal time which - should we be monitoring their**
- (11) **personal**
- (12) **lives and I don't view that as a responsibility of the**
- (13) **company The responsibility of the company is to ensure**
- (14) **that**
- (15) **their job performance is not deteriorating because they**
- (16) **have**
- (17) **those kind of problems and if it becomes a job performance**
- (18) **issue then yes I think it would involve the company I**
- (19) **respectfully disagree with the doctor's view on what was**
- (20) **state**
- (21) **of the art at that time**
- (22) **Q Well could you address what you did to learn what others**
- (23) **thought about this? In other words were these practices being**
- (24) **followed in other companies?**
- (25) **A My - my view would be that they were not in the**
- (26) **companies**
- (27) **that I'm familiar with**
- (28) **Q And that included the 150 plus companies that participated**
- (29) **in the business round table?**
- (30) **A Yes sir that's correct**

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- (1) **Q And were you making an effort to determine what the state**
- (2) **of the art was?**
- (3) **A Yes, sir We did from time to time run surveys to see what**
- (4) **the state of the art was**
- (5) **Q I'd like to address your attention if I can find my**
- (6) **highlighter to the language in this part of the policy Now,**
- (7) **did you have medical or professional advice at the Exxon**
- (8) **human**
- (9) **resources department concerning this provision of the**
- (10) **alcoholism policy as it existed in 1985?**
- (11) **A Yes, sir And I think our human resources advice was**
- (12) **similar, which was the policy didn't require or should not**
- (13) **result in any special privileges, if you will for people that**
- (14) **have problems with - with substances**
- (15) **Q Nor special requirements?**
- (16) **A Nor special requirements, that's exactly right**
- (17) **Q Now if you followed what apparently is Mr O Neill or**
- (18) **Dr Masters advice you would say when an employee came**
- (19) **back**
- (20) **from rehab well you have to come in and check in with us that**
- (21) **you've been going to see your doctor that you've been going to**
- (22) **AA meetings Did you ever consider doing that?**
- (23) **A At that point in time, no, sir**
- (24) **Q Did you know of companies in your industry who were doing**
- (25) **it?**
- (26) **A No, sir I don't think any of them were**
- (27) **Q Do you know of any professional advice you received to do**

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- (1) that?
- (2) **A No, sir In fact, I think we probably received**
- (3) **professional advice that was the opposite, from our law**
- (4) **department, for example, who would have probably**
- (5) **counseled us**
- (6) **and did counsel us that that could result in charges of**
- (7) **discrimination**
- (8) **Q Did you consider - did you make studies to determine what**
- (9) **the proper way to handle the employee who had returned from**
- (10) **rehabilitation was as of the time in 1985 about midway**
- (11) **through the period of time that we're talking about?**
- (12) **A Our view was when they returned from rehabilitation, we**
- (13) **should put them back on the job that they came from, using**
- (14) **good**
- (15) **solid management judgment and then use our normal**
- (16) **supervisory**
- (17) **oversight of their job performance**
- (18) **Q Did you have experience in Exxon that is to say did the**
- (19) **corporate experience give you assurance that that method and**
- (20) **procedure was adequate to identify problems with an employee**
- (21) **who resumed or possibly resumed the use of alcohol or any**
- (22) **other**
- (23) **substance after returning to work?**
- (24) **A At that point in time, as the senior human resources**
- (25) **official in Exxon U S A , I was very comfortable that we had a**
- (26) **policy that did what it needed to do to balance the rights of**
- (27) **those individuals, as well as do the most we could to protect**
- (28) **the safety of the public**
- (29) **Q And you've heard some questions this morning about**
- (30) **whether**

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- (1) people were trained and I think the question was put to  
 (2) Mr Larsen a few minutes ago were you trained to monitor a  
 (3) person who had returned from rehab?  
 (4) Did you have procedures to train managers at Exxon to deal  
 (5) with substance abuse problems whether they be alcohol or  
 other  
 (6) substances of employees who were working in Exxon  
 premises?  
 (7) A Yes, sir, I think we did We put all of our young  
 (8) supervisors as they'd become supervisors through a  
 program I  
 (9) think Mr Larsen called it management one indeed today we  
 call  
 (10) it leadership one It's an 11 day course on supervision how  
 (11) you coach employees how you monitor their performance,  
 how you  
 (12) counsel employees, how you help those employees develop  
 and  
 (13) improve on the job and to that extent I would have to say  
 that  
 (14) our supervisors were well versed in examining employee  
 (15) behavior  
 (16) Q Now that supervision does it include that 11 day course  
 (17) does it include the issue of monitoring for substance abuse  
 (18) knowing - knowing what to watch for?  
 (19) A There is a segment in that course that speaks to  
 substance  
 (20) abuse in the workplace  
 (21) Q And what has Exxon's experience been in actual practice  
 (22) with the success of its managers in identifying problems - in  
 (23) identifying people who have problems and either moving them  
 out  
 (24) of the job or getting them to help or whatever is necessary to  
 (25) resolve the problem?

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- (1) A My view is that we have been successful in that regard  
 (2) Q Now as of 1985 you overall - and referring to all the  
 (3) sources that you consulted were you satisfied that the Exxon  
 (4) drug - excuse me Exxon alcohol policies that then existed was  
 (5) consistent with the standard of the industry in other companies  
 (6) like Exxon that had - that included safety-sensitive jobs?  
 (7) A I would say yes and I suppose I should say that we just  
 (8) were not relying on that - on that policy at that point in  
 (9) time in 1985 For example, in - in 1984, we initiated an  
 (10) employee health advisory program which was a free  
 service that  
 (11) employees could come to to receive counseling if they had  
 (12) marital problems or family problems or problems with  
 substance  
 (13) abuse  
 (14) We had very broad awareness training on - on drugs and  
 (15) alcohol in the work place in fact, in 1984, we initiated that  
 (16) and I personally took a fellow to our management  
 committee,  
 (17) which is our very senior managers call them the three or  
 four  
 (18) star generals, using a military term and we started with a  
 (19) drug awareness program with them and then we began to  
 cascade  
 (20) that out throughout the organization So the point I'm trying  
 (21) to make is as we did these studies and understood what  
 (22) companies were doing, then of course we brought our  
 policies  
 (23) along, as well  
 (24) Q As of approximately April 1985 the record indicates that  
 (25) Captain Hazelwood admitted himself for treatment at South  
 Oaks

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- (1) Hospital for a treatment that involved at least some aspect of  
 (2) an alcohol diagnosis I'd like to ask you a few questions  
 (3) about as the person responsible for the policy about how that  
 (4) policy was meant to apply to the facts that exist in this  
 (5) record  
 (6) First of all do you understand the term self identifying?  
 (7) A Yes sir I think I do  
 (8) Q Was the term self identifier relevant to the Exxon alcohol  
 (9) policy as it existed at that time?  
 (10) A Yes sir I think it was  
 (11) Q What was its relevance?  
 (12) A Well, the relevance was that a person could self identify,  
 (13) that is they could go to rehab on their own, through the  
 (14) suggestion or urging of a family member or perhaps a peer  
 or  
 (15) someone like that or the supervisor because there were  
 severe  
 (16) job performances could in effect order them to go to the  
 (17) medical department and find out what the problem was  
 (18) Q You've confused me there Are both of those self  
 (19) identifiers?  
 (20) A Oh, absolutely not The first one is self identifier the  
 (21) second one would be a supervisory referral  
 (22) Q What's the difference under the policy versus a supervisory  
 (23) referral?  
 (24) A Well, a self identifier would be someone who identified  
 (25) someone said you had a problem, you ought to do  
 something about

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- (1) your problem you'd go to work on that problem versus a  
 (2) supervisor referral that I would best describe this way from  
 (3) personal experience I have where we call an individual in  
 (4) said your job performance is deteriorated, your attendance  
 has  
 (5) deteriorated and I think you have a problem and I'm going to  
 (6) send you to medical to find out what that problem might be  
 and  
 (7) let them make a diagnosis and if you don't do that, your  
 (8) option is to clean out your desk and leave the company  
 (9) Q And you described the distinction but what effect does it  
 (10) have under the policy? Does the employee have a different  
 (11) right if he's a self identifier versus if he's referred by  
 (12) supervisor?  
 (13) A If he's a self identifier, he's not going to be subject to  
 (14) discipline, and obviously in the case of supervisory referral  
 (15) there's going to be heavy discipline if he doesn't take the  
 (16) action  
 (17) Q We spoke about the provision of the policy that told the  
 (18) employee if you seek help and get rehabilitation your job  
 (19) position will be returned to you and your future opportunities  
 (20) will not be jeopardized?  
 (21) A Yes, sir  
 (22) Q Is there a difference under that provision of the policy  
 (23) between a self identifier and a supervisory referral?  
 (24) A I absolutely think so because if you were supervisory  
 (25) referral then I don't think there would be any obligation

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- (1) necessarily, to put you back in the position you were in
- (2) You're in a - when you have a supervisor referral, you're in a
- (3) disciplinary mode at that point
- (4) Q Now with reference to Captain Hazelwood - well let's -
- (5) as you understood the policy if an employee admitted himself
- (6) for rehabilitation and shortly prior to that, someone in his
- (7) management chain had advised him that there was an
- (8) investigation underway relating to him that much no more
- (9) would that make the individual a supervisory referral?
- (10) A No, sir, it would be -
- (11) Q How would you classify it?
- (12) A That would be a self referral
- (13) Q Even though the employee possibly made the decision to seek
- (14) help because he heard about an investigation?
- (15) A Absolutely, because you didn't have the supervisor saying,
- (16) in effect, go to medical and get some help or you're going to
- (17) have to clean out your desk and go home
- (18) Q Did being a self identifier require that the employee go to
- (19) his manager and tell the manager I'm going into rehab?
- (20) A No, sir
- (21) Q Did the - was self identification necessarily a formal
- (22) identification to management of the company that the individual
- (23) had chosen to go to rehab?
- (24) A No, sir
- (25) Q Under this policy was it permissible and applicable for an

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- (1) employee to go to a rehab facility and tell the company nothing
- (2) at all about it?
- (3) A Quite possible An employee could take vacation, say I'm
- (4) going to Palm Springs to play golf, put themselves in
- (5) rehabilitation program go through that rehabilitation
- (6) program,
- (7) come out and go back to work and no one would have been
- (8) the
- (9) wiser
- (10) Q Let me ask you if you could slow down a little bit
- (11) A Yes, sir
- (12) Q Maybe they can write it down that fast but I can't listen
- (13) to it that fast
- (14) -A Okay
- (15) Q In the case of an employee who did that would the
- (16) provision of the policy that we talked about that assured the
- (17) employee that he would return to his job would that provision
- (18) apply to the employee even though he never told the company
- (19) anything about the rehab?
- (20) A Well in the hypothetical you're giving me if he never
- (21) told anyone anything about rehab certainly he would go
- (22) back to
- (23) the job that he had when he went off on vacation or on
- (24) leave
- (25) Q Because the company wouldn't know anything about it?
- (26) A Absolutely
- (27) Q But if it subsequently learned about it that would be
- (28) rehab covered by the policy?
- (29) A Yes sir I think so

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- (1) Q And what about the provision of the policy that said no
- (2) special requirements and no special restrictions will apply
- (3) when the employee returns to work?
- (4) A To me that's not applicable I think the employee could
- (5) come back to that job and continue in that position
- (6) Q It is applicable?
- (7) A Excuse me, yes, the reverse, it is applicable
- (8) Q And again under the policy as you understood it would it
- (9) have been permissible for an Exxon manager to say to the
- (10) employee when he comes to work, you can have your job back
- (11) but
- (12) only if you bring me in slips from your AA sponsor to show that
- (13) you've been going to three meetings a week would that have
- (14) been a permissible requirement?
- (15) A If the person was on medical leave, that could have been
- (16) a
- (17) permissible requirement
- (18) Q I'm talking about under the provision of the policy that
- (19) says, when you come back you won't be subject to any special
- (20) requirements or any special privileges
- (21) A Then that would not have been permissible under our
- (22) policy
- (23) as it was
- (24) Q So if the employee went to rehab and came back the policy
- (25) assured him that he was not going to be subjected to special
- (26) medical requirements is that -
- (27) A That's correct, sir
- (28) Q Now you said that the ordinary - the general rule was

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- (1) that an employee who had been out to rehab when he returned
- (2) he'd be given the same job back?
- (3) A Yes, sir
- (4) Q By that do you mean the same job assignment?
- (5) A That's correct I described that as the norm It would
- (6) not have to happen in every case, certainly, but I would say
- (7) that was the norm
- (8) Q Suppose in a situation that an employee -
- (9) MR LYNCH Maybe this is a good time to break, Your
- (10) Honor
- (11) THE COURT Take our initial recess Ladies and
- (12) gentlemen we'll be in recess for 15 minutes
- (13) THE CLERK Court is in recess for 15 minutes
- (14) (Jury out at 10 00 a m )
- (15) (Jury in at 10 16 a m )
- (16) BY MR LYNCH
- (17) Q Mr Rouse we were talking about the employee who goes
- (18) out
- (19) and commits himself or herself for a rehabilitation program
- (20) involving alcohol and the application of this policy insofar as
- (21) it includes a provision that the employee may return to his or
- (22) her job You said I believe that your department at Exxon
- (23) U S A was also responsible for the benefits program?
- (24) A Yes, sir, that's correct
- (25) Q Now in addition to - well I think the policy says it I
- (26) won't put it back up but under the Exxon policy as it existed

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- (1) in 1985 was an employee entitled to benefits if the employee  
 (2) self identified or self admitted into an alcohol rehabilitation  
 (3) program?  
 (4) **A Yes sir, that would have been covered under our medical  
 -**  
 (5) **our hospital medical plan**  
 (6) **Q What about disability benefits salary - substantiation of**  
 (7) **salary?**  
 (8) **A If he went to a rehabilitation facility and that was known**  
 (9) **to the company, in other words he took medical leave to do**  
 (10) **that then he would be subject based on the years of**  
 (11) **service**  
 (12) **he had, or she had, to receive pay while on disability**  
 (13) **Q And in this case there's some evidence that - that the**  
 (14) **employee admitted had himself admitted into a hospital - in**  
 (15) **hospital in house hospitalization program and then there was**  
 (16) **some time off afterwards for the opportunity to attend**  
 (17) **meetings. If that kind of treatment post hospitalization**  
 (18) **treatment were prescribed were prescribed by the doctor did**  
 (19) **the Exxon disability benefits cover that?**  
 (20) **A Would have depended on the type of leave the individual**  
 (21) **was**  
 (22) **on whether they were then on at that point a medical leave**  
 (23) **or**  
 (24) **just on personal leave**  
 (25) **Q Well my question is could they go on medical leave if the**  
 (26) **doctor prescribed that kind of treatment?**  
 (27) **A I think that would depend on the circumstances**  
 (28) **Q What would the - what would make the difference?**

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- (1) **A If that was part of the formal rehabilitation program then**  
 (2) **it would be possible I suppose, for our doctors, our - HR**  
 (3) **doesn't decide this our doctors decide whether they're on**  
 (4) **medical leave or not. The doctor could say they were on**  
 (5) **medical leave. However I think in many cases if they were**  
 (6) **just attending meetings that would not be a medical leave**  
 (7) **Q If their own doctor prescribed time off for them?**  
 (8) **A Yes**  
 (9) **Q And did not declare them fit for duty would they be**  
 (10) **entitled to continuing disability benefits?**  
 (11) **A I don't think so, if their doctor said they were fit for**  
 (12) **duty**  
 (13) **Q Not?**  
 (14) **A They were not fit for duty**  
 (15) **Q That's what I said sir**  
 (16) **A They were not fit for duty. Again, I'm not being vague**  
 (17) **here. I think it would depend on the circumstances,**  
 (18) **perhaps,**  
 (19) **that would be a judgment call by the medical department**  
 (20) **Q In the case of the employee who had taken disability**  
 (21) **benefits your medical department would determine whether**  
 (22) **and**  
 (23) **when the employee returned fit for duty status?**  
 (24) **A When you come off medical leave you need to supply the**  
 (25) **medical department some evidence that your doctor says**  
 (26) **you're**  
 (27) **fit to come back whether that would be problem with**  
 (28) **alcohol**  
 (29) **heart attack broken leg whatever it might be**

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- (1) **Q Now when an employee comes back to work after having**  
 (2) **gone**  
 (3) **through such a program the medical department is the one that**  
 (4) **verifies the employee's qualification to return for duty is**  
 (5) **that correct?**  
 (6) **A I wouldn't state it quite like that. I think the way it**  
 (7) **would really happen is our medical department would**  
 (8) **contact or**  
 (9) **the individual's doctor would contact the medical**  
 (10) **department,**  
 (11) **they would have an interaction our medical department and**  
 (12) **the**  
 (13) **employee's physician and if the employee's physician said**  
 (14) **thus**  
 (15) **the person is ready to return to work then our doctor would so**  
 (16) **note that and they'd return to work**  
 (17) **Q And is that insofar as disability benefits are concerned**  
 (18) **under the - under the Exxon program as it existed in 1985 is**  
 (19) **that what determines whether or not the employee receives**  
 (20) **disability benefits?**  
 (21) **A Yes sir**  
 (22) **Q Now when - you testified that as of 1985 you believed**  
 (23) **that the policy that was then in effect which had these three**  
 (24) **basic elements that you describe the rules against use of**  
 (25) **alcohol the procedure for encouraging self identification and**  
 (26) **the - and the procedures that the employee had available to**  
 (27) **him when he returned to work was that policy changed**  
 (28) **between**  
 (29) **January 1 1985 and March 23 1989?**  
 (30) **A Yes sir it was**  
 (31) **Q Okay Could you just take us through as you recall the**

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- (1) **major changes that occurred over that period of time?**  
 (2) **A Well, the first change that occurred was in - in 1985, we**  
 (3) **decided to initiate a program of pre-employment drug**  
 (4) **screening. We were concerned enough about managing the**  
 (5) **people**  
 (6) **who belonged to the company who were company**  
 (7) **employees, and**  
 (8) **managing their activities as safely as we could for the**  
 (9) **public. We didn't find ourselves wanting to add additional**  
 (10) **people to the roles who came to us with basically the**  
 (11) **problem**  
 (12) **And so we initiated pre-employment drug screening for all**  
 (13) **of**  
 (14) **our people who were hired whether that would be a blue**  
 (15) **collar**  
 (16) **wage earner or if it was a matter of a young engineer**  
 (17) **coming**  
 (18) **off the college campus**  
 (19) **Q That occurred in 1985?**  
 (20) **A That occurred in 1985**  
 (21) **Q Any other changes in 1985?**  
 (22) **A Well, we also had, in 1985, we had expanded - our EHAP**  
 (23) **program started out as a test in 1984, and we expanded that**  
 (24) **broadly across the company in 1985 and our drug**  
 (25) **awareness**  
 (26) **training that I mentioned for supervisors took place in '84**  
 (27) **and**  
 (28) **'85, the year of '85**  
 (29) **Q And this drug awareness did that include training**  
 (30) **supervisors on identification of alcohol abuse on the job?**  
 (31) **A Yes, sir Drug and alcohol abuse**  
 (32) **Q How extensive was that? Was that provided to people at**  
 (33) **Exxon Shipping Company?**

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- (1) A Yes sir We intended for all of our supervisors to  
 (2) receive that, what we call drug awareness training program  
 (3) I'm sure that probably if you took the role of every  
 supervisor  
 (4) we had at that time in the company, perhaps a thousand or  
 more,  
 (5) there might have been someone who missed that training  
 because  
 (6) they were off on duty someplace or had - had - on vacation  
 or  
 (7) something, but the norm or the expectation was all  
 supervisors  
 (8) would receive that training  
 (9) Q Including supervisors at Exxon Shipping Company?  
 (10) A That's correct, sir  
 (11) Q Now have you identified the changes that occurred in 1985  
 (12) to the alcohol policy?  
 (13) A Yes, that would be basically it in 1985 Now, in 1986 -  
 (14) Q Well, let me ask the question Did you make any changes in  
 (15) 1986?  
 (16) A Yes, sir, we did We -  
 (17) Q What were those changes?  
 (18) A Okay We were in the process, throughout the year of  
 1986,  
 (19) doing a complete reevaluation of our alcohol and - our  
 alcohol  
 (20) policy, and that resulted in early 1987 in the introduction of  
 (21) a new drug and alcohol policy  
 (22) Q Okay Now before I ask you about the reevaluation could  
 (23) you just give the jury a quick summary of what the differences  
 (24) were between the '87 policy and the one that had existed at the  
 (25) start of 1985?

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- (1) A Yes sir The 1987 - the new '87 policy added drugs to  
 (2) the equation for the first time because previously we had  
 just  
 (3) an alcohol policy It provided for search for cause, it  
 (4) provided for tests for cause, and then it continued to have  
 the  
 (5) things we already had, pre-employment drug screening,  
 (6) supervisory awareness training, substance abuse is a  
 treatable  
 (7) condition, encourage people to come forward for  
 (8) rehabilitation  
 (9) Q Now you indicated that through 1986 you were engaged in a  
 (10) reevaluation of the policy that we have described through 1985?  
 (11) A Yes, sir  
 (12) Q And did you come across Dr Masters standards for how you  
 (13) deal with employees after they return from rehab if they're in  
 (14) a safety sensitive position?  
 (15) A No, sir, I did not personally come across those standards  
 (16) Q Did anybody report to you in your department that they had  
 (17) learned that there was this well established standard out there  
 (18) that applied to safety sensitive positions?  
 (19) A No, sir they did not  
 (20) Q What did you do to try to find out what was going on in  
 (21) industry and what academics and government were  
 recommending to  
 (22) companies in Exxon's position?  
 (23) A Well when we wrote our 1987 policy we had a number of  
 (24) outside resources we used outside and inside resources  
 We  
 (25) used to help us design that policy

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- (1) For example, we used human affairs international these  
 (2) were the trained counselors that our employees could go to  
 if  
 (3) they had personal problems, including problems with drugs  
 and  
 (4) alcohol, so we used their input  
 (5) Q I think you assumed a lot of us I've spent a lot of time  
 (6) on this you've spent a lot of time on this and we jump over  
 (7) things These were the EAP providers?  
 (8) A Yes, sir, that's correct  
 (9) Q And Human Affairs International was a different  
 (10) corporation not a division or affiliate or department of  
 (11) Exxon?  
 (12) A That's correct, they're just a contractor of Exxon They  
 (13) don't work - they're not a department of Exxon, their  
 (14) employees are not Exxon employees  
 (15) Q Why was the EAP or EHAP program kept separate from  
 Exxon  
 (16) itself?  
 (17) A Because we wanted to maintain confidentiality, for one  
 (18) thing, and, secondly, we didn't want to have that an  
 in house  
 (19) program We thought we could get better counseling  
 across the  
 (20) nation for our employees by using a contractor  
 (21) Q You consult that company?  
 (22) A Yes, sir, we did  
 (23) Q And the people in that company work full-time in the  
 (24) employee assistance field?  
 (25) A Yes, sir, they do

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- (1) Q What else did you do?  
 (2) A Well, we obviously worked with our own medical  
 department,  
 (3) and it's my understanding that they reached out to other  
 (4) medical departments to find out what - in other companies  
 to  
 (5) find out what they were about in the area of drug and  
 alcohol  
 (6) Q And what else if anything did you take into account?  
 (7) A Well, we had - we had a survey that was done by  
 business  
 (8) round table group that I mentioned of about a hundred and  
 fifty  
 (9) companies, interesting to note that about half of those  
 (10) companies had no drug and alcohol policy and were not  
 planning  
 (11) one at that point in time The 70 or so that did have policies  
 (12) basically had policies that included education of  
 supervisors,  
 (13) pre-employment drug screening, a rehabilitation EHAP type  
 (14) program and tests and searches for cause  
 (15) Q Is it fair to say that what you saw from other companies  
 (16) were policies very similar to your own?  
 (17) A Yes, sir that's correct  
 (18) Q Did you look beyond what people were already doing and  
 see  
 (19) what there might be out there that you could do to improve your  
 (20) policy?  
 (21) A Yes, sir we did  
 (22) Q What are some of the things you considered?  
 (23) A Well for example, we considered random screening  
 Should  
 (24) we move forward in random drug screening where you just  
 call



(5) somebody in and say it's time to have a drug and alcohol test

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(1) just totally random After a lot of consideration gathering a  
(2) lot of data we rejected that concept  
(3) Q What led you to reject it?  
(4) A We rejected it for a number of reasons We rejected it  
(5) because our unions that we want to work with we have a  
good  
(6) relationship with Our unions were very opposed to random  
(7) screening at that point They heard all the horror stories  
(8) about chain of custody where employees were falsely  
accused of  
(9) having problems they didn't have confidence in the tests  
and  
(10) so they were very concerned  
(11) We were concerned about the - what had happened to  
several  
(12) companies in our industry who were trying - decided they  
might  
(13) try random screening in a place or two, and what basically  
(14) happened was either the courts or their own unions  
enjoined  
(15) them from going forward with random screening and  
stopped them  
(16) cold  
(17) In the states I don't have all of them committed to  
(18) memory, but states like Tennessee New York, Ohio,  
(19) Massachusetts these were states where the state officials  
(20) stated they would random screen police officers and the  
local  
(21) courts stopped them from doing that The federal  
government  
(22) our own federal government put forth some regulations to  
random

~~(23) screen Department of Transportation workers and they~~  
were

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(1) And so our concern was that we put random screening in  
(24) immediately stopped from doing that or enjoined from doing  
(25) that and went out with that, we might get an injunction that  
(1) would leave us with no policy at all and that was not in the  
(2) best interest of protecting the public And so we took the  
(3) decision that we would go with - with tests for cause which  
(4) our own union official we went and talked to him and we -  
(5) they said we can support tests for cause because  
something's  
(6) happened and you have a reason to do the screening  
(7) Q Now did you focus at any time during the reevaluation of  
(8) the drug policy drug and alcohol policy in 1986 1987 on  
(9) safety sensitive or critical skills positions?  
(10) A Yes, sir That was another aspect of testing that we  
(11) looked at and we rejected that one at that point in time, as  
well  
(12) Q Why was that sir?  
(13) A Well, we rejected it really for three reasons The first  
(14) reason being that it's very difficult to define what a  
(15) safety-sensitive position is It may sound easy, but if you're  
(16) going to say, for example a truck driver is a safety sensitive  
(17) position how about the guy that fixes the brakes on the  
truck,  
(18) is that a safety sensitive position as well, so we were  
(19) concerned about that definition  
(20) We were concerned that safety sensitive jobs would appear  
(21) to be discriminatory from a racial standpoint We worked  
very,  
(22) very hard to have diversity in our work force and many of  
our

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(1) blue collar operating jobs would - which one might classify  
as  
(2) safety sensitive were populated by minorities and we were  
(3) afraid people would say I see what you've done you've just  
(4) got a drug testing program here for your minorities and we  
(5) didn't think that was fair  
(6) And the other reason was we were advised by our legal  
(7) department that perhaps there would be some challenges to  
this  
(8) kind of activity So when you rolled all that together  
(9) combined with the fact that other companies - many other  
(10) companies in our industry were not trying that kind of an  
(11) approach we felt that the prudent thing to do was to go with  
(12) testing for cause  
(13) MR LYNCH Your Honor may I approach the witness?  
(14) THE COURT Uh huh  
(15) BY MR LYNCH  
(16) Q This is my only copy at the moment at least  
(17) Mr Rouse I'm putting in front of you Defendants Exhibit  
(18) 9181 Could you describe that for the record please?  
(19) A Yes sir This is really - this inch or so document of  
(20) papers represented the training program the supervisory  
(21) training program that we used when we introduced the 1987  
(22) policy That was prepared by the training and safety group  
in  
(23) my department  
(24) Q And to whom was that program given?  
(25) A Well in Exxon we have kind of a unique concept perhaps  
we

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(1) call it the train - the trainer program and what we do is we  
(2) bring people in from all over the company and we train them  
on  
(3) the policy and then it is then their responsibility to take  
(4) these materials and go back and train all the supervisors in  
(5) their work area  
(6) Q So the bottom line is all supervisors received this  
(7) training?  
(8) A Yes, sir that's correct  
(9) Q And did just the trainers get these materials that I've  
(10) handed you 9181 I believe?  
(11) A No, sir, the - everybody that attended the training was  
(12) given a copy of these materials  
(13) MR LYNCH Offer Exhibit DX9181 Your Honor  
(14) (Exhibit 9181 offered)  
(15) MR O NEILL No objection  
(16) THE COURT Defendants Exhibit 9181 is admitted  
(17) (Exhibit 9181 received)  
(18) BY MR LYNCH  
(19) Q Now I'd like to call your attention to some material on  
(20) pages six and seven of these training materials which I've  
(21) highlighted together - in the interest of legibility I'll  
(22) take the - only part of it  
(23) The phrase Exxon is committed to providing a safe healthy  
(24) and productive workplace to all employees for all employees  
(25) our new alcohol and drug policy is aimed at ensuring this

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- (1) environment With reference to the specific issue that s been  
 (2) focused on in this case did you re examine the question of  
 (3) whether providing an assurance to employees that if they  
 sought  
 (4) rehabilitation they could have their job back did you  
 (5) re examine whether that was something that tended to promote  
 (6) safe healthy and productive workplace for all employees?  
 (7) A Yes, sir, we did  
 (8) Q Did you ask for professional advice on that subject?  
 (9) A Yes, sir, we did  
 (10) Q Did you explore what other companies in the industry were  
 (11) doing?  
 (12) A Yes, sir, we did  
 (13) Q Including companies that had safety sensitive jobs?  
 (14) A Yes, sir  
 (15) Q Okay And did you reach the conclusion that continuing  
 (16) that part of the Exxon alcohol policy into the now Exxon drug  
 (17) and alcohol policy was in the interest of safety?  
 (18) A Yes, sir  
 (19) Q What was the basis for that conclusion?  
 (20) A Well, we just felt like returning those people to the job  
 (21) was the correct thing to do We felt that if we did not return  
 (22) them to the job, if it appeared that they were going to lose  
 (23) their jobs, they would go underground and, therefore we  
 would  
 (24) have a problem that we didn't even know about and that we  
 felt  
 (25) was a greater risk, greater safety risk than having the

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- (1) employee in the job with appropriate supervisory  
 monitoring  
 (2) Q I d like to go on to the next paragraph of these materials  
 (3) which says now that we ve told you what we are about here's  
 (4) what we are not about in implementing the policy We are not  
 (5) trying to police the moral behavior of our employees nor are  
 (6) we trying to tell you what to do or not do away from work We  
 (7) especially do not want to infringe on your rights  
 (8) With reference to that provision of the policy did you  
 (9) seek professional advice?  
 (10) A Yes, we did  
 (11) Q I should say these are the training materials?  
 (12) A Yes, sir that's correct  
 (13) Q This was what the policy was intended to accomplish is  
 (14) that correct?  
 (15) A That's correct  
 (16) Q Now again focusing you on the specific issue that s been  
 (17) raised in this case how a corporation should deal with an  
 (18) employee who had voluntarily sought treatment for a problem  
 (19) when he came back to work did you seek professional advice  
 on  
 (20) how you ought to deal with that employee when he returned to  
 (21) work?  
 (22) A Yes we did  
 (23) Q Did you receive advice that you should - that the  
 (24) supervisor should get involved in making sure that the  
 (25) employee s attending AA meetings?

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- (1) A No, sir we did not receive advice that it is our  
 (2) responsibility or it would be appropriate I don't like to use  
 (3) that word responsibility, would be appropriate for Exxon to  
 be  
 (4) involved in whether that individual attended AA on their own  
 (5) time  
 (6) Q Did you receive advice that Exxon ought to set up some  
 (7) procedure to make sure that the supervisors are inquiring about  
 (8) employee s emotional well being?  
 (9) A No, sir, we did not  
 (10) Q Or how the family life was going?  
 (11) A That's right We felt that the best advice we could get,  
 (12) that that was inappropriate for the company at this point in  
 (13) time  
 (14) Q In the case of an employee who, prior to or pursuant to  
 (15) this policy went out and received treatment what were you -  
 (16) what was your conclusion as to the appropriate role for a  
 (17) supervisor?  
 (18) A Well, our view was that supervisors, because of their  
 (19) extensive background and training in day-to-day  
 supervision of  
 (20) employees, working with those employees on job  
 performance,  
 (21) that what we should focus on is how the employee's  
 performing  
 (22) the job, and so the supervisory monitoring would take place  
 on  
 (23) day-to day review and analysis of how the employee was  
 doing  
 (24) that job  
 (25) Q Now under the procedures and training that you had if a

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- (1) supervisor was aware that an employee had received treatment  
 in  
 (2) the past for an alcohol problem was the supervisor supposed  
 to  
 (3) ignore that information?  
 (4) A No I don't think they were supposed to ignore it  
 (5) Q What place did that kind of information have in the  
 (6) definition of the supervisor s responsibility?  
 (7) A It would just be another piece of information that he knew  
 (8) about that employee and he would factor in or she would  
 factor  
 (9) into the day to-day monitoring of that employee  
 (10) Q Okay There have been a lot of questions here this morning  
 (11) about a bar that was - or restaurant that was either called  
 (12) the Yankee Whaler or the Yankee Clipper First of all have  
 (13) you been to Long Beach?  
 (14) A I've been to Long Beach  
 (15) Q Do you know what the name of the place is?  
 (16) A No, I do not Unfortunately, I've never been there  
 (17) Q Was it required by this policy or intended by this policy  
 (18) that supervisors should determine whether employees in their  
 (19) off duty time were consuming alcohol?  
 (20) A No sir, they were - the policy did not intend that  
 (21) supervisors would do that  
 (22) Q Let s assume that the supervisor believes that the employee  
 (23) has been through a rehabilitation program for alcoholism  
 (24) A Yes  
 (25) Q Was it - did this policy contemplate that the supervisor

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- (1) should determine whether the employee is going to a bar or a  
 (2) restaurant in his off duty time and having a glass of wine or a  
 (3) glass of beer?  
 (4) A No, sir it did not  
 (5) Q Okay Why not?  
 (6) A Because we felt that the supervisor should monitor the  
 (7) individual's job performance and if there was a problem  
 with  
 (8) substance abuse that would be reflected in that job  
 (9) performance  
 (10) Q Now you have heard have you not the -- the common  
 saying  
 (11) that once a person s an alcoholic always an alcoholic?  
 (12) A Yes sir  
 (13) Q And have you heard it said by people who ve been to AA or  
 (14) otherwise that even one drink for a person who s an alcoholic  
 (15) is a relapse?  
 (16) A Yes sir, I've heard that  
 (17) Q Now if a supervisor under the 1987 policy were to have  
 (18) learned that someone who went to alcohol rehabilitation  
 (19) treatment had at their home or at a private restaurant had a  
 (20) drink under that policy and the supervisory guidelines and the  
 (21) training that you gave your supervisors what should they have  
 (22) done?  
 (23) A Well I can only speculate about what I would have done,  
 (24) and first I would have had some concern if the employee  
 had  
 (25) been through a rehabilitation and in fact was rumored to  
 have

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- (1) started drinking again I think what I would do is perhaps  
 try  
 (2) to check that rumor out and find out if it's valid  
 (3) Q Would the -- did this policy provide that if an employee  
 (4) who had been to alcohol rehabilitation had had a drink on  
 (5) private time that the supervisor could take job action?  
 (6) A No sir it did not  
 (7) Q Could you reassign that employee?  
 (8) A It's always management's discretion to reassign an  
 (9) employee  
 (10) Q If you learned that an employee had been drinking off the  
 (11) job would you consider that an appropriate basis under this  
 (12) policy?  
 (13) A To reassign someone?  
 (14) Q To reassign someone  
 (15) A Not that in and of itself no, sir  
 (16) Q I m trying to get it clear You said you d go check if  
 (17) somebody went to the Yankee Clipper and had a glass of wine  
 or  
 (18) beer with co workers you said you d check into that?  
 (19) A I said I might check into that as personal management  
 (20) style  
 (21) Q What use would you make of that information?  
 (22) A If I found the employee was drinking, that the rumor in  
 (23) fact was true, then I might be monitoring that job  
 performance  
 (24) just a little bit closer  
 (25) Q But the job you would have the policy and the rules that

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- (1) you set for your supervisors would be what?  
 (2) A That the supervisor monitors that job performance It's  
 (3) not we feel appropriate for our supervisors to follow  
 around  
 (4) and see if a fellow even one who has had an alcoholism  
 (5) problem has a glass of wine at his daughter's wedding we  
 (6) don't think that that's our -- the appropriate thing for us to  
 (7) do  
 (8) Q Now this -- these training materials also included this  
 (9) provision is that correct?  
 (10) A Yes sir  
 (11) Q Now insofar as your safety organization had studied for  
 (12) over a year in advance of the 87 policy what was going on in  
 (13) the drug and alcohol field do you know of any professional  
 (14) advice that you received that suggested that it would be an  
 (15) appropriate thing for Exxon to instruct supervisors that they  
 (16) should take job action on the basis of an employee who was  
 (17) drinking in his private time in a legal and lawful way?  
 (18) A Absolutely not There was nothing in our policy to that  
 (19) effect As you pointed out in America it's not illegal to  
 (20) drink  
 (21) Q Now we ve I think gotten as far as the 1987 alcohol policy  
 (22) announcement and the training that occurred in connection with  
 (23) that  
 (24) MR LYNCH Your Honor have I offered 9181?  
 (25) (Exhibit 9181 offered)

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- (1) MR O NEILL No objection  
 (2) THE COURT I don t think you did 9181 is admitted  
 (3) without objection  
 (4) (Exhibit 9181 received)  
 (5) MR LYNCH Thank you Your Honor  
 (6) BY MR LYNCH  
 (7) Q Were there additional or subsequent changes made to the  
 (8) Exxon alcohol policy between 1987 and the time of the  
 accident?  
 (9) A No actual changes In the late summer, August kind of  
 time  
 (10) frame in 1988 our senior management asked us to take a  
 look at  
 (11) our drug and alcohol policy along these lines They said  
 (12) you've had it in place for about 18 months Let's take a look  
 (13) and see if it's still state of the art let's see if it's still  
 (14) up to speed with regulations, requirements, social changes,  
 and  
 (15) come back to us and give us some recommendations about  
 any  
 (16) changes you'd recommend  
 (17) Q And what -- what did you do pursuant to that directive?  
 (18) A We looked at various studies that we had It was about  
 (19) this time frame or certainly that fall when the government  
 (20) passed the Drug Free Workplace Act Our 1987 policy fully  
 (21) complied with every aspect of that act We looked to see  
 what  
 (22) other companies were doing and their various policies  
 came up  
 (23) with several things, issues if you will, that we brought to  
 (24) the attention of our management and they agreed that  
 some of  
 (25) the things we ought to go forward with and some we should  
 not

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- (1) Q Now, let me ask you one item you didn't refer to Under  
(2) these policies that you as manager of human resources were  
(3) responsible for was - were the local managements of Exxon  
(4) facilities or Exxon operations free to augment these policies?  
(5) A Yes We had situations where local managers, during  
(6) this  
(7) time, would have supplemented, if you will, the policy with  
(8) various ideas  
(9) Q And in connection with this case are you acquainted with a  
(10) letter that Mr Larossi wrote to the people of the Exxon  
(11) Shipping Company in 1985?  
(12) A Yes, sir, I am  
(13) Q And the effect of that - what was the effects of that  
(14) letter?  
(15) A Well, his 1985 letter, as I recall it, really took them  
(16) from a policy on just alcohol to one that included searches  
(17) and  
(18) some of the things that we had in the 1980, ultimately put in  
(19) the 1987 policy for the company  
(20) Q So in that case the Exxon Shipping Company adopted some  
(21) procedures in 1985 that the corporation ended up adopting  
(22) corporation wide in 1987?  
(23) A Yes, sir, that's correct  
(24) Q Now in connection with your update or whatever it was in  
(25) 1988 did you look at what local elements of Exxon were doing  
(26) and see if they had any good ideas?  
(27) A Yes, sir, we did

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- (1) Q And what if anything did you find about that?  
(2) A One that came up as a result of that examination was the  
(3) concept of post rehabilitation testing, has to do with when  
(4) an  
(5) employee comes back from rehabilitation should you do  
(6) periodic  
(7) testing of that individual, unannounced testing  
(8) Q That would be testing for such things as alcohol in the  
(9) system?  
(10) A Yes, sir, it would Although, I got to tell you, those  
(11) kinds of tests are not really too effective with alcohol,  
(12) because alcohol metabolizes through a system fairly  
(13) quickly, so  
(14) post rehab testing is most effective with drugs like cocaine  
(15) and marijuana that may stay in the bloodstream as long as  
(16) 24  
(17) days or so depending on the individual  
(18) Q Now we talked earlier about whether you had considered  
(19) testing of rehabbed people people who had returned and  
(20) indicated that that was thought to be inconsistent with the  
(21) provision that people who took advantage of the policy would  
(22) not be subjected to special requirements?  
(23) A That's correct  
(24) Q What changed - or how did that develop in Exxon  
(25) organizations given that provision of the policy?  
(26) A Well, this whole thing is an evolutionary process You're  
(27) moving along with how society's changing, you're moving  
(28) along  
(29) with how laws are changing, and so what we were looking at  
(30) in  
(31) 1987 in terms of post rehabilitation testing, we found more

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and

(..5) alcohol policy

(1) activity in that area more acceptance of that by unions  
more

(2) acceptance of that by the courts in this period of the fall of  
(3) 1988

(4) Q Now did you take any action as a result of the study that  
(5) you did in late 1988?

(6) A Well we went to the management committee with several  
(7) recommendations that had to do with whether we should  
relax our

(8) drug testing standards because we have about the  
toughest drug

(9) testing standards of anyone in the industry and issue was  
(10) whether we ought to move marijuana from 20 nanograms up  
to a

(11) hundred and we concluded we should leave it

(12) Q Move it up means to a less strict test?

(13) A Yes, sir, that you would not be considered positive of  
(14) marijuana, construed positive if you were 99 or below, and  
(15) right now it's 19 or below you're construed as having  
marijuana

(16) in your bloodstream We concluded our testing, as we  
(17) discussed We told the management committee we felt we  
needed

(18) to continue our education programs we had We suggested  
to the

(19) management committee that - a couple of other areas that  
don't

(20) come immediately to mind

(21) What our management committee said to us these are just  
(22) concepts There are some - we think you ought to do the  
final

(23) analysis terms of implementation what's that involve, well,  
(24) you got to check and work out the details as to how it  
relates

~~(25) how you're going to bargain these with your unions because~~  
you

(1) don't slam dunk these with the unions We want to bargain  
(2) these and do it correctly, what changes that would make to  
our

(3) supervisory training what materials we would have to  
develop

(4) for employees and supervisors to do these things So we  
were

(5) in that staff process up to March 23rd, 1989

(6) Q So as of March 23rd these proposed changes or proposed  
(7) updates of the policy had not been put into effect?

(8) A They had not been The mechanics and the details were  
(9) being finalized to go back to the management committee for  
one

(10) last here's-how it-will all play-out kind of review before we  
(11) implemented them and the accident occurred before we got  
back

(12) to it

(13) Q Now Mr Rouse as of March 23, 1989 based on the  
(14) information available to you was the Exxon overall alcohol  
(15) policy as you've discussed it today deficient in - in failing  
(16) to have that post rehab testing provision?

(17) A No, sir I would not think so, because the federal law that  
(18) was passed a few months before in 1988 did not have any  
comment

(19) requirements about post rehabilitation testing As we  
looked

(20) at other companies, there were some doing that, but it was  
not

(21) yet a widely adopted concept, so I would have to say my  
(22) testimony would be at that time our 1987 policy was still  
state

(23) of the art versus what other companies had Understand  
there

(24) are many companies at this point that didn't have a drug

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- (1) Q Was in your view based on the information that you had  
 (2) available was the Exxon overall alcohol policy that existed  
 (3) in - on March 23 1989 deficient insofar as it dealt with the  
 (4) monitoring of employees who had been through rehabilitation?  
 (5) A Again I would say it was not, and I would base that on the  
 (6) fact that the federal drug and alcohol - work free drug -  
 (7) Drug Free Workplace Act that was put into place at that  
 point  
 (8) in time made no comments at all about post rehabilitation  
 (9) monitoring  
 (10) Q Well putting that statute aside  
 (11) A Right  
 (12) Q Was it common in industry based on your research for  
 (13) companies to have procedures for mandatory post  
 rehabilitation  
 (14) monitoring of employees who had been through rehab for  
 alcohol  
 (15) abuse?  
 (16) A I would testify that it was not common We were seeing  
 (17) some movement in that area, and that's why we were  
 recommending  
 (18) to our management committee the concept of post  
 rehabilitation  
 (19) testing, but it was still not common in industry at that time  
 (20) Q Okay Now are you familiar with the procedures that were  
 (21) used in the airline industry through that period for pilots who  
 (22) were flying under an exemption because of the diagnosis of  
 (23) alcoholism?  
 (24) A I'm not really familiar with that but my limited  
 (25) understanding of the -

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- (1) MR O NEILL Objection foundation He's  
 (2) disqualified himself from testifying about the subject  
 (3) MR LYNCH Well I don't -  
 (4) THE COURT You can try again but - but it sounded  
 (5) like a good objection  
 (6) MR LYNCH Well I think he was about to give his -  
 (7) what -  
 (8) BY MR LYNCH  
 (9) Q Did you have any familiarity with that procedure?  
 (10) A I had some, sir  
 (11) Q What was the basis of that familiarity?  
 (12) A Just what I had heard from our experts  
 (13) Q And what had you heard from your experts?  
 (14) MR O NEILL Objection foundation speculation  
 (15) MR LYNCH I think Your Honor that this has been  
 (16) offered by the plaintiffs as -  
 (17) MR O NEILL I'll withdraw I'll withdraw the  
 (18) objection  
 (19) THE COURT You had a winner but you withdrew it  
 (20) MR O NEILL No let's let it go  
 (21) THE COURT Okay Okay  
 (22) THE WITNESS Your question sir?  
 (23) BY MR LYNCH  
 (24) Q What had you been told by your experts about the nature of  
 (25) the program that existed in the airline industry?

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- (1) A My understanding of the airline industry program was  
 they  
 (2) had special legal considerations from the government that  
 would  
 (3) permit them to have that kind of program considerations  
 that  
 (4) my industry does not have  
 (5) Q In your - your evaluation through the business round table  
 (6) committee and through other professional organizations that  
 you  
 (7) belong to had you determined whether procedures such as  
 (8) mandatory counseling mandatory participation in Alcoholics  
 (9) Anonymous were common in companies situated in the same  
 (10) position as Exxon?  
 (11) A I would testify they were uncommon at that point  
 (12) Q Had you determined whether such provisions were common  
 (13) among oil companies?  
 (14) A They were not common among oil companies In fact, in  
 my  
 (15) recollection, I don't believe there was a single one of the  
 (16) majors, the majors being the top 12, that was doing that at  
 (17) that point in time  
 (18) Q Were such procedures common for holders of  
 safety sensitive  
 (19) jobs?  
 (20) A Again that would - I would not think that was common at  
 that point in time  
 (21) that point in time  
 (22) MR LYNCH Your Honor I have no further questions  
 (23) THE COURT You may cross examine  
 (24) MR O NEILL Thank you Judge  
 (25) CROSS EXAMINATION OF JAMES ROUSE

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- (1) BY MR O NEILL  
 (2) Q Sir you came in here and testified about the airline  
 (3) industry today and you don't know about the airline industry?  
 (4) A I testified what my understanding was that's correct  
 (5) Q Do you know about the regulatory structure for the airline  
 (6) industry yes or no?  
 (7) A No I do not  
 (8) Q You don't know do you?  
 (9) A I do not that's correct  
 (10) Q Now I also was interested and I read during your testimony  
 (11) the big supervisor's volume and I want to go over some of the  
 (12) pages with you  
 (13) A Fine  
 (14) Q Could we have the Elmo please  
 (15) On page five of the supervisor's volume it states that of  
 (16) a hundred million people in the nation's work force the ten  
 (17) million or so who are the drug and alcohol abusers cost  
 (18) companies between 40 to 60 billion dollars a year in lost  
 (19) productivity medical expenses lost or damaged equipment  
 and  
 (20) rehabilitation do you see that?  
 (21) A Yes I do  
 (22) Q It's a serious problem isn't it?  
 (23) A There's no question about that  
 (24) Q And your company if an employee - back in 85 86 87  
 (25) if an employee is found with or is under the influence of drugs

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- (1) or alcohol on company property disciplinary action will be  
 (2) taken and is grounds for termination isn't that a correct  
 (3) statement?  
 (4) **A That is a correct statement**  
 (5) **Q So if somebody is under the influence of alcohol on company**  
 (6) **property there is a requirement for disciplinary action?**  
 (7) **A Could I check your dates again? I believe you said 1986**  
 (8) **You're reading from a supervisory manual from 1987**  
 (9) **Q 1987?**  
 (10) **A 1987 that was the case**  
 (11) **Q And it was the case in 1985 wasn't it?**  
 (12) **A Not in Exxon U S A**  
 (13) **Q At Exxon Shipping Company if an employee was found**  
 (14) **under**  
 (15) **the influence of alcohol on company policy disciplinary action**  
 (16) **had to be taken isn't that right?**  
 (17) **A I would have to go back and look at the shipping's policy,**  
 (18) **I'm not certain of that**  
 (19) **Q You don't know one way or the other?**  
 (20) **A I know that that language was not used because that**  
 (21) **language wasn't written then**  
 (22) **Q Doesn't make any sense to have drunken employees on**  
 (23) **company**  
 (24) **property is that right?**  
 (25) **A That's right**  
 (26) **Q It's a bad practice?**  
 (27) **A Yes**

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- (1) **Q Something should be done about it?**  
 (2) **A I would say it was a bad practice**  
 (3) **Q In 1985 it was a bad practice?**  
 (4) **A I would say it was a bad practice**  
 (5) **Q Are you aware that there were reports and Captain**  
 (6) **Hazelwood**  
 (7) **admitted he occasionally drank aboard the ship?**  
 (8) **A I was aware of that**  
 (9) **Q And he came back from the ship - came back to the ship**  
 (10) **from port drunk?**  
 (11) **A Let me say it this way I was not personally aware of that,**  
 (12) **I have seen that document**  
 (13) **Q You see it now?**  
 (14) **A Yes sir**  
 (15) **Q Bad practice don't you think?**  
 (16) **A Yes sir Terrible is your word I said bad practice**  
 (17) **Q Disciplinary action should be taken?**  
 (18) **A It would depend on the circumstances**  
 (19) **Q Do you know if any disciplinary action was taken?**  
 (20) **A I do not**  
 (21) **Q The effects of alcohol are well documented includes slowed**  
 (22) **reaction reduced level of interest abrupt increase in**  
 (23) **frustration frequent drop in moods that's a correct**  
 (24) **statement?**  
 (25) **A Yes, sir I'd say that's correct**  
 (26) **Q You showed your employees a movie Everything Looks So**

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- (1) **Normal didn't you?**  
 (2) **A In 1987 indeed we did in our drug and alcohol training**  
 (3) **Q And if you had an employee who was suspected of having an**  
 (4) **alcohol or drug problem at least this manual says what we can**  
 (5) **do is observe changes and confront the employee with our**  
 (6) **observations isn't that what the manual says?**  
 (7) **A As of 1987 that's correct sir**  
 (8) **Q So in 1988 if we had a drinking incident on the west**  
 (9) **coast say San Francisco or at the Portland Shipyard and**  
 (10) **there were observations that caused something to be brought to**  
 (11) **our attention we should have confronted the individual isn't**  
 (12) **that right?**  
 (13) **A We should have investigated the circumstances and if**  
 (14) **appropriate confronted the individual If the allegations**  
 (15) **were untrue I sure wouldn't confront him wouldn't have**  
 (16) **anything to confront him for**  
 (17) **Q And your manual says that if an employee is found violating**  
 (18) **the company policy he or she cannot avoid disciplinary action**  
 (19) **by requesting treatment?**  
 (20) **A That's correct**  
 (21) **Q And that makes good sense doesn't it?**  
 (22) **A I think it does**  
 (23) **Q If you're caught you're caught?**  
 (24) **A I think that's correct**  
 (25) **Q Good And any drug related problem as far as your**  
 (26) **company**

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- (1) **is concerned is a performance problem isn't that right?**  
 (2) **A Any substance abuse problem is a performance problem**  
 (3) **Q So alcohol problems are not performance problems but**  
 (4) **drug**  
 (5) **problems are?**  
 (6) **A No sir I didn't say that I said any substance abuse**  
 (7) **problem is a - is a performance problem We've said that in**  
 (8) **this testimony going way back decades and decades**  
 (9) **Q That's right Somebody with an alcohol problem has a**  
 (10) **performance problem don't they?**  
 (11) **A That does not necessarily follow I suppose people could**  
 (12) **have an alcohol problem on their own time and not have it**  
 (13) **affect their job performance and, as we've testified, what we**  
 (14) **were concerned about is their job performance**  
 (15) **Q We'll get to that in a minute**  
 (16) **A Good**  
 (17) **Q And indeed you show your employees a chart as part of the**  
 (18) **training that talks about confronting the employee if you think**  
 (19) **a problem exists?**  
 (20) **A That's correct, 1987, that's what we told our employees**  
 (21) **Q And if somebody thought a problem exists they should have**  
 (22) **gone to the medical department?**  
 (23) **A We said - told our employees our supervisors that if they**  
 (24) **thought a problem existed they should send the employee**  
 (25) **to the**  
 (26) **medical department, in 1987**  
 (27) **Q And serious misconduct should normally lead to**

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- (1) termination?  
 (2) **A That's correct**  
 (3) **Q Is coming back to ship drunk serious misconduct?**  
 (4) **A It depend on the circumstances**  
 (5) **Q How drunk you were?**  
 (6) **A Or if you were indeed drunk what basis you say they're**  
 (7) **drunk Did you run a test did you not run a test was it**  
 (8) **based on the smell of alcohol on somebody's breath or**  
**whatever**  
 (9) **Q I was very interested in your manual on these the three**  
 (10) **highlighted comments abuse in the workplace is not committed**  
 (11) **to your stereotypical imbalanced staggering person do you**  
**see**  
 (12) **that comment?**  
 (13) **A Yes sir I do**  
 (14) **Q And alcoholics seldom ever drink on the job do you see**  
 (15) **that concept that comment right there?**  
 (16) **A Well, it was not because I think -- put the whole**  
 (17) **comment --**  
 (18) **Q Put it up?**  
 (19) **A Or says, takes barbiturates for the same effect**  
 (20) **Q Monitoring alcoholic on the job is sort of a non event**  
 (21) **because as you say there alcoholics seldom drink on the job?**  
 (22) **A Oh I would disagree with that completely I think**  
 (23) **monitoring is a very major event I don't know where you**  
**come**  
 (24) **up with the non event concept**  
 (25) **Q My question is do alcoholics seldom ever drink on the job?**

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- (1) **A I ve had experiences where alcoholics drank on the job**  
**and**  
 (2) **experiences where they did not**  
 (3) **Q Is this your manual?**  
 (4) **A Yes it is**  
 (5) **Q Thank you Now you came in here and you talk in your**  
 (6) **direct testimony at the beginning part of your direct**  
 (7) **testimony very very carefully and your words were very very**  
 (8) **careful You said that when somebody comes out of**  
 (9) **rehabilitation it was the norm to return them to the same job?**  
 (10) **A Yes sir that is what I said**  
 (11) **Q And I m interested in the second half of that statement**  
 (12) **A Okay**  
 (13) **Q The half you didn t say**  
 (14) **A All right**  
 (15) **Q Let s take a look if we could at the half you didn t**  
 (16) **say Page 212 lines 4 through line 23**  
 (17) **MR LYNCH His deposition?**  
 (18) **MR O NEILL Yes**  
 (19) **(Portion of Video of James Rouse played as follows)**  
 (20) **BY VIDEO EXAMINER**  
 (21) **Q Mr Rouse previously we discussed the issue of an**  
 (22) **individual coming back from drug or alcohol rehabilitation and**  
 (23) **what would happen to that person**  
 (24) **In or around 1985 when a person came back from alcohol**  
 (25) **rehabilitation did that person enjoy job security but not**

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- (1) necessarily the job that that person once had? We ll start  
 (2) out with an Exxon U S A employee  
 (3) **A Regarding Exxon U S A , 1985 we would have been under**  
**the**  
 (4) **1977 policy on alcoholism And as I've previously testified**  
 (5) **I think our norm would have been to put them back into their**  
 (6) **previous assignment We would have put them back in their**  
 (7) **previous assignment**  
 (8) **Q Okay**  
 (9) **A Since the policy were silent on that, if a manager for some**  
 (10) **reason had certain concerns I'm sure he was not obligated**  
**to**  
 (11) **put him back in that assignment necessarily**  
 (12) **(Portion of Video of James Rouse concluded)**  
 (13) **MR O NEILL Let s take a look at it again in another**  
 (14) **part of the deposition on page 213 lines 11 through 21**  
 (15) **(Portion of Video of James Rouse played as follows)**  
 (16) **BY VIDEO EXAMINER**  
 (17) **Q Does that mean that in 1985 people returning from an**  
 (18) **alcohol rehab program were subject to extra scrutiny with**  
 (19) **respect to the job they -- they went back to?**  
 (20) **A No As I've testified all along, the norm would be to put**  
 (21) **them back on the -- on the existing position But if the**  
 (22) **person looked like they were not having a very good**  
**recovery or**  
 (23) **there were safety concerns there's nothing that obligated**  
**that**  
 (24) **manager to put him straight back in that job There's to be**  
 (25) **some management judgment in that (End of video)**

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- (1) **MR O NEILL And on page 214 of your deposition**  
 (2) **transcript lines nine through 14**  
 (3) **(Portion of Video of James Rouse played as follows)**  
 (4) **BY VIDEO EXAMINER**  
 (5) **Q Meaning that the manager based solely on safety concerns**  
 (6) **could determine in 1985 not to put that individual back into**  
 (7) **the position he or she once held?**  
 (8) **A I think I'll just repeat the same answer I've been giving**  
 (9) **I'll give it one more time which is the norm was to put them**  
 (10) **back in the job That would not prevent management**  
**judgment**  
 (11) **which would do something different than that**  
 (12) **(Portion of Video of James Rouse concluded)**  
 (13) **BY MR O NEILL**  
 (14) **Q So there was no requirement they go back to the same job?**  
 (15) **A I have testified here this morning that was the norm and**  
 (16) **as I said in my deposition very clearly management has the**  
 (17) **right to manage We train our supervisors and our**  
**managers**  
 (18) **very carefully and we do not take their ability to make**  
 (19) **individual decisions away from them with our drug and**  
**alcohol**  
 (20) **policy**  
 (21) **Q Now I m going to use Defendants Exhibit 3683**  
 (22) **MR O NEILL Offer 3683**  
 (23) **(Exhibit 3683 offered)**  
 (24) **BY MR O NEILL**  
 (25) **Q Defendants Exhibit 3683 appears to be some charts Have**



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- (1) you ever seen these chart?  
 (2) **A Yes I do** This was a draft of a management committee  
 (3) review that we were planning in November of - a copy of  
 that  
 (4) review I believe on November 21st 1986 which was part of  
 the  
 (5) presentation we later used to get approval for the '87 policy  
 (6) I've mentioned earlier  
 (7) **Q** And you asked the question what are other companies  
 doing  
 (8) in this area?  
 (9) **A Yes, sir,** that was one of the things we discussed with our  
 (10) managers  
 (11) **Q** And other companies test for cause among other situations  
 (12) for employees that occupy high risk positions?  
 (13) **A Yes sir** that's correct  
 (14) **Q** And your policy -  
 (15) **MR LYNCH** Brian page?  
 (16) **MR O NEILL** Here  
 (17) **BY MR O NEILL**  
 (18) **Q** At the time policy violations call for disciplinary action  
 (19) and cannot be avoided by a request for rehabilitation?  
 (20) **A Yes, sir** The context that's in let's make sure we get  
 (21) these things in appropriate context, was if an employee  
 drove a  
 (22) pickup truck into a tree and then rolled out of the smoking  
 (23) wreckage and said, I've got a problem our policy is that you  
 (24) can't avoid discipline by asking for rehabilitation at that  
 (25) point in time

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- (1) **Q** Now let me go back to the same page will you? With  
 (2) regard to the page other companies typically test for cause  
 (3) where - and it has four items, and the last of which is  
 (4) employees occupy high risk positions do you see that?  
 (5) **A Yes, sir**  
 (6) **Q** And then the recommendation you recommended the first  
 (7) three but you didn't recommend the fourth did you?  
 (8) **A Well,** if you go back and read our policy, indeed we did  
 (9) because what our policy says  
 (10) **Q** What does the piece of paper in front of you say?  
 (11) **A** That is one document I think we ought to show them the  
 (12) whole presentation if we're going to do that What the  
 policy  
 (13) says in terms of test for cause is the manager in any  
 (14) safety sensitive situation has the right to call for a test or  
 (15) search for cause That's what the policy says  
 (16) **MR O NEILL** I am interested in a document  
 (17) Defendants Exhibit 3918 it's dated September 25 1985  
 (18) Offer 3918  
 (19) (Exhibit 3918 offered)  
 (20) **MR LYNCH** Yes No objection Your Honor  
 (21) **THE COURT** 3918 is admitted  
 (22) (Exhibit 3918 received)  
 (23) **THE COURT** Did you wish to offer 3683 also?  
 (24) **MR O NEILL** Yes sir I did  
 (25) (Exhibit 3683 offered)

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- (1) **THE COURT** Is there objection?  
 (2) **MR LYNCH** No objection  
 (3) **THE COURT** Defendants 3683 is also admitted  
 (4) (Exhibit 3683 received)  
 (5) **BY MR O NEILL**  
 (6) **Q** I'm interested in the last page of the exhibit Do you  
 (7) recognize the last page of this exhibit next steps it's from a  
 (8) document dated December 15th 1985?  
 (9) **A** I honestly don't recall that one Is that a - I don't  
 (10) recall that  
 (11) **Q** It's an Exxon Corporation document?  
 (12) **A** Okay I work for Exxon U S A so I might not be familiar  
 (13) with that as far as Exxon Corporation  
 (14) **Q** It says it was presented to the Exxon Corporation  
 (15) management committee on 9/11/85 do you see that?  
 (16) **A** Yes sir I was not working in the corporation at that  
 (17) time  
 (18) **Q** Were you working in the medical department?  
 (19) **A** No, sir I was not  
 (20) **Q** Do you know if as this documents states in September of  
 (21) 1985 the medical department was supposed to be finalizing  
 (22) rehabilitation aftercare programs and procedures?  
 (23) **A** I do not know, sir  
 (24) **MR O'NEILL** I am interested in - exhibit 3617, did I  
 (25) offer 3617?

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- (1) **MR LYNCH** The one that you used before? You've  
 (2) offered two  
 (3) **MR O NEILL** I offer Defendants Exhibit 3617 which  
 (4) is a memorandum dated October 5 1988  
 (5) (Exhibit 3617 offered)  
 (6) **MR LYNCH** No objection  
 (7) **THE COURT** Defendants 3617 is admitted  
 (8) (Exhibit 3617 received)  
 (9) **BY MR O NEILL**  
 (10) **Q** This is a memo and I'll put a copy in front of you that  
 (11) you've copied on Do you see that memo?  
 (12) **A** Yes, sir, I do  
 (13) **Q** At least in 1988 this document indicates on chart seven  
 (14) that post rehabilitation testing was not addressed in your  
 (15) current policy and was commonly done in the industry, do you  
 (16) see that?  
 (17) **A** Yes, I do  
 (18) **Q** And is that what the - is that a fair restatement of what  
 (19) the piece of paper says?  
 (20) **A** I would testify that - that that is what the paper says  
 (21) I would not necessarily agree with what the paper said  
 (22) **Q** Comes out of your company, doesn't it?  
 (23) **A** It was a draft put together by one of my subordinates,  
 (24) that's correct A draft I should emphasize, a draft  
 (25) **Q** And on the next page the statement is made by somebody  
 who

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- (1) works for Exxon U S A that Exxon is in the minority of  
 (2) companies which do not specify abatement rehabilitation  
 (3) following first positive test is that a correct statement?  
 (4) A Yes, that's correct that's what that draft says  
 (5) Q You didn't want Exxon to be out on the leading edge with  
 (6) regard to any alcohol policies did you?  
 (7) A I wanted Exxon to have a policy we could implement and I  
 (8) didn't want to be enjoined by the Court so I wound up with  
 (9) an  
 (10) empty bag and had no policy to protect the safety of the  
 (11) public  
 (11) Q Now I am puzzled by what this page is in the document  
 (12) A This was simply a rundown of our pre-employment drug  
 (13) testing results for the year  
 (14) Q By race?  
 (15) A 1987, by race, that's correct  
 (16) Q Now this document has at the end of it some assessment of  
 (17) the competitive situation with regard to post rehab testing and  
 (18) you compare yourself to two oil companies Shell and Amoco  
 (19) do  
 (19) you see that?  
 (20) A Yes, sir, I do  
 (21) Q Post rehab testing Exxon no Shell post rehab Amoco  
 (22) post rehab Do you see that?  
 (23) A Yes sir I do  
 (24) Q 3M post rehab DuPont post rehab Allied Signal post  
 (25) rehab IBM post rehab So you and the soap manufacturer are

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- (1) the two that don't Proctor and Gambel is that right?  
 (2) A No sir What that is that's the companies doing post  
 (3) rehab out of the 150 doing the survey I believe the number  
 (4) was about six or seven at that point So that meant a  
 (5) hundred  
 (6) and 43 were not doing it  
 (6) Q Now I'm a little interested in - see if we can clean this  
 (7) up Union Oil in the early 1980s had a very specific follow up  
 (8) program with regard to its employees that went through  
 (9) rehabilitation didn't they?  
 (10) A I have no data on that  
 (11) Q You don't know?  
 (12) A No sir I don't know  
 (13) Q Have you ever been informed of that?  
 (14) A No sir  
 (15) Q Ever been shown any Union Oil documents on that?  
 (16) A I saw a Union Oil document yesterday that said you were  
 (17) going to use this morning  
 (18) Q Union Oil you know as you sit here today that Union Oil  
 (19) had a very careful follow up program with regard to post rehab  
 (20) employees?  
 (21) A No, sir, I did not know that And in fact the document  
 (22) you provided was a dear to nobody letter signed by nobody  
 (23) Appeared to me to be a draft by the way  
 (24) Q Or a form letter?  
 (25) A Looked to me like a draft

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- (1) Q You've been deposed in various cases on behalf of Exxon  
 (2) ten to 15 times that's a correct statement?  
 (3) A In my 32 year career, that would be correct, sir  
 (4) Q And you know that the nature of alcoholism is such that it  
 (5) goes abstinence relapse abstinence relapse that's a correct  
 (6) statement isn't it? You know that don't you?  
 (7) A Well, I really - I do and I don't and let me testify to  
 (8) what I do know  
 (9) Q Let's take a look at your deposition transcript  
 (10) A Well let me testify what I do know because I know  
 (11) exactly  
 (11) what I said in my deposition I said early on I was of the  
 (12) impression that employees who went to rehabilitation  
 (13) tended to  
 (13) be cured when they came out of there and if they stuck with  
 (14) their aftercare, then there was not a problem  
 (15) I have subsequently learned that the relapse rate was a  
 (16) great deal higher than I probably realized that it was and, in  
 (17) fact, I was shocked, as some people in this courtroom might  
 (18) be  
 (18) shocked, in a substance like cocaine it's as high as 90  
 (19) percent  
 (19) and frankly, I did not know that  
 (20) Q Couldn't tell whether you agreed with me or not?  
 (21) A I told you what I testified to in my deposition Or what I  
 (22) recall testifying in my deposition  
 (23) Q Let's go to page 48 of your deposition  
 (24) A Okay  
 (25) Q The questions on page 47 Would this be the case for

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- (1) example the alcohol and breath everyone - well if an  
 (2) individual reported for work with alcohol on his or her breath  
 (3) and it was the first time would that person - was the policy  
 (4) that that person regardless of the number of times it happened  
 (5) be sent for treatment?  
 (6) That's a crazy question but your answer was again that  
 (7) would depend on the circumstances If you look into the  
 (8) subject of alcoholism you find the nature of alcoholism is  
 (9) abstinence relapse abstinence relapse abstinence relapse  
 (10) and  
 (10) somebody can be having a very successful recovery and still  
 (11) have a situation where they have a relapse And that's the  
 (12) answer that you gave  
 (13) A Absolutely in that context that's right We were talking  
 (14) about a period much more recent than the one that you  
 (15) seemed to  
 (15) be talking about  
 (16) Q Now do you have an understanding that over 50 percent of  
 (17) alcoholics have relapses?  
 (18) A I - that's not a number that I'm familiar with I would  
 (19) have said it would have been something less than that, but  
 (20) you  
 (20) may be correct I just don't have the data committed to  
 (21) memory  
 (22) Q Go to page 67 of your deposition testimony  
 (23) A Okay  
 (24) Q Take a look and read along with me  
 (25) A Sure

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- (1) Q The question on line 18 is your testimony is that your  
 (2) understanding is it's well over half answer that's correct  
 (3) A Excuse me sir you said what page we're on?  
 (4) Q 67  
 (5) A Mine only goes to 58  
 (6) Q I'm sorry Here's 67  
 (7) A Okay Thank you  
 (8) Q And if you would why don't you read to the jury line 18 to  
 (9) line 20  
 (10) A Line 18 says, question your testimony is that your  
 (11) understanding is it's well over half?  
 (12) That's correct  
 (13) What I was understanding between - was that your  
 (14) understanding between 1977 and 1987 And I'm saying are  
 (15) you  
 (16) asking me to give you the date at which I really became  
 (17) familiar with the illness and I can't do that because I don't  
 (18) know when that was It's been an evolutionary process  
 (19) much  
 (20) like I just said and I've learned a lot about that process as  
 (21) we worked through it  
 (22) Q Are you ignorant now? You're more knowledgeable now  
 (23) than  
 (24) you were in 1985?  
 (25) A No question about that sir  
 (26) Q Did you know what relapse rates were in 1985?  
 (27) A No I did not  
 (28) Q Should you because of your position at Exxon U S A have

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- (1) known that information? You were writing an alcohol policy  
 (2) weren't you?  
 (3) A No sir I don't necessarily think I needed to be familiar  
 (4) with relapse rates at that point in time  
 (5) Q You were writing alcohol policies for the company in 1983  
 (6) 84 and 85 and you don't think you should have been familiar  
 (7) with relapse rates?  
 (8) A I didn't write a policy in '83 I didn't write one in '84  
 (9) and I didn't write one in '85  
 (10) Q Did you approve them?  
 (11) A And I did not approve them I was involved in writing one  
 (12) as I testified in 1986 which was put out to our employees in  
 (13) the year 1987  
 (14) Q And it wasn't necessary to know about relapse rates?  
 (15) A We were dealing with our medical department and  
 (16) certainly  
 (17) the medical department was familiar with that and I would  
 (18) have  
 (19) depended on them to provide me that advice if they thought  
 (20) it  
 (21) was a significant issue  
 (22) Q Apparently it wasn't was it because they didn't provide  
 (23) you with that advice?  
 (24) A They did not provide me with that data  
 (25) Q So it's their fault?  
 (26) A I'm not saying it's anybody's fault I'm just saying they  
 (27) didn't provide me with that data  
 (28) Q Would you agree with the proposition that at least the

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- (1) society outside of Exxon Corporation and Exxon Shipping  
 (2) Corporation that a supertanker captain presents more of a risk  
 (3) to the public than for example a secretary or a clerk?  
 (4) A Yes sir I'd agree with that  
 (5) Q With regard to Exxon Shipping Company you don't know  
 (6) what  
 (7) kind of training was provided to Exxon Shipping Company  
 (8) supervisors with regard to monitoring employees who had been  
 (9) through alcohol rehabilitation?  
 (10) A Sir, you're going to have to put that in a time context  
 (11) You talking about '77 '87  
 (12) Q 85 '86  
 (13) A '85 '86 We did drug awareness training in 1984 and '85,  
 (14) and Exxon supervisors were allowed to participate in that  
 (15) training  
 (16) Q Did Exxon Shipping Company ever seek your advice on how  
 (17) to  
 (18) go about monitoring an alcohol or drug abuser who had been  
 (19) through rehab and come back to work?  
 (20) A I don't recall if they ever sought my advice on that  
 (21) Q Proper investigation of a report of alcohol use would  
 (22) include interviewing the suspect interviewing the accuser and  
 (23) interviewing people that were aboard the vessel and  
 (24) documentation?  
 (25) A I testified in my deposition that I personally would have  
 (26) documented and investigated an occurrence in that  
 (27) manner  
 (28) Certainly it's up to the individual manager on how they do

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- (1) that That was just my personal view of what I would have  
 (2) done  
 (3) Q Makes good common sense and it is an honest way to deal  
 (4) with people?  
 (5) A I would say that I would have done that, yes sir  
 (6) Q You testified that with regard to these discussions over  
 (7) alcohol policies you were trying to balance the rights of the  
 (8) employee against the public safety?  
 (9) A Yes, sir  
 (10) Q And putting somebody who had gone through alcohol  
 (11) rehabilitation in charge of a supertanker presents a risk to  
 (12) the public doesn't it?  
 (13) A It would depend on why they went through alcohol  
 (14) rehabilitation I have a fellow, people I'm aware of that went  
 (15) through alcohol rehabilitation because their son was going  
 (16) through and they wanted to go through it so they could  
 (17) experience it with them So first question I'd ask in that  
 (18) case is what were the circumstances of the individual going  
 (19) Q Let me reask the question  
 (20) A All right, sir  
 (21) Q And I want to get your position Putting somebody who has  
 (22) gone through alcohol rehabilitation because of problems with  
 (23) alcohol in charge of a supertanker presents a potential risk to  
 (24) the public yes or no?  
 (25) A I would say there would be some risk to the public

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- (1) Q And if you had a supertanker accident a supertanker  
(2) grounding a supertanker mishap the risks can be catastrophic  
(3) can it?  
(4) A No question about that  
(5) Q I m going to try to summarize your direct testimony and  
(6) you can come along with me if you would but you re aware  
that  
(7) Captain Hazelwood it was reported to him that he was under  
(8) investigation in February of 1985 by Mr Tompkins?  
(9) A That is my understanding  
(10) Q And that Mr Pierce had a conversation with him as a result  
(11) of an anonymous phone call after the Captain already knew he  
(12) was under investigation you re aware of that aren t you?  
(13) A That is my understanding  
(14) Q And the captain went through an alcohol rehabilitation  
(15) program you re aware of that?  
(16) A I am  
(17) Q And the captain held a safety sensitive position?  
(18) A That's your description, but yes I'll accept that  
(19) Q And the company s policy with regard to taking care of this  
(20) captain was such that the only thing you were going to look at  
(21) was job related performance you weren t going to look at off  
(22) duty drinking whether he was drinking again that s the  
(23) company s policy isn t that right?  
(24) A Our policy was to monitor the individual based on their  
job  
(25) performance as I testified that s correct sir

- (1) was a problem  
(2) Q We ll get to that in just a minute  
(3) A All right  
(4) Q A relapse - so the company policies would allow - the  
(5) company policies would allow a relapsed alcoholic to be in  
(6) charge of a supertanker so long as nobody knew so long as  
his  
(7) relapsed nature didn t affect his job performance?  
(8) A Are you speaking of Captain Hazelwood?  
(9) Q No I m talking generally a relapsed alcoholic can work  
(10) who has gone through treatment can work for Exxon  
Corporation  
(11) and drive a supertanker according to Exxon Corporation s  
(12) policies?  
(13) A That's correct, sir, with appropriate monitoring  
(14) Q So your policies knowing the risk to the public of the  
(15) catastrophic results of a supertanker accident allow a  
(16) relapsed alcoholic to command a supertanker?  
(17) A Yes, sir, that's possible under our policy  
(18) Q And you write your policies you can change your policies  
(19) the management committee can change your policies that s all  
a  
(20) correct statement isn t it?  
(21) A Yes, sir, it is  
(22) MR O NEILL Nothing further  
(23) REDIRECT EXAMINATION OF JAMES ROUSE  
(24) BY MR LYNCH  
(25) Q Mr Rouse you were shown this document by Mr O Neill?

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- (1) Q So if you had Captain Hazelwood who had gone through  
(2) alcohol rehabilitation and he was drinking again so long as he  
(3) didn t drink on company property or come back to ship drunk  
(4) his drinking again was hunky dory with regard to company  
(5) policy?  
(6) A Well I m sorry I don t understand what you mean by  
hunky  
(7) dory  
(8) Q Wasn t it a violation of company policy for the captain to  
(9) be drinking again even though he went through alcohol  
(10) rehabilitation?  
(11) A It was not a violation of company policy for him to  
consume  
(12) alcohol on his own time and as long as it didn t interfere  
with  
(13) his job performance that s right  
(14) Q And the policies did not require anything with regard to  
(15) making sure that he was not relapsing there was nothing in the  
(16) policy that said we got to follow up with regard to the  
(17) general subject of relapse off duty personal life problems  
(18) drinking that kind of thing except with a strict area of job  
(19) performance?  
(20) A Well I would not accept your - your definition as you ve  
(21) laid that out I would say that in a normal supervisory  
(22) employee relationship, that that supervisor be working with  
(23) that employee frequently, would have a good understanding  
of  
(24) how they were getting along, how they felt how they were  
(25) performing their job and they would see a deterioration if  
that

- (1) A Yes  
(2) Q There seemed to be some confusion at the conclusion of  
your  
(3) dialogue What did the 1987 policy ultimately provide with  
(4) reference to for cause testing of safety sensitive positions?  
(5) A What the 1987 policy said was that if a manager had  
reason  
(6) to believe or had safety concerns he had the right to test in  
(7) those situations if he had reason to believe there was a  
(8) problem or had safety concerns under our test for cause  
policy,  
(9) he or she had the right to conduct for cause testing  
(10) Q And I believe you testified that you considered giving or  
(11) providing for testing even without concern just because the  
(12) person held a job and concluded that would not be a good  
idea?  
(13) A Yes sir that is my testimony  
(14) Q Now in connection with this document Mr O Neill saw fit  
(15) to show you for some reason a page that had to do with  
(16) breakdown of pre employment test results by race?  
(17) A Yes sir  
(18) Q I don t know what that has to do with this case but why  
(19) did you prepare that breakdown?  
(20) A Because as I ve already testified we re very very  
(21) interested and concerned about the issue of embracing  
diversity  
(22) in our company and we wanted to make sure that in no way  
our  
(23) testing policy was adversely affecting our fine minority  
(24) employees and the only way we knew to do that was to go  
get  
(25) some data

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- (1) Q Now Mr O Neill asked you about this page of the 1987  
 (2) training materials and particularly the underlined phrase  
 (3) that disciplinary action will be taken Would you read the  
 (4) next sentence?  
 (5) A Yes, sir As you will see later in the program we must  
 (6) try to keep - we must try to get all the facts in a situation  
 (7) carefully evaluate those issues and use good judgment in  
 making  
 (8) our decision  
 (9) Q Now I d like to refer you then to page 24 and ask you  
 (10) if this is the later part of the program which is referred to  
 (11) there as the - as an indication of how good judgment is to be  
 (12) used in a situation where information of a possible employee in  
 (13) violation comes to light?  
 (14) A Yes, sir, that's correct What this says is, you'll find  
 (15) that there are not always cut and dried solutions to these  
 (16) cases Our intent in this section will not be to give you a  
 (17) school book solution but rather to learn a process for  
 making  
 (18) decisions on alcohol and drug cases The key points in this  
 -  
 (19) in this decision making process are clarify the situation  
 (20) investigate by gathering relative or relevant information,  
 (21) analyze your information decide on a course of action and  
 (22) follow up  
 (23) Q Then I d like to take you to page 32 and direct your  
 (24) attention to the second sentence reading for cases involving  
 (25) an employee in an unfit condition at work under the influence

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- (1) of drugs or alcohol?  
 (2) A Yes, sir  
 (3) Q Management has discretion to either terminate the employee  
 (4) or impose lesser discipline based upon severity of the  
 (5) deference timing and other mitigating factors This is the  
 (6) 87 guideline correct?  
 (7) A Yes sir that's correct  
 (8) Q And in 87 the advice you gave to management was that they  
 (9) should invariably impose some discipline for violation of the  
 (10) alcohol policy?  
 (11) A That's correct sir  
 (12) Q Prior to that time management had the discretion not to  
 (13) impose discipline in the case?  
 (14) A That's correct it was unspoken or unwritten in our  
 (15) previous policy so the manager had total discretion to use  
 his  
 (16) or her best judgment  
 (17) Q Let me ask you about the case that Mr O Neill asked you  
 (18) about If in a situation where an employee where information  
 (19) came to management's attention that indicated a possible  
 (20) violation by an employee some years back  
 (21) A Yes, sir  
 (22) Q And in the mean time the employee went through  
 (23) rehabilitation and when talking to the management admitted  
 this  
 (24) prior activity several years back did your guidelines as you  
 (25) understand them require the company to punish the employee  
 for

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- (1) telling the manager?  
 (2) A Absolutely not As far as -  
 (3) Q That after having undergone rehabilitation and admitting  
 (4) some prior problem he now has to be punished?  
 (5) A Absolutely not He does not need to be punished We  
 (6) encourage our people to seek help He sought help and I  
 think  
 (7) it would have been a terrible thing to go back and discipline  
 (8) him retroactively after he'd gone and sought help and gone  
 (9) through rehabilitation  
 (10) Q Now one last item You were shown a list of companies  
 (11) which as of 1988 were doing some rehab testing post rehab  
 (12) testing?  
 (13) A Yes sir  
 (14) Q And you were asked about whether Exxon was the odd man  
 out  
 (15) in that list This is that draft document that you were asked  
 (16) about  
 (17) A Yes sir  
 (18) Q Now what did you say about how those companies were  
 (19) selected?  
 (20) A Well, that was a broad potpourri of companies As I  
 (21) testified, we looked at as many as 150 different companies  
 in  
 (22) our policy and what that draft document did was just speak  
 to  
 (23) those that were doing that type of testing, it didn't speak to  
 (24) those who were not doing that type of test  
 (25) Q In other words it picked just the pace setters?

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- (1) A That's what we did  
 (2) Q And of how many companies were on that list that were doing  
 (3) that?  
 (4) A My recollection was the BRT survey had 150 companies  
 in it,  
 (5) perhaps and so these were the pace setter companies out  
 of  
 (6) that group  
 (7) Q Seven?  
 (8) A There were seven  
 (9) MR LYNCH No further questions Your Honor  
 (10) THE COURT Sir you may step down  
 (11) MR CHALOS Your Honor I m happy to report to you  
 (12) and to the Jury that this is our last witness We re almost  
 (13) there  
 (14) The defense calls Captain Jay Bolton  
 (15) THE CLERK Raise your right hand please, sir  
 (16) (The Witness Is Sworn)  
 (17) THE CLERK For the record state your full name, your  
 (18) address and spell your last name, please  
 (19) THE WITNESS Yes sir My name is Captain Jay D  
 (20) Bolton that s B O L T O N I live at Browns Lane Old Lyme  
 (21) Connecticut  
 (22) THE CLERK Thank you sir  
 (23) DIRECT EXAMINATION OF JAY BOLTON (Live)  
 (24) BY MR CHALOS  
 (25) Q Captain Bolton how old are you?

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- (1) **A 51, sir**  
 (2) **Q 51 You look good 51? By whom are you employed?**  
 (3) **A I am presently self employed serving as a consultant**  
 (4) **Q Consulting on what?**  
 (5) **A At the present time I am consulting with a company that**  
 (6) **manufactures ship handling simulation and training**  
 (7) **equipment**  
 (8) **Q Tell us a little bit about that**  
 (9) **A My job in the last few months has been to survey**  
 (10) **merchant**  
 (11) **marine academies from around the world to determine their**  
 (12) **training requirements, learn of the training methods and to**  
 (13) **advise them as to what kind of equipment they can most**  
 (14) **effectively use to implement their training objectives**  
 (15) **Q Now when you talk about training are you talking about**  
 (16) **training officers to go on board vessels?**  
 (17) **A Yes, sir**  
 (18) **Q Now tell us a little bit about your educational**  
 (19) **background**  
 (20) **A I attended the State University of New York Maritime**  
 (21) **College and graduated in 1967**  
 (22) **Q Prior to that you were at the naval academy for a couple**  
 (23) **of years?**  
 (24) **A Yes sir**  
 (25) **Q Since your graduation from the - from Fort Schuyler can**  
 (26) **you tell us a little bit about your employment history?**  
 (27) **A Immediately upon graduation in 1967 I was deployed to a**

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- (1) **tanker that was serving in the Vietnam Persian Gulf waters**  
 (2) **and**  
 (3) **I served on that ship for approximately ten months Since**  
 (4) **then I've been serving continuous duty as a junior officer,**  
 (5) **rising through the ranks from third mate to second mate to**  
 (6) **chief mate**  
 (7) **Q Let's slow down a little bit How long were you - you got**  
 (8) **a third mate's license when you graduated right?**  
 (9) **A Yes sir**  
 (10) **Q How long did you sail as a third mate?**  
 (11) **A I sailed for six months as a third mate and then started**  
 (12) **sailing as a second mate on a waiver because of the**  
 (13) **Vietnam**  
 (14) **war**  
 (15) **Q Which war?**  
 (16) **A And I obtained my true second mate's license in early**  
 (17) **1969**  
 (18) **Q You were sailing through Vietnam you say?**  
 (19) **A Yes sir**  
 (20) **Q What type of ships were you on as a third mate and then a**  
 (21) **second mate?**  
 (22) **A Essentially tankers although as I rose to second mate I**  
 (23) **served aboard general cargo ships as well**  
 (24) **Q And eventually you became a chief mate?**  
 (25) **A Yes sir**  
 (26) **Q When did you obtain that license?**  
 (27) **A I obtained my chief mate's license in 1972**

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- (1) **Q And how long did you sail on that license?**  
 (2) **A I served in a capacity as chief mate from 1972 through the**  
 (3) **middle of 1977**  
 (4) **Q What type of ship?**  
 (5) **A Tankers**  
 (6) **Q Then I take it you - you received your master's license?**  
 (7) **A I received - I took the examination for my master's**  
 (8) **license and received it in 1974**  
 (9) **Q Okay When was your first job as a master?**  
 (10) **A My first command was in the fall of 1977**  
 (11) **Q What type of ship?**  
 (12) **A That was a 40 000 ton tanker**  
 (13) **Q When did you retire? You said you retired - or you left**  
 (14) **the seagoing career Sorry you're only 51 I'm sorry Go**  
 (15) **ahead**  
 (16) **A Too young to retire I left the company that I was working**  
 (17) **for as a master of tankers in 1980 - late 1987**  
 (18) **Q Did you work for the same company from 1977 to 1987?**  
 (19) **A Yes, sir**  
 (20) **Q As a master?**  
 (21) **A Yes sir**  
 (22) **Q And this company was who?**  
 (23) **A This was a company, Maritime Overseas Corporation**  
 (24) **Q And did they operate tankers in the Valdez trade?**  
 (25) **A Yes sir**

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- (1) **Q Was that your primary trade between 1977 and 1987?**  
 (2) **A It was part of our trade It wasn't primary I was**  
 (3) **involved in the Alaskan oil transportation scheme, but I**  
 (4) **spent**  
 (5) **a great deal of my time down in the Gulf of Mexico in the**  
 (6) **U S**  
 (7) **Gulf and east coast**  
 (8) **Q Have you been up to Valdez?**  
 (9) **A Yes sir**  
 (10) **Q On tankers?**  
 (11) **A Yes sir**  
 (12) **Q As a master?**  
 (13) **A Yes, sir**  
 (14) **Q How many trips did you make up there as a master?**  
 (15) **A It's an estimate but I would guess about 20 trips**  
 (16) **Q In your deposition you said 20 22 trips is that a fair**  
 (17) **estimate?**  
 (18) **A That's an estimate yes sir**  
 (19) **Q Trips are what we call round trips right?**  
 (20) **A Correct**  
 (21) **Q Okay So you would have been in and out of Valdez 40 to 44**  
 (22) **times?**  
 (23) **A If you included each passage that's correct**  
 (24) **Q As a master?**  
 (25) **A Yes sir**  
 (26) **Q What size tankers did you work on?**  
 (27) **A I was primarily engaged aboard a 90 000 ton tanker That**

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- (1) ship had almost the same length as the Exxon Valdez She was
- (2) about 900 feet in length but she was much narrower and was not
- (3) as deep, so she was much smaller in size by tonnage
- (4) Q You've been on ships bigger than 90,000 tons?
- (5) A Yes, sir
- (6) Q As a master?
- (7) A Yes, sir
- (8) Q Also tankers?
- (9) A Yes, sir
- (10) Q Let me ask you this. In respect to your coming up to the
- (11) Valdez trade, did you hold the pilotage endorsement for Prince
- (12) William Sound?
- (13) A No, I did not
- (14) Q So all those trips that you made, 40 to 44 trips, you had
- (15) no pilotage endorsement?
- (16) A That is correct
- (17) Q Okay. Do you presently hold a master's license?
- (18) A Yes, sir
- (19) Q Is that an unlimited license?
- (20) A Yes, it is
- (21) Q You can go on any - any ship, any size, any ocean?
- (22) A Correct
- (23) Q Did you do any postgraduate studies after you left Fort
- (24) Schuyler?
- (25) A Yes, I did

- (1) master?
- (2) A Well, in 1987, I formed a nonprofit organization. I formed
- (3) it for the purpose of advancing the cause of marine safety
- (4) and
- (5) promoting the U.S. flagged merchant marine and promoting
- (6) U.S.
- (7) commerce and trade. The name of that organization is the
- (8) United States Maritime Foundation.
- (9) Q Is that the one that you're working for now?
- (10) A I am. That is still presently an active organization,
- (11) yes.
- (12) Q Now, have you ever qualified as an expert witness in a case
- (13) involving collisions or grounding?
- (14) A Once.
- (15) Q When was that?
- (16) A It was about a few months ago, three or four months ago.
- (17) Q Was that in federal court?
- (18) A Yes, sir.
- (19) Q In Newark, New Jersey?
- (20) A Yes, sir.
- (21) Q And were you accepted by the court as an expert in marine
- (22) operations, navigation and duties of a captain overall?
- (23) A Yes, sir.
- (24) Q Those were the subjects that you were accepted as an expert
- (25) on?
- (26) A In substance, yes.
- (27) Q Have you been to sea lately?

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- (1) Q What type of studies?
- (2) A I attended various professional courses of study at an
- (3) organization called the Maritime Institute of Technology
- (4) and
- (5) Graduate Studies.
- (6) Q What was that in?
- (7) A Various topics, from admiralty law, ships medicine, cargo
- (8) operations and various courses like that. I also attended a
- (9) simulator, ship handling simulator course.
- (10) Q For tankers?
- (11) A For VLCC.
- (12) Q What is a VLCC?
- (13) A VLCC is what they call a very large crude carrier, and
- (14) those are ships that are generally judged by size of being
- (15) 265,000 tons up to about 300,000 tons.
- (16) Q Did you participate in a simulator project as a subject?
- (17) A Yes, I did.
- (18) Q That was over at Kings Point?
- (19) A Yes, sir.
- (20) Q And you had an opportunity to work the simulator and they
- (21) gauged your performance, is that the subject of the test?
- (22) A I was a test subject doing runs going up into the Valdez
- (23) Narrows.
- (24) Q They could simulate that?
- (25) A Yes, sir.
- (26) Q What have you done since you left going to sea as a tanker

- (1) A My last command was 19 - or last summer.
- (2) Q What was that?
- (3) A I was captain of a tall ship called the HMS Bounty.
- (4) Q Sailing ship?
- (5) A Yes, sir.
- (6) Q The Bounty?
- (7) A Yes, sir.
- (8) Q Like the mutiny on the Bounty, same Bounty?
- (9) A Yes, sir.
- (10) Q Did you leave that job voluntarily, or in a life boat?
- (11) A No, but they changed my name to "Captain Blighton".
- (12) MR CHALOS: Your Honor, I offer Captain Bolton as an
- (13) expert in the overall duties as a captain and navigable duties
- (14) particularly in respect to Prince William Sound.
- (15) MR MONTAGUE: No objection.
- (16) THE COURT: Captain's qualifications are accepted.
- (17) You may inquire.
- (18) BY MR CHALOS:
- (19) Q Captain, let's start generally. Can you tell us what the
- (20) duty of a master is on a ship? And let's do it on tankers.
- (21) A A captain's job or ship master's job is perhaps one of the
- (22) most unusual jobs in the United States. At first blush, one
- (23) could say he has to be the chief executive officer or the
- (24) chairman of his own company. More importantly, he has
- (25) areas of responsibility that transcend maybe more than 20 different

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- (1) areas of expertise He's expected to have working knowledge
- (2) and discharge his responsibilities in areas and in such topics
- (3) as nautical astronomy navigation naval architecture marine
- (4) engineering He must also be a paramedic level skilled individual so he can discharge his medical responsibilities
- (5) and the list goes on and on and on
- (7) The thing that makes this job perhaps really different is the fact that first he has this responsibility 24 hours a day
- (9) It never goes away while he's on board the ship or while the ship is at sea, and the other thing that makes his job somewhat
- (11) unique is the fact that up until most recently and even now, once a ship is at sea he has no umbilical cord of support He
- (13) is the sole decision maker and he lives with the responsibility
- (14) that he's got to discharge under various adverse and varied
- (15) conditions calling upon these levels of expertise at moments
- (16) and when he's least expecting it
- (17) Q What is the captain's role let's say in relation to his junior officers as far as teaching them as far as guiding them?
- (20) A I view that one of the most important jobs a master has is the education of all of his crew members Bear in mind if you're in the middle of the ocean on a small ship, and even ships like the Exxon Valdez, as big as she may appear here when you're at sea it becomes a very small island and we have
- (25) 25 people on board We're all dependent upon one another for

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- (1) our own survival and our well being and our happiness So the
- (2) most important job a captain has therefore is to develop those people professionally and assure that they have the professional skills and competency level such that they can discharge their responsibilities in an effective manner
- (6) Q How does he do that?
- (7) A Well, every captain has different ways of discharging that educational responsibility they're responsible to be a teacher So I couldn't speak to how they do it but typically it's done by encouraging them to assume responsibility to guide
- (11) them as they grow in their ability to accept and discharge consequential responsibility and I think that that's the key
- (13) Every crew member be it ordinary seaman or cook has got to be
- (14) able to accept and discharge his own consequential responsibility so that's the guide of a captain to a coach a teacher, and a cheerleader at the same time
- (17) Q Does the captain discharge that responsibility by giving his officers on the job training giving them responsibility to let them do it by themselves?
- (20) A Well it varies In my situation I did not have the luxury of having permanent officers or crew members so I would
- (22) be having to work immediately with people whom I did not know
- (23) did not know what their background was only the fact that they
- (24) had a Coast Guard license and were qualified So the first chore that I had was to assess the individual assess their own

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- (1) abilities at that point in time and then to grow that capability within each person
- (3) Q Let me get a little bit more specific now You've read the testimony of Captain Hazelwood in this case?
- (5) A Yes, sir
- (6) Q You read the testimony of Chief Mate Kunkel?
- (7) A Yes, sir
- (8) Q You've read the testimony of Third Mate Cousins?
- (9) A Yes, sir
- (10) Q Did you read the testimony of Mr LeCain?
- (14) A I don't remember the name LeCain
- (12) Q He was the second mate?
- (13) A No, I did not
- (14) Q Now, with respect to the testimony that you read you read about Captain Hazelwood's management style and the way he dealt
- (16) with his junior officers?
- (17) A Yes
- (18) Q You remember that?
- (19) A Yes, sir
- (20) Q How do you describe his management style vis a vis that you're talking about here what a captain needs to do to train his officers?
- (23) A Well I think that in the trial you may have heard or witnessed different management styles everybody has a different style I think one captain testified he does

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- (1) everything Doesn't trust anybody to do everything, he does
- (2) everything himself that way he doesn't -
- (3) Q I'm sorry to interrupt That particular captain that you're talking about was the plaintiff's expert Captain Clark?
- (5) A I think the name was Clark
- (6) Q You read his testimony as well?
- (7) A Yes
- (8) Q Go ahead
- (9) A That's an individual who doesn't trust himself enough to trust other people in my view Captain Hazelwood, in listening to or reading the deposition I think specifically of Mr Cousins and Mr Kunkel Mr Kunkel being close to being a
- (13) master having had a broad base of experience they indicated
- (14) to me that they had a very active or proactive master with respect to training and developing his management team if you
- (16) will between the levels of officers
- (17) So I would interpret Captain Hazelwood's modus operandi as
- (18) being one of - being very didactic and being very interested in the development of his junior officers
- (20) Q What was that word?
- (21) A Sorry very much of a teacher he's very educationally oriented Excuse me
- (23) Q When a captain does that when you have the style of Captain Hazelwood where he's teaching his junior officers what is the reward for him? I mean what can he expect in



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(1) return for doing that?  
 (2) A I think the reward of any teacher is to see their students  
 (3) go on to be successful and I think the biggest reward I've  
 had  
 (4) is to see people I've had opportunity working with as third  
 (5) mate to learn that they are someday a captain That's the  
 most  
 (6) rewarding The instant gratification or benefit is the fact  
 (7) that the ship manning infrastructure was not designed to be  
 a  
 (8) one man dog and pony show it was designed that lots of  
 (9) professionals would work different departments  
 engineering,  
 (10) steward and deck performing their tasks so by  
 emphasizing the  
 (11) educational level by developing the professional  
 competency  
 (12) it assured that the ship had a better overall sense of - or  
 (13) capability of being operated safely  
 (14) Q A captain can I be on the bridge 24 hours a day can he?  
 (15) A That's a good question There are many many  
 documented  
 (16) cases whereby a captain has tried to live on the bridge day  
 in  
 (17) and day out Most recently there was a captain who - no  
 (18) offense it was a Greek ship was coming into -  
 (19) Q They love these Greeks I'm telling you take it easy  
 (20) will you?  
 (21) Go ahead  
 (22) A The captain was making landfall coming into I think  
 Rhode  
 (23) Island a couple of years ago, and he had been on the bridge  
 for  
 (24) 24 48 hours or something and he missed the buoy and ran  
 aground because he was trying to do it all himself. So  
 (1) that's - that's the disaster of trying to do everything by  
 (2) yourself and exhausting yourself beyond any realm of  
 (3) reasonability  
 (4) Q Do you have an opinion as to Captain Hazelwood's  
 management  
 (5) style? Was it good had based on your experience and based  
 on  
 (6) your experience in training officers?  
 (7) A Well the testimony has been that he's the best -  
 (8) Kunkel - I think Mr Kunkel said he's the best captain I've  
 (9) ever sailed with Bear in mind that the junior officers  
 (10) Mr Kunkels of the world who are looking at becoming a  
 master  
 (11) they're looking for a role model what kind of captain are  
 they  
 (12) going to be when they get to sit in that chair So that  
 (13) meaning he's the best captain I ever sailed with doesn't  
 mean  
 (14) he's the nicest guy in the world, but it does mean he's  
 (15) probably the most effective individual that that individual  
 has  
 (16) sailed with so I'd rather say that based on that input that  
 (17) Captain Hazelwood must have been a very effective ship's  
 (18) master  
 (19) Q You mentioned Captain Clark Let me ask you a few  
 (20) questions about him He testified - Captain Clark again was  
 (21) the plaintiffs expert he testified that in I think 20 years  
 (22) or so at sea he never came close to making a mistake or having  
 (23) an accident What do you think about that?  
 (24) A Boy, was he lucky  
 (25) Q You think he was just lucky?

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(1) A I - going to sea is a hazardous occupation It's a  
 (2) hazardous business by its very nature In my 20 some odd  
 years  
 (3) of going to sea I don't think there's been a tour that I have  
 (4) not witnessed some form of mishap or an accident That's  
 the  
 (5) nature of the business And the nature of our training is to  
 (6) try to cope with that - that mishap or accident as best we  
 can  
 (7) to minimize the danger  
 (8) Q I take it in your career you've had some close calls  
 (9) yourself?  
 (10) A Yes sir  
 (11) Q Now you read did you not that the Exxon Valdez in 1987  
 (12) and 1988 under Captain Stalzer and Hazelwood won the fleet  
 (13) manager's safety award?  
 (14) A Yes sir I did  
 (15) Q What does that indicate to you?  
 (16) A It indicates two things to me The company that I worked  
 (17) for was not an oil company fleet it was a company that  
 (18) operates many tankers and that's their primary business  
 The  
 (19) company that I work for and many other companies that I  
 worked  
 (20) for did not have a safety awards program so that tells me  
 one  
 (21) thing, that from the administration perspective the  
 company  
 (22) was interested in higher level or consistent level of safety  
 (23) From the instant performance perspective it indicates that  
 (24) during those two years, the people who - and the crew who  
 were  
 (25) on board that ship were achieving a high level of safety in  
 all

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(1) areas, perhaps from the galley to down in the engine room  
 and  
 (2) up to the bridge  
 (3) Q You started to say something before and I jumped in  
 (4) Accidents and mishaps in the marine transportation field and  
 (5) the seagoing field are common occurrences aren't they?  
 (6) A Yes sir  
 (7) Q I mean that's part and parcel of the business isn't it?  
 (8) A Right I believe that in the Lloyd's list which is a  
 (9) publication out of London I think they record something at  
 (10) least one maritime casualty a day  
 (11) Q Serious maritime casualty?  
 (12) A Yes  
 (13) Q As opposed to somebody cutting their finger?  
 (14) A Correct, groundings, drowning, collisions, fire  
 (15) Q Captain Bolton did you ever have the occasion to visit the  
 (16) Exxon Valdez?  
 (17) A Once  
 (18) Q When was that?  
 (19) A I was on my tanker, I say loosely I was aboard a ship in  
 (20) Valdez and I saw this new ship, I knew it was an Exxon ship,  
 (21) never been on board an Exxon ship and I wanted to - I was  
 very  
 (22) interested to see what it was like to - to be on a brand new  
 (23) ship like that operated by an oil company so I went over to  
 (24) have a tour  
 (25) Q Who was the captain at the time?

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- (1) A It was Captain Hazelwood  
 (2) Q Did you meet Captain Hazelwood in town or did you go over  
 (3) to his ship?  
 (4) A I don't remember I think I may have met him at the agent  
 (5) office, Alamar or someplace I don't remember But either  
 he  
 (6) invited me over or I marched over myself, and I don't  
 (7) remember  
 (8) Q Okay When you went on board did Captain Hazelwood  
 give  
 (9) you a tour?  
 (10) A Yes, he did  
 (11) Q What did you find?  
 (12) A Well obviously I was very impressed with regard to the  
 (13) ship It was new The equipment that they had on the ship  
 far  
 (14) and away exceeded industry standard which a marine  
 industry  
 (15) standard from all the ships I have ever been on, especially  
 (16) impressive was the firefighting capability The extra gear  
 (17) that is put on that was not required by Coast Guard, and I  
 went  
 (18) away thinking that I checked off the wrong box  
 (19) Q What box is that?  
 (20) A Well, I wish I'd worked for Exxon  
 (21) Q Well let me ask you this Did you at my request review  
 (22) some of the Exxon safety manuals -  
 (23) A I -  
 (24) Q - and procedures?  
 (25) A - reviewed the bridge organization guide and I think that

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- (1) that's the only Exxon publication that I reviewed  
 (2) Q How did that - what you read how did that compare to the  
 (3) industry standard?  
 (4) A Bear in mind my frame of reference in my going to sea,  
 I'd  
 (5) worked for maybe 15 different companies there are always  
 duty  
 (6) instructions sometimes outdated old sometimes no  
 (7) instructions The last ship that I was in command of not the  
 (8) Bounty but the last big ship had literally no instructions to  
 (9) the master  
 (10) I found in reading those instructions or guides, guidelines  
 (11) I guess they call them they were comprehensive in my  
 sense  
 (12) they were a good and excellent guide especially for what I  
 (13) perceived to be like a first time master or a first time  
 (14) employee because it lays out very specifically what's  
 expected  
 (15) of him and what's expected of him without taking away his  
 (16) authority and I thought it was from that respect extremely  
 (17) well written and authored from my experience  
 (18) MR CHALOS Okay I'd like to - Your Honor I can  
 (19) start a new subject now or we can take our break whatever you  
 (20) like  
 (21) THE COURT Let's take our break We'll be in recess  
 (22) for 15 minutes  
 (23) THE CLERK Court is in recess for 15 minutes  
 (24) (Jury out at 11 57 a m )  
 (25) (Jury in at 12 16 p m )

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- (1) BY MR CHALOS  
 (2) Q Mr Bolton I want to cover a subject very quickly  
 (3) There's been testimony in this trial that the sailing board -  
 (4) you're familiar with the sailing board on the ship?  
 (5) A Yes, sir  
 (6) Q That's to advise crew members going ashore what time the  
 (7) vessel would sail?  
 (8) A Correct  
 (9) Q There's been testimony here that the sailing board was set  
 (10) for 9 00 originally it was later changed And Captain  
 (11) Hazelwood and his two shipmates found out it was changed to  
 (12) 10 00 and then unbeknownst to them was moved back up to  
 (13) 9 00 What I want to ask you is based on your experience  
 (14) sailing up to Valdez have you ever seen that situation where a  
 (15) sailing board was put back to 10 00 - or back to any time and  
 (16) then moved back up?  
 (17) A It cannot  
 (18) Q It cannot?  
 (19) A It cannot be changed the other direction  
 (20) Q Why not?  
 (21) A The sailing board - the purpose of the sailing board was  
 (22) set up such that if the ship is in port and sailors go ashore,  
 (23) and the ship decides to sail that they would leave seamen  
 (24) destitute, that's the basic idea You can't leave a guy on the  
 (25) beach looking for a ship So there are rules or regulations

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- (1) that many maritime unions have set up, and I don't know if it  
 (2) applies to Exxon but in principle, it says that there are very  
 (3) distinct rules that you must tell the crew members what  
 time  
 (4) you're going to sail and you cannot leave earlier because of  
 (5) the fact you would leave somebody destitute so you never  
 (6) advance the sailing board to an earlier time You can  
 postpone  
 (7) it but never advance it  
 (8) Q Was it unreasonable for Captain Hazelwood and his two  
 (9) shipmates to believe that once they found out the sailing board  
 (10) was set at 10 00 was it unreasonable for them to believe that  
 (11) the ship would sail at 10 00 or later?  
 (12) A No, that's a reasonable assumption  
 (13) Q All right I want to speak to you now about the transit  
 (14) the vessel's transit through the Narrows There's been  
 (15) evidence presented in the trial that the captain Captain  
 (16) Hazelwood was off the bridge during the transit of the  
 (17) Narrows  
 (18) A Yes  
 (19) Q And appears that he was off for about 30 minutes 35  
 (20) minutes There's also evidence that during that period of  
 (21) time he came up once stood in the back took a look around  
 (22) okay and there's further evidence that the mate called him  
 (23) while he was in his office and advised him what was going on  
 (24) Okay I want you to assume all that Are there any  
 (25) regulations that you're aware of prior to the grounding that

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- (1) required the master to be on the bridge at any time in Prince  
 (2) William Sound?  
 (3) A No  
 (4) Q That includes the narrows is that correct?  
 (5) A Correct  
 (6) Q It's true is it not that it's in the master's discretion  
 (7) as to when he should be on the bridge and when he should be  
 (8) off the bridge?  
 (9) A Right  
 (10) Q He decides that doesn't he?  
 (11) A Yes sir  
 (12) Q Now Captain Clark testified here on behalf of the  
 (13) plaintiffs that in his opinion Captain Hazelwood exercised poor  
 (14) judgment by being off the bridge during the transit of the  
 (15) Narrows okay?  
 (16) A I remember reading that  
 (17) Q Do you agree or disagree with that opinion?  
 (18) A I disagree  
 (19) Q Why?  
 (20) A As I said earlier the captain is a CEO and he has many  
 (21) responsibilities including the safe navigation of the vessel  
 (22) and that's not a minimal responsibility He has many  
 (23) responsibilities The captain has got to use his discretion  
 (24) and look at the risk analysis or perform a risk analysis if  
 (25) you will of the -- of the potential dangers or non dangers

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- (1) that a ship would be encountering to determine where he  
 should  
 (2) or should not be so he's got to make that decision himself  
 (3) Q Let me ask you this With respect to the transit through  
 (4) the Narrows of any tanker going through  
 (5) A Yes  
 (6) Q What are the things that a captain sees knows is  
 (7) confronted with? I mean what are the factors?  
 (8) A The factors that he would use in performing his risk  
 (9) analysis?  
 (10) Q Right  
 (11) A Sure In the Narrows, there are perhaps two kinds of  
 (12) factors, one are ship factors and the other are  
 environmental  
 (13) factors Let's look at the ship factors first Any ship  
 (14) that's navigate in a restricted waterway, narrows or any  
 river  
 (15) or any port the two most common ship factors are loss of  
 your  
 (16) rudder your steering capability, and the second is a loss of  
 (17) your engine Would you like me to go through what that  
 means?  
 (18) Q Yeah yeah yeah I'm not ignoring you I was looking for  
 (19) an exhibit Go ahead  
 (20) A As far as this ship is concerned, in modern day tankers  
 (21) safety systems and backup systems are installed to  
 minimize  
 (22) that risk For example there are two steering -  
 independent  
 (23) steering systems on the ship so if one fails, it's a matter of  
 (24) pushing a button or a lever and you instantaneously within  
 two  
 (25) seconds can be working on your backup system Very  
 similar

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- (1) like an airplane they have backup systems  
 (2) If for any reason that system were to fail there is a  
 (3) third system which bypasses all the electronics on the  
 bridge  
 (4) and gives a direct stimulus or signal to the steering gear  
 (5) which is back in the back part of the ship so there's three  
 (6) systems for backup on the steering  
 (7) So in the Narrows where there is no current or minimal  
 (8) current, where the ship is steadied on course, if the rudder  
 (9) were to fail once, twice, or maybe altogether, then the next  
 (10) back up that is available is the assistant tug, and they have  
 a  
 (11) tugboat that goes out with the shipper per chance that  
 (12) emergency, so at the speed that the ship is traveling, which  
 is  
 (13) about seven miles per hour six knots that tug is close  
 enough  
 (14) to come alongside the ship and steer it until such time that  
 (15) either the steering system can be restored  
 (16) With regard to the engine, the problem with when you lose  
 (17) the engine or you lose the plant as they sometimes say, is  
 (18) that you would lose electricity and you would lose your  
 (19) steering and everything else So they have a backup  
 system for  
 (20) that and they have what they call an emergency generator,  
 and  
 (21) the emergency generator on the ship is designed to trip on  
 (22) almost instantaneously within a few seconds When you  
 lose the  
 (23) engine's generation system and that generator supplies  
 (24) electricity for the steering so at the very least you would  
 (25) steer yourself through the Narrows at a slower speed So  
 those

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- (1) are the two ship risks  
 (2) The environmental risks that need to be considered are in  
 (3) any port any - any channel what kind of current do you  
 (4) have Well in some places like in the Mississippi River the  
 (5) current can be running at maybe five or six miles per hour  
 and  
 (6) so that is very much of a factor that could push the ship into  
 (7) another ship or push the ship under the - onto the shore  
 (8) The other factor is wind On a loaded tanker wind is  
 (9) really not a factor On an empty tanker it is because most  
 of  
 (10) it's out of the water A loaded tanker that is not a factor  
 (11) So those are the two key environmental factors  
 (12) The third would be how much water is under the ship In  
 (13) some places it's not uncommon to navigate a ship where  
 there is  
 (14) minimal clearance between the bottom of the ship and the  
 bottom  
 (15) of the channel maybe three or four feet sometimes less  
 and  
 (16) that becomes very much a factor In the case of the Valdez,  
 (17) the Narrows that was not the factor  
 (18) Q Let me ask about that The water in the Narrows is very  
 (19) deep is it not?  
 (20) A Yes sir  
 (21) Q Over 600 feet?  
 (22) A Something like that  
 (23) Q There's no current running through there or negligible  
 (24) current?  
 (25) A Correct

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- (1) Q And the wind is not a factor?  
 (2) A Correct  
 (3) Q He didn't have any of the environmental factors to  
 (4) consider?  
 (5) A His factors were technical And there's one other factor  
 (6) that needs to be assessed, and that is the human factor and  
 the  
 (7) potential for human error And on board a tanker or a ship,  
 (8) when you have a pilot, you have a licensed deck officer and  
 you  
 (9) have an experienced qualified helmsman there are  
 basically  
 (10) three people on the bridge that are checking and cross  
 checking  
 (11) one another for the human error factor So it's like a triple  
 (12) redundant type of a situation on board the bridge of any  
 (13) merchant ship  
 (14) Q You read the testimony in this case that Captain Murphy was  
 (15) the pilot on board?  
 (16) A Yes  
 (17) Q You know Captain Murphy?  
 (18) A I don't know him personally I believe I've - may have  
 (19) had him - I'm sure I've had him during one of my transits but  
 (20) I do not know him personally  
 (21) Q You have any doubt - he's been described as a very  
 (22) competent pilot, you have any doubt about that?  
 (23) A In my experience coming into Valdez, the - all of the  
 (24) pilots had a uniform standard of excellence that I wish many  
 (25) other ports in the world had the same standard Good pilots

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- (1) and - and by virtue of the fact that myself I was up here  
 (2) about 20 times, the captain gets to know the pilot, know his  
 -  
 (3) his technique, and generally, there's a bond of trust that  
 (4) develops once you know how they - how they operate  
 (5) Q Captain Bolton let me get to the bottom line on this  
 (6) inquiry The testimony here was that the trip through the  
 (7) Narrows was uneventful?  
 (8) A Yes  
 (9) Q No problems?  
 (10) A Correct  
 (11) Q Okay and Captain Clark testified that in his opinion the  
 (12) fact that Captain Hazelwood may have been off the bridge  
 during  
 (13) that period of time played no role in the grounding do you  
 (14) have any reason to dispute that?  
 (15) A No, I don't  
 (16) Q You agree with that?  
 (17) A I agree  
 (18) Q Now let me ask you this you've sailed in Prince William  
 (19) Sound made 20 trips 40 passages How do you compare  
 (20) navigating in Prince William Sound to other areas of the world  
 (21) that you've operated in let's say the Mississippi or down in  
 (22) Galveston Houston?  
 (23) A I think by way of comparison is perhaps one of the  
 easiest  
 (24) ports in the world My last VLCC, which was a ship that was  
 (25) 1100 feet long, I was transiting something called the  
 Malacca

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- (1) Straits going by the Straits of Singapore and through that  
(2) straits which is a much narrower body of water going in and  
(3) out of the port they average 270 ships each day 270 ships  
(4) each day plus the other traffic so probably somewhere in  
(5) the neighborhood of three to four hundred ships are transiting  
(6) an area that is much more confined with heavy current than  
(7) Prince  
(8) William Sound  
(9) Q Did you find it to be an easy place to navigate?  
(10) A Yes  
(11) Q The hazards whatever hazards there are are they  
(12) well known?  
(13) A They're very well defined  
(14) Q And well marked?  
(15) A Yes  
(16) Q I'm showing to the jury now Defendants Exhibit 9172 which  
(17) is in evidence This is the Prince William Sound that we're  
(18) talking about right? Fairly wide open roadstead?  
(19) A Yes, sir  
(20) Q Little or no traffic most of the time?  
(21) A I don't know what the statistics are but in - very rarely  
(22) do we pass another ship in the safety lanes very rarely  
(23) Q Okay Now Admiral Yost said - just one more question on  
(24) this and we'll leave it alone Admiral Yost said that this  
(25) was in his opinion a very very easy area and the third mate  
(26) could navigate in this area with no problem at all Do you

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- (1) agree or disagree?  
(2) A Admiral Yost as you remember was the commandant of  
(3) the  
(4) U S Coast Guard and as such I would consider him to be  
(5) one  
(6) of the leading authorities on vessel safety qualifications  
(7) and  
(8) probably one of the most knowledgeable people in the  
(9) United  
(10) States He made a comment that even a child could  
(11) navigate  
(12) Well, I wouldn't go so far as saying a child could navigate,  
(13) but certainly with a professionally licensed and qualified  
(14) individual, this was perhaps a textbook area of - of a place  
(15) where any officer could and should be able to navigate  
(16) successfully  
(17) Q Captain Bolton while we have the chart out when you came  
(18) up to Valdez without your pilotage endorsement -  
(19) A Yes  
(20) Q - where did you pick up and drop off the pilot?  
(21) A A little south of Rocky Point  
(22) Q Up here?  
(23) A Yes, sir  
(24) Q In this area?  
(25) A Correct  
(26) Q Okay I'd like to ask you about the communications that  
(27) you had with the Vessel Traffic Center when you were up there?  
(28) A Yes  
(29) Q Okay did you report to them from time to time?  
(30) A Yes, that was a requirement

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- (1) Q Okay there's been - when you were up there you deviated  
(2) out of the lanes for ice?  
(3) A Yes  
(4) Q And you gave them certain reports when you did that?  
(5) A We deviated for ice on one occasion for vessel traffic  
(6) Q There's been testimony here by Captain Clark and Captain  
(7) Clark criticized the communications that Captain Hazelwood  
(8) had  
(9) with the VTS where he told them that he was leaving the lanes  
(10) so on so forth okay? Are you with me so far?  
(11) A Yes  
(12) Q What Captain Clark said - well let me back up What  
(13) Captain Hazelwood said he made a transmission to them after  
(14) -  
(15) after the pilot came off - let me put up a chart This way I  
(16) can read from it  
(17) At 11 24 this is after the pilot got off within a minute  
(18) after the pilot got off Captain Hazelwood told them that he  
(19) departed the pilot and is hooking up to sea speed and he gave  
(20) them an ETA at Naked Island Now was that the standard  
(21) phrase  
(22) that was used up there when you were up there?  
(23) A Yes, sir  
(24) Q Okay Then he's telling them I will probably divert in  
(25) from the TSS and end up in the inbound lane and if there's no  
(26) conflicting traffic What does the TSS mean to you?  
(27) A That means traffic separation scheme  
(28) Q I'm looking at Defendants Exhibit 9172 - finally I got

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- (1) him to do something for me Thank you The TSS is the  
(2) southbound lane the separation zone and the northbound  
(3) lane  
(4) right?  
(5) A Yes, sir  
(6) MR CHALOS Thank you Mr Neal  
(7) MR NEAL You're welcome  
(8) MR CHALOS You're very good I may use you again  
(9) BY MR CHALOS  
(10) Q When he's telling them he's diverting from the TSS he's  
(11) telling them he's going right out of the lanes correct?  
(12) A Yes  
(13) Q Now at 11 30 - you read Captain Hazelwood's testimony,  
(14) did you not?  
(15) A Yes I did  
(16) Q He said that when he made this transmission at 11 24 he  
(17) was still assessing the situation you remember?  
(18) A Yes  
(19) Q And he was over at the radar looking at the ice situation  
(20) and that he changed his mind and he decided not to go to sea  
(21) speed at that point all right you remember that?  
(22) A Yes  
(23) Q So then he calls back at 11 30 and says at the present  
(24) time I am going to alter my course to 200 and reduce speed to  
(25) about 12 knots and to wend - wend means to maneuver  
(26) doesn't  
(27) it in nautical talk?

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- (1) A Yes
- (2) Q And wend my way through the ice and then he tells them
- (3) about what he s going to do with his ETA Is that a lot of
- (4) information to give to the VTS?
- (5) A In my opinion, it is perfectly more than ample
- (6) Q And when he told them he was going about 12 knots that s
- (7) his full ahead maneuvering speed isn t it or thereabouts?
- (8) A I believe that is, yes
- (9) Q So when you read this do you take it as Captain Hazelwood
- (10) revising his previous - his previous advice to them that he
- (11) was hooking up to sea speed to tell them that he was
- (12) maintaining his speed at around 12 knots?
- (13) A I believe the sea speed on that ship is something around
- (14) 15
- (15) or 16 knots
- (16) Q Right
- (17) A So his second transmission where it says, reduce speed
- (18) to
- (19) about 12, that means he's not going to go up to the sea
- (20) speed
- (21) That's how I would interpret that
- (22) Q Okay There s been some criticism by Captain Clark that
- (23) eventually Captain Hazelwood put the vessel on a course of
- (24) 180
- (25) on a course of 180?
- (26) A Yes
- (27) Q And that he didn t report that?
- (28) A Correct
- (29) Q You remember he said that?

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- (1) A (Nods head up and down)
- (2) Q And that was against what he said the rules you agree or
- (3) disagree with that?
- (4) A I disagree
- (5) Q Tell us why?
- (6) A At that point in time the captain is concerned with
- (7) determining how he s going to direct his vessel how he's
- (8) going
- (9) to get through the ice That's the key thing He's made his
- (10) initial report to VTC, in my view That tells VTC he's doing
- (11) something that's totally different than the normal and at
- (12) that
- (13) point the captain's got other things on his mind in my view
- (14) than to be providing excess communications to VTC
- (15) And with regard to VTC having received a transmission
- (16) from
- (17) a ship saying, I'm doing something that's different that to
- (18) me
- (19) is a tip-off to VTC they should start to monitor that
- (20) situation and so the transmissions - any other
- (21) transmissions
- (22) would not be necessary
- (23) Q I m going to ask you about the monitoring in a second I d
- (24) like to just stick to this In your experience up there
- (25) you ve had a chance to use the users manual up there?
- (26) A Yes
- (27) Q Is there any requirement in the users manual that says you
- (28) have to tell them every time you change course?
- (29) A No
- (30) Q Okay Let s take a look at the communications by the

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- (1) Brooklyn and the Arco Juneau You re aware that they also
- (2) went
- (3) outside the TSS?
- (4) A Correct
- (5) Q Have you had a chance to compare the communications that
- (6) Captain Hazelwood made to the ones that were made by the
- (7) Brooklyn and the Arco Juneau in terms of the amount of
- (8) information that was given?
- (9) A Yes
- (10) Q Who gave the most information?
- (11) A Well, it's clear by the chart that Captain Hazelwood was
- (12) giving them far more information than the other two vessels
- (13) were
- (14) Q Did either one of the other vessels give a speed or a
- (15) course that they were steering?
- (16) A I don't believe so
- (17) Q I want to show you something I m going to put this up
- (18) This is Defendants Exhibit 1735 Alpha Your Honor in
- (19) evidence
- (20) The yellow dayglow yellow is the Arco Juneau you see
- (21) this? And the orange is the Brooklyn okay you with me? Can
- (22) you see?
- (23) A Yes
- (24) Q The Arco Juneau made one course change two course
- (25) changes
- (26) three course changes you see this?
- (27) A Yes

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- (1) Q And the Brooklyn made one course change two course -
- (2) also
- (3) three course changes right?
- (4) A Correct
- (5) Q Is there any indication any indication on the
- (6) communications that they had with VTC where they advised of
- (7) any
- (8) course change?
- (9) A No
- (10) Q But Captain Hazelwood told them that he was changing
- (11) course he gave them a course?
- (12) A Yes, sir
- (13) Q Okay I want to go to another subject now so we can move it
- (14) along There s been some testimony here about the use of the
- (15) autopilot?
- (16) A Yes
- (17) Q Captain Hazelwood has testified that he put it on for
- (18) anywhere from five to eight minutes?
- (19) A Yes
- (20) Q You remember that?
- (21) A Yes
- (22) Q And he also testified that the reason he did that was so he
- (23) could get a clear picture of the ice he wanted a steady course
- (24) and it was at a time when the helmsmen were changing?
- (25) A Yes
- (26) Q So he didn t want to have to look at the helmsman keep an
- (27) eye on the helmsman while he concentrated on the ice with

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- (1) Cousins?
- (2) A Yes
- (3) Q You remember all that?
- (4) A Yes I do
- (5) Q With respect to the use of the autopilot are there any regulations that you re aware of that prohibit the use of the autopilot in Prince William Sound?
- (6) A There are no regulations that I'm aware of
- (7) Q It s up to the captain to decide that isn t it?
- (8) A Yes
- (9) Q And depending on what he wants to do he can use it anywhere?
- (10) A Correct
- (11) Q And you yourself have used autopilot in Prince William Sound have you not?
- (12) A I've used it in Prince William Sound and in congested maneuvering areas
- (13) Q More congested than this area?
- (14) A Yes
- (15) Q Now I told you what Captain Hazelwood testified and that comports with your recollection?
- (16) A Yes
- (17) Q Do you find anything unreasonable in what Captain Hazelwood did or was thinking about when he used the autopilot?
- (18) A No

- (1) together and they assessed the situation and stood there for about ten minutes talking the situation over You remember that?
- (2) A Yes I do
- (3) Q And that Captain Hazelwood was asking for input from Mr Cousins?
- (4) A Correct
- (5) Q And giving input to Mr Cousins?
- (6) A Yes
- (7) Q How does that - that exchange that ten minute exchange where they were both gathering information and talking it over and so on and so forth how does that fit into this training thing that you re talking about the training of officers?
- (8) A I think that that maybe is a perfect example whereby the captain is giving certain bits of information what do you think about it getting the officer to become an active participant in the job at hand So that's a very excellent way of developing the training
- (9) More importantly it develops a bond of trust between the junior officer and the captain which in many cases is totally absent So it bolsters the confidence of the junior officer that he can have this dialogue with the senior captain and not be criticized for it So in my view this is a very excellent kind of opportunity to - to conduct call it training exercise but to continue this philosophy

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- (1) Q Do you agree that that was a good maneuver that he made under the circumstances?
- (2) A Well I don't know what was in Captain Hazelwood's mind It was good for his management decision based upon the information that he provided in the deposition or trial testimony It was a good - a good decision sure
- (3) Q Assume the facts I just gave you -
- (4) A Yes
- (5) Q - that he said I was looking at the ice I wanted a steady course I wanted a clear picture on my radar -
- (6) A Sure
- (7) Q - and I don t want to have to watch a helmsman Are those two good reasons for what he did?
- (8) A Very good reasons
- (9) Q Do you agree or disagree with Captain Clark s opinion that the autopilot played no role in the grounding the use of the autopilot?
- (10) A Yes I do It played no role in the grounding
- (11) Q Okay I want to talk a little bit about the communications that Captain Hazelwood had with Third Mate Cousins?
- (12) A Yes
- (13) Q Do you remember the testimony on that?
- (14) A Yes
- (15) Q Just so we put it into perspective both Captain Hazelwood and Third Mate Cousins testified that they stood at the radar

- (1) Q You read that Mr Cousins said that the captain elicited from him his advice?
- (2) A Yes
- (3) Q Is that good or bad?
- (4) A Excellent
- (5) Q Now in terms of - of the maneuver that they were contemplating -
- (6) A Yes
- (7) Q - was this discussion the overall discussion a good or a bad thing?
- (8) A The discussion?
- (9) Q Yeah In other words Captain Hazelwood didn t just say to the mate okay I m leaving, it s yours?
- (10) A No it was an - an excellent or outstanding interchange between junior officer and senior officer
- (11) Q And what was the purpose in your mind? I mean what was the purpose of this discussion?
- (12) A Well the purpose I believe number one, was from the educational perspective it appears that at some point to continue that educational process or for some reason, the captain, as I've learned subsequent to my earlier deposition, had a reason for leaving the bridge He was well preparing that officer to continue in the performance of his duties, so he was preparing that gentleman to be able to successfully conduct the navigation and pilotage of the vessel

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- (1) Q Based on what you read in terms of Captain Hazelwood's  
 (2) testimony and Mr Cousins' testimony, did the captain give on  
 (3) the basis of this discussion that they had, did the captain  
 (4) give that mate enough information for the mate to carry out the  
 (5) contemplated maneuver?  
 (6) A Yes  
 (7) Q Now, did you conclude whether or not they came to a mutual  
 (8) agreement about the contemplated maneuver?  
 (9) A They did come to a mutual agreement.  
 (10) Q What do you base that on?  
 (11) A I base it primarily on the trial testimony of Mr Cousins  
 (12) and also the testimony of Captain Hazelwood. And in both  
 (13) cases, Mr Cousins basically sent a loud and clear signal to  
 (14) Captain Hazelwood, I understand what's at hand. I'm  
 comfortable  
 (15) with it, and I can do it.  
 (16) Q Was it unreasonable for Captain Hazelwood, given this  
 (17) discussion that they had, given the situation that they were  
 (18) looking at and given Cousins' assurance to him that he was  
 (19) confident, comfortable with the situation, was it unreasonable  
 (20) for him to rely on what Mr Cousins told him?  
 (21) A No.  
 (22) Q One factor we didn't throw in, Captain Hazelwood has  
 (23) testified that he knew Mr Cousins and he knew him as a good  
 (24) mate, remember that?  
 (25) A Yes.

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- (1) Q Does that go into the planning and thinking process?  
 (2) A All of the factors go - yes. That's one of many factors  
 (3) that goes into play, as far as determining when and under  
 what  
 (4) circumstances you turn the con over to a deck officer.  
 (5) Q In your opinion, based upon the testimony that you read  
 (6) could Mr Cousins have said no to Captain Hazelwood if he  
 (7) wasn't confident?  
 (8) A Most definitely. That's a duty responsibility of any  
 (9) junior mate or any deck officer.  
 (10) Q Was there anything in what you read that indicated to you  
 (11) that Mr Cousins was afraid to say no to Captain Hazelwood?  
 (12) A No, to the contrary.  
 (13) Q Why do you say that?  
 (14) A Because of the dialogue, there's one statement that he  
 was  
 (15) one of the easiest going captains I've ever sailed with and  
 (16) because of this ongoing, long term or relatively long term  
 (17) professional relationship where they knew one another,  
 they  
 (18) could have this bond of trust that I spoke about, was so  
 (19) important.  
 (20) Q In reading Mr Cousins' testimony, did you discern anything  
 (21) that - that said to you that Mr Cousins was in doubt that  
 (22) Captain Hazelwood would stay on the bridge if he told him  
 (23) look, Captain, I can't handle this.  
 (24) A I think he testified to the fact that at any time if he'd  
 (25) asked the captain to remain on the bridge or come back to  
 the

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- (1) bridge, the captain certainly would have done so.  
 (2) Q So he had that option available to him at any time, didn't  
 (3) he?  
 (4) A Yes.  
 (5) Q Including saying, Captain, don't leave the bridge, I'm not  
 (6) comfortable?  
 (7) A Most definitely, and that's a very common request of a  
 (8) junior officer. I deal with it perhaps more because I have  
 (9) officers I don't sail with all the time. But at any time that  
 (10) they're not comfortable, the first one to say, Captain, you  
 (11) better stay here because I'm not comfortable with this, I  
 (12) haven't done this before, that's a tradition of - I won't say  
 (13) tradition of the sea, but certainly is well within the working  
 (14) relationship between junior and senior officer.  
 (15) Q And based on your experience, there's no repercussion, is  
 (16) there, if the mate says no, Captain, I want you to stay with  
 (17) me?  
 (18) A No, never. At least not to my - my experience level.  
 (19) Q I mean, in dealing with your mates, if a mate asked you to  
 (20) stay up there, you would have stayed, wouldn't you?  
 (21) A Correct.  
 (22) Q And that's what Cousins said about Captain Hazelwood  
 (23) right?  
 (24) A Right, and what that's saying to the captain is, I need  
 (25) some more instruction, I need some more guidance or I  
 need your

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- (1) experience, and that's the reason why the captain would  
 (2) remain.  
 (3) Q Okay, I want to put up the - what I referred to as the  
 (4) ice chart, and I want to talk about the maneuver, the  
 (5) contemplated maneuver. This is Defendant's Exhibit 1729.  
 This  
 (6) is a chart that was prepared during Captain Hazelwood's  
 (7) deposition. Captain Hazelwood has testified that the apex of  
 (8) the ice - let me get a pointer.  
 (9) MR SANDERS: Here, Mike.  
 (10) MR CHALOS: I'm going to use the plaintiffs'  
 (11) pointer. It's a better pointer.  
 (12) BY MR CHALOS:  
 (13) Q Captain Hazelwood testified that the apex of the ice was up  
 (14) here, see this?  
 (15) A Yes.  
 (16) Q And that was almost directly opposite of Busby Island,  
 (17) light?  
 (18) A Correct.  
 (19) Q And what he was doing by coming to 180, he was trying to  
 (20) get the vessel an equidistant between the apex of the ice and  
 (21) Busby Island?  
 (22) A Correct.  
 (23) Q In your opinion, is that a good or a bad maneuver?  
 (24) A Excellent maneuver.  
 (25) Q He's also testified that - and now just to put the whole



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(1) thing in perspective Mr Cousins says - by the way this  
 (2) thing here that I'm drawing with the pointer is what Captain  
 (3) Hazelwood saw as the leading edge of the ice Mr Cousins  
 (4) testified that when he and Captain Hazelwood were at the radar  
 (5) together he saw the ice in approximately the same area except  
 (6) he thought the leading edge was slightly further to the east as  
 (7) represented by these red circles okay?  
 (8) A Okay  
 (9) Q All right So the instructions that Captain Hazelwood gave  
 (10) to the mate was when you come abeam of Busby Island I want  
 YOU  
 (11) to start turning back towards the lanes okay? Now there was  
 (12) some criticism from Captain Clark that Captain Hazelwood  
 should  
 (13) have given him given the mate a course to steer Do you agree  
 (14) or disagree with that?  
 (15) A In that situation I would disagree  
 (16) Q Why?  
 (17) A Because they - they were skirting ice of an unknown  
 (18) definition not knowing exactly where it is and they were  
 (19) coming through like a channel or a - between two barriers  
 one  
 (20) land barrier and the ice barrier which is not defined The  
 (21) objective would be to pass midway between those two  
 barriers  
 (22) if you will to be somewhat in the middle So to set a course  
 (23) a specific course right at Busby Island would not  
 necessarily  
 (24) put the ship midway between the two areas of danger that  
 they  
 (25) would discover as they get closer and the radar picks up  
 more

(1) of ice toward the eastern end and appeared to be larger bits  
 of  
 (2) ice chunks of ice sporadically towards the northwestern  
 side  
 (3) Q That's up here?  
 (4) A So there's no definite wall as such but the bigger ice  
 (5) appeared to be further to the northwest or up to that corner  
 (6) Q What you're talking about is the video that Mr Lawn took  
 (7) where we saw bits of ice?  
 (8) A Yes  
 (9) Q Has that been your experience that is when you have ice  
 (10) going across the lanes that the bigger pieces tend to be over  
 (11) here to the west closer to Columbia Glacier and the smaller  
 (12) pieces to the east?  
 (13) A I don't remember how many times I've actually  
 encountered  
 (14) ice during my transits I know I've encountered it two or  
 (15) three times So I think that logic would dictate that the  
 (16) larger pieces would be up there up to the - closer to the  
 (17) glacier itself and that the wind would drive the smaller  
 (18) pieces across, potentially  
 (19) Q Okay Now at my request did you measure the distance  
 (20) between Bligh Reef buoy and the leading edge of the ice at the  
 (21) closest point of approach as Captain Hazelwood saw?  
 (22) A Yes I did  
 (23) Q And what did you find?  
 (24) A It was about two miles  
 (25) Q How about from where Cousins drew it?

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(1) of the ice  
 (2) Q So was the captain giving discretion to the mate to look at  
 (3) the situation and decide what course he wanted to steer?  
 (4) A Discretion to the mate as far as the numerical course but  
 (5) they both came to an agreement I believe and the  
 testimony  
 (6) states that they both agreed that they would go right down  
 the  
 (7) middle That's my recollection So they - that was very  
 (8) precise or very definite they're going to go down the  
 middle  
 (9) Q So we all understand when you say down the middle you  
 (10) mean -  
 (11) A Between the two barriers, the ice and the land going  
 down,  
 (12) the reef  
 (13) Q That would be Bligh Reef buoy?  
 (14) A Yes  
 (15) Q He wanted to stay equidistant between the ice and Bligh  
 (16) Reef buoy?  
 (17) A Yes  
 (18) Q Let me ask you this we've been talking about the leading  
 (19) edge of the ice -  
 (20) A Yes  
 (21) Q - and the image that I conjure up in my mind is this big  
 (22) sheet of ice with an edge you know almost like a glacier Is  
 (23) that what you see out there?  
 (24) A No As a matter of fact I looked at a videotape that was  
 (25) taken the morning of the grounding and there were small  
 bits

(1) A Can you point to Cousins' -  
 (2) Q This would be the leading edge  
 (3) A Something like maybe one and a half or one and  
 (4) three-quarter miles perhaps  
 (5) Q Based on what Captain Hazelwood saw the moment he left  
 the  
 (6) bridge and what Cousins saw in your opinion was there plenty  
 (7) of room if the turn had been started at Busby for them to  
 (8) navigate safely through where the ice was and where the buoy  
 (9) was?  
 (10) A Yes  
 (11) Q Now you've heard testimony yesterday that if Captain  
 (12) Hazelwood's orders were followed the vessel would have  
 missed  
 (13) Bligh Reef by a comfortable margin do you agree or disagree  
 (14) with that?  
 (15) A I agree  
 (16) Q Incidentally what was the distance - did you measure the  
 (17) distance between Bligh Reef buoy and the apex as Captain  
 (18) Hazelwood saw it?  
 (19) A Yes I think it was in the magnitude of three and a half  
 (20) to three and three-quarter miles  
 (21) Q Was it unreasonable when Captain Hazelwood when he left  
 (22) the bridge to believe that he had given instructions for a  
 (23) simple maneuver and there was plenty of room to make that  
 turn  
 (24) in?  
 (25) A Yes

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- (1) Q It was unreasonable?
- (2) A No, it was reasonable
- (3) Q The maneuver that he asked the third mate to make that is
- (4) when you come abeam of Busby turn the vessel back towards the
- (5) lanes go right up the middle is that a maneuver within the
- (6) capabilities of the licensed third mate?
- (7) A Definitely
- (8) Q Tell me about that That particular – that particular
- (9) task that was asked of the mate how do you compare that in
- (10) terms of difficulty?
- (11) A One needs to look at all of the tasks of a deck officer and
- (12) if you get in all the technical things, even non navigation
- (13) whereby the officer is in a control room all by himself,
- (14) loading cargo, it may be 80 000 barrels per hour
- (15) manipulating
- (16) maybe 20 valves that's a fairly complex skill required of an
- (17) officer to do by himself
- (18) With regard to navigation there are many instances where
- (19) one would be at sea with ten or 15 ships converging in
- (20) different angles with nobody able to communicate with one
- (21) another where two ships might be passing within a mile of
- (22) another with a cruising speed of maybe 35 or 40 miles an
- (23) hour,
- (24) not knowing exactly what the other ship is going to do there
- (25) are many areas of navigation around the world where one has got
- (26) to encounter traffic and current putting all that into
- (27) context, as far as a skill required to make a simple course

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- (1) change with no traffic no current good visibility it's got
- (2) to be on a scale of difficulty, minimal, minimal requirement
- (3) for a third officer
- (4) And I believe that that was attested to by Admiral Yost
- (5) commandant of the Coast Guard
- (6) Q I forgot about visibility Captain Hazelwood said the
- (7) visibility and Mr Cousins conferred that the visibility was
- (8) ten miles Is that pretty good visibility?
- (9) A Yes
- (10) Q Captain Hazelwood has testified that the reason he went
- (11) below at that particular moment – which incidentally I want
- (12) you to comment on something he was coming up to a course
- (13) change at 2355 11 55
- (14) A Yes
- (15) Q He left the bridge at 11 53 and he said the reason he did
- (16) that was to go down and check do some weather calculations
- (17) Do you have an opinion as to whether or not he should have
- (18) stayed up and waited for that turn to commence given the
- (19) totality of the situation?
- (20) A Remember before I said risk analysis needs to take place
- (21) before a captain leaves the bridge or whatever he does
- (22) regardless of what he does risk analysis is very key Based
- (23) on the training that he apparently had been conducting with
- (24) all
- (25) his officers based on the skills of the third officer any
- (26) requirement that would take the captain off the bridge he

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- (1) should have had a hundred percent expectation that that
- (2) command that was a very explicit command would have
- (3) been
- (4) carried out and carried out successfully
- (5) Q Do you have any criticism of the fact that he left two
- (6) minutes before the turn started?
- (7) A No
- (8) Q What do you base that on?
- (9) A Before I said the captain has many responsibilities My
- (10) reading of the – of the depositions and trial transcript, the
- (11) captain had something on his mind, apparently, with regard
- (12) to
- (13) vessel safety, and that is he had to make a decision as to
- (14) whether or not to proceed to sea out through Hinchinbrook
- (15) or to
- (16) take the ship to Knowles Head and anchor and the factor
- (17) that I
- (18) understand was on his mind had to do with – with high wind,
- (19) 70
- (20) knot winds or a low, and he was apparently concerned
- (21) about
- (22) having to make the decision, what course of action he was
- (23) going
- (24) to do after he was through the ice
- (25) Q When you gave that opinion did you put yourself on the
- (26) bridge of the ship that night as opposed to the courtroom five
- (27) years later?
- (28) A Well that – excuse me'
- (29) Q Let me rephrase that
- (30) A You lost me
- (31) Q When you were making that analysis in your own mind
- (32) A Just now'

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- (1) Q Yeah When you say I don't criticize Captain Hazelwood
- (2) for leaving two minutes before the turn
- (3) A Right
- (4) Q Did you try and put yourself in the ship that night and put
- (5) yourself in Captain Hazelwood's position?
- (6) A Of course One has to – to try to understand what was in
- (7) his mind what's were the pressures what were the
- (8) concerns
- (9) what was his overall thinking process at that point in time
- (10) Q And how much confidence he had in the mate and the
- (11) navigation factors that he looked at?
- (12) A All factors have got to go together All factors
- (13) Q It's fairly easy to say five years after the fact isn't it
- (14) that hey maybe he should have stayed up there two more
- (15) minutes after you know that you've had an accident?
- (16) A In retrospect, that would be the obvious conclusion
- (17) Q And Captain Hazelwood – you read did you not he said
- (18) knowing what I know now knowing that that turn wasn't done
- (19) as
- (20) I wanted I would have stayed up there Do you remember that?
- (21) A Yes I do
- (22) Q Is that a normal reaction under the circumstances?
- (23) A Most definitely
- (24) Q Okay Let me talk a little bit about this weather that you
- (25) mentioned You heard testimony from Mr Leitz did you not
- (26) that on Sunday the 26th two days after this there was a big
- (27) storm that came through?

(1) A Yes  
 (2) Q In Prince William Sound 70 mile an hour winds that moved  
 (3) the ship a little bit do you remember that?  
 (4) A Correct  
 (5) Q Based on your experience up there in March you get these  
 (6) big lows coming through do you not?  
 (7) A Yes, sir  
 (8) Q Those lows sweep across and go in the Gulf of Alaska?  
 (9) A They go various places  
 (10) Q And they can be very dangerous can they to a ship  
 (11) especially a ship with slack tanks?  
 (12) A Yes  
 (13) Q So was it unreasonable at that time for Captain Hazelwood  
 (14) to be concerned about an approaching low?  
 (15) A No That's a major factor because the preservation of the  
 (16) safety of the vessel in a different element now not from a  
 (17) navigation but from a structural perspective is an important  
 (18) thing he was looking at or obviously considering at that  
 (19) point  
 (20) in time  
 (21) Q Okay I want to talk about the things that Third Mate  
 (22) Cousins did Third Mate Cousins testified as to all the things  
 (23) he did do you remember he - turn this towards the jury  
 (24) Third Mate Cousins testified that when Captain Hazelwood left  
 (25) and he wanted to plot his position at 2355 he came out of the  
 (26) wheelhouse walked all the way down to the end of the wing

(1) here right and using an azimuth bearing sighted Busby Island  
 (2) light then he walked all the way back into the wheelhouse  
 (3) went over to the radar swung an arc on the radar got a range  
 (4) then walked all the way back to the chart room and plotted it  
 (5) Remember that?  
 (6) A Yes  
 (7) Q Okay And he said that took him about two minutes or so?  
 (8) A Okay  
 (9) Q Remember that?  
 (10) A Yes I do  
 (11) Q Based on your experience did Mr Cousins have to do all  
 (12) that?  
 (13) A It was totally unnecessary  
 (14) Q Why do you say that?  
 (15) A There are two other very simple ways of finding out or  
 (16) determining your position and determining what course you  
 (17) are  
 (18) going to steer that he could have used and should have  
 (19) used  
 (20) that he chose - for whatever reason chose not to use  
 (21) Q What could he have done that would have assessed his  
 (22) position or given him a fix without having to walk all the way  
 (23) to the end of the bridge wing come back in go to the chart  
 (24) room go to the radar then the chart room?  
 (25) A The best thing and the thing we're all familiar with, and  
 (26) that is simply using your own two eyes and looking out the  
 (27) window the light was visible to him okay, Bligh Reef light

(1) was visible  
 (2) Also the light of Busby Island was visible to him so all  
 (3) he really had to do was stand in the middle of the - can you  
 (4) point to the middle of the bridge wing the bridge  
 (5) wheelhouse  
 (6) middle stand and look out one of those windows and all he  
 (7) had  
 (8) to do is look to the left see that the light is almost abeam  
 (9) and actually in fact he should have started his turn when  
 (10) the  
 (11) light was a little forward of the ship because it takes a while  
 (12) for the ship to start to turn and he simply had to turn the  
 (13) ship watching that light until the light was on the left hand  
 (14) side of the ship That's all he had to do  
 (15) Q The maneuver that Captain Hazelwood wanted him to do was  
 (16) that simple?  
 (17) A Yes  
 (18) Q Now you recall Third Mate Cousins called Captain  
 (19) Hazelwood  
 (20) after he laid down the fix on the chart you remember him  
 (21) saying I went over to the phone and I called Captain  
 (22) Hazelwood?  
 (23) A Yes  
 (24) Q And he - Captain Hazelwood asked him what s going on  
 (25) what  
 (26) rudder arc you using and he told him ten degrees right rudder  
 (27) do you remember that?  
 (28) A Yes  
 (29) Q Was captain - was that a good rudder to use ten degrees?  
 (30) A Not having been on the ship it would be wrong for me to  
 (31) second guess I think I probably would have started off with  
 (32) a

(1) right 15 degree rudder to start the swing and then eased,  
 (2) eased  
 (3) the swing a little bit to ten degrees but it would be  
 (4) inaccurate for me to judge but that's a minimum amount of  
 (5) rudder that I would have used  
 (6) Q Okay You heard Mr Cushing yesterday say that ten  
 (7) degrees  
 (8) right rudder would have brought her comfortably past?  
 (9) A Yes  
 (10) Q So they have this exchange the captain asked him is  
 (11) everything okay He said everything s fine so on so forth  
 (12) Was it unreasonable for Captain Hazelwood to rely on that call  
 (13) from the mate to put his mind at ease that the orders were  
 (14) being carried out?  
 (15) A It was a very reasonable expectation  
 (16) Q At that point if Third Mate Cousins felt uncomfortable  
 (17) what should he have done?  
 (18) A As I indicated before it's an every day occurrence for a  
 (19) mate to call the captain and advise him of information and  
 (20) to  
 (21) send the signal either I need you on the bridge or I'm doing  
 (22) something I don't need you on the bridge, that happens all  
 (23) the  
 (24) time, all the time So the signals that Cousins sent to  
 (25) Captain Hazelwood was very clear I don't need you on the  
 (26) bridge, I've done what you told me to do  
 (27) Q And Captain Hazelwood could rely on that?  
 (28) A If you can't rely on that, then there's a major problem on  
 (29) board a vessel where you have qualified officers

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- (1) Q Okay I want to change subjects for a moment You had  
 (2) dealings over the years with the Vessel Traffic Center?  
 (3) A Yes  
 (4) Q And yesterday we read into the record Plaintiffs Exhibit  
 (5) 101 the function of the VTS which is to prevent collisions  
 (6) and groundings?  
 (7) A Yes  
 (8) MR CHALOS Your Honor if PX101 is not in evidence  
 (9) I would offer it at this time My feeling is that it is  
 (10) THE COURT It is admitted  
 (11) MR CHALOS Thank you  
 (12) MR MONTAGUE This is a document that is dated after  
 (13) the captain stops - after he stopped sailing in Prince William  
 (14) Sound  
 (15) MR CHALOS But it was the same principle carried  
 (16) over from the previous one  
 (17) BY MR CHALOS  
 (18) Q Okay I'm not going to show you that document but you  
 (19) understood their mission up there the VTS mission?  
 (20) A Yeah  
 (21) Q Was to prevent collisions and groundings?  
 (22) A That's stated in the statement of purpose in the Prince  
 (23) William Sound VTS user's manual  
 (24) Q Okay How did you believe they were going to do that? I  
 (25) mean what means do they have available to them to prevent

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- (1) collisions and groundings?  
 (2) A VTS systems are common becoming more common  
 worldwide  
 (3) They're primarily designed to be an advisory system In this  
 (4) specific instance they deployed or used a radar to track the  
 (5) position of the vessels to track them as they go and then  
 (6) they had a communications system to communicate with the  
 (7) vessels to - to obtain information from the vessels and to  
 (8) disseminate information to the ships  
 (9) Q Let me ask you directly When you were up there did you  
 (10) believe you were being monitored above Bligh Reef?  
 (11) A Most definitely  
 (12) Q Did you ever have occasion to get a rudder or a speed  
 (13) command - let me strike that  
 (14) Did you have occasion to get a navigation or a speed  
 (15) command from them?  
 (16) A I've received both from them at different times  
 (17) Q Where they told you to slow down speed up move here  
 move  
 (18) there?  
 (19) A They told us to slow down  
 (20) Q Let me ask you this If your ship was standing into danger  
 (21) above Bligh Reef based on your experience did you expect  
 that  
 (22) they would call you and tell you captain do something  
 (23) anything avoid the danger?  
 (24) A Not expressly written in the purpose but it does say that  
 (25) their goal or their mission is to prevent groundings  
 Knowing

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- (1) that they were tracking - or thinking that they're tracking a  
 (2) ship on the radar anybody would have the duty to advise  
 (3) somebody if they thought they were standing into danger  
 That  
 (4) goes without saying So I would have every expectation  
 that,  
 (5) A, they would be watching our progress and B that if they  
 (6) saw us going in a very abnormal way that they would call  
 the  
 (7) ship and at least alert them to the fact by a brief  
 (8) communication  
 (9) Q I take it you didn't expect a rudder command from them you  
 (10) didn't expect them to say use ten degrees right rudder or 20  
 (11) degrees right rudder?  
 (12) A No, no  
 (13) Q But you expected the warning?  
 (14) A I would only think that they would say, captain, we have  
 (15) you plotted at half a mile off such and such a point headed  
 in  
 (16) this direction, is everything okay, or something to that  
 (17) effect What we see you doing is not exactly what we think  
 is  
 (18) going to wind up in a positive vein  
 (19) Q You read the testimony in this case where Mr Blandford  
 (20) said he came on watch never turned the radar on the 12 mile  
 (21) range just kept it on the three and the six mile range?  
 (22) A Yes  
 (23) Q Were you surprised when you read that?  
 (24) A I guess I was shocked  
 (25) Q Why do you say that?

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- (1) A Well, here is a gentleman coming on watch with a - with a  
 (2) responsible task to monitor a ship that was within radar  
 range  
 (3) and for this guy to go down and have a ham sandwich and  
 not  
 (4) monitor it I find unbelievable  
 (5) Q Was it unreasonable for Captain Hazelwood when he left the  
 (6) bridge at 2353 to believe that his vessel as an added measure  
 (7) of safety if his vessel was standing into danger that there  
 (8) would be a call from the VTS?  
 (9) A That's not an unreasonable assumption I would doubt  
 that  
 (10) that was - that that was foremost in the captain's mind  
 (11) because I don't think that he had any indication or any  
 thought  
 (12) that he was going to be standing into danger so I don't  
 think  
 (13) that came into his thought process, but if you would ask him  
 as  
 (14) to what he expected I would think yes certainly  
 (15) Q Okay Let's talk now about the post grounding and then  
 (16) we're done Have you been involved in any major casualties in  
 (17) your career?  
 (18) A Yes  
 (19) Q Tell us about the major casualty  
 (20) A Well, I've been - throughout my career I've been  
 involved  
 (21) in various kinds of casualties I've come under rocket attack  
 (22) twice in Vietnam I've seen ship fires experienced ship  
 fires,  
 (23) suicides massive human injuries that resulted in  
 mechanical  
 (24) failures on board a ship so I've seen a lot of -  
 (25) Q Give us a big one

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- (1) A The biggest one or the most devastating to me was happening
- (2) in 1972 when I was second mate of a ship and - can I use that
- (3) model?
- (4) Q This one here?
- (5) A Please The ship that I was second officer on was a cargo
- (6) ship so it didn't look like this but I need to use this for
- (7) point of illustration A cargo ship carries general cargo
- (8) does not carry oil and instead of having a flat deck has
- (9) cargo booms usually higher than the house big steam
- (10) shovel
- (11) cranes for lifting out heavy steel and all kinds of
- (12) superstructure up here
- (13) The accident happened in January of 1972 We were
- (14) southbound in something called the Chesapeake Delaware
- (15) canal
- (16) It's a canal that divides the Delaware peninsula if any of
- (17) you
- (18) are from that area It's about 800 foot wide the canal
- (19) itself We were going through with about four knot current
- (20) pushing us along and after we entered the canal in the
- (21) early
- (22) morning hours fog set in and our visibility was no more
- (23) than
- (24) maybe half a mile ahead of us The ship was empty and
- (25) because
- (26) the ship was empty the ship had an attitude of something
- (27) like
- (28) this
- (29) Now, the ship I was on was about half the size, much
- (30) smaller, only 500 feet Let's assume this is a small ship
- (31) Almost the same kind of thing happened here with regard to
- (32) VTS
- (33) that canal was controlled by the Army Corps of Engineers.
- (34) And
- (35) there was a watch change and at the watch change the guy
- (36) forgot to tell the other guy that we were in the canal So 20
- (37) minutes later the canal operator Army Corps of Engineers
- (38) got
- (39) a phone call from a railroad bridge operator There's a
- (40) railroad bridge that spans this 800 foot canal it's a lift
- (41) railroad bridge, said I'm going to lower, I have a freight
- (42) train coming through
- (43) Well they lowered the bridge and we saw it, it came out of
- (44) the fog with maybe less than half a mile The bridge, corner
- (45) of the bridge hit right here and it proceeded to knock away
- (46) the
- (47) anchor windlass All the cargo came down, like a lawn
- (48) mower,
- (49) and everything's crashing And finally, the bridge impacted
- (50) the house nearly killed us all nearly decapitated the house
- (51) We're lucky or fortunate only one person was killed, was a
- (52) lookout forward And as a result of that accident of that
- (53) accident the ship was a total loss
- (54) Q Were you - were you on watch at the time?
- (55) A I was a second officer I had come off watch, but I
- (56) returned to the - to the bridge to help the captain and the
- (57) third mate, so I was standing by the radar at the time of
- (58) the - of the collision or the impact
- (59) Q So you witnessed this thing?
- (60) A Yes sir
- (61) Q And the captain was there?
- (62) A Yes

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- (1) Q And couple other mates were up there?
- (2) A The mate the pilot the A B and myself
- (3) Q Tell us - tell us your state of mind after this accident
- (4) immediately thereafter and for several hours after
- (5) MR MONTAGUE Your Honor object on relevance
- (6) MR CHALOS Your Honor this is the state of mind of
- (7) sailors after a major casualty
- (8) THE COURT I'll allow the testimony
- (9) MR CHALOS Thank you
- (10) THE COURT You may answer
- (11) THE WITNESS With the initial impact to the house or
- (12) the bridge I was one deck - we had just gotten one deck
- (13) below the captain fell on top of me and there was a shock
- (14) wave like lights or something Unbelievable experience We
- (15) thought we were potentially killed I guess from that point
- (16) on it was acting mostly on nerve I guess instinct The
- (17) captain had been going to sea since he was a child or 15 or 16
- (18) years old He was 65 it was his last - supposed to be his
- (19) last voyage and it was Basically the captain became
- (20) although one could speak to him he lost his decision making
- (21) capability Other people had to step in and make decisions for
- (22) him and he would shake his head and that was okay
- (23) Q Let me ask you this In contrast to that you read the
- (24) testimony about how Captain Hazelwood reacted after the
- (25) casualty?

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- (1) A Yes
- (2) Q The grounding you remember the testimony of what he did
- (3) when he came up on the bridge the orders he gave?
- (4) A Yes
- (5) Q The discussions that he had with his mate?
- (6) A Yes
- (7) Q How do you compare that to what you experienced? With your
- (8) captain?
- (9) A Well I believe the stress probably was every bit as great
- (10) or perhaps - it's every bit as great as what the captain was
- (11) that I experienced But whatever that level was not
- (12) measurable, but Captain Hazelwood at that point in time
- (13) had
- (14) some very instant responsibilities that he carried out with
- (15) exceptional amount of calm and judgment especially in
- (16) view of
- (17) the - like this is something that we never prepare for We
- (18) never expect to have a casualty of such magnitude so I've
- (19) got
- (20) to say that he - because of his own personal fortitude was
- (21) able to function miraculously in spite of this tragedy
- (22) Q Well I want to shortcut this You've read about
- (23) everything that he did in the course of about an hour?
- (24) A Yes
- (25) Q All the orders he gave what he was thinking about how he
- (26) was trying to get the ship to settle down you remember all
- (27) that?
- (28) A Yes

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- (1) Q Do you have any criticism at all of what he did?
- (2) A No I don't
- (3) Q Did you find it to be the decisions that he made to be
- (4) good decisions under the circumstances?
- (5) A Excellent decisions
- (6) Q Do you think based on your experience someone that's
- (7) impaired by alcohol could make the decisions that Captain
- (8) Hazelwood made under the circumstances?
- (9) MR MONTAGUE Objection no foundation
- (10) THE WITNESS I don't know sir
- (11) THE COURT Just a moment
- (12) MR CHALOS Okay Let me approach it from a
- (13) different standpoint
- (14) BY MR CHALOS
- (15) Q You've read the testimony of the crew members?
- (16) A Yes
- (17) Q That Captain Hazelwood was not impaired at any time after
- (18) the grounding?
- (19) A That's what I read
- (20) Q You have any reason to quarrel with that?
- (21) A No
- (22) Q Were his actions consistent with someone being alert and
- (23) dealing with a horrible situation at that moment?
- (24) A Most definitely You heard the tape
- (25) Q You heard the tape where Captain Hazelwood called the VTS

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- (1) at 12 28 to report the grounding?
- (2) A Yes
- (3) Q Let me ask you this You've had experience with
- (4) transmissions back and forth to the VTS?
- (5) A Yes
- (6) Q Did you find in your experience any - any distortion of
- (7) your voice when you were away from the VTS as opposed to
- (8) someone being right there with a monitor?
- (9) A Well if there's a recording device in the room where
- (10) somebody is transmitting as opposed to when they're
- (11) receiving,
- (12) there's a very different sound in the voice in all cases
- (13) Q And that depends on the distance that you're away from that
- (14) device doesn't it?
- (15) A It depends on factors of which I know not but it depends
- (16) There is a difference in sounds I know that
- (17) MR MONTAGUE Your Honor
- (18) MR CHALOS I'm done
- (19) BY MR CHALOS
- (20) Q You heard Captain Hazelwood's voice?
- (21) A Yes
- (22) Q At that moment giving that information?
- (23) A Yes
- (24) Q What is your opinion of the voice? Does that sound to you
- (25) as someone impaired?
- (26) THE COURT Wait a minute

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- (1) MR MONTAGUE Your Honor  
 (2) MR CHALOS I'll back off  
 (3) THE COURT There's an objection and I sustain the  
 (4) objection  
 (5) BY MR CHALOS  
 (6) Q Now there's been a suggestion that Captain Hazelwood was  
 (7) trying to free this vessel from the reef and you read  
 (8) Mr Leitz's testimony that -  
 (9) A Yes  
 (10) Q - that he didn't believe he was doing that and all the  
 (11) actions were consistent with keeping it on the reef?  
 (12) A Yes  
 (13) Q And you read Commander McCall's testimony?  
 (14) MR MONTAGUE Your Honor I thought we were not  
 (15) having cumulative testimony here  
 (16) MR CHALOS I just want to ask him opinion  
 (17) MR MONTAGUE Mr Leitz testified about this at  
 (18) length and was examined and now you're going to go into it  
 (19) again  
 (20) MR CHALOS All right I'm satisfied with what  
 (21) Mr Leitz said  
 (22) BY MR CHALOS  
 (23) Q Okay Captain Bolton given everything that you've read  
 (24) and heard and testified to do you have an opinion as to what  
 (25) caused the grounding in this case?

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- (1) A Yes  
 (2) Q What is your opinion?  
 (3) A There are dynamics that have come together apparently  
 (4) that  
 (5) have led to this accident Not technical not environmental  
 (6) It's people In my view there are perhaps three causes of  
 (7) this accident The first is that Captain Hazelwood relied on  
 (8) the professional competency of his third officer He trusted  
 (9) that third officer That in retrospect was his mistake  
 (10) The second mistake in my view was the third officer who  
 (11) acted for that period of time most unprofessionally for  
 (12) whatever reason  
 (13) And I think the third mistake and perhaps this is the nail  
 (14) in the coffin is the fact that the third mate gave the captain  
 (15) misinformation and that misinformation gave the captain  
 (16) the  
 (17) wrong sense as to where he needed to be to discharge his  
 (18) responsibilities  
 (19) Q Do you agree or disagree with this statement made by  
 (20) Admiral Yost in testimony here The primary cause of the  
 (21) grounding was a perfectly qualified third mate on the bridge of  
 (22) a ship that through a period of a few minutes of inattention  
 (23) to duty or lack of knowledge of exactly where he was ran the  
 (24) ship aground on a clear night with all the navigational aids  
 (25) watching him a person who had received a license properly  
 (26) issued by the Coast Guard on a vessel like the Exxon Valdez  
 (27) should have no difficulty navigate a vessel in the area around

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- (1) Bligh Reef  
 (2) Do you agree or disagree with that opinion?  
 (3) A I agree with - with that opinion  
 (4) MR CHALOS I have no further questions Your Honor  
 (5) THE COURT You may cross examine  
 (6) We're going to take five minutes or two or three or  
 (7) whatever We'll be off the record for a moment  
 (8) (Recess from 1:20 p.m. To 1:23 p.m.)  
 (9) THE COURT Back on the record  
 (10) You may cross examine  
 (11) CROSS EXAMINATION OF JAY BOLTON  
 (12) BY MR MONTAGUE  
 (13) Q Captain Bolton good afternoon  
 (14) A Good afternoon sir  
 (15) Q I'm Laddie Montague  
 (16) A Yes sir  
 (17) Q We met once before  
 (18) A Yes  
 (19) Q I just want to start out - I was going to start out by  
 (20) asking you if on the morning of the 24th of March 1989 the  
 (21) Exxon Valdez ended up on Bligh Reef but you finally got  
 (22) around  
 (23) I just want to talk about this chart for a second okay?  
 (24) You talked about the communications between Mr Cousins and  
 (25) Captain Hazelwood?

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- (1) A Yes  
 (2) Q How they communicated with each other? By the way this  
 (3) line which is Mr Cousins' line of the edge of the ice do you  
 (4) remember that Mr Cushing testified that that was a lot closer  
 (5) to Bligh Reef than Mr Chalos represented?  
 (6) A Yes  
 (7) Q Now as he identified them in his measurements there was a  
 (8) fairly wide discrepancy between those two isn't that correct?  
 (9) A Yes  
 (10) Q And if they were communicating as has been represented  
 (11) would you expect that type of a discrepancy to arise as to how  
 (12) they viewed the ice?  
 (13) A That communication if I remember correctly, they agreed  
 (14) that there was roughly a two mile slot and it was my  
 (15) recollection from Mr Cousins' testimony that that area of  
 (16) the  
 (17) ice being much further south was after the fact, not at the  
 (18) point where they're abeam Busby Island.  
 (19) Q So you place no significance in this divergence in their  
 (20) view of the ice?  
 (21) A Well judging by the film that I saw Mr Law's film, I  
 (22) believe the morning following there appeared to be small  
 (23) bits  
 (24) of ice down as far as what Mr Cousins said but at the  
 (25) moment  
 (26) they were abeam of Busby Island I don't think that they saw  
 (27) that  
 (28) Q Just answer my question

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- (1) **A I thought I did**  
 (2) **Q It will go faster**  
 (3) **A I'll do my best**  
 (4) **Q That is did you give any significance to the fact that**  
 (5) **Mr Cousins and Captain Hazelwood drew these divergent**  
**leading**  
 (6) **edges of the ice yes or no?**  
 (7) **A Significance with regard to that point in time?**  
 (8) **Q Yeah As to how they - does the fact that they had**  
 (9) **different perceptions -**  
 (10) **A Mr Cousins -**  
 (11) **Q - perceptions of where the ice is?**  
 (12) **A Mr Cousins perception of this is not consistent with his**  
 (13) **testimony**  
 (14) **Q He drew that you know?**  
 (15) **A Was not consistent with what he said to Captain**  
**Hazelwood**  
 (16) **at the time**  
 (17) **Q Are you aware that he drew that line?**  
 (18) **A In the trial, yes**  
 (19) **Q Now as the vessel was coming down this area I think you**  
 (20) **described it in your testimony that it was skirting ice of an**  
 (21) **unknown definition is that correct?**  
 (22) **A Correct**  
 (23) **Q And it also had - it was a lookout for ice right?**  
 (24) **A They had a lookout**  
 (25) **Q And for ice ice was one of the hazards that was involved**

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- (1) **in that -**  
 (2) **A The only way of accurately detecting ice at nighttime is by**  
 (3) **use of radar unless you have full moon night or daytime or**  
 (4) **visible My assumption is their detection of ice based on**  
 (5) **Hazelwood's testimony was by use of radar**  
 (6) **Q How long is it once you get to Bligh Reef or you pass**  
 (7) **Bligh Reef how long is it until you get to Cape Hinchinbrook?**  
 (8) **A Mileagewise?**  
 (9) **Q No timewise**  
 (10) **A Depends on the speed of the vessel Maybe five hours**  
 (11) **60**  
 (12) **some odd miles I believe**  
 (13) **Q So after they passed Bligh Reef it took five hours to get**  
 (14) **to Cape Hinchinbrook which is something like that?**  
 (15) **A Something in that magnitude**  
 (16) **Q You're saying that it was proper for Captain Hazelwood to**  
 (17) **leave the bridge and not wait two more minutes before he**  
 (18) **looked**  
 (19) **at a weather report?**  
 (20) **A I did not say that**  
 (21) **Q Have you seen the weather report?**  
 (22) **A No I haven't**  
 (23) **Q For that?**  
 (24) **A No, I haven't**  
 (25) **Q So you don't know what - what was brewing in the**  
 (26) **Aleutians right?**  
 (27) **A Correct**

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- (1) **Q And you don't know whether or not that was something that**  
 (2) **was sufficient to take the captain off the bridge when he had**  
 (3) **five more hours before he got out of Prince William Sound?**  
 (4) **A As I stated earlier, sir, it was not that he had five**  
 (5) **hours, but that he had to make a decision as to whether or**  
 (6) **not**  
 (7) **he was going to go to Knowles Head which was just literally**  
 (8) **around the corner**  
 (9) **Q Didn't he have to make a decision as to whether or not he**  
 (10) **was going to make it through this transit first and get past**  
 (11) **Bligh Reef wasn't that the first order of business?**  
 (12) **A Yes**  
 (13) **Q Okay Now the last command was - other than a tall ship**  
 (14) **was in 1987?**  
 (15) **A No, my last command was 1991 '2 I was captain of a**  
 (16) **VLCC**  
 (17) **Q Your last command in Prince William Sound was 1987?**  
 (18) **A About 1987, I believe**  
 (19) **Q Did you hear any of the testimony from the captains of**  
 (20) **Exxon that appeared here?**  
 (21) **A Yes**  
 (22) **Q Did you hear Captain Martineau testify?**  
 (23) **A I don't - I don't remember Captain Martineau**  
 (24) **Q Did you hear Captain Stalzer testify?**  
 (25) **A No, I missed his testimony**  
 (26) **Q Did you hear Captain Duncan testify?**  
 (27) **A No**

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- (1) **Q Did you hear Captain Sheehy testify?**  
 (2) **A No**  
 (3) **Q How about Captain Deppe?**  
 (4) **A No**  
 (5) **Q You must have heard Captain Mihajlovic?**  
 (6) **A I'm glad you pronounced the name for me**  
 (7) **Q I may have mispronounced the name for you but I heard him**  
 (8) **yesterday**  
 (9) **A Yes**  
 (10) **Q And did you hear Captain Pierce?**  
 (11) **A I don't believe so**  
 (12) **Q Now I don't mean to be - sound disrespectful but with**  
 (13) **all those captains in the Exxon fleet coming here and**  
 (14) **testifying do you feel you're better qualified to comment on**  
 (15) **captaining a tanker vessel through Prince William Sound than**  
 (16) **they are?**  
 (17) **A I don't think that's a reasonable question to ask me, sir**  
 (18) **because we're looking at people whom I don't even know, I**  
 (19) **don't**  
 (20) **know what their background is and captaining of a ship is**  
 (21) **command, it's a responsibility, it's not - it's not a motor**  
 (22) **function as you're describing, so I cannot answer that**  
 (23) **question sir**  
 (24) **Q We don't know who you are either?**  
 (25) **A That's correct**  
 (26) **Q Are you aware that those other than Captain Mihajlovic**



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(1) but of those captains that were asked they said that they  
 (2) would stay on the bridge they would not have left the  
 (3) bridge -  
 (4) **A What's the question?**  
 (5) **Q - during this transit?**  
 (6) **A But what is the question sir? Am I aware -**  
 (7) **Q Yeah Are you aware of that?**  
 (8) **A I just told you I did not hear those captains testify**  
 (9) **Q Oh okay Now you've used often in your - in your**  
 (10) **testimony on direct you used the word discretion or**  
 (11) **Mr Chalos used it with you do you recall that it's in the**  
 (12) **captain's discretion?**  
 (13) **A Yes**  
 (14) **Q And would you agree that that's the same as judgment it's**  
 (15) **in the captain's judgment?**  
 (16) **A Yes**  
 (17) **Q And just because it's in the captain's discretion or**  
 (18) **judgment that doesn't mean that the captain might not have**  
 (19) **exercised poor judgment or poor discretion isn't that**  
 (20) **correct?**  
 (21) **A Sometimes captains exercise poor judgment sometimes**  
 (22) **good**  
 (23) **judgment and sometimes not so good judgment**  
 (24) **Q Now let's go to the voyage Can everybody see that? We**  
 (25) **went through this yesterday with Mr Cushing so I'm going to**  
 (26) **not repeat it but you will recall that the captain left the**

(1) right?  
 (2) **A Yes**  
 (3) **Q And it's nighttime?**  
 (4) **A Yes**  
 (5) **Q Okay Now do you - do you have any criticism of Captain**  
 (6) **Hazelwood leaving the bridge two minutes approximately two**  
 (7) **minutes before the vessel was abeam Busby Island light as**  
 (8) **described in the facts as I've set them out in that chart?**  
 (9) **A I believe I just testified a few moments ago that I did**  
 (10) **not**  
 (11) **Q Okay Do you recall being asked that question at your**  
 (12) **deposition?**  
 (13) **A I do**  
 (14) **Q And if you would if you'd turn to page 132 of your**  
 (15) **deposition that's that big fat -**  
 (16) **A I have page 132**  
 (17) **Q And do you see the question do you have any criticism of**  
 (18) **Captain Hazelwood?**  
 (19) **A Yes**  
 (20) **Q And did you give this answer If I had been on the bridge**  
 (21) **myself I would not have left the bridge?**  
 (22) **A I see that**  
 (23) **Q Did you give that answer?**  
 (24) **A For that specific question yes**  
 (25) **Q Well that's the question I just asked**

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(1) bridge at 2353?  
 (2) **A Yes**  
 (3) **Q Right?**  
 (4) **A Yes**  
 (5) **Q And that the turn that he asked Cousins to make was at**  
 (6) **2355 right?**  
 (7) **A He said make the turn when you're abeam He did not**  
 (8) **specify the time**  
 (9) **Q No but that's what - we established that's when the**  
 (10) **vessel was abeam Busby Island light?**  
 (11) **A Correct**  
 (12) **Q And let's see And the vessel during this time was**  
 (13) **outside of the TSS?**  
 (14) **A Correct**  
 (15) **Q And it was as you said skirting the ice?**  
 (16) **A I don't know that I used that term but they were going**  
 (17) **between the ice and Bligh Reef**  
 (18) **Q And there was some danger possibly ice could come up**  
 (19) **here?**  
 (20) **A I beg your pardon?**  
 (21) **Q There was a possibility that some ice could come up here a**  
 (22) **piece of ice?**  
 (23) **A I don't know that**  
 (24) **Q You don't know that one way or the other?**  
 (25) **A No**  
 (26) **Q And of course they're headed towards a known hazard**

(1) **A No it's not**  
 (2) **Q Let me ask this question as it's given**  
 (3) **A Sure**  
 (4) **Q The question was do you have any criticism of Captain**  
 (5) **Hazelwood leaving the bridge two minutes approximately two**  
 (6) **minutes before the vessel was abeam Busby Island light as**  
 (7) **described in the facts that I've given you to assume and you**  
 (8) **said if I had been on the bridge myself I would not have left**  
 (9) **the bridge**  
 (10) **A When I gave the deposition I had just returned from**  
 (11) **Singapore I had only maybe 24 hours to look at some**  
 (12) **depositions I had not had any opportunity to review the**  
 (13) **material that I have read and listened to subsequent to this**  
 (14) **-**  
 (15) **this statement So this was based on a different set of**  
 (16) **isolated circumstances and my answer today was based on**  
 (17) **what**  
 (18) **I've learned throughout the trial**  
 (19) **Q Now your deposition was taken on the 5th of May - correct?**  
 (20) **A Correct**  
 (21) **Q Now if you look see the next answer -**  
 (22) **THE COURT Excuse me 5th of May when?**  
 (23) **MR MONTAGUE 5th of May 1994 Your Honor Sorry**  
 (24) **Thank you**  
 (25) **THE WITNESS Recently**  
 (26) **MR MONTAGUE I'm trying to hurry**  
 (27) **BY MR MONTAGUE**

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- (1) Q Do you see your next answer you say you don't know all the  
 (2) facts why Captain Hazelwood decided to leave the bridge it  
 (3) could have been a very compelling reason I don't know And  
 (4) then you say but I myself would have stayed on the bridge  
 (5) until I was clear of the ice Did you give that answer?  
 (6) A To that question yes  
 (7) Q Now I'm confused about something maybe you can clarify  
 (8) it but you stated if I can find it when you were asked about  
 (9) whether the captain should have reported this course change  
 (10) from 200 to 180 degrees remember you were asked that  
 question?  
 (11) A Yes  
 (12) Q And the answer that I got was at that point in time the  
 (13) captain was concerned how he's going to get through the ice  
 (14) At that point the captain has other things on his mind other  
 (15) than call the VTC Do you remember that answer?  
 (16) A Yes  
 (17) Q All right Well wouldn't he have the same concern down  
 (18) here?  
 (19) A I don't think so  
 (20) Q Now let's do this again Captain leaves the bridge at  
 (21) 2153  
 (22) A 2353  
 (23) Q I'm sorry 2353 And he tells Mr Cousins when he leaves  
 (24) make the turn when you re beam Busby light right?  
 (25) A They came to a consensus as to what they were going to  
 do

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- (1) yes  
 (2) Q But that's what he told Cousins?  
 (3) A Correct  
 (4) Q Then he told Cousins to call him when he made the turn?  
 (5) A Correct  
 (6) Q And he knew at that time where his location was with  
 (7) respect to Busby Island light right?  
 (8) A Correct  
 (9) Q And he knew that the turn was going to be about two  
 (10) minutes?  
 (11) A Yes  
 (12) Q And he didn't receive a call at 2355 did he?  
 (13) A I don't know when he received a call  
 (14) Q Okay Well I'm going to ask you to assume that he  
 (15) received a call eight and a half to nine minutes later between  
 (16) 01 50 and 02 okay one and a half minutes after midnight and  
 (17) two minutes after midnight sometime in that range I want you  
 (18) to assume that and given those facts shouldn't Captain  
 (19) Hazelwood have known there was a serious problem when he  
 failed  
 (20) to receive the telephone call from Cousins around two or three  
 (21) minutes after he left the bridge?  
 (22) A I - I want to reiterate I have no information as to when  
 (23) that call was made so if this is a hypothetical  
 (24) Q It's a hypothetical  
 (25) A And this is taken in isolation and if you're asking me

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- (1) that if a captain were expecting a course change in two  
 minutes  
 (2) and he did not receive a phone call for eight minutes if  
 (3) that's an assumption then I would say that that would  
 probably  
 (4) be a tip-off to the captain that maybe something needs to  
 (5) happen sooner  
 (6) Q And when you were asked that question in your deposition  
 (7) and you said if you were in - read the question it's on page  
 (8) 176 The last question on the page Have it page 176?  
 (9) A Okay  
 (10) Q You were asked the question and if you were in the cabin  
 (11) in Hazelwood's shoes wouldn't you after two or three minutes  
 (12) have either called the bridge on the telephone and checked  
 with  
 (13) Cousins to see that the turn started or go up to the bridge  
 (14) wouldn't you have done one or the other? And your answer is I  
 (15) think I would have Is that correct?  
 (16) A Yes, but I - I need to add that this was in response to a  
 (17) hypothetical question as you are asking me today and as a  
 (18) hypothetical  
 (19) Q Yes exactly Same hypothetical  
 (20) A Right  
 (21) Q Okay Now let's turn to the VTC for a minute okay? Do  
 (22) you have Exhibit 101 in front of you Plaintiffs Exhibit 101?  
 (23) A Yes sir  
 (24) Q That's the - the user's manual of 1988?  
 (25) A Yes sir

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- (1) Q And you had stopped going to Prince William Sound when  
 that  
 (2) came - this particular version came out correct?  
 (3) A Yes  
 (4) Q But it is predicated on an earlier version?  
 (5) A That would be my understanding  
 (6) Q Were you familiar with the earlier version?  
 (7) A Yes  
 (8) Q Have you checked to see if there are any changes between  
 (9) that one and this one?  
 (10) A No I have not  
 (11) Q Now you've also reviewed the transmissions between the  
 VTC  
 (12) and Captain Hazelwood?  
 (13) A Yes  
 (14) Q Okay Would you agree that Captain Hazelwood did not  
 (15) advise the VTC that he was going to his cabin and leaving Third  
 (16) Mate Cousins on the bridge?  
 (17) A He did not so advise  
 (18) Q And I think you've already agreed that he didn't tell them  
 (19) that he had made a course change of 200 to 180 degrees?  
 (20) A Correct  
 (21) Q And did that cause him to leave the lanes a lot earlier  
 (22) can you tell from that? Did that course change cause the  
 (23) vessel to leave the traffic lanes earlier?  
 (24) A The course to 180?  
 (25) Q Uh huh

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- (1) **A Yes sir**  
 (2) **Q** Than it would have if it stayed on 200?  
 (3) **A Yes**  
 (4) **Q** So he didn't do that and he didn't tell the VTC where he  
 (5) left the lanes is that correct?  
 (6) **A That's correct**  
 (7) **Q** And he didn't tell them where he planned to turn back?  
 (8) **A That's correct**  
 (9) **Q** Okay And he didn't tell them that he was on auto gyro?  
 (10) **A Correct**  
 (11) **Q** And he didn't tell them that he was putting the load  
 (12) program up on as he got out of the traffic lanes is that  
 (13) correct?  
 (14) **A Correct**  
 (15) **Q** And he never asked the VTC if they had the radar on and  
 (16) they were tracking him is that correct?  
 (17) **A Correct**  
 (18) **Q** Now I think you've correctly stated in your direct  
 (19) testimony that the VTC operations is advisory  
 (20) **A Correct**  
 (21) **Q** And that one of the things that they rely on is -- is the  
 (22) materials the communications they have with the vessels?  
 (23) That's one of the components that they rely on?  
 (24) **A Yes communications is a part of that system**  
 (25) **Q** And -- and another component is radar?

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- (1) **A Correct**  
 (2) **Q** And they all work together?  
 (3) **A Correct**  
 (4) **Q** And do you recall that there's a provision boldly stated in  
 (5) the user's guide the VTC user's guide expressing the  
 (6) importance of having accurate information from the vessels?  
 (7) **A You'll have to show it to me sir**  
 (8) **Q** If you want to turn to the manual you can but this is the  
 (9) first intro -- introductory page and it states the mariner is  
 (10) cautioned that information provided by the Vessel Traffic  
 (11) Center is to a large extent based upon reports of participating  
 (12) vessels and can be no more accurate than the information  
 (13) received  
 (14) Were you aware of that?  
 (15) **A** I can't say if I was aware of it but I can certainly read  
 (16) it as you are I understand what it's saying  
 (17) **Q** Okay And then it goes on if you look at the next  
 (18) highlighted section the efficient operation of the Prince  
 (19) William Sound Vessel Traffic Service and safe navigation in the  
 (20) service area depend upon mariners observing these operating  
 (21) procedures day and night in all weather Were you aware of  
 (22) that?  
 (23) **A** I'm aware of that  
 (24) **Q** Were you aware of it when you testified earlier?  
 (25) **A** I can't say -- I was not acutely aware of it no I did

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- (1) **not enter it into my thought processes**  
 (2) **Q** Then I would like to show you again if you want to turn  
 (3) this is to Page 3 a statement which says the responsibility  
 (4) of the master or pilot for safe navigation and prudent  
 (5) maneuvering of his vessel is in no way lessened or relieved by  
 (6) this regulation Were you aware of that?  
 (7) **A** When?  
 (8) **Q** Were you aware of that when you testified earlier?  
 (9) **A** At the deposition?  
 (10) **Q** No today  
 (11) **A** No--  
 (12) **Q** You also testified -- you also testified that there was no  
 (13) obligation on the part of Captain Hazelwood to advise the VTC  
 (14) of the change in the course from 200 to 180?  
 (15) **A** If I had been the captain of the ship I would not have so  
 (16) advised  
 (17) **Q** No no that's not what you said You said there was no  
 (18) requirement in the VTC user's manual  
 (19) **A** I'm not aware of any requirement But I know there is I  
 (20) can see it coming  
 (21) **Q** Would you like to see it?  
 (22) **A** Oh yes please  
 (23) **Q** Actually that's the color I used there It says movement  
 (24) reports while navigate in the VTC area the master of a vessel  
 (25) shall report the following information to the VTC by radio

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- (1) telephone you see that?  
 (2) Then it says if you look at three when the vessel clears  
 (3) the TSS after crossing right?  
 (4) **A** Well I read that and I -- and I can read the words I  
 (5) think it's taken out of context in the way you're presenting  
 (6) it  
 (7) **Q** You'd agree would you not that if after the grounding  
 (8) Captain Hazelwood had attempted to remove the vessel from the  
 (9) reef that would have endangered the vessel's safety?  
 (10) **A** In broad scope I agree  
 (11) **Q** And that would have been a serious error in judgment if he  
 (12) had done that?  
 (13) **A** If he had done so?  
 (14) **Q** Yeah  
 (15) **A** To just blatantly pull back off the reef and hope to go in  
 (16) the merry way, is that the suggestion?  
 (17) **Q** Try to get it off the reef?  
 (18) **A** Totally That would be an error of judgment  
 (19) **Q** One last little thing You mentioned that Mr Cousins  
 (20) activities on the bridge after Captain Hazelwood left I think  
 (21) you used the words totally unnecessary Mr Chalos running  
 (22) out  
 (23) to the wing and going to the radar?  
 (24) **A** Yes unnecessary and unprofessional  
 (25) **Q** Okay And -- and you also -- and unprofessional And your  
 (26) opinion was that that unprofessional conduct was a cause for

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- (1) this wreck is that correct?  
 (2) A It was one of the causes of the wreck  
 (3) Q You gave the three?  
 (4) A Yes  
 (5) Q Now would you agree that if Captain Hazelwood had been on  
 (6) the bridge like you said you would have been on the bridge  
 (7) that that unprofessional conduct on the part of Third Mate  
 (8) Cousins would have been avoided?  
 (9) A It - it's a strong likelihood that it would have been,  
 (10) yes  
 (11) MR MONTAGUE Thank you very much Captain  
 (12) REDIRECT EXAMINATION OF JAY BOLTON  
 (13) BY MR CHALOS  
 (14) Q Mr Bolton did you read anything with respect to Captain  
 (15) Hazelwood's actions that suggested that he was trying to get  
 (16) this vessel off the reef?  
 (17) A To the contrary  
 (18) Q He was trying to keep it on?  
 (19) A Correct  
 (20) Q Now Mr Montague read to you from the VTS user's manual  
 (21) about reporting course changes when you're crossing the VTS?  
 (22) A Yes  
 (23) Q That's talking about a situation where you're here and you  
 (24) want to - let's say you're in Cordova and you want to go over  
 (25) to Whittier right you got to cross the TSS?

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- (1) A Correct  
 (2) Q That's what they talk about there don't they? Isn't that  
 (3) correct?  
 (4) A Correct  
 (5) Q And you read Captain Clark's testimony that he said he  
 (6) didn't report every course change that he made do you  
 (7) remember  
 (8) that?  
 (9) A I believe I do  
 (10) Q Now Mr Montague gave you a list of things that Captain  
 (11) Hazelwood didn't do he didn't tell them he was going to his  
 (12) cabin he didn't tell them he was taking his coat off he  
 (13) didn't tell them - you remember all that?  
 (14) A Yes  
 (15) Q Is there any requirement in the VTS manual that required  
 (16) him to make any of those reports that Mr Montague suggested  
 (17) to  
 (18) you?  
 (19) A No sir  
 (20) Q You remember he told you he didn't tell them this that  
 (21) there's no requirement for any of that?  
 (22) A No sir  
 (23) Q Now Mr Montague asked you some question about when  
 (24) Captain Hazelwood got the call from Mr Cousins  
 (25) A Yes  
 (26) Q Do you remember Captain Hazelwood's testimony that he  
 (27) received a call within two minutes after he expected it?

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- (1) A Correct  
 (2) Q And you remember Mr Cousins' testimony that he made the  
 (3) call within a minute or so after he laid the fix down?  
 (4) A Yes  
 (5) Q And he laid the fix down at 2356 or 57?  
 (6) A Correct  
 (7) Q Isn't that within the realm of time that the captain should  
 (8) have expected the call?  
 (9) A Yes  
 (10) Q Now you said that in response to the question that you  
 (11) wouldn't have left the bridge on that night that was before  
 (12) you heard what Captain Hazelwood had to say the reasons that  
 (13) he left?  
 (14) A Correct  
 (15) Q And you yourself have left the bridge of your ships above  
 (16) Bligh Reef on a number of occasions have you not?  
 (17) A Yes  
 (18) Q Okay When you leave the bridge of the ship, you don't  
 (19) leave the ship do you?  
 (20) A No  
 (21) Q You're only ten seconds away at most correct?  
 (22) A Correct  
 (23) Q And you got a telephone?  
 (24) A Right  
 (25) Q You can be called any time?

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- (1) A Correct  
 (2) Q Now Mr Montague gave you a list of Exxon captains who  
 (3) said they wouldn't have left the bridge under the  
 (4) circumstances right? Are you surprised that Exxon captains  
 (5) would come in here after the fact and say golly gee I would  
 (6) have never left the bridge?  
 (7) A If I was an Exxon captain or a company employee the  
 (8) safest  
 (9) answer is to say I'd never leave the bridge  
 (10) MR NEAL Objection Your Honor  
 (11) THE WITNESS With all the bosses in the room  
 (12) MR NEAL Objection Your Honor Move that it be  
 (13) stricken  
 (14) MR CHALOS You just got me in trouble  
 (15) THE COURT Just a second  
 (16) MR CHALOS Last question Your Honor last  
 (17) question  
 (18) MR NEAL There's an objection  
 (19) MR CHALOS I'll withdraw It's my own teammate  
 (20) I'll withdraw the question  
 (21) THE COURT Okay The question is withdrawn The  
 (22) Ladies and Gentlemen of the Jury will ignore the question and  
 (23) the answer and give it no consideration in deciding this case  
 (24) THE WITNESS Excuse me for being facetious It's a  
 (25) long week  
 (26) THE COURT Glad I didn't do it

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(1) BY MR CHALOS  
 (2) Q Okay Last question here Mr Montague showed you the ice  
 (3) chart and he asked you about this line here that he said  
 (4) Mr Cousins drew?  
 (5) A Yes  
 (6) Q I want to clear this up You remember the testimony of  
 (7) Mr Cousins and Captain Hazelwood gave Captain Hazelwood  
 (8) said  
 (9) this is the way he saw the ice when they were at the radar?  
 (10) A Yes  
 (11) Q Right here where I'm pointing?  
 (12) A Yes  
 (13) Q And Mr Cousins said he saw the ice as depicted in this red  
 (14) when they were standing at the radar you remember that?  
 (15) A Yes  
 (16) Q That's roughly about the same isn't it? I mean they're  
 (17) looking about the same ice in the same area?  
 (18) A Correct I think the important thing is they both came to  
 (19) a mutual agreement  
 (20) Q Right Now this line down here that Mr Montague referred  
 (21) to was what Mr Cousins said was the leading edge that he saw  
 (22) as he was - as he got down beyond - beyond Busby Island  
 (23) light you remember that?  
 (24) A Yes  
 (25) Q That's not the ice that he and Captain Hazelwood saw?  
 (26) A Correct

(1) BY VIDEO EXAMINER  
 (2) Q Do you recall any conversations with Frank Larossi where  
 (3) you told him that it was your understanding that alcoholism was  
 (4) considered a disability under federal law and as a result  
 (5) Captain Hazelwood had to be assigned back to sea aboard a  
 (6) vessel?  
 (7) A That conversation did not take place  
 (8) Q If Frank Larossi said it did take place he's wrong?  
 (9) A One of us is wrong I don't recall it I remember Frank  
 (10) specifically asking me to check on the company policy and  
 (11) I do  
 (12) -  
 (13) not recall any conversation or me doing anything about any  
 (14) federal investigation of federal statutes  
 (15) Q And in your mind a shoreside assignment for Captain  
 (16) Hazelwood would not have violated company policy nor federal  
 (17) regulation?  
 (18) A No I don't think so Neither would his seagoing  
 (19) assignment  
 (20) (Portion of Video of Ben Graves concluded )  
 (21) MR JAMIN I believe there's no cross Your Honor  
 (22) MR SANDERS That is correct  
 (23) THE COURT Thank you  
 (24) MR JAMIN Your Honor at this time plaintiffs would  
 (25) move Exhibit 3809 as redacted into evidence  
 (26) (Exhibit 3809 offered)  
 (27) THE COURT That's Exhibit 3809?

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(1) MR CHALOS I have no further questions Your Honor  
 (2) THE COURT Sir you may step down  
 (3) MR CHALOS I have one more thing and then we're  
 (4) done  
 (5) THE COURT Good We're through with -  
 (6) MR CHALOS Yes This witness is finished Thank  
 (7) you  
 (8) THE COURT Thank you sir You may step down  
 (9) MR CHALOS I would like to offer into evidence now  
 (10) Defendants Exhibit 2478  
 (11) (Exhibit 2478 offered)  
 (12) MR O NEILL We have no objection  
 (13) THE COURT Defendants Exhibit 2478 is admitted  
 (14) (Exhibit 2478 received)  
 (15) MR CHALOS Thank you  
 (16) MR LYNCH Looks like defendants rest Your Honor  
 (17) THE COURT Thank you  
 (18) Ladies and gentlemen this concludes the defense side of  
 (19) the case  
 (20) Mr Jamin I guess  
 (21) MR JAMIN Very brief rebuttal Your Honor I think  
 (22) we'll make 2 00  
 (23) First Your Honor we have very brief videotape of  
 (24) Mr Graves again  
 (25) (Portion of Video of Ben Graves played as follows)

(1) MR JAMIN Yes that's correct sir  
 (2) MR CHALOS No objection  
 (3) THE COURT Plaintiffs 3809 is admitted  
 (4) (Exhibit 3809 received)  
 (5) MR JAMIN And as promised we rest our rebuttal  
 (6) case Your Honor  
 (7) THE COURT Thank you very much  
 (8) Ladies and gentlemen this completes the taking of the  
 (9) evidence in this case There is one thing counsel that we  
 (10) didn't talk about behind the console a minute ago and we  
 (11) better do it right now before we do anything else  
 (12) (At side bar off the Record)  
 (13) THE COURT Ladies and gentlemen we are now at the  
 (14) point in the case where counsel need to do some work and I  
 (15) need  
 (16) to do some work They need to get ready to make their closing  
 (17) arguments and there's a great deal of material that they've got  
 (18) to put together and marshal and assess in order to have it  
 (19) properly organized to present their theory of their case to  
 (20) you I have to finalize the jury instructions that we will be  
 (21) using What I'm leading to is that you get a day off  
 (22) tomorrow We get to work We get to work but you all get the  
 (23) day off Friday We will reconvene with you at 8 00 on Monday  
 (24) morning at which time we will have closing arguments followed  
 (25) by my jury instructions  
 (26) Over this second long weekend that you'll get please do

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(1) remember my instructions that you not read any newspaper  
 (2) articles about the case or listen to any reports about the  
 (3) case Don t let anyone discuss the case with you Don t  
 (4) listen to anybody discussing the case and furthermore even  
 (5) though you ve heard all of the evidence at this point don t  
 (6) start making even tentative decisions about where you think  
 (7) you re going to go with the case  
 (8) I know it s hard not to make those kind of judgments but  
 (9) you really will be better off if you stay in neutral over the  
 (10) weekend Wait until you ve heard the arguments wait until  
 (11) you ve heard my instructions and then it will be plenty of  
 (12) time for you to be making decisions Have a good weekend  
 (13) We  
 (14) will see you on Monday morning  
 (15) Counsel will please stay a moment  
 (16) (Jury out at 2 02 p m )  
 (17) **THE COURT** They didn t seem the least bit offended  
 (18) **Mr Lynch?**  
 (19) **MR LYNCH** Your Honor on behalf of the Exxon  
 (20) defendants and I believe that Mr Chalos will join me in part  
 (21) of this motion I move pursuant to Rule 58 for judgment as a  
 (22) matter of law on the ground that the record taken as a whole  
 (23) and by the proper legal standards is insufficient to establish  
 (24) a claim of recklessness as against the Exxon defendants and I  
 (25) ask for entry of judgment against the plaintiffs claims for  
 punitive damages

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(1) Separately would ask the Court to rule that there is not  
 (2) sufficient evidence in this record and judged by the  
 (3) appropriate legal standard for a jury to find that a claim of  
 (4) recklessness could be based on the allegation that the  
 (5) assignment of Robert Kagan as a helmsman aboard the Exxon  
 (6) Valdez was a reckless act or could be a predicate for an award  
 (7) of punitive damages  
 (8) Similarly and separately we ask for a judgment that there  
 (9) is insufficient evidence on this record judged by the  
 (10) appropriate legal standard for a jury to conclude that the  
 (11) grounding of the Exxon Valdez resulted from the fatigued state  
 (12) of Gregory Cousins or inattention or demanding practices of  
 (13) Exxon relating to deck officers  
 (14) On the same standard we do - we submit that it is  
 (15) appropriate for the Court to direct entry of judgment as a  
 (16) matter of law on the ground that the evidence taken as a whole  
 (17) and by the appropriate legal standard is not sufficient to  
 (18) establish that Captain Hazelwood was impaired by alcohol at  
 (19) the time of the grounding or that the impairment - that the  
 (20) consumption of alcohol rather was a proximate cause of the  
 (21) grounding and accordingly that judgment is permissible and  
 (22) proper as a matter of law and it would be improper for the jury  
 (23) to return a verdict based on claims relating to Exxon s alcohol  
 (24) policy or Captain Hazelwood s actions because there is no  
 (25) adequate proof of impairment or proximate causation

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(1) We make the same motion separately as to the claims  
 (2) relating to - claims of recklessness and claims for punitive  
 (3) damages relating to actions of Captain Hazelwood on the  
 (4) ground  
 (5) that on the evidence presented and that by the appropriate  
 (6) legal standard any actions of Captain Hazelwood with  
 (7) reference  
 (8) to leaving the bridge cannot be attributed to Exxon Corporation  
 (9) for purposes of punitive damage liability because those actions  
 (10) were not in a requisite degree of direct complicity and as the  
 (11) record indicates were contrary to the direct practices of Exxon  
 (12) Shipping Company  
 (13) Lastly and separately we move for judgment as a matter of  
 (14) law on the ground that the evidence taken as a whole and by  
 (15) the  
 (16) appropriate legal standard would not permit a jury verdict of  
 (17) recklessness with regard to the Exxon Shipping Company  
 (18) alcohol  
 (19) policy, either in general or as applied to the case of Captain  
 (20) Hazelwood  
 (21) I believe Your Honor that we can better support this  
 (22) motion with a brief which we would like to submit to the Court  
 (23) tomorrow As the Court knows you have the discretion and we  
 (24) are invited to suggest to you that some or all parts of this  
 (25) motion might be reserved for consideration at a later time It  
 is our view that particularly the first two grounds of the  
 motion that I mentioned that is the claim of impairment - I m  
 sorry the claim of Kagan was unqualified to serve as helmsman  
 and that that had some involvement in this action and the claim

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(1) that fatigue or deck officer manning practices were a proximate  
 (2) cause of this accident are matters which - which it would be  
 (3) constructive to resolve before submission of the case to the  
 (4) jury  
 (5) We believe that those two points in particular are clearly  
 (6) unsupported and that it would simplify the jury deliberation  
 (7) process to resolve those matters and instruct the jury  
 (8) accordingly I don t say that in derogation of the other  
 (9) points that I ve made but those two points in particular would  
 (10) tend to simplify the consideration of the case by the jury  
 (11) **MR CHALOS** Your Honor on behalf of Captain  
 (12) Hazelwood we also move for a directed verdict on the issue of  
 (13) negligence We do not believe that the evidence that s been  
 (14) presented supports a finding that Captain Hazelwood was  
 (15) negligent on the night of the grounding particularly in his  
 (16) leaving the bridge under the circumstances that have been  
 (17) presented  
 (18) We also move for a directed verdict on the issue of  
 (19) recklessness in that Captain Hazelwood s actions on the  
 (20) evening  
 (21) of the grounding do not rise to the level of the legal standard  
 (22) of recklessness  
 (23) We join in Exxon s motion with respect to the impairment  
 (24) issue as outlined by Mr Lynch We would also like to reserve  
 (25) for Captain Hazelwood the opportunity to submit a brief on the  
 two - on the motions that we have made on the issues of

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(1) recklessness and negligence  
 (2) THE COURT You all sure like to write briefs  
 (3) MR O NEILL I don't think we need briefs We were  
 (4) all here and saw the same evidence The Rule 50 standard is  
 (5) that there is no legally sufficient evidentiary basis for a  
 (6) reasonable jury to find for the non moving party on the issue  
 (7) And a jury sitting here in this courtroom for the last three or  
 (8) four weeks can believe or disbelieve the testimony of almost  
 (9) anybody it chooses to because most of the witnesses have  
 (10) deviated from past deposition testimony  
 (11) I want to clear up one matter with regard to Mr Kagan and  
 (12) their motion concerning Mr Kagan The plaintiffs don't  
 (13) contend that the assignment of Mr Kagan per se onto the  
 (14) vessel provides in and of itself a ground for the award of  
 (15) punitive damages Just so we're clear about that  
 (16) Mr Kagan's role as far as we're concerned is a piece of  
 (17) evidence that at the time the captain made the decision to  
 (18) leave the bridge he left it in charge of Cousins and Kagan  
 (19) and Kagan's history was relevant to that decision So Kagan  
 (20) per se is a piece of evidence and to shortcut the legal jargon  
 (21) is not a cause of action I guess he's a person but he isn't a  
 (22) cause of action  
 (23) Our theory with regard to Exxon is that it is liable for  
 (24) punitive damages because Exxon was reckless with regard to  
 (25) Hazelwood and secondly because Exxon was reckless  
 because

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(1) Hazelwood was its managing agent and his acts his reckless  
 (2) acts were attributable to Exxon  
 (3) So those are the two theories on the basis of the  
 (4) stipulated facts on the basis of statutory violations  
 (5) including the four hour rule the six hour rule the pilotage  
 (6) requirement in 46 USC 8502(a) on the basis of Exxon's general  
 (7) admissions including those of its president and chairman of  
 (8) the board Mr Rawl Mr Raymond Mr Stevens Mr LeGrange  
 (9) In light of the admissions that we presented to the Court  
 (10) and in light of the proof presented to the Court there is more  
 (11) than sufficient evidence to consider that Exxon with regard to  
 (12) either of those theories was reckless  
 (13) With regard to Mr Hazelwood a jury could conclude based  
 (14) upon the evidence presented to it in this courtroom that he  
 (15) drank that his drinking caused impaired judgment at or about  
 (16) the time he left the bridge that his leaving the bridge was  
 (17) cause of the accident and indeed Exxon has stipulated that it  
 (18) was a proximate cause of the accident He had a 06  
 (19) afterwards There is evidence that can put him up to 14 drinks  
 (20) that afternoon if you listen to the bartenders  
 (21) With regard to manning there is evidence with regard to  
 (22) the fact that there was violations to the six on six off  
 (23) statute We went through that in great detail with that big  
 (24) board There's evidence that such violations occurred  
 (25) regularly There's evidence that Exxon did not have a system

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(1) in place to ensure compliance with the six on six off  
 (2) requirements  
 (3) With regard to alcohol proof there's alcohol proof for  
 (4) three and a half weeks So all of the motions with the  
 (5) exception of the Kagan motion are in our view after what  
 (6) we've heard for the last three and a half weeks ill founded  
 (7) and we oppose the motion on the basis of the record and the  
 (8) law  
 (9) With regard to our record and I'm moving on to a new  
 (10) subject we move on both of our theories for judgment as a  
 (11) matter of law under Rule 50 and criteria the record  
 (12) I'll move on  
 (13) THE COURT Thank you  
 (14) MR O NEILL I want to address one question on the  
 (15) verdict form in some detail  
 (16) THE COURT On the what?  
 (17) MR O NEILL One question that may be on the verdict  
 (18) form in some detail I am going to move for judgment as a  
 (19) matter of law under Rule 50 that Captain Hazelwood was a  
 (20) managing agent of Exxon Corporation And I cite the Protectus  
 (21) Alpha case which we've all looked at more times than we care  
 (22) to have looked at and the testimony of Paul Myers Lloyd  
 (23) LeCain Frank Iarossi Mr Iarossi's piece of work surrendering  
 (24) the memories Daniel Paul's testimony Mitch Stalzer's  
 (25) testimony Captain Andre Martineau's testimony and the

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(1) testimony of expert Bolton who today described the master of a  
 (2) chief - as a chief executive officer and chairman of his own  
 (3) company and described him as a CEO So we move under Rule  
 (4) 50  
 (5) for judgment as a matter of law that Captain Hazelwood was the  
 (6) managing agent of Exxon and we don't believe there's any  
 (7) evidence to the contrary in the record  
 (8) So I've moved for judgment as a matter of law under Rule 50  
 (9) based upon the record and the applicable law against Exxon  
 (10) Corporation Exxon Shipping Company under both theories on  
 (11) claims of recklessness I move against Captain Hazelwood with  
 (12) regard to negligence and Captain Hazelwood with regard to  
 (13) recklessness and I think my record's complete  
 (14) Thank you Judge  
 (15) THE COURT Mr Lynch?  
 (16) MR LYNCH Your Honor we oppose that motion  
 (17) MR CHALOS I join in the opposition  
 (18) MR LYNCH I really hadn't prepared to meet it but I  
 (19) would like to say one thing with regard to the fatigue aspect  
 (20) of Mr O'Neill's comments and that is that his claim in this  
 (21) case is necessarily a claim based on recklessness conscious  
 (22) disregard of the known risks  
 (23) The six hour rule a Coast Guard regulation put in at the  
 (24) turn of the century as Mr O'Neill has said as part of a labor  
 (25) issue relating to the loading activities of mates in port I  
 think the evidence on that issue does not by any stretch of

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- (1) the imagination rise to the level of recklessness but  
 (2) moreover it doesn't seem to me to have anything to do with the  
 (3) question of whether the - the activities and actions of Third  
 (4) Mate Gregory Cousins on the night of the grounding were or  
 were  
 (5) not caused by a state of fatigue That statute doesn't -  
 (6) doesn't guarantee rest The plaintiffs own expert indicated  
 (7) that you could be in full compliance with that rule and in a  
 (8) very advanced state of fatigue  
 (9) The absolutely uncontradicted testimony of everybody who  
 (10) saw Mr Cousins and Mr Cousins himself was that he was well  
 (11) rested The record is that he had ten hours of sleep in the  
 (12) preceding 23 more than the amount that the plaintiffs expert  
 (13) says is necessary to meet the adequate sleep needs of the  
 (14) average person So there's no testimony other than pure  
 (15) speculation that fatigue played any role in this grounding  
 (16) Now whether the plaintiffs agree with the procedures that  
 (17) were used for the six hour rule or not the six hour rule is  
 (18) basically a red herring I go into that because as I said  
 (19) that is one issue which we do strongly feel would well be out  
 (20) of the case before the matter is submitted to the jury  
 (21) As to the other matters we do wish to submit a brief  
 (22) although I gather that Your Honor is not particularly anxious  
 (23) to have one and I'd like to defer a more detailed discussion  
 (24) on the record on the other points to something we could submit  
 (25) in writing

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- (1) MR O NEILL I don't want to write another brief  
 (2) THE COURT I don't want to read another brief right  
 (3) now Now the time -  
 (4) MR LYNCH Point well taken Your Honor  
 (5) THE COURT The time may very welcome when I will both  
 (6) need and want briefs from you all on the kinds of things you  
 (7) are talking about now I think it will be more profitable for  
 (8) all of us for you to defer writing that brief until you have  
 (9) some additional information that these 12 people will probably  
 (10) provide us And I suggest you wait to write your briefs until  
 (11) we see what happens  
 (12) MR O NEILL Thank you Judge  
 (13) MR LYNCH Louisville slugger on my forehead but I  
 (14) finally got the point Your Honor  
 (15) THE COURT That probably suggests to you that it -  
 (16) at this point I'm going to deny all of these Rule 50 motions  
 (17) I think in some respects some of you have got good points but  
 (18) really what it gets down to is that you're arguing the evidence  
 (19) to me at this point and I believe that there is at least some  
 (20) fair room for argument about all of these things that all of  
 (21) you have talked to me about So it's not appropriate for me to  
 (22) take this case or any part of it I don't believe away from  
 (23) the jury at this point  
 (24) Now some of the things that you've talked about were  
 (25) going to have to hash out thrash out in terms of jury

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- (1) instructions but - but basically what I mean to do is to  
 (2) leave all of these issues for the jury to deal with hopefully  
 (3) with proper instructions  
 (4) MR LYNCH Thank you Your Honor I think one minor  
 (5) point that doesn't have to be dealt with now but I think it is  
 (6) important that we confirm that that's on the understanding that  
 (7) Mr O'Neill's concession that there is no claim made with  
 (8) relation to the assignment of Mr Kagan is - is included in  
 (9) your comment  
 (10) THE COURT Oh well I -  
 (11) MR O NEILL I meant what I said  
 (12) THE COURT I heard that but - but -  
 (13) MR LYNCH I had made a motion on that ground and you  
 (14) were technically denying it and Mr O'Neill I think had  
 (15) conceded that there's no claim for punitive damages made as to  
 (16) the assignment of Robert Kagan  
 (17) THE COURT Well I guess I'm denying it because I  
 (18) expect you all to talk about the role that Mr Kagan played in  
 (19) this thing and I don't mean - I don't wish to by ruling on  
 (20) the motion to preempt anyone from talking about Mr Kagan's  
 (21) role in the case So I don't think I should grant a motion on  
 (22) it  
 (23) MR O NEILL Thank you Judge  
 (24) THE COURT But I understand what you're saying that  
 (25) there is no claim cause of action based upon the assignment

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- (1) of Kagan to the vessel per se  
 (2) MR O NEILL Per se that's correct but we are going  
 (3) to talk about Mr Kagan  
 (4) MR LYNCH Similar to the Coast Guard - thank you  
 (5) Your Honor  
 (6) THE COURT Anything else we need to talk about now?  
 (7) MR O NEILL No sir  
 (8) THE COURT Okay You all are going to take a close  
 (9) look at your - your exhibit lists so that you know that when  
 (10) you are arguing you're talking about exhibits that have been  
 (11) admitted and not multiple many many things that you've got  
 (12) that were identified but not admitted  
 (13) MR O NEILL Yes sir  
 (14) MR LYNCH Even more importantly the ones that we  
 (15) have are the same ones that were admitted by those numbers  
 (16) THE COURT That would be nice too  
 (17) We'll be in recess now for this case until 8:00 Monday  
 (18) morning but I will be seeing counsel on instructions  
 (19) (Recess at 2:20 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	

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UNIQUE WORDS 3,239
TOTAL OCCURRENCES 16,139
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TOTAL WORDS IN FILE 50,003

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