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ALASKA OIL SPILL COMMISSION

August 30, 1989

Location: Anchorage

OIL SPILL COMMISSION MEMBERS

Walter B. Parker, Chairman

Esther C. Wunnicke, Vice-Chairman

Margaret J. Hayes

Michael J. Herz

John Sund

Timothy Wallis

Edward Wenk, Jr.

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MOTION INDEX

Scopes of work, including qualifications of contractors, be circulated to all Commissioners with 24-hour deadline for telephone approval.

Motion made and no second Page 12

Motion amended Page 13

Motion seconded Page 14

Motion failed Page 19

Remainder of materials be sent to all Commissioners (as in Motion above, Page 12). Subcommittee charmen advise Chairman and Staff of approval/non-approval.

Motion made Page 19

Motion Seconded and Move to Table Page 20

Motion tabled Page 21

Move to adopt minutes of 7/20 and 7/27 meetings.

Motion made, seconded and passed Page 29

/clf

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1907/ 2/12-2/19*

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/clf

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1 MR. PARKER: Good morning, the Alaska Oil Spill  
2 Commission will come to order. With us this morning we  
3 have a quorum, myself, Chairman Walt Parker, Vice-  
4 Chairman, Esther Wunnicke, on my left Commissioner Meg  
5 Hayes, on her left Commissioner Ed Wink, on my far right,  
6 Commissioner Tim Wallis. Commissioner Sund will not be  
7 with us for this meeting and Commissioner Herz will not  
8 get in until tonight. Our schedule: nine until ten will  
9 be conducting Commission business. From 10 to 12 we will  
10 have a review of legal options by an independent group of  
11 law professors who have been funded by the Alaska Sea  
12 Grant Program. 1:30 lunch. From 1:30 until 3:30 we will  
13 hear on the National Contingency Plan Commander Dennis  
14 Rohm of the Coast Guard from 3:30 until 4:00. From 4  
15 until 5 we will have public comment. Tomorrow at this  
16 same location we will discuss the Response Plan failure  
17 with all concerned and Friday at the Federal Building at  
18 Suites 133 and 137 we will discuss the Tanker Operations  
19 from Valdez with the Shippers who operated from Valdez.

20 The first item on today is old business to bring  
21 everyone up to date on what has gone on since the last  
22 meeting since many Commissioners were gone on private  
23 business and the Commission held hearings in Kodiak and  
23 Larsen Bay and Port Lions and Quzinkie on Kodiak Island.  
25 Commissioner Hayes held hearings in Tatitilik. We met

1 with the Oil Mayors and Senator Stevens last Thursday.  
2 Most of the time was consumed by engaging in the limited  
3 competition process to staff for our future efforts. This  
4 was done by interviewing approximately 30 people who  
5 were judged to be top candidates that responded to our  
6 advertisements over a period of two weeks.

7 MS HAYES: Yes, we went to Cordova.

8 MR. PARKER: We went to Cordova for the House  
9 Merchant Marine and Fisheries Subcommittee hearings there  
10 which proved to be an interesting exercise. It has been  
11 a really busy three weeks. In regard to staffing we  
12 have hired our Counsel, John Havalock on my far left.  
13 Our Technical Coordinator Dennis Dooley, next to him.  
14 Contracts for both of them are still in process. One of  
15 these days hopefully they will be paid. Both have put in  
16 substantial time, unpaid time, on this in the month of  
17 August to keep this process underway. The situation on  
18 contracting now is that the contractors who have been  
19 chosen have been asked to submit scopes of work when the  
20 Administrative Officer returns tomorrow he will begin  
21 taking those scopes of work that have been approved thus  
22 far and putting them into contract form and finalizing  
23 the contracts. Our contracting, of course, is limited by  
23 the amount of funds available. The situation on that is  
25 we have the Governor and the Legislature have approved

1 ed our funding requests, but the source of funds still  
2 must be found so we are now in the process of finding  
3 that source of funds and hopefully by close of business  
4 tomorrow we will have some better idea of whether  
5 pursuing sources of funds we are pursuing tomorrow are  
6 the correct ones. In essence the Governor doesn't have  
7 enough in his Contingency funds to finance this and we  
8 can't wait until the Legislature reconvenes for a  
9 supplemental in January so some other source must be  
10 found.

11 MS WUNNICKE: Mr. Chairman, did the Governor and  
12 the Legislature approve our request at the middle level  
13 or the high level?

14 MR. PARKER: The high level.

15 MR HAVELOCK: I think I should inform the Chair  
16 that the interviewing process that you know, Mr. Daviak  
17 (ph) is the first choice for investigator and knowing  
18 that there is a long process to go through, I have done  
19 the last, perhaps exceeded my authority and asked him to  
20 start doing some chores for the Commission because of  
21 undue impatience with the pace that sometimes that the  
22 Administration makes it seems sometimes liesurly so I  
23 have asked him to do some things. He understands that  
23 has no contract price and it will be whatever the  
25 Commission agrees to as the price, but obviously people

1 are excited about doing work and I've wanted him to start  
2 chasing documents.

3 MR. PARKER: I think that I would indicate that  
4 counsel did discuss this with me and the risk of going  
5 ahead and working without a contract. I can't technically  
6 approve that. I would look the other way I guess while  
7 he went ahead on and did it. Time is running short.  
8 Hopefully Mr. Daviak will be able to get out and  
9 interview the long list of people who have already been  
10 developed that we want to interview very quickly. As  
11 will the other investigators.

12 MS WUNNICKE: Mr Chairman, just a comment, I  
13 didn't sit on the selection committees for many of the  
14 contractors, but I did sit on two of the selection  
15 committees and I must say that I was very pleased and  
16 heartened at the caliber of the people who applied to  
17 work with the Commission. I believe that they are  
18 motivated as you mentioned with respect to Al. I have a  
19 real desire to serve and get to the bottom of things and  
20 I am impressed at the caliber of the people who have  
21 applied.

22 MR. PARKER: Yeah, we got a wide range and one of  
23 the reasons for that is that the staff sent the  
23 applications out to the professional societies in all  
25 the areas that we were concerned and applications came in

1 from a good part of the country. Of course, we already  
2 had several firms that indicated an interest and they got  
3 applications so we had really excellent, in some areas,  
4 an excellent range of people to choose from and by going  
5 through this limited competition process we had  
6 established a good reservoir of talent that we can draw  
7 upon as necessary throughout the fall.

8 MR. WENK: Excuse me, I have questions related  
9 to the report. Is this a good time to raise these?

10 MR. PARKER: Yeah.

11 MR. WENK: You mentioned attending this hearing.  
12 Is that the hearing at which the GAO report was released?  
13 Could you give us the gist of the report, number one,  
14 number two, will copies of that be made available to us?

15 MR. PARKER: The gist of the report was not  
16 really there because all we got was what they gave to  
17 the Committee in their formal testimony. The report will  
18 be made available to us -- available in mid-September.  
19 Right now it is undergoing internal review within GAO in  
20 Washington. We had substantial discussions, Mr. Dooley,  
21 myself and Meg Hayes, with the GAO staff who came with  
22 the report. There were eight of them, and have some  
23 sense of what parts of the report are all about. The GAO  
23 technical consultant, Virgil Keith, indicated that  
25 probably the most trenchant testimony that was given was

1 where he indicated in there review of the new Contingency  
2 Plan under which Alyeska's operating if a similar spill  
3 occurred, only 35 to 45 percent of the oil would be  
4 recovered and that was no disagreement with either  
5 Alyeska or the Coast Guard. Was that right?

6 MS HAYES: No, in fact, Ed I was quite  
7 surprised at the report GAO made at that meeting, because  
8 I had expected from our previous discussions to have a  
9 blow by blow discussion of the various Contingency Plans.  
10 And that really wasn't the subject that they got into at  
11 all. They really were addressing the cleanup and the  
12 response, to that particular action in terms of  
13 authorities and things, but not really a discussion of  
14 the Contingency Plan. So I was thrown by the report  
15 given because my expectations had been presented quite  
16 differently.

17 MR. WENK: I was in the same view as you. Is this  
18 because they did not proceed as they originally planned  
19 with evaluating the Contingency Plans or is it that this  
20 will come at a later date?

21 MS HAYES: I think the later. My feeling was  
22 they hadn't yet gone through they're internal review. We  
23 do have copies of all the testimony that was presented  
23 that day. It is in our library if you're interested in  
25 seeing it, but it didn't add much to our understanding of

1       our Contingency Plans.

2               MR. WENK: Did they focus on the cause?

3               MS HAYES: No

4               MR. PARKER: No there was no real focus.

5               MR. WENK: So they are leaving that to NTSB?

6               MR. PARKER: Yeah. The focus was very much on  
7 the response the immediate response and the failure  
8 there. The Washington group was the one. They had two  
9 members of the Seattle group of GAO that worked on it and  
10 the rest of it were the Washington group. And so the  
11 Tanker Operations part of it were primarily handled in  
12 Washington from my understanding and the Contingency  
13 planning and Review in Seattle. I think that they were  
14 aiming in the 15 minutes they had before the Subcommittee  
15 that they had to get out the principle points.

16              MS HAYES: It seems as though their principle  
17 point would have been inadequate and that really  
18 prevention was the key. That's really their major point.

19              MR. WENK: I've got another question on a  
20 completely different subject. Back to this very effective  
21 session you had in the past couple of weeks in evaluating  
22 qualifications of potential contractors, did I understand  
23 correctly that once that sort of selection has been made,  
23 the work plans for each of these were to be developed and  
25 if that so, my question, how will that be done?

1           MR. PARKER:     The work plan the scope of the  
2 contract will be submitted by the Contractor first and  
3 reviewed by staff and the Commission and given to the  
4 Contract Officer and some of those are in now. How many  
5 have we got now, Dennis?

6           MR. DOOLEY:   I got four scopes last night and I  
7 think more are being faxed over. I don't know whether  
8 we've received any the evening or not.

9           MR. PARKER:     Anyway, most of those should be  
10 available by the time we wind up this session.

11          MR. WENK:       My question is again, not recalling  
12 the precise wording of prior Commission decisions, but my  
13 impression was that the procedure that we used for the  
14 three earlier studies was one of submitting the proposal  
15 to the entire Commission for approval. That was  
16 consistent with a general procedure I believe the  
17 Commission adopted. Otherwise we wouldn't have done it.  
18 My question is , are you going to go through that same  
19 process?

20          MR. PARKER:     The difference between the process  
21 here and that process is that we had proposals that were  
22 submitted which stated the complete work program. Here  
23 we have contractors applying to our advertisement. Which  
23 the advertisement relating to our work program as we've  
25 defined it such thus far, is that the contractors are

1 not submitting proposals, but submitting the scope of  
2 work....

3 MR. DOOLEY: I understand.

4 MR. PARKER: .....where their contract as it  
5 relates to ours so you know we will have the scope of  
6 work as they submit it to review. But there is no  
7 proposal per say to vote on.

8 MR. WENK: Well, but there is a scope of work  
9 that could be voted on. My question is are we going to  
10 proceed to do that? I'm interested in the substance.  
11 And, I just want assurance that we are going to proceed  
12 that way, if not, I will so move.

13 MR. DOOLEY: Let me determine, if I remember the  
14 last meeting correctly there was some discussion about  
15 this and I thought that the Commissioners that were  
16 interested in certain work items would be involved in the  
17 interview process and a part of that interview process  
18 helped developed that context of scope of work. It was  
19 for a two way process, will host a proposed contractors  
20 interacting in that. The selected contractors would then  
21 have sense from that discussion about the scope of work  
22 they prepare that, present it for review.

23 As I understood it then, it would be staffed  
23 making some comments along with to the Commissioners that  
25 were interested in that particular interview process to

1 review and see that indeed reflected their discussions  
2 and then it would be a sign off by the Chairman. If it  
3 requires all these contracts at there vary points in time  
4 being reviewed and voted on by this entire Commission  
5 we're offering a substantive delay in the process in  
6 getting the paperwork to the Department of  
7 Administration and I do not mean to use that as a hammer,  
8 but.....

9 MR. DOOLEY: Sounds that way to me. Sounds like  
10 a hammer to me. I want to be clear about this. The  
11 issue did come up at the last meeting, you're quite right  
12 Dennis, and I think that Commissioner Hayes, eager as all  
13 of us are to make progress, was justifiably concerned  
14 that if this were subject to a review by the Commissioner  
15 during a period when at least two of the Commissioners  
16 were out of contact that to delay until they were  
17 available would have been a handicap. That's my  
18 recollection of the discussion and so though there was no  
19 formal action taken, my impression was that the review  
20 process was one where in the absence of Commissioners  
21 during this period of time that the Subcommittees would  
22 be acting on behalf of a full Commission during that  
23 period to approve scopes of work and that's the way I  
23 thought it was left. It turns out that cercumstances are  
25 such that it was impossible to get things moving that

1       swiftly.

2               Everybody would like to have seen it move that  
3       swiftly and I would have been comfortable with that  
4       procedure. But now that all of us are back in the saddle  
5       so to speak and because of the size of some of these, I  
6       have no idea what they look like, but they are larger  
7       than the 5000 dollar ones that went through a pretty  
8       careful scope review.

9               I would like to move, I may not get a second to  
10       this, but I will still move, that these scopes of work be  
11       circulated with qualifications of the Contractors to all  
12       Commissioners and that there be a short deadline for  
13       telephone approval and by short I mean 24 hours after  
14       receipt. In other words, I think Dennis' points well  
15       taken and I think 24 hours ought to be enough. But I  
16       think there is a lot at stake here and I think there is,  
17       the whole purpose of this proposition of mine, Mr.  
18       Chairmen, relates to Quality Control. And you know  
19       that's been a concern of mine for months and it is still a  
20       concern.

21              MR. PARKER: Ok, is there a second? No second,  
22       John.

23              MR. HAVELOCK: Addressing this issue, it seems to  
23       me that some care should be made in distinguishing  
25       between those Contractors that are coming in with

1 careful scope review, I would like to move, I may not get  
2 a second to this, but I will still move, that these be  
3 scopes of work be circulated with qualifications of the  
4 contractors to all Commissioners and that there be a short  
5 deadline for telephone approval and by short I mean 24  
6 hours after receipt. In other words, I think Dennis'  
7 point's well taken and I think 24 hours ought to be enough.  
8 But I think there is a lot at stake here and I think there  
9 is -- the whole purpose of this proposition of mine, Mr.  
10 Chairman, relates to quality control. And you know that's  
11 been a concern of mine for months and it is still a  
12 concern.

13 MR. PARKER: Okay, is there a second? No second,  
14 John.

15 MR. HAVELOCK: Mr. Chairman, I just -- addressing this  
16 issue, it seems to me that there is some care should be  
17 made in distinguishing between those contractors who are  
18 coming in with a work product that is a designated work  
19 product which is gonna control the direction of the  
20 Commission or the areas of expiration. And those contracts  
21 such as writers, investigators and so on, which are  
22 generic, and which -- and those people, it seems to me, you  
23 know who will be assigned on the Commission's instruction  
23 in due course, it seems to me fall into a different  
25 category and are not.....

/clf

1 MR. PARKER: Absolutely agree. And perhaps your  
2 motion, you know, if you're talking about contractors who  
3 have a specific designated work product, that you -- your  
4 motion may have more.....

5 MR. WENK: Counsel's -- I think Counsel's point's  
6 exceedingly well taken and I wasn't sufficiently clear in  
7 this regard. Certainly my intent was to apply to those  
8 cases where there was a product defined by work scope or  
9 work statement or whatever. So I don't know whether it's  
10 worth trying the motion again, but I'll try it again,  
11 amended along this line without getting into specific  
12 wording. What you were talking about or what I'm proposing  
13 is that those contracts where there are specific scopes of  
14 work defined and a product to be expected by a certain time  
15 -- that those be subject to Commission approval, but with  
16 a telephone ballot, 24-hour turnaround.

17 MR. PARKER: Is there a second to that? Meg.

18 MS. HAYES: In the interests of compromise, and also  
19 to clarify because my understanding of the process was  
20 somewhat different from Dennis'. I would like to clarify  
21 the continuation of the process as being something along  
22 the lines of the chairman of the subcommittees that are  
23 related to the specific work products are able to convene  
23 the subcommittee for review of the scopes of work for  
25 discussion prior to approval by the chairman. And that the

/clf

1       -- once the committee -- the subcommittee has approved them  
2       then the chairman may out-sign the contract.

3           MR. WENK: Commissioner Hayes, I -- can we assume that  
4       my motion is dead?

5           MS. WUNNICKE: I was gonna second your motion just for  
6       purposes of discussion.

7           MR. WENK: Oh, okay, because if it's dead then I was  
8       going to second her..... (laughter). But -- well, how do  
9       we proceed then, Mr. Chairman?

10          MR. PARKER: I think.....

11          MS. WUNNICKE: We're discussing your motion.

12          MR. PARKER: There is a second for discuss -- okay.

13          MS. WUNNICKE: I second Ed's motion.

14          MR. PARKER: The most pragmatic way, it would seemed  
15       me to be proceed, would be to review at this meeting the  
16       scopes of work that have come in by that time and either  
17       subcommittee or -- the entire Commission if they're  
18       available and get Commissioners' input to those scopes and  
19       take care of those that are in by this time. Now some of  
20       these scopes of work will not be coming in for some time  
21       'cause the only ones that have come in so far are those  
22       that've been requested. And.....

23          MR. WALLIS: Question, Mr. Chairman.

23          MR. PARKER: Mm Hm.

25          MR. WALLIS: Is the purpose for this exercise to

/clf

1 review for the detail or the generality of the scope of  
2 work?

3 MR. WENK: Are you asking the proposer of the motion?

4 MR. WALLIS: Yes.

5 MR. WENK: I don't think I can answer your question  
6 with a yes or no -- let me put it this way. I'm a great  
7 believer in multiple perspectives. Not only are two heads  
8 better than one, but seven. And I realize that opens up  
9 possibilities. The thought here is not to do anything that  
10 would slow down the process, it is to enrich it with  
11 whatever perspectives, experience, insights and so on that  
12 individuals can bring to this. The whole point being to do  
13 some quality control at the beginning of a study not at the  
14 end. We don't have time to do any quality control at the  
15 end. The quality control of these contracts, in my view,  
16 has gotta be done by some real care in the definition of  
17 the work statement at the very beginning. Otherwise, you -  
18 - you have to let these people loose. If they start in the  
19 wrong direction and end up in a different destination two  
20 months later, it is too late to rectify it. The time, it  
21 seems to me, to try to bring some quality control over the  
22 scope of the work is at the very beginning. Now, I suggest  
23 this -- I'm attracted to Commissioner Hayes' proposal here,  
23 and I don't know whether we oughta dispose of mine. If  
25 it's gonna fail let's get it dead and get on to another

/clf

1 step. What I see is the possibility of two things. And  
2 I'm now talking really to here proposal, but while mine's  
3 still on the table. And that is to make sure that all of  
4 the work statements are circulated to all of the members to  
5 give everyone of them an opportunity to comment, but  
6 without it being a requirement. If they have nothing to  
7 say, so be it. If they do, to get it in fast. As far as  
8 authority is concerned, I would like to feel that there is  
9 a -- an element of responsibility exercised on behalf of  
10 the Commission through the subcommittees, and it's in this  
11 respect that if my motion's gonna fail that I would support  
12 Commissioner Hayes' proposition that the review have a  
13 formal aspect to it by each subcommittee which has  
14 jurisdiction over that particular work statement, and that  
15 the subcommittee as a whole take whatever action -- it's  
16 probably a teleconference or whatever, but there be a -- I  
17 don't wanta use the word conscientious, but -- what do I  
18 mean -- thoughtful and not perfunctory approval of the work  
19 statement. Again, underscore, and I'll stop. It's the  
20 whole notion of looking at this before these guys get  
21 started, because they're gonna move fast, they're gonna  
22 move in the directions that they propose and which we fine-  
23 tune. And if it isn't the right direction the product that  
23 they turn in isn't gonna meet the Commission needs.

25 MS. WUNNICKE: Mr. Chairman, I find what Commissioner

/clf

1 Wenk has just said reasonable. It think that opportunity,  
2 initially, was given to everyone to sit on the committees -  
3 - selection committees that they particularly were  
4 interested in. That's why I chose to sit on the  
5 investigator's selection committee because I see the work  
6 of the subcommittee that I chair being largely carried out  
7 through the investigators. I think it's a reasonable  
8 request -- without veto authority, let's say, in that  
9 review. But, as Ed says, just give that many more eyes to  
10 the detail. And you have done that, I think, in the other  
11 selections that have been made. You've given a full  
12 commission the opportunity to look at the proposal before  
13 the appointments were made for Counsel and investigators  
14 and so forth. So, I'll withdraw my second if you wanta  
15 withdraw your motion, Ed, and we'll start over.

16 MR. WALLIS: Oh, excuse me. Before we get in --  
17 another question. You have a 24-hour turnaround time under  
18 your motion.

19 MR. WENK: Right. Oh, excuse me. I did under my  
20 motion, but if that failed, then.....

21 MR. WALLIS: I understand, let me finish. If there's  
22 a 24-hour turnaround and you make a comment or a suggestion  
23 of change on the scope of work. Then does that have to go  
23 out again to all commissioners? That -- who has the  
25 authority or responsibility to change the scope of work.

/clf

1           MR. WENK: It seems to me that either the chairman of  
2 the whole Commission or the chairman of the subcommittee  
3 oughta have the authority to accept or reject whatever  
4 suggestion's made. I do not believe that -- we cannot --  
5 we don't have time to recycle again.

6           MR. WALLIS: So basically the sending out of the  
7 material, then, is for the individual's information.

8           MR. WENK: And opportunity to comment.

9           MR. WALLIS: Okay, and, again though. If there is a  
10 comment what happens to that comment.

11          MR. WENK: It should be considered by whichever  
12 authority the Commission jointly now agrees is gonna make  
13 the decision. Either the chairman of the whole Commission  
14 or the chairman of the subcommittee. I'd lean to the  
15 chairman of the subcommittee myself, but I'm flexible in  
16 that regard. But I think somebody ought to assemble  
17 whatever inputs occur, and make a decision. And not put it  
18 back to the Commission as a whole.

19          MR. PARKER: Any other comments? The -- we have a  
20 motion on the floor. All in -- is there any further  
21 comments or discussion on that motion? All in favor of the  
22 motion -- let's see it takes -- it's gonna take three votes  
23 to pass since there's five of us here. Unless I here from  
23 somebody more expert on arbit rules than I am, but that -  
25 - that it takes four votes. I'll determine three votes.

/clf

1       Okay. All in favor? Opposed? Okay, the motion fails.  
2       The Chair will direct.....

3               MR. WENK: Excuse me -- is Commissioner Hayes gonna  
4       introduce a motion?

5               MR. PARKER: Do you want to introduce a motion?

6               MS. HAYES: Well I was going -- I do, but I was  
7       waiting to see what you were going to say.

8               MR. PARKER: Well the Chair was going to direct the  
9       staff to make copies of the scopes of work that have been  
10      submitted thus far and a memorandum on the contractors that  
11      have been requested to submit scopes of work thus far to  
12      Commissioners as soon as possible. By at least the start  
13      of the meeting tomorrow so that the Commissioners will have  
14      the final two days to review them and if that's not soon  
15      enough, I suppose, could we get them this afternoon? Well,  
16      let's try for this afternoon then. And we can take this up  
17      again later in this session.

18              MS. HAYES: Mr. Chairman, I would like to make the  
19      motion along the lines that I previously described about  
20      having, in addition to the materials that we have available  
21      to us this week, that the remainder of that material be  
22      sent to everyone, as was proposed by Mr. Wenk and that then  
23      the subcommittees meet on the contracts of particular  
23      interest to us via teleconference or individually by  
25      telephone. And that we then have the chairman of those

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1 committees signal to you and to staff that we have approved  
2 or not approved the scopes of work with changes.

3 MR. WENK: I'll second that motion.

4 MR. PARKER: Okay. Does everyone understand the  
5 motion. The -- for clarity, which of the various work  
6 areas that were defined in our advertisements would come  
7 under which subcommittees. And that -- I think needs to be  
8 clarified at this time if I'm going to understand the  
9 motion.

10 MS. HAYES: Do you have the list of all the.....

11 MR. WALLIS: Mr. Chairman. Since we are going to get  
12 information and copies of the scopes of work and talk about  
13 it on Friday, I move we table the motion till Friday.

14 MR. PARKER: There's a motion to table, it's not  
15 discussable, all in favor of tabling the motion.....

16 MR. WENK: Excuse me, what's happening Friday? I guess  
17 I.....

18 MR. PARKER: Tim, could you elaborate a little on.....

19 MR. WALLIS: It was my understanding from what the  
20 Chairman said earlier that staff was going to gather the  
21 scopes of work and present it to us this afternoon to  
22 review and take it up again on Friday. Is that correct?

23 MR. PARKER: That's correct.

23 MR. WALLIS: So I was just tabling the motion till we  
25 had time to review.

/clf

1 MR. WENK: Well, can we (indiscernible - simultaneous  
2 talking).

3 MR. PARKER: (Indiscernible - simultaneous talking) no  
4 discussion about tabling a motion. All in favor of tabling  
5 till Friday. Three votes to table till Friday. The -- by  
6 which time we'll have one more commissioner on board, who  
7 I know has a lot of thoughts on this subject. The.....

8 MR. WENK: Mr. Chairman.

9 MR. PARKER: Ed.

10 MR. WENK: In terms of the agenda I'm not quite sure  
11 whether I have the most up-to-date one but for planning  
12 purposes I would like to request an executive session  
13 tomorrow afternoon for a highly sensitive personnel matter.

14 MR. PARKER: Okay, we can schedule that, I guess, at  
15 the end of the day would be most appropriate. That would  
16 take any pressure off -- any time pressure off. Is there  
17 any objection to that?

18 MS. WUNNICKE: At five o'clock tomorrow.

19 MR. PARKER: Five o'clock, yeah.

20 MR. WENK: My -- I guess I'm not working with the same  
21 agenda. Maybe there's a newer one. Okay, I see -- the one  
22 in the book.

23 MS. WUNNICKE: Yes.

23 MR. WENK: Okay, thanks.

25 MS. WUNNICKE: At the bottom.

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1 MR. WENK: Got you. Okay. Thank you very much.

2 MR. PARKER: Okay. New business. Under new business  
3 the Chair has been discussion the proper way to proceed in  
4 future meetings on the -- now that we have Counsel on-  
5 board as to questioning of witnesses and I would like to  
6 have Counsel give us his thoughts on that at this time.

7 MR. HAVELOCK: Mr. Chairman, I think it would be more  
8 efficient, although I'm sure there's some values lost, if  
9 the main body of the question was asked by your Counsel of  
10 the witness and taking the witnesses individually at the  
11 outset. And that commissioners communicate with me lines  
12 of questioning that they would like to see pursued, and  
13 that commissioners also tell me about lines of questioning  
14 that they want to reserve to themselves and tell me how  
15 much time they want. And so each commissioner could  
16 reserve time to ask questions at the end, but I would  
17 attempt to cover the scope -- full scope of the questioning  
18 in original examination of the witnesses. One thing other  
19 that we would pick up is the loss of the hand-off time that  
20 goes on now when you move from one question to another  
21 around the table there's always a loss of time in the hand-  
22 off and I'm concerned about using our time valuably here..  
23 I'll admit I'm not that confident to say that my  
23 questioning would be any better than anybody else's  
25 questioning but -- and I suppose you could have a

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1 designated commissioner to do the -- to do all that  
2 questioning, but I'll volunteer my services on the theory  
3 that I have more staffing time to prepare that questioning  
4 and to -- as I say, I do want the commissioners to let me  
5 know what they have in mind and let me know what they time  
6 they reserve and I will just back off and stop so that  
7 there's enough time left for every commissioner to have his  
8 designated time. That'd be my proposal. I'm not -- this  
9 is -- with respect to who, I'm not suggesting that we do  
10 that on, you know, the things like the professors coming in  
11 doing their thing that's -- I don't count that as  
12 examination of witnesses in the ordinary sense. I'm  
13 talking only of those people that we're formally calling,  
14 such as the captains the day after tomorrow and maybe use  
15 the questioning on the plan -- the Coast Guard witness that  
16 we'll have on the plan. The national plan.

17 MS. WUNNICKE: Mr. Chairman, I think that would be a  
18 good way to proceed.

19 MR. PARKER: Anyone else? We -- is there any  
20 disagreement with proceeding under that format. Especially  
21 the next couple of days where we're going to have a  
22 extremely tight schedule.

23 MS. WUNNICKE: Mr. Chairman, not only is our time very  
23 tight and all, but the people appearing before us are all -  
25 - have time -- at a premium too. And so I think that would

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1 be much more efficient to proceed as Counsel suggests and  
2 I think we'd save a lot of duplicate questions, be much  
3 more effective.

4 MR. PARKER: Ed.

5 MR. WENK: While I strongly endorse the notion of  
6 efficiency, I'm not sure that's the first criterion. It  
7 seems to me the first criterion ought to be eliciting  
8 information. I'm not disagreeing with you, John, but I'm  
9 very concerned about the fact that we have not had any post  
10 mortems to evaluate our past process. You alluded to the  
11 inefficiency of hand-off. No question about that. It  
12 seems to me that for Counsel to be most effective there  
13 oughta be some type of exercise, and I'm not sure how this  
14 is done in the State of Alaska with the sunshine rule, but  
15 some exercise by which there be a discussion among all the  
16 commissioners as to what the key questions are. Now, I've  
17 spent many years involved in this sort of thing and  
18 preparing questions for members of Congress to ask, and the  
19 darn thing is that they want a question and any skilled  
20 witness can put off that question easily. What's needed is  
21 enough background information to ask the second, the third  
22 and the fourth question, and in all due respect, I don't  
23 see how the Counsel can -- any Counsel can fill their head  
23 with that in an abstract way. These are top level, I  
25 assume, technical people who are going to be here. They

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1 all have an interest to guard. They're not gonna confess  
2 any guilt spontaneously. They're gonna have to be teased  
3 into sharing information with us. And that not only takes  
4 all the skills that I know the Counsel has, but it takes  
5 some expert knowledge. And it seems to me, therefore, much  
6 as I support this notion, that unless as a Commission we're  
7 able to help the Counsel by giving him a -- some clues as  
8 to what these key questions are, I'm concerned about the  
9 whole process. Now we started off discussing this months  
10 ago in terms of identifying what we know from a lot of  
11 other studies and hearings and so on, what we don't know,  
12 what we should know. And it seems to me that if that  
13 pattern makes any sense that we've got to deal with that  
14 topic by topic. We don't wanta cover the same ground  
15 that's been covered before, and I'm afraid that we've been  
16 guilty of doing some of that in the past in terms of this  
17 efficiency that you referred to. It seems to me that some  
18 of the information elicited from witnesses was already  
19 available in written documents. What we need to do is get  
20 our heads together in terms of what it is that we don't  
21 know that we should know. And I don't see, with the  
22 present agenda, how we're gonna have time to do this with -  
23 - in order to help the Counsel. Now, I'd be interested in  
23 his comments on my comments.

25 MR. HAVELOCK: Well, I agree with Mr. Wenk. And I've

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1       been bothered, as I'm sure he appreciates, by the inability  
2       to get the kind of professional preparation for hearings  
3       that is the normal expectation. As we both worked with  
4       Congressional committees and the State Legislative  
5       committees, and you know that what the public sees is the  
6       result of a work product that's gone on for weeks in terms  
7       of developing lines of strategy and for the second and  
8       third and fourth question out on a particular line and --  
9       what you see, don't expect me in the format that we're now  
10      available to come off like a Watergate interrogator 'cause  
11      we don't have that -- there just isn't that kind of a  
12      backdrop and background to what we're doing. And -- but I  
13      -- you know, I'm also looking at the schedule that the  
14      Commission has set for itself, and all you guys are in  
15      these hearings all the time, you don't have any time to -  
16      - you haven't set any time ahead for getting your skulls  
17      together to talk about it. And unless you do that -- and  
18      I'm not saying that's not a good idea, I'm just thinking  
19      of what your time is -- then my suggestion included that I  
20      expect commissioners to call me up and woodshed me  
21      individually on the things that they are particularly  
22      concerned about. And I agree that it's better to do that  
23      collectively, but it would take a long time to do that  
23      collectively.

25           MS. WUNNICKE: Mr. Chairman. I believe Counsel has

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1 earlier in his statement, in his speaking not only to  
2 efficiency but also to effectiveness, given that  
3 opportunity to us to reserve time for the kind of follow-  
4 up questions that I think that Commissioner Wenk is talking  
5 about. And we just don't have much other option I don't  
6 think in term -- because of our time and --.....

7 MR. WENK: (Indiscernible) you're referring, for  
8 example, in preparation for tomorrow and Friday.

9 MS. WUNNICKE: As I understood Counsel to say, that if  
10 he asks questions of all of the participants but reserve  
11 time, at our request, for whatever specific follow-up  
12 questions that we want to ask that he may not have asked  
13 that may come from that technical knowledge. I think  
14 that's the opportunity that we have and I think that's the  
15 way we should handle it.

16 MR. PARKER: Dennis.

17 MR. DOOLEY: There's another asset that Counsel has  
18 available, too, in terms of using that time, is that we are  
19 in the process of hiring technically proficient consultants  
20 who have also shared the background of prepping  
21 Congressional committees and being witnesses as well. And  
22 they can share that knowledge and provide those kinds of  
23 strategies as well, through staff or the Counsel to augment  
23 that technical deficiency that may be there. And that's -  
25 - through that forum be able to bring that to apply during

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1 the Commission's meetings and through the various  
2 commissioners.

3 MS. WUNNICKE: Mr. Chairman, just a follow-up on what  
4 Dennis has said. I think we must not make the mistake of  
5 thinking that we are a court and that everything has to be  
6 approved in this forum. We're going to have information  
7 from our investigations, from our contractors, from the  
8 work of others, and so the information that's going to come  
9 to us is going to be from a number of different sources and  
10 I think that we shouldn't put too much emphasis on this  
11 public forum as the only source of information or proof  
12 before us.

13 MR. PARKER: The Chair would only make the comment  
14 that we have had teleconferences, we have scheduled work-  
15 days and some commissioners have been able to make them,  
16 some have not. And if we are going to approach that point  
17 where you want to have intensive work sessions in order to  
18 develop this questioning, commissioners will have to make  
19 their time available either on the telephone or in person.  
20 The -- so -- but we are not in the same situation as the  
21 Congress where we sit at the Capitol and everyone comes to  
22 us, nor do we have quite the powers of the Congress to  
23 exercise in this, nor do we have the resources of the  
23 Congress yet. Hopefully we will approach in quality the  
25 resources of the Congress. I too have known many

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1 Congressional staffers. They vary in quality from being  
2 totally incompetent to being most competent. So.....

3 MR. WENK: Mr. Chairman, I'm not talking about how the  
4 Congress operates. I'm trying to get this Commission to  
5 think clearly about its own procedures.

6 MR. PARKER: Well, I'm merely stating that the Chair  
7 is, you know, is ready to consider any meetings other than  
8 those already scheduled that the commissioners wish to  
9 schedule. Do we wish to take up the minutes now, or do we  
10 wish to wait for Commissioner Herz?

11 MR. WALLIS: I vote to adopt 7/20 and 7/27.

12 MR. PARKER: Second. Any discussion on the minutes?

13 UNIDENTIFIED SPEAKER: Question.

14 MR. PARKER: Question's called for. Does anyone --  
15 call for the question on the minutes. All in favor?  
16 Opposed? The minutes are passed. We'll proceed to the  
17 next item of discussion.

18 MS. WUNNICKE: How'd you manage that? (Indiscernible)  
19 precisely on time.

20 MR. PARKER: Yes, I was watching the clock.

21 MS. WUNNICKE: Oh. Sorry, I underestimate you.

22 MR. PARKER: John, will you see if Ron Dearborn is out  
23 there.

23 MR. WALLIS: Take a five-minute break?

25 MR. PARKER: Sure.

/clf

1 (Off Record)

2 (On Record)

3 MR. PARKER: We'll proceed. Reconvene. We're now  
4 going to have a discussion with an interesting group which  
5 came to my attention very soon after the oil spill. The  
6 group is working under the aegis of the Sea Grant Program  
7 at the University of Alaska. And so the director of that  
8 program, Ron Dearborn, will now proceed to tell us what  
9 they're all about and introduce the rest of the group.

10 MR. DEARBORN: Thank you, Mr. Chairman. For the  
11 record, I am Ron Dearborn, I do direct the University of  
12 Alaska's Sea Grant College Program. Sea Grant is a  
13 university-based program of research and education focused  
14 on marine resource development, conservation. A system of  
15 universities throughout the United States interested in  
16 marine resource issues. Because of limited budget, our own  
17 Sea Grant college at the University of Alaska has been  
18 mostly focused on fish and fisheries resource issues. But  
19 we don't -- we see these issues before you as related to  
20 that. Our program of education is both -- involves  
21 students on campus, but our education program also includes  
22 a marine advisory component. And I believe you have met  
23 before, but I'll reintroduce him to you now, Mr. Rick  
23 Steiner (ph), who's our marine advisory agent in Cordova.  
25 Rick. The education being part of the University and that

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1 education program is also enabled us to have with us and to  
2 help us out with logistics and other matters of keeping us  
3 patched together, Mrs. Susan Dickenson, from the  
4 University.

5 Sea Grant's interest in these oil issues is  
6 prospective in nature. There are many other agencies and  
7 groups in this state that are busy and have been busy and  
8 are absorbed by the issues that have happened since the  
9 time of the oil spill. We thought that our role is more  
10 appropriately, and our usefulness might be more  
11 appropriately focused to issues looking forward. Issues  
12 that might enable us -- enable us to prevent this kind of  
13 thing or avoid this kind of happening in the future. So  
14 all of what we say will be oriented towards that. Normally  
15 as Sea Grant director, I use mostly the faculty resources  
16 of the University and private colleges in Alaska. We  
17 certainly have considerable faculty in oceanography and  
18 fisheries. We do not have a law faculty. We have limited  
19 -- we have faculty with law interests and with law  
20 training, but we don't have a law program. And so as Sea  
21 Grant director I reached, as I have in other issues, to  
22 faculties beyond our own to form this Sea Grant Legal  
23 Research Team, as we call ourselves. The -- I hope that  
23 what we're doing as part of the Sea Grant program is of  
25 interest to you, and we'll find that out over the next hour

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1 or so. And if this work, which we will be continuing, can  
2 be of more usefulness to you, if you'll help us to identify  
3 that we'll certainly take that into account.

4 There's a interrelationship of the ideas of the next  
5 four panelists. We're very sensitive to your time  
6 limitations and time commitments. What I would recommend,  
7 in fact, Mr. Chairman, request, is that if we could all  
8 four of them present a series of ideas, hold the questions  
9 until after that. We think that maybe some of the  
10 questions will have been answered by the time the next  
11 speaker comes up, and certainly we will then be able to get  
12 forth all of the ideas in hopefully half the time that  
13 we're allotted and still leave lots of opportunity to  
14 discuss things with you. So if you would consider that we  
15 would appreciate that.

16 MR. PARKER: Yeah, that'll be fine.

17 MR. DEARBORN: Why don't I move right forward and  
18 introduce the first -- well, I mentioned that we've gone  
19 beyond the University. Aside from faculty at the  
20 University of Alaska we have involved faculty from the  
21 Maine Law School, from Boston College and from the  
22 University of Washington. I will introduce, as the whole  
23 panel will be before you in a minute, but let me introduce  
23 first, only Zigmund Plotter. Mr. Plotter has 21 years of  
25 experience teaching law. Twenty years ago he was in

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1 Ethiopia, or actually teaching law and helping to, and  
2 actually writing the national park regulations for  
3 Ethiopia. He also was involved in representing farmers,  
4 fishermen and conservationists, both before the Congress  
5 and the U.S. Supreme Court on the Teleco (ph) Dam issue,  
6 using the snail darter as a legal tool to help move the law  
7 forward. He's been on six law faculties, presently teaches  
8 for two law faculties, for Boston College and Harvard. So  
9 I'll introduce you to Mr. Zigmund Plotter.

10 PROFESSOR PLOTTER: Good morning.

11 MR. PARKER: Good morning.

12 PROFESSOR PLOTTER: Thank you for having us. We are  
13 very pleased that Sea Grant asked us to join them in this  
14 project and we're glad that you asked us to come this  
15 morning. Let me go in -- three points. First, introducing  
16 our people, second introducing our research proposals --  
17 no, second our history perhaps, and third our research  
18 proposals. Beside me here is a gentleman who is no  
19 stranger to Alaska. Many of you, I think, know him.  
20 Professor Ralph Johnson from the University of Washington  
21 Law School. I should say, of course, institutions are  
22 identified for purposes of identification not being  
23 represented by us here. Ralph has been on National  
23 Academies of Science committees. He wrote a series of law  
25 articles on the Public Trust Doctrine, which were used

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1 heavily by the California Supreme Court on the Mona (ph)  
2 Lake controversy, one of the major resource questions under  
3 the Public Trust Doctrine in the country. He's been chief  
4 consultant to the Senate Committee on Water Policy. He's  
5 written the book on American coastal zone law. I could on,  
6 obviously, for 20 minutes. I'm gonna go on for probably  
7 only three minutes more on this, but -- drafted the Alaska  
8 Water Code back in 1960, working with Professor Frank  
9 Trelease (ph). Was that correct?

10 PROFESSOR JOHNSON: He did it and I helped him.

11 MR. PLOTTER: Professor Johnson is modest, as you will  
12 see in other consequences as well. Chief consultant for  
13 the National Water Commission. He's done international  
14 studies with England, with the European community. German  
15 water pollution, England, Israel, Papo (ph) and New Guinea,  
16 and native-rights problems across the face of the U.S.  
17 including Alaska, consulting with the Alaska Native Rights  
18 Review Commission in '83 to '85, where I think he met Ms.  
19 Wunnicke for the first time.

20 MS. WUNNICKE: And he's an expert on international  
21 boundary (indiscernible).

22 MR. PLOTTER: Amongst many other things. We are very  
23 pleased to have Professor Johnson with us. Professor  
23 Allison Reezer is a professor at the University of Maine  
25 Law School, teaching in a variety of resource areas,

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1 coastal zone law, natural resources and such. She  
2 established the Marine Law Institute at that university  
3 nine or 10 years ago, and has worked extensively with state  
4 and regional agencies on law of the sea and water law kind  
5 of questions, coastal zone, fisheries and so forth. Was an  
6 attorney advisor for the National Oceanic and Atmospheric  
7 Administration. A fellow at Woods Hole Oceanographic  
8 Institute, not just law libraries but getting out on a  
9 boat, I think, and getting her feet wet. Will be a  
10 graduate fellow, research fellow, at Yale Law School next  
11 year. Not at Harvard as perhaps your chief Counsel  
12 would've wished, but the Yale program some of us know  
13 offers much better opportunities across-the-board. She  
14 writes in a variety of areas and has been an advisor to a  
15 number of governors and legislative commissions, as this  
16 one. Professor Harry Bater is to our far right. A  
17 professor at the University of Alaska, Fairbanks, in the  
18 Resource Management Program there this past year. He will  
19 be taking a year off, being at Eagle, and then also  
20 consulting with the Forest Service on the Tongass Forest  
21 management policy. Is scheduled teaching again at the  
22 University of Alaska, Fairbanks, teaching five courses in  
23 the environmental/natural resources law field. Has worked  
23 for the U.S. Department of Interior, Bureau of Land  
25 Management, before he went to Harvard Law School, where he

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1 in a very fine class of 105 or 110 people was one of the  
2 top three students I had. An extraordinary guy and Alaska  
3 is lucky to have him as I feel lucky to have three such  
4 fine colleagues. Professor Bater is working now on  
5 articles on the Alaskan Public Trust Doctrine, Alaskan  
6 subsistence law, and a variety of other things as well as  
7 running a trapline.

8 MR. PARKER: (Indiscernible - simultaneous talking)  
9 his technical advisor.

10 MR. PLOTTER: (Laughter) That's right. That's who we  
11 are. How did we come to be? Well, it happened as it so  
12 often does by accident. Professor Bater and Ron Dearborn  
13 were talking about the fact that everybody on the oil spill  
14 seemed to be focusing on retrospective remedies. And  
15 nobody was talking really clearly about the next spill.  
16 Prospective remedies. What the State of Alaska can do to  
17 try to prepare for -- as best it can -- for whatever might  
18 come in the future. And so they called us and we three  
19 happened to have interests in some ongoing work in  
20 prospective remedies, and you asked us to join you here.  
21 With that focus, completely really, the prospective  
22 approach, we've been doing only preliminary research,  
23 trying to define the projects that we and researchers under  
23 us will do and you are invited to help us define those  
25 jobs. In other words, we don't know exactly what line-up

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1 of projects we have. In fact I'll show you, we have a  
2 variety of different projects that have been started  
3 potentially but we want to make sure that they fit your  
4 needs because that's one way to make academic research  
5 actually amount to something.

6 What is the outline of that research? Well, let me  
7 say first, we had to look at your statute and figure out  
8 probably what the outline of your research, what your  
9 report ultimately would be. And the way we lined it up in  
10 our mind, just hypothetically, is that you will be doing  
11 probably four major functions. The first is looking -- or  
12 whatever the numbering order is -- the actual spill  
13 starting at four minutes after midnight on the 24th of  
14 March and its short-term consequences, both biological,  
15 ecological and in terms of government response and so  
16 forth. That's reportorial narrative, it's fact-finding.  
17 We have no relevant input on that. That's retrospective.

18 Number two, we suspect you will address, then, how the  
19 State of Alaska got to Bligh Reef at four minutes after  
20 midnight on 24th of March. And that, of course, is also  
21 descriptive and analytical. It will be making conclusions  
22 about the operations of terminals and tankers, I suppose,  
23 and also we have no direct relevance to that inquiry with  
23 the one small exception of Professor Reezer -- has a  
25 project which she's defined involving risk management that

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1       probably will review somewhat how the risk management  
2       decision was made in the past, but the definite focus is  
3       for risk management for the future. Risk assessment,  
4       excuse me.

5               And three, I suspect you will address not just the  
6       short-term consequences of the spill, but long-term  
7       consequences as best you can determine, and long-term  
8       conclusions, as a matter of policy, of how to prevent  
9       particular problems in loading the oil and transporting in  
10      ice conditions or whatever. We have virtually no direct  
11      relevance to that either. It's the fourth category, which  
12      is preventing future disasters. In other words, where  
13      you're gonna be looking for vehicles, for tools to put this  
14      third sort of policy recommendation and analysis into  
15      effect. We consider ourselves as lawyers -- I don't know  
16      how common this is, but we are the inferior members of  
17      whatever team we're on, just talking about defining legal  
18      authorities and legal vehicles to put into effect whatever  
19      you decide as a matter of policy and fact-finding you think  
20      is required. So now, we're at the tail-end and that is our  
21      function, I think, as we see it, which is to analyze your  
22      authority and the existence in the legal system of tools  
23      that you can propose. Some of them may be based on the  
23      Attorney General's complaint, which already opens up  
25      several avenues that we might help you discuss with the

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1 Attorney General, the Attorney General might wish to  
2 follow-up on. We're just saying these are options which  
3 you now have opened to you and this is the case law, this  
4 is the statutory interpretation that backs it up.

5 Let me introduce it just in broad terms and let Ralph  
6 begin. Our definition of tools falls also into three  
7 groups. Number one is having Alaska establish some ability  
8 to control its own destiny. A comprehensive oil transport  
9 regulatory monitoring system, which might involve also a  
10 continued quality assurance and cleanup capacity and  
11 compensation. That small, little item is Professor  
12 Johnson's focus. In other words, a statutory and a  
13 regulatory system that you can propose to the State of  
14 Alaska so that the next oil spill won't occur, or if it  
15 does occur can be controlled and mitigated. There are --  
16 in fact, maybe -- there are other topics that fit Professor  
17 Johnson's topic then in setting out the general system.  
18 Professor Reezer is an expert in intergovernmental  
19 authorities. Preemption. Can the Feds say to Alaska,  
20 thank you very much but we'll take over and just take over,  
21 preempt the State system. That will be Professor Reezer's  
22 primary focus and she'll have something to say about that.  
23 Multi-state efforts. Alaska might be able to mobilize  
23 other states to increase its power vis-a-vis the Federal  
25 Government in the event of preemption through interstate

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1 compacts or whatever, and Professor Bater has been doing  
2 some impressive, though short-term, research on that topic.

3 The next major area is judicial remedies. And those  
4 are the ones that I'm primarily involved with. Piggy-  
5 backing on the ongoing litigation. The lawsuit now is  
6 backward-looking toward what happened that night, but there  
7 are opportunities under the Attorney General's complaint,  
8 as they have suggested, to have equity remedies for the  
9 future, and I'll speak briefly about those. And the third  
10 area is a variety of other related inquiries. Professor  
11 Johnson is going to analyze the Federal responsive system  
12 and what problems you found with that. And what in terms  
13 of legal organization could be done to make the Federal  
14 response better. I think that it's useful to note the  
15 Native rights issues briefly, and Professor Johnson will be  
16 talking about that as well. You see, it's starting to  
17 sound like a real line-up of associated doctrines. The  
18 Public Trust Doctrine is clearly important. It's already  
19 been recognized in litigation, but we're thinking of it in  
20 prospective terms, and Professor Johnson's an expert on the  
21 Public Trust Doctrine. Risk assessment, is Professor  
22 Reezer's analysis and there are some important issues  
23 there. And I have two other inquiries. One is, there may  
23 be some things that you cannot do as a State that are  
25 Federal. But virtually no one uses a section of the

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1 Administrative Procedures Act which allows you to petition  
2 that the Coast Guard, for instance, shall pass a regulation  
3 requiring that ARPA that -- what is it, Automatic Radar  
4 Positioning Aid -- be used on all tankers in the Sound.  
5 You have the legal power under Federal law to petition and  
6 they must respond on the merit. So it's just a small  
7 research project for you, but it opens up a complete  
8 possibility of Federal remedies, and frankly, if the State  
9 of Alaska makes such a petition it's guaranteed to get  
10 hearings. It's guaranteed to get serious attention. So  
11 whatever you -- double-hulling of -- I have no idea what  
12 you're going to end up proposing but almost any such policy  
13 and technological recommendation can be passed to the Feds  
14 through 553E of the Title 5 of the U.S. code, and that's a  
15 project as well. All right. In a sense this is a shotgun  
16 approach, but in another sense, as you see, it all focuses  
17 on tools available to you and our first manager of your  
18 tool research is Professor Ralph Johnson.

19 PROFESSOR JOHNSON: Well, it's a pleasure to see Walt  
20 Parker and Esther Wunnicke again and my old friend Ed Wenk  
21 who -- we joined in research together 20 years ago or some  
22 such thing. And it seems to me the Commission and the  
23 State of Alaska now have an unusual opportunity to take the  
23 leadership in the Nation on the questions of control of oil  
25 spill possibilities or the oil industry as it poses risks

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1 to the environment, social values. And that this  
2 Commission has the opportunity to provide that leadership  
3 or guide it. I'd like to talk about ideas that come from  
4 five different states. I'm going to be very conceptual and  
5 not very detailed because we don't have the time for it  
6 today. But there are different ideas in each one of these  
7 states. I've selected the five because of the management  
8 competency they've shown of their own resources, and  
9 because of the influence they've been able to exercise on  
10 the Federal agencies within those states. Most of the  
11 other states have not exercised very much influence on the  
12 Federal agencies.

13 The first thing is the absolute need -- well, I guess  
14 the first thing is to recognize that when I talk about  
15 these other states I'm not suggesting that you can pick  
16 something up from there and put it here. Alaska is truly  
17 unique in all kinds of ways, from land, population, Native  
18 population, dominance of oil and so forth. But recognizing  
19 those, still the concepts, I think, may have some utility  
20 here. I guess the first thing one would say is that in  
21 each one of the five states you find a major commitment of  
22 resources, of budgetary resources to environmental and  
23 natural resources management. Alaska has the financial  
23 resources if they wish to exercise or put them where that  
25 need is. And that need must be met by creating competency.

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1 It doesn't sit well with the Federal agency that has 10 or  
2 15 experts in environmental engineering, scientific matters  
3 to come across somebody who says, well you guys aren't  
4 doing the right thing. It's got to be backed up by  
5 technical competence. And that is the one thing that comes  
6 through in all of these five states is applying budget to  
7 get the technical and scientific expertise to stand toe-  
8 to-toe with the Federal agency or large industries and meet  
9 them at a level that is impressive to them, is impressive,  
10 provides real leadership for the state. So that would be  
11 the first idea. Oregon. The five states incidentally are  
12 California, Oregon, Washington, North Carolina and Florida.  
13 Oregon has two ideas that would be useful to think about.  
14 One is they articulated in a most unusual way, 19 specific  
15 goals. Those 19 goals were designed -- were debated at  
16 great length, fought over, and finally agreed upon by the  
17 population of the state, and they are so clear that they  
18 have an impact upon everybody who wants to do something.  
19 A Federal agency will move into a vacuum like everybody  
20 else does. And if they find that the policy of the State  
21 of Alaska is not clearly articulated, they're gonna move  
22 in. So the 19 goals in Oregon are recognized by the  
23 experts in this field as being an unusual way of expressing  
23 just exactly what they want to do and what they want to  
25 have done. And that has an impact upon the Federal

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1 agencies. Oregon also has state-wide land-use planning.  
2 Oregon and Hawaii are the two states in the Nation that  
3 have state-wide land-use planning. It's another idea.  
4 They also plan for Federal lands. I mean, whether you can  
5 control the Federal land, but at least it is a clear  
6 expression of the state's ideas about what should happen to  
7 that land. It is an influence. Otherwise, if there's no  
8 plan, the Feds will do whatever they want because they  
9 don't know what you want.

10 Moving to Florida. Florida is most distinguished  
11 because of the impact the Florida government has had on OCS  
12 development. That is not in the direct mandate of this  
13 Commission but certainly is included with that. That is  
14 the potential for disaster or harm to the environment from  
15 Outer Continental Shelf oil and gas drilling and  
16 development. And Florida has created a permanent task  
17 force that is advisory directly to the governor. They've  
18 split the two functions. One is general coastal zone  
19 management, which is within a department, and the OCS  
20 development, which is a highly Federalized problem poses  
21 very special problems of political power, and that is now  
22 controlled by the governor with the aid of a permanent task  
23 force as the governor's expert advisors. They are  
23 particularly concerned about the Everglades, and like  
25 Bristol Bay some very special places.

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1 North Carolina has created a coastal resources  
2 commission. And the major increment of this, the major  
3 idea that has been effective is the participation by local  
4 citizenry. I don't mean state officials, I mean local  
5 citizenry. And I'll talk a good deal about that more in a  
6 few minutes. But they have a 15-citizen panel. They're  
7 nominated by local government and appointed by the  
8 governor. But that 15-citizen panel administers their  
9 coastal zone management act, and also is the -- is sort of  
10 a policeman for Federal agencies that are operating in the  
11 area.

12 Going to California, a similar idea in California but  
13 differently constructed for California's special problems,  
14 is a series of joint review panels. When a Federal project  
15 is about to occur in California, an ad hoc joint review  
16 panel will be created made up of Federal, state and local  
17 officials. A lot of times people forget that the local  
18 people, in fact, are the most important people that should  
19 be here. I just take a minute to comment about that, and  
20 it's a thread that should run throughout all of my  
21 comments. And that is, as a permanent institutional system  
22 it's essential to involve the people who have a permanent  
23 interest in their environment. And those people are not  
23 the state officials in Juneau or Anchorage or somewhere  
25 else, and they're not somebody in the Coast Guard who lives

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1 somewhere else. The people who's blood and guts are about  
2 to be spilled are the people in Cordova and Valdez, and if  
3 you have those people on a watchdog group of some sort, it  
4 cuts through all kinds of things. I mean, they should be  
5 not just advisors, not allowed to testify at hearings, but  
6 in the decision process. And I have some suggestions about  
7 that. But there is a sense of -- in the National Academy  
8 Panel, in which we've been going around the country  
9 listening to people, local people -- the common cry is,  
10 well we go up and we testify before the panel and the  
11 hearing board and nothing happens. And the way to make it  
12 happen is somehow involve them in a legally powerful  
13 structured way. And that, as I say, is the way that the  
14 California joint review panels operate, and the North  
15 Carolina Coastal Resources Commission. Although they're  
16 each quite unique and applicable to their special state  
17 problems. But there a permanent constituency. The local  
18 people become a permanent constituency. So, in general,  
19 ideas that we would explore here would be local  
20 participation of California, North Carolina, state/Federal  
21 relationships and involving not only an advisory panel but  
22 some panel with power that is represented both by state and  
23 Federal people. A clarification of goals, such as has  
23 happened in Oregon. And then the possibility of having the  
25 governor with a separate task force staff, as in Florida,

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1 on Outer Continental Shelf oil and gas questions. I was  
2 pleased to hear that Rick Steiner (ph) and others in the  
3 Cordova area are in the process now of creating a series of  
4 three advisory commissions involving Federal, state and  
5 local industry people. And I think that's excellent. I  
6 have a couple of ideas that I think should be thought about  
7 for how that would be strengthened. I dislike the idea of  
8 just advisory panels. I think they should have some legal  
9 clout, and without that, why then advisory panels tend to  
10 be excited for a year or two and then the excitement goes  
11 away and they're less effective.

12 A second thing that -- moving to a different topic.  
13 What we would consider studying is a program of emergency  
14 compensation program. Or program of emergency  
15 compensation. If a disaster such as the Exxon Valdez spill  
16 should occur again, it would be a useful idea to have some  
17 pool of funds developed over time out of a small levy on  
18 oil or the oil transportation or development, and have that  
19 available so that the State could respond quickly to the  
20 needs of fishermen or others who are impacted by that  
21 emergency. There is a Federal Disaster Relief Program, but  
22 we all know that it's hard to get classified just right  
23 under it, and it's very difficult to get the money. And  
23 the State should look out for its own citizens and have  
25 some sort of a disaster relief program or emergency

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1 compensation program. It might be designed with a trust  
2 account which, if never used, would return to the oil  
3 companies. There's no reason why the money should not be  
4 returned, or the interest. If you decide how much money  
5 you need then return the interest to the oil companies as  
6 a possibility. But we're exploring different ideas in that  
7 regard.

8 Lastly, a study that we might participate in. Others  
9 are equally doing the same thing, but I'm sure there are -  
10 - it's like describing a camel. It can be described from  
11 many sides and I think we might have another side to look  
12 at. Why did the Federal response fail so badly. Well one  
13 can talk about lack of State/Federal/local cooperation,  
14 coordination. You can talk about major national issues,  
15 but again I come back to one fundamental solution to me,  
16 and that is you find the constituency, which is the local  
17 people, the environmentalists, the fishermen, the people  
18 who live there, and you put them into the process and then  
19 you don't have to worry about institutional structure.  
20 Then they're gonna look out for their own interests. They  
21 can't be co-opted by the oil companies or by the State or  
22 anybody else because they have different interests. And  
23 that interest would remain. But we could look at why the  
23 Coast Guard sat on its hands or became less aggressive than  
25 should be necessary. Why the budget was cut so much --

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1 Federal budget. And look at questions of quality control,  
2 loss prevention, how this could be prevented in the future.  
3 Well, these are some of the ideas that we're thinking about  
4 and we will all be grateful if we can hear either  
5 officially or unofficially from you as to the emphasis that  
6 could be put on these research project. Thank you very  
7 much.

8 (Applause)

9 MR. PLOTTER: Thank you. Professor Reezer's research  
10 on the relationship between the Federal and the state  
11 governments obviously ties in very nicely at this point.

12 PROFESSOR REEZER: Thank you very much. I am very  
13 grateful for the opportunity to meet with you, learn more  
14 about what the Oil Spill Commission is doing, and  
15 appreciate your giving us this time on your agenda to hear  
16 us interlopers. We have a number of ideas. I think the  
17 question of things we'd like to do, the question is, what  
18 is most relevant to what your going to be doing and what  
19 you would like us to look into. As Ralph has identified,  
20 there are lots of aspects of the problem that can be  
21 addressed through design of a new comprehensive system  
22 exercising the full extent of state authority to prevent  
23 the reoccurrence of this kind of event. And what I'm  
23 interested in doing if it fits in, and I think it does, is  
25 to do a supporting analysis of the extent of the State's

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1 legal authority to really redefine a program to prevent  
2 such occurrences. And then to respond if all the  
3 preventive measures are -- turn out to be ineffective.  
4 This would involve a thorough examination of the scope of  
5 the State's legal authority, and it includes a discussion  
6 an evaluation of what is the nature or the basis for a  
7 state's authority. And working in conjunction with Ralph,  
8 examining, in this context, the prevention of catastrophic  
9 events such as the Exxon Valdez spill. The authority of  
10 the State under a number of legal theories, including the  
11 Public Trust Doctrine, state sovereignty, the relationship  
12 that the State maintains to its coastal and natural  
13 resources. And the relationship of State legal authority  
14 under these principles, to Federal legal power. And this  
15 is the question of Federal preemption. If the State  
16 defines a new system, taking the -- really promoting,  
17 advancing the art of resource protection and management -  
18 - is it going to be stymied by the existence of Federal law  
19 under the Clean Water Act principally and other authorities  
20 that give various Federal agencies the power to intervene  
21 and respond to events such as the oil spill. Does the  
22 existence of a Federal scheme of regulation to prevent and  
23 then response to contain in any way limit the range of  
23 actions that the State of Alaska, or Alaska perhaps acting  
25 in conjunction with other states on an interstate basis,

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1 that they can take. For example, does the authority of the  
2 Federal government to Federalize an oil spill take over the  
3 response and cleanup operations, does that preclude the  
4 ability of the State of Alaska, for example, to Alaskanize  
5 the spill and to take charge and really dictate what  
6 happens, when, how fast and by whom. Now there is no  
7 finite definition of what is the extent of State authority  
8 in the scheme of Federal regulation. There's no clear-cut  
9 answer on what is preempted by Federal law and what is  
10 allowed. Because of -- I mean, there's no absolute  
11 definition of a limit of State authority, because most of  
12 this preemption it's not a matter of Constitutional  
13 authority, it's a matter of statutory occupation of a  
14 particular field of regulation or area of action. And  
15 statutes -- Federal statutes can be interpreted, they're  
16 not always crystal-clear, and they also can be amended.  
17 And my feeling is that to the extent that there exists now  
18 under existing Federal law, some constriction on the  
19 ability of the room for the State to move in creating an  
20 oil spill prevention and response system, then those laws  
21 can be amended and the time has never been better for  
22 amendment and clarification of Federal law to make room, if  
23 necessary, for full range of State activities. And I also  
23 think that the time is excellent, better than ever before,  
25 because of the unfortunate developments and the limitations

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1       that have been revealed in the existing Federal legal  
2       system an operations under it, for court interpretations in  
3       favor of full exercise of state authority. All courts that  
4       have looked at the relationship of state legal authority to  
5       Federal authority under the Clean Water Act, for example,  
6       have said the Congress intended there to be concurrent  
7       jurisdiction, shared responsibility, the full exercise of  
8       State authority with only a very limited constriction on  
9       state ability to influence in the area of tanker design and  
10      manning standards. There -- I think that that could be --  
11      -- that understanding of the shared responsibility could be  
12      changed through amendments, through judicial  
13      interpretations, and if there still are remaining some  
14      limitations on what Alaska could implement once designed --  
15      -- having designed a comprehensive system -- then we can use  
16      the mechanism that Professor Plotter referred to is  
17      petitioning the Coast Guard to exercise its sole and  
18      exclusive authority to regulate tanker design standards.  
19      So I think that the field is wide open and we are not  
20      saddled with any static definition of limited state  
21      authority. But I think, in this context, it would be  
22      worthwhile to examine it and fully explore the extent of  
23      state authority in light of a concrete program, new program  
23      to implement revised state statutes and procedures for  
25      coordination both in the prevention of spills through

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1 regulation of activities -- oversight to insure that  
2 regulatory standards are being complied with, and then  
3 managing the response and compensation system.

4 The other aspect of the intergovernmental relations  
5 question that I would like to look into, and I think it's -  
6 - there's a very good opportunity presented by current  
7 developments, is what new relationship will emerge out of  
8 this event among the various Federal agencies and state  
9 agencies. I think we have a new relationship that's being  
10 established through the trustee council. The coordinated  
11 exercise by all Federal agencies that have been designated  
12 by Federal law as having a public trust or a trustee  
13 responsibility over natural resources. And the State of  
14 Alaska, that also has trustee responsibilities. Through  
15 the operation of the damage assessment system, which is one  
16 particular function, can we establish and expand upon that  
17 relationship that is created in order to accomplish that  
18 one end -- the damage assessment -- into an ongoing  
19 management and coordinated regulation and oversight  
20 relationship. Instead of going home after the damage  
21 assessment is completed, which, I'm not sure when --  
22 whether that will be done in short- order or long-term --  
23 but to continue to work together as co-trustees and to  
23 redefine our -- the legal authority of these agencies and  
25 management responsibilities in light of that relationship.

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1 And I think that to talk in those terms and to put any of  
2 our proposals for a comprehensive new system, it would  
3 include a specification of the relationship that the State  
4 would expect to have with the Federal agencies who have  
5 ongoing responsibilities under this trusteeship -- co-  
6 trusteeship relationship. This would involve a further  
7 investigation of what are the relationship of the -- that  
8 the individual states have to Federal power, but also the  
9 coordination that other states that are affected by the  
10 transportation of oil might have. And I think that's  
11 probably a good point to turn to Professor Bater, who has  
12 a number of specific ideas for research in that area.

13 PROFESSOR BATER: It seems that oftentimes a lot of  
14 unexpected tools can be pretty effective. And I've learned  
15 that already this morning. Just a few moments before we  
16 got up here Walt Parker may've changed the way I was going  
17 to do things for the next year by informing me that the  
18 pole set is simply a bad idea for harvesting marten. And  
19 the Interstate Compact Clause, the Constitution, is just  
20 one such tool that can have an incredible impact in  
21 allowing the State of Alaska to do through Compact, that  
22 which the State would not be able to do unilaterally. A  
23 compact is Federal law once consented to by the Congress.  
23 And the authority of an interstate compact commission has  
25 the authority to set and establish regulations which a

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1 state singularly acting on its own, simply would be  
2 prevented from doing by such things as the Interstate  
3 Commerce Clause of the Constitution as well. Now a compact  
4 is not an interstate agreement. And that's one of the  
5 things that's very important. And that's why it requires  
6 Federal consent. Because an interstate agreement can have  
7 -- be an agreement between states in which they operate on  
8 a number of issues, but an interstate compact by  
9 definition, necessarily changes the sphere of operation in  
10 that the political power of the state is expanded at the  
11 expense of the Federal Government. The Federal Government,  
12 in effect, has vacated, in part, an area. And that is why  
13 the Constitution requires Congressional consent. But  
14 there's procedure and -- as well as intent that has to go  
15 into fashioning an interstate compact. It cannot be done  
16 haphazardly, but it offers an immense number of  
17 opportunities for Alaska to seize the lead, to finely tune  
18 solutions to the unique problems that Alaska faces, as well  
19 as its sister Pacific states, and to get accountability  
20 through it's compact, which in many ways, would be  
21 unattainable under the Federal Government. Because Federal  
22 Government has a lot of interests. And under a compact  
23 that can be narrowly fashioned and narrowly tailored to the  
23 immediate needs at hand. It is reciprocal and binding upon  
25 states once they enter a compact. And that's one of the

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1 issues that you have to consider. All the state  
2 legislatures in a compact have to pass reciprocal  
3 legislation, the governors have to participate in the  
4 appointment of members. But to just give you a quick  
5 rundown of some of the advantages of an interstate compact,  
6 if it's a tool that folks may find useful, is that one --  
7 number one aspect is that it increases the responsiveness  
8 to community needs and interests. It does this because you  
9 have the community interacting directly with the compact,  
10 which is necessarily a smaller entity with less peripheral  
11 interests than a Federal agency, which is broadly applied  
12 across the country.

13 It also enhances state control over issues which  
14 involve Alaska as well as the sister states. In a compact,  
15 if it's with the four Pacific Coast states, the  
16 representatives of Alaska in the compact become one out of  
17 four, rather than three out of 535. That makes a big  
18 difference in the ability of the State to assert its own  
19 interests over areas which control it -- or that interest  
20 it. There's also the enhanced oversight to reduce  
21 complacency. Looking through the Skinner-Riley Report,  
22 it's ripe with complacency. People say, oh, there's six  
23 contingency plans, we're here, there's agencies, well who's  
23 overseeing who. There's interests -- there are four states  
25 that have interest in it. The fisheries is a paramount

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1 interest to Washington as well as to Alaska. If, you know,  
2 if Washington, for example, wonders if Alaska is really  
3 watching out, it can, through the compact, investigate and  
4 ask. Alaska can do the same, as well as through  
5 transportation. It increases the opportunity for  
6 oversight. Principally because of that reduction of  
7 peripheral interests and the focusing upon a particular  
8 issue of need. By virtue of the fact that Congress merely  
9 has consent power to say yes or no to a compact, it cannot  
10 meddle or change the infrastructure of the compact. Again,  
11 that reduces the infrastructure of peripheral interests  
12 impacting the issues. Senators from Louisiana will not be  
13 pressured by a particular industry in the same manner if it  
14 does not affect Louisiana, if he or she says yes or no to  
15 a regulation that's occurring in the Gulf of Alaska or off  
16 the B.C. coast. By the way, compacts can involve Canadian  
17 provinces as well as the Northeast Fire Control compact  
18 does with Quebec. And that offers an opportunity to extend  
19 a regulation along the entire Pacific Coast. Which breeds  
20 another advantage. And that is the continuity of regional  
21 regulation. You will not have economic forum shopping  
22 among industry if you have a continuous regulatory scheme  
23 that monitors the entire Pacific Coast in the transshipment  
23 of oil. You also have the advantage of the aggregation of  
25 resources among four states and perhaps a province. You

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1 have the opportunity to aggregate technical expertise,  
2 material, financial resources and academic resources. To  
3 pool, to focus on a particular issue. And to identify  
4 those issues. And again, it's just the advantage of  
5 narrowly tailoring not only a solution that perhaps is  
6 effective, but one that is supreme. There's a variety of  
7 such things that have occurred in the past. There are many  
8 compacts in existence now that the various states can look  
9 to to see what works, what doesn't work, what Congress  
10 consents to, what it doesn't consent to. And there are  
11 limits. A compact is not a free-for-all escape from  
12 Federal regulatory control. It's not the panacea to a  
13 state's rights argument. But it does increase the  
14 leverage. It does increase the sovereignty of the state to  
15 exert influence over its own affairs. And it offers many  
16 opportunities if it can be a tool that the state can  
17 fashion to achieve its own ends.

18 PROFESSOR PLOTTER: We're getting close to the end of  
19 the line-up, but let me identify that this is the major  
20 focus, probably. The design of a statutory and regulatory  
21 system of control for the state. Let me just say that I'm  
22 now moving into one or two other areas. The State of  
23 Alaska and this Commission want to get the most bang for  
23 their buck. And it certainly is going to take a lot of  
25 time and thought to set up the system that we're talking

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1 about, especially if it involves what I think is a very  
2 exciting element, the possibility of the interstate compact  
3 to share some of the burdens and gain some of the powers  
4 that Professor Bater talked about. The legislative process  
5 is one you know best here as far as Alaska's concerned. I  
6 have to say that trusting the Federal Congress to do the  
7 right thing is not necessarily the best way to get the  
8 biggest bang for your buck. So when I talked about the  
9 rule-making petition -- we shouldn't even call it petition.  
10 It is a demand for official consideration of proposed text  
11 of a rule. That's a way -- it's almost a freebie, because  
12 you write it, you send it, and they must consider it. And  
13 it's been my experience in practice from the very  
14 beginning, that the person who actually proposes the words  
15 of the text often ends up shaping the actual product which  
16 will come out of the other end of the pipeline. So that  
17 there is that administrative avenue as well. The final of  
18 the triad is judicial, of course. And it seems to me there  
19 too, it's another way of getting a bigger bang for the  
20 State's buck. We know that there's litigation ongoing.  
21 That it's retrospective looking back at this spill. But  
22 the equity jurisdiction of the court, which the State's  
23 complaint mentions and which obviously is an important part  
23 of Federal and state court jurisdictions, allows this  
25 opportunity to take specific recommendations for corporate

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1       action that you might propose -- that the State might well  
2       propose, in fact, this section of our proposal is equally  
3       well directed to the State as a whole and we'd be pleased  
4       to supply our analysis of judicial remedies. Corporate  
5       conduct injunctions. That is to say, how a corporation  
6       makes a decision on, for instance, how many people can  
7       safely, what minimum number of people can safely be used on  
8       a tanker. That's the kind of thing that in a short-term a  
9       court can do with a wave of a pen. And it also may be much  
10      tougher to preempt than a state statute saying exactly the  
11      same thing. So the judicial remedy allows a broader scope  
12      as against the Federal preemption doctrine, and it's also  
13      a bird-in-the-hand if you wish to use it. Inviting the  
14      court not to dismiss at the end of the case, but continue  
15      jurisdiction so that next year the court would hold a  
16      hearing to see how the process has worked under the final  
17      quarter for whenever that court order finally is issued.  
18      And we'll keep it going in terms of jurisdiction. In fact,  
19      the State might even ask the equity court to appoint a  
20      continuing master to report to it like a trustee in a  
21      testamentary trust. Every year, how are they doing in  
22      terms of staffing, have there been incidents in spilling  
23      in offloading and so forth. And they're available at the  
23      stroke of a judge's pen. So it seemed to us that those  
25      were worth reviewing in terms of their potential

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1 availability to the State.

2 Let me say that then we have our other related  
3 inquiries, this third section of -- I've already spoken  
4 briefly about the rule-making. If at the end of another  
5 fifteen minutes we want to talk further, I can talk about  
6 Freedom of Information Act issues. Apparently, some  
7 Federal agencies have been reluctant to release data to the  
8 State. And under Federal law it's worth reviewing whether  
9 indeed there's a statutory right for the State to get that  
10 information under the Freedom of Information Act. That is  
11 one further grab-bag issue that I could address if you  
12 wish. An emergency mobilization system. In the event of  
13 a calamity, past experience has shown that often one party,  
14 typically an industry, can rush in with a lot of money cash  
15 in hand and lock up the hotels, the cars, the trucks, the  
16 boats, the phone systems, the radio systems, so that the  
17 government comes in as a poor cousin petitioner trying to  
18 find resources for the governmental, the public's own  
19 cleanup efforts. It is possible that it would be  
20 interesting to you to analyze the authority of the State of  
21 Alaska to set up an emergency mobilization which would get  
22 around the lock-up. Allow the State to come in and say,  
23 for the following short-term, it doesn't matter whether  
23 this has been contracted to a various private party, the  
25 State has the right to take priority use of certain

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1 resources. And if you wish we could address that too, and  
2 I could address it at somewhat greater length. But let's  
3 go to our final grab-bag issues. Professor Johnson has  
4 already discussed the Federal decision-making analysis as  
5 opposed to the state system. So why don't you, Ralph, talk  
6 briefly about the Public Trust Doctrine and then briefly,  
7 if you wish, about Native rights issues as they might be  
8 helpful to the State.

9 PROFESSOR JOHNSON: Well, the Public Trust Doctrine is  
10 one of those mysterious doctrines that is hard to get ahold  
11 of. You think you've got it, you grab hold and then it's  
12 somewhere else. But the fact is it has been increasingly  
13 important in resource management in the Western United  
14 States over the past -- well, throughout the United States,  
15 but especially in the West -- over the past 15 years. And  
16 the State of Alaska Supreme Court in the (indiscernible)  
17 case and CWC Fisheries in 1988 adopted the doctrine,  
18 expressed it. There have been -- the State of Washington  
19 did the same thing, Idaho did, North Dakota, a radical  
20 industrial state -- adopted the doctrine, in fact a large  
21 appropriator of water applied for an appropriation of water  
22 rights in the State, and was told that -- by the court --  
23 that he could not have the permit until the State developed  
23 a statewide planning program for all the water of the  
25 state. It wasn't appropriate any more to just say, well,

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1 ad hoc you get water, you get water. The state had to  
2 develop a major statewide program. It's been used in the  
3 Mona Lake case in California in 1982 to stop, or threaten  
4 to stop, the diversion of water from non-navigable streams  
5 that fed Mona Lake. And Los Angeles was taking water out  
6 of these streams and taking it to Los Angeles, several  
7 hundred miles away, for municipal and industrial use. And  
8 the court said no, you can't do that. And it said  
9 furthermore that the fact that water permits --  
10 appropriation permits -- had been issued as early as 1940,  
11 made no difference because the Public Trust Doctrine is  
12 like an easement. It's been lying there all the time. It  
13 hasn't been called on by the courts, but it's there. And  
14 in short, the Public Trust means that the public has a  
15 permanent, almost inalienable, right to navigation,  
16 commerce and fisheries. And the courts have explained that  
17 if you're talking about fisheries you're talking about  
18 water quality. The use by -- or the accidental oil spill  
19 by Exxon, or the Exxon Valdez, was very possibly a  
20 violation of the Public Trust Doctrine. Whether the Alaska  
21 court will precisely go in that direction I would not want  
22 to predict, but it is clear that the Western courts are  
23 going in that direction. They're talking about the Public  
23 Trust Doctrine as being something that overrides the state  
25 permit system for water pollution. It stands as a hovering

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1       presence to be called upon when the state statute or Federal  
2       statutes are not abundantly clear. Now that's sort of the  
3       litigation side of the Public Trust Doctrine. There's  
4       another nice example of the use of the doctrine in the  
5       State of Washington, two years ago -- well, the general  
6       statement is this, that the Public Trust Doctrine applies  
7       to support legislation. It applies to support regulation.  
8       So in California, for example, after the Supreme Court of  
9       that state announced the application of the Doctrine, the  
10      State water board picked up and said to all permittees, now  
11      we are going to review your permit to appropriate and take  
12      water out of a stream, under the Public Trust Doctrine. We  
13      are now concerned about fisheries, recreation, water  
14      quality, ecological values, and even though you have  
15      permits, those permits are subject, and were always  
16      subject, to the Public Trust Doctrine. And it allows them  
17      to modify the permit, to require more efficient use of the  
18      water, cut water back, require irrigation at night. It was  
19      just a powerful tool and it depends upon what direction you  
20      want to go as to whether it might be used. Just one last  
21      thing. In Washington this last -- as I said, in 1988 --  
22      the Orion case, is one in which the issue was like this.  
23      The company/developer owned a tide flat -- tideland. And  
23      under past law wanted to develop that area. Got state  
25      permits -- or was denied the state permit, I'm sorry --

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1 under the Shoreline Management Act. Came in and said,  
2 well, you can't stop me from developing because if you do  
3 you're taking my land. He was only permitted under the  
4 state permit system to use the land as a wetland, as a tide  
5 flat. And he could look at birds and shoot ducks, but  
6 could not fill anything, could not build it, could not use  
7 it for industrial, for restaurant, housing, or anything  
8 else. He said, you can't do that, that takes my land. The  
9 court said there are two reasons why that's not true. He  
10 said the first and important reason is the Public Trust  
11 Doctrine. It was always subject to the Public Trust, and  
12 you never had a right to build on it. If the state let you  
13 build on it that's another matter, but we could always say  
14 no and don't have to pay you compensation. There is no  
15 constitutional issue involved because our easement was  
16 there before you ever thought you had a right to it.  
17 Secondly, they said anyway the regulation did not go too  
18 far. But the public trust analysis was about three pages -  
19 - it just wipes it out. The analysis of the issue of to  
20 whether the regulation was too excessive took about 25  
21 pages of convoluted reasoning. So it is a powerful tool,  
22 it is a potential tool in the State of Alaska, both as a  
23 basis for legislation, regulation and as a basis for  
23 litigation.

25 PROFESSOR PLOTTER: Native rights, as well.

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1           PROFESSOR JOHNSON:   The question of Native rights  
2       needs to be considered in all of these actions because 17%  
3       of the population of the State is Native Americans and some  
4       44,000,000 acres or potential 44,000,000 acres of land are  
5       in a Native corporate ownership. And there are also Native  
6       rights, for example, the Ninth Circuit has recently held  
7       that the Native villages may have aboriginal rights to fish  
8       on the Outer Continental Shelf that were not eliminated  
9       either by ANILTHA (ph) or by the Alaska Native Claims  
10      Settlement Act. So those aboriginal rights may still exist  
11      and have an impact upon Outer Continental Shelf oil and gas  
12      development. It is also true that the Native people have  
13      a very keen interest in -- in Bristol Bay, for example,  
14      where oil spill could be a disaster to villages like Togiak  
15      and Aleknagik and other villages there. So that there is  
16      very clear Native concern, and what I would try and do  
17      would be to identify those concerns, identify the ways in  
18      which those concerns might be expressed -- coordinated with  
19      State, local concerns otherwise. The subject is complex  
20      enough that I don't think I can describe more than the  
21      generality at the moment.

22           PROFESSOR PLOTTER:   Thanks.   Professor Reezer, risk  
23      assessment.

23           PROFESSOR REEZER:   This aspect of our proposal would  
25      really -- I guess it's the one part, as Professor Plotter

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1 has said, that sort of looks backwards. What I'm  
2 interested in doing is looking at the record of decision-  
3 making about the Trans-Alaskan Pipeline and the decision to  
4 complete the oil transport process through the use of  
5 tankers from the Port of Valdez. And compare how that  
6 decision was reached to the extent that that's apparent in  
7 the materials that I would look at, and with the way that  
8 decision might be taken in 1990 for -- as a reference  
9 point. If the full -- if it had been fully considered or  
10 would be fully considered under our current definition of  
11 what it is required to do under the National Environmental  
12 Policy Act. If a full investigation of the alternatives  
13 and evaluation of worst-case scenarios and the full  
14 application of the current standards as the courts have  
15 defined them and agencies follow them under NEPA to make  
16 such a decision. It's I think a -- certainly would be an  
17 interesting opportunity to assess the current state of NEPA  
18 law, but also might shed some light on -- for future  
19 decision-making with respect to the Pipeline and our other  
20 large-scale projects like that. And would provide a basis  
21 for our evaluation of some of the other intergovernmental  
22 and other aspects of the decision. So the risk assessment  
23 portion would be looking at how risks were assessed and  
23 decisions to define an acceptable level of risk were made  
25 in the early Seventies, and how they might be made in the

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1 early Nineties with the increases and improvements in risk  
2 assessment methodology and the definition of standards and  
3 procedures for making those risk determinations under NEPA  
4 and other environmental laws.

5 PROFESSOR PLOTTER: Thank you. Let me just finish by  
6 -- before we get to your questions of us, and please be  
7 free about that -- by saying that in each case Sea Grant  
8 has very generously given us sufficient support so that  
9 each of us will be the principal investigator but there  
10 will be a number of other legal researchers who do work and  
11 help collect data, so that you shouldn't be shy to ask us  
12 to expand or redirect some of those inquiries, yet if  
13 they're useful to you the Sea Grant has very generously -  
14 - I mean it doesn't have a huge amount of resources -- but  
15 has given us enough so that we're able to do so. And let  
16 me finish by saying that I've already referred to the other  
17 projects that I -- the Freedom of Information Act question  
18 was Federal information. We've often found that  
19 information is more valuable than cash. And how can you  
20 get information from an office that -- that's why we're  
21 academics, right? Information is more valuable than cash.  
22 The final one is this emergency mobilization system,  
23 avoiding the lock-up of resources necessary to the  
23 government in an emergency, by a private party. I think  
25 you can see what that means and you can see what that

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1 inquiry would be. So our presentation has had first of all  
2 this highly labor-intensive, government-intensive,  
3 statutory/regulatory system for the State of Alaska to try  
4 to manage its own destiny in terms of oil transport and the  
5 associated inquiries that Ralph has introduced to you,  
6 supported by the compact theory, preemption questions and  
7 so forth. Then as much smaller categories, potential,  
8 administrative agency/Federal remedies, the freebies, maybe  
9 -- low-energy, easy, big bang for the buck -- and judicial  
10 remedies. And then the variety of background doctrines and  
11 concepts. You have a lot to try to organize for us, if you  
12 would, or to respond to. So please do so. We are your  
13 servants.

14 MR. PARKER: Well, thank you very much Zig. I want to  
15 thank Ron Dearborn and Sea Grant for sponsoring this  
16 project. I wanta especially thank Harry Bater for making  
17 it known to me early-on in the process. And to thank all  
18 of you for putting it together. I was especially -- you  
19 had put such feast before us. I was especially taken with  
20 Allison Reezer's last comments on how we viewed it in the  
21 early Seventies versus the early Nineties and reviewing the  
22 TAPS, our council, of course, is principal author of the  
23 State's input to TAPS and as -- and I would sew up a lot of  
23 things that are hanging on my own agenda, both in  
25 relationship to that and relationship to our efforts to get

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1 around Federal preemption with Senate Bill 406 and the --  
2 why our efforts at that time failed in comparing them to  
3 now would be of tremendous value certainly to me. The --  
4 so -- who's first?

5 MS. WUNNICKE: Mr. Chairman.

6 MR. PARKER: Tim?

7 MS. WUNNICKE: Oh, go ahead Tim.

8 MR. WALLIS: What do you think about -- should the  
9 spiller be responsible for the cleanup?

10 PROFESSOR PLOTTER: The easiest way I think for us to  
11 answer that, is to say that's your decision, we are just  
12 technicians to help you put into effect your decision. We  
13 could, of course, give you a great number of analogies and  
14 cases where responsibility attaches to the person who is  
15 directly and comprehensively involved with something. But  
16 do you see, we really should not characterize ourselves as  
17 making any policy recommendations. We suspect that that  
18 discussion will continue in this Commission. Is that a  
19 fair response on that one?

20 MR. PARKER: Yeah.

21 MS. WUNNICKE: Good answer.

22 MR. WALLIS: It's a cop-out.

23 (Laughter)

23 MR. PARKER: Esther. Go ahead.

25 MS. WUNNICKE: As someone who for many years has tried

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1 to keep policy separate from the law, that's a very good  
2 answer. Mr. Chairman, this is the most exciting hour and  
3 15 minutes we've had in this whole Commission. But  
4 obviously because your singing my song. I have a lot of  
5 questions and a lot of comments that I won't take the time  
6 of the full Commission to ask, but getting to Ralph  
7 Johnson's initial comments with respect to budgetary  
8 resources and all, I think that the problem most often  
9 found there in dealing with funding -- environmental  
10 agencies and then funding natural resource agencies,  
11 particularly in Alaska, is building a constituency for the  
12 funding of those agencies. And that's particularly hard to  
13 do in multiple resource agencies, as I speak from some  
14 experience. I do have a question with respect to whether -  
15 - what comments you might have with respect to the  
16 proposals by Senator Murkowski in his legislation in terms  
17 of local involvement. I think he took his example from the  
18 experience off of Scotland.

19 PROFESSOR JOHNSON: Of Senate 686?

20 MS. WUNNICKE: Yes.

21 PROFESSOR JOHNSON: I am not intimately familiar with  
22 that proposal that it's now evolved. I haven't been able  
23 to keep -- that's the one thing I'll be doing very quickly  
23 is to try and find out where it is and what form it's in.  
25 But a couple of things that strike me -- if they're not in

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1 the bill it would be nice to have 'em there. That would  
2 be, one, that if you had a joint -- let's take a  
3 commission, and advisory, or whatever you want to call it,  
4 commission made up of a Cordova Fishermen's Union member,  
5 a environmentalist from Valdez, an Exxon or Alyeska  
6 representative, a Coast Guard representative, EPA  
7 representative, and a State Department of Conservation  
8 Development representative, some thing like that. That  
9 body could be given powers of investigation, subpoena  
10 powers for witnesses, subpoena powers for documents. Those  
11 are not grand, powerful things but they're enough to make  
12 it more than just a showcase. Then even beyond that it  
13 could be given power, for example, to come to a conclusion  
14 and issue and order which would be not binding, and let's  
15 say for 90 days. And in that 90 days the agency involved  
16 could respond in writing to the their order, whatever it  
17 was. If they responded in writing and it becomes a public  
18 matter then the order does not go into effect. But that  
19 means that they have a voice -- it doesn't stop the  
20 machinery but at least it means that they have a serious  
21 voice in the process. Now, whether the Senate 686 has  
22 something like that now, I don't know. I don't think it's  
23 appropriate to give the local -- this kind of an entity the  
23 power to make just the ultimate decision. Those are  
25 national decisions, but certainly it's enough to make them

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1 stumble over a stone until they prove that they've  
2 considered seriously the local interest. So I'd like to be  
3 able to get ahold of 686 in its present form.

4 MS. WUNNICKE: That would be very helpful. One of the  
5 things I think that I've concluded, at least speaking for  
6 myself, was that the whole question of legal liability  
7 really thwarted an effective response to this spill and I'm  
8 assuming that in a lot of the work that you're proposing  
9 you would address that question of how you remove that  
10 barrier to an effective response to a catastrophic spill.

11 PROFESSOR JOHNSON: I agree, I mean, all the doors are  
12 closing now and they've been closing for some time because  
13 people are worried about litigation, and it's a very real  
14 problem. At the national level we solved that by having  
15 Congressional hearings that sometimes mess up criminal  
16 investigations. But the national issues are so important  
17 that it's felt to be more important than the prosecution of  
18 a particular person. And I don't -- I'll be glad to try  
19 and think about that. I don't have any.....

20 MS. WUNNICKE: I'll turn it over to others, Mr.  
21 Chairman, 'cause I would like to have spent days with you.  
22 How 'bout lunch?

23 PROFESSOR PLOTTER: May I say that we would be  
23 delighted to have lunch with you and the members of the  
25 Commission so that you can give us informal feedback -- if

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1       that can be scheduled?

2               MS. WUNNICKE: (Indiscernible) I would like that very  
3 much.

4               MR. PARKER: Ed.

5               MR. WENK: I join my colleague here in saying this has  
6 been enormously stimulating, exciting, fruitful, whatever,  
7 contribution to the Commission work. I come at this as a  
8 dumb engineer who went through the cultural shock of  
9 suddenly working for 535 lawyers. And I think they had  
10 more of an impact on me than I did on them. But be that as  
11 it may, I see some connections here that fascinate me and  
12 I'll share those with you. But first, I was listening hard  
13 to you, Ralph, with what I thought you said were five  
14 examples of the way that states could influence -- extend  
15 their sovereignty and influence the situation -- and I only  
16 wrote down four. Oregon, Florida, North Carolina and  
17 California. Which one did I miss?

18              PROFESSOR JOHNSON: I had Oregon, Florida, North  
19 Carolina, California.....

20              UNIDENTIFIED SPEAKER: And Florida.

21              PROFESSOR JOHNSON: Oh and -- no, that's all I've got  
22 is -- I'm sorry there were four.

23              PROFESSOR PLOTTER: But you put together California  
23 and North Carolina because they had a similar task force  
25 (indiscernible).

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1           PROFESSOR JOHNSON: Yeah. Mmm hmm. Yeah I actually  
2 studied five states but I didn't talk about Alaska. I'm in  
3 the process of -- I mean, you know about Alaska, but I'll  
4 include that in the to -- as a matter of comparison.

5           MR. WENK: Well, for what it's worth, I would add to  
6 some degree the State of Washington, following this notion  
7 of the right of petition, with an example that bears  
8 directly on the situation. I'll be very brief about this  
9 'cause I want to get to come questions. And Ralph, I think  
10 you would remember that in about 1974 the State of  
11 Washington passed two laws to try to reduce risk of oil  
12 spillage in Puget Sound. One having to do with tanker  
13 size, one having to do with the tug escort. The tanker  
14 size limit was challenged and thrown out as being  
15 unconstitutional.

16           PROFESSOR JOHNSON: Struck down, right. Preempted.

17           MR. WENK: The right of petition wasn't exercised.  
18 The political maneuvering however was through our State  
19 delegation which managed to get, then, to the Secretary of  
20 Transportation who got in turn to the Coast Guard and put  
21 in a temporary injunction which was equal in size to.....

22           PROFESSOR JOHNSON: The Secretary of Transportation  
23 being a good friend.

23           MR. WENK: Yeah, a very good friend. And now back in  
25 the Senate, as a matter of fact. But, in any event, it

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1 succeeded. That was later made permanent. The interesting  
2 legal question, it seems to me though there, has to do with  
3 the justification in the first place. Not just the legal  
4 maneuvering of who has rights, state versus Federal, but  
5 whether or not the tanker limit has validity itself and I  
6 want to leave that as a question in terms of -- and I want  
7 to broaden it in this respect. I've heard some very  
8 exciting opportunities that you've laid out, but I kept  
9 reaching for something I couldn't find. And, please  
10 forgive me for mentioning this, because it's not in the  
11 spirit of any criticism at all, it's that there's something  
12 there that you haven't yet said. And that has to do with  
13 the transport system itself. There was an air of  
14 unreality, as I listen here, as though the law were up here  
15 that would influence human behavior. Underscore that,  
16 because we know from many studies of accidents that the  
17 human element is responsible in 85% or more cases, and most  
18 of which the law won't change the situation a bit. The law  
19 won't change it a bit. And therefore, if we're going to  
20 deal with risk reduction, which is really the heart of the  
21 matter, we've gotta find a connection, it seems to me,  
22 between the law and the system itself that we're dealing  
23 with. Now we -- there're different systems which somehow  
23 or other all follow similar patterns with regard to human  
25 frailty. And it may be nuclear power plants, or it may be

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1 oil transportation and so on. Human element in all of  
2 these. The interesting thing about what we're dealing with  
3 here is that instead of this being a safety-promoting  
4 system, which is true with air transportation and with  
5 nuclear power -- you might resist that notion, but it's  
6 still in the way the thing is done is safety-promoting.  
7 This is error reinforcing. That is to say, the maritime  
8 transport system is shooting itself in the foot  
9 continuously, and it has been for a long, long time. And  
10 there've been a lot of laws passed and previously, in an  
11 effort to reduce risk, and unsuccessfully, one of these  
12 things that always brings a little bit of a chuckle is  
13 what's called the Radar Assisted Collision. And we can go  
14 on and expand this at length. Now, to come to the point.  
15 Can you help me make a connection with this sociotechnical  
16 system that we're dealing with. The objective -- I think  
17 we'd all agree -- is risk reduction. Incidentally, you did  
18 a great job in that demo of yours, if I may say so, in  
19 diagnosing this. We -- is risk reduction. And we  
20 understand there are technical means to do this. And  
21 you're approaching this from the point of view of giving us  
22 some legal tools. What I haven't found yet is this  
23 connection between the legal doctrines, etc., etc. and this  
23 particular system.

25 PROFESSOR JOHNSON: I'm not talking like a lawyer now,

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1 I'm talking like either a political scientist or a  
2 sociologist. But it seems to me that the solution is to  
3 find that constituency -- you've heard me on this before,  
4 but let me expand about it some more. Find a constituency  
5 whose self-interest, as Adam Smith said, is in protection  
6 of the environment. And put that group in the system of  
7 decision-making. I'm informed, I think quite responsibly,  
8 that there had been a number of calls that the people of  
9 Valdez, the environmental groups and fisherpeople there,  
10 knew that Hazleton and others were drinking a lot before  
11 the event occurred. They knew there was a problem of  
12 drinking and called -- I don't know exactly when or who -  
13 - but there were telephone calls made to complain about  
14 this. Also that the response system was deficient. Those  
15 people knew. They had a self-interest in making sure that  
16 the system did work. But they weren't listened to. They  
17 were outside the decision-making system. It seems to me  
18 that if you restructure the Department of Interior, if you  
19 do this somewhere else and that somewhere else, you still  
20 haven't solved the problem in a permanent way because you  
21 haven't incorporated the constituency whose interest is to  
22 have it done otherwise. And I just think that to  
23 permanently -- or semi, nothing is permanent -- but at  
23 least in long-range, to make that change it means you get  
25 those people who are gonna be goaded by inefficiency or

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1 incompetence or whatever. And that's the local citizen.  
2 I think somehow they've got to be brought into -- it's  
3 awkward. It isn't neat, it isn't clean, it's -- sometimes  
4 local citizens are more erratic than the Federal officials,  
5 as they say, but they are looking out for the interests of  
6 their constituency. And I think that's what has to be  
7 done somehow. Now that's not a legal answer, that's a real  
8 politic answer.

9 MR. WENK: I understand that very well, but let me  
10 recall for you a case back in Washington State of Asarco  
11 (ph) smelter in Tacoma. Now here was a known hazard where  
12 at one stage the administrator of EPA said, well, if we're  
13 gonna continue the hazard we'll put this to a vote of the  
14 local citizens whose jobs depend on that Asarco (ph)  
15 smelter. Right?

16 PROFESSOR JOHNSON: That's right.

17 MR. WENK: You know what happened, the vote never was  
18 taken because.....

19 PROFESSOR JOHNSON: They voted to let it go.

20 MR. WENK: But I think you can guess what would happen  
21 if the local constituency had the say in the matter.

22 PROFESSOR JOHNSON: Well, that constituency got  
23 informed after a while and changed its mind. It didn't -  
23 - it took some information, it took some education, but  
25 they did change their minds eventually and realized that

/clf

1 the damage to them, individually and to their families, was  
2 not justified under the circumstances. But I agree that  
3 when that vote was taken it was not very self --.....

4 MR. WENK: In no way does that diminish the importance  
5 of your argument about the value of the local constituency,  
6 but this is one of these little twists.

7 PROFESSOR PLOTTER: Could I make a -- maybe a legal  
8 comment, although, well..... It seems to me clear, that  
9 anyone who thinks that this Commission and the State --  
10 where we can design a one-shot structure of laws that's  
11 going to accomplish anything rational over time -- that's  
12 gotta be nuts. That way lies madness. So what Ralph, I  
13 think, talks about, what we've been talking about is that  
14 different kinds of systems that indeed will have to be open  
15 to continued participation by local groups, by engineers.  
16 We don't wanta forget engineers because we lawyers have  
17 learned that we ignore them at our peril, and that the  
18 process, like with the judicial remedies I mentioned, it  
19 makes sense to have mid-course corrections built into the  
20 system and the structure that's proposed. The compact  
21 system includes that as well. But we as lawyers can't tell  
22 you exactly how the system is gonna interface with a tanker  
23 captain at any particular time. We're process people.

23 MS. WUNNICKE: I'd like to ask Professor Bater a  
25 question with respect to the compact idea. Is it possible

/clf

1 to hook up one horse at a time. To begin with a compact  
2 between the Federal government and the State of Alaska, for  
3 example, and add Washington, and add California and so  
4 forth as times goes on. Is that a possibility?

5 PROFESSOR BATER: A compact is by necessity between  
6 states. And in the compact regulation becomes Federal law  
7 for interpretation, but it does not become a Federal  
8 agency, nor do the compact officers become Federal  
9 officers, so the.....

10 MS. WUNNICKE: Well, I understand that. I understand  
11 that.

12 PROFESSOR BATER: So a Federal/state interaction is  
13 not a compact. It is not.....

14 MS. WUNNICKE: Between one state and the Federal  
15 Government, is not a compact?

16 PROFESSOR BATER: Right. So it requires two states,  
17 and the Federal Government -- oh, I'm sorry, go ahead.

18 MS. WUNNICKE: That's interesting because..... Well  
19 at a time when there were a number of interstate compact  
20 commissions, Alaska was considered one of those even though  
21 it was a single state. And it operated through the old  
22 Federal field committee. And I admit it was an aberration.  
23 But at one time, too, when we were thinking of the  
23 navigability determination problems within Alaska, there  
25 was a proposal that the State of Alaska and the United

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1 States enter into a compact to appoint a special master to  
2 determine navigability. And so I guess I had assumed from  
3 that that it was possible to enter into a compact with one  
4 state. And I was just asking here whether it might be  
5 possible to begin with that and add the other members in  
6 a.....

7 PROFESSOR BATER: I'm not sure.....

8 MS. WUNNICKE: Rather than to wait to have all parties  
9 in agreement to achieve a compact.

10 PROFESSOR BATER: Yeah, I'm not sure on that. It may  
11 be a different type of beast with a similar name.

12 MS. WUNNICKE: Oh, okay.

13 PROFESSOR BATER: And -- in which -- you know, they  
14 accomplish the same objectives. I'm not ruling that out by  
15 any means. It's something to look into. The compact  
16 advantage is generally derived because the Federal  
17 Government does not have a decision-making input by  
18 definition in the interstate compact. They have  
19 representation. But generally Congress has been loathe to  
20 consent to a compact in which it has a voting membership.  
21 And so -- now I'm not familiar with that and I should be.  
22 But I think it may be a different beast by the same name,  
23 accomplishing a similar purpose. And that's something to  
23 look into, definitely.

25 MS. WUNNICKE: Okay, thank you.

/clf

1           MR. PARKER:     Ron Dearborn had a comment over  
2     there.....

3           MR. DEARBORN:   Mr. Chairman, Miss Wunnicke, I suspect  
4     your interest in moving ahead in a state -- one  
5     state/Federal relationship and then building is one of  
6     efficiency time.

7           MS. WUNNICKE:   Uh huh.   Uh huh.

8           MR. DEARBORN:   The Sea Grant programs on the West  
9     Coast quite often get together and chat about things that  
10    we might have in common. Each of the Sea Grant programs on  
11    the West Coast has been involved closely in an oil-related  
12    issue, where we're last in but dramatically so. But we  
13    have also been meeting on a regular basis with some  
14    interstate groups.     There's West Coast Fisheries  
15    Legislative Task Force that the Sea Grant programs have  
16    been mating with, and that would provide each instant  
17    access to leadership, which might provide a quick vehicle  
18    to get through the Legislature, so I'm not sure that just  
19    because you had to go through four states that it would  
20    necessarily be a long time. History of cooperation might  
21    suggest that it could take a long time. But I think we  
22    could help identify some leadership through each of the  
23    separate state programs and through vehicles like the  
23    legislative task force, that might speed up that process  
25    and get it on the agenda quickly.

/clf

1 MS. WUNNICKE: Well, too, Mr. Chairman, I'm always  
2 mindful of the fact that -- I'm sure that you're familiar  
3 with the nine nations of North America. I'm always mindful  
4 of the fact that Alaska falls in two of those nations. So  
5 that even the state itself would be split in supporting  
6 legislation or supporting that kind of effort.

7 PROFESSOR BATER: I'd also like to add, in terms of  
8 time efficiency, we have quite a history of compact being  
9 proposed before the Congress in which a fair number have  
10 been consented to and a fair number have been rejected. So  
11 there is an opportunity to establish a list of dos and  
12 don'ts which would facilitate that enormously. They can be  
13 distributed to the appropriate state legislatures. And the  
14 process need not be laborious and long. It can be fairly  
15 efficient and quick if the motivation is there.

16 MS. WUNNICKE: Okay, thank you.

17 MR. PARKER: On a follow-up point on that -- on the  
18 compacts, Harry, I'd be most interested in the  
19 relationships -- how to best develop the relationships  
20 between the compact and the state agencies in the states it  
21 developed. 'Cause one of the problems it seems to me in  
22 reviewing the various commissions is the relationships of  
23 the commissions to the states -- governments that they  
23 served were very different because of the different way in  
25 which state's are structured. And in Alaska, historically,

/clf

1 we always have to put something in a cabinet-level  
2 department and house it within there, and have rejected  
3 putting anything under the governor's office. And other  
4 states, of course, follow very different models, so I'd be  
5 really interested in any -- in developing that particular  
6 area. And in regard, you know, to the various commissions  
7 that were developed around the country, they were very  
8 different beasts and some commissions were compacts and  
9 some were not, which has created the problem, I think, that  
10 Commissioner Wunnicke was developing. The other area of  
11 great interest to me in this, is the compact staff itself.  
12 and while, you know, no matter how they originally set up  
13 they all seem to become Federal employees eventually. And,  
14 you know, I'd be interested in any insights on how you  
15 maintain the independence of the compact over time, 'cause  
16 it's been a problem in the past from my perception.

17 MS. WUNNICKE: Mr. Chairman, I (indiscernible). Oh,  
18 Tim, I'm sorry.

19 MR. PARKER: I think Ed was next, then Tim.

20 MR. WALLIS: No, were you still on compact?

21 MS. WUNNICKE: No I'm not, I want to change the  
22 subject.

23 MR. WALLIS: Oh, okay. I was gonna talk about  
23 compact.

25 MS. WUNNICKE: Go ahead.

/clf

1 MR. PARKER: Okay, go ahead.

2 MR. WALLIS: I just -- did I understand you correctly?  
3 Did you say that Canada was involved in a compact?

4 PROFESSOR BATER: Quebec is involved in the Northeast  
5 Fire Prevention Control compact. And they do not have a  
6 voting membership, but they do have a representation in  
7 which they have full privilege and obligations with the  
8 compact to coordinate fire prevention and control in the  
9 Northeast. New York, New England and Quebec. So B.C.,  
10 theoretically, could participate in a compact and it's the  
11 advantage of being in merely an advisory at someone's  
12 suffering to come before, versus, as in the case of being  
13 a member of the compact, full right of debate,  
14 participation, decision-making analysis, but just not the  
15 final vote. It might be something that foreign provinces  
16 would find useful to help provide continuity to the entire  
17 corridor.

18 MR. WALLIS: Was that a provincial decision to do that  
19 or was that the Canadian government?

20 PROFESSOR BATER: Provincial. Definitely provincial,  
21 especially since we're talking about Quebec.

22 MR. WALLIS: True.

23 MR. PARKER: Ed.

23 MR. WENK: I'm gonna come back again to the connection  
25 between law and engineering that I see so important here.

/clf

1 First the type of accident that occurred and one similar to  
2 this, which are often labeled catastrophic, are a  
3 particular category of accidents where the frequency is  
4 very low and the consequences are very severe. These are  
5 not subject to any laws of probability and therefore thanks  
6 to your mentioning the role of the engineer, no engineer  
7 can answer this question in terms of how to deal with that  
8 issue, because what's at stake here is the question of what  
9 is an acceptable risk. And that is a social judgment. No  
10 Newton's Laws of Motion, or Theory of Relativity, or  
11 whatever, is gonna help you here. This is a social  
12 judgment. Now we come to the notion of a constituency.  
13 And in real politic terms, this local constituency that was  
14 oiled, certainly has a direct interest and would have one  
15 view as to what is acceptable risk. But now you're dealing  
16 with the whole State of Alaska and you're dealing with a  
17 state that gets somewhere around 80% of its revenue from  
18 the oil business. You have a typical situation of a high  
19 level of emotional reaction to a disaster which inevitably  
20 decays. We know this from all kinds of past experiences.  
21 What would you say in terms of, again real politic, this  
22 matter of a constituency that's strong enough politically,  
23 reinforced with not just the technical knowledge but the  
23 wisdom, in order to put some kind of legal remedy as you  
25 propose.

/clf

1           PROFESSOR JOHNSON: Well, the short answer is that if  
2 the people of the State of Alaska want oil spills, well  
3 then that's their choice. I mean, I'm not being facetious.  
4 You stated it right correctly at the outset, and that is  
5 that it's a social question. It's a social/political  
6 question. And to illustrate the point, Alaska's revenues  
7 now, you say are 90% or about 80% from the oil industry.  
8 Well, there's a tradeoff. I mean, you didn't want the oil,  
9 why then you'd never have Exxon Valdez. But there're  
10 obviously benefits that outweigh some of the risks. So  
11 some risk is -- has been accepted already, there's no  
12 question about that. Another example to highlight the  
13 difference, is that Outer Continental Shelf oil and gas,  
14 which now poses a real threat to most of the states as  
15 viewed by the legislatures and governors of all the coastal  
16 states, and especially the State of Alaska, trying to take  
17 the potential leasing of Bristol Bay out of contention.  
18 That's a case in which if the OCS drilling does occur, all  
19 the revenues go to the Federal government. The State  
20 doesn't get anything. And so there's no trade-off. I  
21 mean, the damage, if it occurs, will occur to the State,  
22 but the revenues occur -- accrue to the Federal Government.  
23 And that's a case in which the State of Alaska may very  
23 well say, no we don't wanta do that because there's zero  
25 benefit to us and there's a very high risk. But on the

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1 other hand, on the revenues that come from Alaska  
2 territorial waters or the land mass of Alaska, there is a  
3 risk. And there is obviously a trade-off. The question is  
4 reducing the potential risk enough so that the trade-off is  
5 as beneficial as you can make it.

6 MR. WENK: Well, just to follow your line of reasoning  
7 here one step further in getting into the kind of thing  
8 that Professor Reezer was mentioning. How are you gonna  
9 present this to, just for practical purposes, the citizens  
10 of the State of Alaska? Because it is a trade-off, has  
11 been in the past although it may have been less visible in  
12 the past. Now all of a sudden it's visible. What  
13 constituency do you see as being needed here in order to  
14 bring about a major shift in acceptable risk?

15 PROFESSOR JOHNSON: I am not sure that I'm qualified  
16 to answer that question. I have private opinions but  
17 (laughter) not ones that I think are publishable at the  
18 moment.

19 (Laughter)

20 MR. DEARBORN: Mr. Chairman, Mr. Wenk -- Dr. Wenk.  
21 Isn't it likely at this stage, that there is not really an  
22 environmentalist versus oil, or fish versus oil conflict  
23 with respect to this issue. Isn't it as much to the  
23 interest to the oil companies to nurture the establishment  
25 of solutions which give a high degree of confidence that we

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1 can pursue offshore development. That we can pursue ANWR  
2 and do that with increased safety factors, with an increase  
3 -- with a reduced risk. I don't know that I see any  
4 necessary division or fighting between fish,  
5 environmentalists, oil on these issues of improving public  
6 confidence that such an accident would not happen.

7 MR. WENK: Well, I have to agree with you completely  
8 that for the moment, Exxon at least, and perhaps other oil  
9 companies too, are very concerned with public esteem. And  
10 for the moment this will affect some of their decision  
11 making. But people close to this whole issue of tanker  
12 safety, and it's been around for a long, long time,  
13 remember that the cost/benefit analysis that was developed  
14 by the oil companies eventually influenced the Federal  
15 Government to abandon its push for double-bottoms. I'm not  
16 saying that in terms of double-bottoms being the remedy.  
17 We know better than that. But the fact of the matter is -  
18 - and we even had a Coast Guard admiral testify to this  
19 down in Valdez, if you remember, saying that the reason we  
20 -- the system permitted single-bottom tankers was a cost-  
21 benefit analysis. The question that was asked him was,  
22 cost to whom, and he didn't know what that question meant.  
23 And this is pretty serious, you see, when you've got both  
23 the advocates on the one hand, who -- that is the operators  
25 of the tankers and the regulators using the same calculus.

/clf

1 So, all I'm doing is peeling back one more skin of the  
2 onion in terms of the kind of situation that in reality is  
3 gonna have to be faced out there. Now the concern of the  
4 private sector might be fairly durable this time, more  
5 durable than usual. But here again we ask what evidence is  
6 there that investors n Exxon are really up-in-arms about  
7 the situation and could influence decisions at the board  
8 level. And I believe this remains to be determined. It's  
9 the kind of thing I hope this Commission really looks at,  
10 because the corporate culture, in my view, personal view,  
11 the corporate culture at the very top infects the whole  
12 system. And until we understand what's going on there and,  
13 in fact, try to influence it, we know from past experience  
14 that in the competition between the Coast Guard and Exxon,  
15 or any of the other companies, the companies win.

16 MR. PARKER: I think, indeed, the corporate culture,  
17 and you know, we include corporations, you have to include  
18 public corporations because these perceptions certainly  
19 begin at the White House on one side and in the Congress,  
20 and in the Governor's Mansion and the Legislature on the  
21 other side, and the end result is somewhat predictable and  
22 -- how much of that history we can develop, I think bits  
23 and piece of it come in, and I think, both on your part and  
23 on ours as we develop the history of this, the difference.  
25 The reason this Commission exists is because it is expected

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1 to paint with a much broader brush and take a much broader  
2 look at the institutions that govern these things than the  
3 NTSB is going to do in its investigation. I got the  
4 Governor's concurrence that the Commission should exist,  
5 'cause when he asked the questions what'll it do that the  
6 NTSB won't do, I said the NTSB will have a very narrow  
7 focus on this. Which it has proven to have. And the State  
8 owes it to itself to investigate, in depth, all the  
9 institutional constraints that govern the system, and most  
10 particularly on how the system prevents accidents, rather  
11 than how it responds to them. Counsel, did you have  
12 anything you wanted to --.....

13 MR. HAVELOCK: Well, I'll just make a observation that  
14 when you were talking, Ralph, about Florida and what  
15 they've been doing there, that I'm thinking how everybody  
16 in Alaska would rattle around in a suburb of Miami. And  
17 they're two aspects of that, seem to me, that you need to  
18 keep in mind in your -- in many of the studies you're  
19 talking about. First, we're well aware of these enormous  
20 resource responsibilities that we have in the State. But  
21 we're also very budget conscious and we're very  
22 conservative fiscally. And we've been through a period, if  
23 you look at State budgets (indiscernible) on the commitment  
23 to natural resource management expenditures. And I guess  
25 when you look at California could do, or Florida and

/clf

1       whatever, you have to remember anything you do with us has  
2       to consider miniaturization.       Because we simply --  
3       miniaturization -- we've gotta do whatever they do with  
4       less. Instead of a panel of 20, you're gonna have to have  
5       panels of three. If you're gonna have -- in staffing  
6       considerations, all these things, you gotta figure, make it  
7       small. Because we're small as a State. The population's  
8       small. The other aspect of this which is -- Harry, I might  
9       address this to you in particular, is that -- when we get -  
10      - we have a lot of self-consciousness about our size in  
11      this state in dealing with the Federal Government and in  
12      dealing with other states. And you always worry -- and  
13      furthermore there is a history, which is sometimes called  
14      colonialism, of relationship between this state and the  
15      Federal Government and with the State of Washington and,  
16      indeed, the Seattle.

17               UNIDENTIFIED SPEAKER:   Yep.

18               MR. HAVELOCK:   So..... (laughter). So we'll leave out  
19      some of those university relationships. But that means  
20      that there is an anxiety and a real concern that when we  
21      start playing in the same pool with some of these other  
22      players that we don't end up being swamped. And that the  
23      decision-making process, indeed, is put out of Alaskan's  
23      hands. And you fit that in with what you've already seen,  
25      no doubt, from your visits here, with respect to the

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1 passions that Alaskans feel about being unique and  
2 individual and sometimes, yea, even Alaska first, that  
3 there is a political problem if there is not a practical  
4 problem in putting together arrangements that don't protect  
5 Alaska's unique attitude towards its own sovereignty and  
6 control of its own resources.

7 PROFESSOR JOHNSON: I might just make two comments.  
8 One is that the -- from my experience Alaskan's are very  
9 clever, remarkably clever at adjusting -- at miniaturizing  
10 ideas. And secondly, I wouldn't presume to suggest which  
11 one of these ideas, if any of them, are applicable and how  
12 they might be adjusted to Alaska. That's up to the  
13 Commission and the State Legislature and the State  
14 officials. But it seems to me that learning what other  
15 states are doing, even with much more resources, is just a  
16 way triggering ideas of thinking about something. And  
17 that's what we're trying to do. Lastly, I realize the  
18 budgetary constraints in Alaska, but then when I think  
19 about what two billion, three billion, five billion -- I  
20 don't know the figure -- the damage that occurred out of  
21 the one oil spill, and I think that maybe it's worth  
22 recommending that more resources be spent on the problem.

23 PROFESSOR BATER: I'd like to just add one comment, is  
23 that rather necessarily, following what other states are  
25 doing, the Commission or others can distill the attributes

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1 that make those programs successful, and then narrowly  
2 tailor those attributes to the unique situations that  
3 Alaskans have. And like Professor Plotter pointed out, you  
4 have options that Alaska can seize upon, which provides the  
5 biggest effect for a small amount. The petition for rule-  
6 making to the EPA, and the equitable power of a court with  
7 a single stroke of a pen, is something that Alaska need not  
8 follow what other states have done, but uniquely structure  
9 those solutions to the unique problems. And the compact,  
10 also, is similar to that. Alaska, rather than following  
11 what compacts have done in the past, just say compacts  
12 work, some compacts don't. How can we find the attributes  
13 that make a compact successful and apply it to meet our own  
14 purposes in a manner which is not overly broad or general  
15 or vague, which is usually the effect of Federal  
16 regulation, but make it effective for our needs and our  
17 purposes. And it's usually easier to apply that kind of  
18 fact-finding and solution-generation when you are a compact  
19 of four equal states, rather than three representatives  
20 among a House and Senate of over 500 that have peripheral  
21 interests that legitimately they're concerned about and  
22 may, you know, infiltrate and meddle upon your own unique  
23 solutions. It's an opportunity rather than to follow, but  
23 to distill and lead.

25 PROFESSOR REEZER: I just might add that I think that

/clf

1       there might be a useful model in looking at the Regional  
2       Fishery Management Council and North Pacific Fishery  
3       Management Council, which I don't think the history of that  
4       council can be described as one in which Alaskan interests  
5       have been overwhelmed by the interest by other states. I  
6       think there's been a battle, but I think just the fact of  
7       the strong degree of interest that the State of Alaska has  
8       and which it demonstrates in it's own legal and management  
9       system for fisheries has allowed it to, certainly, carry  
10      its own water in the Regional Fishery Management Council,  
11      if not to dominate in many of the policy considerations.

12           PROFESSOR PLOTTER: In responding to John Havelock's  
13      question, may I ask a follow-up question of my colleague,  
14      Professor Bater? It seems to me that the interstate  
15      compact is a way of your looking at how we approach John  
16      Havelock's question. If Alaska is to put together a  
17      compact, it would be the initiator. It also packs the  
18      weight of 11,000,000 gallons that nobody else does. But  
19      isn't it also possible, responding to John's economic  
20      issue, that we should look into whether the compact  
21      mechanism allows us to save money by having a compact  
22      staff, compact budget, contributed to by those other  
23      states, which would then feed in data to an Alaskan  
23      regulatory system at no cost. Is that feasible within the  
25      setup and is it something we should look at?

/clf

1           PROFESSOR BATER: Yeah, it is feasible because a  
2 compact is sorta like a (indiscernible) a beginning, where  
3 the states fashion out whatever they want on a clean slate.  
4 And any type of internal mechanism for adjudication of  
5 problems or resolution among states is an advantage rather  
6 than a disadvantage. And you can do most anything you  
7 want, especially to save financial resources. The  
8 aggregation of states can assist Alaska in accomplishing  
9 what it alone cannot in terms of financial and material  
10 resources. Washington, as Ron Dearborn has pointed out,  
11 has indeed an interest in Alaskan fishery. In fact, the  
12 Washington fishery, if I'm not mistaken, is actually  
13 dependent upon the Alaskan fisheries. So the opportunity  
14 for contribution and aggregation is immense.

15           MR. DEARBORN: Ninety-two percent of the fish landed  
16 in Seattle are taken off Alaska.

17           MR. PARKER: A fact which we will (indiscernible).

18           (Laughter)

19           MR. DEARBORN: Mr. Chairman, it seems like we're  
20 getting into a bit more detail than we intended to get into  
21 this time. I'm aware that our clock is dearly expired. Be  
22 glad to stay with you if you would like us to right now, or  
23 we would.....

24           MR. PARKER: Well, I think we can probably safely  
25 adjourn and take it up over lunch, which is -- reservations

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1 have been made at the Sea Galley. And, right Marilyn?  
2 That was Sea Galley? Okay.

3 UNIDENTIFIED SPEAKER: Where is it?

4 MR. PARKER: Sea Galley's right down the street here,  
5 but we should drive. It's a little far for walking. The  
6 only point I would like to make up in finishing is that  
7 I've always promoted interstate alliances for Alaska,  
8 especially as we entered the era of the dealing with large  
9 multi-national and multi-state corporations, because the  
10 corporations we deal with, of course, have influence in  
11 several states. ARCO has strong influences in Texas,  
12 California, here, you know, several others. And the same  
13 can be said for Exxon, BP, all the larger companies have  
14 very strong presence in each state, so we simply --  
15 certainly owe it to ourselves to, you know, stretch our  
16 resources to maintain the same kind of presence so that we  
17 appear before the Congress in some form of equality in  
18 seeking redress on both sides. And I think, you know, one  
19 advantage we have here in Alaska is a lot of different  
20 institutions which a lot of us here at the table have been  
21 associated with in approaching the Federal/state problem in  
22 different means. And as Allison pointed out, you know,  
23 they take part in a good many -- your state councils and  
23 operations which have a rich history. I wouldn't agree  
25 with you that we've dominated the North Pacific Fisheries

/clf

1 Council. I thought the State of Washington dominated the  
2 Council, but -- recess for lunch. Thank you very much.

3 (Off Record)

4 (On Record)

5 MR. PARKER: We'll get underway. The Alaska Oil Spill  
6 Commission will reconvene. Next on our agenda is a  
7 discussion of the National Contingency Plan. Commander  
8 Dennis Rome from the Coast Guard will be presenting. And,  
9 as you know, tomorrow Commander will be getting in depth  
10 into response plan as it existed on March 24th and so  
11 forth. So -- for this afternoon and tomorrow we would hope  
12 to wind up by the end of the day with considerably more  
13 insights on the working of the National Contingency Plan  
14 and all of the subsidiary contingency plans that we have  
15 now. So.....

16 COMMANDER ROME: I hope so, Mr. Chairman. My original  
17 structure when I talked to the staff from the Commission  
18 today was to put together a short description on the  
19 history of the National Contingency Plan, what basic  
20 legislation we have that starts it, who's responsible, and  
21 I've put together some handouts for the Commission. The  
22 three handouts that I have first is the Alaska Region Oil  
23 and Hazardous Substances Contingency Plan. The second  
23 part is the National Contingency Plan, which I copied out,  
25 at least the oil spill parts of it out of the 40CFR, Part

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1 300. And then I have a series of handouts, basically that  
2 I'm gonna talk to this afternoon. So with your indulgence  
3 I'll go ahead and just bring these up, pass 'em out to you.

4 To get into a little bit of history and why the  
5 National Plan was started and why we felt we needed a  
6 national response mechanism. It really began probably back  
7 around the advent of the Torrey Canyon grounding off the  
8 coast of England in 1968, 69, in that time frame. Up until  
9 that point in time the United States had two basic pieces  
10 of legislation. The Harbor and Port Safety Act and also  
11 the Old Refuse Act of 1899, which essentially made it  
12 illegal to dump oil or refuse in the ports of the United  
13 States. And at that -- in that Act it was a criminal  
14 offense to spill oil in a port. And the penalty, of  
15 course, if you could get a U.S. attorney that was willing  
16 to prosecute the case, could be, you know, substantial,  
17 whatever the criminal penalties were at that time. And  
18 with the Torrey Canyon, as in other major incidents,  
19 government starts to take a look and say, am I prepared for  
20 a situation like this should it occur in my backyard. And  
21 in 1972 Congress passed the Federal Water Pollution Control  
22 Act. And basically that goes -- we can start with the  
23 statutes that are sitting here on page two -- which was  
23 subsequently amended in 1977 and is now pretty much known  
25 as the Clean Water Act. But the Federal Water Pollution

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1 Control Act created the need for a national contingency  
2 plan, and it also created the need for a national response  
3 structure. The Clean Water Act made it illegal to dump or  
4 spill oil in the navigable waters of the United States. It  
5 set up a system where we could have civil penalties and/or  
6 criminal penalties if the circumstances arose to do that.  
7 It set up a fund which is under 1321 of the -- Section 1321  
8 of the Clean Water Act -- set up the what we call the 311K  
9 fund, which is the pollution fund. And in the initial  
10 legislation the fund level was established at \$35,000,000.  
11 Or that was the ceiling that was supposed to be for the  
12 fund. I'm not entirely sure if it ever reached  
13 \$35,000,000, but I know in the late Seventies it was up to  
14 as high as \$24,000,000. This fund had a couple of  
15 purposes. First of all, some of the money could be used by  
16 the U.S. Government to go out and buy stockpiles of oil  
17 spill cleanup equipment, which it did. And it created a  
18 certain amount of seed-money for some research and  
19 development, but it was actually very little. The Coast  
20 Guard opened up a research and development program and the  
21 Environmental Protection Agency also opened up an R&D  
22 program, so that was something that R&D within the oil  
23 spill program probably started -- the inception was 1972  
23 and probably reached its heyday in the time from 1976 to  
25 1980. And then after that the funding fell off

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1 considerably.

2 MR. PARKER: The original 35,000,000 -- any idea of  
3 what the background was arrived at that figure?

4 COMMANDER ROME: I don't know why that figure was  
5 established, other than that particular fund is an  
6 appropriated fund. I don't know the history on why it was  
7 set at that number. The fund itself was to be used for oil  
8 spill response in one of two circumstances, whether if they  
9 -- spiller did not assume responsibility for the cleanup of  
10 the spill, or if we had a mystery spill and there was no  
11 readily identified spiller. A third one, which is kind of  
12 a variation, is one where you'd go in and you'd say, well  
13 the spiller is not doing what we think he should be doing.  
14 And we can open the fund and supplement their response  
15 until the spiller comes up with the resources to replace  
16 any Federal resources that are in there. So that was how  
17 the fund was supposed to be used. There was within the  
18 national -- original National Contingency Plan -- there  
19 were four phases which was notification. Second phase was  
20 assessment. Third -- well, there's five phases. The third  
21 phase was cleanup, recovery. The fourth phase was  
22 disposable and the fifth phase was cost recovery and  
23 documentation. In the Clean Water Act legislation there  
23 was also a limit of liability that was placed on shippers  
25 and in the marine industry. And basically it was for ships

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1 it was \$150 a gross ton is what we normally use now. And  
2 that has not been changed since 1972.

3 Beyond that, with the other statutory authorities that  
4 are mentioned, the chemical era and interest in hazardous  
5 material spills started growing probably in 1974 and 1975.  
6 And then -- which resulted in the passage of the Super Fund  
7 legislation, in I think 1979, which is a Comprehensive  
8 Environmental Response Compensation Liability Act. And  
9 that created the Super Fund which was initially 1.6 billion  
10 dollars. And that was for use -- the fund was administered  
11 by the EPA, used for chemical spill response. And for the  
12 first time it broke out hazardous materials from the Clean  
13 Water Act, which basically said that Clean Water Act money,  
14 the 311K fund, would be used to clean up oil spills. The  
15 Super Fund would be used to clean up hazardous material  
16 spills. And both these pieces of legislation at times we  
17 can use when we -- within the Coast Guard, which is the  
18 Intervention on the High Seas Act. And a ship which poses  
19 either a substantial -- an eminent, substantial  
20 endangerment to interests of the U.S. That's about the  
21 language that's in there. Basically, if you have a ship  
22 that can -- that is now within the 200-mile Exclusive  
23 Economic Zone, if it poses a significant threat to the  
23 interests of the United States, whether it be  
25 environmental, economic, amenity, for -- there's a number

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1 of things. The President has empowered the Commandant to  
2 take whatever actions are necessary to intervene in the  
3 situation and keep the vessel from affecting the interests  
4 of the United States.

5 MR. PARKER: One-point-six billion in the Super Fund  
6 administered by EPA -- if the Coast Guard is going to use  
7 that it could only be for chemical spills.

8 COMMANDER ROME: Yes sir. That's right.

9 MR. PARKER: So if it's an oil spill you're still  
10 limited to the 35,000,000 ceiling.

11 COMMANDER ROME: Yes it is. Yes we are. And the --  
12 in the Super Fund legislation oil and oil products, which  
13 would be propane, natural gas, lubricating oils, that type  
14 of thing, are specifically excluded from the circle of  
15 legislation. In order to determine whether or not you use  
16 the Super Fund legislation for picking up an oil spill, EPA  
17 has designated a number of hazardous substances. They've  
18 also designated some acutely hazardous substances and then  
19 they've -- in Title 40 they've identified properties of  
20 some materials, whether it's flammable, corrosive, has some  
21 inherent toxicity, that type of thing, and if it falls into  
22 that category you can use it clean up as a hazardous waste.

23 In the Intervention Law, as I was mentioning,  
23 intervention by definition is doing something which is  
25 detrimental either to the interests of the vessel, or

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1 interests of the owners, or interests of -- or both. And  
2 essentially, what the Commandant can do is go ahead and  
3 tell the owner, even if it's a foreign flag state, that the  
4 vessel will not be allowed to come into the -- either the  
5 waters of the U.S. or the waters of the exclusive economic  
6 zone. And if the owners do not comply, he can take  
7 whatever force is necessary to cause the order to happen.  
8 Basically he can summarily destroy the vessel if necessary.  
9 There were some provisions under the Clean Water Act, under  
10 311D authority, which allowed the Commandant to do very  
11 much the same thing in the navigable waters of the U.S. If  
12 a vessel -- and we've used it in Alaska a number of times -  
13 - if a vessel runs aground in Alaskan waters, the owner's  
14 not going to do anything, we find that a response method  
15 would be to detonate the ship, detonate the fuel and burn  
16 the fuel in place. Then that's certainly against the  
17 interests of the owners and against the interests of the  
18 vessel. So we would go to the Commandant and make a case,  
19 essentially to say, what is the threat in terms of  
20 environmental, economic amenity. How is it affecting the  
21 interests of the U.S. What critical resources are gonna be  
22 affected. What is the owner doing to abate the threat.  
23 What do we feel is wrong if the owner is proposing a plan  
24 and what would we intend to do with it. And we ship that  
25 package back to the Commandant and we either get authority

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1 to do it or we don't. And we've done that.

2 So from the Clean Water Act we get oil spill money,  
3 from the CIRCLA Super Fund Act we get money to clean up  
4 chemical spills. Both funds can be used in the  
5 Intervention on the High Seas Act depending on which --  
6 what hazard that's involved. And basically the structure  
7 is all the same and that's within what is defined as the  
8 National Spill Response Structure. And on page three, this  
9 is in the National Contingency Plan. It was published in  
10 only slightly changed from the original plan of about 1974.  
11 And the plan has three distinct levels. The national  
12 level, and it has a national response team, and it has all  
13 the participating Federal agencies that are involved in  
14 that. Defense, Interior, Transportation, Agriculture,  
15 Commerce, the EPA, State Justice, Health and Human  
16 Services, Department of Labor, Department of Energy, and  
17 the Federal Emergency Management Agency. The participating  
18 agencies and what they can bring to bear on a problem, are  
19 lined out in the parts that you see next to it. Where you  
20 have the 300-32, which are the participating agencies. It  
21 also has the things that are important in this is when you  
22 get down to 300.23, Federal Agency Resources, you see what  
23 the agency resources -- each one of the Federal agencies  
23 that is expected to bring to a particular spill incident.  
25 The National Response Team essentially provides national

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1 response policy. They get the direction primarily from the  
2 President or whatever Counselors he has for particular  
3 environmental issues. Goes to the National Response Team  
4 where the Environmental Protection Agency is the chairman  
5 and the Coast Guard is the vice chairman.

6 MR. PARKER: Is EPA always chairman?

7 COMMANDER ROME: On the National Response Team, yes  
8 sir. The EPA is also tasked in each of these pieces of  
9 legislation with updating the National Contingency Plan.

10 MS. WUNNICKE: Question here. But the Coast Guard is  
11 chair of the Regional Response Team, is that correct?

12 COMMANDER ROME: The Coast Guard is the co-chair of  
13 the Regional Response Team. Yes. And when an incident-  
14 specific Regional Response Team is activated then whoever's  
15 zone it is in is the chair. So in the Coast Zone it would  
16 be the Coast Guard. The National Response Team can be  
17 activated to provide national resources for spill response.  
18 Basically, we look at if we need DOD resources as in the  
19 Exxon Valdez where we needed to move large pieces of  
20 equipment, or we need to get the berthing vessels, that  
21 type of thing. That's a national issue. And it has to be  
22 resolved at the, basically the secretary level within the  
23 executive branch. The National Response Team also resolves  
23 issues which cannot be settled at the regional level.  
25 Oftentimes it happens in the Lower '48 although it doesn't

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1 happen in Alaska, is that you will move through regional  
2 boundaries. Across the border of California on a spill.  
3 You have two regions actually responding to the same spill.  
4 And if the region, the two regions, can't settle who's  
5 gonna be responsible, who's gonna provide the services and  
6 who's gonna do these things, then the National Response  
7 Team will go ahead and settle the issue. I've summarized  
8 that in page four, for basically what the National Response  
9 Team does.

10 The other big efforts that the National Response Team  
11 has been involved in over the past probably five years.  
12 The original Super Fund legislation in 1979 was updated and  
13 we had the 1986 Super Fund Amendments and Reauthorization  
14 Act, which is the SARA (ph) legislation. And the Super  
15 Fund pot at that time was up to 8.5 billion dollars. And  
16 the Super Fund itself, I believe it's about 86% is put into  
17 the fund by taxes on the oil industry and chemical  
18 industry. And 14% is appropriated money. In the last four  
19 or five years the National Response Team and also the whole  
20 country has been focusing in on hazardous materials  
21 response. It was, I think originally, certainly targeted  
22 by the Bopal (ph) incident where you have -- you know, is  
23 one of these things gonna happen in my backyard. So that  
23 created a lot of the input into the SARA (ph) legislation.  
25 It created SARA (ph) Title III with the requirements for

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1 the states to set up state emergency response commissions,  
2 local emergency planning commissions, and also set up the  
3 Community Right-to-Know Laws. And those fall into the  
4 National Contingency Plan also. And that's what they --  
5 that's what the NRT's been doing.

6 The next level down is the Regional Response Team.  
7 And the Regional Response Team is -- essentially, they put  
8 together a Regional Contingency Plan which I've provided to  
9 ya. And the Regional Response Team provides a -- they  
10 provide the resources on a regional basis. And actually  
11 within the State of Alaska we're fairly lucky because we  
12 only -- our region -- we have an incident-specific RRT  
13 that's specifically set up for the State of Alaska because  
14 of the geographic problems with the Lower '48. So we only  
15 have one state to worry about. Through the Regional  
16 Response Team each one of the participating Federal  
17 agencies and the structure of the agencies that we see is  
18 actually on page seven, you'll see this block diagram.  
19 Where we have the co-chairs, or the EPA and the Coast  
20 Guard. Within the Regional Response Team we have three  
21 distinct working groups. The first is a dispersant-use  
22 planning working group, which has worked on, essentially,  
23 dispersant-use guidelines for Cook Inlet and Prince William  
23 Sound. And we've also started to build the data-base on  
25 chemicals other than dispersants which could possibly be

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1 used in an oil spill. Just basically an information dump.  
2 Yes sir.

3 MR. WENK: Quick question. From what you just said  
4 this sounds like this is a recent version of the Regional  
5 Response Team, or was this the version that was in place  
6 before Exxon Valdez.

7 COMMANDER ROME: This was a version that was in place  
8 before Exxon Valdez.

9 MR. WENK: Okay. Fine.

10 COMMANDER ROME: In the working groups we've also --  
11 we also published, which is part of the Contingency Plan,  
12 Oiled Wildlife Working Guidelines -- Oiled Wildlife  
13 Rehabilitation Working Guidelines, and had distributed  
14 those probably about three months before Exxon Valdez.

15 MS. WUNNICKE: Question, Mr. Chairman. May I ask you  
16 -- I'm looking at the chart on the Regional Response Team -  
17 - what agencies, for example in the Department of Interior,  
18 serve on the Regional Response Team for Alaska?

19 COMMANDER ROME: In order to keep the confusion to a  
20 minimum and/or boats to a minimum, basically each one of  
21 the agencies that we have will gather the information from  
22 their other agencies. So basically, within DOI we have  
23 that feed information into the Regional Environmental  
23 Officer for DOI, is Fish and Wildlife Service, Bureau of  
25 Land Management, Bureau of Indian Affairs and the National

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1 Park Service.

2 MS. WUNNICKE: Not MMS?

3 COMMANDER ROME: And MMS. Thank you.

4 MS. WUNNICKE: Thank you. And that's the Regional  
5 Environmental Coordinator?

6 COMMANDER ROME: Regional Environmental Coordinator.  
7 Yes, right here in Anchorage.

8 MS. WUNNICKE: Thank you.

9 COMMANDER ROME: Since we're on that, the agencies  
10 that participate in Department of Commerce, both NOAA and  
11 their group, we get most of the information from the  
12 National Weather Service and the National Marine Fisheries  
13 Service, from NOAA. The U.S. Department of Agriculture is  
14 primarily U.S. Forest Service in Alaska. Department of  
15 Defense, the primary contact we have right now is U.S. Army  
16 Corps of Engineers. And we had participation from the  
17 Sixth Infantry Light, but the position that they have that  
18 is on the RRT has not been filled. Justice is the U.S.  
19 Attorney here in Anchorage, Mr. Michael Span (ph). Health  
20 and Human Services is the basic Public Health Service,  
21 which is Native Health Service folks that are here in  
22 Anchorage. Department of Energy is out of Richland,  
23 Washington. They provide a member from there and they --  
23 because we overlap to a certain extent with the Federal  
25 Region 10. Department of Labor is OSHA concerns within the

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1 State of Alaska.

2 MS. WUNNICKE: And the State? Oh, for the State of  
3 Alaska.

4 COMMANDER ROME: Well, yeah, it's OSHA but it's  
5 Federal OSHA in this one. FEMA is out of Bothel (ph),  
6 Washington. The U.S. Treasury is the Customs Service.  
7 Department of State is Washington, D.C., basically, if  
8 we're dealing with either the Soviets or the Canadians on  
9 a particular spill. I put two distinct agencies within the  
10 State of Alaska down here with the Alaska Department of  
11 Environmental Conservation and the Alaska Division of  
12 Emergency Services. The aboding member on the Alaska  
13 Regional Response Team is ADEC, and they provide a  
14 representative to the RRT. ADES has a lot of interest and  
15 a lot of statutory responsibility under the SARA (ph) Title  
16 III. They're providing training to the Fire Service, that  
17 type of thing so it meshes well and they attend all the  
18 meetings and essentially provide their input to a vote  
19 within the RRT for -- through ADEC. And then any  
20 scientific support that's provided to the Regional Response  
21 Team is provided through either EPA's Environmental  
22 Response Team or the NOAA Scientific Support Coordinator.  
23 Those are the primary sources of information.

23 Within the Regional Response Team and -- besides  
25 coordinating regional policies we also conduct pre-planning

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1 for chemical agents, wildlife rehabilitation. And the RRT  
2 can be activated -- is always activated during a major  
3 spill. And a major spill is defined by the National Plan  
4 as anything greater than 100,000 gallons. A medium spill  
5 runs the range from 10,000 gallons to 100,000 gallons. And  
6 a minor spill is less than 10,000 gallons. Unless you have  
7 a spill that creates a significant political interest for  
8 whatever reason. It can be elevated all the way from a  
9 minor spill up to a major spill.

10 The RRT can provide Federal and state resources that  
11 would go to work directly on-scene, provide regional assets  
12 as needed for damage-assessments, that type of thing. They  
13 provide the OSC advise on resources at risk and sensitive  
14 areas and provide the on-scene assistance as requested by  
15 the Federal On-Scene Coordinator. That's the second level  
16 down and more detail in terms of the plan for who's  
17 involved, what specific activities they have, and I think  
18 the activities are pretty well lined out in the Regional  
19 Plan. The main meat of the National Plan and the main  
20 focus goes to the next level. If I could -- let me back up  
21 just a little bit here. One of the things we do in pre-  
22 planning, and it's certainly gonna come out in your  
23 discussions, is dispersants and other chemicals which  
23 Subpart H to the current National Contingency Plan. And  
25 the Regional Response Team has been working, probably since

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1 1983, '84. There was -- the first effort was in Cook Inlet  
2 and worked on the Pre-Approval and Dispersant-Use  
3 Guidelines for Cook Inlet, which were signed and agreed to  
4 early 1987. And from 1987 to 1989 we extended the coverage  
5 and worked in Prince William Sound exclusively. And the  
6 Dispersant-Use Guidelines were approved for Prince William  
7 Sound about the sixth of March of 1989. You see the  
8 definition on page six of chemical agents. Essentially, it  
9 covers a wide variety of sins, it's those elements,  
10 compounds or mixtures that coagulate, disperse, dissolve,  
11 emulsify, foam, neutralize, precipitate, reduce,  
12 solubilize, oxidize, concentrate, congeal, entrap, fix,  
13 make the pollutant mass more rigid or viscous or otherwise  
14 facilitate the mitigation or deleterious affects or removal  
15 of the pollutant from the water. What we -- the primary  
16 focus that we have on any of these chemicals that come in,  
17 is that the approval for use first has to be suggested or  
18 requested by the Federal On-Scene Coordinator. And it's  
19 brought into the Regional Response Team and the two key  
20 votes or veto power within the Regional Response Team for  
21 the use of chemical agents is the State of Alaska -- or the  
22 state -- generic -- and the Environmental Protection  
23 Agency.

23 Whenever a decision is made on the use of a chemical  
25 agent the State, through ADEC, gets their input from --

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1 primarily from Alaska Department of Natural Resources,  
2 Alaska Department of Fish and Game, any other resource  
3 agencies. Those are the two that we normally deal with.  
4 They provide their input, resources at risk, and give an  
5 honest assessment of whether or not a decision should be  
6 made to use dispersants or not. EPA gets its input  
7 primarily from Department of Commerce, National Marine  
8 Fisheries Service on marine mammals and the fishery, and  
9 also they get it from Department of Interior resource  
10 agencies. Fish and Wildlife Service, National Park Service  
11 primarily. Those two groups. If the decision comes up on  
12 both sides where it says yes, we can do that, the OSC says  
13 the RRT concurs with your decision to use dispersants and  
14 the OSC either has the spiller go ahead and do it or hires  
15 a contractor to go ahead and use dispersants.

16 As you can see from the description, we wanted to go  
17 and do pre-planning as much as possible, conducted a number  
18 of dispersant seminars, dispersant workshops, to get  
19 primarily the resource agencies up to speed on what  
20 dispersants do, how they work, what conditions should they  
21 be used under, and when will they be most effective in  
22 order to make some reasonable decisions at the time of the  
23 spill. The pre-planning in Cook Inlet and Prince William  
23 Sound was to allow the Federal On-Scene Coordinator some  
25 pre-approval authority in certain zones so the calls would

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1 not have to be made to, you know, get everybody up and each  
2 individual has to make three or four phone calls. And  
3 essentially those are well-established. And I think you've  
4 probably seen those (indiscernible) Prince William Sound  
5 and the Cook Inlet Area. So pre-planning is another thing  
6 that we do. The primary focus, however, is on the Federal  
7 On-Scene Coordinator. And the Federal On-Scene.....

8 MR. PARKER: What do you mean that -- was  
9 bioremediation, was that a chemical agent that went through  
10 this same process?

11 COMMANDER ROME: Yes it was. And it was because it  
12 was a nutrient. And the language in there includes  
13 nutrients. The other thing that we have is this in situ  
14 burning issue where recently the Norwegians, just within  
15 the last couple years, have started -- on the North Slope  
16 we started to put together some fireproof boom and use that  
17 through some of the tier two work, to use that as a  
18 response technique. And they said, well, if we can do it  
19 on the North Slope why don't we try it in some more  
20 temperate waters, which is in Cook Inlet or in Alaska where  
21 you have -- you can move some boom there quickly, start a  
22 fire, maybe burn and do a pretty fair job of it. We  
23 started -- we tried to get a ruling on whether or not that  
23 was an approval process by the Regional Response Team, and  
25 basically, the Environmental Protection Agency indicates

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1       that it is a burning agent that you're adding to the oil to  
2       make it burn, so essentially the approval process is  
3       through the Regional Response Team. So we've been doing  
4       pre-approval work and pre-planning on circumstance where we  
5       could use in situ burning. The key member in the in situ  
6       burning is the State of Alaska, because the State of Alaska  
7       issues burning permits in State waters. So if you don't  
8       have a burning permit you can't burn. And essentially, the  
9       questions that we need to know in terms of resources at  
10      risk and what's gonna happen in a burn are satisfied by the  
11      requirements of the burning permit. So you kinda get  
12      everything done at one time if the spiller's on the ball.

13           MR. PARKER: The State can't -- through the voting  
14      process on the RRT approve burning. It has to still get a  
15      burning permit.....

16           COMMANDER ROME: That's the way it is now, Mr. Parker.  
17      Yes sir. The State ABEC, through their agency, issues the  
18      burning permit. And implicitly they give the vote of "yes"  
19      to burn, or, you know, explicitly, however you wanta put  
20      it.

21           MR. PARKER: That's what I meant though. But voting  
22      "yes" is not the permit. They still have to get the  
23      permit.

23           COMMANDER ROME: They still have to get the permit.  
25      Yes.

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1 MR. PARKER: Okay.

2 MS. WUNNICKE: Did you have agreement in advance with  
3 respect to in situ burning?

4 COMMANDER ROME: No. We did not. But we discussed it  
5 very early in the Regional Response Team meeting that we  
6 held on Friday morning, and essentially had the application  
7 in hand for both the dispersant and the in situ burning.  
8 And the burning permit was issued.

9 MS. WUNNICKE: The burning permit was issued?

10 COMMANDER ROME: Yes.

11 MS. WUNNICKE: But no burning took place?

12 COMMANDER ROME: Oh yes, burning did take place. It -  
13 - there was burning on Saturday night, March the 25th.

14 MR. PARKER: Where was the location of the burn?

15 COMMANDER ROME: Near Goose Island. It was southeast  
16 of the location of the grounding. I can cover that some  
17 more tomorrow if you wanted to do that. The problem with  
18 it was there was a lot of -- there was some ash and fallout  
19 that went -- that fell on Tatitlek. That was a real  
20 concern for the village. So, you know, there's no free  
21 lunch in some of these things, we have to make sure that  
22 when it happens that it is right. The center of the spill  
23 response is the Federal On-Scene Coordinator. And we're  
23 unique in the United States in the sense that for every  
25 square inch of coastline that we have, a predesignated

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1 Federal On-Scene Coordinator is known by name. And it  
2 coincides with the Coast Guard's Captain of the port zones  
3 that are published in the Federal regulations. So the  
4 captain of the port of William Sound, wherever, you know,  
5 since the Exxon Valdez, he was the predesignated Federal  
6 On-Scene Coordinator, and it was Commander Steve McCall by  
7 name. That individual is responsible for coordinating both  
8 commercial, the spiller, other Federal agencies, and also  
9 coordinating with the State to make sure that there is a  
10 focused response. And one thing I'd like to digress a  
11 little bit, there was a conscience choice in the word of  
12 "coordinator." In the early days of oil spill response,  
13 1973, '74, OSC meant on-scene commander. And there was a  
14 considerable amount of consternation about using the word  
15 "commander" because it implied that there was gonna be some  
16 form of marital law that was gonna be declared. That,  
17 essentially, the Federal government would go in, decide  
18 what was right, you know, roll over the top of everybody  
19 else, and anybody else that had any divergent opinions  
20 would not be heard. So the term "coordinator" was chosen  
21 instead of on-scene "commander." And the responsibility of  
22 the Federal On-Scene Coordinator is to basically take a  
23 look at the problem, and it goes in a series of steps.  
23 When a spill is reported and a spill is supposed to be  
25 reported immediately to the National Response Center or to

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1 the Coast Guard Captain of the port, or to the EPA, you  
2 know, depending on what zone you're in. And basically, on  
3 page eight in the coastal zone it's the Coast Guard, the  
4 inland zone it's the Environmental Protection Agency has  
5 the responsibility for assigning a Federal On-Scene  
6 Coordinator.

7 MS. WUNNICKE: Question. Just a point of information.  
8 If it were not under Coast Guard jurisdiction as on-scene  
9 coordinator, does EPA have a designated person who would be  
10 the on-scene coordinator if it were within their  
11 jurisdiction.

12 COMMANDER ROME: Yes, although their system is a  
13 little different. They have a staff of on-scene  
14 coordinators, basically. There're two -- you kind of get  
15 the duty officer is what you get. So in the Inland Zone,  
16 you know, you call the Environmental Protection Agency and  
17 basically in Alaska they call Seattle and Seattle gets the  
18 duty officer for up here that lives in Anchorage.

19 MR. PARKER: How is the division on the rivers?

20 COMMANDER ROME: The division on the rivers was a  
21 long, long painful negotiation process. In the Western  
22 river system?

23 MR. PARKER: Yeah.

23 COMMANDER ROME: The Coast Guard has the immediate  
25 port areas and then in the rest of the river system the EPA

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1       -- although there's -- it's kind of fluid jurisdictions at  
2       times. If the Coast Guard starts it, and they'll go ahead  
3       and continue to chase it until we get to the point where  
4       EPA is geared up enough to go ahead and assume  
5       responsibility. The Monongahela spill was in the EPA zone  
6       because it occurred outside the immediate port area of  
7       Pittsburgh, Marine Safety Office, Pittsburgh. However, the  
8       Coast Guard resources were the first ones there and as the  
9       first Federal official they have, certainly, some on-scene  
10      coordinator authority. They just performed those OSC  
11      responsibilities until the EPA got geared up to come in and  
12      assume the responsibility.

13           MR. PARKER: There aren't any river ports where  
14      there's a Coast Guard presence in Alaska are there?

15           COMMANDER ROME: No sir.

16           MR. PARKER: No. As far -- for the purposes of  
17      Alaskan rivers systems it'd all be EPA?

18           COMMANDER ROME: Yes sir.

19           MR. PARKER: Okay.

20           COMMANDER ROME: We have a negotiated agreement that's  
21      in the Regional Plan. Basically, the Coast Guard assumes  
22      responsibility from the mean high-tide mark, 1000 yards  
23      inland. And we just kinda follow the coastline because we  
23      have a larger presence in Alaska than the Environmental  
25      Protection Agency does.

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1 MR. PARKER: To follow-up on that then, if there was  
2 a spill in the interior rivers, if EPA did not have  
3 response capability the Coast Guard would respond?

4 COMMANDER ROME: In a practical sense, probably not.  
5 And it gets into whether or not the need for us to be  
6 notified was in there. If we didn't know about it we'd  
7 probably not -- probably would not respond. And that's  
8 where we get into the practical part because the spiller is  
9 required to notify the National Response Center. If the  
10 National Response Center cannot be called in Washington  
11 D.C. then they can call either the Coast Guard or the EPA.  
12 If you get into up in the Yukon, you know, who would they  
13 call. They would call the State of Alaska. So whichever  
14 individual within ADEC, whoever they work with more  
15 frequently, and they'd call the Fairbanks office, Fairbanks  
16 office often works with EPA so they'd call the EPA and  
17 that's who gets notified.

18 MR. PARKER: Yeah. I guess, you know, what my problem  
19 I'm trying to cut through to is I'm fairly well aware of  
20 what the Coast Guard's logistical capabilities are, and  
21 what the Navy's logistical capabilities are on oil spills,  
22 but I don't have much sense of what EPA's capabilities are.  
23 Would they just utilize contractors, or.....

23 COMMANDER ROME: Yes sir. Primarily use contractors.  
25 They would entirely use contractors.

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1 MR. PARKER: Okay.

2 MR. WENK: Excuse me (indiscernible) are you going to  
3 -- Mr. Chairman, if I could follow your question. Are you  
4 gonna address that same question with regard to the  
5 relative balance with regard to Coast Guard operations  
6 between using your own capabilities versus a contractor?

7 COMMANDER ROME: Yes.

8 MR. WENK: Okay.

9 COMMANDER ROME: I can do that now or later.

10 MR. WENK: No, well, whatever's comfortable with you.  
11 I just wanted to make sure we covered that.

12 COMMANDER ROME: Yeah, I'll get into that in --  
13 basically on page nine, the sequential activities that  
14 occur on every spill response whether it's oil or hazardous  
15 materials. They go in four distinct phases. First of all,  
16 the concern is for public safety, getting things -- getting  
17 the people off the vessel, whatever you need to do for  
18 public safety concerns. The immediate response by the  
19 spiller, state and local governments, Federal Government,  
20 that type of thing. The remedial response where things are  
21 kinda stabilized and you get into the long-term, slug-it-  
22 out type of cleanup. And then in the cost-recovery  
23 litigation, who does what. In the initial response  
23 activities for public safety on page 10, basically you're  
25 looking at spill containment, evacuation, fire-fighting and

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1 rescue, damage-assessments that are done. Removing  
2 casualties, conducting SAR cases, as most -- well all the  
3 major marine casualties the Coast Guard gets involved in  
4 start out as Search and Rescue cases. Those activities are  
5 always funded by either the local municipality, or if the  
6 spiller hires somebody to come in and do it, or the Coast  
7 Guard out of whatever operating funds they have, that's  
8 paid for by the agency. And there's often close  
9 coordination with state and Federal agencies to get things  
10 moving. On page 11, the immediate response. After you get  
11 everybody off somebody says, jeez, I gotta call the Coast  
12 Guard or I gotta call the National Response Center. So  
13 they call the National Response Center and the National  
14 Response Center will notify the appropriate Federal On-  
15 Scene Coordinator. And an environmental assessment is done  
16 on how bad is this thing. Is it a minor, medium, major,  
17 what kind of resources do I need to know. At that point in  
18 time the on-scene coordinator, his responsibility is to  
19 identify the spiller. If the spiller is known his first  
20 question is, are you assuming responsibility for the  
21 cleanup of this? And depending on the answer, if the  
22 answer is yes the on-scene coordinator says fine, continue  
23 to do that, do you need any other assistance? Do you need  
23 Federal resources, do you need State resources, because we  
25 have ways of getting -- we have an agreement with the State

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1 of Alaska where we can pre-approve certain activities that  
2 they do and make sure they get reimbursed from the 311K  
3 fund, for instance. We also can enter into a letter  
4 agreements with any other Federal agency to have them  
5 commit resources. Wildlife rehabilitation, sea otter --  
6 you know, otter rescue -- whale rehabilitation -- you know,  
7 almost anything that we can do. We can enter into letter  
8 agreements with the folks and get 'em paid so we can have  
9 the service provided. If the spiller says, no, I've got  
10 everything in hand, basically we monitor. Yes sir.

11 MR. WENK: Question, Mr. Chairman. As you know far  
12 better than we, time is of the essence at this stage of an  
13 incident. I've heard figures quoted that the first six to  
14 eight hours are the critical times. I've heard figures  
15 maybe up to 12 hours, but hardly anything beyond that. So  
16 -- now coming to your points here. An awful lot needs to  
17 have to be -- a lot of information needs to be collected,  
18 assimilated, analyzed and acted upon in a very short time,  
19 which now means we're getting into a question I'm gonna ask  
20 a lot more about later, and that is the decision process.  
21 What I want to ask about here, is whether there is a protocol  
22 which starts the clock running and says to the OSC that if  
23 by such and such a time nothing happens then you do this,  
23 or whatever. In other words, are the various steps that  
25 are related the environmental assessment, and spiller known

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1 and responding, question mark, is that connected to a  
2 clock?

3           COMMANDER ROME: Not formally. It's a difficult thing  
4 -- you know, we've looked on a number of occasions at how  
5 you form a decision-tree for an individual out there and  
6 there are no easy answers to it, quite honestly. You can -  
7 - this decision can be made in seconds or it can be made,  
8 you know, actually in hours. And there's a number of  
9 things that can go into it. The decision that can be made  
10 in seconds is -- and whether or not we would commit, say  
11 Federal resources on the Exxon Valdez. That was made  
12 within minutes because the initial report that was back was  
13 that we've got a lot of oil coming out, and a lot of oil in  
14 a large tanker means a lot of oil.

15           MR. WENK: 40,000 gallons a minute.

16           COMMANDER ROME: Yes. So the OSC -- one of the OSC's  
17 first calls was to the Coast Guard Strike Team that says,  
18 I know I'm gonna need to lighter this vessel, start  
19 bringing some pumps and start arranging your transportation  
20 to get up here as quickly as you can. So that's a partial  
21 Federal assumption. Where you can tie into a long one, and  
22 what has happened is when we get into say, as a scenario,  
23 would be a foreign fish processor that runs aground on the  
23 Aleutian Islands, on any one of 'em out there for whatever  
25 reason. The owners are in either Korea or Japan. The

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1 amount of time that -- it's gonna take you weeks -- a week  
2 to get out there anyway. So you look at that and you say,  
3 do I have to make a decision in six hours. Probably not.  
4 You know, you're look at, you know, a day or two to find  
5 out who the underwriter is, who their attorneys are and  
6 find out whether or not they're gonna assume  
7 responsibility. But in the meantime, if it's serious  
8 enough and if the OSC in his best professional judgment  
9 feels that it is serious enough, he can access the fund and  
10 open a Federal case and get something started immediately.  
11 It's really best professional judgment right now.

12 MR. WENK: Mr. Chairman I want to pursue this point in  
13 some depth, but only at the appropriate time. So I'll  
14 leave to your judgment whether to do it now or perhaps at  
15 a later time.

16 COMMANDER ROME: I'll pursue it now if you'd like to.  
17 That's fine.

18 MR. WENK: Okay. May I reveal my own bias.

19 COMMANDER ROME: Okay.

20 MR. WENK: And I should -- I don't know if you know my  
21 background, but I have to tell you I spent 26 years in the  
22 Federal Government so I do this with a certain positive  
23 outlook as far as bureaucratic arrangements and so on are  
23 concerned. My question really relates to a state of mind  
25 for contingency planning which deals, as I have seen these

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1 over the years, with a long inventory of equipment,  
2 organizational charts of all kinds, lists of telephone  
3 numbers, so on and so on. And practically zero on the  
4 decision-process that has to take place in this first six,  
5 eight, ten, twelve hours. By little attention I mean all  
6 the way from the point of view of simulation in various  
7 scenarios where you have to deal with all the different  
8 parameters that are at stake here. The whole question of  
9 whether or not you've got a central place where information  
10 can even be collected with regard to the weather and the  
11 currents and the tide, the vessel itself, the kind of oil  
12 it was carrying. And then make a decision. As I started  
13 by saying this is my bias. My bias is that what happens in  
14 those first few hours, the state of readiness of mind of  
15 that on-scene commander has everything to do with what  
16 happens next. And what I'm asking about for elucidation,  
17 because so far we haven't really gotten to this, is how  
18 that's dealt with because, as I say, most of what I've seen  
19 in contingency planning has overlooked that critical  
20 element. And that critical element seems to be open to  
21 inquiry -- I don't wanta come to any judgment as to what  
22 happened with Exxon Valdez, but it's certainly an area that  
23 I would suggest has to be examined in rather fine-grained  
23 detail. That's a long question, isn't it Commander, I  
25 apologize. I know you know what I'm driving at.

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1           COMMANDER ROME: Yeah, the decision on how you --  
2           whether you dive in or you sit back and bounce on the diving  
3           board for a while and.....

4           MR. WENK: That's part of it. That's part of it.

5           COMMANDER ROME: There's a number of sources and I'll  
6           first answer by saying that there's no formal decision-  
7           tree matrix that I've seen. Okay. That goes down and says  
8           within a certain time frame or flow chart, whatever it is,  
9           that I've got this, I'm gonna take on this additional  
10          responsibility (indiscernible - simultaneous talking).

11          MR. WENK: And in that same sketch, some idea of the  
12          kind of information you need to make a wise decision.

13          COMMANDER ROME: Yes.

14          MR. WENK: Okay.

15          COMMANDER ROME: And although it's not formalized,  
16          that I've seen in my experience, I've -- in the normal  
17          notification processes, there's -- one of the things that  
18          people do, that the Federal On-Scene Coordinator does, is  
19          he has to make notifications, and he makes the  
20          notifications to some key people. One is my boss, who's  
21          the Chief of the Marine Safety Division, represents the  
22          Admiral. And usually that individual, or he calls myself  
23          and, you know, I have a checklist of things that I have,  
23          you know, that say have you considered this, this, this and  
25          this and you've got as much money as you need. That kind

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1 of thing. Have you considered the Strike Team, do you need  
2 any resources, do you have the spiller, do you have a feel  
3 for how long it's gonna take you to get equipment on-  
4 scene. That type of thing. And then based on his answers  
5 I, either myself or my boss'll give 'em a recommendation  
6 for what we think he should do. But basically we try and  
7 provide some support. The other individuals that they call  
8 are the special forces people. And that's in the diagram  
9 that our Federal Special Forces, the Strike Team, which  
10 have a number -- they are Coast Guard people that are  
11 trained in spill response -- operational spill response.  
12 And basically they have a lot of similar checklists. When  
13 he calls them he says, here's my situation, here's my  
14 problem. They'll make some recommendations and they'll  
15 also try and get on the job to get up and do some work. So  
16 they'll make some recommendations in terms of Federal  
17 funding and getting their equipment on. The other is the  
18 NOAA Scientific Support Coordinator, who will provide  
19 trajectory information and also contact a number of people  
20 within State and Federal agencies to get resources at risk.  
21 But that doesn't happen right away. That resources at risk  
22 and gathering what's important trajectories probably takes  
23 hours. So the immediate operational decisions on whether  
23 or not to Federalize it, or whether or not to commit some  
25 extra equipment is probably made through advise from either

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1 the District Commander or the Strike Team probably within  
2 the first hour, hour and a half. The trajectories, the  
3 resources at risk, probably come within three to four  
4 hours. And then you kind of define just how much trouble  
5 you're really in, in terms of where the oil was likely to  
6 go and what resources are gonna be in the path and then  
7 he's got an assessment of what he's got in hand to be able  
8 to keep it from getting there. With any luck at all,  
9 essentially the spiller, or an agent for the spiller would  
10 get there shortly afterwards and say, you know, I have this  
11 equipment committed to doing this. You know..... But  
12 that's kind of the situation that he's in. So I would say  
13 within four or five hours he's got a pretty good feel for  
14 what things, or how things are gonna happen. And what, you  
15 know -- he knows whether or not he's got enough equipment,  
16 certainly.

17 MR. PARKER: Assuming we've got a spiller who's kind  
18 of on the edge on whether they should move or not to assume  
19 the spill themselves, what's the hammer that forces  
20 responsibility on the spiller?

21 COMMANDER ROME: In all honesty there's not much of a  
22 hammer. The biggest hammer is public awareness and public  
23 profile. And acting as a good citizen. That's primarily  
23 it. Monetarily there's no particular hammer -- that \$150  
25 a gross ton that's not -- you know, it -- the spiller at a

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1       \$150 a gross ton, you know, he could say, jeez, I can have  
2       the Coast Guard go out there and do that, hire contractors  
3       and keep track of the costs and expend their effort and  
4       then bill me later. And I'll just hire a lawyer and argue  
5       about it in court. So there's not a big hammer. If  
6       there's gross and willful negligence there's some  
7       provisions in the law where EPA can impose some stiffer  
8       penalties. But proving gross and willful negligence is  
9       often very difficult. So we -- you know, we have a civil  
10      penalty system where we have a \$5,000 maximum civil penalty  
11      for an oil spill. That's, you know, for a large company  
12      that isn't gonna put them out of business. So to answer  
13      your question, there's not a big hammer out there. It's  
14      just public awareness, you know, being a good citizen, that  
15      kind of thing. Continuing to conduct business in the state  
16      where they're doing it.

17           MR. WENK: My question about this decision-tree  
18      analysis, and you caught on to it right away, was really  
19      more of an abstract one, though obviously I'm thinking of  
20      how that applies to this particular case. I'd like to get  
21      back to the generic situation in a minute, but simply  
22      following now this question of the hammer and so on. If I  
23      understood you correctly, this question of whether to  
23      Federalize or not Federalize is the first decision made  
25      usually within one hour.

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1           COMMANDER ROME: Yes.

2           MR. WENK: And if I heard you correctly, you said  
3 someone, and I wasn't quite sure who it was, knowing that  
4 this was really bad, decided not to Federalize. Not  
5 because a spiller had acknowledged they would do something.  
6 I'm not sure I understood you correctly, but that's what I  
7 thought I heard, that early-on, I mean within this first  
8 hour when someone knew how really bad it was and was then  
9 beginning to move things to get a lighter and so on and so  
10 on to take care of the rest of the oil, that nevertheless  
11 the decision not to Federalize had been made before -- I  
12 mean at that time Alyeska still got jurisdiction, as I  
13 recall, that they hadn't passed the baton to Exxon. So I'd  
14 like to put a little microscope on what went on and who did  
15 what in that period of time that led to a very important  
16 decision not to Federalize. I'm not saying it was a wrong  
17 decision, all I'm saying is that it was an important  
18 decision.

19           COMMANDER ROME: Okay. The decision in this, and I  
20 think I can clear it up, is you go to a spiller or an agent  
21 for the spiller. In this particular case it was Alyeska  
22 that was acting as the agent for Exxon Shipping. And they  
23 said yes, we certainly will assume responsibility and we'll  
23 commit whatever resources we have to this problem. Now,  
25 the OSC knowing that they were short on -- certainly on

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1       lightering pumps -- before he had a damage assessment done  
2       on the vessel they'd called the Strike Team and said I know  
3       I'm gonna need lightering pumps. So start getting 'em  
4       together, get 'em on a plane and get 'em up here as quickly  
5       as you can. That, in a sense, is a partial Federal  
6       assumption, because we're augmenting, basically, the  
7       spiller's response. But we're not taking over operational  
8       control of their response. We're actually augmenting that.  
9       And with the Coast Guard skimming barrier system we did  
10      that -- you know, basically we were trying to find as many  
11      resources as we could. We committed -- by Saturday night  
12      we'd committed some Navy supervisor salvage equipment and,  
13      you know, arranged for the transportation to come up. And  
14      basically it was to augment the spiller's response. And  
15      essentially, you know, what we do is just pass a memo over  
16      to 'em that says, you know, here's what we got, you guys  
17      want it say yes or no 'cause you're gonna pay for it. And,  
18      you know, they just went, sure and signed it and got it  
19      back. That puts them on hook for financial responsibility.

20           MR. WENK: So that communication took place fairly  
21      swiftly and there is documentation?

22           COMMANDER ROME: Yes. There is.

23           MR. WENK: Okay. Well then back to the generic  
23      question again, not as it applied here. You mentioned that  
25      there was not a fault tree -- I'm sorry, a decision-tree

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1 technique used. There are other ones, of course, that  
2 could've been used. I keep thinking of check off lists to  
3 help one's clarity of mind under stress, supplemented, of  
4 course, by rehearsals. So I guess I'm would like to ask a  
5 question or two about what kind of rehearsals take place  
6 with regard to this decision process. I'm not talking  
7 about getting any hardware in place and so on. Are there  
8 a range of scenarios that you use for test purposes and run  
9 on-scene commanders through these so that there is some  
10 memory?

11 COMMANDER ROME: Yes we do.

12 MR. WENK: How often is this done?

13 COMMANDER ROME: This -- there's a requirement for it  
14 to be done annually. And we do it in a couple of ways.  
15 One is you go through annual Strike Team training. We  
16 bring a cadre of people up from the National Strike Force  
17 and they go through.....

18 MR. WENK: Let me clarify my question again.

19 COMMANDER ROME: Okay.

20 MR. WENK: This only has to do with this imaginary  
21 event.....

22 COMMANDER ROME: Yes.

23 MR. WENK: .....during the first few hours. No Strike  
23 Team, no hardware, no anything. Just in terms of  
25 exercising the decision apparatus of some on-scene

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1 commander, is there any rehearsal to do that?

2 COMMANDER ROME: As part of the Strike Team training,  
3 yes.

4 MR. WENK: Once a year?

5 COMMANDER ROME: It's a -- you know, it's a table-top  
6 scenario that's presented and documented and critiqued,  
7 essentially.

8 MR. WENK: Can you imagine what would happen in the  
9 emergency room of a hospital if there were only one  
10 exercise a year?

11 COMMANDER ROME: Yes. I don't quite know how to  
12 respond to that other than in the Strike Team we can have  
13 some ports where all we have is minor spi -- you know, I  
14 just -- you have a spill of national significance once  
15 every 11 or 12 years. You know, to get me on that, the  
16 Coast Guard, through the training center at Yorktown,  
17 sponsors on-scene coordinator, Regional Response Team  
18 drills. And we've had two in the State of Alaska. One  
19 September of '87 and May -- and then another one May of  
20 1988 in Anchorage here, at which all three of the on-scene  
21 coordinators participated. And part of that -- a good  
22 portion of that is the original six to eight hours of a  
23 response, basically that's what it is, to make sure that  
23 the notifications, the initial steps for setting up a  
25 response in terms of contracting people, dispersants,

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1 burning, a wide variety of issues that happen to be going  
2 on. Those things are brought out and the Federal On-Scene  
3 Coordinator and his staff are put through this table-top  
4 exercise. So in terms of the last three years, with each  
5 OSC being on a three-year tour, we've had all three of them  
6 through at least two exercises -- two major exercises plus  
7 the annual Strike Team training with the small table-top  
8 stuff.

9 MR. PARKER: Are the reports of the simulations of May  
10 7, I guess that was the Southeast simulation?

11 COMMANDER ROME: September '87 was the Southeast  
12 simulation, yes sir.

13 MR. PARKER: And then there was the one on Seward  
14 Peninsula.

15 COMMANDER ROME: Yeah, the May '88 one we -- the  
16 scenario was off of Kotzebue and the Chuckchi Sea. We got  
17 the Soviets involved in that too.

18 MR. PARKER: Are there reports available on those?

19 COMMANDER ROME: I haven't seen any, Mr. Parker.

20 MR. PARKER: I'd appreciate it if you could ask  
21 Yorktown if they have any documentation on those. It'd be  
22 handy to have.

23 MR. WENK: Can I ask one more question please, Mr.  
23 Chairman, on this matter of reports. I realize that the  
25 information the public has access to, and I put myself now

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1 in that category, is mainly through the news media and this  
2 means it's incomplete compared to, I would think, your  
3 records. With regard to all spills, and I know these are  
4 documented, my impression is that this promptness of  
5 notification is very uneven. Especially if you've got an  
6 incident at night. I'm reminded of one in Puget Sound that  
7 happened a couple years ago when a valve on a barge was  
8 open and they were filling the barge except they were  
9 filling Puget Sound with oil and nobody knew this until  
10 daylight. I've heard of quite a few incidents, or I've  
11 read of quite a few incidents like that. So my question is  
12 whether or not there is an analytical effort somewhere  
13 within the Coast Guard to look over all spill reports and  
14 incidents to evaluate these from the point of view of  
15 enhancing this decision response the first few hours?

16 COMMANDER ROME: The answer is partially -- you know,  
17 and it's -- on a major incident or an incident where we  
18 have some significant issues raised, the on-scene  
19 coordinator is required to write out an OSC report and the  
20 contents of the report are in the National Plan that you  
21 have. But essentially you lay out what the chronology of  
22 things happened and how things happened. And the other  
23 part is -- are significant issues, either regional issues  
23 or national issues. The OSC submits that to the Regional  
25 Response Team and the Regional Response Team reviews it and

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1 makes comments on what they're role was in that particular  
2 response and whether or not it was satisfactory. How we  
3 can upgrade it. And then it goes to the National Response  
4 Team. And they review the reports themselves. However,  
5 the "if" to that is that within the National Response Team  
6 it's only been a recent effort to take a look and review  
7 operational spill cases. And it's been a national thing,  
8 mainly because of all the emphasis on hazardous material  
9 response. That's what a lot of the people and  
10 environmental agencies have been focusing on, so oil  
11 spills, quite honestly, took a back seat to what was going  
12 on. And just recently, I would say within the past eight  
13 to ten months, you know, the new vice-chair of the National  
14 Response Team said, one of our functions should be  
15 reviewing OSC reports to see if there's some common either  
16 mistakes or atta-boys that people have done and provide the  
17 feedback back to the RRTs and back down. So it's being -  
18 - and with this it's being regenerated more, certainly. So  
19 -- we're not there yet. No.

20 MR. WENK: Thanks very much.

21 COMMANDER ROME: After the OSC makes that decision on  
22 whether or not to Federalize or even partially Federalize,  
23 and a Federal assumption is made, the OSC lets the spiller  
23 know that a Federal assumption has been made that he will  
25 be responsible for any and all costs up to his limit of

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1 liability, and that the spiller can at any point in time,  
2 if he feels -- he or she feel that they have the capability  
3 to come back in and get back in the ballgame, all they have  
4 to do is come up and tell the OSC that, I'm ready, I have  
5 the resources, I can go ahead and do the things that I need  
6 to do to clean this up. And the OSC, if he believes him  
7 and they've demonstrated they can do it, will turn back  
8 control back to the spiller again. In spending Federal  
9 monies, the Coast Guard uses primarily commercial cleanup  
10 contractors. And that philosophy has existed for probably  
11 15 years. Mainly because in the early days we needed the  
12 viable oil spill cleanup contractor business. And the  
13 Coast Guard invested in putting together some large  
14 offshore systems at their Strike Teams, because it became  
15 apparent by about 1977 that most of the spills that  
16 commercial cleanup contractors were gonna respond to were  
17 probably less than 1,000 gallons. Small boat marinas,  
18 harbors, small dribs and drabs. And the cleanup  
19 contractors couldn't afford to, you know, first buy the  
20 equipment and then maintain it over an extended period of  
21 time. Maintain the labor force and everything else  
22 necessary to put it in. So that role fell onto the Federal  
23 Government for doing that, and the Coast Guard had that  
23 within its National Strike Force. Also the Navy has that  
25 capability within the Navy Supervisor of Salvage -- that

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1 they have this type of equipment, 'cause we can maintain  
2 the work force a little bit longer and spend the money to  
3 keep the equipment up and running. So primarily we hire  
4 commercial cleanup contractors. If the contractor can't  
5 show up as quickly as the Federal Government can, as the  
6 Coast Guard -- then what we can do is commit Federal  
7 resources until the commercial contractor is on-scene and  
8 gets his resources in place. And if the Federal resources  
9 are no longer needed then we just release 'em and send 'em  
10 back. If they're continued to be needed then we'll commit  
11 those resources as we need to.

12 That's essentially the money part. The 311K fund, in  
13 the money part, where we train our OSCs. I think it's  
14 probably well-published that the 311K pollution fund was at  
15 a level of about 6.2 million dollars when the Exxon Valdez  
16 ran aground. And there are some inherent problems with the  
17 Federalization in terms of the Federal Government, or  
18 particularly a Coast Guard on-scene coordinator being able  
19 to move money very fast. And it's the procurement of  
20 resources is entirely controlled by the Federal procurement  
21 regulations. And the -- each Federal on-scene coordinator  
22 has a limited amount of authority within a basic ordering  
23 agreement that we have, he can commit \$25,000 on a  
23 signature. Anything beyond that you have to have a fully-  
25 qualified contracting officer there to, you know, take

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1 bids, do all the things that you have to do to make sure  
2 that administratively it's done correctly. And our ability  
3 for anything over about \$25,000 to commit money and move  
4 money fast, to move resources fast, gets to be severely  
5 limited. We can, however, move Federal resources quickly  
6 in terms of asking DOD to move resources. Any Federal  
7 agency that has some resources that can be committed, they  
8 can do that, 'cause we can do it kind of on a, you know, I  
9 promise I'll pay you back kind of a thing. But the  
10 commercial sector is not in the business to do that. You  
11 know, if we tell 'em, you know, we promise we'll pay ya,  
12 that doesn't even get you a cup of coffee in Homer.

13 MR. PARKER: What's the health of the commercial  
14 sector in Alaska right now?

15 COMMANDER ROME: Getting better, Mr. Parker, actually  
16 it's..... After every major oil spill the commercial  
17 sector picks up because they see -- there's an increased  
18 awareness in the public to spills, and the demand to get  
19 'em cleaned up. And so the business is there. It's --  
20 prior to the Glacier Bay incident in 1987, the number of  
21 commercial cleanup contractors in Anchorage had gone down  
22 to one, from about five or six. And from 1987 to 1989  
23 they've maintained -- there was about three, maybe four  
23 viable commercial cleanup contractors, mostly doing small  
25 jobs.

/clf

1 MR. PARKER: I guess it's the big problem I had in  
2 the, you know, sitting in on a few simulations and  
3 listening to the commercial contractors and so forth, that  
4 the system is successful -- the prevention system is  
5 successful, why the commercial contractors get starved out.  
6 And how does that loop get connected up. So if you're  
7 gonna rely on commercial contractors how do you insure  
8 they're there when you need 'em if you're successful in  
9 keeping oil out of water?

10 COMMANDER ROME: You're not very successful.

11 MR. PARKER: Hmm?

12 COMMANDER ROME: You're not very successful at keeping  
13 them in business. That's a simple fact.

14 MR. PARKER: Yeah.

15 COMMANDER ROME: And that's where -- I don't know  
16 where the first co-op started. But essentially the oil  
17 industry, in order to keep viable resources, and primarily  
18 large collection-type resources -- offshore stuff -- they  
19 formed cooperatives and put together money, put together  
20 the resources that they'd have and that's -- It's well-  
21 established on the West Coast for co-ops. The East Coast  
22 has one or two, and the Gulf Coast has one, and I think  
23 it's a regulatory requirement for the loop in the Gulf  
23 Coast, but essentially they -- the West Coast is probably  
25 farther ahead in terms of co-ops and large pieces of

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1 equipment. But that was a way that industry could  
2 guarantee that they could maintain oil spill cleanup  
3 capability. And they ran it as non-profit organizations,  
4 too. So the small cleanup co-ops, you know, they --  
5 basically it was reduced to suppliers, you know, you supply  
6 boom, you supply skimmers. You'd have some people that had  
7 worked on a few spills, you know, they'd go down and they'd  
8 -- you know, it was not a large industry.

9 MS. WUNNICKE: Mr. Chairman. You mentioned earlier  
10 that part of the \$35,000,000 fund, or that was the ceiling,  
11 anyway, was to use to stockpile equipment. Now, I take it  
12 that the equipment that the Coast Guard stockpiled for  
13 major offshore spills was under the control of the Strike  
14 Team?

15 COMMANDER ROME: Yes.

16 MS. WUNNICKE: Where are they headquartered and where  
17 was that equipment located?

18 COMMANDER ROME: The Strike Team equipment, until  
19 1987, there were three Strike Teams. One in Elizabeth  
20 City, North Carolina, one in Mobile, Alabama, and one in  
21 San Francisco. And the one in San Francisco is operating  
22 areas -- the West Coast of the United States, Alaska,  
23 Hawaii and the trust territories of the Pacific. They have  
23 28 people and approximately a \$13,000,000 inventory of oil  
25 spill cleanup equipment, primarily high-seas stuff. And

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1       they have lightering pumps and basically everything they  
2       have is designed to fit into a C130 or a C141 to be able to  
3       fly. Their operational requirements are that they have to  
4       have an individual underway within an hour toward the scene  
5       of a spill. And equipment underway from the facility in  
6       San Francisco to the scene of a spill within six hours.  
7       But practically speaking, you know, within -- to get the  
8       State of Alaska from San Francisco, you know, you've got  
9       the mobilization, flying time, and then, you know, wherever  
10      you've gotta move it to. So I always took a guess at  
11      anywhere from 18 to 36 hours from time of notification to  
12      in the water actually doing something useful.

13           MS. WUNNICKE: Among that equipment there were not  
14      fireproof booms?

15           COMMANDER ROME: No. There was not.

16           MS. WUNNICKE: So you used a contractor for the in  
17      situ burning and the fireproof boom.

18           COMMANDER ROME: Alyeska had contacted the Cook Inlet  
19      Response Organization, CIRO, in Kenai and that was the  
20      stockpile, that was the closest stockpile and fireproof  
21      boom.

22           MR. WENK: Mr. Chairman.

23           MR. PARKER: Ed.

23           MR. WENK: I thought I heard you say that these three  
25      Strike Teams had so many people and so much in the way of

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1 equipment.

2 COMMANDER ROME: Yes.

3 MR. WENK: Until 1987?

4 COMMANDER ROME: After 1987 the Atlantic Strike Team  
5 ceased to exist and it was consolidated into two Strike  
6 Teams, one in Mobile, Alabama with 38 people, and one in -  
7 - the same one in San Francisco with 28 people. And there's  
8 currently some studies being done by the Coast Guard to  
9 look at reinstituting (indiscernible) city Strike Team.

10 MR. WENK: On two occasions, and I think both were  
11 with Admiral Robbins, the question was asked as to whether  
12 or not there was a line-item in the Coast Guard budget for  
13 contingency planning, rehearsals, simulation and for --  
14 I'll say all response-related activities. And his answer  
15 was no, that what amounted to funding for these activities  
16 was pieced together out of other line-items. All of us  
17 know that there's a difference between, in relative -- let  
18 me put it this way, that the existence of an item as a  
19 line-item is an evidence of priority. Now, has anything  
20 happened? I think the last time he mentioned this to us  
21 might have been down in Homer? In any event, let's say  
22 four to six weeks ago. To your knowledge has anything  
23 happened to consolidate these activities and have them show  
23 up as a line-item in the budget?

25 COMMANDER ROME: I don't know, sir. I don't know the

/clf

1 answer to that.

2 MR. PARKER: Yeah, I was a little surprised at that  
3 answer 'cause the Yorktown facility must have a line-item -  
4 - someone's budget does.

5 COMMANDER ROME: Within the OE, Operating Expenses  
6 Budget, yes. They do. And it goes to the general program  
7 manager for oil spill response and chemical spill response  
8 is the Environmental Response Program. And they provide a  
9 certain amount of money for Yorktown to run six exercises  
10 a year. And that's throughout the Lower '48 and Alaska,  
11 Hawaii, the trust territories, for that matter. The  
12 National Strike Force gets approximately \$30,000 to \$40,000  
13 a year to conduct in-water exercises of equipment. And we  
14 try to pick different areas where they can put it in and  
15 really test, you know, the people, the equipment, the  
16 logistics, what kind of ships that you need to support it,  
17 that type of thing. And we run -- actually we had one  
18 scheduled to be done in Kenai the first of May, but it was  
19 unnecessary, 'cause we already had 'em deployed in Prince  
20 William Sound, so.....

21 MR. WENK: Assuming that all these bits and pieces  
22 could be, for accounting purposes, added up -- and I'm not  
23 asking you to guess at the number, but is it possible,  
23 then, to find out what the Coast Guard total budgetary  
25 commitment is in this area?

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1 then, to find out what the Coast Guard total budgetary  
2 commitment is in this area?

3 COMMANDER ROME: You can ask. I'm not sure what the  
4 number is, to be very honest with you.

5 MR. WENK: Right, I can understand that. But I just -  
6 - because -- again, all of us, I think, have been  
7 sympathetic to the fact the Coast Guard keeps getting new  
8 responsibilities and less resources, and so we recognize  
9 that, but we don't have any calipers on it at this stage to  
10 know really what size effort we're talking about. We hear  
11 how much it's cost Exxon to do their job, and we haven't  
12 any way to compare that amount of money with the total  
13 amount that's available in the U.S. Coast Guard that has a  
14 continuing and geographically very wide-spread  
15 responsibility. It sounds like it's orders of magnitude  
16 difference.

17 COMMANDER ROME: Yeah. I honestly don't know what the  
18 number is. We get some money. 'Cause I still have a job,  
19 so, I don't know the answer. At least \$10 an hour anyway.  
20 So I don't know how to answer your question on that. I  
21 could ask and see what kind of a -- basically, since you  
22 know the Federal budgeting system, the program gets a block  
23 of money and then within that block there are certain line-  
23 items that are, you know, either more or less specifically  
25 outlined, you know, depending on -- and I just don't know

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1 the dollar figures for that.

2 Essentially, the people that the OSC has to work for  
3 him, and primarily commercial resources that he hires, and  
4 those are in the diagram "On-Scene Forces." Certainly has  
5 other Federal agency resources. There are some provisions  
6 to use local resources if they're needed during a spill  
7 response. And we pulled in, as an example, you know, we  
8 pulled in local universities at times to provide scientific  
9 advise on primarily currents, resources at risk, you know,  
10 more local knowledge than sometimes we have. And then we  
11 have, certainly, all the State resources that come in and  
12 have a role to play. And basically, if the Coast Guard is  
13 paying the bill and funding it out of 311K, the Coast Guard  
14 assumes operational and financial responsibility and  
15 generally acts as the banker to the thing. If anybody, you  
16 know, and -- pretty much dictates what, at least we feel,  
17 needs to be done to satisfy both state and Federal  
18 environmental laws to the cleanup.

19 If the spiller is paying the bills, then we get into  
20 the term that the Coast Guard monitors. And basically, the  
21 State of Alaska and the Coast Guard follow a very similar  
22 pattern where we participate in the spill along with the  
23 spiller, and make sure that they're doing -- we make  
24 recommendations to the spiller to see whether, you know, to  
25 say I think you should be doing this task, specifically.

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1 If the spiller agrees and does it then all is well and  
2 good. If the spiller doesn't do it, then the Coast Guard  
3 has the option of saying does it really need -- do I feel  
4 that strongly about that I should go ahead and fund it.  
5 And, you know, there are some circumstances where the  
6 answer is yes, some circumstances where it's no. But in  
7 all cases, you know, we still have that option as a monitor  
8 that if we feel we should be doing something extra the on-  
9 scene coordinator can do that. And then we work up the  
10 cost recovery and litigation, actually later. It's the  
11 OSC's responsibility to track all the costs, get good  
12 supporting data for it. At the end of the spill we submit  
13 a bill to the spiller. If the spiller pays it, fine, it  
14 goes back in and reimburses the 311K fund. If the spiller  
15 chooses not to or only wants to pay part of it then we just  
16 ship it off to the Department of Justice, and Justice  
17 fights it out in the court system for whatever money they  
18 can get back, and essentially, the better level of  
19 documentation that we have the better chance we have of  
20 success in later litigation. Yes ma'am.

21 MS. WUNNICKE: I have a question, Mr. Chairman. What  
22 you just said assumes that everyone is paid for what they  
23 do. What about a volunteer group. Does Coast Guard have  
24 any authority to use any volunteers, or what has been your  
25 experience in terms of using people who volunteer boats, or

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1 volunteer equipment or even volunteer their own services in  
2 an event of this nature?

3       COMMANDER ROME: We prefer to put -- by the definition  
4 of volunteers we look at that as free. And that's a hard  
5 question in the use of volunteers, because there're a lot  
6 of liability concerns in putting people in danger where you  
7 don't need to. In a classical sense, in a lot of spills,  
8 we've used volunteers in wildlife rehabilitation efforts.  
9 You know, in bird cleaning stations, people that know a  
10 lot, even down in Valdez people that knew how to handle  
11 otters and that type of thing, that said I wanta volunteer  
12 to do this. Then we would certainly, you know, try to  
13 support those folks. We've used volunteers where, in some  
14 of the spills in the Lower '48, where they say, we've got  
15 a group of people that wanta go down on a beach and just,  
16 you know. Can you give us bags, or rakes, or shovels or  
17 anything? We'll just go down, pick it up and you guys  
18 handle the disposal. And, you know, we've done that. We  
19 got into some problems here because of the remoteness and  
20 actually putting -- you know, first of all they needed  
21 transportation out to some of these islands, and then once  
22 they were out on the islands what do you do with them? You  
23 know, and actually whose responsible. If somebody gets  
24 hurt, you know, how do they transmit that so you can get  
25 'em out of there. And I'm not sure we ever came up with a

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1 great answer for that. And in fact, I don't think we ever  
2 really did. Volunteers in dangerous, rocky places -- it's  
3 our general policy not to use them there.

4 MS. WUNNICKE: Let me just follow-up on that. What I  
5 really had in my mind when I asked the question, was the  
6 flotilla of fishing vessels that were in the water and able  
7 -- ready to respond within a matter of hours after the  
8 grounding of the Exxon Valdez, that was put together by the  
9 Cordova Fishermen's Group. Now, I don't see them as, you  
10 know, people on rocky shores unaccustomed to the area. I  
11 think that's what I had in mind when I asked the question.  
12 I'm not asking you to give an answer to that particular  
13 thing, but it's something that is -- has really puzzled me  
14 from the beginning that there seemed to be that concern for  
15 liability did prevent people from making use of equipment  
16 and people that were at hand.

17 COMMANDER ROME: Yeah, I think in the very early  
18 stages that's indeed true. I'm just not, in this specific  
19 instance with who volunteered to do what, I'm not sure I  
20 know what we did. Later on there were a number of -- we  
21 flew approximately 100,000 feet of boom, sorbent boom, up  
22 from Seattle. It was the 27th or 28th of March. And we  
23 put it on the Rush, on the Coast Guard cutter Rush, and  
24 went out into Prince William Sound and said, anybody that  
25 wants to try and so something, we've got 100,000 feet of

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1 sorbent boom and basically, you know, -- I mean it was in  
2 concert with everybody that was there. You know, Exxon,  
3 the State and us, and we said, anybody want some sorbent  
4 boom to go out and try to do something with it, you know,  
5 here's the place you can drop it off. And the boom was,  
6 you know, was certainly gone in 15, 20 minutes.

7 MS. WUNNICKE: So that may have been used by some of  
8 the same vessels that I am talking about, huh?

9 COMMANDER ROME: Yeah, if it were there.

10 MS. WUNNICKE: If it were there.

11 COMMANDER ROME: And I guess the -- one of the hard  
12 things to look at, is can you put them to good use. I mean  
13 doing something that's gonna help the response. I mean, do  
14 you have some equipment for 'em that they can actually put  
15 to bear and cause something good to happen. We certainly  
16 on the grounding of the tanker, we didn't want a lot of  
17 vessel traffic in and around there because we had such a  
18 high fire potential. And we didn't need that with a lot of  
19 people going in.

20 MR. PARKER: In regard to the volunteers, the State  
21 Legislature passed its Oil Spill Response Corps legislation  
22 in the last session. Has the Coast Guard had any position  
23 on that or studied that legislation how it fits in with the  
24 RRT?

25 COMMANDER ROME: What, setting up our response depots?

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1 MR. PARKER: Yeah. This one is the one that  
2 establishes the corps of trained persons who are going to  
3 be on standby, you know, throughout the State.

4 COMMANDER ROME: Yeah, I -- we haven't published an  
5 official position on that and I don't know if we were. My  
6 personal feelings on it are that if the equipment is there  
7 and the people can use it and use it properly and maintain  
8 it and do some good, I -- you know, that's fantastic. And,  
9 you know, we would certainly support that effort. You  
10 know, we don't have to be the only kids on the block kind  
11 of a thing. Because if you've got the people that are  
12 there, you've got the local knowledge and they have enough  
13 equipment to be able to handle, that's probably 80% of our  
14 spills, are the stuff that occur in small boat harbors and  
15 things like that.

16 MR. PARKER: Let's see. Meg, then Ed.

17 MS. HAYES: I have several ragbag of questions as  
18 you've been talking this afternoon. First of all, we've  
19 had several people testify to us in our public meetings  
20 about -- that relate to the definition of a spill. For  
21 instance, when -- as I was flying over Prince William Sound  
22 last week it was obvious that there were places that there  
23 were still great deal of oil washing off of beaches and  
24 redepositing itself in other places. Is the spill only a  
25 specific, discreet event. If, for instance, if the oil is

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1 deposited on the beach and then redistributed through ocean  
2 activity, waves or storms, is that another spill, in the  
3 Coast Guard's mind or in the incident? Do you consider  
4 that all the same?

5 COMMANDER ROME: The identity of the spill is the key.  
6 If it's Exxon Valdez oil then it's one continuous event.

7 MS. HAYES: So if, for instance, if there's another  
8 spill when it gets to California or wherever its drydock is  
9 going to be, that's a part of the same initial spill as up  
10 in Prince William Sound?

11 COMMANDER ROME: Yes.

12 MS. HAYES: Okay. Another question is we have all  
13 seen maps of the spill superimposed on the East Coast. In  
14 that kind of case, if the same magnitude of spill, with the  
15 same distribution pattern, had happened, would the National  
16 Response Team have taken a different role than it did in  
17 the Exxon Valdez spill? My question is, sort of, is the  
18 decision about the level at which it's addressed a  
19 political decision based somewhat on population and the  
20 resources at risk, or is it -- would that still have been  
21 handled through a regional response team?

22 COMMANDER ROME: I don't know the answer to that,  
23 honestly. It's -- there's a considerable amount of work  
24 that's being done at the National Response Team level,  
25 'cause this -- the Exxon Valdez is considered, a new term

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1 has evolved, which is " a spill of national significance."  
2 And I think it gets to the point where the growing number  
3 of people that are actually concerned about a spill is so  
4 large that the interest from a national level has to get  
5 involved in it, you know, as historically you look at a lot  
6 of spills, it's pretty much kept in a regional or a local  
7 level. You know, you get two or three nights of news and  
8 then, you know, it's kind of forgotten. So at that point  
9 it's left at the local/regional level. So to answer your  
10 questions, I'm not sure what they -- I would think in that  
11 type of circumstance where they certainly have the  
12 population that it would be elevated to a higher level.

13 MS. HAYES: Also I wasn't sure that I understood you  
14 properly. The Super Fund does not -- is funded through  
15 taxes on the oil industry?

16 COMMANDER ROME: Yeah, on the chemical industry, 86%  
17 of it is on tax. I'm not sure what -- it's a few cents a  
18 barrel of.....

19 MS. HAYES: Okay, so it's the chemical industry, not  
20 the oil industry.

21 COMMANDER ROME: Yeah. It's the chemical industry.  
22 Yeah, I'm sorry if I.....

23 MS. HAYES: There's more. In your chart on page  
24 seven, about the Regional Response Team. That makes some  
25 sense to me in Alaska with the relatively small amount of

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1 private land. But in this kind of set up is there any  
2 representative for private landowners. For instance, in  
3 this case, the Chugiach Corporation obviously has land that  
4 is being affected by the spill. In that first initial six  
5 hours is there opportunity for private landowners that  
6 might be affected to interact with the decision process.

7 COMMANDER ROME: Primarily they interact through their  
8 elected officials. And with the Chugiach Alaska  
9 Corporation, they showed up on-scene very quickly. And in  
10 that sense, you know, they were there and introduced  
11 themselves and that's the way a lot of it happens. You  
12 know, they just come in and introduce themselves and say,  
13 hi, I'm with so and so and these are my concerns.

14 MS. HAYES: So you're saying that it would be  
15 advantageous if one were a large landowner affected by a  
16 spill, is to not wait for the phone to ring. To yourself  
17 to go.

18 COMMANDER ROME: You bet.

19 MS. HAYES: Several questions we've had about the  
20 Coast Guard's -- limits of Coast Guard's authority and this  
21 kind of thing, especially in a situation where it hasn't  
22 been Federalized. For instance, we've heard various  
23 stories people have told us. One of them was that the  
24 lightering of the Exxon Valdez had to wait until there was  
25 an Exxon vessel available. First of all, do you know if

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1       that's true?

2               COMMANDER ROME:  No I don't.  I think it was more of  
3       a situation that we didn't have the lightering pumps there.  
4       The Exxon Baton Rouge showed up, it was either Saturday  
5       evening or Sunday, and we had, I think the actual  
6       lightering operation first started early Sunday morning.

7               MS. HAYES:  So if an Exxon vessel hadn't been there  
8       would another vessel of a different company had been  
9       available to, for instance, we've heard that vessels  
10      continued to be filled at the terminal in the middle of all  
11      of this, in the initial hours.  Would the Coast Guard,  
12      without Federalizing the response to the spill, have had  
13      the authority to commandeer one of those vessels to use for  
14      lightering the product of Exxon Valdez?

15              COMMANDER ROME:  I -- commandeer may be a strong word.  
16      And I think it's more.....

17              MS. HAYES:  Encourage strongly?

18              COMMANDER ROME:  Yeah, either encourage or bare boat  
19      charter, something like that.  I think there's something  
20      that, you know, I mean, when the Exxon Valdez ran aground,  
21      to the best of my knowledge the port was shut down and it  
22      was not reopened until, I think, Monday, the 27th.

23              MS. HAYES:  But the Coast Guard could've split its  
24      authority by leaving the spill -- the response in the hands  
25      of Exxon, but still have directed certain actions to take

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1 place, like.....

2 COMMANDER ROME: Yes.

3 MS. HAYES: Okay. And also, in that same line, we've  
4 heard various people come to testify at some of the cities,  
5 talking about the first on the scene to grab boom kept it,  
6 regardless of whether there was actually a threat of oil or  
7 given the likelihood of oil affecting their particular  
8 resources, in some cases individual private people had  
9 that. Is there any mechanism for determining the split of  
10 resources, communications, vessels, aircraft, boom,  
11 equipment, that kind of thing, that overall other than, you  
12 know, the first guy who's got it, you know, possession  
13 being nine-tenths of the law. Has there -- is there any  
14 method of doing that -- of making those decisions other  
15 than Federalizing the spill, or would Federalizing the  
16 spill have made that kind of difference?

17 COMMANDER ROME: I don't know, you know in the initial  
18 stages of the spill, with the resources that were there,  
19 there was, you know, essentially three skimmers and 17,000  
20 -- on that order of 17,000 feet of boom, and a work barge  
21 that -- there wasn't that -- you know, that was the  
22 equipment and it was in the oil. Beyond that you develop  
23 strategies certainly for what you want to protect, how much  
24 of your resources do you want to commit to protection  
25 versus active mechanical cleanup. And I think as a

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1 practical matter you rely -- you know, you rely very  
2 heavily on your contractor to say, you know, give you a  
3 recommendation that says I need this amount of my resources  
4 doing this thing, and that these are the vessels people and  
5 everything else I have to do with that. And you develop  
6 that game plan to figure out what you need to do rather  
7 than -- you know, first of all you wanta make sure that  
8 your resources are used well, and if you have, like Mr.  
9 Parker was saying, if you have a group, a local group of  
10 trained people that know how to do oil spill response,  
11 they're certainly a likely candidate that you would go to  
12 and say, I know you're in Cordova and I'm over at Homer  
13 but, you know, we can use you. And we have the equipment.

14 MS. HAYES: Well, of course, you know, communities, as  
15 one of the people testified before us, we've heard lots of  
16 stories. And good stories. I mean, instructive stories.  
17 But somebody said, you know, you take care of what you  
18 love. And I can imagine easily that fishermen or people  
19 with strong emotional ties to parts of the Sound would make  
20 decisions that if you had a load of boom brought in, as  
21 sort of a come-all-ya (ph), whoever's there first can load  
22 up as much as you can carry and deploy it -- that the  
23 decision is made somewhat haphazardly rather than being  
24 well thought-out. And in fact, that's what sounds like some  
25 of the response was to this spill. Am I wrong, is that -

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1 - I mean, was there an overall thought process about the  
2 way that these -- how we've heard of State legislators  
3 bringing -- personally escorting loads of boom up.

4 COMMANDER ROME: Yeah, I'm not sure if I've heard  
5 that. There -- with the resources that we had in this  
6 particular incident you -- the strategy was to, at first,  
7 you know, collect as much oil as you possibly could. You  
8 could certainly choose the leading edge. The other part  
9 was identifying the critical resources that we absolutely  
10 wanted to protect and certainly Cordova District  
11 Fishermen's United came in and essentially -- well they did  
12 -- they made the statement that said, we will write off the  
13 entire Knight Island, but what we have to do is protect  
14 these four hatcheries, which was Sawmill, (indiscernible),  
15 Main Bay and Esther Island hatcheries. And with that a  
16 tremendous amount of effort went into, you know, the  
17 protective booming in those. The initial protective  
18 booming went around primarily Bligh Island where we had  
19 some of the herring hatcheries. And there was some boom  
20 that was stored in Jack Bay and Galena Bay in the event  
21 that the oil migrated back into the narrows and into the  
22 Port of Valdez. So that -- those were, in my opinion,  
23 considered thoughts for what we were gonna do. In terms of  
24 turning people loose, to the best of my knowledge, you  
25 know, with the sorbent boom and things, we gave it out to

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1 'em. When you have -- I don't know, you have a front of  
2 oil that's 40 miles long, you know, you're not gonna miss  
3 too much of it.

4 MS. HAYES: Let me just go back to what I -- the  
5 question I just asked you before. You said that to the  
6 best of your knowledge it wasn't that the lightering of the  
7 vessel was delayed by a lack of.....

8 COMMANDER ROME: An Exxon ship.

9 MS. HAYES: An Exxon ship. But it was because  
10 lightering pumps weren't available?

11 COMMANDER ROME: There was an anti-pollution transfer  
12 system, one lightering pump. There was some damage to the  
13 transfer lines within the tanker. So to use the tanker's  
14 pumps to transfer would've resulted in -- in fact they did  
15 try it when the Exxon Baton Rouge got on and lost an  
16 additional 11,000 barrels. I think in that order. And so  
17 that required us to go on a load-over-top operation, which  
18 is lower pumps down into the tanks and your -- instead of  
19 having pumps that can transfer 90,000 barrels an hour  
20 you're running down to a pump that runs 1,000 barrels an  
21 hour. So your dimensions of scale are considerably  
22 smaller. So we had that -- we had the one there, there was  
23 one in Kenai. The Strike Team brought up five, and a  
24 commercial contractor out of Detroit brought in two  
25 additional ones. So eventually there were nine pumps on

/clf

1       there.

2               MS. HAYES:   Okay.   Thank you, Mr. Parker.

3               MR. PARKER:   Ed.

4               MR. WENK:    The Secretary of Transportation and the  
5 Administrator of EPA turned out a report that I know you're  
6 familiar with, that some of us think is pretty remarkable.  
7 It's one of the most readable documents I've ever seen  
8 produced.....

9               UNIDENTIFIED SPEAKER:   Ed, could you talk up a little.

10              MR. WENK:    Sure.   This -- there was this so-called  
11 Skinner Report that was produced by the Secretary of  
12 Transportation and the Administrative EPA.   In it there  
13 were some conclusions in the forwarding letter to the  
14 President.   I won't read 'em all but just one or two to  
15 come to then one of their recommendations or conclusions.  
16 They said that, "Response personnel adequate in number,  
17 training and readiness must be available.   The parties on  
18 the scene were not ready.   The arrival of vital equipment,  
19 skimmers, booms, barges, dispersants, etc. was delayed  
20 precious hours.   Three different contingency plans were in  
21 place and their incompatibility helped to slow the  
22 containment and cleanup.   The skimmers and other mechanical  
23 means of oil removal were inadequate."   And so on.  
24 "Mechanisms need to be developed to insure that the level  
25 and speed of the government response match the level and

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1       seriousness of the crisis." Then under recommendations,  
2       under leadership of the Coast Guard, "The National Response  
3       Team is conducting a six-month study of contingency  
4       planning." And here more words are used like preparedness  
5       must be improved, the study will examine the use of worst-  
6       case scenarios to insure realistic planning, and so on. My  
7       question is whether you have any familiarity with that  
8       study that's underway. I realize six months have not yet  
9       elapsed, so it's certainly not finished. But are you  
10      familiar with it, and at the risk of playing the same  
11      string again and again, do you know whether there's been  
12      attention paid to the whole concept of crisis management  
13      and decision ability in the first few hours as part of that  
14      study.

15           COMMANDER ROME: The National Response Team is  
16      collecting the informa -- basically, what we're doing  
17      within the Coast Guard and within the National Response  
18      Team agencies is we're reviewing and updating our  
19      contingency plans, particularly looking at risk analysis,  
20      of where a spill is likely to occur and whether or not our  
21      contingency plans are adequate, or at least identify that  
22      they're inadequate in terms of people and personnel. And  
23      our response is going back on the 15th of October. The  
24      other thing's as partial to this, the National Response  
25      Team is recently going to conduct a study on basically

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1 management on a spill of national significance again  
2 (indiscernible). And I think part of that is taking a look  
3 -- you know you have to look at the initial decisions of  
4 the first few hours on this. Who, you know, who does what  
5 and where, and when, and that -- the whole thing. I think  
6 you have to so that my guess is that, yes, that's part of  
7 the study -- has to be part of the study, because it  
8 affects how we respond, you know, in certainly in future  
9 years. And it also identifies, you know, whether there's  
10 gonna be money available.

11 MR. WENK: Right. And the study that I understand  
12 will be finished October 15th?

13 COMMANDER ROME: Well, our part of it is -- the Coast  
14 Guard's part of it. I think the response to the President  
15 has to be in by either the first of January or the first of  
16 February. In that time frame. But we're getting it back  
17 to the National Response Team by the first of November.

18 MR. WENK: I see. And would that be available to this  
19 Commission?

20 COMMANDER ROME: The -- yeah, I think any of the  
21 documents that we have, you know, have been made available.

22 MR. WENK: Okay. Thanks very much.

23 MR. PARKER: Any other questions for Commander Rome?

24 MR. WALLIS: I have about 10.

25 MR. PARKER: Okay. The special forces people -- are

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1 those slotted positions or collateral duties.

2 COMMANDER ROME: Those are specifically slotted  
3 positions. That's their major role in life.

4 MR. PARKER: How many of them are there?

5 COMMANDER ROME: Within the special -- the EPA has the  
6 Environmental Response Team and they have a cadre of about  
7 20, 25 people. They provide advise, expertise, you know,  
8 primarily ground water problems, hazardous waste cleanups,  
9 beach cleanup type operations, biology, water chemistry,  
10 that type of thing. The NOAA Scientific Support  
11 Coordinator has access to primarily Coastal Zone resource  
12 things. You know, they get the trajectory modelists, they  
13 get the marine biologists, chemists. They provide a lot of  
14 computer support, have actually provided a lot of computer  
15 support for the Coast Guard during this. We have a Public  
16 Information Assist Team that comes on and provides press  
17 support for the Federal On-Scene Coordinator, actually, you  
18 know, develops press statements, holds press conferences,  
19 that type of thing. Make sure that the information flow  
20 from the on-scene coordinator gets out. So those are  
21 slotted. I think within the Coast Guard the PIAT team has  
22 five, four maybe five people on it.

23 MR. PARKER: The National Response Team chairman --  
24 I'm the on-scene coordinator in a major spill. What kind  
25 of support do I look to the NRT chairman for, and say I'm

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1 working -- I'm the Coast Guard on-scene coordinator, do I  
2 have to access him through the Commandant, or do I access  
3 him directly.

4 COMMANDER ROME: Primarily we would access him through  
5 the Commandant because we would be looking at national  
6 resources when we wanted to access the NRT. If we wanted  
7 advice, in terms of advice or policy guidance or something  
8 like that, what we normally do is go to the chairman of the  
9 Regional Response Team who goes to the chairman of the  
10 National Response Team and that's a shorter, probably less  
11 political, path in terms of advice and how to apply policy.  
12 But if we want hard resources we pretty much better go to  
13 the Commandant.

14 MR. PARKER: And when you were securing the Corps  
15 dredges and the Navy units that were brought in, was that -  
16 - what was the path that you went to secure those?

17 COMMANDER ROME: The path was to the National Response  
18 Team. It was an established path, basically. And it was  
19 involved two telephone calls. One was an Air Force  
20 logistician with the -- in the Pentagon, and the other was  
21 a guy that owned the equipment. And we just said we needed  
22 it, sent the right formatted message and, you know, the guy  
23 put it on a plane and flew it to Anchorage. So that system  
24 was a little -- that system was smoother.

25 MR. PARKER: Mmm hmm. Esther.

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1 MS. WUNNICKE: You responded to Commissioner Hayes a  
2 while ago when she asked about private land owners, and you  
3 said that it's best that they show up and not wait for the  
4 telephone to ring, and that they should look to their  
5 elected officials. Are you talking about State officials  
6 or local officials?

7 COMMANDER ROME: Well, I think it's a matter of  
8 accessibility. The -- we keep, you know, we have contact  
9 points of both State and local officials for each of the  
10 Federal On-Scene Coordinators. So, you know, certainly the  
11 people that we would be in contact with would be both the  
12 State official that's there and also, probably, the mayor  
13 in the town that we're in. So through -- as resourceful as  
14 people are through one of those two, you know, we find out  
15 that they have a concern, or they just show up.

16 MS. WUNNICKE: If I may. That was -- that would be an  
17 established procedure then to -- you outlined who you would  
18 notify first and so forth. Do you notify State officials  
19 apart from DEC as a member of the Regional Response Team?

20 COMMANDER ROME: No we -- what we rely on is that the  
21 -- we have a -- from the OSC he has a list of notification  
22 numbers that he makes. And it's usually the Emergency  
23 Service's folks, local DEC, probably local Fish and Game.  
24 He calls the District office in Juneau and the National  
25 Response Center, you know, if they need to do that. And

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1 then what we expect out of that is the spider web, the  
2 networking effect to go on. Each individual that's  
3 notified has another series of telephone calls to make.

4 MS. WUNNICKE: Is that written down somewhere, that  
5 spider web, as to who calls who?

6 COMMANDER ROME: Within -- yes, it is in the  
7 contingency plans. In the local contingency plan it'll be  
8 the notification list from the OSC. Within the Regional  
9 Contingency Plan it says when the Regional Response Team is  
10 activated the -- myself and my assistant, call the people  
11 on the Regional Response Team and let 'em know what's going  
12 on.

13 MS. WUNNICKE: So.....

14 COMMANDER ROME: But then within those other agencies,  
15 you know, I guess we'd look at it, to answer your question,  
16 we'd look at it that they are responsible for notifying who  
17 they need to know. Who needs to know within their own  
18 agency.

19 MS. WUNNICKE: But in terms of a local government, or  
20 in terms of the State government as a whole, are they part  
21 of that network or do you count on the Department of  
22 Environmental Conservation to be the sole point of contact  
23 for all local and state interests.

24 COMMANDER ROME: Pretty much. Yes. Because we, you  
25 know it -- we don't have the list of the land owners. So

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1 the Coast Guard would look to DEC and the local officials  
2 to make the necessary contacts, yes.

3 MS. WUNNICKE: Thank you.

4 MR. PARKER: Any other questions? Okay. We've been  
5 getting bits and pieces, you know, of the National  
6 Contingency Plan for the last couple of months in our  
7 hearings and getting it all at one time here from you,  
8 Commander, was extremely helpful I think to all of us. And  
9 we'll see you tomorrow.

10 COMMANDER ROME: All right, sir. Thank you.

11 MS. WUNNICKE: Thank you.

12 MR. PARKER: We'll take a break till four o'clock, at  
13 which time we'll have public testimony.

14 (Off Record)

15 (On Record)

16 MR. PARKER: We'll have public testimony. I  
17 understand there're two people to testify. Mr. McKee, is  
18 it not?

19 MR. MCKEE: Yes.

20 MR. PARKER: Mmm hmm.

21 MR. MCKEE: My name's Charles McKee. Again, a common-  
22 law citizen, the Republic of the United States of America.  
23 And I would like to thank the Commissioner, the Chairman  
24 and the Commissioners for this opportunity. And I'd like  
25 to ask about the records and whether this -- the dictation

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1 process of the tapes or transcription of these tapes will  
2 be available before this Commission is convened or  
3 dissolved?

4 MR. PARKER: The summary minutes of the previous  
5 meetings are available up to the ones that were approved  
6 today. And the transcriptions of future meetings will be  
7 available at the Commission offices. Anybody who wants  
8 their own copy will have to, of course, pay for it. But  
9 they will be available for review at the Commission  
10 offices, which would take about anywhere from five to ten  
11 days after each meeting before they're transcribed from the  
12 tapes. And depending on our Counsel's needs we may move to  
13 have transcriptions made at future meetings as our future  
14 meetings get more intensive. So that's about where we are  
15 now on that.

16 MR. WALLIS: (Indiscernible) transcriptions are  
17 minutes aren't they?

18 MR. PARKER: Hmm?

19 MR. WALLIS: The transcriptions are the minutes.

20 MR. PARKER: Yeah. We have our summary minutes up  
21 till now, yeah, but those are -- we're going to have to go  
22 to complete transcription from now on just to have a  
23 record. At least that's Counsel's advice. And the tapes  
24 are also available for purchase.

25 MR. MCKEE: Yeah, I'm aware you're not gonna go ahead

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1 and for the previous hearings transcribe those tapes?

2 MR. PARKER: Not unless we need to, no.

3 MR. MCKEE: Okay. I'd like to address again the  
4 prevention aspect of the oil spill. And I've -- in my own  
5 personal endeavor, I've uncovered some very frightening  
6 information. And it's in reference to the assured or the  
7 insur -- value -- the insurance company covering a maritime  
8 policy that found out that the directors were negligent in  
9 conducting the affairs of the company, mutual fund  
10 insurance company. And the State was forced to file a  
11 suit, class action, and they're now seeking damages -- just  
12 a minute.

13 Now seeking the people involved but the damages arise  
14 out of negligence, misrepresentation, conversion and  
15 frauds, civil (indiscernible) activities, and -- so they're  
16 seeking these people all over the world. And so -- and I'd  
17 questioned the legal Counsel and questioned the  
18 representative of the State, and I informed this individual  
19 that the policy-holders, this is this very serious point  
20 that I want to bring to your attention -- the policy  
21 holders are ultimately responsible for the director's  
22 actions. And that's us. In lieu of mandatory auto  
23 insurance policies, we're all tied in to it through this  
24 Federal Reserve Mutual Fund Policy Contract. And the other  
25 legislation that it becomes law. So all, most all,

/clf

1 insurance companies that are mutual fund insurance  
2 companies and the policy holders are ultimately responsible  
3 whether it's -- they had employees that were injured under  
4 their policy. We all have to cover. It's not like pay out  
5 10 cents on a dollar. The policy holders are ultimately  
6 responsible for damages incurred. So we're looking at the  
7 middle-class people. Middle-class income. It'll bankrupt  
8 the Nation. And we as -- we're still tied whether we want  
9 to acknowledge it or not, we're still tied to Nature as a  
10 whole, so we're all policy holders in this environment and  
11 so in order to repair the environment, who's gonna be  
12 ultimately responsible in paying for damages. Just to be  
13 rehabilitating the environment. Not talking about profit  
14 or punitive damages. Is it gonna come from the negligent  
15 directors of the insurance industry? Where they're in a  
16 foreign country and they can't even be found. And they  
17 don't even know where the money's at? That's the question  
18 that has to be focused on 'cause they don't even go to  
19 jail, these individuals. And the money is hard to find to  
20 -- it shouldn't come from the gas pump. It shouldn't come  
21 from taxation 'cause we're all ultimately paying for that  
22 rehabilitation of the environment. And it'll certainly  
23 bankrupt us if we don't go after the policies that've  
24 already been prepaid. And, you know, through premiums. I,  
25 as well as -- as I pointed out in the earlier testimony,

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1 possibly even directors of this company that was involved  
2 in this maritime accident. And it goes beyond that into a  
3 foreign country and it's in reference to a word that's --  
4 you can find in the common-law books, loyd (ph) -- the  
5 proposition to loyd (ph). The definition is to lord and  
6 master over the economy and the environment, basically. So  
7 it's in reference to the mutual fund policy holders, we're  
8 ultimately responsible unless we adjudicate this in common-  
9 law court, rather than the equity court system. And go for  
10 not punitive damages, but go for recovery. And go directly  
11 to the source of where the money is at. And it's not in  
12 this country. It certainly, we don't have it. The  
13 citizens, the policy-holders of this country, as you want  
14 to refer to 'em, don't have the money. And it's in a  
15 another foreign country. And the environment has to be  
16 cleaned up. And you'll bankrupt the citizenry and the as  
17 well as the state governments in order to do so. If you  
18 don't go to common-law court. And another thing I might  
19 point out is earlier testimony in reference to equity court  
20 system and Congress and so on, is Article 3, Section 2,  
21 Clause 2 of the Constitution reads, in all cases affected  
22 -- in all cases affecting ambassadors and other public  
23 ministers, and Counsel, and those in which a state shall be  
24 a party, the Supreme Court shall have original  
25 jurisdiction, except for the people. The people have

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1 ultimate jurisdiction over the Supreme Court. The jury.  
2 And I end my comment.

3 MR. PARKER: Okay, thank you, Charles. We'll have the  
4 CIRCLA trustees and the Federal trustees in on September  
5 20th. We'll be addressing this, and you heard the comments  
6 on Public Trust Doctrine this morning, so.....

7 MR. MCKEE: That was refreshing.

8 MR. PARKER: Mmm hmm. Okay. Anyone else? Yes sir.  
9 Come on up. Will you state your name for the record,  
10 please.

11 MR. WOW (ph): Mr. Chairman Parker, ladies and  
12 gentlemen of the Commission, my name is Ed Wow (ph) and I'm  
13 just ordinary concerned citizen. I'm gonna address myself  
14 to what we understand most. The budgetary preparedness.  
15 The men -- the officer of the Coast Guard who proceeded us  
16 was saying that there was \$35,000,000 in oil spill  
17 emergency fund. I would suggest to you that we amiably at  
18 some point reach an agreement with the oil companies that  
19 they do each chip in about \$50,000,000 each to that such  
20 fund. And that is not a big deal, because \$250,000,000  
21 comparing to \$1,000,000,000 that Exxon had already spent is  
22 of relatively small, you know, importance. This would  
23 insure the availability of ships, pumps, booms and  
24 equipment for immediate, swift, or instant rescue response.  
25 But before this happens, we need a group of individuals

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1 drilled in oil spill real-life exercise. To do that we  
2 will need to have either the State or the Coast Guard  
3 taking a firm command of oil spill situations, instead of  
4 just making recommendations no captain ever listens to. In  
5 final analysis, Coast Guard is probably better equipped for  
6 taking that command of such an emergency, simply because of  
7 their military effectiveness in dire situations. However,  
8 should the State assume command, then be advised that the  
9 State of Alaska by no means is short on dedicated and hard-  
10 nosed officials. Two of them come to my mind. Dr. Ted  
11 Marla (ph) of University of Alaska and a catalyst for  
12 circumpolar-held studies. The other one is Mr. Don Lome  
13 (ph), who until recently was State Emergency Procedures  
14 Overseer in Valdez. What bothers me is that Dr. Ted Marla  
15 (ph) is now -- has now become an object of University  
16 bureaucratic harassment with an aim to ease him off his  
17 job. And Mr. Don Lome (ph) was demoted and transferred on  
18 a flimsy excuse of being unprofessional, unobjective and  
19 insubordinate. Now, here are the individuals who could  
20 well prepare this State for any emergency. And yet they're  
21 being mistreated to the max. What incentives we give to  
22 those youngsters aspiring for leadership or public service  
23 if that is the way we treat our best.

23 MR. PARKER: Okay, thank you Mr. Wow (ph). Any  
25 questions. Okay, it's gonna be hard, you know, one of the

/clf

1       hard decisions we face is whether the State or the Coast  
2       Guard be in ultimate command on these, but we'll wrestle  
3       with that one a lot before we're through.  Anyone else?  I  
4       see no one.  We will adjourn until nine o'clock tomorrow  
5       morning in this room here.

6               (Off Record)

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