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# ALASKA OIL SPILL COMMISSION

September 21, 1989

Anchorage, Alaska

Tapes 3, 4, & 5

## OIL SPILL COMMISSION MEMBERS

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Institute of Marine Science

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Professor of Economics

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Assistant Professor of Economics

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1 (Tape Number 89-09-21/03A)

2 MR. PARKER: I, for one, will be very interested to see  
3 how you come out on the right of way lease. Okay. Anyone else?  
4 Thank you very much:

5 MR. HAVELOCK: Mr. Chair?

6 MR. PARKER: John.

7 MR. HAVELOCK: Can I just leave -- I know there's no time  
8 for questions, but I'd like to leave a question, which I hope you  
9 can answer by mail, not that you don't have enough to write. I  
10 was appalled to hear you say that the CERKLA process is so bad  
11 that litigation is even, is better. Maybe that's just a lawyer's  
12 preference, but I would like you to submit to us proposals for  
13 how you would amend CERKLA or amend the regulations to  
14 make this a kind of progress which the Congress apparently  
15 intended. That is, one that would provide for an expedited  
16 method of bringing about the recovery of the resources or the  
17 replacement thereof. Secondly, I would like you to give us, this  
18 may be something you're briefing or that Exxon is briefing, what  
19 your problems are with the scope of 46.03 with respect to the  
20 ability of the State to adequately recover and fund all types of  
21 work that the State might be inclined to do to fulfill CERKLA  
22 style obligations. That is, recovery and replacement of  
23 resources. And thirdly, and this may relate to that in a way, is  
24 there a mechanism for the State -- is there a better mechanism  
25 for providing remedies to private parties, particularly

1 subsistence users and the like, than is provided under law,  
2 which, as I understand it, you sit and wait for 10 years and  
3 maybe you get something, and whether you have any  
4 recommendations with respect to State legislation in respect to  
5 that issue. Thank you Mr. Chairman.

6 MR. PARKER: Thank you Counsel. It looks like a lot.  
7 Okay, thanks again. Alaska Center for the Environment.

8 MS. WUNNICKE: I wondered where they'd been.

9 MR. PARKER: Good afternoon Sue. I don't know the  
10 gentleman with you.

11 MS. LIBENSON: I'm sorry. I'll introduce ourselves. I'm  
12 just giving her a chance to pass out some of our information we'll  
13 be presenting here. I can go ahead and just do the  
14 introductions. My name is Sue Libenson. I'm the Executive  
15 Director for the Alaska Center for the Environment for a regional  
16 conservation group in the area affected by the spill. And with  
17 me today is Mike Wennig, staff attorney for Trustees for Alaska,  
18 which is a public, non-profit law firm which frequently  
19 represents our group as well as other environmental and other  
20 public interest groups in the state. We're going to be addressing  
21 two issues today that I think are of interest to the Commission. I  
22 know the Commission is investigating the spill in laborious  
23 detail, and charged with coming up with recommendations for  
24 the legislature. And I think the two broad platforms that we're  
25 going to present today are kind of things that you should be

1 considering in the background of all of your efforts. The one  
2 being an appeal for improvement in enforcement of Alaska  
3 environmental law and the one being a recommendation for a  
4 biological recovery area for areas affected by the spill. And I'll  
5 begin by just saying that these recommendations are in  
6 preliminary form and we would be happy to further research  
7 them and give you more information.

8 I think I'll begin with the subject of improved  
9 enforcement. I suppose that the Commission will be looking in  
10 great detail, for instance, at the Department of Environmental  
11 Conservation and you may have recommendations for changes in  
12 the way the Department operates. But regardless of the  
13 recommendations, we've got plenty of laws on the books right  
14 now and underlying any efforts that you may may are going to be  
15 the realistic ability of the Department to enforce your  
16 recommendations, to enforce the laws that exist or as it will  
17 change as a result of the spill. And I can tell you today that that  
18 enforcement is virtually non-existent and the powers are  
19 severely inadequate to maintain the -- for DEC for instance to  
20 maintain the quality of the environment with which it's charged.

21 I'll start -- we've listed seven, I mean eight  
22 recommendations for you. I'll start just going down the list and  
23 Mike will actually be explaining the bulk of them as they are  
24 fairly legal in nature. But, my first recommendation concerns  
25 with establishment of a separate environmental enforcement

1 unit within DEC. And this, I think, is the crux of the issue.  
2 You've got laws on the books. You've got some staff at DEC,  
3 certainly some level of funding for personnel, but no one who's  
4 really charged with enforcement. You've got enforcement  
5 powers kind of thrown around within different level field  
6 officers. The same folks are responsible for researching and  
7 writing permits, who are responsible for inspections, which they  
8 never can seem to get to, are also responsible for enforcement  
9 and for various which Mike will elaborate on, it's very difficult  
10 right now to proceed with enforcement. But, as the basis on it,  
11 you've got individuals on staff with a lot of different  
12 responsibilities. And enforcement represents, to them, a  
13 tremendous strain on their personal resources, their time -- and  
14 there's a tendency to bypass enforcement, to negotiate, to put it  
15 off. I think you'll find that with your investigation of Exxon  
16 Valdez spill, with compliance problems at the Valdez terminal.  
17 But it's rampant statewide. And it's not just the oil industry, it's  
18 with regards to every industry. And I think the most important  
19 thing that we can do to reverse this cycle of complacency and  
20 non-compliance is to establish within that you see, a unit which  
21 is solely charged with enforcement powers. With enforcement, I  
22 should say as their charge of responsibility. Within that  
23 enforcement unit, I think you need dedicated attorneys to stand  
24 behind the staff, to organize the staff in terms of how do they  
25 conduct inspections. Are they going to hold up in court? Do

1 they get the right information? I think, in addition to increased  
2 enforcement and with increased enforcement, I think you will  
3 find increased voluntary compliance on the part of other  
4 polluters who will recognize once and for all that there is some  
5 bite behind DEC, that there is some potential for enforcement.  
6 Right now I don't think that exists. I think industries in Alaska  
7 recognize that they can pretty much get along and go along. But  
8 I think in the long run, although there will be budget constraints  
9 in starting up a unit like this, that you will actually have -- it'll be  
10 an efficient use of State monies in that by going out, enforcing  
11 the law with some stringency, you will see increased voluntary  
12 compliance by setting examples. With realistic enforcement  
13 goals, we'll see increased voluntary compliance throughout all of  
14 our various polluting agencies in the state. It's going to be a  
15 good investment, overall, on the part of the State. I'm trying to  
16 think if there's much else with regards to that. The only other  
17 thing that I would say is that I believe that we do have the  
18 potential to put these enforcement units in place. I think it's  
19 going to be, would be an efficient way to go about increasing the  
20 potency of your recommendations or any other laws that  
21 currently exist. But what is needed, in addition to staff  
22 dedicated to enforcement, is some direction for that staff.  
23 Currently, DEC does not have regular enforcement procedures in  
24 place for inspections and follow through with enforcement. And  
25 it's a real catch-as-catch-can methodology right now in terms of



1     how they go about enforcing on different polluters. I think not  
2     only would you see a better record of enforcement and like I  
3     keep saying, potentially voluntary compliance, you would also  
4     have a fair background for industry in terms of knowing what to  
5     expect. From there, I'll let Mike continue some of the other  
6     points in our recommendations.

7             MR. WENNIG: Thank you Mr. Chairman and other  
8     members of the Commission. As Sue mentioned, my name is  
9     Mike Wennig. I'm an attorney with Trustees for Alaska which is  
10    a non-profit environmental law firm based in Anchorage. Well,  
11    there's not only a structural problem with DEC, that Sue  
12    mentioned, but there also are numerous legal impediments to  
13    DEC's enforcement capabilities. We've listed these impediments  
14    in our testimony, which I think you've just received, and they're  
15    described in much more detail than I'll give today. I would be  
16    glad to answer questions today or provide further answers at a  
17    later date. Going through the list, the first legal problem is that  
18    DEC does not have the authority to assess administrative  
19    penalties for violations of the State's pollution laws. This is a  
20    necessary enforcement tool because it enables DEC to take  
21    relatively quick, inexpensive enforcement action to collect  
22    penalties rather than to have to take a polluter to court in order  
23    for the obligation to pay penalties to attach. The next measure is  
24    that the State's criminal penalties for environmental violations,  
25    across the Board, are, we feel, pretty inadequate. We did a

1 comparison of the State's penalties with federal penalties and  
2 imprisonment terms under federal law and they simply don't  
3 compare. And we've made a number of recommendations to  
4 stiffen the penalties and prison terms for criminal violations in  
5 the environmental laws. Next item is fairly technically legally,  
6 but still quick important, which is that when the State issues  
7 compliance orders, at this time, those orders can be  
8 immediately challenged by the recipient of an order and  
9 challenged in a state administrative proceeding and then  
10 challenged in court. And what that means is whenever the State  
11 issues a compliance order, it has to have all the resources ready  
12 to litigate that order for the next couple of years. And because  
13 it's such a resource drain, this litigation, the State basically  
14 doesn't issue compliance orders. What they do, as I understand,  
15 is they'll try to get the polluter's consent on an order so the  
16 order won't then be challenged. But it's a rare or non-event that  
17 the State will unilaterally issue a compliance order. And this is  
18 one of the major problems, the fact that they can be immediately  
19 litigated. This State law stands in stark contrast to the federal  
20 law where courts have held, and several statutes have been  
21 amended, to make it expressly clear that EPA's compliance  
22 orders cannot be challenged unless and until EPA actually brings  
23 an enforcement action against the recipient of the order and  
24 then the recipient can challenge the validity of the order as a  
25 defense to EPA's enforcement suit. I know the federal law from

1 first hand experience, having defended EPA in a former career  
2 before coming to Alaska, working for the Department of Justice.  
3 And this was a principal that was strongly advocated by both  
4 democratic and republican administration at the federal level.

5 The next item on our list of legal changes to improve  
6 DEC's enforcement deals with inspections. Currently, under  
7 State law, as we understand it, DEC needs to get a warrant  
8 whenever it wants to investigate a particular site to determine  
9 whether there's a potential or actual violation of the law and to  
10 request documents. And we again checked federal law. That  
11 warrant requirement simply doesn't exist. Congress has given  
12 EPA the outright right to do reasonable inspections. And we  
13 think this impediment should be lifted under State law as well.  
14 The last measure that we've listed, which is perhaps the most  
15 important, as you can probably understand coming from an  
16 environmental group, is the right for citizens to enforce the  
17 State's environmental laws. That right has been provided  
18 thoroughly in Federal law, at the federal level, and the right has  
19 been used well. It hasn't been abused. But, the right simply  
20 doesn't exist under State law. State law provides State courts  
21 with jurisdiction to issue penalties and issue injunctions, but  
22 then it goes on to indicate that the rights created under State  
23 law enure solely to the State and the State is the only entity that  
24 can enforce these statutory environmental standards. Citizens  
25 are a must if we're really going to have complete enforcement of

1 State environmental laws. That's all on my list. Thank you.

2 MS. LIBENSON: I'll just follow up with a few other  
3 points. There are provisions under existing statute for Citizen  
4 Advisory Boards to DEC. And, as you know, we have numerous  
5 boards, for instances with DNR and Fish and Game. But we  
6 failed to fund any with DEC. I'd recommend that we could do a  
7 lot better with more citizen involvement in this department,  
8 both in watchdogging industry, making recommendations for  
9 appropriate regulation, and just a higher level of participation  
10 in terms of what works in Alaska. And finally, again with the  
11 recommendations we've made here and many of the  
12 recommendations that I anticipate you may be making to the  
13 legislature, you need to ensure that there's gonna be adequate  
14 funding to make these recommendations a reality. DEC's  
15 budget has slowly inched up over the last several years with  
16 increased recognition of its importance. This is a resource-  
17 based state. We rely very heavily on fishing and tourism and  
18 yet we spend piddly amounts of our enormous state budget on  
19 DEC which is charged with protecting the environment on  
20 which so many of our industries rely and I think it's a real  
21 oversight, historic oversight on our part and I would just urge  
22 you to consider that any recommendations you make need to  
23 have the basis in funding for fulfillment.

24 So, we can take questions on this portion if you'd like or  
25 otherwise I'll go on with our other item which is somewhat

1 different.

2 MR. PARKER: There are some questions on this.  
3 Counsellor, you want to start?

4 MR. HAVELOCK: I just had one question and that relates  
5 to the problem of allocation of re -- of enforcement resources.  
6 That is, as I look at your proposals and I think of it in the  
7 political context of the State, you know, what happens when  
8 you come in and say that you want to set up a police  
9 department in DEC that's gonna go out and really enforce the  
10 environmental laws. The results you're gonna get is a whole  
11 lot of people that are out there that are operating little  
12 operations where they pollute a little bit on a shoestring and  
13 are scared to death -- can't think about going to court the way  
14 you're talking about. Being, having your opponents go to court  
15 to knock out a DEC order or whatever, and complain regularly  
16 before legislative committees and the like about the ruinous  
17 nature of environmental regulation. And I can see those  
18 proposals grinding very quickly to a halt in the face of that  
19 kind of an outpouring. And this Commission here is -- we're  
20 looking at the big spill. That's what we're thinking about. Do  
21 you have any formula by which the kind of enforcement that  
22 you're talking about, those enforcement resources could be  
23 brought to bear. With that kind of a focus, have you got any  
24 suggestions for funding other than just simply out of the  
25 regular budget?

1 MS. LIBENSON: I'm not prepared for any other  
2 recommendations for funding. But, with regards to  
3 enforcement, I think that is a problem within DEC even now. I  
4 think the small time folks have reason to gripe. But what does  
5 happen -- I think if you had an enforcement unit in place, with,  
6 again, staffed by the people who were solely charged with it  
7 and not distracted by some of the other responsibilities, that  
8 they would be able to take the time to account for what are our  
9 main polluters in the state. And really going after -- you  
10 know, setting by example, -- right now, what tends to happen  
11 is DEC'll get dragged into a septic tank argument and it'll drain  
12 away as much resources as fighting, for instance, well, look at  
13 Alyeska, the ballast waste water treatment plant. And there's  
14 a real problem with priorities within DEC. I'd say that's a  
15 whole other issue. But politically, that'll be between, I guess,  
16 the forces that would go for more environmental regul -- who  
17 want to see real environmental regulation in the State and  
18 those who would prefer not to. But I think that, again, it's fine  
19 to sit here and look at the various agencies and make  
20 recommendations for changes in regulations or changes in  
21 plans or all kinds of requirements, but if there's no  
22 enforcements behind it, you really spend a lot of time spinning  
23 your wheels. So, yes, politically, it's never easy to come in  
24 and suggest that we could do a better job of environmental  
25 regulations. But if this Commission does, in fact, come

1 forward with any recommendations along that line, with the  
2 current status of enforcement capabilities of DEC, I really  
3 think that you're not going to get very much for your efforts.

4 MR. PARKER: I think Counsel brought up a good point and  
5 it's something that I've been thinking about for the last several  
6 months. How do you structure enforcement so the enforcement  
7 is on what we identify as the crux point, to make sure that the  
8 major dangers are strictly enforced and separated out from the  
9 day-to-day enforcement of restaurants, gas stations, etc.  
10 'Cause it's always going to be, you know, allowing the  
11 Department to prioritize itself puts us down the same road we  
12 started on in 1973 and wound up on in this situation, so that's  
13 where my thinking has been running is, you know, what  
14 structure's can we build in to ensure priority enforcement is  
15 taking care of before we get out into the general public.

16 MR. WENNIG: The quickest solution that I see to that  
17 problem is to provide for citizen suits, so that if there is -- if  
18 the State is, because of political problems or one problem or  
19 another, is spending its enforcement resources on the little  
20 bitty violators, if there is a right for citizens to enforce the  
21 State law, you can be darn sure that the people from the  
22 community who are being impacted by the really serious  
23 violators are gonna sue. And therefore, their priorities will be  
24 set, not only by the State, but by the citizens themselves.

25 MR. SUND: Mr. Chairman. I just have two comments on

1 that. I put through a bill that repealed the private Attorney  
2 General statute for enforcing criminal laws. We had a case  
3 down in Kenai I think where a guy tried to become a private  
4 attorney general and there was an old statute in there that we  
5 ended up digging out and repealing. So we took it out of the  
6 criminal side of it and the civil side. I guess I really don't  
7 have a big problem with it as long as the private citizens that  
8 want to bring these suits, if they loose, have to pay all the  
9 costs of the other side so that it kind of cuts the harrassment  
10 side down a little bit. But, that's a -- I have the same feeling  
11 that Mr. Havelock has is that the fear of the smaller business  
12 people and how to distinguish between the large and the small  
13 cases here that bring up some big issues that I haven't quite  
14 resolved. The other comment I wanted to make was one that  
15 Counsel was leading towards and that's the trickle down  
16 impact of litigation. And I think we've put together a group, I  
17 forget what we call it. It's a criminal policy planning group or  
18 something that -- what we learned was the impact of enacting  
19 new laws or the impact of hiring more attorneys in the  
20 Department of Law also impacted the court system because it  
21 brought more lawsuits so we had to have more judges. And  
22 then that impacted the jails because they put more people in  
23 jail so we had to build bigger jails. And it really is true. You  
24 can't just deal with one small unit of it. So, if you're gonna  
25 hire more lawyers to issue more citations, you're gonna have



1 more lawsuits, so therefore you gotta hire more judges. So, it  
2 isn't a matter of just dealing with one small component of it.  
3 And it may be right. It may be the thing to do. I'm not saying  
4 it's right or wrong, but it's a bigger issue than just dealing  
5 with one small component of one agency.

6 MR. PARKER: Ms. Wunnicke.

7 MS. WUNNICKE: Could I ask Mr. Wennig. You did the  
8 comparison between Alaska laws and federal's laws with  
9 respect to criminal and civil penalties, have you done a similar  
10 comparison among states?

11 MR. WENNIG: I haven't had the chance yet.

12 MS. WUNNICKE: Do you intend to do that?

13 MR. WENNIG: I would be glad to do it for the Commission,  
14 do a study and prepare it for you, give some comparison.

15 MS. WUNNICKE: That'd be very helpful if you would do  
16 that. Is that alright, Mr. Chairman? For free.

17 MR. WENNIG: Well, we.....

18 MS. WUNNICKE: pro bono.

19 MR. WENNIG: .....we talk about urging the Commission to  
20 recommend that there be citizens suits. I want to make it  
21 clear, we don't get paid for representing our clients. We're a  
22 public, non-profit group, so there's no personal stake in this,  
23 personal financial stake.

24 MS. WUNNICKE: Understood. Thank you.

25 MR. PARKER: Regarding the advisory board, in the

1 original legislations, '73 wasn't it John, we formed the  
2 Department, the advisory board was intended to be the State's  
3 environmental watchdog and there was great rhetoric at that  
4 time as to what it was gonna do. And Governor Egan appointed  
5 a very strong advisory board at that time, as I remember. And  
6 I don't know just what year it gilded away. I've seen the press  
7 reports on this and I've got your report, but I'm not sure  
8 exactly sure when the advisory board ceased to exist. Does  
9 anyone know?

10 MR. WENNIG: I guess Marx was right, the State just  
11 withers away.

12 MR. PARKER: Uh, hum, but you know, it is incredible  
13 considering its start, that it just disappeared without anybody  
14 realizing it was gone.

15 MS. LIBENSON: In discussions I've had with DEC  
16 regarding advisory boards, they've given me a figure of  
17 \$26,000 to resurrect the existing advisory Board. I mean, it's  
18 fairly, a relatively small budget.

19 MR. PARKER: Yeah, we spend probably half a million now  
20 our boards of Fish and Game or better. Mike?

21 MR. HERZ: What's most disturbing in your testimony is,  
22 to me, the part about enforcement, or lack thereof. And I  
23 wanted to explore a little bit, or have you explore for us, your  
24 perceptions of DEC's enforcement. My understanding, based on  
25 some things that I've done is that in many places the mandate

1 exists. We passed a lot of laws, both federally and at state  
2 levels, in the '70s. The problem is, since the '80s, the  
3 enforcement component that was designed to go along with  
4 those laws has eroded away. So, my question really is the  
5 degree to which there is not already existing in DEC the  
6 structure or the design for an enforcement group that has  
7 teeth. But, rather the difficulty is the lack of funding for, or  
8 execution of the enforcement part. I want -- you're calling for  
9 a new unit. Does that imply that there has not ever really been  
10 anybody there who was, even back in the days when it was  
11 better funded, doing the enforcement?

12 MS. LIBENSON: I think things are getting better instead  
13 of worse in terms of funding, believe it or not. But, again I  
14 would reiterate the problem being that existing staff, you  
15 know, the given individual who has enforcement responsibility,  
16 also has permitting responsibilities, frequently regulation  
17 responsibilities with regard to developing regulations. I mean  
18 the diversity and the, of responsibilities of any given staff  
19 person with DEC are extreme and there is just a very high  
20 disinclination on the part of the staff and even within the high  
21 levels of DEC to pursue enforcement, because it is such an  
22 enormous drain on resources and will, for instance, I'm  
23 thinking of the North Slope case with the -- the North Slope  
24 salvage case was -- had its place -- my understanding is DEC  
25 there was three and a half man years to pursue this case.

1 Well, in terms of their staff, not including attorney time. I'd  
2 point to that. Well, the North Slope district office only has  
3 four people, so, you know, here's an office that's supposed to  
4 be patrolling the North Slope. They go after one case and they  
5 basically tie up a quarter of their staff. So, there's a real  
6 problem in terms of adequate staffing. And then the other  
7 problem is just sheer training and professionalism, and the  
8 individuals have so many different responsibilities that they  
9 do not receive clear direction with regards to how to pursue  
10 enforcement or clear direction in terms of the priority that  
11 enforcement is given. I think you really need to separate it  
12 out, away from individuals who have all these other  
13 responsibilities so that it becomes a priority within the  
14 department. It becomes a reality within the department.

15 MR. HERZ: I'm still not clear, because what I'm trying to  
16 get a sense of is whether or not the mandate exists in existing  
17 State legislation, such that DEC has the power to do  
18 enforcement, the problem being that it -- there is not enough  
19 money, there aren't enough personnel to implement that  
20 mandate and.....

21 MS. LIBENSON: I'd say it's more of an administrative  
22 budgetary problem than a mandate. I mean, the laws are on the  
23 books; people are breaking the laws. That's the current  
24 situation. And, again, I think when you investigate the spill,  
25 you're gonna find a law of things that were out of compliance

1 and you'll find, if you look at Dan Lawn's records, that he saw a  
2 lot of things out of compliance and you'll find that he was  
3 unable to enforce. He had other responsibilities. You know,  
4 just go down -- you can just see what his other  
5 responsibilities were in that region with regards to just the  
6 Alyeska terminal and you can quickly see why we got to the  
7 situation where we were. You know, it's so far out of  
8 compliance. So, I'm not sure.....

9 MR. WENNIG: I'd just like to add that DEC does have the  
10 legal authority to take enforcement action, but the items  
11 we've listed indicate that the law is almost stacked against  
12 DEC by making enforcement as difficult as possible. So it's  
13 resource is a large part of it, but there also needs to be some  
14 legal fixes as well.

15 MS. LIBENSON: And I'd say that, you know, in outlining  
16 this package, again, I think there's potential for increased  
17 efficiency. There is gonna be some budget increases in terms  
18 of this separate unit which I'm referring to and I do think in  
19 terms of developing expertise, you do need dedicated  
20 attorneys. However, if you have, removing some of these  
21 hurdles, you'll be able to have enforcement actions at actually  
22 less cost and, I think, greater results, so.

23 MR. HERZ: It sounds to me, in terms of our, your sub-  
24 committee, Institution Sub-committee that looking at the  
25 structure of an institution like DEC and the degree to which --

1 I mean, obviously the enforcement isn't getting done. I'm not  
2 challenging that. I'm just trying to get a sense of what's the  
3 best way to make sure that it does get, that the laws that do  
4 exist do get enforced and, perhaps, adding the provisions that  
5 you suggested. But, there seems to be, not just here, it's every  
6 place you look. It's at the federal level. It's at the state level.  
7 That we have the mandate in all of these areas - water, air and  
8 -- but the enforcement powers have been unravelled and  
9 undone in the past eight, nine years.

10 MS. LIBENSON: And I would submit, you know, Mike made  
11 several comparisons with the federal law and he'll be  
12 researching other state laws, but I would submit that Alaska  
13 is far behind even other states in terms of, you know, making  
14 it reasonable for agencies to enforce laws.

15 MR. PARKER: And I'd like to return to this question of  
16 prioritization. You did a beautiful job of illustrating it with  
17 Mr. Lawn's (ph) problem at Valdez and indeed every other  
18 district office in the DEC that has a major terminal in its  
19 midst. When we prioritized the enforcement through the State  
20 pipeline office, nobody shut any gates in our face. We were  
21 absolutely certain of our authority and we were absolutely  
22 certain that the Governor and the Attorney General and the  
23 troopers would back us up if it came to that. But because they  
24 knew that this -- we had that particular authority to enforce  
25 the stipulations through the right-of-way lease and when we

1 said the job is shut down, the job was shut down. There wasn't  
2 any argument. There weren't any, there wasn't any hying off to  
3 court for an injunction. The work stopped, period. And that,  
4 you know, while that perception does not transfer totally, still  
5 there is a lesson to be learned regarding enforcement and the  
6 level of enforcement you need. You know, you don't bring that  
7 same kind of, level of enforcement when you go out to the gas  
8 station, to the restaurant and so forth. You don't arrive with  
9 the same perceptions at all. And it is very difficult, I think  
10 from my own experience, to have in the same person, at the  
11 same time, a level of expertise in training to handle all these  
12 levels. So, you brought up an important area that, as a  
13 conversation with our other commissioners indicates, needs to  
14 be pursued. Why don't you go ahead with your biological  
15 recovery area.

16 MS. LIBENSON: The other recommendation again, is, you  
17 know, the Commission is charged with making  
18 recommendations to the legislature with regard to future  
19 spills and preventions and what we can be looking at. But, the  
20 fact is, of course, that we have a spill on our hands and we've  
21 got hundreds of miles of impacted beaches. With regards to  
22 this spill, I would recommend the Commission look at a bill  
23 submitted last year by Cliff Davidson of Kodiak regarding a  
24 biological recovery area and he called it the Prince William  
25 Sound Biological Recovery Area. I would submit that we might

1 need to re-evaluate the boudaries given the current extent of  
2 the spill. And, basically, the intent of this legislation was to  
3 give the Department of Fish and Game further statutory  
4 direction to evaluate any other, all activities in affected areas  
5 with giving biological restoration and recovery the highest  
6 priority and I think this is a simple step that we can do in  
7 terms of directing the state's actions in the oil impacted areas  
8 in the years to come - that we do need to be considering  
9 restoration recovery and Fish and Game is the logical  
10 department, given their expertise with fish and wildlife, to  
11 ensure recovery of these resources, which, of course, form the  
12 basis for local economies. I think you might also have a spin  
13 off, positive effect of giving Fish and Game a somewhat  
14 stronger stance as it participates in the CERKLA re-  
15 authorization -- I mean, sorry, CERKLA efforts if it was clear  
16 that, again, recovery and restoration was the highest value  
17 that the state was giving directions for management for oil  
18 impacted areas. It would give Fish and Game that much more  
19 leverage or stance while they participate as the sole trustee  
20 for the State in the CERKLA process.

21 MR. PARKER: Okay. Any further questions.

22 MR. HERZ: I have sort of a generic one that I want you to  
23 explore a little bit with us if you would, the role that the  
24 environmental community played during the spill and response;  
25 the degree to which your input was solicited by Exxon or the



1 state or federal agencies in terms of information about  
2 sensitive habitats, response protection, animal rehabilitation,  
3 number one; and secondly, the degree to which you people were  
4 consulted by the damage -- any of the people doing damage  
5 assessments. Whether you've had or attempted to have any  
6 input into the process of suggesting the kinds of studies that  
7 might come up with the most worthwhile information relative  
8 to, of the State or Feds filing damage claims.

9 MS. LIBENSON: Well, I can -- the first part of your  
10 question concerning our actions. During the spill, we did set  
11 up a volunteer hotline in Anchorage. A companion one was set  
12 up by the Prince William Sound Conservation lines in Valdez.  
13 We happened to plug our phone in about three days after the  
14 spill just to sheerly deal with the number of calls we were  
15 getting. And when the State found out that we were up and  
16 running with a data-base capable of identifying, for instance,  
17 boats and airplanes and all the different skills that might be  
18 useful in the clean up, the State then contracted with us to  
19 continue this service for three months. The Prince William  
20 Sound Conservation lines, as I understand it, is still under  
21 contract with the State to both receive calls from volunteers,  
22 which of course have tapered off dramatically, and they are  
23 also serving as an information center. Just giving DEC  
24 somewhere to send people who walk in and say what's  
25 happening with the oil spill. So, we received in Anchorage

1 approximately 2,700 calls and placed approximately 500  
2 volunteers. There was, of course, mass confusion during the  
3 first several days of the spill. The President got on television  
4 and say, "well, we're gonna use volunteers". And if you read  
5 the Department of Interior press releases, they tell you to call  
6 our hotline number. But, of course, the large number of  
7 volunteers were never deployed that.....

8 MR. HERZ: Do you have a report that summarizes those  
9 activities, or is there anything written up?

10 MS. LIBENSON: Yeah, yeah.

11 MR. HERZ: Could we -- I think it would be very useful for  
12 us to have for our report.

13 MS. LIBENSON: And in terms, I mean, in terms of future  
14 recommendations, a lot more could be done. We, again, we just  
15 happened to take the initiative, plug in a hotline. We had one  
16 line in within three days. We needed four lines. And we  
17 received a lot of support, I would say, from the business  
18 community. You know, just people donating equipment and  
19 what not to get us up and running. And, again, we happened to  
20 be up and running before the State was so they gladly  
21 contracted with us to continue the service. And I -- but I do  
22 think -- I'm not prepared to, really, today to go into detail. I'd  
23 be glad to give it more thought and come back if you want more  
24 input in terms of what would be the most appropriate use of  
25 volunteers. I mean, our volunteers got largely shuttled into

1 cleaning birds and otters. That was nice and a lot of people  
2 learned a lot, but I'm not sure that that's really the most  
3 appropriate long term use -- in terms of soliciting our input or  
4 our expertise during the initial stage of the spill, I would  
5 submit that you ought to expand your definition of  
6 environmentalist beyond the actual group. I mean a lot of local  
7 communities just walked in and did quite a bit and I know you  
8 guys have heard a lot about that. We received a lot of offers  
9 for donations, everything from skimmers to teams of men,  
10 people to clean marine mammals. And very, during the first  
11 week of the spill, we made very serious efforts to make sure  
12 Exxon knew of these, you know, these requests and then it  
13 became quite apparent that they just weren't interested and  
14 kind of didn't pursue trying to make these things available to  
15 them. So we definitely had a lot of offers, outpouring of, you  
16 know, volunteers from around the world to actual materials  
17 that, you know, industry, various industries wanted to donate.  
18 But we were unable to get that into the system of the clean up.  
19 So that, I mean, there was a refusal on the part of Exxon to  
20 seriously consider these kind of offers. I'm trying to think  
21 what the next part of your question was?

22 MR. HERZ: The damage assessment.

23 MS. LIBENSON: So far as the damage assessment, I would  
24 recommend that you speak, perhaps, with Ann Rossey (ph) of  
25 the Natural Wildlife Federation. I know she spent quite a bit of

1 time with reviewing the damage assessment aspect. My  
2 organization's not spent quite as much time.

3 MR. HERZ: Rossey (ph)?

4 MS. LIBENSON: Uh, huh.

5 MR. WENNIG: Also, Bob Adler who used to work for our  
6 group in Alaska, is now with the Natural Resources Defense  
7 Council in Washington D.C., is really heading up a coalition of  
8 environmental groups' responses to the proposed, or draft,  
9 natural resource damage assessment plan as far as input on  
10 that plan. There is a comment period, a public comment period  
11 on that plan, but Bob recently sent in a request to get 60 or 90  
12 days more to comment on the plan, in large part because the  
13 draft plan was pretty hard to get ahold of, so we lost about a  
14 week just trying to get the plan. And we were recently given, I  
15 think, 30 days of the 60 or 90 that we asked for, and we would  
16 ask the Commission to help us to urge the State and Federal  
17 trustees to give us more time to give our input. One other  
18 point, on public input during the spill, I'd like to commend the  
19 DEC for holding public hearings on the air permits on the  
20 proposed incinerators. Under current law, DEC has discretion  
21 to hold hearings and they were under substantial pressure from  
22 Exxon not to hold the hearings, not to have any kind of -- allow  
23 for much public input and, in spite of that pressure, they held  
24 the hearings and they really let the public have its say. And  
25 they're to be commended for doing that.

1 MR. PARKER: Thank you.

2 MS. HAYES: I would like to get back, for a second, to the  
3 biological recovery area that you proposed. You were here  
4 earlier when we were talking to the Department of Law, and I  
5 would hazard to guess that 45 million pumped into overall  
6 research money -- I'm using John Sund's estimate as how much  
7 money has gone into the scientific studies in the Sound this  
8 year -- would be a significant amount in comparison to past  
9 years research budgets for any state agency. What's your  
10 reaction to finding that all of that data is confidential and not  
11 available for management. It would seem to me that the  
12 Department of Fish and Game would be severely handicapped by  
13 not being able to use that data for management purposes.

14 MS. LIBENSON: It was unclear to me whether Fish and  
15 Game would have internal access to that information in terms  
16 of management, so I'm not.....

17 MS. HAYES: I would say that, in the past, resource  
18 decisions are usually made in the public forum. They're  
19 scrappy and they're rough and tumble and they're public.

20 MR. WENNIG: It's unclear whether all the data that would  
21 be gathered from the natural resource damage assessment  
22 process under CERCLA will, in fact, become confidential,  
23 because it will also be used in all the litigation. I'm just not  
24 sure whether -- there really are two separate processes and  
25 it's hard to believe that the natural resource damage

1 assessment process under CERKLA will be held up the 10 or so  
2 years that, while the court suits are proceeding..

3 MS. LIBENSON: But, certainly, in answer to your  
4 question, we don't like having, not having access to this  
5 information any better than you. I was gonna answer another  
6 part of Doctor Herz's question with regards to other citizen  
7 initiated, or public interest initiated efforts with response to  
8 the spill, Mike and I both serve on the Board of the Prince  
9 William Sound Clean Up and Rehabilitation Fund, which is a  
10 fund that I started. It's a donor directed fund under the Alaska  
11 Conservation Foundation and we've solicited and received  
12 approximately \$200,000 in private monies. And what we've  
13 done is responded -- the Board includes Mike and myself, other  
14 individuals who are with tourism and education organizations  
15 that operate in the Sound and a few other environmental  
16 groups. And we respond to proposals from communities, from  
17 individuals, from organizations interested in cleaning up the  
18 spill, educational projects concerning the spill, organizations  
19 attempting the direction the clean up was going. And some of  
20 our projects have done things like pick up two tons of oiled  
21 debris. There are efforts out there that citizens have  
22 undertaken through frustrations. Some of the others, I think,  
23 we've been -- I'm not an advocate of private or the public  
24 interest forum being responsible for coming in and having to  
25 clean up the spill or for providing volunteers for a clean up,

1 but I think, we have been very successful in allowing  
2 frustrated individuals, organizations with ideas to get started.  
3 And oftentimes, either Exxon or the State has come in and  
4 taken over funding once they have gotten started. The Homer  
5 Area Recovery Coalition is one example. They're out in Mars  
6 Cover right now cleaning up a beach with their own techniques  
7 and the State has offered to fund the continuance of that  
8 project. We've funded everything from actual clean ups to days  
9 for the kids in Valdez, for the Girl Scouts, once we stepped in  
10 and provided some funding, then Exxon came forward and  
11 provided additional funding. So, I think we've done quite a bit  
12 in terms of allowing citizen involvement. I think there are a  
13 lot of projects out there that citizens could have done if there  
14 had been more funding available. Thank you.

15 MR. PARKER: Thanks very much. Rod Cameron and I  
16 founded your organization, Mike, in 1974. I was one of the  
17 groups that founded yours in 1972, so it's nice to see this kind  
18 of continuity. Alaska doesn't get good marks in the  
19 environment to often, but.....

20 (Tape Changed -- loss of record)

21 (Tape Number 89-09-21/3B)

22 MR. PARKER: Okay.

23 MR. HERZ: Mr. Chairman?

24 MR. PARKER: Yes?

25 MR. HERZ: Could we have a three minute break?

1 MR. PARKER: Sure.

2 MS. WUNNICKE: Three minutes.

3 MR. HERZ: Whatever you wanna give.

4 MR. PARKER: Our next one's at 3:15.

5 MS. WUNNICKE: We have 15 more minutes.

6 (Off the Record)

7 (On the Record)

8 MR. PARKER: Okay, the Oil Spill Commission will

9 reconvene with Professor Shaw from the Institute of Marine

10 Science. Welcome.

11 PROFESSOR SHAW: Thank you. I'd like to thank you for

12 the invitation to meet with this group and I hope be able to

13 help in your work. I certainly must admit that I'm rather

14 ignorant about the work of this Commission, but I've been

15 rather encouraged by breadth and depth of the questions that've

16 been asked this afternoon while I've been in attendance.

17 MR. PARKER: Yeah, when we saw that you were heading

18 up the University's effort on Prince William Sound sciences, at

19 least as it was indicated to us, we've been wanting to be able

20 to talk to you ever since.

21 PROFESSOR SHAW: Well, as you undoubtedly know,

22 universities are rather informal and loosely structured, at

23 least when it comes to actually pursuing knowledge, loosely

24 structure institutions. And the -- referring to me as any kind

25 of head of the university activities is sort of an almost



1       meaningless designation because all faculty members value  
2       their intellectual independence, but I would like to speak to  
3       you as, I hope, knowledgeable senior scientist at the  
4       University.

5               I had thought to try to address in some opening  
6       remarks, two questions. One of those questions is, how is the  
7       response to the Exxon Valdez oil spill progressing, and are  
8       there institutional problems that are impeding that response?  
9       So, if that sounds.....

10              MR. PARKER: It's be great.

11              PROFESSOR SHAW: .....appropriate, I'll pursue those lines  
12       for a little bit, if I may.

13              In talking about the response, I think we need to  
14       distinguish between the natural response and the human  
15       response. And the natural response process is one that is set  
16       in motion by nature and is really one that human activities can  
17       really not effect greatly. That, I think a good analogy is  
18       perhaps to a wild fire goes to a mature spruce forest, that  
19       after that fire has burned itself out there's no way that people  
20       can go in there and replace the mature spruce forest in the  
21       next day or the next week or the next year. There are some  
22       things that we can do in that kind of situation to go in an  
23       mitigate the situation and to some extent, accelerate the  
24       natural processes of recovery. But, in that case it's still going  
25       to take several decades, perhaps a hundred years for the

1 process of natural succession to get back to a mature spruce  
2 forest. After that drastic disturbance of a fire, we have a  
3 whole series of natural events that take place. First, weeds  
4 begin to grow and then grasses replace the weeds and then  
5 willows replace the grasses and then we get birches, we get  
6 aspen and birch and finally back to the spruce trees. Well, the  
7 same kind of process of natural succession works in the ocean,  
8 in the inter-tidal areas, the beaches that have been affected by  
9 oil. Perhaps the good news is that succession moves  
10 somewhat faster in those marine systems than it does in the  
11 terrestrial systems, largely because that most marine  
12 organisms, especially inter-tidal organisms, are not nearly as  
13 long-lived as spruce trees or birch trees. So the process of  
14 recovery and succession is taking place and will continue to  
15 take place and will, I think largely be close, not exactly to  
16 where it was before the spill, but close, probably, certainly  
17 within a decade. And the human activities, the beach cleaning,  
18 the otter cleaning, the clean up, will have some impact on the  
19 speed of that recovery process, but the effects will be  
20 marginal, not dramatic, not cutting the time in half certainly.

21 Then, to speak to the human response, the  
22 institutional response, the government response, I see two  
23 aspects of that response. I see an immediate response and a  
24 longer term response. In the immediate response, I see the  
25 minimization of further damage, the damage control phase, and

1 the process of seeking to recover damages from responsible  
2 parties. Those two activities are moving along, as we all  
3 know. The process of seeking to recover damages is, as we  
4 heard earlier this afternoon, moving along under the CERKLA  
5 process. I certainly share the view that the CERKLA process,  
6 as it's been implemented here, is a very unwieldy one; that one  
7 of the major shortcomings of that process is the lack of a lead  
8 agency, a lead authorized person, a decision-maker, that in  
9 this circumstance there is no single institutional entity with a  
10 broad enough mandate to look at the entirety of the impact,  
11 both the natural impact and the human impact, and have the  
12 goal of developing a balanced response. That each of the  
13 trustee agencies has a somewhat narrower mandate, a  
14 narrower sphere of interest and, quite, properly, within its  
15 own mandate, works to protect, to consider its own area of  
16 responsibility. I think that in this situation of relatively  
17 narrow responsibilities, and in view of the fact that each of  
18 these trustee agencies has been, for the last several years, in  
19 a stringent budgetary posture, it's not surprising that, at  
20 times, these agencies have been tempted to pursue their own  
21 mandates in a rather narrow fashion and not to look to the  
22 overall needs of a damage assessment and response activity. I  
23 think that's also been -- this problem has been exacerbated by  
24 the consensus nature of the way the trustees have been  
25 operating. I guess the temptation here is to use the political

1 phrase to "go along to get along", but there's been a real  
2 structural reluctance to criticize other agency's proposals in  
3 order not to have one's own agency's proposals criticized. And  
4 the need for consensus has, I think, made that a real political  
5 consideration as each one of the trustees seeks to address its  
6 own agenda. There have been, I can tell you from the working  
7 level, there have been real problems with exchange of  
8 technical information related to the spill. That's gotten to the  
9 place that it's sometimes now difficult to get information  
10 flow between trustee agencies.

11 MS. HAYES: Excuse me.

12 PROFESSOR SHAW: Yes.

13 MS. HAYES: Could I clarify that? That's between the  
14 agencies, not between Exxon and the agencies?

15 PROFESSOR SHAW: Yes, I'm afraid that's correct.

16 MS. HAYES: And also, is it between the agencies  
17 themselves or the agencies' contractors?

18 PROFESSOR SHAW: Uh, I think it's both.

19 MS. HAYES: Okay, thank you.

20 PROFESSOR SHAW: I think that part of the problem is  
21 that even if there is a less stringent view of confidentiality at  
22 the top of organizations, as you go down through a bureaucracy,  
23 things tend to become more and more rigid, become -- people  
24 in those kinds of organizational structures tend to err on the  
25 side of what seems like prudence.

1 MS. WUNNICKE: That's why they're called turf wars.

2 PROFESSOR SHAW: Yes.

3 MR. PARKER: How about transfer of information within  
4 the university, between any research that's being funded by one  
5 agency for another. Then of course there's all the cooperative  
6 units within the University too.

7 PROFESSOR SHAW: That hasn't become a problem yet and  
8 I think the reason is that the university was not very deeply  
9 involved in the early reconnaissance, initial assessment phase of  
10 this work. That was done more by the agencies and their  
11 contractors. The university is just now becoming more active  
12 in some of the studies that have been proposed and are actually  
13 moving forward under the CERKLA draft study plan. So the  
14 University is really just now beginning to have enough data to  
15 start to interpret, so the question is probably going to become  
16 a much more critical one in the coming months.

17 MS. HAYES: I just want to clarify, is the university  
18 empowered at keeping the research that you're doing,  
19 confidential?

20 PROFESSOR SHAW: Now you see -- I don't have a legal  
21 counsel with me today, like some.

22 MS. HAYES: You didn't bring your attorney?

23 PROFESSOR SHAW: I really don't know what the legal  
24 status of the -- what the contractual language that binds the  
25 university is. I have certainly been given guidelines which

1 make it very clear that it would be inappropriate to freely  
2 disseminate this kind of information. Exactly what kind of  
3 legal force those documents have, I'm not qualified to say.

4 MS. HAYES: Excuse me, one more question for  
5 clarification. I just want to clarify, were the contracts with  
6 the University of Alaska or were they with the individual PI's  
7 as individuals?

8 PROFESSOR SHAW: The documents that I'm think about  
9 are what are technically called, Reimbursable Service  
10 Agreements. These are the equivalent of contractors between  
11 units of State government. And the units of State government  
12 in this case are the University and the Department of Fish and  
13 Game. There are also, I think, I would suppose, contracts  
14 which I think are still being negotiated between the University  
15 and the Fish and Wildlife Service as part of the inter-tidal  
16 assessment work. Those are agreements between the  
17 University as a legal entity. I don't know what the extent of  
18 University employee participation and outside consulting is.

19 MS. HAYES: No, I guess -- if it's an RSA, that's with the  
20 University as a public agency, so I'm just trying to get straight  
21 that the University's doing -- what it's up to or what it's role  
22 is in that.

23 MR. PARKER: Mike.

24 MR. HERZ: This is really, it's perplexing and it's very  
25 disturbing because it has the potential for changing the way in

1 which science gets done. The whole basis on which we collect  
2 scientific information has historically been an open process  
3 whereby exchange of information between investigators,  
4 among investigations, sitting down and sharing ideas and data  
5 and interpretations is the way we make progress. As someone  
6 who -- I mean it's not as if you personally and institutionally  
7 are participating in this process now. What's your sense of --  
8 I mean, this must be a huge pot of gold at the end of a  
9 scientific rainbow in terms of a lot of investigators who were  
10 not well funded suddenly have access to significant amounts of  
11 money to do work. But the work is the worst of contract  
12 research because you have, it's mission oriented research and  
13 it's proprietary. How does it feel to be doing this kind of  
14 science compared to the kind of science you -- pre-Exxon  
15 Valdez science?

16 PROFESSOR SHAW: I am involved to a rather small  
17 extent, as a principal investigator on one of these RSA's. The  
18 dollar figures for the work that is being done, is going to be  
19 done, are very impressive. The time scale is very short. I  
20 think those two factors pretty much dictate that the work is  
21 going to be not of the highest scientific quality regardless of  
22 whether our people feel free to talk about it or not, it's gonna  
23 be, in a word, quick and dirty. It's -- I think that's inevitable  
24 that this kind of project, this scale of project would've  
25 consumed any where from two years on up of scientific

1 planning if it hadn't been responding to a situation that  
2 couldn't wait. The technical directors of the CERKLA project  
3 or the CERKLA activity have been very clear and very insistent  
4 that this is not scientific research. This is damage  
5 assessment. I think the University community has made  
6 appropriate changes in our vocabulary to accomodate that  
7 view. I personally am rather skeptical that there will be as  
8 much scientific value gotten out of this situation as would  
9 otherwise be possible. And that's partly because the work  
10 that's been being done is confidential and it's partly because  
11 the work that's being done is focused on determining the  
12 extent of environmental injury, which is not the same as  
13 understanding, in ecological or social terms, the impact of this  
14 event on Prince William Sound or southcentral Alaska. So, the  
15 focus is being driven by the litigation and that's -- I don't have  
16 any problem with that or I wouldn't have any problem with that  
17 if that hadn't at least so far, seemingly driven all other  
18 activities off the map.

19 MR. PARKER: Do you see this process impacting  
20 traditional funding sources for basic research?

21 PROFESSOR SHAW: Uh.

22 MR. PARKER: Too early to tell?

23 PROFESSOR SHAW: Well, I think, in a sense, yes. The  
24 traditional funding sources that the University pursues will  
25 not fund this kind of work - damage assessment kind of work.



1       So it's not competitive in that sense. It's competitive in the  
2       sense that this activity right now is occupying a very large  
3       proportion of the environmental scientific talent in the state  
4       and all over North America. So, in that sense, other ongoing  
5       projects are being neglected. Other work is not moving as fast  
6       as would otherwise be the case.

7               MR. HERZ: Do you -- you're participating -- you're one of  
8       a number of people participating in this kind of research. In  
9       terms of the CERKLA process -- forget about the CERKLA  
10      process. In terms of damage assessment, determining the cost  
11      of the spill, if you're gonna design a large research program  
12      that's gonna maximize the kind of information you get back,  
13      you do that through collegial interaction. You can't just do it  
14      with one person interacting with an agency. Is there this give  
15      and take? I mean, are you now inside that damage assessment  
16      process as opposed to the people who are not contracting, and  
17      is there interaction among the investigators in different  
18      disciplines such that there is, in fact, a good overall research  
19      program developing or is it just hit and miss, little one-shot  
20      projects?

21              PROFESSOR SHAW: I participated in workshops, planning  
22      sessions in, I believe it was, early May that wrote a few pages  
23      for the draft study plan, the yellow document. So, I had a  
24      chance to contribute intellectually to that process. As a --  
25      that process was divided up into a series of working groups,

1 the subject areas are reflected in the way that that study is  
2 broken down into air and water and fisheries and some others  
3 whose names I don't recollect. At the end of three or four days  
4 of discussion and creating drafts of individual proposed  
5 elements of the study, there was a vote taken of which  
6 elements should proceed to be recommended on up the trustee  
7 framework. I did not have the franchise to vote because I did  
8 not represent a trustee agency. So, there were, I think there  
9 were five voters that passed on each one of those program  
10 areas; one from each of the four trustee agencies, plus EPA.  
11 So, I did have an impact -- I did have a chance to participate at  
12 the initial step and then it's been getting.....

13 MR. HERZ: My question is really, do you think the process  
14 worked and is gonna, as a result of the process, the best, or  
15 under the circumstances a good overall, long term product will  
16 result?

17 PROFESSOR SHAW: Well, I think that the product that is  
18 embodied in that study plan addresses the individual resource  
19 management agencies, the individual trustee's concern. I do  
20 not think that it addresses the overall ecological system level  
21 questions about what's going on in Prince William Sound and  
22 the Gulf of Alaska as a result of the oil spill. When I went to  
23 the meetings that I just described to you, I carried a plan for  
24 such a project from the University that had been put together  
25 to address these things, with a systems approach. That plan

1 was not given thorough consideration simply because of the  
2 way the questions were structured, the way the working  
3 groups were structured. No one was in charge of the overall  
4 picture.

5 MR. PARKER: What was the driving discipline in that  
6 particular structure?

7 PROFESSOR SHAW: I think the driving discipline was  
8 ecological modeling. The role of ecological monitoring is to  
9 produce an intellectual framework in which you make a series  
10 of measurements about what's going on in the environment.  
11 You bring your measurements back and you test them against  
12 the model. You use the data to improve the model and the  
13 model to improve the next round of data collection. So, I  
14 wouldn't say chemistry or biology or physics was driving that.  
15 I would say this process of integration through model building  
16 was.

17 MR. PARKER: You're talking about the University now.  
18 And on the trustees' side, what was the controlling discipline  
19 in the making of decisions so that your model didn't get there?

20 PROFESSOR SHAW: I think the controlling discipline --  
21 well, the controlling consideration was the individual natural  
22 resources whose damage to which was the objective of those  
23 studies.

24 MR. PARKER: You're dealing with the managers or the  
25 attorneys from the departments?

1           PROFESSOR SHAW: The technical managers, the  
2 scientific managers.

3           MS. WUNNICKE: I have a question that you may not be  
4 able to answer, but in terms of the Department of the Interior,  
5 which agency, if you were to choose among the Interior  
6 agencies that have those management responsibilities, has the  
7 lead, so to speak, within Interior?

8           PROFESSOR SHAW: I really can't answer that question.  
9 Most of my technical level interaction has been with the state  
10 agencies.

11          MS. WUNNICKE: Fish and Game.

12          PROFESSOR SHAW: Fish and Game and also DEC.

13          MR. PARKER: Any other questions? Counsel?

14          MR. HAVELOCK: Are you through with your statement  
15 yet?

16          PROFESSOR SHAW: Well, I guess what I would like to do  
17 is come back and answer a part of one of Mr. Herz's question  
18 that I think I glossed over. I think you wanted -- at one point  
19 you asked me how I personally reconcile the fact that I'm a  
20 practicing scientist and this is largely -- that I'm involved in  
21 a situation where data is confidential and I think my approach  
22 to this is that 1) when I found that this was the way the  
23 situation was going to be I did as much as I could to limit my  
24 participation. I didn't completely opt out of the situation in  
25 part, primarily, because I was -- by the time the trustees had

1 the CERKLA process was in place, I already had several months  
2 of sample collection already done. I would, as a university  
3 scientist, I would always see the ultimate possibility of, I  
4 guess the appropriate term is, leaking information if I felt  
5 that this was really the ethically appropriate thing to do. Now  
6 that is certainly not something that I would do lightly, but it's  
7 not something that I could feel that I could categorically say I  
8 would never consider.

9 MR. HAVELOCK: Is part of the problem that CERKLA  
10 itself is based on a false model, that is a model that assumes  
11 that you can rehabilitate the resources, that you can replace  
12 them; that it is a job that can be done, but, to follow that  
13 through. That being the assumption of CERKLA that is and it  
14 not happens then the CERKLA process deteriorates into a  
15 lawyer's game really of damage assessment and not of  
16 rehabilitation replacement, but one of punishing the offender  
17 by collecting a civil penalty through the damages. Can you  
18 comment on that?

19 PROFESSOR SHAW: Well, certainly for a region like  
20 Prince William Sound where certainly, at least to people from  
21 the Lower 48, a great deal of the perceived value is the  
22 unspoiled, pristine nature of the place. There's very little that  
23 people can go in and do to restore that value. That's I think,  
24 just an essential paradox to think that you can go and restore  
25 the pristineness. The -- as I understand the CERKLA

1 mechanism and the process involves the measurement of injury  
2 to natural resources, the assessment of damages to the  
3 responsible party. But then that monetary settlement goes  
4 into a trust fund which is being used for environmental  
5 restoration. I think that's where the restoration compensation  
6 thing lies. But, certainly, given the time scales of both natural  
7 processes of recovery and the timescales of litigation,  
8 certainly that human ability to use monies that are collected  
9 to really make a difference in Prince William Sound is gonna  
10 be, is likely to be rather minimal.

11 MR. HAVELOCK: Then, are you suggesting then that part  
12 of the problem with this process is that there are things that  
13 could be done right now or on an earlier schedule to replace  
14 resources or to mitigate the impact. The money is not  
15 available for them and attention is not available to them  
16 because you're all involved in the damage assessment?

17 PROFESSOR SHAW: No, I don't -- I think that -- my first  
18 contention was pretty much that the die is cast, that Prince  
19 William Sound, the Gulf of Alaska is going to recover pretty  
20 much at its own rate. And that our -- no matter what we do,  
21 that rate isn't gonna change a whole lot. I think -- it's my  
22 personal believe that the long term activities would more  
23 profitably focus on evaluating this response and improving the  
24 future capability to respond to other similar situations. As I  
25 understand it, as I perceive it, that's part of the role of this

1 Commission. Also as I perceive it, there's a built in reluctance  
2 for very much intraspection, certainly by the trustee agencies  
3 at this point, that when one goes into litigation it's probably  
4 not helpful to simultaneously be finding fault with one's self.  
5 One wants to find fault elsewhere. So, I think there's probably  
6 going to be reluctance from the management agencies that  
7 were involved, both at the State and Federal level, to take the  
8 hard look at their performance. And that hard look is really  
9 necessary if we're gonna have a better performance next time  
10 around. I also think that it's, in the long term, it's important  
11 to begin a process of informing society about the uncertainty,  
12 the risks and the tradeoffs that are involved in most human  
13 activities and especially in these kinds of large scale resource  
14 development activities. I think it's been politically popular in  
15 this state in the last six months to say we were sold a bill of  
16 goods by the oil companies about response capabilities. To the  
17 extent that we were sold a bill of goods, I don't think we were  
18 very smart shoppers. I think we were all too ready to not  
19 confront this extremely unpleasant, extremely unlikely  
20 scenario that we've lived through in this state in the last six  
21 months. We just didn't want to think about it. And, so we  
22 didn't. And -- but I think my point here is that in order not to  
23 be caught quite so much by surprise the next time something  
24 like this happens, we need to be a little bit more realistic  
25 about understanding what we're bargaining; what kind of

1 tradeoff's we're making; what kinds of risks we're taking.

2 MR. HAVELOCK: Am I correct in saying that in terms of  
3 the style of scientific response that the problem is that it is  
4 fractionated in its approach and does not include an holistic  
5 overall response. Is that fair?

6 PROFESSOR SHAW: That's certainly, within my frame of  
7 reference, that's the way I see it. For, perhaps for CERKLA  
8 narrowly construed, that is a non-problem. However, I think in  
9 the interests of the State of Alaska understanding what the  
10 real sensitivities of the environment are; what the real  
11 impacts, whether or not they're related to quantifiable natural  
12 resources injury, ought to be a high priority. I think we see  
13 that when we have questions about whether subsistence food  
14 resources are fit to use. We need to know which of those  
15 things that people have been eating have really been damaged.  
16 We need to know how long they're likely to be damaged. We  
17 need to know about the indirect changes that may be set in  
18 place by this oil spill. Most of the CERKLA sponsored work is  
19 focused on the direct impact of oil on organisms that are, that  
20 have value in some sense. There's very little work that's being  
21 done on indirect impacts. The kinds of things that where,  
22 because you change one part of the ecosystem, something else  
23 changes in response. But there will certainly be those kinds of  
24 impacts. The case of otters in Prince William Sound is one  
25 particularly obvious one. Otters are very active predators.



1 They consume something like 30% of their body weight in food  
2 a day. Removing a substantial fraction of those animals from  
3 Prince William Sound is going to allow the animals they fed  
4 upon to multiply. The preferred food of the otters are sea  
5 urchins. The sea urchins, when they multiply, eat more algae  
6 and that's going to remove the food for other organisms. So,  
7 there are lots of things that reverberate through the food chain  
8 in ways that we don't yet have a very good handle on, but may  
9 be as damaging or more damaging than the direct effects.  
10 Certainly, the closure of fisheries, which we've already seen  
11 on a fairly substantial scale may have indirect effects too.  
12 When you don't catch the fish, they stay in the ocean and keep  
13 eating other things. So those kinds of large scale changes are  
14 also going to lead to indirect impacts from this situation. And  
15 CERKLA isn't geared to looking at those things.

16 MR. PARKER: Anything else? Thank you very, very much.  
17 That was very much what we needed to hear at this time. I  
18 hope the model gets funded somewhere, because it does need to  
19 be done. Certainly the oceanographic model that was developed  
20 by IMS over the last couple of decades has proved invaluable  
21 and the -- I hate to see any interruption of these long term  
22 efforts result from this or even any small interruptions. So,  
23 thanks, once again.

24 PROFESSOR SHAW: Thank you.

25 MR. PARKER: Did Peter McCoy come down with you?

1 PROFESSOR SHAW: No, he wasn't able to come today.

2 MR. PARKER: Okay. I just wanted to make sure I wasn't

3 overlooking him. Okay. Next we have the Institute of Social and

4 Economic Research. Dr. Berman and Steve Colt.

5 MR. \_\_\_\_\_: We're not here yet.

6 MR. PARKER: We're not here yet. We're a couple minutes

7 early.

8 (Tape Changed)

9 (Tape Number 89-09-21-4A)

10 MR. HAVELOCK: Mr. Chairman, I don't know how late

11 they're gonna be or maybe they're even gonna not come. We're

12 checking on that by phone. But you have a sub-committee report

13 to finish, as I recall, and you've got, we have that timeline that

14 we talked about partly, but did not conclude discussion on. If

15 you want to move on to other business.....

16 MR. PARKER: Alright, we'll do that. Which would you like

17 to take up first?

18 MS. WUNNICKE: Let's finish the sub-committee reports.

19 MR. PARKER: Alright. I return to response. I like that.

20 MS. HAYES: Return to response. I think the words were

21 falling out of my mouth, when we stopped. I guess we were in

22 the process of hearing from other commissioners about this idea

23 of using sub-contractors as a way of doing some kind of peer

24 review; whether it was feasible or not; what other peoples'

25 opinions were. I don't know who we hadn't heard from. My

1       subcommittee was in agreement. John, do you have any opinion  
2       on that?

3               MR. SUND: I always have an opinion on everything. I  
4       guess I'm just can't -- I'm not convinced 'cause of the timing. I  
5       guess that's my ultimate thing. It just gets down to -- I don't  
6       know what or when we get out of it. The up side is is that you  
7       protect some peer review if there's some substantial problems in  
8       the initial design that you may get 'em early and therefore make  
9       the report a better qualified report later on or you protect  
10      against it being attacked on some basis that later on -- It's  
11      probably gonna be attacked later anyway, but what you're trying  
12      to do is say, well, this peer review or this review of the layout  
13      would've prevented or would've stopped or would've helped  
14      solve this problem, which is a decent goal. It's like the last  
15      witness said. You know if he was gonna do a \$40 million  
16      scientific study he might've spent two years trying to plan it.  
17      We're gonna let these guys go here in the next day or two so on  
18      the thesis that we wanta look over the design. Or you and Mike  
19      and somebody in the committee wants to look over the design  
20      and you wanta have some help to make sure that you ask the  
21      right questions, then that's -- I don't know what that is, if it's a  
22      plane trip or something like that to go look at it, but I don't  
23      know how we get out. I guess, you know, if it's -- I go down to  
24      money right? When it comes down two or three thousand  
25      dollars to have someone look at it, that's fine, but I don't think

1       it's \$10,000. I don't think you have time to spend that much  
2       money. I'm not gonna recommend it for the rest of the tanker  
3       design studies or anything.

4               MR. HERZ: Can I make a comment? My sense -- two  
5       points. Number one, I think that this element is different from  
6       any other element that we are contracting to have done because  
7       it is a generation of a technical product that is original research  
8       that's not a re-hash, a re-evaluation of existing data. And number  
9       two, I think it's a misnomer to call it peer review, 'cause it really  
10      is not. It was not designed to be peer review in the sense of the  
11      word for the reasons that the chairman pointed out. I mean,  
12      peer review usually involves a number of people. It's a fairly long  
13      and complicated process. We don't have time for that. It's  
14      oversight. And it seems to me, because this is a technical  
15      product and because this is a very sophisticated discipline that if  
16      we're gonna spend -- I'm not quite sure just what the risk part of  
17      the contract is, but it's.....

18             MR. SUND: Forty-five.

19             MR. HERZ: Oh, no. It's much more than that. It's over a  
20      hundred isn't it? Risk and hazard.

21             MS. WUNNICKE: The whole thing is.....

22             MR. HERZ: Two hundred and ninety.

23             MARILYN: Ninety-five for each.

24             MS. WUNNICKE: Ninety-five for each section.

25             MR. PARKER: The sections are by geography, not by

1 function.

2 MR. HERZ: So, if we're gonna spend -- I'm sorry, we are  
3 going to spend nearly \$200,000. it's the largest single outlay of  
4 money that we are making for any product that we are having  
5 done. Therefore, I feel that the investment of 5% of that total is  
6 not very much and I think it will buy us some protection in the  
7 long run.

8 MR. PARKER: You're mixing apples and oranges because  
9 the reviewer will be only undertaking a review of a portion of the  
10 product.

11 MS. HAYES: I just wanted to clarify two things and I  
12 thank you for that one. But the overall contract is looking at  
13 many more things. The number that you cited is for lots of work,  
14 not just the hazard and risk assesment. It's the tanker, the  
15 contingency plans and various other elements as well. But, I  
16 wanta also clarify that we can talk about semantics all you will,  
17 and perhaps peer review was the long choice of words, but  
18 oversight gives me apoplexy. What we're trying to avoid is having  
19 oversight. What we're trying to do is to make sure that the  
20 project is designed properly at the beginning and let the  
21 contractors who we trust and we are confident of their  
22 professionalism, go with it after that. So, I'm trying to avoid  
23 oversight in the sense of a long term management of the project.  
24 I just wanta clarify that.

25 MR. PARKER: Let's not get bogged down on this. I think

1 that Counsel has had some thoughts on this which we can pick  
2 up on 5 o'clock. Mr. Berman is here now I believe and so let's  
3 proceed with the agenda and take that up again, but I think that  
4 -- I agree with you. Let's not get bogged down in semantics and  
5 define exactly what we hope to get here. Are both Mr. Berman  
6 and Mr. Colt here now? Okay. You wanta come up together or  
7 separately? Okay.

8 MR. BERMAN: My name is Matt Berman. I'm Associate  
9 Professor of Economics at the Institute of Social and Economic  
10 Research at UAA. My views here are my own and they don't  
11 represent those of the Institute or the University. I'd like to  
12 come here to offer my views as a social scientist of the oil spill  
13 response and I'll offer some fairly general remarks and perhaps  
14 be available to answer some specific questions if you have them,  
15 and also, my colleague, Steve Colt, is here to offer some  
16 additional suggestions of his own.

17 The goal of public policy towards oil spill, I believe, is  
18 with all environmental risks should be to minimize social costs.  
19 We should seek to minimize technically the sum of all costs,  
20 including damages to the environment and to people, not just  
21 the cost of one particular group or another. One can argue at  
22 length over the relative value of various environmental costs, but  
23 we're not yet that far along in our thinking. Instead we have a  
24 situation in which each of the various interested parties is trying  
25 to pass on their own real or perceived costs to everybody else,

1       rather than trying to work together and reduce the costs.  
2       Litigation is obviously the main vehicle for this kind of  
3       unproductive activity, but it's not the only one. Attempts to pass  
4       on costs also occur through attempts to -- for example, to  
5       influence legislation on liability for accidents through the  
6       regulatory processes, through oil, and even between various  
7       government agencies. It's unproductive. Cost avoidance also  
8       occurs through the efforts of managers of all agencies to try to  
9       control information in order to keep other people from finding  
10      out whether you might be able to do a better job. Public policy  
11      can improve organizations so that they do what we want, I think.  
12      And that's really the main conclusion that I have from looking at  
13      the situation is that we need to improve the way organizations  
14      perform and the goals we have here that first we want to make  
15      sure that we spend enough on accident prevention so that  
16      additional spending doesn't give us more benefits than reduction  
17      and environmental damage than it costs. And secondly, we want  
18      to achieve whatever prevention and clean up that we need, we  
19      want to get that accomplished at the lowest cost. And I don't  
20      think we're achieving either of those goals now.

21             A program to move in that direction, I think should have  
22      three components. It should develop incentives for responsible  
23      behavior. It should employ managerial or administrative  
24      structures which allow the incentives to work, and it should also  
25      produce information that we need in order to achieve cost

1 effective prevention and clean up.

2 Incentives to consider might include such things as  
3 reducing fines for spills depending on the fraction of oil  
4 promptly recovered from the water or setting a bounty on  
5 recovered oil. Steve Colt will have more to say about incentives.

6 Management reform requires addressing the problem  
7 except as centralization. The clean up effort has consisted  
8 principally of managers, most of whom knowing little about the  
9 area or environment they're entrusted to restore, fairly rigidly  
10 supervising laborers. These same managers, private and public,  
11 have discouraged volunteers with local knowledge from helping  
12 in the clean up effort. This kind of centralization works for  
13 mobilizing heavy equipment and disposing of hazardous waste  
14 and I don't want to advocate decentralization of every thing. But  
15 I think it's discouraged the flexibility and creativity needed to  
16 pick up oil with the primitive technology that we have in remote  
17 areas. Instead, we could probably get much better results if we  
18 could de-centralize responsibility for restoring a given area to a  
19 local group. Managerial de-centralization would also speed up  
20 the generation and transmission of knowledge. Since there isn't  
21 any perfected technology, directions handed down from above  
22 on how to do things, whether from Exxon and it's sub-  
23 contractors or from the Coast Guard or the State DEC, they  
24 should be, I think, treated as suggestions rather than orders. We  
25 really don't know exactly what we're doing so we need to have



1 more experiments in the field and incentives for  
2 entrepreneurship and ideas. For example, maybe we need to  
3 have, establish, a prize for invention of technologies that work.  
4 Organized research to produce information that would help  
5 achieve the goal of minimizing social costs isn't really being  
6 undertaken, at least there is very little of it compared to the  
7 enormous quantity of research that's being generated to try to  
8 assess damages. We oughta want to know, for example, what  
9 kind of continuing restoration activities, if any, are desirable and  
10 cost effective. We really don't know. We're playing a political  
11 game with how much clean up should Exxon continue to do or  
12 should the State pay for. But we don't really know how much we  
13 should have or what kind of activities. Such a strategy of --  
14 which is different from -- I guess, our current strategy is based  
15 on trying to see how much we can collect from Exxon and that  
16 seems to be the smart thing to do, but it doesn't really  
17 accomplish the objective -- the principle objective, which is to  
18 minimize social costs. Get the damage cleaned up at the least  
19 cost and prevent -- cost effective ways of preventing future spills.  
20 I think it reflects the problems we have in an institutional  
21 structure in which the best strategy for each group is to try to  
22 pass on its costs. So, since nobody's really trying to reduce the  
23 cost, the public and the environment end of being the losers.

24 So to summarize, doing a better job of preventing and  
25 cleaning up oil spills requires, I think, a series of institutional

1 reforms that encompass incentives for private and public  
2 organizations, administration and information. At the State  
3 level, these reforms should include several things. One is we  
4 should have direct financial incentives for private firms to keep  
5 or move oil out of the water. I think we should definitely  
6 consider that and hopefully Steve Colt can address some  
7 specifics suggestions on that, in that regard. Secondly, the  
8 State, I think the State should not hesitate to take over the clean  
9 up effort, as I think they should have a long time ago. And in  
10 doing so, de-centralized administration of restoration programs  
11 to local communities. And finally, the State should pursue a  
12 research program that creates, runs and manages information  
13 about oil spills. Alaska state policy should pursue prevention of  
14 clean up and restoration strategies that are cost effective  
15 regardless of whether these expenditures could be billed to  
16 Exxon. The State can levy user fees on the petroleum  
17 transportation industry to fund whatever it decides needs to be  
18 done. I think what's missing here is an attitude among state  
19 leaders that the buck stops here, with the people of Alaska and  
20 not in Houston or Washington D.C. Thank you.

21 MR. PARKER: Thank you very much. You struck a  
22 responsive chord with me in management de-centralization.  
23 Have you had a chance to read the Governor's winter plan that  
24 he announced in Valdez Friday?

25 MR. BERMAN: I haven't had a chance to read it.

1 MR. PARKER: I haven't.....

2 MR. BERMAN: Only the head guys got it.

3 MR. PARKER: .....had a chance to go over it. But I think, I  
4 hope that some of those elements -- as I understand it some of  
5 the elements that you brought up are in there and that basic  
6 focus is de-centralization of effort to a large degree. Questions.

7 MS. WUNNICKE: Mr. Chairman? You say you speak for  
8 yourself. Is either of the organizations with which you're  
9 associated mounting a systematic look at some of the social costs  
10 that you outlined?

11 MR. BERMAN: Well we, at the Institute, have -- sort of are  
12 in a fairly unique position around here in that we're not doing  
13 any, as far as I know, any organized, any research related to the  
14 oil spill. And that is a reflection primarily, I think, of our policy  
15 that we don't do proprietary research and most of the research  
16 that's been requested of us has been requested by attorneys and  
17 they want to keep that priveleged.

18 MS. WUNNICKE: But there's been no decision on the part  
19 of the Institute on it's own to look in a systematic way at some of  
20 the problems that you.....

21 MR. BERMAN: We've tried to do it as time permits, but as  
22 a contract research organization, we have to -- we have very  
23 limited funds for pursuing research that's not funded from  
24 external sources, so it's preventative.

25 MS. WUNNICKE: And the same thing would be true of the

1 University in general.

2 MR. BERMAN: i think that's true of the University in  
3 general.

4 MS. WUNNICKE: thank.

5 MR. SUND: Can we get a copy of your statement that you  
6 just read.

7 MR. BERMAN: Well, I sort of summarized part of it, but I  
8 have a full text of remarks that I'll.....

9 MR. SUND: That's what I was asking for it.

10 MR. BERMAN: .....has a little more than I said. Yes.

11 MR. PARKER: Any other questions? Counsel?

12 MR. HAVELOCK: I'm wondering whether we might hear  
13 the other person and have Mr., Dr. Berman stick around so we  
14 can ask joint question.

15 MR. PARKER: Okay.

16 MR. COLT: Mr. Chairman, members of the Commission,  
17 thanks for the opportunity to testify. My name is Steve Colt. I'm  
18 an assistant professor of Economics at the University, also with  
19 the Institute of Social and Economic Research. I also have a  
20 prepared written statement, which I'd be happy to distribute to  
21 you and I will just try and summarize that.

22 I guess what I'm gonna do is amplify some of what Matt  
23 Berman just said and if I'm stating the obvious or I'm stating  
24 what you've already heard, so much the better that I'm  
25 reiterating common knowledge.

1           My remarks focus on some of the specifics of the use of  
2 de-centralized incentives to help reduce the risks of future spills  
3 and the magnitude of damages should a spill occur. Economics  
4 teaches that we should regard regulation as somewhat of a game.  
5 In a game, even if you play with friends, you don't take your  
6 opponent's word at face value. You do not assume that your  
7 opponent's interests are the same as yours and you do not try to  
8 win simply by threatening to take away the ball and go home. In  
9 short, you look out for yourself and try to make your opponent's  
10 self interest congruent with yours. And, usually, everyone has a  
11 good time and remains friends in spite of the competition. In  
12 the same way, for the purpose of setting public policy, the State  
13 of Alaska should never assume that the oil companies are telling  
14 the truth or that they share common interests in environmental  
15 protection with us. Similarly, we should not expect to win the  
16 game of assuring effective prevention and a top notch response  
17 through requirements enforced merely by inspections and  
18 threats of punishment. Inspect and enforce methods are  
19 cumbersome and costly.

20           I think we should look beyond ineffective sticks and  
21 consider some carrots as well. I think we should consider  
22 paying the industry to stay ready and to stay on top of technology  
23 - with their money, of course. We should consider taxing  
24 Alyeska and taxing the shipping companies on an annual basis for  
25 the right to operate, then rebating that tax to them upon annual

1 proof that they have operated safely and that they continue to  
2 maintain complete readiness to respond to an accident. This  
3 scheme is used throughout the private economy. Construction  
4 companies put up performance bonds, and tenants pay security  
5 deposits to landlords. The payback should be based in part on  
6 pure performance, i.e. how many gallons of oil were spilled this  
7 year, and in part on compliance with prescriptive standards  
8 such as the number of barges and miles of boom maintained in  
9 readiness. The pure performance component of the payback  
10 gives an ongoing incentive for technology development and  
11 innovation. In addition, these paybacks should be highly  
12 publicized so that company executives can bask in the glow of  
13 successful performance. A safety tax payback scheme puts the  
14 burden of proving safety on the company, not the understaffed  
15 DEC. It encourages Alyeska and the shippers to take action on a  
16 day-to-day basis to stay safe. Most important, it helps make  
17 safety and preparedness pay on the bottom line and makes cost  
18 cutting costly. Any use of an annual safety tax payback program  
19 should, of course, be in addition to existing liability law and the  
20 use of oil spill response funds.

21 As a second example of ongoing, de-centralized  
22 incentives, the Commission should seriously consider, as Dr.  
23 Berman suggested, the adoption of a bounty program to take  
24 effect when spilled oil is no longer contained. And by that, I  
25 mean either in space, because the booms and the skimmers

1 failed, or in time because "treatment" is over for the year.

2 The potential advantages of such a program should be  
3 obvious to us all. Picking up spilled oil is a lot like fishing. In  
4 both endeavors, local knowledge, rapid de-centralized response,  
5 technical innovation, and various types of gears are all important  
6 to success. Partly for these reasons, I suppose, we have not put  
7 corporate giants like VECO in charge of the task of catching  
8 Alaska's fish.

9 In order to work properly, I would suggest the bounty  
10 program must do the following. First, to discourage the  
11 deliberate spilling of oil, such as waste oil, the bounty payment  
12 should ideally be set below the cost of producing spilled oil. The  
13 bounty program should only take effect upon declaration by the  
14 Governor that a major spill has become uncontainable. And the  
15 feasibility of chemically tagging North Slope crude to allow spot  
16 checking of collecting oil should be addressed.

17 Second, to avoid the incurrence of liability by the state for  
18 potential accidents suffered by private collectors, the program  
19 should encompass some form of workers' compensation  
20 requirements or specific legislation to clarify the state's  
21 relationship with private collectors. And I'm thinking here of  
22 any implied employer/employee relationships.

23 Third, to encourage cost-effective preparation for a spill,  
24 the program must be clearly defined and announced well in  
25 advance of any spill.

1           And fourth, points of collection should be clearly  
2           established, whether they're defined as fixed central collection  
3           points, or some set of floating centers defined in relation to the  
4           unknown, at the moment, location of a spill. Potential collectors  
5           must know by what technology and where the oil is to be  
6           delivered. I think the Commission should carefully consider  
7           these issues and in evaluating a bounty program, I believe the  
8           burden of proof should rest with those who would reject the  
9           idea.

10           Thank you for the opportunity and I'd be happy to answer  
11           any questions.

12           MR. PARKER: Thank you very much for providing us with  
13           some very horizon-broadening suggestions on -- is -- why don't  
14           you come up again Dr. Berman. As you know, our primary focus  
15           is on what happens next and my colleague, the Vice-Chairman,  
16           Esther Wunnicke, heads our Institution Sub-Committee, which  
17           is concerned with the institutional changes that are necessary.  
18           We have our Response Sub-Committee Chairman, Meg Hayes,  
19           and our Prevention Sub-Committee Chairman, John Sund.  
20           Questions of either Dr. Berman or Dr. Colt. Meg?

21           MS. HAYES: When we were in the communities earlier  
22           this summer, seems like a long time ago, we talked to several of  
23           the MAC Committees. Has either of you had opportunity to  
24           discuss your ideas with the various MAC Committees, the Multi-  
25           Agency Coordinating Committees?



1 MR. COLT: I'm familiar with who they are, but we have  
2 not had a chance.

3 MS. HAYES: I guess the reason I raise that is that you  
4 made the statement that spill clean up was being done without  
5 local involvement and in fact, what we've found is that you're  
6 partly right or at least that they were -- the people who were  
7 enabled to make the decisions about where things would, what  
8 things would actually happen, were not local people, but the  
9 local people had a fair amount of involvement in making  
10 recommendations and suggestions about where clean up would  
11 occur in each of the four sectors. I'm just wondering if you've  
12 got access to information or evaluation of that process that  
13 maybe we don't.

14 MR. BERMAN: Well, I guess since I made that statement,  
15 I'll have to address it. I was thinking of a much more local -- I  
16 was thinking of the levels of the actual crews rather than the  
17 advising of what areas would be cleaned first and the overall  
18 mobilization of resources. The problem that I was trying to  
19 address is the fact that you have a -- the process of hiring and  
20 training clean crews is carried out separately from the and  
21 serves separate from the individuals in local communities who  
22 would like to help and whose only opportunity to do so is to join  
23 one of the clean up crews. Mainly I find my impressions from  
24 talking to many people from various communities who would  
25 like to, who have tried to help as volunteers and were

1 systematically excluded because they were not working for a  
2 VECO crew. So, it's more that individuals were being  
3 discouraged from helping and that created -- not only did it  
4 waste resources, because these people could've been very  
5 valuable in the clean up effort, but it also caused them to have a  
6 lot more frustration and anger over the spill and that was not  
7 productively directed.

8 MS. HAYES: it is interesting because most -- I've been to  
9 four of the villages that were affected by it and in those villages,  
10 most of the people that came forward and testified, which wasn't  
11 everybody in the village, said that everybody who wanted to get  
12 on, got on to the spill response, that they were working for  
13 VECO. And that they felt that, they felt frustrated at not -- that  
14 the money that they came in -- that the work of cleaning up the  
15 oil was not sufficient to relieve their frustration about the event.  
16 In fact one of the most interesting things, I think, came out of  
17 some of the testimony was people that would say they never had  
18 so much money in the bank before, but they're still mad. But I  
19 guess I'm saying that the local people, at least in Kodiak and the  
20 outer coast cleanup were mostly people from Kodiak that were  
21 involved with that, but that the spill -- the decisions about where  
22 the resources were allocated were still being made on a Valdez  
23 basis rather than being on site.

24 MR. BERMAN: Yes, well I didn't want to get into a  
25 detailed evaluation of management of the clean up, because that's

1 going to require a lot more serious research than I did here in a  
2 month.

3 MR. PARKER: The reason your remarks on de-  
4 centralization struck home to me in discussions with the MAC  
5 Committees, particularly those in Seward and in Homer and  
6 Kodiak, the description was the locals would get their act  
7 together, fire off their request, you know, their request for  
8 resources, which would be based on their shoreline clean up  
9 plan, and it would disappear into the vast bureaucracies of  
10 Valdez for up to six. By the time information came back from  
11 Valdez on allocation of resources, why the situation had totally  
12 changed. And we heard a lot of that from that end and of course  
13 that was in the mid-summer. Whether that changed later or not,  
14 we haven't had any testimony on. But, it did appear that there  
15 were some -- because the system was put together very  
16 hurriedly, just the first week of the spill -- really, other than  
17 adding on as the spill moved westward, adding on increments,  
18 why the basic structure didn't seem to change much after the  
19 federal on-scene coordinator took over in it's basic evolvement.  
20 But even that, going from the triad to the supreme federal on-  
21 scene coordinator didn't seem to change the way things worked  
22 much. I think your -- what you've got up here is very germane to  
23 that and we'll be having some transcripts eventually of those  
24 particular hearings, will we not, Counsel, that'll be available at  
25 our library for reference and detail on that. Any other questions.

1 MS. WUNNICKE: I'm interested in the carrot approach.  
2 Have you given any thought and you mentioned a tax might be  
3 refundable, but have you given any thought to bonding, as such,  
4 and to whom it would apply, whether it would be a shipper, the  
5 owner of the oil, the user of the port?

6 MR. COLT: I didn't give specific thought to the  
7 mechanism and, in fact, I'm not completely sure how the  
8 intricate details of bonding work. I just wanted to bring up the  
9 general idea that we ought to try and work out -- we might want  
10 to consider having the day-to-day incentives being positive ones,  
11 rather than negative ones for the on-the-ground managers.

12 MR. PARKER: Anything else?

13 MS. WUNNICKE: No thank you.

14 MR. PARKER: Thank you very, very much.

15 MS. WUNNICKE: One comment. I think when you talk  
16 about getting bounties for oil removed, you must recognize that  
17 this is being proposed to a state that can't even pass a bottle bill.  
18 You can't get 15 cents for an empty Coke can.

19 MR. HAVELOCK: Touche.

20 MS. WUNNICKE: Touche.

21 MR. PARKER: We've only been trying for 20 years. I  
22 mean, what the heck.

23 MR. HAVELOCK: Five minute break.

24 MR. PARKER: Hum?

25 MR. HAVELOCK: Five minute break.

1 MR. PARKER: You want a five minute break?

2 MR. HAVELOCK: We're going back into reports, right?

3 MR. PARKER: We're going to have public testimony. First  
4 we're going to hear from the Governor's science advisor, Henry  
5 Cole and then we'll have three people for a public testimony,  
6 then we'll take a break.

7 MR. HAVELOCK: Oh, I thought we were going back into  
8 committee.

9 MR. PARKER: Oh, okay, sorry Henry. Alright, first our  
10 public testimony then is Ed Wow.

11 MR. WOW: Chairman Parker, ladies and gentlemen of the  
12 Commission. One of the most attractive attributes of the  
13 American character is our ability to be blunt with each other, if  
14 only to put a point across. Chalking Exxon Valdez accident to  
15 experience, I learned a lot about preventive, double bottoms or  
16 double sides for oil tankers with unlimited greed for damage and  
17 size. I learned about the existing rules of the road. The  
18 necessity to stay within the shipping lanes and the situational  
19 judgment calls left to content or abuse by some unruly captains  
20 out there on the bridge. Concerning the power of prevention,  
21 I've talked to some of you, a Coast Guard commander and a  
22 prominent oil executive testifying before you. It is my firm belief  
23 that the lack of Coast Guard assertiveness played a major role in  
24 this unfortunate accident. You see, Captain asked for permission  
25 to leave the first lane into the second lane. He did not ask for

1 permission to leave the second lane. Alaska Coast Guard was  
2 aware of that, but did not have the authority to assert itself by  
3 saying to the Captain, get your ass back into that second lane. If  
4 they did, none of us would be here.

5 MR. PARKER: That's very true and we have -- I think you  
6 were there when all of the tanker captains were testifying that  
7 they told their people to stay in the lanes now, but then the Daily  
8 News reported the other day in one of its articles that they just  
9 kind of took off into the southbound lane when they wanted to.  
10 So, we'll keep hammering on that point. Richard Roland?

11 MR. ROLAND: Mr. Chairman, Commission members, my  
12 name's Richard Roland. I'm deputy director of North Pacific  
13 Rim Native Corporation and I just have a couple of issues I'd like  
14 to bring before you briefly today.

15 The first issue has to deal with the health toxicity of  
16 subsistence food in the villages. This is one of many concerns  
17 that my constituency has and is probably the number one issue  
18 in the public eye right now in the communities. There is  
19 incredible concern over the potential for toxic waste or  
20 hydrocarbons becoming accumulated in various fin fish and  
21 mollusks and crustaceans and people are very, very concerned  
22 about this issue. I've been involved for the past four months with  
23 what has been called the Oil Spill Health Task Force, which is a  
24 group that includes Kodiak Area Native Association, the North  
25 Pacific Rim Native Association, Fish and Game Subsistence

1 Division, Indian Health Service, NOAA, Exxon has been  
2 represented, one of Exxon's contractors (Dames and Moore),  
3 who is doing collecting subsistence food samples has been  
4 represented. We've had a very good working group that has  
5 attempted to oversee what's happening in this issue and where  
6 it's leading. One thing that it has led to -- I neglected one of the  
7 members of that task force, a very important member, John  
8 Middau, the State epidemiologist, who today has released  
9 Bulletin #3. I don't know if you've seen this yet. I'll leave a copy  
10 with you. It was first handed out at noon today at the Public  
11 Health Association meeting. The Task Force had an opportunity  
12 to review a draft of this bulletin yesterday and made some  
13 appropriate comments and our input is, in the most part,  
14 included in this final draft. This bulletin reports about all of the  
15 samples that have been taken and on the fact that there've been  
16 no fin fish that have found to have any major hydrocarbon  
17 retention in flesh samples. Talks about the fact that, you know,  
18 the jury's still out on mollusks. We don't know what's gonna  
19 happen there. It tells some things about marine mammals that I  
20 disagree with, basically making some assumptions that marine  
21 mammals are probably okay, yet no data's been collected at all on  
22 marine mammals. Samples have been taken, but to our  
23 knowledge, no lab reports have been run. But the bottom line is  
24 that we don't have enough samples. There just simply has not  
25 been enough taken and they haven't been taken over a long

1 enough period of time. My point is that there's been absolutely,  
2 really, no public oversight of this issue. Exxon has been running  
3 these tests. Exxon's contractors have been collecting the  
4 samples, grant with NOAA along on the boats, Fish and Game  
5 along occasionally. FDA labs are running the tests. But it's  
6 basically an Exxon show again. And, again, they've decided that  
7 we'll we've got enough samples. We don't have any data to  
8 support any major concerns at this point and we're going home.  
9 We're not going to continue. We are very concerned that there's  
10 no plan, no public plan to my knowledge, for any kind of  
11 continued sample and testing of subsistence foods. And we feel  
12 that this needs to continue in the spring and it needs to go on  
13 probably through next year and possibly the year following. This  
14 is a major concern of people in the communities and I would  
15 hope that you would investigate that and help us in identifying  
16 the appropriate agencies or organization to follow through on  
17 this. I'll stop with subsistence foods there and if you have any  
18 questions later, I can try to be more specific.

19 My other concern has to do with the million dollars that  
20 the Department of Community and Regional Affairs received a  
21 couple of months ago. They recently put out a Request for  
22 Proposals from municipalities and villages for basically municipal  
23 assistance grants. They have just let that million dollars,  
24 700,000 of that went to a soci-economic study that was put  
25 together by the oiled mayors. That left obviously, very little for



1 municipal projects. Our villages are suffering with over  
2 burdened landfills, with over burdened health clinics and mental  
3 health facilities, over burdened airports, runways that have just  
4 been destroyed this summer. The villages are basically being cut  
5 off without that air access. There's undoubtedly a need for this  
6 soci-economic study. I think everybody agrees with that, but we  
7 don't feel that it should have come out of that million dollars.  
8 And now that it has, it's very apparent that there needs to be  
9 additional funds made available for municipal assistance, not only  
10 for the villages, but also for the larger communities in Prince  
11 William Sound, the lower Kenai Peninsula and the Kodiak areas.  
12 And I'll conclude with that.

13 My address is 3300 C Street, 562-4155. I'm two blocks  
14 down the street. Please come by and visit any time.

15 MR. PARKER: What airports have been most severely  
16 impacted?

17 MR. ROLAND: I would say Tatitlek and English Bay.  
18 Chenega Bay has yet to get an airport. The only access in there  
19 is by float plane or boat and we're working very hard with Dot  
20 Puff to try and push there schedule on that. Tatitlek is not  
21 scheduled for re-surfacing their runway for six years. English  
22 Bay - they need work in there every year. The ocean comes over  
23 that runway regular in the winter. It needs a grader down there  
24 the size that's able to take care of that problem.

25 MR. PARKER: Yeah, I've been trying to figure out a way to

1 fix English Bay for 20 years. The -- other than continually  
2 redoing it. Well, Tatitlek's probably saw more traffic this year  
3 than it's seen in the past 15.

4 MR. ROLAND: I'm sure.

5 MR. PARKER: So, doesn't DOT recognized that? Aren't  
6 they gonna move their schedule, adjust their schedules and  
7 move in there any sooner than that?

8 MR. ROLAND: My understanding of the process is that  
9 they have a six year plan and when they get locked into that it's  
10 very difficult to change it. I've been trying to get a runway into  
11 Chenega for the past six years. They're just starting planning on  
12 that this winter.

13 MR. PARKER: My colleague and I sat in on the Exxon  
14 when they reefed Cannon and got a good sense of the Exxon  
15 team in action. They're gone?

16 MR. ROLAND: Which one?

17 MR. PARKER: The one that Judy Meidinger had?

18 MR. ROLAND: Judy's still on board.

19 MR. PARKER: Judy's still on board.

20 MR. ROLAND: And Ed Gallatin, her supervisor's still on  
21 board.

22 MS. WUNNICKE: Is that going to continue, do you know?

23 MR. ROLAND: My understanding is that they will be  
24 around. The Exxon winter plan did have a community liaison  
25 office in there.

1 MR. PARKER: Meg.

2 MS. HAYES: I'm interested in the samples that you just  
3 got the results back on. When were they taken?

4 MR. ROLAND: There's actually a number. I'll leave this  
5 with you. John, in his bulletin, mentions 5,000 commercial fin  
6 fish that were - are again oliptically tested. Those were taken, I  
7 believe, in June. 900 halibut were also taken in June. Those are  
8 all commercial. There were about 14 subsistence samples taken  
9 in a Fish and Game pilot study. That was in the spring, I believe  
10 May and June. Then Dames and Moore has gone out in June,  
11 July and August and has collected approximately 76 other  
12 samples that were used in a lab report that was just made public  
13 about a week and a half ago. So we've got somewhere around a  
14 hundred subsistence samples.

15 MS. HAYES: And none of those samples have shown any  
16 tainting of oil?

17 MR. ROLAND: No. there were a few samples, one from  
18 Windy Bay and one from near NERE Island, Kodiak Harbour.  
19 The Windy Bay samples were obviously oiled. Again, oliptically,  
20 they showed oiling. The villages who collected the samples, said  
21 that they were oiled and by golly when they got to the lab they  
22 found oil as well, found hydrocarbons. And the same Dere (ph)  
23 Island. In both cases, again oliptic tests on site showed that they  
24 were oiled. There have been other samples that have shown  
25 higher levels of hydrocarbons in background levels, but were not

1 considered toxic levels and were not obviously. And there again,  
2 oliptic tests.

3 MS. HAYES: And those samples are sent outside for  
4 analysis?

5 MR. ROLAND: There have been samples that have been  
6 sent to the DEC lab in Palmer and those are primarily  
7 organoliptically tested and tested for flourescent hydrocarbons.  
8 They use a black system, basic. The others have gone out to the  
9 FDA labs in both Seattle and in Washington initially and now the  
10 primary lab is the National Marine Fisheries Lab in Seattle -  
11 Percy Veranase (ph), Dr. Veranase (ph) has been running those  
12 tests, very well respect.

13 MS. HAYES: Is there a better response time in the  
14 samples that go to Palmer than there are in Seattle?

15 MR. ROLAND: I can't answer that.

16 MR. PARKER: Seattle had to get the samples out of the  
17 freezer. The Department of Justice had 'em locked in there.

18 MR. ROLAND: Those are still there and it's still debatable  
19 as to whether it's the Department of Justice or the State or who  
20 it is that's holding what up. They have a lot of meat in the  
21 freezer and no (indiscernible).

22 MS. HAYES: Mr. Roland, just one more question. Were  
23 the Chugach area mayors involved with the oiled mayors meeting  
24 that forward this proposal for this \$700,000.

25 MR. ROLAND: We have been involved as dollars allowed.

1 We've had a representative from our office at almost all of the  
2 meetings. Elene Smith who's our oil spill response office  
3 coordinator. They did not endorse the soci-economic study.

4 MR. PARKER: Okay. Well, we're going to talk to the oiled  
5 mayors tomorrow afternoon, so I'm sure we'll be hearing more  
6 about that. Mike?

7 MR. HERZ: Just a quick question. I thought I heard you  
8 say that the data on the shellfish were unclear, or could you  
9 elaborate?

10 MR. ROLAND: Mollusks, I guess, it's not really understood  
11 how mollusks metabolize hydrocarbons. Vertabrates and fin fish,  
12 included, have a ludler (ph) and through the ludler (ph) and bio  
13 process do metabolize and excrete hydrocarbons. That's pretty  
14 well accepted. Mollusks seem to excrete it, but at a much  
15 slower rate and we don't know very much about that.

16 MR. HERZ: In the sampling that's been done, have there  
17 been any detectable concentrations in tissue of shellfish or has  
18 that not been done or.....

19 MR. ROLAND: There have been some -- there have been  
20 detectable levels. The only levels that were considered at risk  
21 were these ones from Windy Bay and from Nere Island that were  
22 taken in the original Fish and Game pilot study.

23 MR. HERZ: So there were both fin fish and shell fish that  
24 showed detectable levels?

25 MR. ROLAND: These were just shell fish samples.

1 MR. HERZ: But I thought you referred to some fin fish  
2 that also had detectable levels?

3 MR. ROLAND: They had detectable levels of  
4 hydrocarbons, but not in what's considered amounts that are a  
5 problem.

6 MR. HERZ: The shellfish -- I'm still not clear. The  
7 shellfish do.....

8 MR. ROLAND: Two samples of shellfish had very, very  
9 high levels.

10 MR. HERZ: And would be considered public health safety  
11 levels?

12 MR. ROLAND: Yeah, if you -- it's a big if you gotta read. If  
13 you were do -- in just a large quantity, there is a possibility of  
14 higher risk of cancer for some of these.

15 MR. HERZ: Do you know what the quantity.....?

16 MR. ROLAND: I can get that information. I'm not a doctor  
17 and it's not my field. We've got written material. John Middau is  
18 an excellent resource for that kind of information. Fish and  
19 Game has additional information on where the samples were  
20 taken and at what levels were found in what areas at what dates.  
21 We do have a team that's putting together -- we have maps that  
22 are put together that show where the samples were taken and  
23 we're taking this out to the village to present in the next two to  
24 three weeks. We're starting immediately and over the next two  
25 to three weeks we'll hit all the villages.

1 MR. HERZ: Were those samples with elevated shellfish  
2 hydrocarbon levels samples were taken early on or recent.

3 MR. ROLAND: These were taken early on. They were  
4 taken from a beach that was very heavily oiled. The Windy Bay  
5 area which is around Chugach point, south of Homer, before you  
6 get to Gore Point there's Windy Bay.

7 MR. HERZ: And when you say subsistence, you're talking  
8 about some samples being subsistence samples.

9 MR. ROLAND: These are beaches identified by villagers as  
10 subsistence use areas.

11 MR. HERZ: Thank you.

12 MR. ROLAND: Thank you very much. I will leave a copy of  
13 the bulletin. I'll leave a copy of the DCRA fund distribution sheet.  
14 There are errors on here and they'll be more than happy to  
15 update that.

16 MR. SUND: In your comment that the villages didn't want  
17 to participate in this resource study that's gonna be done, one of  
18 the concepts that we've developed here as part of our report was  
19 a review of the communities and the impact in the communities.  
20 One of our investigators is going to go around to the  
21 communities to try to gather in that data. But from what I  
22 understand, one of the reasons that the village didn't participate  
23 in that, they have some advice from their lawyers that they're  
24 plaintiffs in the lawsuit and they didn't want to participate in the  
25 human impact part of that study because of the proprietary

1 nature of their lawsuit. Is that -- you gonna see a problem with  
2 our Commission here gathering the data or the information that  
3 we need to make our conclusions. Is that gonna run into this  
4 proprietary problem too?

5 MR. ROLAND: I would think that that question would be  
6 raised. Currently the -- all the Councils have agreed to and have  
7 signed a resolution and a letter to all surveyors basically saying  
8 that you have to receive permission from the Council and from  
9 their legal representative who is Lloyd Miller prior to doing any  
10 studies in their community. So we would hope that it will have  
11 review. We have been inundated with researchers. The villages  
12 are doing their own research. We're beginning on a project and  
13 our lawyers and their lawyers will certainly be doing research.  
14 And there is a problem, you know, with everyone from icers to  
15 the sociology department at the University, here, in Alabama,  
16 Minerals Management Service. Anybody who thinks they have a  
17 good graduate thesis idea wants to come in. And they've all got  
18 proposals before us. They all want dollars and it's been a real  
19 trial trying just to keep track of everybody that wants to come  
20 into the village and do basically the same thing.

21 MR. SUND: We don't want any money.

22 MR. ROLAND: Yeah.

23 MR. SUND: We do see this in our report as a real major  
24 portion of the report that is quite different than dealing with the  
25 impacts of oil around.



1           MR. ROLAND: I'll hopefully work something out with you  
2 to gather that information. It would be a pretty substantial hole  
3 in the report if we couldn't include the villages in that. It's hard  
4 to put out an oil commission report that leaves out the impact on  
5 all the vaillages in the area. That wouldn't look. The idea is to  
6 attempt to slow us down a little and coordinate it rather than  
7 just having, you know, everybody run, we'll we know ya, but we'll  
8 certainly work to support your efforts here on the Commission.  
9 I don't think that'll be a problem.

10           MR. SUND: Thank you.

11           MR. PARKER: Yeah, we have a cordinator on board now to  
12 work directly with you.

13           MS. WUNNICKE: Sharon McLintock.

14           MR. PARKER: Oh, great.

15           MR. HAVELOCK: We will have her give a call.

16           MR. PARKER: Okay, thank you Mr. Roland. Johnathon  
17 Jordan.

18           MR. JORDAN: Good afternoon. I haven't been able to  
19 attend too much meetings yesterday and today. I have to be in  
20 the office most of the time, but I do appreciate the time you give  
21 citizens to come and testify to you.

22           I'd like to address comments today on the effects of the  
23 oil spill and the clean up on the wildlife and the environment,  
24 which I believe have been greatly exaggerated by the Alaska state  
25 agencies, the environmental groups and most of the media, but

1 not all of it. I just received in the mail a copy of US News and  
2 World Report. It has a cover story on the oil spill and its affects.  
3 I don't know if any of you have seen this yet. It's probably the  
4 most recent issue. I've asked them, written to them, to see if I  
5 can get permission to reprint the article to give it to you and I  
6 haven't heard back from them yet. I hope to by tomorrow so I  
7 can get copies to you. But in the meantime, I through I try -- I  
8 just say to you, read to you a few of the quotes from the magazine  
9 and see what they have to say. I think it's one of the most  
10 indepth, factual and unbiased articles in the media that I've seen  
11 on the oil spill.

12 They started off by saying that contrary to public  
13 perception fueled by one dimensional television images and a  
14 furious environmental community, Prince William Sound is no  
15 longer an ecological disaster zone. Initially there was heavy  
16 mortality among birds and otters, but the long term injury to  
17 most wildlife and marine organisms is expected to be minimal.  
18 The weathered crude that forms on rocks and beaches will  
19 remain unsightly for three to six years, but it has already become  
20 relatively non-toxic. Considering the actual clean up, they  
21 continue in this article to say that the clean up has taken some  
22 bizarre turns, as I'm sure you're well aware in your investigation.  
23 They estimate that Exxon has spent about \$30 million in  
24 attempt to save wildlife, \$8 million spent to rescue about 200  
25 otters. They say this works out to about \$40,000 per otter. That

1 seems a little ridiculous to me. Most people, even living in  
2 Alaska, don't make \$40,000 in a year. They also go on to talk  
3 about how it's re-vitalized the state's economy, which is a good  
4 thing to come from this mess. They say it's reduced  
5 unemployment from 10% to 6.1% in July and we've just seen  
6 that it's been reduced to 5.9% for August. They quote Jacquelyn  
7 Michelle with the National Oceanic and Atmospheric  
8 Administration to say that, for the clean up at least the mentality  
9 has been to do something, anything. But, she goes on to say, do  
10 you continue to take five aspirin a day after your fever is broken.  
11 I think that's an excellent attitude towards the spill. I think  
12 that's been Exxon's feeling is that maybe it's being overdone.  
13 They also say that many scientists have come to believe that by  
14 spring, continued clean up efforts will do more harm than good.  
15 It's been debated lately whether that's happening even now, but  
16 by the end of the summer they say the oil will be reduced to  
17 asphalt like substance that, while is ugly, does not do any  
18 continued harm to wildlife. I think that shows that media is  
19 getting feeling that maybe the Exxon -- the clean up has come to  
20 its useful life and I think that Exxon's done an admirable job on  
21 the clean up. Certainly more than any state or federal agency  
22 could have done, employee 10, 11 thousand people in a six to  
23 eight week period from when they started. They also go on to  
24 talk about, in the US News article, go on to talk about wildlife.  
25 They say that the eagles and other birds of prey were hit by the

1 spill, though not hard enough to threaten the state's population  
2 of these animals. Many animals, in fact, they say escaped  
3 immediate harm. Only a few seals and sea lions had any  
4 problems encountering oil. And whales, too, they discuss some  
5 scientific data that they appear to be relatively unharmed. They  
6 go on to quote John Robinson, with NOAA also, saying that when  
7 he walks along many of the beaches, they appear to be thriving  
8 and he's referring to the marine organisms in the inter-tidal  
9 zone, I believe.

10 And then they go on to talk about a little bit later, about  
11 fishing and what's happening with the fisheries. And they say  
12 the fishing, commercial fisheries have been affected, but have  
13 not been closed because of contaminated fish, they've been  
14 closed because of, Mr. Robinson again says, consumer confidence  
15 being the main thing driving these restrictions. Consumer  
16 confidence in receiving an oiled fish product.

17 I urge you read this US News and World Report article in  
18 full. If you don't have a copy of it, I say I didn't have time to get  
19 copies to you, but you can also go out and purchase it at the  
20 library or, you know, have copies purchased for you. I think  
21 Alaskans deserve to know the whole truth. And as I said, I think  
22 this article is one of the most unbiased and detailed reports I  
23 have seen. When you're considering information for your final  
24 report, I think you've gotta consider some of this information  
25 and I hope you are. We cannot -- finally, I just like to say, we

1 cannot let this oil spill continue to be the divisive issue that its  
2 been since the occurrence in March. And that's all I have to say.  
3 Thank you very much.

4 MR. PARKER: Thank you Mr. Jordan. Any questions  
5 anyone?

6 MR. WUNNICKE: We do have copies of the article that you  
7 mentioned.

8 MR. JORDAN: Good.

9 MR. HERZ: You didn't indicate any affiliation. Are you  
10 speaking, representing anybody.

11 MR. JORDAN: No. I'm representing -- I'm just here as a  
12 public citizens, representing myself. I just -- like I say, I just  
13 received this article the other day and I wanted to make sure  
14 you were aware of the information that's contained in it. To  
15 date, as I said earlier, I have not seen any -- most of the data  
16 they talk in there in any of the local newspapers, on the national  
17 TV network, the local TV and I think it's very important that  
18 people realize that -- you're probably aware -- I probably should  
19 just say that the title of the article is "The Disaster That Wasn't"  
20 and the effects of the spill are not as great as initially feared,  
21 they theorize. And I think this is very important and some  
22 things that need to come out.

23 MR. PARKER: Well, there's one thing about oil spill is 20  
24 years after some of them, why nobody's any closer to being in  
25 agreement than they were 10 days after, so it's in the nature of

1 the oil spills to be controversial. They don't fit into nice neat  
2 packages.

3 MR. JORDAN: He's correct.

4 MR. PARKER: US News and World Report that did that?

5 STEVE: I have some ideas.

6 MS. WUNNICKE: He'll give it to John.

7 MR. PARKER: Jim Sykes.

8 MS. WUNNICKE: Don't recognize you without your  
9 headphones on.

10 MR. SYKES: I have to go up and cut some winter wood,  
11 since I will be leaving you. My last day of recording is tomorrow  
12 and some of you know that I am a community activist and some  
13 of you know that I am highly opinionated. I really hated to let  
14 the Comission know, go, without you knowing my mind here.  
15 So, here it is.

16 I have been called an environmentalist and a community  
17 activist and a few other dirty words over the past 10 years. I  
18 didn't become a community activist because I wanted to be nasty  
19 to people or get involved in controversies or go to boring  
20 meetings until midnight. I became a community activist because  
21 some of the things that I was interested in, mainly resource  
22 development, had some community values that I didn't feel were  
23 being addressed by the bureaucracy. And, as you go forward with  
24 your report, the most exciting testimony that I have heard has  
25 been the four stakes that are involved in communities in their

1 laws, not as citizen advisory groups, but getting actually citizens  
2 in the process of the bureaucracy. And as far as I'm concerned  
3 that is one of the most important things I've heard because -- I'll  
4 tell you my reasons for this. I had discovered on my own that  
5 some bureaucrats had expertise and they had good intentions,  
6 but they have a lack of understanding of what the local situations  
7 are. They quite frequently make decisions based on printed  
8 reports and maps, for which they have no idea what is really  
9 there or what the attitudes of the community are towards this  
10 piece of paper. Some bureacrats have expertise and no good  
11 intentions. The basis of the talk may change, the bureacrats can  
12 remain for years and they don't change. Some bureacrats have  
13 little expertise and no intentions one way or the other. This  
14 grand variety of bureacrats, and I'm not criticizing bureacrats,  
15 we need 'em. But, I mean this is just the reality of human nature  
16 that we're having to deal with this. All of this grand variety of  
17 bureacrats is supervised by a political appointee. And the  
18 political appointee may have great expertise. He may have no  
19 expertise. He may a good manager. He may be a bad manager,  
20 or somewhere in between. He may be sensitive. He may hate  
21 the public. He may have his own hidden agenda that he wants to  
22 accomplish. Or he may be truly interested in the public's  
23 interest. So these things all interact. The only thing that can  
24 complete the circle of success for the bureacracy, I believe, is  
25 the community. And this local input is very important, because

1 if a bureaucrat, some political appointees and even legislators  
2 have trust in their citizens that they represent, they should be  
3 glad to have this citizen input imbedded in the bureacracy.  
4 Because it certainly removes the political heat if citizens are  
5 involved. So, as far as I'm concerned, if you make any  
6 recommendations, the community must be imbedded in the  
7 bureacracy and in a way that is not easily changed. Because I  
8 think this is the only way that oversight is gonna happen. I  
9 think it's the only way that continued community involvement is  
10 going to happen. And I think it is one way to guard against  
11 apathy if you don't have another oil spill for 20 years.

12 I also feel strongly that an oil spill volunteer force should  
13 be trained, just like an oil spill, a volunteer fire force, so that you  
14 have qualified people in the villages, in the inland bodies of  
15 water such as Cook Inlet and Prince William Sound that are  
16 prepared and ready to go.

17 As far as -- I would like to address something Mike Herz  
18 has been trying to get at and that is DEC. If you're really  
19 interested, I think that you could legitimately ask somebody at  
20 DEC for a list, a summary list, computer printout of lists of all  
21 their investigations that they have gone out of the office on since  
22 they came into existence. We have a standing joke that I was  
23 involved in an issue of agricultural tentacles. And the agency  
24 that I was dealing with was basically telling me to go blow my  
25 now. I said, well if you've got a chemical problem, that's DEC's



1 jurisdiction. Everybody knew that DEC hadn't been out of that  
2 office until -- on a railroad car with some toxic chemicals here  
3 outside of town a few miles. So, since that rail car accident, they  
4 are starting to go out of their office, but basically the feeling of  
5 the people was that we could be quite confident that they  
6 weren't even going to leave their office, much less do an  
7 investigation. So, I think that you could look at -- I mean, you  
8 could also look at the political record. There have been  
9 attempts during certain legislatures to entirely de-fund the  
10 agency, really cut it off as well as DOSH, the State version of  
11 Occupational Safety and Health. So, I think that you can look at  
12 those kind of things. Being an environmental regulatory agency  
13 is somewhat like trying to preserve ice cream in the Sahara in  
14 it's development oriented state. It's not easy.

15 I would like to address one thing about the Commission  
16 being worried about the report being attacked. Your existence is  
17 so brief that I don't think you should worry about it. I think that  
18 you should make some of the most assertive conclusions that you  
19 can legitimately support for several reasons. One, it's going to be  
20 a discussion document anyways. People are going to attack it  
21 regardless of what you say. So you may as well say something  
22 outlandish and say, my look at what these people said. Let's get  
23 to the real issue here. And it will be a discussion document.  
24 And the second reason is you all well know that through the  
25 political process this stuff's all gonna get watered down anyway.

1 So if you don't make assertive recommendations, if you start  
2 with watered down recommendations in reaching your  
3 consensus, there's certainly going to be much less by the time  
4 you get into the political process.

5 I do support some of the things that Matt Berman has  
6 said. I thought he had some good general statements. I guess  
7 the only other thing I have to say is that I wish you well. I feel  
8 that you're a very qualified group of people to take the  
9 conscience of this state and produce the report. I'm very  
10 impressed and I must say it's mighty exciting and interesting  
11 working with the Commission the past three months. I guess  
12 the other thing that I can assure you on, I have not erased the  
13 fourth tape from the second meeting, where you were discussing  
14 before sub-committee.

15 MR. PARKER: Okay. Thank you Jim for your thoughts.  
16 I've been in trouble since yesterday, so the day's not over yet.

17 MS. WUNNICKE: No, the day's not over.

18 MR. PARKER: But, to be in trouble in natural. In Alaska  
19 it's your right to maintaining an environmental presence in a  
20 resource oriented state is the long, hard drive. Tom Lakosh.

21 MR. LAKOSH: Thank you for the opportunity to appear  
22 before this Commission. My name is Tom Lakosh. That's spell  
23 L-a-k-o-s-h. My address is Box 616, Whittier, Alaska, 99693. My  
24 telephone numbers are 258-5767 and 472-2346. I have a  
25 number of issues that I'd like to present to the Commission

1 related to clean up, contingency plans, and related issues.

2 First, I've been slightly incensed by the concept that  
3 Alaska's beaches are no more important to the nation and the  
4 world than the shorelines of New Jersey. The concept that our  
5 beaches should be allowed to be sludge covered is absolutely  
6 abhorrent. The areas that have been impacted by the oil have  
7 been preserved under proposed wilderness areas, designations  
8 in national park areas and these areas have been excluded from  
9 economic degradation for the specific purpose of preserving a  
10 unique eco-system which has now been disrupted to an extreme  
11 extent. We're talking about circumstances where a variety of  
12 organisms interact in very intricate and sensitive manners and  
13 placing sludge on the beaches or asphalt paving the beaches is  
14 obviously not an acceptable waste disposal method or condition  
15 which would -- or whether should be ignored or allowed to  
16 proceed at any cost. The fact that it may cost \$40,000 to  
17 preserve an otter is probably more preferable to the Exxon  
18 executives who might otherwise, had they poached those  
19 animals, been sent to jail. I believe that their actions were, as I  
20 have mentioned before, individually discreet, economic  
21 decisions which were designed to use the beaches and the  
22 waters of the Gulf of Alaska as their personal toxic waste disposal  
23 pit, as it were. And with no consideration of the designation of  
24 proposed wilderness area, national park, national wildlife area or  
25 any other designation to preserve these environmentally

1 sensitive and unique environments. And not to mention not just  
2 the otters and subsistence users, etc., etc., but also our national  
3 symbol of the eagle. As I mentioned before, one of the most  
4 disgusting things I've seen in the Sound this summer was a full-  
5 mature bald eagle with a blackened, sludge covered, bald head.  
6 And it really shows how our nation has been degraded by -- it's  
7 quite symbolic of how our nation has been degraded by this  
8 catastrophe. And it is a catastrophe that is, was, is, and will be.

9 Another issue I'd like to address here is, as was addressed  
10 by the gentleman representing the native groups on subsistence  
11 food use, is that many of these samples that were taken were  
12 taken prior to the use of Correxite and Interpole on the  
13 shorelines, which has been a very touchy situation with me. I  
14 was performing a volunteer clean up on South Colross Island on  
15 August 27th, 28th, and 29th, when Interpole was being applied  
16 to the beach on Applegate Island. The VECO vessels that were  
17 engaged were the Raven, the Moline B and another landing craft  
18 on the 27th, and the Eschults Bay landing craft on the 29th.  
19 They were indiscriminately applying the toxic chemical  
20 Interpole to areas of the beach and directly to the water. I'm  
21 specifically referring to the Eschults Bay spraying several gallons  
22 of Interpole into the water. They were spraying areas that were  
23 not oiled. They were spraying mussel beds, clam beds that had  
24 no oil in them. The toxic effects to the people who use it. They  
25 weren't posting the areas as to be toxic to any recreational users

1 that could've or recreational users or even the US Fish and  
2 Wildlife personnel who were on the research vessel Big Bird that  
3 were conducting an ocean current survey, a surface current  
4 survey at the time and they specifically requested that those  
5 beaches not be sprayed because of the toxic effects that might  
6 occur to the research personnel that were using the beach for  
7 that research project. They disregarded those requests. VECO  
8 disregarded those requests. They disregarded my request to  
9 preserve an environmentally sensitive area that contained a  
10 Canadian Goose nesting area and other mussel beds and clam  
11 beds. And the Eschults Bay was attempting to spray that area  
12 and the only way I could discourage them from spraying that  
13 environmentally sensitive areas was by placing my vessel in  
14 harm's way. And that didn't even slow 'em down. They were  
15 going to continue to essentially sail over me, if they could. I have  
16 a 16-foot Zodiac, which I placed in front of the shore where they  
17 were intending to spray this environmentally sensitive area. And  
18 I think the only thing that dissuaded them was the fact that they  
19 noticed I was in the process of doing some subsistence hunting  
20 on the island at the time. And they then turned around and left  
21 and the Fish and Wildlife vessel asked them if they could please  
22 post the areas that were sprayed. The VECO vessel refused to do  
23 so and left the area, but not before they discarded a plastic boat  
24 fender into the water, which I reported to the Coast Guard.

25 What I wanted -- besides those particular issues, they

1 illustrate the fact that there is further impact upon subsistence  
2 species, other than just the initial pollution with hydrocarbons.  
3 The use of Correxite and Interpole creates a situation where oil is  
4 emulsified and placed into the inter-tidal zone to be, to allow  
5 uptake by the biota and the marine and inter-tidal environment  
6 is -- the euphemism that Interpole is a bio-remedial agent is one  
7 of the biggest scams that's been perpetrated in this spill. The  
8 constituents of Interpole are approximately 10% surfactant and  
9 the rest are high concentrations, toxic concentrations I might  
10 add, nitrogen and phosphorous. These also provide a surfactant  
11 effect, along with, I believe, glycol is the carrier. I had  
12 attempted to obtain data from the Department of Environmental  
13 Conservation and from the Alaska EPA to determine or to assess  
14 exactly how much of the oil removal is the effect of the  
15 surfactants effectively emulsifying and/or dispersing the oil and  
16 it, as opposed to a bio-remediation which implies a degrading of  
17 the oil to a non-toxic condition. The surfactant effect would not  
18 only introduce a toxic element in itself to the environment, but  
19 also emulsifies the oil in its still toxic state to be allowed to be  
20 taken up, like I said, marine and inter-tidal species. The use of  
21 dispersants in the inter-tidal zone has specifically been  
22 prohibited and yet the Exxon continues to perpetrate this scam  
23 that Interpole is a bio-remedial agent. There has been no data to  
24 substantiate that fact that the oil removed is in a degraded  
25 versus an emulsified state. And this is particularly damaging at

1 the time of spawning of salmon in and around those inter-tidal  
2 areas. Viewing the application of Interpole in an indiscriminate  
3 and excessive manner can only indicate to me that VECO has  
4 been given a directive to use this on a per gallon basis, or they  
5 are being compensated on a per gallon basis. I understand that  
6 the substance itself is a product of Exxon or its subsidiaries and  
7 is therefore an effort for Exxon to cash in on this catastrophe.

8 As I mentioned, I was, at the time, engaged in volunteer  
9 activities clean up on the south Colross beach. At that time, I was  
10 engaged in those clean up activities under my own volition, but  
11 in two previous -- on occasion a weekend two weeks prior, I was  
12 the volunteer supervisor for the Prince William Sound  
13 Conservation Alliance which performed a clean up on that beach.  
14 I would like to bring the attention to this Council that volunteer  
15 clean up efforts have been attempted to be stifled by Exxon and  
16 the Coast Guard to the effect that the Coast Guard has placed  
17 stipulations upon volunteers which would preclude  
18 reimbursement for any expenses, salary, stipend,  
19 reimbursement for fuel or other expenses. I believe that that is  
20 in direct conflict with the rights promulgated by the Transalaska  
21 Pipeline Act, Title 43, Part 29 of the CFR or Title 43, Section  
22 1653 of the US Code, which specifically state that all parties,  
23 public and private, have the right to seek compensation for  
24 damage and/or clean up operations from the liable parties, being  
25 the carrier and the owner of the spilled oil, in this particular

1 case. I beleive that, given the fact that Alyeska Pipeline Company  
2 had the obligation to comply with this oil spill contingency plan  
3 to Prince William Sound dated January, 1987, I believe that they  
4 are also liable for the damage to the shorelines and waters of the  
5 Gulf of Alaska. I have, as a result of my activities, submitted a bill  
6 to the Exxon Corporation to Exxon Shipping, the Exxon  
7 Corporation, to the Transalaska Pipeline Liability Fund through  
8 their agents of Goeithers and Price, through the adjuster of  
9 Hollencarvers Surveyors Incorporated to the Alyeska Pipeline  
10 Company and to this date all of those aforementioned  
11 corporations and/or entities have refused to accept their  
12 responsibilities as promulgated by the Transalaska Pipeline Act,  
13 specifically the aforementioned sections. I believe that this  
14 shows a desire to prevent the effected persons who have lost the  
15 most, to prevent them from actually engaging in clean up  
16 operations. Given the fact that I am a plaintiff in a damage claim  
17 for losses of recreational, of subsistence, and commercial uses of  
18 Prince William Sound, I believe I am obligated under civil  
19 procedure to attempt to mitigate the damage incurred in the  
20 cause of action. I believe that mitigation is definitely cleaning up  
21 the oil impact. To this date, all of the aforementioned entities  
22 who are liable for the damage to Prince William Sound and  
23 contiguous areas are definitely denying their liability and have,  
24 as such, shown an irresponsibility and an unlawful intent.

25 I might also add that the State does presently, at this



1 time, have authority engage in clean up activities and seek  
2 reimbursement. I might particularly refer to Section 46.04.010  
3 of the State of Alaska Statutes which specifically states  
4 reimbursement for clean up expenses. The Department shall  
5 promptly seek reimbursement under AS 46.03.0760, subsection  
6 E, AS 46.080.070, or from applicable federal funds for the  
7 expenses it occurs in cleaning up or containing a discharge of  
8 oil. If the Department obtains.....

9 MR. PARKER: Mr. Lakosh, we can't help you in pursuing  
10 your claims against the State, you know.....

11 MR. LAKOSH: No, I am not specifically requesting  
12 compensation from the State. I am saying that the State has  
13 authority to engage in clean up activities of its own and seek  
14 reimbursement. I believe that the fox has been guarding the hen  
15 house way too long and that the State, at this time, given the  
16 abandonment by Exxon and the State has stated -- there has  
17 been statements by the Commissioner of the Department of  
18 Environmental Conservation that it is very possible to engage in  
19 clean up activities during the winter in protected coves. I will  
20 enumerate some of those coves in a short while, relative to the  
21 prior survey which I submitted to this committee and I would  
22 request that the Commission interact with the appropriate State  
23 agencies in an effort to see that an appropriate, timely clean up  
24 of the oil in Prince William Sound and other areas be performed  
25 during the winter.....

1           MR. PARKER:   Okay, we're going to have the State  
2 agencies in, in the morning. And the winter plan has, already  
3 was announced Friday in Valdez.

4           MR. LAKOSH: And I went to Valdez this weekend in an  
5 effort to gain further information on what types of clean up  
6 activities would be engaged in and how I might participate in  
7 that clean up. And I'll get to that in a minute. Specifically, that  
8 is being also -- Exxon is also putting the communities and  
9 individuals through another ringer to the effect that Exxon, a  
10 fellow by the name of Mr. Briggs, I believe, has adamantly  
11 refused to support or encourage in any way, clean up activities  
12 which he says will endanger the health or safety of any workers.  
13 This is the same excuse that they gave for pulling out on  
14 September 15th, which is totally falicious. I believe that there  
15 are, you know, there are people that use the Sound all winter  
16 long. I personally go hunting. I don't even start going out 'til  
17 after September 15th when doe season opens. I mean, I'm out  
18 there by myself for weeks at a time in a 16 foot boat and I find it  
19 hard to believe that they can't get 300 foot in a cove in a safe  
20 manner and provide for clean up. Once you're on the beach, I  
21 mean, you can walk up a couple feet, if the wave splashes. I  
22 mean, I don't understand how they can excuse the clean up by  
23 saying it's hazardous conditions when they can safely anchor up  
24 their vessels and have, you know, self-contained operations and  
25 stay there all winter, you know, without ever leaving that same

1 beach. There's more oil out there that can never be cleaned, no  
2 matter.....

3 MR. PARKER: I agree with your point on winter clean up  
4 and so does the Governor. In his winter clean up plan, he makes  
5 that same point, but we've still got an hour of work to do here.  
6 We get your point and you've given us some very valuable  
7 information, but we don't have time to.....

8 (Tape Changed)

9 (Tape Number 89-09-21/05A)

10 MR. PARKER: .....Prince William Sound which are  
11 substantial.

12 MR. LAKOSH: I might've suggested that the committee  
13 heard me in order then. May I continue, sir.

14 MR. PARKER: What I'm telling you is we don't have time,  
15 in giving you half an hour now which is 25 minutes more than  
16 anybody else has got and I get.....

17 MR. LAKOSH: I believe I have some.....

18 MR. PARKER: .....provide you relief.....

19 MR. LAKOSH: .....very valuable input to contribute you  
20 here. I have not addressed the contingency plan. I was  
21 attempting to be at the meeting earlier, but I feel that there was  
22 some very valuable things that I could offer, namely the fact that  
23 given that lightering operations would be necessary from a  
24 damaged vessel, that a tanker of appropriate size, 100,000  
25 barrels or larger, be available at all times so that we could

1 prevent the situation of pumping of bilges into the Prince  
2 William Sound, as was done by the Baton Rouge. Should it be  
3 necessary to take oil off of a tanker and/or load oil on that has  
4 been spilled, an appropriate tanker should be provided at all  
5 times. There are barges that I believe are available, but they are  
6 very slow and if they are going to be available, they should be,  
7 have the capacity to clean up as spill of the magnitude that has  
8 happened and that they should be anchor or deployed in areas  
9 where they can most efficiently respond to a spill. Also, I might  
10 mention that the booms that are presently on the oil response  
11 vessels are insufficient to contain oil in heavy weather, that  
12 those booms that are presently on those response vessels are  
13 incapable of containing oil under the sea conditions that are  
14 present in the winter. The Exxon Corporation is incapable of  
15 providing a clean up in the winter and given those conditions  
16 that the vessels should not be allowed to operate in these  
17 hazardous conditions. I might also add that the crew of the  
18 vessels, the response vessels, have not been included in the drug  
19 testing and/or evaluation of Alyeska pipeline. I went aboard a  
20 response vessel, the Liberty Surface, that was docked in the city  
21 of Whittier and noticed alcohol on the breath of the crew  
22 member and I noticed in the local tavern later that evening,  
23 given that fact it might be very possible that response vessel  
24 could not adequately respond and/or might even create the spill  
25 itself by a collision with the tanker.

1 MR. PARKER: You're giving us more information than we  
2 can handle. I would suggest -- I think you've got about a whole  
3 day of talking to do and we need to get this kind of input, but we  
4 can't do it all this evening. Thank you very much for your  
5 testimony and that's it.

6 MR. LAKOSH: Thank you for an opportunity to appear  
7 before this community.

8 MR. WENK: Let me just say to the witness that we really  
9 do appreciate your being here. The Chairman, I think, is very  
10 mindful of your contribution. I certainly, and I think my  
11 colleagues are too. I hope you can understand the kind of  
12 problem that the Commission has in terms of it having to defer  
13 business twice, because of the workload and there's still some  
14 important business that it is going to have to transact while it's  
15 still in session.

16 MR. LAKOSH: Are there question?

17 MR. PARKER: Okay, we'll take up the sub-committee  
18 reports again.

19 MS. WUNNICKE: What island were you on. You said,  
20 Culross Islands.

21 MR. LAKOSH: Culross Islands.

22 MS. WUNNICKE: Will you spell it for me please.

23 MR. LAKOSH: C-u-l-r-o-s-s. If you'll refer to the survey  
24 that I produced for the Commission earlier, you will see that the  
25 areas that I cleaned were data entries 56, 55 and 56 data

1 MR. PARKER: Ed, would you report.

2 MR. WENK: Mr. Chairman, two questions. One, how  
3 much more time will we have to work this afternoon so that  
4 perhaps we could budget that time to cover several items.  
5 Secondly, it occurred to me that we've had a lot of discussion of  
6 the sub-committee chair's proposal and I'm not putting this in  
7 the form of a motion, because I don't think its necessary. I  
8 believe we once earlier did adopt as a motion, the notion that  
9 sub-committees have certain sovereignties. And in the interest  
10 of getting on with other items, I'd like to suggest we maintain  
11 that principal, because if we do not, then we have to open up  
12 that principal for -- in its generic form.

13 MR. PARKER: .....whoever made the sub-committees have  
14 sovereignty, nor was that any motion ever passed to that effect.

15 MR. SUND: There's never been a motion adopted to  
16 adopt sub-committees.

17 MS. WUNNICKE: That's right. I would say that I think  
18 that what the chair of the sub-committee is getting at is more  
19 one of the Commission being comfortable with a major piece of  
20 new work. And how that's achieved. I'm not prepared how that  
21 should be done, but I would support that effort. I don't think  
22 that we are going to be fail safe in our report any more than  
23 transporting oil is fail safe. But I understand what she's trying to  
24 get at. It's a level of comfort and a level of perhaps credibility in  
25 terms of that particular aspect of that large contract.

1 MR. SUND: This is just on risk and hazard assessment?

2 MS. WUNNICKE: Yes, and I think that is all the Meg has  
3 really been addressing. She's not been addressing....

4 MR. WENK: So far, I want to get to contingency plan  
5 later, but let this thing off first.

6 MR. SUND: It's two \$22,500 maximum contracts. One  
7 for Prince William Sound, one for Cook Inlet. Right? The risk  
8 hazard assessment contracts -- there's two of them and each are  
9 for \$22,500 each? One's for Cook Inlet and one's for Prince  
10 William Sound?

11 MR. HERZ: Well, Meg, my understanding is that we're not  
12 -- we haven't -- nothing is broken down other than the fact that  
13 in the contract there is \$95,000 for Prince William Sound and  
14 \$95,000 for Cook Inlet. The rest is.....

15 MR. SUND: But on these issues, they are site specific.

16 MR. HERZ: But my understanding, and correct me if I'm  
17 wrong, is that the decisions -- the numbers that are in the book  
18 are not in the contract. Clarify us on what the con -- what is the  
19 status on the way in which it's contract.

20 MR. HAVELOCK: What you -- as you pointed out earlier  
21 Commissioner, there is a certain progression in each of the  
22 studies. And we have the option -- one of the options is to cut  
23 off one of the studies at some point in that progression so that  
24 we can viprocate either, we can eliminate one, or we can cut off  
25 the end of one, or you know, I can work on a re-negotiation of

1 one.

2 MR. HERZ: In the interest of moving this along, if it's  
3 gonna take this, let me try a motion which is that we ask our  
4 staff director to negotiate payment of up to \$10,000 to Lathrop  
5 to perform some service similar to what is in his proposed scope  
6 of work, which is a review and evaluation, performs a review and  
7 evaluation service for us on the risk and hazard component of  
8 our contract.

9 MR. PARKER: The motion's been made. Is there a  
10 second?

11 MS. HAYES: Second.

12 MR. PARKER: Motion has been made and seconded.  
13 Question. I would point out that you are departing completely  
14 from the whole contracting process and putting both the  
15 contracting officer and the staffing director in a position -- the  
16 commission finally hired a staff director, now they're trying to  
17 micro-manage every item of his -- completely take away his  
18 discretions.

19 MS. HAYES: Mr. Chairman, I share the same concerns  
20 that others have raised about whether we need to have a motion  
21 to do this. I'm very much aware of the fact that our sub-  
22 committees are areas of interest, but are certainly, we overlap so  
23 much that I don't think that any one contract is the purview of  
24 somebody, of any one sub-committee. I think that there is a  
25 certain -- certainly there seems to be a certain amount of



1 understanding at what I'm trying to get at in terms of some kind  
2 of oversight. I'm curious as to whether our discussion this  
3 morning has adequately told our chief counsel what kind of thing  
4 that we're interested in and whether we need to have a motion  
5 to effect that kind of level of direction to him. I guess I'm not  
6 aware of that. We've done so much by consensus by this group, I  
7 personally am not in favor of going through a motion, a formal  
8 motion to, in this particular case when we haven't done it for  
9 anything else that we've gone into. I don't think it, this is.....

10 MS. WUNNICKE: I'm not ready to vote on such a motion.

11 MS. HAYES: ....that level of interest. So, I guess I'm  
12 interested in just whether, John, do you see what my concern  
13 is? Is there -- you originally raised questions and you felt you  
14 needed to have directions. Do you think it has to take the form  
15 of a motion.

16 MR. HAVELOCK: Well, based on what has happened.  
17 Unless the chairman tells me not to, I will be talking to Mr.  
18 Lathrop and Munson, is it?

19 MR. PARKER: Do you have a scope of work from Lathrop?

20 MR. HAVELOCK: Yes.

21 MR. PARKER: Which has been shared with the rest of us?

22 MR. HAVELOCK: Well, I just, I don't know. What I got is a  
23 piece of paper that.....

24 MR. HERZ: It's been shared with the sub-committee on  
25 response.

1           MR. HAVELOCK: Sub-Committee on response has. So,  
2 I've got that and what I would do is talk to him on the phone and  
3 I would arrange optimally to meet him and also to meet the  
4 other proposed contractor, in annapolis and discuss with the  
5 contractor, in each case, how their expertises could be utilized  
6 to support the effort of the main contract, which might be either  
7 direct application through sort of quality control or it may mean  
8 -- there's information I don't know. In the case of the second  
9 contractor, for example, it may be she feels uncomfortable with  
10 that and it would make more sense for her to supplement rather  
11 than working on sort of quality control issues, it might be more  
12 useful from her point of view to supplement by dealing with the  
13 Arctic Coast aspects of the study. That's sort of where I'm at, but  
14 obviously, I'm gonna get input from those two contractors and  
15 also from the main contractor as to what they all feel  
16 comfortable with and I have a sense that they will reach  
17 consensus on what is best in each case.

18           MS. WUNNICKE: Mr. Chairman, I don't think it's any  
19 reflection on Counsel or on the Chair or on anyone. I think it's  
20 just an attempt to get some expertise that we don't have in-  
21 house in terms of assuring the validity of a larger study.

22           MR. PARKER: I don't understand what expertise,  
23 particularly. Based on the information that has come in to me,  
24 I'm completely at sea. Tim.

25           MR. WALLIS: Thank you Mr. Chair. I'm gonna vote against

1 the motion for a couple of reasons. One, I don't know -- we  
2 haven't done with any other contracts by motion.

3 MR. PARKER: Yes, we have.

4 MR. WALLIS: And I'm not going to, so I'm not going to  
5 vote on this one. And secondly, I don't know whether these  
6 people would want to do something like that. You know, I can  
7 see the need for -- I shouldn't say I can see a need, but I can  
8 understand, perhaps is a better word, why someone would want  
9 to review. But, at the same time, you know, we should tell John  
10 what we need. He should tell these people what we need.  
11 They're supposed to be professionals. We chose them out of a  
12 review process, as I understand it, and they were one of the top.  
13 They got the contract. You give somebody a contract to do a job,  
14 you know, you tell 'em what you want and you let them go do it.

15 MS. WUNNICKE: Did the first choice of that sub-  
16 committee get the contract?

17 MR. WALLIS: That's part of what the problem.....

18 MR. HERZ: I understand what we are doing is we  
19 established a process whereby we were going to interview a  
20 variety of contractors and make choices. A number of us spent a  
21 significant amount of time, probably the equivalent of two full  
22 days on the telephone talking to contractors. The end of that  
23 process was that we made a selection of contractors. In the case  
24 of risk and hazard it was Pourchelli (ph) and Lathrop;  
25 contingency planning it was Norson and Schultz; in terms of --

1       what were the other ones that we.....

2               MS. HAYES: There were other contractors that we had  
3 identified certain areas of expertise on.

4               MR. HERZ: In any case, those of us who participated in  
5 that process felt that we had definite consensus and that we had  
6 given direction to staff to proceed with entering into those  
7 contracts. And, what concerns mean is that I though we went  
8 through a process which was agreed upon by all Commissioners  
9 and that process is now being blocked and I'm concerned that --  
10 I mean, I'm prepared to withdraw my motion. I didn't want to  
11 make things difficult, but I thought that we had reached an  
12 understanding in which the staff director thought that he had  
13 these things well in hand and he was prepared to have the  
14 conversations with the people involved and come up with what  
15 seemed like a solution. And, if that is acceptable to everybody,  
16 I'm certainly more than happy to withdraw my motion and let  
17 him do that.

18              MR. PARKER: Is that acceptable to the second?

19              MS. HAYES: Except that I -- John's description of what  
20 he's doing is more open ended that I had envisioned by original  
21 suggestion. It is -- if can clarify that particular point. John, the  
22 way you described it, makes it sound to me as though we're  
23 interjecting another contractor into the process of the work  
24 we've already asked EKO to do in some substantive way. And I  
25 guess I wanted to make that perfectly clear that I am only

1 talking about the design phase of that project. I don't want to  
2 get -- it's so easy when there's such a short time to get  
3 underfoot. I'm -- when a contractor's trying to do it....

4 MR. HAVELOCK: One thing she's says as far as the design  
5 goes, you know, from we're there for a day talking about the  
6 design all day. She says it's pretty good. The problem is that  
7 there's nothing on the arctic slope about which I know a lot. Do  
8 I go on and negotiate with her to do an arctic slope study?

9 MS. HAYES: The Arctic Slope study is one that we've only  
10 talked -- that I've only been thinking about for the last two or  
11 three days at the most.

12 MR. HAVELOCK: Yeah.

13 MS. HAYES: I mean we have -- up until now in everything  
14 I've talked about to people have been focusing on Prince William  
15 Sound and Cook Inlet as being our primary areas of interest. I  
16 think that the contingency plan concerns less than the hazard  
17 one. I don't envision John Lathrop getting into co-working this  
18 contract or overseeing this overall contract, okay?

19 MR. HAVELOCK: I understand that.

20 MS. HAYES: I don't want it to be bigger than we mean in  
21 the original proposal.

22 MR. HAVELOCK: Yeah.

23 MS. HAYES: And I guess given that, then yes, that's  
24 certain acceptable to me.

25 MR. PARKER: Okay.

1 MS. HAYES: Okay, let me continue.

2 MR. HERZ: For the record, I think I should withdraw the  
3 motion with the permission of the second.

4 MS. HAYES: Yes, certainly.

5 MR. PARKER:

6 MS. HAYES: I'd like to go back to the piece of the paper  
7 that we worked from John, which was -- I didn't get to the  
8 contracts. We were working on John's cartoon version of the  
9 report, of the draft report. And we identified several things that  
10 still need to be done, or that it wasn't clear who's responsible for  
11 doing it, John, and it might be staff. I don't know whether it's a  
12 contract or what.

13 The first one is that we wanted to be sure that some place  
14 in the report the events -- the decision process that was  
15 involved with the dispersant, yes or no; burning, yes or no; the  
16 initial response was documented. There seems to be a lot of  
17 confusion. I don't want to get into saying whether or not Kelso's  
18 recall of the events or Otto Harrison's recall of the events is  
19 most accurate, but I think that question of pre-authorization of  
20 dispersants and what that actually means is something we want  
21 to work into the report, because I think we're gonna wanta be  
22 making recommendations based on that.

23 MR. HAVELOCK: Recommendations about the pre-  
24 authorization process?

25 MS. HAYES: About the process. There was a lot of inertia

1 at the process in the initial response. We've heard a lot of  
2 arguing and bickering back and forth from all the players about  
3 yes it was authorized; no it wasn't; yes it was; no, it wasn't; we  
4 should; we shouldn't; you didn't have enough dispersants. All  
5 that kind of stuff. We should have at least some description of  
6 that decision process. Another one was.....

7 MR. WALLIS: Can I ask a question, if I may.

8 MS. HAYES: Yeah.

9 MR. WALLIS: If, in a contingency plan they say they are  
10 going to use dispersants, etc., once that plan is approved isn't  
11 the use of that approved, also?

12 MS. \_\_\_\_\_ No.

13 MS. HAYES: Well, but -- Mr. Chairman, with your  
14 permission, I guess what we heard was a lot of conflicting  
15 reports. One, we heard that there still were two other votes that  
16 said you could make the planes fly. One was the Coast Guard's  
17 and the other was DEC's. And that both of those agencies say  
18 that they gave it just to the Coast Guard and that was the  
19 immediate decision about whether the weather was good,  
20 whether the test did it's thing and that kind of thing. That's  
21 some of what I think we need to investigate and get to.

22 MR. PARKER: The way the plan reads is Area 1 requires  
23 Coast Guard only. Area 2 requires Coast Guard and DEC and Area  
24 3 is no dispersants.

25 MS. WUNNICKE: But the Regional Response Team people

1 will tell you that there was pre-approval in Area 1.

2 MS. HAYES: Yes

3 MR. PARKER: Pre-approval by the Coast Guard?

4 MS. WUNNICKE: By the Coast Guard?

5 MR. PARKER: Good, I think there's.....

6 MS. WUNNICKE: Yes, and I think that's what I wanta  
7 discuss.

8 MR. PARKER: .....some questions now.

9 MR. HERZ: The pre-approval by the Coast Guard and the  
10 State and DEC; those three had to concur.

11 MS. WUNNICKE: But they're all members of the Regional  
12 Response Team and I think.....

13 MR. HERZ: Yeah, but there was pre-approval for that?

14 MS. WUNNICKE: That's what I've understood from the  
15 Regional Response Team.

16 MR. PARKER: Well, let's plow on. Ed?

17 MR. WENK: To help plowing on, let me try a suggestion  
18 here. I think what Meg's doing is exactly what we had in mind  
19 to come up with the gaps and to get a panarama, I think that's  
20 the term we use, so that John could look at these, without our  
21 taking any position -- do this, do that and so on. We just want to  
22 get sort of nominations on the floor of things yet to do. We  
23 haven't heard from the third sub-committee yet and I'm not sure  
24 which one she's gonna raise. I have to signal that I've been  
25 working over here like mad to try and figure out what's left over



1 in my own head. And I've come up with quite a few items and  
2 these are dredged out from past hearings and so on and so on.  
3 What I would like to suggest is that we try to get a list of these,  
4 swiftly, without discussing any single one. Let the person's  
5 who's nominating it, explain it. But that we don't debate them.  
6 That gives the Counsel or staff director the opportunity to get  
7 this total.

8 MR. PARKER: Good idea.

9 MR. WENK: And then, I -- are you gonna be here  
10 tomorrow at all, Mike?

11 MR. HERZ: No.

12 MR. WENK: No. Okay. Then if it's as all feasible, using  
13 short hand to get these typed and if there's a short time  
14 tomorrow to see, and I don't know how you can work this into  
15 the agenda, to see if we can't collectively look at this from the  
16 point of view of what's really important.

17 MS. HAYES: Mike, I'm surprised you're not going to be  
18 here tomorrow. I guess I didn't realize that, that you're only  
19 here for two days. Let me go on then briefly. We want to check  
20 the contingency -- we wanta have a reality check on the  
21 contingency plans that are in existence now. Do they or don't  
22 they have the equipment or access to the equipment that they  
23 say they say they have. This is for Cook Inlet as well as Prince  
24 William Sound.

25 MR. WENK: Excuse me, when you say existing.....

1 MS. HAYES: The ones that exist now.....

2 MR. WENK: Right now, September 8th, 1989.

3 MS. HAYES: We want to know what the degree of

4 readiness is. Given -- you know, regardless of all the new

5 statutes and all the stuff that's in the works, what is the degree

6 of readiness right now and that's probably gonna take an

7 investigator because the only way I'd be satisfied is if you see it in

8 a few selected instances. I guess those were the big ones I

9 thought I had. I guess those were the most important that we

10 didn't know who or where it was going to be done. And

11 especially that key element of what actually happened in that 72

12 hours right after the spill. What I think Esther identified as that

13 containment and treatment point, chapter 3, that has been

14 differentiated -- wasn't clear to us who's writing that. I don't

15 know if Steve is or we're planning to do it by contract, but

16 wanted to make sure somebody did it. My sub-committee do you

17 have anything else to add?

18 MR. PARKER: Esther?

19 MS. WUNNICKE: Oh, okay. Just a comment, Mr.

20 Chairman. I would hope that the door doesn't close after one

21 hurried day of looking at John's thoughts in the matter, but.....

22 MR. PARKER: I hope not either.

23 MS. WUNNICKE: I think that it's gonna, there's more to

24 it than that, as I used to tell my children. But in terms of the

25 institutions working group or sub-committee, we submitted a

1 draft report to the full committee some time ago and I called  
2 Counsel's and the writer's attention to some of the questions  
3 that were outlined in that draft submission for a good guidance.  
4 We had anticipated and had not entered into any specific  
5 contracts or asked for any specific product kind of contracts for  
6 the institution's work that we would use Counsel, that we would  
7 use the investigators that were going to be hired. That's true on  
8 contract, but not hired for particular product. As we talked  
9 through this morning in reporting from the Prevention Sub-  
10 committee, I got the impression that it would be possible to  
11 negotiate with ECO to address some of the gaps that maybe  
12 existed there in terms of institutions with respect to the Coast  
13 Guard record on citing violations and the Coast guard record on  
14 penalties, Coast Guard record really on pursuing safety matters  
15 of all kinds, and, secondly, the record of the NTSB accident  
16 investigations and their recommendations and whether or not  
17 they were put into effect.

18 There is an item and I've just spoken informally to  
19 Counsel about it that perhaps will require a discreet contract  
20 and that has to do with insurance, both in terms of who pays,  
21 which is one of the questions that we asked in this sub-  
22 committee, but also in terms of providing that kind of carrot or  
23 incentive to built in an incentive on the part of marine shippers  
24 to practice safety methods. We, Marilyn, at our request,  
25 developed very much a draft matrix to try to give us the

1 background to answer some of the who questions. I think we  
2 know in terms of the status quo, a lot of the answers to these  
3 questions, but I don't think they've ever been presented to the  
4 Commission in an organized fashion. What I ask that you do is  
5 give a look at this draft, again make additions to it or suggestions  
6 on how it can be a more useful document. And then I guess I  
7 would propose to the body as a whole in terms of some of the  
8 policy decisions that are yet to be made by this group, that this  
9 perhaps is a good method of laying out the issues so that the  
10 Commission fills in this blank column on the right in terms of  
11 it's own recommendations. If we are content with the status  
12 quo, are we content with what's being proposed in the State  
13 legislature; being proposed in the Congress. I think we need to  
14 indicate that. But we just need to have before us all this mass of  
15 information that we know, but perhaps is not organized in this  
16 fashion. So, I think the answers to these questions and I would  
17 very much enter a plea certainly for time from one of the major  
18 investigators to support this sub-committee, simply because we,  
19 except for the insurance contract that we're asking for, we're  
20 not asking for any kind of product contracts.

21 With respect to the SeaGrant group that we heard from at  
22 our last meeting, I think we can make good use of the kind of  
23 work that they're doing without feeling obligated to take all their  
24 recommendations or sign off on the contents of their report.  
25 But I think that you've had conversations and so has the Chair

1 with that group and I -- they very much want to help us. The  
2 only exception to their being a gift to us is the proposal from  
3 Professor Johnson and I don't know what the sense of the group  
4 is or what Counsel's recommendation is in terms of entering  
5 into a small contract, perhaps not with Professor Johnson, but  
6 with his graduate student Mary Evans. Is that her name?

7 MR. PARKER: yeah.

8 MS. WUNNICKE: So, that's kind of the bare bones of the  
9 report of our sub-committee. I'm sure that what I've not  
10 addressed here are the corporate looks. How does any  
11 corporation, whether it's a private corporation making money or  
12 even a public corporation, if you will, a public agency look and  
13 respond to the stakeholders beyond its own stockholders and  
14 beyond its own constituencies. And I think that's something  
15 that Ed would certainly like to address and I don't know what  
16 our methodology should be in getting at the answers to that kind  
17 of a broad question.

18 MR. PARKER: Thank you very much Esther for the  
19 matrix. I think it will help a lot in keeping things on track to.....

20 MS. WUNNICKE: Marilyn was very constrained by this too,  
21 'cause she kept wanting to cover the water front and I kept  
22 saying, no, you just ask the who questions. So there will be a lot  
23 of things that you'll want to add from your own what and where  
24 kind of perspectives to this kind of a matrix.

25 MR. WENK: Mr. Chairman, would it be permissible to

1 follow along with some other nominations. Bear with me if you  
2 would please. What I've tried to do is develop a mental model of  
3 our process and I'm gonna cover this with 20 key questions.  
4 Some of these we've asked before, some are a little new. Many  
5 of these are gonna be answered by decisions already made for  
6 this study or that study and I will cite these as I go along, but I  
7 believe and it won't take me long to do this, I believe that there's  
8 a chain of logic here that it would be worthwhile to try to put  
9 down on the floor. I'm gonna be very brief.

10 Number one, have we developed a concept of a Maritime  
11 Oil Transportation System? And the answer to that is, thanks  
12 to John Sund and the committee, that's gonna be done by ECO.  
13 There was a change from the tanker design orientation to the  
14 system, so that's gonna be done.

15 Number two, do we have a map of the Maritime Oil  
16 Transportation System so as to flag the points of potential failure  
17 of the system. Again, ECO is gonna do it.

18 Number three, do we -- can we characterize the Maritime  
19 Oil Transport System in more general terms as a technological  
20 delivery system so as to identify the role of public policy, the  
21 behavior of such systems, the side effects and so on. The answer  
22 to that is yes. Forgive me if I say it's already done, but it's in  
23 tradeoffs. But I think you have to put that into this sequence.

24 Number four, have we addressed the key issue which is  
25 how do we manage a Marine Oil Transportation System to

1 minimize risk and mitigate damage if there is an accident.  
2 Operational word is manage. My own feeling is that that's a way  
3 of looking at the problem, which we haven't tripped over yet and  
4 we do not yet have any study group that could elucidate for us  
5 some basic principals of management that would apply to these  
6 mega-systems. And there's not much out there in the literature  
7 on this, I have to tell you, because it's been on a lot of peoples'  
8 minds.

9 Next question, with regard now to oil transport, what is  
10 the social acceptability of risk? Now, this you see, is going one  
11 step beyond the ECO contract in terms of what are the risks. To  
12 ask a tougher question, what's the social acceptability.

13 Next question, with regard to these risks, who protects  
14 the public. I think Esther, things you've got already underway  
15 sort of says at least who should protect the public.

16 Next question, what are the current incentives for safety?  
17 Now, we've already had a lot of nominations of things to do  
18 better, but we don't have an inventory of the current incentives.

19 And then we go -- we're getting closer and closer to our  
20 actual situation to ask how did the accident really occur. And  
21 here is a case to getting into some fine grain details, some of  
22 which the NTSB did collect, but an outside mariner has called to  
23 my attention some gaps in their hearings and I passed on to --  
24 Walt, I think I passed it on to you about two months ago. I've just  
25 given another copy to Chief Counsel of some key questions that

1 is worth examining in the NTSB testimony, but these relate to  
2 some very peculiar circumstances in the reporting.  
3 inconsistencies in the reporting that may give clues as to what  
4 really happened. Anyway, to go on.

5 Keep in mind, now the Marine Oil Transportation System.  
6 And now, we ask the question, what failed in the system with  
7 regard to Exxon Valdez? I don't think we've got a handle quite  
8 on that yet, but now, did it follow a pattern. By that we mean, is  
9 this type of accident one that, at some other degree, not so  
10 much oil, may have happened before. Maybe it happened often.

11 And that's where we get a handle on do we have an error  
12 inducing rather than safety reinforcing system. Again, I think if  
13 I understand what John has got in the ECO and I think that's  
14 gonna be pursued.

15 Now we go, Esther, to this question of what other factors  
16 influence safety and we get into the question of the impact of  
17 corporate culture. And, without going to detail, I invite you to  
18 read Susan Foote's report. It's written as an aide memoir to the  
19 Commission. It's not a scholarly study. It's sort of helping the  
20 commission ask the right questions. But it raises the issue, or I  
21 said say, if we pursue this it raises the issue of what indeed was  
22 the social responsibility of those major corporations that are  
23 involved? And how do we know. And this means a study of  
24 statements that have been made by corporate executives.  
25 Statements made in annual reports of the corporation.



1 Statements made when then file with SEC. Statements made in  
2 their advertising literature as that relate to their reflection of  
3 social responsibility. I'll give you an example of the kind of thing  
4 to pursue specifically in response to a question. Iorocy says he  
5 was able to spend all that money so fast because four years before  
6 that he had gone to the Board saying, we might have a  
7 catastrophe and I want a carte blanche from you now so that I  
8 can do what's needed, if indeed Exxon is going to assert social  
9 responsibility. According to Iorocy, at the hearing he said he  
10 had that. He must have had something. You can't spill that  
11 much money out of a corporation without some kind of prior  
12 decision and that, to me, is the kind of element of social  
13 responsibility I think we oughta look for. Let me go on real  
14 swiftly.

15 Citizen expectations. We've heard that discussed. That  
16 relates to corporate response, social responsibility. because,  
17 what is important is whether there's a difference between what  
18 citizens expect in corporations and what they get.

19 Next, what are the weaknesses in this question which  
20 deserve attention. I think, again, this is going to be covered by  
21 the contracts.

22 Now, a couple of explicit questions. We've been given a  
23 proposal by the petroleum industry in terms of how they plan to  
24 deal with the oil risk with the API report and the \$250 million  
25 of equipment they're going to stock pile with the presumption

1 which is in fine print that the Coast Guard's in charge. I think  
2 we have got to take very heavy cognizance of that report because  
3 this is the industry statement. It's only a statement. Nothing's  
4 happened, nobody's put up a fuss yet. But it seems to me that we  
5 do need to review this and comment on it in light of some  
6 standards that we set up for making this oil transportation  
7 system work.

8 Next on the Coast Guard. We've heard time and time  
9 again there's some problems here. I would suggest that one of  
10 our investigators make a job of really pursuing this collection of  
11 concerns about the Coast Guard. Because, what everybody  
12 knows, is they've been given more responsibilities. They're  
13 underfunded and under manned, but it's more than that.  
14 There's again, a corporate culture that's at stake here, where  
15 they do not like being policemen and where this whole  
16 question of whether we're gonna put all the responsibility on the  
17 Coast Guard, according to the API plan, when this is not an  
18 organization that is gonna behave any differently with all that  
19 equipment on the beach than it has recently.

20 Now I'm gonna get down to one or two specific studies.  
21 With regard to contingency planning, I sent a memo -- we had  
22 an understanding, I thought, that we had a one-day turn around  
23 time on proposals. There was a proposal, and ECO type proposal  
24 last Commission meeting that Friday and the following Monday  
25 was Labor Day, but I sent a fax addressed to the three sub-

1 committee chairs and I'm not sure any of them got it, in which I  
2 suggested that for contingency planning -- I didn't know who  
3 was handling this, that the contractor employ this profession  
4 Jack Herald, who we had here as a speaker. Remember, he's  
5 the one who Marine Board felt is the key expert in contingency  
6 planning. He gave a briefing at the Chairman's invitation, to the  
7 Commission. I think it was well received. He's the kind of guy  
8 and in a little way it's not -- it follows on some of the principals  
9 Meg was talking about, but not quite. this was just filled up the  
10 brain crust with another guy that has real credentials.

11 Next item. You may have this already in mind, Esther, but  
12 this SS686 is a blockbuster. And I had a feeling that we oughta  
13 have a study to know what it's implications are; to know what  
14 provisions are consistent with sort of our current thing; what  
15 provisions are not; because it may end up being a reality out  
16 there when our report comes out. And it seems to me we  
17 oughta be mindful of what it might do.

18 Two other things and then I'll quit.

19 I mentioned this pursuit of the Coast Guard by a tough  
20 investigator. I think the same thing applies to ADEC. I'm not  
21 sure what we're gonna find, but I think there's been enough  
22 allusions to this and enough references in the past, that we  
23 oughta go down that.

24 And now let me quit with this one last item and I hope I  
25 haven't -- I don't undermine everything I've said so far with this

1 last one. But I have a proposition to make with these ECO  
2 contracts. They're are two of them, which at first we were  
3 mystified about until we found one was specifically for Prince  
4 William Sound and the other was for Cook Inlet. Otherwise,  
5 they're identical. There were questions raised when we were  
6 discussing this in the Prevention Committee as to how to justify  
7 two that way. I think Tim raised a question, if there's only 2% of  
8 the shipping in there, how can you spend this much money.  
9 Maybe other's felt that way.

10 What I'd like to propose specifically is, without taking a  
11 position on the Cook Inlet one that we request the contractor to  
12 finish the Prince William Sound one first. And then ask him to  
13 give us some specifics in terms of what additional he would have  
14 to do because of the the special geography, sea conditions or  
15 whatever, of Cook Inlet. This in no way diminishes our interest  
16 in Cook Inlet, but I think it gets around this uneasiness that I  
17 sense about our not being able to rationalize to ourselves have  
18 two, almost identical contracts and in now ways does it  
19 preempt, as I see it, doing the Cook Inlet thing. But I believe  
20 that it would be comforting to have the FDDS study pretty well  
21 completed. Maybe not 100%, but 90% and the contractor then  
22 tell us, here's what we really ought to do. That is taylored to  
23 Cook Inlet.

24 Mr. Chairman, thanks very much.

25 MR. PARKER: Okay.

1 MS. HAYES: Mr. Chairman, on that particular subject, I'll  
2 relate to you that, I think it was Esther. I don't remember it was  
3 the last time I talked to you. I was relating to Esther how I  
4 found myself in the uncomfortable position as being mad as heck  
5 that nobody asked me, but that even despite the fact that they  
6 didn't ask me, that I had.....

7 (Tape Changed)

8 (Tape Number 89-09-21-5B)

9 MS. HAYES: .....what we should spend all of our time in  
10 Prince William Sound and not Cook Inlet, that darn it, I've come  
11 around to thinking that they made the right decision, even  
12 though they didn't ask me. And I'm still pissed that you didn't  
13 ask me. But, I'm now of the opinion that we should be spending  
14 a fair amount of time in Cook Inlet. And part of that is that I'm  
15 persuaded by the fact that there's at least something being done  
16 in Prince William Sound, that Cook Inlet has such a big effect of  
17 possibility of the same type of disaster occurring there with  
18 additional problems of not having one port, not having group of  
19 people to beat up on if something does happen. I'm persuaded  
20 that the decision of splitting our resources that way is right.  
21 And I'm just mad that I wasn't asked, but I think that I've been  
22 persuaded that.....

23 MR. SUND: I could be mad, but maybe I could offer this.  
24 When our contracting officer, Jerry Hammel, gets here  
25 tomorrow, we could talk to him on why he structured these

1 contracts that way rather than trying to second guess how they  
2 came about.

3 MR. WENK: Right, but I don't wanta -- there's nothing  
4 I've said, I hope, Meg, that disagrees with your point of view. All  
5 I'm saying is that this gives us a little better.....

6 MR. SUND: You want to reverse it?

7 MR. WENK: .....control over it.

8 MS. HAYES; Except that I would reverse it. I would say  
9 that they sould work Cook Inlet first and then ask the questions  
10 that about how do you regard it.

11 MR. PARKER: Well, I understand.

12 MS. WUNNICKE: A sequence anyways. It's not a.....

13 MR. SUND: That's what they're doing, right?

14 MS. HAYES: No, I think that's a long distance.

15 MS. WUNNICKE: I would agree with Meg on Cook Inlet.  
16 Not because of the amount of shipping, as tim says in numbers,  
17 but just in terms of the situation there. That there just is nobody  
18 else is looking at it and we are.

19 MR. PARKER: Cook Inlet has about the same amount of  
20 traffic as Prince William Sound. It's a different mix.

21 MR. HERZ: Same amount of.....

22 MR. PARKER: We're talking if you talk about quantity of  
23 oil moved per barrel, it's very course, why.....

24 MR. HERZ: By putting Prince William Sound second, I  
25 just would hate to see us loose the opportunity to do something

1 that's gonna parallel what Alyeska is doing so that we can.....

2 MR. PARKER: Right.

3 MS. HAYES: And I think Esther said a good point about  
4 the parallel, doing it sequentially is sort of counter-productive.  
5 Because, when you collected information, you're gonna be in the  
6 book two times with the same computer program twice, doing  
7 the same.....

8 MR. WENK: If you do it in parallel.

9 MS. HAYES: If you do it in parallel.

10 MR. WENK: That's why I'm suggesting doing it in.....

11 MR. SUND: Do it in sequence

12 MS. HAYES: In sequence, you have to go back to the same  
13 book and get the stuff out. On wave action and the stuff with  
14 Goldman and that kind of stuff.

15 MR. WENK: I don't think so, but anyway, the notion of  
16 getting all these out on the table is to see what the total looks  
17 like and to see what it is that we can really afford to do and  
18 establish priorities.

19 MR. SUND: Is it my turn for open issues.

20 MR. PARKER: Open issues? I didn't know I was opening  
21 a Pandora's box here, you had your say. Go ahead Ed. Two  
22 minutes for open issues.

23 MS. WUNNICKE: How about open wounds, open sesame.

24 MR. SUND: Hopefully, we covered the issues somewhere  
25 in the comic strip approach or otherwise of recommendations

1 dealing with non-financially responsible parties. I can't believe I  
2 forgot about this, but in June or July I was very adamant about  
3 the issue of what would happen if its a financially responsible  
4 party that this would happen to. What would go on. I think we  
5 have some duty to make a recommendations to the state of  
6 Alaska, any way, of what it can do to get prepared for that kind of  
7 a situation. Whether it means building up a financial fund. The  
8 second part of that.....

9 MR. PARKER: Ten cents a barrel?

10 MR. SUND: Yeah, whatever it takes. The second part of  
11 that is something that Tim and I were discussing earlier and  
12 that's the organizational structure for managing an oil spill on  
13 the State's behalf. I know we're gonna talk about it a little  
14 tomorrow, but at least it's been my observation that the  
15 organizational structure the State has to manage this spill isn't  
16 the best, to put it politely. And I think we have some  
17 responsibility to make a recommendation there. And it may  
18 involve -- I think it's in the institution thing again, Esther, and it  
19 may involve some kind of contractual help. I don't know that we  
20 have staff availability to do that. But I'd leave it up to the staff to  
21 develop that thought.

22 MS. WUNNICKE: Well, maybe we can put on a third  
23 investigator. Mr. Chairman.

24 MR. SUND: I would just know that we had people in front  
25 of the Commission. We had a guy that was, maybe it was Harold.



1 Forget who it was who was advising Red Cross on emergency  
2 response procedures and stuff like that. I just throw that out. I  
3 guess, well, I'll.....

4 MS. HAYES: Mr. chairman.

5 MR. SUND: .....throw the CERCLA thing up. And another  
6 thing I guess I'll work on and that's the -- on the review of all  
7 existing legislation. We've been asked several time to let  
8 legislators to go over what they passed last year, make some  
9 comments on it and come back with some recommendations.

10 MR. PARKER: Of the existing?

11 MR. SUND: Yeah, of what they've already done. They did  
12 it in a big hurry and most of 'em said they never read it. And  
13 they came -- Faye Brown came and I kind of jumped on her  
14 during that meeting. I shouldn't have, but at least say.....

15 MR. PARKER: That's the legislation.....

16 MR. SUND: Passed by the State of Alaska.

17 MR. PARKER: .....concerning

18 MR. SUND: oil spill and oil spill regulation. They've  
19 passed about five laws or something like that. I'm just trying to  
20 throw things out that are going to require staff time or some  
21 time to has to be allocated to get that.

22 MS. WUNNICKE: Two things. I'd like to see a foundation  
23 laid for and we'll have to think about how we do that. I think we  
24 have enough information before us from public testimony on two  
25 or three occasions to look at something like the Incident

1 Command System.

2 MR. SUND: excuse me, like what?

3 MS. WUNNICKE: Like the Incident Command Team in  
4 terms of institutional response. And whatever foundation we  
5 might need to lay, and maybe you might want to -- especially  
6 chairmen about your testimony today, so that we package our  
7 recommendations in a form that they might be the nucleus for  
8 inter-state agreements with other coastal states.

9 MR. SUND: Okay, that's just another tack here, I guess. It  
10 comes up to what's this report for and what are we writing it  
11 for? You know, there's strategies and motivations -- or, how do  
12 you leverage people to change? If you wanta impact the federal  
13 government, it's nice to have California in your balliwick and it  
14 gets back to this inter-state compact thing that the Chairman  
15 was talking about.

16 MS. HAYES: Mr. Chairman.

17 MR. SUND: I'll just lay it on. Here's a strategy.

18 MR. PARKER: Just real quick.

19 MS. HAYES: This is reall quick, too. I just wanta relate in  
20 the suggestion that I've asked -- I took the bit and at the  
21 suggestion of, did some five draft recommendations of things  
22 that I've already got a gut reaction to. I've asked my sub-  
23 committee to do the same thing as a homework assignment. In  
24 fact, I guess I didn't give you a deadline, but probably ought to  
25 the next week to get them to us by Friday of next week. But I

1 would suggest that many of the things we brainstormed here like  
2 the Incident Command Center and things are things that we've  
3 all talked about before. If all the Commission members did that  
4 and sent them to John, he have a way of checking to see  
5 whether we've got that background laid out for those kind of  
6 things that listened to in public testimony.

7 MR. WALLIS: This is real quick. Mr. Chairman, basically  
8 for John, I think something that we oughta keep in mind or at  
9 least consider and look at as we go on and make  
10 recommendations is what affect it will have on the well head.

11 MR. PARKER: On the what?

12 MR. WALLIS: On the wellhead.

13 MR. PARKER: You alone or all cooperate if you want. Just  
14 holler and do that for free. The -- any other open things? It's  
15 time for dinner. I.....

16 MS. WUNNICKE: I guess maybe just to confirm our  
17 discussion at lunch that we're gonna forego the October meeting  
18 and I'd like to at least have a sub-committee meeting about that  
19 time, which could be arranged.

20 MS. HAYES: John, why is Fish and Game not come in, just  
21 not available? As we talked today, I identified several people that  
22 we haven't talked to that we had talked about having like Dan  
23 Long, those kind of people. By not meeting in October are we  
24 gonna be doing any damage to ourselves? We're gonna be  
25 meeting -- the next time we meet is after the contracts have got

1 drafts in. Is that gonna cause a problem for us.

2 MR. HAVELOCK: Remember that the -- you're not gonna  
3 stop gathering information. We're just switching modes. We'll  
4 be gathering information by interview processes.

5 MS. WUNNICKE: So sub-committees can.....

6 MR. HAVELOCK: So, I will have some kind of a product  
7 from that as it goes along. To the extent that the sub-  
8 committees have priorities in repect to who they want to be  
9 interviewed and the questions they want to see asked or  
10 explored, then if you'll give that to me in writing, it's more likely  
11 to be memorialized.

12 MS. WUNNICKE: But look at the draft of the Institutes  
13 first report in terms of who want to.

14 MR. PARKER: In closing, I only want to relate to you my  
15 last conversation with the Governor, which was last night. As  
16 you're aware, he has a high interest in enhancing shipments to  
17 the Soviet Union and trade with the Soviet Union, as a result of  
18 his recent trip, as does the Mayor of Dutch Harbour, Paul  
19 Pughes, who is becoming a major political force in this state.  
20 And, when the Governor put it to me, I couldn't really refuse  
21 him because of the \$490,000 he's given it. So what he wants us  
22 to incorporate in our work program is a risk assessment of  
23 shipping oil and other products over the Northern Sea route.  
24 And I said, no problem Governor, our guys are ice breaker  
25 experts too and he said would you mind holding your next

1 session in Leningrad or Moscow. And I said no problem,  
2 Governor, if you'll buy the tickets. So, that's the way it is folks.

3 MR. HAVELOCK: That would make for a helluva big  
4 impression all around the country.

5 MR. PARKER: Yes, I'm sure it would. So, on that note.

6 MS. HAYES: I'll take you so far Parker, but when you got  
7 to that one credible.....

8 MR. PARKER: You mean I got to the point where the  
9 Governor said he'd buy the tickets?

10 MS. HAYES: Yeah.

11 MR. PARKER: You know I was just running you then. So,  
12 on that note, Dos Dedonia. We'll see you at 9 o'clock in the  
13 morning.

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