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ALASKA OIL SPILL COMMISSION

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Volume I of II

OIL SPILL COMMISSION MEMBERS

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WITNESSES

PUBLIC TESTIMONY

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Mayor Emeritus, City of Cordova	
Charles McKee	Page 236

1 (Tape Number 89-12-4-1)

2 MR. PARKER: I think we'll dispense with the formalities
3 since there's no particular audience present and we all know
4 each other. The.....

5 MS. WUNNICKE: No public. They're not interested in
6 what we have to think.

7 MR. PARKER: Oh, they'll get there.

8 MR. SUND: It's just conclusions and recommendations.
9 It's nothing important.

10 MR. HAVELOCK: Maggie, you didn't notice this meeting
11 for some place else did you?

12 MAGGIE: No.

13 MR. PARKER: No -- that's great.

14 MAGGIE: Better get the work done right away.

15 MR. PARKER: Before I turn it over to Counsel to hear
16 from what he has to tell us, do any of the Commissioners want to
17 say anything.

18 MR. HAVELOCK: Mr. Chairman, I thought there was
19 deliberately not an agenda piece of paper in front of you because
20 I thought you may wish to create your agenda, having in mind
21 that this is, for some purposes, the last meeting. I understand
22 Commissioner Wenk will not be able to make the January
23 meeting. So, this, for some purposes, is the last formal meeting
24 of the Commission. And it occurs to me that everybody should
25 have some opportunity in the context of you all being together to

1 figure out what it is that you, you know, may finally want to say or
2 to make sure is in the report, or to itemize, so -- or that you feel
3 is not being addressed in the work of the Commission, which,
4 unfortunately, I would much rather have it the other way.
5 Obviously much of it you're gonna have to take somewhat on
6 faith. There hasn't been the kind of an interval between the last
7 meeting and now for us to develop the kind of full staffing for a
8 meeting that I would have preferred to have.

9 As far as the staff is concerned, the agenda would be, the
10 primary agenda item would be to review and amplify on the
11 document that is distributed this morning on recommendations.
12 And as you go through those recommendations, to identify for
13 the staff the findings that you are aware of that we should be
14 looking at to support them and your additions or amendments to
15 those recommendations. Obviously, they're not in a fully
16 polished form yet, but I think that basically they're all out there
17 that have been, of the major ones that have been suggested and I
18 suppose we're talking about 20-30 in there for you to chew on.
19 Commissioner?

20 MR. HERZ: One of the things that I felt we didn't have
21 which is needed for this session is a list of the interviews that
22 our field investigators have formed with, you know, a summary
23 sentence or two about what the principal take-home message
24 from each of those interviews may reveal. I have no sense other
25 than -- we've gotten some of them now. I notice there's some in

1 the pile here that we have this morning, but I don't have a sense
2 whether we have a complete set or any place in one document a
3 complete listing of what our investigators have gotten us, which
4 might be the backup information that we need for some of these
5 recommendations and conclusions.

6 MR. PARKER: Yeah, the Chair would join Commissioner
7 Herz.

8 MR. HERZ: I've raised that a couple of times.

9 MR. PARKER: So, you know, I don't have any better sense
10 of that than you do.

11 MR. HAVELOCK: What we have tried to do is just to get it
12 to you as it came in, but you're correct. There is not yet a list.
13 I'm aware, you did talk to me a few days ago and reiterated that
14 you needed. Peggy, you making a note that we need to develop?
15 We ought to get everybody that list. It's not a -- I mean when you
16 talk about a list of interviews, that's easy. When you talk about a
17 list of interviews and a capsulated summary of what's said in
18 there, you're talking about a significant work project, which we'll
19 do, but it's not something that you just put together overnight.

20 MR. HERZ: But, just for openers, I have no idea, do we
21 have three investigators or two?

22 MR. HAVELOCK: We have three.

23 MR. HERZ: Okay, and so I really feel.....

24 MR. HAVELOCK: Adazeak, Purcelli, there's five of 'em

25 MR. HERZ: Okay. My personal sense is that I have no

1 overall feeling about what has guided where they've gone and just
2 a list would be, for openers, would be very, very helpful.

3 MR. DOOLEY: Mr. Chairman, I'd be happy to put together
4 that list.

5 MR. PARKER: Okay. Thank you.

6 MS. WUNNICKE: Mr. Chairman, to follow up on
7 Commissioner Herz, we have a number of recommendations in
8 writing from the Governmental Affairs Coordinator. Would it be
9 possible for us to have similar set of recommendations from the
10 Technical Coordinator, in writing.

11 MR. HAVELOCK: A list of the Technical Coordinator's
12 recommendations?

13 MS. WUNNICKE: Yes. I'm sure maybe that's been shared
14 with other staff and with other Commission members on a day to
15 day basis, but it's not ever been formally presented to the full
16 Commission.

17 MR. HAVELOCK: Alright, I will make sure that that's
18 forthcoming.

19 MR. HERZ: Following up on that question, are there
20 recommendations that are in the document that you handed out
21 this morning, which I think came from your meeting yesterday
22 primarily where you pooled everything, does that include all of
23 the recommendations from each of the staff people integrated
24 in?

25 MR. HAVELOCK: Yes, as far as institutions go. Now the

1 last meeting, at least from my perspective was the one for
2 addressing technical issues. And you did review the, most of the
3 technical issues. I'm not saying we have the product to present
4 to you yet, out of that, and you may want to go back to that, the
5 third day or something here. If you give me notice I can put
6 something together to re-review that. But, I thought that the
7 last meeting basically set the stage for the rather difficult and
8 probably your most important recommendations which seem to
9 be involving institutions.

10 MR. HERZ: And do the, in your thinking or as you put
11 together this list, are there -- it seems to me that for each of the
12 items here, there's gotta be a set of two or three major pieces of
13 data that substantiate that recommendation.

14 MR. HAVELOCK: All of those are -- there's sort of a double
15 layer. First of all, it seems to me that there's a series of findings
16 and I was suggesting that at least -- and you know, finding is a
17 slippery thing, you can, depending on the level of generality you
18 put it at. So, at one level I hope that in these three days that the
19 Commission is gonna give me their sort of, their, at a high level
20 of generality, the findings that they think support a particularly
21 proposition. You should have received some first cut on findings.
22 Did they Peggy? I did -- the paper I did.....

23 PEGGY: Yeah.

24 MR. HAVELOCK: So you've got at least some.....

25 MARILYN: Is that a John Havelock memo?

1 MR. HAVELOCK: Something called a Havelock memo.
2 Yeah, one dated when?
3 MARILYN: November 28th?
4 MR. HAVELOCK: It's dated November 30th.
5 MARILYN: Oh.
6 MR. HAVELOCK: No, November.....
7 MARILYN: November 30th.
8 MR. HAVELOCK: November 30th, yeah November 30th.
9 MS. WUNNICKE: I have a November 28th.
10 MR. PARKER: I don't have it.
11 MR. HERZ: What is it?
12 MR. HAVELOCK: November 30th and it's entitled.....
13 MARILYN: Re-defining the recommendations first cut.
14 Please give me your own additions by the end of Friday.
15 MR. HERZ: When was that sent?
16 MR. HAVELOCK: I would send it, I guess maybe it only,
17 only staff caught it. Is that what happened.
18 PEGGY: I never had it.
19 MR. HAVELOCK: We will, alright, we'll make out -- I
20 apologize. You don't have that. We will
21 MARILYN: I don't have a clean copy. Mine has notes on it.
22 Do you have a clean copy we can copy then?
23 MR. HAVELOCK: You should also have, I mean, well -- you
24 did not get -- we have some preliminary findings and we will
25 make sure they're copied and distributed to you. I regret -- I

1 thought they'd be in your hands.

2 MR. WALLIS: Mr. Chairman, I don't know whether it'd be
3 today, tomorrow or the third day, do we plan, the Commission,
4 to vote on some of these things, so we know what we're talking
5 about. That everybody's talking the same language. We think we
6 recommend something, but we find out that it's really not
7 addressed?

8 MR. PARKER: Yeah, I think that we can go through the
9 staff presentations fairly rapidly and that would leave us in a
10 position to examine what we regard as any holes or additions
11 that need to be made to those, would be how I view it.

12 MR. WALLIS: We really haven't voted on any thing yet. It's
13 been generalities and some things I thought we had decided, I
14 guess it really isn't there.

15 MR. WENK: Mr. Chairman along the lines that Tim has
16 commented, could someone differentiate for me these two
17 documents that were available this morning. One does have
18 recommendations and I was wondering whether this one also
19 has it in it or whether this is supplemental.

20 MR. HAVELOCK: You have the.....

21 MR. WENK: Is there an easy way to characterize these
22 two?

23 MR. HAVELOCK: That's a plotter.

24 MARILYN: One big plotter.

25 MR. HERZ: That's from SeaGrant.

1 MR. HAVELOCK: That the plotter.

2 MR. WENK: Oh, that's SeaGrant. Okay, that helps.

3 MR. PARKER: Now, one of the problems I had in going
4 through my files yesterday and extracting things, we've got an
5 awful lot of documents and nobody knows where they came
6 from. There's just no heading, no name, no date sometimes. It
7 makes it a little difficult for reference and I suppose we
8 should've picked up on these as soon as they were received, but
9 I hadn't realized 'til I started thumbing through things how many
10 of those there were, so -- we might have the staff or for those
11 that were staff prepared, just take them, write on them who
12 prepared them so -- where it was an original, where it wasn't --
13 or whether it was a total staff presentation so we know where to
14 go on the telephone. The -- okay, well it would seem to me that
15 at the beginning to -- we may wish to go through your
16 institutions recommendations of institutions recommendations
17 to begin with and we'll see where that leads us. John.

18 MR. SUND: Mr. Chairman, I would suggest a process that
19 is somewhat circular or intricate here that we try to get through
20 all of 'em, at least cursory, today and then have a chance to come
21 back again so that at the end of Wednesday we've got a complete
22 package that we're all fairly comfortable with rather than trying
23 to take the first one's that come up and argue or debate or
24 discuss them at ad nauseam that if we agree, we agree. If we
25 don't, let's get the issue on the table, find out where the

1 disagreements are, and then move on to another one so that by
2 the end of today we've gone through the whole process and then
3 we have two days to fill in the holes.

4 MS. WUNNICKE: Mr. Chairman, may I ask a question of
5 staff. I don't see reflected in the minutes the discussion on the
6 last day of our last meeting in which, at least with staff's help, we
7 tried to give an outline of the elements of an institutional
8 recommendations and -- was that not helpful or, as a framework
9 within which to place these recommendations. 'Cause quite
10 frankly that's the framework within which I'm trying to think as
11 far as institutions go.

12 MR. HAVELOCK: I don't have an explanation yet. I did
13 not -- I just delegated that to staff which I did not follow up,
14 have not reviewed them myself to see what's there. You're
15 telling me Thursday's missing.

16 MARILYN: What she's saying, I think is the stuff we wrote
17 on the board, was never written down.

18 MS. WUNNICKE: I think I submitted a memo which
19 everyone was copied on and then we discussed it from the
20 chalkboard. It's not reflected in the minutes at all. Apparently
21 was not a usable outline for staff to put these recommendations
22 within. I'm just asking if that was the case, whether it's even
23 considered it.

24 MS. HAYES: Mr. Chairman, I might be able to shed a little
25 light. In the pre-meeting discussion over coffee, I talked to our

1 -- the woman that is responsible for recording our meetings and
2 she reported that she was up until 4 o'clock this morning trying
3 to put together the minutes of these minutes. I'm not sure
4 whether all of them are here. Do you know that.

5 ERLENE: One day.

6 MS. HAYES: Is not here yet.

7 ERLENE: Is not here. The last day. She went back to
8 finish it.

9 MS. HAYES: The last day is not here.

10 MS. WUNNICKE: No wonder.

11 MS. HAYES: So, I believe it will be coming soon.

12 MS. WUNNICKE: Okay.

13 MR. HAVELOCK: Just in general, Commissioner, certainly
14 your outline was integrated in my head and I think is somewhat
15 reflected in here.

16 MS. WUNNICKE: We'll take an x-ray of your head.

17 MR. WENK: Mr. Chairman. Just, excuse me (cough), a
18 footnote on process. I'm sort of picking up a little bit on
19 colleague Sund's comment a minute ago. Just in terms of a way
20 to approach this I wonder whether it would be useful as we go
21 through if we're thinking about recommendations and we want
22 to try to, maybe through an intertive (ph) process, arrive at some
23 kind of consensus and you're gonna find this Commissioner
24 eager for that. I wonder whether for each one, it would be
25 possible for staff in a very concise way to do the following: 1) to

1 state what the problem is as identified from evidence; 2) why
2 this is an institutional question and not a functional question; 3)
3 again, in very concise presentation, what the options are, if
4 indeed there are some, so as to lead us through that chain to a
5 way to appreciate the recommendation as submitted.

6 MR. PARKER: Yeah, I think that's a lead-in on all of these
7 would be helpful. Anything else before I.....

8 MS. WUNNICKE: One other question, Mr. Chairman, and
9 that is these recommendations are keyed to the outline of the
10 report?

11 MR. HAVELOCK: No, they are not.

12 MS. WUNNICKE: Oh.

13 MR. HAVELOCK: And in just following up on what you had
14 on the board, I took it to be an outline that would be reference
15 with respect to how we would -- how it would appear in the
16 report. And your outline, it seems to me, is for that purpose.
17 This document is intended, from my perspective, to allow us to
18 look at the institutional issues from the point of view of
19 institution by institution. What practical changes are you
20 making? What new institutions are you introducing? And I
21 recognize that there are other formats to approach that, but this
22 is a sort of a down to earth sort of cut, it would seem to me.

23 MR. HERZ: Mr. Chairman, I'm somewhat confused, 'cause
24 I think I have three separate pieces of paper that say
25 "recommendations".

1 MR. SUND: I can give you a couple more if you want more.

2 MR. HAVELOCK: There's a lot of them floating around.

3 MR. HERZ: Yeah, but that we just got this morning. And
4 then.....

5 MR. HAVELOCK: Three?

6 MR. HERZ: And then we just have your memorandum.
7 And I wanta get a sense of why that is and which is the one that
8 we're working on. Does it include things that are raised in the
9 others? If not, why not and how are we gonna integrate what
10 isn't on the master?

11 MR. HAVELOCK: I'm not dead sure of all what you may
12 have on your table. But, some of, a couple things you got are
13 called "findings" and they're just part of the supporting
14 documentation to recommendations. The one that I propose to
15 work from is entitled, "Institutions, Recommendations,
16 Prevention" and starts out, "The United States, the Coast
17 Guard.....".

18 MR. HERZ: Okay, but there's another recommendation.....

19 MR. HAVELOCK: You've got another one.....

20 MR. HERZ: Oh, there's a Proposed Recommendations,
21 DEC, that is from you that is dated yesterday. What is it's
22 relationship to the thing you just described?

23 MS. WUNNICKE: You mean to, from Spivey to Havelock.

24 MR. HAVELOCK: Spivey's report.

25 MR. HERZ: No, no.

1 MS. WUNNICKE: No?

2 MR. HERZ: Oh, I'm sorry, I'm sorry it is from Spivey. Is
3 that subsumed.....

4 MR. HAVELOCK: That came in, that came in late last
5 night on fax and we're distributing its available, but it is not -- I
6 glanced at it and I -- there's one issue that is not in the report,
7 not in the outline presented and I guess it's an order -- it isn't --
8 I thought about, but dropped it as an order of magnitude issue
9 and that is the issue of personnel. That is we had some
10 discussion of whether we should even create a -- recommend a
11 special executive service within the state to allow for the special
12 track, special salary track, special tenure track for highly
13 professional people.

14 We were scared off of it somewhat by the fact that, okay
15 we do it for this and everybody's gonna want in and what we're
16 really talking about is a major civil service recommendation
17 instead of a spill recommendation and that's why I backed off of
18 it. But it, it's certainly still a pertinent problem and that is one
19 of the ways of addressing it, which is how do you hire and keep
20 highly professional people and talk them from moving off into
21 the industry or elsewhere.

22 MR. HERZ: But that's just one -- coming back to my
23 clarification question. The institutions recommendations starts
24 prevention with the United States Coast Guard is the thing
25 which the staff has.....

1 MR. HAVELOCK: Everything the staff.....
2 MR. HERZ:Pooled all.....
3 MR. HAVELOCK: that's right.
4 MR. HERZ:The information and Marilyn's, Marilyn's
5 piece of prevention recommen -- institutional recommendations
6 is not, is included?
7 MR. HAVELOCK: Marilyn's.....
8 MARILYN: The piece I gave you this morning?
9 MR. HERZ: Yeah.
10 MARILYN: Which I -- the copy machine's not working
11 here, by the way, why people don't have it. But, I'd say that some
12 of mine is more detailed and it's a question of how detailed your
13 recommendations would be. I think that there may be some
14 differences and I'd be glad to clarify those as we go through.
15 MR. HERZ: So your intent, one last question and I think
16 I'm clear. Your intent is then to use only this document, at least,
17 as the first cut thing that we go and these others are all backup
18 and may be added, but.....
19 MR. HAVELOCK: Correct.
20 MR. HERZ:we're only gonna work from this one
21 document.
22 MR. HAVELOCK: That's my proposal.
23 MR. HERZ: Okay.
24 MR. HAVELOCK: It's a of fairly high -- Marilyn says it's a
25 fairly high level of generality and you can look at Mr. Spivey's

1 memo, for example, or Marilyn's, and you will see there's a good
2 deal more detail about how you might go into these things that I
3 -- I wanted to get the overview cut from the perspective of
4 principle staff and from yesterday's meeting. That's what this
5 does.

6 MS. WUNNICKE: Recommendations, Roman two, is
7 Marilyn's memo, correct?

8 MR. HAVELOCK: Right.

9 MS. WUNNICKE: This is another one of those that Walt
10 was talking about -- anonymous.

11 MARILYN: I'm guilty of that. I'm the most guilty and let
12 me say that I take it to heart.

13 MR. HAVELOCK: Actually, there's a joke in staff because
14 we tend -- we all recognize each other's work by the format.
15 And we can always spot a Marilyn memo.

16 MS. WUNNICKE: I see.

17 MR. HAVELOCK: I've got a file called Marilyn memos.

18 MS. WUNNICKE: This is old, you've got a new.....

19 MARILYN: I'm -- don't worry about Marilyn's
20 recommendation because you don't -- not everyone has them and
21 you'll have them within the next 20 minutes or so. And, they are
22 draft and not completed and not fully backed up yet.

23 MR. PARKER: Okay Counsel, do you think -- do you want a
24 review briefly your November 30 member just so -- I think it's --
25 it leads into the institution recommendations, I.....

1 MR. HAVELOCK: Yeah. What you get here is a flavor
2 which I would like your comment on, on the level of findings
3 that I would anticipate being rolled into the Executive Summary.
4 And, for example, the general finding that the Exxon Valdez as
5 an accident waiting to happen and the link that broke first. I
6 might add that's a, you know, it's certainly not a self-evident
7 proposition. And we will have to -- but I think that there's
8 enough documentation to show weaknesses in the system up and
9 down and that in the body of the report we are going to have to
10 sustain that kind of a finding with more detailed text, what went
11 on there. And obviously there's a problem there because -- or,
12 let's say another -- not a problem, but not all of the system is
13 equally as bad or good. But on the other hand, we're not in a
14 position to make a totally comprehensive analysis and be able to
15 identify every weak link and every strong link and give them a
16 rating of one to 10 on how good they are. So, so we have to deal
17 with that in terms of, as a text problem.

18 Secondly, we are saying that the entire system is still at
19 risk. And we're identifying the whole system, which is to say
20 that we know there are some areas where simply, maybe
21 particularly in the area of institutions, where the changes that
22 are underway are not going to fully do the job or -- and there's
23 some definition of what's underway. I mean do we accept a
24 Congressional enactment as a done deal or are we gonna assume
25 that they're not. What do we do about -- we know that there are

1 various planning processes underway for both the TAPS repair
2 and the contingency planning for Port Valdez and for Prince
3 William Sound, that we don't know what that product of that is
4 gonna be yet. So I think that's in some senses why I'm saying
5 that the system is still at risk is we know that that pipe -- we're
6 fairly confident, we have reason to believe that that pipe is a
7 mess, or something short in that. At least it's got problems. And
8 we know that there is no significant or insufficient response
9 capability, for example, from Hinchinbrook Entrance on. We
10 know that the design of tankers is going to continue to be a
11 problem infinitum. Or at least, not infinitum, but until the kind
12 of measures that we're putting in place have been fully
13 effectuated by the establishing the double bottoms, etc. etc. So
14 we know that those risks, still, are still there.

15 Thirdly.....

16 MR. WENK: I just underscore and support that number
17 two with regard to risk. I run across a document that's like one
18 of these anonymous, Walt, you referred to. I can't trace it's
19 source, but it refers to a population of cracks in tankers, aging
20 tankers, and comments on the discovery and it sounds like it's a
21 Coast Guard document, the discovery of more cracks in tankers
22 on the Alaska trade than in the others. Now, cracks and ships
23 go back to the Liberty ships of world War II. You're well
24 acquainted with that, but in the case of a tanker -- I mean this is
25 really alarming to me. I just wanta support Counsel's point about

1 the system still being at risk. This Commission can't deal with
2 everyone of these details and I think that there's a real virtue of
3 certainly defending the statement, but in making it clear that
4 the mitigating measures now in prospect are not going to relieve
5 the problem.

6 MR. PARKER: Yeah, the illustration is a great one, 'cause
7 that document you referred to is several years old now. The
8 press picked it up and did a fairly extensive expose on it a
9 couple of years ago, but the follow up from the Coast Guard or
10 the industry has been zero.

11 MR. SUND: Well I just read it last week someplace.

12 MS. WUNNICKE: But more, most recently, the Coast
13 Guard wrote.....

14 MR. PARKER: Yeah.

15 MS. WUNNICKE:a letter to Alyeska saying we are not
16 allowing any ships to leave.

17 MR. SUND: Yeah, but was that in the press.

18 MS. WUNNICKE: It was in the press.

19 MR. PARKER: Yeah, it just happened two days ago, so it
20 took that long to get that level of response.

21 MS. WUNNICKE: And they said in their letter, we know
22 that this is an unusual procedure for us, but in the present
23 climate we have no other recourse.

24 MR. SUND: What's the procedure, I don't know it.

25 MS. WUNNICKE: To forbid a ship leaving port with any

1 cracks in the hull are detected.

2 MR. SUND: But how would that be de -- I mean is there a
3 procedure for detecting those?

4 MR. HERZ: Yeah, when they leak. When the oil comes
5 out.

6 MR. PARKER: Oh boy. That's the fine.....

7 MR. WENK: That's the procedure.

8 MR. SUND: Well, I think in the past they've let 'em sail
9 and there's been substantial dumping at sea. Now, there gonna
10 make 'em pump the oil back off at the Alyeska terminal, go
11 across the bay and weld the crack up before they can come back
12 and take on oil. That's a substantial deviation from current
13 policy.

14 MR. HERZ: But, from our point of view, it seems to me, if
15 in fact this is as much of an accident waiting to happen, that
16 there should be some sort of a regulatory structure -- maybe it
17 has to be Coast Guard and we can't get involved in it, but it
18 seems to me that that is pretty worthy of a recommendation. I, I
19 mean, I -- the press coverage that I was aware of, and I don't
20 know what report it was based on, made it sound as if this aging
21 phenomenon was going on.....

22 MR WENK: Oh, no, it just in the news.

23 MR. HERZ:but it hadn't been demonstrated, hadn't
24 demonstrated itself with cracks that are actually leaking oil. So,
25 we oughta be somehow making recommendation on that if that's

1 a finding.

2 MR. HAVELOCK: Well, I think we -- you already did make
3 a recommendation in the sense that you did make
4 recommendations on hull structure at the last meeting. And I
5 guess, and you also indicated the -- that it should be extended,
6 as I recall, to foreign vessels and I think you also -- there was
7 also discussion of the schedule. In a way what you're talking
8 about is the schedule at which the fleet should be replaced. I
9 mean do we.....

10 MR. HERZ: But it's more -- that's part of it, but it seems
11 to me, what I'm hearing dictates that there needs to be some
12 sort of inspection system that is done independent of the owner
13 and operator of the vessel such that these cracks can be
14 detected and these vessels are out of the trade. I mean, this
15 sounds like the most serious potential problem that is so close
16 to being more than a potential problem problem of anything we
17 talked about.

18 MR. PARKER: Right. It.....

19 MR. HAVELOCK: Well, there is an inspection system. I
20 mean that's why they picked it up.

21 MR. HERZ: But, the Coast Guard or that -- I mean for
22 leaks is one thing. There must be ways of measuring structural
23 integrity of tankers.

24 MR. WENK: Just to elaborate Mike, for a second. The
25 structural integrity of the ship is designed in the thickness of

1 the members, based on the type of service that the ship has and
2 its bending in the seaway - hogging and sagging. Now it turns
3 out that in winter, around here, but like in most of the world,
4 the weather is worse. And so for years there was a load limit on
5 tankers that was more stringent in the winter than in the
6 summer, believe it or not, in terms of how much oil they could
7 put in. The most losses were off Cape Horn. The oil companies
8 went to EMCO, just like they did on the double-bottoms and
9 forced EMCO (ph) to abandon this summer vs. winter rating.
10 Now, I do not know what applies to this trade coming to Alaska,
11 whether there is a difference in the -- does the name Plimso
12 (ph) mark mean something to all of you. We'll there's a different
13 Plimso (ph) mark -- that's the.....

14 MR. HAVELOCK: It's a legal term.

15 MR. WENK:legal -- oh, is it a legal term?

16 MR. HAVELOCK: There's a very famous legal decision
17 where Captain Frankfurter borrow the Plimso line as a way of.....

18 MR. WENK: I'll be damned.

19 MR. HAVELOCK:distinguishing constitutional rights.

20 MR. WENK: That's one way to become famous isn't it, as a
21 naval architect. Anyway, it's a mark on the outside of the hull
22 which tells you how deep it can sink into the water with the
23 load. I don't know whether the -- do you know, Walt, whether
24 the Alaska Trade has a summer vs. a.....

25 MR. PARKER: As far as I know, they don't.

1 MR. WENK:winter Plimso.

2 MR. PARKER: I think it goes back when they abandoned
3 the winter and summer regs on Cape Horn and Cape ^{of Good Hope} Agoodcope
4 (ph), why they never picked them up here. In line with what
5 you've just been saying, the two newest ships in the trade, Exxon
6 Valdez and Exxon Long Beach, were built with 20% less steel
7 than is normal for a ship from that class, at Exxon's direction. It
8 meets the American Bureau of Shipping Standards, but it's 20%
9 thinner than is typical and which means that the low amplitude
10 fluctuations, which are typical of the Gulf with that constant
11 pounding, the thinner steel is obviously going to fail soon. It's
12 the same think as flexing paper.

13 MR. WENK: It's a fatigue. It's a fatigue.....

14 MR. PARKER: Yeah. It's a fatigue thing, so.....

15 MR. WENK:phenomenon. Anyway, it's simply
16 amplifying the point Mike that you were raising.

17 MR. PARKER: It's the way we rate ships. McKenzie, the
18 top ship rater, rates both the ships as number one, number five I
19 guess. Yeah, number five's right at the top of his classification.
20 Yet they're built weaker than the older ships. The ship that, in
21 the famous sun spill that he has before him over there, those
22 lion class, 250,000 tonners, generated the 75 million barrel
23 spill off of Vancouver Island that hits all of southeast Alaska.
24 Those tankers have been in this trade for a long time and they,
25 of course, not only suffer the Gulf of Alaska, they also go around

1 Cape Horn on their way to the Virgin Islands. And you know,
2 those are the ones we passed on our way -- that's the one we
3 passed on our way out to the Island, that day in the Sound, and
4 those ships are getting pretty long in the tooth and there's -- I
5 don't think there's any provision for inspection for fatigue.

6 MR. WENK: Just to underscore your point, Mr. Chairman,
7 about the 20% thinner, and it goes back to findings and that is
8 that here's another example, and we've had several before, of a
9 tradeoff between cost and safety. And you come down to finding
10 number six in terms of operating error-prone system, absolutely
11 true. And, you know, why? And I think there's an explanation,
12 but final point, where is the decision made or what was it made
13 way back for the oil companies to fight the double-bottoms.
14 Where was the decision made to go to the 20% thinner steel?
15 Where was the decision made, and it wasn't made by Captain
16 Hazelwood, and it wasn't made even by Captain Iorocy, I don't
17 think. I believe it was made up in the Exxon board room and I
18 believe this is one of the reasons why this corporate culture is so
19 vital in terms of what happened. The same thing is true when
20 you talk about the Coast Guard being under-funded in your item
21 three. That under-funding sure wasn't a choice of the Coast
22 Guard and it only highlights, again, the fact that the system will
23 continue to be at risk, just as you say, Mr. Staff Director. It'll
24 continue to be at risk until there's a change in some point of
25 view at the very top of every one of these systems. We've had a

1 compound failure. By that I mean a compound failure where
2 every institution in the system failed and not because they're
3 independent necessarily, but the correctives go back to why did
4 it -- why do we have the 20% thinner steel in the first place?

5 MR. PARKER: Why does it qualify under the AB -
6 American Bureau of Shipping?

7 MR. WENK: There you go.

8 MR. PARKER: 'Cause the American Bureau of Shipping is
9 composed of the shippers. It has no real oversight in the public
10 sector.

11 MR. HERZ: Mr. Chairman, not to belabor this, can we
12 make a recommendation? Can the State of Alaska make a
13 recommendation that is specific to the Alyeska trade, relative to
14 an inspection program or is that.....

15 MR. HAVELOCK: Yeah.

16 MR. HERZ:something we shouldn't do?

17 MR. HAVELOCK: Sure.

18 MR. HERZ: 'Cause if we can I think we should.

19 MR. PARKER: I'd let this run on.....

20 MS. WUNNICKE: Alright, but I think.....

21 MR. PARKER: 'cause I think it's a beautiful illustration
22 of the problem that you can extrapolate into several other areas.
23 I mean, you know, we've examined this one in some detail, but
24 we've got a lot of others than lend themselves to justifying our
25 recommendations in the same manner. You can go down

1 chapter and verse, one, two, three, four, five, six points and.....

2 MR. HERZ: Can I propose that we put on the
3 recommendations a list that there be added a recommendation
4 about this and so we can drop it and move on.

5 MR. PARKER: Sounds good.

6 MR. HAVELOCK: Sounds like unanimous consent. I'll add
7 it.

8 MS. WUNNICKE: Under item one, D?

9 MR. HAVELOCK: Well, I guess where -- if you want to
10 address it as -- actually you wandered into a technical area. But
11 it has an institutional implication. And that is, is the Coast
12 Guard the appropriate body to inspect or would you give it to the
13 state or would you give the duplicate powers to both the Coast
14 Guard and the state agency to undertake that?

15 MR. PARKER: This is the core of why we got into the
16 whole revolving door examinations in the first place, you know,
17 this relationship between the Coast Guard as inspector, the
18 American Bureau of Shipping and all the other regulatory
19 agencies. So, I think however you phrase the recommendation,
20 it's a point that has to be attacked strongly.

21 MR. HAVELOCK: Well are you -- you're not responsive to
22 what I'm asking.....

23 MR. PARKER: Yeah.

24 MR. HAVELOCK:which is, who's gonna do and when or
25 where? I mean you're talking about having somebody in Valdez

1 do the hull inspections.

2 MR. PARKER: Originally both state and the feds did, you
3 know, went on the tankers when they came in.

4 MR. HAVELOCK: Alright, so we'll return to that regime
5 then. Both, right, is the answer.

6 MR. WALLIS: Let me ask a question.

7 MR. WENK: I would just like.....

8 MR. WALLIS: When these vessels are inspected now, do
9 the company do their own inspections? Do the Coast Guard
10 inspect? Or do they have a contract inspector? How's it done
11 now?

12 MR. PARKER: Companies do their own, either on their
13 own or by contract, it's a mix of both. The Coast Guard inspects
14 about, the last figure I saw they're inspecting 15% of the level
15 they think is necessary, because of budgetary constraints, so they
16 claim.

17 MR. WENK: Keep in mind that a thorough inspection can
18 not be done in the water. It's gotta be done in dry dock.

19 MR. WALLIS: I understand.

20 MR. WENK: You've gotta look at stuff that's culded. And
21 these guys don't wanta put them in dry dock very often, for
22 obvious reasons. Unless they have a breakdown.

23 MR. WALLIS: Well, let me ask another question then.

24 MR. DOOLEY: Well there's a mandatory requirement to
25 dry dock once every two years.

1 MR. WALLIS: And will the Coast Guard look at it then.
2 MR. PARKER: Are they meeting that?
3 MR. DOOLEY: Yes.
4 MR. WALLIS: There is a mandatory requirement that a
5 ship dry docks every two years.
6 MR. DOOLEY: Yes.
7 MR. PARKER: And is the Coast Guard enforcing that?
8 MR. DOOLEY: As far as we -- we haven't any evidence that
9 they're not enforcing it.
10 MR. WALLIS: And, do they get some type of paper, sticker
11 or whatever to show that they have done that?
12 MR. SUND: Well, but may I.....
13 MR. WALLIS: Something like they put on your elevator
14 that this is has been inspected.
15 MR. WENK: The Chairman made a point about only 15%.
16 The fact that they're in dry dock and there's a Coast Guard
17 inspector there is no guarantee that it's a thorough inspection.
18 There've been cases of Washington State Ferries in dry dock
19 with the inspector there and minutes before they were gonna
20 flood the dock, somebody, by accident, hit the hull and
21 penetrated it because it had rusted so heavily. And this got a lot
22 of publicity as indicating the Coast Guard wasn't, didn't have the
23 manpower to really do the job. They had -- they were stretched
24 so thinly. So, it does mean there's been a.....
25 MR. PARKER: During 1990 -- well 1990's the peak of

1 human technology. They care so little about the problem,
2 they've never developed a system for magna-fluxing the way you
3 magna-flux air craft rings.

4 MR. SUND: Mr. Chairman, just a point on this. I think if
5 you look at the historical perspective on where people have
6 cared about things being lost at sea, you know, originally the only
7 care was the loss of the cargo. And then later on they came in to
8 care about the loss of the passengers. And we developed a lot of
9 stuff. Up until the Exxon Valdez there really hasn't been much
10 care about the loss of the environment based on a spill. And I
11 would venture to say if you ask the Coast Guard when they go to
12 inspect ships, that inspecting tankers is very low on their
13 priority list in terms of that inspecting ferry vessels and other
14 passenger carrying vessels. If you were a Coast Guard person
15 and you had a choice, you would spend more time inspecting a
16 vessel carrying people than you would inspecting one carrying
17 oil. So I think Commissioner Wenk's point is correct that
18 there's undermanning anyway, but in terms of a priority listing, I
19 think inspection of cargo carrying vessels is fairly low on the
20 priority list for the abovementioned reasons. That we rank loss
21 of cargo, loss of people, loss to the environment in about that
22 order.

23 But, I, you know, that's one thing to do it in dry dock. I
24 do think that the State has a role here to play in terms of
25 inspecting at the terminal site and that we should bring that up

1 as a point in here. It's -- there's an overall perspective of the
2 state's responsibility to manage it's resources in the totality, so I
3 think I would like to see some recommendation of increasing
4 the state's inspection authority and abilities at Valdez.

5 MR. PARKER: It was very clear when the state, you know,
6 compersely (ph) report. But when the state stopped inspecting
7 both Alyeska -- both shippers and Coast Guard, enthusiasm
8 sagged perceptively.

9 MS. WUNNICKE: You need redundancy in inspection as
10 you need redundancy in equipment and manpower on the ship.

11 MR. SUND: I think you need -- the State of Alaska needs
12 to put on its priority list that this is something that's important
13 to them. If the environment is important to the people of the
14 State of Alaska, the State of Alaska has to be willing to pay. And
15 you pay through regulatory means. And I think, I've seen the
16 time I was there, a definite slip in that point of view.

17 MR. WENK: Could I, Mr. Chairman, just pick up again on
18 this point about the historical progression from concern for
19 cargo to concern for people.

20 MR. WALLIS: Before you do it, let me ask this question.

21 MR. WENK: Yeah.

22 MR. WALLIS: Did you say the state used to inspect the
23 ship?

24 MR. PARKER: Yeah, up 'til we lost -- up until Judge
25 Fitzgerald overruled the states on Chevron vs. Hammond. And

1 that wiped out the coastal contingency fund, which funded the
2 inspectors. And the state -- by that time, Ed Dankworth had
3 control of the legislature so the state wasn't about to, you know,
4 stick up and fund it through some other means.

5 MR. WALLIS: Okay. That's the case we've got. It's
6 somewhere back in here, right?

7 MR. WENK: I'm glad this point's been raised, 'cause I
8 really think that history is really important to bring out - that
9 the state did not only care, with regard to prevention, but had
10 actually taken explicit, pro-active measures toward that end for
11 which there's a hiatus. But I want to come back just to Mostert's
12 (ph) book, Supership, 1974. He ends, very ends, says, "we
13 shipwrecked one feared principally for those on board, but now
14 we have a dread more solemn for those on shore. Helicopters
15 get the sailors off. We clean up the muck. For the first time, we
16 on land have more to loose and nothing to gain and that is why
17 the responsibility for ships is no longer that of the mariners
18 alone."

19 And I think, I mean, there's a principle at stake here that
20 I believe underpins this concern for the environment and the
21 role of the state, etc., etc., etc.

22 MS. WUNNICKE: Mr. Chairman, I think if we don't make
23 but two findings, that one of -- and I think John Sund has
24 spoken to both of these through the times that we've been
25 meeting. One has to be that the protection of the environmental

1 resources is of equal importance to the protection of the lives of
2 crew and cargo. And I think the second has to be a service that
3 we will perform for all citizens and that is that the beneficiaries
4 of oil knowingly assume the risk of its shipment. And I was
5 struck by a memo that the Chairman gave us with respect to the
6 percentage of fail safe transport in the air craft industry, in the
7 airline industry, and fail safe transport of oil. And, I think we
8 need to make clear to all the parties that if that percentage is
9 99.95%, that if they continue to drill for oil and ship oil and use
10 oil, they assume the risk of a rare, but often catastrophic spill.
11 And that to raise that percentage even one, one-hundreds of a
12 percent may cost more than the affected parties are willing to
13 pay. And I think that those unusual costs, particularly in Alaska,
14 since citizens have a direct stake in marketing Alaska oil and
15 have a direct stake in those one, one-hundredths percentage
16 improvements in the fail safe percentage. And they can see that
17 more directly because they are the owners, at least of the royalty
18 share of oil produced from Prudhoe and Kaparak and Upper
19 Cook Inlet and out to the three-mile limit. Where they're less
20 willing to assume that risk is where the benefit goes directly to
21 the federal government, is in the outer-continental shelf
22 program or where they go to some private land owner.

23 So if we do nothing more than make those two findings,
24 and I think John Sund was more eloquent than I am on both of
25 these, I think they have to lead off our findings. From all that,

1 everything else flows in terms of detail on the regulatory system,
2 detail on the shipping companies themselves, detail on
3 institutional response. Which is not to say that you don't do
4 everything you can to mitigate that risk or mitigate the effects of
5 that risk. That's probably my speech for the day, Mr. Chairman.

6 MR. PARKER: Okay.

7 MR. SUND: We'll transcribe that one.

8 MR. HAVELOCK: There was great eloquence there. We're
9 making notes on it and it'll be reflected.....

10 MS. WUNNICKE: Be sure and quote me.

11 MR. HAVELOCK:but I am uncomfortable with, if I
12 heard your word that with the assumption that the citizen
13 knowingly assumes the risk of shipment. I don't think that the
14 citizen, in most cases, is knowing. That is.....

15 MS. WUNNICKE: That's why we have we have that
16 obligation.

17 MR. HAVELOCK:disguised by bull, among other things.

18 MS. HAYES: Yes.

19 MS. WUNNICKE: That's why I think we have that
20 obligation to make known, make known the risks that are to
21 assumed.

22 MR. PARKER: Citizens.....

23 MS. WUNNICKE: And then if you can also make known
24 the cost, then -- I guess I have always believed that people make
25 reasonable decisions if they know the risk and know the cost.

1 MR. PARKER: In a well ordered republic, the citizen has
2 the right to go to bed at night assuming his government is taking
3 care of him.

4 MS. WUNNICKE: Oh, come on.

5 MR. PARKER: In a well ordered republic.

6 MR. HAVELOCK: Do you want that a finding?

7 MR. PARKER: However, it's been a long time since the
8 republic was well ordered so.....

9 MR. SUND: The East Germans just went to bed with no
10 government.

11 MR. PARKER: Yeah.

12 MR. HERZ: They haven't been sleeping.

13 MR. PARKER: It'll be interesting to see how long they
14 continue, but, well.....

15 MS. WUNNICKE: Don't, let's don't -- let's just solve our
16 corner of the world, Mr. Chairman, for the next three days.

17 MR. HERZ: As we move to item three, which I'm raising
18 it and trying to move forward at the same time because I see a
19 relationship with number two. The Coast Guard role, it seems to
20 me that we have touched on, mentioned in a number of places,
21 the revolving door. But I'm concerned that that has played a role
22 in terms of high level decisions being made. I don't know what
23 documentation in terms of findings we have to substantiate
24 making that point strongly. It certainly was underscored for me
25 on the day after the San Francisco quake, on October 17th, when

1 I was out patrolling and discovered on the 18th that transfer
2 operations had resumed at the major refineries in San Francisco
3 when the aftershock probability was still quite high and I tried
4 raising that as an issue with the Coast Guard and a direct quote
5 from the Captain of the Port was, "I understand your point, but
6 commerce has to keep moving. There's a tremendous need for
7 these commodities. "

8 Now if you look at who's running PIRO (ph) and if you look
9 at where most of the senior Coast Guard officials end up at the
10 end of their 10 or 20 years, ala Iorocy and others, that revolving
11 door, I think, plays a major role in the decision making process
12 at very high levels. And I don't know the degree to which we
13 have -- we have pieces of that scattered. We have paid lip
14 service to it, but I think it's, again, one of those things that, like
15 corporate responsibility, and the place at which decisions are
16 made is at the top. And I just wanta red flag that as something I
17 would like to see underscored as a finding. And I don't know if
18 we have enough systematic information on that.

19 MR. HAVELOCK: Well we certainly have enough to make a
20 lot of findings in that area. You're not bumping into it here
21 simply because we're talking about recommendations. And I
22 don't know, you know -- again, you're sort of running into
23 generic issues in the federal government about revolving door.
24 And it'd be a very sensitive spot for military retirements as well
25 as Coast Guard as to what do you do about this. And I don't know

1 whether you want to, you know, take on something like that that
2 is generic to government in your context with respect to
3 regulation. So I admit I dropped the recommendation and
4 focused on what Mary Evans -- Mary Evans is our study
5 background on this issue. You can see she shifted to looking at
6 the confusion of role involved in the institution as a priority
7 problem over the revolving door problem. It's not to say that we
8 don't make findings.

9 MR. PARKER: But, it is generic. Morton Thiocal (ph) is
10 still the chief contractor for NASA and the shuttle and there's
11 still a revolving door between NASA and its contractors too. So
12 it is endemic throughout the government.

13 MS. WUNNICKE: Mr. Chairman, it's why I would go back
14 to what we talked about the last day of our last meeting. Why I
15 would put my money, I guess, on institutions that perform a
16 watchdog responsibility for the future rather than trying to
17 attack everyone of these symptoms, if you will, of the system that
18 is failing. That's where I would put my emphasis, because it
19 seems to me that that's a positive, concrete kind of thing that
20 we can do and I was struck by it when we were talking earlier
21 about the Coast Guard saying in their letter to Alyeska, this is an
22 unusual thing for us to keep a ship in port and not allow it to
23 leave because of a defective crack in the hull. But in the present
24 climate, as I read it in the news item, we must, we have no other
25 recourse. I guess I'd put my money on those institutions that

1 keep up the present climate, so that then, in their own self-
2 interest, the regulators, the shippers and all of the other parties
3 respond to that climate, if you will. 'Cause there's been a lot of
4 response in the aftermath in the Exxon Valdez. Some of it's
5 symptomatic, you know, drug testing and alcohol testing and
6 things of that nature. But some of it, also addresses the system
7 failures, so we -- I think we need to applaud those changes, but I
8 don't think that we can change the world, I guess is what I'm
9 trying to say.

10 MR. PARKER: Well.....

11 MR. WALLIS: Well, I guess, excuse me. I guess what we're
12 talking about here really is, in a lot of these cases, things are
13 already in place and it's a matter of us trying to change attitudes
14 more than anything else. And as far as findings go, you know,
15 whether we make recommendations on 'em or not, they should
16 be included for the simple reason that we know they're there
17 and hopefully the press will pick up on.

18 MS. WUNNICKE: Oh, yeah, I agree, I agree. But not to get
19 too hung up on trying to change.

20 MR. WENK: But, the changing attitudes, which I strongly
21 underscore, our mindset of corporate culture is not easy unless
22 it's forced by some outside pressures. And part of this lies in the
23 whole notion of accountability, which depends on public
24 information.

25 Coming back to this item three, though, John, what would

1 you say is the reason why the Coast Guard failed, or reasons?

2 MR. HAVELOCK: Well, I guess I'd fall back on Mary Evans'
3 proposition of the confusion of roles in the Coast Guard, trying to
4 be all things to all people. And in evolving set of national
5 demands. And as a result of that, matters relating to maritime
6 safety have really gone by the board as compared with chasing
7 drug dealers or anything else you wanta pick. So.....

8 MR. WENK: But where, where was that.....

9 MR. HAVELOCK: And that's happening at the
10 congressional level in terms of appropriation, in terms of the
11 direction of the Coast Guard. That's what they're telling the
12 Coast Guard.

13 MR. WENK: Isn't it the Presidential level. Who was it that
14 said the drug interdiction comes first? Who was it who declared
15 themselves the environmental President?

16 MR. HAVELOCK: Well, I'm not sure. So they both have
17 the responsibility in that responsibility.

18 MR. WENK: Okay.

19 MR. HAVELOCK: Congress and President, sure.

20 MR. WENK: But, all I -- my only point is that the Coast
21 Guard, I think, would in candor, agree that they failed.

22 MR. PARKER: The problem of dual missions doesn't get
23 around the dialogue such as Admiral Kime, Frank Iorocy and the
24 unions had on manning, where Admiral Kime was 100% with
25 Exxon on reducing it's manning.....

1 MR. WENK: Yep.

2 MR. PARKER:and didn't give anything at all to the
3 union side of it that this manning reduction was, you know, far
4 below the standards of acceptable safety. You know, there is a
5 definite mindset in all the correspondence we've read at the top
6 levels of the Coast Guard that the industry position is more
7 valuable than the public position.

8 MR. WENK: And, Mr. Chairman, do you recall whether it
9 was Kime who, when we were talking with him, said that some
10 of these decisions are based on a cost benefit analysis and we
11 asked him who's cost benefit analysis and essentially he said it
12 was the oil company's cost benefit analysis. Well, that ducks the
13 question completely in terms of benefit to whom and cost to
14 whom. It doesn't duck it, but it narrows it down.

15 MR. SUND: Well.....

16 MR. WENK: It's got the industry point of view.

17 MR. SUND:translate. Everybody here's right. One, in
18 terms of allocation of budget allocated to Coast Guard, that's a
19 presidential and congressional issue. And allocation of mission
20 of the Coast Guard is probably a presidential and congressional
21 issue. So on that one hand you can say that the President and
22 the Congress had failed, the same as we're probably gonna say
23 the state, the governor and the legislature failed to adequately
24 fund DEC and other regulatory agencies, but then you get to the
25 second level. Within those agencies, this manning and crewing

1 decision really had nothing to do Presidential funding or
2 Congressional funding. I mean the Coast Guard has that ability, it
3 has that money, it does that job now and I would say does it
4 poorly. So there's a multiple level of fault here, so to speak.

5 MR. WENK: It comes back to attitude like Time was
6 talking about.

7 MS. WUNNICKE: Yeah.

8 MR. PARKER: EPA under-ran Gorsuch. It wouldn't have
9 mattered how much money Congress plowed in there. It
10 wouldn't have been effectively spent on the side of
11 environmental regulation.

12 MR. SUND: So, I don't quite know how you're gonna
13 translate all of this.

14 MS. WUNNICKE: Pogo Senate really best.

15 MR. HAVELOCK: Well you're giving us some direction on
16 expanded findings. It's very helpful. Do you wanta go to finding
17 number four.

18 MR. PARKER: Plow on.

19 MR. HAVELOCK: Since we seem to be starting with some
20 of these generic findings with the way you're more comfortable
21 with as approaching this to take a look at the major findings
22 first. And that's the EPA. We're looking at a different
23 documents.

24 MR. PARKER: I don't see, considering what we've heard
25 from EPA how we could disagree with that particular insight.

1 MR. HERZ: Mr. Chairman, my sense is that I totally
2 concur with that one, but it seems to me that what the spill
3 demonstrated is that not only does EPA have no significant
4 presence in Alaska capable of responding to a major land spill,
5 but they also don't have the capability of playing a major role in
6 an ocean spill. And they are supposed to be.....

7 MS. HAYES: That's right.

8 MR. HERZ:although not in charge, they are supposed
9 to be part of the triumvirate that runs spill response and I think
10 we have to underscore that.

11 MR. HAVELOCK: Well, what is, what is the evidence to
12 support that proposition?

13 MR. PARKER: The evidence to support that is in the
14 material that's been accumulated showing the amount of people
15 who were put on the spill. EPA had six people on the spill,. The
16 Navy had a hundred. The Coast Guard had 190. And EPA's six
17 people on the spill, you can't find 'em in the record until bio-
18 remediation came up.

19 MR. WENK: I think the evidence is also by what was not
20 said by Mr. Ewing. That, I think -- frankly Theo as a
21 representative of a major federal agency, that I would have been
22 embarrassed to answer the questions about their role in the spill
23 the way he answered our questions. They played no major role.
24 They had no major presence. They don't have people doing the
25 kinds of jobs that an agency that's supposed to have major

1 responsibility should have.

2 MS. HAYES: Wait, I.....

3 MR. DOOLEY: We have that a letter of response to that
4 too.

5 MS. HAYES: Well, the testimony about the origin of the
6 bio-remediation project, I think, speaks for itself about where
7 that originated and why it was done.

8 MR. PARKER: And I think the other, you know,
9 substantial documentation on the role how dispersants were
10 used or not used, you go through that dialogue, which we have in
11 some depth, and you're not gonna find anything in there from
12 EPA on making a command decision on dispersants. Yet, they
13 control the -- they're the ones who control the dispersant list.

14 MR. HERZ: And on a broader sense, on a regulatory level,
15 they have the responsibility for inspecting facilities and tanks
16 and I know that in Region IX, California and Nevada and Hawaii,
17 they have 55-60,000 tanks that they're supposed to be
18 inspecting and they have a half-time person allocated to do that
19 job. I can't imagine that the allocation is any different here. So I
20 think it's a question of whether we do it here or whether we do
21 it in another section, but I just wanted to make sure that we
22 don't just say, in terms of inland spills.

23 MR. PARKER: Marilyn.

24 MARILYN: I guess I would just add to that. If you're gonna
25 talk about EPA, they don't the ability to respond. They don't

1 have the ability to regulate. And they don't have the ability to
2 plan. And planning meaning the RRT. I think we really have --
3 I think one of the findings, and this has just come to my
4 realization right now, has to be that the RRT really didn't do
5 adequate state/federal coordination with the federal agencies as
6 well as the state in planning for response in the state. So I
7 would just expand number four so that it includes what
8 Commissioner Herz has said about regulation and addition of
9 planning, including the RRT process, which they are co-chair of.

10 MR. WENK: Mr. Chairman, at the risk of redundancy on a
11 point that I made earlier, but I think it's gonna come up
12 repeatedly. If we ask the question, why did the EPA fail, just
13 like we asked the question about why did the Coast Guard fail,
14 you will find that the statutory authority is there, the technical
15 skills, though thinly spread, are there. The commitment by
16 some people at an operating level to serve the public interest is
17 there. So, something else quite serious was missing and I think
18 we all know what the hell it was and I think that we've gotta be
19 frank in saying what it was in terms of this mindset at the very
20 top that was very evident in the prior -- in the Reagan
21 Administration, but it hasn't been completely corrected yet. And
22 it's reflected in a tilting of the playing field, or whatever you
23 want to call it in terms of EPA's role and reflected also in their
24 budget.

25 And until that gets corrected at that level EPA is gonna

1 continue to -- if this happened next week, or if it happened next
2 year, everyone of us around this table would say the same damn
3 thing about EPA.

4 MR. PARKER: Yeah. Certainly reflected in the last U.S.
5 position in Belgium where they.....

6 MR. WENK: Absolutely.

7 MR. PARKER:said, you know, we're gonna stand fast
8 until our industry is ready to re-tool, you know, 20 years down
9 the pike or something.

10 MR. WENK: There you go. Absolutely.

11 MR. WALLIS: Question. On item four, what was your
12 additions to item four?

13 MARILYN: Well, here, I'll just amend what it says here as
14 best I can, but I think it should probably all be re-worded. The
15 EPA has no significant presence in Alaska capable of responding,
16 regulating, I would put comma, regulating and planning for
17 response to major land or playing a major role in water/oil spills.
18 Something to that degree.

19 MR. WALLIS: Now, do we -- we know that for a fact?

20 MARILYN: Well we know that the -- right, they don't have
21 the actual people resources, but we know that the R -- I think
22 we know that the RRT spend most of their time -- their role was
23 based on reviewing technology as the decision makers in the
24 spill thought that they would use a certain type of technology.
25 The RRT would review that to say yes or no, whether that oughta

1 be hot water wash or you know, certain.....

2 MR. WALLIS: Planning for instance.

3 MARILYN:type of dispersant, but they didn't do the up
4 front planning for how would the state's government people as
5 well as the federal government coordinate with each other
6 within the state and federal and between the state and federal.
7 The RRT did not do that.

8 MR. WALLIS: Do we feel that by putting that in there that
9 we can defend that.

10 MARILYN: Oh, yeah. I think we can defend it. I'd be glad
11 to write up in our background as to why.

12 MR. WALLIS: Okay, if we can defend it I've got no
13 problems in putting it in there.

14 MARILYN: We'll.....

15 MR. HAVELOCK: It goes without saying I'm gonna come
16 running back to the Commission with any of these findings that I
17 find we have adequate documentation to support and we'll also
18 be intriguing in the phrasing thereof.

19 MS. WUNNICKE: Mr. Chairman, Counsel, I think we may
20 get trapped in something if we don't make one finding up front,
21 also. And that is to distinguish between the common variety, the
22 garden variety spills, which is addressed by contingency plans
23 and addressed by that ability to clean up and a catastrophic spill,
24 which is not addressed by contingency plan and is impossible to
25 contain and the direction has to be toward the protection of

1 resources rather than containment or recovery of the oil. I
2 think if we make that finding and distinction then we won't get
3 caught as we go down the road in other recommendations in
4 trying to apply the common variety standards to a catastrophic
5 spill.

6 MR. HERZ: But that implies that the system works
7 adequately with the garden variety spills.

8 MS. WUNNICKE: For common variety spills.

9 MR. HERZ: I mean, I don't think anybody in Alaska feels
10 the Glacier Bay spill was responded to in an adequate way and is
11 what's going on in the Arctic now, is that being responded to in
12 a reasonable way?

13 MR. PARKER: Yeah. It's not being responded to at all.

14 MR. HERZ: That's nothing.

15 MARILYN: I would say there is a.....

16 MR. HERZ: I mean, I think the distinction needs to be
17 made, but it doesn't -- I just don't wanta make -- I wanta make
18 sure that we don't.....

19 MR. PARKER: The spill in the Bering came at an
20 opportune time for us 'cause it gives us a classic indication that
21 there's nothing there.

22 MR. HERZ: There's nothing there.

23 MR. PARKER: Absolutely nothing. The capacity to fly over
24 and look at the spill is what exists as the contingency plan.

25 MR. DOOLEY Esther, there's a conversation I had this

1 morning without distinct knowledge of the assessment. That
2 individual characterized the Exxon Valdez as the only
3 catastrophic oil spill we had this year. I pointed out to him that
4 if one of those three spills they had in the northeast coast had
5 been down in Chesapeake Bay, he have a different orientation,
6 but the response system would have been as inadequate as it was
7 up north. That changed his whole connotation of what was
8 catastrophic and what was adequate.

9 MR. PARKER: Yeah, I think 250,000 gallons is a helluva
10 big spill.

11 MS. WUNNICKE: Well, what I don't want us to get
12 trapped in to is making recommendations with respect to
13 contingency plans and response that are geared toward a do-
14 able, if they're done properly a do-able response, do-able
15 mitigation and then lull people again into a false sense of
16 security that they're protected in case of a catastrophic spill. I
17 think you've gotta have two different analyses of the event.

18 MR. PARKER: In order to do anything on the catastrophic
19 spill, there have to be major advances in technology at all levels,
20 which I think we could address in some of the
21 recommendations here. But that's, you know, you're right.
22 Right now we are just as vulnerable to another catastrophic
23 (indiscernible).

24 MS. WUNNICKE: That's my only reason for making that
25 point.

1 MARILYN: Could I make a further distinction to what
2 Esther just said about catastrophic and non-catastrophic and
3 those which she, I think, stated would have contingency plans
4 which potentially work, which we then discussed whether they
5 do or don't and those which don't -- and what I in my December,
6 December 3rd, has my name on it, draft at the top, "F". I have
7 another approach just to bring to that just to be considered,
8 which is giving the state' explicit authority to require the
9 industry plans to ensure capability to respond to every size spill.
10 And I think the decision, which the Commission might want a
11 look at is whether you want to put the burden on the industry to
12 provide that capability of response from all size spills or whether
13 you want to put that burden on the state when you're talking --
14 and when I say all size -- the reason why I say all size is to
15 include catastrophic spills, because presently we know, based on
16 Al Adozeak's memos on his discussions with Paul O'Brien, the
17 past head of the oil spill response office, he did feel that they
18 had the authority to require industry, and it didn't make --
19 necessarily think that they should, but he did not feel they had
20 the authority to require the ability to respond to a worst case
21 scenario spill.

22 MR. WENK: Mr. Chairman, I think this is a key issue
23 that's just been brought up. I'm not sure this is the time to
24 discuss it, but to over simplify what Marilyn was saying, it's a
25 decision the Commission I think has to make not -- first of all

1 with regard to the state responsibility, but secondly whether the
2 state expects the capability to be in private hands, overseen by
3 the state or whether the state will provide the capability. And I
4 think there is really a fundamental issue here which, if we can
5 reach agreement on, we'll have a fall out that will straighten out
6 a number of other related issues.

7 MR. PARKER: Uh, hum.

8 MS. WUNNICKE: Mr. Chairman, I'd support that in that I
9 think that if we heard one constant theme in the testimony
10 before this Commission, it was that the spiller should not be in
11 charge.

12 MR. SUND: Well, Ed brings up a different point, not that
13 the spiller being charge of the state oversight, should the state
14 be capable.....

15 MR. WENK: Right.

16 MR. SUND:of doing it itself regardless of the spiller.

17 MS. WUNNICKE: Yeah, then there follows from that.

18 MR. PARKER: In my own thinking on that, you know,
19 we've had three major strands developing here. The industry
20 strand is represented by Piro (ph) and the Alyeska. We've got
21 the federal strand that's developing in the Congress to put more
22 resources in there and then you've got the state's developments
23 from last spring to put more resources in there and since these
24 are all in a state of flux, melting them has been very difficult and
25 I think getting back to your point, fixing the absolute

1 responsibility for determining that all three of those come
2 together in a coherent matter is the key to what we got to make
3 our recommendation, yeah.

4 MR. DOOLEY: I have a suggestion that in the past we've
5 been trapped I think in the industry. The Alyeska contingency
6 plan, the NRT contingency plan, I mean they use that term for a
7 host of different things. But if we took a terminology and said
8 let's look at the Prince William Sound response plan, not
9 addressed whether it belonged to Alyeska or the state or the
10 feds, and then, within that context you can feel that two or three
11 level response. When there's such a low level response,
12 primarily a private corporation can sort of clean up it's tracks. A
13 certain other threshold gets hit, hey, it's definitely Alaskanized
14 and the state's in charge, and then there may be some third
15 threshold, an opportunity for the federals to marshal in their
16 resources.

17 But we deal with it in context of a regional response plan,
18 without respect to the specific industry entity that's involved, as
19 has been in the past, it would be a lot easier for every one to
20 coordinate.

21 MR. WENK: Uh, Mr. Chairman, I think we're bringing out
22 a lot of relative points here that I'm wondering, am I right John,
23 are helpful to you in terms of in a sense getting more of a texture
24 to these items.

25 MR. HAVELOCK: My problem is that you're moving all

1 over the agenda. And where you are you're talking about
2 response and I was just flipping to page three of the first
3 document I suggested you start from, the second page three,
4 that as I start the renumbering with response. And with respect
5 to the state's ability to respond, I broke that down regionally
6 because I don't think it's realistic or at least it's a policy question
7 for you to determine whether you're gonna say that the state is
8 gonna have a, itself, a response capability, except in -- and to
9 take over a spill except in the case of Prince William Sound and
10 Cook Inlet. In the Arctic are you ready to tell the state to bite
11 the bullet and to build a capability to respond or are you saying
12 go away, that's between the Coast Guard and the private
13 industry? The same goes for south of Hinchinbrook Entrance
14 and so on. So it seems to me, you need to divide on a regional
15 basis as to what you're gonna say the state's gonna do in the
16 terms of Alaskanizing a spill.

17 But on the other hand, as I say, agenda wise, from my
18 perspective, you've jumped off into an ancillar.....

19 MR. PARKER: Still, still the point which Dennis brought
20 up, which wasn't strongly emphasized in our hearing, but in the
21 conversation with a lot of the people, who've been working on
22 contingency plans, you have to get away from this multiplicity of
23 contingency plans. You have to have a contingency plan that fits
24 the area. And you plug in whatever elements are necessary in
25 that to make it work.

1 MR. HERZ: Well, in theory Mr. Chairman, it's my
2 understanding that the local response plans that are supposed to
3 be drafted by the Captain of the Port, but are usually inadequate,
4 were designed for that purpose.

5 MR. PARKER: Yeah.

6 MR. HERZ: And whether we wanta reinvent the wheel or
7 simply put on the list of things that have to be better or
8 optimally implemented is the difficulty. I think we should
9 maybe get a sense of where different Commissioners are in
10 terms of whether the state should have a response capability.
11 Because that is a major, major undertaking and if you have spills
12 once ever ten years, can you maintain a budget and a
13 preparedness in a state response capability that is gonna be
14 adequate. It's hard enough when you have the industry, which
15 has got the money and has got somebody else doing the
16 oversight to make them, or has the potential of having oversight,
17 you could do it. So, I mean there's a.....

18 MR. PARKER: There's only one way the state's gonna do
19 it. They're gonna put another tax, per barrel tax on to do it is
20 the only way the sate would be able to fund something of that
21 magnitude, so yeah.

22 MR. HAVELOCK: Well, in this discussion I managed again
23 on that same page three in the response part of saying that the
24 private parties must have a state-approved plan of response to
25 worst case scenarios spill, usable under either a federalized or

1 an Alaskanized spill response program. So, in other words, it is
2 assumed that there can -- there is gonna be one plan and it is
3 either a federal plan or a state plan depending on which
4 authority decides to take over and that all other contingency
5 plans are going to have to fit with that. Which I think is gonna
6 be a handy way, I might add, of taking some of the issues that
7 we've discussed about the sensitivity of commanding private
8 resources. Because the contingency plan developed by the
9 private party itself to be approved, is going to have to reflect that
10 those resources will respond to federal or state direction in the
11 event of a catastrophic spill.

12 MR. WALLIS: Mr. Chairman, I guess when I was looking at
13 this and thinking at it was that basically what we were looking at
14 in terms of contingency plans was imply some broad guidelines
15 on what industry would present. And that then those would be
16 reviewed depending on their own individual criteria depending
17 on the size of the ship, the facility, etc. And that we are simply
18 going to draw guidelines and review from that. Am I mistaken?

19 MR. PARKER: I think it depends on how far you take the
20 term guidelines in determining -- you know, make
21 recommendations on who administers the guidelines.

22 MR. WALLIS: Okay, well I guess what I'm getting confused
23 on then is when we talk about when industry, they have
24 contingency plans. When we talk about state, you talk about the
25 state having contingency plans. What are we calling contingency

1 plans for the state? What are we calling it for the industry? And
2 what are we calling guidelines. I guess I'm getting a little
3 confused on that.

4 MR. PARKER: The system is confused and that's why it
5 doesn't work.

6 MR. WALLIS: Every body has used a different terminology
7 here, I guess

8 MR. WENK: Mr. Chairman.

9 MR. PARKER: Dennis.

10 MR. DOOLEY: That was one reason I was suggesting that
11 we use terminology such as a regional definition with the words
12 response plan. Get away from some of these old nomenclature
13 because it adds confusion.

14 Contingency plan on a vessel is nothing more than a
15 glorified phone list. It says who to call. It says I'm in trouble.
16 And normally it's your agent, local agent at the top of the list.
17 And his next call would be an attorney. That was the case in the
18 Glacier Bay Incident.

19 Cook Inlet. When we use the word industry, with Valdez
20 it's sort of easy. We've, subliminally, we make that Alyeska's
21 seven companies. When we deal with Cook Inlet, hell Drift River
22 isn't talkin' with the other side of the Bay. Port of Anchorage
23 isn't talkin' with the southern end of Cook Inlet. So you're taking
24 a Cook Inlet Response Plan. That has to integrate all those
25 features. And there isn't an industry spokesman for Cook Inlet.

1 MR. WENK: Two points, the first one very briefly. We're
2 spending a lot of time, justifiably, talking about response, but I
3 think we need to spend a proportionate time on prevention.
4 And some of the thing concepts, I think, are going to apply and
5 let me give you an example. This is the second point.

6 I think what we're talking about gets back to a
7 fundamental principle that I'd like to throw out on the table that
8 has been discussed many times, but I'll put it in these start
9 terms. And that is that the state has the first responsibility to
10 protect its citizens. Now there's a long history of this with
11 regard to public health. Each state, it seems to me, has set their
12 own separate requirements for vaccination against smallpox,
13 with regard to the safety of drinking water and so and so, public
14 health. Some states have set their own requirements with
15 regard to whether or not they're gonna let somebody else's
16 vegetables in, in terms of the agricultural health. States, I think,
17 when they deal with hazardous substances, set their
18 requirements with regard to the safety of the vehicles carrying
19 the stuff in. I know the state of Washington does this from the
20 point of view of inspecting the brakes and so on of the trucks
21 carrying stuff into the state.

22 I think the same principle applies here with regard to oil
23 transportation. If you operate from that principle, then the state
24 has to do whatever it has to do to make sure that all the other
25 organizations that have a role, public and private, or I should say

1 federal and private, are doing their job, but the state itself still,
2 it seems to me, has a preeminent responsibility to its citizens,
3 represented by some very high level symbolic power, maybe the
4 Governor, and authority as already I think Esther and others
5 have pointed this out, to pull all this together in terms of the
6 performance of the system. Without getting into the details of
7 this contingency plan vs. that one vs. another one, there is some
8 ultimate performance with regard to preserving or protecting
9 the citizens in the environment that I think the state should
10 enunciate in absolutely unequivocal terms and I think that if it
11 can -- if there's a successful way to do this it then doesn't
12 necessitate going into fine grain detail further down the line,
13 which I think we would have difficulty sorting out item by item.

14 MR. PARKER: But you approach, you know, one of the
15 fundamental problems in doing this in the Alaska system as it
16 was developed in the Alaska constitution developed back in the
17 50's when everything was for centralization so we went for
18 strong governor and strong commissioner set up. And all of that
19 oversight that you just described is dependent on the, in our
20 system, mainly on the commissioner and the particular
21 perceptions they bring to the job and who they hire to work for
22 them. And, you know, it's -- we have to take a strong look at
23 whether that has really worked for the long term because so
24 many of our commissioners have so many duties now that if they
25 don't have their checklist with them, they're not quite sure, you

1 know, just what duties they do have to perform. What is it, how
2 many did you figure? 430.

3 MS. WUNNICKE: 700.

4 MR. PARKER: 700 had at natural resources.

5 MR. WENK: 700 what, duties.

6 MR. PARKER: Duties, legislatively mandated duties. 700
7 of them, so -- you know, getting that kind of focus, whether we
8 need something other, you know, than the Commissioner's
9 traditional role to provide that kind of oversight and continuing
10 focus is critical. Yeah.

11 MARILYN: If I could just add to that. Many times you have
12 legislative mandates, but what happens in legislatively mandated
13 may be of more important to protecting the public than what
14 happened legislatively mandated. And then you're caught
15 between doing what's legal and what doing, right.

16 MR. WENK: Well, first of all I must confess an absolute
17 naivete with regard to the state government processes, but it
18 just strikes me that there is a state role here and I'm.....

19 MS. WUNNICKE: From some corner of the bureaucracy.

20 MR. WENK: Hmmm.

21 MS. WUNNICKE: From some corner of the bureaucracy.

22 MR. WENK: From some corner and, of course, when I say
23 state, I'm thinking not just Alaska, but I think the same thing is
24 true with Washington, and California and so on. I think there is
25 a state role here, where the state cannot simply make the

1 assumption that the Coast Guard's gonna do this or API and Piro
2 (ph) are gonna do that and so on. I think the state has got to
3 serve it's own constituency first. But that doesn't necessarily
4 mean it's gonna have all the hardware in place.

5 MR. PARKER: In carrying that one step further, in getting
6 back to one of Mike's earlier comments, the head of the port
7 association was on the phone the other day. It's Paul Pughes
8 right now, the mayor of Unalaska, the port people wanta meet
9 with anybody who's available on December 15th to discuss their
10 view of the world, which I think (indiscernible-coughing)
11 discovered that, yeah, the port directors do have to have some
12 responsibility in their response plan. There's Pugh sitting out
13 there at Unalaska with 1400 sailings a year now, four major
14 ships a day coming in and out of port. 80 million, I think he said
15 80 million gallons a day of diesel being pumped You know, a
16 major operation, no response plan whatsoever. And you know,
17 whether the -- so, there's.....

18 MR. SUND: Dutch Harbor.

19 MS. WUNNICKE: At Dutch Habor.

20 MR. PARKER: A definite focus that needs to be brought to
21 this, and you know, since all these municipalities are creatures
22 of the state, why it's still the state that is there primary.....

23 MR. WENK: Well, don't -- Mr. Chairman, I think it was
24 you raised earlier the fact that there's this geographical
25 difference in terms of what you do here vs. there or maybe it was

1 Dennis made this point. I think, or I'd raise the question, is it
2 possible that there is a way to establish some fundamental
3 principle at this level which, in a sense, is a guidance to
4 whoever's gonna read this report, but without telling 'em line
5 and verse exactly what to do.

6 MR. PARKER: Uh, hum.

7 MS. WUNNICKE: Mr. Chairman, given all that, it's still a
8 federal -- we still are a state within a federal system. And, as
9 Counsel has our recommendations under prevention addressed
10 first the United States. But there are, there are probably three
11 changes, basis changes, that would have to be made for the state
12 to be able to perform. And one would be that Congress not pre-
13 empt a stronger state requirements and that the presumption of
14 the shipper being in charge until proved incompetent, or unable
15 to perform, that presumption should be changed so that -- it
16 should be just the opposite, as a matter of fact. That a public
17 agency should be in charge unless the shipper can assume
18 ability and competence and so forth. And one way that I think
19 we might even achieve what I think Commissioner Wenk is
20 getting at, would just be by agreement and delegation from the
21 appropriate federal agency to the state, some of the functions
22 that need to be performed by the state, but under the current
23 federal system cannot be performed because of that federal
24 system. So I think those are points to be made when you're
25 talking about recommendations to the United States.

1 MR. WENK: Well, Mr. Chairman, along that line, is it true
2 now that the states, let's say with regard to environmental
3 protection, can put in laws that are more stringent than the
4 federal government, but not less stringent?

5 MR. PARKER: That is the way it is with water quality.

6 MR. WENK: Isn't that the pattern?

7 MR. HAVELOCK: If it's consistent the issue is.....

8 MS. WUNNICKE: Is whether the fields been occupied.

9 MR. HAVELOCK:if you've got a -- let's say -- I mean,
10 arguably, we actually could require tankers to require certain
11 containment equipment on board, if the Coast Guard hasn't
12 already said that they should do something in that regard. If
13 they have, then obviously, maybe not so obvious, but a vessel
14 cannot try to comply with two different definitions of the
15 technology that's involved, so that amounts to an occupation of
16 the field.

17 MR. WENK: So, there is, as long as there is consis -- did I
18 understand you correctly? As long as there's consistency, the
19 state can be tougher.

20 MR. HAVELOCK: I think that is the case now, although
21 obviously there would be oil companies who would litigate that
22 on a case-by-case basis with you.

23 MR. SUND: Well I think the -- one of the prime examples
24 is air quality with automobiles in California. But, you know -- that
25 got in there where California put in a more stringent air quality

1 recommendations -- requirement for cars sold in California, but
2 they cannot stop you, if you bought your car in Washington and
3 drive it into California and do not meet their air quality
4 recommendation, they can't take your car away, 'cause that's an
5 interference with inter-state commerce. And so, they kind of
6 tackled part of the problem, but.....

7 MR. HERZ: But, if you re -- when you go to register that
8 car in California, you must meet emission standards in California.

9 MR. SUND: Yeah, but you can't stop me from driving my
10 Alaska car into California. And I think -- you know, I'm just
11 gonna take it right into tankers, right. You can require more
12 stringent requirements for a tanker in Alaska, maybe, but, you
13 know, you just right into this inter-state commerce argument, so
14 requiring the construction of a tanker or the operation of a
15 tanker to be more stringent while it's within Alaska waters.....

16 MR. PARKER: I think, I think your control is at the dock
17 site. I don't think that federal pre-emption extends to the dock.
18 And whoever owns the dock, I think, is either the Captain of the
19 port in the case of a public dock, or the owner of the dock in the
20 case of a private dock, and just say you can't tie up here.

21 MR. WENK: Well, I'd like to -- I understand the point
22 that's been made. I'm reminded though that tank trucks
23 carrying toxic materials into the state of Washington can be
24 stopped at the state line and inspected to meet State of
25 Washington standards for truck safety, state of Washington

1 standards. Just the same way that trucks carrying vegetables
2 into California can be stopped. But, I realize we are treading,
3 getting awfully close to this threshold of federal/state pre-
4 emption and I'm just speaking for myself. I'm inclined to
5 wanting to live a little dangerously in terms of the Commission
6 saying the state doing so and so. If someone later on challenges
7 this and goes to court, that's one thing, but my impression -- and
8 we know darn well that the oil companies have already done.
9 They did it in the state of Alaska and we know about this and I
10 know something's going to be said in the report. They did it in
11 the state of Washington, when we put on the tug escort and the
12 tanker size limit. My impression is that they're gonna be a little
13 bit timid right now, in terms of their public relations, of rushing
14 into court and challenging this thing, the other, the way they did
15 previously and I think there's a window of opportunity here.

16 MR. PARKER: And I think based on the work we have
17 from Allison Reasor comparing those two cases, why I think the
18 courts would probably take a someone different look on the same
19 issue to. John.

20 MR. SUND: Well, I just hold off on my somewhat speech
21 here, but I think you can build a case, a strong constitutional
22 case for the requirement of the state to protect its people and
23 manage its resource. Article VIII, Natural Resource Section is
24 fairly strong and I think you can build a case that we probably
25 haven't done it adequate. And I have a five year long speech I

1 can give the two minute, five minute, or ten minute version on
2 call, any time you want.

3 MR. WENK: Here's a call for it.

4 MR. SUND: Well, no, I'm gonna let it sit for a little bit and
5 I'm just gonna assume it's there. So now let's get down and let's
6 assume that we can push the pre-emption of state and federal
7 law a little farther than what it was. Okay, those are -- now you
8 have the constitutional basis, you have a social basis and you have
9 a legal basis. My next question is, to do what? And that gets
10 down -- I think we can lay all that out in this argument, just not
11 having to re-hash it here. Let's just work from the assumption
12 that all that is valid, what do we want to recommend and how
13 specific a recommendation do we want to make. And then I
14 think then, when we tackle those issues, you get into somewhat
15 of Ed's issues, do we have a factual base to support that
16 recommendation. And are there two options to doing it and
17 maybe what are the ramifications of those options, to get down
18 to that. But, just so that we go down to that level of discussion.
19 But that's where we wanta be.

20 MR. PARKER: Okay.

21 MR. SUND: And I'm not saying anybody in the state's
22 convinced that we do have a constitutional mandate to do it.
23 There's a big discussion about that. Or if we do, that we should
24 do anything about it. We obviously have a large discussion of that
25 'cause of the way we allocate our budgets every year. And, but

1 even if everybody agreed, then somebody's gonna say, well what
2 should we do? What do you guys recommend?

3 MR. WENK: You're asking what are the functions to be
4 performed?

5 MR. SUND: Yeah.

6 MR. WENK: Okay.

7 MR. HAVELOCK: I would agree that that's a critical
8 question when you apply it on a regional basis. When you take
9 out it includes a problems with the Matthew. The finding is no
10 problem. We can find that neither the federal nor the state
11 government have a capability to respond to a spill of that
12 magnitude in Arctic waters. So there we are. So the question is
13 then, who's gonna do it and what kind of stand by resources are
14 you gonna have? I think the state, under those circumstances is
15 likely to balk at providing the funding and etc. to respond to that
16 in a direct way. But, to follow a strategy, and it's a strategy that
17 we do recognize that the federal government has indeed said
18 that it has a responsibility in this area and so we pursue the
19 strategies that have been listed of first of all either
20 recommending Coast Guard rule to cover it or to federal
21 agencies recommending rule to make them do what they should
22 do. And secondly, that we do use our own resources at some
23 level. Either through inter-state compact, if necessary -- but you
24 know, these are unwanted babies through the -- when you get
25 into those tough situations they're not really covered now. It's

1 not really gonna be a question of pre-emption, it's gonna be a
2 question of who wants to get stuck with this job that people
3 don't have the resources to do.

4 MR. PARKER: Well.

5 MR. SUND: Well, I just wanta kind of respond a little bit
6 to that. You look at this whole preliminary outline draft thing
7 that was mailed out to us. Why are we here, right? And it goes
8 into the Commission's work plan. One is to inform people of the
9 present risk. And I think we're doing. If you look at the cargo
10 carrier out in the Aleutians. That is an existing risk. You can
11 recommend ways to stop it, but basically my feeling is that
12 people in the state of Alaska, that is an acceptable risk. People
13 in the state of Alaska are not willing to pay the price to mitigate
14 that risk. They're not willing to one, shut the fishery down;
15 secondly, they're not willing to pay the price, for the
16 preventative inspections necessary. And thirdly, they're not
17 willing to pay the price to get ready to respond to what I would
18 call minimal spills in arctic waters. I think we're probably
19 prepared to yell at the federal government to do it. That's easy.
20 It doesn't cost anything to do that. But I think it get's back to
21 Esther said. You've gotta tell people what risks they're exposed
22 to and then the people have to consciously make a decision
23 whether they like that exposure or not. And that's where we're
24 at today.

25 MR. PARKER: And pragmatically, though on spills like

1 that, you know, you can yell at the feds. If the feds don't
2 respond, the state has the capability through the air guard to
3 respond. The casual spills you're discussing, unless they're, you
4 know, we're talking about ship spills here and not platform
5 spills. The only way we're ever going to handle those in a
6 pragmatic matter is to tackle them by air, and, with either
7 dispersants or coagulants, 'cause there's no way you're going to
8 get there in time to do anything on mechanical recovery. So,
9 you know, maintaining that kind of capability is well within the
10 realm of probability and if the feds don't do it, the state should
11 have the, at least be able to make the response; have it in it's
12 planning that it should be there to respond if there is federal
13 capability to respond.

14 MR. SUND: Well, it's a case of the financially insolvent
15 spiller.

16 MR. WENK: Mr. Chairman, forgive me if I keep coming
17 back to this notion of prevention, but earlier Esther pointed out
18 the separation of spills, large/small. And I believe there's sort of
19 a consensus among the experts that the catastrophic spill is
20 uncontainable. But there's another kind of spill that we're
21 talking about right now that we oughta prevent, and that's the
22 much smaller spill, but in a geographically remote area where
23 the clean up is just as unlikely, or containment and clean, than
24 the large spill in an accessible area. Erego, prevention.

25 John, you were raising the question about whether or not

1 the citizens of Alaska are willing to pay the price of, and now
2 here's question to me, pay the price of better prevention. I
3 don't think we have a price tag on that yet and my impression is
4 that, from studies that have been done in other places, that the
5 cost of prevention is amazingly low; certainly as compared to
6 clean up. But I think the cost of prevention is really quite low
7 and this then comes down to the will, the political will to
8 prevent and it's expression through proper authority and so on
9 and so on. And my feeling is that when we get down -- I know
10 we got off of John's document, the November 30th one, but
11 down to item five, in terms of findings, with regard to DEC a
12 regulatory agency, talking about significant disaster response. It
13 seems to me that in the Alaskan history, about which I know
14 very little, DEC had an initiative and responsibility with regard to
15 prevention. And my feeling is that the topic that we're talking
16 about, vis-a-vie state versus federal, etc., etc., boils down though
17 to underscoring more strongly -- to emphasize more strongly
18 that has been the case in recent years, the role for a state agency
19 to deal with prevention. And, again, my, I think that the cost to
20 the cost to the Alaskan taxpayer is significantly lower than when
21 we're talking about the state role in contingency response. But
22 it has an awful lot to do with this point about our not being able
23 to handle the big spill and not being able to get to many of these
24 little spills.

25 MR. HERZ: Mr. Chairman, it seems to me that part of the

1 costs that you're identifying and that we haven't really addressed
2 is the cost of the environment if you don't have this preventative
3 and response capability. And it seems to me that if you look at
4 the report from Dan Lawn on his trip to Solem Voe (ph) and to
5 Norway, there were decisions made at a very high level in that
6 country, but I don't know the degree to which it's government
7 versus citizens, or both, that there is going to be an authority
8 that determines that part of the cost of doing business is good
9 prevention and good response. Now the difference there is that
10 the profits from that business belong to the state, because these
11 are state-run industries. But the bottom line question here, it
12 seems to me, is whether or not the people of Alaska feel that
13 they want to decide that part of the cost of doing business is to
14 establish this strong prevention and strong response capability
15 and I think that is not -- the answer to that question is not clear
16 to me as an outsider. I don't know if it's clear to people inside.
17 But, until that question is addressed in some way to really
18 develop a capability that is as professional and as dedicated as
19 what you have you Scotland and Norway isn't gonna happen.

20 MR. PARKER: No, it was answer in part last year by the
21 imposition of the five cent a barrel tax up to build the 470 fund
22 up to 50 million. That was the first step in that direction. I
23 think.....

24 MR. WENK: But isn't it up to the Commission to address
25 this very point?

1 MR. PARKER: Oh yeah.

2 MS. WUNNICKE: Yeah, but I don't think we pre-judge
3 what's acceptable. That gets determined....

4 MR. PARKER: You wanta take a five minute break or you
5 wanta keep on.

6 MS. HAYES: I wanta hear what Marilyn has to say.

7 MARILYN: Okay. Basically all I was gonna say is I was
8 gonna go back to the St. Matthew spill for just one moment to
9 explain that there's two things different about that kind of spill.
10 One is that that vessel is not required to have a contingency plan
11 no matter how much oil or fuel is contained. It is only tank
12 vessels and barges and offshore development and facilities have
13 to have contingency plans. Also, they are not required to have
14 the kind of super financing responsibilities for those kinds of
15 vessels, the same kind as the spillers carrying oil and oil barges,
16 etc., are supposed to have. And I just wanta point that out to you
17 as difference as far as that spill. Because that -- we're not even --
18 whether that person's financially solvent or not, we're not
19 requiring them to have either of those two things.

20 MR. HERZ: But if, if you had a contingency plan
21 arrangement, or a response plan as Dennis is talking about, you
22 would, in fact, be addressing not only tankers and barge vessels,
23 you would be addressing everybody who's there.

24 MARILYN: That's right.

25 MR. DOOLEY: Much more -- it takes a much more

1 complete picture to operate a (indiscernible) and Dutch Harbor
2 is our biggest refining port, import area in the state. It does, I
3 think 89's a little, I think it's close to about eight million gallons
4 a day. But it is servicing an enormous fleet of boats out there.
5 And so it has significant impact in terms of servicing bulk plants,
6 as well as servicing the fleet.

7 MR. ____: Here it goes, a five minute break.

8 MR. PARKER: Okay.

9 MR. WENK: Is it all diesel now?

10 MR. DOOLEY: Yes.

11 (Off the Record)

12 (On the Record)

13 MR. HAVELOCK: Mr. Chairman, I would sort of add to
14 that one. Sort of a DEC finding, that the DEC also does not have
15 a regulatory capability sufficient to its task. That is, this one
16 addresses a response, but the evidence is quite clear involved
17 that there's insufficient strength in the statutory provisions to
18 allow DEC to do its job and possibly you've got personnel
19 resource issues there too. So figure that as a finding included
20 for that or a second finding of DEC.

21 MR. SUND: Maybe, since Mr. Wenk here hasn't heard my
22 two minute version and some other people have, I'd just like to
23 lay out my thesis here of what we're at for just a couple seconds.

24 But I think one of the problems we have in this state is
25 the basis this is a common property ownership state and we're a

1 lot different than other states and the fact that the people here
2 have decided to leave all of the property, the major property of
3 this state in the common ownership. All the land, all the water,
4 all the minerals are all owned by all the people. So then you look
5 at our constitution in Article VIII in the Natural Resource
6 Section and it gives a mandate that all of that property shall be
7 managed by the people. And I draw the conclusion from the
8 ownership, if you own the land, you also have the responsibility
9 in large works to manage the works in its total concept of
10 management. And I think that's where the state has failed, and
11 it's kind -- you can go back Garret Hardens (ph), you know the
12 tragedy of the commons, if anybody here has been through his
13 thesis. But the commons gets destroyed because nobody
14 managements the commons. It's just utilized by everybody and
15 nobody has a private sector interest in the managing of it. And
16 so, the state has decided not to put its resources into private
17 ownership and to maintain it in public ownership. So, you can't
18 look -- when you look at how the state budgets, you can't look at
19 other states for allocation of budget to see whether we're doing
20 good or bad. 'Cause we're different and we need to allocate a
21 larger portion of our budget to management of our resources.
22 And in this case, the management I think we're talking about
23 this table, is regulation. In management, you have to inventory
24 what you have. You have to come up with a plan to allocate it,
25 whether it's gonna be wilderness, whether it's gonna be

1 harvested, whether it's fish or whatever. And then if you're
2 gonna allocate it out to somebody then you have to have the
3 police authority or the regulatory authority to make sure that the
4 allocation plan is adhered to. In this case, we've allocated a
5 bunch of oil out and we're running it down this pipeline.

6 And that kind of gets back to -- you know, I can give you
7 all the statistics. Less than five cents of every dollar, four and a
8 half cents, of every general fund dollar in this state is spent on
9 managing the natural resources of the state. If you take the
10 entire budget of Fish and Game, DEC, Natural Resources, and
11 Fish and Wildlife Protection out of public safety, it's 110 million
12 dollars.

13 MR. HERZ: What percent again?

14 MR. SUND: Well, it's 110 million out of 1.8 billion goes to
15 those re -- now that's not -- that's the state funding portion.
16 They have some federal funds, but we spend \$110 million in the
17 division of Corrections keeping people behind parts this year
18 and they're asking for a \$35 million increase so they can put
19 more people behind bars. That's kind of where we're at.

20 And I think the finding on number five, here, is that --
21 isn't so much DEC a regulatory agency. It's this dual thing we
22 talked about earlier like the Coast Guard. It's the Governor and
23 the legislature has failed to adequately allocate enough of the
24 state resources into management. That's a finding. And then
25 within that you have a sub-finding down there that DEC, with it's

1 resources that it had, or Fish and Game with the resources it
2 had, maybe didn't do an adequate job within those numbers.

3 But I think there's a bigger picture and it's the one Ed has
4 kind of pointed out is at the top level we made some very hard
5 policy calls and I have to say I was a part of 'em for two or three
6 years before this whole thing dawned on me and I began to
7 figure out where the problem was that we get into this.

8 So, you know, another way to look at it is if you take and
9 look at this huge funnel of money coming into the state. You
10 know, this big arrow diagram. You had this huge arrow coming
11 in and that's money. 85, 90%'s from oil and then you have this
12 little box and it says state government, right, comes in. And
13 then you have -- look at what comes out. And you have this little,
14 narrow, little trickle line running out, called allocation for
15 resource management and then you had this huge line coming
16 out of expenditures on people. We expend a large sum of this
17 money in this state on people. We put it in to education. We put
18 it into health and social services. We put it into people in jail.
19 We put it into public protection. Not to say they're good or bad,
20 but that is the decision this state has made.

21 And I think on this Commission, the finding I would like
22 to say is that there's been an inadequate allocation of the state's
23 funds in terms of management, in a big sense, of it's natural
24 resources.

25 MS. WUNNICKE: Hear, hear.

1 MR. SUND: And then, I can get into defining
2 management in terms of the public trust. I have a trustee ship
3 theory of management that we have to preserve or manage the
4 resources, not only for today, but the future generations and
5 that's when you get into this man -- the commons out there has
6 to managed in a way to preserve it for the future. And I think
7 that leads you into the issue that we had inadequate regulatory
8 management oversight of the tanker industry. It's self evident
9 because we had a tanker that destroyed a large part of some of
10 the future or the commons that the state is responsible to
11 manage.

12 So that's why I said earlier, I can get you a line from
13 constitutional authority to political authority, you know, that
14 whole line down. But, you can go in, and I don't necessarily
15 think people in the legislature of this state agree with my
16 theory, and they're not necessarily willing to re-allocate existing
17 funds. They're gonna do like Walt said. If we want to put more
18 money here, then go find some new money, which brings up
19 other problems. But, I think it's pretty evident that in this case
20 there was not an adequate regulatory authority.

21 And then you get into the next thing and say we'll what --
22 the legislature's gonna say what can we do? And then I think
23 we, as a Commission, have the responsibility to make some basic
24 findings. I think on the pre-emption issue, we can re-visit the
25 pre-emption issue. We can re-visit ten years ago and we have

1 some legal opinions and work that we've done, that we can point
2 out and say, guys, you can go back and do some things that you
3 didn't could be done. Legally, the backing is here. Here's the
4 commission report. It's here.

5 Okay, then the next thing is what should be done and how
6 far should the Commission recommend it. And I'm just dealing
7 on the prevention issue for right now, but you know, I think
8 some of the things we laid on the table -- tanker inspection at
9 Valdez, control of the port can be done legally, and should be
10 done.

11 MR. WENK: Talk about escort vessels, pilotage, all kinds
12 of things.

13 MR. SUND: Well, I think the whole issue with the tug
14 escort, pilotage, staying in the tanker lanes, going at slow
15 speeds, navigating ice. I think we all know who had that
16 authority. A guy named Williams walked into Alyeska and said,
17 thy shall be done, and it was done. And when he leaves it'll be
18 undone.

19 MR. WENK: Yep.

20 MR. SUND: So, anyway that's my four-and-a-half minute
21 speech of how to get from here to there.

22 MR. WENK: Thank you very much.

23 MR. SUND: You hadn't heard it before, but I.....

24 MR. WALLIS: We should just, on all recommendations,
25 just put 'em all down and then tomorrow or the third day, then

1 we can talk about, you know, where we're gonna trouble with
2 pre-emption.

3 MR. PARKER: Uh, hum.

4 MS. WUNNICKE: Mmm.

5 MR. PARKER: John.

6 MR. HAVELOCK: I guess is, I just want to reference you to
7 the separate sheet called, findings of Chevron versus the Sherald
8 (ph) theory.

9 MARILYN: Make sure they have it.

10 MR. HAVELOCK: Huh?

11 MARILYN: Are you sure they have it.

12 MR. HAVELOCK: Yeah. You got a handout this morning.

13 MR. SUND: Really?

14 MS. WUNNICKE: We did?

15 MR. WALLIS: I don't think so.

16 MR. SUND: I don't remember seeing.....

17 MS. HAYES: Yeah, it's on the last page of this one, the last
18 page.

19 MR. PARKER: Yeah, it's here.

20 MR. SUND: There it is. We got it.

21 MR. HAVELOCK: Alright.

22 MR. HERZ: Which one?

23 MS. HAYES: The last page of this one.

24 MR. SUND: The last page of John's recommendation.

25 MR. HERZ: John Havelock's memorandum?

1 MS. HAYES: John's November 9th, 30th findings.

2 MR. HAVELOCK: Yeah. I didn't know that she stapled it
3 to the back. At any rate, it brings out, it seems to me a very
4 major thesis about what went wrong. And I think that we do
5 need to pay a lot of attention to the impact that the Chevron,
6 actually Chevron against Hammond, the impact that this case
7 had in terms of its demoralization of the entire state effort with
8 respect to both prevention and response. And I think, you
9 know, if you're talking about what happened; why the state went
10 wrong, I don't think you really need to look for devil's theories
11 so much as seeing what the implication was. How this case was
12 -- not so much what it said, although that was devastating
13 enough, but how it was subsequently used as a basis for general
14 philosophical positions the state had no business in regulating
15 the oil industry; that it was a federal responsibility at most.

16 MR. WENK: Mr. Chairman, could I just verbally applaud
17 that page that has been appended.

18 MR. PARKER: uh, hum.

19 MR. WENK: I think this is a, first of all it's, as I read it, is
20 a piece of very significant history. Secondly, it says something
21 about the mindset of the state, however it was steered, that had
22 a lot to do with the interval after that Chevron/Hammond
23 decision until the present time with the consequences you see
24 outside there. And what I hear John saying in that
25 recommendation is that now we wanta go back to Adam and Eve,

1 philosophically and, regardless of that past action, say the state
2 really does have the obligation to its citizen for, as you say,
3 higher standards of compliance with regard to safety. I'd just --
4 I think this is a very significant contribution.

5 MR. PARKER: I -- yeah, it's a nice summarization. It's
6 probably read very nicely, I would guess. Anyway, on following
7 up a little bit on what John said on the allocation of resources, I
8 think you look -- on our Fish and Game we put a thousand people
9 to work on it and they will tell you that's enough, but it's still a
10 thousand people we have working in Fish and Game on Fish and
11 Game matters. When you look at oil and gas and you combine all
12 the people working in DNR and DEC, on oil and gas matters,
13 why you're talking about less than 50 people.

14 MR. SUND: Department of Revenue has people.....

15 MR. PARKER: Huh?

16 MR. SUND: Revenue has people in there too.

17 MR. PARKER: Revenue, but you still, including revenue,
18 you're still talking less than 50 people.

19 MR. SUND: Yeah, I was giving you the benefit of the doubt
20 in lumping everybody. I wasn't gonna get it down the.....

21 MR. PARKER: Yeah.

22 MR. SUND:miniscule.

23 MS. WUNNICKE: I used what point John are making and
24 made extremely well and I wish you'd seen the light soon, but
25 anyway.

1 MR. SUND: You have to put it in perspective. I was in
2 charge of cutting her budget for two years before I saw the light.

3 MS. WUNNICKE: Yes.

4 MR. SUND: So, I cut.....

5 MS. WUNNICKE: But now that you're a Methodist cat and
6 have you're eyes open. I used to try to cast it in terms of a
7 corporation that if you had a private corporation that had the
8 ownership of the land and the resources of the state of Alaska
9 had, and the responsibilities that went along with that, can you
10 imagine how big a staff it would have taken; how many lawyers
11 there would've been; how many accountants there would've
12 been; how many management there would've been. Thank you
13 John. All Methodists are welcome. You're great. I'd like to have
14 that verbatim in the report.

15 MR. WENK: This Commission, however, is quite
16 ecumenical.

17 MS. WUNNICKE: What?

18 MR. WENK: The Commission is ecumenical.

19 MR. SUND: Yes.

20 MS. WUNNICKE: Well, Methodists.....

21 MR. SUND: Actually, I'm Norwegian so therefore I'm
22 Lutheran.

23 MS. WUNNICKE: Or Lutheran, well then I can tell the
24 story, they were Lutheran cats.

25 MR. SUND: Bring it back to order, Mr. Chairman.

1 MR. PARKER: As we proceed to number six.
2 MR. WENK: No, no, excuse me, just a quick.....
3 MR. PARKER: Go on with question five.
4 MR. WENK:question. Could I understand that finding
5 number five will somehow or another incorporate the spirit of
6 that last page?
7 MR. HAVELOCK: Yes.
8 MR. WENK: Okay.
9 MR. PARKER: Number six. Can we document that?
10 MS. WUNNICKE: Mr. Chairman, I would wish that we
11 would make a point with respect to number six, that not every
12 oil company or every oil shipper is configured or owned or
13 managed the way that Exxon Shipping is, but that they all have
14 common needs and we've already spoken to those, I think, in
15 some of our technical recommendations in terms of adequate
16 manning and regular training and safety consciousness of the
17 crews and all of those elements of common need, but I do think
18 it's a point still needs to be made.
19 MR. SUND: I see from six that we're now -- the rest of
20 these kind of move beyond prevention into what do you do later.
21 I think we spent some time looking at why or where and what
22 evidence we have that the Coast Guard may have failed, and
23 made DEC fail. Those are from regulatory oversights. I think to
24 me the question on number six is something like, should a
25 company have a social conscience to provide more protection of

1 the environment or the safety of its vessel than absolutely
2 required by regulation or by law. In other words, do we expect
3 our corporations to always operate on the thin line between what
4 is adequately required by government or regulatory entities
5 which are only doing it because they have the trusteeship of the
6 common property or the common good of the people involved.
7 And I think the point Esther brings up is yes, some do take that
8 point of view and then there are others who somehow go beyond
9 that a little bit.

10 MR. PARKER: I think you have to aim your system at the
11 lowest common denominator, though, and not at the highest.

12 MR. SUND: So, the finding then, if there is a finding, or
13 the decision of the commission is to make an assumption that
14 from recommendations from us, that all companies will attempt
15 to, or be led to, or the indication or inclination will
16 be to, I call it operate on the fine, thin line of, in this case,
17 tankers moving the largest volume of oil in the thinnest steel
18 ship with the least amount of power and the smallest crew
19 possible. In other words, the highest degree of risk to the
20 people and the environment. Is that the basis upon which we're
21 gonna make the rest of the recommendations? I throw it on the
22 table 'cause I don't have a good answer for it.

23 MR. WENK: Can I speak to this for a second, Mr.
24 Chairman?

25 MS. WUNNICKE: Go ahead.

1 MR. WENK: It seems to me that we've learned a couple of
2 things from, not only this accident, but others similar to it,
3 where we have seen an instant focus on liability, which is sort of
4 a post-factive thing, and not enough on accountability and
5 responsibility or social responsibility. The Commission has an
6 opportunity to bring that focus back as a finding, but it goes
7 beyond that to what makes, what forces action. Experience, I
8 believe would suggest that what forces accountability is visibility,
9 is public information and that's what's been seriously lacking in
10 the past with regard to the way these systems operate. Forgive
11 me for going back to that paper I presented, but it was -- and I
12 really wasn't very clear on this point, and they're a couple things
13 I wasn't clear about in there, but this is one, and that is the
14 notion for example requiring social accounting in the annual
15 statement before the SEC, by these corporations as a step
16 toward this matter of heightened visibility. The encouragement
17 for coastal states to be represented some way on Boards of
18 Directors of these corporations, same sort of thing. But most
19 important the notion of an annual report. In there the focus was
20 on a report of the President. I see that's listed in John's list
21 here. But a report by the Governor, if indeed this Commission is
22 gonna head toward this responsibility, report by the Governor,
23 which contains some of the same kind of information with
24 regard to what's going in and out of Valdez and other places.

25 MR. HERZ: It's in here.

1 MS. WUNNICKE: Uh, huh.

2 MR. SUND: It's in John's list. The state one as well.

3 MR. WENK: By the Governor? Oh, well I didn't read this

4 -- I haven't -- I'm not as fast a reader as you guys.

5 MR. HAVELOCK: It's under a different topic. Is this,

6 you're looking at the four recommendations on page two that are

7 specifically industry actions and the gubernatorial report is on

8 this page.

9 MR. WENK: Sorry.

10 MR. PARKER: And on that report.....

11 MR. WENK: I haven't gotten that far, but that's the whole

12 point.

13 MR. PARKER: And on that report, you know, when we

14 formed CEQ, we operated on the assumption that was what they

15 were supposed to do.

16 MR. WENK: Yeah.

17 MR. PARKER: Interestingly enough the Council of

18 Environment Quality has not been heard from once on this

19 particular issue.

20 MR. HERZ: And they're one of the 13 agencies.

21 MR. WENK: Yeah.

22 MR. SUND: Who is that?

23 MR. PARKER: The Council of Environmental Quality?

24 MR. SUND: Yeah.

25 MR. PARKER: Is in the office of the President which is

1 set up to be the President's principal advisory on the
2 environment and to make an annual report to the Congress on
3 the state of the environment. I guess they still make it. If they
4 do, the press certainly isn't.

5 MR. HERZ: The last, I think the last one was the one that
6 was delivered under Carter's last year.

7 MS. WUNNICKE: Yes.

8 MR. HAVELOCK: Can I have some comment on it. You tell
9 me the CEQ wasn't funded or nobody was appointed to it, or
10 where is it now?

11 MR. HERZ: It was seriously defunded the beginning of the
12 Reagan Administration and the staff was cut to about a quarter of
13 the size that it had been in the previous years. And it has -- the
14 first time I had heard of it in years was a decision made last
15 week by Secretary of the Interior on water allocations that CEQ
16 and Department of the Interior are supposed to render advice
17 on this decision. First CEQ thing I've heard in ten years.

18 MS. WUNNICKE: But, you're absolutely right. It was very
19 active during the Carter Administration.

20 MR. HAVELOCK: I wish I knew more about about it, 'cause
21 part of what we're doing, in a sense, is suggesting that re-
22 invention of something like the CEQ at the federal level to deal
23 with marine relations. And we sort of wondered what happened
24 to the institution that might have been there.

25 MR. PARKER: You know.....

1 MR. WENK: When you get down to that on this page.
2 When you talk about OSTP or OTA, that'll be the time to talk
3 about that.

4 MR. PARKER: Yeah.

5 MS. WUNNICKE: Very good.

6 MR. PARKER: The -- on another thing on the error-prone
7 system, I think the point we need to make in here is the very
8 different perspective which the industry brings to offshore
9 technology. Anybody's who's ever been to an OTC conference in
10 Houston recognizes the perception immediately where 20,000
11 top scientists, engineers and what have you gather together to
12 exchange information. And the United States is justifiably proud
13 of its offshore technology. It's, you know, right up there with
14 space technology as being in. And what's the perception about
15 the tankers? You know, if you called for a technology conference
16 on tankers why you'd get about 14 people show up. The.....

17 MR. WENK: Maybe.

18 MR. PARKER: Maybe the shipping heads of the major
19 companies or something.

20 MR. HERZ: Before we leave number five, once again I'm
21 struck by the fact that we're talking about major spills. It seems
22 to me that some place in the report, findings relative to the DEC
23 role in all spills needs to be laid out and I think we need an
24 accounting history of previous spills and the degree to which the
25 responses have worked or not work, and the role of DEC and

1 other state agencies in those responses.

2 MR. PARKER: Did you get Marilyn's -- did you give Mike a
3 copy of your compilation that you got from Northern Region on
4 pipeline spills and stuff?

5 MARILYN: It was that one page on pipeline spills.

6 MR PARKER: That's interesting reading in line with what
7 you're.....

8 MR. HERZ: But I think all, I mean.....

9 MARILYN: He wants, you know, the actual response to
10 those spills.

11 MR. HERZ: Yeah, but my concern is that with our
12 continuing emphasis on major spills, that we shouldn't use sight
13 of the fact that response capability to minor and medium size
14 spills has been the pits. And that.....

15 MR. DOOLEY: Mike, I don't think it's gonna be possible to
16 get a catalogue of response. We can't get information on the Ling
17 Yang Zoo.

18 MR. SUND: Ling Wang Zing.

19 MR. DOOLEY: (Indiscernible) When you ask those people
20 about the technological agent, set up test sites for bio-
21 remediation on that, where does that transfer? Well, you've got
22 to ask so and so, but he's gone from the Department. You just
23 happen to (indiscernible), you know where he's at. There's no
24 institutional memory in DEC, that's one of the major problems
25 we have in terms of -- you're asking for some collection of

1 history being transferred and that's one of the problem is it
2 hasn't been transferred.

3 MR. HERZ: Well, if you look at the on-scene coordinator's
4 report, which are federally required for every spill in which the
5 feds respond, at least every on-scene coordinator report that I've
6 ever seen, not to the detail we would like, but at least talks about
7 the state's role, the shipper's role, the feds role, all the 13
8 agencies roles and it's in there -- in those reports. I don't know
9 how many incidents we're talking about, I guess is part -- I was
10 just struck by -- this makes it sound as if we're only talking about
11 major spills and.....

12 MR. WENK: Well, could I put.....

13 MR. HERZ:there's been a lot of oil spills relative to
14 this industry in the last 10 years, since the pipeline began.

15 MR. WENK: In light of Dennis said, though, isn't the
16 question whether, if the state doesn't have it as you suggest,
17 whether the U.S. Coast Guard does. It seems to me there is a
18 requirement that the Coast Guard have this data.

19 MR. HERZ: No, it's a require -- every spill that the feds
20 reply -- I don't know if it's -- I think it has to be over a certain
21 amount. I can't remember what that amount is. There is.....

22 MR. WENK: The law is that the, that the -- I'm not sure
23 what the lower limit of the spill is, I've heard 'em talk about a
24 couple of gallons.

25 MR. HERZ: They have a reporting system that some of it's

1 computerized, but then they also have these reports. Every oil
2 spill that, in the country, is in the oil spill -- our contractors,
3 ECO, have amassed all that Coast Guard information. They
4 should be able to pull it out of their computer like that.

5 MR. DOOLEY: I have some stuff. I got some information
6 just from the terminal alone is almost an inch and a half thick,
7 single page report reports for each spill at the terminal in the
8 last ten years. Those vary all the way, we call 'em the table
9 spoons, and that's where they cut off the level and made it --
10 their spill analysis is from one ton above. And they eliminated a
11 whole lion's share of that small response. And you don't have an
12 on-scene coordinator for that two gallon response. There's a
13 report filed. One of the questions DEC is how many of those
14 reports is really filed and how many of 'em a year that are spilled
15 that are not filed?

16 MS. WUNNICKE: But I think it makes a good point, puts
17 the whole thing in context because on all those incremental
18 spills which may, in the long run, have a detrimental
19 environmental effect as a single tanker spill. they're not alt all
20 spills from oil tankers. They're spills from fishing boats and
21 everything else all up and down the line and I think it would
22 help to put that incremental effect in context.

23 MR. PARKER: Yeah.

24 MS. WUNNICKE: Or put this in the context of
25 incremental spill.

1 MR. PARKER: As far as I know the figures are still that we
2 loose 80% of the oil that goes into the marine environment is
3 from the tanker spills we've been discussing. 20% is from major
4 catastrophic spills.

5 MS. WUNNICKE: Uh, hum.

6 MR. PARKER: So, gettin', you know, getting control of
7 that is absolutely important. Because it comes from so many
8 sources, you have to broaden your perspective a lot and it's
9 mainly cracking down on the people who use, on the storm
10 sewers, the municipalities who bum storm sewers, who don't
11 separate their oil out before they dump and those small boat
12 harbors and the terminals and the, you know.....

13 MR. HERZ: If our focus is on resource damage, the
14 cumulative impacts are critically important.....

15 MR. PARKER: Oh, yeah.

16 MR. HERZ:I mean, if you go out and look at the whole
17 Valdez arm, you're gonna be hard pressed to be able to find a
18 reference site that doesn't have oil in it all ready to be able to
19 compare with spilled every year. I mean you get this cumulative
20 kind of level of oil in the environment and it's having an effect
21 on the resources and I just think that we've gotta have some
22 coverage this. We're not gonna be able to do it as
23 comprehensively as we would like, but something should be in
24 the report.

25 AL: Mr. Chairman, I've looked at some of the state

1 records on oil spills. The state records indicate only the amount
2 of the spill that was reported, not the actually amount it was
3 determined. They get their reports by the Coast Guard. The
4 records are incomplete. Older records have been put away in
5 storage. Similarly, with the Coast Guard, I think we're lucky
6 here the Coast Guard goes back to more years keeping it's
7 records on hands, but some have gone to the federal records
8 center. There's just been a lot of small mechanical problems in
9 putting the data together and getting something that has a high
10 reliability factor.

11 MR. HERZ: The Coast Guard data base which ECO has,
12 while not as detailed as one would like, gives you about eight
13 categories of the amount spilled, the cause, what the response
14 was, how much was picked up, and that's for spills from, you
15 know, a barrel or a gallon, up to catastrophic. And that's in
16 computer data bases that ECO has taken from the coast Guard.

17 MR. DOOLEY: Excuse me, I thought you were talking
18 about -- your request was what is the DEC record and response
19 to lower class spills. And the Coast Guard record is specific to a
20 marine spill and DEC, I was interpreting in a broader context in
21 dealing with land site spills as well as the marine spills and it's
22 historical record of response. Coast Guard isn't keeping that
23 record of monitoring DEC. And I'm having a confusion here in
24 what the request was.

25 MR. HERZ: Well, the goal was to get as much information

1 as possible, but obviously if it isn't in the data you can't get it. My
2 understanding is that some of inland spills are in the Coast
3 Guard data base, but I don't know the details.

4 MS. WUNNICKE: I was just gonna. Alan's examination of
5 the DEC record, at least I guess is enough of a foundation to
6 highlight that as something that needs to be improved and
7 strengthened. And think that they're gonna be a host of things
8 like that that won't be part of our major recommendations that
9 we'll need to just nudge people on.

10 MR. PARKER: John.

11 MR. SUND: I have one observation and a comment.
12 There's been this fly maneuvering up and down the table all
13 morning and it was only after he landed on what has come to be
14 called the Sund oil spill scenario that he rolled over and is in the
15 process of dying. It should be dead by noon.

16 AL: Put dispersants on him.

17 MR. SUND: I thought it was somewhat symbolic that the
18 animals are still dying on the paperwork here.

19 MR. PARKER: And that has nothing to do with pollution
20 in your particular area.

21 MR. SUND: That didn't land in my coffee cup anyway. But
22 the main point I want to get out of here.....

23 MR. WENK: I've never seen a fly do that before.

24 MR. SUND:in this number six. I'm not really ready to
25 let the oil companies off the hook on.....

1 MR. WENK: Right.

2 MR. SUND:somewhat of being at fault here. You know,
3 we've gone after the Coast Guard but the federal government has
4 been inadequate in it's oversight for various reasons and DEC --
5 and I would just slide in here and say the oil companies are
6 offering error-prone system and it's prone to error because
7 we're failing to regulate it adequately. I don't, I don't wanta let
8 that slide here. I don't think you can say the Exxon Valdez went
9 on the rocks because of a total failure of governmental oversight.
10 I think there's some responsibility that companies have to
11 operate in an adequate and safe manner regardless of whether
12 they're being told by some law or regulation of the government.
13 I mean, just 'cause they didn't break a law, doesn't mean they
14 were wrong, or weren't wrong. And that a large part of what
15 happened here is in the total power and control of the industry.
16 And the example of that is what Williams did at BP, coming into
17 Alyeska. I mean in one fell swoop, he accomplished what some
18 people had been trying to do for 10 or 12 years. And so I think,
19 I don't quite know where we're going with this error prone
20 system. I think.....

21 MR. WENK: Well, I -- if I could just add a footnote to that.
22 We're still in findings and it seems to me that we brought out
23 two dimensions with regard to the oil companies. The first has
24 to do with their own sense of social responsibility and we talked
25 about that a minute ago in terms of trying to enhance that

1 through higher visibility toward accountability and so on. But,
2 along John's point, I don't think we can sweep under the rug the
3 fact that the oil companies aggressively tried to prevent some of
4 this regulation.

5 And let me come back to the classical example of the
6 double-bottom. We know that it was being advocated in the last
7 60's. We know that the Coast Guard supported it in 1973 and
8 we know what happened subsequently. Now, we can point
9 fingers at the Coast Guard and so on, but we also have to note
10 that it was the oil companies who vigorously opposed it in the
11 United States. It was -- when it was deflected to IMCO, or IMO
12 as it's later called, for decision, it was the multi-national oil
13 companies that went behind the scenes to the other members of
14 IMCO to get them to shoot it down. And where was that
15 decision made? That wasn't made by people like Hazelwood. It
16 wasn't made by Iorocy as I was referring to earlier. It was made
17 in the Exxon Board room and I think that from the point of view
18 of findings that, and all I'm trying to do is support John Sund
19 here as strongly as possible that we really call a spade a spade
20 with regard to what the oil companies have done repeatedly.
21 They've done this again with regard to manning. They've done it
22 with regard to pulling off the radio operators. And we know
23 some of the recent story there. It's repeated time after time
24 after time and I think that we have to point out that what's
25 happened is a trade off of safety for economics in the Board

1 room.

2 MR. PARKER: We tend for minimal economic's savings
3 too.

4 MR. WENK: That's right.

5 MS. WUNNICKE: Which probably is not unique to oil
6 companies.

7 MR. WENK: But we can't -- that's probably true, but so we
8 can refer to the system. I don't think we can get down to
9 company by company analysis.

10 MS. WUNNICKE: Well, aren't -- I'm just thinking of all
11 kinds of companies.....

12 MR. WENK: No, you're right.

13 MS. WUNNICKE:who make that kind of trade off.

14 MR. WENK: No, no, no, I mean we know for example on
15 the manning that there's quite a difference between Exxon and
16 the other companies.

17 MR. HERZ: In this regard, I'd like to reiterate something
18 that I've said once or twice before and that is we are identifying
19 a number of areas where there's a need to collect information for
20 someone else to do a job that we have not been able to do. It
21 may be that this thing I was requesting about past oil spills that
22 would help us get a better handle on how DEC has managed or
23 not managed. I would like to see us keep a running tally of
24 those, that there would be a page in the report, or section in the
25 report, which would outline our recommendations that this is an

1 area that other agencies or entities should take a look at and --
2 so they don't get lost. Because I think we've identified some
3 very fruitful areas for research and data gathering, but that we
4 haven't been able to do the job.

5 MR. PARKER: One that just crossed my mind that would
6 be relatively easy to implement at very low cost, if people who
7 committed environmental discretions were published in the
8 vital statistics in the paper, the same way that law breakers
9 were, why they might change their view of the world.

10 MS. WUNNICKE: That's a very good ideas.

11 MR. PARKER: Yeah, it just crossed my mind.

12 MS. WUNNICKE: Mr. Chairman, while we're on this
13 topic.....

14 MR. SUND: I thought you were gonna put them in the
15 obituaries.

16 MR. PARKER: That's worse.

17 MS. WUNNICKE: A couple things that have to do with
18 some other things that have been said. I think in our report, we
19 want to give credit. Whatever the motivation may have been, and
20 I think Ed may have pinpointed that, I think that even in the
21 case of the Exxon Valdez, we need to give credit for some of the
22 things that Exxon did that were not required. And one of those,
23 of course, is standing up and taking responsibility for the Exxon
24 Valdez spill and not just saying, well guys, I'll see you in court.

25 Secondly, they made up front payments to fishermen and

1 up front payments to community, which was not required. Now
2 whatever the motivation was, I think we need, we need when
3 we're painting this picture to give credit there.

4 MR. SUND: I think you can do that after the accident
5 occurred. What I'm talking about.....

6 MS. WUNNICKE: Yeah.

7 MR. SUND:is what do they do up front.....

8 MS. WUNNICKE: I know, I know, I know.

9 MR. SUND:to prevent the accident from occurring.
10 I'm not sure I find anything on this list of -- we just went
11 through vessel design. I don't think it's an adequately designed
12 vessel. On manning, I don't think it was an adequately manned
13 vessel. And in operating conditions in terms of staying in the
14 tanker lane, slowing down for ice, slowing down overall, fatigue
15 on the crew unloading, I don't think they did any of those things.
16 So, you know, I'd give them a negative on all of the prevention
17 and all the operational issues.

18 Now after the accident I occurred, I agree, the stepped
19 up to the plate and took their swings, or their pitches,
20 depending on which side you wanta be on.

21 MR. PARKER: But the system failed because they violated
22 everything that had been built into it.

23 MR. SUND: So I was just trying to -- I thought we're on
24 six here. From seven through 12, we're gonna get into after the
25 accident, I think, occurs. But I'm just trying to get down my

1 notes of what we feel as this error-prone system and how did --
2 how did not only Exxon react to it, but how are -- what are the
3 generalities that we're acting from. And I'm in this real toss up
4 situation. At one time, a few minutes ago, we went into a
5 situation where I asked, is it the assumption that we have to act
6 from that a company will act in their economic best interests at
7 all times and only do what is minimally required by government
8 regulation. Everybody nodded their head, yes. And now we're
9 into this, well some companies do better than that, so we should
10 maybe act differently than that. I'm.....

11 MS. WUNNICKE: No, I just think.....

12 MS. HAYES: No.

13 MS. WUNNICKE:we should point out that it's not a
14 single industry.

15 MR. SUND: It may be that some of the other companies
16 haven't had to step up to the bad on responding because they've
17 done better on the other side of the coin.

18 MS. WUNNICKE: Right.

19 MR. WENK: Mr. Chairman, if I could suggest this. I think
20 this discussion is leading right to the nub that the Commission
21 is, already by virtue of what's been said, expressing a point of
22 view that may be reflected in the report. And let me cover it
23 very briefly.

24 Every single one of the points John just listed are eligible
25 to the question, if this had been done, would the accident have

1 occurred? And you can go through item, after item, after item,
2 and ask, if this had been done, would the accident have
3 occurred. And I think in most cases, the answer's no.

4 So then there's another set of questions. Why was it not
5 done? And now we go down to two things. Number one,
6 because the oil companies made the trade off of safety for cost.
7 But, number two, because a federal and a state regulatory agency
8 failed also to protect the public interest vis-a-view that item.

9 It seems to me it might be quite dramatic to have a check
10 off list, almost a one page chart with regard to these different
11 measures to see the degree to which they would've been
12 effective in preventing the spill, but also to pinpoint, as comes
13 out of this discussion that John just chaired with us, who was
14 responsible for that measure not having been in place?

15 MR. PARKER: John.

16 MR. HAVELOCK: I guess maybe I'm taking a devil's
17 advocate position here, but I'm not wildly enthusiastic for
18 blaming corporations for behaving like corporations. And, you
19 know, I think that it is, fundamentally, it is the government's job
20 to establish the regulatory climate and I think it is basically
21 government failure to cause that. I think you can go overboard
22 on social responsibility and so on because -- I mean, what is the
23 answer they're gonna give as to why they do these things. They
24 do these things because of competitive factors. That's the
25 reasons.....

1 MR. PARKER: But.....

2 MR. HAVELOCK:they cut crews and so on and so forth
3 and they make these trade offs and they -- you know, you're
4 gonna destroy the American system of competition and our way
5 of doing business. Furthermore, you expect us to do it
6 voluntarily. You're making us voluntarily give up a competitive
7 advantage in relation to other people who will then wipe ups out.
8 So, it's, you know -- I'm not saying that there are not fingers to
9 pint, but at bottom there's been this sort of confusion between
10 the role of the government and setting minimum standards
11 versus the role of the government in setting these standards.
12 And the government has been doing, at best, minimum and
13 because of this competitive climate, they have to set the
14 standard and it really it government responsibility to make sure
15 that they toe the line at the BAT.

16 MR. PARKER: Dennis.

17 MR. DOOLEY: I guess I'm gonna offer a different
18 perception. Then I think you should award to Ed the tradeoffs.
19 I think oil corporations made a decision to gamble. And I'm not
20 using tradeoffs considers a legitimacy. They rolled the dice and
21 gambled that saying no means they wouldn't get caught with an
22 environmental tragedy. And we are not trading competitiveness
23 in the Alaskan's trade.

24 MR. PARKER: That's right.

25 MR. DOOLEY: Our competitiveness in this economic

1 environment is against foreign imports and we are not shown to
2 be sensitive to cost in that regard. Our price of oil and profits
3 are related to the price of foreign imports. And this is a closed
4 ^{oligarchy} allagart (ph) lead that is not in a competitive environment
5 amongst themselves, but against foreign imports. And so that
6 distinction about the corporation reacting competitively, I think,
7 is somewhat suspect in this particular case of the Alaskan oil.

8 MR. PARKER: Or indeed any where else.

9 MR. WENK: I absolutely agree with Dennis' point here in
10 terms of competition. My term tradeoff is simply where
11 implicitly or explicitly a choice was made in which safety was
12 sacrificed. I say implicit or explicit, but let me come back to
13 John's comment about corporations behaving like corporations.

14 That reminds me of some slogan of let, what Reagan be
15 Reagan. It seems to me that there are different ways
16 corporations not only look at themselves, but are looked at by
17 others. I come back to the history of the active incorporation in
18 the company and my recommendation is that until about the last
19 50 years when so many corporations fled to Delaware to
20 incorporate for narrow reasons, that the states did expect some
21 element of responsibility. They're giving the corporations the
22 privilege of -- the protection of corporate status is not without
23 some social benefit. And I think we moved away from that. Now
24 some corporations, on their own, have exercised social
25 responsibility because they know that profits to the shareholders

1 are not the only outcome. Public esteem turns out to be one of
2 the goals of corporate enterprise and so are several other things
3 apart from shareholder profits. But what's characteristic here, it
4 seems to me, is another disease of the corporation, which is we
5 let the corporations continue to be corporations, will lead to the
6 ultimate domination of the industrial world by the Japanese.
7 That's one of the problems and it has to do with the short term
8 versus the long term. The corporations, if we follow that notion,
9 the corporations be corporations looks for the value of the stock
10 Monday morning. It looks for the quarterly profit and loss
11 statement. And we just have a distortion of the industrial
12 production process by that short range outlook and I think the
13 short range outlook has infected the decision here with regard
14 to -- it might be a gamble, I'm not disagreeing with it being a
15 notion to gamble. But it wasn't -- surely it wasn't a long term
16 point of view.

17 MR. SUND: Well, I assume, when you say you're taking the
18 devil's advocate point of view, that it isn't necessarily a point of
19 view that you believe - that you wanta just challenge the
20 assumption to feather out or further.....

21 MR. HAVELOCK: Right.

22 MR. SUND:elaborate it, that if you have to protect your
23 point of view, you'd be able to explain it. I think the question
24 comes down it's government regulation by minimum
25 requirements, the only way to effect corporate decision making.

1 And I think the answer to that is no, it's only one way to effect.
2 And Ed has hit on the other way, one, it's public esteem or, I
3 guess impact in -- but at some point, yeah, it does come down to
4 say, how much heat am I willing to take to do this specific
5 activity. And we all make it at all levels. This isn't just in the
6 great world. I load my fish vans on the street in Ketchikan in a
7 publicly parking zone and have since the beginning. And we did
8 it on a conscious theory that we figured we'd have 'til 1989
9 before we'd be forced off the street. And guess what, I was right.
10 Now the cost of getting 'em off the street is several hundred
11 thousand dollars. But we figure it took us six years to build up
12 the funds to be able to afford to do it. We took the gamble. We
13 took the risk. And I mean, we're not affecting anybody. We took
14 five parking spots off the street, but, you know, you make these
15 decisions. But I think public esteem is one which gets into
16 accountability, which gets into information available to the public
17 and until the Exxon Valdez, the environment was not a factor to
18 be taken into consideration in what you call a gamble. I don't
19 know that if Exxon had known that the gamble was a potential
20 billion to two billion dollar, if they had known that when they
21 made that decision, that it would have been worth taking. I
22 think back when they made those decisions, the environmental
23 damage was in the 50-100 million dollar range.

24 MR. HERZ: But even by today's standards, from their
25 point of view, at least in terms of what they've spent so far

1 relative to their profits, it was a gamble well worth taking.

2 MR. SUND: But the profits are not necessarily based upon
3 anything going on in Alaska. Alaska's oil is pegged on the world
4 oil market, which is a political decision. It's not an economic
5 decision. And, you know, sitting back 10 or 12 years ago, saying
6 how profitable the north slope's gonna be, I mean, that's like
7 guessing what's its profitability's gonna be in the next 10 years.
8 So, I, I just -- again, I have a hard time with just saying, hey the
9 companies are just doing what we sent them out to do and it's
10 really not their fault that they ran on the rocks.

11 MR. HERZ: Well, part of.....

12 MR. SUND: I can't accept that.

13 MR. HERZ: It seems to me that one of things that might
14 help make sense out of this issue is, does the amount of money
15 that's spent in Scotland and Norway, relative to what the
16 government-owned industry gets for profits, are we talking about
17 imposing costs per barrel that are gonna be much more
18 expensive than what they've spent to create really excellent
19 response and prevention capabilities as the.....

20 MR. SUND: The amount of money of the -- if you take
21 every dollar of oil that comes out of Prudhoe Bay and see where
22 it goes and versus a dollar a barrel coming out of Indonesia or
23 out of the North Sea or out of Saudi Arabia or whatever, you see
24 how much is left to the companies. I think Norway takes 80%. I
25 think the total combined taxation rate and leasehold rate of a

1 Prudhoe Bay barrel of oil is, I think, it's about 60%. 55 or 60%,
2 I think goes to federal/state and local government. The state
3 takes about 30, and the feds used to take about 40 or 50 when
4 they had windfall profits, but they're down to about 25 now and
5 the rest -- they get a larger chunk of this than any other field in
6 the world.

7 MS. WUNNICKE: That showed up in the article on British
8 Petroleum that I think was shared with, I think everybody, that
9 there percentage of expenditures in Alaska compared to the
10 percentage of profits from Alaska -- there's just no, no
11 correlation at all compared to the worldwide activities.

12 MR. SUND: I don't know that that's a discussion here. I
13 think our point is what do we recommend to the legislature to
14 do. Legislature's gotta find funding and that's where that
15 argument's come up and been fought out year after year.

16 MR. PARKER: Okay, do we want to break for lunch now.
17 Return at one.

18 (Off the Record)

19 (Tape Changed)

20 (Tape Number 89-12-4-2)

21 (On the Record)

22 MR. WENK: Mr. Chairman, I would like to raise a couple
23 of housekeeping points. I don't know if it's appropriate here or
24 not, having to do with.....

25 MR. SUND: But, even if it isn't, I'll raise.

1 MR. WENK:Having to to with the report and report
2 preparation and so on. Our legislatively mandated date for
3 delivery of this report is like the Septem -- January 9th, is that
4 right?

5 MS. WUNNICKE: Eighth.

6 MR. SUND: Sometime in January, take my advice.

7 MR. WENK: Well, then maybe what I was about to -- want
8 to discuss was academic, which was if we don't make that
9 deadline, are we gonna be, is this gonna be detrimental to the
10 way in which it is received, or are there alternative ways of
11 delivering it such that we can maximize the quality of the report
12 when it's delivered? A little discussion about that so we know
13 where we are and staff certainly has more than academic
14 interest about whether they're gonna, they have to work
15 Christmas Eve, Christmas Day, New Year's Eve, New Year's Day.

16 MR. HAVELOCK: Well that is a foregone conclusion.

17 MR. WENK: Oh.

18 MR. SUND: That isn't gonna change regardless of what
19 you decide.

20 MR. PARKER: The Governor would have no problems
21 with us coming in late with it. The legislative leadership has not
22 been queried formally on it.

23 MR. HAVELOCK: Well, Mr. Chairman, what I suggested to
24 a couple of Commissioners is that we at least, we turn out an
25 Executive Report to meet statutory deadline. I guess I am old

1 fashioned enough to believe in meeting statutory deadlines even
2 though I'm aware that the political requirement is not there as
3 Commissioner Sund has pointed out. I think we can have a good
4 report and at the Executive Summary level, 20 pager, whatever,
5 and that will give us some time to fine tune a full bodied report
6 and to -- and be supplements, which as far as I'm concerned, the
7 supplements, supplemental volumes don't have to be ready 'til
8 February 15th. I assume that by giving it to February 15th, the
9 legislature partly intended that we do those sort of things.

10 MR. HERZ: One of my concerns with that approach is
11 that there's a certain calculated risk if you deliver an Executive
12 Summary without that being a faithful summary of the report
13 that it is supposed to summarize. There's a risk.

14 MR. SUND: A suggestion, Mr. Chairman, that we move
15 this discussion until tomorrow Wednesday, or after dinner or
16 something like that.

17 MR. PARKER: Is that all right with you.

18 MR. HERZ: Well, I don't want -- I certainly thing that
19 that's not inappropriate, I just would hate to have that be the last
20 thing on the agenda of a three-day meeting, particularly when I
21 think Ed and I are going to be leaving during the day, before the
22 end of the third. Is that right?

23 MR. PARKER: What would be a good time Wednesday for
24 picking it up again for you?

25 MR. WENK: Before lunch.

1 MR. HERZ: Yeah.

2 MR. PARKER: Shall we say 11 o'clock on Wednesday and
3 carry it through lunch.

4 MR. HERZ: And a brief related issue is that it seems to
5 me that it would be one of the strengths of a good report is its
6 graphics and tables. And there is a suggested -- there's a set of
7 suggested graphics and tables that is in the table of contents that
8 John prepared that we got in the mail. My question is whether
9 we shouldn't -- individuals should be thinking about -- shouldn't
10 review that and think about additions, if they want them, such
11 that by the time we finish this meeting that those people who
12 want, have candidate things they would like to have added in
13 graphic or tabular form; be able to give those to staff now, at the
14 end of this meeting, so that they can prepare them and not have
15 them at the last minute.

16 MR. PARKER: Yeah, I think, you know, anytime
17 Commissioners want put their input in writing in to staff on
18 what they think, you know, should be incorporated, they should
19 give it to John whenever they've got it ready. It'd be up to him
20 to consider whether that would require bringing back to the
21 Commission or not for any kind of action.

22 MR. WENK: Well, could we go on -- I mean, could we
23 then move on on the assumption that we will discuss this
24 Wednesday morning?

25 MR. PARKER: Yeah.

1 MR. WENK: Okay.

2 MR. PARKER: Yeah. We had just finished up with number
3 six on our findings and -- any questions on seven?

4 MR. HERZ: I had a -- in number seven I would like us to
5 make sure we include something relative to the GAO reported
6 numbers about the worldwide percentage of recovery that has
7 been obtained in previous spills because the notion of -- that's
8 there still a lot of people who believe that containment and clean
9 up is something that works and I think that we need to stress
10 the fact that containment, at best is not going to take care of a
11 very significant portion of spilled oil, regardless of the size of the
12 spill, and that the further strengthens the argument for a strong
13 prevention program.

14 MR. HAVELOCK: Could I take a devil's advocacy position
15 on that. One, it seems to me you're encouraging those involved
16 to lower their sights. I guess, you know, when you put in the
17 aggregate of rural spills, particularly over a history of where
18 clean up has not been much of an inheritance, I think that those
19 international figures, in particular, are grossly deceiving with
20 respect to what's possible. And I think that there's so little at
21 this moment developed on the technology. I mean, just take for
22 example what we know about congealant, now. I'm not sure that
23 I totally agree with the thesis that it is impossible to recover a
24 major fraction of even a major spill. And it seems to me it's
25 incumbent upon somebody other than this Commission to say

1 you can't do it, rather than for us to say it's impossible.

2 MR. HERZ: My point is that there is, I think, ample
3 evidence for almost every spill that has ever occurred that it is --
4 I don't know if there's ever been a spill that over half of what has
5 been spilled has been collected. The point being that the
6 Alyeska response, to spend 25 or 27 million dollars to perform
7 this tremendous razzle dazzle in terms of, on the response side
8 is to make people believe that the capability to do a complete job
9 of clean up or a very thorough, effective job of clean up is there.
10 Yes, they have spent a lot of money. Yes, they will be able to do
11 a better than was done with the Exxon Valdez, but I think it's
12 important for us to stress the fact that the current technology is
13 pretty ineffective and therefore, the amount of energy and time
14 and money that you spend on prevention, is gonna buy you far
15 more than the amount of money that you spend on response.

16 MR. WENK: Mr. Chairman.

17 MR. PARKER: The way I'd like to see this approached is
18 to take Mike's view as the present situation, white out what was
19 from the GAO report that the present Alyeska improvement, the
20 best they can hope for is 35-40% recovery under ideal, stressing
21 ideal, conditions. And then move to what it takes at the spill
22 sites that we have been using as typical spill sites in Prince
23 William Sound and in Cook Inlet, what it would take to move in
24 to the 95-100% recovery capability at those sites if it was even
25 possible to develop the technology for some of those sites. But I

1 think that would answer John's problems and do you think in
2 your conversations with ECO that they're gonna be able to get us
3 that kind of answer, in that last part.

4 MR. SUND: Don't we have to do astersing (ph),
5 distinguish big from small here on this whole argument.

6 MR. PARKER: Well, I'm thinking.....

7 MR. WENK: It's not, it seems to me it's not just big from
8 small at this stage in the findings. Maybe later on, but it's --
9 what I was looking for as the first finding has to do with the
10 clumsy viscus (ph) response, the lack of leadership in the on-
11 scene coordinator. It seems to me that you don't have to get
12 right away into this question of eventually can you do, 20-30-40-
13 50%. The fact of the matter is that if there had been a more
14 zealous initiative right at the beginning, there could have been a
15 heck of a lot better protection of Prince William Sound and it
16 did not happen. Now people may not agree with what I've just
17 said, but my impression is that there was a helluva foul-up, as a
18 finding.

19 MR. HAVELOCK: Does anybody argue with what
20 Commissioner Wenk has just said?

21 MR. PARKER: No, I think the point -- no, there was a
22 helluva foul-up. If you assumed the system would work perfectly,
23 that all the dispersants available in the United States within
24 flying range of Valdez, Prince William Sound, had been dispersed
25 in the first three days, if the boom that was called for in the plan

1 had been put out on these and so forth, you still would have had
2 a major oil spill and still would have saved very little of it under
3 the conditions prevailing then.

4 MR. HAVELOCK: Oh, I think I would argue that point, at
5 least from the devil's advocacy. I mean, you're just focusing on
6 the dispersants. I mean we have -- the fire decisions weren't
7 made that might've been made.....

8 MR. PARKER: Okay, if you throw in fire, I give you that if
9 we'd torched the ships, why we'd have done it. But under the
10 existing legal structure prevailing in American Maritime Law,
11 you wouldn't have torched that ship. I don't think that anybody
12 would have had the legal background to have ordered it torched
13 under the conditions prevailing then. Are you gonna disagree,
14 Dennis.

15 MR. DOOLEY: I think that the insitue burning has been
16 proposed as alternatives and the fact is it was an available tool
17 and technology and if it's a prudent to protect the environment,
18 you had the tool to employ.

19 MR. PARKER: Insitue burning with fire retardant booms
20 and pools of oil, not torching the ship.

21 MR. DOOLEY: Well, I'm talking about torching the ship.

22 MR. PARKER: No, that's not the way insitue burning has
23 been received in the past and not the way it's been, you know,
24 not the way it's laid out.

25 MR. DOOLEY: But they had, they had the opportunity and

1 there was a discussion.

2 MR. PARKER: Well we better find out on that, because.....

3 MR. DOOLEY: (Indiscernible - simultaneous talking) we
4 have one memo that I got from DEC that says they discussed
5 torching that ship.

6 MR. PARKER: I think we need to put it right to Admiral,
7 to Admiral Yost. Dear Commandant, at the time that Exxon
8 Valdez was on the rocks, the first, day, do you feel you had the
9 authority to order the ship torched? Who else is gonna answer
10 that?

11 MR. DOOLEY: Well, and one of the problems is DEC didn't
12 wanta -- it's ambient air quality.

13 MR. WENK: Let me.....

14 MR. PARKER: Now let's, you know.....

15 MR. SUND: Let's get authority to order it versus impact.

16 MR. WENK: Exactly. The point I was trying to make was
17 the defect's in the management decision not in the detail of
18 technical intervention.

19 MR. DOOLEY: Yeah, but we're talking about how you would
20 get to a certain percentage. We've als -- last week we attended a
21 technology workshop where Exxon's touting itself and
22 presenting itself to a group of scientists as being very successful.
23 Because worldwide statistics according to the GAO report, they
24 cited, one percent clean up and we attained greater than 10%. I
25 mean, they are using the data you're asking to present as a

1 positive ploy in public relations.

2 MR. HERZ: I'm not proposing.

3 MS. WUNNICKE: Oh, well, this finding does combine,
4 does combine containment and clean up and there -- we've
5 already, I think, laid the foundation, but it wouldn't hurt to lay it
6 again here, in terms of the shipper being in charge. The
7 shipper had a dual mission. One was to save the cargo and the
8 crew and the other was to contain the already spilled oil. And
9 Exxon, with the Coast Guard's supervision, did an exemplary job
10 of saving the cargo and the crew. And you could argue from that
11 that they mitigated what could have been a total catastrophic
12 environmental effect of loosing the whole cargo instead of just
13 the 11 million barrels. That's one aspect of it. The other aspect
14 of it, that Ed was getting at, was that there was apparently no
15 single commandant, or commander, or person in charge, which
16 gets to other recommendations that we are going to want to
17 make in terms of response.

18 MR. WENK: Exactly right, and I would thus duck the
19 issue of what percent you could or couldn't do. It's simply the
20 evidence that the first few days was chaos and that no spill can
21 stand that. I mean if you don't move smartly, 8 to 12 hours,
22 you've had it.

23 MR. PARKER: Commissioner Hayes did you want to rise
24 up out of your misery and say something?

25 MS. HAYES: No, I just was thinking, was amazed at how

1 the discussion had gone from Mike's original point, which was
2 trying to re-emphasize the value of prevention in comparison to
3 people's -- the dream that people have been told. Esther, I
4 know, has listened to it. I've listened to it. It was your
5 considering oil and gas lease sales and you're assured by industry
6 that, don't worry, things are under control. And I think the
7 statistic that's commonly accepted by our Commission -- you
8 know, whatever number we'd like to argue about a few
9 percentage points makes that perfectly clear that we still have a
10 lot to worry about and that the money is well spent in prevention
11 rather than cleaning up. As somebody said in Kodiak, don't
12 make the world safe for oil spills. I think that's a good point for
13 all of us to remember. Mike, I think that's what you were trying
14 to present it.

15 MR. HERZ: It's a, it's a matter of emphasis. I totally agree
16 with John that there should be a view that encourages improving
17 response capability. But, if, from my perspective, a point that
18 needs to be stressed, it's the emphasis that needs to be placed
19 on the fact that there is practically no incident in the world
20 where everything has worked optimally and where there has
21 been a major portion of a spill cleaned up. I think we have to
22 stress that and I think that becomes one of the foundations for
23 the emphasis being placed on prevention.

24 That was my only point and I didn't want us to encourage
25 the response side, making any -- when we had Alyeska make

1 their big presentation and I asked the question of well, if you
2 had had all this equipment available at the time of the Exxon
3 Valdez incident what would you have been able to do. And the
4 response, started to answer the question and then said, there
5 are too many conditions that weren't under our control and we
6 couldn't describe and we're not -- and I don't wanta get trapped.
7 I think that is one way of saying that the probability of picking up
8 the major portion of the oil spill is low, extremely low and I
9 think we oughta say that, out front.

10 MS. HAYES: Mr. Chairman, I guess I think that if Exxon is
11 looking at 10% as being something to be proud of, it's something
12 that's worth letting people know what we think is something to
13 be proud of. I mean, is 10% really something to be proud of?
14 And how does that make you feel when you go to bed at night in
15 Valdez.

16 MR. WENK: It's that glass, half filled or half empty. it's
17 the other 90%.

18 MR. PARKER: Getting, you know -- there's been a lot of
19 talk about people, you know -- we're gonna torch the ship and
20 everything and you know a lot is at our hearings, but I think we
21 really need to check. Does that legitimate authority exist to do
22 that, 'cause I'm thinking if I was the skipper on the bridge
23 thinking about that 400 million dollar insurance policy and
24 everything, I wouldn't care to wing it on making that decision
25 and possibly having the company, if the insurance didn't pay.

1 having the the company hold me responsible for (indiscernible -
2 fading).

3 MR. DOOLEY: Well it is -- has been an item of discussion
4 on the St. Matthew Project, of whether to torch the ship or not.

5 MR. PARKER: Ask Lasoro (ph). He's your closest.....

6 MR. DOOLEY: I sat in on the meeting once.....

7 MS. WUNNICKE: And Mr. Chairman, for what it's worth it
8 is a part of some of the contingency plans with respect to
9 offshore rigs that if the oil cannot be contained within a certain
10 amount of time, the next option is to fire the rig, which is quite
11 different. Now I've been told that it wouldn't, even had the
12 decision been made, it would not have been effective in this case
13 and you're also dealing with more than half again the amount of
14 oil on that tanker than was spilled.

15 MR. WENK: I'd like to invite counsel's attention to maybe
16 re-structuring the findings from seven on, a little bit in terms of
17 finding vis-a-vie pre-spill preparation versus post spill
18 competence and effectiveness. I don't wanta take the time to
19 elaborate on this here, because this has been brought out, I
20 believe, in early in testimony.....

21 MR. HAVELOCK: Right.

22 MR. WENK:and in the things that have been written.
23 But I believe that.....

24 MR. HAVELOCK: Point's well taken. We'll add something
25 in there on that.