

No. 07-219

IN THE
Supreme Court of the United States

EXXON SHIPPING COMPANY, *et al.*,
Petitioners,

v.

GRANT BAKER, *et al.*,
Respondents.

**On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

**JOINT APPENDIX VOLUME TWO
[Pages 691 - 1367]**

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*Petition for Writ of Certiorari Filed August 20, 2007
Certiorari Granted October 29, 2007*

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**EXCERPTS FROM THE
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May 2, 1994 - Sept. 16, 1994

Q Did Mr. Iarossi, in Surrounding the Memories, describe them as a manager of this business unit? You were there –

A I think he may have.

Q He did, didn't he? You were there for that speech?

A He may have. I don't recall his exact words.

Q Now, you talked a little bit about your monitoring of Captain Hazelwood on your own. We have two instances. We have the '88 fleet conference, but when Mr. Lynch was talking to you, you talked a little bit about the incident where you watched him. Do you recall that?

A I also said I monitored him at the '87 conference.

Q His drinking was of such concern to you that you went out of your way to monitor him, isn't that a correct statement? A His drinking was of no more a concern to me than any other rumor of a master that I would hear, but I did monitor him which I thought was prudent, right.

Q And with regard to your concerns about the ability to monitor him, you never past them on to any other members of the

[2137]

management team, did you?

A Not that I recall.

Q Now, in response to Mr. Lynch's question, your answer was something that puzzles me. You said, I had no training with regard to recovering alcoholics or alcoholism. Do you recall saying that?

A Yes.

Q You were the director of human resources for Exxon Shipping Company and that subject matter was within your responsibilities, wasn't it?

A That's right.

Q I want to talk for a minute about the safety credo, the plaque.

A Uh-huh.

Q The first item in the safety credo is accidents and injuries are preventable. Do you see that?

A Sure do.

Q Accidents and injuries are preventable, and one of the ways that we prevent accidents and injuries is through the careful selection and evaluation of seagoing masters, is that a correct statement?

A One of many ways, yes.

Q That's a very, very important subject, isn't it?

A Certainly is.

* * *

[2139]

DIRECT EXAMINATION OF MARY WILLIAMSON
(Read)

BY MS. WAGNER:

Q Could you please state your name for the record.

A Mary Robin Williamson.

Q Where do you presently reside, Ms. Williamson?

A Houston, Texas.

Q By whom are you presently employed?

A Exxon Shipping Company.

Q In what capacity?

A Catering buyer.

Q By whom were you employed in 1980?

A Exxon Shipping Company.

Q In what capacity?

A 1980, I believe I was on the utility, mess utility list.

Q How long have you been employed by Exxon Shipping?

A Since 1978.

Q What job positions did you hold with Exxon Shipping from 1978 until 1990?

A I held a job as mess man, mess utility person, ship's cook, fleet chef, those are the job titles.

Q In any of these assignments, Miss Williamson, were you on board a vessel?

A Yes.

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Q Were you on board a vessel at any time which was captained by Joseph Hazelwood?

A I didn't sail on the vessel, but I was aboard on temporary vessel assignment.

Q Can you please explain that, please, when that was and what vessel?

A The vessel was on the west coast, and it was one of the big ones. I'll say the Valdez. It may have been the Long Beach, but I think the Valdez. I'm not real sure. But Captain Stalzer was the other captain, so it was the Valdez. I relieved in the west coast office for the port steward.

Q You relieved?

A Yes. Temporary shore assignment, temporary special assignment is what we call it.

Q At any time that you were fleet chef, or on temporary special assignment as port steward, did you receive any reports of intoxication by any captains on board any Exxon vessel, shipping vessel.

A No, ma'am, the one incident that I perceived as alcohol being involved was on the launch in San Francisco.

Q And could you explain that, please, in terms of when?

A You want a date? Somewhere there is a date on this.

Q Even just a year.

A A year, okay. It had to be – it was March, I think, March or April, March of '89, and I was on board the Exxon

[2141]

Galveston. And I took a launch ashore, it was at night, and I had not heard any comments about the

Exxon Valdez crew or Captain Hazelwood up to that time.

I came back on what is called a midnight launch. It gets back to the ship about midnight. I think it leaves at about 11:30. At that point I met Captain Hazelwood at the Weststar launch.

Q What happened?

A He came up and he spoke to me and they – a conversation ensued. I – we were inside the building. We later went outside. I stepped back toward the door so it was fairly – by then there was a group of people, but it's my perception that I smelled alcohol on his breath.

Q On whose breath?

A Captain Hazelwood's. I don't know for sure, but that's only my perception. And we had a conversation and we stepped outside and we got on the launch. And that conversation continued briefly, not long, because he was out on the open deck area and I went in the cabin.

Q Of the launch?

A Yes, ma'am.

Q And that was your only contact with Captain Hazelwood at that time?

A That was my only contact with Captain Hazelwood. Inside a building, by the door of a building, and the conversation was

[2142]

finished up on the deck of a launch.

Q Now, is Weststar launch the same as Weststar terminals?

A I know it as Weststar Marine Services and Weststar launch is the same thing. It is at Pier 46 in San Francisco. So is that what you're talking about?

Q And at this time did you advise Captain Hazelwood that you thought that he was intoxicated?

A I didn't say to Joe Hazelwood, I think you're drunk, no, ma'am. I said something to the effect – he wanted he to relay a message to the captain of the Galveston, and I said, well, Captain, I don't think I can do that. I think maybe in the morning if you feel better, you can relay that message.

Q What message did he want you to relay to the captain of the Galveston?

A It wasn't entirely clear, and I wasn't entirely letting him

finish his statements because he seemed to be upset with Captain Reeder, and that was the master of the Galveston at that time and wanted me to tell Captain Reeder, that he was upset with him, and I didn't think that was my place to do that.

Q Now, at this time that you smelled alcohol on the breath of Captain Hazelwood in March or April of 19 –

A I think it was March. I got off the ship in April. It was March.

Q Did you feel that you had a duty to report Captain

[2143]

Hazelwood to other authorities in Exxon?

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

[2144]

about this would you take it back and talk to somebody. And I didn't tell him who to go talk to, but I felt – whether anybody agrees with me, I felt like I did what I had to do and I trusted Steve Day to address or at least see if the issue was checked out.

Q Was the issue checked out?

A I did not talk to Steve Day after that. I assumed it was.

Q And you said nothing to anyone that night?

A No, ma'am, I did not.

Q Do you know anyone else who saw Captain Hazelwood the night he left the launch in March 1989 from San Francisco and boarded the vessel?

A There were crew members and some licensed from the Exxon Valdez on that launch that went back on the ship with him and there was another crew member from the Exxon Galveston on board that launch.

Q Did you discuss your beliefs regarding Captain Hazelwood's possible state of drunkenness with any of the Exxon Valdez members?

A No, I didn't.

Q Did you board the Exxon Valdez that night?

A No, ma'am.

Q Along with Captain Hazelwood?

A No, ma'am. It went to the Exxon Galveston, the launch went to the Galveston prior to going to the Exxon Valdez. I went

[2145]

out.

Q As a port steward, would you have expected someone on board a vessel to report someone else on board the vessel as a crew member being drunk?

A I would think some people would and I would think some people wouldn't.

Q Why wouldn't some people do that and why would some people do it?

A This is my opinion.

Q I know, I'm asking for it, please.

A Okay. Some people would do it because company policy you should follow. And some would do it because they probably thought there was another way and – you don't want to turn somebody in. And if they were drinking and not drunk, and there was no harm done, even though it was a violation of company policy, it's not – I didn't say anything that first night because I'm not a hundred percent convinced Joe Hazelwood was drunk. I thought he was drinking. Then I had to debate company policy is a serious thing and to go to somebody and say, hey, by the way I think your captain over there was drinking. I had to think long and hard about that. And I think there are other people that probably have to think long and hard, whether it is a captain or somebody else, but in the end we try to do the right thing in most cases, and what I did I feel like I was in the wrong place at the wrong time and I

[2146]

tried to do the right thing. And maybe I didn't do it in a timely fashion, but I think I'm just like most other people out there. Sometimes you may take too long but you don't deliberately violate company policy. If I had seen the man stumbling, falling down drunk, yes, ma'am, I would have made a fuss over it. But that's not what I saw.

Q And you said Captain Reeder was the master of the Exxon Galveston at this time?

A Yes, ma'am.

Q Were you made aware at any time as to whether or not Captain Hazelwood and Captain Reeder had a verbal altercation on the radio at about this time?

A The morning after I came back on the launch ride that night, that next morning at breakfast, I heard people talking about when the Galveston and the Valdez had let go. And this is talk, because the chef didn't have to get up for those things, so I wasn't up for that, that there had been profanity used on the radio.

Q Well, when you became aware of this cursing between Captain Reeder who is the master of the vessel you were on –

A Yes, ma'am.

Q – and Captain Hazelwood, did you in any way feel any obligation to tell captain Reeder of your observations or perceptions the night before?

A I won't say the thought didn't cross my mind. We were

[2147]

underway. Captain Reeder was on the bridge. Captain Reeder was busy and I still hadn't made up my mind what to do about it. So I didn't tell Captain Reeder maybe I should have, hindsight, is always better than foresight, but, no, I did not tell Captain Reeder. Q If you can – and I appreciate the difficulty in doing so – internally, what was going through your mind when you judged whether you

shouldn't or you should tell Captain Reeder about your perception with regard to Captain Hazelwood?

A It's perception. I can't tell you the man was falling down drunk. He got on the launch just fine. And if there was an incident with profanity or cursing over the radio, then that is between Captain Reeder and Captain Hazelwood, and that's up to them to settle. I don't know if I was right or wrong in doing what I did. I'm telling you what I did. If I had thought the man was totally incompetently drunk I would have handled it different. I thought he had been drinking. And I had a hard time deciding what to do about it and, yes, ma'am, I was fully aware of the company's policies.

Q Well, the company policy doesn't make a distinction between drinking and falling down drunk, do they?

A No, ma'am.

Q It prohibits drinking, am I correct?

A You're right.

Q Well, what was the company policy? Did it allow crew

[2148]

members to have one drink as you understood it?

A As I understood it, you could not come back to a ship inebriated. You could not have alcohol aboard a vessel. You could not drink aboard a vessel. If you went ashore and had dinner and had a beer or a glass of wine and you didn't have to go on watch for several hours, then you could do that. That was my interpretation of it.

Q Yes. At the point of the launch in March of 1989 was there any person representing Exxon Shipping who, if they perceived a crew member might be drunk, could administer a test to determine whether or not that crew member was drunk or how drunk they were?

A That night that I went to the Weststar launch, there was a Weststar lunch driver and there were people going back to ships. And I don't know about any breathalyzer test, but nobody said anything about any breathalyzer test and only Exxon people that were there were people that were, A, going to the Valdez; B, going to the Galveston. I didn't see anybody else who worked for Exxon Shipping.

Q Were you aware of any company policy in effect at that time which would have stationed some Exxon Shipping representative at the site of a launch to determine whether or not returning crew members were drunk and/or how drunk they may have been?

A I don't know of one. There might have been, but I don't know of one.

[2149]

Q Was there any Exxon Shipping representative on board a vessel whose function was to determine whether or not returning crew members were drunk or how drunk they were?

A I assumed it was the mate on watch, or if you were on – you know, if somebody saw you they would tell the mate or the captain or a chef if you were an oiler or an engineer.

Q And that's all you were aware of, that's the only procedure you were aware of?

A That's the only procedure I was aware of. There might have been more, but you're asking me what I knew.

Q Miss Williamson, let me ask it directly, then. At the time you were on the launch with Captain Hazelwood in March of 1989 and you perceived he had been drinking, did you also perceive that his drinking may have been in violation of company policy?

A I know you want a clear-cut answer, but I didn't think about it that way.

Q Why not?

A I don't know how to explain this. I didn't perceive Joe Hazelwood was a danger to his vessel or anybody else. And I didn't discuss with him if he had been drinking. I didn't see him take a drink. Now, in the back of my mind, yeah, I knew what company policy was, and how precise, or how right I was or how wrong I was, and I gave it a lot of thought. And maybe if I hadn't of heard there had been an incident with profanity on the radio, maybe I would have never said a word to anybody. I

[2150]

don't know that. That played a part in it, and then I still didn't say it to the captain. Then I waited for someone to come show up from the office that I trusted that I thought would just take this and pass it on, and that's an assumption

on my part that he passed it on.

Q You said that the incidence of profanity somehow connected in your mind to –

A Our captains don't normally use profanity on the radios.

Q In your mind, did you associate the use of profanity by Captain Hazelwood with regard to your perceptions the night before?

A Something was wrong. I didn't know if he had been drinking or not. But something – captains don't use profane – I'm not saying a captain never used a dirty word on the radio. I'm saying our captains don't pick up radios and use – and curse other people out, another captain or a line handler or whatever. They don't do that. That is not normal.

Q I'm just trying to find out honestly what you were thinking at the time, and if I can ask maybe directly, then, when you heard of the incident of Captain Hazelwood using profanity, in your mind did that raise another question as to whether or not he might be drunk?

A It raised a question of, this is odd, and I wonder if I know something that impacts any of this. And I wonder what I should do about it. It raised –

[2151]

Q Mr. Thomas interjects, I believe she's finished.

It raised it internally?

A It raised it internally for me. I didn't assume – I mean, you can get angry, I don't say profanity is not used on Exxon Shipping ships, and I don't say that everybody didn't use it time and again. I'm saying on the radio that's just not routine. That's not normal. That doesn't mean somebody is drunk, that means somebody is annoyed or upset. If I had really been concerned, I guess I would have gone to

Captain Reeder, and I didn't do that. I just kept thinking about it, and that was strictly— I don't know how to explain to you what I felt or how I thought, and maybe you don't understand it, but I didn't assume Joseph Hazelwood was drunk. I assumed something was wrong with him concerning — and I assumed that — well, I knew what my perception was and maybe I had better say something. And the best thing maybe to do would be to say something to somebody in the office if I could get off the ship and go to a telephone. I didn't get off the ship. We were at anchor. And then Steve Day showed up, and I thought, well, Steve Day's here, and I'll just tell him.

MS. WAGNER: There's about two more pages left, finish it up?

THE COURT: Finish it up.

Q I'm just trying to understand —

A In effect, I passed the problem on, whether I was right or

[2152]

not. And it was only my perception of the problem.

Q What was the problem you understood you were passing on?

A That I thought he had been drinking. I didn't know if this — I didn't know how this played into profanity on the radio or anything else, but, you know, here, Steve. I don't know what it means or if it means anything, and I did it confidentially, and I did it to him alone and I said if you would take it out back and see if anybody in the office wants to check it out. He told me he would take care of it. He didn't

get real specific, but he said he'd take the information and I assumed he did.

Q Can you tell me to the best that you can recall what you said to Mr. Day and what Mr. Day said to you?

A I told Steve Day that I had been ashore, that I had come back. It was the Weststar, it was the launch, I had a conversation with Joe Hazelwood. It was my impression that Joe Hazelwood was drinking. And I didn't see him falling down drunk or anything and I didn't – you know I don't know what this mean, but I had heard of an incident of profanity on the radio, and I didn't know if Steve knew about and that if he wanted to know about that he could go ask some crew members or go ask a captain. I wasn't a witness to that. And that I would be more comfortable if he would just pass it on to somebody in the office and check it out or have somebody check it out. I don't think I asked Steve to check it out.

[2153]

Q Check what out?

A To check to see if the profanity or anything else, if Joe Hazelwood had been drinking or if it was all linked together or what was going on. I mean, they could have – they could call the ship up, they could do something. So he told me he would take that back to the west coast office, and I don't – I don't specifically remember him telling me who he would tell. I just remember he said he would do it, and I – I believed he would do it. So I didn't – I didn't run after him to see if he really did it, I just assumed he would take it back to whoever he thought was appropriate in the west coast office. It would be checked out.

Q At the time you observed Captain Hazelwood on this launch outside San Francisco, did you fear any retaliation from Exxon Shipping if you – or Captain Hazelwood if you actually officially reported the incident?

A Official retaliation, no, ma'am.

Q Well, even unofficial retaliation?

A If I had been wrong and reported him, I thought they would, there would – thought there would probably be some unofficial and not from top down, from the people you sail with. Being ostracized, but that's human nature and I could be wrong about that. Everybody wants to get along with who they sail with.

* * *

[2155]

Q At the time in March 1989 that you were on board the launch in San Francisco with Captain Hazelwood, did you perceive that Captain Hazelwood had had more than just a beer or glass of wine at dinner? I'm asking you only your perception.

A My perception was I smelled alcohol on this man's breath. He could have had a beer five minutes before he showed up for the launch. He didn't slur his words, he didn't stumble, he wasn't as nice as he had always been on the phone with me, but I didn't take that directed at me, that's what I perceived. I didn't perceive this fumbling person going back to the ship.

* * *

[2166]

DIRECT EXAMINATION OF STEVE DAY (Video)

BY VIDEO EXAMINER:

Q Mr. Day, for the record, would you state your full name, please?

A Steven Morgan Day.

Q And where do you currently reside, sir?

A At 2920 Sombrosa Street in Carlsbad, California.

Q By whom are you currently employed?

A Exxon Shipping Company.

Q What's your current position with Exxon Shipping Company?

A I'm a first assistant engineer.

Q When you were initially hired in November of '84 by Exxon Shipping Company, what position did you hold?

A Second assistant engineer.

* * *

[2170]

Q After the management conference, when was the next time you would have had occasion to see or hear of Captain Hazelwood?

A May of '88.

Q Okay. In May of 1988, you came across Captain Hazelwood's name again or you heard about him again?

A I worked with him.

Q Where was this?

[2171]

A In West State Shipyard in Portland, Oregon.

Q You were the repair superintendent at that time?

A I was an assistant to Jack King.

Q And at that time, was Captain Hazelwood the master of the Exxon Valdez?

A Yes.

Q You say you worked with him. What exactly did you do with Captain Hazelwood, or how did your duties coincide with Captain Hazelwood's?

A Well, it was – it was in both of our interests to get the vessel back into service, you know.

Q Let me – the Exxon Valdez was in dry-dock?

A Yes, undergoing repair.

Q Do you recall specifically how long the Exxon Valdez dry-docking lasted in May of 1988?

A I believe it was about eight weeks.

Q Was there any reason it was longer than the general?

A Because there was this guarantee dry-docking, as I mentioned, the scope of work was larger, a lot of guarantee related items were repaired or altered.

Q Could you tell us what kind of contact you had with Captain Hazelwood during this time?

A Primarily working the – my responsibility was to monitor the repairs and then work with him, coordinate with him to be sure that he was satisfied that repairs were complete and then

[2172]

get the vessel back into service, you know.

Q Did you see Captain Hazelwood on a daily basis?

A Yes, I would – I would say that’s how I remember it.

Q Did you socialize with Captain Hazelwood at all during this time?

A No.

Q During the time of the Exxon Valdez dry-docking, did anything happen concerning Captain Hazelwood which you subsequently reported to a superior of yours?

A Yes.

Q Okay. Could you tell us what occurred?

A I overheard on the walkie-talkie radio someone call the ship superintendent for the vessel, yard person, indicating that “we’re out of Henry’s up here.” It was my impression that the voice calling was Captain Hazelwood.

Q You heard Captain Hazelwood’s voice before?

A Yes.

Q Okay. You said that you heard this voice which you believed to be Captain Hazelwood saying “we’re out of Henry’s up here”?

A Yes.

Q What does that phrase mean to you?

A It sounded to me like he was referring to Henry Weinhart’s beer.

Q You identified the position before, I think, but to whom

[2173]

was Captain Hazelwood speaking at this time?

A The ship superintendent.

Q And who was that?

A Person named Bill Timmons.

Q Do you recall what Mr. Timmons' response was?

A I believe it was something to the effect, Roger – Roger, captain, I'll see what I can do about that. Something like that.

Q How was it that you happened to overhear this conversation?

A I was in the shipyard office – the port engineer's office, and it was my habit to leave the radio on in case the shipyard needed me or people on the ship needed to ask me something.

Q Did this exchange cause you any concern?

A Yes.

Q And why did it cause you concern?

A I was concerned that others might draw the conclusions I had drawn.

Q You had drawn some conclusions from this exchange?

A That Henry's meant Henry Weinhart's. I was concerned the way it sounded over the radio.

Q Why did that concern you the way it sounded?

A Well, we try to keep the radio conversation to work-related business and it didn't sound work-related to me.

Q Did it concern you that an Exxon Shipping Company captain was ordering beer over the radio?

[2174]

A I would have to say I was concerned that that might be the case.

Q Did you do anything to follow up on your concerns?

A Yes, I spoke to Herb Leyendecker.

Q Who is Herb Leyendecker?

A At that time, he was the repair manager, I believe was his title. He was my boss, essentially, as repair superintendent overseeing the repairs of the vessel.

Q What did you tell Herb Leyendecker?

A From my recollection, I told him essentially what we've just – what I've just told you.

Q Where was Herb Leyendecker?

A He was in the office with me.

Q So he overheard the conversation as well?

A It's very possible that he did.

Q Did he indicate to you that he'd over heard the conversation?

A My recollection is that I didn't have to do much explaining, so he was in an office that was just a few feet away and probably could have heard the same radio that I heard, or even had one on in that adjacent office.

Q Was there anybody else in the office besides you and

Mr. Leyendecker?

A Not that I recall, no.

Q Can you tell us what it was you discussed with
[2175]

Mr. Leyendecker?

A As I stated earlier, you know, we like to keep the radio for the business of the repair. And that there might be a possibility that what we heard was ordering beer.

Q What did Herb Leyendecker say in response to your concerns?

A My recollection is that he said that he would speak to Captain Hazelwood about what I had heard or we had heard. And he didn't really want me to get involved. I think being a fleet – fleet person.

Q I didn't understand what you meant, being a fleet person.

A This – the job that I was doing in Portland and the entire two years I was ashore, still essentially a first assistant engineer who was working temporarily as a repair superintendent or new construction inspector, but eventually as we've seen in my bio, I do have to go back to sea and work with the rest of the fleet as a peer or as a junior officer to some of these people. It was his desire to keep me out of any potential conflicts or discussions of that nature.

Q Did he tell you that that was his desire?

A Yes, that's my recollection that –

Q He said don't get – don't get involved, you're going to be sailing with these people, I'll handle it?

A That's my recollection.

Q Okay. As a result of the concerns that you told us about,

[2176]

any action that you took in regards to this incident, after you spoke with Herb Leyendecker, using that understanding of follow up, did you do anything to follow up on your concerns?

A Well, I spoke to Herb about – as I said, and I believe he did speak with Captain Hazelwood at some point. I can't recall whether it was that day or the following day.

Q Okay. Let me ask you, did you speak with Mr. Leyendecker about his conversation with Captain Hazelwood?

A Yes.

Q What did he tell you about that conversation?

A From what I recall, he indicated he – he asked Captain Hazelwood if there was drinking going on on the ship, and Captain Hazelwood said there wasn't. This is from what I remember of him debriefing me afterwards. He asked Captain Hazelwood if he was drinking again, and from what I recall, his reply was, no.

And then I believe Herb indicated that if there was any drinking going on on the ship, that he wanted it stopped. And if there was any booze on the ship, he wanted it off, you know, kind of – kind of a warning or a – some guidance that if this was some kind of indication of a problem, that he expected the captain to take care of it.

Q Anything else you can recall about what Herb Leyendecker told you in regards to his conversation with Captain Hazelwood?

[2177]

A No, that's – that's all I can –

Q You said that Herb Leyendecker asked Captain Hazelwood if he was drinking again?

A That's – that's my recollection, yes.

Q Did you have an understanding as to why Herb Leyendecker would ask him if he was drinking again?

A My understanding was that, you know, possibly at some time in the past Captain Hazelwood had an alcohol problem or been a heavy drinker and as – you know, as I stated earlier, the only time I had met him, he was not drinking.

Q Prior to this incident, had someone told you or had you learned from some source that Captain Hazelwood had had an alcohol problem or was a heavy drinker?

A Nothing specific.

Q Mr. Day, did you want to clarify that answer?

A Yes. I would say the impression that I had regarding, you know, what I said previously, possibly being a heavy drinker, probably came from Herb, you know, in, you know, discussing the incident or in his decision to speak to Captain Hazelwood. That's my recollection, that that's where I kind of became aware that, you know, there might be something in his past.

Q Was this an indication that you'd received from Herb prior to this incident?

A No, I think kind of during. Yeah. Prior, I would have to state, you know, say the same as I did just a few minutes ago,

[2178]

there was nothing specific to indicate that.

Q Okay.

A You know, the only other thing I can add is, you know, I did attend this conference and with a group of sea-going people, and did notice that he wasn't drinking. So maybe here's a guy who had realized it was in his best interest not to. You know, that's probably the only other place I could have drawn that conclusion.

Q Do you recall thinking that at the time that maybe, here's

a guy who doesn't want to drink?

A Yes. He and Andy, both, you know. They'd made a choice of some – you know.

Q Do you know whether Herb Leyendecker spoke with anyone else regarding this incident?

A No, I do not.

Q Do you want to clarify?

A Well, there's a time frame involved.

Q Okay. And I had limited my question to –

A Right. So it's wide open and in that time frame, you know, no. But –

Q It's your understanding that sometime later Herb

Leyendecker spoke with someone else about this incident?

A Yes.

Q Do you recall when that was that Herb would have had that conversation?

[2179]

A I don't know exactly when he had the conversation. I do know when he told me that he had had the conversation.

Q Okay. And when was that?

A After the grounding.

Q Okay. But when he told you about the conversation, he didn't indicate when it was he had had – had discussed this incident with anyone?

A Not specifically, no.

Q Did he indicate to you that this subsequent conversation he had had was – occurred prior to the grounding?

A Yes, that was my – that was my impression.

Q Did he tell you who he spoke with?

A Yes.

Q Who did he speak with?

A Harvey Borgen.

Q Did he tell you what he told Harvey Borgen?

A No, not specifically, just gave him a description of – of essentially what I've testified here.

Q Okay. And did he tell you what Harvey Borgen's response was?

A No, he didn't.

Q Now, you've told us that you spoke with Herb Leyendecker about this incident. Have you spoken with anyone else about this incident, excluding the lawyers – well, excluding your lawyer and Exxon Shipping Company counsel, have you spoken with

[2180]

anyone else about this incident?

A Yes.

Q And who have you spoken to?

A Paul Myers.

Q Let's go back to the conversation you can recall with Paul Myers –

A Yes.

Q – regarding this incident. When did that conversation

occur?

A My best recollection is that when I – when I returned to Benecia after the vessel sailed from Portland, I remember discussing this incident with him. It's also very possible prior to the ship sailing from Portland in speaking with Paul regarding preparations to complete the repairs and go to sea that I mentioned it as well.

Q Okay. You told us the ship was dry-docked in Portland for approximately eight weeks?

A Yes.

Q So in the May or June 1988 period, you think it's possible you spoke to Paul Myers regarding this incident?

A Yes.

Q And then you say when you went back to Benecia you had a conversation with Paul Myers?

A Yes.

Q And when would that have been?

[2181]

A Approximately May 23rd.

Q So we can be a little more specific, you think you may have had a conversation with Paul Myers between May 20th and May 22nd while you were still in Portland, and you recall a conversation on May 23rd, 1988, when you returned to Benecia with Paul Myers.

A The telephone conversation that I don't really recall, you know, that vividly probably occurred sometime between May 11th and 20th. That would be the proper time frame for that.

Q What was Paul Myers' position with Exxon Shipping Company in May of 1988?

A He was ship group coordinator.

Q He was not your immediate boss?

A No. Well, not normally. In his capacity as ship group coordinator for the Exxon Valdez, I as repair superintendent was obligated to keep him informed, and so solely for the purposes of that 20 days or so that I was involved in the Valdez repair, he was a supervisor on the operation site.

Q Do you recall what you told Mr. Myers regarding this incident during the telephone conversation that you believe occurred sometime between May 11 and May 20, 1988?

A What I recall is essentially informing him what I've told you today, what occurred, Herb was involved, Herb followed up on the vessel, spoke to the captain.

Q Did you tell Paul Myers that you heard Captain Hazelwood

[2182]

ordering beer over the radio?

A I can't recall my specific words. Probably the best is to say I relayed to him what I've told you today.

Q Do you recall what Paul Myers' response was to the information that you were telling him?

A No, I don't.

Q Did Paul Myers indicate to you that he would take any action based upon what you told him?

A No, he didn't.

Q Was there something that specifically concerned you about that incident that led you to discuss this with Paul Myers?

A It was Paul's policy to request feedback on all of the

people on the vessel from the repair superintendent, so I felt this was part of giving him that feedback, you know, regarding events or people and their performance.

Q You mentioned before that Herb had told you to stay out of this because you're not – may have to sail with these people. Was that a concern that you had when you were discussing this with Paul Myers on the telephone conversation?

A Yes.

Q Did you discuss that with Paul Myers?

A I would say yes.

Q What did you tell him in that regard?

A I would say discussion – I mean – my recollection is that Paul understood the position I was in, and that – I kind of –

[2183]

I got the impression – or my feeling after talking was that he agreed with what Herb had done, to keep me out of it and take the issue himself.

Q In May of 1988, were you aware of any instances where Exxon Shipping Company employees suffered consequences, even informally, from their fellow employees or from the company for reporting violations of company policy, alcohol or otherwise?

A In that – at that time, no.

Q Subsequent to that time, have you become aware of such?

A Nothing specific. Our promotion system within the shipping company, including the sea-going employees is based upon performance only, and that performance is evaluated by your senior officers on the vessel, so it's easy to understand how crossing a certain group or – or sea officer could come back to haunt you or prevent you from being promoted or

getting, you know, salary increases or whatever. It's something everyone's pretty conscious of.

Q Whether or not you discussed it with Paul Myers, was that a concern – was that a concern that you held, that your reporting this incident could cause certain negative ramifications to you in future evaluations?

A Yes.

Q I may have asked you this already, and I apologize. Did Paul Myers indicate to you whether he was going to take any action as a result of your report during the telephone

[2184]

conversation?

A Not that I recall.

Q You said you had another conversation with Paul Myers on May 23rd or 24th when you returned to Benecia?

A Yes.

Q Was that a conversation that you initiated?

A I can't recall whether he did or I did.

Q What was the subject of that conversation? Was it this incident?

A No, actually, most of it was updating him on the – how the repair finished up, kind of nuts and bolts of how the repair was completed. This was just part of that general conversation.

Q Now, you say you recall this in-person conversation better than you do the telephonic conversation you'd had with Mr. Myers. What do

you recall about your conversation with Paul Myers on May 23 or 24, 1988, as it relates to this incident?

A What I recall is pretty much just restating the circumstances and Herb's involvement and his debriefing to me. That's pretty much it.

Q I understand. Other than this incident, did you report anything else to Paul Myers during this conversation regarding Captain Hazelwood's performance during the dry-docking of the Exxon Valdez?

[2185]

A I reported his performance generally was quite – we had quite a good relationship, very cooperative, seemed to work well together to get the repair completed.

Q Did you have any heightened concerns about this incident because it was Captain Hazelwood involved as opposed to John Doe involved?

A I would say no. You know, the problem I had was using the radio for some purpose such as that where it could be heard by all the shipyard employees, as well as the ship's crew.

Q Did you have any further conversation with Paul Myers regarding this incident?

A What time frame?

Q Well, since the May 23-24, 1988 conversation?

A Yes.

Q When did that conversation occur?

A It was in 1989, approximately two months after the grounding.

Q Where did that conversation occur?

A In my office, in the west coast fleet office in Benecia.

Q Who initiated that conversation?

A Mr. Myers.

Q Was your report of this incident the subject of that conversation?

A Not – not really.

Q What was the subject?

[2186]

A It was more the incident itself, not my report of it.

Q What was said at that time with regards to the incident by Mr. Myers?

A He indicated that he had passed on that information that I had told him to Harvey Borgen.

Q During this conversation, what else did he say?

A He said that there had been another incident in which – that he did not remember.

Q Now you have confused me. He told you that there was another incident? What type of incident?

A We're going to get to it, I'm sure. It's in all the other depositions.

Q That's the Mary Williamson incident?

A Yes. He mentioned there was an incident reported, apparently reported to him that he did not remember. He didn't remember that occurring.

Q He didn't recall having received a report of that; is that correct?

A That's correct.

Q Anything else that Paul Myers said during this conversation that you can recall?

A No, it was very short.

Q Whether Mr. Myers told you or otherwise, are you aware whether Mr. Myers took any steps other than reporting to Mr. Borgen in response to your report of this incident?

[2187]

A No, I'm not aware of any steps.

Q And do you have any knowledge as to what Mr. Borgen did, if anything, in response to Paul Myers' report of this incident to him?

A No, I'm not.

Q Are you aware of any other Exxon Shipping Company employee having knowledge of this incident, other than those that you've told us about today?

A Just – just Herb and myself.

Q And Harvey Borgen and Paul Myers?

A Yes.

Q Okay. Your discussion with Herb Leyendecker – Leyendecker, excuse me, did you discuss whether there had been beer on board the vessel?

A Yes.

Q And what was discussed in that regard?

A Herb asked if I had seen any beer on the vessel. My reply was that I had seen beer bottles, empty beer bottles on board the vessel.

Q Where were these empty beer bottles that you had seen on board the vessel?

A In the dumpster or garbage can in the computer control room, which was kind of public areas.

Q What kind of beer bottles had you seen?

A Henry Weinhart's.

[2188]

Q When had you seen those beer bottles?

A My recollection is that it was – it was sometime between the time I arrived there, May 2nd or 3rd, whenever that was, and the time of the radio call, sometime in that first week, ten days.

Q Okay. Had you seen the beer bottles on more than one

occasion?

A I can't say I specifically recall. I saw them in two different locations that I mentioned, which had to be a little bit apart, you know, it was – saw them in the dumpster, saw them in the chart controller room, so I don't know specifically if it was, you know, successive days or every day or once.

Q Do you recall how many beer bottles you saw?

A Best recollection is possibly four to six total in both locations. That's the best I can think or remember.

UNIDENTIFIED SPEAKER: I'm sorry. Four to six in each of the locations?

THE WITNESS: No, total. Maybe two in one, four in the other, or two and two.

BY VIDEO EXAMINER:

Q Did you see any other alcohol containers aboard the vessel?

A No.

Q When you discussed this incident with Paul Myers, did you tell Paul Myers that you had seen beer bottles aboard the

[2189]

vessel?

A My recollection is that I would have – I would have told him that, or I did tell him that during that discussion.

Q Was Captain Hazelwood on board the Exxon Valdez on a regular basis during the time it was in dry-dock and you were there?

A Yes.

Q When was the next time that you would have come in contact with him or his name would have come up?

A March of '89.

Q Where were you at that time?

A On the Exxon Galveston.

Q Who was the captain of the Exxon Galveston at that time?

A Captain Craig Reeder.

Q And what type of vessel was the Exxon Galveston?

A It's a small 25,000 dead weight ton lightering vessel. Stayed in San Francisco Bay.

Q Stayed in San Francisco Bay for the purpose of lightering other vessels?

A Yes.

Q What were your duties at that time?

A I was still repair superintendent working out of the west coast fleet office.

Q Could you tell us about the circumstances surrounding your either contact or Captain Hazelwood coming out in March of

[2190]

1989?

A I didn't meet Captain Hazelwood at that time. I was involved in a conversation about him.

Q When did this conversation occur?

A I'm going to say it was approximately March 13th or 14th, 1989.

Q What time of day; do you recall?

A Oh, about 11:00 in the morning, 11 a.m.

Q Were you a direct participant in the conversation, or did you overhear a conversation?

A I was a direct participant.

Q Who was the conversation with?

A Mary Williamson.

Q This is a conversation you initiated, or had Mary Williamson come to you?

A Mary had come to me.

Q What did she say to you?

A She said she had something she needed to talk to me about.

Q Okay. And what was your response?

A We were both very busy at the time. I said, okay, when I get a chance I'll stop by, or we'll get together and she could pass on this information.

Q Did you make time during that initial contact to speak with Mary Williamson?

A Actually, my recollection is the initial contact was – I'm

[2191]

going to say it was the – a Monday or the first day of my involvement with the Galveston on that repair, and I – I didn't really get a chance to speak with her that day. I had been on a ship all night, a different ship, and just came out in the morning and then went home. It was the following day, so it was about, say, a 24-hour time period from the initial – well, when she said she had something she wanted to tell me and when we actually got together.

Q And just so I'm clear, at that initial contact she didn't mention Captain Hazelwood's name?

A No.

Q What was the next occasion when Captain Hazelwood's name came up or you had contact with her?

A After speaking with Mary?

Q Well, let me ask you, have you told us everything you can recall in regards to your conversation with Mary Williamson, that initial contact?

A Oh, yes, yes. Initial contact was just, Steve, I need to tell you something when you get a chance. Okay. She went her way, I went mine. We had lots to do.

Q You didn't speak with her again?

A Until about 24 hours later the following day at lunch.

Q What was the next occasion after that initial contact that

you had with Mary Williamson where Captain Hazelwood was discussed?

[2192]

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

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

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

Q What did she have to say?

A As best I can recall, she had been on a launch from Westar going out to the Galveston. At the time she was on that launch, the Galveston was alongside the Exxon Valdez and the Valdez was discharging cargo to the Galveston. And she said she had met Captain Hazelwood on that launch and had a conversation with him on the launch on the way back to the ship. She said that in her opinion, that he might have been drinking, and that he was being

kind of loud and directing most of his comments toward her, and so she, you know, continued the conversation with him out on the deck of the launch to try and minimize the number of people who would overhear what was being spoken about. And she thought this might be a problem, you know, that maybe someone should be made aware of the circumstances that she had described.

[2193]

Q Did – you said that Mary Williamson indicated that she believed Captain Hazelwood may have been drinking?

A Yes.

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

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

Q Do you recall any – did Mary Williamson give you any of the specifics of what Captain Hazelwood was saying?

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

[2194]

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

A Yes.

Q And who did you report it to?

A Paul Myers.

Q When did you make that report?

A It would have been the following day, one day after my conversation with Mary.

Q What did you tell Paul Myers?

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

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

A He didn't – didn't say very much, my recollection, anyway. I vaguely remember some, you know, questions of when, what day, and, you know, but that's about – that's about all. It was very short, actually.

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

A Yes.

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

[2195]

your report?

A No, I don't know.

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

A We were still in port.

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

A They were still in port.

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

A At the time that I spoke with Mary?

Q Right.

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

Q Right.

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

[2196]

feel that there was some kind of friction there between these two people.

Q You said that Mary Williamson had reported to you that Captain Hazelwood had said less than kind things about Captain Reeder and Dan Paul?

A I believe so, yes.

Q What led you to report the information that Mary Williamson had told you to Paul Myers?

A Well, Paul was his supervisor.

Q Paul was not your immediate supervisor, though; is that right?

A No.

Q Who was your immediate supervisor at that time?

A Depended which vessels I was responsible for. At that time. I believe for most of the time I was in that office, it was Stuart McRobbie and Bill Deppe, maybe three shifts with one, two with the other, it kind of shifted around. That's why I reported it to Paul.

Q Did you report it to Paul Myers because you had made the previous reports to Paul Myers as well about Captain Hazelwood?

A Not really. He was – he was Captain Hazelwood's supervisor at the time of the shipyard repair, also, so I would – I would say that the reason for telling Mr. Myers is he was Mister – Captain Hazelwood's supervisor in both cases.

[2197]

Q When you made the report to Paul Myers, did he indicate to you that he would do anything with the report?

A Not that I recall, no.

Q At this time, on March 13th or 14th of 1989, were you concerned that Captain Hazelwood had a drinking problem?

A I would say that my feelings were that, you know, something was going on with this individual, that his supervisor ought to be made aware of, if I can do that, and as I said, I chose to do that. I don't know that I'm qualified to hear a secondhand report and determine if someone has a drinking problem or not. So it's kind of hard to come out and say that.

Q Do you believe that you did all that you could to inform Paul Myers, Captain Hazelwood's supervisor of the concerns that you have stated that you had about Captain Hazelwood?

A Yes.

Q And those concerns were that something was going on with this individual?

A Yes.

Q Was that something, in your mind, a potential alcohol problem?

A Could have been – could have been a lot of things. Could have been, you know, family problems. Could have been a number of things that were bothering this guy. But I just felt that what I was hearing from others he should be made aware of as his supervisor, so if he needed to speak with him or
[2198]

investigate, he could.

Q After your conversation with Paul Myers, when was the next time that Captain Hazelwood's name came up or that you had contact with him?

A March 24th, the grounding, was the next time really I heard his name.

Q Was there any problem with the Exxon Valdez when it was in port in San Francisco, any mechanical problem?

A We were having some problems with the turbo chargers on the main engines.

Q Okay. And what was that problem?

A I believe it was surging.

Q What was your first thought when you heard the Exxon Valdez had gone aground?

A Thought it was a mistake.

Q Why did you think it was a mistake?

A I just didn't feel that with, you know, one of the newest and most modern ships, well-maintained ship, that our company would have a problem like that. You know, with the care that we took in our

operation, that we would be the ones to hit Bligh Reef. Frankly, I thought it would be somebody else, you know, a fly-by-night operation.

Q When you heard that the vessel had been grounded, did it

cross your mind that Captain Hazelwood might have been drinking?

[2199]

A No. Initially – to answer your question, initially, no.

Q Okay.

A Could have been a mechanical problem, you know.

Q You say initially, no. At some subsequent point in time, did it cross your mind?

A Heard an awful lot of media reports that immediately brought that to the forefront, you know. News we got in the office.

Q So that morning –

A Yes.

Q – when you got to the office?

A Yeah.

Q And that thought was as a result of the media reports you heard?

A I believe so, yes.

Q When those media reports started coming across, did you discuss with anybody, either the Mary Williamson report to you or the ordering of the beer in Portland shipyard?

A That day?

Q We can begin with that day.

A Any time – yeah. Not that I can specifically recall on that day, you know, we were kind of busy with getting drawings of the ship, getting people prepared to go up there.

Q Okay. Subsequent to that day, did you discuss either of the incidents, the Mary Williamson report or the ordering beer

[2200]

in the Portland shipyard as it related to the media speculation that alcohol had been involved in the grounding of the Exxon Valdez?

A Every neighbor on my street that wanted to know the real story. There was an awful lot of hallway talk, as you can imagine, about every – all different theories on what happened. Then there were the media reports that may or may not have been correct, you know.

I do remember, you know, talking to – it's kind of hazy, but I do remember talking to Stuart McRobbie about it. He was running the office after the grounding. I also may have mentioned, you know, these incidents to Tom Shearer who worked in our office.

Q Anyone else you can recall?

A Those are the – the only people that I really have any recollection of. Like I said, there was an awful lot of hallway talk and I heard about, you know, everything you can imagine.

Q You said that you had a conversation with Stuart McRobbie but it was kind of fuzzy. Do you recall

anything about your conversation with Stuart McRobbie?

A Not – not too much. Essentially, as I said, he was running the office and he was, I'm sure, being asked for information by the company if there was any information out there. So what I recall is just, you know, meeting with him

[2201]

briefly and relating to him what we've talked about here today.

Q Do you recall any comments he made?

A No, I believe he was just a messenger. He was a conduit to pass information on to someone else.

Q How about your conversation with Tom Shearer, do you recall any specifics of that?

A Say it was pretty – pretty much the same as the conversation with Stuart, maybe a little less formal. Tom was just more of a peer than an individual in the office. I would say the same facts.

Q Did you express to either of these two individuals or to anyone other than your lawyers any concern you had that you had made reports to Paul Myers about Captain Hazelwood's activities, and yet to your understanding nothing was done in regards to those reports?

A Well, first I'd like to say, you know, something very well may have been done with the information that I passed along. I just was not aware of it. I also, you know, after the grounding, I think there – you've spoken to most of the – most of the people involved. I think everyone had some feelings that, gee, what could I have done to have prevented this thing? And

I was no different than anybody else in that regard. And in hindsight, I think I tried to do what – what I could, you know, by informing Mr. Myers of what I told him.

[2202]

Q Paul Myers, would he be considered Exxon Shipping Company management?

UNIDENTIFIED SPEAKER: By whom?

VIDEO EXAMINER: By this witness.

THE WITNESS: Yes.

BY VIDEO EXAMINER:

Q Do you believe that Paul Myers should have taken some measures to investigate the reports you gave him?

A Yeah. As I said, I think he very well could have that I was not aware of. I think by virtue of the fact that I reported the information to him, that I felt it was important enough to be looked into.

Q What did you – was there a message you were trying to get across to Mr. Myers that perhaps was not expressed in what you were telling him?

A Sometimes, Mr. Myers – I don't know if you've met him – tends to have a very flat affect. And when you speak to him, you can't determine whether it bounced off or sunk in sometimes, you know. Whether he's preoccupied with something else, he just – as Mr. Klinckhardt asked, what was his response, and there really wasn't much of a response, and that's why I said, you know, in thinking about it and trying to answer truthfully, can I really be sure that he heard me or was he thinking so much about

something else that was going on that day that, you know, he maybe didn't.

[2203]

Q So then perhaps –

A I was speaking that, you know, I'm fairly certain he heard the spoken words, the words that I enunciated, but they may not have registered or sunk in. He may have been – as an example, when – when I reported the Mary Williamson/Westar incident, he was at that time very involved with trying to get the turbo chargers repaired satisfactorily on the ship so that the ship could sail. We'd been delayed a couple days already and he – so it's very possible that's one – I think that's kind of the conversation that, you know, sparked me to make that statement to you, is that I know on that particular day he was very busy and I was very busy as well. And maybe in the – all the other things that were going on in his mind at that time, trying to get the ship out of port, that didn't register.

Q Why was he concerned about getting those turbo chargers operational?

A So that the ship could sail and pick up its next cargo.

Q Was it costing you money for the vessel to be at the yard?

A The ship was in service in – at the time of the Westar incident in March of '89, so every day that it sat in San Francisco without heading towards Valdez was a day off hire for the vessel, which costs a lot of money.

Q You testified earlier that in your – one of your discussions with Mr. Leyendecker – Leyendecker?

A Leyendecker.

[2204]

Q Leyendecker, that there might be repercussions to your career if you reported a concern about alcohol abuse of an officer such as Captain Hazelwood; do you recall that testimony?

A Yes.

Q Notwithstanding that concern, you reported what you learned on several occasions to Mr. Myers; correct?

A Yes.

Q Why did you do that, notwithstanding the fact that you knew there might be repercussions on your career?

A I felt it was information that – that Paul should have, you know, as his supervisor. And I also felt that Paul would be discreet enough not to reveal his sources, you know, having known him for a while.

* * *

[2207]

Q Now, did Exxon Shipping Company management ever do anything to encourage reporting violations of the alcohol policy?

A Not that I'm aware of.

Q You believe it's realistic to expect a junior officer, someone like yourself, to report violations of the alcohol policy to superior officers? Are you aware of

anyone else, Mr. Day, other than you, any junior officer ever reporting violations of a senior officer?

A No, not that I'm aware of.

Q Now, you testified earlier today that you had no knowledge that Hazelwood was monitored regarding his use of alcohol. Do you remember that testimony?

A Yes.

Q Okay.

A Up until the time of the grounding and everything became public and there was a lot of public –

Q Well, are you aware of Captain Hazelwood being treated differently in any way by Exxon Shipping Company management?

A Up to the time of the grounding?

Q Yes.

A Not that I could discern.

Q The contention that Captain Hazelwood was the most closely monitored man in the fleet, do you have any information or any evidence that would support that contention?

[2208]

A The only thing I think I could add on that is that Mr. Myers, who is the SGC for the Exxon Valdez, was very diligent in visiting the vessel. He was – of the SGCs that I saw work in that office, spent much more time on the ships talking to the people. What he was doing there, I really couldn't, you know, couldn't say.

Q How long was Hazelwood in Portland during April and May of 1988?

A I really – I'm not aware of when he joined the vessel. I know when I arrived on the second or third day of May, he was there as captain.

Q Okay. And how long did he remain before you went back?

A He sailed with the vessel. In the first voyage, I believe.

Q So how long a period of time would that have been that he was there and you were there before he sailed?

A Probably 20 days, 18 days, somewhere in there.

Q And during that 18 to 20 days, you had daily contact with Hazelwood; did you?

A Yes, for the most part.

Q Okay. And you're saying that no one ever told you to monitor or check on his drinking during that period of time; is that true?

A That's correct.

Q Did Harvey Borgen ever come to the Portland shipyard during

[2209]

that 18 to 20 day period of time?

A No, not in the period I was there, no.

Q Did Paul Myers?

A No.

Q My question is, you had – in March of '88, it was your belief that Hazelwood had stopped drinking; is that right?

A Yes.

Q And after either the incident in May of '88 or Mary Williamson's report a week before the grounding, did you consider the fact that Hazelwood had relapsed and he'd started drinking again?

A I thought that might be a possibility, yes.

Q That's why you reported it to Exxon Shipping Company management; true?

A The way I put it earlier, was that I reported the information to Paul Myers because I felt as – as his supervisor, he should be aware of – of this information. I believe that's the way I put it. Certainly as his supervisor, hopefully he had a lot more information about this individual than I did. I didn't know Joe Hazelwood very well and he could draw those conclusions as to what that information – what, you know, what that meant to him or to his – in his job as his supervisor more than myself. As I said, I felt that could have been a possibility.

Q Okay. And it was on each occasion when you went to Paul

[2210]

Myers, it was your hope or your belief that Mr. Myers was going to act on your report and do something; true?

A Yes, he – you know, I passed the information to him so that he could take that information into account in supervising this individual, however he chose to do it.

Q Mr. Myers, Paul Myers, in March of 1989 when you made that report to him, the Exxon Valdez was still sitting there in San Francisco Bay; wasn't it?

A That's correct.

Q It hadn't taken off?

A That's correct.

Q How many days did it continue to sit there before it took off?

A I believe I told him on Wednesday afternoon, ship sailed Saturday.

Q So it sat there for, what, three or four days?

A At least two full days, yeah.

Q Okay. And had Mr. Myers chosen to remove Hazelwood as master, he had at least two or three days to do that; didn't he?

A Yes.

* * *

[2216]

DIRECT EXAMINATION OF RONALD SCOTT
LUNT

BY MR. JAMIN:

* * *

[2217]

Q All right. Now, was there a period that you worked for an outfit called Alamar?

A Yes, there was.

Q And is Alamar shorthand for something else?

A It's short for Alaska Maritime Agencies.

Q And what was the period, sir, that you worked at Alamar?

A It was – I can't remember the exact month, but from '86 till – till the end of April, about, of '89.

Q And what was Alamar's general purpose?

A General purpose was to assist the ships and the captains who came into port that were hired by their companies.

[2218]

Q All right. And were these the ships and captains that were in the Valdez crude trade?

A Yes.

Q And the vessels would come up with ballast and leave Valdez with crude?

A Correct.

Q Now, within Alamar, was there a particular person who was the boss?

A Yes. Bob Arts was the manager of the officers.

Q How many employees were there?

A Six total.

Q And what was your – what was your job title, if you had one?

A I was titled an operations agent.

Q How many operations agents were there?

A There were four of us.

Q So if Mr. Arts is the boss and there's four agents, what were the other two people?

A Secretaries.

Q All right. Now, as an agent, what kind of workday would you have? What kind of workweek would you have?

A Basically depended on which type of ships we had coming in. Normal day would be a couple three ships in port. If there weren't any requests from the captains, or generally it was just maybe somebody to the doctor or securing stores for

[2219]

the steward's department or basically like that would be a basic day.

Q All right. So would it be fair to say you were a support person for the vessels as they came in?

A That would be a good description.

Q All right. Would you meet ships when they docked, sir?

A Yes.

Q Was that part of the job?

A Yes. Every time one of our ships came in, we'd meet them as soon as they got gangway on board.

Q All right. Were you there shortly prior to their departure as well?

A Yes. We'd come on board and get any last minute mail that had to come off and collect copies of oil reports from the gaugers.

Q I think we've talked a little bit about ullage reports, but that's how much room is left in the vessel after it's filled up with oil?

A Well, how much is left and how much crude oil is actually in each particular tank.

Q All right. Now, was – was Exxon one of Alamar's clients?

A Exxon was the largest principal Alamar had.

Q So you would deal with the various Exxon vessels as they came into port?

A Correct.

[2220]

Q During the course of your work at Alamar, did you come to meet Joe Hazelwood?

A Yes.

Q All right. And can you estimate for us how many times you might have interacted with Mr. Hazelwood during that period that you were at Alamar?

A I'd estimate 15 times maybe.

Q All right. Now, this may seem a little strange, but how do you know you were interacting with Joe Hazelwood? How do you know it was Joe?

A He was the captain of the ship. That was who I dealt with when I went on board, or he was the first person I'd go see.

Q All right. So as I asked you some questions about Joe Hazelwood, you're sure it was Joe when you're talking about?

A Yes.

Q All right. Now, did you have an opportunity, sir, to go to Mr. Hazelwood's cabin at all?

A When you say exactly his cabin, his office was outside of his cabin and that's where we would conduct business.

Q So you had an opportunity to go to the office part of his suite, then?

A Yes.

Q All right. And what brought you there, sir?

A Oh, Exxon shipped all their mail to our office for the crew members and whatnot, and we'd always take that on board. And

[2221]

then I'd sit down with the captain and discuss any requirements he had of myself or our office when the ship was in port.

Q So you actually got to know him a bit?

A Yes.

Q Let me talk just a bit about your responsibilities, if any, at Alamar for crew people. Would you – and this is with respect to the Valdez, your time in Valdez and talking about crew members from the vessels.

Would you on occasion take crew members to bars?

A Yes.

Q And on occasion, would you pick crew members back up from bars?

A Yes.

Q And did you ever see crew members from Exxon vessels return to ships noticeably drunk?

A Yes.

Q And how could you tell, sir?

A Just – it was about a 15, 20 minute ride from town to Alyeska, and just being loud, boisterous, having fun or whatever, I mean, just a different attitude than when I brought them to town.

Q All right. And were those crew members that you found

noticeably drunk or determined were noticeably drunk, were they able to get through the security gate at Alyeska?

A Yes.

[2222]

Q And were they able to walk back to the vessels?

A Yes.

Q Now, are you familiar with how one had to go from shore over some sort of apparatus to get to the vessel?

A Yes.

Q All right. Was there a name for that, sir?

A Oh, there's four berths there, and each one had a walkway

down to the ship. And then there was a gangway once you got to the end of the – end of the berth onto the ship.

Q So gangway is the right word, then?

A Yes.

Q All right. And were these men that you had seen as noticeably drunk able to make it over the gangway?

A Yes.

Q Did you ever see anyone actually pass out once they had gone through security?

A Yeah, one – one time, but it was not a – an Exxon employee.

Q Not an Exxon employee, but that person had been able to get through security?

A Yes.

Q Let's just talk about some of your contacts with Captain Hazelwood. What sorts of contacts would you have with the captain? What kinds of things would you do?

A Oh, I'd go on board, like I said, and deliver the mail and

[2223]

usually – or most of the time, if it was still business hours in town, he'd ask for a ride to town. And a couple of the crew members would come and I'd drop them off downtown and, more times than not, we'd set up a range of time for me to pick them back up, take them back to the ship after a few hours.

Q All right. Were there particular locations to which they were dropped off when you would bring them downtown?

A Yeah. I'd say most of the time it was either in the parking lot of the Pipeline Club or the parking lot of the grocery store directly across the street from there.

Q All right. And were you also involved in picking up when vessels would leave?

A Yes.

Q All right. And from where, if there was a normal place, from where would you pick him up, sir?

A Best I can recall, it was either at the Pipeline Club or there's another business in town called The

Pizza Club where sometimes they'd pick up pizzas for the crew members and take them back.

Q All right. And on such occasions when you were picking Captain Hazelwood up to return him to the vessel, did you ever go actually into the bar to pick him up?

A Yes.

Q And can you explain how that would happen?

A Well, like I stated earlier, we'd just arrange a time for

[2224]

me to pick him up, and I'd just pull up, go in and see if he was ready to go.

Q All right. And were there times when he would tell you that he wanted you to pick him up at a certain time at a bar?

A Yeah.

Q All right. Now, did you ever actually see Joe Hazelwood drinking alcoholic beverages in Valdez?

A Yes.

Q And can you explain the circumstances as to how you would see that?

A Well, I'd just locate him inside the bar and walk up to him, whether he's sitting at a table or at the bar, and ask him if he was ready to go.

Q All right. Now, how do you know that it was alcohol that he was drinking, sir?

A Well, I don't know for a fact, but just – like I say, I've lived there for 12 years and frequented the Pipeline Club, seen what's called like a rocks glass in

front of him, and I just assumed that that's what was in the glass.

Q How many times do you think that you saw Joe Hazelwood drinking in these circumstances where you'd pick him up before he went back to the vessel?

A Four or five, maybe.

Q And can you estimate how many times that you picked up Mr. Hazelwood from the Pipeline Club to bring him back to the

[2225]

vessel during this period?

A I thought that was what you just asked; four or five times, I mean.

Q Okay. Now, would you also get other materials to bring back to the vessel at Mr. Hazelwood's request?

A Yes.

Q What sorts of things were they?

A Oh, what sticks out most in my mind is during the summer months, we would get fresh seafood that was available in town and take that back on board.

Q And were there other stores you'd bring back as well?

A Occasionally they'd run out of bacon or something like that.

Q Now, during the period prior to the shipwreck, do you know whether it was possible to bring alcoholic beverages through the Alyeska security gate?

A Yes, it was possible.

Q And how do you know that, sir?

A I've seen it happen.

Q What were the circumstances?

A Guys I'd take back, they had arrived, would have a bottle on them and they would just put it inside a – inside coat pocket or put it in a boot or something and just hide it from the security people.

Q Now, other than the crews of the vessels – and I want to

[2226]

focus exclusively on Exxon right now, Exxon vessels, other than the crews of the vessels, by which I mean, the masters and the mates and the seamen, the engineers, the radio people, the crew, did you ever see other Exxon people from shore side management in Valdez?

A There was only one occasion that I can remember where a couple of people came up that were interested in the steward's department. They stayed in town for two or three days and boarded several ships to check out their facilities in the kitchen.

Q All right. Besides them, did you see any other Exxon management in Valdez?

A No.

Q All right. Were you ever aware that there was any program to monitor or keep an eye on Joseph Hazelwood while he was in Valdez?

A Not to my knowledge, there wasn't.

Q All right. Now, did you have contacts other than in person with Exxon people on a regular basis?

A Pardon?

Q Did you have contacts other than personal contacts where you would actually interact with someone, and other than crew, with shore side management?

A Strictly through telephone conversations, yes.

Q And what was the nature of those telephone conversations?

[2227]

A Generally, it was due to a sick crew member who was unfit for duty or if there was an emergency to get somebody off the ship or somebody that was meeting the ship in Valdez.

Q And how often would you – would you have these contacts, or perhaps how many contacts did you have over the time that you were in Valdez?

A Several hundred times maybe I'd talk to somebody in Benecia.

Q In Benecia, sir?

A Yeah.

Q And did you understand that was near San Francisco and it was the west coast office?

A Right, west coast fleet office.

Q During those conversations, did anyone ever ask you to keep an eye on Joseph Hazelwood and/or his drinking?

A Never.

Q Did Hazelwood have a reputation among Alamar people for being a sailor who liked to drink?

A Most of them.

MR. CHALOS: Your Honor, I object. Hearsay.

MR. JAMIN: I think, Your Honor, it's relevant as to whether or not it would have been possible to monitor Joseph Hazelwood and, if Exxon was interested, what they would have found out if they explored it for drinking in Valdez.

THE COURT: I'll allow the testimony as to
[2228]
reputation.

MR. JAMIN: Sir, let me repeat the question as I recognize that may be a little bit disquieting.

BY MR. JAMIN:

Q Did Joseph Hazelwood have a reputation among Alamar people as a sailor who liked to drink?

A Yes.

* * *

[2240]

DIRECT EXAMINATION OF GARRETT
O'CONNOR, M.D. (Live)

BY MR. MONTAGUE:

* * *

[2241]

Q So is it correct that you're both a medical doctor and a psychiatrist?

A That's correct.

Q What is your current practice?

A Well, my current practice – I perhaps should add that prior to getting to my current practice, there's about 25 years intervening in which I was, first of all, on the faculty of John Hopkins University from 1964 through 1972, as an instructor and professor of psychiatry in the department of psychiatry and in the school of public health.

During that time, I directed the psychiatric emergency service at John Hopkins, and also between 1969 and '72, the John Hopkins Drug Abuse Center in Baltimore. I was also the chief of the Acute Treatment Clinic and taught community psychiatry in Baltimore.

I then moved to Los Angeles in 1972 where I joined the faculty of UCLA. And I taught psychiatry on the faculty of

[2242]

UCLA from 1972 until 1976. And for a period of one year there, was the medical director of the UCLA VA Drug Abuse Center at the hospital in Los Angeles.

Q Are you still affiliated with UCLA?

A Yes, I am. Not full-time anymore since 1976, but I am an associate clinical professor at UCLA where I teach courses regularly to medical students and residents on alcoholism and drug abuse.

Q Does that bring us now up to your current practice?

A I think so.

Q Okay. And could you tell the jury what you do today?

A Yes. I am in the private practice of psychiatry and

addiction medicine, and in that role I see – I am referred and I evaluate patients for possible alcoholism, drug abuse or other forms of chemical dependence. And I evaluate them, make a diagnosis, if a diagnosis is to be made, and then make recommendations for treatment.

Q And do you have anything to do with these patients after treatment?

A Well, I do. Sometimes I participate in their continuing evaluation and extended care over a two or three year period as they are recovering from – they continue to recover from their alcoholism or their other forms of chemical dependence.

Q And sometimes are you consulted to evaluate persons who have been through – who have already been through alcoholic

[2243]

treatment?

A Yes. The patients come to me at different times. Sometimes they come before they're gone to treatment. They may be referred by a company; by the FAA, for example. I do a lot of work with pilots, and so the FAA or the airlines will refer me patients about whom they have a question, employees about whom they have a question, refer them to me to evaluate their status to see if there is a diagnosis of chemical dependence and, if so, what to do about it.

So then I will make a diagnosis, make a recommendation, perhaps for inpatient treatment, for outpatient treatment, plus a program of on going care.

Then in the case of – most of the patients I see, I should say, are people in safety sensitive positions. Pilots are the – not the bulk of my practice, but 50 percent of my practice. I also see air traffic controllers. I also see physicians, including surgeons and thoracic surgeons. I also see attorneys, and an occasional judge.

* * *

[2249]

Q Let's get down to basics, Doctor. What is alcoholism?

A Oh, well, there are many definitions for alcoholism, and I will try to make it clear to you what some of the most recent ones are. Alcoholism, first of all, is a disease. It's a biological disease, a psychological disease and a social disease. And that means that it is a disease which affects your body, your mind, your emotions and your relationships, wherever they – at home, or work or wherever they may be.

Now, because there are so many definitions of alcoholism, everybody in a sense has their own way of thinking about it. Our society, the American Society of Addiction Medicine, and this is the definition I'm going to give you because I think it's a very good one, spent two years assembling all of the information on definitions, and we came up with – I was a board member of the society at the time. We came up with a 1990, a definition which that was later published in the Journal of American Medical Association, very prestigious journal.

* * *

[2258]

Q Once an alcoholic, does drinking have any effect on your cognitive functions or your thinking powers?

A Yes.

Q And does one have to be drunk for that adverse reaction to take place?

A Cognitive functions, I think – thanks for bringing that up, because I had – I didn't mention it in my list of symptoms.

Cognitive functions are when the alcohol affects your brain, and the ones we would be most concerned with would be poor judgment, effects on judgment, effects on memory, faulty memory, blackouts, for example, that alcoholics get from drinking too much. And there are many studies that show that these cognitive effects are not just associated with drinking or being drunk or using intoxication, but because of the chronic effect of alcohol on the brain, they persist even at times when the alcoholic is sober.

And when we're evaluating – I'm evaluating pilots or doctors or police officers or others after treatment, one of the things that I do is evaluate their cognitive functions. They may have been sober for two or three months by this time, but they still may have cognitive deficits from the chronic effects of drinking which have to be evaluated.

* * *

[2265]

Q Are there studies made, or is it known in your profession basically what the relapse rate is, or the parameters of the relapse rate for an alcoholic?

A Well, Mr. Montague, that question really can't be answered very simply, but I could answer it briefly in the following way: That untreated, relapse rates for alcoholics tend to be very high, up to 60 or 70 percent if you don't treat people. However – and, of course, it depends on age and amount of drinking and type of alcoholism and whether or not a person has a social support group, whether they're jobless, whether they – all of those things come into play in assessing relapse rates, but in general, they're very high. However, with proper treatment they can be reduced substantially.

* * *

[2269]

Q Let's get them. Do you have sufficient information to form an opinion as to whether Captain Hazelwood suffered from the disease of alcoholism as of 1985?

A I do.

Q And have you formed such an opinion?

A I have.

Q And can you tell us what that opinion is?

A Yes. In my belief, Captain Hazelwood suffered from the disease of alcoholism since 1985.

Q Could you tell the jury the basis for that opinion?

A Yes. The basis of my opinion is largely based on the materials that we just reviewed, and perhaps the best way to talk about it is to divide it up into three time periods, really. The signs and – that were apparent prior to Captain Hazelwood's entry into South Oaks Hospital, and then hospitalization itself, and the period after his hospitalization and then,

finally, the period towards the end of his employment with Exxon prior to the oil spill.

Prior to the hospitalization, what – what did he have? Well, he himself complained that he and his wife had been

[2270]

talking about getting some help for eight months prior to his going into the hospital. He also complained of moodiness and a mid life crisis. There was an investigation going on into Captain Hazelwood's drinking by Exxon in the early part of 1985. Captain Pierce called him, said there's an undercurrent of some kind going on here and maybe you better do something about it.

The Graves report, which indicated that Captain Hazelwood – of course, Exxon didn't know about that until a little later, but looking back on it, Captain Hazelwood had come back drunk to the ship on – I think intoxicated on several occasions and had also been drinking on board. So they were the main things, I think, prior to – in addition to, of course, the principal thing. Of course, Captain Hazelwood's own account of, as he said, abusive drinking for four years, once a week with his wife at home, heavy drinking, we would say, four to five doubles before dinner, wine with dinner, two to three doubles after that. Which would make him, as he said in his testimony and his deposition testimony, giddy or jokey or a little clumsy. So there was that, and this obviously, as he indicated, did not help his relationship with his wife. And led to subsequent treatment.

Q If I may divert for a minute. Did you notice any change in Captain Hazelwood's testimony with

respect to the time of what he said in his deposition and what he said here in court?

[2271]

MR. SANDERS: Objection, Your Honor, as to relevance.

MR. MONTAGUE: Well, Your Honor, the witness just said that he relied in forming his opinion on his deposition testimony.

THE COURT: Mr. Sanders, anything else?

MR. SANDERS: Your Honor, I question the relevance of a comparison.

THE COURT: Well, I'll allow the witness to testify as to the comparison, and you may cross-examine as to whether there's any basis for it, if it isn't brought out.

You may testify.

MR. MONTAGUE: Thank you, Your Honor.

THE WITNESS: Well, yes, there were – I think a couple or three different versions of Captain Hazelwood's account of his drinking with his wife. In his first – in his deposition testimony, he said in response to the questions that it was once a week for three to four years. Then I think in two different parts of his trial testimony, he said on one occasion that it was sometimes weekly and sometimes kind of every three weeks. Now, a different pattern given. And then on another occasion, he said that the time interval between his heavy drinking at home was, I think, several months. Several weeks or several months. Any way, there was again a third version of the same account.

BY MR. MONTAGUE:

[2272]

Q Is that – I'm sorry.

A Yes, go ahead.

Q Does that have a significance to you, the fact that that story would change from his deposition in January of this year and at the trial?

A Yes, it does. It makes it difficult to rely upon Captain Hazelwood for accounts of his drinking, for me, in trying to think about the significance of Captain Hazelwood's drinking, what it means, the vitality of it, the centrality of it in this case when you get a person giving three different versions under oath in a two or three month period. It makes it difficult to rely upon whatever he says about his drinking, especially is he – also basic to that opinion is his own admission in his deposition testimony that he lied about his drinking several times, and there was other information which perhaps we'll generate here that he lied about his drinking on other occasions throughout this time.

MR. SANDERS: May it please the Court, I renew my objection, move to strike the comparison of testimony.

THE COURT: I'll allow the testimony to stand.

MR. MONTAGUE: Thank you, Your Honor.

BY MR. MONTAGUE:

Q Let's get back from my diversion. You were giving the basis for your opinion as to why you had concluded that Captain Hazelwood was suffering from alcoholism or was an alcoholic as

[2273]

of 1985, and I believe you had finished his – the events – or had you finished the pre-events before he entered South Oaks Hospital?

A Yes. Oh, one more I forgot about, that he didn't tell his doctor about any of this. Why is that significant?

MR. SANDERS: Your Honor, may we have a side bar?

(At side bar off the Record)

THE COURT: Ladies and gentlemen, you will please ignore and disregard totally the last question and answer that was given.

Dr. O'Connor, at this stage of your testimony we need to tighten things up a little bit and do it more in a specific question and a specific answer. When you're giving the broad background material, I've allowed you to give narrative, broad answers, but we're into the case specific part of your testimony now, and we need to tighten it up some.

THE WITNESS: Yes, Your Honor.

BY MR. MONTAGUE:

Q Dr. O'Connor, in reaching your opinion on whether Captain Hazelwood, that he was an alcoholic and suffered from alcoholism in 1985, did you consider the fact that he attended a 28 day inpatient alcohol rehabilitation program?

A Yes, I did.

Q And what is the significance of that?

A Well, it was in an alcoholism rehabilitation center, and he

[2274]

was admitted to that for treatment.

Q Okay. Did you consider the information that was on the IDR, which is Plaintiff's Exhibit 10?

A Yes, I did.

Q And the statements on that made by Dr. Vallury?

A I'm sorry. The statements made on it by Dr. Vallury, yes.

MR. MONTAGUE: That's not facing too good. Thank you. Can you see that?

THE WITNESS: Yes, I can.

BY MR. MONTAGUE:

Q And what is it on that report which supports your opinion or from which you formed your opinion or contributed to your opinion that Captain Hazelwood was an alcoholic in 1985?

A Well, the – do you want me to –

Q By the way –

A This IDR or this abbreviation of that.

Q You look at Exhibit 10, if you want and if you could put Exhibit 10 on the – I guess we can't get – PX10?

MR. SANDERS: Don't we have a blow-up of that somewhere?

MR. MONTAGUE: Can everybody see the screen?

BY MR. MONTAGUE:

Q You want to tell us what we're going to refer to and I'll try to make it more legible for everybody.

A Yes. I was going to refer at some point to the code

[2275]

numbers at the top of the diagnosis section.

Q Is that what you're referring to?

A Yes. Where it says 300.40 and 305.42. They are typed.

Q What is it about those that you relied upon in reaching your –

A Well, one of them is the code number for dysthymic disorder, and the other is the code number for alcohol abuse episodic.

Q Yes. And what is the significance of that to you?

A Well, alcohol abuse episodic is a diagnosis which indicates a form of alcoholism. Furthermore, the handwritten information below, individual psychotherapy, group therapy, marital therapy, AA and lectures, seminars and workshops pertaining to alcoholism is a classical description of the treatment in an inpatient 28 day program for alcoholism following what is called a Minnesota model, which was the traditional form of treatment for alcoholism at that time. And indeed today, as well. So that the – what is described for treatment is the treatment for alcoholism.

And then further down, Dr. Vallury, looks like his writing, has said that Mr. Hazelwood will complete our 28 day program, that's the – the only thing – alcoholism is the only thing for which a 28 day program exists. It is recommended, given the nature of his job, that after discharge, Mr. Hazelwood will be given a leave of absence to get involved in AA and

[2276]

aftercare.

Again, that is an absolutely classical prescription for extended care and aftercare for somebody with a diagnosis of alcoholism. We note in item five there that workshops pertaining to alcoholism is what's used. And going back to the diagnosis part there, it's typed, and that's probably Captain Hazelwood. It indicates at the top, was admitted on the 1st of April, and this form is the 16th of April, just 16 days, so this diagnosis is no doubt provisional. And it's typed here.

MR. SANDERS: Objection. Objection to the speculation.

THE COURT: Sustain the objection.

The jury will disregard the comment about the nature of the diagnosis.

BY MR. MONTAGUE:

Q Doctor, in your opinion, would any trained practicing professional in your area know that Captain Hazelwood was treated for alcoholism by looking at that document?

A Yes, in my opinion, would know.

Q Is there a treatment for dysthymia – dysthymia, which is

it? Dysthymia, dysthymia, which is it?

A Dysthymia, I think is how it's pronounced. Yes, there is a treatment for dysthymia and that is individual psychotherapy for 18 months to two years with what's called cognitively based behavioral psychotherapy, which helps a person recognize the

[2277]

signs and symptoms of their depression and helps them do something about it to engage in behaviors that will prevent it.

Q And from that exhibit, the IDR, can you determine whether Dr. Vallury prescribed that type of treatment for dysthymia?

A There is no evidence to – no, there is no prescription for that type of treatment.

Q Are there any other bases for your conclusion that in 1985 Captain Hazelwood suffered from alcoholism?

A Well, Dr. Vallury's deposition, we heard in the Court here, where he indicated that the – with respect that he – he advocated, any cases of alcoholism, he said, that abstinence should be the recommended treatment, as he has indicated here by recommending AA and aftercare.

He also said that the – in this instance, the treatment for dysthymia and alcoholism would be the same. He recommended, as did the hospital recommend, a – as Captain Hazelwood said in his testimony, too, there was a general recommendation not to drink and he had committed himself not to drink for a while.

Q Okay. So your opinion is that in 1985, Captain Hazelwood was an alcoholic?

A That is my opinion.

Q Do you have any doubt about that conclusion?

MR. SANDERS: Objection, Your Honor.

THE COURT: Sustain the objection.

[2278]

MR. MONTAGUE: Okay.

BY MR. MONTAGUE:

Q Do you have – in the materials you've reviewed and what you've heard in this court, have you found that you have sufficient information to form an opinion of Joe, Captain Joe Hazelwood's status in recovery from alcoholism after his inpatient treatment and up to the time of the grounding of the Exxon Valdez in March of 1989?

A Yes, I do.

Q And have you formed such an opinion?

A I have.

Q And what is that opinion?

A It is my opinion that Captain Hazelwood never really got into a state of recovery and, therefore, that he did not achieve a state of stable recovery following his discharge from South Oaks between that and the time of the oil spill.

Q Okay. And could you tell us – well, let me ask you some specifics, so maybe we can shorten things.

The fact that Captain Hazelwood left his aftercare program after two months, did that have any significance?

A Yes, it does.

Q And what is that significance?

A Well, he was prescribed to attend extended and aftercare sessions, and he told us that he had dropped out of those in late June or early July, about six weeks after his

[2279]

prescription, and he didn't tell anybody about that. Except dropping out of treatment, dropping out of recommended treatment without telling anybody is often a sign of the beginning of the end of an alcoholic who will sometimes return to drinking because they have cut themselves off from professional contact and support.

Q Does the fact that after finishing treatment he had no further contact with an alcohol abuse professional have a significance?

A To my – to my knowledge, that's the case.

Q And why? Why does that have a significance?

A Well, again, the treatment had been prescribed by Dr. Vallury, and one of the symptoms of a return or an eventual return to drinking or poor recovery status is the alcoholic's belief that they can do it on their own and that they have a better way of going about recovery than professionals or other people who know what they're doing.

Q What about Captain Hazelwood's attendance at AA meetings and his description of participation at those meetings?

A When Captain Hazelwood began, he says he attended AA meetings for – 90 meetings in 90 days, but his description of his attendance in AA I have found very difficult to understand. For example, he has said that he has never shared in an AA meeting in four years. He has said that despite the fact that he does not now or then ever thought of himself as an

[2280]

alcoholic, he has been attending closed meetings of AA, and closed meetings of AA are for alcoholics only. He says that he has had three temporary sponsors. The concept of a temporary sponsor that I'm familiar with is one that you meet in a hospital who helps you get established in AA, and then you get a permanent sponsor. I've never heard of somebody having three temporary sponsors for three years, even though sponsors may move, you get another one, but they're permanent response source. And then finally, the only requirement for membership in AA is a desire to stop drinking. Doesn't mean everybody who joins AA stops drinking, but they have a desire to stop drinking, and when they go back to drinking, they generally talk about it in AA with their sponsor, but as he didn't share ever in AA, he apparently didn't talk about it in AA.

So persons who continue to drink in AA and particularly who come to closed meetings and don't display any desire to stop drinking in AA are not generally well accepted because everybody in AA has a desire to stop drinking and wants to stay sober so people who don't demonstrate that, in my experience, are frequently not terribly welcome. So that's why his description of his membership in AA is puzzling to me.

Q Does his description of his participation in AA meetings comport with your experience in attending over 3,000 meetings?

A No, it does not.

Q And you mentioned his resumed drinking. Did that have a

[2281]

basis for your opinion that he did not achieve recovery?

A I'm sorry, could you say that again?

Q Yes, his resumed drinking.

A Yes, his resumed drinking. He – he did resume drinking after a statement that he would remain abstinent and it was about a year later that he did so. And the way he did so is very typical of how any alcoholics go back to drinking, just sitting there at dinner, suddenly it seems like a good idea to have a drink. No – nothing major going on in his life, just had a drink and, to me, that means that the denial process had begun to set in again and the vigilance that he may have been taught at the treatment center about returning to drinking, the consequences of drinking, the knowledge that he had about what would happen if he violated policy because of his meetings with Captain Tompkins and others, all of that information was not there, as he just took up the first drink. It just happened like that.

And from there on out, his resumption of drinking over the next two and a half years, between then and the oil spill, it seems to me, we can detect a pattern or a progression of just having one drink, which is a lapse or a slip, but then over time, relapse – just like recovery, relapse is a process, not an event, it goes on over time. And he continued to drink, it was wine and beer and Bloody Mary's on planes and drinking with colleagues. And then by September 1988, he had a period of

[2282]

heavy drinking in which he drank a lot of – I think ten drinks and then drove a car afterwards, which

might suggest again a return – or the development of what I talked about, tolerance, be able to drive a car after drinking ten drinks in a short period of time.

Then the pattern continued. He began to violate alcohol policy even knowing that that would result in termination of his job, and at Portland where Mr. Carr talked about having a drink on board with Captain Hazelwood. We heard about the walkie-talkie episode this morning for Mr. Day. We also then heard about the Captain Reeder episode, Ms. Williamson's report, all of these things were contributing to my conviction that Captain Hazelwood had by that time returned to an abnormal pattern of drinking, under the circumstances, given his treatment and given what was known. In addition, he was leading a double life. Heavy drinking after work for a while, but he concealed that from his wife who herself was in Al-Anon and who had been in marital therapy with him in the hospital, which most of these things were to be talked about which you do in marital therapy, he didn't drink at home for all this period of time, and yet he was drinking on the road, on board, with colleagues and so on.

And then finally, on March 23rd, 1989, there was his drinking in Valdez prior to the oil spill with the violation of the Coast Guard rule.

[2283]

Q Okay. Now, have you formed an opinion, Doctor, as to whether Captain Hazelwood's alcoholism was the cause of his leaving the bridge on the Exxon Valdez on March 23, 1989, while the vessel was outside of the traffic lanes, diverting ice and heading towards Bligh Reef?

A I have.

MR. SANDERS: Objection, Your Honor, I think this is a little far outside the expertise that he's stated here in this courtroom.

THE COURT: Mr. Montague, it strikes me that it goes beyond.

MR. MONTAGUE: Let me ask it a different way, if I might.

THE COURT: All right.

BY MR. MONTAGUE:

Q Doctor, have you formed an opinion as to whether Captain Hazelwood's alcoholism impaired his judgment on the night of March 23, 1989?

MR. SANDERS: It's closer, Your Honor, but –

THE COURT: I'm going to let him try it.

BY MR. MONTAGUE:

Q Have you formed an opinion, first?

A About whether alcoholism impaired –

Q No, impaired his judgment?

A I have.

[2284]

Q And what is your opinion?

A I believe it did.

Q And can you tell us in succinct terms how you reached that opinion?

A Well, it – obviously, basic to that opinion is the fact that I think that Captain Hazelwood had returned to an abnormal pattern of drinking by that

time, and that he was actively alcoholic and in full relapse of his drinking, for all the reasons that I've given. On the afternoon – and was exercising poor judgment both with respect to his drinking and with respect to his activities.

On the afternoon of March 23rd, he drank an unknown amount of alcohol in Valdez in the company of his chief radio operator and his chief engineer and led them in a violation of the Coast Guard rule. It seems to me that for –

MR. SANDERS: Now we're far afield, now. It's not his field of expertise as to whether there's a violation of the four-hour rule and those kind of things, and I think he's answered the question.

MR. MONTAGUE: He's stating his basis.

THE COURT: He's stating his basis.

Ladies and gentlemen, you are the deciders of the facts in this case, and you all have a dispute in the evidence that you're going to have to deal with as to whether or not the Coast Guard rules were violated. That's a decision you're

[2285]

going to have to make at some point.

This witness is going to offer some testimony about that, but whether or not – he isn't the one who's going to decide whether those rules were violated. You're the ones that are going to do that.

Go ahead, Mr. Montague.

THE WITNESS: Perhaps I could say by drinking within four hours of going back on the ship. And then coming back on the ship, Captain Hazelwood is – his behavior in leaving the bridge

that night was so uncharacteristic, he is known as a

—

MR. SANDERS: Objection again. Now, he's testifying over in the area of seamanship.

MR. MONTAGUE: Okay. Okay.

BY MR. MONTAGUE:

Q Apart from — we've heard all kinds of testimony about what happened on the ship that night, and I'm asking you, Doctor, if you can, as on the basis of his behavior leading up to that night, not what happened once he got on the bridge, but his behavior leading up to the night he boarded the vessel, if that's sufficient for you to form an opinion as to whether his judgment was impaired that evening?

A Yes.

Q Okay. Can you do that and can you tell us?

A I can try, yes.

Q Thank you.

[2286]

A Well, I would be repeating myself to say that I think his judgment was impaired by the way that I have heard the accounts of — the various accounts of his drinking that afternoon. And so that in itself, under the circumstances of his backgrounds, treatment, development of his disease, progression of it would indicate to me that his judgment that afternoon was indeed impaired.

Q Now, the fact that he was able to walk up the gangplank when he boarded the ship, does that have an effect on your judgment?

A No.

Q And the fact that persons on the vessel will testify that they saw him and he looked perfectly fine, does that have an effect on your opinion?

A No.

Q Captain – Dr. O’Connor, have you formed an opinion as to whether Exxon’s – Exxon contributed in Captain Hazelwood’s failure in recovery?

MR. SANDERS: I object to that question. Contributed?

THE COURT: Try the question another way. There may be a way that you could get at this from a medical standpoint, but that’s where your focus needs to be.

MR. MONTAGUE: That’s correct.

BY MR. MONTAGUE:

[2287]

Q Dr. O’Connor, have you reviewed Exxon’s reactions to Captain Hazelwood from 1985 up to March 23, 1989?

A Yes, I have.

Q And do you have an opinion as to how those actions affected Captain Hazelwood in his alcoholism?

A Yes, I do.

Q Could you tell us that, briefly?

A It goes back initially to the return to work of Captain Hazelwood in August of 1985 when the criteria for return to work was successful completion of treatment for his alcoholism. And Captain

Hazelwood has himself has said that he dropped out of treatment after six weeks and therefore, in my opinion –

MR. SANDERS: Object to this as the mischaracterization of the testimony. Again, I – maybe the jury should –

THE COURT: The jury will have to decide what the facts are, but I'm going to allow the Doctor to testify as to his opinion, but if his recitation of the facts does not comport with yours, you will have to ignore the opinion.

You may go ahead.

THE WITNESS: Yes, sir. That he had dropped out of treatment at the end of June or the beginning of July, and that he had indicated to Captain Mark Pierce that his medical treatment had been curtailed over the summer. And that

[2288]

indicates to me that he had not, in fact, successfully completed –

MR. SANDERS: Objection, Your Honor. That's not only a mischaracterization of the evidence, it's a making up of evidence.

Can we approach the bench, Your Honor?

THE COURT: No. I'm going to allow him to testify. But I say again, if his recollection or recitation of the facts does not comport with yours, you will ignore his opinion on this subject.

Why don't you ask another question, Mr. Montague, and help focus this.

MR. MONTAGUE: Okay.

BY MR. MONTAGUE:

Q Specifically, let me ask you this question. Based on your experience, if Captain Hazelwood had been properly evaluated before being assigned to the Yorktown in 1985, could Exxon have discovered the signs of his failure in recovery?

A I believe so.

Q And do you have an opinion as to whether there were sufficient signs available to Exxon to detect Captain Hazelwood's failure to recovery when Exxon reassigned the captain to the Exxon Valdez in 1987?

A I believe there were.

Q And had Exxon looked properly, could they have found those

[2289]

signs?

A I believe they could.

Q By the way, is it accepted professional conduct, in your field, to require an evaluation of someone who has gone through alcohol treatment on the basis of rumor?

A Yes.

Q Particularly with when that person is in a safety sensitive position?

A That's correct.

Q Is that normal, in your experience?

A Yes, it is normal. Aggressive investigation of rumors about drinking ought to, under circumstances of a person after evaluation, trigger a

medical evaluation of their recovery status at the time.

Q Okay. Now, one last question. Based upon all of your testimony today and what you've heard in this courtroom, and based on the signs that were available to Exxon, do you have an opinion as to whether Exxon should have allowed Captain Hazelwood to be the master on the Exxon Valdez as it left San Francisco in March of 1989?

A I do.

Q And what is your opinion?

A I believe that Exxon should not have permitted him to leave San Francisco as master of the Exxon Valdez on that date.

* * *

[2300]

you. Didn't you in fact say at your deposition on the 22nd of April 1994, that Captain Hazelwood did not, in my opinion, meet the criteria under alcohol dependency DSM-III at that time, referring to 1985?

A Yes, I did, as you showed me.

Q Now, I think it's obvious, but I want to make sure. DSM-III-R was not in existence in 1985 when Captain Hazelwood sought treatment, was diagnosed and treated by Dr. Vallury?

A That's correct.

Q All right. And then you also mentioned another definition or basis for your definition of alcoholism, and that was one that your society worked two years on; right?

A That's correct.

Q And that wasn't published until 1992; was it?

A I think it was earlier than that, but certainly in the '90s, yes.

Q Wasn't it published by the Journal of American Medicine in 1992?

A No, it was published originally by the American Society of Addiction Medicine in 1990, and it was commented upon and

[2301]

republished in the Journal of the American Medical Association in 1992.

Q In any event, whether it was five or seven years, it was long after 1985; correct?

A It was 1990, yeah.

Q And certainly after the grounding?

A Yes.

* * *

[2307]

Q And 305.02 is alcohol abuse episodic?

A That's correct.

Q Which is different under DSM-III than alcohol dependence or alcoholism; is it not?

A Under DSM-III, yes, it is.

Q That's what Dr. Vallury was using; isn't it?

A That's true.

Q Quite obviously?

A That's true.

Q Couldn't have used DSM-III yet because it wasn't there yet?

A That's correct.

Q Couldn't use your societies definition because it wasn't there yet?

A That's correct.

* * *

[2317]

DIRECT EXAMINATION OF BENJAMIN GRAVES
(Video)

BY VIDEO EXAMINER:

Q Mr. Graves, for the record, would you state your full name, please?

A Benjamin Carter Graves, Jr.

[2318]

Q Sir, where do you currently reside?

A I reside in Kingwood, Texas.

Q Could you tell us by whom you're currently employed?

A Exxon Company U.S.A.

Q And in 1984 you were transferred to Exxon Shipping Company here in Houston?

A Yes.

Q Did you request that transfer?

A No. It was –

Q Was that considered a promotion, demotion, any change in status at all?

A It wasn't a demotion. It was either a lateral move or a promotion. I don't remember.

Q And what was the title you were to assume in 1984 with Exxon Shipping Company?

A Administrative manager.

Q What were your duties as administrative manager with Exxon Shipping Company in 1984 through 1986?

A I was basically the human resource organization for Exxon Shipping Company.

* * *

[2326]

Q After Exxon Shipping Company had learned through Captain Hazelwood's own admission that he had drunk while aboard the vessels and that he had gone through alcohol rehabilitation, was it a concern at any time after that that Captain Hazelwood may be drinking, whether it's on board the vessel or at home?

A Oh, I'm sure that some of Captain Hazelwood's supervisors were interested and concerned about that.

Q Okay.

A I certainly would have assumed that they were, any way.

Q Did you have any conversations with Frank Iarossi regarding that topic?

A Only to the extent that Frank asked me to be sure that John Tompkins counseled with Hazelwood before he was reassigned to a vessel. That his assignment, travel plans routed him through

Houston so that he in fact could talk with John before being assigned to the vessel, and John was to counsel with Captain Hazelwood about maintaining his non-drinking status and to be a solid employee and manager of the ship.

Q You say non-drinking status. Does that mean non-drinking status both on board the vessel and off the vessel?

A I presume from an alcoholic standpoint, once you are, you can't pick up a drink thereafter. I don't know. That's just

[2327]

what I hear. But John was to advise him that any infractions that the company became aware of would subject Captain Hazelwood and subject him to discipline up to and including termination.

Q Did your conversations with Frank Iarossi regarding this topic include conversations that once you're an alcoholic, you can't pick up another drink –

A No.

Q – that abstinence was important?

A No.

Q Did you ever have any conversations like that with Mr. Iarossi?

A No.

Q Did you take any steps to attempt to determine the extent of Captain Hazelwood's alcoholism?

A No, that would have been the medical department, if they – I mean, wouldn't be something I would be able to evaluate.

Q Do you know whether they attempted to evaluate that?

A I have no idea what conversations took place between our medical department and his facility.

Q Did you speak with anyone in an attempt to discover generally what's involved with alcohol rehabilitation?

A No. Again, I don't consider myself an expert in that. It's like whether I know whether the ship is being navigated properly or not. It mean, it's a doctor's prerogative, as far

[2328]

as I'm concerned.

Q Did you speak with anyone in an attempt to determine information regarding how from a human resources perspective a company should deal with an alcoholic?

A Not that I can recall.

Q Did you speak with either Frank Iarossi or Paul Revere regarding how the company should deal with Captain Hazelwood having gone through alcohol rehabilitation and reporting back to work?

A I don't recall speaking specifically to them about it. I mean, it's – alcoholism as a – as the company viewed it is a treatable illness, is kind of a job performance issue as much as anything else, and you know, how a person's illness affects their ability to do their job is part of the on-going supervisory responsibilities that any supervisor in the company would have, stay close, you know, close to observe the employee as possibly and determine what their performance levels are.

Q Did you discuss with either Mr. Iarossi or Mr. Revere that it would be necessary to closely observe Captain Hazelwood as much as possible and evaluate his performance?

A I didn't, but I think that was clearly Frank's intent of having John Tompkins talk to Hazelwood before he went back aboard the vessel to let him know that his performance was going to be watched and the company wished him well and expected him to have a full and total rehabilitation.

[2329]

Q Do you know what background, if any, John Tompkins has in regard to problems associated with alcoholism?

A No, I don't.

Q Do you know whether John Tompkins sought the advice of anyone to determine generally the problems associated with alcoholism or how a company generally should deal with an alcoholic employee?

A I don't know. You'd have to ask Mr. Tompkins that.

Q Was there any discussion that you were a party to with either Mr. Iarossi or Mr. Revere where it was discussed whether Captain Hazelwood should have a shore side assignment at least initially?

A No.

Q Is it your testimony that you believe a shore side assignment would have been punitive in nature?

A No, I do not believe it would have been punitive in nature.

Q Do you believe a shore side assignment would have violated the alcohol policy?

A No.

Q It's just a subject that never came up, as far as you know?

A As far as I know.

Q After your May 19, 1985 conversation with Joe Hazelwood, did you have any further conversations with him regarding either his rehabilitation or his use of alcohol on vessels?

A Not that I recall. I guess it's possible, but the only

[2330]

significant conversation I remember with Joe was the interview that I did with him on May 19th.

Q From the summer of 1985 until you left Exxon Shipping Company, did you have any involvement whatsoever regarding follow-up on Captain Hazelwood and his alcohol rehabilitation?

A Did I? No.

Q And did you ever ask Captain Hazelwood any questions about his home life?

A No.

Q And do you have any knowledge of either Mr. Tompkins or Mr. Sheehy or anyone who was watching Captain Hazelwood asking him questions about his home life?

A No.

Q Do you have any knowledge of anyone ever, from the time Captain Hazelwood returned from his leave

of absence up to the time of the grounding, of anyone asking Captain Hazelwood whether he had resumed drinking?

A I have no knowledge of that.

Q Did Captain Hazelwood tell you that he had come back to the ship drunk on several occasions?

A Yes.

Q Did you ask him on how many occasions he was referring to, whether it was five times, ten times, 20 times?

A No, I did not.

Q And did you ask him when these occasions had occurred?

[2331]

A I don't recall asking him specifically, no.

Q And did he tell you specifically when these occasions had occurred?

A Not that I recall.

Q And did you – was it your understanding that attendance at AA meetings was – by a recovering alcoholic was an important element in the rehabilitation program?

A Our presumption is that that would be a reasonable thing for any substance abuse person to be involved in, some continuing support activity.

Q Between mid May and August, did anyone monitor whether he was going to AA meetings three times a week?

A I don't know.

Q As he had indicated?

A I don't know that they did or did not.

Q Did you suggest to anyone that that might be a good idea?

A I personally did not, no.

Q Was that matter discussed by anyone, to your knowledge?

A Not to my knowledge.

Q Now, did you understand that that outside doctor would be making a decision as to whether or not Captain Hazelwood was fit to return to duty as a master of an Exxon vessel?

A Well, my memory's a little fuzzy on the disability situations, but I think the outside doctor may be able to take a position that the person is fit for duty, but generally

[2332]

speaking, someone in our medical department may have the authority to approve, overrule or say yes or no to that.

Q All right. Now, no one at Exxon Shipping, to your knowledge, had any contact with the – the outside doctor who was treating Captain Hazelwood; is that correct?

A Not to my knowledge.

Q To your knowledge, however, someone in the medical staff of Exxon U.S.A. did have contact with this outside physician; is that correct?

A That was my understanding, yes.

Q And was it your understanding that that intermediate from – that person from the Exxon U.S.A. medical staff was Dr. Montgomery or someone else?

A As I recall, I was unclear as to whether that person was Dr. Montgomery or someone on the medical staff. Dr. Montgomery was the person I talked to.

Q And Dr. Montgomery is the person who said to you that in my judgment Captain Hazelwood is fit to return to duty?

A I guess he told me that he had completed his program in the hospital, he was continuing to go to the AA sessions and had done what he should do relative to the rehabilitation effort. Q Did Dr. Montgomery indicate to you that anyone from Exxon U.S.A.'s medical staff had interviewed Captain Hazelwood since he had undertaken this rehab course?

A No, he did not.

[2333]

Q Were you ever laboring under the impression that anyone from Exxon U.S.A.'s medical staff had any contact with Captain Hazelwood concerning his medical treatment after he entered the rehab clinic?

A No.

Q Do you know if any system was set up at that juncture to advise others what to do in the event Captain Hazelwood relapsed into drinking?

A No, I'm not sure what system was or was not in place.

Q What system was implemented to closely monitor Captain Hazelwood while he – while he was out at sea?

A I do not know.

Q Was any system of closely monitoring Captain Hazelwood at sea ever discussed with you?

A Not with me.

Q Did you ever hear of any discussion that anyone had with regard to establishing a monitoring system for Captain Hazelwood while he was at sea?

A No.

Q How about shore side, was any monitoring system discussed concerning Captain Hazelwood's behavior and performance while he was not at sea?

A Not with me. It may have been discussed in the operations group, but not – I don't recall anything about it.

A I was a ship group coordinator.

* * *

[2334]

DIRECT EXAMINATION OF WILLIAM DEPPE
(Video)

BY VIDEO EXAMINER:

Q Captain Deppe, what is your first recollection of hearing about the Exxon Valdez on March 24th, 1989?

A I got a phone call from Paul Myers early that morning telling me that the vessel had gone aground near Bligh Reef.

Q And who's Paul Myers?

A Paul Myers is a ship group coordinator and in the west coast fleet office.

Q What happened after that?

A I helped arrange for flights up to Alaska for Harvey Borgen, Paul Myers and myself. We – we – I packed a bag and shortly after that drove to Oakland Airport and met them at Oakland and we flew up to Alaska.

Q Okay. And was it Harvey or Dave Borgen?

A Harvey.

Q Harvey Borgen. And what was his position at the time?

A He was the west coast fleet manager.

Q And what position did you have at that time with Exxon?

A I was a ship group coordinator.

* * *

[2338]

Q In doing the reviews that you referred to as a port captain, it was part of your job to keep an eye on the captains and the masters to make sure they didn't drink on board or have alcohol on board ship?

A Well, it – that was – that would be part of the job, yes.

Q And would part of your job be to monitor any captains or masters who might be suspected of having a drinking problem?

A Part of the job is to monitor all the masters and chief engineers to – if anyone is having a problem with anything to do something about it.

Q In any time, did anyone or anything make you aware that Captain Hazelwood might have a drinking problem?

A I knew that Captain Hazelwood had been through a rehabilitation program.

Q Did you know what the rehabilitation program was for?

A Yeah, it seemed to be pretty common knowledge in the fleet that Captain Hazelwood had been through a rehabilitation program for alcohol.

Q What was the basis for your knowledge that Captain Hazelwood had been through an alcohol rehabilitation program?

[2339]

A I don't know how I found out. I just knew.

Q That would be back – do you remember the time that was?

A It was – it was before I got in the office as port captain.

Q Now, during the time that you were either port captain or shipping group coordinator, were you given any instructions regarding the monitoring of Captain Hazelwood?

A Not that I can recall.

Q I don't mean this in an argumentative way, but when you say not that I can recall, you've had a long time to think of this. Can you – does any situation

at all occur to you where somebody in Exxon Shipping or Exxon or Exxon U.S.A. asked you or asked anyone else about whom you have knowledge to keep an eye on Captain Hazelwood in regard to his – regard to his drinking?

A I knew that he had been through rehabilitation. How I found out about it, I'm not sure. If a conversation took place in the office with anyone about it, I – it didn't stand out in my mind because I knew already, but I – I was aware of

Hazelwood's problem, and I would have been aware of him drinking if I was in a situation with him and he was drinking. I would have – that would have been something that would have stood out in my mind.

Q At the time that the alcohol policy was issued, which you described earlier, was there any discussion on monitoring any

[2340]

employees or officers who were thought to have an alcoholic problem?

A No.

Q In the various meetings that you attended in 19 – in 1987 up to the time of the grounding, do you recall any discussions about monitoring persons that were thought or known to have alcoholic problems?

A No.

Q Did any of your superiors ever ask you to keep – to monitor or keep your eye on Captain Hazelwood in regard to any drinking problems?

A Not that I can recall.

Q During the same period of time, have you – did anyone ever bring to your attention any complaint regarding Captain Hazelwood?

A From 1987 –

Q To the time of –

A – to the time of the spill?

Q Yeah.

A In a disciplinary nature?

Q Any nature.

A Well, there was some complaints about some of his management style, but those were – those were in ranking type situations. But as far as any disciplinary type things, there was nothing brought to my attention during that period.

[2341]

Q If you know, during the same period of time, '87 through the spill, was anyone, Exxon, Exxon Shipping, or Exxon U.S.A., given an assignment to keep an eye on Captain Hazelwood relating to drinking problems?

A No, I wasn't aware of anyone.

Q Now, you have – you have taken vessels through the Valdez Narrows; is that correct?

A Yes.

Q Have you ever taken vessels through the Valdez Narrows when you weren't on deck at the time?

UNIDENTIFIED SPEAKER: On deck?

THE WITNESS: On the bridge.

BY VIDEO EXAMINER:

Q On the bridge, I'm sorry.

A No.

Q Did you consider it to be your obligation or your duty to be on the bridge during the time that you – during the times

that you trans – that you've taken a ship through Valdez Narrows?

A Yes.

Q The question was, when you were – you were in a supervisory capacity, did – would not you expect any reasonably prudent captain to be on the bridge during such a transit?

A I would expect most captains would be on the bridge during

[2342]

those transits, yes.

Q Since – I'm going to read a question and answer and ask you if this is still your opinion. I'm looking at the hearings, page 1096. Question is, could you tell me what Exxon does to ensure that six hours of rest are given to ship's personnel, to the deck watch officer prior to getting underway.

Answer, we don't have any program to give six hours of rest to any dock – deck hand or officer before we get underway. On the ships that I've been on, we make sure that – or I've been made sure that once we have taken departure, if no one has had rest, then I'll stay up on the bridge and I'll stand the watch until someone who has had enough rest to come and take the watch and meet the law.

Still believe that's a correct answer?

A Yes.

Q You still stand by that answer; right?

A Yes. I'll elaborate a little bit on that.

Q Sure.

A The master and the individual officer is responsible to make sure that he's getting that rest, also.

* * *

[2344]

Q Now, you testified earlier that it was common knowledge in the fleet that Hazelwood had been through alcohol rehabilitation; do you recall that?

A Yes.

Q When you made that statement, when do you believe it was common knowledge?

A In 1986 and 1987.

Q So it was well-known within the fleet, at least by the time of the meeting in 1988 that you were present at where he was ranked?

A Yes.

Q Was the subject of Hazelwood's having been through alcohol rehabilitation mentioned in any way in the 1988 ranking meeting?

A I don't think so.

* * *

[2347]

DIRECT EXAMINATION OF GREGORY COUSINS
(Video)

[2348]

BY VIDEO EXAMINER:

Q Please state your full name and home address?

A Gregory Thomas Cousins, reside at 13966 Fletcher's Mill Drive, Tampa, Florida.

Q And you were with Exxon from 1980 up through 1990; is that correct?

A Correct.

Q When you were sailing as a third mate which you've testified to on the four vessels with Exxon, did you go do Valdez?

A Yes.

Q Now, on the – these vessels, the North Slope and the New Orleans and the Exxon Valdez, what was the total number of trips you made to the Port of Valdez, approximately? I think you previously have testified about a dozen, would that be about right?

A That would be, yes, fair, I think.

Q About how many of the trips that you made to Valdez were you a watch stander in Prince William Sound? Of say of the approximate dozen?

A How many transits did I make on the bridge?

Q Yeah, that you were actually watch standing going in or coming out?

A Well, I would say a portion of all of the times, but at least – at least half.

[2349]

Q How many trips did you make with – on the Exxon Valdez prior to the – not counting the

grounding trip, in or out? Did you make a trip prior to that trip?

A Yes.

Q How many trips did you make prior to that trip; do you recall?

A I believe there were three or four total.

Q How many trips prior to that trip, the grounding trip we'll call it, the grounding trip, in and out did you make with Captain Hazelwood?

A One or two.

Q Now, in your experience, in going into Valdez and coming out again, the same parameters I gave you before, and we're always talking about Hinchinbrook to Valdez and from Valdez to Hinchinbrook, what type steering was used on the vessels you served on?

A Hand steering.

Q Did you ever, in any of your trips while you were a watch officer, see the steering put in any type of auto mode in those waters?

A Well, the – one time.

Q When was that?

A That was the evening of – or the morning of the grounding.

Q Now, you had no pilotage endorsement on your license or you

[2350]

have none today?

A No.

Q For Prince William Sound?

A No.

Q Are you familiar with the requirements for a pilotage endorsement on a license in Prince William Sound?

A No.

Q What I'm trying to do is really save time, Mr. Cousins. Instead of asking you take me through your day, you have the eight to twelve that morning; is that correct?

A Yes.

Q This is on the 23rd of March?

A Right.

Q In essence, what I'm concerned with is when you're working, when you're not working. So you're on duty from 0800 to 1200 is that a correct statement?

A Correct.

Q What did you do, your recollection, between 12 and 1300; do you remember, on March 23rd?

A Well, I had lunch, then I did the salinity test and I returned to – I went to my room.

Q How long did you take for lunch; do you recall, about a half hour?

A No. Well, 10, 15 minutes.

Q All right.

[2351]

A Actually, the – the twelve is the watch. I'm relieved actually at 10 minutes before.

Q You also relieve 10 minutes before eight; do you not?

A Correct.

Q So you stand a full four hour watch?

A Yes.

Q So you do this salinity test after lunch?

A Yes.

Q And does that take you up to about 1300, would that be about right?

A Just a little bit – around 1300. Actually a little bit before 1:00.

Q What is a salinity test?

A Measuring water density.

Q And is that the density of the sea water around the vessel?

A Yes, sir.

Q And what's the purpose of that?

A That is used by the chief mate to calculate what – what drafts we'll be able to load to.

Q How do you get sea water to take the test?

A On the Valdez, we – we would go down into the engine room and take water from a small spigot that was fitted into one of the sea suction.

Q So is that part of your normal – your normal operation of

[2352]

the vessel?

A What, taking a salinity?

Q Yes.

A Yes, when you're loading, um-hum.

Q It's needed information in order to put a proper load aboard the vessel?

A Yes.

Q This paperwork you did in your office?

A Yes.

Q In your room?

A Yes.

Q That paperwork was paperwork which you connected with the vessel; right? You weren't writing love notes to your wife or anything?

A Well actually, it may have been, but there was some paperwork that was connected with the vessel's safety.

Q All right, and you were the safety officer aboard?

A Yes.

Q Do you have a good estimate of how much time you spent with that paperwork?

A It wasn't long. I'd usually – well, sit down, work on it 10 or 15 minutes and set it aside and do something else.

Q So it may have been 10 or 15 minutes?

A Yes.

Q So let's pick it up from 1315 – okay – 1315 on, you slept

[2353]

until about when? You can look at the testimony and notes?

A Whenever they called me for supper relief. A few minutes before 1700.

Q All right, and you then did what?

A Relieved the chief mate for supper.

Q When you relieved the chief mate, where did you go?

A Cargo control.

Q And then you had to observe gauges or whatever?

A Yes, monitor the load.

Q Okay, do you agree that 1730 was about the time the chief mate relieved you in the cargo control room?

A Approximately. Jim – Jim was like the rest of us, pretty

quick eater, but generally.

Q That's about right?

A Well the normal, normal, the normal supper hour lasts 20 minutes.

Q All right. And then what did you do?

A I went back do bed, as far as I – I can remember. I returned to –

Q According to Delozier's – I'll let you look at the document – 1745, he says cargo control room. Does that refresh your –

A You're referring to his report?

Q His notes, yes. You see 1745 he has cargo control room?

Does that refresh your recollection?

[2354]

A Probably, yes. I remember sticking my head in the control room and spoke to Jim Kunkel, chief mate, briefly about the topping off and that's when he told me that I would be assisting him.

Q And you stay in the cargo control room?

A No, I went to my room.

Q Before you give me an answer, let me ask you, can you try and place times on these different events that you're giving us?

A I will attempt to. Can I – I'll begin with I relieved the chief officer at approximately 1700.

Q Okay.

A He had supper. I remained in the cargo control room monitoring the load while he ate. After he returned, I had my meal. I returned briefly to the cargo control room and I guess this Delozier has almost a log entry type thing here of 1745. I don't know where he got that. Maybe it's in the testimony, but I don't recall, but I don't think that it is.

I spoke briefly with the chief officer and that's when he told me that he will use me to assist him in the topping off.

I left, I did not remain in the cargo control room from that brief conversation on, because the topping off didn't begin until sometime later.

Q What time?

A Much later. Almost – well, I don't know.

[2355]

Q Finished cargo was 1924; does that help you?

A Correct. So Mr. Delozier has a 1900, chief mate called cargo control room for topping off. So at 1900, this – the chief mate called me in my room.

Q Let me just go on and then I'll get back to that. Your testimony is for a brief time you had this conversation with the chief mate and then you went to your room?

A Yes.

Q And what did you do in your room?

A I don't recall. I normally don't sleep that time of day. I may have read a book, sat down in the recliner and digested my meal.

Q Up to this point of 1900, when you start working again, does that – approximately 1900, did you agree with that?

A Right.

Q Chief mate called you for cargo for topping off?

A Yes.

Q Was this period that we've been going over up till 1900, was this sort of typical for a turn around period in Valdez?

A Yes. Yes, I would say that.

Q Now from 1900, which we took you up to, up to the time of grounding, you were doing work up on the bridge and/or on watch; is that correct?

A From 1900 on, yes.

Q When the vessel got underway and you ultimately returned

[2356]

from your docking station to the bridge?

A Yes.

Q When you returned to the bridge, who was on the bridge?

A The pilot, I believe the captain, I relieved the chief mate, Jim Kunkel, and I don't right offhand recall who the helmsman was.

Q Well, without reading your testimony, Radtke, you testified in the Hazelwood trial, does that refresh your recollection?

A Yes.

Q You relieved Kunkel and he went below?

A Yes.

Q And you are now the watch officer?

A Yes.

Q Now, after you returned to the bridge, did Captain Hazelwood leave the bridge?

A At – yes, at some time later, he did.

Q When he left the bridge, was it prior to the Narrows?

A Yes.

Q And when he left the bridge, did he say anything to you about he was going to leave the bridge or why he was going to leave the bridge?

A Yes, he – he told me he was leaving the bridge and he told me why, but I don't remember why.

Q All right. Now, my question to you today, thinking back on it, are you saying he did give you a reason?

[2357]

A The reason – the reason was he – was that he needed to discuss something that was bothering the chief engineer.

Q That's why he told you he was leaving the bridge?

A Yes.

Q Did the captain tell – tell you or did you hear him announce when he was going to return?

A I don't recall.

Q Prior to the Narrows, ultimately isn't it correct that you were asked by the pilot to call the captain because the pilot was going to leave the vessel?

A I called the captain on my own before we entered the Narrows. I said he was almost finished doing what he needed to do, that he'd be up directly, and later, sometime later after we had transited the Narrows, and I can't say exactly when, I think the pilot mentioned, said you ought to have the captain up here for debarking the pilot.

Q So it's correct that the pilot ultimately asked you to have the captain come to the bridge; isn't that correct?

A Yes.

Q So you're saying you had a conversation with Captain Hazelwood in the interim?

A Yes.

Q And that conversation, tell me again, what did you say and what did the captain say?

A I informed the captain that we were approaching the Narrows

[2358]

and he asked if there was any problems, any traffic and of course there wasn't and he said that he'll be up as soon as he finishes doing whatever he was doing, and I don't recall what he said, as far as what he was doing.

Q In any event, as you recollect it back, as you're sitting here right now, the period of time Captain Hazelwood was off the bridge, would you agree, was not a short time?

A I would say it was longer than – than I was used to.

Q In your experience on these other vessels in Valdez, did you ever experience when you had that same watch, let's say coming through the Narrows, as you're going out –

A Um-hum.

Q – did you ever experience a captain walking off the bridge and staying off the bridge through the Narrows?

A I can't recall, no.

Q You say you can't recall, you mean no, you do not?

A I can't recall having been on the bridge with – without a master present through the Narrows.

Q Now, when you called Captain Hazelwood to come back to the bridge, you remember what you said to him?

A Yes.

Q After the pilot, the pilot said to get the captain, you telephoned Captain Hazelwood?

A Yes.

Q And what did you say to him, the pilot wants you back or –

[2359]

A I told him that we're getting close to the pilot station, that we need him on the bridge, and he said, I'm on my way.

Q Okay. From the time you – of that telephone call, about what was the interval of time between that call and Captain Hazelwood arriving on the bridge?

A I don't recall.

Q Now, you took Cousins – you took LeCain's watch that evening, the mid watch, at least the beginning of it?

A Yeah.

Q After you stood your watch?

A I was standing part of his watch, yes.

Q Why did you do that?

A Because he didn't get called when you normally call the – the relieving watch.

Q Maybe you didn't understand my question. Did LeCain ask you to take his watch for him because he was tired?

A No.

Q Why did you take LeCain's watch?

A Because when I returned to the bridge, he wasn't there. So I had no choice. I can't just leave the bridge without being relieved.

Q When you returned to the bridge, you mean after dropping the pilot off?

A Correct, yes, sir.

Q But isn't it normal for you to send someone down to wake

[2360]

the watch officer?

A No, the – the watch is called from the bridge.

Q Well, who calls it from the bridge?

A Normally I would.

Q You didn't, though, did you, that evening?

A Well, I didn't have a telephone with me out on deck. I was out on deck during the time that – the relieving watch would be called. The A-Bs called their relief. No one called my relief.

Q All right, but then you got back do the bridge; did you not?

A Yes.

Q And you could have called LeCain when you returned to the bridge; could you not?

A I could have, yes.

Q But you didn't?

A I did not.

Q Why didn't you?

A Because I was busy.

* * *

[2367]

A As far as turning the con over to me, we had – we had discussed what – what he had intended, asked me if I was comfortable with that. I told him what I thought and what I saw and how much room we had between the reef and the ice. The ice had – I don't want to characterize it as being surprised, but I had not seen the ice on radar up until the time that I returned to the bridge from dropping the pilot off. So we had some discussion about that. He asked me again if I was comfortable with that, our attempt to get around the ice, and that he wanted to leave the bridge for just a few minutes, did I feel comfortable, and I said yes.

* * *

[2377]

Q Now, when the captain was going to leave to go below, he just before leaving put it on load program up, which you've told us about?

A Right.

Q So in other words, Captain Hazelwood left the bridge, and correct me if I'm wrong, two minutes before your vessel was going to be abeam of the position that you're testifying to that he told you to make the turn in?

A Yes.

Q Is that correct?

A Yes.

Q 120 seconds?

[2378]

A Right.

Q What was the urgency, as you understood it, in what Captain Hazelwood told you why he left the bridge at this time two minutes before the turn that you've testified he told you to make at Busby Island light?

A I don't know that I ever understood the urgency, but I understood that he needed to gather figures to pass on to Alyeska or whatever the name of our agent is up there.

Q Did he use the word messages to you when he said I got to send some messages or do you recall the term he used?

A I don't recall specifically if he used that term.

Q And you just testified, just a minute ago, you said you weren't sure if you ever understood the urgency of it. What did you mean by that? Is it that you questioned the urgency?

A In comparison to what we were doing. Who cares about cargo figures? I mean, that's my opinion, but evidently he felt comfortable. I indicated to him that it's not a particularly – should not have been a particularly tricky maneuver.

Q On that evening when you were thinking of your mind set right then, did you question the necessity of Captain Hazelwood leaving the bridge for the reason that he gave to you in the circumstances the vessel was in which you've testified to outside the traffic separation scheme?

A I didn't really have time to – I didn't really have –
I

[2379]

was a bit busy with navigating the vessel to concern myself with whether it was unusual or not. It was just that's the captain, that's what he's doing.

Q Now, your prior testimony that you just gave, as you reflect on it now, you find it to have been unusual, is that what you're saying?

A Yes. I'm sure he does, too.

Q I show you 32504. This is a photograph taken at night in the wheelhouse of the Exxon Valdez. Do you recognize the photograph as being somewhat representative of what you had on the evening of March 23, 24?

A Somewhat. The lights are a little bit too bright, but.

Q You like them dimmer than that?

A Yes, it was quite a dark evening.

Q Okay. And this photograph shows this overhead rudder angle indicator is illuminated?

A Yes.

Q So you can readily see that, can you not?

A Yes.

Q You already testified that Captain Hazelwood knew, because you discussed it with him, that you were outside the traffic separation scheme when he was turning the con over to you?

A Yes.

Q He further knew the vessel was on a course of 180?

A Yes.

[2380]

Q He also knew that the vessel's course of 180 was heading if continued down toward the Bligh Reef area?

A Yes.

Q He also knew that there was ice in the channel which you previously discussed and have marked on the chart?

A Yes.

Q Across the traffic separation scheme?

A Yes.

Q He knew that you were a Navy third mate, had come up from a seaman up to a third mate about when you had made your third mate?

A Yes.

Q Got your third mate license?

A Yes.

Q He further knew that when he was turning the con over to

you, that it was Second Mate LeCain's watch?

A Yes, he did.

Q He further knew that the steering was on auto gyro because he had put it in auto gyro?

A Yes.

Q And by the way, did Captain Hazelwood, before he left the bridge, tell you it was auto gyro?

A I only knew when the watch was changing out, Mr. Carr (ph) informed me that it had been put on.

Q Did you find it unusual that Captain Hazelwood had ordered

* * *

[2381]

A I – I believe that's when I took the fix or shortly thereafter, I was headed out to the port bridge wing, took a visual bearing of Busby light.

Q Okay. And what did you use for the time that you were doing this? Did you use your wristwatch?

A Yes.

Q And had you previously synchronized your wristwatch with the bridge watch?

A Yes.

Q You do that as a matter of routine when you come on watch?

[2382]

A Yes. And also the gear test requires that.

Q The first thing you did was take a bearing with an azimuth?

A Yes.

Q I'm going to ask you, prior to that, and in your sailing experience, have you ever utilized any other method to determine when a navigational aid was abeam when you needed to do it rapidly?

A Yes.

Q What method did you use?

A I've used radar for that purpose. I've also just in conjunction with the radar, placed an azimuth circle set up on – with the vanes set so I could actually take a rough sight of it from inside the wheelhouse.

Q Why did you, in this situation, take the time to take an azimuth bearing to make it precise as opposed to doing it in a rougher manner like I described?

A I can't give you a satisfactory answer for that. It puzzles me, also.

Q Now, after you took the azimuth bearing, you then walked into the wheelhouse from the port wing?

A Yes.

Q And what did you do next?

A I read the range, radar range off of Busby Island, the point – the point.

Q And then what did you do after you got that distance?

[2383]

A I plotted the fix.

Q So you walked back into the chart room and while you were in this position, we mentioned yesterday that you couldn't see anything up ahead?

A Correct.

Q Okay. Now, you have plotted the fix, and tell me from the time you walked out on the port wing of the bridge to take the azimuth bearing that time, at that time, was 55 the time you started this process?

A Yes.

Q Can you tell us, when did you receive a first report from the lookout?

A I had just finished plotting position at the 2355 fix as the lookout came into the chart room and reported Bligh Reef light. She gave the color and characteristics of the light.

Q Did she tell you where the light was in bearing with reference to your heading?

A Yes.

Q What did she say?

A I believe she said it was a point on the port bow – a point on the starboard bow, excuse me.

Q And the point, in nautical terms for those that don't know, is how many degrees?

A 11 and a quarter degrees.

Q Now, when she made that report to you, did you reach a

[2384]

conclusion as to what light she was reporting?

A I – I knew what light it was. I'd seen it before she had, actually.

Q Okay. And did she make a subsequent report to you?

A She – yes. Some moments later, and I can't say how much later, she corrected her initial report and the characteristic of the light.

Q Do you remember what the correction was or –

A I think she'd reported it as six or seven second light, and then she corrected hers to a five second light.

Q To what it actually was on the chart?

A Yeah, yeah.

Q Where were you when she made that second report? Had you come out of the chart room or were you still in the chart room?

A I was in the wheelhouse.

Q You plotted the position, she had made the first report while you were in the chart room?

A Yes.

Q You walked out of the chart room, now what did you do next?

A That's when I approached the radar. It was giving the command – I was giving the command when she made her second report, as I recall.

Q Giving what command?

A The rudder order, the ten degree right rudder.

[2385]

Q I see. Okay. So you gave that order, then you went – you went to the telephone?

A I went to a bulkhead.

Q Got the light?

A Right, flashlight, went to the telephone. It's on the bulkhead separating the chart room and the wheelhouse, and called the captain's office.

Q Were you in the wheelhouse when you were making that call or were you in the chart room?

A I was in the wheelhouse.

Q And then I think we talked about before you turned around to make the telephone call to Captain Hazelwood and you didn't watch the – you didn't watch the helmsman?

A I turned to take a flashlight from a holder that was on an opposite bulkhead, and I called Captain Hazelwood as he had instructed me to do.

* * *

[2392]

Q Did you at any time after the grounding smell crude oil

[2393]

vapors?

A Yes. They were very strong.

Q And what was the interval of time between the grounding and your smelling this?

A Almost immediately.

Q And in your mind, did you make a judgment that there was danger of a fire?

A Yes, that possibility crossed my mind.

Q Now, were you on the bridge when Captain Hazelwood started maneuvering the vessel's engines?

A Yes.

Q After the grounding?

A Yes.

Q And on the bell logger, it indicates that the first engine maneuver was at time 0935 and 57 seconds

when the vessel's engine was put dead slow ahead. Do you see that number towards the top of the second column? It's about six entries down. It's this one right here.

A The dead –

Q The dead slow ahead; you see that?

A Slow ahead that's at 0935.57.

Q Yes.

A Yes.

Q And to bring that to local time, that's 0935 and 57 seconds; is that correct?

[2394]

A Yes.

Q Did Captain Hazelwood, did you hear him say anything that indicated to you what he was trying to do while he put his engines ahead?

A I heard part of a radio transmission. And I assume it was with vessel traffic, that he thought perhaps there was a chance to extricate the vessel from the reef.

Q When you say extricate, you mean free the vessel from your strand?

A Yes, correct.

Q I'm going to read you transmissions here that he gave and then ask you your interpretation. It was your understanding he was trying to get underway?

A I really didn't know what he was trying to do.

Q But you did mention that you had heard part –

A I mean, the – the definition of extricate is to pull

something out; right?

Q Yeah. I want you to turn over to page nine on this same exhibit.

A Um-hum. The transmissions?

Q Yes. And I want you to look at the transmission that was of 0107.29 when he's talking to the captain of the port?

A Yes.

Q Were you on the bridge when Captain Hazelwood had this

[2395]

transmission with the captain of the port?

A Yes.

Q And do you see where he is twice in that transmission, he says, we are working our way off the reef, and then a little below that he says again, we're trying to just get her off the reef. Do you see that?

A Yes.

Q What does that indicate to you he was trying to do?

A Could be meaning he was trying to get her off the reef.

Q Were you on the bridge when Captain Hazelwood ultimately stopped the engine after this commencement of the maneuvers at about 0036 and the maneuvers –

A Yes.

Q You were on the bridge?

A Yes.

Q The maneuvers continued, did they not, from 0036 to time 1040 and 50 seconds where there's a stop, and we're indicating the left-hand column on that page, can you look at that about midway below the center. Do you see that?

A Yes.

Q And is that correct, then, that the maneuvers continued for about an hour and four or five minutes?

A Yes.

Q And is it also correct if you look down a little bit in that column that on three occasions there's entries of full ahead on the engine?

[2396]

A I see full ahead, yes.

Q Did you hear Captain Hazelwood during this hour and four or five minutes giving orders to the helmsman?

A Yes.

Q And what orders did you hear that were given?

A I don't recall.

Q During any of your studies, did they ever teach you about proper maneuvers when your vessel goes aground if you're going to attempt to free your vessel from a strand?

A Yes.

Q And what were you taught?

A Stay aground.

Q And what – were you ever taught anything that if you were going to risk trying to free yourself from a strand, did you ever receive any instruction as to what steps you should take to try and do that?

A I can't recall having read anything recommending pulling a grounded vessel in the condition that we were in from a ground, but any – any text that I've read on those matters suggest extreme caution and number of safety precautions.

Q And in connection with use of the engines, if you go

forward – if you go aground in the forward part of your vessel forward of your engine room aft, would it be more prudent to back your engines rather than try and go ahead to free your vessel from a stern strand?

[2397]

A If someone was trying to pull the ship off the reef?

Q Yes.

A I remember – regardless of whether he thought that was a good thing to do or not, you would back the engines.

Q And by going forward on the engines in the situation you were in, if the vessel were able to have been freed from the strand, might you not endanger tearing your engine room apart?

A Yes.

* * *

[2399]

Q Did you have in mind the time he turned the con over to you and told you to make the turn at Busby Island what

[2400]

course you would steer to bring it back into the lanes?

A Yes. I had already formulated my approach to this – our passage between the reef and the ice back into the lanes.

Q What course did you in your mind – you didn't mark it on the chart?

A No.

Q And what course did you have in your mind that you would steer to go from abeam of Busby Island, between the ice and the reef?

A It was not so much a course. It was a series of headings.

Q And did you have those plotted out in your mind?

A In my mind, yes.

Q What were they?

A I cannot recall. My intent was, because of the extent of the ice and how it appeared on radar, that the reason for me not using more rudder angle, more rudder initially was that I wanted a somewhat more gradual rate of change, heading change, so I didn't end up in the midst of the ice.

Q Okay. Now, where the ice was did not encroach on the red sector of Busby Island; did it?

A No.

Q So that there was room between the red sector and the front edge of the ice for the vessel to go through?

A Yes, there was plenty of room.

* * *

[2402]

Q Now, you mentioned, I believe, Mr. Cousins, it was Tuesday. You said looking back there a number of things you would have done differently, and I think it was in response to a question about making sure that Kagan in fact followed your order to turn. Could you describe for me sitting here in hindsight what things you would have done differently on the evening of the 23rd and early on the 24th?

A I would never have bothered to go out and take a visual bearing from a repeater. I would not have left the three centimeter radar. I would not even have bothered to go back into the chart room. I already knew where I was. I would not have left the helmsman unattended as I did. I would have taken a visual bearing but I wouldn't have – would not have walked out to the repeater and sighted it. It was not necessary.

Q Why did you do it that evening?

A I can't answer that.

Q You said you would have stayed at the radar?

A I would have maintained the radar watch and right there where I can watch the helmsman, the rudder angle indicator. I can watch – I had fairly decent visibility, as far as viewing the lights, the navigation lanes, Bligh Reef light, I could see that. I saw that before the lookout did.

There was just no reason for me to do what I did that

[2403]

evening, as far as plotting the fix, going out and sighting it, turning my back on the helmsman, calling the captain. If he wasn't there, who cares. I mean, obviously he had something else to do. I should not have allowed myself to become inattentive to more serious –

* * *

[2407]

Q Okay. Let's go to the next thing. You testified that Captain Hazelwood, after getting underway, at some period of time before the Narrows left the bridge?

A Yes.

Q And you further testified that in your experience, your experience in Valdez, you have never seen a captain who had not been on the bridge through the Narrows; do you recall that?

A Correct.

Q You further testified that you have never seen load program up used before when there was ice in the traffic separation scheme; do you recall that?

A Correct.

Q You further testified that the con was turned over to you by Captain Hazelwood at a time in which the vessel was outside the traffic separation scheme in which the vessel's heading was in the general area of Bligh Reef, that the vessel's steering was in auto

gyro, the vessel's engine was in load program up and that you had no pilotage?

[2408]

A Correct.

Q In violation of your vessel organization manual, the requirement for two officers to be on the bridge?

A Assuming the Watch Condition C?

Q Yes.

A Yes.

Q With which you said in your judgment existed?

A In my judgment, yes.

Q You further testified that the captain went below to his cabin and remained there until about the time of the grounding, which was a period of – we had about 15 minutes, I believe, from 2353 to 0008 or thereabouts?

A Correct.

Q Now, do you have an explanation, knowing Captain Hazelwood and knowing what you knew of him before the grounding and reflecting back on this, what caused this captain – you believed him to be a competent captain; did you not, I gather?

A Yes.

Q What caused this competent captain in a sequence of acts over a period of few hours to be performing acts which you have given – the record speaks for itself – a description of? Do you have any answer to that?

A I have no idea.

Q Did you ever see Captain Hazelwood drinking ashore?

A One time, yes.

* * *

[2415]

Q When you sailed as an A-B, did you have occasion to go up to Prince William Sound?

A Yes.

Q How many occasions?

A I think the estimate was perhaps 26 voyages or so, like that.

[2516]

Q During the course of your service as an A-B in Prince William Sound, did you have occasion to steer up there?

A Yes.

Q Did you stand the lookout watch during those –

A Yes.

Q – those trips as well?

A Yes.

Q You had a chance to observe the topography of the area?

A Yes.

Q You knew where Bligh Reef was?

A Yes.

Q You knew where the Bligh Reef buoy was?

A Yes.

Q You knew where Busby Island was?

A Yes.

Q You knew where Naked Island was?

A Yes.

Q How about Rocky Point?

A Yes.

Q Potato Point?

A Yes.

Q The Narrows?

A Yes.

Q Little Rock?

A Yes.

[2517]

Q Now, can you recall who the captains were that you sailed with into Valdez while you were an officer?

A Yes.

Q Tell me who they were.

A Captain Grove, Captain Wallace, Captain Hazelwood, Captain Stalzer, Captain Hoyer, Captain Witty.

Q Now, when you sailed as an officer, where did you pick up and drop off the pilot?

A Rocky Point.

Q Was that on every single trip that you were involved with dropping off and picking up the pilot?

Let me rephrase that. That was a bad question.

When you were involved in the picking up or dropping off of the pilot, did you always pick him up at Rocky Point and drop him off at Rocky Point?

A Yes.

Q When you – when you acted as a lookout when you were an A-B, in Prince William Sound, did you report the various navigation aids that you spotted?

A Yes.

* * *

[2424]

Q Okay. Let me put the letter in front of you. I put before you the letter dated September 19th, 1986 from Alaska Maritime Agencies to whom it may concern?

A Yes.

Q Had you read this letter prior to March 23rd, 1989?

A Yes.

Q Were you aware, prior to that date, that there were

[2425]

proposals made by the Coast Guard to change the pilotage regulations in Prince William Sound?

A Yes.

Q And did you understand that they wanted to waive pilotage from Rocky Point down to Cape Hinchinbrook?

A Well, I probably did at the time, yes.

Q When you received this letter – when you read this letter, did you have any understanding as to whether this letter was advising its recipients that the pilotage requirements had been waived?

A That was my understanding of the – the letter.

Q When you took the con of the vessel after Captain Hazelwood left the bridge just north of Busby?

A Yes.

Q And south of Rocky Point?

A Yes.

Q Did you believe that you were qualified to con the vessel in those waters, without a pilotage endorsement?

A Yes.

* * *

[2430]

MR. SANDERS: Your Honor, this next part is – goes to the subject of Captain Hazelwood's condition on the bridge just before the Valdez got underway the night of March 23rd.

BY VIDEO EXAMINER:

Q Did you observe any staggering?

A No.

Q Did you believe Captain Hazelwood was impaired or intoxicated in any way?

A No.

* * *

[2437]

Q Okay. After you took this 2339 bearing, is that when Captain Hazelwood came over to the radar scope with you?

A Yes.

Q Both of you were standing over at the ten centimeter radar?

A Yes.

Q Close to each other?

A Just about shoulder to shoulder, yes.

[2438]

Q Okay. Now, did you – you discussed with Captain Hazelwood this ice condition, was he in agreement with you as to where you saw the ice? You say you discussed with him when he was turning the con over, the situation with the ice?

A I don't – I can't really answer that question. He – he saw the ice. The conversation, as I recall it, was that this is – if we're going to avoid the ice, we're going to be out of the scheme altogether, and he said, yeah, we'll – we'll just start bringing it back when we get down abeam Busby and swing it back into the lanes.

Q Okay. And what did you take those directions to mean as to where you were to make the turn? You said you'd go down around abeam of Busby?

A Get abeam of Busby. Abeam of Busby, alter course to get back to the traffic lanes.

Q Yes. What I'm asking you, he said abeam of Busby, he used that general term, what was your general understanding that he meant, Busby is an island?

A Yes, Busby Island light.

Q You say when he left, he said he was only going to go for a few minutes, he used the word fewer minutes?

A Yes.

Q You actually used that expression; didn't you?

A Yes.

Q Now, I believe your testimony is that you had two meetings

[2439]

at the radar, two separate meetings; is that correct?

A Yes.

Q Was this the first meeting that you had?

A I believe it was.

Q Tell me what you and Captain Hazelwood discussed at that meeting, the first meeting.

A He explained to me what he had intended, as far as the deviation out of the traffic scheme to avoid the ice. That was the first that he spoke of coming abeam Busby Island and then begin the turn back into the lanes.

Q Okay. He told you that was his intention?

A Yes.

Q At this point, were you able to see any of the ice on the radar?

A Yes.

Q Did you see it in the form that you drew on Exhibit 48785 at that point?

A No, that was a bit later. The targets that we had identified as ice, the radar was picking up the chunks of ice that were to the north and not all of the – not –

Q Okay – don't get anything – can we have a blue marker, or red one, red one's even better.

Would you mind marking on Exhibit 48785 in red pen what you observed during your first conference at the radar – A At –

[2440]

Q – with respect to the ice?

A Okay. Fairly large targets like this standing down into here, down into the southern lane, something like that. Right here.

Q Okay. Would you just – all right. Would you initial in the area that you made those?

A (Witness complies.)

Q Okay. Good.

UNIDENTIFIED SPEAKER: I think we should either hold that up to the camera or let the record show that he put on numerous red circles.

VIDEO EXAMINER: Let the record show, do you see that? Yeah, that the witness put a series of red circles representing the ice –

MR. SANDERS: Your Honor, we apologize. We thought we had a blowup of that over here with the red circles and we didn't. We'll just have to show it a little bit later and I apologize. I know you can't see it on the screen.

VIDEO EXAMINER: – that they observed the first time that they stood at the radar, okay.

BY VIDEO EXAMINER:

Q Now, you said there was a second meeting at the radar. When did that occur in relation to the first meeting?

A Minutes later. I returned to the chart room. I don't know if there was – if I actually put a fix down. I had taken some

[2441]

ranges to determine exactly how far the ice was across the lanes, if it was in fact across all of the lanes or whether we really needed to go out of the lanes, to give me a better idea as to what the captain was talking about. I just – I hadn't been on the bridge that long. So I returned to the chart room briefly, picked off some distances that I had gotten from the radar, went back to the radar, and I believe that's when Captain Hazelwood and I spoke again. He was standing on the forward side of the radar. That's when I said, it looks like we're going to be – the ice is all across both of the lanes and that we're going all the way out of the lanes. He said, yeah, that's the point, we have to go out of the lanes to get around the ice.

Q Okay. You had made a determination by taking bearings and ranges?

A Ranges, yeah.

Q Oh, sorry, ranges, that in fact the ice that you observed on the radar extended across both lanes inbound and the outbound?

A Yes. Yes.

* * *

[2443]

Q When Captain Hazelwood told you the entire plan, which is

[2444]

to come down abeam of Busby and then turn back into the lanes in order to avoid the ice, did you concur with that plan?

A Yes.

Q Did you in fact feel comfortable with it?

A Yes.

* * *

[2463]

Q Now, going back to the – to the amount of time you had off duty and on duty or while you were resting or not resting, at the time that you stood your watch the night of the grounding, starting sometime before 8:00 that night?

A Right.

Q Did you feel like you were affected by any fatigue?

A No.

Q At the time that you took over the con some eight or nine minutes before midnight, did you feel fatigued?

A No.

Q Did you feel like fatigue had anything to do with your performance that evening? That night or that morning?

A No, I don't think it did.

* * *

[2472]

CROSS EXAMINATION OF WILLIAM SHEEHY
(Live)

BY MR. O'NEILL:

Q Could you tell us where you work.

A Right now I work for Sea River Maritime.

Q That's the old Exxon Shipping Company?

A Exxon Shipping, correct.

Q And when did you start with them?

A I started with them in I believe it was July of 1974.

* * *

[2476]

Someone in personnel told you that Captain Hazelwood would be returning to duty as the master of the Yorktown; is that a correct statement?

A That's correct.

Q And you were later told by your boss, who was John Tompkins, to meet with Captain Hazelwood?

A Yes.

Q And Tompkins told you that Hazelwood had been determined to be fit for duty in a medical sense?

A Yes, Tompkins told me that he was returning to sea. Yes, I believe he said that.

Q And he was going to be assigned to the Exxon Yorktown?

A Yes.

Q And the sum and substance of this conversation was about two minutes?

A Approximately.

Q And Tompkins never told you the reason for Captain Hazelwood's leave of absence?

[2477]

A When – when Tompkins and I had that conversation, we were both going to the same meeting. We were driving up north of town. I don't believe that he told me any reason then.

Q And you didn't ask him about the nature of Captain Hazelwood's medical leave?

A No.

Q And you learned later on that Mr. Tompkins was in fact aware of the reason for Captain Hazelwood's medical leave?

A I – I assumed that he was aware of it, yes.

Q Now, after your discussion with Mr. Tompkins and before your meeting with Captain Hazelwood, you called a Mark Pierce to find out what the situation was with Captain Hazelwood; you were curious?

A Yes. I called Mark Pierce because I had just relieved Captain Pierce, and so I decided to – before I left for the meeting, to call Captain Pierce and just probe the issue a little bit.

Q And Pierce told you that Captain Hazelwood had been in some kind of alcohol rehabilitation?

A Yes.

Q And that he described Captain Hazelwood's problem as drinking problems?

A I can't recall for sure – I believe he said that, yes.

Q And Captain Pierce was of the opinion that Captain Hazelwood's drinking may have been interfering with Captain Hazelwood's job?

[2478]

A No, I believe that what Captain Pierce told me was that – something along the lines that Captain Hazelwood went voluntarily to a rehabilitation program before it interfered with his job performance.

Q Did he at some subsequent time tell you that Joseph Hazelwood's drinking problems interfered with the performance of Captain Hazelwood's job?

A I believe that Mark did not tell me that, that he said there may have been a potential for it, but I don't believe he ever said that there were any performance problems.

Q Okay, sir, would you go to page 116 of your deposition transcript? And on page 116 of your deposition transcript at line 21 through page 117, line 5, would you read that?

A Starting on which line, line –

Q Line 21, there's a question on line 21.

MR. SANDERS: Your Honor, I'd ask that question go back to 116, line 5. Make it complete.

MR. O'NEILL: This is my examination, Judge. If he wants to redirect him –

THE COURT: Well, I think the rule says that you need to pick the relevant part. Take a look at it and see, see if you're getting all that's relevant.

MR. O'NEILL: The top of page 116 deals with the first Pierce conversation. I believe my question was at any time after 1985. Did Mark Pierce at any time after 1985 tell you

[2479]

how Joseph Hazelwood's drinking problem interfered with the performance of Hazelwood's job.

BY MR. O'NEILL:

Q Sir, Mr. Sheehy, Captain Sheehy, when I asked you the question, I want you to know I read it out of the transcript.

A Oh, I'm sure you did.

Q That's how I do it. I don't have the confidence to ask questions I don't know the answer to.

A Well, the thing that's relevant is he asks up on line 5 about problems interfering with Joe's job, and I said no, I don't think there were any problems interfering with Joe's job and I believe this – this is down –

Q Let's read the questions and answers out loud. I'll read the question and answer out loud.

A Okay.

Q And you tell me whether I read it out loud right or not.

A Okay.

Q Question, did Mark Pierce, at any time after 1985, tell you how Joseph Hazelwood's drinking

problems interfered with the performance of Hazelwood's job?

Answer, I believe that a subsequent time he did tell me something about it.

Question, what did he tell you?

Answer, seems to me like he told me something about some problems on one of the vessels Joe was on and that was what

[2480]

actually precipitated his involvement with Joe and encouragement to go to a program.

Were those questions asked and were those answers given?

A Yes.

Q And indeed, Captain Pierce told you that he was instrumental in getting Captain Hazelwood to seek help for his drinking problem?

A Captain Pierce said that he had some involvement with Captain Hazelwood going into a program. I don't believe he said he was instrumental, but he did say that he had some involvement with that, due to some problems that he had seen that I don't think were job related.

Q Are you at all aware of the Graves report?

A First time I saw that was when it was one of the predesignated documents.

Q It would appear from the Graves report that Captain Hazelwood's drinking was job related; wouldn't it?

A Maybe at some point. I don't know.

Q Would you go to page 113 of your deposition transcript, line 19 and with regard to the word instrumental, was the question asked – let's start on line 20. There are a variety of questions and you eventually answer.

The question is yes, but the answer is, I believe that Mark said that he – he was involved in Joe's drinking problem and that he had told or that he had been instrumental in Joe

[2481]

seeking help and that it was a good thing that he did, and that, you know, he needed to seek this help and successfully complete this program in order to remain employed with the company, something along those lines that in the context of this last chance thing came in.

Did you say that?

A Yes, I believe so.

* * *

[2485]

Q Would it be fair to say that in the summer of 1985, you were on notice of a potential problem; that is, Captain Hazelwood, alcohol rehabilitation, and what Captain Pierce had told you?

A Captain Pierce – yes, Captain Pierce had – when – I believe that perhaps also when I relieved Captain Pierce in June, several months before the Windham meeting, I believe that Captain Pierce said something to me about Captain Hazelwood being on medical leave. We didn't get down to the details of any of it, nor did we discuss when he would be back.

Q And you understood during the period of time that you worked with Captain Hazelwood on the gulf coast that there was a fairly high likelihood that someone with an alcohol problem would start drinking again?

A I don't know if I was aware of what that likelihood was. I'm not sure if I could assign a percentage to it, but I certainly recognized that it was something to be concerned about.

[2486]

Q The term fairly high, the reason that I used that is that was the phrase that you used in your deposition. Would you

take issue with that now?

A I'd have to read that.

Q Let's find it.

A Okay.

Q Let's go to page 285, line 16. The question was, and what was your understanding as to the rate of recidivism? And your answer was that it was fairly high. Do you see that?

A Yes. That refreshes my memory, the discussion about recidivism a little bit.

Q We can take – we can take our time. We can go back here and take a look at what you need to look at, because there are – there's like 400 or 500 pages of transcript there.

A Yeah.

Q And you knew that a follow-up program was a necessary part of Captain Hazelwood's alcohol rehabilitation?

A The details, to my knowledge, about Captain Hazelwood's program were very limited, because it was a confidential matter that really only a supervisor would be privy to, so the details of his program and of his aftercare situation I was not privy to.

Q You knew as a general proposition that a follow-up program was a necessary part of an alcohol rehabilitation program?

A I know in – yes, in most cases it is, yes.

[2487]

Q And that was your belief at the time that Captain Hazelwood was under your watch?

A Yes, I believe that he was in some sort of program, yes.

Q And you made no attempt to determine if Captain Hazelwood could attend AA or aftercare meetings during his tours at sea; did you?

A The details of Captain Hazelwood's aftercare program, as I said, were not – not matters that I was privy to. I was still on the peer level with Captain Hazelwood. What his program was, how frequently, what – I didn't even know what group he was going to, whether it was AA or rapid recovery or any of those.

Q That's – that's fine. In fact, let's take that one step further. Would it be fair to say that no one ever told you to monitor Captain Hazelwood regarding his use of alcohol?

A Well, the fact of the matter is, is that I don't recall specifically being told and I think it's probably because I recognize that such monitoring of like that

that you speak was part of my job in the base case. I did not recall of specifically being told to do anything other than what I felt like I was doing already.

Q Well, my statement is correct, you were never told by anyone at Exxon to monitor Joseph Hazelwood regarding the use of alcohol?

A I – I may or may not have been told that. I don't recall

[2488]

being told that. I may have been.

Q Okay. Would you go to page 218 of your deposition transcript, and I'm going to read from line 2 to line 5 and you can follow along with me.

Okay, were you ever told by anyone at Exxon to monitor Joseph Hazelwood regarding use of alcohol; and your answer was, no.

Do you see that?

A Yes. But then on the same page I specifically say that I wouldn't necessarily be told that because it was part of my job to monitor that.

Q Well, you were concerned about this man; weren't you, just on your own? Your own investigation, without being told to monitor him, puts you on notice of a potential problem; didn't it?

A I felt like it was my job to – to monitor him, yes.

Q And would it be fair to say that you don't know whether anybody else specifically monitored Joseph Hazelwood regarding his use of alcohol?

A I don't know specifically what other monitoring plans or programs were.

Q Now, at some point in time a Mr. Jim Shaw comes to you with regard to Captain Hazelwood?

A Yeah.

Q Is that a correct statement?

A Yes.

[2489]

Q And he was a port steward while you were the port captain of the gulf coast fleet?

A That's correct.

Q And you view Mr. Shaw as being an honest man?

A I believe my testimony was that he's – he's honest and well-intentioned, but he also is prone to gossip, to exaggerate things rather – he lacks in credibility sometimes simply because of his gossiping and exaggeration.

Q He had never – are you finished?

A Yes.

Q He had never before or after reported any out of school drinking problems that he had. This is the only drinking report that Mr. Shaw ever brought to you; isn't it?

A I had had a lot of contact with Jim Shaw over the years, and I think he – he talked about all aspects of people's private lives over the years. I think I may have – I don't think I, while port captain, ever heard any other rumors from Jim, but I think perhaps when I sailed with him I had.

Q When you were port captain, Mr. Shaw didn't come in and tell you any other out of school drinking stories; did he?

A I can't positively say that he didn't, but I don't recall that he did.

Q And Mr. Shaw told you that Captain Hazelwood was acting funny?

A Yes.

[2490]

Q And you had to press him to get the story up; didn't you?

A Yes.

Q And you did press him?

A Yes.

Q And Mr. Shaw told you that Captain Hazelwood was drunk over in Baton Rouge when Mr. Shaw was on the ship?

A I believe that he alluded to that fact, that my discussion with Mr. Shaw – he was being so cryptic and so ambiguous in what he was saying. I can't recall that he specifically said he was drunk. I think he said that he thought Captain Hazelwood had fallen off the wagon, or something like that. I continued to question him about what he meant by that.

Q Did Mr. Shaw tell you that Captain Hazelwood was drunk?

A Like I say, as – as near as I can recall right now, he said that he had fallen off the wagon, or that he was acting funny.

Q The cure didn't work?

A May have said that.

Q And did he tell you that he was concerned about Captain Hazelwood being drunk on board ship?

A I don't know if he said that he was concerned.

Q Would you go to page 156 of your deposition transcript, line 16, and I'm going to read the 157, line 2 and why don't you follow along.

[2491]

Jim Shaw expressed concern that a lot of people saw Joseph Hazelwood drunk, question. And your answer was, I believe he said something like, hey, this man – this isn't too cool. I mean, we have all the people storing the vessel and Joe was, he said, misbehaving, or I can't remember exactly what terminology he used, but something like that. Like I say, it was somewhat cryptic and I may have said, what do you mean, you mean he was drunk, and he said yes, or I can't remember how it went, but that ended up being the bottom line, so to speak, Jim alleging that.

Is that a – does that fairly state what happened?

A I think so, yes.

Q It's a touchy thing for a port steward to report a master being drunk; isn't it?

A I don't think it's so touchy for Jim Shaw, because he regularly gossips about people's personal lives and things like that. I don't think that he felt uncomfortable about doing that at all.

Q At the time that Mr. Shaw brought this information to you, you had – you knew that Captain Hazelwood had been through the program and you, according to your testimony, had told him this was his last chance?

A I told him that I understood it was his last chance, yes.

Q Now, let's talk about the things that you didn't do after

the Shaw report. You didn't go and interview anybody else on

[2492]

the ship; did you?

A By the time I got the Shaw report, the ship had left.

Q At no time after that did you go and did you talk to the people that were on the ship and ask them about the Shaw allegations; did you?

A Subsequent to the Shaw allegations, I did go over to the vessel, talked to Captain Hazelwood and I made myself available to other crew members.

Q You made yourself available. Did you go and ask any of the other crew members anything specifically about the Shaw allegations?

A I did not specifically ask anybody if they had seen Captain Hazelwood drunk or anything like that.

Q And anything to the potential witnesses, crew members, there were a variety of other potential witnesses, the stevedores; isn't that right?

A Well, there were some stevedores on there, but my feelings about that whole report, due to Mr. Shaw's lack of credibility, I thought that it would be inappropriate to launch into an investigation that could possibly undermine Captain Hazelwood's authority based on such a scurrilous report from basically a non-credible source. So I felt that it was

prudent to take other avenues before I did anything that I thought might have been an overreaction.

Q Would it be fair to say that with regard to the potential

[2493]

witnesses, with regard to the Shaw event, that is the other crew members and the stevedores, you didn't go and interview them?

A I did not interview the stevedores, no.

Q Now, Captain Hazelwood – you took this seriously enough, the situation seriously enough to call Mark Pierce; didn't you?

A Yes, I called Captain Pierce. Probably immediately after Jim Shaw told me the – the story.

Q And Pierce told you that if Captain Hazelwood was drinking again, he was going to be in big trouble?

A He said something like that. Yes. I'm not sure what the trouble was referring to, if it was a professional or a personal sense.

* * *

[2487]

Q That's – that's fine. In fact, let's take that one step further. Would it be fair to say that no one ever told you to monitor Captain Hazelwood regarding his use of alcohol?

A Well, the fact of the matter is, is that I don't recall specifically being told and I think it's probably because I recognize that such monitoring of like that that you speak was part of my job in the base case. I

did not recall of specifically being told to do anything other than what I felt like I was doing already.

* * *

[2488]

Okay, were you ever told by anyone at Exxon to monitor Joseph Hazelwood regarding use of alcohol; and your answer was, no.

Do you see that?

A Yes. But then on the same page I specifically say that I wouldn't necessarily be told that because it was part of my job to monitor that.

Q Well, you were concerned about this man; weren't you, just on your own? Your own investigation, without being told to monitor him, puts you on notice of a potential problem; didn't it?

A I felt like it was my job to – to monitor him, yes.

* * *

[2489]

Q And you view Mr. Shaw as being an honest man?

A I believe my testimony was that he's – he's honest and well-intentioned, but he also is prone to gossip, to exaggerate things rather – he lacks in credibility sometimes simply because of his gossiping and exaggeration.

Q He had never – are you finished?

A Yes.

Q He had never before or after reported any out of school drinking problems that he had. This is the only drinking report that Mr. Shaw ever brought to you; isn't it?

A I had had a lot of contact with Jim Shaw over the years, and I think he – he talked about all aspects of people’s private lives over the years. I think I may have – I don’t think I, while port captain, ever heard any other rumors from Jim, but I think perhaps when I sailed with him I had.

Q When you were port captain, Mr. Shaw didn’t come in and tell you any other out of school drinking stories; did he?

A I can’t positively say that he didn’t, but I don’t recall that he did.

Q And Mr. Shaw told you that Captain Hazelwood was acting funny?

[2490]

A Yes.

Q And you had to press him to get the story up; didn’t you?

A Yes.

Q And you did press him?

A Yes.

Q And Mr. Shaw told you that Captain Hazelwood was drunk over in Baton Rouge when Mr. Shaw was on the ship?

A I believe that he alluded to that fact, that my discussion with Mr. Shaw – he was being so cryptic and so ambiguous in what he was saying. I can’t recall that he specifically said he was drunk. I think he said that he thought Captain Hazelwood had fallen off the wagon, or something like that. I continued to question him about what he meant by that.

Q Did Mr. Shaw tell you that Captain Hazelwood was drunk?

A Like I say, as – as near as I can recall right now, he said that he had fallen off the wagon, or that he was acting funny.

Q The cure didn't work?

A May have said that.

* * *

[2493]

Q Now, Captain Hazelwood – you took this seriously enough, the situation seriously enough to call Mark Pierce; didn't you?

A Yes, I called Captain Pierce. Probably immediately after Jim Shaw told me the – the story.

Q And Pierce told you that if Captain Hazelwood was drinking again, he was going to be in big trouble?

A He said something like that. Yes. I'm not sure what the trouble was referring to, if it was a professional or a personal sense.

Q Well, let's talk about that, because during that same phone call didn't Captain Pierce tell you that Captain Hazelwood's drinking problems had interfered with his job performance at another time?

MR. SANDERS: Your Honor, this has been asked and answered. We've spent quite a bit of time on it.

MR. O'NEILL: It's another time.

THE COURT: My sense of it is this is another time, but the jury will have to make that call for themselves based on the testimony.

BY MR. O'NEILL:

[2494]

Q Did he inform you of that in that telephone conversation?

A I believe that in that telephone conversation, here again, there was the one at this time and the one in August of '85. I don't believe that he ever said that there were any professional problems that – that has at yet affected Captain Hazelwood's job performance. He may have alluded to personal problems or problems in general, but I don't believe that he ever specifically told me that – he may have said there were some problems, maybe even problems on the ship, but – but nothing that had really negatively impacted performance at that point.

Q Did he tell you that there had been drinking problems that interfered with the performance of Hazelwood's job?

A I don't recall if he said that for sure.

Q Let's go to page 116 of your deposition transcript.

MR. SANDERS: Your Honor, this is exactly what we did before, exact same page, exact same line.

THE COURT: Is that the same page?

MR. O'NEILL: It is the same page, but the man is –

MR. SANDERS: Same question, there were two conversations. The answer to the first one is on

line 5 and this one is where he's referring to again. It's the very same thing.

THE COURT: If we've been over it, Mr. O'Neill, let's don't do it again.

[2495]

MR. O'NEILL: I'll move on, Judge. I'll move on.

BY MR. O'NEILL:

Q At some time you also talked to an Ivan Mihajlovic?

A Correct.

Q And he is a friend of Captain Hazelwood's?

A Yes, I think. I think they live near each other. I'm not sure how close they are.

Q And it crossed your mind that Captain Hazelwood would tip – that Captain Mihajlovic would tip off Captain Hazelwood about your investigation; wouldn't it?

A Captain Mihajlovic was a classmate of mine through all four years of school and I believe that I could trust Captain Mihajlovic to discuss an issue with him if I wanted to. I may have had some concern about that, but I believe that I felt that over all, it would be better to – to discuss this with Captain Mihajlovic.

* * *

[2497]

Q And you had never talked to Mr. Koops before about Hazelwood's alcohol rehabilitation?

A I'm a little unclear about the temporal sequence of all this. I – I don't recall specifically talking to Dwight about Captain Hazelwood's rehabilitation, but as I had said, this – this was a confidential matter that I would have made the assumption that whatever arrangements that Captain Hazelwood had would have been with Mr. Koops and it would have been in a confidential status.

Q Would it be fair to say that you had never talked to Mr. Koops before about Hazelwood's alcohol rehabilitation?

A Before?

Q This report.

A Before this report, I – I may have talked to Dwight about it. I – I don't specifically recall discussing anything about Joe's aftercare or his rehabilitation program with Dwight.

Q And you made this report, that's – to Mr. Koops?

A Yes.

Q And after you told Mr. Koops about the Shaw report, you assumed that the ball was in Mr. Koops' court?

A I assumed that as far as further action on this specific allegation, that the ball was then in Mr. Koops' court, yes.

[2498]

Q And he was the gulf coast fleet manager?

A Yes.

Q And he reported directly to the company president?

A Yes.

Q And after Mr. Shaw's report about Captain Hazelwood, you can't recall doing anything different, yourself, in terms of watching Captain Hazelwood; can you?

A Well, I think from the very beginning when, you know, subsequent to my first conversation with Captain Pierce, you know, I probably had a heightened awareness or recognized the need to be more alert. I think it would be fair to say that with Captain Hazelwood's incident with Jim Shaw, if that would have maybe been some other person, that Jim Shaw was – was saying that about, I may not have – have even reacted as strongly as I did with that.

So I don't think it's a fair characterization to say that I never did anything different with Captain Hazelwood, because I always subconsciously knew of his background.

Q You knew that he was an accident waiting to happen; didn't you?

A No.

Q Let's go to Page 323 of your deposition transcript, line 8, and I'll read from line 8 to line 13.

A Which page was that, sir?

Q 323, sir.

[2499]

MR. SANDERS: Give us a second, counsel.

BY MR. O'NEILL:

Q Question, did you do anything different – did you do anything differently after the Shaw report in terms of monitoring or watching Hazelwood?

Answer, here again, I may have, but I don't recall of anything that significant that I can specifically tell you that I did do something different.

Do you see that?

A Yes.

Q And would it be fair to say that Mr. Koops, you're unaware as to whether Mr. Koops did anything differently? After the Shaw report?

A I'm not sure what Mr. Koops did, no.

Q And you don't recall ever discussing with Mr. Koops about whether you and he should watch Captain Hazelwood more closely?

A The – typically, when I would visit the ships, Dwight or Mr. Koops required us to make a report back to him. That was a one page written form that covered a number of issues. I know that I – they were called vessel visitation reports, and I'm sure I wrote those when I visited the Yorktown. Dwight and I may have talked about it or we may not. I can't specifically remember.

Q Okay. Let's go to the same page, 323 of your deposition transcript, and I'll read from line 17 to line 21, and you see

[2500]

if I get it right.

Question, I take it you never discussed with Koops, sat down and said maybe we ought to watch him a little more closely or something like that?

And your answer was, I can't remember having a conversation like that.

Did I get it right?

A Yes.

Q And indeed, this was the only discussion that you had with Mr. Koops about Hazelwood and alcohol, this one discussion?

A Well, as I say, I know that I discussed a lot of issues with Dwight, especially each time I – I visited the vessel. I'm sure I discussed Captain Hazelwood with Dwight. I'm sure Dwight asked me how Captain Hazelwood was doing and I reported on that. I think that Mr. Koops and I had an understanding between the two of us, what that meant, but specifically, I can't remember a date and a time when I discussed that specific issue with him.

Q Now, sometime in 1987, the issue of Captain Hazelwood being reassigned to the west coast fleet comes up; do you recall that?

A Yes.

Q And you had a conversation with a Mr. Andy Martineau?

A Yes.

Q And Mr. Martineau was, in the course of this conversation

[2501]

at least, concerned enough about Captain Hazelwood to ask the question whether Joe was drinking?

A Yes. He – he initiated this conversation with me regarding Captain Hazelwood's transfer to the Exxon Valdez. We discussed some of the – as well as some other reassignments that were being made at that time, and I believe after we discussed some of the other aspects of assigning Captain Hazelwood to

the Valdez he asked me if we had had any problems with Captain Hazelwood drinking.

Q Wasn't the question he asked you whether Joe was drinking over there?

A Something like that.

Q And you told Captain Martineau that he wasn't drinking?

A I told Captain Martineau that his performance had been, in my opinion, above average, and in all respects that I saw no signs of him drinking. I may or may not have said there was one incident that we investigated, we found no substance to it and I believe Captain Martineau was satisfied with – with what I had told him.

Q Did you know that by 1987, Captain Hazelwood had in fact resumed drinking?

A No, I had no reason to suspect that at all, as I said, his job performance was above average, I felt.

Q His ratings weren't; were they?

A No.

[2502]

Q In fact, in 1986, the year prior to this 1987 conversation, his ratings were the worst that they had ever been; weren't

they, 35 out of 37?

A I was not privy to the list exactly. I – I understand that he was, in the final outcome of the seriatim, he was quite low on it.

Q So now would it be fair to say that Captain Martineau was on notice that there was this incident?

A No, I don't think that would be fair to say. I – I said that I may or may not have mentioned the Jim Shaw incident to Captain Martineau. As a matter of fact, I may have said well, we had one incident which we investigated, we found it not to be factual, and so in my opinion, everything with Captain Hazelwood was fine and that there would be no problems transferring him.

Q In point of fact, over the one year period prior to that conversation, you had never asked Captain Hazelwood, are you drinking, are you in AA, how's your rehabilitation going, how's your family going; is that a fair statement?

A During that time period, I had numerous conversations with Captain Hazelwood. I'm not sure that – I think we may have discussed his family, we may have discussed how he was doing in general.

I do not specifically remember talking about his aftercare or his rehabilitation program. I – I felt that I had somewhat

[2503]

of a rapport with Joe, but I also felt that that was a confidential matter and that in my opinion, his performance was such that it didn't warrant delving into his personal life.

Q It was a confidential matter. You knew about it; isn't that right?

A Yes.

Q Pierce knew about it?

A Yes.

Q Koops knew about it?

A Well, Koops knew about it because he was his supervisor. I knew about it.

Q Did Koops know?

A I knew about it on a more personal level.

Q You found out about it from Pierce. Andy Martineau knew about it; didn't he?

A I think he may have, yes.

Q Are you aware that it was a rumor in the fleet?

A I'm aware that there's not a lot of secrets in the fleet, so –

* * *

[2518]

Q All right. Let me go into that business just a tiny bit, because it's already been covered, but you had this conversation with Mr. Shaw?

A Yes.

Q And he was very cryptic; correct?

A Correct.

Q All right. When you got into it and pressed him, what was your concern?

A My concern first of all was that if, in fact, what he was saying was true, my concern was that – that Joe may have fallen off the wagon or may – may have started drinking again,

[2519]

so my concern was how that would affect the operation of the vessel.

Q All right. Did you think you had any duty or obligation to do something about that?

A Well, yeah, obviously I did, because I did. And I felt that that was squarely within my job responsibilities to investigate that.

Q All right. And did you investigate it?

A Yes.

Q All right. And as part of this investigation, you called Captain Pierce and Captain Mihajlovic?

A Yes.

Q Now, let me ask you, Mr. O'Neill asked you a question about calling Captain Mihajlovic and knowing that he was a friend of Captain Hazelwood's and that it entered your mind that he would tip – he might tip Captain Hazelwood off. Is that why you called Captain Mihajlovic so he would tip off Captain Hazelwood?

A No, that's not it at all. The reason I called Captain Mihajlovic was because I, too, know Mihajlovic very well. Like I say, I went to school with him. I felt that Captain Mihajlovic would tell me the truth. Part of it was on a personal level, and I felt that on that personal level, Captain Mihajlovic would not do anything that would jeopardize a ship or jeopardize any of the operations and I felt like Captain

[2520]

Mihajlovic would – would level with me.

Q All right. What did he tell you, specifically, as best you can recall?

A He told me that he was good friends with Joe, spent a lot of time with him at home, and that he was definitely not drinking and that – that there was no question in his mind that he was in some sort of aftercare or that he was still dry.

Q All right. Now, we'll get to Captain Mihajlovic again in a minute. After talking with Captain Mihajlovic and Captain Pierce, you've testified that you went to Baton Rouge?

A Yes.

Q Why did you go the Baton Rouge?

A I went to Baton Rouge because the vessel was on that run, it went down to Chiriqui Grande and back and I knew that would be the next U.S. port that it would be in. I went there because of what I heard and I wanted to ask Captain Hazelwood about these allegations and make him –

Q All right. Now –

A – make him aware that these had been presented to me.

Q When you met with Captain Hazelwood, did you ask him if he had been drinking or if these allegations from Shaw were true?

A I told Captain Hazelwood what the allegations were, just as Mr. Shaw had told me and Captain Hazelwood said that – that basically it was all fabricated, it was not true.

[2521]

Q What did he say? Don't tell us basically. If you can call any specifics.

A I can't really recall what he said, but I know I was very comfortable with the fact that he was telling me the truth and that what Jim Shaw had told me was basically not true. I felt comfortable with that as I left the vessel some six or seven hours later.

Q Did you spend six or seven hours on the vessel?

A Yes.

Q And you've already testified as to what you didn't ask. What was the purpose of staying on the vessel for six or seven hours?

A Well, I probably talked to the chief engineer, chief mate. Probably ate lunch on the ship. Probably talked to some of the unlicensed crew members. I can't recall specifically what any of the issues were, but I probably saw most of the people on the ship during that time.

Q Captain Sheehy, is it realistic, your view in 1985 or '86, whenever this happened, is it realistic or was it realistic in your view to expect that if there had been a drinking problem with Captain Hazelwood on board that ship that somebody on board the ship would have told you?

A I think that rumors like that always fly pretty fast, yes.

Q All right. Now, you came back after this and I believe you testified you met with Mr. Dwight Koops?

[2522]

A Yes.

Q Let me ask you first, before you get into that, Mr. Koops was at that time the gulf coast fleet manager, he had by that time taken over Mr. Tompkins' job?

A Yes.

Q Matter of fact, he had stepped in about a month after you got in as port captain? Two months?

A Little longer than that, yeah, couple months.

Q Did you tell Mr. Koops what you were investigating and what your conclusion was?

A Yes. I pretty much discussed everything with him. I believe that Jim Shaw came in and sat in with us when I had that discussion with Koops. I can't remember for sure, but I think that Jim Shaw came in, too, and added whatever he felt appropriate.

Q What was that?

A He basically, when we got done, he said that he was comfortable with what – you know, what we had done.

Q All right. Did you later hear on this issue? Did you later hear again from Captain Mihajlovic?

A Yes, somewhere along the way, and I can't remember exactly what point in time it was, if it might have been before I went over to Baton Rouge – as a matter of fact, I think it was, captain –

Q But it was after the Shaw – after you called Mihajlovic?

[2523]

A After the Shaw report, after I called Mihajlovic, but I think prior to me going over to the vessel, Captain Mihajlovic called me back and I believe that Captain Mihajlovic was on the Exxon San Francisco

at the time, and that they were anchored together when they left the dock in Baton Rouge and they went down, they were both anchored in Chiriqui Grande, waiting to –

Q Excuse me just a minute. Could you tell the ladies and gentlemen of the jury what Chiriqui Grande is?

A That's the port they loaded down in Panama. It's about a five day trip, five and a half day trip, and the ships wait in this lagoon to go and load from a pipeline down there.

Q Sorry for the interruption. They were together there near the lagoon in Panama. Go ahead.

A They were probably – might have been within a half a mile of each other, actually. But Captain Mihajlovic told me he went over to Captain Hazelwood's ship and searched through his room and that he felt that everything he had told me over the phone still held and that there was – that he found no alcohol in Captain Hazelwood's room.

* * *

[2532]

Q One step removed. And you were on notice of the fact it was your opinion that the man suffered from the disease of alcoholism? At that point in time, that was your opinion? That's a correct statement; isn't it?

A Oh, I assume that he had been diagnosed as an alcoholic because he had been to a rehabilitation program.

Q And you knew that alcoholics could cause a lot of problems for you? You testified to that a couple minutes ago?

A I knew that an alcoholic could cause a problem if he resumed drinking, yes.

Q That he could cause a problem for the vessel that he was in charge of?

A He could, yes.

Q And the environment surrounding the vessel?

A Whatever associated with it, yes.

* * *

[2540]

DIRECT EXAMINATION OF PAUL MYERS (Live)

BY MR. O'NEILL:

Q How are you, sir?

A Fine. Thank you.

Q Tell us who you are, if you would?

A My name is Paul Myers.

Q And where do you work?

A I live – work for Sea River Maritime, formerly Exxon Shipping Company.

Q And when did you first go to work for any member of the Exxon family of companies?

A May 25th, 1970.

* * *

[2541]

Q When you finished working with regard to the building of these ships, then you were assigned to where?

A The west coast fleet office in Benecia, California.

Q And you were the – the what?

A Port engineer.

Q Port engineer?

[2542]

A Yes, sir.

Q And then you eventually became ship group coordinator?

A Yes, sir.

Q And your boss was Harvey Borgen?

A Yes, sir.

Q And Captain Hazelwood was the master of the Exxon Valdez when you became the ship group coordinator?

A That is correct.

Q And you became Captain Hazelwood's supervisor; did you not?

A That is correct.

Q You kept notebooks with regard to your duties?

A Yes, sir.

Q Is that a correct statement? And at some point after the

grounding of the Exxon Valdez, you entrusted those notebooks to your personal lawyer?

A Yes, sir.

Q And after some litigation, the notebooks were produced in discovery; that's a correct statement?

A I believe it is.

Q And you had a notebook that you kept generally up to about the time of the grounding?

A Yes, sir.

Q And you had a second notebook that you essentially started at or about a day or two after the grounding?

[2543]

A Yes, sir.

Q And immediately after the grounding, you received a call from Captain Hazelwood?

A No, sir.

Q Okay. What was the first – did you call Captain Hazelwood?

A Yes, sir.

Q So you called Captain Hazelwood on the vessel and you talked to him?

A Yes, sir.

Q And did you keep notes of that conversation?

A Yes, sir.

Q And you kept the notes in your notebook?

A Yes, sir.

Q And would it be fair to say, and I've got it up on the monitor, you've got a monitor there, if you want to – can you see that?

A Yes, sir.

Q That this is the copy of your notes of that telephone conversation?

A That's correct.

Q And in taking these notes, you tried to be accurate?

A Is that a question or a statement?

Q Yes, sir, it is.

A When I was on the telephone with Captain Hazelwood, I kept

[2544]

notes on a – what you might call these sticky things, post-it notes, and by the time the conversation was over, they were all over the kitchen table.

Q So –

A And this is transcribed from them, not necessarily in the order that it was actually spoken.

Q But these subjects were discussed?

A Yes.

Q And at least with regard to the entries for each of these subjects, you tried to be accurate?

A Yes, sir.

Q And Captain Hazelwood reported to you – well, you spoke to him personally?

A Yes, sir.

Q And let's just take a section of this, if we can. We'll do it in parts.

A Oh, now I can see it.

Q Just stick with me, and I'll help you out a little bit. It says here, right here where the arrow is, spoke to Joe Hazelwood; do you see that?

A Yes, sir.

Q And he told you that he was hung up aground?

A Yes, sir.

Q On Bligh Reef?

A Yes.

[2545]

Q And it says here, zig for ice, third mate, Joe just went below; do you see that?

A Yes.

Q Is that what he told you?

A Yes, sir.

Q And says Joe just went below to do paperwork. Is that what he told you?

A That's correct.

Q And Joe, my fault, I'm the blame, and then I can't read that. A Neither can I.

Q With regard to Joe, my fault, I'm the blame, is that what Captain Hazelwood told you?

A Yes, sir. He indicated that he'd just gone down below to do paperwork when this happened, and my impression was the third mate made an error and he said he should have been on the bridge.

Q Thank you. And there is a comment right here, concerned about stability?

A Yes, sir.

Q Is that a comment he made to you?

A Yes, sir.

Q And what is the, should keep yap shut?

A At one point in time, he indicated that he perhaps had said too much and perhaps needs a lawyer.

[2546]

Q Okay. And did he tell you that he thinks he can get it off?

A That was really the last thing that was said and certainly in retrospect, that was a – from where I'm standing, a pleasant way of ending the conversation. There was no – that was the last thing he said, it was, don't worry, we'll get it

off, it's not the end of the world type, that was the last thing he said before we hung up.

Q Have you ever heard the expression, you can't change the written word?

A No. I haven't.

Q Your notes at least reflect the fact that he said, thinks he can get it off; do you see that?

A Yes.

Q And then he also said right below that after departure, programming up to full speed; do you see that?

A Yes.

Q Is that what he told you?

A I had asked how fast were you going, and his response were – was that we were programming up, so I knew the ship had to be going more than 55 rpm.

Q And you transcribed these notes at some later point to start your second notebook?

A Yes, sir.

Q And with regard to your transcription the second time, is

[2547]

it fair to say that the transcription of your notes the second time is essentially – you had time to reflect and the entries are essentially the same?

A With one exception, I think I wrote down twice that Captain Hazelwood mentioned the – the third mate twice, something about, I can't let the third mate take all this by himself, I'm partially to blame, something to that effect.

Q Doesn't say, at least in your notes I'm partially to blame; does he?

A No.

Q He says, my fault, I'm the blame?

A Yeah, there's another entry lower somewhere, as well.

Q Okay. My fault.

A My fault, can't pin on – let's see, can't pin on third mate, normal operation.

Q Says my fault, can't pin on third mate, normal operation, should keep yap shut?

A Um-hum.

Q Okay. And on both of those entries, there is an indication that he was – think he can get it off?

A Those were the words that I wrote down and I just transcribed, as I said.

Q Now, you talked to him over the phone?

A That's correct.

Q And how did he sound?

[2548]

A Just as we're talking now.

Q Okay.

A Calm.

Q I want to play another conversation that he had at about the same time and ask you whether the tone, intonation, pacing, speech, style is the same as when he talked to you; okay?

A Yes, sir.

MR. O'NEILL: Can you play that?

(Audiotape Played)

BY MR. O'NEILL:

Q Can you compare his tone, intonation, pace, diction and the phone call with you and what we just heard there?

A They sound completely different.

Q Thank you. You were of the view that the grounding wouldn't have happened if Captain Hazelwood would have been on the bridge; aren't you?

A Yes, sir.

Q You became Captain Hazelwood's supervisor in early 1988?

A Took effect March 1st, 1988, but I was preparing for it in January and February.

Q And would it be fair to say that you got bad vibes from Captain Hazelwood?

A Yes, sir.

Q And you thought that there might be a problem down the road with regard to Captain Hazelwood because of these bad vibes?

[2549]

A Once the – as I met Captain Hazelwood sometime in the summer or fall of 1988, in my capacity as port engineer on the Exxon Valdez, and during the period of time from then up until I think my February visit, I found him to be very interested in the ship and very knowledgeable. And at that point in time, which is after the announcement of the new organization, I felt that he was somewhat put off by the fact that: Number one, I have an engineering background; number two, I am from outside of then Exxon Shipping Company, I'm an outsider; and number three, I was in a peer position and now I'm going to be in a supervisory position.

Q But all of that being taken into consideration, you've got these bad vibes and they were sufficient enough to where you went to Mr. Borgen, your boss, to discuss the subject, the bad vibes subject with him?

A That is correct.

Q As Clint Eastwood would say, you wanted to discuss an attitude problem?

A Oh, this was a concern that was discussed with the other ship group coordinators, as well as Mr. Borgen, and although this was the highest level, if you will, there was some of this – I could feel some of this from some of the other masters, but it wasn't as extreme.

Q And Mr. Borgen told you that Captain Hazelwood had gone through alcohol rehabilitation?

[2550]

A During the conversation when I related what I just related to you, he indicated that – or told me that Captain Hazelwood had undergone some sort of rehabilitation relative to alcohol, as well as some emotional concerns.

Q Okay. Now I'm interest in the way you just put that. Because you used the words indicated and told.

A Um-hum.

Q He whispered it to you; didn't he?

A Well, the door – actually, when I went into his office and started speaking to him, the door was open and when he got to the point where he discussed this, he looked at the door, because it is a confidential matter, and spoke in a low voice.

Q He whispered it; didn't he?

A Spoke in a low voice.

Q Whose term is whispered?

A I – I've used that term.

Q So we have two full grown Exxon executives whispering about alcohol rehabilitation?

A I wasn't whispering.

Q He was?

A He spoke in a low voice.

Q And you may have had one other discussion with Mr. Borgen about Hazelwood and drinking; is that right?

A About actual drinking?

Q Yeah.

[2551]

A I don't think the discussion had to do with actual drinking.

Q In the whole time between the time you became member of the management team and the time of the grounding, how many discussions did you have with Harvey Borgen about Joe Hazelwood and alcohol, drinking?

A I would monitor Captain Hazelwood, and I would come back to Mr. Borgen each time I visited the ship, and in essence report to him my observations so that he was aware of them. If that's what you're referring to.

Q My – did you come back repeatedly and say to Harvey Borgen, I checked on Joe and he isn't drinking? You didn't do that; did you?

A Not in those words, no, sir.

Q You – your understanding was that Captain Hazelwood was alcohol dependent?

A That is correct.

Q And he couldn't drink?

A Or if he did, he would be – he would be addicted to it, yes.

Q And he had emotional problems?

A Yes.

Q And he was supposed to abstain from drinking whether on or off duty? That's a correct statement?

A Well, if you – yeah, if you're an alcoholic, in essence

[2552]

you have to abstain.

Q Okay. And you – let's – do you know of anybody else who was monitoring him other than you or Harvey Borgen? You don't; do you?

A No, sir.

Q And you didn't document any of the monitoring; did you?

A There wasn't really anything to document.

Q Okay. We'll come to that in just a minute. But there is no document; is there?

A Not to my knowledge.

Q Not one piece of paper that you're aware of in the Exxon Corporation that reflects any monitoring?

A No, sir.

Q Okay. And you never visited the Exxon Valdez in the Port of Valdez; did you?

A Not in the port, no.

Q And did you ever ask of the Alamar people, we had a fellow from Alamar here yesterday, did you

ever ask anybody at Alamar whether Hazelwood had a reputation for drinking or was drinking?

A No sir.

Q How about anybody at Alyeska, did you ask anybody at Alyeska?

A No, sir.

Q And there were never any random searches of Hazelwood's

[2553]

quarters?

A Not when he was master of the Exxon Valdez that I'm aware of.

Q And you never asked anyone at Exxon about past incidents?

A No, sir.

Q And you never asked any other supervisors of the west coast office about Hazelwood and alcohol; did you? Other than Borgen?

A That is correct. My understanding of this whole rehab situation is that the procedures that I have read indicated that there'll be no discussion on rehab or the details of it or any such thing and such as that unless the employee chooses to do so himself.

Q So it's top secret; is that right?

A That's my impression.

Q You never told Captain Hazelwood or you never asked Captain Hazelwood if he was in treatment, Alcoholics Anonymous, how his recovery was; did you?

A No. But I did – not in those words, but I did ask Captain Hazelwood if he had any personal problems, and he said no. I asked him if he had any problems at all, and he said no. And I believe that Captain Hazelwood knew that I was talking about alcohol.

Q So it's sort of kind of a thing that you'd understand or whisper?

[2554]

A Well, as I said, there's this confidentiality issue about rehab and I didn't feel it appropriate to go down and say, well, Joe, how's rehab going, how was the last AAA [sic] Meeting. I chose not to be a bull in a china shop but to handle it a little bit differently.

Q And in May of 1988 you got a call from Steve Day who told you that he heard Hazelwood order beer over the ship walkie-talkie?

A I did not receive, to my recollection, a call from Steve Day that addressed that issue. There was, however, a conversation in late May of 1988 where Steve did tell me that.

Q There was a call in May of 1988 where Steve Day told you he heard Hazelwood order beer over a ship walkie-talkie?

A Not a telephone call, no, sir, there was a conversation.

Q Conversation?

A In Mr. Day's office where he related that to me.

Q Did he tell you he found empty Henry Weinhard's bottles on the vessel?

A No, sir.

Q Did he tell you that the walkie-talkie incident had to do with Henry Weinhard's beer?

A No, sir.

Q Mr. Day testified that he came in and reported this to you; did he?

A He – he reported to me that he heard Captain Hazelwood

[2555]

over the walkie-talkie asking for beer. And at that point in time, I said, did you go over and investigate? He said no. I asked him a series of other questions and I can't remember specifically what was said, but the last question I said is, did you see anybody drinking, and he said no.

Q So for – does that allow you to wash your hands?

A No, I went in to Mr. Borgen after this, this conversation, and – and spoke to him about the possibility that Captain Hazelwood might be drinking.

Q And Mr. Borgen already knew about it; didn't he?

A That is correct.

Q And you were shocked; weren't you?

A I was sort of surprised that I didn't know about it.

Q Everybody knew about it?

MR. NEAL: Objection.

THE COURT: Sustained. Jury will disregard that.

BY MR. O'NEILL:

Q The word shocked is your word; isn't it?

A Yeah. I was surprised. Here I am three months on the job, I find this information out, go to my boss and he is already aware of it, so, yeah, I was a little surprised.

Q So would it be fair to say that at this point in time you knew that captain – you were of the view that Captain Hazelwood was an alcoholic, he had to abstain, he ordered beer over a walkie-talkie in the Portland shipyard and that you and

[2556]

your boss both knew about it?

A Well, when I left the conversation with Mr. Borgen, my understanding was that he had done – or some sort of investigation was done and there was nothing to tie Captain Hazelwood with drinking during that incident.

Q So you –

A And one other thing, that I would continue to watch Captain Hazelwood closely.

Q And then at some point in time, you talked to Messrs. Kimtis and Glowacki; isn't that right?

A Separately, yes.

Q And did you know that Mr. Kimtis was the one that Captain Hazelwood was drinking beer with in Portland?

A No, I did not know that.

Q Did you know that Mr. Glowacki – at that point in time you wouldn't know that Glowacki was in Valdez drinking before the grounding. Did you know that Hazelwood and Glowacki drank on occasion?

A Not until the – after the incident.

Q Now Captain Hazelwood said in his testimony, we talked at great length about his conversation with you?

A Which conversation?

Q The one in May or June of 1988?

A I talked to Captain Hazelwood, I think in May he called me from the shipyard, and in June I was on board the ship for the

[2557]

stewardship review and to give him performance feedback.

Q Okay. And he says that you and he talked, at least at one point in time in his testimony, he said that you and he talked and he told you that he was drinking beer with Chuck Kimtis back at his apartment?

A That –

MR. NEAL: Objection to that, unless Mr. O'Neill brings out the fact, that makes that misleading, really. Mr. O'Neill knows what that story is. I'll get to it, never mind, I withdraw my objection.

THE COURT: Thank you, sir.

MR. O'NEILL: So we can get it clearly in mind.

(Portion of video of Captain Hazelwood played as follows)

BY VIDEO EXAMINER:

Q Did Mr. Myers discuss this event with you?

A I think it was the subsequent voyage. We left Portland, loaded, dropped a bunch of people off that

had ridden with us in Long Beach. Went to Panama and returned. I think it was our last run to Panama.

Q And where did the discussion take place?

A As I recall, Anchorage and San Francisco.

Q And what did he say to you and what did you say to him?

A He was – it was part of a general commentary on how did things go to the yard and, you know, it basically was a shakedown voyage for all this repair work that had been done

[2558]

and I don't know if it was the beginning or the end – I have a feeling it was the middle of this discussion, went on for about five or six hours, about all the concerns in the yard and he says, I got a report from Herb Leyendecker about some beer being ordered or referred to on the walkie-talkie, and in sum and substance, I told him the same thing I've testified to today, what happened, said okay.

Q Did he say anything else besides okay, when you gave him the –

A No. He just said I just wanted to be sure there was no violation of the alcohol policy, and I said as to my way of thinking, there was none.

Q Did he – at this point, did you tell him that you had consumed some of that beer later?

A I believe I did. I said Chuck Kimtis, and I went and watched the Bruins play whoever they were playing in the Stanley Cup finals, I think it was. I explained the whole scenario to him.

Q You explained the scenario, including the fact that you subsequently drank some of the beer while watching the football game?

A Hockey game.

Q Hockey game?

A I believe I did, yeah.

Q You refer to Mr. Timmons, I forget, he was on the other end

[2559]

of the walkie-talkie during the – during the conversation?

A Simmons, Timmons, something like that. I've forgotten.

Q Who was he again, remind me?

A I think he was a rigger foreman. He was in charge of the riggers for the day shift at that time.

Q Did you tell Mr. Myers how much beer you drank during the hockey game?

A I don't think specifically. I think it was a six-pack of beer and I think we indicated to him that we finished it or drank it.

(Portion of video of Captain Hazelwood concluded)

BY MR. O'NEILL:

Q Have you ever seen that before?

A No, sir.

Q In the conversation, would it be fair to say that he does say that he related to you the fact that he drank beer with Kimtis back in his apartment?

A Well, that's what he said, but–

Q That's what he says?

A That's what he said, but –

Q I'm going to let you – I'll give you a chance. Go.

A Number one, I never had a conversation with Mr. Leyendecker in relationship to this and I think Captain Hazelwood is mistaken because that discussion never took place. With Captain Hazelwood. It just didn't take place.

[2560]

Q Okay. That's fine. Would it be fair to say as you sit here today you thought he was an alcoholic, you knew he wouldn't be – he shouldn't be drinking, those are correct statements?

A Yes.

Q And you knew that a drinking alcoholic captain, master of a vessel, presented a risk to the vessel and the environment around it; okay? Is that all fair so far?

A Yes.

Q If Captain Hazelwood's version of this facts is correct, assume it is – may or may not be, but let's assume it is – your not doing something about that would have been reckless?

A Well, first off, it wasn't. It didn't happen.

Q I'm asking you to assume it was.

A Well, since it didn't happen, it's sort of difficult.

Q Let's say it's somebody else, say it's Mr. X, same context that we're talking about, knowledge of alcoholism, knowledge with regard to shouldn't be drinking, knowledge with regard to tanker risks, and

Mr. X gets a report, as we saw Captain Hazelwood give him a report, if Mr. X didn't take action, wouldn't it be fair to describe that conduct as reckless?

A Well, in Captain Hazelwood's situation, I do not believe that he was drinking, and/or if he was drinking, then perhaps he wasn't an alcoholic. Because I was on the ship all the time. Every time it came in, the ship came into Northern

[2561]

California or Long Beach. I was in there for extended periods of time and I know what to look for and I ensured that every time I came on board the ship I got close enough to him to smell his breath. I talked to him. I made myself available to other members of the crew. And I got a number of unsolicited positive comments, more than I had for anyone else. And it didn't –

Q Let me ask the question a different way.

A Okay.

Q If we assume Captain Hazelwood's version of the facts, which we all just looked at.

MR. NEAL: Your Honor, this is too much. Can we approach the – approach the side bar?

THE COURT: Not at this point. Let's see what the next question is.

MR. NEAL: Then I'll have to set up the video again where Mr. Hazelwood comes back and corrects this. Apparently Mr. O'Neill is not going to do that.

THE COURT: You'll have your chance.

MR. O'NEILL: Thank you, Judge.

BY MR. O'NEILL:

Q If we assume Captain Hazelwood's – that version of Captain Hazelwood's testimony, and I'm happy to admit that there are at least four versions, okay, there are four versions, two in which he says that, two in which he says the conversation

[2562]

didn't take place, happy to admit that. We've got four versions of the same conversation, but let's assume the version that we just looked at. If we assume that that version is the one that took place, you're partially responsible for the Exxon Valdez; aren't you?

A No.

Q Okay. Now, at some point in 1988 you attempted to get Captain Hazelwood transferred; didn't you?

A No.

Q You didn't?

A No.

MR. NEAL: Page, Mr. O'Neill.

MR. O'NEILL: 169.

BY MR. O'NEILL:

Q Would it be fair to say that there was a meeting in August of 1988?

A That's correct.

Q And there were ship group coordinators there including Deppe, McRobbie, and Sheehy?

A That's correct.

Q And you were talking personnel matters because people were being promoted at that point in time?

A Right. There was the ranking and rating in June and as a result of the ranking and rating, there were people that were promoted and the object was to even out the personnel on the

[2563]

fleet, so there was a meeting and Captain Deppe said that he needed somebody for the – I think it's the Yorktown that was working for I think PRI, which is a customer of ours, and he indicated that – or said that he needed a good ship handler and everybody's told me that Captain Hazelwood is the best, probably the best ship handler Exxon Shipping Company had, so I said do you want to take him on that ship. It wasn't – it was more like looking at the general interest of the company rather than saying get this guy off my ship.

Q Did you suggest that he go to another vessel?

A Other than that conversation, no.

Q That conversation, did you discuss that he go to another vessel?

A I suggested that if Mr. Deppe wanted him for the Yorktown, that would be okay. Because of the requirements he had.

Q And Captain Deppe didn't want Captain Hazelwood; did he?

A No. Because he's not politic.

Q He's a wise guy?

A Not a wise guy.

Q Now, at some point in time, you get a report, do you not, with regard to a second incident concerning Captain Hazelwood in San Francisco Bay concerning Captain Reeder and Mary Williamson?

A Captain Reeder, I – I had a conversation in March of 1989 where Steve Day said officers busting Reeder’s chops. To my

[2564]

knowledge and recollection, there was nothing said about Captain Hazelwood.

Q So it’s your testimony, as you sit here today – well, let’s see what Steve Day said, and then you can deny it, not deny it; okay?

A Um-hum.

(Portion of video of Steve Day played as follows)

BY VIDEO EXAMINER:

Q What did you tell Paul Myers?

A From what I recall, I – I initiated the conversation, went into Paul’s office in Benecia, shut the door and related to him essentially what I’ve – what I’ve told you here, what Mary observed and thought he, as – he should know about it.

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

A He didn’t say very much, from my recollection. Vaguely remember some, you know, questions of when, what day, and you know, but that’s about – yeah, that’s about all. It was very short, actually.

(Portion of Video of Steve Day concluded)

BY MR. O’NEILL:

Q The Mary Williamson incident is the incident Mr. Day had previously talked about concerning whether Captain Hazelwood had been drinking aboard a launch that evening, and here he reports that he reported it to you or testifies that E reported

[2565]

it to you. My question is simply, did he?

A He did not mention Captain Hazelwood. My recollection is that during that time frame, we had a turbocharger problem, and I'm sure you're aware that the Exxon Valdez was delayed from the Monday, I guess that would be the 13th, through Saturday, the 18th because of a turbocharger problem, and I was dealing with this, which I normally wouldn't have done, and Steve is a hot shot engineer, diesel engineer, and I went into Steve's room and asked him some questions about if he could help me with the turbocharger or if he had any ideas, because I had three different firms, one Sulzer, one our own people and one the turbocharger manufacturer all saying that they were different things, trying to find out which one it was, so things were a little tense for me.

And Steve was busy and he really didn't have anything to offer and there was a lull in the conversation, and I remember him saying after that, officer's busting Reeder's chops, and someone else came into the room and I left and got back on the turbocharger case.

Q So just so the record is clear, you deny that Mr. Day told you about what we – about Mary Williamson observing Captain Hazelwood in a possibly inebriated state?

MR. NEAL: Objection, Your Honor, to total misquotation of the record.

MR. O'NEILL: Well, I think that's –
[2566]

MR. NEAL: Possibly inebriated state, she said she couldn't say that–

THE COURT: Mr. O'Neill – Mr. Neal – I knew I'd do that sooner or later – just take it a little bit easy, please. The jury will decide for themselves what the testimony of these various witnesses were.

You may continue, Mr. O'Neill.

MR. O'NEILL: Thank you, Judge.

BY MR. O'NEILL:

Q Mary Williamson describes an incident aboard a launch with – right before the Valdez leaves north to go on the fateful voyage. And she reports it to Mr. Day, whatever the characterization of it is. Mr. Day has testified that he reported both the Williamson incident to you and a heated conversation between Captain Hazelwood and Captain Reeder in which profanity was used. Mr. Day's testified that he reported that to you. My question for you, sir, is, did he?

A You said just before the ship left. I was on board the ship the 17th, overnight to the 18th.

Q My question is, did Mr. Day report that to you?

A Not that – not that I'm aware of, no, sir.

Q Why would Mr. Day lie about that, if you know?

A Certainly on the surface, I have – I have no explanation on why he would.

Q Now, knowing what your state of mind then was with regard

[2567]

to Captain Hazelwood, and his treatment and his alcoholism and the fact that he wouldn't be drinking, if indeed Mr. Day made this report to you and you didn't act on it, that would be reckless; wouldn't it?

A Well yeah, I think if he said that to me and I didn't, yeah, I would be a bad boy, so to speak.

Q Reckless?

A No question.

* * *

[2612]

Q Now, you testified that when you talked to Mr. Kimtis and Captain Hazelwood about this review that you talked to them because they were, quote, the management representatives on board; do you recall saying that this morning?

A We're talking about captain – I mean, Chief Engineer Kimtis.

[2613]

Q And Hazelwood?

A Yes.

Q And they were the management representatives on board?

A Yes, sir.

Q Would you explain that to us?

A The captain and chief engineer are certainly responsible for their – their various departments and in relationship to this, if you will, the stewardship or the management of the vessel, the stewardship activity, I believe, started roughly ten years – no – yes – let's see. About late '70s, early '80s when it was determined that the folks that ran the respective departments would be management on board the ship and the stewardship process started.

Q To some extent that's what Mr. Iarossi talks about in his talk, surrounding the memories; have you ever heard that or read that?

A I've read it, but I don't remember the details.

Q But in any event, the concept was to change the role, the traditional role of the captain from someone who drove the boat to someone who managed the vessel and its activities as essentially an economic unit?

A I think that's what I was getting at when I mentioned that each individual fleet office for – since the late '70s or early '80s, this is my understanding, I wasn't there, had specific stewardship activities. I think the thing that changed in the time frame that I came into the organization is

[2614]

that the stewardship requirements were going to be the same for both fleets of ships, rather than a little different for one fleet than the other, and the other aspect that was cranked into this is the safety aspect that wasn't actually part of the stewardship before. It was like a separate entity.

Q So at least by the time, by 1988, 1989, the captain and the chief engineer were the management of the company on board the ship?

A I wouldn't – management of Exxon Shipping Company; is that what you're saying?

Q The management representative on board the ship?

A Yeah, I would say so.

Q Now, I want to talk to you for a minute about this Mr. Day coming in to talk to you about the Mary Williamson incident and the possibility that you may have been less than attentive during the conversation, if in fact the conversation took place. Does that make sense?

A Yes, with the exception I was – I went to him on another topic.

Q Okay.

A There's a little disagreement there.

Q The issue of Captain Hazelwood and drinking was an important issue in your mind; wasn't it?

A I would say so.

Q And the issue of a drinking captain who had gone through

[2615]

alcohol treatment was one that you knew could present dangers to the vessel, to the safety of the vessel, to the environment surrounding the vessel. You were aware of the risks?

A I was aware of the policy.

Q You were aware of the risks, too; weren't you?

A I was also aware of the policy.

Q Were you aware of the risks?

A What risks are we talking about?

Q That a captain who had an alcohol problem, who suffered from alcoholism of a supertanker presented a clear and present danger to the vessel if he was drinking again, to the vessel and the environment –

A If he was drinking. If anybody was drinking, actually.

Q Now, the rankings that you looked at today, where you had him in the middle, those were not the final rankings; were they? Those were your recommendations?

A That was the – I believe the final ranking for the west coast fleet.

Q Was that the final Exxon Shipping Company ranking for that year?

A I believe they were melded with the gulf coast masters.

Q Would it be fair to say, from your testimony today, that on the evening of the 23rd, there was no need for the Valdez to go out at night and there was no need for the Valdez to have run the risk of that ice at night, that it could have waited for

[2616]

another day?

A If there was a specific reason, the ship could have stayed.

Q Are you aware at all of the ice telex?

A Which ice telex?

Q Captain Martineau sending an ice telex on or about March 16, 1989 to some part of the west coast fleet recommending that Exxon Shipping Company vessels only take passage, because of ice conditions, during the day?

A I've heard about that, but I don't remember seeing it.

Q You've heard about it, though?

A Yes, from counsel.

Q You testified that you monitored Captain Hazelwood and I'm just going to ask a series of questions that all have to do

with monitoring, whether you did or didn't do it; okay? Did you ever talk to anybody in the medical department about

Captain Hazelwood?

A No, sir.

Q Did you ever talk to anybody in the – what is it, human resources section or department that Dan Paul heads up about Captain Hazelwood and drinking?

A No, sir.

Q Did you document any of the so-called monitoring of Captain Hazelwood?

A There's nothing to document.

Q Okay. Did you ever inquire of the Exxon Shipping Company

[2617]

agent Alamar in Valdez about Captain Hazelwood and drinking?

A No, sir.

Q Did you ever do a random search of Captain Hazelwood's quarters?

A No, sir.

Q Did you ever search the ship?

A No, sir. However, the – all of the ships in the west coast fleet in the – I believe in 1989, were going to be randomly searched, and one had been scheduled for the Exxon Long Beach and then canceled just prior to the incident because they couldn't get the dogs, but this was – this was planned.

Q Would it be fair to say that during your tenure, there were no searches of the Exxon Valdez with regard to alcohol?

A That I am aware of, that's correct.

Q And you never asked anyone at Exxon Corporation, other than the conversation you related with regard to Mr. Borgen, about Captain Hazelwood and drinking on duty; did you, about his history?

A About his history?

Q Yes, sir.

A No, sir.

Q And you never discussed Captain Hazelwood's – the issue of Captain Hazelwood's alcohol problems with other supervisors in the west coast fleet office other than Mr. Borgen; did you?

A My understanding was that Mr. Borgen told me that in

[2618]

confidence, and the policy is clear that the whole issue of rehab is not to be discussed unless the employee brings it up.

* * *

[2622]

DIRECT EXAMINATION OF RICHARD L.
MASTERS (Live)

BY MR. MONTAGUE:

Q Dr. Masters, could you please tell the jury your educational background?

A I went to college at Wayne University in Detroit, Michigan, where I received a bachelor's degree in psychology. I then started work on a master's degree and had a teaching fellowship in psychology. I did not complete the master's degree because I had an opportunity, somewhat unexpected opportunity to enter medical school, and I went to the University of Michigan for four years and graduated from there.

Q Doctor, could you keep your voice up a little bit? I think we're having trouble hearing you.

THE COURT: Doctor, that silver microphone will amplify. If you get it over in front of you and speak into it, it'll broadcast your voice.

THE WITNESS: Thank you.

MR. MONTAGUE: Thank you very much.

THE WITNESS: I graduated from the University of Michigan in 1957 with an M.D. degree,

took an internship, then entered the United States Air Force.

I was in the Air Force for a total of nearly ten years. During my work in the Air Force, I took a master's degree in

[2623]

public health, preventive medicine and occupational medicine at Harvard University and completed my residency training for my board certification.

BY MR. MONTAGUE:

Q What is occupational medicine, Doctor?

A That's the study of the diseases of work environments as they affect humans and the – and the effect of humans in their work environment.

Q Okay. And today, do you have a specialty?

A Yes.

Q Could you tell us what it is?

A I'm a special – I'm board certified by the American Board of Preventive Medicine in aviation medicine, and my specialty is preventive medicine, aviation and occupational medicine.

Q Do you have any special expertise in alcohol abuse programs?

A Yes.

Q And does that include the monitoring of employees in safety sensitive positions?

A Yes.

Q Could you tell us how you developed that expertise?

A Well, skipping anything that I might have had contact with in the Air Force, I start with my assignment or my work after I left the Air Force at the Lovelace Foundation for Medical Education and Research. At that organization I became the

[2624]

chairman of the department of preventive medicine, and as a part of that work there I was responsible for a number of consulting contracts with various organizations, probably the most significant being the – what we called then the atomic energy commission.

Q And what did you do with respect to the atomic energy commission?

A Well, I had a number of roles there, but –

Q I mean, relating to an alcohol abuse program?

A Yes, sir, relating to that. I was a consultant to the commission in drawing up and enhancing the standards for the selection for the continued duty and for special evaluations of the persons who had hands-on contact with nuclear weapons, the couriers who transported those weapons and the methods of transportation by land, sea and air.

Q Have you received any grants from the National Institute of Alcohol Abuse and Alcoholism?

A Yes.

Q What is that, what is that institute?

A That's one of the national institutes of health that deals with, as the name says, alcoholism and alcohol abuse.

Q And could you tell us if that grant included within it the area of monitoring of safety sensitive positions?

A Yes, it did.

Q And when did you get that grant?

[2625]

A The grant – the grant began on September 11th, 1974.

Q And when did you finish your work officially under that grant?

A The official cessation of the grant was December 31st, 1982.

Q So that was approximately an eight-year project?

A Yes, sir.

Q Okay. Now, can you tell us what you just – very briefly what you did under that grant?

A Basically, we developed a program for the dealing of alcoholism in the safety sensitive positions in the airline industry.

Q And does that – the study that came out of that grant, does that have a name?

A Yes. We called it the Human Intervention and Motivation Study, and the acronym for that is just HIMS, HIMS.

Q Okay. And as a result of HIMS, Doctor, have you had occasion to familiarize yourself with alcohol programs, including monitoring programs in industries other than aviation?

A Oh, yes. Before you get a grant, for example, you have to provide a very detailed written request

detailing precisely what you're going to do, and we did a great deal of study of programs that were in effect before the onset of the grant, and then as a consequence of having the grant, we did a wide study, [2626]

collected hundreds of programs from major industries around the country.

* * *

[2630]

Q So back in '85 or before, if a corporation wanted to have a monitoring program, especially for persons in safety sensitive positions and especially where they've returned from some form of alcohol treatment, that information was readily available; is that a fair statement?

A Yes. From those organizations, as well as interchange of information between corporations or organizations.

Q Is that the sort of information alcohol abuse programs, and ways to do it and monitoring, is that the type of information, in your experience, that large corporations are willing to share amongst themselves?

A I've rarely seen anyone refuse to share that information.

Q Okay. Now, can you describe for us as you understand it and based on your experience, the major features of a monitoring program? And I'd like you to do that, if you can, based on what was available in the early '80s or at least

1985. And again, relating to employees in safety sensitive positions who have returned from some form of alcohol treatment.

A Well, monitoring is a concept that needs to be formalized in a plan, and it needs to involve a relationship between the operational supervisors and the medical department and the individual or individuals being monitored.

Q And can you tell us – can you sort of tell us the roles that each of those – well, first of all, when you say a

[2631]

formalized plan, what's that supposed to set forth?

A Well, it should be a written plan and it should be explained very carefully, the relationship between supervisory personnel and the medical department personnel and what their specific roles are.

Q Okay. Could you tell us, for example, what the – what the role of the supervisor is and what – and its relation – and the supervisor's relationship to the medical department?

A Well, the supervisor is responsible for looking at the overall behavior of an employee who has returned to work, and for keeping in mind that you have to have a broad concept in dealing with this. He has to understand the employee as well as he can, he has to be concerned about the employee, and he has to be alert to any observations that he might make about changes in that employee's behavior, the way he approaches his job, that type of thing.

Q Okay. And does the supervisor get any – should there be interaction between the medical department

and the supervisor before the supervisor begins to watch that particular employee or keep an eye on him?

A Yes. The medical department would play a very key role in this, assuming for example that they would have made a return to work or fitness for duty determination after the person comes out of the inpatient treatment program. The medical department would interact with the supervisor of a given

[2632]

individual and together they would talk about what the monitoring program should be. The medical department should meet with the individual before he's returned to duty, and then should have periodic meetings with him throughout the time of his monitoring, as should supervisors.

Q Okay. Now, would it be fair to characterize the supervisor as the eyes and ears of the medical department?

A That's a.

Q Is that a fair –

A Yeah, that's a good term, yeah.

Q Now, when the supervisor sees something that is unusual or notices something in behavior or hears a report about behavior or drinking or whatever, what – how does he then interact with the medical department?

A I think the medical officer should be consulted by the supervisor. They should have a conference, discuss the – the findings or observations of the supervisor. We're certainly assuming that the

supervisor will have done some preliminary investigation of the problem and can give a fairly good description to the medical officer of what the problem might be.

Q Okay. Now, is it monitoring – is it monitoring if the supervisor never reports anything to the medical department?

A No, not under the plan that I've described.

Q And why not?

[2633]

A Well, the – the whole monitoring program is aimed toward prevention. What you're looking at is making sure that the person has continued in his progress and his aftercare program, is in continuing care, and is being observed very closely in every way. Medical department may have information pertaining to this particular case, which might cause them to have reason to perform a formal professional evaluation, for example.

Q And might that be information that is not available outside of the medical department?

A Yes, they had – would have the records from the treatment center. They would have the frequent reports from the aftercare program, all of those types of things.

Q And what if they didn't have those records?

A Well, I think they would have to have them. I don't think it would be an adequate monitoring program if they didn't.

Q Does a – in a responsible monitoring program, is the – is it proper for the medical department to require the employee who has been in treatment to

make his records available? As a condition of returning to his safety sensitive position?

A I believe it is. I believe that it would be quite important. I can't conceive of how the medical department could make judgments without having that information available to them.

Q Would it at least be appropriate to ask for them?

A More than appropriate.

[2634]

Q Okay. Now, let's get back on the beat here. Once the supervisor spots something and reports it to the medical department, someone in the medical department – and I take it that's a doctor?

A Yes.

Q Okay. Then what's the next step?

A Well –

Q In this –

A Let me interrupt you, if I may. That could be the physician or he might have assigned a particular employee, assistance person, program person, to accept the initial reports like that, but generally, it would be the physician, himself, especially in the role of great responsibility.

Q Would it be fair to say it would be a physician or someone especially trained?

A In all cases, yes.

Q Now, let's assume that the report is made, then, to that – to the medical department and the person within it who should receive it. What happens next in the medical department?

A The medical officer should review the report carefully, discuss it carefully with the supervisor, make any determination that he feels able to make at that point in time, but most likely should see the employee face to face.

Q And that's the person in the medical department?

A Yes.

[2635]

Q And after that, then, is it the person in the medical department that determines what steps should be taken with respect to the employee in that safety sensitive position?

A Well, it always has –

Q Do you understand that?

A I think I do. It would always have – it would always have to be done in conjunction with the supervisor. Medical department interactions involve the responsibility of making recommendations.

Q Okay. And then that's – the medical department would make its recommendation after it's interviewed the employee?

A Well, it may do more than that. You know, the medical department would have to perform a professional evaluation of this individual in their meeting with this individual, and there's a whole gamut of things that, you know, the medical – you know, the medical department might need to do. The outcome of this meeting in the medical department could be anything from go back to work, calling the supervisor, saying look, I don't think this is important, I see no evidence of a problem here, or they might say, well, look, he's having some

problems with – with one of his children, we’re going to get some family counseling introduced. Or he’s got financial problems, we’re going to get one of our financial people, all of those types of things, or the medical department may wish to have a more specialized professional evaluation on the individual and

[2636]

may call in other people or send the individual to – to another type of specialist, maybe a psychiatrist, whatever, call the aftercare monitoring counselor, see if he’s got any input, what he thinks. He might want to, you know, increase the monitoring program. He might want to enhance it, so to speak. He might say, look, let’s, in conjunction, say with the counselor at the aftercare program, he might say, well, let’s go ahead.

Q Might he pull him off the job, say wait until we get the evaluation?

A I was talking about a gamut, and that’s sort of the end of the road, but if he has to go that far, yes, he would pull him off the job, do whatever is necessary, have other evaluations and so forth, sure.

Q Okay. Now, have you reviewed Exxon’s alcohol policies and their supervisors’ guidelines with respect to those policies?

A Yes, I have.

Q And have you heard the testimonies in this courtroom of Drs. Montgomery, Gould and Nealy?

A Yes, I have.

Q And have you looked at their depositions?

A Yes.

Q And have you heard the testimony of Mary Williamson last Friday, and Steve Day?

[2637]

A That was read.

Q Yes.

A Yes.

Q And the video deposition of Steve Day on Monday?

A Yes, yes.

Q And were you here to hear the testimony of Captain Sheehy and Paul Myers?

A Yes, for both gentlemen.

Q And on that, based on that information, in your opinion, did Exxon – did Exxon’s alcohol policy and program, whatever it was, provide for monitoring?

A I found nothing in the paperwork that I didn’t find – I didn’t find the word “monitoring” in any of the provisions, so

I would have to say no.

Q All right.

In your opinion, what captain Hazel- – I’m sorry, what Exxon did as to Captain Hazelwood as described by Captain Sheehy and Paul Myers, does that constitute monitoring?

A No, it does not.

Q I’d like to – I’d like to take some notes this morning and you recall Mr. Myers testifying that, with respect to the Portland Shipyard incident, he said I spoke to Hazelwood alone, I asked Hazelwood

if he had any personal problems or any problems at all and he said no.

Do you recall that testimony?

A Yes, sir.

[2638]

Q Is that what a professional in the medical department would do if he were interviewing Hazelwood, Captain Hazelwood after that type of report?

A No. It's not even what a supervisor should do.

Q Okay. And I also – Mr. Myers was asked by Mr. Neal what would you have done had you heard Steve Day when he – when he mentioned the San Francisco Bay-Mary Williamson story, and he said I would have asked Day to accompany me to Mr. Borgen's office, we would have brought in Mary Williamson, we would have brought Captain Hazelwood in, Captain Hazelwood to hear his side of the story. Is that what a medical department would do if it were reported, that incident?

A No. I don't – I don't – I wouldn't – I wouldn't take that type of action.

Q Well, is that what you would expect?

A No, it's not what I would expect.

Q Is it correct that people in the medical department are trained to know how to determine if a person who has been through alcohol treatment and who is in a safety sensitive position, that they're trained to be able to ferret out if someone is in denial or whether they're actually – they're more apt to be able to ferret out what's really going on?

A They should be if they're going to make monitoring work effectively.

Q And is that normally the case?

[2639]

A That, in my experience, yes.

Q And monitoring, as you've described it, is it effective?

A I think it's quite effective, yes.

Q Okay. Now, I want to turn for a minute to job performance and you've heard testimony that Exxon, in their alcohol policy, their supervisors were looking to job performance as the main criteria as to whether someone was okay; and is that a proper criteria on which to base a monitoring program?

A No, it's not. It's – I would characterize it as even dangerous to base everything on that.

Q Dangerous?

A Yes.

Q Why would you say it's dangerous?

A Well, first of all, it's not preventively oriented. You need to take in all elements of the person's conduct and behavior and the way he approaches his work. I feel that both performance and skill in professionals is one of the last things to go; and I really wouldn't want to have that happen when a safety-sensitive person is driving a train, controlling a ship, flying an airplane.

Q In other words, the first – the first mistake that manifests itself could be the big one; is that what you mean?

A Yes. I don't want to see that happen, you know, on approach to Kennedy airport with a load of passengers, for example.

[2640]

Q Okay. Now, I want to turn for a second to monitoring – monitoring program and paperwork, and if a monitoring program is in effect, would you expect – you testified that there would be a written plan?

A Yes, sir.

Q And would that include written guidelines as to what the medical department should do and what the supervisors should do and how they interact?

A Yes, sir.

Q That would be explicit?

A Yes.

Q And did you find that in Exxon?

A No.

Q And would you expect also to find paperwork documenting the activities of the supervisors if they found anything or reported anything to the medical department?

A Yes.

Q And would you expect to find anything when the – in the files of the employee in the safety-sensitive position when the medical department made its evaluation of that report?

A Yes, the file would start with, you know, a fitness-for-duty and then make any further reports of any special evaluation conducted which were

brought to their attention or that they found out in their interviews with the person. But those reports would have to be handled in a very

[2641]

confidential manner, and the report itself merely would be a record of what was done. That's all that would get to the personnel file: I've examined this person and I find him fit for duty, or this person was removed for duty for a period; and so forth.

Q And when there are no such records, either a written plan or guidelines telling employees how to act, both the medical department and the supervisor's department and where there's nothing in the files of the employee, either the personnel files or the medical records or anything like that, does that suggest to you that there's no effective monitoring program in place?

A Yes.

* * *

[2656]

Q Dr. Masters, directing your attention to your testimony about what you would consider to be appropriate monitoring procedures for a company employing people who have safety-sensitive jobs, first of all, is it your testimony that you know that the standards that you described are followed in industry generally?

A It is my testimony that I know of the wide dissemination of the information. It is my testimony that I know organizations that use this technique and I don't – I don't know what you

[2657]

mean by “widely disseminated”.

Q I said used in the industry generally.

A Generally.

Q Used in industry generally?

A I couldn't answer that because I don't know about all industry.

* * *

[2662] Q By the way, when I asked you earlier about the FAA requiring monitoring for a pilot who wanted to return to duty, in this memorandum the FAA set up standards in which it would grant exemptions to pilots who had a diagnosis of alcoholism, did it not?

A That's the general purpose of this document.

Q And that document specified that, in order for a pilot to receive that exemption, he would have to be subjected to monthly monitoring meetings of the type you described in your direct testimony; isn't that true, sir?

A That's true.

Q By the way, this document evolved from a grant you received from the National Institute for Alcohol Abuse and Alcoholism?

A Yes.

Q Now, with reference to the diagnosis of alcohol abuse, if – if a pilot in 1982 had been diagnosed as having – as having a case of secondary alcohol abuse secondary to dysthymia, that would not require his license to be revoked by

[2663]

the FAA; isn't that correct?

A No, that's not correct. He would have to report his

inpatient treatment and the FAA would have probably required the documentation and would have reviewed the medical records in great detail and would have made an individual determination on that case.

Q Is it true that, if the FAA determined that the diagnosis was alcohol abuse secondary to dysthymia, that that would not require the pilot's license to be suspended or revoked?

A If they determined that that was the exact diagnosis, that could be the case. But they would make an individual determination based on their review of all of the medical records.

Q So if they made the determination that a pilot was suffering from dysthymia, primary problem; alcohol abuse episodic, secondary problem, then that pilot could continue to fly; isn't that correct?

A That requires a lot of assumptions that you haven't given me.

Q It is true, is it not, Dr. Masters, that that is – that if the FAA concurred in a diagnosis of dysthymia and alcohol abuse episodic, that the FAA regulations would not call for the cancellation of that pilot's license?

A If the FAA concurred in that, yes.

* * *

[2672]

Q So, just so I understand, an airman who had had – a pilot who had had his license to fly suspended or revoked because of a clinical history of alcoholism and remained sober for two years could get his license reissued, even if he told the agency that he occasionally had wine with dinner; is that accurate?

[2673]

A Yes. Since he wouldn't get a special issuance, I believe that would be accurate.

* * *

[2675]

Q Okay, now, does that mean that you think that a good monitoring program obligates a supervisor to pass on to the medical department every rumor that they hear?

A No.

* * *

[2676]

Q Let me see if I understand this. If a supervisor received a rumor from a notorious gossip and the supervisor didn't believe the rumor, is it your testimony that that supervisor should call the medical department and drag this employee in for a medical evaluation?

A No, it's not my testimony.

Q Okay.

A And drag in, I think that's rather strident.

[2677]

Q Oh, I'm sorry, I didn't mean to be strident. Invite the employee in for a medical evaluation?

A Yes.

Q Now, is it your view that the supervisor should do that?

A Under the circumstance you suggested?

Q Yes, sir.

A A rumor? No, I suggest the supervisor investigate the rumor; if he doesn't think there's anything to it, that's fine.

* * *

[2698]

DIRECT EXAMINATION OF JERZY GLOWACKI

BY MR. CHALOS:

Q Hello, Mr. Glowacki.

A Good morning.

Q What is your present occupation?

A I'm presently self employed and I'm also on the faculty of an engineering department at State University of New York, Maritime College.

Q What is your present employment?

A As self-employed?

Q Yes.

A Yes. I do consulting work in the maritime engineering field.

Q How long have you been doing that?

A Since 1990.

Q And how long have you been in an instructor at Maritime College?

A Since about two years ago.

* * *

[2705]

Q Now, once the Exxon Valdez was constructed, did you sail on her as a chief engineer?

A Yes, I sailed on her from the maiden voyage on, that's correct.

Q When did the vessel come out of the yard?

A Mid December '86. I don't recall the exact date.

Q And you were the permanent chief engineer on that vessel from 1986 until the grounding?

A One of the two, that's correct.

Q Who was the other chief engineer?

A Chuck Kimtis.

* * *

[2716]

A Captain Hazelwood made arrangements with one of the pilots to give us a ride into town, and I believe we waited for him for a little bit.

Q At the end of the jetty?

A That's correct.

Q Did anyone besides yourself and Captain Hazelwood decide to go to town?

A Yes, the officer, radio operator.

Q That was Mr. Roberson?

A That's correct.

Q What was he going to do in town?

A He just came along with us and had opportunity to get a free ride into town.

Q Now, you say you were picked up by a pilot?

A That's correct.

Q Do you remember his name?

A Bradford. I never met him prior to that time.

Q Let me suggest a name: Bradley?

A Fine.

Q That sound correct?

A Fine.

Q Where did Mr. Bradley take you after he picked you up in

[2717]

his car?

A He took us to – obviously out of the terminal into downtown Valdez to our agent's office, Alaska Maritime Services.

Q Before we get to the Alaska Maritime Office, you checked out through the gate, I take it?

A That's right.

Q When you got to the gate, did you have to log out?

A I don't recall physically signing out, no. Or individually signing out.

Q Do you remember what time you left the gate?

A It had to be shortly before 11:00.

Q We have evidence here and we put it up before that you left at 10:59. Does that comport with your recollection?

A It is with the sign-out sheets, yes.

Q Now you said you went to the Alamar office. Did you go to the Alamar office directly?

A That's correct.

Q You were driven by Pilot Bradley directly to the Alamar office?

A That is right.

Q All three of you?

A That's right.

Q What did you – what did you do when you got to the Alamar office?

[2718]

A Their office on the second story, so we all went to their office and they provided us with a couple desks where we could use the phones, and Captain Hazelwood proceeded to make his phone calls and I proceeded to make my phone calls, plus I had some lubricating oil samples from the turbochargers that I had to have Fed Ex'd to San Francisco for analysis and that was basically the nature of the business, what I had to do there.

Q Did Pilot Bradley go up to the Alamar offices with you?

A I don't recall. He didn't stay with us, if that's what you mean.

Q Yes, that's what I was driving at.

A No, I don't recall that.

Q So the three of you got out of his car and walked upstairs to the Alamar office?

A That's correct.

Q What time did you get to the Alamar office?

A Have to be about 11:30.

Q And how long did you remain in the Alamar office?

A Approximately an hour.

Q Till about 12:30?

A Correct.

Q During that period of one hour, did any of you leave the other site or, to say it a different way, did you all stay together?

A That's correct.

[2719]

Q You all stayed at the Alamar office?

A That's my recollection, yes, sir.

Q Now, you said you had to make some phone calls as well?

A That's correct.

Q Who did you call?

A I called our repair superintendent out of the Benicia office, all regarded the turbochargers; and I also called turbocharger manufacturer's representative. And there might have been a couple others; I don't recall.

Q And plus you made arrangements to send the samples by Federal Express?

A That's correct.

Q So that whole thing took a period of time, I take it, and then you were waiting you said for Captain Hazelwood at this point to finish what he was doing?

A I was done with whatever I had to do earlier than Captain Hazelwood was, yes.

MR. CHALOS: Your Honor, this may be a good time.

THE COURT: Take our second recess, ladies and gentlemen. We'll be in recess for 15 minutes.

THE CLERK: This court is in recess for 15 minutes.

(Jury out at 12:02 p.m.)

(Recess).

(Jury in at 12:17).

THE COURT: Mr. Chalos.

[2720]

MR. CHALOS: Thank you, Your Honor.

BY MR. CHALOS:

Q Mr. Glowacki, before we go back to the Alamar office: I notice you speak with a slight brogue, is that a Bronx accent?

A No, it's not a Bronx accents.

Q Where were you born?

A I was born in Poland.

Q You immigrated to the United States?

A I'm sorry.

Q Did you immigrate to the United States?

A That's correct, I did.

Q Just one more question: When you left Exxon – in 1990, you said?

A Yes, I did.

Q – was that a retirement on your part?

A I had the opportunity of taking 20-year retirement and I took it, yes.

Q Okay, back to the Alamar office when you were there for the one – one hour, from 11:30 to 12:30, you said?

A Yes.

Q Did there come a time when you overheard a radio transmission from the vessel regarding the sailing time?

A Yes, the vessel did get in touch with the agent and did notify the agent of a change in sailing time.

Q From what to what?

[2721]

A It was moved back one hour to 10:00.

Q So when you left the Alamar office at 12:30 in the afternoon, was it your understanding and Captain Hazelwood's understanding that the vessel's sailing time had been pushed back one hour, to 10:00 from 9:00?

A Yes, it was.

Q Incidentally, we spoke a little bit about the sailing board. Is the sailing board, the time that's listed on the sailing board for sailing, is that something that people who are going ashore can rely on?

A It has been my experience, that's correct.

Q Okay. So what happens that 12:30?

A Captain Hazelwood and Pilot Murphy made arrangements to have lunch together, and myself and Mr. Roberson were also invited to lunch.

Q Did – Captain Murphy was a pilot up in Valdez; was he not?

A Yes, he was.

Q Did there come a time when Captain Murphy picked you up, the three of you up?

A After we got done with whatever we had to do at the agent's office, we went downstairs and we waited for Pilot Murphy to pick us up; that's correct.

Q Where did you go downstairs?

A I'm sorry.

Q Where, at the Alamar office?

[2722]

A At the Alamar office.

Q And did you wait in the parking lot?

A We waited in front of the office.

Q Did you go anywhere else during that period of time while you were waiting for Pilot Murphy?

A No, we just stood outside the office downstairs.

Q And did the three of you stay together?

A Yes, we did.

Q And did Pilot Murphy come directly to pick you up at that point?

A I believe we waited a few minutes, something of that order, but yes, he did; did actually come and pick us up.

Q And did he – did he drive you somewhere?

A We all – yes. He drove us to the place where we was going to lunch.

Q What was the name of that place?

A Pizza Palace.

Q And did you in fact have lunch at the Pizza Palace?

A Yes, we did.

Q Did you drink anything at the Pizza Palace?

A Yes, I did.

Q What did you drink?

A I had beer.

Q How many beers?

A I believe two.

[2723]

Q How about Mr. Roberson, did he drink?

A I believe he also drank beer.

Q How many beers?

A I don't know.

Q Did Captain Hazelwood drink?

A Yes, he did.

Q What did he drink?

A He had ice tea.

Q Did he drink anything of an alcoholic nature?

A At the Pizza Palace?

Q Yes.

A No, he did not.

Q How about Captain Murphy? Did he have any alcohol at the Pizza Palace?

A No, he did not.

Q How long did the lunch take?

A I would say slightly over an hour.

Q Let me ask you this.

During this lunch that you said took slightly over an hour, did any of the three of you get up and leave to go any place?

A No.

Q You remained together?

A Yes, that's correct.

Q All right. After lunch was finished, where did you go?

A Pilot Murphy took us back in his car to – back to the

[2724]

center of town.

Q And all three of you?

A That's correct.

Q Did he drop you off somewhere?

A I believe there was a supermarket there in front of the supermarket, which is – to me is the center of town, Valdez.

Q To the best of your recollection, about what time would that have been?

A Around 2:00, or shortly after.

* * *

[2727]

Q Did there come a time when Captain Hazelwood joined you at the Pipeline Club?

A Yes. He joined me about 20 minutes to half an hour after I showed up, after I went to the Pipeline.

Q What time would you say he came in?

A Approximately 4:30.

Q Had you already ordered a drink by the time Captain Hazelwood arrived?

A I did, yes.

Q What did you order?

A Gin and tonic.

Q Did you get a gin and tonic?

A Yes, I did.

Q When Captain Hazelwood came in, did he come over to speak to you?

A Yes, he came toward me, that's correct.

Q Okay. What did he say to you and what did you say to him?

A I don't believe we said anything other than How you doing, something like.

Q Did he ask you if you wanted a drink?

A I'm sorry.

Q Did he ask you if you wanted a drink?

A No, I still had the drink I ordered.

[2728]

Q So he didn't buy you a drink at this point?

A No, I don't recall anything of that sort, no.

Q Did Captain Hazelwood go up and order a drink for himself?

A Yes, I believe so.

Q Did you hear what he ordered?

A I believe he ordered vodka, yes.

Q And did he come back with the vodka?

A That's right.

* * *

[2761]

Q You knew, though, that Captain Hazelwood had a reputation for partying; didn't you?

A I wouldn't say that I knew, no.

[2762]

Q Had you heard rumors prior to the grounding that Hazelwood had a chemical dependency problem?

A No, sir; first time I learned of that was after the – after the grounding and there were hearings and testimony was given.

Q Would you go to your NTSB testimony at page 865?

A 65? 865?

Q 865.

A Yes.

Q And let me read the questions and answers, and you tell me if I read them right.

When did you become aware that Captain Hazelwood may have had a chemical dependency problem? That was the question.

“Answer, I can’t say exactly, but being – working for a company for 19 years, you hear certain rumors, but these are innuendoes and rumors and I cannot exactly answer you.

“Question, When did you first hear a rumor to that effect?

“Answer, I don’t recall, sir.

“Question, Was it prior to the grounding?

“Answer, Yes. It could have been a few years before that, I can’t tell you.

“Question, But you think it would have been before the grounding?

“Answer, Oh, yes, certainly.”

Were those the questions asked and the answers that you

[2763]

gave?

A Yes.

* * *

[2774]

Q Now, did there come a time in March of 1989 when a man named Hazelwood came into your place of business?

A That's correct. But I didn't know who he was at the time.

Q Okay, what day or date was that, that you recall?

A The spill was on the 24th?

Q Yes.

A Then it was the day before.

Q If the spill was on the 24th, what day would it have been?

A It was in the daytime before the spill.

[2775]

Q So that would have been March 23, 1989?

A Yeah, right. Right, the 23rd.

Q What are you looking at, ma'am?

A I'm looking at the telephone bill where I put his credit card through, to make sure I'm right.

MR. CHALOS: I'm showing DX – let me see if I have this, yeah, DX3456. And DX3457 Alpha.

Oh, wait that's because I'm fooling with the focus instead of the zoom.

MR. SANDERS: On-the-job training.

THE COURT: We all got to learn sometime.

MR. CHALOS: Can you see? Is that clear? I thought I knew how to do this one.

BY MR. CHALOS:

Q All right, well before – well, before we get into that, let me ask you about Mr. Hazelwood's visit.

A gentleman came into the store?

A Correct.

Q What do you recall by his appearance, how he was dressed?

A Very well dressed. He was very pleasant, he looked around the shop. He walked around. He came up to the counter, which was – I was closer to him than I was to you; you know, like about one table away. And he spoke to me, and the only reason he stood out in my mind is I used to live in Long Island, and when he sent flowers to Huntington, I tried to be congenial

[2776]

with all my customers, I asked him how Long Island was; and we discussed Huntington. And I lived in Malverne which is in Long Island and we discussed Long Island. And if he'd been drinking, I would have smelled it. And he could not – and he was not drinking at the time he was in my shop.

Q In addition to talking about your respective homes in Long Island, did Captain Hazelwood buy anything from you?

A Yes. He sent – he wired flowers and I put his credit card through the machine.

Q To where did he wire the flowers?

A To Huntington, Long Island.

Q All right. Now, let me show you another piece of paper, which is Exhibit 3456.

Have you had a chance to look at it?

A Yes.

Q Have you seen this before, Ms. Kaiser?

A Well, yes. I wrote it.

Q This is all your handwriting?

A All my handwriting.

Q What is this form?

A Okay, every person that comes in, I write an order out for them so I have a record \$45 was what he bought, a dozen long-stem red roses. What they cost in Long Island, eight is for the phone call and the delivery, and it comes to \$53.

Q A total of 53?

[2777]

A Right.

Q And the message in that section – let me start again.

That telephone number is at the top is what, what number, ma'am?

A The number of the person that it's going to.

Q That it's going to, okay. And they delivered to Mrs. Susan Hazelwood, that's the person to whom it was sent; is that right?

A Right.

Q And when you said you didn't know what the relationship was, you just knew it was a woman's name?

A Yeah, I didn't know if it was his mother or his wife.

Q And then the florist is listed there?

A Main Street Floral, and the lady I spoke to was Jean.

Q And what did Captain Hazelwood order, looking at this?

A A dozen long-stem red roses arranged in a vase.

Q What was the occasion for sending this; do you know?

A I don't know if it was Easter or – I don't remember. I really don't remember. I do so many.

Q Do you recall that this was Easter weekend?

A I think it was over Easter weekend, but I don't remember. I'd be lying if I say I know definitely what he sent it for. Q Let me do this, Ms. Kaiser. Let me go – before I get to this telephone bill, how long would you say Captain Hazelwood spent in the store from the time he came in until the time –

[2778]

Q Okay, let's go back to what you said about your being close to him and having a considerable conversation with him.

A We were face to face.

Q And being face to face, you smelled no alcohol on Captain Hazelwood's breath?

A No, I did not.

Q Was he sober, ma'am?

A Yes, he was sober. And I know the difference because I had an alcoholic husband, so I know the difference between – and I see a lot of people that drink in my shop and I can tell the difference. He hadn't been drinking. I mean, if he did, he was

hiding it. But he didn't reek from alcohol, and when you

[2779]

talk to something that close, you can tell.

Q There was no sign that he was intoxicated?

A No sign.

Q And you just said a moment ago that there was no sign that he had been drinking in any way at all?

A Correct.

Q Now, you said that you've had people come into your shop that had been drinking, you had a family experience with it. What do you look for in trying to detect whether somebody's been drinking or not?

A Well, at that particular moment, I wasn't looking for anything. He was just another customer.

Q Right. I'm not – I'm not even asking now about this particular moment. I'm just asking you generally, what are the kind of things that you would see generally in somebody who might come into your shop or you might otherwise run across who had been drinking?

A They don't usually – they're not usually able to carry on a normal conversation, be polite sometimes.

Q So it may affect their courtesy?

A Correct.

Q Or their manner of speaking?

A That is correct.

Q You saw nothing like that in Captain Hazelwood, is that right?

[2780]

A Not a thing. Nothing, no.

Q You said a moment ago or a few minutes ago something about if he were, he might have been hiding it. You didn't see any sign that he was trying to hide that he had been drinking, had you?

A No, he was doing everything every other customer comes in my shop does, just looking around.

Q All right. Let me get to the telephone charge with you – and let me mark one last piece of paper as an exhibit and have you look at this, too, Ms. Kaiser. And we'll mark this as 3457

A. Ms. Kaiser, you can see that this exhibit I just put in front of you has atop across the top, Cooper [sic] Valley Telephone Cooperative – or that's the top printing on it?

A Correct.

Q And there is a bill that you – you look down, I think it's seven lines from the bottom?

A Right.

Q There's a telephone charge for a call to Huntington?

A Right.

Q All right, Ms. Kaiser, let's look at the exhibit we've marked for the deposition and one that was used at the Hazelwood trial.

This is a copy of some of your telephone calls in March of 1989, is that right?

[2881]

A Correct.

Q And these are all calls made from the Hobby Hut, Kelly's

Floral?

A Correct.

Q Now –

A Excuse me, can I tell you, it's also my home phone number. It's the same one.

Q All right. Now, let's go left to right across this bill and see what you can tell me about it.

Down the left-hand column – we're going to look at the Huntington, New York entry, okay? Are you with me?

A Right.

Q Let's look at the left-hand come first, where it says 03 slash 23?

A Correct.

Q What does that mean to you?

A The date I put his credit card into my machine and made the call.

Q All right. What is the second entry, telephone number, the 835-4483?

A That's my telephone number.

Q And the third entry says Huntington, New York?

A That's the place I called at the time.

Q And what's the telephone number next to Huntington, New York, the 516/271-0160?

[2782]

A The number of the shop that I called to order the flowers.

Q And then there's a column labeled MINS, and there's a Number 2 in this Huntington, New York entry. You see that?

A Yes.

Q Do you know what that stands for?

A That it took two minutes to call.

Q All right. The next one says time and the entry is 14:02?

A Correct.

Q What does that mean to you?

A The hour that it was placed.

Q All right. So does that mean 14 hours into the day, two minutes after the 14th hour of the day, 1402? Is that what it means to you?

A I guess that's what it means, yes.

Q Would that be 2:02 p.m.?

A Correct.

Q And you said before this call – before this – wait a minute, let me start again.

And you said before that this call represented your putting the card through. Is that how you put it?

A Yes.

Q What do you mean by that?

A I have a machine that processes credit cards, and it went through the credit card machine plus my telephone bill.

Q And that's something you do routinely when you get a credit

[2783]

card charge?

A Right. I phone in as fast as I can.

Q Okay. At the time that you go through this exercise of putting the card through and having the credit card charge verified, I guess it was Captain Hazelwood was still in the store?

A I'm pretty sure he was, yes. I put it through right away, yes.

Q You used the card physically to do it, didn't you?

A I used it physically, right, so he had to be there.

Q So he must have left sometime after this?

A Right. Correct.

* * *

[2822]

Q Now, in watching them walk, did you see yet any sign to cause concern on your part about whether they might be impaired or a danger to themselves or danger to the property?

A No, I did not.

Q So neither the first fellow nor the other three caused you any – gave you any reason up to that point to be concerned?

A Correct.

* * *

[2824]

Q Now, from the time you saw them arrive to the time they spent with you in the security office to the time they exited and went to the cab, did you see anything which suggested to you if any of them was under the influence or impaired by alcohol?

A No, I did not.

Q Did you see anything to indicate that they were in any way lacking in coordination, stumbling or walking funny?

A No, I did not.

Q Anything about their speech that indicated to you that they might be using alcohol?

A No, I did not.

Q Okay. Now, at that point in time, March 1989, was it a regular part of your responsibility at the security gate to watch for alcohol, signs of alcohol on incoming tanker people?

A Yes.

Q And did you observe that occurring? I mean, had you seen

[2825]

people come through who you observed to be and judged to be affected by alcohol?

A Yes.

Q Had you observed people who were – who you observed to have had something to drink but were not – were not so impaired that they were unsafe?

A Yes.

Q And had you observed people who were – not only had something to drink but impaired and you judged them to be a danger to themselves?

A Yes.

Q Now, if you observed someone in that condition, was it your practice to try to videotape the behavior of the people in the – in the security office?

A Which condition?

Q In a condition where their impairment might present a risk to themselves or a risk to the property?

A Yes.

Q That would have been Mr. Shoop's responsibility?

A Yes.

Q And he was working under your supervision?

A Yes.

Q As of that time, were you – well, strike that.

Approximately how often or how frequent did you observe indications of alcohol consumption on incoming tankers?

[2826]

A Specifically on the night shift as the night crew, later, say after 10:00, when everything else is pretty much closed except for the bars, and particularly after midnight it was very common.

Q So it was not uncommon for you to observe people and judge them to have had something to drink?

A Yes.

Q And again, sometimes they were under control and sometimes they weren't?

A Correct.

Q By either test, did you judge these four individuals to have had enough to drink to be noticeably affected by what they may have drunk?

A No, I did not.

* * *

[2840]

DIRECT EXAMINATION OF FRANK IAROSSO
(Live)

BY MR. NEAL:

* * *

[2845]

Q In 1982, then, to get down to it, you became president of Exxon Shipping Company?

A Yes, sir.

Q And Exxon Shipping Company is the company that owned the Exxon Valdez as of March 23, 1989?

A That's correct.

Q When did you leave the Exxon companies?

A I believe it was April 2nd of 1990.

* * *

[2861]

A Well, we felt we had to establish safe operations and safe operating procedures for all of what we felt were the critical aspects of ship operation. Probably the most important initiative we took was

development of what we call the bridge organization and navigation manual, which was very extensive undertaking, started back in 1977, as I recall, went through a major revision in around 1983 or so, but it was a manual which outlined the responsibilities and roles and approach and procedures that needed to be followed for the operation and navigation of our vessels.

Q And were the masters and officers required to follow the instructions in this manual?

A Yes. It was – it was put forward as the manner in which the company wanted its vessels operated. Certain segments of it were guidance, certain segments of it were requirements.

[2862]

Q Now, was – did this bridge navigation manual, was it required to be read and studied by every officer and was it required to be placed on every vessel?

A Yeah, there were two copies assigned to every vessel. One was to be in the master's cabin and one was to be on the bridge. The officers being assigned to the vessel, there was a signed sheet in the front of the manual where they had to sign that they read it and understood it.

* * *

[2874]

Q Now, did this policy, and the guidelines attached to this policy, have anything to say about how supervisors should monitor employees for alcohol or drug problems?

A Yes. We had – we had one, the training programs I was talking about earlier, but also in addition to that we had guidelines for supervisors and also fleet officers as to how to recognize signs of alcohol or drug abuse and what to do when there was suspicion of use.

Q Did this – what were they supposed to look for or look at in monitoring employees?

A Well, the key was job performance and how the individual performed his or her job.

* * *

[2875]

Q Did you consider – did you intend or consider that your supervisors would monitor an employee when he's off duty or at home, that sort of thing?

A No, I – my personal feeling, I think it was the company's position very definitely, that we had no business in the employee's private life. In fact, it was probably illegal, and therefore, all of our activities were associated with on-the-job performance or time periods when the employee was on Exxon facilities.

* * *

[2879]

Q When Mr. Graves is telling you, and you're having this conversation about Captain Hazelwood, did you understand from Mr. Graves that the conduct that Mister – that Captain Hazelwood was telling about had occurred some years earlier? A Yeah, the – the subject that caused Ben to get in contact with Hazelwood had to do with an incident that occurred

[2880]

sometime prior to – to '82, and so the whole context of discussion that Ben was relating to me was some years prior to the incident.

* * *

[2886]

Q Did you intend or expect anybody to monitor his private life or the times he was off duty and at home?

A No, absolutely not.

Q You said you expected them to monitor him primarily for job performance?

A And job performance and any sign – I think I used the term that he was off the wagon was the exact term I used.

* * *

[2896]

Q All right. Now then, did you, at these fleet conferences, have occasion to see and be with Captain Hazelwood?

A Yes. I remember especially subsequent to the rehabilitation.

Q I'm talking about subsequent to the rehabilitation. A Yes. I – there was one fleet conference in March of 1988 that I recall because of a specific incident related to Hazelwood. Then there was another one, it was either the '86 conference or the '87 conference, I don't recall which one, and during those times, I – I made it a point during those five days to watch Joe, not only to see whether – how

he was participating in the program, one of the things that I was curious about was whether Joe was fully participating in the program, how he was behaving during the course of the five days, but also what he was consuming as far as liquid refreshment, and I never at any time saw Joe consume any alcohol during that time, whether it was during meals – he was not drinking wine, was not drinking beer during meals or

[2890]

anything.

Q These were over five days each time?

A Yes.

* * *

[2903]

Q I have placed in front of you your testimony in this case under deposition, your testimony before the National Transportation Safety Board, and a number of exhibits, and we may want to use those as tools as we proceed here for the next hour or so.

The first thing I'd like to do is just figure out the chain of command. It's going to be on the monitor right next to you. This is great.

Just prior to the grounding, you were the president, FJI;

[2904]

that's a correct statement, right?

A Yes.

Q And then reporting to you with regard to the west coast was Borgen?

A Yes, Harvey Borgen.

Q And he had a ship group coordinator named Myers?

A Yes, that's correct.

Q And then there was a Captain Hazelwood; is that correct?

A Myers actually had an assistant called a port captain, but under Myers were a series of masters who – actually, pairs of masters who alternately were in charge of vessels and Hazelwood was one of two masters in charge of Exxon Valdez.

Q And Mr. Cousins was on the bridge at the time of the grounding?

A Cousins was one of the deck officers assigned to the Valdez at the time of the grounding.

Q And he was the deck officer who was on the bridge at the time of the grounding?

A Yes, that's correct.

Q Now, you left Exxon Shipping Company three years before retirement in 1990?

A April of 1990.

Q And Mr. Borgen was transferred to special projects in Houston within a month or two after the grounding?

A Yes.

[2905]

Q And Mr. Myers was transferred to Houston within a month or two after the grounding?

A No, actually, Myers was assigned first out of San Francisco for the repair of – of Exxon Valdez, which took three or four months.

Q Then he went to Houston?

A Then he went to Houston.

Q And Captain Hazelwood was terminated?

A Yes.

Q And Mr. Cousins, I guess, quit?

A I'm not sure of that.

Q He left?

A Yes. I guess.

* * *

[2906]

A Yes, sir.

Q I'm going to keep this.

Now, the Exxon Valdez won the fleet manager – or the fleet award in 1977 and '88?

A Yes.

Q And it didn't win it in '89; did it?

A No.

Q And indeed, somehow or another the awards it got were pulled off of the vessel; weren't they?

A Yes, sir.

Q Now, on the bridge manual, the bridge manual is an important document; isn't that correct?

A Yes.

Q And after the grounding, you made the determination that Captain Hazelwood was not on the bridge when he should have been on the bridge?

A I was told that Captain Hazelwood had told Paul Myers that he was not on the bridge at the time of the grounding. Subsequent to that, Exxon lawyer had told me, Bob Nicholas had told me that he had asked Hazelwood where he was and Hazelwood had confirmed he was not on the bridge and that other crew members also confirmed that Hazelwood was not on the bridge.

Q And not being on the bridge at that point in time was such a serious breach of the bridge organization manual that that in and of itself was sufficient reason to terminate him from his

[2907]

job?

A It was part of the policy that there were certain times when the navigation and bridge organization manual stated that the master had to be on the bridge and there were certain circumstances defined. In my judgment, this particular passage would have qualified as one of those times.

Q And it was reckless not to be on the bridge; wasn't it?

A No, I just said that it was my judgment that – that the captain should have been on the bridge at this time.

Q And it was a serious enough breach, in your judgment, to terminate the man's job?

A He had failed, in my view, to – to live up to a policy and that clearly the – the result of not living up to that policy

included termination.

Q You stated that with regard to the seagoing employees, quote, there is very little opportunity as managers to observe them on vessels; and, quote, we have so little opportunity to see the employees on the vessels; do you recall that testimony?

A Yes.

Q Those are true statements?

A Yes. Most – you know, the opportunity to see a master perform really is primarily associated with either in port periods while the vessel is discharging, or other opportunities, such as conferences or things like that. But

[2908]

you can't watch his vessel performance.

Q Now, you talked – I want to go to the topic of self identification.

A Yes.

Q You talked at great length about self identification?

A Set the basis of the whole program.

Q With Captain Hazelwood you opined that he self identified?

A Yes, absolutely.

Q Would it be fair to say that with regard to exactly how Captain Hazelwood's – and how Captain

Hazelwood and the subject of alcohol came to the attention of Exxon Shipping Company, that specific topic, you don't know about, you're surmising –

A The first –

Q – or guessing or putting together what people may have told you, including lawyers, but you don't know how Captain Hazelwood either brought it to the attention of Exxon Shipping Company or was caught; do you, one way or the other, you don't know?

A What I was told first through the memo of May 29th or whatever the date was, 1985, from Ben Graves was that he, Ben, had found out, and I don't know how, that Hazelwood had turned himself in to a rehabilitation program subsequent to that, Ben had had the conversation which was the – the point of the memo that he wrote to me.

[2909]

Q Would you go to page 196 of your deposition transcript.

A Yes.

Q And page 196, line 20, and I'm going to go through 197, line 6. At the time you discussed Captain Hazelwood's condition with Mr. Graves and made the decision then to return him to duty –

MR. NEAL: Excuse me. Could we hold on? What page?

MR. O'NEILL: 196, line 20.

BY MR. O'NEILL:

Q At the time you discussed Captain Hazelwood's condition with Mr. Graves and made the decision

then to return him to duty, would it be fair to say that you, at that point in time, didn't know whether Captain Hazelwood had self identified? Answer, it was my assumption that he had identified his problem to Ben Graves and that he had some contact to the medical department, because the medical department had awareness of the problem, as I understand it.

Question, do you know? Answer, exactly what the contact was, no. Do you see that?

A Yes, that was my statement.

Q Now, Captain Hazelwood has testified here on the same topic and the question was, you didn't self identify; did you?

Answer, no, no.

[2910]

You got a call from Exxon Corporation through Captain Pierce who said you have a problem, I think you ought to get some help or work it out or – Yeah.

And at the time Mr. Graves was reporting, Mr. Graves was investigating instances of drinking prior to going to South Oaks? Judging from the date of the report, yeah. So you didn't self identify? Answer, no.

You see that?

A I'm reading it, yeah.

Q Are you aware of – were you aware before you came in here today of that testimony?

A Absolutely not.

Q You've also testified that you became aware of the fact that Captain Hazelwood was going through

treatment, I think it was just by chance? Do you recall that, to the NTSB?

A Well, I found out about it from Graves who informed me of his discussion with Hazelwood after Hazelwood had completed the program, and what Ben told me was that – try and recall the exact words. Told me that Joe had turned himself in for rehabilitation.

Q Why don't you go to page 921 of your testimony before the National Transportation Safety Board. Your testimony now is

[2911]

that – well, let's read what your testimony was then.

Beginning on line 19, I'll read the question and then why don't you read the answer.

Question, how did you become aware of that after he got out? And what was your answer?

A I said, we learned through, I think it was just by chance, one – I believe the administrative manager had been trying to get ahold of Captain Hazelwood and, as I remember it, had learned that he was in the hospital in New York, Long Island, I believe it was, and tracing it down across this situation.

Q Now, I'm going to state another proposition with regard to how you found out. I'm going to tell – I'm going to say that you found out because of an investigation that was going on. Okay? Not an investigation that happened after, but you found out because of an investigation that was going on. Would you agree with that statement or not?

MR. NEAL: Your Honor, could we approach the side bar?

THE COURT: I'll allow the question. But simply a straightforward answer to nothing but that question.

THE WITNESS: Yeah, there was – Ben Graves was following up on a complaint.

BY MR. O'NEILL:

Q Would it be fair to say that the risk of Captain Hazelwood's continued use of alcohol brought in the question of

[2912]

safety to the vessel?

A I think the risk of anyone using alcohol or drugs while on duty brings in a safety question.

Q Let me ask – reask the question, would it be fair to say that the risks of Captain Hazelwood's continued use of alcohol after 1985 was that it brought into question the safety of the vessel?

A If it was on duty, yes.

Q Let's go to your deposition transcript. This is going to be a long day. Let's go to page 87 of your deposition transcript, line 15?

A Yes.

Q And the question was, and the risks of his using alcohol were what, what were the risks if he continued to use alcohol?

Answer, well, the risk if he continued to use alcohol was that it brought in the question whether he could discharge his responsibilities.

Question, it brought in the question of the safety of the vessel? Answer, yes. Do you see that?

A Yes.

Q You never received any report from the medical department of Exxon Shipping Company related to Captain Hazelwood up and through the time of the grounding; did you?

[2913]

A Me personally?

Q Yes, sir.

A No.

Q Do you know or are you aware of whether Captain Hazelwood, after his rehabilitation in 1985, received any health advisory services from the medical department of Exxon U.S.A.?

A I do not know.

Q Now, you testified here today that this conversation that took place with Mr. Graves dealt with the subject of depression and then some kind of associated drinking; do you recall that testimony?

A What – what I was told was that the actual symptom, I don't remember the medical term, was a mild depression, and during the periods of mild depression, Joe drank, I think the term was excessive drinking.

Q You were told that he went through alcohol abuse treatment?

A I was told he went through rehabilitation.

Q Alcohol abuse treatment?

A I don't recall that.

Q Okay. Let's go to page 76 of your deposition transcript. The question is, okay. And he voluntarily

went for alcohol abuse treatment in 1985? This is at line 10. And your answer at line 12 was, yes, I learned that subsequently.

[2914]

Do you see that?

A No, I'm not with you.

Q Okay. Page 76 of the deposition; not the NTSB testimony.

A I'm on page 76.

Q And the question on line 10 is, okay. And he voluntarily went for alcohol abuse treatment in 1985?

And your answer was, yes, I learned that subsequently. Do you see that?

A Yes.

Q And when you get over to the next page, on line 9, now, you say you learned of his going for alcohol abuse treatment six to eight weeks after he commenced it? Answer was, yes, I think it was late May when I first learned of it, and I think his treatment started sometime in April. Do you see that?

A Yes.

Q I was interested when you said and you were talking about Ivan Mihajlovic, and you testified Ivan Mihajlovic, here in court, said he heard a rumor in the fleet; do you recall that?

A Yes, there are often rumors in the fleet.

Q But because of this rumor of Mihajlovic he went and did some investigation?

A Yeah. I believe it was the same rumor of Jim Shaw saying that Hazelwood was acting kind of crazy or kind of strange.

[2915]

Q You talked at some length about this Shaw matter, and I'd like you to go to 961 of your deposition transcript – I'm sorry, 961 of your NTSB testimony and the NTSB asked you when you were under oath before the NTSB about whether you heard of any allegations and the question put to you before the National Transportation Safety Board was, has Exxon Shipping ever been made aware of allegations of Captain Hazelwood's drinking or abuse or failure to follow any other company policies, and your answer was, subsequent to rehabilitation, no. Is that what you mean, subsequent to rehabilitation; do you see that?

A Yes.

Q And the question concerned merely allegations of Captain Hazelwood's drinking or abuse; isn't that right?

A Yes.

Q And that was the answer to the question you gave before the National Transportation Safety Board when you were under oath isn't that correct?

A That's correct.

Q And you did not mention the Shaw situation; is that correct?

A Shaw situation mentioned nothing about alcohol. Somehow what was reported to me, he came back and he said Hazelwood's acting kind of strange.

Q Would it surprise you to know or would you be concerned if indeed Mr. Shaw said, and to use a term that you used today,

[2916]

Hazelwood has fallen off the wagon?

A That was not reported to me that way.

Q It wasn't?

A No. Absolutely not.

Q If indeed there was a report in the company that Hazelwood had fallen off of the wagon, that he was drinking on board the vessel, that there was a party on board the vessel in Hazelwood's room, those are serious allegations; aren't they?

A If those were the allegations, they were serious allegations, yes.

Q And the people who were witnesses to that situation, participants in that situation, under your company policy, should have been brought in and asked about them; isn't that right?

A If it was known by company management, yes.

Q And indeed, if it was known by company management and those people weren't brought in and interviewed, that's wrong; isn't it?

A Clearly, if anyone knows of drinking on board, they should make it known to the supervisor, yes: The policy was clear as to that.

Q Were you aware of the agent – we had testimony from a fellow who worked with your agent in Valdez, Alamar. Were you aware that Exxon Shipping

Company had an agent in Valdez; Alamar, Alaska maritime agency?

[2917]

A I learned after the grounding.

Q This fellow came in and testified, I can't recall his name, but he testified that Captain Hazelwood had a reputation, at least among the Alamar employees, as a drinker. Are you aware at all of that?

A No.

Q Now, you testified, and I – you may have misspoke on this, because this is not a subject that you know a lot about, but in the IDR, just so you know, – I can't read this copy. Can we bring it up, the IDR? See if this is any better. Do you know whether on the IDR there's any notation as to whether he's fit for duty or not?

A I have never seen an IDR.

Q Okay. So when you testified with regard to what, in fact, is on the IDR, you'd never seen the IDR. Have you ever seen it up to today other than the fact that it's before you?

A I don't recall ever seeing it, but certainly before the incident I had never seen one.

Q Captain Hazelwood has testified here that no one from Exxon Shipping Company told him not to drink, that he resumed drinking in 1986, and that he didn't hide it from anybody. Does that surprise you?

A Yes.

Q Now, you testified this morning that you had told your subordinates to make sure that Captain Hazelwood completed the

[2918]

rehabilitation plan?

A The program.

Q The program. Captain Hazelwood has testified that after about a month or a month and a half he quit his aftercare program. Is that something that you would – his aftercare program as prescribed by South Oaks. Is that something that you would have expected your subordinates or people under their control to follow up on to make sure that he completed his aftercare program?

A What I told Ben was to make sure that he was fit for duty and that the medical department agreed with that or concurred with that evaluation.

Q My notes, and I wrote them right here on my outline. You can see my outline is not much use to me, but my notes this morning were that you testified to make sure that he completed his rehab plan. Is that now not your testimony?

A What I meant was that he went fully through the program and was declared fit for duty.

Q Now –

A I'm talking about the program leading to a fit for duty determination.

Q Do you know whether there is a fit for duty determination in any of Exxon Corporation's or Exxon Shipping Company's records anywhere?

A I was told that he was declared fit for duty by his – by

[2919]

his private physician and that the medical department concurred with that conclusion.

Q My question is, do you know if there's a piece of paper anywhere that documents that?

A I do not know. I don't know what the files are.

Q Do you know if there's a piece of paper anywhere in your company or your then company, Exxon Shipping Company, that details any of this monitoring stuff anywhere?

A I would be surprised if there is, because we were trying to handle it strictly confidential. I didn't write anything down.

Q You didn't write anything down?

A No.

Q Sir, was there a rehabilitation plan for Captain Hazelwood?

A There were two facets to –

Q My question was, was there a plan?

A A written plan that said we do this and do that?

Q That's right.

A No.

Q I want to, if we could – your testimony also today was you had directed your employees to make sure that there were no signs that he was, quote, off the wagon, close quote; do you recall that?

A Yes, I told that to Ben Graves.

[2920]

Q And –

A Later to John Tompkins.

Q And if somebody's off the wagon, it means they're drinking again; isn't that right?

A That's what I meant, yes, sir.

Q So any drinking, again, he's off the wagon, you want to know about it?

A Yes, sir.

Q And indeed, if your employees, Ben Graves, Jim Shaw, Andy Martineau, Harvey Borgen, Herb Leyendecker, if any of those people knew or had reason to suspect or heard rumors that this man was drinking again, they should tell you; shouldn't they?

A Well, the management – the people that reported to me were Ben Graves, John Tompkins, Dwight Koops, Harvey Borgen. They were the people who communicated to me, who reported to me and who I consulted with on this project. The other people that you talked about, I had essentially no contact or very little contact and no direct management contact. I may have seen them in the halls.

Q You didn't actively participate in this monitoring program at all yourself; did you?

A The two or three occasions during those management conferences that I talked about and spoke about where I was in Joe's presence on and off for four or five days at a time. That's the only opportunity I had.

[2921]

Q You didn't supervise the monitoring; either; did you?

A I did not supervise the monitoring directly, but I kept in contact periodically with John Tompkins, Dwight Koops, later Harvey Borgen, and I left each of those contacts with the clear direction or direction to them that if they came across anything of significance on this subject, I was to be informed.

Q Let's just take a look at your – you've been asked the question. It's deposition transcript.

MR. NEAL: What page?

MR. O'NEILL: I don't know. We're going to play it on the screen. Is that coming up?

(Portion of Video of Frank Iarossi played as follows)

BY VIDEO EXAMINER:

Q And is it fair to say that other than the conversations that you detailed to us, you did not supervise the monitoring?

A I was not a supervisor, I was the president of the company.

(Portion of Video of Frank Iarossi concluded)

BY MR. O'NEILL:

Q And the conversations you referred to there were conversations you had with Harvey Borgen and Dwight Koops?

A And John Tompkins, yes.

Q Now, I'd like to, if we could, go over some of your policies. Well, let me just ask you while we're on this

[2922]

subject.

Was an incident – did Mr. Herb Leyendecker ever make a report to you with regard to an incident in the Portland Shipyard?

A No.

Q With regard to Captain Hazelwood ordering beer over a walkie-talkie?

A No.

Q Did anybody from the west coast fleet ever make a report to you that beer was ordered over a walkie-talkie and there were Henry Weinhard's bottles found on board the Valdez and Henry Weinhard's were ordered over the walkie-talkie, anybody report that to you?

A No.

Q At the time when Captain Hazelwood was on board the vessel, anybody report that to you?

A No. First time I heard about it was after the grounding.

Q They should have reported it to you; shouldn't they?

A If there was any evidence, yes.

Q And they should have reported it?

A I instructed Harvey Borgen that anything out of the ordinary, let me know.

Q And indeed your policies require that in situations where there's allegations of alcohol use that's in violation of a company policy, drinking on ship, that the suspect or the

[2923]

person in question is supposed to be questioned by two members of management; isn't that right? Do you know what your policies dictate with regard to that?

A Perhaps I'd have to review it. I knew it required follow up, but I can't tell you exactly what the follow-up was.

Q Was a situation ever brought to your attention with regard to San Francisco Bay a week or two before the Valdez – a week before the Valdez started up north on its fateful voyage concerning a Mary Williamson and a Captain Reeder?

A No.

Q After this –

A Following, subsequent to the grounding, I heard about it at NTSB or something like that.

Q And should have been brought to your attention; shouldn't it?

A If there was anything to it, yes.

Q And it was reckless not to have, if there was any substance to it?

A The instructions that I left with Harvey very clearly would have said that if – if he found out about any – any violation of company policy, he had to let me know. I had to be informed.

Q Now, I want to go back to the time when you talked to Ben Graves and the concept of a rehabilitation plan. You were of the view that part of Captain Hazelwood's rehabilitation was to

[2924]

attend AA meetings when he was at home; isn't that right?

A I – I don't believe I ever was told of any AA meetings or what it was. What I was told is that he was going on 90 day leave of absence during, which he was going to attend AA meetings.

Q Did you tell the National Transportation Safety Board that, to your knowledge, part of his rehabilitation was to attend AA meetings when he was at home?

A During this 90 day period.

MR. NEAL: Page?

MR. O'NEILL: 926.

THE WITNESS: The context I remember of Ben Graves'

discussion of AA was during this same first meeting. He said at that time, Hazelwood was already out, that he had requested 90 day leave of absence, which we had granted, and that he was going to be attending AA meetings while he was at home.

BY MR. O'NEILL:

Q Now, with regard to your company policies, I want you to, if you would, to take a look at Exhibit 3617, Defendants' Exhibit 3617, which is an Exxon document. Do you have that? And I'm going to –

A I'm going through.

Q I'll put the page up on the screen then and we can take a look at it, the document, so we can put it in date context.

A I have it.

[2925]

Q It's dated October of 1988?

A Yes, I have it.

Q And the section of the document that I'm interested in is the section that I've got highlighted on my copy, which says, post-rehabilitation testing not addressed in current policy, variation in application across company, commonly done in industry, aids successful rehabilitation, recommendation, revise guidelines to incorporate post rehabilitation testing; do you see that?

A I'm not familiar at all with this document.

Q You've never seen the document before?

A No.

Q Well, let me ask you another question. Have you ever seen Defendants' Exhibit 3683, which I've put up on the screen?

A I don't believe I ever saw this.

Q What's the management committee?

A That's Exxon Company U.S.A. management committee, which is the – the president of Exxon Company U.S.A., and three or four senior vice-presidents of Exxon Company U.S.A. I was not a member of the management committee.

Q With regard to people who violated the company's alcohol policy in 1985, you regularly terminated people who violated the company's alcohol policy; didn't you?

A We had, I believe, from about 1982 to the time of the grounding.

[2926]

Q 55?

A I was going to say about 37 terminations, I think is what I recall. We had another 24 suspensions without pay for certain periods. Those are the statistics I remember over that seven year period.

Q So if, in fact, somebody was violating company policies with regard to drinking on vessels or returning to vessels drunk, you had the power and, in fact, you did terminate them?

A Yeah, the – the violations clearly were possessing or using alcohol on board or being impaired in the course of duties. Those were the two company violations. And where we found people drinking on board, possessing alcohol on board or being impaired or intoxicated during duty, during a watch, then clearly, we were not very easy on people and we terminated a number of people. Some of which, by the way, were returned to the fleet after arbitration and arbitrators forced us to take them back.

Q But you did do it?

A Yes, we were not easy on them.

Q And indeed, it was the company's policy that if an employee's request for rehabilitation is made after the company's discovery of a violation of the policy, the company will take disciplinary action which may include termination?

A That was our policy.

Q So if you got caught, you were going to be subject to some

[2927]

kind of disciplinary action and that disciplinary action could include termination?

A Yes.

Q Does Captain Hazelwood's personnel file, or any other company record that you're aware of, reflect any adverse personnel action with regard to the Graves report?

A This occurred – this statement in this conversation between Ben Graves and Captain Hazelwood occurred after Hazelwood's rehabilitation.

Q Could you answer my question?

A Would you ask it again?

Q Was there any adverse personnel action taken as a result of this?

A None was required.

Q None was taken, whether it was required or not?

A None was taken, none was required.

Q Now, with regard to Captain Hazelwood's assignment to the Yorktown, you discussed this anguish about that. In point of fact, you found out that Captain Hazelwood was assigned to the Yorktown four weeks after he was already on board the vessel; didn't you?

A Yes, I think it was in September.

Q And when you found out, you were upset?

A I was upset that I hadn't been told beforehand.

Q And with regard to his reassignment to the Valdez, you were

[2928]

told that after the fact?

A Yes.

Q After he was on board the vessel?

A Yes.

Q And you were, quote, shocked?

A I was surprised that he had been reassigned without them informing me, without either Harvey or Dwight informing me.

Q I want to go back to, if we could for a minute, our earlier discussion about aftercare. Was it your understanding that after the 60 day outpatient period, Captain Hazelwood would be evaluated again?

A I did not know that. Other than the fact that – that I wanted somebody in the shipping company to – to interview Joe and make a decision that – that he was fit for duty, if that’s what you mean, clearly that’s what I wanted.

Q Let’s go – do you know that following the inpatient treatment there would be a 60 day outpatient period and then he would be evaluated at that point?

A I don’t know if there was a medical evaluation or whether his physician – the evaluation I wanted was for somebody in the shipping company, before we gave him an assignment was to meet with him and clearly make a decision based on that face to face meeting that he was fit for duty. Irrespective of what the doctor said.

Q Okay. And what kind of – you wanted somebody from the

[2929]

shipping company to meet with the man and in order to make that determination as to whether he was fit for duty, I would get – that would entail a lengthy heart searching conversation to get to the bottom of what happened, how he was now, his treatment, his rehabilitation?

A I didn't specify.

Q Whether it would be perfunctory or detailed, careful or not careful?

A I think a face to face meeting would have helped us understand whether Joe was clear, whether he understood, whether he recognized the problems he had, and clearly one of the things we were looking for is would he in fact – was he out of the denial phase.

Q Was he clear?

A Was he clean.

Q Was he clean, was he out of the denial phase, and that's what – those are the subjects that you wanted your people to go into when they had this face to face with him before he was reassigned to the Yorktown that's what you expected of them?

A I didn't spell it out in detail.

Q But that's what you expected?

A Yes.

Q Just good common sense, care, care for the individual, care for the situation, carefulness?

A Yes.

[2930]

Q What is the denial phase? You used the expression denial phase. What is that?

A I'm not a – I don't have a medical background at all. I – the little I know about – about rehabilitation is that the first sign you look for is, does the individual acknowledge that he has the problem. And it's important – apparently an important outcome of rehabilitation is that the individual acknowledges that there was a problem and that he has to now address it. That is what I understand the denial phase – or getting out of the denial phase.

Q Getting out of the denial phase. Somebody is open about their problem and is talking about it, working on it, that's getting out of the denial phase?

A Yes, as I understand it.

Q If it had been brought to your attention that Captain Hazelwood had had a prescribed aftercare treatment program and he had quit going to that, would that have given you cause for concern?

A If I understood it was a mandatory part of his program he wasn't following, I think I would have been a little concerned, yes. I would certainly ask some questions.

Q Now, you related to us a discussion that you had with Mr. Graves about the Federal Disabilities Act?

A Yes.

Q You did not go to your lawyers and say, hey, lawyers, with

[2931]

regard to Captain Hazelwood, tell me what the law is about that; did you?

A No. Ben told me he had conferred with the Exxon lawyers and that was the opinion of the Exxon lawyers.

Q So we ought to ask Ben, then, as to whether he conferred

with them and if neither you nor he conferred with the Exxon lawyers about this particular topic and a decision was made on this assumed law that nobody ever asked about, something's wrong; right? You expected him to take care of it for you?

A He was my expert on – on employee relations matters, including contact with law, and if he told me that that was the opinion of the Exxon lawyers, I believed him.

* * *

[2932]

MR. O'NEILL: Do we have that? Can you pull that up for me?

MR. NEAL: Plaintiffs' Exhibit 173.

BY MR. O'NEILL:

Q Here is Plaintiffs' Exhibit 173. Is that the press release?

A I believe so.

Q And you cleared the press release; didn't you?

A I authorized its release.

Q And in the press release there is a statement, Frank Iarossi, president of Exxon Shipping Company, said that the decision to terminate the employee was made because he violated company policy concerning alcohol; do you see that?

A Yes.

Q And that was what you told the world about why you fired Captain Hazelwood?

A It was the press release, yes.

Q Now, with regard to this topic – because you talked to the core group of Exxon Shipping Company officers in the summer or fall of 1989; do you recall that?

A I believe I had a meeting with a group of officers.

Q And it was – was it to, among other things, address the Exxon Valdez situation?

A We certainly talked about that as part of your lessons learned and how to make sure it doesn't happen again.

[2933]

Q It has been reported to us here by one of the participants in the conference that you made a statement to the following effect, that you couldn't believe that they had spent the afternoon in Valdez at a number of bars. Did you make that statement?

A I don't believe I made that statement, no.

Q You deny it?

A I don't recall making that statement.

Q Okay. Now, were you disappointed and outraged that an officer in such a critical position would have jeopardized the ship, crew and the environment through such actions?

A I was very angry. I guess I could certainly use the word outraged. Outraged at the fact that the vessel was – had grounded, the fact that there were

32 square miles of oil all over Prince William Sound, the fact that I was spending five hours a day in front of the press answering questions. I was – I was outraged.

Q You still can't get away from answering questions today; can you?

A No.

Q And I'm interested in the second paragraph, the last paragraph where it says, critical position; you see that?

A I – yes, I see critical position.

Q Is a ship captain a critical position?

A With regard to operation of the vessel, he is the most

[2934]

critical member of the crew. With regard to operation of that vessel, yes.

Q And indeed, he was also part of the management team and part of management; wasn't he?

A He was part of the management of that vessel. He was not part of Exxon Shipping Company management. He had no responsibilities outside of that vessel when he was on board that vessel.

Q With regard to the vessel, wasn't it a major program of yours, as related in Surrendering the Memories, to turn the ship captains from people who drove boats into people who participated in the management of this vessel as an economic unit?

A Actually went well beyond the ship master. It included the entire, what we call the shipboard management team, was the – the senior officers, the

four senior officers assigned to the vessel at that time, and then their counterparts, so there were really eight. They formed what we call the shipboard management team and their role was to manage the activities of that vessel.

Q So we had four members of this management team who managed this vessel as a business unit, economic unit, safety unit for Exxon Shipping Company?

A They were responsible for the safety and whatever took part. They weren't responsible – I have to hedge on

[2935]

economics, because they weren't responsible deciding what cargos they carried or what rates they got for it.

Q No, but within the context of safety?

A Yes. They were responsible for the safety of the vessel, yes.

Q And they were also responsible for, within the context of safety, getting the vessel moving, being – being prudent with regard to ship stores that were put on – not put on, the management of the personnel on the vessel, all those kinds of things?

A Yes.

Q And one of your contributions as the president of Exxon Shipping Company was, through the years, to upgrade these guys from ship drivers to this management team?

A Yes. We were trying to give them a broader perspective and understanding of their – of their role as it related to all facets, safety, safe operation.

Q And at the time of the grounding of the Exxon Valdez, you had a member of this management team and indeed the key manager of the vessel who violated his duty under your policy manual when he left the bridge?

A The – yeah, the bridge navigation manual, in my view, required his presence there. There are other opinions who say, no. My opinion is –

Q I understand at that time –

[2936]

A – opinion he should have been on the bridge.

MR. NEAL: Let him finish, Mr. O'Neill.

BY MR. O'NEILL:

Q Are you finished, sir? I wasn't trying to cut you off. Are you finished?

A Yes.

Q So we have a management team member who, in your opinion, violated the bridge policy manual by leaving the bridge?

A In my opinion, one of the circumstances – the circumstances of the vessel were in – were one of those circumstances which required his presence on the bridge.

Q And the reason for that is so you can have four eyes on the bridge instead of two?

A That's true.

Q And, in fact, there weren't four eyes on the bridge instead of two?

A That's correct.

Q And the vessel ran aground without the help, aid, assistance of this additional pair of eyes?

A In my view it was a contributing factor.

* * *

[2943]

Q The normal procedure, once you get to the gate here coming out to where the ship is – well, why don't you just tell me what happens there.

A Well, this was – this was a new – it was a new situation to me. I – the cab driver got out and opened the back door so I can get out, and I gave my identification card to the guard and he gave it immediately back. Usually in the past, we have all given – all the occupants in the cab have given their cards, their Z cards or what have you to the driver and gone through the metal detector or what have you and have them given back to the driver. This time it was changed. We gave our Z cards to the guard and he gave them immediately back. Then we went through the metal detector, got back in the cab and went on our way.

Q All – all of you did that?

A As far as I can remember, yeah.

Q When you were in the cab, was there anything you noticed, as far as whether the other people had been drinking?

A No.

Q I'm not saying that they were drunk, but had they been drinking?

A No, I have no occasion to notice any – they – the other people seemed to be perfectly standard type

people coming back to the ship. I didn't know who they were or I – I had no occasion to remark on their condition one way or the other.

[2944]

Q So there was nothing that stood out to you, as far as any of the other people?

A No.

Q And you didn't talk to any of the other people during this –

A Well, I think I probably said hello and thank you, or one thing or another.

Q Who did they let out – they let them out first?

A No, I was first out.

Q You were out first and they went to –

A Yeah. I was surprised at that because I was dozing and I thought – I don't know why I thought it, but I thought that they were from the other ship that's still here, and when the cab stopped I was told it was berth 4, okay, I got out.

Q When they paid for the bill, were you in the cab when they paid for their part of the bill?

A No.

Q You paid yours?

A Yeah.

Q Just about when they were in this security building, when you were in the security building going through the metal screen or whatnot, were you right with the other three guys where you might observe them walking and moving in there, ah, or were you alone?

A I was in their company but not with them.

[2945]

Q You were in the same general area?

A Yes.

Q The point is, did you have an opportunity to see them if they were, ah, stumbling or whatever, or did you not even have the opportunity to see them?

A Oh, I had the opportunity to see them, but I think – but – and I think, I'm not sure, but I – as I said to the security man last night, I had nothing to cause me to notice what they were doing.

Q Nothing triggered your interest?

A No.

Q You –

A They behaved like people coming back to a ship.

Q You had went off for, I believe, approximately two hours?

A Yeah, two, two and a half, something like that.

Q Did you – well, when you were downtown, did you drink?

A Oh, yeah.

Q Did you have anything to drink that night?

A Of course.

Q Did you – would it be like one drink or two drinks?

A Oh, I may have had three or four. I don't know.

Q But still, there wasn't anything noticeable to you about

the other three?

A No.

Q Is there anything that you can think of that you would want

[2946]

to say before I turn the tape recorder off?

A About their condition or – or –

Q Anything? Or if you have a question?

A The only thing I can remember that actually had to be brought to my attention last night when the security guys, they had a couple of pizzas with them. When I climbed into the backs seat, I was careful not to sit on one.

* * *

[2952]

CROSS EXAMINATION OF HARRY CLaar

BY MR. O'NEILL:

Q You left the employ of Exxon Shipping Company some months after the grounding?

A Yes.

Q And you work for Arco now?

A Yes.

Q Before you sailed with Captain Hazelwood, you knew that he had a reputation as a partier; didn't you?

A I had heard that.

* * *

[2988]

DIRECT EXAMINATION OF RAY JONES (Read)

BY MS. STEWART:

* * *

Q You graduated from Kings Point in 1976. What was your first job upon graduation?

A My first employment was with Exxon U.S.A., that was the name of the company at that time. Exxon Company U.S.A., as a third assistant engineer.

[2989]

Q You never sailed as a mate; did you?

A No, I did not.

Q Did you work for anyone besides Exxon?

A No, I did not.

Q When did you get a chief's license?

A Approximately two years after that.

Q What year would that be?

A 1986, thereabouts.

Q What was the first vessel you worked on with Exxon U.S.A.?

A The Exxon Chester.

Q Did you work on quite a few Exxon vessels?

A Yes, I did.

Q You were on the Exxon Valdez when she was christened; right?

A Yes, I was.

Q Were you generally a regular crew member of the Exxon Valdez?

A Yes, I was.

Q Well, from 1986 until 1989, did you ever work on any other vessels other than the Exxon Valdez?

A No, I didn't.

Q Generally, what were the duties of a first engineer?

A First engineer is responsible for the overall running of machinery plant. He's responsible – he's the primary supervisor of all the other engine department personnel and he

[2990]

reports directly to the chief engineer under his supervision.

* * *

Q I'm not going to hold you to these specific times so you don't necessarily have to refer to that, but can you just give us a chronology of the whole time you were in Valdez and when you sailed? And take your time and be as specific as you can. A That morning, we had had some turbocharger problems when we left San Francisco. So my intention that day was to open up the oil sumps up on those and inspect them, which I proceeded to do. And that took basically the entire day. That afternoon, I was in the engine room basically the whole time doing those inspections. That afternoon, I can't be specific about the time, but I was notified that there was a telephone call for the chief engineer in the radio officer's room. I went up there to talk to Paul. I can't even remember his last name now, the port

engineer from San Francisco wanted to talk to the chief engineer about this turbocharger problem.

[2991]

I went up, I had a conversation with him. I went back below. I finished the turbocharger inspections and proceeded to get the plant ready to leave that night.

Q This is the 23rd now?

A This is the 23rd, Thursday, standby leaving the dock was at 2054. That was uneventful. Everything proceeded normally.

Q Had you seen Joe Hazelwood any time that evening?

A No, I hadn't. I talked to him on the telephone. After we were clear, it was our usual procedure as a routine to wash the efficiency boosters on the main engine and before I did that, I always informed the bridge that I was going to do it. I talked to him. I called the bridge to let them know that I was going to proceed to do this. Captain Hazelwood answered the phone. Informed him of my intentions, he said fine, go ahead. Then we joked. This was – I think Pete Rose had just gone through his problems and I made a comment about that and we laughed. I hung the telephone up and I went below and proceeded to wash the turbochargers. After this was completed and I was headed up, when I got back to the control room, the chief engineer was there, Mr. Glowacki.

* * *

[3110]

DIRECT EXAMINATION OF LLOYD LECAIN
(Read)

BY MR. SANDERS:

* * *

[3117]

Q What was Exxon's policy concerning watch officers standing watch, leaving port as far as when they are on duty leaving port, not having been on duty for six hours out of the required 12 hour period? Do you understand what I'm saying? Did you ever hear any regulation?

A I heard a Coast Guard regulation, something about it.

Q Do you know what the regulation is?

A No. Like I say, I really don't know. I don't know about

[3118]

that.

Q Did you ever stand a watch leaving port with Exxon, you said you did on occasion, where you had not been off duty for more than six hours in the 12 hour period preceding – preceding period?

A Many times.

Q So that was a violation of the regulation, as you understand it?

A No, that's what you're telling me.

Q Well, assuming there is a regulation that says you're not to have been on duty for at least six hours within a 12 hour period when leaving port, you either – there were occasions when you had been on duty for more than six hours in a 12 hour period when leaving port; isn't that correct?

A Occasionally.

Q And Exxon Shipping Company – does Exxon Shipping Company pay its deck officers for overtime?

A No.

* * *

[3177]

17th Coast Guard district in Alaska in 1975. How long did that continue?

A I served in Alaska for three years; one of those as chief of operations, two of the remaining two [sic] as chief of staff.

Q Sir, can you tell me what factors you determined as Commandant of the United States Coast Guard to have caused the grounding of the Exxon Valdez?

A I formed the opinion that the causal relationship here – I'm not sure I'm using the term word causal in the legal sense that – that all of you are used to, so not being a lawyer, I'm treading on thin ground; but in my view, the primary cause or the causal effect of that grounding was a perfectly qualified third mate on a bridge of a ship that, through a period of a few minutes of inattention to duty or lack of knowledge of exactly where he was, ran the ship aground on a clear night with all the navigational aids watching him. That's the – that's the primary cause.

* * *

[3181]

This is not a treacherous area as you people in the press have called it. It is not treacherous in the area they went aground, it's ten miles wide. Your

children could drive a tanker through it. Did you make that statement, sir?

A I did.

Q The last sentence of that statement, your children could drive a tanker through it, I think you testified earlier that

[3182]

you received some feedback from various sources in regards to that comment. Is that a fair statement?

A Yes. That comment was an overstatement, it was an obvious exaggeration and, well, there should have been laughter, as it overstated my position considerably.

Q In regards to the remaining portion of that statement, do you still stand by what you said there?

A I do.

* * *

Q Did you ever look into whether or not crew fatigue was a factor in the grounding of the Valdez on Bligh Reef?

A Only to the extent that I was briefed on the manning of the bridge at the time of the accident. The fact that the crew had been working all day and loading the tanker and getting ready for sea, which is normal, that they had departed Port Valdez in the early evening after dark and had been at sea for – had departed about three or four hours earlier, prior to the accident, three or four; so it's likely that any ship that departs the port in the early morning, that there might be some fatigue in the crew, but that is normal operating practice on

[3183]

every Coast Guard ship, Navy ship, merchant ship in the world, that when the time – when the ship is loaded and it's time to go, you sail. Time and tide waits for no man came out of the sea, but I'm going away – but I'm not aware that fatigue was a factor in this ship going aground.

* * *

[3185]

The Coast Guard currently has a proposed rule-making which, if finalized, will eliminate the requirement for pilotage on PWS – meaning Prince William Sound – quote, between the high seas and Rocky Point. Why have you made this proposal? In view of the Exxon Valdez incident, do you feel that this is a good proposal? And the major points are, first, quote, statutes require the secretary to designate the waters of Prince William Sound

[3186]

upon which a vessel will not require a pilot, end quote. Do you have a recollection of that statute, sir?

A Not specifically the statute, but I'm aware of the impact of it, yes.

Q And that was a statute sponsored by Congressman Young of Alaska?

A I don't know whether Congressman Don Young, that was his statute, what Don – the initiative by Don Young in support of the Alaska Pilots was to eliminate pilotage in that particular piece of water.

Q And that was the water in which the Exxon Valdez evidently ran aground; is that correct?

A I think it was. That's a very long piece of water and the Exxon Valdez went aground on a rock in a part of it.

Q Okay. And that was the part we discussed earlier that was ten miles wide and, in many places, 500, 600 feet deep; is that right?

A It was at least at least ten miles wide in many places, yes.

Q And item two of the major points is, quote, Opinion of the maritime community and Alaska state pilots is that pilotage is not necessary seaward of Rocky Point, end quote. Is that statement correct, to the best of your knowledge?

A When you talk about the maritime community, I don't know who all that is. But the State pilots went to Don Young, as I

[3187]

understand, and asked him to propose this. They had specific reasons for wanting to do so and perhaps valid reasons, and when it went out as a proposed rule-making, the Coast Guard put it out as proposed rule-making, I understand that nobody commented on it. That means either the maritime community didn't have any problems with it or didn't take any notice of it; it was just not a major issue.

Q Is it accurate to say that the Coast Guard, in formulating a proposal rule-making about pilotage, would use its best judgment, the best judgment of its staff and its experts as to whether or not pilotage was objectively required; is that –

A That's correct. And the major input would be from the captain of the port in the area.

Q Well, my point is – but I guess my point is, the Coast Guard would not simply issue a rule-making to eliminate pilotage requirements on the ground that the Alaska pilots had some reason for wanting to do it that way?

A No, I think before the Coast Guard would even go out with an advance notice or proposed rule-making that they would have to feel that there was some justification and they would want them to get comments from a much wider group, which they did.

* * *

[3205]

the case may be. I've agonized the same way about somebody recovering from alcohol problem and you have – and you rehabilitate them and you bring them back on duty and you sit there as the separate leader and decide, do I let this guy go back to his job or do I ruin his life and his career when he's just made a great effort to be rehabilitated; and it's a very difficult corporate decision.

* * *

[3285]

Q I'd like to have put up on the screen PX10, Plaintiff's

Exhibit 10.

You'll notice there is a video screen right next to you, also one here too (indicating), if you prefer to look at this one. I'd like you to look at this document that's been displayed up on the screen. Is that the individual disability report that you reviewed?

A Yes, it is.

Q It is your understanding that this is the individual disability report that was sent to Exxon Corporation by

Dr. Vallury?

A Yes.

Q Is it possible to have that brought up a little bit, in the center? Doctor in looking at this particular individual disability report, can you see an area here which relates to Captain Hazelwood's diagnosis?

A Yes, I can.

Q Can you tell us where that is?

A I am sorry, I don't have a pointer, but it's the line – yes, that is it.

Q (Indicating). Now, what is it that you see here that you say is the diagnosis?

A Those are two diagnostic code numbers which are derived

[3286]

from the Diagnostic and Statistical Manual III which is, in parentheses, DSM-III.

Q There's here, right this little thing here, DSM-III in parenthesis?

A That's correct.

Q And those are code numbers?

A Those are code numbers.

Q So if one wanted to determine what Captain Hazelwood's diagnosis was in looking at this form,

you would look at these code numbers and you would go to the manual DSM-III?

A That is correct.

Q And that would tell you, correct?

A Yes.

Q Now, can you tell the jury what DSM-III is?

A Diagnostic and Statistical Manual III was a publication compiled by the American Psychiatric Association following contributions by experts in the field for describing the diagnostic criteria for establishment of a diagnosis of an individual who had a psychiatric illness.

Q Now, in 1985, Doctor, was DSM-III the primary diagnostic manual for individuals in the United States?

A It was the – not only primary, but I would say the exclusive diagnostic manual which achieved consensus in most inpatient and outpatient settings in the United States.

Q Now, in terms of this diagnosis, right here on the [3287]

diagnosis section, 300.40 and 305.02, according to the diagnostic manual DSM-III, what is this diagnosis?

A That diagnosis is dysthymia.

Q That's 300.40?

A That's correct.

Q And this diagnosis, 305.02, what is that diagnosis?

A That is alcohol abuse episodic.

Q Now, in conjunction with the fact that the dysthymia is listed first and the alcohol abuse episodic is listed second, is there any medical significance to that?

A Yes, the primary diagnosis in any medical record is usually the first listed diagnosis.

Q So you would conclude, then, that the primary diagnosis on this form is what?

A Dysthymia.

Q And the second carry diagnosis is what?

A It would be alcohol abuse episodic.

Q And, Doctor, in terms of DSM-III, what it says in DSM-III, the manual, is that diagnosis a diagnosis for alcoholism?

A It is absolutely not a diagnosis for alcoholism.

Q Why is that not a diagnosis for alcoholism?

A Because in order to achieve the diagnostic criteria for alcoholism, the diagnosis would have to include criteria which indicate either alcohol withdrawal or significant alcohol intolerance.

[3288]

Q In conjunction with that, Doctor, under the criteria of DSM-III, if that were the case, diagnosis would be alcohol dependency as opposed to alcohol abuse episodic?

A That is correct. DSM-III states explicitly that alcoholism is – alcoholism is alcohol dependency.

Q As opposed to –

A Which is not alcoholism.

Q Now, I'd like you to explain as best you can in layman's terms, what is dysthymia? What is the primary diagnosis dysthymia? What does that mean?

A Well, dysthymia is a form of depression. It's relatively common; many, many individuals have experienced it. It's characterized by feelings of sadness at times, by inability to sleep well, either sleeping too short a time or sleeping too long a time. It's characterized by difficulties that individuals may have in their perception of happiness or sadness in the world about them. They may have difficulties eating, they may have difficulties sleeping, as I mentioned. It is not a severe depressive disorder but a relatively common one.

Q So would you say that it's a mild form of depression?

A It's a mild form of depression.

Q All right. Now, the secondary diagnosis there, alcohol abuse episodic. Will you please explain to the members of the jury what that is?

[3289]

A Well, alcohol abuse episodic is basically inappropriate use of alcohol on an episodic basis. It is alcohol abuse but not alcohol dependence or alcoholism.

* * *

[3324]

DIRECT EXAMINATION OF MICHAEL FOX (read)
BY MS. STEWART:

Q When did you begin your training as an Alaska state trooper?

A I was hired more or less by accident first summer I was here to work on a seasonal basis for the department of public safety, division of fish and wildlife protection. I was hired to be an aide, that was the time of the job, to fish and wildlife protection officers, as they were called at that time. I was an assistant maintenance person, assistant law enforcement guy. Just a summer hire.

Q And at some point, I take it, then, you were commissioned as a full time?

A I spent a second summer in doing the same work, and then that fall of '78 I went through the hiring process. And I was hired and sent to the state trooper academy in Sitka in January

[3325]

of 1979.

Q Have you been continuously employed by the department of public safety since January of 1979?

A Yes.

Q What is your rank in the department at this point?

A Trooper.

Q Trooper Fox, when did you first hear about the grounding of the Exxon Valdez?

A It was about 2:30 in the morning approximately.

Q How did you hear about it?

A Phone call from the Coast Guard.

Q Was there another phone call between or phone conversation between you and the Coast Guard and the marine safety office later that morning?

A Yes.

Q What was the nature of that call?

A They wanted me to go out to the ship.

Q Do you recall who you were speaking with in that conversation?

A That was with Commander McCall.

Q Trooper Fox, about what time was it when you made it aboard? I understand there was some problem about actually getting on board the Valdez, but what time was it when you arrived on deck, on the deck of the Valdez?

A Just after seven.

* * *

[3328]

Q At that point, were you trying thinking to yourself that you need to look for signs of alcohol impairment?

A Sure.

Q Did you see any?

A No.

* * *

[3339]

Q Did you have any conversation with Captain Hazelwood?

A Yes, I did.

Q Tell us, then, about the conversation you had with the captain.

A I introduced myself and told him that I was on the boat representing the State of Alaska, and that we were going to be trying to figure out what happened. I don't know if I used the word investigator or not. And after that I just looked into his eyes and said, what the heck is the problem here? And he said, You're looking at it.

* * *

[3343]

DIRECT EXAMINATION OF MARK PIERCE

BY MR. SANDERS:

Q Good morning, Captain.

A Morning.

Q Captain Pierce, by whom were you are you employed?

A Previously by Sea River Maritime.

Q Is Sea River Maritime the successor company or the name change from Exxon Shipping Company?

A That is correct.

Q And as a captain are you assigned to a particular vessel?

A Yes, I am.

Q What is your vessel assignment at this time?

A The S/R Mediterranean.

Q And that is, of course, the former Exxon Valdez?

A Yes.

* * *

[3389]

Q And Mr. Graves said to you, when you said, I have trouble with a captain; Mr. Graves said to you, Does his name start with H?

A That's correct.

Q And Mr. Graves was over the human resources department?

A Yes, he was in charge of that department.

Q Now, there's another telephone call that takes place

[3390]

sometime thereafter, and that is to Mr. Tomkins. And that's to inform Mr. Tomkins that Captain Hazelwood was going on leave or on disability leave?

A That was not a phone call.

Q It was?

A It was a conversation with person in the office in Baytown, and I informed Mr. Tomkins that Captain Hazelwood was going on medical leave.

Q And Mr. Tomkins was your boss and his boss?

A That is correct.

Q And Mr. Tomkins had a one-word answer, or a one-word response to this information, and his one word was –

A As I recall was "good".

Q "Good." And the anonymous caller who – the anonymous caller called you in a situation where you

already had felt some undercurrent, that something was wrong?

A That's correct.

Q And the anonymous caller identified himself as an officer at Exxon – Exxon Shipping Company?

A Just said an officer who had sailed with Captain Hazelwood.

Q An officer who sailed with Captain Hazelwood. And you were the – at that time you were the ship group coordinator, and as part of your duties, Captain Hazelwood's ship was a ship that – whose activities you coordinated?

[3391]

A That's incorrect.

Q His ship didn't fall under your responsibility at all?

A I wasn't a ship group coordinator.

Q I'm sorry, what were you?

A I was a port captain, and as such I liaised between the ships and line management.

Q Including Captain Hazelwood's ship?

A Including his ship, yes.

Q And that was part of your duties?

A That's correct.

Q And the anonymous telephone caller who called, if in fact he was a ship's officer and working with Captain Hazelwood was a part of his duties?

A Yes.

Q And I want to – you tell this series of events in 1985, but other people have come in here and have said that Captain Hazelwood was the most monitored man in the fleet. Okay?

You're aware of no monitoring, are you?

A In what time period?

Q Time period that you worked – the time period that you worked with Captain Hazelwood.

A Well, we had contact with Captain Hazelwood as we would any other master during that time frame.

Q You're aware of no monitoring, are you?

A No.

[3392]

Q And indeed, you had information with regard to Captain Hazelwood and Captain Hazelwood going into a hospital for some kind of treatment, and later on that Captain Hazelwood had something to do with Alcoholics Anonymous, and you passed that on in one cryptic conversation to Mr. Tomkins, and you passed it on to nobody else, did you?

A I'm not aware that I passed it on to Tomkins other than he was going on medical leave.

* * *

[3397]

Q And tell me who you saw as soon as you entered the bridge?

A My recollection of – the first person I remember is Captain Hazelwood.

Q What was he doing?

A As I recall, he was looking – I have a notion that he was looking out over the deck.

Q You recall that or this is –

A My – the thing that I remember most is when I saw him, he said, Hi Dan, I believe. I said, Hi captain. I didn't

[3398]

recognize him.

Q You hadn't recognized him when you first saw him?

A Yeah.

Q Didn't you just testify the first person you saw on the bridge was the captain?

A Well, what I'm saying is I learned that he – you know, learned that it was at captain.

Q Did someone introduce him to you at that time?

A I don't have a good notion on that.

Q Now, how close did you get to him?

A A few feet.

Q Did you shake his hand?

A I don't recall.

Q Now, my question now related to your meeting on the bridge. That was what I asked you. And I asked you what you had testified at an earlier time I think in response to the question whether you had smelled alcohol on his breath or person, and I believe your testimony at that time was that no, you did not. Is that correct?

A That's – I think that's what I said just now, too.

Q The other question I have, and this is something I believe you've testified to earlier, besides not smelling any alcohol on his breath or person at the time, did you notice any unusual – anything else unusual about the captain at that time?

[3399]

A I believe my testimony was my recollection – and my recollection is that he was pensive, and – my recollection and my sense of Mr. Hazelwood was that he was pensive and that – concerned about what had happened.

Q Would you consider that to be a normal reaction to –

A Hell, yeah.

Q – the situation at hand? Sorry?

A Yes.

Q Did you can notice any impairment in a physical way on Captain Hazelwood? By that were his motor functions in any way impaired as best as you can tell from that initial meeting? A I believe I earlier said that I – that wasn't the focus of what I was doing. I didn't recall anything that came to mind.

Q Did you notice any unusual speech patterns in the course of speaking with him in your initial –

A Not that I recall.

Q – contact?

Have you ever seen anyone intoxicated or under the influence of alcohol?

A I have.

Q You've seen someone drunk, basically?

A Yes.

Q Who – where has that happened?

A Well, in the – life.

Q Did there come a time when you needed to use the MARSAT

[3400]

phone on the vessel?

A I did.

Q Did you not?

A Yes, I have some vague notion that the captain helped, or at least made it possible for me to use the phone.

Q What do you mean, made it possible? Did he hand you the phone?

A I have some notion that there was some instructions given to the radio officer or something of that nature.

Q Was he there physically when that happened?

A I have a recollection that I saw Captain Hazelwood in the radio room and on places other than just the bridge.

Q When you met the captain in the radio room, did you smell alcohol on his breath or person?

A I don't recall that.

Q Did you see him acting in any – did you see any physical impairment about any of his actions?

A I don't recall.

Q Did you see him speaking in a slurred manner?

A I don't recall, no.

Q Now, that's at least two times we've said that you've seen the captain on board the vessel, right? Now you've mentioned a third time or – I'm not trying to suggest it's in this chronology, by the way, but you did mention passing him by in the stairs or –
[3401]

A I have a recollection of – I was either going downstairs and he was coming up or vice versa, and it's a very narrow companionway, and that is the first time that I was within a foot or so of him.

Q Now, how soon after the initial meeting on the bridge was that?

A I think it was sometime afterwards but I don't recall the –

Q Was he going up the stairs or going down the stairs?

A I don't recall.

Q Well, let's see. Let's turn to your – were you going up and down stairs? By the way –

A Yes.

Q – someone was going up and someone was going down?

A That's just what I testified to, yes, sir.

Q Okay. Did you see Captain Hazelwood having any difficulty going up or down the stairs that you're referring to?

A I don't recall.

Q Did he fall at any point or stumble that you recall?

A Not that I recall.

Q By the way, that passing in the stairway, did that occur before or after you were in the radio room with him during your efforts to use the MARSAT phone?

A I don't know.

Q You don't recall. You don't recall –

[3402]

A I don't recall, excuse me.

* * *

[3404]

DIRECT EXAMINATION OF GABRIELLA
GUERRA

BY MR. SANDERS:

Q Miss Guerra, where are you employed?

A I'm with Sea River Maritime, Incorporated.

Q And that's Exxon; right?

A That's correct.

Q And before that, how long have you been employed by Exxon?

A I joined Exxon September 8th of 1969.

Q Would you tell the ladies and gentlemen of the jury about your educational background?

A I graduated from the University of Houston in secondary education with chemistry and math as my teaching fields, and I have some course work after that in computer science.

Q Now, in the spring of 19-and-85, what was your job at Exxon?

[3405]

A I was with Exxon Shipping Company in the administrative department in human resources section there, and I coordinated the merit compensation program and administered the savings and investment plan benefits and the disability benefits for the ocean fleet.

Q Now, I want to ask you some questions today before I ask you to put on your disability section hat.

A All right.

Q Okay. Now, as the person who – were you the only person responsible for disabilities, the disabilities section, for Exxon Shipping Company?

A For the ocean fleet, yes.

Q What is in the ocean fleet?

A The deep sea tankers and the men and women that crew those tankers.

Q All right. Was the Exxon Yorktown part of the ocean fleet?

A Yes, sir.

Q And was Captain Hazelwood a person as master of the Yorktown that was within your realm there as the disabilities person?

A Yes.

* * *

[3420]

Q But in order to end the disability period, you had to have something from Dr. Montgomery to say, Well, the disability period is over?

A That's right.

Q And you called Dr. Montgomery?

A That's right.

Q Did you make a request of him?

A Well, I called for advice and – from him, and that's the information he gave me.

Q Did you ask him to get in touch with Dr. Vallury?

A I don't know whether I asked him to do that or whether he had already done that.

[3421]

Q Okay. In any event, were you able to, at least for pay purposes, for disabled benefits purposes, were you able to terminate this disability?

A Yes.

Q And is there a specific form that you use or as in –

A Yes.

Q – all other things in life, are there some initials you use to do that?

A It's a DTR, disability termination report form.

Q And I'm circling DTR issued, and there's a date beside that. A May 20th, 1985.

Q Does that show the date that you terminated the disability termination – or let me start again. The initials have gotten me confused. Is that the date on

which the disability termination report was done by you?

A Yes, sir.

* * *

[3424]

CROSS EXAMINATION OF GABRIELLA GUERRA
BY MR. O'NEILL:

Q Ma'am?

A Yes.

Q Let's take a look on this form, if we could for a moment. We'll go the same thing we did before?

A All right.

Q Where it says diagnosis it says alcohol treatment. You testified that you got that information from Ben Graves who told you that the captain was entering an alcohol treatment facility or center?

A That's correct.

Q So the company's state of mind at the time you made this

[3425]

entry was the captain was entering an alcohol treatment facility or center?

A That's what I understood from Ben Graves.

Q Okay, and you dutifully made the entry in the company record, the best you could?

A Yes, sir.

Q And then this says, 4-16-85 through hospital through 4/20/89, and then leave of absence for group – and then what does that say?

A IND for individual.

Q Yes.

A And then marital therapy.

Q I want to admit, I once thought that was marital axe?

A Marital.

Q Marital therapy. So the records reflect he would be hospitalized through 4/29 and then after 4/29 he would be in for group – he would have a leave of absence for group, individual and marital therapy and Alcoholics Anonymous and lectures?

A I copied that from the individual disability report.

* * *

[3456]

CROSS EXAMINATION OF JESSE WATTS (read)

BY MS. WAGNER:

Q Tell me what you're understanding was of the alcohol policy around the time of the Valdez spill, before the spill like in '88, '89?

A It was the same policy. Supposed to be the same policy it was in 1970 when I joined the ship, but it was not enforced.

* * *

[3485]

DIRECT EXAMINATION OF THOMAS
FALKENSTEIN

BY VIDEO EXAMINER:

Q For the record, commander, would you identify yourself?

A My name is Thomas G. Falkenstein. I'm a lieutenant commander in the United States Coast Guard.

Q When in 1987 did you arrive in Valdez?

A I reported in on July 31st, 1987.

* * *

[3492]

Q You had not seen anything in Captain Hazelwood's behavior or demeanor to suggest that he was intoxicated, had you?

A From my observations, no.

Q Let me ask you specifically, at the time that you spoke to Captain Hazelwood aboard the vessel, did he appear to you in any way to be either in shock or incapacitated?

A When I initially spoke with him on the bridge right after I got aboard, he looked a little shocked or stunned or – understandably upset about the condition that he – his ship had come into.

Q Now, did he appear to be incapacitated?

A No, sir.

Q You, as the Coast Guard on-scene investigator, had the authority to relieve the captain that you – if you felt that he was intoxicated or in any other way unable to command the vessel. Is that correct?

A Yes, sir.

Q And it is also a fact that you did not relieve Captain

[3493]

Hazelwood of his command of the Exxon Valdez on that night; is that correct?

A Yes, sir.

* * *

[3509]

Q Are you familiar with vessels that have deviated on occasion outside the traffic lanes because of ice extending across those lanes?

A Yes, sir. They have deviated.

* * *

[3510]

Q And what did you do upon – upon boarding the vessel?

A The seaman on – at the head of the ladder directed us to the bridge. We asked him where the captain was, I believe, and he indicated the bridge, and we proceeded immediately to the bridge.

Q Did you come upon the captain at that point?

A Yes, sir. I went over and spoke with the captain.

Q Do you recall what you said?

A I introduced myself and asked him what the situation was.

Q And what did he tell you?

A I believe he indicated that the ship was hard aground, they were unsuccessful in – the engine was amid – engine was off, shut down, was amidships.

He may have given me the vessel's heading and told me that they were unsuccessful in trying to get it off the rock at high tide.

Q Commander, you said when you went out on the bridge wing with Mr. Delozier that he asked you if you – if you smelled alcohol, and you said that you answered yes?

A He asked me if I smelled the captain's breath, and I said yes.

Q Commander, when you – when you say that you smelled alcohol, what – can you be anymore specific than that?

A No, sir.

[3511]

Q You just smelled alcohol?

A I smelled like an alcoholic beverage had be consumed, yes, sir.

Q Did that alcohol smell fresh?

A No, sir.

Q Did it smell stale?

A Yes, sir.

Q Didn't Trooper Fox ask you if the Moussy beer on his hand smelled similar to what Captain Hazelwood's breath –

A He asked me if that smelled like the smell on the captain's breath, not did I smell the captain's breath. And I told him to the best of my recollection, it could be, but I didn't think so.

Q Why didn't you think so?

A Just didn't smell the same way, exactly. But that was poured freshly on the back of his hand, so we're talking two different circumstances.

Q What was the smell up on the bridge when you were standing next to Captain Hazelwood?

A Smelled like the captain had been consuming an alcoholic beverage.

* * *

[3526]

you follow me?

A Yes, sir.

* * *

[3527]

Q Continue on, Mr. Cushing.

A All right. At this point, the vessel had increased its speed even further now because of the load program up. The vessel was at this point traveling at 11.3 knots.

* * *

Q All right.

A All right. Just after midnight, then, at about two minutes past midnight, the vessel's head started to swing to the right, and the vessel followed a –

Q Now, before you do that, how would you know that at two minutes after midnight the vessel begins to swing to the right?

* * *

[3528]

A The vessel is equipped with a course recorder, and the course recorder which has a clock in it indicates the time and it indicates that the direction of the vessel was pointed at all times. It's tied into the gyro system of the ship.

Q All right. The vessel begun to swing to the right or now, as we've all learned, swing to starboard at about two minutes after midnight; is that correct?

A That's correct, yes, sir.

Q All right. Now, if the bow – if the course recorder reflects the two minutes after midnight the bow begins to swing to the right, okay, when would the rudder have to be put on? Let's say it's ten degrees. When would you have to put on the rudder on the helm ten degrees to get an indication on the course recorder that the vessel is beginning to swing to the right at two minutes after midnight?

A That would have to have been done between 20 and 30 seconds before that.

Q All right. So the rudder, then, was moved to right rudder at some degree about a minute and a half after midnight; is that correct?

A That's correct.

* * *

[3529]

Q All right. What degree of right rudder was put on the vessel as you say a minute and a half after midnight so that you can see the bow turn on the course recorder at two minutes after midnight?

A Well, we have determined that that rudder angle was ten degrees.

Q Ten degrees?

A Yes, sir.

Q So according to your – in your opinion, in your work, rudder angle was put on of ten degrees right at a minute and a half after midnight and the vessel began to show some turn at two minutes after midnight?

A Yes, sir.

Q All right. Now, were you able to – how long did the ten degree right rudder continue in effect?

A That continued at least through the period of – period of five minutes, at which point the vessel struck a pinnacle in Bligh Reef.

* * *

[3534]

Q All right. Let's show the Ladies and Gentlemen of the Jury that. Now, explain to the Members of the Jury and the Court what they're seeing here.

A Well, the initial part of the track is the blue track we've just described, but at a point just south of abeam of Busby light, in other words, 2355.30. We've shown a track where the bow of the ship would have – the track the vessel would have followed where the bow of the ship would have started to swing at 25 – 2355.30, or five minutes, four minutes and 30 seconds before midnight.

Q All right. Now, you have said that the vessel was abeam Busby Island light at 2355?

A Yes, sir.

Q Why do you have 2355.30 on there?

A Because if the vessel were to have followed this – this red course here, the order would have had to have been given at 2355 to cause the vessel to start swinging at this point.

Q So you're assuming, this assumes a ten degree order was given and executed at 2355?

A Yes, sir.

Q And what you're showing here is what the course – on the course recorder it would be approximately 30 seconds later before you'd see the bow begin to swing?

[3535]

A Yes, sir.

Q All right. Now, go ahead. And the red line there, what does that show?

A Well, that is the track of the vessel if that ten degree right order, right rudder order had been given abeam of Busby Island light and executed, and you can see that the course actually curves well north of the – the track that the vessel actually took.

Q If that – if that had been carried out, if a ten degree right rudder had in fact been carried out at abeam Busby Island light, how much would the vessel have missed the grounding point?

A By over a mile.

Q All right. You're aware, are you not, that the testimony in this case is that Captain Hazelwood asked Mr. Cousins to come back into the lanes at abeam Busby Island light?

A Yes, sir.

Q Now, at my request, did you do something else, did you assume a five degree turn?

A Yes, sir, we did.

Q At abeam Busby Island light?

A Yes, sir, we did.

Q Now, would you explain to the Court and the Members of the Jury what you're demonstrating here?

A Well, the yellow – the yellow trace shows the track that

[3536]

the vessel would have followed if a five degree –

Q Is that yellow?

A Well, dayglow or whatever.

Q All right.

A If a five degree order had been given and executed abeam of Busby light, it would have followed this yellow track, just slightly, curving just slightly further south than the ten degree course.

Q Okay. And if even a five degree turn had been put on at abeam Busby Island light, how far would the vessel have missed the grounding spot?

A By a little over eight-tenths of a mile.

* * *

[3537]

Q Let's do one other thing. Let's assume that there is – it's two minutes after midnight and let's – when the bow begins to turn, correct, according to your testimony?

A Yes, sir.

Q Let's assume that a 20 degree right rudder was put on rather than a ten degree. Do we have that now?

A Yes, sir. Orange, I believe orange in color. 20 degrees right rudder at two minutes after midnight would cause the vessel to follow this – this orange trace here.

[3538]

Q And would it have missed the reef?

A Yes, sir, by – close to it, but by a tenth of a mile.

Q Mr. Cushing, the record in this case reflects that two other vessels went out of the – two other tankers went out of

the Port of Valdez on March 23, preceding the Exxon Valdez.

Are you aware of that?

A Yes, sir.

Q At my – and those vessels were the Brooklyn and the Arco Juneau. At my request, did you prepare a track line of the Brooklyn and the Arco Juneau as they exited Prince William Sound on the night or – day or night of March 23, 1989?

A Yes, sir, we did.

Q Would you, looking at Defendants' Exhibit 1735-Able, A or Able, would you explain to the Court and the Jury what they're seeing there?

A The orange trace, again, is the – a track of the tanker Brooklyn as she travels southward through Prince William Sound, first in the traffic lane and

then leaving the traffic lane to avoid reportedly or what I understand to be ice in the traffic lane.

Q Now, is she – she, is the Brooklyn totally outside of the traffic lanes, itself?

A She is at this point here.

Q And she continues on further out?

A Yes, sir, she does.

[3539]

Q Or farther out? Okay.

A Until she's abeam of Bligh Island, Bligh Reef light.

Q How close does the Brooklyn come to Bligh Reef? Were you able to figure that out?

A Yes, sir, we were.

Q And what is the distance?

A The closest point of approach to Bligh Reef was about eight-tenths of a mile.

Q Eight-tenths of a mile?

A Yes, sir.

Q All right, sir. And you testified that had the order been carried out on the Valdez, you'd been over a mile away on a ten degree right rudder?

A Yes, sir.

Q All right. By the way, were you able to determine the times, what times of the day do these tracks – let's start with the Brooklyn, what times of the day are represented by the track line of the Brooklyn?

A Well, the Brooklyn left Port Valdez early in the morning around 8:00 in the morning and she was up – up at this point here about 10:47 in the morning, and her – her charts from which we got this information show the times at which she was at the various points along the track and she arrived down at this point here at about 11:26.

Q So you are representing on your chart here a time for the

[3540]

Brooklyn that begins at about 11:47 and ends up at – I mean 10:47 and ends up at what?

A 11:26.

Q All right. And let's take the Arco Juneau, then. What color represents the Arco Juneau then?

A That's this kind of yellowish green, dayglow color.

Q And does it go entirely out of the traffic separation scheme?

A Yes, sir. The Arco Juneau was traveling southbound in the northbound lane, in this portion of the track, and she exits the lane also and obviously travels further, further away from the traffic lane, curving back and then finally reentering the traffic lanes down here.

Q All right. What time is represented – what time period is represented on your chart by the track line of the Arco Juneau?

A The Arco Juneau left Port Valdez in the afternoon of the 23rd, about 4:00 in the afternoon.

Q Okay. And what time is represented there?

A She arrives at this point here about 6:53 in the evening and travels through this course, arriving down here at about 7:22 in the evening.

Q Now, was the Arco Juneau put on a direct line to Bligh Reef at some point?

A Well, when she left the traffic lanes, she was pointed directly at Bligh Reef, on a course directly at Bligh Reef.

[3541]

Q How close did the Arco Juneau come to Bligh Reef?

A She came to within six-tenths of a mile.

Q Six-tenths of a mile?

A Right.

Q Now, Mr. Cushing, a Mr. Jerry Aspland of Arco Marine testified in this case, and I want to read you a question and answer: Question, did you have – was there ever – were there ever any rules as to what speed would be considered a prudent speed in transiting through ice in Prince William Sound; and the answer, I don't recall having put out a written memo, but I do recall having discussed that we could go – if there was ice in the area, we could go up to five knots. Was there ice in the area when the Arco Juneau was transiting this part of the Prince William Sound you've discussed?

A That's my understanding, yes, sir.

Q Were you able, nevertheless, to determine the speed of the Arco Juneau as it transited that portion of Prince William Sound?

A Yes, sir, we were.

Q And what was that speed?

A That was 12. – sorry, 12.96 knots.

Q 12.96 knots?

A Yes, sir.

* * *

[3583]

DIRECT EXAMINATION OF JOHN TOMPKINS
(Live)

BY MR. SANDERS:

Q Mr. Tompkins, let me ask you to speak into that silver microphone or lean forwards so we can hear you a little bit better. I'd like you to tell the jury your educational background first?

A I'm a graduate of the United States Merchant Marine Academy in 1965. I got a bachelor of science degree in engineering. I then got a masters in business administration from Adelphi University in 1976.

Q The last university was Adelphi?

A Adelphi University on Long Island.

Q Long Island. Now, when did you start working for Exxon?

A In 1965.

Q All right. And do you work for Exxon now?

A I work for an affiliate of Exxon.

Q Sea River?

A Sea River Maritime.

* * *

[3587]

Q Let me take you back to the spring of 1985. You were, of course, gulf coast fleet manager in the spring of 1985?

A That's correct.

Q And Captain Hazelwood was a captain under your direct supervision in the spring of 1985; was he not?

A Yes, he was.

Q Did you become aware in the spring of 1985 that Captain Hazelwood went on medical leave?

A Yes, I did.

Q And did you become aware – do you know about when you found that out?

A It was sometime in the latter part of March that I understood that, when I received a phone call.

Q Okay. And from whom did you receive a call?

A I received that call from Mister – Captain Hazelwood, telling me that he was checking himself into rehabilitation.

Q Did he tell you what kind?

A I'm sorry, I didn't hear the question.

Q I'm sorry. Did he tell you what kind of rehabilitation?

A Yes, I do – I think I recall him saying for alcoholism.

Q In any event, at some point thereafter you did understand that his treatment did involve alcohol; is that correct?

A Yes, I did.

[3588]

Q So by the late spring of 1985, you knew that one of your captains that you supervised had gone into some sort of a treatment program which did involve alcohol; am I right?

A That's correct.

Q All right. Now, did Captain Hazelwood return to work while you were still his supervisor?

A Yes, he did.

Q Prior to his returning to work, did you do anything?

A Yes, I did. I arranged to have a meeting with Captain Hazelwood.

Q Do you recall getting a phone call about having such a meeting?

A Well, I recall that – I believe it was Ben Graves had called me and suggested that I have a meeting with Captain Hazelwood before he returns. He suggested that I make sure he understands that he only has one more chance when he comes back, and he also suggested that I should have some kind of way to keep an eye on him, make sure I monitor him when he is back in the fleet.

Q All right. Did Mr. Graves tell you that that – those suggestions came from someone else, or did he just simply tell you, I suggest this?

A I don't recall. I don't recall.

* * *

[3589]

Q All right. Now, based on that, is the prompting that you got – was the prompting that you got from Mr. Graves, was that necessary?

A Not really. I had intended to meet with Captain Hazelwood. I wanted to make sure that I had my own evaluation, that I knew that – I felt comfortable that he was in pretty good shape, how he looked, how he chatted. I had some other things that I wanted to talk to him about. I also wanted to make sure that he understood that he had his opportunity for rehabilitation and that he cannot afford to have any further problem with alcohol or he would be disciplined.

* * *

[3593]

Q All right. You had – you then met with Captain Hazelwood in a conference room on the second floor of the Windham Hotel in Houston, Texas, near the airport. Would you tell the Ladies and Gentlemen of the Jury, as best you recall it, what your conversation was with Captain Hazelwood?

A Well, again, what I wanted to do and what we did was to talk with each other, and my intent in the initial conversation was to see how Joe was, how he responded, how'd he feel, and he – I thought he did quite well. I asked him, I remember, was he ready to go back to work, or something to that effect, and he was. I also mentioned to him that – brought him up to date a little bit on the activities associated with the Exxon Yorktown, the ship he was going back to, and some of the things that had been going on in the fleet, and also my expectations, one of which was that he needs to understand that he's had his

opportunity and that he cannot have any further problems with alcohol or he would have – he would be subject to discipline.

[3594]

I also recall that we had a discussion about what type of support he may have or he may have planned, was he planning on going to any meetings when he got into port in order to continue to support his activity. I don't recall all the details of the conversation, but in general, that was what we talked about.

* * *

[3595]

Q And with that assumption, did you have any sort of a plan to watch Captain Hazelwood?

A Well, I had a plan that when he comes into port, I would try to visit the ship as much as I could, recognizing that I was – very short period of time, I was transferring out of that job, but I had planned to do that, and my recollection is I got to visit, I believe, on one occasion before I left my position.

Q Now, I asked you about your plan or your intention. Did you think that was adequate for the job?

A Yes, if –

Q Why do you think that your plan, your intent with respect to Captain Hazelwood was adequate to deal with the situation that you thought you had?

A Well, if – if Captain Hazelwood, assuming he was an alcoholic, which that was my understanding, then if he started to drink again, he wouldn't be able to – I don't believe he could control that. So my visiting

the ship, I would clearly learn that he had a problem and I most likely would have a high probability of seeing that and talking with him.

[3596]

Q All right. Now, would you rely solely upon your own observations?

A Well, I had planned primarily to do that. I didn't ask anyone else to do that kind of thing.

Q But whether or not you asked them, did you think that you would be able to detect, other than from your own observations of him, any sort of problems that might crop up?

A Clearly. When I go aboard the vessel, I would be chatting with other folks and I know that I felt that I had the respect of others in the organization, that if there was a problem that I would have – that I would be made aware of that.

Q You think it's realistic to expect that people in the fleet – was it realistic for you to expect that people in the fleet would let you know if they saw a problem with Captain Hazelwood?

A I think so.

Q What's your basis for thinking that?

A Because I have been told in the past, when there was an individual that I referred to before that I had a – that had a problem, I was notified.

Q I want you to speak up a little bit more. I'm having trouble hearing you and maybe some other people are, too.

A Sorry.

Q My question is not your understanding of the disease of alcoholism. My question is, what basis did you have for

[3597]

believing that people that worked under you would let you know if they saw something amiss?

A Well, I believe that I had the respect to the organization and the rapport with the folks that they would tell me.

* * *

Q All right. You mentioned that you were transferring to your new job with project EXCEL, and you mentioned that that occurred sometime in September of 1985. Do you recall the months in which you met with Captain Hazelwood at the Windham Hotel?

A Yes, I believe it was in August, very early August.

Q All right. Now, when you were being replaced by Mr. Dwight Koops, was there an opportunity for you and Mr. Koops to have some sort of a transition?

A Oh, clearly there was. We did that.

Q And in the course of having that transition, did you have an occasion to talk to Mr. Koops about the masters that you had been and were supervising?

A Yes, I did.

Q Did you talk about Captain Hazelwood?

A Yes, I did.

Q Did you tell Mr. Koops anything about Captain Hazelwood?

A Well, I told him what I knew about Captain Hazelwood, that

[3598]

he was in rehabilitation and that he –

Q Let me stop you. You said rehabilitation. Did you tell him what kind of rehabilitation?

A I think I did, yes, for alcoholism. That was my understanding.

Q All right. And – and what else did you tell him?

A Well, I told him that what my plans were, I was going to try to visit the vessel and he may – he may want to consider that type of follow-up, and visit the vessel as much as I possibly could when Captain Hazelwood is on.

Q Now, after you told Mr. Koops about your understanding of what the treatment had been and – did you tell him when that treatment had occurred?

A I probably did, but I don't really recall.

Q After you told him that Captain Hazelwood was treated for problems relating to alcohol and you had this transition, then you went into the project EXCEL job; is that correct?

A That's correct. In fact, I was actually doing a little bit of that at the time.

Q Now, after that, did you ever have any occasion to see Captain Hazelwood?

A Yes, I did.

Q Where would you see him or where did you see him?

A I remember seeing him at least at – at our officers' conferences that we had.

[3599]

Q Did you take the trouble to make any observations about Captain Hazelwood and drinking?

A I did.

Q And what did you observe?

A I did not ever observe him drinking.

Q Drinking alcohol?

A Drinking alcohol.

MR. SANDERS: May I have just a moment, Your Honor? I don't have anything else, Your Honor.

THE COURT: You may cross-examine.

MR. O'NEILL: Thank you, judge.

CROSS EXAMINATION OF JOHN TOMPKINS

(Live) BY MR. O'NEILL:

Q My name is Brian O'Neill, sir, we've never met before. And it is my custom – let me give you a copy of your deposition transcript, if I may approach. You picked up the story with regard to Captain Hazelwood in the spring of 1985, but you left out the first step in the story; didn't you?

MR. SANDERS: I object to that.

A I don't understand what you mean.

Q Well, would it be fair to say in February – in February of 1985, you knew that Captain Hazelwood was under some kind of investigation, and you either

caused Captain Hazelwood to be notified that he was under investigation or that you notified

[3600]

himself that he was under investigation and that indeed the date was about February 11th of 1985?

A Yes, I – I knew that he had some – he was under investigation. I had no idea what the investigation was about.

Q And you caused him to be notified or you notified him yourself with regard to the investigation at or about February 11th of 1985?

A I was advised – requested by Mr. Ben Graves to let Captain Hazelwood know that he, Mr. Graves, was conducting an investigation, and I thought that's – and that Captain Hazelwood be aware that there may be some questions asked of other folks which he may hear about that associated with an investigation.

Q And Captain Hazelwood was given that information?

A Best of my knowledge, yes.

Q So as of about February 11th of 1985, Captain Hazelwood knew that his company was investigating him for something?

A Well, my understanding, it was some activity that took place in the past. I don't know, but that's – yeah, he knew some investigation was taking place.

Q And this is the same Mr. Ben Graves who appears in what we refer to as the Graves report?

A That's Ben Graves' signature, yes.

Q Did you know why he was under investigation?

[3601]

A No, I did not.

Q Did you ever acquaint yourself as to why he was under investigation?

A Well, because it was an issue that took place in the past, I understand, and nothing to do with my activities.

Q So would it be fair to say that you, his direct supervisor, knew he was under investigation by your company and you did nothing to acquaint yourself with regard to the facts of the investigation?

A That's true. I might add I – I asked that question and I recall that Mr. Graves suggested that I didn't really need to know, it had nothing to do with my activities, so I left it at that.

Q Now, I listened to your testimony as you started off today, and you testified that Captain Hazelwood told you that he was in treatment for alcoholism; do you recall testifying to that today?

MR. SANDERS: I object to that as a mischaracterization of his testimony.

THE COURT: The jury will decide whether it is or isn't a mischaracterization of his testimony, but you may inquire.

MR. O'NEILL: Thank you, Judge.

BY MR. O'NEILL:

Q That was your testimony today; wasn't it?

[3602]

A I think what I said was, what I recall, is that I got a phone call from Captain Hazelwood that he

told me he was checking into a rehabilitation for alcoholism, as I recall it.

Q He was checking into a rehabilitation for alcoholism?

A That's my understanding.

Q And that's what he told you over the telephone?

A That's what I recall.

Q So at this point in time, you were on notice that he in February was under some kind of investigation, and now you were on notice that he had checked into a rehabilitation center for alcoholism?

A That's correct.

Q And you were his supervisor?

A That's correct.

Q Now, prior to 1985, you had not received any training in the supervision of rehabilitated alcoholics?

A No, I did not.

Q And when you received the call that Hazelwood was ready to come back to duty, you assumed that Hazelwood would be seen by the Exxon medical people before he came back to work?

A That's the normal procedure, as I knew it.

Q But you never spoke with anybody in the medical department to make sure that they indeed interviewed him, saw him, touched him?

A No, I was advised by the human resources group, who

[3603]

would be the direct contact with – with the medical department, not myself. Those are confidential issues and I did not get involved in the medical department.

Q And you didn't speak with anybody in the medical department about any special accommodations that might be made for Captain Hazelwood so that he could pursue an AA program or some other form of aftercare while he was at sea; did you?

A Not that I can recall.

Q And indeed, you as a supervisor made no provision for support or aftercare for Captain Hazelwood while he was at sea; did you?

A No, I did not. I queried as to what his plans were, as I

mentioned before, and –

Q This was at the meeting in August?

A That's correct.

Q I'm puzzled about the meeting in August. Your partner, was that Sheehy that met with him that same day?

A Captain Sheehy was the port captain for me, yes.

Q And where did Sheehy meet with him; do you know?

A To the best of my knowledge, if I recall, it was in the Windham Hotel.

Q Down in the cocktail lounge?

A I have no idea.

Q You don't know?

A Not that I can recall, that kind of comment.

[3604]

Q Now, what I'm puzzled about, this is Captain Hazelwood's trial testimony, we're going to go through his trial testimony for a minute, and I'm trying to figure out who said what to who.

He's describing the conversation and he's – and I'm interested in – I want to ask you a series of questions about whether these topics were discussed at this meeting with Mr. Tompkins. Very well, was AA discussed? No. Was aftercare discussed? No. Was the subject of your personal drinking discussed? No. Was the subject of drinking on board vessels or returning to vessels after having drunk discussed? No. Were you told not to drink – and then the testimony continues – with the exception of the parameters of the alcohol policy? No.

Were you told you were going to be monitored?

Well, in his inimitable fashion Mr. Tompkins kind of indicated to me that I was going to be watched. Did he tell you you were going to be watched? He didn't verbalize that, no. So he did not tell you that you were going to be watched? No. Now, Captain Hazelwood, as he testified here, said you didn't ask about AA, you didn't ask about aftercare, you didn't talk to him about his personal drinking. Is that consistent with your story, or do we have two different stories about the same event?

[3605]

A I don't think so, because what I – I did not talk to him about what he did in the past. I felt it was more important for us to look forward, and I also felt that I would close out that issue by just stating that –

that he's had his chance and that he's had his opportunity and now he needs to take care of himself.

Q So you didn't discuss AA or aftercare?

A So, I didn't – well, I did not discuss him drinking in the past. I did not discuss any reference to aftercare. I don't recall that. I do recall that I believe I discussed – asked him about what kind of monitoring he was – or what kind of support he was going to have or was he going to participate in any support efforts, whether I used AA – I think I did, but I can't a hundred percent recall.

Q So you don't recall?

A I don't recall what I said at that time.

Q Would it be fair to say that with regard to the issues of past drinking, AA, aftercare, personal drinking off the job, that those were the subjects that you did not directly discuss with him?

A I would say that that is fair to say, because I felt that they were in the past. And that by giving him the comment that he had – he has his chance, I felt that was all we needed to do.

Q But there wasn't a detailed discussion about his care, his

[3606]

progress with regard to rehabilitation, you just said, Joe, this is your last chance?

A Yeah, it was a little more than that, but I just – I did not get into an aftercare program, no, sir.

Q And at the time you said, Joe, this is your last chance, would it be fair to say that you, as his manager, were on notice, it was your understanding

that he had been treated for alcoholism and that the company had conducted some kind of investigation with regard to the man?

A Could you repeat that again? I'm not quite sure exactly what you said.

Q At the time you said, Joe, this is your last chance, you, a management official with Exxon Shipping Company, were aware that he had undergone treatment for alcoholism, and that the company had conducted some kind of an investigation with regard to the man?

A Well, the purpose of my statement was that he had undergone, the best of my knowledge, treatment for alcoholism and that once he's had that opportunity, which was the policy we had at the time, then he could come back to work, assuming he was classified as fit, and he – best of my understanding he was, and then – but then he had no longer any chance. If he had any further problems, then he would be disciplined.

Q Any further problems, disciplined?

A Associated with alcohol, yes.

[3607]

Q Any association with alcohol on or off the job?

A I didn't get into differentiating between the two. I was primarily concerned about the general term on board the ship.

Q You knew that attending aftercare would be difficult for Captain Hazelwood because of the nature of his job; didn't you?

A Well, again, I didn't get involved with discussions, if I recall, concerning aftercare.

Q My question was, did you know that attending aftercare would be difficult because of the nature of his job?

A Well, certainly if – if he was to attend an AA meeting, he could only do that when he was in port, so I knew that.

Q With regard to Captain Hazelwood, you were of the view that Captain Hazelwood could not drink, period; isn't that right?

A Probably so, yes.

Q You did cogitate, come up with the idea of some kind of a monitoring plan; isn't that correct?

A My intent was to visit the vessel when he's on board as often as I could.

Q And you don't recall whether you, in fact, made a trip or two to his vessel before you turned the mantel over to Mr. Koops?

A I think I made one occasion, but I cannot be a hundred percent sure, but I think I did.

Q And with regard to implementing any monitoring [3608]

plan with Captain Hazelwood, you didn't get the chance to implement the plan or formalize the plan; did you?

A I didn't get to use it very long because –

Q You were moving on to another assignment?

A – I was moving on to another job.

Q I think Mr. Koops is going to testify next so what happens there on out, I should ask – I should spare

you your time and ask Mr. Koops questions; would that be a fair statement?

A That would probably be more appropriate.

Q I do, though, at the end of my outline, want to ask you about your meeting with Mr. Koops. And would it be fair to say that you didn't have any special meeting about Captain Hazelwood with Koops, but you had one meeting in which you discussed your ship's officers and the subject of Captain Hazelwood came up at that meeting?

A My recollection, we had a couple of opportunities to get together and the time that we got together concerning the personnel of the gulf coast fleet, we pretty much reviewed all of the senior officers, captain and chief engineers. At that time, I included the discussion with Captain Hazelwood or about Captain Hazelwood.

Q And when you discussed that with Mr. Koops, you put Mr. Koops on notice that Captain Hazelwood had gone through treatment for alcoholism?

A I – yes, I did.

* * *

[3611]

DIRECT EXAMINATION OF DWIGHT KOOPS
(Live) BY MR. SANDERS:

Q Good morning, Mr. Koops. Mr. Koops, where are you now employed?

A I'm employed by Sea River Maritime.

Q And what is your job at Sea River Maritime today?

A I'm the ocean fleet manager.

Q All right. And where is your office located?

A In Benicia, California.

Q And as the ocean fleet manager, what are your duties and responsibilities?

A My primary duties are the safe and efficient operation of the ocean fleet vessels that Exxon owns, U.S. flagged, and of course supervisory responsibility for the people that man those vessels.

Q Does the ocean fleet include oil tankers?

A Yes, it does.

Q Does it include anything but oil tankers?

A Primarily oil tankers.

* * *

[3614]

Q Let's go straight to the transition period. Did you, in fact, have a discussion with Mr. Tompkins concerning Captain Hazelwood when you were in this transition period?

A Yes. During the overlap period, primarily September, we reviewed of course all the business of the fleet and we talked about each of the senior personnel, which of course included the masters and that included Captain Hazelwood.

Q All right. And in discussing Captain Hazelwood, did John Tompkins advise you that Captain Hazelwood had somewhat recently undergone treatment that included treatment for alcohol problems?

A Yes. When we discussed Captain Hazelwood, Mr. Tompkins told me that Captain Hazelwood had been through alcohol rehabilitation in the spring of '85.

Q All right. Now, at that time, did you ask Mr. Tompkins what Captain Hazelwood's diagnosis was?

A I did not.

Q Did you ask him what his treatment regimen was?

A I did not.

[3615]

Q Did you have any discussion with anybody in the medical department?

A No.

Q Did you have any access to an actual diagnosis?

A No.

Q What – am I correct in assuming that you take on this new job and you find out that one of the masters that you're going to directly supervise has recently been in some sort of treatment program or rehabilitation program for alcohol; is that good news or bad news for you?

A Well, it's bad news, but I make the assumption that when I hear alcohol rehabilitation, I assume that I have a captain that has a drinking problem, and that assumption leads me to the thought process that if he starts drinking again, things will probably go pretty bad pretty fast, and that's what I really needed to know.

Q All right. At the time, 1985, did you think you needed to know more than that?

A No, because I was really assuming the worst case scenario for the situation that Captain Hazelwood was in.

Q All right. And right or wrong, you assumed that he had an alcoholism problem that would manifest itself in some sort of loss of control; correct?

A That is correct.

* * *

[3616]

Q Well, now first – I've jumped a little ahead of you. Did you plan to watch Captain Hazelwood?

A Absolutely.

Q And what were you watching for?

A To see if there were any signs that essentially Joe fell off the wagon, if he started drinking again.

Q Okay. Now, having formed that intent or plan, did you – I take you back to where you were before I so rudely interrupted you, but what did you plan to do to set that in motion? How were you going to do this?

A As I was saying, I started to look at the network of people that I have in my organization and as I said, I had it then and I have it today, if I start with myself and I go down through my organization, which probably helps if – what my thought process was at that time, but I have line functional managers, which I guess people refer to them as port engineers and port

[3617]

captains, which in the primary reporting function to me, and then I have in the office personnel, people

who handle personnel issues. I have agents who deal with the ships seven days a week, 24 hours a day, all sorts of questions and interface with them. I have contractors running around the ships constantly, particularly when they're in our ports and even riding the ships. We also have unannounced searches, we did them with dogs and did them with people on a fairly frequent basis. As part of the administrative load for managing the fleet, you have an awful lot of reports, performance reports that come in off the ships, and if you look at them very closely you can tell an awful lot about them. The cost reports, requisitions, performance of the vessel, and if you start to see things going a little bit screwy on them, then you start to become suspicious. So I had really a multifaceted organization that could reach out and stay close with the situation, I felt.

* * *

[3618]

Q Okay. Let me stop you there. What was this report that you got?

A The report that I'm speaking about, it had come from the port steward, which was Jim Shaw, and Bill Sheehy, which was my port captain at the time, said that he had heard from Jim Shaw that Captain Hazelwood was acting a little weird.

Q What did you think when you heard that?

A My immediate thought was that perhaps Joe's started drinking again, and of course Captain Sheehy and I had talked about it previously when I first came into the job, and so our thoughts ran pretty much parallel.

Q So you both had this thought or maybe even a fear that this translated into Joe's drinking?

A Absolutely.

Q Did you act on that?

A Yes.

Q What did you do?

A I asked Captain Sheehy – I had spoken to Jim Shaw and he became a little evasive. He didn't say alcohol, he became a little more evasive, so I said, Bill, I said, I really want you to go over and catch the Baton – the Yorktown in Baton Rouge which, if you know, is fairly close. I said, go over there unannounced, and that was the next port of arrival for the vessel, and I want you to spend as much time as possible on

[3619]

board the ship and see if things are okay. Bill, being a captain in the fleet, knows exactly what that meant. That meant to talk to a lot of people, to see Joe himself and spend as much time as possible. That's what Bill did and he came back to me, I recollect a phone call from Bill that told me that everything was in order based on his evaluation, and then he returned to the office. And we had some further conversations about the issue.

Q All right. In these further conversations, did you ask or suggest to him to do anything else?

A I asked Bill to talk to – on a low key basis, talk to Captain Hazelwood's friends and associates and –

Q Let me interrupt you just a second. Why would you ask – why would you ask a guy's friends to find out if the guy was – had fallen off the wagon?

A I knew – I knew Joe well enough, that there are enough people that care about Joe and people who do know Joe, I think I had a strong enough reading on the situation that people who do care enough and who do know Joe would certainly say something to – to Bill.

Q Did you know who his friends were?

A Yes, I knew who many of his close associates were.

Q Did you know those people?

A Yes.

Q In fact, were they employees of yours?

[3620]

A A lot of them were masters in the fleet and engineers.

Q Did Captain Sheehy make those kinds of contacts?

A He did.

Q Do you know specifically who he talked to or did you know at the time?

A He spoke to a number of people. When I spoke to Bill, and of course our offices physically were just a couple of doors away from each other, and we would speak from time to time about Joe Hazelwood and many indications I got from Bill was that Captain Hazelwood was fit, he was working out, he was in good shape. He did speak with one individual, specifically, that I found out after the grounding, that was Captain Ivan Mihajlovic.

Q Let's make sure we don't get things muddled up here. You asked him to talk to Captain Hazelwood's friends, and he did and reported back to you?

A Yes.

Q And later on, after the grounding occurred, some three, four years – well, let me back up. Strike all that. Do you know when this – when this report came from Mr. Shaw and when this visit Captain Sheehy made to the Yorktown at Baton Rouge, do you know when that was?

A The time frame, based on my best recollection, is '86, '87 time frame.

[3621]

Q Okay. And so therefore, the conversation you had with Captain Mihajlovic was some couple or three years later?

A Yes, I – in speaking with Captain Mihajlovic, would you like me to go into the details?

Q Wait a minute. I want to back up, though. But at the time that you asked Captain Sheehy to make these contacts, he had reported back to you the thoughts and observations of Captain Hazelwood's friends?

A That's correct.

Q But you didn't talk to Captain Mihajlovic at that time; correct?

A I did not.

Q You did talk to him later?

A Yes.

Q What did he tell you later?

A I was visiting Ivan's ship, the San Francisco down in Baytown, and that was July of '89. This is after the grounding where I'm looking after the gulf coast fleet, but – and also watching the west coast fleet. So I was visiting the San Francisco, and Ivan and I go back a number of years, and I knew Ivan when he was a chief mate.

It was my recommendation for him for a captain, so we had a close relationship and a great deal of respect for Ivan, and I know that Ivan is a close friend of Captain Hazelwood's; in fact, they live in the same area, and we talked about it

[3622]

before.

And we were talking about the grounding and – and there were allegations, of course, in the newspapers about alcohol and so forth, and as I was speaking to Ivan. I remember like it was yesterday. We were having lunch on the ship at a table, and I said to Ivan, I says, it is a shame, you know. And when he was – when Joe was with me for a year and a half in the gulf, I says, I had no indications; in fact, to the contrary. I said, it was just one indication that we followed up on, and Captain Sheehy had come back and said it was okay, but then I asked him to talk to friends.

And Ivan said, yes, he says, I was one of those guys. And he says – and you have to know Ivan to understand this, but he says, you know what I did, and Ivan, I think, has a very, very close and fond affection for Captain Hazelwood and very concerned about him and his family. Captain Mihajlovic's ship, the San Francisco went down to Chiriqui Grande in Panama, this is where we used to pick up crude on

the Atlantic side. And he looked over and saw the Exxon Yorktown in anchor and Ivan got in a launch and went over to the Yorktown and went storming right up to Joe's quarters, is the way Ivan relates it to me, and literally tore the place apart. He was – he was looking for booze. Didn't find any, checked Joe, Joe looked okay, and I think Joe probably had his mouth open by now, and Ivan walked off the ship, got back on the launch and went back to his ship.

[3623]

Q Did Captain Mihajlovic tell you at that time that he had reported that to Captain Sheehy at the time that it occurred?

A I believe he said he mentioned it to Bill and that was part of his overall report to me, I would assume, when Bill reported back to me.

* * *

A No. As a matter of fact, it would probably be worthwhile to the testimony here, in speaking with Joe, Joe and I developed a – I got to know Joe probably more than most skippers in the gulf coast fleet at the time. I was the new kid on the block, I had come from engineering management and taking over gulf coast fleet, I was the new kid on the block. And Joe, of course, being Joe, was going to put me through my paces, but coming from New York, I was up to the challenge, so I took him on and we got to know each other pretty well. We were fairly direct with each other, as New Yorkers are, and so

[2624]

I – I asked him about a lot of things, procedures and policies. Being a little bit new to the game, I asked him some thoughts, and of course he always

volunteered his thoughts about some of the policies that were in place. It was a good, frank relationship, and I liked Joe. Joe was well read. I liked his intellect. I liked his frankness. He was a good sounding board and so we –

Q Did you form any – from this relationship, did you form any opinion as to how he was doing with respect to this problem for which he had been treated?

A Yeah, by talking the way we did, I got to know the man pretty well and I wouldn't – I wouldn't diminish the relationship by saying I was there to watch his eye/hand coordination, but obviously as I talked to him and got to know him a little bit better, I started to understand the man, I also understood his behavior. So it became pretty easy for me or a little bit easier with him to see any aberrations or any changes in the behavior for the next year and a half.

Q Did you see any?

A None. In fact, if anything, I counseled Joe on some of his performance characteristics that are reported in his performance report and he was working on those, and in my estimation, in the year and a half, I saw a great deal of improvement, at least an effort to improve in those areas.

Q You were kind of tough on him, though, weren't you, on the

[3625]

rankings?

A I was. Joe is a seaman and probably one of the finest that we had. His seamanship skills were very,

very good. Some of his dislike for some of the paperwork and such, I needed to see some more improvement. I didn't have a long enough running time on Joe. You don't like to make major movements in seriatim rankings unless you're sure. Worst you can do is move people out on the list, you want them to steer you out so I needed a little bit more running time on Joe. I had seen him a year, year and a half and you figure he's only on the vessel half that time, so before I made any major moves on Joe on the seriatim, I felt comfortable with where he was, which was the – the bottom third kind of in the upper part of the bottom third. And I could see if we stayed together probably if he continued his progress, moving him a little bit more.

Q Now, you have described for the Ladies and Gentlemen of the Jury the relationship that you had with Captain Hazelwood when you would visit the ship. Did you try to visit his ship often?

A Yes, I did. My style of management in running a fleet is to visit ships as much as possible. You need to smell and feel and touch, and I enjoy that part of the job. I especially enjoyed visiting Joe and obviously with this knowledge, I tried to spend more time with Joe than the others.

* * *

[3631]

Q Did you have a chance to observe him, though, at any of the conferences after he left your fleet?

[3632]

A I did.

Q Did you notice whether or not Captain Hazelwood was drinking at these conferences?

A Only he had a passion for Perrier and ice tea, as I remember, and those are the only two drinks I ever saw him drink.

Q Did you take particular note of that?

A Yes.

* * *

Q This is your deposition transcript, in case you need it. You have – you testified here today some knowledge with regard to alcoholism; isn't that a correct statement?

A Yes.

Q And you realize that alcoholics have to admit that they're alcoholics in order to move forward with their treatment?

A Yes.

Q And you understand that alcoholics are in fact never cured?

A Yes.

Q And you understand that the relapse rate for alcoholics is better than 50 percent?

A Yes.

Q And you testified a little bit about these officer conferences that you'd go to and see Captain Hazelwood.

[3633]

You're aware of the fact that individuals who have an alcohol dependency problem attempt to hide that fact; don't they?

A Yes.

Q It's called masking; isn't that right?

A That's correct.

Q And at some point in time, you were put on notice that Captain Hazelwood had gone through alcohol rehabilitation?

A Yes.

Q And you don't know or you didn't follow up and ask when he'd been in rehabilitation; did you?

A I was told that it was the spring of '85.

Q Did you know the details of his program?

A I did not.

Q Did you know the details of his aftercare program?

A I did not.

Q Did you know whether he was attending AA or not?

A No.

Q Did you know why he went into alcohol rehabilitation?

A No.

Q Did you ever speak to anybody in your human relations department, Dan Paul, who came in here testified he was the – the company officer charged with responsibility for this particular topic, did you

ever talk with Dan Paul about the subject of Captain Hazelwood and alcohol rehabilitation?

A No, I did not.

[3634]

Q Now, you testified here today, you started off by saying it might help the testimony here, and then you launched into a discussion in which you said we were direct with each other, as New Yorkers are, it was a good, frank, relationship. Do you recall testifying to that today?

A Yes.

Q Now, did the two New Yorkers talk about, between each other, the captain's alcohol rehabilitation?

A We did not.

Q Did you talk about the subject of alcohol?

A No.

Q Did you talk about the subject of AA or aftercare?

A No.

* * *

[3638]

Q If you had had a report to you, I don't want to talk about the standards to which you bring to this situation, you testified here today if there was any indication that Captain Hazelwood had resumed drinking, you would have yanked him in a New York minute; do you recall that?

A Yes.

Q What if it was reported to you that he was ordering beer over a walkie-talkie at, for example, Portland Shipyard, would you have yanked him in a New York minute?

A Assuming that the facts that you cite are true, what you need to do and what I'd do and what I would always do is investigate the situation. I'd talk to the people involved,

[3639]

check the context in which that -- that radio conversation or whatever you said it was took place. I'd look at the whole situation.

Q Let's discuss that a little bit. Talk to the people involved. You'd talk to, among other people, the suspect, because you're a direct and forthright individual, you'd say, I have a report that this incident happened, what's up; is that a good first step?

A Absolutely. You'd confront the individual directly.

Q Always confront the individual directly; isn't that right?

A Sir?

Q Always confront the individual directly?

A Well, as part of the investigation, I think that's an integral part of any question you have.

Q It's both good management and part of being a decent human being?

A That's correct.

Q Did you confront Captain Hazelwood about the Shaw incident directly?

A I did not.

Q Okay. Now, with regard to this hypothetical I've given you about the Portland Shipyard, let's assume that you got a report not only that beer was ordered over the walkie-talkie by, for example, Captain Hazelwood, but there were – and the beer was Henry Weinhard's, but there was empty Henry

[3640]

Weinhard beer cans in one or two locations on the ship, heightened sense of awareness?

A Yes.

Q Go talk to the man?

A Part of the investigation.

Q Do you know, with regard to the Jim Shaw incident, whether other potential witnesses with regard to the situation as to Captain Hazelwood acting weird were interviewed? Do you know?

A I asked – I do not know specifically.

Q Now, Mr. Shaw testified here by deposition and he says that he reported – and I don't recall to who in management, so I'm not going to say it was you or I'm not going to say it was your port captain, but Shaw says that the report consisted of Joe had fallen off of the wagon, Joe was drinking, was that ever reported to you?

A Captain Sheehy reported what I testified, and I'm afraid I'm misleading the jury in my eagerness to try and give you a response in that last question.

Captain Sheehy told me – when he came back he talked to a lot of people. Now, Captain Sheehy and I know each other very well and he knows what I

require, as does everybody else in the fleet, and he knows exactly what I'm looking for, so the response, well, were other people talked to or interviewed, I feel quite certain that Captain Sheehy talked to a number of people on the ship like I asked him to.

[3641]

Q Let me ask you a question about that. Captain Sheehy's testified here. If Captain Sheehy did not investigate the people who were involved in the incident that Mr. Shaw related, witnesses, participants, would Captain Sheehy have been remiss in his duties?

A I don't know that he did that, but the answer to your –

Q Assume he didn't, would he have been remiss in his duties?

A The answer is yes.

Q That would have been a reckless act; wouldn't it?

A He would have been remiss in his duties.

* * *

[3644]

Q Now, when Captain Hazelwood was transferred to the west coast, you did not tell Borgen that he had to monitor Captain Hazelwood; did you?

A I did not.

Q And captain – Mr. Borgen did not indicate to you that he was going to monitor Captain Hazelwood for alcohol use; that's a correct statement; isn't it?

A That's a correct statement.

Q Now, with regard to your observations of Captain Hazelwood, you have testified here today that you got to know the man pretty well, I got to understand him; do you recall that?

A Yes.

Q You car-pooled with a fellow named Ellenwood?

A I did.

Q On a daily basis from October of 1985 to April of 1987; isn't that a correct statement?

[3645]

A Yes, I missed the days, but I car-pooled with the gentleman.

Q On a daily basis you? May have missed a day here or there, out of town?

A Yes.

Q You had much more contact with Ellenwood than you had Captain Hazelwood?

A On a day-to-day basis, yes.

Q And you were a friend of Ted Ellenwood?

A As I am a friend of Joe Hazelwood.

Q Captain Hazelwood. And it turned out that Ellenwood had an alcohol problem; isn't that right?

A In 1988, it was reported he turned himself in for a program.

Q You had daily contact with Ted Ellenwood and made no observations at all with regard to Ted Ellenwood's problems?

A Made no observations of Ted Ellenwood because there was no knowledge, prior knowledge that he

may have had a problem, where as there was that knowledge that I had of Hazelwood.

Q You were on notice with regard to Captain Hazelwood?

A That is correct.

* * *

[3675]

Q You have a conversation with port Captain Sheehy, he tells you about a rumor that Joe is drinking again, or something like that, and he mentions a man named Shaw, a

[3676]

Jim Shaw; is that correct?

A That is correct.

Q And he asked you to look into it when you get the chance, or words to that effect?

A Words to that effect, yes.

Q All right. Now then, tell us, then, about from that point on how the search took place; that is, where did you find Captain Hazelwood and so forth?

A All right. I was on the San Francisco, once again, and we were at the loading buoy in Chiriqui Grande. Loading buoys, just one buoy, you tie up one line and they have a hose that comes around and they lift it up and put it on a manifold, very simple system. Captain Sheehy, Captain Hazelwood's ship had just took arrival and had anchored at Chiriqui Grande, it's a nice, like, bay. I know the pilots, we been running down there quite often, so I said could I get a launch there and go over and see Joe. Said no problem, you know, so they took me over there.

When I went over there, I talked to Joe. I said, hey Joe, you know, I heard about this rumor. This rumor's not good, you know, this company is very adamant about this and they're going to can you. And Joe, figuring it's just another rumor and here we go again and all that, said something, and people that know me know that I have occasional temper.

Q Occasional temper?

A Occasional, yeah.

[3677]

Q That's good. Occasional?

A Occasional. I'm not quite the beast you all heard before, but I went over there, I talked to him and I started to get – you know, this is serious, you could lose your job. And he said, hey, if you don't believe me, you're welcome to take a look in my room, which I did.

Q A look in your room, let's talk about that. On the – he was on the Yorktown, that's a smaller vessel than the Valdez; is that correct?

A That is correct.

Q On the Yorktown, was there a – by the way, something that may be not clear here, most of us, we go to work in the morning, we come home at night, we have a workplace and a place to come home and eat and sleep and have a drink or whatever we do, and when you're on board a vessel, your workplace and your home place is the same place; is it not?

A That is correct.

Q Now, on the Valdez, we've learned, there was a living room – or what do you call it, stateroom?

A They have a stateroom and they have your bedroom.

Q A bedroom?

A Yeah, and then an office.

Q Okay. So you have a little sitting room and a bedroom?

A It would be the office, and a sitting room would be on the Yorktown, for example. Then the bedroom is adjoined, but

[3678]

just off to the side, that's your bedroom.

Q So you have two rooms?

A Right.

Q You have what we'll call the office and what we'll call a bedroom?

A Exactly.

Q Now, did you search the office?

A Yes, I did.

Q Did you look in drawers?

A Yes, I did.

Q Did you look in refrigerators?

A Yes, I did.

Q All right. Did you then go into the bedroom?

A Yes, I did.

Q Did you search the bedroom?

A Yes, I did.

Q Did you find anything of alcoholic beverage at all?

A No, I did not.

Q How did Joe look?

A Kind of surprised.

Q Pardon me?

A I said he looked kind of surprised.

Q Otherwise – I mean, did he look like he might have been drinking?

A No, not at all.

[3679]

Q Anything like that?

A No.

Q Good shape?

A Good shape.

Q You think this was about the summer of 1986?

A That is correct.

Q Now, following this, did you make any report on your, what I'll call, investigation?

A I wouldn't call it investigation.

Q Well, on your search?

A On my search, all right. I went up – back to Baton Rouge, that was our regular run, Chiriqui Grande up to Baton Rouge, and Captain Sheehy happened to be up there again. I can't recall whether it was the very next trip or the trip after, but any way, it was in Baton Rouge. He came on and I said, you know, that's a lot of baloney and, you

know, I just went on the ship there, and I don't know whether we're still friends or not, but there's nothing on here, there's nothing I've seen. I mean, he didn't know I was in port, we don't – can't keep in touch with each other, so it was totally by surprise. And that was it.

Q So you told him that this Shaw report, rumor, whatever you're talking about, was a bunch of baloney?

A In those words.

* * *

[3713]

DIRECT EXAMINATION OF HARVEY BORGEN
(Live) BY MR. NEAL:

Q Mr. Borgen, how are you employed, sir?

A I'm employed by Sea River Maritime, Inc.

Q How long have you been employed by Sea River or Exxon Shipping Company or one of the Exxon entities?

A It'll be 31 years this month.

Q So you first became employed by Exxon in 1963?

A That's correct.

* * *

[3720]

Q Now, then, I want to direct your attention to a third thing. There's been something in the testimony here about so-called Henry's, or somebody said to be Captain Hazelwood ordering Henry's aboard a walkie-talkie – or through a walkie-talkie. You understand what I'm talking about?

A Yes, sir.

Q Did you happen to have a conversation with a Mr. Herb Leyendecker regarding this matter?

A Yes, I did.

Q Was that in person or by phone?

A By phone.

Q All right. Again, tell the Ladies and Gentlemen of the Jury and the Court in substance what Mr. Leyendecker said to you and what you said to him?

A Mr. Leyendecker said that while he was aboard the Exxon Valdez at the Portland Shipyard –

Q And by the way, the Valdez was in dry-dock at that time; correct?

[3721]

A Yes.

Q All right. Go ahead with the conversation.

A That he overheard on the walkie-talkie Captain Hazelwood ordering beer. Herb then, the next day, confronted Captain Hazelwood and said he had overheard ordering beer and we do not allow beer on our ships, and Captain Hazelwood said, no, it wasn't for the ship, I was ordering the beer for a crew party ashore, and reassured Herb at that time that that's what he was doing.

Q Did Mr. Leyendecker say anything to you about whether he asked Captain Hazelwood if he were drinking or not?

A Well, I asked Herb if in his observations of Captain Hazelwood – because he had been there, this was a second trip to the shipyard to visit, see

how things were going, any indication in his eyes that Captain Hazelwood was drinking or appeared to be impaired in any way, shape or form, and Herb assured me that in his judgment, he was not.

Q Okay. Following this conversation, did you have occasion to meet or to talk to Mr. Paul Myers, your ship group coordinator regarding this?

A We did have a discussion after about this specific incident.

Q Do you remember the – that conversation?

A Well, I'm – I don't recall all the specifics of the conversation, but what I do recall telling Paul was as far as I

[3722]

was concerned, Herb's investigation of this particular incident was satisfied – satisfactory.

MR. NEAL: You may examine.

Excuse me just a moment, Your Honor. Hold on just a moment, Your Honor.

CROSS EXAMINATION OF HARVEY BORGEN BY
MR. O'NEILL:

Q I am going to cover with you, because of the rules of the game that we play with, exactly the subjects that Exxon just covered with you; okay? Now, the first conversation that you just talked about was the 1987 conversation between Martineau and Sheehy regarding Captain Hazelwood's proposed transfer to the west coast, that's the first thing you talked about; right?

A Yes, sir.

Q Let's talk about that for a minute. You stated that you had known that Captain Hazelwood had been through alcohol rehabilitation?

A Correct.

Q And you learned that at a fleet conference sometime in '85 or '86?

A I want to say '86.

Q '86? And you don't specifically recall how you found out about it, but it was, in any event, a subject of conversation between you and somebody else at a fleet conference in 1986?

[3723]

A Well, it would have been – I would have heard it from someone, yes.

Q Okay. And then you had this conversation with your counterpart on the gulf coast, and he said he was not drinking and clean. Is that a correct statement?

A That's correct.

Q So it was important to both of you, I assume, that he was not drinking and that he was clean?

A Yes.

Q And then there was a joint decision made between you and Mr. Koops to reassign Captain Hazelwood?

A Yes, sir.

Q I want to talk briefly about that decision, and what you did or didn't do with regard to that particular decision; okay?

You didn't talk to the human resources department about the rehabilitation; did you?

A I did not.

Q You didn't talk to the medical department about the rehabilitation; did you?

A I did not.

Q You didn't talk to the human resources department or the medical department with regard to what a proper monitoring program might be for this captain in this situation; did you?

A I did not.

[3724]

Q You didn't go back and find out the details of his rehabilitation or the details, if any, of any aftercare program; did you?

A I did not. Other than the monitoring that Dwight Koops said that they had done.

Q And you didn't talk to the man in person about how he was doing, how he was doing with regard to his recovery or that subject, the man in person, I mean, Captain Hazelwood?

A No.

Q In any event, you were on notice that he had gone through an alcohol rehabilitation program?

A Yes.

Q Second conversation, the Doug Larsen conversation, your instructions to Mr. Larsen were to take a look at job performance and paperwork when the ship came in?

A Correct.

Q And that was the sum and substance of your direction to him?

A I also told him to observe him to see whether or not Captain Hazelwood appeared to have been drinking at all.

Q While – but – okay. Thank you. Thank you. This was while the ship, though, came into the harbor?

A And – yes, while it came into the harbor.

Q Okay. And I listened to your testimony, you didn't have him check the captain or you didn't tell him to check the

[3725]

captain when the captain came back from leave or came back from shore to get on the ship, you were talking about when the ship came in?

A And while it was in port.

Q Do you know, is this in Long Beach?

A Yes, sir.

Q Do you know of a place in Long Beach called the Yankee Clipper or the Yankee Sailor, somewhere near where the terminal is?

A I don't recall.

Q Do you know if in fact –

A But it's not – the ship is not at a terminal, it's actually at anchor.

Q Then they bring a launch in?

A The launch comes in.

Q And where the launch gets off, are you aware of a bar called the Yankee Clipper or Yankee Sailor, are you aware at all that your crew members get together there and have a couple of beers?

A No.

Q You're not aware of that?

A No.

Q And he reported to you that the paperwork was impeccable and that the captain was a team player and doing well?

A Yes, sir.

[3726]

Q But he never reported to you that he talked to the captain about his emotional health, emotional well-being, recovery, whether he was drinking or not drinking; did he?

A That's correct.

Q Now, I want to talk about the Henry's incident briefly and then we'll get you out of here; okay?

A Fine.

Q At the time of the Henry's incident, Steve Day worked for you or worked in the same area?

A He – yes, he did.

Q And –

A Not directly for me, though.

Q Sort of a different chain of command but co-located?

A Yes.

Q And Mr. Leyendecker was from what you guys call Mecca or Houston?

A Yes.

Q That is right?

A Yes.

Q He was there, too, in the Portland Shipyard?

A Correct. He's the repair manager.

Q And with regard to the report by Mr. Leyendecker to you, you testified today that Mr. Leyendecker reported to you that Mr. Leyendecker overheard Captain Hazelwood ordering beer?

A Correct.

[3727]

Q And was this done over the telephone?

A Walkie-talkie.

Q No, I mean not the ordering but the Leyendecker report to you, was that done over the telephone?

A Yes.

Q And then Mr. Leyendecker – was there a second call with Mr. Leyendecker?

A I believe it was only one.

Q One call, so Mr. Leyendecker said, I heard Captain Hazelwood ordering beer; I followed up, and the captain told me that it was being ordered for a crew party ashore?

A Correct.

Q And then counsel for Exxon asked, did Mr. Leyendecker report to you that he'd talked to Captain Hazelwood about drinking, and your

answers were that he made an observation of Captain Hazelwood?

A Yes.

Q And I assume because of your answer to the question that Mr. Leyendecker did not report to you that he in fact talked to Captain Hazelwood about whether he was drinking again or not?

A I don't recall that.

Q So with regard to the Henry's incident, the sum and substance of your investigation as the west coast fleet manager was fielding the call from Mr. Leyendecker and passing on the substance of what Mr. Leyendecker told you, and then coming to

[3728]

the conclusion that this is enough, I'm going to move on to something else?

A Correct.

Q Now, was Mr. Steve Day – then there was a conversation with Myers, Myers came in and reported this to you, and then you told Mr. Myers that it had been taken care of?

A What I told Mr. Myers was that I knew about the incident and Herb had investigated that incident and I was satisfied with the investigation that he had undertaken.

Q And then that was – and then that's it, all of the conversations on the topic?

A Yes, sir.

* * *

[3730]

DIRECT EXAMINATION OF DOUG LARSEN
(Live)

BY MR. NEAL:

* * *

[3733]

A Mr. Borgen advised me that the – one of the alternate positions of master of the Exxon Valdez was open, was being replaced by Mister – Captain Hazelwood. He would be coming out working on the west coast, coming out from the gulf coast. Further to that, he advised me that Captain Hazelwood had a – effectively, a substance abuse problem in the past, and it was indicated it was alcohol related, and that he requested me to monitor him while he was – while his vessel came into port, to

[3734]

notify him if there was any problems, behavioral cues, his paperwork was out of sync, if his arrivals were off, his performance was other than the normal expected of the position, if I noted if he had been drinking on any occasion, along those lines, again, just generically any problems.

Q You understood what you were supposed to do?

A Yes, sir.

Q All right. Following that conversation, did you undertake to perform the task of monitoring Captain Hazelwood as requested by Mr. Borgen?

A I did.

Q How would – what did you do to fulfill that role?

A Follow through with all aspects of his request. I first met Captain Hazelwood when he was – met

with him when he joined the west coast. I don't know if he was already on the ship or he was about to join the ship. I had a lunch – a lunch with him at a shoreside facility in Long Beach. I met with him and another captain from another ship, who was going on a paid leave or leaving, and we had lunch. That was a Saturday, I believe, Saturday afternoon.

I had lunch with him, I had a beer, I think one of the other captains had a beer, possibly. Captain Hazelwood had Perrier. As follow up, as an example, I notified Mr. Borgen of the lunch, welcome to the west coast, and just told him that we had lunch and he wasn't drinking, he was having Perrier.

[3735]

During subsequent meetings, during that roughly one and a half year period, the Valdez called into port roughly a dozen times.

Q Roughly how many times?

A A dozen. Roughly on a one month cycle, the Valdez went to Panama and stopped in Long Beach on the northbound trip for ballast, and coming from a foreign port, customs clearance needed to be taken care of, immigration work for the crew leaving, being repatriated, crew that were joining and what have you, had a close interface with Captain Hazelwood preceding the actual arrival of the vessel, both in exchange of telexes, communications, discussions on the MARSET radio about the upcoming port call, attending to the – advising us of what port requirements he was going to need, repairs, stores, fuel, et cetera. Boarded the vessel, either myself or the agent who reported to me, his name was Ron Kelly, the two of us went – one or the other of us would attend to the entry of the vessel seven days a

week, 24 hours a day, didn't matter what time it was, one in the morning or whatever.

Q Speak up just a little bit.

A I'm sorry. It could have been any time of the day. We boarded the ship with the customs and immigration personnel. Proceeded to the bridge and spent roughly one to two hours on board the ship in the master's office and stateroom area. During that time, I had – I was in close proximity, the

[3736]

occasions that I boarded, personally boarded the vessel for customs entry. I had – I was within inches or a foot of Captain Hazelwood. Never had any odor of alcoholic beverage on him at all, completely control of his vessel, always on time, paperwork was absolutely impeccable, the best I've ever seen, very well organized, very well laid out, quick turn around, quick entries, although I think Harvey Borgen mentioned, it's a real team – teamwork between all the – the agent, the repair gangs, and everybody else that was attending the ship and the ship's personnel, trying to get the ship in, attend to the various aspects that were going on, he managed his ship very well in port.

Q Did you – so there are a number of occasions, then, when you spent a good bit of time with Captain Hazelwood in close contact?

A That's correct.

Q And this is when the vessel was coming into port?

A That is correct.

Q Would the vessel be in port at times several – several days at a time?

A Typically the ship would come and spend between 12, 12 hours, unless there was extended repairs. On occasion I believe the ship was in port up to maybe a week.

Q A week?

A Correct.

[3737]

Q On any of those occasions you were with Captain Hazelwood, did you see any sign of any untoward conduct, any sign of drinking, any sign of anything like that?

A Absolutely not.

Q Did you report your observations to Mr. Borgen?

A I did.

* * *

[3741]

Q And are you familiar with a bar called the Yankee Whaler or the Yankee Clipper at or near where the launch comes in?

A I'm aware of it.

Q And are you aware that on occasion, crew members when they're departing from a tour of duty would get together there and have a couple of beers?

A (Shakes head from side to side).

Q You're not aware of that at all?

A Yankee Whaler, Clipper, is in a line of restaurants and boutiques called the San Pedro

Ports of Call, and crew members do get off with other visitors and tourists, and they will go through the area, do some shopping, stop, have lunch or dinner, stop for beer or whatever. I'm sure they did, I'm sure. There's no general meeting spot for crew, if that's the question, no. That I didn't know.

Q Here you were the monitor and you didn't know that?

A That's correct.

Q Did you ever ask Chuck Kimtis the chief engineer on the Valdez if he ever drank with Captain Hazelwood at the Yankee Whaler or the Yankee Clipper?

[3742]

A No, I did not.

Q How about Nate Carr?

A No, I did not.

Q How about Pat Enright?

A No, I did not.

Q How about Katherine Haven?

A No, not Katherine Haven.

Q How about Carlos Hogan?

A No.

Q So as the monitor you were unaware that these crew members and the captain would go over to the Yankee Whaler and have a couple of beers?

A I was unaware of that.

Q He wasn't hiding the fact that he had a couple of beers with anybody, and indeed he's testified he openly did it; you weren't aware of that?

A I didn't follow Captain Hazelwood around if he came ashore, no, I did not.

Q Now, was Kevin Dick or Bob Sturgis, were they assigned to the Valdez when you had this '87 to '89 duty?

A I don't recollect. It's possible they did.

Q Did you ever ask them whether they drank with Captain Hazelwood?

A No, I did not.

Q How about Mr. Kunkel, did you ever ask Mr. Kunkel if

[3743]

he drank with Captain Hazelwood?

A No, sir.

Q Did you ever receive any training in monitoring people who'd been through alcohol rehabilitation?

A I have had certain background training at the Merchant Marine Academy, as far as general awareness of substance abuse problems. Further to that, when I first became employed with Exxon, was in the marine with Exxon Company U.S.A., at the time we had a one week orientation when I first came on board for anyone that was coming aboard in a sailing capacity. During that orientation they had an overview of company policy and what was allowed, what was not allowed, and beyond that, there was a – one – had a one week management course that we had with officers, engineers and deck officers to

discuss in part, not specifically for that, but part of that was to deal with identifying and how to handle problematic situations.

Q So you have had training?

A Some. Videos on board the vessels, general awareness more than anything else.

Q So you're aware that with regard to alcoholics who have been through rehabilitation, there's a high rate of relapse?

A I was unaware that Captain Hazelwood had been through rehabilitation.

Q My question for you is, are you aware of the fact that alcoholics who have been through rehabilitation have high

[3744]

rates of relapse?

A Yes.

Q And you're aware that alcoholics learn to mask, and that's the technical term used, mask both their drinking and the effects of their drinking?

A I assume so, yes.

Q And now I want to come back to what you said in response to my question two or three questions back. You said I was unaware of the fact that Captain Hazelwood had been through rehabilitation. So you were the monitor and nobody told you that Captain Hazelwood had been through alcohol rehabilitation?

A I might –

Q Is that a correct statement?

A – take exception in stating that I was the, quote,

unquote, monitor.

Q You weren't the monitor –

MR. NEAL: Let him finish.

MR. O'NEILL: Go ahead. Are you finished?

THE WITNESS: What was the question again, if you want to rephrase it.

MR. O'NEILL: I'm happy to rephrase the question. Could you go back and read what he was saying right before counsel's objection?

(The last question and answer were read back)

BY MR. O'NEILL:

[3745]

Q Your statement was, I take exception to stating that I was the, quote, unquote, monitor. She just read that back; did you hear that?

A Okay.

Q You were not the monitor; were you?

A Words in my mouth, I was asked by Mr. Borgen, given the backdrop that Captain Hazelwood had a problem, didn't go into detail to it, other than just to tell me there was a problem associated with alcohol, and to keep a close surveillance, report anything concerning his performance, if there was any relapse or if there was a problem, whether it was drinking or the performance of bringing the ship in and out of port.

Q So you didn't consider yourself to be the monitor; did you, or a monitor, and you weren't trained to be a monitor for somebody who had been through alcohol rehabilitation; were you?

A That's kind of a vague question. I don't know if I can answer that question.

Q Then don't.

A I was asked to monitor, oversee, to report, and I did that.

* * *

[3765]

DIRECT EXAMINATION OF JAMES ROUSE (Live)
BY MR. LYNCH:

Q Mr. Rouse, you're employed by Exxon?

A Yes, sir, I am.

Q How long have you been with Exxon?

A Joined Exxon 32 years ago this week.

Q And what is your current job, sir?

A I am the manager of Exxon's public affairs department.

Q As of March 23, 1989, what was your job title?

A I was the manager of the human resources department.

* * *

[3777]

Q Now, how, in your opinion, did telling the employee that if he went out to rehab he would get his job back or be assured of employment, and I guess future status on the job wouldn't be jeopardized, how did that contribute to the safety of coworkers and the public?

A Well, the view was that if you did not offer them the opportunity to come back to their job, if in fact

you penalized them for coming forward and saying they had a problem, then they wouldn't come forward, then you got a situation where you have somebody with a serious problem that you don't know about, and that has a very, very deep concerning for us from a safety standpoint.

* * *

[3778]

Q Okay. And with reference to the status of the policy as of January 1, 1985, could you just give us a general description of how you went about determining where this policy fit in the industry generally?

A Well, obviously we had input from our medical department, and I'm aware of the fact that they reached out to other medical departments and other companies to see how they were doing. I'm personally involved in several groups, a group called the Business Round Table Employer Relations Committee, a business round table made up of perhaps a hundred CEOs of major companies in the country. I was on a committee called Employee Relations, and we frequently talked about substance abuse policies, problems and that sort of thing. I was chairman of that committee in 1986. I'm in an organization of – Labor Policy Association, and it does research on labor and personnel policy issues, had many discussions about drug and alcohol policies so I was, I think, generally familiar – my view would be I was generally familiar with drug and alcohol policies of other companies, as well as advice from medical experts and others in the field.

Q Now, a Dr. Masters has come into this court and he

[3779]

testified that in the mid '80s, there was a recognized standard that employees who went out to rehab, if they held a job in a safety-sensitive position, that the employer should get directly involved in supervising aftercare.

In your research as of 1985, was it a standard in industry that employers get involved in aftercare of employees who held jobs in safety-sensitive positions?

A I would say not. I would say that this is – you're almost saying shouldn't we be monitoring what they do on their personal time, which – should we be monitoring their personal lives, and I don't view that as a responsibility of the company. The responsibility of the company is to ensure that their job performance is not deteriorating because they have those kind of problems, and if it becomes a job performance issue, then yes, I think it would involve the company. I respectfully disagree with the doctor's view on what was state of the art at that time.

Q Well, could you address what you did to learn what others thought about this? In other words, were these practices being followed in other companies?

A My – my view would be that they were not, in the companies that I'm familiar with.

Q And that included the 150 plus companies that participated in the business round table?

A Yes, sir, that's correct.

[3780]

Q And were you making an effort to determine what the state of the art was?

A Yes, sir. We did from time to time run surveys to see what the state of the art was.

* * *

[3780]

Q Now, if you followed what apparently is Mr. O'Neill or Dr. Masters' advice, you would say when an employee came back from rehab, well, you have to come in and check in with us that you've been going to see your doctor, that you've been going to AA meetings. Did you ever consider doing that?

A At that point in time, no, sir.

Q Did you know of companies in your industry who were doing it?

A No, sir. I don't think any of them were.

Q Do you know of any professional advice you received to

[3781]

do that?

A No, sir. In fact, I think we probably received professional advice that was the opposite, from our law department, for example, who would have probably counseled us and did counsel us that that could result in charges of discrimination.

* * *

[3781]

Q Did you consider – did you make studies to determine what the proper way to handle the employee who had returned from rehabilitation was,

as of the time in 1985, about midway through the period of time that we're talking about?

A Our view was when they returned from rehabilitation, we should put them back on the job that they came from, using good solid management judgment, and then use our normal supervisory oversight of their job performance.

Q Did you have experience in Exxon, that is to say, did the corporate experience give you assurance that that method and procedure was adequate to identify problems with an employee who resumed or possibly resumed the use of alcohol or any other substance after returning to work?

A At that point in time, as the senior human resources official in Exxon U.S.A., I was very comfortable that we had a policy that did what it needed to do to balance the rights of those individuals, as well as do the most we could to protect the safety of the public.

Q And you've heard some questions this morning about

[3782]

whether people were trained, and I think the question was put to Mr. Larsen a few minutes ago, were you trained to monitor a person who had returned from rehab? Did you have procedures to train managers at Exxon to deal with substance abuse problems, whether they be alcohol or other substances, of employees who were working in Exxon premises?

A Yes, sir, I think we did. We put all of our young supervisors, as they'd become supervisors through a program. I think Mr. Larsen called it management

one, indeed today we call it leadership one. It's an 11 day course on supervision, how you coach employees, how you monitor their performance, how you counsel employees, how you help those employees develop and improve on the job and to that extent, I would have to say that our supervisors were well versed in examining employee behavior.

Q Now that supervision, does it include, that 11 day course, does it include the issue of monitoring for substance abuse, knowing – knowing what to watch for?

A There is a segment in that course that speaks to substance abuse in the workplace.

* * *

[3783]

Q Now, as of 1985, you overall – and referring to all the sources that you consulted, were you satisfied that the Exxon drug – excuse me, Exxon alcohol policies that then existed was consistent with the standard of the industry in other companies like Exxon that had – that included safety-sensitive jobs?

A I would say yes, and I suppose I should say that we just were not relying on that – on that policy at that point in time in 1985. For example, in – in 1984, we initiated an employee health advisory program, which was a free service that employees could come to to receive counseling if they had marital problems or family problems or problems with substance abuse.

We had very broad awareness training on – on drugs and alcohol in the work place. In fact, in 1984, we initiated that and I personally took a fellow to our management committee, which is our very senior

managers, call them the three or four star generals, using a military term, and we started with a drug awareness program with them, and then we began to cascade that out throughout the organization. So the point I'm trying to make is as we did these studies and understood what companies were doing, then of course we brought our policies along, as well.

* * *

[3802]

Q Okay. And did you reach the conclusion that continuing that part of the Exxon alcohol policy into the now Exxon drug and alcohol policy was in the interest of safety?

A Yes, sir.

Q What was the basis for that conclusion?

A Well, we just felt like returning those people to the job was the correct thing to do. We felt that if we did not return them to the job, if it appeared that they were going to lose their jobs, they would go underground and, therefore, we would have a problem that we didn't even know about and that we felt was a greater risk, greater safety risk than having

[3803]

the employee in the job with appropriate supervisory monitoring.

* * *

[3805]

Q Was it required by this policy or intended by this policy that supervisors should determine whether

employees in their off duty time were consuming alcohol?

A No, sir, they were – the policy did not intend that supervisors would do that.

Q Let's assume that the supervisor believes that the employee has been through a rehabilitation program for alcoholism.

A Yes.

Q Was it – did this policy contemplate that the supervisor

[3806]

should determine whether the employee is going to a bar or a restaurant in his off duty time and having a glass of wine or a glass of beer?

A No, sir, it did not.

Q Okay. Why not?

A Because we felt that the supervisor should monitor the individual's job performance and if there was a problem with substance abuse, that would be reflected in that job performance.

* * *

[3820]

A In 1987, indeed we did in our drug and alcohol training.

Q And if you had an employee who was suspected of having an alcohol or drug problem, at least this manual says what we can do is observe changes and confront the employee with our observations; isn't that what the manual says?

A As of 1987, that's correct, sir.

Q So in 1988, if we had a drinking incident on the west coast, say San Francisco, or at the Portland Shipyard, and there were observations that caused something to be brought to our attention, we should have confronted the individual; isn't that right?

A We should have investigated the circumstances and, if appropriate, confronted the individual. If the allegations were untrue, I sure wouldn't confront him, wouldn't have anything to confront him for.

Q And your manual says that if an employee is found violating the company policy, he or she cannot avoid disciplinary action by requesting treatment?

A That's correct.

Q And that makes good sense; doesn't it?

A I think it does.

Q If you're caught, you're caught?

A I think that's correct.

* * *

[3823]

Q Thank you. Now, you came in here and you talk in your direct testimony, at the beginning part of your direct testimony very, very carefully and your words were very, very careful. You said that when somebody comes out of rehabilitation, it was the norm to return them to the same job?

A Yes, sir, that is what I said.

Q And I'm interested in the second half of that statement.

A Okay.

Q The half you didn't say.

A All right.

Q Let's take a look, if we could, at the half you didn't say. Page 212, lines 4 through line 23.

MR. LYNCH: His deposition?

MR. O'NEILL: Yes.

(Portion of Video of James Rouse played as follows)

BY VIDEO EXAMINER:

Q Mr. Rouse, previously we discussed the issue of an individual coming back from drug or alcohol rehabilitation and what would happen to that person. In or around 1985 when a person came back from alcohol rehabilitation, did that person enjoy job security but not

[3824]

necessarily the job that that person once had? We'll, start out with an Exxon U.S.A. employee.

A Regarding Exxon U.S.A., 1985, we would have been under the 1977 policy on alcoholism. And, as I've previously testified, I think our norm would have been to put them back into their previous assignment. We would have put them back in their previous assignment.

Q Okay.

A Since the policy were silent on that, if a manager for some reason had certain concerns, I'm sure he was not obligated to put him back in that assignment, necessarily.

(Portion of Video of James Rouse concluded)

MR. O'NEILL: Let's take a look at it again in another part of the deposition on page 213, lines 11 through 21.

(Portion of Video of James Rouse played as follows)

BY VIDEO EXAMINER:

Q Does that mean that in 1985, people returning from an alcohol rehab program were subject to extra scrutiny with respect to the job they – they went back to?

A No. As I've testified all along, the norm would be to put them back on the – on the existing position. But if the person looked like they were not having a very good recovery or there were safety concerns, there's nothing that obligated that manager to put him straight back in that job. There's to be some management judgment in that. (End of video).

[3825]

MR. O'NEILL: And on page 214 of your deposition transcript, lines nine through 14

(Portion of Video of James Rouse played as follows)

BY VIDEO EXAMINER:

Q Meaning that the manager, based solely on safety concerns, could determine in 1985 not to put that individual back into the position he or she once held?

A I think I'll just repeat the same answer I've been giving. I'll give it one more time, which is, the norm was to put them back in the job. That would not prevent management judgment which would do something different than that.

(Portion of Video of James Rouse concluded)

BY MR. O'NEILL:

Q So there was no requirement they go back to the same job?

A I have testified here this morning that was the norm and, as I said in my deposition, very clearly, management has the right to manage. We train our supervisors and our managers very carefully, and we do not take their ability to make individual decisions away from them with our drug and alcohol policy.

Q Now, I'm going to use Defendants' Exhibit 3683.

MR. O'NEILL: Offer 3683.

(Exhibit 3683 offered)

BY MR. O'NEILL:

Q Defendants' Exhibit 3683 appears to be some charts.

[3826]

Have you ever seen these chart?

A Yes, I do. This was a draft of a management committee review that we were planning in November of – a copy of that review I believe on November 21st, 1986, which was part of the presentation we later used to get approval for the '87 policy I've mentioned earlier.

Q And you asked the question, what are other companies doing in this area?

A Yes, sir, that was one of the things we discussed with our managers.

Q And other companies test for cause, among other situations for employees that occupy high risk positions?

A Yes, sir, that's correct.

Q And your policy –

MR. LYNCH: Brian, page?

MR. O'NEILL: Here.

BY MR. O'NEILL:

Q At the time, policy violations call for disciplinary action and cannot be avoided by a request for rehabilitation?

A Yes, sir. The context that's in, let's make sure we get these things in appropriate context, was if an employee drove a pickup truck into a tree and then rolled out of the smoking wreckage and said, I've got a problem, our policy is that you can't avoid discipline by asking for rehabilitation at that point in time.

* * *

[3829]

THE COURT: Defendants 3617 is admitted.

(Exhibit 3617 received)

BY MR. O'NEILL:

Q This is a memo, and I'll put a copy in front of you, that you're copied on. Do you see that memo?

A Yes, sir, I do.

Q At least in 1988, this document indicates on chart seven that post rehabilitation testing was not

addressed in your current policy and was commonly done in the industry; do you see that?

A Yes, I do.

Q And is that what the – is that a fair restatement of what the piece of paper says?

A I would testify that – that that is what the paper says. I would not necessarily agree with what the paper said.

Q Comes out of your company; doesn't it?

A It was a draft put together by one of my subordinates, that's correct. A draft, I should emphasize, a draft.

Q And on the next page, the statement is made by
[3830]

somebody who works for Exxon U.S.A., that Exxon is in the minority of companies which do not specify abatement rehabilitation following first positive test; is that a correct statement?

A Yes, that's correct, that's what that draft says.

Q You didn't want Exxon to be out on the leading edge with regard to any alcohol policies; did you?

A I wanted Exxon to have a policy we could implement and I didn't want to be enjoined by the Court, so I wound up with an empty bag and had no policy to protect the safety of the public.

Q Now, I am puzzled by what this page is in the document.

A This was simply a rundown of our pre-employment drug testing results for the year.

Q By race?

A 1987, by race, that's correct.

Q Now, this document has at the end of it, some assessment of the competitive situation with regard to post rehab testing and you compare yourself to two oil companies, Shell and Amoco; do you see that?

A Yes, sir, I do.

Q Post rehab testing Exxon, no; Shell, post rehab; Amoco, post rehab. Do you see that?

A Yes, sir, I do.

* * *

[3832]

Q And you know that the nature of alcoholism is such that it goes abstinence relapse, abstinence relapse, that's a correct statement; isn't it? You know that; don't you?

A Well, I really – I do and I don't, and let me testify to what I do know.

Q Let's take a look at your deposition transcript.

A Well, let me testify what I do know, because I know exactly what I said in my deposition. I said early on I was of the impression that employees who went to rehabilitation tended to be cured when they came out of there, and if they stuck with their aftercare, then there was not a problem.

I have subsequently learned that the relapse rate was a great deal higher than I probably realized that it was and, in fact, I was shocked, as some people in this courtroom might be shocked, in a substance like cocaine it's as high as 90 percent and, frankly, I did not know that.

Q Couldn't tell whether you agreed with me or not?

A I told you what I testified to in my deposition. Or what I recall testifying in my deposition.

Q Let's go to page 48 of your deposition.

A Okay.

Q The questions on page 47. Would this be the case, for

[3833]

example, the alcohol and breath everyone – well, if an individual reported for work with alcohol on his or her breath and it was the first time, would that person – was the policy that that person regardless of the number of times it happened be sent for treatment?

That's a crazy question, but your answer was, again, that would depend on the circumstances. If you look into the subject of alcoholism, you find the nature of alcoholism is abstinence relapse, abstinence relapse, abstinence relapse, and somebody can be having a very successful recovery and still have a situation where they have a relapse. And that's the answer that you gave.

A Absolutely in that context, that's right. We were talking about a period much more recent than the one that you seemed to be talking about.

Q Now, do you have an understanding that over 50 percent of alcoholics have relapses?

A I – that's not a number that I'm familiar with. I would have said it would have been something less than that, but you may be correct. I just don't have the data committed to memory.

Q Go to page 67 of your deposition testimony.

A Okay.

Q Take a look and read along with me.

A Sure.

[3834]

Q The question on line 18 is, your testimony is that your understanding is it's well over half; answer, that's correct.

A Excuse me, sir, you said what page we're on?

Q 67.

A Mine only goes to 58.

Q I'm sorry. Here's 67.

A Okay. Thank you.

Q And if you would, why don't you read to the jury line 18 to line 20.

A Line 18 says, question, your testimony is that your understanding is it's well over half?

That's correct.

What I was understanding between – was that your understanding between 1977 and 1987. And I'm saying are you asking me to give you the date at which I really became familiar with the illness, and I can't do that because I don't know when that was. It's been an evolutionary process, much like I just said, and I've learned a lot about that process as we worked through it.

Q Are you ignorant now? You're more knowledgeable now than you were in 1985?

A No question about that, sir.

Q Did you know what relapse rates were in 1985?

A No, I did not.

Q Should you, because of your position at Exxon U.S.A., have

[3835]

known that information? You were writing an alcohol policy; weren't you?

A No, sir, I don't necessarily think I needed to be familiar with relapse rates at that point in time.

Q You were writing alcohol policies for the company in 1983, '84 and '85, and you don't think you should have been familiar with relapse rates?

A I didn't write a policy in '83. I didn't write one in '84, and I didn't write one in '85.

Q Did you approve them?

A And I did not approve them. I was involved in writing one, as I testified in 1986, which was put out to our employees in the year 1987.

Q And it wasn't necessary to know about relapse rates?

A We were dealing with our medical department, and certainly the medical department was familiar with that and I would have depended on them to provide me that advice if they thought it was a significant issue.

Q Apparently it wasn't, was it, because they didn't provide you with that advice?

A They did not provide me with that data.

Q So it's their fault?

A I'm not saying it's anybody's fault. I'm just saying they didn't provide me with that data.

Q Would you agree with the proposition that at least the

[3836]

society outside of Exxon Corporation, and Exxon Shipping Corporation, that a supertanker captain presents more of a risk to the public than, for example, a secretary or a clerk?

A Yes, sir, I'd agree with that.

Q With regard to Exxon Shipping Company, you don't know what kind of training was provided to Exxon Shipping Company supervisors with regard to monitoring employees who had been through alcohol rehabilitation?

A Sir, you're going to have to put that in a time context. You talking about '77, '87.

Q '85, '86.

A '85, '86. We did drug awareness training in 1984 and '85, and Exxon supervisors were allowed to participate in that training.

Q Did Exxon Shipping Company ever seek your advice on how to go about monitoring an alcohol or drug abuser who had been through rehab and come back to work?

A I don't recall if they ever sought my advice on that.

Q Proper investigation of a report of alcohol use would include interviewing the suspect, interviewing the accuser, and interviewing people that were aboard the vessel and documentation?

A I testified in my deposition that I personally would have documented and investigated an

occurrence in that manner. Certainly it's up to the individual manager on how they do

[3837]

that. That was just my personal view of what I would have done.

Q Makes good common sense and it is an honest way to deal with people?

A I would say that I would have done that, yes, sir.

Q You testified that with regard to these discussions over alcohol policies, you were trying to balance the rights of the employee against the public safety?

A Yes, sir.

Q And putting somebody who had gone through alcohol rehabilitation in charge of a supertanker presents a risk to the public; doesn't it?

A It would depend on why they went through alcohol rehabilitation. I have a fellow, people I'm aware of that went through alcohol rehabilitation because their son was going through and they wanted to go through it so they could experience it with them. So first question I'd ask in that case is what were the circumstances of the individual going.

Q Let me reask the question.

A All right, sir.

Q And I want to get your position. Putting somebody who has gone through alcohol rehabilitation because of problems with alcohol in charge of a supertanker presents a potential risk to the public; yes or no?

A I would say there would be some risk to the public.

[3838]

Q And if you had a supertanker accident, a supertanker grounding, a supertanker mishap, the risks can be catastrophic; can't it?

A No question about that.

Q I'm going to try to summarize your direct testimony, and you can come along with me, if you would, but you're aware that Captain Hazelwood, it was reported to him that he was under investigation in February of 1985 by Mr. Tompkins?

A That is my understanding.

Q And that Mr. Pierce had a conversation with him as a result of an anonymous phone call after the captain already knew he was under investigation, you're aware of that; aren't you?

A That is my understanding.

Q And the captain went through an alcohol rehabilitation program, you're aware of that?

A I am.

Q And the captain held a safety-sensitive position?

A That's your description, but, yes, I'll accept that.

Q And the company's policy with regard to taking care of this captain was such that the only thing you were going to look at was job related performance, you weren't going to look at off duty drinking, whether he was drinking again, that's the company's policy; isn't that right?

A Our policy was to monitor the individual based on their job performance, as I testified, that's correct, sir.

[3839]

Q So if you had Captain Hazelwood who had gone through alcohol rehabilitation and he was drinking again, so long as he didn't drink on company property or come back to ship drunk, his drinking again was hunky dory with regard to company policy?

A Well, I'm sorry, I don't understand what you mean by hunky dory.

Q Wasn't it a violation of company policy for the captain to be drinking again even though he went through alcohol rehabilitation?

A It was not a violation of company policy for him to consume alcohol on his own time and as long as it didn't interfere with his job performance, that's right.

Q And the policies did not require anything with regard to making sure that he was not relapsing, there was nothing in the policy that said, we got to follow up with regard to the general subject of relapse, off duty, personal life, problems, drinking, that kind of thing, except with a strict area of job performance?

A Well, I would not accept your – your definition as you've laid that out. I would say that in a normal supervisory employee relationship, that that supervisor be working with that employee frequently, would have a good understanding of how they were getting along, how they felt, how they were performing their job and they would see a deterioration if that

[3840]

was a problem.

Q We'll get to that in just a minute.

A All right.

Q A relapse – so the company policies would allow – the company policies would allow a relapsed alcoholic to be in charge of a supertanker, so long as nobody knew, so long as his relapsed nature didn't affect his job performance?

A Are you speaking of Captain Hazelwood?

Q No, I'm talking generally, a relapsed alcoholic can work, who has gone through treatment can work for Exxon Corporation and drive a supertanker, according to Exxon Corporation's policies?

A That's correct, sir, with appropriate monitoring.

Q So your policies, knowing the risk to the public, of the catastrophic results of a supertanker accident, allow a relapsed alcoholic to command a supertanker?

A Yes, sir, that's possible under our policy.

Q And you write your policies, you can change your policies, the management committee can change your policies, that's all a correct statement; isn't it?

A Yes, sir, it is.

* * *

[3935]

First, Your Honor, we have very brief videotape of Mr. Graves again.

(Portion of Video of Ben Graves played as follows)

[3936]

BY VIDEO EXAMINER:

Q Do you recall any conversations with Frank Iarossi where you told him that it was your understanding that alcoholism was considered a disability under federal law and as a result, Captain Hazelwood had to be assigned back to sea aboard a vessel?

A That conversation did not take place.

Q If Frank Iarossi said it did take place; he's wrong?

A One of us is wrong, I don't recall it. I remember Frank specifically asking me to check on the company policy, and I do not recall any conversation or me doing anything about any federal investigation of federal statutes.

Q And in your mind, a shoreside assignment for Captain Hazelwood would not have violated company policy nor federal regulation?

A No, I don't think so. Neither would his seagoing assignment.

* * *

[4417]

DIRECT EXAMINATION OF LES R. MEREDITH
BY MR. SCHROER:

Q Mr. Meredith, what do you do for a living?

A I'm a commercial fishermen in the Upper Cook Inlet.

Q Do you have any other jobs?

A I also teach high school biology at Noterdale High School in Lynchwood, Washington.

Q How long are you, sir?

A I'm 53.

Q Do you have a family?

A Yes, sir. My wife Colleen and two daughters. Michelle is 24 and Lori is 21.

Q How long have you been a commercial fisherman?

A I started commercial fishing in 1972.

Q Was that in Alaska?

A No, sir, that was in Washington state.

Q When did you first become a commercial fisherman in Alaska?

A I purchased a limited entry permit in the winter of 1982

[4418]

and was able to fish it for the first time in 1983.

Q Let's take just a minute to talk about your purchase of that. A limited entry permit, could you just tell the jury what that is generally?

A It is a document that gives us the right to fish in a designated area within the State of Alaska and there are a limited number of those permits.

Q And apart from buying a permit, do you need other things in order to be able to fish commercially?

A To be a drift gillnetter, you need a boat, and at the same time, I purchased a boat and the equipment that go along with it.

Q And I take it you need some nets and other equipment to go along with that?

A That is correct.

Q How big an investment did you have to make to become a fisherman in Upper Cook Inlet?

A Somewhere between 100 and 105 thousand dollars into the operation.

* * *

[4433]

Q Did you have crew lined up to work with you in 1989?

A In '89 in anticipation of a big year, I hired an additional crew member that year.

Q So for your 1989 fishing, it was going to be you as the skipper and your daughter and then another crew person?

A That is correct.

Q When did you get up to Alaska?

A Again, I'm not sure of the exact date, but I do know that I was here before the first scheduled opening. We came in in Alaska daylight, which could have been anytime, but it was in late June and we were here before the first scheduled opening.

Q Tell the jury what happened after that.

A We sat and waited on a daily basis for an announcement as to whether there would or would not be a fishery in Upper Cook Inlet for the 1989 season.

Q How did you get information on that subject?

A It was made available to us from the cannery office on a daily basis.

Q Does the Fish & Game Department down in Soldotna, Kenai have a tape recording that you could call on a daily basis to get information?

A Yes, and that's where the cannery was getting it and we

[4434]

could get it also over the radio. There is a program called Fisherman's Corner that runs every afternoon and tells what's happening, as far as if there is going to be openings or strength of the run.

Q When did you finally get fishing?

A We didn't.

Q Well, did a time come when you learned you weren't going to be able to fish at all?

A To the best of my recollection, I think it was on the 16th of July there was a statement made by the Alaska Department of Fish & Game that there would be no drift gillnet fishery in Upper Cook Inlet in 1989.

Q So you caught no fish at all in 1989?

A That is correct.

Q I take it that was not good for your business?

A Not at all.

Q Just a very narrow question on a couple of things. If you didn't fish at all that year, were you able to save any money that you otherwise would have spent on your fishing business?

A We changed the oil twice a season, and the engine was hardly run at all, so that didn't occur. And I usually go through anywhere from eight to a thousand dollars worth of diesel fuel, and I didn't burn that, but other than that, everything else was basically the same.

* * *

[4436]

DIRECT EXAMINATION OF OLIVER N. HOLM BY
MR. O'NEILL:

Q Sir, what do you do for a living?

A I'm a commercial fisherman.

Q What do you fish for?

A I fish for herring, salmon, some halibut and crab in the Kodiak Island area.

Q Where do you live?

A Kodiak, Alaska.

* * *

[4445]

Q Now I want to talk about the 1989 Kodiak herring season. Did the oil spill impact your herring season?

A Yes, it did.

Q And in what way?

A There were a number of areas where I usually fished that were closed because of the presence of oil before we got a chance to fish in them. We did get to fish in some areas, but many of the areas we couldn't fish in.

Q With regard to the areas that you were able to fish in, was there any extra crowding, extra boats, as a result of there being closures in other places?

A Yes, there was. All the boats got crowded down into an increasingly number of smaller areas that were open.

Q Did that result in less fish for you?

A Yes, it did.

Q Did you see oil in your fishing grounds in 1989?

A Yes, I did, in numerous places. The ones that stick vividly is in Marmot Bay. We ran through oil for about six miles, and the west side of Kodiak from out late cape to Uyak Bay, 40 miles of sheen and mousse patties in the middle of May.

Q Now I want to talk briefly about salmon fishing and the Exxon Valdez oil spill. Did the Exxon Valdez oil spill impact your family salmon fishing in 1989?

A Yes, it did. Neither my wife or myself or any of our

[4446]

family members were able to fish in 1989 for salmon.

Q So Kodiak salmon was closed in 1989?

A Clearly all of it. One setnet area on the south end was open.

Q And that isn't your wife's setnet?

A No, she was fishing the northwest Kodiak district. That was closed.

Q How about seining?

A It was closed for the entire year, with one minor exception.

* * *

[4481]

DIRECT EXAMINATION OF KENNETH P.
PARKER

BY MR. O'NEILL:

* * *

[4483]

Q And if you could go through your job history after that for us, and bring us up to date, what kind of things did you do, what jobs did you have?

A Well, I started off in a temporary position, and worked that for just a few months, then I was promoted into a permanent full-time position, and I worked in that position for two years, then I was promoted into the research project leader for Bristol Bay at a research position. I was involved in the season management activities, assessment of run strength to the Bristol Bay sockeye fisheries. I ran field camps and collected data and had to analyze the data and determine the size of the runs. I was also responsible for post season compilation of catch and escapement for Bristol Bay, and another responsibility to generate the annual preseason forecast for the Bristol Bay salmon fisheries.

Q Then what did you do?

A Subsequent to my six years in Bristol Bay research, I moved into deputy director position in Juneau for the Division of Commercial Fisheries, and held that position for six years, and then I was

later promoted into the director position for the division, and I retained that for six years, and

[4484]

then I retired in 19 – in October 31st, 1990.

Q You were both a deputy director and the director of Commercial Fisheries for who?

A For the State of Alaska.

Q And that's the Alaska Department of Fish & Game?

A Yes, that's correct.

Q Have you ever done any service with regard to the North Pacific Fisheries Commission?

A Yes, I served on the North Pacific Fisheries Commission as a – you mean North Pacific Fisheries Management Council?

Q Yes.

A I served as the alternate commissioner.

Q In your years as the director and deputy director of Fish & Game, did you have any responsibility for implementation of Fish & Game's regulatory management's programs?

A Yes, as both deputy and director I was responsible for the inseason management program throughout the state on all species that the State of Alaska had regulatory authority for. The responsibility is kind of cyclic in nature. In season we would spend a lot of time out in the fisheries. Preseason we would be involved in planning activities. In the winter, we would be working with the Alaska Board of Fisheries to develop a

regulatory framework that would be used to manage these fisheries.

* * *

[4490]

Q What fisheries, and everybody knows this but nobody has been asked this, what fisheries were impacted by the 1989 Exxon Valdez oil spill?

A Well, there was a number of fisheries in the central region and westward region that were impacted. We have some exhibits that list those. You might want to –

Q Well, let's go through the maps, if we could. I'm going to bring up Plaintiffs' Exhibit 303, and what is Plaintiffs' Exhibit 303?

A This is an illustration of the Prince William Sound management area with the 11 districts within the management area indicated, and of course we did have a number of fishery closures within Prince William Sound. The major portion of the Montague district was closed, the entire southwestern district was closed. The Eshamy district was closed, and portions of the northern district were closed, and the entire district was closed for 11 days during the peak of the run later on in the summer.

Q And why was the district closed, why were these portions of the district closed?

A Due to problems with oil from the Exxon Valdez. Now, I've been referring to just salmon fisheries.

Q How about herring fisheries?

[4491]

A There were closures on our spring herring fisheries and they take place in various locations throughout the Sound, but basically all the herring fisheries, there are four, they were closed. The sac-roe fishery, it's a fishery on the herring eggs. They harvest the herring so you can extract the egg. We have fisheries on roe on kelp, both in pounds, which are net enclosures that float in the water, and then we have the wild kelp fisheries where divers go out into the fisheries where kelp has the eggs deposited on the blades, and then we also have a gillnet fishery that harvests sac-roe. So we have both gillnet and purse seine harvesting sac-roe.

Q With regard to the four different types of herring that were harvested in Prince William Sound, were all four of those types closed?

A Yes, they were.

Q Who would eat fish eggs on kelp?

A I do, after it's been processed.

Q I might pass on that.

I'd like to, if I could, go to Plaintiff's Exhibit 305.

What is Plaintiff's Exhibit 305?

A This illustrates the Kodiak area management. The Kodiak management area with the district surrounding the Kodiak Island including the mainland district along the Alaska Peninsula.

Q Were there closures in Kodiak as a result of the 1989 Exxon Valdez oil spill?

[4492]

A Yes, there was.

Q And generally, where were they?

A Well, there was major closures in the sac-roe fishery in the spring. I think most of the management areas, management districts were closed. There was some openings. The salmon fishery was pretty much limited to a setnet fishery in the Alitak Bay region. There was some short openings for the seiners in Karluk, this area, but for the most part, the rest of the island was closed to the salmon fisheries.

Q And why were the fisheries closed?

A It was due to the presence of oil.

Q I'm going to bring up Plaintiffs' Exhibit PX 304. What is PX 304?

A This is a map, a chart of the Upper Cook Inlet management area showing the central district along in through here, and then the northern district of Upper Cook Inlet.

Q In 1989 were there any fishing closures in the Upper Cook Inlet salmon district?

A Yes. In the salmon fishery we ended up having to close down the drift fishery that is prosecuted in the upper subdistrict of the central district, and we had a 12 hour closure on the east side setnet beach south of the Kasilof River right in this area here.

Q I'm going to bring up Plaintiffs' Exhibit 306, PX 306, and ask you what it is?

[4493]

A This is a chart again of the Chignik management area showing the districts within that management area, Perryville, western, central, and eastern, and then the Chignik Bay district in here, and this is the – this pointer doesn't want to cooperate, anyway. It

also shows Chignik Lake right here and Black Lake, which are the major sockeye producers for that area.

Q Were there oil spill related closures with regard to the Chignik fishery?

A Yes, there was. I believe without looking at the detailed documents, most of it was on the outside and restricted fishing on the outside coast.

Q What is Plaintiffs' Exhibit 304-A, when it comes on the screen?

A This shows the Lower Cook Inlet management area. Again, here is Anchorage – I mean Homer, for reference, and this is the dividing line here between Lower Cook Inlet and the Upper Cook Inlet management area that we saw before, and the management area includes the eastern outer districts, the Barren Island and southern districts and Kamishak districts.

Q Were there any oil impacts with regard to the Lower Cook Inlet management area?

A Yes, there was closures in the outer and eastern districts, and within the Kamishak district.

Q I'd like to, if we could, go to Prince William Sound and

[4494]

talk for a minute about the timing of the spill versus the opening of the 1989 herring season. Could you tell us about that?

A You know, the spill of course occurred in late April, and our herring fisheries –

Q Late March?

A I'm sorry, late March, and our herring fisheries in Prince William Sound are run anywhere from early April through late April. So we were, of course, facing the beginning of our herring fisheries almost immediately after the spill had begun.

Q Did the herring fisheries open?

A No. We summarily closed all of them.

Q Now, I want to talk generally about something called the zero tolerance policy and a memorandum of understanding concerning the zero tolerance policy, and I'm going to place in front of you Plaintiffs' Exhibits 274 and 279, which are in evidence. What was the zero tolerance policy?

A Well, the zero tolerance was a term that was coined during the early development of this memorandum of understanding, and it related to how the department was going to manage the fisheries in view of the oil potentially interfering with it, the normal prosecution of fisheries. The final product, out of discussions at the area level and at headquarters and at throughout the state with our managers and people in the industry, was that we developed this memorandum of

[4495]

understanding which is an agreement essentially between two state agencies, the DEC and the Alaska Department of Fish & Game, and it basically lines out who is going to be responsible for what kind of actions and how we're going to proceed. It was a document that also provided information to the industry on what to expect from the state.

Q What was the problem that presented itself? Why did you need to have a memorandum of

understanding? As a practical matter, what issue are we addressing?

A Well, we had a tremendous problem facing management with the presence of the oil, and there was no way, in some situations, that we could prosecute a normal fishery, so something had to be done. We needed guidance out there for our area managers to follow so that they would know when to close, you know, how to close, how to proceed.

Q Now is that referred to as the zero tolerance policy? Did it stay a zero tolerance policy?

A No, not really. It was a name that caught on and it's often referred to as the zero tolerance, but actually the important point is that this document spelled out when the department would close fisheries, would react to oil, and within the document we have the terminology, appreciable likelihood, and that is used in the document to kind of guide when the departments would take action. When we perceived that there is a likelihood that gear will be fouled, fish harvested

[4496]

adulterated by the oil, or the conduct of an orderly fishery could not take place, basically what we're saying is if we perceive a problem, a likelihood to measure a likelihood of something happening, we would have to react to close these fisheries down, and that was the basically the concept in the MOU.

Q So if there was an intersection between oil and fish, and that created a likelihood of a problem with oiled fish or oiled gear, then the department had to take some regulatory action?

A That's correct.

Q In the development of this policy, was Exxon Corporation or their representatives invited to participate in that development?

A Yeah, there was a number of meetings that occurred in the Cordova area, and it's my understanding that they were invited to participate in those proceedings.

Q And Exxon has stated in it's opening here that it agrees generally with the zero tolerance policy. Were there any criticisms of the zero tolerance policy by Exxon to you as the director of the fisheries?

A No, not that I can recall.

Q Now, we talked generally with the closures using the maps. I am now going to ask you some more detailed questions about the closures using Plaintiffs' Exhibit 283, it's PX 283. What is – let's get it so we can read it.

[4497]

What is PX 283?

A This is a listing of the specific closures that occurred as a result of the 1989 season from the spill.

Q Would you generally go over the first page of PX 283?

A Certainly. This lists the closures that took place in Prince William Sound, and the first one is the pacific herring fisheries, and we did close the gillnet and purse seine sac-roe fisheries along with the pound, wild roe on kelp April 3.

The next fishery was the shrimp fishery. It was in progress at the time. We closed that down April 3rd, and we had also a trawl shrimp fishery we closed April 9th. And this lists also the closures that

occurred in '90, in 1990, and we had a small spot shrimp harvest that usually occurs around Knight and Eleanors, and we closed that for the 1990 season. We had blackfish, I mean sablefish fishery that closed April 1st, and it did reopen later with the halibut opening. Dungeness crab we closed April 30th for the season. King crab we also closed October 1st, and groundfish and closed April 30th, and re-opened along with the halibut opening in mid June. We had miscellaneous shellfish we closed on April 24th, and we basically didn't issue any permits in that fishery. And the pink, chum and sockeye fisheries we closed, as I indicated before, the Eshamy district, portions of the northern district, and all the northern district for 11 days.

We closed the southwestern district and parts of the

[4498]

Montague Island district. In 1990 we had some area right around Eshamy Bay that were closed for just a few days and then re-opened, and there was portions on the LaTouche Island around Eleanor and Ingot that were closed to fishing for that season.

Q Would you do the same drill with regard to page two of Plaintiffs' 283?

A Certainly. This lists the Upper Cook Inlet fishery, and of course we have the sockeye salmon fishery.

Q Sir, could you just hold on for a minute? Sorry to interrupt you. Let me get this so we can read it.

MR. LYNCH: Thank you.

BY MR. O'NEILL:

Q Start at the top again.

A Have the Upper Cook Inlet fishery, and that's the sockeye fishery I was referring to before. We closed the central district drift fleet and a portion of the beach on the south of the Kasilof River for a 12 hour period. The rest of the central district drift fishery was closed.

In Lower Cook Inlet, we had a shrimp fishery that was closed April 30 and opened it July 7th. We had miscellaneous shellfish fishery that closed on the 24th of April, and the outer and eastern districts, and the groundfish fishery that we also closed in the outer and eastern districts, and they were closed April 30th. The fishery did reopen for all species except sablefish on June 12th in conjunction with

[4499]

the halibut opening.

Smelt remained closed with groundfish in the outer and eastern districts beginning April 30th. Pacific herring we had the sac-roe fishing in the outer and eastern districts closed April 15th prior to the regular opening date. Pink salmon fishery we had the same fishery in Kamishak Bay that opened and closed by emergency order. We did have some areas that remained open in the Kamishak district, and the Tutka Bay subdistrict north of a particular point, probably get into this when you get into Lower Cook Inlet. They were closed to seining on July 10th.

Q What do we have on the third page of Plaintiffs' Exhibit 283?

A This is the same general information for the Kodiak fisheries. We have the pacific herring fisheries, and approximately 34 of the 56

management units were closed for the duration of the sac-roe season.

Q I'm going to try to pull it up again.

A That's better. The sockeye and pink fishery. As we indicated, the setnet fishery in the Alitak district was open, but that was pretty much it. The other fisheries were very limited. We did have a two-day seine opening in the Karluk Lagoon on the west side of Kodiak Island in mid September, but the rest of the Kodiak management area was closed to commercial salmon fishing.

[4500]

Chignik is indicated here and it's a sockeye fishery and the fishery – the outer portions, the eastern were closed due to the presence of oil, and we did have some closures in the Chignik Bay district for a little bit of time and the fishery was restricted to the inner parts of Chignik Bay.

Q And with regard to all of the closures in PX 283, why did these closures occur?

A They were implemented in response to our MOU that spelled out, you know, how we would handle the presence of oil in our salmon fisheries, and well, all of our fisheries, and how we would react.

Q And that MOU was a result of the Exxon Valdez oil spill?

A Yes.

Q Did you visit Prince William Sound after the spill?

A Yes, I did.

Q And when was that?

A That was one week after the beginning of the spill.

Q And tell me about it?

A Well, I flew into work with our managers and assess what was going on, and see for myself firsthand the magnitude of the problem, and begin activities to design research activities that we would implement to assess the spill's impact on our fisheries.

Q What did you see?

A Well, I flew over Prince William Sound and inspected

[4501]

the Exxon Valdez on Bligh Reef, and then I flew towards the southwest corner over the spill area. Pretty much spread all the way to the outlet of Prince William Sound in that corner. We don't have a map. Maybe put up that map of Prince William Sound.

Q Sure. I'm going to put up on the screen Plaintiffs' Exhibit 303. Now, using the map, tell us what you saw?

A Well, I flew into Cordova, then took a light airplane to survey the situation. We flew up here to Bligh Reef and around the Exxon Valdez, and I observed oil moving throughout this area and down through here. We flew in a southwesterly fashion through this area (indicating) and through these – I observed the oil existing through these passes, and we flew over to the AFK, the AFK hatchery that's located on San Juan Island, and observed the booms and the activities there, and then we swang back up

here and took a look at this area by Eshamy, and then back to Cordova.

Q Where are the principal salmon spawning streams in Prince William Sound?

A Well, we have 1100 spawning streams within Prince William Sound, and they are pretty much spread throughout the periphery of the Sound and the larger islands, and you know, fairly well distributed.

Q Distributed throughout the Sound?

A Yes.

* * *

[4513]

Q Did the oil spill in 1989 have any impact on the management of the Prince William Sound fishery?

A Well, the – probably the most major impact was the elimination of the ability to fish in the southwestern district – well, essentially, the southwestern corner of Prince William Sound, where all these fish are migrating into Prince William Sound. The Montague district and the southwestern district are down in that corner, along with the Eshamy district. They were closed for the season. Even up in the northern part of Prince William Sound, or where the northern district is, a portion of that was closed to protect it from potential oil/fish interaction. So essentially this upper part was the portion that was open, and, furthermore, during the peak of the season, from I believe it is the end of July to about the end of the first week of August, this whole district was closed due to an oil incident.

So, to back up here, this part was closed, so the managers were forced into a situation where they had to rely on how the escapements were developing in these areas to assess the run. They didn't have the ability to put that fleet out there and

[4514]

see what the catch per unit effort might have been during an opening.

In normal years, in normal years, this district, southwestern district –

Q We'll bring it back up for you.

A – accounts for over half of the commercial salmon, pink salmon catch in the purse seine fishery, over half. So that opportunity was gone.

* * *

[4684]

DIRECT EXAMINATION OF DR. RICHARD
KOCAN BY MR. JAMIN:

Q Dr. Kosan, how are you employed?

A I'm on the faculty of the University of Washington School of Fishery.

Q And in connection with your appointment, do you teach?

A Yes, I do.

Q What do you teach?

A The course I'm specifically responsible for is aquatic toxicology, and I also lecture in other people's courses.

Q And in connection with the aquatic toxicology course, do you deal with issues of genetic toxicology?

A Yes, I do.

* * *

[4702]

Q All right. Sir, given – given these numbers, when would you expect herring that were embryonic, that would have been the subject of spawning in 1989, to first start coming back as spawning fish themselves?

A Traditionally you would expect to see the first ones entering at three years old, so that would be in 1992.

Q Then would a substantially larger group come in in 1993?

A 1993, a much larger group would enter the population, and that's the first year you would expect to see them actively spawning or participating in the spawning with the rest of the population.

* * *

[4734]

Q Now, do we have some pictures from your own larvae from your own study with respect to the Exxon Valdez?

A Yes, we do.

Q Let me pull up 481.

A Okay. Here are represented three larvae. The anterior, or middle of the body toward the head, were exposed in my laboratory to Exxon Valdez crude.

The center larvae, that's a normal individual, the jaws are

[4735]

normal, the eyes are where they belong. The yolk sac, which is this little gadget right here and carries all the nutrients this little fish will live off of for about the first ten days to two weeks of its life. It's normal, all the muscle structure in the body, you can see all the segments appear normal.

Now, at the very top of the screen you see the yolk sac is very much smaller, the yolk is smaller, there is a lot of space in that sac. And in the bottom one, the pericardial region, that means the region around the heart, just below that second dot is filled with fluid, and this is a condition called pericardial edema, or fluid filled sac around the heart.

These are some conditions I found in the larvae that I worked with. Go ahead.

Q Let me show you the next one you asked me to have available, 479.

A This is a close up to give you a better view of the head and how the development occurs. The larvae at the top is a newly hatched normal larvae. Its jaws are developed in such a way that they will meet each other when they close. The spine is straight, the yolk sac is relatively normal, no problems.

The larvae to the left, you see the upper jaw is mostly missing because the eye is hanging or protruding below the level of where the upper jaw should be, and the entire jaw line, as you can see, extends clear back behind the eye,

[4736]

which is abnormal if you compare it to the fish on the right-hand side. And just behind the head there is a kink in the spine.

Subtle differences, but still differences that are going to affect the survival of these individuals.

Q Call up the next one you asked that I show you, sir.

A This individual goes without explanation. I think it's fairly obvious there is no way this individual is going to hatch.

Now, in the higher concentrations that I used in the laboratory studies, 100 percent of the larvae that hatched were this type of configuration. They were just totally deformed and totally incapable of survival on their own.

Q Next I have 480.

A This is again another individual. You see the yolk sac is very small. The yolk sac there is much smaller than it should be. The tail is obviously deformed and the upper jaw is truncated; that is, it has grown out as far as it should so it properly meets with the lower jaw. And the gill region just behind the lower jaw is obviously swollen and deformed, it would be right there, the entire body structure of this animal is not right, as you saw in the picture.

Q Let me show you 485.

A This shows herring larva that obviously has a bent spine, the yolk is fairly normal, proper sides and location. There is no problems anterior to the yolk sac, but the eyes are

[4737]

protruding from the side of the head and the lenses are protruding from the eyeballs. Obviously there is a gross deformity and no chance of survival.

Q Next one.

A This fella is upside down, it has no lower jaw, and you can see there is no lower portion to the face, which would be facing up in this case. That's where the lower jaw should be. The top of the head is here, where that unusual bump is, and the eyes are hanging down into what would be the roof of the mouth.

Q Finally 487, sir.

A This one has a grossly deformed spine and it has no facial features, no mouth, no eyes, no ears. They have overlaid ear bones, not capable of surviving on its own.

Q Now, sir, in your research was there a relationship in the sorts of deformities which we've seen and the concentration of Exxon Valdez oil to which the eggs were exposed?

A Yes, there was a relationships between the two.

* * *

[4741]

Q Sir, do the concentrations that you chose to use in the lab reflect the sorts of concentrations that might have been found in the areas where herring spawned, were deposited in 1989?

A The concentrations that occur in the field situation following an oil spill are quite variable, and they range from pure oil to no oil, so – and they also depend on how much mixing has occurred and how recently after the spill it has occurred, and a number

of factors. It's possible that these concentrations were present in the field in oiled locations following the spill, but a direct comparison between the field and the laboratory is not really possible because you can't exactly replicate all the conditions that occur in the field in a laboratory situation.

The experiment was designed to demonstrate that in the presence of oil there was an adverse effect on these embryos.

Q Let's go right on to the field, then. Was there research done in the field which reflects the effects of the oil on the herring and which overlaps what you did in the lab?

A Yes. There were field studies conducted from 1989 through 1992 in the field in Prince William Sound.

Q Did you participate in some of those?

[4742]

A I participated in studies from 1991 and 1992, but had access to the data that had been developed prior to that time.

Q Can you explain to us what the mode of research was in the field?

A The field studies involved – in 1989, they involved the collection of herring embryos from sites that had been oiled and from sites that had not been oiled, and these embryos were brought to the laboratory, and in the laboratory they were incubated in seawater and allowed to hatch. And then the same types of abnormalities – or the same types of observations were made to determine whether or not there were abnormalities or

mortalities occurring in these larvae that had hatched from oil or – on the oiled or presumably unoiled embryos.

Q Let's look at 514. Does that reflect some of the evidence from the field, sir?

A Yes. This graph represents three years of field data collected by other members of the Trustee team working just prior to and up to the time I became involved in the study, and – that's what they represent.

Q What does – does it show certain areas that were oiled and certain areas that were not oiled?

A Yes, it does. There are three bars represented for each year. If you see along the bottom of the years, 1989, '90, 1991 are represented. The blue bar, or the bar on the left for each of these years is from Fairmount Bay. It's in the north

[4743]

end of the Sound and was reported to have been not directly hit by the oil plume. That's Fairmount Bay.

Now, the other two bars represent Rocky Bay, which is on the north end of Montague Island and is a herring spawning area and was reported variably to be oiled or lightly oiled by different investigators. And the third bar represents Naked Island, which was completely surrounded by the trajectory of the spill in 1989 and was also a spawning area for herring at that time.

And what this graph shows for 1989 is that the two oiled areas, the two bars on the right, produced significantly more physical embryos with more physical deformities than did the site that had

embryos from the unoiled site. So embryos from an unoiled site had more normal and less abnormal larvae than did the embryos that were collected from the two oiled sites.

Now, in 1990 all of the physical deformities or physical deformities in all of the sites was very dramatically reduced the year following the spill. But, again, if you look at 1990, you'll see the same trend, and that is that the Fairmount Bay, or the blue bar, represents the very smallest number of abnormal larvae, and the two oiled sites, or the two bars on the right, represent larger numbers. And in this case, the difference is – I'd say it's about a hundred percent doubling, or a hundred percent increase between Fairmount Bay and Naked Island.

* * *

[4755]

Q What did you find?

A On the basis of that study we found that those female herring that were collected from oiled sites produced fewer live larvae at hatching than did the females collected from unoiled sites. I don't know if I got that backwards.

Q You can say it again and clear it up.

A In case I got it wrong, fewer of the eggs hatched from the females that were collected from oiled sites than from females that were collected at unoiled sites. The unoiled females were more successful than those from the oiled sites.

Q Now, up until now, sir, we've shown some pictures of herring from the lab. I'll show you 503 and ask you to tell us what that is.

A These are three herring that were obtained from Prince William Sound or were hatched from hatchery spawned eggs in Prince William Sound in 1989. The top larvae is a newly hatched normal larvae. The larvae on the left and on the lower right and lower left are both abnormal. They have bent spines, eyes, deformed snouts of a variety of different types of damage. These were collected – the larvae on the top was derived from eggs that had been collected from an unoiled site and the two at the bottom were collected from oiled sites.

Q Let me show you next what's been marked 504.

A This is again a similar representation. There are three larvae here with varying degrees of abnormalities, again all

[4756]

collected from Prince William Sound and used to demonstrate that the types of abnormalities that you've seen in the laboratory are similar to those that we found in the Sound in 1989.

Q Now, sir, having made the comparisons that you did between your laboratory work, field work that you did and the field work that others did, do you have any conclusions to present to the jury about the relation between Exxon Valdez crude oil and herring following the spill?

A Yes.

Q Have you collected those in 494?

A Sure. The conclusions that I came to following the studies I did with Exxon Valdez oil were that if herring embryos are exposed to crude oil in the laboratory, that you can get, and you do get,

premature hatching of the embryos, of the larvae. You also get an increased number of abnormal larvae, and this is dependent on the concentration of oil that's present. You get lower weights in even the normal appearing larvae that had been exposed to oil relative to those that had not been exposed to oil, and there is increased cytogenetic or heretical damage in the exposed individuals compared to the unexposed.

* * *

[4760]

Q So the most severe effect from the spill focuses on this '89 year class, and that's the class that is returning for spawning in '93 and '94?

A That's correct.

Q Now, were the opinions that you've shared so far with the jury today formed prior to your having been retained by Plaintiffs in this case?

A Yes. Those were based on data that was available at the time, were formed prior to being retained.

Q And that was when you were with the Trustees?

A That's correct.

Q Based upon the field work and lab work you and others had done with herring, did you form an opinion in 1992 that the herring returning in 1993 would be more susceptible to disease than normal because they were exposed to Exxon Valdez oil?

A Yes. The conclusions of the synthesis committee that met following the completion of all the studies, was, as I recall, I'll try to paraphrase it, that all year classes that were present in 1989 had been affected

to some degree by exposure to oil, and that all of them would very likely have been – have suffered some form of damage to their immune system. And I believe we predicated an increase in disease frequency following that.

[4761]

Q And was your prediction realized, sir?

A Well, in 1993 there was appearance of large numbers of lesions in Prince William Sound herring, in the spawners, and these lesions at the time appeared to be related to the presence of a virus known as VHS, or viral hemorrhagic septicemia.

Q Let me break that down. First, what is a virus?

A It's a submicroscopic organism that invades or requires a living cell for its own existence, and it lives in and depends on that cell for its reproduction. Some viruses are not known to cause any problems and others are known to be quite severe pathogens.

* * *

[4936]

DIRECT EXAMINATION OF DR. PHILLIP
MUNDY BY MR. JAMIN:

Q Sir, are you currently employed as a consultant?

A Yes, I am.

Q And are the two principal issues you're focusing on now the recovery of Columbia River basin salmon and the effect of the Exxon oil spill on salmon?

A That's correct.

Q And in the former capacity with respect to Columbia River basin salmon, are you working with

the United States Fish & Wildlife Service, the Bonneville Power Authority, the Yakima Indian Nation and the Nez Perce Tribe of Native Americans?

A Yes.

[4937]

Q And with respect to the second issue, are you working with the NRDA Trustees, and specifically the Alaska Department of Fish & Game?

A Yes, I am.

Q Apart from your work for the Trustees, have you done research in Alaska fisheries?

A Yes, I have.

Q And has that been every year since 1976, sir?

A That's right.

Q Let's take a moment to look at your education. Did you receive a bachelor of science in zoology from the University of Maryland?

A Yes.

Q And a master of science from the University of Alabama Tuscaloosa?

A Yes.

Q And a Ph.D. from the University of Washington in Seattle?

A That's right.

Q And was your thesis on the timing and management of the Bristol Bay salmon fishery?

A That's right.

* * *

[4980]

Q And is it your opinion that the Exxon Valdez oil spill in 1989 was a significant contributing factor to the very low population levels of both hatchery and natural pink salmon in Prince William Sound in 1992 and 1993?

A Yes.

Q And have you prepared a chart with your calculations on the effect of the spill on pink salmon in Prince William Sound after the spill?

A Yes.

Q I'm going to show you a portion of what's been marked Exhibit 318, and let's focus, if we may, sir, on the first line, which I'll try and get the right portion on the machine. We want to save a little bit of the excitement here. Thank you.

MR. COOPER: Always happy to see your excitement.

BY MR. JAMIN:

Q In 1990, sir, can you explain to us what that first line reflects?

A Looks like –

Q You can't use – you're on the overhead. Yeah.

A This number here is a number that I discussed with you earlier. This is from the fish and shellfish study 28. This

[4981]

is the Geiger number produced for harvest – I mean, adjusted for harvest. They have applied a harvest rate to the number that he calculated, lost – to figure

out what portion of those fish lost would have been taken by the harvest. Same is true in 1991. But the numbers in 1992 and 1993 are different numbers.

Q In what way, sir?

A Well, these numbers up here, '91 represent partial impacts of the oil spill. They estimated what we were able to measure in the time available with the resources available. These numbers down here (indicating) are deviations, negative deviations from the forecast. Each year Fish & Game makes a forecast of how much the fleet can expect to harvest so the fleet can prepare for the abundance that it's going to encounter out there. And these harvest forecasts are based on the number of fry that they have in the spring of the preceding year.

That's – as I told you, some of the people were going out to actually check on those fry at the time of the Exxon Valdez oil spill. That's why we had people out in the field at that time.

So they forecast the harvest that's going to be available based on the abundance of fry in the preceding year and also the weather data. And forecasters who work with Fish & Game, they are not Fish & Game people. That forecast is

[4982]

based on other things as well, but this particular forecast that we see for 1992 and 1993, the method is based on fry and weather data.

And this number is the difference between what Fish & Game expected to come back in 1992 and 1993 as harvest, that's the harvest portion of it, and what actually showed up. And you can see while the numbers for '90 and '91 are small numbers, these

two numbers are really big numbers, because the forecast was totally high, was extremely high in 1992 and 1993. They expected a lot more fish to come back in 1992 and 1993 than actually showed up.

Q Now, let's go back to the 1990 fish. How would this group have been affected by the oil?

A The 1990 estimate is based on reductions in growth from the '88 brood year. Now, you just – on pink salmon, you just subtract two to get the brood year. So in 1990, 1988 would have been the brood year, so that was the young fish trying to get out of the Sound at the time of the Exxon Valdez oil spill. They swam right into it.

And so – and these were the reductions in growth that were measured by the federal studies and the state studies on wild fish and hatchery fish, translated into survivals and projected forward into adult harvest.

Q And the 1991 fish, sir?

A 1991 numbers is a small number because it's based only

[4983]

on the embryo mortalities, the egg deaths in the oiled streams just for the southwestern district. Streams that were oiled, okay? So it's only a portion of a district and based only on the egg mortality factor, not on any other impact that the oil may have had on the 1989 brood year.

Q With respect to 1992 and 1993, were these sorts of deviations between the expected harvests from ADF&G and the actual returns seen in other areas of the state, sir?

A No. That's one of the reasons that these negative deviations were so unexpected and are such a cause of serious concern for me and for other salmon population biologists. The other big pink producing areas of the state, such as southeastern Alaska and Kodiak, which grow up in the same areas in the Gulf of Alaska and experience the same type of offshore marine mortality, are having record years. They are producing lots and lots of pink salmon and the survivals are very good.

These forecasts were quite low, and that was completely unexpected.

Q Sir, do you have an opinion as to whether the sorts of problems that we've seen in 1992 and 1993 with the pink salmon in Prince William Sound can be expected to continue in 1994 and 1995?

A Yes. I think the factors that we've seen, particularly the concerns about the problems with the ecosystem, the problems with the other species and the fact that these

[4984]

forecasts are so lower – I mean, these runs are so low relative to the forecasts, these forecast errors are huge. Until we see a positive deviation or a run that comes in on the forecast, I don't see anything that leaves me of the opinion that these factors are changed, and, if anything, they may be accelerating.

* * *

[5040]

Q Did Mr. Spies write at the top: As the oil moves through Prince William Sound and out into the Gulf of Alaska, the slicks were also swept into the mouths

of streams where salmon breed and where the salmon fry were soon to emerge from the gravel and find their way to saltwater?

A Yes.

Q Did he write: 75 percent of the wild pink salmon in the Sound spawn at the mouth of streams?

A Yes.

Q Did he say that: There was no apparent change in the use of this habitat by fish in the summer of 1989 and many salmon deposited their eggs in the intertidal portion of oiled streams?

A Yes.

Q Did he say: In the autumn of 1989 egg mortality in oiled streams averaged about 15 percent compared to about 9 percent in unoiled streams?

A Yes.

Q Did he go onto say that: Since 1989, egg mortality in the oiled areas has generally increased?

A Yes.

Q Did he go on to say that: In 1991 and 1992, approximately 40 to 50 percent of the salmon eggs in oiled streams did not survive as compared to an 18 to 30 percent mortality in unoiled streams?

[5041]

A Yes.

Q Did he go onto say that: In 1993, though the rates of egg mortality had dropped to an average of less than 25 percent in oiled streams and less than 15 percent in unoiled streams, the differences still persisted?

A Yes.

Q Did he say: Although the differences between salmon egg mortality and oiled and unoiled streams over the first two years were likely attributable to the effects of oil scientists did not expect these differences to persist as long as four years after the spill. At first they thought oil was directly affecting survival of the pink salmon eggs, but as the amount of oil on the shorelines decreased, other explanations began to seem more plausible. Perhaps there was a genetic effect which young that carried over into adulthood and was inherited by the next generation?

A Yes.

Q Did he say: In 1993 the story took another turn.

Returning adult pink salmon were captured as they entered oiled and unoiled streams, their eggs spawned in the laboratory and raised under controlled conditions. This experiment showed that the differences in egg mortality between pink salmon from the oiled and unoiled streams when both were raised in the laboratory were as great as the differences seen in the wild, essentially eliminating environmental factors from

[5042]

consideration?

A Yes.

Q Did he go onto say that: It now appears there is an inheritable difference in egg mortality for fish from oiled versus unoiled streams?

A Yes.

* * *

[5045]

DIRECT EXAMINATION OF JAMES
CRUTCHFIELD BY MR. O'NEILL:

Q Just so we know where we're going, you're a fishery economist?

A More broadly, a natural resource economist with a heavy concentration in fisheries.

* * *

[5073]

Q Now I want to ask you a couple questions about the exhibit. The actual price of salmon beginning in 1984, in fact through 1988 for Cook Inlet reds, rose?

A Yes, it was increasing steadily in that period.

Q And then between 1988 and 1999 (sic), over the time of the oil spill, we get a precipitous drop?

A That's correct.

* * *

[5083]

Q Have you formed an opinion, sir, as to whether the 1989 Exxon Valdez oil spill had an impact one way or another on the price paid to fishermen?

A I have. I think it did have such an effect.

Q And what was the effect?

A The effect was to lower prices paid to fishermen in response to a situation which the traders viewed with real alarm and uncertainty and which gave them the incentive to use the spill as a very strong bargaining weapon in negotiating prices for the coming years' pack. This was an ideal weapon to use

to get the price down. Fishermen had no other place to go with their fish, and the spill had a very

[5084]

strong influence on the bargaining process exactly as it had in the Braer case and others.

* * *

[5165]

Q Thanks. You talked for a minute about the Japanese buyers with him and with me. Would you explain to the jury the role that the oil spill fills in the negotiations between the Japanese buyers and the Alaska fish processors?

A Yes. I believe strongly that the spill, which did constitute the major out-of-market impact that could possibly have been expected on the salmon market as a whole, had the effect of tilting the bargaining process very, very strongly in favor of the buyer. He had a weapon in his hand, the market was uncertain. There was no way of knowing whether or not the kind of consumer reaction that had resulted from widespread knowledge of the spill would result in a situation in which they might be caught with some very expensive inventory that would prove to be unsellable or sellable only at reduced prices.

These dealers operate on relatively narrow margins, processor and the trader above him. They cannot, in holding inventory, bear the full risk of that degree of uncertainty. This was the reaction we found in the Glacier Bay case, was the reaction we found in the Braer case and the Shell case.

Q And in point of fact, with regard to sockeye prices in Alaska fisheries, what happened?

[5166]

A We got a sharp decline in prices, ex-vessel prices to fishermen.

Q And that happened in the Bristol Bay sockeye fishery?

A Yes, it did.

Q And it happened, indeed, in every major Alaska sockeye salmon fishery?

A It did.

Q And with regard to the one that we've been talking about, specifically the Upper Cook Inlet sockeye man fishery –

A Yes.

Q – does this depict in fact the average ex-vessel prices of sockeye salmon in Upper Cook Inlet, Plaintiffs' Exhibit 739?

A Yes, it does.

Q From 1983 through 1988, the price had gone up continuously; hadn't it?

A Yes.

Q What happened in 1989?

A In 1989 it plunged very sharply.

* * *

[5171]

DIRECT EXAMINATION OF ROBERT
MENDELSON BY MR. O'NEILL:

Q Sir, what do you do for a living?

A I'm a professor at the Yale School of forestry and

Environmental Studies.

Q You're a professor of what?

A I'm a professor of natural resource economics.

* * *

[5181]

Q Did you reach a conclusion about the impact of the Exxon Valdez oil spill on salmon and herring prices?

A Yes.

Q What conclusions did you reach?

A I've concluded that the Exxon Valdez spill damaged the reputation or damaged the image of high quality fish coming out of the Alaska seafood market, and this resulted in lower prices for those fish from 1989 through 1991.

[5182]

Q And that included red, pink, chum and kings?

A That's correct. The salmon that I've concluded have been damaged would be the red, sockeye, the king, the chinook, the – not the coho, the pink and the –

Q Chums?

A The chums, yes, thank you.

Q And with regard to silvers, you were unable to reach a conclusion on silvers?

A That's right. In my opinion, the evidence was mixed with respect to silver, and to be conservative, I've assumed that there's no effect there.

Q How about herring?

A It – it's clear that there's effects in the herring roe market and roe on kelp market, both.

Q Those effects are the result of the Exxon Valdez oil spill?

A That's correct, that the Exxon Valdez oil spill has affected those markets, has limited the premium that used to be associated with those products and has resulted in lower prices.

Q How did you go about studying the effect of the Exxon Valdez oil spill on the price of Alaskan seafood?

A Well, the first step was to look at exactly what the prices did over time, so that was my first line of attack.

Q And what prices did you use?

A Well, the question that – that's on hand is what's [5183]

happened to the price that the fishermen have received, so rather than going to later prices, prices that are further down in the market chain, I examined exactly the prices the fishermen were getting, the ex-vessel prices.

Q I have pulled a boo-boo, but we had some preadmits for today that I should have done before the doctor – I'm going to put you over in suspended animation, if I could for a second, and do the preadmits, because it'll save some time with your testimony.

MR. O'NEILL: For the record, plaintiffs would offer the following exhibits: Exhibits – Plaintiffs' Exhibits 518, 519, 520, 522, 523, 524, 3645, 3647. Exhibit 430, 530, 531. Exhibits 439, 440, 441, 442,

443, 444, 445, 446, 447, 448, 449, 450, 451, 454, 455, 456, 457, 458, 459, 460, 780, 781, 783, 784, 786, 789, 790, 792, 793, 6004, 6005, 6006, 6007. (Exhibits 518, 519, 520, 522, 523, 524, 3645, 3647, 430, 530, 531, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 454, 455, 456, 457, 458, 459, 460, 780, 781, 783, 784, 786, 789, 790, 792, 793, 6004, 6005, 6006, 6007 offered.)

THE COURT: Are there objections to any of these exhibits?

MR. COOPER: Your Honor, at least insofar as those exhibits concern this witness, those are agreed upon as preadmitted.

[5184]

THE COURT: The exhibits just announced by Mr. O'Neill are admitted.

(Exhibits 518, 519, 520, 522, 523, 524, 3645, 3647, 430, 530, 531, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 454, 455, 456, 457, 458, 459, 460, 780, 781, 783, 784, 786, 789, 790, 792, 793, 6004, 6005, 6006, 6007 received.)

MR. O'NEILL: Thank you, Judge.

BY MR. O'NEILL:

Q Let's – if we could take a look at Exhibit 440, what does Exhibit 440 show us?

A Well, as you can see from looking at this exhibit, the prices of – the ex-vessel prices of sockeye have gone through a number of fluctuations. The most important factor is that for a long time prices have been in an upward trend through the '80s, but suddenly in '89 they've taken a precipitous drop, and that drop has continued through '91.

Q Now, these prices on Exhibit 440 are the actual ex-vessel prices for those years?

A Yeah, this is what the fishermen were actually paid. This is their annual payment, the average salary for the year.

Q For the sake of clarity, could you draw a red circle, if you can get that thing up there, around the '88/'89 time period?

A Well, this is '88, which was a peak year, and this is '89,

[5185]

after the spill. So these are year end prices.

Q Now, I want to take a look, if we could briefly, at what happens – that's for sockeye, red salmon?

A Yes.

Q Let's take a look at pink salmon and see what happens with regard to pink salmon, and we're going to look at Exhibit 441 with regard to pink salmon, and what do we see on Exhibit 441?

A Well, the same kind of pattern. The prices rose in the late '80s, but then following '88 again being a peak year, and then following that there was an abrupt reduction in prices in '89. The price reduction was continued again through '91.

Q So in 1988, the pink salmon price was above – or about eighty cents a pound, and by 1991 it's below 20 cents a pound?

A That's correct.

Q What do we see with regard to king salmon prices?

A Again, you can see that in the '80s there was an increase in prices, and then when we reached '88, there's again a peak, and then again, following it back, there's an abrupt decline and the prices at this point just stay at that level.

Q And on Exhibit 790, we have chum salmon.

A And, again, you see the same pattern that in the '80s, the prices were rising rapidly. They reached a peak in '88 and abruptly fell in '89 and then again slightly more in '91.

Q Now, I'm going to put up silver, because as we proceed we're going to talk about silvers, but just to remind

[5186]

everybody, you could not come to a good conclusion on silvers?

A That's correct. On coho, I was unable to conclude that the oil spill was in fact the culprit for this.

Q And what –

A Again you see the same kind of effect, that the prices rise to '88, reached a peak and then fall abruptly in '89 and stay down in '89.

Q Let's take, if we could, a look also at the two predevelopment herring products, sac-roe herring and herring roe spawned on kelp, and we're going to take a look at Exhibit 458, which deals with sac-roe herring, and tell me what we see with regard to sac-roe hearing?

A Sac-roe herring, you can see this is a shorter time line. This is slightly different than the salmon. We didn't have data going as far back, so this is entirely the '80s, and what you can see in general, the prices

were rising, again they reached a peak in '88 and then abruptly fell in '89 and stayed low.

Q And herring roe spawned on kelp, which is Exhibit 457, what do we see there?

A Again, you see the same pattern that prices were rising through the '80s, reached a peak again in '88 and then fell abruptly in '89, and in this case, the prices then recovered somewhat.

* * *

[5191]

Q I'm going to leave this board up, but I'm going to pull up on the TV Exhibit 444, which is in evidence. Do I have – I've got a board. I'll use a board. Changed my mind. I'll put up the board. And what is this Exhibit 444?

A Now, what the exhibit shows – this is a very important exhibit. What this exhibit shows is what the model predicts would happen and what actually did happen, and if you look at the data points from 1964 through 1988, the orange line shows you what the model predicts would happen. As you can see, the orange line actually tracks actual prices fairly closely, so the model, normal market factors are explaining a lot of the variation that you observe in the actual prices, up through 1988.

In 1989 through '91, we used the relationships that the model has predicted from all those previous years and we

[5192]

predict what those prices would have been if the spill had not occurred; that is, just looking at the market factors alone, what would the prices have looked like,

and what this model predicts is that the prices would have in fact increased over this time period. And if you look at '81, '90, '91, they would have actually slightly increased over the 1988 price. In fact, if you look at actual prices, actual prices took a sharp drop.

In my opinion, the difference between these two is the taint effect. It's the effect the oil spill had on sockeye prices.

Q I've going to parse that out into three parts. The first is up to 1988. Let's just talk for a minute about up to 1988.

Up to 1988, the orange line is what the model predicts and the black line is the actual price, and you get a good fit?

A Yes.

Q And is the fit that you get here significant to somebody in your business?

A Yes. It's saying that this model is – the market factors included in this model actually are capturing a lot of the variation that you observed happening in the marketplace up until 1988, through 1988.

Q Okay. The model predicts that the prices would continue on the same general incline that they had been on since 1983, for 1989, 1990 and '91. That's a correct statement; isn't it?

A That's correct.

[5193]

Q But in fact, there is a crash, which we've already talked about, in red salmon or sockeye prices?

A That's correct.

Q So that tells you that something's rotten in Denmark or Alaska?

A Something other than normal market factors has happened, and it happened in '89. That's what it tells you.

Q And you've heard Dr. Crutchfield's testimony about the history of these kinds of things. Is this kind of effect in your view consistent with an environmental disaster like the Exxon Valdez oil spill would have on the price of a product like red salmon?

A Absolutely.

Q Is it your opinion that the drop in price between the predicted value and the actual value that the Exxon Valdez oil spill was the major contributing factor to that price drop?

A That is my opinion.

MR. O'NEILL: Can we take a break now, Judge?

THE COURT: We'll take our recess at this time, ladies and gentlemen. We'll be in recess for 15 minutes.

(Jury out at 9:58.)

(Recess from 9:58 a.m. to 10:16 a.m.)

(Jury in at 10:16.)

MR. O'NEILL: Thank you, Judge.

BY MR. O'NEILL:

[5194]

Q Now, we were talking about Plaintiffs' 444 when we took our break, and you used an expression in

describing this here, the effect, the red effect, you called it the taint effect?

A That's correct.

Q Would you explain that to us?

A What that – what this graph shows, what that red area shows, is that if you look at all the market factors, prices should have increased, but in fact they did not. And the question is what could have caused that, and it's pretty clear from past evidence that from very small spills, even very small spills have a subtle affect on prices. So we have experience with the Glacier Bay spill, we have some experience with the spill in the Shetland Islands, we have some experience with the Torrey Canyon spill. In all those cases we have some evidence that following the spill there was a price effect, and the price effect – I'm calling it taint.

And in the case of sockeye, my theory is that the reason why you see such a big taint is that this is a very high premium product. This is the fillet mignon of fish. This is one of the top products and top types of seafood in Japan. And when you find out – when there's a threat in the consumers' minds, risks, small risks, even that perhaps there's something wrong with this fish, it dramatically affects that premium and that premium gets wiped out. And that red area is the taint effect, the effect of that premium being eliminated.

[5195]

Q The premium was eliminated, in your opinion, as a result of the Exxon Valdez oil spill?

A Exactly.

Q You mentioned the Torrey Canyon spill. That's a new spill here in the room. It isn't for the world, but it is for this room. When and where did the Torrey Canyon spill occur?

A I think it was in the '70s. It occurred off the coast of France, close to England, and the evidence that people had was, following that spill, the prices for catch, French catch, actually fell even in places where there was no spill, no effect, no direct effect, people observed for the year following that spill that the prices had in fact fallen.

* * *

[5203]

Q Now, Exhibit 430 is an exhibit that we used with Dr. Crutchfield, but it shows a precipitous decline in sockeye salmon throughout Alaska, including Bristol Bay, southeast, plus the four oil spilled areas?

A That's correct.

Q Is the fact that there was a precipitous decline in Bristol Bay and southeast consistent or inconsistent with what you've done here?

A Well, my model is – actually examines Alaska-wide prices, and from what little we can understand of the consumer market in Japan, consumers there do not know where the salmon come from. They don't know which area the salmon come from. They just know that this is sockeye, and so whatever has happened to the sockeye market, it's going to happen to every one of these areas.

Q So if there's an impact in Prince William Sound, Kodiak, Chignik and Upper Cook Inlet on sockeye, the market perceives that as an Alaska-wide impact?

A That's correct.

* * *

[5207]

Q And with regard to sac-roe herring, you took a look at the factors listed in Exhibit 783, and with regard to roe spawned on kelp, you took a look – I'm sorry, the sac-roe, you took a look at the factors listed in Exhibit 459, and with regard to roe spawned on kelp factors, you took a look at the factors listed in Exhibit 783; is that a correct statement?

A Yes.

Q Let's see what the results are. I've placed in front of the jury Exhibit 456, which I'll bring up on the screen. And what does the exhibit show?

A The exhibit shows exactly the same patterns as we just saw for the – or for salmon; that is, prior to 1988. The model does have a reasonable job of capturing the small change in prices that you see, that growth in prices that you see in the sac-roe herring market, and then following that,

[5208]

predicting what the prices would have been, the market actually predicts that the prices would have pretty much stayed at that level.

It would have stayed near the level you observed in 1988 and in fact actual prices declined very dramatically from there.

Q We get high prices before the spill and a crash in prices after the spill?

A That's what the observed prices do, but that's not what the model predicted would have happened.

Q The model predicted the prices would have remained fairly stable?

A That's right. There would have been a slight decline in prices in 1989, but then they would have bounced back.

Q The red reflects the damage to the fisherman price?

A That's right, that red area reflects the size of the taint effect.

* * *

[5256]

DIRECT EXAMINATION OF ROGER LOHRER BY
MR. O'NEILL:

[5257]

Q And, Mr. Lohrer, what do you do for a living?

A I'm the owner of Dock Street Brokers.

Q What does Dock Street Brokers do?

A We're the brokers for commercial fishing vessels and limited entry permits.

Q What does a broker do?

A A broker, basically we act as a clearinghouse for buyers and sellers of permits, bring the buyers and sellers together.

Q So if I wanted to sell my permit, you're like a real estate guy for permits?

A Exactly.

Q And I could come to you and – and you'd help me sell it, or if I wanted to buy a permit, I could come to you and you'd help me buy it?

A Yes, that's correct.

Q Do you have any experience in the Alaska fishing industry, sir?

A Yes. That is our primary area of operation.

Q Have you yourself worked in the fishing industry?

A Yes, I have. I ran tenders in Alaska for approximately 15 years.

Q And in what areas in Alaska?

A Chignik, Kodiak and Southeast Alaska.

Q And when you say you ran a tender, a tender is the guy who goes out and picks up the fish from the fishermen?

[5258]

A That's right, and then delivers the fish back to the cannery.

Q How long have you been in the broker business?

A This will be our 17th years.

Q And during those 17 years, have you bought and sold permits?

A Not personally, but yes, I have arranged sales.

Q You have arranged sales of the permits?

A Yes, that's correct.

Q And of boats?

A Yes.

Q And in what areas do you buy and sell permits?

A In every area in the state of Alaska, as well as Washington and down the coast.

Q And how many employees does Dock Street Brokers have?

A During our normal selling season, which is October through June, we have four full-time employees.

Q And have you sold limited entry permits for Upper Cook Inlet, drift and setnet gear types?

A Yes, we have.

Q And Prince William Sound, various gear types in Prince William Sound?

A Yes.

Q Kodiak?

A Yes.

[5259]

Q Chignik?

A Yes.

Q Salmon and herring?

A Yes.

Q Since 1990, 1991, has there been a change with regard to the frequency of sales and the prices for permits in Prince William Sound, Upper Cook Inlet, Lower Cook Inlet, Kodiak and Chignik?

A Yes, there has.

Q And would you tell us about it?

A Since 1991, particularly after the release fish report 27, we've seen a drastic drop in both the value of the permits, that would be the selling price, as well as the number of the permits we sell. And we also see it taking a lot longer for us to find buyers for permits in those areas.

Q And so the permit prices have dropped?

A Yes, that's correct.

Q And it's harder to sell a permit out of those areas?

A Yes. In some of the areas, there's almost no market whatsoever.

Q And you said that that happened after fish study 27, or the announcement of fish study 27?

A Yes. We first started seeing it in the fall of '91 and then that fall and then the following spring and winter, so we saw the drop really hit us.

[5260]

Q And you've worked in this area and talked to these people?

A Yes, on a daily basis.

Q And in sales negotiations for Prince William Sound salmon permits, what reasons have buyers cited for not higher prices?

A The main thing we're hearing from the fishermen is they're concerned about the long-term and short-term effects of the oil spill and whether or not there's going to be sufficient runs or whether or not they're even going to have the opportunity to fish at all.

Q And how about Kodiak?

A In Kodiak, yes, we're seeing the same general concerns from the fishermen.

Q And with regard to Kodiak salmon seine prices, for example, what's happened to Kodiak salmon seine prices?

A In 1991, we were seeing prices in the range of 125,000 to \$140,000, and those prices now are down around 40 to \$50,000.

Q And with regard to the sales negotiations for Kodiak salmon seine permits, what reasons do permit buyers cite for not paying higher prices?

A The main concern is the long-term effects of the oil spill on the fisheries.

Q With regard to Prince William Sound herring permits, what's happened with Prince William Sound herring permits?

A We've seen a really radical drop there. Those permits prior to '91 were almost impossible to find. In 1991, '92,

[5261]

those permits were selling for approximately \$150,000, if you could find one to sell. And this year they're trading for approximately \$50,000 right now.

Q What reasons do buyers cite for not being – for attempting to drive the price down with regard to Prince William Sound herring permits?

A Again, it's the effects on the oil spill on the herring, the fact that we're seeing diseased herring or herring with lesions on them, and lower quotas and just the runs appear to be in danger.

Q Okay. With regard to the numbers of permit sales, the activity in permits –

A In all permits or just Prince William Sound herring seine?

Q Let's take Prince William Sound salmon permits.

A That's probably the most drastic reduction on any permits that we've seen in the state. Those permits, we've sold them for as much as \$250,000. This year, I believe we had three sales, one I'm just completing when I go back to my office tomorrow. It is at 33,000. The other sales that we had this year were in the range of 50 to \$65,000, if you could find a buyer.

Q With regard to the number of – the sales activity that you've seen with regard to the various permits that we've talked about, compare, if you would, the sales activity in, for example, 1991 with the sales activity in 1993.

[5262]

A Well, not having the number offhand, I can give you an approximation. I would say that they are probably 25 percent of the total that they were prior to the –

Q So people are buying fewer permits?

A And paying less, yes.

Q And does it take more time to sell a permit now?

A Yes. Typically, Prince William Sound salmon seine, for example, if you could get one listing, you know, in October, we would generally have those sold within a month or two, sometimes within a day or two. Now we've had permits listed in Prince William Sound for both herring and salmon that

have been listed for over a year without any offers at all.

Q So people just won't buy them?

A That's right. They're getting down to the point now where I think most of these buyers are speculators that are just hoping that, you know, something may happen or there may be an improvement, but they're buying them and hanging on to them rather than even fishing them.

* * *

[5277]

DIRECT EXAMINATION OF ROSALEEN MOORE
BY MR. SARKO:

Q Good afternoon, Ms. Moore. My name is Lynn Sarko. I'm one of the plaintiff attorneys. Could you tell us how long you've lived in Alaska?

A I was born in Anchorage and I've lived in Alaska my entire life.

Q What do you now do?

A I'm having a little trouble hearing. Must be a fan or something.

Q What do you now do?

A I'm a commercial fisherman and I also own a boatyard and

[5278]

storage facility with my husband and a boat brokerage in Homer.

Q I understand that you actually have quite a background in commercial fishing?

A I've fished in Alaska all my life. My parents owned setnet sites in Cook Inlet since 1939. I imagine I picked my first fish when I was learning to walk. I've – I personally have – is that okay?

I've personally fished Cook Inlet setnet, Cook Inlet drift, False Pass drift, Bristol Bay drift, Prince William Sound herring. My husband has fished in three of the major seine fisheries, two of the gillnet fisheries and crab fisheries of Alaska, and my children fish also.

Q Wow. I want to get into just briefly some of your background. You're a past board member of CFAB; correct?

A Yes, that is correct.

Q That's a new term. Can you explain to the jury what CFAB is?

A CFAB is Alaska Commercial Fisheries and Agricultural Bank. It is a private cooperative. It was funded by the State of Alaska to loan and then has leveraged money outside of the state to loan to commercial fishermen and the agricultural industry in Alaska.

Q Do I also understand that you're a board member of United Fishermen of Alaska?

A I've been a board member several times of the United

[5279]

Fishermen of Alaska and I am presently a member.

Q And what is that?

A It is a united – it basically handles political action in the state, and board members are made up

throughout the state from different areas and different fisheries groups and kind of a watchdog of politics of Alaska fisheries.

Q During your time in commercial fishing, have you personally sold and bought various vessels and permits?

A My husband and I personally, since 1966, sold and owned 17 different vessels. We also have sold our own permits in many of the areas and transferred to different areas.

Q I'd like to get into your line of work. You are a commercial permit broker; correct?

A Yes, I am.

Q And the name of your business is?

A Northern Enterprises.

Q And how long has that business been – how long have you been involved in this?

A I started the brokerage business in 1981.

Q And is the business with your husband?

A He does very little in the brokerage business. It's really my own.

Q Let me just quickly get to the subject at hand. You've sold limited entry permits and I would just like to review in what areas.

[5280]

A The areas that our business sells permits in is Prince William Sound, Cook Inlet, Kodiak, Alaska Peninsula and Bristol Bay. We do some work in Southeast, but geographically since we're located here, north, we do very little. The other ones are

where our primary business is and Cook Inlet is our real primary – I mean, it's where we sell the most.

Q The jury has heard the mention of fish study number 27. Since 1991 when that came out, have you seen a change in the price of permits that you've been involved with in your business that have been bought and sold since the release of that study?

A Well, the information on the study started coming out in the fall of '91 and the actual study came out just after the first of the year in '92. When that word came out and started getting onto the street, basically, that Cook Inlet would have very little fishing in '94, '95 and '96, permit prices started to drop drastically. I personally had some concerns and gave a call to a biologist about it that fall.

Q And the permit buyers and sellers that you dealt with raised this as a concern?

A Repeat the last –

Q The permit buyers and sellers that you were involved with spoke about this to you?

A Yes, they did. I probably deal – we store 500 boats. Half of those are from Cook Inlet, so on a daily basis and a

[5281]

yearly basis, I must talk to thousands of fishermen, and in the Cook Inlet area, probably, you know, couple hundred in a year. And they were very concerned about what their future held for them and would they be able to make a living in the fishing industry.

Q Let me move on to Prince William Sound. Did – what happened to permit prices in Prince William Sound?

A Permit prices in Prince William Sound actually started to decline right at the oil spill. The one area that dipped immediately and started going down and just furtherly, especially, the seine permit eroded. The drift permit went, too, down and kind of went across the board for a while and now it's went down even more.

Q What types of concerns did Prince William Sound buyers voice to you?

A Well, the first few years, or right after the oil spill, I had many complaints that they couldn't even get loans and to even buy anything. So that started the first erosion, and they just don't know what the long-term effects are of the oil. The herring fishery has been closed for two years due to lesions on the fish. The salmon fishery last year, guys did not even break even. I know of only one person that had any substantial pounds, and he was the only one practically fishing in the Sound. And he stayed over there and scratched it out, but the rest could not even make their payments. Our son-in-law did

[5282]

not even go because of it.

Q These were concerns that were being raised to you?

A These were concerns. They talk about it daily. They just – what are we going to do, you know.

Q You mentioned the term lending and I'd just like to briefly touch on that. Do you have dealings with

the State of Alaska Department of Investments in connection with the financing and purchasing of limited entry permits?

A Yes, we do. They financed the primary amounts of permits in Alaska to state residents.

Q And you briefly discussed what CFAB was?

A Yes.

Q Are you familiar with those lending requirements?

A I'm real familiar with it. We do loan preparation, along with the sales of permits.

Q And have you observed the lending requirements change since January of '92?

A Yes, I have. After the report came out, fish study 27, the State of Alaska issued a directive that they were drastically going to reduce the amount of money they loaned into the Cook Inlet and Prince William Sound fisheries. Before they would loan 90 percent of the appraised value of the fishery, and 80 percent if you had additional collateral.

After the directive came out, it was 50 percent. You had to come up with 50 percent of the cash in order to buy a permit

[5283]

in those areas.

Q And in connection with those lending requirement changes, the effects that you've mentioned have been voiced as to what was the effect on the fisheries?

A Yeah, fisheries families basically no longer could – even if they had some confidence, which they don't,

no longer would have the capital to enter into the fisheries and they're very concerned about it, and the lending institutions did not want to have anymore loans on the books that weren't well financed and had a lot of collateral because they knew they were going to have enough trouble with the ones they already had on the books.

Q Let me just quickly go over some of the various permit areas. Starting with Cook Inlet, can you tell me what you've observed happening there in prices, the market, how quickly the permits have sold and whether there is a market?

A Well, prior to about '91, it – I think Roger and I probably both had to stay awake nights to see who was going to get the sales. It was an absolute frenzy. If I got a permit on the table or on the desk from somebody, I'd probably have it sold in 24 hours to 48 hours and we were looking for permits constantly because we had a large list of buyers. After that, we have a large list of sellers and very few buyers.

Q And the prices have plunged?

A The price in 1980 – 1990, excuse me, one was over \$200,000

[5284]

and I had people standing in line to buy them. And the last permit we closed for Cook Inlet was 58,000 and that was a month ago.

Q Let me ask –

A That was for Cook Inlet drift.

Q Let me ask you about Prince William Sound salmon permits. There's been a change there also?

A There's been a drastic change. Right at the oil spill, I had several contracts of prices around \$300,000 for Prince William Sound salmon seine, and we recently closed a permit, I think it was April 30th, for 34,500. On the same day, CFAB auctioned a permit off that bought basically the same price, and so did the State of Alaska. And those were foreclosed permits and the one I sold was involved in a bankruptcy.

Q And there, similarly, has been a change in the number of people who wanted to buy permits to now, the few people who want to buy permits?

A The numbers are drastic and also the make-up is drastic. I just don't have very many. I used to have pages of people that wanted to buy permits in any area of Alaska and now it's – you can advertise a permit in almost any of these areas for months and not get anybody to come up to it. They're all looking for bargains, and if they do put their name down, they say, well, if the Sound permit reaches 25, give me a call, if Cook Inlet reaches 45, give me a call. They just aren't interested and

[5285]

they are – I guess they're investment seekers, they're not really fishermen anymore.

Q When you say – just to be clear, when you say these areas are having trouble selling permits, these are the oiled areas?

A That's right. It's Prince William Sound, Cook Inlet, Kodiak. It is not the Alaska Peninsula and it is not Bristol Bay.

Q Let me take you to Prince William Sound herring. Is there a similar problem with selling those permits?

A Yeah. Prince William Sound herring sold for \$250,000 and now there's nobody that wanted one. I heard of one that sold for 70, but I did not personally handle that in our office, and there's just no – you know, who wants to buy into a fishery you're not going to fish?

Q And, lastly, are you seeing the same problems in Kodiak salmon permits?

A I have permits listed for Kodiak for 40,000 and I can't sell them. There are no buyers.

Q And there's been a drop in those –

A The high was \$180,000.

* * *

[5363]

DIRECT EXAMINATION OF HANS JAHNS

BY MR. SANDERS:

* * *

[5363]

Q Doctor, I want to go into your background to some extent in a moment, but first I want to ask you, as of right now, you're serving as a consultant to Exxon; correct?

A Yes.

Q And how long have you been in that capacity?

A Since the first – since early January 1993.

Q And prior to January of 1993, you were an Exxon employee, an Exxon scientist, for a period of 30 years; is that correct?

A Yes.

* * *

[5447]

Q As I understood your direct testimony, we've got roughly 25 percent evaporating, roughly 40 percent, and you've refined it now either on the shores or near the shores?

A Yes.

[5448]

Q Or coming into the shores in Prince William Sound, and 35 percent has gotten out of the Sound?

A Right.

Q Translate for me in gallons what that 40 percent would represent, sir, given the amount that, in your mind, left the Exxon Valdez.

A A little over four million gallons.

Q About four million gallons?

A A little over, yes.

Q Now, of the 35 percent that left the Sound, do we know that some ended up along the beaches in the Kenai Peninsula and in the – in the area down here, sir?

A Yes.

Q And is that because of the general flow of the currents along this southern portion of the northern Gulf of Alaska?

A Yes. The Alaska coastal current will take it that way.

Q And do we know that some of the oil came into Cook Inlet and lodged in areas that I'm pointing to right now, on the north shore here?

A I'm not specific on shoreline segments, but generally, yes.

Q All right. And do we know that some of the oil went over into – besides the Cook Inlet, went into the Shelikof Strait area and lodged itself on the Alaska Peninsula?

A On some segments there, yes.

[5449]

Q And do we know that some of that oil went and lodged itself on Shuyak Island and Afognak Island and Kodiak Island?

A Yes.

Q And that that oil went all the way down passed Chignik on the Alaska Peninsula?

A It went passed Chignik, yes, what was floating, and floated even farther, ended up in the Pacific Ocean.

Q All right. Now, that's a portion of that 35 percent that we talked about –

A Yes.

Q – that had been sort of freed from Prince William Sound in 1989?

A Right.

Q Can you tell me now what percentage of that 35 percent ended up on those beaches, sir?

A No. I don't have – haven't made an estimate of that.

Q Haven't made that calculation?

A No.

Q And Exxon didn't ask you to make that calculation; did it?

* * *

[7002]

THE COURT: Good morning, ladies and gentlemen. This is the continuation of trial in case A89-0095, civil, in re the Exxon Valdez. We are ready to commence Phase III of this trial and I have some further preliminary instructions for you.

We will now begin Phase III of the trial in the case arising from the Exxon Valdez oil spill. In Phase I of this case you found that Joseph Hazelwood and the Exxon defendants were guilty of reckless conduct which resulted in the grounding of the Exxon Valdez on March 24th, 1989. In Phase II-A of the trial you awarded sums of money for actual damages to various commercial fishermen to compensate them for the losses legally caused by the Exxon Valdez oil spill.

In this Phase III of the trial you will decide the amount of punitive damages, if any, that should be awarded against the Exxon defendants and/or Joseph Hazelwood. In this third phase of the trial the claims of all who suffered actual damages caused by the oil spill have been consolidated into a single proceeding for purposes of determining whether punitive damages should be awarded against the defendants and, if so, the amount of such damages.

[7003]

This includes claims of persons who are suing for their actual damages in the state courts because of these – because of this consolidation of claims. There will be no other claims for punitive damages in any other court with the exception of the claims that you resolved in Phase II-A. You will not be asked to decide the true amount of the actual damages, if any, to which other claimants are entitled.

In a few cases the parties have agreed to the amount of actual damages sustained by certain claimants. As to other claimants, the parties have entered into a stipulation which states the approximate amount of the actual damages claimed by other persons who contend that they were injured as a legal result of the oil spill. This information will be provided to give you an idea of the amounts of additional actual damages claimed by other plaintiffs, although those claims are disputed in whole or in part by the defendants.

The purposes for which punitive damages are awarded are, one, to punish a wrongdoer for extraordinary misconduct, and, two, to warn others against doing the same. The amount of any award of punitive damages should be fixed using calm discretion and sound reason. You must not be influenced by sympathy for or dislike of any party in the case.

Punitive damages are not favored in the law and are never awarded as a right, no matter how egregious the defendants' conduct. This does not mean, however, that the plaintiffs'

[7004]

burden of proof of punitive damages is any different from this of Phase I. You must decide whether or not plaintiffs have established by a preponderance of the evidence that, one, an award of punitive damages should be made in this case, and, two, if so, in what amount.

* * *

[7013]

MR. O'NEILL: Thank you, Judge.

May it please the Court, Counsel, Ladies and Gentlemen of the jury. What is the appropriate punishment for reckless conduct by one of the largest institutions in the world? That's why we're here, the conduct that we're talking about you have found to be reckless, and I'm going to take about three minutes and revisit Phase I, but I'm going to do it very briefly.

The Phase I jury instruction that you were given at the time described a defendant who was conscious of a particular grave danger. He disregarded the risk, or it disregarded the risk, and the conduct in ignoring the danger or risk was a gross deviation from the level of care. That's good old jury instruction 28, to revisit what happened, and in response to that instruction and other instructions which you read as a whole, you returned this special verdict in which you found the conduct was reckless, and this is why we're here. If you would have said no, no, no, we wouldn't be here, so this is a session that you convened.

[7014]

This conduct, this reckless conduct, was a finding by you that Exxon Corporation deviated, grossly

deviated, from the standard of care that we expect of it and all others like it. So we're back here in Phase III to decide on the amount of punishment.

Now, briefly, the punishable conduct spanned five years, from 1985 to 1989, and it included within Exxon Shipping Company almost everybody in Exxon Shipping Company. We had the West Coast fleet manager, Gulf Coast fleet manager, we had Frank Iarossi, we had everybody up and down the chain of command at Exxon that had complicity in what happened, so it wasn't a lark. And with regard to Exxon Corporation and the defense of what happened, we had complicity again from the top to the bottom.

We had the people who run Exxon Corporation, the most powerful people in the world involved in telling Congress what did and didn't happen, and they were involved in coming in here and telling you what did or didn't happen. And the Exxon Corporation medical department were involved in what happened, the head of the medical department. So Exxon Corporation and Exxon Shipping Company, up and down the chain of command, participated in this conduct.

And with regard to their position on what happened in Phase I, they told you that it was okay for recovering alcoholics to drink again. They told you that relapsed alcoholics can pilot

[7015]

supertankers. They told you that alcohol had nothing to do with the grounding and they told you that Captain Hazelwood was the most closely monitored man in the fleet. And that it wasn't told to you – none of those things were true, but that

wasn't told to you by low level Exxon employees, that was the position of Exxon in this courtroom in Phase I, and none of those things were true.

Now, that's about all I want to say about the conduct. We'll revisit the conduct in the closing, but I do want to talk a little bit about the risk taking, because the risk taking, the risk that they took with the public, just wasn't right. This was Mr. Rouse's testimony right at the end of Phase I: So your policies, knowing the risk to the public, of the catastrophic results of a supertanker accident, allow a relapsed alcoholic to command a supertanker? Yes, sir, that's possible under our policy.

This is a foolish, callous risk, it is; doesn't accord with anybody's common sense, and Mr. Rouse was from Exxon Corporation, not from Exxon Shipping Company.

Now, another risk that they took, so we can put the conduct into some kind of context, was with spill sizes in Prince William Sound, and this is Mr. Stevens who testified before the Congress: My own view is that that occurrence, 200,000 barrels in Prince William Sound, was viewed, quote, so highly unlikely that the consequences of it which have occurred pretty much

[7016]

well – which have occurred pretty well as much as envisioned were viewed as acceptable by today's retrospective that may be incomprehensible, Mr. Chairman, well, it is incomprehensible, but this is a risk taken with specifically Prince William Sound, and it was a conscious knowing risk that they took with the Sound, if there was a big spill, oil was going to hit the beaches, a knowing conscious risk.

Now, there were other risks that were taken, but I'm not going to go into all of those, but I do want to highlight the testimony of two Exxon chief executive officers, Frank Iarossi, the president of the shipping company, and Mr. Raymond, who at the time was the president of Exxon Corporation. Now, Mr. Raymond is with us today and is going to testify, but Mr. Iarossi was aware of the risk associated with the transportation of crude oil, we understood the risks in the business, yes; we understand the responsibilities, yes, sir. And Mr. Raymond was aware that with regard to managing this risk, and it is a big risk, that the selection of the master and the evaluation of the master was a good way to manage the risk.

So there were chances taken with the public with the alcohol policy, with the selection of the master, with the knowledge that if there was a big spill in the Sound, oil was going to hit the beaches. These were all risks that they took.

[7017]

Now, the risk that they took were with people that didn't have a choice. If you're a fisherman in Prince William Sound or a landowner in Prince William Sound or a Native subsistence harvester in Prince William Sound, you didn't have any input into these risks, these were risks that were taken by other defenseless people at Exxon Corporation, and knowing that these risks consisted you have found that they acted recklessly.

Now, they also took risks with regard to the enforcement of rules and laws, the fatigue rules and laws. They took risk with regard to ice, they took risk with regard to their attitudes towards the

treatment of employees, they took risks with regard to widespread people problems throughout the institution, and they chose those risks.

I mean, this is a collection of smart, well-educated, talented people who should know better, but in any event the verdict – we don't need it again, the verdict is such that the conduct requires punishment and the conduct requires punishment in this case even more so because of the nature of the individuals involved. These are people who ought to know better, and they will show you in this next phase that they do know better.

Now, Exxon is one of the biggest institutions in the world and is given a privileged status in society. And why do I say it's given a privileged status? If 50 or a hundred of us got together and went out and got involved in an activity, in a lot

[7018]

of instances the law condemns that, it's a mob, conspiracy, but the law recognizes that there are advantages in allowing people to act together. And we have corporations, and a corporation is a sanction from society that says we're going to allow you to pull people in together and operate together, but that is a gift from society, and Exxon is allowed to operate as a corporation in a lot of countries. It has a tremendous size, a hundred thousand employees, and in Alaska it's allowed to extract the people's oil. This isn't Exxon's oil, it's the people's oil, it comes primarily from public lands. That's a gift to it.

The Exxon executives, mostly the Exxon employees, acquire some wealth while they work with Exxon Corporation, and they are given this in exchange for two things. They provide a service to

society, a very valuable service. They provide us with our oil and gas, they do, but the second half of that is, if we're going to allow you to become wealthy and rich and operate in a corporate form and take our oil out of the ground, we want you to be responsible, we want you to be careful, we want you to be caring. And in this case, that trust, that deal with regard to Exxon Corporation and oil and size and wealth, was broken.

Now, as His Honor said, the purpose of punitive damages is to punish the wrongdoer and deter others, and the size of the award has to be looked at in terms of punishment and

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deterrence, and I'll talk more about that in the closing when I know more about what His Honor's instructions are going to be in the closing. But right now punishment and deterrence, and this is okay, but it isn't okay. What is punishment for a poor man could be nothing for a rich man, and in legal terms they call that the rule of proportionality.

Punishment for a poor man can be nothing for a rich man, so we have to – and the primary proof that you're going to see in Phase III, we're going to see two, but the primary proof is going to be with Exxon's size wealth.

Now, I'm going to go over for a minute in some detail how we talk about corporate wealth and I'm going to show you the exhibits, and when we put our numbers guy on, he's going to go through it, and when Mr. Raymond takes the stand, we'll go through it, and then I'll go through it in the closing.

And you say why is the dummy going to go through it four times. It's to avoid jury question triple Z. Little jury humor.

THE COURT: Too early in the morning.

MR. O'NEILL: Pat Lynch and I had to sit and wait for the questions, if you wonder where these come from, from sitting at our office.

But it is important, and corporations publish year-end reports and annual statements, and this is one of the exhibits, and you're going to get these for a number of years in exactly

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this form, color, nice. They are required by law to publish them.

The Securities and Exchange Commission and the 1934 Security and Exchange Act required that they file things with the Securities and Exchange Commission. There are requirements that they publish financial data to their shareholders and the investing public. These are put together by accounting firms, the big six or seven accounting firms, and the company – and they are very serious documents and they contain information that is as accurate as – a company with the size of Exxon Corporation with its accountants can make.

They include at the beginning sort of a pitch on how well investors do in Exxon Corporation and highlights for the year, and then there is a letter to the shareholders, which is sort of the top guy's view of what happened last year, and then there is sort of a – I guess sort of a fluff – sections of fluff pieces on the different departments, and when you get back to the different colored pages, and I think they are

different colored because of time deadlines and putting them together, they go through extreme detail all of the financial aspects of the corporation.

There is an appendix to this that has further financial information in it. They are done on a yearly basis. These year-end reports, annual statements, they are done on a yearly basis, and we will have a Mr. Sam Rhodes' testimony about these

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at some length.

We will also put on some summaries of them, and Mr. Rhodes will tie these reports to the summaries, so you'll know exactly where the numbers come from, and I'd like to take a look at one of the key summaries for a minute and he's going to go through it, and Mr. Raymond is going to go through it, but I'm going to go through it so we know what we're talking about.

This is Exhibit 6302-A, which will be preadmitted and which will be in evidence, and what we have done is we have taken from the year-end statements some of the key indicators and we laid them down by year from 1988 to 1993, so if you were to go to this book and look at assets and trace them through on a year-by-year basis, you'd build this chart.

Now I'm going to bore you with a little Economics 101 and go through these categories. Assets are essentially what the company owns. Revenue is the gross amount of money that it generates through whatever it does. After-tax net income is what it has left after it spends everything for the year. Cash flow includes after-tax net income plus other things that the company has money to spend on. So if the

company has \$10.55 billion in cash flow, it can take some of that money and reinvest it back into the company, \$5 billion, and still have a five billion after-tax net. Makes sense. This is property, plant and equipment, this is what it spends on that.

The cash dividend, and this is in billions, is what it paid

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to its stockholders in cash dividends that year, all of them. This is the stock price that it sold at the end of the year, this is the one number that is not in the year-end statements. You've got to go and look in the Wall Street Journal on the last trading day of the year and see what that is. The outstanding number of shares is in here.

Market capitalization is the stock price times the outstanding number of shares. That is what is the investing public – what numbers to place on the company.

Earnings per share are the earnings of the company per share. This is in regular dollars. Dividends per share, what they paid out on a dividend of one stock, and the equity of the company is what its books and records show is the value. So you have essentially two valuations. You have a market capitalization valuation; that is, what is stock payers willing to pay and what kind of equity does the company have on its books and records. These are a variety of different indexes that one could look at in judging the size wealth of Exxon Corporation. Of note to our purpose here, is that every year they have had a three, four, five billion after-tax net.

In 1989 the after-tax net was down a little bit, but it's down for a couple reasons. The spill is one, but they also did a lot of investing in the future in 1989. 1989 was a building year. But you can see with regard to assets, revenue, after-tax net, cash flow, investments in the company, cash

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dividends, their stock price, the number of outstanding shares remains constant. Market capitalization, earnings per share, dividends per share and equity, that Exxon Corporation is substantially better off today than they were in 1989, they are. And indeed on the dividends that they pay to their shareholders, they paid \$2.15 in 1988. The year of the spill the shareholders got a higher dividend, \$2.30, and increased the next year to \$2.47.

Now, nobody is going to question these numbers. Exxon will provide different ways of looking at them, and I'm going to talk about those in a couple minutes, but these are the numbers and this company is so healthy that a spill like the Valdez spill is, with regard to their regularly published numbers to the public, a hiccup.

And I'm going to come back to this probably later today and at the end of the week, but as an aside, this week is going to go fast. Even with the jury view we may be finished with Phase III by Friday, just for juror planning. May take until Monday, you know, we've normally had these closing on Monday, may take it until Monday, but it's going to go fast, and our case will probably be over at the end of today or tomorrow.

We face some of the same problems in Phase III as we did in Phase I. We're outside of Exxon and we're

attempting to look inside Exxon numerically and add it, and we don't have a lot of Exxon people available to us when we want them.

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But post-spill Exxon Corporation thrived, its officers got bonuses and indeed Mr. Raymond and Mr. Rawl the year of the spill got bonuses. The numbers for the bonuses, and I'll talk with Mr. Raymond about them, are found in these proxy statements, and the proxy statements are sent out once a year before the annual meeting, and the Security and Exchange Commission requires that they tell the shareholders how much the executives are getting. And if I was a shareholder, I'd want to know. That information is in the proxy statements, and it's sort of obtuse, but I figure the best person to ask about it will be Mr. Raymond, so I'm going to ask Mr. Raymond about it when he takes the stand for the defendants.

But in point of fact, in 1989, the year of the spill, Mr. Raymond's salary was \$909,000. He got 27,000 EBUS, employee bonus units, with a potential of 206,000, and he was awarded 180 stock options that were worth \$300,000. The values of Mr. Raymond's unexercised stock options is about \$10 million. Mr. Rawl got bonuses the year of the spill. So the two guys that were running the company the year of the spill were given bonuses.

We are going to play videotape depositions for you today in which I ask, was anybody fired as a result of this. Now, the only two people that had adverse personnel actions taken, at least according to what they told me when I took their depositions, and I asked all the appropriate people, the head

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guys, was that Hazelwood was fired and Cousins was demoted. So with regard to all these people, the West Coast fleet manager, the Gulf Coast fleet manager, the president of Exxon Shipping Company, the people in charge of the policies and monitoring, there was no adverse personnel action taken with regard to any of them. It was a “look at the two bottom guys and let’s dump on the two bottom guys” kind of attitude, so the company thrived. The two top officers got bonuses, it thrived, and the people who made gross errors are still employed at Sea River Maritime.

Now, what is Exxon going to say in response to all of this. I’m going to put on mine for one day, what are they going to do for three days, they are going to make some points, they are going to say they lightered the vessel, and they are going to bring in Captain Deppe, who lightered the vessel, and Captain Deppe did a good job in lightering the vessel, and by lightering the vessel Captain Deppe cut the size way back. The risk was much, much bigger.

Captain Deppe will tell you, and it is not particularly important, but the lightered oil was saved and resold, so Exxon made some money off it, but the fact that they lightered the vessel was something they had to do. You have a vessel that’s on the ground spilling oil, it’s something you got to do. They did a good job, but they did it because that’s what the law requires, and common sense. They are going to say they paid

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enough and that’s why Mr. Rawl is here – excuse me, Mr. Raymond, and Mr. Raymond is going to say we paid enough and that ought to be the end of it; we

paid \$2.7 billion, with regard to 2 billion in the cleanup and the monies you awarded in Phase II and such, and that ought to be the end of it.

And we're going to show you a videotape of Mr. Rawl when he was the chairman of the board about the impact of paying a billion dollars, and Mr. Rawl will say.

For the first three minutes you'll say, why are the plaintiffs playing the videotape, this is sort of boring, what's the point. The point is when we get to the end of the videotape, Mr. Rawl will tell you that a billion dollars to Exxon in the context of this spill means almost nothing, and that his time – the reason they settled their cases with the federal and state government for a billion dollars was because his time was being diverted, and a billion dollars isn't a heck of a lot, and I want you to watch that videotape carefully because that's the import of that videotape.

We will show you Jack Clark, who is sitting back in the audience, and Mr. Clark will tell you that the costs associated with the spill didn't have any impact on the company. It's a short three or four minute videotape, but he will tell you that. But we saw, and we'll see again with regard to these key financial indicators, that Exxon Corporation today is better off than it was the year of the spill.

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Now, I want to take an aside here for a second and talk for a minute about Captain Hazelwood. I'm not going to spend a lot of time on Captain Hazelwood. In the closing I'm going to ask you to award punitive damages against Captain Hazelwood because I think it's important that the point be made, but I'm going

to ask you for a dollar against Captain Hazelwood. And why is that? Because Captain Hazelwood is not better off today, he isn't, than he was in 1989. Captain Hazelwood has lost his job, he's no longer financially secure. There is a year or two in here, and I don't recall when it is, where Captain Hazelwood's income, his revenue was zero. And in point of fact with what has happened to Captain Hazelwood and his position in the history books with Captain Hazelwood, enough is enough.

But that isn't the same with Exxon Corporation and with regard to Exxon Corporation. They have thrived during the year of the spill and since the year of the spill and so have their executives and everybody who was involved in the events leading up to the spill who works for Exxon Corporation.

In addition, and I'm going to give you a concept here, let's assume for the sake of discussion that the spill was totally innocent, accidental, a storm came up, blew the vessel out of the traffic separation scheme and onto the rocks, .8 miles over and on to the rocks. Let's assume that. So there is no reckless conduct, none, nobody contends there was reckless conduct. In fact, the captain of the vessel

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heroically saved much of the oil, and it was a classic textbook save, because of weather there was nothing we can do about it.

Let's assume that for the sake of discussion. What would that company have to pay with regard to cleanup, compensation, victims, lightering and those things, \$2.7 billion. An innocent spiller of oil. You know that Robert Fulghum book, All I Ever Wanted

to Know I learned in Kindergarten? A spiller has to clean up the mess.

While they have paid \$2.7 billion, they have not paid one cent because of recklessness. The items that they are going to talk about are compensatory damages, and the spiller of oil has to pay compensatory damages because it's strictly liable under the Pap's Act and other statutes. They paid restitution to the state and government for oiling state and federal lands, they are going to pay the fishermen, they are going to pay the cleanup. All of that is required by law for an ordinary accidental spiller, has nothing to do with the punishment of reckless conduct. They have paid \$125 million fine, but they have paid that \$125 million fine for negligence in the context of the criminal proceeding, so they haven't paid a cent because of their reckless behavior.

Now, do we have that Steven's quote. The consequences of the spill which have occurred pretty well as much as envisioned were viewed by them as acceptable.

This \$2.7 billion was a cost of doing business. This was

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the cost of doing business, but in any event, despite it being a cost of doing business, and the fact that an innocent spiller who have had to pay \$2.7 billion and that they haven't been punished for their reckless behavior, the balance sheet shows that the \$2.7 billion had little, if any, impact on them, and the Rawl video will show you that in the context of \$1 billion.

So you say to yourself two minutes in, boring video. Watch it until the end because it gets really, really interesting.

Exxon is also going to say we cleaned it up, and they did clean it up, and they spent \$2 billion working on the cleanup, and my comments are that on the cleanup was a mixed bag. A lot of it was done very well. They did spend \$2 billion on it; they got only 10 to 15 percent of the spilled oil. Everybody agrees with that. Mr. Johns testified they'd gotten to 15 percent. But that gets back to kindergarten, you clean up your own mess, and the laws require that of an innocent spiller, and they understand the risks of the cleanup.

They took the chance essentially on purpose, and they are going to say, and this is the last point I want to talk about, that they changed their policies, and Mr. Elmer, who is the new president of Exxon Shipping Company, now sea river maritime, is going to testify about that for an hour, hour-and-a-half and he's going to say something totally different.

This is going to be interesting because it's totally
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different than what you heard in Phase I. In Phase I everything they did was right. You're going to find out when Mr. Elmer testifies that indeed they did have fatigue problems, they have added additional mates, they did have problems with regard to alcohol policies, they did have problems with regard to ice policies, they did have problems with regard to the bridge manual, they had a variety of problems, and that the problems were institutional, deep-seated institutional problems.

And Mr. Elmer is going to come and tell you about the fact that we have changed all these things, and the pitch is going to be we've changed, so don't punish us. But that's no different than any kid caught, and their paper policies, and oil companies tend to act only by reaction.

The other things about these changes, and you're going to see this and it's very interesting, most of the changes are made in response to the law, and the Congress and the State of Alaska and the states of California, Oregon and Washington, as a result of this passed a variety of laws to force them to change their behavior. And they could have done all these things before, and the fact that they had to go through this to do what you and I would have expected of them in the first place – so as Clint Eastwood would say, we have a very serious attitude problem here.

And then the last thing they are going to do is come in and

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say we're not that big, and this is going to be done by saying you can't look at Exxon Corporation as a whole, but you need to look at various activities within Exxon Corporation in assessing how much to punish us, and they are going to talk about U.S. activities versus foreign activities, they are going to talk about oil and gas versus chemicals and try to dice the cake a bunch of different ways.

And my comments on that are Exxon is run as a consolidated company and the balance sheets are consolidated balance sheets, first answer. Second answer has to do with how they manage their money, and this is from the 1991 Exxon annual report. The

company's global operating activities have provided cash flows of about 10 to 12 billion annually in recent years. Cash flow is centrally coordinated in order to efficiently move funds from units generating cash to units where the funds are needed to finance new investments or meet operating requirements. The company is run as a whole.

Now, this is from the 1991 Exxon book here, page 4. And the last answer to it is there is a stipulation that bears on it that was read to you in Phase I in which the parties agreed for a variety of reasons that we're dealing with the Exxon defendants, essentially one institution, and on the verdict form when you get the verdict form in Phase III, you will not see upstream and downstream or U.S. or foreign or oil and gas; you'll see the Exxon defendants.

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But when it gets right down to it with regard to punishment and whether they have been punished enough, it's best to look at what they say in their annual reports, and 1991 was one I happened to make some highlights up from, but it's a year or two after the spill. Net income of 5.67 billion, best in Exxon's history; earnings per share, 4.45, highest ever; return on shareholders equity 16.5 percent; total shareholder return for 1991 was 23 percent. How would you like to manage your money like that?

Capital and exploration spending, what they invested in the future, 8.8 billion, and there are other similar passages, but Exxon has thrived during and since the spill because it is as big and powerful as it is.

So how do we assess punitive damages on a company like Exxon Corporation in any meaningful way? Good question, sort of the 64 dollar question.

Let's take what we know. The Rawl videotape will show you what a billion dollars means to the company. The fact that Exxon has paid \$2.7 billion in response to the spill, combined with how well they have done since the spill, shows you that \$2.7 billion is not punishment. And I would submit in light of their conduct in Phase I, that \$2.7 billion didn't get the message across, but in light of the balance sheet, we know that 2.7 billion sets the bottom of what we're going to look at.

Where do you go from there? If I was to submit to you as a

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proposition, let's just take from 1989 to the present day the amount that Exxon stock has appreciated on the market, not take the value of the stock, but just the amount from 1989 to the end of 1993, what is the amount that the stock – don't look at the answer yet, you're cheating – the amount that the stock as appreciated on the market, does that strike you as conceptually a fair number?

The number is \$20 billion. Exxon's stock, because it has gone from \$44 a share before the spill to – it was \$63 year-end, now it's about 60, has appreciated about \$20 billion since the spill, and it has appreciated \$20 billion since the spill, and at the same time Exxon has paid to its shareholders \$17 billion in dividends. So we have on the bottom range 2.7, which they have spent, which we know has no affect on them, and it's your job to search out a number that has meaning to Exxon Corporation.

Since 1989 Exxon stock as appreciated 20 billion after taxes, and at the same time they have been able to pay out to their shareholders \$16 billion in dividends. For a transnational corporation, and Exxon is a transnational corporation, 80 percent of its business is outside the U.S. 26th biggest institution in the world, with an operating budget that would be the envy of many countries, nations, a fine must be high enough to challenge the view that the risks of recklessness are worth an occasional spill, and that the

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well-being of local fishermen, Natives, Native corporations, landowners, are but a footnote in their annual reports.

Now I want to talk, if I could, a little bit about the structure of the case. This is going to be more informative about how we're going to proceed. It will take about a week. We will end at the end of today or very early tomorrow. We are going to put on Sam Rhodes, who is a CPA, and some videotape depositions and read some documents. The claimants in Phase III include more than the fishermen than you saw in II-A, and His Honor alluded to that.

There is a Phase IV that has a variety of claimants in it, whose claims you couldn't try on a global basis, people are more individualized claims, and shrimpers, halibut, those kind of people, they also include landowners whose land was oiled, and present very unique problems, and other people also. So there is a Phase IV claimants, they are part of Phase III, and you will get read a stipulation that will detail all these claimants.

There is a proceeding in the state court that deals with the Native corporations and municipalities, and they are trying compensatory damages in Phase II of the state court right now. Their claims are in this court for Phase III, and people who have valid claims who haven't sued them out yet, right now I can't imagine who that would be, but they are technically in the Phase III.

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His Honor said anybody in the world who has a valid claim against Exxon is in Phase III so one jury and one judge can take one overview of punishment of this thing one time, and that's the structure and that's why we have a Phase III and a punitive damages class.

So for the purposes of Phase III, if you're in another court system or you're in Phase IV or you're still gearing up your lawsuit, or whatever it is, they are all your responsibilities. I mean, they are all in this one phase together, so that's structurally something that you need to know.

I can't think of anything else structurally you need to know.

The jury view will take place on the first good day we can get this week. If there is no jury view because the weather is bad and the helicopters have trouble getting over Portage Pass, Mr. Otto Harrison will put on some evidence for the defendants, and we will put on Rick Steiner. The jury view is dependent upon weather and we will interrupt the proceedings on the first day we can where it appears the helicopters can do, get you over to the Sound and we can get back, so you're on jury view call I guess is the best way to put it.

There are going to be in this short period of time some fakes, some stutter stepping, with regard to punishment. I'm going to come back to punishment and then I'm going to sit

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down, but I want to remind you of the obvious. The conduct was reckless, you found it was reckless, it hurt a lot of people, it was done by people who ought to know better, and the money that they paid out to date they would have had to pay out, one, if they would have been innocent, there has been no punishment for reckless conduct, there had been none, and at most it was a hiccup on their financial statements.

The third thing is, and His Honor said it, and that is half of it is to punish them, and they are to be punished, but the other half of it is to set an example for others, and that setting an example for others, half of the purpose of punitive damages is part of your charge, and it is a charge with regard to corporate responsibility, it's a charge with regard to the environment, it's a charge with regard to oil spill prevention.

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MR. SANDERS: May it please the Court, Counsel, Ladies and Gentlemen of the jury. You wonder how he knows so well what we're going to say? Because we tell him, we're required

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to give him what the witnesses are, and he calls me up on the phone and says what are you going to say and I tell him, and he tells me what he's going to say.

Now, in spite of his argument this morning, I do not intend to go behind your verdict in Phase I or reopen those issues. You found that we were reckless, we respect your verdict, we have taken it to heart even though you disagreed with us, but I cannot ignore his suggestion a while ago that the people at Exxon were intentionally risking an oil spill of 250,000 barrels in Prince William Sound as extraordinary misconduct.

There is not a person in this courtroom that actually believes that people at Exxon knew that was going to happen or intended for it to happen. That would be stupid. That would be sheer insanity. Let me give you an example that you'll remember from Phase I kind of risk taking, to use Mr. O'Neill's phrase, that occurred in this case.

Prior to 1989, prior to the spill, we knowingly took the risk that in calling for a captain to come forward and declare himself as having an alcohol problem and guaranteeing that person return to a job, that we had the risk that that problem could recur after he returned to duty. Now, that's not a risk that we knowingly took because we wanted to take a risk or because we didn't care, the one thing that he said that I agree with. It is not a lark. It was not a lark we took that risk because at that time, knowing what we knew and studying what we

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could study and knowing what everybody else was doing, we thought that was a lesser risk than having an unknown or undetected and untreated person

with an alcohol problem sailing around on our ships, and we thought it was better to say come forward and get treatment instead of having the risk of an unknown ticking time bomb out there.

After the spill, after what happened in 1989, we completely changed that. The world has completely changed a lot of things since 1989. The new policy, and Mr. Raymond is going to testify about this, takes away any discretion or decision-making in the medical department or at the operational level that in hindsight was too hard a call to make, too hard a call to make. So now, under the new policy, which was changed in 1989, a person who has had an alcohol problem or has had alcohol treatment can no longer hold a job that is a safety sensitive job; that is, a person who has had alcohol treatment in the past cannot even be a captain or a tanker driver, truck driver, any safety sensitive job.

Now, we still have that other risk, make no mistake about it. There is still a risk, that other risk that there is somebody out there who will develop an alcohol problem, who won't come forward because he or she will fear I'll lose my job if I come forward to get treatment. We still have that risk. Now, of course we did a lot of things, more than we can do in 1989 or '85 to minimize that risk, but you cannot totally eliminate it.

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There are two sides of a very tough question. You remember that from Phase I, that's a far cry from a 250,000 barrel potential oil spill in Prince William Sound, the kind of risk counsel is talking to you about. That is not what this Phase III is about.

Mr. O'Neill has spent a lot of time on something else I don't think this phase is about. Now, these financial statements, I don't want to belittle his efforts, he's done quite well and he's proud of it, and I think I'll understand more when he finishes than when he started, but that all misses the point of Phase III. It is true that we are a large corporation and it is true that this corporation has been very successful. If you listen to Mr. O'Neill's theory and turn it around the other way, if after the oil spill we had done very badly, if we had not worked hard to overcome this, if we had failed and if we hadn't made money and our stock hadn't gone up or been bought and we were in bad shape financially and we couldn't have cleaned up, we couldn't have made changes, then he wouldn't be asking for any money here.

Nah, nah, it is true that we have worked hard, that we have been successful. It is also true that of every dollar that comes in, five cents of that goes to profit. It is also true that the range of numbers that he showed you towards the end of his argument, 15, 17, \$20 billion is more than we have invested

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in oil in the United States of America.

And I'm not talking about just buying leases. He talked about a gift we got that we get this oil, it's the people's oil, we pay for that, exploration, leases, refining, marketing, service stations, buying the land where the service stations are. All of that together in the United States of America is not \$17 billion. It all misses the point because it skips over the issues that Phase III is about. It skips over the reasons for punitive damages.

As the Court has told you and you will hear in the instructions today and later, your job in Phase III is not simply to determine how much Exxon has in order for you to select how much to take away from its owners, the shareholders. No, the critical issues in Phase III involve the conduct you've determined, the harm that resulted, the question of whether future punishment is necessary to deter and whether Exxon and others have gotten the message in the interest of deterrence.

Now, I do applaud plaintiffs' decision to ask one dollar from Captain Hazelwood, and I strongly agree with their reasoning.

Phase III is based merely on their ability to pay? That is not the law. Do not be misled by that and do not accept their invitation to jump ahead and brush over the issues for Phase III.

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Now, one other thing I want to say about the final information and I'll move along. He told you on a number of times during this opening statement that Mr. Rawl said that a billion dollars would have no impact on the corporation in 1989. That is not true. Mr. Rawl said it wouldn't bring us down. That's what he said. Don't be misled.

So the case is not about the kind of risk taking that he's talking about, because that's not what the proof was, and it's not about looking at how big we are. If that's what it's about, we lose, we are big, and I'm not going to be up here to make apologies for the hard work that was done in order to do better since 1989. No, the issue framed for you in Phase III that the Court told you about this morning is not that you

go from Phase I to a direct entitlement to money for the plaintiffs in Phase III. No, that's not issue.

The Court told you the issue. It was to determine whether, whether, punitive damages should be awarded, and, if so, the amount of such damages. So the real issues to decide in this case, this phase, are the ones plaintiffs' counsel has been raising from the very first day of trial, and we have finally come to the appropriate time to answer his charges that you're going to remember now when I repeat them from the very first day that this trial started on May 2nd.

You will recall it being repeated a number of times, Exxon is in denial, Exxon is not sorry, Exxon has not gotten the

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message. We are here to place the truth before you about these accusations. We're not going to come with speeches; we are going to come to you with facts. We will demonstrate to you that these accusations are not true.

Why is it relevant now and why is it appropriate to deal with these issues? Because the issues in this phase are whether punitive damages ought to be awarded in order to punish Exxon further for extraordinary misconduct and to deter Exxon and others from repeating the conduct you found reckless in Phase I. And in making this important decision, your common sense and the law the Court has given you will tell you that you should consider whether Exxon has owned up to its responsibilities. We did; whether it is sorry for its mistakes, we are; and whether or not only has it gotten the message, but

has it acted in response to that message, and we have.

So I want to talk to you about these matters and about your decision on the question of punitive damages. The first place I would like to start is the guidance you have from the law that governs our case, the law that you received from the Court.

You remember back in Phase I and this morning the Court telling you that punitive damages are not favored in the law, why is that and what guidance and perspective does that give you? Part of the reason I suggest to you is that in civil

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cases, such as the kind we have before you, the only punishment permitted by law is money in the form of punitive damages.

Now, these damages are assessed against defendants and they are awarded to plaintiffs. Now, Mr. O'Neill didn't mention that a while ago when he talked to you. These damages cannot come from anywhere else and they cannot go to anyone else but the plaintiffs. By their very nature and under the Court's charge, they are over and above the damages actually sustained by the plaintiffs. So the money does not go into some public fund or trust, it goes to those who have already been paid their actual damages.

In this case you have spent a lot of time, care and effort deciding how much money you should pay the fishermen plaintiffs to make them whole from the damages caused by the spill. You worked very, very hard. Now – and you have decided their actual damages.

Now, these fully compensated plaintiffs and others suggest to you that you should give them more, and not hundreds of millions, as you decided in Phase II, but thousands of millions, billions, and at whose expense, the guys that got the bonuses, some faceless, bloodless creation that you cannot see, but you're urged to hit it hard so whatever it is will be taught a lesson? Not on your life.

The people that own Exxon are the shareholders, the people and the institutions who own Exxon stock, and as the proof will

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show you, they number over 600,000 people who are identified as shareholders and then many more who own Exxon shares through pension plans, mutual funds, retirement plans and through brokerage accounts. Those shareholders will be hurt, and it's therefore inevitable that innocent people will be hurt by an award of damages.

Now, to pay actual damages, the law says it is perfectly proper as between an injured party and shareholders that actual damages should be paid. But that's less true in the case of punitive damages because you have fully compensated plaintiffs, like the ones here in this courtroom, being enriched at the expense of a lot of innocent people. That is a good common sense reason that the law does not favor punitive damages.

Now, the court also has given you other guidance in telling you the two purposes of punitive damages. One of those is punishment, and the one thing that I would mention about punishment, any punishment should fit the conduct and the harm, no less, but no more. And deterrence, and I think this is perhaps

the most legitimate aim at justice in our society, punishment should be inflicted if it is necessary to deter similar conduct in the future, these defendants or others, in the same situation.

So our case in Phase III is going to focus on these three issues, punishment and deterrence, and you can see again now why I told you is the time to consider Mr. O'Neill's three

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allegations.

Now, in doing this we're not going to tug at your heart strings or curry with you. We are going to keep in our minds what I trust has been in yours in your trial, and best stated by that great old phrase, actions speak louder than words. We are sincerely sorry and we said so. We said so in March of 1989. We're not going to call a bunch of witnesses here to tell you we are simply sorry. It's much better and a lot more helpful to you to show you what we did rather than to keep telling you we're sorry.

In essence, we're going to prove four things to you: One, we accepted responsibility for the spill; two, we made a commitment to clean up the spill; three, we made a commitment to restore the Sound; and, four, we made a commitment to see that it does not happen again.

Now I want to talk to you a minute or two about punishment before we talk about deterrence, and I want to talk to you about the punishment that has already occurred, and I want you to remember as we go through this, if you will, please, that what Mr. O'Neill says about what would have been paid anyway if this ship had been blown off is not true.

What is the punishment in this case? Well, first you decided in Phase I that we were reckless. We came to you, we presented our case to you. They presented their case to you and you found that we were reckless. We have accepted that, we

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respect that decision. That hurts, that's punishment. And I'm not going to stand here and try to reduce either the scope or reach of your decision in Phase I or the import of it.

Now, there is another punishment that's been going on and that has been in the core public opinion. Since March 24, 1989, this corporation, Exxon, was criticized around the world for this oil spill. Its officers and Exxon employees have felt the sting of public censure for over five years. Some was fair and properly aimed, some was not, but it all came, nevertheless, and it all hurt and it hurts perhaps more because we knew we had made mistakes, not intentionally, but no one did say then or can say now that the criticism was deserved.

Now, Mr. O'Neill said we came to you in Phase I and said everything was all right. We started right from the very beginning telling you we made mistakes. This corporation will never forget this disaster or punishment. The Prince William Sound oil spill is a part of the corporate fabric, a part of the corporate life that will never go away. It's a lasting punishment.

What's the other punishments? Well, right after the spill we advanced to the federal and state government \$15 billion to study the effects of the spill. Indeed much of what you heard in the plaintiffs' case about the science was funded by that

\$15 billion. We also had a grand jury investigation by the state and federal government and a whole lot of publicity about

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it, and at the end of that there was a guilty plea by Exxon after we had cooperated in the investigations, including the NTSB investigations, which was a guilty plea by Exxon, which resulted in the largest environmental fine in history, and there was a settlement with the federal and state governments through which Exxon is to pay 900,000,000 and a billion dollars over the period of ten years, and another hundred million to the State of Alaska and for restoration of the Sound. So I'll ask you to consider that, and punishment that will continue for as long as the corporation exists in light of our conduct as you determined it and the harm which we have paid.

That brings me to deterrence and the answer to questions are we sorry, are we in denial, have we gotten the message. We will demonstrate to you in a number of ways we got it. We didn't run, we didn't hide, didn't even duck. We immediately took responsibility. We said to the country – well, let me show you this. You remember hearing about the Glacier Bay. You remember Dr. Crutchfield was testifying and there was some exchange where Dr. Crutchfield was saying I'm having trouble finding out who was responsible for that spill, and the court said, yeah, we had trouble with that too.

That didn't happen here, did it? Exxon told the country it is our ship, it is our oil, it is our responsibility. Then we immediately followed up

those words with deeds. We took over responsibility for the cleanup immediately from Alyeska and we

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never attempted to shift it to the federal government. Next we said we were sorry, including a letter from the chairman of the board which was published in newspapers all across the land, that we acted like we are sorry.

Lightering, it's often overlooked, and the fact is, as Mr. O'Neill said, the lightering effort kept all or part of a million barrels of oil from getting into the water. Now, Captain Deppe will come and testify about that and will tell you what was done, and I'll ask you to remember, you heard about the Braer spill, the crew just abandoned the ship. Twice as much oil that was lost in Prince William Sound was lost in the Braer spill. Compare what we did with what happened there.

Now, I don't think Mr. O'Neill seriously tried to deflect from the effort it took to lighter that vessel and the response of it by saying we sold the oil. What do you want us to do with it? Throw it away.

Now, the cleanup. There is a great temptation, and Mr. O'Neill does it, to simply put a price tag on it and think that that explains and ends the matter. It doesn't, and I ask you to listen to the witnesses that we're going to call, Mr. Otto Harrison, Mrs. Connie Buhle, Mr. Jim O'Brien, about the cleanup effort. I don't want you to listen to numbers. I want you to consider the attitude that Exxon and these people took in doing this cleanup. I want you to consider, please, the commitment

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that it represented under the circumstances that they were facing, and I want you to consider, please, the effort that was put into it.

Connie Buhle is going to come and testify as to one of the many, many people that went to work in Houston bright and early on the morning of Good Friday 1989, called all over the world to get equipment and people into Alaska to work on the spill to clean up the spill. Mr. Otto Harrison, who was in charge of the cleanup, is going to come and testify to you about what was done and what effort was made to clean up the spill, and Mr. Jim O'Brien, who was one of the world's foremost experts in cleaning up spills, gone to all of the big spills, one of the best experts that could be found at the time, was hired immediately by Exxon and he's going to testify to you about what was involved in cleaning up the spill.

Now, this is not bragging, they are not going to brag, but what we want you to see is the commitment, keeping the commitment and effort that it took, and when you hear all this evident you will have clear and unequivocal answers to the questions that I mentioned at the outset.

And in addition to that, we're going to put on some evidence about the claims program that was established immediately. It was designed to pay money quickly to those people like fishermen, but not just fishermen who were losing money because of the spill and who needed that money to care

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for themselves and their families. It paid out over \$300 million, and that was a very eloquent we're sorry.

There was a community liaison, which was a humanitarian effort to ease the pain that the local communities experienced because of the spill. These were a lot more diverse than the clean-up program and they included things such as payments to municipalities for their added or incremental cost resulting from the spill effects, jobs training program to train people to take the jobs that were working in other jobs and went to work on the spill, and also for assistance to Native villages and corporations.

In a very real sense, it cheapens the commitment and the effort to put a price tag on it, but punishment and money is the issue. It's been phrased in Phase III, so the proof is that the cleanup expenditures were over \$2 billion in addition to the \$300 million in claims payment. Of course, you add to that the monies paid in connection with the federal and state settlements and fines. These facts can't be disputed, I think, so the attack on this effort and what it really means about Exxon and what it stood for will come from a different direction.

I have to give Mr. O'Neill credit, he's a very skillful lawyer and he's very good at trying to make a sow's ear out of a silk purse. What he will do is not only focus on the things he mentioned in the beginning, but he's also going to focus

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your attention on some things a PR guy named Don Cornett said after the first few days of the spill, and you'll see it and hear it, and what he said is offensive particularly taken out of the context, which he was operating and out of the context of the other things that were going on. And I'm not going to try to stand here and defend it, but do not be misled by it. Mr.

Cornett was not involved in the clean-up operation at all and Mr. Cornett did not set corporate policy, and please remember that these remarks came in the first day or two following the spill.

Mr. Cornett was operating in his own department and worrying about the PR beating he was taking. What he said and whatever he was thinking did not influence the clean-up effort and certainly cannot be compared with the obviously sincere commitment Exxon made to clean up the spill. Compare what we did with Mr. Cornett's words and compare Mr. Cornett's words with the words of two Coast Guard admirals. This is Admiral Ciancaglini, that's '89. I think I've painted myself into a trap.

Here is the end of it. That's what he said, say about the people, then he was replaced by Admiral Robbins, or at least Admiral Robbins came along later on. This goes to the question of federalizing the spill, whether Exxon stayed with the responsibility or whether the responsibility should have been turned over to the federal government. This is why it wasn't.

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Compare those words with what Mr. Cornett said, compare the actions of Connie Buhle, Bill Deppe, Jim O'Brien. As good as he is, Mr. O'Neill cannot change the undisputable facts about what Exxon actually did in response to the spill, the effort and expense that it took and the duration and the sincerity of the commitment to make things right.

Now, I do need to say a word here about this PR business because we've heard an awful lot about it in this trial, and the message I get from this PR argument is that you should not give Exxon credit

for anything good because whatever it does good is done for some PR purpose or you can't believe that because we have a PR department.

Well, let me tell you we did have a PR department, they did work in the aftermath of the grounding, and unfortunately they did say some things that help his theory along a little bit if you just consider those little snippets in isolation and ignore what was going on and if you make the mistake that PR sets corporate policy or that PR was in charge of getting any real work done.

Let me tell you something else. The PR department, as you well know from the proof you've heard in this case, did not change a single fact and I doubt they ever changed a single opinion. The PR effort was like trying to stop a herd of buffalo by standing in front of the stampede with a stop sign written in Russian. The PR argument is an attempt to get you

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to ignore the forest of truth by focusing your attention on a little satchling.

Now, there is another large body of truth that I want to talk to you about that addresses the question whether we got the message or do we need to be punished some more to deter us from the conduct that caused the grounding of the spill. I'm talking about the changes made by Exxon as a consequence of the spill.

Now, all of the changes that we're going to discuss were not done just by Exxon, and one of the things that was necessary to understand, to appreciate the situation between then and now, is that everybody,

the industry, the governments, Coast Guard, the Environmental Protection Agency, everybody had a similar view of the remote chance that anybody could drop 250,000 barrels of oil in Prince William Sound. We did not stand alone in underestimating or in not appreciating that you needed more protection than was available.

You will not hear and you have not heard proof that somebody else was doing a lot more. When this spill occurred, it was like a clarion call to Exxon, to the entire industry, to Alyeska, to the state governments all across the United States, and particularly to Alaska and to the United States of America, particularly the Coast Guard, the Environmental Protection Agency and the Department of Transportation. All of these organizations suddenly realized that the risk had been

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underestimated and that everybody had been lulled into to a false sense of complacency by a good record of safety before that.

There is 8,000 transits without a problem, then everyone came to the painful and humbling recognition that we were not as smart as we thought, and suddenly everyone recognized a higher level of protection was necessary. Now, that is really what Mr. Stevens, in that piece that Mr. O'Neill kept putting up here this morning, that's really what I was trying to say to Congress, and when that testimony comes on, you will notice that it's preceded by another comment that kind of puts it in context.

The chairman of the subcommittee was asking Mr. Stevens about this, and before he says the statement

that you saw up on the board, Mr. Stevens says I'll take the broader question and try – and then come to the more specific. The spill plan, that's what he's talking about, the contingency plan, in place was not adequate to handle a spill of that magnitude. That was recognized in the plan, the plan submitted to the federal government and to the United States Coast Guard. The words – you've said – you read the plan, used words in that section are highly unlikely. In other words, the prospect of having a spill of this magnitude are highly unlikely, so therefore the spill plan, the contingency plan, did not have in it a schedule of equipment that would be designed to handle a spill of this

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magnitude in the water before it hit the beach. That's the context in which Mr. Stevens is talking about, and that was true for virtually every contingency plan that existed in the United States of America in 1989.

Now, what happened here was after this happened, after the unthinkable happened, then things changed, and today contingency plans insofar as physically possible provide that there will be equipment on-hand to handle this type of spill in the water before it gets ashore.

Now, on changes, the proof is going to show you that Exxon reviewed the grounding and spill not in such a way as to limit the corrective action it should take, but to broaden it. It would have been easy to fire people, blame it on them and run off and go into something else. That would have been easy, been a lot cheaper too, but instead of trying to narrow the focus and narrow the problem solving to the cause or

causes of the accident, Exxon looked at everything in its operations to see what could potentially cause an accident of this magnitude; in other words, a new look.

The world viewed this potentiality much more differently after March 24th, 1989, than it had before, and looking at it with that blinding clarity of hindsight, there were many, many, many changes made, and not just by us. And some of the changes we made are in response to changes required by the federal and state government. I'm not trying to claim credit for all the

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claims, but I want to tell you about these changes and you'll see that they not only address the problems involved in this grounding but other problems as well, whether or not they had anything to do with the grounding.

In fact, we took to heart every criticism, every criticism and every suggestion and everybody's theory as to what the cause could be, and in any case where we thought that was reasonable, a change would reduce the overall risk, we made the change.

Now, I mentioned the change in the alcohol policy that Mr. Raymond is going to testify about. There were other corporate-wide changes. I want to talk to you a little more specifically about the changes that Mr. Elmer is going to talk about. Now, these are in no particular order and I'm going to try to go fast so I don't take up too much of your time.

The first of these, let's talk about the manning. After the accident we decided that it would help reduce a potential for a problem if we put an extra

mate on every ship, so we did. For fear that there was a potential problem with fatigue, we added a lightering mate in San Francisco that would make it easy on the front end of the voyage, make it easy on the ship's crew going from San Francisco to Valdez, and at the other end we added a loading mate here in Valdez, a chief mate, to reduce the possibility that fatigue could impair performance. Now, having done that, we then pretty quickly realized that

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wasn't enough as we studied the work hour situation, so we decided that we needed to do some more things, so we put in some work hour restrictions. Now, shortly after that Congress gave us some, too, but we had them before we were required to have them, and then when Congress passed them in the Oil Pollution Act of 1990, we reformed outside to Congress's. That wasn't enough, either. In order to make sure you're complying with work rules and regulations, you have to have something to check, and that was a hole in the past.

You remember officers – we didn't pay overtime for officers because they were on salary and so we didn't have a record of how long people were working on the ships. Officers we did if they were unlicensed, but we started requiring that logs be kept of the hours officers were working on these vessels, so not only would we have the rule that you're only supposed to work this amount of time, but we had a way to check on it.

We also have now an auditor, a guy who does nothing but ride the ships, and one of the things this guy does is go on the ship and make sure these guys are working the hours they say they are working,

that they are writing them down and that these comply with the – with our policies and with the regulations. This is a good example of making changes even though we didn't think the fatigue problem had anything to do with the accident.

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You'll remember what I told you in closing argument in Phase I. We didn't think fatigue had anything to do with this grounding, nevertheless we made all these changes.

Now, training, the first thing we did in terms of training was to go back and eliminate any possible confusion that there was or could have been with respect to who is supposed to be on the bridge when you get into Prince William Sound. And what we said was, face-to-face, every master, every officer, every deck officer entering and leaving port gives you but one option; that is, two officers on that bridge. If you're entering or leaving port, you cannot operate with one officer up there.

Now, just so you know, boys, in Prince William Sound you enter port at Cape Hinchinbrook, and when you leave port you're leaving at Cape Hinchinbrook. There in Prince William Sound the only option you got is two.

Now, we also saw, then we looked at our training in 1989, that it was possible that people were not getting the training we wanted them to have. They weren't getting enough training and some people could be falling through the cracks, so what we have done is we have required every deck officer to have a certain kind of training, and that training includes a bridge team simulation course in Rhode Island, where a whole group of officers, the normal

contingent that would be on the bridge is taken up there. There is a computer simulation, this huge wrap-around screen, very impressive. You have this bridge and

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this simulator takes them through conditions in each and every major ports in the United States, including Prince William Sound, and it goes through expected situations and unexpected situations. And you talk about remembering, getting the message, each one of those teams goes through the voyage of the Exxon Valdez, constant reminder, constant reminder, have we got it, we got it.

Now, in addition to that, they have a ship handling course imposed right after that, where we not only teach the skills and the maneuvering of a vessel to everybody, not just the captains, not Grenoble, this is not Grenoble, teach it to everybody and teach them how to use the radar, and we get evaluation read back, did Joe do it right, did Jack do it right, we get feedback.

The navigation, the Loran and MARSAT, the plot and fix method, you could probably figure out where you were within 1500 feet or so, if the satellite was in the right spot, you got the right time and all that where you were always trying to figure out where you were based on where you had been.

Now, in today's technology, with global positioning system – and in weeks we're going to go to differential global positioning, you're going to get to the point in weeks, within 20 feet where your ship is, you have improved radar and we have a system Mr. Elmer is going to explain to you the Ex-bridge

system. It takes this global positioning business, the radar

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and everything else and it puts it on a screen, and that screen will project where you are within 20 feet, what's around you, what's above the water, where the other ship is, land, what's under the water, and on that you can even put your course.

And indeed we require that they put a course in there, and you put that course in there and if you get away from that course, there is an alarm that goes off, and as you go down through that you can see within 20 feet of where you actually are.

Now, what do we do in Valdez? Well, instead of having nobody or an Alamar agent up there, we have put one of our senior most captains in Valdez and he is now called the Valdez port operations coordinator. He's Captain Bill Deppe, not only a ship group coordinator, coordinates with ships, the Coast Guard, coordinates with all regulatory agencies and the community, and the watchdog.

We have restrictions on the number of people who can go ashore at all – at any visit at any port.

There are, as you know, rules about how much alcohol a person can have within a certain amount of time before he can get on a ship. Do you remember the four hour rule, .04 and all that? We said that's great for everybody else, but for our captains and chief engineers, heck with that, our captain or chief engineers can no longer drink on a tour of duty, period. There is no such thing, if you're a captain of Sea River

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Maritime, of going – port in Valdez or San Francisco or anywhere else, and when you come back, and this is required by the State of Alaska, take a breathalyzer before you take off, and if any of our captains blow anything, that's it.

Check-in is required for every member of a crew that goes ashore. You've got a security checkpoint, but we require a check by the mate on duty, breathalyzer, already mentioned, extra policing of the alcohol policy at every spot in Valdez. We got the Valdez port operations coordinator, Captain Deppe, you have a loading mate, a radio officer up here, you have all kinds of people up here making sure that the rules are being followed. We also have random searches and we have a hotline.

Now, before you leave Valdez, going out like that fateful night, it is required that you have a voyage plan and you tell people about it, and with Ex-bridge you have to put it up there so everybody can see, we know what we're going to do and if we're not doing it, somebody is going to know about it.

We have weather rules and ice rules. Our policy says if ice can be a hindrance and it's nighttime, you cannot go at all, if it's daytime and if there is ice and it's not a danger, you can go, but you have an escort, and that escort in that situation will be in front of you so that that person – that vessel will encounter the ice long before you do, and obviously, in light of all that's happened, if it's a problem, you got to come back, because there is a new rule that we

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have. You can't leave the system, you can't leave the traffic separation system, you can change lanes to account for ice, but you cannot leave the system.

Now, you're also going to hear some other changes involving oil spill response and things like that. I'm not going to take the time to go into this. I do want you to know one other thing though, particularly as to sea river. You remember hearing there was no after care and there was no formalized monitoring, written out monitoring, for under the alcohol policy? There is now. There is now. If you think about it, once you hear this proof and you compare what I told you and what Mr. Elmer is going to tell you about and what Mr. Raymond is going to tell you about, we have made a change in virtually every area you've heard about, whether it caused the accidents or not, during the course of the trial, every area.

Now, once again, it's going to be hard to dispute those facts, but I don't expect that he's going to leave them sitting out there unmolested. Probably is going to question the sincerity and the motivation and the sincerity of the effort. He's seen that as his job and he's pretty good at it. An old stand is to talk about Exxon as some evil group suggesting to you that everyone at Exxon lies, everyone at Exxon is bad and everything done by Exxon is for some ignoble purpose; in other words, don't trust a word that they say, the only thing they understand is the lash, and the lash you have is money, so use

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it freely for my side.

Now, we all know from our own personal experiences, from the country's experiences, what terrible unfairness and uncondemnations of whole groups of people to propagandize that way. To say or even think that all of a whole group of any human

being is bad inevitably is inaccurate, it's mean and it's downright stupid, it's an insult to everybody.

When we came into Phase I, we knew we had made mistakes and we told you so. We told you at the very beginning. We also told you we were liable for the actual damages suffered by the plaintiffs. In short, we came into this case feeling guilty and honestly told you so.

Now, with our feeling of guilt, remorse, I suspect we've been a little too meek in responding to these suggestions of light, and a little too timid in defense of the clients' honesty and integrity, but now is the time for you to judge us as we are, as the truth tells you we are. Look at what we did, look at the efforts we have made, look at the size of the commitment since the spill and look at the wholesale changes we have made since the spill. I trust you won't let these side attacks and generalizations deflect you from the truth, because they tell you and show you much better than my words that we were sorry, we were not and are not in denial and that we have gotten the message.

These are the facts, then, that you will have before you as

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you decide this last claim, the claim for punitive damages, and the potential facts are that we acted responsibly, we committed to clean up the spill, we committed to restore the Sound and we committed we would do everything we could to see that it didn't happen again.

In short, Ladies and Gentlemen of the Jury, I respectfully submit to you that when you consider

proof in Phase I and you consider what happened after the spill and what was done after the spill, on the main things, the main issues, you're going to conclude that this corporation behaved like you would want a responsible business to behave after this accident. Exxon did what you would want them to do, any business to do after this kind of disaster, and we were able to do it because of these successes that Mr. O'Neill was talking about in part, and because of the commitment, the sorrow, the remorse that we made, and if that's the case, if I'm right about that, and I think the facts are going to lead you in that direction, then you have a very solemn and terribly responsible duty as citizens, as jurors, to say so in your verdict on punitive damages. And by saying so you complete the message. You complete that message, you underscore that message and you make sure that everybody gets it. Thanks.

* * *

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you decide this last claim, the claim for punitive damages, and the potential facts are that we acted responsibly, we committed to clean up the spill, we committed to restore the Sound and we committed we would do everything we could to see that it didn't happen again.

In short, Ladies and Gentlemen of the Jury, I respectfully submit to you that when you consider proof in Phase I and you consider what happened after the spill and what was done after the spill, on the main things, the main issues, you're going to conclude that this corporation behaved like you would want a responsible business to behave after this accident. Exxon did what you would want them

to do, any business to do after this kind of disaster, and we were able to do it because of these successes that Mr. O'Neill was talking about in part, and because of the commitment, the sorrow, the remorse that we made, and if that's the case, if I'm right about that, and I think the facts are going to lead you in that direction, then you have a very solemn and terribly responsible duty as citizens, as jurors, to say so in your verdict on punitive damages. And by saying so you complete the message. You complete that message, you underscore that message and you make sure that everybody gets it. Thanks.

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The second stipulation has four separate parts to it. First, the following Phase II-B claims for actual damages were resolved as follows: A class consisting of Alaska Natives made

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claims that their subsistence harvests were reduced as a result of the Exxon Valdez oil spill. Exxon has agreed to pay \$20 million to the class on these claims. The next series has to do with claims for actual damages that will be resolved by proceedings in Phase IV that will not involve you. First, commercial fishermen in fisheries affected by the oil spill were unable to fish certain fisheries as a result of the Exxon Valdez oil spill including pot shrimp, trawl shrimp, Dungeness crab, brown king crab, tanner crab, king crab, halibut, sablefish, miscellaneous finfish, miscellaneous shellfish, miscellaneous groundfish, smelt, scallops and bait herring, commercial fishermen participating in these contend \$24,764,000. Defendants admit that there

was some loss in each of these fisheries, but contend that the actual damages were lower. Second, commercial fishermen in Lower Cook Inlet, salmon seine and salmon setnet fisheries sustained losses due to closures as a result of the oil spill. Commercial fishermen in these areas contend that damages in 1989 amounted to \$787,000. Defendants admit that there was some loss in each of these fisheries, but contend that the actual damages were lower. Three, commercial fishermen in fisheries affected by the oil spill contend that they have sustained losses because the prices at which their fishing vessels sold have been reduced as a result of the spill. Defendants deny that the Exxon Valdez oil spill caused a drop in the price of vessels

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sold, and contend that the actual damages, if any, were less than the amount claimed.

Four, certain commercial fishermen from fisheries affected by the oil spill who sold their fishing permits after September 1993 contend that the prices at which their fishing permits have sold have been reduced as a result of the spill. Defendants deny that the Exxon Valdez oil spill caused a drop in the price of these permits and contend that the actual damages were less than the amount claimed.

Five, landowners, including certain Native corporations, who own shoreside lands in the oiled areas of Prince William Sound, Kenai Peninsula and Kodiak, contend that oiling of those lands by the Exxon Valdez oil spill resulted in damage of at least \$130 million. Defendants assert that many of the lands involved were never oiled by the oil from the Exxon Valdez. As to lands which were oiled,

defendants admit that they are responsible for damages, if any, caused by the oil, but defendants contend that such lands have been, for the most part, cleaned up and that any residual damages are temporary.

Six, the Cook Inlet Aquaculture Association, Kodiak Regional Aquaculture Association and Prince William Sound Aquaculture Corporation contend they sustained losses due to a reduction in the price of fish – I'm sorry, reduction of the price paid for fish actually harvested in 1989 and state that these damages are \$18,860,000. Defendants contend that

[7072]

hatcheries, the hatcheries damages, if any, were less than the amount claimed.

The third area has to do with claims for actual damages that are to be resolved in Alaska state courts. First, the municipalities of Kodiak Island Borough, Larsen Bay, Old Harbor, Ouzinkie, Port Lions and Cordova contend that they have sustained losses due to the Exxon Valdez oil spill and state the damages they have suffered at the present trial, 8,784,546. Defendants contend that the damages suffered were less than \$75,000.

Two, other municipalities, including Seward, Valdez, Kenai, Kenai Peninsula Borough, Chignik, Akhiok, City of Cordova and Whittier, losses at a minimum equivalent to those municipalities presently in trial in paragraph one above. Defendants deny that these municipalities were damaged by the Exxon Valdez oil spill or contend that the damages suffered, if any, were lower.

We have a second paragraph two, and probably all of the numbers from this point on were supposed to have been shifted. The Native corporations of English Bay, Port Graham, Chenega, Chugach, Eyak and Tatitlek contend that they have sustained losses from the oiling of their land due to the Exxon Valdez oil spill and state the damages they have suffered are 110,898,000. Defendants contend that the lands far back from the shore land and other lands that were not touched by oil

[7073]

were not damaged at all and contend that the damage attributable to oiled lands amounts to about 1,500,000.

Third, the Native corporations of English Bay, Port Graham, Chenega and Chugach contend that they have sustained losses to archaeological sites on their lands due to the Exxon Valdez oil spill and state the damages they have suffered are 35,571,000. Defendants deny that archaeological sites were damaged by the Exxon Valdez oil spill.

Four, certain commercial fishermen in fisheries affected by the oil spill have claims in state court for losses they claim for the depressed sales price of their permits and vessels. The Exxon defendants dispute these claims.

Five, the Native corporations of Chugach and Port Graham own and operate seafood processing operations that were impacted by the Exxon Valdez oil spill. Exxon paid these processors 9,515,000 in settlement of their claims.

Six, certain commercial fish processors claimed that they were damaged as a result of the Exxon

Valdez oil spill. Exxon paid these processors 113,500,000 in settlement of their claims.

The fourth part of this stipulation has to do with the membership of the punitive damages class. Each and every claimant entitled to recover damages from defendants for damage resulting from the Exxon Valdez oil spill is a member of the punitive damages class and is a plaintiff in this action for

[7074]

purposes of this Phase III. No other jury will award punitive damages to these plaintiffs in any other lawsuit.

* * *

[7140]

MR. JAMIN: Ladies and Gentlemen, by agreement we're now going to publish two additional documents, portions of which I'm going to read to you. This is a memorandum dated March 19, 1990. It's from Michael Stalzer to Dwight Koops, and the subject is fleet licensed officer analysis work hours.

As background, Mr. Stalzer's writes: There are safety concerns about the numbers of hours individuals have been working in the fleet. These concerns arose in the '80s when manning reductions were occurring and additional responsibilities were being shifted to the fleet officers with no accounting for the additional time required to do these tasks.

Later in the background section he indicates: Recently the fleted officers have documented their work hours for January 1990 and added suggestions for reducing the workload.

In the section that Mr. Stalzer describes as analysis, he indicates: The data received confirms management's own observations and the feedback which the fleet has provided to management concerning the number of hours work. The work rule guidelines were violated 74 out of the 94 positions, or 78.7 percent of the time. The data indicates that the workload is heaviest in the deck department when compared to the engine

[7141]

department. The deck department had 123 incidents of 15 hours or more per day versus 47 for the engine department. The deck department had 32 incidents of 340 work hours or more per month versus 24 for the engine department. The data indicates that the workload is heaviest for the senior officers in each department, and of the 20 positions which did comply with the guidelines, seven of these, or 35 percent, were concentrated on the Exxon Baytown and the Exxon Galveston, which have four mates.

On page 2 of the document, in the section entitled recommendation, Mr. Stalzer writes: In the interest of safety, it is management's responsibility to insure that the guidelines are followed.

And on the fourth page of the document, PL-13, Mr. Stalzer sets out two charts, one with the number of incidents, 15 hours or more worked per day in January 1990, and then down at the bottom half of page 5 of PL-13 sets out the actual reported work hours in January of 1990.

I call your attention to the, basically what's a notice down at the bottom: The work guidelines limit the maximum number of work hours per month to 340, and we have highlighted, but I will not read

those lines, for the Benicia, the North Slope, the Long Beach, the San Francisco and the Baton Rouge, and note that there is a line summarizing the data where more than 340 hours per month are determined, the incident line.

[7142]

Exhibit 13 will be available for you in the jury room.

The next exhibit which I would like to publish is available in a board format, and I'll set up on a second easel, Ladies and Gentlemen, which is Plaintiffs' Exhibit Number 175. It is a memorandum from Mr. Frank Iarossi to Mr. Dwight Koops, dated September 5, 1989, and I want to call your attention at the outset to the beginning of the third paragraph on another subject. Mr. Iarossi writes: On another subject, I am growing a little impatient with our slowness in coming to grips with other operational issues highlighted by the grounding of the Exxon Valdez. Someone in operations needs to take some initiative fast. Areas which need to be addressed very soon and action steps proposed include very clear instruction to our masters regarding operations in PWS during ice season.

In parens, Mr. Iarossi writes: It's incredible that September is here and we have still not addressed this issue.

Number two, very clear instruction regarding vessel speed in PWS and other areas such as SF Bay.

Item three, very clear prohibition against leaving the traffic lanes in PWS, unless emergency conditions exist and then only with the express permission of the MSO Valdez.

Number four, some fail safe method of ensuring that watchstanders clearly know when the autopilot is engaged.

Number five, a very clear directive on maintaining a lookout at all appropriate times. In parens, the idea of

[7143]

allowing a coffee break is just unbelievable.

Number six, a very clear statement that the Navigation and Bridge Organization Manual is not a guide. It establishes how our vessels must be operated, and that it is the master's responsibility to ensure it is followed at all times as appropriate.

From the second page I call your attention to the second paragraph: Last week during a hearing before the Alaska Oil Spill Commission, Jerry Aspland of ARCO Marine publicly and for the record stated that in the aftermath of the Valdez grounding, ARCO Marine has established the following policies. One, all vessels will remain a minimum of a hundred miles offshore, except during direct approach to and from port; two, restricted speed in PWS and Puget Sound; number three, no deviation from the traffic lanes in PWS; number four, breathalyzer tests for masters before leaving any dock; number five, autoalarm on all steering gear autopilots; number six, master's judgment as to whether he leaves Valdez at night during ice season.

These steps clearly establish a standard of care in our industry, and I hope we all have come to understand what that means to us. We could not defend having a lesser standard. It is more than a little disturbing that ARCO has come to grips with

the Valdez grounding while we, over five months later, have not.

[7144]

The memorandum is copied to Mr. Paul and Mr. Tompkins.

* * *

[7144]

EXAMINATION OF FRANK IAROSSO (Video) BY
VIDEO EXAMINER:

Q Now, Exxon is in the business of transporting crude oil by sea, right?

A Crude oil, yes.

Q And other substances?

A Yes.

Q Substances which Exxon Shipping and Exxon USA were aware created a danger to the environment if released?

A We understood the nature of crude oil, yes.

Q Exxon shipping and Exxon USA were aware that a master of a tanker where the master had an alcohol abuse problem was a potential for a disaster to the environment?

A We understood the risks in the business, yes. We understood the responsibilities, yes.

Q As of March 26th, 1989, other than attorneys for Exxon, had you talked to anyone concerning the cause of the grounding of the Exxon Valdez on March 24th?

A No.

Q Did you as of March 26th, 1989, had you instructed anyone either within Exxon Shipping or within Exxon USA or Exxon

[7145]

Corporation to make – to interview the persons on the – that were present on the Exxon Valdez at the time of the grounding?

A When I arrived in Valdez on March, still the 24th – Friday, I can remember the days better, it was Friday evening, one of the five people that came up with me was our Exxon Shipping Company generally counsel, and his instructions were to initiate the investigation to determine exactly what had transpired.

Q I'm sorry, who was it that was with you?

A Bob Nicholas, who is the Exxon Shipping Company general counsel, and his role was to initiate an investigation to determine what had transpired.

Q Are you aware that the investigation was in fact conducted?

A There was, I'm sure, a whole series of investigations.

Q Have you since the spill gleaned any knowledge relating to the condition of Captain Hazelwood at the time of the grounding through your own personal investigation or conversations or discussions with persons other than counsel?

A The answer is no, with the exception of the NTSB published reports.

Q I'd like to mark as the next exhibit, 26794, a two-page document, our number 21, for Mr. Iarossi to Mr.

Koops, dated September 5, 1989. You had a chance to review 26794?

A Yes.

[7146]

Q Is that a document that was prepared by you?

A Yes.

Q Now, on the second page you list six new policies established by ARCO Marine?

A Yes, as I understood them from their presence.

Q And you characterized those six new policies as clearly establishing a new standard of care in our industry, is that correct?

A Well, that was a phrase that we had used subsequent to the grounding to – that's what I said, yes.

Q Was anyone else terminated from Exxon Shipping Company as a result of the Exxon Valdez incident?

A No.

Q Was anyone's position affected as a result of the Exxon Valdez incident, were they demoted, transferred?

A I think the mate on watch was demoted to an able seaman, my recollection.

Q Was anybody – were any officers at Exxon Shipping Company transferred, demoted or had any other personnel actions taken as a result of the Exxon Valdez incident?

A No.

Q Was anybody at Exxon USA subject to adverse personnel action as a result of the Exxon Valdez incident to your knowledge?

A Not to my knowledge, no.

[7147]

Q With the exception of Captain Hazelwood and the mate on board who was demoted to an able-bodied seaman, were there any adverse comments placed in the personnel file of anybody at Exxon Shipping Company as a result of the Exxon Valdez incident?

A Not to my knowledge, no.

Q How about at Exxon Corporation to your knowledge?

A Not to my knowledge.

Q Prior to the grounding of the Exxon Valdez in March of '89, was there a loading mate assigned to the Exxon Valdez?

A You mean in addition to the regular crew?

Q Yes.

A No.

Q Was that ever discussed to your knowledge within Exxon shipping prior to the grounding; that is, having a loading mate?

A Not at my level.

Q You never were privy to any discussions?

A No, not that I recall.

Q Do you recall that after the grounding a loading mate was assigned to the Exxon Valdez at the Port of Valdez?

A It was one of the changes made in response to the incident itself and all of the aftermath of the incident.

Q Were you a party to that decision?

A Yes.

[7148]

Q I'll show you the transcript. We have a transcript that was produced by Exxon, and I'm interested – and I'll tell you ahead of time, I'm interested in the entire page 19. Will you read the entire page 19 and then tell me if that's what you said? Will you read it out loud?

A Okay. Could I read the question from 18 so I understand it.

Q You can read all you want to read.

A The speaker who is not identified says, what does the crew tell you about what went wrong. Mr. Iarossi's answer, our people are asking questions and making an investigation. We are doing that right now.

The speaker said, are you deliberately shielding yourself from orders so you don't have to tell us.

Mr. Iarossi's answer, we intend to tell you everything we know. There would be no reason to shield it. It's going to be out from the NTSB study and the Coast Guard hearing so there is no way I could shield. What I'm going to do is to make sure I tell you before anybody else does.

The speaker says, sir, my answer is, you can take that as a fact. It will be my job to tell you first before they tell you, Bill Peters.

Q I'm interested, did you commit publicly at the press conference to be the one to first tell the public what went wrong?

[7149]

A To the extent we found out, yes.

Q At page 79 of the same book you were quoted as saying, there is no doubt that all of these contingency plans and all of this planning and everything did not anticipate ever having to respond to a spill this big, Iarossi said. I do not know why it didn't. I wasn't involved in the plan, but clearly no one ever anticipated trying to handle 250,000 barrels of oil on the water. This spill just overwhelmed everybody. No one was organized to control a spill of this magnitude. Did you ever make that statement?

A Yes, that's probably my characterization.

Q At page 31 of the same book you were quoted as saying, upon being informed of the fact that the vessel had lost an estimated 138,000 barrels by one George Nelson, you're quoted as saying we had an unbelievable problem on our hands. Did you ever make that statement?

A Yes.

Q At page 34 of the same book, you're quoted as saying, with regard to the mobilization, we started from ground zero, Iarossi said. There was no logistic system in place. Did you ever make that statement?

A In a certain context, yes, probably.

Q Was the statement made in the context of the Exxon Valdez oil spill?

A Yes. I don't recall what I was referring to as far as

[7150]

logistic system, but I'd have to go back and look at what the exact question was.

Q Page 297 of the same book, you're quoted with regard to the response to the oil spill as saying, quote, it's just that it was totally inadequate relative to the magnitude of the spill. Did you ever make that statement?

A I wouldn't say that there weren't details that couldn't have been done better, but I've seen EPA and Coast Guard reports that basically give us a B-plus or better on most of the response work. It's just that it was totally inadequate relative to the magnitude of the spill. I'd say a lesson to society is that a spill like this can happen no matter how low the probability, the potential is still there for it to happen, and another lesson is in the inadequacy of current technology, what we have is just not good enough no matter how fine-tuned a organization you have, unquote.

Q Did you make those statements?

A I would say that's my statement. I recall that.

Q Did you mean it to be truthful at the time you made it?

A Yes.

Q Let's talk about Exxon senior management for a minute. At any time after the spill were you ever called to account either orally or in writing for what happened with regard to the spill?

A What part, you mean the cleanup?

[7151]

Q With regard to the accident.

A No.

Q So nobody from the date the vessel ran aground to today has ever called on you to account for the accident?

A No.

Q Now –

A Within Exxon, I've been asked questions by a lot of other people, but not Exxon.

Q From the date of the accident to today, have you had to submit any reports to Exxon USA or Exxon Corporation with regard to what happened about the accident?

A No.

Q From the date of the accident until today, have you yourself conducted an investigation with regard to what happened as to the accident?

A Friday night I asked the general counsel of Exxon Shipping Company, that's March 24th, to initiate an investigation Saturday that became an Exxon USA investigation and I was out of the loop after that.

Q Did Exxon USA ever report back to you the results of their investigation?

A No.

* * *

[7162]

EXAMINATION OF LAWRENCE RAWL (Video) BY
VIDEO EXAMINER:

Q Are there risks in the production and transportation of oil?

A There are risks in everything, but, yes, there are.

Q I'm going to hand you a document the reporter has marked as 33100.

A Are we through with this?

Q Yes. Have you ever seen 33100 before?

A Yes, I have.

Q What is it?

A It's called an open letter to the public dated April 3rd,

[7163]

1989.

Q And –

A It was a newspaper ad, as I recall.

Q Who paid for the newspaper ad?

A I presume Exxon did. I assume they did.

Q Is that your signature on the bottom?

A Yes.

Q Did you participate at all in the drafting of the document?

A I don't recall participating in the drafting. It's possible I might have edited it or something, I don't recall.

Q Did you approve it?

A I signed it, which would indicate I approved it, I'm sure.

Q What was Exxon's purpose in running this advertisement?

A Well, I recall not really thinking that it was necessary to have such an advertisement, but certain people, and I don't remember which advisors felt like it would be useful. There was concern that the public didn't understand this and that it would be good to put it in a newspaper.

[7166]

Q Is there – does Exxon Corporation, Exxon USA or Exxon Shipping, any of the three separately or together, have an intention to make public the results of any of its ongoing investigations as to the causes of the incident?

A I thought we've made a lot of reports public. Now, I can't really get specific as to – in fact, I know we've made a lot of reports public, but we've provided information to the National Transportation Safety Board, I think there was some testimony made that were related to that. I don't know what the report said, but they were related to that. There were other hearings, other than the ones you referred to, that I testified at in the Congress where some kind of reports were made or questions answered under oath. So I don't understand the question actually. I think we've been doing – there are some things I'm sure that have not been reported but are still under investigation.

Q Do you know if – well, have you come to a conclusion as to why the incident happened?

A No, I haven't. I think I've testified on that.

Q Now, was it your understanding that this plan did recognize that if there was a catastrophic spill, large volumes would reach shore?

A My understanding, that was somewhere in that plan. I read the large oil spill part of that plan. Of course it covered a lot of other things, and I'm not sure these words are

[7167]

sufficiently precise, but a large spill it was recognized some would probably reach shore.

Q As a result of your experience, would you agree with the proposition that a risk of running oil out of the Port of Valdez is that there will be a large spill and that as a result of that large spill large volumes would reach shore?

A There is always a risk in transporting anything. This was a contingency, and the word contingency means if you have such a spill. I don't think this plan, when they wrote it, they felt like this was a predetermined, going-to-happen kind of thing, if I answered your question.

Q Now, was it true that Exxon had a good year in 1988?

A Yes.

Q And at the time of this annual meeting in May 18th, 1989, the Valdez spill had occurred?

A Yes.

Q And in the bottom right-hand corner of the first page it appears that you expressed the opinion that Exxon's overall financial health remains sound and its operations are well positioned for the future. Do you see that?

A Yes, I see that.

Q And was that your view as to the health of the corporation at the time?

A Yes.

* * *

[7172]

Next, Your Honor, I would like to publish PX620. This is from President Stevens of Exxon USA: My own view is that that occurrence, 200,000 barrels in Prince William Sound, was viewed, quote, so highly unlikely that the consequences of it which have occurred pretty well as much as envisioned were viewed as acceptable. By today's retrospective view, that is not the case. That may be incomprehensible, Mr. Chairman.

* * *

[7175]

EXAMINATION OF JACK CLARKE (Video) BY
VIDEO EXAMINER:

Q Mr. Clarke, you are a lawyer, correct, sir?

A Lawyer by training, yes.

Q Are you licensed in any states right now?

A Yes.

Q What states are you licensed in?

A New York.

Q What is your present title, sir?

A I'm a director and senior vice-president of Exxon Corporation.

Q How long have you held that title, sir?

A 16-plus years.

Q That's same title, is that correct?

A Yes.

Q What is your current residential address?

A 3831 Turtle Creek Boulevard, Dallas, Texas.

Q Who do you report to within Exxon Corporation, sir?

A I report to the chairman.

Q How long have you reported to the chairman, sir?

A Since I became the director and senior vice-president.

Q Well, sir, has the spill to your knowledge had any material adverse effect on the business operations of Exxon Corporation?

A Material adverse effects on its operations, is that the

[7176]

question?

Q Yes.

A No, I'd say not.

Q Has the spill and the cost incurred by Exxon in responding to the spill had any material adverse effect on the financial condition of Exxon?

A I think that the expenditures that we made were very substantial, and I think that the – they did not affect our triple A rating, which, as I recall, we were one of 11 corporations in the United States with a triple A rating.

Q Sir, were you the member of the board of directors of Exxon that supervised the company's public affairs activities that were taken in response to the oil spill of the Valdez and the subsequent contamination of the Alaska shoreline?

A I think that a fairer way to put it is that it was in terms of people on the board of directors, that the chairman and the president and I tried to work together on those issues.

Q Sir, did you consider the Exxon Valdez oil spill and the subsequent contamination of the Alaska shoreline with oil that ran aground from the spill to have a catastrophic impact on the coastal habitat of Alaska?

A Well, obviously I'm not an expert on impacts on the coastal habitat, but my belief is that it was not a catastrophic impact.

Q Do you think it had serious effect on the Alaska [7177] environment?

A I think that there were serious impacts of some kinds for a period of time, yes.

Q Sir, do you consider the grounding of the Exxon Valdez and the subsequent discharge of oil from the Valdez to have caused any catastrophic effects on the economy of the shoreline regions of Alaska?

A No.

Q No?

A No.

Q Can you tell me why you hold that opinion?

A I haven't seen any evidence to support that.

Q Have you looked for any evidence to support whether or not the oil spill had a catastrophic effect on the coastline economy of the state of Alaska?

A I'm aware generally of ports of impact, yes.

Q Do you know if the oil spill and the subsequent contamination of the Alaska shoreline had any serious effect on the local economy of the coastal regions of Alaska?

A My perception is that in a economic sense, the amount of money that was spent in respect to the cleanup significantly contributed to the economy in terms of reducing unemployment in the state and providing income to a lot of people.

Q Do you consider the oil spill to have been beneficial to the state economy?

[7178]

A I'm just saying that I understand that a lot of employment was provided as a result of the money that was spent on the spill. I'm not going to make a judgment as to whether on a net basis they came out ahead or not, I'm just reporting what I understand to be the facts.

* * *

[7192]

CROSS EXAMINATION OF CONSTANCE BUHL
BY MR. O'NEILL:

Q Do you want to take a break for a second?

A I think I'm going to be okay, but thank you for offering. Go ahead.

Q Thank you for your work on the spill. And I have a few questions.

A You bet.

Q Normally I come up here with a transcript and a big stack of papers, but I have a couple questions. As a result of your experience in those days and pulling the equipment together and searching for equipment, you searched for the equipment in United States and Europe?

A All over, even Russia.

Q I think it's fair to say, and it's relatively obvious, that there was not equipment anyplace in Alaska to deal with the spill?

A I agree.

Q And again I think it's fair to say and it's obvious, but with a spill of this magnitude, in excess of 200,000 barrels, oil is going to reach the shore?

A That's probably fair to say. In hindsight, that proved to be the case.

[7193]

Q Did you know in the contingency plan, that was also envisioned? Did you know that or not?

A I have never read the contingency plan.

Q Save yourself the time to read the contingency plan.

A And I think that the objective of the contingency plan was not to address a spill of this magnitude, that a spill of this magnitude was considered to be a very remote possibility, and I think that it was remote enough that whom the powers to be that were involved in developing that plan, which were

the shipping companies and EPA and the State of Alaska and the Coast Guard, all concurred that the remoteness of that possibility precluded them from having that itemized in their spill response.

Q And it wasn't –

A Again, I haven't read the spill response, but that is my understanding.

Q Because if we have a spill of this magnitude, and the terrible things that result from a spill of this magnitude, the best way to attack it is by not allowing it ever to happen, prevention, common sense, isn't it?

A Prevention is, for any accident, is truly the best approach, yes.

Q And I was interested – I've got one or two more questions and then I'll sit down. You made the comment that there was still a million barrels on the vessel after it ran aground and it had discharged

[7194]

260,000 barrels?

A Yes, sir.

Q And that million barrels on the ship, which Captain Deppe is going to come and testify about, but that million barrels, the reasons that we lightered it was because that million barrels also presented a threat to Prince William Sound and the communities around the Sound, ship was stranded, it had an additional million barrels and that additional million barrels was also a threat?

A I concur.

* * *

[7194]

DIRECT EXAMINATION OF WILLIAM DEPPE
BY MR. SANDERS:

* * *

[7199]

A When Mr. Iarossi arrived in Valdez, I was already there, and Mr. Iarossi asked me to go on board the Valdez and relieve Captain Hazelwood.

Q Did you do that?

A Yes, I did.

Q And when you went up to relieve Captain Hazelwood, did you have any discussion with him concerning what had happened or anything like that?

A No.

Q You simply relieved him?

A Yes.

Q And after you relieved him, what did you do?

A Well, the first thing I did was got together with some of the senior officers and try to assess what the situation on the vessel was.

Q For what purpose?

A Well, it was – what I found out shortly after arriving was a very precarious situation from what I could tell. Three-quarters of the bottom of the vessel had been ripped open by rocks, we had lost a tremendous amount of oil from the vessel. The vessel was aground, we didn't know how much of it was aground. We didn't know really the stability of

the vessel. If anything occurred at that moment, if it somehow

[7200]

refloated, whether it would stay afloat or not. There was the possibility that because of the damage on the bottom, that with the tide action and the motion of the vessel on the rock where it was, it could create some stresses on the ship that could break it in half, and it was – I was trying to gather as much information as I could in a short period to find out what our next step should be.

Q And was there an ultimate aim to all this? Had lightering been mentioned at this point?

A Yes, lightering was something that was mentioned before I even went out there. We were going to try to lighter the ship, if we could, to get as much oil off as we could before anything worse happened out there.

Q And you were to be the captain of the vessel that was to be lightered, correct?

A I was the captain for about three days after Captain Hazelwood left, the official captain on board.

Q We'll get into how you changed jobs, but on Friday, the 24th of March, when you arrived and relieved Captain Hazelwood, you were to determine whether lightering could be done in terms of the safety of that ship, correct?

A That was the major function. We were going to attempt lightering. My job was to figure out how we could do it.

Q And the first step you took was to determine how dangerous the situation was, correct?

[7201]

A That's correct.

Q And you talked with the people on board, correct?

A Correct.

Q And you made your assessment?

A We had some divers that came alongside also, and they gave us some information early on, too.

Q And as I understand it, the two principal dangers that concerned you were, one, whether the ship could break apart, given the rising falling tides and the damage that had been done, that was the first; the second was if it floated off the rock on which it had grounded, what would happen to it, would it sink?

A Yeah. And the third one was blowing up.

Q And what was your assessment after you went out there, looked at the situation, talked to those people, what did you think?

A Well, we had really scanty information. Our initial assessment was we thought we could stay there and start the lightering operation. It was real important, talking to our naval architects, that we keep the vessel aground, that we didn't refloat in any way. So all the plans had to be developed around keeping the vessel on the rocks and not letting it get off the rocks. I was told if we did refloat that, we would probably capsize and sink, although all those determinations weren't totally made at that point by the naval

[7202]

architects.

Q Let me stop you a second. How did you talk to the naval architects, where were they?

A They were in Houston and I talked to them via satellite telephone.

Q Is that the group Ms. Buhl was talking about just a second ago?

A I believe so.

Q So you consulted with them after you had seen the ship and after you had talked to the officers on board?

A That's correct.

Q Now, as a result of your assessment, did you give the crew a choice of staying on board?

A Well, the next morning before we started lightering operations, we met with the whole crew and we discussed what we were going to do, the dangers and the way I thought they were developing for us, and we tried to go over all kinds of safety aspects before we did anything and try to guarantee personal safety. One of the options we gave everyone was that if they thought they weren't able to continue on board, after what they have been through, that they can leave the vessel and we'll try to find a replacement. No one decided to leave; everyone decided to stay.

Q And in making that decision, you had already gone over the

[7203]

dangers as you saw it?

A Well, that was the first thing we did the next morning, was try to get everyone prepared for the

worst case scenario. If we did break in half, if we did have refloat inadvertently for some reason and the vessel got into an emergency situation, we wanted to guarantee that the people were taken care of first as best we could under the circumstances. So we went over all those plans before we did anything, to make sure that everyone was prepared to get off the ship as rapidly as we could if something bad happened during that time.

Q Then following that and other discussion, you actually gave them the option of whether they stayed or not?

A That's correct.

Q And they all stayed?

A Yes.

Q And I believe you said this, but I want to make sure it's clear, that at the time it was your assessment that there was approximately a million barrels of oil still on the ship, correct?

A We thought we had a little over a million barrels left on board, that's correct.

Q And when did the lightering actually start?

A I got on board Friday night and the lightering started Saturday afternoon.

Q So the very next day?

[7204]

A Right.

Q And just so there is no question about it, tell them what lightering is.

A Lightering is just taking the oil that's on board the Exxon Valdez and transferring it to another vessel.

Q Now, that sounds simple, but I think we need to explain how difficult that is in the situation you had out there. First, can you describe to the jury the particular problem caused by having no bottom in many of the tanks and how would you possibly be able to take fuel out under those circumstances? And since you and I have done this, I know you need a little –

A Probably be best to draw a picture than try to explain it, I'm not that good an explainer and it would probably be easier to draw a picture.

Q Well, the problem was, you were explaining it to me –

MR. NEAL: That's a real chore, Captain. I've worked with him a long time, haven't been able to explain anything to him.

MR. SANDERS: I object to Mr. Neal's interruptions.

BY MR. SANDERS:

Q Will this be all right?

A I guess.

Q I'll get you a pen.

A Well, the cargo tank is similar to a big milk carton, I guess you could say. It looks something like that, and there

[7205]

is – there might be 15 cargo tanks on board the Exxon Valdez full of oil. A normal tank would have

a pipeline in the bottom of it here and there might be oil up to this level, and when you pump out the cargo, this oil would just come out down here and up through this suction valve and out into the cargo pumps and over the side of the ship. And that's how we would normally do it if the bottom was intact; the oil would feed out through gravity and go out. On the Exxon Valdez there is a hole in the bottom of each tank, so you had this suction valve down here. Oil floats on top of water, so when you try to – what happened initially, the oil might have been there high in the tanks and the water outside was at that level (indicating). The oil immediately went down to that level and that's where we got the initial 260,000 barrels of oil that came out of the ship right there. But at this point the oil was stabilized equal with the water outside, so water could come in and out of here easily without any oil coming out for the most part. And if we tried to start a pump up right now and pump out oil, we would get water coming in and not any oil coming out, so the dilemma was how to get the oil out of the ship. What was decided on was to – and the only way we figured we could do it was to put pumps in from the top of the tank, and there is little pumps that are manufactured that can fit through about a 12-inch hole and it's on the deck of each ship

[7206]

that you can take a plate off of and slip these pumps and they can be driven by hydraulic oil and they can pump maybe a thousand barrels an hour, if you're lucky. But, anyway, what we did was we got a bunch of these pumps and flew them out to the ship. We inserted them in the tanks and just put them in the oil right there and we pumped the oil out from

the top. As we pumped the oil out from the top, because oil floats on water, water would – oil would flow to the bottom, and as we kept pumping, it would fill up with water from the bottom and the oil would go out the top. So that's how we lightered the majority of the oil.

Q Thank you, Captain. You can sit down now. Now, you mentioned the prospect for explosion, danger. Was there a particular area in which that danger was the greatest?

A Well, when we were pumping the oil from the top like that, oxygen could come in through the openings that we had opened up and we would create an explosive atmosphere between the void space, the deck and the oil. By putting the tools and lines and equipment down there, we could get a spark, and if we had an explosive atmosphere, you could blow up the ship. We ran the inert gas system as soon as we started getting close, which generates gases that don't have enough oxygen to allow an explosion, and that just – that system ran the whole time to get that atmosphere from being an explosive atmosphere.

Q How do you get that atmosphere?

[7207]

A We have meters that can check that.

Q Now let's explain – if you explain how you could not use the regular pumping system to pump the oil out of the tanks, because that's where the water – in some of the tanks at least?

A Sure.

Q So you're pumping from the top, correct? Would that mean that you had to redo the entire system

above the deck in order to get the oil up to pump it off to another ship?

A Yeah. Once we got the oil to the deck, we had to do something with it.

Q I think I've got some pictures to help us out a little here, but first I've got a blow-up before – I have to play with this machine over here. This is Exhibit DX8375, which is a blow-up, and could you tell the ladies and gentlemen of the jury what this is and why we have it up here?

A That's – I don't know which one of those ships, it's either the Baton Rouge or the San Francisco, but it's one of the ships we used to lighter and it's tied up along the Valdez. The smaller ship is the ship we used to lighter.

Q This is the Valdez and that's a cloud that's blanking that off?

A Yeah, that's a shadow. Can I stand up?

Q With the Court's permission.

[7208]

A What we did here, all those individual pumps we had in different tanks were just put down through these little holes. You can see there is a little pump there, there is a pump over here, and we got these hoses that were strung all the way down the deck. You can see how they – we pump the oil up from the tank to the main deck and then we had to do something with it. So what we did, we took all this oil and ran hoses from the individual tanks and ran them over to this manifold right here. This is where we normally discharge oil if we're at a dock, or unload oil, so we ran these different tanks and hoses

to this manifold, and over on this side we pumped it right across the ship, and over on this side we connected hoses to the lightering ship and pumped the oil into the lightering ship just like we normally load oil onto a ship, onto this one. The reason we did that was we felt if we ran individual hoses across from each tank this way, that we would stand a chance of spilling some oil. These hoses were a little more flimsy than what you would normally use to go across water with, and we thought it would be a safer and easier operation to just go across on several hoses here rather than run maybe 15 hoses in different places that way.

Q Thank you. I want to briefly go through some more detail about how this was done, and we've got some pictures here to help with

[7209]

that. Now, this is another picture of the Valdez with another ship lightering. Can you describe what we see there?

A It looks like it's similar to the picture we just saw where we were – where we just had tied up the ship there and were getting ready to lighter it. One thing you can see on this picture is that the Valdez has got a – the ship is listing to starboard, or leaning over to the right side of the vessel, and that was something that was occurring twice a day on us, because the right side of the ship and the center line of the ship was – all those tanks were holed. That's where the vessel was aground, on that side of the vessel. The port side was afloat. And as the tide came up, the port side would float and the starboard side would stay on the rock, and twice a day we would get about a five or six degree list to starboard, and then we

would go back down to port again and we would get even keel or get a little bit of a port list. And you can see right there the vessel is listing a little bit to starboard. That's where we were just sitting on the rock, right there on that starboard side.

Q Captain, particularly when the tide would go up and down like that, did you hear any noise from below in the Valdez?

A There was some real scary noises that were generated once in a while down there. People working down there on the pumps would tell us about tremendous cracking and banging noises that

[7210]

were occurring, and a few times when I was walking out there, I heard them also. The whole ship would vibrate as a piece of metal let go or something would crack down there that hadn't previously cracked down there, and it got your attention when it happened.

Q Let me show you Exhibit DX8379 in evidence, and if you can, use that light pen up there.

A Is this it right here?

Q Yes. We can see it.

A What we're seeing here is just the – as I showed you earlier, the cargo hoses that went across from one vessel to the other, and I'm just going across it really slowly here, we connected these cargo hoses up and just left them there, and that was just a permanent connection so we wouldn't have to keep moving those smaller, less adequate hoses back and forth, so we could – we would stand less of a chance of spilling oil that way.

Q Are you ready to go to the next picture?

A Yes, please.

Q DX8388 in evidence, what is this?

A That's – this is the collection side of the Valdez. That was the starboard side of the Valdez, the manifold on the opposite side of the lightering ship. That's where all the hoses came together and that's where we collected the oil on the vessel.

[7211]

Most of those manifolds there, the chief engineer and the engineering staff put together for us on an emergency basis so we could collect the oil and connect those hoses in a mass like that. That big one on the end is something we had ordered especially, and it flew around the Sound about a week before we got it. And it weighed about a thousand pounds, but we did use it eventually.

Q Do I understand that all of this business up here was rigged by the crew after the grounding in order to make this system that you described to the jury possible?

A The crew put that together in order to make this possible, that's correct.

Q Now let me move to DX8383 in evidence.

A That's just another view of the same thing, the manifold there with those different connections that the crew would put together.

Q And the purpose of that is to get the oil from these different kinds of pumps into the manifold so that it can go across to the lightering ship in the normal – using normal hoses, correct?

A That's correct.

Q The next one is 83 – DX8389 in evidence. What's this?

A That's an example of a – we call that a prime mover. That was one of the – there is a diesel motor that's connected to a hydraulic unit that would power the pumps in each tank, and

[7212]

that was – each pump had to have its own prime mover. The Coast Guard had several units. That's one of the Coast Guard's units out there, and that was what powered the pumps we were using to pump out each tank.

Q I'm glad you raised that. I gather that you were not alone in working on this lightering project?

A No, I was not alone. There was lots of help out there.

Q And that help included the Coast Guard?

A The Coast Guard were the first people on-scene with their Pacific Strike Team.

Q Was the coordination good and the cooperation good between you and the Coast Guard and the other agencies that helped?

A The Coast Guard were quite heroic in this thing. They worked around the clock and never asked for a thing, never took a break. They did a great job.

Q And they are the ones that brought in these prime movers?

A They brought in three pumps, and then we, through our own resources, brought in – eventually I think we had close to 20 pumps, maybe 17, 18. I

think we may have had 11 in operation maximum at any time.

Q Let me show you, this is the final picture, DX8381 in evidence.

A That's just one of the tripods that were rigged up that would hold the pump in the tank. One of the challenges the people operating each pump was, especially when the oil started

[7213]

getting pretty close to maximum oil out of the tank, was as the tide came in and out, the oil would rise 12, 15 feet in the tank or go down, and to try to keep the pump in the oil was difficult. So the people were having to adjust the pumps to keep the pump near to surface and not get it in the water. Sometimes we pumped water, but they worked hard to try to keep them adjusted properly so we would get mostly oil.

Q I guess it's obvious, but I think we ought to make the point. Is it true that the pumping in every step in this operation, unlike a normal operation, was a hands-on, 60 seconds out of every minute operation?

A There were people at each pump site, and watching the prime movers, keeping those going, there were diesel motors that had to be taken care of. There were hydraulic units that had to be monitored and the pumps had to be adjusted and there were people constantly doing that. We had up to 70 people on board the vessel during the maximum activity there trying to get all this done.

Q Now, as the time went on, did you become more comfortable with the seaworthiness of the vessel, or did the fear of those two or three things happening stay with you during the entire time?

A I think we all learned to live with the uneasiness that we had about something going wrong. The longer we stayed there it became less likely that it would occur because it hadn't

[7214]

occurred, but I never felt totally comfortable that I was going to be safe at all moments there.

Q Did there come kind of a humorous incident when that was brought home to you?

A Well, after about a week on board we had gone through and drilled safety into everyone constantly every day at our meetings in the mornings and just walking about, making sure that everyone was prepared to get off if anything bad happened. One morning at about 5:00 in the morning I was sleeping in my room and a fire alarm went off, and then the general alarm went off which is the reaction to the fire alarm usually going off, and everyone just scurried about trying to get to their stations, get to the lifeboats, get their survival suits on.

Q Get ready to abandon ship?

A Yes. And it turns out, which is good for us anyway, that the cause of the whole thing was someone who didn't know how to use one of our \$500 toasters down in the galley burned the toast.

Q Now you mentioned that you were captain of the Valdez for three days only. What was the job change?

A We brought another captain out to help out with a lot of the administrative work out there and assist me so we would have double coverage. I became

primarily involved in lightering operations, so I was in charge of the lightering

[7215]

after that point.

Q So the lightering became your job after the third day?

A That's correct.

Q Who took your place?

A Bill Wallace.

Q Now how long did it take to lighter the oil that could be taken off the vessel?

A I think it took us around ten days, ten or 11 days.

Q How many lightering ships did you need?

A We used three.

Q Which were the?

A Baton Rouge, the San Francisco and the Baytown.

Q And after the ten days, I gather – well, did you find that you had lost more oil than you started out thinking you had lost?

A Shortly after we – I got on board we thought we had lost 240,000 barrels of oil, and that's what we were reporting for the first several days. After we had gotten into the forepeak tank which we thought contained 20,000 barrels of oil, we found later that tank was mostly water, and what we thought was 20,000 barrels of oil was oil in the sounding tube, because the sounding tube showed a reading of oil there. Although when we got in the tank itself it was mostly water. So that brought the estimate up to 260,000 barrels at that point instead of 240.

[7216]

Q So you originally thought you spilled 240,000 barrels of oil, and then subsequent investigation of the forepeak tanks showed that you lost even more?

A Yeah, we thought there was oil that somehow gotten into the forepeak which really wasn't there.

Q So if 260,000 barrels was spilled, how much did you end up lightering at the end of those ten days, how much did you save from going in the water?

A We lightered almost a million barrels.

Q After the ship was lightered, was it then floated?

A Yes, I think the day after the Baytown was gone, I believe we refloated it the next day or a day-and-a-half later.

Q And where was it taken?

A To Outside Bay.

Q And that is located on Naked Island?

A On Naked Island, yes.

Q And were repairs done thereafter and then it was moved down to San Diego to the shipyard?

A I left the vessel in Outside Bay after several days there. But we continued to skim oil, get as much oil as we could in Outside Bay, and I think there was a little bit more that was taken out there, and the vessel was prepared for the trip to San Diego from there.

Q One question I guess, this is more curiosity than anything. We have heard testimony that on Sunday the 26th of

[7217]

March, 1989 you had a storm?

Q So you originally thought you spilled 240,000 barrels of oil, and then subsequent investigation of the forepeak tanks showed that you lost even more?

A Yeah, we thought there was oil that somehow gotten into the forepeak which really wasn't there.

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[7218]

CROSS EXAMINATION OF WILLIAM DEPPE BY
MR. O'NEILL:

Q Captain, I just want to talk for a minute about your assignment as Valdez port operations coordinator. You were assigned there in September of 1993?

A That's correct.

Q Which was about four-and-a-half years after the spill?

A Yes.

Q Was there a Valdez port operations coordinator between the spill and the time you were assigned there four-and-a-half years after the spill?

A No.

Q As Valdez port operations coordinator, do you do what Alamar does too, or Alamar used to do?

A No.

Q You don't?

A I do some of the things Alamar – Alamar was an agent. The agent functions are being done by the vessel now, by themselves. If anything unusual comes up –

Q Then you handle it?

A If there was a serious injury or something out of the ordinary, I would get involved in it.

Q Was Alamar the agent from the time of the spill through September of 1993?

A They were the agent until, I believe it was either December

[7219]

'93 or January '94, I'm not sure.

Q So for four, four-and-a-half, five years Alamar continued to be the agent?

A That's correct.

Q And you came on duty about four-and-a-half years after the spill?

A That's correct.

Q Now I want to move to the lightering, and I'm confused, and how can I be confused? I'm confused because there has been prior testimony in this case in Phase I about how the vessel was stable up against the rock and everything was fine, and in listening to your testimony you were concerned about the vessel breaking in half?

A Do you want an answer?

Q Yes.

A I don't know whether it would break in half or not. That was a possibility.

Q You were scared?

A There was a possibility.

Q I'm not impugning your bravery. Most brave men are scared, but there were times when you were on that vessel when you were scared?

A It was an unpleasant situation the whole time we were there. I wouldn't say there was a moment that we weren't afraid than another moment.

[7220]

Q It's even worse, isn't it, but there was a possibility that the vessel would break in half. That's a correct statement?

A That was a possibility.

Q There was a possibility that if certain things were done, the vessel would capsize?

A That's right.

Q There was a possibility that the vessel would blow up?

A Right.

Q And then there was one other danger that presented. I think you said there were four?

A I think I said there were three.

Q Those three. And those weren't remote possibilities, those were things you were concerned about?

A I think they were – the chances were better than average – than normal, let me put it that way.

Q And the spill could have been much bigger than it was. We had another million barrels on board, isn't that right?

A If we didn't get the oil off the vessel, there could have been another million barrels spilled in Prince William Sound.

Q So we could have had a spill that was five times as big as the spill that we had?

A Correct.

Q And in hearing your testimony – I had a different cross-examination than this one, but in listening to

your testimony, it became apparent to me that you were concerned

[7221]

about people's lives being in danger?

A In the worst case scenarios there, if the vessel had one of those three things happen to it, people's lives would have been in danger.

Q And that included your own?

A Correct.

Q Now, was there any possibility with regard to the vessel next door – do you call it lightering because it makes one vessel lighter, do you know?

A I don't know.

Q Well, I was wondering about that, but with regard to this sister vessel, and I don't know whether it's technically called a sister vessel, but the other vessel, that was at risk too to some extent, wasn't it?

A I'd say lesser risk, but there was risk.

Q And with regard to the Coast Guard officers on board or who came up, who bravely stood by you, they were at risk too, weren't they?

A There was risk.

Q So this grounding not only resulted in a 260,000 barrel spill, but it placed at risk another million barrels in the Sound that was at risk?

A Yes.

Q Didn't turn out that way, but it was at risk?

A Yes.

[7222]

Q And it placed at risk the vessel; that is, while the vessel has been put back together again, if the vessel would have been broken in half or capsized, the vessel was placed at risk?

A That's correct.

Q And indeed this grounding placed at risk people's lives, didn't it, including your own?

A People's lives were more at risk lightering than they would have normally been.

Q And because of the risks of oil spills, the risk to vessels and indeed the risk to people's lives, it's incumbent upon all of us to be exceedingly careful in the transportation of crude oil by tanker, isn't it?

A I'd say that's a correct statement.

* * *

[7332]

DIRECT EXAMINATION OF GUSTAS ELMER BY
MR. SANDERS:

Q Mr. Elmer, what is your job?

A I'm president of SeaRiver Maritime.

Q And when did you take over that job?

* * *

[7416]

Q I'll use Mr. Sander's copy. This is in evidence, it is Exhibit Number 13. And to put it in context, this is dated in March of 1990. That's a correct statement, isn't it?

A Yes, sir, I'm looking at it.

Q And he talks about there are safety concerns about the number of hours individuals have been working in the fleet. That's the general subject of the memorandum, isn't it?

A Well, that's the introducing sentence.

Q Now, when you talked about manning, you were very careful, when you started your testimony, to deny that fatigue had anything to do with the grounding?

MR. SANDERS: Objection to the characterization of testimony.

BY MR. O'NEILL:

Q Is that a fair characterization of your testimony?

THE COURT: You can answer.

THE WITNESS: My position and my belief is that the

[7417]

testimony that I've heard and what I understand, that there is no evidence that fatigue caused this accident. And you used the word accident and I agree with you. My belief, my company, we don't believe fatigue caused this accident.

BY MR. O'NEILL:

Q Now, this is a study by Captain Stalzer, who came in here and testified with other Exxon people, and he refers to the past. He said, these concerns arose in the '80s when manning reductions were occurring and additional responsibilities were being shifted to the fleet officers with no accounting for the additional time required to do these tasks. Do you see that?

A Yes, I do.

Q What's he talking about?

A I don't know what concerns arose in the '80s. I wasn't there, so I'd be speculating to give you an answer. I know about this memo; I read it as you do.

Q Would it be fair to say that we have a piece of paper from your company which indicates that there were concerns about manning – there were concerns about safety concerns, about the number of hours people were working in the fleet, and that those concerns arose in the '80s when manning reductions were occurring?

A That's what it says.

Q And this is a paper from SeaRiver Maritime, Exxon Shipping Company?

[7418]

A It's a paper that was put together by a group of people and Captain Stalzer was part of that group.

Q Your best people on it?

A That's my understanding.

Q In March of 1990 we had – they took a look at 94 positions, is that right?

A That's what it says.

Q And for 74 out of those 94 positions, or 78.7 percent of the work rule guidelines were being violated?

A Right, not laws or rules or Coast Guard regulations. By the guidelines that Exxon Shipping Company had introduced, guidelines, yes, sir, company imposed guidelines.

Q Your own internal rules were violated three-quarters of the time?

A Internal guidelines.

Q Indeed most of the compliance was only on two vessels, the Baytown and the Galveston?

A That's what I believe this report summarizes, yes.

Q And this is almost a year – this memo is almost a year after the grounding of the Exxon Valdez?

A Yeah.

Q And in this memo it says that the data indicates that the workload is heaviest for the senior officers in each department. Do you see that?

A I recall that. I don't see it as I'm looking at it.

[7419]

Q It's the fourth bullet down.

A Yes, sir, I see it now.

Q And the data was collected in January 1990, so this isn't old data, this is data about work conditions ten months after the spill. That's a correct statement, isn't it?

A I don't think – yeah, nine, ten months, that's correct.

Q Do you find it alarming that your work guidelines were violated 75 percent of the time, in excess of 75 percent of the time, by people on ocean-going vessels, like the Exxon Valdez, a full ten months after the grounding of the Exxon Valdez? Do you find that alarming?

A Will you allow me to answer the question my own way? This memo reflects management pulling

together a group of senior officers to look at an issue. We had put the second third-mate on the Galveston and the Baytown already, and that's where you see those two ships are performing best. What you see, this basis, this memorandum that came from a management request identified, and you haven't shown the middle part of it, in which they announced a great number of changes that they suggested be done were largely accepted by management. The third mate was then put on every ship in order to conform with our guidelines, which then subsequently conformed with the law of the land.

* * *

[7422]

Q I want to go over some of these changes that you talked about that have been made.

A Okay.

Q With regard to – you're aware of the six hour rule?

A With regard to the mates, yes, I am.

Q And the changes with regard to keeping records, putting additional mates on, monitoring time records with regard to the mates, are made in effect to comply – among other reasons, they are made in recent to comply with 8104-A?

A They are made to comply with the regulations of the United States Coast Guard.

Q And the Congress, because the six hour rule is a statute passed by the Congress?

A Sure.

Q And the six hour rule is not new, it was passed first in

[7423]

1913. Are you aware of that?

A Yeah. I read that someplace, very interesting.

Q So it has been a requirement to comply with six on and six off for almost 80 years, 81 years?

A So it would seem.

Q And indeed in OPA '90, when the Congress took a look at the issues with regard to tanker safety, they went ahead and they amended it and they added even more requirements, didn't they, with regard to the number of hours you could work?

A Yeah. Work hours, yes.

Q And so that indeed now nobody can work more than 36 hours of duty in any 72-hour period?

A That's part of the rules.

Q And that was a subject that Congress addressed in OPA '90 in part as a result of this oil spill?

A It's part of OPA '90, yes.

* * *

[7430]

Q When you spilled oil in 1989 off of Bligh Reef into Prince William Sound, specifically, you're legally obligated to clean up the spill?

A There are laws – I'm not a lawyer, I'm a marine man, I'm an engineer, and I have a couple legal advisors to help me. There are laws of the land to

which you have to responded, and where your thumb is points it out quite clearly. I'm not a lawyer.

Q You don't know, so as the president of SeaRiver Maritime five years after the Exxon Valdez spill, you don't know whether your company was obligated to clean up that spill on March

[7431]

23rd, 1989? You don't know?

A What I know is what we did, and I understand it took place on the laws, et cetera, but I'm not a lawyer.

Q Have you ever looked at the Alaska statute that was in effect with regard to the requirements to clean up a spill?

A Back in '89?

Q Yeah.

A I don't think I have.

Q Would it surprise you to know that a person causing or permitting the discharge of oil shall immediately contain and clean up the discharge of oil?

A I think you're showing us a statute so I can read it as you can.

Q That's the statute, that is the statute in effect in 1989. Does that statute surprise you?

A I don't think it does, no, sir.

* * *

[7444]

DIRECT EXAMINATION OF LEE R. RAYMOND
BY MR. NEAL:

Q Mr. Raymond, we'll start out the way we do with everybody. What is your occupation?

A Chairman of the board and chief executive officer of Exxon Corporation.

Q Before we get to the actual spill and the what happened

* * *

[7475]

Q I think I'm going to – I think we've talked about how long the cleanup lasted and so forth. Let me ask you this. Were you involved in any other part of the program? Let's take the claims program for fishermen and others. Were you involved in that?

[7476]

A Yes. The claims program was an area of, I guess, particular interest to me. I guess if you probably talk to some people in the company, you'd find out that I from time to time can drive them kind of nuts, but one of the reasons that that happens is I tend to kind of walk around and see what's going on. And the first time I was ever in Valdez we were having a lot of discussions – it was over some strip shopping center and we had some offices up there and we got into a discussion about the claims program. And I was asking how does it work and all that type of thing. And they said, well, the office is just downstairs. So I kind of filed that away and the next time we took a coffee break, I just wandered downstairs and walked in and said I'm here to file a claim, what's going to happen. And I found out what

was going to happen. Now, as we left – as I left Alaska that time, I stopped in Juneau to see the governor, and we talked about a lot of things that had to do with the spill, but on the specific issue of the claims program the people in Valdez had pointed out to me that the speed of the claims program was going to be held back because they really didn't have all the information they needed. They needed to have confirmation that the fishermen actually had licenses and what kind of licenses they had and all kinds of data before they felt comfortable paying the

[7477]

claim. And it was going to be very difficult for us to get that kind of information, so I stopped – among the things I talked with the governor about, he said I have all this information, well, we didn't have this information. So I said, to the extent you can make that available to us, we can really get this going. And his chief of staff was there, Mr. Pesta. We had access, on a confidential basis, but we had access to all the data the State would confirm; this is the kind of license the person has, this is the kind of thing they do, to accelerate the claims program. Now, somewhat later as I tried to chase what was going on in the claims area. I kind of got the impression that it was getting bogged down, and it was kind of getting bogged down because the lawyers were getting involved. And what was happening – of course, normally when you pay money out, you ask people to sign a release, and some people were willing to sign releases, other people weren't willing to sign releases, and there was a lot of to-ing and fro-ing. I said, from New York, forget the release, just pay the money, get a receipt that you paid the money and some day we'll sort all this out in court. Here

we are. But some day we'll sort it out in court, because it isn't good to not pay the people.

[7478]

Q So you paid claims without getting a release from the person you paid?

A Right.

Q You just got a receipt?

A That's correct.

* * *

[7497]

Q Now let's get down to the cost of the spill. I have Defense Exhibit 6399-A, which is in evidence, and let's run over this quickly. Okay? The total actual and potential costs of the Exxon Valdez spill, now he's talking about cost to Exxon, right? And we have them all here lined up, less tax

[7498]

reduction and adjustment?

A Correct.

Q So the fixed and incurred expenditures are approximately two-and-a-half billion dollars, is that correct?

A After tax, that's correct.

Q After tax?

A Right.

Q And then what's out there waiting to be will total that, plus what's out there waiting to be will be up to 2.8 billion dollars after tax, is that correct?

A That's correct.

Q Now, you have in here -- there has been some suggestion that there has been no penalty or no punishment for negligence here, no punishment for conduct. Were we punished for our conduct criminally?

A Yes, sir, we were.

Q Now, was there a criminal case in this court?

A There was in this court.

Q And as a part of that, was there a payment of a hundred million dollars to the state and federal as part of the criminal case?

A Yes, there was.

Q And was there a federal fine of \$25 million?

A Actually there was a fine, Mr. Neal, of \$150 million, of which \$125 million was remitted because of the response that

[7499]

Exxon had taken following the spill.

Q So the fine was really \$150 million, but was reduced to 25 million because of --

A That is correct, and I assume that was not for just complying with the law.

Q Now, let's see what else we have on that. So to this point the cost to Exxon is two-and-a-half billion after tax and may be 2.8 billion after tax?

A That's correct.

Q Now, Mr. O'Neill in his opening statement said the cost to Exxon was a mere hiccup. Do you remember that?

A I certainly do.

Q Was this a mere hiccup to Exxon?

A Well, that comment, I think, Mr. Neal, has bothered me and I've been trying to think about how to try and put this in some kind of perspective in terms of its impact on Exxon, and let me see if there aren't two or three ways I can describe it.

First of all, Exxon is about a hundred -- at this point it's 113 years old. There has never been any single event in the history of the company that has had this kind of cost associated with it.

Q The largest expenditure in the 113-year history of the company?

A That's correct.

Q You said you had some more ways?

[7500]

A In order to pay these bills, of course, our plans are usually pretty well set for the forward years, and although you see a tax offset there, as we all know, you don't get a tax reduction until you have made the tax expenditure. So as the costs began to escalate in 1989, the only way the corporation really had of dealing with those costs was to go out and borrow money. And in 1989, at the end of 1989, our debt levels were by far the highest they had ever been in the corporation's history.

I think another perspective I would put on that draws on data I have already talked about earlier today. And that is if you look at \$2.8 billion after tax,

and you try and put that in the context of our U.S. operations, to pay that \$2.8 billion, we had to have 33,000 people operating a capital employ of over \$15 billion for three-and-a-half years in order to pay that bill.

Now, the other comment I'll make just to try to still answer this, as the costs started to escalate rapidly in 1989, and if you'll recall that little folder that Otto Harrison waved yesterday and said this is a clean-up plan on April 15th, 1989, there was no conceivable way we had any idea what the total cost was going to be, and the cost started to escalate very rapidly.

The first point I'd make, we didn't flinch, we wouldn't back off, we were going to pay the bill. But the other point

[7501]

I'll make, it became clear to me that the corporation could never, never have this kind of thing happen to us again.

Q Is that the reason you started talking about all the changes that you insisted be made?

A Yes, sir.

Q Now then, I want to put this in context for the jury because they will have the exhibits. If you take \$2.8 billion and you take Defense Exhibit 6347, I'll ask you this, isn't that far more than all the after-tax income from Exxon Corporation, from all U.S. sources, for the year 1991, '92, '93?

A That's correct.

Q Now, what would it be --

A And the first half of '94.

Q What if you added the first half of '94 to it?

A Well, I think that's about \$400 million for the first half of '94.

Q So you would have then approximately the cost, ultimate cost for the spill, after-tax cost for the spill of \$2.8 billion, would be all -- the after-tax income would approximately equal all the after-tax income from Exxon Corporation, from all U.S. operations throughout the entire country for the last three-and-a-half years?

A That's correct.

Q Now, Mr. Raymond, let's drop just for a minute the thing

[7502]

about money. Was that the only impact that this spill had on Exxon Corporation?

A No. In some senses, it's hard to even try and verbalize or articulate what happened to us. As I commented, we're a company that's 113 years old, and while there will be people in the court who will focus on how many oil wells we own and how big our refineries and how many tank truck and service stations we have, the real key to Exxon is the people, and that's always been the case.

I reminded -- and I know, Mr. Neal, this is going to take longer than you want, but I'm reminded in the early days of the corporation when the people -- when the people who were managing it then, if you look at the history, said what we really need -- the only thing we really need are the best people, and if you have the best people, all the rest of these things we can deal with.

And I would make that same comment here. The Exxon people have a tremendous pride in the organization and they have gotten that over the years by -- all across the world, by virtue of their dedication and to a degree the success that the company has had. I can't think of a single event that really shook, what I would say, the bedrock of our employees' views of themselves and the corporation as did this event.

Now, in saying that, I also want to make it clear that in no way am I trying to suggest, redeflect or minimize the effect

[7503]

that this spill had on Alaskans and Prince William Sound. I understand that. I understand that from the first days I came here, and that's why we did a lot of the things that we tried to do.

But I do have to point out in terms of Exxon and our people, our 90,000 around the world, this has had a very, very serious impact on them, and their whole focus is, and many have said in their careers they worry about whether or not we'll ever be able to regain the position we had in the communities around the world and the stature we had in the business community because of this event.

Q I think two more questions, really. Mr. Jamin said something to the effect that, well, the taxpayers helped pay for the cleanup and all of these other things. The chart I've showed you was 2.8 billion after tax?

A That's correct.

Q And what do you think about the statement that the taxpayers helped clean it up?

A I don't think that's totally accurate. You have to realize that nearly all the money we paid out went to other people who the IRS always has a way of finding and they pay taxes. So to that extent the government got revenues from another source, and I suppose I could get some highfaluting economist to come in and run through the multiplier effect and he could tell you how this all dribbled down the chain.

[7504]

I'm not saying that the government came out even, I have no idea on that, but to suggest that all of that tax reduction fell on the burden of the taxpayer simply isn't accurate.

Q Anyway, 2.8 billion after-tax dollars fell on Exxon?

A That's correct.

Q We're talking about punitive damages. In view of Exxon's situation, would a punitive damages award be deductible for tax purposes?

A Well, as you can expect, first of all, I'm not a tax expert, so all I can do is ask our tax people how that works out.

MR. O'NEILL: He's disqualified himself from answering. I object, 403, he disqualified himself from answering.

MR. NEAL: Could we have just a brief side bar on this?

(At side bar off the Record)

BY MR. NEAL:

Q Mr. Raymond, thank you. You, very frankly, have disqualified yourself from answering that question by not being a tax expert.

A I'm rather pleased.

Q Now, Mr. Raymond, one final question. Under the law, where appropriate, punitive damages may but are not required to be awarded to punish and deter. Do you believe punitive damages

[7505]

are necessary to punish and deter Exxon and others in this case?

A Well, Mr. Neal, no, I do not, but that's exactly what everybody in this courtroom would expect me to say. It's not my decision to make, it's the jury's decision to make, and I guess I would just hope that the jury, when they consider this issue, they consider the response that Exxon had, the commitment we made, the responsibility we accepted, and the commitment we've made both for the corporation and for others to find better ways such that this thing won't happen again.

MR. NEAL: You may examine.

CROSS EXAMINATION OF LEE RAYMOND BY
MR. O'NEILL:

Q Mr. Raymond, your lawyers said in the opening of Phase III that we accept the jury's verdict in Phase I. Were you here for that?

A Yes, I was.

Q Was your company reckless?

A The jury, I believe, Mr. O'Neill, has concluded that.

Q Now, in all these 12-step programs, including treatment for alcoholism --

A I didn't understand.

Q In these 12-step programs, including psychological treatment for alcoholism and other diseases, are you aware that it is an established principle that before you make any

[7506]

progress you have to acknowledge the full scope and responsibility of your mistakes? Have you ever heard that before, talk to anybody who has gone through treatment?

A No, I really haven't. I'm not trying to be argumentative, but I don't know what you mean by 12 steps.

Q It's a very different thing, would you agree with me, to say, yes, we were reckless or I understand that that's what the jury found in Phase I? Those are two very different things, aren't they?

A I'm not sure I understand the question you're asking me.

Q Can you answer the question was your company reckless? Can you answer that yes or no? Can you answer it -- if you can't answer it yes or no -- if you want to answer it yes or no, either way, tell me, but I'd like either yes or no, or I can't answer the question.

The question is, was your company reckless? And I think that's a fair question. A Again, I don't want to be argumentative, but I don't think in asking the question you can tell me how I have to answer. The facts are as we know. The facts are as we know.

The jury concluded that Exxon was reckless, I'm not arguing about that, I'm not looking back, I'm not disputing it.

Q Are you going to appeal it?

MR. NEAL: Your Honor, objection.

THE COURT: Sustained.

* * *

[7507]

BY MR. O'NEILL:

Q Now, you testified that this 25 million dollar number, 1 hundred million dollar number and 9 hundred million dollar number were because of recklessness – excuse me, because of negligence. A couple minutes ago you said they had to do with negligence?

A May I say what I said?

Q Sure.

A I think what I said was in the federal and state settlement, which was in this court, which was a negligent misdemeanor, which was for whatever happened in Prince William Sound, there was a federal fine of – really it was 150 million, of which 125 was remitted, a hundred million for federal and state restoration and 9 hundred million for state and federal settlement.

Q Isn't it true in the agreement settling of the case, this one hundred million dollar number and this 9 hundred million dollar number were described as compensatory and remedial in nature and not punitive?

A That's what the agreement says.

Q Yes?

A Then I'm not going to argue with it.

* * *

[7538]

Q And there were an awful lot of small processors who didn't participate in the claims program?

A You mean they didn't file a claim?

Q No. The claims program, from this chart and from my recollection, essentially shuts down in 1991. Do you recall that?

A I'm not sure I'd characterize it quite that way, but there became – I think my best recollection is that the claims program was getting to the point where it was becoming very difficult for us as the payor, so to speak, to also make the judgment as to what the – being in the position of both judge and jury, in a sense, of paying and having to make the judgment of who should get that payment.

Q So you decided to duke it out with the fishermen in the court system?

[7539]

A That is not a fair characterization. What we decided to do was, we concluded that there is a purpose in the law, and the purpose in the law is to come to a reasonable decision as to what the right level of compensation was, which I think is the issue – one of the issues that this jury has already dealt with.

Q Have you been aware of the fact that the chairman of the board of Exxon Corporation represented – the then chairman of the board of

Exxon Corporation represented to Senator Stevens from Alaska that this kind of proceeding wouldn't be necessary, were you aware of that?

A I'm not aware of that.

* * *

[7556]

MR. O'NEILL: May it please the Court, counsel, ladies and gentlemen of the jury. What amount of money is necessary to punish Exxon Corporation for its reckless acts, reckless acts that caused the worst environmental disaster in United States history? And that's the question before us.

Now, your role is unique to our country in that the 7th Amendment to the constitution sets up the jury system, and in our country when it comes to issues of punishment like this, that is not relegated to the executive branch of the

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government, and the legislature can't do it, the Congress can't do it and state legislators can't do it; the jury system does it. And when it comes time to express society's condemnation of conduct that we all know is wrong under our system of government, juries do it. That's how we do business in our country.

So to the extent that you sit there and you think, who am I to cast judgment on Exxon Corporation for what went wrong, the answer to it is two-fold. The constitution and the laws of the United States have set it up so that you're the ones. And the second reason is that, the reason that there are 11 of you, is so that you can bring the considered judgment of 11

people and their life experiences to the problem at hand.

Makes sense. But instead of having one juror or two jurors, we have a number of jurors so that all your life experiences, your attitudes, your different views, which are all valuable, are brought to the problem at hand, and the combined wisdom of 11 of you, history has proven that the combined wisdom of 11 of you is a heck of a lot better than the combined wisdom of one or two people, so we have a jury system.

And the jury system has been with us for hundreds and hundreds of years, goes back to the tenth and eleventh century in England, and punitive damages as a concept for expressing our disapproval, society's disapproval of actions, has been

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with us for hundreds of years.

Now, could we see the first jury instruction?

Jury instruction 24 says that the amount of punitive damages that is necessary to punish a defendant is the penalty that is necessary to express society's disapproval of conduct that society condemns, and that's what I'm talking about. You are here to express society's disapproval of conduct that society condemns.

And that is the jury instruction and that is your role, and in this case, because we have set up a punitive damages class and because Your Honor has chosen to supervise a punitive damages class, this is the only jury that is going to address this issue. And in fact with regard to Exxon Corporation, this is the only jury that has heard the whole story. With

regard to Exxon, this is the only jury that has heard the whole story of Exxon's conduct with regard to the grounding of the Valdez. Exxon has not appeared before a jury before in the last five years with regard to this grounding.

So you have the responsibility of being the only jury, you had the responsibility of being a jury that takes the place of juries in the state court system, that takes the place of juries in other federal cases. You are supposed to take it all in and do it once, and that's quite a responsibility.

And to say – a lot of times in these cases the lawyers say, well, the world is looking at you, and you read in

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newspapers about the lawyers making an argument “you have to send a message to the world or corporate America”, most of the time that isn't true, most of the time those cases end up on the back page of the business section, that's a lawyer's argument.

In point in fact, the world is looking at you, the directors in mahogany polished boardrooms in Houston, New York, Brussels, Paris, France, Hong Kong, are going to know exactly what you did. And ordinary citizens in the United States, Norway, Germany, Japan, are going to know what you did. And what you do in this Phase III is an expression of what our society's values are. That's how it's going to be interpreted and everybody is going to know about it.

Now I want to talk for a minute about the standard for punitive damages, and jury instruction 27 lays them out as clearly as they can be laid out.

And the first is the degree of reprehensibility of the conduct. The conduct, the Phase I conduct, is the first thing that you look at. The second thing that you look at is the magnitude of the harm likely to result from the conduct, as well as the harm that actually occurred. That's two separate things, what was put at risk and what happened. And the third is the financial condition of the defendants. These are the three primary things you look at.

As mitigating factors, you look at the existence of prior criminal sanctions or civil awards and the extent to which a

[7560]

defendant has taken steps to remedy his conduct. Now, the word mitigated is defined in the jury instructions, and when you go back to the jury room and you consider this, I urge you to look at the definition of mitigating, because it doesn't say if you find these factors in place you let them off the hook.

The three primary factors are the degree of reprehensibility, harm and the financial condition of the defendants, and they ought to be. What they did, who they hurt and how wealthy they are make eminent sense, because you punish the conduct, the conduct has to be looked at within the scope of the danger it presents to society, and what is punishment for a poor man can be nothing for a rich man.

Now, with regard to the conduct at issue, I want to pull up jury instruction 28 from Phase I. That's the one you've got right there. This is the jury instruction that I am sure you discussed back in the jury room at great length because it is the core of the Phase I jury instruction, and this is the conduct that

you found to be reckless in Phase I and now I'm asking you, because of the seriousness of the conduct, to condemn the conduct.

Now I want to, if we can, revisit a minute, and I'm going to do it by videotape, some of the proof that we've seen in Phase I, Phase II and Phase III. I could stand here and talk about it, but all that seems to do is engender arguments about who said what to who. So rather than talk about the conduct,

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I'm going to put on a videotape and we're going to revisit some Phase I evidence and some Phase II evidence, and then because I didn't have the time to put the Phase III evidence on a videotape, I'll talk about that afterwards, but if we could –

(Videotape Played)

MR. O'NEILL: The conduct that led to the grounding of the Exxon Valdez took place over four years, and it took place with the complicity of almost every officer of Exxon Shipping Company, Dwight Koops, Harvey Borgen, Frank Iarossi, Andy Martineau, and you can go on and on and on. They were told during the course of that four years, repeatedly from 1985 to 1989, to two or three days before the grounding, there is a problem here.

And the conduct wasn't a result of paper policies, the conduct was a result of a sickness in the organization, and that sickness had to do with the way we treat each other as decent human beings. And I talked about it at some length with the witnesses. If somebody has a problem, you say how are you doing on your problem, how is your treatment, how is your family, are you happy,

unhappy, is there something I can do for you, is there something the company can do for you.

What happened here was the result of a lack of basic human decency. And what happened as a result of that lack of basic human decency at Exxon Corporation? A lot of people were hurt.

The Exxon Valdez, in fact, had impacts on landowners in the

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Sound, on Kodiak and the Alaska Peninsula. It had over \$280 million worth of impacts on commercial fishermen, Phase II commercial fishermen.

Municipalities, Valdez, Cordova, Whitter, Seward, Kodiak, Chignik, were impacted both with regard to the spill on their lands and the basic nature of those communities was ripped apart. The influx of clean-up workers and influx of demands on city services took those small, sleepy, happy communities and turned them upside down. There are fishermen who were hurt by this who we haven't talked about yet with any jury, and they will be in Phase IV of this case.

As His Honor read, there were some payments made to canneries, there was a disruption with regard to canneries. Aquaculture associations, Prince William Sound Aquaculture Association, Cook Inlet Aquaculture Association, the Kodiak Aquaculture Association were hurt by the spill, Alaska Native corporations were hurt by the spill.

In point of fact, in Prince William Sound, Kodiak, Chignik, the communities were ripped apart as a result of the spill. And this is a foreseeable event, the consequences of which occurred as predicted. These

are the people that are here for justice, and they include the full tapestry of society in the affected spill areas.

Now, the second part in His Honor's instructions not only covers the harm that occurred, but also covers the harm that

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could have occurred, one million more barrels of oil on the ship, and the fact that the conduct at issue places people's lives in danger, and it does, and Captain Deppe testified about that. This conduct resulted in, scope-wise, the greatest environmental disaster in the history of America. That's the second factor.

The third factor is wealth, and I'd like to take a look at jury instruction 34 for a minute. Your new jury instruction 34 will say, in considering a defendant's net worth or net income, you may consider what portion of a defendant's net worth or net income is most relevant to the activities that were impacted, or you may decide that all the defendant's net worth or net income is relevant, so it's up to you what you look at.

Now, Exxon Corporation is run as a corporation, and you don't go to work for Exxon Shipping or Exxon Chemical or Exxon USA, you go to work for Exxon Corporation. And like Mr. Elmer, you go between division and division. And Exxon Corporation, if you look at those annual reports, publishes consolidated financial statements, and the reasons that they do that is because they are run as one company, and, more importantly, with regard to their assets, they are run as one company.

Now I want to go to the 1991 annual report of their company, and this is how they tell you they manage their money. Cash flow is centrally coordinated in order to efficiently move funds from units generating cash to units

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where funds are needed to finance new investments or meet new operating requirements.

That's the 1991 annual report at page 4. This is how they run their business. And this 10 to \$12 billion of cash flow is an important number because this 10 to \$12 billion is discretionary cash that they have at the end of the year, and it can be invested in dividends for the shareholders, it can be invested in how much cash they keep in their wallet at the end of the year, or it can be invested – reinvested in the company.

In addition, and this stipulated fact is in the jury instructions, the number of which I do not recall, but you'll see it, the parties have stipulated that we have the Exxon defendants, and when you look at the special verdict form, which I'm going to talk about at the end, this is one number for the Exxon defendants, and in this case I would suggest to you that the complicity doesn't just go throughout Exxon Shipping Company, but who came in here to defend the conduct, the Exxon medical department, Mr. Cornett, where is he from, the Exxon USA public relations department.

But when it gets right down to it, the big defenders of the conduct were Mr. Rawl and Mr. Raymond. And what they did in coming in and defending the conduct, they ratified that conduct. When they mounted this defense in Phase I, they

ratified the conduct. The complicity of this thing goes from

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top to bottom, but I'm going to come back to the complicity of this thing going from top to bottom when I talk about that dispute resolution agreement, because that's reprehensible, but we'll get to that.

So Exxon Corporation is in fact run as one corporation, and I want to go over for a minute, if we could, the board that Mr. Rhodes used, and I want to talk about its financial health. And I figured out one thing over the weekend that I want to talk to you about, too.

Now, remember we started in '88 and go all the way through to '93. I'm going to sneak by, I'll block His Honor off, he won't mind.

The dividends per share of Exxon Corporation have gone up every year from 1988 to the present, including the spill. They have. The total amount of cash dividends paid out for every year, including the spill, have gone up, and they pay out about \$3 billion a year, three-and-a-half billion dollars a year in cash dividends. The stock price on the stock market, like my clients' permits, is affected by things extrinsic to the piece of paper. The stock price has gone up every year, including the year of the spill.

Now, we see that there is a drop in earnings per share in 1989, and I was curious about that, and I went back and I read the 1989 Exxon annual report, and I did it for two reasons. If you recall, Mr. Raymond testified that the \$2.7 billion was the

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biggest expense Exxon has ever made on anything. He testified to that. And looking at these numbers, it struck me that \$2.7 billion shouldn't have had this kind of effect on earnings per share, so I went back. And when you go back to the jury room, I would recommend to you pages 33 and 34 of the 1989 annual report, because Exxon paid, in 1989, for McColl-Frontenac, which is formerly Texaco Canada, \$4.2 billion in cash in the year of the spill, and on pages 33 and 34 they describe that.

So the year of the spill, where this allegedly devastating expense was taking place, they had cash to pay \$4.2 billion for another subsidiary, and that's in here on pages 33 and 34, and if they want to argue about it, I suggest you read it. So the year of the spill, not only could the dividends go up, but we have over \$4 billion to use on another acquisition.

Now, the after-tax net number is an important number to look at, but so is the cash flow number. The cash flow number represents what you and I would have left over at the end of the year, and we might, if we had anything left over at the end of the year, we might put something in the bank, we might reinvest some of it in our house, but that's an important number and I want to talk about that.

Let me have the next one.

Jury instruction 33 says that you cannot take the gross numbers, and I'm just looking for one, gross revenue, that you need to be more sophisticated in your approach than just

[7567]

looking at a hundred billion dollars in revenue, and that makes a lot of sense. But this number here, the equity, is a net number, okay, and, in addition, the after-tax net is a net number.

And this last sentence here, if you consider a defendant's income in assessing its financial condition, you may not consider a defendant's gross income, but only the difference between gross income and all expenses that must be paid out. This is a definition of cash flow. That is gross income and expenses that must be paid out of that income.

Now I want to leave this one up, and if you could get me the cash flow board, this is an exhibit, it is Exhibit Number 6317-B, and it shows what the cash flow is for each of these years. And then it shows that out of this cash flow, they make a decision to expend, a discretionary decision to spend on property, plant and equipments or dividends or other reasons this 10 billion, 8 billion, 11 billion, 10 billion, 10 billion and 11 billion. So this fills out the detail from here.

Now, what is Exxon going to say? It's going to talk about the two mitigating factors. Do you remember we had five factors, the big three and the two mitigating factors, and they are going to say look at the cleanup. And I would offer again what I've been asking about in the interrogation of the witnesses, the law required the cleanup, and this is Mr. Elmer's testimony: Have you ever looked at the Alaska statutes

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that was in effect with regard to the requirements to clean up the spill? Would it surprise you to know that you're obligated to immediately contain and

clean up the discharge of oil, that's the statute, that's the statute in effect in '89. Does the statute surprise you? I don't think it does, no sir.

Now, why doesn't it surprise him? A, because he's in the business, and, B, in this book, *All I Really Needed to Know I Learned in Kindergarten*, one of my favorite books, and this is a really good book – you know, part of the problem in this courtroom process is that it's possible for a defendant with enough money to come in and create a reality that doesn't make sense, and what a book like this does is it reminds you of basic human decency. And in the rules of this book, there is a rule that says clean up your own mess, it's one of the eight or nine rules in here. Another rule is say you're sorry when you hurt somebody, but you clean up your own mess.

And Exxon is in here claiming credit for what I really need to know I learned in kindergarten. And in point of fact, they cleaned up about 15 percent of what they spilled, so they are claiming credit for what the law requires, what we learned in kindergarten, and doing part of the job.

Now, they spent a lot of money on it and the people who worked on the cleanup worked hard. Not only does Exxon's sense require them to clean up their own mess, but that was a business risk they took.

[7569]

Let me see that one.

Now, this may seem sort of a "why is he doing that" question, but you see how it fits in the business. We all don't come home everyday to expect praise about complying with the law. "I ought to be

awarded for complying with the law". What I said is a ridiculous proposition, this setup to comply with the law, that's what I said. Absolutely everybody has to comply with the law. You comply with the law, I comply with the law. I don't come home and say to my wife Ruth, good job today, I complied with the law. I mean, I don't do that.

But in addition to clean up was a risk that they took, it was a risk doing business. It was so highly unlikely that the consequences of it which occurred pretty well as much as envisioned were viewed as acceptable. The spill was a callous, cold-hearted business risk that they took, and they made the risk worse.

If this was the risk that I was going to take with defenseless people – and they were viewed as acceptable by who, by fishermen? If this was the risk I was going to take with defenseless people, I would be real careful. Fishermen have no protection against this risk. The Native corporations, the landowners, the municipalities, have no protection against this risk. If I was going to take this risk, I would be really, really careful. I would not have this policy.

Now, with regard to clean up, I would submit to you that at

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least – and remember Mr. Cornett in the emergency center tapes and how they tried to disallow Mr. Cornett, and he's now the director of public relations for Exxon USA, he got promoted, this is the guy who brought you, well, if you just have to get out there and drive it around, do it, and I would encourage you to take the three noisiest fishermen down here and

hire those suckers, and hire those suckers, and load them down with something and have them drive it around there in Prince William Sound, and hire those suckers.

There is an exhibit that you ought to look at, Exhibit 603, this is an Exxon fax: Even cleaning a few ducks and otters gives the impression of caring. And then they promote Mr. Cornett, but that's the cleanup. The claims program, they are going to claim success for the claims program. They paid half of what they owed to the fishermen, the biggest chunk of the claims program, about a hundred million dollars went to seven or eight corporate canneries.

But the claims program, you pay somebody when you hurt them, you pay them when you hurt them. It's compensatory in nature. And Mr. Rawl's promised the Congress, and we saw the promise here on Monday, I'm not going to make the people of Alaska who were hurt by the spill go to the mat. That's what he told the congressmen or senators, and we're – we are going to the mat.

Now, the third thing they are going to say is we made these

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changes in our policies. Now, the first thing I want to say about that is, didn't we hear about their policies in Phase I, remember the big collage of the safety awards, remember the safety belt buckles? We heard how great the policies were in Phase I, and the policies in Phase I didn't do a thing, they didn't do a thing. And the safety belt buckles didn't do a thing, because safety belt buckles don't hurt unless the person wearing the safety belt buckle cares.

In addition, the changes they claim they are making is what the law requires, so they are coming in and saying give me credit for what the law requires. There is a statute since 1913 that says six on and six off, and it takes until 1990 to get a board on the statute. The Congress amends the work hour laws because it doesn't trust Exxon, the states of California, Oregon, Washington, Alaska feel they need protection, so they pass oil spill statutes in the wake of the Exxon Valdez, the Congress of the United States, the American people need protection from Exxon Corporation, so it passes OPA '90.

The Congress of the United States feels that the people of Prince William Sound need such protection from Exxon Corporation that it passes a statute that prohibits this vessel from going into Prince William Sound. The policies, whether they deal with spilling oil or safety or fatigue or work hours, are passed to comply with the law and they should have done it a long time ago.

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And with regard to their embracing of the future, I would like to discuss two exhibits with you. I would like you to read Exhibit 13 and Exhibit 175 when you go back to the jury room. Exhibit 13 says in March of 1990 our own internal policies with regard to work hours are being violated on three quarters of our vessels. A year after the Exxon Valdez; the SeaRiver Mediterranean.

Exhibit 175 is in September of 1989 and it's by Frank Iarossi to Koops. They put Koops in charge of implementing the changes to the program. Koops is now the number two guy at SeaRiver. Dwight Koops, the Gulf Coast fleet manager, one of the people that

caused the problems is the number two guy, is Mr. Elmer's assistant, he's the ocean fleet manager. Dwight Koops is the ocean fleet manager, Don Cornett is the director of public relations.

But in this memorandum, Mr. Iarossi says it is incredible that September is here and we still have not addressed the ice issue, the idea of allowing a coffee break is just unbelievable, and then he goes on to say about Jerry Aspland of ARCO Marine; that ARCO is setting a new standard in the industry, ARCO sees the grounding of the Exxon Valdez and says we weren't involved, we're not in trouble, but we're going to go and look at what we're doing and set a new standard in the industry, which is what you would expect from ARCO, but it is not what you would expect from Exxon Corporation, the people

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who brought you the grounding of the Exxon Valdez.

Now I want to talk for a minute about what happened after the spill, and I'm going to suggest to you that Exxon Corporation lives in a different world and the corporation executives live in a different world, and I'm going to make reference now to a minor part of that, but it's a very telling minor part of that, and that Mr. Raymond's testimony compared how much he makes compared to Mobile.

Now, Mr. Raymond has \$14 million in stock options that he has yet to exercise. He makes a couple million dollars a year, he lives in a different world than we do, and I'm going to talk about that, but after the spill Exxon cleaned up part of its mess, it paid for part of the harm done, contrary to what Mr. Rawl said. It is claiming credit for complying with the law, and now I want to talk a little bit

about some things that we found out about last Thursday that I find very interesting, the law department investigation.

There is a law department investigation, which apparently has never been reduced to writing. Couldn't tell that from the testimony, but it's never been reduced to writing. Now, the genesis of this law department investigation, I want to go back in time with regard to the law department investigation. The genesis of the law department investigation was Iarossi there for the first day or two, and he tells the people at a meeting in Valdez that he's going to get to the bottom of what happened [7574]

and report to them.

We had that videotape testimony last Monday or Tuesday, and then he says, and a couple days later was taken over by the law department, and then he was asked, I asked him, did they ever tell you, and he says, well, no, but they will only tell me what I need to know to run my business. Now, I think the law department as to the real causes of this thing are real important to the guy who is running the business. Then the law department investigation goes on and the law department investigation is not going to be told to anybody so long as the litigation was going on, that's correct.

Now, what litigation is this? That's the litigation before you. So there is a law department investigation that we know nothing about that is being withheld from all of us by Exxon Corporation. Does that bother you? It bothers me a heck of a lot.

Now, in this case, as you've seen from when we started on May 2nd, there is extreme difficulty with the proof in a case like this because none of these guys were there to do the monitoring, none of these guys were there at the board meetings. They weren't. So you got to pull the facts out, but one of those facts is the law department investigation.

Now let's talk even more interestingly, though, despite the law department investigation, Mr. Raymond came here to testify about all of the changes that he and the board had implemented,

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and I asked him a series of names, Mary Williamson, Jim Shaw, those kind of names, and he didn't know who any of them were – let's put that one up first.

So this is the guy, the take-charge CEO, who comes in to testify here and says that he's fixed all the problems, but he didn't know who these people were three years after the grounding, he didn't know who the key players were, and this is the guy who did the reporting to the board of directors, who is charged by law with running this company.

I'm not – well, I was not here in Phase I, I'm not aware of all the evidence. You were the guy on the board, the officer from the company that did most of the information of the board with regard to the Valdez disaster, is that correct; that's correct. Oh, the board of directors that runs the corporation and the take-charge CEO who was supposed to fix the problem doesn't know who was involved in the problem.

I asked him, did you talk to Koops, Borgen and those guys. He says, yeah, I talked to them briefly,

and they told me Hazelwood was the most monitored man in the fleet. So up to May 2nd of 1994, Exxon Corporation, who is trying to address serious institutional problems, a cancer within that company, doesn't know what happened, the board of directors doesn't know what happened, and indeed the board of directors, in this mahogany polished boardroom in Houston, Texas, had at the time of Mr. Raymond's deposition not asked for an assessment as to

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the cause of the grounding.

Now, if you were a member of the board of directors bringing our common sense to this problem, if you were either the president or the CEO of the company or a member of the board of directors who caused this terrible thing to happen, wouldn't you say I want to know exactly what happened? I mean, we can have all of these policies and such that we're going to run out and scurry about writing, but don't you want to know what happened? I would. That's the first thing I would want to know, what happened. Maybe I would yell at somebody, maybe I wouldn't, and if you yell at them, you yell at them, but I want to know what happened.

Now, here is a little quote on monitoring. This is Mr. Raymond's trial testimony on Thursday. Now, I find this kind of interesting, too, because now they are claiming credit for having a monitoring program in Phase III, but remember they had a monitoring program in Phase I, but they didn't have a monitoring program.

Now, the other interesting thing about Mr. Raymond, who comes in here and testifies about the alcohol policy, and this goes to how far remote these

people are from the rest society, and I was in a dialogue with him about recklessness, and if you recall, I said isn't one of the first things you have to do in a 12 step program is come to grips with the full ramifications of what you did. Do you recall that testimony? What was his

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answer? He didn't know what a 12 step program was.

Now, in the world that most of us live in, we know about Alcoholics Anonymous and the 12 step program. We may not know what the 12 steps are, but we know what the 12 step program is.

Now, if you were chairman of the board – let's approach this from an Exxon sense. If I was a chairman of the board of one of the biggest companies in the world and my company caused the biggest environmental disaster in the history of America and there was alcohol involved, I'd learn a little bit about the problem.

And with this particular problem, is it possible to learn about it without at least hearing what a 12 step program is? If I was the chief executive officer or a member of the board of directors of one of the biggest institutions in the world and I hurt people, and I hurt them, I would want to know who I hurt. I'd want to know who I hurt so I could know how to help them, and I wouldn't come before a jury in the United States courtroom and not know the name of one single person that I hurt. You know the names of more people that Exxon Corporation hurt than the chairman of the board of Exxon Corporation, Tom Dooley, Les Meredith.

Exxon covered up before Congress, and we saw that in the videotape. Exxon gave, the year of the spill, Exxon Corporation gave these guys bonuses, they have given Mr.

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Raymond and Mr. Rawl bonuses every year.

Now, with regard to Mr. Raymond's unexercised stock options, the book value of the unexercised options is \$10 million. The potential of the options reported to the Securities and Exchange Commission is \$20 million, but in 1989 he and Mr. Rawl were given bonuses.

Now, what happens in Japan, what happens in Japan if in fact something like this happens? The chairman of the board of a Japanese company steps down, but I guess in the United States, in one of the biggest companies in the world, if you create a disaster, you give people bonuses. The world that these people live in is like Never, Never – it's like Alice in Wonderland.

Do you want to look at the bonuses, go through the proxy statements, and when you look at them the rules change in about 1991, about reporting, so they need to give fair reports after 1991, but the compensation consists of the compensation – these EBU units and stock options, the most lucrative of which are the stock options, and Mr. Raymond and Mr. Rawl stock values went up between 1989 and 1994.

Did they discipline those involved? I would suggest to you that most of the people who brought you the wreck of the Exxon Valdez, if they haven't

been given bonuses, they have been promoted. And that isn't right, either.

Now, while people were being promoted, and people in the –

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another interesting thing, go to the 1989 year-end statement, if you search through it, you can find that the outside directors, that they approved a stock bonus program for the outside directors in 1989.

1989 was quite a year. We buy a company in Canada, we give ourselves bonuses, and with regard to the outside directors, we put into place a bonus system for the outside directors. That isn't remorse. You know, if you're sorry, you acknowledge the full scope of what you did. You don't come in and weasel words around, was your company reckless, yeah, my company was reckless, first step towards moving on. But these are the people who brought it to you, and they are still with us.

How many of these employees who came in here, the people who were forced to come in here and testify about these stories in Phase I are victims.

Yeah, let me see that the dispute resolution agreement. They will try to argue this away and argue this away and argue this away, but you cannot change the written word. Why would anybody agree to this? This is a contract to lie, and I didn't know until Thursday that this contract to lie was approved this year, this year, by the chairman of the board of Exxon Corporation.

Now, you can try to argue it away or you can say the lawyers made me do it or you can say Captain

Hazelwood made me do it, but this is a contract to lie by both parties. Does

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this signify remorse?

And then you ask – something like this you ask the guy, isn't this reprehensible, does this bother you? It should bother him. Thank you.

They have called some of their own employees liars, Shaw, Steve Day, Mary Williamson, and they denied in Phase I a series of problems, fatigue, alcohol, manning. No one would have known but for this jury and the persistence of these plaintiffs what went on. No one would have known the full scope of what went on but for these plaintiffs and their persistence and this jury and its attention.

Now, with regard to punishment, you have two tasks in front of you. Would an award of punitive damages serve the purposes of punishment and deterrence, and, if so, what amount is necessary to achieve those purposes.

I'm going to use this one because I don't have the right one. There are two purposes, and the instructions in the verdict form lay out the two purposes. Really there are three, punishment in and of itself, and you'll see that's clear in the instructions and clear on the verdict form, the deterrence of Exxon Corporation – yeah, that will work. This works.

Punishment, purpose one, deterrence of the defendant and others. So we have three purposes. We punish the conduct in and of itself and then we punish for deterrence of Exxon and we punish for deterrence of others. Now, with regard to the

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addition, poor stockholders, unlike, for example, Captain Hazelwood, have profited every year from the spill.

Now, Captain Hazelwood is an interesting comparison both with regard to Mr. Raymond, Mr. Rawl, Mr. Koops, Mr. Borgen; The Shadow, Paul Myers; Captain Sheehy, you can go on and on and on. Frank Iarossi is now the president of the American Bureau of Shipping. Who did the industry put in charge of safety standards for the industry, Frank Iarossi. All of those people are better off today than they were in 1989.

Captain Hazelwood is a good example. Why do you ask for a dollar against Captain Hazelwood? Enough is enough. But everybody else has thrived, they have thrived. Thank you.

I want to go over a board of numbers and I want to talk about it in terms of punishment. This is not an exhibit, but it's to make me be able to talk better off of a board than a piece of paper.

We know that, with regard to a billion dollars, that has no impact on them, that was not worth Rawl's time, and you'll have in the jury room that videotape of his press conference. Remember the press conference that I told you about in the opening? Watch that. It will give you a clue about the value of a billion dollars to the chairman of the board of Exxon Corporation. \$2.7 billion is the total that was spent, and as Exxon's lawyers admitted in the opening, Exxon has thrived since 1989 despite the \$2.7 billion, and in the year that they

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spent \$2.7 billion on the grounding of the Valdez, they bought this company in Canada for 4.\$1 billion, they paid their executives top bonuses and the shareholders got the highest dividend in the history of Exxon Corporation.

Now, they demean that and they say these dividends aren't so high because you've got to take into consideration inflation. When you go back into the jury room, look at the highlight pages on each of the year-end statements. The year-end statements are filed with the Security & Exchange Commission. Look at the highlight pages, and in the highlight pages, including every year, 1989, '90, '91, they tell you this is the best the company has ever done.

So we know that \$2.7 billion, Exxon thrives, and money is the language of corporations. You and I have souls to damn and bodies to kick, we do. Exxon Corporation has no soul and has no body, and its language and the language of the people in boards of director's rooms throughout the world is this, this is their language. The 1989 after-tax net was \$3.5 billion, and that includes a year in which they spent \$4.1 billion on this acquisition, and they paid the costs of the spill. That's a number you can place in context. 5 billion is the average yearly net profit. 7.92 billion was the cash flow the year of the spill.

This 5 billion, Exxon, because of its size and wealth, can sustain a 5 billion dollar award and shrug their shoulders,

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just shrug their shoulders. One year's average cash flow is 10 billion. Exxon spent \$16 billion of its cash in buying its own stock back. A bizarre thing for a

company to do, but that is not money that needed to be invested in its year-to-year operations.

They paid out \$16.7 billion in dividends between the year of the spill and the time of the signing of the dispute resolution agreement, and they paid out \$20 billion, or the value of the Exxon stock appreciated over these five years. The poor Exxon stockholders get the benefit of a \$20 billion appreciation in stock.

Now, my job in this is to represent them (indicating) and to drag the truth out of them (indicating) and to bring that to you. Your job is to look at these numbers and to come up with a number that does three things, or maybe you come up with three numbers and put them together, I don't know, but that punishes the conduct in light of its reprehensibility, the scope of the harm, the scope of the harm that could have occurred, and the wealth of the defendant.

You're going to punish the conduct, you're going to get them a message. And I would submit to you that based upon what they did in the courtroom in Phase I and what they did in the courtroom on Thursday and the changes they have made in their personnel and the state of knowledge of the board of directors of Exxon Corporation about what happened and the state of

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knowledge of its executive officer about what happened, and the fact that we hear the same thing about safety policies in Phase III as we heard about in Phase I, and the fact that they think it is a keen thing to claim credit for complying with the law, and the fact that they think it is a nifty thing to claim credit for cleaning up their own mess, and the fact

that the chairman of the board describes the advertisement (sic) as an advertisement and he didn't particularly think it was a good idea at the time. They haven't gotten the message.

And then to all of the other Exxon corporations of the world, if there is not a significant verdict in this case, to the other Exxons of the world what does that say about our society's values, what does it say about business risks? You know, if you're going to take these business risks, you're supposed to be careful. What does it say about reckless conduct and our society's approval or disapproval of reckless conduct?

If the headline in the newspaper, and in this case it will be Barons or Future or Money, is that Exxon walks away, Exxon gets off, Exxon goes scot-free, what does that say to the rest of the oil industry, what does that say to the big 15 or 16 powers of the world, that we can mount a defense in a courtroom that gets us off the hook, that we don't have to change our people.

You know, it's interesting who they fired. They didn't

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fire anybody who wears a white shirt. They didn't fire anybody who wears a white shirt. As the kids would say, there is an attitude there. But you have to do something, you are the ones that have to do something.

And the point of fact where I started off, the constitution says that you're the ones charged to deal with this problem, and His Honor with a mandatory punitive class says you're going to deal with it for all

of the different plaintiffs and the different court systems that are involved in this thing.

And then you say in Phase I, the conduct was reckless, so what you're going to tell Exxon Corporation and you're going to tell these people in these boards of director's rooms, and they are not the Connie Buhls of the world, the meeting that you're talking about has Jack Clarke, Lee Raymond, Larry Rawl, bodyguards outside, in a board of director's room, that's where you're going, isn't it?

I have five more minutes and I want to talk about the verdict form, because I always do. Now, make sure you sign it. I didn't catch it, but I'm guessing that's what the heck happened. Ken Murray, jury.

Do you unanimously find from a preponderance of evidence that an award of punitive damages against Defendant Hazelwood is necessary in this case to achieve punishment and deterrence, and I've asked you to fill that in yes and I think that is an important social statement to make. You have to condemn the

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conduct and you have to condemn the fact that he hadn't come to grips with the conduct.

If your answer to interrogatory number one is yes, what amount of punitive damages do you find necessary for those purposes, and the purposes are punishment and deterrence, and I'd ask you to put in one dollar because I think that's a significant statement, and I think it's a statement that has relevance in Captain Hazelwood's's life. In all honesty, because this is the first time that everything has come out, I think he would take a

dollar to heart, I think it will make a difference to him, like St. Paul falling off his horse on the road to Damascus.

Do you find from a preponderance of the evidence that an award of punitive damages against the Exxon defendants is necessary in this case to achieve punishment and deterrence? Should Exxon be punished for its recklessness in the grounding of the Exxon Valdez, the greatest environmental disaster in the history of America? Yes. For punishment, deterrence of Exxon and deterrence of others, for justice, for those guys, for justice for those women.

If your answer to interrogatory number three is yes, what amount of punitive damages do you find to be necessary for those purposes. And that's your job, and we know it's more than five and we know it's less than 20. We know it's more than five and we know it's less than 20, and I could give you a

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number that I think, and that is bringing my life experience to bear on a very difficult question, and I think that's a waste of time because each of you are going to go back in there and bring your life experiences to bear on a very difficult question.

But it's more than five and its less than 20, and that's what they ask you to do, is they ask you for purposes of punishment and deterrence to make the world a better place, and a situation in which you, in fact, have the opportunity to make the world a better place, to grapple with those numbers and to grapple with age-old concepts of punishment and deterrence and right and wrong.

Thank you.

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MR. NEAL: May it please the Court, counsel, ladies and gentlemen of the jury. I waited for an hour-and-a-half while Mr. O'Neill was up here to simply admit to you that this massive amount of money that he's asking for doesn't go to charity, it doesn't go for something else. It goes solely to

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their side, to their side, who have already been awarded all their actual damages. Not once did he mention that.

Let me start out a little slowly here by simply telling you that I'm sure you know by now, now that you have become judges of the facts, what Judge Holland learned several years ago when he assumed the bench and became a judge of the law. Judges of the facts and of the law never, ever, satisfy everyone, and judges of the facts and judges of the law sometimes never satisfy anyone. That's the burden you have.

In Phase I, although we disagreed, you found us reckless. That's your decision, that's the system, we respect it. In Phase II you awarded the plaintiffs \$287 million. That's your decision, that's the system, we respect the system.

I doubt that Mr. O'Neill and I have ever been involved in a case in our years when the jury came back and didn't agree with our position. I doubt that there was ever a time when we want to jump up and say, hey, you're right. I can't speak for Mr. O'Neill, but he is a fellow trial lawyer and I've never had a time when I ever thought the jury was right if they

didn't agree with me. By definition they are only right when they agree with me. Well, that's not the way it works, everyone agrees with you or not.

Let me tell you from the bottom of my heart, and I know this to be a fact, every man and woman at Exxon, whether they agree with your verdict or not, appreciate your methodology.

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We appreciate the way you went about resolving Phase I and Phase II. We appreciate the obvious care you took to decide the case on the facts as presented in this courtroom and under the law as given you by His Honor.

Your reward is not to have people agree with you, because it never happens all the time, and sometimes – as I said, sometimes no one agrees with you. Your reward is simply your knowledge that you've done the best you can do under the circumstances. And, by golly, let me tell you, you keep doing that and that's good enough for me.

We now start Phase III, and that's the issue of whether – whether you should award punitive damages, and, if so, how much. We start out with two propositions. One, and I'll show you by the Court's instruction number 26, one is that you, which is a fact, you must assume all the plaintiffs involved have been paid or will be paid all of their actual damages and that this phase is not to compensate for actual damages.

Your Honor, do you want us to pull this back?

Okay. Now let me say what Mr. O'Neill didn't say, but I'm sure it was an oversight. When we put up some kind of instruction like this, I want you to

know that's not necessarily the entire instruction, it's what we want you to notice out of that for the sake of this argument, but Mr. O'Neill did it and I'll do it. We put up a part of it, but the Court expects you, I expect you, and I know you will, to look

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at not only this entire jury instruction, but the entire set of jury instructions.

So back to this. The first thing we start with in Phase III is that, quote, you should assume that all plaintiffs have been or will fully be compensated for all damages they may have suffered as a result of the spill, which is in fact a fact. You may not make an award of punitive damages for the purpose of compensating any plaintiff.

The second thing we start with is the proposition in the law, as will be charged you by Judge Holland, that punitive damages are not favored, they are not favored in the law, and I will talk about why I submit to you they are not favored later on, but jury instruction number 25, the first paragraph says punitive damages are not favored in the law and are never awarded as a matter of right, no matter how egregious the defendant's conduct.

I've learned that egregious means the same thing basically as outrageous means, that you have discretion to award or not award punitive damages in accordance with these instructions. So punitive damages are not favored and are not a matter of right regardless of how egregious or outrageous the conduct.

The third thing we learned is instruction number 22, punitive damages may be awarded to punish and deter, to punish and deter.

Ladies and gentlemen of the jury, we apologized for the

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spill from the get-go. We accepted responsibility immediately. We immediately handed a check to the federal and state governments for \$15 million to conduct scientific studies to see what it would be – what it would cost or how to go about restoring the Sound. Nobody required us to do this, no law required us to do this. We cleaned up our spill at a cost of \$2.1 billion.

Let me tell you something. Mr. O’Neill says all of this is required by the law and therefore you get no credit. Look at the instructions, look at the instructions and see where in there it says it’s required. What we did was required by the law. Your law comes from the Court’s instructions. We paid claims over \$300 million in claims to fishermen and others. And you know what, we never asked for a release.

Now, one of my colleagues, when I was talking about releases the other day, suggested that since the jurors are not lawyers, somebody might not know what a release is. Well, in this – in our business, if you’re going to settle – somebody makes a claim against you and you’re going to settle with him, you say I’m going to give you this money, but I’m going to release you from all liability, I want to give you this money and have you sue me.

In our case, as Mr. Raymond told you, it was slowing up the process to start that in the beginning. Forget the releases, we'll give them the money and they can also sue us, all we want

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are receipts showing that we gave them the money. No law required us to do that, no law whatsoever.

We tried to ease the stress to the communities involved by the spill. We should have done that, but contrary to what Mr. O'Neill told you, no law required us to do that. If we were taking people away to work on the spill and paying them substantial sums, we brought people in to do the work that's necessary to run a city or a village. Nobody required us to do that.

We stepped up, and the Court will instruct you on punishment, too, and how to consider that, we stepped up – the federal government charged us and we stepped up and we said, yes, we were negligent. Unlike what plaintiffs' lawyer told you, we have never in this case said we did it all right, we have never said that. We stepped forward and said we were negligent, and we were assessed a 150 million dollar fine for that negligence right here in this court.

Now, as Mr. Raymond told you, all but 25 million of that fine was reduced, or reduced to 25 million because of our conduct, our good conduct following the spill. Now, in that case, that criminal case, we also paid a \$100 million to the state and federal government. In toto – strike that.

We also committed to see that the Sound was restored and we committed 900 million to a billion

dollars, which is flowing out now as we speak to the Trustees, federal, state Trustees,

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to restore the Sound. In total we spent \$2.8 billion after taxes, and you'll have it here and this is a chart that is in evidence, \$2.8 billion lacking what, 798. \$2,798,000,000 after taxes to clean up, claims, punishment, et cetera, and I'll talk some more about this. We vowed to do everything in our power to change whatever we had, to change to make sure this didn't happen again.

Mr. O'Neill talks a lot about message and getting the message and sending the message. Ladies and gentlemen of the jury, this is getting the message, this is acting responsibly, this is acceptance of responsibility, this is punishment, and it is deterrence.

Now I want to talk a few minutes about Phase I. I had hoped not to do this, because we spent a month on Phase I, but I have to do it, I have to answer some things that were brought up, and I know that you all don't like squabbles between lawyers, I appreciate that. I know you think that it doesn't help you, I appreciate that. I know that you've gotten the message that what Mr. O'Neill and I say is not evidence, the evidence is in. Nevertheless, I have to address certain allegations he made and certain snippets of testimony he took out of context on Phase I and II and tried to readdress them and put them in context without going through the entire Phase I again. I know you'd kill me if I tried to, and I would deserve death if I tried to.

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I do want to say this. One of the suggestions he made was that the Exxon board of directors didn't get reports and were not interested in this. Members of the jury, you heard it uncontradicted. The Exxon board of directors were very interested in this, and every month they got a report on everything Mr. Raymond knew. And, indeed, as Mr. Raymond pointed out to Mr. O'Neill, Mr. O'Neill, you had the agenda for every board meeting every month, you got that in discovery and you have seen that there was a place there for a report to the board of directors every month.

Now, there is a suggestion – there is a suggestion that we didn't go around firing people. We didn't conduct a witch-hunt and therefore we didn't care. Members of the jury, your own experiences – and I submit to you the fact it's easy to fire people, lop off their heads – as Alice in Wonderland, lop off their heads, off with their heads. That doesn't fix the problem.

What we did was not conduct a witch-hunt, but to go out, as I'll talk to you in a few minutes, we went out to look at the problems and tried to fix every problem. Everything that might be a problem, we tried to fix it and change it. The easiest thing for us in the world to do would have been fire a couple of people and say, okay, now we fixed the problems, let's go onto business as usual. We didn't do that.

They have also said that, well, Mr. Raymond up here didn't

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say, oh, we were reckless when he was on the stand and didn't say the first step that he's talking about. You know what, if Mr. Raymond had said – this is

the kind of Catch 22 you get into sometimes with a clever lawyer like Mr. O'Neill. If Mr. Raymond had said, oh, we were reckless, you would have been hearing from Mr. O'Neill saying that we're lying in Phase I when we thought we were not reckless.

If we say we are not reckless, then you'd hear Mr. O'Neill say we are in denial and therefore we didn't get the message. Mr. Raymond said it best when he said, look, what I think is not important, what I thought wasn't important. The jury decided we were reckless, now let's move on, and that is the perfect answer to that question.

One thing Mr. O'Neill couldn't avoid talking about was the compensation to Mr. Raymond. Let me tell you something, I wouldn't have the responsibilities for 91,000 employees with the problems that exist – involve now, for that compensation or double his compensation. Life is too short for that. But he went into Mr. Raymond's compensation and he never, never refuted what we brought out, and that is Mr. Raymond makes far less than CEO's of anything like comparable companies in this company. He makes less than ARCO, he makes less than Mobile, he makes less than Texaco. And you know what, he makes one third the compensation of Merrill-Lynch, but, as he said to you somewhat humorously, I'm not trying to file any claim on that,

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I get paid handsomely.

Now, there is a suggestion made that we didn't make a formal report, thus there was some kind of coverup. Mr. O'Neill says the law department investigated, I'd love to have their report, I'd love to see their report.

Ladies and gentlemen of the jury, we have been three-and-a-half months giving you the law department report. Mr. O'Neill took literally hundreds of depositions of our employees. He subpoenaed and got hundreds and thousands and millions of pages of paper. We gave you our law department report right here.

And let me tell you something else, that this demonstrates that his idea is that there is some coverup is nonsense. Mr. Raymond, as he told you, directed every person at Exxon to cooperate fully in the investigation of the National Transportation and Safety Board, and he directed to everyone at Exxon cooperate fully with the United States Department of Justice, and as he told you in this very courtroom, the United States Department of Justice, after they had conducted their investigation, complimented Exxon for having fully cooperated with them. That's not a coverup.

And there is a suggestion by Mr. O'Neill that somehow we lied to the fishermen when we said we would pay claims. And he points to this man Cornett. Ladies and gentlemen of the jury, to fishermen and others, we paid without releases \$300 million

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in claims. We couldn't pay them all. They started in this courtroom, as you'll remember, demanding \$980 million. Even before you got to work on a verdict, they had reduced that to 895 million, and we all know that even that claim was far too high. We did the best we could to settle claims, but sometimes you just can't settle them.

Now, the suggestion has been made, and I'd like to put this up on the Elmo, if I could, a suggestion has been made here that Prince William Sound is dead. As a matter of fact, Mr. O'Neill in his closing argument in Phase II said as follows, I hope we can read that: There was damage to the nursery habitat, the areas along the shore, there was a loss of food, we find egg mortality, larval mortality, loss of juvenile growth, genetic damage and a continuing damage to soil in the echo system, pink salmon – he's talking about Prince William Sound – pink salmon have crashed.

Members of the jury, I submit to you if they have crashed, they have crashed against each other because there is not enough room in the streams for all that are coming back now. And as Mr. Harrison told you, in the last five years there has been the three largest returns of pink salmon to Prince William Sound in history.

He also suggested to you that, and you'll remember this, you put an ad in the Detroit newspaper, but you didn't tell the people of Prince William Sound and Alaska you were sorry. We

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brought out then that we had to put an ad in the newspapers, we had to put an ad out otherwise the papers wouldn't take it, but we put an ad in practically every newspaper in Alaska saying we are sorry. Those include the Valdez newspaper, Cordova – Cordova, Juneau, Anchorage, Ketchikan, amongst others.

And then he suggested throughout this trial that our employees lied. I think that hurt. I think that hurt more than any statement made by the plaintiffs.

It is simply not true. Our employees came up here and did the best they could to tell you the truth. And now he's saying we called them liars. We never called them liars. We think our employees told you the best they could, best they knew.

Ladies and gentlemen of the jury, I don't consider myself the smartest lawyer in the world, but when somebody suggests that I might put on perjured testimony, I dislike it. I dislike it for two reasons. One, I wouldn't do it, and, number two, if I were evil enough to do it, although I may not be the smartest person to do it, if I were evil enough to put on perjured testimony, I would be smart enough to make sure a jury wouldn't find us reckless in Phase I. Our employees did the best to tell you the truth and not once did we suggest that they were liars.

Then Mr. O'Neill goes to the dispute resolution agreement. Mr. Mike Chalos may have something to do about this, but you heard the proof and Mr. O'Neill kind of endorsed this in a

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sense, because he says in this trial everything came out for the first time. You know why everything came out for the first time? We asked Mr. Hazelwood, Captain Hazelwood, to come in and testify, hurt us or help us, but come in and testify, let the jury and let us have it because we, as was pointed out, we weren't able to talk to him, his lawyer, doing an appropriate job, would shield him from us so we couldn't talk to him.

So we go to him and say, come in here and tell it like it is. As they say sometimes around, in Tennessee for sure, tell it like it is, Captain Hazelwood, and he says, I won't do it unless you

agree that you won't use what I say in our dispute later on. That was the only way we could get him to testify.

And then being lawyers, being lawyers, we said okay, if you want it, it got to be both ways, but that dispute resolution agreement, let me assure you, was created solely and simply to get Captain Hazelwood in here to tell you and tell us his position, his reaction, was he impaired, not impaired, and that was the only way we could get him in here.

Now, they also said to you, look, you purchased a company in 1989 for \$4 billion, even though the spill occurred. Look at the same reports, ladies and gentlemen of the jury, I think they will tell you that we committed to purchase that company in 19 hundred and 88 and we had to follow that through.

Now, I want to speak a few more minutes about conduct and then I will move on and I will spend the rest of my time,

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members of the jury, talking about affirmative things.

You will remember that we returned Captain Hazelwood to master the vessel. We did that, we had a report from his doctor, that's undisputed, that he was fit for duty to return as a master of a vessel. We reviewed that – they talk about we just ignored the risk. We weighed very carefully the risk of returning Captain Hazelwood to duty.

Do you remember that finally, as Mr. Iarossi told you and Mr. Graves told you, we finally concluded that if we didn't return Captain Hazelwood to duty, we would be driving problem drinkers into the closet,

and in their judgment, the risk of driving problem drinkers into the closet and having problems from problem drinkers was greater than the risk of returning Hazelwood to duty, but we knew it was a risk either way.

Now, we've changed our policy where safety sensitive positions are concerned and now we've reversed the risk, but we thought that if we would tell people with a problem, and I'm not going into whether he's an alcoholic or recovering alcoholic or an alcohol abuser, but we thought that if we returned Captain Hazelwood, who has gone and successfully completed rehabilitation, if we return him to the master of the vessel as the policy seems to suggest, then we will get others who have a problem we don't know about to come forward to seek help. If we don't return him, there will be masters and others out there in safety sensitive positions who won't come up.

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So we waived that risk, not ignored that risk, but we waived that risk, and, gosh knows, drink, drugs and alcohol are such a problem in society today, we still don't know how to deal with that risk. But we didn't ignore the risk, we waited, we did the best we could.

Now, you may have found – I don't know why precisely you found us reckless, and it's not relevant, you may have found that returning Captain Hazelwood was such a bad judgment, that was reckless, so be it. And we tried to monitor Captain Hazelwood. I suspect we didn't do the world's best job of monitoring Captain Hazelwood, and as I think about it now, it's probably impossible to monitor the master of a seagoing vessel. After all, he's on 60

days and goes home 60 days, when you can't monitor him at home, and you all wouldn't like it if we did, but he's on a vessel, and we tried and we thought we could and we tried, and we may have made bad mistakes in there and that may be why you found us reckless, but we didn't ignore – we didn't ignore the risk.

Now, right here I'm going to go to a couple more instructions because I want very – I want – if I don't do anything else, I want to call your attention to this. Mr. O'Neill says you found Exxon defendants reckless in Phase I, now how much, how much punitive award. He misses a step. He says you found them reckless, they are a big, successful company. Let's talk about how much, and being a big successful

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company is really his only basis, as I can see it, for saying you should punish us.

He misses the following step, and I'll read from jury instruction 20 and jury instruction 30, and I fairly said these are excerpts, so look at all of them. The Court will instruct you that the fact that you have determined that the conduct of Joseph Hazelwood and the Exxon defendants was reckless does not mean that you are required to make an award of punitive damages against either one or both of them. And then 30, the fact that you have found a defendant's conduct to be reckless does not necessarily mean that it was reprehensible or an award of punitive damages should be made.

So don't let – when you go back, and I know you will because I observed your – haven't observed it, but I've been sitting around knowing that you are

taking all the care in the world, so don't let him jump the step on you. The first issue you have is, should you award punitive damages at all. And there again, I remind you one more time that punitive damages are not favored by the law.

Now let's take one more point – two more points about our conduct. Before I do that, I want to talk to you a moment about these videotape clips. You know we spent a month in Phase I putting on proof. It's rather remarkable that plaintiffs would come in – as I looked at the clock, I think there was something like 12, 11 or 12 minutes, maybe even less,
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of little snippets of evidence in Phase I out of a month-long trial. The opportunity for distortion, for misleading, is remarkable there, and I won't try to catch them all, because I think you'll probably remember the proof, but they put on Mr. Shaw, Mr. Jim Shaw, and he says I reported that Captain Hazelwood had been drinking.

You know what they didn't put on, as you remember, the fact that Mr. Sheehy investigated that and came back and reported to Mr. Koops that he couldn't find any evidence of it. They didn't put on that. Then Captain Mihajlovic, do you remember him, went out there and also investigated that report and came back and said – and I can pull it up there because I did it on that screen – that is pure baloney. That's the problem you get into when you use videotapes. You take a little snippet, but you don't put on the truth, the whole truth and nothing but the truth so help me. And I'm not going to get into the snippets, but I do have to correct one or two of them.

Now, they did put on where Mr. Day reported to Mr. Myers the Mary Williamson matter, I believe it was. What they didn't put on was Mr. Day acknowledging and saying, you know, he was busy and he may not very well have heard me.

And they put on Captain Hazelwood, who said that he told Mr. Myers about having a beer or beers with Kintis in his apartment outside the Portland shipyards. What they didn't tell you is that he went to lunch, came back later, got to

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thinking, told you this from the stand, and said, you know, I'm not at all sure, I don't think I told Mr. Myers about the drinking beer. Didn't put that on.

And then Mr. Martineau, they put on a little clip of Mr. Martineau saying I knew nothing about the monitoring of Captain Hazelwood. What they didn't put on, but what is the undisputed proof, is that when – at the same time Captain Hazelwood was being transferred to the West Coast fleet, Captain Martineau was leaving the West Coast fleet. There was no way for him to know anything about monitoring, and, if not leaving the West Coast fleet, was becoming a master – master of a different vessel.

Now, they also said that Mr. Day – put on a little clip of Mr. Day saying he knew nothing about monitoring. Mr. Day was involved in this process something like ten days to two weeks. I won't continue on that. I think it's quite obvious to all of us that 10 or 11 minutes of a month's trial has a great opportunity for being misleading and unfair, and I'm sure that you will recognize that and deal with it accordingly, and I won't go through a lot of other examples, practically every one they put up.

Now, you found us reckless and in – in Phase I, but, you know, as I think about it, there are many different levels of wrongful conduct in human endeavor. One is negligence, that's the lowest. We're all – all guilty of it. I submit there is

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a thin line up to the next one, which is reckless, and you found us guilty of that. Then you move to the next step of willful, malicious, intentional wrongful conduct entered into for profit. There is no suggestion that we were willful, that we were malicious, and certainly we didn't run that tanker aground for a profit, wrongful conduct, conduct not willful, not malicious and certainly not for profit.

Now, from this point on I want to be positive. I have thought, and I know I've been directed, Jim, knowing that you're an advocate and sometimes you get excited and sometimes you get agitated, I want to – and I've been directed to take the high road in this case, and I want to spend the rest of my time not squabbling with lawyers, but to tell you what we've tried to do since this tragic spill occurred, which we were responsible.

First, as I said, we apologized. Second, we step forward and said it's our oil, it's our vessel, we accept responsibility. Now, that seems like an ordinary merit, but that doesn't always happen. First let me show you a clip of our immediate acceptance of responsibility.

(Videotape Played)

MR. NEAL: Now, I said that's not always the case. There was another oil spill around here, a spill from the Glacier Bay, and this is such a long trial,

I'm not sure people remember, I know you don't remember everything that happens in

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the course of the trial, but there was an interesting dialogue between one of the lawyers, the plaintiffs' witness, Dr. Crutchfield, and the Court, and here is what happened there. Look at this now, contrast that with Exxon.

Question: Now in the case of the Glacier Bay situation that you looked at, that was a case where – by the way, that was a spill from a ship owned by some somebody called Trinidad.

Answer: I'm – trying to determine who owned that ship was beyond my capabilities.

And then the question, there was difficulty with that, and the Court says: We had trouble with that.

Contrast the two. Contrast the two. That's a transcript of June 24th, 1994, page 5094, line 14, to 5094, line 20. Thank you.

By the way, I've had things come to my mind sometime, that I didn't want to do it, but I'll do it while it's on my mind. Brian O'Neill and some of the lawyers up here are talking heads, we got a script and we talk, talk longer than you all want us to, but I do want to thank you, the people that have been helping us, Ms. Irene Stewart, don't thank Jimmy Sanders, he's too cocky anyway, but I'm sure Mr. O'Neill thanks the people he's had who had to do most of the work here.

So we apologize, we accepted responsibility immediately, unlike others, and, third, we committed to clean up the spill.

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Right here I want to say again, that plaintiffs' lawyer says we're entitled to no credit for that. Well, you look at the instructions and see if we're entitled to no credit. You look at the instructions and see if it says everything that Exxon did it was required by law to do. Look at it. I just leave it to you to look at it and see who is right.

Our commitment, I think, was demonstrated with our first two witnesses we put on in Phase III. Connie Buhl, who worked all night, what a magnificent employee and a magnificent human being. I don't think people like that would work for a company that is an evil empire, as plaintiffs try to make it out. And Bill Deppe, who risked his life and crew to get that oil off the vessel, a million barrels. One of the great stories, not been told much, that Exxon people went out there at the risk of their life, lightered one million barrels of crude from that vessel in the position it was in, and not more loss of another barrel of oil, and not a single serious injury. A remarkable, remarkable story. And people like Bill Deppe don't work for an evil empire.

Our commitment involved, and you've heard it, unlimited authority to Otto Harrison to spend whatever it took to clean this up. You heard Mr. Harrison say I talked to Mr. Rawl, Mr. Rawl said you've got unlimited authority, you've got all authority, and if somebody stands in your way, somebody from Exxon stands in your way, come to see me. That is commitment.

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And then we had this little anecdote that I thought was one of the most telling things I've heard. A fish

hatchery, a person from a fish hatchery in the first day or two of the spill came to Mr. Iarossi and said we need money immediately, we can't wait until you get all geared up. Mr. Iarossi took out his business card, turned over his business card and wrote pay one million dollars. That man took it to the bank and got his million dollars immediately. That is commitment.

We brought in forces from all over the world. At one time we had over 11,000 people here. We built floating hotels on the water, we built bunkhouses on the shore, we brought in 12 million pounds of food just in 1989, and we brought in a massive amount of equipment and clothing. But I think best – with regard to cleaning up the spill, perhaps the best proof is from the admirals, Robbins and Ciancaglini.

(Videotape Played)

MR. NEAL: Thank you. I have talked to you about the claims program, not demanding releases, we did that. I've talked to you about the community liaison program, no one required us to do. I want to point out to you with the Court instruction, let's look at number 27, and this is what will guide you to see how our commitment to clean up, our commitment to pay claims, our commitment to community liaison fits into the law, and I'll start right up here. This may be all of 27, but I've said enough about that.

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In determining the amount of punitive damages to award, if any, you may consider, among other factors, and then the reprehensibility of the conduct, the magnitude of the harm that Mr. O'Neill went over, the financial condition, down here, the extent to which a defendant has taken steps to remedy the

consequences of his or its conduct or prevent repetition of that conduct. I'm talking about the spill here, the cleanup, the claims program, and in a minute I will talk about the changes we have made that you should consider, to prevent repetition of that conduct.

We made another commitment. We made a commitment to do whatever was necessary to restore Prince William Sound, or to make Prince William Sound sound again, and what we did there, we – as I said, we immediately committed \$15 million to conduct studies on the processes to go about that.

We paid \$100 million to the state and federal government, and we committed – and are spending 900 million to a billion dollars to make the Sound sound again. You have seen the Sound, I've seen the Sound. You will have to judge how well we're doing. Not all of that money has been spent as yet. And then – why don't we leave that up just a moment, Irene.

The next commitment we made was commitment to do whatever we could to make sure that this didn't happen again, and again, this instruction number 27 will tell you in determining punitive damages you may consider what the defendants did to

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prevent repetition of that conduct.

Now I'm going to tell you – Mr. O'Neill said but you don't get any credit for that because the law required that. I'm going to challenge him on that and see what we did that the law didn't require and did require. First thing we did is, you heard Mr.

Raymond say I said we could never have this happen again, and I'm not going to look just at the shipping company, I'm going to look at the whole worldwide organization. And so he undertook an audit of all the risks that would be out there in the company, and he made changes and ordered changes in those risks, and then he created a separate organization to look at those changes every year to see that they were being followed, whether any more was needed to be made, that's the worldwide company. The law did not require it.

He was – the company was instrumental in creating a marine spill response corporation, and Exxon committed 50- to \$80 million to that organization to make sure that they could respond – the whole industry could respond better and quicker to oil spills, no law required that.

As Mr. Raymond told you, they went in and revised completely the corporate-wide alcohol policy, and, as I said before, I don't know how these all come out, but they revised the policy to say, gee, and I don't want to back up and say on behalf of Captain Hazelwood and Mr. Chalos, we don't say that Captain Hazelwood was impaired or not impaired when making this

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statement, but did he drink that evening, and he did maybe inadvertently have a drink within four hours, and he had had some sort of a problem. What Mr. Raymond said is, whether that had anything to do with this spill or this precise spill other not, we can't take that chance again. We are going to create something called safety sensitive positions, and if you've had an alcohol problem in the past, you will

never go back to those safety sensitive positions. But not being an evil empire, what they said was, if you seek treatment, we will give you a job, we will give you a job with the same pay you had, but you won't go back to these safety sensitive positions, we just can't take that chance.

Now, you know what? As Mr. Raymond told you, that is an effort to avoid what problem you may or may not have found in this case. You know what, Exxon has been sued 106 times claiming that's the wrong policy, that you got to put them back. The alcohol policy also provided for random testing.

Now, you remember Mr. McMasters? Mr. McMasters the plaintiffs put on as an expert in the alcohol policy, the alcohol problems. He said I don't like random testing, don't believe in it. We said we're putting in random testing, too, we're putting in random testing for those sensitive – safety sensitive positions, and we're putting in random testing for other positions.

And then Mr. Raymond, as he told you said, look, I don't

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want people, our employees, to think that senior management or higher people in higher positions of the company can avoid random testing, you put it on all senior management.

And you know what? As he told you, he will get a call at his office and say, you will be at the infirmary, or wherever it is, in one hour for random testing, and if he doesn't go, he can be fired.

We change the policy for those who had a problem and were returned to their positions, not safety

sensitive positions, but they have gone through rehab, returned to work. We now have a written – written detailed policy for monitoring those people. We thought we monitored before, but we admitted we didn't have a written detailed policy.

And then, you know, Exxon and Exxon Shipping, if somebody thought that there was a problem that might have contributed to the spill, we'd look at that, and if we thought it might have – whether we agreed it did or not, we thought if it had merit, we will look at it and maybe we will change it.

Now, there has been a suggestion in this case that crew members or subordinates won't report on a superior. Remember some question about whether a crew member would report Captain Hazelwood if he had been drinking. You know what we did about that, maybe that's a problem, so we instituted a hotline and a post office box, and now every employee is told, repeatedly published, if you find anybody who is violating the law, who is

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violating the company policy or who is doing anything you consider to be wrong, if you don't – we want you to report it, and if you don't want to report it and give your name for some problem, you call an 800 number and you make your report, you tell us about it, you don't have to give your name, you don't have to identify yourself.

And then they went one step further and said if you don't want to call, if calling bothers you, send a message to a post office box and tell us what you said. And you know what they did? They set up an organization. If they get those complaints, they have

set up an organization to investigate them. That's not required by law. That is not required by law.

And then the shipping company went even further, and let me tell you what they have done, no, that's not required by law. Still under the Coast Guard rules and regulations, even today, a master can have a drink as long as – of alcoholic beverages, as long as it's not within four hours of assuming duty and as long as he doesn't have .04 in his system. Exxon Shipping Company says that's not good enough, we can no longer take that chance, we've got to see this doesn't happen again. So if you are a master or a chief engineer, you cannot have one single drink. Whether it's six, ten, eight hours, you cannot have one single drink during your tour of duty, about 60 days, 50, 60 days. You don't do it whether or not you're on the vessel –

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that's also been a prohibition, you can't do it when you're on shore, too much of a chance, and chief engineer, same goes for you, you can't have a drink of alcoholic beverages, whether it's on shore or not on your tour of duty. That, ladies and gentlemen of the jury, is not only not required by the law, but the Coast Guard still says you can.

And then there was a suggestion that maybe fatigue had something to do with this grounding. We didn't think so, but because that suggestion had merit, you know what we did, we added another third mate to our vessel. Now, unlike most shipping companies sailing the waters now, most shipping companies sailing the waters now have a master and three mates. We now have a master and four mates. A master, a first mate, a second mate, a third mate

and a second third mate. The law does not require it whatsoever, not required by law.

And then we went beyond that and we said, look, if there is any sort of problem with the workload in loading and unloading these vessels, we will add a mate stationed permanently at Valdez to help loading. That mate is there today, it's not required by law.

And then we said, okay, we unload in San Francisco, lighter. If there was a problem there, we will add a mate permanently stationed there to help lighter, in addition to these four people now that I've just mentioned. So we have a lightering mate stationed in San Francisco to help with the

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lightering. That's not required by law.

And then we created something called an Ex-bridge, and I won't take a lot of time with this, but it's new technology that we've developed – there was a suggestion that maybe Cousins kind of lost where he was, so we came out with new technology called Ex-bridge. We locked on to the global positioning satellite, and now on Exxon vessels the mate with the conn can tell where he is within feet anywhere in the world, tell anywhere in the world he is within feet, and he can see from the Ex-bridge concept the dangers or the obstacles that may be around him. That's not required by law.

And there was a suggestion that maybe because our bridge navigation manual was ambiguous and maybe the master did have the right to go off the bridge in Prince William Sound, we didn't think so. We were confident that wasn't the way it read, but

we said if there was any ambiguity, we have sent out a directive, in port is from the sea buoy at Hinchinbrook and therefore when you pass the sea buoy at Hinchinbrook going in, the master will stay on the bridge with another mate until you pass the sea buoy going out into the Gulf of Alaska. That's not required by law.

We have always, unlike the requirement of the Coast Guard, required a master to undergo a ship handling course before he's sailed for Exxon as a master. Now every mate, every mate, first, second, third, third, must go through a ship handling

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course using a simulator before he can sail for Exxon. That's not required by law.

And you know what they do on this simulator? One of the things they study, one of the things they study is the grounding voyage of the Exxon Valdez. Is that denial, are we denying it when we say you must study it? Here, we'll get your attention, you must study this, that's one of the things that all the mates must study, and that's not required by law.

And then we have put an independent auditor on our vessel and he rides our vessels and he reports on any problems he sees. Independent auditor, that's not required by law.

And these changes, may it please the ladies and gentlemen of the jury, are still going on, they haven't stopped. And let's see what the Court says, the Court's instructions will say about changes made to do everything you can to prevent the repetition.

And Mr. O'Neill kind of muted this a little bit in his argument, because I suspect he knew the

instruction that was coming, but the two things this instruction says, one, you should consider – in determining whether an award of punitive damages is appropriate, you should consider steps taken by defendant to prevent recurrence of the conduct in question.

And the Court says something else because the law says something else, and the Court is the repository of the law, or the law giver to you. The law says if an accident happens or

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event happens, we should not penalize people if they make changes. So the fact that changes have been made after an event does not tend to show that such changes should have been made before the event, or that the policies and procedures in place were negligent or otherwise improper.

Accordingly, if you find that changes were made that reduce the likelihood of an oil spill in the future, you may consider the making of such changes as a factor to mitigate punitive damages. Ladies and gentlemen, we have taken those steps and, almost without exception, there are some required by law, but not what I've been talking about.

Every time my law partner Jimmy Sanders comes up, I lose my chain of thought. Why is that?

MR. SANDERS: I'm helping.

MR. NEAL: Okay, Jimmy.

I don't want to suggest to you, indeed I think it's important that you know, Exxon Shipping Company and Exxon are not the only people who have gotten the message and made changes. This was an event

nobody thought would happen, and when the event occurred, not only Exxon, but others made changes. ARCO made changes. You've heard Mr. O'Neill talk about that. ARCO made changes. They said we haven't been doing it right, we need to make changes or we ought to make changes. The Coast Guard has made changes and the United States state governments have made changes. So we have all

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gotten the message, thank you.

So I'm coming to the end of my remarks. I had promised myself that I wouldn't take as near as much time as Mr. O'Neill. I still believe I'll make that, although I sometimes don't keep promises to myself.

We apologized immediately, we accepted responsibility, we committed to clean up the Sound, we committed to clean up the spill, we committed to pay claims, we committed to restore the Sound, and we committed to see that we could do everything in our power that this would not happen again.

Let me talk to you a moment about punishment and impact. There were two cases here, the civil case you've been involved in, and the criminal case, and I can tell you briefly about this. I told you about the criminal case, 150 million dollar fine. We paid 25 of that, 125 remitted because of our good works following the spill. We paid a \$100 million to federal and state government. We have paid approximately 2.7 billion in addition to that. Ladies and gentlemen, that is punishment. That is punishment.

Now, this is after tax, the 2.8 billion. The other day in the opening statement he hadn't mentioned

this summation, as I remember it, but you remember Mr. O'Neill saying, well, they have been punished for negligence, but they haven't been punished for recklessness. I'm going to show you what the jury instruction says about this. You don't break it down that

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way.

The judge will tell you you should consider the punishment we've already had, and it says you may consider as mitigating factors the existence of prior criminal sanctions or civil awards, that's both of these cases, against the defendant for the same conduct we were punished in this very court for, negligence, the same conduct.

We have now suffered approximately – in addition to the 125 million, we have now suffered after tax approximately 2.7 billion in civil awards. But plaintiffs say – plaintiffs say, oh, 2.8, they use 2.7, but you've use – seen of the chart, it's within a million of 2.8 billion. And they said – really said this 2.8 billion is only a hiccup to Exxon. You have the charts and you can see it for yourself, but \$2.8 billion after taxes is equal – is equal to all the income Exxon has made from all of its oil and gas operations in the United States for the last three and one half years. What we paid after tax is equal to all the income Exxon has made from all of its oil and gas operations in the entire United States.

As Mr. Raymond told you, and I think that Mr. O'Neill inadvertently got this confused, Mr. O'Neill – Mr. Raymond also told you that what we paid here is the largest single cost expenditure in the 113-year history of the company. And he also told you that

the expenditure here of 2.8 billion after tax caused the corporate debt level to go to its highest level

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in the history of the company.

And plaintiffs say, well, give us 15 billion more, I know you're just giving it to us, we have been paid our actual damages, but give us 15 billion more. Let me put that in context to you. Because we've dealt with such numbers, it's hard for me to comprehend them.

\$15 billion is \$500 million more than Exxon's entire investment, entire investment, not income, but entire investment in the oil and gas business – actually, it's \$500 million more than Exxon's entire investment in the oil and gas business in the entire United States, but money is not the only story.

They brought up Steve Day. I want to bring up Steve Day again. One of the things that happened in this case is the impact, the non-monetary impact. And I thought this was best expressed in a moment, unguarded moment, by Steve Day, who basically said – this was put on in Phase I. It wasn't really relevant to Phase I then, but it seems to signify the human impact this case has had on the 91,000 Exxon employees.

Would you play that?

(Videotape Played)

MR. NEAL: Mr. Raymond told you that Exxon, and over the years, tried to get his employees, the best and the brightest. And he says this spill has affected not only how employees think about themselves, their devastation of pride,

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but also how others think about Exxon. It will have, as Mr. Raymond said, a lasting effect for the indefinite, indefinite future.

I want now to close by picking up another theme that Mr. O'Neill has said time and time again, "send the message". Now, I'm not going to be as flowery as he was talking about the world watching, very little publicity about this case. But how the world is watching you has nothing to do with your duty. Do justice, forget the world watching business as he said.

But he does keep saying send the message, send the message. Members of the jury, whatever you do, you're going to send the message, whatever you do. We apologize for this accident, we accept the responsibility, we paid \$15 million to the federal government to start studying immediately, we committed to and did clean up the Sound, we committed to restore the Sound to its original status or better, we committed to pay claims. We committed to do whatever we could to see this didn't happen again, and we put out \$2.8 billion, not because we were required to, but because we should do it.

Now, if you say now enough is enough, the message you will send is to companies is if you stop following – if you accept responsibility and you act responsibly, when it comes to punitive damages, we will give that great weight.

On the other hand, if you hit us now, the message you may send to other companies is, don't do anything, drag your feet.

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If you got any responsibility, make them take you to court because you'll be hit anyway. It's a somber job. I don't know what else we could have done that we haven't done in this case to rectify our conduct.

Finally, members of the jury, the Court will instruct you, as I've said several times, that punitive damages are not favored in the law. I submit to you that a reason punitive damages are not favored in the law is that punitive damages reward those who have already been made whole, reward those who have received all of their actual damages, and run the grave risk, probably do, to punish the innocent employees and stockholders.

I've never, in 35 years of practicing law, said to the jury give me this verdict or give me that verdict, answer this question my way, et cetera; I don't do it now. Give us your care, attention, do what you've done to this point, study the facts carefully, study the law of His Honor carefully, do what is right and just, and go home and sleep, go fishing.

Thanks. Thank you very much.

* * *

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MR. O'NEILL: Thank you, Your Honor.

This is the whole – this is the first time the whole story has come out, everybody agrees to that. This is the whole time – the first time the whole story has come out and come out into the public in the air where everybody can hear it. And who had control of the facts, who had control of the facts? Exxon Corporation had control of the facts and the law department had control of the facts, but it took five years for the whole story to come out despite

congressional testimony, National Transportation and Safety Board hearing, a justice – and investigation by the justice department of the United States, and all of that, and this is the first time the whole story comes out. Does that bother you? That isn't right. That's amazing.

Now Exxon says – you know, some of these arguments that are made sound good when they are made, and I'm going to give you an example of one. One is the first example Exxon said it did. It points to the Glacier Bay and says we accepted responsibility for the spill, it's our ship, it's our oil, we accepted responsibility and that's an important thing to do. On its surface it makes sense.

Now I'm going to show you that that is a ridiculous statement. This boat is on a reef, and what does it say on the

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smoke stack and what does it say on the bow. Now what are they going to say, that this boat belongs to ARCO? This boat is in the 1986 annual report at page 13. Accept responsibility? They didn't have any choice but to accept responsibility. It's on a reef, the state authorities are coming out, the Coast Guard authorities are coming out, what are they going to do, paint the smoke stack and put SeaRiver on it. We accepted responsibility, it's our boat, give me a break it's their boat.

I mean, Exxon has no place to hide. So they say, having no place to hide, we accepted responsibility. That is a stupid, stupid, misleading thing to say, and what it means is they are making up arguments so they won't be punished. They are trying to get off the hook for a terrible, terrible thing that they did.

And this is the hook, jury instruction 27, and it lists the factors that you're to look at and the three major factors we had agreement on. The degree of reprehensibility of the defendants' conduct, it was reckless and it spanned five years. The magnitude of the harm likely to result, as well as the harm that in fact resulted, it was terrible and people could have died. And the financial condition of the defendants, there is no argument about that. So in the jury instruction, with regard to the three major factors, we've got agreement on that and that's what the law tells you.

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awards. They are required to pay potential and contingent expenditures. Phase IV claims and contingent state and federal claims are all compensatory damages, so I ask you – on this board, every number on here, an innocent spiller would have had to pay, with one exception, and that's the federal fine of \$25 million paid for negligence.

Show me a dollar on that that is attributable to reckless behavior. It is not fair and it is an improper, chronic message to send to society that innocent spillers and reckless spillers are going to be treated the same, and you don't need to be a genius to figure that out.

On the claims payments, there is a real interesting comment made, we paid without releases, we started to require releases and then we paid without releases. What that means is they were making partial payments and they were initially requiring releases for partial payments, and then they saw the wrong in that and they made payments to people who they owed money and they receded for that, and that's what they should have done.

This oil spill, this disaster, this thing that affected so many people's lives, wasn't the result of written policies, it was the result of the same people that they still had working there, who they promoted,

who have attitudes, and I don't think they live in the real world, but those same people are still there. Those same people were brought into the courtroom and they defended reckless behavior.

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Now, what message are you going to give Koops, Borgen, Iarossi and all of those people if you say you're coming in here defending that reckless behavior, we're going to validate that, we're going to validate that, and then they are going to go back to their company and they are going to know for the things they did from 1985 to 1989 they got away with them, and from the things they did from 1989 to 1994 they got away with those, and that includes the conduct in the courtroom, it does.

And if you want to talk about them learning their lesson – you know, I have a boy and a girl. Boy is older than the girl. And, you know, we've all heard it, but I didn't hit my sister. If I hit her, she made me do it. I didn't hurt her anyway. And that's what we've heard. And when your kid comes in and says – goes through the litany, you say hold it there, cowboy, we're going to have to have a serious discussion about accountability.

And we've heard today that fatigue was a problem, but it wasn't a problem, but it was a problem. And we have the Stalzer memo in 1990 showing three quarters of the vessels in the fleet with serious fatigue problems.

Now, from the closing today, is alcohol a problem with Exxon or isn't it, or was it a problem from '85 to '89? Can you tell whether the policy was a problem, can you tell whether the monitoring was a problem? Can you tell? I can't tell.

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Subsequent remedial measures, the extra mate – I mean, this is like the vessel – the extra mate and the loading mate in Valdez are made to comply with the six on/six off rule, and they are claiming credit for complying with the six on/six off rule, which has been in effect since 1913, and there is a memo. The Stalzer memo, when you go back to the jury room, points out that the problems, the fatigue problems, were caused by manning problems in the '80s. That's where they were saving the buck, that's where they were saving the buck, but the extra mate and the loading mate are made to comply with the statute that was passed in 1913.

And it's interesting how they turn things around. Well, society has learned a lesson, because these laws have been passed, the states of California, Oregon, Washington, Alaska and the federal government have enough of a distrust of this institution, enough of a distrust of this institution to pass oil spill laws protecting us against Exxon Corporation. That's what those laws do. And it isn't that those laws weren't specifically passed. The OPA '90 was passed in the wake of the Exxon Valdez and it prohibits this tanker from going into Prince William Sound.

So why do we need these laws by California, Oregon, Washington and Alaska and the federal government? Because this is a responsible, forthright can-do, positive part of our society. Is that why every legislator on the West Coast and in

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Washington D.C. had to take a look at oil spill prevention and oil spill response? That's because

what happened, the first three factors, the conduct, the harm and the actors, were so egregious and so powerful that they needed to do something about it.

But one thing that they can't do, and as I said before, the Congress can't, and the executive branch cannot punish. And the framers of the constitution, when they set up our government, did that on purpose. They wanted punishment in cases like this to be in the hands of the people, and that's what we're talking about.

Now, there is – Mr. Neal starts off by saying what about this money to the plaintiffs, and why didn't Mr. O'Neill mention that? Do you recall when he said that at the beginning, why didn't I mention it, like I was trying to hide it? Do you want me to show you why I didn't mention it? Because I was told not to because it's irrelevant to the purpose of punishment, because it is irrelevant to the purpose of punishment.

The fact that the punitive damages would go to Alaska fishermen, Native corporations, every community in Southcentral Alaska and benefit this economy is irrelevant to the purpose of punishment. And the jury instruction tells you that, and when you look at the five factors for punishment, your duty in this case, that is not one of the five factors for punishment.

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His Honor, in a mandatory punitive class, will bring in not only the people that appeared before you, but people from all the other court systems and will administer the fund and that's what will happen to that and that's how come you're not supposed to speculate as to how that money might be divided

among the punitive damages class, but the issue being raised, it's going to Alaskans.

You are supposed to look at the defendants, and you are the embodiment of our society with regard to the conduct that we're looking at. You are it, once and for all, only one ever, and the issue has never been tried in the open air of cross-examination, your scrutiny has never been brought to these facts before. And they have not paid once cent with regard to their reckless conduct, they haven't.

This case is about the members of these boards of directors at Exxon Corporation and at other corporations like it, the people who call the shots, and that's why I think the most fascinating bit of discussion in the courtroom was when Mr. Raymond was on the stand and we find out that he is the man who is responsible for informing the Exxon board of directors he doesn't know who any of the players are, he thinks Hazelwood was the most closely monitored man in the fleet. The board never asked for an assessment of why the grounding occurred. All of those things are irrefutable.

He comes here and tells us that he doesn't know who Mary

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Williamson is, he doesn't know that Hazelwood had a problem in 1985, the Graves report. What does that tell you about the board of directors of Exxon Corporation, about the interest of what happened? What does that tell you about Mr. Raymond's interest in what happened?

You know, they don't know, they don't know what happened. You know more about what happened in

their company than they do, and they are here to tell you that they fixed the problem. And that doesn't make any sense, and the reason that it doesn't make any sense is because they still haven't come to grips with the problem, and they haven't come to grips with the problem because they live in a different world than we do, and they haven't come to grips that everybody doesn't make what the head of Texaco makes.

And corporations are very interesting institutions. The moral tone or the moral leadership is set from the top down, and corporations can have sick cultures. Like schools can have sick cultures, corporations can have sick cultures. And in a corporation, because everybody has got a specialized role, medical department, that's not my responsibility, that kind of thing, people avoid responsibility. And because there are all these layers, people can avoid responsibility, and because there is an anonymity, when you and I do something wrong on an individual basis, we can't hide. We are sort of like the Exxon Valdez aground. We're us, our name is – we have to accept

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responsibility for what we do as individuals, and a corporation, you can get a pass the buck, like we saw in the medical department kind of thing, I wasn't supposed to monitor, I was the president of the company.

How do we police against that attitude? We're not policing against paper policies, we're policing against attitudes. How do we police against attitudes? We police against attitudes, against institutions that are as big as this one through the jury system, and the

message from the jury has to go not to Connie Buhl, but it has to go to the board of directors and it has to go to Mr. Raymond so that five years after the grounding of the Exxon Valdez, boards of directors have an interest in finding out what happened and the chairman of the board of Exxon Corporation has an interest in finding out what happened and so that the boards of directors and the chairman of the board have enough concern about the people that they hurt to at least know the names of a few of them.

With regard to all of these employees that have been promoted, everybody who had any complicity in this thing at all, I would submit to you that we have the same problem that we had with Captain Hazelwood and that when bad things happen or people are having troubles, we need tough love. And if you or I would have been the president of Exxon Shipping Company, or the president, more importantly the president of Exxon Corporation, with regard to these employees who had these

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problems, we would have seen some tough love.

What does that do? Not only does it fix the problems with regard to these individuals, but what message does that send to the company, what message does it send to the company to take occasional adverse personnel actions, to suggest to people that maybe this isn't their calling, to suggest to others that we got to fix our attitudes?

If you do that in a company, that sends a message to all of the other employees and it changes the corporate culture. That's on the one hand.

Now let's go on the other hand. We promote everybody who was involved, we take no adverse personnel actions, and then we parade them in the courtroom to defend them what happened one by one.

Now, Connie Buhl and Steve Day are two of over a hundred Exxon employees that we saw in here, and the higher they get up the totem pole, the more you get a Mr. Rouse that says, yeah, we have a relapsed alcoholic as the captain of our tanker, so on the one spectrum we have promoted them, let's not fire them, let's talk to them, and five years after let's make them come in here and defend the conduct.

Now you let that crew off. What does that tell them? What does that tell them, that this behavior is right? What message does that send? We got away with it, I came in here and lied my head off in Phase I and we got away with it. It's a

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question of tough love. It was a question of tough love with Captain Hazelwood and it is a question of tough love with the employees, and I would submit to you today that it's a question of tough love for society.

And corporations, as I said, have – when I was talking with Mr. Elmer, there was an interesting little colloquy. I don't have it, but it was – we were talking about learning to clean up your own mess, and I mentioned the fact that school boys get their knuckles wrapped. And he said, yeah, and I had to stay after school. Now, that's a very interesting comment for two reasons. The first is he had to clean up his mess and then stay after school. Obvious, but it's right.

And the second is, as people can have their knuckles wrapped, but a corporation has no soul to damn and nobody to kick. That goes back to the Lord Chancellor, the biggest lawyer in England in about 1760. And the language of corporations is unfortunately the language of might.

And shareholders get upset with their boards of directors on money issues, and shareholders will force changes in the board of directors either in attitude or personnel on the basis of money. And that is an ugly fact, but that is a fact of life. It's an ugly fact, it's a mean fact, but it's a fact of life. What are the magazines entitled that you read that deal with corporations? Fortune, Money. I mean, they are, and if

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you were going to effect a change in our society rather than – you know, many of these Exxon corporations, Captain Deppe, who is now the port captain at the time the trial date is set, how many of these changes are going to exist a year or two from now?

We saw the number of mates go down in the '80s. How many of these changes are going to exist a year or two from now if you let them off the hook? What kind of message is it going to send to other corporations if you let them off the hook.

The argument that they make, it's a very interesting argument, but again it's a childish argument, is if you punish us, the message that you're going to send to other corporations is they shouldn't comply with the law and clean up their own mess. Isn't that the argument?

I've rephrased it, but isn't the argument if you punish us, Mobile, Texaco, ARCO, won't comply with the law and clean up their own mess? No. If you punish them, two things are going to happen. If you punish them, two things are going to happen. There are going to be less messes. And we know there are other oil spills. We know the Braer spilled in 1991. You punish them, there are going to be less messes, that's the first thing.

And the second thing is they are going to clean their messes up, and when they make messes, they are going to effect real, meaningful changes in their personnel, and when they make

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messes, they are going to say I'm sorry in a real and meaningful way.

The newspaper ad is in the plaintiffs' exhibits with the newspapers that it was published in, and it's kind of interesting. It's not a big point, but when you go back to the jury room there is an A version and a B version, and we were given the A version, a discovery version, and then we were given the B version. Notice the order in which the newspapers that it's run in. They put the logos on the exhibits, but notice the order they are in, in the A-1 and the B-1, the A-1, all the national newspapers, and then somebody with a litigation mind said we better switch the order of the ads and we better throw in a couple more Alaska ones. Go back and look at A and B.

But, most importantly, Chairman Rawl said he didn't think that it was necessary to run the ad, that's what he said.

Saying you're sorry when you hurt somebody, and that is no small point. Saying that you're sorry when you hurt somebody, in coming to grips with the full scope of what you did and not hiding it from the public, are the first meaningful steps to changing attitudes and moving forward.

And with regard to changing attitudes and moving forward, nobody is going to move forward until you're through. Fishermen can't move forward, there are tens, twenties, thirties of thousands of people in the municipalities and the

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Native corporations, the other groups impacted by the spill, who are still angry and hurt about what happened.

And that is an important reason to punish. That's why, you know, we used to resolve these disputes with six-guns. Now we resolve them with juries, but the validation of their feelings is important and the validation of society's feelings and anger about this spill is important, and changing Exxon's attitudes are important and sending a message to others – you know, the statement that this case has not received any publicity, did you hear him say that? Absolutely incredible.

I mean, you're not supposed to read the newspapers; I do. Absolutely incredible. And society – your verdict is going to be a validation of society's values, and that includes values on people, the environment, honesty, that's – your verdict is a validation of society's values.

The numbers that I gave you there isn't much dispute about. They come out of the Exxon

Corporation year-end statements, and so as you go to do your duty, I wish you well. And we started with coats on and we're finishing with coats on. And all of the people who were hurt by the spill appreciate what you've done and what you're doing.

And in point of fact, these people in these board of directors' rooms are going to look to what you do, and the day after you do it it will be discussed in every major board of director's meeting in the country that exists. And your fellow

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citizens are going to look to what you do, and it is a very, very important, important task.

Now my part is over. You know, five years of work and all these depositions and looking at these documents, it's over, and now you can go and do your work. And we all wish you God speed and thank you for your time and we'll hang around and wait until you come back.

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