

SCOMM

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ROUGH VERBATIM
TRANSCRIPTS OF
SEVERAL COMMITTEE
MEETINGS

Alaska State Legislature

House of Representatives



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Official Business

House Special Committee on the Exxon Valdez Oil Spill Claims Settlement

VERBATIM TRANSCRIPTS OF EXXON VALDEZ SETTLEMENT COMMITTEE MINUTES
PREPARED BY ACCUTYPE

Note: These transcripts were done verbatim from the tapes by Accutype Secretarial in Anchorage. House Records subsequently edited them into final minutes. These are being retained because of their "word-for-word" value.

Meetings:

April 5, 1991
April 9, 1991
April 10, 1991
April 12, 1991
April 16, 1991
April 17, 1991

HOUSE SPECIAL COMMITTEE ON THE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT
April 5, 1991
12:00 P.M.

MEMBERS PRESENT:

Rep. Max Gruenberg, Chairman
Rep. Ramona Barnes
Rep. Cliff Davidson
Rep. Bill Hudson
Rep. Gene Kubina
Rep. Mike Navarre
Rep. Gail Phillips

MEMBERS ABSENT:

Rep. Fran Ulmer

OTHER LEGISLATORS/STAFF PRESENT:

Attorney General Charles Cole
Andy Hemenway, Staff Attorney for the Committee
Gregg Erickson, Economist for the Committee
Pamela Finley, Legislative Affairs Attorney
Pat Williams, Committee Secretary
Rep. Georgianna Lincoln
Rep. Pat Carney
Rep. Loren Leman
Rep. David Finkelstein

COMMITTEE AGENDA:

- I Committee Announcements
- II Testimony of Attorney General Charles Cole

1 Tape 8, Side A
2 000

3 Chairman Gruenberg called the meeting to order at 12:10 p.m. in
4 the House Resources Committee Room. The Chairman noted the
presence of the members and other legislators and staff present.

5 The Chairman noted that Attorney General Charles Cole would be
6 testifying after Gregg Erickson addressed the Committee first.

7 017

8 Gregg Erickson, Economic Consultant retained by the Committee,
9 noted there was, before each member, a copy of a memorandum
10 dated April 5th. He directed everyone to page four of the
11 memorandum and the question related to restitution. The
12 question arises as to what sort of things the \$50 million which
13 might be received in restitution under the criminal agreement
14 might be spent on, and in addition, a similar question arises
15 with respect to the funds received for restoration under the
16 Consent Decree and to be allocated in accordance with the
17 Memorandum of Agreement between the State and the Federal
18 Government. He pointed out that there is language in the
19 definition of restoration in the Criminal Plea Agreement and
20 there is similar language in the Consent Decree that
21 substantially broadens the objects upon which those funds can be
22 spent. That language relates to the enhancement of affected
23 resources. Restoration is usually defined and is defined in the
24 Federal Acts as direct restoration, replacement and acquisition
25 of equivalent resources. The enhancement language is nowhere
found in Federal statutes, he noted, that he was aware of. He
thinks it's important that the Committee be aware of this
especially in light of the assertions by the Administration that
the funds under the Consent Decree that will go for restoration
are not subject to appropriation because if that is the case,
the objects of that money that is to be discretionarily
allocated by the trustees, State and Federal trustees, is much
broader than it would have been had that language not been
included.

He also mentioned that he had some hearsay comments that the
Committee might want to delve into a little more deeply. He
said he understood that Commissioner Sandor, designated by
Governor Hickel as a trustee in this issue, indicated to his
federal colleagues on the trustee counsel that it was his desire
to suspend the damage assessment studies and to suspend the
restoration science studies on the grounds that they are no
longer necessary. He stated it was also his understanding that
the federal members of the trustee counsel demurred from that

1 view. He also stated that a meeting was held yesterday to deal
2 with those issues and they may be resolved by now. He also
3 noted that it has been suggested both among the state and
4 federal participants that the intention of the State is to
5 establish the Department of Natural Resources as the lead
6 trustee. He was asked if that would be Commissioner Harold
7 Heinz. He stated yes, as soon as this agreement is in place.
8 He thinks there was concern that because of Commissioner Heinz's
9 relationship to ARCO, which was a participant in the Alyeska
10 Pipeline Company, that it would have been inappropriate to
11 involve him in this while there was still pending civil and
12 criminal litigation.

13 099

14 Chairman Gruenberg noted the time was now 12:25 and that
15 Representative Barnes has joined the meeting. He addressed
16 Attorney General Cole noting that the Committee was in the
17 process of questioning him about the Consent Decree and they
18 had gotten through question number seven. He asked the
19 Committee if anyone had any questions regarding the previously
20 covered questions.

21 Representative Davidson asked what the intent of the State was
22 at this point. Were they going to continue the assessment of
23 damages and injuries, and would there be cause to do that? He
24 wanted to know how we, as a state, were going to proceed.

25 Attorney General Cole stated yes, and also that it was necessary
for him to comment on Mr. Erickson's testimony. He said that
Mr. Sandor, after discussing the future of the expenditure of
funds from the settlement if finally approved, that a
reassessment of the studies during 1991 should be made with a
view to determining which studies in light of the settlement
could be eliminated. He stated that of particular discussion
were economic studies which had been initiated in furtherance of
the State's claims for damages against Exxon. He said that
underlying these discussions was the view that as much money as
possible should be utilized for restoration purposes rather than
perhaps singular scientific knowledge. There is planned to be
expended this summer in continuing studies and related
expenditures approximately \$35 million. He stated that he and
Commissioners Sandors and Rosier want to make certain that those
studies are in furtherance of damage assessment and restoration.
He pointed out that there is a covenant in the agreement to
continue the 1991 scientific studies and that the State trustees
have no intention of breaching or endeavoring to thwart that
provision of the agreement. He also noted that nobody among the
State trustees, to his knowledge, has any secret intent to do
other than restore Prince William Sound and the injured natural

1 resources, nobody has mentioned building roads, exotic concrete
2 and steel improvements, just restore the damages resources.

3 208

4 Representative Davidson asked that Attorney General Cole make
5 wider reference to the extent of the damages. He said it
6 frequently seems that we're concentrating only on Prince William
7 Sound and he's concerned about other areas, i.e. Kodiak, that
8 were affected by the spill.

9 Attorney General Cole said to look at the language, it's
10 referred to as the spill affected areas. He also noted that the
11 pink book contained some 150 page analysis of coast studies and
12 expenditures of \$35 million.

13 He was asked whether all of the meetings of the trustees would
14 be open to the public and he stated that he didn't really know
15 the answer because he hadn't discussed the subject with the
16 other trustees.

17 263

18 Representative Hudson said that he had just gone through the
19 double volume pink plan that is open for public review and said
20 that he was surprised to hear that they were changing that. He
21 said he understands the Attorney General's testimony is that if
22 there are changes, it will be more to pursue restoration as
23 opposed to litigation assuming at any rate that if this is
24 approved that the some of the ongoing tests or evaluations,
25 economic considerations might not be necessary if we have an
approval of this nature. He asked if that was a fair
assessment. The Attorney General stated that that was precisely
accurate.

Attorney General Cole also noted that they asked for public
comment in this document and if they didn't say they had an open
mind at this time about what we received from the public
comment, in his view, they would be acting irresponsibly.

287

Chairman Gruenberg said that he was concerned about one aspect,
that the Attorney General indicated that they needed to have
faith in the trustees to do their job. He thinks that that's a
two way street, that the trustees need to have faith in them and
keep the public informed, that when they hear that studies are
being suspended at this crucial time, that that is bound to have
far reaching effects especially when they don't receive it from
the trustees but receive it indirectly from third parties who

1 leak the word out. It doesn't help in their confidence in the
2 process and leads to a question the Committee is going to have
3 to address and hasn't been addressed yet and that is, what kind
4 of legislative oversight there should be on this process if the
5 agreement is approved in whole or part and the process proceeds?
6 What type of continuing legislative oversight should there be
7 and should this legislature consider the enactment of
8 legislation requiring that?

9 Attorney General Cole responded to that by saying that here is
10 this group which has been functioning for two years, 20, 40
11 people functioning carefully and judiciously and making
12 decisions as the process goes on weekly, monthly. If the
13 legislature wants to send somebody over there to attend the
14 meetings, he said he was sure they would be welcomed. He said
15 he felt that if this was a matter of legislative concern, you
16 would think that for the past two years when the legislature was
17 appropriating these funds that it would have the oversight that
18 it now speaks about having by attending all these committees.
19 He stated that he finds this presumption of secretiveness hard
20 to accept.

21 331

22 Representative Finkelstein stated that he thinks the Attorney
23 General may be taking things out of context. He noted that the
24 Committee only hears hearsay when they don't have first-hand
25 reports, and noted that they would really appreciate him filling
them in and giving them information as to what is actually going
on. He stated that the role they play is to look at the Fish
and Game budget, look at some of the studies, the special
appropriations we made and we fund them.

Attorney General Cole reiterated that if the Committee ever
wants information, to ask for it, he'd be pleased to give it to
them.

348

Chairman Gruenberg suggested moving on to question number eight,
Consent Decree. What do the terms on the first three lines on
page six mean? Does natural resource damage include economic
loss to the State?

Attorney General Cole noted that his number eight had been
marked out indicating that he would not be questioned about it,
therefore, he was unprepared to answer that.

Chairman Gruenberg asked about question number nine. What
impact does the agreement have on the State's rights and legal

1 position prior to the final approval but after the effective
2 date?

3 Attorney General Cole said that the only operative effect which
4 he can think of has to do with Exxon's obligation to continue
5 with cleanup activities prior to final approval. He said they
6 thought that final approval may involve appeals and things of
7 that nature, and who knows when they'll be resolved.

8 Chairman Gruenberg directed the Committee to look ahead to
9 paragraphs 11 and 12 of the CD Application. He said that they
10 were informed by their counsel that those paragraphs are
11 immediately effective and cannot be terminated or modified. He
12 asked if that was correct. Is the State, as much as legally
13 possible, bound by those?

14 Attorney General Cole said yes, but paragraph 12 has visions for
15 recapturing the status quo, as it were, if the agreement is not
16 approved. And, that is the reason for paragraph 12, to cover
17 the possibility that Exxon may initiate spill cleanup, may
18 expend funds, and then there be no approval by legislature or by
19 the court. Then what happens is subject to big discussion, and
20 it was hard to revise a remedial provision to cover that
21 contingency.

22 Chairman Gruenberg noted that on each question, if any of the
23 Committee members have a question on that provision to just
24 raise their hands. Next, he went on to question 14, use of the
25 money dealing with paragraph 10, which is found on page 10.
Article 9, section 7 of the Alaska Constitution prohibits
dedicating the funds. Money received under the Clean Water Act
must be designated as reflected in this paragraph. Can you, Mr.
Attorney General, choose to settle a case under a law that
requires a dedicated fund especially when the State could
recover under state law, and that state law does not require or
allow dedication? Is recovery under the CWA participation
"under a federal program" such that the prohibition against
dedicated funds in our constitution would not apply?

Attorney General Cole answered yes to both questions. He said
here are the questions. Can the Attorney General choose to
settle a case under law that requires a dedicated fund
"especially" when the State could recover under state law which
does not require dedication? He said it was his view for the
reasons stated in that opinion that the Attorney General can do
that. There's a lot of authority there and he realizes full
well that he had to make a decision, the Governor and himself,
as to how to make this settlement work. He said that the
Governor and himself and the lawyers who spent untold weeks and
hours putting this together had to make decisions and did make

1 the decisions to reach the settlement and a successful
2 settlement, that when you've got legislation, you work towards
3 getting it done. He said that he studied that question
4 carefully and concluded that the Attorney General had that
5 power, he concluded that it was in the best interest of the
6 State and that was that. He said he anticipated that someone
7 would ask if he had that power and he said he did, but he just
8 thought that they needed to get the money back so we could get
9 on with restoring the Sound and it was in the State's interest
10 to do that.

11 495

12 Representative Barnes said that she appreciated all the work
13 that the Administration has put into this settlement, but she
14 thinks the fundamental question that has to be answered as it
15 relates to the settlement is, first of all, did you settle it
16 based on a State asset? And, if you did settle it based on a
17 State asset, does the settlement then not become a State asset?
18 And, if it does become a State asset, then only the legislature
19 has the power to appropriate those funds in which you have
20 negotiated a settlement. If we, the legislature under Article
21 9, Section 13 of the Constitution, sets out that only the
22 legislature may appropriate, then how can we get from the
23 legislature to the three persons from the State, three from the
24 federal government, and a federal judge making those
25 appropriations on behalf of the State?

Attorney General Cole answered, under a federal statute which is
the supreme law of the land.

Representative Barnes said that then the answer to her question
is that the Clean Water Act supersedes our constitution?

Attorney General Cole answered that he didn't think it
supersedes the constitution because under the Clean Water Act
those assets, the regular recovery under the Clean Water Act for
State Trustees, does not come into the State treasury.

Representative Barnes said she felt that this is a settlement
based on damage to an asset of the State, even though it was
settled under the Clean Water Act, that there has to be some way
that this legislature, if it is a settlement that belongs to the
State of Alaska, any portion of it, it has to then be
appropriated by this legislature. She said she believes that
for it to be legal and binding, it must.

Attorney General Cole answered that if she felt that way, she
should vote against this settlement agreement. And, if enough
people in the legislature feel this view and agree with her on

1 that issue, we'll terminate the agreement and pick up our papers
2 and go home and start the litigation. He said that that is the
3 choice that he faced and that is the choice the Committee faces.
4 He stated it was the best decision made by he and the Governor
5 and if it's not satisfactory, you can vote it down by the
6 people. He said he didn't feel it was his responsibility as a
7 public resource trustee acting on behalf of the State to walk
8 from a billion dollars. He stated he thought it was a good
9 settlement and was in the public interest, but was prepared to
10 commit that final decision to the legislature.

613

11 Representative Barnes said she can recognize the position he was
12 in when he was looking at a billion dollars, but all she's
13 saying is there must be some way within the process that
14 constitutionally we can reach the appropriation process if it is
15 a State asset. She said that if he says it is not a State
16 asset, then she will fold up her camel's tent and walk away.
17 But, if it is a State asset, the Supreme Court in Burn versus
18 State and Others and the Homestead Act in 1978 ruled very
19 clearly that only the legislature including land or any other
20 assets has the right to appropriate. She said that until such
21 time that he can show her that it's not a State asset, she's got
22 a constitutional problem.

23 Attorney General Cole said he couldn't prove it to her, but he
24 didn't think it was a State asset in that sense. And, he thinks
25 it's in the Constitution.

646

17 Representative Hudson referred to the memorandum from Pam Finley
18 to Senator Sam Cotton concerning essentially the same element.
19 And, he thinks therein lies the problem for people like himself
20 who are not attorneys in trying to deal with this. He said that
21 on the second page of that document you can almost find the same
22 reasoning that in this case the court upheld that the proceeds
23 of the settlement between Chevron and the Federal Department of
24 Energy had to be used for specified purposes and were not
25 subject to appropriation by the Colorado legislature, the reason
that the money was not subject to appropriation either because
it was in trust from a private source or because it was from a
federal source with restrictions placed on its use. He thinks
that's what we're dealing with here. The Attorney General has
given us a multi-page memorandum of his constructive belief of
why this does not necessarily have to be subject to
appropriation. He feels this is the crux of the issue of
whether or not and what power, not only this legislature but
future legislatures can have. So, it's a very critical issue.

1 (Tape changed)
2 Tape 8, Side B
3 000

4 Chairman Gruenberg told the Attorney General that it appears
5 there are going to be some follow-up actions that may possibly
6 be necessary. He asked if there was any reason that this
7 settlement could not have included a requirement that the
8 legislature must appropriate the necessary amounts to the trust
9 fund each year?

10 The Attorney General answered yes. He said to look at the
11 general setting which we have. We have federal funds thrown
12 into the pot to avoid interminable litigation between the state
13 and federal government as to who owns which natural resource
14 damage recovery. He said that the United States is not going to
15 stand by and grant to the legislature of the State of Alaska the
16 power to control these lumped together funds.

17 Chairman Gruenberg asked if he ever discussed with the federal
18 negotiators a possible split, did he ever make an offer on how
19 these damages could be apportioned on a percentage basis?

20 Attorney General Cole said there was no possible way which could
21 have led to the segregation of those funds. He stated that it
22 had been discussed for 18 months through the Cooper
23 Administration and Attorney General Bailey for months and
24 months. And, there had been documents which reflected the joint
25 consolidation of whatever rights the State had and whatever
rights the feds had. Did he ever set down with Assistant
Attorney General Richard B. Stewart and say let's talk about
splitting up these recoveries? He said a fair answer to that is
no because he realized it was so impossible, it's like him
taking a rocket to the moon tomorrow. It's so impossible that
it's not worth talking about.

055

Representative Kubina said this was one area that he was
sympathetic with him on because he's seen legislators trying to
think of ways to divvy up this money in their own ways and it
scares him because he thinks it should be dedicated to the
single purpose. He asked the Attorney General to discuss in
more detail how he sees that process to happen with the
limitations on the money. What do we do those last five years
if there's nothing specifically related? Where would you go
with \$70 million a year?

1 Chairman Gruenberg noted that Representative Navarre has just
arrived.

2 Attorney General Cole said he wanted to say preliminarily that
3 not only under the Clean Water Act were these funds dedicated,
4 but under the concept of the common law of public trustee
5 concept following that theory through that the funds would be
6 required to be dedicated. He said he'd thought about it a lot.
7 He said he thought that if this money had come into the State
8 treasury under a State public resource theory based on the
9 common law that it would have to be used in the furtherance of
10 restoring the damaged resources. So, if this money were a State
11 asset and came into the State treasury, that at the end of the
12 day it would have to be used by the "legislature" in the same
13 way that it's going to be used there. He said he couldn't
14 really say all of the projects which will be used or will be
15 initiated by the trustees, but we're going to have mayors of the
16 various affected communities, municipalities on this committee.
17 They're going to have scientists, native groups, environmental
18 groups, a broad base which will furnish their views on the best
19 use of those funds to the trustees. He said he felt satisfied
20 that the trustees will act responsibly and if they don't,
21 someone should simply go to the Governor and say get this guy
22 off there.

139

14 Representative Kubina said he thought that was a fairly
15 simplistic way of suggesting that someone might have influence
16 over the Governor. He said it's not going to be as simple as
17 the Attorney General suggested, someone go to the Governor and
18 tell him to get this guy off of there.

19 The Attorney General responded by saying that if the legislature
20 says, by the way, Governor, we want to add \$50 million to the
21 education budget, those things have a way of working. He thinks
22 that the political process works reasonably well.

155

21 Representative Lincoln arrived.

22 Representative Navarre stated that after he realized how it was
23 set up and where the monies were dedicated for and seeing the
24 relationship between dedicating any funds recovered essentially
25 to restore what had been damaged, he thought that was a very
clever and ingenious way of dealing with things. He said that
when they were asked to approve this whole thing, one of the
questions he asked the Chairman was whether or not we could
approve it with stipulations. And, he said that one element

1 that would perhaps be amenable by all parties would be to place
2 at least an advice and consent of the legislative body into
3 whatever final expenditures or programs have been developed.
4 The idea there being that we could bring a lot of resources to
5 seeing that the decisions are met with prudent background and
6 judgement. He asked if the Attorney General thought that an
7 agreement with stipulations could be brought back to the table.

8 Attorney General Cole answered as follows: I think it would be
9 frivolous to take it back, number one. And, number two, is the
10 legislature commits widely to administrative bodies throughout
11 the State, the adoption of regulations, other projects. It does
12 it all the time. And, this strikes me as not being so far
13 afield of that which the legislature repeatedly and for years
14 has historically done with respect to administrative bodies.
15 Take, for example, the Department of Education. I mean, look at
16 what these boards of education do with one of the very most
17 basic resources we have in this State, the education of our
18 children. It's far more important, I should think, than Prince
19 William Sound natural resource damages. And, does the
20 legislature micro-manage that? I don't think so. So, that's
21 the thought. Then, the next thought I have in that regard is,
22 how much time do you really want to spend reading that book?
23 And, that's just one little year's project. That's the concise
24 summary of what projects they intend to do. Underlying that,
25 there's this much information, background supporting the reasons
for going ahead with those projects. And, there's page after
page of documents. So, for the legislature to really
effectively do anything is a massive job.

Representative Hudson said he believed that practically speaking
the implementation of this massive multi-year project will at
times embody the need to change the statutes perhaps, which is a
legislative function. What he's suggesting is it would be
constructive to the trustees and more amenable, at least making
the legislature who represent all the people of Alaska feel like
they're somewhat into the process if there was some sort of an
advise and consent. We could do that by making sure we have
someone at all of these meetings or pertinent meetings when you
start establishing the public input for the process.

Attorney General Cole responded by saying that the legislature
could have a representative on the public advisory counsel.
That would be acceptable to the trustees. He said he's also
thought that the legislature can act by way of joint or
concurrent resolutions. And, if it has a representative aboard,
then it can bring that information back and the legislature by
resolution can suggest to the trustees that we should pursue
these projects.

Representative Kubina said he disagrees with the terms of the settlement. He believes we should have gotten a little more, did a little better in that. He asked if we could approve the agreement with the stipulation that the \$900 million is paid up front today in today's dollars and then, therefore, the legislature would approve if that was done, and what would be the ramifications if that was done?

Attorney General Cole said he was asked that question yesterday in a Senate hearing and he answered that he did not think it would be possible a) to receive \$900 million, and b) he also did not think it would be possible to receive a discounted present value payment. He also said he didn't know what that would add anyway if you look at the basic problems of the state and federal funds lumped together. We were negotiating with the United States of America. Just look at the statutes that they dump on the State of Alaska and other states, and look at the power they wield over the state. He added it didn't have anything to do with this settlement.

Representative Kubina suggested that what he's saying is that we approve the settlement, all of those other things, still that trust is there, that the dollar figure that we go back to Exxon and say we've got everything approved, the State of Alaska legislature says when that's done, that money ought to be paid up front, that Exxon should just bite the bullet and then they're out from under it.

Attorney General Cole just commented that he would want to have his ear muffs on when he posed that question.

Representative Kubina suggested that if the Attorney General didn't have any other choice and Exxon looks upon him as coming to them in good faith and arguing this that they would have the final decision. They would say to themselves well, here we are, are we going to go to court for ten years or are we going to take their last best and final offer? He said it may put them in a stronger bargaining position.

Attorney General Cole suggested that if legislature really thought that the criminal case was the lever which brought Exxon to the settlement table, then you'd have to say that this is a great settlement. He asks if we could have achieved this settlement without the criminal case. If your underlying thesis is correct, you won't have to ask oneself that question.

1 Chairman Gruenberg stated that before he turns the meeting over
2 to Representative Navarre, he had a question or two. He sees
3 several different possible scenarios here not all of which have
4 been explored yet by this Committee. He thinks we have more
5 options than we have really explored here and assures the
6 Attorney General that they will explore those options before
7 rendering their report. He said the staff had a question that
8 if the Alaska Supreme Court decides this is unconstitutional
9 provisions in the agreement or another court decides it's
10 unconstitutional, how can we recover against Exxon since we're
11 dismissing our claims?

12 The Attorney General stated that we have a pending lawsuit
13 against Exxon that arises out of the Consent Agreement filed in
14 the United States District Court, so we'll just go back to the
15 legal trenches and litigate.

16 340

17 Representative Finley asks that if the constitutional problems
18 arise and it's because of provisions in the Clean Water Act,
19 which she thinks only applies to dedication funds, and the point
20 being, well, we can't sue under the Clean Water Act, all you've
21 got is a Clean Water Act case but you in the meanwhile dismissed
22 the state case which is not a specific dedication. That's what
23 she foresees as the danger.

24 Attorney General Cole responded that there's pending lawsuit
25 against Exxon filed in United States District Court which simply
amend our complaint. He added that he would assume that under
any theory that you want to sue them under, all the existing
claims would still exist.

358

Representative Navarre pointed out on the page called Consent
Decree, at the end of paragraph 11A it says, "Exxon should have
no liability to any person or enemy including the government by
reason of undertaking clean-up work performed in accordance with
direction of the federal on-scene coordinator or the state on-
scene coordinator." His question was, does that mean that if
there are third-party claims that the state or the federal
governments are then liable and also is this consistent with
current state law? Can you in the Consent Decree override, or
eliminate, or make null any state statute that currently would
be applicable?

The Attorney General stated that this sentence was the subject
of focused discussion and negotiation. Exxon's position
generally was why should we be liable for doing which you told

1 us to do. So, we revised the sentence so that we could insert
2 the clause "by reason of undertaking clean-up work". Those were
3 words chosen advisedly. It means by reason of doing what you
4 asked us to do. And, we formulated that language under the
5 Federal Tort Claims Acts and under the State Court Claims Act,
6 and we thought that in general Exxon would not be liable for
7 doing what the federal and state governments asked them to do by
8 reason of the discretionary function exceptions to those Tort
9 Claims Act. He added that that has no effect on breach of
10 contract by Exxon to anyone with whom it may contract in
11 connection with the performance of these functions. It has no
12 effect on negligent actions which Exxon may commit in the course
13 of its work. He added that it has no liability for exceeding to
14 the directions of the federal on-scene coordinator that says go
15 clean up this beach and do the following. They're protected by
16 going to clean up that beach. If they, in the performance of
17 that duty, in his view, negligently injure someone's property,
18 real or personal, then they're liable for that and they're
19 liable for Workman's Compensation injuries to their employees
20 and things like that only in that narrow function.

21 431

22 Representative Navarre questioned the wording from a legal
23 standpoint when it says "Exxon should have no liability", it
24 doesn't say Exxon has no liability.

25 Attorney General Cole stated that that wording was carefully
chosen, too. He said that they gave them what is sort of known
as cold comfort.

438

Chairman Gruenberg had another question from the staff referring
to the clause that Representative Navarre has been discussing.
Absent this sentence, why would Exxon have been liable for
undertaking the clean-up?

Attorney General Cole answered that they probably would have
been relieved from liability under the Federal Tort Claims Act,
discretionary function exception. Obviously, they wanted more
than they got but we didn't give it to them. We said you can
have a little bit of cold comfort because we think that under
the Tort Claims Act you don't have liability and we let it go at
that.

456

1 Ms. Finley said she would understand this better, why the clause
2 was in there, if she understood what legal theories you would
sue Exxon for for merely the decision to take over clean-up.

3 Attorney General Cole stated that they (Exxon) wanted protection
4 from third-parties out there, i.e., tearing up their beach,
trespassing. They wanted indemnification and we said no. We
5 told them that we thought the Federal and State Tort Claims Acts
were applicable and that was all they were going to get.

6 474

7 An unidentified speaker asked if we wanted more and, if so,
8 what? What more did we want out of this agreement that we
didn't get?

9 Attorney General answered that we wanted \$1.2 million cash. He
10 asked why did we talk about the numbers first. He said they
spent weeks, maybe a week or ten days on the re-opener clause
11 itself. But, he said they negotiated very pointedly over
virtually every sentence in this agreement and in many
12 instances, every word. We wanted \$1.2 billion cash, we didn't
get it. We wanted a re-opener clause, we got one. Did we get
13 all we wanted out of the re-opener clause? Most of what we
wanted. Did we want to release Alyeska from the natural
14 resource damage claims? No. Why did we discuss these at the
outset? Well, why spend five weeks arguing all these things and
15 get down and say well we can't reach accord on the dollars?
Because he thinks it was the view that if you can't reach accord
16 on the dollars, we should go home. So, we wanted more cash, a
bigger total payment, we wanted it in cash, we also obviously
17 negotiated at length over how much was paid each year under the
installment. We wanted it to the extent we could front-end load
18 it, we got it somewhat front-end loaded, as you see. We wanted
it front-end loaded because of heavier expenses in a sense
front-end loaded.

19 577

20 Chairman Gruenberg asked for other questions from the staff.

21 Representative Hudson asked if it would be possible for the
22 legislature to approve this with stipulations and he said he
thinks he hears the answer as no, you'll approve it as written
23 or you disapprove it. He asked if that was correct
understanding.

24 Attorney General Cole answered yes.
25

1 Chairman Gruenberg said that that is not to say that we can't
2 disapprove it with stipulations.

3 Attorney General Cole stated that he personally had no interest
4 one way or the other in this settlement. As Charlie Cole,
5 Attorney General, he believes this agreement is in the best
6 interest of the State and thinks it should be approved. He said
7 he's not here to tell the legislature what to do or even to
8 suggest what it do other than he would like to see it approve
9 this document for the reasons he's mentioned. What does he
10 think the effects of the legislature doing those things would
11 be? He thinks it would sink the settlement and we would head
12 down the path of interminable litigation.

13 650

14 Chairman Gruenberg moved on to question 17. Alaska's
15 Constitution vests the appropriation power in the legislature
16 alone. Federal laws and regulations applicable to the Clean
17 Water Act require the Governor to appoint a trustee who will
18 decide how money recovered under the CWA is to be spent. Is the
19 scheme under the CWA contrary to Alaska's Constitution and, if
20 so, does the AG have the power to enter into an agreement under
21 the CWA? He stated that he knows that AG Cole will cite them to
22 his memorandum once again and asked if there was anything he
23 would like to add to that?

24 Attorney General Cole said no, he was exhausted. (Laughs)

25 Chairman Gruenberg moved on to question 18. How much has the
State spent for response clean-up damage assessment and
litigation costs?

Attorney General Cole answered that he had a written report
outlining the same. Chairman Gruenberg asked that it be
duplicated and they would come back to question 18 after it had
been duplicated. He then moved on to question 19. To what
extent would the legislature's approval of the Consent Decree
constitute an approval of the MOA?

(Tape changed)
Tape 9, Side A
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Chairman Gruenberg added a corollary question to that of why did
only the Consent Decree have the provision about the
legislature's approval? How interrelated are the two and what
can we do?

1 Attorney General Cole answered that he thinks they're
2 irretrievably linked together and the approval of the Consent
Decree constitutes an approval of the Memorandum of Agreement,
or at least removes the less condition.

3 Chairman Gruenberg asked question 21. It appears that the
4 reimbursements to the State up to \$72 million are not restricted
as to use; am I right?

5 Attorney General Cole answered yes, that's for the legislature
6 to spend those in whatever direction you wish.

7 016

8 Representative Hudson referred to 16. Is legislative
9 authorization needed to accept funding from the trustees? That
is, if the trustees agreed to say pass X number of millions of
dollars over any particular year for a specific purpose, would
10 we necessarily have to pass laws to accept that?

11 Attorney General Cole answered yes. It's technically a very
difficult legal question. He said this is the way he looks at
12 it. If the trustees wanted to give the Fish and Game \$30
million and somebody objected to it, the trustees could say
13 well, we'll just give it to the Federal Fish and Wildlife
Service and we'll remove the problem.

14 Representative Kubina asked if you did give it to the State Fish
15 and Game, you would assume that we would actually include it in
our budget because it would be appropriated to a State agency?

16 Attorney General Cole stated that he did not know. One of the
17 problems he says he sees is that the legislature might not be in
session when the trustees decide for one reason or another to
18 make this authorization and the budget process takes quite
awhile.

19 048

20 Chairman Gruenberg moved on to question 18. He asked the
21 Attorney General to explain the lengthy document which they
received.

22 The Attorney General stated he thought it was self-explanatory.
23 He stated that it's preliminary, in draft, and confidential, but
it shows where we were headed when we agreed to the \$72 million
24 figure.

25 Chairman Gruenberg asked if this was the document used to work
up the figure of \$72 million. Attorney General Cole said it was

1 one of them. He added that the number wasn't viewed by him as
2 being a definitive number.

3 076

4 Chairman Gruenberg moved on to question 23. Does the settlement
5 provide for federal or state funding for continuous damage
6 assessment studies?

7 Attorney General Cole answered yes, it's within the scope of
8 permitted expenditures of the recovered funds.

9 Representative Phillips joined the meeting.

10 Chairman Gruenberg asked under paragraph 24 by representing to
11 the court that the money will be spent pursuant to the MOA, if
12 the government is barred from changing the MOA without court
13 approval?

14 Attorney General Cole answered yes.

15 Chairman Gruenberg asked that if they do seek court approval,
16 will they bring that back before the legislature?

17 Attorney General Cole answered that like the legislature, he
18 can't find his successors in office.

19 Chairman Gruenberg asked if he would recommend approval of House
20 Bill 213 which would require that under state law?

21 Attorney General Cole answered that he had not reviewed 213 so
22 he couldn't answer that.

23 Chairman Gruenberg stated that he would appreciate it if AG Cole
24 would give us his views of that Bill because that would, in
25 effect, get us where the legislature wants to go. And, if
there's any future modifications of this, that they too would be
brought before the legislature and he would include under that
the MOA because the AG has indicated that they are inextricably
intertwined.

Attorney General Cole said that he would.

Chairman Gruenberg asked, "Could the trustees or the court in
breaking an impasse act through a private party to preserve or
utilize the natural resources under the settlement?"

The Attorney General stated that he's not sure he understood the
question. He asked if that was by way of an arbitrator.

1 Chairman Gruenberg stated that he thought the gist of it is, can
2 the trustees act indirectly as well as directly? Can they
deputize or give authority?

3 Representative Phillips indicated that was not the question. He
4 stated that what was meant was if three on each side disagree,
5 could the court essentially provide for the breaker through a
6 Native corporation or a third party. Does the court have
sufficient leeway if there's an impasse between the trustees,
that is, if they can't come up with consent to essentially say
accomplish something through a third party?

7 Chairman Gruenberg asked could they delegate their authority or
8 appoint a special master who would make recommendations?

9 Attorney General Cole answered that that's exactly what he had
10 in mind that the court could appoint a special master to conduct
a hearing, probably would, and report back it's conclusions and
recommendations.

11 Chairman Gruenberg suggested moving on to question 28 and
12 reserve 27 until after a break. To what extent can the losses
of third parties for which the State is found liable be paid out
of those funds?

13 Attorney General Cole answered zero. He stated that these were
14 trust funds which are required to be used for the restoration of
the damaged resources. The State's liability will have to be
15 paid out of the State (indiscernible). And, hopefully, we don't
have any liability.

16 Chairman Gruenberg asked question 29. Will any of these monies
17 go into the Section 470 fund? Which funds will get used first,
the trust funds or Section 470 funds?

18 Attorney General Cole stated that's not the way his 29 reads.
19 It is noted that he does not have the latest revision.

20 Chairman Gruenberg recommended that they break and his staff
will provide the Attorney General with the most up-to-date
21 version and stated that they're going to meet tomorrow at 3:50
p.m. with the Senate on public hearings. He stated that the
22 Committee will be meeting Monday from 12:00 to 2:00 and they
would like the AG to continue Monday.

23 Chairman Gruenberg adjourned the meeting at 2:05 p.m.
24
25

HOUSE SPECIAL COMMITTEE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT
April 9, 1991
8:15 A.M.

MEMBERS PRESENT:

Rep. Max Gruenberg
Rep. Cliff Davidson
Rep. Dave Donley
Rep. Bill Hudson
Rep. Gene Kubina
Rep. Mike Navarre
Rep. Gail Phillips
Rep. Fran Ulmer

MEMBERS ABSENT:

Rep. Ramona Barnes

OTHER LEGISLATORS AND STAFF PRESENT:

Rep. Loren Leman
Rep. Kay Brown
Pat Williams
Andy Hemenway
Gregg Erickson
Ernie Piper
Mike Dean
Mark Brodersen

1 Tape 10, Side A

2 000

3 Chairman Gruenberg called the meeting to order in Room 124,
4 House Resources Committee Room, Juneau, Alaska on Tuesday, April
5 9th, 1991 at 8:10 a.m. The Chairman noted the presence of the
6 members and other legislators and staff present.

7 The Chairman announced that they're going to take a couple
8 of witnesses out of order. Attorney General Cole is out of
9 state. Today they'll be hearing from Ernie Piper from the
10 Department of Environmental Conservation and Mike Lean with the
11 Department of Fish and Game.

12 The Chairman passed out copies of the itinerary for the
13 upcoming weekend and noted that they have been granted
14 permission to travel to the Prince William Sound area this
15 weekend to the various Districts that are affected by the oil
16 spill. He went over the itinerary.

17 The Chairman asked the guest speakers if they had any
18 opening statements. Mr. Ernie Piper said he was here to answer
19 any questions the Committee would have and also noted that Mark
20 Brodersen with the Department of Environmental Conservation is
21 also present to answer any questions.

22 OPENING STATEMENT BY ERNIE PIPER

23 MR. PIPER: Briefly, Mr. Chairman, we're beginning the
24 third field season of clean-up of the Exxon Valdez oil spill.
25 We've had people in the field doing survey work for the past

1 week, throughout this week and the rest of the month as well.
2 At the close of May, we'll make a determination with the Federal
3 Government as to what work needs to be done and how it will
4 proceed. And, at that point, we'll go ahead and do it this
5 summer. I think in terms of the settlement, it's important to
6 point out that regardless of whose pocket the funds for the
7 clean-up are coming, our position at DEC is that we would not
8 require the spiller to do anything that we wouldn't be ready to
9 do ourselves. So, those requirements that you see this summer
10 are virtually identical that would exist regardless of whether
11 Exxon was paying for it direction or whether it was coming out
12 of this sum of monies. We've got statutes and regulations that
13 tell us what we need to do. We're fairly clear in that regard.

14 Another important point that should be made, I think, is
15 we've made a lot of progress over this winter, you know, with
16 the Federal Government in making sure that the state's
17 requirement for clean-up are fully included in all plans. We
18 had at the close of last season's clean-up some points on which
19 there was beginning to be clear divergences and we thought that
20 it was important to make sure that both the spiller and that the
21 Coast Guard understood that the state's position was that
22 biology is not the only determinant of what is important to do
23 for clean-up, that people's lives and their livelihoods and the
24 statutory requirements of Fish and Game are equally important
25 and in some cases, they make take precedence over some

1 biological matters. With that, I think it may be more useful to
2 open it up to questions rather than have me drone on.

3 MR. GRUENBERG: Thank you. Before opening it up to
4 questions, I'd like to invite first Mr. Dean and then Mr.
5 Brodersen to make opening statements. Mr. Dean?

6 OPENING STATEMENT OF MIKE DEAN

7 MR. DEAN: Thank you, Mr. Chairman. I really don't have
8 any opening statements other than I'm just here this morning to
9 try and provide whatever information that the Committee would
10 like to discuss in regards to the damage assessment for oil year
11 three or the beginning of the 1991 restoration field season that
12 we have proposed through the state and federal trustee counsel
13 process. So, anything I can help you with this morning, feel
14 free to ask me and I'll see if I can answer it.

15 MR. GRUENBERG: Thank you, Mr. Dean. Mr. Brodersen?

16 MR. BRODERSEN: The same. I don't have anything to add to
17 that. Like Ernie said, we're just here to do what we can to
18 help you out.

19 MR. GRUENBERG: Committee member's questions.
20 Representative Phillips, then Representative Hudson. I'd also
21 like to welcome Representative Davidson to the group.

22 MS. PHILLIPS: Mr. Piper, on your comments regarding a plan
23 for procedures this summer, were you able to get the detailed
24 information on the Federal Government assessment that was on the
25 news this morning?

1 MR. PIPER: I think it may be in terms of what the actual
2 clean-up has been, we've worked very closely with Fish and Game
3 and with DEC. We've been working with the trustees to make sure
4 that we get the necessary information for clean-up. If I can
5 add one specific instance, Mr. Chairman, that would be helpful,
6 one of the key points of discussion this year is how much clean-
7 up should be required in salmon streams. And, the Federal
8 Government had taken a position that there perhaps was not that
9 much of a danger for remaining weathered oil in and around
10 salmon streams. And, we sat down with Fish and Game and got
11 some very good information on the damage assessment that helped
12 us come up with a stronger position and will take precedence
13 over the federal position in that regard.

14 MR. HUDSON: I would like more information as to the status
15 of the restoration and the collective goals. Most of us are
16 down here and the only thing we really know is what we read or
17 an occasion where we get an opportunity to go up there and fly
18 over or get out to the Sound, and you folks are there. What is
19 the status and what are your goals for this summer here? Are
20 you going to get down deep underneath in the beach gravel? Do
21 you have some specific plans?

22 MR. PIPER: The biggest problem that we're presented with
23 this year is oil on the subsurface. I think it's safe to say
24 that relatively speaking the problem with surface oil, I guess,
25 has been taken care of, that's not to say there's not oil out

1 there. But, that's really not going to be the priority this
2 year. The most difficult problems is where oil is buried 10,
3 20, 30, 40 centimeters deep under clean gravel on top, sometimes
4 continuous running from top to bottom. And, that's where the
5 real hard decision comes in. I can tell you that the way we're
6 doing this is setting priorities based on things like
7 (indiscernible) fish streams, commercial use, recreational use,
8 subsistence use. Those special uses that are associated with
9 cites will tell us whether it's worth the money and disruption
10 to the environment to take in a cap and actually do tilling on a
11 beach to release the oil and then recover it. But, largely, the
12 NOA, the science advisor to the Coast Guard, we had a lot of
13 discussions with them over the winter and brought them to
14 understand our point of view better. And, they recently
15 produced their recommendations for clean-up to the Admiral, to
16 the Federal on-scene coordinator. And, they are less interested
17 in tilling areas than we are for a variety of reasons because
18 primarily biological disruption. So, again, we're not going to
19 go on an area-wide tilling and excavation program by any means,
20 but it certainly is an option at those high use and special use
21 areas which we know need help.

22 MR. HUDSON: So, what actual work will be going on up
23 there?

24 MR. PIPER: Breakdown into a couple of categories. We're
25 going to be surveying about 600 cites. If you look at the way

1 cites have fallen out in the past, I would say that there will
2 be some work at roughly half of those cites. The bulk of the
3 work will be manual pick-up, literally breaking up the types of
4 asphalt mats that are on the surface and picking them up and
5 putting them in totes and taking them away. At a select number
6 of cites, and I'll put the number just because it's not exactly
7 off the top of my head but I would say that at 25 to 30
8 individual work cites that we will go ahead and do some kind of
9 work whether it's with mechanical equipment or with rakes. And,
10 then, what happens is on the rising tide, the oil is lifted out
11 as you till it and then you have containment booms, snare booms
12 and other kinds of things to catch the oil and take it away
13 before it gets out into the inner tidal area.

14 MR. HUDSON: And, this work is funded from the 470; is that
15 correct?

16 MR. PIPER: Yes, sir. And, in terms of how it would work,
17 until the settlement, assuming it goes through and the trust is
18 set up, the cash flow is out of the 470 fund and then the trust
19 becomes the third party that reimburses the 470 fund. And,
20 again, as you ask that question, I would point out that again
21 the kind of work that we would require has to meet any of the
22 existing criteria that decide what gets spent out of the 470
23 fund. A settlement won't change the way we decide what's good
24 clean-up and what isn't.
25

1 MR. HUDSON: Do you see, say, the settlement approved, if
2 it's approved, continuation of program of clean-up and
3 restoration out of the 470 fund, or do you see -- what do you
4 see with the settlement, the Exxon Valdez litigation settlement
5 proposal? What major changes do you see? Have you had a chance
6 to assess that?

7 MR. PIPER: Well, the most significant change is that I
8 want to make sure that as we spend money out of either the
9 settlement or as it comes out of the 470 fund, but specifically
10 out of that settlement monies, that the public has a clear
11 understanding of why we're spending money and what we're doing.
12 When it was just Exxon, I didn't feel so compelled to justify
13 how we were carrying out state laws and regulations. I mean,
14 they exist, that's our job and we wanted them to do it. Now, I
15 think the public really wants to know that as clean-up is
16 conducted why it's being conducted and how it's justified. And,
17 we're going to make sure that the justifications get to the
18 public in a more direct way than they have in the past.

19 MR. HUDSON: In your wildest dreams, \$900 million over the
20 next seven years, how do you see that -- I mean, is there that
21 much work out there in just restoring the environment?

22 MR. PIPER: In terms of clean-up, there is not anywhere
23 near that. I mean, you could spend that amount of money if one
24 chose to spend that amount of money. Whether it would be an
25 intelligent use of funds is quite another question. I think

1 that perhaps the best thing, Mr. Chairman, with your permission
2 is to let Mr. Brodersen talk about how the restoration goes from
3 there. I don't expect the clean-up will take more than \$20 or
4 \$30 million, if that. But, that's just an estimate at that
5 point.

6 MR. GRUENBERG: I would like the record to reflect and also
7 welcome Representative Kubina. Representative Hudson, pleas
8 continue your questioning. And, Mr. Brodersen, did you wish to
9 step in this morning? And, you need to press the toggle switch.

10 MR. BRODERSEN: I think the question here that you're
11 asking, I'll have to rephrase it to make sure I'm answering the
12 right question, is whether we now have enough money to finish
13 restoration once clean-up is done; is that what you're asking?

14 MR. HUDSON: You are the professionals in the field, you've
15 been up there ever since, as they say in Africa, and so now
16 we're confronted with a major program, a multi-year program with
17 hundreds of millions of dollars in the offering here and I want
18 to know how you see your program going with these new funds.
19 What kind of advanced or accelerated activity will you be
20 engaging in? What are some of your ideas on how these funds
21 should be used?

22 MR. BRODERSEN: Well, restoration actually follows when
23 you're done with clean-up in terms of bureaucratic thinking
24 here, if you will. Once Ernie is done getting the oil off the
25 beaches to the point where you've done effectively what you can

1 do, then you start restoration. We basically have a lot of
2 money to do a lot of things with it. In terms of what we could
3 do directly in repairing the damage, we have more than we can
4 spend efficiently. What has been done in other areas after
5 spills like this is then you go after what is called equivalent
6 resources so that perhaps you really cannot effectively fix,
7 say, a headland or something like that that's been damaged by
8 the oil, but you can protect another headland or a same species
9 somewhere else so that the total population of a given species
10 has been damaged will then have a better opportunity to recover
11 than would otherwise be possible if you continued to stress it
12 through other means. We do not have a final restoration plan in
13 place. Under the regulations, one waits to do a final
14 restoration plan until you find out how much money you have.
15 So, it's partially driven by available funds. So, over the last
16 year we've been looking at what can reasonably be done and what
17 is really not cost effective in Alaska. We anticipate doing
18 some more of this as we learn more about what has been damaged
19 and what can be repaired. I think I'll stop at that.

20 MR. HUDSON: What role do you see, say, your continuing
21 role in this new funding and trustee arrangement there? Do you
22 see the trustees coming to you collectively for projects for
23 restoration or for equivalency and things of this nature and
24 then, perhaps, turning the actual conduct of restoration or
25

1 securing the equivalency or rebuilding particular species, or
2 something like that to you folks?

3 MR. DEAN: Mr. Hudson, I want to digress just a bit. Are
4 you aware that there's a restoration planning work group
5 established in this process already made up of representatives
6 from the state and federal agencies? Mr. Brodersen is the
7 representative from DEC, I have a gentlemen by the name of Stan
8 Center representing Fish and Game in the state of Alaska. They
9 have been the primary focus on activities in restoration
10 planning, feasibility studies, science studies that are proposed
11 for this year. They're the body that really are handling the
12 ideas associated with restoration at this time. I just wanted
13 to make sure you were aware of that. They're really the core
14 group dealing with restoration from the various agencies
15 involved here.

16 MR. HUDSON: That's what I was referring to. How do you
17 see that group continuing on in light of the settlement, with a
18 different source of funding, and a different determination as to
19 what fundings will be spent through the trustees?

20 MR. DEAN: My guess, I have to respond to that, is in lieu
21 of a settlement not reached at this time, we're progressing as
22 we have been in the past until we probably, the various
23 federal agencies, are provided directions from their legal
24 counsel on the interpretation of the settlement and what it
25 exactly means and how it's supposed to function. My general

1 understanding is real shallow in terms of the settlement, the
2 Consent Decree, other than there is a six-member trusteeship
3 established with a designation of some form of public
4 participation. Other than that, there has not really been any,
5 I guess, models thrown out for confirmation of how the process
6 would work. Although there is some discussions amongst the
7 management team and the restoration work group, various kinds of
8 models of how to include public participation, how to structure
9 themselves to function if the settlement is reached. Until that
10 time though, we are progressing along the trustee/trustee
11 counsel management team, the restoration work group and the
12 project is going forth at this time as a settlement has not yet
13 been reached at this point.

14 MR. GRUENBERG: Mr. Piper, did you want to say something at
15 this point?

16 MR. PIPER: Yes, Mr. Chairman. I guess I'll be more
17 elemental about it because I'm more of a generalist and maybe
18 this would help you, too. The trustees exist in the settlement
19 itself, but quite frankly, all the working groups and everything
20 that are involved in this restoration are trying to find a way
21 to make it a less cumbersome process and make it more direct and
22 to come up with a better system for having a good flow of ideas
23 and projects, then go up to the trustees and then out to the
24 agencies for execution. Our principal concern -- and just being
25 somebody whose worked in the Executive Branch for the last

1 several years, my particular recommendations have been that
2 there be a very short distance between elected officials,
3 whether they be legislative or executive. But, a short distance
4 between those people and the people that sit on these
5 committees. The dangers that I've sort of seen about this, and
6 perhaps you share that a little bit, is that the more
7 independent and distant this fund begins to get, the less
8 responsive it does to specific Alaska concerns that were damaged
9 by Exxon Valdez. And, I think that can be dealt with, but
10 that's what one of our concerns is.

11 MR. HUDSON: Mr. Chairman, that's precisely what I'm trying
12 to get to. We have built in place, I think, probably the best
13 expertise on what the long term needs of the Sound and the rest
14 of the oiled areas including (indiscernible) and Cook Inlet and
15 the backside of Shilikoff Straights and, you know, Spruce
16 Island, the whole works there. And, I was wondering, hoping at
17 any rate, that as this develops that that built-in brain trust
18 there, expertise, would continue to be the executing point to
19 where the trustees would turn to first of all for what needs to
20 be done and then to authorize the necessary thing and then
21 literally to turn it over so you would have an ongoing or
22 continuing long-term restoration and enhancement program.

23 MR. GRUENBERG: Any comments from the panel? If not, we
24 have Representative Ulmer and Representative (indiscernible) and
25 I'd like the record to reflect (indiscernible).

1 MS. ULMER: Thank you, Mr. Chairman. A couple of
2 questions. Ernie, why are you so sure that the trust will
3 reimburse 470 fund for clean-up costs?

4 MR. PIPER: The way it's set up is that the -- included in
5 the agreement says that clean-up costs beyond once the
6 settlement is executed, the clean-up costs are to come out of
7 there. Now, the Coast Guard and I immediately sat down with the
8 Admiral and said we've got to come to a quick agreement about
9 what constitutes a justifiable expense on each of our parts
10 because the settlement calls for unanimous consent among the
11 trustees for spending money. And, we agreed that each of us
12 would use the rules that are established, in our case by the 470
13 fund, in the Federal Government's case by the 311K fund in the
14 Clean Water Act that essentially is their clean-up fund, and
15 those rules say thou shall not do clean-up except under these
16 circumstances and to reach these goals. So, by using those
17 definitions, we don't do superfluous work or work that really
18 isn't associated with the clean-up. There are rules established
19 and we'll try to stick to those as close as we can.

20 MS. ULMER: Do you think that those rules in that
21 agreements that you've preliminary reached with your federal
22 counterpart would mean that all of the money that has been spent
23 to date out of the 470 fund for clean-up would be reimbursed out
24 of the trust. And, if so, what is that amount?
25

1 MR. PIPER: The sum of the money that was spent early on
2 came out of the general fund. Currently, the cash flow, and I
3 think it was since July of last year, virtually all of the money
4 has come out of the 470 fund and that was expected to be
5 reimbursed from there. Again, really the control on making sure
6 you get paid back is that if you as federal on-scene coordinator
7 or you as state on-scene coordinator make sure that you
8 faithfully abide by the rules laid out of best professional
9 judgement for oil spill clean-up and that you don't get off into
10 extraneous expenditures that you're likely to be reimbursed by
11 the third party. These have gone against -- I mean, this has
12 been tested in court cases and so on where you've been able to
13 recover from this type of activity and you haven't been able to
14 recover for that. So, we by definition restrict our activities
15 now to only those things that show that we have a good chance of
16 being reimbursed.

17 MS. ULMER: Do you know what that total is?

18 MR. PIPER: Out of the 470 fund itself? I can't tell you
19 exactly, but I would say that it would probably be in the
20 vicinity of \$60 million since the beginning of the spill. And, a
21 considerable portion of that has been reimbursed already. But,
22 outstanding would probably be half of that.

23 300

24 MS. ULMER: The reason I'm asking these questions is
25 because of the \$72 million (indiscernible) associated with costs

1 for not only clean-up but also litigation and a variety of other
2 costs. And, it's beginning to sound to me like we may have
3 already spent \$72 million and so additional costs from this
4 point on that the State may need either for purposes of legal
5 fees or clean-up, there would be nothing left to charge it
6 against under the \$72 million, I guess is what I'm trying to get
7 at. And, so, the State would more or less have to look to the
8 general fund, at least to the extent those costs are not within
9 the rules of the 470 fund like legal fees. You're shaking your
10 head no, so please give me some information. Do you think all
11 of the additional costs that couldn't be charged against the \$72
12 million could be charged against the 470 fund?

13 MR. BRODERSEN: It's charged against the trust. The MOA is
14 pretty clear on that. The \$72 million cap is just for expenses
15 up to the date of the settlement, and then any expenditures
16 after that both for clean-up and restoration come out of the
17 trust. The terms are fairly clear on what has to be done to
18 make it an allowable expense for reimbursement for clean-up and
19 that will be funded from that source.

20 MS. ULMER: And, even though it requires basically all the
21 trustees to agree, you're reasonably comfortable based on your
22 conversations with the (indiscernible) so far that there will be
23 a meeting of mind, so to speak, about how you will reach an
24 agreement on what should be funded and what shouldn't be?
25

1 MR. PIPER: I may be reasonably certain, but I don't leave
2 the possibility open that they won't. As a matter of fact, as
3 soon as settlement was agreed upon among the initial group of
4 parties, I immediately went in and starting sitting down with
5 the Coast Guard to make sure that we knew exactly what each
6 other was doing. And, furthermore, that the Coast Guard knew
7 what other federal agencies were doing. And, once we made sure
8 that there were those controls in place on state and federal
9 government spending and we each knew what each other was doing
10 that there was also a provision whereby we knew exactly was
11 charging for their overhead, for their expenses, that they don't
12 take any action without first clearing it through the state on-
13 scene coordinator or the federal on-scene coordinator, and in
14 fact, this week there will be a series of meetings in Anchorage
15 among the parties for reaching those kinds of agreements. The
16 principal one, I think, that the legislature and the public
17 would want to know about is that the chief financial counsel for
18 the Coast Guard for the Pacific Region is going to be in
19 Anchorage and should be there tomorrow to meet with the
20 accounting group from Exxon and from the state government so
21 that we can make sure that there aren't hidden overhead costs,
22 that there aren't costs that have been represented to be coming
23 from somewhere else and charged against the trust. Following
24 that, the next day the Admiral is sitting down with the federal
25 agencies and myself to make sure that other federal agencies

1 know that any response plans that they have for this season or
2 anything like that has to go through the Admiral and be approved
3 by him. And, by implication, it also has to be approved by the
4 State. We have to agree to each other's expenses.

5 MS. ULMER: Thank you. One final question. One of the
6 questions that was raised concerning the Consent Decree was why
7 are the natural resource damages of the state not separated from
8 the natural resource damages of the federal government. As
9 people who are in the field and know the resources, is that a
10 real naive question? I mean, is it possible to draw the line
11 between what is federal and what is state in terms of damages or
12 not? How better could we have asked that question?

13 MR. DEAN: Representative Ulmer, I'm not sure that had
14 anything to do with the way we prosecuted the damage assessment
15 program. When we first set it up, we set it up as a scientific
16 program investigating what was injured out there. We did not
17 set it up as to the respect of who claimed ownership over what.
18 We had some headbashing with the federal and state agencies when
19 we initially met way back in 1989. We put that aside and for
20 the benefit of investigations, we kind of went along the lines
21 of so called authority management, statutory authority of what
22 the federal agencies claimed, management of fisheries service,
23 Forest Service; U. S. Fish and Wildlife Service had a hospice
24 over migratory birds, sea otters; and then the Department of
25 Fish and Game, State of Alaska, and their various agencies over

1 the remaining specific resources. It was never really discussed
2 as to ownership of who owned what in setting up the program to
3 start with.

4 MS. ULMER: So, the data basically is categorized by area,
5 by species, by management regime? I'm just curious. If I
6 wanted to go look at the information the DEC in particular may
7 have that tried catalog the damages, how would it be organized?

8 MR. DEAN: In the pink book, I believe, I'm not sure if
9 someone has a copy there, it's the volume three, Natural
10 Resource Damage Assessment Plan, I made sure that it has
11 recently been printed and all the legislature members have
12 received copies or had been sent by the Forest Service who
13 printed it, in there is a designation of lead agency. This was
14 agreed upon by the management team of representatives. That
15 essentially designates who is leading on the project as well as
16 cooperating agencies. There are some projects such as birds
17 where the expertise is centered in the state of Alaska, and that
18 project then is under the U. S. Fish and Wildlife Service under
19 contract with the State. In that book there then and in the
20 summary in the back or the beginning of it is the designation of
21 lead agency, and that essentially is where the data or who is in
22 charge of the study.

23 MR. GRUENBERG: I have Representative Brown and then I have
24 Representative Kubina. Anybody else?
25

1 MS. BROWN: Thank you, Mr. Chairman. Mr. Piper, who within
2 state government has the accounting group that you referenced
3 that's going to be meeting to reconcile the numbers? What's the
4 name of the individual that's in charge of the accounting for
5 the State?

6 MR. PIPER: Mark Thorson, who is the Director of
7 Administrative Service at DEC.

8 MS. BROWN: As you carried out your work since the spill,
9 what rules have been in place, what directions have been given
10 to the agencies regarding whether the information is
11 confidential or public?

12 MR. PIPER: In terms of clean-up alone?

13 MS. BROWN: In terms of everything.

14 MR. PIPER: In terms of everything. In terms of clean-up,
15 anything I do is open to scrutiny by anyone and I welcome it,
16 as a matter of fact, I encourage it. There has been some
17 scientific work that has been done by DEC and some by Fish and
18 Game that isn't directly under the auspices of damage
19 assessment. And, it's not a lot of science, but it has been
20 helpful to us. The principal stuff the DEC has been shoreline
21 surveys to see how shorelines react, what the physical effects
22 of the oil has been on the shorelines, whether clean-up has
23 altered those shorelines, and that kind of stuff. That's one of
24 the studies we're collecting data on right now in addition to
25 doing assessment where the oil is. Fish and Game has also done

1 some work associated so-called the P450 study, it was looking at
2 the ingestion or the activity of a certain enzyme in fish livers
3 that would show that the fish were metabolizing the
4 hydrocarbons, and that's been very helpful us as well. That
5 work has also included some looks at the effects or possible
6 effects of oiled areas or oil on fry, salmon fry, pink salmon
7 fry. And, that's been -- it's not a big body of work, but
8 again, it's been helpful. The rest of the stuff has been the
9 natural resource damage assessment.

10 MS. BROWN: And, how have these two first studies you
11 mentioned, the shoreline surveys and the P450 studies, are those
12 public or confidential?

13 MR. PIPER: Public. And, the data that we have on those --
14 actually, I think Fish and Game's are probably more readable
15 sense and there are also some photos which I think are better
16 than reading a lot of charts and tables. The shoreline survey
17 information is fairly technical in nature and unless you were a
18 coastal geologist you might not be too interested in it.

19 MS. BROWN: And, the balance of the work, the natural
20 resource damage assessment, how has it been treated with respect
21 to public release?

22 MR. DEAN: I think I could probably address any questions
23 in reference to the natural resource damage assessments, more so
24 than Ernie. He's basically charged with the clean-up effort and
25 I'd hate to get him cross-wise here, likewise, I wouldn't want

1 to address his involvement in the clean-up. We've been directed
2 by the Department of Law that anything as a result of the
3 natural resource damage assessment science studies is not public
4 information. We were reminded again, even though the terms of
5 the settlement are being pursued, that information generated or
6 that comes out of these studies is still considered
7 attorney/client privileged information, litigation sensitive,
8 and not for public release. Early on in the spill, a lot of
9 studies went out in the grounds in response to it. That
10 information generated from those studies was considered to be in
11 public realm, subsistence food testing, samples that were
12 collected and analyzed for hydrocarbons under various natural
13 resource damage assessment groups were also taken some samples
14 to provide to various organizations for testing. Some of our
15 fisheries studies, Mr. Piper mentioned that the MFO studies that
16 they had conducted under response is in the public information.
17 We have some studies beyond the fisheries where the information
18 is the same techniques, but that information is confidential
19 because it's related to exposure in those organisms and not
20 available in the public realm. So, you have kind of one set of
21 techniques and some information as a result of response is
22 public, and then, a damage assessment cite, that information is
23 not public because of its connection with the science studies
24 that will probably be used for litigation is the settlement
25 fails.

1 MS. BROWN: And, if I could continue, Mr. Chairman?

2 MR. GRUENBERG: Certainly.

3 MS. BROWN: How does the information that you have that's
4 not public differ from the information that is being released by
5 NOA that I heard described on the radio as being a comprehensive
6 overview of what we know about the spill effects on biological
7 resources? Does that overview include your data also?

8 MR. DEAN: Maybe I can kind of summarize, I believe, what
9 you're referring to. Yesterday afternoon, the Department of
10 Interior filed a report called "The Summary of the Effects of
11 the Exxon Valdez Oil Spill on Natural Resource Damages", with
12 preliminary data of March, 1991, with, I believe, Judge Hall
13 under the Federal Court. This was an approximately 15 page
14 document summarizing injuries to those resources under the
15 Natural Resource Damage Assessment Program. Originally, it was
16 prepared by a representative from the Department of Interior at
17 the request of people in Washington, D. C. for presentation to
18 congressional committees, I believe, Congressman Miller's
19 committee back then. It was supposed to meet on April 8th.
20 That meeting has since been cancelled. Originally, it was
21 worked on as a cooperative effort, both state and federal
22 investigators reviewing it, Department of Law reviewing input
23 into that to take care of their concerns as far as the State's
24 litigation purposes. For whatever reason then, the federal
25 side, specifically, I believe, Department of Interior then went

1 ahead and released this report yesterday. I have not seen the
2 final version of what was released. I have a version I've
3 looked at, I believe dated April 2nd. And, the final version
4 that they did release was dated April 5th. That went forth then
5 into the legal process of being filed with the courts and
6 theoretically should come out into public information shortly.
7 I'm not familiar how the judicial process works with information
8 that is filed. But, that report was worked on by program
9 managers I have for wildlife habitat and fisheries. It was
10 reviewed and had input by the Department of Law staff people as
11 well as the senior scientist, Bob Spees, from California who is
12 under contract with both the state and federal governments as
13 the senior scientist to coordinate the science. That probably
14 would be available later this week then embodied here for their
15 review. That's kind of the synopsis of the report that was
16 filed yesterday.

17 MS. BROWN: Well, my question is, did you do other studies
18 that are being held confidential that are not included in this
19 report on other species, on other effects? My impression is
20 that the state agencies were in charge of some of the studies
21 and the federal agencies were in charge of other studies. I'm
22 trying to figure out, is this a combined report of all studies
23 or is it just the federal studies that are included in this
24 overview?
25

1 MR. DEAN: I believe it's a combined study report, a
2 summary of all the projects, those studies that did determine
3 injury and those studies that did not find injuries for various
4 reasons. It's kind of a combination presentation by presenting
5 most all of the projects that were put forth in the field.

6 MS. BROWN: Your familiar, I assume, Mr. Dean, with the
7 natural resource damage assessment process that's set out in the
8 Clean Water Act?

9 MR. DEAN: The general guidelines, I believe, are -- I'm
10 not familiar with the technical details. I'm not sure where
11 your question is leading.

12 MS. BROWN: Well, my question goes to -- well, I'm not that
13 familiar with them, but my understanding is that they establish
14 a process to assess damages and provide for restoration outside
15 of litigation. Do you agree that that is a correct statement?

16 MR. DEAN: I believe the process we've been under is injury
17 determination, quantification of that injury, then damage
18 assessment or putting a monetary value on the resources that
19 were injured, and then, under the guides of (indiscernible) and
20 Clean Water that, I believe, the process has been following,
21 then restoration would follow after monetary remuneration is
22 secured from the principal responsible parties. I've been
23 directly involved in making sure the science studies are
24 coordinated and out in the field the exact technical process
25 would be handled through the Department of Law and then the

1 legal counsel from the various other agencies. So, I guess
2 that's a process I'm aware of that we've been operating under.

3 MS. BROWN: But, there is a process in place to rectify
4 this situation without getting into litigation necessarily? In
5 other words, we have run this entire operation apparently by
6 holding everything confidential on the assumption that a) all of
7 this work was being done for litigation, and I'm just wondering
8 if that's the case? Did everyone assume from the beginning that
9 there would be litigation, or was there not a process in place
10 to resolve these matters without getting into litigation?

11 MR. BRODERSEN: Under CERCLA you have more or less a two
12 pronged approach that you can take where you can hopefully
13 resolve the whole issue without ever going to court. There also
14 under CERCLA is a process for going to court where that's not
15 possible. What's occurred to date in small spills, very small
16 spills, we have sometimes reached agreement where the spiller
17 and the governments have got together and done the process right
18 from the start without anticipating litigation. Under any spill
19 of any size, this has never worked. We've always had to end up
20 in court to get things resolved or settlements as we're seeing
21 here, which is essentially spill litigation. Does that help? I
22 guess I should mention that CERCLA is an optional process and
23 through this whole process right from the start, the trustees
24 have stated they did not feel bound by it where they didn't
25 think it was appropriate.

1 MS. BROWN: Mr. Piper said in his comments that the public
2 really wants to know what's being done and why and that the
3 State is going to do a better job of explaining the
4 justification for what's being done out there. How are we going
5 to do that in the absence of being able to explain what the
6 resource assessment studies have shown? And, when do you
7 anticipate that this information will be made public?

8 MR. PIPER: The second part of your question, I can't speak
9 to because I don't know. But, the first part about clean-up is
10 that we're not -- it really deals primarily with the physical
11 effects, what you can see is what you try to pick up. The
12 information we have that leads us to believe that we ought to do
13 more clean-up, for example, in and around salmon streams,
14 there's enough information in the public realm now that helps us
15 to reach that conclusion. So, I don't have to reach deeply into
16 damage assessment in order to come up with decisions on clean-
17 up. And, that's as far as it goes for me, that would be where
18 people like Mike would take over.

19 MS. BROWN: What was the decision making process on
20 determining what was or wasn't confidential? Did you have any
21 instructions other than just a blanket "if it relates in any
22 way, it's confidential"? Were those the instructions the
23 agencies had?

24 MR. DEAN: There has been numerous memorandum distributed
25 throughout the process by the Department of Law on disclosure of

1 information, the process of discovery, verbal instructions
2 basically with an overall coverage of none of the information is
3 to released.

4 MS. BROWN: I see here a document by the state of Alaska,
5 "Exxon Valdez Oil Spill Estimated Allowed Costs". It's a
6 summary of expenditures and it's labeled "Attorney work product,
7 confidential". What is confidential about this? How is this in
8 any way confidential? Why should this be confidential? This
9 was all a matter of public record when we were going through the
10 appropriation process.

11 MR. DEAN: I think you would probably have to direct those
12 questions to the people who determine the confidentiality rules
13 as they apply to this process. I don't believe that's any one
14 of us. I think that's from the Department of Law. We were
15 operating under their directions. I guess I'm of the believe
16 that this science program that I'm involved in will stand alone
17 on its own merits. And, once the direction comes from the
18 Department of Law for their consideration on litigation, you
19 know, I'm ready to instruct my staff.....

20 (Tape changed)

21 Tape 10, Side B

22 000

23 MS. BROWN:have access to everything, every employee,
24 or what kind of controls did you put on the information to
25 prevent its release?

1 MR. DEAN: If you have principal investigators that are
2 employed by the State that are generating the information that
3 is supposed to be considered confidential, it's somewhat hard
4 for them to understand what they can and can't do. But, that
5 direction has pretty much been provided. You don't hand it out
6 at request either written or verbally, that any question be
7 directed through the Department of Law for obtaining reports or
8 information like that. I'm sure there has been instructions
9 down through the ranks since employees of the various agencies,
10 I believe, have received the message and, you know, responsible
11 workers that some of this information has been given out both on
12 the state and federal side. The federal people have instructed
13 their people similarly not to release information in certain
14 forms. There has not been a real concrete direction provided
15 other than the memorandums that have been generated and I've
16 passed out from our headquarters level down to the field people
17 to ensure that if they have any questions, they call up and
18 we've provided the proper answers this thing and get help. I
19 mean, these people are out in the field and have questions and
20 don't know how to respond, I think it's part of my job to see
21 that if I can't answer them, then these people who are directing
22 the concerns for this attorney/client information can talk to
23 them and help them.

24 MS. BROWN: So, workers within the Department of Fish and
25 Game who are working on these projects could talk to each other

1 but not to anyone outside the Department of Fish and Game; would
2 that be accurate?

3 MR. DEAN: No, it's not accurate. I believe they could
4 talk in generalities about the study, you know, the objectives,
5 what was published in the public information real, those oil
6 spill books, the objectives. They were restricted about the
7 detail and the methodology or the sample designs, specific
8 detailed information having to do with the projects themselves.

9 MS. BROWN: But, was anyone considered to be on the same
10 client side as the State in the litigation? If not your
11 department line being the boundary, what was the boundary?

12 MR. DEAN: I don't believe there was a boundary
13 established. I mean, that information was pretty much open for
14 discussion. Anyone that inquired, the documents went out there
15 essentially for public review and comment.

16 MS. BROWN: Were there any sanctions, disciplinary
17 sanctions imposed or threatened to be imposed on people for
18 release of this information?

19 MR. DEAN: Not that I'm aware of.

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21 MR. GRUENBERG: I have in the following order
22 Representative Kubina, Representative Leman, Representative
23 Hudson, Representative Davidson. I'd also like the record to
24 reflect that Representative Navarre is (indiscernible). Anyone
25 else? Okay, Representative Kubina.

1 MR. KUBINA: What is the extent of Exxon's involvement at
2 this time in the clean-up maybe percentage-wise compared to what
3 the State's involvement is?

4 MR. PIPER: Rather than put a percentage on it, I think the
5 better way to say is they're all contractors. And, my attitude
6 is right now, and I think the Coast Guard pretty much agrees
7 with me, is the that the two governments sit down together and
8 figure out what needs to be done and we'll tell Exxon what needs
9 to do. They'll then give us a cost estimate and we'll decide
10 whether we think that's a cost effective remedy to employ.

11 MR. KUBINA: Is more consideration being given now that
12 this clean-up effort is on a smaller scale to using locals,
13 having local communities do that? Can they use the locals more
14 and get Exxon out of the process completely?

15 MR. PIPER: If we have a lot of proposals, say, for manual
16 clean-up, the breaking up of tar mats and the kinds of things I
17 talked about, if we have a lot of that work and Exxon's proposal
18 comes in through it's su' -contractor, VECO, at a cost that's
19 significantly more than we could do it some other way, I have no
20 intention of having VECO do it or having Exxon do it simply out
21 of convenience. If we can do it more cheaply, we will. And,
22 there are some things that the local response groups have done
23 very effectively and tend to do much more cost efficiently than
24 large army-type operations.
25

1 MR. KUBINA: The reason I push this is just (indiscernible
2 - cough) to give them their money back, in essence. I mean, we
3 seem to set up and are paying this fund and we're just giving it
4 right back to them to do more work. It might be better spent on
5 the local efforts than Exxon's (indiscernible). Can I go back
6 to the studies a minute, please? You said this report came out
7 as a 15 page report. Obviously, it's not a very comprehensive
8 report.

9 MR. DEAN: No, it's a summary. It's just a cursory summary
10 of most all of the resource groupings, seals, otters, fish,
11 birds.

12 MR. KUBINA: What would you call the pink book that this 15
13 pages is the summary?

14 MR. DEAN: That's probably just a cursory summary of the
15 resource groups as its listed in there. Probably, the back
16 lists a categorization of the projects under marine mammals,
17 under birds. And, I believe, the headings are pretty similar,
18 and then there's just some follow-up information with general
19 numbers and findings in regards to each category.

20 MR. KUBINA: Have your scientists been analyzing the
21 information so that if there's anything in any of the studies
22 would indicate there's a public health hazard out there to any
23 persons that that information would be immediately made
24 available and has through the process?
25

1 MR. DEAN: I don't believe the studies contained in that
2 book or any of them are designed to address public health
3 concerns. There was a health task force with various
4 representatives formed as a result of the spill that did address
5 subsistence food stuff issues and some of the information from
6 the hydrocarbon testing results were utilized by that committee.
7 They published an extensive report on health concerns. But in
8 regards to the pink book there, there are no studies directly
9 looking at public health concerns in those studies.

10 MR. KUBINA: Well, not directly, but if your studies
11 indicate that some fish species or shell fish or something that
12 may be edible by human beings has some carcinogenic, some oil
13 residue in it that may pose a health hazard, is that information
14 being made public?

15 MR. DEAN: I'm trying to think how to answer your question.
16 I don't believe any of the studies are out looking at
17 information in that respect. There is scientific biological
18 physiological information that is generated from these studies
19 that perhaps another scientist trained in aspects of human
20 health could use that information if it was available to them to
21 look at the results which came from our studies. But, there is
22 no exchange in that respect so I'm not sure how to address your
23 question.

24 MR. KUBINA: Well, my point is this, that is the study
25 purely through litigation or is there anything out there to help

1 protect the people? You said there was some studies about
2 subsistence foods, for example. I know there have been some
3 studies on bottom fish. You know, that were showing up that
4 there's any danger of any of those foods, are we asking
5 ourselves that question at all?

6 MR. DEAN: The subsistence food stuff testing project is
7 completely separate and public. The information of those tests
8 has been published in a report from the human health task force.
9 I forget the exact title. But, they have a quite extensive
10 report of their sampling that was collected out there. That was
11 done under the response mode and that information is public.
12 And, we have had several public officials involved with it and
13 various agencies to review that information. I mean, that's out
14 there and that's one of the reasons it was done to try and
15 assure some of the questions the public has on that.

16 MR. KUBINA: All right. Well, how about shrimp, halibut,
17 crab, salmon. I believe all of those in one shape or form have
18 been studied. Is there any analysis of those studies to
19 determine if any of those foods could be hazardous to one's
20 health if eaten?

21 MR. DEAN: Not from the natural resource damage assessment
22 perspective. That was not the objectives that these studies
23 were designed. I believe the health task force study has taken
24 samples of those species and conducted tests from that
25 perspectives.

1 MR. PIPER: One thing to keep in mind is that there's a lot
2 of existing literature on the toxic effects of hydrocarbons on
3 ingesting them. I mean, there's a lot of stuff in the
4 literature that's been helpful. NOA has pulled together
5 information that they've given us because part of the job of oil
6 spill clean-up is to protect public health. That's one of the
7 things that's listed that you're supposed to do during the
8 clean-up. And, while you can see some effects of, like I
9 mentioned, where the fish were metabolizing some hydrocarbons at
10 some point, that may show up as an activity of that particular
11 enzyme but the flesh itself is edible. And, the other thing
12 that NOA has made sure that we know is that they haven't seen
13 what they call biomagnification of the food chain so that if
14 you catch a halibut, it's unlikely that what you're eating is a
15 carcinogenic flatfish.

16 MR. KUBINA: So, you're saying NOA is doing studies to
17 determine if there is any health hazards out there, and if they
18 found any, the public would have been notified?

19 MR. PIPER: They're not doing any specific studies. It has
20 primarily been this sort of literature search that generally
21 goes on in these things. There is a lot of existing information
22 about that. But, by definition, they're supposed to let us know
23 if there's any public health hazard. And, by definition, if
24 there is, we're supposed to do some clean-up to protect public
25 health.

1 MR. KUBINA: By both of your answers, you've indicated that
2 studies were certainly more directed towards litigation research
3 rather than health and safety of the food chain.

4 MR. BRODERSEN: More than being directed at litigation, it
5 was directed at restoration of the ecosystem from the NRDA
6 studies. There was a separate set of studies, as Mr. Dean was
7 stating, that looked at health hazards. The NRDA studies are
8 directed at making the ecosystem whole again. Litigation just
9 happens to be method of getting the money to do that so that
10 while doing the studies, we had to keep in mind that they were
11 litigation driven. But, in terms of their actual end point and
12 direction they take and all that kind of thing, litigation was
13 secondary. And, as soon as we get this settlement behind us,
14 which we hope we will, then those small aspects of the studies
15 be dropped out and the studies will become entirely restoration
16 which is what we, the scientists, wanted to do in the first
17 place and have been doing primarily.

18 MR. KUBINA: Is there any analysis going in the studies
19 right now that can determine this particular study may have some
20 litigation effect and we should keep it secret, and these over
21 here, in your opinion, would not have any bearing on litigation
22 and should be made public? So, are the ones sitting aside now
23 secret, is there any analysis to determine which ones we could
24 release?
25

1 MR. DEAN: I guess how I want to address that is, I believe
2 most of these studies were designed for assessing the damage for
3 scientific reasons. That information will be used for
4 litigation. We've been requested to re-evaluate the studies in
5 oil year three. What studies may be dropped because they're
6 strictly litigation studies or strictly supportive of
7 litigation? I think the answer to that question is, most of
8 these studies aren't going to be altered that much when they
9 show up in the pink book. They are studies based upon
10 scientific methodology. That information then will be used for
11 litigation purposes. There wasn't a study strictly designed for
12 litigation in mind. To answer your question in that regard, the
13 release of that information then is still being covered by the
14 Department of Law that it's still restricted and we can't
15 release it. And, my response to that is, it's going to stand on
16 scientific merit, it's just because of legal concerns which I
17 don't understand that that information is being restricted.

18 MR. KUBINA: Well, I guess maybe my question would be
19 better directed towards the Department of Law on that. But,
20 have they asked you to make any recommendations on what you
21 thought could be released or have they, as far as you know,
22 looked at it all, some of the results, to determine if it can be
23 released? What I'm trying to say is you've got such a big pot
24 in there that is being held secret there's probably a good chunk
25

1 of it that you could be able to let go now and let the science
2 community have it without affecting any lawsuits.

3 MR. DEAN: Yes. That would have to be determined by the
4 Department of Law.

5 MR. KUBINA: And, they haven't asked anything like that?

6 MR. DEAN: No. Although we have prepared a schedule of
7 reports of when the final reports of these individual projects
8 could be ready for public release. And, I believe that the
9 federal participants are moving in that direction to release
10 information in the public realm, both the summary report as well
11 as large amounts of raw data.

12 MR. KUBINA: My last point is, what would your reaction be
13 if this Committee subpoenaed all the scientific studies or some
14 portion thereof?

15 MR. DEAN: I guess I really have no opinion. I guess if
16 that's the case, the information that's there, as far as I'm
17 concerned, is generated for a purpose, a scientific purpose or
18 whatever purpose, and if the Committee wants to look at it, I
19 have no objections to that. I've just been directed for
20 litigation concerns not to release it. My own person belief is
21 this is scientific data that will stand on its own merits one
22 way or the other.

23 MR. KUBINA: I think you side-stepped my question. What
24 would you do if this Committee issued a subpoena do you telling
25 you to turn over all the scientific data to this Committee?

1 MR. DEAN: I guess I would have to formulate some further
2 questions of the Committee as to what information they were
3 looking at and what form. It wouldn't do the Committee any good
4 if I turned over a large set of raw data of hydrocarbon
5 technical analysis without any caveats. This is some of the
6 concerns I have on the federal side about releasing this data
7 without any qualifications on it. If you have just large
8 numbers and large technical chemical implications on it without
9 explanations or someone to look at it, then you just have some
10 useless data that's in the public realm. I'd probably take an
11 inventory of exactly what you're looking for, what is available
12 in report forms and summary to provide the Committee and make my
13 staff available to discuss any of them they would like.

14 207

15 MR. GRUENBERG: I have Representative Leman, Representative
16 Hudson, then Representative Davidson in that order.

17 MR. LEMAN: Thank you, Mr. Chairman. Ernie, in one of your
18 earlier statements, you said that the 1991 work plan for clean-
19 up is basically in place with or without the settlement. And, I
20 just heard Mark Brodersen say a similar thing that the
21 scientific studies have been driven more on the basis of how do
22 we restore ecosystem rather than who pays for it. But, my
23 question is, from a practical point, what is the effect of the
24 settlement in terms of the extent and the timing of future
25 activities? Are we still going to have them anyway? Are they

1 driven by certain statutory responsibilities, certain
2 regulations? And, the same thing with the other substance.
3 What I'm trying to determine, does this enhance our ability to
4 move this restoration up? Do we gain five years in the process
5 or some other period of time? Or, are we merely talking about
6 restoring funds into these funds that we're working out of right
7 now? There may be an indirect benefit because if those funds
8 don't have sufficient dollars to work from, then I guess that
9 would be a practical application of that. What, in your
10 opinion, is the practical effect of the settlement?

11 MR. PIPER: In terms of the the clean-up, the practical
12 effect is it makes my life a lot easier. It gives us a much
13 more direct command structure to deal with Exxon. They're our
14 contractor now. I think that we need to remember that the
15 federal government under federal law really has the primary
16 response and the overarching control of all of this. And, while
17 Exxon was paying for it out of its own funds, I think there was
18 a -- the Coast Guard felt that it was important to include Exxon
19 in a more expansive way in the decision making process and
20 that's not the case anymore. They're a contractor and it really
21 cuts down the job billing time necessary to make good decisions
22 and get them done quickly. I think it will make the clean-up go
23 a lot more efficiently quite frankly. That's a very limited
24 part of the settlement. I'm not passing judgement on the whole
25

1 thing, that's for the Committee to do. But, in terms strictly
2 of clean-up, it makes my life easier.

3 MR. LEMAN: Mark, do you have any comments in terms of
4 restoration?

5 MR. BRODERSEN: In terms of restoration, the benefits are
6 much greater even than they are for response or for clean-up.
7 We can get on with restoration. There has been a major
8 discussion amongst federal and state governments as to whether
9 we could even start restoration prior to settlement
10 (indiscernible) litigation, or an out of court settlement. We
11 made some attempts this year to kind of start that prior to
12 settlement discussion, but they were very limited mainly because
13 you're concerned about being reimbursed. If you can get a
14 settlement in place and you don't have to worry anymore about
15 being reimbursed, you know how much money you have, you can go
16 ahead and start your restoration, you can get your restoration
17 plan in place, and you can do it. If you're trying to get
18 through court, through appeals and everything, you could easily
19 wait 10 to 15 years before you can actually get on with the
20 process. I would hate to think that we would be waiting that
21 period of time before we make Prince William Sound an the Gulf
22 of Alaska (indiscernible - background noise) is what it comes
23 down to in a nutshell.

24 MR. LEMAN: I agree with that. That's one of my concerns
25 in this whole thing is that we're not waiting 10 or 15 years

1 because I don't think we have that time to wait, I don't think
2 we should, and I would like to move ahead. I think the question
3 is, is the settlement sufficient in terms of it has some
4 negative aspects to it as well as the positive. And, that's
5 just a value judgement that I think each of us is going to have
6 to weigh. Mark, you earlier made a comment about the dollars
7 available for restoration, the cash flow stream that's
8 available, and you said something to the effect that it's a lot
9 of money, it's probably more than we can spend efficiently just
10 strictly in restoration so we're looking at this aspect of
11 equivalent resources. How strict do you anticipate the trustees
12 will be in defining what are equivalent resources? In your
13 discussions, how strict do you think the trustees will be in
14 application of this guideline?

15 MR. GRUENBERG: I would appreciate it if all members of the
16 panel would answer that question.

17 MR. BRODERSEN: I think that folks really don't have a
18 completely clear picture of how strict they're going to be.
19 That's part of development of the final restoration plan. One
20 of the main aspects of that that I'm hearing from the trustees
21 and seeing in the agreement is that they want a large amount of
22 public participation in here to try and figure out what
23 everybody does want. That one of the advantages of getting a
24 settlement as opposed to having to go through litigation is that
25 we're not as strictly bound by the regulations as to how we

1 interpret equivalent resources, direct restoration, such things
2 that within reason we can pretty well do what we want to do. I
3 think that means that the people of the state of Alaska can do
4 what they want to do. That's why we're trying to get a much
5 larger public participation come out and into restoration. The
6 restoration people have been chomping at the bit here for quite
7 awhile to get on with restoration, make it a public process.
8 One of the advantages that we in restoration see of the
9 settlement is that hopefully the data will be released pretty
10 soon and that we can go out and tell people this is what has
11 been damaged and this is what has not been damaged, because
12 there's also quite a bit of that, and then figure out how do we
13 all want to fix it, try and tell people their options and get on
14 with it. That's my simplistic view of that. I hope that helps.

15 MR. PIPER: Mr. Chairman, as far as the technical aspects
16 of how the trustees would or would not spend restoration money,
17 I'm not the most qualified person to best discuss that. But,
18 just in terms of management structure, as I said before, if a
19 lot of this is going to come down to leadership and a lot of
20 that depends upon how close elected accountable people are,
21 officials, whether it's legislature, the President, or the
22 Governor, how close they are to directing activities of the
23 trustees, it becomes merely another off budget source of funding
24 for government agencies, we're going to have an institutional
25 feeding frenzy and we're not going to get anything meaningful

1 out of it. But, if there is good leadership from elected
2 officials on those trustees we have and on the federal side,
3 then I think that it will work very well.

4 MR. DEAN: I think Mr. Piper hit on and a more important
5 point to me is the changing role of the state trustees. We have
6 the Department of Law currently as lead trustee, we have the
7 Department of Fish and Game, Department of DEC. Right now the
8 litigation concerns are foremost in this process. And, I guess
9 some of the questions I have is involving the other state
10 agencies and perhaps what the future organizational structure
11 will look like for the trustees. I'm not sure there's going to
12 be an evolving change with the Department of Law if the
13 settlement is reach in their overall trusteeship or their
14 function in the process diminishes. Their trusteeship will then
15 be passed on to another organization or entity of the State.
16 That concerns me on how we're going to organize this process in
17 the future. One of the things I guess I am concerned with is I
18 think right now involving the public and in this process of
19 restoration is really important. A lot of the way we've done
20 business in the past in state government perhaps is not the most
21 cost efficient or best way to do things. I think we have an
22 opportunity here of being quite creative especially in the realm
23 of acquisition or acquiring the (indiscernible) of injured
24 resources. There's only so much you can do for certain
25 resources as far as direct restoration. You can't go out and

1 build a crab hatchery or Prince William Sound does have a lot of
2 salmon, you know, there are (indiscernible) right now. Where
3 are those alternatives? Some of the things I think you could
4 have limited funds on a yearly basis, then some of the private
5 groups could be used in this realm as contractors or perhaps
6 competing for these limited funds and have that process set up
7 for review by the trustees and those restoration work group as
8 the best way for it. Some of the agencies, I think, would have
9 to take a critical look at their roles of how they're involved
10 in this restoration process and if that is the best way for
11 those resources that were injured, not only Prince William
12 Sound, but the lower Cook Inlet and the Peninsula and Kodiak
13 area. I'm not sure that the way we've done business and the way
14 we're doing business now would be perhaps the most cost
15 efficient way to do it in the future. Establishment of a trust
16 fund where, perhaps, small businesses could take loans out
17 against that and utilize it for pledging of land rights or
18 right-of-ways or acquisition timber rights against that in order
19 to develop their own economic base may be a way to approach it.
20 There are various opportunities both in the private entity and
21 the public entity that I think will be competing for these
22 limited funds for restoration. And, I think it should be open
23 to all ideas out there.

24 MR. LEMAN: I think that's a pretty interesting concept
25 that you've just talked about. In your discussions with these

1 other agencies, either casual or formal, what has their reaction
2 been to such thinking? Or, have you shared that type of idea
3 with them?

4 MR. DEAN: It has just been real simplistic. As I said,
5 I've been mainly involved in internal directing of these studies
6 for the State logistic-wise trying to get them on the ground,
7 reports done, things like this. And, my program manager,
8 specifically the group that Mr. Brodersen is associated with,
9 the restoration planning workgroup, is the group that's really
10 starting to kick these ideas around now. And, I've just had
11 some real brief discussions of ideas with them.

12 376

13 MR. GRUENBERG: I have Representative Hudson,
14 Representative Davidson, and then I'll ask questions myself.

15 MR. HUDSON: Pursuing the summary that has just been
16 released and comparing that to materials held, scientific data
17 that was held, we haven't seen the summary. Is it terribly
18 revealing or is it just a general overview of damages?

19 MR. DEAN: I believe it contains just an overview of the
20 damages. The data or the specifics of methodology or the
21 details of it is not contained in the report. It's just a
22 summary briefing of the species from the last draft that I've
23 seen. I have not seen what was actually turned in that report.

24 MR. HUDSON: And, the materials held, if we were to obtain
25 an executive briefing as legislators here which we have done

1 already at least in a cursory manner from another source there,
2 would that be very revealing?

3 MR. BRODERSEN: I was at sessions, I think, that were held
4 there. It's essentially the same information that you've
5 already received about six weeks ago. There hasn't been that
6 much more information obtained from the studies other than what
7 you already have. One more point I should on these studies is
8 that probably the best form the information could come to you in
9 to be useful to you is stuff that you've already had in terms of
10 those hearings. Final reports are not available, the PIs are
11 now out in the field. In terms of dumping raw data on you that
12 I don't that would be too terribly helpful, maybe it would. I
13 would be reluctant to bring a truckload of information up here
14 and just dump it on you and say go to it. I would much prefer a
15 summary basis and say this is what we found, this is not what we
16 found.

17 MR. HUDSON: It's been really interesting listening to your
18 thinking of where we go next with this, particularly if we have
19 the settlement. And, I would like to just a little observation
20 to see if I'm thinking right here. But, it looks to me like at
21 this point in time at any rate, we've been reacting to the
22 spill, responding to it, cleaning it up, trying to minimize the
23 damage to the extent possible, and then, predominantly gathering
24 technical and substantiative information to protect our long-
25 term interest to make certain that were made whole by the

1 perpetrator of the spill. And, so, throughout your whole
2 process of cleaning up and et cetera, there have been a great
3 deal of public input into that process, it seems to me, both in
4 actually conducting clean-up as well as the hearings you've had
5 as to what you're doing and what value it's having and where the
6 problems remaining are. And, all of this has been done, for the
7 most part, from general fund monies and from the 470 monies, and
8 from direct recoveries from the Exxon Corporation. Now, we're
9 looking at an offering essentially to take us out of the
10 litigation and process and put us into a really scientific
11 practical mode as opposed to contentionary modes. I don't even
12 know if that's the right word. And, I'm wondering, we looked at
13 this clean-up restoration equivalency of injured resources, and
14 do you think that the one big outstanding concern out there, I
15 think, from an awful lot of the public, at any rate, is how do I
16 get back my economic losses. That is, the loss in business, the
17 loss in fish values, fish prices, and things of this nature. Do
18 you think that in the purviews of using this \$900 million
19 through this trustee relationship that there can be some
20 consideration for developing mechanisms in equivalent values and
21 things of this nature that would enhance over time the
22 restoration of some of the economic losses of, say, Prince
23 William Sound communities, Native corporations, and et cetera?
24 Have you thought about that?
25

1 MR. BRODERSEN: It's a difficult question when you start
2 talking about enhancement because the regulations are all set up
3 to return you to baseline. While you're returning to baseline -
4 - let me back up here. We've always stated that we followed the
5 regulations when it suits our needs, including the trustees.
6 So, we're not necessarily locked into that directly. Still, you
7 try and follow those guidelines to the extent possible. So,
8 you're looking at getting back to baseline. As you do get back
9 to baseline, you are necessarily doing work in the effected
10 areas which any time it seems work is done in any area, you
11 necessarily enhance the local area. Even if you're just
12 returning to the baseline, there's also the work that's done
13 peripherally to get you back to that point. So, we've been
14 trying to look at how do we get back to baseline, how do we use
15 the money most effectively, and at the same time, get as many
16 spin-offs as you're talking about as possible on that. And,
17 that's something that really needs to come out of the final
18 restoration plan with considerable public input. And, we're
19 just not there yet. We're trying to stretch our minds as much
20 as possible to figure out how to get there. And, I anticipate
21 being helped in that process when we can actually go out to the
22 public and start dealing with a much more informed basis.

23 MR. HUDSON: One of the things that we have to either
24 concur with the proposed settlement or don't, I really think
25 that's where we're at. And, yet, from a timing point of view,

1 one of the things that would help, at least in my mind, knowing
2 how to vote on this thing would be a lot of these things that
3 you don't quite know the answers to yourself. And, that is,
4 what's the relationship going to be between you folks and the
5 trustees? Now, I can take the legislature totally out of it. I
6 mean, as long as it's accomplishing something that is useful
7 like restoring the Sound and all of the affected areas and
8 improving that whole lot over there and leave that entirely up
9 to the mechanisms out there, but we don't know what that
10 mechanism is. And, I assume, at any rate, you folks have had
11 closer talking relationships with some people who are on the
12 inside of this settlement either from the legal departments or
13 from the federal agencies there. Do you feel somewhat
14 comfortable that there will be adequate involvement on your
15 part, as well as the public's part, in the spending and use of
16 these funds?

17 MR. PIPER: I would give the same answer to that question
18 as I did to an earlier question from Representative Ulmer. I'm
19 not confident until I see the system. That doesn't mean that
20 the settlement, therefore, is bad and should be scratched
21 because we don't have the system yet. I think the settlement
22 sets up a structure that we can create a good system, but we
23 have to stay on it and we shouldn't kid ourselves into thinking
24 it will just work itself out. We really need to do a lot of
25 homework and a lot of negotiation to make it work right.

MR. GRUENBERG: Representative Davidson.

MR. DAVIDSON: Does this settlement get us back to baseline expeditiously?

MR. PIPER: Perhaps the best way to get at this is that, speaking with a little bit of perspective having gone through this for two years in the Cooper Administration as well, I guess those of who were associated seeing the spill unfold and the response unfold and seeing the inner workings of that and having some contact with how the settlement was being put together, have a different set of expectations perhaps than the public. This is not to criticize the public expectations. But, I think that we found since the beginning of this spill that the institutions that were created to deal with large spills are not sufficient to rectify the situation. And, that goes all the way from the original system that was in place and failed for prevention, it goes to the inadequate response techniques or advances in the technology over 15 years and I'll extend that on through the legal system and the laws that are set up to do that. If we expect to be made whole by an oil spill clean-up, we're sorely mistaken. And, I think that if we expect to be made whole by a settlement alone, we're also going to be disappointed as well. What I think would be appropriate, Mr. Chairman, if I were in your shoes and I was looking at this, I would say are there a set of attainable goals that this

1 settlement presents us with and can we reach them. But, that
2 won't end the job of what we need to do to restore people's
3 livelihoods and their lives. You know from your community, it
4 has been emotionally wrenching and still is.

5 MR. DAVIDSON: Of course, there is political as well as
6 economic explanations for the difficulty of not being able to
7 meet the responsibility of the catastrophe. But, another
8 question is, we've heard the visionary figure of \$1.2 billion.
9 That's the most we've ever talked about in terms of this
10 immediate settlement. In the three of your experiences, you
11 have been very close to a lot of this information all along the
12 line, just to pick a figure like that out of the sky, is that in
13 your mind a good base number to start from in terms of dollars
14 to do the job that we face?

15 MR. PIPER: Again, I'm a generalist and generalist wind up
16 making a lot of decision and they don't always have a wealth of
17 technical advice behind them. I think all of us would like to
18 have gotten more money. All of us would have liked to have
19 gotten \$5 million or \$10 million, but there were a lot of things
20 that come into play when putting a settlement together. And,
21 not sitting in on the negotiations, I can only assume that
22 people who are a lot more skilled at negotiation than I picked
23 attainable goals and tried to work towards them.

24 MR. DAVIDSON: Ernie, I guess my point is that you start
25 from a figure that you project from the shaking down of all the

1 information of which you are all specialists. You just don't
2 start from a figure and work down. And, I'm not sure what that
3 is based on. Anyway, I'd like to get back to this issue of
4 information. It appears that once again we have a situation
5 where legal preparation requirements are permitting a just and
6 fair process to deal with the damaged individuals and resources.
7 We're so concerned now that some of this information is going to
8 get out that might help third-party litigants that it seems to
9 have disrupted the real scientific damage assessment process.
10 Is that a fair statement?

11 MR. DEAN: I think it has interfered with the normal way
12 that scientists are used to doing business, as far as the free
13 exchange of information. I do not know that it has surrendered
14 or hurt the process itself in the end because the information
15 has been sequestered for litigation purposes. But, certainly
16 the freer the exchange, the more critical reviewed it is. But,
17 the peer review or world ~~ew~~ have had a chance to review the
18 data that was generated. ~~of the~~ a university public format
19 (indiscernible - background ~~st~~ reports or information
20 to be exchanged. I guess ~~that's a~~ difference. Those
21 constraints are -- a lot of the scientists aren't used to those.

22 MR. DAVIDSON: As a scientists, Mr. Dean, does you
23 delineate the way you prepare your scientific data between legal
24 kinds of information and the kinds of restoration damage
25 assessment that we're trying to arrive at?

1 MR. DEAN: I believe the detailed format that these studies
2 are presented in are a very similar format and we have some
3 goals and objectives and methodology involved in laying out the
4 cost of the study as well as the restoration science studies
5 that are put forth those are peer reviewed. From a scientific
6 point of view, they are set up in a detail format and reviewed
7 to kind of strengthen or reason from the way their developed.

8 MR. DAVIDSON: Could you expand on what some of those
9 criteria difference are?

10 MR. DEAN: Early on back in '89, there was a set of
11 criteria developed for putting forth studies, the end result
12 would be the yellow book of first year studies. Those are
13 entirely different criteria set up than what the restoration
14 science studies were evaluated on. I'm sorry I don't have a
15 list of either one of those with me.

16 MR. DAVIDSON: How about the third year studies, Mr. Dean,
17 you said that you were instructed to review the third year
18 studies to determine which were directed towards litigation.
19 And, then, I think you indicated further that these studies were
20 either to be terminated or cut back on. What does that do to
21 our overall attempt here, this effort to get as much information
22 as we can to do the job and Mr. Piper has indicated we've got to
23 do to make sure that we get the job done?

24 MR. DEAN: Essentially, what's left is scientific
25 information you can use to move forward in the restoration

1 process. I believe that what you will find is after review of
2 these projects, very little of them are being driven.....

3 (Tape changed)

4 Tape 11, Side A

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6 MR. DAVIDSON: How do you feel this withholding of this
7 information is delaying or slowing down the restoration efforts?

8 MR. DEAN: At this point in time, a settlement with the
9 process going forward as is, I don't believe it is delaying down
10 the process involving and where we are going right now with
11 restoration. I think if the settlement is reached, it will
12 change direction at some point. I guess I'd like to clear
13 something up is I do not know from a legal standpoint what is so
14 important from a litigation standpoint the information that
15 could be detrimental to the State or couldn't be. I mean,
16 that's not my job. That's the Department of Law's. So,
17 following their direction of this information, that's what I'm
18 doing. So, I'm not saying that the scientific information is
19 going to damage or not. I mean, I can't address that. But, I
20 feel that being this information is the best science we could
21 put forth and how we did, you know, it's going to stand on its
22 own if it becomes public soon or in a year or so. If the
23 settlement fails and we still have to go into ten years of
24 litigation, and I don't know what that means, but from a program
25 manager, getting there as aspect to running an efficient program

1 involving these studies that a lot of the methodology or the
2 expenses are coming strictly from a litigation standpoint of
3 expert witnesses or reviewing the studies themselves. And, it's
4 my responsibility to take a look at them and say if we do reach
5 a settlement, can I build a better mousetrap here on these
6 things, where am I going with it and can I reduce the cost
7 without reducing the goal and objectives of these studies. And,
8 I think, you know, I've been involved in this in the last couple
9 of years and I personally feel responsible that I've put a good
10 program together. I'm not saying some things w
11 things didn't, or some things slipped through. hat's
12 the way the program works and the way the proces
13 But, I personally feel responsible that I've given my best shot
14 at least from the damage assessment side of things.

15 MR. DAVIDSON: Do you feel any frustration with the work
16 that you've done as to where we've come to at this point in
17 time?

18 MR. DEAN: A lot of it, yes.

19 MR. DAVIDSON: Finally, Mr. Chair, if I may?

20 MR. GRUENBERG: One more question.

21 MR. DAVIDSON: When we talk about restoration, what are
22 some of the specific projects in your opinion we should be
23 pursuing with priority?

24 MR. GRUENBERG: Representative Davidson, that I consider
25 will take a little time to answer. We will start with

1 Representative Davidson tomorrow. The answer to that question
2 we will start with tomorrow. So, please hold that question. We
3 will have for tomorrow Representative Davidson, myself,
4 Representative Brown in that order. If anyone else wants to get
5 in line? Okay. Now, I asked the members to stay around because
6 I have a question for you. Mr. Cole will still be out of town
7 tomorrow, we intend to have him back on Thursday. We want to
8 finish with these departments tomorrow, or at least continue
9 with the questioning with these departments tomorrow. And, my
10 question to the members is whether we wish to have the
11 commissioners here, or either of the commissioners.

12 MR. HUDSON: The one commissioners we may want to talk to
13 would be the three people that are going to be on the trust
14 board and how they think they may be able to answer some of our
15 concerns about how this thing is going to work, how they
16 envision it.

17 MR. GRUENBERG: The present trustees are these two
18 commissioners and Mr. Cole. Mr. Cole may or may not remain.
19 That's the reason for my question to you right now. (Discussion
20 pursued regarding this question.) All right. With that, I will
21 take that as a request to have the commissioners here as well as
22 you gentlemen. Would you please convey that to the
23 commissioners? And, staff you will expect the commissioners to
24 be here. We will attempt to maximize the use of their time so
25 they will not have to be here longer than necessary.

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Rep. Gruenberg adjourned the meeting at 10:00 a.m.

1 HOUSE SPECIAL COMMITTEE
2 EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT
3 April 10, 1991
4 12:55 P.M.

5 MEMBERS PRESENT:

6 Rep. Max Gruenberg
7 Rep. Cliff Davidson
8 Rep. Bill Hudson
9 Rep. Gene Kubina
10 Rep. Mike Navarre
11 Rep. Gail Phillips
12 Rep. Fran Ulmer

13 MEMBERS ABSENT:

14 Rep. Ramona Barnes
15 Rep. Dave Donley

16 OTHER LEGISLATORS AND STAFF PRESENT:

17 Pat Williams, Committee Secretary
18 Andy Hemenway, Committee Attorney
19 Gregg Erickson, Committee Economist
20 Commissioner Heinz, Department of Natural Resources
21 Commissioner Rosier, Department of Fish and Game
22 Ernie Piper, Department of Environmental Conservation
23 Mark Dean, Department of Fish and Game
24 Mark Brodersen, Department of Environmental Conservation
25

Tape 12, Side A

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Chairman Gruenberg called the meeting to order at 12:55 p.m. in Room 17, House Transportation Committee Room in Juneau on Wednesday, April 1, 1991. He noted the presence of the Commissioner of Fish and Game, ^{Carl} Paul Rosier.

Mr. Rosier stated that he had no opening statement at this time, but was willing to proceed with any questions the Committee may have.

Chairman Gruenberg began asking questions of Commissioner Rosier as follows:

MR. GRUENBERG: What steps have the trustee designates taken so far? Have you met? What kinds of communications have you had between you, and so forth?

MR. ROSIER: At this point, there has been one meeting that I participated in. This involved all of the federal trustees as well as the state trustees. And, we began to discuss in general terms the scenario under which we might proceed if the agreement was signed by the Judge and approved by everyone concerned. Those discussions have been very preliminary at the present time. They didn't address the issue of what kind of a structure we might want to look at. That issue was turned over to the management group under the existing structure to kind of develop some options for us to take and the next trustee counsel meeting coming up here the end of April or early May. We've had, of course, the exchange of the paper documents associated with the

1 settlement and the Consent Agreement as well as the Memorandum
2 of Agreement. That type of information has been exchanged.

3 MR. GRUENBERG: Was your meeting public?

4 MR. ROSIER: No, that trustee counsel meeting was not a
5 public meeting.

6 MR. GRUENBERG: Commissioner, what generally are the plans
7 of the trustees? How is this going to be set up? What is the
8 structure going to be? How do you plan to proceed?

9 MR. ROSIER: Well, I think, at least my view and I
10 certainly can't speak for all of the other trustees, but it
11 would be my perception on how we would proceed, would be to
12 utilize the resources that are currently in place to develop the
13 organizational options. And, these organizational options
14 would, in fact, be debated amongst the trustee counsel with us
15 making the decision, ultimate decision, on how to go. I believe
16 under the Memorandum of Understanding, we have 90 days following
17 the final signing of the Consent Agreement to come up with that
18 kind of a structure. And, I can say that we're looking at quite
19 a broad array of possible options here all the way from a very
20 simple system in which we might have an executive director, a
21 very small administrative staff to support and put the
22 responsibility of the program into the agencies. I'm not saying
23 I'm endorsing any of these at the present time. But, there is a
24 large array of different structures that might be used including
25 the continuation of the structure that's currently in place.

1 But, we really need to take a look at it in terms of what's good
2 for the restoration program. And, I think this may be an area
3 where we begin to diverge a little bit between the state and the
4 federal people on this. I think that generally we're looking
5 that a system, one that involves a significant amount of public
6 involvement. We're looking at a system that would really not
7 put a lot of emphasis on the administration, the bureaucracy
8 supporting this and keeping it as simple as possible.

9 067

10 MR. GRUENBERG: What will you do to ensure that the federal
11 trustees also understand that their view of meaningful public
12 participation and adequate public notice is (indiscernible) or
13 equally admitted to the process?

14 MR. ROSIER: Again, Mr. Chairman, speaking for myself on
15 this, I just deal with the -- some system will have to be
16 developed within the trustee counsel to ensure us that people
17 within the State are being given the opportunity here to
18 participate in the process. Whether this is the development of
19 an interest mailing list that we routinely send the items out to
20 or whether it is some other system, I really can't say at the
21 present time. I know that it's important that we get that
22 material to as broad a cross section of the public as possible
23 on this. And, I've never been a supporter of the Federal
24 Register system for notice in the state. I just don't feel the
25 Federal Register is made available to a major cross-section of

1 the public that's going to be interested in what that counsel is
2 going to be doing. But, again, it's one of those questions I
3 can't answer you specifically on what we're going to do. I can
4 tell you this that I think that it's important that the public
5 not only be notified, that the information coming back is
6 carefully weighed and I really feel the public has as much right
7 to participate in the expenditure of those funds as any of the
8 government agencies.

9 097

10 MR. GRUENBERG: I see it's 1 o'clock and we don't won't to
11 keep you from your meeting. We will invite you back.

12 MR. ROSIER: Thank you, Mr. Chairman. I'm sorry that I
13 have to run off at the present time, but I will make myself
14 available to the Committee at any time you wish to call me.

15 MR. GRUENBERG: Thank you, Commissioner Rosier. We have
16 the Commissioner of Natural Resources, Harold Heinz here and
17 would like to welcome you to the Committee.

18 (Discussion ensued between Rep. Navarre and Rep Gruenberg
19 regarding a confidential briefing by the Department of Law or
20 Department of Fish and Game or whoever has the information on
21 resource damage so that the Committee can get a feel for the
22 overall valuation. Rep. Gruenberg asked the staff to contact
23 the Attorney General on that briefing and stated he would like
24 to see as much in open session. Rep. Phillips and Rep. Navarre
25 just arrived.)

1 MR. GRUENBERG: Commissioner, again, welcome. I know you
2 have not thus far been designated as a trustee. I don't think
3 it takes a clairvoyant personality that you might possibly
4 looked at in the future for that particular role. And, with
5 that in mind, we would like to welcome you. Would you have any
6 opening comments?

7 OPENING STATEMENT BY HAROLD HEINZ

8 MR. HEINZ: My name is Harold Heinz. I'm the Commissioner
9 of the Department of Natural Resources. I guess I would start
10 two parts; number one, I was not personally involved in any of
11 the discussions or negotiations of the settlement so my
12 background as to the settlement is the same as everybody else's
13 from what I read in the newspaper. I have, however, done some
14 thinking about it. If it would be of interest, as a decision
15 maker, I think I'd be happy to share that with you.

16 MR. GRUENBERG: Please feel free.

17 MR. HEINZ: Number one, I see the decision before you as a
18 rather straight forward one in terms of outcomes. Basically,
19 it's to accept or reject. And, I guess my own personal weighing
20 of the situation just happens to be to accept it. That's mainly
21 driven by what I see as the negatives of rejection. The only
22 two basis I can identify in my mind for rejecting the settlement
23 as proposed is 1) if I felt I could go back and negotiate a
24 better settlement. I, in my previous lifetime, had the
25 experience of dealing with Exxon for some 15 years and I know

1 them to be very tough and capable negotiators. And, I think the
2 Attorney General has very properly indicated to you that he's
3 had his shot at it. And, before I would reject in hopes of a
4 better negotiated settlement, I'd think about who was going to
5 do that negotiation and whether you really thought you could
6 come out ahead. The other part of the negotiated approach that
7 is fraught with problems as I see it is the fact that right now
8 you have a settlement that is the federal and state government
9 together. If the state for some reason chose to drop out of
10 this, I think the federal government would have every right to
11 proceed and do whatever it felt was right. Based on the
12 indications of the past, I think they are very interested and if
13 they reach a settlement and the state was left out there, I
14 think you are in a very difficult position to negotiate from
15 them. The only other basis I can come up with basically to
16 reject to basically proceed down the litigation route, and again
17 I would have to believe that I could do better out of the
18 litigation than I can out of the settlement. The litigation
19 route, I basically again see just a couple of problems. But, I
20 think they're kind of severe problems. I'm not a lawyer, but in
21 many ways this is a straight forward damage case type situation
22 where the courts would not only look at the value, the
23 assessment of damage, the dollars, but they would also look at a
24 phase where they would attribute damage to the various parties
25 that potentially could have contributed to that. And, while

1 there hasn't been a lot of discussion, I will remind you that
2 the federal government and the state of Alaska could be brought
3 in as parties to that. And, again, I have no particular feel
4 for what that assessment might be. That would be an issue in
5 the court and it would be done on an adversarial basis amongst
6 all the parties. The judge would give weight to everything as
7 far as assessment. So, I think that is very difficult.

8 Secondly, I know there's a lot of concern over the damages out
9 in the future, and there very well may be. On the other hand,
10 as time has passed, there also is evidence that keeps coming
11 forward that seems to contradict some of the basic arguments.
12 The other day we learned, for instance, that Prince William
13 Sound salmon run this year may be excessively large. And,
14 again, those kind of factual situations in a court room sitting
15 might argue against some of the issues that the State has.

16 The bottom line of my thinking, that's the way I try to
17 think of it from a decision point of view. And, for whatever
18 it's worth, we can stop there or we can go on to your other
19 questions on the trustee side.

20 (Representative Ulmer arrived.)

21 (Rep. Gruenberg took up the issue of the letter that was
22 drafted with respect to material the committee received from
23 Congressman Miller's yesterday addressed to Judge Holland. He
24 stated the question is, do we wish to look at any of the issues
25 in that letter, and if so, do we wish to inform the court that

1 we're doing so with a request that the court give us enough time
2 to do that. Rep. Phillips agrees to sending the letter, but has
3 some objections to some of the wording in the letter. Rep.
4 Ulmer said she felt we should send the letter. Rep. Navarre and
5 Rep. Kubina had no comments. Rep. Phillips suggested removing
6 the sentence that says "The documented allegation that Alyeska
7 knowingly disregarded the requirements, et cetera." She also
8 suggested adding a little rewriting to the third paragraph in
9 the line that says, "Our committee believes that the
10 (indiscernible) agreement must be considered not solely in light
11 of the impact on Exxon." She would suggest changing the wording
12 to say "and Alyeska, but also our state." Also, the line that
13 says "In view of these new allegations", those allegations are
14 not from this Committee and she would like that phrase left out.
15 Rep. Gruenberg suggested adding the phrase "by Rep. Miller"
16 after the phrase "allegation". No one objected to eliminating
17 the word "documented". It was also recommended that he be
18 referred to as Congressman Miller rather than Representative
19 Miller. Rep. Hudson suggested changing the word "goes" to
20 "could go" in the sentence regarding a level of culpability on
21 the part of Exxon and Alyeska. There being no further
22 objections to the letter, the letter was approved for
23 remittance.)

24 303

25 MR. GRUENBERG: Thank you, again, Commissioner.

1 MR. HEINZ: Well, I have just shared very briefly my view
2 of the decision. The only other thing is during the time that
3 the settlement discussions were going on I did take time to work
4 with a few of my folks and try to generate some ideas from a DNR
5 perspective of what kind of additional ideas we might bring to
6 the party if there was a large monetary settlement. I think the
7 way maybe to summarize it to you is that our focus was probably
8 looking at more than just reclamation. And, frankly, I would
9 explain my concept of it as trying to look to a conservation
10 authority where the funding would have been used in a very broad
11 sense to deal with conservation issues in that general area.
12 And, I think that would have given the kind of latitude that I
13 would have like to have seen. There are even under the
14 restrictive and, as I understand it at this point, the federal
15 requirements of what the settlement is all about have eliminated
16 the possibility of some of these broader definitions.
17 Basically, we were looking at our reclamation funds.

18 Some things of interest from our perspective, for instance,
19 in reclamation and there may be areas in the Sound that were
20 disturbed in such a way either at the spill or during the clean-
21 up that it may be unrealistic to reclaim to "an original state".
22 And, some of those areas particularly if they were in cold
23 sheltered water or some thing like that, I certainly would look
24 to the possibility of making them more a landing type park even
25 though they may not be restorable to a fully natural state that

1 may be very compatible with human park use, a wharf, a cabin, a
2 dock, a picnic table, those kind of things. There is not a lot
3 of that kind of facility in the area and it is a way to utilize,
4 I think, some of those areas in terms of reclamation. Beyond
5 that, at this point, we have just tended pretty well to look at
6 studies that are on the table. And, there's not a lot we can
7 offer in terms of expertise on those, they're generally in a
8 biological area as opposed to the areas that are generally of
9 interest to us.

10 MR. GRUENBERG: Thank you. I do have one question to start
11 us off by the staff, a question. The Department of Natural
12 Resources if, by definition, the state agency most affected by a
13 trust that administers a fund dedicated to the restoration,
14 rehabilitation, and enhancement of natural resources owned by
15 the State. Has the Administration considered replacing the
16 Attorney General with yourself after the litigation is resolved?
17 What role will the Department of Natural Resources play in the
18 trust decision making process if you are not a trustee?

19 MR. HEINZ: Thank you, Mr. Chairman. This question the
20 Administration has worked through. And, it was felt important
21 at this point that the Attorney General be one of the three
22 trustees because at least in setting up this group initially he
23 represented the only one with the legal background and the
24 knowledge of the settlement to really be implementer of that
25 smaller group of folks. In the long term, the Attorney General

1 has realized and acknowledged from the beginning that the
2 partnership should be represented on there, and basically, once
3 the group is functioning I would look to replace the Attorney
4 General. In the interim, we have the Attorney General's
5 considerable invitation to us, had a lot of interactions with
6 him, shared with him our thinking, and we feel we very directly
7 have had input at this point. But, the getting started chore
8 was indeed more important than our having direct influence.

9 MR. GRUENBERG: Let me go on to the specific questions once
10 again. Would it be likely that at some point you would be
11 substituted in for the AG?

12 MR. HEINZ: Absolutely.

13 MR. GRUENBERG: You weren't here generally when I was
14 asking Commissioner Rosier questions. The Administration has
15 stressed the need for public input in reaching the decisions
16 regarding how the trust money should be spent and how the trust
17 should operate. However, the federal trustees have already
18 issued a call for public comment on how the public should be
19 involved and this is by means of a notice in the Federal
20 Register. What would you do to ensure that notice is provided
21 to local residents in the state of Alaska generally and in the
22 spill affected areas in particular, an important of public
23 participation in the trust process? And, how will you ensure
24 that the federal trustees also understand that their view of
25 "meaningful public participation" adequate public notice is not

1 the only view that counts but that Alaskans need to be heard on
2 at least an equal voice?

3 MR. HEINZ: Well, I've heard a little bit of the former
4 Commissioner's answer, and I share his feeling that the Federal
5 Register is maybe not a suitable notice in terms of most
6 Alaskans. Based on my own experience number one, I would try to
7 come from the point of view trying to find as broad a context as
8 would be permissible under that trust relationship to include
9 things in terms of projects and ideas that was possible. In
10 doing that, my experience to date has indicated 1) no lack of
11 individuals with enthusiasm and ideas that have come forward. I
12 have probably already talked to a dozen individuals with a dozen
13 different very interesting ideas for projects in that area.
14 And, certainly, I would continue that. Secondly, I'd certainly
15 have no problem with the public meeting process. And, I guess
16 as far as number three, influencing the federal trustees,
17 certainly I would consider it a very good meeting site to be on
18 both Prince William Sound.

19 MR. GRUENBERG: Commissioner Rosier said before you got
20 here that there had been one meeting of the trustees at which
21 they discussed how to proceed and what the structure would be.
22 Did you or members of your department participate?

23 MR. HEINZ: I did not participate in that meeting. One of
24 our people was there. There was a large number of studies that
25 were proposed. They were basically studies in biological

1 species, a fair amount of money. I think our opinion was that
2 maybe it was a little premature to be committing to that many
3 of those specialized studies and, quite frankly, using up a lot
4 of effort in that regard at this point and rather than going
5 through a process of trying to broaden the scope of what the
6 trustees might look at. And, as I understand it, that's
7 basically what happened, that while there was certainly no
8 negative associated with any of the proposals, there was a
9 deferring of consideration of a number of them.

10 429

11 REPRESENTATIVE ULMER: Just on that point, when you
12 referenced the notion of broadening the scope of what the
13 trustees might look at, I just wondered if you might share with
14 the Committee what you had in mind when you say that? And,
15 maybe if you might share with us some of the dozen or so ideas
16 that mentioned, the creative ideas? Beyond biological research,
17 what are the sorts of things that you and the other members of
18 the Administration might include?

19 MR. HEINZ: Thank you. Some of things I've heard, for
20 instance, were the (indiscernible) and biological studies is, of
21 course, a proposal in Seward of a marine mammal study center, a
22 concept of research, educational, a number of other -- there is
23 no sort of Arctic marine mammal type center anywhere. Those
24 kinds of ideas, the sort of culmination of scientific
25 educational research but much more center based and providing a

1 place that's really sort of the home for that type of work.
2 There obviously are some unique adaptations of some hatchery
3 ideas, shellfish related type ideas, things like that. Again,
4 how much of them are devoted to repopulation, research,
5 education, commercial activity, again, I would tend to see them
6 in the broadest context possible. I think from there it ranges
7 to ideas related to the use of the area and the access to the
8 area by all sorts of people and for a wide variety of reasons.
9 I guess at the other end of the spectrum, of course, some of the
10 people are suggesting that some of the money be used to buy out
11 the timber holdings in the area to preserve the area unharvested
12 in terms of timber. And, again, that's clearly an issue not
13 related "to the oil spill", but if you look at it as a
14 conservation area, it certainly is a very legitimate concern.

15 (Mr. Gruenberg noted for the record that Representative
16 Davidson is here.)

17 MS. ULMER: Commissioner, following the same line of
18 thinking and comments, I have a great level of discomfort in the
19 statements that were made earlier in the hearing that there
20 would be a possibility if the trustees agreed that these funds
21 which are funds which are coming to us because of the spill
22 could be spent some place other than Alaska, to be used on other
23 reclamation projects because of the restrictions of the Clean
24 Water Act. And, I would just like to hear comments on that,
25 please.

1 MR. HEINZ: Well, I think my own comment is as I understood
2 the procedures, it required all six to unanimously approve any
3 expenditure.

4 UNIDENTIFIED MALE: Commissioner, I've been trying to get
5 sort of a practical side of what would happen if this were
6 approved and where would the concentration of these funds be in
7 the early years. I wondered if you had some ideas. For
8 example, do you believe that ongoing research in better
9 equipment to handle oil spills, for example, do you think that
10 would be something that would fit in research of spill recovery
11 equipment or other ways to respond to maybe faster breakdown of
12 oil that is spilled?

13 MR. HEINZ: Well, again, the area you just sketched out is
14 a fairly broad area. As I think about the issues related to,
15 for instance, recovery type equipment from the water, I think
16 that may be getting pretty far from the federal definition, as I
17 would understand it, at this point. On the other hand,
18 certainly could justify, I think, certain type of research into
19 bacteria or other things that just might have the effect of
20 reducing oil whether they're on the water or in the land or
21 whatever, I think that would seem to fit in my mind very neatly
22 into the concept of reclamation. And, so, I think in terms of
23 what you sketched out, I guess what I'm saying is there's some
24 of it that it would seem you could fit in the definition,
25 there's some of it that doesn't. Where that line is, it would

1 be part of the intellectual talents of those folks.

2 UNIDENTIFIED MALE: (Indiscernible) essentially are trying
3 to figure out how to fully recover not only in the Sound, but
4 hopefully Cook Inlet, the backside of Shilikoff Straights and
5 Kodiak Island and other places that have been oiled, what about
6 expenditures on maybe some sort of revolutionary equipment to do
7 that, for example, some sort of a scientific vessel and a
8 contract offer of that vessel throughout to examine the
9 hydrocarbons in areas that are not immediately in the Sound, for
10 example?

11 MR. HEINZ: Some sort of oceanographical research type
12 vessel? Again, I certainly am not going to have problems with
13 those kinds of things. I think the boundaries of my thinking
14 are far broader than I think again will be permissible by the
15 federal approach. I think what we're going to find is the
16 federal approach will really limit what can be done to a point
17 where and for several years it becomes fairly obviously that
18 unless one is really wasteful of the money that you're just not
19 able to utilize the funding that's there for the type of things
20 that are permissible. And, hopefully, at that point, at least,
21 people will reconsider whether some of that definition might be
22 broadened to include a number of things like you're talking
23 about. And, I have no personal objection at all and I support
24 whether it's a mammal center or a ship or whatever, but I'm not
25 sure that's going to fit under the definition as I understand

1 it.

2 UNIDENTIFIED MALE: That's part of our problem is we don't
3 know what's going to fit in and I guess that's something we're
4 all concerned with. But, I see just a limited amount that we
5 can actually do, say, physically in the Sound. You can only
6 manipulate it so much and you can only spend so many dollars in
7 that respect. But, it sure seems to me like there's been a
8 tremendous loss of marine mammals and fisheries and everything
9 else, and it seems to me like a legitimate expenditure from this
10 account would be stream enhancement maybe even in other parts of
11 Alaska, say, the south side of the Aleutian chain and places
12 like that, and that might be a good trade-off for the losses.

13 MR. HEINZ: I would agree with that. There's obviously a
14 lot of ideas in terms of habitat enhancement that would help
15 areas recover. There are a lot of trade-offs that can be made
16 like that, things that can be done that are very effective.
17 But, again, you have to look at (indiscernible). But, it's my
18 general experience that even those projects cannot use up huge
19 sums of money. I mean, they are fairly modestly priced in terms
20 of habitat enhancement.

21 581

22 MR. KUBINA: You used the words use and access,
23 Commissioner, in your response. First of all, this is basically
24 your opinion, you haven't set down with the other trustees or
25 the Governor and really talked about this yourself; is that

1 correct? This is pretty much your own thoughts on it?

2 MR. HEINZ: I have definitely not talked with the other
3 trustees about this. Certainly, as the whole idea has
4 progressed, there has been discussion within the Administration.
5 As you saw very early in the process, the Governor outlined some
6 vision he had of Prince William Sound. And, I think several of
7 us did try to sit down and try to put our view of it into some
8 context. As I said, I saw more of a conservation authority as -
9 - everybody knows what a port authority is or an airport
10 authority, but this one's purpose would be conservation. And,
11 in that concept of use and access, that might include, as I
12 said, a landing area on some of these islands, a wharf, a cabin,
13 a trail to the top of the mountain, those types of things.
14 Those are not available now so those would be new additions in
15 that sense.

16 MR. KUBINA: I've talked to the Governor about this myself
17 and support some of his ideas out there. But, let me just press
18 you a little farther because you will be one of these trustees
19 so your personal thoughts obviously are going happen. In the
20 beginning, the Governor talked about a possible road to Cordova
21 and other things, and it seemed like those ideas really got kind
22 of shot down. This probably could not be used for that. What
23 are you thoughts on that, say, a road to Cordova is probably out
24 of bounds or the definitions there?

25 MR. HEINZ: Again, I think it's clearly outside this

1 definition. As I said, my understanding of the definition is
2 that it's very narrow. I can think a lot of things that I
3 wouldn't have even thought of as reclamation that don't meet the
4 definition.

5 MR. KUBINA: I mean, how about ports and harbors in the
6 areas affected, what would you think of that?

7 MR. HEINZ: Again, that, I think, fits my definition of a
8 conservation authority. But, again, as I would understand it,
9 that's not the type of activities people are looking at.

10 Mr. KUBINA: Would you assume then also that you are going
11 to in essence prioritize things, that obviously in the beginning
12 part of this you're going to spend most of your time and efforts
13 on scientific studies or how to mitigate the results of those
14 studies and things like that, and you're talking about down the
15 road 2, 3, 4, 10 years on other things as you have money left
16 over; would that be an accurate statement?

17 MR. HEINZ: I think you'll find I'm sort of a fiscal
18 conservative in that sense. Given the type definition, I think
19 the focus has to be on basically studies that are going to look
20 more at the recovery potential, studies that reveal reclamation
21 progresses can be made, what types of techniques might be more
22 effective, certain monies for implementing those techniques. I
23 guess it's my feeling that at some point people are just going
24 to see in a cost effective sense that there's a much larger
25 dollar resource than really it is sensible to spend in terms of

1 impact and everything else. I'm sure we could go out there and
2 build a lot more hatcheries or something else, but I'm not sure
3 that's what an area wants or needs.

4 MR. KUBINA: With that in mind, what would you think if we
5 got to a point five years down the road and we've done under the
6 narrow scope of the Clean Water Act probably provides and we're
7 to a point where nothings fits in that scope anymore, where do
8 you think we would stand or what might be the directions that
9 would come into your mind that would be taken if that scope is
10 reached or the limits of it?

11 MR. HEINZ: Well, I think in the practicality of ownership,
12 which again the land that's adjacent to the waters here and the
13 waters if you look at it, there is a very large federal
14 ownership as well as a state ownership. And, I think that there
15 is an argument that could be made.....

16 (Tape changed)

17 Tape 12, Side B

18 000

19 MR. HEINZ:general sense on it. I guess the way I
20 would express it to you is that if 10 or 20 years down the road
21 the fund and the trustees have done a good job, hopefully we're
22 talking about an area that has a context when people see it,
23 when they visit it, when they use it, when they conduct their
24 activities there, whatever, that hopefully it's better, a lot
25 better maybe even than it was at the time of the spill. And, I

1 think that's the challenge. It may be that the definition is
2 just too encumbering to accomplish that purpose, and sooner or
3 later reason prevails, I think.

4 MR. KUBINA: One last point then. If we reach that point
5 at some stage where we hit those limits, the document certainly
6 that we've had before us doesn't speak to this and I haven't
7 read the entire Clean Water Act only really know about what
8 people have told us of it, is there a possibility that we reach
9 a point where we say that's enough of this trusteeship and we
10 divide up what's left?

11 MR. HEINZ: Again, I wouldn't be adverse to that proposal.
12 I like to think about it in a positive context. I think this is
13 a unique opportunity for the state and federal government to
14 work together. As several of you know, I seem to end up with
15 the brunt of the conflict with the federal government issues
16 within the state departments so I'm not adverse to being at odds
17 with them. I think this is legitimately an opportunity to work
18 with them in a very positive way. I think, you know, over time
19 the trustees can realize that the federal government also has a
20 stake in that geographic area. And, I think we can help them be
21 responsible land owners and landlords in that area. And, as
22 such, maybe I'm being too optimistic in my hope that we can work
23 together there. And, I would hope that we didn't have to just
24 sort of split up, just split the money.

25 032

1 MR. GRUENBERG: I have Representative Phillips,
2 Representative Davidson (indiscernible - speaks too soft).

3 MS. PHILLIPS: :Commissioner, I know you haven't much time
4 or involvement in this state, but have you looked or had the
5 opportunity to look at us accepting a settlement in any other
6 light other than through the Clean Water Act?

7 MR. HEINZ: I have not personally thought about that at
8 all. I'm sorry. The Attorney General is the expert on that.
9 038

10 MR. DAVIDSON: Mr. Commissioner, thanks for coming today.
11 One area that I was thinking about, it seems that you feel that
12 there's possibly more money than they're going to be able to
13 utilize over the course of the decade. (Indiscernible) the
14 criteria that we're restricted to spending on, is that
15 (indiscernible)?

16 MR. HEINZ: Yes, I think it's -- I'm trying to portray to
17 you my personal feeling which is that while there would be some
18 immediate claims on the money and certainly the initial monies
19 that though they may be largely staked out, as I look through
20 this initial list of proposals and everything else, it's just
21 hard for me to visualize that list growing over time and being
22 supported over a time at levels of lots of tens of millions of
23 dollars a year. I have trouble expanding that list to that many
24 dollars over a long time. And, clearly, as I would understand
25 the settlement, over time there are a lot of dollars flowing in.

1 MR. DAVIDSON: Do you feel that the reward, then, was maybe
2 too large, that \$1 million settlement, or what would be your
3 response to that?

4 MR. HEINZ: As I talked about earlier when we first
5 started, my recommendation to you is clearly to accept the
6 settlement. And, that's based upon trying to think through what
7 rejection of the settlement means. And, I don't think there is
8 a chance of negotiating a better settlement and I think there
9 are some very legitimate concerns you ought to worry about in
10 terms of litigation to achieve the same ends. So, I accept that
11 the Attorney General did a good job in a tough negotiation
12 against someone frankly that I've known and had to negotiate
13 with for 15 and I think he done pretty good. So, the way I
14 would express it is, I'd like my share, you can decide what to
15 do with yours. But, I think we ought to take it.

16 UNIDENTIFIED MALE: You mentioned a conservation authority,
17 Commissioner, yet it seems like both in the last administration
18 as well as this one there has not been a whole lot of enthusiasm
19 for a biological recovery area which to me is similar to a
20 conservation authority. And, I was wondering if you would
21 expand on what you would see as a conservation authority and
22 would it, in fact, encompass some of the ideas that I think are
23 suggested or put forth in a biological recovery area.

24 MR. HEINZ: The reason I chose the conservation authority
25 is that conservation to me is the wise use and so it could be

1 (indiscernible) authority. The reason I chose authority is that
2 people understand that authorities can conduct almost any
3 activity that I know of that a business can, buy, sell, lease,
4 operate, contract for, contract with, whatever. It is a vehicle
5 that does everything and anything related to its purpose. In
6 this case, I think I was trying to reflect compatibility of some
7 of the long-standing uses of the area in terms of fisheries with
8 currently an expanded recreation and yet, at the same time, a
9 very clearly expanded scientific interest in the area and a real
10 basis to build a science educational type presence. And, those
11 are at least three of the axis that I saw, the recreation, the
12 traditional sort of commercial harvest from the water, the
13 fisheries, and the science educational use. And, again, I think
14 a conservation authority is big enough to include more than that
15 if you want it, but those seem like pretty good starting points
16 in my mind.

17 UNIDENTIFIED MALE: Would that science and educational
18 component include (indiscernible) for better prevention as well
19 as better response, or have you carried that beyond these
20 initial ideas?

21 MR. HEINZ: It could if that was the right place to do it.
22 Again, I was not looking that this idea as necessarily trying to
23 force things into the area, but really trying to make some things
24 work naturally in the area, an inter-weavement (ph). The Seward
25 marine mammal center that I mentioned before, I mean, there's

1 obviously a research science assigned to that that's very
2 important as an educational side that's very important. But
3 also, frankly, if anybody has ever seen those kind of
4 facilities, they're tremendous attractions for visitors. There
5 might be some aspects of it that almost become recreational.
6 You can go pretty far with those kinds of ideas, and it would be
7 unique to that area and it would build on that area.

8 UNIDENTIFIED MALE: Commissioner, you've indicated to this
9 Committee that you feel strongly that your recommendation is to
10 sign on the dotted line, that's in our best interest. And,
11 because you seem so convinced of that, I was wondering -- I
12 realize my question here is probably outside the purview of the
13 state aspect of this, but I was wondering would you say that in
14 spite of what you felt about the Plea Agreement and exactly how
15 do you feel about that Plea Agreement?

16 MR. HEINZ: I'm sorry. I don't really understand the last
17 part of the question.

18 UNIDENTIFIED MALE: If the Plea Agreement stands alone from
19 this settlement, we know that Alyeska, a company which you
20 probably have a very close association as well as knowledge, it
21 seems that the -- well, they probably got the best deal of all
22 from what I understand. And, I was just wondering because you
23 are recommending or advising that we sign the settlement, I was
24 wondering what your thoughts were regards that Plea Agreement as
25 it affects Alyeska?

1 MR. HEINZ: I'm still not sure I can differentiate just
2 exactly what you're looking for. Let me try and say to you that
3 I see the settlement as a settlement of damages. And, certainly
4 as I explained earlier, that settlement of damages, I think this
5 is the kind of deal where presented to you as (indiscernible), I
6 think (indiscernible - background noise). I just see a lot of
7 difficulties with the alternatives, litigation or further
8 negotiations. As to those damages, I guess it was my
9 understanding that the only relationship of Exxon and Alyeska,
10 in particular, being drawn into it related to those damage
11 claims specifically. And, as I understood the basis of that,
12 Exxon felt they would be sort of held in double jeopardy if that
13 provision was not included. And, I think there's some validity
14 to that line of reasoning on their part. So, if they settled
15 this, Exxon, but there was another whole route back into Exxon
16 for those same claims, I can understand them not feeling they
17 had made a settlement.

18 UNIDENTIFIED MALE: I certainly can understand your
19 approach there. However, what would be your feeling as regards
20 to the damages caused or not caused by Alyeska?

21 MR. HEINZ: I think the way I would have to answer you
22 there is to say that I visualize, for instance, in a court room
23 setting where one is in the damage allocation phase of this, and
24 I think clearly not only Exxon and Alyeska would be in there,
25 there's no doubt about that in my mind, but I think also the

1 United States Coast Guard and the state of Alaska would be in
2 there, at least those four parties for sure. And, I just am
3 unable to predict what, you know, in that sort of court room
4 setting where everybody gets to shoot at everybody and it's one
5 of those wonderful rules that apply in court, I just can't tell
6 you where a judge would come down in terms of the allocation
7 amongst those four parties.

8 UNIDENTIFIED MALE: We received an interesting letter today
9 as well as yesterday. And, it's my understanding there were, in
10 fact, some examples where Alyeska did not perform in the manner
11 in which they had agreed they would perform, that is, promises
12 to Congress, promises to the state of Alaska. And, if I'm not
13 mistaken, I think you were in a very key position dealing with
14 some of these -- well, dealing with some of the agreed upon
15 responses that would have been taken by Alyeska in event of a
16 major spill out in the Sound, yet since was not the case and I
17 think there was a few days there where the right hand and the
18 left hand got pretty well tangled up with not only the
19 historical promises as well as some of the other provisions of
20 what was stated would be done in event of a major spill such as
21 the Exxon Valdez. And, I was just wondering how you felt how
22 Alyeska's role as it relates to how they're being taken care of.
23 And, I can understand that we don't want to put anybody in
24 double jeopardy, that's a constitutional basic. But, at the
25 same time, it seems like there were some key players here and

1 some key roles and by roll of the dice, I guess, some of those
2 key players are going to be in even more key positions. I'd
3 just like to go into another area here and that is.....

4 MR. HEINZ: Could I? Again, I just respond extensively
5 other than say that I'm aware that there is some allegation by
6 Representative Miller. I have not seen it so I don't even know
7 what it says. You are right. I mean, clearly at the time of
8 the spill, I was ARCO's representative to TAPS ownership
9 committee, and yes, I do have knowledge in that sense of what
10 went on, TAPS ownership, whatever. I was one of those people
11 that was woken up at 2:30 in the morning of the spill and
12 certainly I've lived through a lot of the events and I have
13 impressions. And, it would be really very inappropriate for me
14 to comment on that to any extent absent, again, not knowing what
15 forums and what settings may come out in the future. So, it's
16 an area that I personally can't touch I think for both legal and
17 moral grounds.

18 UNIDENTIFIED MALE: I'm not trying to get you in a
19 quandary, Commissioner. It's just with your heavy emphasis and
20 recommendation on settling this and the other relationship prior
21 to this spill as well as what happens in the Plea Agreement
22 struck a chord of interest and I won't continue to pursue that,
23 but I appreciate your candor and thank you.

24 MR. HEINZ: I think again you should realize that that was
25 one of the reasons I purposely disqualified myself really from

1 any conversations with the Attorney General about the settlement
2 and all these types of things. I accept the fact that having
3 been on the other side of this specific issue that it would be
4 unethical for me in regards to those past associations to cross
5 over and be part of the basic formulation of a litigation
6 strategy. Now, in all my conversations with the Attorney
7 General, he sees no problem, and I have no ethical problems in
8 moving forward once the settlement is reached with the
9 implementation thereof. But, as long as there is that tie to
10 the past, I do have to stick to somewhat of my ethical
11 considerations from the past.

12 UNIDENTIFIED MALE: Well, moving then on down past the
13 settlement, what do you see as the role of the trustees and how
14 they would expend money for subsequent clean-up? How would you
15 as a trustee look out for Alaska's interest? This settlement
16 apparently means that if there is subsequent clean-up, at least
17 \$100 million of it down the line is going to be paid for by
18 Exxon. And, does that mean then that you would feel then that
19 if there was more than \$100 million of clean-up required that
20 you would see that it would be the obligation of the trust to
21 provide the funds to do that?

22 MR. HEINZ: I think there's a little difference in the way
23 we're looking at it. As I understood, there was a portion of
24 this that recognized that there might be additional damages, and
25 that's what the \$100 million was about, for damages, and there

1 really was no promise. And, it may not be a very proper
2 judgement to clean up anymore. The point here is the
3 compensation is for damages. And, it may be that the right
4 thing is to not clean up anymore. I noticed also from the
5 recent news reports here lately, according to the commentary was
6 that maybe some damage had been done by some of the clean-up
7 that should have been avoided and maybe the thing to do at some
8 point was to stop cleaning up and just recognize that there was
9 damage. And, again, (indiscernible) trying to suggest that in
10 some of the areas that, for instance, conversion to a park type
11 area, some place on a bay, or something, designed for human use,
12 it may not be necessary to resort to some of these techniques
13 and that may be a better use for it. I don't see this as this
14 money has to go in clean-up. I'm not sure we haven't reached
15 pretty far towards the end of the road of what is an effective
16 clean-up in terms of restoration.

17 UNIDENTIFIED MALE: Well, then going on down the calendar
18 then, how would you see additional funds dealings with the
19 problem of subsistence? We don't know how long these people can
20 depend on the resources there. But, do you see a role for the
21 trustees in righting that wrong and those damaged resources as
22 well as people dependent on the life style?

23 MR. HEINZ: My personal feeling is that a number of the
24 villages that were very directly oiled, I think, suffered very
25 direct damage and I think there is an obligation here to assure

1 that in the reclamation sense that as much as can done as
2 humanly possible to restore that to the productivity it was
3 before.

4 UNIDENTIFIED MALE: Commissioner, my final question
5 concerns the reimbursements to the 470 fund. What would be your
6 feelings about any of the monies that would come to the state as
7 a result of the settlement reimbursing the 470 fund?

8 MR. HEINZ: I really haven't taken a position at all on
9 that. I haven't even thought about it.

10 258

11 (Chairman Gruenberg adjourned the meeting at 2:00 p.m.)
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HOUSE SPECIAL COMMITTEE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT
April 12, 1991
12:00 P.M.

MEMBERS PRESENT:

Rep. Max Gruenberg
Rep. Cliff Davidson
Rep. Bill Hudson
Rep. Gene Kubina
Rep. Mike Navarre
Rep. Gail Phillips
Rep. Fran Ulmer

MEMBERS ABSENT:

Rep. Ramona Barnes
Rep. Dave Donley

OTHER LEGISLATORS AND STAFF PRESENT:

Attorney General Charles Cole
Rep. Kay Brown
Pat Williams, Committee Secretary
Andy Hemenway, Committee Attorney
Gregg Erickson, Committee Economist

1 Tape 13, Side A

2 000

3 Chairman Gruenberg called the meeting to order at 12:08 p.m.
4 on April 12, 1991 in Room 17, House Transportation Committee Room
5 in the Capital Building. He noted the presence of the Committee
6 members present, and welcomed the Attorney General of the State
7 of Alaska, Charles Cole, to the meeting.

8 Chairman Gruenberg pointed out that they had previously left
9 off with questions regarding the Consent Decree on page four with
10 question 29. He stated that before they began he was asked to
11 clear up a misunderstanding concerning the disclosure of
12 information. He asked if the legislature were to pass a
13 concurrent resolution requesting the AG to release information to
14 the public, what would be his response.

15 The Attorney General said that he would give such action on
16 the part of the legislature weighty consideration. He said that
17 he thinks the legislative body is the body elected by the people
18 and as a matter of courtesy, if not sound judgement, it should
19 have the opportunity to express its views to him and he would
20 carefully consider such.

21 059

22 Chairman Gruenberg began questioning Attorney General Cole
23 with question number 31 as follows:

24 MR. GRUENBERG: The first sentence of paragraph B provides
25 that Exxon has no clean-up obligation after final approval of the

1 Consent Decree except as set forth in this agreement. Has
2 another paragraph of the agreement imposed clean-up obligations
3 after final approval?

4 MR. COLE: Yes.

5 MR. GRUENBERG: Please explain.

6 MR. COLE: Paragraph 11A found on page 11 provides that
7 Exxon shall continue clean-up work relating to the oil spill
8 after the effective date as directed subject to prior approval by
9 the federal on-scene coordinator (indiscernible) work directed by
10 the federal on-scene coordinator and that that obligation to
11 continue continue clean-up work after the effective date
12 continues with directions of the state on-scene coordinator.

13 MR. GRUENBERG: And, that is the reference?

14 MR. COLE: Well, the.....

15 MR. GRUENBERG: The phrase that the question refers to is on
16 page 12 of the Consent Decree under subsection B, lines two and
17 three, "Upon final approval, Exxon shall have no further
18 obligation with respect to clean-up of the oil spill except as
19 set forth in this agreement."

20 MR. COLE: Well, the agreement requires them to continue to
21 perform clean-up work as required by the federal and state on-
22 scene coordinators. I'm certain that no one is of the view that
23 upon final approval Exxon is suddenly somewhat magically released
24 from its clean-up obligations.

25 093

1 MR. GRUENBERG: Next is question 33. To what extent is
2 Exxon's current liability for clean-up limited by the settlement?
3 Why are we reimbursing Exxon for future clean-up even if the
4 settlement is rejected?

5 MR. COLE: The governments are not reimbursing Exxon for
6 future clean-up even if the settlement is rejected. The
7 provision, paragraph 12, was in effort to give Exxon credit for
8 work it performed under the Settlement Agreement after the
9 effective date if the Settlement Agreement does not have final
10 approval. In other words, Exxon's view was well, if we perform
11 clean-up work under the agreement and then the agreement is not
12 approved and we are back performing clean-up work absent this
13 Settlement Agreement, we should be entitled to credit for the
14 work which we performed under the disapproved Settlement
15 Agreement. They didn't want to perform clean-up work under this
16 agreement, have the agreement disapproved, and then, not get
17 credit as against their clean-up obligations for the work which
18 they had performed under the Settlement Agreement. That's the
19 basis for that provision.

20 MR. GRUENBERG: Do we know how much we can anticipate that
21 Exxon will be able to deduct under this provision tax-wise?

22 MR. COLE: Exxon's tax return or prospective tax returns
23 were not furnished to me, and I do not know what the tax
24 consequences of this provision or the agreement itself has on
25 Exxon.

1 MR. GRUENBERG: I'm sorry. It wasn't a tax deduction, how
2 much their credit will be.

3 MR. COLE: Well, that will depend upon the amount of the
4 clean-up and work. But, let's be clear about it. They may not
5 receive any credit at all. I mean, if I understand your question
6 correctly, they may be required to perform clean-up work and as
7 you say receive credit against their 1992 payment for the work
8 directed by the state and federal on-scene coordinators in 1991.
9 Maybe now I understand your question a little better. Well, you
10 can sort of see if you look at paragraph 13 that that \$35 million
11 figure looms out there. Now, that is not necessary any limit one
12 way or the other, but it was a sense and only a sense of what the
13 cost of state and federally directed clean-up activities would
14 cost in 1991, perhaps slightly above that, I suspect, and it
15 could very well go below it, I suspect. I choose those words
16 very carefully or articulate them slowly because I try to
17 (indiscernible) correctly the thought. We conferred with the
18 federal representatives and we conferred with the state
19 representatives when we arrived at that number. It wasn't
20 something that we plucked out of the ionosphere.

21 MR. GRUENBERG: What is this year's 1992 budget for clean-
22 up, do you know?

23 MR. COLE: I don't have that figure before me.

24 MR. GRUENBERG: Do you know what the budget is for '93 to
25 '95?

1 MR. COLE: For clean-up, I believe and only believe that
2 clean-up expenditures in 1992, '93 are not anticipated. I
3 believe that it is expected that all clean-up work will be
4 completed in 1991 calendar year.

5 MR. GRUENBERG: Do you have any idea what the figures are
6 for this calendar year?

7 MR. COLE: No, but I believe they are contained in the pink
8 books, and I can have them here later after a recess.

9 MR. GRUENBERG: If you could provide that information in
10 writing to us?

11 MR. COLE: I shall.

12 170

13 MR. GRUENBERG: We're going to move on now to the release
14 paragraphs, which is the paragraphs 13 and following up on page
15 14. Other questions by the Committee at this point? If not,
16 we'll proceed to question 35. Mr. Attorney General, in the state
17 case, the state asserted claims for lost revenue from the salmon
18 enhancement tax, loss of oil and gas production revenue tax, loss
19 of (indiscernible) tax revenue, plus loss of oil production
20 royalties. These claims will be given up as to Exxon. Would the
21 state have been able to prove this claimed loss of revenue and,
22 if so, how much did the state believe it could prove? Does the
23 state intent to continue litigating against other defendants in
24 the state case? If so, do you expect that it will be successful?
25 What has it gained in the Consent Decree to compensate for the

1 loss of those claims?

2 MR. COLE: It's true that under the Settlement Agreement the
3 state released the claims which are recited in the first sentence
4 of this paragraph. The next question of whether the state would
5 have been able to prove this claimed loss of revenue, I believe
6 the state would have been able to prove some loss of revenue.
7 How much? I would prefer not to say in a public meeting because
8 we are continuing to assert those claims against Alyeska Pipeline
9 Service Company and its constituent owner company.

10 MR. GRUENBERG: Would you be willing to answer that question
11 in executive session?

12 MR. COLE: Yes.

13 MR. GRUENBERG: Would you be prepared to do so today?

14 MR. COLE: I could give a sense of it today.

15 (Chairman Gruenberg noted that that should be put on the
16 list to be covered at a confidential briefing next week.)

17 201

18 MR. NAVARRE: As we're talking confidential, did the
19 trustees ever set up to do the assessment or give you or give
20 anyone a number or range of numbers in terms of what the value
21 was for, you know, if we have \$1.1 billion is where we're at in
22 the settlement, I'm wondering if there is some number that we can
23 look at that provides us for range of values that the trustees
24 came up with based on their assessment.

25 MR. COLE: The answer specifically to that specific question

1 is that there is no single number, and there is not in writing a
2 range of numbers. I have said before, my personal view is that
3 the possibility of recovering less \$900 to \$950 million, or
4 however you want to quantify this settlement, is greater than the
5 possibility that the governments would recover more.

6 MR. NAVARRE: I appreciate your opinion as our attorney. I
7 would like to know whether or not, in fact, the trustees provided
8 a range of values for an estimate of what the case was worth that
9 we could look at it and maybe assess that and give our opinion as
10 to whether or not we think after weighing it in terms of
11 legalities, how hard it is to collect or prove damages of a
12 certain type in court, whether we could make an assessment as to
13 whether or not the \$900 million was enough or not enough.

14 MR. COLE: Let me respond preliminarily as follows. There
15 have been over the past several months three state trustees. I,
16 as the Attorney General, was one of them, the Commissioner of
17 Fish and Game was another, and the Commissioner of Environmental
18 Conservation was another. Those other Commissioners were not
19 those who evaluated the settlement range. That evaluation was
20 done by the Department of Law. The Oil Spill Section has been
21 working on this litigation for essentially two years. And, the
22 estimates of settlement range were discussed among members of
23 that team and myself. There is, however, nothing in writing
24 which, as far as I recalls, gives an overall estimate of the
25 settlement's range.

1 MR. NAVARRE: Attorney General, I guess what I need to have
2 in order to, I guess, feel that this is a good settlement or not
3 is some information that tells me what the value of the resource
4 damage assessment is. And, you, as our Attorney General, looked
5 at some information like that and valued it and determined what
6 you thought was maybe likely recoverable. And, you and the
7 Department of Law made that assessment and maybe based the
8 settlement on that. That's fine. I'd like to have the same type
9 of information in order to make my best judgement, and I'm
10 wondering if that's available either through you or through the
11 trustees, whether it's available here, whether it would be
12 available if we went into executive session because, I guess, my
13 frustration is that if I'm going to make an informed decision on
14 this, I need some information.

15 MR. COLE: I will respond to this in executive session. You
16 may see all of the economic studies which the Department of Law
17 had prepared. A number of those economic studies were not
18 complete. Overall let me say with respect to the settlement
19 amount, the large numbers in any settlement or any claim against
20 Exxon were damages to the natural resources owned by the United
21 States or the state of Alaska. The large damages in the range of
22 hundreds of millions cannot be derived or established economic
23 (indiscernible) by the state such as loss of taxes. Large
24 damages claimed against Exxon would come from subsistence values
25 and largely, I think, non-use values so far as damages to be

1 sustained by the governments. And, I've said before and I repeat
2 that measuring existing values is one of the most difficult
3 exercises or requirements in the law of damages. There is very
4 little law in that area and the economists are still to this day
5 trying to formulate tests to measure those damages. Now, I could
6 elaborate on that a little bit by simply saying largely those are
7 measured by contention valuation studies.

8 MR. NAVARRE: I guess I appreciate those observations. What
9 I'm wondering is, maybe a direct question, is there a summary
10 sheet that we could look at which gives us a range of values for
11 each of the possibilities, what is the highest valuation that we
12 could put on this case, and then, we could look at it and weight
13 it, like I'm sure that you did, to see what is reasonable that we
14 could achieve?

15 MR. COLE: I'll say this. We could give you preliminary
16 pilot studies of contingent valuations. That's where the big
17 numbers are. We can also give you (indiscernible) somewhat
18 preliminary perhaps, somewhat tentative perhaps, but I think
19 reports which give a good sense of the economic damages. We
20 would be prepared to do that.

21 MR. NAVARRE: I would like to have that, and if we need to
22 do that in executive session, that's fine with me. I also
23 recognize that it may be hard under the laws to determine whether
24 or not it's a loss to the federal government or a loss to the
25 state government, so that part of the settlement helps in that

1 respect. At the same time, we're going to be shipping oil out of
2 Alaska for a long time and maybe we ought to reach some
3 conclusions as to how we're going to value these things and who's
4 going to be compensated for the different migratory water fowl or
5 the marine life, things like that. Maybe that needs to be
6 litigated. I mean, maybe we need to find out who gets what. I
7 don't know, that's a policy problem. It's easier if you don't
8 litigate it, obviously. But, maybe from a policy perspective,
9 in case, God forbid, we ever have another spill like this, we at
10 least have some precedence in place.

11 MR. GRUENBERG: Did you wish to respond?

12 MR. COLE: No, I think that Representative Navarre has
13 touched upon a point which we would be glad to furnish him all
14 the information which we have and discuss these damage tests with
15 him and with the rest of the Committee.

16 MR. GRUENBERG: Would you prefer to do that in executive
17 session?

18 MR. COLE: Oh, I think it's essential.

19 MR. GRUENBERG: We will tentatively schedule an executive
20 session for one of our visits with you next week, and we will
21 determine before the end of today which of those will be the
22 executive session.

23 MR. COLE: I would like to have attending that session with
24 me representatives of the Oil Spill Section of the Department of
25 Law in Anchorage to furnish you with their insights. As I've

1 said, members of that section were with me in Washington, D. C.
2 when we negotiated this agreement and I relied upon their
3 judgement and knowledge and experience in this area when the
4 settlement was negotiated. I did not simply take it upon myself
5 to make all of this (indiscernible). I would like to say, I
6 believe I can safely say there was substantial agreement among
7 all members of the oil spill (indiscernible - background noise)
8 when we negotiated this agreement in Wasnington, D. C.

9 MR. GRUENBERG: I would like to tentatively set that
10 executive session for next Tuesday.

11 400

12 (Discussion ensued regarding when to meet in executive
13 session.)

14 MR. KUBINA: One thing I'm getting from what you're saying
15 with Representative Navarre's questions is that you really didn't
16 study the damage assessment and come up with a figure, that
17 really your argument that this is a good settlement is really
18 based not so much on what the damage assessment really is out
19 there, but irrelevant of what that is, what you think that we may
20 be able to get in the long term no matter what the studies say
21 and the argument that having something now is better than, I
22 guess, what you might get later. Is that accurate?

23 MR. COLE: Let me see if I can put that somewhat in my own
24 words. No experienced trial attorney in litigation which is
25 (indiscernible) realize in my view in settling the case on a

1 finite number. It's an art form, it's not a science. And,
2 attorneys who say well, my damages are \$1 million, I'm going to
3 stick with \$1 million and so forth, because experienced, I think
4 all experienced trial counsels full well recognizes that cases
5 cannot be fairly evaluated in that fashion. And, I had a sense
6 and a good sense of the outer limits of the amount of damage
7 testimony which would be introduced or attempted to be introduced
8 into evidence by the State. I had a good sense of that. On the
9 other hand, I evaluated the possibility that the court might not
10 admit all of that testimony. And, I also evaluated how strong
11 were the credit worthiness of that testimony might be before a
12 jury. That's always important, and that's what I did.

13 MR. KUBINA: Let me clarify something that I think you said
14 a few days back and I took it wrong. I believe you said we have
15 agreed in the document before us that we would not sue Alyeska on
16 natural resource damages; is that correct?

17 MR. COLE: That is correct.

18 MR. KUBINA: But, that we do have the ability to sue on
19 other grounds and there is, in fact, a lawsuit right now between
20 the state and Alyeska.

21 MR. COLE: That is correct.

22 MR. KUBINA: Did you not say somewhere in there, you said
23 you gave your word as Attorney General that there would not be --
24 you would not sue anyone else?

25 MR. COLE: That's not correct.

1 MR. KUBINA: That was someone else you said that about. Who
2 was that?

3 MR. COLE: Here's what I said. I said that I gave writing
4 to Exxon that the State would not file criminal charges in the
5 future against Exxon.

6 MR. KUBINA: You're right. That's the one I was thinking
7 bout.

8 MR. COLE: And, let me just say, I said that because I
9 thought the decision substantiatively not to sue Exxon criminally
10 or file criminal charges against Exxon had been made two years
11 ago. But, there has been no agreement or representation not to
12 sue Alyeska and its constituent owner companies criminally or
13 anyone else with whom or against whom the State has a valid claim
14 worthy of prosecution in my judgment.

15 MR. KUBINA: I have one other thing I'd like to ask you and
16 that is a letter we received today and announced representative
17 committee on merchant marine and fisheries. Have you had a
18 chance to look at this letter, the one dated today?

19 MR. COLE: The one dated today, no, I have not, sir.

20 MR. KUBINA: It is to Judge Hall and signed by the three
21 sub-committee chairmen, Hurdell, Suds and Huges (ph), and it asks
22 specifically that they respectfully recommend that you not
23 approve the proposal unless and until certain fundamental issues
24 are clarified. And, on page two lists three specific points in
25 the first paragraph there at the top, 1) disclosure to the court

1 of enough information to permit a fully informed judgement about
2 the monetary sufficiency of the proposed settlement, 2) a
3 commitment by the trustees to release all damage assessment and
4 restoration studies or related documents to the public after the
5 settlement is approved, and 3) clarification by the trustees
6 concerning the manner in which the recovered funds will be spent
7 and the extent of public participation in the restoration. I'd
8 like your comments basically in general on all three points, and
9 if you believe these are three points that we should take into
10 consideration in rejecting or accepting this document.

11 MR. COLE: I'd be pleased to respond. Let us address number
12 one. "Disclosure to the court of enough information to permit a
13 fully informed judgement about the monetary sufficiency of the
14 settlement." I represented this morning to this Committee that
15 the Department of Law, myself, as Attorney General, will furnish
16 to this Committee all of the information dealing with the nature
17 and extent of the damages which is in the possession of the
18 Department of Law. Now, how this Committee uses it and how it
19 evaluates it is up to the Committee, but I've certainly expressed
20 a willingness to provide the Committee with data to permit it to
21 make "a fully informed judgement about the monetary sufficiency
22 of the proposed settlement." I really question, I must say that
23 I think that that's the type of informed judgement which trial
24 lawyers are experienced to make, an informed judgement. And, I,
25 however, will commit that to the Chairman of this Committee's

1 comments to this Committee and abide by and acquiesce in his
2 views on that regard. I think at the end of the day
3 (indiscernible - cough) and his supporting staffs, we will
4 certainly furnish you with the information.

5 Number two, "A commitment by the trustees to release all
6 damage assessment and restoration studies and related documents
7 to the public after the settlement is approved." I do not agree
8 with that for the reasons which I repeatedly stressed
9 (indiscernible - cough) unless you would like me to address them
10 now.

11 MR. KUBINA: Representative Davidson, I believe, would like
12 for you to reiterate those reasons.

13 MR. DAVIDSON: If you really wouldn't mind, Attorney
14 General, I really would appreciate the review.

15 MR. COLE: All right. Let me say this, if this settlement
16 is approved, the State would continue to prosecute these claims
17 against Alyeska Pipeline Service Company. And, an additional
18 comment in that regard that Congressman Miller, I believe, is
19 going to furnish the State with information which will be helpful
20 in the prosecution of those claims. But, if all of this data
21 which this Committee suggests be released, it will be available
22 to Alyeska Pipeline Service Company and its constituent members
23 and it would be used by them, I'm certain, in the defense of the
24 State's claims against them. In my judgement, the State should
25 not give that credible litigation gift to Alyeska. It would make

1 a much more difficult prosecution of the claims against Alyeska.
2 Bear in mind in addition that Alyeska is not giving us its
3 information, all of its witnesses' statements, all of its in-
4 house studies and analysis and damage assessment studies. And, I
5 see no reason why under those circumstances the State should make
6 such a multi-million dollar donation to Alyeska. Let me add that
7 the State now has some 20 lawsuits filed against it on damages
8 arising out of the oil spill. Daily I receive as Attorney
9 General copies of more claims for actual damages and punitive
10 damages. I have furnished this Committee with a compilation of
11 those claims and, in addition, a copy of all of those complaints.
12 If one were to add up the amount of the complaints stated in the
13 prayers of relief for all of those claims, the amount is easily
14 in excess of \$500 million. I want to defend on behalf of the
15 State most effectively against those claims and I do not want to
16 furnish the claimants with all of the information which the State
17 has acquired so it can be used in furtherance of claims against
18 the State. I, in addition, I'm told and am looking into it that
19 the 1989 appropriations and the 1990 appropriations from the
20 legislature contain a provision that those appropriations were
21 made under representation that those amounts, could be recovered
22 from Alyeska. That would seem to me that the legislature made
23 those appropriations in furtherance, not in pure scientific
24 studies, but in furtherance of the prosecution of the claims
25 against Exxon and Alyeska. And, therefore, it's fair to say that

1 that is a recognition by the legislature that those monies were
2 expended for the settlement of litigation work product.

3 Number three, "Clarifications by the trustees concerning the
4 manner in which the recovered funds will be spent and the extent
5 of public participation in the restoration planning and decision-
6 making process." I discussed this subject, I believe, before
7 this Committee at length. You will recall that there is a
8 provision in the agreement for the creation of a public advisory
9 body. We did not list the constituent members in that group
10 because we wanted to have time to be able to conduct hearings and
11 receive comments as to what groups should be on that advisory
12 body. And, it's my belief that the trustees.....

13 (Tape changed)

14 Tape 13, Side B

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16for the expenditure of the recovered funds. And, in
17 that regard let me say that those guidelines are the very
18 guidelines which Congress itself adopted in the Clean Water Act
19 and it's just an observation that if Congress itself was not
20 satisfied with those guidelines in adopting the Clean Water Act,
21 one would think they would have been more specific about the
22 guidelines. But, I think Congress wisely enacted the limitations
23 which they did in recognition of the fact that each oil spill
24 contains different elements of damage, different possibilities to
25 restore the damaged resources, different possibilities of

1 acquisition of alternative resources, and wisely committed that
2 decision to the federal trustees.

3 MR. KUBINA: I guess I would summarize that then, one and
4 three you believe that you have gone to great extent to deal with
5 those two points of concern, but two you'd be in disagreement
6 with the position?

7 MR. COLE: Yes, and I think that before the trustees would
8 make any decisions on the lines sought in number three, it should
9 receive input from the people in the spill-affected areas to see
10 what their desires are, what do they think are the best use of
11 those funds. I mean, instead of having three federal trustees
12 sitting in Washington, D. C. saying this is what I think we ought
13 to do with these funds, I think what we ought to do is we ought
14 to hear from the people in the spill-affected areas, you know, in
15 your area, say, tell us, members of the public, what you think we
16 ought to do with these funds and would be restore them for your
17 use. It just makes sense to me.

18 MR. KUBINA: Mr. Chairman, my last question, a very short
19 one. Can you, Attorney General, tell me if you have knowledge of
20 Exxon trying to settle other third party claims? Is there an
21 effort going on by that corporation to do what they've done with
22 the state and federal government? And, is it a serious effort, if
23 there is one, in your opinion?

24 MR. COLE: I really don't know the answer to that question.
25 I have not spoken to the Exxon lawyers since the night this

1 agreement was signed, and I've not spoken with the lawyers in
2 Anchorage, and I've not spoken in that regard with the lawyers
3 for the claimants.

4 MR. KUBINA: Was it discussed during the negotiations about
5 third party claims or how to deal with the rest of the lawsuits?

6 MR. COLE: No.

7 039

8 MR. HUDSON: Just a statement to begin with. I guess now
9 I've attended everyone of these meetings and I've been fortunate
10 enough to attend a couple of the senate meetings as well and it's
11 been interesting to listen because there were some questions on
12 that side that are coming out over here. One thing that I heard
13 the other day discussed was this relationship between the
14 settlement with Exxon under these circumstances and the expected
15 continuing litigation against Alyeska. I think that's a critical
16 element in our decision-making process here as to what the
17 Attorney General, how he sees that in his mind. And, I guess
18 what I'd like to do as we get into executive session, Attorney
19 General, is to sort of get into your mind just a little bit. I
20 don't know what we're going to find there. (Laughs) But, let me
21 tell you why. We've not been party to the negotiations, not with
22 Exxon nor have we been party to many of the probable strategy
23 meetings that you've had with those you confer with on a legal
24 basis on behalf of the state of Alaska. And, it seems to me it
25 would be good for us to hear what you expect from this and what

1 your expectations from this current settlement with Exxon and
2 what you expect out of it. And, when we have that, Mr. Chairman,
3 I would ask for that. And, this is the question, Mr. Attorney
4 General, and that is do you still feel that you have sufficient
5 funds in the fiscal year '92 budget to aggressively pursue your
6 litigation of claims against Alyeska?

7 MR. COLE: Well, the answer to that question, I'm not quite
8 sure because I never know where the fiscal appropriation winds
9 up, and I haven't been able to (indiscernible) of those matters
10 regarding the Department of Law as I'd like to. I felt, however,
11 that the Department of Law needs a super-fund to continue the
12 litigation which I think it faces not only in the prosecution of
13 the claims but also for the expenses on the claims against the
14 state. But, with respect to the proposed use of these funds, I
15 would say that maybe questions of that nature could be addressed
16 to Tom Campbell, the General Counsel of NOA, when he is here next
17 Tuesday. He might be able to furnish some insight in that regard
18 and he works with Dr. Canounce (ph) internationally known and
19 respected scientist.

20 MR. HUDSON: The three questions that came up above, after
21 analyzing this carefully, I don't see how in the world the third
22 demand by this Committee could be met because how in the world
23 are we going to possibly know what the long term uses of these
24 funds are going to be until we get into to the program, programs
25 developed to the best of the needs indicated by the scientific

1 data. So, again, it's Washington, D. C., no doubt, looking after
2 what they think are the right interests. I don't see how that
3 can be possibly responsible.

4 MR. COLE: I agree with the statement. What I'd like to say
5 is that here we have an agreement which gives the state
6 representatives power over the decisions made in Washington, D.
7 C. dealing with Alaska's natural resources. And, you know, I
8 think that's one of the major accomplishments of this agreement.
9 I mean, we can to say to the federal representatives, look, we're
10 not (indiscernible) to the agreement to take your dictates, how
11 this money is spent and how Alaska's natural resources are going
12 to be restored. That to me is a major achievement, but maybe I
13 missed the boat. But, I say that here under the settlement, we
14 have a voice in how the federal natural resource recoverable
15 damages would be spent. Look at it this way, if we gone our way
16 in the prosecution of the state claims against Alyeska, certainly
17 we know that we would only get some share, or fraction, or
18 portion of recovery for the natural resource damages because it's
19 clear beyond any question that the federal government had the
20 right to recover for a good portion of the damaged resources in
21 Prince William Sound. And, if they had recovered for their own,
22 they and they alone would have had the right to expend those
23 funds however they wanted and the state would have had no voice
24 whatsoever. Under this agreement, the state has in a sense veto
25 power of how the federal damage recoveries can be expended. It's

1 a major accomplishment.

2 125

3 MR. DAVIDSON: Mr. Attorney General, what I'd like to
4 understand is the very first vision, for lack of a better term,
5 the vision number \$1.2 billion is the very first number that I
6 heard and we have continued to keep before us. In fact, it was
7 that very number that became the focus of the settlement. Now,
8 that number, as I understand from your discussions in the various
9 committees I've heard you, was not based on contingent valuation,
10 it was not based on pilot studies, that was the number, so that's
11 the first statement. Now, you talked about the economic damage
12 and sir, I must admit my questions are ignorant because I do not
13 have the slightest knowledge of the art form in which you excel.
14 But, on the economic damage, it appears to me that the state in
15 the effort, the team, did not sit down with the litigants who
16 were damaged and who have now become third-party litigants. It
17 appears to me that we did not make that effort to sit down with
18 the people of Alaska and also with the federal government and
19 also with Exxon and say, now, we want to talk and we would like
20 to arrange a settlement that not only takes care of the state of
21 Alaska and its ability to cash in on federal ownership of
22 resource damage, but also we want you to consider what these
23 other people have lost or have been aggrieved. And, I guess I
24 would like to know why we didn't do that because it seems to me
25 the way this process has unfolded, the settlement process, we

1 have generated additional claims against the State because it
2 worked like a limited entry system. We're going to limit your
3 entry into the settlement process, so get in the door. So, a lot
4 of people were forced to jump into the litigious stream. Now,
5 the question is, could we have avoided some of these third-party
6 problems if the State had gone to those people and said, look,
7 we're going to talk about your problems as well? Was that done?

8 MR. COLE: No.

9 MR. DAVIDSON: Why not?

10 MR. COLE: Because I have a fiduciary duty to the state of
11 Alaska as a litigant. I did not think that I could discharge my
12 fiduciary duty as Attorney General by inviting to the settlement
13 discussions or negotiations, if you will, 50 other lawyers or
14 more representing five or 10,000 people. I thought that those
15 Wall Street lawyers could effectively represent the clients whom
16 they represented. I don't mean to be pejorative about lawyers,
17 but just let me say that daily I hear about these claims, you
18 know, why didn't you bring us in. But, when they filed their
19 lawsuits against Exxon, they didn't say I want the Attorney
20 General's name on their complaint. They filed their own lawsuit
21 represented by top drawer lawyers. And, I assumed then and
22 believe now that those lawyers can effectively represent their
23 clients in the prosecution of the claims against Alyeska. And,
24 let me say this, one of the difficulties of the State proving
25 damages in this case are because a lot of the damage claims are

1 held by these third parties. I mean, a lot of these claims, like
2 the loss of tourism claim, those are held by the tour operators,
3 they're not held by the state. So, I didn't see it upon my
4 obligation as Attorney General to go and say, all right, now I'm
5 going to take the tourism operator's claims and go to Exxon and
6 say can we settle this, and then, can I say, well, we'll settle
7 the sport fishing claims against Exxon, and then, I'll say, well,
8 I'll settle the commercial fishing claims against Alyeska, I'll
9 do that. And, then, I'll say we should have here the cannery
10 worker's claims against Exxon and we'll do that. I mean, that
11 just won't work. I mean, these people are represented by their
12 own lawyers and they're prosecuting their own claims against
13 Exxon, and that's the way the system works.

14 MR. DAVIDSON: I can appreciate that Mr. Cole. What I seem
15 not to be able to appreciate is did we miss an opportunity to
16 clarify the total problem here of all the people who were
17 damaged. I'm not saying take these people's lawyers to
18 Washington. I'm saying wasn't there a preliminary attempt before
19 we really got moving in the settlement process to try to
20 understand how these people were damaged and how we as a state as
21 well as a state government could work to leverage, understand, to
22 deal with the problem. And, it seems to me that you're saying,
23 well, geez, we don't have this obligation to our people in this
24 state.

25 MR. COLE: Wait a minute. A lot of these people and a lot

1 of these claims against the State, I don't know how many of them,
2 are claims by non-residents against the State. I mean, I'm not
3 going to go down and look through these complaints and say, well,
4 you know, 25 people out of these 150 are state residents, 125 of
5 them are non-residents and I'm going to look after their claims
6 against Exxon. Don't you think this problem is big enough
7 without bringing in another 10 or 20 or 30,000 claims to this
8 table? I mean, we can't even get this singular one done without
9 trying to settle the claims of another 50,000 people represented
10 by over 100 different lawyers. Getting this done was a massive
11 effort and we're still not done with it. And, let me say this, I
12 see the Native villages are receiving \$1 million from Congress to
13 prosecute their own claims to hire experts. The Native villages,
14 the subsistence users, have claims that are represented by
15 lawyers, they're not wards of the state by any sense and the
16 state has no direct trustee duties to them.

17 MR. DAVIDSON: I think I failed to focus in on the point
18 that I was trying to focus on and that was, it seems to me that
19 we missed the opportunity to sit down as people of the state of
20 Alaska to quantify, to qualify how we all were damaged. I mean,
21 two or three people who have gone bankrupt whether it's a
22 processor or a fisherman because of this accident, because of
23 this catastrophe, it seems to me that we have an obligation
24 somewhere from the time that it happened to resolution of the
25 conflict somewhere along there it would be nice to touch base

1 with these folks.

2 MR. COLE: My lawyers tried to touch base with their lawyers
3 every day in Anchorage for two years. I mean, we didn't not
4 touch base with them.

5 MR. DAVIDSON: Did you ever go up to Exxon and say, look,
6 this is the State's position and, you know, we'd like to know how
7 you're planning to handle some of these processors that are going
8 to have to close down or are going bankrupt, that are going to
9 quit processing the fish, take money out of their communities
10 because this thing happened?

11 MR. COLE: If I had done that, the lawyers for those
12 claimants would have said what's the Attorney General doing
13 mucking around in my case, it's unethical, it's improper, I'm
14 going to call him up before the State Bar Association and file
15 ethical charges against him. I don't have any right to get
16 involved in the prosecution of their claims. And, the first
17 thing they would say, I would imagine, well, he's damaged our
18 case, I mean, we had a real good before he went to talk to Exxon
19 and said what about settling this case. Whammo. I mean, I would
20 be in trouble, the State would be in trouble. And, furthermore,
21 let me say this. We can't even quantify the State's damages.

22 MR. DAVIDSON: Well, why did you settle for a \$1.2 million?

23 MR. COLE: Well, I can tell you that, you know, if want to
24 give me the time. But, what I'm saying is, we're having all
25 these discussions, all these problems now trying to satisfy this

1 Committee and the Senate with how do you quantify these damages.
2 Do you expect me to quantify the damages of 50,000 other people?
3 I mean, like I said, give me a break.

4 MR. DAVIDSON: Well, I'll give you every break I can, sir.
5 But, you know, it just seems that there should have been or
6 hopefully we could have had a more comprehensive effort. And,
7 I'm not saying you go down and represent this. I haven't done a
8 good job, I guess, of trying to focus on what my point is. I'll
9 just on to my next piece of concern and that is, we talked about
10 the information. Now, I've heard it stated that the resources of
11 the industry of that particular company are probably -- well, I
12 we'll have to look at hindsight, the billion dollars worth of
13 revenue they got to know that they're going to have resources to
14 throw into this thing probably on the magnitude of 10 or 20 times
15 what the state of Alaska is ever going to come up with, that is
16 to give people to fight the case one against the other. I wonder
17 what's so special about the State's information that we think
18 that Exxon won't have in terms of the scientific data. Where is
19 that information, sir?

20 MR. COLE: We have better scientists than they do.

21 MR. DAVIDSON: Do we have better lawyers?

22 MR. COLE: We have better damage assessment experts than
23 Exxon. Probably better trial lawyers, now that you brought it
24 up, too.

25 MR. DAVIDSON: Well, that's good to hear and I, again

1 though, I'm still concerned about where that first vision number
2 came from and what it was based on and how that's what carried to
3 date.

4 MR. COLE: Well, we know this, don't we, that we couldn't
5 get that first number so it was apparently too high.

6 316

7 MR. NAVARRE: I guess, Mr. Attorney General, I'm wondering
8 if, in fact, the damage assessment just quantifies what the value
9 is of the damages. And, if that's what it does, does it hurt the
10 State's position in terms of whether or not they're liable or
11 culpable for damages in any way by releasing it?

12 MR. COLE: Sure, it would give Alyeska that data.

13 MR. NAVARRE: But, if the State is liable or guilty in some
14 way, isn't the value that the study that quantifies what the
15 value of those damages are, wouldn't that be available, and
16 wouldn't the court say that they can't make a judgement without
17 knowing what it's worth?

18 MR. COLE: I'm sorry. Who can't a judgement?

19 MR. NAVARRE: The courts, or the jury, or whoever is
20 deciding.

21 MR. COLE: We would present that evidence at trial. Why
22 would we want to give all of that data to Alyeska's super lawyers
23 so that they can go out around the world and say, ah ha, here's
24 the state's analysis, and then spend \$3 million or \$4 million
25 with the world class expert in tearing it apart?

1 MR. NAVARRE: I guess I can see that argument. The next
2 question I have is, have you done an analysis, you mentioned you
3 gave some information to the Committee, but on what the value of
4 the cases is against the State? You mentioned it was excess of
5 \$500 million at this time. How much it's going to cost to
6 litigate and defend ourself against those? And, what the value
7 of those cases might be? And, if we have to spend \$100 million
8 litigation and \$100 million to pay claims and we take in a grand
9 total of \$72 million from Exxon, is it a good deal?

10 MR. COLE: Well, we can't recover from Exxon the amount of
11 our liability to third-party plaintiffs. That's just not our
12 relation there.

13 MR. NAVARRE: Well, the only relation is that if our claims
14 are undervalued and the claims against us are not, I mean, the
15 total value of what we're recovering really other than the
16 restoration amounts which are decided by the trustees, I think
17 the amount that was the general fund was \$72 million.....

18 MR. COLE: That's the amount the State has (indiscernible -
19 speak too softly).

20 MR. NAVARRE: And, that's the money we've already spent?

21 MR. COLE: Yes.

22 MR. NAVARRE: I guess I could see us spending more money
23 than that on litigation on pending claims and paying for claims
24 and we have no recourse.

25 MR. COLE: You know, we're liable in a court of law for our

1 wrongs. I mean, we have to pay the piper. We can't get from
2 Exxon, you know, the money for our wrongs.

3 MR. NAVARRE: Right. Except we could get from Exxon money
4 for their wrongs.

5 MR. COLE: That's what we've done.

6 MR. NAVARRE: The total value of the State is the
7 restoration value and nothing else?

8 MR. COLE: Well, we win \$72 million.

9 MR. NAVARRE: \$72 million you said was for what we've
10 already spent on litigation.

11 MR. COLE: Yes.

12 MR. NAVARRE: So, it's awash (ph)?

13 MR. COLE: Let me point out another factor which seems to
14 escape. If the State has legal liability for wrongs in
15 connection with the oil spill, under doctrines of comparative
16 (indiscernible - background noise) or allocation of the monies,
17 if the total damages sustained by Exxon under the State's claim
18 was \$2 billion and the State were 50 percent at fault, the State
19 would recover only \$1 billion. If, as Attorney General, I had
20 concluded that maybe we could show damages of \$2 billion, but we
21 were 50 percent at fault, we would recover from Exxon only \$1
22 billion. Now, as you evaluate the State's recovery, as I hear
23 Representative Brown saying the State may have been involved and
24 so forth, crank that factor into the settlement.....

25 MR. NAVARRE: I guess I can ask are those assumptions that

1 you made in this case, because if not, then you can use any
2 assumption you want. But if it doesn't apply in this specific
3 instance, it doesn't matter. I mean, you can say, what if the
4 value against Exxon was \$10 billion and what if the State had
5 zero allocation, then the value is \$10 billion.

6 MR. COLE: Let me tell you how it works. We have 20
7 lawsuits seeking how many hundred million against the State in
8 which the claims were made that the State was at fault. I mean,
9 should I have considered that as we looked at a number? Of
10 course, I should have. Did I? To a degree. That's the way it
11 works. I mean, I don't know what you expect me to do. I mean,
12 this is not a linear type analysis. I can't put these figures
13 into a Cray computer and plug it all in and say, here's the
14 number, it just spits it out in the end. This is art form, good,
15 bad or indifferent. And, people who think of it as other than
16 that, they're mistaken because that's what the process is.

17 431

18 MS. BROWN: Mr. Attorney General, with respect to a village
19 that does not have property rights to the fish and game, I've
20 been informed by staff that their claims are extinguished by this
21 package before us with respect to being able to sue for their
22 lost subsistence or anything that they don't actually have a
23 property right in. And, I'd like to know is that correct? Is
24 that an accurate interpretation?

25 MR. COLE: I bet you couldn't find one lawyer for a

1 subsistence claimant who claims that true. And, therefore, I
2 don't believe it.

3 MS. BROWN: So, in your view, it remains open for litigation
4 among, say, recreationalists, environmentalists, natives, fisher-
5 people, or other people with a joint ownership of our common fish
6 and game resource to bring litigation on behalf of the common
7 interest apart from the State interest, whatever State right to
8 sue on those arguments, that's extinguished, but these other
9 people retain the opportunity to sue under this package; is that
10 an accurate statement?

11 MR. COLE: Who is retaining the right to sue?

12 MS. BROWN: Whoever, sir, has been damaged and has a common
13 interest in those resources. I took the example of a village
14 that depended and has subsistence relationship with fish and game
15 in their area and now that has been diminished or eliminated to
16 the extent that they are affected by that loss of common
17 resource. And, I'm just trying to see where they are legally if
18 this is approved.

19 MR. COLE: I wouldn't want to venture an opinion about their
20 rights. They have lawyers who well represent them and I wouldn't
21 want to venture an opinion on that. I mean, what would they say
22 and think about the Attorney General says their rights are gone?
23 They'd be crazy, wouldn't they? I'm not saying that one way or
24 the other. It's not up to me to give opinions on their rights.

25 MS. BROWN: In valuating the economic value of the damages

1 or whatever in determining whether the settlement value is
2 adequate compensation for the State, did you consider lost
3 subsistence opportunities? And, if so, did you do it in a
4 structured sort of way where you said this village
5 (indiscernible), and there's so many of them and if their food
6 resource is removed for "X" years, that's so much dollar value?
7 Was there some sort of analysis of that type that went into your
8 overall determination?

9 MR. COLE: We made no village by village damage assessment.

10 MS. BROWN: Did you assessment include an evaluation of lost
11 subsistence opportunities? Did you place an economic value on
12 those lost opportunities?

13 MR. COLE: No.

14 MS. BROWN: How did you anticipate that citizens of Alaska
15 who were damaged in that way would be compensated for the damage
16 they are suffering?

17 MR. COLE: They have their claims which they have asserted
18 in the course of the law and I assumed that they would pursue
19 those claims through their legal representation. Let me say
20 this. The damages were assessed from the standpoint of best
21 available techniques for the assessment of natural resource data.

22 MS. BROWN: Is there some written statement somewhere that
23 describes what that is?

24 MR. COLE: There's a lot of literature out there that's
25 available.

1 MS. BROWN: Is there some particular document that you
2 relied on that you can share with us?

3 MR. COLE: Not any particular. Let me just show you. Here'
4 sort of a compilation of literature discussing contentious
5 valuations of damage assessment techniques. Say, you have among
6 these documents I have here literature which was put together in
7 a bibliography which shall remain confidential, but here's the
8 bibliography of writings in the field, it contains 828 items.
9 This is sort of some of the stuff that was put together and
10 analyzed for contentious valuations.

11 MS. BROWN: Mr. Chairman, I appreciate the opportunity to
12 participate in your meeting today. I still don't understand how
13 release of data that quantifies damages would affect a court's
14 determination of whether the State is guilty of a tort.

15 MR. COLE: Those damage assessments would be used against
16 the State in prosecuting damage claims. (Indiscernible -
17 simultaneous talking) present stages of a claim, it's not simply
18 liability but you also produce evidence of damages, you see.
19 And, that's a big part of a good many lawsuits. In some ways,
20 it's at least half or maybe it's more, damages. And, that is one
21 of the very central issues in the litigation is the damage data
22 and the experts' opinions.

23 MS. BROWN: But, it doesn't affect whether we are guilty of
24 a tort?

25 MR. COLE: No, but it does affect, if so, how much we are

1 damaged.

2 MS. BROWN: But, it doesn't affect whether we are guilty or
3 not.

4 MR. COLE: Well, the State has a lot of data on that, too,
5 by the way.

6 576

7 MR. NAVARRE: I just want to make sure that I understand
8 completely (indiscernible) that we're letting Alyeska off the
9 hock in this settlement. That's not the case, that's not the way
10 I read it.

11 MR. COLE: We're releasing Alyeska only from the State's
12 claim for natural resource damages. The reasons I previously
13 mentioned, number one. Number two, there was the thought that
14 went into that decision to agree to that was that how much
15 natural resource damage we might be able to prove in addition to
16 \$950 million. That was also a consideration.

17 MR. NAVARRE: I'm real interested then in what the value of
18 potential resource damage is because we have no other recourse
19 now if we agree to this settlement and we let Alyeska off with
20 respect to resource damage, we've got nothing.

21 MR. COLE: You mean we have no other economic damage claims
22 of value?

23 MR. NAVARRE: No, I'm sure we do. But, with respect to
24 natural resource damage, we may have economic claims, I want to
25 know what's the value of the natural resource claims that we're

1 giving up for essentially the \$1 billion?

2 MR. COLE: We'll furnish you with the information the State
3 had available.

4 611

5 MR. HUDSON: Mr. Chairman, I just want to put this in
6 because I want to see if my thinking is right and maybe the
7 Attorney General can help me. Exxon corporation's tank hit the
8 rock and spilled the oil and that damaged the marine resources
9 and set in place the potentials for the expanded damage that did
10 occur. And, for that in this litigation they have not only
11 agreed to clean-up but also to pay up for the next 10, or 20, or
12 100 years, whatever it's going to take, and have put a certain
13 dollar value of resources out there to accomplish that in some
14 mechanism. So, now I'm an old skipper. There's one guy that
15 drives it up there, and then, the next responsible action that
16 anybody has to take is containing it. And, the people that were
17 authorized and responsible for containing it are Alyeska, and so
18 that's the next case. And, Alyeska botched it. Maybe the State
19 did and maybe the Coast Guard did, too, and so maybe there are
20 some legitimate claims against both us and the Coast Guard. But,
21 Alyeska clearly was responsible for permitting that spill to get
22 away and for oiling 300 miles of beach and damaging untold
23 resources and everything like that. It seems logical to me that
24 you would hold Exxon responsible for cleaning up the marine
25 environment and that you would go after Alyeska for the failure

1 to contain all that oil that somebody else dropped into the ocean
2 there, and so, that the economic damage would logically accrue to
3 Alyeska for failure to do, which I think is what you're going to
4 do. And, in that process, it seems like all of our efforts would
5 compliment the efforts of (indiscernible) Village and the City of
6 Cordova and the individual fishermen and all of the other people
7 who claim that they've lost some economic values as a result of
8 this thing. They shut down the Cook Inlet, all of the fisheries
9 on the east side were shut down, a lot of people lost some bucks.
10 Now, they paid some of that so I'm told the courts would say,
11 well, you paid some, you've got to pay some more, we'll find out
12 what it is. But, you know, it seems so logical to me, at any
13 rate, that you're pursuing this right. And, I listen to my
14 colleagues here argue about why you haven't made Exxon pay for
15 the economic losses. And, am I right here in my thinking here,
16 was that your thinking?

17 MR. COLE: The economic loss claims held by the State were
18 considered. I don't want to say how they were valued
19 specifically. But, these third-party claimants have all of their
20 rights available against Alyeska and Exxon. And, the State
21 released Exxon and Alyeska from the natural resource damages
22 which the State itself had and only the State could recover.
23 They don't own the resources, they don't own the water or the
24 fish. But, I don't know the test that a court would provide to
25 determine whether the state or federal government had.....

1 MR. HUDSON: How about the third party?

2 MR. COLE: Well, they have no right under the public trust
3 doctrine or the (indiscernible) doctrine, those claims were only
4 held by governments.

5 (Tape changed)

6 Tape 14, Side A

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8 MR. GRUENBERG:pipeline system with specific focus and
9 coverage of the tanker operations between Alyeska and/or any of
10 the member companies and the state of Alaska or the federal
11 government, any previous indemnification agreements covering
12 those activities?

13 MR. COLE: I would prefer to have the oil spill experts
14 answer that question.

15 MR. GRUENBERG: Well, I'm sure we can ask them, too. But,
16 has not the Department of Law researched that similar question?

17 MR. COLE: Well, that is what I am going to find the answer
18 to.

19 MR. GRUENBERG: I would very much like to have that answer
20 first thing on Monday, whether we're already covered by an
21 indemnification agreement.

22 MR. COLE: Between whom and whom?

23 MR. GRUENBERG: Between Alyeska and/or any of the owner
24 companies and/or any of their subsidiaries, and the one hand, the
25 state of Alaska and/or the federal government on the.....

1 MR. COLE: For oil spill?
2 MR. GRUENBERG: Yes.
3 MR. COLE: Okay.
4 MR. GRUENBERG: It may be part of the permit or anything in
5 the documentation that would provide indemnification, first
6 question. Second question, has the Department of Law provided a
7 written legal opinion or advice to the trustees or anyone else
8 regarding the meaning and scope of the terms restoration and
9 enhancement? And, if so, we'd like a copy.
10 MR. COLE: No. The nature and extent of those rights have
11 been discussed. I'm not certain if we have any memorandum from
12 the Department of Law addressing those specific issues.
13 MR. GRUENBERG: You don't believe so?
14 MR. COLE: Like I said, I'm not certain. But, I do not now
15 recall.
16 MR. GRUENBERG: If you could check, I'd appreciate it.
17 MR. COLE: It's a little hard to check because there's so
18 many documents, but I will ask immediately.
19 MR. GRUENBERG: Enhancement is not defined in the
20 regulations or statutes, is it, sir?
21 MR. COLE: I don't believe it is.
22 MR. GRUENBERG: Would you object to this legislature
23 spelling out general procedures and/or policies for public
24 involvement in the operation and execution of these agreements
25 vis-a-vis the trustees?

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MR. COLE: Well, you may but.....

MR. GRUENBERG: You, being the state of Alaska.

MR. COLE: Like I say, who knows what the response from the federal trustees might be.

MR. GRUENBERG: Only talking about the state, your answer?

MR. COLE: What is the purpose here?

MR. GRUENBERG: Object.

MR. COLE: Object? Well, one wouldn't object to it.

MR. GRUENBERG: Thank you. That may be where we're coming from here ultimately to some extent. So, if you wish to reconsider that further, I will hold you to that answer unless you want.....

MR. COLE: Well, we won't object.

MR. GRUENBERG: Thank you. Back to the list of questions. Paragraph 38, do political subdivisions of the State retain their claims against Exxon under this settlement? They do, do they not?

MR. COLE: Yes.

MR. GRUENBERG: 39, although the Consent Decree states it does not affect third party claims related to the oil spill, will settlement between the State and Exxon have any practical effect on the abilities of third parties to litigate their claims, such as any effect on confidentiality of scientific and economic data? Now, I know you have answered this at length, some would say ad nauseam. Is there anything you want to add to this?

1 MR. COLE: No.

2 MR. GRUENBERG: Question 41, how likely is it that the state
3 or federal government will be able to take advantage of this
4 provision, and that refers to paragraph 17 at lines 17 and 18,
5 given the requirement that the injury cannot have been
6 anticipated by any trustee? This, of course, deals with the re-
7 opener. The real question here is, is that too tied up, should
8 be looking at ways to loosen that?

9 MR. COLE: That was one of the most ferociously negotiated
10 sections of this entire agreement. How likely is it that the
11 state or federal government will be able to take advantage of the
12 provision?

13 MR. GRUENBERG: It's possibly not an artfully worded
14 question. Let me rephrase the question. Looking at this as the
15 point of a defense lawyer, I'm now representing the payors who
16 don't want to pay a dime. The real issue is going to be could it
17 "reasonably have been anticipated"? That's the kicker. How
18 tough is that going to be to break out of?

19 MR. COLE: Well, that's like the general rule of law, what
20 would the reasonable man do?

21 MR. GRUENBERG: No, because you're dealing with reasonable
22 anticipation, not reasonable acts.

23 MR. COLE: Well, there will be expert testimony on that
24 subject if the issue were to go to court on that subject, what
25 was known, what would a reasonable person expect with regard to

1 injury to the environment from that data. It's just like any
2 other expert testimony issue as far as I can see. I just want to
3 say this. Administrator Riley of the Environmental Protection
4 Agency was personally involved in the negotiation of these
5 provisions and he approved it. I think certainly he's probably
6 the foremost authority in the United States on the subject. I
7 relied in part on his good judgement.

8 MR. GRUENBERG: Is there a difference between could not
9 reasonably have been known, on the one hand, and could not
10 reasonably have been anticipated, on the other? Because it seems
11 to me that knowledge is one step, but knowledge is one aspect of
12 anticipation. And, it seems to me the term "could not reasonably
13 have been anticipated" encompasses "could not reasonably have
14 been known", because in order to anticipate something, you must
15 not only have knowledge but you must be able to assess the
16 probability.

17 MR. COLE: Well let me say this. I don't want to get into a
18 logical debate on (indiscernible) or semantic, but I think
19 there's a difference.

20 MR. GRUENBERG: I'm not disputing that. I'm saying one
21 encompasses the other.

22 MR. COLE: Well, I'm not certain of that. A) Is
23 information, knowledge available to a trustee. The other one
24 says if you have this knowledge, what would you reasonably
25 anticipate from it. I think they're mutually exclusive. I mean,

1 there's two different tests. A) Should you have had the
2 knowledge or the information which is reasonably available to
3 you? B) If you had that knowledge, what would you reasonably
4 expect from it? I think that it's properly expressed.

5 MR. GRUENBERG: Next question, page 18, subsection A at the
6 top of the page. The other factor is the cost of restoration
7 project must not be "grossly disproportionate to the magnitude of
8 the benefits anticipated from the remuneration". How do we
9 determine whether something is "grossly" disproportionate?

10 MR. COLE: Well, like any other legal test such as gross
11 negligence. I mean, how do you determine gross negligence?
12 Well, we do it in the courts every day in this country. That's
13 just one of those legal tests that the courts instruct to the
14 jury. And, let me just say that this whole concept came out, a
15 large part of it, the root of it came out of Commonwealth of
16 Puerto Rico versus Fishing Vessel, 628 Federal 2nd at 652. I
17 mean, there's where these basic requirements stem from. There ar
18 other cases which sort of lay down the same limitations.

19 MR. GRUENBERG: So, there is a body of law that this
20 particular clause, in any event, was based upon? This is the
21 first time, maybe not the first time, I stand corrected, but one
22 of the few times in our discussion of these series of agreements
23 that we have been cited a specific authority as to the
24 construction of certain terms. It would be of some assistance, I
25 think, to this Committee as to the legislative history of these

1 agreements which certainly will, in one form or another, be
2 embodied in resolutions and/or legislation if we could have
3 prepared for this Committee and for the legislature some sort of
4 a commentary, or background, or points of authorities that would
5 construe the areas of those terms if, in fact, there was general
6 agreement among the drafters that, in this case, the Commonwealth
7 of Puerto Rico case, which I am not familiar with, but obviously
8 the drafters were, was to be used as the source of construing the
9 terms in this clause. It would be of great help to us if that
10 could be on some file in a manner of public documents with this
11 legislation. Would you staff be able to do that, Mr. Attorney
12 General?

13 MR. COLE: I would request that your staff tell me which
14 specific provisions of these various agreements you want legal
15 memorandum on. I can't go through this 50, 60 pages of documents
16 and say they may want a brief on this, they want a brief on that.
17 Just tell me what sections of the agreement you want the
18 memorandum on, we'll give it to you.

19 MR. GRUENBERG: You misconstrued what I tried to indicate.
20 What I'm saying is, in this particular case, apparently it was
21 the intent of the drafters, the negotiators I'll call you, to
22 construe these particular terms in accordance with a particular
23 case. I have no idea throughout the drafting what particular
24 authorities were relied on for the drafting of the various
25 provisions. It will be of help to the public and all the people

1 who will be looking at these documents and future legislatures
2 and probably the Congress if somebody could put together sort of
3 a contractual history of this which would say, for example, when
4 you get to paragraph, in this case, 17 of the CD that the terms
5 "grossly disproportionate", or whatever, were based upon the
6 following authority. I wasn't in the room, I don't know. I just
7 want to get together a complete history of this thing. I don't
8 want a legal memorandum, I just want if you're referring to
9 certain points and authorities, that, of course, would be helpful
10 if it could be done.

11 MR. COLE: I want to come back to what I said earlier. I
12 will furnish you with authorities or response to the extent there
13 was specific authority of the paragraphs of this agreement that
14 the Committee wants that information from. But, I must ask that
15 you specify the paragraphs of which you want this addressed. We
16 can't go through this whole document and write a legal brief on
17 paragraph by paragraph.

18 MR. GRUENBERG: Well, I certainly would like it on that
19 paragraph.

20 MR. COLE: We'll be pleased to give you the citations. But,
21 let me suggest this, that in an effort to be helpful in where we
22 were in that paragraph, I would suggest that you ask those
23 questions to Mr. Campbell and Mr. Van Cleef (ph) when they're
24 here.

25 MR. GRUENBERG: I'm not, sir, trying to put you on the spot

1 because I know in each and every case you were not the drafter.
2 I'm asking that to the group as a whole. I think having that
3 would be helpful for the legislature.

4 MR. COLE: But, I don't want to duck, you know, my
5 participation in this re-opener clause. I say that it was one of
6 the most fiercely contested negotiating sections of this entire
7 agreement, and I participated in it, and I wrote and re-wrote
8 myself some of these words in an effort to reach accord. And, I
9 also know, but I don't have the citations here with me, the root
10 cases, just a couple of them which make reference to this test.
11 So, it wasn't the (indiscernible) act, it was one of my acts and
12 one of the others of the negotiating team. I want to make that
13 clear. We will furnish you with the authorities in this section.
14 I think it's the New Bedford case in the Fed. sub. and also the
15 Puerto Rico case which does not express quite the same test, but
16 it comes close, in which the court there in the Puerto Rico case
17 said, you know, when it comes to recovering damages for damaged
18 (indiscernible - cough), the basic test has been damages for the
19 diminution and the market value of the ground. But, then, there
20 is this body of law case -- well, I mean, it's difficult to
21 value the diminution of the market value of property. The law
22 is you have to use some economic rationality in the restoration
23 process so that you don't spent \$2 billion to restore property
24 that is worth \$100,000. I mean, that's the concept.

25 MR. GRUENBERG: I understand. We'll do more one more

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question.

191

MR. HUDSON: From a non-attorney, would that be similar to a footnote in the final draft like we often see in the Alaska Statute is a cross-reference in the footnote?

BERG: No, it would be part of the legislative history of this.

(Chairman Gruenberg adjourned the meeting at 2:00 p.m.)

1 HOUSE SPECIAL COMMITTEE ON THE
2 EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT
3 April 16, 1991

4 MEMBERS PRESENT:

5 Rep. Max Gruenberg, Chairman
6 Rep. Gail Phillips
7 Rep. Bill Hudson
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HOUSE SPECIAL COMMITTEE ON THE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT
April 16, 1991

MEMBERS PRESENT:

Rep. Max Gruenberg, Chairman
Rep. Gail Phillips
Rep. Bill Hudson

HOUSE SPECIAL COMMITTEE ON THE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT
APRIL 16, 1991
8:10 A.M. and 12:07 Noon

MEMBERS PRESENT:

Rep. Max Gruenberg, Chairman
Rep. Cliff Davidson
Rep. Bill Hudson
Rep. Gene Kubina
Rep. Mike Navarre
Rep. Gail Phillips
Rep. Fran Ulmer

MEMBERS ABSENT:

Rep. Dave Donley
Rep. Ramona Barnes

OTHERS PRESENT:

Charles Cole
Matt Jamin
Greg Andy
Richard Stewart
Thomas Campbell
Bob Clark,
Mike Dean
Cheri Cole
Dave Donaldson
Gregg Erickson
Mayor Van Brocklin
Andy Spear
Andy Heming

P R O C E E D I N G S

Tape 27

Side A

MR. CHAIRMAN: Good morning. Today is Tuesday the ¹⁶13th of April 1991 with the meeting of the House Special Committee on the Exxon Valdez Oil Spill Claims Settlement. These can go to him.

MR. COLE: Doc, you might want to correct the date of this hearing.

MR. CHAIRMAN: I stated -- yes, the 16th. I'm sorry. And, I appreciate [redacted] was Attorney General Cole pantomiming there. [redacted] record will reflect, please, that we have the following [redacted] present. Representative Gail Phillips, Representative Hudson and Representative Gruenberg. I'd like to welcome everybody, the time is eight minutes after eight. And, we were in the midst of questions and answers, the Attorney General answering questions on the master list for the consent decree. But, I was wondering the Attorney General and the members of the committee would be willing to go a little bit out of order. I realize I'm sort of spraying this on you, Mr. Attorney General, members of the committee, but I've been giving some thought, literally this morning, to what we have to do in this committee. And our first task is to comment to Judge Holland on or before the 23rd, according to his letter on the plea agreement. And, what I'm going to propose to this committee is that we divide our work into two parts and we expedite

1 something out of this committee on the plea agreement on or
2 before the 23rd, which means if we're going to deal with anything
3 on the House floor, it really has to pass out of this committee
4 no later than this weekend and probably by Friday. So, it's
5 going to be, when we have more members here, my intent to make
6 that respectful suggestion to the members and to look initially
7 at the plea agreement, where the purpose is of advising Judge
8 Holland and making our report known, and deciding what we want to
9 do by way of formal action, whether it's a report or a simple
10 House resolution or a concurrent resolution. With that long
11 introduction, I'm wondering, insofar as it's possible for the
12 State Attorney General, who is of course not a party to the plea
13 agreement, to comment on it. We have a very few questions that
14 are listed on it, and then I think it's going to be proper for us
15 to examine some facets of state law on this subject but if the
16 members would look at their master list of issues for the plea
17 agreement, we have only a handful that concern the Attorney
18 General. And, I know these are nothing new and I'm wondering if,
19 with of course, the right to supplement answers later. I'm sure,
20 Attorney General, you would be prepared to take some questions
21 starting off this morning on that plea agreement and also the
22 applicable state law, the state criminal law on this subject. Do
23 you have any serious problem with that, Mr. Attorney General?

24 MR. COLE: I.....

25 MR. CHAIRMAN: Do you need your list?

1 MR. COLE: I'm certainly willing to.....

2 MR. CHAIRMAN: (Indiscernible) a list (indiscernible)?

3 MR. COLE:accommodate the committee's desires in this
4 regard, I may want to comment further about the state criminal
5 law.

6 MR. CHAIRMAN: Certainly. I'd like the record to reflect
7 you can join my Representative Kubina as well. No problem.
8 We're going to start with the plea agreement. Since it's my
9 intent to deal with that first since we have an April 23 date for
10 the judge. He's the final legislative option on that, as far as
11 Judge Hollander's concerned.

12 Okay, let's skip immediately to the second page of the
13 questions on the plea agreement, and, this, I think, is a very
14 central question, according to the witnesses whom we heard on the
15 subject. I'd like the record also to reflect we've been joined
16 by Representative Mary Miller, not a member of the committee but
17 a welcome guest anyway. Please come on up and join us up here.
18 We're discussing the plea agreement.

19 Question number 3, Mr. Attorney General, members: Why is
20 Alyeska Pipeline Service Company included in the entities against
21 whom criminal charges will not be brought, and from whom civil or
22 administrative penalties will not be sought? And, this of course
23 gets into the George Miller letter as well. Sir?

24 MR. COLE: Could you show me the provision of the plea
25 agreement upon which this question is predicated.

1 MR. CHAIRMAN: Yes. This is, withn pages five and six of
2 the plea agreement.

3 MR. COLE: May I have copy of it?

4 MR. CHAIRMAN: Oh, you don't have.....

5 MR. COLE: I did not bring a copy this morning because I did
6 not believe I was being.....

7 MR. CHAIRMAN: Staff, do we have a extra copy of the plea
8 agreement?

9 MR. COLE:interrogated on this (indiscernible). I
10 apologize, that's due to my own poor planning over
11 (indiscernible).

12 MR. CHAIRMAN: That's all right. No, I'm perfectly willing
13 to accommodate the committee's desires in this regard,
14 but.....Oh, you found it, good.

15 MR. COLE: I now have a copy of it.

16 MR. CHAIRMAN: Thank you.

17 MR. COLE: Let me see which provisions there are we now.....

18 MR. CHAIRMAN: We are on pages five and six of the plea
19 agreement. If you take a look at page five, paragraph Roman
20 numeral III, capital A -- the United States agrees not to seek
21 additional criminal charges or civil or administrative penalties
22 except as provided in paragraph 3(b) below against...Aleyska
23 Pipeline Service Company, their agents, shareholders or officer
24 companies, or their companies or present or former shareholder
25 representatives, for any violation of federal law as

1 (indiscernible).

2 MR. COLE: I would answer this question as follows. So far
3 as I know, Representatives of the State of Alaska were not
4 involved in the negotiation of the plea agreement. Therefore, I
5 do not know why Alyeska Pipeline Service Company was included
6 among the entities against which criminal charges will not be
7 brought under this provision of the plea agreement.

8 MR. CHAIRMAN: I asked you a question several times and in
9 the past, and I'm going to ask it again for the record and maybe
10 pursue it a little more than I did in the past.

11 MR. COLE: Before you ask that question which I'm certainly
12 pleased to respond to, I want to say I did not see this agreement
13 until after it was signed.

14 MR. CHAIRMAN: Did you or any member of your staff discuss
15 with Exxon or the United States or any employee or agent of
16 either body, the bringing or dropping or agreement not to bring
17 criminal charges?

18 MR. COLE: Against?

19 MR. CHAIRMAN: Against Exxon or any of its agents or Alyeska
20 or any of its agents?

21 MR. COLE: No.

22 MR. CHAIRMAN: That was never discussed.....

23 MR. COLE: No.

24 MR. CHAIRMAN:to your knowledge, to your knowledge
25 never discussed by anybody in the Attorney General's office or

1 acting on behalf of the State of Alaska?

2 MR. COLE: Yes, but to make sure we're absolutely clear,
3 would you mind repeating that question? I'm not fencing with
4 you, I just want to make sure.....

5 MR. CHAIRMAN: Of course.

6 MR. COLE:exactly what the question is and I will give
7 you a frank and an answer.

8 MR. CHAIRMAN: We've been joined by Representative
9 Davidson. To your knowledge, Mr. Attorney General, did you or
10 any member of your staff or anyone representing or acting on
11 behalf of the State of Alaska at any time, in this matter, ever
12 discussed the bringing or not bringing of criminal charges
13 against Exxon? (Indiscernible) part of these negotiations.

14 MR. COLE: Against Exxon?

15 MR. CHAIRMAN: Exxon, its subsidiaries, its officers,
16 agents, shareholders, anyone connected with Exxon as part of
17 these settlement negotiations or during the time of these
18 settlement negotiations?

19 MR. COLE: The answer to that question is yes. I did.

20 MR. CHAIRMAN: You did?

21 MR. COLE: I testified to that before.

22 MR. CHAIRMAN: You may have this case (indiscernible) if
23 that's the case, but.....

24 MR. COLE: Yes, I've said that I gave them a letter, or I
25 signed a letter, and then I think I lost it and didn't give it to

1 them, but I signed such a letter.

2 MR. CHAIRMAN: Oh?

3 MR. COLE: Against Exxon Corporation, yes, I did.

4 MR. CHAIRMAN: Please describe when that letter was signed,
5 approximately?

6 MR. COLE: Probably sometime during the first two weeks of
7 March, but I discussed it earlier, in the first two weeks of
8 March, but I think I signed it sometime within a day or two
9 before the settlement agreement was signed. I'd earlier
10 committed orally to not bring criminal charges on behalf of the
11 State against Exxon.

12 MR. CHAIRMAN: What did the letter say?

13 MR. COLE: Just said that the State would not bring criminal
14 charges against Exxon or any of its subsidiaries.

15 MR. CHAIRMAN: We've been joined also by Representative
16 Koponen. Welcome. And, do you have a copy of that letter?

17 MR. COLE: Do I have a copy of it? Well, I haven't run
18 across it recently, but I think I have it someplace among the
19 papers.

20 MR. CHAIRMAN: Will you please be willing to produce a copy
21 of it for (indiscernible).

22 MR. COLE: I will try to find it, I can't say that I will
23 produce it. But, I will try to locate it. But it's
24 straightforward.

25 MR. CHAIRMAN: Was the letter ever sent?

1 MR. COLE: I don't believe so, it was last I saw it in this
2 brown manila folder and I was going to give it to them and I'm
3 not sure that in the last hour or so I really handed it over to
4 them.

5 MR. CHAIRMAN: And, what was the reason for the letter? Was
6 it requested by Exxon?

7 MR. COLE: Oh, absolutely. It's another one of those --
8 this is part of the deal, if you don't want to give us this
9 letter, they won't the sign the settlement agreement. I mean,
10 you know, I'm not there, and let me make it very clear,
11 voluntary, voluntary to give up rights, whatever they may be
12 against Exxon. Like I said, I want to make very clear -- every
13 sentence, if not every word of this agreement was tough
14 bargaining. And, would you like an explanation why I gave it to
15 them? I mean, I think that's sort of relevant.

16 MR. CHAIRMAN: Yes, I would and that the specific question
17 I'd like -- before that letter and that agreement, not to
18 prosecute was part of this whole settlement?

19 MR. COLE: Indeed it was.

20 MR. CHAIRMAN: And now, please answer your own question.
21 Why didn't you (indiscernible)?

22 MR. COLE: Well, in the first place, remember that the
23 decisions about state criminal proceedings arising out of the oil
24 spill, they were made by the State of Alaska within several
25 months or several weeks after the oil spill, presumably made by

1 Attorney General Bailey. And, the decision was made to prosecute
2 criminally Captain Hazelwood. And, that was done. The federal
3 government, of course, had initiated criminal proceedings against
4 Exxon. And, if you wish more details on the interrelationships
5 of the state and federal criminal proceedings and the reason that
6 the State did not bring criminal proceedings against Exxon
7 Corporation or Exxon Shipping you should ask Attorney General
8 Doug Bailey. As we proceeded into the negotiations, it was my
9 general view that criminal proceedings, or the lack of criminal
10 proceedings, had been decisions made by the state and federal
11 governments and it did not occur to me that, at that stage,
12 anything would be gained by the State in initiating criminal
13 proceedings against Exxon. Then, Exxon said that they wanted a
14 letter representing that the State would not bring criminal
15 proceedings against it. I thought that certainly, at this stage,
16 the State's interest would not be served in in initiating any
17 criminal proceedings against Exxon in light of the negotiations
18 and the past events. And, I thought that it was in the State's
19 interest to give such a letter. I mean, (indiscernible) demand
20 of Exxon, and it's sort of another one of those take-it-or-leave-
21 it situations you get in in the course of negotiations. I mean,
22 after all, I mean, what's there to be gained by the State?
23 Criminal proceedings were -- forceful criminal proceedings were
24 being prosecuted by the United States.

25 MR. CHAIRMAN: Okay, I've had the following -- I'd like to

1 recognize Representative Ulmer who's here as well, following
2 Representative Savast (sp) and the following were represented:
3 David Stuart, Representative (indiscernible) Stuart,
4 Representative Kubina.....Please, (indiscernible).

5 MR. : Thank you.....

6 MR. CHAIRMAN: And, we're on 1. *one*

7 MR. : Thank you Mr. Chairman. Mr. Attorney General,
8 so it's my understanding that you wrote the letter, but you did
9 not sent the letter?

10 MR. COLE: Well, I'd committed.

11 MR. : You committed?

12 MR. COLE: I committed to give it to them.

13 MR. : But, there's nothing in writing in the position
14 of Exxon that says you've committed. Is that right?

15 MR. COLE: I think that's true. But, it's only because
16 perhaps in the last minutes I forgot to hand it over to them,
17 it's a matter of oversight, and I've not spoken with them since
18 the night this agreement was signed, they've not asked for it,
19 I've not taken it upon myself to deliver it to them.

20 MR. : Mr. Attorney General, if you could clarify for
21 me -- such a letter would have what effect on Exxon, and beyond
22 that, how would that affect expanded risk on the part of Exxon,
23 and how would that in turn, impact third-part litigant's
24 possibilities or their cases against Exxon?

25 MR. COLE: I don't understand the question. But, first I

1 think there are about two questions there and if I could have
2 them separated.....

3 MR. : I'll try to refine them.

4 MR. COLE: That would be helpful.

5 MR. : The State is on record as saying they would
6 drop any criminal proceedings against Exxon, is that.....?

7 MR. COLE: No. Incorrect. The State is on record as having
8 said we will not initiate any criminal proceedings against Exxon.

9 MR. : So if you don't initiate any criminal
10 proceedings, how does that differ from my first intent?

11 MR. COLE: Well, the first statement implied that there were
12 existing criminal proceedings against Exxon and that they would
13 be dismissed. The second question was, the way I stated it, the
14 State just agrees not to initiate -- remember, that the State has
15 not initiated any criminal proceedings against Exxon for two
16 years. I mean -- you know, that was not a decision made by me,
17 or rather to initiate criminal proceedings against Exxon, or
18 rather not to initiate cri -- for two years, I was at the table
19 trying to negotiate on behalf of the State a billion-dollar
20 agreement. And, it did not occur to me that under those
21 circumstances I could say, by the way, I think tomorrow we're
22 going to see if we can find some criminal charges to file against
23 Exxon. I didn't think it would serve the State's purposes at
24 that stage and I thought the decision had been made.

25 MR. : Not to initiate.....

1 MR. COLE: Yes. I mean, why, you know, why wasn't these
2 questions directed to Attorney General Bailey, I mean, two years
3 ago?

4 MR. : Well, that's a good question, too
5 (indiscernible)

6 MR. COLE: Well, I mean, you know, all of a sudden here at
7 this meeting, I am said -- you know, what are you doing? Why
8 didn't you initiate.....

9 MR. : (Indiscernible - simultaneous talking)

10 MR. COLE:well, wait a minute. If I don't want to say
11 -- I mean, two years have gone by. No criminal charges have been
12 filed by the State against Exxon. Insofar as I know, nary a peep
13 was heard by anyone from this committee or anybody in the
14 Legislature or, facts, far as I know, I haven't heard any howling
15 among the public about it. And, suddenly I'm here requested to
16 give this explanation -- which I'm pleased to do. I just want to
17 make sure that the setting in which existed in early March was
18 clear.

19 MR. : I appreciate the clarification and, of course,
20 the committee did not exist prior to any proposed settlement.

21 MR. COLE: Yes, but.....

22 MR. : But, but.....

23 MR. COLE: This legislature's been in session for two
24 years. And I don't mean to be argumentative, but I want, you
25 know, the record clear that what the setting was, you know, in

1 the first week in March of 1991, when I was negotiating with
2 others on behalf of the State.

3 MR. : Mr. Chairman (indiscernible - simultaneous
4 talking) I'm, you know, not trying to put anybody on the spot
5 here, and this Legislature has only been sitting for about two
6 and a half years. But, you know, perhaps we should have had
7 these questions. Maybe I should start out with the more basic
8 questions. How long does the State have to initiate criminal
9 proceedings against Exxon? Is it five years.....?

10 MR. CHAIRMAN: (Indiscernible - noise) five years.

11 MR. : So, now there's still two left?

12 MR. COLE: Well, there would be.....

13 MR. : Except (indiscernible).

14 MR. COLE: (Indiscernible) left, I think.

15 MR. :now we all know that the State will not
16 initiate any criminal proceedings.

17 MR. COLE: That's true.

18 MR. : That's a given?

19 MR. COLE: That's true.

20 MR. : So, since we're not going to have -- correct me
21 if my statement is wrong, please, sir -- is I have no pretention
22 of being a legal expert. The leverage, let us say, of the threat
23 of initiating criminal proceedings against Exxon for the damage
24 they caused individuals as well as the State of Alaska, is
25 gone. Is that correct?

1 MR. COLE: Well, let me just say to the extent it ever
2 existed. I mean, I'm not sure that there was much leverage.
3 And, let me ask this -- what do you think the fine would have
4 been then? The maximum fine, if some criminal proceedings had
5 been initiated. You know, you should really ask these questions,
6 the fundamental premises, to Attorney General Bailey. Not me.
7 He made that decision. The Cowper Administration made that
8 decision. Not the Hickel Administration. What really happens,
9 so that the record is clear, is the Hickel Administration did not
10 take it upon itself to reverse the decision made by Governor
11 Cowper and former Attorney General Bailey.

12 MR. : Are you saying, sir, that some of the basic
13 fundamental corrections or positions taken in this proposed
14 settlement resulted from work that was done by the previous
15 Administration?

16 MR. COLE: Yes. We did not start the oil spill litigation
17 team, which had existed for nearly two years and discard all of
18 the work they had done and all the months of negotiations with
19 the federal government to (indiscernible) expired and reject it
20 and start all over again. Of course. We relied heavily on the
21 work products of the oil spill litigation team which had been
22 generated in the past 20 months plus or minus.

23 MR. : Well, within that work product, Mr. Cole, was
24 there a deliberate communicative strategy which said, and by the
25 way, Mr. New Attorney General, we're not going to go after these

1 guys in a criminal thing, because there's just not enough to do
2 it on because the penalties are too small. Was there any
3 discussion between you and the prior Administration as to a
4 general direction for a proposed settlement?

5 MR. COLE: That last question really doesn't fit with the
6 dependent clause at the beginning of the sentence. But.....

7 MR. : Well, do you mind.....

8 MR. COLE:the answer to the last part of the question
9 is, we relied heavily on the work of the oil spill section. In
10 fact, it was three members of the oil spill litigation team who
11 had been working on this civil litigation against Exxon and
12 Alyeska for, say 20 months or more, in negotiating this
13 agreement. Those people were there in Washington, D.C. with
14 me. I conferred with them daily about essentially every decision
15 I made. I was not out there flying blind on instruments, but I
16 had an experienced team of able lawyers at my side at all times
17 and reviewing my decisions and my thoughts with them. None of
18 them said, oh, by the way, the thing to do is, we should tell
19 Exxon we're going to file criminal charges against them. I mean,
20 there's some things, you know, in the course of events that just
21 sort of get settled.

22 MR. : Well, I know that perhaps we're certainly tardy
23 and maybe blameful of the fact that we're not following these
24 charges as closely as we should, perhaps, as a Legislature. But,
25 you know, like most people in public service, at this part of the

1 process, we have two years and then we start over. But, I still
2 am not clear on -- and, by the way, who were those three members
3 and are they still members of your team?

4 MR. COLE: Yes, they're going to be here Thursday and you
5 can ask them all the questions you wish at length.

6 MR. : I'd like to, you know, I have more questions,
7 Mr. Chairman, but I appreciate the crunch of time and I certainly
8 the forthrightness of the Attorney General and again give him
9 credit for.....

10 MR. CHAIRMAN: Yes, we've only fifteen minutes with this
11 witness here and we have at least three more people who want to
12 ask questions and, of course, the others can ask them when he
13 goes back. I would ask you, Mr. Attorney General, if you could
14 condense your answers a bit then we can continue on.

15 MR. COLE: Well, I know, but sometimes the condensed answer
16 is not adequate to the response of the implicit charge.

17 MR. CHAIRMAN: Condensed, but adequate. I'd appreciate.
18 Next we have.....

19 MR. COLE: All right. Thank you.

20 MR. CHAIRMAN:Repres -- we want them to be adequate.
21 At least. Representative Hudson and then Representative Kubina
22 then Representative (indiscernible).

23 MR. HUDSON: Thank you, Mr. Chairman. Mr. Attorney General,
24 I'm going to see if I go this down right. The spill occurred
25 March 24, 1989. The federal government filed criminal charges,

1 do you know about when it was after that? And, the State filed
2 criminal charges against Hazelwood, were they about the same
3 time?

4 MR. COLE: I would think so. And, I think furthermore that
5 there were discussions between the state and federal governments
6 with respect to those events.

7 MR. HUDSON: And, then the third action is that the civil
8 charges were filed against Exxon, was that done prior to your
9 coming on board, or was that after you came on board?

10 MR. COLE: Oh, I'd say months and months.

11 MR. HUDSON: Okay, so essentially, when you came on board,
12 all of this other actions, the federal filing of criminal charges
13 -- of course, the Hazelwood thing was already, it was an aborted
14 affair and that produced nothing and then now we're -- so now
15 we're left with the federal criminal charges and the state civil
16 charges and this settlement, of course, emanates from some sort
17 of agreement surrounding the two of those, is that correct?

18 MR. COLE: Yes.

19 MR. HUDSON: Thank you.

20 MR. CHAIRMAN: Further questions, Representative Hudson?

21 MR. HUDSON: No.

22 MR. CHAIRMAN: Representative Phillips?

23 MR. KUBINA: Then I have.....

24 MR. CHAIRMAN: I'm sorry, excuse me. I'm sorry,
25 Representative Kubina.

1 MR. KUBINA: Good morning, Mr. Attorney General.

2 MR. COLE: Good morning, sir.

3 MR. KUBINA: Let me get this straight. The charges, your
4 agreement with Exxon about not charging them criminally obviously
5 is only contingent upon the settlement being approved?

6 MR. COLE: Well, I would imagine so. I mean, they never
7 simply wrote out, this agreement is conditioned upon, but my
8 understanding it's part and parcel of the event.

9 MR. KUBINA: Okay, I want to go a different little track
10 really briefly. What if we ask for 90-120 days, 180 day delay in
11 approving this? Would the request that you take your great
12 offices, and whatever pressure and power that you could towards
13 Exxon to try to settle the many other lawsuits that are out
14 there, especially the communities, the villages, the little push
15 for some of the individual ones, and that we'd be (indiscernible)
16 after Exxon has a period of time to do that? What would you
17 think of that approach?

18 MR. COLE: Well, I will answer that question as follows. I
19 have previously said that I will be responsive in this regard to
20 requests from the Legislature and I will convey to Exxon, in the
21 most professional fashion I could, the requests of the
22 Legislature and I would support a legislative request in my
23 communication with Exxon. What Exxon's response to that,
24 obviously I cannot say.

25 MR. KUBINA: What do you think the federal government's

1 response would be? I mean, there's some timelines in this
2 settlement that are supposed to be met.

3 MR. COLE: Well, the Attorney.....

4 MR. KUBINA: Do you think that you could convince other
5 people that a delay may be beneficial to everybody involved
6 (indiscernible) leave this settlement (indiscernible - noise) it
7 sets and try to deal with some of these other issues?

8 MR. COLE: The Attorney General assistant, Attorney General
9 Richard B. Stewart, will be before this committee this afternoon
10 and I would say that that would be a question you might need to
11 present to him.

12 MR. KUBINA: Would a delay like that cause us any legal
13 problems? The way the agreement's right now?

14 MR. COLE: The way the agreement's -- well, I'm sorry, but I
15 don't know how to answer that question, would it cause us any
16 legal problems? Well, to the extent that all parties agree to
17 such a delay it would not. You know, it causes us perhaps some
18 problems of expense to continue the prosecution of the
19 litigation. I mean, you know, just put that in suspense and
20 (indiscernible) prosecute and what do you do about the
21 depositions.

22 MR. KUBINA: Could you not do that though, put it all on
23 hold for 90 to 120 days, that's not that long?

24 MR. COLE: The parties could, yes. The State singularly
25 could not.

1 MR. KUBINA: I wouldn't mind, in the next few days,
2 personally, if some kind of track like that at least might be
3 discussed among you and your colleagues and I think in the
4 testimony that we've had over the weekend and everything that
5 we're -- might be a way to develop and support around the
6 effective communities for this settlement. Thank you, Mr.
7 Chairman.

8 MR. CHAIRMAN: You're welcome (indiscernible)

9 MR. KUBINA: We did have this, we received it
10 (indiscernible) this was obviously contingent on this settlement
11 being agreed to. Did you not, Attorney General, I asked you the
12 very first thing, I said, we're talking about the criminal, your
13 letter would be obviously only be affected, only would take
14 effect, and your commitment, if this settlement was agreed to.

15 MR. COLE: Well, I didn't say that, but I said I -- that was
16 my understanding. Let me.....

17 MR. CHAIRMAN: If the Representative would yield to me for
18 just one question. I'm going to ask the converse of that. If
19 the settlement is not approved, are you bound still not to
20 prosecute criminally?

21 MR. COLE: I don't believe so.

22 MR. CHAIRMAN: Are you prepared to state at this time what
23 your intent would be if that were to occur?

24 MR. COLE: No. And, I mean, I certainly would want to look
25 at the various statutes under which criminal charges could be

1 brought. I'd want to evaluate the strength of the State's
2 case. Any prosecution under those statutes to ascertain whether
3 it was reasonably likely that the State could obtain a
4 conviction, and I would evaluate the maximum penalties and
5 evaluate whether the maximum penalties would be sufficient to
6 warrant the expenditure of State monies in which to endeavor to
7 recover those penalties. I mean, you know, the prosecution of
8 such charges could be a very, very heavy financial burden for the
9 State and I think that is the proper consideration.

10 MR. CHAIRMAN: I understand.....

11 MR. COLE: So, those are the things I would want to evaluate
12 very carefully.

13 MR. CHAIRMAN: I understand (indiscernible) Representative
14 Phillips, if I may just make a request to you. We would
15 appreciate, as quickly as possible, today if possible, if
16 possible, by the time we convene at noon, even -- a brief
17 memorandum of points and authorities by the Attorney General as to
18 the applicable State laws in effect at the time and their maximum
19 penalties if you could ask your staff to do that. I'm sure that
20 must have been worked up at some point.

21 MR. COLE: I will endeavor to obtain that.

22 MR. CHAIRMAN: Thank you. Representative Phillips?

23 MS. PHILLIPS: Thank you, Mr. Chairman. Rather than a
24 question for the Attorney General, I have a request of the
25 Committee. I would like to request to see within the previous

1 Administration through Attorney General Bailey, and the Cowper
2 Administration, if there ever was anything in writing regarding
3 the State's position on a criminal charge agreement -- the
4 deletion of a criminal charge agreement. I'd like to have that
5 for our records.

6 MR. COLE: I'd like to add a note that in thinking about
7 this present line of interrogation, I have sought to obtain
8 documentary records of the decision making progress in the Cowper
9 Administration about the prosecution or the non-prosecution of
10 criminal charges against Exxon. So far, I've not been able to
11 find very much, although I have been told that the subject was
12 discussed and decisions made in that regard.

13 MS. PHILLIPS: Mr. Chairman? If there is nothing in
14 writing, perhaps we could have the previous Attorney General in
15 here to make a statement to us to that effect.

16 MR. CHAIRMAN: Well, we certainly will invite Mr. Bailey
17 here for that specific line of questioning and Mr.

18 ^{rememuray}
(indiscernible) you take it, please do that. I have -- yes?

19 MR. ^{Chair} : On that request, since we all are new players,
20 because every two years we turn around here, what effect does
21 that have on the present Administration? We note -- does that
22 mean that the former Administration is the one that really
23 fundamentally proposed this settlement? What do we gain by
24 having someone like the former Attorney General before us? And,
25 I guess that's my question.

1 MR. CHAIRMAN: I understand. I think that's something for
2 this Committee to decide, and I certainly have no problem in
3 endeavoring, as time permits, that line of questioning. And,
4 once again, I think it's incumbent upon us to have something to
5 the judge from the Legislature, if it's just a report from this
6 Committee, or whether it's a House resolution or a concurrent
7 resolution, no later than the 23rd. As early on the 23rd as
8 possible so I'm moving ahead in that direction with speed, with
9 respect to the criminal charges. Representative Ulmer?

10 MS. ULMER: Thank you, Mr. Chairman. I have three brief
11 questions (indiscernible). I have three questions. First of
12 all, with regard to the federal criminal charges, there's a
13 popularly held belief that one of the reasons Exxon came to the
14 table to bargain for a settlement was because of the pending
15 criminal charges and that but for that, they might not have come
16 to the table. Do you care to express an opinion on that subject?

17 MR. COLE: No, I never discussed that subject with Exxon and
18 so I do not know whether that affected their decision to
19 negotiate with respect to a civil or -- a settlement when they
20 did.

21 MS. ULMER: My second question relates to Alyeska. May I
22 ask whose idea it was to include Alyeska in the settlement with
23 Exxon?

24 MR. COLE: Yes, and the answer is Exxon. Certainly that was
25 not a.....

1 MS. ULMER: That was not a suggestion by the State of
2 Alaska?

3 MR. COLE: It's certainly not. Let me tell you, I have a
4 firm recollection of saying, in response to that demand of Exxon,
5 of saying "hold this until the last card, I mean, do not
6 acquiesce in this demand until we've gone through the, you might
7 say, entire settlement process." You know, I don't like to make
8 concessions in the course of negotiations, you know, like I say,
9 you sort of put all the cards out there on the table, you know.
10 And, my view is you don't say, all right, we'll give you this
11 one, Exxon, and that's fine, and you get nothing in exchange, you
12 just concede to their demands and then, you know, you talk about
13 another issue that they want, so you give them this card and off
14 the table, and so forth. My view of the way you do it is you
15 keep all these cards out there. That means demands, you know,
16 back and forth. And, (indiscernible). And then when you get
17 down to the end you say, you want this card? I'll give you this
18 card but I want this card in exchange, you see? That's sort of
19 the way it went, I mean, there's no conceding these basic
20 parameters in the negotiating process. Negotiators likely know
21 about it or until, you know, until we start picking up cards
22 too. And my observation over the years of a lot of negotiations
23 in various settings, too many people deal away their cards and
24 make concessions too early waiting to get down to the last card,
25 and, you know, where the trump starts, coming and going, is

1 there's nothing left to pick up. So, that was hold that point
2 till the end. But, Exxon said this has to be included in the
3 agreement or there would be no.....

4 MS. ULMER: My final question, Mr. Attorney General, relates
5 to the trustee decision-making process. As you've probably
6 heard, the public isn't very impressed. They don't feel as
7 thought the trustee system will enable the communities impacted t
8 have much of a say about the (indiscernible) they don't feel as
9 though there is a real responsive system that's being set up.
10 They worry about whether or not the decisions that the trustee
11 council make will in fact reflect what the consensus of the
12 Alaskan residents (indiscernible) come up with as a priority or
13 things that they don't want to have happen. Theoretically, at
14 least the Alaska Legislature is the only entity under Alaska's
15 Consitution that can appropriate funds. My question to you is,
16 can you imagine a modification to the MOA, or perhaps
17 (indiscernible) you between the trustees and the State of Alaska,
18 that is the Legislature, that would enable the trustees to make a
19 recommendation of what they feel the money should be spent for,
20 to the Legislature for appropriation and if the Legislature says
21 no, it goes back to the trustees for a determination as to how --
22 for another proposal, so to speak. That is to say, a system that
23 would not allow the Legislature to (indiscernible) its own
24 motion, initiate the expenditure, but rather to be in a
25 concentral, so to speak, for the funds to be spent in the state.

1 MR. COLE: The answer to the question is no.

2 MS. ULMER: Why?

3 MR. COLE: First and foremost, I do not believe the United
4 States would agree to that. That's first and foremost.
5 Secondly, I don't believe that it's possible to reach a
6 settlement of this litigation with those terms under it because
7 what the Clean Water Act does in this situation is provide a
8 mechanism whereby this dispute, with all its various legal
9 problems, would be accomplished and it provides a vehicle with
10 which to obtain these funds and to expend the funds and I just do
11 not believe that the federal government would acquiesce in that
12 process.....

13 Tape 27

14 Side B

15 MR. COLE:reach in the settlement where the
16 negotiations involving the United States. So, one must keep that
17 in mind. I do not see the United States acquiescing in allowing
18 the Alaska Legislature to make those decisions with respect to
19 undivided federal interest in them. Okay?

20 MR. CHAIRMAN: Yes, I see the clock on the wall had you
21 leaving here, but we had questions with the two brief questions,
22 one from Representative Kubina, one from Representative Davidson.

23 MR. COLE: I have another.....

24 MR. CHAIRMAN: I'm sorry, (indiscernible - simultaneous
25 talking) and I'd like to welcome Representative Navarre.

1 MR. KUBINA: On that point, is there anything in the
2 agreement, or would the agreement allow one of the trustees to be
3 a member of the Legislature?

4 MR. COLE: There's nothing in the agreement that
5 (indiscernible) and.....

6 MR. KUBINA: Is that something that possibly the governor
7 would give a guarantee to, that in order to help get this
8 agreement passed?

9 MR. COLE: That is a matter which should be directed to the
10 governor. I don't.....

11 MR. KUBINA: Do you support.....

12 MR. COLE: I don't speak for him in that regard.

13 MR. KUBINA: Would you support such a position?

14 MR. COLE: I'd want to think about it.

15 MR. CHAIRMAN: Representative Davidson then Representative
16 Hudson then that's it. We're (indiscernible - simultaneous
17 talking)

18 MR. DAVIDSON: Thank you, Mr. Chairman, I'll try to refine
19 my question here a little better, I haven't done too well today.

20 MR. COLE: Well, I think you've done well.

21 MR. DAVIDSON: Mr. Attorney General, Exxon's Alyeska card
22 says that the government give up all claims they have against
23 Alyeska related to oil spill for natural resource damages and
24 damages for injury to natural resources. That's the
25 Exxon/Alyeska card, is that correct?

1 MR. COLE: Well, yes, in substance.

2 MR. DAVIDSON: And, when Exxon wanted to play that card
3 early on the game here, somebody said no, that card goes at the
4 very bottom. That's the last card we play. So, my question is,
5 what card did the State get for Exxon's Alyeska card?

6 MR. COLE: Oh, we -- I simply got the committment to pay 900
7 million dollars.

8 MR. DAVIDSON: That -- i.e. the settlement proposal?

9 MR. COLE: Yes.

10 MR. DAVIDSON: Okay. Now, what -- a follow-up then, is, you
11 have indicated in previous hearings that we still have the
12 ability to go after Alyeska for other kinds of things. What are
13 they and what would be the outer limit numbers -- and I believe
14 you're pretty good at this game, I think -- what would be the
15 outer limit numbers in terms of monetary or other kinds of gains
16 to the State of Alaska could we realize from going after
17 Alyeska? On those other kinds of charges?

18 MR. CHAIRMAN: Representative, I know you have to be at the
19 airport at nine-thirty, don't you?

20 MR. COLE: Well, I would like to be as a matter of courtesy.

21 MR. CHAIRMAN: I think that.....

22 MR. DAVIDSON: (Indiscernible) say you had five minutes.

23 MR. COLE: Well, well, just let me say the answer to this,
24 I'm not going to tell publicly Alyeska how much money I think we
25 can beat out of them in criminal and civil litigation. I mean, I

1 just want to say that we will get all the money we can prove.

2 MR. DAVIDSON: But, we can't get money for resource damages,
3 right?

4 MR. COLE: That's true.

5 MR. DAVIDSON: So that's only -- well, I guess -- Mr.
6 Chairman, all I want to know is, you know, what are we going
7 after Alyeska for, if we go after them in the future?

8 MR. COLE: I've said, non-natural resource damages and.....

9 MR. DAVIDSON: Thank you.

10 MR. CHAIRMAN: Folks, the Attorney General will be back,
11 this is not his last visit here.

12 MR. COLE: Unfortunately, I'll be back.....

13 MR. DAVIDSON: The record should reflect he's smiling or may
14 be grimacing.

15 MR. : I just have one quick question for him.
16 Representative Kubina, I wonder if adding a member of the Senate,
17 the Alaska Senate and the Alaska House Representatives, in a ex
18 officio manner and perhaps even, if necessary, even the similar
19 comparables from the federal level might be something that would
20 be seeable. We're not disrupting the trusteeship, it would be
21 nonvoting, we used this on (indiscernible) board and a few other
22 instances -- something to think about, Mr. Attorney General.

23 MR. COLE: Yes, it is.

24 MR. CHAIRMAN: Thank you very much, and we'll look forward
25 to seeing the federal officials here at noon and we will start

1 and I know the people are going to have a lot of questions for
2 them. You need to get to the airport. Thank you very much.

3 MR. COLE: Thank you.

4 MR. CHAIRMAN: We really appreciate it. What the schedule
5 is, is now -- between now and 10 we're gonna have to Mr. Matt
6 Jamin, the attorney for the plaintiffs, one of the attorneys for
7 the plaintiff, but before the Attorney General leaves, I'd like
8 to present a letter to him at his request -- (indiscernible)
9 copies to the members. This is a letter requesting the presence
10 of Exxon and we would appreciate your good offices in helping us
11 get the record on this from Exxon here.

12 UNIDENTIFIED MALE VOICE: Thank you, Mr. Chairman.

13 MR. COLE: I will relay this request to Exxon promptly.

14 MR. CHAIRMAN: And, the members of the.....the Attorney
15 General has suggested we do it through him.

16 MR. COLE: Well, it makes no difference to me, I'm simply
17 saying that I would have no objection if the Legislature made any
18 request or request.

19 MR. CHAIRMAN: All right. We will also do it directly,
20 under those -- and I think you should convey that it is the
21 strong wish of the Committee to do that.

22 MR. COLE: Wait just this for a moment (indiscernible). I
23 would have the sense that only one of us should make the
24 request. I think it might get a little.....

25 MR. CHAIRMAN: And, if you would count it up forward,

1 please?

2 MR. COLE: You would like me to do it?

3 MR. CHAIRMAN: Please.

4 MR. COLE: (Indiscernible) I can do that.

5 MR. CHAIRMAN: Thank you. Next we have Mr. Jamin.

6 (Pause)

7 MR. CHAIRMAN: If the Committee would please come back to
8 order? We have with us Mr. Matt Jamin, who is one of the
9 attorneys for the plaintiff. Welcome, Mr. Jamin.

10 MR. JAMIN: Chairman Gruenberg, Subcommittee members, good
11 morning. My name is Matt Jamin, I represent some of the people
12 who have been talking with you both here in Juneau and in the
13 communities affected by the spill. They are my clients and I
14 have a fiduciary relationship with them. And, they in a way, I
15 want to talk with you more about this morning, are your clients
16 too. For you, along with the federal government, have a specific
17 fiduciary duty to them. The State government is a trustee for
18 the natural resource damages in the Exxon Valdez disaster. In
19 fact, reading from the statute, the president or the authorized
20 representative of any state, shall act on behalf of the public as
21 trustee of the natural resources and recover for the costs of
22 replacing or restoring such resources. Most of what I want to
23 talk with you about this morning has to do with what it means to
24 be a trustee. What it means to have a fiduciary relationship and
25 obligation. And, the people who are the beneficiaries thank you

1 for listening. My avocation is as a teacher, so I'm going to use
2 the blackboard to explain some of the points I want to make here
3 today and I hope it helps. But, both because I want to be
4 perfectly clear about what the litigation looks like, and because
5 I want to be totally straightforward about my prejudice, let me
6 start by telling you who I represent. There are fishermen who
7 complain that they've been affected by the spill, because seasons
8 were closed, because fish may have been harmed, because prices
9 may have been depressed, and that fisherman has been certified,
10 or that fisherman class has been certified to be the fishermen's
11 throughout the State of Alaska. Judge Shortell did that. There
12 are Alaska Natives in the affected area, from Valdez, to Chignik,
13 and they are members of the villages in those areas, and they
14 claim the loss of their subsistence way of life. There are
15 landowners whose land has been devalued by the spill. There are
16 businessmen such as shorefront hardware store operators who lost
17 business because of the spill. And, all of those are classes
18 certified by Judge Shortell. And, I also represent 13
19 municipalities, from Cordova to Chignik, that claim that they
20 have lost because of the spill. Got one more prejudice I want to
21 tell you about before I get into the substance of my testimony.
22 And, that is that the lawyers for the State are for the most part
23 close personal friends of mine, and people I like very much.
24 They are also very good lawyers. I'm going to suggest to you to
25 place three substantial limitations on the settlement, if it is

1 to be approved. I'm going to try to put in legal terms what the
2 people who have testified have been saying, that something is
3 seriously wrong with the process of this settlement. And, that
4 you and only you have the ability to convey that to Judge
5 Holland. Those three things are: That Alyeska should not be
6 eliminated by the settlement. That Exxon needs to indemnify
7 completely the State of Alaska. And, under the framework thus
8 far presented to you in this settlement, it's okay to permit the
9 Attorney General, on behalf of the State, to settle the State's
10 claims for expenditures and cleanup, but not those in which it
11 sits as a trustee, as it is currently constituted. So, to
12 understand this case you need to know a little about the
13 litigation, I think. What are the claims. There's claims
14 by.....

15 MS. ULMER: Excuse me, Mr. Jamin.

16 MR. JAMIN: Yes.

17 MS. ULMER: Could you move that back just a little?

18 MR. JAMIN: And, which way?

19 MS. ULMER: Just back, so we can see the.....

20 MR. JAMIN: Over this way?

21 MS. ULMER: Thanks.

22 MR. JAMIN: There are claims by the State against Exxon,
23 against Alyeska, and against the federal government. And, the
24 State is claiming that it was affected by the malfeasance of
25 those parties. There are claims by the federal government

1 because, it is, among other things, a landowner in the area,
2 against Exxon, Alyeska, and the State government. There are
3 claims by Exxon against the State and federal government. And,
4 there are claims by the fishermen and landowners that I talked
5 about, who I will call private plaintiffs, versus Exxon, Alyeska,
6 and very recently, the State. And, finally, there's the pick of
7 a group of plaintiffs, the municipalities, who have claims only
8 against Exxon and Alyeska.

9 What the State is talking about here is sacrificing its
10 claim against Exxon completely and Alyeska as to natural resource
11 damages. It is the trust claim that the State is sacrificing
12 against Alyeska as well as against Exxon. Now, I want to
13 distinguish those two. When the State says to you that it is
14 going to try, or that it is going to recover money for the amount
15 it spent to clean up, that's not a trust claim, that's an out-of-
16 pocket claim. But, when it says its going to recover for the
17 lost resources, that's the claim, the part under the statute I
18 read to you, and that's the claim where it says, we are
19 recovering that as a trustee. Alyeska is paying nothing through
20 this settlement. And, as the Attorney General told you, Alyeska
21 will be discharged completely from any natural resource
22 damages. Our view is it should not be released. There is
23 substantial liability. It has, if anything, as much liability as
24 Exxon and is giving up nothing. Now, the second point about the
25 indemnification provisions, where I suggested to you that Exxon

1 should completely indemnify the State, I want to talk and create
2 an image of a criminal case in which there are three
3 defendants. And, all three, it is suggested, have been involved
4 in a murder. One of those three defendants turns state's
5 evidence and testifies against the other two. The problem that a
6 prosecutor has in that case after that, the one significant
7 problem, is that the two defendants who are still liable for
8 homicide point the finger at what we call the empty chair, to the
9 third defendant, and say, that's the real bad guy, the one that's
10 testifying against us. And, it's very difficult in homicide
11 cases, often, to prosecute effectively the two who are left
12 because the one who is acting to some extent as a snitch, is the
13 one to whom the finger is pointed and the jury may be confused as
14 to who is really responsible. The same kind of problem is
15 present in this case. Let's take a look at what happens before a
16 settlement. Before a settlement, the State is aligned with the
17 private plaintiffs. The State's saying, we're hurt and the
18 private plaintiffs are saying, we're hurt. The other side of the
19 table is Exxon and Alyeska. And, the plaintiffs point the finger
20 at the bad guys and they say, Exxon and Alyeska are the bad
21 guys. What does that look like? Why is this something that we,
22 as private plaintiffs, liked? Well, what a lawsuit involves
23 first is discovery. Discovery is building your case against the
24 other party. And, that involves going through documents.
25 Millions and millions of pages of documents. And, it involves

1 depositions, hundreds of depositions of Exxon witnesses, Alyeska
2 witnesses, everybody that was on the boat, everybody that was
3 close to the spill response in the first couple of days. Before
4 this settlement was proposed, the State and the private
5 plaintiffs were together on that. They were sharing the
6 resources of lawyer's teams, and they were sharing money, 'cause
7 it costs money to litigate. You worked together on documents,
8 you work together on depositions, you work together to develop a
9 case together. After this settlement, the State, with the
10 exception of the limited claim that has been discussed against
11 Alyeska, is not here. Private plaintiffs, for discovery purposes
12 now, pursue the claim against Exxon, pursue the claim against
13 Alyeska alone as to discovery. There are not the joint
14 resources, there is not the joint money. That's a difference.
15 It may be right, but the same claims are there. But, the ability
16 to prosecute those claims is not there the same way. Someone in
17 the community said, it's like you had a ladder and you were
18 trying to go up a wall but someone took the ladder and went
19 away. Maybe the State is taking the ladder to climb the wall
20 away. Someone else said it was like you were in a fight and your
21 big brother was there to deal with the bully, but then the big
22 brother went away. And, maybe that image is right, too. What's
23 it like at trial, 'cause that's the second phase of litigation.
24 And, this is where I want to try and have you understand this
25 empty chair idea. The way it is before the settlement, the State

1 is in the courtroom with its Attorney General actively
2 prosecuting its case against Exxon and Alyeska, and saying
3 they're the bad guys. The private plaintiffs are in the same
4 courtroom saying, these are the bad guys. If the State is no
5 longer a private plaintiff against Exxon, then one of two things
6 happens. If the State, under this agreement, if the State has
7 been sued there in court, but they're down here, and if the State
8 has not been sued, they're not in court. If they're down here,
9 the Attorney General is definitely right. Part of his obligation
10 is to deal with the claim by these folk, the plaintiffs. And,
11 that puts him at loggerheads, at war with the plaintiffs under
12 this agreement. And, the Attorney General would be right to
13 argue there's no legitimate claims that the private plaintiffs
14 have. Or they have no damages, because to the extent the private
15 plaintiffs are successful, the State pays. Now, let's say that
16 the State isn't in here as a defendant because none of these
17 plaintiffs sue the State. Then, under the terms of this
18 agreement what happens? Then these two are permitted explicitly
19 to say, you know who's responsible, ladies and gentlemen of the
20 jury, for the damage to this crew of private plaintiffs? It's
21 this person who's not in court, who's sitting in an empty
22 chair. Know who it is? It's the State of Alaska. Now, in that
23 situation the State of Alaska may not have to spend the money to
24 pay this crew, but this crew gets a lot less money. Now, why do
25 I raise all this? I raise it to counter the suggestion that this

1 agreement does not affect the rights of private plaintiffs. It
2 may not take away any of the claims of private plaintiffs in
3 terms of having that claim to continue to pursue, that's still
4 there, but the reality of this agreement, either removing the
5 State to a defensive position with respect to the private
6 plaintiff's claims, or putting the State in an empty chair, is
7 that the private plaintiffs have been significantly interfered
8 with. Their claims have been compromised.

9 One of the things that you heard out in the communities is
10 that maybe the substantive claims have been affected as well.
11 The discussion that existed regarding the play between the
12 Section 32 of the agreement and Section 13 of the agreement is
13 worth raising here again. Section 32 has been pointed to on
14 numerous occasions, and it reads: "Nothing in this agreement is
15 intended to affect legally the claims, if any, of any person or
16 entity not a party to this agreement." Now, it may be, as I
17 suggested to you, that the claims are not affected, that is, the
18 landowner can still say, well, I lost some value in my land.
19 And, it may be the fisherman can still say, well, my fish price
20 was depressed or I wasn't able to get the fish. But, I hope that
21 you have a perception now of how the reality of the agreement,
22 with the indemnification clauses and with the way the empty chair
23 is created, does significantly affect the rights of plaintiffs.
24 And, I ask you to, to press on that, find out if my view is
25 right. Those Section 32 seems to say that none of these claims

1 against the plaintiffs, or excuse me -- that the plaintiffs are
2 bringing, are in any way affected. Let me try to explain why
3 people have been so concerned about Section 13. Section 13 is,
4 in form, we give up everything except, and then one of the
5 exceptions, paragraph 13(a), says, we don't give up the right to
6 enforce this agreement. Well, that makes good sense, if anybody
7 violates the agreement, the State should have the right to
8 enforce it. Section 13(b) says the rights and obligations, if
9 any, of Alaska Native villages who act as trustees for the
10 purposes of asserting and compromising claims, then goes on and
11 talks about those rights. Well, if Section 32 is right, and this
12 doesn't interfere at all, then there's no reason to have that.
13 You don't have to have a limitation preserving 'cause you've
14 preserved everything. And, so too with Section 13(c). The
15 rights and obligations, if any, of legal entities of persons
16 other than the governments, who are holders of any present right,
17 and so forth. And, everyone was concerned in the communities,
18 well, does that mean that the State is taking the position that
19 future rights are compromised? Well, we don't need that
20 language. If that's there for us, take it out. We're concerned
21 that it may be an attempt to compromise some of the substantive
22 claims. And, we're more than happy to live with the language in
23 Section 32.

24 Now, I want to get now to the core issue that I want to
25 present to you today. And, that's the problem with this

1 trusteeship. The governor and the Attorney General are telling
2 you to review the settlement and approve it or disapprove it.
3 They tell you in the first instance that they will analyze
4 liability for you. Exxon's liability to the State, to the
5 federal government, and Alyeska's, and the State's ability to
6 recover damages, and the amount of the damages. And, they tell
7 you to trust them regarding that judgement, that it is fair.
8 When you push a bit, they begin to release some more. They give
9 you a summary of the science and say that in private they will
10 give you more. But, the source is always the State and the
11 federal government. What's wrong with this? Normally, it would
12 be fine. But, the State is talking about discharging not just
13 its own claims, the claims for the cleanup expenses, but also
14 those that it holds as a trustee. What's different about that?
15 The basic core concept of a trustee we can analogize to me
16 creating a trust for my grandmother, or perhaps for an injured
17 child. And, as a trustee I have a obligation to the person.
18 And, that obligation is a very special fiduciary obligation and
19 it says that I can't put my own personal business dealings
20 first. The first thing that I have to focus on is always my
21 obligation to the trustee. Paramount. Is that what's going on
22 here? Is the governor and the Attorney General focusing
23 primarily on the trustee, or do you hear throughout the
24 discussions a concern about the State's liability? And, I submit
25 to you, you have. The Attorney General has told you that the

1 science cannot be released because it might be used against the
2 State. Well, that science was developed as part of the trustee
3 relationship, the fiduciary relationship. And, it is
4 inconsistent with that fiduciary relationship that you don't
5 focus exclusively on the trustee -- excuse me, on the
6 beneficiary, as trustee, and say that is my paramount
7 obligation. I cannot be concerned about my own backside as a
8 trustee. I can, when it comes to talking about the damages for
9 the cleanup, but not when I talk about the public trust. Not
10 when I talk about the responsibility I have to these people out
11 there, 'cause that's what the language in the law says, and to
12 the environment. There I must be concerned exclusively about
13 them. No question, the State is being a very aggressive and
14 zealous litigant. Private litigants all the time have claims to
15 make and claims against them and they settle them, that's
16 appropriate. But, this is different. Here the Attorney General
17 for the State asserts private claims against Exxon and Alyeska
18 for cleanup expenses, for lost revenues, doing a great job
19 zealously representing the State. But, the State has other
20 claims and they're real. The trust claims are real and so is the
21 potential liability. I don't want to argue to you today that the
22 State has any significant exposure, 'cause that hurts my case.
23 But, when there's any suggestion of exposure to a trustee, then
24 the trustee can't compromise. Well, let's see what those
25 suggestions are. As to the federal government, each of you is

1 familiar with the National Transportation Safety Board findings
2 suggesting that the federal government had some responsibility
3 through the Coast Guard, through the vessel monitoring system.
4 What has Exxon said about the State? Exxon has said that the
5 failure to be able to employ dispersants was because the State
6 wouldn't let them. Exxon has said that the closures of fisheries
7 in places like Kodiak was a function of an absurd policy by DEC
8 and Fish and Game and that it was uncalled for. The damage, they
9 say, was caused by the State. Well, when the trustee has those
10 kinds of allegations against him, against the State, then the
11 trustee has a problem, I submit to you.

12 It's possible, despite this problem, we feel, to develop a
13 solution. Let the Attorney General deal with the affirmative
14 claims against Exxon for the State's cleanup and the other
15 aspects of the claim for which the State is not a trustee. But
16 as to the claims for which the State is a trustee, there is a
17 duty to indepently review those claims, at the very least. And,
18 that's what I think you heard in the communities. Someone,
19 people saying to you, please look at this again totally
20 independently. Part of independent review means independent
21 counsel. Quite wisely, you have already secured independent
22 counsel to review the terms of the agreement and to counsel you
23 in that regard. But, what I'm suggesting to you is that there
24 may be a trust responsibility to review the entire game, not just
25 the settlement, but the whole thing, insofar as natural resources

1 damages claims are involved. That means independent fact-finding
2 where you can not rely exclusively on the Administration, which
3 is attempting to cover its own backside. This is a trust
4 relationship. If we are unable to convince the Administration to
5 act in a trust-trustee type capacity, we implore you to do it.
6 And, we need independent review as to the State's liability to
7 your beneficiary, the public. What's your remedy? What do you
8 do now, if you accept what I'm saying? Please stop this process
9 to the extent it deals with natural resource claims. Hold it
10 up. Slow it down. Wait till the evidence is in. And, if it's
11 not there, if there's no damage to the natural resources, that's
12 okay. Trustees don't have obligations to make false claims.
13 Trustees have obligations to establish what a real claim is, to
14 quantify it as precisely as is possible. You heard Ricky Ott
15 (sp) tell you that it will take us another six months. We need
16 to know what the return is like for salmon 1991. Well, you don't
17 find that out until you've gone through August of 1991. Why is
18 that important? Because those fry were leaving in 1989. We need
19 to find out were those eggs, were hatched in 1989. We need to
20 know what's happening, she said. Maintain your relationship with
21 totally independent counsel, I am suggesting to you. Review the
22 State's liability case against Exxon and Alyeska, which they
23 purport to settle, for natural resources. Review the State's
24 damages case against Exxon -- its own damage case against Exxon
25 and Alyeska. And, painful as it may be, please independently,

1 review the prospect of a case by Exxon or Alyeska or others
2 against the State. And, please behave responsibly about that,
3 not concerned about any liability that the State may have. What
4 if the AG and the governor, in response to this position that I'm
5 taking today, come back and say, well, we've already done that.
6 Trust us. You know, trustees, when they have a beneficiary with
7 a piece of property, know they can't buy that piece of property
8 from the beneficiary, they're not allowed to even if it's a fair
9 market value. The idea is that the basic core relationship is
10 such that you cannot self-deal. And, what we're suggesting to
11 you today is that you are the only barrier between the
12 beneficiaries and the trustee in a self-dealing problem. A self-
13 dealing problem to cover the backside a little bit. You are able
14 to take responsibility for the trust that has been committed by
15 law to you. And, we implore you to do that. Let's move away
16 from the mentality that says hold the science from the people
17 because it might hurt the State of Alaska. Let's move away from
18 concern about exposure. Let's behave like trustees and once
19 again restore in the people of the affected area the trust they
20 deserve they deserve to have. The trust they were begging you
21 for in the communities.

22 I have one final area and then I am here for whatever
23 questions you may have. And, that is this same image about
24 trustees, when you evaluate damages and evaluate this case,
25 applies in the future. People in the communities were talking

1 about the six trustees, three from the federal government and
2 three from the State government. And, they were concerned about
3 what trust they might be able to put in those six trustees. We
4 think, that at the very least, if trustees are to be established,
5 that there needs to be accountability for those trustees. And,
6 elements of that accountability include the following: First,
7 public participation beyond an advisory board for
8 accountability. Second, procedures for public audit of any
9 monies that are spent under the trust. Third, open meetings of
10 the trustees. Maybe it's impossible to apply with the open
11 meetings act, which we think is a procedural protection, but the
12 same kinds of protections can be built into the trustee
13 process. Next, a requirement that whatever the trustees do in
14 the nature of regulations, that they be subject to something it
15 came to our Administrative Procedures Act. With careful
16 enactment. All of these things are consistent with the
17 responsibility that you have and that we implore you to take as
18 trustees for the people of the affected areas. Thank you.

19 MR. CHAIRMAN: Thank you, Mr. Jamin. Just for my own notes
20 here, you listed three things and then you went to the
21 regulations. The second being audited trust, then open meetings
22 of trustees, what was the first one?

23 MR. JAMIN: The first one was public participation beyond an
24 advisory board. And, a number of suggestions have been made
25 there. The idea of an extra trustee.....

1 MR. CHAIRMAN: I understand -- alternative (indiscernible)

2 MR. JAMIN: Yes.

3 MR. CHAIRMAN: You have written comments there?

4 MR. JAMIN: I can prepare comments. These are very rough.

5 MR. CHAIRMAN: That would be very helpful if -- even if
6 they're rough it'd probably be helpful, because I think people
7 understand basically what you're saying but if you could give
8 something to the staff, we'll certainly give it out.

9 MR. JAMIN: All right.

10 MR. CHAIRMAN: Okay. Questions from members of the
11 committee? My goodness. Okay, Representative Hudson. Anybody
12 else? Representative Hudson, Kubina, anybody else? Okay.

13 MR. HUDSON: At what juncture were you established of the
14 trustees? What time, what point in time were you established the
15 trustees for the private litigants?

16 MR. JAMIN: We are the representatives of the private
17 litigants and Judge Shortell's order was in February of this
18 years.

19 MR. HUDSON: I see. And, so have you had any conversations
20 with the Attorney General since that time, imploring him to say
21 add some of these additional safeguards in your behalf?

22 MR. JAMIN: Yes. I said at the outset that a number of
23 these people are my personal friends, there's no question about
24 that, we talk daily about these issues.

25 MR. HUDSON: (Indiscernible) the Attorney General because he

1 said that he had had almost daily discussions with you folks as
2 well. The scientific information, we heard from the Attorney
3 General that any release of the scientific information to, say,
4 you folks, or to the lawyers representing the private litigants
5 who are suing the State of Alaska and he makes that clear, would
6 also provide a similar release to Exxon and Alyeska, which, in
7 his words, intimated it would jeopardize -- if I heard him right
8 -- would jeopardize their ongoing claims against Alyeska. And,
9 so what it might benefit you, it would harm the State of Alaska
10 by that release.

11 MR. JAMIN: I'd be more than happy to respond to that.
12 First of all, sir, the scientific aspect of this, it's going to
13 be part of that discovery process that I told you about. It's a
14 question of whether it will be released sooner for the benefit of
15 the public that was crying for it, or later, as part of the
16 process. I know of no way by which Alyeska, Exxon, private
17 plaintiffs, anyone in the litigation, will be barred from the
18 basic core scientific information which has been established by
19 the trustees. The Court simply allowed that as part of the
20 process. So, I don't understand that argument.

21 MR. HUDSON: You have knowledge of it, but you don't
22 understand it?

23 MR. JAMIN: Well, I see that it's a timing argument, but I
24 don't think it has any long-term validity because Exxon and
25 Alyeska will have access to those, or that information, whether

1 or not private plaintiffs are suing the state.

2 MR. JAMIN: Uh-huh. This morning we heard -- if I might,
3 Mr. Chairman, just continue on, this will be my last question --
4 this morning we heard from the Attorney General that essentially
5 as they came on board, the State had made certain judgmental
6 decisions. One, obviously was to not proceed on criminal claims
7 against Exxon and the federal government had already done so, and
8 that they had chose go against Hazelwood for criminal charges, of
9 course that had played itself out, and I think we heard the
10 Attorney General say that essentially they pretty much adopted a
11 moving boat and jumped into the middle of the thing, and that
12 (indiscernible - noise) some conclusions, that they felt
13 (indiscernible) try to reserve the private litigant's rights, and
14 at the same time to settle or put some money into the bank from
15 Exxon.....

16 MR. JAMIN: Yes.

17 MR. HUDSON:and to recovering the damaged area. Does
18 that wash with you, do you understand that?

19 MR. JAMIN: Well, there's a number of aspects of that that
20 could go on for days. Certainly, the notion that some
21 proceedings had occurred with respect to criminal prosecutions in
22 the previous Administration is true, there was a history there.
23 The -- I suspect one will not find any promise to either Alyeska
24 or Exxon from the previous Administration not to pursue criminal
25 liability at the State level. That that is something that is

1 fairly new. And, I think that's the most important thing I can
2 say in response to your question.

3 MR. HUDSON: Thank you very much.

4 MR. JAMIN: Thank you, sir.

5 MR. CHAIRMAN: I have Representative Kubina, Representative
6 Lavarre and myself, if we have time.

7 MR. KUBINA: Mr. Jamin, as a sixth-grade teacher, I want to
8 compliment you, you did a very good job of educating us. I
9 appreciate that, that's probably there weren't so many questions
10 right off the bat. One thing that did come to my mind is
11 everybody was suing everybody -- why is noone suing the federal
12 government?

13 MR. JAMIN: Well, there are some persons suing the federal
14 government, and that's a pretty complicated question. One had to
15 assert certain claims against the federal government by a much
16 earlier date. Exxon has sued the federal government. There are
17 lawyer's judgments involved and the core judgment is one that I'm
18 more than happy to share with you, and that is that, as I've
19 suggested, I have no particular interest in having the State or
20 federal government on the other side of litigation from private
21 plaintiffs. And, I will tell you bluntly, there was no desire
22 whatsoever to sue the State government. We requested of the
23 Attorney General a totaling of the statute of limitations. There
24 was testimony as to this in the communities. Give us some more
25 time to see if we can work out our difficulties, have this

1 information released, and the Attorney General would not give us
2 that totalling. And so, to protect rights, one files an action
3 but that is not something that the private plaintiffs wish to
4 pursure, I can assure you.

5 MR. KUBINA: And, the municipalities, as I understand it,
6 actually the statute of limitations is longer for them?

7 MR. JAMIN: That's correct, sir.

8 MR. KUBINA: Isn't it, in fact, in this agreement even a
9 little stronger than you put it, that the State actually has to
10 help out Exxon in defense of some of this, that they are co-
11 defendants?

12 MR. JAMIN: Let me say, sir, that there are a number of
13 provisions in this agreement that I believe are not drafted as
14 well as they might be for the benefit of the State and that.....

15 (Tape changed)

16 Tape 28

17 Side A

18 MR. JAMIN:is a very real one for us. There is some
19 portions where we just are not sure what they mean and we think
20 that that may to the detriment of the State as well. The
21 Attorney General may take a position now regarding what they mean
22 and it may be that without clear language, Exxon will take
23 another position later on to the detriment of the State. Thank
24 you.

25 MR. KUBINA: And, the last question, Mr. Chairman -- did you

1 or any third party litigant attorneys have any input at all
2 during any of the negotiations, as far as you know?

3 MR. JAMIN: We did have some input and that was we made
4 pleas, we made requests, insofar as the Attorney General
5 testified and said that he heard the request regarding fish tax,
6 that is true. Section 13(d), I think it is, of the agreements
7 specifically sets out that the protection of the fish tax claims
8 of the municipalities. Incidentally, in that regard, we think it
9 would be tremendously important because the tax mechanism works
10 exactly the same way to similarly protect the claim for fisheries
11 enhancement tax going to the regional agriculture associations.
12 We would specifically request that that be added in much the same
13 way that paragraph 13(d) protects the claim of the fix tax. But,
14 in that regard we were definitely heard, sir.

15 MR. KUBINA: Thank you. Did any of you -- was there ever
16 anything given to you in writing that said, this is an article or
17 part of the agreement, what do you think of this language,
18 anything like that?

19 MR. JAMIN: No, sir. We were not involved in the
20 negotiations despite numerous pleas to be involved.

21 MR. KUBINA: Thank you, Mr. Chairman.

22 MR. CHAIRMAN: Representative Navarre then Representative
23 Ulmer, then myself.

24 MR. NAVARRE: I have a question with regard to the data.
25 You mentioned the core scientific data?

1 MR. JAMIN: Yes, sir.

2 MR. NAVARRE: Will that be, as you said, available under
3 almost any circumstances?

4 MR. JAMIN: Yes, sir, it will. It's a matter of timing.
5 Typically, in a discovery process, one does fact discovery first
6 and then later on in litigation one does what is called expert
7 discovery and that's typically shortly before trial. When I was
8 responding to Representative Hudson about this timing issue I was
9 suggesting that it may be a year, or two years, or three years
10 before the litigation process brings that science out. What we
11 heard yesterday in the testimony was -- and throughout the
12 communities -- was a need for the science now. And, that's what
13 we think is missing. Thank you.

14 MR. NAVARRE: The reason I asked that question is because
15 you mentioned expert testimony, expert scientists, their
16 interpretation, I expect, of the data. How much of that is
17 discoverable? If you're suing the State then how much of that do
18 they have to release? Do they have to release just the experts
19 that they're going to use to try to prove their case in
20 discovery? Do they have to release all of the underlying
21 scientific data, do they have to release every single piece of
22 information that they've collected and interpreted over the
23 course of their studies, or just what they intend to use?

24 MR. JAMIN: Our position, sir, will be that they must
25 release all of this data. You focused correctly on a doctor in

1 this discovery area, which suggests that an expert which is hired
2 by a party for consultative purposes and not for testimonial
3 purposes, as to that material in those exchanges, that is
4 generally not discoverable absent a special showing. And, there
5 may well be a position taken by the State or federal government
6 that some of these, or this expert material that you've
7 described, was for that purpose.

8 MR. NAVARRE: And, again, I guess one of the arguments that
9 the Attorney General made to me was that release of this data at
10 this time will allow either people suing us or Exxon, if the
11 settlement is not approved or Alyeska settlement is not approved,
12 or even Alyeska against the -- maybe some other circumstances,
13 would be able to take the data and tear it apart, have their
14 experts tear it apart, and my question is, won't that happen
15 anyway, I mean, aren't there provisions for delay or whatever the
16 court process, the litigation process and allow that they can
17 take as much time as they want to discredit or tear apart the
18 data as they want?

19 MR. JAMIN: Certainly with mature litigants, as those are
20 that are in this case, one would not expect the ability to
21 discover information of this magnitude and not be able to have
22 enough time to be able to critique it and.....

23 MR. NAVARRE: Thank you.

24 MS. ULMER: Thank you, Mr. Chairman. Two questions. We've
25 been focusing on the natural resources studies. What about the

1 economic studies? I mean, does the trustee relationship that you
2 described so well this morning also extend to a notion that this
3 data, the economic studies should be made available?

4 MR. JAMIN: It certainly does. The economic studies are a
5 variety of the scientific study, from my perspective. The
6 economic studies go to the valuation of the loss of the
7 biological resources. How does one quantify that? And certainly
8 one of the things that both the State and federal government
9 attempted to do in the economic studies, the contingent valuation
10 studies, was to try to quantify the loss. So, that is part and
11 parcel of the trustee obligation. Part and parcel of what it
12 means to have an oil spill -- quite apart from litigation -- what
13 does it mean to the State of Alaska in the future? How should we
14 plan for these spills? Should we set up regulations? Totally
15 unrelated to this litigation and information which we think has
16 to be out on the table.

17 MS. ULMER: My last question relates to the bird in the hand
18 versus two in the bush (indiscernible). Sometimes the simple
19 analysis of a complex issue, (indiscernible) is the hardest to
20 respond to? You have a lot of time to explain to people kind of
21 (indiscernible) and how complicated and interwoven. But, that
22 sort of simple notion that taking some money now, may be
23 admittedly less than we might actually eventually be able to
24 recover, maybe more -- who knows, but taking some of it now and
25 actually putting it into the region to help with restoration

1 might be a better fulfilling, so to speak, of our trustee
2 relationship, not only to the natural resources but to the
3 region, than by putting it off and litigating it further. What's
4 your response to that?

5 MR. JAMIN: All right. May I go to the blackboard. Am I
6 glad you asked this question.

7 MR. CHAIRMAN: Always beware when a lawyer says that.

8 MR. JAMIN: I ascribe to that as well. You know, when you
9 look at the damages in the case, there has been, from my
10 perspective, a little bit of apple versus orange comparison
11 here. If the State pursues its claims and wants to recover for
12 its out-of-pocket expenditures, then courts say, how much were
13 they and when did they accrue? Because you're entitled to
14 interest. When you're damaged, after you're damaged, you get the
15 interest on it. And, the idea there is everything courts look at
16 in terms of present value. Or, at least, apples versus apples.
17 You've heard testimony from a number of people and from the
18 Library of Congress much, much more careful than I can, about the
19 real monetary value of this settlement in the 400 to 425 million
20 (indiscernible). Thank you, Representative Kubina, for looking
21 at me. That's an apple, what's happening right now. It's not a
22 billion-dollar settlement, because on a billion-dollar
23 settlement, you have a billion dollars now and you get the
24 interest over time. So, what are we comparing that 400 to 425
25 million with? Those are the actual damages. Well, in the

1 document that you have in front of you, the State has suggested
2 to you that there are 60-some million dollars' worth of damages
3 for it and some 70 million dollars for the federal government
4 that are out-of-pocket expenditures -- I don't know if I've got
5 those backwards -- but in any event, something on the order of
6 130 million dollars. And, that number should be compared with
7 this number, not a billion, because if a court awards a 130, it
8 puts the interest on it, not even from today, when the 400 to 425
9 is supposed to come out, but from the date they actually accrued,
10 'cause there's interest running on that money already. And, if
11 you work it out over time there will be interest, there will be
12 more interest on it. Plus, happily, under Alaska civil rule 82,
13 there are attorney's fees on top of that number. And, I submit
14 to you that the very least that the claim is worth for the State
15 of Alaska, assuming no natural resource damage at all, and the
16 federal government, is that 130 figure. And, it's a little bit
17 more than that when you actually add the numbers together. And,
18 by the time you bring it to today, two years after the spill,
19 this number is somewhat higher. My guess would be it's about
20 150, with interest on it. Now, it seems to me that that the
21 responsible way to deal with this is to compare this plus all
22 other claims, with the 400 or so that is being offered. The
23 testimony that you heard last night from Ms. Ott (sp) and the
24 others, was the State part of the natural resources damages
25 claim. And, the federal part, together, of the natural resources

1 damages claim. However they should be allocated -- this is my
2 translation -- well exceed 250. This number's actually higher
3 because, with the attorney's fees on it, you might get another 20
4 for attorney's fees, it may be 170, maybe it's 230. Now, the
5 concern that's always been, well, maybe the State won't get
6 anything out of this, maybe all the resource damages belong to
7 the federal government. Our view on that is consistent with your
8 trust responsibility, that would be okay. You're not necessarily
9 trying to recover for the State of Alaska, if it's not entitled
10 to. If the federal government's entitled to it, then we will
11 push them to be responsible trustees. I don't subscribe to the
12 notion that the federal government is irresponsible or that the
13 State government is irresponsible. Which ever one of those is
14 responsible can be forced to be a responsible trustee. That's
15 part of what the beneficiaries are going to try to do. Ms. Ott,
16 and she's a much better scientist and quantifier than I will ever
17 be, is telling you that the bird in the bush, I guess -- this
18 one, is way more than 250. Don't even begin to think about
19 settling both the State and federal natural resource damages
20 claims for that amount.

21 MS. ULMER: Thank you.

22 MR. JAMIN: Thank you.

23 MR. CHAIRMAN: Representative Navarre?

24 MR. NAVARRE: Could we get you to, like, use this diagram
25 (indiscernible) an explanation of it?

1 MR. JAMIN: Sure. I will be happy to do that, sir.

2 MR. NAVARRE: For our records.

3 MR. CHAIRMAN: Okay, I have some questions. With respect to
4 the empty chair argument, that seems to me to be very much
5 driving, tactically, the plaintiffs in this situation.

6 MR. JAMIN: A great concern, sir.

7 MR. CHAIRMAN: A great concern. There are ways of dealing
8 with that empty chair in a case like this, aren't there?
9 Tactically?

10 MR. JAMIN: There are, certainly are ways to deal with it.

11 MR. CHAIRMAN: From our point of view, and this is more of a
12 rhetorical question, from the State's point of view, I have some
13 difficulty in making a decision based on simply a tactical
14 decision like that.

15 MR. JAMIN: I understand that, sir.

16 MR. CHAIRMAN: Would it not be possible -- and I'm simply
17 raising an issue from a tactical point of view -- for example, to
18 try to bring the plaintiff, the State in as an involuntary
19 plaintiff rather than, I mean, brought in as a third-party
20 defendant?

21 MR. JAMIN: There are a range of possibilities, that is
22 certainly one of them.

23 MR. CHAIRMAN: That would then put the empty chair on the
24 plaintiffs side, then help you, would it not?

25 MR. JAMIN: It might, sir. All of those are tactical

1 decisions which may or may not work and they raise for us
2 questions -- as you pointed out, the empty chair is one of a
3 number of problems that you have because of the settlement, and I
4 don't want to quantify it as the biggest problem, it is one,
5 certainly, or I wouldn't have mentioned it.

6 MR. CHAIRMAN: Okay, I don't want to beat that. I am
7 concerned to some extent because and we -- our staff is looking
8 at this and this is something I haven't brought to up the
9 Committee. I asked the staff a couple of days ago and
10 (indiscernible) to look at whether under the original
11 constellation of agreements and permits, et cetera with respect
12 to the pipeline, there were any provisions requiring Alyeska and
13 the owner companies to absolutely indemnify the State of Alaska,
14 and possibly the federal government in just such circumstances as
15 (indiscernible). And, it appears that I'm quoting now, from
16 Section 101 of the State lawsuit against Exxon, et cetera, case
17 89-06857-3AN. Paragraphs 101 reads as follows: "under Section
18 13 of the State right-of-way lease, defendant owner companies
19 must indemnify the State for liabilities, damages, or injury
20 occurred by the State, caused by operation or maintenance of the
21 TAPS" -- Trans Alaska Pipeline. If in fact that is a correct
22 interpretation of the State right-of-way lease, might the State
23 not have absolute indemnification against all claims against it,
24 thereby providing significant additional basis for your second
25 point, whereby we do not have complete indemnification under

1 this. Is the State, in fact, possibly giving up significant
2 indemnification under Section 13 by entering into this
3 settlement?

4 MR. JAMIN: I must answer completely honestly that I have
5 not reviewed the section of the law to comment on whether it is
6 accurate or not. But, if your assumption is correct, your
7 conclusion is.

8 MR. CHAIRMAN: That is my concern, folks. That we may
9 already have complete indemnification and if we are giving it up
10 for less indemnification, that's something I want the staff to
11 look at. Third (indiscernible) questions, I am concerned about
12 what you have termed the fisheries enhancement tax. And, as I
13 understand it -- and I know very little about it, but I want to
14 know more -- the testimony this weekend said that basically Exxon
15 has paid certain monies to fishermen to compensate for their loss
16 of income and has, as part of that, withheld two percent to pay
17 under the fisheries enhancement tax, to the regional aquaculture
18 associations. In fact, it has not yet paid that money and has,
19 at this point, refused to do so. My question: Is there civil
20 liability and potential criminal liability for such activities
21 ongoing on the part of Exxon?

22 MR. JAMIN: Sir, I suspect that there is civil liability,
23 that is what we are bringing our action about. The civil
24 liability stems primarily from the obligation for Exxon to make
25 whole people who have been damaged by the spill. And, both the

1 regional aquaculture associations on which you have focused and
2 the municipalities, should be made whole as a result of the Exxon
3 Valdez oil spill. As to whether or not there is criminal
4 liability, I have not explored that and would not venture to
5 guess. May I take just a moment for the benefit of the panel to
6 explain why, I guess, that both of these be considered? When a
7 fisherman receives a payment from a cannery or a processor, a
8 hundred percent, 50 cents a pound on their fish, two percent of
9 that is generally withheld if there's a regional aquaculture
10 association, and in the form of a tax, goes to the State of
11 Alaska, and then from the State out to the regional aquaculture
12 associations. Chairman Gruenberg has indicated that -- and
13 properly so -- that in the Exxon claims process, rather than pay
14 a hundred percent of what Exxon determined was a fair claim, they
15 paid something less than 98 percent, reserving out the two per
16 cent, have not paid that two percent either to the State or out
17 to the regional aquaculture associations. The way the
18 municipalities get paid on raw fish tax is over and above the
19 hundred percent, the packer pays a roughly a four percent tax to
20 the State, two percent of which goes back to the municipalities
21 in the affected area, and neither has that been gone out despite
22 the fact of the claims process. Thank you.

23 MR. NAVARRE: That's the raw fish.....

24 MR. JAMIN: That's the raw fish tax, sir.

25 MR. CHAIRMAN: So, we have the fisheries enhancement tax and

1 the raw fish tax. Let me ask the same question with respect to
2 both taxes, Mr. Jamin. Were there representations made to anyone
3 including but not limited to the fisherman claimants, State of
4 Alaska, municipalities, RAA's, by Exxon at any time that they
5 would pay either the fisheries enhancement tax, or the raw fish
6 tax in the indicated percentages?

7 MR. JAMIN: Sir, as to the fisheries enhancement tax, when
8 the Exxon claims process was initiated and Exxon officials were
9 in the affected areas discussing the claim process, indicating
10 that they would withhold the two percent, representations were
11 made to fishermen that eventually they would be -- that that
12 money would go through to the regional aquaculture associations
13 for fisheries enhancement programs. When the municipalities
14 approached Exxon about getting paid for the money that would
15 normally have come as raw fish tax, representations were made not
16 just to the municipalities themselves but to the State of Alaska,
17 the Attorney General's office, and to the Legislature, that if a
18 claim was made it would be paid.

19 MR. CHAIRMAN: I would appreciate any proof that could be
20 provided of that, those statements.

21 MR. JAMIN: We will do that, sir.

22 MR. CHAIRMAN: Questions by other members of the
23 Committee? Representative Hudson?

24 MR. HUDSON: Thank you. Back, sir, to your analysis of the
25 real value of the billion one or whatever it is there and you've

1 indicated 400 million. I don't think I've ever seen that
2 figure. I've heard 700 million, I've heard 695 million dollars,
3 but I guess maybe people tend to put a value that enhances their
4 position on these things.

5 MR. JAMIN: All right, let me respond to that, sir. I will
6 try to get to you the value from the federal government agency
7 that put that together. But, the essential notion here is
8 comparing what money we would bank today to get the income stream
9 that Exxon is guaranteeing us through this settlement. And, that
10 income stream, sir, I think is, it's set out specifically on page
11 8 of the agreement.

12 MR. HUDSON: Yes, I've seen that.

13 MR. JAMIN: All right. And, what we are suggesting or what
14 the federal government has suggested is that if you bank roughly
15 425 now, you will get this income stream, and so that is its
16 present value. What I'm suggesting is that's what should be
17 compared to what a court would give. And, a court does not give
18 -- if the person has lost a hundred dollars, and gets it 10 years
19 later, the court doesn't give you a hundred dollars, it gives you
20 a hundred plus interest. So, it takes you back.

21 MR. HUDSON: Is that always the case?

22 MR. JAMIN: That's the case in Alaska, sir.

23 MR. HUDSON: I see, yes. The other question is and I guess
24 this is the -- I'm a pretty straightforward type, not an
25 attorney, but -- I look at this whole thing and we are told at

1 any rate, that the need is right now to respond to the resource
2 damages. And, so we're looking at an alternative of either
3 accepting perhaps less than what we would like to see -- maybe it
4 should be a billion and a half so that it had a billion dollar
5 value -- although we hear that the billion dollar value is
6 something that the governor had a sense of from the very
7 beginning and is an old negotiator, I have to tell you that I
8 find that offensive, I don't think that, you know, that my
9 governor under my negotiations, would have laid a figure out
10 before the unions, before we ever started negotiating, obviously
11 that becomes the figure. So, I don't think that that was the
12 smart thing to do, but it's done. It looks to me like, and we're
13 going to be confronted with either approving of these -- that
14 will put less money than you say we should have in there and
15 Ricky Ott and a few others believe we ought to have there -- now,
16 in deference to essentially continuing a loss of -- it may take
17 13 years to get anything out of and at the same time it's going
18 to cost millions upon hundreds of millions of dollars in order to
19 acquire the same results or perhaps even less. Or, and at the
20 same time, the natural resource healing and the putting the money
21 into healing the natural resources is either going to come out of
22 our hide, which I think diminishes the recovery, not only for the
23 State of Alaska but for all of the affected communities, the
24 fishermen and everybody else. And, I'd like to have you respond
25 to that.

1 MR. JAMIN: All right. There's several elements of that
2 that -- I'd like to respond to that because I think that's part
3 of the weave of the argument that suggests you have no choice but
4 to accept this deal. First of all, an element of that is the
5 cost of attorney's fees and an element of that is how long is
6 this going to take? Certainly how long this is going to take is
7 of great concern to me as a private litigant should be to
8 anybody. Sir, the litigation can take 10 years as has been
9 suggested. The Amoco Cadiz litigation has taken 12 or 13 years,
10 although I think what was said yesterday is that it's not a fair
11 comparison because of the international aspects of that
12 litigation. But, I have every reason to expect that the State of
13 Alaska, pushing its lawsuit aggressively, can get a trial of its
14 lawsuit within the next two years. And, that's a long time, I
15 think, but it's not 10 years. That's not to say that there
16 wouldn't be appeals after that, there can always be appeals in
17 litigation. But, the fact is that this could be brought to a
18 resolution and prior to this settlement the State was suggesting
19 it should be brought to a resolution within a period of that
20 duration. As to the costs, this settlement agreement exposes the
21 State in a way it has not been exposed before, both to liability,
22 that is if a private plaintiff out there sues it and damage is
23 established, the State has to pay. It's exposed to that
24 liability and I think it is exposed to continuing responsibility
25 to pay attorneys in a defensive way. That is, to defend the

1 liability. And, that costs as much money as does paying lawyers
2 to litigate offensively. Therefore, the suggestion that it will
3 take a lot less money after this agreement to maintain the
4 State's position should be scrutinized carefully.

5 MR. CHAIRMAN: Representative Navarre?

6 MR. NAVARRE: Yes, Chairman, on that point, I too, I'd like
7 to ask the staff if we could analyze what those costs might be,
comparison of those costs and also the fact that currently,
we are going to pursue litigation with Exxon, we can use port
(ph) Fund for those litigation funds. And, so that gives a
11 mechanism for funding those litigation costs. If we don't
12 continue pursuing Exxon, we can't use port 70 (ph) fund dollars
13 to defend against third-party claims against the State. So, what
14 it is, is it's a transfer from the port 70 fund to the general
15 fund of costs of litigation. I think also that we ought to
16 examine to what extent we can use the port 70 fund for
17 restoration. Whether or not we can use that fund for restoration
18 because that's something that -- it's not general fund dollars.
19 I mean, it's an ongoing revenue stream that would provide for
20 litigation, and, I think some -- certainly assessment work,
21 ongoing assessment work and maybe restoration work and that could
22 be examined. And, the next one of my concerns is that we're
23 transferring, by taking this settlement, we're transferring all
24 of the costs to the general fund and (indiscernible - noise) we
25 now have through the port 70 fund and no way, or almost no way to

1 recover it.

2 MR. CHAIRMAN: My recollection is that the Attorney General
3 wrote a letter to Representative Larson on just that question and
4 I'll ask Mr. Hemingway to please get the AG's opinion to
5 represent it from the AG to Representative Larson on this and
6 let's start from that and answer Representative Navarre's
7 question.

8 MR. NAVARRE: Mr. Chairman, I do recall having seen
9 something like that and basically it says you could use them for
10 third-party litigants but there's no question I think that we can
11 use them for litigation against Exxon. I think that was the
12 thrust of the legislation. So, we need an analysis of what those
13 costs will be and I believe I asked the Attorney General to give
14 us an analysis of those costs, both litigation against Exxon and
15 defending against third-party claim, and then the potential for
16 recovery because I don't know -- I know against Exxon, if you're
17 suing Exxon and you win or you win most of it, you get -- you're
18 gonna get litigation costs, you're gonna get attorney's fees paid
19 or significant amount. If we defend against third-party
20 claimants, even if we're successful, I think the likelihood of
21 recovering is significantly less.

22 MR. CHAIRMAN: Yes, I think your recollection of the holding
23 of recommendation in that -- in the inclusion of that opinion, I
24 think it's correct. Okay. Other questions? If not, Mr. Jamin,
25 are you planning to stay around or are you.....

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MR. JAMIN: I will be here (indiscernible)

MR. CHAIRMAN: Okay, good. Because we may have additional questions. Thank you very much.

MR. JAMIN: All right.

MR. CHAIRMAN: (Indiscernible) it was very (indiscernible).

MR. JAMIN: Thank you, sir.

MR. CHAIRMAN: With that, it's 10:18. We'll be adjourned.

(Off record)

P R O C E E D I N G S

1
2 MR. CHAIRMAN: It is still the 16th and I didn't say the
3 14th, the 16th of April 1990 (sic). Thank you, I appreciated
4 that. It is Tuesday and the time is seven minutes after one.
5 I'd like to call once again to order the House Special Committee
6 on the Exxon Valdez Oil Spill Claims Settlement. Present this
7 afternoon are Representative Hudson, Representative Ulmer and
8 myself, Max Gruenberg. We have several distinguished guests who
9 will be testifying before the Committee today but to introduce
10 them we have Attorney General Charles Cole and a welcome back.

11 MR. COLE: Thank you, sir. If I may I would like the
12 opportunity to follow up on my response to questions this morning
13 about the criminal proceedings and the consideration of whether
14 to file criminal proceedings against Exxon. Since the meeting
15 adjourned this morning I have obtained a copy of a letter which
16 was written on June 21, 1989 by then Attorney General Douglas B.
17 Bailey on that subject and I would like to read it into the
18 record if I may.

19 MR. CHAIRMAN: You may and if you have a copy it will be
20 accepted for the record.

21 MR. COLE: Thank you. The letter, under date of June 21,
22 1989, reads as follows: Charles DiMonaco, Chief, Lands Division,
23 Enviornmental Crime Section, Department of Justice, Washington,
24 D.C. 20038. Dear Mr. DiMonaco: We would like to inform you that
25 the State of Alaska is no longer pursuing a criminal investigaton

1 of either Alyeska Pipeline Company or Exxon Shipping Company with
2 respect to the Exxon Valdez oil spill. Based on our initial
3 investigation, we believe that our remedies against these
4 corporations are limited to B misdemeanors. For corporations,
5 the maximum penalty for a B misdemeanor is a fine of \$100,000.
6 In light of the state penalty structure, and the broader range of
7 remedies available under federal law, we would defer any further
8 investigation of the corporations involved in this matter to the
9 Department of Justice.

10 Of course, if new evidence is developed that indicates
11 additional criminal acts under state law have been committed by
12 either defendant, we would be willing to resume our
13 investigation. However, given our limited resources and limited
14 remedies, we believe the best course of action at this time is to
15 turn primary responsibility for any criminal prosecution of
16 Alyeska and Exxon over to you. Part of the reason for our
17 decision is the excellent cooperation we received from the
18 Department of Justice during the course of our investigation.

19 As you continue your inquiry, please keep in mind that we
20 will make available to you the information and materials we have
21 developed to date. We will make every effort to cooperate with
22 you, and the other federal authorities, in any way possible.

23 Very truly yours, Douglas B. Baily.

24 I herewith hand this letter to the chairman of the
25 committee.

1 MR. CHAIRMAN: Thank you very much. If you'd make copies of
2 this for everyone and put a copy in the record. Thank you very
3 much, Mr. Attorney General.

4 MR. COLE: I would like also to notify the Committee that I
5 now have a copy of the letter I signed on March 12, 1991
6 addressed to Lee Raymond, President, Exxon Corporation, 225 East
7 Carpenter Freeway, Irving, Texas. Dear Mr. Raymond: As a part
8 of the settlement of certain issues covered by the Plea
9 Agreement, the State of Alaska agrees that it will not bring
10 criminal charges or seek any civil or criminal or administrative
11 penalties, except as provided below, against Exxon Corporation,
12 or any of its officers, directors or employees, past or present,
13 or against any of its wholly-owned subsidiaries, their offices,
14 directors of employees, past or present, for any violations of
15 Alaska law arising out of or relating to the grounding of the
16 "EXXON VALDEZ," the resulting oil spill, the containment or
17 cleanup of that spill, the oil spill contingency plans or related
18 documents of Alyeska Pipeline Service Company, including their
19 preparation or submission to the State of Alaska.

20 Nothing in the foregoing paragraph shall prevent the State
21 of Alaska from seeking criminal charges against Alyeska Pipeline
22 Company or Alyeska Pipeline Service Company, or any of their
23 officers, directors, or employees, for any violation of Alaska
24 law based on an allegation of false statements made to any agency
25 of the State of Alaska arising out of its or their conduct in

1 conection with the preparation or submission of the oil spill
2 contingency plans and related documents by Alyeska Pipeline
3 Service Company to the State of Alaska.

4 You may advise Exxon Shipping Company of the contents of
5 this letter and provide each of them with a copy. Signed,
6 Charles E. Cole, Attorney General. I herewith hand this copy to
7 the Chairman.

8 MR. CHAIRMAN: Thank you, Mr. Cole. Was this letter
9 actually sent?

10 MR. COLE: I will rely upon the statements I made this
11 morning. I have no recollection of having personally delivered
12 that letter to Exxon but I had every intention of doing so. I'm
13 not certain that at the occasion of the signing of the settlement
14 agreement, I in fact delivered it, and since I deliberately have
15 had no contact in any form with Exxon since the documents were
16 signed, with respect to the spill, I do not know if it was
17 actually delivered. I do know that Exxon has not requested me to
18 furnish them with a copy of this letter.

19 MR. CHAIRMAN: Would you be able to find out from Exxon
20 whether in fact it was delivered? Could you (indiscernible -
21 speaking softly)

22 MR. COLE: Yes, I will. I would also like to report that I
23 have transmitted by facsimile transmission a request to Exxon to
24 appear before this Committee. Now, with those preliminary
25 matters, I would to introduce to the Committee Assistant Attorney

1 General Richard B. Stewart and General Counsel of NOAA, Ms.
2 Campbell. Thank you. With the permission of the Chairman I
3 would like to furnish the record with a copy of their resume.
4 Here will hand one copy of Mr. Stewart's to the Chairman and
5 another from Ms. Campbell to the Chairman of this Committee.
6 Thank you very much.

7 MR. CHAIRMAN: Thank you, Mr. Attorney General and I
8 appreciate this, we'll make these biographies part of the record
9 and distribute them to other Committee members as soon as the
10 staff returns. I'd like the record to also reflect we've been
11 joined by Committee member Gail Phillips, Representative
12 Phillips. And, so we have Representative Phillips,
13 Representative Ulmer, Representative Hudson and myself.
14 Gentlemen, welcome and we trust you had a safe and pleasant
15 journey to Alaska and I'd like to welcome you in the spring
16 morning -- afternoon now. Who would like to go first?

17 MR. STEWART: Well, why don't I start briefly, it's a
18 pleasure to be here, you've given us a sunny day and it's nice to
19 be back in Juneau. I have a prepared statement here which I will
20 read, but if you want to make it part of the record.....

21 MR. CHAIRMAN: Thank you, that'll be part of the record.

22 MR. STEWART:you're welcome to do so. All I would say
23 is I have been handling this case for the last year and three-
24 quarters and I've been working with that time, over that time,
25 with the State and the Attorney General's office. I think the

1 agreement we've gotten here after a lot of work and close
2 cooperation is a good agreement, fair agreement, you know, the
3 United States certainly committed to it, and I'm just here to
4 answer any questions you may have at this point. I should just
5 explain that the Justice Department is the federal government's
6 lawyer in court and so we've been handling both the criminal and
7 the civil parts of this litigation, the civil parts on behalf of
8 the trustees, the federal trustee agencies, NOAA is the lead
9 trustee under our system and it handles the general counsel. So,
10 in some sense he is speaking for the trustees here today, I'm
11 speaking for the litigation interests of the United States and
12 particularly on the criminal side. Thank you.

13 MR. CHAIRMAN: Mr. Campbell?

14 MR. CAMPBELL: Mr. Chairman and members of the
15 Committee.....

16 MR. CHAIRMAN: Do you have any kind of a.....

17 MR. CAMPBELL: Yes, I do have a prepared statement. I'd
18 like to submit it for the record.

19 MR. CHAIRMAN: Thank you. It's so ordered.

20 MR. CAMPBELL: I am here if Mr. Stewart is the lawyer then I
21 represent the client and, on the federal side of this
22 (indiscernible) problem represented here is the Department of the
23 Interior, the Department of Agriculture, and the Environmental
24 Protection Agency, who, while they are not a trustee, has been
25 charged with the responsibility of coordinating the federal side

1 of the restoration activity. I have the distinction of having
2 joined NOAA two weeks before the Valdez ran up on the rocks.
3 Since that time my entire tenure has been overshadowed by this
4 event. But, in many ways what it has done for NOAA and other
5 federal trustees, is brought into focus our responsibilities as
6 stewards of our national resources. And, we share a co-equal
7 grant of stewardship from the Congress of the United States with
8 the State of Alaska. We have tried throughout this process to
9 act as an honest broker, to try to work on an equal footing with
10 the representatives from the State of Alaska, to one: try to
11 properly assess the damages done as a result of this terrible
12 event, and number two, prepare ourselves for making plain in
13 courts so that we can fully recover for the restoration of those
14 resources. And, number three, under the leadership of our
15 administrator, Dr. John Knaus (ph), he's asked us to be an honest
16 broker. We try to look for opportunities for settlement, for
17 resolutions of this matter where and if at all possible. A lot
18 of this goes back to the history of NOAA, how we became involved
19 in the damage assessment arena in 1978 with the spill of the
20 Amoco Cadiz off the coast of Normandy. In that instance, the
21 tanker broke in half and spilled 67 million gallons of oil onto
22 the shores of Normandy. I would point out that just this fall
23 that case finally completed its trial after 13 years. That 105
24 million dollars were recovered for damages to natural resources
25 and other cleanup related damages. And, that the matter

1 currently is on appeal, pending on appeal with no result,
2 immediate result, in sight. Our responsibility is as stewards to
3 the resource, we look upon the settlement as a good settlement
4 for the Prince William Sound and as an excellent settlement for
5 the federal government and for the State of Alaska. And, we look
6 forward to move from the litigation arena, with all due respect
7 to Mr. Stewart, into the arena of restoration, the practical hard
8 work of restoring the damage that has been done. Mr. Chairman,
9 members of the Committee, thank you for your time.

10 MR. CHAIRMAN: Thank you very much, Mr. Campbell, and Mr.
11 Stewart. We also have been joined by Representative Gene Kubina,
12 another member of the Committee we have a formal Committee
13 present. We have some prepared questions which I would like to
14 go over with you, but before I do, I'm wondering at this point in
15 time, do any other members have questions? Representative
16 Hudson? (Indiscernible)

17 MR. HUDSON: Just, if I could, Mr. Chairman, I'd like to
18 make sure that I heard correctly on the Amoco Cadiz. You
19 indicated 13 years, \$105 million dollars recovered?

20 MR. CAMPBELL: It has, you're exactly right, the money has
21 not been recovered. The court has in fact rendered a judgment in
22 the amount of -- I think it's about \$135 million, but some of
23 that was toward the value of the tanker. \$105 million of which
24 was for natural resource damages and cleanup. And, the matter's
25 pending on appeal. No monies have been paid.

1 MR. HUDSON: And, what would be the approximate litigation
2 costs during that period of time?

3 MR. CAMPBELL: I don't have.....

4 MR. COLE: I believe I.....

5 MR. CAMPBELL: Yes, Charlie, go ahead.

6 MR. COLE: I believe we.....

7 MR. CHAIRMAN: Mr. Cole?

8 MR. COLE: I believe we.....

9 MR. CHAIRMAN: Please, come on up so that it picks you up.

10 MR. COLE: I believe the State.....

11 MR. CHAIRMAN: We're on teleconference.

12 MR. COLE:the State can furnish a complete breakdown
13 of those damages. I should do that.

14 MR. CHAIRMAN: Okay. On that point briefly, Representative
15 Ulmer, there were.....

16 MS. ULMER: Very briefly, it's my understanding that natural
17 resources damages were not a part of the \$105 million dollars.
18 And, just for purposes of understanding, we're comparing apples
19 and oranges, I would like some additional material to be put into
20 the record so that people aren't mislead about whether that's a
21 comparable member or a comparable kind of damage, in it. Thank
22 you.

23 MR. CAMPBELL: Just in response to that, there were a number
24 of factors that did go into that settlement and there was cleanup
25 expenses that went in, there was lost income as a result of

1 people did not visit the beaches, and there were natural resource
2 damages, it is my understanding, that were part of that
3 cumulative number. Certainly, natural resources damages made up
4 a very, very small fraction of the recovery.

5 MS. ULMER: Could we get additional information on that, Mr.
6 Campbell?

7 MR. CHAIRMAN: If you would provide that, please?

8 MR. CAMPBELL: Yes.

9 MR. CHAIRMAN: Representative Kubina, and then I will
10 commence the line of questioning that (indiscernible).

11 MR. KUBINA: Thank you, Mr. Chairman, and gentlemen, thank
12 you for being here. My name is Gene Kubina and I represent the
13 Prince William Sound, the entire Sound and the area around it.
14 So, I'd like to pursue a little questioning on how much
15 flexibility the federal government would have in their dealings
16 with this settlement. Is this, in your mind, a yes or no answer
17 that you're looking for permanence in the Legislature, or would
18 you be open to suggestions from the Legislature on a way or ways
19 to either amend this or to delay this so that, for example,
20 third-party suits might be able to be taken care of? Let me give
21 you an example of what I mean here. While you say you're the
22 steward of the natural resources, we represent the people of
23 Alaska here and our number of municipalities, villages that are
24 -- have been damaged and have suits against Exxon. By us
25 settling this suit, it -- well, the documents may say that this

1 does not affect other third-party litigants -- in reality, it
2 probably does make their -- a lot harder for them to settle their
3 cases. One possibility would be to ask for say, a period of
4 delay, 120 days or some amount, and try to get your good offices
5 as well as our Attorney General to encourage Exxon to settle with
6 the other litigants in this matter. What would be the United
7 State's response to a proposal like that?

8 MR. STEWART: Well, I would say this was a.....

9 MR. CHAIRMAN: Mr. Stewart.

10 MR. STEWART:yes, a very hard-fought negotiation.

11 MR. CHAIRMAN: I think that you need to get that little
12 microphone (indiscernible).

13 MR. STEWART: Okay. Sorry.

14 MR. CHAIRMAN: And speak into it. That's our teleconference
15 line. Mr. Stewart.

16 MR. STEWART: This is a very hard-fought negotiation with
17 the State and the United States and Exxon. And, I think each
18 provision was the subject of extended discussions and I'm very
19 pessimistic about the prospect of simply reopening the
20 negotiations here, because (indiscernible) civil settlement, this
21 provides for approval by the Alaska Legislature, that's what the
22 Attorney General and governor thought was appropriate here. But,
23 modifications that were required would reopen the whole
24 negotiation. And, I think we would be back in a very uncertain
25 situation. I think Exxon wanted some closure here, you know,

1 wanted to put this matter to rest and I just point the very
2 practical issue of the relation between the criminal case and the
3 civil case. Now, legally those are independent settlements. But,
4 a lot of the impetus for a settlement in the civil case, at this
5 time, was the pendency of the criminal case. And, Judge Holland
6 has indicated he is willing to resolve that criminal case very
7 promptly. And, if Exxon has the advantage of the Plea Agreement,
8 and that goes forward, and then is facing the civil litigation, I
9 don't know what they would do. They might say, well, we made a
10 deal, we agreed to pay so much, we'll see you in court. So, I am
11 quite pessimistic about what would happen. I understand the
12 concerns of the -- Representative feels about his constituents
13 and the people who are concerned here and I would say they're
14 careful legally not to affect their interests in the agreement.
15 I think we can talk about this later, but in some sense I think
16 they may be advantaged by a settlement in the sense that at least
17 the federal government would feel freer to release studies and
18 evidence that might be of assistance to them in the litigation.
19 And, there will available now, starting now, as soon as this
20 agreement goes forward, substantial monies to restore the
21 resources and benefit the people that were affected. So, I think
22 that we have cognizance -- or try to be cognizant of the impl --
23 those interests (indiscernible).

24 MR. KUBINA: You use the argument about the criminal plea
25 being settled, really, prior to the time that we have to approve

1 this settlement, why was that submitted to the court so early?
2 Why wasn't it submitted after this agreement was approved by the
3 Legislature?

4 MR. STEWART: Because it's -- as I say, legally on a
5 separate track, Judge Holland had set a trial date and therefore
6 if there was going to be a plea it had to be entered before that
7 time. We suggested.....

8 MR. KUBINA: That was in June, isn't that correct?

9 MR. STEWART: No, April. April 10th is the original, is the
10 date and there have been suggestions, at least from Exxon, that
11 that be postponed and the judge said no postponement and so that
12 is sort of on the track. We have suggested to the judge that
13 perhaps these two civil and criminal ought to be used
14 functionally related, but he has decided to have a schedule and I
15 think he's gonna resolve the criminal matter fairly promptly.

16 MR. KUBINA: So, it appears that you're using, now that this
17 leverage for us is to say yes, because it is no longer going to
18 be any leverage on Exxon, obviously. But, your statement and
19 your (indiscernible) arguments are your strongest argument,
20 really, was that criminal case. Well, let me.....

21 MR. STEWART: Could I just say I don't think we're to find
22 leverage -- the Alaska Legislature to do anything, I think Alaska
23 is an equal partner in this arrangement, that's been understood
24 and it's up to you all to make your evaluation, the agreement
25 provides for that, I'm just trying to a practical (indiscernible)

1 to say -- if in effect, this agreement is opened up, which
2 changes would do, that I'm pretty pessimistic about what might
3 happen in terms of getting another agreement and how favorable
4 that agreement would be. I don't know.

5 MR. CAMPBELL: Let me just say, on behalf.....

6 MR. CHAIRMAN: Mr. Campbell.

7 MR. CAMPBELL:on behalf of the natural resource
8 trustees, federal natural resource trustees, we recognize the
9 role the Alaska Legislature plays in this process, we did the
10 very best job we could, we negotiated the very best deal that we
11 could given the facts that we had. Now, you, as part of the
12 settlement process, have an opportunity to review and you will
13 pass judgment on the appropriateness of that -- of our acts as
14 stewards. That is your stewardship and ultimately that
15 stewardship will be reviewed by the electorate. That's a process
16 that we respect and we're very comfortable with. In terms of our
17 negotiation of this agreement, though, we narrowly looked at the
18 resource, and what it was going to be necessary to restore that
19 resource, and that was our objective, that was our goal. It is
20 difficult for us as stewards to evaluate the legitimacy or
21 illegitimacy of a series of third-party claims relating to the
22 oil spill. Not in terms of the fact of their legitimacy but as
23 to the quantum (ph). And how am I as a natural resource trustee
24 to judge the propriety of third-party claims in terms of their
25 amount? So, we made a decision early on that we were going to

1 focus on the resource, we were going to determine what the damage
2 was done to the resource, what the cost was going to be to
3 restore that resource and then to be able to make a claim, and
4 for enough money to be able to do that restoration work. And we
5 feel that we completed our stewardship in this issue.

6 MR. KUBINA: If I could follow up just one more time, Mr.
7 Chairman? If this Legislature passed a resolution that said we
8 approve this settlement with changes A, B, C. What would the
9 United States do at that time? The United States do?

10 MR. STEWART: Well, I think we'd obviously look at what A,
11 B, and C were and Exxon would look at that, and I don't know
12 whether we'd be in a position to successfully renegotiate the
13 situation or not. As I said, I think that there's a practical
14 matter, we were in the strongest position before criminal trial
15 was going to be held, and Exxon knew that there was a deadline
16 and that created incentives to get some (indiscernible) and
17 explain some of the timing, and hell, we would in good faith try
18 and look at the situation but, as I say, having gone through this
19 for some period of time, I am probably pessimistic about what we
20 could -- depending on the conditions -- what we could do to get
21 another settlement, and whether the settlement would be as strong
22 as the one that we now have.

23 MR. CAMPBELL: On behalf of the trustees we have spent a
24 year and a half negotiating a memorandum of agreement with the
25 State of Alaska, we spent the last 90 days negotiating with

1 Exxon, we feel that the settlement is a good one and that it will
2 provide for the restoration of the Sound and the resources upon
3 which your people rely and we think the time for restoration is
4 now. And that is not appropriate at this time, from the
5 standpoint of the resources, to delay that restoration effort any
6 longer.

7 MR. CHAIRMAN: I have Representative Navarre, Ulmer,
8 Phillips, and then I'll ask my questions.

9 MR. NAVARRE: Thank you. My question is can you tell me
10 what the value of the damages are? A range of values? Or can
11 you just tell me it's a good deal?

12 MR. STEWART: Well, I think that in (indiscernible) two, two
13 parts of that. One is probably might reasonably expect to get in
14 litigation, given the litigation risks and that's -- I guess the
15 litigators (indiscernible) looking at it and then in the client's
16 view, if we need to restoration, do we have enough money? And
17 I'd just point out that certainly if this case were to be
18 litigated, it would be a long period of time before appeals were
19 resolved so I think we're talking 10 years minimum. The
20 litigation costs would be high, the State has moved forward with
21 its civil case while we were focusing on the criminal side and
22 (indiscernible) Juneau well know what the civil litigation costs
23 have run and there's significant litigation uncertainties here in
24 terms of the legal basis for the claims, or appropriately
25 establishing what the damages are. We're in virtually unknown

1 territory here in terms of what counts as natural resource
2 damages, how you put a value on physical harm to the environment,
3 what you can show restoration studies would cost, what the role
4 of these contingent valuation studies might be. So, when you put
5 on the one hand the delay and cost of litigation and on the
6 other, great uncertainty, you come within a range of judgment and
7 I think the ultimate result here was quite a good one, an
8 excellent one, given the litigation risks as we saw as we
9 evaluated it.

10 MR. NAVARRE: Is that information available, how you went
11 through the process of determining what the litigation -- or, how
12 much you'd recover if you went through litigation, the process
13 that you and the State Attorney went through in order to get to
14 that, and we submit that to perhaps a private independent counsel
15 for their assessment of litigation?

16 MR. STEWART: No, because, you know, it's really our -- I
17 understand you're in an oversight role here, but, you know, it's
18 our job to make those judgments, most of them rely on experience
19 and judgment of intangibles. It's a process of lengthy
20 discussion within the Justice Department with our trustees, with
21 the State, and frankly, you know, we would find it difficult to
22 operate if we knew that anything that might have been put down on
23 paper, and most of it wasn't, was going to be subject to review
24 later, so it's just our general practice that litigation-related
25 analyses or discussions are not made available.

1 MR. CAMPBELL: If I may make a comment on that. We also
2 have a problem as it relates to the litigation. There is no
3 guarantee that the judge would accept the settlement. You have
4 indicated that you -- that there is at least some thought of
5 making amendments to the consent decree and the MOU, which would
6 allow the Exxon to back out of the agreement. If there is
7 amendment to the MOU -- not the MOU, the consent decree -- that
8 gives Exxon the unilateral right to withdraw from the agreement,
9 which would put us back into a litigation posture. And if we
10 found ourselves in a litigation posture again with Exxon, having
11 put all of our cards on the table, then they would know exactly
12 how strong or weak our hand was and aware that hand is strong or
13 weak and that would be an untenable situation that I think would
14 be irresponsible to place the people that are -- the advocates
15 for your case in.

16 MR. NAVARRE: Well, I appreciate that, I just wondered from
17 a legal standpoint how much of the information is not go
18 made available and (indiscernible) Exxon, if we go back
19 confrontation litigation, I wondered if -- I suspect the
20 probably get most of that information anyway. It's just
21 on my part.

22 MR. STEWART: Well, not -- no, not our internal evaluation
23 for purposes of litigation. Yes, they could get some of the
24 ruled-on (ph) data, but not our internal assessment of litigation
25 risks, and not the studies that were reviewed or prepared by our

1 experts in litigation. That would (indiscernible).

2 MR. CAMPBELL: Much of what you're asking for would not be
3 discoverable.

4 MR. NAVARRE: Unless we were going to use it to prove
5 damages in court, then it would be discoverable, I presume?

6 MR. CAMPBELL: Well, when you go into court to prove your
7 damages, you put the very best picture you can on it. And what
8 you would be saying would not be the best picture, you'd be
9 saying the worst, as well. And, those -- as a litigator, you do
10 not want to be putting the weaknesses of your case.....you can't
11 appropriate the evaluative settlement unless you evaluate both
12 your strengths and your weaknesses and you don't disclose your
13 weaknesses to your opponent unless you are forced to.

14 MR. NAVARRE: Mr. Chairman, Mr. Campbell, you've hit
15 precisely upon the difficulty that this Committee is having in
16 trying to determine whether or not we did get a good deal and
17 that is that we don't know what the strengths and weaknesses are
18 as we haven't had, at this point, the type of information
19 necessary to make -- to come to that conclusion. You have, your
20 attorney has, Mr. Cole has, but we haven't. So, I'm wondering if
21 you'd be willing to participate in an executive session with the
22 Committee in order to try to maybe get us to some comfort level
23 as to the process that you went through.

24 MR. STEWART: This is not the first time this problem has
25 been faced, and that's why there's a Legislative Branch and an

1 Executive Branch, and that's why certain responsibilities are
2 delegated to the Executive Branch by the Legislative Branch and
3 that is in fact what has happened under the Clean Water Act.
4 You've appointed trustees, the people have elected a governor on
5 one side and a president on the other side, and they said you're
6 the trustees for these resources, you go out, you assess these
7 cases and you value the claim and then you restore the
8 resource. And we'll be accountable for that action.

9 MR. NAVARRE: So I understand the process you went through,
10 would you be willing to participate with the Committee in an
11 Executive session with our Attorney General to walk through the
12 process that you (indiscernible - distance) to try to reach some
13 comfort level with the Committee as to whether or not in fact we
14 did get a good deal?

15 MR. STEWART: I think we have with Charlie about that, but I
16 just don't know how much we could really disclose that would be
17 helpful, I have no precedent for this from the viewpoint of the
18 federal government. I think from the other side of it we do have
19 the summaries of damages that have been (indiscernible) and a lot
20 of the material in the Oil Spill Information Center that, from
21 the viewpoint of will this be enough to deal with the resources
22 and provide restoration, and I think that Tom could speak to
23 that.

24 MR. CAMPBELL: All right. And, we also have been -- had the
25 discussion with the various Houses of the various committees of

1 Congress, and we have indicated to them and taken the same
2 position with them. What you're talking about is the very -- the
3 potential of some of the -- some very critical facts that are
4 damaging to the federal and State cases finding themselves from
5 an undiscoverable status into a discoverable status, and that
6 would be unacceptable. I think it'd be unacceptable to the
7 people of the United States and unacceptable to the people of
8 Alaska. In terms of what we've been able to put into the damage
9 assessment, into the repository, we have provided a summary
10 report, I think all of you have received copies of that, we've
11 disclosed a report talking about the effects of the washing of
12 the beaches, we have also put significant body of data, raw data,
13 in the repository, and we've provided a schedule by which
14 additional data will in fact be provided upon Justice Department
15 review. So we feel -- we're very comfortable and over time,
16 these facts will come out and if we weren't -- were not
17 comfortable with our fulfillment of our stewardship
18 responsibility, I would not be sitting here today and you would
19 not have the Environmental Protection Agency, the Department of
20 the Interior, the Department of Agriculture, and NOAA in the
21 unified format, standing up and saying that this is a good and
22 viable settlement for the people of the United States and the
23 people of Alaska.

24 MR. NAVARRE: Maybe I could ask you is, as -- under the
25 agreement, the Legislature is given some authority to approve or

1 disapprove the settlement. Now, how are we supposed to do that
2 without information to try to decide whether it's in the best
3 interest or not. I mean, I think you're probably a very
4 trustworthy guy, I think the Attorney General's a very
5 trustworthy guy, that's all I've been hearing up to this point,
6 is trust us, it's a good deal. I mean, if someone owed you a
7 bunch of money and you wanted me to negotiate a settlement for
8 you, would you be interested in what the range of values were?
9 Or would you, if I came to you with a number and said here it is,
10 trust me. Wouldn't you want to know, maybe, what the strengths
11 and weaknesses were?

12 MR. CAMPBELL: I think we'd go back to the basic
13 underpinnings of what we're doing and when the Clean Water Act
14 was created there was a co-equal brand of responsibility to the
15 present United States and the governor of each of the states, and
16 the right to assess these cases, and to go forward with the
17 litigation and do the restoration, was given to those
18 individuals. And I think that that's an appropriate position of
19 trust. And given the delicacy of a situation like this, where
20 the consent decree can literally evaporate, we can find ourselves
21 back in a litigation posture once more. I think that that is a
22 very difficult situation, but it goes to the realities of the
23 situation and it is not appropriate to compromise our plan.

24 MR. STEWART: I'd just say that I'd go back to litigation
25 risks, and I mean one way you could try and pose it is, you

1 know, what are the chances -- if we went to litigation I think it
2 would be probably -- what did I say -- at least 10 years, with
3 appeal, more. And what's the prospect at the end of that time,
4 of getting a recovery in excess of \$900 million dollars, which
5 some of which is going to be paid a lot sooner. And then deduct
6 from that the litigation costs, the delay in having monies
7 available for restoration because if this settlement doesn't go
8 through it's going to be up to the taxpayers through their
9 legislator's, to pay for damage assessment studies and
10 restoration. I don't know what funds are going to be available.
11 No funds will be available. So, you look at all that and say,
12 what are the objection indications -- we going to do a lot
13 better? And, I just say there's no precedent in litigation to
14 date, saying that the prospects are strong for a big recovery in
15 excess of that. I think the scientific data that has been made
16 public, it's doubtful that would support a higher recovery. We
17 have the CV studies but they've never been admitted into evidence
18 in court, much less been the basis for liability and in my own
19 judgment, just looking at those circumstances and what's out
20 there in the way of precedent, the chances, if you litigate of
21 getting less than \$900 million x years in the future -- have to
22 spend a lot of money -- are greater than getting more. I
23 wouldn't say we wouldn't ask for more, but I think just the
24 objective legal structure of what we know about the situation
25 says that it's -- the deal's more than just "trust us."

1 MR. NAVARRE: What's the cost for restoration?

2 MR. CAMPBELL: I think in order to be able to give you the
3 cost for restoration I would have to go into the analysis that
4 went behind our arriving at the figure. I can simply state that
5 the amounts that we'd recover, we'd feel are reasonably
6 calculated to allow us to do the necessary restoration work.

7 MR. NAVARRE: And if it's determined that the damage goes
8 beyond what, I guess what the estimates are at this point, or
9 even if your estimates are wrong -- in terms of what it costs for
10 restoration, who pays it -- either the State or the federal
11 government or it doesn't get done, is that correct?

12 MR. CAMPBELL: Maybe I can turn the question around -- at
13 the end of this process there's going to be -- if we don't
14 approve the settlement, there will be litigation. And, if the
15 trial court process will end and a number will come out. And
16 ultimately that number, if that's less than a billion dollars,
17 who's going to pay that?

18 MR. NAVARRE: I would guess that we would have to do it on
19 an ongoing basis up until the point that we (indiscernible).

20 MR. STEWART: The bottom line is that it works either way.
21 We can either end up with a shortfall if this recovery is not, in
22 fact, approved, or we can end up with a shortfall if in fact we
23 find that there is insufficient money in some recover, the damage
24 assessment. All I can say is that normally in these processes
25 you'll have people within the federal ranks that will

1 (indiscernible) when you come to, to people and newspaper
2 reporters and say that this is not enough. That there's a
3 problem here. That has not happened in this process. We feel
4 that we have sufficient monies to do the restoration work that
5 would be reasonable required.

6 MR. NAVARRE: Okay. I guess my final question here -- first
7 the comment, that is, with respect to the Clean Water Act and the
8 fact that arguably you're settling under the Clean Water Act it's
9 my understanding that we settle all natural resources damage
10 claims and under all applicable state and federal laws, so that
11 we extinguish any further recovery under State law as well as
12 federal law, and if you by doing that go across some of the State
13 laws, then arguably the State has some appropriation powers which
14 we have never given to the Executive Branch in the State. And I
15 guess the question I would ask is why, in certain parts of the
16 settlement is Exxon, with respect to Alyeska -- say to any claims
17 over and above 20.24, which is what Exxon's ownership is in
18 Alyeska -- why is that prevalent through most of it except for
19 the part about any natural resource damage, and that is,
20 essentially we indemnify Alyeska for 100 percent of that rather
21 than Exxon's percentage of Alyeska which 20.34? And could that
22 portion be renegotiated?

23 MR. STEWART: Well, I think I can speak for that -- I think
24 the way Exxon approached these negotiations, that they were going
25 to pay a certain amount of money to discharge their liability and

1 the concern was that if we were to recover against Alyeska,
2 Alyeska might well go back to Exxon and say, you were the chaps
3 that spilled the oil, you pay up. And so they would end up
4 paying more for natural resource damages than they had really set
5 as the bottom line. And I think both Attorney General Cole and
6 I, who were in these negotiations as was Tom, and I think we
7 viewed it as one (indiscernible) negotiations, that this was a
8 deal break. So in the end your make your concession in order to
9 get \$900 million and that's the judgment one has to make. I
10 would say also, at least as I look at it, as I look at the
11 evidence that we have of natural resource damages, if we were to
12 pursue claims against Alyeska, we would have to start with
13 showing damages in excess of the \$900 million. And I think our
14 chances reliably of doing that are not good at all. So I didn't
15 think the claim we were giving up had a lot of risk in it on the
16 one hand, on the other hand I was persuaded it was a
17 (indiscernible). So that's the.....

18 MR. CAMPBELL: And, from the trustee's standpoint, when we
19 looked at the picture, we felt that it was a sufficient amount to
20 be able to do reasonable restoration.

21 MR. NAVARRE: I guess I was just looking at it in terms of
22 the other liability provisions. It says that we let Exxon off
23 for any recovery against Alyeska up to 20.24.....

24 MR. STEWART: Right.

25 MR. NAVARRE:and anything that Alyeska recovers from

1 (indiscernible) Exxon will indemnify us for 20.34 (sic) billion
2 in natural.....

3 MR. STEWART: Right.

4 MR. NAVARRE:resource assessment it's 100 percent.....

5 MR. STEWART: And, I think as I said, that they way they
6 approached the negotiations, we're going to pay so much money to
7 settle all natural resources damages claims. And, you know, if
8 we had not written off our claims against Alyeska, they would be
9 faced with the prospect of paying them maybe some additional
10 amounts if they were successful. And I wanted to avoid that.

11 MR. CHAIRMAN: Before passing to Representative Ulmer, I'd
12 like to first recognize we've been joined by Representative
13 Davidson, a member of the committee, and Representative Lincoln,
14 who's going to participate in (indiscernible). Before.....

15 (Begin Side Two)

16 MR. CHAIRMAN:we're supposed to have an Executive
17 Session briefing, we need to get some more figures, I'm willing
18 to talk to them and see about participating in that with him.

19 MR. STEWART: I'll soon talk to him. I am -- just from the
20 viewpoint of the policy of the Justice Department, I am -- I very
21 much doubt he is going to be in a position to do that from the
22 federal side, because we would not do that with the Congress and,
23 it is a separation of powers question. Nothing unique to this
24 particular case, I mean, we've already been appearing before
25 Congressional committees, I understand the need for the oversight

1 function and me, on the other hand, I have the litigation
2 decisions made the way they are. So.....

3 MR. CHAIRMAN: I understand, but I -- and I understand the
4 theoretical purity of the separation of powers doctrine. But I'd
5 like to understand the practical necessity of an informed Alaska
6 Legislature. And, that is for two reasons. Number one, because
7 in this agreement, the Alaska Legislature's given a unique
8 role. Congress doesn't have that role. That was negotiated by
9 you gentlemen as well as our Attorney General. I.....

10 MR. STEWART: He's tough, I'll tell you.

11 MR. CHAIRMAN: We know that, he's the gist of this
12 committee. But this committee is tough too. And, secondly, that
13 before we can really give an informed decision and recommendation
14 to the remaining members of the House of Representatives, to the
15 Alaska public, to the Senate and ultimately to the court and to
16 the parties to this agreement and sign off one way or the other,
17 we need to know some facts. And, sometimes theory has to give
18 way to practice and I would urge you, personally and on behalf of
19 this Committee, to seriously consider, before you turn our
20 invitation down. It's very important.

21 MR. STEWART. I will certainly talk with the Attorney
22 General. I would just say that I think that in the end here, in
23 my view, respect, we're not talking about facts, but judgments,
24 professional judgments in the (indiscernible) agreement.

25 MR. CHAIRMAN: What I'm saying at this point just so you

1 completely understand what I'm saying.....

2 MR. STEWART: Yes.

3 MR. CHAIRMAN:and what I'm not saying -- I am asking
4 you to participate, whether you choose to answer any given
5 question, give opinions as opposed to facts is of course up to
6 you in the context of that hearing. I'm simply asking that you
7 be there and then you make your own judgment as the hearing in
8 Executive Session progresses. And, we would not at this point
9 ask for a blank check or anything like that, simply your
10 participation to be there and answer as you gentlemen see fit.
11 Now, Representative Ulmer, then Representative Phillips.

12 MS. ULMER: Thank you, Mr. Chairman. I have four
13 questions. My first question is this settlement does not try to
14 apportion who owns the resources.....

15 MR. STEWART: Yes.

16 MS. ULMER:and who therefore gets to recover for which
17 species, and I gather, at least from what we've been told today,
18 that's because it's (indiscernible) two different -- I guess I'd
19 like a little more information about that. For example, if the
20 Marine Mammals Act provides for federal management of a
21 particular species, does that mean in your opinion, only the
22 federal government can recover damages for that particular
23 species or is that question unanswered? Has it been litigated?
24 To what extent can there be an apportionment of who owns the
25 resource and how much (indiscernible - noise) to the respective

1 entities?

2 MR. STEWART: Let me talk about that in general terms and
3 then I'll have Tom Campbell maybe give you some specifics. I
4 think it was clear to me and to Doug Bailey from the outset of
5 this matter and all the people he -- clear to Charlie Cole when
6 he came on board -- that to really attempt to apportion these
7 resources was really impossible. One, the Clean Water Act
8 doesn't provide any guidance as to what the respective roles of
9 the state or federal trustees are. Two, one is dealing with most
10 of these resources with overlapping jurisdiction, management,
11 regulatory authority on behalf of both the State and the federal
12 government. And so, if we were put in a position of trying to
13 slice things up, we would be saying 95 percent are ours and you'd
14 probably be saying 95 percent are yours. And also, persons you
15 got in litigation with Exxon on this issue, they would whipsaw us
16 and when pursued by the State, would say to State, no, no, those
17 are federal resources, and when sued by the feds, they -- no, no,
18 those are State resources. Because of the lack of legal guidance
19 and the sort of interwoven character of regulatory and ownership
20 and management jurisdiction, I think it's been our sense that the
21 only practical thing is to have a joint recovery, joint
22 litigation strategy. And, joint decision-making how the funds
23 should be spent. Because otherwise we'd be opening ourselves up
24 and in the end I think that years of litigation between the State
25 and the federal government about who owns what. But Tom can give

-31-

1 some more, I think, concrete examples.

2 MR. CAMPBELL: Representative Ulmer, I don't know of any
3 instance where this has in fact been litigated. It may have, but
4 I'm not aware of it. It is both a legal, in terms of its
5 complexity, and an ecological problem. Let me talk a little bit
6 about the ecological problem. The resources that we manage all
7 intertwine within the Prince William Sound and to try to apply a
8 solution to a particular aspect of those resources, were we able
9 to separate them legally, would crave an unbalanced solution. So
10 what each of the trustees and every -- in each of the instances
11 that I'm aware of, had decided -- State and federal -- is that we
12 should, in fact, handle this in a cooperative way. The examples
13 of that would be the Bedford Harbor case where we have discharges
14 of PCB's. We could have divided up the resources there, we
15 decided to take a \$10 million dollar fund similar to \$20 million
16 we were going to jointly administer. The Shell Martinez case in
17 San Francisco. We agreed with the State of California to jointly
18 administer funds of \$22 million dollars. And, in the case --
19 Lost Angeles Sanitation District case, San Pedro Shell ferry, we
20 again made that same agreement with the State of California. In
21 the State of Washington, dealing with Commencement Bay, we have
22 again made that same determination. So, what was happened is we
23 have approached a series of different trustee, state trustees
24 across the United States and in each of these instances we
25 determined that we didn't want to get involved in the legal

1 morass of trying to pick this thing apart, and then there is also
2 the potential that we could pick it apart and somebody from the
3 outside could come and challenge it and then we could be thrown
4 back into the legal morass. And then, putting aside the legal
5 concerns for a minute, from an ecological standpoint we want to
6 take the big picture on this. We want to work the whole system
7 so that the restoration can be done in a cohesive and a
8 coordinated way.

9 MS. ULMER: Thank you. My second question relates to the
10 meaning of the terms "restoration" and "enhancement." As we went
11 around to the various communities and took testimony from people
12 we heard a lot of concerns about what are the kinds of projects
13 that the trustees might fund? Sort of like "beauty is in the eye
14 of the beholder"? You know, is a road restoration and
15 enhancement? You know, what is restoration and enhancement in
16 the context of the Exxon Valdez spill?

17 MR. CAMPBELL: Restoration -- first of all, that's why the
18 continuation of the damage assessment studies are so important.
19 Because you can't restore what you don't know is damaged. And,
20 you can't restore it if you don't know how it was damaged. In
21 some of these instances we know the damage that was done, but
22 it's important for us to know how the whole food web, for
23 example, would work. So, we will continue those studies, so that
24 we'll be able to better construct the restoration plan that will
25 attempt to restore the damaged resource. And then what we intend

1 to do is rely heavily upon the advisory group that will be
2 established that will contain representative members of the
3 Alaska community and it's a public process. And I think a good
4 example of this is what we've done thus far in the restoration
5 process. We've had a restoration symposium, where we've invited
6 experts from all over the United States to talk about the
7 potential restoration methodologies that would be available, that
8 was held, I think, in Anchorage. We've had a series of public
9 meetings where we've gone out to a series of communities where
10 we've asked and talked with people about their concerns about the
11 restoration process, we've had technical meetings, we've put out
12 now two documents for public comment, and it's going to be an
13 iterative process where we're going to go so far -- we're going
14 to put out a product, we're going to ask for public comment,
15 we're going to incorporate the public comment, then we'll put it
16 out again and the process is going to move along in a very open
17 fashion that we'll try to take in consideration people's
18 concerns. Will be there fights? You betcha. There are going to
19 be a lot of fights about what, in fact, is appropriate, what
20 needs to be done, what the priorities are, but that's part of the
21 democratic process.

22 MR. STEWART: I'd just say, from a legal viewpoint, we just
23 don't have anything raw. But the outer limits of restoration is
24 a practical matter, I think it's going to be largely a decision-
25 making process that's been outlined (indiscernible).

1 MS. ULMER: My third question relates to that democratic
2 process that you were referencing. In the State of Alaska the
3 democratic process, according to our constitution envisions
4 appropriations by the Legislative Branch. There is no mechanism
5 for the Executive Branch to decide how to spend money. And so
6 when we look at this settlement, I think our principal concern --
7 my principal concern from the beginning has been, is it
8 compatible with the State's constitution. It makes it quite
9 clear that any appropriation of any State asset must be done by
10 the Legislature. So, as I look at this agreement, I wonder about
11 a possible amendment, not to the consent decree but rather to the
12 Memeorandum of Agreement between the federal and the State
13 government which would provide for some sort of a mechanism
14 whereby the trustees would go through the iterative process
15 you've just described and do whatever it needs to to come up with
16 its list of (indiscernible) money in any given year, and then it
17 would submit that list, that proposal to the Legislative Branch
18 and in a sense, approval. Not for purposes of allowing the
19 Legislature to replace a particular proposal with a different
20 proposal, because the Clean Water Act I understand the
21 constraints, but rather for purposes of being consistent with
22 Alaska's constitution. Again, I don't see that as being
23 something that necessarily has to go back to Exxon for approval
24 but simply between the federal and the State government to make
25 sure that the agreement is compatible with our own law. Do you

1 think the federal government would be open to something like
2 that?

3 MR. STEWART: Hard to say, I think -- you know, I don't want
4 to speak to Alaska constitutional law, we have the analogous
5 issue on the federal side about whether these monies would have
6 to go through the appropriation process, and I think it's clear
7 view that the Clean Water Act does provide for recovery by the
8 trustees and expenditure by the trustees without appropriation,
9 at least as a matter of federal law, and the State issue seems to
10 be analogous. I would be concerned that if the Alaska
11 Legislature would like approval process of each year's package of
12 projects, Congress would also want such approval. And I would
13 think, because I don't see in this, as an ongoing thing, about
14 who decides how the money is spent, why Congress would let the
15 Alaska Legislature have that authority and not the Congress not
16 assert it. And then, if we got to two Legislatures into the act
17 along with these trustees, I think we get to a point of possible
18 breakdown of the process.

19 MR. CAMPBELL: Don't forget the Office of Management and
20 Budget.

21 MR. STEWART: Yes, now there are other people on the federal
22 side involved.

23 MS. ULMER: Well, Congress created the Clean Water Act,
24 (indiscernible) the Legislature in Alaska did not. They set up a
25 mechanism they felt worked and they felt was compatible with the

1 U.S. Constitution -- that's a very different issue than what is
2 required in the State of Alaska, under our constitutions. I
3 think they're pretty different, and, if Congress felt comfortable
4 Clean Water Act provision, the trustee provision, I assume they
5 thought through this notion and decided they don't need to
6 appropriate, but it is different here.

7 MR. CAMPBELL: But there are staff members who have in fact
8 raised that very idea, who have indicated that maybe the Congress
9 would in fact like to get into the business of indicating how
10 this money is spent. And, there have been people at OMB, staff
11 members again, who have indicated that they would like -- and
12 what I'm saying is, is we have given, we have indicated that we
13 -- that's not what the law provides, the law creates stewardship,
14 it's a federal law and those people are the appropriate people to
15 make those -- to be able to make those decisions. That's what
16 this concept of a trusteeship is all about. These are the
17 trustees. These are the ones that assess and restore the
18 resource. I understand your constitutional, your state
19 constitutional concerns and I cannot address those, but I can
20 address the practical aspects. I think that from a practical
21 standpoint, if you guys break the door down on this issue, there
22 will be people that will follow you and I'm not sure that Alaska
23 wants that kind of constraints and I know that the trustees will
24 not want that kind of additional complication that will delay the
25 restoration that needs to begin as soon as possible.

1 MS. ULMER: Mr. Chairman, my final question is, if for some
2 reason the agreement does not become a reality, the Legislature
3 fails to approve it or whatever else might happen, will the
4 federal government join the State governments in a vigorous civil
5 case against Exxon and Alyeska?

6 MR. STEWART: I think we'll have no choice but to crank up
7 the civil litigation and push it along as hard as we can. I
8 mean, that's the reasons I've indicated, I wouldn't be happy
9 about that prospect because I think it's going to take a long
10 period of time. Without -- with the criminal case disposed of
11 Exxon will not be -- I would just -- putting myself in their
12 shoes, not having any knowledge of what they're going to do, but
13 think it would not be necessarily inclined to sweeten the pot,
14 but might simply say, well, we'll see you in court. Certainly we
15 would pursue that, that would be our job, assuming that the
16 trustees have told us to go forth, which I assume they will.

17 MR. CAMPBELL: Our responsibility is to the resource and we
18 feel very strongly that this is a good and a fair and an
19 equitable settlement, but if for some reason we were forced to go
20 back again, we would do the right thing which is to continue to
21 be vigorous advocate for the resource. I would point out,
22 though, that what's happening is that you're evaluating our
23 stewardship and you're making a judgment, which is a fair and
24 appropriate judgment, that's what you've been called to do as
25 part of this process. Ultimately, that judgment will be rendered

1 upon a decision to turn this settlement down by the electorate
2 and three, four, five years when this is litigated at the trial
3 court level, there will be a number that will be created. And
4 that number will either be larger than the billion dollars that
5 we recover or it will be below that number. And only then will
6 we be able to appropriately evaluate the judgments that we made
7 at this time. I'm comfortable that we have done is recovered
8 more money at this point in time than we will four or five years
9 down the road and plus, we will be able to begin the restoration
10 process that needs to be done now. I'm not sure that federal
11 monies will be available for restoration now, and I'm not sure
12 that you are going to provide the tens of millions of dollars
13 this year, the hundreds of millions of dollars next year and the
14 year after, that the restoration process could in fact provide
15 under the settlement.

16 MS. ULMER: Thank you, Mr. Chairman.

17 MR. CHAIRMAN: Thank you, Representative. Representative
18 Phillips?

19 MS. PHILLIPS: Thank you, Mr. Chairman. I've got several
20 questions, the first, Mr. Campbell, is for you. I just want you
21 to clarify the statment I believe you made that you had to spend
22 one and a half years writing the Memorandum of Agreement and
23 approximately 90 days writing the consent decree, is that
24 correct?

25 MR. CAMPBELL: Representative Phillips, I may have said

1 that, but what I meant was negotiate.

2 MS. PHILLIPS: Negotiate?

3 MR. STEWART: Well, I would just say that the -- Tom was not
4 involved in this, but I spent three or four months on the first
5 round of -- getting an agreement with Exxon last year, and we
6 have then, in discussions on the criminal side, that the trustees
7 were not involved with, over some period of time. So, I would
8 say we haven't been in constant negotiation with Exxon since last
9 year ago December but (indiscernible) to that time.

10 MS. PHILLIPS: Okay, thank you. My next question, was there
11 ever any discussion or any other way to negotiate this
12 settlement, other than through the provisions of the Clean Water
13 Act, which you looked at?

14 MR. CAMPBELL: I think we looked at the whole
15 (indiscernible) of options and we determined that this was the
16 best way to do it. The decision was that we in fact
17 (indiscernible - noise) there was some responsibility to restore
18 the resources that were damaged and that the Clean Water Act
19 provided the best vehicle and the -- using the natural resource
20 damage assessment ranks that the Department of the Interior had
21 promulgated. Using that as a pattern that was the process that
22 was begun two years ago. It was instigated under the previous
23 Administration and continued your current gubernatorial
24 administration.

25 MR. STEWART: I just say from the federal side, one, those

1 would, were certainly the heart of our claims, but two, it's more
2 important that, well, it goes to the issue we discussed with
3 Representative Ulmer, that it's a vital, practical, and legal
4 necessity to have a joint fund to spend these monies, for joint
5 management of the resource, and that the only way to reliably
6 accomplish that, if you go on the Clean Water Act, which refers
7 to state and federal trustees and provides the legal framework to
8 set up a common joint trust funds. So, that in my view, is the
9 purely legal side of this (indiscernible) override
10 (indiscernible).

11 MS. ULMER: My final question is, I still have some real
12 concerns (indiscernible) the oversight of the trustees and the
13 audit capabilities on the trustees. What's to prevent the
14 trustees from -- on an agreement of six votes -- from spending
15 all the money hiring the staff or doing studies and not getting
16 into restoration? Who's going to have control over that? I'm
17 concerned.

18 MR. STEWART: I would assume that the legislators find a way
19 to exercise oversight and then get the message across, you know,
20 these are heads of departments of the State government that
21 depend on you, for (indiscernible - noise) their funding, that
22 are subject to oversight for all of their activities, including
23 their activities as trustees, I assume. That would certainly be
24 true of the federal folks, though, that even without the power to
25 appropriate, the legislators, certainly in my experience, can

1 find ways to make their views known and make the Executive Branch
2 officials pretty sensitive to their concerns.

3 MR. CAMPBELL: And the process will be, and it has been, in
4 terms of putting forth a damage assessment claim and the rest --
5 well, in particular, the restoration planning process, has been
6 an open process. And as soon as we get out of the litigation
7 constraints, there's no reason that it can't get a complete whole
8 exchange of information. The bottom line is that this whole
9 thing's placed in the public arena and the public will be the
10 judge and this agreement constitutes not only a contract between
11 us and Exxon, but also a contract between us and the people of
12 Alaska and the people of the United States. And if we don't
13 restore, we're going to be held accountable and so will our
14 Executive branches.

15 MS. ULMER: Thank you.

16 MR. CHAIRMAN: I have a few questions. First of all,
17 following up on the Clean Water Act questions. As I understand
18 it, correct me if I'm wrong, the agreement simply follows the
19 pattern of the Clean Water Act, it doesn't mention the Clean
20 Water Act, it doesn't say it's pursuant to the Clean Water Act
21 and you're not bound by the Clean Water Act in construing its
22 provisions, right?

23 MR. STEWART: Well, I don't know what you mean "bound by the
24 Clean Water Act," as I said -- was indicating to Representative
25 Phillips, we believe that the only legal basis the Justice

1 Department -- is on the federal law side -- for having this joint
2 trust fund and the joint spending arrangement, is to have it
3 pursuant to the Clean Water Act. It provides for recovery by the
4 trustees.

5 MR. CHAIRMAN: Then why doesn't it mention the Clean Water
6 Act?

7 MR. STEWART: Well, it probably should have mentioned it
8 more explicitly, I don't think there's anything deliberate about
9 that, I mean, the.....

10 MR. CHAIRMAN: Are the parties bound by the Clean Water Act?

11 MR. STEWART: Well, I think the whole structure and pattern
12 of the agreement, as I say, follows that of the Clean Water Act,
13 of its joint trustee status, it refers to trustees, it refers to
14 natural resource damages, it tracks a lot of the language and
15 provisions of the Clean Water Act and I think it could have been
16 more clearly drafted in hindsight to make that a little
17 clearer. But I think everybody's operating assumption, and the
18 legal basis, as I say, in the federal government's viewpoint, for
19 having the joint trustee arrangement would be under the Clean
20 Water Act.

21 MR. CAMPBELL: Let me also say, if you take apart the
22 agreement, offered the passages are lifted in toto from the Clean
23 Water Act and also from the damage assessment reads promulgated
24 to facilitate the Clean Water Act oil claims. So, it may not be
25 ruled by the Clean Water Act by reference, but by the

1 incorporation of specific aspects of the Clean Water Act, it is
2 governed.

3 MR. CHAIRMAN: I understand exactly what you're saying. My
4 question isn't what is included in the provisions of the
5 agreement. My question relates to what it's not. And if it were
6 under the Clean Water Act, then the entire Clean Water Act would
7 be incorporated by reference, presumably. Otherwise, you are
8 bound by the terms of the contract and if some of these
9 contractual terms are from the Act, then of course they would be
10 construed the same way. I'm looking at it from the point of view
11 of an active limitation, rather than an act of imitation and I
12 think that you're answering the question, as I understand it,
13 that you are bound by the provisions of the contract and it's
14 strictly contractual, am I correct?

15 MR. STEWART: Well, I would say that the, as I've indicated,
16 the authority at least of the federal government to enter into
17 this arrangement is dependent upon the Clean Water Act. So, to
18 that extent, the authority, at least of the federal government,
19 again, is -- would be circumscribed by the provisions of the
20 Clean Water Act.

21 MR. CAMPBELL: Chairman Gruenberg, if you could give me a
22 specific example that relates to your concern.....

23 MR. CHAIRMAN: Yes.

24 MR. CAMPBELL: Okay.

25 MR. CHAIRMAN: The makeup of the Board of Trustees.

1 MR. CAMPBELL: Okay.

2 MR. CHAIRMAN: The Clean Water Act specifies only certain
3 people and certain methods of appointing the Board of Trustees,
4 the trustees from the feds and the trustees from the state. We
5 are looking at this from a legislative point of view, not finding
6 ourselves particularly limited to simply an up or a down vote on
7 this, but that we can make recommendations and that may be very
8 well what we will wind up doing. What you do with them, of
9 course, is your decision, and then we see where we go from
10 there. But in looking at it from the point of view -- as we say
11 around here, walking in my mocassins, gentlemen -- if we were
12 bound by the Clean Water Act then we couldn't make certain kinds
13 of suggestions because they're not permitted under the Clean
14 Water Act. From what you're saying, you have incorporated
15 certain provisions of the Clean Water Act within the agreement.
16 And, there would be nothing to prevent the parties from
17 negotiating things that are not under the Clean Water Act, for
18 example, who may sit on the Trustees.

19 MR. STEWART: I don't think that the -- I have to get some
20 reflection on this, but -- I do not believe that the federal
21 government, or the federal trustees, would have authority to
22 enter into an agreement that provided for a veto authority or
23 required the consent of somebody other than a trustee of the
24 State of Alaska appointed by the governor, in spending these
25 monies.

1 MR. CAMPBELL: Right. I understand.....

2 MR. STEWART: Let me just explain why. Because basically,
3 our authority to enter in to this joint trust spending agreement
4 is based on the Clean Water Act and the contractual nature of the
5 dispute about who owns what resource. Otherwise, we would not
6 have -- and it's really a settlement of that dispute, and the
7 aegis of the Clean Water Act, that would say, yes, a federal
8 government official can give state government officials the right
9 to veto what the federal government officials would otherwise do
10 and vice versa. But there's no basis for saying --
11 (indiscernible) citizen group could be a trustee -- I don't
12 believe that the federal government could enter it, validly enter
13 into any such agreement.

14 MR. CHAIRMAN: Are you saying your ability to contract and
15 enter into the agreement is directly premised on and limited by
16 the Clean Water Act?

17 MR. STEWART: Yes.

18 MR. CHAIRMAN: Do you have another basis for such an
19 authority?

20 MR. STEWART: At least where it has this feature of a joint
21 trusteeship and joint spending responsibility over a joint fund,
22 yes.

23 MR. CHAIRMAN: Suppose you were to enter into something
24 else?

25 MR. STEWART: Well, I don't know what it would be, because,

1 I mean, when they.....

2 MR. CHAIRMAN: (Indiscernible) that's an unfair question.

3 MR. STEWART: Yes, I'm just saying as a practical matter --
4 and the notion is that the federal officials are acting --
5 pursuing federal claims, settling them -- they generally don't
6 give somebody else the right to veto what those federal officials
7 could do and there would have to be some, really, provision in
8 the statute. And we only look at the Clean Water Act.

9 MR. CAMPBELL: I think as a practical matter one of the
10 reasons we had to do this, in constructing this way, is if it did
11 not -- if it was not done under the Clean Water Act, all of these
12 funds would have had to gone into the federal treasury. And,
13 this was pursuant to the Clean Water Act, we were able to say
14 these were trust funds provided under the Clean Water Act and
15 therefore we were not necessarily -- necessary to put in the
16 federal treasury and could in fact be put in the registry of the
17 court. So, we can't argue with OMB and the Department of
18 Treasury and Office of Legislative -- Office of Legal Counsel and
19 to justify the placing of these monies into the federal register
20 so that -- into the registry of the court so that they can gain
21 interest. But this is a Clean Water Act case, and then to turn
22 around and then argue at the same time that is not the Clean
23 Water Act, and therefore we can bring other trustees in that were
24 not provided for under the Clean Water Act.

25 MR. CHAIRMAN: I understand. With respect to the divulgence

1 of information, have your attorneys discussed your work product
2 with any attorneys for the State, anybody for the State of Alaska
3 or the Exxon Corporation and subsidiaries, et cetera?

4 MR. STEWART: Well, as far I know, we've had no discussion
5 with Exxon at all.

6 MR. CHAIRMAN: How about the State of Alaska?

7 MR. STEWART: There has been a joint process for the conduct
8 of natural resource damage settlements. And, in that process,
9 our experts have done our evaluations, the State experts have
10 done theirs but there has been at least some feedback from the
11 investigators. But I don't (indiscernible) that as work product.

12 MR. CAMPBELL: No, I don't think that there was any formal
13 exchange on the expert level of the evaluation of the case. That
14 has been done pretty much on the, separately on the federal side
15 and separately on the State side.

16 MR. CHAIRMAN: Okay. Does the Clean Water Act allow an
17 enlargement of the term "restoration" to include "enhancement"?

18 MR. STEWART: I think the purpose of that language in the
19 agreement was simply to indicate the draft (ph) of what I
20 understand restoration to include under the Clean Water Act.
21 Particularly if you have done what you can to restore damaged
22 resources and either it's physically impossible to do more or
23 maybe outrageously expensive or the resources have restored
24 themselves but there was damage in the past, you still have some
25 recoveries that one needs to devote to the purposes of natural

1 resource damage restoration. In that case, enhancement, in my
2 view, would be the value within the -- and the Clean Water Act.

3 MR. CAMPBELL: Let me give you an example of that. For
4 example, let's say that salmon have been restored to their pre-
5 spill vitality. But there is a decision made that it would be
6 useful to actually enhance that resource and do some additional
7 work in that area. This gives the -- it gives the flexibility to
8 be able to go in and actually enhance the salmon stocks.

9 MR. CHAIRMAN: Did either of you have anything to do with
10 the Plea Agreement?

11 MR. STEWART: I did.

12 MR. CHAIRMAN: You did. What was the connection.....

13 MR. STEWART: I negotiated it.

14 MR. CHAIRMAN: You did?

15 MR. STEWART: Yes.

16 MR. CHAIRMAN: Was there a connection between the criminal
17 plea agreement and the civil agreements?

18 MR. STEWART: Well, I don't know what you mean by
19 connection, there's.....

20 MR. CHAIRMAN: I'll leave that up to you. You're not going
21 to get me into that one. (Indiscernible) answer the question?

22 MR. STEWART: I think there was an interest on all sides in
23 having a comprehensive settlement that took into account both the
24 criminal case that had been brought by the United States and the
25 civil case brought by Alaska and the civil claims of the United

1 States. So, in that sense, they were related because it was an
2 effort on all side to resolve all of those contradictions. I
3 would also say that -- speaking just from the criminal side --
4 that our -- well, I'll just leave it at that.

5 MR. CHAIRMAN: Under federal criminal law, if there were
6 reason to do so, would you be permitted at this point in time,
7 prior to the time that the Plea Agreement is accepted or rejected
8 by the federal judge on the 24th of April, would you be permitted
9 to dismiss the indictment and then subsequently reindict. Is
10 there any federal bar to doing that, Mr. Stewart?

11 MR. STEWART: Well, you're getting me a little out of my
12 area of specialization, which has been mainly on the civil
13 side. But I believe so, there is a -- Exxon would certainly
14 argue prejudice from having publicly agreed to plead guilty to
15 certain terms and then be subject to indictment and trial.
16 Certainly they would argue severe public prejudice to that
17 procedure.

18 MR. CHAIRMAN: I'm assuming that that evidence would be
19 excluded.

20 MR. STEWART: Well, but, you know, but among the
21 practically, do that. And, it would also be a -- you know, if
22 there's not some statutory mark the contrary to the consistent
23 policies and practices of the Justice Department, you could
24 hardly expect people to enter into plea agreements if we turned
25 around in the middle and said, well, we've reconsidered now and

1 we're going to sock it to you. I mean, that just wouldn't allow
2 -- you wouldn't have any credibility as a negotiator. So, it's
3 certianly been our, never been our practice to do that.

4 MR. CHAIRMAN: So that, in practical effect, limits this
5 Legislature's effect on the Plea Agreement, does it not?

6 MR. STEWART: Well, we did comtemplate public comment, a
7 period of public comment, before the court decided whether to
8 accept the plea. In some cases the plea is entered and sentence
9 is imposed at the same time, so there's no opportunity for the
10 public to comment. In our view, and I think the judge's view,
11 was in this case given its public importance that there ought to
12 be a procedure that says the agreement is entered on day one and
13 then on day x, sentence would be imposed and of course as you
14 know there have been very extensive, I don't know, comments,
15 comments by this Legislature to the judge. So, there has been a
16 public process here.

17 MR. CAMPBELL: Let me go.....

18 MR. CHAIRMAN: Mr. Campbell.

19 MR. CAMPBELL: If I could go over -- thank you, Mr. Chairman
20 -- there was no requirement in the statute for us to enter into
21 this comment period and we felt very comfortable with the.....

22 MR. CHAIRMAN: You're talking on the civil side?

23 MR. CAMPBELL: I'm talking on the civil side and also on the
24 criminal side.....

25 MR. CHAIRMAN: Yes.

1 MR. CAMPBELL:that -- I don't know a great deal about
2 the criminal side, in fact I know very little about it -- but the
3 whole overall concept of public comment, we created this public
4 comment period in order to give people an opportunity to take a
5 look at the settlement and we felt comfortable, we in fact felt
6 some pride in what we knew had been able to negotiate. And,
7 we're trying to run the process as openly as we can given the
8 constraints of the process that we are bound to operate in.

9 MR. CHAIRMAN: What were the guidelines used to determine
10 the amount of the criminal restitution? Was that.....

11 MR. STEWART: We.....

12 MR. CHAIRMAN:number just taken out of the air, was it
13 based on certain guidelines, or what?

14 MR. STEWART: I would say it's a, it has been a practice
15 that we have followed from time to time in environmental criminal
16 cases where we've had close cooperation from a state whose
17 resources were injured by the violation. For example,
18 then.....yes?

19 MR. CHAIRMAN: Let me focus my question. I'm not talking
20 about the percentage division.

21 MR. STEWART: Yes.

22 MR. CHAIRMAN: I'm talking about the total amount, the \$100
23 million dollar figure.

24 MR. STEWART: Well.....

25 MR. CHAIRMAN: My question is limited to that. How did you

1 arrive at that \$100 million dollars?

2 MR. STEWART: One, by the fact that we insisted on a fine
3 that would be far greater than any imposed in any enviornmental
4 criminal case in the past, the greatest fine in the past was \$5
5 million dollars, the Allied chemical spill in Virginia a number
6 of years ago, and we have had largest fine in an oil spill, the
7 National case was two and a half million, the World Prodigy (ph)
8 case in Rhode Island there in Aragansett (ph) Bay was a million,
9 and we regarded this as such a serious violation, that the harm
10 was so great, that we were going to insist on something that was
11 much bigger than that, something that would really get people's
12 attention, really be an acknowledgment of some unprecedented
13 seriousness of this violation and obviously there was negotiation
14 with Exxon but \$100 million is a large round number. As I say,
15 is 20 times higher than the previous fine in an enviornmental
16 case.

17 MR. CHAIRMAN: Why didn't you insist on a plea to the
18 felony?

19 MR. CAMPBELL: That was a matter of negotiation and an
20 assessment of our litigation risks.

21 MR. CHAIRMAN: Who drafted the agreement? Was it based on
22 other agreements?

23 MR. STEWART: It certainly reflects sort of a standard
24 practice, it was mainly drafted on my -- a criminal trial
25 section, but it was personally reviewed and approved by me.

1 MR. CHAIRMAN: We have received a recently -- copies of the
2 letters that Congressman Miller and the other three Congressmen
3 from the Merchant Marine Subcommittee sent out to Judge
4 Holland. I don't know that you've been in front of an official
5 committee since those letters were sent. Would you like to make
6 any response to either letter at this time on the record?

7 MR. STEWART: Well, I'd just say in response to Congressman
8 Miller's letter that, first of all, it contains a fundamental
9 legal error in asserting that there would be a prosecution
10 available under the Clean Water Act, these reports on the
11 contingency plans were not required to be filed with the federal
12 government under the Clean Water Act. In fact, there is a very
13 substantial legal question whether any jurisdiction to assert a
14 false reporting claim under the general false reporting claims,
15 the Title 18 of the federal code, with respect to the spill here
16 because the report was to be filed under the lease agreement with
17 the BLM and the contingency plan went with respect to spills out
18 in the Sound, not the spills on federal land. So there is a real
19 legal issue of -- whether there was a proper basis for a federal
20 prosecution here at all and there were other substantial
21 litigation risks in the case about whether the, any false
22 (indiscernible) and material. I would say that the evidence
23 before a (indiscernible) by Congressman Miller, not really
24 address those problems, and I find it rather surprising that if
25 responsible officials thought this was important information

1 material to the criminal case, why this wasn't disclosed to us
2 before. I never heard of this information from Congressman
3 Miller.

4 MR. CHAIRMAN: Before passing on to the second letter, is it
5 your testimony that you're not certain that there was -- assuming
6 the allegations made in.....

7 MR. STEWART: Yes.

8 MR. CHAIRMAN:that letter were true,.....

9 MR. STEWART: Yes.

10 MR. CHAIRMAN:assuming no question about the
11 facts,.....

12 MR. STEWART: Yes.

13 MR. CHAIRMAN: Is it your testimony, sir, that there is
14 significant question in your mind whether there is federal law
15 that would make that criminal?

16 MR. STEWART: Yes.

17 MR. CHAIRMAN: Have you brought that to the attention of the
18 Congress and sought curative legislation?

19 MR. STEWART: Not to this point.

20 MR. CHAIRMAN: Is it your intent to do so?

21 MR. STEWART: I want to investigate the facts more
22 closely. As you said.....

23 MR. CHAIRMAN: Well, from a legislative point of view,.....

24 MR. STEWART: Yes.

25 MR. CHAIRMAN: It's less important whether these particular

1 facts were true, than that is that hypothetical, which certainly
2 could occur, if not in Alaska in 1989, than in other places at
3 other points in time.

4 MR. STEWART: Yes.

5 MR. CHAIRMAN: If that is in fact not criminal, ought it not
6 to be?

7 MR. STEWART: I think it's a substantial question we will
8 pursue, yes.

9 MR. CHAIRMAN: I would ask you to do so and I'd ask you keep
10 this Legislature informed of your progress because I think it
11 ought to be. How would you like to respond to the second letter,
12 if you care to?

13 MR. STEWART: Second letter, I'm not sure what you're
14 referring to.

15 MR. CHAIRMAN: The letter signed by Gary Studs on the end.

16 MR. CAMPBELL: I.....

17 MR. STEWART: Maybe I'm mixing up these two letters here.

18 MR. CHAIRMAN: No, you're not.

19 MR. CAMPBELL: You have the right letter, and in terms of
20 the letter from Congressman Studs, I think the comments that we
21 made in our previous testimony in front of the House Merchant
22 Marine and Fisheries committee and the comments that we made in
23 this hearing today adequately address the issues that were raised
24 by Congressman Studs.

25 MR. CHAIRMAN: Nothing further to add on that point?

1 MR. CAMPBELL: That's correct.

2 MR. CHAIRMAN: Fine, after taking such a lengthy question
3 which I know who would have it, I'd go to Representative Hudson
4 and then Representative Davidson and Representative Kubina.

5 MR. HUDSON: Thank you, Mr. Chairman. I was afraid you were
6 going to ask all my questions. I may be following on the line of
7 questions from Representative Ulmer, my colleague from Juneau.
8 She indicated whether or not an amendment to the Memorandum of
9 Agreement might be possible so as to -- to maybe not necessarily
10 put Alaska into the loop, but to perhaps help define some
11 criterial for the process. Not necessarily break down the door
12 so others can follow through, but to define the path on the other
13 side of the door. And I'm wondering if maybe an entirely new
14 Memorandum of Agreement between the State Legislature and the
15 various parties, which would be totally outside -- let's say that
16 we were to agree with all of the plea and the agreement, the
17 Memorandum of Agreement that is contained and before us, and we
18 executed another one that essentially would provide Alaska and
19 those of us that represent the people of Alaska, with a little
20 more input and involvement into the process. And, let me tell
21 you why. I think that Alaska is different from the federal
22 government as relates to many of the natural resource remedies
23 that are going to take place up here over the next number of
24 years, and it's here, it's our home, we are going to have
25 associated expenditures and appropriations by this body over the

1 future to essentially complement that which will be done perhaps,
2 you know, in the Sound and other areas. And I wondered if you
3 could maybe give the, sort of a gut reaction to the possibility
4 of striking some sort of an agreement between the parties, we in
5 the Legislature would at least have some sense of understanding
6 of what the very term "restoration" means, for example.
7 Comparable values, where the expenditures could take place.
8 There is a provision in this agreement that says that you can,
9 the trustees may spend monies outside of the region, may even
10 spend it outside of the State of Alaska and those are broad terms
11 that really grab me real quick, you know, in the interest of
12 trying to do the most for the resource improvements in my area
13 and our state.

14 MR. STEWART: I'd just say on the last point.....

15 (End of Tape #29)

16 (Tape changed)

17 (Being Tape #30)

18 MR. STEWART:project by project basis. And I just
19 don't know, given the uncertainty of the law, there's no
20 decisional law on this to speak of, how much substantive
21 refinement one can do. So then one gets back to the process.
22 And again, I've said my view, at least, of the federal government
23 can only have authority to enter into an agreement of joint
24 decision making and joint fund with trustees appointed by the
25 governor pursuant to the Clean Water Act. On the other hand, as

1 I mentioned earlier to Representative Phillips, it seems to me
2 that the Alaska Legislature, as a practical matter, can have a
3 lot of input to the federal trustees as to what they're going to
4 do and since it's a unanimous agreement, I think those interests
5 will certainly be respected.

6 MR. CAMPBELL: Let me just address your -- I understand your
7 concerns. This spill was an insult to the people of the entire
8 United States but in particular it was an insult to the people of
9 Alaska and I identify with that sentiment. The way the process
10 is set up right now there are three Alaskan trustees and there
11 are three federal trustees. And if, in fact, any one of those
12 trustees disagrees with a particular activity and it feels that
13 it does not, in fact, meet the appropriate restoration criteria,
14 they have the ability to stop the project. I think our problem
15 will be not in terms of stopping things that are inappropriate
16 but the problem will come in trying to get things done, get
17 things accomplished. I hope we can work cooperatively. My
18 thinking in this process was we want to get the money into the
19 process, we want to have money to spend before we start arguing
20 about how to spend it. And if, in fact, there comes a point in
21 time when we reach an impasse and the State of Alaska can't agree
22 with the federal government, we can always go to court. I mean,
23 that's always the option. We can always go into court and divide
24 up the pot. But to the extent we can work together, it's better
25 for the environment, better for the ecosystem in the Prince

1 William Sound, and it makes practically more sense. The other
2 problem we face on this is, this would create a delay in the
3 process. You'd have three federal trustees sitting here and
4 you'd have the three State trustees sitting here and they would
5 agree upon what needs to be done. And there's going to be some
6 discussion among them as to what's appropriate, what's not
7 appropriate -- if, in fact, the federal body has to go back to
8 discuss the matter with the Office of Managment and Budget, then
9 we're going to be in a situation where they're not going to be
10 able to act, they're not going to be empowered to act and the
11 decision-making process is going to be delayed. And I can
12 promise you that if you break this nut and bring in the
13 Legislature, then I've got problems on my side where I'm looking
14 at the Enviornmental Protection Agency, who'd like very much to
15 be a trustee in this process, and they have contributed
16 significantly to this process, I have the Office of Management
17 and Budget, who want very much to have the traditional budget
18 oversight, which they have over all other federal programs. We
19 have rumblings in the Congress, that they would also like to be a
20 part of this decision-making process. I'm concerned that a
21 process that's already not pro-active, not decision-oriented
22 would be completely Balkanized.

23 MR. HUDSON: My followup (indiscernible) One of the things
24 that really triggers th's line of questioning is that in the Plea
25 Agreement there's a \$100 million dollars, \$50 million dollars to

1 go to the State and \$50 million dollars to go to the federal
2 agencies, I presume, or to.....

3 MR. STEWART: It actually goes into the Treasury, by.....

4 MR. HUDSON: The Treasury, and the \$50 million goes into our
5 Treasury. It comes into my (indiscernible) the very first
6 time. And it's that plus perhaps the 70, up to \$72 million
7 dollars, is the only real capital that we see. And the \$72
8 million is to pay back, you know, for other expenses. And this
9 \$50 million, it does say, is for restoration. And yet, as a
10 bunch of legislators who will be appropriating these monies, we
11 don't totally for sure what's been included in that. We make
12 some references to replacement values, comparable replacements
13 and things of this nature. What I'm saying is that it seems to
14 make some sense, without busting the agreement, without delaying
15 the whole process, have at least some sort of a vehicle wherein
16 there's some consultation and we at least understand what the
17 criteria is for the spending of these monies over time and at
18 least look at the money that's going to come into our coffers.

19 MR. STEWART: Well, I think that the Plea Agreement says --
20 may review of your decisions, at least so far as the federal
21 government's concerned. This is the money that's provided to you
22 for that purpose and it's really up to the State, I think, to
23 decide what that means.

24 MR. CAMPBELL: On the federal side, the federal trustees are
25 quite envious of you.

1 MR. STEWART: Yes.

2 MR. CAMPBELL: You have \$50 million dollars that you can
3 spend unfettered (indiscernible - simultaneous talking).

4 MR. STEWART: Ours goes to the Treasury, they wanted the
5 fine to be zero, you see. Secretary Luhan actually to the
6 meeting and said, well, I'd like to see the fine be zero because
7 it'd be more money to be spent for restoration under the
8 restoration process, in some sense, we said no because of the
9 deterrent effect in a lot of strong criminal sanctions and so,
10 the \$100 million dollar fine. And then, as I said, there's
11 precedent for sharing that with the State, that's been
12 cooperative and that's been hurt. And so in a sense you got the
13 \$50 million free of the joint decision-making process.

14 MR. HUDSON: With strings that we're not quite certain where
15 they lead.

16 MR. STEWART: Well, I think, I would say it's up to you to
17 decide what the strings are.

18 MR. HUDSON: All right, we'll do that.

19 MR. CHAIRMAN: Thank you. Before casting to Representative
20 Davidson, gentlemen, did you need a couple minutes to take a
21 break or anything?

22 MR. STEWART: I'm fine.

23 MR. CHAIRMAN: You're okay. Okay, Representative Davidson,
24 Representative Kubina. Never let it be said we're inhospitable.

25 MR. STEWART: Thank you.

1 MR. DAVIDSON: Thank you, Mr. Chairman, and first I'd like
2 to thank you two gentlemen for coming all the way from the east
3 coast to help us take of our resources. I know you've been
4 working hard and.....

5 MR. STEWART: A little bit.

6 MR. DAVIDSON: But, I also acknowledge that you are the
7 craftsmen, the artists of determining what the outer limits of
8 liability numbers are. So, as a layman, I'll try to ask you some
9 questions that probably sometimes won't be very polished and
10 rather crude, but I apologize for that in advance. First off, it
11 appears then that when you talk about -- as you did in your
12 remarks, Mr. Stewart -- that we are in a true stare decisis
13 ability kind of situation. That is to say, as I understand it,
14 this is, these issues are a first impression. So, could you tell
15 us please, what in fact does this first impression mean, then?
16 What are we starting here? I mean, is it baseline kinds of legal
17 precedent that will go far into the future as to whether or not
18 we established a high enough standards to restore damaged public
19 resources to their full recovery, or -- would you have any
20 comments about something like that kind of question?

21 MR. CAMPBELL: Sure. I feel there's three important
22 precedents that have come out of this settlement and the event as
23 a whole. Number one, we've broken the billion dollar mark for
24 environmental damage cases and this is the first case ever and
25 now juries will think in terms of the a billion dollars, because

1 there was precedence set for damages like this done to the
2 enviornment. So maybe there'll be a prophylactic effect on other
3 people that may contemplate the carelessness that led to this
4 event. Number two, \$100 million dollars, that's 20 times larger
5 than any criminal penalty that previously had been imposed upon
6 any criminal defendant in any criminal enviornmental case.
7 That's a substantial precedent that's been established. And,
8 number three, it has really focused the federal government, the
9 federal trustees on the fact that we have a natural resource
10 heritage that needs to be protected and that not only do we need
11 to prosecute the big oil spillers for cleanup and restoration,
12 but that we have to go after the small spillers for restoration
13 also. We've always gone after them for cleanup, we need to
14 continue to dog them for restoration. And then we need to, in
15 the toxic area also begin to assess injuries done by releases of
16 PCB's and DDT's and heavy metals that have, for having a
17 devastating impact on our fisheries resources. And we have, NOAA
18 has engaged in a series of cases throughout the coastal United
19 States to begin assessing damage done to our fisheries resources.

20 MR. DAVIDSON: I must say one thing. Mr. Campbell, one of
21 your statements kind of, it was a little bit abrasive, I think,
22 in terms of -- now, you weren't abrasive, it came out abrasive
23 sitting from a legislator's perspective. And that is, when we
24 talk of adminstrations personnel it seems that you're simply
25 trying to do your trustee responsibilities whereas in reference

1 to the Congress or other legislative types, it seems that there's
2 rumbling involved. And, I want to show you that we take
3 seriously our trust responsibilities as well. But if I may get
4 on with some of my questions.....

5 MR. CAMPBELL: Please let me say that I see your job as a
6 stewardship of, that's broader than our own and I respect the job
7 that you've been entrusted to do and I just pray you do it well.

8 MR. DAVIDSON: Thank you. I felt you felt that way, but it
9 didn't come out that way -- I didn't decode your message that
10 way. So thank you very much. Getting back to the Plea
11 Agreement, I was wondering if the Alternative Fines Act played
12 into part in determining this \$100 million dollar sum?

13 MR. STEWART: Well, there was a big -- talk about another
14 issue that's on the legal frontiers -- that was certainly one
15 where if the Alternative Fines Act had not applied, the maximum
16 fine if we convicted Exxon on all 10 counts would have been 3.2
17 million. We were saying the Alternative Fines Act applies and we
18 proposed up to twice the economic loss caused by the spill which
19 would include certainly the response costs that the State and
20 federal governments had expended. Exxon said the Alternative
21 Fines Act didn't apply at all, that it was only to deal with
22 financial fraud in financial cases, not environment, so there was
23 just very little precedent on this issue and it's one of the
24 uncertainties that I think made a plea agreement attractive to
25 both sides. I mean, you were running the risk of a very small

1 fine, Exxon was maybe running the risk of a much larger fine,
2 although it's totally up to the discretion of the judge, so it's
3 a little bit (indiscernible) litigation and so both sides tried
4 to negotiate towards some middle ground. But it was a big
5 factor.

6 MR. DAVIDSON: So, you say it was a good factor. Was it a
7 big factor in determining that -- the \$100 million then more than
8 we should have ordinarily expected, is that what you're saying?

9 MR. STEWART: I think, yes.

10 MR. DAVIDSON: But yet in your comments you talked about a
11 fine that could range from \$600 million to a meager \$3 million.

12 MR. STEWART: Yes.

13 MR. DAVIDSON: Where does the \$600 million.....

14 MR. STEWART: That would be, our view is that we might --
15 you would have been able to argue and present to the judge
16 evidence of \$300 million dollars of economic loss, say, to the
17 government. And then ask the judge to impose a fine of twice
18 that. In order for the judge to do that, he would have to say,
19 one, the Alternative Fines Act applies. Two, I will use in this
20 case because the Act -- the judge can say, it's too
21 complicated. It messes up the sentencing to get in all these
22 extraneous issues and I'm not going to apply it, even though I
23 could, and if he uses it he could impose the fine anyplace
24 between 3.2 and 600 and is pretty much in his sole discretion.

25 MR. DAVIDSON: So then, Mr. Stewart, then if this case does

1 go to trial, a fine even beyond \$100 million is not completely
2 out of the question.

3 MR. STEWART: That's correct. It's theoretically
4 possible. Very unlikely, I would say, but of course that would,
5 you know, that's -- we would certainly ask for the maximum. What
6 we would get from the judge is a real guess.

7 MR. DAVIDSON: So, the issue of sharing the federal fine --
8 is there precedent for that?

9 MR. STEWART: We have done this in a number of cases in the
10 past. I mentioned two prior oil spill cases, the Ashland case
11 which was in Pennsylvania and the World Prodigy oil spill -- the
12 tanker in Aragansett Bay. In each of those cases we gave -- the
13 agreement provides that a -- restitution, half the fine will go
14 to the state. So there is there is that precedent in actual
15 practice, yes.

16 MR. DAVIDSON: So, then if we do go into trial, that --
17 there could be possibly a larger fine? And would that then
18 follow necessarily that that fine would be split between the
19 State and federal government? And if not, why not?

20 MR. STEWART: No, because it would be up to the judge to
21 decide if part of the fine would be suspended and what would be
22 done to it.

23 MR. CAMPBELL: Again, in the Plea Agreement -- assuming the
24 judge accepts the Plea -- what the deal is, but if it went to
25 trial then it would really be up to the discretion of the judge

1 how big a fine and whether part of that would be suspended and go
2 to the State. That would be totally judicial discretion.

3 MR. DAVIDSON: So that means that the bargaining parties,
4 negotiating parties, would give up jurisdiction.....

5 MR. STEWART: Yes.

6 MR. DAVIDSON:as to what happens to that fine.

7 MR. STEWART: Yes, that's correct.

8 MR. DAVIDSON: Okay. Now, we have a side question here,
9 could the judge then -- let's say the judge said, well, okay,
10 we're going to give you \$150 million and \$75 million goes to the
11 State and \$75 million goes to the federal government. The judge
12 actually does that?

13 MR. STEWART: Well, I think in theory -- I guess my own
14 personal assessment is that such a fine would be very unlikely --
15 a fine of that magnitude, there's no precedent for it. But the
16 judge, in essence, would have the authority to suspend half the
17 fine on condition that the monies be paid to the State, or some
18 portion -- it wouldn't necessarily have to be for half, it could
19 be \$10 million or \$20 million or whatever. But that would be
20 very much up on the discretion of the judge.

21 MR. DAVIDSON: You used the word "suspend." When you used
22 it there, is that the same as "remit" as in the case of this fine
23 we're talking about?

24 MR. STEWART: Normally, the suspension would be as a
25 condition of probation and we do not think that given Exxon's

1 solvency and the fact that it has done some, made some important
2 effort to respond to this bill, that probation was appropriate.
3 So we just have the remission.

4 MR. DAVIDSON: Mr. Stewart, I'll push on, I know we're under
5 a time constraint here, but in regards to the Plea Agreement and
6 I -- you almost answered it for me when Chairman Gruenberg talked
7 to you about it, but you expound a little bit on how the Plea
8 Agreement relates to the consent agreement and the Memorandum of
9 Agreement, or does it not relate at all?

10 MR. STEWART: It doesn't relate to the Memorandum of
11 Agreement, I think, in any way. And to the consent decree only
12 in the sense that the incentive of all the parties to see if we
13 could get a comprehensive settlement of this, to dispose of all
14 the claims in one package so Exxon can say, we're going to pay
15 this much and be done with it and get this behind us. And, from
16 the federal government's view, being able to amass all your
17 claims in a coordinated way, you're likely to get top dollar as
18 opposed to a piecemeal approach.

19 MR. DAVIDSON: So, am I correct then in saying that some of
20 the things that we're pushing all of this together -- that's the
21 way the leverage ball bounces, so to speak?

22 MR. STEWART: Well, I think as a practical matter, I mean,
23 Exxon was facing this trial date of, in April and, you know, in
24 any negotiation, you need some incentive for the parties to get
25 agreement. I know some incentive here for Exxon, to pay up a lot

1 of money, and that was sort of (indiscernible) that provides the
2 impetus for getting to an agreement.

3 MR. DAVIDSON: Well, guess that's another area that troubles
4 me, I have questions about it. What -- let me ask, I wrote this
5 question down here since I've been in the room -- what legal or
6 other considerations pushed or enticed this settlement into a
7 hurried time crunch? Fair question?

8 MR. STEWART: Well, I disagree because I was trying to get
9 this matter, at least the criminal case, settled over a year ago
10 and I think, obviously, the longer one waits, the more
11 information one might have. That information can be favorable to
12 one party or favorable to another party. Exxon says the Sound's
13 restoring itself, we say well there may be long-term damage, so
14 you don't know in whose favor the information is going to come.
15 And secondly, from a very practical viewpoint, to get the money
16 now and have the resources available now, to spend the money to
17 do the restoration projects, to benefit the communities that
18 depend on the resources, it's a big consideration.

19 MR. DAVIDSON: I certainly would agree with that but I guess
20 as a trustee, I'm still trying to determine are they adequate
21 resources? And, out of this amount, should we continue to allow
22 the perpetrator to deduct cleanup cost? Not restoration cost,
23 but cleanup costs. But anyway, Mr. Campbell, I think you had
24 some.....

25 MR. CAMPBELL: Yes, I just wanted to be sure that the

1 characterization of this as being a hurried settlement doesn't
2 lay there, because it wasn't. We took our time, we've had
3 discussions with Exxon previously, the trustees in this instance
4 instigated the discussions, we felt that we had sufficient
5 information available to appropriately value the claims, and in
6 the interest of the resource, it was appropriate to begin the
7 discussions. And I don't think it was hurried, I think we took
8 our time and we did the best job we could and took as much time
9 as we felt it required.

10 MR. DAVIDSON: So, you're talking in terms of a perspective,
11 certainly a long time prior to January of 1991?

12 MR. STEWART: I would say, from the Justice Department, that
13 we had been evaluating our claims, for purposes of litigation or
14 settlement, for a year and a half.

15 MR. CAMPBELL: NOAA took over as the lead trustee in the
16 late summer of last year, and from that time we have been
17 pursuing discussions, attempting to get the parties together to
18 be able to negotiate. At the end of the previous government
19 gubernatorial regime it was apparent that, that because of the
20 fact they were leaving that that wasn't going to be possible and
21 in early December I made a trip up here on behalf of the trustees
22 to talk with the governor, to discuss the possibility of.....

23 MR. DAVIDSON: Which governor?

24 MR. CAMPBELL: Governor Hickel. And to discuss the
25 possibility of reopening discussions and he had the same thoughts

1 that we did, and we began the process of negotiation. Nobody
2 rushed anything, we took our time, we did a careful job.

3 MR. DAVIDSON: Well, perhaps my feeling of hurriedness then
4 comes from the appropriate opportunity for public comment and the
5 time frame within which we as trustees are pretty much pushed
6 into a schedule of reacting to this settlement, and at the same
7 time trying to determine that the information is there to assess
8 the extent of the damages as well as determine why it is all of a
9 sudden, instead of the State being on one side of the line
10 against Exxon and Alyeska, we're now on the other side -- oh,
11 well, it's Exxon and the federal government, we're on the other
12 side of the line against our Alaskan constituents. If you have a
13 comment, I'd appreciate it.

14 MR. CAMPBELL: I don't under.....

15 MR. STEWART: Well, I don't -- I just say, on your
16 constituents, in terms of their own private claims? You know,
17 again, I think we've discussed that, we've wrote this agreement
18 very carefully so it's not prejudiced their claims in a legal
19 way. And I've indicated if we can get the Exxon case approved
20 and behind us I think the federal trustees, at least, are going to
21 be much readier to disclose information because we don't have the
22 specter of having this information go to the benefit of Exxon.

23 MR. DAVIDSON: The release of federal information -- would
24 that then in turn, damage the State's defensive case against
25 these litigants who have now been more or less forced to go

1 against the State as well?

2 MR. CAMPBELL: We, in truth, find ourselves in something of
3 a dilemma on the federal side. NOAA, is in essence, a science
4 agency. We have -- the main thrust of our responsibility to
5 educate the public and to make information available for the
6 advancement of science. On the other hand, we're given this
7 trust responsibility where we're supposed to assess this claim,
8 get the most money we can out of the negotiation or litigation
9 process and the two are not fully compatible. One is a closed
10 process, one is an inherently open process. And what we've said
11 is that well, we recognize the disclosure of information does in
12 fact, to a certain extent, compromise the second objective, that
13 we are prepared to suffer some small compromise in order to be
14 able to fulfill our group (indiscernible).

15 MR. DAVIDSON: Let's go to your primary agency
16 responsibility. That is, the generation of scientific data. Is
17 that fair? So, now, does science, wherever it is found, stand on
18 its own, or is it capable of being manipulated for litigious
19 purposes? I mean, what difference does it make whether the
20 science comes before or after the case? If the science is the
21 science?

22 MR. CAMPBELL: Let me just say, in terms of the scientific
23 process, the way (indiscernible)?

24 MR. DAVIDSON: In terms of the scientific data that affects
25 the determination or the extent of the damages.....

1 MR. CAMPBELL: Yes. The fact is that the process on the
2 federal side is, we would try to keep it as pure as possible, the
3 scientists (indiscernible) develop the data, they reported the
4 damage assessment without restraint -- other than the fact that
5 they're unable to publish their information and what that means
6 is there's -- the scientific process is a process of exchange, of
7 debate, of discussion, of conflict.

8 MR. DAVIDSON: Deduction?

9 MR. CAMPBELL: Of deduction -- it's a messy process. And
10 you don't want the other side to be exposed to the low points in
11 the process where your guys are questioning their conclusions,
12 because in cross-examination, having some trial work myself,
13 that's what you want. Are you right this time or were you right
14 last time? You said you were right the time before. That kind
15 of line of questioning we don't want to expose our people to so
16 we have to draw a veil over that process, to protect our
17 experts. What we want to do at this point in time is to conclude
18 the litigation, draw back the veil, and let a robust discussion
19 occur.

20 MR. DAVIDSON: So, in this robust discussion, was the agency
21 experts, the legal experts within the agency ever given the
22 directive, don't go forward with these studies, these
23 assessments, because of we're close to a settlement here? Or,
24 you never had that kind of directive?

25 MR. CAMPBELL: No.

1 MR. DAVIDSON: So.....

2 MR. CAMPBELL: That's the first answer to that.

3 MR. DAVIDSON: Good. So, this damage assessment
4 continues, is that correct?

5 MR. CAMPBELL: That's correct, it will continue until its
6 conclusion. The purpose of the damage assessment, though, will
7 be more specifically focused. Right now it is focused at being
8 able to document injury. Now it will be more specifically
9 focused at crafting restoration opportunities and methodologies.

10 MR. DAVIDSON: Mr. Campbell, if your responsibility under
11 federal law is to ensure recovery for all costs, not some, all
12 costs -- or giving back or restoring the damage or injured
13 resources, why are we stuck with \$900 million dollars? Because
14 we've already established now that the damage assessment goes
15 on. So we don't know the extent of the damage to the resources
16 and yet we're stuck here with this \$900 million dollar figure and
17 in light of your responsibility under federal law, how do you
18 justify that?

19 MR. CAMPBELL: Representative Davidson, what you do is you
20 talk to your scientists, you say okay, what do you consider to be
21 a scenario that would occur. Let's interpret the damage that you
22 think would come out of this, let's take a liberal look at it --
23 and when I say liberal I mean let's consider it.....

24 MR. DAVIDSON: As opposed to Republican?

25 MR. CAMPBELL: No, that's Independent.

1 MR. DAVIDSON: Let's take a more conservative.....

2 MR. CAMPBELL: Yes, if you think that the damages are going
3 to be moderate, let's go a little bit beyond moderate to give
4 ourselves some leeway, some pressure and let's take a look at
5 what it's going to cost to do the restoration. And again, I
6 point out, NOAA is a tremendous agency and the people that work
7 in NOAA are there because they believe protecting our marine
8 mammals, protecting endangered species, and the agency leaks like
9 a sieve when we have something that cuts against the grain of
10 what was proper in terms of that -- what they percieve to be
11 their responsibilities beyond governmental responsibilities. I
12 would point out to you both -- to this Committee, that the people
13 universally, within the federal agencies, have stood the time
14 (indiscernible) they want to be reasonable. People that are on
15 the front lines doing the scientific work that's associated with
16 this damage assessment.

17 MR. DAVIDSON: But the fact remains, though, despite what
18 you've said, this remains -- the \$900 million dollars, the
19 scientific guesstimate -- is that fair?

20 MR. CAMPBELL: No.

21 MR. DAVIDSON: Or is that unfair?

22 MR. CAMPBELL: That is unfair.

23 MR. DAVIDSON: Unfair. Okay, I take that one back.

24 MR. CAMPBELL: It's all right, but I want to be sure the
25 record is clear that we have substantial information and

1 understanding of what the injury is. The scientists constructed
2 an hypothesis indicating what they think it will be and I think
3 they feel comfortable as we feel comfortable, relying upon the
4 information they provided us. That we appropriately assessed the
5 damage -- now, we're going to refine it.

6 MR. DAVIDSON: It becomes work product then, is that right?

7 MR. CAMPBELL: No, but we're gonna -- what I'm saying is,
8 over the continuing years we're going to refine it and we're
9 going to better understand how the damage occurred. For example,
10 why is it that the river otters are depleted in their weight? We
11 don't quite understand what's happened there completely in terms
12 of how it happened. They have a good idea on it but they're not
13 looking at a failure of the river otter population, they're
14 looking at a short-term dislocation that is significant, but it's
15 within their understanding. What they're going to look at now is
16 how do we go about getting at the problems in order to be able to
17 make sure that the restoration is complete?

18 MR. DAVIDSON: Again, I'd like to thank you both for coming
19 I appreciate it. Thank you, Mr. Chairman.

20 MR. CHAIRMAN: Sure. Representative Kubina (indiscernible).

21 MR. KUBINA: Thank you, Mr. Chairman. A couple more
22 questions. First of all I want to say that I have a problem with
23 him using the \$900 million dollar figure. Since I'm an old
24 schoolteacher negotiator -- by the way, Representative Davidson
25 speaks as a layman, I speak as a sixth-grade teacher, so I'm

1 really down on the scale there, but -- 900, it's like me going to
2 the bargaining table and the teacher's saying, we want 10 percent
3 and I go in and I go to negotiate and I come back and I tell you
4 I got you 10 percent. One percent a year for the next 10
5 years. They going to vote yes?

6 MR. STEWART: Depends on how good a negotiator you are.

7 MR. KUBINA: Well, if I came back with one percent a year
8 for 10 years, I think they'd tell me real quick.

9 MR. CAMPBELL: Let me tell you, let me respond directly to
10 the underlying question, and that is that this is stretched out
11 over time. We could not spend all of the money responsibly if in
12 fact it were all available right now. The restoration of Prince
13 William Sound is going to take place over time.

14 MR. KUBINA: No.

15 MR. CAMPBELL: (Indiscernible).

16 MR. KUBINA: We have had, but if we had.....

17 MR. CAMPBELL: (Indiscernible)

18 MR. KUBINA: If we had \$900 million dollars in the bank, I
19 would not worry that we don't have enough money because we could
20 spend the interest off it and go for a long time.

21 MR. CAMPBELL: I understand that, but what I'm saying is, is
22 that we will have the monies that we need to do the restoration
23 needed at the time that it's needed to be done. That's what we
24 feel that the settlement provides.

25 MR. STEWART: I will say you're more adamant on the point

1 than I think we've got previously to this.

2 MR. KUBINA: Let me ask a couple questions, please. Was
3 there any way that -- any other way to settle this other than the
4 Clean Water Act? Was it just the most convenient mechanism to
5 set up this trust, or were there other?

6 MR. STEWART: I think in our view, and this is really a call
7 by the part of the Justice Department called the Office of Legal
8 Counsel, is that this was the only way to have the joint fund and
9 joint decision-making.

10 MR. KUBINA: Okay, that's fine. Was there a way, under the
11 Clean Water Act, to include other governmental agencies,
12 municipalities, villages, not just the State? Was there a way to
13 incorporate them in this process?

14 MR. STEWART: In my view, under the Act, is only trustees
15 appointed by the governor or the President that can serve as the
16 decision-making trustees. Now, I assume there would be no
17 statutory impediment if the governor appointed the mayor of
18 Cordova, or whatever.....

19 MR. KUBINA: No, you're misinterpreting what I'm saying.
20 Could have this process, this negotiation process included
21 negotiating also a settlement with the municipalities and the
22 villages that also have lawsuits? Could it be broadened by
23 settlement to also include them with the mechanism you had set up
24 to do?

25 MR. STEWART: I guess I don't understand the mechanism. And

1 I suppose that we could say to Exxon we're not going to settle
2 our claims unless there's simultaneous settlement of everybody
3 else's claims. I suppose that would be possible but I don't see
4 how those settlements would be under the mechanism that we set
5 up, that's what I was wondering.

6 MR. CAMPBELL: Now, I don't think we could have mixed those
7 responsibilities. Because there is the responsibility to restore
8 the environment and regardless of whether or not we've gone under
9 other theories, there would have been the federal responsibility
10 on the part of the federal trustees, and that's how we get into
11 this thing, to be sure that the money's spent sufficient to do
12 restoration work in the Prince William Sound. We looked at the
13 possibility of broadening the negotiations but it became a
14 problem when you looked at trying to sit down and evaluate the
15 value of a private party's claim. And if have an overestimation
16 of the value of this claim, I as a trustee for natural resources
17 suddenly was put into the position of having to act as something
18 of a judge to determine whether or not his claim was too big, too
19 small, whether or not he was acting unreasonably. And then you
20 multiply that by the number of private.....

21 MR. KUBINA: I'm not talking about -- I'm only talking about
22 other governmental agencies, basically. Cities, municipalities,
23 legally constituted in some way, shape or form. I'm not talking
24 about all the fishermen or all the individuals, private
25 businesses.

1 MR. STEWART: Well, I think it's been at least the federal
2 government's position, at least in one case where it's come up,
3 but that municipalities are not trustees under the Clean Water
4 Act, so to the extent we're relying on the Clean Water Act
5 mechanism, the answer is no.

6 MR. KUBINA: Okay, but you could have put them in there and
7 just as all of the fines are not under the Clean Water Act, are
8 coming straight to the states, straight to the federal treasury,
9 you could have negotiated a settlement on those and had separate
10 agreements that they could have paid off too. It would have been
11 tougher but you certainly could have done it.

12 MR. STEWART: The criminal fine, you're talking about,
13 or.....

14 MR. KUBINA: I'm saying that that \$100 million dollars.....

15 MR. STEWART: Yes.

16 MR. KUBINA:is not going through the trustees?

17 MR. STEWART: That's correct.

18 MR. KUBINA: That's correct. You could have negotiated it,
19 you could have in some way, shape or form, if you look at the
20 broader picture out there -- if you looked at the broader picture
21 out here, you could have in one shape or form brought in all
22 those other people, at least the municipalities? It would have
23 been more complicated as for the (indiscernible)?

24 MR. STEWART: Yes, yes. I guess, I mean, it's still up to
25 the State to decide how that \$50 million dollars is going to be

1 spent, so.....

2 MR. KUBINA: Our (indiscernible) like that, yes.

3 MR. CAMPBELL: Just as a practical matter, and I want to
4 speak to you as practical people, we had eight federal agencies
5 involved, three State agencies, the Attorney General, and the
6 three or four levels in Exxon involved in this negotiation is one
7 of the most complex enviornmental negotiations that has ever
8 taken place. And with the addition of each additional party, the
9 negotiations became exponentially more complex. And I'm just
10 saying that as a practical matter, it was very difficult. It
11 came to the point where you were concerned that it would
12 jeopardize the ability to acheive a settlement for the natural
13 resources, and as natural resource trustees we said this has got
14 to take precedent but we have to be sure that the resource upon
15 which all of these communities draw is in fact restored.

16 MR. KUBINA: All right, I don't want to belabor.....

17 MR. STEWART: No, I take your point. I don't think we
18 disagree with your point.

19 MR. KUBINA: Let me give you an example. A year ago you
20 tried to settle the criminal suit. The State of Alaska raised
21 hell. You stopped. I don't see it any different than where other
22 third-party people are right now. The State of Alaska felt they
23 were getting left behind, they were going to be in a worse
24 position if you guys settled that criminal suit at that time.
25 Well now, I think if you look at it, all these other people

1 probably are feeling the same exact way. They're being left
2 behind. And let's leave that.

3 MR. STEWART: Wait, could I just add a footnote. The reason
4 that we really had to forego the agreement was back to this
5 problem about the joint nature of the resources, because unless
6 Alaska were to agree to a joint recovery and spending process and
7 we'd be back in this, in this never-never land. So that was
8 really the reason, I agree others may feel left out, or they may
9 -- yes, but the reason we responded to the State in that case was
10 the special nature of the joint -- of a lack of trusteeship for
11 resources.

12 MR. KUBINA: Did Exxon at that time, and I believe there
13 were reports out that Exxon was willing to pay a \$500 million
14 dollar fine to settle that at that time, is that correct?

15 MR. CAMPBELL: What we provided for was a restitutionary
16 mechanism, pay up to \$550 million dollars over a period of time,
17 although Exxon could have disputed the need for some of those
18 expenditures.

19 MR. KUBINA: Did that include damage to the resource, or was
20 that all fine?

21 MR. CAMPBELL: Well, that was a restitutionary part of a
22 criminal settlement. It did not include any settlement of the
23 civil claims.

24 MR. KUBINA: Okay, so in other words, right there we've lost
25 \$400 million dollars, and correct me if I'm wrong, but that's

1 what a sixth-grade teacher, that's what it does.

2 MR. STEWART: I understand the loss of \$400 million.....

3 MR. KUBINA: Well, basically the federal government was on
4 the verge of settling for \$500 million dollars.

5 MR. STEWART: Only our criminal case.

6 MR. KUBINA: Only the criminal case.....

7 MR. STEWART: And the State still retains all of its civil
8 claims, and we retained all our civil claims, and the rationale
9 was we didn't know how bad -- at that time, particularly, we had
10 probably much less evidence -- let's get this money, get it to
11 work and then if it's more than that, the State and the feds
12 still have their civil claims.

13 MR. CAMPBELL: I think there's a misunderstanding going on
14 here. Any restoration effort that was done with that \$550
15 million dollars would have been an offset to any civil recovery
16 that we might have obtained. So, in other words, every penny of
17 that would have been an offset and so we have not lost
18 anything. That would have been part of the \$900 million dollars
19 that you're talking -- actually it'd be part of the \$100 million,
20 the billion dollars that we're discussing.

21 MR. KUBINA: So you're saying it's not unrestricted like the
22 \$100 million is?

23 MR. CAMPBELL: That's correct.

24 MR. STEWART: That's right.

25 MR. KUBINA: That's correct.

1 MR. CAMPBELL: And the other thing you need to understand
2 about that process, there was a mechanism, it was a part of that
3 process whereby they could contest expenditures under the
4 previous agreement. There had to be -- there were a set of.....

5 MR. STEWART: There was \$150 million down for natural
6 resource damage projects, joint decision-making, federal and
7 State and then the trustees could have then asked for additional
8 installments, but a challenge would have to prove that there was
9 some real need for these projects, whereas the money we're
10 getting now is unconditionally committed.

11 MR. CAMPBELL: There would have to be a proof process in
12 that before we could make an expenditure.

13 MR. STEWART: And we tried to, you know, make that as mild
14 as possible, but -- and it was a concern of the State.

15 MR. KUBINA: All right. Do you believe that one of the
16 trustees from the State could be a member of the Alaska
17 Legislature? Would that be legally acceptable?

18 MR. STEWART: It's a matter of Alaska law, so far as I'm
19 concerned, but I.....

20 MR. CAMPBELL: I think it.....

21 MR. STEWART: but I'd have to defer on that question.

22 MR. KUBINA: Alaska law dictates (indiscernible).

23 MR. STEWART: Well, whether the -- I mean, federal law
24 simply says it's somebody who's appointed by the governor. And
25 whether it's proper for a legislator to serve as a.....

1 MR. KUBINA: To your understanding....

2 MR. STEWART: And under federal law, it.....

3 MR. KUBINA:did the governor wanted, it's the
4 governor's decision, he can put pretty much any three people
5 he.....

6 MR. STEWART: Well, all I'd say is if it were a matter of
7 federal law, you couldn't do that. You couldn't have a
8 legislator also serving in what would be an executive position.

9 MR. CAMPBELL: We have a difference of recollection of the
10 statute on that. We probably ought to conduct a.....

11 MR. STEWART: All right. Maybe we better get back to you on
12 that.

13 MR. KUBINA: Okay. Let me ask you this, would the federal
14 government, United States government object to having say, two or
15 four ex officio members of the Alaska Legislature, no vote, just
16 there to give there input. If that was a stipulation of our
17 agreement to this, would you find objection to that?

18 MR. CAMPBELL: I think we'd have to consider it.

19 MR. STEWART: (Indiscernible) I think, respond to that. I
20 mean, (indiscernible) but it contemplates, you know, there as a
21 voting member, voting trustees or not, and (indiscernible).

22 MR. KUBINA: But then again, it's only an agreement between
23 the State and federal government, we don't have to bring Exxon
24 into that decision any longer.

25 MR. STEWART: That's correct.

1 MR. KUBINA: And obviously the good relationship that we
2 have with each other would.....I believe I have one more. Two
3 more, actually. One is, one of the problems that I had with this
4 settlement, is that it appears to me it could cost the State of
5 Alaska money. Let me tell you how. We get \$50 million
6 dollars.....

7 MR. STEWART: Let me just -- I kind of have one little
8 thought.....

9 (Begin Side Two-Tape #30)

10 MR. KUBINA: Okay. My next point, and I'm almost done
11 here. It appears, or some people contend that the State of
12 Alaska may actually have to pay out monies because of this
13 settlement. The example given is we get \$50 million dollars. We
14 also get, I believe it's \$72 million dollars, but that's
15 reimbursement for money we've already spent. Because we've
16 entered into this agreement, there have been numerous lawsuits
17 filed against the State that were not filed beforehand. If we
18 are found culprits and it's because -- for example, we did not
19 monitor and regulate the oil industry -- transportation of the
20 oil -- and people win lawsuits against us, we can not go back to
21 Exxon to claim any of that money, is that not correct?

22 MR. STEWART: Correct.

23 MR. KUBINA: And therefore, if there's any amount over \$50
24 million dollars that we are held liable for, we're going to be in
25 debt. Do you agree with that scenario?

1 MR. CAMPBELL: I think that that is a -- as a consideration
2 that your Attorney General undoubtedly went through and
3 negotiated this agreement and I don't think it would be
4 appropriate for us to speculate on his responsibilities in that
5 area.

6 MR. KUBINA: Well, you see, it's one of the things that
7 Representative Davidson brought up and that -- by this agreement,
8 you're -- in some way it's pitting us against our own citizens,
9 our own municipalities, our own villages because of that issue.
10 And it's why a number of us have a hard time -- while we may
11 accept the general terms of the agreement, because of the
12 relationship it's going to put us in with our own citizens, it
13 makes it quite difficult to say yes.

14 MR. STEWART: Well, first I don't understand why you
15 wouldn't be liable to such suits in any event, whether you sign
16 the agreement or not.

17 MR. KUBINA: Well, they were not -- I can say that they
18 weren't -- many of them were not filed, but one of the things it
19 does is we can't put the blame back on Exxon now, that's what.
20 Before, we really could and this agreement really makes us and
21 Exxon have to stand hand in hand in some respects.

22 MR. CAMPBELL: But you could never take money out of this
23 settlement and offset that against private claims.

24 MR. KUBINA: No.

25 MR. CAMPBELL: If in fact the restoration required

1 (indiscernible).

2 MR. KUBINA: No, this money (indiscernible - simultaneous
3 talking). Money in the trust is protected, I agree with that.
4 But the State of Alaska may have to take the money out of our own
5 general fund to pay third-party claims.

6 MR. CAMPBELL: But I think that would always have been the
7 case.

8 MR. KUBINA: Well, the argument is that before the
9 settlement, we could have gone back to Exxon and tried to have
10 then tack those barges onto them. Where now we can't, we can't
11 take it out of the trust, that's not what it's for, we can't go
12 back to Exxon, we can't go to you, we're stuck. That's why our
13 Attorney General refused to release the scientific data, he
14 doesn't want to give those people any more ammunition to sue
15 ourselves.

16 MR. CAMPBELL: But what I want to point out is that I don't
17 think that the existence of this trust changes that in any way
18 because if, in fact, we have the amount necessary to do
19 restoration, which is the measure of damages here, that's always
20 going to be required to come out of this process. And just
21 because the State is found 20 percent liable say, for this
22 incident and Exxon is found 80 percent liable, you're not going
23 to be able to tack that 20 percent over on to Exxon under any
24 scenario.

25 MR. KUBINA: I understand, okay. My last point is, do you

1 agree that -- I'm sorry I don't have the wording in here, but you
2 should know what I'm talking about -- that Exxon is, in essence,
3 sort of forgiven for any future damages to the natural resources
4 once this takes effect due to the spill. Is that correct? They
5 paid their duty.

6 MR. STEWART: Well, with the reopener clause.....

7 MR. KUBINA: Except for the reopening. My question then is
8 this: Does that stop commercial fishermen from privately going
9 back to Exxon for damages to the fishery that may occur this
10 year, this summer, next summer, the summer before? Or does it
11 only to this -- in relation to the State and federal governments?

12 MR. STEWART: Only it's in relation to the State and
13 federal law.

14 MR. KUBINA: So you're saying that those third parties.....

15 MR. STEWART: Whatever claims they say have there, are still
16 there, they are still valid.....

17 MR. KUBINA: Even in future years?

18 MR. STEWART: Yes.

19 MR. CAMPBELL: Per private pecuniary loss. Or, for whatever
20 losses they can establish based on the injury to the resources.
21 We are our only -- federal and State governments can only assert
22 claims under, for public resource damages and if there are
23 private claims or subsistence claims, or whatever they are, based
24 on the injury to the resources, they are unaffected by this
25 agreement.

1 MR. KUBINA: Would you say that they have an argument,
2 though, that since they paid the governments who are claiming to
3 be trustees or owners of the resources, that they've already paid
4 that and therefore, even though a fisherman in fish low or peak
5 years may be, not receive the income that they would, that they
6 would have a good argument, that they've already paid that to the
7 State and federal governments and they would not have a claim?

8 MR. STEWART: I think it depends on the legal question,
9 whether there are those private claims or not. And that question
10 -- the answer to that question isn't changed by this agreement.
11 So, if those folks have those claims, they still have them. I
12 mean, if Exxon's going to argue that they don't have any such
13 claims, the only claims are the governments, and we're saying,
14 you know, we don't take any position on that and nothing that we
15 do with Exxon is (indiscernible) foreclose those private
16 claims. So those claims are (indiscernible).

17 MR. KUBINA: The bottom line is that this settlement is not
18 affecting their private claims in any way?

19 MR. STEWART: Correct.

20 MR. KUBINA: If they had them to start off with, they will
21 have them today? They'll have them.....

22 MR. STEWART: And they'll have them for the future.

23 MR. KUBINA: I appreciate your being here. Thank you, Mr.
24 Chairman.

25 MR. CHAIRMAN: Thank you, Representative Kubina. With

1 respect to your last question, we have had testimony before this
2 Committee concerning a Paragraph 13(c) that the defendant, Exxon,
3 is alleging that this doesn't cover future resource damage. Was
4 there any discussion during the -- I'm talking of course about
5 the concession where (indiscernible) refer to section 13(c) --
6 was there any discussion in the negotiating sessions about the
7 meaning of Section 13(c)? And whether Exxon's alleging, and I
8 refer to that as allege throughout this just because we haven't
9 yet had Exxon either verify that -- was there any discussion as
10 to whether that particular construction of the word "present" on
11 line 3 of page 15, section 13(c) -- "and a present right title or
12 interest of land or under property interest affected by the oil
13 spill", whether Exxon is correct if they were to take that
14 position.

15 MR. STEWART: I think, and let me just point out one general
16 point before I try and respond to that question, that.....

17 MR. CHAIRMAN: I'm asking you more now as a witness to any
18 statment that.....

19 MR. STEWART: Yes, I just -- there's a more general
20 provision about the effect on third-party rights in paragraph 32.

21 MR. CHAIRMAN: I'm aware of that, that has been repeatedly
22 pointed out.....

23 MR. STEWART: Yes, and these provisions were put in as an
24 additional sort of boilerplate excess of caution question. So,
25 you'd think that the paragraph 32 was the more general provision

1 that would cover past, present and future.....

2 MR. CHAIRMAN: I understand that, and of course, as an
3 attorney, I am concerned because the specific often controls over
4 the general. And the really, thing that I want to avoid is that
5 problem because of the insertion of the word "present."

6 MR. STEWART: The word "present" did not get in there to
7 foreclose the situation that you're discussing.

8 MR. CHAIRMAN: Yes, I have then formally asked Attorney
9 General Cole about the history of the insertion of the word
10 "presnt." And, General Cole, you can certainly correct me if I'm
11 wrong, as I know you do with relish at every opportunity.

12 MR. COLE: I deny that.

13 MR. CHAIRMAN: We're good friends, go back and forth here.
14 He has said that really that that was inserted dealing with
15 landholdings that - native claims.

16 MR. STEWART: That was primarily addressed to the question
17 of (indiscernible) the Interior Department and these native
18 claims that have not been perfected yet as a transfer of title --
19 it's a very complicated area and we sort of defer to what the
20 Interior Department's concerns were on that part.

21 MR. CHAIRMAN: So that really modifies the phrase "land or
22 other property" and when they're talking about "land or other
23 property" they're talking primarily about interests in real
24 estate, am I correct there?

25 MR. STEWART: Well, again, all I can recite is that the

1 background of this was from the Interior Department and the
2 native claims issue and that was the problem that that was
3 addressed to.

4 MR. CHAIRMAN: Let me ask, let us say there is a subsequent
5 transferee of an interest in real estate. Would that subsequent
6 transferee be foreclosed or would they step into the shoes of the
7 present landholder?

8 MR. STEWART: That'd be a matter of property law, but I
9 think the, you know, the general property rule would be the
10 successor in interest acquires whatever right or title that his
11 predecessor had.

12 MR. CHAIRMAN: That's my recollection.

13 MR. STEWART: I think it was primarily addressed to the
14 situation where (indiscernible) get the technical or these.....

15 MR. CAMPBELL: Vested lands.

16 MR. STEWART: Well, where these allotments have been
17 selected, but haven't been transferred yet.

18 MR. CHAIRMAN: Temporary allotment?

19 MR. STEWART: Yes. Well, I don't know, this is just a term
20 that they are designating these as allotments, they would like to
21 have, but sometimes there are conflicts in those and they haven't
22 been perfected yet. So, it was those claimed or designated that
23 is yet unperfected claim that, it was intended to be
24 (indiscernible).

25 MR. CHAIRMAN: Okay, that is extremely.....

1 MR. STEWART: Selected but not conveyed.
2 MR. CHAIRMAN: Well, wasn't it.....
3 MR. CAMPBELL: Excuse me.....
4 MR. CHAIRMAN: Wait, wait, wait, wait. Selected but not
5 conveyed, that is your recollection?
6 MR. STEWART: Yes.
7 MR. CHAIRMAN: Mr. Campbell, is that yours?
8 MR. CAMPBELL: Yes.
9 MR. CHAIRMAN: Mr. Cole, is that yours?
10 MR. COLE: Well, I was going to add the word "reserved."
11 MR. CHAIRMAN: Okay.
12 MR. COLE: Lands reserved, perhaps selected and not
13 conveyed. But it was to cover one of these situations where the
14 actual deed had not been delivered to the selectee.
15 MR. CAMPBELL: Now, I want to be.....
16 MR. CHAIRMAN: Wait. Is that your interpretation, Mr.
17 Stewart?
18 MR. STEWART: Well, I mean, you know, this is such a
19 complicated area in which I deal rarely, but that's the gist of
20 it, it was to deal with claims of that nature by the neighbors.
21 MR. COLE: Let me say this, that'd be helpful. I've
22 requested the deputy solicitor of the Department of the Interior
23 furnish us background on this specific issue and I think it would
24 be best to await his, you might say, formal response. But, this
25 is the general area he can perhaps supply a little more technical

1 background. But it was at his instance that this provision was
2 inserted. That's.....

3 MR. STEWART: That's right. And we deferred, I as the
4 litigator, and Tom as the general counsel for the lead trustee,
5 deferred to the Interior Department using their concern over this
6 particular problem of the Native allotment.

7 MR. CHAIRMAN: Mr. Campbell?

8 MR. CAMPBELL: We don't -- that is my recollection. I don't
9 know enough about this technical area to be tied to these
10 particular term of art.

11 MR. CHAIRMAN: Absolutely, and I'm not intending.....

12 MR. CAMPBELL: Okay. That is (indiscernible).

13 MR. CHAIRMAN:I'm not intending to do so. And I think
14 that the record should be very clear, and that's what I wanted to
15 get in, for you gentlemen in the same room at the same time,
16 saying something. Is there anything any of the three want to add
17 on that point before we move ahead, hopefully?

18 MR. CAMPBELL: No.

19 MR. CHAIRMAN: Okay. I would appreciate it, Mr. Cole and
20 gentlemen, if when the Interior memorandum arrives, if the three
21 of you would review that and if copies could be given to this
22 Committee along with any differences of opinion that you three
23 gentlemen may have with it. Otherwise, I will assume that it
24 meets with your approval and there is nothing in your independent
25 recollection to the contrary. Is that agreeable, Mr. Stewart?

1 MR. STEWART: Yes, it is.

2 MR. CHAIRMAN: Mr. Campbell?

3 MR. CAMPBELL: Yes.

4 MR. CHAIRMAN: Attorney General Cole?

5 MR. COLE: If I understand it, yes.

6 MR. CHAIRMAN: I have never know you to be at a loss to
7 understand something. Okay. Next aspect here. I have
8 been.....Okay, with respect to the extent to which the MOA could
9 be renegotiated, if the parties chose to do so. If the only
10 thing that the Clean Water Act does, relevant to what I'm going
11 to what I'm going to ask, is the authority to set up a co-
12 trusteeship. Is there any impediment, under the CWA, any other
13 impediment, to renegotiating the MOA? Did I make my question
14 clear, I didn't.....

15 MR. STEWART: Well, I would say joint trusteeship and joint
16 fund for the recovery of resources, natural damages, natural
17 resource damage it covers.....

18 MR. CHAIRMAN: So.....

19 MR. STEWART:(indiscernible) all that occurs then on
20 the face of it, I might have to, you know, if I have any other
21 concerns I'll let you know.

22 MR. CAMPBELL: Let me just say one thing and.....

23 MR. CHAIRMAN: Mr. Campbell?

24 MR. CAMPBELL:it took us 60, 90 days to negotiate with
25 Exxon. It took us a year and a half to come to an agreement

1 within the federal government and between the federal and the
2 State governments. I really, from just a practical standpoint,
3 am very reluctant to reopening those issues because the
4 discussions -- it would be difficult and could be subtractive.
5 And I would object very strenuously to going back and redoing
6 that.

7 MR. CHAIRMAN: I'm not -- I didn't mean it on that basis,
8 I'm asking simply a legal question and I'm not putting any more
9 broader interpretation on your answer to that and I'm not
10 (indiscernible). With respect to your.....

11 MR. CAMPBELL: I mentioned, I mentioned that, Charlie.

12 MR. COLE: You might mention that.....

13 MR. CAMPBELL: Well, I just again say that, you know, there
14 is this tie between the consent decree and the existing MOA.

15 MR. CHAIRMAN: We understand, yes.

16 MR. CAMPBELL: All right.

17 MR. CHAIRMAN: This is primarily a question to you, Mr.
18 Campbell, that's why I wanted your answer. You had indicated
19 that this was the first time that the billion-dollar mark had
20 been broken in a settlement of this type, and secondly, that the
21 damage award was more than 20 times as large as the previous
22 largest damage award. The staff has pointed out, and I'd just
23 like to you to confirm or correct it, that the Allied Chemical
24 case was an award of 13 million dollars rather than \$5 million,
25 and \$8 million of that was remitted to a trust fund. Also, that

1 it was \$13 million in 1976 and that might equate, according to
2 staff, to about \$31 million today, and thirdly, that the \$13
3 million dollar figure represented approximately 10 percent of
4 Allied's net annual earnings that year.

5 MR. CAMPBELL: Let me address a couple of different things
6 about it since we're going to compare the cases.

7 MR. CHAIRMAN: If you needed the notes (indiscernible).

8 MR. CAMPBELL: I think I can remember them.

9 MR. CHAIRMAN: Okay.

10 MR. CAMPBELL: And I'm going to have to rely to a certain
11 extent on Dick. My understanding is the \$8 million dollars did
12 go for natural resource work, that only \$5 million dollars that
13 the Allied case was by way of a criminal penalty. When I
14 compared it as being 20 times, the \$100 million, as being 20
15 times larger, it was a comparison of criminal penalty to criminal
16 penalty, and that is an apple to apple comparison which is, in
17 fact, appropriate.

18 MR. CHAIRMAN: I see.

19 MR. CAMPBELL: I think that it is a valid point, that there
20 is in fact inflation, that there does per over time. I think you
21 also have to look back, go to the facts of the Allied Chemical
22 case, and there we had a situation where over.....

23 MR. CHAIRMAN: We have a kepone (ph). Dumping kepone into
24 the.....

25 MR. CAMPBELL: We had potential dumping of.....

1 MR. STEWART: Well, it was over a period of time, it wasn't
2 just an accident that happened once, as I recall. But I'd have
3 to, you know, we'd have to get -- we could.....

4 MR. CAMPBELL: Well.....

5 MR. STEWART: It's a somewhat rhetorical issue, I think,
6 but.....

7 MR. CAMPBELL: As I recall, and maybe the staff will look
8 this up also, the facts were quite egregious, really, had some
9 very significant intentional conduct that occurred that led up to
10 that. The other comparable case is with the Ashland Oil case
11 where a oil drum simply collapsed because of failure to maintain
12 the oil drum. And that was previous.....

13 MR. STEWART: Two and a half million.

14 MR. CAMPBELL: Yes, two and a half million
15 dollars.....felony.

16 MR. STEWART: No, it wasn't, it was a negligent violation
17 (indiscernible).

18 MR. CAMPBELL: Okay.

19 MR. CHAIRMAN: Let me ask, I didn't mean to interrupt you.

20 MR. CAMPBELL: Sure.

21 MR. CHAIRMAN: You mentioned felony and I asked earlier
22 about felony issue, here. In the previous cases, have felonies
23 been the result of a conviction?

24 MR. STEWART: Well, you said previous cases, yes -- previous
25 environmental cases, or.....

1 MR. CHAIRMAN: Oh, yes.

2 MR. STEWART:previous cases like this one? Yes, we've
3 obtained felonies for known violations in other cases.

4 MR. CHAIRMAN: Would the facts here have supported a felony
5 conviction?

6 MR. STEWART: We believe that we had a -- you know, we
7 obtained an indictment, there was certainly litigation risk, I
8 would say the question -- felony violations require the showing
9 of a knowing violation. And the question here was under the
10 Ports and Waterways Act and the Dangerous Cargoes Act, you know,
11 whether there was a knowing failure on the part not only of Exxon
12 Shipping, but Exxon Corporation to ensure that the vessel was
13 properly manned, or whether it was nothing more than
14 negligence. I mean, obviously, Exxon would say, yes, there was
15 negligence but it was the captain's, and it didn't go up very
16 high, it wasn't knowing, and we would take a different view, so
17 there was litigation risk. I would say, another precedent-
18 setting aspect of this is the admission of parent corporation
19 criminal liability. And Exxon strenuously resisted the idea --
20 Exxon Corp -- that it should be liable for the acts of its
21 subsidiary, Exxon Shipping. And very little -- no precedent in
22 enviornmental case for the parent corporation to be held
23 criminally liable. We thought that was important here because
24 Exxon was exercising rather pervasive control over Exxon Shipping
25 and we want the incentive and blame to go to the people that are

1 ultimately in charge. So that was another precedent-setting
2 aspect in this case.

3 MR. CHAIRMAN: Were felony indictments sought and obtained
4 both under the Ports and Waterways Act and under the Dangerous
5 Cargo Act in this case?

6 MR. STEWART: Yes.

7 MR. CHAIRMAN: Were any other counts involving felonies
8 (indiscernible).

9 MR. STEWART: No, there were 10 counts, five as against
10 each, the negligent Clean Water Act count, the Migratory Bird
11 Treaty Act, the Refuse Act, all misdemeanors, and then the two
12 felony counts against each of the two defendants.

13 MR. CHAIRMAN: I see. So there were two felony counts
14 against each of the two defendants?

15 MR. STEWART: Yes, that is correct.

16 MR. CHAIRMAN: Okay. With respect to -- we don't have all of
17 the pleadings, un -- I don't, my staff does -- there has been a
18 provision that has attracted the attention of this Committee and
19 particularly myself in one of the civil counts in the State
20 case. That deals with the issue of indemnification and it's
21 Paragraph 101 of the case of the State versus Exxon complaint for
22 damages and et cetera. It says, under Section 13 of the State
23 right-of-way lease, defendant and owner companies must indemnify
24 the State for liabilities, damages or injury incurred by the
25 State caused by operation or maintenance of the Trans-Alaska

1 Pipeline system. We have examined, very recently, the lease
2 itself and there's a significant question, at least in my mind,
3 whether in fact that lease would cover the alleged acts in this
4 particular case. My question to you is whether there was any --
5 and that is the same question I asked Attorney General Cole, for
6 the State -- I'm asking you this with respect to the federal
7 government. Was there any indemnification agreement or provision
8 by Exxon and/or its subsidiaries in this case, any of those
9 parties, in any document, or as any matter of law, that would
10 have indemnified the federal government?

11 MR. CAMPBELL: Where it's pre-existing this agreement?

12 MR. CHAIRMAN: Not the Plea -- no, no, not this consolation
13 (indiscernible).

14 MR. STEWART: I just don't know the answer to that
15 question. I mean, the details of the civil case I reviewed in
16 general terms, but I just don't know the answer to that.

17 MR. CHAIRMAN: Okay. I would appreciate it if you could
18 provide that information in writing to this Committee. My
19 question again is whether there was pre-existing indemnification
20 duty, either imposed by an agreement or imposed by law, to the
21 federal government, or if you know, to the State of Alaska, by
22 any of these defendants. And my previous question, just for the
23 record, again, had to do with the advisability of changing the
24 federal law to cover the Alyeska situation.

25 MR. CAMPBELL: No, I understand.

1 MR. CHAIRMAN: That completes my questions. I'd just to
2 announce, before I forget, that the meeting tomorrow has been
3 slightly changed because of the previous commitment of the
4 Attorney General. It will be in House Transportation from 1:30
5 to 3:30 and, again, we'll continue with Attorney General Cole. I
6 know he's looking forward to that. Further questions -- I don't
7 have anybody else on the list and it's three o'clock. Oh, I'm
8 sorry, Representative Hudson, is there anyone else? Okay,
9 that'll be the end after Representative Hudson.

10 MR. HUDSON: I'm going to ask the Kubina question.
11 Representative Kubina, coming from the area that is probably most
12 affected, most directly affected, has asked and perhaps exeted a
13 great deal of concern about the concerned consideration of food
14 quality. That is, the safety of the food quality. Is there any
15 scientific information or studies that have been done, to your
16 knowledge, that might indicate some harm in ingesting any of the
17 seafoods in the area, tested that might be harmful to the public,
18 or would that have been released generally to the public?

19 MR. CAMPBELL: A very short answer to that question, because
20 I want to be very concise on this -- all public health safety
21 information has been released, okay? About a year and a half ago
22 a subsistence study was conducted by the federal government, by
23 NOAA, I think the Department of Interior and the State of Alaska
24 and that report was made public. It indicated that there were no
25 health concerns related to any fisheries products caught within

1 the Prince William Sound area, with the exception of certain
2 bivalves -- clams -- that were, in fact, in some of the heavily
3 oiled areas which do in fact have an uptake of hydrocarbons that
4 were in fact not -- I wouldn't call them unsafe but above -- the
5 word significant, questionable. But in terms of the broad
6 overall fishery, no safety concerns relate from the spill.

7 MR. HUDSON: And then does our -- are there tests continuing
8 to determine if that remains to be the case, do you know?

9 MR. CAMPBELL: Yes, there is not a significant concern
10 because the levels of hydrocarbons that are being found in the
11 fishery resources are so low that as little as a decade or more
12 ago, they would not have been able to detect them. The question
13 is if whether or not those known hydrocarbons are having any
14 impact on the reproductive capacity of the fisheries resources
15 and that's why we continue to trace them. But the levels are so
16 low that, while they are continuing to be monitored, from the
17 damage assessment perspective, there is no concern from the
18 public health perspective.

19 MR. HUDSON: Thank you.

20 MR. CHAIRMAN: Thank you. Okay, we appreciate your time
21 very much, and I hope you will carefully consider the request,
22 the Executive Session at this time is scheduled for Thursday
23 morning, and we would very much like you to participate or your
24 representatives. The time is 3:02 and I'd like the record to
25 reflect Representative Gonzalez has joined us. He has also been

1 involved in this and we appreciate (indiscernible). Thank you,
2 this meeting is now adjourned.

3 *****

4 END OF PROCEEDINGS

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HOUSE SPECIAL COMMITTEE ON THE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT
April 17, 1991
1:30 P.M.

MEMBERS PRESENT:

Rep. Max Gruenberg, Chairman
Rep. Cliff Davidson
Rep. Bill Hudson
Rep. Gene Kubina
Rep. Gail Phillips

MEMBERS ABSENT:

Rep. Dave Donely
Rep. Ramona Barnes
Rep. Mike Navarre
Rep. Fran Ulmer

OTHER LEGISLATORS/STAFF PRESENT:

Rep. Loren Leman
Rep. Georgianna Lincoln
Charles Cole
Andy Hemenway
Pat Williams

COMMITTEE AGENDA:

I. Committee Announcements

II Testimony Attorney General Charles Cole

P R O C E E D I N G S

Tape #31

Side A

MR. CHAIRMAN: Good afternoon. Today is the 17th of April. The time is 1:37 with the meeting of the House Special Committee Meeting on the Exxon Valdez Oil Spill Claims Settlement. Please come to order. The record should reflect that Representative Phillips and myself, Representative Gruenberg, are here. We have with us our guest today, it is Attorney General Charles Cole. We're going to start with continuing the questioning concerning the Plea Agreement, which is our first order of business for the Committee, but I understand that Mr. Cole would like to make some brief remarks before we commence our questions. Mr. Cole?

MR. COLE: Thank you, Mr. Chairman. First let me say that -- good afternoon, Mr. Chairman. First let me say that in one of the recent sessions of this Committee, I was requested to furnish the Committee with cases which I thought were significant, with respect to the issues before the Committee. I promised to respond and I have now made contents of three cases, which I want to present to the Chairman and the members of the Committee. They are, first, the State of Ohio et al, versus the Department of the Interior, found in 880 Federal Reporter, Second Series 432. The case is cited by the Court of Appeals for the District of Columbia, which upholds a number of the regulations

1 promulgated by the Department of the Interior under SIRCLA (ph)
2 and strikes down some but there is a lot of meat in the opinion
3 and it takes about 50 pages, so I first would like to present
4 those collective cases to the Chairman.

5 MR. CHAIRMAN: Thank you very much.

6 MR. COLE: Now, I have another series of cases also, Mr.
7 Chairman. And that is the case which I alluded to in my
8 testimony, Commonwealth Corp. of Puerto Rico versus the SS Zoe
9 Colo Contrendenonden (ph), 628 Federal Reporter, Second Series at
10 652, decision of the Court of Appeals of the First Circuit in
11 1980, and I will hand to the Chairman copies of that opinion.

12 MR. CHAIRMAN: Thank you, that'll be received in the record
13 as well.

14 MR. COLE: And lastly, I have another series of cases, it's
15 really the New Bedford Harbor proceedings found in 712 and suc
16 (ph) at 1019, decision of the District Court of the District of
17 Massachussetts in April 1989. And that contains some language
18 which the Committee may find helpful. So I will now hand those
19 to the Chairman.

20 MR. CHAIRMAN: Thank you very much. And those will be
21 received. Was there anything else you wish to state for the
22 record before we start, because I would (indiscernible) we get
23 into the questions.

24 MR. COLE: I know you are but on the other hand, these are
25 -- here is the copies of the joint sentencing memorandum of Exxon

1 Corporation and Exxon Shipping Company filed in the United States
2 District Court of the District of Alaska for Judge Holland. That
3 may be of interest to the Committee.

4 MR. CHAIRMAN: Now, this is the Defendant's sentencing
5 memorandum. I have received a copy of the government's
6 sentencing memorandum. Do you have copies of that, are you
7 (indiscernible) too?

8 MR. COLE: Yes, I do. Would you like copies of that for the
9

10 CHAIRMAN: I think we need, the members need to have
11 those memos.

12 COLE: All right. And, in addition.....

13 MR. CHAIRMAN: And I would urge the members to review those
14 memoranda because I think you will find them -- I haven't seen
15 this memorandum with Robert Bundy's name at the top before, but
16 I'm in the process of reviewing the government's sentencing
17 memorandum and find it most interesting and significant, frankly.

18 MR. COLE: And, incidentally, show as to -- not to be
19 misleading -- the State filed a memorandum in addition.

20 MR. CHAIRMAN: Have the members -- the members should have
21 received that, haven't they, Pat?

22 MS. WILLIAMS: I'm sorry?

23 MR. CHAIRMAN: The State's memorandum. Let me get it
24 (indiscernible). I'd like to -- Pat Williams, please be sure --
25 thanks -- that the members have received that State's memorandum.

1 MR. COLE: And then lastly, let me say, as part of the
2 State's work out of its case, it carefully looked into the Amoco
3 Cadiz litigation. I have here, if the Committee is interested, a
4 copy of the findings and facts, conclusions of law and memorandum
5 opinion entered by the United States District Court in January
6 11th, I think it's 1988, and it says (indiscernible) 454 pages.
7 It's litigation which I think is miniscule compared to all of the
8 litigation proceedings filed here, and.....

9 MR. CHAIRMAN: If anybody wants that, please let the staff
10 know, and if you get it, then you'll be tested on it.

11 MR. COLE: But I also have, in addition, a summary of the
12 decision up here. If you would like that, find it helpful, the
13 Department of Law prepared that.

14 MR. CHAIRMAN: I hope it's significantly less than 460
15 pages.

16 MR. COLE: It is significantly less, yes. I just want to
17 know, in Committee, now what is available. Now, one last thing, I
18 think, to clear up the record.....

19 MR. CHAIRMAN: If that's very short, if it's an executive
20 summary of -- in 10 pages or less or something -- then you might
21 want to just.....

22 MR. COLE: Let me find out.....

23 MR. CHAIRMAN: Well, let's not worry about it, then.

24 MR. COLE: All right. One last thing. I've now tracked
25 down what happened to the missing Exxon noncriminal prosecution

1 agreement. Last evening, while conversing with my wife, she
2 blurted out it was she who has mailed that letter to Exxon.
3 That, with her memory which forgets absolutely nothing, she
4 reminded me I had signed it the night that the settlement
5 agreement was signed, that it was indeed placed in the brown
6 manila folder, that the following day or two when she returned to
7 Alaska it was still in her briefcase, so she took it upon
8 herself, unbeknownst to me, and mailed it to Exxon. That is the
9 reason I've not been able to find it. I don't know rather
10 embarrassed to say that or pleased to say that, but I now say
11 it. So that is.....

12 MR. CHAIRMAN: We appreciate that, we were thinking of
13 subpoenaing your wife.....

14 MR. COLE: Well, I mean, no wonder Exxon never called me and
15 asked me where it was. That was always puzzling to me, but I say
16 that so the Committee will know that letter in fact.....

17 MR. CHAIRMAN: And we'll presume that mail then was
18 received.

19 MR. COLE: Yes.

20 MR. CHAIRMAN: I'd like the record to reflect the presence
21 of Representative Kubina also. Now, with that.....

22 MR. COLE: Good to see you, sir.

23 MR. KUBINA: And you too, Attorney General.

24 MR. CHAIRMAN: With that, I want to proceed on the Plea
25 Agreement questions. I'm going to move right along and I'm going

1 to ask the members to be patient and I will do the lead
2 questioning here to get through as many questions today as
3 possible, because we're moving right along. Representative
4 Hudson is present also. And, we had dealt with only the Question
5 Three on the Plea Agreement. And, by the way, it is my intent
6 to, after the confidential briefing, possibly invite one or two
7 additional witnesses in certainly no later than Friday dealing
8 with the Committee's action on what we're going to do with
9 respect to the Plea Agreement. Representative Davidson has just
10 arrived as well. So, (indiscernible) that we proceed as rapidly
11 as possible, so that's a (indiscernible - talking softly).

12 Question number five: As I understand it, there was only a
13 single charge, a Class B misdemeanor for pollution, it could have
14 been brought under Alaska law and you've discussed the Bailey
15 letter and given us copies, so I think you have completely
16 answered question number five, have you not, sir?

17 MR. COLE: I believe so, sir.

18 MR. CHAIRMAN: Okay. With respect to question number nine,
19 and this I think you have also dealt with -- by the way, we've
20 been joined now by Representative Lincoln. What are some of the
21 examples of what the restitutionary payment is to be used for?
22 Is there any limitation as to what they can be used for?

23 MR. COLE: I do not have the Plea Agreement before me, but
24 (indiscernible).

25 MR. CHAIRMAN: Can you give the Attorney General a copy of

1 the Plea Agreement?

2 MR. COLE:say that the uses to which that \$50 million
3 dollars can be put, as stated in the Agreement, and in an effort
4 to move along, I think it can be used for restoration,
5 replacement, enhancement of the affected resources, et cetera.
6 And those are the very same purposes to which the net damage
7 recoveries may be put. And I think it would be unduly prolonging
8 this session if I repeated those same definitions or uses
9 again. But, I would like to say that the following sentence
10 which reads, "the long-term environmental monitoring and research
11 programs directed to the prevention, containment, cleanup, and
12 amelioration of oil spills" was a concept that I was responsible
13 for and the purpose of that language was to broaden the use of
14 the proceeds so that if the Legislature and the governor wanted
15 to use those funds for the establishment of a world-class type
16 oil spill institute that that type of institution could be
17 provided for or created from the use of these funds. It is
18 slightly broader than the other language because the thought was
19 expressed during the negotiation period that while it might be
20 possible under the limitations of the consent decree to provide
21 for research and oil spills simply in cold water, (indiscernible)
22 for waters substantially the same or similar to those of Prince
23 William Sound, this language would permit oil spill monitoring
24 and research programs directed to prevention, containment,
25 cleanup, and amelioration of oil spills anyplace in the world. I

1 have a sense that under the settlement agreement perhaps
2 prevention and containment, for example, would not be within the
3 purposes of the restoration uses under the decision and
4 agreement.

5 MR. CHAIRMAN: Moving ahead to question 11 -- does Alaska
6 waive any challenge to the limitations on these payments by
7 accepting?

8 MR. COLE: I'm sorry, there was coughing at the moment that
9 your question was articulated and I did not get the last two
10 words.

11 MR. CHAIRMAN: Does Alaska waive any challenge to the
12 limitations on these payments by accepting them?

13 MR. COLE: I don't fully understand that question --
14 challenge by whom and specifically what payments?

15 MR. CHAIRMAN: We're talking about the restitutionary
16 payment.

17 MR. COLE: Yes?

18 MR. CHAIRMAN: And the question is, by accepting the money,
19 do we waive any right we may otherwise have to challenge the
20 agreement? That assumes, of course, that we would have a right
21 in the first place, which we're not sure, that may have
22 (indiscernible).

23 MR. COLE: That's my point, I'm having a little trouble
24 (indiscernible).

25 MR. CHAIRMAN: Let me cast a little.....

1 MR. COLE: We have a -- I just want to say -- we have a
2 right to challenge that Plea Agreement up till the court
3 pronounces sentence. After the court pronounces sentencing I
4 think everybody has more or less passed their right to challenge
5 the plea bargain, but.....

6 MR. CHAIRMAN: Let me just pass on to the next question.

7 MR. COLE: Yes.

8 MR. CHAIRMAN: That was the question I had asked originally,
9 so I can, you know, pass anyway. Next question is question 12 --
10 are there any limitations under Alaska or federal law that
11 restrict our use of this money? Or can it be fully used as set
12 forth in the Plea Agreement?

13 MR. COLE: My view is that it may properly be used for the
14 uses set forth in the Plea Agreement.

15 MR. CHAIRMAN: Now, there is the deadline that the judge has
16 set on this, is for sentencing, April 24, (indiscernible) May
17 3rd. How much time would he have to try the case or dispose of
18 the case under federal law, if he were to grant a continuous for
19 any reason? It is -- specifically, he has knocked down, has he
20 not, the May 3rd deadline in the other agreement. That does not
21 apply in this, does it?

22 MR. COLE: That would be my belief.

23 MR. CHAIRMAN: What is federal law on the subject, if you
24 know, Mr. Attorney General, how long does he have to dispose of
25 the case, the criminal case there?

1 MR. COLE: I don't know because criminal law is not an area
2 in which I claim any more than a sketchy knowledge. I mean, that
3 case has been pending quite a while, so I can't imagine that
4 (indiscernible) by -- I really don't know, isn't there some
5 limitation on a right to a speedy trial in the federal system? I
6 just don't know.

7 MR. CHAIRMAN: Well, I know there's such a thing as a speedy
8 trial act, but I'm only into forest fires. Anyway, that's the
9 end of the questions on the Plea Agreement.

10 MR. COLE: We could find that out, if (indiscernible).

11 MR. CHAIRMAN: I would appreciate it if you'd find that out
12 and communicate that to counsel (indiscernible). Okay, questions
13 on the Plea Agreement -- I have Representative Kubina,
14 Representative Hudson, anyone else?

15 MR. KUBINA: I'm not sure (indiscernible) Plea Agreement,
16 you know, but.....can you tell me when money will be available
17 for the first time for cleanup? I have indications here that it
18 won't be until 1993.

19 MR. COLE: Let's get back to that question -- when money
20 will be available for cleanup?

21 MR. KUBINA: Well, available for any restoration projects.
22 Let me say why I say that, and according to this -- and I have no
23 idea if this is right, to be honest with you -- that Exxon's
24 required to \$90 million in '91 -- that's correct, right? And
25 \$150 million in '92. But, under the Agreement, is these two

1 payments will be used to reimburse Exxon for the cleanup that its
2 been doing since January 1 -- that's correct, reimburse the
3 federal and State governments for their past cleanup costs,
4 damage assessment costs and litigation expenses to \$62 and \$72
5 million, comes out of that?

6 MR. COLE: No.

7 MR. KUBINA: That's incorrect?

8 MR. COLE: That's incorrect.

9 MR. KUBINA: So that 62 or 72 comes out of.....

10 MR. COLE: No, it comes out of the payments made by Exxon
11 but (indiscernible - noise) was not coming out in 1991 or 1992.

12 MR. KUBINA: That's a five-year period, isn't it?

13 MR. COLE: Yes.

14 MR. KUBINA: Okay. That's wrong.

15 MR. COLE: And that's the very reason we added the five-year
16 period in there.

17 MR. KUBINA: Okay.

18 MR. COLE: Pleased to say. I mean, we discussed that, and
19 referred Mr. Campbell and he was very concerned, as were other
20 trustees, that the monies would be available to start
21 restoration. I wanted, frankly, to get the money back in the
22 State treasury as fast as possible. I strongly urged the 3-year
23 period of time but in the end I was able to negotiate only \$60
24 million in the first three years. Or maybe \$68 million, I think
25 in the first 3 three years and the balance in the remaining two

1 years, of about two and a half million each.

2 MR. KUBINA: Okay, that answered my question there, Mr.
3 Chairman.

4 MR. CHAIRMAN: Are you saying that it was at the option of
5 the State?

6 MR. COLE: (Indiscernible).

7 MR. CHAIRMAN: What was your question?

8 MR. KUBINA: Payment period.

9 MR. CHAIRMAN: Payment period is up to the State, to --
10 period is up to the State to decide?

11 MR. COLE: No. I'm saying is that we reached an agreement
12 which simply is oral, but it's a firm understanding that those
13 payments would be paid over five years and that it would be paid
14 essentially \$20 million, \$20 million, \$27 million, five and
15 five. That is the sequence of those payments. Like I say, what
16 I'm saying is I argued that I wanted to see the State be able to
17 recover its money, all the \$17 million in the first three years,
18 but it wasn't (indiscernible) negotiated the schedule which I've
19 mentioned. And, for the very reason so that there would be money
20 available to initiate restoration.

21 MR. KUBINA: Mr. Attorney General, so as I see it, like this
22 first year, we get \$90 million and nothing will be taken out of
23 that for the State, or yes, some of it will? Do you remember?
24 I'm sorry -- because.....

25 MR. COLE: I think there will be \$20 million taken out for

1 the State the first year.

2 MR. KUBINA: Okay, and then \$20 million for the feds, too?

3 MR. COLE: I'm not sure exactly what the feds, because --
4 let me say this in that regard, that the federal people were not
5 certain, i.e. the various federal agencies which had contributed
6 monies to the \$62 million dollar figure -- were uncertain whether
7 they were going to ask, this year or ever, for monies they had
8 contributed to the \$62 million. And that's the reason it says up
9 to the \$72 million, because of that uncertainty. The reason that
10 it also says up to \$72 million for the State was to provide a
11 uniformity of migrage (ph).

12 MR. KUBINA: Okay.

13 MR. COLE: And the one didn't say up to \$62 million and the
14 other said \$62 million, or \$72 million, but there's no doubt up
15 to \$72 million and the State's share leaves \$72 million. It may
16 not mean that in the federal system.

17 MR. KUBINA: So, if the federal government did take \$20
18 million out the first year and we took 20, that would be 40 out
19 of the 90 and then we have to also pay Exxon for whatever they're
20 doing out there now, according to the -- at the direction of the
21 federal on-scene coordinator? So, with not much money, within
22 the next year there's \$150 million or so if you took -- so
23 there'd be at least \$100 million plus that second year, and then
24 we'd go down to the \$70 million a year?

25 MR. COLE: I'm not vouching for those numbers, but I think

1 conceptually that's correct. Now, I'm vouching for the numbers
2 that were in the document, but in essence, I think the principle
3 which you're expressing is correct.

4 MR. KUBINA: Thank you.

5 MR. CHAIRMAN: I would like, at this point, to please limit
6 the questioning to the Plea Agreement. Then we're going to get
7 back to the consent decree and the MOA, but I want to finish the
8 Plea Agreement first. Yes, you're properly chastised.
9 Representative Hudson?

10 MR. HUDSON: Thank you, Mr. Chairman. I apologize for being
11 a few minutes late, and this may have already been asked. Number
12 three on the questions on the Plea Agreement, why is Alyeska
13 Pipeline Service Company included in the entities whom criminal
14 charges, nor to whom administrative penalties will not be sought,
15 and we are talking about the Plea Agreement, is that just the
16 United States that agrees with this, or does Alaska agree with
17 that?

18 MR. COLE: Could you refer to me.....

19 MR. HUDSON: Yes, in the Plea Agreement, page number five,
20 number three, agreement of the parties regarding imposition of
21 sentences, and it's question number three in the line of
22 questions that we have -- that we're reading from right at the
23 moment, on page number two?

24 MR. CHAIRMAN: By the way, that was a question we asked the
25 last time the A.G. was here, and I thought he had answered that

1 already, but can you just briefly summarize your answer again,
2 sir?

3 MR. HUDSON: Mr. Chairman, let me tell him, if I might, just
4 -- what I've been hearing is that we give up certain things but
5 we still are going to be going out there for civil damages, or
6 for civil litigation for damages done to the economics of the
7 communities and things of this nature there, and I want to be
8 sure that this doesn't preclude you from doing that. I presume
9 that it doesn't but I'd just like to know that.

10 MR. COLE: The answer is, your presumption is correct. The
11 State is not precluded from initiating criminal proceedings
12 against Alyeska or its owner companies for administrative
13 proceedings. The State was not a party in any fashion in this
14 agreement other than -- it was the decision of the governor and
15 me that to the extent there was federal fines, that the State,
16 because of its claims for penalties, very important, claims for
17 penalties against Exxon, although it had no pending criminal
18 proceedings, should share equally in the fine under this Plea
19 Agreement. And that is the only participation the governor or I
20 had in this. Well, we tinkered with the language, but as I
21 mentioned earlier, or this afternoon.....

22 MR. HUDSON: That's all. Thank you very much. That was
23 really very important to get that answered. Thank you, Mr.
24 Chairman.

25 MR. CHAIRMAN: At this point I'm going to do a little

1 questioning on the Plea Agreement. I've done a lot of thinking
2 about this in the last 24 hours because this is the first order
3 of business for this Committee and I see us having several issues
4 involving whether to approve or disapprove or recommend, with
5 respect to the Plea Agreement. And the issue that concerns me
6 the most really involves the characterization of the criminal
7 charges. And I've asked my staff to bring me the government's
8 memorandum and they have since. The way it's characterized by
9 them, that this is a pollution case. I don't see the case, the
10 criminal case, in that way. I see that as only a partial
11 answer. I see the far more serious answer. It was a situation
12 involving a large ship that happened to be carrying pollutants,
13 but that was merely happenstance. And the bridge was improperly
14 manned at the time of the accident. The master was intoxicated
15 and was off the bridge. The mate who was in charge was not
16 qualified to be in command of the ship at that point, and there
17 were serious problems with the qualifications of the wheelman.
18 All three people, there were problems with. There was a felony
19 charge, a felony federal charge that, as I understand it, relates
20 to failure to maintain a properly manned bridge -- wheelhouse.
21 And that felony against Exxon Shipping was one of the felonies
22 that was dismissed. A lot of people's lives were endangered. I
23 don't care what the ship was carrying, whether it was full or
24 empty. And those lives should have been our primary
25 consideration here, in dealing with that particular aspect of the

-17-

1 case. And I am frankly very concerned and troubled about the
2 dismissal of that count against, that felony count, against Exxon
3 Shipping. And I want that on the record now and I'd like your
4 comments, Mr. Attorney General, on that particular point. The
5 dismissal of that particular count against Exxon Shipping,
6 failure to maintain an adequately staffed and competent
7 wheelhouse, if you care.

8 MR. COLE: I'm not one for second-guessing the judgment of
9 the Department of Justice.

10 MR. CHAIRMAN: And by the way, I'm also concerned that at
11 that time we did not have a State statute on the subject, and I
12 don't believe we still do, but I don't know, do we?

13 MR. HUDSON: We do.

14 MR. CHAIRMAN: We do.

15 MR. HUDSON: We've increased the amount how, dangerous and
16 reckless operation of a vessel. 5-66, I believe.

17 MR. CHAIRMAN: I stand corrected.

18 MR. HUDSON: It was -- or 3-15, 3-15.

19 MR. COLE: Simply let me say that I have never looked at the
20 federal criminal case, okay? And I have just am not in a
21 position to evaluate that litigation or the considerations which
22 went into the negotiation of the criminal plea agreement. So,
23 I'm not just deliberately (indiscernible) that question, I just
24 could not give you a fair, balanced opinion.

25 MR. CHAIRMAN: Thank you, and I did not mean to make a

1 soapbox statement, I've expressed my concerns to the federal
2 Attorney General's office. Before passing on, back to the
3 consent decree, does any other member have questions for the
4 Attorney General concerning the plea? If not, we'll pass back to
5 the consent decree.

6 MR. COLE: Could I just say one word about that? I'll make
7 it very brief. I leave to the Committee's good judgment this
8 position that will ultimately decide to take with respect to the
9 Plea Agreement. I do want to say that -- and I think it's
10 significant that the State receives \$50 million dollars from that
11 plea bargain agreement. If the case were to go to trial
12 following rejection of the Plea Agreement, I would strongly
13 suspect that the State would never ever be in a position to
14 participate in the receiving half of the (indiscernible) fine
15 that -- which ultimately might be imposed and I'm not suggesting
16 one way or the other the moral balance which this Committee may
17 ultimately make in that regard, but I just want to mention
18 that. Thank you, sir.

19 MR. CHAIRMAN: Thank you. I would note that there are other
20 ways to skin the cat.

21 MR. COLE: Well, that's what I had in mind when I.....

22 MR. HUDSON: Mr. Chairman, I'm an animal lover, I wish you'd
23 stop saying that.

24 MR. CHAIRMAN: I'm sorry. Other ways of solving the
25 problem. With that (indiscernible). We're back to the consent

1 decree. And, we -- okay, we are on question 33, I believe, on
2 page four. And we're only getting to do the highlight of the
3 questions. To what extent is that -- and this relates to
4 Paragraphs 11, 12, (indiscernible). To what extent is Exxon's
5 current liability for cleanup limited by the settlement? Why are
6 we reimbursing Exxon for future cleanup, even if the settlement's
7 rejected?

8 MR. COLE: What is the number of this question?

9 MR. CHAIRMAN: 33.

10 MR. COLE: 33? I really don't understand the first
11 sentence. To what extent is Exxon's current liability for
12 cleanup limited by the settlement?

13 MR. CHAIRMAN: The question is.....

14 MR. COLE: I don't think it is, but.....

15 MR. CHAIRMAN: The document is not a document of limitation,
16 in that sense?

17 MR. COLE: No, they've got to continue cleanup until they're
18 told by the federal and State on-scene coordinators that they're
19 no longer directed to continue cleanup, that's my
20 understanding. I think it's contemplated, if I may venture to
21 step farther (indiscernible) nice that the cleanup will be
22 finished in the 1991 season, but there's nothing in the agreement
23 that restricts cleanup efforts.

24 MR. CHAIRMAN: Why are we reimbursing Exxon for future
25 cleanup even if the settlement is rejected?

1 MR. COLE: Where is Mr. Davidson? It's his.....

2 MR. CHAIRMAN: He is not here.

3 MR. COLE: That's his question. Well, I don't think we
4 are. That's the answer.

5 MR. CHAIRMAN: It may be the Committee members need to know
6 how that paragraph works.

7 MR. COLE: All right, let us go to that. That Paragraph
8 11? I thought I went over this point before, but I'm pleased to
9 go over it again.

10 MR. CHAIRMAN: Well, let me ask the Committee members who
11 are present. Is there anybody who'd like to have that question
12 answered or do we all understand how it works? Representative
13 Hudson?

14 MR. HUDSON: Mr. Chairman, I was looking under the payment
15 terms under number 8, and in my way of thinking it
16 (indiscernible) it was the total \$150 million dollars minus, and
17 then it specifies the up to \$4 million dollars plus expenditures
18 made by Exxon, so I sort of viewed it as just a term in the
19 content in the agreement here. And I don't know how much it'll
20 be that's the question I would have, is what amount of funds --
21 and I don't quite understand what Mr. Davidson, Representative
22 Davidson's, what direction he was trying to go here.

23 MR. COLE: Let me just say this. I think that, I think that
24 the concept is -- expressed in here and perhaps needs a note of
25 explanation, the discussion became what if Exxon, under the

1 agreement, undertakes cleanup activities directed by the federal
2 on-scene coordinator and, in other words, continue to perform
3 those cleanup activities under those directions and then, for
4 some reason or another, the court either rejects the settlement
5 agreement or the appellate court rejects it and we're back in
6 square one again. The idea was that Exxon should be given credit
7 for its cleanup expenditures under this agreement if it falls
8 apart, as directed towards its underlying obligation, see the
9 concept? But for this agreement, Exxon would have to proceed
10 this summer. Well, if it proceeds this summer under this
11 agreement, and then the agreement is rejected at some stage, then
12 Exxon's position was, well, we should get credit for the work we
13 did under the settlement, the now defunct settlement agreement as
14 applied to its underlying obligation. And that's the reason for
15 this, these somewhat convoluted provisions.

16 MR. HUDSON: It seems to me like -- I understand that, Mr.
17 Attorney General -- what I'm wondering, let's see now, January,
18 this -- begins to talk about cleanup work done after January
19 first, which obviously is going to be well before we have a final
20 settlement here, Exxon expends up to the claim that they're going
21 to commit millions of dollars this summer to continue the cleanup
22 and, as I understand it, then what this would do is simply to
23 give them credit under the terms of this agreement for those
24 expenditures. Should this not be approved, or would they also
25 get credit for it even if it should be approved?

1 MR. COLE: They get credit for it if it is approved. That's
2 position number one.

3 MR. HUDSON: Okay.

4 MR. COLE: If it is not approved, then there are other
5 provisions as to how you go back and resurrect the situation the
6 way it was. or would have been had this agreement not been
7 signed. That is the concept that's expressed later on and I
8 thought perhaps that merited a note of explanation.

9 MR. CHAIRMAN: Okay. Question 35 -- in the State case, the
10 State asserting claims for lost revenue from salmon enhancement
11 tax, and loss of oil and gas production tax revenue, loss of
12 corporate income tax revenue and loss of oil production royalties
13 -- these claims will be given up as to Exxon. Would the State
14 have been able to prove this claimed loss of revenue? If so, how
15 much did the State believe it could prove? You may want to
16 reserve that for the confidential briefing.

17 MR. COLE: I do and that's what I had in mind when you
18 discussed that for a moment.

19 MR. CHAIRMAN: Does the State intend to continue litigating
20 against other defendants in the State case, if so, does it expect
21 to be successful? Again, you want to reserve that?

22 MR. COLE: Well, obviously, the answer to both of those
23 questions is yes.

24 MR. CHAIRMAN: What hasn't gained in the consent decree to
25 compensate for the loss of those claims? Would you like to

1 reserve that as well?

2 MR. COLE: Well, I can, but is not the answer pretty
3 straightforward. The -- we'll receive \$50 million dollars under
4 the Plea Agreement and we will participate in the moluments (ph)
5 of the settlement agreement. I mean, everything is interrelated.

6 MR. CHAIRMAN: Okay. As I go along if any member has
7 questions please let me know. Question 38, do political
8 subdivisions of the State retain their claims against Exxon? Not
9 that -- the answer to that is correct, isn't it?

10 MR. COLE: Yes.

11 MR. CHAIRMAN: Okay. 39 -- what are the effect on third
12 parties -- I think again you've answered that, have you not?

13 MR. COLE: Yes. I believe so. (Indiscernible) remember.
14 And who isn't?

15 MR. CHAIRMAN: Qualified restoration projects -- I'm on
16 question 41. Paragraph 17, pages 17 to 18. These is the
17 reopeners?

18 MR. COLE: Yes. (Indiscernible - simultaneous talking).

19 MR. CHAIRMAN: I think you've answered this too? Okay,
20 let's go to Question 43, on the releases and covenants not to
21 sue. I frankly think I owe you an apology, I think we are
22 farther along than I realized here. So, if I've wasted a few
23 minutes I (indiscernible - cough). What claims have Exxon or
24 Exxon Pipeling asserted against the State or federal government?

25 MR. COLE: Maybe we can address that tomorrow.

1 MR. CHAIRMAN: Okay.

2 MR. COLE: But, really, I think that the significant plea of
3 Exxon has to do with the State's sharing of the liability.
4 That's the significant claim. It's a form of a counterclaim or
5 affirmative defense.

6 MR. CHAIRMAN: 44 -- how likely is it that the Trans-Alaska
7 Pipeline Liability Fund will assert claims against the State for
8 money, if any, that the Fund pays to Alyeska?

9 MR. COLE: I think that that Fund did not assert claims
10 against the State, it filed suit against the United States. And
11 I think that therefore implicit is the fact that since the two-
12 year statute has expired, that it's likely it will not ever be
13 permitted to do that, but, you know, with these concepts one
14 never knows.

15 MR. CHAIRMAN: Yes, I would turn the chair at this time over
16 to Representative Kubina. We are moving ahead to questions 46
17 and (indiscernible).

18 MR. KUBINA: Has 46 been answered, Mr. Attorney General?

19 MR. COLE: I believe so. The answer to 46 is yes, there are
20 third-party suits against Exxon and the State. There are
21 approximately 26 suits and I furnished the Committee, I believe,
22 with copies of all of those complaints and other related
23 details. What will the cost of litigating those third-party
24 suits be to the State? That's impossible to say.

25 MR. KUBINA: Have you requested in this year's budget money

1 specifically for that purpose?

2 MR. COLE: I'd like to say, I mean, I think it'd be accurate
3 to say I don't know, I spent all the time before either this
4 Committee or the Senate Committees, either that or comparing for
5 them, plus answering (indiscernible) telephone calls and I
6 absolutely lost control of the Departmental loss budget, I just
7 hope that somebody out there's looking after it.

8 MR. KUBINA: Mr. Chairman? Representative Hudson?

9 MR. HUDSON: Mr. Attorney General, I have ability to take
10 care of you. I've got a \$20 million dollar appropriations bill.

11 MR. COLE: Thank you, thank you. Because, you know, I'd
12 like -- beyond that, I'd like to take the Fifth.

13 MR. KUBINA: Which is one of the areas that I have concern
14 that we're going to end up paying more than we get after these
15 peoples are -- I certainly hope we're trying to settle them no
16 matter what happens with this. We're on number 48 and I'll turn
17 the chair back to Representative Gruenberg.

18 MR. CHAIRMAN: Go ahead, I'm sure it would probably be
19 better than those.

20 MR. KUBINA: Not at all.

21 MR. CHAIRMAN: Go ahead, Mr. Attorney General, please
22 (indiscernible).

23 MR. COLE: Well, I don't know where we are.

24 MR. KUBINA: Number 48, I believe.

25 MR. COLE: Number 48.

1 (Begin Side B)

2 MR. CHAIRMAN:the State of Alaska involved in
3 negotiations to drop the felony charges.

4 MR. COLE: I thought that question was after the asked?

5 MR. CHAIRMAN: It was after the asked and it would have been
6 asked but I forgot.

7 MR. COLE: No.

8 MR. CHAIRMAN: Neither yourself nor Ms. Herman (sp) nor Mr.
9 Teleminario (sp)?

10 MR. COLE: I want to say very emphatically, again, so
11 there's absolutely no misunderstanding by anyone, either in this
12 Committee or in the Alaska Legislature or in the State or Alaska
13 or anyplace else, the State did not participate in the
14 negotiation of that Plea Agreement. I've consistently said that
15 and I want to repeat it again. The State did not participate,
16 other than what I have testified here today, in that Plea
17 Agreement. Absolutely not. Didn't even go close to those
18 federal people.

19 MR. CHAIRMAN: Were you aware -- let me go on -- were you
20 aware that negotiations to drop the felony charges were ongoing?

21 MR. COLE: No.

22 MR. CHAIRMAN: At what stage did you become aware that the
23 felony charges would be dropped?

24 MR. COLE: Maybe not until these hearings commenced, to tell
25 you the truth. I didn't look at this Plea Agreement. It wasn't

1 any of the State's affair. I was not about to intermeddle in the
2 prosecution of federal crimes, and I thought that it was not the
3 State's place to do that. I did not see this Plea Agreement, I
4 never spoke about the negotiation of the Plea Agreement, the only
5 thing I did hear that they're negotiating a Plea Agreement --
6 somebody else. I didn't even know who their names were,
7 period. I just didn't see them. Mr. Stewart -- if there's a
8 federal fine, the State is not participating in any way in the
9 amount of that fine. That's a matter committed to the Attorney
10 General of the United States. One half of that fine should go t
11 the State of Alaska, and.....

12 MR. CHAIRMAN: Thank you, I'm satisfied with your answer and
13 I appreciate the Committee's intelligence to allow the.....

14 MR. COLE: There is nothing the State did beyond that and
15 let me just say, I want to make it very clear to everybody here,
16 everybody, nothing did the State do, know about, participate in,
17 that -- other than that one little -- I don't want to say it was
18 a demand because I don't think we made demands -- request would
19 be more the way to put it -- you could ask me a thousand
20 questions on it, didn't get involved.

21 MR. CHAIRMAN: Thank you, I appreciate you patience and
22 courtesy, I mean.....

23 MR. COLE: Well.....

24 MR. CHAIRMAN:we all.....

25 MR. COLE: I mean, you know, I really feel a little

1 strongly.....

2 MR. CHAIRMAN: And good humor.

3 MR. COLE: Yes. 'Cause I really want everybody to know we
4 just didn't get into that and I just thought it wouldn't be
5 proper to get into that. And you recall that througout this
6 whole thing I've said that consistently and that's exactly the wa
7 it was.

8 MR. CHAIRMAN: We understand. Now, we're back on question
9 48 and we again -- are there third-party suits -- by the way,
10 this relates to Paragraph 27 on page 22 of the consent decree.
11 Are there third-party suits against the State, or are there
12 likely to be any in which Exxon is not (indiscernible)?

13 MR. COLE: Please let me read it.

14 MR. CHAIRMAN: You take your time. Let me read it for the
15 benefit of the audience. I really think we need to do that. The
16 question continues, under Paragraph 27 of the CD, the State could
17 not recover against Exxon for its losses in such case. And the
18 question continues, what value do the claims have? What portion
19 of the claim could we collect from Exxon? What will the
20 litigation cost? And that's all part of the combined question.

21 MR. COLE: Well, I think the answer to the first sentence in
22 48 is the third-part suits against the State, in which Exxon is
23 not a defendant -- I'm not certain but I don't believe there are
24 any, there could be possibly, if somebody had settled with Exxon
25 and then decided to pursue the State, but I'm not even sure that

1 the scope of the releases would permit that.

2 MR. CHAIRMAN: I have a question from Representative
3 Phillips before you continue.

4 MS. PHILLIPS: Would that include Alyeska Pipeline?

5 MR. COLE: Well, see, there's a special provision in here
6 dealing with Alyeska Pipeline and I just (indiscernible) where
7 that is.....

8 MS. PHILLIPS: I can check it later, thanks.

9 MR. COLE: I think it's 25.

10 MR. CHAIRMAN: Page 21.

11 MR. COLE: I think that sentence that's relevant -- looks
12 like a very long sentence, doesn't it? It's the entire paragraph
13 in one sentence. But here's the critical language. See, that
14 says if Alyeska sues the governments where they're based on
15 Alyeska's own losses or damage as a result of the spill, then
16 Exxon is required to indemnify the governments against those
17 claims. I wanted to mention that, but I'm not sure that
18 specifically answers your question.

19 MS. PHILLIPS: It doesn't. Are there third-party suits
20 against the State in which Exxon is not a defendant, but Alyeska
21 might be? And, in the case that -- say a fisherman had settled
22 with Exxon and came back to the State then because of Alyeska's
23 involvement?

24 MR. COLE: Came back against the State because of Alyeska's
25 involvement?

1 MS. PHILLIPS: And the State's agreement with Alyeska.
2 MR. COLE: I frankly don't see how that would work.
3 MS. PHILLIPS: Okay.
4 MR. COLE: But maybe I just don't understand the question,
5 too, so.....
6 MS. PHILLIPS: We'll drop it.
7 MR. CHAIRMAN: We're talking third-party claims, right?
8 MS. PHILLIPS: Third-party.
9 MR. COLE: There's no third-party rights (indiscernible).
10 MR. CHAIRMAN: We're all on teleconference, so you need to
11 flip your mike on.
12 MS. PHILLIPS: Yes.
13 MR. CHAIRMAN: Okay.
14 MS. PHILLIPS: We'll just drop it.
15 MR. CHAIRMAN: I'm going to ask leave of the Committee to
16 ask if there's any objection to Andy Hemenway asking a question.
17 MR. COLE: How about the Attorney General's objections?
18 MR. CHAIRMAN: Sorry, you're the witness.
19 MR. COLE: But I have no objection. Andy's easy.
20 MR. HEMENWAY: Yes, I just want to confirm the manner in
21 which the disbursements by Exxon will be distributed. As I
22 understand it, under the MOA, the money that Exxon pays for
23 allowed expenses, that's reimbursements to the State and the
24 federal government, plus any ongoing cleanup costs that Exxon
25 incurs under approval from the State and the federal

1 government. All of that money would not in fact go through the
2 trust at all, that would be all paid directly to the general fund
3 or to the federal treasury, is that correct?

4 MR. COLE: Did you put the criminal plea bargain agreement
5 into that question?

6 MR. HEMENWAY: No, I'm leaving that aside.

7 MR. COLE: Frankly, I'm not really sure of the precise flow
8 of money, but I know that has been discussed. But I'm not
9 sure. All I'm confident of is the State will get it.

10 MR. CHAIRMAN: Representative Hudson?

11 MR. HUDSON: Andy, are you referring to the 71.6 million
12 dollars?

13 MR. HEMENWAY: Yes, that would be reimbursements to the
14 State and federal government plus ongoing costs.

15 MR. HUDSON: We heard some testimony yesterday from either
16 Mr. Campbell or Mr. Stewart was that indeed those funds would
17 flow directly to the State's general fund. And they could be
18 used for whatever we legislators wanted them to be used for. The
19 criminal \$50 million dollars could flow to the General Fund but
20 carry the stipulation that they're only to be used for
21 enviornmental resource cleanup. I believe that's what I heard.

22 MR. HEMENWAY: Did anybody say anything about the additional
23 payments for cleanup by Exxon and, I assume they would have to go
24 through the General Fund as well?

25 MR. HUDSON: Yes, that was my assumption as well.

1 MR. COLE: Well, let me say I understood the question to be,
2 does not the money initially flow to the registry of the federal
3 court and then be disbursed through that mechanism back to the
4 State. That's what I was referring to when I said I was not
5 precisely sure that that mechanism.....

6 MR. CHAIRMAN: That may answer your question. Thank you
7 very much.

8 MR. COLE: Let me say this and just sort of -- that became a
9 very convoluted discussion with the Treasury and OMB and the
10 federal people who would deal with OMB (indiscernible) series of
11 negotiations to try to get that flow of money straight and I did
12 not participate in detail in that because it was a little
13 irrelevant as far as I thought the State was concerned. I was
14 just certain that the State was going to get the money by order
15 of Judge Holland and let it go at that.

16 MR. CHAIRMAN: Let's just take a moment, I want to be
17 certain we're not missing any additional questions here that
18 aren't circled, that we should be asking. And I'm on page eight
19 of the CD questions. I'm going to ask a question or two that's
20 not circled, Mr. Attorney General, I'm on page eight. Question
21 50, can the State and federal governments recover against each
22 other for judgments they have to pay third parties?

23 MR. COLE: Well, let's see, is -- that deals with Paragraph
24 30 of this.....

25 MR. CHAIRMAN: Yes, Paragraph 30 of page 22.

1 MR. COLE: We discussed this very clause the other day that
2 I recall at length. That deals with one of these arcane
3 enactments of the State legislature dealing with the
4 indemnification provisions, and it relates.....

5 MR. CHAIRMAN: Mr. Attorney General, I may be able to save a
6 little bit of time.....

7 MR. COLE: Yes.

8 MR. CHAIRMAN:here. I am going to have to do
9 something, I have to make a quorum in the other Committee, I'll
10 turn the chair over to Representative Hudson. This may happen to
11 be my question out of order. If none of the other members have a
12 question on that, the Chair may desire to go on to something else
13 here and then right into the MOA, Representative, and I'll be
14 back as soon as I can, but I may be gone for the rest of this
15 meeting, I do apologize.

16 MR. COLE: Quickly let me say I think that the paragraph
17 that deals with you question is number 26.

18 MR. CHAIRMAN: So, that's the wrong paragraph?

19 MR. COLE: I think that it is not the paragraph that relates
20 to your question. 26 deals with third-party litigation, 30 deals
21 with the position, or the case where a third party has settled
22 with Exxon.

23 MR. GRUENBERG: Okay. I'd like to apologize.

24 MR. CHAIRMAN: Mr. Attorney General, we'll continue on. The
25 next one that I have marked under the termination of agreement,

1 Paragraph 38, is number 56, on page nine of the master
2 question. And the question is whether the State receive in
3 exchange for the setoff in Paragraph 12, assuming that the
4 agreement is terminated?

5 MR. COLE: Let us go to Paragraph 12. Like I say, again,
6 I've discussed this paragraph earlier.....

7 MR. CHAIRMAN: Yes, you have.

8 MR. COLE: I think I've answered it.

9 MR. CHAIRMAN: This was the sort of a return, if you will,
10 for any expenses they've already put in during the processing of
11 this.....

12 MR. COLE: Yes.

13 MR. CHAIRMAN: I believe it was in another one.

14 MR. COLE: And let me just say, the difference between
15 subsections (a) and (b) there is simply to shift the burden of
16 proof. That was one of those negotiated agreements that took up
17 a lot of time in the last waning days.

18 MR. CHAIRMAN: If the Committee's satisfied with that, any
19 other questions? Next we'll look down to number 59, does
20 legislative approval of the settlement estop the State or third
21 parties from making constitutional challenges to the authority of
22 the Administration to enter into or to the funding mechanisms?
23 That's Representative Barnes' burning question.

24 MS. PHILLIPS: Mr. Chairman, before we get that, would
25 somebody please explain to me the meaning of the word "estop"?

1 MR. COLE: I will endeavor to do that.
2 MS. PHILLIPS: Thank you.
3 MR. COLE: It's a fancy legal word for "preclude."
4 MS. PHILLIPS: Thank you. I can handle that one.
5 MR. COLE: The answer is I don't know. It may.
6 MR. CHAIRMAN: It may halt third parties or the State from
7 making a constitutional challenge as to the authority of you and
8 the Administration from entering into this or the funding
9 mechanisms? You just don't know the.....
10 MR. CHAIRMAN: Well.....you know, there's a couple fights at
11 me there. One, to the authority of the Administration to enter
12 into it, I would say that if the Legislature approves this, it
13 certainly indicates it's a ratification by the Legislature of the
14 acts of the governor and the Attorney General in entering into
15 the agreement. I don't know who else would have a right to
16 object to the agreement on the ground that the Attorney General
17 and the governor were not authorized to enter to this settlement
18 agreement. So, I think with respect to that precise question, the
19 answer, in my view, is rather clear. I mean, either the
20 executive or the legislature, legislative branch, would have the
21 authority to enter into the agreement. Certainly the judiciary
22 wouldn't. So if we have the approval of each of those branches
23 of the government I imagine that's the end of it, number one. By
24 now number two is the funding mechanism? That's a slightly
25 different question. Certainly the approval by the Legislature

1 would strengthen the State's position with respect to the
2 constitutional impact. Whether it would preclude it, I don't
3 really know what a court might say. You know, you never know.
4 But you have to first address the question, well, if it's
5 constitutional, that's the end of it. Period.

6 MR. CHAIRMAN: I'm assuming, Mr. Attorney General, that it
7 was your determination in negotiating or attempting to negotiate
8 this instrument that you assumed that it was constitutional,
9 constitutional to set up the trust outside of the clutches of the
10 legislative appropriation process?

11 MR. COLE: Well, may I have that opinion on that, number
12 one. But, number two, the reason that we sit here today
13 conducting these proceedings, i.e. the provision in the agreement
14 that provides that the Legislature must approve this agreement,
15 was an effort to fold in the Legislature into the entire
16 process. And, as a matter of fact, you know, it is shots like
17 that that under the circumstances are not well received by me.
18 The caricature of the action by the Attorney General. But that's
19 all right, I (indiscernible) big enough to take those things.

20 MR. CHAIRMAN: Mr. Attorney General, I don't find that
21 terribly humorous, either, quite frankly.

22 MR. COLE: Thank you, sir.

23 MR. CHAIRMAN: All right, I'm going to go on the last
24 question on the consent decree, number 64, does this article --
25 this is the insertion of (indiscernible) paragraph 41 -- does

1 this article terminate the Legislature or a third party from
2 litigating the issue of authority.

3 MR. COLE: I don't know the difference between that and the
4 question you just asked.

5 MR. CHAIRMAN: I don't either.

6 MR. COLE: Looks like they're both the same, does it not?

7 MR. CHAIRMAN: Andy?

8 MR. HEMENWAY: It looks the same to me.

9 MR. CHAIRMAN: Looks the same. So let's put the consent
10 decree aside then and take a look at the MOA. Let's see, let's
11 just see what we have down here. Does your record show we've
12 gone through all these?

13 MS. WILLIAMS: I thought we did.

14 MR. CHAIRMAN: I would ask -- are there any questions in the
15 MOA that members have. I believe we have gone through all of the
16 master questions here. Are there any questions
17 (indiscernible). Any questions, Mr. Kubina.

18 MR. KUBINA: I would only like to say that we've probably
19 asked this poor guy enough questions.

20 MR. CHAIRMAN: All right.

21 MR. KUBINA: We don't have the answers by yet, we're not
22 going to get them from him.

23 MR. CHAIRMAN: Mr. Attorney General, that's all the
24 questions I have. Representative Phillips?

25 MS. PHILLIPS: Mr. Chairman, I do have one question of the

1 Committee. And that is with this entire myriad of questions that
2 we've put together on all the different aspects of this, I wonder
3 if it would be possible to condense the questions into one or two
4 pages with the answers, now that we have them gathered. And make
5 that a working document for the Legislature.

6 MR. CHAIRMAN: Good idea. Andy's shaking his head yes and
7 so we'll make that request to the staff.

8 MR. HEMENWAY: Yes, all this time I've been preparing that
9 and trying to keep up, but with requests for oth
10 (indiscernible) I will have that for certain before it gets to
11 the floor.

12 MS. PHILLIPS: Great.

13 MR. CHAIRMAN: Hopefully a little time ahead of time, Andy,
14 so we can all kind of -- we're the ones, I believe, on the floor,
15 at any rate, they're going to have to respond to many other
16 people's questions.

17 MS. PHILLIPS: And that's what I wanted to continue with,
18 was that there's a lot of other legislators than cannot be here,
19 but if they have those answers to look at ahead of time, it's
20 going to help them a great deal.

21 MR. COLE: Am I understand this is my last appearance before
22 this Committee?

23 MS. PHILLIPS: No, no way.

24 MR. COLE: Other than tomorrow morning at the Executive
25 Session. You know, it's sort of like speak now or forever hold

1 your peace.

2 MR. CHAIRMAN: Charlie, there's an old song that says we've
3 grown accustomed to your face.

4 MR. COLE: But it was a she, you know.

5 MR. CHAIRMAN: That's true.

6 MR. COLE: Easier to look at.

7 MR. CHAIRMAN: That's true too.

8 MR. COLE: But seriously, is this the end.....

9 MS. PHILLIPS: I think so.

10 MR. KUBINA: I have a feeling that the Chairman may ask you
11 that one more time, Mr. Attorney General, and there may be a few
12 more questions coming to you in writing and that I don't know
13 that for sure, but I believe that may be the case.

14 MR. COLE: Well, let me say this. It would be hard for me
15 to believe that there's anyone out there who does not believe
16 I've been patient in responding to these questions. I would hope
17 that at some time the process would come to an end, number one.
18 And, number two, before the process concludes, I would like to
19 have the opportunity to make a few final remarks to the full
20 Committee about my views with respect to the entire settlement.

21 MR. CHAIRMAN: Attorney General, we will make sure that the
22 Chairman of this Committee, the acting, the real chairman, not
23 just us acting folks, understands that, and frankly, we would
24 also like to give you that opportunity because this is a very
25 important document. I personally would like to thank you for

1 your patience and for your sense of humor in what I think is an
2 extremely difficult but important issue before the State of
3 Alaska. I recently on a little (indiscernible) that I put out,
4 that I thought this may be one of the top three issues we're
5 dealing with in this session, in perhaps as many years. So I
6 want to thank you, and with that, this Committee is adjourned, it
7 is now 2:47.

8 (Off record)

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