

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1941 SCOMM 76: HOUSE SPEC. COMM. EXXON VALDEZ OIL SPILL. 1991-92

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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

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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 enviornment,
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 an
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 judgements, 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

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 certainly 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 contemplate 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.....