

1 A. Correct.

2 Q. Okay. So you arrive at the airport in  
3 Yakutat. What do you do next?

4 A. I met with Chief Nichols. He gave me a  
5 ride to his office.

6 Q. Okay. And where did you first meet up  
7 with Chief Nichols? Was he waiting at the gate?  
8 Did they have that security stuff you have to go  
9 there through and you have to stand outside? What  
10 was your memory?

11 MR. BRENNAN: Objection. Leading.

12 Q. You can go ahead and answer.

13 A. I recall meeting up with Chief Nichols.  
14 I think he was out in the parking lot, in his  
15 vehicle. He had just arrived. And I met with him  
16 out there at his vehicle and got in his vehicle.

17 Q. Do you remember what kind of vehicle it  
18 was?

19 A. No, I don't remember. I believe it was  
20 like a Bronco or Blazer-type vehicle, but I don't  
21 know for sure. I don't remember, actually.

22 Q. Okay. Was anyone else with  
23 Chief Nichols when you met him in his vehicle?

24 A. No.

25 Q. Okay. What happened next?

1           A.       Well, he gave me a ride to his office.  
2       We met -- we went to his -- to the police station.

3           Q.       Okay. And the vehicle that you rode  
4       in, I think you said it might have been a Bronco.  
5       Did I understand that correctly?

6           A.       Yeah. That type, you know, an SUV type  
7       of a vehicle. That's what they have there, and  
8       that's why I'm saying that. But I do not actually  
9       have a specific memory of what vehicle he was in.  
10      I don't know.

11          Q.       Okay. And when Chief Nichols picked  
12      you up at the airport, did you go straight to the  
13      police station, or did you stop and do anything  
14      else?

15          A.       We went straight to the police station.

16          Q.       Okay. And if you remember, is that  
17      like a long ride? a short ride?

18          A.       No. It's not that long of a ride. It  
19      maybe is, you know, four or five minutes at the  
20      most.

21          Q.       Did you and Chief Nichols discuss the  
22      death of Mr. Byler on the way into the police  
23      station?

24          A.       We did.

25          Q.       What do you recall of that discussion?

1           A.       He filled me in with what he had  
2       learned. He had already interviewed and spoken  
3       with Kimberly Byler and one other male individual  
4       that she had brought with her. And he filled me in  
5       with the details of what he'd learned from them.  
6       He briefed me on the content of those interviews.

7           Q.       Okay. And do you remember, as we sit  
8       here today, without having to look at your report,  
9       what -- the basic content of what Chief Nichols had  
10      told you?

11          A.       Its basically the same thing as what  
12      Kimberly Byler had told me, you know, that she had  
13      basically relayed to him the same information that  
14      I already had had, that Jerry Byler had gone out to  
15      pump out a skiff that was tethered to the back of  
16      their larger boats and had subsequently slipped or  
17      fallen in the water and was later located and  
18      recovered, deceased.

19          Q.       And before your arrival in Yakutat -- I  
20      apologize that I didn't ask you this -- were you  
21      sent any records or, you know, documents about the  
22      investigation in this matter, to review?

23          A.       No. I wasn't sent anything.

24          Q.       Okay. All right. So you're with  
25      Chief Nichols. You get to the Yakutat police

1 station. What happens next?

2 A. I got there. I met with one of the  
3 other officers that had been helping, a female  
4 officer. I believe her name was Rose or Rosie.

5 Shortly after I arrived there,  
6 Kimberly Byler showed up. They had -- she had  
7 somehow acquired their own vehicle. She drove up  
8 and got out, came into the police station. I spoke  
9 with her and spoke with another gentleman that she  
10 had with her, the two people that had already been  
11 interviewed.

12 And while I was speaking with  
13 them, two more people arrived. Pam -- I can't  
14 remember her last name off the top of my head, but  
15 I ended up doing an interview with Pam. I believe  
16 she was one of the -- she was the cook on the boat.  
17 And that's what happened next.

18 Q. Okay. You had mentioned that you'd  
19 spoken with an officer by the name of Rose. Do you  
20 recall what you and Rose spoke about?

21 A. Yeah. She had taken the photographs of  
22 the -- of Jerry Byler. And she talked with me  
23 about, you know, what she'd done, her photographing  
24 and the condition of the body and so forth.

25 Q. Okay. Did you view Mr. Byler's body?

1           A.       Well, yes and no. I did not view his  
2 body, so the answer to that is no; but she had the  
3 photographs, digital photographs, and I viewed his  
4 body from the photographs that she had taken.

5           Q.       Okay. If you know, was Mr. Byler's  
6 body at the police station when you arrived?

7           A.       No. His body was at the airport, out  
8 at the airport.

9           Q.       Okay. And how do you know that?

10          A.       Because that's where they said he was  
11 at.

12          Q.       When you say "they," who told you he  
13 was at the airport?

14          A.       Well, it was either the chief or Rose,  
15 Rosie. It's either Rose or Rosie. I can't  
16 remember.

17          Q.       Okay. All right. So you're at the  
18 police station. You spoke with Rose. She showed  
19 you the -- now, did she show you the photos of  
20 Mr. Byler at that time, or was that later?

21          A.       It was either then or later. I don't  
22 recall. It was while I was in contact with her  
23 there at police station. I looked at the photos at  
24 the police station. So, I mean, it's possible that  
25 she could have just told me about it; and then

1 after I got done with all my interviews, then I  
2 looked at them there, or maybe she showed me the  
3 pictures before I did the interviews. I'm not  
4 sure. I looked at the photos while I was at the  
5 police station at some point.

6 Q. Okay. And do you recall whether you  
7 looked at the photos -- were they printed-out  
8 photos, or did you look at them on some kind of  
9 digital device?

10 A. Yeah. They were digital photos on her  
11 camera.

12 Q. All right. So you arrived at the  
13 police station. You spoke with Rose. What  
14 happened next?

15 A. Well, like I mentioned earlier,  
16 Kimberly showed up, and I spoke with her and the  
17 gentleman that she showed up with. And then,  
18 later, Pam and another gentleman showed up, and I  
19 believe his name was Eddie, Ed or Eddie. And I  
20 ended up interviewing Pam. And that's what was  
21 done next.

22 Q. Okay. And to make sure we're clear on  
23 certain things, when you had mentioned that you  
24 spoke with some individuals and you interviewed  
25 some, what is your difference between speaking with

1 someone and interviewing someone?

2 A. Well, sitting down and doing a formal  
3 interview, you're taking notes and writing down.  
4 Just to sit and chat with somebody and talk with  
5 them is a simple conversation. That's not an  
6 interview.

7 Q. Okay. Do you recall whether you  
8 interviewed Kimberly Byler while you were there at  
9 the police station?

10 A. I did not interview her nor her friend  
11 that was with her. I only -- I just spoke with  
12 them. They had already been formally interviewed  
13 by the Yakutat PD, and I had already been kind of  
14 filled in with what they said. I just talked with  
15 her and pretty much got a confirmation that, you  
16 know, she had said everything that she'd already  
17 told me the day before and that the chief had told  
18 me she'd said; and everything was -- you know,  
19 jibed with each other. Everything was all correct.

20 Q. Okay. And the Yakutat police station,  
21 when you arrived -- is that a single-level  
22 building? Has it got a couple of stories? What  
23 does it look like?

24 A. It's a double -- I believe it's a  
25 double-story, a two-story, upstairs and downstairs.

1 Q. Okay. And when you arrived, did you  
2 stay downstairs? Did you go upstairs? What's your  
3 memory?

4 A. It was upstairs.

5 Q. Okay. And if you remember, when you  
6 spoke with Rose, was that downstairs or upstairs?

7 A. Upstairs.

8 Q. Okay. And you had mentioned that  
9 Ms. Byler had shown up in a vehicle. Where were  
10 you at when that occurred?

11 A. I was upstairs in the police station.

12 Q. Okay.

13 A. They came up the stairs and came on in.

14 Q. And did you physically see Ms. Byler  
15 drive up in a vehicle?

16 A. No, I did not.

17 Q. Okay. Thinking back in your memory,  
18 where did you first see Ms. Byler when you were at  
19 the police station?

20 A. Walking through the front door of the  
21 police station.

22 Q. Okay. And did you speak with her right  
23 away, or was there a bit of time before you spoke  
24 with her?

25 A. Well, you know, a bit of time. She

1 walked through the front door and we were  
2 introduced, and I began speaking to her; so not  
3 much time.

4 Q. Okay. And the front door of the police  
5 station, to the best of your memory, is that on the  
6 first level, or the second level?

7 A. Upstairs. It's on the second level.

8 Q. Okay. And if you know, does the front  
9 door -- does it go out at a ground level, or are  
10 there stairs to get to it?

11 A. It's upstairs.

12 Q. Okay. Does the front door of the  
13 police station open up into any other kind of city  
14 department, or is that solely the building of the  
15 police station?

16 A. Well, to my knowledge, it was only a  
17 police station. There may have been -- the  
18 downstairs area may be the city offices, but I'm  
19 not for sure.

20 Q. Okay. Do you know where the DMV office  
21 is located in Yakutat?

22 A. Well, I don't know where it's located  
23 now, and I'm not sure where it was located then. I  
24 know where it was located a few years earlier,  
25 because I ran it. But, no, I don't know exactly --

1 Ms. Byler walks in the front door. You're  
2 introduced. You speak with her. What happens  
3 next?

4 A. Well, after I speak with her and the  
5 gentleman she had with her, then Pam came in with  
6 another person. I believe it was Eddie. And I  
7 interviewed her.

8 Q. Okay. And then after you interviewed  
9 Pam -- and if I suggested the name Pamela Girdwood,  
10 would that refresh your memory any?

11 A. That was her name, yes.

12 Q. Okay. After speaking with Pam, what  
13 did you do -- or, excuse me -- after interviewing  
14 Pam, what did you do?

15 A. After interviewing Pam, we began to  
16 make preparations to go back to Juneau, and we  
17 subsequently went back out to the airport and left.

18 It ended up, Kimberly  
19 apparently -- was going to go to Anchorage, but  
20 there was a change; and she ended up flying back to  
21 Juneau with Jerry's body on the same flight that I  
22 went on, which was the only flight going south.

23 Q. Okay. And how did you get back to the  
24 airport?

25 A. Chief -- the chief gave me a ride back.

1 Q. Okay. And do you recall the vehicle  
2 you rode in?

3 A. No, I don't. I don't recall the  
4 vehicle.

5 Q. Before you left for the airport, did  
6 you see Ms. Byler leave the police station?

7 A. Yes. She left before we did.

8 Q. Okay. Did you see if she left with  
9 someone from the police department or someone else?  
10 What do you remember?

11 A. I recall they had their own vehicle.  
12 She left with this other vehicle that they had  
13 acquired in Yakutat. I don't know where they got  
14 it, but they had their own transportation at that  
15 point. And she left with some of the folks that  
16 she had there with her.

17 Q. Okay. And do you remember whether --  
18 if she left with one person? two persons? ten  
19 persons?

20 A. At least one other. I don't know how  
21 many she left with.

22 Q. Okay. Male or female?

23 A. I believe it was the male that she came  
24 with, but I don't know for sure now.

25 Q. Okay.

1           A.       It was too long ago for me to recall  
2 exactly who it was that she left with, but she left  
3 with some of the others that had come there with  
4 her from the boat.

5           Q.       All right. And did you physically see  
6 her get in a vehicle?

7           A.       No. She left the office, went down the  
8 stairs, and then was gone.

9           Q.       Okay. So your testimony about them  
10 acquiring another vehicle -- you didn't actually  
11 see a vehicle?

12          A.       I didn't see the vehicle, ever, no.  
13 They told me they had one, but I never saw it.

14          Q.       Okay. When you say they told you, who  
15 told you?

16          A.       Kim and some of the people that she had  
17 there with her. They had mentioned that they had  
18 gotten a vehicle there in Yakutat. I don't know if  
19 they rented it or if it was a friend's or whose it  
20 was, but they had acquired some vehicle.

21          Q.       Okay. Did they mention whether it was  
22 a van or a car, if you remember?

23          A.       No. I don't recall.

24          Q.       When you arrived back in Juneau, did  
25 you have any more interaction with Ms. Byler?

1 within five or ten minutes of me getting there.

2 Q. Okay. And during the time that you saw  
3 Ms. Byler until you went and spoke with Pam  
4 Girdwood, did you see Ms. Byler get on the phone?

5 A. I don't recall seeing her get on the  
6 phone. I mean, she may have used the phone. I  
7 don't know. I don't recall seeing her on the  
8 phone. I don't -- I just don't know.

9 Q. Okay. And in your investigation, did  
10 you have to deal any of it with a man by the name  
11 of Eddie MacDonald?

12 A. I think Eddie MacDonald was the guy  
13 that showed up with Pam. I think that's the Eddie  
14 that I remember showing up with Pam when Pam  
15 arrived.

16 Q. Okay. And was that before, or after,  
17 you had seen Ms. Byler at the police station?

18 A. After.

19 Q. Okay. And during your investigation,  
20 did you ever come into any knowledge of whether  
21 Eddie MacDonald rented a vehicle while they were  
22 there in Yakutat?

23 A. I know they had a vehicle. I don't  
24 know who rented it or who got it. It may have been  
25 him, or it might have been one of the others. I'm

1 testimony, Kimberly Byler had called in to the  
2 troopers at approximately 2037 p.m., which would be  
3 8:37 p.m.?

4 A. Yes.

5 Q. And she called the dispatcher for the  
6 troopers; is that correct?

7 A. Yes.

8 Q. And then you called her from the house,  
9 or somehow you were put in touch with her. Do you  
10 know how that happened?

11 A. I don't think I called her. I believe  
12 what happened was is she called -- at that time of  
13 day, all the phones, the dispatch is all taken care  
14 of out of Ketchikan. She would have been forwarded  
15 down to the Ketchikan trooper dispatcher.

16 They call me -- they have the  
17 ability to, like, put her on hold; and then, after  
18 they give me the initial reason for the call -- the  
19 call-out, because I'm at home -- then they patched  
20 her in to me.

21 Q. Did you gain any understanding as to  
22 what type of telephone she was calling on?

23 A. I believe it was some sort of a  
24 satellite phone, because they don't have phones out  
25 there on the boat.

1 Q. Did you understand that she was on a  
2 vessel?

3 A. Yes.

4 Q. In Icy Bay?

5 A. Yes.

6 Q. All right. During that evening, did  
7 you ever speak with Darren Byler, her husband?

8 A. No.

9 Q. I'll show you what has been marked as  
10 Exhibit 1 to this deposition and ask you to  
11 identify this.

12 A. This is a copy of my police report,  
13 trooper report.

14 Q. Okay. Does it include anything  
15 produced by the City and Borough of Yakutat?

16 A. Yeah. It includes their documentation  
17 of what they did also.

18 Q. Okay. Did you consider that to be part  
19 of the trooper report?

20 A. Yes. It was part of my report. I  
21 included it with my report, to go with it, to be  
22 part of my report.

23 Q. All right. And if I can ask you to  
24 refer to the third page of Exhibit 1. And I'm  
25 looking at the page that is after the header on

1       that. The first thing it says is "Information:"  
2       and then it has a paragraph under that?

3           A.       Yes.

4           Q.       The information in that paragraph, did  
5       you gain all that information from Ms. Byler on the  
6       evening of May 14, when you talked to her on the  
7       telephone?

8           A.       Yes. That was the initial information  
9       I received from her.

10          Q.       Okay. So this would include the  
11       statement that Jerry Byler "had fallen overboard  
12       from their 15-foot Boston Whaler into the water in  
13       Moraine Bay at Icy Bay"?

14          A.       That was -- that was her assessment,  
15       yes.

16          Q.       All right. And then the next sentence  
17       references a civilian helicopter which had  
18       responded, and Ms. Byler stated that a civilian  
19       helicopter had located Jerry Byler's body. She  
20       told you those things?

21          A.       Yes.

22          Q.       And further down, in the next-to-the-  
23       last sentence, it says, "His body," meaning Jerry  
24       Byler's, "was recovered and brought back to their  
25       96-foot hunting guide base vessel, the North

1 Pacific." Did she tell you that?

2 A. Yes.

3 Q. All right. And you think you -- how  
4 long, approximately, did you speak with Kimberly  
5 Byler on the telephone on the evening of May 14?

6 A. Roughly 20, 30 minutes.

7 Q. All right. Do you remember if you then  
8 asked to speak with her husband?

9 A. He was not available.

10 Q. Did she explain why he was not  
11 available?

12 A. No. Not at that time, no.

13 Q. All right. Did you gain an  
14 understanding that evening of May 14 as to whether  
15 the body was going to be transferred into Yakutat?

16 A. Yeah. That was the initial plan, that  
17 they were going to try to get a float plane to come  
18 out and pick up the body and take it back to  
19 Yakutat.

20 Q. Did you gain an understanding that  
21 evening as to who, if anyone, would be accompanying  
22 the body in from the vessel, into Yakutat?

23 A. That Kimberly would go.

24 Q. All right. When was the first time  
25 that you contacted -- you came in contact with the

1 City and Borough of Yakutat Police Department?

2 A. It would have been the next morning, on  
3 the 15th, to make arrangements for my travel up  
4 there.

5 Q. Who did you speak with?

6 A. Chief Nichols.

7 Q. All right. Do you know approximately  
8 what time that morning you talked to Chief Nichols?

9 A. I think it was somewhere around 8:30,  
10 9:00, somewhere in that neighborhood.

11 Q. All right. If you look at Exhibit 1  
12 there, looking at the Yakutat Police Department  
13 portion of the report, page 1, the information  
14 page, you found that page? Here's what it looks  
15 like. It says "Case Report."

16 A. Yes.

17 Q. All right. In the second paragraph  
18 down, it says, "On 5-15-07, at approximately 0830  
19 hours, I spoke to Sergeant Cox of the Alaska State  
20 Troopers in Juneau."

21 Do you have any reason to think  
22 that's not accurate?

23 A. No. That's about right. 8:30. Yes,  
24 that could be exactly when it was. I'm not sure at  
25 this point, but it was in the morning; so, yeah,

1       that's about right.

2           Q.       And what was your purpose in contacting  
3       Chief Nichols?

4           A.       Well, first of all, to let him know  
5       that there had been a death. He was already aware  
6       of that. And to get a ride, because I was going to  
7       show up. I needed to get a ride to his office, and  
8       he volunteered to do that.

9                   Also at that time there was -- the  
10       thought was that Kimberly was going to try to get  
11       the body -- it had already been released to the  
12       family. They were going to take the body to  
13       Anchorage, which meant that that would have been on  
14       the same flight that I was arriving on, which means  
15       I wouldn't have had an opportunity to really  
16       conduct an interview with her.

17                   And so I asked them if they could  
18       do that, because she was going to come in in the  
19       morning before I got there. And so they were going  
20       to interview her for me to make sure we had enough  
21       time. As it turned out, she didn't end up going  
22       north; she ended up going south with me. But at  
23       that time, we didn't -- the thought was she was  
24       going to try to go to Anchorage.

25           Q.       Okay. And did Chief Nichols agree to

1 perform that preliminary investigation?

2 A. Yes, he did.

3 Q. All right. And did you discuss any of  
4 the information you'd learned from the night before  
5 with Chief Nichols in that 8:30 a.m. telephone call  
6 on May 15th?

7 A. Yes. I briefed him with everything  
8 that I knew about the case so that he would be able  
9 to sit down and chat with her intelligently and be  
10 able to conduct an interview for us.

11 Q. Okay. Turning back to Exhibit 1, which  
12 is your report, at page 3 containing the  
13 information, you indicated that first paragraph was  
14 information you had obtained the evening before.  
15 Did you discuss all of that information with  
16 Chief Nichols?

17 A. I would have -- yes. I would have  
18 given him all of that information.

19 Q. Based upon his responses, did you get  
20 the impression that this was all new information to  
21 him?

22 A. Not all of it. I mean, he understood  
23 that there had been a death, and he was aware that  
24 the investigation was in the process. He knew  
25 about this. I don't think he knew all of these

1 details until I filled him in, but he knew much of  
2 this already.

3 Q. All right. One of the sentences in  
4 your report -- I think it's the second sentence on  
5 page 3 -- was that "It was further reported that  
6 she had also reported this to the U.S. Coast Guard,  
7 and a civilian helicopter had responded to the area  
8 to help search for Jerry. Riedel-Byler stated this  
9 civilian helicopter had located Jerry Byler's body  
10 in the water, near the beach in Moraine Bay."

11 Was that information discussed  
12 between you and Chief Nichols?

13 A. Yes, it was.

14 Q. At 8:30 a.m. on Saturday?

15 A. Yes. Yes.

16 Q. And did you get the impression, any  
17 impression one way or the other, as to whether he  
18 already knew that a helicopter had been involved?

19 A. I don't recall now if he knew a  
20 helicopter -- I think -- he knew that the body had  
21 been recovered, had been discovered and recovered.  
22 Whether or not he knew exactly how it had been  
23 recovered, I don't know for sure. But it was my  
24 impression that he knew much of this already before  
25 I even talked with him.

1 Q. Okay. And in any case, you did talk to  
2 him about the helicopter?

3 A. Yes, I did.

4 Q. All right. So you were still in Juneau  
5 when you made that telephone call to Chief Nichols?

6 A. Yes.

7 Q. All right. What else, if anything, did  
8 you do in Juneau in investigating this matter,  
9 before you departed for Yakutat?

10 A. I don't recall -- I don't recall doing  
11 anything specific.

12 Q. Well, let me ask you this: Did you do  
13 any investigation of any kind regarding the company  
14 that was involved here, Alaskan Adventure Tours, or  
15 its vessels?

16 A. Yes, I did. Because of the vessels  
17 that were involved, I had my dispatcher pull up  
18 printouts of the vessels, kind of like you do if  
19 you were to go to a traffic accident or a case  
20 involving vehicles. You pull up the vehicles to be  
21 able to include those in your report.

22 In this case, it was boats; so I  
23 had them pull up the information regarding the  
24 boats and print them out for me, as well as I had  
25 printouts of all of the people involved that I

1 thought I was going to make contact with.

2 Q. This would be Mr. and Mrs. Byler?

3 A. And Jerry Byler also. Yes.

4 Q. All right. Did you have any knowledge  
5 of any kind about the Bylers before you went to  
6 Yakutat?

7 A. No. I had not met them prior to this.

8 Q. So you had no direct knowledge of them?

9 A. No.

10 Q. Did you have occasion to discuss them  
11 with any other law enforcement officers?

12 A. Yes. I spoke to a couple of Fish and  
13 Wildlife troopers in Juneau regarding -- they heard  
14 that this case was going. They knew the Bylers  
15 from their previous contact with them, and so they  
16 talked with me about their previous contacts with  
17 the Bylers.

18 Q. And what did you learn in that regard?

19 A. I had learned that much of their  
20 contact with the Bylers had been kind of a negative  
21 contact between them, that there was not good  
22 feelings between them and law enforcement,  
23 particularly them in those particular cases that  
24 they worked with, and that I might meet with some,  
25 you know, resistance in my attempts to talk and

1 interview with them because of their distrust  
2 toward law enforcement.

3 Q. All right. So you then traveled to  
4 Yakutat. And who, if anyone, were you expecting to  
5 meet at the airport?

6 A. Chief Nichols was going to come pick me  
7 up.

8 Q. All right. Anyone else that you were  
9 expecting to meet there?

10 A. No.

11 Q. Were you expecting to meet Kimberly  
12 Byler there?

13 A. No. Just Chief Nichols was going to  
14 pick me up, is all I knew.

15 Q. Did you know what Kimberly Byler looked  
16 like?

17 A. No.

18 Q. So do you know whether or not she was  
19 at the airport when you arrived?

20 A. I do not.

21 Q. You did meet her later at the police  
22 station, did you not?

23 A. Yes, I did.

24 Q. But is it your testimony now that you  
25 do not know whether you had seen her at the airport

1 prior to that?

2 A. I don't recall seeing her at all. She  
3 may have been there; she might not have been. I  
4 don't know. My first recollection is, I first met  
5 with her at the police station; and I don't recall  
6 seeing her prior to that.

7 Q. But you didn't know what she looked  
8 like, right?

9 A. And I didn't know what she looked like.

10 Q. And you weren't looking to meet her at  
11 the airport?

12 A. No.

13 Q. You testified earlier, Mr. Cox, that  
14 you were informed, either by Chief Nichols or  
15 someone else at the Yakutat Police Department, that  
16 the decedent's body was at the Yakutat airport?

17 A. Yes.

18 Q. And so, therefore, you looked at images  
19 on Rose -- the officer, the Yakutat officer -- on  
20 Rose's camera, of the body?

21 A. That's correct. Yes.

22 Q. If the body had still been at the  
23 police station, or if the body had been at the  
24 police station when you were there, would you have  
25 wanted to look at it yourself?

1 A. Yes.

2 Q. All right. Did you gain any impression  
3 from looking at the camera images as to whether  
4 there was any indication of possible trauma to the  
5 decedent's body?

6 A. None, really, with the exception that  
7 there appeared to be some sort of a bump on his  
8 forehead. Other than that, he looked like -- there  
9 was no visible trauma.

10 Q. All right. And you indicated that  
11 you -- as I understand it, that when you arrived at  
12 the station, Kimberly Byler was not there at the  
13 police station?

14 A. That's right.

15 Q. And she came in five to ten minutes  
16 later with another gentleman; is that correct?

17 A. That's -- yeah. That's my  
18 recollection.

19 Q. All right. And at some point, you  
20 gained the understanding that they -- all of them,  
21 Kimberly Byler and her colleagues -- had a vehicle  
22 of their own?

23 A. Yes.

24 Q. All right. And your impression was  
25 that they left in their own vehicle?

1           A.       When they --

2                   MR. WALLER:  Objection to form.

3           A.       I'm sorry?

4           Q.       He's made an objection.  Go ahead and  
5 respond.

6           A.       When they left, it was their vehicle  
7 that they -- the vehicle that they had acquired,  
8 that's what they left in.

9           Q.       What do you base that impression on?

10          A.       Well, they left, and Chief Nichols was  
11 there, still there with me; and he gave me a ride  
12 back to the airport.  And when I got to the  
13 airport, they were already there; so they had their  
14 own ride.

15          Q.       All right.  As I understand it, when  
16 you saw Kimberly Byler and the other gentleman who  
17 you now, I guess, believe to be Brian Barton --

18          A.       Yes.

19          Q.       When they arrived at the station after  
20 you, you did discuss with them the facts that had  
21 been related to you by Chief Nichols to confirm  
22 that they were correct?

23          A.       Yeah.  I talked with them.  I knew that  
24 they had been formally interviewed already.  And I  
25 just chatted with them about the basics of what

1 and was trying to get back up onto the big boat.

2 And so it was her summation that  
3 he had to have fallen off in transitioning from the  
4 Mako to the Whaler, because he had not yet had an  
5 opportunity to release the Mako and let it stretch  
6 back out.

7 Q. Generally speaking, what was Kimberly  
8 Byler's manner in dealing -- in speaking with you  
9 while you were at the Yakutat police station?

10 A. You know, I would say she was -- she  
11 was upset of this -- of what had happened, which is  
12 expected. There was -- there was some frustration  
13 over, you know, having to repeat many of these  
14 things over again to the police. So "upset and  
15 frustrated," I guess, is how I would characterize  
16 her.

17 Q. Did you get any impression that she was  
18 anxious to cooperate with you?

19 A. I had the impression that she was  
20 guarded with what she said to me. And, in fact, we  
21 talked about that. We discussed that very thing.  
22 And she talked with me about how, you know, she had  
23 been -- had bad experiences with troopers, Fish and  
24 Wildlife particularly, and Forest Service law  
25 enforcement in the past, and that there had been

1 the many negative contacts between her family and  
2 law enforcement. And we discussed some of those  
3 things.

4 Q. When did you have that discussion with  
5 her?

6 A. I discussed that with her at the Juneau  
7 Airport, when we got back.

8 Q. This is when you gave her a ride from  
9 the airport?

10 A. Yes. Yes.

11 Q. All right.

12 A. And we talked about those things. And  
13 although we ended on a note that she was  
14 appreciative of my work with her and didn't feel  
15 that there were any issues regarding my contact  
16 with her on this particular case, as far as  
17 mistrust and frustration, but that, you know, we  
18 talked about how -- some of the circumstances prior  
19 to this that had caused her to distrust law  
20 enforcement. And we talked about those things,  
21 yes.

22 Q. Okay. So if I understand the sequence  
23 here, while in Yakutat at the station, while you  
24 talked to her, you felt that she was guarded and  
25 distrustful; but later, when you gave her a ride

1 from the Juneau Airport, she opened up to you with  
2 describing why she had these feelings towards law  
3 enforcement?

4 A. Yes.

5 MR. WALLER: Objection. Form.

6 A. Exactly.

7 Q. All right. And what, about her manner  
8 while she was at the Yakutat police station, made  
9 you feel that she was being guarded, acting  
10 guarded?

11 A. Well, you know, she mentioned that --  
12 you know, she had told me all these things before,  
13 over the phone the night before, which she had.  
14 And then she had to go and explain it all again to  
15 the city police chief, and that she felt that, you  
16 know, if law enforcement already knew about this,  
17 that we all should know about it, and she shouldn't  
18 have to repeat it. And she was frustrated at that.

19 When people have a death in their  
20 family, you know, they are oftentimes emotional and  
21 deal with it differently. And so I think her  
22 frustration and her being upset was not something  
23 that I did not anticipate.

24 Q. Certainly. And you've indicated she  
25 was expressing frustration with having to tell this

1 multiple times. But I guess my question is: What,  
2 about her manner, did you regard as guarded?

3 A. Well, when asking her specific  
4 questions -- in particular like, "Where is Darren,  
5 and why isn't he here?" -- it was, "Well, he's  
6 busy, and he couldn't come in, and he has  
7 responsibilities out on the boat." And those kind  
8 of things kind of made me feel that she was trying  
9 to be careful with how she said things, because --  
10 because Darren wasn't there.

11 Q. Did you ever have an opportunity to  
12 discuss with Darren Byler the circumstances of the  
13 death of his father?

14 A. No.

15 Q. Did you attempt to do so?

16 A. I left messages with Kim to have him  
17 contact me. He never did. I never spoke with  
18 Darren Byler regarding this case at all.

19 Q. Okay. When did you leave these  
20 messages with her?

21 A. Well, talking with her there on that  
22 particular day. She also had called my office  
23 to -- later on in the week to advise me that she  
24 had some photos of the boats tethered together, the  
25 two large boats, and would -- and she sent those to

1 me via e-mail.

2 But on that telephone  
3 conversation, I'd asked if she could have him  
4 contact me. And he was busy doing his guiding  
5 duties with the clients that he had, and I was  
6 never able to get in touch with him.

7 Q. When, approximately, was that telephone  
8 conversation? Was there one telephone conversation  
9 with her afterwards, or more than one?

10 A. At least one, because she was telling  
11 me about the photos she had. So --

12 Q. When was that?

13 A. -- within a week after -- after leaving  
14 them.

15 Q. Okay. And so you indicated to her in  
16 that conversation that you wanted him to call  
17 you --

18 A. Yes.

19 Q. -- about this?

20 A. Yes.

21 Q. Why did you want to talk to him?

22 A. Well, because he was the one who last  
23 spoke with his father. And she had told me what  
24 his interaction had been, but I wanted to hear from  
25 him, you know, what his interaction was with him.

1                   It really wasn't that critical,  
2     because it wasn't a criminal investigation; but it  
3     would just have been nice to sew it up a little  
4     cleaner to have spoken with Darren also, because he  
5     was the last person to really -- well, one of the  
6     last people to talk with him.

7           Q.       Had you given Kimberly Byler your  
8     telephone number by which Darren Byler could  
9     contact you?

10          A.       Yes. She used it to call me to tell me  
11     about the photos.

12          Q.       Was this from their SAT phone on the  
13     vessel, as far as you know?

14          A.       Yes, I think it was.

15          Q.       So you never were able to speak to  
16     Darren Byler about this death investigation?

17          A.       No.

18          Q.       And you indicated she called you to  
19     discuss sending you some photographs. When did you  
20     learn that she had some photographs to send you?

21          A.       I learned that on the first day. She  
22     said that they had some they could send to me,  
23     because I wanted to get some overall pictures of  
24     the boat that he had been on to include with the  
25     report. She said she had some; and then after we

1 you two questions here. The first one is: Do you  
2 know whether or not they have a reputation for  
3 truthfulness or untruthfulness? And I'm looking  
4 for --

5 MR. WALLER: Objection to form.

6 Q. -- looking for a yes-or-no answer here.

7 A. Ask me that question again, please.

8 Q. Do Darren Byler and Kimberly  
9 Riedel-Byler have a reputation for truthfulness or  
10 untruthfulness?

11 MR. WALLER: Same objection.

12 A. Well, according to them --

13 Q. Well, let me just say --

14 A. -- yes. Yes.

15 Q. The answer is, yes, they do?

16 A. Yes.

17 Q. Okay. What is that reputation?

18 A. That they are basically untruthful with  
19 their contacts with law enforcement.

20 Q. How well did you know Chief John  
21 Nichols before this particular investigation  
22 occurred?

23 A. Not very well. I just knew of him. I  
24 had met him in previous cases, but just -- I just  
25 knew of him, basically.

1 about the helicopter?

2 A. No. Not right now, I can't think of  
3 anything else.

4 Q. Earlier you had testified that when you  
5 were at the police station, you saw Kimberly Byler  
6 come in. Do you remember that?

7 A. Yes.

8 Q. How did you know it was Kimberly Byler  
9 that walked in the building?

10 A. She was introduced to me, I think, by  
11 Chief Nichols.

12 Q. Okay. So she had to walk all the way  
13 in, find you or find Chief Nichols, and then you  
14 were introduced?

15 A. Yeah. The door is right there in front  
16 of us. I mean, she walked in, and she's in plain  
17 sight of everybody.

18 Q. Okay. And had you been outside the  
19 building to observe where Ms. Byler was before she  
20 walked in the front door?

21 A. No. I was inside. She just -- my  
22 first -- I first saw her when she came through the  
23 doorway.

24 Q. And that doorway, could it lead to the  
25 DMV office?

1           A.       It's attached to a set of stairs that  
2 goes downstairs. And if the DMV office is  
3 downstairs, then I guess the answer would be, yes,  
4 it's right there in front of the DMV office. I'm  
5 not for sure --

6           Q.       Okay.

7           A.       -- what the office is downstairs.

8           Q.       And do you know, before Ms. Byler came  
9 into the door, whether -- did you physically see  
10 her walk up the stairs?

11          A.       No. I saw her when she walked through  
12 the doorway.

13          Q.       So she could have been just on the  
14 other side of the doorway?

15          A.       When?

16          Q.       When you arrived.

17          A.       No, because I had to go up the same  
18 stairs. She wasn't there.

19          Q.       Okay. So you came in through the front  
20 door?

21          A.       Yes.

22          Q.       And if you remember, when Kimberly came  
23 in, was she by herself?

24          A.       No. She had another gentleman with  
25 her. I believe it was Barton.

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1 A. I don't remember what he loaded them into. I just  
2 know he took the card out of my camera and loaded them  
3 into something.

4 Q. Do you remember, the pictures that Chief Nichols  
5 downloaded from your camera, were there any pictures of  
6 Jerry Byler?

7 A. Not to my recollection.

8 Q. We've kind of gone a little bit out of order, but  
9 I want to just stay on this one subject a little bit.

10 To the best of your memory, could there  
11 have been some pictures of Jerry Byler in the pictures  
12 that you gave to Chief Nichols?

13 MR. BRENNAN: Objection, asked and  
14 answered.

15 THE WITNESS: I don't remember. I just --  
16 I really don't remember what all was on that camera. It  
17 was a big memory card. There was -- could have been  
18 hundreds of pictures on there.

19 BY MR. WALLER:

20 Q. Do you recall whether you took any pictures of Mr.  
21 Byler when he was deceased?

22 A. No, I did not.

23 Q. When you were working out for AAT, had there been  
24 times that you had taken pictures of Jerry Byler?

25 A. Not to my recollection.

1 remember him asking you about any particular picture?

2 A. He was asking about the boat picture a lot, of the  
3 ALASKAN LEADER and the NORTH PACIFIC. He was mainly  
4 interested in that.

5 Q. Okay. Any other pictures you remember?

6 A. No.

7 Q. And just to get a rough idea, if you remember, at  
8 the time you handed your camera to Chief Nichols, as an  
9 estimate, would there have been five pictures on the  
10 camera or 500 or --

11 A. I'm going to say probably at least a hundred  
12 pictures.

13 Q. All right, now I want to go back to starting with  
14 the time after, you know, Mr. Jerry Byler's unfortunate  
15 death and you guys had gone out and searched for him and  
16 found him, I want to start from the point where you found  
17 Mr. Byler. And I believe he was brought back to the  
18 vessels, is that correct?

19 A. Yes, sir.

20 Q. After he was brought back, what did you do next?

21 A. We left him in the Pac Cat in a tarp. And then to  
22 my -- best of my knowledge, I'm pretty sure I went back to  
23 the NORTH PACIFIC and started packing my stuff.

24 Q. And did you go with Mr. Byler's body the next day  
25 when it was taken out of that area?

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1 Q. But I want to make sure I understand your  
2 testimony.

3 Are you saying you never took a picture or  
4 you just don't remember whether you took a picture of Mr.  
5 Jerry Byler?

6 A. I just don't remember if I have taken a picture of  
7 him. I don't have any pictures of him in any of these  
8 photo albums.

9 Q. When Chief Nichols downloaded the pictures from  
10 your camera, do you know how many pictures he copied?

11 A. No, I do not.

12 Q. Do you have a rough idea of how many pictures  
13 might have been on your camera at that time?

14 A. I can't recall.

15 Q. And just a couple more questions.

16 When Chief Nichols was downloading the  
17 pictures, was he able to go through and pick out specific  
18 pictures or did he have to download them all?

19 A. I think he just picked out certain pictures, but  
20 then again it's been five years.

21 Q. Okay, and I understand. Just trying to test  
22 your -- you know, see what you remember is all we want to  
23 know.

24 When Chief Nichols was going through the  
25 camera and sort of picking out specific pictures, do you

1 A. Yes, I did.

2 Q. And how was that accomplished? Was it boat,  
3 plane, helicopter?

4 A. It was an airplane.

5 Q. And where did you meet the airplane at?

6 A. On the beach next to that lodge you had mentioned  
7 earlier.

8 Q. So was it a floatplane?

9 A. No, it wasn't.

10 Q. So it landed at an airstrip?

11 A. It landed on the beach.

12 Q. And was this a very small plane, a big plane?

13 What kind of plane was it?

14 A. It was a pretty small plane. It seated me and  
15 Kimberly, the pilot, and the body.

16 Q. Did anyone else go with you on that flight?

17 A. No.

18 Q. And where did you fly to?

19 A. We flew to Yakutat to the airport.

20 Q. So you're at the Yakutat airport. Do you remember  
21 what day it was?

22 A. Or, no, check that. It wasn't the actual Yakutat  
23 airport, it was the guy that picked us up, he had a taxi  
24 service there in Yakutat. I don't recall his name. We  
25 landed on his little airstrip by the Yakutat Lodge.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

ESTATE OF JERRY L. BYLER,

Plaintiff,  
vs.

ALASKAN LEADER, Official No.  
558697, its Engines, Machinery,  
Appurtenances, etc., *In Rem*, and  
ALASKAN ADVENTURE TOURS,  
INC., *In Personam*

Defendants,

CITY AND BOROUGH OF  
YAKUTAT,

Intervenor.

Case No. 3:10-cv-00055-HRH-JDR

**ORDER GRANTING IN PART  
MOTION TO COMPEL  
COMPLIANCE WITH SUBPOENAS  
[169], HOLDING MOTION TO  
STRIKE EXPERT WITNESSES IN  
ABEYANCE [172], and DENYING  
IN PART MOTION TO EXTEND  
TIME FOR DISCOVERY [175]**

Dockets 169, 172 & 175

Plaintiff, Estate of Jerry Byler (Estate), filed a *Motion to Compel Compliance with Subpoenas* at Docket 169. Intervenor, City and Borough of Yakutat (CBY), filed a qualified non-opposition at Docket 174. The Alaska Department of Public Safety, Division of the Alaska State Troopers (Troopers) filed their opposition

in cases where charges were not filed but where the investigation concerns an issue with a "significant social stigma."<sup>16</sup> The material in question does not fall under these exceptions.

Since CBY did not retain all documents relating to the investigation into the death of Jerry Byler, and since the Troopers have failed to assert that the materials requested fall into a category of prohibited items described in the Opinion, the Court HEREBY ORDERS that the CBY investigative materials in the Troopers' possession, which were requested by the Estate, and which were not retained by CBY, be discovered. Those materials which were retained by CBY and are available through discovery from CBY are not subject to this order. Counsel for the Estate shall consult with John Novak, attorney of record for the Alaska Department of Public Safety, Division of the Alaska State Troopers, in this regard. This ruling is not intended to permit the Estate to harass the Troopers for discovery outside of the scope of this order.

III. CBY's Motion to Strike Expert Witnesses AND the Estate's Motion to Extend Time for Discovery

On March 25, 2011, the Estate filed its Amended Final Witness List, one week after the March 18 deadline. In that list, the Estate included two witnesses it designated as experts. Expert disclosures, including reports, were due on March

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<sup>16</sup>*Id.*

2, 2011.<sup>17</sup> CBY filed the Motion at Docket 172 to exclude the Expert Witnesses due to the late disclosures. As of the date of this order, the Estate has not yet filed any expert reports.

The witnesses designated as experts, Douglas S. Lacey and Alfred L. Johnson, are expected to evaluate whether CBY Police Chief Nichols altered the audio recording of the interview he conducted with Kimberly Riedel-Byler, owner of AAT, concerning the death of Jerry L. Byler.

In response to CBY's motion in this case, the Estate filed a motion to extend the time for discovery, currently set to close on May 31, 2011. The Estate claims that they need to evaluate whether CBY altered audio recordings of interviews with Kimberly Riedel-Byler CBY police Chief Nichols took during his investigation into the death of Jerry L. Byler.

The Defendant, AAT, filed a *Joinder in Motion to Extend Time for Discovery* at Docket 176. AAT cites the Declaration of Douglas Lacey and "CBY's unwillingness to produce the hard drives from CBY's computers" in support of their Joinder.<sup>18</sup> The court wishes to address AAT's assertion regarding the CBY hard drives. It is apparent from CBY's filings that AAT's statement is misleading and a mischaracterization of CBY's actions. CBY has elected to make the hard drives available but, due to the obvious sensitive nature of the material on the hard drives

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<sup>17</sup>See *Amended Scheduling and Planning Order*, Docket 152, p. 4.

<sup>18</sup>Docket 176, p. 1.

at the CBY Police Department, including information from current investigations and pending criminal cases, CBY is not willing to turn over the hard drives without certain protective safeguards in place.<sup>19</sup> Counsel for CBY further states that the Plaintiff has had duplicate copies of the audio recording in question since July 26, 2010.<sup>20</sup>

The Plaintiff in this matter is not a party to the State case wherein the issue of the audio recordings is being considered. The Defendant, AAT, however, is a party. But, it is not the Defendant who has filed the motion to continue discovery at Docket 175.

A full reading of all filings relating to this motion and the motion at Docket 175 shows that there is little chance the plaintiff in the State case will find evidence that Chief Nichols either altered the audio recordings or perjured himself on the stand in the original tax case between AAT and CBY.<sup>21</sup> In essence, the

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<sup>19</sup> See *CBY's Opposition to Motion to Extend Time*, Docket 182, pp. 9-10. The Estate, in their Request for Production No. 1, Dated December 21, 2010, sought production of: "The hard drive from the desktop computer of the Police Department of the City and Borough of Yakutat on which the original witness interviews from May, 2007 are stored." See *Plaintiff's Second Discovery Requests to Intervenor*, Docket 183-8, p. 2. CBY responded on January 18 by making the hard drives accessible for the Estate to examine and to have a CBY operator available to arrange for duplication of files for the Estate. See Docket 182, p. 10, and *Intervenor CBY's Response to Plaintiff's Second Discovery Requests*, Docket 183-9, Exhibit 9, p. 1-2.

<sup>20</sup> See Docket 182, p. 9.

<sup>21</sup> CBY asserts that the basis for the Estate's theory that the audio recording was altered stems from CBY's conclusion that the interview with Kim Byler ended at 11:07:32 a.m. and the Estate's expert indicates that it ended at 11:07:33 a.m. A difference of one second. See *CBY's Opposition to Estate's Motion to Extend Time for Discovery*, Docket 182, p. 3.

1 A The copy of the first letter.

2 Q Okay. Was there any response from Mr. Byler to your  
3 letter?

4 A Yes, there was.

5 MR. BRENNAN: May I approach, Your Honor?

6 THE COURT: Sure.

7 MR. BRENNAN: Exhibit 68.

8 A Thank you.

9 Q What is exhibit 68, ma'am?

10 A This is a letter from Darren Byler.

11 Q And is it on letterhead?

12 A Yes.

13 Q Whose letter head does it appear to be?

14 A Darren Byler.

15 Q Okay. And does it give an address?

16 A Yes, P. O. Box 641, Whittier, Alaska.

17 Q Is your -- is that the letter you had addressed your  
18 letter to?

19 A Yes.

20 Q And what did Mr. Byler say in his response if you could  
21 just read his response?

22 A This letter is in response to your -- your inquire into  
23 whether or not I am operating in Yakutat. I am not  
24 operating a business or do I plan to operate a business  
25 in Yakutat City or Borough. Sincerely, Darren Byler.

1 Q And that letter was dated what again?

2 A It was dated February 15, 2005.

3 Q All right. Did you have any further contacts with either  
4 Mr. and Mrs. Byler or AAT?

5 A Yes.

6 Q When was that?

7 A That was in February of 2007.

8 MR. BRENNAN: Can I approach, Your Honor?

9 THE COURT: Yes.

10 MR. BRENNAN: It's exhibit 69.

11 A Thank you.

12 Q Can you identify what exhibit 69 is?

13 A It's a letter that I wrote on February 21st, 2007 to  
14 Bylers Alaska Wilderness Adventures, Inc. and Alaska  
15 Adventure Tours, Inc. and Darren Byler.

16 Q Okay. So three addressees, Bylers Alaska Wilderness  
17 Adventures, Inc., Alaskan Adventure Tours, Inc., AAT, I  
18 take it.....

19 A Yes.

20 Q .....and Darren Byler?

21 A Yes.

22 Q And what address were these sent to?

23 A That is P. O. Box 848 in Cordova, Alaska.

24 Q Now, that's a different address than the prior addresses  
25 you'd been sending mail to?

1 A Yes.

2 Q Why did you mail this one to P. O. Box 848 in Cordova?

3 A That was the address that was on the web page.

4 Q Whose web page?

5 A AAT.

6 Q All right. And what did you tell AAT in that letter

7 February 21, 2007 -- or I should say what did you tell

8 Bylers Alaska Wilderness Adventures, AAT and Darren Byler

9 in that letter?

10 A Would you like me to read it?

11 Q Yes.

12 A Okay. According to the State of Alaska Business License

13 Department, you possess both licenses listed above. Your

14 web page also suggests activities within our borough.

15 Therefore, you will be required to apply for a business

16 license and pay the applicable taxes. Enclosed you will

17 find an application and a brochure. Thank you for your

18 time and attention to this matter and look forward to

19 setting you up.

20 Q And did you receive any response of any kind to that

21 letter?

22 A Yes, I did.

23 Q And what response was that?

24 A That was the telephone conversation with Kimberly Byler.

25 Q And how did that come up?

1 A That.....

2 Q I guess what I'm asking is did you call her?

3 A No, she called me.

4 Q All right. And what was -- what did she ask you or what

5 did she talk to you about?

6 A We talked about sales tax and bed -- bed tax issues and

7 the business license.

8 Q And the business license?

9 A Yes.

10 Q All right. How did that come up? Did she ask questions

11 of you or what?

12 A She asked if they -- if they would be required to pay the

13 sales tax and the bed tax and I asked her what she did

14 and she said that they had two large boats that they had

15 -- were going to be taking clients out and they were

16 going to be sleeping and eating on the boats and asked if

17 the bed tax would be applicable and I said yes.

18 Q Okay. Did you -- did -- was there any discussion of

19 whether the sales taxes would be applicable?

20 A Yes, that would be too.

21 Q Okay. And did she explain to you whether there were

22 activities on the land that were associated with their

23 business in addition to the staying on the boat?

24 A Yes, she said that they were hunting bears on the shores.

25 Q All right. Did -- when you explained that to her, did

1 she disagree with you?

2 A No.

3 Q Did she argue with you at all?

4 A No.

5 Q All right.

6 MR. BRENNAN: May I approach, Your Honor?

7 THE COURT: With the exhibit?

8 MR. BRENNAN: Yeah, exhibit J. This is a defense exhibit.

9 If I could use that, counsel?

10 MR. FITZGERALD: Yes.

11 MR. BRENNAN: I believe you put them up here.

12 (Whispered conversation)

13 A Thank you.

14 Q Ms. James, I'll show you what's been marked as exhibit J.

15 Do you recognize that?

16 A Yes, I do.

17 Q What is exhibit J?

18 A It's a picture of an envelope.

19 Q Photocopy of an envelope?

20 A Yes.

21 Q All right. And what does it appear to be a copy of?

22 A It's a copy of a letter that I mailed out to Bylers  
23 Alaska Wilderness Adventures, Inc., Darren Byler to  
24 Cordova, Alaska.

25 Q What address in Cordova, Alaska?

1 A It is Box 848.

2 Q All right. That -- is that the same address as your  
3 letter of a month earlier of February.....

4 A Yes.

5 Q All right. And what was included -- what was enclosed in  
6 that envelope?

7 A By the -- there was the enclosure of a sales tax code,  
8 the business license code, the brochure and also the  
9 business license application.

10 Q All right. Now, if you'll look at the second and third  
11 page of exhibit J, do you recognize what those are?

12 A Yes.

13 Q What are those?

14 A That is a brochure.

15 Q Okay. Is that all that was enclosed in this letter?

16 A No.

17 Q What else was enclosed?

18 A The sales tax. I just.....

19 Q The things you just previously testified to?

20 A Yes, I just -- mm-hmm.

21 Q All right. Now, looking at the first page of the  
22 exhibit, what postage was charged for that envelope?

23 A Eighty-seven cents.

24 Q And if you had just been mailing only this brochure,  
25 would the postage be -- have been 87 cents?

1 A It does, indeed.

2 MR. FITZGERALD: You've been waiting for that, haven't  
3 you?

4 MR. BRENNAN: All day.

5 MR. FITZGERALD: Yeah.

6 Q Okay. Ms. Heideman, do you handle issues relating to  
7 administrative of City and Borough of Yakutat's sales and  
8 bed tax?

9 A I do.

10 Q And did you, in handling that, have an occasion to become  
11 involved in a matter concerning Darren and Kimberly Byler  
12 and a corporation related to them by the name of AAT?

13 A Yes.

14 Q When was that?

15 A It was in late April of 2007.

16 Q And what was your involvement?

17 A Well, I was contacted by borough personnel. I -- I  
18 looked on the web at the occupational licensing and  
19 business licensing websites at the Division of  
20 Corporations and then I wrote a letter to them.

21 Q All right.

22 MR. BRENNAN: May I approach, Your Honor?

23 THE COURT: Yes.

24 MR. BRENNAN: This will be exhibit 4.

25 Q Ms. Heideman, I'll show you what's previously been

1 admitted as exhibit 4 and ask you to identify that.

2 A Yes, this is the letter that I wrote.

3 Q And what was -- who were the addressees?

4 A Let's see, I addressed it to Darren Byler, Jerry Byler  
5 and Alaska Adventure Tours in care of their registered  
6 agent at -- and that one was at two separate addresses.

7 Q What were the two addresses you sent to AAT?

8 A P. O. Box 1469 in Seward and P. O. Box 848 in Cordova.  
9 I.....

10 Q What wa -- go ahead.

11 A Oh, I'm sorry.

12 Q What was your source of those addresses?

13 A The -- the P. O. box in Cordova, that was shown as their  
14 principal office address in the Occupational Licensing  
15 and also Business Licensing website and then at the  
16 Division of Corporations' website, the Cordova address  
17 was shown as their principal office and then the Seward  
18 address was shown as the address for the registered agent  
19 where you serve the corporation with service of process.

20 Q All right. Are corporations in Alaska required to  
21 identify an address for a corporate agent and a corporate  
22 office?

23 A Yes.

24 Q All right. And that in the case of AAT was what?

25 A P. O. Box 1469 in Seward.

1 Q All right. And how was the -- how was your letter mailed  
2 out?  
3 A Just regular first class mail.  
4 Q All right. And was -- is your letter on your firm's  
5 letterhead?  
6 A Yes.  
7 Q Does it indicate your telephone number?  
8 A Yes.  
9 Q And what is that number?  
10 A The -- down at the bottom, 279-5528.  
11 Q All right. And so the letter was sent to AAT at the  
12 Seward address, the Cordova address and then the letters  
13 to Darren Byler and Jerry Byler were both sent to the  
14 Cordova address?  
15 A Correct.  
16 Q And that's P. O. Box 848, Cordova?  
17 A Right.  
18 Q All right. Now, were these letters -- were any of these  
19 letters returned as undeliverable?  
20 A Only the one addressed to AAT to the Seward address. The  
21 other three were not.  
22 Q Have you reviewed your office file to confirm that?  
23 A Yes, I have the envelope for the -- the Seward letter.  
24 Q All right. Did you receive any written response to that  
25 letter?

1 A No.

2 Q All right. Now, the letter, what did it basically notify

3 AAT what was required?

4 A That they should apply for and obtain a borough business

5 license and that they were subject to the sales and --

6 and bed tax of the borough and needed to file tax

7 returns, collect and pay over the tax and file tax

8 returns.

9 Q Did you indicate any potential consequence if they did

10 not do so?

11 A Yes, that we would proceed with whatever we needed to do,

12 legal remedies, if -- if they didn't.

13 Q All right. Following your sending that letter, did you

14 have any communications with either Kimberly Byler or

15 Darren Byler?

16 A Darren Byler.

17 Q What communication was that?

18 A He telephoned me the following month.

19 Q Do you know the date of that telephone call?

20 A May 31st.

21 Q All right. And did you talk to him?

22 A I did.

23 Q And had you ever talked to him before that time?

24 A No.

25 Q Have you ever talked to him since that time?

1 A No.

2 Q What was discussed?

3 A Well, we discussed the activities that his company was  
4 conducting within the borough and the application of the  
5 borough sales tax to -- to those activities.

6 Q Did he raise that issue or did you?

7 A No, he -- he initiated the phone call so he told me why  
8 he didn't think he was subject to the tax.

9 Q All right. And what response did you give Mr. Byler?

10 A Oh, I -- I told him I thought he was, that those  
11 activities were subject to the sales tax and that -- he  
12 had indicated he'd gotten legal advice that -- that -- to  
13 the effect that he didn't have to -- to collect and pay  
14 over the tax and I told him if that was the case, I  
15 thought he'd gotten erroneous legal advice and -- and he  
16 needed to do that, he needed to comply with the borough  
17 law.

18 Q All right. Do you have a general recollection as to how  
19 long this conversation lasted?

20 A It was less than 10 minutes.

21 Q All right. And how did it end, the conversation?

22 A Well, he -- he just wasn't there anymore. I don't know  
23 if he hung up or if he got cut off but it ended abruptly.

24 Q Did he indicate what type of telephone he was calling you  
25 on?

1 A He said a satellite phone.

2 Q All right. Sometimes known as a sat phone?

3 A I guess.

4 Q Okay. Did you make any contemporaneous records of that

5 call? By contemporaneous, I mean about the same time as

6 the call or shortly thereafter?

7 A I made some notes of the phone call and I also indicated

8 the phone call in my -- on my time sheet.

9 MR. BRENNAN: May I approach, Your Honor?

10 THE COURT: You may.

11 Q Okay. Ms. Heideman, I've handed you two exhibits and the

12 first one I'd like you to address is exhibit 10. Can you

13 tell the jury what that is?

14 A That's one of my time sheets, the time sheet for a

15 portion of May 31st of 2007. A time sheet is what

16 lawyers use to keep track of their time to bill you --

17 bill your clients.

18 Q Is it your practice to keep your time sheets

19 contemporaneous with your activity?

20 A Yes.

21 Q And does that exhibit have any information redacted or

22 deleted from it?

23 A It does.

24 Q What type of information is deleted?

25 A The non-Yakutat information.

1 Q Is that for purposes of this exhibit that you  
2 deleted.....

3 A Yes. Yes.

4 Q All right.

5 A The original would have that on there.

6 Q What was your purpose in deleting that information?

7 A Well, just to delete information about other clients that  
8 aren't related to this matter.

9 Q All right. With respect to the reference -- is there a  
10 reference on there to your telephone conversation with  
11 Mr. Byler?

12 A Yes.

13 Q And would you read to the jury what that reference is?

14 A It has the -- well, there's a number of different  
15 columns. There's a date column, there's the client name  
16 which says CBY which is Yakutat. There's the account  
17 which is the account number. Our office is assigned to  
18 them. Then it says telephone -- well, it's -- actually  
19 says T with a circle which means telephone from Byler and  
20 then there's a -- a time which is .17 which is we bill in  
21 -- in increments of five to 10 minutes and so that's a --  
22 indicates it was a call that lasted between five or 10  
23 minutes, closer to 10.

24 Q And is that in accord with your recollection of the  
25 telephone conversation?

1 A Yes.

2 Q All right. If you could turn your attention to

3 exhibit 9?

4 A Okay.

5 Q And what are -- what is exhibit 9?

6 A These are the -- the notes I made of the -- of the phone

7 call.

8 Q All right.

9 MR. BRENNAN: With the court's permission, Your Honor,

10 I'd like to position a blowup of that exhibit for the witness

11 to reference.

12 THE COURT: Any objection?

13 MR. FITZGERALD: No.

14 THE COURT: Go ahead.

15 Q Can you see that?

16 A I can.

17 Q All right. I don't know how well the jurors can see it

18 but, unfortunately, we have to have her see it to discuss

19 it so -- okay. Is that a blowup of exhibit 9, Ms.

20 Heideman?

21 A Yes.

22 Q All right. And would you tell us what each line of that

23 exhibit 9 says?

24 A Well, the first line says Darren Byler. The -- over in

25 the -- sort of more towards the upper right is a -- a

1 file number that I -- internal filing number I use to  
2 make sure my notes get in the right file. The next line  
3 has a T circled and it says telephoning by satellite  
4 phone and then it says one sell -- that's the nil sign so  
5 sell nothing in borough, no offices in CBY, fly into CBY.  
6 Two says meal slash lodging on water. Three says others  
7 not paying.

8 Q Okay. Just -- let's go over that one more time to be  
9 clear on it. So the first numbered item was sell nothing  
10 in the borough?

11 A Yes, that's what Mr. Byler indicated to me.

12 Q All right. That they were sell -- and they weren't  
13 selling anything in the borough?

14 A Right, and that they had no offices in the borough, no  
15 fly into CBY. That's indication that his clients fly  
16 into the community of Yakutat.

17 Q By CBY, you mean what?

18 A City and Borough of Yakutat.

19 Q Okay. So that was your notation to indicate that Mr.  
20 Byler was saying his clients fly into the City and  
21 Borough of Yakutat?

22 A Yes.

23 Q All right. And number two again means what?

24 A He was -- this is what he indicated to me, that he had  
25 talked to a lawyer and a lawyer had told him because the

1 lodging was on the water, that it wasn't subject to the  
2 tax which is the item, I think, my recollection, we  
3 talked the most about. So that's my note that those are  
4 provided on -- on a boat that's -- was anchored in Icy  
5 Bay on the water and, three, others not paying, he was  
6 indicating that there are other guides out there that --  
7 that weren't collecting and paying over the sales tax.

8 Q Did he identify any of those?

9 A No, actually, and what I indicated is that we do our best  
10 to -- to stay on it to make sure that the borough applies  
11 that tax uniformly to the extent they can and that if he  
12 wanted to provide names to the borough, they would make  
13 sure and follow up on it.

14 Q All right. And that was the gist of the conversation,  
15 what your notes indicate there?

16 A Yes.

17 Q All right. And despite the things Mr. Byler told you,  
18 you -- what was your indication to him?

19 A That his activities were subject to the -- to the  
20 borough's sales and bed tax.

21 Q Did you have the impression in this conversation that he  
22 was already aware of the fact that there was a -- an  
23 issue of sales tax application to AAT?

24 MR. FITZGERALD: Objection, calls for speculation.

25 THE COURT: Sustained.

1 MR. BRENNAN: All right. I'll withdraw that.

2 Q Do you ever see any telephone billing records relating to

3 this call?

4 A Yes.

5 Q Now, you were the recipient of the call, correct?

6 A Correct.

7 Q So you wouldn't have billing records yourself?

8 A No.

9 Q All right. What records did you see?

10 A The -- we -- we obtained records of the satellite phone

11 company that provided the service to -- to his company.

12 Q To Mr. Byler's company?

13 A Yes.

14 Q And how did you obtain those records?

15 A Well, they had produced some records, a set of records

16 that did not show the phone call on there. It was

17 confusing. There was no name of customer of the -- of

18 the -- the sat phone and so we obtained a release from

19 the defendants and -- and took that release to the

20 satellite phone company and then obtained additional

21 records which appeared to be for a second sat phone and

22 the phone call appears on those records.

23 Q Okay. You said they had a -- when you said they had

24 produced a set of phone records that did not include this

25 phone call, who do you mean by they?

1 A I'm sorry, the defendants had.

2 Q All right. And I'll ask you to refer to exhibit 13. Do

3 you have that there?

4 A No.

5 Q All right. Ms. Heideman, do you recognize exhibit 13?

6 A Yes.

7 Q What is that?

8 A These are the phone records we obtained directly from the

9 -- the satellite phone provider.

10 Q Do you know where that provider was located?

11 A I don't remember.

12 Q All right.

13 A It was hard to get them I remember.

14 MR. BRENNAN: And, Your Honor, I'd like to show a blowup

15 of a portion of this exhibit if that's acceptable. It's the

16 lower part of the last page of the exhibit. This is.....

17 THE COURT: Page 12?

18 MR. BRENNAN: Actu.....

19 MR. FITZGERALD: Page 11, Judge.

20 MR. BRENNAN: It's page 11 of 12.

21 THE COURT: Oh, okay. Page 11?

22 MR. BRENNAN: Yeah, it's the lower part of that billing

23 statement and it includes the -- but it does include the

24 column headings at the top of that page.

25 MR. FITZGERALD: Oh, so you've just spliced it together?

1 MR. BRENNAN: I've just spliced it together to make it  
2 more visible.

3 MR. FITZGERALD: Judge, I've got no objection. There's  
4 been a stipulation with regard to the admission of these  
5 records that were produced by records release.

6 THE COURT: Okay.

7 MR. BRENNAN: May I approach?

8 THE COURT: You may.

9 Q Can you see that, Ms. Heideman?

10 A Yes.

11 Q All right. And the blowup I have placed before you  
12 there, does that correspond to any of the pages of  
13 exhibit 13?

14 A Yes, pa -- page 11.

15 Q All right. And does that include the billing information  
16 for May 31st, 2007?

17 A Yes, looks like the.....

18 MR. FITZGERALD: Judge, may I just look at the exhibit for  
19 a moment?

20 THE COURT: Sure.

21 MR. FITZGERALD: (Indiscernible - whispering).

22 MR. BRENNAN: Sure.

23 Q So that includes a portion of billing statements for a  
24 sat phone number for May 31st, 2007?

25 A Yes.

1 Q All right. And this is a sat phone which is identified  
2 as being whose satellite telephone?  
3 A Alaskan Adventure Tours, Inc.  
4 Q All right. And do you see your firm's telephone number  
5 on that?  
6 A Yes, it's the ninth one down.  
7 Q Nine one from the top?  
8 A Yes and the top of the list is -- yeah.  
9 MR. BRENNAN: May I approach, Your Honor?  
10 THE COURT: Sure.  
11 A If I counted right.  
12 Q So you're talking about this one right here?  
13 A Yes.  
14 Q All right. Now, did these -- oh, I guess you can't hear  
15 me unless I'm in front of the mike. Do these calls  
16 indicate how many minutes they lasted?  
17 A The -- the air time is shown in units of minutes. It  
18 says 8.5 for that call.  
19 Q Is that the -- this call here?  
20 A Yes.  
21 Q All right. And that's where it's 8.50?  
22 A Yeah, and then there's an air time charge that's 8.42.  
23 Q Air time charge, 8.42?  
24 A Yeah.  
25 Q If that billing record shows that the call lasted 8-1/2

1 minutes, would that be consistent with your recollection?

2 A Yes.

3 Q All right. Are you aware that Mr. Byler, Mr. Darren  
4 Byler, recently claimed that you called him and that his  
5 call to you was a res -- a return of your call and that  
6 he was put on hold while he called you and then never got  
7 a chance to talk to you?

8 A Yes.

9 MR. FITZGERALD: Objection as to both argumentative and  
10 compound.

11 THE COURT: It is compound.

12 MR. BRENNAN: Well, it -- I'll break it up.

13 Q Are you aware that Mr. Byler has recently intended in a  
14 deposition in a sworn statement that he called you on  
15 May 31st to return a phone call you had placed to him?

16 A Yes, I'm aware of that testimony.

17 Q And are you aware that he has contended that he was put  
18 on hold, was unable to talk to you and, therefore,  
19 terminated the telephone call?

20 A Yes, I'm aware that he's testified to that.

21 Q And are you aware that he has testified that he left you  
22 a message to call him back?

23 A Yes.

24 Q All right. Is any of that testimony true?

25 A No, I -- I spoke to him.

1 Q Okay. And did you call him first?

2 A I don't think I did. I don't have any recollection of  
3 ever calling him. It would be really unusual for me to  
4 call a -- a potential taxpayer or seller directly. I  
5 don't have any recollection of -- of making a call or  
6 even thinking about making a call or -- or leaving a  
7 message. I looked through my notes after he testified to  
8 that. I didn't see anything in my notes or in my time  
9 sheets. I think it's highly improbable. I'm not -- you  
10 know, I've -- I'm not a thousand percent certain but I'm  
11 about 999 percent certain I didn't phone him.

12 Q How certain are you that you talked to him?

13 A I'm certain I talked to him.

14 Q All right. Did I suggest to you that you, nevertheless,  
15 despite your certainty, check the law firm's records to  
16 see whether a telephone message had been left on  
17 May 31st, 2007 for you by Mr. Byler?

18 A You did.

19 Q And does your law firm maintain records of telephone  
20 slips?

21 A We do.

22 Q And did you check the records for that date?

23 MR. FITZGERALD: Judge, I -- I'm going to object unless  
24 the records are produced. I mean, there's no ability for me  
25 to examine the statement unless the records have been

1 produced.

2 MR. BRENNAN: Well, the records that would be produced  
3 would largely consist of communications with other clients,  
4 records of those communications.

5 MR. FITZGERALD: I appreciate that but.....

6 THE COURT: Why don't we move on? We can come back to  
7 this after a break.....

8 MR. BRENNAN: All right.

9 THE COURT: .....if necessary.

10 Q When did you first learn that this was Mr. Byler's  
11 contention that he was simply returning a call you had  
12 made to him?

13 A In mid-January at -- after his deposition was taken.

14 Q Mid-January this year?

15 A Yes.

16 Q Approximately a month ago?

17 A Yes.

18 Q All right. And this -- was this after you had been able  
19 to obtain this sat phone record confirming that a call  
20 had been made from Mr. Byler to you on May 31?

21 A Yes.

22 Q And this is the first time you heard this contention that  
23 he had called you.....

24 A Yes.

25 Q .....in return -- in response to a call from you?

1 A Yes.

2 Q All right. Did you have -- have you had occasion in --  
3 now, let me ask you this, you handled the underlying  
4 lawsuit in this case by which the City and Borough of  
5 Yakutat obtained a judgment against AAT, is that correct?

6 A Yes.

7 Q On the tax matter?

8 A Yes.

9 Q And in that -- in the proceedings in that lawsuit, did  
10 you have occasion to file an affidavit in which you set  
11 forth the substance of what your testimony is here today  
12 that Mr. Byler called you on May 31 to discuss sales tax  
13 application to AAT?

14 A Yes, in conjunction with a -- a motion that I filed in  
15 that case, I filed an affidavit in -- in mid-2008 setting  
16 out my phone conversation with him.

17 Q And the motion that you were filing that in, was it an  
18 important motion?

19 A Yes.

20 Q What kind of motion was it?

21 A It's a motion for summary judgment is what it's called.  
22 It's to dispose of a -- the whole case in -- in that one.  
23 Sometimes you can do a partial summary judgment, dispose  
24 of a -- a finite issue but, yes, it's a significant  
25 motion.

1 THE COURT: Do you plan to tie it up?

2 MR. BRENNAN: I plan to tie it up.

3 THE COURT: Okay. If you're going to tie it up, I'll  
4 allow it. Go ahead and answer the question.

5 A Going to have to ask it again.

6 Q You recall the question? All right. So even if the City  
7 and Borough of Yakutat had attempted to file a sales tax  
8 against cruise ships and their sales to their own  
9 passengers, would that have been enforceable?

10 A Not under the state law.

11 Q All right.

12 MR. BRENNAN: May I approach, Your Honor?

13 THE COURT: Yes.

14 Q Show you -- I'll show you what's been marked as  
15 exhibit 14. Can you identify that?

16 A Yes, it's the original notice of tax lien that the  
17 borough filed against AAT and Mr. Byler.

18 Q And when was that lien signed?

19 A December 5th, 2007.

20 Q Who prepared that notice of tax lien?

21 A I did.

22 Q Okay. And who signed it?

23 A Cathy Bremner. She was the interim borough manager at  
24 the time.

25 Q All right. And was that lien recorded?

1 A Yes, the recording stamp is up in the upper right-hand  
2 corner.  
3 Q Who arranged for the recording?  
4 A I did.  
5 Q All right. When was it recorded?  
6 A December 14th, 2007.  
7 Q All right.  
8 MR. BRENNAN: May I approach, Your Honor?  
9 THE COURT: Sure.  
10 Q Exhibit 8. Would you identify exhibit 8, Ms. Heideman?  
11 A Yes, it's a letter that I wrote.  
12 Q To who?  
13 A To Darren Byler at Alaska Adventure Tours on  
14 December 20th, 2007 enclosing a -- a copy of the -- the  
15 tax lien that's -- that you just handed to me.  
16 Q All right. So you sent that out on December 20, 2007 to  
17 Alaskan Adventure Tours?  
18 A Yes, at the Cordova address.  
19 Q Which address was that?  
20 A The Box 848.  
21 Q All right. And was that letter returned to you as  
22 undeliverable?  
23 A No.  
24 Q All right. Did you bring the City and Borough of  
25 Yakutat's lawsuit against AAT?

1 A Morning.

2 Q Have we met before this trial?

3 A Telephonically.

4 Q You were interviewed by me over the telephone in a couple  
5 of hearings, correct?

6 A Correct.

7 Q All right. And I heard you give your name here as  
8 Kimberly Christina Riedel-Byler.

9 A Correct.

10 Q Have you used other names, ma'am, in business-related  
11 matters?

12 A Yes, I have.

13 Q And what names are those?

14 A K. Christina Riedel, K. Chris Riedel.

15 Q How about Kimberly C. Riedel?

16 A I'm not sure about that.

17 Q Do you use Kimberly Riedel-Byler?

18 A I have.

19 Q And have you used Kimberly Byler?

20 A Pertaining to business?

21 Q Yes.

22 A I perhaps may have signed something that way.

23 Q All right. Do you mind if I call you Ms. Byler? Would  
24 that -- I don't want to be offensive.

25 A That's fine.

1 THE COURT: If you could just answer the question that's  
2 being put to you, please?

3 A Sorry, ma'am.

4 THE COURT: Thank you.

5 A Sorry, Judge.

6 THE COURT: It's just that our -- we -- our time is  
7 limited and so if you could limit yourself to just answering  
8 his questions?

9 Q All right. Ms. Byler, would you take a look at exhibit  
10 67 in front of you?

11 A Okay.

12 Q And that's a letter from -- again, from Ms. James of the  
13 City and Borough of Yakutat dated February 3, 2005, is it  
14 not?

15 A Yes.

16 Q And then would you look at exhibit 68?

17 A Okay.

18 Q ~~Does that appear to~~ be on your husband's letterhead,  
19 Darren Byler, P. O. Box 641, Whittier?

20 A Yes.

21 Q And your husband responds to Ms. James that -- and I'll  
22 just read it, this letter is in response to your inquiry  
23 into whether or not I am operating in Yakutat. I am not  
24 operating a business or do I plan to operate a business  
25 in Yakutat City or Borough, correct? Have I read that

1 right?

2 A Yeah, you read it out loud. Yup, that's it.

3 Q Oh, okay. Did you discuss this matter with your husband  
4 when it came in when he received this letter?

5 A Well, this is 2005. I -- I'm -- I'm sure probably we --  
6 we talked about it and I -- I probably even helped him  
7 type this. He doesn't type very well but what would you  
8 like to know about it?

9 Q That's fine, I just wanted to know that you knew and we  
10 can move on. So would you look at exhibit 69?

11 A Is that this one?

12 Q Yes, it is.

13 A Okay. Do you have a cleaner copy?

14 Q And that -- no, but can you -- are you having trouble  
15 reading it?

16 A Well, yeah, there's a lot of.....

17 Q I think all of ours are the same so.....

18 A Oh, okay.

19 Q And after you get a chance to look at it, my question  
20 will be whether you have seen that letter before.

21 A No, I've never seen this letter.

22 Q All right. And it's.....

23 MR. FITZGERALD: Your question was directed with regard to  
24 prior to the litigation?

25 MR. BRENNAN: Yes, prior to the litigation, had you ever

1 mean, there's nothing to check on.

2 Q Mm-hmm. Did you talk to the post office about where that

3 mailing was?

4 A No.

5 Q All right. Okay. Let's move ahead. Actually, let's

6 back up a little bit. Let me.....

7 MR. BRENNAN: May I approach, Your Honor?

8 THE COURT: Yes.

9 Q Let's.....

10 THE COURT: I'm sorry, you handed her an exhibit?

11 MR. BRENNAN: Yes, I handed her exhibit 43. I'm sorry.

12 THE COURT: 43?

13 MR. BRENNAN: Yes.

14 Q Ms. Byler, do you recognize exhibit 43?

15 A Yes, I do.

16 Q Is that a bank statement of Alaskan Adventure Tours with

17 the Cordova branch of First National Bank of Alaska?

18 A Yes, it is.

19 Q And what activity is reported there for the month of

20 November, 2007?

21 A Well, there's withdrawals.

22 Q There's withdrawals of how much?

23 A You want me to list them line item or just add it up?

24 A Well, let me just ask you is there a total of \$91,000 of

25 withdrawals that's made over a period of three days

1 starting November 16?

2 A Mm-hmm.

3 Q Did you make those withdrawals from the AAT bank account?

4 A Yes.

5 Q Was there much -- how much was left in the bank account  
6 after you finished doing that?

7 A \$835.87.

8 Q All right. And did you transfer all of AAT's assets to  
9 yourself in early 2008?

10 A All of the assets? Yeah.

11 Q Thank you. Did AAT have anything left when you were done  
12 doing that, any assets?

13 A No, it didn't have any property or anything.

14 Q All right.

15 MR. BRENNAN: May I approach, Your Honor?

16 THE COURT: Yes.

17 Q This is exhibit 17 through 20 and 23. Ms. Byler, take a  
18 moment to take a look at exhibit 17 through 20 and 23 and  
19 once you have done so, my question for you is going to be  
20 whether these are disbursement agreements all signed  
21 January 10, 2008, each of which transferred a vessel to  
22 you for a total of five vessels.

23 A Did you say 17 through 23?

24 Q 17 through 20 -- 17, 18, 19, 20 and 23.

25 A Okay. Gotcha. Okay. I'm familiar with these, yes.

1 MR. BRENNAN: Exhibit 29. I don't seem to have that here.  
2 Do you have that, Madam Clerk, 29?

3 THE CLERK: I.....

4 Q I think we were just using it. I think you have it.

5 A 29? What is it?

6 Q Yeah, it was that occupational licensing file.

7 A That?

8 Q There it is.

9 A Mm-hmm.

10 THE COURT: She has it.

11 THE CLERK: Okay. Because that's third.

12 Q All right. Again, this is a packet of documents --  
13 certified copies of documents received from the.....

14 A Mm-hmm.

15 Q .....State Division of Corporations Business and  
16 Professional Licensing. Can you look at page two of that  
17 exhibit?

18 A Yup.

19 MR. BRENNAN: And, again, Your Honor, I have a blowup of  
20 that exhibit.

21 THE COURT: Okay. You might want to put it a little  
22 closer.

23 MR. BRENNAN: I think I will do that.

24 Q All right. Ms. Byler, what is page two of exhibit 29?

25 A It's a assignment of assets utilizing the SOUND ADVENTURE

1 value. What letterhead is that on?

2 A That's on Alaskan Adventure Tour letterhead.

3 Q Darren Byler's Alaskan Adventure Tours?

4 A Yes.

5 Q All right. And this was in February, 2008?

6 A Yes.

7 Q I'm a little confused here. I thought the vessel had  
8 been transferred to you personally by February of 2008.

9 A It had.

10 Q And yet this is on Alaskan Adventure Tours letterhead?

11 A Yeah.

12 Q And you signed it not individually but as president of  
13 Alaskan Adventure Tours, Inc.?

14 A Mm-hmm.

15 Q Is that a yes?

16 A Yes.

17 Q All right. Can you.....

18 MR. BRENNAN: I think I'll take this exhibit down because  
19 some jurors can't see the witness.

20 Q Ms. Byler, when was the estimate of \$50,000 on the SOUND  
21 ADVENTURE made?

22 A Oh, that would have been probably November, December-ish.

23 Q November or December of 2007?

24 A Yeah.

25 Q And.....