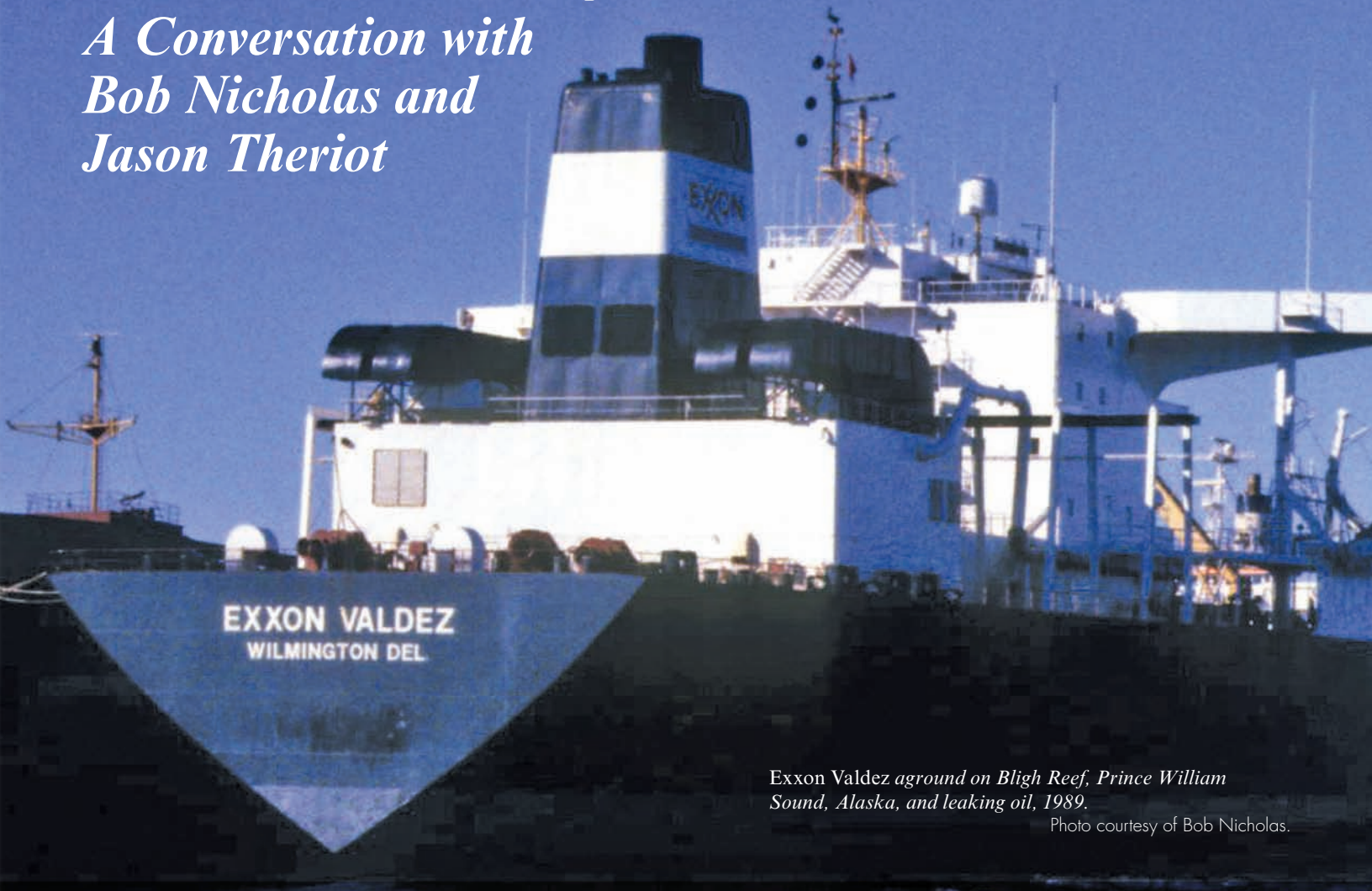
Witness to the Day of Reckoning: *Exxon Valdez* Oil Spill, March 24, 1989

A Conversation with Bob Nicholas and Jason Theriot



Exxon Valdez *aground on Bligh Reef, Prince William Sound, Alaska, and leaking oil, 1989.*
Photo courtesy of Bob Nicholas.

On March 24, 1989, the U.S. oil industry encountered a day of reckoning. Just after midnight, the *Exxon Valdez* supertanker carrying Alaskan crude to California ran aground on Bligh Reef in Prince William Sound, Alaska, spilling nearly eleven million gallons of oil into one of the nation's most beautiful coastal habitats. At the time, this was the largest oil spill in history in American waters.

Although it occurred thousands of miles away from Houston, this disaster had strong connections to our region. Exxon USA, headquartered in downtown Houston, was the Exxon subsidiary responsible for the *Exxon Valdez*. In the days just after the spill, numerous Exxon USA employees were summoned to Alaska to join the company's effort to get the spill under control.

On the morning after the spill, Bob Nicholas, a Port Arthur, Texas, native and General Counsel for Exxon Shipping Company, received an urgent telephone call at his Houston home. Within hours, he and a crew of Exxon representatives flew to Valdez, Alaska, to respond to this disaster. Before the end of the day, he was on board the *Exxon Valdez*, which was still aground on Bligh Reef.

In the wake of the *Valdez* tragedy, Congress passed its most stringent oil pollution legislation of the twentieth century: the Oil Pollution Act of 1990 (OPA-90). In this issue of the *Houston History* magazine, Mr. Nicholas, who has practiced maritime law in Houston for nearly thiry years, shares his personal experience in this historic event and discusses the impact of the OPA 90 legislation on the Houston Ship Channel and Galveston Bay.

JASON THERIOT (JT): What was your immediate reaction to the telephone call that you received on March 24, 1989?

BOB NICHOLAS (BN): I remember I was about to leave my house. It was Good Friday. It was a holiday, and I was on my way down to my sailboat. I was just packing stuff in the car, and my wife came out and said, "There is a phone call from Captain Bill Duncan."… The first thing I heard was that the *Exxon Valdez* had run aground in Prince William Sound and that I needed to get to Intercontinental Airport to meet at the Exxon terminal as soon as possible. That's where the group was gathering to fly up to Valdez.

Retired from ExxonMobil (1998), Bob Nicholas currently practices Admiralty and Maritime law with the firm of Phelps Dunbar in Houston, Texas.

Photo courtesy of Bob Nicholas.

It was kind of funny—I remembered one of the things I packed was a suit, anticipating that I might have to go to some kind of Coast Guard hearing. Everything I did was based upon the routine that I had been doing for many years in responding to a marine casualty. As it turned out, though, the reality and the magnitude of *Valdez* was totally different. It was a completely different experience from anything I had ever been involved with in connection with a marine casualty. This was brought about because of the huge media blitz and the large amount of oil that was spilled. This was a major environmental event and not just another ship casualty. The fact that it was a huge environmental event dictated the type of response…. [T]he response was more aimed at the containment and clean up efforts. The salvage of the ship and what happened to the ship afterwards was of little consequence at the time, given the magnitude of the oil spill.

When we got into Prince William Sound, I can remember we flew over the ship, and the oil at that time was one huge slick that you could see out in the middle of Prince William Sound. This was before it had dispersed and was blown all over the place by the heavy weather that occurred two days later. We landed there some time, I guess, between three and four in the afternoon local time. At the airport, we were met by Captain Bill Deppe. I was asked by Frank Iarossi, president of Exxon Shipping Company, to take him out to the ship and relieve Captain Joe Hazelwood and find out what happened. We went out to the ship on a small fishing boat. It took several hours, and we didn't arrive until after dark. The ship was still lit up. The water was very calm out there at the time. There were floating pieces of ice all over the place. In fact, as we approached the ship, the person piloting the small boat that we were on turned on a spotlight to pick our way through the ice pieces. When we were about halfway there, the light burned out. All I could remember thinking was, "Oh boy, it is going to be fun going back. We are going to have to go back through all this ice in the dark." When [we] got to the ship and got on board, I met with the Captain Hazelwood and the third mate, [Gregory T.] Cousins, who was the actual mate on watch at the time of the grounding. I spent some time with them talking to them about what had happened. I wanted to get a rough thumbnail sketch of what their remembrance was of the events before and after the grounding. After speaking with them, I went about gathering documents.

High-pressure steam-cleaning the beaches of Prince William Sound.

Photo courtesy of Charles Ehler/National Oceanic & Atmospheric Administration (NOAA).

JT: You mentioned that Prince William Sound is very, very dark at night. With all your years of experience as a maritime attorney and the life experiences that you bring, were you getting a sense of how dark and spooky, and how the weather played a factor in all of this?

BN: Oh, no question about it…. When you get to a place like Prince William Sound and there are mountains all around, and there are no large population centers, you don't have any huge concentrations of light being reflected off the cloud layer. There was still a lot of snow around, so you did get some light, but in the absence of light there is nothing to be reflected. It is extremely dark. It was very, very dark out there that night. When we finally saw the ship, it was all lit up, just ablaze with lights, because it was the only light source out there. But yes, I can imagine going through there, and it being that dark, especially if you have cloud cover. And it was kind of cloudy. In fact, I don't remember very many clear nights while I was there in Valdez.

JT: What occurred in those thirty minutes when the ship actually maneuvered off course to avoid the icebergs?

BN: They [*Valdez* crew] had gotten some information from a ship that had left earlier that there was a considerable amount of ice in the traffic lanes. Prince William Sound has a traffic separation scheme in place…. If you look at a navigation chart of the area, you will see there are designated

lanes for inbound and outbound traffic. In the separation scheme, there is a zone between the two, the south and northbound lanes. They were outbound, of course, in the southbound lane…. They requested permission [from the Coast Guard area vessel traffic service] to leave the lane to go around some ice, and as I was told by Captain Hazelwood, he had instructed the mate [Cousins] on watch before he left the bridge to turn back into the traffic lanes when they got abeam of, or directly adjacent to, Busby Island Light. Busby Island Light is on a little rock protrusion sticking up where they have installed a navigation aid that blinks at night. At that point, Cousins was supposed to turn back into the traffic lanes.

I noticed from looking at the chart, a piece of the chart that I had copied that was being used that night, there was a position marked just inside the southbound lane. The next position was marked at a point almost due south, 180 degrees from the earlier position. There was another position marked on the chart directly abeam of or adjacent to Busby Island Light. While this point was marked on the chart, you can look further south and see the point of impact on the area nearby Bligh Reef. Bligh Reef is shown on the chart as a reef, but it is really just shallow water with lots of rocks…. There is a navigation light that marks the reef. If you were southbound in the direction they were headed, the light would have appeared off their starboard bow or off to the right of the forward part of the ship. Actually, the lookout, the person sailing who happened to be a third mate, reported the light on the starboard side; but for some reason the ship did not begin to turn until it was too far south and in the vicinity of the shallow water where it actually went aground. It is interesting to note that in looking at the course recorder—which is a paper roll recording device that is attached to the ship that operates off of and takes signals from the ship's gyrocompass—in my mind, it indicated that the ship was about ten minutes on autopilot. The mate on watch at the time indicated that they had taken it off autopilot and had started to turn, but obviously the ship did not turn at the anticipated location. Obviously, it went aground. The facts are as they are. The ship did not turn, and it did not go back into the traffic lanes when they were abeam off Busby Island Light. I have often wondered about that ten minute segment of time, and what actually happened. With respect to whether they were able to disengage or thought they had disengaged the autopilot, all of these things have been speculated on by those involved, including me.

JT: What damage did you see in the flyover?

BN: You could see the spill, but it was massive. What I remember about the oil slick and how massive it was…. There was a small vessel that looked like it was attempting to string out some boom, but the oil slick was a thousand times larger. It looked like a toy on one end with a little string of boom, and here is this massive slick, which extended out several miles away from the vessel. To surround the spill, they would have had to have a thousand times more boom. This is my guess. It is what I thought when we were flying over and looking down at the oil. It would have required a lot more boom than was out there to actually surround this huge massive slick.

JT: What was the mood of the locals, of the media, and of the people involved with Exxon?

BN: The media was very hostile. It was difficult to do your job sometimes.

JT: Had anything in your previous experience prepared you for those fifteen days up there? Did you feel that you were prepared well enough?

BN: You just did the best you could. The worst problem you had was trying to stay focused on your job. Things were constantly changing. You had to do stuff so rapidly and so quickly, and not being able to get any sleep made it worse. We all went for days with little or no sleep. I don't think I ever stayed up twenty-four hours, but I know I was up those first few days probably a good twenty hours a day or more. It takes its toll on you after a while. I saw people walking around like zombies, barely able to function after that length of time. The constant bombardment of requests to do this, do that, as quickly as possible made the stress unbelievable.

For me it was a tough fifteen days, but it was really only the beginning. After we got back—all the work we had to do and things that had to be done were overwhelming. It was very, very stressful for a very long time.

JT: Was the U.S. prepared for an oil spill the size of the *Exxon Valdez*?

BN: The answer is obviously no—from the documents that came out after the spill and for many years later it was clear no one was ready for such a massive spill. Even before *Valdez* happened, there were a number of things, I think that pointed to the fact that the answer would be no. First of all, there had never been a spill of that magnitude in the U.S. There were larger spills but the spills had not occurred in the U.S. Even the spill involving the *Torrey Canyon* back in 1967 was not this large. Only the *Amoco Cadiz* spill off the coast of France could rival the *Valdez* spill. Of course, the ships were not as large either, and that makes the difference. There was a very large spill from a Shell vessel down in the Strait of Magellan … larger than the *Exxon Valdez* spill … Unfortunately, it did occur in a pristine environmental area, but it was so far removed from civilization it did not

Oil skimming operations in Prince William Sound.
Photo courtesy of Charles Ehler/National Oceanic & Atmospheric Administration (NOAA).

get the press. Also, I doubt if there was any clean up or any response available at all. At that time, they probably just let nature take care of it.

With the *Valdez*, all of the spill response planning was for a much smaller spill than the *Exxon Valdez* spill. There were no regulatory requirements that required the level of spill response capability that would have been needed. There were some resources available; but what actually happened was in order to cope with a spill of that magnitude, Exxon had to gear up to actually handle the volume of the spill by flying in massive amounts of equipment. Just mobilizing for the cleanup required a massive transportation effort to move all the spill response equipment—skimmers, boom, all types of spill response equipment, including people. Alaska's population is small—the population of Valdez could not have handled the problem. The Alaska resources that were mobilized were primarily fishing boats that were used to take equipment and people out to the response areas. But yes, definitely this was not a situation where the country was prepared. I think even the Coast Guard commented, if it had to be anybody, they were glad it was Exxon because of their vast financial resources and their ability to respond, given the magnitude of the spill. No one else could have responded in a very large way. What people do not realize, in spite of the litigation and the lawsuits and everything else—Exxon spent about $4 billion up there just on cleanup efforts, $4 billion. [In addition, although the *Valdez* lost about 250,000 barrels of oil, lightering ships were able to transfer about 1,000,000 barrels of oil off the *Valdez* before the tanker was moved south for repairs in California.]

There is no question in my mind this event was absolutely a hundred percent preventable. You had one person involved in creating an error chain, and no procedures in place to prevent that error chain from being broken. Procedures were in place, but as was learned, they needed to be more effective. You are going to have plane crashes, you are going to have whatever kinds of casualties, ship collisions, ship groundings, because you've got one person up there doing everything; and if they make a mistake, and that mistake is not caught by somebody else, … that is what can happen.

After *Valdez*, Exxon Shipping began a training program referred to as "bridge team training" with the idea in mind of having more than one person involved in the navigation process. Coast Guard regulations now require—that was one of the things that came out in OPA 90 [Oil Polution Act of 1990]—that you have to have more than one navigation officer on the bridge of the ship when you are in Prince William Sound and in other areas.

JT: How did OPA differ from previous laws, and why had Congress waited so long to pass effective legislation?

BN: I think the magnitude of the spill was the driving force behind the Oil Pollution Act of 1990 and its amendments. I say "amendments"—the Oil Pollution Act of 1990—if you look at it, it is as a series of amendments to a large number of existing statutory provisions that were already in effect. The main liability provisions, the proof

Exxon Valdez *transferring crude to the lightering ship,* Exxon Baton Rouge*, Prince William Sound, Alaska, 1989.*
Photo courtesy of Bob Nicholas.

of financial responsibility requirements, and the limits of liability, those are all amendments to the Clean Water Act or Federal Water Pollution Control Act. The amendments dealing with double hulls, with manning and work hours requirements, drug testing, and all those things, those are amendments to existing Coast Guard statutes and regulations that deal with tank vessels specifically, and with the manning statutes that the Coast Guard oversees. Also effected were the licensing requirements and licensing statutes that the Coast Guard administers for the licensing of American merchant mariners; all these changes were statutory amendments to existing legislation. There was part of the act which consolidated all of [the] federal oil spill liability funds in existence at the time. This included the TransAlaska Pipeline Authorization Act as well as the Deep Water Ports Act Fund, the Outer Continental Shelf Lands Act Fund, and whatever else all got consolidated in this one Oil Pollution Liability Fund, federal fund….

As you well know, most of the vessels that call into U.S. ports bring most of the crude oil into the U.S. The only exceptions are the few U.S. flagships that move Alaskan oils to the lower forty-eight states. The vast majority of these ships are foreign owned; and being foreign owned, if the owner of such a vessel has no assets in the United States and does not reside in the United States and has a *Valdez*-type event, spilling eleven million gallons or twenty million gallons, that ship owner's limitation of liability is going to be de facto. You are not going to have unlimited liability against this vessel owner. He may be exposing his billion dollars worth of insurance or whatever it is the vessel owner carries, but in order for that insurance to be exposed, the vessel owner will have to have some presence in the U.S. in order for the full impact of the OPA 90 liability provisions to apply. That vessel owner, if you can't reach him here in the United States, [and] you can't get personal jurisdiction over him, you are only going to have jurisdiction over the ship through an admiralty process called "in rem" jurisdiction, which gives the court actual jurisdiction over the property of the vessel itself but not the owner personally. And if the owner never appears, you can't get personal service over the owner; the ship, or what's left of it. Liability insurance is going to be all you will get … There is not going to be these billions of dollars paid out by some U.S. owned oil company.

The other thing that has happened, too, is there have been a lot of technological developments that occurred afterwards where people have developed better dispersants. There are some products now that have been used in Galveston Bay, and what is great about it … [is] they spray this material, which consists of bacteria, or microbes or whatever, that actually eat the oil. What is really good about this product is that if you have a spill in a marsh area, you don't have to go in there and really disrupt the habitat. I've seen them using it in the upper parts of Galveston Bay. They just run along the shore line and spray this stuff all the way up to the tide line. It also works better in warmer water. When you go back in a few months, you can't tell that there was ever any oil in there. It is amazing how well this stuff works. New technology is definitely on the plus side.

The big thing though is with … the emphasis on pollution. Given the potential for liability and the massive costs that can be involved, if you are an American flag operator, basically, you bet your company every time you put a vessel to sea because of the potential cost involved in a massive spill, the clean up cost efforts, and liability. So, whatever efforts directed towards prevention … and the number of and size of spills has resulted in a real benefit to the environment. It doesn't mean that something is not likely to happen sooner or later because there are people that always like to cut corners.

Having been connected with the tanker shipping business for more years than I would like to remember now—well over thirty years—I think this is probably true of shipping in general, people who ship goods don't like to pay a lot of money for the transportation…. People don't want to buy double protection. They don't care. They want the cheapest way you can get it there, and I think that is an unfortunate reality we have to contend with in the shipping business. The only way you can get around this is you've got to have governments coming together to pass legislation so there is a level playing field and this is the standard….

JT: That telephone call that you received, how did that change your life?

BN: Oh, man, I'm telling you. It is one of these events that is a career changing, or life changing; that's the way it happened to me anyway…. There was my life before it and my life afterwards, and it changed quite a bit. Most of all it changed the way I look at things that happen in my life day to day. You get to the point where the small problems that you encounter on a daily basis don't mean a whole lot to you anymore. They all pale in significance to the kinds of things that you see happening when you are part of something like this. However, what I will never forget is working with the people that I had grown up with at Exxon, and how hard those people, especially the crew on the ship who worked to save it—they wouldn't get off that ship. You couldn't have pried them off there or ordered them off. They wanted to do whatever they could to save that ship, to salvage it and get it out of there. And they did. I mean, people were working themselves to death up there, very little sleep, working around the clock, a lot of men and women with a lot of courage, a lot of guts. Those people will never be recognized. Exxon and everybody associated with Exxon will always be looked at as the villains in this particular incident. But, for me, if I have any feelings at all that I will always remember, it will be the great sense of pride that I was able to work with these people and be there for them the best I could be. And I miss that. I really miss being away from the ships and the people. Of course, I am old enough now where I don't particularly want to be climbing around some ship or barge in the middle of the night anymore. I did my time doing that. But those were a great bunch of folks and still are. God bless them all.

Jason Theriot is a Ph.D. candidate in history at the University of Houston. His dissertation, "Building America's Energy Corridor: Oil & Gas Development & Louisiana's Wetlands," is an environmental history of the oil and gas industry in coastal Louisiana.