

Interviewee: Nicholas, Bob

Interview: November 21, 2006, December 4, 2006

UNIVERSITY OF HOUSTON

ORAL HISTORY OF HOUSTON PROJECT

Interview with: Bob Nicholas

Interviewed by: Jason Theriot

Dates: November 21, 2006, December 4, 2006

Transcribed by: Suzanne Mascola

[Tape One, Side One]

JT: This is an interview with Bob Nicholas, an attorney with Baker and Hostetler [Houston, TX]. Bob Nicholas was general counsel to Exxon Shipping during the Exxon Valdez oil spill crisis in March of 1989. Bob Nicholas is an expert on the Oil Pollution Act of 1990. This is tape 1 of an oral history interview, Houston, Texas, by Jason Theriot on November 21, 2006, for Center for Public History, University of Houston. Bob Nicholas on OPA 1990.

BN: O.K. My name is Bob Nicholas. I am in admiralty law or maritime lawyer and have been involved in this practice of the law for over 35 years right now. In fact, I have been licensed to practice law in the state of Texas for 40 years. I was originally from Port Arthur, Texas. I was born and raised there. I went to undergraduate school at Lamar University in Beaumont and went to law school at the University of Texas in Austin. After graduating from law school, I went to work in New York City for the Marine Department of Gulf Oil Corporation when it was still around and from there, I went back to Beaumont and ended up working for the City of Beaumont for a very short period of time and then for the United States Attorney's office, Department of Justice. I was there 4 years as an assistant United States attorney and from there, I went to work in August of

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1973 for Exxon Corporation over in Houston, Texas, and I was there for about 25 years. During that time, I served primarily as in-house marine or maritime counsel and at the time of the Exxon Valdez event, I was general counsel of Exxon Shipping Company which had been made into a separate affiliate of Exxon Corporation to operate the U.S. flag Jones Act fleet of ships which, at one time, consisted of about 21 ships. In addition to the ships, the Exxon Shipping also operated a fairly large inland fleet of tow boats and barges designed primarily to move product, different types of oil, lube oils, motor gasoline, things like that. Between the different Exxon refineries in the south, principally the Baton Rouge refinery located on the Mississippi River and the Baytown refinery located here on the eastern Ship Channel.

JT: So, why did you get involved in the maritime law? What was your driving passion in order to go into that field?

BN: Well, it is interesting. When I was in law school or actually, in undergraduate school, I was very interested in international law but that is kind of . . . whether or not you can actually get into practicing that is . . . the problem with international law is it involves a lot of things. Anyway, I thought that was what I was kind of interested in. But in law school, I finally was able to take a course in maritime law or admiralty law and really, really enjoyed that. And I had the opportunity to go to work after law school for Gulf Oil Marine department in New York City. I thought that was going to be a lot of fun working on the business side and it was for a while but I realized that I was kind of wasting the legal education I had obtained and there really was not a lot going on the legal side. I was really working on the commercial side. So, I decided, after talking to

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several people up there, that what I really wanted to do or thought I wanted to do was to get into the law practice side of family law.

I came back to Beaumont in anticipation of possibly working for a law firm there that did maritime work and ended up first working there for a few months for the City of Beaumont. And then, I ended up working for the United States Attorney's Office for a period of about 4 years. During that time, I was able to actually do some maritime trial work, working with the attorneys in Washington, D.C. and the old admiralty shipping section of the Department of Justice. And roughly 4 years later, I decided that I wanted to get out and I decided, well, I'd look around for law firms. I really did not know which way I wanted to go. I knew I wanted to try to stay in the maritime area. So, I ended up interviewing and getting a job with Exxon and the reason they hired me was to be their specialized in-house marine counsel. And when I first went to work there, there was just one of the lawyers that worked for, at that time, what was called the Marine Department of Exxon Company USA and later, for tax reasons, Exxon Shipping Company was actually activated in the ship's transfer to that entity and that became the operating company for the Exxon Corporation owned domestic US flag fleet of tankers, towboats and barges. And that was the company that I was general counsel of from the time that it took over operations of the American flag fleet until the time of the Exxon Valdez until shortly thereafter when SeaRiver Maritime, Inc. was formed.

JT: Let's back up just a little bit. Your father, you had mentioned to me, he was in the U.S. Navy?

BN: Yes, during World War II. Not stationed on ships, however. He was in the Naval

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Air Corps and was stationed primarily in Florida during the war. He was an aviation gunner or aerial gunner in a TBF like President Bush flew in World War II and was stationed on the East Coast conducting anti-submarine activities all up and down the East Coast. They do some convoy duty. They would kind of fly over convoys that protect convoys from U-boat attacks, that type of thing during the war.

JT: So, with a father in the Navy growing up right along the coast in Port Arthur, I am sure all of that combined had something to do with your interest in a career in the waters.

BN: Oh, absolutely. I have been fascinated by ships since I was a child, and that probably has more to do with anything else. I still have that fascination. I love the salt water. Lakes don't count!

JT: Well, let's talk about that telephone call that you received on March 24, 1989. What was your immediate reaction?

BN: Well, it is hard to put this in perspective to some degree because I was very used to getting calls whenever there would be a casualty on one of the ships or one of the tows and doing that at that time for, I'll say 1989, not quite 20 years, but for quite a while there, I was used to getting these calls at all times of the day or night and having to go somewhere and catch an airplane, fly somewhere or go down to Baytown or go over to Baton Rouge, you know, conduct a casualty investigation, go on board the ship, go on board the boat or whatever it was that was involved. At first, this, to me, was just another one of these calls. The call that I received was from the marine advisor at the time, Captain Bill Duncan, a British master mariner who served in that capacity until 1992 when he retired but Bill called me. I remember I was about to leave my house. It was

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Good Friday. It was a holiday and I was on my way down to my sailboat and I was just packing stuff in the car and my wife came out and said, "There is a phone call from Captain Duncan." So, I went in there and got on the phone and the first thing I heard was that the Exxon Valdez had run aground in Prince William Sound and that I needed to get to the Intercontinental Airport to meet at the Exxon navitat, so that . . . there was a group gathering there to fly up to Valdez. So, I packed my bag. 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. I mean, everything I was prepared for was the routine that I had been involved in for many years. As it turned out though, the reality and the magnitude of Valdez was totally different. It was a totally completely different experience from anything I had ever had involving a marine casualty up to this point. And, of course, that is because of the huge media blitz and the large amount of oil that was spilled which was more of an environmental event than it was just a pure ship casualty. And the fact that it was a huge environmental event dictated the type of response. And again, this was, as I said, as an environmental event too, the response was more aimed at the containment and clean up efforts after the event. 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.

I left home and drove my old GMC pickup truck up to Intercontinental and sat there and waited. I remember Captain Duncan and, of course, Frank Iarossi, who was the president of Exxon Shipping Company, Craig Rassinier who was the environmental guy in the shipping company. I can't remember the guy's name that was from the claims

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group...Marston. I can't remember his name. His last name was Marston. And then, there was a guy who was on there with us who was an expert, I believe, in the use of dispersants. He was not an Exxon employee but he went up on the plane with us. There were 5 or 6 of us, I believe. I can't remember if there was anybody else or not. But we left Intercontinental and flew from there to Seattle and landed at Boeing Field in the rain . . . it was kind of a miserable day—kind of reflected the mood . . . and refueled there and headed up to Alaska from there. 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 blown to all over the place up there by the heavy weather that occurred two days later. But anyway, after we landed . . . well, actually, it is kind of interesting . . . the pilots that flew us up there had never landed at the airport in Valdez. On the one side, you've got mountains and then you've got kind of a little piece of flat land where the airport is and the runways are. They did a fly by before they actually landed to get a good look at the place. And then, we landed there some time, I guess, local time between 3 and 4 in the afternoon. We were met by Captain . . . oh Lord, I am having such a hard time remembering names . . . one of the other . . . we had actually flown in another master from the West Coast, Bill Deppy, Captain Deppy . . . met us there. I was asked to take him out to the ship and relieve Joe Hazelwood, Captain Hazelwood, and find out what happened and come back. And I went out there with Mr. Marsten. He and I went together just the two of us. Went on a small, I guess it was a fishing boat. It looked smaller . . . out there 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 piece of ice all over the

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place. In fact, as we approached the ship, the person piloting the small boat that we were on turned on a spotlight to pick their way through the ice pieces. And we were about halfway there when the light burned out. And I could remember thinking, oh, boy, it is going to be fun. We are going to have to go back through this in the dark. But got to the ship and went on board. And, of course, with the captain and with the third mate, [Greg] Cousins, who was the actual mate on watch at the time of the grounding, spent some time with them talking to them about what had happened, just kind of . . . I wanted to get a rough thumbnail sketch of what their remembrance of the event was and that type of thing and that is what I did. Then, I went about gathering documents.

The state of Alaska had someone on board and so did the Coast Guard the whole time that the ship was there. And they, of course, followed me around and wanted copies of everything. I made copies. There was no hiding anything. We provided them copies of all of the ship's documents, documents that I would use and experts would use later on to actually retrace the paths of the ship and the reconstruction of the track of the vessel prior to the time of the grounding and that is what I was doing. Got to leave the ship about midnight.

From the human side, one of the more interesting things that happened was when I got off the ship . . . of course, getting on and off the ship, we were using a pilot's ladder which was basically a rope ladder with boards and you go straight up and down the side of the ship. And when we left, I, for some reason, was one of the first ones to go down onto the boat and come down the ladder. If you had a briefcase or anything with you, they usually would tie it onto a separate rope and lower that down to you. So, I got down

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to the boat and Captain Hazelwood, I guess they started lowering his bag and other stuff and I was there on deck untying the stuff and getting it. And then, he came down and he was standing near the stern, they were against the starboard rail of the little fishing boat that we were on. And I happened to glance over to him and he was looking back up at the ship very glassy-eyed and teary-eyed and for a moment there, I had the thought of the scene from *Lord Jim* [1965]. In the movie, Peter O'Toole had been an officer on a ship hauling pilgrims to some event and the ship was in heavy weather. They panicked and thought it was going down. He got off the ship with some of the other officers and they abandoned the ship and left it out there with all the people on board it to die, thinking the ship was going to founder. Anyway, after they had abandoned ship, they were actually picked up and brought into harbor and, of course, they told the story of how this terrible event with the ship and the weather and the heavy weather, the ship was sinking, going down; they were the only survivors. Well, when they get into harbor . . . I don't know where they are at, Singapore or some place in the Far East . . . and I can't remember now from the story. He starts down the ladder like Hazelwood coming down the pilot ladder and he looked off into the harbor at ships anchored there and there is the ship. It didn't sink. And he knew his whole career and whole life was over because he had lied, this kind of thing. But Joe had that look on his face like, my life is over, my career is over. I'll never go to sea again. Those kinds of things. This all took place in a matter of seconds. It takes a lot longer to tell it than it actually did. It was just more of a feeling that I got than anything else but there are lots of little stories like this, the human side of this of the terrible event that occurred throughout the whole time that I was there, different times.

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JT: I think it is also interesting how you note the trip to the Valdez in the small vessel as you are dodging the large icebergs and the light goes out. It is almost as a small scale probably what was occurring on the Valdez as far as the weather, the icebergs, the darkness, you know. I know that you had mentioned before that Prince William Sound is very, very dark at night and so you, with your experience as a maritime attorney, all the years and life experience that you bring and yet, you probably getting a sense of how dark and how spooky and how really the weather played a factor in all of this.

BN: Oh, no question about it. In fact, my other hobby is, of course, sailing and I have been sailing up and down this coast, the Pacific, down in the Caribbean and different places for many, many years and have been a pilot in my own sail boats here, there, and yon and you get off the coast here and as you approach the major metropolitan areas, you've got light pollution coming from everywhere. The sky is lit up. You can see lights for miles. When you get to a place like Prince William Sound and there are mountains all around and there are no large population centers so you don't have any huge concentrations of light being reflected off the cloud layer or anything like that, and everything was so covered with snow so that can get some light but if there is no light there to be reflected, it is extremely dark. It was very, very dark when out there that night, as I recall. I mean, when you saw the ship finally, it was all lit up, just ablaze with lights because it was the only light you were looking at 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. One night, we did have some clear weather and we had had a very interesting display of the Aurora Borealis one

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night and that was the strangest thing I've ever seen because it was pitch black and you could see these colors of this thing moving around in the sky. And you expected it to make noise but there was just complete silence and you are looking up at these strange shapes tearing in the sky. But anyway, that was a few nights later on that we actually got to see the Aurora.

JT: Will you briefly explain what occurred in those 30 minutes when the ship actually maneuvered off course to avoid the icebergs and just explain briefly what happened in those few moments.

BN: I am doing this from memory because there is a lot better information available in books now and whatever else but as I recall, they had on the outbound passes, they 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—this is an IMO [International Maritime Organization] dedicated traffic separation area. What that means is you have designated . . . if you look on 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. There was a separation zone between the two. They were outbound, of course, in the southbound lane and had requested from the Coast Guard vessel traffic servicing the area—the Coast Guard maintains the vessel traffic service—they operate radar and can actually see the ships as they go in and out on radar. They requested permission to leave the lane to go around some ice and as I was told by Captain Hazelwood, he had instructed the mate on watch before he left the bridge to turn back into the traffic lanes when they

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got a beam of, or that means directly adjacent to Buzbee Island Light. And there is a little rock protrusion sticking up where they have a navigation aid on it and it blinks at night. At that point, it 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 at night, there was a position marked just inside the southbound lane and then the next position almost due south, 180 degrees south from there. There was another position marked on the chart directly abeam of or adjacent to Buzbee 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 are no reefs up in the traditional sense of a coral reef or anything like that up there. There is a light also that marks the reef and if you were southbound in the direction they were going, then that light would have appeared off your starboard bough or off to the right of the forward end of the ship. Actually, the lookout, the person sailing is A.B. who happened to be a third mate, by the way, 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. And it is interesting in looking at the course recorder which is a recording device that is attached to the ship that operates off of and takes signals from the ship's gyrocompass. And that device, in my mind, indicated the ship, for about 10 minutes, was on autopilot. The mate on watch at the time told me or indicated that they had taken it off autopilot, had started to turn but obviously the ship did not turn. You know, there has been that doubt in everyone's mind of what actually really happened during that period of time. Obviously, the ship didn't turn. Obviously, it went aground. As to what actually happened, if I were

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to guess, it would be pure speculation. But obviously, the facts are as they are. The ship did not turn. They did not go back into the traffic lanes when they were a beam off Buzbee Island Light. But I have often wondered about that 10 minute segment of time and that actually happened in there. If they actually had not been able to disengage or thought they had disengaged the autopilot, all of those types of things have been speculated on.

JT: What was the speed of the vessel?

BN: The speed was, as I calculated it, was roughly 12 knots. They were building up to sea speed at the time so when I looked through the ship's documents and looked at the automatic bell recorder. The bell recorder is . . . in the old days on steam ships, when you gave an engine command with the ship's telegraph, this was a mechanical device that indicated the speed or direction of the ship, and the engine room would respond by answering on this mechanical device. They actually had to turn the boughs to open the steam and increase speed—that type of thing. But this was an automatic device that automatically logged in the engine commands as given from the bridge. This was a bridge controlled vessel. And these were automatically printed out in the bell logger in the engine room. And I noticed that at one point in time, in the actual one of the ship's documents referred to as the "bell book" that was kept on the bridge, at one point in time, the bell book . . . LPU, low program . . . what I was referring to is an entry in the deck bell book which shows at actually 1121:52, so that would be 9 o'clock, around 9 local time . . . no 2352, so that would be 8 minutes to midnight . . . the designation LPU or low program . . . the ship was equipped with a large slow stroke diesel engine and to increase

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speed, there was a computer program that actually works with the engine controller to increase the speed up to sea speed in an efficient manner that will not do damage to the engine. And so, the speed that I calculated at the time, just using time and distance traveled, computing that from the chart, estimated the speed to be about 12 knots or less than 12 knots, 11 point. . .

JT: But it was building?

BN: But it was building. It was increasing. The velocity of the ship was increasing.

JT: Did the run-aground on the rock, did that stop its forward motion or did it pull back on the engines?

BN: They attempted to get off, as I understand it from talking to Captain Hazelwood, but this quickly found out that they were stuck fast and the ship would not move. They had done a tremendous amount of damage to the bottom of the ship, especially along one side. I can't remember if it was the port or starboard side but it ripped out a lot of the bottom. Of course, when you rip the bottom out on a single hulled ship, the cargo comes out of the ship and the oil spills. I remember talking to the chief mate who... **[Tape One, Side One ends]**

[Tape One, Side Two starts] the level of ullage, the ullage is the outage in a tank and you stop usually loading the tank when it is about 3 feet or so from the top of the deck, the deck level. And I remember him saying to me he estimated he was losing oil out of the ship at about 260,000 barrels an hour. So, I mean, it was pouring out of there from underneath and coming back up. Of course, when I first saw the ship and it was sitting there, actually, it didn't look anything out of the normal. It just looked like it was stopped

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in the location that it was in.

JT: What about the flyover you mentioned you saw some of the damage?

BN: You could see the oil.

JT: Was that something that you were expecting to see?

BN: You could see the oil 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 1,000 times larger. I mean, it looked like a toy on one end with a little string of boom and here is this massive slick which I guess extended out several miles away from the vessel. So, they would have had to had a thousand times more boom. This is my guess. I am just saying what it looked like and I kind of remember from my fuzzy memory of flying over and looking down at it. But it would have been a lot more boom that was needed to actually surround this huge massive slick.

JT: So, when you and Hazelwood leave the ship, this is essentially when your job really begins as far as the location is concerned?

BN: Yes. Now, I was not actually involved in the litigation, really, and when lawsuits got filed and that kind of thing. What my job was while I was there was to work with the company and handle the paperwork needed to do the salvage effort. One of the things I remember doing while I was there was on Easter Sunday night, they came to me and they were starting to try to acquire equipment for the clean-up crews to go out and work. They had a landing craft of some kind and they wanted to charter this, and there was

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some issue of it was not a Coast Guard certified vessel so they could not take passengers for hire. And I talked to the Coast Guard, I said, "You know, what they used to do in the Gulf of Mexico was to do a time charter with a manning agreement on the side with the owner of the vessel. They would time charter the boat to the new oil company and then do a manning agreement giving the owner the right to man the vessel." So, we did something like that. Well, what made it interesting was I had no forms with me and I actually had to draw these contracts and these documents up from memory in long-hand. And it took me several hours to do this, a couple of hours at least, to write these out from memory, write out a time charter party from memory what I wanted to put in it and the terms and provisions of a normal time charter for that type—like for a supply boat or an offshore vessel— that type of thing. It was what I was working off of from memory and stuff.

JT: So, Texas law school did well then?

BN: I guess so, or actually having worked for Exxon long enough . . . I had a lot of experience in drafting those types of documents, reviewing, drafting and preparing, but it wasn't until several days later that I was actually able to get some forms in, had them fax me some forms and then we redid some of those contracts. And, of course, a lot of them got redone after I had left there. I was up there 15 days from March 24, 15 days to the day; I left the day that ship was floated off the reef. They floated her off the . . .

JT: Where were you staying this time? Was it [Valdez] offshore?

BN: Yes. For a few days, we were staying in some hotel there in Valdez and then there was an apartment somewhere that we got. That was kind of funny. This was a two

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bedroom apartment that could sleep maybe 4 people and we were taking the mattresses off the beds and putting people on the floor and sleeping 6 or 8 people in there at a time.

JT: What was the mood at the time? I mean, I am sure you guys got up and went and had breakfast and coffee every day. What was the mood of the locals and of the media and of the people involved in Exxon?

BN: Well, of course the media was very hostile. It was difficult to do your job sometimes. I had called and got some help, had two or three of the lawyers and we had people coming up helping out. After that, the litigators finally got there. Charles Matthews who is now General Counsel of Exxon Mobile Corporation came up. He was a litigator in Houston at the time and he came up and so did Bob Woods from New Orleans, one of the other lawyers. I had a lawyer from Seattle, Paul Daigle, came up and was helping out. In fact, Paul got there the next day and they were a lot of help. What we did was we tried to stay out of the limelight. It was a lot easier if people did not know who we were for us to do our job behind the scenes. I went back to the ship several times to interview people, take people off. I went back the very next day to take Cousins, the third mate, off, bring him back.

That was kind of an interesting story there. I had gotten him off the ship and down onto the boat where it was going to take us back and in the meantime, a reporter had gotten on the ship, flown out there on a helicopter and they were all upset about that so we got the guy off and down also onto the boat but we were going to go back on. I remember telling Cousins, I said, "One thing I want you to do the whole way back is don't talk to anybody on the boat." So, we went all the way back and he went up forward

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and laid down in the bunk up there and basically slept the whole way back.

The trip back was unbelievable. We had hit the bad weather that was coming in, stayed there for the next several days. This is a 30 foot boat, open in the back, very cold and we were in really some rough weather, slugging it out right into the teeth of this wind coming out of the north. We were heading due north. We finally got back. But I always thought that was kind of funny because we had this reporter on the boat and I had the third mate who had grounded the ship on the boat and this guy never knew who he was. He was inches away from probably the biggest story of his life and never knew it.

JT: You guys kept it under wrap pretty good?

BN: Well, we wanted to get these guys out of there. One of the things we did for Hazelwood and for him was to actually help get them their own lawyers because we knew the Coast Guard would probably be coming after them. Didn't know what else, so we wanted them to be represented.

JT: And these guys were Exxon employees as well so there was some level of loyalty, we've got to protect these guys?

BN: Yes. We have always done that. In fact, my role as company attorney was always to, you know, when I went out there, I said, "I am here representing the company. I cannot represent you personally." I usually made it a point if, given the severity of the event or whatever it was, from experience, I would know whether or not I thought their license might be in jeopardy from the Coast Guard in license proceeding or potential criminal liability. I had run into that before in casualty investigations and I would usually, even if the Coast Guard were there investigating, I would always insist that we

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stop the investigation and get counsel with these people as there was a potential for this at some point in time. And that obviously was my foremost thought going out there that night given the magnitude of what happened. So, we were able to get counsel for these people after they were off the ship.

JT: So, for the next 15 days, you and your crew went to work. Now, as I recall, you mentioned you began at Exxon in 1973, correct?

BN: Yes.

JT: And this occurred in 1989, so you have got well over 15 years with the company plus the years of experience before. Had there been anything in your previous career that could prepare you for those 15 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 up there was the constant bombardment of things changing, having to do stuff so rapidly and so quickly, and not being able to get hardly any sleep. I mean, I would go for days. You'd be up 20 hours . . . I don't think I ever stayed up 24 hours but I know I was up those first few days probably a good 20 hours a day or more, and it takes its toll on you after a while. I saw people walk around that were like zombies, barely able to function after that length of time but it was just this constant bombardment. And that takes . . . the stress is unbelievable. Any casualty I had ever been involved on before, I mean, it is very tense at the beginning and what you go through during the investigation. You have to go to a Coast Guard hearing immediately, you know, you've got that to go through. Then it is over. And this was only the beginning. This continued for months on end. Well, months

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and years. The intensity changed but the impact of all this continued on for years. And even after the early 1990s at SeaRiver, we were, at that point in time, getting ready for the trials to take place, that kind of thing. Like I said, when I was up there, I did some of the initial interviewing and I worked on the types of things that were necessary to get the ship salvaged and out of there and did some contract work and that kind of thing, always providing legal advice usually orally. And when I came back, instead of being involved in the claims or litigation piece of it, I got involved again in the day-to-day running of the shipping company which was severely impacted by all this that had gone on.

JT: So, what happened at the end of the 15 days? Did you finally come home?

BN: Yes. By that time, it is kind of interesting. I had accumulated a lot of documents and papers and things that I had gotten off the ship. We had some other things that we wanted to get out of there like that. In order to maintain the proper control and custody of this material, I realized there was no way that I could fly commercial because I would have had to check all this stuff and it would be out of my possession. So, I remember telling them, I said, "You've got to find me a way out of here where all of this stuff that is with me can stay with me."

JT: The ship documents?

BN: Yes. I had boxes of stuff and some other things as potential exhibits and things that we wanted to look at and analyze. So, I told them, "I can't fly commercial. Get me out of here on some other kind of aircraft." And, at one time, I was looking at a C130 that was going to be going back. But as it turned out, of course, they had Exxon security up there and everything was kind of tight because there were death threats against Frank

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and other people in the company. So, the security was very tight. And on the 15th day when I left, I had been down there and they were floating the ship off. I went back . . . well actually, at that time, that day, I was told by one of the security people to go on back and be ready to leave and not to tell anybody. So, I went back and I packed up and I got a call, "come now to the airport." So, I did and I went in there and met one of the guys. I didn't see the plane or anything around. And they started jacking with me and telling me well, it was a hoax; that I really wasn't going out that day. And after I guess they had seen this long look on my face of oh my God, how much longer am I going to be here kind of look, they took me over where the plane was kind of behind this building on one side. I unloaded all my boxes and we flew from there down to . . . Frank Iarossi was on the plane and we flew back to Seattle, stopped at a private terminal there in Seattle and we were met there by lawyers from Seattle who picked up all the documents and all that stuff that we had maintained our chain of custody of the materials and stuff that we brought. That plane went back to Alaska and they flew another plane up from Houston to pick us up. We got home about 2 o'clock in the morning. I was so delighted to be home after that [laughs]. But, again, that was tough. That was a tough 15 days. It was really only the beginning...after that, after we got back—all the work we had to do and things we had to . . . oh, I don't know, just one thing after the other to analyze. It was very, very stressful for a very long time after that.

JT: Let's talk about the ship. What kind of changes it was going through in those 15 days. At what point did it finally stop leaking?

BN: The first thing they did was to . . . after the oil had gone out of the ship, all that

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was going to go out, you still had oil floating in there above the water and damaged tanks. You still had oil in undamaged tanks on the ship. The first effort was to get smaller ships with shallower draft alongside—I mean, literally alongside the ship and start pumping the oil remaining on board onto those ships. And I remember actually going out there one day—I can't remember if it was one of the Houston/New Orleans class vessels or one of the San Francisco class vessels, '70s or '75s . . . I think those were the ships they primarily used because they were a smaller and shallower draft . . . being tied up alongside and taking cargo off. What a lot of people do not realize is that even though they lost about 250,000, 260,000 barrels, they actually got 1,000,000 barrels of oil off the Valdez before they moved it. And, in fact, until it was all pumped out and they moved everything they could get off of it out of there, only then did they consider actually moving it, getting it off the reef. And they did that . . . we were using a traditional salvage method. What they did is they flew out there—I could see these sky crane helicopters coming out with Ingersoll-Rand compressors, put these big air compressors on deck and drilled holes in the deck and had the air coming from the compressor going down into the cargo spaces. And basically what they did was since you had a water seal still around the hull, they pumped the tank full of air so that the ship would float literally off on the air. It was compressed air.

JT: What about the hole?

BN: The hole is in the bottom and the air is being trapped by the water so it can't escape. You only had to pressure it up to like 2 PSI or something like that for it to actually affect the buoyancy of the vessel.

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JT: And then from there, it was able to sail into San Francisco?

BN: No, they went to another place in Prince William Sound and they had divers working for days cleaning the inside of the ship and getting all the oil out before they ever attempted to go to sea. And it had only been after that they started for San Diego. That is another whole story of how they were taking it down there.

JT: What were some of the options? I take it that is the final option there, but what were some other options on the table as far as what do with the ship?

BN: Well, before they left Prince William Sound, the idea was to, what we were working on at that time and I was involved in that—I was back in Houston—was finding a place to get it repaired. The first option was to go into a repair facility in Portland, Oregon, but the requirements for getting it in there, the bonding requirements and all the other costs associated with getting in there were just cost prohibitive. So, they decided not to go there. In the meantime, we began negotiations with NASCO, National Steel and Ship Building in San Diego which is a shipyard where the Valdez and the Long Beach were built for the repair. They had sent a group of people to Houston, the same people we had negotiated the original building contract with, and I remember, for several days including a Saturday and a Sunday, we negotiated a repair contract with them for the repair of the vessel. I think it was about a 30-something million dollar contract. What was interesting though is that given the severity of damage to the ship, they were not sure, they were not real sure how they were going to repair it at the time but they actually were very successful in their repair efforts and the strategy for repairing the ship worked out real well. But that was the first obstacle, getting that. So, we then negotiated that

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contract and that got signed. So, they were headed to San Diego.

The next obstacle which occurred several weeks later—I can't remember the timeframe—I think I was out there though in July and August. This was like several months later from March when I arrived off San Diego. Then, the difficulty became: Is the State of California going to allow the ship to go into the shore given the condition that it is in? And that precipitated a whole another round of negotiations at that time with the State of California and a number of different agencies of the State of California including the Game and Fish people, the Attorney General's office, someone like, I think they call it their General Land Office like we do in Texas and also local water quality district down in the San Diego area. And we negotiated with them for two weeks where we really reached a . . . actually, after about one week, I think we started to make some progress. About the first week, we had to listen to everybody harang about this, that and the other. Also, a couple of times during the negotiations in the first week, we had some other problems that came up—actually had to fly out to the ship a couple of times on helicopter, land out there on the ship. There were requests by the State of Alaska to preserve some of the sections of steel plate on the bottom of the ship. What had happened to the ship while it was in transit from Alaska down to San Diego is that large sections of the bottom plating broke loose but they didn't actually break loose from the ship, they just were hanging down vertically under the ship, bent down and hanging down vertically. Some of these sections were over 70 feet in length so, I mean, it made the draft of the ship kind of like 80, 90 feet with these huge pieces of steel hanging down. The ship went to anchor off San Clemente Island outside state territorial waters 3 miles

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and the water was real deep there and you had divers down into the hull and cutting these plates with a torch. It was extremely dangerous work because when the plates would break loose, instead of dropping directly to the bottom in a straight fall, they acted like a leaf falling off a tree in the wind and cascaded all kinds of different directions before it reached the bottom. And anyone in the way would have been sliced in half if one of these plates would have hit them. Went out to the ship anticipating . . . talked to the salvage people about whether or not it was practical or possible to save any of this material. And, of course, the salvage master, in a very language which I obviously will not use, told us what we could do with those plates or told me to tell the State of Alaska what they could do with these plates if they wanted them, that if they wanted them, they needed to come get them, that he was not going to risk any of his divers.

Anyway, we went back and ended up, actually the State of California talking with us there, the State of Alaska people and basically told them we were not going to save the plates, that it was too dangerous. Of course, they were trying to get California to do something and the California people basically said, look, it is not our problem. As long as they don't drop them in state waters, we don't really care what they do with them. Anyway, that was the decision that was made in consultation with the people back in Houston that I was talking to. But that was a major problem, getting those plates off because they had to be cut off before the ship could come in. And then, we had a whole protocol put in place for the ship to enter and what should take place and this kind of thing, that and the other.

I remember the ship came in on a Sunday morning. A lot of fanfare. There were

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a lot of boats out there—Green Peace and people demonstrating on the water—but really, it was uneventful from the time they arrived off the sea buoy and the Coast Guard was on the bridge. There were some people from the State there but the Coast Guard basically told everybody on the bridge not to communicate with any of the ship's people or talk to the pilot. "If you have anything to say or ask about anything, you talk directly to me." This was the captain of the port. And the ship came in and went to the dock. It did not go into the graving dock at that time, it just went alongside a dock. We tied it off at that time. I remember being down on the dock and they were tying up the ship and the tugs came in behind it. There wasn't anybody there to handle the lines of the tugs. I ended up tying those tugs off and handling the lines of the tugs when it came in. I was doing a little double duty that day. But anyway, that was the day it got in. I remember going on the ship right after it got tied off and we got the gangway down.

JT: What was the biggest surprise to you out of all of this that had occurred in the first couple of months?

BN: I think, for me, the biggest surprise and actually the thing that was just really difficult to deal with was the extreme hostility and really hatred. It was just unbelievable the hostility, of course, not only towards Exxon, but any of us that were involved. I had been with the shipping company 15 years or so before that time and I went to work there when I was roughly 30 years old. I had kind of grown up with these people. And I knew the people on the ships really well because I was out there a lot and worked with them, represented them before the Coast Guard and things like that. I represented the company and, of course, their interest at the same time in some way before the Coast Guard. And

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to see these people treated like they were drug dealers or common criminals was difficult, very difficult, for me to accept and to understand. And to this day, I still have very strong feelings about that. It is very difficult to see this happen. **[End of Tape One]**

[Tape Two, Side One]

JT: This is an oral history interview with Bob Nicholas, attorney for Exxon during the Valdez. Tape 2, oral history interview by Jason Theriot on November 21, 2006, for Center for Public History, University of Houston. This is Bob Nicholas on OPA '90. So, go ahead. What is your response to that?

BN: Was the U.S. actually prepared for an oil spill the size of the Exxon Valdez? I think the answer is obviously no—from the documentation you see that comes out after the spill and years later and whatever else. Even at the time, there are a number of things I think that point to the fact that the answer would be no. First of all, I think there had never been a spill of that magnitude. There were larger spills but the spills had not occurred in the U.S. nor had they occurred in Europe. Even the spill involving the Torrey Canyon back in 1966 was not this large. Of course, the ships were not as large either. And that, I think, makes the difference. There was a very large spill of a Shell vessel down in the Strait of Magellan. I can't remember what happened to the ship, if they salvaged the ship or not but that was a very large spill, larger than the Exxon Valdez spill, but again, it did not occur in the U.S. Unfortunately, it did occur in an area of very pristine environmental area, but it was so far removed from civilization and I doubt if there was any clean up or any response at all. They probably just let nature take care of it. But with the Valdez, in all the planning, all of the spill response planning, was for

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much smaller spills than the Exxon Valdez spill. The other thing was you didn't have...the level of planning that is required now, that was in place. I mean, there were some resources available but what actually happened was in order to cope with the spill of that magnitude, I mean, the Coast Guard . . . actually, it was Exxon, geared up to actually handle the volume of the spill, bring it in. Just mobilizing this massive transportation effort to move all the spill response equipment—skimmers, boom, all types of spill response equipment to it including people because you had to have a large body of resource there to get out there. I mean, there was nobody . . . Alaska's population is small—the population of Valdez—there is hardly anybody there. 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, we were glad it was Exxon because of their vast financial resources and their ability to respond even given the magnitude of the spill, to respond in a very large way. What people do not realize is forget the litigation and the lawsuits and everything else—Exxon spent about \$4 billion up there just on cleanup efforts, \$4 billion.

JT: That came out of Exxon's pocket?

BN: That is out of their pocket. They got some of that money back from insurance but a fraction, a mere fraction of that. The most liability insurance a vessel had for pollution liability coverage was \$400 million, which that goes to pay third party type claims and they went through that probably in a few days. I think there was some excess insurance which ended up in some protracted litigation afterwards, which they were able to collect

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on—they settled with the underwriter on—but the amount of insurance compensation that they received was miniscule compared to the amount of money they spent on the cleanup efforts. And then, of course, the cost of . . . just to talk about that a little bit. When you get into litigation—the litigation over the spill is still going on even though it has occurred over the past 15 years—the cost of that litigation is just enormous. I have no idea but I am sure the attorneys' fees are well into the millions. And I was there during this period of time and I can speak to this is that, after a major event like this, I do not know whether you can quantify the amount of lost man hours. When you look at, here you are trying to run a business and you have to devote a huge number of resources, people resources, to responding to all of the discovery claims, discovery issues in the lawsuits, producing documents, producing people as witnesses, and it just puts a real drain on your company, somebody the size of Exxon because really you were focusing on one actual small part of this business—the domestic shipping business or tanker transportation—so, it was quite a drain on us as I recall going through that period of time. And it was one of these things that never let up. Anybody that had any kind of grievance ever against Exxon or Exxon Shipping Company, they were all coming out of the woodwork trying to make some hay or get some money out of the situation. So, it was very difficult. But I would say that to anyone.

I remember I had given a talk in London in 1998 talking about the implementation of the International Safety Management Code, ISM code for ships, and what I pointed out to everyone there was that after experiencing something like the Exxon Valdez, you cannot spend, in my opinion, enough money on prevention and your efforts ought to go

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towards prevention and training and making sure that you have got a situation where you can prevent something like that from every happening. I have been involved in accident investigations for many, many years and you look at there are two airlines in the world, Quantas and Southwest, and neither one of those airlines have ever had a crash. I guess that incident where the plane went off the runway in Chicago was the closest event that Southwest has ever had like a crash but not really a crash of the aircraft. I think it goes to show people with the right safety environment in place, the right safety system in place, you can prevent accidents like that. There is no question in my mind this one was absolutely 100 percent preventable. You have one person involved in creating an error chain and no procedures in place to prevent that error chain from being broken, you are going to have an event like the Exxon Valdez. You are going to have plane crashes, you are going to have whatever kinds of . . . ship collisions, whatever, ship grounds, because you've got one person up there doing everything and they make a mistake and that mistake is not caught by somebody else . . . that is what happened afterwards. Exxon went into a whole process called "bridge team training" with the idea in mind of having more than one person involved in navigation. And, of course, the Coast Guard regulations now require—that was one of the things that came out in OPA 90—now you have to have more than one navigation officer—you have to have more than one officer on the bridge of the ship when you are in Prince William Sound and maybe in other areas. I can't remember now. But that is now part of the Coast Guard regulations.

JT: Let me ask you about some of the legislation that was enacted prior to OPA and I have a list on here. If you are not familiar with them, I have got an actual list of the full

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names but it is TAPPA, FWPCA, OCSA, and then the Deep Water Ports Act and then CERCLA. These are all the legislations that had been in place. Briefly go over and touch on some of those and explain how these related to the Exxon Valdez, so that we can get an idea of just how limited the liability was.

BN: Well, the first one, TAPPA or TransAlaska Pipeline Authorization Act really did not have any particular liability provisions in it. What it did require is the creation of an oil spill liability fund and it placed some financial responsibility requirements on vessel owners operating ships in and out of Alaska that would trade to the terminus at Valdez of the TransAlaska Pipeline system. There were not any requirements in that statute for double hulls, increased manning requirements, other ship design, criteria, things like that that actually had been addressed. I notice you don't have that in here. There were a lot of things addressed after the Amoco Cadiz incident. I can't remember when that was, probably some time in the 1970s or 1980s [1978]. I guess it was late 1970s. And there were quite a few amendments. Well, there were amendments at the international level to the IMO, International Maritime Organization convention, MARPOL, the Maritime Pollution Prevention statute or pollution convention. In addition, it was probably around the time they passed the Ports and Waterways Safety Act which you address later on in here and there were amendments to the Tank Vessel Act or Tank Vessel Statute which required . . . this is when indirect gas came in so you wouldn't have explosions of ships. As ships got larger, there were a series of incidents involving large tankers where they would actually explode while they were tank cleaning and what they found out was that the tank cleaning equipment and there were little Butterworth machines there—a little

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round-shaped looking device that has arms on it that rotate and spray hot water on the tank walls and they rotate all around and try to get—they have lots of different machines in them—in a tank given the size of the tank. They would actually create a negative charge kind of like creating a small thunderstorm in the tank and you would have the charge release, the build up of the negative charge, and you would get like a bolt of lightning that actually would occur. And that is where the ignition source came from. So, as a way to prevent that, all crude oil tankers were required to install inert gas systems and basically most of them installed equipment which took the exhaust gases and scrubbed those and cleaned them up and then they would pump those into the cargo tanker, on top of the cargo or empty tank so that you would keep the level of oxygen in the tank down to a minimum, so you could conduct cargo washing operations and things like that.

There was a lot . . . I remember after Amoco Cadiz, in this country anyway, there was quite a bit of pressure. There was some pressure anyway on the industry to implement double hulls. Of course, that did not occur at that time. That came later with the Oil Pollution Act of 1990. I don't know if I mentioned this before but I still think double hulls have yet to . . . our experience of double hulls—they are new, they do prevent spills when you had low impact groundings and things like that but there are other problems with double hulls that will start to... we will see those at some time later as these ships get older.

The Federal Water Pollution Control Act, FWPCA, often referred to as the Clean Water Act, again, this was a liability statute which created, actually before Valdez,

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permitted recovery of liability for oil spill damages by the federal government.

Primarily, it didn't have a cause for action for private damages. The OPA 90 changed that. There were proof of financial responsibility requirements under the Act. It also requires reporting the spill and the reporting requirements have remained the same.

Basically, if a spill, and this involves persistent oil which is crude oil, lube oil, anything that leaves a sheen on the water, if you see a sheen, that is a reportable quantity as defined in the regulations. That came out the regulations. That was way back in the '70s. That is a reportable quantity. And it is a felony not to report, but if you report, then you cannot be charged criminally under that statute. There were criminal penalties but not to the extent that they are now under OPA. The amendments to Clean Water Act or Federal Water Pollution Control Act under OPA 90 increased the severity of the civil as well as the criminal penalties.

JT: What about CERCLA?

BN: Oh, CERCLA, the Comprehensive Environmental Response and Compensation Liability Act. CERCLA is primarily aimed at . . . well, it has two parts to it and it really doesn't cover persistent oil. It is more if you looked at parts of CERCLA that address requirements regarding the handling of hazardous waste and transportation of hazardous substances. And there is a whole list of hazardous substances listed by the EPA. And you look at that list if you are moving those, hauling those and a lot of them are chemicals like all the polypropylenes and styrofoam and stuff like that. And this statute, if you have a spill of any of the items that are listed there, the regulation will tell you what the report of quantity is. It is quite different than oil. In some cases, it is pounds—

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how many pounds you spilled or gallons or things like that. You have to maybe have some way of determining whether or not you even have a reportable spill. Some of this stuff is very difficult, if not impossible, to clean up. If you have a ship that is hauling CERCLA cargo and you have an oil spill . . . a number of years ago, there was an attempt to have response plans for these vessels and that never, for some reason, came about. So, we don't have response planning requirements for certain cargos other than oil cargos there. You still have to respond but you may not have to have a specific response plan back in place like you do for oil. And actually, I have not kept up with that real well but I don't think they ever got around to implementing the response plan requirements for the CERCLA-type cargos.

JT: So, with this list here, it appears that, at least the federal government was trying to make some attempts at prevention.

BN: Yes.

JT: But the Valdez incident was certainly much larger than anyone had anticipated.

BN: Yes.

JT: You mentioned earlier the \$400 million insurance liability. Outside of that and outside of the \$5 billion they eventually paid out, what was the Valdez technically lawfully liable to pay in that incident?

BN: Well, its proof of financial responsibility, I think, under TransAlaska Pipeline Authorization Act and I am telling you this is all from memory, but I believe the max was \$20 million, was the max.

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JT: So, technically speaking, as the books had it . . .

BN: There was a different proof of financial responsibility requirements. It seemed like the limits were lower at that time. But it was quite a bit less. It wasn't \$400 million. \$400 million was the max insurance they had. Now, that is just insurance. That did not limit their liability. Their liability was unlimited under state law and under just plain old ordinary common law negligence. But yes, those limits, of course, were increased substantially afterwards, both through state legislation and federal legislation. In fact, the state requirements in Alaska are such that only major oil companies can meet the proof of financial responsibility requirements. You or I could never charter a ship to go to Alaska and pick up a cargo of ANS crude that we bought from somebody. The financial responsibility requirements are massive plus the plan requirements and that kind of thing. In fact, there was even some antitrust litigation at one time because of that stuff, but it all went away.

JT: Well, let's talk about the real issue here, OPA 90, Oil Pollution Act of 1990. How did OPA differ from the aforementioned laws and why had Congress waited so long to pass effective legislation?

BN: Again, I think the magnitude of the spill was the driving force behind the Oil Pollution Act of 90 and amendments. And I say "amendments" . . . the Oil Pollution Act of 1990, if you look at it as a series of amendments to a whole bunch of existing statutory provisions that were already in effect. The main liability provisions, the proof 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

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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, with the licensing requirements and licensing statutes that the Coast Guard oversees for the licensing of American merchant mariners, all of that was statutory amendments to existing legislation. There was part of the Act consolidated—I think we talked about this before in general—consolidated all of oil spill liability funds in existence at the time. The TransAlaska Pipeline Authorization Act as well as the Deep Water Ports Act Fund, the Outer Continental Shelf Lands Act Fund and whatever else was there got all consolidated in this one Oil Pollution Liability Fund, federal fund. That was probably a good idea to consolidate all those and not have different ones implying in different places. It made a lot of sense probably and the Coast Guard oversees the administration of that particular fund.

JT: But if you look at it, and the federal government is obviously historically guilty of this, more of a reactive response versus a proactive. And if you look at hurricanes, natural disasters, have things changed in your opinion as far as maritime law and that type of industry? Has that sort of changed with the massive Valdez style oil spills? Has the government been practicing more proactive motions?

BN: I don't think so. I think it is reactive and it is all political. To give you some examples: We have the Oil Pollution Act of 1990, we have the No Limits of Liability provision in there although there are limits of liability highlighted in the statute which everybody thinks everybody will go blow right through and not really pay any attention

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to if you have a spill. The limits of liability provision say you can limit your liability up to the limits set out in the statute. So many dollars per gross ton. I think after the incident of the ship about the size of Valdez, it would be about \$100 million or whatever it is but people carried up to \$1 billion insurance now. But you cannot benefit from the ship owner's limitation, 1851 Ship Owners Limitation of Liability Act. That has gone away. And if you can enforce open limits of liability, whatever they are and they were to stand, if they were to be upheld, they would stand in place and still looking at quite a bit of money. There is a whole different oil spill liability regime at the international level using the Civil of Liability and Fund Convention and the Civil Liability Convention imposes which is insured through the vessel's underwriter, pollution carrier, that was rejected as not being adequate. And then, the fund convention, the United States has never ratified that convention. The fund convention places another layer of funding on top of the vessel owner's requirements for insurance with the creation of international funds and if you are a signatory to the fund, based upon your import of oil, that is how much money—some formula there—you pay into the fund. Well, after the United States not being a signatory to one of those conventions, the United States could not recover a dime from the fund and it is still that way. We still have not ratified that convention. In the meantime, the rest of the world after the Erica and Prestige vessel accidents in Europe have increased liability limits, have increased requirements for double hulls, even more so with an implementation plan going into effect more rapidly than our own in Europe and here we are, sitting here with our own limitation limits which have absolutely nothing to do with the international conventions. And if there is a weakness in OPA 90, I'll tell you what it is, with respect to the limitation of liability.

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The vessels that call into U.S. that bring most of the crude oil into the U.S., with the exception of a few of the ships that move Alaskan oils to the lower 48, the vast majority of those ships are foreign owned and being foreign owned, if the owner of those vessels has no assets in the United States and does not reside in the United States, and has a Valdez-type event, and with a space . . . say you spill 11 million gallons or you spill 20 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. Actually, technically, the only thing he has to expose is his limits of liability under the act. 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 would have to be . . . there would have to be a judicial finding that the limits of liability didn't apply. But as the spill resulted from, as the statute points out, some violation of regulation and there is some criteria in there in the statute which sets out how you can break limitations or go through limitations, but whatever it is, that vessel owner, if you can't reach him here in the United States, can't get your personal jurisdiction over him, you are only going to get jurisdiction over the ship through an admiralty process called Inroom Jurisdiction, which gives you actual jurisdiction over the property of the vessel itself and not the owner. And if the owner never appears, you can't get personal service on the owner, that is all you are going to get and that is all that is going to happen. You know, there is not going to be these billions of dollars paid out by some oil company. In states that have cargo owner liability, you may be able to collect some money from . . . probably the majority of the money will come from a cargo owner but not from the ship owner.

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JT: Let's give an example. If it is coming from Venezuela, the ship is foreign owned, it is Venezuelan government owned cargo . . .

BN: That further complicates it. You've got a question of the application. There is also another federal statute called the Foreign Sovereign Immunities Act which does not allow you to sue foreign governments in U.S. courts because of the fact that they are a foreign sovereign, just as you cannot sue the federal government except under limited . . . you can't sue any government agency or entity unless they have, by statute, waived immunity in some way, shape or form so that you've got the question of whether or not that would be applicable. So, that would be very complicated. It is not going to be a fun, free-for-all after Valdez where you are going to find . . . and, again, Texas and Louisiana, neither Texas or Louisiana has cargo in their liability. The only liability that is going to be on the vessel or on the spilling party.

JT: All they would get essentially is the property value of the busted ship?

BN: They'll get the insurance. They'll get the billion dollars or whatever . . .

JT: Whatever the maximum that he has.

BN: Yes, whatever the max is.

JT: Does he have to carry a billion?

BN: No. Whatever the OPA 90 limits are. He is carrying insurance over and above those limits but then the underwriter, first of all, is going to try to enforce those limits. The ship owner is going to have to do what the underwriter says in those cases because the way the policy is written, P&I insurance basically is protection and indemnity and it

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is indemnity insurance. The vessel owner is really on the hook first and it is supposed to pay before it can be paid. Now, most of the time, the underwriter goes on and pays but it only pays . . . anyway, the underwriter will only pay out money for which the insured is legally liable to pay as a result of his liability under statutory, common law, whatever. And that is all they are going to pay. So, until a court were to say, O.K., we are . . .

[Tape Two, Side Two]

JT: Explain to me what is a P&I, what role they play in such an incident?

BN: Well, P&I stands for protection and indemnity and these are associations that are usually made up . . . the members of the P&I club are the vessel owners and the club is managed by some management group. There is an American P&I Club, I guess. There was, anyway. The other major ones are in Europe: The U.K. Club, the Britannia Club, the Scold is a Swedish club. Those are just some of the ones I can think of off the top of my head. They are the underwriters. It is a little bit different because the insurance is different but the P&I club handles the third party liability for the vessel owner. It is kind of like your liability insurance for your car. You get in an automobile accident, you are at fault and your liability underwriter comes in and protects you and provides counsel. If you get sued, they represent you. That kind of thing. That is what a P&I club does. Now, there are specific rules that the club has just like in your policy. And the premiums are based on the amount of the coverage. Now, I know this: most P&I clubs in the past after Valdez, especially after the enactment of the Oil Pollution Act of 1990, if you had a ship trading to the U.S., you paid the surcharge. In other words, you paid more money coming to the U.S. than you did going to other countries in the world because of the

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liability limits not only at the federal but at the state level in a lot of cases. So, as far as I know, I guess those charges are still in effect, although my guess is that Europe has gotten very expensive now, too, following those two major tanker accidents over there in the late 1990s.

JT: Well, if you look at all of the actors in this story—the ship owner, the companies, the natural resources involved, the federal government—all the major actors in this story, who benefitted and who lost from OPA 90?

BN: Oh, that is a tough question.

JT: First of all, let's start with who benefitted from OPA 90?

BN: People that were in a salvage business and spill contractors, people like that. If those businesses weren't there, they sprang up afterwards. Existing spill response contractors probably were able to expand their business as a result of the specific requirements because one of the major changes that OPA 90 required with respect to vessels is the requirement for . . . and I think that is one of your questions in here about contingency plans, but each ship has to have its own spill response plan in order to trade to the U.S. Texas and Louisiana also have state requirements for spill response plans, although if you meet the federal, you cover the state. In filling out your form to go to the Coast Guard when you are making up your plan, you can't just indicate what you are going to do. You also have to have listed in there the names of the contractors you call in the event you have a spill in the Port of Houston or the Port of Galveston or Texas City. I mean, you have this huge area here. Who are you going to call? Who is going to respond? What kind of resources do they have? That kind of thing. So, you have to set

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those out specifically. So, you have to enter into those contracts in advance. So, those people are already signed up and ready to go in case you have a spill and you call them up and your on-scene coordinator shows up and says, O.K. . . . prior to that, somebody calls and said, go out there, this is where we are at, this is what you've got to do . . . estimate the kinds of resources needed and that kind of thing. So, definitely people like that, I think. You know, you look at probably people in manufacturing, oil boom, oil spill response equipment—the requirements for huge stockpiles of that stuff up at Valdez or Alaska. Oil spill clean up barge is another equipment that they have to have up in Prince William Sound. Of course, you know, a lot of that was a one-shot deal. If you know stuff doesn't get used unless it is something that deteriorates over a period of time and it has got to be replaced, you know, there is not going to be a continued great demand for that.

JT: I guess a ship building company would have had some business with the double hulls?

BN: Well, that was the hope of the U.S. ship building industry, which is almost nonexistent. The only shipyards left . . . there are a few yards left and they build mainly vessels for the military, the Navy. But that was thought to be the savior of the American yards—that there was going to be this great demand for double hulled vessels to replace the aging U.S. Flag tanker fleet. Well, that has not occurred. The reason it hasn't is because actually a lot of that was actually started . . . the demand for that type of shipping was already on the decline even before Valdez. There used to be a huge number of ships trading between Gulf Coast and the East Coast north of Cape Hatteras, New York/Boston

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area, Maine, product trade: fuel oil, gasoline, motor gasoline, things like that. Well, since the late 1950s, 1960s, some time in the 1960s, I guess, you had pipelines going in so most of that product goes up there by pipelines. It is a lot more efficient way to move it and a lot less expensive way to move that volume product. So, that cut way back on the demand for American flag ships to move that product. That product had to go in American flag ships because that is part of the U.S. Coastwise trade. By statute, it has to be American built, American flag, American crude vessels, Jones Act vessels. Same way with Alaska trade. Even though it is noncontiguous U.S. trade, it still has to use the Jones Act ships. But with the exception of the Jones Act Trade for Alaskan oil, the rest of the stuff is almost dying. There are a few ships that are still plotting the waters with their American flag. So, with respect to large tankers, no, not much help. The smaller you are to build barges, on the other hand, probably have had and are still getting a chance to build although the industry was already, even before OPA 90, moving towards double hulled barges in the inland waterways. It makes a lot of sense. Those things get banged together all the time and the steel they are built of, it is not near the thickness and the weight that you find in a ship. It doesn't need to be. But it is not that hard to puncture one, especially if you are banging them up together all the time in tows. But that didn't happen there in the ship building industry. Most of the double hulled ships coming to this country now that are moving crude are foreign and bringing a crew from foreign countries.

JT: Well, in theory, also those who benefitted would be local communities, the natural environments of a potential spill which, because of the response plans that are in

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place or the contingency, etc. . . .

BN: Oh, yes, if you want to measure . . .

JT: . . . you need to be able to avoid the massive Valdez spill.

BN: Oh, yes. I think 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 . . . they spray this material which consists of bacteria, I guess is what it is or microbes or whatever it is that actually eat the oil and what is good about that . . . if you've got a spill in a marsh area, you don't have to go in there and really disrupt the habitat. You can go around in boats and spray this stuff. I've seen them do it at the upper parts of Galveston Bay and they just run along the shore line and spray this stuff all the way up to the tide line. And you come back in a few . . . and it works really well down there. It works better in warmer water. And you go back on a few months, you can't tell that there was ever any oil in there. It is amazing how well that stuff works. So, there are technological developments, I think along those lines.

I think the big thing though is with . . . the emphasis is on pollution. Given the potential for liability of the massive costs involved, if you are an American Flag operator, as I said before, 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 you can direct towards prevention . . . and the number of spills is way, way down. It doesn't mean that something is not likely to happen sooner or later because there are people that always like to cut corners. That has always been . . .

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You know, having been connected, I'll make this comment. Having been connected with the tanker shipping business for more years than I would like to remember now—well over 30 years—and I think this is probably true of shipping in general: people who ship don't like to pay a lot of money for the transportation. I always said that unless you've got OPA 90s and European legislation in effect and domestic legislation in effect that mandates only double hulled ships coming to your country, whatever the requirements are, I could go out in the world and there are people I still would bet are doing this—collect up the bottom of the barrel tonnage that is available, ships that long since should have been scrapped and find substandard crews and operate them and make money. And the reason you make money is because there is always somebody willing to pay for the cheaper transportation. They don't want to pay for the double. People don't want to buy double protection. They don't care. They want the cheapest way you can get it and I think that is an unfortunate thing. And the only way you can get around that is you've got to have governments coming to pass legislation so there is a level playing field and this is the standard. You've got to raise that standard high enough up so that if it is double hulls you want or whatever protection you want in the operation of equipment that is going to move oil by sea, you are going to have to legislate it.

Even the international conventions . . . I mentioned earlier the ISM code, International Ship Management Code or Safety Management Code . . . it was hailed as, this is directed at prevention. It is really directed at people. I thought, yes, this is a good idea but the people that will implement this will try and cheat and they do, and they go

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out and they get somebody to certify that they have an ISM or safety management system in place on their ship and that they have a shore side safety management system in place and I have seen these. And this requires that you do right because I have been involved in setting these up. It requires you educate your people, that you train your people in what you want them to do. If you have to have a system in place for reporting not only accidents but near misses and if you have a near miss or an accident, you need to have in place a system which conducts an investigation and a root cause analysis or some type of analysis of the casualty or near miss, and makes recommendations for if there are any gaps or holes in your procedures or things like that, that changes be made and implemented. A very complex process. I don't see that happening.

JT: The U.S. is not assignee of this charter?

BN: Oh, yes. We are. Most of the people that operate in the U.S. are operating under ISM. But, you know, there are still people that cheat under that. I know that the manuals I have seen and some things I have reviewed since I have been here, there seems to be a boiler plate type of manual that some of these . . . actually, the P&I clubs use these. So, you go out and you get these and put them on your ship and get some certifying agency, classification society or whatever certify that you are ISM compliant. What is interesting though that, since most of the shipping coming from the U.S. now is foreign flag, Coast Guard and even the European countries have implemented what they call a port state enforcement program. Under port state enforcement, the Coast Guard will board you. They will look at . . . in fact, we talked about the NVIC, the Navigation Vessel Inspection Circulars—a whole bunch of these out there are published by the Coast Guard which deal

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with the question of port state enforcement of ISM. And they will board you. And their policy is to first of all check your certificates and make sure you got your certificates and that they are not out of date and check all the paper work first but then, as they are going around there looking at the ship, if the way the ship is being operated, say it is at the dock just charging cargo or whatever, the general condition of the ship would lead them to believe you might have the paper but we don't see any real evidence of a safety management system in place, they can call you to task on that right there on the spot. And they have done so. In fact, you go to the port state enforcement web site and you will find that there are certain vessels that have been barred or asked to depart, not come back until all these items are fixed or you have this in place or whatever.

JT: And this is OPA 90?

BN: This is at the international level. This is not really part of OPA 90. I think though, it doesn't surprise me though that the international maritime community went in this direction. The OPA 90, I think, was just the opening round of domestic legislation and it came out in the U.S. that said, hey, you guys have got low grades of standard here. We can't have this kind of risk involved and not up the standards here for international shipping.

And I think that obviously impacted . . . you know, because the IMO is made up of countries. Our representative IMO is the Coast Guard because they enforce all these types of laws. So, that is where this stuff gets started, and other countries, you know. One of the other things that came out of that . . . we have specific work hours requirements for people on tankers. That is before ISM came into effect, you had the

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STCW convention come into effect—Standards of Trading, Watchkeeping and Certification or Certification and Watchkeeping—whatever it was. But STCW is aimed at having a certain level of training for seagoing personnel. It does not really address work hours but it does require rest periods. That is still a major issue. I think that is the major issue confronting the ship industry today and that is you work people too long. They want to reduce the manning on the ships down to less than 20 people and you've got people that work just ungodly hours on these ships, on these foreign flag ships, because there were no restrictions on work hours specifically. And, as under OPA 90, we had specific—with respect to tankers, there are absolute specific—work hour requirements. You can't work but so many hours within a 24 hour or 72 hour period or whatever it is that is set out there. Those are steps in the right direction but again, there is always a way to cheat and there is always a way to get around. And as long as you've got the shipper out there who wants to pay the least amount for freight, that is going to happen. That is the tragedy of it. I mean, the greed is live and well as we all know.

JT: Well, let's move on to some local considerations with respect to the Port of Houston, the Port of Galveston and the Houston Ship Channel, the areas within this region. Let's take OPA 90, juxtapose it against the Port of Houston and let's look at some probable impacts, good or bad, from OPA 90. Generally speaking, how has OPA 90 impacted the Port of Houston?

BN: You know, that is kind of hard to tell. Again, I am giving you my particular point of view. I think, again, the spill contractor business is probably good here because probably . . . this has become a larger and larger container port, but on the other hand,

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probably the majority of ships that trade in and out of here are tank vessels of some kind, product tankers, crude ships, chemical and specialty tankers. You know, there is a lot of that down there, a tremendous number of barges and tow boats moving barges, petroleum barges primarily. I say, primarily, probably the majority of stuff that moves in and out of here. I don't think that there has been any reduction probably in the number of ships that call here. The oil industry, chemical industry, petrochemical industry is huge in this area and there are just a huge number of ships trading in and out of here. Now, what I have seen and again, this is not necessarily related to OPA 90 . . . the majority of the ships that come in here now are . . . I say majority, like probably 98 percent of them, that trade in and out of here, are foreign flag. They are not American. Again, the American flag fleet or tanker fleet, there just hasn't been a demand for that coastwise trade anymore because of pipelines and various things. And so, you don't have those ships. But even with the foreign flags coming in, a lot of those ships are new ships. The double hull requirements have forced the newer tonnage to come . . . that was, I think, one of the real benefits was as the phase out period came into play and the other requirements for double hull just the way that section of law was written, the United States got the benefit of all the new ships because of the double hull requirement. So, as the double hulls were being produced, they were slotted into the U.S. trade. Not only ships coming directly into port but also for ships that were lightering offshore, the lightering vessels, as well as the ships to be lightered coming out there. Well, don't quote me on that. That one, I am not sure about. Anyway, the impact was the majority of tankers that started coming to the U.S., you know, have been increasingly more and more and more double hulls. And so, I think that was a real benefit to the port in the area because obviously with the double hulls, I think

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you've got, especially in our area . . . unless you have a major ship collision here and I am talking about high speed ship collision can penetrate through the double hull space, shell plate in the tank inside between the double hull void, you are not going to spill any oil.

And I will tell you one thing, you are not going to spill any oil running the ship in the ground in the Houston Ship Channel or anywhere around in Galveston or wherever. The bottom here is like it is everywhere else: mud. No rocks. Now, I guess you could rip one open if you hit a pipeline or something like that but again, you'd probably only puncture the outer hull, shell. So, it is a rare case. So, I think the provision for this port, no rocks and no major obstacles and things like that, is probably pretty good. Of course, you can always run into a platform out in the Gulf. That hasn't happened in a long time.

Probably the navigation now with the GPS has also improved greatly because I had a case many, many years ago involving a ship that hit a platform and caught on fire. Just a horrendous . . . not much pollution. The tanks that were ruptured burned and it was mainly a sad event because I think it killed 20 people, burned up or something like that.

There were quite a few people that died.

JT: Well, you mentioned before that an American ship owner has to gamble with his entire company every time he goes out. What are some of the other impacts of the increased liability in the insurance hikes? And some of the other legislations. How has that impacted this industry down here?

BN: O.K., but one of the things I ought to mention though in connection with the other one, too, is in the towing industry, the barges have been . . . in fact, this has been happening in the shipping industry in general. There have been these huge consolidations

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that have taken place and I don't know if you can directly attribute those to OPA 90.

Probably, in some ways, that has influenced it because of the increased cost involved in operations because of insurance and it kind of spills over into the next question but you are seeing that in the barge industry. I mean, there used to be Hollywood Marine and Kirby [Marine], local companies. And now, Hollywood was absorbed by Kirby and that company has become quite a bit larger. In fact, it has bought other companies, too. I think Hollywood and that merger was not only there between those two. I think Kirby has also acquired other smaller operators. And some other small companies have gone out of business. That may be related also to the increased cost and operation in insurance.

Also, it could be attributable to if they had substandard equipment. The other thing is the cost of having to convert to double hulls could have been a factor for some of the small barge operators because, you know, after some point in time, you could no longer use . . . especially if you had an older fleet, those older barges would have gone first. I know there have been a couple of small companies or some small companies that have basically gone out of business or they sold their other equipment to somebody else. So, obviously, I think insurance cost is a factor. It has gone up exponentially by huge amounts following Valdez and costs a lot more. Of course, that cost gets passed back to the consumer who buys the oil. And eventually, you pay for that at the pumps in one way, shape or form, although, again, that is a supply-demand issue. But, you know, transportation of oil to move the oil, the transportation costs are still pretty low. You are moving big enough ships but . . . anyway, did that pretty much answer that? That is at least my view of it anyway.

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JT: Yes, it is sort of a post-OPA liability reality and these realities today are completely different than 15 years ago.

BN: Oh, no question about it. And if you get out of here and you go to places like California, it is even worse because the state legislation there has . . . in fact, the whole West Coast, the people out there have just . . . the State of Washington, probably the worst. They have imposed all kinds of local requirements. For example, they have all kinds of rules for laying debunkering operations or refueling operations for ships and rules. They have some of their own rules regarding the cargo transfer operations and things like that. And liability wise, they all have cargo or liability imposed UGA liability burdens on anybody shipping oil or owning oil. That was that the legislatures out there wanted to do.

JT: It just makes it more expensive to function as a business.

BN: Yes, and if you go to the West Coast and look at the price of the gasoline out there, their taxes on gasoline or petroleum products are much, much higher than they are here. But, you know . . .

JT: Like you said, it would be difficult for you and me to go into that type of business.

BN: Oh, it would just be impossible [laughing]. It would be impossible nowadays without having some contract with a major oil company, depending on where you are going to move the oil.

JT: All right. Well, let's talk about traffic and safety. The PWS of '72 advanced the

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safety of traffic control in some of our ports to some degree. How did OPA 90 transcend that previous law for more efficient, safe traffic control along the Houston Ship Channel?

BN: I don't know that OPA 90 did much to change the local VTS. What is interesting is that there is a VTS or vessel traffic system in place in Prince William Sound, and before the Valdez left the traffic separation lane to try to get around the ice, they did so with the permission of the vessel traffic system. What I found interesting though is in the old days . . . I talked to people up there—I actually went down to the vessel traffic center and the operator that was on duty at the time, by the way, tested positive for marijuana and he claimed he could not see the Valdez on the radar any longer, which is not true because I could see it when it was on the reef. All you had to do was change the scale, go out a little further and it showed up. But in the old days, some of the captains told me that if you did anything like if you just got out to get a little close to getting over the edge of the zone, got out of the lane, you were still probably in safe water, that the VTS system up there was much more proactive and they would call you down, they would radio you and would say, hey, you'd better get over, you are doing this, that and the other. I always said this, after 10 months of being up there looking at everything including the people operating the ships and the people operating the VTS, they had been doing this now for a long time and there was just a lot of apathy that people had gotten too lax and not paid enough attention to what they were doing anymore. And a lot of that crept in the system, but in Houston, I noticed because I was here prior to the time . . . I was working for Exxon then doing all their marine casualty work . . . prior to the time of the instillation of the Houston Galveston Traffic Vessel System, a lot more . . . of course, Exxon also had a

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lot . . . [End of tape]

[Tape Three, Side One]

JT: This is an oral history interview with Bob Nicholas on December 4, 2006. This is tape 3. Bob Nicholas, Exxon Valdez and the Oil Pollution Act of 1990 by Jason Theriot. Some of the safety measure that are put in place with VTS, with OPA 90 standards certainly would make the traffic in Houston, the very congested traffic in Houston, somewhat more safer, so much more efficient. As you know, the Houston Ship Channel is, by far, the most unique ship channel probably in the country and maybe in the world because of its history, because of its size and its depth and its length, etc. One harbor tug operator refers to the business on the channel as a “contact sport.” You have mentioned before about “Texas chicken.” So what is Texas chicken and what do you know of its history and influence on our nation's waterways?

BN: Of course, the Texas Chicken Rule refers to the method by which large, deep draft vessels pass each other in the Houston Ship Channel. And I guess the rule is still in effect even though in the last few years, the Channel, from Bolivar all the way up to Morgan's Point—that is in the open bay part of the channel—has been widened from a width of 400 feet to 600 feet. It increased the width from a couple of hundred feet. I believe that is it. It may be different but I think that is what they've gone to. From the entrance channel up to Bolivar, it was always 600 feet. I thought they discontinued that up. But basically, the passing rule allowed vessels, under the control of the pilots normally, to actually kind of hit directly towards each other which is not hard to do when you've got a channel that is only 400 feet wide. It looks like you are doing that anyway.

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And then, when they are so many feet apart, of course, the pilots make that judgment, they turn to the right, both vessels turned to the right, make a slight turn over to the right. Not a far right turn but just move to the right. And then, the bough wakes as the vessels actually approach each other. The bough wakes, the water being pushed to the side by the bough and displacement of the ship, pushes the ships apart. Keeps them from hitting each other. Anyway, that rule goes back to established practice that was judicially recognized by the federal court here in Houston and also by the Court of Appeals in a collision case by an Esso ship and an Italian naval vessel in the mid-1920s. So, it has been around a long, long time and it has judicial acceptance as a customary rule, in recognizing the maritime law as a customary rule. But anyway, that is the words of the rule. I think that the widening of the Channel all the way from Bolivar to Morgan's Point has probably done a lot to increase the safety of the channel. The newer ships, I mean, you still . . . and, of course, it was not only widened but it was deepened . . . but you are still somewhat size limited. I think the controlling depth now, I am not sure, is 40 feet. It used to be 38 or 39 or 40. And so, you've got a cushion under that of . . . if you run through there with a depth sider . . . I know I do on a sailboat . . . I think it shows 45 feet but I think the controlling depth is 40. But if you get 18 knots, 20 knots, 30 knot gust of wind out of the north over a sustained period of time, I guarantee a lot of that water in that bay is out in that Gulf and you have to change your arrival draft because of that. You lose a lot of that cushion. The VTS combined with the deepening and widening of the Channel I think has really brought the port here up to date in a lot of ways and I am glad to see that happen.

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JT: Let's do this: Let's walk through a Valdez-style disaster in the Galveston Bay.

Let's say, in the Intercoastal byway where you've got opportunity to go several different directions, you could have a major collision at a fast pace and you could have, let's say, a puncture of a double hull or some type of disaster where you have a massive oil spill or maybe a pipeline burst or what have you. Explain to me how OPA 90 immediately goes into effect with respect to Galveston area. We are talking about removal costs, natural resource loss, damage assessment, liabilities, all these that would be associated with this kind of accident.

BN: Yes, of course, what further complicates it is any time you have any kind of major oil spill, I think I may have mentioned this to you some time ago, but that area, that scene of the vessel or vessels involved, that merely becomes a crime scene now, which is unfortunate. But regardless of whether the vessel is an American flag or foreign flag, the tanker, for example . . . and, in fact, let's say it is a collision between a tanker and a tow and there are petroleum barges on the tow, the owner of the vessel must immediately notify the Coast Guard that there is oil in the water that spilled. The tow boat owner probably ought to do the same if the barge is ruptured and he is spilling oil out of the barge. And just assume the worst. We've got a bad spill. The vessel owner needs to call the Coast Guard, notify them they've got a spill. As soon as they get off the phone with him, they need to call to do whatever they need to do to activate the response plan if they've got oil coming out of that ship, that is required by law. Within so many hours, they probably will have their field representative on site there, the person on charge. And the same way for the tow. It is a petroleum barge and it is ruptured and it is leaking the

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oil into the water; they are going to have to do the same thing. The response contractors, of course, would be out on the scene. The Coast Guard more than likely would close the Ship Channel as well as the ICW if the collision occurred at that intersection. I think we mentioned that they would close the channels. Of course, the Coast Guard would be on the scene. Now, more than likely, given the fact that this has security implications because you are closing the Channel, I would not be surprised if the FBI doesn't show up either. This will complicate the investigation, of course, by counsel for the vessels involved that more than likely won't be allowed on. The attorneys won't be allowed out there and there will be a claim, if you try to get on, obstructing justice and all that good stuff. But anyway, assuming that aside from all those issues related to the liability, now it is not going to matter which vessel is found to be at fault with respect to claims for liability. There may be some division of whoever spilled the most oil, whoever's oil did the most damage. But the spillers, if it comes out of your vessel, you are liable for the consequences of the spill. The liability is strict, it is without fault. If there is a battle, it may be between the two underwriters for the vessel and for the barge, the barge owner or tug boat operator. But they will have to sort that out later on. They would have to respond in liability to any third parties who have been damaged as a result of the spill.

Now, direct results of the spill. This does not include demurrage claims, for example, for the closure of the Ship Channel. If you happened to have a ship sitting out there and I have it chartered and I am waiting for it to come in and it can't come in and it starts charging me demurrage, the delay cost, I can't collect those because I don't have any physical damage directly related to the spill. I only have monetary damage. Now, on

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the other hand though, if you were a bay shrimper and you were shrimping for a living, livelihood there and the season was open and you couldn't bay shrimp as a result of the spill, even though you don't have physical damage to your boat or whatever else, a person who relies upon the use of the natural resource for livelihood can collect damages. That is the difference between the two. So, those parties would be liable. The cruise ship owners, unfortunately with delays in not being able to bring the ships in or sail the ships—no compensation without some actual physical damage. There're potentially damages that the municipalities could collect, if the spill impacted the beaches and they couldn't have tourists and things, people coming down to Galveston; that is a potential problem. The Coast Guard and the . . . eventually, if the spill spread out to the parts of the Bay like over towards Anahuac and over in the West Bay, East Bay area, Bolivar, along the coastline and along the coastline of Smith Point and up towards Anahuac, in that area, and into Trinity Bay, NOAA [National Oceanic and Atmospheric Administration] would be on the scene trying to determine the extent of any natural resource damage or damage to resources. The spill contractors would be looking to operate up in those areas, pick up any free oil in the water using skimmers or whatever they could. They would also be looking possibly to use bio remediation in nearby marshy coastlands and things like that. All that is going to be for the ticket. The liability is going to be for the two spillers in this case and how they could sort it out. But, you know, this scenario that we are talking about here should go into place immediately. That is the whole point. Now, if, by some chance, the spillers don't respond, of course they are going to be an extremely different problem and people will probably go to jail. But the Coast Guard could respond in the even that the responsible parties do not

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respond. The [OPA 90] Act uses the term “responsible parties.” Anyway, that is something I think should go on.

If one of the major oil companies is involved, if it was a vessel calling up their facility and they wouldn't have any liability or any legal responsibility to get involved, they might have some way of assisting or could assist the vessel owner in that case depending on the arrangement they had with the vessel or that kind of thing might be. But officially, it is the vessel owner who has got to have that response plan in place but how to activate that plan and follow through until the oil was cleaned up to the satisfaction of the Coast Guard. And in this case, also the general land office would be on the scene from the state of Texas. So, you'd have to have this combined effort with the Coast Guard, the general land office, the vessel owners and their representatives and the spill contractors would all be working together under a unified command on the Coast Guard's unified command to set up and respond to the spill.

JT: Now, where does the oil spill liability trust fund, where would that come into play in a situation like that?

BN: Potentially, state governments and local governments could make claims against the fund if they were not able to collect from the vessel owner. You always have to make your claim against the responsible party first, then you go to the fund. I understand it is pretty difficult to collect from the fund. And third parties can also claim against the fund in the event they are unable to collect against the vessel owner.

JT: So, OPA 90 provides an opportunity for injured parties to receive some financial .

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BN: Yes, and I think that is the big difference between the amendments to Clean Water Act enacted under OPA 90 and the way the Clean Water Act was before—only municipalities, the state local governments, federal governments could collect for oil spill liability, oil spill damage. OPA 90 opened it up to third party claims by private citizens who were damaged.

JT: Explain just briefly bio-remediation.

BN: As I understand it, it involves a process . . . they have developed a type of bacteria that eats constituents of oil and I think we are talking about persistent oil, something that doesn't have the type of toxicity you might have in some special chemical product or something like that. And they spray this stuff over the affected area and the bacteria goes to work to start eating away at the oil, the residue of the oil. I have seen pictures of areas in Galveston Bay where they have done this and it is amazing. The good thing about it is you don't have to send anybody walking around in there trying to hand clean or skim an area of marshy grass and areas like that.

Yeah, whatever, and you'd end up killing half the stuff in there anyway. Oh, the other thing . . . you'd probably have these places that would be set up automatically . . . part of your response plan would have to include a group of people or whatever, the group that comes in and washes and cleans birds, wildlife response, that is part of the response plan. It is interesting. The way the response plan works, there is a national response plan and then a regional plan that OPA requires if you look at the statute. The Coast Guard implements those at different levels. And one of the things they have done is you can find coastline and maps that show the coastline of the bays and harbors and all

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those kinds of things, and those pretty much are designed to show if your spill contractor should have those. You know, in looking at those, when you initiate the spill response, which of the real high risk areas that are likely to be impacted and how. You know that just by looking at these, this work was done and these assessments were made some time after the statute was passed. I think NOAA probably did most of that work, I believe. I remember doing some drills, oil spill drills, in different parts of the country. We always had those maps available.

JT: Talk about the strike teams.

BN: Those are Coast Guard strike teams and they will go in, for example, if there is a mystery spill of some significance and there is no identified responsible party, if it is bad enough, they will send in a strike team to do the clean up. And, of course, always looking for a responsible party to tag in the event that, you know, they find somebody that is responsible. But again, I mentioned that fact that if you don't report and they later catch you, you are going to face a felony charge just for failing to report less all the clean up costs and damages and maybe some additional criminal penalties under the statute.

JT: It sounds like OPA has really put a lot of the burden on the Coast Guard and if you look at some of the things that have occurred recently with the big hurricanes and 911, the Coast Guard really is now the definitive police of the waterways. They really have a huge role to play in this.

BN: Oh, yes. I mean, every time you turn around, even with the passage of the Maritime Security Act in 2002, those poor guys keep getting their mission increased with more missions to perform, not just . . . probably back in the 1960s, a chief functioning

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Coast Guard was SAR, search and rescue. And then came all the pollution stuff and drug interdiction. Customs is supposed to be involved in that but they do a lot of it. Now, all the maritime security and the pollution enforcement of all the pollution laws and what you have to do—inspection of foreign flag ships, certification of foreign flag ships. Every foreign flag ship has to have a certificate of compliance letter, I guess. Now, I think they have gone . . . it used to be tank vessels had a separate one called TVEL, tank vessel examination letter. Now, everything is a certificate of compliance. Crews ships, foreign crews ships have to have them, tankers, any type of cargo vessel or containerships, bulk carriers, anything that is foreign. Once a year, you kind of have to renew that thing. I know, too, when they implemented the Maritime Security Act and the International Ship Port Safety Security code. Every ship coming through the Port of Houston. . . I remember being at a meeting at the Houston Pilots a couple of years ago. Every ship that comes into the Port of Houston that had not had a prior security inspection would not be allowed in until inspection was conducted. And that meant you anchored at the offshore anchorage outside of Galveston. No one was allowed on or off the ship. No one could come and visit the ship because you hadn't cleared Customs and Immigration yet. So, you were stuck out there until the Coast Guard did its thing and then Customs came on after them and cleared you. And then, you could have your normal people, the ship's agents and owners, or prepare reps or whatever comes on board and start doing their thing when the ship came in but that was a very strict rule. The Coast Guard, if you had not been inspected before, you know, you were going to have to wait your turn.

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JT: In the 15 years of OPA 90 legislation, in your opinion, how has that legislation been effective in handling several dozens of minor spills that have occurred?

BN: I think so. I haven't heard much . . . of course, we have not had any real large spills. Well, I say that . . . there have been some pretty good-sized spills on the West Coast out there with a ship I think that came, ran aground, came up on the beach and different things like that, with different issues involved. I think the thing about it is, is the government had a lot more tools to work with now than he had before and being able to . . . well, in seeing that the vessel owner, first of all, is doing what it is supposed to do under the law and secondly, it has got resources that it can put into play in the event the vessel owner does not respond. But I have not heard of a case involving a failure to respond. Now, let's put it like this: If you have, and this is supposed to change now but this is only within the last year—the spill response plan requirements only by the tankers, tank vessels, ships and barges—a couple of years ago, they went ahead and implemented a change in the law requiring nontank vessels above I think it is 300 gross tons threshold size to have spill response plans. You could have a large container ship that carries quite a bit of fuel that could have a spill. So now, and I think this is a direct result also of some casualties involving these ships, there was . . . it wasn't a tanker—I can't remember . . . it went on the beach out there in Oregon—I think there was a large spill associated with the grounding and breakup of the ship, the Coast Guard had to respond to that entirely, it was a government response. That was some of the impetus behind driving the change in legislation to include nontankers, which makes sense.

JT: And that has been amended since 1990?

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BN: Oh, yes. The last couple of years I think. And the Coast Guard is still in the process of implementing that. There were some guidelines they put out or a NVIC that came out, Navigation Vessel Inspection Circular. The law is already in effect so they just need to . . . they really ought to come out with some regulations.

JT: So, what does this tell us about the broader issue of the state of environmental issues in maritime in the oil industry?

BN: Well, you know, OPA 90 extended offshore, too. You've got requirements for spill response from offshore facilities and that type of thing so I think it has heightened the awareness of how anybody operates in the U.S. and out of the U.S. or offshore on the U.S. And if you have a spill, they know you've got to report it and you know that the Coast Guard is coming, and the MMS is going to be there, too [laughing].

JT: Well, it sounded like it is getting difficult, meaning more expensive and more responsibility on the part of the industry. Is this beneficial—meaning OPA 90—is it beneficial to the U.S. industry or does this lead us to more foreign outsourcing? Being that it is more expensive, more liability, more responsibility.

BN: Well, that is hard to answer. I guess if you look at . . . we've got still a very active offshore drilling program in the Gulf of Mexico. Those are all federal leases because of their location, as a tremendous amount of oil is being found out there. That will help the demand for oil situation in this country but it is such a huge demand, I don't know . . . what you are talking about here is energy policy and I know very little about energy policy other than we should have made changes a long time ago to make ourselves less . . . decrease our demand for foreign oil and our use of oil as our primary energy source.

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But, you know, nuclear energy got rejected and been rejected and you know there are all kinds of issues involved in that. Of course, Americans in love with their cars here and all that kind of stuff. I don't know. Maybe this tells the story. The majority of the income that a company like Exxon makes, for example, probably as high as 80 percent of their income does not come from the U.S. It comes from outside the U.S. And most of the money they spend on development is outside the U.S. This is a very mature market. They still have refineries here but nobody is going to go out and build a new refinery. I don't care what you change in the law . . . that is another issue. It is not only the demand for the oil but there is also a very . . . I think we are stretched pretty close to the limit on refining capacity. And the other thing bad about it is most of it is located on the Gulf Coast so you disrupt oil production in the Gulf of Mexico and also do damage to the refining capacity like a lot of it is over the New Orleans/Baton Rouge area, your supply of gasoline and motor gasoline and refined petroleum product drops off, so there is a big requirement then to start having to move the stuff in from foreign sources. But I don't know; there are a lot of things I think we could have done different with respect to the energy policy in this country in the last 50 years. It seems like we didn't learn anything from the embargo, the oil embargos of the 1970s. We didn't learn anything from that at all. And I have heard people in the oil industry say that the only energy policy this country has had over the last 50 years is to buy all the cheap Middle East oil we could buy. Well, it is not cheap anymore.

You know, it is kind of interesting. I saw something in the *Oil and Gas Journal* about one month ago . . . there was a big congressional investigation after the prices had

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gone up of gasoline and I never saw this in the newspaper, but the congressional committee found that the cartel or OPEC was doing everything it could to manipulate prices to keep them high by curtailing production. You saw that recently. They curtailed production to get the price back up or keep it high. We are at the mercy of these folks. I don't know.

You talk about outsourcing. I know the oil companies, but they are not probably unique have outsourced some of their payroll activities and things like that but that is just corporate America that has done a lot of that. I don't think they are any different from anybody else. I don't know that that has anything to do with any of this, I think that just has a typical . . .

JT: Well, if you are using Exxon as an example, they are one of half a dozen of the big hitters that could afford to do stuff like that. Let's pay attention to the guys like you and I who may want to go into the industry, the smaller guys. Is it going to get to a point to where environmentally, liability speaking, that it is going to be too expensive for the Americans like you and I to operate in this maritime environment?

BN: I think probably it already is. I think it already is. And, in fact, one of the comments when I was looking through some of your questions, one of the comments that I got from the people I talked to about people wanting to go into this business or go into the industry or actually get a job as a ship's captain or work on a barge or tug . . . people don't do that anymore because of the fear of the penalties, the criminal penalties that are potentially involved now. If I see one thing, it is a tragedy and I don't think it is the right way to go, is the further criminalization of ordinary negligent conduct. And eventually,

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we are going to have so many people put in jail in this country, I think our primary business is going to be keeping people locked up. That is my own opinion. I mean, we just can't continue to keep criminalizing ordinary negligent conduct and that is what we've done. If he has an oil spill, you want to put people in jail. And one of the things I think I mentioned to you earlier, too, there are limits on how far you can go with this criminal prosecution thing because the liability underwriters basically have told state local governments or federal governments too, if you get convictions against people here for inordinate criminal statutes where it says the conduct is more than negligent or willful...

[Tape Three, Side Two]

BN: Anyway, what is coming, though, is the fact that conviction in connection with an oil spill, conviction of the company or an individual with the company that the conduct was other than ordinary to negligent conduct, willful misconduct, something like that, underwriters could deny any claim for liability. Underwriters could deny liability on the basis that they don't carry . . . insurance is not designed to cover your willful conduct. For example, you get in a wreck in a car and you were negligent, you ran a red light or something, you weren't paying attention to what you were doing, your insurance will cover you for that. But if you see somebody going through a light and it is already red and you decide, I just want to go deliberately hit this car, or T-bone him, your carrier won't pay for that kind of conduct. I don't know; that has got to be sorted out. But, you know, there is always some federal prosecutor or state prosecutor now that wants to make a name for themselves out here ready to prosecute whatever XYZ company or individual

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operating the tug boat or the barge. In fact, this doesn't involve an oil spill but the German ship that knocked a crane down over in Mobile, Alabama, the company has pled guilty to a criminal charge and the owner . . . the captain has already been convicted. He is supposed to be sentenced here. I am supposed to be talking about this in a couple of weeks, as a matter of fact, one week from Friday at the Council of Master Mariners here in Houston. But another example of how ordinary negligent conduct is criminalized.

JT: Well, let's wrap this up, Mr. Bob. What ever became of the Exxon Valdez?

BN: After the incident, the ship went to NASCO, National Steel and Shipbuilding in San Diego where it was originally built and was repaired. Before it came out, the Exxon Shipping Company had been reorganized and a different company now was going to operate a ship called SeaRiver Maritime, Inc., so the name of the ship was changed to the S/R Mediterranean. The ship, as a result of OPA 90, a provision of OPA 90, was not allowed to trade in the Prince William Sound. A court battle over that resulted in that being upheld. And the ship, for a long time, until I would say probably the last 10, 12 years, 13 years, was used primarily over in Europe by Exxon and traded out in the Middle East. Also loaded oil in the North Sea. Basically operated in European waters. Sometimes to the Far East.

JT: Now, what happens when it is not a shipping company?

BN: Hold on just a second . . . and then, I think within the last year, the ship was transferred from the U.S. flag to the Marshall Islands flag. Now, I don't know if it is still owned—I was trying to find out today if it was still owned by Exxon Corporation or through a foreign affiliate or whatever but it is no longer an American flag ship. So,

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Exxon Shipping Company is still around. It has all the liability associated with the Valdez accident. It does not have any assets although the Exxon Corporation has assumed whatever liability. Nobody is going to walk away empty-handed because Exxon Shipping Company doesn't have assets.

JT: They are no longer in shipping crude?

BN: No. SeaRiver is still around and SeaRiver still operates in Alaskan ships about 6 or 7, 5 or 6 ships, out of Alaska.

JT: What happened to Captain Hazelwood? Where is he today?

BN: He works for the Fowler Rodriguez law firm in New York as a paralegal handling cargo claims, the last I had heard. Never had a chance to go back to sea.

JT: And I believe—correct me if I am wrong—\$5 billion in punitive damages lawsuit, where is that today?

BN: Well, it got reversed a number of times and every time we get sent back to the 9th Circuit Court of Appeals to the federal court in Alaska, the judge reinstates it and it keeps getting bumped back to the 9th Circuit. So that is where it is now. I think it has gone back to the 9th Circuit.

JT: Now, you experienced first-hand a massive ecological disaster brought on by negligence. What has the industry and our government learned from this?

BN: I could talk to you about that another hour. Why don't we start off with that question next time?

JT: How about this, this last question for today, Mr. Bob: That telephone call that

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you received the day after, how did that change your life?

BN: Oh, man, I'm telling you. It is kind of one of these events that is a career changing event or life changing event that occurred . . . the way it happened for me anyway . . . there was my life before it and my life afterwards. And it changed quite a bit. I think the way you look at things . . . I know one of the things it did, when I came back, I mean, from the time I spent up there although the whole experience lasted for years, 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 are pale in significance to the kinds of things that you see happening when you are part of something like this. I think the other thing is if I take away anything or remember anything about it, it was working with the people that I had grown up with at Exxon and how hard those people, especially the people on the ship and what they did—they wouldn't get off that ship. You couldn't have pried them off there or ordered off there. 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, just 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 if I have any feelings at all, it is of a 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

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of folks and still are.

[End of tape]

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