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EXXON IS INDICTED BY U.S. GRAND JURY IN SPILL AT VALDEZ

By **JOHN H. CUSHMAN JR.**

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Attorney General Dick Thornburgh called the indictment on two felony and three misdemeanor charges "our best shot at prosecuting this incident."

The indictment comes just four days after the Justice Department acknowledged that it was drafting a plea bargain that would allow Exxon to avoid a criminal trial. Mr. Thornburgh said the company had refused to accept the department's terms for entering a guilty plea and avoiding a trial, although he would not rule out further negotiations.

But the details of what happened behind the scenes to bring about the collapse of the plea bargain were not clear today.

Even so the developments in the case represented a victory, at least for now, for the state of Alaska, environmental groups, and private parties seeking civil damages from the company in connection with the March 24, 1989 accident that spilled nearly 11 million gallons of crude oil into Prince William Sound. Those seeking civil damages had complained bitterly last week that the Justice Department's proposals would undermine those efforts.

Exxon's chairman and chief executive, Lawrence G. Rawl, said in a prepared statement that the company was "disappointed" with the indictments and that officials would "defend ourselves in court against these charges."

Because the potential criminal penalties under the indictment cannot yet be calculated, it is difficult to compare Exxon's potential liability with what it would have been forced to pay under a plea bargain.

Justice Department officials said the indictment could result in penalties of at least \$600 million, perhaps far more, but not until a conviction, which is far from assured and could take years to obtain.

The plea bargain, officials said, would have imposed about \$200 million in criminal fines and would also have required Exxon to contribute up to \$550 million, beginning with an immediate payment of \$150 million, to a fund that would be used for environmental restoration. The plea bargain would not have prevented civil lawsuits against Exxon, but the restitution fund could have offset some of the awards won by civil plaintiffs.

If Exxon is convicted, it could be fined more than \$1 billion if the court applies legal provisions setting fines on the basis of economic losses or environmental damage. In that case Exxon might have to pay fines calculated at double the damages caused by the spill to the environment itself, and double the costs incurred by the Government and private parties. The Justice Department said \$600 million was a conservative estimate of potential criminal fines.

In any event, the criminal penalties Exxon might face are probably dwarfed by the potential civil liabilities. Those are calculated based on the actual damage to the environment, and the cost of restoring it to its original condition or buying equivalent property. The spill killed thousands of birds and animals and crippled much of the state's fishing industry.

Today, after a meeting with Mr. Thornburgh, Governor Steve Cowper of Alaska said: "If there is an indictment in Anchorage, and there is no plea bargain, at least in the form that we've seen it, that's fine with us. Things can be negotiated from here."

"People ask me every day, frankly how much we want," said Governor Cowper. "The answer is, we don't know. We're just beginning to put our evidence together."

Sarah Chasis, a senior attorney for the Natural Resources Defense Council, which is suing Exxon on civil claims to force it to pay for the restoration of damages caused when the Exxon Valdez ran aground in Prince William Sound last March, spilling 11 million barrels of oil, also welcomed the developments.

"We think it is appropriate that the Federal Government has decided to pursue criminal penalties, and we are glad that the proposed plea bargain has not been adopted," Ms. Chasis said.

Mr. Rawl particularly objected to the two felony charges, which are based on the assertion of willful wrongdoing. "Nobody willfully grounded the ship or caused the spill," he said. He also disputed the Justice Department's assertion that fines, under the Alternative Fines Act, could be set at double the value of the damage to natural resources. Unless that law is invoked, the fines would be minimal under the statutes that Exxon is accused of violating.

The indictment does not make any charges against Exxon corporate officers, and thus would not send any individuals to jail upon conviction.

Its two felony counts cite the company for failing to ensure that the Exxon Valdez was operated by competent crew members during its voyage out of the huge oil shipping harbor at Valdez. After leaving normal shipping channels in an effort to avoid heavy ice, the ship's crew ran into shallow waters while the captain of the vessel was below deck.

The captain, Joseph Hazelwood has been accused of drinking before the accident and is on trial in Anchorage on charges in the case; the officer left to navigate the ship was allegedly not properly licensed for those waters.

One of the felony indictments was brought under the 1972 Ports and Waterways Safety Act, which the Justice Department said "requires the owner, master or other persons in charge of a vessel to ensure that the wheelhouse is constantly manned by competent persons."

The other felony count was brought under the Dangerous Cargo Act, which the department said "provides that a felony is committed if a person willfully and knowingly violates a regulation prohibiting any person from being engaged on a crew of a tank vessel, if such person is known to the employer to be physically or mentally incapable of performing the duties assigned to him or her."

Mr. Thornburgh said that the indictment against Exxon represents the first time the Federal Government had brought such charges under the Dangerous Cargo and Ports and Waterways Safety Acts.

Prosecutors today refused to elaborate on the basis for the charges, saying that the evidence would be presented in court.

The three lesser charges were made under the Clean Water Act, the Refuse Act, and the Migratory Bird Act.

At a press conference in Washington, Mr. Thornburgh said that the prosecution of the company sent "a strong signal

that environmental crimes will not be tolerated. Firms which violate the environmental laws will face tough prosecution in the federal courts."

Speaking privately, department officials said that they believed the proposed plea bargain might have gone through had Alaskan officials not objected to it so strenuously. But Mr. Thornburgh said that it was rejected by the company, and that the complaints of the state were irrelevant.

It appeared that the state's vehement objections to the plea bargain and the resulting political pressure had, in any event, eliminated any possibility of further compromise by the Justice Department in the final days of its negotiations with Exxon.

Conversely, attorneys said, the indictment would probably increase pressure on the company to seek more negotiations on a possible plea.

Mr. Thornburg rejected any suggestion that Exxon and the Justice Department have actually agreed quietly that the company will later agree to a plea bargain, now that the indictment has been handed down.

But he added that a criminal defendant can at any time approach prosecutors with a plea bargain proposal. He refused to say whether the department would now accept a settlement based on its earlier proposals.

Justice Department officials said that Alaska's consent to the plea bargain was essential because Exxon wanted it to affect not just the criminal case but future civil lawsuits, which will provide the state its main recourse in attempting to recover from the harm done.

Correction: March 1, 1990, Thursday, Late Edition - Final

A picture caption yesterday about the indictment of the Exxon Corporation in the Alaskan oil spill misidentified the men with Gov. Steve Cowper of Alaska. Garrey Peska, the Governor's chief of staff, was at left; at rear was Doug Bailey, the Alaskan Attorney General.