

APR 30 1991

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

DISTRICT OF ALASKA

By Deputy

1 UNITED STATES OF AMERICA,)

Case No. A90-015 CR

2)
3)
4 Plaintiff,)

Anchorage, Alaska

5 vs.)

Wednesday, April 24, 1991

8:30 o'clock a.m.

6 EXXON CORPORATION and)
7 EXXON SHIPPING COMPANY,)

IMPOSITION OF SENTENCE

8 Defendants.)
9)

TRANSCRIPT OF PROCEEDINGS

10 BEFORE THE HONORABLE H. RUSSEL HOLLAND
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 For the Plaintiff:

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1 ANCHORAGE, ALASKA - WEDNESDAY, APRIL 24, 1991

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3 (On record at 8:37 o'clock a.m.)

4 THE CLERK: All rise. His Honor the Court, the

5 United States District Court for the District of Alaska, is now

6 in session, the Honorable H. Russel Holland presiding. Please

7 be seated.

8 (Pause)

9 THE COURT: Good morning, ladies and gentlemen. We

10 are taking up first this morning Case A90-015 Criminal, United

11 States of America v. Exxon Corporation and Exxon Shipping

12 Company. The matter is set down for imposition of sentence.

13 We have a necessary preliminary to that, which is the question

14 of whether or not I should accept the plea agreement which was

15 negotiated between the Government and the defendants.

16 In connection with making that decision, I have, of

17 course, reviewed the sentencing memoranda that have been

18 submitted by counsel. I have received from counsel

19 subsequently summaries of reports of various environmental

20 assessments of the damage which flowed from the grounding of

21 the Exxon Valdez, and I have considered those reports. I have

22 received a considerable number of public comments pursuant to

23 notice which we gave indicating that we would accept and

24 consider public comment on this sentencing in lieu of a

25 Probation Service report. As has, I think, been reported,

1 those comments ran rather heavily against the settlement
2 agreement for a whole variety of reasons.

3 Finally, I have received a number of communications
4 from the legislature of the State of Alaska and, in particular,
5 a Special House Committee which is considering the civil
6 settlement which has also been negotiated between these same
7 parties. That Committee had requested, at the time we took the
8 changes of plea, that we postpone decision on this matter as
9 far as sentencing until after the Committee had had an
10 opportunity to complete its work.

11 Subsequently, the Committee chair, I believe,
12 indicated to me that he expected that the Committee would have
13 completed its work by today and -- or yesterday, at any rate,
14 and would have some input to me by yesterday, which I indicated
15 was quite acceptable. Unfortunately, I heard again from the
16 Committee yesterday, as was reported this morning, indicating
17 that the Committee had not yet reached a decision and again
18 asking that I delay this proceeding. With respect to that
19 request, and while I have given it serious consideration, the
20 fact is I have reached a decision on the acceptability of the
21 plea agreement, and I am not, at this time, persuaded that
22 there is any reason why I should delay or defer announcing that
23 decision.

24 With respect to the plea agreement, I am satisfied
25 that the parties worked very hard, that they worked in complete

1 good faith, and that they came up with an agreement which they
2 believed to be good and acceptable and one that they could
3 justify to the Court. In evaluating that agreement, I have
4 indicated -- I had indicated early on to counsel that while
5 there were no applicable Federal Sentencing Commission
6 guidelines for use in sentencing corporations, that I would
7 look to the general sentencing factors set out in federal law
8 with respect to sentencing in general and organizations in
9 particular in evaluating the plea agreement which had been
10 entered into here.

11 I am satisfied that the pleas which were offered and
12 reflected in the agreement adequately reflect the seriousness
13 of the underlying conduct. That is not a problem with the
14 agreement. In that regard, and if you will excuse just a
15 little bit of editorializing on my part, I have some difficulty
16 with the concept that we criminalize unintentional
17 environmental accidents, in effect criminalizing the killing of
18 birds and sea otter and so forth, yet we do not criminalize
19 airline crashes which result from negligence and which kill
20 people. Congress, in the sentencing guidelines, has told us --
21 the Courts -- that we must do better in avoiding disparity in
22 sentencing. I suggest that Congress has some work of its own
23 to do in getting the disparity out of the criminal laws, for,
24 as I see it, we are affording greater protection to birds and
25 sea otter, that aren't even good for food, than we are people.

1 I think that's some pretty serious disparity.

2 However, my job is to enforce the law as it is on the
3 books at the present time, and I mean to do that. The
4 sentencing factors that I alluded to earlier include such
5 things as the nature and circumstances of the offense, history
6 and characteristics of the defendant, the seriousness of the
7 offense, whether the penalties to be imposed adequately deter
8 others from similar conduct. I'm to seek to protect the public
9 from further crimes of the defendant. I'm to consider
10 restitution. With respect to fines and corporate defendants, I
11 am to consider the defendants' income and earning capacity and
12 financial resources. In short, I'm to consider the size of the
13 defendant organization.

14 I've used those factors in evaluating this plea
15 agreement. I have come to the conclusion that the fines which
16 the agreement proposes to be imposed do not adequately achieve
17 deterrence. I am afraid that this fine sends the wrong
18 message, suggesting that spills are a cost of business which
19 can be absorbed. The fines, I think, are also inadequate if,
20 as the law requires at the present time, defendants who commit
21 environmental crimes are to be punished. The fine proposed to
22 me does not appear to me to adequately punish the defendants
23 for the conduct to which guilty pleas were offered.

24 There has been a great deal said in the comments
25 which I received about the unavailability of scientific data.

1 In that regard, it is, of course, quite probable that there is
2 more scientific data available to some of us than there is to
3 the general public. But having said that, I would further
4 observe that the availability of scientific data does not, I
5 think, at this time, stand in the way of making the decision
6 which needs to be made here. Much information is available.
7 There is no question but what the Exxon Valdez oil spill was
8 off the chart as far as other environmental disasters that
9 we've had in this country. It was very large, to say the
10 least. The damage, although we cannot presently quantify it
11 with specificity, was very great, sufficiently so that I feel
12 very comfortable saying that the fines which were proposed to
13 me were simply not adequate.

14 One final matter which has been the subject of some
15 controversy and which, in my view, should be -- simply not be a
16 factor in connection with this case has to do with the role of
17 Alyeska in these proceedings, and it is my perception that
18 Alyeska has no role whatsoever in these proceedings. A certain
19 Congressman has written me on the subject. It's interesting to
20 note that his communication to me appeared in the press a day
21 and a half before I read about it in the newspaper, and it
22 appears to me that he was more interested in getting some
23 publicity than he was in informing me. Be that as it may, I do
24 not have any role in the decision of whether Alyeska should or
25 should not be prosecuted for anything. That's an executive

1 decision; it's a Justice Department decision. I take no
2 position on it; I have no role on it. I take no responsibility
3 for the decision that is to be made, and I do not think that is
4 an appropriate provision for a plea agreement in connection
5 with this case.

6 As is obvious from my comments, the plea agreement is
7 rejected.

8 Mr. Neal, Mr. Lynch, at this point, the defendants
9 are entitled to withdraw their pleas of guilty pursuant to the
10 plea agreement if they wish to. Are you gentlemen ready to
11 make that decision now, or do you require some time to consider
12 the matter?

13 MR. NEAL: May it please the Court, James Neal
14 representing Exxon Shipping. This is a matter that we need
15 some time to consider, and we would ask for some time to
16 reflect on what the Court said and consider our course with the
17 Court's (indiscernible).

18 THE COURT: Thirty days?

19 MR. NEAL: Thirty days would be adequate, Your Honor.

20 THE COURT: All right.

21 MR. NEAL: Thank you.

22 THE COURT: If a decision is made earlier than that,
23 I would appreciate your letting me know about it. We'll look
24 for an answer no later than Friday, the 24th of May. As I say,
25 I have some interest in moving this matter along as quickly as

1 it can and should be, but I realize that this is a decision
2 that's going to take some thinking on your part. Thirty days,
3 May 24. If you have a decision earlier, I will appreciate it.

4 Will that be sufficient for Exxon Corporation also?

5 MR. LYNCH: Yes, Your Honor.

6 THE COURT: All right. The same will apply to Exxon
7 Corporation. I'll expect a decision as soon as possible and no
8 later than the 24th of May. Upon receiving your decision, I'll
9 do one of two things. We'll -- we will -- well, we'll schedule
10 a status conference of some sort at that point to do whatever
11 needs to be done in light of the decision that you make. And
12 we'll communicating with you a time and place for that meeting.

13 Anything further we need to do, gentlemen?

14 MR. DeMONACO: No, Your Honor.

15 THE COURT: Thank you very much. We'll be in recess
16 subject to call.

17 THE CLERK: Excuse me. This Court now stands in
18 recess subject to call.

19 (Whereupon, the proceedings in the above-entitled matter
20 were adjourned at 8:50 o'clock a.m.)
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CERTIFICATE

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I hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Cindy S. Carl
Cindy S. Carl, CCR

4/27/91
Date