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Shocking: 18 Years on and Exxon Still Won't Pay \$2.5 Billion for Valdez Oil Spill

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The Supreme Court's recent decision to hear ExxonMobil's reasons to void the \$2.5 billion punitive award in the Exxon Valdez case hit the town of Cordova, Alaska, hard. This small coastal fishing community — my hometown — along with the Alaska Native villages in Prince William Sound have borne the brunt of the largest crude oil spill in America's waters; a spill that took place more than 18 years ago, but one that continues to hold the region hostage.

The second painful blow was the high court's decision to not even hear our reasons why the award should be restored to the full \$5 billion that a jury of peers decided was necessary to punish the corporate giant back in 1994.

While media pundits, lawyers, and scholars play the Supreme Court's decisions back and forth like a ping-pong ball, people in Cordova share a completely different perspective of this story. It's not about whether the Supreme Court should hear the case. To us, it's about justice and reparation — making us whole, a promise Exxon made to the community five days after the spill. A promise that Exxon broke before the trial even started five years after the spill.

To us, it's about more than an oil spill, the world's largest oil corporation, and a small fishing community in Alaska. It's about America's failed legal system that inherently cannot dispense justice in the face of corporate globalization.

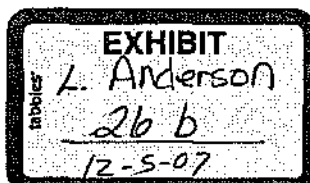
U.S. corporations have outgrown America's justice system. The system won't work for any community in America that is traumatized by disaster that triggers class action lawsuits — hurricanes like Katrina, terrorist acts like 9/11, or oil spills like the Exxon Valdez. Yet sociologists warn such disasters will be a hallmark of the 21st century.

People in Cordova wonder how this happened and why our legal system no longer metes out justice. When did "punitive" stop meaning to punish? If the original punitive award of \$5 billion was sufficient to change corporate behavior why was Exxon the last corporation to double hull its oil tankers to reduce risk of future spills rather than the first?

Why shouldn't Exxon be expected to pay to clean up its mess, pay penalties for breaking laws, compensate victims for losses, and pay punitive damages? This is what responsible corporations do — and it's certainly what Americans expect.

The spilled oil — somewhere between 11 to 38 million gallons (the figure is elusive because as we learned the hard way, the truth was one of the first casualties of the spill) — created a big mess and broke a lot of federal laws. It shouldn't surprise anyone that Exxon paid \$2.5 billion for its cleanup and another \$1 billion for penalties. But, it might surprise people who live outside Alaska to learn that taxpayers, not Exxon, paid a majority of that bill. Exxon recouped most of its remaining expense from its insurance companies and from money it paid to settle damages for natural resources — publicly-owned wildlife and lands.

Further, Exxon rewarded its primary cleanup contractor, formerly VECO, with a cost-plus contract that acted like steroids, bulking up this small-time oilfield service contractor into one of the biggest



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-- spending, pro-oil lobbyists in the state -- until its fall from grace this year under charges of federal bribery, conspiracy, and more. You may have heard of the ongoing FBI investigation that is sweeping Alaska's politicians -- from state legislators to congressional delegates -- into its widening net.

While that's another story, it serves to illustrate what our justice system deems "good corporate behavior" worthy of consideration to reduce its punitive award.

We ask all of you who share in the cost of this cleanup and the devastation of this spill: How could Exxon fool seemingly everyone into believing that the Sound is now clean, wildlife recovered, and fishing back to "normal"?

How could they fool everyone? Because the reality goes against the "good corporate behavior" meme Exxon has pushed for now nearly two decades in the courts, in the media, and in Congress.

This is our world, our reality: Three of Cordova's five fish processors (canneries) went bankrupt after the spill. The largest one never recovered, leaving the town with not enough capacity to buy and process large salmon returns like this year. Further, the town lost its only locally owned and operated processor cooperative, leaving fishermen with fewer resources to leverage high grounds prices for their catch. The town tumbled from its ranking as one of the top ten seaports in the nation, based on harvest value, to 53rd after the delayed, spill-related pink salmon and herring population collapses in 1992 and 1993.

The salmon recovered; the herring did not. The herring fisheries are closed indefinitely. Fishermen who held \$300,000 commercial fishing permits for salmon and/or herring fisheries at the time of the spill now own pieces of paper worth around 10 percent their former value -- that is, the fishers who did not go bankrupt, lose their permit in foreclosures, take a loss and sell out, die, or commit suicide. Fishermen who buy into the fisheries now pay less for the privilege and expect less in return, while the spill survivors deal with ever mounting debt on permits that the fisheries no longer supports -- and in many cases that exceeds their individual share of the punitive award at the full \$5 billion.

This is our world, our "normal."

I am a Survivor of the Exxon Valdez oil spill. I owned and fished a salmon drift permit in Prince William Sound until I sold out after the fish run collapses in the early 1990s. I have a stake in the Exxon Valdez litigation. But so, in a sense, does every American. Here's why.

No other country in the world has a legal system that is as adversarial, costly, formal and complex as the United States system. At its core the American legal process is an adversarial system that pits disputing parties against each other before an impartial judge. Justice is "a zero-sum game," meted out through punishment of the guilty to make the injured whole.

If the Exxon Valdez case is a harbinger of litigation to come, it does not bode well for people, civic society, or the environment. In this case, simply put, a giant corporation used its wealth to aggressively drive up legal expenses and to reduce, delay, and eliminate payment of awards to spill victims for more than 18 years and counting. By so doing, the giant corporation denied justice to thousands of people. In this case, the corporation is Exxon Mobil, but other giant corporations that do battle on class action turf wield similar weapons.

The forces of aggression released and sanctioned by the American judicial system are horrific -- no one leaves the field unscathed. Psychiatrist Larry Strasburger noted, "Although it may be that we have exchanged swords and cudgels for subpoenas and depositions, an aura of combat continues to hover about the judicial process, and combat produces casualties."

Psychologists found that adversarial litigation emotionally "arrests" disaster-scarred survivors, forcing them to keep the disaster trauma alive and present. This blocks the normal progression of recovery phases from a stress response and holds disaster-litigants hostage until case closure.

Further, litigation generates new trauma, so-called "Litigation Response Syndrome," with symptoms similar to Post Traumatic Stress Disorder (PTSD) and General Anxiety Disorder. For disaster-litigants, this amounts to a double helping of stress. It scars even "successful" litigants—those who eventually prevail.

Sociologists Drs. Steve Picou and Duane Gill have studied the evolution of disaster trauma in Cordova since the spill. They report a third of the fisher-claimants in Cordova suffer from clinical depression, nearly 40 percent from PTSD, and 60 percent hold off-season jobs to make ends meet. This is now — 18-plus years after the spill. Further, they found the stress level attributable to litigation in fisher and Alaska Native claimants is nearly as high as the initial level from the spill.

If American class action lawyers were medical doctors, they would be disbarred for violating the Hippocratic oath: "Do no more harm."

The American justice system is predicated on several underlying assumptions, most of which are not valid in adversarial litigation, as we in Cordova discovered.

Equal treatment under the law? Not possible when those with money use it to influence the laws and public perception, or manipulate courts of law to make punishment moot.

Impartial judges? Not possible when judges are human and often former corporate lawyers.

Decisions based on whole truth and facts? Not even close: Jurors receive only selective information from judges or court masters as gatekeepers, and facts are grossly distorted through corporate-sponsored "science."

Further, when cases extend into decades, unanticipated long-term injury to people and ecosystems often becomes evident along with science linking harm to the original disaster, as was the case with the Exxon Valdez spill. The mechanism to understand the delayed fish collapses in Prince William Sound was not proven until six years after the collapse -- well after the trial was over. Fishers and Alaska Natives were never compensated for this unanticipated, long-term harm.

Another gross oversight of the American judicial system is that it fails to respond to a very basic human dimension of litigation: process. It turns out the process of dispute resolution is a key determinant in "making people whole."

Studies show that the thing parties want most is a process that allows them to participate, seeks to merit their trust, and treats them with dignity and respect. It should not surprise any person that victims who are humans, too, care a great deal about how they are treated beyond the amount of money they may pay or receive and that accountability is important. Yet in class action litigation, individual litigants often feel violated by the very process they are given to make them whole.

Just as the aftermath of war is not simply peace, so too, the aftermath of a disaster, especially one with toxic exposures, is not simply money. But money is all that the adversarial system can deliver to some—at the expense of justice for all who were injured.

As we learned in Cordova, it is flat impossible to expect the American punitive justice system to "make anyone whole." Perhaps it is time for Americans to question whether the adversarial litigation system is really the best way to ascertain truth, insure fairness, and dispense justice.

If the goal of our justice system is to make people whole, then the process should focus on

restoring harmony to injured parties and communities with retribution for harm agreed upon through a non-adversarial mediated process. In other words, we need a restorative justice system rather than a punitive one.

And, we in Cordova offer some suggestions for rebuilding our American justice system.

First, post-disaster disputes could be minimized during preliminary planning and scoping of projects by negotiated, legally-binding agreements -- now that we are better informed of the ecological and human costs of disaster.

Second, financial incentives and rules could be created to encourage dispute resolution through non-adversarial negotiated settlements. Such techniques have proven successful even for disasters involving toxic exposure.

Third, incentives could be created to shorten litigation timelines by eliminating mechanisms that reward profits through stalling.

Fourth, if punitive damages are to be effectively applied, then they must be linked with corporate profits rather than compensatory damages and they should be shared not only among victims, but also among the injured communities to rebuild areas devastated by disaster.

In Cordova, we hope that it is just a matter of time before these suggestions or other similar ones are demanded by professionals, activists, and victims fed up with the American "injustice system."

We know that change will have to come from each of us, as there is little hope that the Supreme Court, or any other branch of the current judicial system, will take it upon itself to keep from doing more harm to those it was designed to protect.

This article was adapted from the forthcoming book *Not One Drop: Promises, Betrayal, and Courage in the Wake of the Exxon Valdez Oil Spill* (Chelsea Green, 2008).

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