

## *Seventeen*

# "I Pray for Exxon"

**D**uring the late 1960s, Exxon Corporation erected a gas station near the three-pronged corner of Jarrettsville Pike, Paper Mill Road, and Sweet Air Road in Baltimore County, Maryland. The corner was nestled in thick woods, rolling hills, horse farms, and muddy streams that joined into the Gunpowder River and ran to the Chesapeake Bay. Modest aluminum-sided brick ramblers with long driveways and multiacre lots dotted the region. In the early days after the Exxon gas station opened, new homeowners in the neighborhood topped up their wide-finned Impalas or their 8-cylinder muscle cars while commuting to jobs at restaurants or insurance offices or the industrial sections around Baltimore Harbor. In 1984, Exxon shut its first station in the neighborhood and opened a new one nearby, in the midst of the three-way intersection: Jacksonville Exxon, station number 2-8077, as it was known in the corporation's vast system of retail gasoline manufacturing and distribution. Suburban sprawl encroached as the years passed, and later, new subdivisions of brick McMansions with granite countertops and chef's appliances sprang up in the woods. Doctors and city executives refurbished old flagstone farms and transformed them into elegant country estates each worth

a million dollars or more. The small ramblers from the 1960s seemed dwarfed by the larger new residences, but all of the area's homes rose steadily in value as the great American housing bubble inflated. By 2006, Jacksonville Exxon served a growing and economically diverse community in northern Baltimore County: professionals, small-business owners, retirees, and middle-class commuters. All along, for more than three decades, a single family, the Stortos, had operated the Exxon-branded stations and auto repair facilities in Jacksonville; day-to-day management had eventually passed down to a daughter, Andrea Loiero.<sup>1</sup>

Altogether, ExxonMobil sold about 14 billion gallons of gasoline to American drivers each year. Andrea Loiero reported to a downstream division of the corporation in Fairfax, Virginia, on the site of the old Mobil headquarters, which oversaw this retail system. There were almost 29,000 ExxonMobil-affiliated gas stations worldwide, about 14,000 of them in the United States. Market researchers conducted public opinion surveys after the merger and discovered that consumers valued and felt loyal to each of the Exxon and Mobil brands, and so they concluded that there was no reason to change any of the names, or to create a combined ExxonMobil brand. More than 8,000 of the gas stations carrying one or the other name were owned and operated by independent distributors who paid ExxonMobil for the right to use the brands and who agreed to abide by the strict rules in franchise contracts. Another 1,000 or so stations were referred to within the corporation as Heritage Mobil stations, branded as Mobil and owned directly by the company. Some were operated entirely by ExxonMobil employees; others were owned by ExxonMobil but operated by an independent dealer under contract. There were also about 2,200 Heritage Exxon stations similarly organized. Jacksonville Exxon was a Heritage station owned by the corporation but managed under contract by the Storto family. It had operated this way since it had opened.

Running a gas station had become steadily more complicated since the 1960s. The typical retail snack and grocery shop under a red Exxon roof now generated as much as or more profit than gasoline sales did. Managing the retail business required expertise in credit cards, customer reward programs, and packaged food supply. Technology and regulation

had at the same time transformed the gas station's physical plant into an intricate system of electronic monitoring systems, interconnected pumping systems, computerized inventory managers, alarms, and console boards. The blinking monitors set up behind the thick safety glass where the cashiers and station managers worked allowed ExxonMobil corporate managers to see from a distance, for example, when a particular dealer like the Stortos needed more gasoline, so that deliveries could be scheduled efficiently. The gas station business had become infused with new technical jargon: What customers referred to casually as the gas pump was now known within ExxonMobil as the M.P.D., or multi-product dispenser. Its digital systems might allow a driver to use a single handle to pump multiple grades of gasoline. A modern gas station's electronics required continual supervision, to ensure that the systems were operating properly and that gasoline sales were being captured and credited correctly.

The scene at Jacksonville Exxon on the brisk winter morning of January 12, 2006, reflected this new complexity. On one side of the station tarmac that day, a contractor had arrived to fix a submersible sump pump that pulled the gasoline out of the ground and delivered it to the multi-product dispensers. The contractor was drilling holes in the asphalt. As this work proceeded, around 9:00 a.m., an ExxonMobil tanker truck also arrived to refill the station's 12,000-gallon underground storage tank.

As the tanker driver directed gasoline down a thick hose into a storage vat, alarms rang out suddenly—they signaled that gasoline was leaking somewhere in the station's system. All of the multi-product dispenser islands at Jacksonville Exxon shut down automatically, cutting off befuddled customers in midsale.

The tanker-truck driver came inside and spoke to the cashier. "I think I overfilled the regular tank," he said, referring to the station's underground storage vat. Spilled gasoline from the tanker hose had set off the station's gasoline leak alarm system, he suspected.<sup>2</sup>

At every stage of its operations—from oil wells in Africa to filling stations in America—ExxonMobil relied on outside contractors to perform much of its technical work. Halliburton and Schlumberger constructed oil and gas wells for ExxonMobil around the world. Companies special-

izing in offshore oil production leased their ships and crews to the corporation to drill wells in deep ocean water. Similar business practices had become the norm in ExxonMobil's retail gasoline division. Contractors, not corporate employees, serviced ExxonMobil station managers under fixed-price agreements: They mowed lawns, painted walls, and they also installed and repaired electronic and gasoline storage systems.

When a leak alarm sounded at any Exxon station in the mid-Atlantic region, it automatically alerted a call center in Greensboro, North Carolina, operated by an ExxonMobil contractor called Gilbarco Veeder-Root. The contractor's technicians in turn telephoned another independent company in Connecticut called I.P.T., which was responsible for dispatching maintenance specialists to Exxon stations. That January morning, in response to the ringing alarm, I.P.T. telephoned Alger Electric, which had a subcontract in the Baltimore area. An Alger truck turned up at the Jacksonville station within two hours of the alarm's first bell to diagnose and fix the problem, so that the Stortos could begin selling gasoline again.

Alger's technicians had learned through experience that leak detector alarms at Exxon stations usually did not go off because there was an actual gasoline leak. The detectors were sensitive devices that could be triggered by any number of causes—a paper jam inside the office, a faulty electrical component, or simply because the station was running out of gasoline. "A very big majority" of times that Alger was called to Exxon stations to inspect a leak alarm, it turned out that the alarm had been set off by something other than leaking gasoline, David Schanberger, an Alger manager, said later.

On January 12, the Alger technician first checked for evidence that the gasoline delivery driver had overfilled the storage tank as he had reported to the cashier. There was no evidence of such a spill, however. Then he ran troubleshooting tests on other station equipment. He concluded that a motor in the pumping system was at fault; he unplugged the motor from the leak detector wires, replaced it with a new motor, reconnected it to the leak detector, reset the alarm, and departed. Jacksonville Exxon was back in business and Alger Electric, the repair contractor, was "under the impression . . . that everything was working properly."<sup>3</sup>

Russell Bowen had worked for Exxon and then ExxonMobil for thirty-seven years. As a territory manager he worked from his Maryland home and looked after scores of gas stations in his home state, Delaware, the District of Columbia, and northern Virginia. Bowen lived just eleven miles from Jacksonville Exxon. He had known the Storto family for many years. On February 16, 2006—about six weeks after the morning incident with the ringing leak alarm—he was driving back from a corporate meeting in Fairfax when his cell phone rang. It was Andrea Loiero, the Jacksonville Exxon's manager.

"I've got a problem," she said. "I'm missing some gasoline."

Bowen asked what she meant. How much was she missing?

About 24,000 gallons, she said. That was a lot—double the capacity of an underground storage tank at the station—and not easy to misplace. Bowen figured that the gasoline was not actually missing physically, but that the problem was probably a faulty meter or a glitch in an inventory computer program. Still, he thought they should be cautious. "Shut everything down," he told Andrea. "I'll come on over there."<sup>4</sup>

Bowen had been around the retail gas station business long enough to remember how things were done before all the computers came in. "Back in the day," as he put it, each gasoline pump had a meter on it called a "totalizer" that kept track of how much gas was dispensed to customers. At the end of each day, the station manager would take a reading off each mechanical pump totalizer and check it against cash register receipts. To complete the inventory check, the manager would grab a dipper stick, go outside, drop it into the underground storage tanks, and measure the level of gasoline, to make sure the level conformed with the totalizer readings and the register receipts. A station manager would expect to lose a few gallons here and there because of small spills around the pump and the like, but otherwise, he would expect the daily totals to be aligned.

It was dark when Russell Bowen arrived at Jacksonville. He first checked the electronic multi-product dispenser totalizer readings; the meters were computerized now but they still counted up the number of gallons of gas pumped that day. Bowen first wanted to be sure that the

measuring device was working properly; he bought a gallon of gasoline, pumped it into his own car, and then rechecked the totalizer to see if the sale had registered. It had.

Inside, he found Andrea Loiero in a nervous state. Bowen asked to see her daily inventory records. He saw that Jacksonville Exxon had been posting a "negative variance"—missing gasoline—on the scale of hundreds of gallons each day since early January. Between January 13 and January 31 alone, 14,501 gallons appeared to be missing. Why had it taken her six weeks to notice that so much gasoline seemed to be missing? Had she been failing to undertake her required daily electronic inventory reconciliations? It was just like "doing your checkbook," Bowen said later. ExxonMobil rules required station managers to report to the corporation if they experienced significant losses of any grade of gasoline. Loiero seemed agitated and confused about what her daily inventory records showed—how the math worked.

"Did any leak alarms go off?" Bowen asked her.

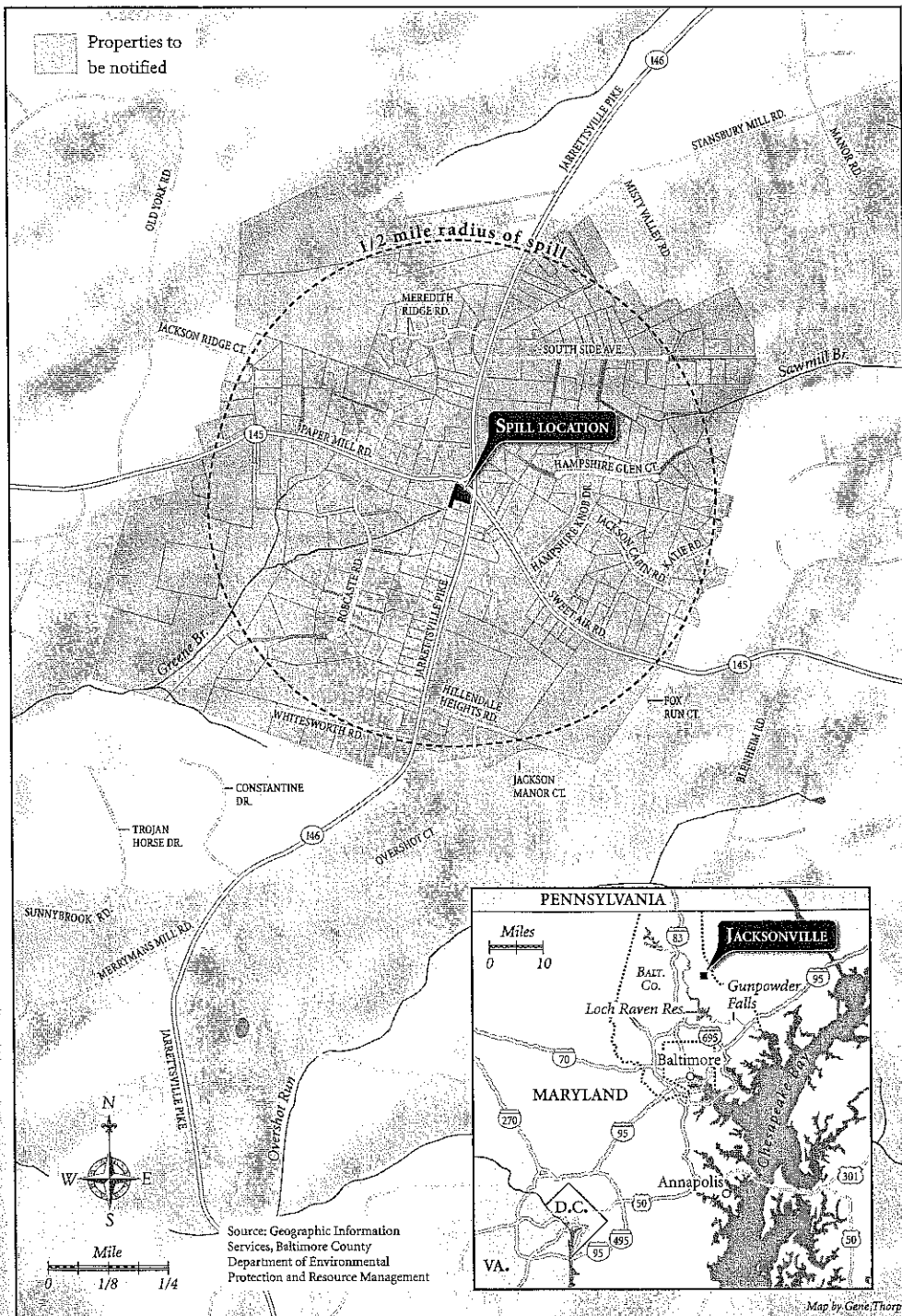
"No."

The more they talked, the more Andrea Loiero seemed to be "bouncing around," thinking out loud about the work that had been done by the Alger Electric contractor back in early January.<sup>5</sup> Had that caused the gasoline to go missing somehow?

Bowen called to ensure that another contractor was on his way to Jacksonville to start running new tests on the station's equipment. He told Andrea to calm down, think through the events of the last six weeks, and write out a chronology that could help them diagnose what had happened.

He returned in the morning and found a new contractor had also arrived with metal tanks full of helium gas. The technician drilled quarter-inch holes in the concrete near the multi-product dispenser to inject gas into the ground, to search for evidence of leaks in the lines or tank walls, through which gasoline might have escaped. About an hour later, he called Bowen: There was a single fluid leak near the station's big underground storage tanks. It was about the size of the holes that the contractor—who happened also to be from Alger Electric—had been drilling during his sump pump repair project back in January.

# Exxon Spill in Jacksonville, Maryland



The news was catastrophic: In all probability, about 24,000 gallons of toxic gasoline had been leaking into the ground for six weeks in an area where there were houses located within five hundred yards of the Exxon station. Worse still, those homes drew their water supplies from wells drilled on their properties; the county system of piped and treated drinking water did not serve them. Those household wells would be vulnerable to contamination from the gasoline in ways that piped county water would not. Since January, scores of local families and children had been consuming their well water, bathing in it, and cooking with it, unaware that they might be imbibing and dousing themselves with diluted gasoline. How could this have happened? Why didn't the station's leak detector alarm bells ring as they were supposed to do?

Bowen relayed the findings up ExxonMobil's chain of command. His report reached Steven Polkey in Fairfax. Polkey was an Englishman who had joined Exxon out of a British university, rose through the corporation's retail gasoline businesses in the United Kingdom and Europe, and then moved to the United States in 2004 to take a senior position in ExxonMobil's Safety, Health, and Environment department—"She," as it was known to acronym-savvy corporate insiders. Polkey was now responsible for all of the environmental issues involving spilled gasoline at Exxon and Mobil stations in the United States. When he took the call about Jacksonville, he said later, "I was stunned, I was shocked. . . . I didn't believe that we could have lost 25,000 gallons."<sup>6</sup>

There was no precedent in the retail gasoline division for a leak of this scale—especially one that had been allowed to unfold over six weeks without detection. Worse, the spill had occurred at a gas station known within ExxonMobil as a Consequence I site because it was located near houses that relied on aquifer wells for drinking water.

ExxonMobil promoted itself as one of the safest large industrial corporations in the world; its executives increasingly scoffed in public and private at competitors such as BP that seemed accident prone. By 2006, ExxonMobil's record was certainly better than the industry norm, but the truth was that, nonetheless, accidents with serious environmental impact or in which workers were injured were regular events at the corporation. They involved pipeline spills, trouble at refineries, accidents at construc-



tion sites, and losses of inventory of dangerous chemicals. Since the *Exxon Valdez* accident, under Frank Sprow, the daredevil adventurer and dangerous game hunter, Safety, Health, and Environment had seen worker fatality rates, in particular, fall to the point where if one did occur, it seemed a shocking anomaly inside the corporation. Yet such a massive global enterprise that daily moved toxic materials from beneath the earth to customers at 29,000 retail gas stations, plus large refineries and chemical plants, could hardly expect zero accidents. On the retail gasoline side, ground leaks of as much as 1,000 gallons of gasoline occurred periodically at American stations or storage facilities. ExxonMobil's Public Affairs and Safety, Health, and Environment departments had developed standardized playbooks to respond to such events. The protocols included pre-packaged talking points for communicating with alarmed members of the public. The leak at Jacksonville was exceptionally large, but it was exactly the sort of accident that ExxonMobil's playbook was intended to address. When Steven Polkey hung up after receiving the news about Jacksonville, he set ExxonMobil's spill response plans into motion.

Public Affairs faxed Andrea Loiero talking points to use if homeowners around the station or journalists turned up asking questions about all the commotion and activity now taking place at the Jacksonville station, which had been closed to customers as contractors drilled and dug to determine the extent and flow of the leaked gasoline. "We're investigating," she was to tell neighboring homeowners. "We'll provide an update."

Outside Jacksonville Exxon, a sign soon appeared that explained the station's closure as well as the presence of so many mysterious trucks and workers drilling in the ground: "Please excuse our appearance. We're working to serve you better. Fueling facility is temporarily closed for upgrade."<sup>7</sup>

**T**ransportation fuel—the production, refining, and distribution of gasoline, diesel, jet fuel, and the like—is the second-largest segment of the worldwide energy economy, and the fastest growing. Power generation—the production of electricity—is the largest. The fuel economy's worldwide growth is mainly a function of rising incomes in previously car-deprived

poor countries. In Europe and the United States, however, by 2006, gasoline consumption had reached a plateau and possibly peaked forever.

The retail gasoline stations had always been an unglamorous stepchild division within ExxonMobil. If the value of the land on which corporation-owned stations sat was factored in, the division's profit margins were embarrassing by ExxonMobil standards, particularly compared with upstream oil and gas production or chemical manufacturing. Since the 1980s, like other large international oil corporations, Exxon had been steadily divesting itself of retail stations: Its total of 29,000 Exxon and Mobil stations worldwide in the early days of Rex Tillerson's reign as chief executive represented less than half of the 62,000 stations Exxon had operated under its brand alone three decades before.

The environmental and legal aspects of the gas business looked particularly unfavorable. In the euphoric postwar automobile age, neither citizens nor government officials in the United States paid much attention to gasoline's toxic properties or to the consequences of so much sloshing and spilling of gasoline on and beneath the ground. Only after the rise of environmentalism and the birth of the Environmental Protection Agency in 1970 did federal regulators begin to look seriously at carcinogenic effects of gasoline exposure and to tighten the loose, expedient storage and cleanup practices of retail gasoline sellers. Like other oil corporations that had previously pumped gas without much reason to think about environmental impact, Exxon discovered, as the laws tightened after 1970, that it would henceforth be responsible for hundreds of "remediation sites"—that is, sites where gasoline had leached into the ground at some point in the pre-E.P.A. era and where it now had to be located and scrubbed out as best as possible, whatever the cost.

By 2006, ExxonMobil managed four thousand environmental remediation sites around the United States.<sup>8</sup> Of those located at gas stations, many involved "historic spills," as they were called, that dated to the pre-environmentalism era. The origins and extent of these old leaks were often unknown—all that could be said was that gasoline had somehow gotten into the ground, contaminating the soil and any water that might lie beneath.

To prevent the recurrence of such leaks, the E.P.A. issued regulations

in 1998 requiring gas station operators to upgrade their storage tanks, improve the tank hulls, and install more spill buckets and other protections. It also required station operators to install leak detection systems that were better than the old system of physical inventory reconciliation.

The purpose was to protect people from health damage caused by exposure to gasoline. So far as federal scientists could determine, there were two elements in gasoline that might be damaging, if a person suffered sufficient exposure: benzene and methyl tertiary butyl ether, or MTBE.

Benzene is an aromatic hydrocarbon compound long known to cause cancer; it has been formally designated as a "known human carcinogen" by the U.S. Department of Health and Human Services. Benzene was widely used as a gasoline additive in the 1950s. Its use was discontinued, but as the government moved to replace lead in gasoline, to attack air pollution, benzene made a limited comeback as an additive. Regulators limited the amount that could be blended into gasoline, however—no more than 1 percent, precisely because of fears that spilled gas might accidentally leach into groundwater accessed by household drinking wells.

MTBE, the second dangerous element in gasoline, was developed in laboratories to raise gasoline octane ratings; after 1990, government policy encouraged its use to enhance the amount of oxygen emitted when cars burned gasoline, to reduce urban air pollution caused by tailpipe emissions. Nobody had studied MTBE's health effects, however. Later, based on laboratory tests involving rats, the E.P.A. concluded that MTBE was a "potential human carcinogen at high doses." That tentative finding led to fast policy reversals by state and federal regulators, who ordered plans to reduce and eventually eliminate MTBE from gasoline. The E.P.A. finding about MTBE's potential health effects also stimulated massive numbers of lawsuits against oil companies by cities, towns, businesses, and individuals who claimed to have been affected by historical gasoline spills where MTBE had been present in the fuel. ExxonMobil found itself a defendant in hundreds of these cases after 2001. PACER, the computerized system containing records of lawsuits in the American federal court system, contained dozens of listings of civil cases where ExxonMobil stood accused of negligence for allowing MTBE to leach into groundwater

because of gasoline spills—even though it had been encouraged by the government to put MTBE into its gasoline in the first place. The corporation's law department managed these suits as a kind of high-cost division of legal operations, seeking to minimize ExxonMobil's financial exposure. ExxonMobil's Washington lobbyists pushed unsuccessfully for Congress to enact laws that would exempt oil corporations from liability, on the grounds that the government had encouraged MTBE's use. Separately, the corporation accepted that the additive should be phased out: "ExxonMobil recognizes that MTBE use in gasoline has caused concern with some customers," one of its lobbyists, D. L. Clarke, wrote to a state air pollution regulator in 2003, "and we support phase down of MTBE use in a manner consistent with maintaining reliable and affordable gasoline supplies."<sup>9</sup>

On the other side of the issue stood a network of plaintiffs' lawyers who saw MTBE as an opportunity to sue oil companies and win lucrative verdicts. By the time of the Jacksonville Exxon leak, American plaintiffs' lawyers who previously had represented victims of tobacco marketing, asbestos exposure, or faulty medical devices traded information and scanned for news of new gasoline leaks and spills. For the Baltimore area plaintiffs' bar—ambulance chasers, to their critics—it would have been difficult to imagine more enticing news than that which circulated in the last weeks of February around northern Baltimore County: that 24,000 gallons of MTBE- and benzene-laced gasoline had spilled in an area of homes dependent on groundwater wells, and that the world's largest and least popular publicly traded oil corporation directly owned the gas station responsible for the leak.

In this way, the irresistible force known as Stephen Snyder came to meet the immovable object branded as ExxonMobil.

**S**tephen Snyder grew up in a modest row house in West Baltimore. His father and uncles owned clothing stores. In high school, Snyder recalled, he rarely did so well as to earn a B. As an undergraduate at the University of Maryland, he at last began to study, and at the University of Baltimore School of Law, he excelled. He had the gifts of a natural salesperson and worked his way through school selling magazines—he was so

successful that he soon was earning more than his father, even before he entered law. At twenty-four, he set up an independent legal practice devoted to "contingency-fee" cases, in which he generally sued corporations on behalf of individuals and got paid only if he won damages or settled for cash. "I don't think you could hire me for an hourly rate, no matter what," he explained later. "If I win, I have to have some skin in the game, a piece of the action." He won his first million-dollar medical malpractice verdict in the 1980s and kept going. United Cable settled a racial discrimination case with him in 1990 for \$106 million. The accounting firm Ernst & Young settled over a business bankruptcy matter for \$185 million. He won a jury verdict against a bank for \$276 million. A contingency attorney such as Snyder generally took about a third of such verdicts as his fee.<sup>10</sup>

By the time of the Jacksonville Exxon gasoline leak, Stephen Snyder had reached his late fifties. His silver hair was receding from his forehead; he wore his hair cropped. He was not a tall man, but he was broad-shouldered and powerfully built. He had more wealth than even most successful lawyers could imagine. He had fathered five children by two marriages, and two of his sons had followed his footsteps and joined his law firm. And yet Snyder remained deeply restless, driven, and insecure. "How did I do?" he would eagerly ask anyone within earshot after a court appearance. "I just wish he'd take a deep breath and relax," his second wife, Julie, said. "It's never enough."<sup>11</sup>

Snyder displayed his wealth conspicuously: a diamond-studded Rolex watch; a gold chain with "Steve" encrusted in diamonds; an alligator-skin briefcase; expensive tailored suits. His office wall displayed a framed check written to his firm for \$70 million. He almost lost a New Jersey trial when jurors mistook his Rolls-Royce in the parking lot for that of his client. He defied conventional thinking about how lawyers should comport themselves: He flashed his wealth inside the courtroom because he believed jurors would lean his way if they believed he was rich and successful. He wept and shouted at witnesses. He ignored judges when they ruled him out of line.<sup>12</sup>

Some members of the corporate bar dismissed Snyder as "more showman than lawyer, a flashy cynic who manipulates unsophisticated jurors

by twisting the facts," the *Baltimore Sun* put it. Even within his own tort or plaintiffs' law community, he remained emphatically and annoyingly in second place in the city of his birth. Peter G. Angelos, another street-smart University of Baltimore law school graduate, had earned an immense fortune in contingency-fee asbestos and tobacco cases and had used his winnings to purchase the Baltimore Orioles baseball team. Whereas Snyder's greatest verdicts exceeded \$100 million, Angelos had gotten rich from billion-dollar tobacco and asbestos cases.

Snyder was desperate to catch up, to land his own white whale: Jacksonville Exxon seemed to have that potential, or so Snyder concluded as he solicited clients soon after news of the leak became public. He had not been tracking MTBE litigation nationwide, but soon educated himself. The attraction of the Jacksonville case had little to do with its complex environmental aspects. Snyder and his colleagues were drawn instead to the fact that the station had put up a misleading sign during the first day or two after the spill and then ExxonMobil had given talking points to the station manager that she found to be "lies." Those were the sorts of facts that could turn a jury's emotions against a giant corporation.

Snyder found himself in a race with Angelos once again. His rival's firm signed up as clients property owners around the Jacksonville station. Lawyers for the two competing firms prowled the same neighborhoods, seeking to recruit as many homeowners affected by the leak as possible. On Robcaste Road, Steve Tizard and two of his neighbors decided to interview the firms contending for their business. They met Angelos's team and more than a dozen other firms. When it was Snyder's turn, he arrived with his entire law firm, even as he declared he was not sure he wanted to take the case. It was "a show of force," Tizard recalled. "I was getting sold every second. He was just so arrogant and nasty." Eighty-nine families within the general vicinity of the station, including Tizard's, eventually agreed to go with Snyder.<sup>13</sup>

Exxon executives quickly removed the case from the Safety, Health, and Environment department and handed it over to the law department, putting it into the operations queue with the other MTBE cases the corporation faced. By now ExxonMobil's in-house legal strategists had a playbook for such cases. In accidents like Jacksonville's, the corporation

had learned that there was usually no point fighting the basic question of legal responsibility; instead, the goal of its defense strategy was to avoid punitive damages. In the *Exxon Valdez* case, Lee Raymond had refused to bend by paying punitive damages, and his stubborn determination eventually made new and favorable law for corporations at the United States Supreme Court. (The Court held that formulas under which actual damages found at trial might be multiplied to determine punitive damages could be constitutional, as long as the multiplier was relatively low, such as one or two times the actual damages.) "The strategic call we made," Lee Raymond recalled, "was that the punitive damage issue is moving our way. . . . So we are just going to hang in there. That was the strategy for twenty years. And we just called it right. And had good lawyers." ExxonMobil was hardly going to depart from these principles while defending itself in local trials over spilled gasoline. As to actual or compensatory damages—payments to homeowners for the actual losses they incurred because of the Jacksonville Exxon's leaking gasoline—Exxon's representatives told residents that in principle the corporation was willing to pay for declining property values and proven medical claims, including documented emotional distress. With Stephen Snyder's clients, however, settlement negotiations failed. Snyder's firm felt ExxonMobil's lawyers were trying to skim off the clients in his group with the strongest cases, and settle with those, while leaving Snyder with the weaker cases at trial. He urged his clients to hang together, and they did.

**B**ecause the case involved MTBE claims, it was initially assigned to the federal court system, to be consolidated with all of the other MTBE cases accumulating around the country. Snyder wanted to try the case before a state jury, on his home court, where he knew the rhythms and rules best. State court juries tended to award punitive damages more readily than federal juries. It took some maneuvering, but Snyder eventually won a decision removing the case to the Maryland courts in exchange for his agreement to drop claims specifically related to the health effects of MTBE.

ExxonMobil honed its defense strategy as the trial date approached.

Gasoline prices in the United States were rising, and oil companies were more unpopular than ever. The corporation could expect hostility from at least some jurors. Therefore, it would try to win sympathy from the jury by forthrightly admitting that it was at fault; it would apologize to the plaintiffs and the jurors; and it would invite the jury to determine what actual damages local homeowners deserved. At the same time, Exxon-Mobil's lawyers would defend adamantly against the claim that it owed punitive damages. Before the Jacksonville trial opened, ExxonMobil paid \$4 million to the Maryland Department of the Environment and accepted responsibility for the spill. The corporation spent, according to its representatives, another \$38 million on cleanup efforts in the neighborhood around Jacksonville Exxon—it dug into the groundwater, installed test wells to monitor for the presence of benzene or MTBE, and used chemical and other treatments to clean and eliminate gasoline residues from the aquifer.

To win his billion dollars, or at least something close to it, Stephen Snyder would have to persuade the jury that the Jacksonville gasoline leak was more than just an accident. He would have to show that ExxonMobil had acted maliciously, fraudulently, or with gross negligence, a standard that might amount to a finding of "willful blindness." He had to show that greed and corporate cover-ups lay behind the Jacksonville leak—and therefore, ExxonMobil should be punished or deterred with an award of heavy punitive damages, beyond the actual losses of the homeowners, in order to send a signal to the corporation's executives and to other companies in the oil industry. Snyder figured that if he won about \$150 million in actual damages, and if the jury was outraged enough by Exxon's actions, he might win a multiplier for punitive damages that could push the total verdict toward \$1 billion. If he did that well, he hoped to withstand appellate scrutiny or at least force Exxon into a high settlement.

Snyder subpoenaed hundreds of thousands of pages of documents and e-mails from ExxonMobil's retail gasoline and safety divisions. As he and his partners painstakingly read through them before trial, they found what they felt was a winnable fraud case that could produce a billion-dollar jury verdict. Snyder decided to turn the trial into a story about the alarm bell



that hadn't rung at the Jacksonville station after the gasoline leak began to flow on January 12.

The story involved a leak detector system called the EECO 3000. It was one of two different electronic alarm systems the corporation used at its stations nationwide—and of the two systems ExxonMobil employed to comply with federal regulations, it was the more problematic. Internal documents showed that the EECO 3000 was highly sensitive and prone to false alarms.

ExxonMobil had decided to replace the EECO 3000 before the Jacksonville leak occurred, but it had not moved quickly to do so. Exxon said the devices were safe, just harder than they should be to operate, and therefore the pace of replacement was just a routine business matter. The company that originally manufactured the system had been sold; in 2004, the successor company informed ExxonMobil that it would no longer support the leak detector with spare parts. Budgetary constraints and corporate planning timelines meant the EECO 3000 changeover was proceeding gradually.

Snyder concluded that the totality of evidence added up to fraud. His argument was that to enhance its gargantuan profits, ExxonMobil had avoided coming to terms with the EECO 3000's fatal flaws; it had failed to act promptly to replace the system at stations near homes that relied upon groundwater wells; and the corporation had sought to hide evidence of the system's troubles. It was perhaps not as obvious a jury-ready story of corporate neglect and greed as the case of the *Exxon Valdez* captain with a documented alcohol problem, but given the unpopularity of oil corporations and of ExxonMobil in particular, it might be good enough to bring home a fraud verdict from a Baltimore County jury.

"It was a lemon," Snyder said of the EECO 3000. "They knew it. It is a dark secret. It was the skeleton in Exxon's closet."<sup>14</sup>

**O**n an autumn morning, Snyder and dozens of his clients filed into Courtroom 2 on the third floor of the Baltimore County Courthouse, a massive prisonlike concrete box in suburban Towson, Maryland. Judge

Maurice W. Baldwin Jr., a senior visiting judge assigned to the case from nearby Harford County, entered the courtroom and settled on his raised bench. On the wall to his left hung oil portraits of robed judges. Wood paneling, plush carpeting, and upholstered blue vinyl chairs contributed to a heavy, sleep-inducing aesthetic. They all might as well get comfortable; Stephen Snyder intended to speak at length about the cause he had now shouldered.

"Members of the jury, this is a gas leak that should not have happened," Snyder declared in his opening statement, pacing before the jury box. "It is a leak that took place because Exxon made a corporate decision to disregard the health and the welfare of the citizens. This is a company that decided that profits are much more important than safety."

Snyder warned the jurors that the trial would take months, and he urged them to pay close attention to the details. "It is not a contest between the lawyers—who wears the flashiest suit or jewelry. I will win that contest."

"Stipulate," came the deadpan response from the ExxonMobil defense table.

There sat James F. Sanders, a trial lawyer from Nashville, Tennessee. Sanders had participated in ExxonMobil's trial defense in the *Valdez* case more than a decade earlier. He was one of the trial attorneys ExxonMobil relied on in its most risky, sensitive jury cases. Sanders had tested over years the best ways to reach jurors who might be naturally skeptical about the motives of a giant oil corporation.

Among other things, as the Jacksonville Exxon trial unfolded, Sanders would avoid badgering witnesses or arguing vehemently with Stephen Snyder, no matter how provocative or outrageous Snyder's behavior or accusations became. To build an emotional connection with jurors on behalf of an unpopular corporation, Sanders believed he had to come across as entirely reasonable, calm, humble, and interested only in a modicum of fairness on behalf of his client. His southern accent and soft voice reinforced his demeanor. Let Snyder bluster and thunder; Sanders would slip in behind him and speak calmly of common sense.

ExxonMobil's alleged greed lay at the heart of Snyder's accusations, but he had to calibrate his charge. "No one is saying in this case that Exxon

intentionally allowed 26,000 gallons to go into the ground," he explained to the jury. "Exxon *did* knowingly allow unreliable and defective equipment that they knew was a lemon—they knew for seven years and they did nothing about it because they didn't care about residents and the environment. All they cared about was profits."<sup>15</sup>

**M**r. Snyder's time with you was quite a performance," Sanders replied when his turn arrived. "And I will tell you from the very beginning that it is not my intention to try to match the performance. Indeed, I'm not going to perform at all. I'm not going to try to match the jewelry or his suits. . . .

"The most important thing that I have to say to you is the first thing that I'm going to say to you: And that is, we are sorry. We are sorry for the leak. We are sorry that the leak went on for over 30 days without being discovered. We are sorry at the magnitude of this leak and the spill into the community. . . . We apologize. We apologize to the Plaintiffs in this room. We apologize to the Plaintiffs not in the room. We apologize to you. We apologize to the community. We apologize to the State of Maryland. . . .

"Now, we do not—do not—accept liability under some of these theories you heard about" from Snyder, he went on. "We do not accept liability for fraud, we do not accept liability for any intentional misconduct, and we do not accept liability for anything that says we did anything intentionally or with malice. We don't accept that. But we do accept liability to pay for the harm that you find was actually caused to the people who were actually harmed."<sup>16</sup>

The fraud charge centered on the EECO 3000 leak detector would be the "battleground," as Snyder put it later, of what became a five-month trial. Day after day, Snyder presented ExxonMobil internal documents and cross-examined corporate witnesses in an effort to prove that ExxonMobil managers and executives knew the EECO 3000 was dangerously unreliable because it gave off so many false alarms, and that ExxonMobil accepted this flawed leak detector because it did not want to spend the money necessary to replace all of them at once—not even in Consequence

I areas such as north Baltimore County, where a gasoline leak could infect household wells.

"You would agree, sir, that you all at Exxon had the economic wherewithal to replace the [alarm system] in one day if you wanted to do it across the country? You had the money to do it?" Snyder asked John Greco, an ExxonMobil manager in charge of gas station construction around the United States.

"I can't speak to that, no."

"Is it not a fact, sir," Snyder demanded, "that this was the system that continuously alarmed, 99 percent of the time, for reasons other than a leak, and it just wasn't trusted by you all at Exxon?"

"I would disagree with that statement."

"And is it not a fact, sir, that you all at Exxon knew, you knew that the leak detector had alarmed [at Jacksonville]—you knew it at Exxon, and you all ignored it?"

"That's incorrect."

Exxon's defense turned on its assertion that however many false alarms the EECO 3000 might emit, the detector still found leaks accurately. It had done so in Jacksonville on the January morning in question, James Sanders told the courtroom. The contractor fixing the station's submersible pump on January 12 had unknowingly drilled a hole in one of the gas lines; the alarm had sounded as it was supposed to do; and a second contractor had arrived to resolve the leak issue.

This second contractor thought he had fixed a false alarm problem by replacing a motor in the leak detector system, but in fact, he had missed the real trouble, the gasoline leak, and then, compounding his error, in resetting the alarm he had inadvertently calibrated the EECO 3000 improperly, so that it would no longer sound as gasoline spilled into the ground in the days to come. That might not have mattered so much if Andrea Loiero had conducted her daily inventory checks properly and noticed the missing and leaking gasoline within a day or two, but she, too, had failed. Like many industrial accidents involving complex systems and human beings, the Jacksonville spill had arisen from small errors com-

pounding one upon the other, ExxonMobil argued. But there was no fraud: The leak detector had sounded its alarm; it was the human beings involved who failed to diagnose the alarm correctly. Therefore, there was no gross corporate negligence involved.

Snyder called some of his clients, the local homeowners, to take the stand to speak about their emotional experiences—their anxiety about not knowing if the water they had been drinking might leave them with cancer in later years, and the distress of lost wealth as news of their contaminated property spread and home values fell. Some of the witnesses wept. Some spoke of their fears for their children and grandchildren. Almost all of them expressed anger about the inflexibility and arrogance they said they experienced when they dealt with ExxonMobil public affairs and legal officials after the accident.

Ricci DePasquale, the owner of a local pizza parlor, told the jurors about his children: "At one time the youngest gulped down a little bit of the water in the bathtub and asked his mother if he was going to die because he drank contaminated water. No child should ever have to say something like that."

Snyder bore in on Exxon's strategy of apology and appeasement. "In this case, you have heard Mr. Sanders apologize on behalf of ExxonMobil. . . . How do you believe that Exxon has handled this entire situation?"

"Exxon has handled this for Exxon, not for the people of the community of Jacksonville," DePasquale answered. "They have taken care of themselves, not us. . . . My neighbors shouldn't be up here spilling their heart out. They should have been taken care of. . . . We should never have to come to this and go through this."

"As an affected resident in this community, do you accept Exxon's apology?"

"I pray for Exxon; I don't accept their apology."<sup>17</sup>

**M**y small law firm from Baltimore County took on the world's largest corporation," Snyder declared when closing arguments finally arrived. Speaking of his homeowner clients, he continued, "I was sort of floored

by what I saw in this courtroom. . . . I heard people's hearts pouring out. People breaking down on the witness stand, and I can be pretty tough, but there were times when I had to hold back the tears."

At ExxonMobil, "they do not have their priorities in order. Hopefully, you'll correct that. . . . You heard their stories. They cried out to you. This is their avenue for change. This is their opportunity for justice."

James Sanders spoke gently. He appealed to the jurors' sense of responsibility, after they had invested so many days and hours in their roles as citizen-judges. "Here we are," he said, "a big Texas corporation, international, profits that you have read about, all this other stuff—how do you treat us the same way that you treat people sitting out here in the audience? Man, that's tough. But you have to. That's what is really hard about this. You have to treat us fairly as you have been treating me during this trial." If they felt sympathy for him as ExxonMobil's lawyer, if they liked and trusted him, they should apply that trust to their verdict and reject the fraud charge.

ExxonMobil's vulnerability in the trial—its potential billion-dollar problem—lay with Snyder's emotive performance, his efforts to pull the jury into a change-the-world mind-set, from where they could unleash their pent-up anger at Big Oil. Sanders therefore aligned himself with those in the jury who might admire Snyder's passion—and then he turned this sympathy for his opponent around.

"I like Mr. Snyder," Sanders said. "I am fond of him. I respect his abilities, which are considerable. He is quite a character. . . . He is an absolute handful, but you have to love him. But I don't agree with how he mangles the facts. . . . In my wildest imagination, I would never have been able to come up with some of the theories that he has come up with in this case. . . . It is ingenious. It is brilliant. It is wrong, but it is brilliant."<sup>18</sup>

The jurors filed into Courtroom 2 after twelve days of deliberations. They announced their verdict: \$150 million in actual damages and zero dollars in punitive damages. The verdict for actual damages was high: The jury awarded all of Snyder's clients 100 percent of the appraised value of their homes, even though some of them had sold their homes for hundreds of thousands of dollars and none of the homes was appraised as worthless. Of the \$150 million, \$71 million was for emotional distress,

\$61 million for property loss, and the rest for the costs of future medical monitoring.

Snyder was still looking for his first billion-dollar case. The jury's decision showed that proving "intentional malice is an extremely uphill climb," he explained.

James Sanders had told the jurors repeatedly during the trial that ExxonMobil would pay whatever they thought was fair by way of actual damages. Nonetheless, once the verdict was in, ExxonMobil rejected the jury's decision and declared it would appeal. This was ultimately Rex Tillerson's decision; he followed the legal strategies and policies bequeathed to him by Lee Raymond, and before Raymond, by corporate lawyers dating back to Standard Oil's defiance of antitrust reformers. "Compensatory damages should not be so high as to essentially be punitive instead of truly compensating for actual harm caused by the spill," the corporation said in a statement.<sup>19</sup> Judge Baldwin upheld the verdict on initial review, but ExxonMobil said it would appeal again. It would be years before the families around Jacksonville Exxon would see a dollar from the corporation, if ever. "Don't mess with Texas" remained the ExxonMobil law department's ethos, and the corporation's strategists believed that if they made exceptions for one set of accident or tort victims, they would only be challenged and exploited by others—whether in Baltimore County or Aceh, Indonesia.