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APPENDIX A

TO THE

JOURNAL OF THE HOUSE OF REPRESENTATIVES

OF THE

FIRST CALLED SESSION
OF THE FORTY-SECOND LEGISLATURE

Proceedings of Investigating Committee of the Whole House of Representatives Relating to the Oil and Gas Industry

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APPENDIX.

Proceedings of Investigating Committee of the Whole House of Representatives Relating to the Oil and Gas Industry.

(Saturday, July 18, 1931.)

Hon. Fred H. Minor, Chairman of the Committee of the Whole House.

Steering Committee.

Hon. Bailey W. Hardy, Chairman, Hon. Harry Graves, Hon. Lee Satterwhite, Hon. Earl Adams, Jr., and Hon. Walter H. Beck.

C. V. Terrell, being duly sworn by the Chairman of the Committee, testified as follows, on examination:

By Mr. Hardy:

Q. Please state your name to the Committee.

A. C. V. Terrell.

Q. Where do you live?

A. My home is in Decatur, in Wise county, Texas.

Q. Where are you now residing?

A. Austin.

Q. Do you hold any official position with the State of Texas?

A. Yes, sir. I am Chairman of the Railroad Commission of Texas.

Q. How long have you been a member of the Railroad Commission of the State of Texas?

A. Over six years.

Q. How long have you been chairman thereof?

A. About five months.

Q. At the time you became a member of the Railroad Commission, was part of the duties of the Railroad Commission to look after the oil production in the State of Texas?

A. Yes, sir.

Q. What are the duties of the Railroad Commission relative to the oil matters of the State of Texas?

A. To see that various operators in Texas follow the law, and the enforcing of the rules and orders concerning oil waste promulgated by the Railroad Commission.

Q. Does the Railroad Commission of Texas have anything to do with oil and gas other than the conservation thereof?

A. I think not.

Q. What are some of the duties of the Railroad Commission in addition to the conservation of oil and gas?

A. We have charge of the railroads of Texas. We have charge of the gas utilities department and the trucks and buses of Texas and the pipe lines law.

Q. You have various heads of those departments? You have a head for the different departments?

A. We have a head of each department or division, I believe, we call them.

Q. Who is the head of the oil and gas division?

A. R. B. Parker.

Q. Now, Mr. Terrell, has the Railroad Commission ever issued any orders of proration in Texas?

A. Yes, sir.

Q. Under what theory of law?

A. Under the theory that it is supposed to prevent waste.

Q. Mr. Terrell, will you tell the Committee of the Whole House what you mean by proration?

A. Well, I do not know that I can do that as thoroughly as I ought to. Proration means we hold our hearing, public hearings, and hear testimony, and on that testimony we base our decrees or orders putting on proration, which is for the purpose of preventing waste of oil and gas.

Q. What is meant—what does proration mean?

A. Proration would be to prorate everything—to equalize and prorate equitably over the field.

Q. Do you mean by that, that you, by order of the Railroad Commission, authorize owners of oil wells to produce only a certain part of what oil they are now able to produce normally?

A. Yes, sir.

Q. You mean by that, you would allow a certain per cent of oil production—only a portion of what that field would normally produce?

A. That is correct.

Q. Do you know of any statute under the present law authorizing proration other than the waste statute?

A. Not that I know of.

Q. There is no specific statute authorizing proration?

A. None except as stated.

Q. For the benefit of the Committee, please state to the Committee what you mean by the potential of a well. What do you mean by that when you say the potential of a well?

A. I am not a petroleum engineer, or a practical oil operator. My understanding is that the potential is what it would produce on an open flow.

Q. How do you determine what the potential of a well is?

A. Those matters are handled by the umpire—the head of the Department, Mr. Parker, who is experienced in those matters. I think he could answer you more intelligently than I could. I have never been present, but I think they take a test or gauge the flow of the well for a couple of hours and from that make the calculation, but I am not a petroleum engineer, and do not know the method they use in determining the potential of a well, but Mr. Parker understands that and can tell you.

Q. Have your proration orders issued by the Commission been based upon the potential of various pools?

A. Yes, sir.

Q. Is your present orders now in existence based upon potentials in the various pools?

A. They are with some exceptions.

Q. Please state those exceptions.

A. One exception is in the East Texas pool.

Q. Upon what basis is the East Texas pool prorated?

A. It is based, if I understand it correctly, it is based upon the unit system, or unit plan of twenty acres.

Q. How much production is allowed to twenty acres?

A. I will state this, that the allowable in the East Texas field, under our last order, is 250,000 barrels per day, and each unit is allowed its part of that 250,000 barrels.

Q. How did you arrive at the figure of 250,000 barrels as being their proration?

A. It is largely based on the outlet, the demand, and it was largely put into effect in the way of a compromise.

Q. What do you mean by the term demand?

A. Demand of the purchasers for the oil.

Q. You mentioned a few minutes ago the umpire?

A. Yes, sir.

Q. Before I get to that, what do you mean by the statement that you made that this proration order was based partly upon a compromise?

A. Well, there were several factions and each one urged that the Commission issue a certain order, and we decided that the allowable of the field should be 250,000 barrels per day.

Q. Based upon what?

A. Based upon the production of the field, the number of wells, and the outlet to purchasers.

Q. What did the various factions want?

A. Well, they were very different; some wanted it based upon each well—wanted a production of 300 barrels to each well; others wanted more than 250,000 barrels, and other operators that wanted less than that amount.

Q. Now, Mr. Terrell, did the compromise in any way affect waste?

A. Well, I think so.

Q. Your figures were based on 250,000 barrels per day—did you believe that 225,000 or 200,000 barrels per day was proper?

A. No, we finally decided that 250,000 barrels per day was the proper amount to be allowed that field.

Q. And that was based on the outlet, the demand and compromise?

A. That is right.

Q. Well, you say this is based partly on a compromise. Now, what did the Railroad Commission think was the proper amount originally?

A. Well, I do not know just what the Commission thought. My idea was that about 225,000 for the first fifteen days, then 250,000 for the second fifteen days, would have been about right; but we finally decided that it was best to go on a 250,000 basis, and let it continue for the month, instead of attempting to make a change at the end of fifteen days.

Q. Did the Railroad Commission take into consideration in the preparation of this order the market demand, or was it considering alone the purpose of economy?

A. I would rather say it was both.

Q. If it was based partly upon the economic situation, or upon the market demand, please state whether or not, after the issuance of this order, there was a reduction in the price of oil?

A. I am not familiar with the price of oil.

Q. You do not know whether it was or not?

A. I have never interested myself in that phase of the question sufficiently to testify intelligently.

Q. A few minutes ago you stated something about an umpire. Please state to this Committee what an umpire is.

A. An umpire is one who is appointed by the Texas Railroad Commission to supervise the production of oil and to see that orders of the Commission in regard to proration are followed in a given field.

Q. What are the duties of an umpire?

A. Just what I have stated.

Q. It takes the whole of his time to attend to that?

A. Yes, sir. He has a man to assist him in gauging the well and looking after that phase of it.

Q. Who pays the salary of an umpire?

A. The operators in a given field.

Q. Are these operators assessed for the payment of this salary, or do they voluntarily contribute thereto?

A. I do not know whether they are assessed or not, but they voluntarily pay it, but the details of that I am not familiar with.

Q. Who sets the salary that they are to be paid?

A. It is either done by the operators in the field, or the Advisory Board of that field.

Q. What is the Advisory Board?

A. The Advisory Board is composed of five or seven or eleven members, usually. They are elected by the operators to look after the enforcement of the proration orders in that field and to assist in the enforcement of the Railroad Commission's orders covering that field.

Q. Is that Advisory Committee provided for by law?

A. No, sir.

Q. Who selects them?

A. They are selected by the operators in the given field.

Q. Does the oil pool have an Advisory Committee?

A. Each that is prorated has.

Q. Do you know, Mr. Terrell, just how they select these men? Are you in a position to tell us just how those men are selected?

A. They are supposed to be elected by the operators at a meeting.

Q. Do they receive any salary?

A. Not that I know of.

Q. Then the salary of an umpire is not set by the Railroad Commission, is it?

A. No, sir.

Q. The Railroad Commission, as a matter of fact, confines itself to the appointment of the umpire?

A. Yes, sir.

Q. Is he appointed by the Advisory Committee?

A. No, sir. The operators and the Advisory Committee recommend to the Railroad Commission whom they think would make a proper umpire. Later on that is taken up by the Railroad Commission, and if we think proper we select that umpire. If we do not think he will make a good umpire, we reject their recommendation.

Q. Has an umpire ever been rejected that was recommended by the Advisory Committee?

A. I think so. We rejected one.

Q. Who was that?

A. He was an umpire recommended by the Yates pool.

Q. How long ago was that?

A. Something like a couple of years. I believe it was 1928.

Q. Who was that party? Do you remember?

A. I know, but I believe that I will not answer that question unless you insist. I do not believe it would be best to mention the man's name unless you demand it.

Q. Mr. Terrell, what is the allowable? What do you mean when you speak of the allowable in an oil pool?

A. The Central Advisory Committee that has been selected by certain operators in Texas makes an inquiry, an investigation of the amount of oil that could or may be produced in a given field, and reports to us what they think the allowable should be in that field.

Q. Who is the Central Advisory Committee?

A. I cannot give you the names. The president of it is Robert Penn.

Q. Where is he from?

A. I do not know where he lives.

Dallas, I believe, but he formerly lived at Austin.

Q. Then this committee, this Central Advisory Committee, is appointed, as I understand, by the operators, is that right?

A. Yes. I will tell you how they are appointed. Two of them are appointed by the major producers, two of them by the Mid-Continent Oil and Gas Association, and two by the independent companies.

Q. Now, does the Railroad Commission have anything to do with this Central Advisory Committee?

A. Not a thing.

Q. Now, these gentlemen find out from the purchasing companies what amount of oil they will take, and then they make recommendations to the Railroad Commission as to what amount that is, which is the means of determining the amount of oil that is in that pool, and what the allowable is?

A. Yes.

Q. In other words, the pipe line companies, if they can only take a certain amount of oil from that field, then the allowable is not over that amount, is that correct?

A. You speak of the pipe line companies—I just said purchasing companies, and the allowable is never more than the purchasing companies bid for oil.

Q. The allowable is never more than the purchasing companies bid for oil?

A. No, sir.

Q. These purchasing companies make what is known as nominations, don't they?

A. Yes, sir.

Q. Tell the Committee what the nomination is.

A. It is the amount of oil that the purchasing companies desire, or want to buy from that pool.

Q. Within a given time, a day, or week, or how?

A. So many barrels per day.

Q. Then the Railroad Commission's order is based upon the recommendation of this committee, this Advisory Committee?

A. Yes. The Railroad Commission will then set this down for a hearing. We set a date for the hearing and give ten days' notice to all parties interested in the field, and such parties as desire to do so come to the meeting and give testimony as to what the allowable should be or what the order should contain, and the Central Advisory Committee gives the amount of the allowable that they think is proper for the field and gives their reasons why. Anybody can come into this meeting and testify as to whether it is too much or too little, then the Railroad Commission takes the matter under advisement and makes the order such as they see fit, based on the facts developed in that hearing.

Q. How many purchasing companies are there in the ordinary field?

A. Well, I suppose it varies.

Q. Do you know how many purchasing companies purchase in the various fields of Texas?

A. I have not that information at hand, but I think I can get that information for you. I expect the office has it, and we will give you that information.

Q. Are all the oil pools in the State of Texas prorated?

A. I think they are.

Q. How many various oil pools have you in the State of Texas?

A. I believe there are eleven that are prorated.

Q. Whenever the Railroad Commission issues an order, do they prorate the entire State of Texas at one time?

A. We did not at one time. Three years ago, that is in 1928, we first started with the Winkler pool. I believe it was July, 1928, when the first proration order was issued.

Q. What pool was prorated at that time?

A. The Winkler pool. But there had been an agreed proration in the Yates pool, beginning something like six months before that time, but the Commission had never issued its order in regard to it. That proration was just done by agreement.

Q. Was any effort made to prorate the Winkler pool without the order of the Commission?

A. Not that I know of.

Q. Then each pool in the State of Texas is prorated under nominations of the various purchasing companies from that pool?

A. Yes, sir.

Q. Does this Central Proration Committee make recommendations in each of the pools in the State?

A. Yes, sir.

Q. You said at one time that you prorated by pools—do you prorate Texas now as a whole, or not?

A. Yes, sir, we now have an allowable for the whole State which is the same total for each pool.

Q. How much is that, Mr. Terrell?

A. The allowable for Texas is 800,000 barrels for July 11.

Q. That is based upon the purchasing companies' nominations?

A. Yes, sir, but they are producing more oil than that amount at this time.

Q. You mean by that that in certain pools they are producing more oil than the Railroad Commission's allowable?

A. Yes, sir.

Q. Do these purchasing companies make their nominations by pools, or do they make their nominations by pools for the entire State?

A. Their nominations are made for each pool separately.

Q. In other words, the purchaser can agree to purchase from one pool a certain amount of oil, and another purchasing company can take a larger or smaller amount from another field, if they desire to do so?

A. Yes, sir.

Q. In other words, the purchaser can raise the percentage of one pool over another pool?

A. Yes, sir; they could do that. They make their reports to the Central Advisory Committee, who come to the Railroad Commission, and then the allowable is determined, but it would still be up to the Railroad Commission whether or not they would do what the Central Advisory Committee have recommended.

Q. Do the purchasing companies collectively make the nominations for the pool?

A. I think so.

Q. What has the producer—what voice has the producer as to the amount of production in certain pools? Has he any right to come to the Commission?

A. He has the right to come before the Commission in regard to the allowable for that pool, and in the event any injustice that may be done is looked into by the Advisory Committee and the Railroad Commission.

Q. Suppose the Advisory Committee overrules him?

A. He has the right to appeal to the Railroad Commission, or legal redress, as has been done in several instances.

Q. And in the event the Railroad Commission believes the allowable is too small, or that the nominations by the purchasers have been set so as to create an injustice, what authority has the Railroad Commission to raise that allowable?

A. We have the power to raise that allowable, or to lower it, as we have done in one or two instances that I know of. We have raised the allowable at times, but I think on the recommendation of the Central Advisory Committee. We have in several instances made the allowable greater than that fixed by the Central Committee, and in several instances we have made it lower.

Q. And then you have followed the recommendation of the Central Committee, have you not?

A. Yes, sir.

Q. Do you have any authority to make the purchaser take any oil?

A. None that I know of. I might be wrong about that. The Attorney General can answer that question when he comes on the stand.

Q. Do you know of any endeavor on the part of the Railroad Commission to endeavor to use the common purchaser law so far?

A. We have discussed that with the Attorney General and he finds in the order of the East Texas field where we have made an attempt to have that incorporated into the rule and orders of the Commission in attempting to enforce that law. It is doubtful whether it can be done, and we have been informed by some good lawyers that it cannot be done.

Q. Mr. Terrell, have you ever prorated a field that the Central Proration Committee did not request? In other words, could you prorate a field whether or not the Central Committee thought it necessary?

A. We have the power to prorate the field, even though the Central Committee thought it ought not to be done.

Q. Have you ever done so?

A. I cannot recall to mind any instances.

Q. Do you base, Mr. Terrell, your order of proration on waste?

A. Yes, sir.

Q. Do you take into consideration economic waste?

A. No, sir.

Q. How do you define waste? How do you determine that a certain pool will produce without waste 250,000 barrels and not produce waste if more than that was taken from the pool?

A. Well, the pool might not produce waste if there was more than that taken out, but that is just a figure fixed by the Commission on the testimony, feeling that it is a proper amount for the pool to produce so that it will not produce waste. It

might produce some more than that, and not bring about waste.

Q. What information do you base that on?

A. On the testimony in the trial of the cause.

Q. And upon the nominations of the purchasing companies?

A. Yes, sir.

Q. What is waste, tell us what you consider waste in the light of the present statute?

A. Of course, waste is more or less defined in the statute; waste as I understand it, is what—it may on account of two reasons; first, is what we call up-ground waste, that is, waste of oil in storage.

Q. How is waste—how does waste occur in that way?

A. By the evaporation of the oil. The experienced operators and engineers tell us that it will waste about five per cent during a year in up-ground storage.

Q. What is the other kind of waste?

A. The other kind of waste we take into consideration in issuing our oil proration orders is what is called underground waste. That is where the wells are permitted to open flow, it sometimes sucks water into the well and traps off the oil, and the testimony of expert witnesses is that one-half of the oil, if it is permitted to open flow, without any regulation, will lose about one-half of the oil in the field.

Q. That testimony is given by petroleum engineers?

A. Yes sir, and by practical operators.

Q. Oil and gas and water are found in layers?

A. Yes, sir. If I understand it right from the petroleum engineers, the oil is on top of the water. The gas form on top of the oil, and when you drill into an oil strata the gas comes first, and then you bring in oil, and after the oil comes up then the water comes into the well.

Q. How many umpires do you have in the State of Texas?

A. I believe we have eleven.

Q. Who are they?

A. I can give you their names, I do not believe I can give you all of them, but I will furnish you a list of them.

Q. Are any of them connected with, or have any of them ever been connected with any of the purchasers in those pools?

A. I think that some of them have worked for various operators in Texas, but I do not know what operators.

Q. Do you know whether they worked for purchasers or oil operators?

A. No, I do not. Some of them have perhaps worked for purchasers and some have worked for operators, for in order to get an umpire who is qualified he must have had some experience either as a purchaser or as a practical operator.

Q. Do any of these umpires work for anyone else besides the Railroad Commission?

A. I do not suppose they do. If they did and I knew it, I would vote to discharge them.

Q. Do you have any rule or regulation prohibiting them working for anyone else?

A. We have not a written rule, but we would not permit it if we knew it were true. I cannot speak for the entire Commission, but I know, in fact, I would not, but I feel that they would take the same view of the matter that I do.

Q. Are their duties such as to require practically all of their time?

A. Yes, sir.

Q. Then they would not have time to attend to their duties and work for anyone else?

A. I do not think so.

Q. And you take the position if that were true why then you would then vote to discharge them from the employ of the Railroad Commission?

A. Yes, sir.

Q. Do you not believe that you have any of that kind on the payroll of the Railroad Commission at this time?

A. No, sir, I do not think so.

Q. You know all of the umpires, do you?

A. No, sir.

Q. Naturally you do not know then whether they are in the employ of any of the purchasing companies or independent operators, or not?

A. No, sir, I do not.

Q. Did the Railroad Commission issue an order changing the proration order in East Texas?

A. Yes, sir.

Q. What did the expert testimony at that hearing show that East Texas could produce without waste?

A. The testimony was more or less conflicting on that particular point.

It ranged from 250,000 to 300,000 barrels per day.

Q. How much did it show for the entire State? What was the testimony relative to that?

A. I do not remember just now what the testimony was on that point.

Q. Why did the Railroad Commission change from the potential basis to the well or unit basis in East Texas?

A. There were about twenty-five operators in East Texas that refused to obey the order of the Commission. They brought suits in both the Federal and State courts and in some cases filed injunction which prevented the enforcement of the order or proration in that field. When some one man or operator violates the order of the Commission to permit his well to flow open, of necessity, that would give the offset wells the same privilege to flow any open well open, and if you denied the man who had an offset the privilege of flowing his well open, the man who was violating the law and flowing his well open would get some of the oil, and perhaps a great deal of the oil from the offset well, so that the twenty-five operators and those that brought suit, and the offset wells owned by the parties who were wanting to obey the rules of the Commission, you can see how that gradually spread out over the field. It rendered the order of the Railroad Commission null and void, in other words, they were unable to enforce it and they were not and are not following the allowable in that field.

Q. Were the operators in the other pools following the allowable in those pools?

A. Yes, sir, so far as I know, they are.

Q. Then the Railroad Commission changed the proration in East Texas?

A. No, the citizens in East Texas, and the operators and royalty owners met and adopted and started what is known as the unit plan as antagonistic or contrary to the potential plan which we had adopted. They selected Captain Lucy as the head of the advisory committee, and they came to the Texas Railroad Commission and held a conference with us urging the putting on of that plan. Under the law we had to give ten days' notice before we could put on any order. We had already set this case down for the 29th of June and we told them that we would take the matter up at the hearing to be held on the 29th. So when that day came all of the parties interested came and testified in regard to the matter and had a full and free hearing of all parties interested in the matter, and after the Commission decided that they would abandon the potential plan and adopt the unit plan with an allowable of 250,000 barrels for the field.

Q. Was that done in other pools?

A. I think not, we have in the Yates pool, we have a combination of potential and unit plan. I believe 75 per cent is potential and 25 per cent the unit plan, but I am not positive now as to the figures on which the rule was put into effect, but we can give you that information from the office.

Q. The Department can give us that information?

A. Yes, sir.

Q. Do you have a list of those violators who are violating the proration order at this time?

A. I have not it with me, but I can furnish you with it.

Q. And you will do that?

A. Yes, sir.

Q. Now, before this order on the unit plan basis, you had violations of the law that could not be enforced. They were taking more oil than they were allowed?

A. Yes, sir.

Q. Now, since you have changed the potential to the unit plan, do you have obedience to your orders there now?

A. No, about the same number of operators have brought suit and are violating the order.

Q. Are they the same violators?

A. In the main, the same.

Q. Do you have a list of those violators?

A. We have a list of them, and will furnish it to you. That list is in our files in the office.

Q. Has the Railroad Commission and the Attorney General filed complaints against any of these parties, or filed injunction suits against them for violations of the Commission's orders?

A. Yes, sir. We have discussed with the Attorney General's Department, that is, with Mr. Upchurch, I think, in an effort to work out some plan by which these violators could be forced to live up to the rules and regulations of the Commission.

Q. Do you have in your employ

parties known as deputy supervisors, or something like that?

A. Yes, sir; we have seventeen.

Q. Do you have one in each pool, or how are they allotted?

A. The State is divided into seventeen or eighteen districts, and we have a deputy supervisor in each of those districts. They are not the same districts as the proration districts. In other words, the deputy oil and gas supervisors might have part of three proration districts in his district.

Q. Who are those supervisors—do you know them all?

A. Yes, sir.

Q. Do you have a list of them—we would like to have a list of them?

A. We will furnish you with a list.

Q. Do their duties in any way conflict in any way with the duties of umpires?

A. No, sir.

Q. Could they be used or employed as umpires?

A. They could be, if they had the time to devote to it.

Q. What are their duties?

A. Their duties are to prevent waste, see that the laws are enforced, and see that the various orders issued by the Railroad Commission are strictly enforced.

Q. Are not those similar to the duties of an umpire?

A. They are different orders and different rules, and have nothing to do with the umpire. The umpire sees that each well produces a certain amount of oil and that the entire field produces only a certain amount of oil, and he sees that the operators comply with that proration order, while the deputy oil and gas supervisors look after the plugging of wells, the logging of wells, pipe lines and the prevention of fire and other matters of similar nature.

Q. They look after different kinds of waste?

A. Yes, sir. We have in the East Texas field three oil and gas deputy supervisors, but only one umpire.

Q. Who employs the deputy oil and gas supervisors?

A. The Railroad Commission.

Q. Who pays their salaries?

A. The State of Texas.

Q. Out of the special fund that goes to the Railroad Commission?

A. Out of special funds collected from the oil operators.

Q. Those acts and commissions of waste that the deputy supervisors endeavor to enjoin, are they punishable by fine or imprisonment, or in any way, are the violations of those rules and regulations of the Commission punishable in any way?

A. The deputy oil and gas supervisor assessed a fine.

Q. As I understand it, the duty of the supervisors is to prevent waste of a different nature than the umpires look after?

A. Yes, sir.

Q. Are the commissions of acts of waste by various operators punishable by a fine, or otherwise?

A. They are punishable by a fine. The penalties are set out in the rules that we have issued, and there are probably forty or fifty rules.

Q. Has the Railroad Commission endeavored to punish them under those circumstances?

A. We have collected money fines.

Q. You have been able to enforce that character of rules to prevent waste?

A. Yes, sir.

Q. And it is only the production of oil and the over-production, and matters pertaining to that, that the Railroad Commission has not been able to enforce?

A. Yes, sir.

Q. Has the Railroad Commission taken into consideration, in the passing of its set of rules, the marginal well bill?

A. Yes, sir.

Q. Explain to the Committee just what you have done relative to that?

A. I believe I will ask you to direct that question to Mr. Parker, because he is directly in control of the division, and he can give you that information in a more intelligent manner than I can.

Q. Have any of your orders ever employed the provisions to that to make ratable takings?

A. Yes, sir, I think the order in East Texas.

Q. Which order?

A. The last.

Q. How many have there been issued?

A. Two.

Q. Would you mind looking that up and see whether or not it is correct?

A. I will be glad to do so.

Q. Now, Mr. Terrell, in order to get straight on this, I understand that all orders up to recently have affected each individual pool as they were issued?

A. Yes.

Q. Now, in making the allowable, do you take into consideration now all of the pools of the State of Texas, or are they still based upon the withdrawals or the nominations for each individual pool?

A. Well, I rather think it is probably a combination. The allowable in the entire State would necessarily be based upon the allowable of each field.

Q. But what I am getting at is this: the Railroad Commission does not ascertain what the allowable for the State of Texas should be and then prorate that among the various fields according to their production?

A. No, I don't— While that is considered, I don't think that is the way our Department has handled it.

Q. In other words, one purchaser still, under your orders, purchase from one pool a great amount of oil and take only a small amount from another?

A. Yes, that is one of the troubles.

Q. Mr. Terrell, you have stated that storage of oil is waste?

A. Yes.

Q. Now, in fixing the allowable, do you take into consideration that oil which is then at that time in storage?

A. Well, I suppose the Division knows about what is in storage, but I don't know just how that is handled, and I believe I will have you ask Mr. Parker when he comes on the stand.

Q. From your experience in handling the proration orders, and having stated that practically all the other orders of the Railroad Commission are not violated, tell this Committee what, in your opinion, is needed to enforce your orders relative to proration—what power is needed?

A. That question is baffling the minds of the greatest and ablest lawyers and statesmen in Texas, and I really don't feel competent to tell this Legislature just what should be done. What I know is that our orders are being disobeyed and not followed, and I understand that it is because of the suits that are brought which permits those who bring suits to violate the orders. Now then, I suppose there are several ways that might be remedied. One is that the Legislature might pass a law fixing what waste is and how much each well should produce. That would not be flexible and might not be best. I have heard of another remedy — that the Legislature might be able to pass a law and fix a tax, graded as it goes up, and stop the waste of oil through the tax. Then I have heard of another—and I will say this, that I have not read any of the bills that have been introduced; I have been away and just came in last night—but there is another way, that I think the Legislature has the power to correct this and provide that during the pendency of a suit the orders of the Commission shall be obeyed until they are set aside by a court of competent jurisdiction; a final court. As to whether that can be done, I have never gone into the matter enough to see whether it can or cannot be done. We have a similar law with reference to trucks, providing that truck operators who violates our rules, that the Texas Railroad Commission, through the courts and the Attorney General, can have an injunction issued, enjoining them from violating the order. Now, something along that line would be my idea of probably what should be done, if it will stand up in the courts. Now, there may be other remedies that I don't know anything about.

Q. Mr. Terrell, you think then, or would you state to this Committee that up to this time the oil business has been conducted in a manner that was satisfactory to the operators themselves?

A. To the operators in the field?

Q. Yes.

A. Well, I can't say. Of course, there is more or less complaint by various operators and I would not undertake to state that, but there never has been as much complaint in Texas as has been in the East Texas field.

Q. Who drew this last order of the Railroad Commission relative to East Texas?

A. Mr. Parker.

Q. Did he have any assistance in the drawing of that, that you know of?

A. I don't know. I was not in his room when the rough draft was made. It was brought into my office and we gave Mr. Upchurch a copy of it late one evening and Mr. Smith took a copy; we only had two and I didn't have a copy of it, and Mr. Upchurch said he wanted to study it, and I asked him to look over it and to come to my office the next morning as I wanted to go over it and discuss the legal phase of it with him, which we did, and then we called Mr. Parker and took our pencil suggestions and rewrote the order, or drafted it, and

then presented it back to the Commission.

Q. Now, Mr. Terrell, do you think that it would be an assistance to the stopping of waste to cut down the production in the State of Texas, taking into consideration the imports of foreign oil?

A. Of course, I have always been against the importation of oil into the United States although it is a matter that I don't know a great deal about. During when the question was agitated in Congress and they were urging the reduction of the importation of oil into the United States, as Chairman of the Texas Railroad Commission I wired the party who had charge of the movement urging them to reduce the importation of oil into the United States, feeling it would help the industry and the people of Texas.

Q. Even though the imports are still coming in, do you feel that it is an act of waste to produce more than the allowables made by the Commission?

A. If the production had to go into storage I would say yes, and if the production of the oil in any given field was such that it would cone off the oil and waste it, I would say it should be reduced.

Q. Does the Railroad Commission know where this oil is going? Does the Railroad Commission, in making the allowables, know what contracts, or have information relative to the contracts of purchasers, by the various purchasers?

A. No, sir.

Q. You don't know whether it is going into storage or being manufactured into gasoline or otherwise?

A. No, sir; we do not.

Q. In making allowables, does the Railroad Commission take into consideration the tank car purchasing ability?

A. I am not sure about that. I don't know just how that is arrived at.

Q. All right. Now, does the Railroad Commission know whether or not this oil taken from Texas is being stored beyond the State limits anywhere?

A. I don't know. I think it is all supposed to be used here in Texas, but I don't know. It might be exported, some of it.

Q. Will a limit on the price of oil to be sold aid in stopping waste?

A. I don't know.

Q. Do you know whether there is an excess of storage oil now in Texas?

A. No, I am not posted in regard to that.

Q. You think your department can give that information with regard to stored oil?

A. Yes.

Q. Without the information as to the amount of storage oil, how do you work out the allowables?

A. Well, as I said, it is on the testimony of the witnesses that come before the Commission and testify. The central committee comes and testifies that the allowable in a certain pool is a certain amount—that the purchasers will purchase a certain amount in that field, and when we fix the amount we feel that it should be equally distributed among the various operators in the field.

Q. I believe you stated you did not know what the price of oil is at this time?

A. No; it's running very low.

Q. You know it is running very low?

A. It's quoted in the papers at 8 cents, 10 cents and 15 cents. I don't know just what it is. I think it's too low.

Q. What is your reason for that? Why do you state that oil is selling for such a low price at this time?

A. I don't know. Of course, overproduction is one cause, but whether that is the whole cause or not I can't say.

Q. Does the Railroad Commission or any other department of the State have a definite policy looking to the interests of the oil industry, to aid the oil industry and the State?

A. Well, I would say yes.

Q. What is that policy?

A. The policy is to conserve the oil and gas and prevent its waste and by curtailing the production in a given field—by doing that I feel that the oil by staying in the ground will necessarily help the industry, and I think it will help the people of Texas, aside from the question of waste. I think it will benefit the people of Texas immeasurably.

Q. Tell this Committee whether or not it is waste, in your opinion, to cause the shutting down and closing and plugging of many of the small wells in the State?

A. I think that would be waste.

Q. What is the cause of that now?

A. The low price of oil. Many of

those wells, as I understand from the witnesses, can never be reopened to obtain the oil once they are closed in. The expense in producing the small well is such that at the low price of the oil they cannot afford to let them run. It costs more than the oil.

Q. Now, Mr. Terrell, you have had six years' experience with the Railroad Commission?

A. Yes.

Q. And you are familiar with the duties of the Railroad Commission?

A. Yes, I think I am.

Q. Please tell to this Committee whether or not you are overworked or whether or not you have the time to attend all the duties of the Railroad Commission?

A. I think we have the time to attend all the duties of the Railroad Commission and I think we have done so. The only trouble that I see is the fact that our orders cannot be enforced.

Q. Do you believe if some law was passed which would authorize the enforcement of your orders by court action and that your orders could be maintained, that your body could look after the oil situation in a proper manner and to the best interests of the State of Texas?

A. I think so.

Q. Someone asked this question: Do you know who sets the price of oil?

A. No. But I assume that the major companies do so.

Q. What do you mean by major companies?

A. Well, I don't know whether I could define the major companies or not. But they are distinguished by independent companies. That is, I take it, companies connected up with large concerns like the Standard of New Jersey and Standard of New York and the Shell and so on.

Q. What are independents?

A. Independent oil operators, I take it, are those which are working independently of those big corporations; on their own hook—put it that way.

Q. Aren't major companies, as a rule—isn't it the general understanding that they are recognized as the purchasers of oil?

A. I think that is true.

Q. Are all of the major companies—the purchasing companies who are also engaged in the business of drilling and refining and so forth; are they obeying the orders of the Railroad Commission at this time?

A. I don't know, only from memory. The Arkansas Oil and Fuel Company has brought suit.

Q. Will you state that again?

A. The Arkansas Oil and Fuel Company, I believe is the name of it; I am not sure that is a major company or not.

Q. Do you know who that company is connected with?

A. No, sir.

Q. Do you know whether or not it is a subsidiary company of any other company?

A. I don't know. I am inclined to believe it is. Mr. Parker called my attention to the fact that it is a subsidiary of Cities Service Company.

Q. Is that a major company?

A. I believe so.

Q. Can you name the major companies doing business in Texas?

A. No, sir, I cannot. Mr. Parker can give you all those, though.

Q. Do you know, Mr. Terrell, whether or not we produced less oil than we consumed last year; that is, in the United States?

A. I have seen the figures, but I can't give you the information. I am not sure.

Q. Do you think that the law of supply and demand has anything to do with the price of oil today?

A. Yes, I rather think it has something to do with it.

Q. To what extent?

A. I believe the overproduction of oil has assisted in bringing the price down. Now, whether it has been entirely responsible for it I am not able to say.

Q. Do you think importations have anything to do with the price of oil?

A. I believe so.

Q. Do you know of any agreement or combination to fix the price of oil?

A. I do not.

Q. Mr. Terrell, I want to go back a minute. A few minutes ago I asked you who wrote the last proration order and you advised the Committee that Mr. Parker wrote it?

A. It was written in his office and brought to me by him, and I assume he wrote it.

Q. It was written in his office and brought to you by him?

A. Yes.

Q. And then, that day or the next day, did you call for Mr. Upchurch to go over it with you and explain it?

A. Yes, the next morning. He

was there that evening and took a copy of it and Mr. Smith took a copy and I had no copy. I asked Mr. Upchurch if he wouldn't go over it carefully and come up the next morning, as I wanted to discuss it, and particularly the questions of law pertaining to it, and he came up and we discussed it probably for a couple of hours, privately.

Q. Was that order then issued?

A. I then called in Mr. Parker and called his attention to the changes we thought should be made.

Q. Who was "we"?

A. Mr. Upchurch and I. Mr. Parker then took the draft and went back to his office and took our penciled notations, and that evening, late, brought in the draft corrected, in part at least, as we suggested; he had it then prepared ready for the Commission to consider and discuss.

Q. It was not corrected in full, as you suggested to him?

A. I am not so sure. I think probably it practically did cover the points we suggested.

Q. Then was the order as brought back by Mr. Parker the second time, was that order signed and issued?

A. No, sir.

Q. What happened to it?

A. It was brought back that evening about 3 or 4 o'clock, after he finished it.

Q. Who brought it back?

A. Mr. Parker.

Q. All right, sir.

A. I called a conference of the Railroad Commission to consider the order.

Q. All right, sir. Did you notify all the members of the Commission?

A. I sent for Commissioner Smith and sent my private secretary for Governor Neff. They all came in, and each one of us—I told Mr. Parker to prepare drafts for all of us, so we could properly consider it, and he did so and gave me one of the drafts, Mr. Smith one and Governor Neff one. Governor Neff complained that he had not been in on any of the conferences and I told him I had held no conference except to discuss the matter with the Assistant Attorney General, Mr. Upchurch, and I did that privately in order to inform myself of the law regarding it, and I feel that either of the Commissioners had the same right to do the same thing if they desired, and he said, Well, I have had no time to consider it. I says, Well, we will adjourn the conference over until tomorrow morning that we may make a study of it until in the morning and come back in the morning prepared to handle it. It was 4 or 5 o'clock then, and we adjourned and the next morning I called Mr. Parker and asked him if he would get the Commission together for a conference. He said he would. He went out and returned, and I believe he was unable to locate Governor Neff that morning. Evening came on, and I felt the matter should be handled and I told Mr. Parker to see Governor Neff and Commissioner Smith, and bring them in and we would have a conference. He came back in the course of twenty or thirty minutes and said that he had seen Governor Neff and the Governor asked him a few questions about the order, and he answered them, and the Governor stated to take it to Terrell and Smith and let them sign it and then send it to him. He came in and made that report to Commissioner Smith and I, and we signed the order and turned it over to Mr. Parker for Governor Neff's consideration. Those are the facts and can be substantiated by Mr. Smith and Mr. Parker, and my private secretary.

Q. Do you know whether or not Governor Neff ever signed the order?

A. I heard he did not.

Q. Did Mr. Smith sign it?

A. Yes.

Q. Is that the usual and customary way of the Commission issuing its orders?

A. Yes; we call a conference and discuss the questions. Of course, if it is an order of slight importance and we do not regard it as of grave importance, we sometimes, if the order is presented to the Chairman and the Commissioners, they sign it individually, and it goes along, but that is not usual except in unimportant cases.

Q. Mr. Terrell, do you consider the laws now on our statute books fully adequate if fully complied with to properly control the oil and gas situation?

A. I do not.

Q. Do you think the present laws, if they were enforced, that economic waste could be prevented.

A. I do not think the economic waste of gas could be prevented under the present law, and I doubt whether or not the oil could or not, or even the actual waste of gas. I will say this: I think we need additional laws not only to enforce proration orders, but I think we need addi-

tional laws in regard to the conservation of oil and gas, and especially gas.

Two years ago Chairman Gilmore, Commissioner Smith, Mr. Parker and myself prepared a bill—I didn't have much to do with the preparing of it, but I read it afterwards and it was introduced in the Legislature. There were some of those provisions of the bill that I think were sound, but it went before the Committee and some of the independent operators impugned the motives of the Texas Railroad Commission, insulted Chairman Gilmore, and I walked out of the committee room, and I decided I would never urge or insist upon the Legislature passing any bill pertaining to the Railroad Commission. That bill had in it a provision which gave the Texas Railroad Commission the power to define the ratio of oil and gas, and I think something along that line should be done. We have gas in Texas that is wasting, not specially in East Texas, because the pressure there is low, probably two or three hundred cubic feet to the barrel of oil, but we have gas waste in Texas that is most deplorable. In the Panhandle field, with the assistance of the Attorney General's Department, we made an effort to prevent that waste and some of the operators found out about it and they immediately brought suit in the district court here in Austin and by agreement with the Attorney General we were enjoined from preventing the waste of that gas in that field. Now that case has been pending, I expect, more than a year, and I feel like that is another case that should be looked after. Of course, I understand the change of Attorney Generals, and the necessary delay that is bound to follow in those cases, and I don't know the reasons why, but I do believe that matter should be handled and the waste of gas prevented. I believe the gas in Texas is probably just as precious as the oil, and I think the Attorney General's Department is trying to use every effort possible to assist us in enforcing these orders, but we are enjoined in that case just as in East Texas, and the gas is wasting. I call your attention to that because I feel it is important to the Legislature to hear such a matter when it is considering the question of oil and gas waste.

Whereupon, the Committee of the Whole House, at 12 o'clock, noon, stood at ease until 1:30 o'clock p. m.

The Committee met at 1:30 o'clock p. m.

Mr. Hardy: Mr. Chairman, the Committee is ready to proceed.

The Chairman: Where is your witness?

Mr. Hardy: The Committee would like to have Mr. Lon Smith.

The Chairman: Are you through with Mr. Terrell ?

Mr. Hardy: I think so for the present. I don't think we will need him any more at this time.

Whereupon Lon A. Smith, being by the Chairman first duly sworn, testified as follows:

Examination by Mr. Hardy:

Q. You are Mr. Lon A. Smith?

A. Yes.

Q. One of the Commissioners of the Railroad Commission?

A. I am.

Q. You live here in Austin, do you?

A. I live in Austin.

Q. Did you hear the testimony this morning, Mr. Smith, that Mr. Terrell has given before the Committee?

A. Every word of it.

Q. Do you have any suggestions you want to add to that testimony or any variations thereof you care to give at this time?

A. On the matter of the employment of the umpires, I would like to say that the Commission would like to have that matter in its hands in its entirety. We would like to employ the umpires, as we do, and we would like for the State to pay them so they would be under the absolute direction and control of the Railroad Commission.

Q. What is the income of the Railroad Commission each year for this purpose?

A. I couldn't give you that. Of course, you will understand, Mr. Chairman, that the amount of income received from the oil industry would be in proportion to the price of the oil and the amount of production we have, so it varies. In no two years will it be the same.

Q. In other words, the maintenance tax then is based upon the amount and the price of oil?

A. The amount of oil produced, and the price that that oil brings.

Q. It is one-twentieth of one per cent of the purchase price?

A. Yes.

Q. The market price?

A. Yes.

Q. Does the Railroad Commission have any definite fixed policy relative to the oil situation or the conservation of oil and gas in the State of Texas?

A. I am sure we have.

Q. What is that policy?

A. Well, the policy is the matter of the proration of oil and the matter of the rules and regulations governing the control of an oil field, as that activity is directed by our oil and gas supervisor.

Q. Is that policy formed upon the interests of the people of the State or upon the interests of the oil industry?

A. We think it is in the interests of the people of the entire State.

Q. Does it have anything to do with economic waste?

A. I should think not.

Q. Is the determination of that policy based upon the statutes alone, or upon the discretion of the Commissioners?

A. It is based both upon the statutes that are given us, and also the experience of the Commission in putting into force and effect its program. We are allowed quite a bit of latitude by the statutes, in that we are permitted to provide our own rules and regulations for the purpose of handling the oil situation.

Q. How many railroad hearings has the Commission had in the last year, Mr. Terrell—Mr. Smith?

A. You mean hearings in the interests of the railroad end of our service—just the railroad end of it?

Q. Yes.

A. I couldn't tell you.

Q. Has it taken up one-third of your time or half of your time or one-fifth of it?

A. I would say not more than one-fifth of it.

Q. Perhaps a fifth of your time, you think, has been devoted to railroads?

A. Railroad rate matters and things of that kind. Hearings pertaining to railroads sometimes take us away from the State, for hearings before and conferences with the Interstate Commerce Commission, but in the matters of oil and gas, and motor bus and motor truck, we are not called away from the State.

Q. How much of your time, approximately, has been taken by gas utility matters?

A. Well, I want to get my fractions properly divided, now; I would say probably a third of the time.

Q. How many hearings have you had upon the gas utility matter this year—how many different cases?

A. I can't answer that question.

Q. Do you know approximately how many?

A. No, I wouldn't.

Q. Your Commission has appellate jurisdiction only in gas utility matters?

A. Yes.

Q. Your office has a record of that, doesn't it?

A. Yes, we can give you that information from the files.

Q. Have you had one of these gas utility hearings since the Fort Worth case?

A. I believe not.

Q. How long ago has that been?

A. I think about five or six months ago; sometime within the year.

Q. It was completed within the last six months, you think?

A. I believe so, yes.

Q. How much of your time has been devoted to motor truck and bus matters?

A. Now you can fix my fractions to suit the situation. We give more time to motor bus and motor truck than we do to the railroad end of it.

Q. You only gave a fifth to the railroad end of it?

A. Yes.

Q. Then the greater portion of your time has been taken up in the conservation of oil and gas—oil and gas matters?

A. I should think so.

Q. Do you think that the Railroad Commission is over-burdened with work—that it cannot adequately take care of the oil and gas conservation matters?

A. I do not.

Q. Do you think it needs any added legislation to enforce its orders relative to the oil and gas situation?

A. I think the law might be reinforced in some ways so as to set out our powers more fully and more positively.

Q. What would you suggest along that line?

A. I am a layman and not a law-

yer and so I would have no suggestions to make.

Q. Do you know, then, why your orders have not been enforced?

A. They have not been enforced because they do not seem to be enforcible.

Q. Why?

A. It would seem that we have not the power under our statutes and our rules and regulations to enforce orders of proration, and that is where the law needs to be strengthened, to give us the power we think we should have.

Q. I believe you suggested you do not know what power you ought to have and ought not to have?

A. No, I don't.

Q. Mr. Smith, going back to the fund proposition, is it true or is it not true that each year there has been a surplus left over to go into the general fund?

A. That surplus reverted to the General Treasury.

Q. Approximately how much has that surplus been?

A. I couldn't tell you.

Q. Could that surplus have been used in the enforcement of the common purchaser bill?

A. I don't know whether it could or not.

Q. Could it have been used in the employment of umpires?

A. I think so.

Q. Tell this Committee why, in your opinion.

A. I don't know whether you mean umpires or our supervisors.

Q. You do pay the supervisors?

A. Yes, but whether it could be used for the payment of the salaries of umpires I don't know, because the appropriation specifies the purposes for which it can be used, and since the appropriation bill does not name any part of it to be used for the payment of umpires it would appear that it could not be used for that purpose.

Q. You heard Mr. Terrell's testimony with reference to the duties of umpires and supervisors this morning?

A. Yes

Q. Tell this Committee why supervisors could not be used for umpires.

A. We divide our State into eighteen districts. Some of these districts are as large, almost, as the State of Louisiana, and it would be absolutely impossible for the supervisor to cover his district as it should be done and to look after the matter of each individual well, as is required in the case of an umpire.

Q. Does the umpire cover those duties now?

A. The umpire looks after the individual production of the wells.

Q. Every day?

A. Well, not every well in the field every day, no.

Q. Why couldn't there be an umpire for each field, and merely use the supervisor in that field? The supervisor really has no other duties except to attend to oil matters, does he?

A. In some fields there is no necessity for an umpire.

Q. What field, for instance?

A. I don't know just which fields now. I don't believe we use an umpire in the Van field, perhaps.

Q. Is that field prorated?

A. Yes.

Q. Who are the major producers in that field?

A. I can't give you that information.

Q. Are they major companies, or independents, or who?

A. They are major companies, is my information, but I do not know what companies. In that field, it appears that the operators, there being only two or three of them, agreed voluntarily on a proration program, which is carried out under the direction of that agreement.

Q. Is the Yates pool prorated?

A. Yes.

Q. How long has it been prorated?

A. I couldn't give you that information without the records.

Q. How long have you been a member of the Commission, Mr. Smith?

A. Six years.

Q. Has it been prorated since you became a member of the Commission?

A. Yes; within the past two years, I would say.

Q. Is the Gulf coastal region prorated now?

A. I think not.

Q. Why not?

A. Now, that is a technical matter that I could not go into. It is because of the nature of the soil and the nature of the production and the nature of the oil strata in the sands, and so on.

Q. Do you know of any oil fields in the State of Texas that belong to, or the majority of the producers therein, are major companies?

A. None, unless it is the Van field.

Q. How about the Raccoon Bend field?

A. I couldn't tell you?

Q. You don't know about that?

A. No.

Q. Now, Mr. Smith, as a matter of fact, the Railroad Commission, the Railroad Commissioners, in so far as oil and gas is concerned, and the conservation thereof, merely formulate the policies of that Commission, and depend more or less upon Mr. Parker, the Chief Supervisor, for the technicalities and the enforcement of those regulations; is that right?

A. Not as to the enforcement of the regulations, but we do depend upon him, as he is a technical man, to work out our problems.

Q. He works out the program, more or less, for the operation of the pools, doesn't he?

A. I should say he does.

Q. The Commission itself merely forms the policies as to the conservation of oil and gas?

A. You must understand, Judge, that in all of these hearings, every one of them are conducted by the Commission, absolutely, and Mr. Parker is called in for the wide spread of his information upon matters touching the technicalities.

Q. Who draws the orders for the Commission?

A. Mr. Parker draws the orders. They are drawn in his office.

Q. The proration orders, while drawn by Mr. Parker, are as a matter of fact signed by a majority of the Commission?

A. Correct.

Q. How does the Commission arrive at the proper amount of oil to be produced from a certain pool?

A. That is reached by a method of testing out the wells in the pool; that is, by letting them run wide open, as we say, for an hour, and the amount of production to that hour is measured and then the potentiality of the field is based upon that production for the hour's time that the well is allowed to run.

Q. Now, after the potential is obtained, upon what do you base your production allowable?

A. Well, the allowable is based upon the outlet that oil has and the demand for the production of the wells.

Q. Now, you gentlemen are the gentlemen who pass upon what the allowable shall be and how the order shall be drawn. As a matter of fact, is that allowable based upon the nominations of the purchasers?

A. It is based upon the amount that can be taken and used from the well, field or pool.

Q. How do you arrive at how much can be taken and used from the field?

A. From the nominations of the purchasers.

Q. Altogether?

A. Well, I wouldn't say altogether. That might be the controlling factor. There might be other matters to be considered in connection with it.

Q. Well, within a close proximity to the nominations, the orders are made for the allowable. Isn't that right?

A. I think you are correct in that.

Q. How do you know that because a well on a certain day, at a given period, through a certain choke, produces a certain amount of oil—how do you know that if that well were allowed to continue say for a period of a week or a month, that it would produce at that rate?

A. I don't know it and don't think anybody else knows it.

Q. However, in obtaining an allowable, you do base it upon the proceedings as I just enumerated?

A. Yes, you must have some place to begin, and some basis upon which to fix your conclusions.

Q. Are these nominations from the various purchasers sent to your department?

A. They are.

Q. You have a record, then, of the nominations of the various purchasers in each pool?

A. In each individual field or pool, yes.

Q. Have you noticed any inclination or any tendency on the part of the purchasers thereof to violate any of the anti-trust laws of the State of Texas in making these nominations?

A. I could not say that I have or that I have not. I don't know.

Q. If you had noticed them, you would be willing to tell us about it, wouldn't you?

A. Absolutely.

Q. If you had noticed them, you would have remembered, would you not?

A. Yes, I think I would.

Q. Do you think there should be a law forbidding the drilling of a well within six hundred feet of another well?

A. Well, there would be quite a

good many matters that would enter into a proposition of that kind. We have deep fields and we have shallow fields; we have narrow fields and we have wide fields.

Q. In narrow fields, what would you say?

A. We have recently adopted a plan of the twenty-acre unit in the production of oil. We feel that is a fair arrangement.

Q. Has that been adopted in all the fields?

A. No.

Q. In what fields has it been adopted?

A. In East Texas.

Q. Why has it been adopted there and not in other fields?

A. The people who operate in that field agreed upon the program of that kind, believing it would save the situation of intense drilling, over-production and the general disturbance that has occurred in that field.

Q. Do you believe those people agreed upon that program because of the fact that they were interested in the conservation and the matter of waste, or because of some economic situation?

A. Well, being interested in the field and in the production, and having their money invested, I believe they wanted to conserve the field.

Q. Do you believe it would be to the best interests of Texas to conserve the East Texas field by prorating on the unit plan, or rather upon the potential plan?

A. I believe so, now.

Q. Do you believe that should be the basis for all of the fields?

A. No, I do not.

Q. Why?

A. This East Texas field is the biggest field in Texas, and perhaps the biggest field in the world. With its potential production of 800,000 barrels a day, and other fields with a limited production, it appears to me that the twenty-acre unit plan would not be a practical plan in some fields of limited production, but it does appear to be practical in the fields of big production, like the East Texas field.

Q. Then I take it from your answer that you believe that the conservation and doing away with waste in the whole State is not based upon any storage on the ground, or upon any price of oil?

A. Yes, I would not say, on the price of oil, but on the above-ground storage there is quite a big waste.

Q. Then why would it make any difference whether the East Texas field, being a big producer, was prorated on the unit plan and the others on the potential plan, if all of the oil was to be stored?

A. Another question enters in there in this connection. The East Texas field has never been properly connected with pipe lines for the purpose of taking care of their production.

Q. Is that condition being corrected at this time?

A. In a measure, yes. All pipe line companies have been directed by the Railroad Commission to make connections, and we are advised that connections have been made and are being made promptly.

Q. Has that condition ever existed in any other oil field, previously?

A. Yes, I am sure so. When a new field is discovered and the production is flush, I am sure of it.

Q. Did this last order of the Railroad Commission for East Texas carry any provision in it requiring ratable taking?

A. That is a right new order, Judge, and I couldn't say whether it did or not.

Q. Do you know the substance of that order?

A. In a general way, yes.

Q. Did you know the substance of that order, as originally written?

A. Yes, I did.

Q. Is it now practically the same as it was originally written?

A. I think so. Practically the same order. Possibly there are a few little minor changes.

Q. What minor changes do you remember in that order?

A. Judge, they were so minor we did not think it would affect the picture as a whole. So I didn't think it would enter the question; the order was signed by the Commission in the very form it was first prepared.

Q. Do you know who prepared that order?

A. I am supposing that Mr. Parker prepared the order. It was prepared in his office.

Q. Does the Railroad Commission, through Mr. Parker, have the Attorney General assist them in the preparation of these orders?

A. When we call for the Attorney General's assistance, we always get it.

Q. Did the Attorney General assist in this order—in its preparation?

A. I would have to go into a little detail in answering your question there; I was out of Austin at the time this hearing was held, and was in a hearing in St. Louis before the Interstate Commerce Commission when this order was prepared, and did not return until Tuesday night, and this hearing and the conference on this order was held Monday and Tuesday, I am informed, and they gave me the information upon my return that the hearing had been had and some agreement had been made and the order was then in the process of preparation; I asked that the order be given to me so that I might take it to my home and study it, which I did.

Q. You were not present at this hearing upon which the order was based?

A. No, at the last hearing.

Q. How long was it after the hearing was held before the order was signed?

A. The hearing was held on Monday and Tuesday, and the order was signed Saturday afternoon, I believe.

Q. Was all of that time of delay because of the fact that you wanted to read that over?

A. No, not because of the fact that I wanted to read it over; I read it over Wednesday night. I was ready to sign the order on Thursday.

Q. But it was passed over until Saturday?

A. To Friday, I believe it was, instead of Saturday.

Q. Why?

A. When the order was prepared and submitted to the Commission a conference was held and Mr. Neff, a member of the Commission, having been called into the conference, claimed that he wanted a little time to give it some thought and consideration, and so on Thursday night he took the order away with him, and I don't know whether he ever returned it or not.

Q. Do you know whether or not Mr. Neff made any recommendations of changes in that order?

A. If he did, I have never seen them.

Q. Do you know whether or not he signed the order?

A. He did not sign the one that was sent out.

Q. Did Mr. Neff ever tell you that he had any changes, or would like to make any changes, in that order?

A. No, sir.

Q. Did he ever consult with you relative to that order?

A. In no way except the conference I am telling you we had on Thursday evening.

Q. Except the conference when all three of the members were present?

A. That is correct.

Q. And that is when he took out the order to read it over?

A. That's correct.

Q. And after that time he never once communicated with you relative to that matter?

A. He did not.

Q. In your opinion, Mr. Smith, will proration increase—an enforcible proration—increase the price of oil?

A. There are so many other things entering into this question of oil production and the sale of oil and so on, I would not say whether it would or not.

Q. Do you think that ratable takings will increase the price of oil?

A. I would not answer that question affirmatively.

Q. Do you think that oil should be produced, based upon the reasonable market demand for such oil?

A. It appears that that would be fair.

Q. How are you going to arrive at what is the reasonable market demand?

A. Well, the reasonable market demand would be what is demanded by the purchasers of oil in any particular field. This demand would vary, I suppose, according to the amount of oil produced and the supply of it.

Q. Would that reasonable market demand vary according to whether or not some parties wanted to purchase it for storage, or whether or not they wanted to purchase it for use?

A. It would appear to me it would be because they wanted to purchase it for use.

Q. Could you determine the purpose for which they wanted to purchase it?

A. No, sir.

Q. If they purchased it for storage, would it be waste?

A. It would be waste, because of the—

Q. Then the Railroad Commission would be in favor of the production of oil on the basis that would create waste?

A. It would not.

Q. Does the Railroad Commission take into consideration the economic

condition or the economic situation relative to the production of oil?

A. We consider the question of waste only, in our orders—actual waste.

Q. Do you think it is possible to determine what can be the reasonable market for oil?

A. I doubt if that is possible.

Q. All right; then, if it is doubtful that it is possible to determine what could be the reasonable price, why put it in the law that production shall be upon the reasonable price?

A. Let me have that question again.

Q. If you say it is impractical or probably impossible to determine what is the reasonable price of oil, or what it can be, then would you advocate a law basing production upon the reasonable market demand or reasonable price?

A. I prefer not to attempt to answer that question.

Q. That is one of the questions this Legislature is asked to answer, and we would just like to have your opinion about it.

A. I would have to think that question out a little bit, Judge. That is what everybody is trying to think out now.

Q. Then do you believe that a law which makes the production of oil beyond the reasonable current market demand, which reasonable current market demand you say is impractical to determine—do you believe such a law could be enforced?

A. I am doubtful that it could. It could not be enforced with the present machinery.

Q. Who sets the price of oil now; do you know?

A. I do not; I wish I did.

Q. Do you think the law of supply and demand has anything to do with it?

A. It would seem, just now, that it doesn't have anything to do with it.

Q. You said, in order that the members of the Committee might get it straight, you said you did not think at the present time the law of supply and demand has anything to do with demand or price?

A. It appears that the law of supply and demand does not have anything to do with the market demand or price now.

Q. Why?

A. Because the price fluctuates too much.

Q. Is the production today more than it was last year?

A. I think it is less.

Q. Was the price of oil more then, than it is now?

A. The price was greater last year than it is now. This question of stored oil comes into consideration. There was a lot of oil stored a year ago, which is going on to the market now.

Q. Do you know whether or not there is more storage than there was a year ago?

A. I believe there is more now than there was a year ago.

Q. Is the consumption greater now of petroleum products than it was a year ago?

A. It is less now than it was a year ago.

Q. Do you know whether or not the sales in Texas, according to the reports of the gasoline tax, show an increase or not?

A. I do not.

Q. Your statement that the consumption is less; is that based upon a Texas report, or upon a nation-wide, or a world-wide report?

A. Nation-wide. A world-wide report.

Q. As one of the Commissioners, are you in favor of the umpires in the various fields being employed by the operators or not?

A. I am not.

Q. Do you know whether or not any of the operators are at this time in the employ of anyone other than the Railroad Commission?

A. I do not.

Questions by Mr. Walter Beck:

Q. Mr. Smith, as to these umpires, in the separate fields, they are not, or are they provided for in any statute under which you are operating?

A. I think not, Mr. Beck.

Q. It is just a method that you have worked out for determining the sentiment of the operators, and those who are operating in any given pool?

A. It is under the power given us under the statutes—to make our own rules and regulations for the purpose of looking after this industry.

Q. Now it would appear that through those umpires who represent the opinion of the operators involved in each case, that such compliance as we are getting to the conservation laws in this State, is only a matter of voluntary compliance, and not one of enforcement; is that correct?

A. In a measure. In the main, it is.

Q. It is purely a voluntary compliance, in so far as it is effective?

A. The first proration program we put on in Texas was a voluntary program between the people operating in a certain field.

Q. Who, and to what extent, represents the State in determining what should be the policy in the given field —from the standpoint, I mean, of the State of Texas, and not from the standpoint of the operators in the field?

A. I should say the Railroad Commission.

Q. That's all.

Questions by Mr. Keller:

Q. Mr. Smith, you said the umpires were paid by the operators in the field; is that correct?

A. Yes.

Q. In those fields, the independent and smaller operators refused to join in paying those umpires, don't they?

A. I don't know.

Q. As a matter of fact, don't you know that a number of the umpires are paid by vouchers from the major companies?

A. I couldn't tell you how they are paid. I understand they are paid by the operators in the field. I don't know whether by voucher or how.

Q. You just don't know about that?

A. No, I do not know.

Q. You have heard that, haven't you?

A. I have not heard how they are paid, except that they are paid by the operators in the field.

Q. Hasn't the Railroad Commission ever inquired into who paid these men?

A. These operators in the field submit the names of these umpires and the Railroad Commission appoints these umpires; they are paid by the operators in the field, and we would have it the other way if we could and had the money to pay them; we would do it ourselves.

Q. That's what I am trying to find out. It has been told to me and I am just asking this for definite information; that a number of these umpires are paid just like the regular employes of the major oil companies; for instance, the Texas Oil Company, if they are a big operator in one field, they write them out a check just like for any other employe. Have you ever heard that charged?

A. No, sir; I have not heard that charge.

Q. I will ask you this, if that is true, wouldn't there possibly be a little unfairness on the part of the umpire?

A. I do not and would not subscribe to a plan of that kind; I do not believe it would be fair.

Q. You think it would be better if the umpires were paid by the State?

A. Yes.

Q. At least the State might not be getting the full benefit of these gentlemen's unbiased opinion, if they are paid by the operators?

A. Yes.

Q. That's all.

Mr. Hardy: Before Mr. Parker takes the stand, we felt that there might be a few questions in the House that someone wants to ask Mr. Smith and we want to give them the right to ask the questions if they do desire. Does anyone else desire to ask him any questions?

Mr. Parker: Mr. Terrell has some statements he desires to make, I believe, in clarification of his testimony this morning.

Mr. Hardy: We will be glad to come back to him. There are some prepared questions here, Mr. Smith, prepared by Mr. McGregor; One: What do you mean by supply?

A. The amount of oil necessary to take care of the demand.

Q. What do you mean by demand?

A. The amount of oil called for to take care of the supply.

Q. Then supply is the necessary amount of oil to take care of the demand, and the demand is that much oil which will take up all the supply?

A. That's right.

Q. What do you mean by "The Market Demand?"

A. It appears that one answer to this question would be an answer to all. The market demand is the demand for which the market calls.

Q. What is the difference between Demand, and Market Demand?

A. The real demand for the oil might be called that amount of oil necessary to take care of the oil used in the manufacture of gasoline and other matters for which this oil is used. The Market Demand might be

the demand for the oil by the market, going from one State to the other, or one nation to the other. That would be the Market Demand.

Q. What causes this difference between Demand, and Market Demand?

A. I cannot answer that question.

Q. Is it not true that the market demand is regulated entirely by the ability of the consumer to buy?

A. I should think so.

Q. Is it not true that the sufficiency or insufficiency of the supply is determined by the necessities of the consumer, and not by his ability to purchase?

A. That is true, too.

Q. Is it not true that the market demand is always more restricted than the demand of the consumer as measured by his necessities?

A. I think that is correct also.

Q. Is it not true that as the ability of the consumer to buy increases, the market demand of a commodity expands, and more nearly approximates the demand, or necessary demand, of the consumers?

A. I believe that is true, also.

Q. Then is not the difference between market demand and demand occasioned entirely by the ability of the consumer to buy?

A. I will agree to that.

Q. If the supply of a commodity is ample to meet the wants or necessities of the consumers, and the consumers are able to purchase the commodity to gratify their wants or necessities, then the relation between the supply of the commodity and the demand of the consumers is a natural relation, unaffected by the monetary, as artificial medium by which an exchange is effected by the producer and the consumer?

A. That question I would also answer yes.

Q. If the purchasing power of the consumer remains the same and the production of the commodity is reduced, thereby reducing the supply of the commodity, is it not true that the price of the commodity would advance immediately upon the manifestation of this condition?

A. That is correct.

Q. Is it not also true that if the supply of the commodity remains normal, and the purchasing power of the consumers is diminished—that is, if the demand based on their wants and necessities is reduced because of their inability to buy—then the price of the commodity will, upon the disclosure of this condition, go down?

A. Correct.

Q. Then is it not true that the term "market demand," as distinguished from "demand," springs into use to differentiate a condition existing between those who want and have the money to buy, and those who want and would use, but have not the money with which to buy?

A. Will you read that question again?

Q. Then is it not true that the term "market demand," as distinguished from "demand," springs into use to differentiate a condition existing between those who want and have the money to buy, and those who want and would use, but have not the money with which to buy?

A. Yes.

Q. Then it is the purchasing power of the consumer which preserves the harmony of the rule of "supply" and "demand"?

A. That is a question which I would not answer right now.

Q. If you destroy the purchasing power of the consumer—take away from him the medium by which exchange is made, you paralyze the operative functions of the rule of "supply" and "demand," do you not?

A. That is absolutely true.

Q. If the supply of a commodity is adequate to meet the necessities of the consumer, then the price of such commodity to the consumer should be the cost of production plus the cost of transportation and delivery to the consumer?

A. I will also answer yes to that last question.

Q. Is it not your opinion that an oil monopoly exists in Texas to control the purchase price of oil, among the major companies?

A. I have no opinion.

(Witness then excused.)

R. D. Parker, being duly sworn by the Chairman, testified as follows, on examination by Mr. Graves:

Q. Mr. Parker, you are the Chief Supervisor of the Oil and Gas Division of the Railroad Commission of Texas, are you?

A. Yes, sir.

Q. There are some things that I do not understand, and I know there are lots of other members of the Committee that do not understand. What do you mean by the term "allowable"?

A. The allowable of a field is the amount of oil that the field is authorized to produce under the Railroad Commission's order.

Q. What do you mean by potential?

A. It is the ability—the ability of a field to produce oil—the barrels it will produce each day.

Q. What do you mean by proration?

A. It is the distribution of the fixed amount of allowable in a given field.

Q. Now, at the present time, you have approximately twenty-five violators of the law—of your rule in the State of Texas?

A. That is, in East Texas.

Q. Have you any violations in other fields?

A. Two or three in the Panhandle, but they are immaterial.

Q. What is the matter with the present law that we now have, and why can't you stop the violations of these twenty-five violators in East Texas?

A. That is largely a question of law that I cannot and do not care to pass on. Under the present situation, any operator in the field, or any field in Texas, if he is not satisfied with our orders and comes to Austin, and in the Travis county court files a suit to test the validity of our order, and immediately upon the filing of that suit penalties under the law in question are evaded for so long as the operator does not have penalties hanging over him, he is not disposed to obey the orders of the Commission.

Q. You mean by that that the penalties against operators are evaded immediately upon him filing this suit?

A. Yes, sir.

Q. Nevertheless, when he files that suit the amount of oil that he has previously drawn,—the amount of oil that he has previously drawn from that pool, he is not penalized therefor?

A. That is correct. Although he may have injured his neighbor by not obeying the rules.

Q. Then, in the event he is unsuccessful in this suit which he files, does he suffer any penalty therefor?

A. No, sir.

Q. Is there no method under the law that is now in effect by which he can be penalized in the event that the Commission is successful in its suit—that he would be penalized for this violation of the rules of the Commission?

A. I understand not, and for that reason they come down here with the idea that they can file suits and not having any penalty hanging over them the suits are filed and they go ahead in direct violation of the rules of the Commission?

Q. And in doing that it results in an abatement of the law, as far as that feature of it is concerned?

A. That is right.

Q. So that, if at the present time, if these twenty-five odd operators in the East Texas field who have filed these suits and are not obeying the rules and instructions of the Railroad Commission, and if his neighbor next door is obeying the rules of the Commission, is forced to cut down his production, he has no redress for the injury that he has sustained?

A. Yes, and not only that, his neighbor stands the chance of having his leases cancelled and therefore has no protection.

Q. What is the demand at the present, as far as you know, for oil in Texas? How much oil are you producing or are the operators permitted to produce under the orders of the Commission that they have issued?

A. The Commission that was sponsored by one of the Departments at Washington made a study of the situation; I have forgotten the name of the Department at Washington which had sponsored this, after the study of the supply of oil in the United States, the study having been made some months ago, and they allotted a specific amount as the amount that Texas should produce as its prorate of the market demand.

This was for a period of six months and that amount was allotted as the pro rata part for the State of Texas. It was 880,000 during that time.

Q. You mean that per month, or for the six months' period?

A. No, sir. I mean by the day.

Q. You mean 880,000 per day?

A. Yes, sir.

Q. State the amount, as near as you can estimate it or approximate what amount is being produced in Texas per day now.

A. 986,000 barrels per day.

Q. About 106,000 more than under this United States survey as the

amount which they should produce under the survey as the supply of oil?

A. Yes, sir.

Q. Where does that surplus amount of oil come from?

A. Mostly from East Texas and a small amount from the Panhandle. They have just a few operators in West Texas that are violating the rule.

A. Are there any pools in Texas that are not on proration orders similar to that in East Texas?

A. Our proration covers the entire State, but under the State-wide proration order this is generally divided by districts, and in addition to that we have individual prorations covering certain pools and in some of these pools there is a different proration covering individual wells in the pool.

Q. Is there any difference between the method of proration as you have stated in the handling of the fields in Texas and the handling of the East Texas fields as the proration was started individually?

A. There is some difference in the original order on Winkler Field, which was the first field that was put under proration, which is based on the potential and a combination of potential and unit system, the unit plan bearing 50 per cent of the field and the potential was given the balance of it. Generally speaking, potential has control when we fix the allowable.

Under the last order that was made covering the East Texas Field that was based to some extent on a compromise, it was made to some extent as a compromise. The Commission thought the order might be drawn up on that to secure ratable takings.

Now, going back to the unit plan or unit system, there are objections to it. Personally, I would prefer a recognition of the well to produce oil, and then fix the allowable for each well, irrespective of the acreage to produce oil.

Q. Are you familiar with the scale set for the determination of the potential of a well?

A. Not sufficiently to make an explanation of it. I will say that I would not like to undertake that.

Q. You heard Mr. Smith and Mr. Terrell testify as to the economic waste. The waste at the field, and that was not taken into consideration in preparing the proration order on the pool, but it was on the unit basis, meaning that on the unit plan so much is allowed out of so many acres. Proration is so much per well or per acre, is it not?

A. It will be proration, whether on wells, or whether on the basis of the unit, it is still proration.

Q. The Unit Plan is on the acreage basis, is it not?

A. Yes, sir.

Q. You only take into consideration, I presume, that you will allow to be produced only so much as can be purchased?

A. I do not know that I understand your question.

Q. When you begin to determine how much oil will be allowed from any particular field, you first determine how much the purchasers will take from that field?

A. That has been the basis of this State-wide order. We commenced that, Judge, in August, 1930, when we started the State-wide proration scheme. About that time we had only prorated one field or district. The limitation in the amount of production in a specific field prior to the adoption of State-wide order was to limit the production in that field to what could be marketed. In other words, we limited it to the amount the buyers would take as indicated by their nominations.

Q. By nominations you mean how much the buyers will take?

A. That is my understanding.

Q. Ten people here, we will say, would have a thousand wells, and each of those wells was producing a thousand barrels a day. Then you would have a million barrels per day.

A. Yes, sir.

Q. And then you would say to this man that you would take so much from him and give another man another portion of that oil, and that is the way that you arrive at proration?

A. Yes, sir. The idea that we have had and what we have acted on at all times is to keep the production limit within the limits that the purchasers will buy within the market demands. If the purchasers' nominations are a certain amount, then we would try to keep that particular field within the nominations as to what they would buy.

Q. Where do you get your information as to that?

A. Testimony and hearings. That technical information is not in book form, that information is record testimony that is taken in hearings under oath.

Q. Now, do you take into consideration the probable life of the fields at the time you are allowing only a certain amount of the oil to be produced?

A. Yes, sir.

Q. You have been connected with the Railroad Commission for approximately 25 years?

A. Yes, sir.

Q. You are a civil engineer, I believe?

A. Yes, sir.

Q. Will the limitation of the output of a field lengthen its life and cause a larger amount of recovery, or otherwise?

A. I think it will unquestionably do so. The overwhelming testimony given before the Commission indicates that.

Q. How long has the Mexia field been producing?

A. I do not know. It has long been reduced to a stripper stage.

Q. Will you please explain to those of us who are uninitiated as to how oil is found and how it is brought from the subterranean territory to the outside?

A. It is contained in a closed structure in the ground. The oil, gas and water separate according to their specific gravities. Gas being lighter, collects at the top of the reservoir, oil collects at the next highest point and the oil last, and in most of the fields you have what is called rock structures and rock pressure, and pressure of water behind the oil and gas and pressure above the oil and gas, two forces to help in producing the oil when the reservoir is penetrated by the drill, the gas being lighter and on top, escapes and the oil is forced into that space as the gas is taken out by the pressure of the water behind it. These two agencies aid in the production. As long as those forces are kept in proper adjustment the oil will flow naturally, but if those forces are not kept in proper adjustment it becomes necessary to give artificial help to produce it. You have to get the oil out then by artificial means.

Q. The gas then is really the lifting power for the oil in the well?

A. Yes, sir.

Q. The pushing power on the well?

A. No, sir. Not necessarily. Frequently in some of the fields we have not so much free gas. This East Texas Field is one of them. The gas there is largely in saturation. This has been explained in this way. It is like gas in soda water. When the pressure is released the gas comes out of the liquid. The gas in the East Texas District exists very much in that same form.

Free gas in contact with the gas is not saturated, sometimes that appears.

Q. If you allow that gas to escape, allow the well to flow open and put out its full capacity, what usually happens to the strata?

A. It does two things. It entirely dissipates the natural pressure of gas above the oil, and by displacement it takes the oil out too fast and it is immediately displaced by water coming in and too rapid misplacement of encroachment of water occurs, and causes trapping of the oil in pockets, or holes in the sand that are still saturated with oil, and prevents a large per cent of the ultimate recovery of the oil if the oil had been taken out of the structure by permitting the oil to be produced slowly. It is an important element in the recovery of the oil. If you produce the oil too fast and dissipate the gas pressure a too rapid encroachment of water results and you do not get the maximum ultimate recovery.

Q. If you allow the oil to be trapped off by too rapid encroachment of the water, and too fast a dissipation of the gas, then would there be any way to recover that oil?

A. That would be a matter of experiment to know where it was trapped off, and not only that, but in most cases, too expensive, because the amount of oil would be insufficient to encourage the drilling of another well to secure that oil.

Q. During the last Legislature we passed the Marginal Well Bill—

A. Yes, sir.

Q. How is that law affecting the oil industry at this time?

A. It excepts wells of certain capacity from the effect of the proration order.

Q. Now this Marginal Well Bill,—was passed by the Legislature, but will you kindly explain it, tell us what a marginal well is?

A. What we term a marginal well is one that has reached that stage of its life where it cannot be economically produced. Naturally, the question of price comes into it, of course. There might be under certain price conditions that a ten-barrel might be

effectively worked for some time; that is, a well that is simply on the edge, or near abandonment. The Legislature fixed a rule to guide us in considering marginal wells by defining certain wells as marginal wells according to the degree of depth. I believe on ten-barrel wells or less on 2000 feet, twenty barrels 3500 feet deep, forty-barrel wells for oil wells of greater depth than that.

Q. Do you have any trouble with the enforcement of that statute?

A. The trouble about the marginal well is that prices have practically passed out of existence. When the price of oil was up as it was a couple of years ago, many of those wells could be economically produced, but not so at the present price. It costs about thirty cents a barrel to bring the oil to the surface.

Q. Then it is not an economical proposition at this time, and those particular wells are being abandoned, is that right?

A. Most of them are being abandoned and the salvage being hauled to other parts of Texas.

Q. Now, then, we have what is known as the common purchaser law?

A. Yes, sir.

Q. Explain to the House what that is.

A. The common purchaser law sought to provide a share in the market outlet for the field to all operators in the field. It provides for common purchases in this way. Common purchasers which are affiliated with common carrier pipe lines, common ownership or otherwise, and provides that common purchasers should take oil from all fields or all common sources without discrimination, and also provides that the oil should be taken without discrimination as to fields in this State. The difficulty we have had with that is trying to work the law out. There are three major objections to it. The first is that it is difficult to make a purchaser out of a company that does not elect to buy. There may be a company, and there is one in the State of Texas that I know of, and they have all the production that they need, or that they want, and there is no need for them to go into the open market and buy oil for which they have no use. The second objection to the law is that of its limitations. It applies only to common purchasers who are affiliated with common carrier pipe lines, and does not deal with other matters of transportation. In Texas we have facilities sufficient to take care of some 1200 cars of oil per day, with gathering arms running out into the fields with capacity to load these cars. There are gathering lines running out into each of these fields, and loading racks on the railroads from which tank cars are loaded and the oil is brought out in that way. The Common Purchaser Act does not apply to that character of transportation. Therefore, the common purchaser—or the purchase and transportation of oil by rail does not come under the common purchaser law. However, that can be corrected by definition. The third objection to it is the difficulty of making practical administration. It provides that all common purchasers shall purchase oil without discrimination. If we had one major pipe line system or company, if you please, operating throughout the State, and one purchaser alone, and it did all of the collecting in the different fields of the State of Texas, then we could see that it took as much from one field as it did from another, pro rata. But the difficulty is that there are some operators—some common purchasers operating in one section of the State that do not operate in other sections of the State, and it is manifest that you will have in one field operators who are not in another section of the State. Therefore, they cannot be common purchasers throughout the State. You will have half a dozen pipe lines in operation in one pool, and then in another pool in another section of the State there perhaps will be only one.

Another thing, if there were six pipe lines in one pool, it would be necessary to have six connections to every lease. The practical thing to do is by negotiations rather than by trying to enforce it. We have now provision in the pipe line law that requires pipe line companies to extend their facilities on order of the Railroad Commission when such order is reasonable. It provides, however, that this shall be a reasonable order and without undue expense, and without impairing the ability of the pipe line company to serve its other connections. In the Ranger Field the Prairie Company occupied that territory pretty thoroughly, and in the early days they were rather liberal about making connections and had connections to a number of wells that had ceased to produce, and in a field

where there are no connections at this time, unless the Railroad Commission can make a reasonable order, the producers in that field must wait until a carrier comes into the field or until such time as a reasonable order can be issued by the Railroad Commission forcing them to do so.

Q. In your judgment, has the common purchaser law in anywise affected the price of oil?

A. I do not think so.

Q. On account of the fact that you cannot force them to purchase, and they cannot be reached along that line, do you think that the law ought to be amended so that it would reach the carriers who are transporting oil by tanks at this time?

A. Yes.

Q. That would in a large manner reach the major portion of the East Texas trouble at this time?

A. Yes, sir.

Q. Do you think the oil industry should be separated into different controls, such as the producers, purchasing companies, refiners, and like that?

A. There has been argument on both sides as to that. That is a question on which there are conflicting opinions and on which I have no definite information. A company that is operating as a producer, having its own carrying facilities and its own refineries and retail operations, ought to be able to sell at a minimum price.

Q. It cuts the middleman out, then?

A. Yes, sir, that is, the subagent, where they have their own selling arrangement.

Q. Is the unreasonable waste of oil in Texas—is that a factor in the price? Not only here in Texas, is it not a factor in the oil industry throughout the country?

A. Well, it is a factor to this extent, that the fellow against whom we cannot enforce our order in an orderly way, is in fact losing in the ultimate recovery on oil in that particular pool.

Q. Why, then, can't you enforce the law against unreasonable waste?

A. We can enforce the law against any visible waste. It is adhering to this rule, and is the primary power of the Commission to enforce this law at this time.

Q. Well, if those parties take the matter into the courts and enjoin you, then what are you able to do?

A. There has been a test and that was on Rule 37, which was taken to the Supreme Court of the United States.

Q. What is that Rule 37?

A. That requires the spacing of wells 150 feet from the property line, and 300 feet apart.

Q. Do you remember where that decision is reported in the Supreme Court?

A. I cannot give you the citation. However, I can find the citation for you.

Q. You have, then, found out by the Supreme Court decision that you could force a man to drill a well not less than 150 feet from the border line of his property?

A. Yes, sir.

Q. Now, then, if you could make a rule that has apparently been upheld by the Supreme Court of the United States, to the effect that no man should drill closer than 150 feet from the property line, and that the wells must be 300 feet apart, could you not extend the distance to 1000 feet?

A. If the conditions would justify it.

Q. Then, if you did extend the distance between wells to 1000 feet, then would not you have a beginning of the solution of this situation that we now have?

A. No, sir. The difficulty would be to show that it was necessary to space the wells 1000 feet apart in order that that order would be justified.

Q. You have just stated that you had shown that it was necessary that wells be drilled not within 300 feet of each other,—not less than three hundred feet,—now, why could you not show that it was necessary that they be drilled not closer than 1000 feet?

A. Because as the oil comes out the water follows in behind the oil, and if you pull the oil out too fast the water comes in too fast and cuts the oil off in pools. Now, if there were two or three wells in the same area, there would not be the same likelihood of the water encroaching and cutting the oil off in pockets.

Q. By that you mean that the water comes in and takes the place of the oil?

A. You must understand that the water is in a porous sand. It is not

a pool of water, and capillary attraction makes it come in to take the place of the oil.

Q. Of course, you would have to make provision for the man who had a small amount of land, which would not bear a spacing of 1000 feet if he only had 500?

A. Many tracts are smaller than that, especially the ones in such pools as we have in North Texas, which is divided up into very small tracts on those fields among small owners.

Q. If gas is wasted excessively in a pool, water, of course, is in that pool, and the water encroaches on the oil in that pool, is that oil ever again recovered?

A. No.

Q. Unless you get it from some other point?

A. And that is largely impracticable.

Q. What is rock pressure?

A. It is the pressure in the sand itself.

Q. In the East Texas Field, who are the ones who are drilling the most of these wells for offsets?

A. I do not think I can answer that question.

Q. Are they independent or major operators?

A. There are more wells being drilled by major companies.

Q. If the major companies in Texas are drilling along the margin line, or fence line, that forces the other man on the other side of the line to drill so that he can protect himself. Now can you take any action by which that could be stopped?

A. No, sir.

Q. Would a 1000-foot margin catch that?

A. I think it would be a difficult matter to administer the thousand-foot offset because of the difference in the lease. I think one well to ten acres would be a better plan. Three hundred feet apart would be two acres to the well.

Q. Three hundred feet apart gives a well to about two acres?

A. Yes, sir, about two acres to the well.

Q. If one party violates your order, as they have been doing, and draws more oil from his holdings, and by means of injunction is allowed to continue to do that, then would the party who had the marginal well on the other side of the fence be punishable for violation of your orders?

A. Theoretically, under our rules it would be a violation, but where a case of that kind has come up we have thought it was nothing but fair to permit the man to drill the offset well, in order to protect his holdings.

Q. If you had a law limiting the wells to ten acres, would the ultimate recovery of oil be more than one well to every two acres?

A. Probably if operated according to our orders, eventually they would.

Q. Would one well to ten recover more than one to two?

A. There might be a small differential in the ultimate recovery.

Q. How far apart should wells be in order that one would not drain the other?

A. A minimum of 150 feet, but that depends on the resistance of the oil to flow, a heavy gravity oil naturally flows more slowly than a light, high gravity oil. The oil in East Texas is a high gravity. The East Texas oil is all fairly high gravity oil.

Q. All the East Texas oil is high gravity oil?

A. Fairly so, very good grade.

Q. It is really a very peculiar oil, is it not?

A. I am told, but I do not know much about the refining business, but I understand it lends itself admirably to refining, particularly to the making of no-nox gas or anti-knock gas.

Q. I believe that you stated that the Gulf Coast was not prorated?

A. That is a mistake. Under a recent order of the Railroad Commission, we permitted a production of 140,000 barrels per day, but they are producing less than 140,000 barrels a day. It was reported to us that the potential was in the neighborhood of 200,000 per day, that is the first case where we cut the Central Committee's recommendation down. They recommended 150,000 to 152,000 barrels per day, and we cut it to 140,000 barrels per day.

Q. Who are the greater producers in the pool?

A. You mean the greatest producers, whether major or independent operators?

Q. Are they major or independent?

A. I expect the major companies have the maximum production.

Q. What is the per cent of overproduction according to the United States Department survey?

A. I would say it was about one to eight.

Q. Is there any overproduction in other States?

A. I am not sufficiently advised to give you definite information, and I would not like to say.

Q. If the overproduction in the United States is 240,000 barrels per day, and the overproduction is around 100,000 barrels per day, then we are nearly two and a half of it?

A. Yes, that is right.

Q. Is the reduced market price in Texas in your judgment due to the overproduction of crude petroleum?

A. I rather think so. I think the East Texas overproduction has done much to cause this.

Q. Prior to the time that the East Texas Field came in, was the posted price stable?

A. The first posted price in East Texas was 67 cents, and immediately oil operators began to contract for oil at less prices and that continued and is continuing until this date. I got a report, it is not definite, however, that a million barrels was contracted for at 12½ cents— I am not giving this as definite information, and a company that has to sell to filling stations and buys its oil at 15 cents per barrel, and another that has to buy its oil and pay 67 cents per barrel, will have a decided advantage.

Q. What was the price of Mid-continent oil at the time this East Texas pool came in?

A. There were various prices, I can't give you the schedule of it. It is in our files in the office.

Q. Can you approximate it?

A. At what time?

Q. At the time this East Texas Field was brought in?

A. I feel pretty sure it was something over one dollar per barrel.

Q. What is it at the present time?

A. About 38 cents.

Q. In July or August, 1929, do you recall what the Mid-continent price was at that time?

A. No, I do not, offhand.

Q. Did it go up or down?

A. I think it was worth more at that time. My recollection is that it was something over one dollar per barrel.

Q. In July, 1929, what was the petroleum production in the United States?

A. About 2,999,000 barrels per day.

Q. And at the present time it has decreased approximately to about what figure?

A. 2,400,000 barrels per day.

Q. And at the time in 1929 the price had not been affected as it is now?

A. No, sir.

Q. Then would it not be a reasonable presumption that the production did not affect the price?

A. That would be a conclusion.

Q. Though now with a lower production, with less production, we have a lower price.

A. Yes, however, I do not know what the condition was as to storage. There might have been an accumulation of oil in storage that caused that.

Q. Do you know what the storage is at the present time?

A. No, sir, I do not.

Q. Storage of oil is governed by the ability and capacity to store?

A. Yes, sir.

Q. Do you know whether or not any oil is being stored out of the United States or Texas?

A. It is moving out of the State through the Gulf ports in export and on coastwise movement to the Atlantic seaboard. How much goes in storage or how much goes to the refineries, I am not in a position to state.

Q. Texas has two large refineries and many small refineries, has it not?

A. Yes, sir.

Q. Much of the refined oil goes out of Texas for ultimate consumption, does it not?

A. Yes, sir.

Q. Could you give about how much, approximately what per cent of it goes out of Texas?

A. No, sir, I could not.

Q. Do you know whether or not the major companies at the present time have enough of their own production to supply their demands without buying from independent operators?

A. I think most of them have.

Q. The major companies at this time?

A. Yes, sir, there are one or two companies that are behind.

Q. Which have you had the more trouble with—the major companies or the independents—relative to your proration orders?

A. Well, you get on the question whether there are major companies or independents. The major companies, as a rule, don't violate our rules.

Q. The "major" companies, that is what the word "major" means, means the bigger ones?

A. Yes, sir.

Q. And you think they observe your rules better than the independents?

A. I believe that is the case.

Q. What is the ratio allowable and potential in East Texas compared with that allowable and potential in the Van and Gulf Coast—is it the same or approximately the same?

A. The testimony states in different ratios, I would not undertake to say offhand what the ratios are. Some ratios in East Texas are set down very low; for instance, in the Yates Field it is rated potentially about four million barrels; the Committee at this time allowed 75,000 barrels; in the Van Field, one of the major fields in the State, that has, according to the testimony, potentially over one million, was cut down to 50,000; East Texas, which has potentially at least two million barrels, at the present time is not allowed but 250,000 barrels.

Q. You mean East Texas could produce approximately, if turned wide open, about two million barrels of oil?

A. Yes, sir, but not safely, it couldn't be produced, that much, without wastage at the present time.

Q. But I mean if turned wide open.

A. Yes, sir.

Q. And you have allowed them to produce, according to your order, approximately 250,000 barrels a day?

A. Yes, sir.

Q. And, based upon, as I understand from you, that law the idea is it might have some assistance in establishing the market, is that right?

A. We believe so.

Q. Do you think, if you would cut down the production in all the fields, which you have done in East Texas, approximately, if all the fields were cut down 10 per cent, do you think it would bring up the price of oil?

A. I think so.

Q. When the figures were released fixing Texas at approximately 860,000 barrels, was that before the East Texas Field was developed?

A. Yes, before it had developed to the present point, it was in the early days of the East Texas, yes, sir.

Q. I believe you stated, talking to you,—don't remember that you said it here though—that in the begining the East Texas Field was an unknown quantity and you only allowed them 50,000 barrels because you did not know how much was there?

A. Well, the first figures were 90,000 barrels, and the Committee recommended 50,000, and said they did not have sufficient data on which to make the kind of recommendation they wanted to make, and we studied the matter over, discussing it with the Proration Committee, and in connection with the information we had, ourselves on the matter, at the hearing and otherwise, we thought that it would not at that time justify a greater amount than 50,000. At first it was 90,000.

Q. Yes, you raised it yourself?

A. Yes, sir.

Q. Now, has any other State voluntarily cut down their allowance in order to take care of this increase in the Texas oil fields?

A. Well, in other States they have cut down production, whether the cutting down was on account of the Texas fields or not.

Q. If you cut down a well arbitrarily and shut it up, not run it at all, does it cause destruction of that well?

A. Well, not necessarily.

Q. Would it impair the production from that well?

A. Well, the sand might be retained and materially impair the production of that well in the end, that effect might be produced ultimately, yes.

Q. Cutting down then into the allowable, some of the witnesses stated —I believe you told me, that the oil well would run approximately four hours, then you would multiply it by twelve, and find out how much it would run a day, is that right?

A. Yes, sir, that is how you find out.

Q. And then you make your figures on that, to say how much that well will be allowed to produce, under your order?

A. Yes, sir. We do not think in estimating a well that it produces safely as to the amount rated, and usually, as I said, we make a ratio of each ratable share of the total amount of the field.

Q. Is it possible while you are taking the ratio of this well that the well could be made to run more rapidly than it would otherwise?

A. Well, you might speed it with a pump, pumper, might slip in a larger pump.

Q. Suppose you checked it down

the day before, wouldn't it accumulate gas faster?

A. Yes, sir, it would increase the tension. But, as a rule, we are able to make a fair test.

Q. You have wells, also, that flow spasmodically, a well that gushes and then rests and then gushes again. How do you arrive at a basis on that well?

A. Well, after all, the amount produced, by head or the amount produced in a certain length of time, gives the potentiality of the well, it doesn't make any difference how it is produced.

Q. It doesn't make any difference how it is produced. Then if it gushes every thirty minutes, you can take four gushers, in other words, and multiply by 12, and that gives you the amount produced in 24 hours?

A. It gives you the amount it will produce, yes, if it produces the oil.

Q. Will you please explain the cause and effect of the coning in of a well as related to unrestrained production of the field, and as to production under proration,—the coning in of a well?

A. That is what I stated awhile ago in connection with Rule 37, that is one of the instances of the coning of a well, where you've got a surplus and open them up wide, the water displaces too rapidly and the water comes in and the oil comes in cone-shaped.

Q. That has already been explained. Can you give us an estimate as to how much actual physical waste of oil is now taking place in Texas?

A. No, sir.

Q. Or how much actual physical waste of gas is now taking place?

A. I couldn't say.

Q. Isn't is a fact that it is enormous?

A. Yes.

Q. That an enormous amount of gas is ever disappearing in the air without being utilized for any useful purpose?

A. Yes, sir, it is a tragedy.

Q. Gas is a valuable product, isn't it?

A. It is unquestionably so, where it is valuable underground in the production of oil and when it is brought to the surface, it is the best fuel we've got.

Q. Do you know any remedy at the present time for the purpose of decreasing the wastage in gas?

A. I think legislative action would be necessary, I don't think you have any authority in the statutes. I prepared for the Legislature a bill that had for its purpose that very thing; some of the operators who were against it, thought it too drastic and made an argument against it. We attempted to modify it, but never could get it in shape to get it put over.

Q. In fact, one field alone, the Big Lake field, wasted more than one million cubic feet of gas a day, did it not?

A. Not that high. There was a bill submitted, I don't know who submitted it, somebody sent me a mimeographed copy.

Q. At that time, as I understand you, the operator, or owners and exploiters of the natural resources of the State, strenuously and vigorously objected, not only to the passage of the law, but, as Mr. Terrell said, to the appearance of the Committee before the Legislature relative to the passage of a law?

A. Yes, sir.

Q. Can the Legislature pass a general, workable gas ratio law?

A. I think so. Mind you, that doesn't mean that they can pass a gas ratio law of universal application.

Q. Do you think it is more workable to empower a commission to fix a gas ratio, or let the Legislature try to fix a gas ratio?

A. I think it could be left to the discretion of the Commission, because you can't fix an absolute formula for it, and that would be necessary before you could write a bill for it.

Q. It would have to be flexible to a certain extent?

A. Yes, sir.

Q. Isn't it a fact that one field has a larger amount of gas to do the lifting power than another field?

A. Oh, yes.

Q. How much gas would it take, upon the average, to lift a barrel of oil?

A. Well, I think 400 feet to lift a barrel of oil is too high, and they have been operating in the Yeates field upon a smaller scale than that, and that is the field that is as economically operated as any in the State of Texas, they are making a better impression with very little water, the water showing to be with very little effect on the major forces of the field; they have been operating them since 1927 or 1928.

Q. However, that varies, does it not, in all fields?

A. Yes, the deep wells in Reagan county, the oil ratio is high; it was testified here before, I heard the gas ratio out there, that the fair oil and gas ratio in that area would be 50,000 cubic feet per barrel of oil. There was a gentleman here who made a little talk before the Commission in its hearing on June 29th, who was chairman of the Kettleman Hills Field Committee, he stated in Kettleman Hills they had some wells producing 45,000 cubic feet of gas to a barrel of oil. Of course, that was enormous, and had to be cut down.

Q. Is it practical to put this gas back into the ground and let it again perform its function of raising oil?

A. Oh, yes, by the method of re-pressuring.

Q. Are there any fields in Texas using the method of re-pressuring?

A. Yes, sir.

Q. What are they?

A. The most notable example is the field at Sugar Land, where the gas is gathered from the well—from the oil in a well, and introduced back into the sand in what we call key wells, situated on points in the structure where most utilized to produce the gas, it is pumped back into the sand under pressure, and every portion of that is taken back in the sand and oil taken out in orderly fashion.

Q. Is that expensive?

A. Not considering the ultimate recovery.

Q. That re-pressuring, however, would have to be done by a unit of men who would have to come together for the purpose of seeking to keep it beyond and beyond and beyond, and sharing the expense among themselves, is that right?

A. Every operator in a pool would have to go into it, if the entire pool isn't in it, no one can do it.

Q. Is it physically or economically possible to draw this gas out under the strata from which it came if you are getting 10 cents a barrel for your oil?

A. It is too expensive on ten-cent oil. The best thing to do is to set the field out.

Q. A pool producing unrestrained would ultimately produce less oil than a pool properly restrained by practical methods—that is a question asked you before.

A. Yes, sir.

Q. Would there be a large percentage of difference?

A. It has been testified here that the difference would be material, it is very difficult to express it in barrels without some measure. It is positively known, from investigation, that there is a saving.

Q. How much, approximately—this all, of course, will have to be approximately—if a pool is allowed to go unrestrained, approximately how much oil, in the opinion of petroleum engineers, would be recovered from that pool?

A. Well, it would vary, due to different conditions. I would not undertake to say.

Q. Wouldn't you say approximately about 25 per cent of it?

A. Well, figures put that higher than that.

Q. Unrestrained field?

A. Unrestrained field.

Q. Yes, sir.

A. And probably around 50.

Q. Isn't it a fact that perhaps under ideal conditions they can produce about 75 per cent?

A. Under ideal conditions, yes.

Q. Do you think that the present low price of oil is due to the arbitrary fixing of the price by concerted action of the major companies, other than overproduction?

A. I am not advised, I don't know.

Q. Do you think there is a gentlemen's agreement between the major companies at this time, not in writing, nor oral, but between the two, that when I reduce my price, you reduce yours.

A. I don't know enough about it to say. If I stated I thought so, that would be subject to challenge, and I haven't a thing on earth to base it on.

Q. Well, let me give you something, then, from observation—if I reduce today, or tomorrow, the others do reduce, don't they?

A. Yes, sir.

Q. Then that looks like it.

A. They are engaged in competitive business.

Q. They reduce for the same reason, don't they?

A. Yes, sir. But, Mr. Graves, say a man reduces the price of jeans pants, then the other fellow has to reduce his or he don't sell them.

Q. That is true. But if he continually does that and the other comes in and reduces tomorrow, it looks like they have got something, some kind

of underground telephone or telegraph that makes them do that, doesn't it?

A. It might look like that.

Q. It might be competition, however, does the importation of oil in your judgment, affect the price of oil in Texas at the present time?

A. Well, that is a question for argument. The imports, as I understand—the exports are in excess of the imports, and if you consider the two together, the exports ought to be balanced by the imports, overbalance the imports, undoubtedly any increase in the supply of oil would have a tendency to reduce it.

Q. If the imports at the Atlantic Coast on June 6th were 820,000 barrels of oil for that week and June 13th, the next week, they were 1,927,000 barrels of oil, it looks like the imports were nearly two and a half times as much on June 13th as on June 7th.

A. I don't think—that is not according to the statistics I have; if that is true, I withdraw my statement; my impression was it was the other way around, though.

Q. If that were true, it would affect the market at least, wouldn't it?

A. I think any increase in supply would affect the market.

Q. Are you familiar with the oil that is imported, as to whether it is all of a special grade or different from that of our own producers?

A. I wouldn't undertake to say, I don't know.

Q. Do you think it would be necessary to pass a law requiring purchasers of oil to take oil from all fields of Texas, based on the same ratio from all producers?

A. That would be due to the different kinds of oil and the location of it. Oil that goes to tidewater has an advantage over oil that goes to the interior, and there are not any factors that come into that that ought not to be taken into consideration; I wouldn't say you could have but three of these where they are of equal distribution, but would have to take into account conditions, and, in fact, the whole subject through to its administration.

Q. You will take into consideration the fact that we cannot make you buy when you don't want to?

A. Yes, sir.

Q. And I cannot force you into it if you don't want to,—in other words, we can stop you, make you call this a pipe line if you don't buy?

A. Yes.

Q. But we cannot make you buy?

A. Yes, sir.

(Therefore, at 3:50 o'clock p. m., the Committee of the Whole House, recessed until 10 o'clock a. m., Monday, July 20, 1931.)

Monday, July 20, 1931.

Whereupon, the Committee of the Whole House, convening in session at 10:15 o'clock a. m., July 20, 1931, the following proceedings were had:

Mr. Hardy: We would like to have Mr. Parker recalled to the stand, please.

Thereupon the witness, R. D. Parker, being recalled, testified upon examination by Mr. Graves:

Q. Mr. Parker, what is the difference between ratable taking and ratable rating?

A. That's a new one on me, Mr. Graves; I don't know that I have ever heard of it.

Q. Ratable taking is the amount, isn't it, that can be taken from a well, and the ratable taking is the amount that a pipe line company can take from a producer; isn't that approximately what you understand it to be?

A. That is approximately what I understand it to be.

Q. Now, you had a hearing with the East Texas people; the first hearing you had was up in the Stephen F. Austin Hotel roof garden, wasn't it?

A. Yes.

Q. At that time, the East Texas people sort of refused to abide by the ruling of the Railroad Commission at that time; is that right?

A. Yes.

Q. How many barrels of oil were they being permitted to take from their field at that time?

A. The order of the Commission, as drafted originally, was 90,000 barrels, but it was changed to 160,000 barrels later.

Q. Was that 160,000 barrels, at that time, at the end of the Stephen

F. Austin meeting? Did you allow them the privilege of taking 160,000 barrels?

A. Not immediately. The original order provided for 90,000 barrels outlet, but it was later changed to 160,000 barrels.

Q. And it has since been increased to 250,000 barrels?

A. Yes, after the hearing of June 29th we increased it to 250,000 barrels, plus some arbitraries, which makes the outlet of the field approximately, at this time, 260,000.

Q. If there be 880,000 allowed to the Texas fields, all of them—

A. Yes.

Q. Then they average, with their 250,000, a little less than one-third of the Texas total production, or outlet?

A. Yes.

Q. And yet you have eleven fields in Texas?

A. Yes.

Q. How many wells have they in East Texas?

A. At the time of our hearing on the 29th there were about 900 wells; at this time they have approximately 1200; wells are coming in at the rate of about 70 to 75 a week.

Q. And they have about 1200 now?

A. Yes.

Q. That is about 200 barrels to the well, if they were all equal in ability?

A. Yes.

Q. One reason why—this has come to me by rumor, that one reason why East Texas refused to abide by your allowable amount after the Stephen F. Austin hearing was because you had allowed them 160,000 barrels and had apportioned that 160,000 barrels out among different pipe lines, to such a great extent that there was only 600 barrels left for local consumption; is that right?

A. No; we made no apportionment between pipe lines. Our apportionment is on the basis of the production. The apportionment is as to wells and the operators, and not to the pipe line companies. The pipe lines, pipe line companies, under our instructions are ordered not to take more than our schedules provide, but we do not make any allotments to the pipe lines at all.

Q. How is that matter worked out?

A. The oil is tendered to the pipe line companies for transportation by the producers.

Q. Then one pipe line company could purchase the whole outlet if the producers would offer it to him; he would have the right to take it all?

A. If he made a more attractive offer he would be able to do so, yes.

Q. And you would not interfere?

A. No, sir.

Q. Then one man could buy it all?

A. Yes, but that doesn't work out that way at all.

Q. I know that; I just wanted to see. Some of the producers have told me that; that was a part of their grievance, and I wanted to see if their grievance was reasonable; that you made the Humble Pipe Line and the Magnolia and the other pipe lines take so much, and there was not enough left for the local people.

A. No, all the companies are treated the same way, as far as the allotment goes.

Q. Relative to your umpires; you have seventeen umpires, have you?

A. No, no; six or seven. I have a list of them here.

Q. Well, approximately; you have already given us a list.

A. There are seventeen supervisors.

Q. Yes, I got the wrong number. You will furnish us a list of those umpires, as well?

A. Yes; I have it right here.

Q. Who are they?

A. There are nine altogether. W. B. Hamilton is acting, at the moment, in the Panhandle district; Mr. H. J. Corcoran, who has been up there, acting for months as umpire, recently resigned and we appointed him assistant; in the North-Central Texas district, Mr. L. B. Hull, with headquarters at Wichita Falls, is umpire. In the West-Central Texas district, commonly known as the Ranger district, Mr. J. B. Kennedy. In the Van field, R. E. Andrews. In Darst Creek and Salt Flat field, in Guadalupe county, H. H. Fitzpatrick. J. B. Moncrief in the Gulf Coast. In Howard-Glasscock, E. E. Andrews. A. D. Capers is the umpire in four fields—Ector, Winkler, Crane-Upton, and Yates. That is practically the West Texas area. In the East Texas field, about which we are having so much to say now, Mr. Ray Richmond is the umpire. I will hand the list to the Committee.

Q. I believe you already explained that these men are not paid salaries

by the State, but are paid by the operators themselves?

A. Yes.

Q. By the word nomination, do you mean that each pipe line or purchasing company comes in and says, I will buy five hundred barrels of oil today; is that a nomination?

A. What was that?

Q. Is that what you mean by a nomination? That one comes in and says, I will buy so much oil today, and another comes in and says, I will buy so much?

A. Yes.

Q. Could it be possible that the East Texas grievance relative to your first meeting was because the purchasers had nominated so much that the local purchasers could buy no oil for themselves after the nominations had been filled?

A. No, I understand at the first meeting or hearing on the field, the Central Proration Committee found difficulty in getting any standardized nominations. There was so much oil in that field sold under contract where the parties to the contract—that is, the purchasers, would not nominate, they could not make a definite nomination, and did not undertake to do so.

Q. Do you believe it was so indefinite that you were not in position to know how much would be purchased each day, on account of the indefiniteness of the field itself and its extent?

A. I feel certain that the situation was unsettled on account of the disposition to refuse to give nominations.

Q. What does your umpire do?

A. He is the local administrator of the Commission's rules in any field or area. It is his duty to see that the rules we adopt governing proration are obeyed, and also it is his duty to have a test made by which proration schedules are compiled, and he is in the same nature somewhat of an umpire in a baseball game; he gives decisions on disputed points first-hand, in the field. On special conditions, we grant special concessions to remove inequalities between adjoining leases and operators and the umpire is the party who first-hand makes that adjustment. If his adjustment is not satisfactory to the operator, he can refer to the committee if he has not already consulted them, as the umpire usually does in most cases, and if the operators are not then satisfied, he can bring his complaint to the Commission and have it adjusted.

Q. Could a supervisor do the same work that an umpire does?

A. I think the nature of the two positions are different. An umpire has essentially to know the details of the oil business and to have a knowledge of pipe line operation, and that end of the business, and in addition, be peculiarly fitted by nature and disposition. He has a different sort of set of rules to administer to the rules that the other parties have, and while a supervisor might make a good umpire, it does not necessarily follow that he would. As to the supervisor handling the umpire's job, I think that would be impractical, and I so stated to the Commission, because if the supervisors take care of their positions as they should be taken care of, they have all that they can do, in looking after the various duties under our rules and regulations. The watching of drilling operations and the production operations generally, to prevent waste in the fields throughout the State, is sufficient for any one man to look after on the basis of the districts that we have them now divided up.

Q. Doesn't the supervisor and the umpire's duties run greatly in the same channel?

A. Well, as I said, a supervisor might make a good umpire, but it is not a question of his own ability to do it so much as it is the fact that if a supervisor looks after the work we assign to him, he has enough to do. We make changes in our districts from time to time and whenever we find it necessary to do so—that is, the supervisor's districts, and the umpire in his field has enough to look after taking care of the work under his own jurisdiction.

Q. Most of your meetings relative to the proration problem have been largely attended by many partisans?

A. Yes.

Q. Do such meetings develop into partisanship affairs, or are you able to control the situation from a utility standpoint?

A. You mean control the hearing?

Q. Yes.

A. Our first hearing on the roof garden of the Austin Hotel was a little bit of hard feeling, I thought, in it, and some disorder, but I don't

think we ever had a more orderly hearing than the one recently held on June 29. I think the disorder grew out of the high feeling and the state of nervousness between parties engaged in the controversy.

Q. Now leaving that for a moment. On June 29 you did enter an order that was dated that date, or no, possibly it was dated July 11; did it come out of the investigation of June 29?

A. Yes.

Q. Who wrote that order?

A. It was written in my office, in consultation mainly with the attorney that represented the Central Proration Committee, Mr. Robert Hardwick. He has worked with us continually in these cases that have been tried, the Danciger case and so on, and has a thorough knowledge of law and the handling of these cases.

Q. Lift the microphone a little higher, put it on that book, so the folks in the back can hear you. All right, you were explaining that order of Mr. Hardwick's?

A. Yes, I invited Mr. Upchurch into the conference that morning, the first time we discussed the preparation of the tentative order but he was busy and could not, for some reason, come in, but the tentative order was submitted to him later and we discussed it thoroughly with him; not only I did, but the Commission itself, when I was not present. There were a number of changes made in it, and the final draft was prepared by me and by Mr. Upchurch. Mr. Hardwick, I believe, was the only outside party, you might say, who had anything to do with the preparation of the order. We discussed the terms of it and the conditions of it with a good many people. As I recall, we discussed it with Captain Lucey, who represented the parties for the Cranfill plan; Mr. Terrell and I, in his office, discussed it at length with him, and then we discussed it with what is known as the Oil Emergency Committee, and others. We did not confine it to any particular party, and I don't know that the order itself can be assigned to any particular persons. I will take the responsibility for it and its preparation, and it was done upon the basis as I wanted it prepared.

Q. Have you the power to govern the pipe line rates—the rates charged for the transportation of oil through pipe lines?

A. Yes. The method of handling that from the beginning has been that the tariffs are filed by the pipe line companies, and it becomes the rate until they are challenged; but the Commission has jurisdiction to change any rate or schedule of rates of pipe lines in the State of Texas at this time.

Q. You have really rather wide powers, have you not?

A. Yes, we have complete power to make the rate.

Q. How have the present rates been fixed?

A. As I stated, just as they have in the beginning. The pipe line companies file their tariffs, and they have been permitted to become the rate until they are challenged. There is a provision in the law that if anyone is dissatisfied with the tariff they can bring their complaint to the Commission, and if the rate is changed or lowered, they have the right of reparation. In other words, the pipe line company will be compelled to refund the excess rates over the amount fixed by the Commission.

Q. Have any such rates ever been challenged by the seller?

A. So far as I know, there have been only two complaints. One, a minor complaint, coming from the Wichita Falls district several years ago, before I had anything to do with the department, and I speak of it historically only, without any knowledge of the facts. The other was an application recently filed by the independent association, for reduction in the rates throughout the State of Texas. This application is now pending, and the hearing has been postponed, at the request of the applicant.

Q. Has any person ever filed any motion or claim before you for reparations for overcharge of pipe line rates?

A. No, sir.

Q. Have they that right under the statute?

A. Yes.

Q. As I said a while ago, your powers are very broad. You can do practically anything that you think is best for the purpose of conserving waste in any oil field in Texas, can't you?

A. Yes, I think so.

Q. But these powers are not laid down; they are only given to you under general authority?

A. Yes.

Q. Have you attempted to pass any other orders, or to enact any rules of your own, except the proration order or the unit system, that you are attempting to put into effect at this time?

A. Do you mean any other proration order?

Q. Any other conservation order?

A. Oh, yes. We have from time to time passed various orders. If we find conditions in any particular field such as should be corrected, and it is necessary to issue special orders or rules in addition to our rules of general application, we do so. I have with me Circular 14, which is a pamphlet containing the rules and regulations of the Railroad Commission for the conservation of oil and gas, and I would be glad to submit a copy to the Committee, if you like.

Q. Those are rules you have promulgated and passed out among the oil faternity as the rules they should follow?

A. Yes; they are rules of general application, however. We issue, frequently, rules of special application in special fields where it is necessary to correct a particular condition, to prevent waste or correct a particular condition.

Q. Under this blanket authority given you by Statute 6029, and those immediately following, have you the power to initiate rates yourself?

A. We do not get our authority to make pipe line rates, Mr. Graves, under that statute. We get it under the pipe line law.

Q. One of them is 6035, 6036, 6037 and 6038. They follow right after your general powers?

A. Yes.

Q. Do you wait for the companies to initiate the rates, or initiate them yourselves?

A. It has been the practice of the Commission, since the beginning of its power to establish rates, as I stated a while ago, to do so by the filing of tariffs by the pipe line companies.

Q. Do you believe, under this statute, that you can take the initiative?

A. That has been questioned, whether we can or not. Frankly, I don't know.

Q. It has been questioned by the pipe line people, or who?

A. I have discussed it with a number of people. I don't know, I believe the first discussion I had was with some of my predecessors in the Division.

Q. You have a pipe line inspector, have you not, under Article 6030?

A. No, sir; our supervisor makes inspection of pipe lines.

Q. Article 6030 says: "The Commission shall employ a pipe line expert, who shall be the supervisor for the Commission in enforcing its rules and regulations. The Commission may appoint such deputy supervisors as may be necessary and may increase the salary of the supervisor . . . " and so forth.

A. That's my position.

Q. All right. Then it is your duty to be a pipe line expert, to a certain extent, isn't it?

A. Yes.

Q. Do you know anything about the profits of the pipe lines—what they might be at this time, just generally?

A. No, I couldn't tell you. But we have the pipe line reports on file. The earnings of the pipe line companies have been high. Just what percentage, I can't say.

Q. Have you made any investigation relative to pipe line rates, or do you wait for a complaint to be made relative to that?

A. We have taken the position that we should wait until the complaint is filed.

Q. You just let it work itself out, unless somebody complains to you about it?

A. Yes.

Q. Most of your reports are relative to the tax, aren't they, from the pipe line companies? The main thing that you get out of them is a report relative to the tax that should be paid on oil, isn't it?

A. No; we have a regular form of report, which is a statistical and financial report, which shows the earnings and the expenses of the company.

Q. What is the basis of rate-making for a pipe line company? How do you arrive at what they would reasonably charge for the transportation of a barrel of oil?

A. I think the Supreme Court of the United States has laid down the rule which should guide any rate-making body. It is such a rate as would return to the company a fair return upon a fair value of the property. That is the principal item. There are a lot of details, in that, however.

Q. Isn't it a fact that some of these pipe line companies are making 100 to 300 per cent on their investment? An enormous profit?

A. I don't believe they are that high.

Q. What are they?

A. I would not undertake to say what they are. I would be glad to give the Committee the benefit of the information obtained from and contained in our reports, and work out the earnings for you.

Q. Haven't you a table of their earnings in your office?

A. No, we have the reports on file. I have not worked out a table of earnings.

Q. Do you not know that the claim of the companies that own the producing end, as well as the pipe line and marketing end, is that their money is lost upon the marketing end of it, but made up on the pipe line end?

A. I understand there have been reports—I don't know this of my own knowledge; the reports of one of the companies was that they made their earnings out of the pipe lines.

Q. You haven't paid much attention to the pipe lines? Mostly the production?

A. Largely.

Q. Do you know that one of the companies in the State of Texas has lost $1,000,000 on their marketing and refining and made $19,000,000 on their pipe line end?

A. No, sir; I didn't know that.

Q. Really, you have not been exercising all the powers that you were given under the statute, and especially under this Article 6029, and articles following that, have you?

A. I think so, yes.

Q. You don't know much about the pipe lines, do you — not very much about the pipe line end of it?

A. Don't know much about it?

Q. No. You can't even tell me how much money they have made.

A. I can't give you the figures from memory, but I can give you the figures from the reports in our office. I am not trying to withhold anything from you.

Q. I know that. I just don't believe you know; maybe you just don't know very much about that end of it. Isn't that right?

A. I know a great deal about pipe line operation, yes.

Q. Well, if they were making an enormous profit; suppose the Humble Company—these figures show that the Humble lost $1,000,000 on the production and refining end and made $19,000,000 on the pipe line end of it. Don't you think that's too much.

A. Yes, probably it is.

Q. Then, if that is too much, they are charging too much?

A. That would be logical.

Q. And if they are charging too much, they should have their rates cut down, shouldn't they?

A. Yes.

Q. Don't you think you should know that, and under these statutes, where you have such broad powers, don't you think, under that statute, you ought to know that, and if they are making too much money, you could force them into a lower rate?

A. I don't know that that is true. I have worked on the theory, always —I might be mistaken about it, of course, but I have worked on the theory that the original statute, under that the pipe line tariffs, when filed by the pipe line company, became the rate, subject to complaint and reparation, and if there is no complaint made against them, they were continued, logically and presumably fairly, as the rate. The earnings are probably high, and if we are charged with the duty of following those things up, and initiating changes in the rates, without complaint being first filed, why, then, we have been negligent in our duty.

Q. I will read you two articles, off the records. First, 6029. Now, then, Article 6037. Now, then, you have not gone into that latter statute, Article 6037, as thoroughly as you would like to, have you?

A. No, unquestionably we have devoted more of our attention to Article 6029, and the control and the administration of the conservation rule, rather than the pipe line rules, for the reasons I have given you.

Q. It says here in Article 6038: "Reads statute." Now, you have not done that, have you?

A. No, sir.

Q. You have had no pipe line hearings practically of any kind?

A. No, sir.

Q. You have accepted the situation as you found it, and waited for complaints to be made?

A. Yes.

Q. I am not criticizing you, but I thought possibly you didn't know that was there.

A. Yes, that is what we have done.

Q. In accepting the recommendations of pipe line companies, do you

take into consideration not only the amount of investment upon which there must be a return, and the hazard as to the passage of the oil, and also its evaporating facilities and other matters, do you just take the word of the pipe line that it is worth two cents a barrel, for example, to transport this oil?

A. No, I believe, if we went into an investigation of the pipe line rates, we would have to go into a valuation of the properties and base the rates upon what that valuation shows.

Q. The value when it was invested, or the value at this time?

A. The Supreme Court says you must consider the value at the time of the inquiry.

Q. However, the investment decreases each year, does it not?

A. Yes; however, they have also accretions of new property.

Q. Accretions? New fields which come to them which makes the investment greater, but isn't it true that with the rate of depreciation which they charge off it makes the loss of that investment so rapid that in a short time, in less than ten years at least, they have received back everything they put into that pipe line?

A. That may be so.

Q. Then don't you think that the rate should change appreciably with each year, because if ten per cent is charged off for investment, then the investment is only ninety per cent, then seventy, sixty, and forty per cent, until it becomes to the point where the investment is all velvet, practically?

A. Yes. That is probably true.

Q. Then the rate should decrease after that investment is taken care of, don't you think so? Don't you think that would be fair?

A. Yes.

Q. You have the power to establish and enforce rates and so on, upon the petition of any person showing a substantial interest in that subject, haven't you?

A. Yes, sir.

Q. But you have never exercised that power, in your memory, except from history, because there have been no complaints made; is that true?

A. That is true; there has not been a petition filed, Mr. Graves, against the pipe line rates since I have been connected with the department, until recently; in fact, during the Regular Session of the Legislature recently, there was an application filed for a fifty per cent reduction in the rates, and that is the only application since I have been connected with the Division.

Q. What is approximately the pipe line charge for the average transportation, from West Texas, I will say, to the Gulf?

A. I think the rate is around sixty cents.

Q. Sixty cents for what?

A. Sixty cents per barrel for the transportation of it. There has been a reduction of the rate, however, recently. The Humble put into effect a twenty per cent reduction a month or two ago in all their pipe line rates.

Q. Sixty cents a barrel for the transportation of oil that sold at fifty cents, would leave you a little less than nothing at the coast, wouldn't it?

A. They usually receive the posted price, however, I would say, but I imagine they receive that at the coast.

Q. Before East Texas got into the picture and tore the price of oil into such ribbons, I will say, West Texas oil was selling at approximately $1.20 a barrel; wasn't that right?

A. Yes.

Q. Don't you think sixty cents would be too great a charge for the transportation of that oil?

A. Yes, it would be too high a charge, probably; however, if the rate were cut in half, Mr. Graves, I don't know whether the posted price would be correspondingly increased or not. You see what I mean? If the rate is sixty cents, and you cut it in half and make it thirty cents, I don't know whether that thirty cents that you saved on the rate would be added to the posted price in the field or not; I don't know. The oil transported, in the main, has been oil belonging to the major purchasers and the purchasing companies affiliated with the pipe line companies, and the ordinary transportation of oil, for hire, outside of that has not been very great. In other words, oil tendered to the pipe lines, outside of affiliated companies, has been very small.

Q. If the price of transportation, which you suggest in your answer, should be around fifty per cent of its value, isn't that practically prohibitive from the producing end of it; if a man has to give up half of it to get it to market?

A. Yes, it would be, if he has to give up half of it.

Q. Wouldn't that encourage the importation of oil by boat, because of the fact that you have sixty cents you pay for oil, and thirty cents for the transportation and when it reaches the seaboard, it costs you ninety cents a barrel, yet its value is only sixty cents?

A. The value in the field may be entirely different from what it is at the coast or destination. The posted price of oil in Pennsylvania and Ohio and Indiana is very much higher than it is in the State of Texas.

Q. Do you know how much oil is in Pennsylvania today?

A. It is a very small amount, but I take it that it reflects the value of oil in that locality, and because of the fact they have a small amount of oil up there, makes it necessary to bring oil from other places; there is an added cost to the oil, every time you move it, and it should be of a correspondingly increased value.

Q. Isn't the high transportation price a strong factor in forcing the producer to sell his oil outright to the transportation company?

A. Is that a question?

Q. Isn't the high transportation price, which we will say is fifty per cent of its value, a large factor in forcing the small producer to immediately market his oil to the transportation company and not try to send it to the seaboard or any other market, because he has to pay so much to transport it; the best thing for him to do is to sell it to this company which charges so much for its transportation?

A. If he has a buyer at the end of the line, he can transport it by the pipe line at the same rate as anyone else, or ship it by rail if he prefers. The rail rates are more, as a general rule, of course, than are the rates by pipe line.

Q. Suppose you charged him only ten per cent for transportation. Wouldn't that be a factor in allowing him to seek a free or open market, rather than force him into the hands of the transportation company that owns the pipe line?

A. I don't know that that would necessarily follow. If he had a purchaser on the seaboard he can transport his oil and tender it to the pipe line company for transportation, if he can make delivery at the end of the line. They are transportation agencies just like the railroads are, but if he wants to ship his oil he must have somebody to ship it to, and the consignee must have some way to handle it.

Q. He first must have his market offered?

A. Yes.

Q. If he has a market at 70 cents nearby, he can sell the same oil on that market at 70 cents as cheaply, at the home place of production, as he can at 90 cents or a dollar at the seaboard, can't he?

A. I don't think that would follow, necessarily. The main market for oil is the main purchasing companies. There is no question about that, if that is what you have in mind.

Mr. Hardy: That's what we had in mind.

Q. Now, in your duty relative to fixing pipe line rates, the basis of all rate is for the purpose of allowing a fair return on the investment?

A. No, not on the investment.

Q. What is it?

A. A fair return upon the fair value of the property. The Supreme Court, in laying down its rules for a proper rate basis, has said that an investment value must be taken into consideration, and the reproduction value also must be taken into consideration and also the depreciation, and the earnings of the company and so on, a great many factors enter into it.

Q. But in order to get at its value, you must find out how much it costs and how much it is making, and how much it is worth if you are selling?

A. Yes.

Q. And in order to find out what that fair value you have there is, you must, to give him a fair return, you must know what his profits are?

A. Yes.

Q. But you don't know what his profits are?

A. I have offered to get that information for the Committee if you want it, from our files and reports. I don't keep all those figures in my memory, and I don't know that I should be criticized for it.

Q. What, in your opinion, would be a fair return on their value of their property?

A. I think what other businesses secure.

Q. What do others get?

A. It will run to different amounts; on some the maximum allowed is the

same as the return on government bonds; others, the maximum allowed on promissory notes, and so on. I will give you an illustration that might be of some value to the Committee—the return fixed by the Interstate Commerce Commission, as the fair return for railroads is around four and three-quarters or five per cent. You might make an analogy between one transportation agency and another, if you like. The Commission, in one of its recent gas cases, said that seven per cent was a proper depreciation allowance, and was fair in a gas rate case; there's another illustration for you if you want it.

Q. Now at the present time the statute gives the power to the gas rate makers to fix a rate that will bring in approximately ten per cent; is that correct?

A. Yes, that's correct. The cities and towns are authorized to fix a rate of ten per cent.

Q. Do you think that ten per cent, at least, would be a fair return for the pipe lines?

A. I think it would be a maximum, probably.

Q. A maximum?

A. That is, with a proper allowance for depreciation.

Q. Isn't it a fact that at the present time, some of these large major companies owning pipe line systems, could glut the market and throw open their own production, losing upon it, in order to obtain an enormous profit out of their pipe line affiliated companies?

A. If their operations were large enough, that would probably be so.

Q. And so they could put the independent refinery in a position to where he could not survive, if they just did that and glutted the market long enough?

A. That's probably correct.

Q. Because he has no pipe line profit to offset the losses on the producing end of the line. The railroad rate, as I understood you to say, is larger than the transportation of the same commodity than the transportation by pipe line?

A. Somewhat higher, yes. I was discussing that with our rate man in the railroad division a month or two ago, and my recollection is that he said it was about one-third higher. There is no uniformity in that, however, Mr. Graves. There may be situations where the rail rate and the pipe line rate are offsetting each other, but generally speaking, I believe he said the pipe line rate is lower than the railroad rate.

Q. Isn't there a disposition in the Commission to find itself between two conflicting emotions—one to keep the rail rate stable, and the other to hold the pipe line rate stable, and to keep them as close as possible together?

A. I don't believe it is necessary to say that; ordinarily the railroad cannot transport oil as cheaply as a pipe line company. They simply can't compete with a pipe line.

Q. The railroad cannot compete with the pipe line, that is true; but the more the rates are close together, of course, the more the railroad would probably get; is that right?

A. What is that?

Q. The closer the rates are together, the more the railroad would probably get; isn't that right? In other words, if one was 45 cents and the other was 30 cents, then I wouldn't take such pains to prevent losing that 15 cents, but if one was 45 cents and the other was 10 cents, I would lose 35 cents that way, and so of course I would ship my oil out by pipe line? Isn't that right?

A. Yes.

Q. Do they have proration in Pennsylvania?

A. I don't think so. They have such small production up there, and such old fields, I don't believe so.

Q. We are just quoting from an article here, which says that proration laws in Pennsylvania prevented the price from sinking more than 15 cents last week, bringing crude oil to $1.35 per barrel.

A. I didn't know that. I didn't read that article.

Q. If it is bringing $1.35 a barrel in Pennsylvania, then something is either wrong over here or there is something wrong over there.

A. I think I can give you the quotations on it right now. On July 15th the oil was quoted at from 50 cents to $1.10, $1.35 and $1.60. I am reading the figures which applied in different localities in Pennsylvania, Ohio, and so on. It was $1.40; they ran up from $1.10 to $1.60.

Q. Is Texas oil of the same grade and character of the Pennsylvania oil?

A. The prices paid in Texas in different districts, I have the quotations which show 10 cents, 15, and up to as much as 80 cents.

Q. Why does oil sell in Texas at

10 and 15 cents a barrel, and in Pennsylvania at $1.35?

A. It's the cost of transporting it up there; that is one factor in it. There is not enough oil in Pennsylvania to take care of the demand.

Q. It's not the cost of transportation of it; it's the demand for it? There is a greater demand in Pennsylvania than there is oil in Pennsylvania?

A. Yes, of course; the population in the seaboard on the Atlantic coast is much greater, of course, than the population is down in Texas.

Q. Transportation would not be a factor in Texas oil, if you were utilizing the oil on the ground?

A. That is correct. If you were going to use it all here, that is correct.

Q. We have two of the biggest refineries in the world here in Texas?

A. Yes.

Q. Then, why should Pennsylvania oil be worth more in Pennsylvania than Texas oil is worth in Texas, if not by reason of the law of supply and demand?

A. That is the reason.

Q. The law of supply and demand?

A. Yes.

Q. Mr. Parker, have you ascertained whether or not any railroad company owns stock in any pipe line company?

A. Whether or not any railroad company owns any stock in a pipe line company?

Q. The stock, yes.

A. No, sir; I have made no investigation of it, but I never heard of such a thing.

Q. You have never heard of such?

A. No, sir.

Q. Do you know approximately what is the cost of transportation of a barrel of oil from here to the State of Pennsylvania?

A. No, I have not worked that out.

Q. Do you have any approximate idea?

A. No, sir; I wouldn't undertake to give you that figure.

Q. Would it be $1.35 a barrel?

A. I don't have the figures.

Q. You don't think so?

A. I didn't express an opinion, Mr. Graves.

Q. It is true that the oil carried by the railroads in tank cars is outside the common purchaser act, is it not?

A. Yes.

Q. That is one of the causes of your difficulty in enforcing the common purchaser act, because so much of the oil goes through railroad cars, which you cannot reach by your powers under that statute?

A. Yes, the definition of a common purchaser linked up with common carrier by pipe line only.

Q. Mr. Parker, are the major oil companies that own pipe line transportation—are all of them voluntarily coming under the common purchaser act?

A. No, sir.

Q. What company refuses to call itself a common purchaser?

A. One of the major companies is the Gulf; it says it has sufficient production of its own, and is not a buyer of oil and does not want to buy oil; it has its own production, and has all its refineries need and, therefore, has no occasion to go into the market and buy.

Q. Does it own a pipe line of any importance?

A. Yes.

Q. About how many fields, if you know, does the Gulf Pipe Line enter?

A. It covers the State pretty well.

Q. Practically over the entire State?

A. Yes.

Q. But, saying it has all the production it needs, without the purchasing of other production, it refuses to go under what is called the common purchaser act?

A. Yes.

Q. Therefore, under that refusal, you cannot enforce a regulation of its rates; is that true?

A. Yes.

Q. Do you know whether or not it does transport oil for hire, for others?

A. It states that it is willing to transport any oil that is tendered to it by anybody that offers it at the tariff rate. They have their tariff on file in our office. I think, under the definition, they do probably come under that statute.

Q. They are transporters of oil, but are not purchasers of oil; is that what they claim?

A. Yes.

Q. Do you know of any other companies that use in their transportation tanks, who, as common purchasers, would come under that statute?

A. I believe the Magnolia does.

Q. Do they buy any oil?

A. They have purchased some—

they have purchased some little, but mainly they use their own production. I stated a while ago that some have refused, but I would not undertake to say that they had refused, but that they had not made any nominations to take any except their own production allotted to them under the orders, and it was on the grounds that I have heretofore stated.

Q. That is the Magnolia?

A. The Gulf is what I was talking about. I think either one of them would come under the definition of the common purchaser act.

Q. Have you taken them under your jurisdiction?

A. Yes, sir.

Q. Both the Gulf and the Magnolia?

A. Yes, we have taken them both under our jurisdiction as common carriers. Common carriers are under our jurisdiction—under the law as the law was passed, until that law is declared invalid. Nobody has yet.

Q. Nobody has held it invalid, have they?

A. No, sir.

Q. Have you ever had the validity of that law tested?

A. No, sir; there has never been a test of it.

Q And until that law is held invalid it is presumed that all the acts or statutes passed by the Legislature are valid until same have been held invalid by the proper courts?

A. Yes, sir.

Q. Have you tried to enforce the common purchaser act, either with the Gulf or Magnloia?

A. No, not by forcing them to obey the provisions of the act.

Q. Why?

A. We were afraid of it, and in discussions with the Attorney General's Department as to why that was not enforceable, we tried to accomplish the connection with the wells in some of the worst cases that we had without going to the trouble of making a test of the law, and we thought it best to do it by negotiations rather than by trying to make a test of it. To have done that would have brought on an injunction against us, and we went into the matter of connecting unconnected wells by negotiation, as we took the position that it would be a wise thing to do if we could get connections with unconnected wells where it would give immediate relief, as there were some operators in the industry who were in distress.

Q. Is this Attorney General the one who advised you to be careful in attempting this common purchaser act?

A. The Attorney General who was formerly there — General Pollard. Long inquiries concerning the administration of the statute resulted at different times—

Q. (Interrupting.) Did he give you an opinion relative to whether or not it was workable or invalid?

A. No, it was discussed verbally. I do not believe that we have an opinion on it, a written opinion.

Q. Have you discussed it with the present Attorney General relative to what your powers might be under the provisions of this statute?

A. I discussed it with Mr. Upchurch and he says that it is gravely doubtful.

Q. Have you any suggestions relative—have you have suggestions to make so that it might be strengthened or so that this law could be utilized for the purposes it was intended?

A. Yes, you can, I think, remove any doubt about the definition as to the handling or limitation or limiting it to common carriers by pipe lines, as you could include common purchasers of oil of all sorts, that is, common carriers of all sorts.

Q. Either by rail, truck or pipe line?

A. The difficulty here is in making public utilities out of these companies, and in order for the State to take control of them the public must have an interest in them, they must be divorced from the idea of private concerns, and they must take on the nature of a public utility. You can not make them a public utility by definition, can you?

Q. I do not know. Frankly, I would like to see the law tested out. Have you ever tried to enforce the penalty provided by the common purchaser act against anybody?

A. No. But the violators of the law say that it is not the law at this time.

Q. But you have not attempted to enforce it? Why?

A. No. Because we have accomplished these results in a way, and we did not care to subject ourselves to injunction suits by attempting to drive these people. As I stated before, we handled this proration matter mainly by negotiations.

Q. I believe you stated that in June, on June 29th, there were 160 wells flowing that had not been connected up?

A. Yes, sir, in violation of instructions.

Q. Are they all connected now?

A. No, sir.

Q. Why.

A. The situation is chaotic, and our orders being violated just like they were before, and that is the reason that the companies that would buy free oil and give us a better situation than exists now, is that they have to protect their own wells and get their own oil from their own leases, and they are not in a position to buy any free oil at this time.

Q. As between the so-called major companies and the independent companies, which group is it in that field which is violating the orders at this time; that is, in the East Texas field?

A. I think there are more of the so-called independents. But they are both violating our orders. One of the big companies got an injunction against us here the other day.

Q. Had they been obeying the orders heretofore.

A. Yes, sir, but they have gotten an injunction against us now.

Q. They have an injunction against you now?

A. Yes, sir.

Q. A producing company that owns a pipe line has an enormous advantage over a person who is a producer without owning a pipe line?

A. Yes, sir.

Q. The producing companies with pipe lines to take care of its output can probably dictate the price at which producers will sell their oil to them?

A. If the producer cannot get another market for his oil. It seems in East Texas that they have a market.

Q. In East Texas they have more than one producer with pipe line facilities?

A. And in some cases contracts have been made by brokers and other ways to take the oil out.

Q. That is possibly because the oil is sold at such a distressed price that the brokers can handle it and still make a profit out of it in the open market?

A. Probably so.

Q. How, if you know, how is the price of oil fixed in a given field?

A. I said yesterday that I did not know.

Q. Does not it seem that the price fixed by the major companies is by some kind of an agreement?

A. That may be, but I do not know whether it is or not. The price in East Texas is fixed in the main and, perhaps in most places, by contract. The oil has been contracted for to various companies at various prices, and there is no posted price there at this time.

Q. Does it not evidence something that each company probably fixes the same price, either by upholding the same price, and when it goes up at the same time, and then comes down at the same time—one immediately following the other?

A. What you say is correct. If one company fixes a posted price lower, then all the other companies in that area will fix the same price. When it does go the other way, it is the same thing.

Q. Is it not a further fact that often the purchasers are not governed by the demand, but are governed by the posted price, whatever that might be?

A. Yes, your statement is correct.

Q. Regardless of the market demand, there is a posted price, and they all adhere to the posted price?

A. Yes, sir.

Q. Then it looks like a concerted action between them to get the oil at the posted price?

A. That might be a conclusion.

Q. Are you not familiar with the fact that often the major companies have purchased at less price than the quoted price?

A. I have heard that they buy it through brokers, but I do not know that to be a fact. I have heard that condition exists in East Texas, but I do not know that to be a fact.

Q. In fixing your allowable in the East Texas field and fixing 90,000 in the beginning, was that with the full knowledge of the possibilities of the field, or was that a sort of feeler for letting the field be developed—

A. (Interrupting) It was more or less of a feeler.

Q. You wanted to be in the bounds of reason, so you could increase the allowable provided it was necessary, but you utilized your best judgment as to what you would do in the future?

A. We wanted to play on the safe side.

Q. Do you know whether or not gas companies at times purchase gas-

oline from other companies and sell it under their own brand?

A. Yes, sir; I understand that is done frequently when it is more convenient for one company to purchase gasoline from another to deliver from a nearby point, and they might exchange as a matter of convenience.

Q. You have no jurisdiction whatever over that?

A. No, sir, it is out of our line of work, but I understand that goes on.

Q. Do you know whether or not in the East Texas field the major companies are intensively developing the inside points of the leases, in order to force the small producers to develop the outside edges of their leases?

A. No, sir, I do not know whether that is going on or not. The major companies are developing more territory than the small companies because they have larger holdings.

Q. Is not more of the drilling done where they will force the weaker man to have to drill more wells to protect his interests?

A. They are doing both, but I do not know which they are doing the greater amount of.

Q. In building up proration, to tell a man how much he might produce by the market, that ought to be an important factor, should it not?

A. Why?

Q. One reason is that a poor man who has a small lease might not have as much money as the big company. The small man might bring in wells that would produce 300 barrels, while the larger company would bring in a well that produced 3000 barrels.

A. Our orders provide for larger runs where they have more than one well.

Q. Did your last order provide that?

A. Yes.

Q. How much did it provide for?

A. It provides for a maximum of 750 barrels for any unit.

Q. Any unit may produce up to 750 barrels?

A. We provide that maximum, and authorize the umpire or Committee, with the Commission's consent, to make adjustments to cover that. I was looking over a schedule this morning, and that has been done. For instance, in the course of their operations we have a half unit. That would be entitled to, under the present agreement, 100 barrels—

Q. (Interrupting) You mean by unit 20 acres?

A. The units are 20 acres or less.

Q. Then a man who has 10 acres would be entitled, under your rule, to how much?

A. He is entitled to half plus an additional amount to take care of any danger by an offset well on a full unit.

Q. How much would a man with 11 acres be able to take?

A. A full unit.

Q. And then a man with a 10-acre tract would be counted a half?

A. Yes, sir.

Q. Was your original order prepared that way?

A. The original order was that way.

Q. Strict proration, if carried out in the sense I have gotten from you and your ideas, and also from the Railroad Commission and from practical oil men in the business, means that it is primarily for the purpose of the conservation of natural resources?

A. Yes, it was based on the prevention of waste, not economic waste.

Q. At the present time do you not think that this great natural resource, the conservation of this natural resource, should be effected, not only for the present, but for future generations?

A. Yes, sir.

Q. Then, do not you think that the Legislature at this time should pass a statute which should take into consideration and looking to the conservation of this resource from the standpoint of economics?

A. I think they ought to take care of it for future generations.

Q. Now, for the purpose of illustration, as a field expands, you will allow a larger amount of oil to be taken from that field. Say, the allowance, in its beginning is 100,000 barrels. You feel that that is the amount due for that field to produce on account of the market demand?

A. Yes, sir.

Q. Then as that field expands, what do you do with the rest of the State?

A. Following that order, we allocate to various fields in the State in their share the increased allowable, and we cut down in the other fields. Maybe increasing the allowable in East Texas and cutting down in other fields of the State.

Q. Has that been the custom and the practice that you have followed, when you could cut down or when you

would increase the allowable in, say, East Texas, you would cut down West Texas in order to afford that much more market to that field that is now being developed?

A. That is what we had in mind.

Q. Is it not a fact that the Sinclair started thirty-two new locations, and the Gulf has been thirty and thirty-five locations, and most of them being inside locations?

A. I understand that the Sinclair has.

Q. Under the statute you have absolute supervision both as to where they are placed, and whether they should be drilled or not?

A. No, sir. I do not think we can control drilling.

Q. (Here are the provisions of the statute covering the drilling of wells and was read to the witness, and he was asked the following):

Q. Does not that give you the power?

A. I understood that we had no authority to control a company's drilling. If they elect to drill a well, we can not prevent them from doing so, but we can control the spacing of the wells, but as to the number of wells that they may drill, my understanding is that we have no authority whatever over that.

Q. Do you not have that under the United States Supreme Court ruling under this Rule 37?

A. I am not an attorney and I do not know whether we have or not.

Q. You have got it under Article 6029, have you not?

A. I do not think so.

Q. Do you remember what date the oil in East Texas began to be a factor in the oil market?

A. I think it was somewhere about the first of April, 1931, of this year.

Q. At what date was the first posted price made in East Texas, if you know?

A. I do not recall.

Q. Do you remember what the first posted price was?

A. Yes, sir. Sixty-seven cents, and at that time it was a most valuable oil. It was extremely valuable.

Q. It was extremely valuable?

A. Yes, sir.

Q. It was worth more on the market than oil from other sections, was it not?

A. Perhaps so, on account of its accessibility, possibly.

Q. And on account of its peculiar qualities that were essential in the anti-knock gasoline process?

A. Yes, sir, I explained that Saturday.

Q. And at that time it was the maximum price that was posted for oil of that grade?

A. Yes, sir.

Q. And in other sections of Texas oil of that same grade was sixty cents on the day that the East Texas field came in and the price posted there was sixty-seven cents?

A. Yes, sir.

Q. This oil was not selling upon the basic value at that time?

A. The market probably had something to do with it.

Q. Is not the market controlled by the facilities for transportation largely?

A. In some respects, that is a factor in that.

Q. Do you know whether or not the independent contract has had any effect on the posted price now being paid for oil?

A. I understand that the companies withdraw the making of a posted price because of the fact that there were so many prices at various times, and they could not be stabilized as long as these contract prices were in effect.

Q. Who makes the posted price?

A. The Humble posted a price, the Magnolia and Sinclair posted a price, and I believe those were all that posted a price in that field—well, probably the Arkansas Fuel Oil Company posted a price.

Q. They come in and tell you how much they will give you for your oil?

A. Yes, sir.

Q. The price is made by the purchasing companies?

A. Yes, sir.

Q. Rather than the seller?

A. Yes, sir.

Q. How many pipe lines go through the East Texas field?

A. Five, I think.

Q. Is there sufficient transportation facilities to haul the allowable from the East Texas field at this time?

A. Yes, sir. The transportation facilities are more than needed.

Q. What amount of oil, according to your judgment, can East Texas consume? That is, put on the market at the present time?

A. It was testified in one of our hearings by one that the limit was

250,000 and by another 300,000 barrels per day.

Q. Is it a fact that the gas can not be conserved at the bottom of the wells?

A. Yes.

Q. Can you conserve it at the top of the well?

A. Yes, sir.

Q. You can conserve it by proper means, you can make additional use of the gas which you allow to escape if you follow the newly discovered process, can you not?

A. You can get the maximum value from it.

Q. Do you demand that they follow those orders in East Texas at this time?

A. We try to see that the oil in the field is produced with the least possible waste.

Q. Have you in your organization that we have set up—have you sufficient technical advice in order to inform you as to that matter?

A. I would like to have a man who is a petroleum engineer in our employ.

Q. You have no petroleum engineer at this time?

A. No, sir.

Q. Do you think, then, that it would be necessary to give you a petroleum engineer, under those circumstances, if given such a force could you properly attend to the industry as you now find it?

A. I think if you gave us sufficient money to employ a petroleum engineer it could be done.

Q. Are any members of the Commission civil engineers?

A. No, sir.

Q. Do the members of the Commission take your recommendation and your advice relative to the matters pertaining to the oil and gas industry?

A. Not altogether, but I think in the main they do.

Q. When hearings are conducted pertaining to this phase of the work, you are consulted and are you generally present?

A. Yes, sir.

Q. At these public hearings?

A. Yes, sir. I do not make the decisions. The Railroad Commission makes them.

Q. Do you find the mass meeting sort of hearings like you had down here at the Stephen F. Austin Hotel—is that conducive to free deliberation on the part of the Commission, or is it distracting to their best efforts in arriving at what their judgment ought to be?

A. I think it is a rather bad thing to hold hearings of that kind. I do not think that the mass meeting kind of hearing is a good plan.

Q. Then, if I understand you correctly, a meeting which is like that one held down here at the Stephen F. Austin Hotel is not a good thing—they can not keep from having some influence over their deliberations?

A. That was an unusual thing—the hearing that we had down here at the Stephen F. Austin Hotel.

Q. Now you have the Railroad Commission which has supervision of the railroads. It also has the duty of having supervision over the pipe lines, and one is antagonistic to the other, is it not?

A. Yes, sir.

Q. And yet, and I say it with the highest respect to the Commission, they are doing the very best they can to give a fair administration to the railroads and everybody, yet at the same time there is bound to be conflicts between the rights of the railroads and the rights of the pipe line companies?

A. Yes, sir.

Q. Do you not think that these are two antagonistic interests?

A. Not necessarily. They both deal with transportation, and they both are interested in the transportation of oil, but I think it goes without saying that a railroad transportation agency must yield to the pipe line on the basis of economy. They can not compete with the pipe line companies. There can really be no competition between the railroads and the pipe line companies in the matter of the transportation of oil, because of the fact that the pipe line companies can transport the oil at a much lower figure than the railroads, and there is no competition as far as that is concerned.

Q. Still, if you were to cut pipe line rates down to ten cents or five cents per barrel, and the pipe lines could transport to seaboard a barrel of oil for five cents and the railroads had to transport it for forty cents per barrel, it would put the railroads out of business, would it not?

A. So far as the transportation of oil, if that were its only means of revenue, it would be put out of business.

Q. Now then, if you had a lower

rate by pipe line companies, is it not a fact that producers would benefit largely by that lower pipe line rate?

A. Yes, sir. It would certainly follow.

Q. Now, Mr. Parker, do you know the percentage of oil that is purchased by the major companies themselves and transported through the pipe lines, as compared with the percentage of oil that is transported by them for hire?

A. The amount, as I stated a while ago, that is transported by pipe lines for hire is very small. The most of the oil that moves is moved through pipe lines belonging to the purchasing companies; for instance, the Texas Company oil moves through the Texas pipe line, and the Gulf oil will move through the Gulf lines, and the Magnolia oil through the Magnolia lines, and that constitutes practically the bulk of the oil movement through pipe lines.

Q. Then the rate for transportation is more fiction than otherwise, is it not, and the 30 cents, we might say, or the 50 per cent rate fixed for transportation by the Texas Pipe Line Company, as an illustration, is the cause of a large reduction in the posted market price, is it not?

A. I don't know that I could state exactly what the relation of the posted price to the tariff is. I would not undertake to do so. I believe, although I don't know it to be true, that a reduction in the tariff should bring about a corresponding increase in the posted price, or at least the posted price should correspondingly respond to it.

Q. Don't you think it would be a part of your duty as a supervisor to see that a Texas product would be transported to market at the lowest cost consistent with a fair return to the transportation company?

A. I think so. I believe we went into that, however, in detail a while ago.

Q. However, it seems from your own testimony that you act only upon a complaint and do not initiate the hearings with reference to what the pipe line transportation rate should be?

A. Yes, I explained what our position was, what we had done, and the reason for it.

Q. These complaints are costly, aren't they, and require a considerable amount of money before they can be brought here and urged upon you and finally carried out to their final consummation; aren't they costly.

A. At the time when most of the pipe line rates were made, the price of oil was high and nobody seems to have thought very much about the cost of transportation of oil. If anybody has any objection to the pipe line rates, they can at last come in and complain to the Commission about it.

Q. Suppose a little fellow wants to initiate a rate, and was waiting to start the thing himself; it takes lots of money to do that, does it not?

A. It takes a stamp and a letter to the Commission.

Q. Suppose he comes from Wichita Falls, and he comes to Austin and brings fifteen or twenty or thirty men with him, and brings his attorney down here, and the other man fighting the case comes up and you have a law suit on here that will be like a fight on a gas rate; and it would be a regular monster of a case, wouldn't it, then, be a great big case, and cost lots of money?

A. Well, the Commission could go to Wichita Falls; I see nothing to prevent it.

Q. Before the East Texas field came in, did you ever have the oil companies come in and reduce their rates?

A. I said before that there had been no complaint or petition made since I was with the Department until then, except the one I told you of.

Q. Did you say, or not, that someone advised the Commission they had no authority to locate the drilling of wells?

A. Yes, that has been my understanding from the beginning. Not to locate the wells, either, but here is what I said—that the Commission did not have the authority to stop the drilling of wells, but I did say they had the authority to space the wells and to determine the location of them; that is, how far apart they should be and how far they should be from the property line. I did not say they did not have that authority.

Q. What you mean is—you don't believe they have the right to say how many wells should be drilled, but they do have the right to say where they should be drilled.

A. Not where, Mr. Graves, but how they should be spaced.

Q. Is there any limit to the space?

A. We put the minimum at 150 feet from the property line, with a minimum of 300 feet apart, except

that the rule provides for exceptions to protect vested rights to prevent waste; a man might have a small tract of land, in such shape that he could not locate a well 150 feet from the line, and in that case the Commission would grant an exception to him and permit him to drill closer than 150 feet from the line.

Q. You have different rules in different fields, have you?

A. No, sir; we have a uniform minimum of 150 feet, but by the consent of operators in different areas the amount is raised. In the Panhandle and in West Texas, in some cases, the wells are drilled 330 feet from the property line and 660 feet apart, which is good practice; but our rule is, in all cases, the minimum.

Q. You would allow him to drill all the wells he wanted to within his own enclosure, just so he didn't drill within 300 feet of another man's well?

A. No, sir; you must be 300 feet from your own wells.

Q. Within the body of the area, I must still stay 300 feet away?

A. Yes.

Q. Have you the power to tell me how many wells I should drill?

A. No, sir; not how many.

Q. Do I have to get permission from you to drill any wells?

A. No, sir. I can drill wherever I want to, except I must space the wells according to our rules.

Q. If you give to a purchasing company the power to purchase 600 barrels of oil, would you let that purchasing company take all of its oil from its own leases, if it so desired, or would you cut that lease down and say you shall only take one-tenth from your own lease and go out and purchase the balance of it?

A. You understand, we are controlling in our rules the production and controlling the operator, and the pipe line companies only to the extent of requiring them to follow our schedules. If the rules we lay down are carried out, the production will be ratable throughout the field, and all the wells will have connections. We do not undertake to say how much this company or that company shall buy.

Q. If you know, where is the major portion of this cheap oil being utilized?

A. The cheap oil?

Q. Yes, this oil that is selling now for 12 cents, or whatever it is, in that East Texas field; what is being done with that oil?

A. Some of it is being refined locally, and transported to tidewater, and some is exported, and some goes to the Atlantic coast refineries, and some goes to Texas refineries.

Q. Now the exports; where do the exports of that oil go, as far as you know?

A. I believe most of it to the Atlantic seaboard, to the Atlantic refineries.

Q. That would not be export, would it?

A. That is coastwise movement; if I said export, I did not mean that; I mean most of it goes coastwise; that is, shipped by water.

Q. Approximately how much oil, if you know, is in storage—crude oil?

A. I haven't looked up those figures.

Q. Don't you think you should know that, approximately, when you begin to prorate a field, how much storage there is at that time?

A. I just don't carry the figures in mind; at the time of our June 29th hearing, testimony was given as to storage, but I do not carry those figures in mind. I will be glad to get those figures for you.

Q. Did that testimony cause you to arrive at the conclusion that there is less oil in storage now than there was in storage in 1930?

A. Yes, sir.

Whereupon, upon motion, the Chairman of the Committee recessed the session at 12 o'clock, noon, until 2 o'clock p. m. of the same day.

The Committee met at 2:20 o'clock p. m. of the same day, Monday, July 20th, 1931.

Chairman Minor: The Committee will come to order. Do you want Mr. Parker?

Mr. Hardy: We want Mr. Parker back on the stand.

Thereupon R. D. Parker resumed the witness stand and further testified as follows:

Examination by Mr. Graves:

Q. Mr. Parker, this morning we were discussing the pipe line regulation proposition. Are you familiar with the amount of arbitrary charge that is made against a man that owns a barrel of oil when it is taken into a pipe line?

A. What do you mean by the "arbitrary charge?" You mean deducted—

Q. Yes, sir.

A. Yes, I can give them to you specifically, according to the rules.

Q. What are they?

A. Let me read you the rules on it.

Q. Two per cent, isn't it? And 3 per cent? You can give it to me from memory.

A. It is 2 per cent.

Q. Two?

A. The distinction of marketable oil is this: By the term "marketable oil" is meant any crude petroleum adapted for refining or fuel purposes, properly settled and containing not more than 2 per cent of basic sediment, water or other impurities, above a point six inches below the pipe line connection with the tank.

Q. All right, then, 2. B. S. & W. they call it.

A. Yes, sir.

Q. Then there is an evaporation charge, isn't there?

A. Yes, Rule 9, I think it is.

Q. That is 1 per cent, isn't it?

A. Yes, sir.

Q. Now, the real truth of the matter is that it evaporates practically nothing at all, or very much less than 1 per cent, isn't it?

A. Why, it has been testified here that oil in storage, Mr. Graves, evaporates 5 per cent, the major portion in the first month.

Q. All right, the major portion evaporates immediately in storage?

A. Yes, sir.

Q. I am not talking about storage, I am talking about in transit, as it is going from the Winkler field into the Gulf Coast, it will evaporate 5 per cent; is that right?

A. No, sir, it evaporated in storage, in the pumping stage, in pumping out of storage tanks at the next stage of pumping, it doesn't set in evaporation all the way through.

Q. All right. But you take away from that 1 per cent for that purpose, and that makes 3 per cent that the seller has lost—if he gives you 100 barrels of oil, he loses three barrels of it, doesn't he?

A. Yes, sir.

Q. Now, getting back—leaving that portion of it—and getting back to the proposition as to how much oil a field is capable of producing—did you obtain these figures yourself or did you take those figures from people who were interested in the field?

A. The figures were based on testimony, in every case we have we have to take testimony upon the amount the field might produce without waste.

Q. Now, if the larger companies are interested in a field, largely interested in a field, and give to you figures that the field will produce 2,000,000 barrels a day, that will allow that major company, under the proration scheme, to produce a larger amount of oil.

A. You will have to read that question again.

Q. In other words, it is beneficial to the major companies to say that the field is larger than it actually is, isn't it?

A. Well, it might be of benefit to one individual company that is producing in that field, that it is larger than some other field and would have to take more oil out of it, but it doesn't necessarily follow that—

Q. What I am driving at, if a major company in the Yates pool told you the potential or possibility was 2,000,000 barrels a day, and you would allow them to bring out of that 200,000 barrels a day, when in truth and in fact it was only producing 30,000 barrels a day, it would be to their benefit to tell you it would produce 2,000,000 barrels, wouldn't it?

A. Yes, sir.

Q. Isn't it a fact that your figures relative to the potentiality of a field have been furnished in great part by the major companies?

A. Oh, no, the largest portion of the field, they come from both the major and independents, Mr. Graves.

Q. Isn't it a further fact that approximately the East Texas field has already been thrown into the hands of the major companies, isn't that a fact?

A. Yes, now—they have the major holdings there.

Q. Have the major holdings? They obtained them at a very small price, didn't they?

A. I couldn't say that, I don't know.

Q. You don't keep up with any of those matters.

A. No. sir; I don't know what they paid for it, I don't know what a single lease sold for in East Texas at all.

Q. And I believe you told us the East Texas field ought to produce how many barrels of oil per day on

its flush production, open production?

A. Its rated potential is something in excess of 2,000,000 barrels.

Q. And you have allowed it 250,000 barrels?

A. Yes, sir.

Q. That is approximately 10 per cent?

A. Yes, sir.

Q. And that is approximately the figures by which you arrive at the prorative power that ought to be given to a field, is that right?

A. Yes, sir.

Q. And the per cent would vary under the same requirements?

A. Yes — no — additional wells would add a different per cent.

Q. That is true, but suppose you had 1000 wells, or 100 wells, with 2,000,000 production, you would still allow them 250,000?

A. Yes, but that is not the case, the possibilities would not be so great.

Q. All right. Mr. Hardy wants to ask you some questions.

Questions by Mr. Hardy:

Q. Mr. Parker, prior to the last order for the East Texas oil field, the last proration published, was there any provision in any of your orders for East Texas relative to ratable cases?

A. Yes, sir. The order itself was the primary ratable taking order, Mr. Hardy.

Q. The last order?

A. Yes, both of them. If the first order that was published had been carried out, we would have had ratable takings.

Q. Well, did that order provide for ratable takings?

A. Yes, sir.

Q. Did the last order have it?

A. The last order didn't have it. Rule 11, I believe, is part of it, requiring all persons and corporations, meaning railroads and everybody else, a general provision requiring all of them to abide by our rules or our orders, without specifying; we also had a provision in there that the pipe line companies could not vary from the line of schedule, and they haven't varied from that except in a case of those companies in the East Texas field, where an injunction was obtained against the Rules, we were enjoined from enforcing the Rule against the pipe lines.

Q. Well, did any of your orders for schedules require them that they should take ratables from other wells, did you put those Rules in there?

A. Yes, sir.

Q. Was that in the order also?

A. I don't know whether it was in East Texas, but it was in the general order.

Q. It wasn't in the general order —the East Texas order, was it?

A. No, sir.

Q. And you testified this morning that you didn't think the Common Purchaser Law was probably legal from the advice you had, and enforceable, and, therefore, you went about requesting these various companies to take your oil, is that right?

A. Yes.

Q. Now, then, don't you think that if you had entered an order, in the form of an order you issued, that they could take ratable, that at the time of your last order there would not have been about 180 wells unconnected?

A. I don't believe so, I don't believe they are going to get themselves in any better shape, I don't believe they are going to make any improvement by reason of the fact that we put that provision in the order; at least I doubt it; and we put it in, Mr. Hardy, hoping to arrive at a proper basis for action, to decide on.

Q. How many unconnected wells were there at the time you issued this order?

A. One hundred and sixty.

Q. How many are unconnected now?

A. I haven't got the last figures.

Q. Well, if there were 160 wells unconnected, didn't I understand you this morning to say there were 135 unconnected now?

A. No, sir, I didn't so testify.

Q. How many proration orders have been made, Mr. Parker?

A. Four, I believe it is.

Q. What date?

A. I would like to look that up—one August 14th, another in November, one in January, and one in April, and one just recently—we have five.

Q. What was the price of oil when the first State-wide proration order was issued? What was the price of oil in the West Texas field?

A. It was in excess of $1 in some fields.

Q. It was in excess of $1?

A. Yes, sir.

Q. What was the price in East Texas at that time?

A. East Texas oil was running

around 50 cents to 70 cents maximum price.

Q. Have approximately all of those orders, except the order affecting East Texas, been obeyed or violated?

A. Oh, most of them have been obeyed; we have gotten fairly good results.

Q. Practically all of them except East Texas?

A. Well, the Panhandle hasn't.

Q. The Panhandle hasn't?

A. Yes, and then there has been some minor violations in other places.

Q. In this list you gave me of the other violators, did you include the Panhandle violators?

A. No, sir.

Q. Will you give me a list of the Panhandle violators?

A. I will.

Q. How many pool orders, we will say how many proration orders for pools?

A. About 11 or 12.

Q. When was the first?

A. About June, 1928, if I recall, we put the Winkler field under proration.

Q. Who first suggested proration to you?

A. The Commission held a meeting, who was first I don't recall, and it was held here in the Capitol, in the Senate, and all operators in the State of Texas were invited to attend it; and out of that meeting there was a committee appointed for the purpose of making recommendations to the Commissioners as to what they could do; a committee was appointed, as I said, and recommended back to the Commission the adoption of proration. I do not recall the personnel of that committee, I can give it to you by looking it up in the record.

Q. And that was for the Winkler pool?

A. Yes, sir.

Q. Had there been any pool in Texas prorated prior to that time, prorated by voluntary agreement?

A. The Yates pool had been prorated by voluntary agreement.

Q. Who were the major producers in the Yates pool?

A. Mid-Kansas Oil and Gas Company owns the major portion of the Yates.

Q. What other company?

A. Humble is interested there, and the Gulf has some interests, the California Company has some, and various others; those are the principal ones.

Q. The Yates pool, then, is owned by what we call major companies, is that right?

A. Yes, sir.

Q. All right. Now, then, since the first proration order of the State —State-wide proration order, in August, 1930, has there not been a decrease in the price of oil?

A. Yes, sir.

Q. Hasn't there been a posted decrease in the price of oil after each proration order?

A. Well, whether it follows immediately—I don't think so.

Q. Sometimes, with 30 or 60 days after each proration order?

A. There has been a reduction from time to time, I am not able to co-ordinate it with the proration order.

Q. How do you account for the fact that after these proration orders are issued the price reduces?

A. I don't know.

Q. You cannot account for that?

A. No, sir.

Q. Do you know whether or not it is true that some of these major purchasing companies have been posting a price for oil and then refusing to pay that price for it?

A. I don't know, sir.

Q. Do you know whether or not that is true?

A. No, sir, I don't know that to be a fact.

Q. Who drew that order?

A. I heard that the gentleman's—question was—

Q. Well, the gentleman's question was, don't you know that the Magnolia Petroleum Company posted a certain price and then refused to take the oil at that time?

A. I don't know, but I heard they paid more than other companies charged—I don't know.

Q. Do you know whether or not the Attorney General has filed a suit against them based upon that fact?

A. I don't know. Judge Upchurch is here, he can answer for that—

Q. Now, Mr. Parker, let us go back to this last order. Who drew the last order, affecting East Texas?

A. It was drawn in my office, in conference, or after a conference with the Commission and others, mainly by Mr. Hardwick and myself; I take the responsibility for it.

Q. Oh, you take the responsibility?

A. I take the responsibility for the preparation of the order. We had

discussed the matters forming the basis of the order, and putting it together was merely a matter of terminology and adaptation of words to carry out what the order was.

Q. Now, what was that order drawn behind closed doors?

A. There was no secrecy about it, no.

Q. Did anyone come to you and request to come and listen to the dictation of that order at that time?

A. If anyone did I don't recall. I invited the Attorney General to attend the conference and come in, not alone then, but before it was issued, discussed it with him. I don't remember whether anyone else came in and asked to be present.

Q. Who is Mr. Hardwick?

A. Robert Hardwick?

Q. Yes, sir.

A. I testified this morning he is an attorney, I believe, for the Central Proration Committee, he is head in the conduct of these suits brought against the Commission, is thoroughly familiar with conservation laws and proration and conservation of oil, and conservation laws in relation to proration. He is a practicing attorney, I understand.

Q. Does he represent any particular authorities in bills that have been brought before this Legislature?

A. I don't know, but I think he has consulted with the Oil Emergency Committee in the preparation of their bills.

Q. Did you know that at that time?

A. That had not happened at that time.

Q. That Oil Emergency Committee had not been created at that time?

A. Oh, yes, it had been created, but had not, so far as I know, started into the consideration of any bills.

Q. Do you know whether he is in their employ now?

A. I don't know whether he is or not. His employment with them, as far as my understanding is concerned, was incidental; he was employed by the Central Proration Committee. He may have had other employment; I don't know.

Q. Who is the Central Texas Proration Committee, where is it conducted?

A. Mr. Terrell explained all of that. His explanation of it was complete, I think.

Q. Sir?

A. Mr. Terrell's explanation of how that committee was formed is complete; it is in the record, if you recall that.

Q. His statement was correct on that?

A. Yes, sir.

Q. Did you tell Mr. Terrell and Mr. Smith that Mr. Hardwick helped you draw this bill, draw this order?

A. No, sir; Mr. Hardwick was present.

Mr. Adams: All right.

Mr. Hardy: Mr. Chairman, I don't like to get into an argument with the Committee about questions, here, but I think it is material. I have finished that end of it, as far as going into it at this time, but I would like to know, I asked that question whether Mr. Hardwick was before the committee, or knew whether this order was going to be drawn up, I presume—

Q. Mr. Parker, in making the proration orders and allowables, did you take into consideration the storage in the United States?

A. No, no, except as intended to holding down of our allowables, so that some oil might be kept out of storage. As an illustration of that, that allowable is fixed by the Federal Committee, the Committee that had Federal relations — 880,000 barrels. Our first State-wide order was limited by less than 700,000 barrels, and I am sure if it had been limited to that point it would have aided in taking some of the oil out of storage.

Q. Now, you state you are posted upon the allowable the Federal government gives to you?

A. No, I didn't say that, that is, you can strive for it, you may say the State has an official limit, I wouldn't undertake to say it is exactly.

Q. As a matter of fact, the allowables are made from nominations of the purchasers?

A. Yes, sir, the allowables are made from the nominations of the purchasers, together with experience in the matter of actual purchasers from the time of the issuance of our order.

Q. But you do not take into consideration storage?

A. No, as such, no.

Q. Then, when the Central Proration Committee makes its recommendation, you do not inquire as to whether or not the purchasers desire to purchase oil and place it in storage or whether they desire to refine it, do you?

A. No, but the idea was to hold the allowables down to the amount that was necessary.

Q. Well, do you know how much there is in storage?

A. I can't give you the exact figure at this time; I knew at the time, through hearing it, and at the time the order was entered; I can get you the figures, Mr. Hardy; it varies, of course, from day to day—I would be glad to give you the amount of oil in storage by the month.

Q. Sir?

A. I would be glad to prepare a statement for you that would give the oil in storage for a month or months, for four months.

Q. We would be glad to have it, Mr. Parker.

A. All right.

Q. Isn't it true that the amount in storage now is less than 12 months old?

A. That is my information; I haven't the exact figures.

Q. All right. Now, when these other purchasers decide the major purchasers have endeavored to name certain nominations, has anyone at any time objected thereto, and has the Commission cut down the amount they have nominated for?

A. I have not.

Q. You don't recall any incident where the Mid-West Refining Company in Wichita Falls asked for more than they could refine and produce and was confined to what their capacity was?

A. Well, some combinations, as I recall, that claimed over their consumption, that was taken into account, that is true—they were inflated.

Q. Were any of those nominations you thought inflated in those purchasers from major companies?

A. Yes, sir—no, I think they were from other refineries.

Q. Isn't it just as much waste to allow the sale of crude oil from the East Texas pool to be taken and stored in Louisiana, or somewhere else, as it is to allow overproduction in East Texas and store it in East Texas?

A. It doesn't make any difference where it is stored, it is wasted. There is a difference in a hot climate and in a colder climate; there is a higher rate of evaporation during the hot summer months than during the winter months.

Q. What is the rate of evaporation in the summer months?

A. I cannot give you the figures. In these rules that were adopted—pipe line rules—it was testified that during the hot months that the evaporation of oil was greater in the hot months than in the cold months. I can't give you the exact figures, I don't think anybody has arrived at the exact amount.

Q. Now, I want to get you clear as to whether or not you take into consideration storage in the matter of allowables, I haven't got that satisfactorily; do you take storage into consideration?

A. I said no.

Q. Well, now, if it is a waste to store it, by evaporation, why not take that into consideration?

A. I said a while ago that the limit fixed by the Federal Committee for production in Texas was 880,000 barrels, and our order was limited to approximately 700,000 barrels, with the idea that some oil would be taken out of storage.

Q. But yet you have never questioned any of these companies about what they are going to do with this oil?

A. No, I think not.

Q. I want to go back now to a matter raised by Mr. Terrell the other day about one of these umpires. I believe it has been stated by your committee that the umpires are appointed by the operators themselves, or nominated or suggested to the Commission by the operators?

A. Yes, sir, by the committee.

Q. And except in one instance, all of those nominations by the operators have been accepted?

A. Yes, sir.

Q. Now, then, in speaking of a committee of the operators—

A. (Interrupting) They are not blindly accepted; we inquire into the men where we don't know whether they were capable or not—we know the men that we appointed; they were not blindly accepted.

Q. There was, however, one rejection—is that right?

A. Yes, sir.

Q. Mr. Terrell stated the other day he did not desire to state the gentleman's name. Do you know the cause of his rejection?

A. No, I can't say that I do.

Q. Were you holding the position you now have at that time?

A. Yes, sir.

Q. Did you have anything to do with suggesting his rejection?

A. No. The Commission indicated to me that he would not be satisfactory to them, and I reported that information to the committee. That was all I had to do with it.

Q. Do you make recommendations to the Commission for the employment of any supervisors or umpires?

A. Yes, sir, I have.

Q. Are most of those recommendations carried out, or are they appointed?

A. Yes, I believe they have been; not all of them, however.

Q. The great majority have been?

A. Yes.

Q. Has there been any political connection at any time with any of those employes or those recommendations?

A. Politics have never entered into my suggestions at all.

Q. All your recommendations, then, to the committee have been based purely upon qualifications shown?

A. Absolutely; I am responsible for it, and I like to have good men.

Q. Are you responsible for the acts and conduct of the umpires?

A. Well, yes.

Q. Do you know all those umpires before they are appointed?

A. Yes. I think they are all honorable, capable gentlemen. Some of them I know better than others.

Q. If these umpires are recommended or elected by the operators, how do they express that recommendation, how do the operators convey to the Commission that information, that they desire to have so-and-so appointed?

A. I don't recall in every instance, but they have recommended verbally and in letters, as I recall it—in different ways.

Q. Who are those letters from?

A. That committee, the Advisory Committee, the chairman of this Advisory Committee.

Q. And that Advisory Committee —is that the Advisory Committee of that district?

A. Yes, all of that field.

Q. Well, how did the operators in that district select—do they have to vote upon the recommendation?

A. Well, the Committee meets from time to time and they vote on it and discuss a man, and vote on it.

Q. Are those Advisory Committees always the same, practically in all districts?

A. No, sir; we have had five and seven men.

Q. Who would select?

A. In the East Texas field we had fifteen; they are selected by the Operators' Committee meeting, meeting held and nominations made and elected by the operators themselves, by a majority vote.

Q. Does each operator present have a vote?

A. Well, yes. The East Texas order is based on the holdings of those—it was thought advisable to give the royalty owners a chance to vote on them—I thought they ought not to do it, but I was overruled on it—and it provides in that order that the votes be based on the relative holdings.

Q. Upon what?

A. On the royalty owners' basis, on the relative holdings—for instance, a royalty owner has only one-eighth interest in the land, while the lessee had a seven-eighths interest, and a distinction was made in this last order for that reason. It doesn't make any difference to me; I would just as soon do it on the basis of the old way. We have good committees, any way; I think all of the committees have been good committees; I don't think that there has been any complaint on them.

Q. You haven't had any minority upon the recommendations of these umpires?

A. I don't ever recall any.

Q. All of them have been fairly appointed by unanimous consent?

A. Yes. I have attended a lot of the meetings where they have been appointed, called the meetings to order.

Q. Isn't it a fact that all the umpires were former employes of the major companies?

A. Why, they have been employed by both, most of them—they have been engaged in business, yes, sir.

Q. Well, can you state whether or not all of them were former employes of the major companies?

A. I think in most cases they have at one time during their career been employed by some one of the so-called major companies, yes, sir.

Q. Have any of them been employed by independent producers?

A. I couldn't say as to that, I haven't checked up that.

Q. What qualifications are required of those umpires, if any?

A. They should have complete knowledge of production and drilling methods, and pipe line work and operation of pipe lines.

Q. It is true that the qualifications of an umpire are such as might have or would probably require that at one time he worked for a major or an independent company — isn't that correct?

A. Not necessarily. A man could get good experience in a small company.

Q. Sir?

A. A man could get good experience with a small company to qualify. I wouldn't make any distinction.

Q. He must have had some experience in the business prior to that time, though, mustn't he?

A. Absolutely must, yes, sir; and all of them have had.

Q. Have any of these umpires ever been discharged by the Commission?

A. No, sir.

Q. Their services have been satisfactory at all times?

A. Well, there was made a complaint once, and I thought he was not giving the Committee satisfaction; I made complaint as to him, and a change was made.

Q. Well, was he just changed from one pool to another?

A. No, sir.

Q. Did he resign?

A. I think he was permitted to resign, I don't know—I think maybe he resigned voluntarily, just quit. It wasn't because he didn't know the business.

Q. Do you know whether or not any of these umpires have ever been discharged by any of the major companies for cause prior to going on the works?

A. No, sir.

Q. This question has been sent up: "What if the House passes a bill on the question which contains a provision where the supply is controlled by the market demand, won't it have the effect of breeding out the independent oil man?"

A. I don't know why — I don't think it would, no, sir, at all.

Q. Isn't it true that at this time, in the last week, there have been some 107 new locations made in the East Texas field?

A. Probably so, yes, sir.

Q. Do you know what portion—do you know whether or not the greater portion of that was made by major companies?

A. I think they were made by major companies, yes.

Q. Do you know whether or not a great many of those locations that are being made in the inner part of the field are what is known as inner wells, rather than outside wells?

A. Yes, sir; I understand they are inside wells.

Q. What is the reason for drilling those inside wells?

A. Well, the line wells have all been drilled.

Q. It is not necessary to drill these wells in order to keep the oil, is it?

A. No, sir. The probabilities are it is done to increase their payroll—I don't know.

Q. To increase their payroll?

A. Yes, sir.

Q. Now, then, you have stated that the Common Purchaser Law has been ineffective. Isn't it true that a great many of those purchasers are for proration?

A. I think so, yes, sir.

Q. They favor proration?

A. Yes.

Q. Now, isn't it true, also, that they could, if they favored proration, refuse to make connection and take more than the allowable anyway?

A. Well, they could probably do that, yes.

Q. You have never tried to enforce the Common Purchaser Law?

A. No, sir.

Q. And they could do that?

A. Yes, they probably could do that, yes.

Q. Have you stated to this Committee how the umpires obtained the flow of a well, the potential of a well, or was that done by Mr. Terrell?

A. Mr. Terrell explained it — I think; in fact, I know he did.

Q. I think Mr. Terrell said this, that he would rather leave that to you, that that was technical information. Would you mind telling the Committee how that is done?

A. Well, the potential flow is taken for a two-hour period, with a tube, in the East Texas field, with an 11/16-inch choke; the amount of oil produced in the two-hour period, multiplied by twelve, gives the rate of potential per day—24 hours; in other words, it is practicable to determine whether it will be a pumper or a flowing well, whether it will be reduced to 2½-inch tube, or whether it will be flowing for 24 hours.

Q. How do those umpires determine just how much oil has been taken from a well each day after the allowables are made?

A. By the pipe line run.

Q. Does he check it?

A. Runs tickets; he gets regular reports from the pipe line as to the amount of oil run, and he has to make arrangements to check the railroad stations, and it shows the amount of oil that is taken out by rail—he puts men on that particular work.

Q. Does he actually make a gauge of that, or does he simply take the figures of the producing companies?

A. He takes the pipe line runs, by which the owner of the land is paid, the actual pipe line run; there is a record made by the pipe lines, they show the run tickets, for each shipment of oil, every time it is gauged; there is no getting away from that; it is an absolute record.

Q. Now, going back to waste—early in your testimony you stated that very often the drilling of a well too fast or the flow of a well too fast, would cause a loss of oil in the same, and that oil was a permanent loss—is that correct?

A. Yes, sir. That has been repeatedly testified.

Q. And you stated it was a permanent loss because of the fact it was too expensive to attempt to locate it?

A. Yes, sir.

Q. Well, how much oil would you say would be lost that way?

A. Well—

Q. What percentage of oil would be lost that way?

A. I couldn't state any actual amount, because it would vary in different sorts of sand; it would be different in sand than what it is in lime.

Q. Well, in lime what would it be?

A. I wouldn't undertake to say; the probabilities are it would be more in lime than it would in sand, but as to fixing any particular amount, I don't think anybody could fix it.

Q. But if a considerable sum, would you probably authorize the drilling of another well or locating it?

A. It is questionable. If I knew where he was after it, it might be, yes, it is possible, but I think, myself, after a field has been worked over it is pretty hard to go back and undertake a second plan, how to get all the oil; it certainly would not pay.

Q. You would not undertake to say what the percentage of that was, would you?

A. No, sir.

Q. Whether a large or small percentage?

A. I wouldn't undertake to say how much.

Q. This question has been sent up: "If oil is placed in steel storage with covered tanks and with proper pressure valves, is it not true that waste is practically prevented?"

A. It is materially minimized by that method.

Questions by Mr. Beck:

Q. Mr. Parker, I have here a copy of The Oil Weekly of July 17th, 1931, in which is what purports to be a table showing the producing wells in the United States for June, 1931. Have you seen that schedule?

A. I don't think I have; I haven't looked at it analytically at least.

Q. We shall not expect you to be thoroughly familiar with each of these figures, but if they are in accord with your general experience and observation of the situation in Texas, I wish you would indicate in your answers. It is shown here that 43 per cent of the total production of oil in the United States is produced from wells yielding less than five barrels per day. Is that substantially your information?

A. That is probably true—that is probably true, but I wouldn't think it was out of line very far.

Q. Segregating these items which shows that in Texas we have 34,904 wells that produce less than 100 barrels per day, have a total yield of 384,000 barrels per day. Now, do you think these wells can continue to operate at the present price of oil?

A. They certainly cannot.

Q. They cannot? Now, this statement further shows that there are only 1,912 wells that produce more than 100 barrels of oil per day?

A. That figure sounds low, I would say it was low.

Q. 1,912?

A. That is about 2,000 wells.

Q. Now, this statement further shows that of those 1,912 wells that produce more than 100 barrels of oil a day, 1,867 of those wells are in East Texas. Is that substantially in accordance with your experience?

A. I wouldn't say that wasn't correct, because there are a lot of wells in Texas and West Texas capable of producing more and are not producing more. I expect this is correct.

Q. Yes, sir. Then it would appear that those wells in East Texas, if al-

lowed to flow unregulated and allowed to continue to be developed, would experience a cutting down of the wells of less than 100 barrels, or most of them?

A. Probably.

Q. Is that probable?

A. Probably, yes, sir.

Q. And at less than 50 wells outside of East Texas—the West Central area—could economically produce oil at the present market?

A. Yes, that is probably true; that is due to the price at the present postings.

Q. At present prices?

A. Yes, sir.

Q. Well, now, do you see any connection between that fact and that fact that the major companies are insisting upon developing a rather intensive drilling campaign in the area of East Texas?

A. Well, these figures are subject to change at present; you see, this intensive drilling going on at this time is a sort of future proposition—isn't it?

Q. That is what I mean.

A. You asked me if I could see the relation. I don't know that I can.

Q. Are we likely to find this condition: If all the small wells, producing 43 per cent of the total average daily production of the United States are required to be put out of operation, are we not likely to find a production greatly below the daily demand?

A. Yes, unless some of these flush fields open up to take care of the conditions.

Q. Unless the flush fields open up to take care of the situation?

A. Yes, sir.

Q. Would it appear that these big wells are being put down by the major companies in anticipation of that situation, a shortage of oil, after they are all shut down?

A. That would be my conclusion.

Q. Would most of these small wells then be lost, or would they be recoverable?

A. They are lost already unless the price goes up.

Q. If they are shut down and kept out of production during this low price, can they be salvaged and be made to produce at a later time?

A. No.

Q. They can not?

A. No, sir.

Q. Then it would appear that these companies that are able to finance themselves in the extensive East Texas campaign at this time, that those gentlemen control a greater percentage of oil production at a price undoubtedly due to be higher?

A. That might be true.

Q. Is that a reasonable conclusion?

A. Yes.

Q. Have you any opinion as to what would be the effect in Texas of the shutting down of these 34,000 small wells?

A. You mean the economical effect?

Q. The economical effect.

A. Throwing people out of employment, and things of that kind?

Q. Yes, sir.

A. That would be the practical effect, putting a lot of people out of employment, a reduction in incomes, etc.

Q. Does that same condition exist more or less all over the United States — that is, in oil producing areas?

A. Well, I think it exists all over the United States. One of the greatest causes of that, those 384,000 barrels a day you stated there, if those wells are abandoned they are forever lost, because it wouldn't pay to go in there and drill for future production.

Q. That production of 385,000 barrels a day, under the present economic conditions of the market, would be a loss that would occur to the petroleum industry of Texas, outside of East Texas, and would never be recoverable?

A. Yes, sir.

Q. Would never be recoverable either to the operator, to the owner or to the State?

A. It could be done but it wouldn't pay to do it, it wouldn't be practicable to do it, it would not be done.

Q. It would not be practicable? Are you able to explain to the committee why Pennsylvania oil is today at above $1.00 a barrel and Texas oil of equivalent gravity will sell at 15 cents a barrel?

A. Well, I think there is a small supply in great demand, I think that has lots to do with it. There is a difference in the quality of the Pennsylvania oil, I think that has something to do with it. It is a question of small supply in that area and greater demand.

Q. Now, I have heard it stated

frequently, and you have, too, that ever since proration became a part of the policy of the State, the price of oil has been declining. Do you think that is in any way—that fact is in any way related to the fact that proration has existed?

A. No, I don't think so.

Q. How do you account for it?

A. I am not able to account for it, I would not undertake to express an opinion here, because I don't know, Mr. Beck.

Q. Do you think the depreciation in price is altogether justified or fully justified by the reduced consumption, reduced demand, that has occurred as the result of the general business depression?

A. I don't think that. I think some reduction in price is due to producers in selling it, in buying, too, and, on the other hand, over-production. Now, this question of price-fixing by agreement is something I don't know anything about. I haven't any definite conclusion on it, and I wouldn't like to make a statement on something I don't know anything about, something I couldn't substantiate.

Q. Well, with your experience in this industry in this State, would it be your opinion that to accord the East Texas producing operators at this time that based upon the present price of oil, to allow all of the small wells in Texas to be shut down would be an operation to the benefit of the company or concern able to finance that kind of maneuver?

A. I don't think I can answer that question, I hate to ask you to repeat it. Will the stenographer read it?

Mr. Beck: Will you read that question?

(The Reporter read the question as above set out.)

A. I can't make connection.

Q. Kill the question. I will ask it again. What percentage of Texas production at this time is controlled by the major producing companies?

A. I couldn't say off-hand. I can give you an estimate of it, and will be very glad to do it.

Q. Is it necessary for any producing concern or individual before drilling a well to first get a permit from the Railroad Commission to drill that well?

A. No, sir. If the well is not to be located contrary to Rule 37.

Q. Estimating and having the knowledge that you do have of oil production in this State—at least the cost, the value of the oil now being produced—can you see any justification for the drilling of inside wells unless it is to be predicted that a higher price for oil will prevail when the smaller wells are required to cease operation?

A. Well, that would be the conclusion, that they appeared to do that in order to increase the potential and increase the amount of oil that will be taken out of the East Texas area, they might want to take more oil out of East Texas than West Texas.

Q. Would or not the concern have to increase its particular losses in order to do that?

A. What do you mean by "losses"?

Q. Wouldn't it require a very extensive drilling campaign to increase a potential under proration?

A. Yes.

Q. Would a smaller concern have an opportunity to protect itself in the same manner?

A. Yes, with the same holdings, and money to drill the well.

Q. It would have to have the same capital?

A. Well, it would have to have the necessary capital.

Q. Now, with these small wells that would be shut down under the present economic conditions, if they are allowed to continue to operate, approximately what is the life expectancy of these wells?

A. What wells—you mean the wells in East Texas?

Q. No, all the rest of the small wells. I understand that varies.

A. Well, that would run over a considerable number of years, it would be a well when it got down and would last a long time, a number of years.

Q. How long have the small two-, three- and five-barrel wells been producing in Pennsylvania and in Ohio?

A. O, for some years, many years.

Q. Some of them as long as 35 or 40 years?

A. Yes, sir.

Q. Would those small wells in East Texas have the same tendency?

A. If cared for in the same manner.

Q. But if this present condition continues and they have to be shut down, they are lost for all time?

A. Yes, sir.

Questions by Mr. Graves:

Q. Mr. Parker, referring to the proposition now, relative to the inadequacy of our laws, Article 6006 gives to you and your Commission certain power relative to the handling of gas, that is correct, isn't it?

A. Yes, sir.

Q. Are you familiar with the article?

A. Yes, sir.

Q. Article 6006 gives to the Commission certain powers relative to the handling of gasoline. That is correct, is it not?

A. Yes, sir.

Q. Are you familiar with that article?

A. Yes, sir.

Q. It is also correct, heretofore, that out in the University Field, we will call them, the Reagan and Upton county fields, has there not been an enormous waste of gas?

A. Yes, sir.

Q. Today there has been placed on our desks a letter from the University, or the land lease committee, carrying information to the effect that approximately at this time there are 110,000,000 cubic feet of gas being wasted in that field. Do you think that 6008 should have taken out of it the last sentence, in your book that you are looking at there, but it is not the last sentence in the statute, and which is is follows: "Provided, that this act shall not apply to— * * *"

A. (Interrupting) That is what we have been hoping and praying for six years.

Q. Then if that is taken out you would have the power to eliminate this enormous waste that is going on now out in the field?

A. I think if the Legislature would pass a bill amending that law in that way it would help us materially in the prevention of waste in that field.

Q. You think that would assist you materially in the enforcement of that law?

A. It certainly would. And we have asked several sessions of the Legislature to give us that identical law.

Q. Now, awhile ago you were asked about the per cent of the allowable in East Texas—is the major portion of the oil being taken out by the major companies or by the independents?

A. I would have to compile that information first.

Q. Can you approximate it—approximate what per cent?

A. I would say probably 55 per cent.

Q. What per cent of the production of the East Texas Oil Field is controlled by the major operators?

A. Approximately that per cent and maybe more.

Q. The real truth of the matter is that the major companies have gobbled up the major portion of the East Texas field?

A. I think the records will show the holdings of the major companies are the choice holdings in East Texas—the choice holdings are in the major companies' hands.

Q. And they have gotten it at distressed prices?

A. I do not know about that.

Q. But you do know that many of them have sold at low prices, do you not?

A. I am told that leases are going begging and royalty was not worth anything at this time.

Q. What do you think about this proposition,—at the present time the royalty owners have nothing to say about the sale of oil that is supposed to be purchased on his holdings? Is that true?

A. I think it necessary that he look to his lessee, the man who takes his lease and takes the oil from that lease to get the best price he can.

Q. He has to do that, doesn't he?

A. Well, in the event he does not think it is being properly cared for, he can have his lease cancelled.

Q. Do you think he ought to be given more protection than he has at the present time?

A. In that way?

Q. In the control of the production of his lease.

A. You mean more rights under the law?

Q. More power.

A. I think so.

Q. All contracts that he has at this time in regard to the leasing of his property leaves him practically powerless as to the price he has to take for the oil taken from his holdings.

A. For all practical purposes, it is true. If he demanded his royalty in oil he could get it, but it would not make his condition any better if it were handled in that way.

Q. The real trouble at the present time with the Railroad Commis-

sion is that they have not sufficient power to make the operators obey the law if they wanted to?

A. Yes, sir.

Q. The Railroad Commission's orders are disobeyed and violators of the law have no penalty assessed against them, and at the present time under the present law you have no way to make them live up to the orders of the Railroad Commission?

A. That is right. I think the Commission can just as well consider the abrogation of its orders.

Q. Do you know of any barefaced violations of your rules by any person as claimed to be by the major companies, and which claimed to be observing your rules?

A. I think one of the major companies has a suit filed against it right now, violating one of our rules.

Q. On account of the fact that they violate your rules without incurring any penalty for such violation?

A. That is my understanding, yes, sir.

Q. It is true, is it not, that that company has the power to produce 400 barrels per day, and then they were actually producing 10,400 barrels per day?

A. I do not know what the particulars were, Mr. Graves.

Q. Mr. Parker, you are familiar with the Gregg County Field, are you not?

A. With what field,—are you talking about what we call the East Texas Field?

Q. The Sabine River bottom belongs to the State of Texas?

A. I understand so.

Q. Is it a fact that on each side of the Sabine River in that section of East Texas that wells are being drilled on both sides of the river and are draining the oil from the river bed which belongs to the State of Texas?

A. I believe that is true.

Q. What is the closest they are to the river bed?

A. I cannot say. I will be glad to look that up for you.

Q. Cannot the Commission correct the distance of drilling wells from everybody else's land?

A. Yes, sir.

Q. Do not you also regulate the distance from the land that belongs to the State?

A. Yes, sir.

Q. And if you do regulate that, what is the distance that wells must be drilled from some other person's property? Now, then, in this Sabine River bed, do you know whether there are wells being drilled less than 150 feet from the river bed?

A. I do not know.

Q. I will ask you if it is not a further fact that these wells are continuing to operate one hundred and fifty feet from the river bed which belongs to the State of Texas—I will ask you if they will not drain the oil from the river bed?

A. Yes, sir.

Q. Now, I will ask you that if under the present modern methods of drilling, if you cannot drill a river bed with as little damage to the water as if this well were being drilled 150 feet from the river bed?

A. You can do that, but it would be a more expensive proposition. But it can be done.

Q. Is there any reason in the world why this oil under the Sabine River should not be protected?

A. None that I know of.

Q. Now for my own information. If the State does not want to drill in this river bed, could not it make a contract with the adjacent owners controlling wells not to drill?

A. We might agree with them not to drill.

Q. That is, not to drill?

A. Yes, sir.

Q. That could be done in this case.

A. Yes, sir.

Q. Is it not a fact that the State stands a chance to lose many millions of dollars' worth of oil through the loss of oil by reason of the drilling of these wells near the river bed?

A. Yes, sir.

Q. Do you know whether or not the Sabine River bed is leased?

A. No, sir. You will have to ascertain that information from the Land Office.

Q. The Legislature passed a law in 1929 taking all of the river beds off of the market, did it not?

A. Yes, sir.

Q. Have you any idea how many miles of proven oil land belongs to the State of Texas over in this East Texas field along this river bed?

A. That is in the midst of the field, and probably that would be over seven miles of the field, following the meanderings of the river.

Q. You mean that the State of Texas has oil land seven miles in width along the middle of the river bed in that section of Texas?

A. That is my understanding.

Q. And up to the present time there is not one drop of oil being produced for the State of Texas, or by the State of Texas in that field?

A. No, sir.

Examination by Mr. Farmer:

Q. Mr. Parker, a while ago, Mr. Graves asked you a question in regard to the conservation of gas. We have a great gas fight on in Fort Worth, and I am particularly concerned with this. This afternoon on the desks of the members there is placed a letter from the Board of Regents of the University of Texas, giving some astounding figures as to the great loss of natural gas. You know of the enormous amount of the loss of gas in the Reagan County Field?

A. Yes, sir.

Q. Is there any reason why millions and millions of cubic feet of gas that are being wasted there now are not conserved because the law now reads that this shall not apply to wells that are producing gas alone —is that the reason for that?

A. That is partly responsible for it.

Q. Now, if this Legislature should repeal that law, and give you the authority you now have to stop the waste of gas where oil is being produced, you feel sure under the statement that has been made, that the Supreme Court of the United States has upheld what is known as your Rule 37, that under the Constitution and laws of this State that you could absolutely stop the waste of this gas, and that the waste of gas which is now occurring in that field could be eliminated—is not that true?

A. The enormous amount of gas that is now being wasted in this State could be stopped in the State of Texas, as a whole. I do not think we ought to stop at the Reagan County Field, but that we ought to stop the waste of gas throughout the entire State.

Q. Then, you as Supervisor of the Oil and Gas Division of the Railroad Commission of Texas, recommend that we pass such legislation as will stop this waste of this great natural resource?

A. I do.

Q. Now, then, if the major companies apparently set the price and fix it so low that there is a waste caused, and a loss to the State, should not we prevent the waste which results from the minimum price for crude oil that is set by these major companies at this time?

A. If we can stop waste, we ought to do it, but I doubt whether or not the Legislature cannot be enjoined from fixing prices in Texas, or in making a law that would have that effect. The conclusion would follow from your predicate.

Examination by Mr. Farrar:

Q. Mr. Parker, could you suggest any other necessary legislation than merely repealing the limitation that you cannot control any oil well in the saving of its gas—can you suggest any further legislation to conserve the escape and loss of gas?

A. Yes. We prepared a bill at this Regular Session of the Legislature. I prepared it and it was not passed by the last session of the Legislature. I do not believe that it ever got out of the committee. It was rather an elaborate bill and it turned out possibly to be too drastic in its original draft. We thought we would make it as stringent and rigid as possible, but we failed to get the bill over.

Q. Have you a copy of that bill with you?

A. No, sir, I do not have a copy of the bill with me, but I can get you a copy. I will give you the legislative reference.

Q. Do you now remember the number of that bill?

A. No, sir.

Examination by Mr. Anderson:

Q. I believe that you testified that 75 per cent of the oil being produced in East Texas at this time was controlled by the major companies and probably more than that amount of oil is controlled by them?

A. Yes, sir.

Q. And I believe you stated that one of the major companies was charged with producing more than 10,000 per day in excess of what was allowed to it?

A. I do not believe that I stated that. I did state in connection with the suit which had been brought by the Attorney General's Department, that it was alleged that one of the major companies had violated the terms of the provisions that they were to produce only 400 barrels a day, and that they were producing, so we had been informed, 10,400 barrels per day, when their allowable was only 400 barrels.

Q. Now, then, Mr. Parker, I want to ask you this question. If 75 per cent of the acreage is controlled by the major companies, and more than 75 per cent of the production is controlled by the major companies, and if the major companies, which has been stated here, are willing to obey proration orders, if they would obey the orders covering proration 100 per cent, what would be the effect if the other 25 per cent did not obey those orders—would not that relieve the situation 25 per cent?

A. Yes, sir.

Q. Now, if they control 75 per cent of the production, that is, the major companies, I believe you stated that, didn't you?

A. Yes, sir.

Q. And I believe you stated they were in favor of proration?

A. Yes, sir.

Q. Then if they live up to that—if they would live up to the orders put out by the Railroad Commission covering proration, that would then reduce the overproduction to that extent in that field?

A. Yes, sir. If that was done, I think it would reduce the overproduction somewhere around 100,000 barrels, but here is one thing that has to be taken into consideration in connection with that. If the major companies live up to their agreement and a well is put down by an independent operator on an adjoining or as an offset, it would naturally follow that the major company would have to drill an offset well in order to protect their interest. There are more than twenty-five operators, and they have, I suppose, at least fifty wells, and that would make a bad situation. I mean there are twenty-five operators at this time who are not obeying the orders of the Commission.

Q. Is it not a fact that the production is now less than it was a year ago?

A. You are talking about the East Texas Field?

Q. I will withdraw that question, as I understand it has already been answered.

Questions by Mr. Patterson:

Q. Mr. Parker, is it not a fact that 50 per cent of the gas that is in those wells there in East Texas, that is taken out of those wells, is used for the purpose of forcing the oil out of the hole?

A. Yes, sir. Gas pressure is an enormous assistance in the production of oil. That and the water are the driving forces which bring the oil to the surface.

Q. About how many wells in that pool will drain the pool?

A. Completely, you mean?

Q. Yes.

A. I think one well to 10 acres will drain it. It is estimated that there are 12,000 acres in the field, and that would be 1200 wells.

Examination by Mr. Davis:

Q. Mr. Parker, in connection with this common purchaser law, has there ever been any effort made to enforce the common purchaser law passed by the Forty-first Legislature?

A. Not by court action.

Q. Has there been any complaint to the Railroad Commission that the common purchaser law is not being observed?

A. Yes, sir.

Q. As a matter of fact, out in the Central Texas Field, don't you know that the major oil companies have persistently refused to take the oil of the independent people, but on the other hand, have taken their own oil?

A. That has occurred. The major companies having been taking their own oil, but they have not made any specific refusals to take the independent oil operators' oil in preference to their own, so far as I know. There are a lot of wells there in your district that were connected to the Prairie Pipe Line Company, and when the Prairie Company went out of the market a lot of those wells are more or less out of the other companies' territory, and the other companies did not care to go to the expense of getting in there and making connection with those wells, and therefore they were left out without an outlet, and in most cases they were such a distance away from the other pipe line companies that we were not able to force the other pipe line companies to go to the extent of making connections with them, as we could not force them to do so under the provisions of the pipe line law which gives the Commission the right to have those pipe line companies make connection, but they cannot do so at this time, because it would require an unreasonable expense to make the connection.

Q. Have you not heard complaints recently that oil wells that have been connected up prior to the first of this

year, and owned by the independent operators have been discriminated against by the major companies as to purchases?

A. No, sir. I have kept in pretty close touch with Mr. ————, and we have had no complaint about any discrimination being made in that territory. If you have any information relative to that matter, I would be glad to have you point out the case to us and we will do what we can to remedy the situation.

Q. Do not you think that the Legislature should pass a law to give you the authority to force ratable takings from the independents as well as others?

A. Unquestionably so. If you can give us a law and it is enforceable, I think it would be the beginning of the solution of our difficulties. There is no sense of justice or fairness for the oil pipe lines not to take the oil ratably from the various fields.

Q. And you think there are inconsistencies in the present law that we now have, and it ought to be revised in order to give you the power to enforce ratable takings of oil from the little producer, the independent man, as well as the other?

A. I described three objections to the law the other day, whether they can be corrected or not I do not know. That was given in my testimony on last Saturday.

Examination by Mr. Hardy:

Q. Mr. Parker, what per cent of the stripper wells are owned by the major companies in Texas?

A. I dare say the stripper wells owned by the major companies bears the same relation as the percentage of the major companies to the independents. They have stripper wells just as well as the other people.

Q. Then by that you mean that they would have about the same per cent of stripper wells?

A. Yes, sir. I believe that is about correct, and I would say that that was true, offhand.

Examination by Mr. Graves:

Q. Mr. Parker, relative to the B. S. & W. charge, which is, I believe, 3 per cent or 2 per cent for transportation, and 1 per cent for loss, could that be changed? Those are arbitrary charges, I believe, are they not?

A. Yes, sir. But they can be changed. I mean by that that we can hold a hearing and would be glad to hear complaints that might be made from any section of the State, and if the facts justified it I believe the Commission would issue an order changing the percentage that is now charged for B. S. and W.

Q. If the B. S. and W. was only 1 per cent and the evaporation was half or what it is now, who would be benefited by that?

A. The operators.

Q. The operators or the pipe line people?

A. The operators. The deduction is made against the operators.

Q. The full reduction of 2 per cent for B. S. and W. and 1 per cent for evaporation is charged against the operators?

A. Yes, sir.

Q. That makes $3.00 out of every $100 worth of oil, or three barrels out of every 100 barrels of oil, does it not?

A. Yes, sir.

Q. But if this B. S. and W was cut in half and reduced to 1½ per cent for the total, the operators would get the benefit of that, would they not?

A. Yes, sir, the operators would get the benefit, that is the producers would get the benefit of that reduction.

(Thereupon the witness was excused.)

Tom Hunter, of Wichita Falls, being duly sworn by the Chairman of the Committee, testified as follows, on examination:

Examination by Mr. Hardy:

Q. Your name is Tom Hunter, and you are from Wichita Falls, Texas?

A. Yes, sir.

Q. Are you an operator of oil and gas?

A. Yes, sir. I have been producing probably ten, or twelve or fourteen years.

Q. What portion of the State have you been producing in?

A. Principaly in the Wichita Falls district.

Q. Are you fairly familiar with the oil laws relative to the oil industry in the State of Texas?

A. Fairly so. I have practiced law some.

Q. You have obeyed those rules and regulations of the Railroad Commission?

A. Yes, sir.

Q. Do you have any interests in the East Texas Field?

A. Yes, sir. I have several leases in that section that I have not seen fit to drill.

Q. Are you familiar with the conditions in East Texas?

A. Yes, sir. In a general way.

Q. Are you familiar with the drilling program in East Texas?

A. To some extent. I have a man, a geologist and engineer whom I have kept in that field for some time and he is more familiar with the field than I am.

Q. Please state whether or not the East Texas pool is furnishing, that is, whether the pool is furnished with sufficient pipe line facilities to transport all of the oil from East Texas?

A. I will say this, that the pipe line operators are not carrying away all of the oil, but the pipe line capacity is greater than the pipe lines are carrying at this time. The pipe line capacity for that section of the State is 529,000 barrels per day, and I believe that is a great deal more than is being carried out.

Q. What is the production in that pool per day?

A. I could not give you that information.

Q. It is usually customary for a pipe line to go into a new field, is it not?

A. Yes, sir. They usually go in early in order to make connections with the wells as early as possible. It gives them an advantage during the life of the field.

Q. What are some of the reasons for the pipe line connections?

A. The pipe line companies, the major companies, own practically all of the pipe line systems, and with those pipe lines operating in the field they are able, if they have connections, to control the destination and course of travel of that oil.

Q. Who generally pays for new pipe lines into a flush field?

A. It is usually paid for by the operators in the way of reduced prices on pipe line transportation.

Q. The building of pipe lines is always expensive, is it not?

A. Yes, sir.

Q. But when they are completed they are not expensive to operate after that time, are they?

A. I have never been engaged in the pipe line business, but I would say that there is not any very great amount of expense connected with their operation after they are once constructed.

Q. Has the producing company with a pipe line a decided advantage of the company that has none?

A. Yes, sir, they have quite an anvantage. The independent company that produces oil and operates a pipe line and refinery, or a major company for that matter, has an advantage over the producer who has no pipe line because of the fact that his shipping expense is very materially reduced over the operator or man who does not have a pipe line.

Q. What position are they in during periods of stress?

A. Oil shortage, you mean?

Q. Yes.

A. During periods of oil shortage they have first claim over the oil and the independent cannot get it out and pay the greater price for transportation by rail.

Q. Do you know what amount of oil is in storage now, Mr. Hunter?

A. It is claimed by the major companies that crude oil in storage, that is, not including fuel oil, and refined gasoline, is approximately 600,000,000 barrels.

Q. Do you know whether or not that is correct?

A. As a matter of fact, I do not. I have undertaken to check it to some extent and in checking figures, for instance, the Prairie has probably the minimum amount in storage of 60,000,000. The Texas 26 to 28 million now, and with the other eleven companies that have storage capacity, I do not believe it will measure up to that amount, but I am not in a position to testify whether that is true or not. I do not believe, however, that there is 600,000,000 in storage at this time.

Q. What is the storage capacity in the United States, if you know?

A. I have never seen any figures on that, but it is at least 8 or 9 hundred million barrels.

Q. Do you know what the production at the present time in the United States is per day?

A. Approximately 2,400,000 barrels.

Q. Do you know what the consumption is in the United States at the present time?

A. Last month it was 2,827,000 barrels.

Q. How did you arrive at those figures?

A. From government reports.

Q. Then, according to your state-

ment, there is no overproduction of oil at the present time.

A. We have never had an overproduction of oil in the United States, there has been at times an available overproduction if these pools were produced to their maximum potentials, that is to their maximum outlet. The potential at this time is perhaps closer to the demand than it has been during eighteen months just past. Without East Texas we would have an oil storage.

Q. What is the potential at the present time in the United States?

A. That would be an estimate based upon the investigations that I have made, is under sworn testimony. At meetings held at St. Louis, Washington, Oklahoma City and other places. If all the producing wells in the United States were turned on full potential production for a period of 60 days I do not believe that we would reach a half million barrels over consumption. It has been claimed that we have from 6 to 8 hundred thousand barrels overproducduction and that has been maintained until the last few months.

Q. Were you present in Washington recently of the Texas oil operators who went before Congress to see what should be done to take care of the oil?

A. I was. I stayed there during most of the entire session—that is, the short session.

Q. Did you have at that time occasion to examine the importations into this country?

A. I did. Along with committee work, and before hearings, with congressional committees, both in the Senate and in the House.

Q. When was that?

A. During January and February of this year.

Q. State to the Committee what were the importations of foreign oil?

A. Separated from fuel oil and refined products, the accepted figure was 117,000,000 barrels for last —— Some of the parties before the committee, however, gave it at 108,000,000, 111,000,000 and 116,000,000.

Q. Then the importation and production in accordance with your figures that you have already given, do they exceed the daily consumption?

A. They do not, and have not for quite a while.

Q. Do you think, then, the production in East Texas has had anything to do with the price of oil at the present time?

A. Yes, I believe it does.

Q. In what way?

A. I do not know whether I can give any reason for thinking so, but in conference with major companies who presented their statistics, they gave us the assurance that if that pool was prorated the production would be maintained within the allotted figures given Texas that oil would immediately go up, and for that reason I believe that if an orderly marketing plan is adopted you will see an immediate raise in the price of oil.

Q. Do you mean by that statement that the production of and supply covers the price, or do you mean that that was a statement on the part of some of the companies to force a plan of proration?

A. I have had it said to me by high executives of major companies that if they were assured by a law that could be enforced and that the plan would be continued, that there would be an immediate rise in the price of oil because of the assurance that there would be a proper proration of the oil.

Q. Do you think that the reason for that is that they believe—that they are afraid of having their storage filled with high-priced oil and unable to dispose of it?

A. I believe that if they felt they had a law that was going to be enforced, and as they have no law at this time that they feel can be enforced, that they are compelled to withdraw oil from storage that they have bought at a high price, but if they had a law that could be enforced, the price would immediately go up and obviate any unreasonable storage of low-priced oil at this time.

Q. Do you know what the price of oil in California is at this time?

A. It has been recently 25 cents until the Sharkey Bill went into effect and now it is up to 40 cents per barrel.

Q. What is the Sharkey Bill, if you know?

A. It is known as the Sharkey Bill. It is a proration measure that bears some relation to the proration bill introduced in this State. It provides that the Commission to be nominated by the producers of that State may make an orderly proration to regulate production.

Q. Do they have any such bill in

other States that gives relief, that is, in the oil-producing States?

A. Yes, sir. In Oklahoma and Kansas.

Q. When were those bills enacted into laws?

A. The Kansas bill has been enacted for some time. The Oklahoma bill was first enacted in 1909. That is, the first bill that was in the State of Oklahoma. The second was enacted in 1913, and is known as the ratable taking bill, but produces, however, the same effect, with a different purpose at the time it was introduced. In the Huett field the pipe line facilities were not sufficient to take the amount of oil that was being produced there at the time, and being owned by the major companies they would take their own oil and the independent operators who were producing oil there at that time had no means of transportation for their oil, and the pipe line companies would not take the oil from the independents.

Q. Are they obeying that law at this time?

A. I understand that they do. I was not operating in that pool at that time, but the day that law went into effect there was a difference.

Q. Have you ever heard of Sir Walter Teagle?

A. Yes, sir. I have met Sir Walter.

Q. Have you ever had Sir Walter to make a statement to you?

A. I never have had many discussions with Sir Walter. I have met him.

Q. State who he is.

A. Walter Teagle is the President of the Standard Oil Company of New Jersey.

Q. Did you ever read any statement by Walter Teagle dealing with the present oil situation?

A. I do not believe I could tell you the particular statement that I have read. I have seen interviews from all of these executives.

Q. Do you remember an article in the Wall Street Journal along about three years concerning the oil industry?

A. That was an editorial written purportedly by the member of the staff, which, in so many words, said that the days of the independents were numbered.

Q. How long ago was that?

A. That has been approximately two years.

Q. Was that before the Kansas law went into effect? If you know?

A. Yes, sir.

Q. Was that before the California law went into effect?

A. Yes, sir.

Q. Did you ever hear of Henry Deterding?

A. Yes, sir.

Q. Who is he?

A. He is the President of the Royal Dutch Shell.

Q. Did you ever hear of any statements made by that gentleman relative to independent oil companies' operations?

A. About two years ago when he landed in California he gave an interview to the Los Angeles paper in so many words that the time of the independent operators was passing from the field, and that a few major companies would operate the oil industry in America.

Q. Do you believe that the present situation in the matter of oil activities is a result of the activity of either of these gentlemen?

A. Circumstantial evidence leads me to believe it has been a planned and designed scheme to carry out that plan.

Q. How has that been accomplished?

A. A number of methods have been used. Proration and the potential have been one of the weapons. The major companies have spread the information throughout the United States and to the people of the United States, and led them to believe that there was an overproduction in the United States of from 6 to 12 million barrels, and the people of the United States have believed that there was such an excess production of oil available that it has kept the oil price down. For instance, an independent man with 1000-barrel production will undertake to sell his property, and when he goes to one of the major companies to attempt to sell his oil he is faced with the statement that there is an excess supply of oil in the country; Oklahoma is producing too much oil; they are producing too much oil to supply the demand; Van will produce two-thirds of the world's supply, they will tell him, and as a result of that information being given to the independent the small man who has a production of 1000 barrels worth a million dollars will probably sell his entire output, or sell his property, for

10 cents on the dollar, or for a hundred thousand dollars.

Q. Is it a fact that those pools will produce that much oil?

A. It is absolutely and unquestionably false. For instance, the Yates Pool, and let it run under full pressure and there will be an encroachment of water from both sides and if that pool is allowed off at its full potential for 24 hours it would only be a question of a short time until it would not produce any oil to amount to anything. That testimony is based on the evidence of men who are experienced engineers, experienced oil men and who have charge of the production in that pool.

Q. How do they know what the potentials of those fields are?

A. I do not know exactly what the figure of the potential is. They can only tell by experience, but that pool might produce without damaging.

Q. What do they know about this water pressure? Are there various kinds of water pressure?

A. Yes, sir.

Q. State what they are.

A. I am not an engineer,—I am not versed in it, but there is a seepage water and a side water and a bottom water in the same strata, and a low water that is always below the sand. The Oklahoma City pool which has been rated heretofore at 5 million potential, the corporation commission, however, of Oklahoma cut that figure down, after a careful survey of that pool showed that the total potential of that field of ultimate recovery was 450,000,000, which would be the recovery during its life. If that pool were permitted to produce five million barrels per day it would produce its total output within ninety days, and this is inconsistent with belief. The same is true of other pools.

Q. Getting back now to proration. * * * Before we get to proration, will you advise this Committee whether or not you know of any petroleum engineers that could be summoned before this Committee to advise this Committee relative to this water pressure matter?

A. There's one man that has been in the employ recently, I think, of some of the Railroad Commission departments, or connected in some way, Mr. Foran, who is fairly well acquainted with all the pools in the United States, all over the country, and most any engineer of practical experience can give you general information on that.

Q. What engineer did you have in mind when you advised us that an engineer told you about this?

A. I spoke to several of them. I talked to Mr. Foran, to Mr. W. W. Ports, and several others; some of them I can't recall their names now.

Q. Did you state whether or not you knew what was the potential of the Yates Pool?

A. Less than 150,000 barrels; proably 100,000 a day.

Q. Did you state where you got that information?

A. I got it from the sworn testimony of a former district superintendent of a big company who had testified on direct examination on the stand that it would make three and a half million barrels a day.

Q. Where did you get that information?

A. I got it from the Railroad Commission hearing held on top of the Austin Hotel in Austin.

Q. When did you get that information?

A. In March of this year.

Q. Do you know whether or not there is a water situation in this East Texas Field?

A. There is a side water on the west side.

Q. Is there a great gas pressure in the Yates Pool?

A. There is a gas pressure there, and also a hydrostatic pressure, and that field, as I understand it, will flow without any gas, just from the water pressure.

Q. Is there a good deal of gas pressure in the East Texas Pool?

A. Yes.

Q. Would the water in East Texas seep into the oil sands in the same way it would in the Yates pool?

A. It would channel in and trap off the oil, yes, and waste the oil, but you don't have the hydrostatic pressure in East Texas that you have in West Texas; some engineers, in fact, say you have none at all.

Q. Was there any potential given, any testimony as to the potential of the East Texas Pool in the same hearing that you participated in on the roof of the Austin Hotel?

A. It was placed at different figures, although at that time the East Texas Pool was not well developed and they could not know definitely. I can give you the government reports as to the total figures of pro-

duction from that pool, if you want them.

Q. All right, let's have it.

A. The Geological Department of the Government, in one report I read, estimated that the total recovery of oil from that pool, over a period of years, at 1,320 million barrels. My engineer fixes it at 700 million.

Q. Who is your engineer?

A. W. W. Ports. He is really a geologist, and has engineering training.

Q. You have indicated that proration has followed out as indicated by the statements of Mr. Teagle and Mr. Deterding, relative to the independents; do you think that proration in East Texas will help conserve the natural resources of the State?

A. I really believe it will, Mr. Hardy, under the conditions now; I think they need it. I think there is an imperative need for it.

Q. Do you think it will aid or abet, or injure the major companies any more than the independent companies?

A. If it is misused it will; if it is used rightfully and properly under proper administration of the proration orders, it will work no greater hardship on one than the other, except for the fact that the major companies command an unlimited supply of money, as compared with the independents. If an independent is broke, he is broke, but if a major is out of money, he will sell some more treasury stock.

Q. Proration will not particularly affect that, will it?

A. It will not change that situation, except that I believe it would add to the returns in money for the oil they sell.

Q. Please state how proration has worked out in California.

A. Well, they really have not had proration in California; they have had an agreed plan out there that worked a great hardship on many of the independent operators. The Standard of California has a pretty strong hold on that State, I have been told, in discussing it with the Governor's representatives to the various conventions. Really it did this, after they put into effect this last proration they raised the price of oil one hundred per cent, and that was within a few days after it went into effect, and at the same time, they raised the price, wholesale, on refined products, in much greater proportion to the raise in the price of crude.

Q. Who fostered proration out there?

A. The independents started out fighting it because the bill introduced was what they termed a major company bill.

Q. Was the Sharkey bill a major or an independent bill?

A. It was charged that the major companies did the writing of it and I don't think it was ever denied; at least I never heard of it if it was.

Q. How are the independents now affected by it?

A. I have had two letters from leaders out there, and they feel that they will be able, under the laws and the proration orders when they are finally worked out and adjusted, that they will be materially benefited from it.

Q. Looking at the situation from the standpoint of the individual citizen and disregarding the difference between the ordinary citizen and the oil operator, how has the proration law of California worked out?

A. It would be necessary for me to make a statement to answer that as I have in mind, Mr. Hardy.

Q. All right, sir.

A. I would make this comparison —you have in mind the price of products to the consuming public. Recently our president submitted a moratorium plan which involved the principle of delay of the payment of war debts to the extent of $246,000,000. In that plan which he has submitted, he sees, and a great many economists of the world see, a restoration of prosperity. Bearing that in mind, and further that the reduced price of oil from an average of $1.88 per barrel, when we were producing 2,800,000 barrels per day, a reduction in price to slightly below 20 cents per barrel when we are producing oil at the rate of 2,400,000 barrels per day; therefore, we have a loss of circulation in the United States per day of about $4,500,000 per day from the sale of oil alone. That depressed condition in the price of oil has put out of employment, as the last government statistics show, in oil field workers and so on, over 292,000 men and now it has increased, and is still increasing, to nearly 50 per cent more than that, or approximately 450,000 men, considering oil field workers, group workers, and including the tool makers, shop men and so on; 450,000

men at an average wage of $7 per day, which means a lost wage earning in the United States of about $1,600,000 a day, totaling a lost circulation in this industry of more than $6,000,000 a day. Our lost production and loss of wages in the United States means a lost circulation of better than $1,800,000,000 per annum. If the $246,000,000 of the Hoover plan will restore prosperity, I say that the return of that $1,800,000,000 will put us on a boom.

Q. Do you think that $246,000,000 will restore prosperity?

A. It will help.

Q. A few minutes ago you spoke of proration in Texas, and said that if it was used correctly—I believe that's the term you used—it would aid in the conservation of the natural resources of the State?

A. Yes.

Q. What do you mean by correctly?

A. I mean in the usual sense of the meaning of the word, correct.

Q. What would you suggest that this Legislature do in order that proration might be correctly administered?

A. In my mind, I believe that if a board is created—

Q. Do you mean a new commission?

A. Not necessarily a new commission; an oil board under the Railroad Commission's appointment, with certain limitations and restrictions of this Legislature, would satisfy me and a great many others; if you pass a law creating an oil board of three, answering your question, fixing the qualification of those men so that inexperienced men, with lack of ability, cannot be appointed on them, and requiring that their appointment be checked by the Senate of this State—o. k.'d by this State—I think you would have an oil board that could administer the law. That board could consist of three men: one a lawyer, with experience in oil, in the practice of oil law; one a University-trained oil engineer, and another an oil man with years of experience in practical oil work, who should be conversant with the problems and tribulations of the industry and the oil business as a whole, taken as nearly away from politics as possible, and make an oil board and not a political machine.

Q. Do you think, then, that that is all that is necessary to correct the present evil in the oil situation—just the creation of a new board?

A. I would rather that the matter of the board, if you have asked me for my opinion, I would rather this question of a board did not come before this Legislature until you have passed a conservation law, because a board is a political machine and you can't get away from it. The people in this State are in destitution; thousands of them are in the bread line, and thousands more will be in the bread line in thirty days; let's just put out the fire with the truck we now have, and if we need a new truck after we have tried the present one, then get it.

Q. What sort of a conservation law, other than the creation of this board, would you suggest?

A. Say that again.

Q. You have just stated that you believe in putting out the fire, and you believe we should first enact a conservation law. What sort of a conservation law would you suggest?

A. The bill prepared by the emergency committee successfully ties the independent element of the industry.

Q. Are you a member of that emergency committee?

A. I am. It approaches in several places what I would like for it to do with the majors. I can suggest provisions that I would like to see go in that bill, and that the majors be tied as tightly as are the producers—I mean the pipe line and purchasing agencies; the producing end of the majors is now tied. But the purchasing agencies, the common carriers, are not. If that bill had added to it provisions that tied them as tightly as the producers are tied, then I would be for it 100 per cent; but don't misunderstand me; if you can't vote those in there, give us the other. There are too many men in destitution. You provide a receivership in that bill for a producer who does not comply with the law. Another paragraph, for instance, that I have in mind, might be written in there to put the purchasing agencies and the pipe lines in receivership likewise if they do not comply with the law. Although, if you cannot put that in there, we are willing, in this big emergency, to have the bill as it is now written.

Q. Do you think it would assist any to disintegrate those companies?

A. You will need some other laws to do that, and you will not have 100 per cent restoration until you do that.

Q. What do you mean by disintegrate?

A. Cut them up into their component parts, and allow the pipe line companies to compete with one another and the producers and not allow the pipe line companies during these times of distress, make the profits for the other departments.

Q. What advantage would that be in these times to the citizens of the State?

A. It would enure to their benefit, as I said once before, using for an example the cotton farmer of Texas. He now has a just rate on his cotton to the market; but if you repealed the control of the railroads and allowed them to charge the farmer ten cents a pound for hauling his cotton to market, or if you allowed them to charge half of what a bushel of wheat was worth to haul it to market, nobody would buy any wheat, and nobody would buy any cotton except the railroads, and there would be no competition, as there isn't in the oil business now. You open up those pipe lines to competition, as common carriers, at fair rates, and there will be independent refineries over the country buying oil and you will have competition on the market.

Q. What benefit will that be to the individual taxpayer?

A. It will maintain competition from the independent and among the oil operators generally and competition always insures fair prices.

Q. Will it assist in the conservation of the natural resources of the State?

A. It will assist in an orderly marketing because the majors could not, under a proper pipe line bill, be able to absolutely dictate the course of direction, and the destination of all the oil as they can now.

Q. Do you believe that it is necessary to take the economic situation into consideration in the passage of any proration bill that the Legislature might pass?

A. I surely do. There is no need of kidding ourselves that we are not contemplating market prices when we prorate, because we are.

Q. Do you think that?

A. Proration without price is not and will not avail us anything. You can have it directly spoken of or have it with an overcoat on and cover it up, but after all, it's the same thing.

Q. Can you have a conservation measure without that, which would conserve?

A. To some extent, yes. But you have a physical waste involved in price. If you care, I will tell you why.

Q. Why?

A. Take over in North Texas, West Central Texas and parts of South Texas, there's anywhere from fifty to seventy-five thousand small producing wells, producing less than four barrels of oil a day. There are in the United States as a whole, 330,000 oil wells producing less than—producing less than three barrels a day. These 330,000-odd wells produce a half a million barrels of oil a day, and would continue to do so for many years; without this conservation law and without a price, those wells will be plugged and the casing pulled. There will be billions of barrels of oil reserve forever lost; you can't get back later in those fields and redrill them; that oil is gone and cannot be recovered under any paying process after once plugged.

Q. Why?

A. That is physical waste.

Q. Why?

A. Because it would cost too much to go back in those fields afterwards and redrill those wells, and if you redrilled them you would find that the water encroachment had plugged or blocked off this oil and it could not be produced. You will thereby forever lose many billions of barrels of oil unless the price is very quickly raised.

Q. How can you determine upon a market price?

A. The United States government, through the tariff commission, has compiled figures, and fairly accurately determined what every barrel of oil in the Mid-Continent field costs; that it costs $1.19 per barrel to drill it, the cost of leases, maintenance, overhead, and so forth.

Q. Still, that doesn't answer my question as to how you can control the production to the reasonable market price?

A. Market demand and reasonable market demand might have two meanings. Market demand would be all the oil that could be bought at any price, but the accepted definition of reasonable market demand is that oil which can be sold at a fair profit to the producer.

Q. Do you think that any bill that contained a provision for reasonable market demand, if it should be enact-

ed, that it should also contain a provision for ratable taking?

A. No, sir. (Probably meant yes.)

Q. If such were passed, isn't it true that one producer who could obtain a market for his oil could sell all he could produce and still be within a reasonable market demand, and still another producer would be without a connection and could not sell any?

A. I think you are correct.

Q. Wasn't the Sharkey bill in California passed based upon the production in excess of the demand?

A. Yes, in excess of the reasonable market demand.

Q. It describes waste as being that which is beyond the reasonable market demand?

A. Yes.

Q. Isn't it true, then, that the regulation of production to the reasonable market demand by governmental agency is price-fixing by the government?

A. It is, if I understand your question. There's other reasons, of course. You have physical waste in pools like Yates, Hobbs, New Mexico; Darst Creek, and Salt Flat; Oklahoma City, and so on, where there is a hydrostatic pressure, and there would be operators in that pool who do not know or care what the proper amount of production is, and it would be necessary to restrict that production in order to keep them from drowning their neighbors' leases.

Q. Could you leave out reasonable market demand in an act of conservation measure and would the result be an increase in the price of oil, from the fact that it was a conservation measure?

A. It would not obtain, in my opinion, the full effect unless the enforcing body, under some other reason, did the thing that brought about the same result of bringing the oil within what was the reasonable market demand. In other words, I believe that is necessary to a full recovery, and you must have it, whether the result is procured in that or some other way.

Q. Are you a lawyer, Mr. Hunter?

A. I have practiced law for a number of years.

Q. Are you familiar with the Constitution of the State?

A. I replied one time to a lawyer who asked me that question, that a constitutional lawyer turned loose in a library couldn't find the Constitution in two weeks. I can comply with that. I am not a constitutional lawyer, and I am not so qualified.

Q. Do you know of any provision of the Constitution, or have you run across any in all your ramblings in the oil and in the law, which would authorize the Legislature to pass any measure based upon an economic proposition?

A. There is no direct language in the Constitution which so states they could; I am inclined to believe that it might be interpreted by the courts to include it.

Q. You endorse, then, Section G of the Emergency Oil Committee's bill?

A. I do.

Q. Mr. Hunter, you have stated that the production at this time is less than the consumption?

A. Yes.

Q. In the United States?

A. Yes.

Q. Now, isn't it true that proration would simply be a reduction in production?

A. It would.

Q. Then, if you are not able to maintain the price of oil—

A. It would look forward further, to an orderly marketing over the country.

Q. Wait a minute; I haven't asked my question yet; I think you are anticipating me. If you are not able now to maintain the price of oil sold, based upon the cost of the production of your oil when there is less production than there is consumption, how would you maintain your price by reducing the production?

A. You can anticipate by the fact that you have an enforcable law that when the majors are compelled, under that, to begin withdrawing oil from storage, they will raise the price of oil in order to avoid emptying their storage on their own market. Their practice has been to fill up on their own market and empty on a high market.

Q. Why would they fill their tanks any more with $1 oil than with ten-cent oil?

A. If they fill their tanks with ten-cent oil and take off the flush production of the pool, they are able to sell that same oil back to the public at from $1 to $2 per barrel, for the same oil.

Q. Would they do that with the ten-cent oil?

A. In some districts, where there

is no independent competition, there is gasoline being sold now on a basis of oil at $1 a barrel.

Q. If it is necessary, or if the cost is so great now and was so great at the time oil was selling for $1, that they could sell gasoline for only 4 cents or five cents more than they are now selling gasoline for—will you explain to the Committee where that spread vanishes to?

A. I don't know whether I could, unless this does: An increase in the price of wholesale gasoline of 1 cent per gallon is equivalent to an increase of at least 24 cents a barrel in the crude price.

Q. Why?

A. That's the ratio.

Q. How do you arrive at that ratio?

A. Principally from talking to experienced refiners; the overhead cost on a cheap gallon of gasoline is approximately the same as on a high-priced gallon of gasoline; so after the overhead is once fixed, the increased price in the gallon of gasoline means more, if fairly distributed, than the same increase in the price of oil; for instance, in California the other day they raised the independents' crude price 40 cents a barrel and raised the wholesale price of gasoline 5 cents, which was equivalent to a $1.40 crude raise.

Q. Considering that the major companies have so much storage and that they are the great purchasers of oil, who, in your opinion, and what, in your opinion, makes the price of oil?

A. Circumstances I have seen are indicative to me that those prices, in many instances, are arbitrarily fixed.

Q. How do you account for the fact that practically all of the posted prices are posted at the same time?

A. That is one of the circumstances that I have in mind when I use the word arbitrarily. I have had different major companies to communicate with me on the same date, announcing a crude cut; that is, the letters were received the same date; but whether they were written on the same day or not I don't know.

Q. Have you ever seen any of the orders changing the posted price of oil in your district?

A. I have seen them as carried in the newspapers and as mailed to the producers.

Q. Have you seen any of the orders to the superintendents of the various companies?

A. Not their confidential orders, no. There is one statement, Mr. Hardy, I made a while ago, that I would like to explain, if you will let me.

Q. Just a minute, Mr. Hunter. All right, go ahead, Mr. Hunter, make your correction.

A. When I answered your question, giving the potential production of the United States, I took the Van pool and the Kettelman Hills pool in California as units, and on the present producing figure. Those pools are both under unit arrangements.

Q. Mr. Hunter, are you familiar with pipe line charges—their tariffs?

A. To some extent. Other witnesses can be had that are much more familiar with the details of the pipe line business than I am, and some of the questions I have just answered on refining and marketing; men like Roy Jones and other men of years' refining experience are better posted on that than I am.

Q. Are you familiar with what is known as the 100 per cent contract for filling stations?

A. In a general way, yes.

Q. State what that is to the Committee.

A. It is one of the circumstances of the chain carrying out the death threat of Deterding, Wall Street Journal, and others.

Q. What do you mean, death threat?

A. When they threatened the independents, to cause them to vanish from the industry. That is a method, amongst a great many tactics, that I deem unfair tactics to use in procuring the control of the retail market. They have gone about, over the country, and it is said by statisticians that possibly 95 per cent of the gasoline of America is sold through those big company stations. Of course, that includes Barnsdall and the Texas Company and all large groups of the fourteen groups. Those contracts are made whereby the big companies take over a station, by ownership or by lease, and under an agreement by which that dealer can only sell that company's products and none other. That that big company shall at all times fix the price at which they may be sold.

Q. Is the filling station operator an agent or an employe of the major company?

A. In some cases he is an employe on a salary, but in many cases he takes his merchandise on what they

call a consignment. He is first given so many hundred gallons of gasoline and so much other products, without being charged therefor, but he is charged for all replacements of the merchandise he sells. If he is the station owner, he generally receives 1 cent a gallon for each gallon of gasoline he sells, for rental, and 2½ to 3 cents a gallon for commission, and in a few instances a most desirable station commands a better commission.

At the same time, the independent refineries are only allowed to give from 1 to 2 cents margin of profit, therefore cutting the dealer's inducement to handle their products and being one more inducement for him to join in the big hook-up.

Q. Has that commission been reduced in the past few months, or do you know?

A. In some instances, yes.

Q. How are your sales financed? Is he allowed to run charge accounts, or receive credit on these consigned products from the big companies?

A. The major company takes over the charge account, so long as he sells only to those carrying the courtesy or credit cards. It is charged and may be charged to any station throughout the country authorized to honor those cards. The major company takes over that account and pays the commission in cash each month; they take up these slips in payment for their products that may be delivered, or through book entries that is equivalent to that, and in that case the operator carries no risk on the account, and that is another inducement to him to join in the hook-up.

Q. Can the independent oil operator compete with the prices that are placed thereupon by these 100 per cent contract filling station operators?

A. You mean, are they allowed to meet that margin of profit?

Q. Yes.

A. They are not. The usual spread between tank wagon price and retail price is two cents a gallon, and the man handling independent refineries' gasoline would make just two cents a gallon profit, when, if he came over to the major company, under this hook-up contract, he can make four cents a gallon.

Q. How does the courtesy card affect the prices of the independent filling station, in so far as sales on charge accounts are concerned?

A. They did; I don't know whether it is still maintained or not, but I don't believe so. They did allow on courtesy cards, every one who carried one got a two-cent a gallon discount on gasoline, and in some instances those discounts are now allowed, but it does give to the person charging his products anywhere in the country a charge account at any station operating under that company's name.

Q. State to the committee whether or not the majority of the filling stations in this country now are 100 per cent contract stations, or independent filling stations?

A. I would say 95 per cent of them, or maybe more, are big company stations.

Q. I believe you stated that the agent or employe is practically under the control of the contracting company?

A. What contracts I have read so placed them.

Q. Is he—do you know whether or not he is discharged if he does not increase his sales each month? Do you know of any instance thereof?

A. I don't know of any instance of that kind. The contract provides circumstances under which he may be discharged.

Q. What effect have those 100 per cent contract stations upon the independent refineries?

A. It has cut them off from their market outlet.

Q. What effect will that have upon the individual citizen and buyer of those products?

A. It will tend to and is creating a monopoly in the marketing end, and if that monopoly is allowed to be consummated, the consuming public will pay, as they do now in other countries where there is a complete monopoly, such as Venezuela, and the East Indies and other places, where too there is now an over-production in each place, but the prices of gasoline, near the refinery doors, range from 32c a gallon up.

Q. Who furnishes the tanks on these 100 per cent contracts?

A. The major companies, usually, when they take over a rented station, paint it up, equip it, place in their own pumps, and so on, fix up the driveways; they are required to use the major company's pumps and equipment.

Q. Is there any difference in the

amount paid to the filling station operator who owns his own station, and one operating a station built by the company?

A. If I understand your question, he is permitted under the big company arrangement, to make a bigger profit if under lease, than he is if he sells on the open market.

Q. Going back to the proration matter: Do you know what was the price of oil in California, when the Sharkey bill was first introduced?

A. I think about an average of about thirty-five cents a barrel.

Q. Isn't it true that when the bill was first introduced, oil was selling for about $1.07?

A. Shortly before it was introduced, it was, Mr. Hardy, but at the time it was introduced I don't think so; I might have my dates mixed on that, but that bill was introduced about the time the Oil States Advisory Committee met in Washington. I was in Washington when the committee met and that bill was introduced shortly before that date, and I don't believe oil was at that time a dollar a barrel. I don't remember what those dates are, though.

Q. During the time after the bill was introduced, was there a fight on the bill?

A. There was quite a fight on that bill, and there was a cut of price in the oil, as there has been in Texas.

Q. Do you know Mr. C. M. Bowie of Fort Worth?

A. I think I have met him.

Q. Do you know whether or not he is an independent operator?

A. I couldn't say whether he is an independent in the true sense or not.

Q. Can you explain why he is against proration, as is indicated in his letter which is dated July 18, 1931, and addressed to a member of the Legislature?

A. No, I can't answer that.

Q. Do you know whether or not this gentleman was ever under indictment by the Federal government, for misuse of the mails in oil matters?

A. I don't know.

Q. Mr. Hunter, do you subscribe to the provisions in the Texas Oil Emergency Committee's bill, providing for a bond and for receivership?

A. As I said a minute ago, I am willing to take that, but I feel that the other end of the industry ought to be equally tied.

Q. Mr. Hunter, did you state you were familiar with the prices or the conditions of leases in the East Texas oil field?

A. Yes.

Q. Do you know whether or not many of the companies are drilling what is known as inner wells at this time?

A. Inside locations? Wells that are unnecessary?

Q. Yes.

A. Yes.

Q. Who are the greatest offenders in that line?

A. The Humble and Sinclair.

Q. Does the Gulf have any of those?

A. I don't know of a Gulf well that is drilling inside; I am not in position to say yes or no.

Q. Do you know of any recent transactions or transfers in the leases in recent times from any independent to any of the major producers in that field?

A. There are so many of them and so recent that no man can keep up with them; transfers are coming in so thick and so fast that the records are way behind; they can't get enough people in the courthouse to put them on the records.

Q. Do you know at what prices those leases have been transferred from the independents to the majors?

A. At what I consider anywhere from five to twenty cents on the dollar.

Q. Why?

A. Because the independents, owners of those leases, are whipped to their knees and with destitution staring them in the face and they are simply forced to take what they can get, and just get out. The major companies, when that field opened, had very little acreage in that field; practically none. There were some few tracts belonging to the majors, but, comparatively speaking, none. I have a charted map under my feet, if you care to see it, charted in colors, as they own it, showing that they own something like 80 per cent now.

Q. Of the producing territory, or the non-producing territory?

A. Of the producing territory. The east line is shown by a red line, which is the edge of production, and the west edge is shown by a green line, but if you look at it, I want to hold one end because I have a lot of money invested in that map.

Q. You wouldn't care to offer it as an exhibit?

A. I would exhibit it to you, but I would want to take it with me; you may have a photostatic copy of it, if you like; it has cost me several thousand dollars to produce that map.

Q. Do you mind if we see it now?

A. I would be glad to show it to you.

Q. Do you trust me to hold the other end of it? (Laughter.) Is that the East Texas field?

A. Yes. If you will give me a ruler, so I can point to the map and show the audience.

(Here witness explains the map, off the record.)

Q. Mr. Hunter, I believe you have stated that there are several companies, major companies or otherwise, who are now drilling wells known as inner wells on their leases; in other words, wells that are not necessary in order to keep the leases, or to offset wells on adjacent leases?

A. That is correct.

Q. What is the business theory of the drilling of those wells?

A. I cannot see any economic or other good reason for it.

Q. Considering that some of those companies are advocating proration, what would you deem to be their purpose in drilling those wells?

A. Unless it is to have numbers of wells and a big potential when proration is had, I don't know. It is at least unnecessary, so far as preserving their acreage.

Q. Would they be allowed a larger pro rata or proportion of the oil if they built up such a potential?

A. Probably so, if we follow some of the other orders that have been made.

Q. Would these additional wells and the production therefrom justify the cost of drilling?

A. I do not believe there is any real justification for it under the present conditions.

Q. Is it possible that in the drilling of these wells, and at a loss in the production end of it, they can make a gain in the pipe line end sufficient to take care of that?

A. They could take up the capacity of their pipe lines, of course, with a greater number of wells, if the proration is on the well basis.

Q. Wouldn't the real profit be derived from the advantage they would have after the small producers are put out of business?

A. They would have a great advantage in that, yes. They would also have a tendency to stagger the independents with this campaign going on, with oil selling at 10 cents a barrel; they can't go on. They would have the further tendency to whip them into selling their acreage at low prices, because they could not afford to keep it.

Q. That's all.

Questions by Mr. Beck:

Q. Mr. Hunter, you have stated that you thought there is now an underproduction, actually an underproduction of oil?

A. There is an underproduction on the basis of the present figures; that is, what is being produced. They are capable of producing more than they have been producing.

Q. You have indicated that you think there is some collusion in the matter of establishing the low posted prices that prevail in the several fields?

A. I think so, yes.

Q. Without questioning your opinion on that, do you think it would be good business for the majors or the minors, or anybody else that had any money, to store oil—to store quantities of it at a high price so long as there was the threat of a great deluge of flush production coming on the market?

A. It would not be good business and they could not afford to do it; they could not maintain a high price unless they felt sure that the production would continue under restriction.

Q. In other words, you think that the policy of the companies in using the leverage of a heavy potential is partly taking advantage of a situation, and partly sincere?

A. To the extent that they have gone in asking that the production be held within a reasonable demand, I can see the justification for sincerity. To their statistical claim of large excess potential, I see no justification for that.

Q. Do you believe that, regardless of today's relation between the supply and the demand, that the major companies would be more confident in buying high priced oil if they could be assured that the State's production would be brought within such control that it could in the future be held in proper relation to the market demand?

A. It most assuredly, in my opinion, would bring confidence.

Q. Then any benefit to the majors therefrom would be equally beneficial to the independent operators?

A. Yes, it would.

Q. Then is their interest in this matter largely the same?

A. Yes; if a law is passed, giving us equitable proration over the State, that is correct.

Q. The charge has been made by those who object to the economic demand as a measure of waste, that that feature in a measure would give the major companies entire domination of the price situation; how would that be correct?

A. I don't believe that is good reasoning. So many differ with me, however; I may be the one to be wrong or at fault on that. They are pretty well divided on that question.

Q. How has the effect been in California, where that is now in use?

A. That has been very good. The price of oil has increased 100 per cent.

Q. Is there any peculiar reason, due to the geographical situation, why it might work in California and still might not work here in Texas?

A. There is one reason. I don't believe that reason could be increased, however, and that is importation. Venezuelan oil is not accessible to the Pacific seaboard, and it is to the Atlantic seaboard. I do not believe there is available, without doing unnecessary drilling and opening an unreasonable campaign, any more than we are now getting. We are getting now about 325,000 barrels a day of foreign oil, translated into terms of crude oil. California does not have the same menace that we have, but if we adjust ourselves to meet that menace as it is now, then the conditions should be the same.

Q. What portion of the United States is the greatest refining area?

A. Some of the largest refineries in the world, of course, are in Texas. A lot of refining is done in Texas; some is in the central part of the country and all through the Mid-Continent field, and in Chicago there are some large refineries; there are, of course, large refineries all along the Pacific coast.

Q. To what part of the country does the most part of the surplus oil produced in Texas go?

A. Through the Mid-Continent and mid-western States and to outlets through the Gulf coast ports. Now Venezuela and other foreign oil has taken away from us a large part of that Atlantic seaboard trade.

Q. Assuming that we had an oil board in Texas, like you suggest, and that they set about determining the market demand for oil as a measurement of how much they should allow to be produced in this State, how would they go about determining that market demand?

A. I am not an engineer, nor a statistician. A statistician, well posted upon the conditions and figures, could arrive at an approximate figure each month, which should be produced, to suit the market demand. I could furnish you the benefit of a statistician if you want it, and from my judgment, from my own experience, I know of no other way except to follow the price.

Q. Should the production be held low enough to produce 50 cents a barrel, or 75 cents a barrel, or $1.50 a barrel, or what?

A. As I said a while ago, it should bring enough to give the producers a fair profit on their investment. It costs, in the Mid-Continent field, as shown by the Government Commission, $1.19 a barrel to produce oil in the Mid-Continent field; that is, the average cost of all the production. That figure, if I was fixing it, would be taken as a base.

Q. We are considering now chiefly the people of Texas. If oil were raised, we will say, to $1 a barrel in this State, how much more would it bring to the people of Texas than the refined products would cost the people of Texas? Have you got a table worked out there?

A. The figure I gave you a while ago would work that out. For each 1 cent per gallon raise in the price of gasoline, the producer would receive a 24-cent raise per barrel in the price of crude. If you raised gasoline 2 cents a gallon, it ought to raise the price of crude 48 cents.

Q. I understand that certain contracts for the purchase of oil out of Texas are now being made on the basis of 15 cents per barrel, with a provision that when the tank car prices for gasoline shall increase one cent, the price of oil should go up eight cents. Is that a fair proposition?

A. I don't consider it so. I would refer you to B. H. Edmonds and other independent refiners; they could give you these figures, that are more re-

liable. That figure is not a fair proposition.

Q. Have you any way of determining how much refined products the consumers of Texas buy per annum?

A. I can give you that statement tomorrow if you care to have it, in gallons or in barrels of crude.

Q. In dollars and cents, what do the people of Texas pay for refined oil products for their ultimate consumption?

A. In my opinion there is more oil transported out of Texas than there is consumed in Texas.

Q. Can you furnish us the data or a table of figures showing that relation?

A. I think I can, yes, sir.

Q. A question is asked—could the market demand be determined without having to accept the dictation of major companies as to that market demand?

A. Yes, with the creation of such a board as I suggested, I think it could be done without consulting the majors.

Q. Would they then, in that case, would they be able to whip down the price paid for the production?

A. They would not if that board functioned, and I believe they would if appointed under proper qualifications prescribed by this body.

Q. Would they be able to whip the price down?

A. They would not.

Q. Why?

A. Because a reasonable market demand, as I interpret it, means that amount of oil can be sold at a net profit—that is, an amount over and above cost of production. As we have it, it has been pipe line nominations, and not reasonable demand.

Q. We are informed that the potential production of a well, say in Venezuela field, is equal in the production that now obtains in Texas. Is there any truth in the statement?

A. I can, tomorrow, give you that figure. I don't believe that that is correct.

Examination by Mr. Hardy:

Q. Just a couple of questions, Mr. Hunter, and we will rest for the night. This question has been sent up: Isn't it true that in California, Kansas and Oklahoma, the law in reference to the ownership of oil and gas is entirely different from the Texas law?

A. I have never practiced law in California. There is a difference in the court's interpretation, but I am not at this time able to distinguish it for you.

Q. Do you know whether or not it is true that in Texas the owner of the land or lease has a legal title to the oil and gas, while in California he has only an exploratory right?

A. In Texas, to put it in another way, a man owns what oil he captures. There is a little difference in Calfornia, Louisiana and other States, I never practiced law in those States, I don't want to get into it too deep here, trying to distinguish it.

Q. Isn't it true that a law based upon market demand might be a constitutional law in California, Oklahom and Kansas, and that not be true in Texas?

A. That might be true, but I don't hardly believe it is; I rather believe that our courts, under proper showing, would hold that it is not necessary, with the conservation of wells, the preservation of them, the employment of thousands of men and the preservation of hundreds of millions of dollars of real estate, probably.

Q. How does that affect the Constitution?

A. I think I explained its effect on the Constitution.

Q. Is it not a fact that a large local over-production, such as apparently exists in East Texas, might result in a crisis, even after no over-production existed?

A. The over-production in our oil fields is distress oil.

Q. All fields have distress oil in the beginning, have they not?

A. As a rule, it follows it.

Q. And this distress oil brings lower prices than under ordinary circumstances?

A. I have known two or three distress fields where the oil was brought in and moved out and created distress. I was in the Corsicana boom, I stayed there during that boom, and they probably took, I think, 40,000 or 50,000 barrels of oil out of it with the pipe line facilities they had.

Mr. Hardy: Mr. Chairman, the Committee desires to rest for the night. If anyone desires to ask Mr. Hunter any questions they will do so at this time. We are going to call Mr. Hunter back in the morning, though.

Mr. Farrar:

Q. I want to ask one question, be-

cause there is an idea that has been suggested to me. Mr. Hunter, gasoline in my town is reduced one-third in price since oil went down. Your purpose is to put oil back again. Is there any relation between the low price of oil and the low price of gasoline?

A. I think there is at places where there is independent competition. If you reside out of the reach of independent production, there is such close relation.

(Thereupon the Committee recessed at 5:35 o'clock p. m. until the following Tuesday morning, July 21, 1931, at 9 o'clock.)

Tuesday, July 21, 1931.

Pursuant to adjournment, the Committee of the Whole House convened at 9:25 o'clock a. m., whereupon the following proceedings were had:

Thereupon the witness, Tom F. Hunter, being recalled, further testified as follows upon examination by Mr. Beck:

Q. Mr. Hunter, the Committee is a little bit confused as to your recommendation of yesterday as to your testimony concerning and about proration. Now, in your own way, will you just state to the Committee your general views on the question of proration as applied to the present problem?

A. My opinion of proration, if under fair, equitable enforceable plan, might really aid conservation, aid the operators and better the price for the commodity. The plan that has been followed, under insufficient laws and regulations in this State, have not really been successful, have not been as equitable as they could be.

Q. For what reason?

A. I would offer several reasons as I see them. In the first place, the laws have not been sufficient, and the manner of court procedure has not been effective.

Q. Now, that is a general statement. Have you any reason for it?

A. Under the present law, having known of the opinion in the Supreme Court, an operator who desires to violate the proration law is able to ask the trial court of the district for an injunction, and while that litigation is pending he can with impunity violate the Railroad Commission's orders. Now, I haven't finished my general reasons. I don't believe that the Railroad Commission has had sufficient money to equip themselves with capable men. I don't believe that the orders that the supervisor has, if they function with those, are sufficient under the orders; I don't believe that there has been an effort to prorate every district of Texas equitably with the other districts.

Q. Now, on that question of supervisors, have you had considerable contact with the supervisors?

A. I have had some, yes, sir.

Q. Will you state to the Committee whether or not you regard these men as capable for the jobs to which they are assigned?

A. Some of them undoubtedly are. The criticism that has gone over the State in the main has been that these supervisors had been employes of the majors' temporary payroll.

Q. Are you talking now about the supervisors or the umpires?

A. The umpires—are what I had in mind.

Q. I asked you about the supervisors, the Railroad Commission's supervisors?

A. These have had practically nothing to do with proration. The umpires and the men working under them. The supervisors have helped with the drilling of wells and permits, plugging.

Q. Well, have you, as an independent operator, found any reason to believe that those umpires are partial to the major companies and opposed to the minor concerns?

A. Practically all of my experience in producing has been with the umpire in my district, and I don't believe that he has shown any partiality. I have heard criticisms from other districts. In one case that I thought was unfair, is one area controlled by the major companies the potential was placed far beyond actual, and instead of prorating the scale they were producing, the potential was placed beyond that, and I think all that field could produce.

Q. What field was that?

A. The Yates pool, Darst Creek, Salt Flats, and others probably in the same class.

Q. Will you explain to the Committee why it is that some of the producing companies and some of the producing individuals find it profitable to evade the proration, while

others find it profitable and desirable to comply with the Railroad Commission's orders?

A. Our proration orders have not been made on statistical information, nor have they been based upon engineers', as they should be; we haven't done flat prorating in Texas, we have followed pipe line nominations, and until you get away from pipe line nominations and place it upon reasonable market demands and those things found by statistical investigations, based on engineering facts, it will not be successful. Parties in those fields have been able to employ statisticians and secure their own statistics and, of course, there are allowables of other fields that are not in fact proration; these cheaters, they might be called, have profited by the other men where they have in fact been prorated.

Q. Haven't you an Association of Independent Operators in this State?

A. Yes, sir.

Q. Do they not have a statistical organization?

A. They do not. The national group has a well-known statistician, but the State group does not have what I consider a statistician.

Q. Are you able to obtain the services of the National Association's statistician?

A. I think they are really behind with the secretary's salary.

Q. Behind with the secretary's salary?

A. Well, they are behind with the traveling expenses.

Q. If you were able to present your statistics, from your viewpoint, is there any reason to believe you would not receive the same consideration at the hands of the Railroad Commission that the major companies receive?

A. Take it on evidence; if we have evidence, I think you are correct. I believe there ought to be a statistician in that Department, and this information ought to be filed by the Department, that its employes ought to be State employes and not operators' employes. It is all right to charge it back to us in the way of a tax, but they ought to be employed by the State and not by a group of operators, and they ought to be responsible to the State and not to the operators.

Q. Do you think the Commission as now constituted is capable of collecting all its statistics that would deal with the problem and guide them in their decisions?

A. As they are now constituted, they absolutely are not.

Q. Why?

A. They don't have the man power or money to put into it in the first place.

Q. Well, do you know that the income of the Commission now from the tax which is imposed upon the oil industry, 1/20 of 1 per cent, yields enough money to pay all the help that they have in that Department and have a surplus from it, as the gentleman says, every year?

A. I am misinformed on that, my understanding of that was that money went into the general fund and that the appropriation was made over a year and a half ago, whenever it was, that the appropriation was vetoed, and they didn't get it.

Q. Well, I am not informed just as to the details of that at this time.

By Mr. Graves:

Q. Mr. Hunter, how many oil operators are, roughly speaking, in Texas?

A. I am not sure that I am advised on that. Someone claiming to be a statistician published an article that there were 448,000 that they were able to count; I judge that 52,000 more, and probably a half million more.

Q. More than 500,000 people, then, would be interested in the proration proposition, interested vitally, closely, whether this Legislature saw fit to pass a law one way or another. Is that right?

A. Yes, sir. I will say farther, if you please, I think every man in Texas is vitally interested in the price of oil.

Q. Yes. I am going to try to get to that in a moment. Now, the main purpose that the Legislature has been called together, the main purpose that you and others desire relief from, is in order that the price of oil might be raised, is that right? Crude oil?

A. Yes, we are wasting the wealth of Texas in selling it at the price it is now selling at.

Q. It is an inadequate price, a price that cannot be maintained, and the fellow selling it cannot maintain himself at that price, that is your theory, isn't it?

A. Yes, I am sure.

Q. Now, how much does the price of crude oil bear towards the refined

product, such as gasoline, approximately how much of the crude oil does it take, what ratio—would gasoline follow it in going up?

A. If it goes up in the proportion it should, it would be about 1 cent a gallon to every 20 cents or 24 cents a barrel of crude.

Q. In other words, if crude oil were to go up now to 20 cents a barrel, gasoline would go up practically 1 cent a gallon?

A. Correct.

Q. Now, there are other products besides gasoline, you call it fuel oil or distillate?

A. Well, there are two different products, crude oil is one product and this other is another product.

Q. What is crude oil at this time?

A. A refiner told me the other day he would give me all I could take away from the plant if I would carry it away over the State line so it would not affect the market.

Q. He would give it to you?

A. Yes, sir.

Q. But that is not the true value of it, is it?

A. No, sir.

Q. And it is being sold around at any price?

A. You can buy it most any price you offer.

Q. So that if crude oil doesn't go up, we will say, 20 cents a barrel, by means of our efforts or change in the market, then gasoline will probably go up a cent?

A. Yes, sir.

Q. Crude oil was never at a lower price in the history of Texas than it is now?

A. It has sold lower.

Q. It never has sold any lower on a stable market than it now sells for?

A. No, sir. Now, in Spindletop—it is like the investment market—I wasn't operating in that pool at that time, but I understand it did sell then as low as now, for a little while.

Q. That was because the market had not become stabilized, wasn't permanently stabilized at that time, is that true?

A. Correct.

Q. All right. Then if we increase through our efforts, the price of oil materially, of course it will increase the price of gasoline, will it not?

A. In a proportionate rate.

Q. And gasoline has not sold at a lesser price than it now sells for since it became a stabilized commodity?

A. It has not.

Q. Despite the fact that the State government taxed it 4 cents a gallon also?

A. Correct.

Q. Approximately, how many gallons of gasoline are produced each day, or each month or each week, if you can give me that?

A. I can't give you that figure. Marketers or refiners would be more accurate than I could be on that.

Q. You cannot give us any approximation?

A. No, I cannot. You approached one this, if you please, just a moment ago, on this fuel oil business, leading up to the difference in fuel oil. Now, there is one rating on fuel oil and one on crude oil that you wouldn't have if the price cracked; if the price was high, it would further affect the fuel oil, and increase gasoline up to the estimated prices of 40 or 50 per cent.

Q. If it was worth more, that would be so.

A. If the price of crude was more, just from the fact that fuel was in proration.

Q. Imports have a great deal to do also with the local market at the present time, do they not?

A. Very much.

Q. Do you know any contracts that are made or owned by importers now as to the price of the imported oil in East Texas at the present time?

A. Do you mean what it costs them to produce and deliver in Texas?

Q. Yes, sir.

A. It costs them 79 cents a barrel, figuring a reasonable profit in the 79 cents.

Q. Isn't it a fact that some of the major companies have reported their imports of oil at the price of 30 cents per barrel?

A. Into Texas?

Q. Yes, sir.

A. I couldn't give you a contract, if they are selling it in Texas, I venture to say it would not be any more than that, it would be less—at a loss. They are getting $1.05 a barrel for it along the Atlantic Seaboard after they skim the gasoline from it.

Q. Isn't it a fact that the majority of all the importations in this country, as well as in Texas, are made by the major companies?

A. Yes, sir, practically 100 per cent. There is not a great deal of oil imported into the State of Texas, though; the importations are along the Atlantic Seaboard.

Q. If the fuel oil proposition were to go up also, it would have a great effect, would it not, upon the manufacturers that utilize that fuel oil for the purpose of obtaining power?

A. Yes, sir, it would have an effect.

Q. And there is a large amount of it, isn't there, practically all the railroads use it at the present time, isn't that true?

A. Yes, factories use fuel oil and it is used all over the United States in factories and mills.

Q. Is that the same oil that is being put into the engines now?

A. I am not prepared to answer that, I don't know.

Q. Do you know whether or not any of the independent operators are under financial obligations to the major companies to such an extent that their judgment might be warped in this matter?

A. I know that a great many of them are under obligations to the majors, and I find them, too, with their minds kind of warped.

Q. Isn't it a fact that the major part of the independents only owning an over-riding royalties and the major companies take care of any development and the independent turns it over to the major company?

A. In most cases it is the other case, there are few cases where the independents own over-riding royalties, but you will find most of them having free rides with the majors.

Q. Mr. Hunter, I have before me the Oil and Gas Journal of July 16, 1931. Do you know anything about that journal?

A. The figures compiled in that Journal are accepted as nearly correct as any figures; it is an organ that is recognized by the industry.

Q. If, then, according to the figures in this Journal, there were on May, 1930, a total gross production in the United States of 80,376,779 barrels, or a daily average of 2,592,799 barrels, and in April, 1931, there was a gross production in the United States of 71,909,061 barrels, or a daily average of 2,369,968 barrels, would you say that those figures represent approximately the correct amount?

A. I would.

Q. Then, if that Journal also states that in Texas in May, 1930, there was produced 26,219,488 barrels, or a daily average of 845,786 barrels, and in April, 1931, there was 26,611,890 barrels, or a daily average of 887,063 barrels, would you say those figures were approximately correct?

A. I would; the figures of that magazine are accepted by the industry and by people who know the magazine.

Q. Then, in accordance with these figures, there was some 200,000 barrels produced per day in April, 1931, less than there was in May, 1930; would you be able to give the relative prices of oil at those times?

A. I couldn't give you exact figures, but there was a cut.

Q. Now, then, this Journal also shows that in California, in May, 1930, there was a daily average of 614,000 barrels, and in April, 1931, there was 526,000 barrels average daily production, and in Oklahoma in May, 1930, there was an average daily production of 664,000 barrels and in April, 1931, there was 557,000 barrels average daily production; and in Kansas in May, 1930, there was 128,000 barrels, and in April, 1931, there was 109,000 barrels; and in the Rocky Mountain area in May, 1930, there was 82,000 barrels and in April, 1931, there was an average daily production of 96,000 barrels; now, then, in accordance with those figures, Mr. Hunter, it shows that three districts produced more in April, 1931, than in May, 1930, but that the total production was a difference of about 200,000 barrels less. How do you account, then, for the change in price?

A. I don't think that the purchasers have been sure of a stability of production. I don't think they have had the assurance that we should have given them. Our laws in Texas, as I said a while ago, have been very uncertain and not sufficient that they could feel we had control.

Q. Then, do you think this price is based not upon supply and demand, but upon some future prospect?

A. I said yesterday I thought there is a manipulation to some extent of the market, but it is also persuaded and affected by the lack of stability, and that lack of stability should be corrected.

Q. Do you think that is the cause of the prices at the present time?

A. What is that?

Q. Do you think these prices are causes at this time by a future prospect on the part of the price-making companies, if it is made by companies?

A. To some extent, it is influenced by that. I believe if we regulate this Texas market under the present situation the price will adjust itself under the proper orders.

Q. Are we operating today under the same laws we had a year ago?

A. I think so, so far as Texas is concerned; there have been changes in Kansas and California.

Q. In Texas, though, we are operating under the same law, are we not?

A. Yes.

Q. Then, why was the market at that time stable, and at this time unstable?

A. It hasn't been stable in the last year. We had a higher price back when we were producing this 845,000 barrels of oil that you read, and I don't believe the major companies are in any manner justified in making cuts, and this last cut we got, there is absolutely no economic reason which could be assigned for it.

Q. All right, Mr. Hunter; do you think that the term waste should be used in any law, as defining production beyond market demand?

A. I think market demand is so closely aligned with waste that you cannot separate it.

Q. What is market demand, and what is reasonable market demand?

A. My definition would be that market demand is that amount of any commodity that can be sold at the offered price; and the reasonable market price is that amount of that commodity which can be sold at a profit.

Q. Then should that bill contain "reasonable market demand" or "market demand?"

A. I think it should contain reasonable market demand, fixed by the Commission and not by pipe line nominations, as we had it.

Q. This question has been sent up, Mr. Hunter: I think maybe you have answered it, but I wish you would give the answer again. On yesterday you indicated that you did not approve the present plan for a new commission and indicated you had another idea as to what should be done; explain your idea as to how the new commission should be created.

A. It is a matter of personal opinion in creating the commission. We need a board. It is my sincere wish that the matter of politics not go into this bill; opinions are going to differ on political questions, and the board, wherever you put it, is a political machine. If we can have a conservation law that will relieve 100,000 people in Texas from destitution and suffering through the next winter, I sincerely plead that we have that law enacted by this body as you think it ought to be done, and then discuss the question of the commission. I am afraid of political machine control of the State government, just I am the national government; the machine control is dangerous when you get into politics, and when you go into this bill if it is put in it, the fear of machine control might influence votes for or against this bill.

Q. I have been requested to ask you this question: On yesterday you made a statement relative to imports into this country, and stated they were about 300,000 barrels a day; is that correct?

A. Yes.

Q. Do you know how much the exports are?

A. They are approximately the same, but they are so situated that one does not necessarily influence the other. The imports come into one seaboard and the exports go out the other; the Panama Canal keeps them separated.

Q. Are the exports refined, or not?

A. Both. That 300,000 barrels is a translation from derivatives of crude into terms of crude. Our exports from the Pacific Coast go to places that our imports cannot reach.

Q. How would you determine—going back to your question a few minutes ago of your commission and market demand—how would you determine what market demand is?

A. By statistical information, gathered through State and governmental agencies, taking into consideration daily consumption.

Q. Would Russia's oil be given a place in market demand, along with Texas oil?

A. Not if I had anything to do with it.

Q. Why not?

A. Fortunately, we have a club so that to a great degree we can control the Russian situation; I think we have one, if it was exercised, that would control Venezuela and others, but the authorities have not seen fit to interpret it so. They have interpreted the forced and convict labor in Russia in a manner to exclude a great amount of those products. Russia has

dumped into America, though, a few cargoes of gasoline.

Q. Would you take into consideration the Venezuelan and Persian oil?

A. So long as we are forced to cope with it, necessarily, yes. I am not in favor of coping with it but it is a necessity now, until our government relieves us of that, and I believe in the next few months we will have that relief; at least I know we have that assurance.

Q. Do you know what companies do most of the importation into this country?

A. Four majors are the prime importers.

Q. Who are they?

A. Standard of Indiana; Standard of New Jersey; Royal Dutch Shell, or their subsidiaries, and the Gulf, are the four principal importers. The Cities Service and Standard of New York import quite a little.

Q. On yesterday, I believe, you reported the eleven major companies, didn't you?

A. To be exact, thirteen, I think.

Q. Can you name them?

A. I doubt that I could.

Q. Name all you can for the benefit of the Committee.

A. The six that I have just named; then the Prairie; the Texas; Sinclair —I can complete that list and hand it in.

Q. Will you prepare a list and hand it to the Committee?

A. Yes.

Q. Have they prorated imports?

A. Have they done it?

Q. Yes.

A. Not as effectively as we were given assurance that they would at the last meeting with the President's committee in Washington. They agreed to reduce them 75 per cent, but I doubt if the reduction has been that great; I got that figure wrong, they were to reduce them 25 per cent instead of 75 per cent, is what I meant to say.

Q. When was that agreement?

A. I don't recall the date. It was a meeting of the President's board of the States Advisory Committee about sixty days ago.

Q. What is the transportation cost of a barrel of oil from Venezuela to the Atlantic Seaboard, did you state that?

A. I did not state it, but it is about 23 to 26 cents.

Q. What can they produce oil for in Venezuela and deliver it to the Atlantic Seaboard; did you state that?

A. Different figures have been given on that. The Tariff Commission reported, including a reasonable profit, of I believe they figured, 30 per cent, 25 to 30 per cent, at 79 cents. My understanding is that it might be possible for them to reduce that oil, and load it aboard ship at the Venezuelan coast at from 18 to 26 cents.

Q. Now there are a series of questions here that were sent up. What effect has contracts for the sale of distress oil had upon the posted price therefor?

A. A material effect, to reduce the price.

Q. What effect has contracts for the purchase of distress oil had upon the market price therefor?

A. At below the market?

Q. Upon the market price?

A. That's the same question, wasn't it, as the other? It has a tendency to reduce the price; when a commodity is offered at a low price, no buyer will pay more than that for which it is offered.

Q. Has the present condition in this regard, as applied to East Texas, been unusual in comparison to flush production of oil in other fields in Texas?

A. It has had its effect there. There has been some in other districts; East Texas has not been the only offender; there have been others.

Q. Has there not been a general scramble on the part of producers to market their oil at any price in East Texas?

A. Destitution has driven them to sell oil at a price that they ought not to have sold it at.

Q. What did you say had done that?

A. Destitution, lack of cash.

Q. What effect has the general depression had upon this practice?

A. I don't know whether I understand that or not.

Questions by Mr. Gordon Burns:

Q. I believe you stated yesterday that every time there was a new proration order issued by the Railroad Commission the price of oil immediately went down?

A. I don't believe I made that statement, although the price of oil has gone down.

Q. Isn't it a fact that every time the Railroad Commission of Texas

issued a proration order the price dropped immediately thereafter?

A. It dropped after that; I don't remember how many days in between.

Q. Now, I want to ask you this question: When the Oklahoma City field was brought in, who controlled the larger interests of the Oklahoma field—what interests?

A. Do you mean with reference to independents or majors?

Q. Ownership, yes.

A. I think the independents had the greater part of it.

Q. How many barrels of oil did it turn loose on the market, in the Oklahoma field?

A. I don't recall the number of barrels, but it was a large production.

Q. Did it reduce the price of oil when they turned loose all that oil on the market?

A. It might not have the first day, but there was a cut following that.

Q. Did it reduce the price when the Winkler field came in, Mr. Hunter?

A. I don't recall whether there was a reduction in price at that time or not.

Q. Isn't it a fact that the major oil companies own those fields, and when they own them they control them, and it don't affect the price, but when they brought in the East Texas field, they did not have a control and they deliberately and maliciously did all they could to bring down the price of oil to freeze out the small operators?

A. The circumstances indicate that there has been a design and scheme to take that East Texas field at theft prices, if that is what you want to know.

Q. That is, the major companies designed to do it?

A. They are doing it.

Q. They are doing it?

A. Yes.

Q. And they are coming under proration to do it, aren't they?

A. There is one major company in that field which has made a profit on those equivalent thefts of not less than $300,000,000.

Q. What company is that?

A. That is the Humble.

Questions by Mr. Anderson:

Q. I would like to ask you if you can tell me the fluctuations of the stock of the major oil companies on the New York Stock Exchange that are operating in Texas, when it was announced that this Session of the Legislature would be called?

A. I didn't understand that question.

Q. I would like to ask you if you can tell this Committee the fluctuations of the stock of the major companies, operating in Texas, upon the New York Stock Exchange, when it was announced that this Session of the Legislature would be called?

A. I can't give that to you.

Q. Isn't it a fact that the stocks all went up?

A. To be honest with you, I didn't read it; I don't keep up with the Stock Exchange prices to any extent.

Q. You evidently don't watch the stock market much.

A. I have never bought or sold a share of stock on the New York Stock Exchange. I look at Steel and a few others from time to time as an indication of general conditions, and nothing else.

Questions by Mr. Davis:

Q. Mr. Hunter, we now have what is called a Common Purchaser Bill; is that true?

A. I have read it, yes—once.

Q. Has that Common Purchaser Bill been enforced?

A. It has not even been respected, Judge.

Q. Is it not true that independent operators in the Central Texas, Wichita and other fields have been discriminated against in the taking of oil?

A. Very much so, and specific instances can be given.

Q. Mr. Hunter, if the Common Purchaser Bill is not enforced, will any sort of proration protect the independent operators who are dependent upon the large, or major, oil companies for the purchase of their oil?

A. I think that if you had the man power, prescribing the proper qualifications to the Railroad Commission of Texas equipment, or wherever you put it, that it can be enforced.

Q. Have you any suggestions as to how the Common Purchaser Bill can be strengthened?

A. The enactment of such a bill as I described here yesterday would strengthen it.

Q. But if the major oil companies own half the oil in a territory—

A. Let me say this: It will answer what you are asking me and what I consider should be added to

the other bill; that an added provision to the bill, such as I described yesterday, by putting us into receivership, you have tied us, now write another paragraph in these that will dissolve the corporation who fails to comply with the law, then you will have written a conservation order. Write a paragraph on there that will, when they violate the law, forfeit their charter—let the Attorney General liquidate them through receivership the first time they violate it, and it will not be violated. I am willing to go along with it and go into receivership if I violate it, and the hundreds of men in my district are willing to do the same thing so long as you will put a paragraph in there that the major companies also should have the same thing happen to them; I would put it in this language to really express it; if you will hog-tie us, just hog-tie the hogs, too, and we are satisfied.

Q. If one pipe line company comes into the vicinity of your well, as an illustration—if the Humble Pipe Line Company runs by your well, who is the purchaser of your oil, and the only purchaser that you have a reasonable expectation of taking your oil?

A. It would be the Humble, in that case.

Q. It would not be the Humble Pipe Line Company, but the Humble Oil Company; isn't that true?

A. I believe that is correct.

Q. And you can have all the pipe line bills you want, and all the regulations of them that you want, but if your only purchaser refuses to take your oil the discrimination will continue as it has done in the past; isn't that true?

A. We have had discrimination with the pipe line company that you just suggested; I have had them perpetrated on me on a lease that I operated next to them, and there have been other discriminations.

Q. That's all.

Mr. Anderson: I would like to ask you if you know of any instance where one of the majors has posted a price in the field and then refused to take any of that oil, and that posted price a reduction of the current price?

A. I have had that happen; they posted a price and took oil on the adjoining lease from me and refused to take my oil, yes.

Questions by Mr. Farmer:

Q. Mr. Hunter, you are a lawyer?

A. I plead guilty.

Q. You are versed in the law. I desire to ask you this question: If the majors arbitrarily set the price, and fix it low and thereby fix it low and cause waste, may not the State, in order to prevent waste, set a minimum price for crude oil at the well?

A. I have advocated a plan to fix a minimum price, and I think every producing oil State should, although I doubt that it can be legally done, except through a State's contact, as is now being tried. They are attempting to form a State's contact and it should be given real consideration; I think through that, it can be accomplished.

Q. Don't you think the State of Texas, with the Legislature, has the power to do that?

A. I tried to write what I thought would do that, but some lawyers in conference overruled me on it, and I am inclined to follow the majority opinion.

Q. Mr. Hunter, you know the Supreme Court of the United States has upheld the law in the Indiana case years ago, that they could absolutely prohibit the taking from a well, oil, if at the same time, they were wasting the gas, didn't they?

A. Yes, that has been held; I don't remember the case or citation on it, however.

Q. Well, then, don't you know, Mr. Hunter, if that regulation was held valid, if it is shown that a regulation of this kind would prevent waste, the State of Texas would have power to enact it?

A. It is committing material physical waste, yes.

Q. Then, Mr. Hunter, you know that in this State at this time billions of cubic feet of gas are being wasted by being blown into the air and burned?

A. That is my information, yes.

Q. Do you think that the State of Texas ought to enact a law, or amend the one we have now, which would prohibit this great economic waste and crime against the coming generations, by absolutely prohibiting such waste until they can get a market for that gas?

A. A market for the gas, yes.

Q. Are you conversant with the fact that the Reagan county field is wasting millions of cubic feet of gas daily?

A. I have been so informed.

Q. Are those companies major companies down there or not?

A. In the instance I have been told about, it is the Continental; that is a major company, a Standard subsidiary.

Q. As an expert in the oil business, and a lawyer, do you believe the State of Texas should permit billions of cubic feet of gas weekly to be wasted, when they are getting out 20,000 barrels of oil?

A. I don't think that any gas ought to be wasted; it ought to be conserved, where possible.

Q. Then you think it is incumbent upon the Legislature of Texas to stop this great waste of gas?

A. I don't want to invade the province of the Legislature, but my private opinion is that the waste of gas should be stopped as nearly as possible.

Questions by Mr. Wiggs:

Q. Mr. Hunter, how many gallons of oil is considered a barrel of crude oil?

A. Forty-two.

Q. How many gallons of gas can be obtained from that barrel of crude oil?

A. Depending on the process you use; ordinarily through a skimming process, about eighteen gallons. I am not a refiner, but just giving you general information. On the ordinary cracking process, I think it's about twenty-two to twenty-three gallons, and with the hydrogenation process, you get 108 per cent.

Q. Now the residue that is left, I was wondering if, after the gas has been taken out, can that be used for any purpose?

A. Yes.

Q. That would be termed by-products, wouldn't it?

A. Yes.

Q. Now then, about what would the by-products of that remainder be worth?

A. It would depend on the by-products which were extracted and the method used. I am not a refiner or marketer and you can get more information than I could give you. If you should crack it up into medical properties, it will bring more than fuel oil or distillate or coal oil, but those are processes that I am not an expert on.

Q. About what would you estimate —just a general idea?

A. I hate to guess anything when there is somebody in the House that knows.

Q. Isn't it a fact that if you drive up to a company-owned filling station now, you pay about as much for a quart of lubricating oil as they pay for a barrel of crude oil?

A. I am sorry to say that is true, and that is part of the circumstantial evidence I discussed yesterday.

Questions by Mr. Long:

Q. Wouldn't it cost a good deal of money to make an appraisement of all the pipe lines in Texas?

A. It would cost some money, but the State's increased revenues on it would soon pay it back.

Q. Don't you think this Legislature should make an appropriation so that the Railroad Commission or somebody could determine a fair pipe line rate?

A. The greatest act of conservation this Legislature can do, in my opinion, is to work out a proper pipe line bill that can be enforced, and protect the citizenship of the State against the monopoly that now exists by reason of the pipe line, in that they can mark the course of direction and the destination of every barrel of oil produced, and to whom it may be sold.

Q. Approximately how much are you getting for oil in the Wichita field, and what is the tariff from the field to tidewater?

A. The price strikes an average of about twenty cents. I believe it costs us fifty-six cents to ship it to the tidewater market.

Q. How would it help the producers in that area, or in any area, to reduce the pipe line tariff?

A. It would help in many ways, principally as I just said. It would give all the independent refineries an opportunity to market; it would take away from the majors two clubs—controlling the transportation, direction and destination of the oil, and the monopoly they have on it. It would open the market to competition on crude oil itself.

Q. In other words, if you had a lower pipe line tariff, your oil could compete with the East Texas oil and with the Venezuelan oil, on the Eastern Seaboard market?

A. Much more so than it now does.

Q. What do you think about a bill, a proration bill that its effective date would only last until January 1, 1933?

A. Personally, I prefer that this bill when you pass it, be limited not to exceed two years; give it time for another Legislature to extend it if they deem it wise. If you pass it with no limitation on it, it is on and the political machine is created and it will be very hard to get it off, if we don't need it; if you fixed it so it will expire in two years, it would be hard to renew if we did not need it.

Q. To a certain extent, proration is an experiment, isn't it?

A. It has been absolutely an experiment; we have learned some things about it and ought to be able to now really accomplish something by it, if we have the machinery to work with.

Q. In other words, you don't think that the Legislature should tie the hands of the oil industry unless they definitely knew what they were acting upon?

A. That is my idea; that it be done for two years as an experimental proposition, and then that political machine and the trouble that might come after we don't need it would be off of us.

Q. I would like for you to explain fully what effect the marketing of the refined products has upon this depression in the oil business and give your ideas of what should be done to correct it—in full, please.

A. You want me to state the relation of the present depression—

Q. What effect does the marketing of refined products have upon the oil industry and the public, and give your idea of what should be done to correct that. The filling station bill, in other words.

A. I discussed that filling station bill yesterday. With now a control of 95 per cent of the retail products, we are approaching an equivalent monopoly, and if that monopoly is completed, the people in the United States will pay for gasoline, as they do in other countries, where there is no production. Answering the balance of your question, I believe 50 per cent of the depression, or more, in the United States is attributable to the condition of the oil industry; the lost wage earnings and lost money circulation—that is, to my mind. 50 to 75 per cent of the cause of the present depression in the United States. You restore the price of oil and you will restore the prosperity we had when we had the price. We had prosperity a few years ago. It was not because we had cheap gasoline, cheap fuel oil, or cheap labor. It was because there was money in circulation and there were jobs for all who wanted to work. You put this money into circulation again, and then men into jobs again, and we will have prosperity again and be out of this depression.

Questions by Mr. Nicholson:

Q. Mr. Hunter, your statement a while ago was, if I understood you correctly, that about 300,000 barrels of crude oil are exported, or imported, into the United States monthly?

A. Daily.

Q. Daily?

A. Yes.

Q. And about the same quantity of crude or the products of crude oil are exported?

A. Principally products. There's more—I think the figures would be more in favor of products on the exportation than on the imports.

Q. I further understood you to say that the imported products do not come into the same section of the country from which the exported products move out?

A. The greater part of them do not.

Q. Are you familiar with the fact, Mr. Hunter, that considerable quantities of crude oil from Venezuela and from Mexico are received into the port of Port Arthur?

A. I can't give you the amount.

Q. Well, that is true, Mr. Hunter, and I assume that you do know that a great deal of exporting is done from the port of Port Arthur?

A. Yes.

Q. I would like to know, Mr. Hunter, whether you know—do you know what use is made of these crude oils from Mexico and Venezuela by the refineries?

A. Do I know what?

Q. Do you know what use is made of the crude oils from Mexico and Venezuela?

A. You have in mind particularly asphalt. Is that what you are going to ask about?

Q. Yes, I want to ask about that?

A. A small portion of it is necessary in the United States for the purpose of asphalt for road purposes, but probably 90 per cent of it is not.

Q. Your estimate is that 90 per cent of it is not used—

A. That is guessing at it; I am not giving you the exact figures.

Q. I would like to ask you Mr.

Hunter, whether or not you are familiar with the kinds of crudes that asphalt and road oil may be made from?

A. Only to a limited extent. I will concede to you that it is necessary for us to have some asphalt from South America that the United States does not produce for road purposes, but it is not necessary for us to have 325,000 barrels of crude per day to overcome our gasoline market, our lubricating and fuel oil market, in order to get a small amount of asphalt that can be had without the other.

Q. You do admit, however, that certain of our asphalts and road oils cannot be made from any domestic crude?

A. That is true as to some of it, yes.

Q. Are you familiar with the fact, Mr. Hunter, that neither can asphalts nor road oils be made from those foreign crudes exclusively?

A. I am not an expert on that line.

Q. You may already have stated to the Committee, and if you have, don't answer the question—I will find it in the record, but I would like to ask you, what is a major oil company? If you have stated it, don't answer.

A. If what?

Q. What is a major oil company?

A. Usually it is one that has passed the stage of financial troubles.

Q. That is your construction of a major oil company, then?

A. That is the accepted thought. If you have in mind asking me what is a standard oil company, one of the Standards, that answer will be different. The difference between a Standard and an independent—there are two different definitions of it.

Q. You stated a while ago, Mr. Hunter, that some major oil companies had made a colossal steal, or something or other of the kind, over in the East Texas oil field. If they did that, by what methods did they do it?

A. By price destruction, causing to be furnished and furnishing statistical facts which were false with reference to potentials and available daily production; by propaganda educating the public to their belief. In one instance we find they spend $12,000,000 through an advertising agency in a campaign destroying and laying the predicate for the destruction of these prices.

Q. You make the statement, Mr. Hunter, that in connection with the steal made in the East Texas oil field, that there was tremendous propaganda over there, and that some company had spent a considerable sum of money to—

A. No, not on the field; that is, on the United States situation as a whole that that money was spent.

Q. Not on that field?

A. Not on that field alone, but on the general situation.

Q. Then, would you name for me those companies which have been conducting extensive propaganda in the East Texas field for the purpose of stealing from those East Texans?

A. You name the major operators operating in that field and you have the list.

Q. Would you name them?

A. I tried to name the majors a while ago. These things I am saying there, I want to put myself on record, that they are deductions I make from circumstances and facts I know of. The Humble Oil Company, the Dutch Shell, the Sinclair, are probably the chief offenders in there. The Gulf and the Texas Company, the Stanolind, the Southern Crude and others are lesser offenders, and the Texas Company, particularly. The Texas Company's general policy, if they were allowed to operate alone, I think are truly more inclined to stay in the path of righteousness.

Q. As I understand your position, Mr. Hunter, you have a rather deplorable situation in that East Texas field and in other fields of the State. You believe that by passing a proper law here, providing for proration in the fields, that it will be of assistance to you, as an oil operator? That is to say, as an operator in the field?

A. I think it would be of help to me and every other operator if the law is carefully worked out to regulate everyone justly alike; I want to say this, however: That I am testifying purely as an independent. As the president of the North Texas group and representing several hundred independent producers up there, I say they are willing to accept this bill in any reasonably acceptable form, to get out of this destitution. I want to say that they do not go as strongly down the line on some of these things as I do.

Q. Isn't it also true that some of those companies you have named as major oil companies are in agreement with you on this question of proration?

A. I think the majority of them

are, because it will stabilize the industry and stabilize the market, and will aid them and will aid us.

Q. Then, Mr. Hunter, you have referred to a certain condition in the East Texas oil field which, as I understand you, you take the position was created for the purpose of making a big steal of some kind from the independent men. You are coming and offering to correct the situation over there before this Legislature, and the major oil industry is going right along with you on that proposition?

A. I don't know as I get all of that; I want to be fair with you and with everybody. With reference to that steal—we have probably emphasized that word more than we should. That property has been confiscated at theft prices. There has been a greater advantage taken, and in some instances an unfair advantage, than should have been taken. These last two cuts, for instance; I don't believe any economic reason has been assigned for them, and especially the last one, and those things are what I have in mind when I say there has been a pressure over there that has brought about the taking over of these properties and probably 85 per cent of these properties in that field are in the hands of the majors now, at confiscatory prices, which amounts to legalized theft.

Q. But the same companies we referred to as being those companies who were trying to obtain interests in the East Texas oil fields, after they had created the deplorable situation in that field, are now working with you, trying to straighten the whole thing out?

A. I do not charge that the major companies are responsible for all that condition over there, and do not want to be understood that way.

Q. Then I would like to ask you, Mr. Hunter, if, after all is said and done, that the situation existing in the East Texas field is largely a situation that exists because you have more crude oil over there than you have a market for?

A. They do not have any more crude oil over there than they have a market for at the present price. They have more crude oil over there than they have a market for at a reasonable price.

Q. Then you make the point that the field now is producing all the oil that it could produce?

A. I do not believe it is.

Q. Then should it produce all it could produce, and as much as perhaps some interests would produce in the field, you do not make the point there would be a market for all that production, do you?

A. I believe if you had a way to get it out of there, you could sell every barrel you could get out at the present price, but it would be the greatest act of waste I could imagine.

Q. You have previously stated that the major company is the purchaser; do you take the position that the major company would be willing to purchase, at a price, all the production that might be gotten out in the East Texas field?

A. If it was forced on the market, with sufficient transportation facilities, they and their buyers would, in my mind.

Q. You were talking about a technical matter, or were awhile ago: Mr. Wiggs asked you how much gasoline could be obtained from a barrel of crude oil. That fact will come out later. You said it would depend on the process, and I assume by that you mean on the crude oil also?

A. Yes, unless it is hydrogenated; I am not an expert.

Q. You do not take the position that you can manufacture gasoline in this country and sell it for 15 cents a gallon by that hydrogenation process?

A. You absolutely cannot.

Questions by Mr. Kayton:

Q. What does it actually cost to produce one barrel of oil in the East Texas field today?

A. I don't know; it would be a matter of guessing.

Q. Let's figure it out this way: What will a 10-acre lease in proven territory cost you, if you wanted to buy it?

A. Ten thousand dollars.

Q. That's a thousand dollars an acre?

A. Yes.

Q. What will it cost you to sink a hole there?

A. About $26,000 by contract, including everything, the standard rig, and everything necessary for the lease.

Q. That is $36,000?

A. Yes.

Q. What production should we get

in the proven territory in East Texas?

A. Per acre recovery?

Q. No, for that one well. Well, per acre recovery would be alright.

A. That pool ought to average 15,000 barrels per acre.

Q. For the life of the pool?

A. Yes.

Q. And for the ten acres?

A. That ten acres, producing its share of oil, would produce 150,000 barrels of oil.

Q. And it costs us $36,000—that is, for our original investment?

A. Yes.

Q. What other expenses will go on to the expense there?

A. Your labor, maintenance, and your upkeep and taxes.

Q. That will be approximately how much?

A. If you operated that lease alone probably it would average $200 per month, without office overhead.

Q. How many months will it take to bring that down?

A. It would take about 122.

Q. That is another $24,000?

A. Yes.

Q. So we have an investment of about $50,000 or $60,000 for our 150,000 barrels of oil; how do you figure it costs you more than about one-third of a dollar, in the neighborhood of 30 cents, instead of a dollar a barrel?

A. There's a lot of taxes and one thing and another, and your office overhead and your maintenance and so on, will run it beyond your figure. An engineer might work that out for you. You have to figure into the cost of a barrel of oil all over the United States, charging up your dry hole expenses, and other things incident to the business, and which necessarily must be paid by the producing wells.

Q. You are talking like a major company now, and I am talking like an independent.

A. If you do that as an independent, you know you have to pay those bills somewhere.

Q. Now the consumer, the ultimate consumer that has had no recognition here today at all, is the man that buys it in its final analysis?

A. I think I discussed that feature of it a little while ago; I tried to.

Q. If that is in the record, all right; I'll read it Do you believe that East Texas should get an exorbitant profit on its oil in order to protect some of these fields which are so expensively operated?

A. What's that?

Q. In other words, if we want to prorate the State of Texas so everyone would get $1.00 or $1.40 a barrel for his oil, do you think East Texas should make that exorbitant profit, simply because in your territory or mine it is very expensive to produce our oil?

A. East Texas is a part of Texas, and there is a great wealth of oil there that should be preserved. As to the exorbitant profit, when everything is said and done, a dollar a barrel is not going to show an exorbitant profit in East Texas.

Q. We will be very nice, and say it shall cost them 50 cents a barrel to get their oil, and yet in Refugio it may be costing them $1.00 or $1.15 to produce it, even if they do get only 40 cents for it.

A. When an engineer checks out all those figures, during a period of ten years, figuring in all the expenses chargeable against that oil, you will find that it costs more than that to produce it.

Q. Do you believe that the oil industry should be penalized with the extravagance of some operators, and the dreams of these wildcatters who go out in unknown and unproven places and drill wells, knowing nothing about it or what it will be like; do you believe we should all be penalized for that, for the antics of some fools?

A. I do not believe so, although it is necessary to protect any legitimate business against its losses. Whether it be the banks or any other mercantile business, they have to figure their general course of business to overcome their losses. The credit business, those doing business upon a credit, selling for credit, it is necessary for them to make a profit such as to overcome the losses of those who do not pay.

Q. Do you think it is really fair to penalize the legitimate business with the rank extravagance of some fool who will go ahead and—

A. That rank extravagant fellow is not going to be in the game long and you won't have to worry about him; he is going to be out of business pretty soon.

Q. There are thousands of people all over Texas that are drilling wildcat wells, and selling stock to the public of Texas, and I don't think

that such a thing should be charged to the legitimate oil business.

A. I have not attempted to charge it up.

Q. Don't you believe that this whole problem really belongs to the Federal government, rather than to the State of Texas?

A. I do not. Several phases of it possibly should be handled by the Federal government.

Q. If there is such a bugaboo as perhaps the exhaustion of the resources of a nation, don't you possibly, irrespective of the Red River or the Sabine River, or any other line we might draw, that posterity as a whole is interested in this oil, rather than just East Texas, and that it should be handled from a governmental standpoint?

A. I think it commences at home.

Q. That is true, but at home it seems we can't do anything. California thinks it commences at home, and tried it out, but Texas ruined them. To preserve the nation, don't you think it should be a Federal problem, and that they should make one law for the entire country to cover the situation; now let me have your real reaction on that?

A. I have been just a little inclined to want to stay away from Federal control, as far as possible.

Q. Well, do you think Federal control would solve the situation to any extent?

A. I believe you will agree with me that if the Federal government will step in and keep some of this foreign oil out of this country, we might get somewhere.

Q. We are agreed they ought to keep it out. Now, I want to ask one more question. A man by the name of Holmes mailed me a pamphlet and I read about the Texas Company being an independent; what does that mean?

A. They maintain they are independent, I guess, under the old accepted definition that a company in which the Rockefellers own no stock is an independent.

Q. I see. What are the other independent companies that I thought were not independents? Is the Gulf an independent?

A. I don't believe the Rockefellers own any stock in the Gulf.

Q. Is the Sinclair an independent?

A. Says he is.

Q. In other words, then, we haven't got a problem of the independent oil companies against the major oil companies in Texas, but a problem—

A. There is a difference in major companies. Our problem is the major companies against the fellows starving to death.

Q. I think, since the beginning of history there has been the oppression of the weak against the strong. Some of these other governments on the other side of the pond do not feel like we do, do they? The Dutch Shell Company receives every benefit their government can give them, don't they?

A. The British Admiralty owns a large per cent of that company. It is a more or less government ownership in a way.

Q. You think that is good or bad?

A. I am against it.

Q. I don't know whether to call them independents, dependents, majors, or minors, since Mr. Holmes has changed my concept of what an oil company is. Now, I find the Texas Company is an independent. Don't you think they would be a lot better off if someone stepped in and controlled them all—that that would be a big step?

A. I would like somebody to do as Roosevelt did when he called his advisers in, and said "I am the head of the army."

Q. That is what I think about it, too. Thank you.

Questions by Mr. Hanson:

Q. Mr. Hunter, I want to ask you a question or two in connection with transportation. Now, I noticed on these tanker ships the names of the companies. Have any of those independents tankers on the sea?

A. I don't think the independents in the accepted definition of the term "independent" own any tankers.

Q. That is the reason I ask you for that information.

A. I am not in position to say they do not.

Q. I noticed that the railroads have all those tank cars. Have any independents any of those cars?

A. Yes; I think so; quite a few.

Q. The company that has those transportation facilities for shipping has a considerable advantage over a fellow who has a little well?

A. Pipe lines are a greater advantage than railroads, because everybody has access over the railroads at a reasonable rate.

Questions by Mr. Beck:

Q. Mr. Hunter, you have been pretty general this morning in your reference to a supposed conspiracy to lower the price of oil. How many men in the oil industry want to effect a conspiracy of that sort?

A. I think four or five—twelve at the outside.

Q. You seem to be informed on that. Now, who are those four or five, or twelve?

A. They are the heads of these major companies.

Q. What major companies do you allude to?

A. The ones I named a while ago.

Q. Will you name them again?

A. The Standard of California, Standard of Indiana, Standard of New York, Standard of New Jersey, the Sinclair, the Gulf, and the Texas Company.

Q. Would it be possible for them to have any such agreement or conspiracy without being in violation of the Anti-Trust Laws of this State?

A. It would not.

Q. Would it be possible for them to have that conspiracy and conceal all the facts from the Attorney General of this State?

A. Most of it would be outside the Attorney General's jurisdiction.

Q. Have you any reason to believe the major oil companies are enjoying this period of depression any more than you do?

A. In the long run they haven't lost the money I have. They have been allowed to buy this property at confiscatory prices, and in the long run they have not lost any money. They are losing now on producing, and probably marketing, and I doubt if their pipe line profits will overcome their losses on producing and marketing; in some instances, it will not, I am sure. If they have made a profit it is because they have been able to take advantage of opportunity and buy these properties at extremely low prices.

Q. Do you think we will get anywhere on the question of legislation in the benefit of conservation for the State of Texas by fighting out before this Committee the squabbles that occur between the major companies and the independents?

A. I am inclined to think that this first real act of this Legislature ought to be worked out without those.

Q. Do you think we should have any particular interest in whether you are making money out of the State's oil, or whether the Humble is making money out of the State's oil, or should we have a scheme of natural conservation?

A. You are interested in the welfare and in the wealth of your State and citizenship as a whole, and following that I think you are interested in the fairness of one citizen to another.

Q. Then you seem to think conservation should be the aim, and that if we effect a particular conservation policy, prosperity for the operators will be a by-product of that policy?

A. Yes, sir.

Q. You said they are loaded with propaganda for the purpose of deceiving the public on the oil status in this country, and you said it had been discovered that $12,000,000 had been spent from one source alone; will you reveal the source of that money, and the source through which it was expended?

A. I don't have those figures. A man was supposed to get them in here last night, but I did not get them. It was through the statistical department of the National Association of Independents. Those charges were made in Washington in the presence of the majors, and was not denied.

Q. Was anything shown there except an opinion, or was any facts presented?

A. Only the general facts; the details were not called for.

Q. We are asking for some details in this case.

A. I think I can get them for you.

Q. Can you answer any part of it now?

A. I could not now, no.

Q. I was in a meeting the other day with a group of independent operators who are opposed to proration, and heard their discussions, and in talking to many other operators I find a great dread that if you have proration it will be dictated—the enforcement of it will be dictated by the major companies; what ground is there for that theory?

A. That has been true to some extent in the past, and that probably creates that fear.

Q. In what sense has it been true in the past?

A. Proration has not been true proration, as I would like it.

Q. It has been more of pipe line nominations, and to get away from

that pipe line nominations I believe we ought to provide a means of determining what the reasonable market demand is and stick to it through the Commission, and not through purchasers.

Q. In other words, you think pipe line nominations should be made by the governing body—that is, the Commission, rather?

A. Yes, sir.

Q. Or some similar method?

A. Correct.

Q. You have mentioned in a very general way other cases—other instances of where the major companies taking advantage of their superior finances have, as you say, stolen from and handicapped the various independent operators. Will you cite some instances of what you mean by that?

A. You mean, in buying properties?

Q. Cite some instances of that overpowering oppression that brings about this condition in the East Texas field?

A. In the East Texas field there is any number of those buys that have been made. They are daily buying properties at confiscatory prices, which practically amount to theft. Of course I use this word "theft" in a somewhat different sense than usual; of course, their acts are legitimate under the law, but, nevertheless, they are confiscatory.

Q. Tell us what you know about delays in the examinations of titles. Let me ask you this first: When a purchaser buys an oil well, isn't it customary for him to regard the title to that oil well in the same sense as he would of a piece of land?

A. Yes, sir.

Q. And to examine the abstract, and see the various interests outstanding, and be as careful in paying for oil as he would be for land?

A. Yes, sir.

Q. Tell us about the practice at the present time in holding back the payments for oil until extended examinations of titles are made?

A. It is only hearsay with me. I can only call the name of one operator where that has been practiced, but the general talk is it is practiced all through that field.

Q. Is that talk or fact?

A. Some of it is fact; as to how much, I don't know.

Q. Who could give me those facts?

A. Jim Parker could give you specific instances of it, and no doubt we could find others.

Q. Will somebody interest himself in finding that out to determine whether or not it is a part of a definite scheme, or just a chance incident?

A. I would be glad to help you any way I can. I understand it is generally practiced over there.

Q. But you don't know anything about it?

A. No.

Q. Have you ever stated to anyone that that was a general practice in the field?

A. Have I?

Q. Yes.

A. I don't recall that I stated that in that exact words. I remember stating it was being done.

Q. Is there any one company operating in this State that the independent operators feel is the leader of whatever conspiracy exists, or is supposed to exist?

A. I think it is attributed more to the Humble than any other one company.

Q. Why?

A. Because they have actually taken the lead.

Q. In what manner?

A. In the price cuts, and in pipe line charge fixing, and possibly in the retail; I am not in position to say about that definitely; but in the buying of these properties at these forced low figures.

Q. Has that been because of a determined spirit of greed, or because it was good business, or what?

A. I imagine both.

Q. Well, do you know?

A. No.

Q. You have assumed in your testimony this morning that the governing body, whether it was the Railroad Commission or some new commission administering a proration law, that we might pass here, would quickly degenerate into a political machine; now, what basis is there for that supposition?

A. From past experience we do know that these combinations do have political effects. I don't mean that they would degenerate into a dishonest body, but it would necessarily carry with it political weight, and as a vote-getter it would be a political machine.

Q. I am trying to arrive at what the experience has been elsewhere?

A. I have in mind the Highway Commission of this State, and the

result at the polls of such a machine, with its ability to get some 75,000 or 100,000 votes. Is that what you want me to say?

Q. I am trying to get the facts.

A. I understood you were interrogating me as to why I made that statement.

Q. Have you any suggestions as to how that might be avoided?

A. I would rather keep these machines separated where they cannot consolidate.

Q. Is it your opinion, or the opinion of the operators that you have contact with, that the Railroad Commission is an effective body for the administration of this kind of measure?

A. It has not been as effective as I think it should. I want to distinguish between my beliefs and those of the organization. They have stated they would accept that control body in either case, practically unanimously; but they do not go to the extent and belief on it that I do.

Questions by Mr. Hardy:

Q. You have stated that the major companies own 80 per cent of the leases in the East Texas field?

A. I am estimating that.

Q. I have been requested to ask you to name the companies that own that 80 per cent of the production?

A. I named them just now in that last series of questions: The Gulf, the Humble, the Sinclair, the Texas, the Standard, the Magnolia, the Arkansas Fuel, and the Southern Crude owns some.

Q. Are those major companies?

A. They are major companies and subsidiaries of majors.

Q. Is the Gulf a subsidiary of anybody?

A. No, sir; it is a major.

Q. Is the Humble a subsidiary?

A. Of the Standard of New Jersey. It is in the class of a major itself.

Q. Is the Sinclair a subsidiary of anyone?

A. No, sir.

Q. Is it a major in a class by itself?

A. Yes, sir.

Q. Is the Texas a subsidiary of anyone?

A. No. The Texas Corporation of Delaware is the holding company that owns the Texas Company. We think of it as one, because it has a hundred per cent ownership, I understand.

Q. Is the Texas Company of Delaware a subsidiary of any company?

A. No; I don't think so.

Q. How about the Stanolind?

A. It is a subsidiary of the Standard of Indiana.

Q. How about the Magnolia?

A. A subsidiary of the Standard of New York.

Q. How about the Arkansas Fuel?

A. It is City Service.

Q. Is the City Service a subsidiary of any company?

A. No; they have a big bunch of interlocking companies of their own. It is almost impossible to know what they are aligned with.

Q. How about the Southern Crude?

A. Subsidiary of Indiana Standard.

Q. What was that last answer?

A. Subsidiary of Indiana Standard.

Q. One more question and I think we will be through.

A. Thank you.

Q. I have been requested to ask you to give us again the substance of the conversation you had, giving the name of the party with whom you had the conversation, wherein you were told the days of the independent were past?

A. Those were newspaper interviews.

Q. That was with Mr. Deterding, the newspaper interview; and then I asked you with reference to the statement of Walter Teagle and you said you had a conversation with one of his chief executives?

A. Not on that question.

Q. Did you have any conversation with anyone wherein that statement was made, that the days of the independents were gone?

A. I have not, except I discussed same.

Mr. Hardy: That is all.

Thereupon, Robert R. Penn was called as a witness, and testified as follows:

Questions by Mr. Satterwhite:

Q. Mr. Penn are you an oil operator?

A. Yes, sir.

Q. Were you subpoenaed to come before this Committee?

A. I was called Sunday by Mr. Hardy, who asked me to appear.

Q. Are you an independent oil operator or a major operator?

A. I am an independent, sometimes dependent on my banks.

Q. Will you interpret in your own language what is an independent, and what is a major; what is the difference as recognized in Texas?

A. A major company, generally speaking, is simply what the name implies—one of the larger group of operators, and in the general acceptation of the term usually includes a fully integrated company which controls pipe lines, refineries, production, marketing, and all other activities in the oil business. Generally speaking, it also includes in a great many cases, the ownership of foreign production. I think Mr. Hunter properly said that under the old acceptation of the term the majors were generally regarded as members of the Standard group. Now, however, the Sinclair, the Texas Company, and the Cities Service, and the Gulf, are all properly considered major companies, although not a part of the Rockefeller Standard group.

Q. Do you consider your business as an independent?

A. Yes, sir; I consider myself an independent.

Q. You understand the Governor has convened this Legislature for the purpose of considering the deplorable oil condition in Texas today?

A. That is my understanding.

Q. Are you familiar with the situation that brought about this special session of the Legislature?

A. I think so.

Q. Are you connected with any kind of organization that has been attempting to bring about an orderly development of the oil properties in Texas?

A. I am chairman of what has been called all along the Texas Central Proration Committee, which was an advisory committee pure and simple, without any legal authority.

Q. Will you, in your own way, state to this Committee the history of that organization, and the result up to the present date?

A. I might give, if you don't mind, Mr. Satterwhite, a very brief explanation of the origin of proration here in Texas.

Q. That is what we want you to do, and I hope no member of the House will disturb Mr. Penn until he completes his statement.

A. I want to get the picture as a whole properly before the members of the House.

Q. Yes, sir; that is what we want you to do.

A. Up to about 1924 it was generally considered we were approaching the period of exhaustion of our oil and gas resources. Most of the fields discovered up to that time had been discovered more or less haphazardly, and the great majority of the fields were comparatively small oil fields. Up to that time a field that would produce from 75,000 to 100,000 barrels of oil was considered a major oil field. Beginning about 1923 or 1924, there began the period of what we might call the greatest advance in the methods of oil refining and searching for oil. All the major companies, and a great number of the independents, began using expert geological advice, and building up large and expensive geological organizations for the purpose of finding oil. About the same time, there began a very intensive search for oil in foreign lands; and the first intimation of the present situation came along about 1924 or 1925, when major production was discovered in Venezuela. Up to that time Mexico had two or three fields, which had produced large quantities of oil and from which large amounts of oil had been imported into the United States, and that was during or right after the War, when oil was comparatively scarce in the United States, and when the producers in this country more or less welcomed—at least, the refiners and marketers welcomed this importation. Directly after the discovery of the Venezuela field clouds began to appear on the horizon in the United States, and one of the first discoveries of the new type of oil field was in the Yates pool in West Texas. Whereas they had considered up to that time that an oil field of 100,000 barrels total capacity, or total recovery, was a major oil field, the Yates pool in its early stages indicated it had a reserve of a half billion barrels of oil, and probably up to 700,000,000 or 800,000,000 barrels. Shortly after that there were other discoveries in California, and also the Seminole oil field in Oklahoma, and the oil industry began to realize that it was having one body blow after another in the way of fields so large in produc-

tion and so large in total recoveries of oil, that the market could not readily absorb the production from those fields without causing serious rises and falls in the market prices, principally falls. Following the discovery of the Seminole field, the Winkler field was discovered, and shortly thereafter the Oklahoma City pool in Oklahoma City; then the Hobbs pool in New Mexico; then the Kettleman Hills pool in California, which is probably the greatest oil pool in the world from the point of productivity. In the meantime, a great number of foreign pools had been discovered. Along with the development in Venezuela came the development of fields in Persia and various parts of the world—Roumania and Russia, which had been practically annihilated by the World War, began to develop as pools, and their production came on the market. Whereas eight years ago the great executives of the world were predicting oil would be $10 a barrel in eight or ten years, and that there would be such a scarcity that we would have to look elsewhere for our fuel, we entered a period of steadily increasing production and use of oil, due to the greater use of the automobile and other automotive appliances. Although consumption was increasing very rapidly, it was not able to keep up with production. During 1929 we had probably the greatest use of petroleum and its products in the history of the world, and at the same time the greatest production which had been developed up to that time. Those were some of the backgrounds that ultimately caused the origin of what we now call proration. Before that time there had been hit or miss prorations in certain fields due to lack of pipe line facilities to handle all the oil, and due to physical inability of the producers to get their wells into production. In some cases long periods of rain, with its consequent mud in the fields, served as a prorating agency; in some cases, lack of supplies; in some cases, lack of drilling equipment, all served to keep the fields from being so rapidly developed that the market was able in some sort of fashion to keep up with that.

In the fall of 1926 the Yates pool was discovered in West Texas, and it became a major pool of greater proportions than any other major pool in the history of the world. There was no pipe line reaching the Yates pool; the acreage was held in large tracts, but there were a few comparatively small tracts. During the fall of 1926, or early in 1927, after the potentialities of the field became apparent, Mr. W. F. Farish, who is now president of the Humble Oil & Refining Company, addressed a letter to prospective purchasers in the Yates pool, in which he proposed that the Humble Oil & Refining Company would build a pipe line into the Yates pool, provided the producers in that pool would agree to distribute their production and hold it down within the capacity of that pipe line — in other words, to market such oil as that pipe line could handle, and distribute that oil ratably among those producers. As I recall, he made the point in his letter, that his company could go in and produce all the oil from their own leases necessary to fill the pipe line, but that he would prefer to have a fair measure of production from all producers in the field, and to market their oil through the Humble Oil & Refining Company's lines, on a proration basis. That was the beginning, so far as I know, of an effective proration. The operators held a meeting, and they decided to give the plan a trial, although there was suspicion expressed then as to the motives of the pipe line company, just as there seems to be suspicion now among the legislators as to the motives of the independents and major companies. At any rate, the thing was put on a trial basis, and the Yates pool began producing some 40,000 barrels a day, which was distributed among the various producers on an acreage basis. Afterwards it was realized that there was greater potentialities in certain areas than in others. In certain parts of the field there were tight sand conditions, and in other parts there were loose sand conditions, and some wells were comparatively limited in their capacities, while others had an amazing capacity. Then there came the method of prorating upon the basis of the potentials of the wells. It was then discovered that this also was not a fair method, and that acreage should also be given consideration, and there developed a plan, which is still in use in the field, of allowing a certain percentage of the market outlet to be proportioned among the producers in the field according to acreage. I believe that percentage now is 25 per

cent, although at times it was possibly as high as 50 per cent. It was then discovered that in order to build up potentials, certain producers were inclined to drill a great number of wells on their properties, and the plan was developed of taking the average potential of the wells on any unit, but it was still thought that for proration purposes, 100 acres should be considered as the unit in the field. The Yates pool has been producing from the beginning of 1927 — something over four years continuously under proration. The producers are given their share of the pipe line outlet according to the producing average they have, and according to the average potentials of the wells drilled on their units. As a result promiscuous drilling was discouraged, and there have been up to the present time 400 wells drilled from which is being produced the oil. Actually there are some 12,000 or 14,000 acres in the field. The Yates pool is the best example in the world of a properly prorated pool. As the operators studied the results there they found that certain definite benefits came from proration. They found that the productivity, the flowing life of the wells, was greatly increased or prolonged by proration. They found it was possible to cut down the proportion of gas used to flow this oil. As an example of how that works, at one time the Yates pool was producing 125,000 barrels a day. Afterwards the production was reduced to 89,000 barrels a day, and more recently to 70,000 barrels a day, and a number of the wells were making water, but this number has been reduced to thirty-seven. In other words, less than one-tenth of the wells in the pool are making water. Every oil man realizes that the more oil that can be produced without pumping the wells, and without bringing in large quantities of water, the more economical that oil can be brought to the top of the ground. The Yates pool has been a perfect example of orderly marketing and production under proration. As a contrast I might mention the distressing experience of the Hendricks pool in Winkler county, where proration was not put into effect until approximately a year after the field was discovered. There was a great deal of disorderly production there, as in East Texas, and by the time proration was put in, the field was making large amounts of water, a large number of wells. Some seven hundred wells were drilled in the Hendricks field, as against four hundred in the Yates pool, and both pools were approximately of the same area and same character of production. If handled properly the Hendricks pool should have produced approximately as much as the Yates pool. Up to date the Hendricks pool has produced about 150,000,000 barrels of oil, and is now producing about ten barrels of water for every barrel of oil brought out. The production is down to about 50,000 barrels a day and is falling steadily. The end of the pool is in sight and it may be said with a fair degree of certainty and assurance that the Hendricks pool will never reach 200,000,000 total production or recovery. During the same time the Yates pool has pursued the plan of producing entirely under proration and is now producing 70,000 barrels a day. The Yates pool has produced a total of 140,000,000 barrels up to date, about the same as the Winkler, and the engineers figure that there will be five or six hundred million barrels of oil recovered from the Yates pool. In other words, the productivity of the Yates pool will be at least three or four times as great as the total recovery from the Winkler, and the engineers attribute that entirely to the difference in the production methods of the two pools. I mention that merely as an illustration that occurs to me as to the actual savings of oil to the public due to the methods of production. After the Oklahoma City pool was brought in they had a comparative period of rest when we thought things were going to work out all right, until the Kettleman Hill pool was brought in in California. Then in the fall of 1929, in August, 1929, the Darst Creek pool was discovered about forty miles southeast of Austin, and there again we had the problem of a major pool. Shortly thereafter the Van pool was discovered, and oil men realized again that here was another pool of four or five hundred million barrels, or more. Early last fall, in September, the first well was brought in in the new East Texas field. The first big well was brought in in there in November, and the second big one in December. Then in January the third big well was completed in the East Texas area, and oil men realized we

had an area of some forty miles by several miles wide with a total possible recovery of oil running into billions of barrels, a field that will take its place as second only to the Kettleman Hills field in California.

To retrace my steps a little, there was passed by the Session of the Texas Legislature in the early part of 1930 what was known as the Common Purchaser Act, with provision that all purchasers of crude oil, pipe line and the like, must distribute their outlet rataby among all producers. As I recall, the Common Purchaser Act gave the Railroad Commission of Texas authority to so distribute the production among—rather, distribute the production from the various fields of Texas so as to prevent discrimination as to producers in a common field or pool, and to prevent any unjust or unreasonable discrimination in the takings as between the various pools in the State. When this act was passed, the producers in the State, like myself, had been making a study of the situation, and who realized we were faced with a long period of overproduction and difficult marketing due to possible lack of demand for oil and low prices, began a study of the situation and tried to formulate recommendations as to what should be done. The first step in this direction was in the curtailment committee of the Mid-Continent Oil and Gas Association, composed of both independent and major oil producers as well as marketers, pipe lines and refiners. I was vice-chairman of the curtailment committee, and Mr. J. D. Caldwell of Fort Worth, who is the dean of the independent oil men, was chairman of the committee. We began a study of the situation and made such investigations as might be within our reach to make recommendations as to what the oil men of Texas should do to handle the situation that was already beginning to be grave, and that had been precipitated by a sudden price cut in January, 1930. This committee extended, rather—recommended, the extension of proration activities over the State, and the curtailment of production over the State to within the market demand. The committee also attempted to foster the passage of certain legislation by the State Legislature, which was then in session, which it was thought would help the situation. The Common Purchaser Bill was, by the Independent Petroleum Association, endorsed and the bill was passed at its instance, and members of our committee endorsed the passage of the bill. That bill was to become effective June 20, 1930, as I recall the date. A short time before that our curtailment committee called a meeting of the directors of the Mid-Continent Oil and Gas Association. This was to be held in Dallas, and also notified the directors of the Independent Petroleum Association and others interested in the oil business to attend. At that meeting there was a considerable discussion of the entire situation, and it was agreed that proration should be State-wide, under the terms given in the new Common Purchaser Act, and that we should proceed to ascertain what the conditions of the oil industry in Texas was and make proper recommendations to the Railroad Commission relative to the operation of the Common Purchaser Act. The greatest defect of the Common Purchaser Act, as we then saw it, was the fact that Dan Moody had vetoed the appropriation that the Legislature had made for the enforcement of the Common Purchaser Act. With this appropriation vetoed, everyone felt, and the Railroad Commission felt, that they could not proceed to enforce the act adequately because they had no funds with which to do so. Our curtailment committee of the Mid-Continent Association had a meeting in Dallas and suggested the formation of a committee which should undertake to foster proration in the State of Texas and which should be composed of two members of the Mid-Continent Oil and two members of the Independent Petroleum Association and two members of the major pipe lines and producing companies of Texas. The pipe line companies appointed Mr. A. M. Donoghue of the Texas Company, and Mr. John R. Floyd of the Humble Oil and Refining Company as their representatives. Mr. Tom Cranfill, president of the Independent Petroleum Association, appointed Hubert Ricker of San Angelo and George Hilter of Fort Worth, another independent operator, as their members of the committee. The Mid-Continent appointed a Mr. Clark of the California Company, which is a subsidiary of the Standard Oil Company of California, and one other man whose name I don't recall just now—I believe Mr. Charles Rosier, and he was an independent of Fort Worth, as

their members. The first meeting was held in Houston, and I had been invited to attend, as I had been active as the chairman of the curtailment committee of the Mid-Continent Oil and Gas Association. The meeting in Houston was held, and at that meeting the joint proration committee of the various organizations requested me to serve as chairman of that committee, and I accepted the chairmanship, making the committee have a total of seven. The committee voted to solicit funds from various oil producers, both independent and major companies, for the promotion of the work. We also employed a technical adviser, Mr. David Donoghue of Fort Worth, and we opened offices in Fort Worth and proceeded to carry out as effectively as possible what we then believed to be the best way to secure State-wide proration. The Railroad Commission had requested our committee to furnish it with such information as possible to proceed upon in putting into effect State-wide proration in the State. This committee, through its technical adviser, proceeded to get such information as it could obtain from all sources possible, and set out what we call nominations to all known producing companies in the State. This included the major companies and 60 or 75 independent refiners and pipe line companies and everybody else of whom we could obtain any knowledge of being producers of oil. At the direction of the Railroad Commission, those purchasers were asked to make nominations to our committee so that our technical adviser and statistician could prepare an estimate of the total demand for crude oil in Texas for a period of 90 days beginning about the first of July, 1930. Then, or shortly thereafter, the production of oil in Texas reached approximately 863,000 barrels per day, which was the largest in the history of the State. Our committee then made recommendations to the Railroad Commission that production be made State-wide and apply to all the oil pools of a flush nature within the State, also to certain semi-flush pools, as nearly as possible. The committee recommended, and the Railroad Commission proceeded on the theory of making the Common Purchaser Law applicable so far as it was possible to do so. Upon those recommendations the Railroad Commission held hearings and, after the presentation of evidence, the Railroad Commission issued, on or about the 27th of June last year, the first State-wide proration order, providing for a production from the State of approximately 750,000 barrels per day. About the latter part of September, that was. To begin in October, the total production of the State was placed at some 663,000 barrels per day, in an effort to keep production of the State within a reasonable market demand as it could best be ascertained. The production in the State under proration fell steadily. Proration was applied with more or less success to the Panhandle area and to the Darst Creek area, and to Wichita Falls area, and the Ranger district, and other areas of the State. Production reached a low state of about 660,000 barrels per day. This was just about the time the new East Texas field came on the horizon. On December 6, 1930, the board of directors of the Mid-Continent Oil and Gas Association held a meeting in Dallas and adopted a resolution which called upon the Railroad Commission to start immediate steps for the immediate proration of the new East Texas field. We called attention to the fact that in the opinion of the directors of the association there was developing there another major pool, which would disrupt the petroleum industry in Texas if it was not curbed from the beginning. In January the Central Proration Committee issued a statement, and which called again attention to the necessity for early proration of the new East Texas pool, and predicted the danger of oil prices falling as low as 30, or even to 10 or 15 cents, a barrel if proration was not put into effect.

Mr. Hardy speaking: I move that the Committee stand at ease until 2 o'clock p. m.

The Chairman: We will recess until 2 o'clock p. m. this afternoon, when the hearing will be resumed.

Thereupon the hearing was recessed until 2 o'clock p. m.

The Committee met at 2 o'clock p. m. the same day, Tuesday, July 21, 1931.

Thereupon the witness, R. R. Penn, resumed the stand and further testified as follows, upon examination by Mr. Hardy:

Q. Go ahead, but not quite so fast, Mr. Penn.

A. Mr. Chairman, I believe that I was trying, in opening, to tell something of the conditions regarding development of the East Texas fields. In January, 1931, I issued a statement as chairman of the Central Proration Committee, calling attention to the dangers of too rapid development of this field and disorderly marketing in the new East Texas field. At that time we predicted that if the operators therein did not take steps to secure orderly development and orderly marketing, and put the field under proration, under the supervision of the Railroad Commission, there would be danger of the production of a great lot of oil the market could not absorb, and that there would be prospects of oil as low as 25 to 30 cents a barrel, and possibly as low as 10 cents a barrel or less, and statements were published in all the princiual newspapers of North Texas and in Shreveport papers, and shortly thereafter certain influences in Tyler, Texas, and East Texas began a very violent political campaign, threatening the Railroad Commission with extinction politically if they dared to move on the recommendations of the Proration Committee. The Proration Committee was charged with being a considerable legal monster. The Committee does not claim authority, but simply is an advisory body, and was making an effort to call attention to the dangers with which East Texas was confronted. How correct was our diagnosis subsequent facts proved. Due to political and newspaper campaigns which were started no steps were taken toward the actual proration of the East Texas field until the latter part of March. A proration hearing was called by the Railroad Commission and the hearing lasted for several days and finally resulted in an order for proration of the East Texas pool on the basis of starting out with 160,000 barrels per day. In the meantime, something around 200 wells had been completed in the field and a great deal of oil was then being marketed at a price as low as 15 cents a barrel at the well, so the Committee called attention repeatedly to the dangers of great physical waste in the East Texas field and to dangers that virtually meant ruination of the field, and for the first time it was put under orderly development and orderly market. In all these cases, as I said, we were simply trying to act in an advisory capacity for the good of the entire State and for the oil industry. Since that time there has been completed up to date, in the East Texas field, some 1267 wells. How much oil could be produced per day from all those wells, if all those wells were thrown wide open, no man can estimate at this time, but undoubtedly the field would produce more than 1,000,000 barrels per day for some considerable period; there has been figured mathematically that the field has approximately 200,000 acres, making the field, from the standpoint of acreage, the greatest oil pool in the world, with a single exception of the Venezuelan fields; engineers and geologists estimate there is under ground, in the East Texas field, between 1,000,000,000 and 1,500,000,000 barrels of oil. Personallly, I have estimated for some time back that 1,500,000,000 barrels in East Texas would be too low figures, and recently there has been an estimate by competent authorities, giving the total recovery ultimately, if the field is controlled and properly handled, of 2,000,000,000 or 3,000,000,000 barrels of oil, making it the second greatest oil field in the world. That oil should have been worth to the State of Texas, and to the United States, at least 50 cents to 75 cents per barrel under ground; in other words, the discovery of that pool should have increased the visible wealth of the State of Texas by 1,500,000 barrels. On the contrary, due to disorderly marketing which now exists, due to the refusal of certain operators to obey the proration orders that have been issued by the Railroad Commission, due to the wild scramble for disproportionate markets of operators who imagine they can make more money selling ten or eleven barrels a day at 10 cents than they can by selling 400 or 500 barrels at $1, has caused the collapse not only of our East Texas oil market, but the oil markets of the world generally. The result is that the oil from the East Texas field is now going to market at 15 cents, averaging around 10 to 15 cents per barrel. If that condition continued, the State of Texas will realize from the East Texas field somewhere around $200,000,000 or $300,000,000, where it should realize a net profit of more than one-half billion dollars.

From the standpoint of taxes alone, the State of Texas stands to lose $200,000,000, ultimately, from the disorderly and reckless development and marketing now existing in the East Texas field. I base that estimate upon conclusions of my own — and sitting in a conversation with the president of one of the largest oil companies in the State, he made this statement to me—he said: "Bob, if there were only some way that the producers of East Texas could sit down around a table and say they wouldn't sell that oil for less than $1 per barrel, and then with that oil in orderly condition and that price, we would have that $1 oil." That has been an enormous loss that has been caused in East Texas. Now, there is a market for approximately 400,000 barrels of oil a day; that oil, under normal conditions, would be worth upwards of $1 or a like amount of money. If there had been orderly development there, such as the Proration Committee, the Board of Directors of the Mid-Continent Oil and Gas Association, and many other students of business have recommended for the last six or eight months, they would have kept up the sale at $1 per barrel and would have been able to market out 200 or 300 barrels a day. It has cost East Texas upwards of 155,000 barrels a day, it has cost the rest of the oil business of Texas at least $600,000 a day, it has cost the business of the United States $5,000,000 or $6,000,000 a day. Now, gentlemen, I am not attempting, have never attempted, to blame any East Texan for that situation. The East Texas people have been very unfortunate in having a few very unwise and very shortsighted advisers. It is the greatest record that we have, simply a virtual collapse of the market, and we now see producing conditions there created underground, physical waste, which, if not checked, will not only result in many hundreds of millions of dollars' loss in the value of oil, but will result in the loss of the wells and many hundreds of millions of barrels of oil. That is the situation with which we are now confronted, and this has created waste not only in the East Texas fields, but in all the fields of the State, the Nation, virtually hundreds of those wells are being abandoned and millions of barrels of oil which can only be recovered from small wells in this way being lost forever to the future because of that reckless and dismal market which now exists in East Texas. The statement has been made—at least I heard it made here—that there was a conspiracy to take away the oil of the East Texas people at a low price. I do not agree with that. I think the producers over there, who, in the mad scramble to sell oil at a low price in order to get volume runs from their wells, are the men who have dictated the market, they are the men who have brought down upon East Texas, upon the State of Texas and upon the Nation at large, the collapse of the oil business, with its abandoned wells worth many millions of dollars if not checked, with its immense waste of recoverable oil, with its enormous unemployment, with all the troubles, all the evils, in its wake.

Q. Mr. Penn, can you tell the Committee here why the committee has failed to carry out the proration in accordance with the committee's plan?

A. Mr. Satterwhite, I wouldn't admit that the committee failed. The committee did all that it had any power to do, which was to call attention to the situation and advise on a course of proration.

Q. Whose duty has it been to enforce the proration?

A. The duty was with the Railroad Commission of Texas. I think the Commissioners faced the matter with sincerity of purpose and with a desire to do their duty, but there was such political pandemonium at the time that it is small wonder that elective officers hesitated to run into the situation, particularly when they were not oil men. These men believed the rules would come to the aid.

Q. Do you believe such conditions could be corrected with proper legislation and, if so, what corrective legislation do you recommend?

A. A very corrective legislation would be an effort by legislation which would make it absolutely certain that every great oil field would be placed under proration from the very beginning, with an orderly development program that would be worked out for every such field. The places where there is proration, as the central district and like the Yates pool in Pecos county, and the Penn pool in Ector county, which I discovered myself and immediately put under proration, the Hobbs pool

in New Mexico, and the Van pool in East Texas, where proration was from the very beginning and carried them out as planned, those pools have proven profitable properties for the operators, and they are profitable for the royalty owners, and they are saving untold millions of dollars assets for the future use of the State of Texas, and in the State of New Mexico, in the case of Hobbs, all examples of disorderly development, as was the Hendricks pool in Winkler county, which I mentioned this morning, where there has been untold waste of hundreds of millions barrels of oil due to cases of water encroachment and disorderly development; and Oklahoma City, which perhaps produced close to 1,000,000 barrels of oil, and probably lost 15 or 20 cents a barrel for every barrel produced in Oklahoma City, proration wasn't instituted in time and there has been a great waste. For proration to be most effective, it must come into the field when the field is discovered.

Q. Do you believe this Legislature might pass any character of legislation which would enable that to be done?

A. I think so.

Q. Enable that to be done?

A. I think so.

Q. In what way? What would you recommend?

A. I think that the bill which has been prepared by the so-called emergency committee embodies many improvements in the present system of proration. I think further, that there should be a law placed upon the statute books of Texas which would recognize that each owner of land in an oil pool owns and is entitled to recover that portion of the oil in the pool which underlies his land; in other words, that he has a unit interest in the oil and gas pools, and that the pools should be so developed that if my land or any other man's land underlies 2,000,000 barrels of oil, I would be permitted to recover 2,000,000 barrels of oil in the pool as my portion of the production of the pool. Furthermore, the Common Purchaser Act should be strengthened and ratable takings must be applied to every pool in the State. The principle of proration is only one of equity and fairness, the idea is to take away from the big company the power which it has through its pipe lines and refineries to take its own oil and refuse to take the oil of the little fellow who has no such advantages. Proration gives every man a fair and equal show in the market. That is certainly fair and certainly right. Furthermore, it provides an orderly system of development that saves an immense physical waste in the pool itself and save economic structure and, if properly applied, will prevent such conditions as we have now, where the State of Texas is losing some $15,000 to $20,000 per day in actual taxes from the oil business.

By Mr. Hardy:

Q. Mr. Penn, did I understand you to say that you advocate a bill which would provide that the oil under a man's land might be taken by him and so much of the oil as was ascertained to be under that land would be all he could take?

A. No, sir, wouldn't be all he could take. If the appraisement should be ascertained, he would eventually get more. The proposition would be to ascertain the proportion of oil in the pool that each man was entitled to.

Q. Can that be done?

A. Yes, sir, that can be done.

Q. Then, if it could be ascertained, couldn't it be ascertained in advance and set down.

A. It could.

Q. Then, if ascertained, he could not be allowed to take out any more than the part which was underlying his property?

A. Certainly, it is more than that, he is getting his net portion of oil.

Q. Do you think that is correct?

A. I do.

Q. Do any of the other members of this Proration Committee agree with you on that?

A. I have never discussed that particular proposition with them. I am talking personally, now.

Q. Have you ever recommended to the Legislature that such a bill be introduced?

A. I don't think I have.

Q. During the time you have been a member of the Proration Committee, you have studied the ratio of gas and oil consumption and waste, have you not?

A. Yes, sir.

Q. You were originally appointed on the committee and the committee's original purpose was to help carry out—

A. Proration laws.

Q. No, not proration laws, to carry out the Common Purchaser Bill, wasn't it?

A. Yes, sir.

Q. And during all this time, how long have you had this idea about so much being under each man's property?

A. Well, that would be hard to say, Mr. Hardy. However, you must remember that I haven't been asked for my opinion by the Legislature, and I didn't see that it was up to me to volunteer it.

Q. You are a citizen of the State of Texas, are you not, Mr. Penn?

A. I am.

Q. You have five representatives —where do they live—in Dallas?

A. Dallas.

Q. You have five or six representatives to the Legislature from that county, haven't you?

A. Yes.

Q. You have to exercise but the rights of a citizen to talk to them relative to your views upon that matmatter, haven't you?

A. I have.

Q. Did you ever express that view to them?

A. I have never.

Q. Do you think it is necessary for you to suppress your views until you are called upon by the Legislature?

A. Well, I am not a law-maker, I am not supposed to come and tell you unless you ask me.

Q. Did you ever suggest anything to the Railroad Commission that you were not asked to?

A. We suggested such things as we thought were within the scope of our duties as an advisory committee.

Q. Did you not think that it was part of your duty as an advisory committee to suggest to the Legislature remedial measures?

A. I did not.

Q. And that is your reason for not doing so?

A. Yes, sir.

Q. All right.

A. This is the first time I have been asked for an opinion on that.

Q. Now, then, do you think that that would be a good law?

A. I do.

Q. Then, don't you think that the ascertainment of the amount of oil under each man's land should be filed somewhere with the Railroad Commission, or with the Land Department, so that the State of Texas might know just how much oil each individual operator, or each major company, could produce, and file suit against them if they endeavored to take more?

A. That would be fair.

Q. Do you know whether — you said something a minute ago about the large major companies—the advantage of the major companies over the independents. What advantages do they have?

A. They have the advantage of being what they call integrated companies, or owning their own market systems, owning their refinery, and either owning or controlling their own pipe line systems.

Q. How many of those major companies are there?

A. You mean with those facilities?

Q. Yes, sir.

A. Operating in Texas—probably 10 or 12.

Q. How many are there in the United States?

A. Oh, possibly twice that many.

Q. Is it not a fact that approximately—that those twenty companies, or fourteen companies, or thirteen companies, or whatever they happen to be, own or control approximately 65 per cent of the crude production of the United States?

A. I don't know the exact figures. That is probably not far off.

Q. Pretty nearly correct?

A. I suspect so—just a guess.

Q. Do these same companies control or own approximately 97,000 miles of pipe line in the United States?

A. I imagine so.

Q. Is that approximately 99 per cent of the pipe lines in the United States?

A. Well, probably would be 80 per cent, I don't know as to the exact figures.

Q. Through these transportation facilities, do they not practically control the entire crude production in the State?

A. No, sir, they do not.

Q. What happens to the rest of it?

A. A great many independents own production in Texas, in Oklahoma, California, and elsewhere.

Q. They control the transportation of that, don't they?

A. They control most of the transportation of it, yes.

Q. Do they or do they not own or control approximately 100 per cent of the ocean transportation facilities?

A. I imagine they control most of it.

Q. Do they or do they not produce practically 85 per cent of the crude oil and refined products imported into the United States?

A. The four major companies do nearly all the importing, they bring nearly all the oil that is imported—that is, the four major importers.

Q. Do they control approximtely 95 per cent of the imports?

A. I could not say as to that, Mr. Hardy; I rather doubt as to whether they control that much.

Q. Do they control approximately 85 per cent of the refining plants in the State of Texas — in the United States?

A. In the State of Texas?

Q. In the United States.

A. I don't know about the 85 per cent. They control the major part of them.

Q. They control the major part of it?

A. Yes, sir.

Q. Who are now members of the Central Proration Committee, Mr. Penn?

A. The members of the committee at present are myself, Charles F. Roser of Fort Worth, A. M. Donahue of Houston, John R. Suman of Houston, R. H. Morrison of Dallas, George Calvert of Fort Worth and recently E. L. Smith of Mexia, who sat with the committee in the place of Rupert Richar, who resigned. Mr. Morrison took the place of Warner Clark who moved back to California.

Q. Who is E. L. Smith?

A. He is an independent operator of Mexia.

Q. Who is Mr. Morrison?

A. He is the manager of the Gulf Company, a subsidiary of the Standard Oil of California.

Q. Practically the same position as Mr. Warner Clark?

A. The same position; he succeeded Mr. Warner Clerk when he left here.

Q. Who is Mr. John Suman?

H. He is director of production of the Humble Oil and Refining Company.

Q. Did he hold any executive office in the company?

A. I say he is director of production—that is his title.

Q. Is that the same Suman that is on the East Texas Advisory Committee?

A. Yes, sir.

Q. Who is Mr. Donahue?

A. He is vice-president of the Texas Company.

Q. Who is Charlie Roeser?

A. He is an independent operator of Fort Worth.

Q. And you are an independent operator?

A. Yes, sir.

Q. Are there any fees or salaries paid to the Central Texas Proration Committee?

A. None whatever.

Q. Do you have a secretary?

A. We do not.

Q. Do you have any expenses?

A. We have a technical adviser, who acts in the capacity of a service station and maintains an office to keep up statistics and applies it or them to all the technicalities of his work.

Q. Who is it?

A. The present man, T. D. Foran.

Q. Where does he reside?

A. Fort Worth.

Q. Do you have a lawyer?

A. We have several lawyers who have been employed by the committee as we needed them.

Q. Who are your present attorneys?

A. The present attorneys are M. S. Church of Dallas, R. A. Hardwicke of Fort Worth.

Q. How long has M. S. Church been with the committee?

A. Since its organization.

Q. How long has Mr. Hardwicke been with the committee?

A. Since last September or October.

Q. How does the committee pay them?

A. It pays them out of contributions to their funds.

Q. Where do you get these contributions?

A. From independent operators, major operators, banks, stores, anyone else that we can get the money from, who is interested in the good cause.

Q. Do you keep any records of those?

A. Yes, sir.

Q. Do you have the records with you?

A. I do.

Q. Would you mind letting the Committee see those records?

A. I will not only do that, I will file them with the Committee.

Q. Fine.

A. Do you wish the expenditures, too?

Q. Yes, if you have got them where you can file them, why, we would like to have them.

(The witness handed the papers to Mr. Hardy.)

Q. You are perfectly willing that these be filed and exhibited and shown in the Journal of the House, are you not?

A. I brought them here for that purpose.

Q. All right, sir — all right. Where has been most of your individual operation, Mr. Penn?

A. In Ector county and West Texas. My latest operations were Ector county in West Texas, in the Darst Creek field, in Southwest Texas, and various wildcat drilling operations in other fields. I also owned royalties in Yates pool, and various other royalties in other parts of the State.

Q. Do you have any interest in East Texas?

A. I have sold my interest in East Texas.

Q. When did you acquire them?

A. I acquired them last September.

Q. When did you sell them?

A. About ten days ago.

Q. To whom did you sell them?

A. To my partner, the Sun Oil Company.

Q. Did you ever sell any to the Humble Oil Company?

A. In East Texas?

Q. Yes.

A. No.

Q. Did you ever sell any leases, anywhere, to the Humble Oil and Refining Company?

A. Oh, yes, I have frequently sold them leases.

Q. Do you have a lease in Ward county?

A. I do.

Q. Does it belong entirely to you?

A. No, sir, it belongs 50 per cent to me and 50 per cent to the Atlantic Oil Producing Company; we are joint owners.

Q. Who is the Atlantic Oil Producing Company?

A. It is an independent company, with headquarters in Philadelphia.

Q. Did you or did you not sell approximately $175,000 worth of wildcat leases to the Humble Oil Company recently?

A. I did not. I would like to have $175,000 if it was due me—I wish you would tell me where it is so I can go and get it.

Q. Is the Penn pool—did I understand you to say that the Penn pool was prorated?

A. It has been under proration practically since the beginning.

Q. How big a production is there in the Penn pool, Mr. Penn?

A. It is producing at present about 7500 barrels a day.

Q. Seventy-five hundred?

A. That is right.

Q. How much area does it cover?

A. I think the last figures showed there were 3400 proven acres.

Q. Where is that pool?

A. It is located in Ector county, about fourteen miles west of Odessa, Mr. Satterwhite's Capital.

Q. Do you know what was the price of oil in the Yates pool during the years that this pool has been producing?

A. They have ranged about, with the exception of the last two or three months, the price has ranged from about 60 cents up to about the amount of $1.

Q. When was the Yates pool discovered—when was the Yates pool discovery well first drilled in it?

A. In November, 1926.

Q. When was it prorated?

A. It was prorated about the time the drilling campaign got under way, about November, 1927.

Q. Now, was or was not, in October, 1926, oil in West Texas area selling for $1.30 a barrel?

A. It was not.

Q. It was not?

A. No, sir.

Q. In October, 1926?

A. I think it was selling at about 65 cents then, or 60 cents.

Q. Well, if the Oil and Gas Journal of that date states that fact, it is incorrect?

A. West Texas?

Q. Yes, sir, West Texas oil.

A. Are you looking at West-Central Texas?

Q. No, sir.

A. There is some mistake.

Q. Wasn't North Texas oil selling in October, 1926, for approximately $2.21 per barrel?

A. Probably somewhere in that neighborhood.

Q. In October, 1927—December, 1927, after the Yates pool had been producing and prorated, wasn't the price of oil then approximately 60 cents per barrel?

A. Somewhere in that neighborhood—60 or 75.

Q. And wasn't the price of oil in North Texas at approximately $1.26 per barrel?

A. I imagine that is about right.

Q. Isn't that also true during 1928, that the price was approximately the same during that time?

A. I don't remember any particular changes in 1928.

Q. Was there any change in 1929?

A. There may have been some slight changes. The first deep cut came in January, '30.

Q. Well, in '29 didn't the price of North Texas oil rise to $1.40 and the price of West Texas oil rise to $1.14?

A. Somewhere around a dollar, I possibly recall some $1 West Texas oil.

Q. And this perfectly prorated field, that oil was selling for less than the North Texas oil all during that time, wasn't it?

A. Certainly, it was lower gravity, had softer contents, and was further from the coast.

Q. A gentleman wants to know what difference it makes as to how far it is from the coast.

A. Well, it is just like if he arrives by train from Austin to Taylor, he would pay for 37 miles; if he rode to Galveston he would pay more.

Q. Are you a member of the Mid-Continent Oil and Gas Association?

A. I am.

Q. How did you arrive at the figures that the East Texas oil pool will produce approximately 2,000,000,000 or 3,000,000,000 barrels of oil?

A. The East Texas field has not proven 170,000 acres, approximately, and it is very conservative to estimate that that oil will average from 15,000 to 20,000, or possibly 25,000, barrels per acre, if properly handled, to recover.

Q. What is the largest pool—you referred a few minutes ago to the larger pool?

A. Kettleman Hills in California is probably the world's biggest oil pool.

Q. And how much, approximately, might it produce?

A. It is hard to estimate, but the estimate runs from 3,000,000 to 5,000,000 barrels.

Q. Why is it so hard to estimate?

A. The exact depth is not yet known; they have drilled 300 to 400 feet in the sand, and don't know how far they can go.

Q. How much acreage does it have?

A. 122,000 or 123,000 acres proven up at present.

Q. A few minutes ago you referred to the East Texas citizens interested, objecting to proration. Whom did you refer to at that time?

A. Well, there were a good many of them over there, read it in the paper, the editor at Tyler, one of your State Senators, and a good many other people.

Q. Was it an organization, or was it merely individual objections?

A. I think they formed what they called an organization.

Q. What was the name of that organization, do you know?

A. The East Texas Lease Royalty and Land Owners' Association, I think; something like that.

Q. Where does all this cheap oil go that you spoke about, Mr. Penn?

A. Well, a great deal of it goes in the pipe lines, some of it is going to the refineries, some going to storage, some taken by tank cars—various people.

Q. Approximately what per cent of it is being hauled out in tank cars?

A. I understand around about 20 to 25 per cent is going out by tank cars.

Q. Where does it go?

A. To various points — Canada, some of it probably goes to Europe—various points.

Q. Now, these fellows who made commissions on oil and bought it at low price, to whom do they sell?

A. Anyone they can.

Q. Well, do you know anyone purchasing that in the major companies—purchasing from them?

A. No, I don't know of my own knowledge.

Q. Do you know where this oil goes to, then?

A. No, sir, not entirely. Mr. Foran will be here subject to your call; he will probably give you all these details.

Q. Why did the East Texas pool break away from the proration orders?

A. Because there were a good many fellows there who wanted to run more oil than was allowed in the proration, and they were willing to sacrifice price, sacrifice their neighbors, and sacrifice, very naturally, the other operators in order to do it.

Q. Has that ever happened in any other pool, or not?

A. In some, yes, sir.

Q. What pools?

A. It happened to some extent in Darst Creek.

Q. Where is Darst Creek?

A. About forty miles southwest of here, near Seguin. It happened to some extent in Wichita Falls last fall, and was a contributing cause of one of the price breaks up there. It happened in the Panhandle to some extent, happened in Hendricks pool in Winkler county three or four years ago, and it has happened repeatedly in Oklahoma City pool.

Q. Then these East Texas boys over there, why, are not the first ones to break the laws, are they?

A. Not the first, but the worst. They were the first ones to bring oil down to a dime a barrel.

Q. You will admit, will you not, Mr. Penn, that there is not as much oil being produced at this time as there was in August, 1929?

A. That is correct.

Q. How, then, do you account for the fact that oil is down to 10 cents a barrel?

A. Because of the ruthless and disorderly market in East Texas; because men were offering to sell their oil at any price if they will buy it in large quantities; naturally, nobody is going to pay more.

Q. Do any of these fellows run around to anybody trying to sell them pipe line connections?

A. Oh, yes; they try before they drill their wells.

Q. But I mean those having pipe line connections, were any of those fellows running around trying to sell it to somebody?

A. I don't know; I imagine some of them did.

Q. You don't know, though, do you?

A. I don't know.

Q. When the East Texas pool first came in, what was the posted price for oil in East Texas?

A. There wasn't a posted price for oil in Texas at this time. At the time the East Texas oil began to be developed, the posted price for mid-continent crude, the light crude, was $1.

Q. What is a "posted" price?

A. The posted price is the price which any purchaser makes known to the public where he will buy the oil or make the posting of that price.

Q. Well, now, we refer to posted price—was that the posted price of any particular company or not?

A. No, that was—it was the Mid-Continent Company.

Q. Do practically all the purchasers post the same price?

A. As a general rule, they do.

Q. Do they vary very much, if they do vary?

A. Generally they don't vary; occasionally you will get considerable variance.

Q. Now, then, when was the first posted price for East Texas oil?

A. I think the Magnolia posted the first price at 67 cents a barrel, from 75 cents; that was about April.

Q. April, 1931?

A. Yes, sir.

Q. What was the posted price for oil in North Texas in April, 1931, for forty gravity oil?

A. I don't recall whether North Texas came down to the same price immediately, but they were very soon at the 67-cent price, too.

Q. Well, what was the posted price for Gulf Coast oil, 40 per cent gravity, at that time?

A. I couldn't tell you that; I didn't keep in very close touch with it.

Q. Well, isn't it true, Mr. Penn, that the posted price for East Texas was less than the posted price in any other parts of the State for the same gravity oil?

A. It may have been; I couldn't say.

Q. And wouldn't that cause these boys to try to sell their oil out?

A. No, I don't think so, I don't see why they would want to sell for less than 60 cents when somebody offers them 67.

Q. Your committee was formed originally, I believe you stated, for the purpose of enforcing the Common Purchaser Bill?

A. No, sir; it was formed to advise the Railroad Commission in regard to the enforcement of the bill.

Q. What efforts did you make to assist the Railroad Commission relative to that enforcement?

A. We employed a statistician, technical adviser, put up exhibits and made recommendations, and we made reports to the Railroad Commission of various hearings, provided attorneys and prepared and conducted a hearing—the hearings, provided necessary technical evidence, did everything that we could to assist the Railroad Commission in way that they

were not able because the Governor of Texas had vetoed the appropriation for it.

Q. Who had nominations been made to prior to that time?

A. There had not been any.

Q. How was the proration in those other pools carried along then?

A. Proration in Yates, Darst Creek, Van and Winkler were usually fixed in the greater part of the meetings, of the local Advisory Committees, who had ascertained in whatever way they could how much oil could be handled from the field.

Q. Then proration up to the time your committee endeavored to procure a proration order in East Texas, then proration was, as a matter of fact, only what the companies agreed to purchase, proration simply meant that the field sold only what the major companies agreed to purchase? Is that correct?

A. Well, you can't sell oil unless you have a purchaser.

Q. I understand that, but is that what the theory of proration was prior to this time?

A. No, sir, the theory of proration was to prevent waste by holding the production of the field within marketable demand.

Q. Was that the way proration was enforced?

A. It was.

Q. Now, then, you say your company procured the nominations of these various companies, your statistician did that?

A. Yes, sir.

Q. What did the nominations have to do with the enforcement of the Common Purchaser Law?

A. Our committee repeatedly made recommendations to the Railroad Commission that they take steps to insure all purchasers in all fields with pipe line connections, we repeatedly recommended rigid enforcement of the Common Purchaser Law, we several times recommended to the Railroad Commission that they arbitrarily distribute the takings from various fields, so as to gain more substantial justice as between fields, as contemplated by the law.

Q. But what does nominations have to do with the Common Purchaser Law?

A. The nominations were simply a basis for finding out how much oil could be sold from the State without creating waste.

Q. In your opinion, these nominations amounted to and are synonymous with reasonable market demands?

A. They were.

Q. Are they now?

A. I think they could be worked out if the laws were perfected.

Q. What would you suggest?

A. I think that the enforcing agency, the Railroad Agency, or whatever it might be, should take all the nominations from these various purchasers and register the production as between pools, so as to be sure that one pool would not be starving while another pool was running oil all over the country.

Q. How much effort should it take to get these nominations from these various purchasers as to how much oil they would take?

A. Sometimes it took considerable effort; our technical adviser wrote letters and frequently had to send out telegrams, even make personal talks or personal calls, and in two or three cases had to get assistance from the Railroad Commission, trying to get the companies to supply these.

Q. Couldn't that be done by a clerk or stenographer or something like that?

A. If he had sufficient sense, yes, sir.

Q. What constitutes a fair basis for making these nominations—is it based upon potentials of the field or upon the supply, or upon storage, or how?

A. A fair basis for nominations would be to ascertain how much oil should be taken from the various fields without creating waste by forcing oil into storage, and without creating waste by disorderly and unreasonable takings within the fields.

Q. I didn't catch that, what you said about storage, Mr. Penn.

A. I say a fair basis for marketing demands would be a proper ascertainment of how much oil could be run from the various fields of the State without creating additional or unnecessary storage of oil, and thereby creating waste.

Q. Did your committee intend to make its recommendation based upon that?

A. It did.

Q. You do recommend to the Railroad Commission what the allowable in the field would be, do you not?

A. In most cases we do.

Q. You do that in all of these

State-wide proration orders, do you not?

A. Yes, sir.

Q. Did you make any recommendations along about March 6, 1931—was your recommendation about that time?

A. Yes, sir.

Q. Under your reports you make the nominations of the several purchasers, do you not?

A. I think the recommendation would be the best evidence. It is on file with the Railroad Commission.

Q. What was the amount of oil you recommended to be taken from the East Texas field at that time?

A. I would rather refer you to the report that was made at that time. I do not know exactly what it was that the committee recommended on the East Texas field at that time.

Q. Did you know what the output of that field was at that time?

A. No, we did not know what the output would be at that time. We felt that a good many of them were making nominations in excess of what they could take care of.

Q. What do you mean by that?

A. Well, a good many people felt that they should take more oil than would have been possible for them to take.

Q. How do you arrive at that?

A. By knowing, and by our knowledge of what those who made nominations could take care of.

Q. Would you take into consideration the fact that there might be wastage of oil?

A. We would not recommend the sale of oil from any field that would involve storage beyond the necessary storage to serve their business.

Q. Did you inquire into the proposition of the validity of the nominations which were made?

A. I think you would have to get that information from the Texaco advisory committee on that field.

Q. You just now stated that some of these people were attempting to take more oil than you knew they could handle?

A. That was the report of our technical advisory committee.

Q. Then you are basing your answers to those questions on the advice of this technical advisory committee?

A. Yes, sir.

Q. And not of your own knowledge?

A. Put it that way if you want to.

Q. Is that true?

A. I think so.

Q. Did you ever have the nominations from the Great Southern Oil and Refining Company?

A. I think they had a man or someone here at Austin who handed me a letter at the Austin Hotel after they had concluded the hearing.

Q. Do you recall whether or not you made their recommendation, or made their request?

A. No, we did not. Because we did not have it at the time we made our recommendation.

Q. Did you allow them anything at all?

A. We did not allow them or any specific company anything. We simply recommended the allowable for the entire field.

Q. Do you recall any argument with these people in regard to them taking 15,000 barrels per day?

A. No, sir; I do not.

Q. Do you recall how much the Humble Oil and Refining Company agreed to take?

A. I do not.

Q. Do you recall how much their nomination was?

A. I do not.

Q. Would the technical adviser be posted as to that—who is your technical adviser?

A. Mr. Donoghue. Mr. David Donoghue.

Q. Where is he now?

A. Probably he is in Fort Worth.

Q. Do you know what the imports were to Texas—were into the United States about March 29, or April 1, 1931?

A. They were probably around 300,000 barrels per day, somewhere between 225,000 and 300,000 barrels per day. I can get that information for you if you desire it.

Q. I wish you would, please. Do you know whether or not the Ward county wells were under proration?

A. There are only three wells producing in the entire field. There has not been any proration order entered, but the wells have been producing under proration.

Q. But there is no proration?

A. There are only three wells there, and we own them all.

Examination by Mr. Beck:

Q. Mr. Penn, has it not been your observation of the price of oil over a great many years that it is either

very high or very low, with few periods in which it is just in between?

A. No, sir, I would not say that exactly. The price of oil in 1899, I believe, it was gotten up to about $3 or $3.50 per barrel, and $4 probably at Wichita Falls, and Burkburnett, and the curve or curvature shows prices changing upward and downward with a general falling direction down to the present time.

Q. But along that curve the fluctuations have been fairly pleasant, have they not?

A. No, they have been rather steadily decreasing.

Q. Has there not been a sharp decline following the discovery of these new big pools?

A. There have been probably fluctuations and I dare say they have affected the market. .

Q. Did not a distinct drop occur after the Seminole pool was opened up?

A. I think so.

Q. Did not another drop occur when the Winkler pool was opened up?

A. Yes, sir, I think there was a drop in the curvature at the time the Winkler pool was opened up.

Q. And was not there a sharp decline after the opening up of the Yates pool?

A. No, sir; there was not any general effect on the market following the opening of that pool.

Q. Was not there a severe drop after the Mexia pool came in?

A. Yes, sir.

Q. At the time each of these drops occurred, this price decline, did not it involve in each case an abandonment of these wells?

A. No, sir. Not so much as now, because the operators who owned the wells felt that that was a temporary situation and understood the conditions, and while the prices throughout the Mexia pool went down to 75c per barrel the general price stood around two dollars to two dollars and a quarter per barrel, and at that time one company that I know of was buying Ranger crude from two to two dollars and a quarter a barrel and expecting to make a profit out of the oil, and that oil probably now invoices them around six dollars.

Q. I believe that you stated not very many months that the total market for Texas oil was 660,000 barrels per day?

A. That was last fall.

Q. What was the price response to that answer?

A. There was no price response to that.

Q. Did the price go up?

A. It did not.

Q. To what extent does the price really respond to the available supply or demand for oil?

A. The price is directly dependent upon the available supply and demand for oil. The oil market is as responsive to the supply and demand as is either the sugar market or the cotton market. The price of oil, generally speaking, is a composite of the available supply, the potential supply, the matter of the stock of the commodity and the general demand for the product from the standpoint of consumption.

Q. Is not 660,000 barrels per day way below the market demand?

A. No, that was what the market demand was at that time. The market demand fell off very sharply about that time. Gasoline consumption fell off in 1929.

Q. What is it comparing this year with last?

A. I think this year's figures will probably show a slight increase in gasoline demand.

Q. That is true in Texas, but is that true over the country at large?

A. Yes, sir.

Q. Is not the purpose of proration to bring about a marketing of these cases of flush production in such a manner so as to even out that price, to level it and prevent fluctuations in the price of gasoline and other by-products of petroleum?

A. I would not state it that way. The purpose of proration is to prevent over-marketing in the flush markets and the semi-flush fields and thereby keep the production within the amount that can be reasonably put on the market without creating waste by storage, and without creating disorderly conditions with the producers in the market with prices that are unprofitable.

Q. And the leveling off of the prices and the stabilizing or standardizing of the figure would be a result?

A. We have always hoped that it would be.

Q. Do you think that the major companies or the minor companies, as

a rule, would work to a better advantage than if there was no attempted proration?

A. Unquestionably. I can take an oil field where I know that there is going to be orderly development and orderly marketing, and figure my way to make money out of that field. On the other hand, I can not take a field like that in East Texas where there is no orderly development and expect to make any money out of it. Therefore, I sold what holdings I had over there last week.

Q. Who is it that profits from the present disorderly marketing conditions?

A. I would like to find out. I would like to know.

Q. Who is it that objects to the efforts to stop disorderly marketing?

A. Usually the objection comes from selfish interests. Usually it comes from people who desire to get a market at any price for the oil, and get the greatest amount of oil out at a very low cost. From the standpoint of the purchasers it usually comes from the people who desire to buy oil cheaply, and who for one reason or another may have certain advantages to be gained by buying large quantities of oil cheaply.

Q. Who is that does not want to buy oil cheaply?

A. I think a great majority of the major companies and a great majority of the most experienced purchasers realize that they cannot make money on cheap oil. The records of the oil company show that they have made profits principally in the years that they have paid high prices for the crude.

Q. Will you explain why that is true?

A. Because they are able, if they are paying high prices for the crude, they will carry the usual system of pipe lines and refineries and an orderly system of marketing is brought into play. If you get a distressed condition such as now exists with large amounts of oil being thrown on the market and the price that can be obtained as low as it is now, that oil finds its way into the hands of people who are willing to make a small profit and they put same on the market and glut the market and thereby destroy the oil market structure of the industry.

Q. If a given operator producer, independent, major or otherwise, has a lease with too many wells on it or too much production on it, violates proration and lets his wells run loose, does it or not take away oil from underneath that area?

A. It does unless his neighbors drill additional wells.

Q. Can the neighbors afford to drill to protect themselves on the basis of ten-cent oil?

A. Not on the conditions that we have stated.

Q. How much acreage is it possible to drain or is it possible to be drained from one well?

A. That would depend upon the porosity of the sand, the amount of gas and water pressure in the area.

Q. Generally speaking?

A. We figure from ten to forty acres should be adequately drained by one well.

Q. Some criticism has been raised of major companies posting a price in a given field, and then buying oil at less prices than the posted price. Would you criticize that action?

A. I do not think it is fair play.

Q. You think it would be good business for them to pay the posted price and allow the lower-priced oil to go to their competition?

A. No, sir. I think they should use as most of them do, every effort to keep the oil market level. If there is considerable oil going to other sources who are their competitors, you can hardly blame them for reducing the posted price to the minimum, or to the price the other fellow makes.

Q. Just what can be done about that, that would secure to all a fair price?

A. The only thing that can be done is to hold the production below the market demand so that we will not be confronted with a situation where the producers will be forced to sell at the distressed prices.

Q. How many buyers of petroleum are there in Texas?

A. Right now, there are fifty or seventy-five or maybe one hundred.

Q. How many classes of buyers—like independent oil men, I mean independent refineries, would that be one class of buyer?

A. There are the major companies who have a regular pipe line system, there are foreign buyers who come in and buy and ship to Canada and France and Japan and other sections. There are independent refineries who have their own refineries within reach

of the field and who want all the oil they take for their refineries. There are also brokers who are taking oil, and various other buyers.

Q. If there is a small independent refinery located near the oil field, say, like the one at Longview, that owns its own production sufficient to make out its own requirements, is it your idea that he should or should not be permitted to use all the oil that is necessary to operate his refinery?

A. They should be permitted to use only the ratable production from the field, whether that is an independent refinery, major refinery or otherwise.

Q. Whether it is a major or independent refinery?

A. Yes, sir. In fact, the district court so held. That was one of the principles involved in the Danciger case.

Q. Tell us about that, please.

A. In the Danciger Oil and Refining Company's case the company held a lease on which they insisted on producing more oil than they were allowed under the proration order, and they claimed that it was their own oil and they could use it.

Q. Assuming that proration were put into effect and did result in the establishment of prices at a figure that would be profitable to the industry, would you likewise likely have to have a ratable taking arrangement?

A. Yes, I think we would.

Q. That would be a separate proposition?

A. Ratable taking and proration should go hand in hand.

Q. What is your opinion of the rate made by pipe lines on pipe line haulage?

A. I am not familiar with the pipe line situation. I think the same conservation agent that has charge of the oil fields of the State should have supervision over the pipe lines.

Examination by Mr. Hardy:

Q. Some time during the last sixty days did you recommend that in East Texas there should be formed a billion-dollar corporation to handle the East Texas situation?

A. I did.

Q. Do you think that is a good way to cure the situation?

A. It would be an ideal way.

Q. You believe in large corporations, don't you?

A. A large corporation will better serve the purpose than a number of interests and individuals who will not work together.

Q. Do you think that large corporations are to the best interests of the State of Texas, and especially in the oil industry at this time?

A. That depends on conditions. I personally prefer to be a small operator, and that is why I have sold out my interests in East Texas. At the same time, when a condition confronts the industry like it does in East Texas at this time, if you cannot handle the situation in any other way I think you should have a large corporation that has sufficient funds to handle the conditions that exist.

Q. Do you believe it is necessary to have a billion-dollar corporation to handle the situation over in East Texas at this time?

A. If it is necessary to handle it, it would be the best thing for the industry.

Q. Did you see where the Vacuum and the Standard Oil Company of New York combined in order to form a billion-dollar corporation?

A. I saw that in the papers.

Q. Do you think that is for the best interests of the United States?

A. I do not know as to that. I believe the courts of the United States and the State courts are the ones to pass upon that, and I believe they are the only ones to pass upon a proper construction of the law, and with all respect to the present members of the Railroad Commission and the Attorney General's Department, I believe the courts are the ones to pass on matters of that kind.

Q. You know the present oil condition?

A. I think I have a little knowledge of it.

Q. From what you have already given us, I believe that is a correct answer. Do you think that the farmers would be better off—do you think they ought to be prorated?

A. I do not know what the conditions are, I would not attempt to pass on that.

Q. Do you know anything about the Van Pool?

A. A little bit. I understand that the Van Pool is in the black and out of the red from a financial standpoint.

Q. How long did it take to get out of the red?

A. I think about fifteen or eighteen months.

Q. Who owns the majority of the production in the Van Pool?

A. The Pure Oil Company, an independent company, so-called.

Q. What other companies?

A. The Shell, and they are the next largest holder, and I believe next is the Texas, and then the Humble.

Q. That is a prorated field, is it not?

A. Yes, sir.

Q. And it took about fifteen months to get out of the red?

A. Yes, sir.

Q. Why was that?

A. Well, it was a prorated field from the first, but it was economically operated. In our pool in Ector county we were out of the red in about fifteen months.

Q. What is the price of Ector county oil?

A. Ten cents.

Q. What is the price in the Wichita Falls Field?

A. I think the posted price is ten cents. But I understand that some people are offering a little less for oil there.

Q. What do you mean by unitization?

A. Unitization is a bringing together of the various property interests in an oil pool so as to handle the products in that pool, or the production in the pool, as a pool, rather than competitive leaseholders.

Q. It is about the same as the formation of a gigantic corporation, is it not?

A. It does not necessarily call for the formation of a gigantic corporation. I have operated on this plan in connection with other operators, and we merely agreed that we would operate it as a unit rather than to operate it as separate leaseholders, and one of those interested in the production of the field would operate the entire field for the others.

Q. That is not what you call the unit plan as it is sometimes referred to?

A. No, sir, the unit plan of proration as is in effect in some pools in the State of Texas, is not what I call the unitization plan. The unit plan in some fields allows so much oil to be taken from each twenty acres as a unit, but it is not unitization.

Q. You are not an advocate of the unit plan?

A. No, sir, I think the unit plan of proration will bring about an overproduction in excess of that which should be taken from the field.

Q. Do you think that is because of the potential placed?

A. I have my doubts personally.

Q. I think I have asked you this question before, but I do not recall now what your answer was. Did not you state that you had recently sold some property in East Texas?

A. Yes, sir. I sold some property recently there.

Q. Was that all of the property that you owned in East Texas?

A. Yes, sir.

Q. Do you know a Mr. Bowie of 1417 Sinclair Building, Fort Worth, Texas?

A. I do not.

Q. You do not know whether he is an independent operator or anything about him?

A. No, sir.

Examinaiton by Mr. Satterwhite:

Q. Mr. Penn, how long have you been an independent operator, or oil operator?

A. About ten years.

Q. Do you believe that there is an effort on the part of any organization to form a monopoly in the production of oil?

A. I have never seen any evidence of it.

Q. Do you believe that there is any effort on the part of what is known as the major companies to crush the independent oil operators?

A. I do not. I think that the attitude that they have taken, the most of them, in the last few years, is to encourage the independent operators and give them a fair share of the outlet is contradictory of that assertion.

Q. Is it not a fact that there is constantly in the public press stories to the effect as to the treatment given to the independent companies by the major companies?

A. There is always a great deal of comment on that score.

Q. Do you believe that the independent or small operator of today has an equal chance in the field, to the extent of his ability to operate?

A. He does.

Q. I mean, as a producer?

A. Yes, he does.

Q. Do you know how markets are made for crude oil—who sets the market—who governs the market?

A. Generally speaking, the market is based on the price at which gasoline may be sold on the Eastern Sea-

board. The Eastern Seaboard is the one that absorbs the surplus, and the price on gasoline is fixed just the same as that Liverpool absorbs the overproduction of cotton in the South, and Liverpool fixes the market price of cotton.

Q. Who fixes the market on the Eastern Seaboard?

A. In the last analysis, the price is fixed by the price at which it is necessary to sell those persons in the East who are buying the Texas production.

Q. Evidently, there is some organization that can give that information?

A. I have been trying to find out myself for a number of years, but have not discovered it yet.

Q. Then the price of the crude oil is based on the amount of gasoline that can be taken from the various grades of oil?

A. I think in fixing the price it is fixed on what you could get for the gasoline on the Eastern Seaboard market.

Q. Does the making of those contracts have anything to do with the posted price?

A. Well, you may make a contract and be forced to pay a lower or a higher price to furnish the crude oil required to fill that contract.

Q. Then there is another proposition. The proposition of disintegration in the oil business. That is, separating pipe line ownership from that of the producers, and refiners—have you ever given any thought to that?

A. I am fairly familiar with the subject.

Q. Then give us the benefit of your opinion.

A. I have never been able to see where the case of the independent producers would be improved by the separation of the pipe lines and refineries and marketing companies. As a matter of fact, I think that some of the big companies, those who not only produce oil, but who have pipe lines and run their own oil to refineries which they operate, and have their selling agencies—if these major companies were forced to disintegrate, there would be no opportunity for the small operator. The independent oil operators whose oil is now being carried through these pipe lines pro rata, it would work a hardship on the producers who are not so fortunate as to have pipe line facilities, and as a result the small man and the small operators, the independents would suffer.

Q. Now coming back to the proposition of proration. Do you believe that it is possible for the Legislature of Texas to enact legislation that will give the independent producer an opportunity to get his oil to the market?

A. I do.

Q. What is your recommendation?

A. As I said a while ago, we regard the passage of the bill which has been proposed together with a bill which would recognize common ownership of these pipe line owners, common ownership of these properties, and when that is done, which I think is highly desirable, and explicitly expressed in the bill, that the producers in a given field would be allowed to combine a pool and utilize the same, and such then might be done without violation of the anti-trust act.

Q. So far, no effort has been made to enforce the common purchaser act?

A. I think the main thing is that the Railroad Commission who depends on funds to enforce such laws on appropriations made by the Legislature, have insufficient funds to enforce that, and there has been a feeling on the part of a good many attorneys that the law as it was now written might not be constitutional. There has been some effort but not as great an effort as I am sure would have been made if the Commission had had sufficient funds to carry out the provisions of this law.

Examination by Mr. Beck:

Q. You stated that you think they should be permitted without those who enter into these agreements being held in violation of the anti-trust law.

A. I think so. There are some companies which now refuse to unitize for fear of the anti-trust law.

Q. Will you explain what you have in mind by that?

A. During the session of the last Legislature, the crude oil men committee of the Mid-Continent Oil and Gas Association presented a bill which would permit operators in a given pool to make this agreement or such agreement as necessary for the production of oil from that pool and withdrawals upon the per cent pro rata according to the amount of oil each would be likely to produce without fear of violating the provisions of the anti-trust act.

Q. Is that not being done now?

A. It is being done in some cases, but there are some companies who will not go into it because of fear of violation of that law.

Q. Is that the present method of unitization which you are recommending?

A. Yes, but personally I do not think, and my attorneys have advised me, that it is not a violation of the anti-trust law. However, I think there are some attorneys who think that it is.

Q. As you know of it, has the unitization of the fields worked out satisfactorily?

A. I think that it has worked out to the advantage of everyone who has entered into it.

Q. Has this unitization plan worked to the advantage of the royalty owners in that area as well?

A. I think so.

Q. I think you advance the idea, perhaps your own, a while ago, that the policy is to get away from the caption title that we have in Texas?

A. I think so—

(Interrupting) My idea was that the oil in any pool should be prorated approximately what per cent of the oil in the pool each of the owners or operators should have. If a man is found to have three per cent then he is entitled to three per cent of the total production from that field, and if another one is entitled to fifteen and another to twenty per cent he should be entitled to that percentage of the total amount of oil taken out from that field without the necessity of having to incur the expense incident to numerous wells being drilled.

Q. How would that work in cases of small ownership?

A. It would be an advantage to the small owner, and it would be a disadvantage to the man on the caption theory.

Q. Under the provisions of that it would prevent the drilling of offset wells which are unnecessary at this time in order for a man to get his proportion of the oil in the pool?

A. Yes, sir.

Q. Do you think the operators would follow that plan?

A. I am not prepared to say at this time, but I am very much of the opinion that we may see something of that kind worked out in the next year or two, and they will be educated to the point that they will realize that it is advisable and advantageous to them.

Q. By that you mean to say that while perhaps not at this time, it would not be good policy, but that public opinion would not sustain it?

A. Yes, sir; I think so.

Q. If you were to determine the amount of oil each landowner or leaseowner thought he was entitled to he could enjoin you on your proration thereof, could he not?

A. He could, if he could do the other.

Q. That would mean the spacing of wells 500 to 1500 feet apart, would it not?

A. Under those circumstances, it would be simply awarded to those tracts in proportion, or his proportionate part of the oil.

Q. Would that spacing stop the waste in the drilling expense?

A. It would.

Q. What effect would that have on the interests of the royalty owners?

A. He would still receive his proportionate part of the oil in the pool, as the oil was extracted.

Q. Do you think no matter what law we have or what law we might have, do you think you could sufficiently—or successfully enforce a law without the voluntary organization of the operators themselves?

A. I think that all of the voluntary organizations of operators are trying to get a proper respect and observance of the law, and that any law that is good or that would bring about a solution of our difficulties at this time would be gladly received by the operators as well as the people who are interested in the wells in any particular pool. Of course, there will always be objections to any kind of restrictions by certain of the property owners in that territory, and is due largely to the fact that they are not understood.

Q. Under the unitization plan, how would you provide for the nomination of the concern or individual to operate the pool?

A. That is usually by agreement.

Q. Is there any field in Texas now besides the one you have mentioned that is operating on the unitization plan?

A. I have a little field, or unit, in Bexar county, which I developed on that plan.

Q. How much production is there in that field?

A. We have gotten two producing wells so far. There is a field in Coleman county, and a man by the name of Barrow and Shaver are operating that field. Then there is another field in Colorado county, Texas, in which the Gulf and Humble join me in the transaction.

Q. Did they let you operate the property?

A. I do not recall.

Q. Has there ever been any effort made to stop that sort of arrangement on the grounds of the anti-trust law?

A. No, sir. I do not feel that it is a violation of the anti-trust law.

Q. Still you do not feel that it is a question of the violation of the law, and yet you have just stated that there are some who will not go into that kind of a proposition because of the fact that they feel that it is a violation of the law. How do you account for that?

A. I think that if you had a definition, or had the law so written as to clearly define that such an arrangement would not be a violation of the anti-trust law, that such an arrangement would appeal to the true conservationist, and would result in the prevention of much waste in the oil industry at this time.

Examination by Mr. Hardy:

Q. Who are especially the advocates of this unitization plan? The independents or the major companies?

A. I do not know. There are a good many men in Texas and Oklahoma who are advocating and who are advocates of unitization, and who are both independent operators and some majors. I think the man who has carefully studied the situation that now confronts the oil industry realizes that legislation should be urged which wherever possible that will result in the needless expenditures that are now being made in the industry.

Q. What is the big advantage of unitization?

A. Cutting of operating costs in the removal of oil from the pool as compared to a field where it is developed on the basis of competition.

Q. In what other way would there be a prevention of waste?

A. I would say that there would be a prevention of waste of gas in conserving the flow of the gas and returning it to the well, and the prevention of water encroachment, which has a tendency to lessen the ultimate recovery of the oil.

Q. Would unitization cover the entire pool?

A. It should, or if it should not cover the entire pool it should cover a group of wells in that pool.

Q. How do you explain the position of some of these companies who prefer unitization to the drilling of additional rim wells? By that I mean, people that have offset wells.

A. I am not attempting to say what companies prefer the unitization. I am not attempting to speak for them.

Q. Under the proposition you have laid down, would not that give to the companies who are financially able to do such drilling as may be necessary, an advantage over the small man in the field?

A. I do not think so. I think usually a man who has a proposition that is worth while, and is in a field that is being produced under orderly conditions, he can get the money to drill with. I have never found any difficulty in doing so.

Q. But there are lots of them in East Texas who can not do that, are there not?

A. That may be true, but all they have to do is get an arrangement in East Texas by which they can have an orderly production, and if they have a lease worth while they can get the finances to do any drilling that may be necessary.

Q. Do you think that the drilling of many wells is inconsistent with the policy of conservation?

A. Not necessarily.

Q. Were you present at Kilgore some few days after the East Texas allowable was placed at 130,000 and was raised to 160,000?

A. I do not know anything about that, I was not there.

Q. Do you have any partnership or interest with the Humble Oil Company in any wells?

A. I have one joint interest in Ector county. I have a sixth interest in a lease of 3840 acres that is producing, and I think we have unified some area in Colorado county.

Q. Do you have any other leases with them except that in Colorado county?

A. The Colorado county lease has been abandoned. I also had a unitization agreement with them in Andrews

county, but I think that lease has been abandoned.

Q. Do you have any with them in Rusk county?

A. I never owned any lease in Rusk county.

Q. Did you ever drill any wells in Rusk county?

A. Is Kilgore in Rusk county—I may have drilled a few contract wells in Rusk county for the Humble.

Q. Do you remember how many you have drilled?

A. I think I have drilled 12 contract wells in the East Texas field.

Q. I will ask you this question,—do you think that proration or the plan of proration in Texas has failed?

A. I will answer that by saying that proration has not failed for the reason that we have never had proration except in two fields in Texas that were under complete proration.

Q. Where are those fields?

A. The Yates pool in Pecos county and the Penn pool in Ector county. Of course, there have been some operators who have broken over, a minimization of the proration put into effect in those pools. Wherever proration has been applied early in the stages of the development of the pool, you will find that there is an opinion among the operators in that pool that they are pleased with the orders of proration and that it is a success. It is where pools have not had proration early enough in the game. Too many wells have been drilled in the field, as is the case in this Texas pool—the East Texas pool, and as is the case in the Oklahoma City field, and in such cases everyone is trying to sell and procure an outlet for their oil, and there is more production on account of that fact than there are users for the oil. I think you will find that where you have an operation such as that in the Yates pool or the Penn pool, or in the Hobbs pool in New Mexico, that the concensus of opinion is that proration is a success where it is carried out as it has been in those fields.

Q. The bringing in of the Yates pool did not affect prices as has the East Texas field, has it?

A. The East Texas field has affected prices to a much greater extent than did the Yates pool.

Q. Who were present at the first meeting of the proration committee?

A. All of the members.

Q. Was Mr. Pharr present?

A. He was.

Q. Was Mr. Suman present?

A. Yes, sir; Mr. Suman was present.

Q. I will ask you this: I notice in this exhibit that you have filed with the Commission that the Humble Oil Company is the largest contributor to your organization?

A. They are the largest producers and for that reason are the largest contributors. The expense in connection with the work of the proration committee is paid for by contributions based on the size of the production and the purchases of the company. However, I think that Mr. E. A. Landreth can give you more information about that than I can.

Q. How do you arrive at the contribution of the First National Bank of Fort Worth, Texas?

A. I think that Mr. Landreth got them to contribute that due to the fact that they were handling large sums of money.

Q. Now, does your organization have anything to do with the selection of umpires?

A. No, sir. We never have. The umpire is recommended by the local advisory committee in the field, and they are employed by the Railroad Commission.

Q. You have nothing to do with that?

A. No, sir, nothing whatever to do with the umpire.

Q. Did not you testify down at the hearing at the Stephen F. Austin Hotel?

A. I did.

Q. What was the value of the wells that you have sold to the Humble Oil Company in your oil experience?

A. I think I said at that time that I did not know. I can not give you the information offhand and I could not give the information offhand at that time, but I have sold them approximately $100,000 worth of leases at various times.

Q. About one hundred thousand dollars, that is all you have sold them?

A. I have sold them leases off and on. I am not snobbish.

Q. What I want to find out is how much you have sold to the Humble?

A. I do not know.

Q. Now, getting back to the question of umpires. I want to ask you this question, the majority of the umpires have worked for major oil com-

panies before, they have, have they not?

A. They may have, I don't know.

Q. The oil companies pay them, don't they, pay their salaries?

A. No, sir.

Q. Who does?

A. The proration committee pays their salaries from assessments or voluntary contributions by the producers in the pool.

Q. The State of Texas does not pay them?

A. No, sir. Mr. Moody vetoed the appropriation for that which was passed by the Legislature in 1930.

Examination by Mr. Hardy:

Q. It is necessary, is it not, for an umpire to qualify, for him to have had some sort of experience in the oil business before, is it not?

A. If I were a member of the advisory committee, I would not vote for a man who had not had experience.

Q. It is not necessary, then, for a man to work for a major company to have had the requisite amount of experience?

A. I would not call that a qualification. If a man has been a driling contractor, or has had experience that would qualify him for the place and he was, all other things considered, qualified for the place, if I were a member of the committtee I would vote for him whether or not he had ever had any experience with the major companies or not.

Q. What per cent of the potential in the pool in which you have production has been prorated and how does this per cent compare with the recommendations which your committee made for the pools on the Stephen F. Austin Hotel roof early this year?

A. In the Yates Pool the proration there is about five to ——. In the Echols pools—the Ector county pool, a field which has a potential according to an actual 24-hour gauge of 36 to 80 thousand barrels is producing, at the present time, 7,300 barrels. That is less than 10 per cent. In the Darst Creek Pool something like 20,000 barrels is being produced, and it has a potential of 60 or 80 thousand barrels per day. Now, as to the recommendation for the East Texas Pool. This pool at the time we made the recommendation was estimated that it was capable of producing about 200,000 barrels, and we recommended, I do not recollect whether it was 50,000 but it would be raised up to 90,000 per day, as the field was developed, and we knew that we would have to go higher than that if the potential showed to be a great deal higher than that at the time we made this recommendation.

Q. The potential of the East Texas Pool at that time had not been determined, had it?

A. I do not think so.

Q. Then, the 50,000 barrels that you recommended was an arbitrary figure?

A. Yes, sir. It had to be an arbitrary figure at that time.

Examination by Mr. Farrar:

Q. Mr. Penn, if I correctly understand you, this matter of conserving the petroleum in a given field, you would have us pass a law to the effect that the amount of petroleum that is taken from any particular lease should be determined as soon as it could be determined and that thereafter he should not be permitted to take in excess of that amount of oil. In other words, if it was afterwards determined that errors had been made in determining the potential of that field, and it was determined that he would be entitled to an additional amount, he would then be permitted to take that additional amount.

A. Corrections could be made from time to time by proper appraisement.

Q. The question I want to ask you is this, have you ever yourself, or had anyone else to determine the legality of this law, in view of the fact that when the owner of the land receives his deed he holds the right to the subsurface, as well as the surface of the land?

A. I do not think there will be any question about the constitutionality of that law. The laws of Texas, and also the court decisions in the past say that a man owns whatever is on the surface, and as far as he can go towards the middle of the earth. That is relatively the law of caption. I believe that all determination of the constitutionality of the laws should be passed up to the Supreme Court.

Q. Do you know whether this question has ever been passed on in any of the other States?

A. I do not think so.

Examination by Mr. Davis:

Q. Mr. Penn, you said a while ago that there ought to be developed in each pool the unit plan of operating

the pool, or a unified plan of operating the pool.

A. Yes, sir.

Q. You do not mean that it ought to become the law making it mandatory for the lease owner in any oil pool to place in the hands of the Railroad Commission this authority to enforce the unified plan?

A. I do not.

Q. What do you mean?

A. I mean that it would be advantageous for the Legislature to pass a law that will permit unification agreements.

Q. Now, in your examination a while ago you suggested or I caught from your testimony, that you were of the opinion that these independent oil men were running around and offering oil at prices at times and that that might be responsible for the reduced price of oil today?

A. I stated that they were directly responsible for it.

Q. Now, Mr. Penn, these boys who run around hunting purchasers for oil where the pipe lines refuse to connect, and who are not connected with them, and the purchasers refuse to take their oil, as they were taking their oil, did they not?

A. I do not think that is true. It might have been true in some cases, but I think in the majority of cases the majority of purchasing concerns are willing to take the oil of anyone who is connected with them on the same basis as their own oil.

Q. But in the face of that, is it not true that there has been rank discrimination in the East Texas Field particularly against the independent operators in the taking of their oil?

A. I do not think so.

Q. Is it not a case in point, and a fact, that in the Wichita Falls and Ranger Fields, and elsewhere there has been rank discriminations between the taking of major company oil and that of the independent producers?

A. I have not heard anything of it if that is a fact.

Q. Do you know of any single serious effort that was made by the Railroad Commission to enforce the law regarding the ratable taking of oil under the common purchaser act?

A. I think I said a while ago that the Railroad Commission felt that they did not have the authority to enforce that law.

Q. You have read that law, have you?

A. Yes, sir.

Q. Is it not very clear?

A. My attorneys advise me that the law is enforceable.

Q. And yet, do you think the Railroad Commission in determining the constitutionality of that law, and its enforcibility are right in not making an effort to enforce that law?

A. I cannot say whether their holdings are right or not. I would like to see them enforce it.

Q. Do you think the Commission has the right to pass upon the constitutionality of a law?

A. It happens, Mr. Davis, that I was raised under the belief that the Supreme Court was the place to pass on the law, and not the Attorney General, or any Commission.

Q. Is it not a fact that we are seeking by the program here—is it not a fact that a proration that does not compel the ratable production, the ratable transportation and ratable and equitable purchase of oil, are essential to give the sort of relief needed by the oil industry and by the operators and producers in the State at this time?

A. I think that all of those are essential. I think that most of the purchasers, with a few exceptions, have been willing to purchase oil ratably.

Q. Did you not say that you did not know of any particular discrimination being shown by major companies?

A. It has not been reported to me if it existed.

Examination by Mr. Daniel:

Q. Mr. Penn, how many producing wells are there in the East Texas Field at this time?

A. The last figure that I saw was July 16, was 1267.

Q. What do you as Chairman of the Central Proration Committee recommend as the potential of that field?

A. The potential of that field could only be obtained by proper tests of wells.

Q. You have no idea what the potential of that field is now?

A. I could estimate it, but I do not know.

Q. Would not the proration order as given by the Railroad Commission the first of this month of 250,000 barrels per day, would not that be less than 1 per cent of the potential?

A. No, sir. The East Texas Field, if all the wells were running, that is,

all the oil that they could possibly run, it would not show anything like that. That would be 25,000,000 barrels per day.

Q. Would you give an estimate of what the potential of that field is?

A. I could not give it. At the time the Railroad Commission fixed that amount on July 1st no potential on that field had been taken up to that time, and I therefore have no means of making any estimate on what the field's potential is at this time.

Q. Mr. Parker stated that he took your Committee's recommendation in drawing up that order. Now, then, on what did you base your recommendation?

A. Mr. Parker was evidently mistaken about that. I think you will find from the records that our Committee made no recommendation in connection with that, and that it was up to the Railroad Commission upon whatever figure they would set.

Examination by Mr. Nicholson:

Q. Mr. Penn, there is a certain sentiment towards conservation of oil that some are willing to go so far with the statute to prevent any such supervision on the part of the Commission as will avoid physical waste in the field, either underneath or above the ground. Now, there is another sentiment dealing with conservation that is willing to go so far as to undertake to secure the supervision in connection with economic waste. Now, if I understand your position, you feel that conservation will not be satisfactory until we take care of and deal with the economic waste by a coordinated production program in connection with the crude oil?

A. I certainly think that waste will occur if production is in excess of the market demand. We now have a storage of approximately 700,000,000 barrels of crude oil, or about four-fifths of a year's demand. Economists estimate that three hundred million barrels would be kept in storage for the benefit of the industry. Now, if we at the same time produce beyond the market demand we are going to get uneconomical and wasteful storage and that is physical waste. I am opposed to physical waste from any cause; it is an unnecessary, needless waste and there is another form of waste, a subterranean waste by exhaustion of the gas energy and exhaustion of the water drive, the dissipation of the water drive, causing the coning in the field. I think all of it is tied up in the question of physical waste, and I do not think it is necessary while we are considering the passage of a law to take into consideration economic waste.

Q. You take the position that they both ought to be taken into consideration when dealing with the question of waste in this industry?

A. I certainly do. In order to prevent physical waste. In order to prevent economic waste you must have ratable takings, and ratable takings must not be beyond the market demand because if you have production beyond what the market demands someone is going to withdraw, rather, is going to be without a market, and he is going out and seek to sell more oil to brokers than he is allowed on his ratable takings.

Q. Some witnesses have undertaken to establish that the price of crude oil has in some manner around in the East Texas field, has been caused by the buyers of crude oil, and that they are depressing the price of crude oil in order that they might buy the crude oil more cheaply?

A. I think it is the sellers who have caused it.

Q. I understand that your position is that the sellers have caused the depression in the price of oil over there by offering oil at a lower price?

A. Yes, sir.

Q. And they do it because they want to produce more oil than there is a market demand for?

A. Yes, sir.

Q. The statement was made this morning by a witness, not directly, but by intimation, that the East Texas situation was created over there by people desiring to depress the price so that some persons or companies with money might with millions of dollars of money, might purchase that field at, you might say, bankrupt prices. The suggestion was made that these purchasers in East Texas were now working with independents to try to create proration, thinking that if it occurred it would improve the conditions very much in the field. I would like to ask you the question, is it not a fact that operating through the American Petroleum Institute and otherwise, the operators have not been trying for years to create proration in the others of the oil producing

states, has not in some way affected the conditions that now exist in East Texas?

A. I think that is probably true and that certain of the major companies have been trying to maintain the price of oil and to keep the market up rather than trying to break it. I think it is entirely possible that if we had had this same understanding in East Texas three months sooner than we had, we might have been better off. I know that there has been an effort on the part of the large purchasing companies to maintain the market price and they have been accused by certain men, such as Harry Sinclair, of maintaining fictitious prices.

Q. Do you recall, Mr. Penn, that during several sessions of this Legislature, that bills have been filed intended to stabilize the market in the oil field?

A. Yes, sir.

Q. And if they were enacted into laws, they would to some extent coordinate production with consumption, would they not?

A. Yes, sir.

Q. And on those occasions the primary or major opposition to those bills came from the independent operators in the State?

A. That is true. My personal attitude has always been that the interests of the major and the independent operators are all alike, and whatever is good for the independent in the production is likewise good for the major companies.

Q. And if you can conserve oil for the major companies with large production, or with a large potential, you can likewise conserve the oil that is being produced by the smaller companies and in that way have some success with preventing a recurrence of the conditions that exist in Texas today?

A. Yes, sir.

Q. The question of the pipe lines came up a while ago, and it was said that the large companies control all the transportation by pipe line. Now, if I understand you correctly, under the common purchaser act, in this State, pipe line carriers would be required to take any offerings of the independent operators in relation to arriving at how much it may have offered?

A. I do not think the law voices it that way. The law reads that the production from the pool must be taken ratably according to the market outlet. However, I understand that that law is not being enforced as it should be.

Q. It has been said that in some sections of the State that the price of a certain gravity of crude oil is 67c and in another section of the State the price of crude oil of the same gravity is also 67c. Is gravity, according to your understanding of the matter, the ruling element of crude oil?

A. Up to the last year or two gravity was accepted as a means of creating the value. Within the last few years there has developed what is known as the anti-knock or no-nox gasoline, which on the market has a good following and a greater value than the ordinary grades of gasoline, and a crude oil which has those properties brings a somewhat higher price on the market than those grades of crude oil which do not have that element in them.

Q. Is it not also true that types of crude oil, or rather, types of gasoline and lubricating oil have also affected the market?

A. The value of a crude oil for lubricating uses has a considerable effect on the price of oil.

Q. Is the proration bill to be offered by the Oil Emergency Committee, so-called, similar to the law in effect in any of the other states?

A. I am not a lawyer, and I can not say that I think the main idea of this bill has been getting a clear expression of the law in regard to conservation and proration. I think the Oklahoma law gained somewhat the same end.

Q. The other states found it possible to so control the production of crude oil that it does not materially exceed the demand for crude oil?

A. California is doing that, Oklahoma is doing that and also New Mexico and Kansas. Those are now the main oil producing states outside of Texas, and we are attempting to produce the same thing now.

Q. In discussing one question concerning the oil industry, Mr. Penn, it regularly occurs that somebody said that this pipe line company, or these pipe line companies, are very unfair in operations out in a field, that they refuse to connect purchasers of oil, although the purchaser offers his oil and has a sale for it. Have you, in

your experience observed such statements to be statements of fact?

A. My observation has been that the bigger the corporation, the more afraid it is to be unfair, and I have not observed unfair practices personally—I have heard of them, heard them talk, but I haven't seen anything personally that I thought was absolutely unfair. I have seen some things that were due to misunderstandings. When misunderstandings would occur, the conditions were created. As an example, some producers in Coleman county field, five or six months ago, complained that the pipe line companies were operating in the fields and were not connected with their wells, although their wells had been producing some time. I got in touch with them, the situation was gone over, and a pipe line company connected up with them, and the misunderstanding was cleared up. On the whole, I think the major companies, and independents, too, generally speaking, are—excluding agitators,—very fair and get along pretty well.

Q. Have you given any study to this question of importing oil into the State?

A. Into Texas?

Q. Yes, sir.

A. Very little oil is imported in Texas.

Q. I mean the United States.

A. I have given some thought to it.

Q. And thoughts of embargo in connection with it?

A. Yes, sir.

Q. Don't you think, Mr. Penn, we might be on rather dangerous ground if we should say that Venezuela, for instance, could not export crude oil to the United States? I would like for you to answer, remembering the possibilities on the part of Venezuela to also pass some retaliatory statute.

A. On the contrary, I went to Washington in February, at my own expense to appear before the Ways and Means Committee of the House of Representatives of Congress, and urged the passage, preferably of a tariff on crude oil, and failing that, limitation on export of crude oil, so that we could get placed in a position where we knew just how much crude oil would be imported. I was then, and am now, in favor of a reasonable tariff on crude oil importations, but I wish to say I have no hopes whatever of a tariff doing any good in this country until we get our marketing conditions properly adjusted in the United States; in other words, if we are going to produce more oil than there is demand for that oil, we are going to be in the same position as the wheat grower, who has a tariff of twenty cents on wheat, and wheat selling for the same price today.

Q. You do not know, then, Mr. Penn, I take it, when we take importation of crude oil from a foreign nation, if those crude oils are of such quality and character as not to be in competition with our own grades?

A. I think the foreign grades are more or less in competition, and I am in favor of a tariff on crude oils imported in the United States, always have been.

Questions by Mr. Farmer:

Q. Mr. Penn, I have a few little questions that I desire to ask you for the benefit of all of us. You stated awhile ago that those companies are losing now in business?

A. Yes, sir.

Q. Are thev losing in the pipe lines,—in the pipe line business?

A. No, my understanding is they are losing on their operations, which means all of their operations as a whole.

Q. Well, would that embrace the pipe lines?

A. I think some of them make some money on their pipe lines.

Q. Do you know a gentleman by the name of Mr. H. Pennington, of San Antonio?

A. Yes, sir.

Q. When he makes the statement that they had lost forty million dollars in the operation of business in competition with the independents, but that they made in pipe lines—subsidiary corporations, $79,000,000, what have you got to say to that?

A. Well, I—don't know what the source of Mr. Pennington's figures is. I understand that the Humble Oil and Refining Company made money out of their pipe lines there in 1929, and practically 1930, and lost on other branches of the business. My statement awhile ago was that I understand that the Humble Oil and Refining Company is now losing at the rate of a million and a half dollars a month.

Q. On all their business?

A. On their entire business.

Q. Well, if their marketing business, their refining business, their pipe line business, and production business were all put together, they are losing on it now?

A. Yes, sir.

Q. Well, how do you explain it if they paid $2.40 for oil, and sold gasoline and other products and made money in those days, and are now buying it at 10 cents a barrel and are now losing money?

A. Well, the reason was in those days they had an active demand for products and sold a great deal more, and especially to manufacturers, and they got a price that yielded a profit on the price they paid for their oil.

Q. Well, aren't the consumers today, Mr. Penn, paying 12 and 14 cents for gasoline, and paying the old price of 30 and 35 cents a gallon for oil?

A. You are not paying that price for gasoline.

Q. What do we pay?

A. You pay eight and ten cents, and most of it is taxes to the State of Texas for roads and other things.

Q. So that is the way to get around it?

A. No, sir, I am not trying to get around it.

Q. Weren't we paying taxes two years ago?

A. Two years ago, yes, I think so, and were then paying for our gasoline 18 to 21 cents.

Q. Who dictates the market, Mr. Penn?

A. Who dictates the market?

Q. And in Eastern Texas their posting of the first price is even recognized officially?

A. I don't know as to that. I think the man who dictated it was the man who began selling it cheap.

Q. Well, you testified here awhile ago that those major companies were buying the oil, that they posted the price, that the small fellow has got to do it to sell it.

A. There is lots of oil sold in East Texas, absolutely not on the posted price, has been all along, and that is what broke the market.

Q. What is the posted price now?

A. Well, I heard the other day from a banker of Eastern Texas 100,000 barrels of oil were sold there at 12½ cents a barrel, he said it went through his bank.

Q. Now, suppose the producer in the production end of the business gets 10 cents and these pipe lines charge 12½ cents to gather it, that is the charge?

A. I don't recall.

Q. You don't know what the gathering charge is?

A. No, sir; I think in most cases, about five or six cents.

Q. Do you know what the transportation charge is to tidewater per barrel?

A. No, I don't know the exact figures.

Q. Do you know what the loading charge is on shipments to tidewater?

A. I don't recall, no sir.

Q. Do you know what the service charge is on oil at tidewater?

A. I don't know that.

Q. If it is 20 cents per barrel, you don't know that?

A. No, sir.

Q. Do you know anything about the overcharge on oil?

A. No, sir.

Q. Do you know anything about the two per cent deductions from the price of oil taken from a tank or well or storage?

A. A 2 per cent reduction from tanks?

Q. Yes, does he only pay you 98 cents on what you have there?

A. It is not two per cent reduction on price, it is gauging and storage, and all those things.

Q. Don't you know if they have a gauger who can't gain 2½ barrels excess oil per day, they fire him?

A. I never heard that.

Q. You never heard of any gauger taking his gauge and then cutting down on the pipe?

A. I never did. I always accepted them.

Q. Did you ever check them with other gaugers?

A. No, sir, I never did. I went in with some people once to do that, and found I was losing money to check it.

Q. Now, Mr. Penn, do you think it is fair and right for any business in the United States owned and controlled dominating power in production, transportation, refining and marketing?

A. Do I think it is fair?

Q. Yes, sir.

A. Well, I suppose it was all bought and paid for, or they wouldn't have it.

Q. Do you think that Jim Hogg was right when he fought his battle here to force the railroads to confine themselves to railroad business?

A. I was only about 3 years old, I don't know.

Q. You have read history?

A. Yes, sir, I don't know about that.

Q. Do you think that Mr. Roosevelt was right when he forced the railroads to get out of the coal mining business?

A. I don't know about that.

Q. Well, then, Mr. Penn, as you are a man of long years' experience, do you think this Legislature ought to divorce the producing companies from the pipe line business?

A. I have never been able to say.

Q. You wouldn't recommend it?

A. I would not, I think it would do more harm.

Q. Well, Mr. Penn, do you recommend to this Legislature that they should divorce production and transportation business from the retail business—oil business?

A. I haven't been able to say that. I think it would be a dangerous experiment.

Q. Why would it be a dangerous experiment?

A. Because it would upset the entire business, even worse than it is now.

Q. Well, Mr. Penn, isn't it true here that the big companies are opposed to competition, real competition in this business?

A. Oh, I suppose anyone is opposed to competition, if he can prevent it.

Q. Are you opposed to it as a principle of government?

A. I beg your pardon—

Q. Would you be opposed to competition as a principle of government?

A. I think competition is all right in certain places, and destructive in certain other places. I think one of the reasons for our present depression is competition in every line of business.

Q. Mr. Penn, do you think that we have anywhere nearly developed one-half of the oil resources of Texas, yet?

A. I couldn't say that.

Q. Now, Texas 97½ per cent alluvial land, and all alluvial lands are more or less likely to have oil under them, aren't they?

A. In spots, yes, sir.

Q. In spots? Would you state that over as nearly as you know, now?

A. You are not going to have alluvial—you are not going to have oil under all alluvial land, no, sir, you are only going to have it in certain areas where structural conditions occur that are favorable to the accumulation of oil.

Q. Now, Mr. Penn, we are legislating here for ages to come. Do you think that when the East Texas fields play out, we must find any other fields in Texas?

A. We are likely to find more.

Q. Reagan county, here, teaches us a great lesson by putting down 8000-feet wells and finding oil and gas?

A. Yes, sir.

Q. Might not that same thing occur?

A. It might.

Q. From your own investigation here, does it meet your view that we might yet develop more in Texas?

A. Well, we are faced with another alternative, overproduction, and coming on the market in quantities that the market couldn't absorb. That general principle cannot interfere with production in time, no matter how deep you go—in fact, it will make possible better development of the State by putting the business on a firm foundation.

Q. Now, Mr. Penn, if the major companies, who set the price, fix the price low enough as it is fixed now, so it is producing waste, don't you think that the State of Texas should exercise its sovereign power and set a limit on the price at which oil should be sold at the well, in order to preserve these natural resources and prevent waste?

A. I am afraid it would be going pretty far to have the State of Texas set the price.

Q. Or set a minimum price?

A. Well, it would be no good to set a minimum price unless production was held for the demand.

Q. You know, Mr. Penn, the State has the power to absolutely close any well that is producing oil or gas and that is wasting that article, don't you?

A. It probably has.

Q. No probability about it. Don't you know that the Supreme Court of the United States, in the case of the Ohio Oil Company against the State of Indiana, against the statutes of Indiana, held that those oil men in that State who were producing oil and who were wasting gas, could be made to close their wells?

A. I don't know what the statutes of Indiana were.

Q. These parties claimed that under the Constitution of the United States they were confiscating their property without due process?

A. I am not a lawyer and not able to discuss propositions of law.

Q. Well, let's get down to the facts of the record. Are the consumers today getting the benefit of the 10 cents per barrel for oil?

A. The consumers?

Q. Yes, sir.

A. They are getting the distress 10 cents per barrel oil.

Q. Well, how do you explain the fact that we have to pay 25 and 35 cents for lubricating oil?

A. The price of lubricating oil falls under a different category.

Q. Explain that.

A. Lubricating oil is sold under advertisement of its merits; the average man wants a certain lubricating oil, and knows very much what he wants, if he knows much of his motor car, and the consequence is lubricating oils are all pretty highly advertised, and as he could get either at the same price, he finds they are very considerably different from those that give gasoline.

Q. Well, Mr. Penn, do you want us members of the House here to understand that a man, when he buys lubricating oil, is simply buying a brand and not a certain quality of oil?

A. No, sir. I say he is buying a certain quality which he wants; for instance, I drove into a garage in St. Louis a couple of months ago and told him to lubricate my car and to drain it and fill it with such and such a brand of oil; they said, "We do not have that oil, but we have another oil which is just as good." I told them that I believed I would rather drive a little farther and get an oil that I knew about rather than take one that I did not know anything about.

Q. Well, now, there is testimony in here that it costs from 9 to 19 cents per gallon to manufacture lubricating oil, and then it is sold here from prices ranging from a dollar to a dollar and a half. Don't you think that is an enormous profit?

A. I imagine it varies in profit.

Q. I want your actual mathematical deduction; not a guess.

A. I would deduce that they are making a profit on lubricating oil; they have built up a demand for these products.

Q. How many gallons of refined oil suitable for use in an automobile engine can be obtained from a barrel of crude?

A. I am not a refining man; I am not familiar with that.

Q. Well, you are put up here as an expert on the oil business.

Mr. Satterwhite: I don't want to object to the line of questioning there, it is not that, but Mr. Penn has already stated that he does not know anything about that part of the oil business. We intend to have on the stand witnesses who really do know. I don't want to cut off my friend from Tarrant county, but I hope he will not encumber the record here with testimony which will be gone over and over. This is a proposition on which the witness states that he does not know anything about. It is costing a lot of money to carry this record; that is the only question involved, and I hope the gentleman from Tarrant county will understand the spirit of my objection.

Q. But a man cannot know what this man knows until he asks him. We want the information and we don't need any censorship here.

A. I admit I know nothing about the refining business.

Q. No part of it?

A. No, sir.

Q. Now, Mr. Penn, have you a bill or any written ideas that you can give to us here in the Legislature as to what kind of law ought to be drawn whereby we can get the results we desire?

A. I can have my attorneys draw one, if you so desire.

Q. I would be glad to have one myself.

A. All right, sir.

Q. Are you acquainted with anything about the gas situation in Texas?

A. I have had some statistics.

Q. Well, are you acquainted with the field down here in Reagan county where they are wasting so much gas?

A. I know it from the reports of the technical advisers of our Committee. I believe I would rather wait until Mr. Foran gets on the stand.

Q. Does he know more than you do about it?

A. Yes, sir.

Q. Well, I don't want to embarrass you by asking you about something you don't know.

A. I have no hesitancy in admitting that I know nothing about it. There are many things that I don't know about it.

Q. We members of the House know very little about it, and we want to take as much time and be as patient and be as fair as possible to all the oil interests in Texas and that is the reason for this investigation, and I thank you for the questions that you have answered.

Questions by Mr. Hardy:

Q. Mr. Penn, I have three questions here. I want to ask you these and then I think we will be through with you so far as I know. The first question is: Do you not believe that the major companies could control the entire situation if they wanted to?

I presume that he wants to know if they could not control proration over there and keep it down within proper limits, or keep the price up or down as they see fit.

A. I don't believe they could.

Q. With their refining facilities and pipe line facilities and producing facilities, you don't believe they have enough power to control it?

A. No, sir. I don't think so.

Q. You stated in answer to Mr. Nicholson's question that the Humble Oil and Refining Company had lost some fifteen hundred thousand dollars a month, I believe?

A. Yes, sir, so far this year, that is my understanding.

Q. That is your understanding from an interview with someone?

A. I was told that by someone, but I am quite sure you can call any official of the Humble Oil and Refining Company and verify it.

Q. Was that the Humble Oil and Refining Company or the Humble Pipe Line Company that lost that?

A. I imagine they were referring to the entire corporation.

Q. Well, do you know what they were referring to?

A. That is my understanding.

Q. Do you now testify that the Humble Oil and Refining Company was losing fifteen hundred thousand dollars a month?

A. I said in the beginning that that was my understanding; I suggest that you call some of their officials.

Q. Is that also true of your statement regarding the losses of the Texas Company?

A. I understand the Texas Company was operating at a loss and also the Gulf Company. All the major companies are confronted with losses now. However, their own officials would be the best witnesses.

Q. Did that come from the officials of the companies?

A. I don't recall. I had it very frequently from many different sources.

Q. Here is the other question, Mr. Penn. Do you believe that proration will increase the price of gasoline?

A. Limiting the production of crude, if it has the price effect of raising it, would probably have some effect on the price of gasoline. But remember the price of gasoline is determined by a number of factors besides the price of crude oil. For one thing, here in Texas, we pay four cents a gallon tax on every gallon; it costs from three to four cents to operate the filling station, which is a fixed charge. That would make about seven cents. And it costs about two and a half cents a gallon, on the average, to get the gasoline from the refinery to the distributing point; that would make nine and a half or ten cents. Then it usually costs about one and a half cents to get the gasoline in the tank car on the railroad to the filling station by truck. So you have a fixed cost of about twelve to thirteen cents, which will not change, regardless of the price of crude oil. Whatever is left goes to the refiner.

Q. Can you make the same number of gallons of gasoline from a barrel of oil when you pay ten cents for it as when you pay a dollar a gallon for it?

A. When you have eleven or twelve cents fixed cost, regardless of the price of crude oil, and the refiner is getting four cents a gallon for his gasoline, or eight cents, would not make a great deal of difference to the consumer. In other words, increase in price of gasoline to the consumer is not proportionate to the increase in price of crude oil. And when you consider the benefits that all of us would receive from a higher price for crude oil, in the way of abolishing unemployment and securing the better distribution of money throughout the State, I think we can well afford to pay more for crude oil.

Q. How many gallons are consumed in Texas each year of gasoline?

A. I could not answer that. We pay a four-cent tax on gasoline, and I think the gasoline tax ran about twenty-eight million dollars last year, so you can figure it out from that what the consumption of gasoline was. It would be about 700,000,000 gallons, I think.

Mr. Hardy: That is all, Mr. Penn.

(Thereupon the witness was excused.)

Thereupon Ray Richmond was duly sworn by the Chairman of the Committee, and testified as follows:

Questions by Mr. Hardy:

Q. Your name is Ray Richmond?

A. Yes, sir.

Q. Are you summoned to appear before this Committee, Mr. Richmond?

A. Yes, sir.

Q. What do you do, Mr. Richmond?

A. I am chief umpire for the East Texas Field.

Q. How long have you been an umpire, Mr. Richmond?

A. Since July of 1928.

Q. Speak a little louder, Mr. Richmond, so that all the members of the Committee can hear you, please.

A. All right, sir.

Q. You say you have been an umpire since July, 1928?

A. Yes, sir.

Q. Where were you first an umpire?

A. In the Yates Pool in Pecos county.

Q. How long were you an umpire in the Yates Pool?

A. From July, 1928, until June, 1931.

Q. From the Yates Pool where did you go?

A. To East Texas.

Q. At your request, or otherwise?

A. At the request of the Railroad Commission.

Q. What is the duty of the umpire?

A. The duties of an umpire are to see that production from any given field that he has charge of is taken in a ratable manner according to the outlet,—according to the pipe line outlet, which is determined by orders passed by the Railroad Commission, stating the amount of oil that should be taken out of this field.

Q. Does he have anything to do with determining the allowable?

A. No, sir.

Q. Does he have anything to do with nominations?

A. Only in the way of asking the pipe lines and aiding the Railroad Commission in any way possible.

Q. Does he send reports to the Railroad Commission, or does he send those reports to the Central Proration Committee?

A. In my field so far we have never done that, because the Central Proration Committee has always taken care of that part. However, we have assisted; we have requested them to send their reports to the Central Proration Committee.

Q. You merely have requested that?

A. Yes, sir.

Q. Of whom did you request it?

A. Of various pipe lines operating in the field.

Q. Did the statistician for the Central Proration Committee request this same information?

A. My understanding is they did.

Q. Why the need of two of you doing it?

A. Just co-operation is the only thing.

Q. What other duties does the umpire have?

A. His duties in general are to try to keep everybody in line, so nobody runs any more oil than they should run. And the working up of the proration report.

Q. What do you mean by the working up of the proration report?

A. Proration schedules, showing the amount of each company and each well that is allowed in the field.

Q. Do you keep a record of the violators?

A. Yes, sir.

Q. What do you do with that record?

A. Furnish it to Mr. Parker of the Railroad Commission.

Q. Do you furnish—that is, do you prepare the proration schedules, that is, how many barrels will be allowed to each well in the district?

A. Yes, sir.

Q. How do you arrive at that fact?

A. We arrive at it by the order of the Railroad Commission as a definitely set figure that we work from.

Q. You mean it is a definite, set figure for the pool?

A. Yes, sir.

Q. How did you arrive at how much each well will be allowed to produce?

A. In the case of the East Texas field, we have arrived at it by dividing the number of units into the outlet of the field, which was 250,000 barrels.

Q. How many units have you in the East Texas field?

A. 1240 in the East Texas field.

Q. A unit is twenty acres?

A. Twenty acres, yes, sir.

Q. How about all the rest of the acreage in the East Texas field?

A. You mean the undeveloped acreage?

Q. Well, you have a proven territory in the East Texas field, don't you?

A. Yes, sir.

Q. How many acres is that?

A. In the neighborhood of 120,000 acres.

Q. With 1240 units at twenty acres a unit how many units have you, approximately?

A. About twenty-five thousand acres.

Q. You say it is about twenty-five thousand acres?

A. Yes, sir.

Q. Do you have any other duties relative to the other one hundred thousand acres in that territory?

A. Not until such time as they are developed.

Q. Who looks after that?

A. There is no one to look after that at any particular time. As the wells are drilled in we pick them up on our reports and add new units from time to time.

Q. Do you have a supervisor over there?

A. The Railroad Commission has three there at the present time.

Q. What do they do?

A. Their duties are general inspection of the field from a conservation standpoint. They look especially after water and gas. In other words, they watch the field to see that no one drills a well too deep, or see that they plug back a well that is making water to plug back the encroachment of water.

Q. Are they kept so busy that they have no time to assist you?

A. We all work together.

Q. Couldn't they perform the duties that you perform?

A. If there were enough of them I would say they could.

Q. How many deputy supervisors does it take to equal one umpire?

A. I beg your pardon.

Q. How many deputy supervisors does it take to equal one umpire?

A. That is hard to say.

Q. What are the qualifications of an umpire?

A. I think an umpire, in the first place, has to be a man fair in every respect to everybody; he has to be diplomatic, he has to take lots of things he don't like to take, he has to take it anyway.

Q. Does he have to know anything about the oil business?

A. In my estimation he has to, he must have a little knowledge of both pipe line operation, drilling and refining, to certain extents.

Q. Does the supervisor have to be educated?

A. No, sir; he does not.

Q. Does he have to be fair?

A. Yes, sir; he has to be fair.

Q. Does he have to be able to take those things like the umpire does?

A. In most cases they have more power in their line of work than we have in ours, consequently they do not have to take so much.

Q. Now I notice on this schedule that a unit with one well on it gets 202 barrels as an allowance; what do you mean by that?

A. That 202 barrels is the number of units divided into the 250,000 barrels.

Q. Now then, suppose you got a unit with two wells on it. How many barrels of oil do you get?

A. It is allowed thirty barrels for the second well.

Q. Suppose you get three wells on it? What do you get?

A. Are you talking about the unit?

Q. Yes, sir.

A. It gets sixty barrels for the third well.

Q. Well, suppose you have four on it; how many do you get?

A. Let me correct that. It is fifteen barrels for every additional well over and above the one.

Q. On each unit?

A. Yes, sir; on each unit.

Q. In other words, if you get one well and one unit you have two hundred and two barrels?

A. Yes, sir.

Q. If one unit and two wells, 217 barrels, and for each additional well you get fifteen barrels?
A. Yes, sir.
Q. Up to how many wells?
A. As many wells as are located on the unit.
Q. Is there any limitation as to the number of wells that could be on a unit?
A. Yes, sir. There is a limit to them. We couldn't get more on a unit than they could get derricks on the ground.
Q. How many derricks could they get?
A. On twenty acres they could get fifteen or twenty derricks if so minded.
Q. Then could they get two hundred and two barrels of oil and fifteen barrels of oil for each additional one?
A. If drilled that close, I don't think they would be entitled to it.
Q. Do you know what the Railroad Commission orders provide about the spacing of wells?
A. Yes, sir.
Q. What are they?
A. 150 feet from the line.
Q. How about between wells on the same lease?
A. 300 feet.
Q. Could you then get fifteen wells on a twenty-acre lease?
A. No, sir. Not without special permit.
Q. Is there any limit to the amount a unit can produce under the proration schedule of yours?
A. 375 barrels.
Q. Is that what the order of the Railroad Commission provides?
A. No, sir. The Railroad Commission provides for 750.
Q. What order is that?
A. The order of the Railroad Commission entered as of July 2, 1931.
Q. I understand you made this schedule?
A. Yes, sir.
Q. Then, you are not under your schedule allowing the number of barrels per unit that the Railroad Commission authorizes?
A. Yes, I think we are, because they state in their order that if 250,000 is the outlet for the field, any additional above that will be a special concession for the greater number of wells drilled on any one particular unit or fractional unit. They specify 750 barrels outlet, and I take it from the order that they wanted us to stay as nearly as possible to the 250,000 barrels which the order called for. The order did not necessarily call for anything other than the 250,000 barrels of outlet from the field, but it went on to state that no unit should be allowed to produce more than 750 barrels. That every allowance there was was to then be in the form of a special concession outside of the 250,000.
Q. However, you allowed only 375 barrels to the unit?
A. To any one unit.
Q. Then tell me what is the advantage of a company drilling in a well on a unit when they could only get 375 barrels?
A. There is no advantage to them now; I don't think that is being done.
Q. Was it being done when the orders were based on potentials?
A. Yes, sir.
Q. Who was doing it?
A. Well, the Humble Oil and Refining Company was.
Q. Are they advocates of proration?
A. Yes, sir.
Q. All right. Who else?
A. J. W. Allday.
Q. Who is he?
A. An independent.
Q. He is an advocate?
A. I can't say.
Q. Who else?
A. The Houston Oil Company.
Q. Are they advocates of proration?
A. Yes, sir.
Q. Gulf Production Company. Are they advocates?
A. Yes, sir.
Q. Who else?
A. Magnolia Production Company.
Q. Are they advocates?
A. They were not until this last proration.
Q. They are advocates under the present system?
A. Yes, sir.
Q. All right. Who else?
A. Right in the Henderson district we have a number of them down there who are independents.
Q. Are they advocates of proration as a conservation measure?
A. No, sir, they are not.
Q. Have practically all these major companies and independents discontinued this practice since you discontinued the potentials?
A. Yes, sir.

Q. Do you think that will make a saving in what was formerly wasted?

A. It has.

Q. Do you think that has helped conserve the resources?

A. I can't say that it has, yet. If the production was taken in an orderly manner it would have, but we have never had that happen to us yet.

Q. But this cutting down of additional wells drilled helped to some extent to conserve the waste of the natural resources?

A. To a certain extent, yes, sir.

Q. Then do you think you are getting any better co-operation under the present system of proration than under the potentials?

A. We didn't think so until about a week ago.

Q. What happened then?

A. I have never been able to find out exactly what did happen. Everybody has wanted to run all the oil they could.

Q. What caused the change?

A. Of course, that would be only my personal opinion.

Q. Well, we are after facts.

A. So far as the facts go, I haven't any.

Q. Getting back to the units, a unit is twenty acres?

A. Yes, sir.

Q. Suppose a man runs two and two-tenths units?

A. He would get a full allowance.

Q. But suppose he had an offset?

A. In that case we would increase his allowance sixty barrels to even up with the offset.

Q. Under what order of the Commission is that done?

A. Under the order that no offset well shall produce more than its neighboring well.

Q. Is that sixty barrels additional?

A. Yes, sir.

Q. Included in the 250,000 or not?

A. No, sir. That's in a special concession column.

Q. Who makes these special concessions?

A. That is left to the discretion of the umpire and the advisory committee.

Q. Is that provided for in the order?

A. Yes, sir.

Q. So, if there are two wells on this half unit, what is the allowable?

A. If two wells, it is allowed a full unit allowance.

Q. Do you have any deputies?

A. Yes, sir.

Q. Who are they?

A. R. B. Latton. He is assistant umpire at Kilgore.

Q. Where did he come from?

A. From the Transcontinental Oil Company.

Q. Where is their headquarters?

A. It was at Tulsa at that time. He was located in the Yates field as a scout and was familiar with the proration in the Yates pool.

Q. Proration in the Yates pool is not the same as proration in the East Texas pool, is it?

A. It is not in a way. It is practically the same principle that is involved.

Q. Is the Transcontinental Oil Company an independent?

A. It is.

Q. Who is the umpire in the Henderson district?

A. Mr. Sesson.

Q. Where did he come from?

A. From the Van field; he was assistant proration umpire there.

Q. Who was he with before that?

A. With the Pure Oil Company as a scout.

Q Has the Pure Oil Company large holdings in the Van field?

A. Yes, sir.

Q. Who was he with before he was with the Pure Oil Company?

A. He had just come out of school when he went with the Pure.

Q. Is he a young man?

A. Yes, sir. He is about thirty-two years old.

Q. Who is the deputy in the Longview district?

A. Mr. Clark.

Q. Where did he come from?

A. From San Angelo. He was formerly a scout for the Texas Company.

Q. How long before?

A. About seven years ago.

Q. Had he ever been a practical operator?

A. He was to this extent, that he was familiar with the drilling of wells and production from a scout's standpoint.

Q. Had he actually ever done any drilling?

A. I don't think he did any actual drilling; he was formerly a tool dresser and production man also.

Q. Did Mr. Sesson ever do any drilling?

A. No, sir.

Q. Is he a geologist or petroleum engineer?

A. He is a petroleum engineer.

Q. All right. How about Mr. Liding?

A. He has had production experience.

Q. When?

A. He got quite a bit of that with the Transcontinental before they put him to scouting. He never was a driller or tool dresser. Scouting well qualifies a man because it puts him in a position where he is meeting the public.

Q. This schedule that you have in East Texas is a sort of complicated outfit, isn't it?

A. Yes, sir.

Q. Who worked it all out?

A. We tried to work it out with the advisory committee, and they finally threw up their hands and said we would have to work it our ourselves; I and the assistant umpires worked out ourselves.

Q. What advisory committee threw up their hands?

A. The advisory committee for the Henderson, Kilgore and Longview districts. All those were consolidated.

Q. Did they leave you in the ditch and tell you to do it yourself?

A. They told us we would simply have to work it out ourselves to the best of our ability, and that if there were any kicks they could take it up with the advisory committee.

Q. How do you determine as an umpire whether or not these proration orders are being violated?

A. It is done by working with the scouts in the field employed by the different companies, and also by our own scouts. We have a scout in each district who works under each umpire. In fact, we all try to help one another out.

Q. These scouts for these companies, what companies do you speak about?

A. All companies in the field; a number of them have them.

Q. How many scouts are there?

A. About twenty-six scouts in the three districts.

Q. Are they all pipe line company scouts?

A. No, sir.

Q. Are they producing company scouts?

A. Yes, sir; some are scouting for companies that have no interest in the field. They may be scouts for companies other than those companies that own territory in the field.

Q. You say they advise and assist in locating those violators? How do they find that a well is producing more than its pro rata part?

A. It is determined in several different ways.

Q. For instance, would the scout for the Gulf Company tell you they were running more oil than they were supposed to?

A. I don't think they would in most cases on their own property, but the offsetting scout that makes that property would let us know.

Q. I never have understood just how you locate these wells that are producing more than their part.

A. They are located by the waste gas that comes from the separator in this particular field. In this field that ratio of gas to oil is very small and if they are producing more than their allowable it shows up.

Q. Is there much waste in this field?

A. I would say it was a waste only from danger of water encroachment, by too heavy withdrawals. The gas-oil ratio is kind of small; the more oil produced, the more gas produced, and that is the way we determine whether they are going over their allowable.

Q. What do you do about it when you find it out?

A. We try to get the companies to tell us, if possible, the amount of oil they are taking from that particular well, and in case we can not get it from them we usually check it up with the royalties.

Q. Do you have authority and power to stop production or make an examination of the property?

A. We are empowered with the same powers as the deputy supervisors of the Railroad Commission.

Q. Is he given authority to go on a man's lease and find out his production?

A. He is supposed to. However, we have never been able to do that.

Q. Why?

A. Because they tell us one thing and another. They tell us that they haven't the records there, but they are at the home office, and when we ask the home office they tell us that they are out in the field, and some of them tell us that they will not give us the information.

Q. Under your authority, could you go on a lease and with some sort of instrument make a test and see what they are producing?

A. I have been told that in the case of injunctions we were not supposed to go on the lease and make such tests.

Q. Suppose there were not any such injunctions?

A. I am doubtful if we have that power.

Q. Have you ever done that?

A. No, sir.

Q. Do you know of any violators over there who have not obtained injunctions?

A. Yes, sir. We have some.

Q. Who are they?

A. John Hoosier.

Q. Where is he located?

A. Located in the Henderson Field.

Q. Where is he from?

A. From Dallas.

Q. Who else?

A. The Petroleum Marketing Company, out of Houston. That is all I can recall to mind at the present time. I think all the rest have injunctions. Their home office is in New York.

Mr. Chairman: The Committee feels that we have put in a pretty good day, and it appears that everybody is getting worn out, and I suggest, if witness can stay, that we get a fresh start in the morning.

Q. Can you stay, Mr. Richmond?

A. Yes, sir.

The Chairman: Members of the House, we will adjourn until 9 o'clock in the morning.

(Thereupon the House adjourned at 5:25 o'clock p. m. until 9 o'clock a. m., July 22, 1931.)

Wednesday, July 22, 1931.

Ray Richmond on examination by Mr Hardy—Continued.

Q. How did you obtain this information that certain parties were violating the proration orders?

A. That is determined by checking with the royalty gauges and in some cases by observing the flares in the field.

Q. Now, in checking with the royalty owners, who engages those checkers, or gaugers?

A. They are employed by the lease owners themselves.

Q. Who employs the other gaugers,—I believe you called them the pipe line gaugers?

A. The pipe line company.

Q. Why do not you check with the pipe line companies in these pools?

A. We do check with them. We try to have about three different checks on the gauge, showing the oil being run out of the field.

Q. Do these pipe line gaugers give you the information that some are violating the proration order?

A. Generally they do.

Q. How do they furnish you that information?

A. It is furnished by making reports to our office. They give us copies of reports they make to their companies.

Q. Do you ascertain from—that is, do you obtain copies of the pipe line runs from all of the operators in the field?

A. No, sir, we do not.

Q. Do you obtain the pipe line runs of the violators?

A. In some cases we have obtained the pipe line records from the violators.

Q. That is, the run tickets?

A. No. Not run tickets. The report shows the amount—the total amount run from the pool and the other shows the runs from this, each field.

Q. Then these pipe line companies work along with you in the matter of proration so as to obtain the information as to who the violators are in these fields, do they?

A. Yes, sir.

Q. Why do you have to check these royalty gauges?

A. We do it from the fact that we want to see that we are getting the correct report.

Q. I believe that you said you never go on the lease and attempt to make any test yourself?

A. We have not gone on the leases because we have no right on the leases to request the party in charge of the wells to give us that information, and in some cases he says they are at the home office, and that he has been instructed by the home office not to allow any tests or checks on the lease.

Q. Have you ever made these tests in person?

A. Yes, sir, I have on several occasions.

Q. Did you ever discover any violations by making those tests?

A. Yes, sir. We have.

Q. Where?

A. One was in the Luling Oil Pool.

Q. Did they have an injunction?

A. No, sir. Not at that time.

Q. Did you make any report of that violation to the Attorney General?

A. Yes, sir. We made a report to the Attorney General.

Q. Now, I believe that you stated that you were able to locate wells that were not following instructions by the escaping gas?

A. Yes, sir.

Q. How can you tell about that?

A. Well, a well under proration flow, under the proration amount allocated to that portion, or that particular well, will have a small amount of gas, and if they increase the amount of flow on that well it will increase the amount of the gas that is escaping.

Q. How long will these flambeau lights be if they are producing according to the allocation?

A. I would say that it would not be over three feet in length.

Q. Well, suppose they were allowed two hundred barrels and they were making four hundred barrels?

A. It would just about double the flame.

Q. Well, suppose they were making about two hundred and fifty barrels?

A. In that case you could hardly determine that they are producing in excess of the amount allowed.

Q. What effort do you make personally to stop the violation of proration?

A. We have reported them to Mr. Parker and tried to reason with the producers in the field.

Q. Now, then, what duties is it that you perform that the deputy supervisors could not do—is that the only thing that is required of you that the deputy supervisors cannot do?

A. I do not think so.

Q. What I am trying to get at is what other duties you perform that the deputy supervisors could not perform?

A. The deputy supervisors could probably perform the duties that we do, the only thing, as I see it, the deputy supervisors cover one phase of the business, and ours covers an entirely different line of duty in the field in which we are busy.

Q. What are the differences in the qualifications?

A. I think the difference in the qualification of deputy supervisors is that he is familiar with drilling operations, and that is about all that it is necessary for him to know. I think in an umpire possibly he should have some idea of production, should be a good production man, and should also have some information as to the refining end of it.

Q. What does the umpire have to do with the refining end of it?

A. He has to be familiar with the pipe lines, his knowledge has to be broad enough so that he can run down violations and stop all of that kind of stuff. Another thing, I think he should have a wide acquaintance, because that is very essential.

Q. Is it necessary that he have been a former drilling operator of some sort?

A. No, but I think it is necessary for him to have a wide acquaintance because if he does not he has a harder time getting along.

Q. On yesterday the statement was made that one of the qualifications of an umpire was that he ought to know a good deal about the drilling business?

A. I think he should.

Q. In what way does he have to use that information?

A. Part of our duties is to assist the Railroad Commission in watching the leases that start to making water. He should know whether a well is being operated properly, and I do not know how a man would know that unless he has had actual drilling experience.

Q. Who has charge of plugging wells?

A. That is part of his duties. I work in connection with the deputy supervisors. And I assist in every way that I possibly can.

Q. How long were you an operator before you became an umpire?

A. You mean a drilling contractor?

Q. Yes.

A. One year.

Q. How much experience had you had in drilling wells before you became an umpire?

A. I had been in the game about twenty-three years, ever since I was 13 years old.

Q. You have stated that you have been a drilling contractor for one year?

A. Yes, sir, I was a contract driller. Prior to that time, during the twenty-three years I did not drill, but I dressed tools.

Q. And where did you have actual charge of the drilling?

A. For the Prairie Oil Company, Shaeffer Oil Company of Oklahoma City, for the Oklahoma people, for the Humble Oil and Refining Company in Texas, and for the Sun Company.

Q. How long were you with the Prairie Company?

A. I was with them a year and a half in Oklahoma.

Q. How long were you with the Sun Company?

A. One year in Texas.

Q. How long were you with the Humble Company?

A. Seven years.

Q. Where did you have your operations with the Humble Company?

A. I first began at Breckenridge, Texas, and went from there to the Mexia field, and stayed there for about a year as assistant production superintendent, and was transferred to Mexia, where I was made district superintendent at Mexia for the development of the Mexia field, and from there went to the Powell oil field and the Wortham field, and started the development of the Boggy Creek field in Cherokee county.

Q. And then did you go in business for yourself?

A. Yes, sir.

Q. How long?

A. For one year.

Q. Where did you go then?

A. I went with the Proration Committee in the Yates pool in Pecos county, Texas.

Q. How long were you with the Proration Committee in the Yates pool?

A. From July, 1928, to June, 1931.

Q. What happened to you then?

A. I was transferred to the East Texas field in my present capacity.

Q. Did you apply to the Railroad Commission for the appointment as umpire?

A. I did not.

Q. How did you get that place?

A. Walter Karnes of the Gulf Production Company and Mr. ....., who was chairman of the Advisory Committee of the pool and was also vice-president of the Marland Company at that time.

Q. How did your appointment come about?

A. My understanding is that there were three names that had been submitted to the Railroad Commission, and from among those three names I was selected as the umpire. I was selected as one of the three.

Q. Did you then go to the Yates pool?

A. Yes, sir.

Q. What was your salary in the Yates pool?

A. They paid me to start with $750 per month and later raised the salary to $850 per month.

Q. Your salary was paid by the company?

A. No, sir.

Q. Was it paid by the State of Texas?

A. No, sir.

Q. Who signed the checks?

A. Mr. E. G. Ellan of the Shell Production Company, who was treasurer of the Yates Pool Advisory Committee.

Q. And you were in that field there, over in the Yates pool, and were transferred over to the East Texas field?

A. Yes, sir; Mr. Parker called me in and said that he liked the program under way there and they wanted an experienced man in the East Texas field.

Q. And then you went over to the East Texas field?

A. Yes, sir.

Q. Who pays your salary in the East Texas pool — the State of Texas?

A. No, they prorate the amount of salary I am paid among the operators in that East Texas field.

Q. Do you get individual checks?

A. No; the check comes to me in one check and it is my understanding that it is billed pro rata against the operators in that field. In other words, the current expenses for the previous month is determined and checked over and bills made out on that basis.

Q. Who does that billing?

A. I understand the secretary of the committee, who is with the Humble Oil and Refining Company.

Q. What do you get in East Texas as a salary?

A. I was getting up to June, $1000; they have recently cut it to $700.

Q. Who agreed to pay you that salary?

A. It was agreed to by the committee of that field; I do not know who recommended it.

Q. Did Mr. Parker tell you when you went into the East Texas field that you would get $1000 per month?

A. No, sir, he did not.

Q. Do you recall who told you that you would get $1000 per month?

A. I believe it was the chairman at that time of the Henderson Advisory Committee, Mr. Sam Bradley. As I understand it, I believe that one-third was paid by the Longview committee, one-third by the Henderson committee, and one-third by the Kilgore.

Q. Are all of those separate Advisory Committees?

A. They were at that particular time.

Q. Did you receive that salary?

A. Yes, sir, for one month and a half.

Q. Who was it paid that to you?

A. The check was issued in three separate checks, checks being issued upon the Longview, Kilgore and Henderson committees.

Q. Who issued the Longview check?

A. They were signed by Mr. ....., who had been made secretary and treasurer of the East Texas committee; but shortly after that, I believe it was the Longview committee that refused to pay any further.

Q. Is that the reason they have cut your salary to $700?

A. Yes, sir, that is right.

Q. Who did that, the Advisory Committee?

A. I do not know just what was responsible for that.

Q. What does a supervisor get in the way of salary?

A. My understanding is that they get $325 from the State.

Q. What did your assistant umpire get per month?

A. Two hundred dollars per month and a car furnished?

Q. Do you have a car?

A. Yes, sir; the car is furnished by the Advisory Committee.

Q. How are your expenses paid, by the Advisory Committee?

A. All of the expenses pertaining to the operation of the car and my expenses are paid when I am away from home.

Q. By expenses of your car you mean gasoline and upkeep is paid by the Advisory Committee?

A. Yes, sir.

Q. Is it not a further fact that that gas can be stripped of the gasoline content that it carries?

A. Yes, sir. That is true.

Q. But at the present time it is not being done?

A. No, sir.

Q. If it was stripped of the gasoline content, it could be placed in pipe lines and used for domestic purposes, could it not?

A. Yes, sir, it could be put to profitable use.

Q. And at this time all of that great natural resource is being allowed to go to waste?

A. Yes, sir.

Q. Do you know what, if any, powers have been exercised by the Railroad Commission to prevent that waste of this natural resource?

A. We have not tried to exercise that power because under the present conditions up there there are a number of injunction suits that have been filed and we do not care to take a risk on exercising that power and bring about more injunction suits.

Q. The real truth of the matter is that those people up there in that field have been doing pretty much as they please, have they not?

A. We have tried to exercise the power and authority that we have, and they have made a laughing stock of us and we can not continue along that line.

Q. Has the gas been utilized in other places where you have operated?

A. No, sir, it has not. The gas that usually comes in the Yates pool is comparatively low in gasoline content and the sulphur content of that crude prohibits it from being used under high pressure and the gasoline recovery from that gas in the Yates pool is only about .91 gallons per thousand, and gas from that field could not be used for domestic purposes on account of its sulphur content, because that could be only used by a treatment that would make the cost of the gas prohibitive.

Q. So far as you know then, Texas is wasting all of its natural gas except the fields that are now attached to pipe lines for domestic purposes?

A. Yes, sir.

Q. That is an enormous amount of gas, is it not?

A. Yes, sir.

Q. Can you arrive at even an approximate of how many billion cubic feet that might be?

A. No, sir, I cannot. I would not attempt that. It is beyond my reasoning power.

Q. Do you not think that if the Legislature should pass any legislation pertaining to the oil industry that that is one of the most important pieces of legislation that they should pass?

A. Yes, sir, I do.

Q. Do you know of your own knowledge whether the Attorney General of Texas has filed any suit of any kind anywhere against those who are violating the rules laid down by the Texas Railroad Commission looking to the prevention of that needless waste, especially in the East Texas field?

A. Yes, sir, they have.

Q. Many, or few?

A. I do not know how many. To my certain knowledge I know they have filed suits against violators of the East Texas.

Q. Who are they?

A. They filed a suit, I understand, against the McMillan, and I think, possibly, there is a suit against the Powell Company, and also I think there is one against the Petroleum Marketing Company.

Q. Has a suit been filed against the Gulf?

A. I think they brought suit against the Gulf Production Company.

Q. What is the result of the Attorney General getting an injunction against those operators over there?

A. He has just got the edge on them if he gets the injunction first.

Examination by Mr. Hardy:

Q. Now, Mr. Richmond, have you a list of the present proration violators?

A. I do not have that information with me.

Q. You can get that information, couldn't you, it is where you can get your hands on it?

A. I think I can get you the information.

Q. Will you do that, please?

A. Yes, sir.

Q. Can you name them all?

A. No, sir, I can not. There are so many of them. There are about twenty-five or thirty-five violators there now.

Q. What do they do—do they enjoin the State?

A. Yes, sir, I understand they get an injunction and then they run wide open.

Q. You will get that list for us, will you?

A. Yes, I will have it here some time today.

Q. Where is your main office?

A. 118½ East Ervin Street.

Q. Do you have a field office?

A. Yes, for our assistant umpires.

Q. Where are they officing?

A. The Longview umpire is located in the Chamber of Commerce Building, and the one at Kilgore is with the Humble Oil and Refining Company offices out on one of the leases, the Peters lease, and the one at Henderson is located in the Tidal Oil Company's office.

Q. Why is your office located in the Humble office at Kilgore?

A. At the time we went into the town of Kilgore we could not find any other place to have our office and they were kind enough to let us have office space with them. There were no other buildings suitable for the office at that time.

Q. Is there any available place at this time?

A. No, not in the field, there is not; however, the city of Kilgore has promised us one as soon as they get their new city hall finished.

Q. How much rent do you pay? That is, for your office in the Humble Building?

A. Nothing at all.

Q. How came you to locate your office in the Tidal Oil Company Building?

A. Well, they were the only people in the Henderson area where we could get any kind of an office. We tried to get in the Sinclair Building, but they did not have any space.

Q. Did you try to get located in the town any way?

A. You mean, in the town of Henderson?

Q. Yes.

A. We were too far from the field.

Q. Is Longview too far from the field?

A. It is quite a way from the field, but most of the people stay in the city of Longview who are operating in the Longview field.

Q. That is not true of the Henderson field?

A. No, sir.

Q. Is that true of the Kilgore field?

A. No, but the offices are out in the field, instead of being in town, so that we are closer to the operations.

Q. Do you have an office at Overton?

A. No, sir, we have not.

Q. Did you ever have one there?

A. No, sir.

Q. Where is this field office in the Henderson field? How far is it from the town of Henderson?

A. About twelve miles from Henderson.

Q. How far is the office in the Kilgore district from the field?

A. It is right in the field.

Q. How far is the field from the town of Rusk?

A. About five miles.

Q. They do not have any paved roads over there?

A. I have not seen any. I understand they had some roads over there when we first went over there, but they are worn out.

Examination by Mr. Graves:

Q. Mr. Richmond, relative to the gas situation, has there been any effort made of any kind, in the East Texas pool, to conserve the gas? The natural gas?

A. No, sir. There has not. The gas that is coming in the well that is necessary to the flow of the oil, and there is no pipe line connections to take care of the gas that is being brought to the surface in that field.

Q. Is not gasoline, what is commonly known as casinghead gasoline, extremely valuable?

A. Yes, sir.

Q. And they are not attempting to make any casinghead gasoline as it comes out of those wells over there?

A. No, sir.

Q. They are just burning it up, are they?

A. Yes, sir.

Q. There are many of those flares burning on every lease?

A. Practically every well has its own flare.

Q. And it is being dissipated and wasted over that territory?

A. Yes, sir. The gas if it is not being burned as it escapes, is being dissipated into the air. We have certain orders issued to those people not to burn the gas because it is easily ignited, and a special attempt is being made to prevent the danger of fire.

Q. This gas that is escaping or being dissipated into the air is a very valuable gas, is it not?

A. It would be if gasoline was worth anything at this time. I do not believe it would be profitable to use it under the present conditions, though it has a very heavy gasoline content.

Q. In other words, it is very valuable gas?

A. Yes, sir.

Q. Approximately how many gallons of gasoline could be produced per thousand cubic feet of gas?

A. The answer is about 3.75, that is about the average.

Q. You mean about three and three-fourths gallons of gasoline could be extracted out of each thousand feet of this natural gas?

A. Yes, sir.

Q. Approximately, if you could give us an average, how much is being thrown away in this field each day?

A. It averages in the neighborhood of about 350,000, per barrel of oil, and there are about 450,000 barrels of oil being produced in that field every day.

Q. That is around two billion cubic feet of gas per day?

A. Approximately that.

Q. And I believe that you stated that this gas has a very high content of gasoline, did you not?

A. My understanding is that it is very valuable for the value it has from the no-nox standpoint.

Q. The gasoline extracted from this gas is usually of very high power, isn't it?

A. Yes, sir.

Q. It is more profitable than ordinary commercial gas?

A. Yes, sir.

Q. Then there is a waste there of over two billion feet of gas which would give an enormous amount of high grade gasoline if it was properly utilized?

A. Yes, sir. And then in addition to that there are other by-products that could be manufactured from that same gasoline, benzine, and by being treated with other ingredients.

Q. Is there a method by which the residue gasoline or casinghead, or as the gas is taken from the well, could be placed on the market cheaply for domestic purposes?

A. I think the closest market would be Henderson. That is not very far from the field.

Q. Has Henderson any facilities for natural gas? Is there a natural gas supply there at this time?

A. I think they have, but I am not sure about that. I know that Tyler has, and it may be that Henderson has.

Q. Can not that gas be used by—for prolonging the life of the field in some way?

A. It is possible that much of this gas could be put back into the formation and would continue to be a factor in bringing the oil from the field.

Q. You say your Henderson office is 12 miles from the field?

A. Yes, sir.

Q. The Kilgore office is five miles from Kilgore?

A. Yes, sir.

Q. Did you locate them there to be closer to the drilling?

A. No, sir, we located the Kilgore office at that place because we could not get any other office in the field, and that was the only available space at that time, that is, at the time we went there.

Q. Do you perform the same duties that your deputies do?

A. You mean, my assistant umpires?

Q. Yes?

A. No, I usually try to take care of all pipe line connections trying to secure various companies' pipe lines connections and they take care of the field work, such as gauging, the adjustment of minor conditions in the field.

Q. Why did you locate your office so far away from the field?

A. Well, our office is used as a kind of clearing house for reports coming from the field, all three of these fields in the territory and the various companies operating in the field.

Q. A few minutes ago you said that a bill was sent each of the operators in the field?

A. Yes, sir.

Q. Do you know whether or not all the operators are paying?

A. The last time that I talked with the secretary and treasurer he told me that out of 111 that he was billing only eleven paid.

Q. Do you know who those eleven were who paid?

A. I can not say.

Q. Was it the larger or major operators or the small independents?

A. Probably the big companies.

Q. Has the last proration order written by Mr. Hardwicke been enforced there?

A. No, sir, it is not being enforced.

Q. Why not?

A. Because the conditions in the field, and the number of wells, and a number of operators are not obeying it.

Examination by Mr. Beck:

Q. Mr. Richmond, there seems to be some confusion as to the respective duties of the umpires and supervisors. I hope this line of questions will clear this matter up and dispose of the subject. Will you state to the committee in your own language just what is the distinctive difference between the two employes?

A. The duties, as I see it, of the deputy supervisors are to carry out the rules as laid down by the Railroad Commission, covering the prevention of waste in natural resources to the State of Texas.

Q. You mean the physical waste?

A. Yes, sir.

Q. They are not charged with the determination of policy or anything of that sort?

A. No, sir; they are not.

Q. They are paid to work and supervise operation of wells, and the like, under the supervision of the Railroad Commission?

A. I would say their duties are to look after the drilling of wells; to see to the encroachment of salt water and stuff of that kind, as I understand it from the producers in the pool, the conservation of gas, prevention of fires, where wells are being drilled, and matters of that sort in the field.

Q. And it is your duty, or at least you exercise that function, to attempt to get pipe line connections for all of the operators and to see that he gets his pro rata part of the full amount that is allocated?

A. Yes, sir. Not only that, but any inequalities that may arise from time to time, and they do arise there, is to try to adjust that.

Q. Do you think it is practical to concentrate all those duties or functions under one man?

A. No, sir; I do not. That is not my idea about it.

Q. Now, getting back to these supervisors. State what you think they—rather, state why you think they can not perform these duties?

A. Well, in the first place, I do not think so because the State has not sufficient amount of money to get men who are qualified for that work.

Q. Do you think they could be employed if the Legislature would pass an appropriation of sufficient amount to employ them?

A. Yes, if they would appropriate enough. However, I do not think the deputy supervisors in the field in East Texas can possibly fill both positions at the same time without neglecting both jobs.

Q. Now, there seems to be objections on the part of some that the compensation of the umpire comes from the producers in a given area. It is true that that's where it comes from, is it not?

A. Yes, sir.

Q. Is it not also true that in most pools the major companies are the producers of the greatest part of the oil?

A. Yes, sir.

Q. And therefore they contribute the greatest per cent of the compensation that goes to the umpire?

A. Yes, sir. That is true in this way. All the producers that are in the field are billed, to cover the compensation of the umpire, and to take care of the expenses that he necessarily incurs in doing his work. That bill goes to all the producers in the field and in the event that any of the producers in that field do not pay their assessment, say only half of them pay, then the producers in the field would get a double assessment in order to take care of the expense.

Q. Naturally, in your work you come in contact with every operator in the field—now I am going to ask you this question,—do you find that small operators are protected in the same way—what about the prominent and major companies, who contribute the major portion of the salary to the umpire, does that in any way influence the work of the umpire?

A. We have had some complaint of that kind, but I think they are pretty well offset by others, some claiming that that it is necessary that they live where will always be major companies, and that the major companies can not successfully exist without in a way having independent operators.

Q. Have you followed through on those complaints?

A. Yes, sir, we have.

Q. Did you find that they were justified?

A. We have found in checking up that not one was well founded, in any of those cases. In some cases, of course, a small producer feels that he has been discriminated against because he fails to find a purchaser for his excess oil.

Q. Have you been complained against by the operators making complaints to the Railroad Commission or to the Advisory Committee, or otherwise?

A. Not to my knowledge—not from the operators. I have from outside men who were not operators.

Q. Who were these that complained?

A. Mr. Neff was one who complained because of my having formerly worked for the Humble Oil Company. The other man was a man at Dublin.

Q. What was their interest in it?

A. The only thing that I know about was that they claimed that I had been working for a major company.

Q. Generally, in the position that you occupy, you are in a position to extend favors to these men if you saw fit to do so?

A. I could probably extend favors, yes. However, I have always worked with this thought uppermost in my mind: To treat every man on an equal basis. Do not extend special favors, as I do believe if I extended a special favor to one man that I could not refuse to extend that special favor to another, and for that reason I have always tried to treat all of these fellows alike.

Q. Has your experience been in the East Texas field and in other places where you have been that the operators will seek special privileges?

A. No, sir. Practically none of that has existed in the East Texas field.

Q. Has any of it existed?

A. Well, there were some fellows who felt that they had not been given them what was due them in the matter of the oil that they were taking out, and I believe that they were convinced that we were not mistreating them, and that we would do the best that we possibly could.

Q. Who was that complainer?

A. Mr. Colp, in the Henderson district.

Q. Now, you mention Mr. Colp—what other operators?

A. The Corona Oil Co. They did not feel so badly about not being given as much as they considered that they thought they should have, but they were complaining about not being able to get connections for oil, and could not get collections for oil that had been delivered. In several cases since this new order has been issued reducing the amount of oil that could be run, that succeeded all previous orders, and we started off just as if we had never had any. Several of them believed that they were entitled to, and wanted to be allowed to run their back oil, from the beginning of proration, which was as of May, up to and including July 1st. I looked into the matter and took the matter up with Mr. Parker and he said that I was right in that, and that he could not allow any back oil to run that had not already been run. The amount of oil that had not been run would be in the neighborhood of about two and a half million barrels and that it would tax the pipe lines to such an extent that they would not be able to carry any of the oil or any large amount of the oil that is being carried by them now. Outside of that, I do not think there has been any serious objection.

Q. Have you been able to adjust those matters or those complaints? That is, in a manner that has been reasonably satisfactory?

A. Yes, sir. We have.

Q. Now, back to the matter of the co-operation that you are getting from the operators, of course, that then does not apply to those operators who are now violating the rules of the Commission?

A. That is right.

Q. Now, when you are in doubt as to the decision on one of these things, do you go to the advistory committee, or to whom do you go?

A. I take that up directly with Mr. Parker.

Q. Do you take that up with the advisory board first or with Mr. Parker?

A. I take that up with Mr. Parker. The only thing that is taken up with the advisory committee is that each fifteen days if anyone has any objections or any differences of opinion that he wants to settle that is taken up fully at the meeting of the advisory committee.

Q. You look, then, not to the Advisory Committee, but to Mr. Parker, as your immediate chief?

A. Yes; I was appointed by the Railroad Commission and I think that he is my immediate chief.

Q. Are your recommendations usually followed in the decisions made by Mr. Parker?

A. Yes.

Q. Now, as to these supervisors, as a practical oil producer, are you satisfied with the results as to the prevention of physical waste in the East Texas field?

A. No, I am not.

Q. Why—what is wrong?

A. Well, I think there is a lot of waste that exists due to the uneven withdrawals of oil from the various operators who have injunctions and those who are trying to obey and abide by the proration orders; in other words, in my estimation, if they cannot—

Q. I believe you have not understood what I was driving at: The supervisors are charged with seeing that wells are drilled in properly, is that right?

A. That is correct.

Q. Are all the wells being drilled in properly?

A. No, not all of them. A number of wells have been drilled too deep into the sand, endangering the field from a water standpoint.

Q. Whose fault is that?

A. That is the fault of the producer.

Q. Isn't that what the supervisors are supposed to prevent?

A. The supervisor in that field has had too much work to do; it is impossible for him to watch each well drilled in.

Q. There have been fifty-five lives lost over there, in the drilling in of wells, and fires resulting from wells improperly brought in; is there any excuse for that in modern production practice?

A. No; if there is, I can't see it.

Q. Is every well over there that is drilled in being properly equipped?

A. If they were, then there is no excuse whatever for wells catching on fire.

Q. Whose fault is that lack of administration of the orders of the Railroad Commission?

A. Well, as I said before, it is a case of where the deputy supervisor

has too much to do. I don't know how he could arrange to be at every well when it is drilled in, and it is an impossibility for any two or three or four men to be at every well. There in that East Texas field, as many as ten or eleven wells a day have been brought in for a while.

Q. Is that same difficulty being experienced in other fields?

A. Of course, we have never had anything as big as East Texas, but they have always had careless operators, yes.

Q. And do they get away with it in the other fields?

A. They do to the extent of probably burning up a lot of men; when it happens, the damage is already done.

Q. How many more deputy supervisors would it take to efficiently police the East Texas operations?

A. That is pretty hard to say.

Q. Some one ought to know.

A. I would say at least double the men they have there now.

Q. How many have they there now?

A. Three.

Q. Are they trained and efficient men?

A. Two of them, to my certain knowledge, are; the other one, I don't know so much about; I have just met him, I know him when I see him, but the other two I know personally and they are both good men.

Q. Do they co-operate with you, and do you co-operate with them in carrying out your duties?

A. Yes, we work together and if I make any reports to Mr. Parker, I furnish them with copies so they are familiar with the conditions that actually exist.

Q. Do you think it is possible to work out any system of proration without the use of umpires?

A. Oh, yes, I think anything is possible; if you will get the right kind of a man, I believe so.

Q. Here is my question: Do you think it is possible to develop any machinery which will not, in the long run, have to depend upon the integrity and ability of the man in charge of the operations of that field?

A. Whether you call it umpire, deputy supervisor, or what not, I believe it will require all of one man's time to make these adjustments, keep the people satisfied and see that everybody gets fair treatment. He doesn't have time to look after the drilling in of wells, nor the encroachment of water. Of course, he can get a general idea of that, but he won't have the time necessary to devote to that in order to keep up directly with it, the encroachment of water and drilling in of wells. Since I went to East Texas, there have been for two weeks at a time that a man could not stay in bed over an hour without somebody calling him, and they thought all the time that they were the only people that had any trouble, and naturally the whole field was in trouble and they all thought the same thing, that they were the only ones experiencing any trouble; and then there's another thing that helps to make it hard, and that is, you can't find anybody when you want to in that East Texas field, down among those piney woods. I tell you the actual fact, that I have been on a lease down there myself, that the man on the lease, the superintendent in charge of it, didn't know who he was working for. That condition is not so bad now, but it did exist in that field; it was a disorganized proposition, and even the major companies were not exempt from it.

Q. Now, in the case of the drilling in of a given well, please tell the Committee the things a deputy supervisor should watch for and check upon, as to each individual well, in order to insure the safe and proper production from that well?

A. I think the deputy supervisor, above anything else, in my estimation, should see that the well is properly equipped before it is brought in.

Q. How can that be done?

A. Well, as I see it, it must be done with penalty enough on it that if they don't do it, the Commission, or somebody, regardless of what body it is, has the power to assess such fines to the extent of where the company will do a lot of thinking before they do it the second time; that is my idea.

Q. I am trying to see the detail that is involved, the time required by a supervisor for each well.

A. Well, in order to do that, he would have to spend from the time that well hit the sand, if he can't rely on the parties bringing in the well; it would be necessary for him to spend his time at the well from the time they first got on the sand until the

well is in the tanks and flowing, which as a general rule . . . .

Q. Describe those separate steps, please, sir.

A. From the time they get the sand. as a general rule, in most cases up there, they core ahead and see if they get the sand, and that takes considerable time, six or seven hours, and in all I would say it would take a day and a half to two days, putting the connections on the well and seeing that the connections are properly placed on the well and the proper equipment is placed on it, and that the hole is kept filled with mud so there will be no blowout, and see that the proper anchorage is laid for the bringing in of the well and getting the oil and gas away from the derrick, where the danger always happens and men have been burned up there; in every case I knew of a fire, it could have been avoided. I don't know of a one that could be termed purely accidental, and I have seen several oil fires; outside of lightning striking it or something like that, anything that's done by men, there's not a bit of use in having a single fire.

Q. Is there any way of insuring proper conservation in that field unless you first insure that the wells are properly handled and brought in?

A. No, sir; it's got to be done. That is one of the first steps and one of the most important steps.

Q. The failure to properly police, that means early depletion of the field and serious damage and injury to the field?

A. Yes; and not only to the field, but to all the water supply in that East Texas, and down as far south as Beaumont.

Q. At this time, how many wells are in the process of drilling in East Texas?

A. Two hundred and ninety are now actually drilling. There are probably fifty in seventy-five new locations.

Q. From your observations, probably what percentage of the wells are improperly brought in?

A. Well, I would say 30 per cent of them.

Q. Are improperly brought in?

A. Yes.

Q. Located in all parts of the field?

A. Yes, located in all parts of the field.

Q. Speaking generally, who are the owners of most of the wells improperly brought in?

A. Most of them are brought in by fellows who are not financially able to drill a well in the first place; they are getting by just as cheap as they can and taking no precautions whatever, and the company or the individual, regardless of who they are, that has the money, they are willing to spend it, because if they are going to work to spend $20,000 to $25,000 drilling a well and equipping it, they don't mind spending $500 or $600 more to properly take care of it, but the fellows that haven't got it can't spend it.

Q. Was that true of the Sinclair Cole well, for instance?

A. No, sir; that was purely carelessness.

Q. Was that true of the Paul Vitek well?

A. Yes, and the occasion for the fire on that well was the fact that they tried to bring it in and flow it open through the derrick and take pictures of it for advertising purposes, and that's the cause of the well burning up.

Q. That's all.

Examination by Mr. Hardy:

Q. I want to ask you two or three questions relative to these schedules, Mr. Richmond. I believe you stated that where a well was on a half a unit, he was entitled to half of 202 barrels, or 101 barrels?

A. Yes.

Q. In other words, a half a unit—one well on a half a unit, he was entitled to 101 barrels?

A. Yes.

Q. If it was an offset well, it was entitled to 60 barrels additional?

A. That's right.

Q. If there were two wells on a unit, what would it be allowed?

A. We allowed it the full unit's allowance, 202 barrels.

Q. Now, then, look at your Kilgore district, and go down to the name of Weaver Crim; the first group in there, your Kilgore district —do you find Weaver Crim at the bottom of the first page, just before you get to the Henderson district? Do you see Weaver Crim there, over on page 5?

A. Yes.

Q. Weaver Crim, David Ladd B., Hy Hobson has a half a unit with one well?

A. Yes, that's correct — David Ladd, B.
Q. He has a half a unit?
A. Yes.
Q. Allowed 101 barrels.
A. Yes.
Q. Then he is allowed 60 barrels under the concession allowance?
A. The special concession, yes.
Q. What is that for?
A. That was to as nearly as possible even up the offset 20, which drawed 202 barrels. In other words, we gave a special concession; we gave then 60 barrels over and above what the Railroad Commission order allocated to them.
Q. As an offset?
A. Yes.
Q. Just below that is J. Z. Burby?
A. Yes.
Q. He has a half a unit?
A. Yes.
Q. He is allowed only 101 barrels?
A. Yes.
Q. And you gave him a concession of 101 barrels?
A. Yes.
Q. How do you account for that distinction?
A. That is one of the cases where we had a kick in the equity of the withdrawals from other properties; that was worked out by the committee.
Q. You didn't have anything to do with that?
A. Yes, I helped them to work it out. In some of those cases, offset properties had withdrawn considerable amounts of oil from their property in excess of the amount drawn in this particular case, and that was as nearly as possible to even up those inequities.
Q. You don't always allow for an offset sixty barrels?
A. No, sir.
Q. In some cases you allow 101, and in some cases you allow 111, is that true?
A. That's right.
Q. Down further on the page is the Woodleigh Petroleum Corporation; you see that?
A. Yes.
Q. It has a half a unit and one well?
A. Yes.
Q. And you only gave him fifty barrels for his allowance?
A. Yes.
Q. Why was that?
A. That was done on account of the half unit being in the same amount of acreage that the other full unit.
Q. What do you mean by that?
A. If you will notice there, on that half unit, well No. 1 drew 50 barrels?
Q. All right.
A. Well No. 2 drew 51 barrels?
Q. That's 101.
A. That was in order to divide up, as nearly as possible, the wells on that unit, so that instead of drawing it all from one well, they would take proratably from the two wells on the unit, and sort of balance it up.
Q. Doesn't two wells on a half a unit get credit for a full unit, Mr. Richmond?
A. Yes, but on a special concession claim, you have 111, and 151, making a total of 265 barrels, which was to allow for offset for full twenty-acre units with a number of wells on them.
Q. Now then, turn over on your next page and let's see. Under the Hoosier.
A. Yes.
Q. You find where the Hoosier has a half unit there; is that correct?
A. Yes.
Q. And how many wells on it?
A. Two.
Q. Then did he get 202 barrels?
A. Yes.
Q. Are those offset wells also?
A. They are.
Q. Then why don't they get the same?
A. Because there is only one well on the other unit, which draws 202 barrels, automatically draws that, which only entitles Hoosier to the same amount to his two wells.
Q. In other words, the rule does not always apply that the offset well gets 60 barrels and each additional well gets 15 barrels; is that right?
A. That's right.
Q. A few minutes ago you said no complaints had ever been filed against you except by outsiders, as far as you knew of?
A. That is as far as I know, yes.
Q. Then you said that Commissioner Neff filed a complaint; do you think that a member of the Railroad Commission for whom you are working is an outsider?
A. No, sir; he isn't.
Q. All right; I just wanted to know.

Questions by Mr. Lasseter:

Q. Somebody, it seems to me, was unduly concerned about the waste of

gas in this field. Having worked for the Humble for seven years, I believe you said, you found them a very efficient operating company?

A. Yes, in my opinion.

Q. If this gas waste had such an economic value, will you please tell this House why, in the Kilgore or London areas, where they have their largest blocks, that they themselves have not utilized that gas, and extracted the casinghead gasoline from it and re-pressured their area with it?

A. My understanding is that the present price of gasoline prohibits the installation of a plant for that purpose. The gas, that particular gas, at such time as the gasoline content is taken out of it, it is too dangerous to try to put it back into the formation under pressure.

Q. Then it is not at this time an economic waste; it is not even a physical waste, is it?

A. In one sense of the word, I would say it is. Anything going into the air and being burned, is being wasted, in my opinion.

Q. Having been utilized to lift the oil, and not being economically sound to extract the gasoline from it or to re-pressure with it, and there being no commercial line for its utilization for burning as fuel, is it your opinion that it is still being wasted; is that correct?

A. I would say that it was, yes.

Q. I don't understand your idea of waste. In the field—Mr. Richmond, I will ask you this question: In a field as largely scattered as those operations in East Texas, could it ever be economically sound, until that field is completely developed, to lay a gathering system sufficient to gather that gas which is not being wasted and is now used as a lifting power and is not wasted just because it is dissipated; could it ever be possible to lay a system of lines to gather it to a central plant to remove the gasoline content? Do you believe it would?

A. I am afraid at the present price of gasoline and oil that it would not.

Q. All right. Now, to get back to the early history of the field, Mr. Richmond. We have a Common Purchaser Act, and whether or not it can be enforced, I don't know—nevertheless, to have equal withdrawals from the field, there must necessarily be pipe line connections to all wells?

A. Yes.

Q. Are you familiar with the story in the East Texas field that the Humble Oil Company and the Texas Company, each, and the Gulf, had a trunk line running adjacent to the field on the south, but that they for months refused to build a line into the field?

A. Yes, that is my understanding.

Q. Aren't they largely responsible for those independents there who were putting down their wells for seeking outside markets and necessarily using loading racks and railroad facilities to market their oil?

A. They probably were responsible to a certain extent for that condition. However, I don't think there is anybody but the producer himself that's responsible for the price he is getting of 10 cents a barrel for his oil.

Q. I didn't ask you anything about the price; I asked you if that is not the reason he had to seek the outside market?

A. That is probably true.

Q. In doing so, it was necessary to find commission agents to handle their oil, wasn't it?

A. That is true.

Q. In order to pay a commission, they had to take a reduced price, didn't they?

A. Well, I wouldn't say they had to, no, sir.

Q. They either had to do that or not market it?

A. Yes, but they would have been a lot better off not to market that oil.

Q. If you are producing oil into the channels of commerce, it is not wasted supply because it is not bringing $1 a barrel, is it?

A. My idea of waste of anything is when it goes to a value where it is worth practically nothing, it is wasted.

Q. Would you say that wheat is wasted if I can buy a sack of flour for 45 cents?

A. No, sir; not if you could do that, but I think the fellow who is raising it would be wasting it to sell it for that.

Q. If it is utilized by the public, if it gets into the channels of commerce, and is actually utilized by the public, it is not wasted, is it?

A. It is not exactly wasted, but it is a wasteful price.

Q. I am not concerned with economics or with the economic situation. It is not the province of the State, Mr. Richmond—I don't want to argue with the witness, but it is

not the province of the State to try to subsidize a family of people at the cost of the buying public. We are not concerned with the price of the oil, but I am asking you if it is wasted if it is utilized?

A. No, sir; it is not.

Q. And if the gas cannot be utilized, it is not wasted, is it?

A. If it cannot be utilized, it would not be wasted.

Q. All right. That's all.

Examination by Mr. Harman:

Q. There has been a good deal of questions going on about as to how you measure the oil runs. How do you determine how a well is running?

A. How much a well should run?

Q. How much it is running?

A. Well, it is done by securing pipe line gauges, and in the case of violators we have to work several different ways to get the information. We may work through a half a dozen different parties before we are able to get the information, and we take all the information we get and try to assemble it and get an average.

Q. You do not measure their actual run by yourself, do you?

A. Not in the case of an injunction. We figure where they have an injunction we would be violating that injunction if we did.

Q. Do you ever check up on them to see if they are giving you the proper reports?

A. Yes.

Q. Correct reports?

A. Yes.

Q. How do you do that?

A. Through the royalty gaugers. After we have secured the pipe line reports, lots of time in lots of cases we go back and check with the royalty gaugers, if there is any doubt in our mind as to the correctness of the report.

Q. How does the royalty gauger gauge it?

A. He gauges it along with the pipe line and with the company—the production company who owns the property. In other words, he sits on the tanks and sees the gauge line run and witnesses the ticket—signs the ticket in connection with the pipe line gaugers' and the producers' representative.

Q. Is there any possibility of oil running through the flow tanks and going into the pipe line that is not gauged?

A. I don't think so. I don't believe a pipe line company would accept oil run through a flow tank without it being first gauged.

Q. The question is, is it possible?

A. Yes, it is possible.

Q. How often do they gauge one of these flow tanks?

A. How often?

Q. Yes.

A. The gauge is run from 7 o'clock in the morning until 7 o'clock the next morning; however, the tank is gauged as soon as it is filled up and ready for the pipe line.

Q. What is to keep a man who owns his own well and his own pipe line from running oil continuously through that tank and letting several thousand barrels go through that is not gauged?

A. The only thing is the royalty gaugers. I am afraid the royalty gaugers would catch them.

Q. If the royalty gauger just checked every morning at 7 o'clock, then—

A. As a general rule, that royalty gauger stays on the lease all the time; in fact, as a general thing, he lives on the lease.

Q. On the lease all the time?

A. Yes.

Q. Are you familiar with the meter gauge used in California?

A. No, sir.

Q. You have never seen one of those in use?

A. I have seen the liquid meters used, but never on a direct line from the well where they have a combination of oil and gas, too.

Q. Have you been keeping up with the test they have been making out there recently?

A. No, sir.

Q. You don't know anything about the results?

A. No, sir.

Q. I have been told this: that it is possible to have a flow tank, we will say, with six feet and nine inches of oil in it at 7 o'clock this morning, and your gauger comes back out there the next morning and it only has one foot and one inch in it, which would indicate to him that they had run five feet and eight inches of oil?

A. Yes.

Q. What is to keep them from flowing that oil all day and keeping that oil up in the tank until just before it is time to gauge it, and then letting her run out?

A. Well—

Q. The royalty owner wouldn't catch that, would he?

A. He couldn't if he wasn't there, but he could not run oil into the tank without the royalty gauger knowing about it—if he was on the job.

Q. So—

A. That is the object of employing a royalty gauger.

Q. Do all leases have a royalty gauger?

A. No, sir; but in East Texas most of them have.

Q. Are you sufficiently familiar with the meter to say whether or not it would be advisable to require it to be put on all wells or pipe line runs?

A. I think it is possible on the pipe line runs, yes. Any liquid meter can be handled that way, but it cannot be handled where it has to handle a volume of gas along with the oil. In other words, it would lock — it wouldn't work.

Q. How do they take the sample or test of the oil to know what gravity it is?

A. How is the test made?

Q. Yes.

A. That test is made with a hydrometer to determine the gravity of the oil.

Q. It just sets in the tank all the time?

A. No, sir; it is taken out and put into this thermometer jar, and a hydrometer is dropped into the jar, taking the temperature reading, and so on, and you get your gravity; in most cases, the pipe line takes that test every time it runs that oil.

Q. Isn't it a fact that after several hours, the heavy oil in a tank will go to the bottom, and the light oil will go to the top?

A. That is not the condition in East Texas. You do lose a certain amount of your gas, or your real light gasoline content by letting the tank set, your vapors and other things; the heat has a tendency to take away the lighter ingredients.

Q. Did you work in the Van field?

A. No, sir.

Q. Did you know anything about the conditions there?

A. No, sir.

Q. The condition prevails there where you have that light and heavy oil, doesn't it?

A. It exists in several fields, but I have not heard of it in the East Texas field.

Q. How would you test the gravity in that tank, where you had that condition?

A. You would have to take a top and bottom test, and get an average of the two.

Q. That's all.

(Witness excused.)

Mr. Hardy: Mr. Chairman, we desire now to call Mr. Holmes of the Texas Company.

Thereupon, the witness R. C. Holmes, having been duly sworn, testified, on direct examination, by Mr. Satterwhite:

Q. Mr. Holmes, will you please state to this Committee—first give your initials to the reporter, please?

A. R. C.

Q. Your place of residence?

A. New York City.

Q. Will you please state to the Committee whether or not you are officially connected with any of the oil companies that are operating in Texas?

A. I am president of The Texas Company.

Q. You have already been sworn, have you, Mr. Holmes?

A. Yes.

Q. Are you familiar with the fact that the Governor of Texas has convened the Legislature in extraordinary session, with a recommendation that some character of legislation be passed to aid or help to bring the oil situation in Texas out of its present deplorable condition?

A. Yes, I am.

Q. You understand the purpose of this Committee, at this time, is to get information with reference to the situation in Texas, as to its production and as to the reasons why the present deplorable conditions, and the remedy, if there be any remedy?

A. Yes.

Q. Now, we have invited you to address this Committee, for the purpose of giving us such information and such facts as you may be in possession of along this line. Now, in your own way, will you please address yourself to these matters? You may proceed.

A. I think it is very well to know that I am one, at least in the oil industry, that I personally have been strongly in favor and in support of the conservation efforts, the general

plans to conserve the petroleum resources to whatever extent may be possible, consistent with the best interests of the country and the industry.

This proposed legislation, in my judgment, is essential in order that Texas may get their production under such control and operation in such a way as to enable them, in co-operation with other States and other nations, wherever that co-operation with other nations may be possible, in bringing out of this unsettled chaotic condition some degree of order and stability.

I am of the feeling and conviction that some time ago, possibly three or four years ago, it was realized quite fully by most of the people in the oil industry that we had reached a state, or a condition, of developed potential production in the world that made it quite impossible to work along the theory of exhaustion of any field to bring about a stable condition. In other words, the theory that the best and easiest way to correct the situation is to let East Texas exhaust itself leads you on to the condition that, or the recognition of the fact, that there are other fields, many other fields, under somwhat similar conditions. For instance, take the Kettleman Hills fields in California, with possibly less than half the condition of danger of water. They have possibly half as much again oil reserve as East Texas. If they had wanted to follow that practice and disregard the interests of all other producers, they could have brought on the condition which is or which would have been as bad as that brought on largely by East Texas through lack of control.

The same thing, to a degree, could have been done by the Oklahoma City field. I believe that if Oklahoma had disregarded the efforts to conserve the oil and bring about an orderly condition, that today there would be additional outlets from Oklahoma, principally south, which would have resulted in putting out some cheap oil because of an uncontrolled condition, and today Texas would not enjoy, or would not have the opportunity of enjoying the advantage they have with this large production with the somewhat limited transportation capacity out of the field. In other words, if any one of these districts, when they had first come in and these large potentials developed—if they had pursued to any considerable degree the policy, or at least the practice, which has prevailed in East Texas, we could have had this same low price and unsatisfactory condition at no trouble; and to repeat, in part, what I have said, if that were a theory and practice to be followed and considered a wise one, generally adopted, then we would have, of necessity, or in actual practice, we would exist by these cheaper oils, exhausting them one by one, or altogether, and finally be dependent upon the small wells entirely. We would have exhausted our cheap production at a low price, and as a consequence, would have exhausted very largely the values in our resources.

I believe it must be generally recognized that there is no great good coming to the public by conditions that are such, in any industry, that that industry is operating unprofitably. Certainly the industry, the oil industry, will be unable to maintain the payrolls and the number of men employed, or the rates that they have maintained, if this condition continues. That will be true in the steel industry, and in the sugar industry, as it is now, or in any other industry, and so I am assuming that you and everyone recognizes that whether it is the oil business, or steel or cotton or copper or whatever it might be, we are all generally better off when our industries are prosperous, and there is no desire, because of the lower price to the public, that any industry should be in distress.

I am arguing now on the theory that the best thing for the oil industry is to so regulate, to begin with, the production, the source of the oversupply, that it may be produced most economically, as it is required, and consumed only to the extent that it fills the requirements of the essentials of products of petroleum. When the American Petroleum Institute, early in 1929, made their effort to set up a plan and bring about some effective conservation effort and result, it was pointed out in that report and recommendation the many ways—the many studies that should be made, and the many ways in which economies could and should be worked out, if production could be brought within reasonable control.

I think it is generally recognized that production under control and op-

erated under definite control, so that this uncertainty as to the control is removed, the producing cost can be greatly reduced and both in the investment and the operating costs, economies could be worked out so that the public could get a good part of the advantages of those economies. In other words, it would not be necessary materially to increase the price if those economies could be effected so as to make the industry reasonably prosperous.

Also, it is probably well to comment on the criticism that has arisen so often of the fact that under conservation the crude prices have constantly gone down. In my judgment, that has been caused entirely by the fear that we would not get the production definitely in control, and get it down to the reasonable needs of the industry, and it is this fear which makes it impossible to absorb oil at reasonable market prices when conservation has failed and the prices have gone down in almost all instances and it has been almost always where oil has been produced over and in excess of the then requirements for crude oil.

I think it is proper to say, at least in my judgment, if production were brought a few hundred thousand barrels, say 200,000 or 300,000 barrels, under what is the actual refinery requirements from day to day, that it could and should result, and probably would result, in a better price and a more stable price. Such a condition of production, which is only limiting it to a small amount less than the present limit, would bring about a seller's rather than a buyer's market. A slight shortage would bring it up by the bidding of different companies for oil to a point where it would reach a level which would permit of a reduction of some of the storage stocks, which are always a depressing or bad influence upon the price stability of both the crude and refined markets.

If I were to make a definite recommendation to this Legislature, I would urge that when this bill comes up, whatever it is, for consideration and final consideration, that every effort be made to draft and pass a bill that gives definite control, including the requirement, the market requirement, as one of the measures of the allowable that should be fixed for the production.

Q. Mr. Holmes, while you are right there, you might give your opinion as to how they might find that market requirement.

A. That, I think, would be arrived at by the nominations or requirements of those interests, companies or individuals who are refining or buying the crudes, getting their estimates of requirements, as has been done in some of the fields of Texas in the past. The total of those requirements or nominations should be a guide as to the total amount of oil that would be wise to produce. Of course, in the conservation, strictly conservation plan, the essentials are that there be no waste—no actual waste of the petroleum products, the crude, the gas, or whatever it may be; and on that, I would go a little father than the previous witness.

I would say that any gas or any oil or petroleum that can ever be used in a useful way is wasted when it is allowed to be burned in the air or otherwise escape. The fact simply of the low value of the product was not sufficient reason to determine that dissipating it is not wasting it.

Now, what I started to say was that, strictly speaking, the conservation theory is to conserve the oil and gas to its most useful purposes and to see that we get the greatest ultimate recovery from the sands or deposits, and that it is not wasted in the production or wasted above ground, but in order to make the plan effective and bring about that result, I think you must limit the production, in addition to those reasons for limiting it, to your market demand. Otherwise, different ones will produce in excess of what they should, in disregard of the demand, and will produce in excess of the requirements, and it will lead to cheap products generally, which ultimately leads to waste, and that is because it is cheap, and that is where I, getting back to this previous witness as to the gas waste, differ with him. When it gets down to a price of 10 cents a barrel for oil, you might reach the conclusion that you are not wasting it because it is cheap, but cheapness leads to waste and you should really consider the ultimate value of the product.

Another reason why I feel that Texas should, and I hope that they will, pass a conservation act or law is that the States of California, Ok-

lahoma, New Mexico and other States, I think, have done their part as best they could. Oklahoma, with their better laws or better control, were able in the beginning of our efforts during the year 1929 to keep their production down within the market requirements and within what seemed to be desirable in carrying out the committee's requirements or recommendation for conservation. They were able to do that, because of the effectiveness of their law.

California was in somewhat the same situation as Texas. The laws were inadequate—there was doubt as to their validity or legality, and neither State was able to keep down their production to an amount that made those conservation efforts what we might say successful. As a consequence, in spite of those efforts, and in spite of the fact that there is a tremendous amount of oil shut in and restriction has been brought about to a degree, we have not been able to get it down to such a point, and keep it down, as would bring success to those efforts, and that, of course, has discouraged the producers, large and small alike, who have made sacrifices and reduced the output of their oil with the hope that the reduction would result in at least a slightly better price or a more stable price.

Q. Mr. Holmes, as president of the Texas Company, is it part of your executive duty, if I might state it that way, to determine what the Texas Company can pay for its raw products; that is, for its crude?

A. Yes, it is.

Q. Will you state to this Committee how you determine that market value of the crude at the well — I mean by that, so we may understand the plan of fixing the prices of the crude at the well?

A. Yes. That is determined, I would say, very largely on the condition of the producing situation. That is, whether more oil is being produced than can be readily absorbed is one of the influences on price; more or less, I should say, than can be readily absorbed. Another is the condition of the refinery markets—whether they are such that the price which may exist today is too high to enable our manufacturing end to meet the prices that exist; that is, to meet the prices in the refined markets with the crude prices which exist. Another, and probably a major, factor, with our company at least, in determining the price, is the competitive condition with the crude. It has been our practice, both in the crude markets and in the refined markets, to meet the competition as we come to it; that is, we meet the prices generally of the major operators in whatever market we happen to be in. Sometimes we are obliged to meet the competition of some of the smaller companies, if it varies from the prevailing market, or that of some of the sub-majors. Now, when it comes to the crude price, as a rule, unless we take some serious exception to what others are apparently or have determined are proper values for crude, we follow it. For years we were a small company and were perfectly willing to do that. That, I think, is determined by the companies who may make price changes, as I say, these different influences affecting them. If there is a little shortage of crude, or a company wants more than it is getting, it is likely to raise the price. If there is an excess of crude, of crude as being sold under the market, and that crude which is sold under the prevailing price is going onto the refined markets, that price is likely to be lowered, because they are compelled to meet that cheaper crude, when refined, on their retaill market, and that has been largely the cause in the decline of the crude market this past year. Is that a sufficient and satisfactory answer to your question?

Q. In fixing the crude prices, of course, it is publicly stated in the press and by every other oil man that has anything to do with it, that the East Texas field has wrecked the price of crude. I believe, when the East Texas field came in along about the first of this year, the price was above $1 and today it is down to anywhere from 2½ cents up to whatevery they are willing to pay. In your judgment, do you attribute the present depressed prices in crude to the overproduction in the East Texas field?

A. Not entirely. The depreciation of prices from the higher price levels that prevailed in 1929, as I remember, began along in the middle of 1930. That came about to some extent because of the fear in Oklahoma and North Texas, and to some extent in California, and to some extent the fear—well, we finished that. The failure in those sections to abide by

the proration allowables. A considerable quantity of oil began to come onto the market in the middle of 1930 under the posted prices, and it began in quantity soon after the middle of 1930; as I remember, some 15,000 or 20,000 barrels a day in North Texas and the Panhandle, and smaller quantities in Oklahoma. Those crudes were sold largely to small refineries, and some to major companies, and the products of that cheaper crude met the products on the refinery market of the crude which brought a higher price. That started the situation, and East Texas came on after the decline had started, and I think the effect of East Texas—well, I will say this: I believe that except for East Texas that there was a possibility of getting the matter in better control. When East Texas came with this disregard for the proration orders and the very large amount they produced, a great many who have been in favor of this effort became discouraged with it and felt that it was a hopeless effort, and that feeling, that spirit, together with this tremendous amount of production and overproduction, certainly has been the cause of the decline from around $1 to the present price.

Q. As a matter of fact, Mr. Holmes, if the East Texas field had not been brought in at all, were the crude prices headed for the present deplorable condition, along with other prices in cotton and wheat and so on?

A. I think it is altogether probable that there would have been some decline in the crude prices. I don't see how the oil industry could have escaped from the same influences that have been felt in the other industries, except that to some extent there was an amount of control of production in the oil industry, and there was a volume of demand, consumption, approximately equal to the 1920 volume, or slightly more than that. That is exceptional. There are hardly any other, if any other, industry, during this depression, which has had as large a market in 1930 and 1931 as in 1929, and the oil industry was very favorably situated in that way, and that might have resulted in a more stable price than in other commodities.

Q. I believe it has been stated since this morning started, perhaps on yesterday, that some six or eight companies in the United States should control the markets. Will you give us the benefit of your experience as to that, as the president of a major company, or what is known as a major company?

A. That, I am sure, is not true. The competition among the big companies is quite as keen as it is among the little ones. I don't know that I know just what you mean by control.

Q. I mean the fixing of the price.

A. No, I think that is not true, and I think it is impossible. There are some, I would say, in excess of 30,000 marketers of petroleum products and about that many signed a so-called code of ethics a year or so ago, and a great many did not sign it. Petroleum is marketed by so many units that it would be impossible for six or eight, or almost any number, of major companies to control the price.

Q. You mean the refined petroleum, do you not—the purchasers of refined petroleum?

A. I am speaking of the retail market, yes.

Q. How many purchasers of crude petroleum would you estimate there are, Mr. Holmes?

A. I didn't get your question.

Q. How many purchasers of crude petroleum are in the field in the United States?

A. Well, I have no definite information as to anything like an exact number, but there are some 300 refining companies, and I assume all are purchasers also—there are purchasers out of the United States. That is, you might safely say that there are 300 purchasers of crude oil.

Q. Do you mean major purchasers for refining purposes?

A. For refining purposes, yes.

Q. Mr. Holmes, this may not be exactly in your line, but it has occurred to me quite frequently in our present depressed market, not only for oil, but for farm products and other commodities. We are smart enough, and have been smart enough, to develop all of the latest sciences and are getting the very best results from our raw products. We refine our crude oil and get everything, and it is said that the packing houses use everything from the hog but the squeal. We have been able to do that, to invent machines to take us into the air, and do all those things. Now, why is it that we are not smart enough to so adjust our markets as to make an equitable distribution of

our products and give everybody a chance to earn a fair wage, so he might be a consumer of those products? That may not be in your line, but it does have something to do with these present depressed conditions. Who is responsible for that?

A. Of course, what you say is the result, very largely, of the energy of the American people and their ingenuity, and it is also, I believe, in a large degree, because of our anti-trust laws, but, as I have stated before, I have studied the effect of the laws and I have come to the conclusion that they correct a condition which is largely imaginary, and they have brought about another extreme which is quite as difficult for us. In other words, the anti-trust laws have so encouraged and supported the over-activity in every line of endeavor and have so prohibited co-operation under proper regulation of the supply of either the raw product or the manufactured product, and the orderly distribution thereof, that the whole thing is overdone. Everything is over-built. We are over-equipped with marketing facilities, and that, as I say, I think when the anti-trust laws were enacted, they corrected what, to a certain extent, was an imaginary difficulty.

I think today, if we had no anti-trust laws, there are enough units in every line of endeavor so that the competition among them would prevent any unreasonable or unfair price levels to develop. I doubt if there were no laws at all, and we were free to work with each other, that you would get a price, or a price would prevail, for gasoline and other marketed refined petroleum products that, if carefully analyzed, would be found to be reasonable, because there are so many units that, when any attempt is made to maintain a price above a reasonable level, it very quickly encourages new competition which seeks also to obtain those profits, and that brings it in line again, and I believe that is one of the causes of our present situation. The recent study of the sugar situation brought out the conclusion on the part of those who were attempting to improve that situation, that, to a certain degree, was the cause of the trouble and difficulties, the unregulated production and the inability, within the law, to regulate the production and operations within the market requirements.

Q. We have been confronted, or at least it has been suggested to this Legislature, that if the pipe lines and the filling stations, or the retail end of the refining business, could be divorced from the parent companies, that we would be able to better adjust the prices—what is your opinion with reference to that? In other words, what effect would it have on the present production of crude oil—that is, the price of crude oil, if only the refinery could transport that from the field to the refinery and then some other company would have to handle the sales end of the finished product? What advantage would the people have from that?

A. If that same company and that marketing company were one, you could effect a tremendous economy, but I would say this: that a great deal of our difficulty and our depressed state comes from uncontrolled markets. It comes from the lack of control of that distribution of the products you manufacture, and that is one of the very serious difficulties now in the rubber industry, and that is one of the reasons that you can buy tires for 25 per cent of what they are actually worth; it is because of the lack of a good, definite, controlled marketing system by the tire companies. That is very largely the cause of the difficulty of the oil industry. There is too much uncontrol, rather than too little. There is too much uncontrolled distribution, and, to be frank, there are too many marketers of petroleum products in the market, who will go into the markets with little, if any, investment—money which is loaned to them by the oil companies and others to start the filling station business, and then the manufacturing and marketing companies competing for those outlets.

That uncontrolled distribution results in margins to these retailers or sellers, that they are underselling. To make it clear, or to illustrate, if what we call an uncontrolled dealer or distributor, we will say, at 4 or 5 cents, as applies in some cases and at some places, under the filling station price, he very frequently sells below the filling station price in that locality. That quickly brings about a price war, and that is one of the causes of the depressed price condition in the oil industry; it is because of the lack of control of the companies who manufacture and sell or

market their products. A divorcement from the refining companies of the control facilities that they now have, I am sure, would result in a still worse and more demoralized condition of the industry.

Q. I don't know whether you have given this side of the marketing question sufficient thought to give a satisfactory answer, but I want to present this to you: The refinery, the Texas Company, also refines crude products?

A. Yes.

Q. Your refinery pays 10 cents for a barrel of crude, and then pays a dollar for the same grade of crude. After you had refined that and put it on its markets, all those products in that barrel of crude, how could you distribute that 90 cents so as not to cost the consumer any more money? Who would lose that 90 cents, and where could you distribute it so as to adjust it in a way that it would not interfere much in your profits, provided you have control of both the production, I mean, the refining and the sales? In other words, I am trying to find out the cost of the raw product. How much does it figure in the retail values?

A. It figures in the retail value only to the extent of the difference in the cost of the raw product. The cost of the refining, the cost of transportation, the cost of marketing, all those are, we will say, the same, except that when you have very low crude prices you have somewhat lower fuel prices; except that in the price of fuel, all the costs are the same except that low crude, so that the difference in the price of the refined products is nearly the difference in the cost of the two crudes, the 10c crude and the 90c or $1 crude Too often that fact is overlooked, but it costs just as much to refine a cheap crude and market it as it does an expensive one, so that the decline in the defined products prices cannot be in proportion to the decline which may take place in the crude prices.

Q. You pay, then, ten times as much in one instance as you do in the other, but in the finished price, the consumers' price, you do not reduce or increase in that proportion?

A. I know of no instances, of course, where the differences in that crude price may have been as much as ten to one, and I figure that is just used as a figure of speech or an illustration; but, if I pay several times as much for one crude as for another, it is because of greater values or because of such a condition as prevails now in East Texas, where the producer is making the market.

Q. How do the producers make the market in East Texas?

A. He makes it by going around and offering his crude at prices which he is willing to take in order to dispose of it.

Q. Then, if I understand you, if the producers in East Texas had refused to sell their oil, their crude, for a price less than 75 or 80 cents a barrel, the market would have taken it at that price?

A. I think probably that is true, yes. If they had simply said we will not sell our oil for less than 75 cents or 80 cents or $1 a barrel, then up to the quantity that could have been absorbed they could have gotten that price for it.

Q. As a matter of fact, the purchasers are taking practically all the crude over there now that is offered to them, regardless of the price?

A. That is true, and a great many of them are takiug it regardless of price, and failing and neglecting to take oil from other fields, from which they formerly did take.

Q. Because of the prices?

A. Yes. May I comment just a moment more on this filling station proposition? I do not want to be misunderstood about that question.

Q. Make yourself clear on that.

A. We know of no company owning all of its distribution. That is to say, owning or controlling its entire distribution. In this State we have—we own and control, where we have control of the marketing price, a little over 60 per cent of our distribution. The balance of our distribution is through uncontrolled dealers, and I think possibly that is a fair indication of what may be the average of the major companies. In other sections of the United States, we have less control of the distribution; and I would say this as to our crude supply—east of the Rocky Mountains, I believe we produce about one-third of our requirements, and buy approximately two-thirds, and taking it throughout the United States, California included, we probably produce about half of it, and buy about half of our requirements, and so, so far as our marketing that there would be a better condition there with entire control of our entire markets;

that was an argument against having no control, and having it entirely out of the hands of the manufacturers.

Q. Mr. Holmes, you state that you purchase about half of the crude that you refine in all your refineries in the United States?

A. Yes.

Q. Can you tell me whether or not you use any foreign crude?

A. What was that?

Q. Do you use any foreign crude?

A. We use a little bit of our Mexican crude. We have been producers in Mexico for several years; today, however, we produce very little, but we are buying some. That is needed in the manufacture of our asphalt. In the manufacture of our asphalt, which is manufactured in large quantities, we are required to use some of those grades of crude of asphalt base —Mexican crudes.

Q. You do not purchase that foreign crude because of the price for which you can buy it?

A. The price?

Q. Because of the price at which you can buy it, but you purchase it more because of the grade, or contents?

A. No, we do not. As a matter of fact, these Mexican crudes cost us more, delivered here, than some of our crudes in this country.

Q. How does that cost compare with the Venezuelan crude cost?

A. It is quite a different crude. There is a very small amount of gasoline in it, and no kerosene of value, and very largely it is of an asphalt content, some of it containing as much as 60 per cent asphalt, and the balance is a distillate stock, which is sold generally for fuel.

Q. Do you have in the United States a crude with asphalt content sufficient for your asphalt requirements? Suppose you didn't have any access to Mexico and Venezuela for your asphalt crude. Is the production in the United States sufficient for the needs of the United States?

A. I doubt that it is now. We have had for years sufficient South Texas crude to manufacture the quantities required, but many grades of asphalt required now are such that we cannot make it from the asphalt base of the South Texas crude; it requires some Mexican and, too, we are diminishing our supply of South Texas crudes now.

Q. Now, Mr. Holmes, to sum up what you have stated with reference to the Texas Legislature passing certain legislation at this time, you recommend an adequate law, providing for proration?

A. Yes.

Q. And you stated that that proration should be based on the market demand?

A. As one of the measures.

Q. Now, how would you distribute that production through the several pools in Texas?

A. I think first, of course, that the production should be so regulated as to avoid all waste. I think that should be the first essential. I think you should go ahead and base it to some extent upon the market requirements, so as to make it really effective. I have no other definite idea, no ideas which could be considered definite, as to how it would or should be allocated to the various fields, except that some committee or some commission should be authorized to do that fairly, and if so, there should be no exception taken to it by anyone.

We are perfectly willing to take all the oil that we can use from any field, whether it is in East Texas, in North Texas, or West Texas—wherever it may be in Texas, if the quality of the crude is of such a character as to meet our requirements. We would not be disposed to take all our oil from East Texas merely because it is cheaper to get East Texas oil or because it might be a little better oil than some other. We are perfectly willing to take it in fair proportion, in consideration of all the others in the State doing likewise, and I really believe the other buying companies would have the same attitude toward the proposition.

Q. Then, Mr. Holmes, would you recommend that pipe line connections be made to every well in every field; that it should be required by law?

A. I think that is impractical. I think unquestionably every well or every lease should have a pipe line connection, so it would have a pipe line outlet, but to require every company to connect every well — that would be too expensive.

Q. I did not mean that; I mean simply that every company should receive a pipe line connection.

A. If it is being produced in accordance with the laws of the State, I would say yes.

Q. Thank you.

Mr. Hardy: Mr. Holmes, do you believe you can be back at 2 o'clock?

A. Yes.

Mr. Hardy: We ask the unanimous consent that the Committee stand at ease until 2 o'clock.

The Chairman: Is there any objection? There being none, it is so ordered.

Whereupon the Committee recessed until 2 o'clock p. m., from 12 o'clock noon.

The Committee met at 2 o'clock the same day, Wednesday, July 22, 1931.

Thereupon the witness, R. C. Holmes, resumed the stand and further testified as follows, on examination by Mr. Graves:

Q. Mr. Holmes, are you ready to proceed?

A. I am.

Q. This morning, I believe you made the statement that the anti-trust laws were so broad in their scope that you thought that probably they might have some effect on the present depressed condition that the oil industry finds itself in. Did I understand you correctly to say that?

A. I made the reference to all industries.

Q. To all industries—I believe you did say that, yes.

A. All industries.

Q. All right. You are familiar with the fact, of course, that our Constitution, however, in the beginning, pronounced against the principle of perpetuity as contrary to our form of government?

A. Yes.

Q. Then, as I understand you, your idea a while ago was that the utilization of a pool being prohibited at this time by law, of course, you would not be protected. If that prohibition was taken off and all persons that owned any land in that pool could throw their land into a joint stock company and each receive an interest in that company, as represented by the land that they put in that company, do you think that would have any effect toward stabilizing the price of oil?

A. I think that plan, or a similar plan, where it could be a unit operation, would be a fair and equitable distribution; in the final result, I guess it would be desirable and strengthening.

Q. If, therefore, the Legislature would give the power for utilization of an entire pool of that kind, do you think that might have some effect toward stabilizing the industry and removing it from the distressful condition it now finds itself in?

A. I think something of that character would be helpful, and could result in great economic value and I think definite advantages in many ways.

Q. I believe you also said there is less consumption of oil at the present time, did you say there was less consumption of oil at this time—crude oil—than has heretofore been had?

A. No, I think not—I don't think I made that statement.

Q. There is less production, however, isn't that true?

A. There is less production than there has been—I think considerably less than there was in 1929.

Q. Considerably less than there was in 1928, is that right—1928, 1929 and 1930, there was greater production than there is at the present time?

A. That is true.

Q. Then, do you think the law of supply and demand—or supply, at least, being a record supply at this time, and more distress price, do you think that has anything to do with the control of the situation or cause of the situation at this time?

A. I think there were certain conditions that applied in 1929 and early in 1930 that permitted the absorption of a larger quantity at higher prices than prevail today.

Q. What were those conditions?

A. I will quote from a memorandum I have here: In 1929, the production of the United States, in round numbers, was 901,500,000 barrels; in 1929 it was apparently 1,700,323,000; however, in 1929 now, we saw an increase of production of 105,800,000 barrels. In 1929 we imported 1,000,000 barrels less; we exported 7,445,000; we ran to the stills in refineries to 74,877,000 barrels, and we put into storage an increase

of 53,000,000 barrels; so when you take the increase and figure from the increased accumulation and this increased consumption, we find that there was an even 30,587,000 barrels; in other words, we believe that year, due to the increased purchase by buyers, was the largest year of consumption we ever had and practically the same as we have had in 1930, and so far as 1931 is concerned, there has been very little increase or change in the consumption from 1930 —from 1929, and running about the same in 1931, possibly a little less. We saw a condition there of increased markets, piling up storage, increased imports, increased exports, that absorbed that amount. At the same time, that was the year we began and ever since then efforts in our industry as a whole were made toward absorbing all this and trying to get some orderly procedure in the industry. As I said this morning, the price began to fall when we were unable—the industry generally was unable—to absorb the production, total production, so there could be oil produced and sold under the prevailing posted prices, and that was due partly to the increasing imports, partly to the slowing up of the market requirements, and in part to the financial depression which caused a good many to take oil from storage rather than to buy the oil; some were under the necessity of taking back their storage oil, and sometimes using storage oil, because of lack of confidence in this conservation effort finally being successful.

Q. The reason a person would try to sell for less than the posted price would surely be because he could not sell at the posted price, wasn't it?

A. Exactly.

Q. And why couldn't he sell at the posted price?

A. Some of them were producing in excess of the amount that the conservation committees or the Commission had determined as being a market requirement or the amount that could be absorbed.

Q. In other words, really the reason he could not sell at the posted price was because the man that fixed the price had all he wanted?

A. Yes, sir.

Q. And if he bought anything else, it was like you would buy a suit of clothes now, this summer, to run over to next summer, you don't want that suit, but are buying it to lay it aside—wasn't that the reason?

A. Some of the buyers—for instance, I can remember in North Texas some buyers of crude who had been buying through, I will say, the Texas Company, had been gathering oil and selling it to their refinery, when they could buy oil at a lesser price than they could buy this distress oil, we would be left not only what we could buy for them, but what we would buy for ourselves.

Q. All new fields have distress oil, don't they, in the beginning?

A. That generally has been true. I think the Van field in East Texas, I think is an exception, I think there has been no distress oil in the Van field.

Q. Usually, however, when a new field comes in for a new well, oftentimes it will be where there is an open service tank holding that oil until you can carry out that oil, is that right?

A. Yes, sir.

Q. That oil is called distress oil, the man is in distress, he will take anything he can get for it rather than see it evaporate and go into the ground, is that right?

A. Well, I don't know exactly—properly, distress oil, I don't think it is the exact term, what I call distress oil is oil without a market, no demand for it, and will take any price it could get.

Q. I am asking you for this information: Did you fill or were you concerned in the refining department of the Texas Company before you became president?

A. Yes, I was manager of that department in the beginning.

Q. These matters—I am not inquiring into profits, but I would like to go into details a little bit, into the operations of the refining part of it, and the production part of it—we are trying to work on both ends the best we know how. What proportion on a barrel of oil comes out of it in gasoline at the present time?

A. Of course, that depends on the crude. The natural gasoline contains what we call it, straight run, distillated; ordinary distillated may vary from one per cent minimum in the South Texas field to about 80, 85 per cent in crude in the Kettleman Hills, now, I would say, just off hand, that the average of our crude in the Rocky Mountains may be 25 per cent of what we call natural or straight run gasoline. Today there is some 40-odd per cent of gasoline made from the crude

run in the United States for the natural gasoline and cracked gasoline manufactured.

Q. Out of each barrel you will get, we will say, then, approximately 40 per cent—approximately, of course, and as an average.

A. It will run a little over 40 per cent.

Q. Then the remaining portion of it is distillated, is the fuel oil?

A. There is kerosene, a considerable fraction of kerosene, lubricating oil, gas oil, straps, certain paraffine products, fuel oil. Did I say lubricating oil?

Q. Yes, sir. All right, then the present price of gasoline, I will say 14 cents, I am just using that as an arbitrary figure, but I think that may be correct—there is a four-cent tax that the State has seen fit to levy on that. That leaves 10 cents. How is that 10 cents distributed?

A. The average price in the United States on July 1, is 12.44 cents per gallon at filling stations, exclusive of the State tax. I do not have in mind very definitely how that division would be made, but the selling cost will range anywhere from 3 cents to 8 cents, to which you can add your freight and your other transportation costs to get back your net prices at the refinery, back to the prices at the refinery. I am a little reluctant to use these figures, because I don't think they are very definite—because I don't have them very definitely in mind, and they are approximate.

Q. The selling cost will range from 3 cents to 8 cents approximately—5 cents on the average between them, gives you 5 cents on your gasoline outside—you have a district agent—is that right?

A. That is to the retailer, whether retailing from his own station or whether retailing through distribution.

Q. If you sell to the retailer and the retailer retails for himself, then he has, say approximately, one cent—just approximately on these matters?

A. If we sell it to the retailer, we have to sell to him on a sufficient margin to give him a retail profit to take care of his costs and profit.

Q. That is usually three cents, someone suggested behind me—is that the retailer's profit?

A. No, I don't think any retailer makes three cents today. The margin to the dealer will range from 3 to 5, in some instances more.

Q. All right. We will start with 12½c, which is the refining cost, with 4 cents tax in Texas, that leaves 8 cents—8½ cents.

A. No, 12.44 cents, that is exclusive of the tax.

Q. Oh, exclusive, that is exclusive of the tax, all right; then that leaves me—I will leave out the tax then, and I will say 4 cents as your sale interest, that your district agent or whatever you might call him—you have some person who must overlook these matters for you and do this selling, and I will call him district agent; that leaves you 8½. And then for distribution costs, how much is that in Texas—2½ cents?

A. I would say 2½.

Q. That makes 6.40. Then you have to give them a profit, you must give to your retailer, otherwise he wouldn't be representing you. That will be, we will say 2.40—2½ cents?

A. Well, in cases when I said 4 to 8 cents, that includes any margin to the dealer, or in case if we retail it ourselves, so we have given that, you can call it distribution, whether taken by ourselves or given as a margin to another distributor.

Q. That leaves then, approximately 4.40 on a gallon of gasoline, and that figures 12.44. Now, is there anything else that you haven't taken into consideration in the final marketing, except the original cost of the crude petroleum and its refining?

A. No, that is—that would generally take care of the cost.

Q. Well, what is the cost of the original petroleum and its refining?

A. What is the cost?

Q. Yes, on a gallon of gasoline?

A. Well, that depends on several questions, depends on the cost of the raw product, depends on the cost of the oil for fuel, fuel oil, on your greasing and other products, when supplied to the manufacturer.

Q. We have there 2.40, then an arbitrary charge, that cuts you down to where approximately you make a profit of two cents on a gallon of gasoline—is that approximately the profit you make on a gallon of gasoline?

A. No, you get down, cut us to two cents, as I interpret it.

Q. Well, I am building you up a net work of costs. That is 10.40, and

yet it sells for 12.44, so it looks like a profit in there for more than—

A. I don't understand your last figure.

Q. I took 4.40 list after the deduction you gave me, I took 2.40 off for refining and cost of all products itself.

A. You can't manufacture gasoline at cost.

Q. I know, I am leaving you two cents for that cost.

A. Well, you have arrived at two cents; that gives a fair profit?

Q. Yes.

A. Well, that is not enough.

Q. Well, what would you suggest, then?

A. Well, I would say then, on the average, 4½ cents.

Q. Well, if I give you 4½ cents, then 10 cents, then that is over two cents more than the 12.40.

A. That is the condition today.

Q. You are losing on gasoline today?

A. Yes, sir.

Q. At 12.44 you lose how much?

A. I don't know how much, but in Texas we lost this year and last, and a little part of 1929.

Q. Could you approximate the amount you are losing in Texas at this time?

A. In our Texas refineries, in our Texas distribution, open sales — we have refineries at Dallas, Amarillo, San Antonio, El Paso—those refineries have lost—the first five months $2,000,000, to the refineries and sales in the State.

Q. You did not mention Port Arthur.

A. Well, Port Arthur ships oil into —most of it to the East, and by water to the Atlantic port, and Gulf port points.

Q. Is the Texas loss $2,000,00?

A. Yes, sir.

Q. Now you are losing money then on gasoline, and, of course, the crude product, and something on by-products, as you have indicated in your testimony? Do the by-products make up the loss of the gasoline sales?

A. No, they haven't — and they don't. The industry is losing money, some of our operations are carried on at a loss.

Q. Is the refining operation carried on at a loss?

A. Yes, and sales, too.

Q. All right. You have, however, how many miles of pipe line?

A. As I remember, altogether, some 6,000 miles.

Q. Within Texas?

A. No.

Q. The pipe line end of the industry is profitable, isn't it?

A. Fairly profitable, yes.

Q. Now, the toll charge in Texas as a common carrier—you are a common carrier of petroleum?

A. Yes, sir, we are a common carrier.

Q. What is the toll charge in Texas?

A. Toll charge?

Q. Yes.

A. You mean the tariff?

Q. Carrying charge, yes.

A. Well, that varies as to distance of the different points from origin and destination.

Q. Is it dependent upon the price of oil or crude petroleum, or only dependent upon the amount of labor you have to perform in carrying that product?

A. You see, I anticipated some of this. (Referring to papers.) As I have stated, a tariff varies with distance, and other conditions, from one point to another. If you wish, I can give you some specific tariffs.

Q. Well, could you give me an average, say approximately 30 cents or 25—approximate amounts, of course—we are just trying to find out what burden is on the product. Give us a few instances, then.

A. Well, the tariff into Houston from points in North Texas, North Central Texas, is 31 cents — from points in North Texas and North Central Texas; it is 22½ cents from Kilgore; 37½ cents from the Panhandle; 18½ cents from Mexia.

Q. That is approximately then—it is more than the amount that is paid for the oil at present, is that right? Oil is selling around 15 cents, and it costs 22½ cents to move it, then that is 50 per cent more than the oil itself is worth to carry it from Kilgore to tidewater, or wherever it might be?

A. Yes, that is in excess of the schedule present price.

Q. On what date did that schedule go into effect, Mr. Holmes?

A. This data I am quoting is dated July 16.

Q. Was it a lesser tariff than had theretofore been in force, or cutting down of rates?

A. It necessarily cuts down the rates.

Q. Now, is that a lesser rate, the one you have just given me?

A. That is a lesser rate than we have had prevailing back for some few years.

Q. Did you change this rate, or was the rate changed by the Railroad Commission?

A. We changed this rate by adjustments generally.

Q. Voluntarily?

A. Voluntary adjustment.

Q. Thinking that your present rate at the present time was too high for the price of oil, is that right?

A. Well, there were some—what we thought some variations, or you might call them inequalities—at least, the charges in some respects were a little more than we thought were proper and we made various changes, which resulted in 13 or 14 per cent, the average reduction in pipe lines.

Q. When did you discover these inequalities existed?

A. Well, we know, of course, that all of these things are built up one at a time, whether pipe line rates or other conditions that from time to time need such an adjustment. This came up for specific consideration, definite consideration, after the Humble had made a reduction and adjustment of their rates.

Q. Well, your rates are approximately the same, then, as the Humble?

A. They are not the same in all instances, there is some variation—I don't know whether they are a little higher or a little lower in some cases; I haven't virtually compared them.

Q. You have a gathering charge, do you or not?

A. Yes.

Q. Is the gathering charge in excess or is it added to the pipe line tariff that you have announced?

A. That is in addition to our pipe line or traffic line rate, yes, sir.

Q. Can you give me a fair estimate as to how much these gathering charges are each of these quotations?

A. The first one I gave you was 12½ cents; Kilgore is 10 cents. What were the others?

Q. Panhandle and Mexia.

A. The other two are 12½ cents.

Q. There is a charge for B. S. & W., is there not?

A. There is a discount accounting for the sediment or foreign matter, water, etc., any sediment in crude, when you buy it.

Q. When you buy 100 barrels, then, do you take out arbitrarily, under the rules of the Commission—I suppose you have that power—take out 2 per cent, is that right?

A. No, when we settle the oil, when we sample it, we deduct for whatever sediment there is in the oil.

Q. You do not adopt any rigid rule of 2 per cent?

A. I think probably you are referring to an item in the strapping loss of tanks. I believe under the Commission's ruling they are strapping 2 per cent short for sediment.

Q. Yes, you are right about that, I believe. And there is a 1 per cent charge for evaporation loss, isn't there?

A. One per cent loss.

Q. And that goes to you?

A. That goes to the pipe line charge, 1 per cent loss.

A. There is no charge for temperature. The oil generally is figured at 60 temperature, so that if you take oil, any oil, at lower than 60, it is adjusted up to 60; if it is taken higher than 60, it is adjusted to the quantity there may have been at 60 Fahrenheit. That is the general rule in the settlement of oil.

Q. I know that is the American Institute Rule, that all temperatures or variations therefrom be scaled down to 60 Fahrenheit.

A. That, I understand, has been adopted by the American Petroleum Institute, but has been a practice of the industry since the beginning.

Q. And, therefore, if I give you a barrel of oil that is too hot, you cut it down and adjust it to 60 degrees Fahrenheit; if too cold, you raise it up to 60 degrees Fahrenheit.

A. If you give us oil at 30 temperature, you get credit for a greater quantity than you turned in, because we credit you with oil at 60 temperature. If you give us oil at 80 temperature, you get a little less volume in the temperature by reducing it, that is correct.

Q. Is there a loading fee charge against the oil or crude on shipboard?

A. Not for the pipe lines.

Q. Who charges that?

A. The Texas Company, in our system, owns the storage. The pipe line companies have no large amount of storage. When the oil is delivered to the trucks from the pipe line, it goes into the Texas Company's tank-

age and is there stored and loaded for a charge of 2½ cents.

Q. 2½ cents on a barrel?

A. Yes, sir.

Q. Then from your testimony I gather this fact: that your refinings of gasoline, its production and its marketing is not a profitable but a losing proposition?

A. That is true.

Q. Then, in order that you may continue to exist, you must make some money somewhere else. You make it out of your pipe lines, is that right?

A. Well, we would like to make some money somewhere, if we can, out of our pipe lines.

Q. It is necessary that you do make money or you go broke?

A. It is very desirable.

Q. And you do do that?

A. We do—we make money out of our pipe lines.

Q. As a ratio of the two million loss, would a ten million gain on your pipe lines be an unfair ratio?

A. I am speaking of the loss of those small refineries in Texas; the pipe lines, of course, serve all the refineries.

Q. And the public as well, do they not—your pipe lines serve the public also?

A. Serve the public as well, yes, sir. We do not make enough money in our pipe lines to overcome our losses. I am a little reluctant to talk about this financial — these financial figures— it is right distressing to admit just what the situation is.

Q. I know, probably you may be correct about that. But you must depend on your pipe lines and you are making a fair profit, you stated a very fair profit on the pipe lines. I merely want those items to be as correct and approximate estimate so we might have some idea relative to the pipe line industry. And the pipe line industry is profitable at least, at this time, is that right?

A. That is correct.

Q. I notice from sworn figures filed before the Interstate Commerce Commission, they quote income as reported from 1920, was $9,626,402 from your pipe lines in Texas—that is your Texas pipe line. These figures are approximately correct, are they?

A. I am sure those figures are correct, but I think it includes the pipe line industry in New Mexico, Louisiana and Arkansas; the Texas pipe lines, you know, exist in those four States.

Q. We have an additional pipe line of Texas in Oklahoma, which gives a lesser earning, only $999,000. Then this—there is included not only the Texas pipe lines, but Oklahoma—and what other? Arkansas and Louisiana, is that right?

A. That is correct.

Q. These are figures that were filed with the Interstate Commerce Commission on gross production of Texas, if I am correct about that, and that would not entail an item in there of your New Mexico industry or Arkansas?

A. No, that Texas Pipe Line Company includes the pipe lines in the four States I named: Texas, New Mexico, Louisiana and Arkansas.

Q. Getting back to another proposition, as to waste, there was a controversy between myself and another, the last witness. Oftentimes by-products, especially those that were not known to be useful, for instance, they didn't know what to do with them, they didn't have resiliency, back in the early history of the refining companies, isn't that true?

A. Yes, sir.

Q. At that time, they threw it away, it wouldn't have been useful, but now it is known to be useful and the throwing away of it would be wasteful, is that right?

A. It would.

Q. There are millions of people in Texas that could economically use natural gas, getting back to the point of your first portion of your testimony—hence to throw away natural gas is a waste of a valuable product, isn't it?

A. Yes, sir, that is true.

Questions by Mr. Hardy:

Q. Mr. Holmes, going back to this pipe line—to those pipe line figures again, according to the statement read to you, the Texas Pipe Line Company of Oklahoma cleared some $10,690,000 from pipe line charges last year—1930. Now, according to those same figures, the Texas Pipe Line Company, which includes carrying oil in Arkansas, Louisiana, and Texas, transporting some forty-two million barrels of oil—is that approximately correct?

A. I think that is correct—I haven't the definite figures, but assume that is correct.

Q. Then, if you carried 42,000,000 barrels of oil approximately and obtained approximately $9,600,000 net income, why you would make practically 22 cents profit per barrel for transporting that oil, wouldn't you—net, that much profit?

A. Well, that seems to be the basis, dividing one into the other. I think there is no charge for Federal tax made there, which would be 12½ per cent.

Q. Would be how much?

A. 12½ per cent for Federal tax.

Q. Still, 12½ per cent off of 22 cents, then would leave you 19 cents. Is that correct?

A. Yes, sir.

Q. And that is more than oil sells for today, isn't it?

A. Yes, sir.

Q. Your Texas pipe line in Oklahoma, you transported approximately 15,000,000 barrels of oil for a million dollars — that is approximately correct?

A. I am assuming that those figures are correct, and as nearly as I can remember those are approximate figures, yes.

Q. Then under those circumstances the Texas Pipe Line Company of Oklahoma made about 7 per cent?

A. Yes.

Q. Tell this Committee why the great difference in the percentage and how the Texas Pipe Line Company of Oklahoma can figure business — can take care of business at 7 cents profit.

A. Yes, I think that comes about largely because of the fact that our Texas lines were running nearer to capacity than our Oklahoma lines.

Q. You are not planning on abandoning your Oklahoma lines, though, are you?

A. No, but a part of them are running at low capacity.

Q. In the business world, Mr. Holmes, 7 per cent profit on your money is considered pretty good during these depressed times, is it not?

A. Yes, that would be a pretty good rate to pay, I think.

Q. Then this 19 cents profit on each barrel of oil is also a pretty good profit, isn't it, during this depressed period?

A. Yes, that is a very fair profit.

Q. Now, then, what percentage of this oil that you carry through your pipe line companies belong to the Texas Company, from its production, and is carried to the Texas Company's storage tanks, and what percentage of it do you purchase?

A. That percentage of what we term Common Carrier oil has been running three, ten to twenty-five per cent—I think today it is running close to 25 per cent, close to the line. Now, the balance of the oil we move for ourselves on these particular lines, I would say about one-third of our own production and possibly two-thirds of purchased oil.

Q. Then this 25 per cent you are speaking of represents oil that you carry and is not bought by the Texas Company, but simply carried to your lines and sold to some other purchaser.

A. That is correct; that is carried on generally by other people and delivered on board ship, or designated destinations by them.

Q. And of the oil that is carried through there and purchased by the Texas Company, approximately one-third of it is produced by the Texas Producing Company, or whatever the name is?

A. That is, I remember it now—yes, sir.

Q. Does the Texas Company pay to the Texas Pipe Line Company the same tariff rates for transporting its oil?

A. Exactly the same, yes.

Q. In other words, sort of taking it out of one pocket and putting it in the other, is that correct?

A. Yes.

Q. What is the purpose of taking it from one pocket to the other? At such a rate as a 19-cent profit—does its rate at a 19-cent profit, for instance, when you have to take it out of one pocket and put it in the other?

A. I think that in any activity there are periods and times when conditions are more favorable than others. Right at the present time I think pipe line earnings are larger in Texas than they have generally averaged, considerably higher, and that is nearly always true in periods of over-production, or excess amount of oil.

Q. Why?

A. Because the volume is greater; they are moving more oil.

Q. Was there any great over-production of oil during 1930?

A. Well, there was some over-production of oil in 1930, yes.

Q. Was there an over-production of oil in 1929?

A. Yes.

Q. More than in '30?

A. Yes.

Q. Were the pipe line terms greater in 1929 than they were in '30?

A. I think they were about the same.

Q. Well, now, as a matter of fact, doesn't it work out that by the charges of a large pipe line rate or carriage, the pipe line company is enabled to make a good deal of its profits off of the transportation of the other fellow's oil?

A. Well, naturally you make some profit off his oil if you carry it, that is true.

Q. These rates were changed on July 16 to the ones that you have just quoted to us, weren't they?

A. Yes.

Q. I believe you have already stated to Mr. Graves, upon inquiry, as to how long you knew they existed. I don't believe I remember what your reply was, you stated there were some inequities and it was necessary to reduce those rates. How long did you state you had known these inequities?

A. I don't know, but I termed them exactly inequities. It is a little like a railroad company's rate; you set up first one rate and then another, depending on competitive conditions with one and another, and in time your rates require some adjustment. As I said, it was the Humble made the first adjustment in rates. We took a look at all of our rates and made some adjustments, it was a general, public rate adjustment.

Q. I understood you to say this reduction was some 13 or 14 per cent off of the former.

A. That is correct.

Q. And it was not an adjustment in percentage, but just was worked out that way, is that correct?

A. Well, it was done both for the purpose of making some reductions, and making certain adjustments, to make a more equitable rate structure.

Q. Well, Mr. Holmes, though a more equitable rate structure was necessary and needed, the Texas Company did not do that until the Humble Company quoted its price, did it?

A. No, we did not.

Q. Why?

A. Well, it may have been neglected, and naturally we are all desirous of making money out of these facilities. I think there has been—I may have an opportunity—I know, for explaining a little further, but I think there has been a good deal of misinformation about pipe lines, misunderstandings of what the actual condition is. If you do not draw it all out in questions, I hope you will give me an opportunity to make some explanations.

Q. Go ahead right there—and explain it, Mr. Holmes.

A. The earnings that have been reported through circulars I have seen and sometimes in the press, on pipe lines, are very often misleading, because the earnings are frequently based on capital structure—that is, there is a capital organization running an investment pipe line system. Now, I think generally in this case, that our earnings on our pipe lines back to a period of years, five or six years, did range from, I will say, 10 per cent up to 18 per cent, and I think that is not far from the average run that other major pipe line activities secure. Taking the pipe lines, however, throughout the United States, everywhere, their average rate would be less, there are instances of pipe lines making a much lower—making much lower earnings. Then in addition to your pipe line investment, the holding company and parent company has a very large amount of tankage, both in the fields and at refineries, or at terminals, where oil is accumulated. In order to keep its pipe lines going with a satisfactory amount of oil anywhere near capacity, the pipe line companies frequently are obliged to carry a great many barrels of oil, provide storage for carrying oil, in order to maintain anything like the natural capacity of the line—otherwise you would be obliged to build larger lines and carry your oil just when you needed it—and those facilities in the parent company also, I think, have a very distinctive advantage to the seller of oil, to the purchaser, it offers opportunity for practical results in a steadier outlet for the field production than would prevail if the pipe lines merely were operated as pipe lines without these tremendous storage facilities and accumulations by some other company, which is not included in the investment on which you figured earnings.

Q. Now, I believe you said the 10 per cent—did you say that was the average earnings of pipe line companies, or has been the general average—10 per cent?

A. I checked back four or five years, I think it is between 10 per cent and 18 per cent.

Q. Is 10 per cent a fair earning?

A. I think 10 per cent would be a fair earning if you knew, had assurance you had a fairly permanent life for your lines, but these installations are put in at the risk of the completion of the fields and necessary abandonment of the investment.

Q. How many pipe lines has the Texas Company abandoned in Texas?

A. Well, I think not many in Texas. There has been one taken up, one extension of the West Texas line—there have been some taken up in Louisiana, some in Oklahoma.

Q. Do you think a law would be fair which would allow the Railroad Commission to set the rates or the tariff rates for the transportation of oil through its lines, which provided that the rates should be 10 per cent after allowing for the reduction of taxes and the depression, and so forth?

A. I would like to answer that in this way: I see no advantage in that. In the first place, pipe line rates are considerably lower than the railroads' rates—these rates I have quoted you are lower than the—I would say on the average they are not more or much more than half of the railroads'; now the rates out of East Texas to Houston is 34½ cents for oil—that is, after it is loaded on the cars by the purchaser or some pipe line company—as compared with the 22½ that prevails through the pipe line companies. Now, anyone can build a pipe line, there is no prohibition against any one who wants to build a line, if the purchasers, or different purchasers have a desire to own their own lines, so far as I know there is no prohibition against it, and there would be no difficulty in securing the permits and rights-of-way.

Q. Do you think that would work for the benefit of the oil industry in building the additional pipe lines?

A. I think that would be preferable, really, than to attempt to fix maximum earnings from the pipe line system; I see no good purpose that could be served in limiting the per cent to 10 per cent or any per cent that a pipe line should earn, unless it had been determined definitely that the charges the pipe line companies make are prohibitively excessive or harmful in some way.

Q. Well, now, you changed your tariff rates after the Humble Company changed theirs, is that true?

A. Yes.

Q. Now, then, if the Railroad Commission had had authority to set those rates at 10 per cent and had investigated the matter prior to the time the Humble set their rate, isn't it entirely possible that the rates would have been quoted sooner, to the benefit of the oil-producing fraternity?

A. They might have been quoted sooner, but I cannot agree it would be to the benefit of the producer.

Q. Yes—what?

A. They might have been quoted sooner, but I cannot agree it would have been to the benefit of the producer?

Q. You do not think that the lowering of the tariff rates benefit the producer?

A. I can't see how it would.

Q. Why not?

A. I don't see how it would increase his price or his market.

Q. Do you mean by that that the lower tariff rate would necessarily mean that the price of oil would be reduced?

A. No, I don't think the price of oil would be reduced, but I think the chances are that the refining markets would be reduced rather than the crude price.

Q. Then if the producer should have the tariff rate cut, would he get more for his oil than he would, say, if the tariff rate was 67 cents instead of 81 cents?

A. I doubt if he would get any more, because here is what would probably happen: we assume that you cut the rate from West Texas through to the Gulf. Now, that West Texas oil comes into competition with oil from other places, into competition with oil from East Texas, Louisiana, and comes through lines from other places; that will bring about a decline, in price—now, the price of Mid-continent or Pennsylvania or some other oil had been met with an increase of the pipe line companies?

Q. Well, doesn't that same competition meet also oil anywhere, regardless of tariff rates?

A. Yes, sir, meets them, and meets them if the tariff doesn't exist.

Q. Well, if the tariff was lower,

couldn't you more easily meet the competition of these other oils?

A. Might for a few days, but the result would be — probably those would meet that change you might have.

Q. All right. Then, Mr. Holmes, answer me this: the tariff rates from the Gulf Coast is not as much as the tariff rate to North Texas, is it?

A. No, it is lower.

Q. All right. Now, does the fact that that oil has a lower tariff from the Gulf Coast to the place of sale, does that reduce the price of oil in North Texas?

A. It has had very little effect so far. What I mean by this is, we bought oil in North Texas and paid the same price we pay for it where the pipe line tariff was less and the haul was shorter; and we pay the same price for Oklahoma oil, ordinarily, as we do for North Texas, although it costs more to move it from the North. There has never been, and it is not possible, as I see it, to make adjustment in field prices based on market; you would have to have a price from every market from every field, quite an impossible thing to do.

Q. Well, that is the very thing I am getting at. Then, if the Railroad Commission could reduce those tariff rates without waiting for the Humble to do so, or have the Texas Company to wait for the Humble to do so, don't you think the producer would be getting more money for his oil?

A. No, I don't.

Q. What is the advantage, then, of being close to seaboard?

A. He has that natural advantage, and—I am just telling you.

Q. That is what I am trying to get; I don't quite understand you.

A. That a man from Mexia could get as much, an 18½ rate, could get as much money for the same crude oil as he does in Oklahoma, where the rate is 37½ cents, and the man in Mexia gets the same price from the same tidewater as the man in Oklahoma. Now, you cannot have a fixed set rate, because there are so many buyers, and you have to figure—and if you figure the buyers' price back from destination, you would have all kinds of prices in every field.

Q. Now, this price paid for local oil is paid at the well, isn't it?

A. At the well.

Q. Then, if the Texas Company buys my oil at the well, the Texas Company itself pays the cost of transportation, doesn't it?

A. It does, yes, sir.

Q. But if I got a buyer down on the Gulf coast, I have to pay a larger price for the transportation of that oil which sells to you at the same price as on the Gulf coast, I have to pay a larger price to get it from the Gulf coast to that buyer than somebody does in Mexia, do I not?

A. Sure. If you had that oil on the Gulf, you wouldn't have to pay price on tariff, you would have that distant advantage over the man in North Texas.

Q. But, does the North Texas man pay the producer in the Gulf coast the same in price I pay for mine in North Texas?

A. Yes, sir.

Q. Then, as a matter of fact, the only way for me to make money in North Texas is to sell to the closest purchaser, or pipe line purchaser—doesn't that keep me in line, because it doesn't pay to pay that tariff?

A. I don't think I get your question.

Q. If I am in North Texas, and the price of oil is—we will say a dollar, and I have a purchaser at the coast for $1.15, and the Texas Company only gets $1 at the coast, notwithstanding it is cheaper for me under the tariff prices to sell to the Texas Company at the well than transport it down and sell to the purchaser at the coast?

A. Yes, if the purchaser is buying at $1.15, that is true.

Q. Then, I say, the tariff helps keep me in line with the tariff of the producer there, doesn't it; it cuts out competition, doesn't it?

A. You would have the same competition if the rates were lower; you would have just that same competition in the market, whether it sells for 5 or 10 cents higher or lower; it just makes that much difference in competition when you buy.

Q. Well, now, there is no advantage at all in buying close to tidewater; a purchaser in North Texas is just as well off as a man on the coast?

A. Yes, there is a man on the job if he has the crude oil.

Q. What advantage does he have?

A. He has the advantage — the same advantage.

Q. You pay the same price that

the man in North Texas does, don't you?

A. Yes, sir.

Q. Then, how does it save anything if I pay the same on the Gulf coast for it as North Texas pays for it, what advantage have you?

A. I think you refer to your own oil?

Q. Yes, sir.

A. If you produce your own oil and have a buyer for it, if you are producing on the Gulf coast the same grade you have in North Texas, you have an advantage, because if you are on the Gulf coast as a purchaser you have this advantage on the difference in transportation — that is correct.

Q. Then, that helps to keep me in line in selling to the pipe line companies, doesn't it—in other words, I can't cut in on the same competition, I don't have as much opportunity to sell as the man on the Gulf coast does, do I?

A. No, but you can sell to the North Texas refineries, and he can't.

Q. Well, it works both ways?

A. It works both ways.

Q. A few minutes ago, in your answer about my 10 per cent proposition, you went on and said something about keeping a great deal of oil in storage. The keeping of that oil in storage, is that waste?

A. Over and above the necessary amount for what we will call working stock is a waste; it is a waste first, by evaporation, and second, the cost in investment, deterioration in equipment, etc., economic stock.

Q. What do you call "work stock"?

A. A sufficient amount on hand to insure operation of the refinery, or accidents to the pipe line or conditions in the field which slow up the delivery to the refinery.

Q. Do you have that worked out on a percentage basis?

A. No.

Q. Now, state what percentage of tank storage you should keep on hand for working purposes—working basis.

A. We figure that we can do it with a third of the crude we have on hand.

Q. Sir?

A. We figure that we can operate very easily with one-third of the crude that we carry on hand.

Q. One-third of the crude that you have in stock?

A. Yes.

Q. Then the other two-thirds is waste, is that correct?

A. It results in waste.

Q. Sir?

A. It results in waste.

Q. It results in waste?

A. There is loss in connection with that excessive accumulation.

Q. Well, then, now when oil is 10 cents a barrel, do a great many of the major producers purchase that oil and store it, or not?

A. I think the most of them are trying to.

Q. Most of them are at this time, then, attempting to fill their storage tanks with the cheap oil—is that true?

A. Yes, I think they have that disposition,—yes.

Q. Now, we have something here about bootlegging oil, and I want to ask you if this is not a fact; if a man has a well in the fields, and has connections, he is generally well satisfied if he sells at the posted price, isn't he? Or does he sell at the posted price?

A. Yes, sir.

Q. But if he doesn't get any connection, he is liable to be tempted to sell to someone at less than the posted price?

A. Yes.

Q. Isn't that necessary, that he sell at less than the posted price in order to make a sale?

A. If he is going to insist on selling more than can readily be absorbed, yes.

Q. Well, if he is going to insist on selling that oil that he has and he can't get connections?

A. I think it is with oil like a banker—if you went to him and wanted to borrow a million dollars, and say you are willing to pay him 5 per cent, he will say, "I will give you two million dollars at one per cent, if you will take the two million, if you have any way of making use of it you may have it at 1 per cent." Now, when those producers insist on producing more oil than can be absorbed, they can only do that when other producers who would likewise like to sell their oil, are willing to stand by and let these few men absorb the market; that is the only way in which he can move the oil, is either

at a price that will put it in storage or take it to some other place or some other producing area.

Q. When do you get the posted price?

A. When were the last given?

Q. No, I mean when do you first say he can get the price, posted price for oil in a given field?

A. If we can get the crude price, it would be when there were others who are buying for less, somebody else would cut the price, the market conditions were such the market couldn't absorb the oil, we buy at the price that is being posted. Now, the East Pacific and East Texas, back there in April, a million barrels were being sold contracted to come at the prevailing posted price; I think a very creditable effort was made to try and absorb that oil, it was found impossible to buy that oil at the posted price, it was more than could be absorbed by the individual companies, so there was no one who would take it and it was being carried by the railroads and could not be economically distributed except on low price. Now, I don't see how you can overcome it, and there is at least an unwillingness on the part of buyers to take it because of the low price of oil.

Q. Do you know of any specific instances in East Texas where any producer with a pipe line connection withdrew from selling at the pipe line price, and commenced to sell to someone else at less than the posted price?

A. I don't know of any specific instances, because I am not personally informed of the details, but I am distinctly under the impression that producers with pipe line connections have exceeded the Commission's orders of the prorated allowance.

Q. Do you know whether the pipe lines have taken the oil then?

A. As far as we are concerned, we try and not take it, we decline to take oil that is not produced under the Commission's order, and in compliance with the Commission's order.

Q. Then, as I understand, it is a policy of the Texas Company that wherever there is a violation in East Texas of the Railroad Commission's orders, you have refused to take that man's oil?

A. That is my understanding, yes.

Q. Don't you think that if all companies and all pipe line companies did that, you could cut proration in East Texas?

A. Not when the railroads carry in great quantities.

Q. What percentage are the railroads carrying now?

A. I think, more than a third.

Q. Now?

A. Yes, sir.

Q. What conditions caused you to raise the price of oil—the posted price?

A. A shortage—a shortage of oil, a little less production than market requirements would cause an increase in price—if we needed more oil than we are getting, why, the only way to get it would be to increase the price.

Q. Now, does a condition exist in East Texas wherein it is necessary to raise the price of oil?

A. No, I think not.

Q. You can get practically all you want now at the posted price?

A. You can get more than the pipe lines can carry.

Q. All right, sir. Could you get more than you can use now—or desire to have?

A. We have refused a good deal.

Q. All right. On yesterday the Continental posted up an increase in price in Oklahoma and North Texas. Has the Texas Company met that price?

A. They have not.

Q. Do you know whether or not they are going to in a few days?

A. No, I don't, because I haven't been able to determine.

Q. Isn't it generally true that when one company changes the price, the other companies change it?

A. Not always immediately. I will say frankly that we have been very uncertain as to what we ought to do about this price. We would rather pay 50 cents, 75 cents or $1.00 for oil, than to pay 10 or 15 cents, if the conditions would warrant it.

Q. Why?

A. And I would be glad if the conditions would warrant and justify our increase in the price.

Q. Why would you rather have a larger charge?

A. Because the history of the business has been such that we have more prosperity under such conditions and make more money in purchasing oil, when we pay $1.00 for it than we do when we pay 75 cents and 50 cents.

Q. Didn't you just say a few minutes ago that large companies are

purchasing this cheap oil and running it into storage?

A. Yes, they are.

Q. And can't you make just as many barrels of gasoline out of 10 cents oil as you can out of dollar oil?

A. Yes, sir.

Q. And can't you make just as many gallons of kerosene out of 10 cents oil as you can out of dollar oil?

A. But whenever you have these lowered prices, you have refined prices lower than crude prices.

Q. Who gets the benefit of the lower refined prices?

A. No one except the consumer.

Q. No one, except the consumer? Do you think this, that we should be interested somewhat in the 6,000,000 in Texas?

A. I think the consumers of any product, whether oil or copper, or steel or sugar, in every condition we have ever had, can better afford to pay a fair price in prosperous and favorable conditions, than he could afford to pay distressed prices in such conditions as we have at this time.

Q. Who makes the price of gasoline?

A. Competition.

Q. Competition with whom?

A. With the thirty odd thousand marketers I mentioned this morning.

Q. How is it then, that practically what we call major producers or major refiners or the major companies, sell oil and sell gas at practically the same price in all the filling stations, how do you meet competition that way?

A. You couldn't do otherwise. If you have a string of filling stations, we will say your price is 15 cents. If I make my price 14 cents, unless you meet that immediately, I get your business. On the other hand, we are anxious to get a fair price, and if you should raise your price that difference—I mean if you are raising your price from 14 cents to 15 cents and I recognize that difference, I raise my price, otherwise, if you don't have the courage or don't ever make the effort to get a better price, the price would always be going down.

Q. In other words, the company is interested in getting as much for its product as the consumer will stand at all times, isn't that true?

A. I will say he is always desirous of getting a good return on his investment, and that necessitates getting a fair price for his product.

Q. Doesn't that necessitate his getting all he can for it?

A. There are people who can't get enough, but I think there are plenty of them who have no desire to attempt to get a price more than would justify a fair, reasonable return.

Q. But each time is it an advantage to make the value of gasoline up—and isn't that generally done?

A. I imagine very frequently it is, yes, if the conditions warrant an increase.

Q. All right. Now, then, doesn't the company endeavor to make the same profit out of its oil as well as its gas?

A. Yes, they try to make a profit on everything.

Q. Now then, how do you account for the fact, when the price of crude oil went down, gasoline was reduced somewhat, but we are still paying twenty-five and thirty cents for lubricating oil, which was the same price we were paying when oil was up to a dollar and more; why isn't that reduced?

A. I think there are possibly two or three reasons for that; one reason is that that has been one product where we have been able to fairly well maintain the market; it has not been so destructively competitive.

Q. I didn't get all that reason, please; will you state it again?

A. The first reason is that we are trying, of course, to get a profit out of some of the oil. And there has been less destructive competition in the lubricating business than in the gasoline business, and it has been easier to maintain a fair price on lubricating oil than on the gasoline. The second reason is that the cost of lubricating oil has gone up. In the past few years, there has been a very marked change in the quality of lubricating oil required for automotive lubrication. It has very much less paraffin and carbon content. The manufacturing of lubricating oil has very much improved in the past few years.

Q. That's two reasons. Do you have another?

A. It is not true that there has been no appreciable decline in the price. There are cheap oils offered everywhere. You can buy motor oils for ten and fifteen cents.

Q. You say, however, that the product itself has been enhanced in

value in that it had been made a better grade?

A. Yes.

Q. Isn't that also true of your gasoline?

A. That is true in the gasoline, but the difference in the cost has not been anything like the difference in the cost of the lubricating oil. Then we have had vastly more severe competition in the gasoline than in lubricating oil, much more competition.

Q. Now then, what is the cost of making this lubricating oil?

A. I couldn't tell you that. There are a great many grades and qualities. In fact, without attempting to evade your question, it is an extremely difficult thing to determine the cost of any petroleum product. You must in every instance first determine what your realization is on every other product in your crude. When gasoline brings one and one-half cents at the refinery, and that is what it is sold for now in East Texas, in order to make anything at all, or even to pay for your crude, you must—your fuel oil is very low also, and what you lose on one product you must add to another product in arriving at the cost.

Q. Then the price of oil does have something to do with the price of gasoline and the price of lubricating oil, does it not, Mr. Holmes?

A. The difference in the cost of the oil is a factor in the cost of the product.

Q. Then since your oil is now of a better grade, and since they still maintain the prices that they have, with this cheap oil, in case oil goes up to a dollar a barrel, is the consuming public still going to be able to purchase lubricants for thirty and thirty-five cents a quart, or will they go up?

A. I would anticipate that the lubricating prices will not be advanced.

Q. The losses there would have to be taken up on some other by-product of the oil?

A. If gasoline prices should increase, and the price of kerosene, that would absorb some of the losses being sustained now.

Q. Then as a matter of fact, the prices being placed upon gasoline and lubricating oil are maintained as nearly as possible to the highest prices that can be obtained from the consumer without too much disturbance?

A. I think that is true of other commodities also.

Q. Sir?

A. I think that is true, and of all other commodities also. That is a merchandising condition that exists in every commodity.

Q. Can you state the sales price at the refinery of the component parts of a barrel of oil? In other words, the price of gasoline, kerosene, gas-oil, fuel oil, and so on? Do you have those figures obtainable?

A. That varies at different points. Through the Mid-Continent where we have some refineries and a good deal of bulk shipments, the gasoline prices have been ranging from one and three-quarters to about three cents. In East Texas, I was told that gasoline was sold at one and one-half cents, and fuel oil for ten cents.

Q. Do you have a refinery in East Texas?

A. No, sir.

Q. Where is your refinery in Texas?

A. Dallas, Amarillo, San Antonio, Port Arthur—

Q. Port Arthur; what about that refinery?

A. We are not selling gasoline except to our own distribution at any of our refineries; we sell merely for our own retail distribution; our price is the retail price.

Q. You have—All right—I see. At Dallas, do you sell there to anyone besides your own distributors?

A. No.

Q. Some time during the morning, when you were testifying, you insinuated that you thought the anti-trust laws were too rigid; is that correct?

A. The thought I tried to convey is this: It was in answer to the question regarding the general conditions; that the effect of the anti-trust laws has been to result in overproduction of practically all commodities, and overcompetitive conditions in manufacturing, distribution, and so on, from one end to the other, and to have an undue restraining influence on any efforts to correct any of the evils that come through that uncontrolled, encouraged overcompetitive condition.

Q. What is your suggestion, then, that should be done relative to the anti-trust laws? What portion would you suggest be repealed, if any, and how would you modify them?

A. Personally, I see no harm in their repeal.

Q. Do you mean the repeal of the whole anti-trust law?

A. Yes, and depend upon the competitive conditions and the natural disposition of everyone to get into any line where the profits are excessive. I think that disposition and the large number of units in any activity, would be sufficient protection to the public. Now a good many would not agree with that theory. Possibly a more practical suggestion is one which has been generally made, of some interpreting or administrative body to whom one person or a group can go and submit proposed agreements or recommendations to alleviate some of these conditions, and get permission or consent or immunity from the strict interpretation and application of the anti-trust laws for certain agreements and undertakings.

Q. Isn't it true—I want to go back to your other thought in a minute, but I want to ask you this question: Isn't it true that the Texas Company had its birth and its rise to success because of the fact that the Waters-Pierce Oil Company was investigated and dissolved, and the Standard Oil Company was run out of the State of Texas at one time?

A. I am not clear as to just what effect that had on the development of the Texas Company. As I remember, the dissolution of the Standard Oil Company came in 1911; is that correct?

Q. It was the Waters-Pierce—yes, I think that is correct; somewhere along in there.

A. We started in business in 1902. Well, we had severe competition here, there and everywhere, but the competition was not any more severe or difficult to overcome than it has been since the dissolution of the Standard, nor have we had any more trouble in our foreign business, in building up our business practically all over the world, than in this country; it's been about the same.

Q. Hasn't the Texas Company's growth been greater since 1911 than it was prior to that time, in proportion?

A. Of course, as the years have gone by, we have spent ten or fifteen or twenty million dollars a year or more, whereas, in the first few years it was a matter of only two or three or four million dollars in investment and increased facilities; I do not remember what our capitalized investment was in 1911, but we had extended into the Kansas fields, and were in the refinery business in Chicago at that time and were in a good many foreign markets.

Q. You have extended a great deal more than that, since that time?

A. Yes; I think half of our investment has been made since 1920.

Q. Now you spoke of a code of ethics, did you not; that had been adopted by whom? 30,000 producers?

A. No, that was adopted by the petroleum—the American Petroleum Institute, and was signed by some thirty thousand petroleum operators, many of whom were not members of the Petroleum Institue.

Q. Doesn't that code of ethics provide certain things that should be done, and certain things that should not be done?

A. It does, yes.

Q. Then don't all of the parties who have adopted that code of ethics endeavor to live up to the same?

A. Not all of them.

Q. Don't the majority of them?

A. The majority do. Some do not in some respects, but the majority of the major companies do, and a very large percentage of the rest of them have made an effort to comply with it.

Q. The majority of the major companies do live up to it, do they not?

A. In nearly all respects.

Q. Those things which the code of ethics says they should do, the majority of them do?

A. Yes.

Q. And those things which the code of ethics says they should not do, the majority of them do not do?

A. Yes, that is a fact.

Q. Then as a matter of fact, hasn't the code of ethics built up a system by which you get around the very things which the anti-trust laws prohibit?

A. No, sir.

Q. Isn't it an agreement to do or not to do, or to not permit the doing of certain things by all those people?

A. There is nothing contained therein which has been construed by the department of justice or those who have studied it, as in violation of the anti-trust law.

Q. Nevertheless, the operators

work in agreement or harmony under this code of ethics?

A. We try to.

Q. And have a better understanding of how to conduct the business for the benefit of the business?

A. That is correct.

Q. Do you happen to have a copy of that code of ethics with you, Mr. Holmes?

A. No, sir. But I can get it for you.

Q. I hand you a pamphlet, Mr. Holmes, and ask you to look at that and see if it is a copy of the same code of ethics that you were speaking about. You are familiar with its general terms?

A. Yes.

Q. Do you think that is a copy of it?

A. I think this is a copy of the code of ethics adopted by the American Petroleum Institute.

Q. All right, sir; thank you. Now you said a few minutes ago, something about the repeal of the anti-trust laws, and one of the best things you said you would suggest, besides the repeal, was the creation of some sort of a board of a commission to allow you certain privileges, under certain circumstances; is that correct?

A. I say that might be more acceptable. That is generally the recommended solution of some of the difficulties growing out of the strict interpretation and application of the anti-trust laws, yes.

Q. Do you know whether or not such a thing has been suggested to a great many of the states or not?

A. It has been suggested by a number of very prominent attorneys for the consideration of the Federal government or the National Congress.

Q. When you were referring to the repealing of the anti-trust laws, you meant both the national and state?

A. I had particular reference to the Sherman Act and the Clayton Act. Of course, there are certain state anti-trust laws which are quite as restrictive.

Q. More the Federal act?

A. Yes.

Q. Do you know of any concerted action to change or repeal those laws?

A. The Chamber of Commerce of the United States is giving a great deal of consideration to it. The New York University is having a meeting of experts, legal and industrial, in October, for the consideration of the subject. I think their general thought now is the recommendation of some commission to serve as I outlined.

Q. Do you know of any other bodies working on that now, besides the Chamber of Commerce of the United States that you mentioned, and the University of New York?

A. Not definitely, although a great many people that you talk with are considering it, thinking about it, and maybe a great many organizations are working on it.

Q. Don't you think under the repeal of the anti-trust laws, a great many chain stores will probably arise?

A. That is not for me to say. They are already in existence to a great extent.

Q. There are a great many of them now?

A. Yes.

Q. And they are gradually eating into the communities and running the small business out of business, aren't they?

A. That seems to be the effect of it. Whether that is good or bad in the long run is hard to determine.

Q. What is going to become of these little fellows, who were once in business, and are being gradually pushed out by these gigantic concerns? Do you have places for them all in these concerns?

A. I think that is a very serious question. I would not in fact attempt to answer it, because, just offhand, my sympathy is with the man in business, as is. I don't like to see them put out of business.

Q. But we can't let sympathy get the best of our business, though, can we?

A. No, sir.

Q. This question has been sent up: Why does the Texas Company sell gasoline in McGregor for twelve cents, wholesale, and then sell it wholesale at ten cents, ten miles in the country from McGregor? Do you know whether or not that is true?

A. No, I don't know of that instance. But it is certainly not wholesale. It must be to a dealer, delivered by truck. It is not tank car, sold at that price.

Q. Do you know whether or not you have a company-owned station at McGregor?

A. No, I do not.

Q. Do you not know that it is the practice in certain parts of the State, where there is no competition from small refineries, to sell gasoline at one price, and in another place, where there is competition, to sell it at a less price, even though the lesser price is closer to the refinery?

A. I have no doubt that is true. There are many, many instances where the competition from some local establishment, or sometimes a distant one, is at prices that require us to sell, if we want to maintain our business, at lesser prices than you sell it for elsewhere, regardless of the freight rate.

Q. Now then, Mr. Holmes, there is pending before this House, a bill creating a new commission to attend to the oil and gas matters. Do you think that that commission should be given the authority to waive any of the provisions of the anti-trust law?

A. Not being a lawyer, I hesitate to go into these legal matters, but to a layman, it would not seem to me that it would be the duty or the privilege of this commission to do other than to carry on under such law or regulations as were placed into effect governing the business or operations that they are appointed to conduct.

Q. But just a few minutes ago, you did advocate the creation of some sort of commission, as one of the things to help correct the situation?

A. No, I thought you meant this commission that you are talking about for the administration of your proposed proration law. If you mean a commission in connection with the anti-trust law—

Q. No, I was speaking of this commission which this bill endeavors to create, to handle not only proration matters, but all the oil and gas matters?

A. I would not think that commission should have any authority to interpret or any right to deviate from the anti-trust laws. I should think the bill itself or the provision which sets them up, should specify the limits of their authority, and that it would not include an interpretation of the anti-trust laws.

Q. Then you advocate the creation of a Federal commission to do that; is that correct?

A. I was speaking about a Federal commission, yes.

Q. Mr. Holmes, are you getting tired; would you like to rest a little bit?

A. No, I am all right.

Q. Here is a question which has been sent up, Mr. Holmes— It is a common report that the Texas Company, in East Texas, as well as some others, are making long-time contracts on definite orders at the present distress prices. Will such a price, in the event of an increase of the price as posted, tend to cause contentment later, when oil may be posted at forty cents or more?

A. I have no knowledge of any long-time contracts. We have bought some oil, principally loaded on cars, in quantities of, I will say, 100,000 barrels, or 150,000 at a time, but I have no knowledge of any long-time contracts at a fixed price.

Q. Do you know whether or not the Texas Company is drilling any inner wells? By that, I mean wells which are not offset wells?

A. I am sure we are not.

Q. Isn't it a fact that the drilling of these inner wells tends to create more waste? In other words, what I mean is that with the present price of oil, and the present rapid development and drilling by everyone, isn't it true, that as many companies as could should refrain from drilling any more wells, in order to keep the production down to normal, and not create waste?

A. My own opinion is that they should refrain from drilling not only inner wells, but all wells. When you come to the inner wells, I can see where the system of establishing the allowable, based on developed potential, would encourage anyone to drill a lot of wells, so that when the allowable is fixed, they would have a large allowable. We have pursued a little different course. We have not wanted all that oil to come onto the market, and have delayed our operations in that respect and have not drilled those wells; but I believe almost anyone, under the present conditions, might be warranted in going to almost any extreme in protecting individual or company interests, because of the failure of the proration order and the general condition which has been prevailing in the field. I think it is unfortunate that these complications should have arisen, however; it just adds to the difficulties and to the loss in the development of the field.

Q. You compared pipe line rate structures with those of railroads. Isn't it a fact that railroads usually grant an emergency or lower rate on a commodity which is suffering from an over-production and distress prices; whereas, the pipe line tariff on East Texas distress oil was lowered less than from any other field in your adjustment? How do you account for this condition?

A. I do not believe that one should feel under any obligation to favor East Texas with lower rates or facilities or in any other way, to better enable them to produce the excessive quantity of oil that they are producing, because I feel that producing in that quantity or in anything like that quantity is very inconsiderate of the producing and other interests in all other sections.

Q. Do you know whether or not it is true that prior to the time or at the time that one of the major companies is about ready to issue a lower price or a raise in price, whether or not the other companies are notified thereof?

A. No, I do not think that is true.

Q. You mean you don't know of that practice, or is it true that that practice exists—or do you know?

A. So far as I know, it does not. I do not know of any such a practice.

Q. Who authorizes the posting of these prices by the various companies? For instance, for your company, who authorizes the posting of the price of oil?

A. I do when I am in New York. It is usually discussed in our executive meetings, if we have a meeting at the time. It is usually submitted to me by Mr. Donohoe, our resident manager, that is, it is submitted with his recommendation, and we ask his recommendation as to what to do; that is considered, and we then advise him as to whether we will or we will not change our price.

Q. As a general rule, you do when the others do?

A. Yes, but sometimes we will delay for several days, if we feel there is a question as to the advisability of the price change; we will wait and see what the others do. Generally the others, by their change in price, indicate that they are apparently just following the leader or the one who initiated the movement, or there may be some reason for it and then we will follow it, and sometimes we follow immediately, if we think it is the right change.

Q. How do you hear about what these other companies are going to do?

A. We get it when they have done it.

Q. You don't know about it until they do it?

A. No, sir, and they then wire us immediately what they have done.

Q. I just thought I understood you to say that before you posted your price, you took into consideration what the others were going to do?

A. No, I said sometimes we waited for days to see whether others have followed the initial change.

Q. Why is it that the Texas Company requires a signed order issued by a competitor, showing reduced prices, before the Texas Company will reduce its price in a given territory?

A. Is that on crude oil?

Q. I presume so; that is a question which has been sent up to me to ask.

A. I don't know of any such practice as that.

Q. Well, is that true relative to a refined product?

A. It is true in this respect. We have a great many dealers or distributors over the country to whom we sell on the margin under the filling station price. If some competitor goes to that dealer and offers him a better price or a wider margin than we are giving him, we will not permit our sales people to meet that offer except we have written evidence that such an offer has been made. In other words, we want to know definitely if competition has lowered the price to that distributor. We will not take the word of our salesmen or of that distributor merely on the rumor that someone has made a lower offer. We want specific evidence of a lower price offer than ours before we meet it.

Q. Along that line, Mr. Holmes; suppose that you are selling to a dealer who is not what we call a one hundred per cent contract man, but is merely a purchaser of your gasoline, and he cuts the price below the prices that your 100 per cent contract people are selling it for; will you or will you not continue to sell to that dealer?

A. I don't know whether I could answer that, as to whether or not that would be justification for cancelling the contract; I don't know. I do not

think that it does warrant a cancellation of the contract.

Q. In other words, you mean you don't know whether that is one of the terms of the contract?

A. Yes. I think it is not, but I am not sure.

Q. You don't believe it is?

A. No.

Q. But you wouldn't have any contract with him, would you, other than a daily contract and sale? I didn't mean in the 100 per cent contract men, but I mean in the purchaser from you; that would not be regulated by contract, would it?

A. I think we have contracts with a good many dealers for their requirements.

Q. I am not talking about where they buy only from you, and where you furnish all their oil and gas, but where they simply purchase a part of it. For instance, they sell your gasoline and also sell somebody else's gasoline. Suppose you don't have a contract, I will put it, as a fair sample. Suppose you don't have a contract at all to sell him, but sell to him as he calls for it, and he cuts the price below the price for which your 100 per cent men sell it for. Would you continue or not to sell it to him?

A. I am not familiar with these retail sales contracts, but I know what my personal disposition would be in a case of that kind. If that should occur, my disposition would be to believe that he would not be the right kind of a distributor; that he was destroying the price, and I had rather not have him as a distributor. Now as to whether or not we do actually cancel, I don't know.

Q. You do sell to people, don't you, who are not buying on a margin? You just sell to them on a flat price, and they sell for whatever they see fit?

A. We sell to some of the people, like the tire people, in tank cars, and deliver to some of them in tank wagons, for a specific price, and, of course, we have no price control. We would like, of course, to have them maintain our price, but we have no price control.

Q. Do you meet competition when an order such as I referred to a minute ago is produced, showing that reduced price by a competitor?

A. Do I what?

Q. Do you meet competition when the order is produced showing price reductions?

A. I think sometimes we would and sometimes we would not do so. That is sometimes why we will lose some of our dealers to our competitors.

Q. You stated something this morning about the tire business; that tires were selling for approximately twenty-five per cent of their actual worth, didn't you?

A. That was rather an offhand statement, and I couldn't say that was actually the case, but the tire companies have been in a good deal of distress and a good many tire companies have gone out of business in the last year or so. Prices have been very low on tires, and a good many have gone out of business in the past two years.

Q. Do you mean the manufacturer of those tires, or the seller of tires?

A. I mean the manufacturer.

Q. You account for that because they do not have the control of the selling end of it?

A. I think that is very largely the problem, because of their entire lack of control of the selling end of it. That is a business, of course, that I don't know very much about, and of which I have no knowledge other than my observation of it from time to time.

Q. Now then, the only fellow that benefits from the low price of tires, is that same fellow—the consumer—that you mentioned a while ago?

A. He is the only one who benefits, yes.

Q. Now this is my last question, Mr. Holmes: What effect do you think the increased posted price of oil in North Texas will have upon the East Texas situation?

A. I wish I knew.

Q. Sir?

A. I said I wish I knew. I think, if I can answer your question a little differently, that it may not have much effect on the East Texas operator, but it is the result of the North Texas producer having decreased his production, because of the activity of the East Texas producer.

Q. Because of what, did you say?

A. Because of the activity of the East Texas producer. When I speak of the East Texas producer, I want it understood that I do not overlook at all the fact that the majority of the East Texas producers are properly

disposed, and there could be no criticism of them. It is only a percentage, and much less than a majority, that are subject to the criticism which I make.

Q. Isn't it true that when the company that made the first large price cut in East Texas, or made a reduction of thirty cents a barrel, isn't it true that at the time they made that cut, an official, the president of that company, made the statement that he did so upon the ground that this company, the Transcontinental or some company which made the price, had cut that price in North Texas also?

A. I don't remember that statement.

Q. I said I was through, but I have this one more question: do you have your annual report for 1929 and 1930, of your Texas Corporation with you?

A. I have the 1930 report with me.

Q. What's that?

A. I have the 1930 report.

Q. Do you have it in such form that you could let this committee have it?

A. Yes.

Q. Would you let us have it?

A. Yes.

Q. Would you procure for us the 1929 report?

A. I will, yes.

Q. All right. Mr. Holmes, we can pull that chair up there and let you sit in that tall chair, if you are getting tired.

A. No, I am all right.

Q. All right, sir.

Examination by Mr. Beck:

Q. Mr. Holmes, among the oil companies, the majors as well as the minors, and the minors as well as the majors, do you find one group that is interested in conserving the oil as a natural resource, and using it gradually as reasonable consumption requires, and others, on the other hand, who are interested in profiting by reckless exploitation?

A. I didn't get the last of your question.

Q. And others who are interested in the immediate profit from reckless exploitation of that natural resource?

A. Yes.

Q. Do you find—will you tell us of your experience as to those two classes of operators and producers?

A. Of course, those two classes are present in practically every development. They are present in practically every devolpment of every state—at least, every major field. There are always some who are very anxious to take out all of their oil immediately and convert it into money; there are others who go in with a more conservative attitude, hoping to reduce the necessary investment, operating expenses, and are willing to go along with the development and production of the oil in an effort to do it in an orderly way, and ultimately recover more money from the operation and recover more oil from the field. Of course, those two interests are directly opposed to one another.

Q. What is the long range policy of your company in that respect, Mr. Holmes?

A. I think our disposition always is, as far as possible, to pursue the more conservative policy and attitude. Sometimes we are forced, because of the activities of others, to some extent to pursue the other policy, or a compromise between the two.

Q. Are you prepared to state, or would you care to state what individuals or what major companies accept the opposite view of the question?

A. Accept the what?

Q. The view of the question, opposite to that of the Texas Company? That may not be just a fair question, because it might involve competitive criticism, but the matter is of sufficient importance that we would like to know?

A. I do not think I know of any major operators who I could say deliberately pursue the opposite course; who were desirous of immediately converting all of that oil that is developed and producing all the oil and converting it into money. Of course, I think a good many of them are influenced more than we are at times by the activities of others—of those following the other theory. Now, as an instance—in East Texas, we had, when that field came in, some three thousand or thirty-five hundred acres, and we did not begin any drilling until quite recently. I think we have some twelve wells on that three thousand some-odd acres, and we don't need any more. We felt it was in our interest and in the interest of everyone, to delay the development of that field, and for the interest of the industry itself; because, as I say, it can only be developed at the rate at which it is now

being developed, at the expense of the other fields, and other producers, and at the expense of the industry as a whole. Now, of course we can only hold out against such a condition just so long. Unfortunately, there comes the condition, eventually, where we must meet that condition, and some meet that condition sooner than others, and I have no criticism about their activities along that line, because no two of us think exactly the same.

Q. No two have the same resisting powers?

A. Well, I would say I have more confidence in the ultimate success of this conservation effort than the others have. Some of them have said from the very beginning that it was an impossible thing that we were trying to do; that we were working against the law of supply and demand, and we should just let nature take its course. I think differently. I believe a good deal of the seriousness of the situation could be to some extent modified and relieved by such efforts as we could make, and at least I have not yet given up all hope that something will be done in this connection.

Q. Then I understand you to say that the Texas Company is not running the oil for those operators who are violating the proration orders of the Railroad Commission?

A. We are not if we know it. We make every effort to ascertain that.

Q. Are you making any of these long time contracts, or contracts for big quantities for quick delivery, by rail or otherwise, at the low prices now obtaining?

A. Yes, we have been recently buying some oil in 100,000-barrel quantities.

Q. And will you not be forced to continue that practice if your competitors do so?

A. We will.

Q. Would it be good business to stand out there by yourself and try to hold up the price?

A. Whether we are forced to or not, we could hardly afford, in competing with the others, to stand by and see them buying millions of barrels of oil at ten or fifteen cents, and we not buying any of it. I think we would not be justified in refusing to buy any of the oil, although we did so for some little time.

Q. What big companies in a big way are making these long time contracts, or contracts for big quantities, at the present prices, with operators who are violating the Railroad Commission's orders?

A. I don't know what companies are buying the oil which is not produced within the Commission's orders; I know a large amount is being produced outside the orders.

Q. Do you know who could tell us of what companies are making those contracts?

A. I should think the umpires and the people who are in the field should know where the oil is going, and could probably tell you that.

Q. Now, it has been testified to here by at least one operator, and it is a current rumor among many, that there is a feeling among the independent operators that you and a half a dozen other men, acting in concert, could raise or depress the price of crude oil. Is that possible?

A. It might be possible, but it is not probable. It has never been done, and we would not do it. We know perfectly well that that sort of matter is illegal. The only instance I know of of any effort to do anything that would affect the price was done, I think, in April—

Q. In April?

A. Yes. Quite a group of the representatives of the companies endeavored to see whether we could not buy enough oil, all of us together, whether we could not absorb enough oil in East Texas so that the price that prevailed in the Mid-Continent could be made to prevail in East Texas, but it was impossible to do that.

Q. That conference was held in April?

A. Yes.

Q. Where was it held?

A. It was in the Institute office in New York.

Q. Do you recall who was present at that conference?

A. I think representatives of practically all of the major companies that are interested in East Texas, and some others.

Q. Why did that scheme fail; why did the effort fail?

A. We simply were unable to buy all the oil produced; oil was constantly offered in excess of the quantities those companies could buy.

Q. Were you able to determine what quantity you could absorb out

of that field at the prevailing price?

A. The only way we could determine was to ask each one what he could take from that field, and the quantity was less than the production amounted to, very soon after that. Now I want to make it clear; that was not done in an effort to fix the price; it was an effort to try and absorb the oil, to avoid a price break.

Q. Was it then that the heavy producers in that field began to offer their oil at bargain prices to other buyers?

A. They had offered it prior to that time. There had been a good deal of oil sold—millions of barrels—under the posted price.

Q. You must have some knowledge of who it was buying the oil outside of the association members; who was getting that oil—competitive refineries?

A. Well, some of the large companies were buyers. I remember the Atlantic Refining Company was one; they had contracts for a very considerable quantity, I think.

Q. Who is the Atlantic Refining Company, Mr. Holmes?

A. That is one of the former subsidiaries of the Standard, located at Philadelphia. They are not large producers; they are buyers.

Q. Aren't they chiefly interested in exportation?

A. No, sir; they are largely in the domestic market. They buy a large quantity of oil for their own use, and this oil was offered to anyone and every one, and they, as I remember, happened to be the largest buyers at that time of crude offered under the prices that had been posted up to that time.

Q. At least, there were enough buyers of that type to break all the good intentions that your association had for holding up the price of East Texas oil?

A. Yes, that is true.

Q. Do you think the curtailing of the production, though, would bring about a restoration of the price?

A. I believe it would.

Q. Now, something has been said about the effect upon the consumer of the higher price of crude in East Texas. Let me ask you this: if the price continues down as it is now, will it be possible to continue exploitation for new fields in other territories?

A. It certainly would not be profitable and necessarily would be unprofitable.

Q. Who could afford to hazard exploitation in new territories except the major companies.

Q. Who could afford to hazard explitation in new territories except the major companies?

A. Well, I don't think even the major companies could afford to, because oil fields cannot be prospected and produced anywhere I know of at the prices prevailing in East Texas.

Q. In the event that new fields fail to be discovered, where will the consumer find himself, as the East Texas field begins to diminish?

A. We have a potential production in the world estimated at somewhere between four and ten times the actual consumption. The oil would be forthcoming from a good many sources, when the price warrants it. Now, some of these wells that have been recently shut down in North Texas and Oklahoma; they will certainly be opened up when the producers can afford to do so.

Q. Can those small wells, which are now producing about forty-three per cent of the total production of the country—can they subsequently be opened up, without loss of the wells themselves, and their potential production?

A. I think it is generally agreed that a great many of them cannot. That it would be the expense of refitting, retubing and so forth, and that would be quite expensive, and a great many of them would be lost and the oil would be lost. Some, probably, after a period of three or four years, could be opened up and produced again without any large cost, but a large percentage of them would suffer a tremendous loss.

Q. Are you prepared to say whether or not the continuation of the present low price, while hurtful to all, would be destructive to all but the major companies?

A. All of the what?

Q. Would a continuation of the present conditions be destructive to every operator except the big companies, and including some of them, perhaps?

A. I think it would unquestionably bankrupt the majority of the operators, a very large percentage; and I think, if it continues as it has, if this condition continues, necessarily only a few of the stronger ones could survive.

Q. Is there any effort or wish on the part of any of the major com-

panies to put the independent producer out of business?

A. Now, that is a difficult question to answer specifically. I think that the evidence has been that the great majority, the larger part of the oil people, have been interested in trying to correct this difficulty, get production under control and avoid the situation we are in. I think, unquestionably, however, there are those who, as I say, feel that any artificial structure such as this might be termed by some, is not the way to correct it. That the way to correct the difficulty is to let it run its course, like a fever, and permit the competition to be eliminated and permit the condition to be corrected in that way. I am not of that mind, and do not have the belief anything like a large number in the industry who do believe that way about it.

Q. Would you say that is the viewpoint of the producer or operator who is willing to be an exploiter of this resource?

A. Well, I think that attitude is a selfish one, and a producer who wants to produce this oil, regardless of the effect on everyone else, can be classed in that class.

Q. As an exploiter?

A. Yes.

Q. Are you one of those major company executives who believes that the day of the independent operator is gone?

A. I think you will do something here; but if you don't I am afraid it is.

Q. Are you one of those that believe that in the economic scheme of things, he ought to disappear?

A. No, I am not. I think, to get back to your Constitution and your anti-trust laws, that every effort has been made to avoid and discourage such an event. I think it is contrary to the general majority of thought in America that we should deliberately neglect or destroy competition, or whatever it may be, that may stand in the way of our selfish ambitions.

Q. Then you believe that the opportunity of the independent oil operator should be maintained?

A. Yes.

Q. He should stay with us?

A. I think a very large number of them are properly disposed and entitled to remain; it is just as much a legitimate effort as any other.

Q. Isn't it the feeling of most of the major executives that the independent operator and exploiter fills a place in the industry that is essential to the interests of the industry itself?

A. I think that is true. I think that is the general feeling which prevails.

Q. Now you said that the independent is probably billed to be extinct unless we do something here. Does that refer to your expressed opinion that we should have prorated and curtailed production?

A. Yes, it does.

Q. Now, just how will that benefit him—or do you think you have covered that in the previous statements? To what extent will he be further protected in his existence by what has been recommended?

A. I believe that unless you here pass an act or a bill which enables you to control your production, and which will give the same consideration to the other States and their producting areas that we think that an individual producer, large or small, in the same line of business should give to another, it will result in the same sort of chaos throughout all the fields as we have here. I think the principle is the same. For instance, Oklahoma, California and Kansas have been doing all they could. They have not been theatrical, but they have done lots of good, but your failure in Texas to get your production in control, will cause the others to lose all confidence in any possibilities of the plan or effort, and they will, one by one, be relieved of any restrictions in their States, and I don't see anything that could happen except that the oil will be produced from the cheapest production, whether it be Yates, Kettleman Hills, East Texas, Persia, Rumania, or wherever it may be, wherever it is the cheapest, because those who are competing with East Texas oil on today's prices, with the short haul to the Gulf, must necessarily, in that competition, must necessarily produce their cheapest oil, and that will mean that all of the other fields will of necessity close down, where the cost of production is away above the markets that will prevail; that is my opinion about it.

Q. In the operation of your pipe lines and transportation facilities, you do not attempt to fix the rate on a mileage basis alone, do you?

A. No, sir. They are not strictly on a mileage basis.

Q. Are they governed somewhat by the price that the oil should bear of the traffic or by any more than the traffic will bear?

A. I would not say that had anything to do with it.

Q. Well, what is the basis of rate making?

A. In the place you ought to be guided by the miles of flow in the pipe line from any particular field to the refinery, and on the short life of some of the flush fields that are abandoned in a short time. That is an attendant risk which you have got to take into consideration. You take the pipe lines as a whole throughout the whole United States and you will find quite a different condition existing here in Texas than to what you find as to what the movement of oil has been in other sections. For instance, you take the wells back in the East. The Prairie Pipe Line Company there has a capacity of something over two hundred and twenty to two hundred and thirty thousand barrels per day, and they are now carrying about seventy thousand barrels per day. There are other companies that are running away under capacity. In a way you might disregard, ignore entirely, the rates prevailing elsewhere that prevail in other means of transportation. I think it would be unwise to make rates so far below the railroads. At this time they are below railroad rates. I do not believe that there is anyone who feels that the rates ought to be disturbed as they are today. So far as I have been able to know I have not seen that any field has been contending about any material reduction in pipe line rates.

Q. Did you say if you put a pipe line into a new producing area, is it your practice to penalize the posted price by a given amount per barrel until the sum you have allocated for that use has been offset?

A. I know of no such practice.

Q. That practice does not exist?

A. I do not know.

Q. Has there been any time when it did exist?

A. I have no recollection of any such.

Q. Do you find it necessary in operating pipe lines to operate pipe lines at a loss in order to save the destruction of some field and make the profit back from some more favorable location?

A. I think we have made extensions and gathering lines where it was impracticable, merely to accommodate producers who had been supplying us crude in other fields. That has been pretty generally practiced with the producers from whom we buy.

Q. Do you require the operator, the producer, to pay for the gathering line on his lease?

A. No, sir. We do not; we pay for that.

Q. Mr. Holmes, there has been a surprising amount of complaint in the East Texas oil field over the fact that the pipe line company, the purchasing company, has been very dilatory in paying for the oil through delayed examination or proving up of abstracts. Is there any such policy adopted as that, with which you are acquainted?

A. Do you mean the payment for the oil, for leases, which?

Q. The payment for oil that has been extracted from the leases.

A. I have never heard of any cases of that kind.

Q. Did you learn of delays of that kind—if you did learn of them—would you be glad to give such instructions as might be necessary to dispose of them as fast as possible?

A. I would—yes, sir.

Q. What is the American Petroleum Institute, Mr. Holmes?

A. It is an association of all of the—a very large majority of the producers, refiners and marketers of petroleum, including all of the supply companies. In fact, everyone who has an interest in the oil industry. It is like the institutes in other allied businesses where they get together and exchange ideas in an effort to produce what can be done for the interests of all connected with the industry.

Q. Do they have committees whose work is to standardize materials and supplies?

A. Yes, sir. They have committees fixed to prepare standard specifications for material for pipe lines and refineries and oil well equipment, etc., and for fire prevention, accident prevention, and I think they have taken up the matter of uniform specifications of oil, and uniform methods for different things.

Q. Working out uniform data of geological character and enchanging of information thereon?

A. That is not done with institute committees, but I think there is a general effort to help each other and in what way they can that is not harmful in a competitive way.

Q. Have the more responsible and capable independent operators access to the exchange of this geological information that the major companies themselves have?

A. I think they do. I do not think there is any discrimination between the large and the small. I think whatever is exchanged is exchanged generally, as far I know. So far as I know, that is the practice.

Q. Does the American Petroleum Institute, are they among other functions, are they attempting to work out a standardization of marketing and refining practices?

A. None except as I have had reference to that in that code of ethics you have before you.

Q. Is the code of ethics or any similar name for the thing with reference to purchase of crude oil?

The American Petroleum Institute does not go into that phase of the matter?

A. They have never gone into any phase of competitive activity except as to marketing. This has been done by a great many industries, and has been encouraged by the Federal Trade Commission, and there are several hundred similar industries.

Q. Have you ever participated in any conference except the one you mentioned a while ago? Or have been represented at such a conference, or had suggested, anything that would be in the nature of an agreement with any competing company to depress the price of crude oil in any field?

A. I have not?

Q. Do you know if it ever has been done?

A. I do not know of such meetings, and I spoke of this meeting because of the specific discussion in East Texas because of the discussion, that it was an effort, and I think a proper effort, to avoid what has happened.

Q. Have you any agreement, or are there any agreements, made between you and buyers of crude petroleum to limit or adjust your competition in making your nominations for the taking of crude from these prorated fields?

A. No, sir, there is not.

Q. Is there not frequently some conflict of interest that must be ironed out in competing fields?

A. Well, there might be some discussion over the nominations to be absorbed. I think there has been some, whether it was the Railroad Commission or whether it was some of the representatives, or some local committees in some new field, trying to get the company to take a larger part of certain oil. It was only recently that the Governor of Kansas insisted upon our taking a certain amount of oil in Kansas. There are always certain interests of that kind. Either committees in the field of operators, or, as I said, the Railroad Commission, should meet and make efforts to discuss the amount of the allowable which they would be willing to take out of that field. They are usually able to work that out with the umpire and operators in the field, so that there would be no discrimination.

Q. You say they usually work that out all right?

A. So far we have been able to do so; really, I am not familiar enough with this as to make a statement on that. As to just what brought about these discussions, I am not familiar with the actual details of it.

Q. Assuming that the average retail price of gasoline in Texas is 12 cents per gallon at this time, what would be the cost, the retail price, of that gasoline per gallon if crude oil was $1 per barrel under present conditions?

A. That is difficult for me to take care of, but I will say this, with reference to the market price of gasoline that is at a price where the oil companies are losing money in spite of the price of crude oil. If they had dollar crude, which I sincerely hope they did, then the gasoline price would be at a point where we would make a little money, or at least would not sustain a loss. It would be away under the average prices back over a period of years. The price of gasoline in 1920 in the United States, the average price went up along in September and October to between 31 and 32 cents. The average price in 1918 to 1928, inclusive, for eleven years, exclusive of the State tax, was 22.63 per gallon.

Q. What was the average price of crude oil during that period?

A. I do not have that average, but I have a line drawn here which

I would say—from which I would say it was a little above $2. Leaving out 1920, which was an excessive price, 1921 to 1928, according to the statistics I have here, with the year of depression in 1921, that price, exclusive of that, was 21.09 cents per gallon, and if it did not exceed the price at that time it cannot be considered excessive, even on $1 oil. The prices that the dollar will buy today are down to 12.44, exclusive of the State taxes, on July 1, 1931.

Q. What I find is that the consumer is unable to understand why, and it was alluded to a little while ago, is the price of lubricating oil? You can probably explain that. I will ask you this question: By assuming this to be true, that you are able to obviate the loss, you would otherwise be incurring, by advertising through the public press and encouraging the people to buy a certain grade of oil, or a certain brand of oil?

A. That is possibly part of the reason, but, as I told you, the requirements of the oil, that is, as to whether it has a heavy viscous oil, with lubricating properties, and the price on this oil has been very materially reduced in the manufacturing process of the present-day motor oil, and for that reason it has influenced the maintaining of more nearly uniform prices that prevail today on that character of product.

Q. Mr. Holmes, have you any figures as to what is the average gallonage sold through your own company controlled filling stations per station?

A. We have this, of course, but I do not remember what it is. I can make an average guess, but it would be only a guess.

Q. I think it is probably true that the public would probably like to have some explanation as to what business theory you make of investing in so many filling stations by each of the major companies?

A. That is a visible evidence that there is competition, excessive competition, and they are spending that money to increase that business efficiency.

Q. How are the cost of those filling stations charged off?

A. They are depreciated as other physical property. They take the regular depreciation rate.

Q. You mean by that that they take the regular depreciation rate as set up by the United States government, or do you have an arbitrary figure for that?

A. I think that is the rate that is accepted by the Federal Tax Bureau.

Q. You make no charge off that is not approved by the United States government?

A. I believe that that is our practice.

Q. Is it not a fact that those filling stations are really charged off to sales promotion?

A. That does not occur with us, I am sure.

Q. Do you know if that is the practice of those companies in the field of competition?

A. No, sir, I do not.

Q. I believe there was a time when it was generally considered that the gross profit on a barrel of oil was approximately $4.50. Is any such estimate worked out or available that you know of?

A. I know of no such estimate. I have some figures here of the profits of the industry, if they are of any interest to you. This shows the net profit of the petroleum industry.

Q. In what department — or do you have that information for the industry as a whole?

A. That is for the petroleum industry as a whole, the same as the crude and gasoline prices.

Q. What kind of companies are considered in that, the major, independent and all, or just the majors?

A. This statement I have shows that the entire profit in the industry for the years 1921 to 1928, inclusive, amounted to 2.16 per cent on the investment, and that represents about 90 per cent of the industry, including all company earnings reporting, but I have no figures on the profit per barrel.

Q. We have had one witness on the stand who appeared to have what appeared to be rather convincing statistics to show that there is not now an actual overproduction of petroleum, as compared with the average market demand daily at this time.

A. That might be very easily the opinion of one reading the figures. The actual production in the United States is right close to the amount that was recommended by the Federal Oil Conservation Committee as economically prudent as meeting the refining requirements, but in spite of the low prices certain companies in financial difficulties are today drawing oil from storage. They say that more

oil is being produced than is being absorbed by the buyers or refiners.

Q. How much of this storage still remains to be used up?

A. There is some 500,000,000 barrels in storage. It is estimated that this will be reduced down to some 250,000,000 at least.

Q. That it could be safely withdrawn to that figure?

A. Yes, sir.

Q. And at the same time other oil is now going into storage?

A. It is going into storage by certain companies that have the money to store it. Those that do not have it are under the necessity of using their storage oil.

Q. Is it the threat of heavy potentials of overproduction now in East Texas that destroys the confidence of buyers at the present low price?

A. It is the threat of the uncontrolled condition, or the uncertainty of control, as well as the potentials there as well as in other fields. There is a very large potential in excess of actual production in many of the fields.

Q. Somebody testified on the stand yesterday, I believe it was, that the Texas Company operated at a loss of a million dollars per month last year. If you have interest in correcting that statement I believe that you would be glad to do so.

A. That is incorrect. The statement that I handed you will disclose that.

Q. That is a composite statement of all your subsidiaries, is it not?

A. Yes, sir.

Q. On what capital was that?

A. On $250,000,000. When the investment is something over $600,000,000.

Q. Are you a stockholder or a director of any other oil company?

A. No, sir; none except the Texas Company.

Q. And companies subsidiary to the Texas Company?

A. No, I am not.

Q. Is there a considerable number of interlocking directors among the major oil companies?

A. No, I think there is not. There are none on our board, and I think generally the Standard board is composed of employe directors for the most part.

Q. Your recommendation is then that any such legislation as we consider here should be based on conservation as a principle, separate from any prohibition that they might want to make marketing practices?

A. I think that the conservation of petroleum seriously is a matter of sufficient importance in your State and to your State to warrant you in some action towards a conservation effort that will be effective.

It is generally estimated that the present potential, these flush fields, might last five or six years, and after that time, we might be actually short of oil in this country in the next 25 or 30 years.

From the standpoint of the interests of the industry and those dependent upon it I think it warrants consideration upon that premise alone, even if you do not want it under the basis of conservation. I feel that anything that you can do properly that will aid the major industries, even the small ones who are not so dependent, warrants consideration and support, and whatever consideration you can give to it at this time, that is why I say it is strict conservation and not merely on the avoidance of waste that your legislation should be based. You may not go far enough to correct the unsatisfactory conditions that exist today. You may fail to even effect any improvement of the condition that exists today.

Thereupon at 5:09 o'clock p. m. the Committee stood at ease until 9 o'clock Thursday morning, July 23, 1931.

Thursday, July 23, 1931.

R. C. Holmes on examination by Mr. Beck—Continued.

Q. Mr. Holmes, are you thoroughly familiar with the conditions in all of the oil fields of this State?

A. I think I am fairly so in a definite way.

Q. Have you been with the Texas Company for a considerable length of time?

A. Yes, since its incorporation in 1902.

Q. Did you begin with its program of operations in Texas?

A. Yes, sir.

Q. Will you state what has been your connection with the Texas Company, and what portion of your experience has been in Texas?

A. I began with the Texas Company in 1902, when they organized as a member of the refining — as the manager of the refining department. I continued in that capacity until, I think, I believe it was in 1926 that I became president of the company.

Q. Where were you located with the company at that time?

A. In Beaumont, Texas, and in Houston until 1926; after that time I went to New York. In addition to that, I had charge of the operation, and I was a director of the company beginning in 1907 or 1908.

Q. Your principal training was in the refining end of the business?

A. Yes, my experience before coming with the Texas Company was very largely in the refining business, but I was practically raised up in the oil fields of Pennsylvania.

Q. Do you happen to be the Holmes who is the inventor of the Holmes process used in refining?

A. Yes, that is the Holmes-Manley process. I am the Holmes that designed with Mr. Manley that process.

Q. What is that process, and what has been the effect on the market, or industry?

A. It is what we call the pyrogenic and cracking process in the refining process is the dissolution of the elements of petroleum.

Q. That enables you to get a larger production of gasoline out of crude, does it not?

A. That enables us to take practically double the gasoline that we run.

Q. Has that made it possible for the crude to bring a higher price than it would have brought otherwise?

A. No, I would not say that it has had that effect; the effect has been that possibly half of the crude is now required to produce the gasoline that would have been required without the cracking process. In other words, if we had not had the cracking process we would have had within this period some rather disastrous oil shortages.

Examination by Mr. Farmer:

Q. Mr. Holmes, the members of the House of Representatives desire to express our appreciation of the kind and satisfactory manner in which you have answered our questions thus far. As a member of the House of Representatives, I have a few questions that I want to ask you in a kind way and we want to get your answers that we may act intelligently in enacting legislation here which we must enact. Mr. Holmes, you have just testified in the last few questions about the Holmes-Manley process, and stated that if this process had not been invented, the price of oil would have been far beyond $2.00.

A. May I interrupt? I said that in the meantime, during that period, it might have been $2.00, but there have been times since the development of the cracking process when there would certainly have been an extreme shortage of crude to produce the gasoline requirements.

Q. You mean then to say that if the Holmes-Manley process were taken away that it would increase the value of crude oil—if it were possible now?

A. I think if all the cracking process which is now used were taken away that it would increase the demand for crude, and it is possible that it might double the demand for crude.

Q. If that was done now that would take a great amount of oil from storage, would it not?

A. Yes, sir.

Q. You are aware of the fact that the Humble increased its price for oil today?

A. I am.

Q. The president of that company ordered that?

A. I think he did.

Q. You notice that two of the other companies followed that by an increased price posted today?

A. I have no advice on that.

Q. Now, is there any reason why you should not as president of the Texas Company, do the same thing?

A. I gave instructions to do that last night.

Q. How much have you increased the price, Mr. Holmes?

A. They were instructed to increase the Oklahoma and the light oil fields of Texas to 40 cents.

Q. Now, is there any reason why you should not, as president of the Texas Company, this morning issue a bulletin that the price of East Texas field should not be increased 20 cents per barrel?

A. I think there is every reason why we should not.

Q. Would you be kind enough to tell the House why you should not?

A. First, I feel that they are producing oil in East Texas in excess of the orders of the Oil Commission, the Railroad Commission, that they are disregarding not only the orders of the State, but at the same time they are disregarding the interests of other producers in the other States, and I did not see why we should encourage them in that activity, which will cause a great amount of waste in that field under those conditions if we should make that kind of an offer for oil over there.

Q. Any other reason, Mr. Holmes?

A. I think that is all I care to mention.

Q. Now, Mr. Holmes, we are very proud of the Texas Company; we are very proud it began its organization here, but isn't it just one of thirty-five subsidiaries?

A. Thirty-five subsidiaries?

Q. Are you not just one of the subsidiaries of the Standard Oil Company of New York?

A. No.

Q. The Texas Company was organized in Texas in 1902?

A. Yes, sir.

Q. The business of the Texas Company has been extended from the Texas Corporation, that corporation has extended its activities beyond the boundaries of Texas?

A. It has.

Q. The Texas Company has what activities in what countries besides the State of Texas? And the United States?

A. It has activities all around over the United States, parts of Canada, Mexico, South American countries, Australia, New Zealand, Venezuela, and in the Far East in China and in some of the European countries.

Q. In your confidential report to your stockholders, you do not definitely say or show the portion of which one of your subsidiaries has made the money?

A. No, we make a composite report for all subsidiaries.

Q. Now, that being true, in the year 1928 you showed to have made a net profit of over $45,000,000?

A. Yes, sir.

Q. And your gross earnings for that year were over $196,000,000?

A. Yes, sir.

Q. Then, in the year 1929, your gross profits were over $213,000,000?

A. And I believe that is the correct figure.

Q. And that is when oil was bought for $1 per barrel?

A. Yes, sir.

Q. Your net profits for 1929 were over $48,000,000, were they not?

A. Yes, sir, that is right.

Q. Now, in the year 1928, you paid cash dividends of over $24,000,000; that is right, isn't it?

A. Yes, sir, we paid 12 per cent on the outstanding capital.

Q. And the very next year you increased it, you paid dividends of over $28,000,000?

A. Yes, sir.

Q. Then that same year of 1928 you put into your surplus fund that you did not divide?

A. Yes, sir.

Q. And in the same year you increased your surplus on hand to $131,000,000, did you not?

A. Of course, I do not remember the exact figures, but I assume that that is correct.

Q. Then, in the year 1929, you had a surplus of around $219,000,000, which surplus would be in cash or might be in properties on hand?

A. It would be stocks on hand or additional materials; or property, or cash.

Q. Now, you raised your surplus in 1929 to $150,000,000 that you did not divide among your stockholders?

A. That is correct.

Q. And from this showing we might reason that the Texas Corporation is far more prosperous than the farmers of Texas?

A. Well, it is more prosperous than any one of them, and possibly more than a great many of them.

Q. Here in Texas we are a great oil State, and we are producing a great amount of oil, and we are using a sixth of that oil. Now, where is the other five-sixths of that oil going?

A. It is going into other sections of the United States and to foreign countries.

Q. Are you shipping to foreign countries?

A. Yes, we ship to foreign countries.

Q. Do you ship to Europe?

A. Yes, sir.

Q. About how many barrels do you ship over there?

(Objection was here raised to the character of questioning and, after considerable argument, the interrogation of the witness proceeded, as follows):

Q. Now, Mr. Holmes, I believe that you have heretofore testified a little while ago that your company was engaged in the business of producing oil in Venezuela?

A. No, we have not been, but we have been hoping to produce oil there.

Q. Are you buying oil from other companies in Venezuela?

A. No, we are buying no Venezuela oil.

Q. You have large concessions in Venezuela for production of oil, and large leases, have you not?

A. We have large concessions in Venezuela.

Q. How many barrels of foreign oil do you bring into Port Arthur annually?

A. Somewhere around two million barrels annually, of Mexican crude.

Q. But at the present time your company is not bringing any oil from Venezeula?

A. We are not.

Q. How many acres of land in Venezuela have you down there on which there is a possibility of oil being produced?

A. That is very difficult to say. While there is possibly a million acres that have a small amount of oil, it is possible that a very small amount of oil will be produced.

Q. Are you bringing into this country oil from any other place than Mexico?

A. We are not.

Q. What are you paying for that Mexican oil at this time?

A. I do not know what the price is, it varies with the market.

Q. Have you recently reduced the price you are paying for oil in Mexico?

A. No, we pay the market price when buying that oil, whatever it is.

Q. Who makes the market in Mexico?

A. That is made by the conditions of supply and demand and the producers and sellers of oil in Mexico.

Q. Do you know whether you are paying less than 20 cents for crude oil in Mexico at this time?

A. No, I think we are paying more, unquestionably.

Q. You are paying more?

A. Yes.

Q. If you are paying more for crude oil in Mexico, why could you not pay more for oil—more than 20 cents for crude oil per barrel in East Texas?

A. I think for obvious reasons, and that is that in Mexico there is a demand for that oil and all that is being produced. There is not a demand for all the oil that is being bought in East Texas.

Q. You are producers of oil in East Texas, and three other Texas fields?

A. We are now.

Q. Are you buying leases in East Texas now?

A. I cannot say whether we are or not. There are a good many that have been submitted to us.

Q. Are you buying crude oil from other people in East Texas now?

A. Yes, sir.

Q. And at the same time you are producing oil there?

A. Yes, sir. We are.

Q. What is the size of the pipe line that reaches those fields now?

A. You mean the capacity or size?

Q. No, I mean the dimensions, have you a 12 or an 8-inch line over there, or what size?

A. My recollection is that it is an 8-inch line across from Corsicana to San Augustine.

Q. Now, in the confidential report that you issued to your stockholders, do you separate the amount of profits obtained from refining from the pipe line business?

A. No, we do not.

Q. In your report you do give a composite statement showing the profits from all of the activities of the company?

A. All of the activities of The Texas Company.

Q. Do you issue a report that would show your profit separated as between each of the different activities of your company?

A. We issue no such report.

Q. Do you issue it for your private benefit?

A. We have those records in our office.

Q. You do not have them here?

A. No, sir.

Q. You could not produce them in a couple of days for the benefit of the House?

A. I could, if it was essential for the Committee to have it, or desirable.

Q. Now, if there was an occupation tax upon the producers of oil in East Texas, and in all Texas,—say, a one-cent tax on all wells producing 100 barrels or less, and not over 300 barrels, and if we put a production

tax of 80 cents per barrel on those companies producing more than that from each well, would your company produce or attempt to produce oil from a twenty-thousand-barrel well if there was a tax on it of 20 cents per barrel?

A. I do not think that would accomplish the purpose you have in mind.

Q. We want to stop overproduction.

A. Yes.

Q. That is the thing the major companies say is the matter with the East Texas and other fields at this time?

A. Yes, sir.

Q. Now, then, let me ask you this question—now it has been developed by your testimony that if one of the major companies raised the price one day that the other major companies will set the same price the next day. That is to say, if one raises or lowers the price then the others immediately follow. Now, then, if the major companies set the price and fix it low, thereby causing more waste and another immediately sets the same price for the oil, how are we going to prevent waste?

A. I hardly think I should be accused of testifying that the major companies fix the price. I think I tried to make it clear that conditions —that there is competition and where there is competition, if one company is lowering the price, the other will naturally follow.

After recess at 10 o'clock for the purpose of hearing the address of Senator Gore, of Oklahoma, the Committee resumed its proceedings at 11:35 a. m., as follows:

R. C. Holmes resumed the witness stand and further testified as follows:

Questions by Mr. Farmer (resuming):

Q. Mr. Holmes, when you quit awhile ago, we were at the point of making a price upon the crude oil per barrel. At that time, if I remember correctly, you stated it was based upon conditions, you stated certain conditions. Now, Mr. Holmes, if this present Legislature should find it within its power to pass a law, and the law would be enforced, limiting the production of Eastern Texas oil fields to 200,000 barrels per day, and providing that no other new fields within the next six months should be discovered and produce any crude oil to any great amount, would you deem that to be a condition sufficient to raise the price?

A. I think that would be a condition that would bring about a condition throughout the United States, assuming that the other States would continue their conservation and restricting program, that would probably result in better prices for the oil, and the reason I state that is, it would bring production down to within—well, within the market requirements. Today Texas is producing, or in the month of June produced about 40 per cent of all the oil in the United States.

Q. If you found conditions sufficiently satisfactory in your mind, Mr. Holmes, and you, this afternoon, should order your purchasing agencies to pay 65 cents a barrel for Eastern Texas oil, it would be immediately and rigidly obeyed, wouldn't it?

A. It would.

Q. On yesterday afternoon you found the conditions such that you wanted your producing agents to pay 40 cents a barrel for oil in North Texas and Oklahoma, did you not?

A. Yes, sir.

Q. If, this afternoon, the Magnolia Company should see fit to advance its oil to 50 cents—should fix its price to 50 cents a barrel, you would see fit, as a great Texas corporation, to follow suit?

A. I would not.

Q. You do not believe the conditions would be justified?

A. I do not.

Q. Is a barrel of Oklahoma oil or North Texas oil as the usual thing, worth more than East Texas oil?

A. No, on the average I believe it is the same.

Q. Why, then, is oil in North Texas this morning worth 40 cents and oil in East Texas worth about 10 cents?

A. I think the actual values are the same, or approximately the same.

Q. Then why is 40 cents paid for oil in North Texas, when transportation is 50 cents to tidewater, and only 10 cents paid for oil in East Texas, when transportation is 18 cents?

A. Because the producer offers it at that price.

Q. Then, if that operator or producer considering offering that oil at less than $1.25—he would be bound to take $1.25?

A. Yes, sir.

Q. If there is a law passed by this Legislature in order to preserve the oil resources of this State that the minimum price of oil should be $1.25 per barrel, then each company would obey that?

A. Yes.

Q. Then, Mr. Holmes, if by law we can say that production can be limited to 200,000 barrels, we thereby increase the price of oil, do we not? Because of the limited amount of production?

A. I think if you limited to what might be determined by good authority, as a proper amount, proper allowables, that inevitably, assuming, as I say, that the other fellows continued their conservation and restricting activities, it would result in better fields and better prices.

Q. What is the capacity in Eastern Texas?

A. The capacity up there is in excess of 450,000 barrels.

Q. Yes, sir. Mr. Holmes, because of 450,000 barrels of production in Eastern Texas being dumped on the market, oil has gone from $1.25 a barrel to 15 cents a barrel, hasn't it? —In Eastern Texas?

A. I think I stated yesterday that the entire decline could not be attributed to activity in East Texas—possibly your activity in other fields prior to the excess production in East Texas.

Q. Then, if this afternoon we take the production of Eastern Texas out of the picture for six months, oil would immediately go to $1.25 a barrel, wouldn't it?

A. I couldn't definitely say, but I think that would obtain. Now, I think this is likely to happen at any time, but it is one of the safeguards of any legislation you might enact in the way of conservation of redistricting—that is, when your price goes up, there is likely to be a number of producers who were cut down today, who will probably want to open up their wells and move their oil, and I think it will be a safeguard you will have from time to time as to how far you can without bringing on again another of our overproduction periods.

Q. Well, Mr. Holmes, if by limiting the production by this so-called scheme—of proration will increase the price, why, will it not be better by acts of this government in Texas to say that the price will be so much as a minimum?

A. Personally, I doubt the advisability or wisdom of definite price-fixing by anyone.

Q. Well, if you can fix a price by proration, why can't you fix it by going directly at the thing and saying it shall be worth this or shall not be worth that?

A. I don't think by proration you definitely fix the price; in the first place, you make an effort to avoid the waste which attends all over or excessive production, and price stability has resulted generally, so it is very valuable and satisfactory.

Q. Now, Mr. Holmes, if oil at tidewater is worth $1.00 a barrel, what is it today in the bottom of the boat down there worth now?

A. Being loaded on the boat as low as 50 cents a barrel.

Q. Fifty cents a barrel, loaded on the boat—50 cents a barrel. All right. You are paying 40 cents for it in Northern Texas this morning at the Amarillo fields—a cost—it costs 50 cents to take it from Amarillo to tidewater. All right, that is 90 cents when you get it there. Then it is better not to send it to tidewater, do you think?

A. Well, you wouldn't be able to sell it at tidewater or sell oil today at 40 cents.

Q. Well, now, if any oil of Texas is going out of the State, is most of it going by water or going by tank cars on the railroad?

A. Well, I think a good deal of it is going through both transportation means, but I would say the larger part probably is going by water to other United States ports.

Q. Leaving out, embracing only gathering — now the transportation charge to tidewater, it amounts to about 33 cents from the Kilgore field, and 50 cents from Amarillo; if we pass a law for the divorcing of the pipe lines from their activities and let them become strictly common carriers, and providing that you will take oil prorated, then we reduce the rates of transportation of oil from Amarillo and the Northern field, to 10 cents per barrel—will the producer get the benefit of that 40 cents?

A. I doubt if he would.

Q. Well, why wouldn't — where would the 40 cents go?

A. I think it is the result of the same condition — the same condition that resulted in East Texas—it would be price on board ship at the field price, whatever that price may be, and the cost of getting it through to the Gulf. Let me remark this, my only concern about this investigation is, if I have any, is that you might not be confused and retain false impressions, and I would like to try to make all of my answers clear, so that I will not give you any false impressions.

Q. That is right, Mr. Holmes, yes. Now, you said exclusive of 12½ cents from the Panhandle—the charge is 50 cents?

A. That charge is 37½ cents, 31 cents from North Texas, and 18½ cents from Central Texas points.

Q. Well, your gathering charge in the Amarillo field is 12½ cents, isn't it?

A. Yes, sir.

Q. The transportation charge to tidewater is 37½ cents?

A. Yes, sir.

Q. That makes 50 cents.

A. I understood you to say "exclusive."

Q. No, sir, I say inclusive.

A. All right.

Q. Now, Mr. Holmes, the gathering charge at Kilgore is 33 cents and the transportation charge is 18 cents. You are buying oil in East Texas?

A. Yes, sir.

Q. At what price?

A. Any price it is offered.

Q. You are taking it at any price you can get it?

A. Yes, sir.

Q. And you are drilling in East Texas?

A. Yes, sir.

Q. Producing over in East Texas?

A. Yes, sir.

Q. Well, don't you think it would be a good idea for you people over there to stop drilling wells and stop producing?

A. When that field came in we had about 3500 acres in its proven-up producing area. For weeks we drilled no wells at all. Recently, because of offsetting and the necessity of protecting our leases we drilled a number, drilled and brought in twelve wells, I believe. We drilled additional wells because of the offset. At the same time, we were guided by the proration order and have brought in oil we have a right to only; we have produced oil, produced under the Commission's order, and specifications and rules of that order.

Q. Mr. Holmes, do not the Texas corporations and the Magnolia and the Humble, and the other majors that are in East Texas—don't they today own 85 per cent of the productive fields of Eastern Texas?

A. No, they do not.

Q. How much do they own?

A. I asked that question a day or two ago in Houston, and my information is that there are about eleven so-called major companies, and their total holdings are a little under 5 per cent of the field. There are 250 others who own the balance.

Q. At the present time?

A. Yes, sir.

Q. If it were put on proration, and a fellow over there owes a debt—goes in debt—and has got his property mortgaged and cannot get enough out of the ground to pay off the indebtedness, he will have to sell, won't he?

A. Well, if he does, he will have to get a better price than they are getting today.

Q. Well, if there is a man there who has got a 5000-barrel well, and he only takes 300 barrels out of the 5000, the mortgage is due in one week today, he is forced to sell at a certain price, your company is in the market for that at the present time, isn't it?

A. We have turned down a good many offers.

Q. Why did you turn them down?

A. Largely because of the uncertainty of the value, the uncertainty of the producing situation, and the condition—we would be in the same uncertain position and condition that these same producers are in today.

Q. That uncertainty is due largely to whether the Legislature will prorate, isn't it, and if it does prorate these fellows to run the minimum of their wells, then the man who has to pay his debt will be forced to sell, won't he?

A. It may be a little difficult to anticipate all the consequences and the results behind what I would call a proper conservation law, and my judgment is this man you are talking about who owns the 5000-barrel well, producing 500 barrels, if he is producing 500 barrels, at 10 cents at the well, he has got $50 for that oil. Now, say, he was purchasing 450 barrels a

day, suppose that was cut down to 150, and instead of getting 10 cents he gets 30 cents, he gets as much money for one-third of that oil today as he had for the full amount that he was using today if it was anywhere off—he is better off because he can sell that oil, his future production beyond any question, at a better price. If your conservation and the effect of your law does not improve the conditions which result in 10-cent crude, it certainly would do very much good to those small purchasers.

Q. Well, Mr. Holmes, you have got a big refinery?

Mr. McCombs of Dallas: Mr. Chairman, this cross-examination is very interesting to Mr. Farmer, but it hasn't elicited a bit of new information on anything, and is wholly uninteresting and immaterial to this investigation. I move that Mr. Holmes be excused and another witness be called and examined by the regular steering committee.

Mr. Farmer: Now, Mr. Chairman, that is just another effort of that gentleman who, with the other gentleman, did not want this investigation—

The Chairman: Go ahead.

Q. Now, Mr. Holmes —

Mr. McCombs: Mr. Chairman—

The Chairman: You are not recognized right now, and I told Mr. Farmer to go ahead and continue until 12 o'clock.

Mr. McCombs: Mr. Chairman, point of inquiry. Is there any way to stop him after dinner?

Mr. Farmer: I would like to know what right this man has got to get up here and cast censure over his brother-member?

Mr. Chairman: Go ahead, Mr. Farmer.

Q. Now, Mr. Holmes, if the East Texas producer has oil that is just as good as the Amarillo field, and the gathering charge and transportation charge from Amarillo to tidewater, and you are paying 40 cents this morning—that makes 90 cents—if we empower the Railroad Commission to set rates on pipe lines, and we were to reduce in the State of Texas, the rate on pipe lines to 30 cents instead of 37½ cents, would he get the benefit of that price?

A. He probably would get the same price the producer in East Texas is going to sell at, he has already about 50 cents, he is going to have to meet competition from wherever it comes.

Q. If we set the price on oil, on production, won't you import oil from a foreign country?

A. Won't we import it?

Q. Yes, sir, if we raise the price in Texas by any method or scheme we use, won't you import foreign oil?

A. We won't, others might; but you have your remedy in that.

Q. Mr. Satterwhite desires to know if you refine all the oil that you produce?

A. Well, we refine more oil than we produce.

Q. All right, that is what we wanted.

A. But we are selling crude as well as other products.

Q. You sell crude and buy crude?

A. Yes, sir.

Q. You refine the larger part of what you produce, and, in addition thereto, you buy crude oil?

A. Yes, sir.

Q. Now, Mr. Holmes, when this company started 28 years ago, it had a capitalization of somewhere around a million dollars, didn't it?

A. I think the original authorized capital was three million.

Q. And today the stated value, book value of this company is nearly six hundred million dollars, isn't it?

A. Yes, sir.

Q. In 28 years, then, you have increased from less than $3,000,000 to six hundred million dollars—you have had that increase?

A. Yes. They—may I make an explanation there?

Q. Yes, Mr. Holmes.

A. When you talked of the earnings this morning, I am concerned with the fact that you and others may confuse the rate of earnings and capitalization, rather than the investment in business. The best year we ever had was 1929, as I remember, in the way of earnings, and that was about 8 per cent on the capital invested in the business. That capital, over and above dividends, has come from the money put in it, as well as the excesses—or excess of earnings over it; it is their money, on which they are entitled to proper earnings.

Q. In your confidential report of 1930, as to sales, you made the statement that your sales fell down largely

due to the lack of sales in gasoline, did you not?

A. I don't get your question.

Q. I say, the price of gasoline was what affected your returns for 1930, wasn't it?

A. Very largely.

Q. Now, who had been getting the benefit of this low gasoline, the consumer or your major pipe line companies of Texas and the United States, or the few who produced the oil, who has been getting the benefit?

A. We might disagree as to what the benefits are. You mean who got the lower consumer's price? The consumer. Let me correct another impression, too; you talk about this as being a confidential report,—that report goes to every stockholder, some 75 or 80,000 stockholders, goes to all operators, banks and newspapers and everybody else. It is not confidential, it is public.

Q. You don't send it to the members of the Legislature, do you?

A. We send it to everyone who asks for it, it is free to everyone.

(Thereupon the hearing was recessed until 2 o'clock p. m. the same day.)

The Committee met at 2 o'clock the same day, Thursday, July 23, 1931.

R. C. Holmes resumed the witness stand and further testified, as follows:

Questions by Mr. Farmer:

Q. Are you ready, Mr. Holmes? I am about done.

A. I think I can hold out as long as you can.

Q. Longer. Mr. Holmes, the members of this House recognize you as a great expert, and your knowledge, with your long record in the oil business, is why we are so particular—so persistent in seeking the information that we might intelligently ask. Mr. Holmes, as president of the Texas Corporation, with its 35 subsidiaries, it is within your power to refuse to take oil that is below a dollar a barrel, isn't it? In other words—

A. Yes.

Q. — Mr. Holmes, it is within your power as the executive of this corporation, on the advice of your directors, to refuse to buy oil if it is below its value, isn't it?

A. I think we would be within our legal right and within our power.

Q. To do that? Then, Mr. Holmes, do you think the pipe line rates from the Kilgore field and the other East Texas fields that are now—that they are too high?

A. No, I don't think they are too high, we try to fix them as nearly right under the conditions as we can; they are considerably lower than the rail rates.

Q. The pipe line rates made by your company and the other companies are on a par, are they not, under the same conditions?

A. No, I think they vary to some extent.

Q. Is there any competition between your company and the other companies in their pipe line carrier charges?

A. Yes, sir, I would say there is competition between the companies.

Q. What does it cost to lay a 12-inch main per mile for carrying oil, approximately?

A. Well, of course, that depends somewhat upon the length of the line, and the country you go through, etc.; it would be a very rough guess, but I think that (figuring) in the neighborhood of $35,000.

Q. That is for a 12-inch main approximately,—the price?

A. Yes, sir.

Q. Would an 8-inch main be about two-thirds of that price?

A. Well, possibly, roughly. I am not an expert on that.

Q. I understand, Mr. Holmes—just approximately, I want some idea about that, because, now, Mr. Holmes, you recognize that (showing pamphlet) is the annual report of 1928 of your company, it is not?

A. Yes.

Q. And this (another pamphlet) is the annual report of your company for 1930?

A. Yes, sir.

Q. Now, is there any explanation you would like to make at this time, Mr. Holmes, in regard to any question I have asked—we want to be fair?

A. I think I would like to make this explanation or suggestion: There seems to be some question as to the determination of the market requirements. I suggest for your consideration that you who are considering that subject, that you have the estimates, for what you do and will have to do undoubtedly in the future, of the Economists Committee of the Federal Oil Conservation Board—you

have the report of a similar committee—the American Petroleum Institute—and if your machinery is so set up, either with or without a conservation law, the Commission or Representatives can confer with a similar commission or authorities in other States, to have a very good way to get some sort of check upon your own figures, and the figures that may be submitted by the committees of the oil industry; I think the clearest, fullest extent you may use all such commissions that are handling the main subjects, the easiest it will be to determine what would be the right measures for your own Commission to take. I have no other statement.

Q. Anything further, Mr. Holmes?

A. No, sir.

Mr. Farmer: Now, Mr. Chairman, at this point—

A. Except this.

Q. Yes; go ahead.

A. In the morning papers, in big head letters, it was stated that I advocated price-cutting. I am sure no one here got that interpretation from my recommendation. I merely recommended such action by this Legislature as would bring about improved conditions by their control, with the hope that at the same time it will result in better values for these commodities.

Mr. Greathouse: Mr. Speaker and Chairman: It is understood that Mr. Farmer represents classes and might be recognized as also representing Tarrant county, and we all being interested and to save a little time, I, too, would like to ask one question, to ask Mr. Holmes. Have I got that right?

Mr. Farmer: Yes.

Mr. Greathouse: I would like to ask Mr. Farmer, in order to get rid of this investigation, to get on and do something, to ask Mr. Holmes if he has got a dollar, where he got it and where he is going to spend it.

Mr. Farmer: Now, Mr. Chairman, at this time we desire for the benefit of the members, to have page 7 of the 1930 annual report of the Texas Corporation printed in the Journal; and also pages 16, 17 and 18 of that report, for the benefit of the members; and pages 18 and 19 of the 1928 report—printed in the Journal for the benefit of the members.

Mr. Chairman: You want to offer that for the records?

Mr. Farmer: Yes, sir, five pages, Mr. Chairman.

Mr. Satterwhite: That might not be incorporated in the record, but will be printed in the Journal.

(The items referred to by Mr. Farmer were received in the evidence by the Committee.)

Questions by Mr. Satterwhite:

Q. Mr. Holmes, is your company an independent oil company?

A. Yes, it is. It has no connections with any other oil company.

Q. It hasn't?

A. None at all.

Q. You state under oath to this Committee that you have no knowledge of any effort on the part of any combination of the companies to fix the price of crude oil; will you state that?

A. I do.

Q. Not either by code of ethics or any other method?

A. Yes.

Q. That is your statement under oath?

A. That is my statement under oath.

Q. Do you know, except as to your code of ethics here in the sales of gasoline, is there any other method by which you would agree upon the price of gasoline?

A. No, there is none; and that code of ethics has no provision or opportunity for fixing price.

Q. Do you have any agreement with any companies when you go into a field with your pipe lines, with other competing pipe lines, as to rates, etc.?

A. Haven't, and never have had.

Q. Either on price?

A. No, sir.

Q. Would you object to stating to this Committee—you need not answer this question unless you feel that it is all right and permissible—many of the members have been anxious to know what salary you are being paid at the present time by the Texas Company.

A. I would have no objection—

Mr. Adams of Harris: Mr. Speaker, I am going to object to that question, because the witness ought not to be placed in that attitude, it is imma-

terial to anything in this case, and I think the question improper.

Mr. Chairman: I don't quite understand the question.

Mr. Satterwhite: Whether or not he would object to stating what salary—what his salary is as president of the Texas Company.

The Chairman: I don't see where that has any bearing on it.

Mr. Farrar: Mr. Speaker, it might be embarrassing and is absolutely irrelevant.

Mr. Satterwhite: The only reason for the question is that if the oil business is subject to legislation, then the public has a right to know something how the oil organizations conduct their affairs, whether or not they absorb much of the profits in salaries, etc., and so on—that is the only reason for a question of that kind. (To the witness: You need not answer the question.)

The Chair: The Chair understands Mr. Holmes went into details before noon, telling about the operations and losses of the Texas Company. It seems to me that is sufficient information that would be of any interest to the House and to the Committee without going into detailed information as to salaries.

Mr. Holmes: I will state to the Committee that I would have no objection whatever to giving the Committee for their consideration the salary. I am perfectly willing to say to this House that I do not think it excessive, but that it is, as salaries go to heads of large corporations, modest—it is nothing like the salary paid by Bethlehem Steel, or some others in this country.

Questions by Mr. Nicholson:

Q. Mr. Holmes, I would like to inquire just a little bit further about the identity of the Texas Company, the Texas Corporation. I would like to ask you this question—who owns the Texas Corporation?

A. The Texas Company is owned by a total of some 80,000 stockholders, I think, at the time of our last report, December 31, it was close to 75,000. These stockholders are scattered all over this country, and all over the world. Some 20 per cent of that stock is held by women stockholders, and I think, 40-odd per cent by individual men stockholders.

Q. Is any appreciable amount of stock owned by any one person, or any one interest?

A. No, there is less than 2 per cent held by any one interest—there is no interest or individual that has as much as 2 per cent of the stock of the corporation.

Q. The question of conservation in domestic use invariably invites consideration of a question of import. I would like to know your personal view about the matter of restricting the importing of crudes, whether or not you feel that under present conditions the importing of crude ought to be restricted?

A. My feeling about that has been during this consideration of tariffs and other means of restricting imports, that in principle it is not desirable. It encourages the further development of refining—of the refining industry in other countries, it would absorb, unquestionably, a large part of the market—that is the supply for markets which we now enjoy. I think before that is considered, it would be wise to get our business in order now; when you have done that, if Venezuela or importers from other countries disregard those efforts, then you can resort to tariffs, restricting, or whatever it may be, to correct any serious difficulties that may arise from their disregard of such conditions here, and that, instead of being neutral on the matter of tariffs, are in principle opposed to it, I would then be in favor of it if there is gross disregard for the interests of the industry in this country.

Q. In volume, how do the imports now compare with the exports of crude oil and the products of crude oil?

A. I do not have that very definitely in mind, but I think it has been stated that the gasoline import, or the gasoline contents from crude imports are about one-third of our gasoline imports. I am not sure about that, but that is my recollection. The imports have declined a little in the last few months; I don't know what it has been.

Q. I have been asked to inquire whether or not the country of Russia exports into this country considerable crude oil or the products of crude oil?

A. No, sir, they do not—have not.

Q. Do you think that the small independent producer would survive long under a condition of unrestricted field development, such as we have now?

A. Well, I think that probably a great many might; many of them I don't know, because it is very well known that a great many of them now are in a serious financial difficulty, and it costs more to produce oil than they are getting for it.

Q. Then it is your view that any efforts that might be made—any effective efforts to co-ordinate production in the fields with the consumers' demand, would have the effect of prolonging the life of—or perhaps maintaining in business a great many operators who are not strong financially?

A. Yes, I do, I think that would be giving relief to the so-called small operators.

Q. Here is a thought, Mr. Holmes, I have in mind—I don't know whether I can properly develop it by the questions or not. It has been said that pipe line activities have at times been profitable during periods when the owning company either lost or made no money through refining and marketing operations, that statement has been made here. Now, if losses were taken or no money is made in the marketing division of the business, it is very apparent that you are trying to live in a highly competitive market somewhere. Is my understanding correct, that that situation is particularly true in the foreign markets? Now, should the industry be driven from recovering the losses they have from some other division of the business, would it not result in a decreased capacity for the use of crude oil?

A. Well, there is no question about the competitive condition in the market, not only abroad, but here, and it is as highly competitive here as any place. Naturally we would like some of our operations left us where we could make some money. When—one reason the pipe lines make money during periods of depression, is that the rates remain as practically stationary, and volume; usually they have made more money in the first place when the balance of the industry was more or less depressed, because there is a larger volume of movement, so as it turns out in this case, there is no reason why the pipe lines can't or should earn less than they would under restriction than under more distressed lulls for the industry generally. I am not sure whether that answers the question or not. There is this about the pipe lines: when you consider the question, it is desirable to consider all pipe line questions as one, and not pick out any particular one as being a sample of earnings for any particular year; why, take a period of years and take pipe lines generally throughout the country as an average, and I think it will be found that under all, considering the risks, that it is not excessive, and that any change in it would result in any particular benefits to the other branches of the industry.

Questions by Mr. Graves:

Q. Mr. Holmes, there is a matter of local and personal interest I want to inquire about. I come from Williamson county. Are you familiar with the organization of the Texas Company?

A. Not in Williamson county, no.

Q. Do you know that Judge Hogg and R. E. Wilson of Williamson county organized the company?

A. All right, that was just a matter of personal pride.

Mr. Sherrill: Mr. Holmes, I want to ask you one question—I don't know that you are interested in that line or know much about it, and that is the refining end of this line. I would like to know what the common run of oils from a barrel of oil, either under the cracking process or straight distillation process, without considering the addition of any by-product, such as animal fats, or anything like that, or viscosity—what is the common run of that oil worth?

A. What is it worth—?

Q. Yes, sir, per gallon.

A. Well, today it is worth less than the cost of crude plus manufacturing costs. Now, we very often have what our manufacturing costs are, but that depends on so much in the oil you are running and what you do with it. In the ordinary stripping and strapping, where you take off for any reason a little fuel oil, that is a plain operation, but where you take off useful and various contents of products, it runs many times into the cost of strapping, and, say, it costs, in very large operations, costs from

$1.25 to $1.50 a barrel; that cost of crude is more than the market value today; deducting the cost of marketing, it is more than you realize, because the refineries generally are losing money.

Q. In other words, with all by-products produced from a barrel of oil, there is nothing much to speak of made in the refining processes at the present prices?

A. No, sir. The question of lubricating oil comes up later—now, you think lubricating oil to be a very high-priced product, but it yields very small; we run about 60,000 barrels a year, and our production of lubricating oil is a little less than the cost of producing.

Questions by Mr. Laird:

Q. Mr. Holmes, is it the policy of the Texas Company to instruct its sales agents of its refined products not to handle any products of any other company, such as lubricating oil, manufactured by other companies?

A. No. That is a matter of policy of the Texas Company by the executives' officials. Naturally, we market for the most part only our own product. We have in some instances marketed other products, but it is not a general practice with us at all.

Q. My question, then, to put it concretely, is, does your company permit the Texas stations to handle Quaker State lubricating oil, or any other lubricating oil except the products of the Texas Company?

A. Not as a general practice. There are instances where we allow one of our own controlled stations, possibly, to handle some other oil, but that is not a general policy of ours to allow it; our efforts are to market our own products.

Q. In entering into a retail contract with an independent filling station owner, do you stipulate the price they shall sell the gasoline and lubricating oil at retail?

A. Repeat that question.

Q. In entering into a contract with an independent filling station owner, do you have in that contract the price stipulated at which the station owner will retail your gasoline and lubricating oil?

A. We do if he is a commission agent, if he is selling as a commission agent for us, we do. If he is a dealer, I understand we don't—if he is an independent dealer, and we sell the products on margin, under price, and then we don't have any contract with him as to what the price shall be; naturally, we are hopeful he will maintain our prices. As I understand it, we have no contract of that kind.

Q. If he does not maintain your price, you withdraw your connection with him?

A. I think I was asked that same question yesterday. I don't know whether we would, but my disposition would be to withdraw.

Mr. Hardy: Any further questions? Mr. Holmes, we are obliged to you for submitting to this long examination. You will be excused at this time.

(The witness was excused.)

Mr. Hardy: Mr. Chairman, and members of the Committee, it is the desire of the Committee that the examination of the next witness, or inquiry be made under a new policy. I will say so far as this witness is concerned, we desire to let him give his statement without question, and then after he had made his statement, any examination being made by the Committee will be under oath; and we ask that Mr. Ed Mayer be called to the stand at this time.

The Chairman: I understand you don't desire the court reporter to take it.

Mr. Hardy: No, sir, we dont care to have his statement taken at this time by the reporter.

Mr. McGregor: Mr. Chairman, I think that would be a mistake, not to take his testimony. The only way to get his testimony is to have it taken down by the reporter, and we have to read the report. We are taking evidence in this hearing, and the witness should be sworn, and should give sworn testimony.

The Chairman: No, gentlemen, that I may fully understand the suggestion upon the part of the Committee, it was simply suggested that the witness be not sworn so far as making any statement which he wishes to make is concerned, but that the statement shall be taken and printed in the Journal but not incorporated in the reports of the testimony by these court reporters, for which we are paying $1.25 per page. The witness will be sworn for an examina-

tion which the Committee shall make of him.

Further objection being made to the procedure of not taking the witness' statement down, Mr. Hardy said:

Mr. Hardy: All right, Mr. Speaker, just go ahead and swear the gentleman. We were just trying to save the House some expense, but we are perfectly willing to have him sworn at this time.

Ed. R. Mayer was called as the witness and having been duly sworn testified as follows:

Questions by Mr. Satterwhite:

Q. Mr. Mayer, will you give the reporter your name, please?

A. Ed R. Mayer, Amarillo, Texas.

Q. What is your business, Mr. Mayer?

A. Well, I am a business man here in Texas, and I own a hotel, I am president of the Johnson Ranch Royalty Company, have about 22,000 acres of land, and some 300 oil and gas wells on it.

Q. How long have you been an oil operator?

A. I am also president of two or or three other companies, and I am a dirt farmer.

Q. How long have you been an oil operator?

A. I have been in the oil business since 1917.

Q. Are you classed as an independent or a major company?

A. I am classed as an independent.

Q. In what part of the oil business have you been dealing?

A. I think I have been in nearly every department of the business,—that is, I have bought titles to land and taken leases, have drilled leases, have been in the engineering department, in the erection of refineries, and assistant manager to the W. G. Williams Empire Refineries, in Kansas, Oklahoma and Texas, have laid pipe lines. I have never run a competitive drilling station.

Q. Mr. Mayer, you understand the purpose of this extra session of the Legislature is to inquire whether, in the judgment of the Legislature, a law should be passed for conservation of oil and gas in this State?

A. Yes, sir.

Q. And to dig it out of its present deplorable condition if they can do so; and our purpose here is to get information along that line. Now, you make such a statement as you have in mind with reference to the condition and what you believe possibly is the remedy; but before I go further may I ask you this question; have you prepared a bill that you believe will reach this situation?

A. Yes, sir.

Q. Has that bill been introduced in the Senate?

A. Yes, sir, it was introduced as Senate Bill No. 5.

Q. You may discuss now, Mr. Mayer, your bill, and what you believe is the trouble with the oil business, and what its remedy is.

A. Well, ladies and gentlemen, you have heard this matter discussed here all week by employes of the State and employes of the oil corporations, and I believe by one attorney, Mr. Hunter. Now, I propose to talk about this oil business in this State from the business standpoint of it, just as nearly as I can. This is the business standpoint from all the citizens here in Texas, because I have been a citizen of this State about 20 years, and have invested about twenty million dollars in the State, and so it is from a business standpoint I am perfectly willing to go into it, and talk of the thing, and it strikes me the business angle is what interests this Legislature, as you are all practical men, or you wouldn't be here. Now, it strikes me, that this oil business and the row that is going on in this business is a good deal like that of union and non-union men, organized unions, and some of them wish to go back of the rules of the organization, and those other folks are trying to make a living like them.

The oil men wouldn't let one another live, and as it is, fighting among themselves, they have absolutely disorganized the oil business in this State, by reason of the row that is going on in the oil business itself. Now, to look at it from a business angle and give you a very brief summary, you have it right down to date, I will say the coming events always cast their shadows before, and for the last few years men in this business have known that this was coming, some six or seven years ago. Some six or seven years ago there was a shortage of oil in this country that required a congressional investiga-

tion, and there was an investigation generally to investigate the condition of oil; expert engineers went into that and began experimenting on shale oil, and I went to Colorado and found it cost $4 a barrel to make shale oil—and I came back home.

Now, the big major companies—I will give a definition of the major and independent companies. The major companies first saw the shortage of oil and began storing oil, and there was a wild scramble for oil among the oil men themselves, before they got it through their mind about the changed condition in their own business. They all rushed to the new fields—the oil men all rushed to the new fields as soon as they made a new strike. Now, the time has come when there is not more than 500,000,000 barrels storage accumulated, so the folks that are bothered with that particular trouble have conceived the brilliant and not unwise idea that it was a good thing to store oil in the ground, and it looked to me like it is going to be the policy for the next five years. The question comes up—who is going to store it in the ground, and what is going to be the rule for storing it; in other words, when you store it in the ground, is it conservation. Now, in regard to that, I am going to say—that is what interests you folks here, who is going to get this oil and what are they going to pay for it as they take it out of this ground storage. Now, I will say this to you, some of the figures I have got were gotten from the Independent Association, of which I am a director in this State. We have spent a great deal of time getting these figures. I will say this, however, that any commodity, be it wheat, oil, cotton, or whatever it is, that whenever the production in this country gets to be 10 per cent more than consumption, that the price of that commodity is fixed by demand, and what the cost will be for that surplus is the cost of—less the cost of freight to that country. Now, whenever we have 10 per cent shortage in any commodity, such as wheat, oil, cotton, crops you are familiar with, the price in this country then is set by what we have to pay in Europe and other countries for that commodity, plus the rate of this country. Now, that is the fixed law. It isn't possible to store any amount of a great national commodity. Now, take this oil, that oil was generally taken for the future and held as long as they needed it, we had no oil shortage in this country, but as soon as automobiles were running, the use of oil and its products became so universal that 76 per cent of the market is right here in the United States for oil products.

Now, as to supply and demand, there is no supply and demand for oil. Five hundred million barrels in storage and with major corporations who have grown tremendously, partly controlling the market to the extent of 90 to 95 per cent of the market, and also being engaged in the production end of the business, and have invested a great amount of money in storage and production of wells on a vertical check-up, forcing the oil supply to fix that law of demand, and the law of supply has gone wild and is controlled and is now governed, in my opinion, by the major oil companies.

Now, the question has been asked, what is a major oil company, and I heard one witness say he thought it was part of the Standard group, Rockefeller group. I do not think that is a fair explanation, gentlemen. Now, a major oil company is any company that has a vertical set-up of operations. By that, I mean they have their land department, their oil purchasing department, their subsidiary companies, they have their own wells producing oil, they have their own tank farms to store oil, they have their own pipe lines for transportation, they have their own refineries to market the oil, they have their own developing companies or agencies to distribute their products, and now, in the last few years, they have been putting in great chains of filling stations across the continent to distribute that product directly to the consumer. That is a vertical set-up, and the money comes right straight out of your pocket. And that is a major oil company.

Now, we have small major oil companies in this State that have that vertical set-up, and under present conditions they are getting along pretty well.

Now, you want to know what an independent oil company is. My explanation of that is, an independent oil company is any operator in any one of these departments in any respective field—in any respective field. I think the name mentioned was conferred by the independents upon the

big companies, in about the same sense as the colored help of Kentucky apply the title "Colonel" to their employer. But I believe the name "independent" stands for individuality, and stands for the individual rights of the individual.

What is the position of land owners in respective fields? Another interested is the land owner of Texas, and that covers through Texas, Oklahoma and the Southwest. This land owner is interested in the royalties of his land, and he is interested, folks, in the rentals of that land he gets, because they are very important to him and they go to pay the taxes on that increased valuation that your commissions around this State put on that land when it is even suspected of being oil land.

Now, the question is—what is the position of contributing businesses, cities and counties in respective fields. Now, in the business of this great industry, the independents and majors are great factors in the development —the developing of railroads and supply houses, and a tremendous amount of traffic goes over these railroads. And also the labor industry of this State is affected, and then we have the public welfare interested, the merchants, cities, counties, and the State. Many of these beautiful cities that have been built in the Southwest have been built with oil money, principally new money. Now, I will ask you this question, of what economic value is the oil in the State of Texas? Now, to compare oil with cotton, wheat, or any other crop you can name, is not there—if you want to call it a crop—because oil does not become of economic value unless it is discovered, seized and disposed of, it is a question of what we have. Now, there is a supply of new money that comes into circulation. There is no case that is not analogous. When our cotton and wheat farms in this country produce their yield, we gather our crops and take them to market, and we have that money spent before we get it; if we pay interest on this land, we are doing well; but there is one advantage to that, that the oil business hasn't got: You can have a poor crop and get by, and the next year make another good year,—crop —and will average a fair return on your investment.

Now, one thing that has not been discussed here,—we have heard market demands discussed, we have heard market prices discussed, but we haven't heard market values discussed, ladies and gentlemen, and that is what you are going to decide conservation on—is market value, not either of the others. That will be determined in laboratories maintained in this State, that is where it is determined. In the past there was talk in the oil fields about sulphur, whenever a new field was discovered they talked about sulphur, it was very poor quality because there was sulphur, and sulphur eats out the tanks. The next talk is about salt water. As soon as these little fellows discovered a new field—and they are generally the discoverers—the oil is practically unmerchantable, and of very poor quality, until the time comes when the field is absorbed, and then they discover that that oil is very good oil. In the case of the Panhandle, it is a very high and fine oil, but in the early days it was very bad oil. Now, they put that information out for the purpose of discouraging confidence in the market value of that oil, and these people around this State should get some idea of that market value, and should also obtain bonuses to place on the land, to make it very desirable, and have an open market for oil.

Now, we come to foreign oil, which we have got to consider here because that has quite a lot to do with the question of determining the value of our oil. Nevertheless, foreign markets play a big part in the operations of our market. We get our Mexico oil back on the line that Old Mexico cut off about five years ago, when it was declared in their land bill that the oil belonged to the people of Mexico, but Mr. Morrow, sent down there as Ambassador, and, as I understand it, arranged a loan for them, and got that oil loosed. Now, that amount of foreign oil since a time, as late as 1924 has gone up to 60,000,000 barrels as a minimum figure; and down on the coast of Venezuela are two or three big refineries of the most modern type in the world, that, I understand, has a capacity of two or three hundred thousand barrels of oil a day, so they are now shipping a long line of products to this country, my understanding being from the Independent Petroleum Association that it is equivalent to two hundred million barrels of crude oil a year; and it is this foreign oil that came into this

market that upset the American market, and put us in the condition of so-called overproduction, for which we are now paying the penalty. I want to say to you I went to Washington as representative of the Governor of this State, and made as hard an effort as I knew how, along with other men, to get a tariff put on that oil, and I also wish to admit to you right now that after having continued these investigations further, I am of the opinion if we don't put our house in order that tariff won't be the relief we expect it to be, because if we got a tariff at that time, in 60 days we would be in the same condition as we are now. Now, this foreign oil is gauged, and the investigation held in the United States Senate, as I understand, figured at the rate that oil could be laid down here, it could be laid down at a profit of 76 cents a barrel. The total amount of foreign oil coming into this country is only about 10 per cent of the reduction—I mean consumption, in this country, 10 per cent of the consumption in this market is controlled by the price of foreign oil, just like the wheat, and cotton and other commodities when they are thrown on our market.

Gentlemen, the loss of wealth in this country due to waste of gas is appalling. I used to make gas,—artificial gas in a State, and sell it to people in the State of Texas. It cost us at that time, the actual operating cost to manufacture, 70 cents, and, think of it, we couldn't sell it at $1.00, sold it at $1.35. Now, I will give you some figures: Up in the Panhandle there are 4,000 wells. It is perfectly safe for me to say that for two years there was never a day that at least one billion feet of gas was thrown away. Some of these wells went as high as 60 feet, wide open, for two or three months. Now, just figure that on a basis of 25 cents a thousand, which is a just market price; in any city in this State that gas is worth $225,000 a day, and going to waste there. The replacement value of that gas is worth $350,000,000 a year from one field, and that has been going on all over this State. Folks, I say to you that a conservation law is needed—and that is only a start, that is only a sample—an enormous amount of waste is going on all over the State, due to the kind of thing that ought to be stopped and can be stopped and should be stopped.

Now, I want to ask this question: What is the position of the restricted independent now by independent oil men in various places as to production transportation and marketing? That is the independent man whom I have described in this State. I will answer that and say that the subject is subjected entirely to local conditions. Now, what was the position of the major oil companies in the various fields as to production, transportation and marketing? And I will answer that question by saying to you, that all the oil fields in this State, and in many cases, in other states, are regarded as only unit companies, and that is the vertical set-up which they have.

Now, what is the position of the land owners in respect to value? Now, the land owners are subject to local conditions only, so are the contributing businesses, especially the cities and counties, near to and where these respective fields are; in other words, whatever happens to this one field in the way of prosperity helps the welfare of that county or that city adjoining there, because the oil development generally carries in and reflects the new wealth in that area.

Now, what is the position of the State of Texas in this matter? The first position is that Texas should preserve her priceless heritage by conservation and prevention of waste. Second, that they should have a rate of exchange on prices and the value of all gas. Rate of exchange, now just what do I mean by that? Folks, any State or any country prospers by a rate of exchange for its commodities and for the things you would have to buy. I am going to touch on that a little later. Of interest to the State of Texas is in the protecting the public against the higher price—the higher structure—on gasoline and other products sold.

Now, I am going to talk to you about the practical side of the oil and gas business, from the operator's standpoint. I have tried to segregate this subject-matter, you will notice; I will not go into a discussion here about the derivation and particulars about oil fields unless you request me to. I will only say to you, briefly, that oil is trapped in the ground according to its specific gravity. I will explain that to you in a way which should be readily understandable: If I have a five-gallon bottle on this desk and put into it a gallon of water, a gallon of oil and

three gallons of gas, the water would go to the bottom of the bottle, the oil would rest on top of the water, and the gas would be at the top under the cork. These three structures, or substances, are found in a fault in the earth, or plateaux, or any one of a half a dozen conditions in which oil is trapped in the earth; this fault in the earth is in the form of an inverted bowl, where the oil is trapped, together with the water and the gas, in the same positions as they would assume in this bottle on the desk. Around this structure is a great sea of water, generally salt water, which has been there from some old prehistoric salt beds. Now, the law of the jungle, which has prevailed in the oil business up to now, and you can't call it anything else except the law of the jungle, has meant that the man who got down his wells the fastest would be the man that got the most oil, while the oil on the top of this dome is allowed to blow away, and the man that got on the edge of the field got the salt water and lost his money. If he got edge wells, pretty close to the edge of the field, where he got some oil and some water, why, he might have got his money back out of it. The result of that has been that there has been a tremendous waste of the oils in those fields, both in the wealth of the fields and the recoverable amount of oil. This gas, which is extracted from the top of the structure, represents the pressure and is known as fixed gas. This gas is under a pressure that represents the hydrostatic pressure of the salt water area surrounding this field. Also, it is sometimes referred to as rock pressure, because, with a greater flow, the pressure will drop considerably, due to the hydrostatic pressure. The rate oil is taken out of the field depends upon the porosity of the formation. To illustrate, if you will take a brick and put it in a pail of water and let it soak overnight, you will be surprised to find out the next morning that overnight that brick will absorb 20 to 25 per cent of the water; in other words, there is a 25 per cent void in that brick which looks so solid to you. That void under the earth represents the quantity of oil in that formation, and that can be calculated, and the quantity of gas also can be calculated with fair accuracy, making allowances for differences of formation throughout the structure. Now, I am going to drop the geology of that unless you want me to go back to it later.

I do want to talk about the legal aspects of this thing and the customs that has prevailed. Under this old law of the jungle that the first one gets the oil and the devil take the hindermost, it was necessary to drill at once in a field and to drill the necessary offsets and drill sufficiently in order to hold that title. Any effort at regulation would mean that the land owner would rise up and sue you on the lease, claiming that his neighbor has been getting all the oil. Those leases have been fought over, and the Supreme Court has kind of passed the buck because, when a man took a lease, it said he took title to everything, minerals and all, subject to conditions, subsequent—whatever they are—as to equity, I presume, with regard to the surrounding land owners. Now, any effort to prorate fields means that other courts are coming in and saying that this well must be shut down and that one shut in, and then, also, under these orders, the pipe line companies claim that they can't give you a connection to the well under the present conditions of overproduction; and so we have a paradox in the leading decisions in the oil business at this time which are most confounding to the average operator, and under which he cannot live, and in my opinion it is now necessary for this Legislature to declare a public interest in this oil for the welfare of this State for reasons which I am going to give you, and am giving you, and thereby put some sort of system into these oil fields which will permit the conservation of oil and gas and do away with this unreasonable litigation that is bound to result therefrom.

Now, oil having been produced from one of those fields and transported through the pipe lines, you men are interested in the markets, as you represent the people of this State, and the processes by which this oil is refined, which are, first, the skimming plants, which, unfortunately, are owned almost in every instance by the small operators of the State with a small investment; the other is known as the cracking process, on which patents have been taken and are pretty closely held, as I understand it.

Now, under the skimming process, oil is merely boiled at a temperature of 180 degrees, until the gasoline is

boiled off of it — that is below the boiling point of water. Then the gas or vapor arising is condensed through condensing coils, taken off and sold on the markets, and it is good gasoline, too. The other gasoline content may be saved or may not, and the whole balance may be sold as fuel oil, as it often is.

Under the cracking process, we have quite a different condition; the cracking process—I doubt if any good cracking plant, together with lube plants, could be built for less than $1,000,000 to $1,500,000. In a cracking plant they get an average of about 45 per cent gasoline from the average oil by cracking this oil off at much higher temperatures, and being a different method entirely, whereas they get only about 14 per cent on a skimming plant. Now, at the ordinary cracking plant and lube plant, a first-class plant, they also make kerosene, they make benzol, they make methane, and many other things, and they get their lubricating oil, a light oil, and a heavy oil, and what is known as gas-oil. Now, they get into the light fuel oils for the lighter motors, and into the heavier fuel oils for the heavier motors, and the balance is either asphalt or paraffin base, which is also utilized. I will touch on those plants again and show you the tremendous difference they make in the outlet, because there is competition between these two kinds of plants.

Now, the question has been asked here, and I am going to answer it: What is proration, and how has discrimination as between fields affected major companies, independent operators, and the economic welfare of the State? Now, I won't go so far as to say that proration was a deliberate scheme to handle the oil of this State; I had better give those men who started it the benefit of the doubt, and say that having a tremendous storage of oil on hand, and seeking ways to store this oil in the ground, they hit upon the plan of not taking so much oil from the pool as they had formerly, and there being as I understand it, in the first pool in which it was tried, a few major operators and only a few minor ones, they were able to put that plan into effect, and that they thereupon conceived the idea that that would be a very good idea to enforce upon everybody else in the oil business; but I will say this, gentlemen: that the kind or proration we have had the past two years is not enforceable and it is not healthy. It is not fair; it is unjust, and, in my opinion, it is illegal. I think there was an evolution of this idea, having tried it once; and the way it is formulated, it represents an evasion of the anti-trust law by heavy operators getting together in a field and themselves joining in a combination in restraint of trade and by coming down here to the State of Texas with some sort of an instrument in their hand and begging the Railroad Commission to put it in effect for them, and they take the sole responsibility for it, but I say if any evil results, that there is no recourse. Now, proration as tried would not be practical or just anywhere, but as it has been working, it is very unjust and discriminatory as to many fields, because it has been put into effect on some fields in the State and not on others; now when that happens, that brings about an unbalanced and uneconomic condition in the oil production in this State, without regard to the parties' intent. Now the way that has worked out, the majors have been able to reduce the rate of production and hold oil in one field while taking the flush production of another new field at their own posted prices, thereafter back-posting such prices in all fields. In other words, they have cut down the rate of production in certain fields, and gone into another flush field and taken the production from that field, which is thereupon called distress oil, as you have heard it expressed here, at their own posted prices; and—now get this in mind—thereafter, they have posted the prices on that flush field, back into those prorated fields. Now the independent operators in a respective prorated field have been instantly put out of business by having their gross income drastically cut down and all opportunity to increase production by producing more oil at lower prices stopped, thereafter abandoning their investments, laying off their employes and losing their credit ratings. Land owners have had their royalties greatly reduced, with drastic reductions in the bonus value and in the actual value of the property. The commercial business of adjoining cities has been paralyzed as all new money is immediately withdrawn from circulation. A business situation has then come about, whereby major companies can buy in properties of independents

and land owners at ten cents on the dollar. I am going to touch upon that question in a little bit. I have another thought and another theory in mind; now I am going to ask this question:

What is a common carrier pipe line, and its importance to the field? On oil, it is a connecting link to the market, and should be regulated as to rates. On gas, it is the controlling factor of posted prices in the field and to the consuming public. Whenever a gas company is set up in this State, practically every one that I have ever encountered, and I have myself drawn contracts covering these deals, pays a rate upon the basis of one-third to the gas company in the town, one-third to the pipe line company and one-third to the field. I figured on that question for one year, and find that is a pretty fair break, and whenever any one gets out of line its financial standing suffers and it begins to go out of business.

Now what is the market demand for oil and gas? The market demand? That has been discussed here. The market demand for gas is pretty well fixed; we can get at that, and we also can figure the supply of the oil by the cubical contents of the void in the known sands in any outlying field. The market demand for oil is something we have trouble with. That depends largely upon foreign exports, and imports into this country; it depends upon storage; the price can be kicked about on the policy of these big companies that they will take oil out of storage instead of from the field, or flow it direct from storage to refinery and replace it later with cheap oil from the field. Now as to those foreign fields and as to those foreign markets, I think those foreign fields are going to take that market; that seems to be the prevailing thought. Now we must look after our own home market, which is about 60 per cent of the market of the world. Now another definition of market value for oil and gas, is the highest price that can be maintained by companies having a vertical set-up on sales and the cheapest price at which they can buy their products in the field. I think that is a fair explanation of the market demand, with this added thought: no one should figure the market demand except on a 12 months' estimate in advance and having all the conditions of the oil market before them at the time they set up that estimate, and also having the figures before him of the State in which he is taking the calculation and also the other fields of the country. In other words, in a hospital, we would call that a major operation. I feel that we will have to look after the market value of the oil or the intrinsic value rather than the market demand in laying down the law for conservation.

Now, what is waste? If you will go to Webster's Unabridged Dictionary, you will find about four meanings of the word, about four meanings of the word waste, some going back to the early days in England. Waste is a physical loss of gas and oil; that loss above ground, and that loss below ground due to the water drive and loss of gas energy. Now, folks, what is water drive? I need to mention that because you are going to hear that discussed, and proration, and all those things. Now, instead of taking this thing up and talking about the oil and gas ratio, I will talk about the steam-water ratio in a boiler. When a boiler is under 250 pounds pressure, it is about two-thirds water and one-third steam. Under that 250 pounds pressure, it has a terrific explosive force in that boiler. I once set a 1000-horsepower works boiler seven feet high in a certain plant, and a year or so later I learned one of those boilers went through the roof and a thousand feet through the air like a skyrocket. What happened to that boiler was that the water expanded when the pressure was released; somebody had forgotten their fires and overheated that boiler, and what actually happened was the expansion of the water into steam when released from pressure, and that boiler went 1,000 feet into the air. That is what happens down under the earth when you get down into those rocks that have been there for countless ages and solidified. That oil and gas down there contains a high rock pressure, from 600 to 1600 pounds; when you tap that pool there is a tremendous explosive force there. That is what we call disturbing the pool; if there are a great many wells drilled, it disturbs the pool, and it forces the water and oil through the channels in the field too rapidly, and drives the water through the oil flow and traps off great areas of oil with water all surrounding it, which can never be

recovered. I say that is a waste, and one that engineers know very well of, and it is possible by guarding against it to more nearly recover all the oil from any field in Texas. Now there is the gas energy; if you don't throw that gas away, that is a fixed gas; if you will hold it in there at the proper pressure, it will bring that oil up itself by the pressure it exerts and the migration it has through the sand, mixing with the oil in order to get to the well, in order to equalize the pressure under the ground.

Now I will ask the question: What is conservation? I would say that conservation is regulation so that on the one hand the intrinsic value of the oil and gas is realized; so that the value and the price of the oil and gas is maintained above the reasonable cost of production, and that at the same time the sales price to the public of gasoline, gas and other by-products, is kept down to the price of healthy competition.

Now, I will ask the question: How can this be accomplished? Now, these are the remedies that I have defined, as nearly as I can, and as concisely as I can, that I think will fit these conditions that I have gone over with you here: First, establish a qualified commission, having authority and supervision to control all branches of the oil and gas business. I mean, so far as conservation is concerned and the prevention of waste.

Second, provide that the Commission shall regulate the production of crude oil and natural gas, circumscribe the authority of the Commission as to the manner in which proration rulings shall be ordered, define proration in equity among the fields in the State.

Third, provide that the financial integrity of investments from the standpoint of capital and labor shall be protected by ruling that all small wells up to, say, fifty barrels, shall not be prorated, and that such oil shall be released to market, and further define how larger wells shall be prorated and regulated to meet storage and market demand, forcing lucky operators with the same investment to take pot-luck with the rest of the State until a better demand calls for their production.

Fourth, provide for the storage of crude oil.

Fifth, provide for ratable takings for natural gas and protect the field price by prorating back to the field what we know to be the local demand. There's no question about that business at all, you can prorate it one way or back the other, and regulate it.

Sixth, provide that the Commission shall have control of and supervise the release of crude oil nominated in each field to meet the requirements of a reasonable market demand, and construe the word market demand. I will change that to read market value — market demand and market value.

Seventh, remember I said that the market demand is to be based on a year's estimate; that is not difficult to find in the oil business; that is well known. Now, seventh, provide for the conservation of crude oil and natural gas when public convenience and necessity can be better and more cheaply serve by foreign or other oil imported into the State, by ordering that crude oil or gas shall not be sold, purchased, exchanged or transported at an unreasonably lesser price. Now, there I have used a negative way to protect the public on the price structure at filling stations, because we know it is going to happen as more and more refineries are put out of business in the State, these refined oils and by-products are going to flow to the public through these filling stations from elsewhere, and so I have merely provided that crude oil and gas shall not be produced in this State at an unreasonably lesser price or value.

Mr. Beck: Say that over; I didn't get that.

A. I will read it again: Provide for the conservation of crude oil and natural gas when public convenience and necessity can be better and more cheaply served by foreign or other oil imported into the State, by ordering that crude oil or gas shall not be sold, purchased, exchanged or transported at an unreasonably lesser price.

Mr. Beck: Well, it's too deep for me.

A. In other words, that word, unreasonably, leaves a little margin in there, but any old time they bring the State producers to their knees, as they have now and cut the price to 10 cents, then I say it's time to step in and conserve that oil and gas.

Now, eighth, grant the Commission power and authority to prevent waste

and construe the meaning of the word waste. I say, the meaning of the word waste shall be construed. I think, gentlemen, that possibly a bill could be put to this Legislature, and possibly may have been in the past at some time or another, by which a purpose could be accomplished by indirection, but I don't believe the Legislature of this State should be a party to accomplishing anything or any purpose by indirection. I think you should define waste exactly, and define conservation in this bill.

Ninth, provide that the Commission is granted power and authority to effect reasonable conservation of oil and gas, and construe the term reasonable conservation.

Tenth, provide for the Commission to formulate practical rules and procedure which would make workable and practical all of the provisions provided for in this act of the Legislature.

Eleventh, provide that all agencies operating in the oil and gas business must operate under grants of public convenience and necessity, encouraging prospecting for oil and gas, protecting title to property, and construing the term proven areas in oil and gas fields.

Twelfth, provide for the application for such certificates, hearings by the Commission to applicants, and provisions for issue.

Thirteenth, provide for the character of service and rates that must be rendered by pipe line agencies. I say that because of the many independent operators who are operating in the respective fields around the State, and their interests must be looked after in that respect.

Fourteenth, circumscribe the responsibility of the Commission and make them responsible for their acts.

Fifteenth, provide funds, by taxation, for the maintenance of a commission in sufficient amount to regulate different branches of the business and maintain a laboratory to ascertain the intrinsic value of oil and gas produced in the State.

Sixteenth, provide for prompt redress against the acts, rulings and regulations of the Commission.

Seventeenth, provide penalties for infraction of rules and orders of the Commission and for enforcement and penalties for repeated and flagrant violations of this act, or established orders, rules and regulations of the Commission.

Eighteenth, provide for the conservation of natural gas and crude oil under the provisions hereinbefore set forth by declaring a public interest in oil and gas as fugitive natural resources, needing regulation and because of the State's tax interest, and State and school lands. Now, those are the provisions.

Now, gentlemen, if I can—I told you when I first started that I thought after all you are looking at this as a business proposition as a State. Now, if you regulate these oil fields, who is going to get the oil and for what price? We also want to maintain the price structure under competition in this State as to the refined products and to guarantee to the people of the State that they will not have to pay more than a fair price therefor, and to keep this business in a healthy condition.

Now, I am going to talk to you about these refineries that put this gasoline out to you at this time. The independents, or most of the independents, have skimming plants, for reasons that I have named before, on account of the great investment required by cracking plants. In order to exemplify this to you, I will take a figure easy for you to handle in your mind, and say about 200 barrels a day; that's a good easy figure to keep in mind; you have heard of wells making 200 barrels a day. Now, we will take 200 barrels of crude oil and run it through a skimming plant, with an average recovery of about 14 gallons of gasoline, and take this example. The posted price at the refinery at 3 cents a gallon would be $1.26.

Mr. Beck: Three times fourteen?

A. No, that is $1.26 a barrel, on the barrel basis—a barrel of gasoline.

Mr. Beck: What are you trying to show—the proceeds of a barrel of oil?

A. Yes, I am going to show the proceeds of 200 barrels of oil run through a skimming plant; I want to get away from this court basis and this unit basis, and just take 200 barrels of oil. Now at 3 cents a gallon for the posted price at the refinery, and I want to say right at this time I am getting a royalty of 1½ cents a gallon up in the Panhandle, so that 3 cents a gallon is a good price at this

time. They would sell their gasoline at $1.26 a barrel; they would get 67 barrels of gasoline from that 200 barrels of crude, or $84.42, and figuring that they will put the rest of the oil into fuel oil, which they usually do in the small skimming plants, and figuring 10 per cent loss, they would have 113 barrels of fuel oil, at 20 cents, or $22.60 for the fuel oil, or a gross revnue of $107.02 for that 200 barrels of crude oil. Now, they have got to pay the cost of that oil. Now the 200 barrels of crude oil in the field at 10 cents a barrel, the present posted price, would be $20; 200 barrels of crude oil, gathering charge at 12 cents a barrel, would be $24; a pipe line charge, and I am going to take the average figure that I understood Mr. Holmes to figure yesterday was 32 cents a barrel, which would be $64, making a total cost of the crude oil to that refinery or $108, or 54 cents a barrel, and the loss on this particular allotment would be about a dollar.

Mr. Beck: What is your plant cost —your refining cost?

A. That is a loss in this case, right now.

Mr. Beck: What will it amount to?

A. That will depend altogether on the plant. What I want to show here is that the price of this crude from 10-cent oil in the field, laid down at the refinery, that the pipe line charges absolutely absorb all the profit in that oil for the independent refiner. Now at 4 cents a gallon, if he got that much for it, and I want to mention that some of them do under private contracts they have around the country, then he would get $1.78 a barrel for his gasoline, and the 67 barrels of gasoline would bring a gross revenue of $119.26. The fuel oil, 113 barrels, would bring the same amount of revenue, or $22.60, making a total gross revenue of $141.86; subtracting the cost of the crude oil, at $108, this would leave a gross profit, without including expenses for operations, of $33.86, or a profit of 16.9 cents per barrel on the 200 barrels of crude oil. If this skimming plant has its own contracts for filling stations, at 8 cents, it will make 33.8 cents per barrel. If this skimming plant is a small major company set-up, producing its own oil, owning its own pipe line, refining, and having direct contracts with independent filling stations, it will make 50 cents a barrel by producing and selling its own crude oil in this manner. This is a gross revenue figure for the oil, without deducting expenses. Now I think those figures are fair, and I don't think any independent oil man in the State with a skimming plant will find a very wide variation on that 200 barrels of oil going through his plant.

Now I want to give you the same lot of 200 barrels of crude oil which would go through a big cracking and lube plant, where it is handled in a very scientific manner.

Now in the field, transporting it in the field, transporting it through the pipe lines, taking it through the plant, taking the refined products out of the plant and selling them at their own filling stations, and bear in mind the great chain of company-owned filling stations came into the country during this depression; 200 barrels of crude oil run through the above plant, at an average of 40 per cent, as a minimum, of gasoline recovery by cracking process, and 10 per cent recovery of lube oil. Now bear in mind that there is not a fixed percentage of this oil that is a lube oil; they only make as much lube oil as they need for their market and the rest is made into other products. But I am taking this 200 barrels, with about 10 per cent of it made into lube oil, that is the recoverable amount they claim; I am also throwing everything else into the fuel oil, 40 per cent, and checking off a 10 per cent loss. There are a great many by-products which come from these plants, and that do not need to go into the fuel oil.

Now, the posted price of oil is 10 cents a barrel, and the posted price of gasoline at filling stations is 14.5 cents a gallon, with the tax, and that would be 10.5 cents, exclusive of the tax. The posted price of lube oil in filling stations is 30 cents a quart, and the revenue would be 20 barrels of lube oil sold at 30 cents a quart, or $50.40 a barrel, which would be the sum of $1,008; 80 barrels of gasoline at 10.4 cents, filling station price exclusive of tax, would bring $336; 80 barrels of fuel oil at 20 cents a barrel, meeting the independent market, would be $16. The gross sales price or revenue would $1,360, and the cost of the crude in the field, 200 barrels at 10 cents a barrel, $20. That would leave a gross revenue of $1,340 with-

out figuring any expense. The gross revenue per barrel is $67 and the cost per barrel is 10 cents.

Now I have some concluding remarks to make here. I want to talk about how this money, how these sort of figures affect this State. With posted field price of crude oil at 10 cents per barrel, and the sales price of gasoline at filling stations 10.5 cents, exclusive of 4 cents tax, and the sales price of lube oil at 30 cents per quart at filling stations. The crude oil production from the State of Texas for 1930 was 290,000,000, for the year 1930. The estimate for this year by the Independent Petroleum Association is 305,000,000 barrels for 1931. Then, with an average of 45 per cent gasoline recovery by the cracking process, this means that for the year 1931 there will be 137,250,000 barrels of gasoline made and released into the markets of the world from the above amount of crude oil.

There are approximately 1,250,000 automobiles in Texas using an average of 12 barrels of gasoline per car per year, which would make a consumption of gasoline in Texas for 1931 of 15,000,000 barrels. At a sales price of 10 cents per gallon, exclusive of the 4 cents tax, this would be a sales price of $4.20 per barrel at the filling stations. The cost to the Texas consumer would be $63,000,000. Now for each 25 gallons of gasoline consumption, there is one gallon of lube oil consumed, at 30 cents a quart. I am talking now about what Texas pays for this. That is 600,000 barrels of lube oil at $50.40 a barrel, and that would be a cost to the consumers in lube oil of $30,240,000, and a total cost to the consumers of $93,240,000.

The price paid for crude oil in the field, that is, for this 305,000,000 barrels, would be $30,500,000, and the actual cash loss to the State of Texas for 1931 would be $62,470,000. That is under the present field price of 10 cents a barrel.

At one dollar per barrel posted field price for crude oil, Texas would have received $305,000,000. Subtracting the cost to consumers of gasoline and lube oil, being $93,240,000, the State would have made a net gain of new money in the amount of $211,760,000 profit.

If we receive an average price of 30 cents per barrel in the field for Texas crude oil, and Texas consumers continue to get the favorable filling station price of 10 cents for gasoline, which price has not been so low until the last thirty days and probably will not remain so low long, it would then mean that for the 290,000,000 barrels of crude oil shipped out into the world market, this last named amount of oil will have been bought and paid for by Texas consumers and delivered free of cost to the major oil companies.

Now for the business and economic loss to the State of Texas in the oil business, in 1931. First, we have the demoralization of the oil industry; elimination of over 50 per cent of the independent producers, destruction of credit, shrinkage of business, loss of pride of the independent oil men, and gentlemen, don't you doubt for a minute that I consider that a big factor. Those men have been in business for 25 years in this State and they are all hustlers and builders and spend their money here and invest it with us. About 400,000 men deprived of employment in the oil business and contributing or correlated lines of business in the State.

Second: $211,000,000 new money wealth lost, on which a fifteen times business turnover means a loss of $3,165,000,000 in gross volume business, and another billion dollars in reduction of value of oil field lands, loss of wells and equipment and loss of lease bonus money and rentals. That fifteen times turnover, which is an average, and I will prove that if you allow me to digress for a moment, and say that the gross business turnover of the United States was $364,000,000,000 last year, and the actual cash turned over was $28,000,000,000, so that ratio is about correct. My recommendation is that instead of modifying the anti-trust laws, we should retain and enforce them, and enact a conservation law constructed upon the principle of the market value of the crude oil.

I might give you this one last figure before closing with this, and this is from the economic standpoint. The actual cash in circulation per capita is $161 in the United States. This $211,000,000 that we lost by this cut in the price of oil this year would increase by 25 per cent the per capita wealth of this State, and also increase the gross volume of business 25 per cent, the gross volume being fifteen times the amount of money.

The gross business requirements of this State, looking at it the other way around entirely, to affect prosperity is in the amount of $2500 per capita turn-over per year, or $12,500 per year for a family of five, and 10 per cent interest on this amount of $1250 for the support of this family. Now, the 5,000,000 people in the State of Texas, this means $12,500,000,000 gross for the State to prosper as in the year 1926. Now, at fifteen times the turn-over on the cash, the amount of cash required in circulation, to be in circulation in the State of Texas right through the year is three-quarters of a billion dollars, and your bankers can check this figure if you like. In other words, with three-quarters billion dollars in circulation, it will give you $12,500,000,000 worth of business, which keeps us in a prosperous condition. Now, new money from the oil business is the greatest provider of this new money, and that $211,000,000 that we lost this year, if we had gotten it, would have represented an increase in the per capita wealth of 25 per cent, and also in the business done in the State, and in four years that $1 oil will double the per capita wealth and gross business of this State. I thank you very much.

Questions by Mr. Beck:

Q. Mr. Mayer, frankly, I was not able to follow your figures closely enough to find out just what point it is you seek to establish by them. Can you state that, briefly? Are you attempting to show there that the loss through the low price of oil is many times as great as the cost of increased cost in finished products would be to the State of Texas?

A. Well, there's a number of purposes to be shown by that report; there are a number of them.

Q. Was that one of them?

A. I gave you a statement; shall I state the things as I think of them, at random here, as they occur to me?

Q. Let that go, and I will ask you this: If the economic loss through the low price of crude is not many times greater than the figure you show as the gasoline and lube oil bill, at retail, for the State of Texas?

A. I don't understand your question. Possibly because I figured it out in a different way. The economic loss, I figure, is $211,000,000 at $1 oil.

Q. What did you figure is the gasoline and lubricating total paid by the consumers of the State per annum?

A. None of the details of production cost and transportation and all that is in there. This figure I have is the cost to the consumer for gasoline in this State for this year, 1931, based on the estimate I gave you there. Do you want me to go over this again, carefully? That would be $63,000,000—that would be the gasoline bill in this State at the present filling station price. Now, it was higher the earlier part of this year and probably will be higher the last part of this year.

Q. You are assuming that every quart of lubricating oil is sold at 30 cents, and that the refineries are able to sell all the lubricating oil that they can produce after extracting the gasoline from a barrel of crude?

A. I don't know; I am taking the actual figures in the State of Texas and not any hypothetical condition. I will say this, as a matter of fact—I didn't intend to touch on it until you asked that question, but the people are paying about 40 cents a quart for lube oil instead of 30 cents, because of the purchasing price of the dollar. All other commodities have gone down, and lube oil sold for 30 cents before 1929 and it is still selling for the same, all through this depression, and the purchasing price of the dollar is only about 70 cents now.

Q. Do you think that price is too high?

A. I will say this that—

Q. Well, we will just assume that it is too high. What can we do about it in the conservation measure?

A. I think I see a remedy for that. If you passed a conservation law here which provided, first, that imported or foreign oil or other oil could be gotten into this State competitively; and secondly, that no one should sell, exchange, purchase or transfer any oil offered to go out of this State at a price unreasonably lower than what other oil can be brought in, and further, that the nominations for oil be made by this Commission to fit the State's requirements.

Q. Do you believe that that could be legally done?

A. Oh, yes. It would be a negative proposition; it would be this way—

Q. Let me ask you this: Do you think that that price proposition,

whether it is legal or not, is connected with the conservation problem that is before us now?

A. I think it is the whole nub of it. I think it is the big thing. I merely provide that this oil should not be produced and hauled out of the State for the benefit of other people, out of the State at prices which are unreasonably a lesser price than we can get for our oil and gasoline here. That is equitable. That is protection to the public and protection to the producer.

Q. In other words, you think the value of the oil should be a measure of the limit to which production should be held?

A. Well, if we got this market price reversed; the way you look at the market price, is what the people can buy crude oil elsewhere for, and to protect the price structure on the lube oils and gasoline.

Q. And in the event that the consumers of this State are willing to pay at wholesale in barrel lots 92 cents a barrel for Quaker State Oil—

A. (Interrupting) 92 cents a gallon, you mean, don't you?

Q. Ninety-two cents a gallon in barrel lots. Would you say under those conditions the refiners in Texas should not be able to sell oil at the same specifications at a lower price than that?

A. I do not pretend to go into the refining end of this business.

Q. What I am trying to find out is what we can do about that phase of the oil situation?

A. I will try to explain that. Pennsylvania is producing about 60,000 barrels of oil per day. Texas uses about 10 per cent of that which would be about 6,000 barrels per day of Pennsylvania lubricating oil that you are talking about, and here in Texas we are producing about 600,000 barrels of oil per day, and oil can hardly be sold for the cost of production, therefore it stands to reason that the people are buying a trade-mark instead of buying in the light of the merits of the oil.

Q. Is there anything that we can do about that in the conservation law?

A. Yes, sir.

Q. You mean as to—

Q. I mean in the way that we can stop people from paying advanced prices for an advertised product?

A. No, sir, I do not think there is anything that can be done about it.

Q. And have you any production now?

A. Yes, sir.

Q. Where is it located?

A. In the Panhandle of Texas.

Q. Now, in what way has proration been unfair—and discriminatory?

A. Well, it has been discriminatory as between fields in the State for the last year or two. In some sections of the State under the present plan of proration a very small percentage of the potential is being allowed to be taken from the fields, whereas in the Gulf Coast region the production is without proration, and in some other fields, too, and we feel that we have been prorated in one field in order to maintain the market price in other fields.

Q. Would there be any objection to proration if the conservation law of this State provided that wells within a given field might be prorated up to the total ability for that field to produce and that the allowable for each field should be proportioned to the trade allowable?

A. Yes, sir.

Q. Would not that be an equitable proration?

A. Your question is rather long. I am not sure that I can see that. Will you ask the question again, please?

Q. Well, assuming that the proration was operated as a field, do you think that one field should be prorated as against another field, so that each would produce its pro rata part of the production?

A. You mean the allowable as between every field in the State? No, I do not think that, and I want to say this about proration, and I want to get a record of this in the record, and I tried to, until the whole order of things is changed I do not think that will be effective. The old order of things was for every man to get everything for himself that he could. Now you take these three people here at this table and we will say this lady has a production of ten barrels; this man over here has a production of five barrels and this man over here has a production of ten barrels, and I have a production of fifty barrels per day in that field; now this group over here has 100 barrels production per day, and the rest of the House has from five to fifty barrels in the same pool.

Now then, back to the program of proration, or the so-called proration and the advisory committee, I think you will think that it is made up of the employes of the companies, and you will find that their remuneration comes from the larger companies throughout the entire field.

Now this lady over here will be permitted to produce on proration 5 per cent, if you have a 10,000-barrel pool, and this man here will be prorated on the basis of 500 barrels, and on a 50 per cent basis that would be 250 barrels, and if the proration is determined on this basis there are lots of people operating in the smaller fields who are going out of business.

Q. The fact of the business is, in short, that you advocate not applying proration to the smaller wells?

A. I think it comes to a question of not having any proration on these smaller wells up to, say 50 barrels, or under.

Q. (Interrupting) You would not have us by legislation apply—or try to adjust or proportion the amount of production, would you? Would not you say that the true question of proration, of any proration order ought to be the long-term conservation of the great natural resource?

A. You are already enforcing the proration. You are already adopting those orders—

Q. (Interrupting) Now a while ago you spoke of the tremendous waste of gas in the Panhandle and other fields. Has that not been largely because the gas was not sufficiently valuable, or was not sufficiently close to a market so that it might be marketed at a reasonable cost?

A. That is one phase of it.

Q. (Interrupting) Then would that not reasonably lead to the conclusion that the excessively low prices that are offered for natural resources at the source will cause a continuation of the extravagant waste of those resources?

A. Yes, sir, that is right.

Q. Then that condition ought to be remedied, should it not?

A. Yes, sir. I think the condition should be remedied in some way that will prevent the waste of those natural resources.

Q. That condition should or could be remedied by demanding and requiring the producers of oil and gas not to produce until they can get a reasonable value for it?

A. That is half of it—half of the answer — there should be a ratable taking law for carriers under the common purchaser law.

Q. Ratable taking, if enforced, will make it fair for everybody?

A. You say, ratable taking, and not the way it has been handled. If we have real ratable taking that will go a long way towards remedying the situation that extends today.

Q. If it had been handled correctly in the past we would not be here trying to revise that law now?

A. I think that is right.

(Witness excused.)

Thereupon, Charles E. Bowles, being duly sworn by the Chairman of the Committee, testified as follows, on examination by Mr. Satterwhite:

Q. Please state your name.

A. Charles E. Bowles.

Q. What is your place of residence?

A. My residence is Tulsa, Oklahoma.

Q. Mr. Bowles, are you an oil operator?

A. No, sir.

Q. Mr. Bowles, will you state to this Committee what position you hold with any concern or organization or what connection you have with the oil industry in the United States?

A. I am the statistician of the Independent Petroleum Association of America, with headquarters in Tulsa, Oklahoma, a national organization of independent oil men.

Q. You state that you are the statistician for them?

A. Yes, sir.

Q. Are you connected with any of the oil journals?

A. No, sir, except that I am the editor of the Association Weekly. We have a magazine known as the Independent Monthly. I am editor of that.

Q. You have in your possession, then, the statistics with reference to the oil business for a number of years back?

A. Yes, sir.

Q. (Interrupting) As to production and overproduction and so forth.

A. Yes, sir.

Q. Will you give the Committee the benefit of that information and the effect that it has had on the markets of the United States and so

forth as it applies to supply and demand?

A. I would like to preface my remarks by a few statements in regard to Texas, because it is the condition of the oil industry in Texas that is why you legislators are here.

The price of oil in Texas today may run around 25 or 30 cents per barrel. The average for the entire State. In the statement that I am going to make to you now I want to compare dates, present prices, prices of a year ago, the average for the last five years, the average for the last ten years, and call your attention to what the State of Texas has done in the way of producing crude oil.

Practically 100 per cent of the production of Texas has come within the last thirty years, that is, since 1901. Those figures are covered in the graph that I have before me, and copies of which I have furnished to you. You will notice that the graph started in 1901, to the end of December of the year 1900 the State of Texas had only produced 2,000,000 barrels of oil. It had produced to the end of 1930 a total of 2,217,000,000 barrels of oil; therefore, it had only produced only one-tenth of its oil prior to the period we are going to discuss at this time.

From 1901 to the year 1920 the State of Texas produced 525,000,000 barrels of oil. In other words, it took twenty years to produce 500,000,000 barrels.

In the next five years, 1921 to 1925, inclusive, the State of Texas produced 652,000,000 barrels of oil.

In other words, in the five-year period from 1921 to 1925 the State of Texas produced more than it had in the previous twenty-year period.

Then, again, beginning with the period January 1, 1926, to December 31, 1930, you produced 1,237,000,000 barrels of oil, or twice as much as you did for the preceding five years. So that gives you some idea of the tremendous amount of oil which the State of Texas is producing in crude oil. I might add right here that the best estimate that I can make for this year is that your State will produce about 305,000,000 barrels of crude oil this year.

During the first six months period of this year Texas produced about 30,000,000 barrels of oil, and with the average of about 275,000 barrels per day in East Texas, East Texas for the remainder, the last six months of this year will produce about 50,000,000 barrels, so that will give you for the period of 1931, as a production from the East Texas field, about 80,000,000 barrels.

Now, the danger of the producers of East Texas today is the destructively low prices for that oil, and may I call your attention to the fact that from January 1, 1921, to December 31, 1925, in that five-year period, you produced 652,000,000 barrels of oil, for which you got an average price for the five-year period of $1.55 per barrel.

Now, then, let's compare the amount of oil which was produced during the period of the 652,000,000 barrels with the five-year period, that is, the last five years ending December 31, 1930. In that time you produced 1,237,000,000, or almost exactly twice as much as for the preceding five-year period.

You received for that oil an average of $1.14 per barrel. Now, taking the production of oil for the last ten years, which is 1,819,000,000, or three-fourths of all the oil you have produced, you can see something of the enormous amount of oil that your State has contributed to the industry. In order to get some idea of how rapidly the State of Texas is selling out oil, that is three-fourths of all the oil the State of Texas has produced in the last thirty years has been produced in the last ten years, and that 50 per cent of the oil the State has produced has been produced within the last five years, and during that last ten-year period, in which you have produced 1,819,000,000 barrels of oil, you have received for it an average price of $1.28 per barrel, and that the price of Texas oil today is something over 28 cents per barrel. For some inconceivable reason the price of oil in Texas is exceedingly low. We folks up in Oklahoma are suffering with you, hoping that we will all work together fine in solving this deplorable condition. You people down here in Texas are suffering, and the Oklahoma people are suffering along with you, as well as the people over in Louisiana and throughout the oil-producing sections in the Mississippi Valley, as well the people in California, but to a less degree. For some reason the most of the people of the country seem to think that East Texas is the guilty party. Let's all be fair. Let's study the background of this situation and find out just

what has happened in the past, because our oil industry is seventy years old. This reveals to us about thirty-four great periods of overproduction during the last seventy years. Someone has stated that we had gone through twelve or fourteen periods of depression in this country, but we have gone through thirty-four periods of local overproduction. We are now going through the thirty-fourth. We have gone through thirty-three and managed to live. We are going to go through this, but let's be fair and find out just what we did when we went through the other thirty-three. We folks up in Oklahoma have produced a lot of oil, and we have had big fields a few years ago, especially the Seminole field, which everybody knows about.

Now, the Seminole field came in along about the middle of 1926, and got a slow start, and during the remainder of that year we produced about 12,000,000 at an average price of $2.20 per barrel. It seems pretty high today, doesn't it?

Now, in 1927, that one field alone produced 136,000,000 barrels of oil at an average price of not less than $1.42 per barrel. That was the posted price for 36-gravity oil, and the Seminole oil is 38 to 39-gravity, and they got a higher price for it than the posted price. In 1928 the Seminole field produced 105,000,000 for which the posted price of 36 gravity oil was $1.31.

In 1929, Seminole produced 101,000,000 at an average price of $1.36 per barrel. Last year Seminole produced about 66,000,000 at an average price of $1.23 per barrel. Now then, up to last December, we find that Seminole has produced a grand total in this four and a half years of 420,000,000 of oil for which the market price received by the buyers was something over $575,000,000, or an average of $1.37 per barrel, as indicated by the graph which you have.

Now let's back up and look at California. And what do we find? Necessarily, everyone remembers that in 1923 the oil fields of California went on a rampage and they had three big oil fields out there at once. We thought that the world had come to an end so far as the oil industry was concerned. But let's find out what they produced in 1923. These three fields in 1923 produced a grand total of 183,000,000, right close together, and in the same economic area and same industrial area. Now, then, in 1929, following the discovery of the deep sands in that section, these fields, these three fields went on a kind of a revival or they went on another rampage, and the three fields together produced 153,000,000, which is quite a bit of oil for those three fields; 153,000,000 barrels of oil from these three fields in 1929, 183,000,000 in 1923, and the Seminole field, which we were talking about a while ago, with 136,000,000 in 1927. Now we have covered the big fields in the United States except the State of Texas. And I stated a while ago what the estimate was that would be produced this year.

Now, when West Texas opened up the great Yates pool, and the Hendricks pool, and we will see what the effect of those pools was on the industry. And after those two pools were opened up, the two together in 1929 produced a grand total of 91,000,000 barrels, which is the most oil they have produced, and they are on a decline, as you can see, now.

Now then, East Texas, so far as I have been able to figure it out, probably produced around 80,000,000 or 90,000,000 barrels of oil this year, and that is based on the fact that for the first six months produced 30,000,000 barrels and that your conservation department or Railroad Commission, or whatever means you employ, is going to preserve an average of around 275,000 barrels a day for the last half of this year, so that will give you 50,000,000 barrels that have already been produced for the first half of the year will make your 80,000,000 barrels.

Now what effect is that amount of oil, that 80,000,000 barrels of oil, going to produce this year? It is all in the hands of the industry and you legislators as to what you think is the proper and economic thing to do to handle East Texas. That is your problem, and that is a job in which everyone who has any interest whatever in this great industry wants to see properly done.

I want to call your attention to some things that have happened in the matter of prices. I have told you some thing about barrels of oil, but barrels of oil do not mean anything, as we have recently seen. In July, 1927, or rather on July 30, 1927, you produced only 527,400 barrels of oil.

You average for that month about 470,000 barrels, something like that for the entire month. Now the strange thing is this: that the price of oil in Oklahoma, that is the average price that year, was $1.43 per barrel. In spite of the fact that the State of Oklahoma got the bulk of increase of production in the State at that time, they came through with an average price of $1.43 per barrel.

Now, let's take Oklahoma in 1922 and 1923: in 1922 Oklahoma produced 150,000,000 barrels of oil at an average price of $1.72. The next year it produced 162,000,000 of oil at an average price of $1.74 per barrel. Texas produced during the entire year 160,000,000 barrels of oil which was marketed at $1.48. Now let's take a look at the situation in California. In 1923 there were three big fields in California. Santa Fe Springs, Long Beach and Huntington Beach. Now in 1922, the year before California went on a rampage, it produced 132,000,000 barrels of oil worth an average price of $1.25; the next year they again went on a rampage and increased its production to 263,000,000, and the price dropped to 92 cents. In other words, the State of California increased its production in 1923 from 138,000,000 to 263,000,000 and the price dropped from an average of $1.25 per barrel to 92 cents per barrel. Now then, on the figures that I have just read you, Texas increased its production 12,000,000 in the same year, and oil dropped from $1.59 per barrel to $1.48 per barrel. In Oklahoma the oil increased from $1.72 to $1.74 per barrel.

I want to ask you in all fairness, did the increase in the production from these three big fields in which the production gained over 125,000,000 barrels, did it affect the price structure very much of our Oklahoma fields when the average price dropped here in Texas from $1.59 per barrel to $1.48 per barrel, and increased in Oklahoma from $1.72 to $1.74 per barrel?

Now let's take the years 1926 and 1927. I want to take those two years because they are the ones in which Oklahoma went on a rampage. Our three big States have each gone on a rampage. California in 1923, Oklahoma in 1927, and East Texas in 1931, so let's see how the price structure has been affected.

Let's take Oklahoma. Back in 1927 Oklahoma went up 99,000,000. It increased from 179,000,000 in 1926 to 278,000,000 in 1927, an increase of 99,000,000. Now let's see what happened to the price structure. The price of oil dropped from $2.31 to $1.43 per barrel. Now let's see what happened in Texas. The production went up from 167,000,000 to 217,000,000 barrels, or an increase of 50,000,0000, and the price went down from $1.85 to $1.14 per barrel. Now let's take the other, the third of the big States, which increased its production from 231,00,000 to 236,000,000 barrels, an increase of about 6,000,000 barrels of oil, and the price went down from $1.34 to $1.13 per barrel.

When California went on a tear in 1923 it did not affect the general price structure of either Oklahoma or Texas, and when Oklahoma went on a rampage in 1927, it did not affect the price structure of either California or Texas. From that, what conclusions are you going to draw?

Now let's come to East Texas today. Last year the State of Texas produced 290,000,000 barrels of oil. This year I estimate that it will produce 305,000,000, at least. It might produce more; that is an increase of only 15,000,000.

The amount of conversation we hear about East Texas, would indicate that it was going to produce a billion barrels of oil, when as a matter of fact, the increase in the entire State of Texas as a whole is not going to increase its production over about 15,000,000 barrels this year. I cannot say what the price will be. As to the price of oil this year, that is your own problem.

Now let's see what is going to happen in California. Last year California produced 228,000,000 barrels and this year it is going to produce about 185,000,000 barrels. Not over that. The California production is going to go down about 43,000,000 this year. Let's see what will occur in our own State.

Last year Oklahoma produced 215,000,000 barrels and this year it will not produce over about 190,000,000. That means that Oklahoma is going to reduce its production about 25,000,000.

In 1930 it produced in crude oil 40,000,000 under the preceding year. In other words, Oklahoma in 1930 re-

duced its production 40,000,000. This year it is going to reduce its production 25,000,000 under last year. In 1930 California reduced its production about 64,000,000 barrels under the preceding year, and this year it will reduce it another 43,000,000 barrels under last year, which means that California in the last two years has reduced its production over 100,000,000 under the 1929 figure.

Now, let's see what this means: California went on a rampage in 1923. All of the States of the United States, adding them together, had a total production of crude oil in the United States for the year 1920, the year before California went on a rampage, of 558,000,000, and in 1923 when California developed these three big fields the production of the United States was 732,000,000 barrels. I can remember distinctly how we all thought we were going to the dogs and yet the average price of California oil — I mean the average price for crude oil for the year 1922 was $1.61, and the price of crude for 1923, in spite of the California production, was $1.33. We had increased our production in the United States 174,000,000 barrels per year. We have had an increase in production of 174,000,000 barrels, or over 31 per cent in one year and yet the average price of crude oil only dropped from $1.61 to $1.33. Now we have disposed of California, and let's see what the effect was in Oklahoma during its big year, 1927. In 1926 the United States as a whole produced 771,000,000 barrels of crude oil. In 1927 Seminole went on a rampage and during that period we had a production of oil in the United States of 901,000,000. That was the greatest amount of production that we have ever had in the United States, and yet during that year we had increased production of oil 131,000,000. The price of oil, the average for the United States in 1926, was $1.88 per barrel. In 1927, with the flush from the Seminole field, the price of oil was $1.30 per barrel. Now let's get it clear. In 1923 when California went on a rampage the United States increased its production 174,000,00; in 1927 when Oklahoma went on a rampage the United States increased its production 130,000,000 barrels; in 1931 when East Texas goes on a rampage production of oil in the United States will decrease 66,000,000. Now, let's get the force of that: California which was largely responsible for an increase of 174,000,000 barrels, in another year Oklahoma was responsible for an increase of 130,000,000. Now here East Texas will be responsible for an increase of 15,000,000 in Texas, but the United States will produce about 66,000,000 less oil than it did last year, and in the face of that you have a most deplorable condition, the worst the oil industry has ever been in. In 1923 when California flooded, the price of crude oil in the United States, the average price for the United States only dropped from $1.61 to $1.33. In 1927 when Oklahoma had its flush production the price of crude oil in the United States only dropped from $1.88 to $1.30. Now then, the average for the last year was about $1.19, for the entire United States, but this year with a decrease of something like 66,000,000 barrels, of which 15,000,000 will be an increase in Texas, 43,000,000 will be a decrease in California, and 25,000,000 will be a decrease in Oklahoma, we have gotten the most desperate situation that the oil industry has ever known to be in in East Texas. There has never been in the history of the oil business in the United States anything to equal it. I have among these figures here a little memoranda here that I got a few days ago of the price changes up in Oklahoma. We have what we call the Kansas-Oklahoma Price for Crude Oil, that is 36 gravity. I went back twenty years and I took every price change in Kansas and Oklahoma for twenty years and how many do you think there was disclosed during that period. Up to yesterday there were 120 changes in the prices for crude oil.

An average for the twenty years of six times a year. I will confess that I have handled figures for a great many years, but that has got me guessing as to why it is. I have before me now a little crude oil bulletin sheet showing the supply and the demand. This is the supply side over here (indicating) and this is for the year 1931, and naturally there must be a few estimates in it. I have tried to be fair. On January 1, 1931, we start out with 512,790,000 barrels of crude oil in storage. We will import about 48,000,000 barrels of crude oil into the United States this year. That is based on the most accurate estimate. We imposed 62,000,000

last year and 43,000,000 makes a total of 105,000,000; we will import at least 48,000,000 this year. That accounts for your supply side. That is the supply of crude oil this year. Now then, let's take the demand side of this. We are now refining in the United States, at most 875,000,000; we are using about 30,000,000 barrels of crude oil for other purposes, largely for fuel oil that is burned directly under boilers for fuel use. We will export on estimate covering the period less than half as much as last year. Our exportation of crude oil and refined has been pretty well shot, so that I figure we will export 10,000,000 barrels this year. That will about cover it. Now I will start on December 31. Our stocks then will be in the neighborhood of 475,000,000 barrels of crude oil. That will be about what we will have in storage as we started out on January 1, 1931, with 512,000,000 of crude and as we started off this year with 475,000,000 you can see that we will take out of storage this year between thirty-five and thirty-seven million barrels of crude oil.

As we started out on January 1 with 512,000,000 barrels of crude and we end up this year with about 475,000,000 barrels, you can see that we will draw out of storage this year around 35,000,000 to 37,000,000. Last year we drew over a—something over 22,000,000 barrels from storage. There has been only three times in the last thirteen years that we have drawn out crude oil from storage over an annual period. Last year was one of those three times, and this year we will draw more crude oil from storage in the United States than we have ever drawn before in the history of the industry.

Now, then, let's put this together: we will produce 66,000,000 barrels less crude oil in the United States this year than we produced last year. Around about 35,000,000 barrels of crude oil will be drawn out of storage. Well, you know, when you stop and think about what is necessary to have a good economic background for a satisfactory situation in an industry, I would like to submit it to you as a fair proposition, if that is not a pretty fair background for the oil industry to be in pretty good condition.

Now, I have heard it repeated many times, all the way from the big officials of the oil companies on down, that the statistical position of the oil industry this year was remarkable. But some way or other the price did not hold. Now, will you just figure that out over the evening and find out the answer to my remarks. That if the statistical position of the oil industry is in a fine shape—we have cut down our production, we have cut down our refinery runs, we have cut down our imports, and the other fellow has cut down our exports, and our production is holding up, our market is holding up. I was amazed a few weeks ago when I got the last report of the United States Bureau of Mines. It contains the figures for the first five months of this year—January, February, March, April and May. I took the domestic demand for motor fuel—motor fuel; you know that is the new word for gasoline; and benzol and some of these other things; they call it motor fuel now; we used to call it gasoline.

The domestic demand for motor fuel in the United States, taking all the States of the United States together, the domestic demand for motor fuel for the first five months of this year, compared with the first five months of last year, and certainly we thought we were in worse shape the first five months of this year than the first five months of last year, didn't we? All right. Now comes your surprise—the domestic demand for gasoline, the first five months of this year, as compared with the first five months of last year, showed a decline of six-tenths of 1 per cent. Now, let's go over the field again. Our crude production is cut down; our refinery runs is cut down; our crude in storage is going down; our gasoline in storage is going down; our imports are going down, and our domestic demand is holding, compared with a year ago. Now, that is what they call being in a good statistical position. But I would like for you to explain to me the connection between the industry in the United States being in a good statistical condition or position and the crude oil price being the lowest it has been in seven years in the United States. I haven't been able to figure it out by the ordinary rules of mathematics.

Now, let's go into a little table that I have here that I want to read into the records; I would like for this table to be included in the record.

Mr. Hardy: We will take it, if you will turn it over to us; the reporter doesn't need to take this.

(Discussion of table off the record.)

Mr. Satterwhite: I want you to repeat that last statement there, for the record.

A. Yes, sir. We have produced 8,844,000,000. We have run to refineries 8,466,000,000 barrels. We have exported 187,000,000 barrels; we have used for other purposes 926,000,000. Now, adding your refienery runs, your exports and your crude oil used for other purposes gives a grand total of 9,580,000,000. If you subtract from that amount the crude oil we produced, 8,894,000,000, you will see that we produced 686,000,000 barrels less crude oil in the United States in the past thirteen years than we marketed. What could we do? We couldn't pull that out of storage, because we did not have that much; so this is what happens: Preceding speakers have talked about exports and imports, and I am going to tell you something practical about imports. In the past thirteen years there has been imported into the United States a grand total of 1,010,000,000 barrels of crude oil. First it came from Mexico, and then from Venezuela, Colombia, a little from Peru probably, a little from the island of Curacao; no oil comes from the eastern hemisphere into this country; it all comes from Mexico and South America. This is what happened: Strange as it may seem, the United States has produced within its own borders in the last thirteen years 686,000,000 barrels less crude oil than it had a market for, and in that same period we have imported 1,010,000,000 barrels of foreign oil into this country. All right. Subtract 686,000,000 from 1,010,000,000 and you have got about 341,000,000 barrels of crude, which represents the increase in storage in the United States over the last period of thirteen years. Now, that is fair to account and we have to account for this increase in crude in storage some place. When it suited their purpose, and I am not accusing anyone particularly—it is the industry as a whole. But when it suited the industry to say we can't pay a high price for crude because of the storage, we believed it, and it went; but when you get down to brass tacks and appraise the increase in storage, there is only one way in the world to account for it, and that is excess of imports, because if we had a market for a certain amount of oil and produced less than that and produced exactly that, our storage, our stocks, would have been the same now; isn't that simple? And if you imported more than that, your stocks went up, your excess imports would be reflected in your increase in your storage, and that is what has happened. Our stocks have increased in these thirteen years 341,000,000 barrels, and we have imported 341,000,000 barrels more than we needed to meet our storage. You don't have to guess where our increase in storage comes from.

Now, we want to tie this thing together. We talk about overproduction. Have you stopped to think, if you didn't have overproduction in one area you could not supply the shortage in another? Isn't that simple? We have an overproduction in Oklahoma. What do you mean by that? Well, we produce more oil within our borders than we consume. Out of every three barrels produced in Oklahoma, one barrel goes to the refinery and the other two go out of the State to be refined out of the State. The folks in Texas, I don't remember your ratio, but you produce a lot more oil than you consume in the State.

Mr. Satterwhite: Our ratio is five to one.

A. Yes, you don't refine all you get, and you haven't got enough automobiles, trucks and tractors and airplanes and gasoline engines to consume the gasoline made in Texas by your refineries. You can't do that. I don't remember, just offhand what the refinery capacity is, but you have about fifteen or eighteen refineries down here on the Gulf Coast, and I totaled it all up for a man in my office the other day, and those fifteen or eighteen refineries have a capacity to supply, I believe it is, one-fourth of the supply of gasoline in the United States, right down there on the Gulf Coast. So when you talk about overproduction, don't get stampeded by thinking that overproduction is too serious a thing, because it's temporary. It comes and it goes. We have gone through it thirty-three times, and we are right in the middle of going through it the thirty-fourth time in recent years. It's terrible while it lasts; sometimes the price structures go all to smash, such as

in 1931, and sometimes they don't, as for instance, the times I have stated in seven years. You want to know what the reason is: there are several reasons. As I see it, there are three major reasons why the crude oil structure of the United States is in the deplorable condition it is today. We have had overproduction in thirty-four big fields in the United States in recent years. Every time we have had local overproduction in some major field, there has been a cut in the price of crude in that particular area, and sometimes it spreads farther. There is a legitimate answer to that which applies to cotton and corn and wheat; it is a simple economic law; it's the law of local production, which has always a penalty attached to it; you have all gone through that and you know what it means. We have gone through that often enough, that we should be able to gauge about what the penalty should be for the crime; we should know about how far, how much penalty to assess for the overproduction. I pointed out the increase in California, and I pointed out the increase in Oklahoma, and this small increase you are going to have in Texas. Now there is a second reason for this. That we have this year, in aggravated form, more aggravated than we have ever had before, and that is our so-called nation-wide and world-wide depression. That is a new factor that has entered in here. We have never had it quite so bad as now. I know I lived in Tulsa when oil was $3.00 a barrel, and when it went down to a dollar, we thought everybody would go broke, and business was ruined, but today we are living through and will have to live through dime oil, and my prediction is that in not many months you will see dollar oil. I hope some of you who feel discouraged today will take courage from that prediction.

Now let's get to the third factor. I am overly anxious that you ladies and gentlemen will not take it as anything malicious or vindictive or as accusing on my part, if I say that this third factor has been taken advantage of, and I am using this word in the kindest spirit in the world. Now don't misunderstand me, because there are some of the finest fellows in the world in the oil business; if they were not fine, they couldn't stay in it. It takes courage to stay in the oil business. It is my firm conviction that our oil companies, the crude oil purchasing companies of this country, and especially in the areas where overproduction is greatly aggravated today, have taken an advantage—and I want to repeat that I am using that word kindly—it is only human. May I quote Mr. Holmes, when he said that they bought it for what it was offered for. He bought it for what it was offered for. I don't know what I would offer a barrel of oil for if my wife and baby were starving. I might sell it for a nickel a barrel, if we needed food. Maybe some of these other men are in the same shape. Let's don't be too harsh, ladies and gentlemen, with those producers over in the East Texas field; they have done the best they could. Let's don't be too hard on them. It's fine for the president of a $600,000,000 corporation, when he stands up here with unlimited funds in the bank, to say that they will buy oil for what it is offered for, and I am not accusing him, either. The others do the same thing; but I say this: You gentlemen are facing three things here. There rests in your hands the enactment of legislation which will try to pull the oil industry in Oklahoma back into good shape. Yours is the responsibility to do that, regardless of the conditions you find the industry in, and regardless of what those men apparently who are willing to buy crude oil at a nickel a barrel, who are willing to get that out of somebody else's desperation. This is a bad time to accuse people, but you have got three things: you have got a local overproduction; that situation will have to be handled in some way. It is your responsibility to find out how to handle it. I want to say this to you: I don't believe you will find much increase in the price of crude oil until you folks, or somebody else, have handled the East Texas situation. I think that is the truth of the matter right now. I am sorry if our people with unlimited financial resources are willing to buy oil at a ruination price to the people who produce it; I am sorry that after seventy years in the industry, we have lost so totally our regard for the simple economics of the oil industry, and I trust you gentlemen, all of you working along with the oil industry, will find some sort of a solution, when you can see plainly, when in Seminole in Oklahoma, and when California did what

they did, and in Eastern Oklahoma, you cannot possibly get in the shape —I mean East Texas—cannot possibly get in the shape this year that Oklahoma got into in 1927 and that California got into in 1926.

I wanted to go over this chart a little further, but I think it is a little late, and we had better stop.

Mr. Hardy: Can you be back in the morning at 9 o'clock, Mr. Bowles?

A. Yes.

Mr. Hardy: Without trying to press you, we have certain other witnesses who are desirous of being heard and leaving; what time do you believe you will require?

A. I would say less than an hour.

Mr. Hardy: Mr. Chairman, may we stand at ease until 9 o'clock? We will finish with Mr. Bowles very early in the morning, and I understand we can complete his testimony in less than an hour. Mr. Farish, the president of the Humble Oil & Refining Company, will be our next witness.

Whereupon, the Committee of the Whole House recessed at 5:25 o'clock p. m., July 23, 1931, until 9 o'clock a. m., July 24, 1931.

Friday, July 24, 1931.

Pursuant to adjournment, the Committee of the Whole House met on Friday morning, July 24, 1931, at 9 o'clock, and proceeded as follows:

Mr. R. C. Bowles resumed the stand and was questioned by Mr. Beck as follows:

Q. Mr. Bowles, we are very much interested in your theory that the oil industry has heretofore stood the shock of over thirty-four periods of overproduction, or rather, thirty-three, and that they are now in the thirty-fourth. And that they can get over this without permanent injury. Taking the last ten years, what years during that period furnished the greatest amount of overproduction?

A. The years 1923 and 1927—I mean by overproduction in those years—an increase in the total balance in the United States over the preceding year.

Q. Or, overproduction as compared with the market demand?

A. No, I am talking about crude oil exclusively.

Q. There is no overproduction unless there is more crude oil than can be absorbed, is there?

A. You will have to be more specific, for this reason: Now, let's understand the word "overproduction." Overproduction is always a local proposition. It is overproduction in so far as a relatively small area in the country is affected. If you overproduce—if you consider overproduction in the United States as the rule—there has been only two years in the last thirteen years when we have produced more oil than we had a market for.

Q. What years were they?

A. 1923 and 1927.

Q. Did those periods of overproduction bring about a devastating reduction in the value and price of crude oil?

A. In 1900—I mean in 1923, the year 1922, the year before the overproduction of 1923, the average price of oil for the United States was $1.61 per barrel. In 1923, the year of the extreme overproduction, in California, the price was $1.33. For the year 1923 we produced in the United States 174,000,000 more barrels of crude oil than we did in the preceding year. Now, about 1927—

Q. How about 1927?

A. Now in the year 1926 the average price for crude oil in the United States was $1.88 per barrel. In 1927 the year of the flood of oil in Oklahoma from the Seminole field, the average price for the United States was then $1.33.

Q. But there never has been such a radical reduction as from $1.00 down to 10 cents per barrel?

A. No, never in the history of the oil industry.

Q. That stands alone by itself?

A. Yes, sir.

Q. But you are assuming that because the industry was able to take care of itself and withstand the shock and recover in 1923, that it will be able to do the same in 1931?

A. That question cannot be answered yes or not for the reason that we are not confronted with the same financial conditions at this time as we were during those other years. But the question is, what will happen, or what will be done. We will get

through this situation, but the question is, what will happen to us while we are getting through it; how many will be ruined; how many will be bankrupt, and how many will go out of business.

Q. Do you regard the figures from the United States Department of Commerce as authoritative?

A. Yes, but I use the figures of the United States Bureau of Mines.

Q. Those are the ones that are incorporated in the Commerce Year Book, are they not?

A. Just offhand, I would not say that they are. I want to confine my statistics to the United States Bureau of Mines report, because that department of the United States government, which is directly in charge of the mining or oil industry.

Q. It is a division of the Department of Commerce, is it not?

A. Yes, sir.

Q. These figures, then are the figures of the Bureau of Mines?

A. Yes, sir.

Q. Is it not a fact that in 1923, and again 1927, when these periods of overproduction existed, that these industries were able to come through without disastrous results, was not that due to the fact of the general commodity then, which was high throughout the year?

A. The general commodity index covering what?

Q. The covering of the wholesale, retail and foreign markets.

A. The figures that will be indicated by the department are not such as to negative or invalidate the general proposition.

Q. (Interrupting) We are not attempting to invalidate anything. We are trying to get more information.

A. Yes, sir.

Q. But there is no parallel indicating that the industry will be able to come through without collapse in the face of the last commodity index, the lowest commodity index price that this country has known in many years?

A. You will have the third factor which you did not have in 1927, which did not appear in the picture before.

Q. It has never appeared in the picture before, has it?

A. No, sir. Not to the extent that it does at this time.

Q. And it was not in the picture in the year 1923 or 1927 either, was it?

A. Not to the extent that it is now.

Q. These were years that you considered to be extremely good years for American business?

A. For the oil industry, 1927 was a bad year; 1926 was the last good year that the oil industry has really had. We have been in rather bad shape since 1929, I mean 1927, the years 1928 and 1930, the last four or five years.

Q. Can you tell us whether or not the change in stocks and available have been up or down in the last years, since 1924?

A. The stock on hand on December 31st, 1924, was in round numbers 400,000,000 barrels. In 1925 it was 431,000,000 barrels; in 1926 it was 402,000,000 barrels; in 1927 it was 473,000,000 barrels; in 1928 it was 491,000,000; in 1929 it was 535,000,000, and on December 31 of last year it was 512,000,000 barrels.

Q. You told us yesterday, after giving the total domestic production and the total consumption, and then adding the imports, that the present storage in excess of working stocks was exactly balanced by the imports that have passed during the last ten years.

A. I did not say anything about working stocks. Working stock is a part of the crude oil balance sheet. You cannot eliminate working stock, as I see it.

Q. Then do you mean to say that the consumption has absorbed all of the domestic production, but that the storage is equal to the imports that have occurred?

A. The increase in storage for the last thirteen years from January 1, 1918, to December 30, 1930, is the equivalent to the excessive imports during the same period.

Q. Now, give us the total figures, please, for the imports during that period.

A. 1,010,000,000 barrels.

Q. Now, you did not mention this at all yesterday, but what was the total of exports during that period?

A. The exports for that period were 187,000,000 barrels.

Q. Was that the total of the barrels of oil exported?

A. Of crude oil.

Q. What about the refined products?

A. You do not consider that in the crude oil balance.

Q. Why not?

A. Because this is a crude oil situation.

Q. We are trying to find out whether there is an overproduction in this country.

A. That will not answer your question.

Q. Why?

A. Because it is too small in proportion of the total.

Q. Let's figure it out and see how small it is. What was that total?

A. On last year?

Q. We want it compared with the ten years.

A. Well, your storage stock is crude oil, and you exported 187,000,000 barrels and you imported 1,010,000,000 barrels of crude oil.

Q. Now, if we had not exported the refined products, we would have had to export an equivalent in barrels of crude?

A. Yes, sir, in barrels of crude, if you are going to make it that way, instead of terms of gasoline, it would be.

Q. Let me put it this way: to the extent of how many barrels was the American production called upon to supply the world with the products of petroleum?

A. I do not believe that I have with me the balance sheet of the American Petroleum Institute that has those figures on it. I do not offhand remember what they were, but we exported 43,000,000 barrels of refined petroleum, which is a little less than we refined the year before. May I answer your question in a rough way. That exports are about three times the equivalent of imports.

Q. Will you state that again, please?

A. The value of your exports is about three times the value of your imports, in round numbers.

Q. Then the difference between what we pay for the crude that is imported and what we sell the refined products for is the profit that goes to American industry and American labor, is it not?

A. Of what we export, yes.

Q. In the ratio of about three to one?

A. Yes.

Q. Is it not a fact that during this time, during the twelve years, from 1918 to 1930, inclusive—

A. (Interrupting) That is thirteen years.

Q. (Interrupting) We exported from this country, either in crude oil, or in equivalent to refined products, a billion four hundred twelve million barrels of crude oil?

A. Say that again, please.

Q. Were the exports from this country—

A. Of what—

Q. Of crude oil and its products—

A. You mean refined products?

Q. Crude oil and its refined products consumed a billion four hundred twelve million barrels of crude oil, that we imported—that we had on hand oil in this country?

A. I would say that is probably approximately true.

Q. Which is just a little more than four hundred million barrels above that which you claim to have been imported into this country?

A. I am not talking about imports of crude oil. At no time during my testimony have I told you at all, or talked to you about anything except crude oil—the situation, because to my way of thinking, that is the vital thing in the solution of the present crisis.

Q. But if we ship our refined products, it is because we buy crude oil?

A. Certainly.

Q. Then in figuring whether or not the domestic supply is over or more than the domestic demand, do we not have to recognize that part of the production which is exported has to come from crude oil, whether we ship it out as gasoline or what?

A. You are basing—

Q. (Interrupting) Will you answer the question? If we ship out a given quantity of gasoline, fuel oil, lubricating oil, and other products of crude petroleum it is an indication of so many barrels having been used in the production of that, is it not?

A. Yes, in the last analysis, you have to go back to your raw materials to gain the finished product, it does not make any difference.

Q. Is it an incorrect statement to say that the foreign demand for crude oil from this country, and refined products from crude oil of this country, accounts for a total consumption of

a billion four hundred and twelve million barrels of crude oil per year?

A. Well, you have the figures; just offhand, I would say that you are quoting figures correctly.

Q. I am trying to.

A. I believe you are.

Q. Well, that figure is 402,000,000 barrels greater than the figure that you give as the total imports into this country during that period?

A. May I ask you a question—in balancing up the crude and refined exports, have you offset it with the crude and refined imports?

Q. Yes.

A. You have, then please give me both totals. Give them to me separately.

Q. I am not being examined. I am not on examination.

A. Then I will make a statement: That is this, that the crude and refined imports during the last thirteen years are probably about equivalent to the crude and refined exports during the thirteen years.

Q. Then, Mr. Bowles, we have 341,000,000 barrels of excess storage according to your testimony yesterday, in tankage at this time?

A. That is direct overproduction and excess imports.

Q. You have just stated that the imports and exports balanced off, have you not?

A. I am talking about—

Q. (Interrupting) Cannot we create a situation that refined products come from crude oil?

A. There has never been any question about that.

Q. And it is a fact that we also export the products of refined crude? Is that not true?

A. Yes, sir.

Q. We export much crude oil, don't we?

A. Yes, sir.

Q. And I believe you stated that the exports approximately balanced as against the imports. Then there is 341,000,000 barrels of excess storage at this time that must come out of local production?

A. No, sir.

Q. Well, does it make any difference whether it went out as crude or as refined products so long as one balances another?

A. Exports of crude oil over the seventeen-year period have only been 187,000,000 barrels, and in the last four years there has been only 2000 barrels of foreign oil brought into this country and re-exported during the last thirteen years.

Q. That was because we had so much production that it was unprofitable to export it, was it not?

A. No, sir; we import foreign oil and refine it in this country. Our exports of crude oil are practically, especially during recent years, exports of domestic crude.

Q. You say that exports of crude, in terms of barrels, offset imports, in barrels?

A. No, sir, I did not say that.

Q. Well, crude and refined?

A. Yes, they appproximately offset.

Q. You have said that the exports of petroleum and its products, expressed in terms of barrels of crude, are equal to the barrels of imports, or equals to the barrels of crude and refined, as expressed in terms of crude, that has been imported?

A. Do you want me to answer that?

Q. We have understood you to answer that is true.

A. That approximately the imports of crude and refined both are about the same as exports of crude and refined during the same period, it does not invalidate the figures which I have used and which have been confined to crude oil exclusively.

Q. Then, why in the world, if we do not gain anything, as operators and importers, over exporters, why did this 341,000,000 barrels excess—where, then, did this 341,000,000 barrels of excess come from, unless it came from the American producers?

A. It answers itself. The American producers.

Q. By whose design was that done?

A. The industry as a whole.

Q. Who is the industry as a whole, and who controls it?

A. I will be glad to answer that. I have before me the March issue of the Independent Monthly. In that article is a list of twenty companies, ten so-called Standard and ten so-called independent oil companies. The capital of these twenty companies—

Q. I am not interested in putting a lot of excess stuff into the record. What I am wanting to determine is how you know they control the industry?

A. But you say—

Q. I do not want to have your guess; I want to find out what you know?

A. I want to tell you, and I will tell you. Now, then, looking into their own financial statement of these twenty companies on December 31, 1929, they had aggregate assets of $9,560,000,000; now, that $9,560,000,000 is 80 per cent of the oil assets of the United States. Those twenty companies purchased 50 per cent of the crude oil in 1929. They had 92 per cent of the pipe lines. They had 60 per cent, at least, of the crude oil tankage of the United States. They had more than 50 per cent of the tank cars of the United States. They had 90 per cent of the tank steamer capacity of the United States; they had 74 per cent of the crude oil refining. Now, then, coming to the refineries, we are today putting through the stills of the United States about 2,000,500,000—

Q. Interrupting) Will you let us absorb—

A. (Interrupting) Let me make just one more statement. To show who controls the refining industry of the United States, the crude oil refining capacity of these twenty companies is 2,000,740,000 barrels per day. We are running 2,000,500,000 per day; so, strictly speaking, you could shut down the refineries of every other refinery in the United States and these twenty companies would have 250,000 barrels per day of crude oil to meet their refining capacity. By saying that these companies control the industry, you understand that these companies are a big factor?

Q. You say that they are a big factor in controlling the industry?

A. I would go further than that; I do not say that they control it all; there is $2,000,400,000 assets outside of these twenty companies, but these twenty companies represent 80 per cent. They represent $9,600,000,000 of oil assets.

Q. How do they control it, that is what we are trying to find out here.

A. By making the price for crude oil and making the price for these refined products.

Q. Do they do that by joint action?

A. I doubt it, in a measure, I doubt it very much. I do not think it would be possible at this time to prove that.

Q. Is there anything to indicate that they do do so?

A. When companies get as big as these companies they all operate about the same way. When they get up like the Texas Company, with $600,000,000 capital, and the Humble Company, with $250,000,000 to $275,000,000 capital, and the Standard of New York of which it is a subsidiary, with a capital of $1,750,000,000, the channels of business trade and co-operative operation and organization fall along about the same way. They do not have to sit down around a table and talk things over. For instance, if the price for oil by one of these major companies drops 2 cents today, tomorrow and the next day the price of oil with similar companies will drop just about the same amount, and it is not necessary for them to have any private agreement or private understanding or gentlemen's agreement for them to do that.

Q. Is there anything that keeps the little man, the independent refiner, the independent producer, or the independent marketer, or a combination of all of those from having a vertical set-up?

A. No, but that is not all of the answer. Let's take the percentage of pipe line values. The percentage of crude oil storage by these companies is sixty per cent. That is the per cent that they control. It is not necessary for them to sit down and agree as to how they are going to change the price of your crude or refined.

Q. Do they sit down and agree to it?

A. I do not believe they do. In the first place, it would be pretty hard to get Mr. Holmes and Mr. Teagle and Mr. Mellon to get together at one time in the same place without some of these newspaper men knowing it.

Q. Do they do it by their agents?

A. I am sorry that it is not necessary for them to do that.

Q. Now you spoke of it yesterday as being more or less reprehensible?

A. More or less what?

Q. (Interrupting) Subject to criticism, that the buyers of oil in East Texas are willing to take it at as a low a price as they could buy it?

A. Mr. Holmes made that statement. I think Mr. Holmes stated that we buy crude oil, I think he said, in general terms, that they bought crude

oil at the price the crude oil was offered to them.

Q. Mr. Holmes further stated that he did not buy that cheap oil when it was offered to him if it would be sold to some competitor through the channels who in turn would use it in the market to affect the price of refined products? Do you know of the meeting that was held recently in New York of the heads of the major companies for the purpose of financing the storage of East Texas oil? Do you know anything about that?

A. I know there has been a good many meetings of independents, I mean Standard and non-Standard companies for the purpose of devising some means of storing the oil that is flooding the market at the present time, and the fact of the matter is that they do store the oil because it is not running out on the ground.

Q. Now in 1923 and 1927 when we were at the peaks of production, or at the peaks of overproduction, is it not a fact that the purchasers of oil took every barrel of oil that could be run to them and stored it and took away the shock that overproduction produced?

A. Yes, that is a fact, and they took it out at the price it was offered at.

Q. That, however, was in a period of stable market conditions?

A. The purpose of the storage of the oil made when purchased at low prices is always made during periods of and there was corresponding advances in the marketed product.

Q. You think that business men or a group of business men under conditions such as we have now would be warranted, be they major, independent, or what not, in buying oil, we will say, at 50 cents per barrel, and putting into storage at the high price, when the individuals in Texas in the flush production are trying to sell the same oil at the same time at 15 cents per barrel?

A. The answer to your question is that instead of going out and building sufficient storage to care for the oil at the price, provided there is not ample storage to absorb the excess production in East Texas at the present time, then instead of investing millions of dollars in tank capacity, you had better turn the spigot and let it run out on the ground.

Q. Would you consider it advisable for this Legislature to provide a means whereby production might be curtailed to keep it within the market demand?

A. Yes, sir. Provided you will tell me what you mean by the market demand.

Q. You have told us that market demand is so many barrels. Those portions which have been consumed over the past thirteen-year period?

A. I have the answer here, I think, I would like to submit these figures to you because they are vital in the understanding of the question that you ask. That is, the question of oversupply. Now, you have an oversupply of oil in the East Texas field at the present time. We had an oversupply of oil in Oklahoma in the Seminole field. They had a local oversupply in those three fields in California. I want to illustrate this to you in this way: According to the United States Bureau of Mines, the United States is divided into ten districts, five of those districts have a surplus and five of those districts do not. Texas is in the area where they have an oversupply.

Q. Now you have got to move the surplus crude from the surplus area to offset the shortage in the shortage area?

A. Now you talk about the market demand of the United States—

Q. Mr. Bowles, I am not attempting to interfere with you, but what I am trying to ask you about is what the demand is and what the market demand is; what causes that?

A. But you cannot determine it by just a purely local condition; you have to take into consideration not only the conditions existing in a local area, but you have to take into consideration and look at the whole United States in order to find out what the condition really is.

Q. You think that can be done?

A. Yes, sir; I certainly do.

Q. Do you think the machinery set up for curtailing the production of oil, and also to provide a means for geographically fixing the areas might control the market demand?

A. You say curtail it?

Q. I want your answer to that question.

A. I believe that curtailing is better than the adjustment of supply and demand. Gentlemen, what I mean to say is this: You are not going to get stable prices with the conditions in

East Texas until you bring the producers in East Texas within what certainly should be considered the market demand.

Q. Do you have the means in Oklahoma for curtailing the production to the reasonable market demand?

A. I will answer the first part of the question by saying that the matter in Oklahoma, the curtailment idea, has been so affected that we have produced less—that we have reduced our production last year, from the—the past year 40,000,000, and this year 25,000,000 barrels.

Q. Has the enforcement of the bill in Oklahoma been to curtail the production there from the maximum amount to the minimum production?

A. I cannot answer that question.

Q. You have indicated that the curtailment has relieved the price situation there?

A. No, I did not say that.

Q. You did not mean to convey that inference?

A. No, I did not say anything like that.

Q. I inferred that from your remark.

A. Well, I did not say that.

Q. Now then, take California. What has been the result of the efforts of curtailment there?

A. They have been extremely effective in keeping the oil within the bounds.

Q. Has it worked to the advantage or the disadvantage, relatively, of the majors or minors in California?

A. I cannot answer that question in California.

Q. Now, then, if it can be effective in Oklahoma without discrimination, and effective in California without discrimination, is it your opinion that it can be done in Texas without discrimination?

A. Yes, sir, it can be done. You set up the machinery that has the authority to not only curtail production, but to take the crude oil that comes to the surface of the ground ratably and equally from the producers, and hold your production within the required limits, providing that has been adjusted and allocated by the proper producing area, and you will bring about that condition of stabilization which the big companies as well as the smaller companies and independents in this area will want, and it will result in immediately higher prices.

But it usually results that when a local area gets out of control that the only way to bring it back into control is to penalize overproduction by curtailment, bringing it back to where it should be and then have a law which will require pipe line companies to take it ratably and equitably from the producers, and then you have done about everything that can be done about stabilizing the market within this territory, but in order to do that you must have the co-operation of the industry to get the proper results.

Q. You came here as a voluntary witness, didn't you, Mr. Bowles?

A. Yes, I came here in answer to a telegram from a gentleman that I forget what his name is; I don't have the telegram with me, but he wired me to come and appear before the legislative committee.

Q. One of the committeemen?

A. I don't recall the name of the man on the telegram, but I can produce it if it is necessary.

Q. It's unimportant.

A. Yes.

Q. Did you say, upon arriving here—

A. Sir?

Q. Did you say, upon arriving in Austin, that some of your associates in Oklahoma City prophesied that we would be unwilling to let you testify before this Committee?

A. That what?

Q. That some of your associates in Oklahoma City prophesied this Committee would be unwilling to let you testify?

A. No, because I had a telegram asking me to come.

Q. I asked you that question because it has been rumored about that you made such statements, and I wanted you to have that chance to clear it up. Now, just what is the difference between the term domestic demand and domestic consumption?

A. When you consider what you might call the domestic market, it is a thing that expands and contracts; it is not such a thing as a positively measurable, unchangeable thing. It is reflected, or its expansion and contraction, is a reflection, of varying conditions in the country. For instance, during prosperous times we absorb more of products than during adverse times.

Q. If possible, now, I would like for just three or four questions as brief as I can make them to be stated and see if they summarize your views. That imports into this counery, expressed in barrels of crude, have just about been offset by exports of petroleum and its by-products, expressed in barrels of crude?

A. Yes, with this additional. That I won't concede that that is an extremely important factor in the consideration of the crude oil situation as it exists in East Texas today.

Q. All right, sir; and there are 341,000,000 barrels of oil in storage now, in excess of requirements for working stocks, and so on?

A. No; there are 341,000,000 barrels of crude oil in storage more than there was on January 1, 1918.

Q. 1918?

A. Yes. In other words, the crude—

Q. Well, that is approximately another way of expressing the same thing; is that true?

A. Well, I said it my way. I would prefer for the record to have it my way.

Q. That's all right. And you—the periods of overproduction which have been absorbed by those who were willing to buy oil in the past have usually coincided with periods of general business prosperity?

A. Not necessarily.

Q. Well, they either have or they have not. Have they generally coincided with periods of general business prosperity?

A. No, and you cannot read anything particularly vital in that relationship. Of course, there is a general relationship between general periods of business prosperity and conditions within the oil industry, but the overproduction which brings the chaotic conditions in the oil industry has very little to do with the general business conditions of the United States as a whole, very little to do. They go out and find them, regardless of whether it is good times or bad; and when they find them the price goes down, regardless of the rest of the country, so you cannot read a relationship in there and draw a conclusion from it that would be infallible.

Q. One more question in that connection. When the Seminole pool came on, didn't it, temporarily at least, while the peak was on, greatly lessen and in some places entirely stop explorations for new fields?

A. Automatically, but not only Seminole, but your field is doing it; California did it, and West Texas did it, and any other field.

Q. That is an automatic reaction?

A. Yes, that is an automatic reaction.

Q. Then you think that market demand could be determined, and that it would be a good thing for the industry as a whole if a fair system of curtailment could be worked out and the production held within the market demand?

A. Unqualifiedly, yes.

Q. Have these periods of overproduction in the past been accompanied by a wasteful use of petroleum?

A. Not wasteful in the sense of physical waste, that it ran down the river or ran into pools and so forth, but because it did not find its highest economic value; that is just as true of cotton and wheat and corn as it is of oil. That is a universal economic principle.

Q. In comparing the potential uses of a barrel of crude oil with those commodities which would furnish a substitute in the fuel and lubricating field, approximately, on today's commodity prices, what is the intrinsic value of a barrel of crude oil?

A. That is a question that the oil industry itself has never found the answer to in seventy years, because it is elastic and the factors entering into it are variables, and if you were to find an accurate figure today, it would change with the next big field that came in, and the yardstick that you measured the conditions in one part of the United States with would not measure the conditions in another part, and the yardstick by which you measure conditions of one country would not meet the conditions of another country.

Q. There is an approximate value, is there?

A. The intrinsic value?

Q. Yes.

A. The value of the refined products from a barrel—

Q. No. If you didn't have a barrel of petroleum, expressed in terms of coal or other substitutes for fuel, there is no excuse now for oil to be less than a dollar a barrel as compared with other commodity prices, is there?

A. I think it ought to be that, yes, or more.

Q. Or more?

A. Yes. I want to say this, though, in continuation of your question: That when you take some of the best oil in the United States, and that is from your East Texas field, that is selling for a dime a barrel, or a little more or a little less, and compare it with Seminole crude, which is not so good, or Southern Oklahoma crude, which is very different, or the crudes of other States, you would have to add all of them together, get an average, and it would be worth about the same as fixing the average height of a man or his average weight. There are exceptions to it up and down the line.

Q. What is the association of which you are, I believe, the manager?

A. Statistician.

Q. Statistician?

A. Yes.

Q. What association is it?

A. The Independent Petroleum Association of America.

Q. What is the membership of that organization?

A. It is made up of several hundred independent oil men, scattered throughout the United States.

Q. Do they contribute dues to the organization?

A. Yes, either directly, as contributions, or on the basis of $25 memberships.

Q. Have you a list of all contributing members?

A. No, I have not. That would have to come out of our office in Tulsa.

Q. Can you get that for the information of the Committee?

A. If the Committee asks me to get it, I will submit your request to our general manager. You see, I am not the general manager of the organization, and I will pass it along to him.

Q. I make the request in behalf of the Committee, that you do file with the Committee a list of all contributing members, and their addresses, of your organization.

A. I will transmit your request to Mr. Russell B. Brown, the manager of our association.

Q. We are going to ask that of all other organizations who are officially represented in testifying before this body.

A. I didn't take it that I was an exception.

Q. No, you are no exception; it is not so intended.

A. No, no.

Q. Have you a printed constitution and by-laws?

A. Yes; we have. I don't happen to have it with me.

Q. May I ask you to file that, too?

A. Yes.

Q. I think that will be all of my questions, Mr. Bowles.

Mr. Hardy: Are there any other questions?

Mr. Farmer: I have a few questions, Mr. Hardy.

Mr. Hardy: All right, Mr. Farmer.

Examination by Mr. Farmer:

Q. Mr. Bowles?

A. Yes.

Q. I desire to ask you just a few questions from a point of view that occurs to me, and in order that we may get to the heart of this. We recognize in you a man that is a master of the statistical part of this business, and we appreciate the candid way in which you have spoken to us. The first question I desire to ask you is this: Can the price of crude oil be set by limiting our production—

A. Just a minute now.

Q. Can the price of crude oil be set by limiting our production as effectively as by nominating a certain price by law?

A. That's a good-sized order. In the last analysis, regardless of how you do it, you cannot stabilize the oil industry without bringing your current crude production reasonably within the current requirements, the current total requirements. By current requirements, total requirements, I mean the crude necessary to be run to stills, crude for export, and crude to be used for other purposes. Automatically you have to bring your source of supply reasonably within your demand or you cannot have stable price. We have been led to believe for a great many years that supply and demand made the market. Unfortunately, there are times when we believe that that fundamental economic principle has not been on the job all the time.

Q. Now, Mr. Bowles, there is reported in the papers that your Governor will likely up there, arbitrarily, under the law, if you have one, prohibit the production of oil in the State

of Oklahoma. If that is done, will that tend to increase the price of oil?

A. That might be one result.

Q. Another question—

A. Understand me now; I said that might be one result.

Q. Then, if the State of Texas should prohibit the production of oil in Texas for six months, would that enhance the value of oil?

A. Undoubtedly an increase in the price of crude oil would be one of the results, if you could do it.

Q. If we could do it?

A. If you could, and thought it wise to do so.

Q. All right. Mr. Bowles, if the major companies legally set a price, acting by one of them taking the leadership and the others immediately following, may not the State of Texas set a price in order to protect her natural resources and save waste?

A. That is a legal question, and I am not a lawyer.

Q. We pass. Third: Would a classified occupation tax deter overproduction? To illustrate—now, for instance, we will classify the producing wells of Texas in 300-barrel wells, 600-barrel wells, 1000-barrel wells, 5000-barrel wells, 10,000-barrel wells and 20,000-barrel wells. On the 300-barrel wells we will place a tax of 10 cents per barrel of oil produced; on the other wells 15 cents per barrel, 25 cents per barrel, 50 cents per barrel, 60 cents per barrel, and 80 cents per barrel daily, respectively. If such a law were enacted by the State of Texas, would that tend to deter the overproduction?

A. I would think that it would have some influence. It might have the influence in one direction, of temporarily reducing your production, providing there were not other undesirable reactions from it.

Q. For instance, take this example: In East Texas the posted price now is 15 cents a barrel; would a man with a 5000-barrel production daily offer his oil for sale at 15 cents a barrel, when he had to pay 25 cents a barrel tax on it?

A. He would have to have a pretty good bank account, if he did.

Q. He would stop his production for a while, wouldn't he, until he could get a better price?

A. Probably so.

Q. Of course, we will not go into the legality of these questions, but would the closing of gas wells until a market is found for the gas help the price of oil; that is, wells producing both oil and gas?

A. Do you mean natural gas wells?

Q. Yes.

A. They would have too much legal connection with public utilities; you have public utility laws.

Q. For instance, Mr. Bowles: In the Reagan county field we have some wonderful wells that are producing 20,000 barrels of oil under the present marketing system, and they are wasting hundreds of millions of cubic feet daily there of gas. If we did stop the waste of that gas and thereby stop all the oil being produced there, those wells, five of them producing 20,000 barrels a day, making a total of 100,000 barrels; if we absolutely stopped the production of those wells, would that help in the price of crude oil?

A. Anything—we will have to believe, and we want to believe, that the business of the United States and of this State is so adjustable that when there is an oversupply, any reasonable and legal method of reducing production would tend to stabilize the industry and increase the price if you have an unreasonably low price, as we have today. We want to believe that, and not to do so is to dig out the foundations of our business today.

Q. Will proration help to crush the small man by preventing him from getting enough money from his well to pay his debts?

A. The law is one thing and the practical application and enforcement of the law is another.

Q. For instance—

A. If you had a good, fair, equitable proration law, and administered it ratably and equitably among your producers, undoubtedly you are going to bring back a stabilized condition in your industry and a higher price.

Q. Over in East Texas there are several hundred men who have invested their all in a little well. There is a man with a 5000-capacity well, in which he has placed his money, and he owes $25,000 on it; he is allowed from his ten-acre lease to take 300 barrels of oil and that is only $45 a day that he can get out of his well. There's one of the major companies which has a hundred wells, and they can take the same amount from each well. Now, by getting only $45 a day for six months, can he retire that debt which is due in six months with

such a price and with such a limit placed upon his production?

A. When you are operating under the present drastic prices—confiscatory prices, if you want to call them that—in East Texas, and you have an enormous potential production and you let that man put his money into the ground and you don't let him take out of the ground a sufficient amount of money to amortize his investment, he naturally gets into the bad pretty fast.

Q. Then he is a distress victim on the market to the man who wants to take him, isn't he?

A. He is probably that bad off.

Q. Is there any reason that you know of for paying 50 cents or 40 cents for North Texas oil and Oklahoma oil, with a 50 cents pipe line charge on that oil from North Texas and probably more than that from Oklahoma, when they are only paying 15 cents for East Texas oil, which is better oil and has a cheaper pipe line rate—is there any reason to fail to buy, or get the same price on the East Texas oil?

A. I believe Mr. Holmes answered your question yesterday, when he said that they bought the oil and paid the price the man was willing to take for it. I think he said that is the basis on which they buy it.

Q. Well, what does Mr. Bowles say?

A. Getting back to the question the other gentleman asked me, of the intrinsic value of oil, and looking at the oil industry of the United States as a national proposition rather than as a purely local proposition, and looking at the price of oil in a broad way, when it comes to the question of letting everybody suffer rather than let a few people suffer in one local area, I would say it is pretty hard to understand just why we folks up in Oklahoma and Kansas today are getting 18 cents a barrel for our oil, when we didn't have a thing in the world to do with this thing. I am not blaming you, you see, but I am taking it into a couple of adjoining States, and going over into Oklahoma and Louisiana, and over into New Mexico and up into Arkansas; they have all been affected by that. As to the morality of the question, I must leave that to the consciences of the men who are responsible for this condition.

Q. Now, to get right down to it. You haven't any reason to give why there should be that difference, have you?

A. I have not found it yet.

Q. And nobody else has found it, have they?

A. I haven't talked to them.

Q. Does the A. P. I. Association consist of officials of big oil companies; or are their members the ruling heads and subheads and so on of this bunch of big oil companies, that are in this A. P. I.?

A. Yes. I happen to be a member of it.

Q. Now, Mr. Holmes—

A. Bowles.

Q. Now when they meet don't they meet not as executives of these companies, but as members of this association?

A. You mean they lose their individuality as officials and executives of their own companies and gather around the table as individuals?

Q. No, sir; I don't mean they lose their own individuality, but they do not act as members of their own companies, but as members of this association, and there and then take sweet counsel together?

A. I have never sat in an executive meeting.

Q. Then if you haven't attended any of the meetings, you cannot testify about that. Do you know anything about their blue book, which says that this territory, the State of Iowa, belongs to the Standard of Indiana, and the State of Texas belongs to the Humble Oil and Refining Company, and they are to take those productions? Did you ever see that book?

A. No, and by the way, may I answer this way: The book to which you refer, that is, I believe that the book to which you refer, is the report of the Federal Trade Commission after investigating conditions in the oil industry, in which they found, on evidence, that the United States had been divided into areas for marketing conditions, and so forth, and while I have not a copy of that, I just happened to pick up a copy of the Oil & Gas Journal; I just picked up this journal because I couldn't pick up an Oil Weekly, published here in the State, or the National Petroleum News, or some other source of information; I wasn't playing favorites. I have circled here eleven companies;

I mean, eleven districts. I don't why, twenty years after the dissolution decree of 1911 when the old Standard Oil Company was broken up into some thirty-four units; I don't see why, twenty years later we should follow the same division or approximately the same division of the United States into given areas, but it appears that all our newspapers or trade papers print it that way because they get it that way. The Standard of Indiana has its area designated here, and its price—

Q. Does that show who has Texas here?

A. Yes.

Q. What does it show?

A. The Southwestern District is marked Magnolia Petroleum Company—Dallas, Fort Worth, Houston, San Antonio, El Paso, Texarkana, Muskogee, Oklahoma City, Tulsa, Little Rock, Arkansas—

Q. What is given to the Humble Oil and Refining Company; have you got it there?

A. Yes, just a minute. Let's see; we have here the Standard of Indiana and the Standard of California; the Magnolia—you want which company?

Q. The Humble Oil and Refining Company.

A. Humble Oil.

Q. Or do you have the Texas Corporation?

A. No, because this is not grouped in that way. Tell me what you want to get at and I will answer your question.

Q. Well, we don't want to spend too much time on that. I will ask you this: Would divorcement of the activities of the oil business, that is, divorcing the pipe line business from the producing business and from the refining business, would that prevent control of this situation by the major companies, or even tend to prevent control?

A. Well, now, let's answer that question in this way: These ten standard companies and these ten nonstandard companies have 91,891 miles of pipe lines, out of an estimated something like 100,000 miles, or something in the neighborhood of 92 per cent of the pipe lines in the country.

Q. In order to save time, Mr. Bowles, just answer me, if you can, yes or no.

A. State the question again.

Q. If we in Texas divorce the pipe lines from the production business, and the refining business, will that tend to prevent the control of the oil industry in Texas by the major companies?

A. It will have a very far-reaching effect, comparable, I would say, to the making of railroads common carriers, and keeping them from carrying, for instance, their own merchandise. Theoretically, most of the pipe lines of the United States are common carriers; many of them are not common carriers. It seems an unfortunate fact that the pipe line companies, or rather those companies, big integrated companies who own the pipe lines, have been the makers of the prices of crude oil. There must be some sort of connection between the crude oil purchasing company and the same company of which the crude oil purchasing company is one subsidiary and the pipe line company, which is another subsidiary, and the producing company, which is another subsidiary.

Q. That will be sufficient on that. Do extortionate pipe line rates tend to cut the independent producer off from the markets of the world?

A. I would like to answer that question in rather a broad way; may I have the time, please?

Q. Proceed.

A. I have before me here the report of the Interstate Commerce Commission Bureau of Statistics for the year ending December 31, 1930, and this is issued from Washington, D. C., under date of June 1, 1931; now you are trying to get at a fact there as to the relation of the pipe line and prices and earning power, and so on. On page 5 of this recent issue, I find that the Arkana Transit Corporation last year paid dividends of 220 per cent; I find that the Cumberland paid dividends of 36 per cent; The Cities Service paid dividends of 140 per cent; the Gulf Pipe Line Company of Oklahoma paid dividends of 400 per cent; the Humble Pipe Line Company paid dividends of 40 per cent; the Illinois Pipe Line paid dividends of 18 per cent; the Imperial Pipe Line Company, which runs from Michigan up into Ontario, and is a subsidiary of the Standard of New Jersey, paid dividends of 50 per cent.

Q. Give me the figures of the Texas Corporation.

A. The Humble Pipe Line paid dividends of 40 per cent. Does the Empire operate in this State?

Q. Yes.

A. They paid dividends of 36 per cent; the Magnolia Pipe Line paid dividends of 46 per cent.

Q. What is the Prairie Oil and Gas—do you have that there?

A. Yes, 20 per cent. The Oklahoma Pipe Line Company, which is another subsidiary of the Standard of New Jersey, paid dividends of 30 per cent.

Q. Now, let me ask you this question. I will pass on in the interests of time.

A. Just this one here; now, as to the Texas Company, they paid 93.4 per cent, and the Texas Pipe Line Company of Oklahoma paid 100 per cent.

Q. For what year is that?

A. That's for 1930.

Q. Mr. Bowles, Mr. Bowles, as to these pipe line rates from East Texas, if it could be shown that it would be a fair price, instead of 33 cents, to get that oil and transport it to tidewater, that a fair rate on the investment would be 10 cents a barrel; would that difference of 23 cents react to the benefit of the producer in East Texas?

A. Undoubtedly.

Q. Doesn't unemployment, Mr. Bowles, bring about a condition of affairs so that they are unable to buy? The masses must buy, we understand that, do we not; that the masses of the United States are the main purchasing power?

A. Which has been very seriously impaired.

Q. If they are unemployed and don't have the money to buy these products, doesn't that tend to bring about a condition that the price comes down and the people cannot absorb a normal production?

A. That would limit the market.

Q. Now, Mr. Bowles, since these low prices are on, I want to ask you this question: Haven't the masses of the people profited by the low price of gasoline?

A. Let me answer that question this way—

Q. For instance, let me give you this: There are 500,000 people in Texas that are interested in the production of oil, more or less. There are 5,500,000 people that are only interested to the extent of consuming those products and getting the taxes to help relieve the burden on them. If the price of gasoline is low, then don't these 5,500,000 people profit by that?

A. I just wonder if, when you paralyze an industry, and pay the pitiful prices for your raw material and something like a corresponding price for your finished product, whether even those who buy the finished product at that ruinously low price to the oil industry, whether it does profit them very much in the long run.

Q. I just wanted to know, yes or no. Now, this question: Why is the retail price of lubricating oil for our automobiles still up as much as it was when oil was selling for more than a dollar a barrel?

A. Yes, we are paying—my wife and I, I mean——we buy that lubricating oil, and we are paying the same price for oil as we did years ago.

Q. Is there any justifiable economic reason for that?

A. I have never been able to figure it out that way.

Q. Thank you, Mr. Bowles.

Examination by Mr. Gordon Burns:

Q. Mr. Bowles, from your information and figures you have there, isn't it a fact that every time the Commission issues an order for proration, that the price of crude oil drops?

A. It is currently understood that that is the fact.

Q. That every time there is issued a proration order. Then proration does not help the oil men any, because the price of oil drops, doesn't it?

A. For some unaccountable reason proration has not held up the price, apparently, of crude oil, and the explanation has usually been that if you had not had proration you would have had a worse condition, and to that extent proration has saved you from a worse condition.

Q. It couldn't be any worse than 10 cents a barrel, could it, Mr. Bowles?

A. Not more than 10 cents worse.

Q. Isn't it a fact, Mr. Bowles, that the major oil companies, the Standard Oil and their subsidiaries, are trying through proration to gobble up the small independent producers of this State and other States?

A. That would be a pretty broad accusation for me to make to those

people, but if it should happen in Oklahoma, as it happened in Seminole, that after the smoke cleared away of the development of the Seminole field, which was largely an independent field to begin with, and after four and a half years it is very largely in the control of a few gigantic corporations. For instance—

Q. What corporations were they?

A. Well, let's take the production of the Seminole field from its beginning in 1926 to December 31, 1929; that is a period including a part of 1926, 1927, 1928 and 1929; there is three and a half years. Now, in that three and a half years Seminole produced approximately 360,000,000 barrels of oil. Of that amount, fifteen big companies produced 83 per cent of the oil and all the other operators in that gigantic field produced 17 per cent .

Q. I want to ask you this question, and it is the only one I have: Isn't it a fact that after the proration bill was passed by the Legislature of the State of California, and the Governor signed it, the price of gasoline on the market, the price of gasoline went up 5 cents a gallon to the people of the State?

A. Yes.

Q. Isn't it a fact that if you pass this bill, the 5,800,000 people in the State of Texas that is not directly influenced by the production of oil, to them the refined products in Texas will go up?

A. When you curtail the production of oil in East Texas, which you undoubtedly will do in the very near future, I think it is very safe to predict that there is going to be an increase in the price of crude oil in Texas, and I will say, a reasonably corresponding increase in the price of gasoline.

Q. That's all.

Examination by Mr. Nicholson:

Mr. Bowles, further pursuing the question asked by Mr. Burns: Your answer, I take it you intended to further indicate there might be an intention on the part of the larger companies to annihilate the smaller companies through proration?

A. I have always hesitated to make a statement of that kind, for the reason that I have felt that such a statement is not necessary, because all you need to do is to analyze the things that happen and draw your own conclusions.

Q. All right. Now, if the unrestricted production of crude oil is permitted—

A. Prohibited?

Q. No, permitted.

A. All right.

Q. —to take the same course as it is taking now, for example, in the East Texas field, how long do you think the little man will be in business under that arrangement?

A. Not very long.

Q. All right; then perhaps proration might have the effect of maintaining the little fellow in business for a greater length of time than unrestricted production would keep him there?

A. Undoubtedly; unrestricted production, and its accompanying low prices, is always followed by the rapid elimination of the small producers, because he can't stand the gaff. He has to get his money back out of the ground in order to live. It automatically follows that when the production is curtailed, and the price is raised, he stands a better chance to stay in business, because he is getting something for what he produces.

Q. That's what I thought. Now, you said something a while ago about a condition where there was only an excess of production in a local field. How could there be an excess of local production, and not an excess of world-wide production?

A. Very easily. For instance—the East Texas field this year is going to produce in the neighborhood of 80,000,000 barrels. That production in Texas, that was not dreamed of a year ago, is going to be absorbed by a reduction in the older fields of Texas of about 75,000,000 barrels. That leaves an increased production of the State of only 15,000,000 barrels. In other words, while a year ago you did not dream you had East Texas, and now you have it on your hands today, and it will produce 80,000,000 barrels, you are going to reduce the production in almost every other field in Texas and slow them down through proration and so forth, and they are going to absorb 75,000,000; no, that should have been 65,000,000 barrels of that reduction, through their reduced proration, and that will leave only 15,000,000 barrels increased production in the State.

Q. That is a correct statement, but in that case it was not a local production or overproduction; it af-

fected production in other fields. It might have affected production even in South America, for that matter. My thought is this: The buyers of your crude can immediately establish a demand in any market in the world?

A. I want to say this, if I may answer that question this way.

Q. All right.

A. The cutting of prices, whoever is responsible for it, has been followed by the increases of prices, whoever is responsible for it; it is very easy to say that supply and demand does it, but that is a rather glittering generality; the fact of the matter is that throwing this deluge of oil onto the market from East Texas has overburdened the market and it is just as easy to believe that the restricted production in East Texas will be followed by increased prices.

Q. That is true.

A. Yes.

Q. But, by the overproduction in one field, the tendency is to affect the prices in all fields?

A. Yes, your local overproduction in your East Texas field has affected the production and the price of oil in every other field in Texas, in every field in Oklahoma, in every field in Kansas, and throughout the Mid-Continent, and in a general way throughout the rest of the United States.

Q. You were talking a while ago about refining capacity.

A. Sir?

Q. I say you were talking a while ago about refining capacity; you stated the amount of what the capacity was.

A. Yes.

Q. Of ten companies?

A. Twenty companies.

Q. You stated that daily something like 2,500,000 barrels of crude oil was being run to stills?

A. About 2,500,000 a day.

Q. And you stated that ten of the refining companies had a capacity in excess—

A. No, twenty. Ten standard and ten non-stardard, combined.

Q. But your statement was that ten of the larger companies had more capacity, or capacity in excess of the amount of crude oil being produced?

A. No, I didn't say that; and if I did I want to correct the record. I have it right here: I said twenty companies had approximately 750,000 barrels of crude oil capacity, and we were only running 2,500,000—while these twenty companies have an aggregate crude capacity of 2,750,000 a day.

Q. If I understood you correctly, you made the statement that millions of dollars had been spent in constructing the tankage that went along with those refineries?

A. No, I didn't refer to that; well, wait a minute—

Q. In constructing the tankage in which the owners of the tankage might store the East Texas crude at a low price?

A. Yes.

Q. Where was that construction?

A. I said they might do it. I said it would be reasonable to conclude that they would, in the attempt to find temporary storage, provided there was not storage to take care of that oil in other areas, in Texas and outside of Texas.

Q. Your statement was not that they did that, but that they might do it?

A. I said they might do it, and I might add to that that some of that storage is being filled. And whatever the storage, the increased storage that is being built today, does not take up, they will have to pipe line it to some other area outside of East Texas, or Texas itself, and put it in that storage.

Q. Do you regard tankage as proper equipment for a pipe line carrier?

A. Yes, absolutely essential.

Q. Do you know whether or not in your figures with reference to profits, whether the investment in tankage was taken into account in determining that?

A. No, I have not studied that, but that can be verified by studying the report of the Interstate Commerce Commission, which is available from this office in Washington.

Q. Then you do not make the statement that that tankage was included?

A. I don't make the statement either way. Except to say that I have not studied the statement to see if it was included. In that connection, I want to say that last spring when I was in Washington in our fight for a tariff on oil, I had close contact with the Interstate Commerce Commission, and I checked up on the pipe lines rather closely, and I found out that the Interstate Commerce Commission had made very much less careful study of the pipe line situation of the

United States than it had for instance of the railroads; there is an obvious reason for that, of course.

Now I examined very carefully the forms that were sent out by the Interstate Commerce Commission to get this information—in fact, I checked over the filled out forms of a number of the companies there, which, by the way, is public information, and off those reports, you see, this report is tabulated; tabulated from the reports of those companies, and if there are any inaccuracies in those reports then they are inaccuracies of the original reports made by the pipe line companies themselves. I am simply quoting this tabulation of the pipe line companies themselves.

Q. Just one more question. You are familiar with the fact, aren't you, Mr. Bowles, that pipe line companies, as a subsidiary company at times of a holding company, delivers oil into tanks of still another company, which by reason of that fact, and by reason of belonging to that company, would likely not be included as a part of the investment of the pipe line company when they are determining the profits of the pipe lines?

A. That fact is an isolated fact, and is a conceded fact; now what is the conclusion?

Q. That the profits you quote there are, to a very considerable extent, greater than they should be. That is my conclusion.

A. Undoubtedly, they are what they said they were, because they are taken off their own reports, and if they are wrong and do not reflect the situation, the people who made the reports are responsible for that.

Q. That's all.

Mr. Hardy: That's all, Mr. Bowles. Thank you.

(Witness excused.)

Whereupon, at 10:50 a. m., upon motion duly carried, the Committee of the Whole House stood at ease until 11 a. m.

Thereupon the witness, Pat M. Neff, being duly sworn, testified as follows, examination by Mr. Graves:

Q. You are Pat M. Neff?

A. Yes.

Q. Governor, you are a member of the Railroad Commission and have been so for approximately more than a year, is that right?

A. I have.

Q. As such member of the Railroad Commission, are your duties confined entirely to railroad matters, as, as we all know, I want it in the record, however, other duties beside your railroad duties?

A. We have other duties beside the railroad matters, as originally contemplated by the law creating the Railroad Commission.

Q. What are those, briefly?

A. The conservation of oil and gas, the regulation of busses and trucks, the regulation of gas utilities.

Q. The conservation of oil and gas recently became more burdensome than it has been heretofore; is that so?

A. That is correct.

Q. Your duties with reference to the regulation of trucks have also increased greatly in just recent years; is that right?

A. It is.

Q. Relative to the regulation of the gas utilities, has that increased, or what about that portion of your duties?

A. The Gas Utilities Division has not required any special time by the Railroad Commission since I have been on it.

Q. Since you have been on the Railroad Commission, how many public hearings have you had relative to gas utilities?

A. One.

Q. Approximately how much time did that consume?

A. Two days.

Q. In other words, in about a year you have spent two days on gas utilities?

A. That is all we spent during the year 1930.

Q. Do you think, if we were to give you workable and stronger laws than you now have, has the Railroad Commission a sufficient amount of time to continue their duties and enlarge their duties relative to the regulation of gas and oil?

A. So far as time is concerned, I think they have sufficient time.

Q. We are at the present time endeavoring as best we can to find out some method to remedy the deplorable condition in which the oil and gas situation finds itself in Texas at this time. Having talked with you and knowing some of your ideas, I would like to have you suggest to the

Legislature at this time what some of your ideas may be as to remedying that situation.

A. You mean in regard to the conservation of our oil and gas?

Q. Yes.

A. Yes, I have some ideas of about how that ought to be done. It is my opinion that we have at this time, generally speaking, sufficient laws, if properly enforced, to conserve both the oil and gas. My idea in regard to how it should be done is well known to the Commission. One of the first things I think the Commission should do, and I believe it also has the authority to do under the law at this time, is to define an oil and gas ratio to be used in the proration of oil and gas, allowing a certain per cent of the gas pressure, known, I believe, as rock pressure, to be used for the bringing out of a barrel of oil, and when that gas has been so used it should be piped back or tubed back into the ground. In that way you not only conserve the natural gas, but in my opinion you also conserve the oil fields, and an oil and gas ratio, which I think the Commission now has the authority to define, if defined and enforced, would not only conserve and regulate the production of oil, but would at the same time conserve the production and the conservation of our gas.

In addition to that, I think the Railroad Commission should have, during the past, enforced what is known as the pipe line law, in regard to ratable taking, which the Commission has not attempted at any time since I have been on it to enforce. The pipe line law went into effect June of last year, and I don't know of anything the Railroad Commission has done at any time even looking to the carrying out of the provisions of what is known as the pipe line law. When it went into effect, I urged before the Commission that some one of our deputy oil and gas supervisors should be put in charge of the enforcement of that law, and that the other seventeen deputy oil and gas supervisors, scattered throughout the State, should be used in the enforcement of that law, but there was no action at that time as to the putting of that law under the regulation of any one, and as far as I know, the Commission has not at any time, in any way, directly or remotely, enforced any of the provisions of that law.

I also think the Commission should have, and that it now has the authority to regulate the rate charged by pipe lines for conveying oil from the various fields to tidewater and elsewhere. The law states that the Commission shall gather facts and fix the rate for these pipe lines to charge. So far as I know, no information has been gathered by the Commission, and certainly no action has been taken by the Commission pertaining to the fixing of these rates. In other words, the entire pipe line law has not been considered by the Commission at any time as a part of the duties of the Commission to enforce it.

I am also of the opinion that the common purchaser law should be enforced. It has not been enforced by the Commission in any way. Therefore it is my opinion that when the Railroad Commission, as it has authority to do, has defined an oil and gas ratio; enforced the pipe line law and enforced the equal common purmon purchaser law, that we will have in a large measure solved the proration problem and solved the problem of the conservation of oil and gas in Texas.

In addition to those larger and more important provisions of the law, I think the Commission should widen the distance that all wells at this time should be placed in reference to the dividing line between property. It is now 150 feet and that law has been held to be good, but I think they should be moved back at this time something like 400 feet from the dividing line, and that the distance of 300 feet now provided by our rules in regard to the placing of wells, should be widened to something like 500 or 600 feet. Those rules of course could be changed from time to time, but in the rapid development of our oil fields I think that a rule at this time along that line would be helpful.

With those provisions stated by me, in my opinion, we would have solved the conservation of oil and gas as the law contemplates it should be conserved when it was put under the jurisdiction of the Railroad Commission.

Q. Governor, do you or did you favor the proration order that was issued by your Commission?

A. Which one?

Q. The last one?

A. No, sir.

Q. What were your reasons for that disfavor?

A. Well, the reasons in a general way were as stated. That order, as practically all our other orders, has not been based, in my opinion, upon either the conservation of oil or gas. That order, like other orders in regard to the conservation of our oil, has been based heretofore upon the amount of oil that could be sold to the purchasers. We have a hearing and develop much technical knowledge as to the underground waste and the top-ground waste and the evaporation and other scientific information in regard to the waste of oil, but when the hearing is adjourned, not only in regard to this order, but others, the Railroad Commission then inquires of the different fields how much oil can be sold, how much oil will the purchasers take, and, when that is determined, then the Railroad Commission fixes its allotment to that field based upon what the field is able to sell and not based upon any scientific knowledge, and not based upon any information looking to the conservation of either oil or gas, and so this East Texas proration order did not take into consideration for any purpose the waste of gas in the East Texas field. It did not assume to fix any kind of an oil and gas ratio. It did not provide for the conservation of the gas after it was used, except to burn it in the open air. Because that order put in the hands, as I interpret it, of the larger oil companies the selection of an Advisory Committee in East Texas, vested with authority to select an umpire, that was not in the employ nor paid for by the Railroad Commission, to carry out our orders. Because, in my opinion, that order would require the average, every-day leaseholder, who owned 100 acres or more and who had one or two wells upon a unit of twenty acres that would produce his allowable, it would force him to drill new and additional wells in order to get all the oil he could, when, as a matter of fact, the Commission ought to have fixed it so that the minimum of wells would be necessary to be drilled and not encourage them to drill additional wells.

And then, I conferred with the Attorney General and asked him, Mr. Upchurch, if he drew the order. He said he had not. I asked him if it met with the approval of the Attorney General's office, and he said it did not. I was not called into any of these conferences during the making of this order. I attended the hearing during Monday and Tuesday. On Wednesday, frequent conferences were held in the Chairman's office, consisting of the other Commissioners, Mr. Smith, Mr. Parker, the head of the Oil and Gas Division; Mr. Hardwicke, an attorney, and others. This order was there—as I was reliably informed at that time, and afterwards learned it to be true—was discussed; I was not advised as to the meetings and, therefore, did not know either the merits or the demerits of the different theories advanced. I had no opportunity to present my own views in regard to it, although they were well known in a general way to the other Commissioners. So, taking the entire order and its preparation—the fact that the Attorney General, the employed attorney of the Railroad Commission, had neither drawn it nor had he approved it, and he told me in the conference he had made four definite suggestions, with the view of changing the order as it had been written and as it was delivered to him late on Wednesday afternoon of the week of the hearing, and that none of those four suggestions he had made was put into the order, and that he did not approve it—and, backing up his judgment with mine, I declined to sign the order.

Q. You said there were others present at the meeting—Mr. Hardwicke, Mr. Parker and the two other Commissioners, and others; who were those others, Governor?

A. I do not now recall.

Q. Do you know whether they were representatives of the major companies, or supposedly so?

A. I was not advised either way.

Q. Who is Mr. Hardwicke?

A. He is an attorney that lives at Fort Worth. I understand he is in the regular employ of one of the large major companies, and also is attorney for the Central Proration Committee. He is an excellent gentleman, a good lawyer and a friend of mine.

Q. What major company, do you know?

A. I am not sure. I was told, but I would not risk my memory to name the party.

Q. At the time this order was formulated or promulgated, was it in open meeting; did you have a meeting to that effect, or was it just

prepared and passed from hand to hand?

A. A few minutes before 5 o'clock on Thursday afternoon the Chairman sent for me. I went in his office and he handed to me the order as it was enacted, for our signatures. I glanced over it hurriedly — it consisted of some several pages—and after glancing at it, but not reading it, I told the Chairman I was not in position to sign the order; that I at least wanted some time to study it, and Mr. Smith said: Well, I took my order home with me last night and studied it; and I told him that I did not have that privilege. I didn't have one. And so they said they would not further consider it, and so I took it and went to my office, at practically 5 o'clock, and I did some study on it that night, and the next morning I came to the office approxi- at 7:30, and at 8:30, approximately, I went down to see the Attorney General and discuss with him this order, the conversation taking place as I have stated. About 9:30 that morning I came from the Attorney General's office to my office and met Mr. Parker of our Department in the corridor. I discussed with him for a few moments some of the provisions of the order, and went to my office and was dictating to my secretary my objections to the order, and was doing so about 10 o'clock when the secretary of the Commission brought the order as it had been given to me, signed by the other two Commissioners. I laid it on my desk and continued the dictation of my objections to it and filed it with the order, without my signature.

Q. That is, the order had not your signature?

A. Yes. I signed my objections, but I did not sign the order.

Q. Now, you have mentioned, in the beginning of your statement, that you felt it would be advisable to fix an oil and gas ratio. What do you mean by that, Governor?

A. The amount of gas necessary to bring out or produce a barrel of oil as economically as possible.

Q. The amount of gas that is necessary to raise it from its reservoir in the earth to the surface of the earth and utilize that gas as well as utilize the oil?

A. Yes, utilize the gas to bring out the oil and then put back the gas, to conserve the gas and also conserve the oil field, in order that it may be used to bring out other oil. I think it would be conservation not only of the gas, but specially a conservation of the oil field.

Q. Gas in recent years has become enormously valuable, hasn't it?

A. It has been, but judging from the waste of it, some people think it is worthless.

Q. Is it being wasted now?

A. It developed in the October hearing before the Railroad Commission, which was my first actual information with regard to the waste of it. We were having under consideration at that time the Reagan county field consisting of nine wells. The undisputed testimony at that time was that those nine wells, constituting the only wells in the field, were wasting and had been wasting for more than a year, every day, 150,000,000 cubic feet of gas, and in the hearing held this spring down at the Austin Hotel, I made inquiry of the expert engineer of the Reagan county field, and I have his testimony transcribed before me, to the effect that in March of this year, there was still escaping from these same wells, 140,000,000 cubic feet a day. I announced at the October hearing, in open meeting, that I thought all those nine wells should be closed down, beeswax tight, until some provision was made for the conservation of that gas. They had testified, a representative of that field, upon a question that I asked, that all those wells could be closed down and that no harm would come to the wells except a delay in getting out that oil, and so, a few days after that, I prepared a document and presented it to the Railroad Commission, providing that those nine wells should be closed down at once, until the operators had developed some scientific method for tubing the gas back, or until some market had been provided for the gas or until some method had been worked out to conserve the gas. The other two commissioners declined to sign that order, but said they would sign one of that kind, giving them thirty days in which to do that. I then wrote an order declaring that at the end of thirty days, or sixty, I am not sure but I think thirty, that those wells should be closed down unless, within the thirty days, they had made some provisions to conserve the gas. At the end of thirty days no change whatever had been made. The gas

was still escaping as testified to at the October hearing and I urged before my co-laborers that that order should not be extended, but they extended it a second time over my protest, and I do not know what has happened to it since then, as I have not been advised in regard to it and have not taken the trouble to look up to see just what has happened to that particular order except to see, in April down here, when that investigation was going on, they testified that 140,000,000 cubic feet was still escaping day by day.

That gas is being wasted is true not only in regard to the escape of the gas in that field, but I have a communication here which is information in the possession of the entire Railroad Commission and has been for some time, to the effect that in the Refugio field, some 45 wells in that field, there is escaping every day 210,000,000 cubic feet of gas.

The escape, however, of this 210,000,000 cubic feet of gas in the Refugio field, and the 150,000,000 cubic feet of gas in the Reagan county field are pygmies, compared with the gas that has been escaping for some time in the Panhandle of Texas. There is in my office, and in the possession of the Railroad Commission, information that in Texas now, each day, there is escaping and going out into the air, a half billion cubic feet of gas, every day. As a member of the Railroad Commission and as a native son of Texas, I have been opposed to the escape of that gas, and have been opposed to the idea of proration that did not take into consideration the conservation of this gas after it has served its purpose in bringing out the oil, and in the conservation of the gas that was not used for bringing out the oil, but merely came out and went out into the air.

Q. Do you know, approximately, the value of a thousand cubic feet of gas, an approximate value only?

A. Well, I pay, I think, 65 cents per foot for it—

Q. Per thousand cubic feet?

A. And I understand, on information that has been scientifically developed in two of our different hearings conducted by the Railroad Commission, that the gas that is escaping in these fields, laid down at the gate of any city in Texas or any city anywhere else, is worth more in money than the oil laid down at the gate of that city, either in Texas or elsewhere, and that the amount of gas escaping is today more valuable than the amount of oil that is consumed. I was informed by those who said they knew, from scientific information, that the escaping gas in the Reagan county field was more valuable than the oil, and that for every dollar's worth of oil that was developed in that field, approximately $4 worth of gas was wasted, and I am opposed to that method of conservation of either oil or gas in Texas.

Q. The same power that built an oil pipe line could build a gas pipe line, couldn't they?

A. Yes, and they are building them in Texas, and they finally built a little pipe line from Reagan county field to San Angelo to take care of part of that gas, and on the same theory, they could pipe that gas to the various cities of the country and let it be utilized for commercial purposes.

Q. If an oil and gas ratio would be placed in effect within the bounds of reason, reasonably close enough together, the proration problem would possibly disappear, wouldn't it?

A. I think if the gas oil ratio was inaugurated by the Commission, the pipe line ratable taking law was enforced and the rates of the pipe lines regulated and the common purchaser law enforced, as the Commission now has the authority to do all those things, that the conservation idea of Texas would be a solved problem.

Q. These are some questions, Governor, that have been written and sent up to me.

A. Before you ask that, I have repeated several times that we had this authority under the law and I now want to call your attention to Article 1 of the Oil and Gas Conservation Law, which says that there shall be produced oil and gas in this country in a manner so that it will not waste, and it further provides that it is the duty of the Railroad Commission to make and enforce rules and regulations for the conservation of oil and gas, and specifically states that the Railroad Commission has authority to do all things necessary for the conversation of oil and gas, whether listed, in regard to rules and regulations, whether set forth in the statutes or not, and I want to undertake to state that the courts of this country, from New York to Tex-

as, have held uniformly, whenever such a question has been presented to them for decision, that such rules and regulations, as long as the rules and regulations are in keeping with that law, that the rules and regulations become the law the same as a statutory provision. We have not tried any of those matters in the courts because we have not attempted to draft any rules and regulations along that line, and then prosecute anybody for violating them.

Q. Except Rule 37, which has been followed?

A. Yes, we have enforced Rule 37, and it has been held good, and I think in these rapid developing days of oil fields, it should be widened, as I suggested a while ago.

Q. Rule 37 itself is a delegated power to the Railroad Commission to pass a rule that shall have the effect of a punitive statute?

A. Yes, Rule 37 was a rule adopted by the Railroad Commission under the general provision that it should adopt whatever rules it saw fit for the conservation of oil and gas, and there is nothing to hinder the Commission from adopting other rules along the same line for the conservation of oil and gas.

Q. That is the rule that provides—

A. That wells shall be 300 feet apart in the field and 150 feet from the dividing line.

Q. And your recommendation is that Rule 37 should be enlarged to make it 400 to 600 feet?

A. I think it should have been, six months ago. Of course, that rule might vary from time to time in the development of the oil fields.

Q. The Constitution gives the Legislature the power to pass laws relative to the conservation of the natural resources, but not relative to the prices at which these resources be put upon the market?

A. The Commission should have nothing in the world to do with the fixing of price. These rules of conservation should be adopted, and then the oil companies, big and little, old and young, should be turned loose to market their products in the open markets of the country, wherever they can find a market, but make all of them live up to the rules of the Railroad Commission as to the conservation of oil and gas and have nothing to do with how or where they sell their products in this country.

Q. Article 16, Section 59, of the Constitution, begins with: "The conservation and development of all the natural resources of this State . . . etc. . . . and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties . . ." That is the idea that you have relative to the matter as well?

A. Yes.

Q. That we have no power to prorate, and to fix prices, but only have the power to conserve?

A. That is correct, and we have never had any orders or prentended orders of proration of oil and gas in Texas, in my opinion. We have just dilly-dallied around with it, and permitted the allowable in every field to be whatever they could sell, and that is not proration at all, as I understand it.

Q. Now, relative to the allowable, how have you been reaching the figures that have been arrived at as the allowable?

A. Somebody furnishes that information to the head of the Oil and Gas Division of Texas, as to how much they can sell, and then the order is prepared and the Commissioners sign it, and that's the allowable.

Q. Usually it has been one company says I will take 1000 barrels, another company says I will take 2000 barrels, another says I will take 4000, and they take that and add it all together and give that to the field as the allowable?

A. That is the idea exactly, and that is not conservation in any sense of the term.

Q. Now, these questions: One question is, how much the Attorney General has counseled with the Commission in writing the orders that have been written by the Commission?

A. I asked the Attorney General, not Mr. Upchurch, but the Attorney General, and he said that at none of these hearings had he been even remotely invited to sit in on the hearings and to take part in it, specially in regard to the East Texas field, I will say.

Q. You are not the Chairman longer at this time of the Commission?

A. No, sir.

Q. Did Mr. Terrell or anybody else present the last order that was issued to you and request your signature?

A. No, sir; except Thursday afternoon, when he asked me to come in and presented this document to me for my signature, but as to all that had taken place in regard to the making of that order I knew nothing.

Q. Another question: Isn't it a fact that the Central Proration Committee is largely responsible for the last few orders that have been issued?

A. I have been so advised on information that seemed authentic, but as to that I am not in a position to testify. I do know, however, that those interests were represented, as I take it they were proper to be if they wanted to be, at the conferences of the Railroad Commission. I think anybody representing any institution in this country should have a hearing before the Railroad Commission, but I do not think that any special interest should have a hearing to the exclusion of others interested in it.

Q. I understand from you the last order, at least, and were the other orders written by others than the Attorney General, so far as you know?

A. I have never heard of the Attorney General being asked to write any kind of order by the Railroad Commission.

Q. Who wrote the other orders?

A. I don't know. I was not present or conferred with as to who wrote it, or why they wrote it.

Q. When the matters were discussed as to what should be written and put into those orders, were you present at that time?

A. No, sir, I was not.

Q. As I understand your testimony, then, you think that those interested in the order should not govern the matters and the spirit of the order, or the matters that go into the order? That is, financially interested in it?

A. I don't think they should be followed absolutely, no; that would not be my idea about it. I might be wrong, however. I think they should have a hearing, however, and let them state what they want to. The way I always do, I listen to everybody and then do what I think I ought to do when everybody has been heard.

Q. As I gather from your testimony, then, you think the Commission's attitude relative to the proration problem should resolve itself back to a proration problem and remain on the conservation idea, rather than on the idea they are now on?

A. I think the court decision reported in the morning paper seems to be correct: that the Railroad Commission has no authority to prorate on the idea of economic waste, but absolutely on the idea of physical waste; and that any time the Railroad Commission issues any kind of order that has for its purpose the idea of the amount of oil to be sold and purchased, it is getting out of its territory, and it should confine itself absolutely to the conservation of oil and gas, and I know of no way to do that except to base that order upon the physical waste of oil and gas in the respective fields.

Mr. Beck: I would like to ask a few questions.

A. While Mr. Beck is getting ready to ask me those questions, I would like to say that a few days after this order for East Texas was presented to me, a few days after that, another order was sent to my desk. I had nothing to do with the preparation of it and was not present at the discussion of it. The first I knew, it came in signed by the other two Commissioners, appointing Mr. Richmond as umpire in the East Texas field. I did not sign that order and filed my reasons with the Commission for not doing it. In substance, I knew nothing about Mr. Richmond except the information that he had been for some six years superintendent of the Humble Oil and Gas Company and that he was named by the companies in the field and not by the Railroad Commission and, in fact, he had been working as umpire for something more than a year at least under the guise of the employ of the Railroad Commission, and yet the Railroad Commission had never employed him, had never conferred with him and, so far as I know, had never counseled with him, and there is nothing on the minutes indicating that he had ever applied for or was ever named to be umpire, and yet by this order, after he had been working in this same capacity for at least more than a year, he was named as the umpire over there, and it was sought by this official order, which was not an order appointing him as a representative agent and spokesman, as I said, of the Railroad Commission, because he had been named to that place by others long before.

He was paid $700 a month, I found by inquiry, not by the State of Texas, but by the oil companies, and I was advised on good authority that his office was with the Humble Oil Company in the East Texas field.

I would not have signed that order if I had known that this umpire was as honest as Paul. If I had known he was as honest, and the Humble Oil Company was as patriotic as a company should be, and I will give them credit for so being until I find to the contrary, but had I known all that, I would not have signed that order, for the reason that, in my opinion, the representative of the State government should always have the confidence of the people, and it was my opinion that when those 160 oil owners in East Texas who had never yet gotten a connection with one bucket of oil to those pipe lines; that when those 160 people made application to the Humble Oil Company to take the oil out of those wells, and the Humble Oil Company said we are not in position to do it for certain satisfactory reasons, that may have been good, and these same 160 men that had this oil for which they could get no outlet to the markets, sought out the umpire to see what he could do for them, and he said nothing doing; when he did that and all that happened, suppose one of those East Texas men said, do you know that he has been working for the Humble Oil Company as a regular employe for several years; and they said, no we didn't know that; and he said, did you know the Humble pays him $700 a month for his services, and they say, no, we didn't know that; and he asked, did you know that he has not been appointed by the Railroad Commission as its unprejudiced and unbiased representative in this field of the Railroad Commission? No, sir. But as soon as they learned all those facts, those honest East Texas men over there would have looked with suspicion on a matter of that kind, and would have gone off dissatisfied, and I am not in favor of appointing any one any time as an umpire, paid by outside interests, under no regulation, no jurisdiction, and with no connection in any way, personally or officially, with the Railroad Commission, to be my spokesman and my representative in carrying out our orders in the regulation of oil and gas in these fields.

We have eighteen deputy oil and gas supervisors that regulate these fields, and since last October I have been urging, as I thought it was decent for me to do, that all the orders of the Railroad Commission should be put into the hands of these employes of the State, and that these people connected with us personally and officially, paid by the State of Texas, should be the only people that should carry out any of the orders of the Railroad Commission, and I have urged that that be done, and that these umpires, every last one of them, be dispensed with, but the other commissioners have not agreed on that view of the matter, and they urged that our deputy oil and gas supervisors were not competent, so they told me, to do this work, and my reply to that was, if they are not competent they should be discharged, because we have hundreds of applicants for this work, who desire to do this work, who were as competent, judging from their records, as anybody else in Texas to do this kind of work as an umpire and as a deputy oil and gas supervisor, and I was for discharging every man we had who could not do the work, because he had no training, and then putting it into the hands of competent people to carry out our orders.

Examination by Mr. Beck:

Q. Governor Neff, do we understand you to say that you regard existing laws as giving you all the authority that is needed to enforce conservation measures in the State?

A. I would not say that there could not be passed some laws that would be very helpful to the Commission, making it more clear and definite, but what I am saying is that if the Railroad Commission, during the past few years, had been enforcing the laws we have already, matters would not be in their present chaotic conditions as they are now in Texas.

Q. Would you just enumerate briefly the provisions of the law which are not being enforced, and which you think the Railroad Commission has the legal authority to enforce?

A. One was the pipe line which was passed and became effective as of June of last year, which has helpful provision in it and the Railroad Commission has not, to this hour,

done one single thing to enforce it. The Commission acts apparently upon the idea that the law is automatic; that it can put on its hat and walk out and the statute will enforce itself.

Another is the common purchaser law, which has not been enforced, and so far as I know, no one has been prosecuted with regard to the violation of that law. I also think the pipe line law, with reference to rates, that when the law says the Commission shall regulate those rates, that the Commission should discharge that duty.

Q. Is there any other provision that should have been enforced that has not been enforced?

A. The law gives the Commission authority to do whatever is necessary in regard to the conservation of gas, and we are not doing and have not done anything in regard to the conservation of the half billion cubic feet of gas escaping in Texas every day, and I think we have the authority to do it, but have not done it.

Q. As to these various powers which you feel you have and which have not been exercised by the Commission, does the Attorney General agree with you, that the Commission has those powers?

A. I don't know what the Attorney General holds in these various matters, but neither the Commission nor the Attorney General should pass upon the validity of these laws. We are but administrative officers, and as I understand it, when the Legislature passes a law pertaining to the duty of the Railroad Commission, it is the duty of the Railroad Commission to enforce that law until some court, somewhere, says that law is invalid, and we should not rely upon any attorney in Texas, or the Attorney General of Texas or all the Commissioners combined as to the validity of a law, because if it is the law, it should be enforced until some court says that we cannot enforce it.

Q. Isn't it true that in the past any attempt to enforce the law has immediately resulted in a flood of injunctions to prevent the Railroad Commission from enforcing the law?

A. Yes, some of these general orders, regarding the general proration; injunctions have been filed.

Q. Hasn't that had the effect of utterly demoralizing the enforcement of those laws?

A. I think to some extent, but not altogether. They did enjoin the general proration order, but with regard to those injunction suits, the matters I have mentioned are not covered by any of those injunction suits.

Q. Then you would say that we have had no enforcement. Have we had a large measure of voluntary compliance?

A. All the enforcement we have had in Texas in regard to the conservation of oil and gas has been, yes; by the mutual agreement of the people interested. Any time a man representing any kind of an organization in Texas said he was not going to be prorated, you couldn't prorate him, and I defy you to do it, why we didn't prorate him. We just prorated the people who wanted to be prorated, and nobody else, and we have not had proration in Texas or even an intelligent gesture looking to proration.

Q. In each field under your jurisdiction, they have been holding meetings of operators, and agreements have been made upon the conservation measures that they themselves would agree to and expecting the Commission to enforce them within those limits?

A. Well, I don't think they expected us to enforce them, because nobody in Texas has any fear of or respect for the proration orders of Texas. They merely agreed as to what they wanted to do, notified us of it, and we acted accordingly.

Q. And these umpires have been individuals selected by the operators in a given field to insure that the operators treated fairly with one another?

A. That is the theory of these umpires. That we will pass these orders prepared by and suggested by the representatives of the companies, and then these same companies, they select an advisory committee in the various fields, and that committee selects an umpire, paid for and employed by the companies, and then we, very delicately and sanctimoniously, send out our orders to the individuals, and he goes out in the field and proceeds to allocate to the different producers out there what they are allowed, and he estimates the allowable of the different producers in the field according to what he estimates the potential; and this umpire can estimate that potential by any method on

earth he sees fit to regulate it by. He can say to one person, by one method of computation, that your potential is so much, and your potential being so much, I will allow you to produce so much. All of this first series of orders actually regulated a man who had an oil well producing as little as four barrels a day. In October of last year, one of my reasons for not signing those orders was that I believed those small operators should not be prorated at all. The man whose well produces ten or fifteen barrels a day ought not to have this umpire come out and tell him that the potential in his well was probably twenty-five barrels a day, or ten or five barrels a day, and that he would allocate to him two barrels or three barrels of oil a day, because he could not operate under that, and practically it meant the closing up of his well, and I was thankful to this Legislature when it came and adopted, at least in part, the views I had been advocating, by taking out of the hands and authority of the Railroad Commission, the authority to prorate any of these wells under twenty and forty barrels a day.

Q. That has been corrected by recent law, hasn't it?

A. I didn't get that.

Q. I say that has been corrected by recent law, hasn't it?

A. Yes. This Legislature corrected it, and thanks to them for it.

Q. Now, in the absence of any actual enforcement of proration orders —and you indicate that there has been an absence of even a disposition to enforce them—hasn't it been better to get such enforcement as you could through these umpires, than to have had none at all?

A. No. Let our deputy oil and gas supervisors carry out our instructions in the field, rather than the umpires.

Q. Since the supervisors did not function, wasn't the services of the umpires better than none at all?

A. I don't know. That is a question that might be discussed at length, I don't know. I just want my own employes of the State to carry out the orders of the State, and not any outsiders.

Q. If you had had to employ, during the last two years, additional employes to enforce the conservation laws, have you had the funds to employ them?

A. I think we have had plenty of help. The Railroad Commission is not suffering for help, so far as I know, along any line. I have made inquiry from our deputy oil and gas supervisors, and in my opinion none of them are overworked except, possibly at this time, in East Texas, but in many portions of the State where oil activities are practically dormant, a number of those deputies could be put into the East Texas field, and in fact some of the Railroad Commissioners have thought of consolidating some of the districts of the deputies, because they did not have sufficient work, and I do not subscribe to the thought that our men are not competent, or that they do not have the time to discharge their duties.

Q. How many oil fields are there in Texas?

A. Eleven.

Q. How many deputy oil and gas supervisors have you?

A. Eighteen.

Q. That is one or more to each field?

A. More than that.

Q. Less than two to each field?

A. Yes, and if they did not have the time, if eighteen didn't, then I suggested to the Commission that we make smaller these territories and add one or two new men to the deputies, so they would not have to work overtime.

Q. How many supervisors do you have in East Texas?

A. I think we have three over there; I am not sure of that.

Q. You are familiar with the mechanical process of drilling in a well?

A. No, sir, I never drilled a well.

Q. Have you ever watched the actual bringing in of an oil well?

A. Yes, I have seen the drilling and coming in of an oil well, but I would not know how to drill one.

Q. It has been testified here that to properly enforce the conservation and the safety orders of the Commission, as they relate to the bringing in of a well, would require the time and observance of a supervisor for an average of approximately ten hours to each well.

A. Do you mean a day?

Q. No, during the drilling-in process; is that substantially correct?

A. I would not think so. I take it these men who are now drilling wells in these fields, nine-tenths of them are experienced oil drillers and that they know as much and more about it than the average person, and that they are not going to do anything that would get the well out of shape or out of fix.

Q. Would it seem that assumption is correct when we realize that fifty-five lives have already been lost in East Texas through improper drilling-in methods?

A. I don't know that those lives were lost by reason of improper drilling-in methods. Men are killed in putting up a fourteen-story building, without regard to the proper or improper methods of its construction.

Q. Did you receive any report on the burning of the well drilled in by Paul Vitek?

A. It did not come to my desk.

Q. Do you know that that well was burned and a number of people, including Mr. Vitek, lost their lives through attempting to bring in the well in order to flow over the crown block, for the purpose of getting a picture of it to use in stock sales promotion?

A. No, I did not know anything about that; but I am sure, in the drilling of 1200 or 1500 new wells in a new oil field a good many lives would be lost unless properly supervised.

Q. If you are not going to supervise all the wells, whose wells would you supervise, and whose wells would you not supervise?

A. I would supervise the entire field, and that is what our men are doing. Very few wells are being drilled in most of these territories, and while this rapid development is going on in East Texas we could mobilize our men in that field.

Q. Aren't there some 600 or 700 wells drilling in East Texas at this time?

A. I am advised there are several hundred; I am not advised as to the exact number, and presume it varies.

Q. Under those conditions, if it seems probably to this Legislature that the number of men at your command are insufficient, wouldn't you think that you should have the authority in the Commission to engage any number of men necessary?

A. Yes, I think if the evidence shows that our deputy oil and gas supervisors are not able to take care of the situation as it should be throughout Texas, an additional number should be added.

Q. Does the statute now limit you to eighteen men?

A. I think this last Legislature gave us two additional.

Q. Does that make the eighteen, or twenty?

A. That would make twenty. We have eighteen now, and I believe the last Legislature gave us two more. You may know better about that than I do.

Q. Now, it has been testified here that an umpire ought to be a man experienced in all phases of the business, from production through transportation, and with at least a cursory knowledge of refining. Would that be true of a supervisor?

A. It certainly could be true of him, whether it is or not. If an umpire needs and has those qualities, he is then certainly qualified to serve as deputy oil and gas supervisor.

Q. At what salary can you get them?

A. At $300 a month. The woods are full of them, according to our applications. Men with all kinds of training, with college training and in the practical application of that training in the oil fields.

Q. Can you tell us what is responsible for the Commission's indifference to the enforcement of the conservation laws?

A. Physical inactivity, mental inertness, and the desire to work along the lines of least resistance.

Q. Anything else?

A. That's all I can think of right now. There may be other reasons, but I can't mobilize my words.

Q. Mr. Neff, how can that condition be remedied?

A. I don't know. I might have some opinions, but they would be nebulous and uncertain, and I will pass that up to the others. I am giving my opinion as to what should be done, but as to how it will be regulated, I will leave that up to the Legislature.

Q. The Legislature is attempting to obtain advice from those men competent to know, and you have had experience closely with the condition which you regard as intolerable, and you have been Governor of Texas and we would seriously consider your recommendations as to how that condition should be improved.

A. I have my opinions as to how

the enforcement should be done, but as to the machinery of the enforcement, I take it that I am not in any position to give an opinion.

Q. Is it a matter of the machinery or the existing personnel?

A. Well, they have not been enforced up to now, and no effort has been made to do so up to now, in my opinion.

Q. Is there a lack of technical knowledge in the Commission itself?

A. No, we are swamped with technical knowledge; we are swimming in it.

Q. Is it a case where a little knowledge is a dangerous thing?

A. No, I think not, in the Commission.

Q. I wish—seriously, I wish you would explain to us whether or not the Commission, as now constituted, is in position to be adequately informed of measures which should be put into effect?

A. I think the Railroad Commission is in position to get all the technical information and all the practical knowledge they need with reference to what ought to be done in Texas to conserve our gas and oil.

Q. Would it be better or worse to have these laws administered by men of technical experience?

A. No, my idea of a Commission is not to fill it up with men of technical knowledge, at all. Technical statisticians can be employed by any board or organization. I think any kind of a commission should be filled with all-around business men, who are energetic and honest and courageous and have a general sweep of business matters, and any technical information they may desire, they may get it through the means provided to employ them.

Q. Is it a frequent practice for men so qualified to offer for public office in state campaigns?

A. I do not care to answer that question unless insisted upon. I do not care to pass upon the qualifications of people who seek office; I don't think I ought to be asked to pass upon the qualifications of everybody who runs for public office in Texas. I have my own views of some of them, but I don't believe it would be helpful for me to ventilate them.

Q. Will you explain to this committee the difference in the term ratable taking, and the term, common purchaser?

A. Ratable taking applies to the pipe lines in the taking of the oil out to the markets, and the common purchaser law applies to people who purchase oil in these fields, that they should purchase without prejudice against any individual or organization.

Q. Pipe lines are common carriers under the Statutes of Texas, are they not?

A. I don't know that they all are common carriers, but whether they are common carriers or not, the Railroad Commission has authority to regulate them, and I believe most of them are common carriers.

Q. And they are required to transport all the oil that is offered to them?

A. That is what the law says, if I understand it.

Q. Up to their capacity?

A. Yes.

Q. And if their capacity is strained in a given instance, they are required to move the oil ratably as to the producers?

A. Yes.

Q. Is there any law or any authority that will cause a purchaser to buy more oil than he needs?

A. None that I know of.

Q. Could it be done?

A. I do not think so.

Q. Would it be just if it could be done?

A. No, sir.

Q. Then if a given company refused to buy more oil than it needs, you would not think it has committed a crime against the industry?

A. No, sir; I would not want to be a party to making any organization buy something it did not want.

Q. Even if it could be done, would it be conducive to conservation?

A. I do not think so.

Q. It would invite reckless development?

A. Yes.

Q. Is the Reagan pool a prorated pool?

A. The Reagan pool is prorated just like they said they wanted to be prorated. They told us what they wanted to do and we entered the order accordingly.

Q. Who are the producers in that field?

A. I think there are only two. I don't know that I will be accurate in calling the names, but I think two companies own all the property there; that is the Texon, and—

Q. Big Lake and Texon?

A. Yes.

Q. Have they any great amount of production anywhere else?

A. I am not advised. I judge they have, but I can not testify to it.

Q. Have they shown a disposition to cooperate with the orders of the Commission?

A. They cooperate because they tell us what they want to do and we O. K. it. We cooperate with them more than they cooperate with us, because they tell us what they can sell and we put it in the books accordingly.

Q. Is it your thought that all this excess gas should be used in repressuring the field?

A. Either that or it should be used commercially; it should not go out into the air and waste, any of it, anywhere, not even one cubic foot of it, except just what is incidental.

Q. Under the method of repressuring in a given oil field, is it possible to recover the oil without exhausting the gas?

A. Yes, I would say so, without technical knowledge. If you will put that gas back there, you will finally get out all of that oil, and still have the gas in the ground.

Q. And if it is not valuable now, it can be saved until it is valuable?

A. If this generation don't use it, it can be saved and the next generations can use it.

Q. What is the gas oil ratio in the Reagan field at this time?

A. I don't know.

Q. Have you any data showing you what it should be?

A. There has been some testimony before the Commission in some of the hearings, but I don't recall it.

Q. Do you think you have the authority to fix it and enforce it?

A. Yes.

Q. Does the statute need any broadening upon that subject?

A. Well, I think perhaps a statute would be helpful along that line, although I take it that under the provisions given here, to adopt whatever rules we see fit, with the objective of conserving this gas, it would be binding as long as it has for its purpose the conservation of it. Of course, a statutory law might be helpful along that line, whether we need it or not.

Q. Do you think conservation is best promoted by unitizing a given field?

A. I don't know whether I know what you have in mind by that or not.

Q. Requiring the fields to be operated as one unit, rather than as a series of competing units from a production standpoint?

A. I think, to get the highest efficiency in regard to the conservation of oil and gas, in reference to this ratio and putting it back, there has to be a general unit of the field, or cooperation by some method between the different operators, although it has been testified to that even one well could properly tube its gas back, although I take it that would not be the most economical way, but they should have key wells around in the field, and the gas coming from the several wells should be put back into the key wells, located within certain distances of the respective wells.

Q. In order to maintain the reasonably constant pressure in the producing horizons?

A. Yes.

Q. When a proper gas oil ratio is established in a given field, is that not an automatic check against wasteful production?

A. I take it that it is.

Q. And automatically curtails the amount of oil brought to the surface?

A. Yes.

Q. Is there danger of it being curtailed too low?

A. It would not be a proper ratio if it was. I take it every field would have its own ratio, and perhaps some individual wells in the field might have to have a special ratio, That could all be worked out by the information received with regard to the different wells and fields.

Q. Has the commission adequate technical advice upon which to determine the proper gas oil ratio for any given area?

A. No, I would say that we ought to have a highly experienced engineer in reference to gas and oil ratios, that we have not now connected with the Railroad Commission. I think that would be very important, that some provision be made for additional technical testimony by some representative of the state under the direction of the Railroad Commission, to ascertain facts for working out this ratio.

Q. Is the present chief supervisor of the oil and gas division, in your opinion, sufficiently equipped in a technical way?

A. I am not sure as to his qualifications on that particular feature of it. He is well qualified from train-

ing and experience for the work which is committed to his hands, in a general way. I am not advised as to his qualifications in regard to working out an oil and gas ratio. I would not say he is not, but I am not advised about that.

Q. To what extent have his recommendations to the Commission been followed?

A. Well, the majority of the Commission seems to have been following them very well, so far as I know. I have not been following all of them.

Q. Do I understand you to say that the majority of the Commission has been guided in their decisions by the Chief Supervisor?

A. I am not in position to answer that, because I am not in on these conferences they have; I don't know what they say in there, and I don't know whether he follows their suggestions or they follow his.

Q. Are the doors locked?

A. Whether they are open or shut, I would not go in without being advised that they were holding a conference. They know my views pretty well, though. I have been talking to them since last October just like I have been talking here today, and so they know my views pretty well.

Q. When did you first become aware that there was an apparent problem of overproduction in East Texas?

A. I don't know which day overproduction started, specially, except what I saw in the papers. All I have tried to figure out is the proper conservation of oil and gas. I don't know just the date that any one field may have overproduction of oil and gas; there are people who know that, I presume, but I do not.

Q. When did it come to your knowledge that there was a threat of exploitation of wasteful character in East Texas?

A. Of what—of oil?

Q. Of oil, yes.

A. Well, when we had the hearing down here it came to my official knowledge, but of course I knew before that.

Q. What date was that?

A. I do not recall.

Q. What month?

A. Well, I ought to know; it's just a short time ago.

Mr. Graves: March 23rd.

A. I think so. There was an order following that hearing, on March 30th. It was in March.

Q. But you had some notice of it, perhaps not officially, as far back as December?

A. Everybody knew that the East Texas field, from newspapers, was rapidly developing, and it woud necessarily be in a chaotic condition unless it was taken in charge and handled in some regulatory way.

Q. The whole Commission knew that?

A. Everybody knew it.

Q. Did the Commission at that time, upon its own initiative, institute a program of conservation in East Texas?

A. It did not have anything to do with it, as far as I knew.

Q. Wasn't that its duty?

A. I thought so. I think it should have commenced early in the proceedings and taken charge of it as the law contemplates.

Q. In December, as soon as you became aware of that, how long was it before any kind of action was taken?

A. About three months.

Q. During which time, approximately how many wells had been drilled?

A. I would say something like a thousand. That may not be accurate, but something like that.

Q. It may be inferred from what you have told us this morning that certain special interests have had an inside track to the consideration of the Railroad Commission?

A. I would not want to put it just exactly that way.

Q. I say that it may be inferred from that. Now will you want to say it in that way?

A. I have stated the facts in regard to that. I would not want to say they had an inside track on it.

Q. Is it your opinion that they have had?

A. They have had access, which I think is proper. My main objection to the machinery that was put in operation is that it gives a giant's strength to the big oil companies, whether they use it or not. They may not use it and I don't say they do, but when we turn over these advisory committees and umpires and the machinery in the care of our organization, it puts in their hands the strength of a giant, to be improperly used if they want to, although I don't say they will use it that way. But I am opposed to giving them that authority.

Q. What special interests have unduly benefited?

A. What is your question?

Q. What special interests are they that have derived a disproportionate benefit from the way in which the conservation laws have been enforced?

A. I would not say that any of them have derived a benefit; I am not advised as to that, and would not say they have.

Q. Can you tell how it would be possible for you to find out?

A. No, sir.

Q. Can you tell how it would be possible for us to find out?

A. No, sir.

Q. Isn't it reasonable to suppose that those who have obeyed the orders that the Commission has issued have been those who have profited least?

A. I would rather think so.

Q. And that those who have individually profited most, have been those who laughed at the Commission and went their own way?

A. That is my judgment.

Q. Do you receive from the umpire or the supervisor of that district every day a list of violators?

A. I do not. The head of that department may.

Q. That does not come to your attention?

A. No, sir; I have no daily reports from anybody.

Q. Are you familiar with the fact that the Arkansas Fuel Oil Company, selling to the Tidal Pipe Line Company, are shown in the report of July 23rd to be running twice the amount that the Commission order allows?

A. No, I do not know that officially. I have received no reports about it.

Q. Are you familiar with the fact that the Arrow Oil & Gas Company, allowed by the Commission's orders to produce 161 barrels a day, is producing 1,956 barrels, being conveyed away by the Inland Waterways Pipe Line Company?

A. No; all I know is in a general way, that no one obeys the order of the Railroad Commission.

Q. Isn't it fair to the industry to give the names of those who want to obey the orders of the Commission and the names of those who do not want to abide by the Commission's orders?

A. Well, publicity sometimes helps along that line.

Q. Will you prepare for us a list of those who are helping you and those who are recklessly exploiting the resources of the State?

A. I have no information. I have no objection to asking the head of our division to supply you with that information.

Q. Don't you get all your information from that souree as to that?

A. No, sir; I do not.

Q. Don't you get useful information from that source?

A. Yes, any time I ask Mr. Parker for any information he is very courteous, and has always furnished it to me. I have not inquired for anything of that kind.

Q. What have you done as a member of the Commission to bring about a more efficient operation of the Commission in these matters?

A. Nothing except advocate it, or advocate to them the things I have suggested this morning. That is all I have done.

Q. Is there a lack of harmony which prevents a free and fair discussion of these things in the Commission?

A. I would not say so. When we meet it has always been pleasant; there has been no unpleasant words said at any time. I always go into the conferences to which I am invited, and we may differ but there is nothing offensive said at any time.

Q. Is there a difference between you as to what constitutes conservation?

A. A very wide difference.

Q. Or is there a difference in your intentions?

A. No, we just don't see it alike. I presume they see it the way they advocate it, but I don't see it that way. There is no reason to all three do it the same way unless you all three agree.

Q. Does it seem reasonable that the same set of facts, considered by all three men, would lead to such a very wide divergence of views?

A. Sometimes I find a jury of twelve differ very much in their conclusions on the same set of facts.

Q. Would it be better from an enforcement standpoint if the Legislature by statute should define waste?

A. I think the Legislature has defined waste as accurately as necessary.

Q. As accurately as necessary?

A. I think so; it is set out pretty extensively now, what constitutes waste. If there are any new devel-

opments, that definition might be widened, but I think it covers everything.

Q. If all the members of the Commission were in complete accord as to these measures, would they not be greatly handicapped by the fact that relief or delay can be procured by injunction of the various operators?

A. I think one of the most important things we need along that line is a court which will be available at all times, so these matters can be disposed of. I believe we should have a court available and a law requiring that these cases be tried at once, and then asking the higher courts to pass upon them, as the law now says they shall, in preference to any other matters.

Q. Will you explain to the Committee why it is more important to get speed in the litigation involving oil fields than it is in matters that involve merchandise or other property?

A. Yes, the sale of land and merchandise litigation is not as urgent as this, because the oil situation is a bigger situation that is developing, and greater harm may occur through delay in this matter such as would not occur when people are litigating over a stock of goods or land. The stock of goods will still be there next year.

Q. As a matter of fact, in three months a field can get so far away it is almost impossible to put any proper regulation into effect and get results?

A. That is what happened in the East Texas field. Nothing was done in regard to it until it was too big to handle.

Q. Do you believe it could now be taken in hand and preserved?

A. It might not be preserved as well as it would have been if it had been taken in hand at the beginning, but certainly some provision should be made for handling it as best they can under the situation now existing.

Q. How much more difficult will that be, if we wait another ninety days to put appropriate measures in effect?

A. Sometimes things get so bad they cure themselves.

Q. Now you have mentioned something—if that oil field cures itself by running to water, where does the State come in?

A. Mr. Beck, I think I have stated my position in regard to that. If you will follow out the oil and gas ratio, and enforce the pipe line law and equalize the taking of oil, the condition will not be as you state; that will take care of itself and when those rules are promulgated, let every man live up to them and if he cannot live up to them, then let him get out of the field and let the oil take its natural outlet under those regulations to the markets.

Q. This question was sent up, and I will ask it as it is written: Assuming the existence of adequate law and machinery for enforcement, does it appear to you that the public service for which the Railroad Commission is responsible, can reasonably be expected of the existing Commission, in view of the apparent inability of the existing Commission's personnel to work together harmoniously?

A. The Commission can work together harmoniously, but in the past they have rendered but little service to the State of Texas with reference to the conservation of oil and gas.

Q. Is it a case of too much harmony?

A. It may be in some quarters. We get along very nicely; we are not offensive about these matters. We just disagree without being disagreeable.

Q. What effect upon your deliberations—that is, your decisions, as a Commission, after evidence is presented to you in the various hearings—what effect is produced by the fact that interested parties on both sides turn the meeting into a mass meeting?

A. I am not in favor of any mass meetings for the enforcement of any kind of law, or in favor of enforcement through the newspapers, either.

Q. Doesn't that usually result in bringing about a compromise which has for its purpose the satisfying of both sides, without regard to the spirit of proration?

A. Any official who tries to satisfy both sides does not satisfy either side, or himself either.

Q. Politics, in its narrow sense, hardly fits in with conservation, does it?

A. Repeat your question please?

Q. Conservation cannot sometimes be altogether void of political consideration?

A. I do not think anybody's opinion should be shaped by mass meetings or political consideration.

Q. Is it your opinion that such considerations have had their bearings upon your orders in the past?

A. I don't know whether they have or not. They have not on me and I can not speak for anybody else.

Q. Do you think the Commission has the authority to prevent excessive drilling?

A. I think they have the authority to widen the spaces between the wells within reason, as they do now, and in that way to regulate it.

Q. To promote the greatest ultimate recovery, each field would require a little different treatment as to the spacing of wells, wouldn't it?

A. Yes.

Q. And the spacing in the respective fields, from time to time, should be left as a matter of discretion to the enforcing agency?

A. It could be changed at any time, as conditions change.

Q. It should not be statutory?

A. I don't think so.

Q. True conservation would require, in your opinion, that each field be conducted in a mechanical sense, so as to provide for the greatest ultimate recovery of petroleum?

A. The ultimate recovery of petroleum, and the conservation of the gas at the same time. I never lose sight of the conservation of gas, when talking about these orders, or the development of any oil field.

Q. Some offense seems to have been taken by many, by reason of the fact that Mr. Hardwick, I believe of Fort Worth, an attorney, and perhaps some others, advised with Mr. Parker, the chief deputy supervisor, in the formulation of the last order so as to make it conform to the intention of the Railroad Commissioners. Some criticism, I will put it.

A. I make no criticism of it. I always like to talk to the lawyer on the other side of any case that I try. It is always helpful to talk to him, but I will never take my directions from him as to the law or the facts either.

Q. Is it not a reprehensible practice to have your technical advisor consult with the attorneys for parties interested in the matter?

A. I have no objection to the chief supervisor or the Commissioners consulting with anybody anywhere as to the phraseology of the order.

Q. After all, whoever wrote the order, it is the merits or the demerits, depending upon the words in the face of the order itself, and not who prepared it?

A. That is correct.

Q. Then it is not who prepared it, or who sat in on it, but the face of the order itself that should be considered?

A. I do not object to anybody sitting in on it.

Q. That has been brought into this hearing from time to time as a reason for reflecting upon the sincerity or honesty, even, of the way in which the last order was written?

A. I did not say so, and I did not intend that. Mr. Hardwick is an excellent lawyer, a good friend and a fine man to consult with, and if he is representing the other side, I would gladly confer with him and it is no reflection on anybody.

Q. You do not mean by that of course that you think the Commission was controlled by him or accepted his advice, as anything more than advice?

A. I don't know anything about that. I don't know what his advice to them was or what they adopted or anything about it.

Q. Have you heard any of the testimony in this hearing as to the necessity for changing our conception of property rights, or rather, petroleum rights, to make them conform to our ordinary conception of property rights?

A. No, sir; I have not.

Q. Do you believe it is a practical proposition to pass any kind of legislation which will insure that John Jones could not drain away the oil of Paul Smith?

A. I don't think the Railroad Commission should allow it, and I think some law should be passed, if it is necessary, to prevent that. I believe each of them should get their oil and if either is stealing from the other, it should be prevented.

Q. You think some law should be provided whereby that can be prevented, without requiring Paul Smith to drill a well before he is ready to drill that well?

A. That is why I would set it back from the dividing line some four or five hundred feet; so that it would not drain Paul Smith's land; and separate the wells so a person would not have to be hurried up in the drilling of his offset well to get his oil. If you will put him far enough back from the dividing line, you could have

other rules with reference to that so a man would not have to drill at once to get his oil.

Q. What would be the effect of that upon the royalty owner?

A. He would be delayed in getting his royalties.

Q. He would be delayed, but is it your opinion that he would get more royalties in the long run?

A. Yes.

Q. Is it your opinion that such measures will bring about an automatic curtailment of production?

A. Yes.

Q. Is it your opinion that if production were held in control in such a manner, that the price would assume a level more closely than it is now to the true value of crude oil?

A. I know nothing in the world about the price of oil, what makes it go up or come down. I know nothing in the world about the realm of economics with reference to this oil situation.

Q. From your knowledge of economics, that is reasonable to presume, isn't it?

A. I presume you have had people here who have made a life study of that. I don't know myself, who pushes the buttons or pulls the wires.

Q. In your experience as a Railroad Commissioner, supervising the conservation laws of this State, have you had anything to make you believe that there is any one man or group of men who can pull the string, or push the button, and make the price of oil go up or down?

A. I just have no information about it.

Q. Is the determination of that question in any way related to the duties of the Railroad Commission?

A. No, sir; I don't think the Railroad Commission has anything in the world to do with anything but the conservation of oil. We conserve the oil and gas, but have nothing to do with reference to the price.

Q. Your contact with the industry, however, would yield you some information as to that set-up, if it existed?

A. Some information of that kind might percolate into a fellow's cranium, but so far, I have no facts upon which to base that opinion.

Q. Have you any leads or suspicion, which might indicate a line of inquiry to this Committee?

A. No, sir; none that is intelligent.

Q. One more question; whatever the cost of supervision of the oil industry is, it is now charged back to the producer, is it not?

A. What is charged back?

Q. The cost of the supervision?

A. I judge so.

Q. And should be?

A. Yes.

Q. That's all.

Examination by Mr. Graves:

Q. Governor, I have just one or two questions, one of them is relative to the—now the matters relative to Mr. Hardewick that Mr. Beck went into, and wherein members of the Commission did not quite coincide with you. We believe those matters are not within our purview, and we will leave out any comment on that. We do not wish to reflect on the integrity or honesty of the Commission or anybody else. We are familiar, some of us are familiar, Mr. Long and myself, with the Reagan County situation, but I am quite sure that there are quite a number of the members of this House that are not familiar with that situation as it exists out there now. I believe there are some wells out there which reach a nine thousand foot, and lower, strata, are there not?

A. In that neighborhood. I thought it was about eighty-five hundred feet.

Q. Two of those wells have been closed up at a cost of approximately a quarter of a million dollars, have they not?

A. I have not been officially advised of it if they have.

Q. I believe they have two stratas of oil producing sand in that field? One at approximately 3500 and the other at somewhere around 9000 feet and they have tubed back the gas from the 9000 foot strata to the 3500 foot strata, and are awakening that strata which has been inert recently?

A. The last information I had, which was in March of this year, was that 140,000,000 cubic feet of gas was being wasted. What has happened since then, I do not know.

Q. I will agree with you that the waste of gas is enormous. They have, however, to a certain extent, settled down, but they are at this time even the largest producers of natural gas in the world?

A. They ought to pipe that gas off somewhere and sell it. They have no business losing or wasting this

enormous amount of 140,000,000 feet of gas per day.

Q. They have prorated to the extent that they have killed four wells that have cost $25,000.00 apiece, haven't they?

A. If you say that is true, I know that it is true. I am talking about the losses that we have sustained.

Q. Whether a Commission be a new commission appointed or elected, it is extremely probable that they would have some differences in passing upon matters of this kind, just the same as the Railroad Commission?

A. I do not know. It would depend upon who was on the Commission. If I was on that Commission and I agreed with the other two we could agree.

Q. With the creation of a new commission we would still have three members, would we not?

A. I hope you would have three to deal with.

Examination by Mr. Long:

Q. Governor Neff, you say that the Railroad Commission has failed to enforce the pipe line laws, enforcing it to reduce its rate?

A. No, I did not say they had refused to reduce their rates.

Q. Have you ever read the last few paragraphs in Article 6037?

A. I do not remember the article but I have read all of the laws pertaining to the powers and duties of the Railroad Commission.

Q. Do you think the Commission can, on its own initiative, determine the fixing of rates for pipe line companies?

A. If the statutes say so.

Q. Do you have the money to make such investigations as might be necessary?

A. I think we can make the investigations with the money we have.

Q. Have you ever made a motion as a member of that Commission to go into the matter and determine an equitable pipe line rate?

A. I would not say that I made a motion, but I have advocated it. I don't remember of having made a motion, but I have advocated it. I do not remember of any motion having been made by anyone in the Railroad Commission since I have been on it.

Q. Did you ever read the opinion rendered December 26, 1929, by the Supreme Court?

A. I have read the opinion but I do not know the date.

Q. Do you remember what it states?

A. I would not undertake to say.

Q. Did you ever hear of the Dial Ranch Case?

A. Yes, sir.

Q. Did not the Commission attempt to—

A. (Interrupting) There was some kind of injunction in regard to a case from the Panhandle.

Q. You have talked so much about Reagan County. Suppose the Railroad Commission had cut down the oil and gas production in that field, in that deep sand, do not you think that those companies would have immediately enjoined the Commission from putting that into effect?

A. I do not. I was not for curtailing the amount of production. I was for closing up.

Q. In Reagan County? You have an enormous gas pressure there? Do you know whether you have compression machinery sufficient to overcome that rock pressure?

A. I never heard of it.

Q. Governor Neff, how many proration orders have you signed? When was the last one that you signed?

A. Back in the fall, sometime, I do not remember the date.

Q. Were they good orders?

A. I do not think so.

Q. You did at the time, didn't you?

A. Well, I did not think so much about it at the time. I had not gotten into all of this work, and I certainly thought it was the best thing to be done. Now, I think the whole order was worthless.

Q. Did those orders that you signed provide for umpires?

A. I am not sure whether they did or not.

Q. Do you know a Mr. Barton who is a supervisor of the oil and gas division in North Texas?

A. Yes, sir.

Q. Do you know anything about his qualifications?

A. Yes, sir.

Q. What experience has he ever had in the business?

A. He had had practical experience of three years or more.

Q. As a producer or as the secretary of an oil company?

A. He at one time had interests up there, and was helping to put down wells on leases that he held.

Q. Did he actually do any work in the field?

A. I believe that he stayed some in the field..

Q. Did he keep books, or supervise the drilling of the wells?

A. He may have done both.

Q. Is it not contemplated at this time that Mr. R. B. Walthall will be appointed as deputy supervisor of the oil and gas division?

A. He was supposed to have been on about six weeks ago.

Q. What experience has he had?

A. He was the head of the oil and gas division for some years.

Q. About how many years?

A. One year, or two.

Q. Do you think that holding the position as oil and gas supervisor, that would qualify him for a deputy supervisor?

A. I think if I held that position for a year or two I would have a good idea about it.

Q. Did you ever move at the meetings of the Railroad Commission any check of the violation of the proration law?

A. There has never been made a motion by anybody pertaining to anything in these matters.

Q. You have that privilege, don't you?

A. To be sure. They do not make motions. They never handle it that way.

Q. Did you not, a few weeks ago, try to get the Commission to place in its orders the Cranfill Bill?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Governor Neff, I have something like thirty or forty important questions submitted by Mr. Parker to the Attorney General's Department on the ratable taking law. The common purchaser act. These are hypothetical questions, and I would be glad to have you answer these questions, if you will.

A. I decline to answer hypothetical questions. I am here to tell facts, and not to tattle on anybody.

Q. If we will submit these questions to you in writing will you give us a written answer to them?

A. I will answer the facts pertaining to my knowledge.

Thereupon, recess was taken at 12:20 p. m. until 2:00 o'clock p. m.

The committee as a whole, met pursuant to adjournment at 2:00 p. m. and Hon. Pat. M. Neff resumed the stand.

Examination by Mr. Farmer:

Q. Governor Neff, I regret very much the circumstances under which you are laboring, and the House very much regrets it and thoroughly appreciates your situation, but there are some questions of vital interest to this House in connection with the oil and gas industry of this State that should be answered. You are a lawyer, are you not?

A. I pretend to be.

Q. I want to know if the Railroad Commission members have not been deterred from properly saving gas in this State because of Article 6008 that says: that this article shall not apply to any well that is operated for oil?

A. No, sir, I have not been deterred by that statute.

Q. Then how, Governor, would you get around this statute?

A. It would be left up to the Commission whether or not it was an oil or gas well.

Q. Then it is a question of fact to be passed on by the Commission?

A. Yes.

Q. Well, suppose that a man came to you and stated that he understood that there was a well producing gas, which was not in reality an oil well?

A. The Commission would hold a hearing to determine the facts in the matter.

Q. Now, you are aware of the decision of the United States Supreme Court in what is known as the Ohio Case, are you not?

A. I do not know what it is.

Q. That is where the United States Court held that the Legislature of a southern state could close up a well and prohibit it being run, if they were wasting either one of the products of oil or gas.

A. I understand there are several decisions of that kind.

Q. Do you think that the Legislature of the State of Texas has sufficient power at this time to close every well that is wasting gas?

A. I do not know whether the Legislature has that power or not.

Q. I will ask you if you had anything to do with the drawing of House Bill No. 5?

A. No, sir.

Q. Did you ever see that bill?
A. No, sir.
Q. Did you not read it this morning?
A. No, sir.
Q. Then you do not know that that bill provides for the creation by this Legislature of a new commission?
A. I do not know anything about the bill.
Q. Then you do not know that the bill provides that upon the initiative of the Commission, or upon the verified complaint of any party that a man's property can be taken out of his hands without his consent?
A. I do not know anything about the bill.
Q. Do you believe that a man's property should be taken out of his hands without a hearing?
A. That is a matter of law. I do not know that that is a provision of the bill.
Q. As a question of law, you do not care to answer that?
A. No. I do not care to pass upon a question of law.
Q. Do you believe the Railroad Commission at this time is sufficiently able to deal with the oil and gas question?
A. The Railroad Commission has plenty of time, if that is what you mean.
Q. What else is needed by the Railroad Commission to deal with this oil and gas situation?
A. My opinion as to what else would be needed would be of no particular value to this committee.
Q. There is a bill before this House, and a question before this House at this time, and it is, should we create a new commission to take these duties away from the Railroad Commission. Are you in favor of the creation of a new commission?
A. I am in favor of the conservation of the oil and gas of Texas, regardless of whatever may be necessary to accomplish that end.

Examination by Mr. Long:

Q. Governor Neff, did you ever attempt and seek to get rid of Benny Parker as oil and gas supervisor for the purpose of placing Mr. Walthall in charge of that department?
A. No, sir.
Q. Has Mr. Parker ever objected to any supervisors of the Commission being appointed?
A. Not that I know of.
Q. Did he object to Mr. Barton at the time he was appointed?
A. Not that I know of.
Q. I believe that the last Legislature appropriated $50,000.00 for the Railroad Commission to make a gas survey—
A. I did not know that the Legislature made any such appropriation.
Q. Did I understand you correctly to say that you did not attempt to get the Commission to place into effect in East Texas the Cranfill plan?
A. No, sir.
Q. You would make it appear, that you get little, if any recognition from the other two members of the Commission. Would you say how many people have been appointed to positions on the Railroad Commission since you have been a member of the Commission?
A. There was no such contention that I was not getting due consideration. I made no complaint to anyone.
Q. How many deputy oil and gas supervisors have been appointed since you came on the Commission?
A. Three—only two, I believe.
Q. How many did you nominate?
A. One.
Q. You charged the Railroad Commission with physical inability?
A. No, sir, I did not do that.
Q. Well, it was physical inactivity, then? Would you say how many days you have been absent from the office since your incumbency?
A. I have a complete record of that—
Q. (Interrupting) Can you estimate the number of days?
A. No.
Q. Could you say how much of this time has been devoted to the affairs of the Commission, and how much has not been?
A. When I was first appointed most of the time that I was away was on personal business. I had a moderate law practice and was appointed during a busy term of the court and I devoted some time to those law suits when I came here to first take up the work of the Railroad Commission.
Q. I believe that you said here this morning that no motion had been made on the records of the Commission? Did you not make a motion a few weeks ago to have Mr. Walthall appointed as a deputy supervisor?

A. I wrote out the order and signed it and passed it in to the other Commissioners. They had stated that was my appointment, and whosoever I might name would be satisfactory to them, and in keeping with this I signed the order naming someone some six weeks ago and passed it in to the other members of the Commission, and the Chairman reported that he signed it and the person has not yet been placed on the payroll.

Q. Have you not made trips since you have been on the Railroad Commission to Oklahoma, Tennessee, and I believe, West Virginia, at different times?

A. No, sir. I will say that I have never been to Virginia. I went to the graduating exercises of Oklahoma University and I have also been to Nashville, Tennessee.

Q. Have you been out of Texas during your incumbency?

A. I have no objection to going to other states.

Q. Are you now engaged in writing a book?

A. No, sir.

Q. Or any articles of any kind?

A. No, sir,—not that I have any objections to writing a book. There are a great many things I would like to do, but I can not devote my time to it at this time.

Q. It seems like the administration has the gag rule. How many times have you called the Commission into conference during the time you were Chairman?

A. I could not tell you.

Q. Governor Neff, you stated this morning that you have never made a motion to change the distance in the spacing of wells, or made a motion to have the pipe line rate changed or reduced?

A. Because there had been very few motions made or practically none.

Q. What is the reason that you have taken the attitude that you have?

A. What attitude?—

Q. Of advocating something you have never made a motion on—of advocating something on which you have never made a motion—I mean that you advocated in the newspapers—is it not a fact that you never made a motion to that effect before the Railroad Commission?

A. I did not say anything about advocating anything in the newspapers. There has never been any motion made by anybody about anything at any time since I have been on the Railroad Commission.

(Witness excused.)

Monday, July 27, 1931.

The Committee of the Whole met pursuant to adjournment at 9:00 o'clock a. m., Monday, July 27, 1931.

Mr. Hardy: Mr. Chairman, I would like to have Mr. W. E. Duffy called to the stand.

Thereupon, W. E. Duffy was called as a witness and being sworn by the Chair, testified as follows on examination by Mr. Hardy.

Examination by Mr. Hardy:

Q. Please state your name, occupation, and residence.

A. Walter E. Duffy, Fort Worth, Texas.

Q. What is your occupation?

A. I am in the oil business.

Q. Are you connected with any company?

A. I am associated in the East Texas fields with the Cordova Union Oil Corporation.

Q. As an operator or refiner?

A. As an operator, producer of oil.

Q. How long have you been in the oil operating business?

A. For the past 15 years.

Q. Are you familiar with the conditions of the East Texas oil fields?

A. In a general way and also in a specific way.

Q. In what specific way?

A. Relative to the condition that has existed and is existing around the particular piece of acreage that we are operating in the Kilgore District.

Q. Please state to the Committee in your own way just what that condition is?

A. The condition is this relative to a 36-acre tract which we are operating in this district: We have compiled figures and taken, not the field as a whole, but offset acreage, including our own, which is in the center of this offset acreage, and figured it on the basis of 196 acres and the figures which I would like to pre-

sent here are relative to this 196 acres. We have seven direct offset leases, the largest of which is a 50-acre tract, the smallest of which is a 10-acre tract. These figures are not inclusive, however, of the Humble Oil & Refining wells which offset us on the north. However, they only have one direct offset to us, it being a small 6-acre tract of the 36 acres which runs up in the form of a salient more or less. The Bateman discovery, which opened the Kilgore District, which is now known as the Kilgore District, came in on the 28th day of December. Eddie Jones, who had a 10-acre offset to our 36 acres and also the main body of the 36-acres, completed the well the last week in the month of February. This well was produced openly, allowed to flow openly for many days. The second completion was the Olvey, which offsets our northeast corner or north line of the northeast corner. We were the third completion in that particular area. In March we were offered a contract for a million eight hundred thousand barrels of oil at 37½ cents a barrel. This was not from the major companies; it was from a Houston company, and we felt that the price was unfair, and that we wanted to abide by any proration order that was issued by the State, firmly believing that that proration order would be issued. So we did not enter into this contract for the 1,800,000 barrels. There was perhaps a selfish motive entered into our decision not to enter into this contract for this oil. We figured and we knew from past history that it costs money to lift oil and as long as this oil would lift itself we were ahead the difference between the lifting charge and the natural flow on those wells. So therefore we figured that if we did not produce these wells to excess or to maximum that the wells would flow for an indefinite period of time and therefore we did not enter into the contract. We were without a connection for this particular well from the 3d day of March until the 14th day of March after we had solicited all the major companies for a connection, believing that if they had given us a connection that they would abide by proration, and therefore we would be forced to abide by proration, whether we desired to do so or not; but we did not get it. The specific companies which we solicited are the Humble, the Houston, the Atlas, the Magnolia, and Sinclair. I might state that Mr. Sloan, of the Sinclair Company here in Texas, gave me his word that he would give us a connection on the first day of April. They brought their line down and crossed over our 36-acre lease, but we never got a connection from them until this time. The Houston Oil Company was running and, as I understand it, a part owner with Jones in this 10-acre lease. They built a six-inch line to the loading rack, and pulled all the oil that they could pull. We were told—at that time we did not have access to the figures of what they were actually running, but we could see that their flow tanks or their gas trap was going night and day, and Mr. Heath, of the Humble Oil & Refining Company, told us over the phone that he thought they were running as high as 11,000 barrels a day from that 10-acre tract. They went ahead and drilled two additional wells on that 10-acre tract, when one would have been ample. We were forced, and we never did at any time commence a well on the 36 acres that we were not forced to start to protect our line and in reality protect our lessor to the best of our ability. We drilled two wells more than we figured should have been drilled on it, and, of course, that expense of drilling those wells we have not yet recovered.

Q. Who was running that oil?

A. From Mr. Jones' lease you mean?

Q. Yes, sir.

A. The Houston Oil Company.

Q. All right.

A. I also asked the Houston Oil Company for relief. As a matter of fact, I more or less plead with them and they turned a deaf ear to me. I asked the Atlas—they crossed our line, and, by the way, the Houston crossed our lease with their line. The Atlas crossed our lease with their line. They gave us no relief. The Magnolia, offsetting us to the west, gave us no relief except on April 10th, I believe, they came in, without asking our permission, and tied into us and took four tanks of oil; four 500-barrel tanks of oil, and then left the way they came in, without their saying, "Aye," "Yes," or "No."

Q. Who did that?

A. The Magnolia Petroleum Company. Right down the line we asked those companies for connections. We didn't get them. So then it behooved

us to get out and make some effort to get rid of some oil. We made connection with the Southern Oil & Refining Company, who laid a 4-inch line from our lease to what is known as Reed's Switch, that is on the I. & G. N. Railway, and they started taking oil from us on the 14th day of March, that was 11 days that we were without a connection. They took this oil at 35 cents a barrel. We did not enter into any contract. It was an open division order, in other words, we were hoping that the Railroad Commission would issue an order whereby every one would be prorated there and run their allowable. So therefore this oil that we ran to them only existed as a contract from day to day. We ran all of March at 35 cents. In April they came to us and told us that they would be unable to pay that in the future. Understand, at this time we were making an effort—not every day, I don't say that, but we were making an effort to have some major pipe line company come in there and give us relief, a permanent connection they cut the price from 35 cents to 25 cents.

Q. Who did?

A. The Southern Oil & Refining Company. They gave the excuse for that that there were small tracts coming in and they were offered cheaper oil. Well, we stood for that. We accepted the 25 cents. Then along the latter part of April, to be exact, the 19th of April, they wired us and told us that the Luling Oil Company, which was producing a 10-acre lease west of us across the Magnolia 50-acre tract, had offered them oil for 19 cents. We told them that we would not sell them any more oil at that figure. So then we were without a connection. About this time, however, the Railroad Commission's order was issued; it was not into effect, but it was issued, and we were without connection then from the 19th to the 1st of May, when the Humble Oil & Refining Company came in and gave us a connection and took from us our allowable under the Railroad Commission's order. We are still connected with the Humble Oil & Refining Company, and I would like to assert at this time that they have given us within on the total of a few thousand barrels of what our allowable was. We at many times have not known what they were going to pay us for it, but we have known we would get it sometime, but we didn't know what, but they said they would give us a fair price. For the month of June they paid us 15 cents a barrel. For this month they don't know, they say, what they are going to pay, but they hope it won't be below 15 cents. Now, then, I would like to present to you the figures of recovery, the actual runs, that is, so far as we are able to get them, and I believe to the best of my knowledge that these figures are correct. I know that ours are correct, because we could follow from the first day of May just exactly what our allowable was and that is what we ran, perhaps a few hundred barrels more or less each day or a fraction of a few hundred barrels each day. Since the completion of our first well, and, as I believe I said, we have six wells completed on that lease, we have run 172,304 barrels; under proration we have run 86,838 barrels. Before proration we ran 84,099 barrels. J. W. Olvey, who has a 20-acre lease and offsets us on the northeast, 20 acres, four wells; he has run a total—by the way, that total is up until July 16th, and there are also two weeks missing in there on all these figures, other than our own, that we were unable to get—he has run a total of 537,811 barrels from 20 acres.

The Houston Oil Company, offsetting us on the north and east also, a 10-acre tract, has run a total of 768,326 barrels. That is also up to July 16th. Let me go back to the proration allowable that we have. We don't have the month of May. I asked Mr. Parker's office for it and he didn't seem to have the allowable for the month of May, but from June 18th on until July 16th Olvey has exceeded his allowable by 25,939 barrels. Jones, of course, has had his recovery and he is more or less abiding by proration, yet he has exceeded his allowable by 8092 barrels. The British-American, which has twenty-five acres and offsets us on the east with four wells, that is, the four wells on the twenty-five acres offsetting us on the east; they have run a total—they were were not in as soon as any of the rest of these that I mentioned; they did not complete their wells until the month of April, but they have run a total of 269,380 barrels from that lease of theirs and have exceeded proration 75,250 barrels. The Burton Drilling Company, a twenty-acre tract of two wells, which

offsets us on the south and east, has run a total of 173,244 barrels. They have exceeded proration from the time I have given you by 37,610 barrels. Cranfill & Reynolds has a ten-acre tract that offsets us on the south and southwest corner, two wells. They have run 122,879 barrels, and have exceeded their proration allowable by 42,938 barrels. Markham & Dunning, that offsets us on the south and west by a twenty-five-acre tract, they have four wells. Those wells were completed late, also, and, as a matter of fact, they have failed to file their completion reports with the Railroad Commission. I was unable to obtain their completion report. They have run 267,210 barrels, and exceeded their proration by 117,152 barrels. The Magnolia Petroleum Company, on the west, a fifty-acre tract, seven wells; they made their completion about the time that we made ours, the first one, that is, and then they rushed them on, like the balance of the six, right through. They have run 511,320 barrels, and have exceeded their proration by 18,179 barrels. Those figures, as cited, other than our own, on the thirty-six acres, lack, to be exact, fifteen days, the total of which we were unable to obtain. Now, then, figuring those, without the Humble, which has a large lease offsetting us on the north, I have not compiled the figures on that exactly—I can give you the total that they have produced from this Crim lease, which I will give you later, but, figuring as a whole 196 acres, that is, in this one little spot there, it has produced up until the date of July 16th, a total of 2,823,366 barrels. Provided everyone got what was coming to them, that would be a per acre recovery of 14,404 barrels to the acre. Now, then, I am not going back over the figures, but I am going to show you what we lack and what the others have gotten there. We have produced, having 36/196 of the whole, 4811 barrels to the acre. Olvey has produced 26,890 barrels to the acre. Edward Jones and Houston Oil Company have produced 76,832 barrels to the acre. Now, that oil didn't come out from under that ten acres, I know. The British-American, they got a late start, but they are doing pretty well now, have produced 10,775 barrels to the acre. The Burton Drilling Company, with two wells, produced 8662 barrels to the acre. Cranfill & Reynolds produced 12,282 barrels to the acre. Markham & Dunning has produced 10,688 barrels to the acre, and the Magnolia Petroleum Company, 10,226 barrels to the acre. The Humble Oil & Refining Company has produced on this lease, which is a large lease for East Texas—it would be a large lease anywhere—I think there are 628 acres in the Crim—they produced from that lease up to July 16th 1,774,443 barrels.

Q. What was their allowable?

A. I didn't figure per acre, because giving them the best of it, one well for ten acres, that would run into quite large figures, but nothing like the amount that these others have taken out per acre that I have mentioned. We were not so vitally interested there, except that, of course, it was an endless chain, and I would like to draw the attention of this Committee to the fact that, as I see it, in regard to these people taking out an injunction against the Railroad Commission; for example, if a man wanted to do it, he could have a neighbor with a five-acre tract or a ten-acre tract; he could have an eighty-acre tract and he would have plenty of finances, able to build storage and build pipe lines, and he might, in other words, just rib this five-acre tract to go ahead and take out an injunction and produce his wells openly. Well, that one in turn —it is an unwritten law, whether it is a law at all or not, I don't know—anyway, that would start him, and he could produce his wells to the maximum. Anyway, that has been happening around there. There was one injunction which has just worked in an endless chain, and it is hurting us there, and we have been very badly hurt and are continuing to be hurt; we are being hurt right at the present time, because I don't think all of them—Eddie Jones, I believe, is abiding by proration, and the Magnolia, the last report I had on them, they were abiding by proration.

Q. Mr. Duffy, you have stated that you have made application for pipe line connections and that you were promised pipe line connections from various officials of various companies. Do you have the letters and telegrams by which these promises were made.?

A. I don't have any writing; the Sinclair, that is the Sinclair Pipe Line, the Sinclair-Texas Pipe Line, I have no communication; that was

all verbal, but Mr. McCamey, of the Cordova Union, and I, made a trip to Tulsa. We saw Mr. Manion, and he told us the latter part of March that the 1st of April, when their line was completed, he said: "We will give you relief, we will give you a connection." Mr. Sloan, who is in active charge in Texas for the Sinclair-Texas Company, promised me faithfully that he would give us on the 1st day of April, when he hoped to have his lines completed, a connection and give us relief for tomorrow.

Q. How were these promises made, orally or by letter?

A. We wired the Humble, of which I have copies. ' The only copies of record which we have here is one dated March 6th, from Longview, sent to the Humble Oil and Refining Company, attention Mr. Jep Neath, Houston, Texas: "Our No. 1 offsetting your Crim lease on south is producing. We would appreciate if you would advise by wire if you can give us connection for immediate relief if only for a nominal amount. Houston Oil, Eddie Jones, offsetting you east running 4000 barrels." We were a little small in that estimate at that time.

Q. What was your reply to that?

A. We had no reply, that is, no record reply. We had a telephone reply. Mr. Neath talked to Mr. McCamey and told him that they had about all they could take care of and they were, perhaps, in about the same shape we were.

Q. Well, in any of these requests, have you had any written replies, or have they all been oral?

A. We have had no reply in writing.

Q. You stated that the Magnolia Petroleum Company came in on your lease and, without your consent or knowledge, began taking oil; is that correct?

A. That is correct. The superintendent of the lease might have known; we didn't know—yes, we did have a general superintendent at that time, but they didn't take that up with Mr. McCamey or me asking permission to go in there, and we didn't know they had made a connection until the second tank was run the second day.

Q. Now, were you trying to get pipe line connection at that time?

A. We had a pipe line connection at that time, but, as I said, this was an open division order and we were making a supreme effort to get some major line that would be a permanent connection to come in and give us a connection.

Q. You had no objection to the Magnolia Petroleum Company taking your oil?

A. No, sir, we did not.

Q. Did they notify you they were going to disconnect?

A. No, sir, they did not.

Q. They paid you, of course, for the oil they took?

A. As yet we have not received payment for it.

Q. You haven't as yet received payment for the oil the Magnolia Petroleum Company took?

A. No, sir.

Q. Do you know how much oil they took?

A. They took four tanks, four 500-barrel tanks. Of course, that doesn't mean it would be 2,000 barrels; the tanks run short; it would be around something like 1,900 barrels.

Q. Have you ever communicated with them about this?

A. Yes, sir; we have a division order which has been signed. We had to go through the formality just as though they were still taking oil of signing the division orders. We will get that money eventually; there is no question about that.

Q. They assigned no reason for discontinuing the service?

A. No reason to us.

Q. Do you know of any reason that they assigned to anyone why?

A. Please repeat that question.

Q. Do you know whether or not they assigned any reason to anyone?

A. They may have—the manager might have told our men out there on the lease, I am not sure about that; that we had a connection and that for that reason—now, I couldn't say by my own knowledge that that is so, but I presume they gave him some reason.

Q. Have you ever requested the Magnolia Petroleum Company to take your oil?

A. Yes, sir.

Q. Prior to that time?

A. Yes, sir.

Q. Have you ever since then requested them to take your oil again?

A. No, sir.

Q. Who is the Luling Company that you referred to that offered this oil at 19 cents?

A. I couldn't give you the directors' names, or who the company consists of, but they have a 10-acre tract there just west of the Magnolia 50 acres; they are an independent concern.

Q. Does the Magnolia Petroleum Company's line cross your lease?

A. No, sir.

Q. Does the Humble?

A. Well, of course, the Humble crosses our lease getting into the tanks and taking our oil.

Q. Does the Atlas?

A. Yes, sir.

Q. Does any other line?

A. The Houston Oil.

Q. Sir?

A. The Houston Oil.

Q. Were they across your lease at the time you made request for connections?

A. Yes, sir.

Q. What excuse did these pipe line companies give you for not making connections?

A. Well, as I told you, the Humble told us that they were in trouble themselves and would be unable to give us relief.

Q. What do you mean "in trouble?"

A. Well, that they had as much oil as they could handle at that time through their loading rack and pipe line. Their pipe line—the large line was not completed at that time.

I failed to read a copy of the telegram sent to the Houston Oil Company. May I read that?

Q. Go ahead.

A. "Longview, Texas, March 6th, Houston Oil Company, attention Mr. Turner, Houston, Texas. How much oil can you take and at what price to give us some relief our 36-acre tract? (Stop.) Our lessor dissatisfied with your line through our field giving outlet to Corona and he is demanding an outlet."

Q. And you received no reply to that?

A. No reply to that.

Q. Do you know of any of these companies immediately surrounding your lease who have failed to file completions of their wells within a week or so after the wells were completed?

A. To my personal knowledge I know that Eddie Jones and the Houston Oil Company's No. 1 was completed the last week in February, and his report does not show a completion in the Railroad Commission office until in March.

Q. According to this record here well No. 1 of Eddie Jones seems to be completed April 5, 1931.

A. Mr. Hardy, that was a mistake; the stenographer in typing those—I made a correction there and I have the correct or nearly the correct—I can get those, however, out of the Railroad Commission's office.

Q. Well, I just wanted to get that corrected. It was completed in March?

A. No, sir, the Eddie Jones and the Houston was completed the last week in February.

Q. And when does the record show that it was completed?

A. Along in March.

Q. Approximately what time in March does it show?

A. It shows along about the—from the 7th until the 10th.

Q. Does that give any advantage to anyone in failing to file their completions immediately?

A. Well, I really don't know whether they were trying to postpone the completion date, so that they would not come under the jurisdiction of the Railroad Commission or not; I really could not answer that question.

Q. Well, I am not asking you about their intentions; I asked you does it give an advantage to complete a well on a certain date and make no report of it until some time later; if so, how would it be an advantage?

A. I don't believe I could suggest any advantage there.

Q. Then why should they be delaying or what is the point of that?

A. I really don't know.

Q. Who of those adjoining leaseholders have injunctions at this time against the enforcement of the Railroad Commission's orders?

A. Mr. Parker informed me Saturday that Burton had an injunction under a prior order of the Railroad Commission, but did not have an injunction against the present existing order of the Railroad Commission.

Q. Burton has 20 acres?

A. Yes, sir.

Q. Where is his acreage relative to your lease?

A. It offsets us on the southeast corner.

Q. Who else among this group have injunctions?

A. Early, Eddie Jones and the Houston Oil Company took an injunction; I don't know that it has ever been necessary for Markham & Dunning and the British-American to take an injunction.

Q. You don't know of anyone besides the Houston Oil Company and the Burton Drilling Company that have injunctions?

A. No, sir.

Q. Who adjoins the Houston Oil Company, what lease adjoins them?

A. The Humble offsets them on the north; we offset them on the west and south; Olvey offsets them on the east.

Q. Well, the point I am getting, though, is do all of these violators of proration offset the violator who has an injunction?

A. No, sir.

Q. Explain how they spread around there?

A. Burton offsetting us on the southeast corner, he has wells offsetting us and Cranfill & Reynolds and the British-American. On the east, because he is not abiding by proration through this injunction, I understand that the British-American is automatically then given permission by the Railroad Commission to go ahead and produce their wells open, and in turn that would give Olvey permission, because he offsets the British-American.

Q. Whereabouts, on the north?

A. On the north.

Q. All right.

A. And the Houston Oil Company, then it would give them permission, which offsets Olvey on the west, and so on around, the different property owners there. As I say, it would just be an endless chain by one organization or one producing company taking out an injunction.

Q. Do you have a map there showing your lease and these offsets?

A. Yes, sir.

Q. Would you mind just holding it up and showing to the Committee how that works and point it out?

A. (Exhibiting plat.) The central lease here is the 36-acre which we own. Here (indicating) is the Houston Oil Company, that 10 acres. Here (indicating) is the J. W. Olvey with 20 acres. Here (indicating) is the British-American, with 25 acres. Here (indicating) is the Burton Drilling Company with 20 acres. Here (indicating) is Cranfill & Reynolds with 10 acres, Markham & Dunning with 25 acres, Magnolia Petroleum Company with 50 acres, Humble Oil and Refining Company with some 620 acres.

Q. All right. Now, where is the party who has the injunction?

A. Burton.

Q. All right. Now, where are the locations of the wells on the Burton lease?

A. This well (indicating) and this well (indicating).

Q. All right. Now, where do those offset wells offset the British-American?

A. This well (indicating) is a direct offset to the southwest corner location of the British-American 25-acre lease.

Q. All right. Now, does the British-American let all of its wells run in excess of their allowable, or only that one well?

A. I cannot answer that question.

Q. All right. Now, who is that north of the British-American?

A. J. W. Olvey.

Q. Where does he offset the British-American?

A. He offsets their north line with No. 1 and No. 4 wells.

Q. Does he violate the proration orders?

A. Yes, sir, the figures that I have given will show that he has and is.

Q. Although you don't know whether or not the British-American is running from those wells that offset his property in excess of the allowable or not?

A. No, sir, I do not.

Q. Then where does the Houston Oil Company offset, or Eddie Jones offset, that lease?

A. He has two offsets to the Olvey lease, his No. 2 and No. 3 wells.

Q. Does the Olvey lease run from those offsets to the Eddie Jones lease more than the allowable?

A. Yes, sir, the figures that I have given show that he is running over his allowable; as far as those two wells, I don't know what wells he is taking that from.

Q. Then, as a matter of fact, it doesn't necessarily show that they run the excesses from the particular well that offsets, but they graduallly spread around and around by leases?

A. From the figures that we have, that would be my idea; in other words, I don't believe they could pro-

duce the amount of oil they are running over from any one particular well.

Q. Who takes this excess oil from these various leases, what pipe line companies or railroad companies, or who?

A. From the British-American the Texas Company is handling that oil to seaport; the Atlas Pipe Line Company is handling Olvey's oil.

Q. Who is the Altas Pipe Line Company?

A. I couldn't give you the names of the officers, but they were organized in Shreveport, Louisiana.

Q. All right.

A. The Sinclair Company has taken right along and is taking now—

Q. (Interrupting) Wait a moment before you go to that? Who did this Atlas take this oil to, do you know?

A. They have their own line?

Q. Do they have a refinery?

A. That I cannot state, but their line is completed, I think, also, to Shreveport. They first built a line to the loading rack when Olvey's first well came in, to Longview, and they since then have completed, as I understand it, a trunk line from there on to Shreveport.

Q. You don't know what the Atlas does with the oil it takes in from that lease?

A. No, sir, I do not.

Q. All right. Who else? Go ahead.

A. The Markham & Dunning lease, that is the Sinclair-Texas Pipe Line Company, is taking that oil and has taken it from the date of completion of the well.

Q. Where does it go? Do you know?

A. No, I don't know.

Q. All right. What other lines in there take oil?

A. The Magnolia, of course, is taking their own oil; that is going to their trunk line.

A. I believe you stated that the Humble Company offsets you on the north?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Are they running more than their allowable?

A. I don't know; I didn't go into those figures, because these others were so vital I just got the total recovery up to July 16th on their lease and I didn't check back against their allowable, but I imagine that they have more or less stayed within their proration allowable, except in cases like the Eddie Jones and the Olvey, where they had to protect their lines, and they were able to take care of the oil which they did produce from those offsets and protect themselves.

Q. Are they drilling a good many wells on that lease?

A. I understand that they are drilling, that is, in the past ten days, something like, on this particular lease, I would judge probably four or five inside locations being drilled on that lease.

Q. Four or five?

A. Yes, sir.

Q. Are the landowners clamoring for the drilling of those wells?

A. That particular situation I could not answer from facts other than I know that Mr. Roy Laird, of course, I don't know Mrs. Crim, but Roy Laird, who has part of the Bateman block, he told me he didn't want to sell any of his oil at 15 cents a barrel.

Q. Are any of these inner wells being placed on their lease obtained from him?

A. Yes, sir.

Q. Are they offset wells?

A. No, sir; they are what are known as inside locations.

Q. Then they are not drilling these wells at his request?

A. I would say not.

Q. Did you ever have any conversation with any of the officers of the British-American?

A. Yes, sir.

Q. Did you ever have a conversation with Mr. George Sneddin of that company?

A. Yes, sir, we did.

Q. State to the Committee the substance of that conversation.

A. Mr. McCamey and I were in Tulsa.

Q. Who is Mr. McCamey?

A. Mr. McCamey is vice-president and general manager of the Cordova Union Oil Corporation.

Q. And what is your position with that company?

A. I am interested; I have an interest with them in this particular lease which we are discussing.

Q. All right; go ahead.

A. March 10th we called on Mr. George Sneddin of the British-American, who represents them in the Mid-Continent field, and he told us that he thought it advisable at that time, on the east offset to us, he told us

he thought it advisable that we dispose of this thirty-six acres owing to the fact that we had no pipe line connection, and he thought that perhaps we would be unable to get any pipe line connection and told us that their program for the operation of their twenty-five acres offsetting to us would take out all the oil they could produce as quickly as they could produce, and he thought, and, as I said, he advised us to dispose of that thirty-six acres at that time.

Q. Was that before or after the injunction had been obtained by the offset to the south?

A. That was before.

Q. In other words, the British-American was preparing to take all the oil they could produce at that time before there was an injunction; is that correct?

A. Before there was an injunction, and before they had even drilled one well; they had just built one rig; they hadn't started on the first well when he told us that he thought we should sell this thirty-six acres.

Q. Just in order to get it before the Committee, you say you have an interest in this; do you mean in the Cordova Company, you are a stockholder, or that you have an interest in the lease?

A. My interest is undivided in the lease; in other words, I am not connected in any capacity with the Cordova Union; we are more or less partners, or, you might say, perhaps, tenants in common.

Q. You do not have any connection with them other than this?

A. None other than this lease and some other leases which we own jointly.

Q. Do you hold any stock in the company?

A. No, sir.

Q. Do you hold any official position with the company?

A. No, sir.

Q. Are you connected with that company in any other way other than owning the leases with them?

A. No, sir.

Q. Does anyone own any stock in the company for you?

A. No, sir.

Q. These companies that have been producing more than the allowables of the Railroad Commission's order, did they have connections prior to the time you made connection with a pipe line company?

A. We were the third well in in that particular district there.

Q. Who was the first one in?

A. Eddie Jones and the Houston Oil Company.

Q. Who was the second one in?

A. J. W. Olvey.

Q. Did they have pipe line connections before you did?

A. Yes, sir.

Q. Who was the fourth one in?

A. The Magnolia.

Q. Did they have pipe line connections before you did?

A. Yes, sir.

Q. Who was the next one in?

A. British-American, I believe.

Q. Did they have a pipe line connection before you had?

A. They took over the pipe line that we were using with the Southern Oil and Refining Company, and they ran their oil through that.

Q. Now, do you mean that they took over that? Do you mean that they took over the pipe line connection?

A. Yes, sir; that is where that connection went when we refused to accept the 19 cents a barrel.

Q. Then you had pipe line connections as soon as you had completed your well, before any other wells came in in the immediate vicinity; is that correct?

A. No, sir; we were eleven days from the completion of No. 1 well until we worked up this agreement with the Southern Oil and Refining Company to transport and buy this oil.

Q. Were any of these other leaseholders on these adjoining leases to yours given a preferential connection before you were who did not complete their wells before you completed yours?

A. Yes, sir; Markham & Dunning took the connection from the Sinclair which Mr. Sloan had promised me, or whether it was the same connection or not, I don't know, but nevertheless they got their Sinclair connection and we did not.

Q. And their wells were not completed until after yours?

A. That is right.

Q. At the time that they made connection with Sinclair, did you have any connection with any pipe line company at all?

A. Yes, sir, we were running oil to the Southern Oil and Refining Company.

Q. Then, as a matter of fact, you did have a connection before they had a connection; is that correct?

A. Yes, sir, we had a connection before they had.

Q. Well, now, what I am getting at, though, was there any well in that immediate vicinity completed after your completions and given pipe line connections before you were given a pipe line connection?

A. Of course, during that time of March I will have to answer it this way: During the latter part of March we were without a connection from the 19th—for April, I mean, from the 19th of April to the first day of May we were without a connection, and at that time Sinclair was running the oil from Markham & Dunning.

Q. Have you at any time since proration has been in effect sold more oil than your allowable?

A. Never.

Q. Have you had a connection with the Humble Pipe Line Company at all times since proration orders went into effect?

A. With this particular lease, yes, sir.

Q. What other leases do you have in East Texas?

A. We have the J. S. Dean lease with two wells on it in the Kilgore area.

Q. Do you have a pipe line connection there?

A. We do at the present time.

Q. How long were you without connection?

A. Some thirty-odd days.

Q. Did you make an effort to get a connection with any company during that time?

A. Yes, sir.

Q. What companies?

A. With the Humble Company, and the Texas Company said that they would give us a connection, but they never did; and then the Humble called and requested that they might give us a connection for this particular lease.

Q. What other leases have you?

A. We have a forty-acre lease southwest in the Kilgore district that is non-producing. Those are the only two leases we have that are producing. We have one lease, though, with one well, in the Merritt-McCabe survey, a 97½-acre tract that we sold about two weeks ago.

Q. Do you have any particular idea as to the most of the important factor in assuring real proration in East Texas from your experience as an operator in attempting to get connections and produce oil? Do you have any such idea?

A. I believe that the pipe line companies, if they would give everyone a fair shot at what they can produce and what they allow them to run, either under jurisdiction of some commission or the Railroad Commission, or whatever it may be, that the condition that has existed around us there would not exist and everyone would be put on an equal basis.

Q. Then you attribute violations in the East Texas pool to lack of pipe line connections; is that correct?

A. I think that was the initial cause.

Mr. Beck: Will you clear up for us just the nature of your relation with the Cordova Oil Company? You are connected with them, but not in their employ, but you have a community of interest there somewhere. Just what is the nature of your relation and your contracts with them?

A. I bought these leases and in turn sold the Cordova Union a three-quarter interest in the leases, Nelson Brothers and myself retaining a quarter, of which we have to pay our proportionate share.

Q. You and Nelson were partners in buying the lease originally?

A. Yes, sir, that is it.

Q. Yes, sir. Well, do you, owning a one-fourth, have to participate in the cost of development?

A. Yes, sir.

Q. And they operate the lease?

A. Yes, sir.

Q. And pay you one-fourth of the profits?

A. Yes, sir.

Q. Do you have any part in the direction of those operations?

A. Yes, sir, it is under advisement betwen the Cordova Union, the Nelson boys, and myself.

Q. That is just a customary kind of contract in the oil field?

A. Yes, sir.

Q. What companies have you found attempting to abide by the Railroad Commission's orders and to effect proration and conservation and what companies have you found that were willful violators?

A. The figures that I have given, and I know very little other than hearsay on any other leases over

there except those adjoining us, and it shows that they have all violated the proration orders.

Q. Well, will you give us a list of the names of companies, let's get that off by itself, that have been violators of the Commission's proration orders?

A. J. W. Olvey, British-American, Burton Drilling, Cranfill & Reynolds, Markham & Dunning, and the Magnolia Petroleum Company.

Q. Mr. Cranfill; is that the man that sponsored what is known as the "Cranfill Plan"?

A. I think not; I believe it is a nephew or a cousin.

Q. Oh, it isn't Tom Cranfill?

A. It isn't Tom Cranfill, no, sir.

Q. You are sure about that?

A. I am thoroughly sure about that.

Q. Well, in any event, has that operation been a violator of the present proration system in East Texas?

A. You mean the order in effect from the 16th of July?

Q. Yes, sir.

A. I don't have those figures; I only have up until July 16.

Q. Were they violators of the order that prevailed prior to July 16?

A. Yes, sir.

Q. For what length of time have they been violators?

A. The only definite figures that I have on violations is from June 16 on.

Q. Have the major companies violated the proration orders?

A. The figures which I have given will show that the Magnolia, which I presume is called a major company, have exceeded their proration allowable.

Q. Did they do that because they wanted to or did they do that because they were forced to by the offset violators?

A. I believe that they did that because of those injunctions; the only ones, of course, on the east side that I have mentioned, Cranfill & Reynolds, Burton, and Olvey, Eddie Jones and the Houston Oil Company.

Q. Is the Sinclair Company offsetting you?

A. If they have an interest in the lease, I don't know it, but the lease is carried as Markham & Dunning, and Sinclair Pipe Line Company is handling their oil and is handling their oil at the present time.

Q. Does the Sinclair Pipe Line Company run oil produced in compliance with the Railroad Commission orders, or do they run oil for violators and abiders and everybody else?

A. The only lease that I can cite is this lease of Markham & Dunning, and they have certainly run away over their allowable for them in regard to that particular lease?

Q. Has the Magnolia run that?

A. They show that they have run over their allowable by the figures that I have shown.

Q. Does the Magnolia make a practice in the field of buying oil from the violators beyond their allowables?

A. That I cannot say.

Q. Could any operator produce above his allowable if all the pipe line companies were refusing to buy oil that was illegally produced?

A. To answer that question would be more or less a supposition on my part, but I would say that I would believe that they would rather run orderly and get a fair price for their oil than they would to rob their property and their neighbor and get a price which is not fair.

Q. You believe who would rather do that?

A. A great many of the people producing oil in East Texas.

Q. Well, who is it in your neighborhood in that field that does not want to look at the matter in that manner?

A. The only way I can answer that question is by stating the people adjoining us have broken proration and taken out more than their allowable.

Q. You have pretty well convinced me by your testimony that in a given locality any one man that wanted to jump out of line could disrupt the whole territory.

A. I think that is true.

Q. Well, who is the disrupter in your territory?

A. As it happens, I believe that it was more or less each one took a crack at it; in other words, they took turns; I understand that Cranfill & Reynolds had an injunction at one time; Jones has had an injunction at one time; Burton has had an injunction at one time.

Q. Are those injunctions still in force?

A. Saturday, Mr. Parker told me that there were no injunctions in

force under the last order of the Proration Commission at that time, Saturday last week.

Q. Now, from your testimony this morning is it to be inferred that Mr. Jones took out an injunction, attained a recovery of about 25,000 barrels per acre—what recovery?

A. Something over 73,000 barrels per acre.

Q. He obtained a recovery of 73,000 barrels per acre and then, having largely drained the surrounding leases, was willing to settle down and abide by proration?

A. That is the way it looks to me.

Q. Is there anybody else around you that has that same attitude?

A. No, sir, as a matter of fact, the Houston Oil and Eddie Jones has run over their proration since June 18 up until July 16, which amounted to 9,000 barrels; he has gotten that much more than his allowable; yet that is a very nominal figure, considering the other leases around up there.

Q. Now, after Mr. Jones committed this drainage of adjoining leases, he wasn't very much interested after that in his injunction, was he?

A. No, sir.

Q. Some other producer came along with the same method and got out an injunction and obtained the maximum recovery and then lost interest; who was that?

A. I believe Cranfill & Reynolds was the second to take the injunction.

Q. And then who followed them?

A. The Burton Drilling Company.

Q. All have gone through the same procedure?

A. I believe so.

Q. They enjoin the Commission from enforcing the law until they can produce the maximum recovery and then they are willing to settle down and keep somebody else from using the same method?

A. I think that is right.

Q. Have you ever jumped over?

A. I am not sure; really, I don't know whether it was ever necessary or if they thought it was necessary, at least, they didn't — so far as I know, they never took an injunction, yet they ran away over their allowable and that was both Markham & Dunning and the British-American,

Q. Yes, sir. Well, have you or the Cordova Company ever applied for an injunction?

A. We never have.

Q. Has that worked to your disadvantage?

A. Well, on the total, figuring as I set out with 196 acres, and allowing us 36/196 of that, we are shy 345,000 barrels; in other words, our neighbors, if we take an average of it, we are shy 345,000 barrels of having the same amount that our neighbors have taken from their leases.

Q. Have you at all times abided by the orders of the Railroad Commission?

A. Strictly.

Q. As a result of that your production has held down away below that of your neighbors?

A. Yes, sir.

Q. Will you ever be able to recover as much oil as you would have recovered had you violated the law?

A. I think it would be an impossibility.

Q. You think a good deal of your oil has disappeared through the outlets of the violators?

A. Yes, sir.

Q. To what extent do you think that your recovery has been impaired?

A. In the future I cannot say, but the average was 14,404 barrels to the adjoining leases per acre, that was what they recovered up to July 16 per acre, and we have recovered only 4811 barrels per acre, so we are shy approximately 10,000 barrels to the acre, which I don't believe we will ever get.

Q. The representatives of the Railroad Commission have been active in that locality, have they?

A. Yes, sir.

Q. Have they attempted to stop the overproduction of those operators who have not enjoined them?

A. We have called Ray Richman several times and asked him about the British-American in particular, and Markham & Dunning, and he says that he has been unable to catch them breaking the proration orders.

Q. Doesn't he have access to the same figures that you have?

A. I would think that he would have.

Q. Where did you get those figures?

A. These figures came from one of the largest companies, but I gave my word that I would not reveal where I got them.

Q. If you can get that promise released, we would like to have that

information as to who got those figures and where they came from.

A. I will make an effort to do so.

Q. If you will get released from that promise. By what right does the Magnolia Company construct a pipe line across your lease without your permission?

A. I could not answer that.

Q. Is it the lessee or the owner in fee that has control over whether or not a pipe line goes across the lease?

A. It is a fact that the lessor, they have to gain his permission, however, in many instances over there, in this particular instance I know that they went ahead with their work without consulting the fee owner.

Q. They didn't consult the fee owner and they didn't consult you?

A. No, sir.

Q. Is that a usual procedure for a pipe lnie company to adopt?

A. I think not.

Q. Have you any recourse against them?

A. I don't believe that we could show damage because they will pay us—the Magnolia I am really speaking of, will pay us for the four tanks of oil they took.

Q. Did they take those four tanks of oil to square up the easement which they just took?

A. I don't know that.

Q. Did they help you or damage you when they took those four tanks of oil?

A. They didn't damage us, certainly; we don't know what they are going to pay for it, but I understand the price is to be 67 cents, and whether it is or not remains to be seen.

Q. Who is the Houston Oil Company?

A. The Houston Oil Company are located at Houston, Texas. I know none of the general personnel; Mr. Turner, to whom I directed that telegram, I believe, is probably general manager or vice-president, I don't know.

Q. Is that a Texas company?

A. I couldn't say.

Q. Is it a Standard Oil subsidiary?

A. I couldn't answer to that other than just rumor.

Q. Well, what is the rumor?

A. I have understood that they were in some way connected, but I don't know, with the Humble Oil and Refining Company.

Q. Now, the Houston Oil Company owns production offsetting you?

A. Yes, sir.

Q. They own their own pipe lines?

A. Yes, sir.

Q. They have been willing, as I understand from you, to run their own oil in excess of allowable production and let your oil stay in your lease tankage?

A. That is correct.

Q. Have other pipe line companies been guilty of the same practice?

A. Of course, the Sinclair Company, so far as I know, has no interest in the Markham & Dunning lease. The Magnolia, of course, owns their own lease, and owns their own pipe line.

Q. Do they practice the same method as the Houston Oil Company in that respect?

A. Magnolia gave us no relief other than the four tanks that I have spoken of. The Sinclair, of course, has never given us any connection.

Q. Were they under any particular obligation of law or custom to tie into your lease?

A. I would believe that being common carriers that they would have been obligated, the Sinclair, to have taken as much oil from us as they were taking from the offsetting Markham & Dunning lease.

Q. To what extent could the Railroad Commission now require that they do so?

A. I really don't know.

Q. A pipe line company using the method that the Houston Oil Company has used could very seriously hamper your development, could they not?

A. Yes, sir, if the condition existed long enough we would not have anything to put through a pipe line.

Q. How is that?

A. I say if the condition existed long enough we would not have any oil to put through a pipe line.

Q. Well, now, you meet around with various operators and discuss these problems and you very frankly discuss all of the companies. We want to find some operator that will tell this House of Representatives who it is that is known to be developing the East Texas field and assisting the operators in that field and who it is among the larger companies that are attempting to exploit that field regardless of consequences to the people of the State. You surely from

your association with other operators who are informed will be able to answer that question for us in an open and frank way.

A. The question is rather hard for me to specify any particular ones, other than just by the figures that I have shown, and that is the only concrete knowledge that I have of those properties being produced in excess in East Texas.

Q. Now, in the failure of the pipe line companies to connect with your lease there must have been some reason. What reason did they assign?

A. The only company that gave us a reason was the Humble Oil and Refining Company, that is when they were handling their oil by tank cars, and they said they had all the production that they could handle of their own.

Q. They have testified here that they only produce a relatively small percentage of their requirements. What did they mean by having more —what do you mean by their having more oil than they could handle?

A. At that time they were producing more oil from the Bateman area than they could—of their own oil, producing more than they could handle through their line and find cars for taking it out of the district.

Q. Did they have a pipe line into the area at that time?

A. Repeat that.

Q. Did they have a pipe line into that field at that time?

A. No, sir, none other than the pipe line to the loading rack.

Q. Well, when they said that they could not handle, did that mean they could not get tank cars to transport it?

A. They didn't specify whether it was lack of tank cars or lack of room in their line to the loading rack.

Q. Well, what do you think was the reason, what did you think they meant by that?

A. I believe it was, perhaps, lack of cars and lack of space in the line.

Q. Was it a true statement?

A. Sir?

Q. Did they make a true statement to you when they assigned that reason?

A. I would have no way of ascertaining whether that was a true statement or not? I don't have their production report at the time; I didn't know what the capacity of their loading rack line was.

Q. Do you feel like they got to your lease as quickly as they could?

A. They told us that they would not connect to any lease until there was an order issued by the Proration Committee, the Railroad Commission, and, until it went into effect, and immediately upon that order being issued and the date that it went into effect the Humble did give us a connection.

Q. They gave you a connection to run your oil as quick as they legally could, is that what you mean?

A. Yes, sir.

Q. Well, had the others run your oil before that time would it have been illegal for them to do so?

A. Well, the Railroad Commission had issued no order; when we were running that oil to the Southern Oil and Refining Company there was no order issued at that time or during that time.

Q. What does your royalty owner think about the—the owner of the royalty under your lease; what does he think about the—

Mr. Hardy: Ask him first does he know what he thinks.

Mr. Beck: Well, I will ask him first does he know what he is thinking about the way the people are allowing your acreage to be drained?

A. Well, when we refused to sell at 19 cents to the Southern Oil and Refining Company, he joined with us in that. He said that he would rather we would not sell oil that cheap.

Q. He thinks it ought to sell for more?

A. Yes, sir.

Q. Doesn't he realize that the acreage is being drained by violators that offset you?

A. He does.

Q. Now, what is your recommendation of the means for correcting the situation that injures you and thousands of other operators in the same manner?

A. I believe that if all pipe lines would take the allowable as allotted by this last order of the Railroad Commission—agreed to take it, stand by it, that everyone that is really trying to produce oil or would produce oil orderly in East Texas would be only too glad to get a connection from the pipe line companies to run their oil to them under proration.

Q. You think that every operation ought to be prorated?

A. Yes, sir.

Q. Under a law that is rigidly enforceable?
A. Yes, sir.
Q. Do you think there has been an attempt—a serious attempt—to enforce existing law?
A. No, sir, I do not.
Q. Have you been in the field for some months?
A. I have not been there for the last three or four weeks.
Q. Prior to that time you had been there pretty constantly?
A. Yes, sir.
Q. Did you see any evidence of any vigorous attempt to enforce existing laws?
A. No, sir.
Q. I believe that is all.

Questions by Mr. McCombs:

Q. What did you say your name was?
A. Walter E. Duffy.
Q. Where do you live, Mr. Duffy?
A. Fort Worth.
Q. And how long have you lived there?
A. Since 1925.
Q. Since 1925. You have testified during the last hour about a good many people who have violated proration orders, haven't you?
A. Yes, sir.
Q. How do you know they have violated them?
A. By figuring their allowable from the proration order sheet against the runs that are shown by the pipe line figures.
Q. Where do you get these figures?
A. The pipe line figures?
Q. Yes, sir.
A. I know that they come from the Texas Company.
Q. Where did you get them?
A. I have stated that I have given my word that I would not disclose from what company I procured them.
Q. Do you regard your word, given in confidence to an oil operator, as any more important than your word under oath to the Texas Legislature, representing the people of Texas?
A. I don't believe—I—
Q. (Interrupting) Do you want us to believe everything you testified this morning?
A. I can tell you where I procured it.
Q. That is what I am asking you.
A. The Pure Oil Company gave me these figures.
Q. What man connected with the Pure Oil Company gave them to you?
A. Mr. Smith.
Q. What are his initials?
A. Pete is his first name.
Q. Pete is his first name? What is his connection with the Pure Oil Company?
A. He is connected in the land department .
Q. In the land department. Has he any official capacity, or just a clerk there?
A. No, he is assistant to the head, I believe, of the land department.
Q. Do you know where he got these figures?
A. I understand they came from the Texas Company.
A. Got them from the Texas Company?
A. Yes, sir.
Q. Do you know what man in the Texas Company gave them to him?
A. No, sir.
Q. Where did the Texas Company get them?
A. I presume from their own files, and exchange between the pipe line companies of what each company has run.
Q. What you have been handing us is really third- or fourth-hand information, then, so far as you are concerned, isn't it?
A. I presume you could take it that way.
Q. Of your own personal knowledge, you know nothing about it at all, do you?
A. That the Texas Company gave these figures?
Q. About what figures you have given us?
A. I know I procured them as I said.
Q. Practically all of your testimony has been hearsay this morning, then?
A. Could I suggest that you call the Texas Company and ask them if these figures are correct?
Q. You cannot make any suggestion to me at all. I don't even belong to the Committee. That is all.

Examination by Mr. Hardy:

Q. You have stated these figures to be facts, have you not, Mr. Duffy?
A. Yes, sir; facts.
Q. If they are not true, the leaseholders can come in and deny them, can they not?
A. Yes, sir.

Q. The Texas Company can deny them, can it not?
A. Yes, sir.
Q. The Atlas Company can deny them, can they not?
A. Yes, sir.
Q. Any other questions? Do you know, or have you ever heard of a man in East Texas commonly referred to as "Big Jim"?
A. I have heard of a man by the name of Jim McCann.
Q. Is he rather a large man?
A. Yes, sir.
Q. Did you ever hear him referred to as "Big Jim"?
A. I believe I have.
Q. What is his business?
A. I understand that he is at the present time over there buying and selling oil.
Q. Do you know anybody that is selling any of this oil?
A. He told me that he was buying oil from McIntire, down in the Joiner pool.
Q. What is he paying for that oil?
A. He told me he was paying either 11 or 12 cents, I don't remember exactly.
Q. How does he obtain this oil, in tank cars, or pipe lines, or tank wagons, or how?
A. He has a small gathering line down there and runs it to a loading rack, loads it and sells it on the cars.
Q. Where does he sell it?
A. I have never seen any orders from him or purchase orders from him for the sale of this oil.
Q. Did he ever tell you where he sold it?
A. He told me he was selling it to the Texas Company, that he had contracted with the Texas Company, with the Stanolind Company, those two companies that I remember.
Q. You know whether or not there is any other party engaged in that business of brokering oil?
A. That is the only one that I know of.
Q. Has it been a common practice in the fields of various parties to buy this oil through these gathering lines and dispose of it to the major companies, to your knowledge?
A. The only case that I can cite is just what Jim McCann has told me.

Examination by Mr. Beck:

Q. Now, as to the sales of oil that Mr. McIntire is making, he sold a lot of oil, but has he been paid for it?
A. I cannot say whether he has been paid for it or not.
Q. Do you happen to know that he is behind with the salary of his employes because he has not been able to collect for the oil that he has sold to these brokers?
A. No, sir, I do not.
Q. Mr. McIntire himself is an honorable operator, is he not?
A. As far as I know, yes, sir.
Q. That would be your opinion of him. Are there not quite a number of brokers who call themselves brokers in the East Texas field at this time making contracts for oil with operators that do not know them, running the oil and then failing to pay for it?
A. That is only hearsay on my part.
Q. Do you believe that there is such a practice quite extensively?
A. I could not cite any specific cases of it.

Examination by Mr. Nicholson:

Q. Mr. Duffy, referring to certain acreage over there in the East Texas field, you gave us figures that different producers had produced per acre of land. I think your production, perhaps, was around 5000 barrels, as you stated. I may have not understood it.
A. Four thonsand, eight hundred and eleven barrels to the acre, I believe.
Q. Now, the Humble Company is one of the involved producers in that particular section you were talking about, isn't it?
A. Yes, sir.
Q. I think that you said they had some 600 acres of land?
A. That is right.
Q. Do you recall what their production per acre was, including the 600 acres of land?
A. I mentally made an effort to ascertain that and if I remember it it was around 3600 barrels to the acre that they have recovered, allowing for the number of wells that they have drilled. At that time the report I have showed, I believe, twenty-seven wells.
Q. Then, in fact, you were lower except for the Humble Company, and they were lower than you in production per acre?
A. That is correct.
Q. Now, you had trouble getting a pipe line connection?
A. Yes, sir.

Q. I understood that you were wanting not only a pipe line connection, but some pipe line company to purchase your oil, is that correct? What I am trying to get at is this: whether or not you already had a sale for your oil and some pipe line would not transport it?

A. We were without a connection from the completion of our first well for eleven days and during that time we offered our connection to everyone that was in a position at that time to make a connection or give us a connection, or that we thought might be in a position to give us connection, but we were eleven days without a connection from the completion of the discovery well, No. 1 well.

Q. You were asking, however, some pipe line company to purchase your oil and transport it?

A. That is right

Q. The distinction I am trying to make is this, Mr. Duffy: that your oil was not actually sold, and your trouble was both finding a buyer and a transporter of your oil?

A. Yes, sir, that is true.

Q. And the answer of the Humble Company to you was that they could not use any more oil, or that their line was full, which was it?

A. That is right.

Questions by Mr. Farmer:

Q. Mr. Duffy, you stated you lived in Fort Worth?

A. Yes, sir.

Q. If you could answer in one sentence, Mr. Duffy, the real trouble over in East Texas with regard to the independents, producing from a lease like yours, small in character, what would that one sentence be?

A. Produce on an equal and equitable basis, and bought by the pipe line companies that way.

Q. Then, if the State of Texas will enact a law requiring pipe line companies to take all oil ratably, and treat all alike, you would be treated fairly, would you not?

A. I think so.

Q. Well, Mr. Duffy, in the situation as it now exists, with the pipe lines owned by the major companies, not taking oil ratably from all producers and running others and keeping their pipes full, are the independents treated fairly?

A. No; I would think that the independents were not.

Q. Have the independents a market for all the oil they produce at their prices?

A. At the present time?

Q. Yes, sir. If they could get it to the seaport?

A. I couldn't answer that question.

Q. Have you, Mr. Duffy, tried to sell any oil beyond the bounds of Texas?

A. No, sir.

Q. Then you do not know whether you have a market beyond the bounds of Texas?

A. I do not.

Q. You were caught in distress circumstances and sought to do the best you could under those circumstances?

A. That is correct.

Q. Is it true that these major companies have lines that they do not call common carriers from wells that they run to the loading racks on the T. & P. and the I. & G. N. tracks there in East Texas?

A. Yes, they do.

Q. Is it true that certain oil brokers and certain other companies have laid private lines across property of people that they have arranged with and that they are not common carriers and that they are buying oil and selling it at the railroad racks to be shipped by tank car out of the State of Texas by those railroads, especially the T. & P.?

A. I believe that is correct.

Q. Now, Mr. McCombs had hold of you here a while ago. Mr. McCombs is a member of this Committee of this House. He meant he was not a member of this Steering Committee. That information was given to you and you believed it to be true, didn't you?

A. I did, sir.

Q. You received it from truthful, honorable men, didn't you?

A. I did, sir.

Q. You relied on it?

A. Yes, sir.

Q. They were not seeking to misrepresent anything to you, were they?

A. No, sir.

Q. They were seeking to give you the truth in the matter that you might give it to the people of the State of Texas?

A. That is correct.

Q. Now, Mr. Duffy, I want to know if the independent refineries

within your acquaintance are getting all the oil that they can use?

A. I believe they are in particular areas, and by that I mean they are in East Texas.

Q. I want to know, Mr. Duffy, if you ever did any detective work at night by going to the pipe line or pumping station of the major companies and there after the midnight hours, hearing their pumps running at full force?

A. No, sir, I never have.

Q. Do you know anybody that has?

A. No, sir, I do not.

Q. Another thing, Mr. Duffy, I want to know, did these major companies in running their pipe line out across your lease and others, I want to know if they tried to conform to the law of eminent domain, and attempt to take that under the law by which they can cross a man's private property?

A. You mean by that—will you repeat that question?

Q. Did they cite you into court or come and ask you for a contract across your land with your consent at a certain price with the pipe lines?

A. The owner of the lease, of course, was not consulted, and it is not necessary or customary in the oil country, I believe, to ask him whether he would give permission to cross the land, but the fee owner, of course, I understand their permission must be secured before you can cross their land with a pipe line.

Q. Did they get the fee owner's consent in this case?

A. They did, finally; the Magnolia did not, because it was not necessary.

Q. Now, Mr. Duffy, we want to know this: you are complaining here to this Legislature, saying that these companies are taking this oil out there. You didn't know at the time, but you do know now, that these so-called proration orders of the Railroad Commission are invalid and void?

A. That would be for me to give my opinion, and I believe that their orders and the decision made in Houston invalidates the orders.

Q. All right. Since that is true, now on your wells there in Eastern Texas, and running at full force, have you this morning a market for your oil, all that you could produce?

A. No, sir.

Q. You have not?

A. No, sir.

Q. Why haven't you a market for your oil?

A. I haven't found anyone that would take it.

Q. Well, now, over there, those that are producing that oil in Eastern Texas at this time, taking out the most of it, who are they that are taking the most out?

A. That have taken the most, or that are taking now?

Q. And are taking now?

A. The Houston Oil and Eddie Jones, of course, have taken the most out; Markham & Dunning and the British-American are taking the most at the present time.

Q. Well, then, it is your opinion, as a producer, a man of experience in the oil business, that this Legislature should enact some law by which adjoining owners may be treated alike and each man have his proportionate part of the oil beneath the soil?

A. I do.

Q. If that were enacted, would that help solve this problem?

A. I believe it would.

Q. Mr. Duffy, if the pipe line companies were made absolutely apart from the production, refining and marketing systems, would that help the situation?

A. In other words, if they were connected in no way with the producing department?

Q. Yes, sir.

A. I believe it would.

Q. Mr. Duffy, if all the major companies of this State were forced to part with their pipe line equipment, so that the pipe line equipment would be held by independent corporations, to do only one thing, that, namely, the transporting of oil, wouldn't that help to solve this oil situation?

A. I think it would.

Q. Then you producers would be enabled to seek a market beyond the bounds of Texas, even into Canada, would you not?

A. I think that is correct.

Q. If you knew that you could force by law, through the Railroad Commission or other agencies, the right to have your oil transported to the seaside, where it might be placed upon ships, and if you could find a market for it in New York or elsewhere, you would be benefited, would you not?

A. I believe we would.

Q. Mr. Duffy, have you ever found anywhere, within your knowledge, that these major oil companies have bought this and poured it out into a gulley, somewhere else, or wasted it?

A. Poured it where?

Q. Poured it into a gulley, or into a ditch, or a river?

A. Not to my knowledge.

Q. Not to your knowledge. Well, do you know of their ever having bought millions of barrels, or hundreds of barrels, or thousands of barrels, and burned it up?

A. Not to my knowledge.

Q. Then, Mr. Duffy, is it a case of simply their taking this oil because it is distress oil?

A. No, I don't believe they are taking it just because it is distress oil; I think there is so much oil being produced over there that they cannot begin to take, perhaps, all they would like to take. I don't know whether they would like to take any more or not, but it certainly requires an enormous pipe line capacity to handle the amount of oil being produced over there.

Q. Mr. Duffy, are a great many of these leaseholders over there, men with wells, in debt?

A. Yes, sir.

Q. Are they in debt for their leases?

A. I don't know that they are in debt for their leases, but they are probably in debt for their development.

Q. In debt for development?

A. Yes, sir.

Q. The indebtedness that they have there, is that a lien upon their lease?

A. It usually is.

Q. Yes, sir. Is your company indebted at the present time for the 36-acre lease?

A. Well, we owe some money on the 36 acres, yes, sir.

Q. Is that money due soon?

A. No, not all of it, it is not due soon.

Q. Well, do you know of your own knowledge, Mr. Duffy, of any people over there, that do have liens upon their leases that will be forced to sell within a short time or have the leases foreclosed on?

A. No, sir, I could not cite any.

Q. You don't know about that?

A. No, sir.

Q. Is your knowledge on that field very extensive?

A. It has been confined mostly to that area.

Q. And about how many miles square is that area?

A. Well, it is known as the Kilgore area; I couldn't say that.

Q. About how many square miles are there in the Kilgore area?

A. I couldn't answer that question.

Q. If we passed a law in this Legislature enacting a moratorium on all debts upon realty, will that help the independent oil man in East Texas?

A. I really wouldn't know.

Q. You don't know about that?

A. I am not qualified to answer that.

Q. If you knew that you wouldn't have to pay your debt for a year or two years, would that assist your company?

A. Well, I believe it would.

Q. Then, you think, Mr. Duffy, summing up for this whole thing, that the pipe line divorcement from the production business would solve the problem largely?

A. I believe that it would be—I don't say that it would solve it but I believe it would be an assistance in solving it.

Q. Well, what else would help solve it besides this requiring them to take pro rata from the acre and see that every party is treated alike in what he owns?

A. Yes, that is what I believe would solve the problem.

Q. Are those the two things?

A. Yes, sir.

Q. Is there anything else?

A. None that I know.

Q. Thank you, sir.

Questions by Mr. Hardy:

Q. Let me ask you one question on the moratorium. Did you state that if your debts did not have to be paid for two years, that would help you?

A. Well, anything — if we could sell oil during the meantime and accumulate sufficient money to meet the requirements at the end of that time, I would not say it would not.

Q. How about the fellow that owes you something, wouldn't he be entitled to the same moratorium?

A. Yes, I think so.

Q. Well, would you be in any better position if you didn't have to pay yours, and the fellow that owed you didn't have to pay his?

A. Well, of course, it works both

ways; I didn't think about them paying us for the oil, but we wouldn't be any better off if they didn't pay us for the oil during that time.

Questions by Mr. Davis:

Q. Mr. Duffy, if adequate laws were passed compelling ratable production and compelling ratable transportation and compelling ratable purchases of oil, would you be in any better position than you are now?

A. The way I answer that, the average producer of oil, that is, more or less in the past, has been that he—that when he got production he would be solicited for a connection, and that is about as far as the average producer went. In other words, he just sold his oil, they came, if you were fortunate enough to drill an oil well, have a lease that produced oil, why, they would come to you and take your oil and pay for it, in the far-back days, pay you twice a month. Now they are paying once a month. And I don't know. It wouldn't do us any good for some of those lines to transport that oil down to the coast; after the oil got there, we are not in the refining or marketing end of the business; all we are trying to do is to produce the oil and, therefore, we would have that oil down there and then we would either have to find someone to sell it up or do it ourselves.

Q. Aren't the major companies the principal purchasers of this oil?

A. Yes, sir.

Q. Well, if the pipe line companies would offer to transport, but you had no market for it, and the major companies refused to purchase, wouldn't you be in the attitude of the negro corpse, "all dressed up and no place to go"?

A. I think that is correct.

Q. Therefore, we have what is known as the Common Purchaser Law. Now, if the ratable production is enforced, and ratable transportation, but the Railroad Commission ignores the ratable purchase of this oil, aren't you exactly in the same position that you would be if they refused to transport the oil?

A. The only way that could help us, I am speaking just from our own point of view, is, when they would take that oil from the lease here, we would expect to be paid for it, because we have no line, we have no organization or any means of marketing or disposing of that oil.

Q. But the point I am trying to make is this: You don't transport your oil until you find a purchaser, do you?

A. No, sir.

Q. And if the major companies, who are principal and almost the exclusive buyers of this oil, refuse to buy it, then you don't want to transport it, do you?

A. No, sir.

Q. Well, one question I want to ask is this: If we pass legislation on this point and ignore the common purchaser feature of it, won't you still be at the mercy of the major companies?

A. I think perhaps we would be.

Questions by Mr. Hardy:

Anyone else want to ask any questions of Mr. Duffy? All right, Mr. Duffy, much obliged.

Mr. Chairman, we would like to call to the stand at this time Mr. Swanson.

Thereupon E. B. Swanson was called as a witness and, being duly sworn by the Chairman of the Committee, testified as follows, examinamittee, testified as follows, on examination by Mr. Hardy:

Examination by Mr. Hardy:

Q. Please state to the Committee your name, residence and occupation, giving your initials.

A. My name is E. B. Swanson; I am chief economist of the United State Bureau of Mines at Washington, D. C.; I am also chairman of the Petroleum Economics Committee of the Federal Oil Conservation Board.

Q. Were you summoned or called to appear before this Committee?

A. Yes, sir. I received a telegram from the Chairman of this Investigating Committee requesting my presence in Austin to answer questions regarding the production, storage, transportation and utilization of petroleum products. Upon receipt of this telegram I discussed it with the Director of the United States Bureau of Mines, and he felt that it would be in line with our duty for me to come here and answer such questions as I could from data available to the Bureau of Mines.

Q. What are your duties in the first capacity which you named?

A. The Petroleum Economics Division, of which I am chief, assembles the monthly and annual information directly from producing, transporting and refining companies, and pub-

lishes this in the form of monthly and annual statements. These statements are distributed to all of the oil companies in the United States and to approximately 2200 banks, individuals, newspapers and libraries and other organizations which wish to receive the information.

Q. Do you know whether or not these reports are accepted as authentic throughout the oil industry?

A. I think they are accepted as authentic.

Q. All right, sir. What are your duties as Chief Economist?

A. My duties as Chief Economist are to serve as chief of the Division of Petroleum Economics; I am not Chief Economist of the Bureau of Mines; that is merely a title which designates me as the chief of that Division. There is no Chief Economist in the Bureau of Mines.

Q. Now, under the second classification of your official title, what are your duties?

A. This voluntary committee on petroleum economics is appointed by the Federal Oil Conservation Board and consists of five members, one of whom represents the Pacific Coast, one representing the Mid-continent, part of the Central United States, one representing the foreign trade of the United States, and another gentleman from New York, who is something of a specialist on fuel oil consumption.

Q. Could you give us the names of those parties at this time?

A. Mr. Martin, E. Van Couvering, consulting petroleum engineer of Los Angeles, is the representative from the Pacific Coast.

Q. Who is he connected with?

A. He has no connection; he is merely consulting engineer.

Q. All right, sir.

A. Mr. Howard Bennett, who is connected with the Western Petroleum Refiners Association, is the member from the Central part of the United States. Dr. John W. Frey, with the Bureau of Foreign and Domestic Commerce, of the Department of Commerce, he is the gentleman who is the specialist on foreign trade; Alfred G. White, who is in New York, and connected with the National Industrial Conference Board, is the fourth member of the committee, and I am the fifth.

Q. Do any of these members have any connection with any of the major oil producing companies in the United States?

A. As far as I know, none of the members have any connection with any oil company.

Q. Have you ever had any experience in the marketing end of the oil industry?

A. If you mean by that, if I have ever worked in the marketing end of the oil business, I have not, no, sir.

Q. Did you ever have any experience in the production end of the oil industry?

A. I have never worked for any oil company.

Q. You are then not qualified to go into what causes the prices of oil and how they are produced and how they are sold and the price of retail gasoline, etc., other than from a statistician's point of view?

A. That is correct, yes, sir.

Q. Are you a geologist?

A. No, sir.

Q. All right. Are you a petroleum engineer?

A. No, sir.

Q. Your sole qualification then is a statistician?

A. No, sir. I am an economist.

Q. An economist and statistician?

A. Yes, sir.

Q. All right, what are the duties of this board, the names of the members of which you have just given us?

A. It is the duty of this board or committee, rather, to furnish to the Federal Oil Conservation Board at regular intervals a statement of its estimate as to the production and demand of crude oil and gasoline during periods in advance. The last report, that of April 7, covered the period of April 1, of this year, up to and including September 30, of this year. The committee is at the present time engaged in extending that report and has completed certain preliminary figures extending that period to the end of the present year.

Q. Are you familiar with, and can you give us the amount of oil produced in the Nation, in Texas, and in the world, during the year 1929?

A. During the year 1929 there were produced in the United States 1,007,323,000 barrels. Texas produced 296,876,000. During that same year the world production was 1,484,041,000 barrels. In other words, the production of the United States was 67.9 per cent of the world, and Texas about 20 per cent of the world.

Q. What was the consumption of the world and the United States during that same period?

A. Unfortunately, we do not have information regarding the world consumption of oils, or any particular oil. We are forced to assume that outside of the United States that the production is equivalent to the consumption, as virtually no other countries in the world have as complete petroleum statistics as our country has. In the United States, however, the total demand of all oil was 1,103,203,000 barrels.

Q. How much was the consumption greater than the production in the United States?

A. In 1929 the production was 68,156,000 barrels greater than the demand.

Q. How much was the importation of foreign oil into the United States during that same year?

A. Crude oil imported during that year amounted to 78,933,000, and the importation of refined products amounted to 29,777,000 barrels.

Q. Transferred into figures of crude, what was the total production in the United States, and importations into the United States during the year 1929?

A. The way the Bureau of Mines figures this, the total supply of all oils during that year was 1,171,359,000 barrels, which was 68,156,000 greater than the demand.

Q. Can you give us some facts and figures relative to 1930?

A. Yes, sir. During 1930, the world production of crude oil was 1,418,733,000 barrels. The United States produced 898,000,000 barrels, or 63.3 per cent of the world. That is slightly less than 67.9 produced in 1929. In other words, the proportion of the United States production declined in 1930, as against 1929. Texas production during 1930 was 289,965,000 barrels.

Q. What percentage?

A. Slightly more than 20 per cent. The total demand for all oils in the United States during 1930 was 1,079,601,000 barrels. The total supply of all oils during that year was 1,056,305,000 barrels. Stocks of all oils decreased during 1930 by 23,296,000. In other words, the total demand for all oil during 1930 was that 20,000,000 barrels more than the total supply of all oils during 1930.

Q. How much were the importations of oil for 1930?

A. Crude petroleum imported during 1930 amounted to 62,129,000 barrels, slightly more than 16,000,000 barrels less than 1929. Importation of refined products amounted to 43,486,000 barrels, approximately 13,000,000 more than in 1929.

Q. Do you have any facts and figures relative to these same matters up to the present time of the year 1931?

A. The last statement of this sort published by the Bureau of Mines covers the first five months of the present year.

Q. That is, through May?

A. Through May; January through May.

Q. What was the production?

A. The crude oil production in the United States during the first five months amounted to 346,298,000 barrels, as compared with 389,097,000 during the same period of 1930. That is a decrease of 43,000,000 barrels, or 14 per cent.

Q. How about the production in Texas for the same five months' period?

A. Texas production during the first five months of 1931 amounted to 119,742,000 as compared with 124,313,000 during the first five months of 1930, a decrease of less than 5,000,000 barrels, or about 4 per cent.

Q. What has been the importations during this five months' period?

A. The imports of crude oil into the United States during the first five months amounted to 21,531,000 barrels, in 1931, as against 25,353,000 barrels during the first five months of 1930; that is a decrease of 4,000,000 barrels, or approximately 16 per cent. The importation of refined products during the first five months of 1931 amounted to 16,888,000, against 17,560,000 barrels; that is a decrease of about 6 per cent. With regard to the importation of refined products, the decline in imports of gasoline did not become effective until the close of the first four months, so that during the remainder of 1931 there would be a considerably larger decline in gasoline imports than was indicated by this 6 per cent figure covering the first five months. It is estimated by the petroleum economics committee of the Federal Oil Conservation Board

that gasoline imports during the last six months of 1931 will be 20 per cent less than during the same period of 1930.

Q. What percentage did you say was the decrease in production in the United States from the years 1930 to 1931?

A. I said 14 per cent. It is more closely 12 when I look it over again.

Q. What is the estimate of your committee as to the probable production in 1931, and how will that compare with the production in 1930?

A. The committee feels in this preliminary statement that there will be an increase of approximately 3 per cent in the demand for gasoline, or motor fuel, during the last six months of 1931, as compared with the same period of 1930. This contemplates an increase of approximately 6½ per cent in domestic demand and a decline of approximately 20 per cent in foreign shipments or shipments of gasoline to foreign countries, or a net increase of 3 per cent. That will require, as we estimate it, a refinery output of approximately 226,000,000 barrels of gasoline, and the committee feels that the average recovery will be approximately 49 per cent of the crude run?

Q. What is that?

A. That the average recovery of gasoline will be approximately 49 per cent of the crude run, which, applied to the amount of gasoline which will have to be manufactured, will require the refining of 461,000,000 barrels of crude oil. In addition to that, of course, there is the exportation of crude, which is estimated at approximately 12,000,000 barrels, the use of crude as fuel, and the loss of crude in handling, 15,000,000, which will give a total crude oil production of 488,000,000, of which the committee feels that 26,000,000 will be supplied by imports of crude oil, leaving domestic demand for crude oil at approximately 462,000,000 barrels. I believe that is slightly larger than for the same period last year. It obviously would be.

Q. What percentage more?

A. Not more than 2 per cent, probably.

Q. Two per cent increase in production?

A. In requirement. These are requirement figures; these are not production figures. The production figure would be determined by the percentage of crude which would be withdrawn from storage during this period, which has averaged closely to 100,000 barrels a day over the past year.

Q. You mean by that, that in order to balance supply over demand, it will take a withdrawal from storage of 100,000 more than production this year?

A. During the past year average withdrawals of crude oil from storage have been approximately 100,000 barrels per day. If this were continued during the last six months of 1931 it would be a withdrawal of 18,000,000 barrels from storage, and subtracting that from 462,000,000 would leave a figure of 444,000,000, which is the figure which would represent new production of crude oil during the period. That is on the supposition that the same policy of stock withdrawals continues during the coming six months. If, on the other hand, stocks are added to, production will be more than the 462,000,000 barrels.

Q. What was the production for 1930. You have given us that once, I think.

A. Yes, 898,000,000 barrels for the United States.

Q. 898,000,000. This Committee does not endeavor to ascertain the amount of production other than from the estimated amount of demand; is that correct?

A. That is the way the committee works; it endeavors to determine the amount of crude oil which should be produced in order to provide the necessary raw materials for the manufacture of the gasoline, which the committee estimates will be consumed during the period.

Q. In the past, in these estimations, how near correct have these estimates been to the actual demand shown by figures at the end of the year?

A. I have here a copy of my report to the Chairman of the Conservation Board, covering the May report; the committee in its preliminary estimate, in its estimate of April 15, estimated the total demand of 40,781,000 barrels.

Q. I think you are going a little too fast.

A. The committee estimated that the total demand for gasoline in May of this year would be 40,781,000 barrels. This was an estimate made early in April. The actual figures show that the demand for gasoline

during May was 40,708,000 barrels, a difference of 73,000 barrels in a 40,000,000-barrel figure, a pretty good guess.

Q. Pretty good, yes, sir. This figure of 444,000,000 was for an estimate for the last six months of the year, was it not?

A. That is correct, for the present year, and it is on the assumption that stock withdrawals will amount to 100,000 barrels a day during that period. If they do not have that, why, then, production would be 462,000,000 on the basis that there are no stock withdrawals during the period.

Q. Upon that estimate, would there be more oil produced in the United States during the year 1931 than there was during the year 1930, or not?

A. No, sir, there would be approximately 30,000,000 barrels less produced during 1931 than was produced during 1930.

Q. All right, sir. How much oil and by-products thereof were exported from the United States during the year 1929—wait a moment before you get to that. On this 488,000,000 expected from demand, what proportion of that amount would you estimate to be made off of the fields in Texas?

A. That 488,000,000 is the total crude oil from which is to be subtracted the committee's estimate of 26,000,000 barrels imports, leaving a domestic demand figure of 462,000,000; that is estimated for domestic crude. The committee estimates that of that 462,000,000 barrels, 165,000,000 barrels will come from Texas; that is an average of 900,000 barrels per day. That is arrived at in two or three different ways, each method checking with the other within a fraction of 1 or 2 per cent. Probably the best way of estimating that figure is by taking the market which may be expected to be served by the Texas crude oil during that period, and ascertain the amount of crude oil which will be needed in those particular areas. That means that Texas crude oil will supply virtually all of the domestic crude going to the Atlantic coast refineries during the last six months of the present year; will also supply all of the crude oil refined within the State of Texas, together with the exports of crude oil from Texas ports. The summation of all of those figures given us 155,000,000 barrels. That also is checked by comparing with the past record and the past proportions of crude oil from Texas. I understand that production last week was 1,000,000 barrels, which would indicate that Texas was producing something over its present requirements.

Q. All right. Now, let's go to those exports, please?

A. During 1929 there were 26,401,000 barrels of crude oil exported, and 136,719,000 barrels of refined products exported, a total of 163,000,000 barrels.

Q. Transferring the by-products into crude, how many barrels were exported?

A. About the same, the exports would probably follow fairly closely the usual recovery of refined products from crude oil; it would make a slight difference, but not one of any importance.

Q. Give me the same figures relative to 1930 and 1931 in percentages of increase or decrease, if you can.

A. During 1930 the exports of crude petroleum were 23,706,000 barrels, a decline of 2,700,000, or 13 per cent—12 per cent. The exports of refined products amounted to 132,962,000 barrels, a decline of 4,000,000, or approximately 3 per cent. During the first five months of the present year exports of crude petroleum amounted to 9,309,000 barrels, as compared with 9,586,000 during the same period of 1930. That is the decline of slightly less than 3 per cent. The exports of refined products during the first five months of 1931 amounted to 43,325,000 barrels, a decline of 13,500,000 barrels from the same figure for 1930. That 13,500,000 barrels would be close to 25 per cent, probably 22 per cent.

Q. In arriving at the demand for the balance of the year did you take into consideration the exports?

A. The exports, both of refined products and of crude petroleum, yes, sir.

Q. They were both taken into consideration?

A. They were both taken into consideration.

Q. Now, then, can you give me the amount of oil in storage during the year 1929 and 1930 and 1931 in the United States?

A. The total stock of oils in storage at the end of 1929 amounted to 689,166,000 barrels, which was com-

puted to be 236 days' supply of oil, as of the demand at the close of 1929. At the end of 1930 the total stocks of oils amounted to 665,870,000 barrels, or an amount capable of furnishing 242 days' supply as of the consumption rate at the end of 1930. On May 31 of this year the supply of all oils amounted to, or the stocks of all oils amounted to 656,212,000 barrels, or 230 days' supply.

Q. Is approximately the same amount in storage today as there was at the end of May, 1931, so far as you know?

A. No, sir. At the end of May, 1930, there were 700,412,000 barrels. At the end of May, 1931, a year later, 656,212,000 barrels, that is a decline of 44,200,000 barrels in storage of all oil in the year between May 31, 1930, and May 31, of the present year.

Q. What percentage is that?

A. That is a decline of 6 per cent. In the meantime, however, the total demand for all oil declined 30,000,000 barrels.

Q. Or what per cent?

A. Or 7 per cent.

Q. Seven per cent. What was the percentage of the decrease of the 1930 over 1929?

A. Stocks of all oils at the end of 1930 were 24,000,000 barrels, approximately, less than at the end of 1929. That is a decline of 3½ per cent, the total demand for all oils was approximately 2 per cent less in 1930 than it was in 1929.

Q. The percentages, then, according to your figures of rise or fall, of the demand for oil, shows a similar rise and fall in the amount of storage?

A. That is correct.

In the reduction of stocks of all oils the industry has merely followed the decline in the demand for all oils.

Q. Now, then, do you know what amount of oil was in storage on the first day of July, 1931?

A. No, sir.

Q. You don't have those figures compiled yet?

A. No, sir, those will not be ready until the 31st which, will be, I think, Thursday or Friday. It takes about thirty days to complete a report after the end of a month.

Q. In other words, the June supply is not ready?

A. The June supply is not ready; on June 31 the June report will be ready.

Questions by Mr. Hardy:

Mr. Chairman, I request unanimous consent that the Committee stand at ease until 2 o'clock.

The Chairman: Unanimous consent is requested that the Committee stand at ease until 2 o'clock. The Chair hears no objection. It is so ordered.

The Committee of the Whole House met at 2 o'clock p. m. of the same day, July 27, 1931.

Thereupon the witness, A. B. Swanson, resumed the stand and further testified as follows, questions by Mr. Hardy:

Q. Mr. Swanson, when we quit at the noon hour we were discussing the amount of stocks on hand. Do you have those stocks listed in accordance with the regions or areas or pools from which they are produced?

A. These stocks are listed in accordance with the region of the oil in the present location of the oil.

Q. Well, do you have information there as to where the oil was produced, how much oil was produced in East Texas field, for instance, when it went into storage, how much in the North Texas field, and so forth?

A. We have that information from the Bureau of Mines as to the stocks of the various grades of crude oil held in the United States. These are divided into approximately fourteen different classifications. Part of these classifications include oil from West Texas and South Texas, New Mexico, Oklahoma, Kansas, and that portion of Texas which includes East Texas; another classification includes the Gulf coast crudes.

Q. And your records are complete down to the month of, to and including the month of May; is that correct?

A. Yes, sir, that is correct.

Q. You do not yet have the June or July's report?

A. The June report will be completed on Friday and issued on Friday.

Q. During the month of May, what do your records show was the storage of Texas crude oil?

A. Our records show that crude oil from the district in which East Texas is included increased 1,731,000 barrels during May, a daily increase of 56,000 barrels. In addition to that, the quantity of oil from this region held in storage for refineries in-

creased 933,000 barrels, or a daily average of 30,000 barrels. Combining the two would indicate that crude oil from the East Texas area during May in storage increased 86,000 barrels on daily average.

Q. Were there any decreases in storage of oil from any of the various pools?

A. The United States as a whole shows a decline of 2,269,000 barrels, the daily average 72,800 barrels. The largest item in this respect was the decline in West Texas and South Texas and New Mexico, which declined 1,935,000 barrels, or a daily average of 62,400 barrels. The next largest decline was in the Rocky Mountain regions, a decline of 1,-148,000 barrels, or slightly under 40,000 barrels a day. However, there was in that decline of the countries of oil 72,800 barrels daily.

Q. How much of an increase or decrease was there in the storage of oil from East Texas and that vicinity; have you a list of that—during May, over or under, of oil from that same pool during the month of April?

A. No, sir, I haven't worked out the April figures in the same manner, but I would say that the increase of storage during April would not approximate anywhere near large figures, 656,000 daily average withdrawn for May.

Q. Now, do you have production of oil according to pools?

A. We have oil production by States, with the State of Texas divided into four regions — the Gulf coast, East Texas, West Texas, and the remainder of Texas.

Q. What was the total average production in East Texas during May—do you have it according to files?

A. The daily average production in East Texas in May was 308,000 barrels, as compared with 251,000 barrels in April. That represents an increase during May of 57,000 barrels daily.

Q. Yes, sir. Approximately the same amount as the storage increase during that time?

A. The storage increase in these pools during May was 57,000 barrels. The increase in production was 58,-000 barrels.

Q. Can you give us the amount of crude petroleum purchased in the United States during the years 1923 and 1927? Before you go into that, where did you get these figures you have just given us relative to the amount of storage of oil and May production in East Texas pools?

A. These figures are obtained in the same manner that the Bureau of Mines has been obtaining them since in 1918 when we first started reporting the refining of products. They are obtained directly from the refining company, without regard to refining profit, from the oil producing companies without regard to the amount of oil produced from each area during the month. In this the Bureau of Mines received 100 per cent co-operation from the oil industry and our reports are 100 per cent, I believe.

Q. All right, go ahead.

A. In 1923 the crude oil production in the United States was 732,-470,000 barrels. During June, 1927, the production was 901,129,000 barrels.

Q. What were the imports during the year 1923?

A. Crude petroleum imports during 1923 were 82,015,000 barrels.

Q. What were the imports for the year 1927?

A. 58,283,000 barrels.

Q. What was the consumption during the year 1923? Wait a minute before you get to that. How much oil was there in storage during the year 1923 at the end of the year?

A. Crude petroleum, or all oils?

Q. Crude petroleum.

A. 290,249,000 barrels.

Q. How much was there at the end of 1927?

A. 473,279,000 barrels.

Q. Has there been an increase or a decrease of storage of oils during the last three years?

A. During 1923 an increase of 99,481,000 barrels.

Q. How much in 1927?

A. There were increases in 1924, 1925, a decrease in 1926, and an increase in 1927 of 70,092,000 barrels. Since that time there have been annual increases up until last year.

Q. How much—was there an increase or a decrease last year?

A. Last year there was a decrease of 23,296,000 barrels.

Q. How much was the consumption in 1923?

A. The total demand for oil, which includes exports during 1923, amounted to 754,360,000 barrels.

Q. How much then was the—how much more was the production, to-

gether with imports, than the demand for oil during 1923?

A. 99,461 barrels.

Q. How much was that, more or less, than the production, along with the imports?

A. The production, plus imports, were 70,092,000 barrels.

Q. Those figures representing the surplus of the oil over the demand, are likewise represented by the amount in storage?

A. By the increase in storage.

Q. By the increase in storage? Do you know what was the price of oil, average price of oil during the year 1923?

A. $1.34 a barrel.

Q. Did it rise or fall that year?

A. It went up slightly in 1924, continued to rise in 1925, and reached the peak in 1926.

Q. What was the amount in price in 1926—the average amount?

A. $1.88 a barrel.

Q. What was the average price in 1927?

A. It dropped to $1.30.

Q. What was the average price in 1922—let me get that straight?

A. $1.61; dropped to $1.34 in 1923.

Q. What was the average price in 1930?

A. The Bureau of Mines has that at $1.16. It will probably be a question of a cent higher than that, but it is $1.16 plus differentiation.

Q. And in 1930, what was the storage of oil?

A. The quantity of oil in storage at the end of 1930 was 655,870,000 barrels.

Q. How much of an increase, or decrease, over 1929?

A. That was a decrease—23,296,000 barrels.

Questions by Mr. Beck:

Q. Mr. Swanson, are you responsible for the statistics and comments contained in the Year Book of the Department of Commerce?

A. With regard to petroleum?

Q. Yes, sir.

A. This chapter of that Year Book is prepared in my division.

Q. Prepared in your division, and is accepted by the United States as completely authoritative?

A. It is a recapitulation in the main, of the statistics that are kept in the records of the Bureau of Mines reports. Added to that is certain information not assembled in the Bureau of Mines.

Q. Taking the last ten years as an individual period, have we exported more oil than we imported, or imported more oil than we exported?

A. We exported considerably more oil than we imported.

Q. These importations, are they of a character or grade of oil not obtainable in this country?

A. The crude petroleum imported into the United States is primarily obtained from Venezuela, which is a low gravity crude oil, and is used primarily for the manufacture of fuel oil at the Atlantic Coast refineries. The oil obtained from Mexico is also that grade of oil, but is used primarily for the manufacture of asphalt. The oil obtained from Colombia and from other countries is merely identified with crude oil obtainable from the United States. At that, you might say that two-thirds of the oil imported, of the crude oil imported into the United States, is of a particularly low grade and is usable primarily for the manufacture of asphalt or of crude oil.

Q. Do you have any information indicating how many countries are engaged in the importation of oil—that is, how many companies?

A. No, sir, I do not. That is a Senate document which lists for 1927, 1928 and 1929, the companies importing crude petroleum, and gasoline, fuel oil, and other products. The Senate document of the last session of Congress.

Q. Do you have that document with you?

A. No, sir. That is a very scarce publication, I don't know that the document could be obtainable or not. I had mine from the copy at Washington.

Q. Did you examine it closely?

A. Yes, sir.

Q. Do you remember how many companies there were?

A. I would say that—freely, all of the refining companies operating on the Atlantic Coast—at least all but two or three of them—are importers of foreign oils.

Q. So most of that importation is done by some two or three other companies?

A. It is quite probable that the larger part of that oil was brought in

by possibly three or more companies.

Q. Do you remember what companies they were?

A. No, sir.

Q. Who was the biggest importer?

A. I don't recall that.

Q. Would you say, in your opinion, that the oil in storage in this country today represents the excess of domestic production over consumption?

A. That is quite a difficult problem—or question to answer, owing to the widely scattered oil—widely scattering oil in storage, the fact that possibly 140,000,000 barrels are located in California, which is a part of the country which has not for at least ten years, imported any oil or refining products, consequently, for that area, and that represents close to 25 per cent of the oil in storage, all of that represents a surplus domestic production. In the same way, oil imported or rather, oil in storage in the Rocky Mountains and in the Central United States can come only from domestic production. The only place where oil in storage can be said to result from the importation of foreign oil, would be on the Atlantic Seaboard, or on certain portions of the Gulf Coast.

Q. Well, taking the last ten years' experience, what is the amount of exports as compared with the amount of imports, in barrels?

A. It would take me about five minutes to add this up.

Q. Well, can that be done while you go ahead with other questions?

(The witness turned over the calculation to Mrs. Phinney, the Clerk of the House, and proceeded with his testimony.)

Q. You mentioned before lunch that imports have recently declined, What is responsible for that decline of imports?

A. I stated before lunch that during the first four months of this year there was no reasonable decline in gasoline imports, but that since the first of May the volunteer committee on petroleum economics of the Federal government, anticipated there was a decline of possibly 20 per cent in gasoline imports. This is due primarily to the fact that gasoline which previously had been bought in the United States from foreign producing areas, would not be purchased in the United States.

Q. Who is this volunteer committee that brought about that agreement?

A. There was no committee which brought about that agreement; that was purely a commercial transaction, on the part of these particular companies.

Q. What companies participated in that?

A. The principal importing companies of gasoline. I will say that the most important contributor to the decline of gasoline imports was the Royal Dutch Shell.

Q. The Royal Dutch Shell? Do you know the purpose they had in that reduction?

A. It was simply a case that previously they did not have their own tankers which would permit them to operate in coastwise traffic. Subsequent to May 1, they were able to get American registered bottoms which would carry the gasoline in coastwise traffic. The arrangement was something of this sort; prior to May 1, gasoline was brought in from the Dutch Indies, to the consumers in the United States, and a considerable amount of gasoline was exported from American ports to foreign companies—to foreign countries. That was simply due to the fact that that particular country did not have ample American registered tankers to carry the gasoline in in coastwise traffic, having obtained these tankers, it was arranged that the gasoline which was previously imported would now be supplied from American sources, and the gasoline which was previously exported will not be supplied from foreign countries—foreign sources.

Q. How much actual crude oil, without being submitted to any refining processes, is exported from this country every year, per year?

A. Crude oil exports in this country during 1930 amounted to slightly more than 23,000,000 barrels. Of this amount approximately 13,000,000 went over the Canadian border, 8,000,000 was shipped out at West Coast ports, and the Lakes to Canada, and 2,000,000 barrels shipped from Gulf Coast ports to foreign countries.

Q. What is a barrel equivalent of the crude, of the refined products exported for 1930?

A. Roughly, that would be a total of refined products. It is practically impossible to convert gasoline into crude oil and gas into crude oil, and attempt to get what might be called an equivalent of crude. The total refined product exported comes very closely to be equivalent to crude oil.

Q. Well, what was that figure during 1930?

A. I haven't the paper, she (Mrs. Phinney) has my paper. Imports of crude and refined products during the period 1920-1930, inclusive, amounted to 1,104,959,000 barrels. Exports of crude and refined products during same period amounted to 1,306,872,000 barrels.

Q. You have told us that you expected a demand of 440,000,000 barrels of crude oil during the last six months of 1931. Was that correct, is that approximate?

A. I would rather call it 462,000,000.

Q. 462,000,000? You state there were 656,000,000 barrels in storage as of May 1, 1931?

A. That was of all oils.

Q. That was of all oils—then there is enough in storage, enough oil to supply the United States for the next six months?

A. For the next 230 days, on the basis of the present demand.

Q. For the next 230 days, without the production of another barrel of oil.

A. That is theoretically so, of course, the last few drops of oil must be hard to get out of the tanks, but dividing the total in storage by the present demand, the result is 230 days' supply.

Q. Is it part of your duty as economist of that bureau to account for price changes?

A. No, sir. We assemble only annual information regarding the fields of crude petroleum, we make no effort whatsoever to assemble information on refined oil prices.

Q. Do you make any—or have you made any effort to keep abreast of the fluctuations in crude oil, the prices for crude throughout the year?

A. We obtain notice of all crude oil price changes, the same as all oil companies do—we obtain them.

Q. How long have you been with the department in this capacity?

A. I have been with the Bureau of Mines eleven years, and have been associated with this work for at least eight.

Q. For the last eight years have you observed that the prices go up or down in relation to the shortage of oil or overproduction of oil?

A. There is undoubtedly a definite relationship existing between the price of oil and the supply of oil.

Q. Now, what do you mean by supply of oil; do you mean the oil actually being produced every day—what do you mean by the supply, do you mean the supply of oil being produced daily, placed in storage, that is, in tankage?

A. It probably is a different thing at different intervals. At times it may be, may mean the daily production, plus the quantity in storage above ground, at other times it may mean oil in sight that may be obtainable within years, a few weeks, or months.

Q. By "oil in sight" you mean that production which would easily be brought out quickly, anything in the field?

A. Yes, sir.

Q. Then, in addition to the storage now above ground, and high existing barrel production, there is in sight several times as much oil as the demand will call for in the next six months?

A. There is more oil in sight than the demand will call for within the next six months; whether or not that will be twice as much or six times as much, I can't say, but I don't think that it will be several times as much.

Q. As to your predictions in the past as to the future total demand and production, within what percentage of area have your figures been accurate?

A. Less than 1 per cent.

Q. Over how long a period have you maintained that 1 per cent area in your past calculations?

A. We have been doing this work only since April, so that record of accuracy, although extremely gratifying during that short period, still is over only a very short period.

Q. Well, you have accumulated other records since June?

A. Oh, previous to April we haven't endeavored to report gas.

Q. You haven't made an effort to report gas?

A. We do feel that we will be accurate within 1 per cent during the whole of this six months' period.

Q. In the Year Book of the Department of Commerce, in the Chapter of Petroleum, for which you are responsible, it is stated that on January 1, 1930, there were 358 refiners in this country.

A. January 1, 19—

Q. 1930.

A. That is correct, yes, sir.

Q. How many ownerships were involved in these 358 refiners?

A. I can't say; the report that you have there of 358 refiners is a year old; the reports I have here of January 1, 1931, there are 346 refiners.

Q. That is twelve less than a year ago?

A. Yes, sir.

Q. How many ownerships were involved in those 346 refineries?

A. Possibly 300.

Q. Three hundred separate ownerships? Were all of these separate ownerships competing for the purchase of oil that was raised above the ground?

A. Yes, sir, the particular areas in which they operate and within the areas in which they obtain their crude oil, they compete with one another.

Q. Have you made investigations and are your views of such a nature that you are to have observed whether or not there is a free market?

A. No, sir.

Q. An open competitive market for crude products?

A. That is a matter that should be under the jurisdiction of the Federal Trade Commission, and not under the Bureau. We report the actual facts, as they are obtainable monthly, and are not concerned with matters that are in restraint of trade or open competition.

Q. Are you aware of any investigation that that department has conducted on the subject?

A. That department has not conducted any investigations subsequent, I believe, to 1927.

Q. Is there any publication that you know of showing the results of their inquiry at the time?

A. Yes, sir, there is a publication which is known as "Prices and Profits in the Petroleum Industry." That is a Federal Trade Commission document, covering the department's 1927 investigation.

Q. Issued by the Federal Trade Commission?

A. Yes, sir.

Q. That is all.

Questions by Mr. Farmer:

Q. There is just one question I want to know, Mr. Swanson: As a matter of economy, would it be a good idea to drain these storage tanks to the last drop and refill these tanks with the oil now going out?

A. A friend of mine had a similar suggestion made to him, and he suggested that they use the Mammoth Cave in substitution, because that would leave it in sight, and furnish that the oil will not be retained but continue to drain out.

Q. Then wouldn't it be a matter of economy to drain these storage tanks now and would be better to use the oil as they receive it from the fields?

A. It is a difficult thing to say; it is possibly the same as if you bought something, some security at some high price, and found the market dropped on you, that when it came down to a rather low price, you would then have an opportunity to sort of equalize your loss by buying at the present price.

Q. What I am trying to get at, Mr. Swanson, you are qualified as an expert here on economy: I want to know if it doesn't cost money to store that oil, if it doesn't cost money to store it, pipe line runs—leave that oil in storage just like you got it?

A. No, these people who have oil in storage and have no money to buy additional crude, had better utilize the crude then in order to get some cash as a return on the investment.

Q. So, if you were a refiner and approached the oil field, and had ten million barrels of storage and could get enough to run a refinery right straight from the field, wouldn't you, as an economist, leave that as storage and let that remain like that?

A. I wouldn't regard my crude in storage as of any more value than what I could buy on the market at the present time.

Q. That is all.

Questions by Mr. Hardy:

Q. You stated, Mr. Swanson, that of the 346 refineries now in the United States, they were owned by approximately 300 different parties—is that correct?

A. That is my statement, yes, sir; whether or not it is correct, I couldn't say accurately, because I haven't

counted them. I have a list of them here, if the committee would care to have a list, I will leave it with them.

Q. You have a list of the refineries?

A. Yes, sir.

Q. And you went through the list at the time?

A. Yes, sir.

Q. That statement about the 300, you are merely estimating that estimate?

A. Merely estimating it, yes, sir. I haven't endeavored to count the number of separate operations, it is merely my recollection of what I believe to be the size of our mailing list to those refineries.

Q. This estimate as to the 300—or the 346 refineries, was based upon time?

A. As of January 1, 1931.

Q. January 1, 1931? Do you know how many refineries have been built or completed since that time?

A. I would say that possibly a dozen or fifteen.

Q. That is merely a guess on your part, you don't have the figures on it?

A. That estimate, that information is only as of the first of this year.

Q. And was this a year's return, or monthly?

A. Returned monthly.

Q. One other question: Will you tell me how much more oil there was in storage in 1930 than there was in 1929?

A. Before I answer that, may I say that in connection with our mail report, we get these reports from 346 refineries, which would be ten more than were operating at the beginning of the year. May I have your last question now?

Q. The last question was: How much more oil was there in storage in 1930 than there was in 1929?

A. Two or three million barrels less.

Q. Two or three million barrels less?

A. Yes, sir.

Mr. Hardy: Has anybody else got any questions? That is all, then Mr. Swanson. Much obliged to you, sir.

(Witness excused.)

Thereupon W. R. Boyd, Jr., was called as a witness and, having first been duly sworn, testified as follows, on questions of Mr. Satterwhite.

Questions by Mr. Satterwhite:

Q. Have you given your name to the reporter?

A. William R. Boyd, Jr.

Q. Mr. Boyd, will you state whether or not you have been requested to come here and testify before this Committee?

A. I have.

Q. Will you state where your place of residence is, and your official connection?

A. New York City. My official connection is executive vice-president of the American Petroleum Institute.

Q. When was that Institute organized?

A. In 1919.

Q. Have you been with that institution since its organization?

A. Since 1920.

Q. Since 1920? How long have you been executive vice-president of it?

A. Three years.

Q. Three years? Are you a Texan?

A. I am; I was born in Freestone county.

Q. You were born in Freestone county? Now, Mr. Boyd, what is the purpose of the American Petroleum Institute?

A. Why, the function of it is similar to that of any national trade association.

Q. Is this American Petroleum Institute an organization with a membership of oil purchasers, corporations, and so forth?

A. It is a national organization of oil men, engaged in all branches of the oil industry; we don't have company members; the membership is composed entirely of individuals, of which we have approximately 5000.

Q. How is that institution or institute financed?

A. First, we have a membership, which is only $10 annually. In order to derive the additional revenue necessary to carry on the organization, we obtain money from companies based upon a formula, and that formula is based upon net worth and company earnings.

Q. Then your membership is based upon what is known as major oil operators, and independents, oil operators?

A. Correct.

Q. Is the information provided for this organization regarded as reliable by the oil fraternity in that State?

A. Generally speaking, I think so.

Q. Now, Mr. Boyd, we wish, in your own way, you would state to this Committee the cause of the situation, or what led up, in the opinion of the American Petroleum Institute, to the present deplorable condition of the business?

A. Well, that is a long story.

A Member: Make it short.

A. I will be. My understanding was that the Committee wished me to give a certain overhaul or general history of the oil industry. I have reduced that to writing, and hand to the Committee a copy of it. I have handed each member of the Committee a copy of a prepared statement, which covers, at some length, the general picture of the oil situation; copies of that have also been passed to the membership of the Committee —I mean Committee of the Whole House.

I wish to attempt very briefly to review this general statement. First, there have been a great many investigations of the oil industry over the past fifteen years, by both Federal and State agencies. The best record of investigation has been kept by the Federal Trade Commission at Washington. Since 1915 that body has conducted and reported eleven investigations. In no instance is there any reported findings of monopoly, price-fixing by agreement, or lack of competition in the oil business. Twenty-five years ago the estimated investment in the oil industry was less than $800,000,000; today the accepted estimate of the capital investment of the United States exceeds $12,000,000,000.

The unique competitive factor which characterizes true production is the present competitive method of extracting a liquid from a common reservoir. In other words, the producer of oil, no matter what happens, is, figuratively, between the devil and the deep blue sea. He is powerless under present methods of production to control independently either his own or his neighbor's production; and here lies the root of the economic evil of producing oil. Since the beginning of the oil industry, in 1859, 810,616 wells have been reported drilled and completed. During 1930 a total of 21,165 wells were completed, of which 11,577 or 54.7 per cent found oil; 2885 or 13.6 per cent found gas; and 6703 or 31.7 per cent were dry. The latest official figures, date of December 31, 1929, Bureau of Mines figures, recorded 328,200 producing wells in the United States, with an average production per well per day of 8.4 barrels. In Pennsylvania there were 80,320 producing wells, with an average well production per day of four wells. Oklahoma has 61,180 producers, with an average production of 11.3 barrels; Califoria has 10,520 wells, with an average production of 75.5 barrels; and Texas has 36,280, with an average daily well production of 22.6 barrels. There were many old oil wells in Oklahoma and Kansas, capable of producing less than one barrel per day. From 1859, when 2000 barrels of crude oil were produced, until December 31, 1930, 13,146,737,000 barrels of crude oil had been produced in the United States, valued at the well at $17,639,303,000, an average of $1.34 per barrel. It is interesting to compare the average price for the 71-year period with the present average crude oil prices. There follows in the prepared statement a table which I think anyone who is interested in crude oil production situations will find extremely interesting. In the left-hand column is the name of the major oil pool, the next column is the year in which the pool came in, the next column is the total average production and the imports, the next column is the domestic exchange—or domestic consumption—and exports, the next column is stock on hand at the end of the year and stock change at the beginning of the previous year; the next column is the price per barrel for it in the United States. Now, if you will follow that statement, that tabulation there, you will see the effect of the supply and demand upon the price of crude oil in 1901—I mean since 1901. Following that statement is an analysis of price listings of crude oil for the period from 1913 to 1921. This is taken from Pogue's "Economics of Petroleum," and from 1921 to date a price analysis which I have made. The year 1927 was an important year in the petroleum production history. That year brought the Seminole, Oklahoma field, which was the fourteenth major pool to be discovered during the 1923-1927 period. It reached a peak of 514,000 barrels a

day on July 30. In the 21-year period immediately preceding only four pools reached a maximum daily production of 100,000 barrels or over. The accumulated effect of the discovery of the fourteen major pools was to depress the price structure over the entire five-year period. The peak of the crude oil stock was November 1, 1929. The year ended with an increase in crude storage of 35,816,000 barrels. There was a slight decline, but a large increase in both domestic and export demand for crude. The tremendous increase in domestic demand proved to have resulted in the building of a large surplus of gasoline, which depressed the refined market. The net change for the year indicates an increase in the average price per barrel of 10 cents. The small increase, instead of a decrease, is accounted for because during seven months of the year the posted price was at a higher figure than at any time during the year. The large increase in gasoline consumption, which was continued well into the third quarter of the year, stimulated the refiners' demand for crude. However, beginning with the end of the third quarter, a sharp and unexpected drop in gasoline consumption took place, which resulted in the large gasoline stock addition referred to.

The year 1930 was the first year since 1918, to show a decline instead of an increase in the total demand for crude oil. Demand for crude oil dropped from 1,050,000,000 in 1929 to 978,163,000 barrels in 1930. This was the direct result of the tendency of refiners to decrease crude runs to stills in an effort to reduce the large amount of gasoline in storage due to the gasoline overproduction in the fall and winter of 1929 and the spring of 1930. However, the year 1930 also witnessed the withdrawal from crude oil storage of almost 20,000,000 barrels, despite the declining crude market and the plentiful supply of new oil available. An unprecedented decline in demand for gasoline and refined products, intense competition for gasoline gallonage, and reduced revenue from the sale of products, and reduced cash positions of refiners, undoubtedly necessitated the conservation of their cash and forced, the withdrawal by them, of high cost crude from storage, despite the plentiful supply of low priced crude available.

The year 1931 began with a price of 95 cents for 36-degree gravity Mid-continent crude. East Texas, a new field, vast in area and with a tremendously large potential, developed rapidly. The producing horizon was not very deep. Wells could be completed rapidly and at a comparatively low cost. Tidewater was near, and the transportation rate to the Gulf was relatively low. East Texas production came into keen competition with Oklahoma, Kansas and North Texas production. To meet the competition, prices there dropped to 59 cents. The first price posting for East Texas crude then occurred at the base price of 59 cents for 36-degree gravity. Some producers offered their oil in quantity below the posted price, thus competing with the other producers in the same field. Production of the field continued to increase. Producers in the same field continued to compete with each other. The posted price promptly declined to a base of 33 cents. Production continued to increase. Being near many of the major pipe line systems, the low priced East Texas production found easy access to refining centers. Transportation differentials were wiped out. Large quantities moved in tank cars, some at prices still below the posted 33 cents price, some moving by rail, despite the high freight rates, to distant parts, even as far as Canada, thus supplanting crudes in other parts of the country.

On December 19, 1924, the then President of the United States, Calvin Coolidge, appointed a Federal Oil Conservation Board. In appointing that board, he said:

"It is evident that the present methods of capturing our oil deposits is wasteful to an alarming degree, in that it becomes impossible to conserve oil in the ground under our present leasing and royalty practices if a neighboring owner or lessee desires to gain possession of his deposits."

The Federal Oil Conservation Board has published four reports, up to the present, and I have given the members of the Steering Committee, each member, a copy of those four reports.

The fundamental difficulty with oil production is not that we have too much oil for the nation's future needs but that we possess and exercise, individually, the unrestricted power to

produce too much oil at a given time. The intermittent glutting of the market, under the operation of a familiar law always and inevitably results in demoralization of price and the destruction of values. President Coolidge aptly pointed out, in his statement appointing the board, that "overproduction in itself encourages cheapness, which in turn leads to wastefulness and disregard of essential values."

There then follows in the statement quotations from the recommendation of the board with respect to the common right of adjoining owners, respecting oil and gas in the pool. I have distributed this morning to the entire membership of the House, a publication entitled "The Function of Natural Gas in the Production of Oil." This is perhaps the only publication of its kind. It was prepared as the result of the activity of some two or three hundred petroleum engineers. This is a report of the U. S. Bureau of Mines, which was written and published in co-operation with the Division of Development and Production Engineering of the Institute, and anyone who is interested in the important function gas plays in the production of gas and oil, will find it worth while to read that book.

President Coolidge, in appointing the Federal Conservation Board, pointed out that the oil industry itself might be permitted to determine its own future, and that that future might be left to the simple working out of the law of supply and demand, but for the patent fact that the oil industry's welfare was so intimately linked with the industrial prosperity and safety of the whole people, that government and business can well join forces to work out this problem of practical conservation.

Competitive conditions and prohibitive laws prevent the industry from solving its own problems and effecting that orderly conduct of its affairs with resultant stability. The Federal government has extended the hand of sympathetic and understanding co-operation to the industry. Its powers over production are limited; therefore, if our petroleum resources are to be fully and adequately protected, the only source to which the industry can turn for the effective regulation of the supply of crude oil is the States.

To effect stability of production and price for crude petroleum, methods must be devised and applied to keep the excess available supply in its natural storage in the ground. These methods must be effective and give full confidence that they will be permanent in preventing serious oversupply in the future. Unnecessary drilling must be discouraged and voluntary unit operation in the development and production of new fields should be encouraged, both for conservation and economical operation. Proration and fair ratable taking must be established and preserved as a permanent policy.

Proration is not something pleasant for the owner of a producing oil well to contemplate. In general he should have and exercise his right to find and produce all the oil he can. But a man cannot desert a big ship in mid-ocean when a storm is raging and take to a skiff with any hope or expectation of saving himself.

It must be obvious to all who are engaged in or at all familiar with the oil producing situation that, under a system of unrestricted drilling and unlimited production, there is not enough market to go around and absorb all the oil which could be produced, and that unless each producer is willing to share ratably in the enjoyment of the market nothing can save complete demoralization of the price structure, with all the economic chaos which must follow.

Now, just a moment on the refining. Crude petroeum is refined in some thirty States. Taking my authority from Mr. Swanson's figures, there are some 435 completed refineries in the United States, some of which may be closed down; they have a capacity for straight run distillation of 3,988,000 barrels of crude oil daily and a cracking capacity of 1,951,000 barrels per day. According to the United States Bureau of Mines figures, the average total recovery from a 42-gallon barrel of crude oil run to stills in the United States during 1930 of the four principal products was as follows: Gasoline, 17.6 gallons; kerosene, 2.2 gallons; gas and fuel oil, 16.9 gallons; and lubricating oil, 1.6 gallons. The figure for gasoline means an average of 24.2 per cent straight-run recovery and 17.7 per cent cracking recovery, or a total average of 41.9 per cent of the 42-gallon barrel converted into gasoline by the two processes.

There then follows in the statement

a discussion and analysis of the gasoline price situation from 1913 down to date. There then follows a tabulation of the average price, tank wagon and service station; and the average State tax, and the average service station price, including the tax, from 1919 to July 1, 1931.

There then follows an index number for crude oil and gasoline, which shows that since 1913 gasoline has declined 52.6 per cent, crude oil has declined 37.5 per cent, as of June 5th. Since 1926 gasoline has declined 57.7 per cent, and crude oil has declined 64.9 per cent.

There then follows some of the United States Bureau of Mines index figures, showing the relative prices of food products, other commodities, and gasoline.

Now, then, referring to the marketing situation, admittedly one of the greatest evils in the petroleum industry lies in the marketing situation, and in the multiplicity of outlets, but competition alone is responsible for this deplorable condition and the anti-trust laws, both of the Federal government and the State, prevent any effective voluntary co-operation to correct the situation. There follows in the paper to which I have referred you a general discussion which I will omit presenting now about the marketing situation. I might point out that in an effort to try and correct some of the evils of the marketing situation, the industry developed a national code of marketing practice, which has been approved by the Federal Trade Commission and is in substantial effect in the industry throughout the United States, and has been signed by more than 16,000 marketers of petroleum products. This code has helped, but some of the most fundamental evils and wastes in marketing cannot be reaching by agreement, because any concerted action would be illegal.

There now follows a brief discussion of the pipe line, tank car, and petroleum tanker situation, which concludes the prepared statement which I have already circulated.

Examination by Mr. Satterwhite:

Q. Mr. Boyd, I have before me a press report, just issued, in which it states that the Sinclair Oil Company has advanced posted prices in Oklahoma and Kansas today 8 cents. In other words, the posted price is quoted at 50 cents today in Kansas and Oklahoma. I am not advised as to whether the Sinclair interests mean to advance these prices in Texas or not; if you can, can you give us some advice as to why he would not advance the prices in Texas at the same time as in Kansas and Oklahoma, or any other major purchasing company?

A. Mr. Satterwhite, I assume that that price posting by Sinclair is in part governed by the internal conditions of the Sinclair Company itself, and its requirements for crude. It is quite possible that transportation, or a desire to get oil out of its own oil or to purchase oil out of Oklahoma, had something to do with the new price posted.

Q. I notice here in your prepared statement you state that at the present time there are 435 refineries operating as of the first of the year. Do you make that statement as to that number as a correct statement?

A. That is taken from the Bureau of Mines figures.

Q. Mr. Swanson said it was 300-and-something.

A. I believe Mr. Swanson had in mind the number of refiners, rather than the number of plants, because one refiner may have two or three plants.

Q. Your statistics are reliable as to the output?

A. That is taken from the Bureau of Mines figures.

Q. That is found on page 22; the statistics that you present there are correct, are they?

A. They are, yes, and are taken from the Bureau of Mines publication, which we accept as 100 per cent correct.

Q. How many of these refineries are located in Texas?

A. I am reading from a publication entitled "The Petroleum Industry of the Gulf Southwest," issued by the United States Department of Commerce, which contains these figures, which I assume are taken from the Bureau of Mines figures. At the beginning of 1930, this indicates there were 91 plants located in the State of Texas; that is not the number of refiners, but the number of refining plants, and that they were located in approximately twenty-six counties and about sixty cities or towns.

It may be, and there probably has been, some plants—in fact, I know personally of some ten or a dozen plants which have been constructed

since that time, which would bring it up to over 100 actual refining plants in the State.

Q. Can you give us the number and location of the natural gasoline or casinghead gasoline plants?

A. On January 1, 1930, there were 142 of them, located in about thirty counties.

Q. Will you explain to the Committee what is meant by "casinghead" gasoline?

A. That is the gasoline which is made from the gas taken out at the mouth of the casinghead. The gas comes out along with the oil, and there may be a gasoline saturated gas, and they convert that, by absorption or compression, into gasoline.

Q. Are you familiar with the percentage of gasoline which may be taken from the gas? As to whether that is the most economical way of using that gas?

A. (Answer by witness' assistant or auditor) The quality of gas varies. Some gas is very lean and may give forth perhaps one, one and a half, two or three gallons per thousand cubic feet, and other gas, which is richer, might give as much as ten or more gallons. It is according to the quality of the gas.

Q. We have in the Panhandle of Texas casinghead gasoline plants, I understand, which use millions of cubic feet of gas each day in extracting casinghead gasoline, which otherwise could be used to a much better advantage, that is, in a financial way, to the owners of those gas wells in the Panhandle of Texas; that is why I am asking the question, whether or not you really know the relative value of the gasoline, casinghead gasoline, or the use of the gas for fuel purposes and so on, and as it is now being used all over the United States?

A. I don't know the relative value.

Q. Have you any information as to the relative cost, plus transportation, of a Texas barrel of crude oil laid down at an Atlantic Coast refinery, and that of a South American barrel of crude oil laid down at the same point?

A. Not of my own knowledge, Mr. Satterwhite, but I have a publication recently issued by the United States Tariff Commission, which conducted an investigation in response to the Senate, or Congressional, resolution. There is some information contained in this book upon that subject. On page 29 the following appears:

"The table shows that on the average, for the three years, 1927 to 1929, the cost of production of crude oil in the Mid-continent, Gulf area, was $1.10 per barrel (the Mid-continent Gulf area includes Kansas, Oklahoma, Arkansas, Texas . . .). The average cost of transportation by pipe line and ocean tankers from the wells to Atlantic seaboard refineries, together with the cost of purchasing oil during this period was 88 cents per barrel, making the total cost delivered to the Atlantic seaboard refineries $1.98. The average cost of Venezuela oil in 1929, which may be taken as representing present costs for the purposes of Section 332 (f)—I presume that refers to the tariff commission law—including pipe line and tanker transportation, was 56 cents per barrel, and the cost of ocean tanker transportation was 27 cents per barrel, making the total delivered cost of 79 cents. On the average for the three years, 1927 to 1929, the Venezuela crude cost, delivered at the Atlantic seaboard refineries, was 89 cents per barrel, and therefore, according to the United States Tariff Commission, the relative cost would be $1.98 for the barrel of Southwestern oil delivered on the Atlantic seaboard, as compared with 89 cents per barrel, for a barrel of Venezuelan oil.

Q. Then, if a tariff was placed on the Venezuela oil, in order that the Mid-continent fields could compete with the Venezuela oil, it would have to be the difference between $1.98 and 89 cents?

A. Obviously, if you attempt to balance them.

Q. Which would mean a tariff of $1.10 per barrel would have to be placed against it to make it even?

A. Of course, you have some difference in the relative value of the crude.

Q. What are the average values, relatively?

A. I believe 9.26 per cent is the gasoline recovery of Venezuelan crude, as compared in the United States, with a recovery of gasoline from our crude of 44.24 per cent. In other words, in order to get the equivalent gasoline content out of a barrel of Venezuelan crude, you would have to have a little less than five barrels

of it to equal the recovery from one barrel of domestic crude.

Q. Mr. Boyd, in your association, have you ever traced the total receipts that a refinery gets for all of the products of a barrel of crude?

A. It would be, so far as we are concerned, purely a hypothetical figure, because we do not gather either price or cost statistics.

Q. You cannot state to the committee what a barrel of crude oil will cost the consumer who uses all of it, the gasoline and other by-products of the crude?

A. If I broke it down, it would be purely hypothetical. I know the recoveries based upon the Bureau of Mines averages, but . . .

Q. Do you know where we can get that information?

A. You can get that from any refiner of crude. I think Mr. Holmes gave it to you the other day, and Mr. Farish gave it to you.

Q. They only gave us what they got out of it. What the refinery recovered.

A. So far as I know, there's no figures in existence covering the total. It would be purely theoretical.

Q. Has the independent operator a place in the producing and refining of crude?

A. Unquestionably.

Q. Is there any effort being made on the part of competitive oil corporations to crush each other in business?

A. By the usual legitimate channels; yes, of course. Each fellow is trying to get the business of the other fellow. I have been sitting in the councils of the oil industry in the United States for ten years, however, and have never heard any discussion of any concerted movement to try to put anybody out of business.

Q. Have you heard, directly or indirectly, of any collusion on the part of two or more major oil companies, or other oil companies, in their effort to fix a market price?

A. I have not.

Q. Have you ever made any investigation as to whether or not that is true?

A. No; I have made no investigation, because I know it is not true.

Q. In your own knowledge, you know there is no collusion as to that?

A. Yes.

Examination by Mr. Hardy:

Q. Did you ever work for a major oil company?

A. No, sir.

Q. Did you ever have any kinfolk or relatives that worked for a major oil company?

A. Yes.

Q. Who?

A. I have a brother-in-law who is the vice-president and general sales manager for the Sinclair.

Q. Do you have any brothers or other kinfolk who are also in the employ of any major oil company?

A. Yes.

Q. Who are they?

A. I have another brother-in-law who is an oil salesman, and a son who is also an oil salesman.

Q. And are they working for major oil companies?

A. For the Sinclair.

Q. All working for the Sinclair?

A. The first brother-in-law gave the other two the jobs.

Examination by Mr. Beck:

Q. It is reported that the Sinclair is not very strong for proration; is that correct?

A. I don't know.

Q. How long have you been with the American Petroleum Institute?

A. Since 1920.

Q. Is that the time it was organized?

A. It was organized in 1919, and got going about 1920, the first of the year.

Q. What is your membership?

A. About five thousand.

Q. What percentage of your membership consists of what we might call major companies?

A. Thirty to thirty-five per cent.

Q. Thirty per cent of your membership consists of individuals who have big or major company associations?

A. Yes.

Q. Who are the other 70 per cent?

A. They are connected with what you might call the independents, or the middle-class companies, scattered all over the United States.

Q. Your office is in New York?

A. Yes.

Q. You are a Texas man, are you not, Mr. Boyd?

A. Just a country boy from Freestone county.

Q. Now, this conference that was held about April between the representatives of the major purchasers

in the East Texas field. Were you present at that conference?

A. I was.

Q. Will you tell us in your own way, fully and completely, just what transpired—the purpose of the conference and what transpired, and who was present, if you remember?

A. The conference was called by Mr. W. S. Farish, the president of the Humble Company. It was held in my office in New York—it was not an institute meeting, however. It was simply an informal conference of the principal companies who are acting in the East Texas field. Mr. Farish made an effort at that conference; he described the conditions in the field and the state of the production, and he made an effort in the conference to get all the companies, first, to ascertain how much oil the companies wanted or could take out of the field; and secondly, if they would take it. The conference broke up without any agreement. That, in substance, is what transpired at the conference. There were present representatives of some ten or a dozen companies.

Q. What was it they were trying to agree upon?

A. The Railroad Commission had an order at that time, as I recall, of 160,000 barrels. All of the oil was not being taken and a lot of the oil in that field had no connections, and Mr. Farish was trying to get all these major companies to connect up all this oil and to conform to the Railroad Commission's orders.

Q. Why couldn't they reach an agreement on that?

A. I think probably it was because of the contract situation some of the companies had.

Q. They had contracts, you mean, with individual operators for large amounts?

A. I think that was the real reason why the conference broke up without any action. It was an effort to get the entire amount of allowable oil taken out of the East Texas field.

Q. Could you tell in that conference who it was that had these contracts, and who it was that was without the contracts?

A. I remember some of them, but not all of them. I remember some of the companies who had contracts at that time, but I can't say I remember all of them.

Q. The purpose of trying to get an outlet for all the oil was to prevent a collapse of the price structure in that field?

A. It was to get the oil taken and get the Railroad Commission's order into actual effect and to find out how much oil could actually be taken out of the field.

Q. And what was the quantity allowed under that order?

A. My recollection now is that it was at that time about 160,000 barrels.

Q. 160,000 barrels?

A. That is my recollection.

Q. What is the allowable there now?

A. I believe it is 250,000.

Q. If it was impossible then, it is certainly less possible now to arrange to take all the oil?

A. I should say so, yes.

Q. Have you ever known of any other conference of a similar nature?

A. That's the only one I have ever participated in or known about.

Q. That's all.

Examination by Mr. Hardy:

Q. Mr. Boyd, did you state who was present at that conference?

A. I don't know as I can recall all of them. It was purely an informal meeting. There were representatives of the Jersey Company.

Q. You mean the Standard of New Jersey?

A. The Standard of New Jersey, yes; Mr. Farish, of the Humble; the Tidewater, the Atlantic; I think Sinclair was represented at the conference; I believe the Magnolia was represented, probably by someone in the New York office of the Standard of New York.

Q. Was the Texas Company represented?

A. Yes.

Q. Was the Gulf represented?

A. I believe the Gulf was, and the Sun Company.

Q. Who represented the Texas Company?

A. I think Mr. Holmes.

Q. Who represented the Gulf?

A. I think it was Frank Leovy.

Q. Who represented the Atlantic?

A. I think Mr. Irish.

Q. Is the Atlantic a subsidiary of any of these Standards, that you know of?

Q. I beg your pardon?

Q. Is the Atlantic a subsidiary of any of the Standard companies?

A. The Atlantic was one of the former subsidiaries which was dissolved at the time of the dissolution.

I understand the so-called Rockefeller interests in the Atlantic have been disposed of.

Q. Have been disposed of?

A. That is my understanding.

Q. This agreement, or meeting, I believe you said, broke up without any satisfactory results?

A. There was no agreement.

Mr. Satterwhite: Are there any other questions?

Mr. Farmer: Yes, I have some.

Examination by Mr. Farmer:

Q. Mr. Boyd, I want to ask you a few questions. They accuse me around here of being the representative of the common people and will take these questions from that point of view, and you will understand—

A. I am one of that crowd myself.

Q. But you left your crowd and went to New York.

A. I am back now.

Q. But back as the representative of the major companies?

A. That's what you say.

Q. All right; let's see. Mr. Boyd, you state that the American Petroleum Institute is composed of about 5000 members, and you state, or you testified, that among these members here, just as you began to take the stand, that ten of these directors are Texans, and that you are a Texan, and the executive vice-president of the organization, and, therefore, being a Texan, your testimony is entitled to great weight and influence in getting some legislation here. Now, you have down here a man by the name of Roy B. Jones. Who is he?

A. He is with the Panhandle Refining and Producing Company of Wichita Falls.

Q. He is a man for proration?

A. I hope so.

Q. You have here Edgar J. Marston?

A. Yes.

Q. Who is he?

A. President of the T. P. Coal and Oil Company.

Q. That is a major company of Texas?

A. Yes.

Q. Who is Henry C. Morris?

A. The Lone Star Gas Company.

Q. That is the Lone Star Gas Company of Fort Worth fame, is it not?

A. What's that?

Q. The Lone Star Gas Company of Fort Worth fame?

A. I don't know.

Q. You don't know about that?

A. No.

Q. You have got down here, J. F. Lucey; who is he?

A. Lucey Petroleum Company. That's Captain J. F. Lucey.

Q. He is the one that sells the big equipment to the big companies, is he?

A. He is not in the equipment business now.

Q. What is his business now?

A. I understand he is producing oil; that is what I hear.

Q. Who is E. T. Moore?

A. The president of Simms Oil Company of Dallas.

Q. Is he a major, minor or independent?

A. It depends upon the relative terms.

Q. E. R. Brown; do you know him?

A. Yes.

Q. He is the man of Better Business Bureau fame, isn't he?

A. I don't know about that.

Q. You didn't know about the Better Business Bureau; all right. He is connected with the Magnolia?

A. President of the Magnolia.

Q. Do you know Robert R. Penn, of No. 26 Broadway?

A. Not of 26 Broadway.

Q. Of what then?

A. Of Dallas.

Q. He lives in Dallas?

A. Yes.

Q. Do you know J. Edgar Pew?

A. Yes. He is connected with the Sun Oil Company.

Q. Of course we all know Mr. W. S. Farish, successor to Mr. Sterling, the Governor of the State, as president of Humble Oil Company?

A. Yes.

Q. And now the little boy of the Standard Oil of New Jersey?

A. I wouldn't say it that way, no.

Q. You wouldn't say he is connected with Standard Oil?

A. I don't know about his being a little boy.

Q. Wallace E. Pratt; who is he?

A. With the Humble Oil and Refining Company.

Q. Or the Magnolia—which?

A. The Humble.

Q. I see. Is there a Duffey on this board of directors?

A. Who?

Q. A Mr. Duffey, a little independent, of Texas?
A. No, sir.
Q. Any other little fellow out of Fort Worth or Dallas?
A. Yes, there was Jim Collett, at one time; we have had several little fellows at different times.
Q. But they are not there now?
A. No, but they may be there some time.
Q. Now, Mr. Boyd, I want to ask you about this matter. You are concerned here in this legislation, the act that will be passed or the proration bill.
A. I am interested.
Q. Have you seen the bill, No. 5?
A. No, sir.
Q. Have you heard of it?
A. I have heard it discussed.
Q. Have you heard that the Federal court, a three-judge court sitting at Houston, held that proration in Texas as it is now, is void and illegal?
A. I have not read the decision.
Q. You have read the papers, haven't you?
A. Yes.
Q. Don't you know that in East Texas now, everybody can run all the oil they want to?
A. I beg your pardon?
Q. Don't you know in East Texas now, everybody can run all the oil they want to run?
A. Where, out on the ground?
Q. Anywhere they can sell it?
A. Of course, they can.
Q. Do you think—are you a lawyer?
A. I used to be, but I am not working at the trade any more.
Q. I want to know this: If you don't know that the Supreme Court of the United States said you can't even fix the price of milk?
A. I would not disagree with you.
Q. Don't you know that the Supreme Court of the United States, up there in New York where you now live, said you can't fix the price of a theater ticket?
A. Yes.
Q. And can't fix the price of gasoline, as they said in a case in Tennessee?
A. Yes.
Q. Then how can you fix the price of crude oil in Texas?
A. I haven't said you should do that. That is not the primary object.
Q. Well, what is?
A. First, the primary object is to conserve the State's supply of oil for the future, and second, to confer economic benefits on the people.
Q. Are you in favor of a law to say that no company shall take out of the ground under its lease any more than its pro rata part of that acreage?
A. Yes.
Q. So that the little fellow will get his pro rata part, if he only has five acres?
A. Yes.
Q. Then I will ask you if you are in favor of another law, which will put an occupation tax upon a man, say of one cent a barrel on a three hundred barrel well, and fifty cents a barrel on a well that will produce 20,000 barrels?
A. I am not in favor of that.
Q. Mr. Boyd, you are aware, are you not, that the Empire of Texas gave away its mineral resources in the days gone by?
A. This isn't the only place; the whole world did that.
Q. Don't you think Texas should have some of that revenue back that they gave away, so as to get our government out of the red, and to help us to carry on?
A. Why take it all out on the oil industry?
Q. The oil industry has the oil; now isn't it a fact that we now have a gross income tax based upon the income, and not upon the barrel?
A. Yes.
Q. And isn't that the nigger in the woodpile, when they put it on the gross income and not upon the barrel of oil, so as to avoid all the tax they could?
A. I don't know the nigger in the woodpile.

(Gentleman from Grayson objects: 15 minutes out for discussion off the record.)

Q. Now, Mr. Boyd, our resolution provides here that we may investigate all these things, pertaining to the oil business—

(Gentleman from Grayson interrupts with another objection, overruled.)

Q. Mr. Boyd, do you think that if we in Texas pass a stringent pipe line law, divorcing the pipe lines

from the other activities of the major companies, that that will help the situation in Texas?

A. I do not.

Q. You do not?

A. No.

Q. If you think that we will pass a more stringent law or give more adequate power to the Railroad Commission to conserve the oil resources of the State of Texas, in directing how wells should be drilled—you think, do you, that that would help to conserve the natural resources?

A. Yes.

Q. You think that?

A. Yes.

Q. Do you think, if we pass a law repealing that provision of Article 6008, that provides that the conservation of gas shall not apply to a well that is used for producing oil—that if we repeal that provision, then we will stop the enormous waste of gas in the Reagan field and elsewhere?

A. I don't believe I got the question.

Q. Are you versed or acquainted with the Texas laws at this time?

A. No, sir.

Q. Do you know about the injunction that restrained the Railroad Commission from stopping the waste of gas in Amarillo?

A. No, sir.

Q. You can't answer that question then?

A. No, sir.

Q. I want to know. You have had eleven years of the American Petroleum Institute, and I want to know if we raise this price of oil forty-eight cents a barrel, if that won't raise the price of gasoline two cents?

A. I don't know how much, but it will raise it probably.

Q. Who will pay the bill?

A. People who buy gasoline.

Q. That will be the masses of the people in the 186 counties of Texas that do not produce any oil?

A. And everywhere else in the world.

Q. Everybody in Texas that takes that gas?

A. Yes, and every other place.

Q. Do you think that the farmers of this country, who raise wheat at twenty-five cents a bushel to feed you folks in New York, and raise six and eight cent cotton to clothe you up in New York, except those of you who wear silk and linen, do you think it is fair to have oil raised to the price that it was when wheat was a dollar a bushel and cotton was twenty cents?

A. Let me answer that by giving you some information that you may not have.

Mr. Beck: He has that information.

A. Has he? You speak of the price of wheat. I am looking at an excerpt from the June number of Wholesale Prices of Commodities, issued by the United States Department of Labor. The price of wheat, No. 2, red winter, has declined since 1926, 52.3 per cent. The price of North Texas gasoline has declined since 1926, 76.3 per cent. Now there is somewhat of a disparity and disproportion there, and would you penalize the oil man, simply because his oil has gone down to practically nothing and you wouldn't give him any increase in the price because somebody has to pay for it? Is that fair? The price of crude is down 84.1 per cent, since 1926, and the price of Oklahoma gasoline is down 76 per cent; North Texas gasoline is down 76.3 per cent as compared with 1926, and the price of corn is only down 24 per cent; the price of oats is down 34 per cent; steers are down 32.6 per cent; calves, 32.6 per cent; hogs, 48.2 per cent; sheep, 49.1 per cent; poultry, 29.8 per cent; cotton is down 47 per cent, and gasoline is down 76 per cent, the most of all.

Q. Where did you make those figures; in New York City, or in North Texas?

A. They are made by the Department of Labor, which represents the laboring people, and the common people of Texas.

Q. I know we Texans are mighty ignorant, but we know when we paid sixteen cents for gasoline in Fort Worth. Do you know what it's worth in Fort Worth now?

A. No.

Q. It's at ten and twelve cents.

A. Somewhere around 11 is the average everywhere.

Q. And wheat is 25 cents a bushel now?

A. These are government figures I have given you.

Q. We don't care anything about the government in Texas.

A. Of course, if you don't care anything about the government, that's another story.

Q. Now, Mr. Boyd, what is the price of a barrel of crude oil at Port Arthur, when imported from Mexico?
A. I don't know.
Q. Do you know what it is when imported from Venezuela?
A. No, sir.
Q. You haven't any government figures on that?
A. I have not looked for them.
Q. You have just looked for the figures you wanted, not as applied to the Texas situation?
A. That is not a fair statement.
Q. What is the value of a barrel of Texas oil at Port Arthur?
A. I have no idea.
Q. What ought it to be worth?
A. I have no idea.
Q. Do you know the price and value of a barrel of Texas oil when transported from the Texas field to a refinery on the Atlantic seaboard?
A. I have given you the price quoted by the United States Tariff Commission.
Q. $1.98?
A. Correct.
Q. Does that include pipe line charge to Port Arthur?
A. That includes the pipe line and the ocean tanker charge, I understand. I didn't make those figures however; they are made by the United States Tariff Commission.
Q. They are hearsay with you, aren't they?
A. Here's the book.
Q. That's where you got them?
A. Yes.
Q. Then they are hearsay. Now we are interested in the oil and gas conservation question in Texas. Now I want to know of you if it is fair to have a system of coordination and interlocking of the six activities of the major companies, by which they make from 40 to 400 per cent out of the transportation business? Is it fair that the East Texas people shall not be paid the cost of the production of the oil, to say nothing of its value?
A. State that again. I was reading something here.
Q. Go ahead and read it if you want to.
A. I'll do that at the proper time.
Q. All right; Mr. Boyd, do you think it is fair, in the conservation of the resources of Texas, in East Texas specially, that those people shall not be paid the price of the production of oil over there, while the pipe line companies that transport it, which companies are in the hands of the major companies or controlled by them, make from forty to four hundred per cent out of the transportation?
A. I think the reason the people in East Texas are not getting the price for their oil is because they have violated all the economic law; and the reason those people are getting the price for their pipe line transportation that they do, I don't know. I understood those rates were regulated, but don't know about that.

Q. You think that because you moved from Texas up to New York?
A. I wouldn't say that.

Q. All right. Mr. Boyd, as we said a while ago, can you tell this Committee here, why, if you know, with this low price of oil, the mass of the people in Texas and elsewhere that use Texas oil, are still having to pay from twenty-five cents to thirty-five cents a quart for lubricating oil for their John Henrys and Tin Lizzies?
A. I can tell you what I think about it, yes.

Q. All right, sir, go ahead.

Mr. Satterwhite: Mr. Chairman, I am perfectly willing for the gentleman from Tarrant County to discuss privately what it costs him to oil his John Henry, or his Tin Lizzie, but I think these questions are entirely irrelevant and if the gentleman from Tarrant wants some direct information about the marketing of oil, the prices, and the effect it has on the people of Texas, the consumer, and the producer, let him ask them directly in that way without any effort whatever to prejudice the members of this Committee against the witness, because he happens at this time to be a resident of New York.

The Chair: The chair is of the opinion that the question is a proper one, and will ask the gentleman to be as brief as he can.

Mr. Farmer:

Q. Mr. Boyd, now I am trying to be in a good humor and good natured about this matter, and I want to ask you this.
A. So am I. I haven't declined to answer any questions.
Q. Yes, sir. Is it economy to take oil out of storage to refine it now, and then refill that storage with cheap oil from Eastern Texas?

A. It may or may not be economy with the condition existing within a given company.

Q. I see. But it would be cheaper, Mr. Boyd, if we could get the storage naturally in the earth, wouldn't it?

A. Of course.

Q. Now, Mr. Boyd, will the major companies treat the small fellows of Eastern Texas by entering into association with them in units in a certain block or field, and agreeing to give them pro rata their part of the oil or gas beneath their acreage?

A. You mean a unit operation plan?

Q. Yes, sir.

A. Generally speaking, I would say yes; I imagine they would.

Q. Well, isn't it a fact, Mr. Boyd, that if a man owes on his oil well, or his lease, and is in distressed circumstances, he has got to sell when it is nearly due?

A. If he can not refinance it I imagine he would.

Q. Well they can not refinance it; they have got to sell; then aren't the major companies ready now to take over all good leases and all good wells?

A. I could not speak for the major companies, because I do not know.

Q. You don't know about that?

A. No, sir, I do not.

Q. Well, Mr. Boyd, that blocks me. You can not speak for those major companies; I thought you were their executive vice-president in this American Petroleum Institute?

A. I don't represent any company in the world so far as the companies' activities are concerned.

Q. Well, Mr. Boyd, when you meet there in executive session, the directors of the American Petroleum Institute, do you discuss oil activities?

A. Surely.

Q. Do you discuss prices?

A. No.

Q. What do you discuss?

A. Discuss generally, well—we work on technical things; we discuss all kind of problems within the industry; we don't discuss prices.

Q. Do you discuss transportation?

A. No, except railroad transportation.

Q. Don't you discuss pipe line transportation?

A. No, we have no committee that works on pipe line transportation.

Q. Do you discuss land lease purchasers?

A. Except as a general part of the oil problem.

Q. I want to know, Mr. Boyd, if you, as having eleven years with these companies, don't you think it would be fair to the people of Texas if we should divorce the pipe line activities and the transportation activities from the production activities?

A. Do I think that?

Q. Yes.

A. No, I do not.

Q. You do not, don't you think, Mr. Boyd, that we ought to divorce the marketing and refining business from the transportation and production business?

A. I do not.

Q. Why not?

A. Do you represent the farmers of Tarrant County?

Q. One of them. This one.

A. All right. You raise beans and peaches on your farm, and you find out that you can market them better by buying a truck and transporting them yourself, and after you have transported them a while you figure you can make a little bit more money by building a cannery over near the railroad track, should you be prevented by law from doing that?

Q. Well, they tried to do some last June.

A. Well, just as a matter of principle, do you think you should be permitted? That is the reason I don't believe in the other.

Q. Do you think, Mr. Boyd, that in our conservation fight here in the Legislature that we ought to bottle up the wells that are producing enormous quantities of gas until we find a market for, notwithstanding the production of oil from those wells?

A. Bottle up enormous quantities of gas?

Q. Now let me illustrate, Mr. Boyd; in the Reagan Field, we have wells that are eight to nine thousand feet deep; they are producing 20,000 barrels of oil per day, helping to put up this production quantity. At the same time they are blowing out and burning up over a hundred million cubic feet of gas. This is the property of the University of Texas. Do you think we ought to force those wells to be capped in the interests of conservation until they can get a market for that gas for power or for light or for heat?

A. I think you should prevent the waste of the gas, not purely to get a market for the gas, but because

the gas has an important part to play in connection with the production of the oil itself.

Q. Then how would you prevent the waste of the gas?

A. Why, I assume that is an administrative problem; I am not an engineer. I don't know.

Q. You are not concerned in that, but you do this one thing, Mr. Boyd, that if we raise the price of oil per barrel that the masses who buy the gasoline will pay the price, don't you?

A. I imagine so.

Q. Don't you know so?

A. Why, who else would pay it except the public?

Q. That is exactly right, sir. Thank you, sir.

Mr. Hardy: Any further questions? I believe that is all, Mr. Boyd. Much obliged to you, sir.

A. Thank you.

Mr. Hardy: At this time, Mr. Chairman, we would like to have Mr. Joe Danciger called to the stand, please.

Thereupon, Joe Danciger was called as a witness, and upon being sworn by the Chair, testified as follows, upon examination by Mr. Hardy:

Q. Please state to the Committee your name, address, and occupation.

A. Joe Danciger, Fort Worth, Texas, independent oil producer.

Q. How long have you been in the oil producing business, Mr. Danciger?

A. About fourteen years actively, and about ten years as a sort of side line.

Q. Are you interested in the Wichita Pool?

A. No, I am interested in production in the Panhandle and I have some holdings, that is, the company does, in East Texas, also; other places in Texas and Oklahoma.

Q. You have been more or less before the papers, Mr. Danciger, in this proration fight. Do you have any statement you desire to make at this time?

A. Yes. I felt it was my duty to come down here and assist the Legislature in drawing their conclusions by telling them the effect of proration on the independent operator. If I can be of any service in that respect I would like to make a little statement.

Q. Have you had any experience at that?

A. Yes, I have had considerable experience with proration.

Q. All right, you might make your statement at this time, Mr. Danciger.

A. All right. Thank you. Now, gentlemen, ladies, we have been obliged to go into the courts in order to do business. We tried to run our business in a legal manner, but proration has forced us into the courts. Some folks blame us for going to the courts to seek our rights. Now I will tell you exactly what has happened in our case, and you can use your own judgment as to whether you think you also would have gone to the courts.

I presume you are familiar with the fact that we were one of the first to bring an injunction suit. Now this, gentlemen, was the condition with us; we were producing oil there, and one of the major companies was taking the oil; suddenly they cut us off and wouldn't run a barrel of oil and we asked them why and they just said they didn't care to take any more oil, and we told them that they had promised to take this oil and we would be very much disappointed if they did not continue. Well, they said that there was no way for them to continue, that they were going to cut us off entirely. We had wells on the sand and we had some wells on the sand that we hadn't even brought in, and these wells were possibly drilled the year prior. We were not anxious to produce, or rather overproduce from the leases. Well, the result was that when we could not run oil we had to lay a pipe line. We also had to build a refinery to use this oil because we didn't have any outlet for it. After we had arranged for our pipe line someone else built it, however, and built our refinery, then they inaugurated a proration system. After they refused to take our oil they came along with the proration proposition and said that we could not run the oil to our own refinery. That was a little too much for us and we were obliged to go to the court to see if we could not run that oil. The recent decision of the Federal Court shows that we were entirely justified in going to that court. If I may say so, I don't think this Legislature, in justice to the independent producer, should pass

any kind of a law barring anyone from the courts. Now that explains our experience with proration to that extent. Now, gentlemen, in the interest of brevity, I will read a little statement I have here compiled, based on my experience with proration, which contains the facts in about as condensed form as I could express them in any other way, namely, a few little remarks.

How can an independent oil producer expect to exist when under proration his production is limited, the price cut almost to nothing, while his competitors, the major companies, with their enormous financial resources, can drill any number of wells they wish, and on a basis of their inflated production, through both actual and fictitious potential production of their wells, can regulate the amount of oil that small operators can produce, and at the same time fix the price the independent producer is paid for his product?

Now, gentlemen, in justice to every one I would like to explain what I mean by "fictitious potentials." Just as an example, it was claimed that the Pecos Field was capable of making three million five hundred thousand barrels of oil per day. A witness on the stand testified while if the wells were opened up they would make 89,500 barrels, but if an attempt was made to run them on a basis of three million five hundred thousand barrels they would go to water, a sort of dome or condition they have out there. Now the reason I make that remark is to show the effect that it has on the independent producer. For instance, if the government reported that there was several million bales more cotton ginned than was actually produced you can imagine the effect it would have on the cotton market. Well, that is exactly the way these fictitious potentials react on the oil market. They hurt the product, the production, the little independent producer. The big companies are not so vitally interested in the price of crude oil as the little independent producer is because they get their profit out of the refined product. That could only exist under proration because without proration the actual potentials would always be known because this oil is produced as the wells are drilled—then in that event there is no possibility of any fictitious potentials being maintained.

Under the present system used by purchasers with the full consent of the Railroad Commission, and possibly they thought they were doing the right thing, this is not derogatory of the Railroad Commission,—they are allowed to nominate that they will run—these major companies are allowed to nominate that they will run twenty-five or fifty per cent or less of the oil produced in some fields, while they develop new fields, run new pipe lines, and where they have a majority of the leases they may nominate that they will run 100% of the oil from such field, in addition to flooding the country with their own foreign oils. Well, if we are restricted and they say that our nominations on your field is only twenty-five or fifty per cent, and they go down the road a piece to another spot and nominate "Well, we have got a fine market demand here" and purchase a hundred per cent, we are strictly up against it. They simply keep our oil in the ground while they run their oil. In addition to that, they drill as many wells as they want, say, their nomination is as much as they want, run as many pipe lines as they want, drill fields over in New Mexico that should not be drilled under the present conditions, and import foreign oil. It is unjust, gentlemen, it places the independent producer at a terrible disadvantage. Now, I am inclined to take Mr. Neff's view of the fact that we should not have any laws regulating economic waste, but Mr. Neff believes, and I hold with him, that we have sufficient laws, and incidentally, gentlemen, I believe that we have very fine laws, very fine oil laws, from my little experience on the books in Texas, and Mr. Neff was broad enough to admit that those laws were not sufficiently enforced. If I am privileged to make a little remark, I believe that if the present Railroad Commission was given a little additional help selected from the oil fraternity, or with the help of a few good petroleum engineers, that they could do a great deal towards helping solve our problems in the oil industry, and allow it to be operated the same as it has been operated with success in Texas for the past forty years. The laws of Texas, as you know, give the Railroad Commission broad powers to stop all physical waste. Now the Railroad Commission is not restricted in their powers. They could go out and whenever they

discover any physical waste they can stop it, just the same as they have done in these big wells in Reagan County, and whenever it occurs to them that the physical waste exists they now have the power to do it, and I believe they now realize and understand that it is to the interest of the people of the State to do it, and I believe if given sufficient help they will do it. That is my personal opinion. The major companies did not build their institutions under proration and as a result the independent producer can not even exist under proration. It is a fine theory, but it don't work. It is entirely fanciful, it looks good to everybody, but it is entirely unsound, when you analyze it. And furthermore, these major companies find it to their best interests to use it as a sort of racket instead of following out the spirit and ideals of the whole system. It is idealistic and it does not work in practice. Surely, by this time it is clear that there never was any good faith on the part of the major companies in the whole scheme of proration, and unless there is some degree of honesty and fairness in a trade, it is a bad trade for the unprotected. Under proration, while the production of the country has declined about 700,000 barrels per day, these major companies, who are quick to take advantage of their competitors' distress, arbitrarily cut the price nearly in half, even before the East Texas Feld was developed. In other words, while the production under proration went down 700,000 per day in this country the price of the crude product itself was cut in half, so it looks very much like when they have the independent producers' oil controlled in the ground they don't mind cutting the price all to pieces regardless of overproduction. It should be remembered that when proration was first proposed the representatives of these major companies, in open, gave the independent producers ample assurance that the price would be improved, or at least stabilized, and indicated that useless drilling would naturally be eliminated. Well, useless drilling was not eliminated; the price was not stabilized, but cut in half, yet proration assisted in reducing the output of oil in this country 700,000 barrels. The little independent producer has contributed that and held his own in the ground until it is practically worthless today. They did their part. Proration has proven to be nothing more or less than a gigantic confidence game worked on the independent producers, and which, if continued, will give these major interests the complete monopoly of the oil business, which they seek. I don't see how it can help that under the conditions as they are. Their object, while keeping the other fellow's oil in the ground, is to pay practically nothing for the small amount they actually purchased while they appropriate the market to their own use and benefit. Now along that line, gentlemen, in the Panhandle district, for example, we have thirty to forty thousand-barrel independent refining capacity. I checked up one time and found that these major interests were only taking about three thousand barrels a day from the little fellows who didn't actually have a connection, and if they bought out of charity they exacted that the producers in that field cut their production 75 per cent and produce only 25 per cent of oil.

That was exacting a little too much charity for taking three thousand barrels of oil at the kind of prices that have existed. Now, I want to try to make this clear to you, if I can. We are prorated. If a fellow comes along and wants to buy some of our oil we cannot sell it to him. We are prorated. We can sell him 25 per cent but we don't know how long we can sell it to him, because we don't know what the next schedule of proration is going to be. We cannot sell him any round quantity. These big companies producing from fields in different parts of the country can sell orders for a hundred thousand barrels or a million barrels or two million barrels. That gives them all the advantage that is necessary to put us out of business. We simply cannot contract and they can. And at the same time, I will admit it sounds good. It is a nice looking theory, but it don't work. They appropriate the market to their own use and benefit. That has already happened and it is only reasonable to believe that it will continue under proration unless some act of Providence has injected a larger measure of charity in their hearts than has ever before been known to exist. It is futile to look for fair play, much less charity, from these major interests, who seek only an absolute monopoly of the oil busi-

ness, and the complete elimination of the independent producer, independent pipe line owner and independent refiner. This looks very much to me like a squeeze play. Of course, they are justified in it to a certain extent by the fact that we have got a lot of production in East Texas, but for the life of me I cannot see why they could have it in their hearts to cut West Texas oil down to 10 cents a barrel, 700 miles away, gentlemen. I don't think the conditions affect that. They have since raised the price, so you can see what they can do with the price while you are holding this investigation. For over forty years the oil industry, including the independent producer and refiner, has prospered under the law of supply and demand, which is a hard row, I will admit, and proration is only a disease on the commercial body of the oil industry which will eliminate the public from participation in it. Proration sounds reasonable but with insincerity, deceit and double dealing, it is worse than a failure. Those who believe that under proration the price will improve are showing a measure of optimism not at all justified by what has happened under proration in the past. Naturally, oil came down, production of 700,000 barrels, then East Texas was developed; the price was cut in half. If the major interests wanted to do so they could at this moment raise the price of oil and gasoline to at least cover the cost of production, but they are not ready to do that until they fill their storage with cheap oil. I think that is only good business on their part. Under proration the independent simply puts his head in a noose in the vain hope of bettering the price, while in reality he is only entering an agreement to restrict his production while the major interests take practically the entire oil market, and enslave the independent ever afterward. Now, I am talking about the independent producers. I am one of them. But you remove the independent producer from the picture and you have the major companies dealing directly with the public. The independent producer is the only buffer between the public and the major companies, so when I say independent producer it could just as well apply to the public, just as though I said "The Public." Since there is no measure of fairness or equity in the proration scheme, why agree to something that is utterly foolish and which will not help the independent in any way, but will only prostrate his business still further, and to the tremendous advantage of the major interests, and postpone stabilization indefinitely?

Now, stabilization is one thing that I am striving for. If I thought proration would bring that about I would be for proration 24 hours a day, but I don't believe with this manipulation, with these fictitious potentials, with all this monkey business, that we will ever have stabilization in the oil business until it is on a sound and firm foundation of supply and demand. I cannot see it any other way, and neither can Mr. Babson, who is an authority on the subject. Under the law of supply and demand, and without any proration, if the major interests did not want oil run to independent refiners at low prices, they would be obliged to do so as they have done for the past forty years, namely: to raise the price of crude oil so as to reduce or eliminate the independent refiners' profit, and this naturally helps the market for the independent producer under normal and natural competitive conditions. The independent refiner knows his position in the competitive world, and is the only instrument of competition between the major interests and the public. Proration gives the major interests a two-edged sword, one edge with which to mow down the independent producers by limiting their production and more easily controlling the price, and the other edge to mow down the independent refiners by making it difficult if not actually impossible for them to get any oil under proration. Even though it is sold at 5 cents a barrel. Proration has proven to be a method by which the production of the independent producer is prorated, and under which the supply of the independent refiner is prorated, while these major interests, with their fancy systems of nominations, extensive pipe lines, fictitious potentials, importing facilities for foreign oil, large storage facilities, and large financial ability to drill unlimited wells, have not been hindered in their production and refining to the extent of one single barrel during the entire time proration has been enforced. Now, if that is true, that is a pretty heavy indictment. I wouldn't want anybody to

tell me that I was prorating and at the same time running my refineries twenty-four hours a day. With reference to proration being a conservation necessity, it could not be a conservation necessity because the proration we have had has been based on market demand. There is absolutely no connection between operating methods, the way to operate a well, and conserve oil and gas, and the market demand. Certainly, that is clear. It couldn't have any connection. I believe every one will admit that. With reference to proration being a proration necessity, as indicated by occasional testimony of so-called expert witnesses, every practical operator knows that such a claim is untrue, because retarding the flow of some wells practically ruins them, while under certain conditions the retarding of production, especially of edge wells, in some oil fields, sometimes is a benefit, but that depends on the characteristics of the well and the peculiarities of the individual field, and no law is necessary to make a practical oil operator protect his property, but if he did not do it, then the Railroad Commission has all the power that the Legislature can give them to stop all kinds of physical waste, and I believe that they will do it now that they should realize the gravity of the situation and the necessity for it. I believe they have already been aroused to such an extent that they will enforce these laws. Likewise, the ratable taking law which will smooth out the unequal production from various wells. The present laws of the State are entirely adequate and ample to prevent careless operators from doing anything that causes actual physical waste or damage by water, and this law is a benefit to all producers. A determined effort is now being made to repeal the obnoxious proration laws of Oklahoma and California. In Oklahoma and in California they are just as busy as they can be trying to repeal those obnoxious proration laws, and here in Texas they have been proposed, and you can see how they have worked. Of course, it is clear to say that under proration that drilling is increased the price stays at a fictitious level, which stimulates unlimited drilling, and they drill up the whole field and produce only a small amount of oil from that field. Well, when another field comes in, in which there may not be any proration that causes a collapse. In other words, proration disturbs the basic law of commerce, the basic law of supply and demand. I have come to the conclusion that the best way to help the public and help the independent producer, and the fair way to do would be to simply enforce the laws we have. It is possible that reduction in the pipe line rates would enable the producer to find a little more ready market, and I think, as a public utility, those rates should be within reason, and on the basis of the investment.

I will presume on your time for just a half a minute more to read you two short paragraphs from Babson's report. He is a recognized, a world recognized economist: "Oil control will fail. Handwriting on the wall; the inevitable breaking down of all attempts to control oil production. Present proration schemes are only laying the show-down which is bound to come. You know what has happened to the attempts to regulate rubber, copper, tin, and a great many other raw materials. One by one they failed. Any industry which thinks that artificial control will cure its ills is living in a fool's paradise, yet, certain oil producers are working hard to put across proration, especially in East Texas. This is only one of several stabilization agreements. An important fact; when people try to control a commodity by artificial means, they are monkeying with the basic law of supply and demand. We have been studying commodities for years, and our studies show that fundamental supply and demand factors eventually win out. You remember that in 1929 people were saying 'we will never see another business depression; the law of action and reaction is dead.' If these same people had been thinking as hard then as they are now such foolish statements would never have been made. The law of supply and demand is also alive and continues a fundamental force. Although we heartily endorse the conservation of our raw materials, most plans, so far, have merely been a blind for unfair market price and control."

Babson recognizes that. "How control hurts the buyer: While the producers have command of the situation, the tendency is to push prices up in good times, and to hold them

up even after a general decline has started. This means that prices of controlled commodities do not reflect the real statistical position. In the present period, prices have declined because underlying factors have proved too strong for the price-fixing interests. This is a step in the right direction. Let prices seek their own right level and we will soon see better times."

That article appeals to me because I think it is true about stabilization. I thank you very much, ladies and gentlemen, for your kind attention.

Examination by Mr. Beck:

Q. Now, Mr. Danciger, we will ask you a few questions, please, sir.

A. All right.

Q. Did you say that you think we have very good laws in Texas at this time?

A. I do.

Q. Then why did you find it necessary to enjoin the Railroad Commission from enforcement of them?

A. Well, I figured that they were not trying to enforce one of the laws. My contention is, absolutely, that they stepped out of their province and tried to enforce proration, which was not the law of Texas. I did not figure that I was trying to stop the action of any law of Texas, but they stepped out of their province and were trying to enforce something that wasn't in the laws of Texas.

Q. Well, it appears now that we don't have any kind of a proration law in this State at this time?

A. Naturally, the court decision would bring about that condition, as I view it.

Q. Then what is left to our laws that is good?

A. Ratable taking of oil, ratable purchase of the oil, the stoppage of waste, all physical waste is stopped.

Q. You favor the ratable taking act?

A. I think there is a great deal of merit in the ratable purchase of oil.

Q. By any purchaser?

A. Yes, sir, by all purchasers; I really do, I think that is helpful.

Q. Well, now, in your case, Mr. Danciger, you have one, or is it two, refineries?

A. We have one.

Q. And do you have enough production, if you are allowed to turn it loose, to furnish your requirements of crude?

A. No, we are buying some oil now. It isn't enough to furnish our requirements.

Q. Not enough?

A. Not enough.

Q. Well, is it not true that most of the companies operating refineries, even where they own production, are taking the production ratably from all their connections, including their own wells?

A. Under proration they take what oil they want to from one field, and they take it what you might say ratably, but in some other field they nominate a different quantity of oil to take, and so on. While it looks as though it were a legitimate and fair method, it really is not.

Q. But now, in your own case, having a refinery, you would like to run every barrel of oil that you can produce with your own production, and then allow the ratable taking principle to apply to the other fellow on the outside that doesn't have his refinery?

A. No, we would be perfectly willing to take the oil ratably, including the oil we run from our leases.

Q. You have used all of your own production?

A. No, not necessarily, we would take the oil ratably from the other fellow just the same as we would from our own.

Q. If it was not for the purpose to get to refine oil of your own production, why did you enjoin the Railroad Commission from enforcing proration?

A. Well, now, I will tell you the conditions have changed. At that time we had an abundance of our own production, and now we do not have as much.

Q. If your production increased, though, equal to your requirements of crude, you would want to go back to the same attitude that you had at that time. Is that correct?

A. Well, no, under the ratable taking system we would take the oil from the other leases as well.

Q. You would do it, but haven't been doing it, is that correct?

A. Well, in some cases, we have taken the oil from the adjoining leases also. As a matter of fact, the adjoining leases were running practically all of their oil anyway, since we were operating to capacity they were also operating to capacity.

Q. But since you got the injunc-

tion you have been using all of your own production?

A. Yes, we have been using our production and also other production.

Q. But taking all of your own?

A. Yes, we have been taking all of our production.

Q. Now, how generous is that to your neighboring leaseholder and producer that does not happen to have a refinery?

A. Well, it is not as generous as it might be.

Q. In fact, that enables you to draw out from under the ground some of his oil, as well as your own, doesn't it?

A. Yes. If he didn't have any outlet for his oil, it certainly would.

Q. Now, just getting down to this good old hard law of supply and demand that we have been accustomed to follow these years, isn't it common sense on that theory to believe that the proper thing to do is to let the East Texas field run its course, and thereafter cease being a menace in the overproduction of oil in this State?

A. That seems like a very hard road, but that is the road that has been followed by every oil field up to the time that East Texas came in and up to the time the unit proposition came into existence.

Q. That is the road that was followed by Burkburnett? Is it not?

A. Yes, sir.

Q. That is the road that was followed in Seminole?

A. Practically, they said they were prorating in Seminole, but it was just a blind; while they said they were prorating they said they were swapping their wells to beat the band and producing every barrel they could produce while they were shut down in Oklahoma City.

Q. And that is the rule that was followed in Smackover, isn't it true?

A. Yes, that is the same rough road.

Q. The same thing was followed in Winkler county?

A. Yes, the same thing was followed in Winkler county.

Q. Do you agree with those petroleum engineers who contend that in those fields there never did develop more than fifty per cent of the possible recovery of oil?

A. I don't think those engineers know anything about it, sir; I don't agree with them at all, and I think they are, for the greatest part, a lot of four-flushers and theorists and do a lot of guessing that they cannot back up with facts at all. That is what I think about them.

Q. You just told us that you thought the Railroad Commission ought to be supplied with several petroleum engineers to advise them?

A. Well, I don't believe that they ought to be supplied with the kind that says the best way to produce a well is on the basis of supply and demand.

Q. I see.

A. There are different kinds of engineers, good ones.

Q. Didn't Mr. Roger Babson say in that statement that you have before you, didn't he hold that the thing to do is to let the hard-fisted law of supply and demand take care of the situation?

A. Yes, that is what he said.

Q. That is his creed, isn't it?

A. Yes. Correct.

Q. It is his theory?

A. That is his theory.

Q. Do you not find in that same statement that Mr. Babson has this to say:

A. Yes?

Q. "A great deal of good would result if producers rolled up their sleeves and fought out their battles with supply and demand as their only weapon. This would weed out a large number of the small producers and would put the oil industry back on a more sane basis. Recent sharp declines in oil prices are helping to improve conditions, and may be already discounting the passing out of production control."

Q. Now, do you subscribe to that theory of Mr. Babson's?

A. While I think his statements are probably correct, it is a lamentable fact that in order to bring about stabilization it will probably be pretty hard on a lot of little producers.

Q. Now your company happens to be one of the large independents, does it not?

A. No. I would not say "large"; just a medium-sized; a little larger than the smallest, and a whole lot smaller than what you would call the big independents; just a medium-sized independent company.

Q. But having a well-placed production and your own refinery, you are going to be able to weather this storm. Aren't you?

A. I think we are in a little better position than the poor little operator who has no outlet for his oil

at all. We undoubtedly are in a little better position than he is.

Q. And so the proper thing to do is to follow Mr. Babson's theory and wipe him out?

A. Well, I believe, candidly and honestly, that that rule is the only way to stabilize the little producers business in addition to the larger producers business.

Q. Is to wipe him out and stabilize him?

A. No, not to wipe him out, but on a basis of competitive methods the same as we have done business under for the past forty years; it seems like a hard row and Mr. Babson may be right that some of them can not stand the competitive methods and some of them can not stand, of course, normal business methods, but I believe that is the only way to even stabilize the little producer, I don't care how little he is; it is the only way he will ever get anything for his oil.

Q. Now, Mr. Danciger, unless I am honestly mistaken—

A. Yes.

Q. I think I heard you say recently and seriously that if there could be such a thing as fair proration and absolute enforcement of the ratable taking provisions that it would be a fine thing for the independent oil operators?

A. Yes, if an idealistic situation like that could exist; theoretically it looks good, but practically I can not see any way on earth to have it worked out, because of these big companies simply taking advantage of every principle as I have tried to describe in that little statement that I made.

Q. Well, if it can not be worked out in some manner, the very things will happen which Mr. Babson predicts, and bust them, will they not?

A. Well, to a certain extent. You can probably judge that to the same extent that I can. The little independent producer can not exist under the present conditions, and he can not exist unless he gets a decent price for his oil. Now the competitive condition is the only way that I can see that he has any chance eventually. Of course, I would like to do something for him; we have got little wells of our own.

Q. I can not see where wiping him out will improve his chance of recovery.

A. No, I have tried to make myself clear as to that; I believe that the only way he can eventually be helped will be through competitive system, and I admit, as Mr. Babson says, that in this terrible competitive race some one might fall by the wayside; I admit that.

Q. As a matter of fact, won't he just absolutely have to quit and get out?

A. The little producer?

Q. Yes, sir.

A. Oh, no, they would hang on tenaciously for a long time.

Q. What on?

A. Well, the same way when he drills a well without any money and gets rich, some of them; I don't know, they do it some way.

Q. Now then, you advocate allowing the field to produce itself to death, and do so quickly regardless of the damage to ultimate recovery and regardless of how quickly they run the field to water. Will you tell me what interest you think the State has in the conservation question and how that kind of a policy benefits the State of Texas?

A. Well, as the first part of your question was directed at running the field to water, and indicated that you thought the rapid production of oil would lessen the ultimate recovery; some folks that are posted on the subject say that there is absolutely nothing to that theory. But you then ask what effect will that have on the State. The State will benefit with the competitive situation just the same as the producer will. He will have to sell his oil cheap for a while which will stop all drilling, stimulate the building of refineries, stimulate demand, and finally the State will be in the same position as the independent producer, and really cast its lot with him.

Q. You don't believe that the rapid production of oil will run the field to water too quickly, and yet you told us a while ago that if the Pecos fields were allowed to run at their potential there would be water in no time; how do you reconcile that?

A. Well, that is correct. Your statement is absolutely correct. They have a condition where the edge wells would go to water quickly, and the edge wells in East Texas would go to water quickly if the operator on the edge produces his oil too rapidly; that is liable to happen; but that don't necessarily destroy any oil be-

cause the oil that he don't get through his well, if he produces it too quickly, will go to some other well. But the chances are if that producer thought that his well was going to water he would not produce it so quickly.

Q. If it is possible to work out, don't you think a man should, when he gets the title to his lease, have a chance to develop when he wants to develop the oil underneath that lease?

A. Yes, he ought to have a right to develop his property.

Q. He should not be forced until he reasonably is able and ready to drill in order to save his property, ought he?

A. Well, he sometimes has to drill when he don't want to.

Q. If he doesn't, the other fellow will get his oil?

A. That is right, exactly.

Q. Do you suppose that draining of the other fellow's territory is ever done deliberately any more?

A. I presume in some cases it might be, yes.

Q. In that case it just does not happen to be against the law to steal oil in Texas?

A. Well, of course, that is one of the risks that a person takes in the oil business; that is about all. It doesn't seem entirely equitable and fair, but in every business there are some things that might not be perfectly fair. If you will pardon this little illustration, I read in the paper a few days ago where a fellow was on the golf course, and got hit with a ball, and the judge said, "Well, that is one of the risks you took when you went on the golf course." That is a similar condition, in order to make myself clear.

Q. But it does result that competitive efforts to get a hole down to the sand does result in a wasteful method of recovery, doesn't it?

A. No, I don't think that it results in a wasteful method of recovery. It might stimulate the production from the area, but personally I believe in producing wells reasonably, especially on a low market.

Q. How many other operators in Texas just at this time, small independent operators, independent operators of your size, also own their refinery outfit?

A. That would be a question that I never even thought of; it would be absolutely impossible for me to answer; I really don't know.

Q. I have been asked to ask you if you have had any conferences on this subject with the Sinclair and Gulf Company; I don't know what the relation there is.

A. No, no, they are not in my society at all.

Q. But I am asked to ask you that question.

A. No, they are not in my society at all, Mr. Beck.

Q. Don't you think it would be better to produce a little less oil in Texas and conserve the gas that is now being wasted in producing the excess amount in certain fields?

A. I think that conserving the gas is always desirable to the greatest extent that it can be done with practical operation.

Q. Are you acquainted with Mr. C. M. Buie of Fort Worth?

A. No, I don't know him.

Q. Are you willing to say, again, that a good proration measure, enforceable, coupled up with a ratable taking measure that is enforceable, and that would be enforced against the majors and minors and the big and the little would be a stabilizing influence and a good thing for the operators in the State?

A. No, sir, I think that it would practically destroy the independent operators of the State; that is my candid and honest opinion.

Q. Well, what is going to happen to them under present conditions?

A. They are in the middle of a bad fix.

Q. Are you one of those that believe that the day of the independent operator is gone?

A. No, sir, not—if we have proration, it is possibly gone, but without proration I still think that he has a chance for existence.

Q. If you let Mr. Babson's theory prevail in Texas, why, we will have independent operators, but they will be a new crop, is that the idea?

A. Well, some of them will be pretty badly hurt because this is a terrific competition that they are up against right now with this big East Texas field, and all the others—the other general conditions in the country and the frozen credit, and everything, they are in a bad shape; there is no question about it.

Q. Now while we are going through this process of wiping out these little independent operators, according to Mr. Babson's plan, what

will happen to the revenues of the State of Texas?

A. The revenues of the State of Texas will be mighty low until the price recovers.

Q. Now, which do you think would be better to the people of Texas, to have to raise the price of gasoline two or three cents a gallon, or have to raise the State ad valorem tax?

A. Well, that is a question of taxation that I am not capable of answering. What I said about it would really be just an opinion without any weight at all.

Q. Are you having to buy some oil in addition to that which you produce for your refinery?

A. Yes, sir.

Q. You are having to buy some?

A. Yes, sir.

Q. Are you making any effort to pay the highest price or the lowest price for that oil?

A. Well, we are paying the posted price for oil; I wouldn't say that we are making an effort to pay the highest price, or the lowest, we are paying the posted price.

Q. What do you call the posted price?

A. Well, the price that is current in the field as made by these big major companies.

Q. What are you paying?

A. We are paying thirty cents there now.

Q. Where?

A. In the Panhandle.

Q. In the Panhandle?

A. That is, there is a little variation in gravity. But that is the base price of 40 gravity.

Q. Are you buying any East Texas oil?

A. No, we have a lot to sell over there if we could sell it.

Q. If one of your competitors was able to buy this Panhandle oil at 20 cents a barrel instead of 30 cents, would you be willing to keep on paying 30 cents?

A. No, we are business people. We are not a charitable institution. We do business on business principles and buy the stuff for the lowest price we can. Sometimes we have to pay more than the major companies are paying to get the oil; sometimes we might get it for a little less.

Q. Then it would not have been good business for any other purchaser of oil to pay more than the price that their competitors could buy it for?

A. No, that is not good business.

Q. Then, in what sense, are these purchasing companies subject to the criticism that you leveled at them in a blanket sort of way a while ago?

A. Well, I will tell you; these are tremendous institutions; they have been doing business for years and years; they have held themselves out as purchasers of oil; the people have relied upon them for years and years to sell them the oil; they have run their pipe lines out there and they have set up their business to take the oil. We are just a little new institution building a refinery as a makeshift because they would not take our oil, that is the difference.

Q. Haven't they all practically been little companies at one time or another?

A. All big companies have been little companies?

Q. Most of them.

A. Yes, I think that is very true.

Q. And you hope, and I hope with you, that you become one, too.

A. Well, that is our ambition, that is a candid statement; that is what we are all looking for, for progress.

Q. Now, Mr. Danciger, your statement would indicate that you must have a wealth of information behind you?

A. I beg your pardon?

Q. I say your statement would indicate, and I say it sincerely, that you must have a vast fund of information back of that statement. Now we have been trying, this is the eighth day, to find some definite evidence that the major purchasers of petroleum were in agreement with one another to cut or suppress the price of oil. Have you anything definite to give us on that subject?

A. No, sir, I don't have anything definite; it is just from the observation of the raise in the price and the following by all the other companies and the reduction and so on; that is all I know about it.

Q. Do you think that the price of cotton is dictated by some people, some little group of people?

A. I don't know much about cotton, but my impression is that it is not.

Q. Do you think that is true of wheat?

A. No, I don't think it is true of wheat.

Q. You think oil is the only thing

that should not respond to supply and demand?

A. Well, should not respond to supply and demand? I don't know just what you mean by that.

Q. Well, production goes up and the price goes down and you think that is a natural consequence?

A. No, no, I don't think that is unnatural.

Q. You think that would happen even if the major companies didn't fix the price?

A. Yes, to a certain extent, during flush periods.

Q. And do you believe they fix the price?

A. Well, that is just an opinion, I have no evidence to base it on.

Q. Do you know where we can find any evidence of that?

A. I do not, I don't know how you would get at it to establish that fact; I will be perfectly candid.

Q. We are hunting it.

A. I know and I would be glad to give it to you if I could.

Examination by Mr. Hardy:

Q. I want to ask you a question.

A. Yes, sir.

Q. What do you mean by "fair proration"?

A. Well, that is just a fanciful expression; I could go into a little detail to explain it to you if you wish.

Q. Well, what I want to know is, do you believe in any kind of proration? If so, you said "fair proration." Now I want to know what you tell this Committee is fair proration.

A. I don't believe there is any such thing as fair proration, that would remain fair for any appreciable time, or long enough to make it at all practical or sound.

Q. Is that because of your fears of the major companies or because of your fear of the theory of proration?

A. That is really both, I think the theory of proration is a little too idealistic, and I know that it is entirely impractical as it has operated in this State from the results that it has produced.

Q. Well, eliminating the fact from what it has produced, which I understand you don't call fair proration, what I want to know is, "fair proration"? Is there any theory of proration that you believe in at all?

A. No, sir, there is not.

Q. All right, that is what I wanted to find out. Then according to your idea there is no such thing as a fair proration?

A. There would not be any such thing as a fair proration in my estimation that could be worked practically.

Q. All right. Now a minute ago you stated with reference to some of Mr. Babson's statements that it might be necessary to eliminate some of the small producers, and you were asked how could they hang on. Did you ever hear of any of these small producers borrowing from the major companies?

A. Well, if they were not too small they might borrow some.

Q. If they had a valuable lease, and were willing to drill it with the major companies, could they borrow from them?

A. Yes, I have heard of some operators borrowing money from the major companies in nominal sums.

Q. Do you think that those fellows could hang on?

A. I think they could, yes; I think possibly when they lend them money it shows they are very friendly with them and they are more likely to be able to hang on than the other fellow who could not borrow money.

Q. How much is the capacity of your refinery?

A. Six thousand barrels.

Q. Per day?

A. Per day.

Q. How much oil are you running now?

A. We are running about five thousand barrels a day.

Q. Can't you get the full amount of capacity of your plant at this time?

A. No, we can not even get it in the Panhandle.

Q. Why?

A. Under proration.

Q. Why ?

A. Because the proration is so low that the oil is not to be had.

Q. Well, you mean that there is not five thousand or not six thousand barrels of oil produced in the Panhandle?

A. No, I don't mean that. I mean that we can not conveniently buy that oil around there.

Q. You cannot do what?

A. For your information there is one refinery, I understand, is shut down because they cannot get oil under proration.

Q. Well, how much oil is being produced in that field?

A. I don't know; it has been under proration so long that I don't know what it would really produce now.

Q. What is it producing?

A. It is producing, as I understand, about 35,000 or 40,000 barrels, the last I heard.

Q. What is happening to the difference between 35,000 or 40,000 barrels and the 5,000 barrels that you are refining?

A. That includes ours.

Q. Well, what happens to the difference between what you have and the amount that is produced?

A. Well, that goes to various refineries and pipe line companies and everyone else.

Q. Whereabouts?

A. Right in that field there; they take some of it out of the field, and they refine a great deal in the field.

Q. How many refiners are there in that field?

A. There are five in the Panhandle field proper, and one at Amarillo, making six altogether, as I recollect.

Q. To whom do they belong?

A. One of them, in Amarillo, belongs to The Texas Company; one in Borger belongs to the MacMillan Refining Company—

Q. To the what?

A. To the MacMillan Refining Company; another in Borger belongs to the Phillips Petroleum Company; another one at Kings Mill belongs to the Wilcox Oil Company, and another one in Pampa belongs to us, the National Oil and Refining Company.

Q. What is the capacity of The Texas Company refinery there?

A. I understand it is about four or five thousand barrels.

Q. How much is it using per day?

A. I couldn't say; I am not posted on what those plants are using, Mr. Hardy.

Q. You don't know what any of those refineries are taking?

A. Not for sure, I haven't checked it up lately.

Q. You don't know how much of that oil is being shipped, then, to the Gulf Coast?

A. No, sir, I do not; but I think they are all running just about capacity; I am pretty sure they are, except the MacMillan refinery, and it is practically shut down because they cannot get the oil.

Q. Now, what I am trying to get, is why can't you get the oil?

A. Well, it is not being produced under proration, and there are some wells shut down because they don't want to sell it at this low price.

Q. What is the price now being paid for it?

A. Thirty cents a barrel for 40 gravity.

Q. And still there is not enough supply to cover the demand?

A. Yes, that is right.

Q. Then does the supply and demand have anything to do with the price in that particular field?

A. Well, it eventually will, no doubt, but right at the moment it does not seem to have had an appreciable effect, although we bought some oil a short time ago, a few days ago, at a little advance in the price, a little advance in the posted price.

Q. If you advanced your price a little above the 30 cents could you get some more oil?

A. Yes, it would be possible to get some more oil if you made it probably 10 or 15 cents a barrel.

Q. Did you state that there was less production this year than last year?

A. Yes, the production has gone down very materially this past year.

Q. I believe Mr. Beck asked you relative to the law of supply and demand at Smackover, didn't he?

A. Yes.

Q. And you stated that was the basis of the prices?

A. Yes, sir, yes; they had no proration there, just run it as they brought in the wells; they sold it for what price they could get for it until the price improved.

Q. What did they get for the oil there at Smackover during the flush period days?

A. As I recollect it, that oil was down as low as 40 cents a barrel, some of might have sold for a while a little below that, but it quickly went up to a dollar. I remember that just a little after there were ponds of oil around there and they were selling it at about 40 cents, a fellow laid a pipe line and the price of oil was so high he couldn't use it in the pipe line that he laid, on account of it going so quickly to a dollar a barrel.

Q. Who was that fellow laid that pipe line?
A. Mr. Bass.
Q. Bass?
A. Bass.
Q. What did he do with his pipe line?
A. He had to junk it.
Q. Was the law of supply and demand used at Seminole?
A. No, proration was supposed to be used there, but the field was run practically wide open.
Q. How low did oil get during the period of the Seminole flush production?
A. I don't recollect, exactly.
Q. Did it get as low as fifteen cents?
A. Oh, no.
Q. Two-bits?
A. No, it was—I think the lowest was about $1.50, about $1.45.
Q. During all the time you have been in the refining business or producing business, has oil ever during that time, prior to the year 1931, been as low as 15 cents?
A. No, sir.
Q. All right, Mr. Danciger, I have got two more questions. What is the actual cost per barrel to a refiner to refine a barrel of oil—crude oil?
A. Our figures show 8 cents a barrel—8.6 cents, I think. I would be glad to get that, but that is my recollection.
Q. That takes in, now, the labor, the depression, the producing of oil and all expenses of refining?
A. I think that is correct, but I would like to check it and give you the actual figures from our records.
Q. When can you do that?
A. I ought to have that here tomorrow, if you wish.
Q. Can you have that and offer it to me?
A. I beg your pardon?
Q. Can you have that and offer it to me?
A. Yes, I will have it and offer it to you.
Q. Is your plant a cracking system, or just a skimming plant?
A. No, skimming plant.
Q. All right; now here is a question: What does the refiner receive in dollars and cents per barrel for each—for the by-products of a barrel of oil?
A. Will get that from the records and give it to you; I can furnish you with that.
Q. Will you furnish that for us?
A. I will.
Q. At your plant, and using your process, what percentage of the barrel of oil do you make?
A. Well, we make about 20 per cent.

Mr. Hardy: Any other question?

Mr. Farmer: Yes, sir.

Mr. Hardy: The common people desire to ask you some questions, Mr. Danciger.

Mr. Farmer: Thank you, Mr. Chairman.

Questions by Mr. Farmer:

Q. Mr. Danciger, where is your home?
A. Fort Worth, Texas.
Q. We have never met, have we?
A. I have heard of you, Mr. Farmer, but don't recollect meeting you.
Q. Now, Mr. Danciger, in order to square things around here, in the interest of time, to stop this thing, or rather to start this thing moving on —now, they have asked the question and said that I couldn't put it, dared not put it. You were once in the saloon business, weren't you?
A. No, I wasn't in the saloon business; I wasn't in the saloon business —I was in the brewery business.
Q. All right. Now, Mr. Danciger, you are not a bootlegger of liquor today, but you are engaged in a business—

A Member: I object to the question.

Mr. Chairman: Just a moment, Mr. Farmer. If you have any questions to ask him relative to the investigation—

Mr. Farmer: That is a question, Mr. Chairman, that has been turned in here; they have started it through this House and circulated it. We have nothing to conceal or hide.

Mr. Chairman: Well, go on, Mr. Farmer.

Q. And you, Mr. Danciger, are engaged in the business of independent refining of oil, are you not?
A. Producing and refining.
Q. And you are producing other gasoline — gasoline and other products at the cheapest prices you can, are you not?
A. Yes, sir.

Q. And you are doing that in order to benefit the masses of the people and to make a little money yourself?

A. Well, I feel that I am doing a public service, in addition to carrying on a profitable business, Mr. Farmer.

Q. And where is your refinery located?

A. At Pampa, Texas.

Q. Now, you stated, Mr. Danciger, you had to go to court for your rights?

A. Yes, sir.

Q. Didn't the Federal court, in this last week, prove that you were right?

A. Yes, sir—not in my particular case, but proved my principle, for which I went to court, were absolutely right, sir.

Q. Yes. Mr. Danciger, when you store oil in tanks above the ground, there is physical waste, isn't there?

A. There is some, but I don't believe that it can be called waste, from the inside.

Q. And by evaporation?

A. There is some evaporation; but the storing of it in the right kind of tanks, it is rather negligible.

Q. Mr. Danciger, if we could pass some law at this session, get it in form of a proration law, that would increase the value of oil at 75, would that put not less than one hundred million dollars in the pockets of the major companies who have stored this cheap oil?

A. Yes.

Q. And where would that one hundred million dollars come from—from the independents or from the major companies—or from the masses of the people?

A. It would come from the consumers, undoubtedly.

Q. And they are the masses of the people.

A. They are the masses of the people.

Q. Mr. Danciger, do you know of any incidents where the major companies, who own all the pipe lines, have refused to deliver oil to independent refiners?

A. No, I am not posted on that to the extent that I can testify with any degree of certainty. I have heard that that condition existed, but I have never experienced it.

Q. Isn't it a fact, Mr. Danciger, that the major companies own 20—own 90%—of the filling stations?

A. That is my understanding, something in that neighborhood.

Q. And isn't it a fact that they give a differential of 2% to those who are using their products, who are in business for themselves?

A. I can't exactly state what that is, for the reason that we have no filling station, we sell it wholesale, and just what the arrangement is with filling stations, I couldn't say, Mr. Farmer.

Q. Isn't it a fact that the majors have practically all the pipe lines?

A. The great majority of them.

Q. Do you know of one pipe line in Texas that is a common carrier, that is owned by an independent?

A. No, I don't.

Q. Then the independents are at the mercy of the pipe line owners, are they not?

A. To a very great extent.

Q. Mr. Danciger, when the producers of East Texas are selling oil at 15 cents, and the pipe lines are making 400%, is that fair?

A. Well, it doesn't look fair, doesn't look at all equitable to me. I think the price of crude is abnormally low, I don't know just what the pipe line rate should be, but it seems to me it should be lower than it is now. That is about the extent to which I can answer.

Q. Isn't it a fact, Mr. Danciger, that because the price of oil is low, it is because the producers of Eastern Texas are in debt on their equipment,—on their wells, and on their leases, and have got to sell at a low price or any price in order to pay their debts, that there are many cases, Mr. Danciger, that if we had a moratorium law in Texas, by which the independents, of East Texas could stave off particularly debts on real estate, and let them stand for a period of two years, wouldn't that help the conservation of oil, and gas in East Texas?

A. I presume it would assist anyone along in their business to have a moratorium, as you say, and I would like to have one.

Q. It helped Germany, didn't it?

A. I beg your pardon?

Q. It helped Germany, didn't it?

A. That is my understanding.

Q. All right. Mr. Danciger, haven't the major companies the greatest portion of production in the State of Texas now?

A. That is my understanding, yes.

Q. Isn't it a fact that the major companies have now anywhere from 65 to 80% of the acreage leased in Texas?

A. That is my understanding.

Q. Isn't it a fact that if we give a proration law that they then could control the oil in East Texas, and then it would greatly benefit them, and put millions into their pockets?

A. I believe it would.

Q. Haven't the major companies almost 95% of the purchasing power of crude oil in this State? Yes, I believe that that is rather close.

A. Yes.

Q. Haven't the majors the power to stop buying oil absolutely?

A. Yes, certainly.

Q. Then if they have the power to stop buying oil absolutely, they could wait until its price was marketable, that is, up to the cost of production, could they not?

A. I don't believe I get the question.

Q. All right, Mr. Danciger, to put it a little more plainly—

A. Yes.

Q. Haven't the majors the power in their hands to absolutely refuse to purchase?

A. Yes.

Q. Until after the market demands are sufficient to pay the cost of production?

A. Yes, they have that.

Q. Then, if the majors should refuse to purchase oil in Eastern Texas, it would remain in storage, wouldn't it, in the ground.

A. No, there would be some of it shipped out by others, that have railroad facilities on some of the important lines, Mr. Farmer.

Q. Have you sold a surplus of oil in East Texas beyond the bounds of Texas?

A. Yes, sir, there is a little going through the Hadley Pipe Lines for transportation to Louisiana.

Q. Do you find it to the best benefit of East Texas to scatter it to the railroad lines?

A. We are not, but we are arranging for a loading rack, so we haven't it now, but are putting in a loading rack.

Q. Isn't it true, Mr. Danciger, that the Magnolia Company and others in East Texas have disregarded the so-called proration law that we have?

A. My understanding is that the — we know on lease offset runs they disregarded, also, I don't know that they have been the first to disregard it, or anything of that kind.

Q. Now, Mr. Danciger, the proration order that we have had in effect for a minimum amount over there, with the big wells, limited as to the amount of oil, that they cannot get more than $50 gross a day out of it, isn't that a fact—300 barrels at 15 cents a barrel would be $45?

A. Yes.

Q. Well, could one of those men over there with one of those wells, could he pay off a $25,000 debt before it came due, with $45 gross, the minimum on a well?

A. I don't think so.

Q. Then it becomes a distress condition as to the ownership of the wells, and so it becomes to the benefit of the major companies, who have the pipe lines entirely in their hands.

A. Yes, that would be the result.

Q. Mr. Danciger, wouldn't the best real conservation law of this kind and character, be the law that ought to be passed, requiring a man to take in a certain safe way from his acreage, a certain amount of oil, that he is entitled to, and refuse to allow him to take an amount over his fair portion for his acreage, and take his neighbor's.

A. Well, that is what is known as the unit system, but that could hardly be worked in East Texas, in my opinion, because those folks would have to surrender their property, certainly, to another institution, another company, or something of that kind.

Q. All right. We have shown that that question of proration, then, does not make it possible for an individual to pay his debts, says nothing of income, that under Rule 37, they passed a law which has been upheld by the Supreme Court of the United States that you can not drill within over 150 feet of a man's property, in order to keep him from taking from his neighbor, but we can have a sensible regulation, which is reasonable and not arbitrary. If we give the Railroad Commission authority to that effect, or could put that in logical terms by statute, that the theoretical assumption is correct, that a man has 8,000 barrels beneath his acreage, that no company or individual shall take more than 8,000 barrels from beneath his acreage, won't that solve the problem of conservation and protect everybody in their rights?

A. Well, that appears to be rather fair, but there is so much difference in acreage, so much difference in the value of leases, so much difference in the field, one man drills his well, and the other may not, there is so much difference in the underground position or conditions, there is so much difference in the oil on the structure, that where one man might produce 8,000 barrels, and another man may get from his wells, that part, some part, maybe, where his well may be producing 20,000, 30,000, 40,000 barrels, I don't think you could make a blanket rule of that kind, in my opinion.

Q. Then you think we should pass a law, the Railroad Commission now has power to make you drill these wells, but a law that will make these wells flow in such a way that they will protect the production for years to come?

A. No, Mr. Farmer; I think the man that knows best how to regulate the wells, is the producer that owns the lease, the operator that spends his money in drilling it and producing that oil, he ought to be the man to run his business. Within certain limits he finds by the Railroad Commission, in order to prevent all kinds of physical waste, that is my opinion.

Q. Do you think that it is fair to allow the major oil companies to go in there and with pressure, force out thousands of barrels of oil, to the detriment of the man who hasn't the money to buy this air-lift system?

A. Now, Mr. Farmer, I think you have said something that is hitting a little below the belt, I don't believe in that, and I don't believe they should be allowed to have an air-lift in the field to produce this oil. You might, under pressure conditions, or anything like conditions where oil was selling at—under a couple of dollars a barrel, that would be my judgment.

Q. Now, Mr. Danciger, back to the question of revenues—Mr. Beck asked you awhile ago something about the law of proration was robbing the State of Texas of a great deal of tax money. Wouldn't it be more reasonable for the State of Texas to put a tax of two cents on a barrel of oil, regardless of the price, rather than on the value of the barrel of oil.

A. I presume that it would procoure more money for the State right now; but naturally you can see that it would be quite a burden to the producer of 10-cent oil.

Q. Now, Mr. Danciger, the State of Texas gave us this great wealth in Texas, when the people didn't own it—didn't it?

A. Yes, sir.

Q. Do you think the State of Texas is now entitled to some of this wealth?

A. Yes, we know the State of Texas should get all of the revenue to the fullest extent.

Q. All right, Mr. Danciger, don't you think we ought to pass a graduated occupation tax, thereby helping conservation by putting an occupation tax higher on a big well than on a small well; for instance, you would tax one cent on a little well of 300 barrels, then on a big well of 10,000 barrels you would put an occupation tax on that of 40 cents per barrel for daily production, do you think these majors would run these big wells at full capacity when such an occupation tax had to be paid, when the price of oil was only 15 cents a barrel?

A. No, they wouldn't run their wells if the tax was too high.

Q. Then we conserve the supply, then, by that method?

A. Yes, that would tend to conserve it for big wells.

Q. Can all the independent refiners at the present time, Mr. Danciger, get all they want for their refineries, so far as you know?

A. Well, each locality has its own problem. Of course, I don't know about all the refineries, if they can get all they want.

Q. Do you know of any independent refinery shutting down now because they can't get oil?

A. I know the Miller Refinery did, ceased running, but it was of very small capacity.

Q. Why did it stop running?

A. On account of inability to get oil on a basis sufficient for them to run it profitably.

Q. The pipe line charge from East Texas to that plant is too high for them to get a supply?

A. Oh, yes.

Q. Even with oil at 15 cents in East Texas?

A. Yes.

Q. All right. Do you know, Mr. Danciger, of any physical waste of oil by any major company or independent company, where they are burning it up or throwing it in the ditch, throwing it away?

A. No, I don't know of any physical waste of oil anywhere?

Q. Mr. Danciger, isn't every barrel of East Texas oil now being conserved?

A. It is being used, I don't know that it is being physically wasted in any way.

Q. Isn't it being shipped to Washington on the Pacific Coast, and to Canada on the north of us, and New York on the east of us, and South Carolina on the southeast.

A. I understand it is going coastwise, Mr. Farmer.

Q. Yes. Isn't it a fact that Texas oil has been shipped to the Gulf Coast and been shipped to the Atlantic Seaboard?

A. Yes, sir.

Q. And isn't it a fact that Texas oil, cheap oil, is going thousands of miles by railroad in tanks beyond the bounds of Texas, to the North?

A. Yes, that is right.

Q. Mr. Danciger, do you think the farmers of Texas should offer—furnish 25-cent wheat to feed these people, and six to eight cent cotton to clothe them, and then by legislation force the price of gasoline and other refined products, up to be paid out of the 25-cent wheat and the six-cent cotton?

A. No, sir.

Q. That is unfair, isn't it?

A. I don't believe in discrimination of that kind, no.

Q. Is it fair, Mr. Danciger, for Tarrant County, and Parker, or any other counties that produce no oil, to be forced to pay this tribute to the major companies, so that South Texas and East Texas may have a higher price for oil?

A. No, I don't think there should be any discrimination.

Q. Are the independent refiners increasing in numbers?

A. Are they increasing in numbers?

Q. Yes, sir.

A. Yes, they are.

Q. Independent companies plan their oil refineries so as to have easy access to obtain its supply, isn't that a fact?

A. Yes.

Q. You promised to get figures on the cost of refining oil, and the price, approximately, of running it, and so on.

A. Yes, sir.

Q. Is there any other statement you want to make, Mr. Danciger?

A. No, I have no other.

Q. Thank you, sir, very much.

The Committee as a Whole here adjourned at 5:35 o'clock p. m., until the following Tuesday morning, July 28th, 1931, at nine o'clock.

(July 24, 1931.)

W. S. Farish was called as a witness, and having been first duly sworn by the Chair, testified as follows, on questions by Mr. Hardy:

Q. Please state to the Committee your name, address, and what position you hold at this time.

A. My name is W. S. Farish, address, Houston, Texas, president of the Humble Oil and Refining Company.

Q. You were called to appear before the Committee, weren't you, Mr. Farish?

A. Yes, sir.

Q. I think at this time, Mr. Farish, we will let you make any preliminary statement you desire to before any questions are asked. You may make your statement at this time.

A. Thank you. Gentlemen, as I understand this hearing, this is an inquiry, I take it, directed to an effort on the part of the Legislature through the House hearing to understand, to study, and to find out all the facts relative to the oil business that has a bearing on conservation. Judging from the press and comments I have heard, you have covered a rather wide field in this hearing, however, and have approached the whole question of oil, in my judgment, from every angle. So, before getting into answering of questions, I think it is perhaps desirable—certainly it is my desire—to try to give you, from my point of view, the recent history of the oil business, the major and pertinent facts that affected it, and its present status.

December, in the year 1924, will go down in history as a momentous or particular date in the oil industry of the world. Prior to that date the oil industry had been following its natural life, about as other industries—in general; in other words, the regulation of supply and demand, the planning of it, the continuity, ability to supply the demand, was left to chance, was left to hazard, and, naturally, under those conditions, the oil

industry had been going along about as well as any other industry. We were subject to periods of overproduction, without any effort to control, and we were subject to periods of under-production. The industry prospered in time of shortage.

During this period and up to the date in the year I mentioned, the whole effect of overproduction was more or less minor in its effect on general conditions, on general prices in the industry due primarily to the fact that prior, we will say, to use this same date, 1924, the oil industry of America had not discovered or had not been able to produce enough oil to seriously affect the general situation. It is true we had overproduction, overproduction in our local oil fields, overproduction that had been taken care of, if there was too great an amount of oil, by putting it into storage; it was physically possible to store the overproduction—and it was stored. That resulted always—that is, the area in these periods of overproduction, in local distress primarily, it made depression in the oil industry as obviously it is expensive to build tankage and storage, and this reduced the price. And these periods were gone through all in that manner. The result of this was that about the year 1924 we had accumulated in storage, all told, about 520,000,000 barrels. Since 1924 new factors have been thrown into the situation in every way, but notwithstanding throughout the period we had accumulated further storage—the industry has in storage about 660,000,000 barrels, that is, crude and products. Of these figures I am giving you, about 400,000,000 is crude and 260,000,000 is products, mostly fuel oil, gasoline, lubricating oil, and all other products. The thing to emphasize—in connection with the history of the business up to this period is, whether by chance or accident—surely it could be from no other reason—the industry has been able to take care of itself in a measure by storing surplus production. Mind you, prior to 1924, there was no effort within the industry, no extraneous effort on the part of the government, either Federal or State, or other conservation authorities, to put any restriction on production. We had some conservation laws—but we have got many other laws that were just laying there on the books—so that the industry was left alone to solve its problems as best it could, and naturally unrestricted in any way, it had full play. During this period, the industry had a constantly increasing consumption, which had tremendous effect on righting any upset on reestablishing values, though they had been depressed by certain floods of overproduction. So that through it all there was a natural healthy growth, expanding production, expanding consumption, expanding facilities of every kind. At this time, December 19, 1924, President Coolidge stepped into the oil business. He wrote a letter, creating the Federal Oil Conservation Board. I quote briefly from that letter:

"It is evident that the present methods of capturing our oil deposits is wasteful to an alarming degree, in that it becomes impossible to conserve oil in the ground under our present leasing and royalty practices, if a neighboring owner or lessee desires to gain possession of his deposit. Development of air crafts indicate that our national defense must be supplemented, if not dominated, by aviation. It is even probable that the supremacy of nations may be determined by possession of the available petroleum and its products. We are not today, however, facing an under-supply of oil. The production of our 300,000 wells is in excess of our immediate requirements. That overproduction in itself encourages its cheapness, which in turn leads to wastefulness, and disregard of essential values. Oil, of which our resources are limited, is largely taking the place of coal, the supply of which seems to be unlimited."

Further in the letter he says:

"The oil industry itself might be permitted to determine its own future. That future might be left to the simple working of the law of supply and demand, but for the patent fact that the oil industry's welfare is daily intimately linked with industrial prosperity, and the safety of the whole people, that the Government and the business of the country will join efforts to work out this problem of practical conservation."

Further on, in the conclusion of his letter:

"The members of the Conservation Board will call upon its technical offi-

cers and bureaus to be in all discussions or conversations safeguarding the national security through conservation of oil."

Gentlemen, I wish to emphasize that the writing of that letter and creating the Federal Oil Conservation Board was a signal, if you will, a danger signal, to the oil industry, that the national interest was excited, that they were not going to be permitted to carry on their fight, if you will, for survival under the natural laws of most of the business of our Government. He states frankly that the public interest is such that the Government should not permit it. Well, that letter was a bombshell, as I recall the incident, to the petroleum interest — the petroleum industry. Most of the industry at the time took the attitude that the letter was an unfair indictment of the industry. We were prejudged to start with, and we were condemned as an industry created through the practice and custom of reducing oil to possession. Well, now, the industry may have had something to do with the laws and practices and customs that created that attitude. But it did seem to me that it was unfair to charge that the industry was responsible for it. I will get to that a little later on in the statement. While at the time of the appointment of this Board, the industry happened to be in a period of fairly balanced adjustment — not absolutely, but relatively so. The year 1925 was a relatively fair year in the petroleum industry. The year 1926 was also relatively a fair year. During this period, however, the industry was subjected to the most intense study, to the most strenuous examination, and I might say right here that during that time that no industry in the United States—in the world, for that matter—has lived in the glare of the electric lights and in the public mind as the oil industry has. As Mr. Hoover said in Oklahoma several years ago the industry should live with glass pockets. I think it has, gentlemen. If there are things having to do with the petroleum industry that have not been published or offered or given to the public, why, I fail to see it, and I think the record is clear. We have lived in the glare of publicity such as no other industry.

We come to the year 1927. In 1927, most of you will remember, we faced a new period of real oversupply, overproduction of petroleum. This was a year of—of rapid development of the great Seminole field in Oklahoma; this was the year of the development of the Yates pool and the Winkler county field in Texas. Considerable oil was added to storage in that year. Prices were tremendously affected, values were affected all over. I state right here that values were not affected so much by reason of the volume of oil that went into storage, but were affected by reason of the threatened volume of oil going to come on the market of this State. That was the birth—what we call the birth of conservation of production. Seminole, in Oklahoma, was the first to feel the direct effect of the efforts to control production. It was effective only to a partial degree, but it was effective; values were saved, and the oil business itself was saved from real disaster. During this year the Yates pool was brought into production, and proration was started in the Yates pool. This was in the fall, the Yates pool came in and was producing considerable oil in the summer of 1927, and actual proration went into effect in October. At the time it went into effect, the Yates pool had large production from wells drilled, the wells were only about 1,100 or 1,200 feet deep, and in a very short time produced an immense amount of oil; so that this year, 1927, was the birth, if you will, of control of production. It saved the market, in a measure, saved putting oil in storage, saved waste in that year to the producer. On the whole, however, the year of 1927 was a hard year, or a relatively bad year, to the petroleum industry. Following this year, with its potential overproduction—that is, not actual overproduction—controlled to some extent—the years of 1928 and 1929 were both good years to the petroleum industry, the year 1929—that being the banner year for the oil industry. The conditions, then, in the petroleum industry, in the year 1929, were not ideal, were not entirely satisfactory, but the petroleum industry prospered by reason of the general prosperity throughout the country.

I notice, Mr. Hardy, it is two minutes to 12. I was asked to stop at 12 o'clock.

The Committee at 12 o'clock m. recessed until 2 p. m. of the same day, July 24, 1931.

The Committee of the Whole House met at 2 o'clock p. m. the same day, Friday, July 24, 1931, and resumed the taking of testimony, as follows:

Whereupon the witness, W. S. Farish, resumed the stand and further testified, as follows:

A. When we recessed at noon I had reached the state in reciting the history of the business, the year 1929. I repeat that that was a fairly successful year for the oil industry, but as a whole all of the conditions within the industry were far from satisfactory. The fact that the industry had a successful year was due, to restate it, primarily to the fact that all industries and all businesses were prosperous, and we got the resulting benefit in this oil industry.

The year 1930, following '29—which year of '29, you all recall, ended up with the collapse of values and prices the world over, beginning with the stock market — the year '30, of course, was the year of depression in the sense of commodity values—all values, in fact, and the volume of business generally. The petroleum industry suffered, as all industries suffered, during the year 1930, but the degree to which the petroleum industry suffered in the consumption of its product was, perhaps, less than any other major industry. As you recall, most industries had a tremendous shrinkage in consumption and shrinkage in volume of business in '30, and carrying on into '31. During the year 1930 the petroleum industry of America had an increase of 5 per cent in its consumption of gasoline, and in the total consumption of oil products we had a decrease of 2 per cent. Nineteen-thirty, from the balance sheet, in result of the oil industry, was a very unsatisfactory year. Nineteen-thirty-one, so far, for the first six months, we show a loss for the first time that I know of in the history of petroleum, in the consumption of gasoline, and, gentlemen, that fact is worthy of notice; the greatest friend—the greatest savior of the petroleum industry over the records of disaster in the past, has been the comforting volume of increased consumption of gasoline. For the first time in history, today the petroleum industry of America has a real decrease in the consumption of gasoline, that decrease amounting to 2½ per cent for the first six months, and a considerable decreased consumption of petroleum products, petroleum and all kinds of products of the industry, this year so far is 7½ per cent. This shrinkage in consumption, plus the general state of business and industry in the United States, plus the lack of confidence in our supply situation, plus the lack of control of the East Texas fields, brings us to where we are today, near to the bottom of the petroleum industry, today values are lower than they have ever been within my knowledge, taking the industry as a whole, and it has been my lifework for some thirty years.

To correctly understand the situation in the petroleum industry in America today, it is necessary that you have at least a brief review and understanding the petroleum situation the world over. I will try to be brief, but I think it is important that we have a complete picture. I know if I were in your position to act in this matter, I would want to know all the facts that are available. Briefly, then, gentlemen, the consumption of the world's petroleum is about 4,000,000 barrels a day. This is for all products and all petroleum —including casinghead gasoline; perhaps it is just under 4,000,000, but I used the round figure, 4,000,000 barrels a day. The consumption in the United States and through our refineries is about 2,530,000 barrels a day, perhaps, this year. The consumption abroad is the difference of about 1,500,000 barrels per day. The ratio of consumption, roughly, is two barrels in the United States to one barrel in all other countries; and that is about the rate of oil production. You must remember, in this connection, that the United States has, of course, a great volume—a much greater volume of automobile engines in use than all the rest of the world put together; and in the consumption of oil, the major product of the petroleum industry is gasoline. Our consumption of gasoline is in proportion to our number of automobiles, all of which works out to the equation of about two to one in the United States. So far as we can estimate it today, the petroleum reserve in the United States are placed at 10,000,000,000 barrels — that is, known reserve — that is the measurable oil that is recovered. The known reserve is placed at—that is, the known reserve of foreign oil—is placed at 20,000,000,000 barrels, or about two to one of that in the United States, just the reverse

of production today, and just the reverse of the consumption rate. Now, when we look at the world situation of petroleum, the most important thing, the thing that stands out first, is the fact that with the exception of the one little country of Roumania, today, the world's petroleum is conserved—the world's petroleum—that is, outside the United States—is produced and that production is held to the market. In the case of the Dutch East Indies, the Dutch government is fee owner, and the Dutch government shares in the money received from oil, and they see that there is no overproduction for their market. In Persia, the petroleum reserves in Persia are owned by Anglo-Persian Oil Company, the chief stockholders are the British government, and the petroleum reserves of Persia are held to meet the market demand. The amount of oil in Russia—it is all government, they control the reserves in Russia whether the government drills them or not. In Roumania, a small country, there is a small volume of oil, the maximum production, I think, is about 135,000 to 140,000 barrels a day. The situation is similar to what it is in the United States. In times during the past few years, they have tried to curtail production. At the present time they have been—in recent months there has been some competition between Roumania and Russia to see which could sell their oil cheapest, but in the main that competition is not very serious—not a very serious thing, because the total exports of those two countries are in the neighborhood of 100,000 barrels of oil approximately per day.

We come across the waters to South America. The most of the production in South America is unit control. By unit control, I mean single oil fields under control of one man.

In the industry, the case of Venezuela—this statement is not literally true, but it is practically true, in the sense that it is a big oil field, a tremendous oil field, similar to East Texas, similar geologically, similar in area, similar in reserves — controlled by three companies, and the operations held within reasonable bounds—they have pushed their products into the world's market in the last few years in an embarrassing manner, but when we take into consideration the area, volume of reserves, I am doubtful whether any criticism of the position they have taken in the consumptive market is too much; the production from that country today has been in the neighborhood of 300,000 barrels a day, the whole country with reserves considerably more than we consider we have in East Texas. The competition in petroleum today, gentlemen, and by petroleum I mean primarily gasoline, because there is a distinct limitation to the area of competition into which fuel oil can reach, the cost of transportation soon eats up the value of fuel oil—therefore, the range of oil area in the world's market is more limited than that of gasoline—but the products of oil, as gasoline and lubricating oil, today are perhaps more readibly available in any part of the world than any other product—transportation is cheap and the supplies are available the world over. I mean by that statement to point out that there is no local live market area for petroleum. An over-supply of gasoline in San Pedro harbor, in California, will fix a price of gasoline all over Europe. The abundance of gasoline on the market on the Gulf does today fix the price of gasoline the world over, that is the measuring stick on which to base it, just as most wheat contracts are based on the value of futures in the New York Board of Trade, and cotton values in New Orleans and New York. Today, Gulf prices rule the world. To repeat just a moment, with the exception of the breakdown in Texas today in control of production, the entire world is on the controlled production basis, with the exception of Roumania. And prices made on the Gulf, with the exception of distress oil from Cuba and the chaotic condition in East Texas, these prices rule. The next that I would like to present and, getting back, of course, to the United States, is some of the fundamental difficulties that face the oil producer. The oil producers do not create—you understand that Nature makes an oil pool—it may cover 1,000 acres, it may cover 15,000 acres, the Yates does—may cover 126,000 acres as East Texas does — but men and government make the subdivision on top of the land, and the difficulty, and the fundamental difficulty that the oil producer faces and has faced since the time oil and gas was discovered in Pennsylvania in 1860, is control of the conditions underground in connection with the conditions on top of

it. That difficulty has been solved in part, as I tried to point out, abroad; it is solved in some cases by government ownership of the field, in other cases it is controlled by the reserves being owned by one man, where it is under unit control. In this country this situation has been met in very few instances; in the main, our oil pipe fields are owned by many different owners. And under our law, under the custom in the oil industry that has grown up along this line, the owner of a certain fee has the right to take out on top of the ground on his land, all the oil and gas he can, he has got a legal right, or a legal title to the oil that he puts on top of the ground on his land, it makes no difference if he takes it from me or you, or you, that is his right; and the difficulties that follow from that right—is a fundamental difficulty in the producing industry, and it is back of our whole trouble in overproduction, and disorganized markets, followed by the waste and other things that go with it. The most efficient producer under this system is the fellow who can take most of his neighbor's property—and that is what it amounts to, legalized piracy; in other words, a fellow who was the best pirate, under the law, was the most efficient producer; and that is the trouble, except in so far as the new vision or new idea has been injected and, if you will, thrust on the industry following the appointment of the Federal Conservation Board, by President Hoover. The industry will have to look to new conditions and look at the problem. That is the problem today—or that is, I mean, the producer's problem. The success with which that problem has been met is pitiable. The failure to meet it, as I say, is not entirely the failure of the oil industry. I don't think you could charge the oil industry with failure in any respect. President Coolidge told us that our method of capturing oil created waste, and perhaps endangered the nation; and the industry ever since has been trying to get the situation in such shape that that remedy does—or that a remedy could be had for our method of capturing oil. Obviously the industry has different opinions on this subject; there are wild extremes of opinions on these subjects, but through it all an educational process has been going on, where, I daresay, today there is no company, there is no organization of real merit in the oil industry today that does not see and feel that the scientists, the engineers, geologists and economists have told us the story, have educated us—the industry—up to the point that—where we know that under controlled conditions, the producer can produce more oil from its property, he can produce it cheaper, and he can get more money for it. Delay has been had. The industry has found it hard to admit, has been unwilling to admit that they wanted any control, and control has been fought; but, nevertheless, progress has been made over the years to the point where we today have practical control over—or of the production of oil. The new California statutes do not take effect until August — next month. The California people tell me that with the present conservation practice in effect they feel their problems are solved. In Oklahoma the people feel their problems are solved. Here in Texas we have the question before us. You would perhaps be interested in a brief statement of the proration history in Texas—I don't know whether this has been told you or not, but I will make it short. Yates was the first field in Texas to be prorated. The first limit on Yates was by voluntary agreement; the Yates oil field was a large field with a daily production of a large volume from large volume wells. It threatened serious oversupply. There was no pipe line, no way to market the oil. My company had a pipe line system just finished a few months before into West Texas. We were a producer in the Yates field—I am sorry to say a minor one, but nevertheless we were a producer in the field, and we told the Yates producers that we would lay the pipe line into the Yates field and would furnish a market for 30,000 barrels a day of that oil. We could do it, and would do it, be glad to do it — but do it on the condition that the market of 30,000 barrels be divided ratably between the producers in the field. That offer on our part was the beginning of proration in the Yates field. It is in existence today. It has resulted in an outstanding example of prorated production, and low cost of production. The first order of the Railroad Commission embracing pro-

ration was in connection with Winkler county. Winkler was developed along in 1927, at the time Yates was. Winkler county was a little nearer the railroad. Winkler county had no pipe line; and in effort to produce as much as they could, as fast as they could and sell for whatever they could get, three or four lines were laid down to the railroad; they had no ready market; some of it sold for 30 cents a barrel; at that time the best price in Texas was 60 cents, and the Yates oil was selling at 60 cents. After the Commission's order our posted price was kept at 60 cents in West Texas in spite of this volume of oil.

Following the Winkler field—I know you are not interested, it is not necessary to go into all these orders. The proration in Texas has been under the guidance of the Railroad Commission and subject to their orders, and we progressed along and I would say as a whole, with a fairly good showing, reasonably good control was kept, particularly in West Texas. The Gulf Coast never did, never could measure up to the standard set by West Texas. The Panhandle has been noticeably a violator, and other areas have failed to function effectively, have violated the orders of the Commission.

The East Texas situation is perhaps the one live question before us. Everything was rocking along in very good shape, even with the indifferent control that we had. But there is a breakdown of control in Texas and in Oklahoma, due to the efforts on the part of some to enjoin the conservation authorities and take their troubles to the courthouse. The conditions in the petroleum industry would be entirely—would be in fairly good shape today, but for East Texas. Last fall East Texas began to show to some of us its possibilities. In December they were pretty plain. Now, I know from my contact with the various ones of the petroleum industry in Texas, those who are serious-minded, those who are real students, that they anticipated that East Texas was a major pool and was going to be the most serious overproduction situation in the history of Texas or any other State. They started their efforts, the Central Proration Committee, and the local committee was formed. That effort, as you all know, was made by responsible men; it was opposed on the part by some East Texas people, it was on the part of the Railroad Commission; and with this East Texas oil field, the biggest we have ever had in the United States, developing and growing daily, it was not until the first of May of this year that our Railroad Commission issued any order or took any official position as to the East Texas situation. From the beginning, the Railroad Commission's order has been ignored by quite a few. The Commission has been enjoined to the extent that overproduction in large quantities has existed as it did before the order and ever since the order was placed. Today I do not know what the production is in East Texas, and I don't suppose anybody does. I was told yesterday in my office, before I left Houston, that the East Texas people estimated the production of that field between 560,000 and 600,000 barrels, and I presume today is like yesterday, or perhaps a little worse; in other words, gentlemen, practically all the oil is being produced in East Texas that anybody can find any way to take care of.

I would like to state now, if I may, what has been the individual policy of my company—the Humble Company—in regard to this whole question. We were placed in the position, after the appointment of the Federal Conservation Board, of having to study and analyze the whole situation because of the fact that I was a member of the American Petroleum Institute, and I was immediately appointed a member of a committee of this Petroleum Institute to study and report on the petroleum industry, following the appointment of the Federal Board.

The immediate conviction we came to, because of the increased information and knowledge which these studies gave us, led us to believe that the market for the immediate future, going back now two years past, was not faced with any shortage of petroleum, but was faced with an oversupply of petroleum—I mean by an oversupply in this instance, an ability to produce over and above the market consumption — and we attempted, and our company attempted, to keep our policy of operations based on that conviction. We have attempted ever since to give up the effort to own or control small

tracts of land in any oil field in an effort to produce oil. We felt that we were facing a time and condition in petroleum when, if we were going to live as producers, and by "live" I mean live right, make a profit—that we would have to produce our oil more economically, we would have to produce it cheaply, and the only way we could do it, the only way we could produce it cheaper was to produce it more on the basis of unit operations, such as our competitors abroad were producing it. We are convinced, gentlemen, that a unit-operated pool, with gas conservation and repressioning, can produce oil at about one-fourth of the cost of the competitive line drilling operations we are all familiar with in our past history, and that in the end we would probably get 50 per cent more oil per acre from any given oil pool by such scientific production. We have not achieved the idea, we have made some progress toward it; but if the petroleum industry of America would operate its discovered oil fields on the basis of a unit-control production we could reduce our cost and get increased yield.

I would like to get into the record and read at this time a few statements issued by our company in the past, where we have changed our posted price of crude or our offer to purchase crude. The posted price is the price we offer the producer from day to day that we are willing to pay if he wants to sell to us. I would like to go back to the middle of the summer of 1929. The summer of 1929 was the most prosperous time, perhaps, for everybody everywhere in the United States, that we have ever had; commodity values were high, wages were high, there was more money in circulation, everybody was prosperous. The petroleum industry, however, in the summer of 1929 began to feel the change in the conditions. We had an average price of about $1.48 per barrel for 38 gravity crude in Mid-Continent.

Mr. Hardy: A dollar—how much?

A. $1.48; 46c I will call it. We had a value for tank car gasoline in Mid-Continent of 9¾ cents a gallon.

Mr. Hardy: Now, Mr. Farish, right along there, in talking about the Mid-Continent, will you state whether or not Texas, or any part of Texas, is in that Mid-Continent or not, so we might understand whether that is the Texas price?

A. Well, Mid-Continent includes North Texas and Oklahoma.

Mr. Hardy: All right.

A. And at the end of 1929—I beg pardon, did I say '29 there on those values?

Mr. Hardy: Yes, sir.

A. I want to make that '28, if you please—November, 1928.

Mr. Hardy: You started off with the summer—is that summer or November, 1928?

A. No, November, 1928; I want to get the figures back in November, 1928. In the spring, 1929, in April, the tank car price of gasoline in Mid-Continent area was about 7 cents a gallon, the posted price of 38 gravity crude was $1.27. In the summer of 1929, in June, end of June, and the first of July, the tank car price of Mid-Continent gasoline had gone to 8½ cents, the price of crude had gone back to $1.55, the price of crude remained at $1.55 until January of 1930. The tank car price of gasoline, carloads decreased to where it was six and a quarter cents in January, 1930. January 15, 1930, the Humble Company posted new prices for crude in Texas. They made this statement:

A. That price, gentlemen, was met by all the purchasing companies throughout the area, so that following, the price of 38 gravity crude was $1.37 a barrel. Following that, during the spring of the year, 1930, prices increased somewhat, to the point where gasoline went from six and a quarter to seven cents; we quoted an advance of 10 cents on the price of crude, that advance was April 10, 1930, and we said at that time:

HUMBLE OIL AND REFINING COMPANY

Houston, Texas

April 10, 1930

The advance in price of crude oil posted today by the Humble Oil & Refining Company is made possible by the improvement in the relationship between supplies of crude and refined products and market demand therefor and by the improvement in the wholesale market for gasoline.

The continued accumulation of stocks of refined products in the latter part of last year has been arrested by the reduction in refinery activity in line with the suggestion of the Federal Oil Conservation Board. Threatened accumulation of stocks of crude has been avoided through curtailment of production in California and Oklahoma and improved conditions in Texas.

The Humble Oil & Refining Company feels that its posted price for crude oil should be more sensitive to fluctuations in the wholesale price of products, particularly gasoline, than it has been in the past, even though this necessitates more frequent price adjustments.

Whether the prices now posted can be maintained or increased will depend upon the success of the industry in securing and maintaining a proper balance between crude supplies and the demand for refined products.

HUMBLE OIL & REFINING CO.
By W. S. Farish, President.

I might interject right there that the Federal Conservation Board sent an open request to the refiners of the United States to shut down operations one day in the week—otherwise to cut their production down one-seventh.

That advance was met by all purchasers in the area. That advance, however, for crude was maintained from January to October, and it was maintained at a loss to every purchaser of crude at the posted price; and the refined products, wholesale tank car gasoline, drifted downward from the seven cents, ruling at the time of the advance, to about five cents on October 16th. Now, during this particular period and during the latter half of 1929, it is my judgment that every buyer of Mid-Continent crude at the posted price paid more than it was worth—paid on the wholesale value of the product at the refinery, the refineries, in the interior as well as the refineries on the Gulf, and during this latter period particularly, now, from April 30th to October 16th, producers in Texas and in Oklahoma were selling their oil at from 10 to 30 cents below the posted price; numerous refineries were buying it and numerous refineries were selling their own crude and at a value equivalent of from 20 to 30 cents below the posted price of oil; so, during this period every purchaser of crude at the posted price, paid more than it was worth. On October 16th, 1930, our company made new postings, new offerings, to buy in Texas, and we stated this:

HUMBLE OIL & REFINING COMPANY.

Houston, Texas, October 16, 1930.

Proration involves cooperative effort between the industry and conservation authorities, state and national, to prevent waste in the production of oil and gas, and when successfully attained, results in bringing production in all areas into balance with the demand therefor. The practice of proration in new fields and unit pool operation alike make for reduction of producing costs; and when progress is made along these lines and supply and demand are balanced with producing costs reduced, it is manifest that both the public and the industry must benefit.

In no sense, however, does proration freeze prices or otherwise interfere with the free play of competitive forces. Competition will always exist between oils of different grades from different pools and in different localities.

When any considerable amount of oil is being sold from any field at less than the posted price (as is now the case in certain areas) the lower price establishes the market and readjustment of the posted price in the particular field must inevitably follow.

We cannot continue to pay more for crude than others are paying.

In view of the fact that crude oil from North Texas and Panhandle fields is being sold below our posted price we have no alternative but to meet such lower price by posting in these two fields effective today the attached schedule.

HUMBLE OIL & REFINING CO.
By W. S. Farish, President.

HUMBLE OIL & REFINING COMPANY.

Houston, Texas, October 16, 1930.

Price Bulletin No. 141.

Effective 7:00 A. M., October 16, 1930, subject to change without notice, Humble Oil & Refining Company will pay the following posted per barrel

prices for crude oil purchased and delivered for its account into the lines of Humble Pipe Line Company or other authorized receiving agency:

For North Texas Crude in Wichita, Wilbarger, Archer, and Northern Young Counties:

Below 25 Gravity	$0.65
29-29.9 "	.69
30-30.9 "	.73
31-31.9 "	.77
32-32.9 "	.81
33-33.9 "	.85
34-34.9 "	.89
35-35.9 "	.92
36-36.9 "	.95
37-37.9 "	.98
38-38.9 "	1.01
39-39.9 "	1.04
40-40.9 "	1.07
41-41.9 "	1.10
32-42.9 "	1.13
44-43.9 "	1.16
44 and above Gravity	1.19

For Ranger, North Texas, except as listed above, Mexia, Powell, Boggy Creek, Richland, Wortham, Lytton Springs, Currie, Moran, and Nocona crudes:

Below 25 Gravity	$0.72
25-25.9 "	.77
26-26.9 "	.82
27-27.9 "	.87
28-28.9 "	.92
29-29.9 "	.97
30-30.9 "	1.02
31-31.9 "	1.07
32-32.9 "	1.12
33-33.9 "	1.17
34-34.9 "	1.22
35-35.9 "	1.255
36-36.9 "	1.29
37-37.9 "	1.325
38-38.9 "	1.36
39-39.9 "	1.395
40-40.9 "	1.43
41-41.9 "	1.465
42-42.9 "	1.50
43-43.9 "	1.535
44 and above Gravity	1.57

Gray County Crude:

Below 29 Gravity	$0.60
29-29.9 "	.64
30-30.9 "	.68
31-31.9 "	.72
32-32.9 "	.76
33-33.9 "	.80
34-34.9 "	.84
35-35.9 "	.87
36-36.9 "	.90
37-37.9 "	.93
38-38.9 "	.96
39-39.9 "	.99
40-40.9 "	1.02
41-41.9 "	1.05
42-42.9 "	1.08
43-43.9 "	1.11
44 and above Gravity	1.14

Carson and Hutchinson County Crude:

Below 29 Gravity	$0.55
29-29.9 "	.59
30-30.9 "	.63
31-31.9 "	.67
32-32.9 "	.71
33-33.9 "	.75
34-34.9 "	.79
35-35.9 "	.82
36-36.9 "	.85
37-37.9 "	.88
38-38.9 "	.91
39-39.9 "	.94
40-40.9 "	.97
41-41.9 "	1.00
42-42.9 "	1.03
43-43.9 "	1.06
44 and above Gravity	1.09

For Crane, Upton, Crockett, Winkler, Pecos, Ector County, Texas, and Lea County, New Mexico, crudes:

Below 25 Gravity	$0.65
25-25.9 "	.68
26-26.9 "	.71
27-27.9 "	.74
28-28.9 "	.77
29-29.9 "	.80
30-30.9 "	.83
31-31.9 "	.86
32-32.9 "	.89
33-33.9 "	.92
34-34.9 "	.95
35-35.9 "	.98
36 and above Gravity	1.01

For Howard and Glasscock County crudes:

Below 25 Gravity	$0.65
25-25.9 "	.68
26-26.9 "	.71
27-27.9 "	.74
28-28.9 "	.76
29-29.9 "	.78
30-30.9 "	.80
31-31.9 "	.82
32-32.9 "	.84
33-33.9 "	.86
34-34.9 "	.88
35-35.9 "	.90
36 and above Gravity	.92

Gulf Coast Crude will be classified as follows in fields designated below:

Goose Creek, Hull, Boling, Liberty, Orange, Pierce Junction, Raccoon Bend, Barbers Hill, Sour Lake, Spindletop, Sugarland, West Columbia, and Humble crudes:

"A" Grade. All crudes conforming to the following tests:

Viscosity—Not less than 100 seconds at 100° F. Saybolt.
Sulphur—Not over .4%.
Beaume Gravity—Not over 25 at 60° F.

Cold tests of distillates having a viscosity of 1000 seconds at 100° F. shall not be over 5° F.

"A" Grade.....$1.15

"B" Grade.
Embraces all Coastal crude which does not meet the test for "A" grade crude.

Below 25 Gravity	$1.00
25-25.9 "	1.03
26-26.9 "	1.06
27-27.9 "	1.09
28-28.9 "	1.12
29-29.9 "	1.15
30-30.9 "	1.18
31-31.9 "	1.21
32-32.9 "	1.24
33-33.9 "	1.27
34-34.9 "	1.30
35-35.9 "	1.33
36-36.9 "	1.36
37-37.9 "	1.39
38-38.9 "	1.42
39-39.9 "	1.44
40-40.9 "	1.46
41-41.9 "	1.48
42-42.9 "	1.50
43-43.9 "	1.52
44 and above Gravity	1.54

For Refugio Heavy crude:

Below 25 Gravity.....$0.85

For Refugio Light crude:

25-25.9 Gravity	$1.03
26-26.9 "	1.06
27-27.9 "	1.09
28-28.9 "	1.12
29-29.9 "	1.15
30-30.9 "	1.18
31-31.9 "	1.21
32-32.9 "	1.24
33-33.9 "	1.27
34-34.9 "	1.30
35-35.9 "	1.33
36-36.9 "	1.36
37-37.9 "	1.39
38-38.9 "	1.42
39-39.9 "	1.44
40-40.9 "	1.46
41-41.9 "	1.48
42-42.9 "	1.50
43-43.9 "	1.52
44 and above Gravity	1.54

Mirando crude	$0.85
Salt Flat crude	1.15
Darst Creek crude	1.15
Pettus crude	1.15

Determination of quantity, deductions, adjustment for temperature, etc., on oil purchased in Texas, shall be in accordance with the rules and regulations of the Texas Railroad Commission, and on oil purchased in New Mexico shall be in accordance with the rules and regulations of the Corporation Commission of New Mexico.

HUMBLE OIL & REFINING CO.
By R. L. Blaffer,
Vice President and Treasurer.

Well, from October 16th on—this is 1930 we are talking about—into 1931, we had a constantly decreasing price; Mid-Continent tank car gasoline has drifted from the five cents, and five and a quarter cents, drifting downward, to the ruling price of perhaps 2½ cents per gallon today; some gasoline has sold as low as 1½ cents, casinghead gasoline is sold as low as 1½ cents today, and, of course, right along with it, crude prices have stepped down from the $1.37 that existed at that time, to where it is just a question of paying what you will pay today for it. That is true so far as East Texas is concerned. We made another statement—that was in October, 1930—I would like to read at this time the statement made in January, in East Texas, on behalf of the company—

Q. What year?
A. Dealing with this situation.

Mr. Satterwhite: What year?

Mr. Hardy: That would be 1931, bound to be—East Texas came in in 1930, he was talking about January.

Mr. Farish: There was a meeting held at Tyler, Texas, on January 15, 1931. The Humble Company representatives were present at that

meeting, at the request of those people, and at their request the Humble made the following statement: The point I wish to make here gentlemen, in connection with this market situation and underselling of the posted price in the fall of 1930 was that the industry was then in a state of demoralization. That was before East Texas came into the picture. On January 15th, at this meeting, our people read and presented the following statement, for me, as the president of the Humble Company:

INFORMATION CONCERNING OIL INDUSTRY.

The following was ordered printed in the Journal:

STATEMENT READ BY HUMBLE OIL & REFINING COMPANY AT A MEETING OF OPERATORS AND OTHERS HELD AT TYLER, TEXAS, ON JANUARY 15, 1931, AT THE CALL OF CARL ESTES.

As the holder of a large area of leases surrounding the Bateman well and lying between and in the general section near the Joiner discovery well and the Bateman well in Rusk county, Humble Oil & Refining Company is very vitally interested in the method and rate of oil production in the area. No one knows at this time, of course, how large or how rich the potentially productive area is, but it appears that large quantities of oil are present at places in the area. It is quite apparent to all that this area presents a serious threat of over-production; and unless some measures of restraint are adopted, serious conditions of waste will certainly result from pell-mell drilling and production. The large number of small tracts existing increase the dangers of the situation.

The benefits to the producers and royalty owners from stabilized, orderly production are no longer a matter of conjecture. Experience at Yates, Hobbs, Van and elsewhere has definitely proved the advantage of such methods. Needless drilling of wells is prevented, with material savings in the costs of production; and this is doubly important in the far-flung and widely owned potentially productive section of this area. The gas energy of the pool is utilized more effectively as a lifting agency, thus prolonging the flowing life of the pool, vastly decreasing the lifting costs, retarding water encroachment, preventing underground waste of oil and gas, and materially increasing the ultimate recovery and utilization of both oil and gas. Experience and knowledge of engineers who have worked on this problem show conclusively that recovery per acre can be increased as much as fifty per cent by conserving gas energy through slow and orderly withdrawals. Orderly development and production results in a balancing of production with consumption demand. This in turn avoids extravagant storage of oil with resulting losses in evaporation and costs and the consequent certain drop in the price of oil in the locality and the probable drop in the price of oil generally. Surely no one in this day will have the hardihood deliberately and of his own accord to enter upon a program of storage in the face of the existing underground reserves of oil and the bitter experience of those who are now loaded with storage oil. Orderly development and production also assures to all producers, large and small alike, a fair participation in the market outlet.

Experience has shown, also, that the local community gains equally with producers and royalty owners from orderly production. Rapid development and production result in local booms, in hothouse building and wasteful general growth, followed by depressing times of business failure, unemployment and actual want. It is not necessary to cite instances of these results. Orderly development and production, on the other hand, result in permanent growth and stability for the local community and in generally increased purchasing power and well-being.

To secure orderly development and lowered costs of production and to prevent the waste of oil and gas resulting from rapid development and overproduction, it is necessary that a rapid and close drilling of wells be discouraged. It is easily seen that production under present conditions can be raised far beyond the demand for oil in this area and nothing is to be gained, therefore, by the inordinately rapid drilling of the area through the use of methods of development employed in times past. It follows that slow drilling with widely spaced wells is desirable from every standpoint.

In other fields where conditions have been similar, results prove that a division of the available market among producers by taking the acreage factor into consideration and averaging the potentials of wells accomplishes this end.

Participation on the basis of potential alone will not accomplish the necessary result, but on the other hand tends to increase drilling in order that higher potentials be built up and greater participation thereby obtained. Considering the size of tracts in this area, we believe that a sane conservation program with equitable participation in the market outlet would be obtained by dividing the field into 20-acre units and permitting each producing unit to share in the market outlet ratably on the basis of the average potential of the wells located thereon.

The size and location of the Humble Company's holdings in this area justify the extension of its pipe line to serve its properties. This extension will be made. In the event a program of orderly development and production with proration along the lines above set forth is worked out by the operators and placed in effect by the Railroad Commission, this Company will undertake to provide a market for such quantities of crude produced in the area as it can use itself or for which it can find a market demand; and in such event it will run the oil of other producers along with its own production on the basis of the proration schedules so established. In the absence of an orderly program of development and production, it would be foolish for the Humble Company to attempt to serve the area generally. No good would result to us or to the producers generally. In the absence of such a program we would be compelled to seek to protect our own properties as best we could in the dog-eat-dog scramble for advantage in which the owner of each tract seeks to secure all the oil he can at once from the property owned by him whether it comes from beneath his property or is drained from his neighbor's land.

It is seriously to be doubted if any substantial purchasing company will feel justified in these times in seeking to provide a market outlet for the area in the absence of some effective Commission order for orderly production and proration.

HUMBLE OIL & REFINING CO.
By: W. S. Farish, President.

Gentlemen, that was January 15, 1931, of this year. Nothing happened, and the first Commission order, the first official act of the Railroad Commission was effective May 1, During the period from January to May, there was chaos, so far as orderly production was concerned in East Texas, as there is today.

On May 26, 1931, we changed our price again and made another statement. The Humble Company, anticipating the possible control of production in East Texas, and of orderly production in East Texas, posted a price for East Texas crude on April 21, 1931; and that price was the price existing throughout Oklahoma and the Mid-Continent for similar gravity crude. We attempted at that time, gentlemen, to post relative prices in Texas, and by relative prices, I mean prices of a relative value at the Gulf, and in the posting of this price for East Texas oil, and the readjusting of these prices over Texas, we made the following statement: "At the request of those in charge of the meeting at Tyler, January 15, 1931, Humble Oil and Refining Company there made a statement in which it expressed the hope . . ." etc.,

HUMBLE OIL & REFINING COMPANY.

Houston, Texas, April 21, 1931.

At the request of those in charge of the meeting at Tyler on January 15, 1931, Humble Oil and Refining Company there made a statement in which it expressed the hope that those interested in the new East Texas oil field would reap the greatest benefit from the oil resources in that territory and the belief that such profits would be received under some system of orderly and conservative production. It announced its purpose to enter and serve the field as a purchaser and transporter of crude in the event orderly production should be established in such way as to make such service by it physically possible.

The Railroad Commission of Texas has attempted to provide a method of orderly production for East Texas. We feel that orderly production will be beneficial to the district and that the best interests of both producers and royalty owners in the East Texas oil field will be served by the carrying out of any Commission order for orderly production. This company reiterates its purpose of cooperating with the constituted authorities in their conservation efforts in this territory.

Assuming that the proper organization and machinery for the establishment and maintenance of orderly production including actual allocation of allowable amounts of production will

be promptly set up with subsequent adjustments that will give East Texas a fair participation in the market, we hereby announce that we will purchase oil in the district ratably in accordance with allowable production percentages established by the Railroad Commission and its agents, and until further notice we will pay for such oil the prices shown in the attached schedule. Acting under such assumptions, we are proceeding to install gathering facilities to enable us to make connections to the properties of our customers and to start making purchases as soon as the Commission's order is actually effective. Pending definite determination of our allowable production by the Commission or its agents and in order to facilitate the working out of this program, we are restricting the production from our own wells to that necessary to fulfill our lease obligations and protect our properties against offset production.

The East Texas field appears to be the largest oil field that we have ever had in the United States and several times the size of any other Texas field. It apparently will cover approximately 100,000 acres of land highly productive of oil. The major part of our Texas oil is marketed at tidewater. This field is nearer tidewater than the majority of Texas oil fields. The oil is of good or perhaps slightly better quality than the average Mid-Continent or Texas crude of similiar gravity. The considerable quantities moving to market have already affected product prices. All these facts force the conclusion that the price of East Texas oil will control the price of all competitive oils. Low rail rates and pipe line rates are in effect for the movement of this oil to the Gulf, where the major part of it will naturally and economically find its market. Other crudes sold in the same market must sell at prices which make their delivered cost proportionate to the delivered cost of East Texas oil.

The discovery of this tremendous field has brought new problems before the industry, affecting not only the production and sale of crude and products, but transportation as well. Obviously numerous adjustments are necessary as a consequence of so important a development. Humble Oil and Refining Company recognizes that the sale of crude from older existing fields cannot continue without adjustments in the delivered cost of such crudes to a basis proportionate to East Texas. In an effort to effect some of these adjustments which are essential to the maintenance of the movement of oil from other districts, and to help producers in other fields to meet the burden of competition of East Texas oil, Humble Pipe Line Company is proceeding to reduce its tariffs affecting practically its entire system in connection with which our total delivery charges on crude oil will be reduced approximately 20%, effective as early as the interstate schedules can be made to apply.

The attached crude price schedule effective today reflects the attempt of Humble Oil and Refining Company, considering the confused conditions existing in present markets, to equalize prices of crudes in other fields in Texas with the existing Mid-Continent price being posted for East Texas crude and is based on the revised pipe line rates above referred to. This should make easier the marketing of oil from other areas in competition with East Texas, and will aid the Railroad Commission in its efforts to increase the taking of oil from these areas.

The maintenance of the purchasing policy here announced for East Texas and the maintenance of the attached price schedule for all areas in the State, are dependent upon better product values and upon the success of the Railroad Commission in the enforcement of its conservation program throughout the State.

HUMBLE OIL & REFINING CO.
By W. S. Farish, President.

HUMBLE OIL & REFINING COMPANY.

Houston, Texas, April 21, 1931.

Price Bulletin No. 145.

Effective 7:00 A. M., April 21, 1931, subject to change without notice, Humble Oil & Refining Company will pay the following posted per barrel prices for crude oil purchased and delivered for its account into the lines of Humble Pipe Line Company or other authorized receiving agency:

For Mexia, Powell, Boggy Creek, Richland, Wortham, Currie and East Texas:

Below 29	Gravity	$0.43
29-29.9	"	.45
30-30.9	"	.47
31-31.9	"	.49
32-32.9	"	.51
33-33.9	"	.53

34-34.9 "	.55
35-35.9 "	.57
36-36.9 "	.59
37-37.9 "	.61
38-38.9 "	.63
39-39.9 "	.65
40 and above Gravity	.67

For Ranger, North Texas, Moran, and Cooke County Crudes:

Below 29 Gravity	$0.33
29-29.9 "	.35
30-30.9 "	.37
31-31.9 "	.39
32-32.9 "	.41
33-33.9 "	.43
34-34.9 "	.45
35-35.9 "	.47
36-36.9 "	.49
37-37.9 "	.51
38-38.9 "	.53
39-39.9 "	.55
40 and above Gravity	.57

Gray County Crude:

Below 35 Gravity	$0.33
35-35.9 "	.35
36-36.9 "	.37
37-37.9 "	.39
38-38.9 "	.41
39-39.9 "	.43
40 and above Gravity	.45

Carson and Hutchinson County Crude:

Below 35 Gravity	$0.30
35-35.9 "	.32
36-36.9 "	.34
37-37.9 "	.36
38-38.9 "	.38
39-39.9 "	.40
40 and above Gravity	.42

For Winkler and Pecos County crudes	$0.35
For Lea County, New Mexico, crude	.35
For Crane, Upton, Crockett, Ector, Howard and Glasscock Counties	.30

Gulf Coast Crude will be classified as follows in fields designated below: Goose Creek, Hull, Boling, Liberty, Pierce Junction, Mykawa, Moss Bluff, Raccoon Bend, Barbers Hill, Sour Lake, Spindletop, Sugarland, West Columbia, and Humble Crudes:

"A" Grade. All crudes conforming to the following tests:

Viscosity—Not less than 100 seconds at 100 F. S.
Sulphur—Not over .4%.
Beaume Gravity—Not over 25 at 60 F.

Cold test of distillates having a viscosity of 1000 seconds at 100 F. shall not be over 5 F.

"A" Grade $0.70

"B" Grade. Embraces all Coastal crude, which does not meet the test "A" grade crude.

Below 25 Gravity	$0.60
25-25.9 "	.61
26-26.9 "	.63
27-27.9 "	.65
28-28.9 "	.67
29-29.9 "	.69
30-30.9 "	.71
31-31.9 "	.73
32-32.9 "	.75
33-33.9 "	.77
34-34.9 "	.79
35 and above Gravity	.81

For Refugio Heavy Crude:

Below 25 Gravity $0.60

For Refugio Light Crude:

25-25.9 Gravity	$0.61
26-26.9 "	.63
27-27.9 "	.65
28-28.9 "	.67
29-29.9 "	.69
30-30.9 "	.71
31-31.9 "	.73
32-32.9 "	.75
33-33.9 "	.77
34-34.9 "	.79
35 and above Gravity	.81

Mirando Crude	$0.60
Salt Flat Crude	.53
Darst Creek Crude	.53
Pettus Crude	.75

Determination of quantity deductions, adjustment for temperature, etc., on oil purchased in Texas shall be in accordance with the rules and regulations of the Texas Railroad Commission, and on oil purchased in New Mexico shall be in accordance with the rules and regulations of the Corporation Commission of New Mexico.

HUMBLE OIL & REFINING CO.
By R. L. Blaffer,
Vice President and Treasurer.

That, gentlemen, was our attempt, was our effort, to pay for the oil that producers were willing to sell us at what we considered equivalent and

fair prices. We voluntarily reduced our pipe line rates over the State 20 per cent. The effect of this reduction of 20 per cent in the pipe line tariffs was between 34 and 35 per cent on net earnings. It was a serious, studied and painful effort, if you will, on the part of our company to meet fairly the competitive situation brought about by East Texas and to deal fairly with the rest of the State. Conditions got gradually worse, however. Brave efforts were made to hold the fort, or to furnish a reasonable market for East Texas oil. During this period, it may be well to remind you this was the period of contract purchasers of East Texas oil. Some consumers, some refineries, took advantage of the opportunity and made contracts for quantities at as low as 35 cents a barrel below the posted price we were attempting to pay for East Texas oil. Contracts were made for millions of barrels, and the consequence was the price structure was destroyed. During this period I happened to be in New York, I think it was early in May or the last of April—it was in May, after the Commission had issued its order and had actually got into the effort to attempt to do something in East Texas, and I called a meeting of those available who represented or could represent companies interested in East Texas, either in the purchase of oil or in the drilling of it, and some twelve or fifteen companies were represented. I told them I had asked them to meet with us there and study and analyze the situation to determine what we could do to help put into effect and into working order the order of the Railroad Commission; how many men were willing to take connections, and how many of them were willing to do their part of taking care of this order. We all agreed it would be fine to take all the oil offered and go ahead with it, but didn't anybody do it. I don't blame them, because there was too much oil to take care of. There was no order; the order of the Commission was ignored, and there was no regulatory efficiency in connection with the proration effort, and so oil went begging and chaos reigned and grew constantly worse. Some twenty-six days after the Commission issued its order we made another statement, and we changed our price; that was May 26th, 1931.

HUMBLE OIL & REFINING COMPANY.

Houston, Texas, May 26, 1931.

On April 21, 1931, we posted prices for oil from the new East Texas field equal to Mid-Continent posted prices and announced a purpose to make connections and buy oil in the area ratably as soon as the Railroad Commission's order should be placed in effect. When the order went into effect we proceeded to carry out such policy and have increased our purchases until for some time now we have purchased at the posted price approximately 18,000 barrels of oil per day outside our own production. In our announcement of April 21, 1931, we said:

"The maintenance of the purchasing policy here announced for East Texas and the maintenance of the attached price schedule posted for all areas in the State, are dependent upon better product values and upon the success of the Railroad Commission in the enforcement of its conservation program through the State."

Both of the conditions stated have failed. Product values have declined seriously since that time. The Railroad Commission's order for East Texas has been obstructed and made ineffective. The order fixes the allowable production at 160,000 barrels per day. The actual production is in excess of 300,000 barrels per day; and of this amount approximately 220,000 barrels per day are moving at prices below our posted price, which has been 60 cents per barrel and above, depending on the gravity of the oil. More than 150,000 barrels per day are moving from this field at 35 cents per barrel and below.

In the face of this situation we have no alternative but to reduce our price. The principle on which we act was clearly stated in our price announcement of October 16, 1930, as follows:

"When any considerable amount of oil is being sold from any field at less than the posted price (as is now the case in certain areas) the lower price establishes the market and readjustment of the posted price in the particular field must inevitably follow.

"We cannot continue to pay more for crude than others are paying."

The attached schedule, which posts a price of 35 cents per barrel for East Texas oil of 39 gravity, contains a revision of the price for East Texas only. We are not at this time revising our posted prices for competitive oils being purchased by us elsewhere in the State

in the hope that orderly production may yet be established in East Texas in time to forestall the necessity for such revision.

HUMBLE OIL & REFINING CO.
By W. S. Farish, President.

HUMBLE OIL & REFINING COMPANY.

Houston, Texas, May 26, 1931.

Price Bulletin No. 146.

Effective 7:00 A. M., May 26, 1931, subject to change without notice, Humble Oil & Refining Company will pay the following posted per barrel prices for crude oil purchased and delivered for its account into the lines of Humble Pipe Line Company or other authorized receiving agency:

For Mexia, Powell, Boggy Creek, Richland, Wortham and Currie crudes:

Below 29 Gravity	$0.43
29-29.9 "	.45
30-30.9 "	.47
31-31.9 "	.49
32-32.9 "	.51
33-33.9 "	.53
34-34.9 "	.55
35-35.9 "	.57
36-36.9 "	.59
37-37.9 "	.61
38-38.9 "	.63
39-39.9 "	.65
40 and above Gravity	.67

For East Texas Crude:

Below 35 Gravity	$0.25
35-35.9 "	.27
36-36.9 "	.29
37-37.9 "	.31
38-38.9 "	.33
39-39.9 "	.35
40 and above Gravity	.37

For Ranger, North Texas, Moran and Cooke County crudes:

Below 29 Gravity	$0.33
29-29.9 "	.35
30-30.9 "	.37
31-31.9 "	.39
32-32.9 "	.41
33-33.9 "	.43
34-34.9 "	.45
35-35.9 "	.47
36-36.9 "	.49
37-37.9 "	.51
38-38.9 "	.53
39-39.9 "	.55
40 and above Gravity	.57

Gray County Crude:

Below 35 Gravity	$0.33
35-35.9 "	.35
36-36.9 "	.37
37-37.9 "	.39
38-38.9 "	.41
39-39.9 "	.43
40 and above Gravity	.45

Carson and Hutchinson County Crude:

Below 35 Gravity	$0.30
35-35.9 "	.32
36-36.9 "	.34
37-37.9 "	.36
38-38.9 "	.38
39-39.9 "	.40
40 and above Gravity	.42

For Winkler and Pecos County, Texas, crudes	$0.35
For Lea County, New Mexico, crude	.325
For Crane, Upton, Crockett, Ector, Howard and Glasscock County crudes	.30

Gulf Coast Crude will be classified as follows in fields designated below:

Goose Creek, Hull, Boling, Liberty, Orange, Pierce Junction, Mykawa, Moss Bluff, Raccoon Bend, Barbers Hill, Sour Lake, Spindletop, Sugarland, West Columbia, and Humble crudes:

"A" Grade. All crudes conforming to the following tests:

Viscosity—Not less than 100 seconds at 100° F. Saybolt.

Sulphur—Not over .4%.

Beaume Gravity—Not over 25 at 60° F.

Cold test of distillates having a viscosity of 1000 seconds at 100° F. shall not be over 5° F.

"A" Grade $0.70

"B" Grade.

Embrases all Coastal crude which does not meet the test for "A" grade crude:

Below 25 Gravity	$0.60
25-25.9 "	.61
26-26.9 "	.63
27-27.9 "	.65
28-28.9 "	.67
29-29.9 "	.69
30-30.9 "	.71
31-31.9 "	.73
32-32.9 "	.75
33-33.9 "	.77
34-34.9 "	.79
35 and above Gravity	.81

For Refugio Heavy crude:

Below 25 Gravity	$0.60

For Refugio Light crude:

25-25.9 Gravity	$0.61
26-26.9 "	.63
27-27.9 "	.65
28-28.9 "	.67
29-29.9 "	.69
30-30.9 "	.71
31-31.9 "	.73
32-32.9 "	.75
33-33.9 "	.77
34-34.9 "	.79
35 and above Gravity	.81

Mirando crude	$0.60
Salt Flat crude	.53
Darst Creek crude	.53
Pettus crude	.75

Determination of quantity, deductions, adjustments for temperature, etc., on oil purchased in Texas, shall be in accordance with the rules and regulations of the Texas Railroad Commission, and on oil purchased in New Mexico shall be in accordance with the rules and regulations of the Corporation Commission of New Mexico.

HUMBLE OIL & REFINING CO.
By R. L. Blaffer,
Vice President and Treasurer.

Following May 26th there was no improvement. Things went from bad to worse in East Texas, and we finally withdrew any posted price. We did that, gentlemen, because it was clearly indicated, gentlemen, that the Humble's posted price was just a mark to miss and it just furnished a price for other people to buy and sell under. So we withdrew all posted prices in East Texas, and told our customers that we would pay what we interpreted to be the average going price for oil, and that has been our policy since and is today in that field. Briefly, that is a review of the situation and a review of the Humble's attitude toward the whole question of conservation and proration. I would like to state that during this whole time we have always been convinced, and we have expressed our conviction in acts and in the spending of money, that we could not have orderly production and the prevention of waste without a control of production.

We have argued among ourselves at times the extent of this coutrol; how it is to be obtained, and what should happen.

My own opinion, and I might say the opinion of almost every board or committee that has studied this question, since the appointment of the Federal Conservation Board, have come to a similar conclusion, that the power and the right to exercise this control of production lies in the State. It does not lie in the Federal government, but it lies in the State. Production within a State, the lawyers have always held, is a matter subject to State control, and not for Federal control. The only place where the Federal government can touch the situation is through the enforcement of its so-called anti-trust laws, the Sherman act. The Federal government, as a great land owner, has led the way in this whole effort at conservation and proration. Our State governments have been slack. The constituted authorities have not exercised powers they have had, and the Legislatures of the States have failed to give them more, during this whole period of time, the past seven years.

The conclusions, as I say, of my own company, as well as the conclusions of any constituted committee I know anything about, have been all to the same end, and that end is that we cannot prevent waste of gas and cannot prevent the waste of oil without putting more power into the hands of the conservation authorities. California and Oklahoma have gone a little further and made some advances over the situation as existed in 1924. We have made very little here in Texas. We have made some, but so far as the control of a situation such as we have in East Texas we have made none. My company has taken the position every time, at every opportunity we have had, that more and additional power should be placed in the hands of the conservation authorities. The Humble Company is primarily a producer. The Humble Company's investments are practically entirely within the State of Texas. The Humble Company is a State-chartered institution. There may be one other major company that has a Texas charter, but I believe ours is about the only one. The Humble Company is essentially a Texas company.

The Humble Company was formed by Texas people in 1917, and is still run by Texas people. The Humble Company, in 1919, to secure market outlet for its products and to secure finances to capitalize its opportuni-

ties to produce and transport oil in Texas, sold a one-half interest in its then existing business to the Standard Oil of New Jersey for $17,000,000, and the capital stock was doubled and the money was put into the treasury. Since that time, in the early part of 1919, the Humble Company has secured outside funds and reinvested its own funds to a total of some $431,000,000 in Texas. We have developed and produced a production business that we are proud of. We have developed a transportation business that we are proud of; and we have developed a refining business that we are proud of. The Humble Company is not a large marketer of refined products; that is, a retail marketer. We sell in the State of Texas approximately 7 per cent of the gasoline that is sold in Texas. We sell in the State of Texas, I don't know how much lubricating oil is sold, but I know how much we sell of our own; we sell in Texas about 2½ per cent of the lubricating oil that we make. Our business is largely that of an exporter to Europe and to the Atlantic seaboard. The bulk of our products are sold to, through and by the Standard Oil of New Jersey, along the Atlantic seaboard and to Europe. We are primarily a wholesaler for refined products and primarily a merchant in crude oil, in that we buy and produce, roughly, about 240,000 barrels a day and we refine about 110,000; that is the relation. The Humble Oil Company has bought and is buying two and one-half barrels of crude oil in Texas for every barrel it has produced. The Humble Oil Company is buying two and one-half barrels of oil in Texas for every barrel it produces.

As I stated, and I want to make this clear: In all efforts, before this Legislature and before any committees of the industry, the Humble Oil Company has been a foremost, outstanding advocate of conservation and of the increased power in the hands of the conservation authorities. We believe in ratable production, and we believe it is only equitable and fair, and we believe it is a common law right which should become a statutory law in Texas, to prevent one man from taking the property of another in an oil field, by injunction and damages. We believe in ratable purchases, and we have advocated and been for every proration or control measure that has ever been introduced in this Legislature.

There is just one other thought I would like to state before finishing this statement, and that is this: I have heard and read in the papers a good deal about market demand. I don't know whether you gentlemen have studied the question and, perhaps, this is not the time to go into a discussion of it. But California and Oklahoma have felt it is necessary to do it, and they have done it in their laws. I don't care whether we call it market demand or the prevention of oil going to storage beyond what is necessary in the carrying on of business, but some way must be found to prevent the inordinate production of oil beyond the consumption. It is just as plain to me as any problem is, that if we produce more than we consume, somebody has to take care of it on the top of the ground, and, when that is done, it is a depressing influence on values, and usually it is in itself an act of waste. Therefore, I am whole-heartedly in favor of any type of restricted production to the consumptive demand. We have already in storage more oil than we can say grace over, and it is a problem we must face. We cannot expect to have order, and we cannot expect to have fair prices, and we can't expect to prevent waste, if we overproduce, and on this question of overproduction there is just one further thought:

Overproduction is really a very, very serious thing when we actually realize it, but frequently, my friends, it is a more serious thing to those of us who have it to sell before we realize it. I would like to illustrate that in this way: If we knew we were going to produce sixteen million bales of cotton in the United States this year, the present low price of cotton would look high, not because we have the overproduction, but because we know next fall we will have it. Now that same influence works in the oil business, and when we get on tap, if you will, in the Oklahoma City pool or at Kettleman Hills or the East Texas pool, immense quantities of oil, and we don't have the machinery of control and we don't know that that oil will be left in the ground until it is necessary to be consumed, you have the same influence you would have if the knowledge was current that we would have a sixteen million bale cotton crop. Threatened overproduction has been just as mean and just as bad an influence on values and

on conservation, if you will, in the petroleum industry, as threatened overproduction of cotton or wheat or any other commodity.

Examination by Mr. Satterwhite:

Q. Mr. Farish, you are familiar with the fact that it is alleged and charged that the major companies fix the market price for the raw products in crude oil. Will you state to the Committee how you fix those prices?

A. I think that is pretty apparent, or fairly well apparent, from the statements I have read, as to why we have changed our prices at certain times, but to deal with your question and the mechanics of the situation, we have what to us is an average realization for gasoline at our refinery. Now the value of crude oil . . . and other products . . . the value of the crude oil in the field is worth to us the value of the manufactured products, I will say, at the refinery, plus the cost of the oil, or rather, less the cost of the oil and the transportation and the manufacturing and so on. To illustrate, we will say the worked-up value of a refined barrel is $2. That is the gasoline, the kerosene, gas-oil, fuel oil, and so forth in the barrel. Our manufacturing cost would be 40 cents, transportation cost would be 40 cents; 20 cents to allow for profit, and we would offer a dollar a barrel for that oil.

Q. Are you prepared to give us exactly what the contents of a barrel of crude oil bring you, after it is refined, and all of its by-products?

A. I can give you that, yes.

Q. I wish you would give us that, please.

A. Well, now . . .

Q. Have you your auditor or some of them, can they give that definitely?

A. I can do that, but I simply want to ask a question to know how to get at it. The crude from one field has one value and the crude from another field has another value. Do you want any individual oil field, or the average at our refinery, or how do want it.

Q. Base it on thirty-eight or forty gravity, say, in the East Texas field, and the same grades in the North Texas field and the West Texas field; that is, will a thirty-eight gravity in East Texas produce about the same products that the thirty-eight grade oil in West Texas from the Yates field or the Winkler field?

A. Shall we start with East Texas?

Q. Yes, that's all right.

A. East Texas, 39 A. P. I. value. We get out of that crude 15.12 gallons, straight run gasoline.

Q. Make that statement again please.

A. We get out of that crude, 15.12 gallons of straight run gasoline; 9.75 gallons of cracked gasoline; that's 24.87 gallons of gasoline. Now, this is of date July 15th; we are getting for that gasoline wholesale, F. O. B. our refinery today, 2.888 cents per gallon. We get 3.15 gallons of refined oil, for which we are getting an average price today of 2.9429 cents per gallon. For Dissel oil, we get a cut of 66/100ths of a gallon, for which we are getting 2.375 cents per gallon. We are getting two grades of fuel oil; one crude bottom and the other a cracked fuel, and the cracked fuel totalling 8.69 gallons per barrel, and the crude bottoms, 4.20 gallons per barrel, for which we are receiving a price of 47.5 cents per barrel.

Q. You mean out of that barrel of crude?

A. That is per barrel; 47½ cents per barrel for the fuel oil.

Q. What do you get out of that barrel of crude? You are figuring your basis on the one barrel of crude.

A. I am giving you the set-up now. If you want it in price per gallons, it is 1.131 cents per gallon, and a refining loss of .43 gallon. The total of those figures would account for your 42 gallons. The gross value of that barrel to us today, refined, is 97.26 cents per barrel. Due to the adjustment in quality, because of anti-knock rating, we make a deduction of .0047 cents per barrel, making the adjusted value of the barrel 96.79 cents.

Mr. Beck: Is your decimal before or after the 9?

A. Before the 9. It's 96 cents; .9679; that is the value after it is refined. We have a manufacturing and overhead cost of 36.35 cents.

Q. What does that represent?

A. That is the manufacturing and refinery overhead; that includes the skimming and the cracking and the whole operation. That leaves a net value for the barrel at the refinery of 60.44 cents. We have allowed 13 cents, that being the last posted price

we paid for East Texas oil, 15 cents for the oil in the field. That leaves a value of 45.44 cents, without transportation. Now the transportation charges on this oil total at our refinery 38.65 cents. We estimate today we have an indicated profit per barrel at the refinery of 6.79 cents.

Q. That is basing the crude price on what?

A. Fifteen cents for the crude price.

Q. How then, will you trace that for us—you also have in the state a number of filling stations. That is, the Humble filling stations. Can you trace now on to what this gasoline should cost the consumer, based on 15 cents crude?

A. I don't know as I got that question.

Q. What is the reasonable profit that the consumer should pay when it leaves the refinery and goes out into the retail trade? What should the consumer be paying for his gasoline?

A. That's pretty hard to say, Mr. Satterwhite, what the consumer should pay.

Q. You have the total of what the retailer pays you at the refinery?

A. No, sir; that is the indicated refinery profit we have on this crude of about six cents a barrel. That gasoline, you must remember, is valued at the refinery, just under three cents. Now your question is, how is the retail price made up, starting with this three cents at the refinery?

Q. That is what I am trying to get at.

A. All right; the next item of cost would be to get it from the refinery to a bulk station; the average in Texas, or I can give you ours, if you had rather have it, is just under 15 cents a gallon, transportation on gasoline. So, say we will start at the refinery, at three cents, with three-cent gasoline and take one and a half cents for the transportation cost. The next item perhaps would be the bulk station expense. You know what a bulk station is—where the tank cars go in and unload and then the trucks go in and load and take the product to the retailer. The bulk station expense, I believe, ranges—my guess would be it ranges from as low as one cent to about four cents a gallon, and our average is a little over two cents and we still use two cents for this purpose, which is a little under our experience. The next item of expense in marketing gasoline is the retailing expense; filling station cost. Most dealers in the state today are getting four cents. It is costing most of us who are running our own filling stations that or more. I dare say four cents would be below the average cost, but we will use four cents, because other people are doing it at four cents, but I think our cost is a little higher, so you have a filling station expense of four cents. In addition to that, we have a general sales overhead, which includes the management, which includes the bookkeeping, which includes advertising, which includes bad debts, and so on, and it costs an average, in our judgment, of about one cent a gallon to carry a charge account, as an illustration. Assuming an oil company can hold that expense to two cents, you have an illustration of what it costs him, the average company that attempts to sell gasoline over any considerable area. According to my calculations, that is 12.5 cents. In addition to that, the refinery pays the four cents State tax.

Q. That would be 16.5 cents.

A. Yes.

Q. Not including the 4 cents?

A. Including the 4 cents.

Q. Then the retailer, on the basis of 15-cent crude, the sales price to the consumer, the average price today would be about 16 cents?

A. Yes, that's right. Taking the 3-cent refinery price to start with. Now that of course varies; of course there is a wide variance in your costs. Take for instance a local refinery in East Texas, a refinery right at home there, with very slight transportation cost, who doesn't reach out to sell his gas beyond the truck area, he is probably able to sell it at considerably less than that—nine and a half cents, we figure, and he may get it down to even 6 cents in a local area.

Q. Then what would be the ratio, if you were paying $1 for your crude?

A. Well, I can transpose that very easily; the barrel of crude—that is, assuming now, that you get the same, that the other products are made the same, and assuming there was no change in the fuel oil values, refined oil values or other values in the barrel, the barrel of crude—the difference between 15 cents and a dollar would be 85 cents. We convert here in Texas, or I will say what the average in the United States is—48 per

cent of every barrel of crude into gasoline, and that is about twenty gallons, and therefore, with no change or difference in the price or value of the other products, and absorbing all the difference in the price of the barrel of crude into the gasoline alone, that would make that 20 gallons cost, instead of 60 cents, approximately $1.45, and that would mean about 7-cent gasoline at the refinery. Four cents more.

Q. And about 20 cents to the consumer; the consumer, instead of paying 16 cents, would pay 20?

A. You are bringing the tax into it.

Q. That is including the taxes?

A. Yes, it would be advanced just about 4 cents above what it is today.

Q. Naturally, however, the fuel oil prices would have to be advanced?

A. You might get some advance, but one of the bad features of this situation is that fuel oil contracts are being made over two and three-year periods at these low prices.

Q. You have included in all of that what you get out of the lube, as well as all the other by-products that come from it?

A. No, there are no lubricating values in these figures I am giving you.

Q. What is the lubricating value out of a barrel of crude?

A. We are not using any East Texas crude to make lubricants out of.

Q. You don't use them for that purpose?

A. No, sir.

Q. Now, Mr. Farish, in the East Texas market—it is stated that the major companies make the market. Now really, who made the market in the East Texas field? I mean the market price, and the prices that the producers sell their crude at the well for? Who made those prices?

A. I tried to make that plain in reciting the history of East Texas. The Humble Company posted a price in April, attempting to make a market on the East Texas crude equivalent to the Oklahoma market, or the Mid-Continent market, so-called. We posted that price and we increased our connections and were buying and did buy through most of the month of May, 18,000 barrels a day at that price, 60 cents or above. But in April and May, numerous contracts were made to as low figures as we knew of, as 35 cents.

Q. While you were paying 60 cents, some contracts were being made at 35 cents?

A. Some of our competitors were paying only 35 cents. Who made that market, I don't know. I don't know that there is a market for East Texas oil; there is no recognized market.

Q. You paid 60 cents for your oil?

A. For what we bought.

Q. Naturally the oil from the wells that the Humble owned in the field goes to the refinery and to the outside markets, but the oil that you purchased over there, from other wells, you paid 60 cents as long as you posted that price?

A. Yes.

Q. Why?

A. Why did we do that?

Q. Yes, when others were paying less?

A. We did it in the hopes that we would have controlled production in East Texas, and that it would not be necessary to have a lower price.

Q. Well, did you know, at the time you were paying 60 cents that other companies were buying oil there for less money than 60 cents?

A. Yes, certainly we knew it.

Q. Why did you post the price of 60 cents; I believe you stated it was to meet the Oklahoma price?

A. Yes, I read that statement. Do you want me to read it over again; it's just as clear as the English language can express it, and I can probably make it clearly by reading it than by restating it in different words.

Q. No, that's not necessary; I believe you stated that you were making that price, posting it at 67 cents in order to meet the Oklahoma price; I believe that's what you said.

A. Yes, it is rather an involved matter.

Q. Here is what we are hoping to get at: Was the Humble Company responsible—in other words, did the Humble Company reduce the market price or the posted price in East Texas because of the fact that other companies were not meeting that price?

A. The Humble Company posted the first price for East Texas crude that was posted by anybody. At the time it was posted, considerable oil was moving to market, below that price. Contracts were made selling

it at much lesser prices, and posted that price with the involved statement at the time which I have read; that we reduced the pipe line rates and so on to try and establish a price, a posted price, a market price, for East Texas crude.

Q. Then these companies that were purchasing oil below the posted price of the Humble Company, naturally they were buying it from those who were willing to sell below the posted price of the Humble Company?

A. Certainly.

Q. Why were they able to make that sort of a contract, below that 60-cent price?

A. Well, it's a very simple and easy thing to do. Anybody that was willing to take the oil offered could buy it at almost any price. At the time these prices were being made in East Texas, I knew as a matter of fact that our company could have bought oil at 20 cents at the same time, instead of 60 cents. It was just a question of whether we wanted to tear down the house or try and hold it up, and we were trying to hold it up.

Q. Are you trying to hold it up now?

A. In East Texas? No, sir. It's hopeless—it's already down.

Q. Was it the producers of the crude then who made the East Texas market?

A. They, in connection with the fellows that were buying that oil at less than the posted price, were making it, yes, the two of them together.

Q. Then if I understand you, the market price in East Texas was the result of the fact that there was more oil being produced than the market would take?

A. Than the market equivalent, than the price equivalent to other oils, yes.

Q. Have you been able to take care of all the oil that has been offered in the East Texas field?

A. No, sir.

Q. Has the market as a whole been able to take care of that?

A. I understand considerable oil is going into storage, even though the prices are as low as they are now.

Q. What are the storage facilities now in East Texas which are not filled—not only in East Texas, but wherever these purchasing companies may be able to store it?

A. Do you mean the existing storage?

Q. Yes.

A. In the United States?

Q. Not only in East Texas, but elsewhere also?

A. It would be a guess, I don't know. We have 650,000,000 barrels of oil and products in storage, and my guess would be that there is another 200,000,000 barrels of storage that is empty.

Q. Your guess is now that there is 250,000,000 barrels' capacity that is empty now?

A. I would say about 200,000,000.

Q. About 200,000,000?

A. Yes, that is in California—that's all over the United States.

Q. Then do you know what Texas has—the storage facilities in Texas? Is that capacity all filled?

A. No, sir; there's some empty storage in the Panhandle and some in West Texas, and still some in the old Powell-Mexia area.

Q. So they can take care of that cheap oil for several weeks yet at that cheap price?

A. What cheap oil?

Q. This East Texas cheap oil.

A. No, it is not available to that tankage.

Q. You can't transport it to empty storage now?

A. No, sir.

Q. For what reason?

A. Because the line is busy bringing oil the other way. It is not practical to pump East Texas oil back to West Texas, because the lines are engaged in bringing West Texas oil in to the market.

Q. As a matter of fact, you are not bringing much West Texas oil to the market now, are you?

A. Yes, quite a little.

Q. You are not running your pipe line anything like your capacity from West Texas?

A. No, sir.

Q. Are any of the pipe lines doing that?

A. No, sir.

Q. The truth of the matter is that they are taking most of their stuff from the East Texas pool?

A. I don't know whether that is literally correct, but they are taking considerable. The Humble Company is moving about 230,000 to 240,000 barrels a day to market. We are pumping south from East Texas into the Humble's own possession, the

Humble's oil, and moving a little oil into storage at Mexia for another company, I think about 30,000 barrels of East Texas oil, and also moving about 40,000 to 50,000 barrels that we are moving east to the Standard of Louisiana, at Shreveport.

Q. Your statement then, is that your West Texas lines are not running to full capacity, because naturally the East Texas pool is nearer to your coast shipping points, and you can get it there for a cheaper price than you can bring your West Texas oil to the tidewater?

A. No, it is not that. The total amount of East Texas oil coming into our system today is 34,000 barrels, direct to the Humble, and we are moving, as I say, 40,000 barrels east to the Standard of Louisiana and selling it to them.

Q. That is your total, 40,000 out of Texas?

A. That is the total that has been going across the border, into Louisiana.

Q. Your total each day outside of Texas; you are shipping out of Texas how much each day?

A. Well, sir, that's pretty hard to say. I can't give you accurate figures on that. We are giving to the—selling to the Vacuum Oil Company some East Texas oil which they are moving out, and selling some to the Standard of Louisiana, and delivering to seaboard to various companies, a total of a little over 100,000 barrels of Texas oil a day.

Q. You refine what percentage of your purchases and production?

A. A little over 100,000 barrels, out of 240,000 a day.

Q. You refine a little over 100,000 out of 240,000?

A. Yes.

Q. Therefore you sell to the outside market about 140,000 barrels of crude oil per day?

A. Yes.

Q. Can you give us the percentage of the West Texas crude that you sell out of that 240,000?

A. We are actually delivering at the present time 67,700 barrels of West Texas oil, and I think we are consuming in our own plants 15,000 barrels a day. We are selling to the outsiders generally a little over 50,000 barrels.

Q. I believe you stated that the conservation laws should be sufficient as to equitably and ratably be enforced. Do you mean as that refers to the several pools in Texas?

A. Yes.

Q. Do you believe, then, that if a proper law, which could be enforced, should be passed, that when a new pool comes in that the ratable takings then should be equitably divided throughout the State as to these several fields?

A. Yes.

Q. You also believe that when you go into the field, a new pool or any other pool, that the pipe lines should take from each producer an equitable distribution of that production in that pool?

A. Yes.

Q. Especially where you can gather their oil?

A. Yes; of course, assuming that that field is prorated so that is physically possible.

Q. You stated a while ago that you did not participate in any fixing of prices for crude oil with other companies. In other words, you do your own price fixing. Do you lead the way or do you follow some other company when you fix your price?

A. The Humble prices have always been made by the board of directors of the Humble Oil and Refining Company.

Q. You state under oath that there is no agreement between you and any other company or companies, either directly or indirectly, with reference to fixing prices in any field

A. Yes.

Q. There is no code of ethics in marketing prices, fixing the market prices, that these companies follow?

A. No, sir, not that I have ever heard about.

Q. Well, you understand that that is generally believed to be the method of fixing the market price?

A. No, I do not. I don't believe it is generally believed.

Q. Well, it is alleged, however, that a few companies can fix the market price of crude oil. What about that?

A. I understand a few individuals make that assertion, but I do not believe it is generally believed.

Q. Well, it seems to be quite generally believed that the markets are fixed—that the oil business of the United States is really in the hands of a few companies and can be controlled. I believe it has been stated, since this hearing started, that—by one or two supposed to be competent

authorities—that the price of oil could be fixed and controlled by six or seven oil companies. What is your judgment about that?

A. I think it is impossible for any group to control or fix the prices. You might affect them by company policy, but they can't fix the prices of oil any more than the Federal Farm Board can fix the price of wheat. It is beyond their control. They just simply can't do it.

Q. Now, getting back to the conservation. Over in East Texas at this time, this morning I believe it was, I saw a map of several locations, ten, twenty and forty-acre blocks, with the wells plotted on them that are now being drilled and have been drilled, and I noticed that most all of those wells are drilled along the property lines, supposed to be about 150 feet from the property lines, and all inside there are no wells. That naturally is brought about because each leaseholder has to get over as near his outside line as possible, so that he can get as much of his neighbor's oil as possible, and after that well is put down and comes in his neighbor is forced to put down a well to protect himself?

A. That is the effect of it, in all competitive drilling or production. The line wells are probably drilled first. In other words, the fellow sets up the best defense he can against the other fellow taking his oil.

Q. That results in a mad race to drill the pool up as soon as it is discovered?

A. Yes.

Q. And that is the case in East Texas today?

A. Yes.

Q. In your judgment, if it could be reduced to one well per ten acres, do you believe that that would result in getting the oil from that pool in a more orderly manner?

A. Yes, but I hope it will be more than ten acres to a well in East Texas.

Q. In your judgment, what acreage would one well draw the oil from?

A. I think in the ultimate, and by the time the field is 80 per cent or 75 per cent produced, we will probably see one well to ten acres in that East Texas pool, but as long as the wells are producing and will produce many times the amount of oil that can be sold, it is an absolute waste to drill any unnecessary wells. Therefore, I think that the maximum that we should figure on today would be one well to twenty acres. We stated that in our January statement, at the meeting in Tyler, and recommended then that there be only one well to twenty acres drilled in East Texas.

Q. If the East Texas pool had been developed along that line, possibly it would have resulted in an overhead reduction of what per cent? In other words, to take the oil out of the East Texas pool in the most scientific way, it could be done at a cost of how much less than it will in the manner in which it is now being taken?

A. Well, my judgment would be—it is purely, of course, a matter of speculation and opinion — but my judgment is that the East Texas field could be developed orderly and ratably and the production balanced equitably between leases and the gas put back into the sand, which is now burning up, and we can produce more oil by 50 per cent that we will without that practice, and probably produce it for half the cost.

Q. Then you would save to the land owners of that pool—that is you would, that would result in the land owners of that pool receiving possibly ten times as much in royalty as they will receive out of it under the present method?

A. You are talking about dollars now. I am talking about the oil.

Q. Not the crude, but in actual cash.

A. Well, that is again a matter of speculation. But obviously, if you will get fifty per cent more oil, and under controlled conditions he is getting ten times as much for the oil, according to my calculations, he will get about fifteen times as much.

Q. Of course this is a matter really of the conservation of oil and gas in Texas, but isn't it your opinion that it is the duty of the State, along with that, also to protect the land owners if it can be done, as much as would be reasonable?

A. Yes. I believe it is the duty of the State, and I believe it is the duty of this Legislature to do two things to the oil producer. One is to put him in possession of his property rights, the same as any other property owner in the state has, and that you can do only by giving him a law to prevent the other fellow from stealing his property and by giving him the right to merge his interests with the other fellow in a co-operating pro-

gram, and the second is to control this overproduction to a reasonable demand.

Q. Can that pool be scientifically worked out, as to what the equitable distribution of that right would be? In other words, if I put down a well on my 20 acres, and you and the surrounding owners did not put down a well, is there any scientific way of figuring out how much of that oil you are entitled to under that 20 acres?

A. Yes.

Q. That could be equitably done?

A. I think so. I think that within a very small degree of error, the petroleum engineers, economists and geologists today, that the petroleum geologists and engineers today can tell us with a very small error of accuracy, how much oil underlies acreage in the various oil fields. When we know the sand conditions, when we know the bottom hole pressure, and when we know the viscosity and character of the oil, and the thickness of the sand and the porosity of the sand, and all the factors that should be taken into consideration, they can tell us pretty well how much oil can be expected to be produced from that acreage.

Q. Mr. Farish, how long have you been in the oil business?

A. I have been in it thirty years, all of my business life.

Q. Have you had experience in all of its phases?

A. Yes, I think so. I think I have been through the business from one end to the other. Started in a small way as a small operator, and I think I have been through all phases of it.

Q. Are you a native of Texas?

A. No, sir, I am a native of Mississippi, and came to Texas in 1901.

Examination by Mr. Beck:

Q. Mr. Farish, in outlining these questions I am going to take cognizance of some of the statements or rumors that are loosely or otherwise circulated about the lobbies of hotels by some people, but I do not seem to find it in the record. I have heard some state today that you, individually, are able to create or destroy more value in Texas by one stroke of the pen than any other man who lives in this state.

A. What was that statement?

Q. It has been stated in Austin today that you, by one stroke of the pen, can create or destroy more value than any other man living in this State. Is that a fact, or not?

A. No, sir. That is not a fact. I do not think I have the power within myself or as president of my company to create or destroy any values.

Q. I presume that that is based upon the fact that you have the ability or could, if you desired to, pay a higher price for crude oil than is now being paid, and that if you posted a higher price than is now being paid in the East Texas field in this State next day the other companies would follow this posted price?

A. Not unless they wanted to.

Q. Well, do they ordinarily follow?

A. They usually do, because we never, in our judgment, pay a posted price that is not justified by the economics of the situation, and by the situation existing in the area covered by the posting.

Q. Are you the largest purchaser of crude oil in this State now?

A. I think so.

Q. And you are the largest producer of crude in this State, are you not?

A. No, we may be one period, and the Gulf another. We are about on a par.

Q. Do you hold any consultation with any one other than your board of directors if you decide to name a change in the price of crude oil?

A. No, sir. When we decide to make a change but frequently, I discuss the conditions with the people of the Standard Oil of New Jersey who own sixty-five per cent of our stock. We sell these people, as I told you ninety per cent of the crude products, and we buy about fifty per cent.

Q. They have some voice in fixing the price that they will pay you for the refined products?

A. Why, certainly.

Q. The question really answers itself?

A. Yes, sir.

Q. But do they have any voice in the profit that you are willing to make as a handler of the products before they buy them?

A. I do not think,—I did not hear that remark.

Q. Do they demand, or do they determine the margin that, you, as the Humble Oil Company, or the Humble Company, must charge for the first handling or the assembling and refining of the oil?

A. No. They do not.

Q. That is determined without

consultation with the Standard of New Jersey?

A. Yes, sir.

Q. Does the Standard of New Jersey have large representation on your board of directors?

A. None at all.

Q. Are any of your directors likewise directors in any of the other major companies?

A. Myself, I am a director in the Standard of New Jersey.

Q. Is there any other interlocking directors?

A. No, sir.

Q. The question that seems to worry quite a number of people is this, as to why certain producers are willing to sell at less than the posted price. Will you tell us the reason for that?

A. Well, having been a producer, I do not know what anybody else would do, the question probably goes further than the first inference from your question. I take it that you mean by this, why an East Texas producer, or a North Texas Panhandle producer, as they did through the year 1930, sells his oil below the posted price. The reason he sold in the North Texas and Panhandle area below the posted price was because he could not sell it at the posted price. He could not sell his oil. Those companies who were buying oil, and paying the posted price, could not buy all the oil that was being produced there at the time at the posted price. And because the purchasers could not buy, and had not the capacity to take all of the oil that was being produced there at that time it was necessary for him to look around and attempt to find a buyer for his oil at less than the posted price. In a way that condition was forced on those producers. I do not believe that, speaking in general, that the producers in that area were willing to sell below the posted price. He did it as a necessity, in all probability. Now, over in East Texas the situation is one entirely of production. The East Texas producers, who sold below the posted price, were the producers who went out to make the price and get some money out of his oil. He is one of the fellows who thought he would probably be able to sell his oil by building a line out to the railroad and putting it on the cars and sell it, but he pulled down the house on his head, because the price structure was not strong enough to stand that strain.

Q. Who is it that imposes upon you or the other major operators all power to make the price at which you will buy?

A. It is a custom that has developed in the business. It is a matter of convenience. We buy oil, and make checks to, I do not know the number. It is innumerable. About ten thousand different people. We mail checks out for oil every month to ten thousand people, and it is a matter of physical impossibility to get in touch with all of these people. Therefore, the simplest way in which to handle that business is to publicly announce a posted price that we are willing to pay for oil. They are not obligated to sell to us. It is the freest market in the world and it is the only industry that I know of that deals with its raw products from day to day without future contract.

Q. Ordinarily, you make no future contracts?

A. No, sir.

Q. Oil is not sold short?

A. No, sir. The posted price system of buying oil eliminated the contract and the making of contracts for the future, and prevents any producer from being tied—he is able to turn his oil over to somebody else tomorrow and somebody else the next month or the next day.

Q. That is a custom of the industry just as peculiar to it as is the auction system is to the wool indusery?

A. Yes, sir.

Q. Just a buying process?

A. Yes, sir.

Q. Why has not the purchaser of oil not tried to dicker with the owners or producers of oil in the different fields in an effort to obtain or buy at the lowest price obtainable and make one price to one man and another price to another, according to his own necessity?

A. Well, sir, I think a little history might be appropriate at this stage of the game. There was a time in Texas when oil men paid—or when oil men bought on that basis. That was about fifteen years ago, or more. And particularly in South Texas. At that time the only market the producer had for his oil was to make a contract for about six months or a

year, and in order to do that he had to fix the price as the result of that the price of oil was fixed at the price which the purchasing company felt that it could pay on which to obtain a profit on his manufactured product. As a result of it being necessary to make contracts on long-time periods, the price of oil was fixed in the contract, but since then the contract as it has reference to oil has passed out of the picture, and the posted as now in effect has been the system of purchasing ever since. Under the contract system this matter of bickering and buying and selling for the highest possible price was reduced. The posted price system took away any doubt as to what the buyers were willing to pay for oil of a certain gravity, because we publicly announced to the world the price that we were willing to pay for oil, and that was when we announced the posted price.

Q. And under that system of posting the price, when you sent out the royalty checks to the widow woman who had a small holding, she was assured that she received the same price that was paid to the most adroit or smooth oil salesman in the business?

A. Yes, sir, she received the same price.

Q. It really afforded a protection to those uninformed in the oil business?

A. Yes, sir.

Q. There are men, and I confess that I am among them, who find some alarm in the tendency for giant mergers to occur, but as to the oil industry and the rest of the mergers that occur in that industry, is not that brought about on account of the low price of oil today?

A. I think that is the same with all industries in times of depression or loss, the tendency to merge is to be increased because the stockholders and individuals and the proposition of financing is more difficult, and they can frequently make savings, cut down his costs and adjust the cost of doing business that are primarily necessary by the process of merging and combining their interests so that overhead and operating expenses can be decreased. If there was no such action in times of stress and depression like this there would be a large number of small, as well as larger, companies that would be forced into bankruptcy.

Q. I will ask you if it is or is not a fact that you are now being tendered by small producers unable to get any financial assistance to surrender their properties to you at prices below what it is worth?

A. Where?

Q. All over the State.

A. They are not.

Q. They are not offering to sell out to you, or for you to take them over? The small operator?

A. No.

Q. Is there any of that occurring in East Texas?

A. Not that I know of. I do not know of any property that has been sold in the East Texas field that did not represent a handsome profit to the owner.

Q. Are you one of the executives that believes that the day of the independent operator has gone?

A. No, sir, I do not think that; I think the day of the independent, the day of the successful producer, be he independent operator or not, has today just as good chance as he's ever had. I think the tendency of the time has illustrated that, practically, taking the world over, except here in Texas, and to establish the value of property. Independent, as well as major, companies, as well as the producers, are primarily dependent upon additional production. And orderly production. I think if he is not given orderly production of his property, and protection of his property rights in the orderly development of his property, his chances of developing his wells and his property are as great as they have ever been. I have stated publicly in the past, and I will state here, that I had rather see my company own 50,000 barrels production in a controlled, orderly oil field, than to own 150,000 barrels production in the field that was not properly and orderly developed. I believe that more can be made out of it. I believe that that was true in the past, and I believe it today. I made that statement five or six years ago, and I believe it just as much today.

Q. I believe that you testified that your capacity was something like 196,000 barrels per day?

A. I said that we could handle about 240,000 per day. I did not state what our capacity was. I said that we refined about 110,000 bar-

rels. Our production in the State has been running about 90,000 barrels per day.

Q. Then you are buying approximately 50,000 or 60,000 barrels?

A. No, we are buying the difference between 90,000 and 240,000 barrels per day.

Q. Are you buying most of it from the independent oil producers?

A. Yes, sir.

Q. Practically all of it?

A. Yes, sir.

Q. You testified this morning that there was a known underground reserve of 10,000,000,000 barrels of oil in the United States?

A. Yes, sir.

Q. And that we have a storage above ground of approximately 500,000,000 barrels of crude?

A. About 660,000,000 barrels of crude oil at this time.

Q. And that would represent about one-eighteenth of the amount of oil that is not in reserve?

A. Yes, sir.

Q. Do you consider that unprofitable?

A. The amount in storage?

Q. Yes.

A. Yes.

Q. What condition has led to its accumulation above the demand?

A. Mostly on the part of the larger companies, but also it is an effort on the part of the larger companies to take care of production reserve.

Q. Did you participate in the conference that Mr. Holmes mentioned, in the conference that Mr. Holmes called to try to arrange the properties for the absorption of the East Texas oil field?

A. No, I attended a meeting—a conference that was called in New York. I made a plea in behalf of the Railroad Commission and that we ought to get the wells connected so that we could stop this practice of long contracts in the purchase of East Texas oil below the posted price.

Q. In other words, you did that in an effort to prevent a return to the system of buying oil fifteen years ago?

A. That is right—how was that question, now?

Q. In other words, you tried to avoid returning to the system of buying oil that prevailed among the purchasers of fifteen years ago?

A. Yes.

Q. Now, after you have posted a price in a given field, does that mean that you will absorb all the oil that is offered at that price?

A. No, sir. It means that we will absorb what we can handle, and buy at that price.

Q. But you do have a limit to what you can and will buy in a given field?

A. Unquestionably so. There is a limit to the market demand, and what that will be.

Q. That is true, also, of all other crude oil purchasers, is it not?

A. There is only so much oil in the different fields that anyone can take.

Q. Do you naturally have, among the larger purchasers of oil, some few at least who would like to gain for themselves a temporary advantage by underbidding?

A. Yes, there is always somebody in the oil business who is trying to cut corners.

Q. They are not all majors, and they are not all minors, are they?

A. No, sir, they are mixed.

Q. There are some minors who have been co-operating with you, to establish and to stabilize the industry, and some who are against you. And those who are against you usually tear up the playhouse?

A. Yes, sir. They are pretty well known to everybody in the industry.

Q. I realize that your ethics in business would not permit you to criticize the competitors, but where can we get hold of a list of those who are out of harmony with the proration program?

A. I would rather not go into that.

Q. Do you refuse to buy from the East Texas field from those producers that are producing against the orders of the Railroad Commission?

A. Yes, sir. We have in the East Texas field and in every other field constantly refused to do that.

Q. Have you been forced to make any outside contracts?

A. To get oil in the East Texas field — to get oil below the posted price. We have no posted price. I believe we have in one instance. One of our neighbors, the Tulsa Oil Company, had a well which they are trying to condition, and I think these are producing something like 12,000 bar-

rels per day. They insisted that we buy some of their oil, or that we run some of their oil. We told them that we would run some of it, but that we would do it with the understanding that we would take half of the oil, and that they would accept 10 cents a barrel for it. That is the only time that the Humble Company has made any agreement as to what price it would pay to any individual for oil.

Q. Now, while you do not have a posted price in the East Texas field, it is still a fact that you buy from everyone at a pro rata basis?

A. We paid everybody during the month of June 15 cents per barrel.

Q. Who is the Tulsa Oil Company?

A. I think it is a subsidiary of the Standard Oil Company of Kansas.

Q. Now, the point I want to make is that you stated that that was a subsidiary of the Standard. The Tulsa Oil Company is a subsidiary of the Standard Oil Company?

A. No, sir, I did not mean to infer that.

Q. It is a subsidiary of what Standard Oil Company?

A. The Tulsa Oil Company, as I understand it, is a subsidiary of the Standard Oil of Kansas.

Q. Are they in any way, directly or indirectly, related to the Standard Oil Company of New Jersey?

A. No, sir, in no way.

Q. Then you do not happen to be —then this does not happen to be a case of Standard Oil conspiracy?

A. No, sir.

Q. It is rumored and charged in various quarters that somebody brought about reduction in the price of crude oil for the purpose of forcing this Legislature to stop conservation measures.

A. It is absurd. It is untrue in every respect.

Q. It is stated that you are going to start a drilling campaign on your leases in East Texas.

A. Yes, sir.

Q. It is rumored here that you are drilling a great many inside wells in your East Texas field, is that correct?

A. We are drilling some, I do not know how many, but quite a few. The Humble Company is a large owner; in fact, we own some 20,000 acres of proven leases. Some of that is in large blocks and some of it is in relatively small blocks. We are drilling some inside wells. We are drilling those inside wells because up to date the Humble Company has not produced its percentage of oil that it owns in East Texas. It is a necessary obligation that the Humble Company owes to its lessors that they should do that in order that they should participate in the production of that field.

Q. You mean the royalty owners?

A. Yes, sir; we cannot in good conscience or good faith, hold property in East Texas and let them remain undeveloped when this production is being taken out from under their lands.

Q. Does that not lead to unnecessary production?

A. Yes, but it does not relieve the unrestricted production, or a pro rata production on the acreage basis. To make it clear, the Humble Company owns sixteen per cent of the proven acreage in East Texas, and as of July 8 we produced up to July 8th 9.7 per cent of the oil in East Texas.

Q. You mean that has been produced in that area?

A. Yes, sir. That has already been produced. We have not up to date produced our pro rata part of the oil in that area.

Q. By that you mean the allowable of the field, or not?

A. I mean of the total amount produced. Up to July 8th there was 35,000,000 barrels of oil produced in that area, and the Humble Company produced 3,425,000, or in other words, 9.7 per cent, and we own 16 per cent completed at that date 108 out of a total of 1148 wells.

That was a little less than ten per cent of the production. We are behind in the development of our property in the proportion of wells started. I have a sheet here which will show what I am talking about. It shows according to the figures that we have in acreage, the amount of oil that some twenty-nine producers had produced up to July 8th. On this point there is one fact that I would like to call your attention to at this time. Nineteen so-called major operators, that is, operators, major companies, or major acreage, on this date in East Texas, had completed 434 wells. Thirty-seven per cent of the total, and these same nineteen companies own fifty-seven per cent of the acreage and had produced 12,732,000 barrels of oil, or 36 per cent of the total production.

Q. Were all of those companies abiding by proration orders?

A. I am not sure of that. I know that some were not. Now 606 of the owners or operators owning the balance of 31 per cent of the acreage, 62 per cent of the wells had produced 63 per cent of the oil. This is a point that I want to try to explain clearly. Dividing now, the 606 operators, there were twenty operators of the next largest group, who were owners of 11 per cent of the acreage, and they drilled 173 wells, and had produced 15 per cent of the oil.

Q. Was that group abiding by proration orders?

A. Most of them were not. Dividing further, taking off the nineteen and this twenty, we have 586 operators who own 20 per cent of the acreage, and they had drilled 47 per cent of the wells and had produced 46 per cent of the oil. That is 586 who own 20 per cent of the acreage, and had produced 46 per cent of the oil. Of this 586 operators there were 334 operators and land owners who owned ten per cent of the acreage who had drilled no wells. Had none drilling, and had produced no oil. This leaves 252 minor operators or independents with ten per cent of the acreage, and 542 wells with 47 per cent of the total wells, who had a production of 17,000,000 or 48 per cent of the total amount of oil that has been produced.

Q. Was that group abiding by proration orders?

A. Evidently it was not.

Q. What is the effect of the drilling campaign, and on the owners of the 90 per cent of the acreage in that field?

RUSK-GREGG COUNTIES FIELD: PRODUCTION STATISTICS AND STATUS OF OPERATION

COMPANY	Number Prod. Acres	Per Cent of Total	First Production	Number Comp Oil Wells	Per Cent of Total	Daily Average Production	Per Cent of Total	Total Production Through July 8, '31
19 Major Operations—Total	69,770	57 082	.....	434	37 772	182,854	47.925	12,737,226
W. L. Hunt	2,233	1.827	Dec. 17, 1930	30	2 611	9,461	2 480	511,051
Cranfill & Reynolds	2,207	1 806	April 5, 1931	13	1 131	3,810	.999	786,849
Yount-Lee Oil Co	2,096	1 715	April 2, 1931	19	1 654	239	.063	231,840
Houston Oil Company	1,120	.916	April 14, 1931	22	1.915	5,640	1 478	669,203
Selby Oil and Gas Co	877	.718	April 8, 1931	2	.174	995	.261	18,660
Danciger Oil and Refining Co	636	.520	.....	.....	.....	.....	.....	.....
Devonian Oil Company	586	.479	April 16, 1931	5	.435	1,968	.516	104,137
R. H. and D. H. Byrd	524	.429	June 2, 1931	2	.174	.....	.....	4,529
Republic Production Co	507	.415	April 25, 1931	13	1.131	4,199	1.101	327,414
East Texas Refining Co	397	.325	Dec. 12, 1930	23	2 002	6,514	1 707	1,090,750
Ward Oil Company	395	323	April 26, 1931	6	.522	450	.118	81,943
Warner-Quinlan	386	.316	.....	.....	.....	.....	.....	.....
B. A Skipper & Lacy	365	.299	April 12, 1931	2	.174	250	.066	57,171
J. W. Campbell, et al	344	.281	.....	.....	.....	.....	.....	.....
Cordova Union Oil Co	344	.281	Mar. 9, 1931	8	.696	835	.219	186,894
Mamie Hammond	342	.280	Mar. 11, 1931	1	.087	.....	.....	3,132
Murchison & Golding	327	.268	May 6, 1931	9	.783	4,893	1 282	578,879
Navarro Oil Company	308	.252	Mar. 19, 1931	8	.696	1,398	.366	150,834
Woodley Petroleum Co	285	.233	April 13, 1931	10	.870	2,024	.530	398,111
Louisiana Oil and Refining Co	263	.215	.....	.....	.....	.....	.....	.....
20 Operators—Total	14,542	11.897	.....	173	15.057	42,676	11.185	5,201,397
586 Operators—Total	24,545	20.081	.....	542	47.171	156,013	40.890	17,084,068
Unknown	13,372	10.940	.....	.....	.....	.....	.....	.....
625 Operators—Total Field	122,229	100 000	.....	1,149	100.000	381,543	100.000	35,022,691
586 Operators—Divided:								
252 Minor Operators	12,455	10 190	.....	542	* 47.171	156,013	40,890	17,084,068
334 Minor Operators	12,090	9.891	.....	.....	.....	.....	.....	.....
Total	24,545	20.081	.....	542	47.171	156,013	40.890	17,084,068

Compiled: HUMBLE OIL & REFINING COMPANY,
Scouting Department,
Houston, Texas, July 10, 1931.

RUSK-GREGG COUNTIES FIELD: PRODUCTION STATISTICS AND STATUS OF OPERATION AS

COMPANY	Number Prod. Acres*	Per Cent of Total	First Production	Number Comp. Oil Wells	Per Cent of Total	Daily Average Production	Per Cent of Total	Total Production Through July 8, '31	Per of (T
Humble Oil and Refining Co	19,248	15.75	Jan. 23, 1931†	108	9.40	25,448	6.67	3,421,486	
Gulf Production Company	10,692	8.75	April 7, 1931	73	6.35	37,865	9.92	2,002,576	
Shell Petroleum Corporation	6,760	5.53	April 22, 1931	36	3.13	32,981	8.64	850,232	
Sun Oil Co	5,247	4.29	April 24, 1931	16	1.39	3,933	1.03	123,575	
Sinclair Oil and Gas Co	4,613	3.77	Mar. 3, 1931	32	2.79	13,547	3.55	1,084,098	
Mid-Kansas Oil and Gas Co	4,549	3.72	Mar. 28, 1931	20	1.74	3,643	.95	164,881	
Magnolia Petroleum Co	4,188	3.43	Mar. 9, 1931	55	4.79	15,981	4.19	1,407,366	
Arkansas Fuel Oil Co	2,725	2.23	Jan. 26, 1931	23	2.00	33,430	8.76	2,422,062	
Stanolind Oil Co	2,694	2.20	April 1, 1931	23	2.00	3,624	.95	509,329	
The Texas Company	2,574	2.11	May 13, 1931	8	.70	1,949	.51	59,245	
Empire Gas and Fuel Co	1,784	1.46	June 24, 1931	3	.26	125	.03	3,276	
Tidal Oil Company	1,184	.97	Mar. 2, 1931	23	2.00	6,965	1.83	616,399	
Amerada Petroleum Corporation	803	.66	July 6, 1931	1	.09	143	.04	1,001	
Prairie Oil and Gas Co	643	.53	June 1, 1931	2	.17	379	.10	11,067	
Continental Oil Co	503	.41	.....	.....	.....	.....	.....	.....	.....
Atlantic Oil Production Co	464	.38	May 18, 1931	3	.26	882	.23	35,140	
Vacuum Oil Company	464	.38	June 7, 1931	3	.26	1,068	.28	14,364	
Barnsdall Oil Company	379	.31	May 15, 1931	5	.44	891	.23	11,129	
Pure Oil Company	256	.21	.....	.....	.....	.....	.....	.....	.....
Total Major Operators (19)	69,770	57.08	.....	434	37.77	182,854	47.92	12,737,226	3
Other Operators (606)	39,087	31.98	.....	715	62.23	198,698	52.08	22,285,465	6
Unknown Operators	13,372	10.94	.....	.....	.....	.....	.....	.....	.....
Total Field (625)	122,229	100.00	.....	1,149	100.00	381,543	100.00	35,022,691	1

*Subject to correction.
†Bateman well taken over by H. O. & R. Co.

Compiled: HUMBLE OIL & REFINING COMPANY,
Scouting Department,
Houston, Texas, July 10, 1931.

A. No doubt they are getting some of their oil.

Q. You mentioned this afternoon, if I understood you correctly, some indifference on the part of the Railroad Commission getting a vigorous program of conservation in East Texas?

A. I stated—I do not know just how I did state it.

Q. I believe you called it indifference.

A. I may have, but it was at least lack of action. There was no definite policy taken, and no definite statements made by the Railroad Commission with reference to the control of the East Texas field.

Q. During what period of time?

A. From the time East Texas was discovered until along in April.

Q. How long a time was that?

A. About six months.

Q. Most of the depressing effect of overproduction in East Texas had been produced through an excessive drilling campaign from March 1st on down to about this date, has it not?

A. Will you state that again, please?

Q. Most of the drilling activity that has brought about the overproduction and which has resulted in the depressed price of oil, has occurred since March 1st, between that date and this, has it not?

A. I think so.

Q. That is correct?

A. I think so.

Q. What would be the effect of another ninety days of such drilling activity?

A. Uncontrolled production.

Q. As it is now?

A. That is part of the picture. There is between 550,000 and 600,000 barrels of oil being produced today, and I daresay that all of the oil that will be produced on that can be stored or shipped out.

Q. If that condition continues, or arrives, and I believe you have stated that it never has in the industry, what will be the effect upon those wells in East Texas which are now producing?

A. I would like to make this point. I say that it has never in the industry.

Q. Not in recent years?

A. I tried to make plain that there had never been an attempt to control production through conservation or otherwise in the history of our industry up to the year 1925. The difference in this field in East Texas, and which makes overproduction, is that we have East Texas overproduction, on top of a demoralized condition, a curtailment of proration only making possible orderly production in California and Oklahoma and East Texas is so big that it is simply impossible to store the oil.

Q. There are not proper facilities at this time to store the accumulation of oil from that field?

A. This is what we are up against, we are not physically able to store the oil that is being produced in East Texas at this time, and unless some orderly production can be brought out of this condition in East Texas, it will be an exceedingly difficult matter to handle it.

Q. Approximately what is the cost of erecting storage per barrel?

A. The cost of erecting steel storage can be taken care of at about 30 cents per barrel.

Q. What is the present price of crude oil in East Texas?

A. I think that you can buy oil in East Texas today at almost any price.

Q. Now, at the present rate of producing the East Texas oil, is it the general opinion that that will prove a short-life field in East Texas?

A. No, it is true that there is a lot of waste and a lot of gas energy being dissipated, but in our judgment the East Texas field has between a billion and a half and two billion barrels of oil that is recoverable.

Q. How much of that can be bought under present conditions?

A. We think that much will be produced under present methods, and we think if it can be properly controlled and the water encroachment headed off and the gas returned to the wells and to the sand, that fifty per cent more can be produced than will be under present conditions.

Q. There is some concern, and I have heard some member of this Legislature say that they would be opposed to any measure that would have the effect of increasing the selling price of gasoline to users. Now, with that in mind, there are a few questions as to that price. You have testified that you have produced 24.87 gallons of gasoline out of a barrel of crude?

A. Out of East Texas crude.

Q. That is approximately the same in other pools in Texas is it not?

A. It is approximately the same, as North Texas on 38 gravity light oil.

Q. Now then, if the price at the refinery went up two cents a gallon, you could pay 48 cents additional for the crude in East Texas, could you not, and still make more than you are now making?

A. Assuming that we have a corresponding raise in fuel oil.

Q. You mean 24 cents at the refinery if the other prices went up correspondingly?

A. But, if the other products, that is the price of the other products remained where they are at the present time it would be the equivalent of about 18 to 20 cents.

Q. Then, it is reasonable to suppose that if the price on gasoline went up two cents per gallon it would be the equivalent of a 63 cents price on crude oil in East Texas?

A. Yes, sir.

Q. And still leave you the same margin of profits that you are making at this time?

A. Yes, sir.

Q. Now, isn't it a fact that the gasoline price, and the price of refined products have not immediately responded to the low price of crude. Is there not always a lapse in that adjustment?

A. I thought I made that plain in my detailed history in the production and purchasing over the two last years.

Q. Now then, there is another proposition that I want to ask you about, that is, that the refiner still gets 30 cents a quart, and perhaps more for some of the more popular brands of motor oil for automobiles. Will you kindly explain the reason why that has not come down in keeping with the price of crude oil?

A. I do not know whether I can explain it or not. The lubricating oil that is selling today at the filling stations for thirty and thirty-five cents per quart. I would like to say that you can buy wholesale in tank car lots at eighteen to twenty cents a gallon, or about five cents a quart, and the difference between the value of that lubricating oil at the refinery, at wholesale, is the price that we pay the filling station, the price that we consumers pay for extra service, for advertising, and so on. It is the price of service, that is the cost of getting somebody with a uniform to pour a quart of oil in your car for you any time you drive up to a station. I buy my lubricating oil by the barrel.

Q. When all is said and done, it is a fact that if the public demands advertised and popular brands and known brands of lubricating oil, and is willing to pay the price, it will help you to reduce the price?

A. It is the price the public is willing to pay for advertised package products, if you will, and actual experience, as I am told by the biggest advertisers in the United States, is that the lower the price, the lower the sales.

Q. And you will not reduce the price of that lubricating oil and the price of refinery products until you have to?

A. No, sir, not if we can sell it.

Q. What is your sale price on lubricating oil—that is, the posted price of lubricating oil in barrel lots to a retail consumer?

A. I think it is 60 cents.

Q. Sixty cents?

A. A gallon.

Q. Who is the Federal Conservation Board, Mr. Farish?

A. The Federal Conservation Board is the Secretary of the Interior, chairman; Secretary of War, Navy, and Commerce.

Q. Have they any authority to make rules and enforce them?

A. No, sir.

Q. Except upon government owned land?

A. No, sir. I think they are under laws, under the control of the Secretary of the Interior.

Q. The Secretary of the Interior acts upon the price of products?

A. Yes, sir.

Q. What is the required plant investment in a refinery, the amount per barrel capacity?

A. That is subject to an awful wide fluctuation.

Q. Well, in a modern plant?

A. A modern plant for the cracking of oil, making lubricating oil in proportion, I would say, about $450 per barrel.

Q. Per barrel capacity today?

A. Yes, sir. That is, approximately.

Q. Would you care to state to this Committee your opinion as to what sort of a body should be put in charge of the conservation of petroleum, Mr. Farish?

Mr. Beck: Mr. Farish, you need not answer that question unless you wish to do so freely.

A. I would be naturally willing to answer the question. I would like to say, though, when answering that question, I don't want my statement to be made as any reflection on the gentlemen who are now on the Conservation Board.

Q. A little louder, please.

A. I say, in answering the question, I don't want it to be put down that I am intending any criticism of the gentlemen who are now administering our conservation laws, which is the Railroad Commission. My opinion is that the conservation of oil and gas is a big problem primarily, a most difficult problem, a problem demanding intelligent effort and work of the most capable business men and technical men; and it is a problem that is primarily a State problem—in other words—if they do anything for the conservation of oil and gas, and the proper handling of production, dealing with oil and gas, it is a job that is big enough for anybody. I think the men who administer that law and attempt to regulate our industry—and that is what it means—it means to regulate the oil industry—ought to be given as much time as possible; they ought to be out making efforts at conservation, they ought to be forestalling the vigorous producer. The job is so big and so full of details that they should have a commission of the ablest men they are able to secure in the State today, I don't care who they are, I don't know of anything that is as vital to the prosperity of Texas, and all Texas, as these questions that they have got in oil. It means more to the commercial life of Texas, than any other activity in the State, more than anything else; therefore, if we are going to be regulated, if this Commission is going to be effective in dealing with this problem, it ought to know how to do it, it ought to be the strongest, ablest commission we can secure in the State.

Q. Do you think the welfare of the State is served in any of the oil fields where it takes from three months to six months to start action on conservation programs?

A. No, certainly not.

The Committee of the Whole here adjourned at 5:25 o'clock p. m. until 9 o'clock the following morning, Saturday, July 25, 1931.

Saturday, July 25, 1931.

Whereupon the Committee of the Whole convened in session at 9 o'clock a. m., Saturday, July 25, 1931, and the following proceedings were had:

Mr. Hardy: We would like to have Mr. Farish take the stand.

Thereupon W. S. Farish resumed the stand and further testified as follows:

Questions by Mr. Hardy:

Q. Yesterday afternoon, when we quit, Mr. Farish, you were answering rumors, and either denying or affirming the rumors that were running around hotel lobbies. Now, let us get down to the matters of fact instead of rumors. It is true, isn't it, that the posted price of the Humble Oil and Refining Company and Humble Pipe Line Company oil is generally always equal to or more than the market price of oil, isn't it?

A. What do you mean by market price?

Q. Well, I will ask you then, what is the market price of oil?

A. The market price of oil in any given field, I would take to be the price that the majority of the oil or biggest part of the oil is moving out, being sold at. On that basis, I would answer your question, yes.

Q. Then the Humble Oil Company is one of the largest purchasers—is the largest purchaser in Texas, isn't it? And you, under your statement that the market price is what the greatest amount or greatest portion of oil is being sold at—the Humble Oil Company's posted price is generally always equal to or more than the market price, is that correct?

A. Yes, sir.

Q. The Humble posted price is set by whom?

A. By the board of directors of the Humble Oil and Refining Company.

Q. Of which you are one of the members?

A. Yes, sir.

Q. Did you have a meeting of your directors and set the Texas price, your posted price, as it is raised or lowered each time?

A. Yes, sir.

Q. Do all the stockholders participate in that meeting, or is that mere-

ly a meeting of the board of directors?

A. A meeting of the board of directors.

Q. Did I understand you to say that the Standard Oil Company of New Jersey was the owner of approximately 85 per cent of the stock of the Humble Company?

A. Owner of approximately 65.

Q. 65 per cent? Do you ever consult with the Standard Oil Company of New Jersey before you set the price for crude or post a price?

A. Yes, sir.

Q. How often?

A. Well, at times we discuss the whole question of relative values with the members of the Jersey company who are directly informed on the subject.

Q. Are any of those persons that you are speaking about stockholders or directors in the Humble Company?

A. No, sir.

Q. They are not? However—

A. Except through their company.

Q. Except through their company, except through the Standard of New Jersey?

A. Yes, sir.

Q. They are not directors, though, of the Humble Company?

A. No, sir.

Q. They own 65 per cent of the stock, and therefore can control the actions of the Humble Oil and Refining Company, though, can they?

A. They can fire the directors.

Q. Is it possible then that they can do that?

A. Yes, sir.

Q. The board of directors' actions must be considered to the interests of the Standard Oil Company of New Jersey, is that correct?

A. The control of the majority of the stock unquestionably gives them power to elect new directors at any annual meeting.

Q. Are there any other Standard Oil Companies in Texas or subsidiaries thereof?

A. I don't know—there is no other subsidiary of the Standard Oil of New Jersey.

Q. Are there any subsidiaries of any other Standard?

A. I presume so. I cannot testify as to the official relations, however, of any other company.

Q. Are you a stockholder or director in the Standard Oil Company of New Jersey?

A. Yes, sir.

Q. Both?

A. I have some stock in the Standard Oil of New Jersey; I have to have a qualified share to be a director.

Q. You are, then, a director?

A. Yes, sir.

Q. Are you a director or stockholder in any other Standard Oil Company—or Standard Oil Company besides the Humble?

A. No, sir.

Q. Do you know whether the Atlantic Refining Company is a subsidiary or not?

A. Do I know what?

Q. Do you know whether the Atlantic Refining Company is a subsidiary of any of the Standard companies?

A. Do you mean the Standard of New Jersey? I know it is not a subsidiary of the Standard of New Jersey.

Q. Is it a subsidiary of the Standard of Indiana?

A. I don't think it is — I don't know.

Q. Do you know whether it is a subsidiary of any Standard company or not?

A. I am sure it isn't.

Q. You are sure it isn't? Is the Ohio Oil Company a subsidiary of any of the Standard companies?

A. I don't think so; I am pretty sure it is not.

Q. Is the Prairie Oil and Gas Company a subsidiary of any of the Standard companies?

A. I think not.

Q. Is the Prairie Pipe Line Company?

A. No, sir.

Q. How about the Standard Oil of California?

A. An independent company.

Q. Is it a subsidiary of the Standard of New Jersey?

A. No, sir.

Q. Is the Standard Oil of Indiana in any way connected with the Standard Oil of New Jersey?

A. No, sir.

Q. Is the Standard Oil of New York in any way connected with the Standard Oil of New Jersey?

A. No, sir.

Q. How about the Vacuum?

A. No, sir.

Q. How about the Standard Oil of Ohio?

A. The Standard Oil of Ohio is—I think the Standard Oil of New Jersey owns some small stock in the Standard of Ohio, recently acquired.

Q. What percentage of the stock of the Standard Oil of Ohio belongs to the Standard Oil of New Jersey, do you know?

A. I don't know; it is a small amount, acquired in the last year in connection with building the Ajax Pipe Line Company.

Q. How about the South Penn (?) Oil Company?

A. An independent company, the Standard of New Jersey has no interest.

Q. Is it a subsidiary of any other Standard company?

A. I don't think so, but I couldn't answer that accurately.

Q. How about the Union Tank Car Company?

A. I think it is an absolutely independent company.

Q. How about the Texas Company?

A. As far as I know, they have no relation with any Standard company.

Q. Who makes the market price?

A. Well, I presume, going back to the definition, if we can determine or declare a market price by the price at which the largest, major, oil is sold at, it is made by different persons.

Q. What is the difference between market price and market?

A. Well, you get back to the old definition of market price and market, would be the same thing, if you mean oil movement.

Q. Are they synonymous, then—market and market price?

A. I would think so.

Q. Who was the first person to post a price for East Texas oil?

A. I think the Humble posted the first price.

Q. How much was the first price—the first posted price for oil in East Texas?

A. Sixty to sixty-seven cents, depending on gravity; 67 cents top price.

Q. What was the posted price of oil in North Texas at that time?

A. I think just a little under, about 10 cents; I am not sure. I can give you the record if you would like to have it.

Q. We would like to have it, please, sir.

A. Ten cents a barrel under East Texas.

Q. What was your answer?

A. Ten cents a barrel under East Texas.

Q. Why was East Texas posted at 67 cents?

A. As I explained fully in the statement issued April 21, that I read in the record yesterday. Shall I read that?

Q. No, I would prefer you to take it and tell us, rather than read the record. You read the item, did you not?

A. Yes, sir. Then—

Q. Then you can state it.

A. It was an effort on my part to post relative prices on the crude—an effort on the part of the Humble Company, rather, to post relative prices on crude in Texas at the Gulf, taking into consideration the reduction of 20 per cent in pipe line rates.

Q. In other words, to establish a price equal to the price of North Texas, you will take into consideration the pipe line rates and the difference in distance?

A. Yes, sir.

Q. How much oil was being run from East Texas at the time your price was established?

A. Well, it would be a guess at the moment; this was April 21st, and before spring, I think there was something over 300,000 barrels.

Q. Do you know what oil was selling for at that time in East Texas?

A. Yes, sir.

Q. When did you post that price? Or when you posted that price?

A. Yes, sir.

Q. When was it?

A. It was selling all around from 30 to 60 cents.

Q. Then you were endeavoring to establish a price, weren't you, for oil in East Texas?

A. Yes, sir.

Q. Then you were endeavoring for the Humble Company to make a market for oil, weren't you?

A. Yes, sir.

Q. And if it had not been for overproduction, that price would have probably continued in effect, wouldn't it?

A. Yes, sir.

Q. Then, as a matter of fact, if it is not a matter of overproduction, your refining companies make the price, do they not?

A. If there is no overproduction, the refining companies make the price?

Q. Yes, sir.

A. Well, I presume the refining

companies, in connection with the others, yes.

Q. Well, you have stated you were endeavoring to make the price equal to North Texas price and that you were the first company to post the price, and that oil was selling between 30 and 60 cents, and if it had not been for overproduction that price would have been maintained. Then, as a matter of fact, the refining companies are setting the price—or were setting the price, weren't they?

A. They were attempting to. I made this statement in connection with that statement (reading): "The maintenance of the purchasing policy here announced for East Texas, and the maintenance of the attached price schedule posted for all areas in the State, are dependent upon better product values and upon the success of the Railroad Commission in the enforcement of its conservation program throughout the State."

Q. Well, by "product values," do I understand you to mean that the price of crude is dependent upon the price of by-products, what they sell for?

A. Yes, sir.

Q. And the market, then, is established by that means?

A. It has the greatest influence on establishing the market.

Q. It has great influence on establishing the market?

A. Greatest.

Q. Greatest?

A. Because unquestionably, if the buyer cannot get back as much or more than he pays for crude, plus the cost, why, he will either go broke or quit business.

Q. Then, if his by-products are selling at a good price, then though there is overproduction, the price of crude oil should be maintained, should it not?

A. It might be, at times it has been, yes, sir, temporarily. I went through the whole history of that yesterday; I would be glad to go over it, if you want to.

Q. No, I don't want to; I don't want any repetition; I just simply want to get it clear in my mind what makes price and what changes the price of crude oil, or why, when gasoline is selling at a certain price, and crude oil at a certain price, and you purchase a large or small amount of oil, the purchase brought it down to 15 cents?

A. Now, what part of that do you want me to answer?

Q. All of it.

A. Well, I will have to repeat the story to answer it, it is pretty full and pretty long; I will be glad to do it if you want it. I testified yesterday that beginning of the summer of 1929 any buyer of crude at the posted price, taking the cost of marketing—that is, the cost of manufacturing, the transportation rate and other factors that go into the cost of its refined products, then from that day to this the posted price of crude has been higher relatively than the product value. In the spring of 1930 crude oil was advanced 10 cents a barrel because of that.

Q. Well, now, at that time had gasoline advanced?

A. Yes, sir.

Q. Had gasoline been reduced in price when you fixed your price at 67 cents for East Texas oil?

A. Gasoline was lower when the 67 cents was posted.

Q. Who sets the price of gasoline?

A. That is a deep question. The price of gasoline is set by the consumer in the final analysis, the volume of it that is used. The wholesale price for it today is set by the pressure of gasoline to its market, and that in turn perhaps is affected by the consumers' demand.

Q. How is it you account for gasoline consumption dropping off specifically in the last four months?

A. Gasoline consumption has dropped off some this year for the first time in the history of the United States.

Q. Then, if at this time, for the first time, up to this time, there has been a general increase in the use of gasoline, hasn't there?

A. No, sir.

Q. And yet, during this period, gasoline has fluctuated?

A. Gasoline has fluctuated in meeting reasonable supply and demand.

Q. Now, you can get the same amount of gasoline from a barrel of oil at $1.00 a barrel as you can from a barrel at 15 cents, can you not?

A. Yes, sir. It is all a question of manufacturing. And—

Q. All right. Now, yesterday you made a statement in which you gave the contents of a barrel of crude oil, and the amount received for it, and I believe it was correct, that you finally obtained 60 cents—approximately

60 cents for a barrel of oil from its by-products before you deducted the amount that you paid for crude, is that correct?

A. That is partially correct, before you deduct the amount you paid for the crude and the cost of transportation and getting it out to the refinery.

Q. Yes, before you deduct that part?

A. Yes, sir.

Q. You get 60 cents?

A. Yes, sir, after you deduct that you have 60 cents on East Texas crude.

Q. Now, then, if you pay $1.00 for a barrel of oil and have to deduct that 60 cents, you would be losing a great deal of money on it, wouldn't you?

A. Would be losing 94 cents a barrel.

Q. Well, would the present by-product price raise if you were paying a dollar a barrel for oil?

A. If all oil was on the relative basis of $1.00 a barrel, for each class of oil, unquestionably.

Q. Then, in some instances, I understand, you say the selling price of the by-products raise the oil, and in other instances you say the price of oil would raise the price of by-products. Now, which way does it work?

A. It works both ways; if it means oversupply, the raw material by all means dominates.

Q. The Humble Oil Company was the first to cut the posted price in East Texas, wasn't it? Cut the posted price to 67 cents?

A. They were the first company to cut the posted price, yes, and the first company to change that price. They were not the first company to pay below that price, never have paid below their posted price.

Q. When you cut the price of crude oil in East Texas, were any of the by-products that were made from oil in East Texas cut proportionately by the Humble Oil Company?

A. No.

Q. Why not?

A. Because the Humble Oil Company was trying to make a profit.

Q. I see. Isn't it also true that of all the companies that have been operating in East Texas since last January, the Humble Company has been the first to cut the price?

A. We have been the first to change the posted price.

Q. Well, that is what I mean, I am talking about the crude price.

A. But, I will say, bear in mind that the posted price is not changed until the majority of the oil, the major part of it was moving and selling at lesser prices.

Q. Then it goes back to the fact, then, that the refineries generally make the prices? Is that right?

A. The refiners would like to make the price.

Q. Well, do they?

A. Any consumer of raw material would like to make the price, and he will as long as he is not over-supplied.

Q. That is your statement, then, that the consumer will make the price as long as he is not over-supplied?

A. I think the refiner would, and, of course, acting on that, I feel the manufacturer of goods will fix the price as long as he is not over-supplied.

Q. Then if proration were put in effect in East Texas, and the oversupply cut down, to normal, the refiners will set the price of oil, will they not?

A. They will try to.

Q. They will do it, according to your statement, will they not?

A. Well, if every producer will sell his oil and give him all the oil he wants at that price.

Q. Oh, yes, referring to your statement awhile ago—now, if proration is put into effect, and the supply cut down to normal use of refiners, they will set the price, will they not?

A. I am not making a talk about making a price, or setting a price, I tried to make it clear that a posted price, the price we are talking about, is an offer to buy, that is all it is, it is an offer to buy. Now, these refiners are going to offer to buy at a price that will give them a margin of profit on the purchase of crude. It may be during all this production a producer can make the price, and he will reverse the tables on the refiner, he may make the price. The posted price is simply an offer to buy, and—

Q. And if there is an over-supply, the posted price is generally the selling price?

A. Yes, sir.

Q. And that price is made by the refiner?

A. Yes, sir, certainly.

Q. And except in cases of oversupply, then, he names the price, doesn't he?

A. He attempts to.

Q. Then to whose benefit would proration work if the supply of oil was cut down so that the producer was obliged to take a price that the purchaser offered him for it?

A. Well, if the supply—I can answer that in this way; if proration is successful to the point that the purchaser can limit the supply and demand, he can name his own price, that is plain economics, plain horse sense; if there is lots of everything available, the man that owns everything, he can make—name—the price for it.

Q. That is true, but it has been the custom for the last five years, especially in overproducing fields, for the producer to take that price that was offered by the purchaser—hasn't it?

A. Yes, sir, and will be, because competition between the purchasers in times of shortage has educated them.

Q. In this statement down there, relative to the Humble Oil Company withdrawing its price applicable to East Texas, you made the statement that you were uncertain of the production.

A. That I have? I don't know where it is.

Q. "For all oil run and purchased from you subsequent to 7 a. m. of this date, until further notice, we will pay what we interpret to be the average current selling price for oil sold from this field during the regular settlement period during which this oil is run, exclusive of oil sold under contracts made prior to 7 a. m. of this date."

A. Yes, sir.

Q. And—you said that, didn't you?

A. Yes, sir.

Q. Then you were stating to the purchaser what you would pay for oil, weren't you?

A. Yes, sir, we were telling him in that language.

Q. You were telling him what the Humble Company would pay for all oil bought and run through its lines, weren't you?

A. We were telling him in that language, we were not telling him in dollars and cents.

Q. Well, you were telling him what you "interpreted to be the average sale price?"

A. Yes, sir.

Q. Did you quit running oil according to that statement?

A. No, sir.

Q. You still bought oil then, at the price which you interpreted to be the current sale price—is that correct?

A. Yes, sir.

Q. And you do that yet—is that right?

A. Yes, sir.

Q. Now, what did you mean by "exclusive of all contracts made prior to 7 a. m.?"

A. Now, contracts made prior to that date of any posting activities, which were being filled in violation of the proration order, being a higher price than we would interpret the market to be at that time, and we wouldn't care and didn't care to take this price into consideration, didn't think it a fair price to be paid for East Texas oil. Those contracts were made back and range about 40 cents at the time we were paying 60 cents there.

Q. Did your company have any of those contracts?

A. Not a one.

Q. On October 16, when the price of oil was cut—from $1.55 to $1.01, if I am correct about that—wasn't that when that was cut, at that price?

A. October 16, when?

Q. 1930.

A. October 16, 1930? Our top price for crude prior to that time you are talking about—top gravity crude.

Q. Well, I don't care about the price. You made a statement: "When any considerable amount of oil is being sold from any field at less than the posted price, as is now the case in a certain area, the lower price establishes the market, and readjustment of posted price in a particular field must inevitably follow. In view of the fact that crude oil from North Texas and the Panhandle is sold below our posted price, we have no alternative but to meet said lower price."

A. Yes, sir.

Q. You made that statement, didn't you?

A. Yes, sir.

Q. What particular area were you speaking of at that time?—in which oil was being sold for less than the posted price?

A. North Texas and the Panhandle.

Q. How much oil was being sold below the market price at that time?

A. Approximately 30,000 barrels daily.

Q. How much was being produced in that area?

A. I don't recall—about 110—115.

Q. How much was being produced in the State of Texas?

A. About 750.

Q. Was there a cut in all of the areas—was there a cut in all the areas out there?

A. No, sir.

Q. Just North Texas? And Central?

A. Just in those areas where oil was selling at a discount below the posted price.

Q. Who was taking that oil being sold at a discount?

A. Various and sundry people, I don't know all of them—mostly local refineries.

Q. Please explain why you can make more at $1.00 a barrel than you can at 15 cents a barrel of oil, why the companies can profit more?

A. Well, I haven't said they could; but they can.

Q. All right, you haven't said they could, you have understood they could?

A. Yes.

Q. All right.

A. Because naturally every good competitor of any consequence is a considerable purchaser of crude. Our company produces about thirty million barrels a year.

Q. You produce; and purchase about twice as much, do you not?

A. We purchase not twice that, but approximately; and, naturally, if we get 15 cents a barrel for 30,000,000 barrels, that is $4,500,000, and at a dollar, if we get $1 we make $30,000,000, so at a dollar even on the value of the oil we produce alone, that makes $25,000,000 more that comes into the general account.

Q. How about that oil you purchased?

A. Well, when we purchased oil at $1.00 a barrel—it has been so in the past except during this case I am telling you of, product values are correspondingly high; naturally, with $1.00 a barrel crude, we won't have two or three-cent gasoline in refineries, wouldn't have any refineries, they would be useless, would go out of business.

Q. What is gasoline at the refinery?

A. I testified yesterday 4 cents, that would be about it; in other words, a barrel of crude in North Texas refineries is 6½ cents for gasoline, and a coastal refinery ought to get from 6½ to 7½.

Q. How much would the consumer pay for that gasoline?

A. Well, I don't know, you can go back to the records; you will probably pay about 3 cents more.

Q. Although the producer may pay 6½, the small — the consumer would only pay about 3 cents more. Where is that difference taken up?

A. Other products, kerosene would be higher, lubricating oil would be higher, and other products.

Q. All right. Now, explain to us why lubricating oil has been selling for 35 cents when oil was $1.00, and still selling for 35 cents when oil is 15 cents.

A. I explained that yesterday; I will be glad to do it again. Lubricating oil is a well advertised, specialized product, it is expensive to make, expensive to advertise, and is a package product, the type of thing that we buy everywhere, from drug stores, groceries, we pay for the advertised goods; and in lubricating oil we pay primarily for service; the wholesale value of lubricating oil today is relatively as low as the wholesale value of gasoline or any other product, and when you pay 35 cents a quart for lubricating oil in a filling station, it is my opinion we are simply paying for the privilege, if you will, or the nuisance, I think it is a nuisance—of having a filling station on every corner, and being able to drive there and say, "put a quart in." It is the price of service. The wholesale value of lubricating oil today at oil plants, refineries, has a true relationship to the true values and proved relationship to other products. The highest cost lubricating oil we make is oil we are advertising, 997, and it can be bought at our refinery at a wholesale price, which yields about 3½ cents a gallon profit.

Q. Now, you have this same advertising, do you not, and you have this same service at filling stations, do you not when oil was selling at $1.00?

A. Yes, sir.

Q. Then, when oil is selling for 15 cents there is a great deal more profit

in lubricating oil, except from the expense of advertising, than there is in dollar oil, isn't there?

A. There is not any profit.

Q. There isn't any profit in oil at 35 cents?

A. I don't know any marketer today making money; they are all losing money.

Q. Well, would they be losing if they had to advertise as you advertise and give the same amount of service, if crude oil was $1.00?

A. That would depend entirely on whether the product value had measured up to the equivalent of dollar crude.

Q. Well, suppose it stays like it did before, at 35 cents.

A. Lubricating oil?

Q. Yes.

A. Well, so far as the retail sales of lubricating oil through the company-owned stations are concerned, why, the value of the crude that goes into the manufacture of lubricating oil is a very small factor, the price of crude has nothing to do with it, because lubricating oils are made from a very small percentage of crude and because the cost of lubricating oil is about 91 per cent manufacturing, because that is wholesale cost, and because the consumption would run about the same, whatever the sale cost.

Q. Do I understand you to say—or did you say yesterday that the wholesale cost of this lubricating oil was approximately 5 cents a quart?

A. That is right.

Q. And the difference between the wholesale price and the retail price is approximately 600 per cent.

A. Very high, I don't know what it is.

Q. And it takes that 600 per cent to cover advertising and service, etc.?

A. Yes, sir—I don't say it does take it, there is a profit made out of it, and that is what may have caused to make the difference.

Q. Now, in this advertising you advertise lubricating oil. Do you advertise gasoline?

A. No, not at that same time.

Q. But I mean in the expense of this advertising for lubricating oil, that stands as a charge against lubricating oil, is any advertising done for gasoline?

A. I think most companies carry that advertising cost as a general overhead—because if you ask me how the advertising cost is paid for—

Q. No, I asked you if your advertising for gasoline—and you do advertise "Flashlight" and "Esso" in Texas, now, do you?

A. Yes, sir.

Q. What I want to know is this—in advertising gasoline, is any expense of that charged against this lubricating oil profit?

A. I answered that question and told you that every company carried advertising programs as overhead charge.

Q. On yesterday, in making your statement as to the price received for gasoline, you charged off 2 cents for overhead—

A. Two cents for overhead?

Q. No, sir, two cents per gallon.

A. No, sir.

Q. What did you charge for overhead?

A. Two cents for manufacturing.

Q. According to my figures yesterday, we had manufacturing charges 2.9 cents, for transportation 1½ cents. For bulk, 2 cents.

A. I misunderstood you, you are talking about a different thing, you are talking about selling price at filling stations. I thought you said manufacturers' overhead.

Q. The book shows 2½ cents.

A. That is right.

Q. Retail 4 cents, and then, as I understood overhead; in other words, it is to pay the expenses of managing the office of the Humble Company, and advertising, etc., 2 cents?

A. That is right.

Q. On each gallon?

A. That is right.

Q. Now, is that 2 cents charged off in the price of lubricating oil?

A. No, that 2 cents on gasoline includes advertising and sales and all.

Q. That stands its portion, then?

A. Yes, sir.

Q. Is it necessary to make 600 per cent profit on gasoline to make that expense—to meet that expense?

A. Gasoline?

Q. Yes, sir.

A. No, sir.

Q. It is not necessary?

A. There is no such profit.

Q. Is there such profit on lubricating oil?

A. No, sir.

Q. What percentage is it, if it costs 5 cents wholesale and sells for 35 cents?

A. The retailing price is perhaps six times the wholesale price, but that doesn't mean the difference in profit. .

Q. What does it represent, then?

A. It represents the cost of selling, as I tried to explain to you—that is the filling station cost.

Q. Well, does it take 30 cents on each quart of lubricating oil and 2 cents on each gallon of gas to pay the expenses at this filling station?

A. It takes about 4 cents on the price of gasoline to pay the filling station costs, and, in addition to that, it takes whatever allowance is made to dealers, which, I think, as I recall it, is about 40 per cent of the sale price of lubricating oil, to run these filling stations, and still they don't return any profit.

Q. The producer is generally paid a fair price for his oil, isn't he? Did I understand you to say the reason the posted price is knocked down in a field that is not overproducing is because that field is fair?

A. I think, as a rule, the purchaser is paid a fair price.

Q. You think the market offers the producer a fair price for his oil?

A. Yes, sir.

Q. Must the producer take what price he is offered or go broke?

A. No, the producer can do what any other producer can—he can sell it to whom he pleases, he can build a refinery, a pipe line, or filling station, or go into the whole business.

Q. Suppose he doesn't have the capital to do that, must he take that price or go broke?

A. He can sell it to whomever he pleases.

Q. It is true, though, isn't it, that the refiner—that is, the pipe line company and refinery, who buy from the producer, are in a position to control the market, aren't they?

A. No, sir.

Q. You don't think so?

A. No, sir.

Q. Do you know whether or not there has been a cut in the price recently to filling station operators on their commissions?

A. I don't know.

Q. You don't know? Do you know whether the Humble Company has cut its commissions to its agents at filling stations?

A. I don't know that. I can check it up. I am not thoroughly familiar with what that is.

Q. Would those commissions be deducted, or an order sent out, to cut those commissions 1 cent without the board of directors acting thereon?

A. It may be, yes, sir.

Q. Who would have authority to do that?

A. The vice-president in charge of marketing.

Q. Does the vice-president, then, set the commissions that are paid to an agent without the authority of the directors?

A. He might without the specific approval or action on any one situation, yes, sir. He has delegated authority.

Q. Then the vice-president has the authority to cut the prices of gasoline, has he not?

A. No, sir; oh, yes, sir.

Q. Without taking it up with the board of directors?

A. Yes, sir.

Q. Mr. Farish, one gentleman who has been on the stand during the last week made the statement that the Humble Oil and Refining Company was losing approximately a million and a half dollars per month since the first of the year. Is that true?

A. I don't think so.

Q. That statement is a little bit exorbitant, isn't it—exaggerated?

A. The Humble Oil and Refining Company, like all companies, is suffering from severe depreciation from its products on hand. Just what it amounts to I don't know, the figures are not definite as yet.

Q. It is not as enormous as that, however, is it?

A. It is pretty high, but I don't think it is that high.

(On motion of Mr. Hardy, the Committee of the Whole House recessed for the purpose of attending a flag presentation ceremony until 10 o'clock a. m. of the same day.)

Thereupon the witness, Mr. Farish, being recalled, testified on examination by Mr. Hardy:

Q. Mr. Farish, there is a general understanding among some people that the various gasoline refining plants furnish gasoline to the various filling stations for use. In other words, by that, I mean that sometimes if the Humble Company does not have a refining plant close to its filling stations then some other com-

pany nearby will furnish gasoline to the Humble Company which will be put out under the Humble Company's "Flashlike" gasoline brand. Do you know whether that practice is current between major companies at this time?

A. I do not think it is current.

Q. Do you know whether or not your company has ever done that?

A. I can answer definitely on that. We have bought gasoline at times. And that gasoline we sell as Humble Flashlike gasoline. However, that gasoline must come up to our specifications and is bought on a specification that the gasoline is sold on.

Q. Even though it is not made by the Humble people?

A. Yes, sir.

Q. And even though you advertise Humble Flashlike gasoline as having certain qualities, and generally that it makes it better than other gasoline?

A. Yes, sir. I have told you that it is bought on such specifications. The fact that it is made by us, or whether it is made by some other people under our specifications, does not make any difference.

Q. Then there is other gasoline that is just as good as Flashlike?

A. I presume so.

Q. You stated on yesterday, I believe, that your company owned something like 20,000 acres in the East Texas pool?

A. Yes, sir.

Q. Do you advocate one well to each twenty acres?

A. We do not advocate any more wells than one to each twenty acres.

Q. You advocate no more than one well to twenty acres?

A. We would like, as a matter of policy, to be able to drill our properties in the East Texas field on the same basis that we are drilling in the Hobbs, New Mexico, and Yates pool. We would, of course, like to have as many acres per well as possible.

Q. Are you drilling now a well on more or less than twenty acres?

A. Not that I know of.

Q. I believe that you stated that you have about 9.7 per cent of the production in this pool at this time?

A. That is approximately correct. That is, 9.7 of the oil produced up to July 8th.

Q. You produced 9.7 per cent of the oil that has been produced—

A. (Interrupting) Up to date, that is.

Q. And that is not your proportionate part of the oil that has been produced in the field, according to the amount of property that you own there?

A. That is correct.

Q. And you are now drilling what is known as inner wells?

A. Yes, sir.

Q. Will you state again what purpose those wells are being drilled for?

A. I explained that yesterday.

Q. As I understand it, it was forced on you in order to protect the lease owners or royalty owners whose property has been placed in your hands and because of the fact that other operators were drilling on property so near to the property that you handled that it was necessary in order to protect the interests of these royalty and lease owners for you to drill these inside or inner wells?

A. Yes, sir.

Q. In other words, if you were an advocate of proration, if the other fellow is not going to abide by it your company is going to drill as many wells as may be necessary in order to protect your property?

A. I think we were forced to do it.

Q. Then what about the position of the little fellow who does not have so much acreage and no pipe line connection? Does not he have to either drill wells to produce his proportionate amount of oil or lose it?

A. Yes, sir; certainly.

Q. And if he does not have any pipe line connections and cannot get a pipe line connection, do not you think he is authorized to sell his excess oil at less than the posted price?

A. Authorized?

Q. Do you not think that in equity he should be permitted to sell his oil that he gets out?

A. Every producer in the field is entitled to his proportion of the oil, whether he owns twenty acres or 20,000. What he does with that oil is up to the man who owns it. That is his own business.

Q. You are advocating proration?

A. Yes, sir. We believe in proration. I believe that it is right.

Q. For what reason?

A. In order to do equity between the land and the lease owners.

Q. And in the conservation of oil?

A. The conservation of oil—

Q. And is it not your contention that proration will maintain a higher

priced oil than that oil is selling for now?

A. It is not my contention that it will maintain a higher priced oil. I think if we have proration, stop producing more oil than the market demands, a higher price for oil will largely prevail.

Q. And yet, at the same time, you are attempting to produce more oil at this time?

A. Every man that is producing a barrel of oil today is producing in excess of the demand.

Q. You are producing more oil at this time than you are allowed to produce in the East Texas field, are you not?

A. We are not producing as much as we should.

Q. Are you not producing more than necessary to comply with the terms of your leases on offsets?

A. No, sir.

Q. And these inside wells, are they offsets?

A. Yes, sir. Will you let me explain the inner wells? All you need to do is look at that map and you will know what I am talking about. You will see that the surrounding property is drilled up about four wells to the Humble's one. And the oil that is taken out around it has been about two and one-half barrels to the Humble's one.

Q. I am not speaking about the proportionate part of the oil, but I am speaking of the drilling of more wells than necessary to offset other wells. You are doing that at this time, are you not?

A. If you mean by offset wells and wells that are opposite offset wells, we are.

Q. What does the general term "offset" mean?

A. It means opposite each other. But wells can be offset wells 150 feet from the line, or 500 or 1,000 feet from the line.

Q. The general term "offset" means 150 feet from the well opposite the one that you are drilling, does it not?

A. Generally speaking, it means wells drilled equally distant from the property line on the adjoining lease.

Q. Now, is it not true that your company is drilling those wells with the idea in mind that on the acreage proposition of proration, if that failed, your company would be in position to get a greater proportion of oil in that field than otherwise?

A. No, sir.

Q. That would result, would it not, even if you did not intend it?

A. Every well that we drill there will naturally give us an opportunity to get nearer our proportionate part of the oil that we own in the field. As I have explained several times before, the Humble Company has drilled about 10 per cent of the wells in the field, and we own about 16 per cent.

Q. Are you now abiding by the proration orders?

A. Yes, sir.

Q. You only take from your leases only so much of the oil as is now allowed according to the proration orders issued by the Railroad Commission?

A. With the exception of the wells that are offset wells that are taking some of our oil, in no case, however, are we producing any oil beyond the allowable for that well, which gives us the right to take from our own property the equivalent amount of oil that is being taken from the neighboring property.

Q. Is it true, or not, that you have blanket authority from Mr. Parker of the Railroad Commission to allow your wells to run beyond the limit of allowable?

A. I do not think so.

Q. Did not you receive such a letter at Tyler—at your Tyler office, about ten days or two weeks ago?

A. Mr. Lassiter showed me a notice to that effect this morning and I told him that that was the first I had ever heard of it. As a matter of practice the Railroad Commission has granted to all operators permit to produce an equivalent amount of oil that is produced by the company which has an offset to its property.

Q. Now, then, these wells that are producing as offsets; are you allowing those wells that are producing as offsets to flow at full speed?

A. I do not admit that we are violating the orders when we are doing it.

Q. I did not say that you were violating the orders. I merely asked you if the wells that you are allowing to produce, to run open, are you cutting them down to the same amount of oil that is being produced on the offset lease?

A. We are producing the same

amount of oil that the other well is producing, and if we are delayed in getting down our offset well we are letting that well flow until we get an equivalent amount of oil that has been produced by the offset well on the other property and as soon as that amount of oil is obtained, we will cut our well back to the amount of oil that the other is producing.

Q. How do you get the amount of oil that the other fellow is taking? Do they advise you as to the amount of oil each well is producing?

A. The deputy or the umpire takes the figures that the other man gives him in that case, and then we get them.

Q. Do those figures that they get from him agree with your figures?

A. Approximately, they are correct, as near as we can determine. I do not think anybody is giving surplus estimate.

Q. Do you contemplate sometime producing the percentage of oil that you are entitled to under the 16 percentage of the territory that you have there?

A. It is impossible to say. We would naturally hope some day to reach that. We can not do it today. We are too far behind.

Q. You are not running today—you are not taking any oil today in violation of the orders of the Commission?

A. Except under the conditions that I have named where we are producing oil.

Q. You are not purchasing oil from anyone that is violating its orders?

A. Not knowingly.

Q. Do you know who is violating these orders?

A. I get reports from the field as to who some of the violators are, and to that extent I know something about it.

Q. Who do you buy oil from?

A. From the producers.

Q. Do you buy any from commission merchants?

A. No, sir.

Q. Do you buy any from brokers?

A. No, sir.

Q. Do you buy any from the well owners? Or lease owners?

A. I think we are connected to something like 180 wells that we are buying oil from. About 36,000 barrels per day, and we are buying practically all they produce.

Q. In running this oil, which amounts to more than the proration orders allow, would your company accept from some individual lease holder more oil than the Railroad Commission authorizes, was that party an offset violator?

A. I told you just now that we were running some oil produced in the field, and stated the conditions under which that was being produced, where they get permits from the Railroad Commission.

Q. Do you require any evidence that they have received certificates?

A. We take reports from the umpire in the field.

Q. Do you have that in writing, or not?

A. I think it is in writing, I am not sure about that.

Q. Do you have any joint interest in East Texas with other companies or individuals?

A. Yes, sir.

Q. Whom?

A. We have some joint acreage with the Gulf Company and with the Byrd.

Q. State whether or not the red plots on this map are owned by individuals, whether they are owned individually by the Humble Oil Company, or jointly?

A. Jointly.

Q. So all the red spots on this map are owned jointly with the Gulf?

A. No, sir, I believe the Gulf has interest in most of it, especially that at the lower end.

Q. Does the percentage of interest vary in the various blocks?

A. Yes, sir.

Q. How about the yellow blocks?

A. We own half, no, we own one-fourth, and the Byrd owns a fourth, and the Gulf owns one-fourth and manages the lower part under our management.

Q. Has the Humble Company any leases jointly with individuals in East Texas?

A. We may have one or two, I do not recall.

Q. Do you have any with any individuals in other sections of Texas?

A. Yes, sir.

Q. Quite a few, or not?

A. Quite a few. Partnership leases are quite common.

Q. Do you have any around Wichita Falls?

A. I do not believe we have at the present time. We had partner-

ship leases in all fields in Texas at one time.

Q. Do these companies and your company ever lend money with which to drill and operate these leases?

A. Most partnership interests in which we are interested we are carrying the expense of the leases.

Q. Who passes upon these matters?

A. What matters?

Q. These leases or partnerships.

A. They are usually passed on by the treasurer. If they are too big, and in one or two cases they have been, he brings them to the board of directors. They are always approved by the producing and geological department as to the adequacy of the security.

Q. But, as a general rule, when you lend, this money, the board of directors passes upon that?

A. Yes, sir.

Q. They are just ordinary human beings, are they not?

A. Yes, sir.

Q. Pretty good fellows?

A. Yes, sir.

Q. Usually interested in the affairs of men, are they?

A. Yes, sir. Most all of them were born and raised in Texas, except myself.

Q. They are humanitarian?

A. Considerably interested in the other fellow.

Q. How about the board of directors passing upon the sale of stock?

A. The sale of stock?

Q. Suppose I were to buy a hundred thousand dollars' worth of stock?

A. It is transferred on the books.

Q. Do the board of directors have anything to do with that?

A. The chances are they would not know anything about it. They might know something about it if as much as one hundred thousand shares show to have been transferred on the books.

Q. You have heard something of the Wagstaff bill being before the House, have you not?

A. Yes, sir.

Q. It provides for the creation of a new commission?

A. Yes, sir.

Q. Have you read that bill?

A. Yes, sir.

Q. Are you in sympathy with the idea of the new commission to handle the oil and gas matters—do you think that is for the best interests of the State?

A. Yes, sir.

Q. Do you think that commission should be appointed?

A. Yes, sir.

Q. Do you think that the Railroad Commission has too much business to handle those matters?

A. Yes, sir.

Q. How many times have you been before the Railroad Commission in recent months?

A. I have not been before them personally for some time.

Q. Do you know of your own knowledge just how busy this Railroad Commission is at this time?

A. I do not know what they do with all of their time. I know they have a great deal of administrative work and frequently at one of the most important hearings one of the members will be on a railroad hearing and another will be on a bus hearing, and it has been my observation that very seldom all three members of the Commission are present at a hearing.

Q. Creating this new commission for the oil and gas industry, if that were done, they would have added to their duties the water conservation problems of the State of Texas?

A. Not unless that could be handled through a small board or some sub-division of that commission.

Q. How about handling the conservation of the soil of the State? Do you think this commission ought to have that added to its duties?

A. I do not know much about the conservation of soil. I do not know how you would go about it.

Q. Would you advocate it?

A. I think—I intended to state that it is a big enough job for the three biggest men we have in the State.

Q. I believe that you stated that the best example of proration in the State of Texas was in the Yates pool?

A. Yes, sir.

Q. Do you still retain your interest in that pool?

A. Yes, sir.

Q. Where does all the oil that you are getting in East Texas go today?

A. Thirty-five thousand barrels per day is going to Humble tankage or refineries. Five thousand barrels per day is being carried by Humble to tankage at Mexia for the Stanolin Oil Company. That is their own oil. Forty thousand odd barrels is being

delivered across the State line to the Standard of Louisiana.

Q. What portion of East Texas did that come from?

A. Came from the wells in Gregg and Rusk Counties.

Q. Do you handle any oil going to the Vacuum Company?

A. Yes, sir. That is put on board cars.

Q. Is your company building a line from somewhere in Louisiana to the Van pool?

A. No, sir.

Q. Have you one in that field at this time?

A. We deliver Van oil across the line.

Q. Does that Van line run anywhere close to the East Texas pool?

A. Goes right through it.

Q. Do you add any oil to that line from East Texas?

A. The oil is separated, it is kept separated—it travels through the same line, but it is separate.

Q. How much oil are you running from the Van pool to the Vacuum?

A. Running to the Vacuum? It is not going to the Vacuum. It is going to the Standard of Louisiana.

Q. How much oil are you running from the Van pool?

A. About eighteen thousand barrels per day.

Q. Does that fill the capacity of your line?

A. From the Van pool, no, sir. The line is filled after it reaches East Texas.

Q. How much are you adding out of East Texas?

A. Between forty and fifty thousand barrels per day.

Q. How much oil is your allowable production in East Texas?

A. Per day?

Q. Yes.

A. I can not tell you, approximately about thirty-five thousand barrels per day, I think. I think it is about thirty-five thousand barrels per day.

Q. What I am trying to get at is, is there more production in East Texas today than the pipe line can handle?

A. Yes, sir.

Q. And the pipe lines are running to capacity?

A. I do not know about that.

Q. Are you getting all the oil that you are running, that you are now sending to the Vacuum Company from the Van field and putting same in storage—about what percentage?

A. I think we are refining about 20,000 to 35,000 barrels per day.

Q. What are you doing with the rest of it?

A. Taking it in storage.

Q. Whereabouts?

A. Down the pipe line, wherever they can find an empty tank.

Q. Is that not waste?

A. Is not what waste?

Q. The storage of oil.

A. I think storage of unnecessary oil is waste.

Q. Is that unnecessary oil?

A. Perhaps.

Q. You are storing it just wherever you can find tanks for it?

A. Yes, sir.

Q. Why are you producing it, then?

A. Why are we producing that much oil?

Q. Why are you taking that much oil?

A. We are producing it because we are—

Q. (Interrupting) You are carrying other oil than that what you produce, are you not?

A. Yes, sir, we are buying some oil. We are buying it because we have made those connections and we are under obligations to take care of those connections that we already have there.

Q. Is it not true that after each proration order has been issued in the State of Texas that there has been issued, or there has been a reduction in the price of oil within thirty days?

A. I think it has, yes.

Q. What is your explanation of that?

A. Because the proration order has been just the same as if nothing had been done, and we have had no proration. We have had overproduction constantly going on in East Texas, with the price of oil constantly declining, and the value of both constantly declining.

Q. Then, if the proration is effectively handled, there will not be any production in that field?

A. I do not think there should be.

Q. Then, if there is no more than the actual amount of oil produced in the pool, would be the reason for the Humble Company to keep on drilling wells and getting additional acreage in an overproducing territory?

A. Will you please state that again, I did not get it.

Q. I will state it this way: If proration will limit the production of oil to the market demand, and if the proration is made State-wide, what would be the need for any company to retain leases on unproven territory?

A. Well, they may have the idea that that unproven territory will be proven.

Q. But if they cannot produce more than a certain amount, would they do that?

A. I do not think they would want to.

Q. And that market demand is only increased when the consumption of their products is greater than the production?

A. Yes, sir.

Q. Then there would be no necessity for holding those leases?

A. I think so.

Q. Why?

A. Because they expect to take their pro rata part of the oil out of them and to produce it at a profit. Otherwise, there would be no searching for oil and no new discoveries. The present oil fields we have in sight in the United States today are very large, but they will not last always and it is only a question of years, we may argue as to the number of years, until we are going to be buying oil from somewhere else.

Q. Does not your company advocate the drilling of a great many wells each year?

A. No, sir.

Q. Do not your geologists so advocate?

A. No, I don't think it is advovocated. You are, perhaps, talking about Mr. Pratt's address when he advocated the drilling of 20,000 wells each year. Mr. Pratt, as you know, is the past president of the Geological Society of the United States, and was making a talk to the geologists, as I understand it, and was speaking to them more as a dean. At the present time I think there are about half of the geologists in the United States out of a job, and he was merely telling them not to despair, but that some day the demand for their services would be such that they would be needed.

Q. In other words, he was trying to spread a little prosperity, instead of giving them facts?

A. He was giving them facts. He was giving them accurate facts. And if you will adopt enforceable proration, the facts that he was stating will soon have come again.

Q. Mr. Farish, do you know whether or not your company is contributing to the Central Proration Committee?

A. Yes, sir. It has done so from the beginning.

Q. Do you have any figures as to the amount of money your company has contributed to the Central Proration Committee?

A. Whatever they said it was. I do not know what the assessment was.

Q. Do you know what proportion that was to the amount given, or paid to the Central Proration Committee?

A. I guess it was a pretty good per cent, or pretty good proportion of what was paid.

Q. In other words, you do not know how much you have contributed to them, but they call on you for a certain amount, and you pay it?

A. I know it is reasonable, and we are willing to contribute our part.

Q. Is that matter passed on by the board of directors?

A. Yes, sir.

Q. And yet you have no direct recollection as to the particular amount that is paid to them?

A. I do not remember the exact amount. The board of directors approved of the Humble paying its proportionate amount of money for the Advisory Committee to carry on.

Q. Do you likewise pay your proportionate amount of the expenses in the various fields of the Advisory Committee?

A. Yes, sir.

Q. Do you know whether your company is paying more than your proportionate amount of the expenses of the officers of the Central Proration Committee than any other company in those fields?

A. I do not think we pay more in proportion than the other companies, but we pay more in East Texas than any other company because of the fact that we have larger acreage.

Q. Do you know whether or not you are the only one that is paying?

A. I know that we are not the only ones.

Q. Did you ever hear of bill 1052 in the Regular Session?

A. I do not know a bill by that number.

Q. Did you ever hear of House Bill 1052, in the Regular Session?

A. I don't know it by number. What bill is it?

Q. The Howsley bill.

A. Yes, sir.

Q. You read that bill, didn't you, Mr. Farish?

A. Yes, sir.

Q. Did your company have anything to do with the preparation of that bill?

A. No, sir.

Q. Did you contribute anything in any way toward the expenses of the attorneys in preparing that bill?

A. No, sir.

Q. You said this morning that your company was losing money monthly, but it wasn't in the amount of a million and a half monthly—is that correct?

A. Yes, sir.

Q. You stated—would you state whether or not the pipe line company is losing any money?

A. No, sir, the pipe line company is not losing any.

Q. Is it making money?

A. Yes, sir.

Q. Would you say, for the benefit of the Committee, what it has made since the first of the year?

A. It has made about a million dollars a month.

Q. About a million a month?

A. Yes, sir.

Q. How much is your refinery losing a month?

A. Counting inventory losses—it is purely approximate figures, I don't know whether they are correct or not —I think they will show something a little over $500,000 and a good part of that is inventory loss.

Q. What do you mean by inventory loss?

A. Losses of crude, gasoline and lubricating oil carried in stock.

Q. If the price of oil would go up, your inventory loss would be less then, wouldn't it?

A. Yes, if it would stay.

Q. Well, I mean if it went up to $1.00 a barrel and stayed there a little while.

A. Yes, sir.

Q. Would you make any profit out of the running of this present oil at your refineries if the price went up to $1.00?

A. If we could save it we would.

Q. You are saving about a third, are you not?

A. Saving something today, I don't know just how much.

Q. Are you losing any money in the production end of your company?

A. Today?

Q. Yes, sir.

A. Yes, sir.

Q. Approximately how much are you losing per day—per month, put it that way?

A. Well, I don't know just what it would figure, taking all depreciation and deterioration items into consideration, or a cash basis—it is a little more than a million dollars per month expenses as against receipts at the present time.

Q. You have to offset that by producing wells. Do you know what the unproduced amount of oil is that you expect to obtain from those wells?

A. We are getting some value from the capital, asset value, if you mean in the way of completed wells, yes, sir.

Q. Yes, sir. Then that loss which you are showing at this time because of your continued investment and drilling operations, at a later date may be wiped out from production of oil therefrom—is that correct?

A. Well, we hope—that is the hope we have, or we wouldn't have spent money; but I don't know whether that is going to be true or not.

Q. Well, we all are liable to that, aren't we?

A. We hope that, yes.

Q. Are you losing any money in the filling stations?

A. Yes, our marketing department is losing money, has lost money since the first six months of this year.

Q. Approximately how much?

A. Relatively a small amount, because we are relatively small marketers; I think about $300,000 so far this year. I would like to explain there, as I tried to explain before, the Humble Company is a very small marketer, retail marketer, in Texas. We market about 7½ per cent of the gasoline sold in the State, a very small amount of lubricating oil—in fact, we market in Texas only about 2½ per cent of the lubricating oil we make. Our marketing business in Texas is very small, hence small losses.

Q. What is your investment in the pipe line company from which you make a return of approximately a million dollars per month?

A. We put over $100,000,000 in the pipe line investment in Texas.

Q. Then, that is about 12 per cent, isn't it, on the returns?

A. Yes, sir.

(At this point Mr. Howsley of Shackelford County, requested permission to ask a few questions.)

Questions by Mr. Howsley:

Q. Mr. Farish, this is Andrew Howsley, of Albany. I don't know whether you recognize me.

A. Yes, sir.

Q. When was the first time you met me?

A. Either today or yesterday.

Q. Had you ever conversed with me relative to the Howsley bill which was referred to?

A. Never.

Q. Have you or any of the officials of your company ever discussed with me the merits or demerits of that bill?

A. I think not, sir—not to my knowledge.

Q. That is all.

Questions by Mr. Hardy:

Q. (Resuming) I think I asked you about House bill No. 1052, did I not? But you didn't know what that bill was, and I referred to it as the Howsley bill?

A. Yes, sir.

Q. Did you know that the Howsley bill was being drawn, or was going to be drawn?

A. I couldn't say yes or no to that; I don't know.

Q. Well, you mean you don't know?

A. I don't know whether it was being drawn or going to be drawn.

Q. Prior to its introduction in the Legislature, did you know it was being drawn?

A. I knew there was some effort to draw a bill to regulate the oil and gas industry.

Q. Did you know what the contents of that bill was before it was introduced by Mr. Howsley?

A. I can't say yes or not to that; I don't remember.

Q. Had you ever read it before it was introduced?

A. Not the identical bill, no, sir.

Q. Had you ever discussed it with anybody?

A. Not the Howsley bill, no, sir.

Q. Well, had you ever discussed with anybody prior to the introduction of the Howsley bill a bill of a similar nature to the Howsley bill?

A. I couldn't answer that literally. I think the question of conservation of oil and gas has been a large subject for us, as I told you, for a good many years, and I have never failed —I have never failed taking advantage of the opportunity to discuss the whole question with any business man, with anybody that wanted to discuss it, within our own company and with others. Our attitude toward the Legislature, our attitude toward any bill giving any more power to the conservation authorities, is well known throughout the State and has been well known and public property for years.

Q. You stated that you knew a conservation bill was being drawn?

A. Yes, sir.

Q. Did you suggest to anyone terms or conditions or policies to be included in such a bill?

A. I don't recall doing it, no, sir.

Q. You do not recall discussing it with anyone?

A. No, sir.

Q. Do you believe that the oil business would be—the oil business would prosper any if a law was passed requiring a certificate of convenience and necessity to drill a well? An oil well?

A. You mean to get a permit before you drilled the well?

Q. Yes, sir; to obtain it from the Railroad Commission or some other body, obtain a permit to drill a well.

A. Permit to drill a well?

Q. Yes, sir.

A. Yes, sir, but you don't have to show an absolute necessity for it.

Q. Do you feel that it would be a benefit to the industry to have to show necessity for drilling—to show that there was not overproduction of oil, threatening danger, in order to obtain such certificate?

A. I think anything, any power, that is given to the conservation officials that would permit them to grant such a permit to drill a well would be helpful. Lots of wells are drilled and started and the oil fields are discovered that are not needed at the time they are discovered, and if the Legislature had the power—which I don't think it has—to stop a man from drilling a well on his property, it would be well to exercise it; but from all I know of the subject, it would be an idle gesture; I don't think the power lies in the Legislature to prevent the drilling of a well on the property that a man owns. I think the power does lie in the Legislature, even the State, under the police power, to require that a well be drilled in a proper and workman-like

manner, to prevent expense and waste, and to prevent improper production from it after it is drilled, by proper precaution, lack of waste.

Q. Considering waste economically or physically?

A. I mean both. I think the power lies in the State to do it.

Q. Do you think that all terms of waste, then, are relative to the oil industry, to take into consideration the economical waste?

A. I do.

Q. Do you think any bill passed, then, by this Legislature, then, should include the definition of waste that will be made reasonable market demand?

A. Yes, sir.

Q. Or some similar definition?

A. I do. I think the power should be given to this commission to determine what is market demand.

Q. Do you think that the oil industry would be benefited if it was necessary to secure a certificate of convenience and necessity from somebody of the State before building a pipe line to serve the oil fields?

A. I don't see any objection to it. I do not see how the oil industry would be benefited.

Q. Wouldn't it lessen competition?

A. It hasn't done that in the railroad field.

Q. Do you think that the railroads have prospered from it?

A. I think it would be pretty hard for any of them to show today that they have prospered by it; but undoubtedly that has been helpful.

Q. And you think that it would be helpful to the oil industry?

A. I don't know; I say, I don't see any objection to it, but I don't know whether it would be helpful or not. I think the oil industry is frequently benefited—that is in the industry, and the producing end of the industry having more pipe lines in a field than is needed; that is the condition in Texas today, and that condition today is an oversupply of pipe line capacity, about 50 per cent all over, with the exception of East Texas, and there is probably an oversupply in there; there are in the neighborhood of 500,000 barrels of pipe line outlet today out of that field that are built or they are building in East Texas, and it is more oil than can—than they can market.

Q. Anyone can build a pipe line now, can they not?

A. Oh, yes, very easy; you can contract the work; no more trouble than to build a house.

Q. Then, if it was a requirement that you secure a certificate of necessity and show that the field was not being adequately handled by the present pipe line, wouldn't that eliminate some of the building of pipe lines?

A. It might, yes, sir, probably would—unless the field happened to be on a railroad.

Q. How much oil is being taken out of East Texas on the railroad?

A. I don't know, I wouldn't say—I would estimate somewhere in the neighborhood of 9,000,000 or 10,000,000 barrels.

Q. What per cent, I mean?

A. About a third.

Q. How do you arrive at those figures?

A. By pure matter of guess.

Q. You are just making a guess, just a matter of guess?

A. At times they handle as high as 150,000 barrels a day, by rail, and they have been handling considerable there over three months.

Q. Where was most of all this oil going that was hauled out in tank cars?

A. You mean its final destination?

Q. Yes, sir.

A. Well, I can tell you roughly: Some of it went to Canada, some of it went to Detroit, some of it went to St. Louis.

Q. Did any of it go to the Standard Oil Company of New Jersey?

A. Some of it—let me finish your question, please—most of it went to the Atlantic Seaboard, some of it went to the Gulf refineries, some of it went to refineries in Southern Louisiana. None went to the Standard Oil of New Jersey.

Q. None? Did any of it go to the Humble?

A. No, sir. Wait a minute—none of the crude Texas oil went to the Humble. Humble moved some oil by railroad before the pipe lines.

Q. Then you were using some tank cars up there, weren't you?

A. Yes, sir.

Q. What proportion of the capacity of tank cars was the Humble using before the Humble's lines went in there?

A. I don't know.

Q. You don't have any figures on that?

A. No, sir.

Q. How much oil did the Humble move out a day from that field by tank cars before the line was built in?

A. I think we have got as high as 25 or 30,000 barrels a day—at one time.

Q. How much does a tank car hold?

A. About 200 barrels.

Q. That took quite a few of these tank cars, then, did it not?

A. Yes, sir.

Q. On westerday you stated that approximately 10 per cent of the 586 lease holders holding approximately 40 per cent of the wells, were taking out 40 per cent of the oil, is that correct?

A. Yes, sir.

Q. In referring to your 10 per cent of the acreage, did you mean proven territory in that portion which is now producing oil?

A. I mean in a proven territory.

Q. How much proven territory is there?

A. About 126,000 acres.

Q. And you mean, then, that your 10 per cent of the acreage was of the 100,000 acres.

A. 126,000 acres.

Q. 126,000 acres?

A. Yes, sir. About 12,000 acres.

Q. Was getting 40 per cent of the oil?

A. Had gotten it up to that time, had produced seventeen million barrels out of thirty-five million.

Q. Well, now, isn't that 10 per cent of acreage located in the present producing area?

A. Certainly, or it wouldn't have had that much production.

Q. Well, how much acreage is actually proven now?

A. I don't know.

Q. What portion of the producing area is producing?

A. Well, I guess all of it in spots —in spots; you have got something over 1200 wells up there, and a lot of those wells have considerable acreage. You can put as many acres around it as you want to—lots of those wells producing, you can get as many acres as you like.

Q. It is generally understood though there are about 126,000 proven acres now producing oil out of that field, isn't that correct?

A. Not that I know. You have got 1200 wells, and those wells have considerable acreage around them, the wells are different distances apart, some of them—you have got 1200 wells and if you have got your 100 acres around them, you have 120,000 acres, it depends on how many acres are proven around each well.

Q. They have 40 per cent of the wells, haven't they?

A. Whatever you have there. (Indicating paper.)

Q. And they are producing, then, about half of the oil?

A. Have produced?

Q. They are producing about half of the oil up to this date?

A. Yes, sir.

Q. You make a distinction between "oil produced" and "are producing"—are they now producing that amount, half the oil is now being produced daily?

A. I don't know, I haven't any accurate figures since that date.

Q. What would be your guess at it?

A. Well, I guess that they have, then they are still doing it.

Q. Still producing? That whole country hasn't drilled many wells there recently, is that correct?

A. Oh, yes.

Q. Then you are not now getting a bigger portion than you did when these figures were compiled?

A. No, sir.

Q. Have you not secured a number of permits to drill wells in this territory since these figures were compiled?

A. There has been no change in our program since they were compiled, we were running about 42 rigs in East Texas, and I think we are still running them, that will answer your question, that we are drilling 42 or 43 wells out of the total of between 500 and 600 being drilled up there today.

Q. In order to clear a question—you have 22 wells now producing?

A. We have 42 wells now drilling.

Q. You have 42 wells drilling? And how many wells have you producing?

A. I don't recall today; I think at that date we had 108, July 8th.

Q. You don't know how many then have been brought in since July 8th?

A. No, I think we bring in a well and a half a day up there, approximately; from July 8, through today, is 20 days, will produce about 30 more wells, finish about 30 more wells.

Q. You think we need a remedy for this oil condition, do you not?

A. I have no doubt about that.

Q. Do you think the anti-trust laws should be repealed?

A. No, I don't think the anti-trust laws should be repealed, but I think the anti-trust laws dealing with producing probably should be modified to the extent of permitting owners of an oil pool to get the benefit of unit operation.

Q. Why not repeal all of the anti-trust laws, so far as they regulate oil companies, then?

A. Well, I don't believe you could do that without repealing them entirely.

Q. Then, if you are in favor of that, don't you think you are in favor of repealing them entirely?

A. Well, I don't know as I am in favor of that; I think the producer in an oil pool, after oil is discovered, should have the right, subject to the approval of conservation authorities, to enter into an agreement to limit their production and to produce their oil on a scientific basis by agreement. Today I am told by our attorneys that that is contrary to our anti-trust laws. But I think that is right, a right they are entitled to, the right that every other property owner is entitled to, and it is right for this Legislature to pass that type of law. It has been passed in New Mexico, and today the Hobbs pool in New Mexico is being operated on an agreement between the producers to prorate the field and limit their production in accordance with the desires of the producers as long as that agreement has the approval of the State authorities.

Q. What does oil sell for in that pool?

A. I think the same price as in West Texas. And I think the producers of this State should have the same right.

Q. How would it benefit the producers of this State?

A. Well, if they had sense enough to make an agreement and properly operate their pools, it would benefit them, sir.

Q. Well, your saying "if they had sense enough to make an agreement to properly operate their pools"—just what do you mean by that?

A. Well, that cuts into the whole question.

Q. Just what I have been trying to do.

A. I can give you a type of proper operation, two types, three types. I would like to tell you first, the ideal type of unit operation, such as the Humble Company has in a few oil fields in South Texas. We will take Sugarland, for example, as an outstanding one. Sugarland is the best field, owned and operated by the Humble Company, covers about 1400 acres that they say has a reserve of millions of barrels, and that field, in my judgment, is being properly operated. We have drilled about 70 wells in the field, one well to 20 acres; have taken out about ten million barrels, we hope and expect to take out eighty or ninety million, we are not wasting any gas from that field, not a cubic foot, all the gas that is coming out of these wells is being put back into the sand, all the wells flowing oil being produced with very low gas. That I call an ideal type of operation.

Q. Under that plan how would the operator be made to comply with such agreement?

A. Let's—listen, please.

Q. All right.

A. I said I would like to give you three illustrations of ideal types of operation.

Q. All right, sir.

A. The Yates pool, in Pecos county, I would describe as an ideal type of operation. It is not unit operation, it has some fourteen or fifteen owners, but the Yates pool has been operated from the beginning, in the summer of 1927, on a common program—that is, a program that is carried out by all. Under the Yates plan of operation, the owner does not have to drill but one well to 100 acres to get his share of production; therefore, the oil is produced very cheaply, very economically, and the Yates pool is a very satisfactory pool from an operating standpoint. There is no waste of any consequence in the Yates pool, because the oil and gas ratio is very low. The wells are tubed and they flow at a rate that is controlled, and there is almost no waste—what waste of gas there is is not a serious question, and is so closely contained that repressuring in the Yates field is unnecessary in order to recover.

The Hobbs pool, in New Mexico, is another illustration. In the Hobbs, forty acres to one well is the basis of drilling. They market the Hobbs oil and share ratably with purchas-

ers—with producers; there is no waste, and there is economic operation. Those three pools are outstanding; one is under one management, one company owns the pool, the other two are owned by various individuals and companies.

Q. Now, under the unit, how would the owner of acreage participate in the operation—would he participate on the basis of acreage?

A. Under the unit plan, as I have described, he would own it all, it would be his.

Q. Then, on the unit plan, it would be necessary, then, to form a corporation, wouldn't it, to take in all the acreage in that pool?

A. You do not seem to understand. The unit pool I have described is owned by one company, nobody else has any interest in it.

Q. All right. Do you think that is preferable?

A. It is unquestionably to the man who owns it.

Q. If the Humble Company owned that unit, then it would be better off than otherwise, wouldn't it?

A. Yes, sir.

Q. All right. Now, in the Yates pool, how do the various lease owners share a profit, on what basis?

A. Well, they share their profit—they don't share their profits when it is on their own property, they keep it, but they sell their proportionate amount of oil, just as between themselves, dividing the market; the Yates pool started dividing the market on 30,000 barrels; today I think the output of the Yates pool is about 70,000 barrels, has been over 100,000. But each owner of a piece of property gets his share of the total amount that is taken out of the pool, it is his own oil, and he is permitted to produce just so much oil.

Q. That is what I am trying to get at, he is allowed to produce on potential wells?

A. In the Yates it is down to one-third, he gets one-third allowance on acreage basis and three or four on potential basis.

Q. All right. Now, suppose there was a lease owner that didn't want to participate in that scheme of proration?

A. Well, there are not; they haven't got any.

Q. Well, now, do you think that is doing away with the anti-trust law in so far as they would let various operators get together and operate the pool, and if they had sense enough to do that, how would they participate then, if one operator in the middle of the pool didn't decide to come into the group?

A. He might have the power to break it up, he might stop the intelligent operation of the pool.

Q. He might? Would it be based upon the question of the size of his acreage?

A. How is that?

Q. Would the operator breaking up the combination depend upon the size of his acreage, or the size of his wells?

A. Well, I think it would be the size of his desire, his greed. One operator in a small tract in the center of the Yates pool could probably take out as much oil as all the field is producing today; those are large wells, the forty-acre tract, in the center of that tract with four wells on it, would probably produce as much oil as the whole field would.

Q. Then if he entered the agreement he would have to stand by it, of course?

A. Yes, sir.

Q. And you think that would be to the best interests of the industry and to the people of the State of Texas to so operate a common pool?

A. Yes, sir.

Q. Are the refiners almost wholly in control of production and piping and refining ends of the industry in Texas at this time?

A. I don't believe I get just what you mean.

Q. Are the companies, the owners of refineries, are the refining companies, the owners of refineries, are the refining companies in such position by the owning and holding of pipe lines, and the holding and owning of producing acreage, to control the oil industry in the State of Texas?

A. Well, there is this, practically every refiner in Texas owns production and pipe lines, it is a part of their business, and you cannot very well go into the refining business if you cannot get anybody with any sound judgment to go into the refining business and put in a considerable amount of money into it, unless they are also in the other branches of the business.

Q. I understand that is correct. Now, then, do these refiners own such portion of the producing acreage in Texas, and own such portions of pipe line in the State of Texas, as to be

almost in control of the oil situation in the State of Texas?

A. No, sir.

Q. You don't think so?

A. I don't think anybody or any group is in control of the oil situation of the State of Texas today; I think they have thrown away the compass and broken the rudder and are just going wild.

Q. Well, does the oil produced have any commerce except through the pipe lines and refineries?

A. There is some oil sold as fuel, if that is what you are getting at, but very little.

Q. Only a small portion?

A. Practically all the oil that is produced is going through the refineries today to the consumer.

Q. Then, practically, Texas commerce must depend upon pipe lines or refineries, doesn't it?

A. I don't know what you mean. All oil moving naturally in its natural movement in commerce, goes through the pipe lines to the refineries, goes through the refining operations, and then back through various channels.

Q. The portion that doesn't go through these channels is so small as to be negligible? Is that correct?

A. That is correct.

Q. Are refining profits always ample, in your opinion?

A. No, sir.

Q. What effect does supply and demand have upon the market?

A. Well, I will have to ask that question to answer it, Mr. Hardy. I don't know any commodity that is oversupplied, or that is available in oversupply, that it doesn't depress the value, whether it is peanuts or hogs or sheep, cattle, cotton, wheat, oil, whatever it is, I know that oversupply always lowers your value, regardless of what the commodity is.

Q. Here are some questions sent up to me to ask you: What is the amount of stored oil of the Humble Oil Company at the present time?

A. Let me see, I can check that. I think it is about 15,000,000 barrels, I am not sure. (After checking same.) Sixteen million barrels.

Q. What is the approximate amount of oil that the Texas Company has in store, if you know?

A. I don't know.

Q. What portion of these 16,000,000 barrels of oil is stored in Texas?

A. All of it.

Q. If you know, please state the amount of oil stored by the Standard Oil Company of New Jersey.

A. I don't know.

Q. If you know, please state the amount of refined products that each of the three pipe line companies have in storage.

A. I don't know.

Q. How much does the Humble Company have of refined products in storage?

A. Gasoline, fuel oil, lubricating oil and everything, you mean, as refined products?

Q. Yes, sir.

A. I think we have about two million barrels of gasoline, a little over a million barrels of fuel oil, and the rest is negligible—two or three hundred thousand barrels of kerosene and other products—lubricating oil.

Q. What is the average cost per barrel of your storage, which means at the time it was placed in storage?

A. At the time it was placed in storage?

Q. Yes.

A. I don't know if I can answer that. I will see if I can—get it up for you.

Q. Assuming that one of the three above companies have no oil in storage—had not oil in storage the first of this year, and assuming they could buy sufficient oil during this year at current prices to equal the amount of either of the other two companies, would that give such company, with its new storage at current price, any advantage over the other two companies in marketing refined products?

A. I think so.

Q. To what extent, that the oil that they carried in storage would cost them less than the oil of the people who have a few in storage would cost. Just what that would mean whether they would have an opportunity to market it or not is the question. Have you got that average?

A. Yes, sir.

Q. Humble oil is carried on the basis today at the value of 93 cents a barrel. I think that represents cost, that is not refinery price—that is not the inventory price, that is the average price the oil was purchased for that is now in storage.

A. As of May 31. I can give it further back to you if you want it.

Q. Now, you have answered—

A. Do you want it further back?

Q. Is that your inventory value?

A. That is the cost value.

Q. That is the cost value, that is of May 31, this year?

A. Yes, at the end of '30, $1.12, at the end of '29, $1.21 per barrel.

Q. All right. Now, if you have answered the question about the advantage of buying oil at the present price, then please state whether or not you know of any company now having such an advantage.

A. Well, I don't know anyone that has not got some oil in storage, if that is what you mean. Obviously any company who has storage for oil, but it would require the building of additional tankage, and the oil stands there without tankage at $1.35 (?) a barrel and there would be the additional expense of tankage.

Q. Do you know any company that is now doing that?

A. That is now storing oil?

Q. No, that is building any additional storage to put this cheap oil in?

A. I don't know of any additional tankage being built—only incidental tankage.

Q. Incidental to what extent—how many thousand barrels?

A. Oh, perhaps a million barrels; there may be—if it is, it is news to me, I don't know it.

Q. You were at one time an independent, weren't you, Mr. Farish?

A. Yes. I think most oil men were.

Q. Well, I mean by that you at that time were with a company that wasn't connected with the Standard Oil Company?

A. Yes, sir.

Q. In 1917, were you with the Humble Oil and Refining Company?

A. We organized the Humble Oil and Refining Company March 1, 1917, I was one of the organizers.

Q. In 1916 whom were you with?

A. I was an individual operator, with some partnerships with various people, one or two small companies.

Q. What is commonly known as "an independent?"

A. I guess that is correct; I don't know what the definition of independent is.

Q. You have stated, Mr. Farish, that refining operations are not always ample, and that the refiners do not have almost wholly control of production and prices, and that the refiners offer to the producers a fair price. I want to ask you if you remember making a speech or reading a paper some 15 years ago, at a meeting, wherein you made this statement: "I know that supply and demand determines prices, but it is manifestly unfair for the refiners to figure up that they are paying to us the market price." Do you recall saying that?

A. Yes, sir.

Q. Do you recall saying: "They make the market?"

A. Yes, sir.

Q. "Commerce in our product, except through them, has been destroyed?"

A. Yes, sir.

Q. "Perhaps I may say that they have destroyed it."

A. Yes, sir.

Q. "Whether it be right or wrong, lawful or unlawful, they have through their companies, come almost wholly into control of production and handling piping and refining of oil in the State of Texas?"

A. Yes, sir.

Q. "What the little fellow gets for his product is through their grace?"

A. Yes, sir.

Q. "What they offer, be it large or small, he must take or go broke?"

A. Yes, sir.

Q. "Getting money is a cold proposition, and I often feel that if I have to rely upon humanitarianism of the employees of those who now dominate the whole oil industry, including this production, that I will get but scant rations?"

A. Yes, sir.

Q. You made that statement?

A. I did.

Q. At that time you were not connected with a company belonging to the Standard Oil of New Jersey, were you?

A. No, sir.

Q. Did you believe those statements to be true at the time you made them?

A. I know they were true.

Q. Do those conditions now exist?

A. No, sir.

Q. You are now on the other side of the fence?

A. No, I am on the same side of the fence; but the same conditions do not exist.

Q. All right, I will ask you this, then; if you did not say this: "Of course, what we are looking for is a remedy. The refiners have about got us hog-tied, and they are asking for legislation in this State which will give them one more cinch in the knot." Did you say that?

A. I think I said that—in the same spirit.

Q. Did you make this statement, that "instead of being given more powers, they should be circumscribed or at least put under such governmental supervision as would insure to the producers and to the public, generally, fair and equitable treatment?

A. Yes, sir.

Q. "The charter powers of the pipe line companies make the public agencies and give them large powers?"

A. Yes, sir.

Q. "There would, therefore, seem to be no reason why they could not be subject to governmental control if the public good so required it?"

A. Yes, sir. I would like to have the privilege right on this point—

Q. Are you through with this subject, Mr. Chairman?

Q. Yes, you may go ahead—yes, sir.

A. All right. I want to make a speech now. I want to educate you. This was fifteen years ago, during the early days of the war. At that time the oil that was being purchased in South Texas, in South Texas fields, was about 35,000 or 40,000 barrels a day. At that time I think the purchasing of oil in South Texas was by contract, contracts were made for various periods, some for six months and twelve months' periods. There were only three buyers of oil in South Texas, there were only three companies that were buying this oil and refining it—the Texas Company, the Gulf, and the Sun Company. The producer had no market for his oil except to sell it under contract to those companies. And then oil was being sold and used primarily for making lubricants, the contract basis of oil was approximately that of its pure value, and at the time that speech was made it was to organize the producers of South Texas into an organization — independent producers' organization. I was elected president of that association and, due to the efforts of that association and due to the efforts of that organization at the time, the present pipe line bill is on your books; that is a bill—a pipe line bill which makes common carries of pipe lines a fact and not a theory. The producer of South Texas crude had no market, no other market; we had practically no other refinery in Texas at that time except these three refineries, and he was helpless, couldn't sell his oil to anybody except the railroads or some fuel user would take it. I advocated wide—additional control of production, and of pipe lines, I have not yet changed my attitude, I made it clear in my testimony before this group over the past two days we have advocated and stood behind conservation legislation and regulatory legislation of the right kind every time we had a chance to do it. There is nothing in that speech, I think, of my attitude, Judge, that I have to apologize for in my present position or in my present attitude before this House.

Q. How have the conditions changed relative to pipe lines, Mr. Farish?

A. Conditions have changed in this respect: I told you—I tried to explain the difference between the contract basis of buying oil and the open market basis, posted price basis; that was the only change that was brought about. The other change that was brought about is that the pipe lines today must accept common carrier oil, the basis of acceptance and the amount is written into the law. At that time we had no such law, but due to the efforts of that organization we put the present pipe line bill on our statutes.

Q. You have already stated, though, that all of the oil which did not go to the refineries is negligible, even though you have a common carrier law; the refiners are still in position to set the price of the market and oil must go there, mustn't it?

A. They are not in that position. They were in that position at that time because there were only three refineries buying that oil. Today Texas is producing a million barrels of oil every day—a day—Texas oil going every day—where there were three buyers then, there are probably 100 buyers today, where there was practically a little production and few refiners at that time, there are literally scores today, and we have a free market and an open market.

Q. And yet practically all of the companies have the same price for the oil, do they not?

A. I think so.

Q. If the Humble Oil and Refining Company posts a price, the others generally immediately follow, don't they?

A. They do if they don't want us to take their business away from them.

Q. And the Humble Oil and Refining Company has, since the first of January, been the first to reduce the price in the State, has it not?

A. No, sir.

Q. Who else reduced the price before the Humble?

A. The Humble has been the first to reduce its price.

Q. That is what I am referring to.

A. I made it clear the Humble did it because of the great volume that was moving below its price— at least, I tried to make it clear.

By Mr. Beck:

Q. Mr. Farish, what year was it that the custom of posting prices began?

A. It became general in the State of Texas, I think, about the year 1917 —I am not quite sure as to the date, but I think that was the date.

Q. Before you went into the Humble Company?

A. Well, it was about the time or during the year that we organized the Humble Company.

Q. Is it a fact that you, more than any other man, were responsible for having begun the posted price system instead of the contract and barter system?

A. Well, I think I had more to do with it than anybody else; I was president of that organization at the time.

Q. When you advanced the idea of posting a better price, so that every producer and every royalty owner would know what he was shooting at, who opposed your efforts at that time?

A. Well, there was no real opposition; it came during the war times— and I think the first direct change was a fixed price for crude oil by the Federal Fuel Board, Dr. Garfield and Mr. Requea (?), and the fixed price, as you recall, was put upon Oklahoma oil and upon Texas oil. I think the Gulf Coast got a definite price, I think $1.80 per barrel at that time, and $2.25 for Mid-Continent, and we were under that for the period during the war, and I think after that the whole business was on a posted price basis.

Q. Do you know any operator, or associate operator, that would like to abandon the present posted price system and return to the old contract basis?

A. No, I don't know of any.

Q. There is no demand for it anywhere?

A. No, sir. I think the present use of contracts in East Texas suggests simply an effort today—to buy cheaper oil.

Q. Now, wait a minute—an effort on the part of whom to buy cheaper oil?

A. By the buyers and makers of these contracts.

Q. The one who makes the contract?

A. Yes, sir.

Q. Is there such a thing as competition among sellers, as well as competition among buyers?

A. There is competition among sellers, I think, to sell; but I don't know of any competition between buyers.

Q. You mean you don't know of competition between the purchasing companies?

A. To get oil in Texas today, no sir.

Q. At cheaper prices?

A. At cheaper prices.

Q. Than on contract?

A. I don't know of any.

Q. Do you think all or nearly all of the buyers, at least, are willing for it to be on what they need?

A. That would be my judgment about it, yes, sir.

Q. In figuring your inventory value of crude that you have in storage, do you add to it from period to period the cost of storage that has accrued?

A. No, sir, that is the cost of the oil.

Q. That is what you would have to pay for the oil?

A. Yes, sir.

Q. In figuring your inventory of your oil in storage do you add into it the cost of storage for the length of time that it has been carried?

A. No, sir, that is the cost of the oil just what we have paid for the oil.

Q. It has been charged by various individuals that while you do not purchase at these contracts so highly disadvantageous to the producers, and while you do not purchase oil that is produced beyond the allowable, set by the Railroad Commission, that as a matter of fact you are purchasing from the so-called brokers who make these contracts in their own names and who then secretly turn it over to you?

A. We have no oil in our possession and never have had any of that

character. We buy openly, aboveboard, at the prices stated to one and all.

Q. For the purpose of enabling us to have a better conception of Texas in the oil industry, can you tell us approximately what the position of this State is as to the total production of the United States?

A. I have the figures here, sir, it is a very impressive situation.

Q. Have you any statement there that would enable us to be informed in the question asked? Have you either figures relative to the worldwide percentage?

A. Yes, sir.

Q. Will you tell those facts to us?

A. Yes, sir. This is the production of Texas the first six months. The daily average on July 7th, the date of these figures, was 987,000 which was 38.8 per cent of the total production in the United States.

Q. That is the Texas production—Texas production was 38 per cent of the United States?

A. Yes, sir. As of July 7th. During the year 1930 it produced 806,000 barrels, or 32½ per cent of the total for the year. For the year 1929 Texas produced 819,000 or 30 per cent of the total. For the year 1928 Texas produced 688,000 or 28 per cent of the total. Now then, since 1928 Texas has increased its percentage of the total production from 28 per cent to a little over 38 per cent. The point I want to make is that Texas has gradually increased its percentage of the production and California and Oklahoma have reduced their percentages. In other words, Texas has always increased its production since 1928.

Q. What is Texas' percentage?

A. Texas' percentage of the oil produced in the world, which is about 4,000,000, and of that amount Texas has produced 1,000,000 barrels.

Q. About twenty-five per cent of the world's production?

A. Yes, sir. That amount comes from Texas today.

Q. How does that compare with the percentage it produced yearly?

A. I have the figures here going back to 1926. In 1930 it produced 21 per cent of the world's supply. In 1929 it produced 22 per cent of the world's supply. In 1928, 19 per cent; in 1927, 17 per cent; in 1926, 15 per cent.

Q. Then the Texas percentage has constantly been increased as to the world production?

A. Yes, sir.

Q. Is that gain due to our total greater reserve, or is it due to more reckless campaigns of exploitation, or what?

A. Well, sir, I think I stated yesterday that the known reserve in the United States is estimated to be about 10,000,000,000 barrels. About one-third of that, we think, is in Texas. A little over three and one-half billion barrels. Against the known world reserve to be about 30,000,000,000. Therefore, Texas has about ten per cent of the known world reserve and produces about one-quarter of the world's production.

Q. Assuming no new discoveries in Texas, we may yet be buying our petroleum or petroleum products from outside of this State?

A. I can not make that assumption. We will continue to find more petroleum in Texas.

Q. One other question, Mr. Farish, are all of your books kept in Texas?

A. Yes, sir.

Q. Would you be willing to submit them to examination, all of your books and records to any authorized committee of the Texas Legislature, or a representative of the Attorney General's Department.

A. Yes, sir. They have been submitted to the Attorney General's Department.

Q. You would be willing to submit them on proper request. We have never denied any proper request for an examination of our books.

Examination by Mr. Satterwhite:

Q. Mr. Farish, are you familiar with what is known as Senate Bill 180?

A. Yes, sir.

Q. There has been introduced a bill here to repeal that law, and in order that we might have your opinion, would you mind expressing your opinion to this Committee as to what effect that will have on the oil business in Texas if it is repealed?

A. I will be glad to tell you what I know about it. I do not know as much about it as some of the lawyers know.

In the year 1919 the Humble Company doubled its capital stock and sold the half that was doubled to the Standard Oil Company of New Jersey. There was some criticism in

some quarters and some discussion as to the legality of the Standard Oil Company of New Jersey owning stock in the Humble Oil Company. The fact that the stock was sold to the Standard Oil Company of New Jersey was brought into question. Along several years later Attorney General Keeling brought suit against the Humble Company on the grounds that such ownership or the holding of such stock by the Standard Oil Company of New Jersey was illegal for various and sundry reasons. That case was tried before Judge Calhoun in his court here in 1923. Judge Calhoun decided that this ownership did not control the Standard Oil Company of New Jersey—did not constitute the Standard Oil Company of New Jersey doing business in Texas, and the voting of that stock was entirely legal. Judge Calhoun's opinion was upheld by the Supreme Court in 1924. The Supreme Court handled it in such a way as to approve the action of the Court of Appeals decision. The matter of the ownership and voting of that stock was held to be legal by the courts in Texas. In the year 1925, following, we asked the Legislature of Texas to pass that bill known as Senate Bill 180. Senate Bill 180 simply stated that the voting by foreign ownership of stock owned in a Texas corporation was entirely legal. Now, the reason why, notwithstanding the fact that the Humble Company had been tried and found not guilty, we asked the Legislature to pass Senate Bill 180 to remove any question of doubt from the minds of foreign investors in Texas. We had had some considerable difficulty as every Texas company has that desires to finance itself, in any considerable volume, in getting money to come into Texas. Among the investors in the North and East this question of doubt existed, and if they knew, and were well informed as to the laws of Texas, there was not any question of doubt with them, but still this doubt existed in the minds of a number of investors for a number of years. That is the reason why we asked the Legislature to pass Senate Bill 180.

In the judgment of our attorney, and in the judgment of many other lawyers, the law was unnecessary, but with the passage of Senate Bill 180, all question of doubt as to the legality of this was removed.

Our idea in asking the Senate to pass this Bill 180, was to remove all questions of doubt in the minds of the investors in Texas securities. We felt that it would be a real contribution to the commercial life of Texas, and the property values of this State, if the doubt that existed in the minds of foreign investors in Texas securities might be removed. It was our idea that it would be a good contribution towards stability, it would be contributing to letting the world know that property was just as safe in Texas as in any other state in the Union, and it was not necessary for them to go through a trial to maintain their property rights.

The passage of Senate Bill 180 did not change the law one bit. Foreign owners of stock in Texas corporations can still vote that stock. Practically every corporation of any size in Texas today is owned by a foreign chartered company. Practically every one of any consequence. I do not know why that is. It might be because they fear this Legislature, but at any rate there was a timidity of foreign capital to be put in Texas for fear of Texas charters, and Texas legislation.

Q. Mr. Farish, can you cite that decision as handed down by the Supreme Court? Can you refer me to it?

A. No, but Judge Mobley, I am sure, will be glad to tell you where it can be found. I would like to make this further statement about Senate Bill 180. We discussed that bill with the Attorney General's Department, that is, with the outgoing Attorney General, and with the incoming Attorney General, and they were of the opinion that there was no question as to the legality of the bill.

Q. In your judgment, do you believe that the Legislature of Texas, under that court decision, can pass a measure that will forbid what was attempted before this court decision?

A. I think the Legislature can—I am getting out of my field. I think the Legislature can pass an Act forbidding any fellow doing business in the State.

Q. We also have another bill before this Committee, which attempts to reach this conservation of gas and oil by the route of placing a graduated tax. Will you give us the benefit of your opinion as to that. Have you read that bill?

A. No, but I have seen comments on it in the paper. I know about

what the bill means. I do not know, Mr. Satterwhite, whether a graduated tax on oil would be effective in the sense of controlling production, or not. I doubt whether it is the way. I am not in favor of it as the way to control overproduction in Texas.

Q. The present revenue laws taxing production of oil on the percentage basis at the well. In your opinion, if that law should be amended so as to place a two-cent tax per barrel, what effect would that have on the industry?

A. I do not believe it would have any benefit.

Q. Do you not believe it would figure materially in the posted price?

A. Not if we have effective conservation legislation.

Examination by Mr. Lasseter:

Q. Mr. Farish, you stated a while ago that you called a meeting in New York at which most of the major companies were present, and following that meeting there was posted in East Texas a 67-cent price. Is that correct?

A. No, sir, the price was posted before this meeting was called.

Q. About the same time?

A. Before.

Q. Directly following that there was another meeting in St. Louis?

A. Not that I know of.

Q. You were not in attendance at the Petroleum Institute in St. Louis in May of this year?

A. This year?

Q. Yes, sir.

A. No, sir.

Q. Along about the time of these meetings,—you knew about the meeting, did you?

A. I think there was one there at that time. I think there was a meeting but it was not in St. Louis. There was a meeting in Fort Worth.

Q. Along about that time the Humble made a trade with the Vacuum Company to furnish them with oil, did it not?

A. I do not know what time it was.

Q. Was not that about the time that the posted price was withdrawn in East Texas?

A. No, it was before that, as I recall it. I made a trade with Mr. Hadley of the Vacuum Company on my way back from New York.

Q. There has recently been given permission for the Vacuum to merge with the Standard of New Jersey?

A. Who was that?

Q. The State of New York.

A. The Standard of New York, and I think by the Supreme Court of the United States.

Q. It was the usual, duly constituted authority?

A. Yes, sir.

Q. The Vacuum has been in need of some oil. It was buying oil prior to that date, was it?

A. I think they were.

Q. They have not bought any since then?

A. They have been buying from us.

Q. What was the nature, if you do not mind telling us, of that trade?

A. I have no objection. Mr. Hadley stated that he had some leases and said he was drilling and was going to produce them and wanted us to gather the oil.

Q. And you have been gathering that oil, have you?

A. Yes, sir. I am trying to tell you the nature of the trade. He told us that he had some leases and he wanted us to gather the oil and maybe handle some of it; maybe fill the tank farm at Texas City, or buy it. I told him that we would not be willing to buy the oil but would make a trade with him by which we would take his oil from him until he can produce it. I told him, all right. Fine. That we had no objection to it, I think in the month of July, sometime—

Q. (Interrupting) Is the Humble in the habit of loaning a competitor—

A. Sometimes we get business that way. The Vacuum Company has traded with us from the year they started in business. We have sold them crude oil.

Q. They are a lubricating manufacturing company, are they not?

A. They are primarily a lubricating people, but they manufacture everything.

Q. And they have been driven out of the retail business at this time, to a certain extent, haven't they?

A. I do not get you.

Q. They have been driven from 100% refiners to the point where they only make and sell lubricating oil?

A. I dare say they have lost some connections.

Q. Was not that the court's terms

for the reason for granting the merger?

A. It may be. I was not familiar with the details of that opinion.

Q. Your stations do not handle Vacuum Oil, do they?

A. I did not catch that.

Q. I mean 100% company operated stations have this permissive arrangement. They do not handle Vacuum Oil?

A. Why sure.

Q. I understand that since that arrangement they have operated at most of the Humble stations.

A. That did not have anything to do with it.

Q. They were not selling there prior to that time, were they?

A. Prior to what time?

Q. Prior to the granting of the permission of this merger?

A. Yes, sir.

Q. Where?

A. Here in Texas. That had nothing to do with it at all.

Q. I am asking you for information more than anything else.

A. I am answering.

Q. We are not arguing that question. You are pretty friendly with the Governor of Texas, are you not?

A. Yes, sir. I regard him as a personal friend.

Q. So do I. You were at the Governor's home and visited at his home at regular intervals, do you not?

A. I have visited him on numerous occasions for many years. We were neighbors for years.

Q. Did you visit him on or about July 12th?

A. I do not know the day. I have had a couple of visits with him recently.

Q. At the time you spent Sunday in his home, just about three days prior to the convening of the Legislature,—you did that, didn't you?

A. I do not know what the date was, but I had a visit with him on Sunday afternoon at his home.

Q. Being the logical and most talked of subject did you happen to talk with Governor Sterling concerning the present oil situation?

A. Unquestionably.

Q. You did not mention the subject of legislation to the Governor?

A. No. The Governor has his own mind about legislation.

Q. He does not agree with you entirely, does he?

A. No, not entirely.

Q. All right. I will ask you something else. Does the Humble Company advance money on leases and royalty?

A. Yes.

Q. Tell the House the nature of those kinds of contracts. Who makes these advances on royalty and premiums for oil?

A. On what?

Q. I do not know that you make such loans.

A. We do, but I do not get the words "premiums on oil."

Q. The advance payments in the nature of a loan.

A. Well, ever since we have been in business it has been our custom and habit to lend money to producers, or to advance money to them, dating back for years. I have a list here for a number of years, where we have loaned money to producers.

Q. Does it give the names of those that you have assisted?

A. Loans and advances on oil, and on oil properties totaling $150,000.00 or more. It shows that we have granted loans of one kind or another over a period of years.

Q. Will you file a list, or a duplicate of that list with this Committee?

A. Yes, sir.

Q. I would like to have it certified and filed.

A. I would be glad to do it, I would be glad to read it.

Q. That is too long.

A. I will state this, the amount here shows a minimum of $150,000.00 and up to $700,000.00, or $985,000.00 which is the largest amount, which is headed "Loans and Advances on Oil."

Q. Who was that biggest amount loaned to?

A. To J. H. Hughes of Mexia, Texas.

Q. Mr. Hughes agrees with the Humble Company's ideas, does he not?

A. Sir?

Q. Mr. Hughes agrees with the Humble Company's ideas, does he not?

A. Yes, sir.

Q. I just read a newspaper account of Mr. Hughes' idea of proration recently.

A. I know that he believes in proration.

Q. Can we have the list?

A. Yes, sir.

Q. You will file it?

A. Yes, sir. If the gentlemen

think it is important to this inquiry I have no objection to publishing it in the Journal, but it is a private business, and I do not think it ought to be, but it is up to you. If you want to do that you will take the responsibility, and not me. I will be glad to answer any inquiry about any of the items listed thereon.

Q. Do you mind us looking at it, Mr. Farish?

A. Help yourself.

Q. Mr. Farish, while they are looking over the list—you had breakfast with Mr. Holmes of the Texas Company—didn't you?

A. Yes, sir. I had breakfast with him.

Q. What other oil company official did you have breakfast with the same morning?

A. Nobody else that I know of.

Q. Mr. Dies was there, wasn't he?

A. I walked into the dining room with my young son and Mr. Holmes was there by himself.

Q. Is the Texas Company a competitor of the Humble Company?

A. Yes, sir.

Q. You get along pretty well, don't you?

A. We certainly do.

Q. Did you talk about the oil business any?

A. No, sir, not seriously.

Q. It's pretty serious, is it not?

A. Yes, sir.

Q. And a Senator from Houston happened to be there that morning, didn't he?

(This question and the answer sought to be elicited was objected to and the objection was sustained by the Chair.)

Q. Now, getting back to the East Texas Field, you heard most of the testimony this morning regarding gas waste in Texas?

A. Yes, sir. I heard most of Governor Neff's testimony.

Q. Do the records of your company on the East Texas condition as to waste in East Texas, would not that be objectionable from an economic standpoint? Is there existing in the Kilgore area from the Kilgore area in which the Humble has a great drilling campaign considerable gas waste?

A. What do you mean by considerable?

Q. That this would be an economic waste.

A. I think the records will show if we are able to get it, that in the East Texas Field that there is 500 to 1,000 feet of gas produced with every barrel of oil, and that gas is being burned.

Q. Does that apply to your field?

A. That applies to the whole field.

Q. Do you remember the testimony offered last year, in which Mr. Foran testified that there was 350 feet average, approximately, in the field?

A. I do not know what Mr. Foran testified to. Did he give you any figures, or was that an estimate?

Q. Then you are basing your estimate on the wells that are producing in that area, are you not?

A. Yes, sir, that is based on the whole field.

Q. If it is presumed that it is 500 feet per barrel, would it be economy to construct a refinery there to construct the casinghead gas and use that which is being wasted in that field?

A. Yes.

Q. Then tell the House why the Humble Company has not made any attempt to put in a casinghead gas plant there to conserve that gasoline that is escaping?

A. The Humble Company has under consideration at this time an appropriation to build two such plants.

Q. Then it would be an economical proposition to do that?

A. Yes, sir. It would be if we are going to get a reasonable value for the gasoline. That necessarily enters into the economics of the business.

Q. You hope some day to see the return of the posted price in that East Texas Field, and a higher price paid for not only the crude oil, but for the refined product. Up to date it has not been economical, has it?

A. I do not know that it has, but I think we are going to spend that money, and build those plants.

Q. Then you believe that the price of gasoline is going up?

A. Yes, I believe it is.

Q. Is it necessary in the Kilgore area to drill inside wells to drill that property?

A. Yes, sir.

Q. To what extent would danger occur on the line leases on that property, based according to the Railroad Commission's permit for an offset well that was not producing a greater amount of oil from the well than that many inside wells?

A. That question is difficult for me to answer. I do not know how many wells are there.

Q. Would they drain it?

A. They would. They would to this extent. I doubt whether very much oil would come across if the pressure had disappeared. To the extent that the gas pressure is taken away from the rest of the field, it would injure it to that extent. It is impossible to measure it. But some property will produce a large amount of oil where the wells are largely separated than others due to the character of strata in which wells are drilled.

Q. Then if you move back within the interior of that block and subject to the unit proposition of a few owners, you still can drill a well within the interior of that block in such a way as to protect those wells?

A. I think we can.

Q. Would not the same conditions exist if those wells offset you and you had no wells on the interior of that property? Would not you still have to drill that property closer than 150 feet to the line of the adjoining producer in order to secure your oil?

A. I think so, however, I think that if one well was drilled on a twenty-acre block it would take care of the oil in that block.

Q. Notwithstanding the fact that Mr. Foran testified to?

A. No, sir, I think it would be an economic proposition to drill one well to twenty acres.

Q. But I can conceive of this condition. A well over here on one lease, and then over a thousand feet away is another well. Both of them drilled at the same time and in the center of a lease. Now for the purpose of cutting down the actual investment that is being put into the operation, I believe that the testimony of Mr. Foran showed that gas moves approximately fifteen times faster than oil. Can you conceive of the gas and oil moving exactly alike from the center district between those two wells and fast enough that the oil will have reached one of them as quickly as it will have reached the other?

A. No, nothing is known as to who will get the larger portion of that oil.

Q. Then to actually produce that property as it should be, other wells will have to be drilled in between those wells that are one thousand feet apart?

A. Possibly. If you get the maximum ultimate recovery you are going to have to resort to the maintenance of pressure if the oil is drained from that field with the wells one thousand feet apart.

Q. Is it not a fact that in Venezuela in the drilling of oil wells there it is the common practice to drill one well to every one hundred acres?

A. I do not know.

Q. Is that not about what they do?

A. There are a lot of wells in Venezuela, and there is a considerable amount of oil land there and they give as many acres as they reasonably can to each well.

Q. About what per cent of recovery has been obtained in that field? Is that method of drilling more effective?

A. No, I do not think so.

Q. Under ideal conditions of this territory and this theory of development do not petroleum engineers hope to get a maximum ultimate recovery of more than 40%?

A. I think so.

Q. Is there not two theories as to the condition existing in East Texas, as to whether that is a naturally saturated oil sand or gas under pressure? Are not those two theories being advanced?

A. Whether it is gas saturated sand under tremendous pressure, or what?

Q. Or the actually saturated oil sand?

A. I never heard of anybody advocating that it was a gas saturated sand.

Q. Are not there other fields in which they advance the same theory?

A. Not that I know of.

Q. The water in the East Texas Field; that has been on the west side, has it not?

A. Yes, sir.

Q. And it has resulted in a tremendous hydrostatic pressure?

A. It has done it, that is the reason we have the oil accumulated.

Q. Now then, the local territory between this strip where the wells are being drilled on the west line of the proven area, and advancing towards the east, that would result in the best development of the field, would it not?

A. I do not think so. I think

equal withdrawals with a maximum pressure would be the logical way to develop that field. I do not think that anybody ever dreamed of it. Assuming that you had one ownership and owned 100% of the oil in the field. I do not believe they would drill wells only on the west edge of that field.

Q. That would prevent water encroachment, would it not?

A. I think it would waste a lot of wells. It would be an unsound investment. It would be a wrong investment to drill a line of wells right down the west side of that property. It would be only a question of a short time until these wells would be stripped. Another thing, if you drill there, you would not be able to keep the pressure on the field. You can control your water under pressure.

Q. You mean by repression?

A. Yes, sir.

Q. You do not believe in any of these plans that have been offered? I believe that you stated that you can obtain the most oil from a field by repressure.

A. They ought to if they do not.

Q. Well, it is already nine, ten, or eleven months, there has been told,—I believe you testified—

A. Well, it all hasn't amounted to anything except during the last three or four months.

Q. Well, that has been developed in the small localities, only 29,000 acres of actual productive area, now?

A. Measuring it by area alone, or so many acres per well, or what?

Q. I am only taking—am only going by reports I have seen, that the proven area is more than 126,000 acres, but developed production area is less than 30,000 acres?

A. I guess that is right. If we give each well about 20 acres.

Q. Well, that is fair, I presume, then, that is what the last order of the Railroad Commission was figured at?

A. Yes, sir.

Q. Isn't it a fact that that particular productive area has an advantage, an average six-months' productive time more than any other portion of the field can have?

A. It has some advantage, I don't think it would be as much as six months.

Q. Then under the theory that too rapid production is taken from a well that shows water encroachment and coning and channeling and trapping of the oil, itself from this water encroachment, wouldn't the same thing be true on the 20-30, 50-acre leases that had 10 wells that would produce what one well would produce on the same area?

A. No.

Q. In comparison, one well in the Van Field in ratio to the size of the field, is not any more than a 20-acre lease in the East Texas Field, is it?

A. I don't know the ratio, but I—

Q. Well, it is more than that, that is conservative?

A. Well, whatever it is; the question of acreage to a well, measures down, I don't know the actual acreage.

Q. I don't know the actual, either, Mr. Farish, but wouldn't that same theory hold?

A. What theory?

Q. The ten acres on a 50-acre lease of the East Texas Field, producing 10,000 barrels, would be equal to a 10,000-barrel withdrawal of a single field in the Van Field—I mean of a single well—in the Van Field?

A. In other words, you figure that the oil per acre in the Van Field is about the same as in the East Texas Field?

Q. No, sir. Mr. Farish, I am trying to illustrate in a ratio per cent that in the East Texas Field, that a highly developed productive lease of 50 acres, producing from spaced wells, on that particular lease can cause as much damage to the field as a single well in the Van area in proportion to the size of their field could cause if it was flowing at the rate of ten times as much?

A. I don't think so, no, not if I know what you are trying to get at. But that you can compare a single well in the Van pool with a 50-acre lease in the East Texas pool, I am quite in doubt about that.

Q. Mr. Farish, we were talking awhile ago about advanced royalty contracts, and figured out a list, and here I see J. K. Hughes Development Company, $985,000.00 Would you mind telling us just why it would be necessary for any man to get that amount, was that a sale or a loan or an advance loan?

A. Advance loan against oil production.

Q. Against production?

A. That is, the total over a period of several years.

Q. How much at any one time was advanced?

A. I don't recall—three or four hundred thousand, I guess.

Q. Four hundred thousand dollars as advanced royalty?

A. No, it was advanced against the purchase of oil.

Q. Against oil to be delivered?

A. To be delivered, against oil to be bought.

Q. In January, 1930, there is listed R. S. Sterling, $300,000.00.

A. Yes, sir.

Q. Is that advanced royalty or oil to be delivered?

A. Well, I don't know—part of it is advanced royalty, part of it is payment of a debt.

Q. Just what is the advanced royalty?

A. Advanced against royalty, or advances against production.

Q. Does it carry an interest rate?

A. Yes, sir, in some instances it does, and in some it does not. The item you speak of—do you want an explanation of that?

Q. Yes, sir, I want a detailed explanation of that.

A. The incident you speak of was in connection with the discovery of oil on what is known as Moss Bluff, down in Chambers County; the year previous—I think it was the year previous—they discovered a geophysical dome, known as Moss Bluff in Chambers County; the Gulf discovered the dome about the same time we did, and naturally there was some competition for acreage. We were able to secure the lease on what is known as the Sterling property, owned three-fourths by R. S. Sterling, and one-fourth by Champ Ross and Charles B. Wood, attorneys, of Houston. The leasehold consisted of two tracts adjacent to each other, aggregating about 1,550 acres. We bought this lease June 26, after a bidding contest with the Gulf Production Company. In order to prevent the lease from getting away from us, we finally had to pay $175,000.00 on it, something over $100.00 per acre, and the same amount in oil payment, if, as and when produced. This consideration was paid to the lessors in proportion to their respective interests. At the time you speak of, which was in January, 1930, and just before that time, we discovered oil on this property that would produce about fifteen hundred to two thousand barrels a day. We didn't want to produce the oil, it was the Humble judgment that we had more oil to take care of than we wanted to, and had more wells than we wanted, and we asked Mr. Sterling, and Mr. Ross and Wood, for permission to shut the well in, do no drilling on that property for one year, and they said they wanted an income from it if there was any production, and while they were willing to have it shut down, shut in,—they wanted to know what it was worth to us to shut it in. Finally, the trade resulted in a contract by which we paid them the balance due in payment for the property of $175,000.00, and by which we loaned them or advanced to them $225,000.00 or a total of $400,000.00, to be paid back out of royalties on the property, if, as and when produced—royalties on oil, royalties on sulphur; and whether we continue under the lease or not, the property is subject to a payment to us of $225,000.00 before anybody else can get any oil—get any royalties on it. This property was bought by the Humble Oil and Refining Company for what we considered to be our best interests, we approached them for the trade.

Q. Who is "Sugarland interests?"

A. Sugarland interests is Sugarland Refining Business at Sugarland, Texas.

Q. Do you know any of the majority stockholders in the Sugarland interests?

A. Unless it is the Kempners, of Galveston.

Q. Do they own all the oil wells?

A. They own some leases on property in the Sugarland oil field, in which we have no development.

Q. And you advanced to them $700,000?

A. Yes, sir.

Q. As an advanced royalty or a contract or payment?

A. As a loan against their royalty interest. It bears interest.

Q. Mr. Farish, I have forgotten now the explanation you made as to the advancement for the oil to be produced, owned by the Sugarland Industry.

A. It was a loan to be paid back, having royalty security, at interest. We made the loan as we do all loans, we are not in the habit of giving away money, we not in the habit of loaning money without getting security, we are not doing it just to be lending money, we are not in the banking business. Ninety-nine per cent of every dollar we have ever

loaned has been paid back. We have an idea of the value of these properties—because there is no one in the world owes us any money today they haven't paid back, no one in the world today we don't think absolutely secured; the total amount of the list is about ten million and it is all paid back except about a million dollars.

Q. Mr. Farish, have any advanced royalties been made since January, 1930, on any properties owned by R. S. Sterling?

A. No, sir.

Q. In the beginning of the development—getting to a new line—Mr. Beck might probably ask you some more questions about this—in getting back to East Texas field, early in the spring the Humble Oil Company constructed a pipe line within a few miles of the field?

A. Yes, sir.

Q. And for an unexplained reason to me, that line was held uncompleted for several days?

A. That is right.

Q. In the meantime the Humble Company was using all available traffic on the railroads to move Humble oil, is that correct?

A. I think so. What is unexplained about the matter?

Q. I don't know how you are going to, I don't care.

A. No, you said some unexplained reason.

Q. I said some unexplained reason.

A. Unexplained to whom?

Q. The people of East Texas.

A. Have they asked about it?

Q. Yes, sir; asked me specifically.

A. Nobody asked me anything about it.

Q. If I remember correctly, about the same time as the Legislature—there was a pending bill, attempting to fix a rate, set up a fixed rate that a pipe line might charge for transportation as a common carrier of oil, and there were several witnesses appearing before these meetings of common carriers, who flatly stated that if the bill became a law, that they would not build a pipe line into East Texas. Did that have anything to do with the Humble not completing their line?

A. No, sir. Did the Humble make any such statement?

Q. I don't recall that they did; I asked you if that had anything to do with it?

A. No, sir.

Q. I asked the question and I am asking you now, why you did not complete the line?

A. We delayed the building of the line because the East Texas oil field was going wide open—in other words, every producer was producing oil, no regulatory measures attempted, and the East Texas field was being produced in any quantities that anybody could move it out. On the south line, particularly of the Crim property, our neighbors were producing and taking a tremendous amount of oil; we were forced in our judgment, in order to protect our own property, to take out a large quantity of oil. We didn't know where the end was, and didn't know what would happen. We delayed completing that pipe line in there and removed what oil we could by tank cars as the other fellows moved it, for the simple reason we didn't want to be made the goat, if you will, have an attempt made to make us take oil away with the pipe line, when the field was wide open and subject to no control.

Q. Mr. Farish, do you recall a single instance of a producer in East Texas field who had adequate pipe line connections to take his allowables, making other connections?

A. I think so.

Q. Can you name some?

A. I think they have been connected—I don't know that I can give names, or rules, but the majority have been connected with several leases in East Texas, and we have been giving them service on their line, and they have disconnected and gone to somebody else, and the Southern is removing their oil.

Q. At a lesser price?

A. At a lesser price and in greater quantities.

Q. Could it be possible that if there had been adequate connections in early January, say particularly in a period of 60 days before the mad scramble started, and the posted price —or, the average price, being more than 67 cents at that time, did it ever occur to the pipe line companies that they could themselves have controlled the production with a ratable or a—from those wells?

A. I don't know—it didn't occur to us; our attitude was fixed as a statement I have here in this record

before the meeting at Tyler on January 15.

Q. Can you furnish that list of names of those who disconnected from the Humble?

A. I will, I haven't got it handy—I will get it from my files. In that connection, there are numerous leases that we have offered to connect with, and take the oil ratably, and buy it, that didn't connect.

Q. I will ask you this—what the date of the completion of the Humble pipe line into East Texas was, that they began running oil through the lines?

A. I don't remember the exact date, I would have to get that.

Q. Well, that would be very material right now on this line of questions.

A. I will get it.

Q. It was the 15th of last March, wasn't it?

A. I can't locate it accurately, I will have to look up the record. March 11.

Q. You began running oil through the line March 11?

A. All right.

Q. How far did you have to build a loop, Mr. Farish, to connect into the East Texas field?

A. Just a few miles.

Q. Just a few miles? At that time, or at the time that the line construction was begun, there was not much more than seventy-five wells, total, in the field, was there?

A. I don't remember the number of wells, there must have been more than that.

Q. Well, there wasn't but sixty in January, were there?

A. Yes, but up to March 11 I think there were over 100 wells in the Joiner area of that field alone.

Q. You never have served the Joiner area, have you, Mr. Farish?

A. Yes, the Overton area.

Q. Well, that is probably true, but that is nearer Kilgore, the Gulf, and Texas and Sinclair have served?

A. I don't know. We run some in that field.

Q. They were later connecting into the field—

A. On March 18, to go back, there were seventy completed wells in the field.

Q. I thought that—

Q. One ten-inch line at that time could have carried the recommended allowable out of the field?

A. It would depend on the size of the recommended allowable.

Q. Fifty thousand barrels was the first recommendation. That was the first recommendation, but I didn't say it went into effect.

A. A ten-inch line's capacity usually is figured at about 30,000 barrels.

Q. Your line is a ten-inch line?

A. Yes.

Q. If you had been able to have transported—

A. But at that time the line was burdened with 18,000 or 20,000 barrels of Van oil.

Q. If you could have transported 15,000 or 20,000 barrels of oil, and the Gulf, which was closer to the Joiner area, and the Texas Company was contemplating building a line; if there had been three 10-inch lines in there three months after the discovery of the field, they could have carried away that oil?

A. They could have carried away a maximum of 90,000 barrels.

Q. It could have been done; when was the order issued—after April 1?

A. I don't recall that. Do you mean the Railroad Commission's order?

Q. Yes.

A. I don't remember the exact time.

Q. Prior to that time, Mr. Farish, there had been built in the field at least one skimming plant; is that correct?

A. One what?

Q. One skimming plant, or refinery?

A. I presume so; I don't know.

Q. With a capacity of approximately 5,000 barrels?

A. All right, sir; you make the statement and I will agree to it.

Q. What I am driving at, Mr. Farish, is this: If those producers in the early history of the field had of had an outlet for that oil, most assuredly they would have been glad to have sold it to the Humble or the Gulf or the Texas Company or anybody else at a reasonable price in a reasonable amount, and that is just human nature to want to receive a reasonable price, but they had no outlet except those commission agents or brokers that would handle that oil? Isn't that right?

A. Is that your belief?

Q. Isn't that true?

A. I don't know what they would have done. You say they would have

been glad not to have produced more than a reasonable amount. I don't know whether they would or not.

Q. That's human nature, isn't it, Mr. Farish?

A. Not as exemplified in East Texas.

Q. I am merely trying to make a comparison of human nature as it is all over the world, and if it is true in one locality it would be nearly true in another?

A. I don't believe you can get as many different interests and different people as there are in East Texas, and have them agree on any definite program that you suggest.

Q. I rather think you are right.

A. I think the records of the companies in East Texas demonstrate that the theories you are advancing would be an impossible conclusion.

Q. It is still true that they were not furnished with a common carrier or common purchaser agent in the field in its infancy?

A. No, that's correct.

Q. That's all.

Examination by Mr. Beck:

Q. Referring to this list of loans and advances that you have made to various individuals and companies, there are some several score of them, perhaps a hundred of them, going back to 1921. Have you been willing to make such advances freely during the last ninety days, with the market unsettled as it is?

A. No, sir; we have not made any advances freely for some months prior to them.

Q. Why?

A. We felt the condition in the oil industry was such that the loans were not safe or secure, and it would be poor policy to advance money under the conditions that existed. We have had to deny to make loans and told our friends, when numerous of them have approached us for help, for loans, and some of them really could not get it from a bank and could only get it from somebody who knew values, and no banker knows oil values, but we had to turn them down because we were approaching the time when we felt we would have to take care of ourselves and could not afford to spread our credit around any thinner than we had to.

Q. Under normal conditions, is it reasonably easy to predict the income from a producing property?

A. We can estimate, at least to our satisfaction and with every confidence, the ultimate production from almost any producing property, and assuming a fair value for the oil, we can tell with a reasonable degree of accuracy how much money will come from that property over a period of time. We will buy products on the basis of that valuation, or our valuation, and will lend money on it.

Q. In times of reasonable shortage, or times of adjusted market demand and production, there is quite a little competition in the buying of oil, is there not?

A. Yes.

Q. Then when you advance a man $50,000 and anticipate his production to that extent, you are pretty sure of getting his oil, aren't you?

A. Usually we make it a condition, that we have the privilege of buying his oil at our posted price, when we do that.

Q. Isn't that a buying method that is more or less practiced by all the major companies?

A. I think it is, yes. It is a general practice in the industry.

Q. Do you ever loan money to an operator before he asks you to?

A. No, sir.

Q. If he comes to you for money, it is usually because he needs it to carry on his operations?

A. Yes.

Q. Is one of the conditions of his getting the money—I will put it this way—you would a good deal rather loan out the money to an experienced operator and one that you know is a capable producer, than to some other type of operator?

A. Certainly. And as a usual condition, of course, the character of property they have.

Q. You require security on all these loans?

A. Yes, what we think is adequate security on all of them.

Q. For what purposes do operators usually want these advances?

A. To pay debts or drill wells.

Q. Once in a while one of them will come along and drill a well on a very thin margin, and owe the tool supply house and even his labor, and if you see it is good production, you will advance him money enough to clear his skirts?

A. Yes.

Q. Is that frequently done?
A. Yes.
Q. Do you frequently have occasion to advance money on anticipated royalties?
A. Yes.
Q. Sometimes in very small amounts?
A. Sometimes in small amounts.
Q. To folks in needy circumstances?
A. Yes, who cannot borrow money at a bank adequately, on that security.
Q. I see various loans here that you have made to Roeser & Pendleton, at various times.
A. It must be some years ago.
Q. Yes, that was some years ago; I don't see any the last three or four years. Are they experienced operators?
A. Yes, among the best in the State.
Q. Has any part of their success in developing their business resulted from the fact that they were able to get these credits and advances a number of years ago?
A. I don't know about that. I think it was a matter of convenience to borrow from us rather than from a bank.
Q. I see numerous loans here to a total of $325,000 to Cranfill & Reynolds. Is that Mr. Tom Cranfill?
A. Yes.
Q. Is he the gentleman that is opposing the work of the Central Advisory Committee?
A. I think he is opposing it, yes.
Q. Do you and he agree on your ideas of conservation?
A. No, sir.
Q. I see loans here to an operator widely known as Clint Murcheson; what is his attitude on conservation?
A. He is opposed to conservation. I had rather Mr. Murcheson would tell his own story, but as I understand it, he is for conservation in East Texas because it is so big it can't be handled in any other way, but in general he is opposed to conservation.
Q. And he is a good oil operator?
A. Yes, he is a very able oil operator and a very able man.
Q. Now, the Grayburg Oil Company; are they producers?
A. They are refiners at the moment.
Q. Are they considerable customers of yours?
A. Not at the present time, but they have been.
Q. And in the past you have—they have found it advisable to obtain loans from your company?
A. Yes.
Q. Is the practice in the oil business, in making advances to operators about the same as it is in livestock commission houses, who finance cattle raisers?
A. I don't think it's any different than what it is in all businesses.
Q. Just about the same principle?
A. Yes, the same principle.
Q. Have you ever urged this group of operators to support any kind of legislation now pending or heretofore pending before the Legislature of this State?
A. For the Humble's benefit?
Q. For anybody's benefit?
A. No, sir.
Q. Do you charge interest on these loans?
A. Yes.
Q. At a standard rate, or at a varying rate?
A. At varying rates; usually it is at what money is worth and what a good loan is worth. I think perhaps five or six per cent, as a rule.
Q. Depending somewhat on the size of the loan?
A. Yes.
Q. And the security back of it?
A. Yes. I don't think any are over six per cent, and I don't recall any below five.
Q. For what purpose, if there is nothing confidential in that relation, were total advances of $700,000.00 made to the Sugarland Industries? Will you relate that transaction?
A. Sugarland industries own quite a considerable property in the Sugarland oil field. They discussed selling us their royalty interests, or borrowing money on it and we could not agree as to paying them what they thought their interest was worth, and we ended the conference by lending them the amount of money you see there on that property. We think their property is worth considerably more than the amount loaned, but we could not agree as to the total value they wanted for the property.
Q. Now another thing; if you had not made that advance to them, they might have exacted their royalty in oil, and sold it to some other marketer?

A. Yes, they might; if they were in sufficient distress, they might have insisted upon more oil from the field than we wanted to produce. They had a lot of royalty interests and we dealt with it on a business basis.

Q. They could have demanded their royalty in oil, instead of money, couldn't they?

A. Yes.

Q. And if you had not made that advance to them on this oil, they might have gone to a competitor and gotten this advance?

A. Yes.

Q. Is there any peculiar circumstance regarding the loans to Cranfill and Reynolds?

A. No, sir.

Q. Just the same as the others?

A. They were loaned in the ordinary course of business, as all these other loans were made.

Q. Then you think the producer and the purchasing company have something to gain by cooperating together in these matters?

A. Unquestionably.

Q. Have you told us all you would care to tell us about the transaction with Mr. Sterling?

A. I have told you the bare facts, and I think that is all that is necessary.

Q. Was there a written record of the transaction kept?

A. A formal contract.

Q. Do you still preserve those contracts?

A. Yes.

Q. Are they where we could get at them?

A. Yes.

Q. Do you have them with you?

A. I have a copy with me.

Q. Is there any objection to filing that copy with the Committee?

A. None whatever.

Q. Now, we just can't understand, quite, why it is worth a lot of money to shut down a well. We want a little more explanation on that.

A. We wanted to shut down here and not drill this field because we felt we had all the Gulf Coast oil, particularly, that we could use. The Gulf Coast was overproducing the amount the Commission had set for the Gulf Coast, and we felt to bring this oil field in would further complicate the situation.

In addition to that, it was in a more or less isolated place and would have required the building of roads in marshy land, and required the building of a pipe line in there to handle the oil, and we faced an expenditure of something like $125,000.00 to $150,000.00, and the combination of circumstances made it seem advisable to delay, and we considered that it was advisable to spend our money to have that privilege.

Q. Do you expect yet to recover that oil?

A. We expect to get every dollar of it back, yes.

Q. About what security do you believe you have on that loan?

A. We don't know. We don't know how much oil there is there, or how much sulphur, but we know both are present on that property.

Q. Do you know what reserves you have on that property?

A. No, sir.

Q. But you believe that it is adequate to cover the loan?

A. Yes.

Q. Why is it that you have not been making those advances to the people in East Texas?

A. We have not been requested, is one reason, and even if we were requested, we would not be able to measure any value in East Texas that would warrant advances.

Q. I didn't get that?

A. As far as I know, nobody in East Texas has asked us to lend them any money—no operator. I think they perhaps realize it would be foolish and a hopeless request.

Q. Would you loan them money?

A. No, sir.

Q. Why?

A. Because we would have no way to measure the values in East Texas.

Q. You say because you would have no way to measure what values in East Texas?

A. We don't know whether a lease in East Texas today is a liability or an asset; we think it is an asset, but we do not know it.

Q. Have you made similar contracts with other people at any time, to the one you made with Mr. Sterling?

A. No, nothing of any consequence. We have asked the privilege of delaying developments and have paid for that in numerous instances, to leaseholders; but nothing like the discovery of a new coastal field, or as big as the contract with Mr. Sterling.

Q. In the very nature of things, that set of circumstances or combi-

nation of circumstances would not occur very often, would it?

A. No, sir.

Q. Do you say you would file a copy of that contract with the Committee?

A. The Chairman of the Committee has it now.

Q. That's all I want to ask.

The contract follows:

State of Texas }
County of Harris. }

Know All Men By These Presents: That we, R. S. Sterling, Champ Ross, and Charles B. Wood, in consideration of Ten and No/100 Dollars ($10.00) and other valuable consideration, cash to us in hand paid by Humble Oil and Refining Company, receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed, and do by these presents grant, bargain, sell and convey unto said Humble Oil and Refining Company, a Texas corporation domiciled at Houston, Harris County, Texas, subject however to the provisions hereinafter contained and contract hereinafter referred to, all and every the oil, gas, sulphur and other mineral royalties payable to us as Lessor on account of that certain oil and mineral lease, bearing date of June 3, 1926, and of record in Volume 22, Page 592, et seq. of the Deed Records of Chambers County, Texas, and in Volume 138, Page 508, et seq., of the Deed Records of Liberty County, Texas, which lease covers two tracts of land situated in said counties, the first tract embracing 512½ acres of land out of Division No. 3, and the second tract including 1041 acres of land, more or less, being all of Division No. 4 of the James McFadden League, reference to said leases and to the record thereof being here made for all purposes.

And for the same consideration we, the said Grantors herein, grant, bargain, sell and convey, subject however to the provisions hereinafter contained and contract hereinafter referred to, to said Humble Oil and Refining Company in the nature of royalty interests to attach to said land, and each and every part thereof, if and when said above-mentioned lease should, for any reason, be or become terminated or of no further force and effect as to said land or any part or parts thereof, as the case may be, royalty interests as to oil, gas, sulphur and other minerals, respectively identical with and equal to the royalties payable to us as Lessor on account of the above-mentioned lease, it being the intent hereof that, should said lease become inoperative as to any part or parts of the lease premises, then as to such part or parts said Humble Oil and Refining Company shall continue to own and hold in the nature of royalty interests attaching to said particular part or parts respectively, royalties as to particular minerals corresponding and identical with the royalties payable under said lease. It is expressly agreed and understood, however, that upon the termination of said lease as to any part or parts of lease premises, the Grantors herein shall have the exclusive and unrestricted right, at their election and on such terms and conditions as to them shall seem proper, but fully protecting Humble Oil and Refining Company in its right to receive the royalty interests hereinabove granted to it, either to lease or operate said part or parts, or any portion thereof, for oil, gas, sulphur, and/or other mineral purposes; all bonus monies to be the exclusive property of Grantors herein; but all such leases shall provide for royalties on oil, gas, and other minerals at least equal to those provided for in the lease first mentioned above.

It is expressly understood and agreed that this instrument of conveyance is executed, delivered, and accepted in all things subject to the provisions of a written contract of even date herewith passing between the parties hereto and referring to the above-mentioned lease, the leased premises and the royalties and mineral interests pertaining thereto, which contract is hereby referred to, incorporated herein, and made a part hereof for all purposes.

To have and to hold the above described royalties and mineral interests in the nature of royalties together with all and singular the rights, privileges, and appurtenances thereunto belonging unto the said Humble Oil and Refining Company, its successors and assigns; and we do hereby respectively bind ourselves, our heirs, executors and administrators to warrant and forever defend all and singular said royalties and mineral rights in the nature of royalties, unto the said Humble Oil and Refining Company, its successors and assigns against every person whomsoever law-

fully claiming, or to claim the same or any part thereof by, through and under us but no further; provided, however, that we are respectively obligated on this warranty only in the following respective interests, to-wit:

R. S. Sterling warrants a three-fourths (¾) part of said royalties and mineral rights;

Champ Ross warrants a one-eighth (⅛) part of said royalties and mineral rights;

Chas. B. Wood warrants a one-eighth (⅛) part of said royalties and mineral rights.

In Testimony Whereof, Witness our signatures at Houston, Texas, this the 10th day of January, A. D., 1930.

R. S. STERLING,
CHAMP ROSS,
CHAS. B. WOOD.

The State of Texas }
County of Harris }

Before Me, the undersigned authority, on this day personally appeared R. S. Sterling, Champ Ross and Chas. B. Wood, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under by hand and seal of office this 10th day of January, A. D., 1930.

(Seal)

FREDA DUMBECK,
Notary Public in and for Harris, County, Texas.

The State of Texas }
County of Harris }

This Agreement this day made and entered into by and between R. S. Sterling, Champ Ross and Chas. B. Wood, hereinafter called First Parties, and Humble Oil & Refining Company, hereinafter called Second Party, Witnesseth:

1. Under date of June 3, 1926, First Parties executed and delivered to Second Party an oil and gas mineral lease which is of record in Volume 22 at pages 592 et seq., of the Deed Records of Chambers County, Texas, and in Volume 138 at pages 508 et seq., of the Deed Records of Liberty County, Texas, covering two tracts of land in said counties,—the first tract embracing 512½ acres of land out of Division No. 3, and the second tract including 1041 acres of land, more or less, being all of Division No. 4 of the James McFadden League, reference to said lease and to the record thereof being here made for all purposes. Supplementary to said lease, Humble Oil & Refining Company under date of June 3, 1926 executed an instrument in which it was agreed that as part consideration of said lease Second Party would pay to First Parties One Hundred Seventy-five Thousand Dollars ($175,000.00) out of five-twelfths (5-12) of the oil, exclusive of oil used for fuel for operating and developing said premises that may be produced and saved from said premises under the terms of said lease, said additional consideration being contingent upon the production of that amount of oil from said premises.

2. Second Party has this day paid to First Parties One Hundred and Seventy-five Thousand Dollars ($175,000.00) in cash, receipt of which First Parties hereby acknowledge as in full satisfaction and liquidation of the One Hundred Seventy-five Thousand Dollars ($175,000.00) mentioned above.

3. Second Party has this day loaned or advanced to First Parties the further sum of Two Hundred Twenty-five Thousand Dollars ($225,000.00) in cash, receipt of which is hereby acknowledged by First Parties. First Parties shall be under no personal obligations to repay said sum of Two Hundred Twenty-five Thousand Dollars ($225,000.00). First Parties, however, are, under even date herewith, executing and delivering to Second Party a formal instrument of assignment transferring to Second Party all royalties on oil, gas and other minerals payable to First Parties under and by virtue of the terms of the above mentioned lease and covering also corresponding royalty interests as to each particular mineral in any portion or portions of the leased premises as to which said lease may hereafter become inoperative; and it is expressly understood and agreed that Second Party shall have the exclusive right to appropriate all of said royalties on oil, gas and other minerals that may accrue or become

due or payable either under the terms of the aforesaid lease or on account of the corresponding royalties to attach to any portion or portions of the leased premises as to which said lease may hereafter become inoperative until the Second Party shall have been repaid and reimbursed therefrom the said entire sum of Two Hundred Twenty-five Thousand Dollars ($225,000.00), without interest; and First Parties hereby assign and transfer to Second Party all of said royalties and royalty interests until the proceeds thereof shall have equalled, and to effect the repayment of, the said sum of Two Hundred Twenty-five Thousand Dollars ($225,000.00) to Second Party. Second Party shall have the right itself to appropriate said royalties and royalty interests on oil, gas and other minerals produced from said lease in which event First Parties shall be credited therefor on said Two Hundred Twenty-five Thousand Dollars ($225,000.00) as follows:

(a) Oil royalty shall be credited on the basis of the current prevailing posted field price of Humble Oil & Refining Company for crude oil of like grade and quantity prevailing for the field where produced on the respective days on which runs are made to the pipe line; provided, however, this price shall at least equal the current prevailing price paid by major purchasing companies for Gulf Coast crude of like grades and quality on the respective days on which runs are made;

(b) Royalties on gas, sulphur and minerals other than oil appropriated by Second Party shall be credited on the basis of the current prevailing market price for such particular commodity for the field where produced on the respective days when the particular commodities are so appropriated.

If any of the royalties on either oil, gas, sulphur or other minerals produced and saved from said premises shall be sold by Humble Oil & Refining Company, then the same shall be credited on said Two Hundred Twenty-five Thouand Dollars ($225,000.00) on the basis of the price received therefor by Second Party in the field where produced.

4. For a period of one year from date hereof, Humble Oil & Refining Company shall have the right to shut in the oil well now situated on said premises if it sees fit to do so, and shall not be required to conduct any further operations of any kind or character on said premises during said period of one year, except to protect the property from drainage as required in said lease. After the expiration of one year from date hereof, Second Party shall only be required to perform the obligations of the lease thereafter accruing, it being the intent that after the expiration of said year the lease shall continue in operation in accordance with its terms.

5. Of even date herewith First Parties have executed and delivered to Second Party a mineral and royalty deed subject to said lease, but covering and including all of the royalties payable under the terms of said lease. This conveyance recites a consideration of Ten Dollars ($10.00) and other valuable considerations. It is agreed between parties hereto that said mineral and royalty deed has been executed and delivered for the purpose of providing the means by and from which Second Party shall be repaid said Two Hundred Twenty-five Thousand Dollars ($225,000.00) out of the royalty interests so conveyed, and that as soon as Second Party shall have been repaid the sum of Two Hundred Twenty-five Thousand Dollars ($225,000.00) mentioned above, said mineral and royalty conveyance shall ipso facto terminate and the mineral and royalty rights therein conveyed to Second Party shall revert to and revest in First Parties; and Second Party agrees that upon demand of First Parties it will execute and deliver to them proper written instrument evidencing such revestiture of said mineral and royalty rights in them, but such conveyance shall be without warranty on the part of Second Party.

6. This agreement shall extend to and be binding upon the heirs, legal representatives and assigns of the parties hereto.

7. First Parties shall have the right as an option, at any time after one year from date hereof, to repay and reimburse Second Party that part of the Two Hundred Twenty-five Thousand Dollars ($255,000.00) not theretofore covered by credit on account of the royalties this day assigned by First Parties to Second Party, to effect its reimbursement; and immediately upon such repayment and reimbursement to demand and

receive a cancellation of the royalty assignment hereinabove referred to,—such cancellation to be evidenced by formal written instrument executed and delivered by Second Party. Upon such cancellation, Royalties on account of said lease shall be payable to First Parties, their successors and assigns to the same extent and as fully as if neither the assignment so cancelled nor this contract had been executed or delivered.

Witness our hands and seals in Triplicate Originals at Houston, Texas, this 10th day of January, A. D. 1930.

R. S. STERLING,
CHAMP ROSS,
CHAS. B. WOOD,
First Parties.

HUMBLE OIL & REFINING COMPANY,
By R. S. Pearson,
Vice-President,
Second Party.

(Seal)

Attest:
A. S. Pate,
Assistant Secretary.

Upon the request of Mr. Hardy, a recess of 15 minutes was taken, from 5:40 to 5:55 p. m., and the examination continued in order to complete the examination of the witness.

Mr. Howsley: Mr. Farish, may I ask you two questions, then I will be through? I notice here that you have some loans to Roeser and Pendleton, of which Mr. Charles Roeser is president. Does Mr. Pendleton or Mr. Roeser owe you any money at this time, or the company?

A. No, sir.

Mr. Howsley: Does Mr. E. A. Landreth of the Landreth Production Company owe you any money at this time, or the company?

A. No, sir; not a dollar.

Examination by Mr. Farmer:

Q. Mr. Farish, there have been a good many matters in my mind, but a good many of them I am going to cut out, for the reason that you are tired and this Legislature appreciates the great patience that you have used in answering the questions that have already been asked, and our stenographers are tired. Now, Mr. Farish, the field of action into which I desire to go is this: Do you know how many counties in Texas do not produce any oil?

A. By numbers?

Q. Yes.

A. No, I do not.

Q. You do not know whether 182 counties in Texas produce no oil?

A. I guess that is approximately correct, yes.

Q. And that there are about 72 counties in Texas that do produce some oil?

A. Yes.

Q. Now as to the East Texas field, there are about how many counties involved in that?

A. Three.

Q. What counties?

A. Rusk, Gregg, and Upshur.

Q. Is Smith County partly involved also?

A. In a small way.

Q. Then you will say that four counties are involved in the East Texas Field?

A. Yes.

Q. About what part of those counties are involved?

A. What percentage?

Q. Yes.

A. That would be purely a guess, Mr. Farmer; I don't know. I would say perhaps ten per cent.

Q. Ten per cent of those counties are involved?

A. Yes.

Q. Now, Mr. Farish, we are concerned here with legislation to bring in under orderly methods the production of oil, and under the Constitution of Texas, Section 16, Article 59, dealing with the conservation of natural resources—what do you understand from that section of the Constitution the natural resources of Texas to be?

A. I have never attempted to define them before.

Q. You came from the State of Mississippi?

A. Yes.

Q. And when you came to the State of Texas, you were a lawyer, were you not?

A. I had a license to practice law. I had been out of the university a few months, and I don't know that I could claim to be a lawyer.

Q. You saw more fruitful fields for your endeavors in the oil fields than in the legal practice, and so you are not versed, as you would have been, in the legal interests of this matter?

A. No, sir.

Q. And you must trust to your counsel for your advice on those matters?

A. Yes.

Q. Well, we will deal with the people in Texas. Are you aware of the fact that about 500,000 people of Texas are interested in the production of oil, directly or indirectly?

A. Yes.

Q. And that in the State of Texas there at least 5,500,000 people that are not directly concerned in the production of oil?

A. That is correct.

Q. Then this 5,500,000 people are more directly and closely concerned with the price of oil and gasoline, are they not?

A. I presume that is one conclusion.

Q. All right, Mr. Farish; that being true, those people are concerned that the prices of gasoline and the price of lubricating oil and the other refined products of petroleum should be as cheap as possible, aren't they?

A. That would naturally be their desire.

Q. Then is it fair, Mr. Farish, that the farmers of the State of Texas, who feed us on twenty-five cents a bushel wheat, and on six and eight cent cotton clothe us, and at the same time have the price of oil and gasoline lifted to the standard as when they received eighteen and twenty cents for cotton, and a dollar for their wheat?

A. I didn't get that; will the reporter read the question.

(Question repeated.)

A. Mr. Farmer, several answers to that question naturally suggest themselves to my mind—

Q. Then, Mr. Farish, don't you think the farmers of the country, the State of Texas, and the laborers in the State should have the refined products of the crude oil in Eastern Texas sold to them upon the same basis that they are getting for their labor, and that they are getting for their agricultural products?

A. I tried to answer your question; I said that several answers naturally occur to me. One answer is that the best customers that the farmers and laborers have in Texas today are perhaps the oil people; and that you can not have prosperity in any branch of industry if all industry is flat on its back and losing money.

Q. Then, Mr. Farish, do you feel that the Federal Government should do something in the way of financing, as you have done for certain oil promoters, and start in this country a wave of prosperity to give employment to those who are unemployed?

A. No, sir.

Q. Don't you think the Federal Government should be as kind to the farmers and to the laborers of this country as they have been to the national banks?

A. That is a little far afield. I don't know very much about that question.

Q. Then Mr. Farish, don't you think if President Hoover should bend every effort to save the laborers and farmers of Germany by moratorium, that he should by moratorium attempt to save the people in East Texas, who are about to lose their little lands and real estate?

A. I think President Hoover in his attitude toward the German debts is acting in an intelligent, sensible way. I don't think the Germans can pay us, and just to sit tight and try to make a man pay you when he can't is foolish; it is the attitude of the wise creditor who will modify his debt to the ability of the debtor to pay.

Q. Do you think the Legislature of the State of Texas should enact a law whereby the oil owners of Eastern Texas should be limited in their production, if we have that power, so that they can not get enough money to pay their debts?

A. So that they can't get enough, or so that they can?

Q. Yes; so they can not. That we limit their production so that they could not get enough; so they can not pay their debts?

A. So that they can, I believe is the answer.

Q. All right, Mr. Farish.

A. May I explain?

Q. Yes.

A. It is perhaps a little off the record, but considering these questions you are asking are off the record—I think the world today, Mr. Farmer, is facing a permanent state of overproduction of all commodities. We have reached the state in the development of mechanics, in the stage of the development of machinery and a stage in the development of productivity of man in all lines, that we have the power to overproduce practically every commodity in the world—coal, copper, cotton, wheat,

oil, and everything else, and if we can not find some way in order to control overproduction, to regulate production, all production, not of oil only, but of cotton, of wheat, of coal, rubber, coffee, and every other commodity, we are going to be in a more or less permanent state of overproduction, until by attrition, or by bankruptcy, we can not overproduce. In other words we have got to sink to a lower level of effort than we are today, or we must find some measure to control overproduction, and we are challenged today by Russia in this whole question; by we, I mean the governments of the world are challenged by Russia and our democracy is meeting in Russia today the greatest challenge we have ever met, and we are going to meet that challenge and the efficiency of government in just the proportion that we are wise enough and able enough, through our delegated authorities, to measure up to that responsibility.

Q. Don't you know it is a fact that in the State of Texas today there are thousands of families who can use more than fifty gallons of gasoline each month, and they are not doing that because they do not have the money to buy it?

A. That is probably true.

Q. Don't you know also that they are not buying that gasoline and those products because they have not the money with which to buy?

A. I presume that is correct.

Q. And don't you know that there are thousands of people in Texas who are using your refined products and they are not buying them because they have not the money to buy?

A. I presume that is correct.

Q. And that overproduction is largely on account of the inability of the people to buy?

A. Of course, any overproduction is influenced by the ability of the people to buy.

Q. Texas was a great landed domain?

A. And still is.

Q. We give away our land and public domain for one dollar per acre, and lots of times for fifty cents per acre.

A. A little of it.

Q. Did not we give away nearly all of it?

A. No, sir.

Q. Did we not give away most of it?

A. No, sir, we gave away only a small part of it.

Q. Is it not a fact that we gave away in East Texas land at a dollar and seventy cents per acre that is now worth hundreds of thousands of dollars per acre?

A. I do not think that the State ever owned any acreage in East Texas.

Q. Does not the State now own land out there?

A. Not that I know of.

Q. Did not the State own that land at one time?

A. I do not think so.

Q. Who owned it?

A. It was owned by the grantees from the Mexican Government.

Q. And was all of that given away before Texas became a republic?

A. I do not think they acquired it from the State of Texas.

Q. Now, you tell me, if I remember correctly, you do not think this Legislature ought to levy an occupation tax upon the producers of these wells in East Texas?

A. I think the Legislature has already levied an occupation tax on them.

Q. Now, then, you have some five thousand barrel wells, have you not?

A. Yes, sir, we have some wells that will produce that.

Q. Now then, if you operated those five thousand barrel wells on an occupation tax of 40 cents a barrel, are you going to run those wells?

A. If I got a dollar a barrel for the crude I might do it.

Q. But if you only got fifteen to twenty cents a barrel for the oil you would not operate them, would you?

A. No, sir.

Q. You would rather operate the wells that are producing three hundred barrels per day on which the occupation tax on the output would be two cents per barrel, wouldn't you?

A. I guess so.

Q. Then if we raise it to twenty-five cents per barrel are you going to run that three thousand barrel well?

A. Well, that would depend on the price that we had to pay for the crude oil.

Q. Now, Mr. Farish, you are aware of the fact that this Legislature has the absolute power to cap a well if there is physical waste?

A. I think they have the power to prevent waste.

Q. Physical waste?

A. Yes, sir.

Q. Now then, here in the Reagan Field here are wells that are producing 20,000,000 feet of gas per day, and at the present time all of that gas is going to waste, is it not?

A. I do not think that twenty million feet of gas a day would be an economic or physical waste in that area.

Q. How many barrels of oil are we producing in Texas today?

A. We are producing today a million barrels in Texas, and our proportionate amount of the present market has been figured at 800,000 barrels.

Q. It is shown here by testimony that hundreds of millions of cubic feet of gas are now being wasted in the oil fields—do you think that that ought to be done?

A. No, sir.

Q. Do you think that that gas ought to be conserved?

A. I do.

Q. Have you ever read this Wagstaff bill, No. 5?

A. Yes, sir.

Q. Do you think that bill ought to be passed?

A. I do if we cannot get a better one.

Q. Have you seen a better one?

A. I could suggest some provision that would improve it.

Q. Would you hand us those suggestions?

A. I will be glad to do so.

Q. Do you believe that that bill ought to be passed, if we cannot get a better one?

A. I think it ought to be passed if you cannot get a better bill, but I think the bill should include some provision to regulate the production to the market demand.

Q. Do you think that that receiver feature without a hearing should go into that bill?

A. Is that the effect of it?

Q. That is one of the provisions.

A. I do not know, but I take this attitude: if I am a violator of the law I am due to get my hearing in due time. This, as I understand it, is only a question of time. It stops a man from taking the property away from under the adjoining property that he does not own.

Q. You have a pipe line system operated by your company. That pipe line system shows to have made a profit of 40 per cent for last year, did it not?

A. I do not know; I have forgotten just what the profit of the pipe lines were.

Q. Do you think that a pipe line is entitled to make 40 per cent profit?

A. The percentage of pipe line profits are nothing like that in this State, so far as I know. I do not believe that the percentage of profit on pipe lines operated in this State is any too large considering the amount they have invested in them.

Q. Do you think that 10 per cent is a reasonable profit on your investment?

A. Ten per cent is a reasonable profit to make on an investment, but with pipe lines, regardless of the amount of profit they might make, or the percentage of profit they might make on the investment, it is seldom that they pay out.

Q. Suppose it is an investment of only $3,000,000—would 10 per cent earnings be reasonable on a pipe line?

A. Ten per cent earnings would be reasonable in any line of business, with deducting proper percentage for depreciation.

Q. What per cent of depreciation ought to be allowed on pipe lines?

A. Some of them ought to get 50 per cent.

Q. Some of them ought to get 50 per cent depreciation?

A. Because some never pay out—some ought to get 25, and so on.

Q. If we allowed 50 per cent depreciation on pipe lines, and 10 per cent on capital investment, you make 60 cents, don't you?

A. Yes, sir.

Q. If this Gulf Pipe Line Company is making 388 per cent, then it is getting more than it is entitled to?

A. That doesn't affect us, Mr. Farmer, I don't know how much money they have invested in the business; you are talking about capital stock, that may be 10 per cent of the money they have invested in the business, may be 50 per cent.

Q. Well, we are talking about the Interstate Commerce report.

A. That is based on capital—capital stock issued.

Q. Now, Mr. Farish, do you think that a man has a fair deal with a

competitor that has all the four departments of the oil industry, production, transportation, refining and marketing, where a man produces his own?

A. Do I think he has a fair deal?

Q. Yes, sir.

A. Certainly he has.

Q. All right. He has got over here 10,000 barrels of oil to be transported, and he couldn't have a pipe line connection, after having ordered the pipe line connection and he cannot do it?

A. I don't think it ever happened. All you have to do is to go to the Commission with the information and he can have his pipe line connection.

Q. You think the law in Texas ought to be this way, that they can force these pipe lines to give service just like the railroads are giving service?

A. The law does more.

Q. What about 160 wells over here in Eastern Texas, who stated they didn't have service of the pipe lines?

A. I don't know that they did state that, I think they said the pipe lines didn't connect up and they were not buying the oil—

(The examination was interrupted by objections on the part of members, but under the ruling of the Chairman, Mr. Farmer yas permitted to resume his question, as follows:)

Q. Now, Mr. Farish, it is in evidence here that one-sixth of the oil produced in Texas is used in Texas, and the other five-sixths is transported to points out of Texas.

A. That is correct.

Q. Do you think that the people of East Texas should be held down by prorating them as to product, when they want to sell their products and there is a market in other States beyond the bounds of Texas, whom they can sell to?

A. That is the meat of the whole question, Mr. Farmer. I have stated —I have answered that question a dozen times since I have been on the witness stand. I think the East Texas oil field ought to be prorated equitably among the owners of the land, that the production be held down to reasonable demands—market demands. Texas has 38 per cent of the United States market, growing from 28 per cent to 38 per cent in the last few years, and I think that has been all right enough, but I think it ought to be prorated by some power, as the United States market.

Q. All right. Mr. Farish, when the price of oil is raised, all the balance of the pipe lines of Texas hold up the rate, don't they?

A. We will guarantee to you that the balance of the pipe lines of Texas you are speaking of buy so little oil and gasoline that the total amounts to less than 10 per cent, less than 5 per cent of the money that is brought to Texas from outside of Texas.

Q. Yet, you tell the Committee here that 10 per cent of the number of those forty counties involved in the production of oil, and we have 172 counties in Texas that don't produce oil, and they have got to pay this increase in price; for instance, so you testified, with an increase of 2 cents on gasoline means you will pay 48 cents for a barrel of crude oil. Who will pay that 48 cents?

A. The people in Europe and on the Atlantic seaboard. The amount sold in Texas is not much, the amount they will buy will be about one-eighteenth.

Q. And we have some one-sixth here in Texas, that also applies to foreign products—I am not talking about refined products. Now, Mr. Farish, if there is a man in Eastern Texas with a 25,000-barrel well or 10 acres on which he has got a debt of $25,000 and it will soon be due, do you think that man should be allowed to be limited to 300 barrels a day, when it is 15 cents a barrel, and gets only $45 gross out of it per day, out of which he must pay expenses? How long do you think it would take him to pay that $25,000?

A. I don't know. But I think he should be limited; I don't think he ought to borrow the money to go into it under those conditions.

Q. You would not lend him the money?

A. I don't think I would lend him the money for him to borrow money to gamble.

Q. Well, he couldn't pay it out of $45 a day gross?

A. No, sir.

Q. All right. He will have a distress well there and be subject to big costs?

A. If he has a well he will have a distress well.

Q. Mr. Farish, isn't this a scheme of some of the big companies up here to buy oil and buy it cheap from those people and without bidding on the part of the big companies?

A. No.

Q. Isn't it a fact that the big companies own about 65 per cent of the oil land up there?

A. They do—not me—but the big companies.

Q. They own how much?

A. About 55 per cent.

Q. The testimony here is from 80 per cent, over 80 per cent, is it true?

A. Not according to my information.

Q. All right. Should this oil there, Mr. Farish, make a constant increase, then you would bottle up East Texas wells like you bottled up Chambers county wells.

A. I don't think that can be done; there isn't enough money to do it.

Q. Well, if you get this law through, a man can't get enough to pay his debts, and he must foreclose —I mean he is foreclosed.

A. Let me ask you this question, if you please — if this Legislature passes an enforcement measure and puts it in the power of the enforcement officers of the State to enforce an adequate conservation law in the State of Texas, you will see that oil will go to permanent values in East Texas. You will make land that could be bought for $500 per acre today, that is unstable, of uncertain value, risky gamble, you will make it all intrinsically valuable, and worth just as much. But if the same conditions should continue as they are going on today, with the piracy and theft by legal pirates in order to protect themselves, that is going on today, you are going to destroy the values and make permanent destruction of values that exist there today.

Q. How about the taxes?

A. Well, they are gone.

Q. Now, Mr. Farish, when a farmer has got wheat to sell, and nobody buys it, it stays in the granary, doesn't it?

A. No, the government took it out, they bought it for awhile.

Q. And have quit?

A. Yes, sir.

Q. Well, why don't you big companies quit buying this East Texas oil?

A. Why don't we do what?

Q. Why don't you big oil companies quit buying this East Texas oil?

A. We are afraid we will be mobbed if we did.

Q. Who would mob you?

A. The East Texas people are trying to move that oil and sell that out —we have it on the market. You don't seem to realize there is any market in the world for oil but East Texas oil, or any other place, there has been an accumulated consumption of more than four million barrels; it is more than they are entitled to, some other place has got to give way to East Texas.

Q. Isn't it a fact that the farmer right now can't sell wheat at the present price; that he can't sell cotton at the present price; he just has to stand it—doesn't he?

A. I don't think so, he hasn't done it. Here is what the farmer has done, he has gone so far as to have an anti-trust law, so far as the farmers are concerned, he has gone so far he has got government appropriation to carry his crops, or buy them, he has got the government to appropriate hundreds of thousands of dollars to get him organized to protect himself. The government has done that for the farmers, but the oil industry has to ask to have it done.

Q. You are buying this oil over in East Texas at this price, because it is cheap, aren't you?

A. No, sir.

Q. Are you wasting any oil anywhere? You are not pouring it out on the ground or burning it up, are you?

A. If they were allowed to do so, East Texas would be producing all the oil on the market today.

Q. Are you today burning up oil or pouring it in a ditch and wasting it?

A. No, sir.

Q. All right, you want to raise the price, and when oil gets low in price you want to raise it up, and make over 200,000 people in Tarrant county, which county hasn't got a drop of oil, you want to make them help pay that price, increase, don't you?

A. I think they should pay it, I think every consumer, whether he lives in Tarrant county or whatever county he lives in, ought to be willing to pay for the product he is purchasing, whether oil, or whatever it

is; and I will say this, because looking at it only from a selfish interest, Tarrant county has prospered, perhaps—I don't know in what per cent, but has profited greatly, to a very large per cent by the prosperity of persons in the oil industry, its towns have been populated, by the oil people.

Q. Now, Mr. Farish, if we had a pipe line system in Eastern Texas, a system that was sufficient to transport that oil to tidewater, and, if everyone asked the benefit of the pipe line system or systems and was getting the benefit and would take their oil and they could deliver it in any part of the United States or Canada that they wanted to, don't you think they would get a better price for their oil?

A. East Texas?

Q. Yes, sir.

A. Take all the oil?

Q. Yes.

A. No, sir, I think they would be giving it away.

Q. You think they would be giving it away?

A. Yes, sir.

Q. This is the second question: The Standard of New Jersey can fire all of your board of directors at any time, can't they?

A. I think so.

The Committee as a Whole, on motion, here adjourned at 6:25 o'clock p. m., to reconvene the following Monday morning, July 27, 1931, at 9 o'clock.

The following exhibit was excluded from testimony, of Mr. Charles E. Bowles, heretofore printed in the Journal:

FALLACIES IN OIL.

The Fallacy of "Overproduction" in 1929.

By Charles E. Bowles,

Statistician, Independent Petroleum Association of U. S.

Would you believe the statement that, in 1929, the great Mid-Continent Field, the greatest oil-producing area in the world, didn't produce enough crude oil to supply the combined shortage of the Gulf Coast area and the entire area east of the Mississippi?

Well, it's a fact, nevertheless.

And do you believe the statement that there was a tremendous "overproduction" in the United States last year?

Well, that's a Fallacy. It isn't true.

Unfortunately, however, probably 99 per cent of the people in the United States believe it's a fact. We have had the idea of overproduction shot at us from every possible angle for so long that many of us in the oil industry have actually come to believe that overproduction in the United States, as a nation, is a Fact—instead of a Fallacy.

And if we folks that are in the oil industry believe such Fallacies about our own industry, then it shouldn't be especially surprising that the owners of the 26,000,000 motor vehicles in the United States aren't well informed about the real facts and the fundamental conditions in the oil industry, should it? Neither should it be surprising that some of the things that these millions of people believe to be Facts about the oil industry are, in reality, Fallacies.

But, regardless of the effect that such fallacies have upon the opinions and the actions of the millions of people outside the oil industry, the fact remains that, in the name of these fallacies, a chain of crushing conditions is slowly being forged about the "Independents" in the oil industry.

The responsibility for exposing these fallacies and these conditions and "telling the world" about them rests squarely upon the shoulders of the Independents within the industry. The great mass of the people will become genuinely interested in the cause of the Independents only when they clearly realize that the things the Independents are fighting for reaches right down into their own pocketbooks.

In a hundred years of industrial history in the United States there are very few instances where the powerful interests within an industry have voluntarily and of their own initiative righted the wrongs, the use of which gave them their tremendous power. With the few exceptions, flagrant abuses of the power of great units in the major industries have been righted only when the minority interests, the "Independents," if you please, actively exposed the fallacies and the crushing conditions of that industry and then took their cause to the common people, never forgetting that the common people had a pocketbook interest that

the Independents could be depended upon to safeguard. The Independents, in protecting themselves also protected the common people.

"Bare-Knuckle" Days.

A splendid illustration of this is furnished by the crushing conditions that, for years, the old Standard Oil Company imposed upon the Independents and that finally resulted in the famous Dissolution Decree of 1911. Those were the "Bare-Knuckle" days when drastic policies were issued and executed without the use of piano-polish "propaganda" that subtly prepared the minds of the people for the program and practically assured their commendation of it. Confiscation was confiscation, bold and defiant—and not dignified with a gentler but similar sounding name.

And right here let us emphasize the fact that the preparation and dissemination of propaganda is today one of our most carefully studied and commercially effective arts. It is especially effective as used by some of our larger industries. It is utilizing some of the brightest minds and ablest pens in the United States—and in many instances, without the writers themselves really knowing it. Therein lies the final touch of power of the insidious, seductive, persuasive, plausible type of propaganda.

The "moulding of public opinion" is one of our greatest industries today—and there are a thousand ways to do it. And public opinion that, after long years of careful nurturing, has come to think along certain lines and to accept fallacies as facts, can be depended upon, by those who have "done the moulding," just as certainly as any other great force can be depended upon to function along clearly defined lines.

"Overproduction."

Just as an example of some of the carefully nurtured Fallacies that are almost universally accepted by the great mass of the people of the United States today, let's take the much-discussed one of "Overproduction."

Easily 99 per cent of the people of the United States actually believe that the oil industry is today in a state of "Overproduction"—and that the case is chronic—been producing "too much oil" lo these many years. This bogey of overproduction is the pet fallacy of the oil propagandists—and out of it has sprung a whole family of fallacies. Ignoring the years prior to 1929—for in 1929, for the first time, the United States produced a billion barrels of crude oil—let's look carefully at the facts about 1929 and see if there was an actual overproduction of crude oil that year.

You will note from the accompanying map that the East Texas Coast area (marked A on the map) did not produce a barrel of oil last year. And it hasn't produced a barrel of oil since the beginning of the industry in 1859. However, its refineries run 172,434,000 barrels last year.

The Appalachian area (B) produced 25,962,000 barrels of crude oil and run 33,802,000 barrels to stills. It was "short" 7,840,000 barrels of producing as much as it run to stills.

The Indiana-Illinois area (C) produced 20,914,000 barrels and run 110,349,000 barrels to stills. It was "short" 89,435,000 barrels of producing as much crude oil as it run to stills.

In order to emphasize this "shortage" of crude oil east of the Mississippi River last year, let's set these figures down in a table as follows:

Area	Production	Run to Stills
East Coast	.....	172,434,000
Appalachian	25,962,000	33,802,000
Indiana-Illinois	20,914,000	110,349,000
	46,876,000	316,585,000
"SHORTAGE"		269,709,000

In the last few years there has been an amazing expansion in refining in the Gulf Coast area, which the following tabulation will emphasize:

Area	Production	Run to Stills
Texas Gulf Coast	48,339,000	153,380,000
Louisiana Gulf Coast	7,235,000	50,651,000
	55,574,000	204,031,000
"SHORTAGE"		148,457,000

If to the Gulf Coast shortage of 148,457,000 barrels we add the shortage of 269,709,000 barrels for the area east of the Mississippi we have a grand total shortage of 418,166,000 barrels for the year 1929.

There are only three sources from which this shortage of 418,166,000 barrels could possibly be supplied—the Mid-Continent, California, and Foreign Oil imported into the United States.

A careful study of the map shows that in the Mid-Continent we had the following condition:

Area	Production	Run to Stills
Oklahoma-Kansas	296,579,000	115,449,000
Inland Texas	250,102,000	58,313,000
Arkansas-North Louisiana	38,070,000	24,777,000
	584,751,000	198,539,000
SURPLUS		386,212,000

This means that in 1929 the area east of the Mississippi and the Gulf Coast area had a combined shortage of 418,166,000 barrels while the Mid-Continent had a surplus of 386,212,000 barrels.

And isn't it a staggering surprise to see that if the area east of the Mississippi and the Gulf Coast tried to supply their entire shortage from the Mid-Continent, that the Mid-Continent would have fallen 31,954,000 barrels short of being able to supply their shortage? Of course, Mid-Continent crude is higher gravity than the oil (much of it Foreign Oil) run in Atlantic Seaboard refineries; but, allowing for that, the Mid-Continent alone could not possibly have supplied the shortage east of the Mississippi and the Gulf Coast even if every surplus barrel from the Mid-Continent had been shipped to these areas.

Cutting the Price.

Ponder these "facts" carefully, Mr. Independent Producer of crude oil—and contrast them with the "fallacies" that you have been listening to for years. Check them up with the "explanation," for instance, that the Mid-Continent had a staggering overproduction and that the price would have to be drastically cut to prevent a lot of irresponsible Independents from drilling their heads off and ruining the industry.

And how much do you think that that neat little piece of propaganda was worth to the people who had the power to cut the price? About how many millions of dollars did it save THEM—and how much did it cost YOU?

But let's turn back to the other two areas. In 1929 the Rocky Mountain area (I) produced 26,360,000 barrels of crude oil and run 25,443,000 barrels to stills. It had a surplus of 917,000 barrels—an amount that was negligible, especially as large shipments of Rocky Mountain crude have been going, for years, to Canadian refineries that are subsidiaries of the Standard of New Jersey.

California, in 1929, produced 292,-037,000 barrels of crude oil and run 243,110,000 barrels to stills. This left a "statistical" surplus of 48,927,000 barrels, much of which was non-refinable crude, hence not available to supply the shortage of the Gulf Coast or the area east of the Mississippi.

The Map.

In studying the accompanying map you will note that the United States Bureau of Mines had divided the United States into ten refining areas, and while figures inserted on the map are for the year 1929, the fact remains that for many years prior to 1929 the same general condition prevailed in these areas. That is, the East Coast, the Appalachian area, the Indiana-Illinois area, the Texas Gulf Coast area and the Louisiana Gulf Coast area have for years been "shortage" areas, whereas, the Mid-Continent area, the Rocky Mountain area and California have been "surplus" areas.

In other words, the five "shortage" areas have not, for many years, produced as much crude oil as they have run to stills. And the five "surplus" areas have not run to stills as much crude oil as they have produced.

In the light of these facts, how can you talk about "overproduction" in areas that have always produced more than they have refined? Or how can we have overproduction in the United States as a whole when the total surplus crude in the five areas that always have a surplus is less than the shortage in the five areas that always have a shortage?

Of course somebody will rise up and say that overproduction is a "purely local problem," the answer to which is that the shortage in the Gulf Coast and east of the Mississippi is also a "purely local problem"—and neither statement really answers the question.

And, as it is a fact that for years the surplus from the five surplus areas has about balanced the shortage from the five shortage areas, wouldn't it seem to be both sound business and staunch patriotism to give first consideration, in the solution of our oil problem, to United States oil and give only such consideration to Foreign Oil as will supply our shortage—and not flood us with a surplus that will ruin our markets?

Had this policy been carried out for the last ten years, how much higher would the price of crude oil in the Mid-Continent have been—and how many millions of dollars more would it have brought to the producers of crude oil?

Figure it out for yourselves—and then decide how big dividends "The Propaganda of Overproduction" has paid those who sponsored it.

CRUDE OIL BALANCE SHEET, 1931.

Stock, January 1	512,797,000
Production	830,000,000
Imports	48,000,000
	1,390,797,000

Refinery runs	875,000,000
Other uses	30,000,000
Exports	10,000,000
Stock, December 31	475,000,000
	1,390,797,000

SEMINOLE.

1926	$2.21	12,000,000 =	$ 26,520,000
1927	1.42	136,000,000 =	193,120,000
1928	1.31	105,000,000 =	137,550,000
1929	1.36	101,000,000 =	137,360,000
1930	1.23	66,000,000 =	81,180,000
		420,000,000	$575,730,000
			$1.37

The following exhibit was excluded from testimony, of Mr. W. E. Duffy, heretofore printed in the Journal:

Herbert Noble, Prest.
J. H. Kirkpatric, Sect.
John B. Nevin, Treas.

115 Broadway,
New York.

Cordova-Union Oil Corporation,
Electric Building,
Fort Worth, Texas.

Bateman discovery came in Dec. 28th, 1930.

Houston & Jones about Feb. 21st, 1931.
Olvey about Feb. 25th, 1931.

(Houston gave Olvey outlet till Atlas finished line and rack.)

Cordova March 3, 1931.

Houston built rack and laid line to handle Houston-Jones oil.

Atlas built line and rack to handle Olvey oil (to Longview).

We were without a connection from completion to March 17th—solicited.

Humble—Houston—Atlas—Magnolia—Sinclair.

Started running to Southern Oil & Rfg. March 17th till Luling offered oil at 19c. We refused to sell at this figure.

We were again without a connection from April 19th to May 1st.

About April 13th Magnolia connected and took 4 tanks then disconnected.

On March 2nd Crown Central offered to buy 1,800,000 bbls. at 37½.

March 10th, at Tulsa, Mr. Manion promised us Sinclair connection.

Geo. Snedden of British American at Tulsa told us that we should sell 36 acre tract as they were going to take all the oil they could produce from E. Thompson lease.

On March 24th Mr. Sloan of Sinclair Texas Pipe Line promised me that he would give us a connection April 1st. Phoned from Shreveport.

One week before the proration order went into effect Phillips Sinclair Pipe Line called us from Tulsa offering to buy 300,000 bbls. at 25c.

The following exhibit was excluded from testimony, of Mr. W. E. Duffy, heretofore printe

		Barrels	Proration allowable
J. W. Olvey, 20 Acre Lease (Crim Fee)	Crude runs to June 3rd, 1931.....	496,161.00	Unknown
Crude Run by Atlas Pipe Line.	Crude runs week of June 18th.....	7,350.00	4,949.0
Well No. 1 Comp. Feb. 20, 1931	Crude runs week of June 24th.....	8,337.00	2,429.0
Well No. 2 Comp. Mar. 28, 1931	Crude runs week of July 2nd.....	8,351.00	2,401.0
Well No. 3 Comp. April 23, 1931	Crude runs week of July 9th.....	8,344.00	2,401.0
Well No. 4 Comp. May 19, 1931	Crude runs week of July 16th.....	9,268.00	3,535.0
		537,811.00	15,715.0
Houston Oil and Edward Jones, Crim Fee, 20 acres.	Crude runs to June 3rd, 1931.....	750,064.00	.....
Crude run by Houston Pipe Line.	Crude runs week of June 18th.....	2,703.00	1,484.0
Well No. 1 Comp. Feb. 19, 1931	Crude runs week of June 24th.....	2,721.00	1,484.0
Well No. 2 Comp. Mar. 25, 1931	Crude runs week of July 2nd.....	3,402.00	2,184.0
Well No. 3 Comp. April 17, 1931	Crude runs week of July 9th.....	5,565.00	2,184.0
	Crude runs week of July 16th.....	3,871.00	1,834.0
		768,326.00	9,170.0
British American Oil Co., 25 acres, Thompson Lease.	Crude runs to June 3rd, 1931.....	175,902.00	.....
Crude run by Texas Pipe Line.	Crude runs week of June 18th.....	20,811.00	4,032.0
Well No. 1 Comp. April 12, 1931	Crude runs week of June 24th.....	20,713.00	4,032.0
Well No. 2 Comp. April 17, 1931	Crude runs week of July 2nd.....	17,892.00	2,842.0
Well No. 3 Comp. April 14, 1931	Crude runs week of July 9th.....	18,319.00	2,842.0
Well No. 4 Completion not filed.	Crude runs week of July 16th.....	15,743.00	4,480.0
		269,380.00	18,228.0
Burton Drilling Co., 20 Acre Geo. Thompson Fee.	Crude runs to June 3rd, 1931.....	126,709.00	.....
Crude run by Sabine Pipe Line.	Crude runs week of June 18th.....	13,300.00	1,526.0
Well No. 1 Comp. Mar. 29, 1931	Crude runs week of June 24th.....	13,600.00	1,526.0
Well No. 4 Comp. Not filed.	Crude runs week of July 2nd.....	11,060.00	1,967.0
	Crude runs week of July 9th.....	4,200.00	1,967.0
	Crude runs week of July 16th.....	4,375.00	1,939.0
		173,244.00	8,925.0
Cranfill & Reynolds, 10 acres, Geo. Thompson Fee.	Crude runs to June 3rd, 1931.....	72,827.00	.....
Well No. 1 Comp. April 16, 1931	Crude runs week of June 18th	25,403.00	1,050.0
Well No. 2 Comp. May 23, 1931	Crude runs week of June 24th.....	12,488.00	1,050.0
Crude run by Cranfill Reynolds Pipe Line.	Crude runs week of July 2nd.....	4,697.00	1,750.0
	Crude runs week of July 16th.....	3,318.00	1,414.0
	Crude runs week of July 9th.....	4,046.00	1,750.0
		122,879.00	7,014.0

The following exhibit was excluded from testimony, of Mr. W. E. Duffy, heretofore printed

		Barrels	Proration allowable
Markham & Dunning, 25 acres, Peterson Fee.	Crude runs to June 3rd, 1931	137,451 00	
Sinclair Pipe Line running crude.	Crude runs week of June 18th	30,975 00	2,513 00
Four wells (No filing)	Crude runs week of June 24th	36,302 00	2,513 00
	Crude runs week of July 2nd	35,308 00	2,625 00
	Crude runs week of July 9th	20,238 00	2,625 00
	Crude runs week of July 16th	6,916 00	2,331 00
		267,210 00	12,607 00
Magnolia Petroleum Co., 50 acres Crim Fee.	Crude runs to June 3, 1931	175,438 00	
Crude run by Magnolia Pipe Line Co.	Crude runs week of June 18th	1,732 00	3,927 00
Well No. 1 Comp. Mar. 16 1931	Crude runs week of June 24th	5,005 00	3,927 00
Well No. 2 Comp. April 7, 1931	Crude runs week of July 2nd	15,057 00	2,812 00
Well No. 3 Comp. Mar. 6, 1931	Crude runs week of July 9th	7,567 00	2,812 00
Well No. 4 Comp. Mar. 20, 1931	Crude runs week of July 16th	3,521 00	1,165 00
Well No. 5 Comp. Mar. 31, 1931			
Well No. 6 Comp. April 12, 1931		511,320 00	17,703 00
Well No. 7 Comp. April 13, 1931			

The following exhibit, was excluded from testimony of Mr. W. E. Duffy, heretofore printed in the Journal:

STATEMENT OF CRUDE OIL RUNS FROM OUR C. O. CHRISTIAN 36-ACRE LEASE IN THE ROBERT E. WYNNE SURVEY, RUSK COUNTY, TEXAS, ALSO OTHER DATA AND OIL RUNS PERTAINING TO ADJOINING LEASES.

	Barrels	Proration allowable, Barrels	Wells on production
Purchaser, Southern Oil Refining Co., Crude run from our 36 acre C. O. Christian lease from March 14 to April 19, 1931, inc.	88,204.95	.....	Nos. 1 and 3
Purchaser, Humble Pipe Line Co., Crude run for month of May, 1931.....	53,337.70	54,528.00	Nos. 1, 2, 3, 4, and 6
Purchaser, Humble Pipe Line Co., Crude run for month of June, 1931.....	21,307.83	22,485.00	Nos. 1, 2, 3, 4, 5 and 6
Purchaser, Humble Pipe Line Co., Crude run from July 1st to July 16th, 1931.	9,454.18	9,825.00	Nos. 1 to 6
	172,304.66	86,838.00	
Less: Crude run prior to Proration, namely, May 1st, 1931.....	88,204.96	.....	
	84,099.71	86,838.00	

Number of Wells Completed on Lease, Six. Completed as follows:
No. 1 Christian completed Mar. 3, 1931.
No. 2 Christian completed April 19, 1931.
No. 3 Christian completed April 3, 1931.
No. 4 Christian completed April 17, 1931.
No. 5 Christian completed May 26, 1931.
No. 6 Christian completed April 27, 1931.

	Total acreage involved	Gross barrels	Per acre recovery
Cordova-Union Oil Corporation, C. O. Christian 36 acres.....	36	173,196.37	4,811
J. W. Olvey, 20 acres, A. Crim Fee.....	20	537,811.00	26,890
Edward Jones & Houston Oil Co., 10 acres, Crim Fee.....	10	768,326.00	76,832
British American Oil Co., 25 acres, E. Thompson Fee.....	25	269,380.00	10,775
Burton Drilling Co., 20 acres, Geo. Thompson Fee..	20	173,244.00	8,662
Cranfill & Reynolds, 10 acres, Geo. Thompson Fee..	10	122,879.00	12,287.9
Markham & Dunning, 25 acres, Peterson Fee.....	25	267,210.00	10,688
Magnolia Petroleum Co., 50 acres, Crim Fee.....	50	511,320.00	10,226
	196	2,823,366.37	

Average per acre recovery..... 14,404 bbls.

36 acres at 14,404 bbls. per acre..... 518,544 bbls.
Actual runs..... 173,196 bbls.

Actual discrepancy..... 345,348 bbls.

The following exhibit was excluded from testimony, of Mr. E. B. Swanson, heretofore print

CRUDE OIL PRODUCTION, IMPORTS, EXPORTS, REFINERY RUNS, MISCELLANEOUS USES, AND STO
STATES, FROM JANUARY 1, 1918, TO DECEMBER 31, 1930. ALL AMOUNTS IN BARR
COMPILED FROM ANNUAL STATEMENTS OF UNITED STATES BUREAU

Year	Current Supply		Current Demand		Total Current Demand	Excess of Demand Over Production	Imports
	Production	Refinery Runs	Exports	Other Uses			
1917	.....	.....	.....	.....	.....	.....	.....
1918	355,928,000	326,025,000	4,901,000	89,492,000	420,418,000	64,490,000	37,736,
1919	378,367,000	361,520,000	6,019,000	58,630,000	426,169,000	47,802,000	52,822,
1920	442,929,000	433,915,000	8,757,000	106,340,000	549,012,000	106,083,000	106,175,
1921	472,183,000	443,363,000	8,940,000	77,368,000	529,671,000	57,488,000	125,364,
1922	557,531,000	500,706,000	10,163,000	99,664,000	610,533,000	53,002,000	127,308,
1923	732,107,000	581,238,000	17,385,000	132,917,000	731,540,000	(a) 867,000	82,882,
1924	713,910,000	643,719,000	17,973,000	104,743,000	766,435,000	52,495,000	77,775,
1925	763,743,000	739,920,000	13,335,000	(c) 58,285,000	811,540,000	47,797,000	61,824,
1926	770,874,000	779,264,000	15,407,000	65,932,000	860,603,000	89,729,000	60,382,
1927	901,129,000	828,835,000	15,843,000	43,754,000	888,432,000	(a) 12,697,000	58,383,
1928	901,471,000	913,295,000	18,966,000	30,512,000	962,773,000	61,299,000	79,767,
1929	1,007,323,000	987,708,000	26,401,000	28,730,000	1,042,839,000	35,516,000	78,933,
1930	896,265,000	927,447,000	23,706,000	29,708,000	980,861,000	84,596,000	62,129,
Total	8,894,093,000	8,466,955,000	187,796,000	926,075,000	9,580,826,000	686,733,000	1,010,613,

(a) Domestic Production exceeded Total Demand.
(b) Crude oil withdrawn from storage.
(c) Includes 17,827,000 adjustment in California on account adding Fuel Oil to Heavy Oil Stock. Deduct 17,827,000 when setting up balance sheet 1918-1930.

Tuesday, July 28, 1931.

The Committee of the Whole House met, pursuant to adjournment, at 9 o'clock a. m., Tuesday, July 28, 1931.

Mr. Hardy: Mr. Chairman, at this time we would like to call to the stand Captain E. H. Eddleman of Wichita Falls.

Thereupon E. H. Eddleman was called as a witness and, being duly sworn by the Chair, testified as follows, upon examination by Mr. Hardy:

Q. Please state to the Committee your name, occupation, and place of residence.

A. My name is E. H. Eddleman. I live at Wichita Falls, Texas. I am in the refining business. Manager of the American Refining Company properties.

Q. You were called to appear before the Committee, were you not?

A. I was.

Q. Are you familiar with the refining conditions in the State of Texas?

A. I think I am.

Q. How long have you been in the refining business?

A. About eleven years.

Q. Has all of that time been in the Wichita Falls area?

A. Yes, sir.

Q. Do you have any refinery or connection with East Texas?

A. No, sir.

Q. Are you also a producer as well as a refiner?

A. Yes, sir.

Q. How long have you been in the producing business?

A. Well, I have been personally in the producing business about seven years. The company—the companies, I have been connected with more than one company—have been in the producing business the entire length of time I have been in the oil business, eleven years.

Q. As a refiner, do you necessarily have any business with the pipe line facilities of the State?

A. Yes, sir.

Q. Are you familiar with those conditions of obtaining pipe line runs and the amount of the pipe line runs, and obtaining connections to wells and getting the oil to the refineries?

A. I am in a general way over the State, and I am in a particular way in the Wichita Falls district.

Q. All right. In your own words, can you tell me what is the condition of the refineries, first, as to crude oil, and second, as to their ability to obtain markets, and so forth, for their products?

A. The small independent refinery that does not have sufficient crude oil for its own demands is depending upon the purchase of crude from the independent producers of the particular district in which that refinery operates. That crude is bought from the independent producer and transported to the plant through the common carrier pipe line of that district. Of course, the large companies that own those particular pipe lines always have the advantage, because they are in touch with every lease within the district, and the independent refiner must, through personal friendship or through premiums, convince the producer that it is best to sell the oil to the small refinery, rather than the large company, which places him at a decided disadvantage in the purchase of his crude. Second, the pipe line rates are so high that the average refinery over the State has had trouble during the last eighteen months, during the period of low-priced oil, paying the required pipe line to get the oil into his refinery. When oil was 18 cents a barrel in the Wichita Falls district —I mean 22 cents a barrel—the average pipe line charge was about 17 to 18 cents a barrel. That average has now come down, because the pipe lines have put into effect a voluntary reduction of about 2½ cents in that district within the last ninety days. The small refinery, therefore, always has the disadvantage of having ordinarily, except in times of overproduction, a shortage of crude, at which time the question of a pipe line charge makes his crude cost him so much it is hard for him to operate, and in times when crude is not being overproduced, then it is hard for him to get a sufficient supply. Now, as to the question of markets, up until three years ago the small independent refiner in Texas sold a large portion of his refined products within the State, but that volume of independent gasoline going within the State has greatly dwindled in the last three years, until at this time there is very little of it being sold, except where it is sold to one of the larger companies. The concern with which I am connected has its own bulk stations to

the extent of about 15 or 20 per cent of its outlet. We find that the only way to sell any gasoline in the State of Texas is to have our bulk stations and through contact with the independent filling station man within the State tie up an outlet; otherwise, we find that we cannot sell gasoline within the State of Texas.

Do you wish me to go further into the market situation?

Q. Yes, sir.

A. As to the contract situation in Texas, is that what you have in mind?

Q. Go ahead.

A. About eighteen months or two years ago there arose in Texas a rather—it had been practiced in the North and East for several months before it was put into effect in the State of Texas, what is known as the agency and lease contract, or 100 per cent contract; there are three or four names for it, but they all mean the same. Under the terms of this contract large companies first installed it, the agents would go to an owner of a filling station and make a deal with him, by the terms of which they would lease his station and pay him 1 cent a gallon rental for his station, then enter into a commission agency with them by which they would pay him from 2½ to 3 cents, and, in one or two cases, as much as 3½ cents back for each gasoline that he sold through that station. Now, the average differential in Texas between the tank wagon, that is, the price at which the gasoline was sold at tank wagon to the retailer in Texas, has always been 2 cents, except about two years ago, when it was increased to 3 at certain points. Now, you see, under this contract the owner of the filling station would receive a 4-cent margin between the cost of his gasoline and the retail price. The result was that an owner of an independent station who was running his own station, buying gasoline from the tank wagon, only had a 2-cent margin between the retail and the cost price; as a result all of them, practically, it is estimated that at least 85 and probably 90 per cent of the independent stations in Texas in the last eighteen months signed those 100 per cent contracts because they felt like they could not afford to make a 2-cent margin when it is possible for them to make a 4-cent margin under these contracts. First, the independent refineries and jobbers in the State undertook to meet that competition by lowering the tank wagon, or a rebate under the tank wagon of 1 or 2 cents, but the larger concerns over the State held that that was price cutting. They immediately dropped their retail prices the same amount that the independent refiners and distributors of the State—the same amount that they were giving below the regular tank wagon price as posted in the State. As a result, it became impossible to meet the competition from that standpoint. You see, when the major companies lowered their retail that placed them in the same position that they were before they undertook to meet that competition by lowering the tank wagon. As a result, they either had to go out and make these 100 per cent contracts or quit distributing gasoline within the State. Refineries that used to sell 50 per cent of their outlet within the State of Texas, now, I would estimate, won't sell over an average of 10 or 15 per cent, and the balance of it is sold in the Middle West, in what is ordinarily known as the Chicago district. These 100 per cent contracts provide that the filling station shall be under the control as to price and as to what products are sold of the company that makes the lease. In other words, they determine the price and they determine what products the owner of the station shall sell through his station. That has especially hit the independents' lube oil distributors in the State of Texas. Since they do not sell gasoline, of course, they could not make these 100 per cent contracts, because they had no gasoline to serve these stations with. Therefore, they could not make a 100 per cent contract. As a result, such concerns as the Quaker State and so forth have lost probably 60 per cent of their business in the State of Texas in the last eighteen months or two years.

Q. Going back to the refining end of it, Mr. Eddleman, you stated the independents would have to obtain his oil either through friendship or paying premiums?

A. That is ordinarily the case, yes, sir.

Q. Why is that?

A. Well, as I stated a while ago, of necessity, everything being equal, that a producer who is connected with the Texas Company pipe line would sell his oil to the Texas Pipe Line because it would be easier for him to do so. To do otherwise, he has

to go to the Texas Pipe Line and make a transfer to whatever refinery he sells it to, and they have to accept it, and they have to send a statement on the 12th of each month to the refinery, and then the refinery pays him. It is easier for him to sell directly to the owner of the pipe line.

Q. Don't any of these little independent operators have their own pipe line?

A. Some of them do, but not many.

Q. Why is that?

A. Well, the cost of laying a pipe line, the initial cost of laying a pipe line, is very high. If he has to cover a large territory. The reason why they don't is because the cost is ordinarily beyond their means.

Q. How many of these little refiners, these independent refineries, are there in the Wichita Falls district?

A. Fourteen.

Q. How much crude oil can they use a day; what is their supply, or requirement?

A. You mean their capacity?

Q. Yes, sir.

A. About 35,000 barrels.

Q. How much oil are they at this time using?

A. They are at this time using about 26,000 barrels; there is a shortage of oil in our particular district right at this time.

Q. What is the price of oil in that district, at this time?

A. In the Wichita Falls district, 36 and above, and that is the average gravity, 40 cents a barrel.

Q. How long has it been that price?

A. About three or four days.

Q. What was it before that?

A. Well, it was various prices, from 22 to 35 cents.

Q. Has the shortage been just within the last three or four days?

A. The shortage has been within the last 30 days. There was plenty of oil available for everybody up until when oil was cut to 22 cents, a number of producers, most of them—not most of them, but a large number of them shut down their wells and haven't been cleaning them out or pulling the tubing or anything because they felt like they could not afford to do it at prices prevailing. The result has been that the amount of oil available in that district has declined very rapidly in the last 30 days.

Q. What was the prevailing and what was the posted price of oil in this vicinity? Immediately before the cut to 20 cents.

A. Thirty-seven cents.

Q. Thirty-seven cents. Then the price within the last few days has been raised higher than the price immediately before the cut?

A. That is correct. That was caused by the fact that all over North Texas and Oklahoma the producers had shut down so many wells that oil was very hard to get in that section of the country.

Q. Why can't oil be obtained for those plants from the East Texas field?

A. Well, there is being shipped at this time about four thousand barrels from East Texas, but the freight rate from East Texas to Wichita Falls is 37½ cents per barrel.

Q. What is the pipe line rate?

A. There is no pipe line rate because that is an upstream movement, and there is no pipe line movement from East Texas to Wichita Falls.

Q. The only way you can get it from East Texas to Wichita Falls is by freight?

A. Is by freight; the only way the pipe line companies could handle it to Wichita Falls would be to make a trade-out, that is, if you have so many barrels in the pipe line in East Texas, make a differential trade with you for oil at Wichita Falls, and so far none of them have done that.

Q. You mean by that if you had some oil in East Texas to trade it to one company for some oil in Oklahoma and bring it over there to Wichita Falls?

A. Well, if the pipe line wanted to they could trade their own oil they have there for East Texas oil, but they have so far refused to do so.

Q. Has any request been made on them to do that so far as you know?

A. Yes, I think the Texas Company was requested to do so, and they talked about trying to work out a differential but it was dropped.

Q. Is that customary in any of the fields?

A. That is not customary, but it is done in many instances. In other words, there is no general rule or custom on it but it has been done in particular instances.

Q. Between the small refinery and the pipe line carrier?

A. Well, it is done occasionally between the small owners; it is done more largely between the larger owners.

Q. In other words, they sort of trade with each other, but don't trade with the little fellow?

A. Well, they trade more with one another. I didn't add this; that at this time the Texas Company is selling, I think it is, about eight thousand barrels a day to the refineries in Wichita Falls at 13 cents a barrel above the posted price delivered, which is in other words, they are selling about eight thousand barrels of oil to the local refiners at the cheapest pipe line rate they have in that district. They are going that far to help the local refineries get oil. However, first, most of the connections in the Texas Company line 30 days ago that were selling to the Wichita Falls refineries.

Q. State that again.

A. I say about 30 days ago the Texas Company offered to all producers who were selling oil in their line to be transported to some other refinery, they offered to buy their oil. It seems the last eight months period the larger companies have not been in the market for oil in that district.

Q. Why?

A. Well, they claimed that the price being paid for oil in that district was more than the oil was worth in proportion of what oil was bringing in other sections of the country, therefore, they were only taking a limited amount of that oil.

Q. You don't mean to tell me that one of these pipe line companies with whom a producer had been dealing for years and years actually refused to take any of his oil in that district because oil was selling cheaper somewhere else?

A. Well that was done all last fall and winter.

Q. Was that because of the fact the local refiners could absorb a good deal of this oil, you think?

A. No, sir, that was because they didn't want the oil.

Q. Because they were getting cheap oil somewhere else?

A. Yes, sir.

Q. And you don't believe much in this theory of the humanitarian side of these companies that will take your oil even though they can get oil at a cheaper price somewhere else?

A. No, sir, I think they run for a profit like everybody else runs their business.

Q. A few minutes ago you stated that while the price of oil was 22 cents the pipe line price was 17 cents, the tariff rate?

A. Well, I will explain about what the tariff was up there if you would like to know it.

Q. All right, sir.

A. From the Burkburnett field, which is an average of 18 miles, it was 12½ cents to Wichita Falls. From the Electra district, it was 12½ to Wichita Falls, which is about 25 miles. From the north Archer County district, which runs all the way from 14 to 13 miles, it was 17½ cents. Then from 30 miles down to Newcastle district, which Newcastle is about 60 miles, it was 20 cents a barrel. Now the 12½ cents pipe line tariff remained the same and a goodly portion of the 17½ cents was cut to 12½ cents, and the 20 cents was cut to 17½; that was done by voluntary action of the pipe line company within the last sixty days.

Q. Why was the pipe line from Archer district, which was 14 miles away, five cents more than the Electra rate, which was twenty-five miles away?

A. Well, my idea why that arose is this; the Texas Company put in the first common carrier system in Wichita district. They built their line from Burkburnett and Electra to Wichita Falls. When the first oil was discovered in Archer County, they ran their lines down from the nearest Electra line into Archer County, and oil used to go to Electra and back to Wichita Falls from Archer County. They already had their lines in and they felt like it was cheaper to go that route than to lay other lines, and they charged 5 cents a barrel because it was farther. In the last three or four years all of them have been bringing oil directly into Wichita Falls, but those rates were established back in 1920, the original rates that I speak of, and the pipe lines have observed the same rates in that district as were set out in the district by the Taxes Company in 1920.

Q. Except for this recent voluntary cut to 12½ cents and to 17 cents, and so forth, have the rates that were established in 1920 prevailed during this entire period?

A. Yes, sir.

Q. Has the price of oil prevailed at one price during all that time?

A. It has not.

Q. It has fluctuated a good deal?

A. Yes, sir. It was $3.50 in 1920 and went down to $1 in 1921, and was up to $2.65 in about 1925, and down as you know last year, all the way down, until it got to 22 cents.

Q. At the same time that these tariff rates from Electra to Wichita Falls and Burkburnett to Wichita Falls, and so forth, what was the pipe line rate from Electra to the Gulf Coast?

A. Fifty-five cents?

Q. What is it now?

A. As I understand it, it is 45 cents at this time; they have had a 2½-cent reduction; they reduced it sometime last year, to 47½ cents, and then there has been a further 2½-cent reduction in the last reduction, which has taken place in the last ninety days.

Q. You stated a few minutes ago that in times of overproduction you could get the oil you wanted?

A. In times of overproduction there is no trouble—in that district there is no trouble for us to get oil, and ordinarily when there are times of overproduction anywhere we can get oil in that district.

Q. How about in times when there is no overproduction?

A. It is always hard, we usually have to pay a premium for oil.

Q. Why?

A. As I stated a while ago, the larger companies have connections with the leases and the producers will not break those connections, that is, if they are selling to the Texas Company or the Humble or the Magnolia or anybody else, they will not go to the trouble of making a transfer to a small refiner without they get a premium, or unless they be a personal friend of the refiner.

Q. Did you state that the refiners had reduced their capacity, or had reduced their sales to 50 per cent recently?

A. Well, I said they had reduced their sales in Texas in the last 18 months 50 per cent.

Q. You mean by that that all of the refiners in the State have done that?

A. No.

Q. Or merely the independent refiners?

A. I mean the independent refiners.

Q. Because of the 100 per cent contract on filling stations?

A. Yes, sir.

Q. Practically all of your oil, then, goes to the middle west?

A. Yes, sir.

Q. All the rest of your products?

A. We ship a little to the Southeast; 90 per cent of the balance goes to the Middle West.

Q. Do you get as good a price for it as you would if you were selling it in Texas?

A. Under the present price situation in Texas we get more.

Q. Can you dispose of all of your products at this time?

A. We can at this time; there is a very steady market at this time for gasoline; all of the refiners in the Mid-Continent are down an average, I would say, and that has created a good market.

Q. Mr. Eddleman, are you familiar with the transactions of your group, or your Chamber of Commerce, in endeavoring to protest the change in the pipe line rate by the Humble Oil Company before the Railroad Commission some time ago?

A. Yes, sir.

Q. Please tell us about that.

A. You want to know why they made the protest?

Q. Yes, sir. Tell us what was happening and why you made the protest?

A. The reason why that protest was lodged was this: You remember the Independent Petroleum Association filed a petition with the Railroad Commission asking a 50 per cent reduction in the pipe line rates, or approximately 50 per cent.

Q. Yes, sir.

A. The Chamber of Commerce of Wichita Falls, since it had a great number of both producers and refiners as members, had its traffic manager intervene in that proceeding before the Railroad Commission and ask for specific reductions, I don't remember the exact detail of those reductions, but they amounted to about 40 per cent reduction in rates between the different points, and maybe a little more than 40 per cent in the Wichita Falls area. When the Humble Oil and Refining Company come in and asked voluntarily to make a flat reduction in certain districts over the State the Wichita Falls Chamber of Commerce ask not to put that into effect until a hearing was had so that the Commission could determine what

was a fair rate to be put in all over the State. Their idea was not—they did not oppose the reduction but their idea was that it wasn't enough reduction, and they wanted a hearing at that time so that they could get the rates that they thought should be put in.

Q. Had there been any effort before the filing of this application for the reduction of the rates on the part of any of these pipe line companies to reduce the tariff?

A. No, sir, I haven't heard of any.

Q. Did this voluntary reduction that the Humble was asking for, did that include the Wichita Falls area?

A. If it did it wouldn't make any difference because in the Wichita Falls area the Humble has no connection with any refinery in that district; in other words they don't connect with any independent refinery, and are not common carrier in that district, that is, when I say " common carrier" I mean a practical common carrier; they probably were from the legal standpoint, but not in point of practice.

Q. Now, do all these pipe line companies have practically the same tariff rate?

A. Practically so. The last fifteen months there has been a little difference in one or two points, but practically the same throughout the State.

Q. Then, if one would reduce its rate, more than likely the other would follow suit?

A. Yes, sir.

Q. What happened to your protest against the reduction of these rates?

A. As well as I understand it, they went ahead and put it into effect, the rate into effect.

Q. They went ahead and allowed the voluntary reduction of the rates?

A. Yes, sir.

Q. Did they have a hearing before they did that?

A. No, sir.

Q. Have they ever had a hearing yet on the application of the Independent Association for a reduction in rates?

A. They have not; they have informed us that the Independent Association had asked for that hearing to be put off. We have asked a hearing on the Wichita Falls intervention, but have not obtained it yet.

Q. It has been stated here that the Railroad Commission has never attempted to set pipe line rates because there has been no protest filed with the Commission. Do you know of any reason why such protest, other than the one you are speaking about, has not been filed?

A. One reason they have not been filed is that working out the question of pipe line rates is something like working out the question of railroad rates in that it takes a great deal of detailed work by engineers and statisticians and it costs lots of money to make one of those fights, and the producers and individual refiners over the State have not felt like they were in a position to make the fight.

Q. Is the average producer who is complaining of the rate depending upon that pipe line company to carry his oil?

A. They are.

Q. What effect do you think it would have if he would apply for a change of rate and didn't get it?

A. Well, I imagine a lot of them felt like it might have a tendency to injure them. We didn't think so, our associations with the large companies have been very pleasant and we have done what we thought was right and we haven't found that that was so, but we have found that the producers, most of them, did feel like they couldn't afford to make a protest.

Q. You filed this as an association, didn't you?

A. Yes, sir.

Q. How many of these little independent associations are there scattered through the State, do you know?

A. Well, I don't know of another small association like ours within the State.

Q. I have been requested to ask you this question: Should the Railroad Commission or the pipe lines regulate the carriage charges for transporting crude oil for the public? Answer in full, giving your opinion.

A. As to whether or not the Railroad Commission or the pipe line should set the rate?

Q. Yes, sir.

A. Why, I think, undoubtedly, the Railroad Commission should set the rate, because all pipe line companies have the right of eminent domain, and to that extent are at least semi-public corporations, and their rates should be set by the Commission; pipe line companies, the large ones that cover the State, on account of the enormous investments, are to that extent monopolies.

Q. And how many of these small independent refiners, in your opinion, are financially able to erect their own distributing system and filling stations and so forth?

A. I don't know of any of them that are.

Q. How many of them do you know that are doing that?

A. You mean in our district?

Q. Yes, sir.

A. Well, now, then, there aren't any of them in our district at this time in our district spreading out.

Q. Do you know of any in the State?

A. Well, yes, I know of one or two; the Waggoner Refining Company at Vernon is; they are able to put in their own distribution, and are doing it at this time.

Q. How many of these small independent refiners are there in the State of Texas, do you know?

A. I don't know exactly how many there are in the State.

Q. There are fourteen in your district?

A. Yes, sir.

Q. None of whom are able to?

A. None of those fourteen are able to go out and build filling stations over the State.

Q. What is the cost of storage of oil?

A. I beg your pardon.

Q. What is the cost per barrel to store a barrel of oil?

A. Well, that fluctuates somewhat on conditions. You mean by that if you already have the tankage?

Q. Sir?

A. If you already own the tankage, what would it cost to hold a barrel of oil?

Q. Well, both ways, if you have to rent storage and if you have your own storage?

A. That will depend on conditions; if you are building storage in a field that is new and would probably play out and not be used but the one time, a 55,000-barrel tank ordinarily would cost, under present conditions, about $14,000, and you can see the evaporation of over a period of a year will be about 2 per cent and you can see about what it would cost. It would cost about 20 cents per barrel to build the storage. Now, if you have got storage in a district where the storage will be used continually, it is ordinarily considered that insurance and evaporation and depreciation and interest and so forth is about from 1 to 2 cents per month, depending upon the price of oil. You see, when the price of oil is high, the evaporation will be high-priced oil; therefore, it would cost more than it would when oil is low. Under present conditions, I would say 1 cent a barrel would about take care of it.

Q. Then those refiners which have access to storage facilities are in a much better position under the present circumstances than those refiners who do not have the access to the storage facilities?

A. That is correct.

Q. In those districts where the 100 per cent filling stations have been taken over, what is the relative price of gasoline as against those districts where the independent filling stations are still in existence?

A. Well, at this time I would say that the price is a little lower where the 100 per cent contracts are more nearly uniform.

Q. Why?

A. For this reason: in the 100 per cent districts where they have made a big fight to put on the 100 per cent contracts they have had a fight with the independent refiners to put them on, and that has driven the price of oil down.

Q. You don't mean that they have cut the price and reduced the price in order to eliminate a competitor, do you?

A. Well, as I stated before, of course, I am not in a position to allege or prove that they cut the price in order to put somebody out of business, but I do know that they did this: That in a district where they started to put on the 100 per cent contracts, the independent refiners and the jobbers of the State cut the tank wagon price so as to give their customers a margin equal to the 4 cents which is customary under the 100 per cent contract.

Q. You mean by customers, the 100 per cent filling stations?

A. No, sir, I mean the customers or filling station owners who were buying from the independents.

Q. All right.

A. When they cut down the tank wagon to make the tank wagon 4 cents under the retail so as to make their filling stations they were serving have the same margin as the filling stations operating under the 100 per cent contracts they immediately cut the retail down another 2 cents, and in certain sections of the State,

in fact, I would say, in one-third of the towns of Texas, during the fight to take over the 100 per cent contracts, there wasn't 1 cent difference between the tank wagon and retail, and 25 per cent of the towns in North and West Texas, there wasn't any difference between the retail and wholesale price.

Q. In other words, the 100 per cent filling station contractor was selling at retail his gasoline at the same price that the independent was buying from the tank wagon?

A. That is correct.

Q. Now then, did the independents sell their oil from the tank wagons at the same price that the companies having 100 per cent filling stations sold their gasoline to independents from tank wagon prices?

A. Yes, sir, but of course when the tank wagon and the retail became the same, why, the large companies or the independents neither one were able to sell any gasoline at tank wagons; that cut out all the tank wagon sales, and drove all the filling station owners into these contracts; otherwise, they could not have existed.

Q. What percentage of the gasoline filling stations are now operating under the 100 per cent contracts?

A. Well, now, at this time, all the stations that are owned, that is, stations that are owned by one of the major companies, are under a direct money rent. You will see there are certain stations that they rent and pay so much a month.

Q. Yes, sir.

A. Excluding those, about 90 per cent of what is known as the independent filling stations in the State are under those contracts.

Q. What percentage were there twelve months ago?

A. Well, I would say twelve months ago there were about 50 per cent of them under; eighteen months ago there wasn't over 10 per cent; but the last eighteen or twenty months has been the time they have been writing the contracts.

Q. And this caused the independent refiners' sales in Texas to drop to what percentage—50 per cent?

A. At least 50 per cent. Certain refineries have lost all sales in the State, or sell gasoline out of the State. I recall that one refiner in Wichita Falls used to sell 40 per cent of his gasoline in Texas, that doesn't sell any now.

Q. Do you use the cracking or skimming system?

A. Both.

Q. In your plant?

A. Yes, sir.

Q. How about these other fourteen plants there, what system do they use?

A. There are four of them that have cracking plants, and the balance have skimming plants.

Q. What is the difference in percentage of gasoline obtained from a barrel of oil in the skimming and cracking systems, taking the same grade of oil.

A. Well, about — the skimming plant at Wichita Falls, operating on average oil—that is 39 per cent gravity oil—get about 40 per cent of gasoline; and using that same oil and using the cracking plant, with sufficient cracking equipment, you will get about 60 per cent, add about 80 per cent to the amount of gasoline made from a barrel of oil. Which is the most profitable, then, would you think?

Q. Which is the most profitable?

A. Over a period of years, the cracking combination plant is.

Q. Is the cracking system more expensive to operate?

A. Yes, cracking plants are pretty expensive.

Q. Is that a patented system?

A. Yes, sir.

Q. You have to pay a royalty on it?

A. Yes, sir; the average royalty is 15 cents per barrel for each barrel of crude or fuel oil run through that plant for the period of the last few years; that is more than the profit that the plant can make.

Q. Do you obtain from the cracking system, or from the skimming system, more by-products other than gasoline?

A. Well, about the same.

Q. About the same as other by-products?

A. Yes, sir.

Q. To whom are these royalties paid?

A. Well, there are two big concerns that own most of the cracking plants, outside of the ones owned by the major companies; the Universal Products Company owns what is known as a Dubbs' system, and the Gasoline Products Company owns the Cross plant. The first one is the Dubbs cracking plant, the second is the Cross. Then we have a big plant, Koch & Winkler, that is an engineer-

ing concern. Of course, what is known as the Patent Club, organized a few years ago—two or three years ago—own the majority of the cracking plants in the United States, outside of the Dubbs; the Patent Club is composed of large concerns of the country, out in California and Indiana, are in that Patent Club.

Q. Do these major companies use these cracking plants, do they have to pay these royalties or not?

A. They do not, because they trade with one another; they are members of what is known at the Patent Club, because they use their own cracking systems with one another.

Q. Then, haven't they — doesn't that given them an advantage over the refiner—over the independents in the refining of their products?

A. It does.

Q. So far as products are concerned?

A. Yes, sir. The last years the royalty has amounted to more than the average price there was in a barrel of oil.

Q. Are you now paying 40 cents for your crude?

A. Yes, sir.

Q. Even at the market price?

A. Yes, sir.

Q. Did you say the posted price?

A. Yes, sir.

Q. Did you have anything to do with posting it?

A. Not in the beginning, no, sir.

Q. If the price of crude oil should rise to the price of $1, how much rise in the price to the ultimate consumer would your plant have to have in order to make a profit?

A. That would be a rise of 60 cents a barrel, would be about 3 cents a gallon raise.

Q. Would that be to the refiner, or to the ultimate consumer, the raise of 3 cents?

A. No, it would be a raise to the ultimate consumer of about 3 cents.

Q. What would be the refiners' raise?

A. You mean how much additional? It would cost him about two or three-fourth cents a gallon more to make it.

Q. And you would get 3 cents more for it?

A. Yes, sir, he would have to put an additional cost for the investment in the oil, and its products, and he would have to get some additional to take care of the cost and interest on investment. We make about 22 or 23 gallons of gasoline out of the average barrel of crude, a little less than one gallon brings 20 cents.

The proceedings were here suspended, the Committee of the Whole House recessing for the purpose of hearing the address of Mr. J. Frank Dobie, at 10:06 a. m.

(The Committe of the Whole House resumed their proceedings at 10:47 a. m., as follows, to-wit):

Questions by Mr. Beck:

Q. Mr. Eddleman, are you president of the American Refining Company?

A. No, I am manager.

Q. Manager of the Company—the American Refining Company?

A. It is owned by—it is the American Refining Company, as you call it, it is owned by the former creditors of the American Refining Company. You see, the American Refining Company went into receivership and was bought in by the creditors, it is being operated by the creditors.

Q. Wasn't that receivership largely occasioned—Mr. Eddleman, wasn't the original failure and receivership of the American Refining Company brought about largely through an extravagant attempt to establish a line of filling stations all over the South East?

A. Well, it is partly true. The main cause of the failure of the American Refining Company was lack of permanent finances. They did establish a line of stations in North and South Carolina, which lost them a lot of money?

Q. Isn't it a fact that most companies establishing these filling stations now wish they could find a place to sell them?

A. Yes.

Q. Well, what is the result of this multiplicity, what is the cause of this multiplicity of outlets?

A. The cause of this multiplicity of outlets is this: It is the ambition of every company in the State of Texas to become what is known as integrated company—that is, have its own production and refining, markets, pools, etc., and growing up into a big company and increase their refining capacity, they have been finding it necessary to get an outlet, and in order to get an outlet, to get in more filling stations.

Q. It bids fair to develop to such a point that this multiplicity of outlets are proving more of a handicap to those major companies, than a benefit?

A. I think it is a liability at this time.

Q. And really it is an advantage to the refining company that doesn't have them in that particular?

A. Well, I don't think that is true, for the simple reason that the independents cannot get into Texas markets. I think it is a bad thing, the increase of outlets. I think it is bad business.

Q. Everybody in the industry, may use independents, and everybody else wants to slow up the speed of their establishing them, and find a stopping point if they can find it, do they not?

A. Yes, sir.

Q. Does anybody disagree with that general viewpoint?

A. That they want to stop? I don't think there is any disagreement as to principle, but they haven't been able to get together as a fact.

Q. Some years ago, wasn't there a concern that let it be known throughout the trade that they were coming to Texas with a string of filling stations, and acquire 25 per cent of the retail outlet?

A. Yes, sir.

Q. Who was that?

A. Sinclair.

Q. Anybody else?

A. I understand Cities Service stated they would, too.

Q. How about Dutch Shell?

A. Well, Dutch Shell, of course, they announced that they were coming in and get their part of the market; I never heard that they made any definite statement as to what percentage they would get.

Q. And they established one of these retail outlets as to results of ferocious competition among the majors themselves, is that right?

A. To a certain extent, yes, sir.

Q. And it reacts to the disadvantage of the whole industry?

A. I think it has become a burden on the entire industry, yes, sir.

Q. You buy all of your oil from refineries in Wichita Falls area?

A. Yes, sir.

Q. Do you buy any of it in East Texas?

A. We haven't so far, bought any in East Texas.

Q. Have you any production in East Texas?

A. We have not.

Q. You are paying 40 cents at Wichita Falls?

A. Yes, sir.

Q. Do you find you can compete in the Chicago district with gasoline from 40 cents oil in competition with 10 cents oil, and 15 cents refined in Longview, Texas?

A. We couldn't at this time.

Q. You could not at this time? Is that due to the freight rate differential, or what?

A. Partially so, partly due to the fact that there is only a limited amount of refining capacity in East Texas, and they are not in a position to supply the entire Chicago district.

Q. If this 15 cents oil continues for any length of time, in East Texas, what will be the effect upon your production in Wichita Falls?

A. If it continues long enough, if the refiner hasn't sufficient refining capacity, it will pass out of business.

Q. Are such refineries being built in East Texas?

A. They are.

Q. Would you say that oil is now scarce in Wichita Falls' district?

A. It is, yes, sir.

Q. Is there much competition in the buying of that oil?

A. There is.

Q. Are the major companies competing with you to get that oil?

A. They are.

Q. More actively or less actively than formerly?

A. Much more actively than they were thirty days ago.

Q. You mentioned the fact that the Texas Company is selling you part of their oil?

A. We are buying 1000 barrels a day at this time from the Texas Company.

Q. If they need that oil, why do they sell it to you?

A. Well, the reason they sell it to us is because of the fact we bought at thirty days, and we were buying at that time, 1500 barrels from producers through the Texas lines. If Texas slipped over these connections and started out to sell us 1500 barrels a day, but when the shut-down came, they shut down to 1000 barrels a day. They are doing that to take care of us.

Q. To take care of you, what do you mean by that?

A. Well, we have always been a customer of the Texas Company's

pipe lines, and we have had a great deal of trouble in the last three months in the Wichita Falls field area, with local refiners being able to buy at the posted price, and they will buy from producers one month, and may not be in position to buy the next month, and the Texas Company decided it would be best for them and the producer and the refinery if they would buy oil to meet their requirements.

Q. Well, aren't you in competition with the Texas Company in refined crude?

A. We are in competition with the Texas in refined products, yes, sir. We are in distribution in Texas.

Q. You say you are in competition with them?

A. Yes, sir. The Texas Company doesn't sell in the tank car market.

Q. But you are in competition with them in the distribution of your refined products?

A. Yes, sir.

Q. If they decline to sell you this oil, that you are buying from them now, wouldn't it tend to injure you?

A. It would.

Q. Well, it has been testified here that the major companies were trying to put the little refineries out of business. Why don't they have that attitude toward you?

A. I don't think the large companies have singled out any one particular refinery and undertaken to put them out of business. I think the concerns dealing with the larger companies have been treated satisfactorily. Personally, I frankly believe that the present system of marketing in Texas is having the effect of putting out of business the small concerns of the State of Texas, but I do not think the large companies have singled any of us out to put us out of business.

Q. Do you think there is any collective effort to force you out of business as a group and a factor in the refining business?

A. I have had my doubts as to whether or not there was any collusion in the large companies to freeze out of business the small refinery. I think that there has been more the result, than there was intention to do so.

Q. You think it is largely the result of the market in competition, between the majors themselves, and that you are injured by the backwash of that competition?

A. I think that is largely true.

Q. Would you say that that was just a natural course business development or business activity?

A. I, no, sir, I, well—well, it is the natural trend of the last few years, as business has gravitated to the large concerns, that is all; it is a natural result if business is allowed to get into the hands of a new concern. I think the present plight of the small independent is to a certain extent the result of the trend of the loss of the last three or four years—merely the trend of the times, values merged.

Q. It is true in all lines of business in these times, isn't it—railroads and everything else?

A. I think it is correct.

Q. Can you tell us, as a business man, any way in which we could check or retard the development in that direction?

A. Well, I have my ideas on that, yes, sir; I can tell you what my idea is, it is rather revolutionary, would have to be taken very carefully.

Q. Let us have it, Mr. Eddleman.

A. I think the only way to stop it is by disintegration—that is, to keep them from merging and making these concerns larger and larger.

Q. In other words, you don't believe anything has a perpendicular set-up?

A. That is correct.

Q. Or a vertical set-up?

A. A vertical set-up, yes, sir—integrated; in other words, that is what they call it.

Q. How would you go about stopping that under the laws of this State?

A. Well, I would go about it by a change in the corporation laws; in other words, I wouldn't permit a corporation to engage in but one line of business.

Q. Would it or would it not be to the advantage, then, to foreign corporations?

A. No; if you do not permit a foreign corporation to engage in more than one line of business, within the State, by means of your permit law.

Q. Is it a fact that the large vertical set-up do have operating advantages, superior to those of their own, isn't it?

A. That is correct.

Q. Is there any instance of which you know where they have used those advantages improperly to handicap you as a refiner?

A. No specific instance—I wouldn't

say, of course—the situation has been this for the last three years, competition has been so strong and we were in a downward market, everybody in the country knows what we have gone through in the last few years; the companies that have been integrated, have carried pipe line systems, what little money they have made has been through the pipe lines, they haven't been able to make it both in the market and refining, and at the same time maintain themselves, and from this standpoint they have been in a position to keep these companies which are not integrated from competing with them on a competitive basis.

Q. In other words, they have had vastly increased resources to ride through these times?

A. That is correct.

Q. Is your position as a refiner any different from that of Mr. Danciger, who testified yesterday?

A. Yes, sir.

Q. In what respect?

A. Well, for instance, the refinery I am connected with has been in operation since 1919. We are in an old settled field, and refine year in and year out. Mr. Danciger is refining, and the one he has built has been built in flush years, and it has the advantage of near production, that is the difference—his refinery supply is nearer the field, and he gets his oil through his own pipe lines, and from his own production.

Q. Is a barrel of oil in East Texas worth as much as a barrel of oil in the Wichita area?

A. Intrinsically, yes.

Q. If you had a thousand barrels of oil of your own production in East Texas, leisurely produced, would the Texas Company, from whom you are now buying oil, accept in payment therefor, exchange oil delivered to their lines in East Texas?

A. They would not at this time?

Q. That has been a custom practiced in the past, has it?

A. Yes, sir.

Q. Why was that stopped?

A. I don't know, but it is my opinion they stopped it because they didn't want — they say, if they started it where oil was legally produced, they would get into some transaction where it wasn't legally produced, and they just didn't want the opportunity offered.

Q. Because there was oil in East Texas that was illegally produced at the time, that was the reason?

A. That was the reason they gave us.

Q. Well, do you think it was the real reason?

A. To a certain extent, yes, and I think probably they thought they would possibly like to isolate that oil as much as possible, because they didn't want to bring down the entire structure of the country, in which I concurred.

Q. And you concurred in that, too?

A. Yes, sir.

Q. Now, if you were unable to get oil in the Wichita area to supply your refinery, would it be possible to buy the oil in East Texas, bring it to your refinery, process it and send it out to the market, in competition with other refineries?

A. Well, there is some oil being brought to Wichita Falls and refined at this time, and, as I said before, the present market of Texas, but I don't believe it would be possible because you can't pay 7½ cents freight rate from one portion of the State to another, and then have to pay the same freight rate to open market.

Q. As a matter of fact, as crude has developed and then settled, these refiners have moved from point to point over the country to a greater extent, for instance, than cotton seed oil mills, haven't they?

A. That is correct.

Q. Because of that power which disturbs them, and it would enable them to make that profit economically—to make their operation economically?

A. That is true.

Q. What can prevent that from happening to you?

A. Well, the thing we feel like would prevent it happening to the full extent with us is because of the fact the Wichita field is probably the most uniform in production in the world; as a matter of fact, the Wichita field discovered petroleum in 1903, and the last ten years has produced over 15,000 barrels a day; there is no variations in production, so that it is —well, probably 20,000—and for that reason the refiners in that district, over a period of time, should be able to get oil. As soon as oil operations start off and producers start to drill other wells, we will get oil again.

Q. Have you heard any of the testimony here this week?

A. No, sir, I havent' heard any. I have read some in the paper.

Q. Are you familiar with the discussion for and against certain principles that are proposed for the conservation laws of the State?

A. I think so, yes, sir.

Q. Are you in favor or unfavorable to a tightened conservation law?

A. I am very much in favor of a tightened conservation law.

Q. Why?

A. There are two or three reasons; I will give them if you would like to have the reasons.

Q. I would like to have the reasons.

A. In the first place, I think it is to the best interests of the State that our resources be distributed in an orderly manner, so there will be no waste; first, for the benefit of the State, and then, I think it will benefit not only the State itself, but I think it will benefit industry to orderly control the fields of the State, that it will keep the industry on a more uniform key. To have oil go up and down in price always has a bad effect on the industry. In the next place, I believe that if you hold the production of the State down so that no one field will be too rapidly developed, so as to waste resources, that will be of benefit, and we feel that it will give a supply of oil longer within the State of Texas, so that the business can be operated on a profit basis, and at the same time will not result over a period of time in higher prices to the public. Whenever you let these flush fields come in, they are over-drilled and completed fast, you have a series of low-priced oil, and then there will be following a period of shortage of oil and high-priced products to the public. I think it would be better if there would be some uniformity.

Q. That has occurred in the past, hasn't it?

A. Yes, sir.

Q. When the American Refinery had its difficulties, was it a period when prices for crude were higher, or prices were low?

A. Well, when it first had its difficulties, the price of crude was comparatively low—in 1927.

Q. That was after the great production of the Seminole field, wasn't it?

A. Yes, sir.

Q. Did that have its bearing in driving the original company to the wall?

A. I think it did, yes, sir. The market was demoralized, you see, gasoline had been very high in 1926 and the market was demoralized in 1927, as the result of overproduction in the Seminole field.

Q. We were interested in what you call the Patent Club, that controls the principal patents of the cracking process. What is this Patent Club?

A. Well, the Patent Club, most of the major companies belong to the Patent Club, and control most of the patents, outside of what is known as the Dubbs system.

Q. Well, what did it take to become a member of the Patent Club?

A. I don't know—some of these major patents.

Q. Do you have to own one of the patents, do you just throw it into the pool of ideas, and get any or all ideas?

A. That was originally the principle on which the Patent Club was formed.

Q. It amounts to the same as the custom of licensing the patents among the members?

A. That is what it amounts to—yes.

Q. And is that the same sort of a pooling of patents that has prevailed in the automobile industry?

A. Yes, sir.

Q. How can you join this Patent Club and get the other fellow's ideas without paying royalty?

A. Well, that couldn't be done; that is because we don't own any major patents.

Q. If you developed a new idea or new process, and threw that into the pool, you would get the ideas and the new processes that the others have?

A. I am sure we could, patents that would be worth while, that is correct.

Q. Are your royalty charges?

A. I think they are under present conditions. Of course, that is a matter that the State of Texas—the Legislature—couldn't have anything to do with, that is Federal.

Q. And then do you find, on the part of those who control the patents,

a disposition to adjust or fix those royalty charges to the times?

A. No, sir.

Q. Have they been approached on that subject?

A. Yes, sir.

Q. What did they say?

A. Well, they say that patent royalties are uniform and they are not in any position to change them.

Q. To whom do the profits of these royalties go?

A. Well, they go to the concern that owns that particular patent.

Q. Do you happen to know what concerns are members of that Patent Club?

A. Well, of the Patent Club, the Texas Company belongs to it, and—

Q. What entitles them to be a member of it?

A. The Cross patent.

Q. Who else belongs?

A. I mean the patent that was patented by Holmes, not Cross.

Q. That is Holmes-Manley process, yes, sir, you say?

A. Yes, that is the Holmes-Manley process, that is what I wanted to tell.

Q. Who invented the Cross process?

A. Why, Dr. Cross, and he sold it out to what is known as the Gasoline Products Company.

Q. Well, who is the Gasoline Products Company?

A. I don't know who owns the company, it is owned out of New York, and the Standard of Indiana, and, I think, the New Jersey people. That is a matter of record.

Q. Do you know which of the major companies that do not belong?

A. The California doesn't, I understand, the Standard of California, and the Shell.

Q. Now, when the Shell and the California and the Standard of California have to use the cracking process in those cracking processes, do they pay—have to pay that royalty?

A. If they use the processes—or process that is controlled by the Patent Club—as any other members.

Q. Do they pay the same?

A. Well, they are their own patents, you know.

Q. Do they pay the same rates per barrel, that you pay?

A. Well, you see, the Universal Products Company is now owned largely by the Standard of California and the Shell—Dutch Shell.

Q. The Universal Products Company?

A. That is the Dubbs' patent.

Q. In other words, they are trying to develop a patent of their own?

A. That is correct.

Q. Well, is their process available to you?

A. We are using it now.

Q. Then you pay your royalties to the Universal Products Company?

A. To the Products Company.

Q. To the Products Company and not to the Patent Club?

A. Correct.

Q. Are you buying only such oil as is produced in plants that obey orders of the Railroad Commission?

A. Yes, sir.

Q. You decline to buy any oil that is produced in violation of those orders?

A. Yes, sir.

Q. Is everybody else in your vicinity that buys oil doing the same?

A. I think so—I don't think there have been any violations lately in our district.

Q. When you have a number of operators connected to you, are you taking wageably from them?

A. We are. We have a small pipe line of our own, in the State of Oklahoma, and we are complying with the orders of the State of Oklahoma, and are building it through Texas and the Pure Lines in Texas.

Q. Who are the principal creditors of the American Refining Company?

A. Well—

Q. For whom you are operating as receivers?

A. Well, there are 468. J. J. Perkins is the largest one.

Q. Mr. Perkins, that merchant up there—Perkins-Timberlake Company?

A. That is right.

Q. And there are 468 creditors?

A. Yes, sir.

Q. How many of those creditors are citizens of the State?

A. There are about 425, I think.

Q. 425?

A. Yes, sir.

Q. Is the company indebted in a very large way to any major company?

A. It is not.

Q. Is it indebted in any small way to any major companies?

A. No, sir.

Q. None at all?

A. Well, I think the Texas Company has got a little bit of a certificate, a few dollars, but it is not, or has not undertaken in any way to interfere with the operations.

Q. Is it as much as $100?

A. I don't think it is that much.

Q. Is it not that much?

A. I don't—no, it is not, the Texas, it is the Tidewater, I think they have got about $78 worth of—a $78 certificate.

Q. Not enough to have very much control of your company?

A. They interfere in no way whatever.

Q. Is it your opinion that a conservation law embracing strict proration and strict enforcement of the ratable taking provision would help or hurt you?

A. I think it would help.

Q. Why?

A. Because I think it would put the production of the State on a more even basis; in other words, we would not have so many flushes in the amount of production, and the result would be a better position to know how to plan our business from day to day.

Q. Would it do this, would it require the large concerns with a vertical set-up to refine or manufacture with the same advantages at the same handicap as you possess?

A. I don't understand.

(At the request of Mr. Beck, the reporter read the question as above set out.)

A. It would more nearly do so than at present.

Q. It would level up your process with them?

A. Yes, sir, and would tend to eliminate the taking of advantage by such superior resources as they have.

Q. It would do that?

A. That is correct. They have opportunities and resources by which they can ship from a flush pool, they are in a position to reach the new flush pool, and take large deep oil produced in the flush fields, which, of course, we cannot. We operate in an old settled field, and operate on about the same basis year in and year out.

Q. Is it your opinion that most of the refiners in this State share in your view?

A. Most of the refiners in the old settlement areas have that view; some of them are in new areas, that have moved in to take advantage of this particular situation, probably do not carry that view.

Q. Now, you are of the opinion that there is an unnecessary duplication of a very costly method of disposing of refined products?

A. I do.

Q. What has that to do with conservation?

A. Well, it has no direct bearing upon the question of conservation, greatly, at all.

Q. If the improper practices are going on in the marketing division of the industry, it is a matter for regulation separate from the supervision, separate from the laws of conservation, is that your opinion?

A. I think that is correct.

Q. Conservation, as provided by this State, should comply—should apply with equal force and vigor to big and little producers alike?

A. I think they should be enforced impartially.

Q. Do I understand you to say that you have no production?

A. In East Texas, yes. We have production in Texas.

Q. You have production?

A. We have a production in Wichita Falls area, and in the Panhandle of Texas.

Q. Have you some of that production shut in and held back?

A. Yes, sir, we are only allowed to run 33 1/3 per cent of our production in the Panhandle.

Q. And notwithstanding you are needing more oil than you can possibly produce, you are not overstepping the figures set by the umpires on that basis?

A. No, sir.

Q. Or set by proration?

A. Our wells are all small, and 10 barrels take care of it; and in the Panhandle we are holding in and obeying the orders.

Q. Obeying the order?

A. Only overproduced last winter and were put back to what we overproduced.

Q. In fixing allowables in the Panhandle, has there been any partiality shown in favor of or against you or anybody else?

A. I don't think there has been any partiality shown. I think there has been some tricky work up there by individual operators to increase their allowance, but I don't think—

one reason it has got to be so is because they don't have sufficient force to check it.

Q. With sufficient force and determination to enforce, it would make those tricks pretty hard to pull, wouldn't it?

A. I think so. I asked them, and I have always thought that the umpire enforcing proration should be employed by the State and paid by the State and responsible for whatever body or commission had to do with enforcing the law.

Q. One of the members has sent up these questions which I will ask you: Doesn't this vertical set-up result in cheaper products to the consumer?

A. I don't think so—I think it will result in higher over a period of years.

Q. In other words, there is a point this tendency returns any way in favor of the market?

A. Yes, sir. For instance, it was the general opinion of the oil men over the country a few years ago, that 7 cents a gallon would market a gallon of gasoline from the time the gasoline left the refinery to the tank on the car—in other words, to the ultimate consumer.

Q. What does that cost now?

A. Now, it is 9 cents. The duplication in facilities has increased the cost of marketing by 2 cents a gallon.

Q. Isn't it true that the credit cards are a convenience to the consumers of gasoline?

A. I think the credit cards have some advantage to the consumer, yes, sir.

Q. And it is made possible from the fact that you can get a long line of outlets over a wide area?

A. That is correct. I think while some of the evils overbalance the good, it has advantages to cover a business anywhere over the State.

Q. Doesn't the oil companies guarantee to the retailer the payment of all accounts made by the use of these cards?

A. Yes, sir. I can explain that if you would like me to—the workings of the credit card.

Q. All right, sir.

A. These companies issue these credit cards, and they are good for credit at any station owned, operated or controlled—in other words, these cards are good anywhere within the State; in other words, if you have a card, say from the Gulf Production Company, why, you can buy from any Gulf station either owned or controlled by it within the State of Texas—you can buy gasoline at Dalhart and pay for it at the end of the month, either at the station or from Houston. You can buy anywhere within the State of Texas, and the filling station man, the man who fills the tank, gets a signed invoice and sends it in to Houston, he gets—on a ticket signed by a person who has a credit card.

Q. There is one thing I would like you to explain for my own information, if it is not for that of the Committee: Why is it that a major company, with a widespread marketing organization, will go into a given town and put up a series of modern, neat, clean, well-conducted filling stations, and that the independents who compete with them seldom has a place of business equally as convenient and inviting to the customer—why is that?

A. Well, they have more money to put up the place, that is the reason.

Q. Are they making more money out of their operations, or—

A. They are making less.

Q. Making less money?

A. Yes, sir.

Q. Because of that appearance, service, or what?

A. No, sir. Because the investment and the present volume that goes through the average station in Texas, the investment is so large that the volume of business generally, in the average business of Texas, will not repay the depreciation in the inventory. Now, if there was a big volume of business in Texas, it would pay to have large, good-looking stations, but with the small volume of business done in Texas, why, I think the fellow with a small, uninviting station, as you were tallking about, is in reality making more money—and losing less, I will put it that way, than the company that has a good station. All of them, though, have lost money in the market—in marketing in the last few years.

Q. This question was sent up: How could the conservation laws be strengthened to prevent operators bringing injunction suits and, while the case is going through the courts, the operator should violate the orders, produce their wells open, without regard to the orders of the Commission, and if they lose in the courts they

go free of penalty. You are familiar with that situation.

A. Yes. I think that if we are going to have conservation laws and have proration of the State, the procedure laws should be changed so as to enable the Commission, the Attorney General, whoever undertakes enforcement of the law, to be in a position to enforce it. Under the present procedure, you can go into court and get an injunction, and the facts are that the present laws have had the effect that if a fellow wants to be good, he has a penalty, and the fellow who wanted to be bad has the general advantage of it.

Q. Do you think a proper conservation law, that seeks control or place within control of the Commission, the amount of oil that might be stored above ground?

A. I have always thought so. There has always been a great deal of contention along that line. I feel like that when these big new flush fields come in, that no one should be allowed to go into those fields and pile up an enormous storage of oil of those fields, and I have always felt that that has been a waste, actual physical and economic, both.

Q. One side of that controversy is—that it gives a man with storage a chance to store an excess amount of cheap flush oil and, therefore, an advantage.

A. Well, that is what I had in mind, that if a concern with a tremendous amount of storage, under the old rule, where there was a new pool that was found, and it went in and developed a part of the oil to the top of the ground, they could store that cheap oil and be in a position for putting out of business—the fellow who didn't have it.

Q. Now, the other side of the controversy is that not having storage, no one would be able to take that excess at the time it was produced?

A. Well, my answer to that is that the best place, in the oil business, the ground is the best place for oil you have no use for; there is no evaporation or waste, you can always keep it in the ground.

Q. Which method of storage—or which method is of the most benefit to the refiner?

A. I think to prevent storage more than the reasonable amount the —of the current demand.

Q. Would that work to the advantage or disadvantage of the independent producer of oil?

A. I think it works to his advantage in the long run, for the simple reason that if the oil is held in the ground, and brought out as needed, he will universally get a better price for his oil.

Q. Do you take considerable interest in civic affairs of Wichita county—do you not?

A. Yes, sir.

Q. You are familiar with your West Texas politics and your tax requirements, are you not?

A. Yes, sir.

Q. Do you think the consumers of Texas would be better off paying the present price for gasoline and have an increase for the ad valorem tax, or would it be better for the consumers of Texas to pay 2 or 3 cents more a gallon for their gasoline and not have to pay an additional tax?

A. Well, if you choose to take the tax alone as a criterion, I think they would probably be better off under the present conditions. But I think the people of Texas would be vastly better off paying 4 cents a gallon more than they do today, on account of the general prosperity of the State.

Q. What is the comparison in total volume in Texas of the oil industry in this State as compared with the cotton crop?

A. I saw those figures—the total cotton crop is first, and the oil industry is second, a very close second; I don't remember how close it is.

Q. There is a very slight difference, is there not?

A. Yes, sir, very close.

Q. Don't you think that this State would be more prosperous, then, with 15-cent cotton and 20-cent domestic than they are with 8-cent cotton and 10-cent domestic?

A. I know they were when they had those conditions.

Q. Don't you think the same would apply in the oil industry?

A. I think so. Any Nation that has an industry that is prosperous, is prosperous in proportion.

Q. Do you have any figures to show what percentage of domestic production in Texas is consuming in Texas?

A. No, I haven't that, but I suppose not over 10 per cent.

Questions by Mr. Hardy:

Q. Do the major companies buy gasoline to any large extent from independent refineries?

A. They are not at this time.

Q. Have they been doing so?

A. They haven't in the last twelve months. I understand there have been some purchases in Texas gasoline in the last ninety days, but not generally in the State. These large companies haven't bought a great deal of gasoline.

Q. When they do buy this gasoline, do they use it in their filling stations and advertise it for their own make of gasoline?

A. Yes, sir.

Q. How much do the consumers pay for the different refined finished products produced from one barrel of crude oil?

A. Do you want me to state—a barrel of crude oil in Wichita Falls, average oil, produced about 22 or 23 gallons of gasoline, the consumer in Wichita Falls pays 8 cents a gallon—pays 12 cents, but four of the twelve is tax. Of the balance, the balance is kerosene and distillates, fuel oil, etc., at this time will average about a cent a gallon. You see, that is to the consumer in wholesale quantities. You can figure it out.

Q. Then a barrel of oil, according to your figures, sells to the consumer —the products of a barrel of oil sells to the consumer at approximately $2.61 a barrel?

A. That is about correct.

Q. You stated a minute ago that you were for a conservation plan and favored a bill which would provide that a violator could not obtain an injunction against the Railroad Commission and then violate the order of the Railroad Commission, and after the determination by the court, contrary to his contention, go unpunished —is that correct?

A. That is correct.

Q. Are you willing to take the position of denying that the weak man has the right to apply to the courts for protection against the violation of the orders?

A. No, sir, if I said I didn't want him to have the right of injunction, I didn't mean it. I don't think that we ought to have the right of injunction without a hearing; in other words, I don't think the right of injunction should be granted like they have been granted in the past, merely to give him an opportunity to go there and run the oil, when he really ought not to have it.

Q. Then suppose he is granted an injunction and an appeal is taken, and during all the time of the appeal he runs that well, day after day—do you think that if the upper courts reversed the lower court's decision, that he could be required to pay penalties for the oil he produced in violation of the order?

A. I think he should be cut back on the amount he ran, should be cut back the amount he ran.

Q. Are you in favor of exercising a penalty against him for the amount of that oil during all that time?

A. You mean fine?

Q. Yes, sir.

A. I am not.

Q. Are you in favor of placing him in the hands of a receivership if he violates the order of the Railroad Commission?

A. If it is a violation of the injunction, the authorities take action, take him.

Q. What effect will that have upon the credit of an independent producer?

A. I don't think it will have any effect.

Q. You do not think it will destroy his credit?

A. No, I think it will help his credit, for this reason: unless the court has granted his neighbor the right to run over oil found allowable, why, he is not hurt any, because he has run the same amount that his neighbor ran, and he is not losing his oil, not being drained—therefore, I think his credit would be helped instead of hurt, as a matter of fact.

Q. Did you ever hear of any company going through the hands of a receivership coming out with profits?

A. I have heard of it, but very seldom.

Q. Do you think that if you were a merchant of a supply house, that you would be more willing to lend advance credit to a producer, with the possibility of the chance of his violating some order and being placed in the hands of a receivership, ahead of the other, who has not—as an illustration?

A. No, I don't think so, for the simple reason I think the average supply house would not violate that law.

Q. You think they will live up to the order?

A. Yes, I think they will, unless they get an injunction to run.

Q. Do you think, as a supply house, you would be willing to lend credit on that business?

A. I wouldn't think there was any difference in that position than this—in fact, in watching these flush fields, and having dealt with independent operators in these fields that are run wide open, they have been very satisfactory.

Q. You say that the distillated products of a refinery are sold to the buyer at a price of $2.61 per barel?

A. That is correct.

Q. Please state the cost of refining, transportation, and distributing, basing this upon a cost of 20-cent crude oil?

A. Twenty-cent crude oil? All right; 20-cent crude oil, that is with transportation, would be about on an average 15 cents bringing it to the plant at 35 cents; to run it through a plant such as ours, which is a combination of skimming and cracking, the average cost is 30 cents per barrel, approximately, making the total cost 65 cents, oil and refining.

Q. Leaving a profit—

A. There is no profit under that at all. Gasoline I have shown under my original figures, that under the present market conditions, there are 22 gallons or 23 gallons of gasoline that is sold to the public at 8 cents a gallon, but the cost, the actual cost today of selling that gasoline from the time it leaves the refinery, to the tank on the automobile, averages, within the State, to an independent refiner, or independent distributor, about 7 cents a gallon; with one of the larger companies, it costs them 9 cents a gallon, which means—you can give—as long as gasoline is sold at 8 cents in the State, and has to be distributed by retailers over the State of Texas, you can buy the oil for nothing and you won't make any money.

Q. Now, taking your 7 cents distribution charge per gallon, and taking 23 gallons of oil to the barrel—

A. Yes, sir.

Q. —you have a transportation cost of $1.61 for one barrel of oil?

A. That is selling cost.

Q. Yes. Now, then, we add 65 cents for cost of moving, that gives you $2.26?

A. Yes, sir.

Q. Then the difference between $2.26 and $2.61, is profit to the refiner, isn't it?

A. Now, wait. How did you get $2.60-something?

Q. $2.61. On your basis of 8 cents per gallon for gasoline is how I got that, 22 gallons to a barrel, and approximately 1-cent for the other products, contents left in the barrel—that is, according to my figures, $1.24, and that will be 23 gallons from the total barrel, leaving 77.

A. Leaving what?

Q. Seventy-seven. How many gallons in it?

A. Forty-two.

Q. All right. That would make the difference?

A. I was going to say my figures don't have this 19 gallons for the other products now, had there about one cent a gallon.

Q. That would give you only $1.23 a barrel, instead of $2.61.

A. If I sold it in Texas at 10 cents a gallon, that is about right.

Q. Then you are losing money all the time?

A. If we sold it in Texas, the other products are worth about a cent a gallon.

Q. Now, if the oil goes back to $1 a barrel, you have to increase your gas about 3 cents a gallon?

A. About 4 cents.

Q. About four cents? You would still be losing money at that price?

A. Four cents would just about break you even at a dollar a barrel—no, you would lose a little bit of money.

Q. Well, how much does oil have to go up to make money?

A. Oh, it would have to go up about 5 cents a gallon, dollar oil.

Q. Then it is for the best interests of all the people of the State of Texas that oil do not advance beyond a dollar a barrel, is it?

A. I don't think so.

Q. Well, would you have to advance it any more when it goes up to a dollar and a quarter than it would when you advance it to a dollar?

A. Well, you have to advance for the reason, from the time you advance a cent in gasoline, it would be about 22 or 23 cents to a barrel of crude.

Q. In other words, from the day you go up in the price of a barrel of oil you get 4 cents higher on gasoline?

A. That is right.

Q. Then the people are better off with low priced oil than high priced, aren't they?

A. I don't think so, no.

Q. The independent consumer is, isn't he?

A. No, I don't think so, because they have got to live off of something, and if oil is 25 and 30 cents a barrel, they are not going to live off of it.

Q. You are basing that, though, upon the economic situation, are you not? Rather upon—rather than upon the product itself?

A. Why, where the general public has got to earn the money with which to buy everything, if the money doesn't come in here from some commodity distribution, "it doesn't get here."

Q. In other words, Mr. Eddleman, if the State of Texas produces three hundred million barrels of oil a year —that is what it—approximately what it produces?

A. Yes, sir, that is approximately correct.

Q. If oil is $1.15 a barrel instead of 15 cents, it adds to the income of Texas three hunderd million dollars?

A. That is correct.

Q. All right. I believe it is estimated that five-sixth of the oil produced in Texas, goes out of Texas to be consumed?

A. That is correct.

A. Or $250,000,000. That is $40 a head for every citizen of Texas, or approximately $200 for a family?

A. That is correct.

Q. If you put $200 a family in the pocket of the people of Texas, the general prosperity will be increased, is that right?

A. I think that is entirely correct.

Q. Mr. Eddelman, you expressed yourself as favorable to the proration law in Texas?

A. Yes, sir.

Q. If you enforced ratable production and ratable transportation, still the independent man is not helped at all unless you carry that on and enforce ratable purchase of this oil?

A. I don't think there is any question about it.

Q. And if we add penalties and strengthen the proration laws, enforcing ratable production and ratable transportation, could not the same penalties and the same strengthening go into the laws for enforcing ratable purchases?

A. Yes, there isn't any question about it?

Q. If either of those three phases of this law is weak, it destroys the whole law?

A. I think that is correct.

Q. Mr. Eddleman, I want to ask you a question about the pipe lines in Texas; if you have a 500-barrel tank filled with oil out here, do the pipe lines pay you for the 500 barrels?

A. They pay for 500 barrels, less 2 per cent.

Q. Now, Mr. Eddleman, isn't it a fact they take about eight or ten inches off the top of the oil to start with?

A. Well, they will if the umpire you have got out there to watch it will allow it.

Q. Isn't that a good old Spanish custom for the pipe line companies—of the pipe line companies?

A. Oh, they take care of themselves, no question about that.

Q. And then they deduct 2 per cent for evaporation and waste?

A. No.

Q. In addition to that?

A. No, you see, every tank is strapped by what we call a pipe line tank strapper, and in place of figuring out the whole 500 barrels, he figures it 500 less 2 per cent, and then deducts one per cent, delivered to the refinery, for evaporation.

Q. Making a total of 3 per cent?

A. Yes, sir.

Q. Now, Mr. Eddleman, isn't it a fact that of the amount they transport, less 3 per cent when it is finally delivered over there, if there is an excess they claim an overcharge, don't they?

A. Absolutely.

Q. I am going to ask you if the pipe lines in Texas do not uniformly have immense overcharges?

A. Every well-operated pipe line in Texas has a big overcharge, yes, sir.

Q. And when they get that overcharge, then they have lots of trouble handing it back to the royalty owner or producer?

A. Yes, sir, they make no effort.

Q. They make no effort at all; and the immense profits of the pipe lines are partly accounted for by the fact that they charge this 3 per cent, and also shortage on emptying oil, part of the large profits made by them is due to this overcharge and the fact that they appropriate this overcharge as part of their profits, isn't that true?

A. I think that is correct.

The Committee of the Whole House here recessed at 12 o'clock, noon, until 2 o'clock p. m. of the same day, Tuesday, July 28, 1931.

2 o'clock p. m.

Mr. Hardy: Was there any other questions to be asked of Mr. Eddleman?

Mr. Farmer: Yes.

Mr. Hardy: Before we start with that witness, Mr. Chairman, I want to make an announcement. Mr. Chairman and Members of the Committee, in order to try to get through today the steering committee decided this morning that we would try to limit each of the witnesses from now on to an hour's time. Therefore, I want you to remember that and call our attention to it in case the witness runs over his time.

Mr. Farmer: Mr. Eddleman, you came here under subpoena?

A. Yes, I came under telephone directions from the Chairman.

Q. You spoke a while ago about the oil that is run from these tanks and that there is a 2 per cent left off for scrapping, 1 per cent for evaporation, and oftentimes, when they get it into the storage there, they found there was an excess of oil. Do you know whether the Comptroller collects the taxes for the State of Texas for that excess found in their possession at any time?

A. He collects on the basis of 98 per cent.

Q. Well, suppose, after it is run into these storage tanks, there is found to be an excess there that he didn't get; is he collecting for that excess down there?

A. No, sir.

Q. He is not? And yet that excess or the tax on it belongs to the State, does it not?

A. I think so, yes.

Q. They also make a deduction sometimes for B. S. & W., don't they?

A. What?

Q. Bottom settlings and water?

A. There is always a deduction of five-tenths of 1 per cent.

Q. Don't they deduct an excess amount and get an excess of oil there that the settlings and water and so forth never amount to the amount they deduct?

A. I don't think so; they don't with us, because we check every time; we have a man witness every test; we don't let them do that.

Q. You are an independent refining system. Now, do you think that we ought to have a law here regulating these pipe lines to the extent that you independent refiners could be fairly treated?

A. Yes, sir, I think that is correct.

Q. Do you think, then, we should have a provision in that law that you could sue these common carriers just like you can the railroad for failure to furnish transportation that is reasonably required?

A. I think so.

Q. Do you think the independent refiners of the State ought to have the authority under the law to bring suit for damages against such pipe line companies for failure to do their duty?

A. Well, I really think you can under the present law.

Q. Well, it isn't done, is it?

A. No, sir.

Q. Well, don't you think, then, the law ought to be made more plain, that you privately could bring your own suit against them?

A. I think that the matter ought to be made more plain and that the Railroad Commission ought to give it —if they haven't got the men and the equipment to do it, they ought to be furnished them so that the Railroad Commission would actually inquire into the status of the rates.

Q. Don't you think that we need another Jim Hogg to come out against these pipe line companies like Jim Hogg did in the '90s against the railroads in the matter of transportation and divorce them from other lines of competition with private business?

A. Well, I think the industry would be better off and the State, too, yes, sir.

Q. Is it not a fact, Mr. Eddleman, at the present time they are seeking to get a complete monopoly of the filling station business?

A. Well, I think the larger companies as a whole are, yes.

Q. And hasn't that 100 per cent contract, so-called, done more than any other thing to bring that condition about?

A. Yes, sir.

Q. Now, you were asked something a while ago about receivership and so on, and an injunction case. Don't you know, Mr. Eddleman, that it is the law in these United States of America that the equitable jurisdiction exists to restrain at any time criminal prosecutions under unconsti-

tutional enactments when the prevention of such prosecutions is essential to the safeguarding of the rights of property? Don't you know that you can never stop a man from going into court and getting an injunction restraining the confiscation of his property?

A. I think that is undoubtedly true, but I think you could provide that the injunction could not be granted until after hearing.

Q. Have you read this Bill No. 5 in the House?

A. No, I haven't read No. 5.

Q. You don't know about that? Have you seen a copy of it?

A. No, I haven't. I think I know what it provides, though.

Q. Do you know anything about the bond provision in it?

A. If it is the provision I think it is it authorizes the judge to set the amount of the bond to be payable to the adjoining leaseholders so as to protect them from damages.

Q. And a receiver, do you know about the provision for a receiver that provides that a receiver may be appointed upon notice simply without any hearing?

A. Well, I haven't seen that.

Q. Would you like to have a receiver appointed for your properties if you were in private business without a hearing on the merits whether you had violated it or not?

A. No, I don't think they ought to appoint a receiver without a hearing.

Q. You were asked, Mr. Eddleman, about oil illegally produced. Do you know of any oil in Texas illegally produced?

A. I have known from time to time of oil produced over and above the order of the Commission.

Q. The order of the Commission, and the Federal court has said that is void, hasn't it?

A. Well, they have as to one order.

Q. Yes. Now, Mr. Eddleman, just before noon Mr. Davis asked you a question here about 300,000,000 barrels of oil in Texas and profits coming to Texas of $250,000,000, that would be $200 per farm and $40 each individual?

A. Yes, sir.

Q. He didn't ask you this question which I am going to ask you: If that $250,000,000 would come into Texas, would it come into the pockets of these women in rags and these men wandering the streets without employment?

A. I think a large portion of it would.

Q. Tell me how.

A. All right, if we had dollar oil, there would be thousands and thousands of oil field workers that would be put to work immediately.

Q. How?

A. Pumping the wells that are now shut down, cleaning out wells that have not been cleaned out for several months, some of them several years, because they could not afford to do it on account of the present price of oil. In our district, the Wichita Falls district, we have 13,000 producing oil wells producing now a little less than 60,000 barrels of oil. At the present price of oil there have been very few cleanouts, I would say, in the last two years. It is estimated that there are 5000 men in that district that have been thrown out of work in the last 18 months.

Q. All right, when the prices go up this 300,000,000 barrels of oil already in storage is held by the major companies, is it not?

A. Well, there is 500,000,000 in storage, as far as that is concerned; most of it is held by the big companies.

Q. Well, then, when it would go up, these major companies would get the enhancement of that value, wouldn't they?

A. Yes, most of it, as far as that is concerned, cost them $1.75 to $2 a barrel.

Q. Well, what is it costing them to store it over there now at Kilgore?

A. Well, it didn't cost them that much, but there is less oil in storage now than there was two years ago.

Q. Well, you concede, if at the present time they are fixing to store a million barrels of oil there at Kilgore in brand new tanks, they are making 60,000-barrel tanks, that those companies there which are storing that oil at 10 and 15 cents, they would get that enhanced value, wouldn't they?

A. They undoubtedly would, yes, sir.

Q. Yes, and with the ownership of 80 per cent of the East Texas fields, they would further get an advantage, wouldn't they?

A. Oh, I think they would get some advantage.

Q. But who would foot this bill and pay this money?

A. Well, most of it would be paid for by the consumers of gasoline throughout the world.

Q. And in Texas the 182 counties that do not produce any oil would help to pay it, wouldn't they?

A. Yes, they would have to pay it, some.

Q. Wichita Falls at the present time and Fort Worth at the present time, they are storing hundreds of thousands of bushels of wheat at 25 and 30 cents, aren't they?

A. That is correct.

Q. But the consumer is not storing any, is he?

A. No, sir.

Q. Because he cannot.

A. You mean the producer?

Q. I mean the consumer and producer?

A. The producers are storing it.

Q. A little of it?

A. Yes, sir, quite a lot of that, at least 50 per cent.

Q. They are storing it, because they have got the money and the storage capacity, are they not?

A. Yes, sir.

Q. And the consumer is going to pay the difference in the price bye and bye, isn't he?

A. I think so.

Q. You live in Wichita Falls, where 75 per cent of the production is controlled by the independents still, isn't it?

A. Yes, sir.

Q. They up there have solved the problem for themselves by closing down, haven't they?

A. Yes, sir.

Q. And in the East Texas field couldn't the major companies, if they would do it, couldn't they close down and solve it?

A. I think they could, yes, sir; I know they could.

Q. Couldn't the major companies absolutely refuse to buy this oil at this cheap price?

A. I think they could if they wanted to, yes, sir.

Q. If they wanted to; isn't the reason why they don't want to, because it is cheap and they know it is going to be better and they want to reap a harvest?

A. Yes, sir, I think so; I think that 75 per cent of the big companies are opposed to any form of conservation.

Q. Mr. Eddleman, if we will pass a law here to make these pipe line companies act like the railroads do in the transportation of oil, make them use their pipe lines to pull oil from East Texas or anywhere else that you may have a supply, won't that assist these independent refiners in this State to compete with them like they ought to compete?

A. I think so, yes, sir.

Q. Is it not a fact, Mr. Eddleman, in the countries across the sea, Canada and other places. that the price of gasoline now is above 30 cents a gallon because of the conditions existing there in the way of monopoly?

A. Well, in Canada I think it is, but at this time in India it has gone away down; competition has forced it down.

Q. Are you a member of the A. P. I.?

A. Yes, sir.

Q. Are you a director in it?

A. No, sir.

Q. Do you know of any independent refiner that is a director in it?

A. Yes, I know one.

Q. In Texas?

A. Yes, one in Wichita Falls.

Q. What is his name?

A. Roy B. Jones.

Q. What refinery is he connected with?

A. The Panhandle Refining Company.

Q. Is he an independent?

A. Yes, sir.

Q. What capacity?

A. About 4200.

Q. Do you think, Mr. Eddleman, that the farmers of your district up there should produce wheat at 25 cents a bushel and cotton at 6 cents a pound to feed and clothe the world, and then be forced to pay for their gasoline and for oil at $2 a barrel?

A. No, I don't think so, and I think with oil at $2 a barrel they would not be getting 25 cents for their wheat.

Q. Now, Mr. Eddleman, you stated this morning that if we raise the price of oil 23 cents a barrel, that means 1 cent at least raise on the price of gasoline?

A. That is correct.

Q. Does that mean no raise in the price of the other by-products of gasoline?

A. Sometimes it does, and sometimes it don't.

Q. Well, would it do so now?

A. No, I don't think it would right at this time; it would this coming winter. You see, the other products of oil are heavy oils and, during the summer, there is no demand; the price of oil don't always cut any figure with the price of the other products.

Q. You stated this morning you didn't think a corporation ought to engage in more than one kind of business?

A. I think that is correct.

Q. Then it is your belief that we should divorce the different activities of these major companies in the way of production, transportation, refining, and marketing?

A. Yes, sir, I think that is correct, not only the oil companies, but any company.

Q. Then the people would get justice. Is there any reason, Mr. Eddleman, why oil bought in the Panhandle up there and shipped to the Gulf by pipe line transportation should be of any greater value at the Gulfside than East Texas oil shipped a lesser distance at a lower rate?

A. It isn't worth any more, no, sir.

Q. What is the relative value of that East Texas oil as compared with Pennsylvania oil as to its quality, lubrication, gasoline content, and so on?

A. Well, I don't think it is anything compared with Pennsylvania oil; I think Pennsylvania oil is worth two or three times as much.

Q. Do you think, Mr. Eddleman, in your knowledge of the oil business, that we should have a new law that would protect the man in his lease and his pro rata part of the oil under his acreage so that he could retain his oil in storage under his acreage?

A. Well, if you mean by that do I think there ought to be ratable takings, so that one man would not be permitted to take more than his proportion of the oil out of an oil pool, I agree with you.

Q. Yes, but by "ratable taking," Mr. Eddleman, we are understanding in this House at the present time ratable taking of oil produced. Now, we are talking about ratable taking from the ground.

A. Well, if it were possible to do what you have in mind, I think it would be a good thing to do, but it is practically impossible.

Q. Well, we have advanced a piece of the way, haven't we, by Rule 37?

A. Yes, sir.

Q. In limiting to 150 feet?

A. Yes, sir; I would like to see, if it was practical to work it out, that increased to 600 feet.

Q. So, don't you think we can constitutionally advance a step further and say that if a man takes more than his pro rata part of the pool from beneath his acreage, that the party who adjoins him with acreage, if a part of his is taken, he shall have an action for damages against the major company that has sucked the oil and gas from beneath his acreage?

A. I think you can; the Oklahoma Supreme Court has so held.

Q. I do think so. The Supreme Court of the United States has held it?

A. Yes.

Q. Another thing, Mr. Eddleman, do you think these fields in Reagan county down here, those wells owned by the two major companies, that they should run those wells there to produce oil while they waste hundreds of millions of cubic feet of gas daily?

A. I don't think there should be any gas permitted to escape in the State of Texas at present?

Q. Don't you think we ought to pass a real conservation law with teeth in it and forbid the running of such wells with such waste until they shall get a market for that gas?

A. I think that is correct.

Thank you, Mr. Eddleman.

Mr. Burns: Mr. Eddleman, I want to ask you something about these filling stations. Isn't it a fact that in countries where the major oil companies now control—fully control—the retail price of gasoline, that the price of gasoline is out of sight?

A. Every point where there isn't real competition that is correct.

Q. What countries does that affect now like that?

A. Well, Venezuela and most of the South American countries; that is the fact now.

Q. What is the price of gasoline in those countries?

A. It is, I understand, around 30 cents.

Q. Isn't it a fact, from your observation — you are a practical oil man, aren't you?

A. Yes, sir.

Q. Been watching this oil situation in Texas; isn't it a fact that

every time the Railroad Commission up here issues an order on proration that the price of crude oil goes down?

A. No, I don't think that is necessarily correct; I see they issued some orders in West Texas when oil went up.

Q. Usually, though, they go down, don't they?

A. Well, I don't think so; I don't think the proration orders have anything to do with it. The reason why you probably formed that conclusion is that for the last six months when most of the talk about proration has been on, the East Texas field has been coming on which has gradually forced the prices down. In California it has had the reverse effect.

Q. When they passed the California and Oklahoma acts, didn't the gasoline go up, in California, Mr. Eddleman?

A. What do you mean?

Q. Didn't gasoline go up in California after they passed the proration act in California?

A. It did, yes, sir.

Q. Now, do you believe it would be fair to the five million people in Texas who are not directly affected by the oil production in Texas to raise the price of gasoline?

A. I think it would be the best thing that happened to them.

Q. When they are getting 3 cents a pound for cotton and 12 and 15 cents a bushel for oats?

A. Well, I don't think they were getting 3 cents a pound.

Q. Well, they are going to get that.

A. Well, I don't know about that; I cannot foretell the future. I think that there is nothing ever helped the farmers, that is, the land owning farmers of this State, any more than the rentals paid on oil property, I mean oil leases, whether productive or otherwise; beginning say in 1919 for ten years there was as much money paid out to the farmers of this State as they made nearly in all the other crops during that ten-year period, in my opinion.

Q. If we pass this Wagstaff Bill here, the oil companies won't have to pay any oil rentals, because they will release all their rentals, won't they? It won't be necessary for them to carry them, will it?

A. Oh, I think they will.

Q. Sir?

A. They are releasing them every day now.

Q. But they will release them all when we put that on the book, won't they?

A. No, I don't think so.

Q. I want to ask you this question: When did it get in Texas that the major oil companies got so patriotic that they want to conserve the natural resources, when in truth and in fact at the Mexia pool they cut her wide open and in the Powell field they produced 665,000 barrels a day and when they hit East Texas over there they want to cut us off? When did they get so patriotic?

A. I don't think they ever advocated conservation for any specially patriotic reasons; I think the only reason they ever advocated conservation as far as they did was because they thought it meant money in their own pocket.

Q. Isn't it a fact, Mr. Eddleman, that if you raised the price of crude oil in Texas to a dollar a barrel and raised the price of gasoline in proportion that it will put $60,000,000 in the coffers of the major companies of Texas?

A. Not necessarily; it won't all stay with them.

Q. Well, it will produce about $60,000,000, won't it?

A. I think so.

Q. And the cotton crop in Texas 4,500,000 bales at 5 cents a pound won't produce but about $125,000,000, will it?

A. I think that is correct.

Q. With one stroke of the pen here in this Legislature we will take $60,000,000 and donate it to the Standard Oil, won't we?

A. No, sir, I don't think that is the fact at all; you don't take into consideration the salaries and payments made by the oil companies in the State. I hold no brief whatever for the major oil companies. Those that have been before this Legislature the last ten years know that I have been before every Legislature in the last ten years representing the independent refiners, but, on the other hand, the large per cent of all moneys paid for oil eventually goes back for their labor or hire back to the land owner.

Q. Mr. Eddleman, if we enforce the ratable taking law in Texas, the common purchaser act and the Attorney General properly enforces the anti-trust laws, don't you think that

would solve your whole problem in East Texas?

A. No, sir, I don't think so.

Q. You don't think that would solve it?

A. No, if they just continue the wild drilling, and drilling twice as many wells as is necessary and turn gas in the air and flow all the oil they can, I don't think anything in the world can stop them except government agencies.

Mr. Nicholson: Mr. Eddleman, you have stated and several other witnesses have stated that the pipe line companies make tremendously large profits?

A. Yes, sir.

Q. That is your contention?

A. I think they make undue profits.

Q. Now, is there any inhibition against anybody going into the pipe line business?

A. There is none.

Q. If this field of activity is so highly profitable, oil men being good pioneers and willing to take a chance with their money, why don't these fellows who complain so much about these high rates and about so much money being made in the pipe line business, why don't they go out there into that business?

A. All of them that I know of that have had sufficient capital and are able to control sufficient oil to get to run through their lines have done so. I used to be with a concern that built a pipe line; I think I know about what profit there is in the pipe line business.

Q. Well, here is something hard for a layman to understand, why, if so much money is made in the pipe line business, don't more of these fellows who claim that a great amount of money is made, why don't they get into that business?

A. Well, it is like any other large public service business, it takes an enormous capital and there cannot everybody go into that line of business.

Q. And a good bit of courage to invest that capital and take a chance on making a return after that?

A. Oh, a good pipe line concern that has been familiar with the business won't go into one field out of forty where they don't get a good return.

Q. Well, isn't it generally true, applied to industry, if in a field of activity the prospect for profits are good that it is not long until that particular field is well occupied and there is a great deal of competition in it; that ordinarily is true, isn't it?

A. That is true, and let me answer your question this way: Fifteen years ago there wasn't but one or two pipe lines in this part of the country and at this time every major concern that has the money to put in a general pipe line system throughout the oil fields has done so, sometimes two or three of them go in together to do it. I don't blame the large companies for going into the pipe line business where they can make some money; I would, too, if I had the money to go into it.

Q. Asking you as a business man, it is rather unusual, though, and a little hard for a man to understand a case where the tremendous profits are being made, yet the people refuse to go into that business for some reason or the other.

A. I think, as far as that is concerned, we have got too many pipe lines right now.

Q. Too many pipe lines now?

A. Yes.

Q. There is one more thought, Mr. Eddleman, I have I want to try to develop. I think it has been said here that those pipe line companies or those companies who have pipe lines will take a loss on the sales end of their business and recoup that loss through the pipe line end of the business.

A. I thought that was the case in the year 1930; I didn't intend to say, if I did say, that they deliberately do that, but that was a fact last year.

Q. All right. Assuming that to be a fact, the very fact that they took a loss on the sales end of their business indicated a highly competitive field?

A. I think between the major companies themselves that we had the worst cut-throat competition in the last 18 months or two years that I have ever seen in any business.

Q. Isn't it also true that that competition in the foreign fields is probably more severe than it is here, American companies in competition with foreign companies?

A. There is in Europe at this time; that is a fact.

Q. I think that is true. Now, if it had not been possible for the Amer-

ican industry who is selling in the foreign field to meet that competition and perhaps meet it at a loss, that they might recoup in this country from some operation, wouldn't the effect have been a great deal to reduce the consumption of crude and the manufacture of products?

A. I don't know whether I understood what that question was or not.

Q. The American industry has consumed a great amount of crude oil in manufacturing products which they sold in foreign countries and in connection with those sales in foreign countries have taken a loss which they have retrieved in this country on other operations?

A. They have made it up in other operations.

Q. Yes. Now, if they had not been able to have recouped or retrieved that loss by some operation in this country, they would not have been in that foreign market taking a loss, and the result would have been a greatly decreased consumption of crude oil?

A. I think that is correct, and I think it should have been stopped; I don't think that our American oil ought to have been sold at the enormous cheap prices that it has been sold abroad in the last six or eight months.

Q. But the fact remains, if you should stop them from proration in this country or discontinue a profit in this country, that they can use to offset a loss in a foreign country, the consumption or the capacity of the buyer of crude in this country would be materially diminished?

A. I think that is correct.

Q. And instead of the producer of crude oil who is hunting a sale for it quarreling about the price that he obtains for the crude oil, he would be arguing about a market for it at any price whatever, wouldn't he?

A. That is, if he continued to overproduce; I have always felt like it was better to produce two-thirds of a certain amount of oil and get double the price than to produce all of it and get half the price that you get for producing two-thirds of it; I think it is better for the company.

Q. Mr. Eddleman, you are a producer of crude oil?

A. Yes, sir.

Q. It was stated here yesterday by a witness who also represents himself to be an independent oil man that the production of crude in this year is diminished or less when compared to a previous year, and for that reason the price of the crude oil this year ought to be higher and not lower than the price that prevailed during the previous year. Now, this witness contended that the major companies he said were at fault, because they had not maintained the price of crude oil against declines. I want to ask you a question to see whether you subscribe to his theory.

A. No, sir, I don't subscribe to that theory at all. The major companies are not going to pay any more for crude oil than they can get out of. The general depression of the country, the diminished buying power of the people in the United States, and less gasoline in proportion is bought this year—that is, the increase in consumption this year was less than the normal increase; it is fully as much as last year, that in conjunction with the fact that the oil companies, big and small, wanted to reduce their inventories to reduce them to money in order to get cash reserve, has had the effect of keeping products from being high, in my opinion, more than anything else, and combined with that the fact that East Texas and Oklahoma City, probably Kettleman Hill, with a big potential production of oil, which the buyers of gasoline and all other products feel like places them in a position to force the price of gasoline down. I don't think that anybody has tried to run the price of oil down and keep it down, with the possible exception of one concern who had certain reasons to do so, but I don't think the major companies as a whole wanted to do that.

Q. Right before lunch, Mr. Eddleman, you made a rather severe indictment of your fraternity, the oil fraternity.

A. How is that?

Q. You said, if I understood you correctly, that in the event the gauger for the purchasing company was watched when he was gauging the seller's tanks, that he would undergauge the fellow's tank by seven or eight inches?

A. No, I didn't say that.

Q. You didn't say that?

A. No, this gentleman asked me if that was a fact and I told him that some gauger, if he wasn't watched from time to time, and pumpers would take off a liberal amount. You know what I have in mind; when oil production is fresh it forms a foam on the tank.

Q. And makes it hard to gauge?

A. And it makes it hard and the average gauger will be very liberal to protect his employer and he would protect fully enough in order that he would be sure and show up not short for his district, which is natural. You know, they don't do it any more than any other line of business along the same line.

Q. Well, under your observation, you have noticed no indication of positive dishonesty there, have you?

A. No, they operate just like any other line of business.

Q. The truth of the matter is that under the rules and regulations approved by and sent out as governing rules by the Railroad Commission those gaugers are supposed to be joint gaugers between the seller and the purchasers, aren't they?

A. The gauger for the pipe line company?

Q. The pipe line company's gauger and the lease gauger?

A. Yes, of course, the pipe line company gauger, of course, represents his company and if he doesn't make the proper deductions, his company loses, and naturally he looks after his company's interest. Now, there are a few companies, for instance, the company that I know that I have been connected with, my observation is that the gaugers have always gauged it entirely correct. They have engaged largely in a common carrier business in this State and have been very fair and have for that reason enjoyed the major portion of the common carrier business in the State.

Q. Then it was not your intention to cast any reflection upon the fundamental honesty of anybody in the oil business?

A. No, what I had in mind was this—what I was bringing out was the 2 and 1 per cent deduction and I never said there were 7 or 8; I told him there wasn't that much; there never is that many.

Q. Now, concerning the 2 per cent and the 1 per cent deduction from your experience in the industry isn't that fair? Don't you regard those deductions as being reasonably fair to all parties?

A. Well, I really don't—I don't think it takes that much deduction to cover the actual loss.

Q. You don't believe that 1 per cent is lost in a long haul through a pipe line?

A. Probably 1 per cent is; the 3 per cent I don't think is lost in the entire transaction by well operated pipe lines. I think that a 3 per cent deduction was worked out in the beginning to cover the loss in the line and old lines and so forth on the theory that as the pipe lines of the State got older they would get so they had more leaks and breaks and so forth. As a matter of fact, the companies haven't let their lines get in that condition.

Q. You do accept the 1 per cent, but the 2 per cent of the tank you mean?

A. Well, I think the 3 per cent taken together more than overcomes the loss.

Q. But both percentages are the result of what has been determined from information submitted to and passed upon by the Railroad Commission; isn't that correct?

A. That is correct.

Q. That is correct, is it?

A. Yes, sir, at the time the original tariff was set out that was made a rule of the Railroad Commission.

Mr. Hardy: Any other questions of this witness?

I believe not, Mr. Eddleman. Thank you, sir, for your testimony. Mr. Chairman, I would like to call at this time Mr. Dan Harrison.

Thereupon Dan Harrison was called as a witness, and being duly sworn by the Chair, testified as follows upon examination by Mr. Hardy:

Q. Please state to the Committee your name, occupation, and place of business.

A. My name is Dan Harrison; I am an independent oil producer, president of the Harrison Oil Company, live in Houston, Texas.

Q. Harry Graves wants to know where you were born?

A. I was born in Williamson county, about fifty miles north of Austin.

Q. Mr. Harrison, what occupation did you give?

A. I am an independent oil producer, president of the Harrison Oil Company.

Q. Do you have a refinery connected with your business?

A. I have not.

Q. Are you familiar with the pipe line situation in the State of Texas?

A. Well, I have no pipe lines—well, I will take that back; we have got one over at Darst Creek, about four miles long.

Q. What is that?

A. I say I have one, a short pipe line about four miles long, over at Darst Creek that I was forced to build.

Q. Do you have any statement that you desire to make at this time —wait a minute, I will ask you this: Have you been summoned to appear before this Committee?

A. Well, I was notified to appear here.

Q. Well, you have been called by the Commtitee to appear?

A. Yes, sir.

Q. All right, you might make any statement you desire to make at this time, Mr. Harrison.

A. In the first place, gentlemen, this thing that confronts the Legislature at this time reminds me of an incident that happened in 1887. Some of these fellows here are old enough to know that that was the dry year. People were meeting over in Williamson county, in Harry Graves' county, and praying for rain. Finally a fellow found it out and came over and said that he would guarantee to produce rain. So they all got together and they asked him what he would charge and he said he would charge a hundred dollars. So they told him to proceed, and he said, "Well, pay me first." So they paid him. He said, "Now, there are two things you have got to determine before I produce this rain," and they said, "What is it?" and he said, "Well, the first thing is to determine how much rain you want and when you want it," and the meeting broke up in a row and they never did get the rain. I think that is about the shape the oil business is in in Texas today. The people that are interested in the industry don't know what they want, but the tendencies of the time seems to be in this perilous time that every industry and every man is seeking aid from the government. He comes first to ask his competitor be regulated and then seeks some government aid for himself. So far as this business is concerned, gentlemen, you have heard a great deal of the history of proration. I desire to give you my idea of how this proration proposition started and by whom. I think that it is a concocted effort on the part of the Standard Oil Company of the United States and of certain major interests in Europe to dominate and control the entire oil industry of the world. I base that opinion, gentleman, as I say, on articles that I have read, one of which I am going to read to you. Back in the early part of 1929 I noticed a little excerpt from the Wall Street Journal with reference to an article that was written in the London Daily Mail. I immediately wrote to London and subscribed for the London Daily Mail and dated my subcsrption back directly to the time I noticed this article. This article appeared in the London Daily Mail of March 23, 1929.

(The witness then read the article referred to.)

The Daily Mail—London, England
Saturday, March 23, 1929.
World Oil Trust.

Magnates' Secret Revealed.

Control Of Price And Output.

£2,195,000 Jump of £100 Company.

Special "Daily Mail" News.

We are able to disclose today highly important details regarding the forthcoming meeting of the Oil Kings in New York, at which they expect to make arrangements to enable them to control the output and the price of petrol throughout the world.

The object of the conference is to establish, in fact if not in name, a world oil trust.

This scheme has been made possible by the recently concluded agreement with the Reds at Moscow which, at the expense of the consumer, has eliminated for the benefit of the Petrol combine the competition of cheaply marketed oil from the confiscated oil fields of Russia.

As already explained in the Daily Mail, the basis of the combine's agreement with Moscow is that the Reds are guaranteed the sale of 300,000 to 400,000 tons more oil than they have ever sold in the British market before.

Castle Gathering.

The first result of this agreement has been the advance in the price of motor spirit to British users by 2½d. a gallon. The second will be another advance of about 1½d., if the plan prepared for the New York conference is carried through.

The history of this raid on the pockets of British motorists and petrol users really begins with the mysterious gathering of three oil emperors—as distinguished from the ordinary kings of this commodity—in the wilds of Inverness-shire last year.

It will be recalled that Sir Henry Deterding, Chief of the Royal Dutch-Shell group, took Achnacarry Castle for the season, ostensibly for fishing and shooting. Early in August Mr. Walter Teagle, president of the Standard Oil Company, of New Jersey, arrived in England—and disappeared.

To the astonishment of most people it was found days later that he was the guest of his great commercial rival, Sir Henry Deterding, at Achnacarry Castle.

Further surprise was occasioned when it was learned that Sir John Cadman, chief of the Anglo-Persian Oil Company and the bitter opponent —in a business sense—of both of them, had also arrived at the castle.

Statements were circulated that the three oil magnates had met for the pleasures of the river and moor and bracing atmosphere of the Scottish Highlands. The real reason of the gathering was not disclosed.

Securing Control.

The Daily Mail can give it, and its sequel, today. The oil emperors met to protect their empires from the inroads of the Reds, and they decided that in the first place a settlement must be made with Moscow, and then steps should be taken to perfect an organization which would permit of the control of world supplies.

It was decided that Sir Henry Deterding and Sir John Cadman should consolidate the European oil interests, while Mr. Teagle should return to America and arrange for the formation of an oil export association.

The two organizations would agree upon a common plan of action so far as world oil resources and supplies are concerned.

The success of this plan depended upon agreement with Moscow. When the oil magnates left Scotland steps were at once taken to come to an understanding with the Reds.

About October negotiations were in progress, and an expert was brought over from the United States to deal with them. The negotiations broke down. They were renewed some months later, and this time the Bolshevik expert was successful.

Agreement was reached on February 28.

A £100 Company.

Meanwhile Sir Henry Deterding and Sir John Cadman had been busy arranging the European pool. Early in October the Consolidated Petroleum Company, Ltd., with a nominal capital of £100 in ten £10 shares, was registered, and the Registrar of Joint Stock Companies at Somerset House was asked to expedite the formalities as there were "urgent business reasons why this should be so."

The first directors of this £100 Company were such important persons as Sir Henry Deterding (managing director of the Asiatic Petroleum Company and chairman or director of fifty-seven other oil companies in various parts of the world). Sir Robert Waley Cohen (joint managing director of the Anglo-Saxon Petroleum Company, and fifty-six other companies, chiefly oil), Sir John Cadman (chairman of the Anglo-Persian Oil Company and director of twenty-two other oil companies and also of the Suez Canal Company), and Mr. Hubert B. H. Eves (a director of twenty important oil companies).

Notwithstanding the urgency for the registration of this Company, it was not until this year that it showed any signs, so far as the official documents are concerned, of any activity. Then, a return of directors dated January 29, shows that Sir Henry Deterding, Sir John Cadman, and Sir Robert Waley Cohen had resigned and the Board reconstituted as follows:

Sir John Buck Lloyd, Mr. Andrew Agnew (in place of Sir Henry).
Mr. Archibald S. Debenham (in place of Sir Robert Waley Cohen).
Mr. Frederick Godber.
Mr. Jean Baptiste August Kessler.
Mr. J. C. Clarke (in place of Sir John Cadman).
Mr. William Fraser.
Mr. Hubert B. H. Eves.

All these directors have wide connections in the oil industry.

On March 4, four days after the combine's agreement with Moscow as to the sale of petrol in Britain was concluded, the capital of the £100 Consolidate Petroleum Company was increased to £2,195,100 to acquire the whole of the issued share capital of twelve oil companies.

While these arrangements have been made in England Mr. Walter Teagle, in the United States, has

secured the incorporation of the Export Petroleum Association in Delaware. It is at the invitation of the association that the conference is being held in New York next month.

Now, shortly after that Sir John Cadman — I won't read these other articles—following that on December 7th, 1928, Sir John Cadman appeared on the scene at Chicago over in this country and he went into very voluminous discussion of the world oil business. It is a long discussion and I am not going to undertake to read it, but it is the best camouflage proposition of trying to tell them of what he wants to do and yet talk all the way around it. He said: "Gentlemen, we must go on, undeterred by calumny, unaffected by misrepresentation, fortified by good will. I hope you are all with me on the principle of this all-important matter. The task needs good will everywhere. In the East, I assure you, we are doing what we can. As showing the efforts we are making toward the solution of our own problems, I need only mention recent developments, of which doubtless you have heard, affecting India, Africa and adjacent markets." He goes on further to say: "But if more enlightened ideas are to become permanently established, we must all do our share towards promoting a policy of sane and honest internationalism in industry. To think identity and to start a communistic or syndicalistic system of oil utilization is, however, the very last thing I would advocate. Stereotyped forms of co-operation, nationally and internationally, would be stupid, even if they were not absurd. But co-operation between national and international forces there must be, in some form or other, if we are not to squander the world's heritage. What we want here is something elastic, a basis of common effort that yet takes account of the difference in status and difference in capacity, excluding no one merely because he is small and vilifying no one merely because he may be big. If my observations about the operations of economic law have any truth in them at all, I think no room is left for doubt as to what are the solvents of our problem—'economic co-operation' and 'the nearest source of supply.' Interpret these guiding principles broadly enough, gentlemen, and our problems are gone."

Following that, as shown by the Oil Weekly of February 15th, 1929, they had a meeting in St. Louis, and I am not going to read all this. I will read some excerpts from it. It takes up too much time. "R. C. Holmes insisted that the question of petroleum should be considered from the viewpoint of Nations, rather than from that of States. Walter C. Teagle also insisted on this broader viewpoint and placed it above the question of favorable State legislation in this country. Mr. Teagle said he thought the oil producers of the United States should consider their problems and then invite Sir Henri Deterding of the Shell interests and Sir John Cadman of the Anglo-Persian group to meet in this country and then lay down a program on that score. While the action of the Institute's executive committee does not specify the invitation to the two foreign countries, it seems probable that such will result."

Following that, in April, 1929, Sir Henry Deterding attended the director's meeting held at New York; I am not going to read this article, except to note that he put in his appearance, and give you this article in which you will find he takes quite an interest in this A. P. I. curtailment plan.

DETERDING PLAN COVERS WORLD.

The Oil Weekly.
April 5, 1929.

A. P. I. Directors Approve World Curtailment Plan.

New York, N. Y.—Plans for curtailing production of crude petroleum in the United States received the unanimous approval of directors of the American Petroleum Institute on March 27. This will mean a cut of 170,000 barrels a day in United States production and also reductions in the output of Mexico and South America.

Sir Henry Deterding, managing director of the Royal Dutch Petroleum Company, attended the directors' meeting held in New York and took active part in approving world-wide petroleum curtailment plans. The plan approved included a recommendation for the formation of a permanent organization within the American Petroleum Institute for the study

of overproduction of petroleum throughout the world. Such an organization would work with the Department of Commerce and the Federal Oil Conservation Board, at Washington.

The directors also adopted a resolution saying that the Institute did not oppose a levy of State gasoline taxes from which the revenue is used solely for highway construction and maintenance, but did oppose the "fixing of a rate-per-gallon tax beyond reasonble bounds, or where the rate the consumer must pay is out of the equitable proportion to the price of gasoline." Those present at the meeting represented companies controlling more than 72 per cent of the domestic production of oil and 88 per cent of petroleum production abroad.

Washington, D. C.—Legality of the plan announced by the American Petroleum Institute for the control of petroleum production is to be passed upon by Attorney General Mitchell, who has been asked by Secretary of the Interior Wilbur to render an opinion as to the legality of the plan under the Sherman and Clayton acts. It has also been announced that the Secretary has inquired of the Attorney General as to any possible powers of the Federal Oil Conservation board in the control of petroleum production.

That the plans of the American Petroleum Institute will not go through without possible difficulty is indicated by the statement from the Federal Trade Commission that that body is also carefully observing the actions of the oil industry as part of its duty to detect and prevent any violation of the anti-trust laws or any efforts toward monopoly.

It is not indicated that there is any disposition on the part of the Government to interfere with legitimate attempts of the petroleum industry to cope with the overproduction situation, but that problem must be met without violation of any Federal statutes. Toward that end, any plan of the Institute will have to pass the scrutiny of the Interior Department, the Federal Trade Commission and the Department of Justice.

It is anticipated that representatives of the American Petroleum Institute will come to Washington next week to meet with the Federal Oil Conservation Board and explain to its members the action taken at the New York meeting and the effect upon overproduction which is anticipated if it can be carried through.

Wall Street Journal, 4-9-29

Royal Dutch Chief Says Oil Conservation Is Needed to Insure Future Supply.

Royal Dutch Co. Ready.

Sir Henri Deterding, managing director of the Royal Dutch-Shell group, is in this country in the interest of cooperative conservation by the petroleum industry the world over, for the present and future good of all nations and all industries.

This he told a representative of The Wall Street Journal during a frank exposition of his views on the necessity for conserving the supply of oil. National boundaries do not limit the scope of his vision of real conservation; his ideas are worldwide.

Why? Because, he says, the world needs oil products and in constantly increasing quantities. The waste of oil today in any country will have its reckoning in the future. Now is the time to effect conservation on a world basis; not to raise prices, but to insure a future supply, which will prevent excessive prices in years to come, when wasteful methods of today cause shortage in the future.

ROYAL DUTCH READY TO JOIN.

To be effective, he says, oil conservation must not only be worldwide, but accomplished through unselfish cooperation of all parties. The Royal Dutch-Shell group, with its world-wide ramifications, is ready to join wholeheartedly in a movement to put and keep the world's petroleum business on a sound basis; and the basis must be equal cooperation by all parties if it is to be effective.

Striding back and forth, emphasizing one point after another, the "Little Napoleon" added this admonition: "It has taken me, and those who hold the same views, years to get others in the industry to see this thing in its proper world picture. Something should be done, and done now. As soon as high prices are ruling it will be almost impossible to get people to listen to unselfish reasoning."

Listening to him expound his views and impressed by the genuine sincerity with which he makes his argument, no one could question the intense interest he has in the subject. Neither is frankness lacking when he says his company does not ask anyone to make sacrifices it will not make itself. The world must have oil, he repeats over and over; let every unit and every country do its share in putting the industry on a sound and economic basis.

Willingness to cooperate by all is as essential as conservation itself. The spirit must first be willing. Then will follow sound conservation sorely needed to insure future supplies. "Cooperative conservation," he calls it.

OIL NATURE'S GREATEST ENERGY.

Of paramount importance to him in the matter of conservation is the world's great and increasing need for oil. "It is nature's greatest energy," he says, "for it occupies such a small space. A package of petrol this big (indicating with his hands about a foot square package) put in a motor carries a boy and his sweetheart from London to Brighton and back on a holiday. Energy is labor and when it takes as little room as oil, the world needs it. The world could do without gold, a convenience, but not without the energy which oil contains and supplies."

He talks of the absolute waste in bringing to the surface and forcing on markets unwanted supplies of oil. Inevitably, this leads to consumption of oil in unnatural markets for inferior uses. It is burned up, instead of remaining in the ground for future need.

Since his arrival a fortnight ago, he has been constantly discussing oil. "I have talked and talked," he said, "eleven, twelve hours a day and have had only six hours for sleep. I will be glad to get on a boat and sleep forty-eight hours straight."

CONSERVATION WILL PREVENT SHORTAGE LATER.

With cooperative conservation he can see the supply of oil assured for years to come. "Without it, and with the wasteful production and use of petroleum continuing," he says, "a shortage is sure to develop. One thing I am sure of is that the world will need constantly increasing supplies of oil and the world should see to it that the supplies are conserved."

"I came to America," he said, "in the interest of the whole industry. Not for America alone, but for the world. I am not talking or seeking any special benefits or exceptions for Europe, the Far East, Persia, or any other country, but for the oil industry as a whole.

"When I went to my first meeting with oil men here, I said: 'If you want success, believe on my word of honor that I am here as an oil man interested in the welfare of the whole industry and not for any one company or country. But there is one truth which I ask you to remember, and it is as big as a cow—that if the producer has died today the distributor died yesterday. The distributor has no business if the producer is not living to get him raw material. What is needed is the wholehearted cooperation for the benefit of the consumer as well as the industry.'

PREDICTS $5 OIL WITHOUT CONSERVATION.

"I was entertained at dinner by some banker friends. I told them clearly that, though many people thought to the contrary, I was not here to raise prices. I am here to prevent the price increase which is bound to come if cooperation and conservation is not adopted and adopted on a world basis. Continue the present practices of bringing oil out when it is not needed; the attendant waste of such practice; forcing this excess oil into inferior uses for which it should never be consumed and in six years you will have oil at $5 a barrel. Then will follow the usual frantic search for new pools, the repeating of the procedure of excess and waste in drilling, uneconomical production and waste.

"I told them that with effective cooperation in conservation I could guarantee the continuation of present production for twenty years to come. I also know that consumption will increase, and I would not want to guarantee that it would not overtake production in a shorter time.

"It is obvious to me that the industry should adopt and practice conservation. Not only for any necessities at present, but for the longer viewpoint of the supply to meet demand in future years. I do not ask anyone to write agreements. But sincerely I do ask that the industry, on

its own word, try out real conservation for the next nine months.

MOTOR INDUSTRY SHOULD HELP CONSERVATION.

"There should be no hardship in that. The public everywhere will be assured plenty of oil with production for each country fixed at the 1928 production. And a plentiful reserve will be assured to draw upon when consumption increases, and not wasted before that time comes. Our company is willing to do it and will not ask sacrifices from anyone which we are not willing to make ourselves.

"The result will be good for the industry. But, of greater importance it will be good for the general public in conserving its supply of this much needed fuel. There is an obvious need for conservation for the ultimate good of all countries of the world and the benefits will be felt in years to come.

"One thing which has surprised me is the apparent indifference of the motor car industry to the efforts toward conservation of the world's oil supply. The motor people are most vitally interested in there being a steady supply of motor fuel and should, I believe, give help to our efforts for their own good."

Now here is where Sir Henry Deterding made a statement. "The wicked fleeth when no man pursueth." The head line says: "Deterding Finds Basis For Action," that's the Wall Street Journal for March 11, 1929.

Wall Street Journal.

Deterding Finds Basis For Action.

Oil Leaders Closer on World Problem Though No Definite Agreements Reached.

Discussing results of his conference with leaders of the American oil industry on the eve of his return to Europe, Sir Henry Deterding, Chairman of the Royal Dutch Company, stated: "I think we have achieved this: The people in the oil industry have learned to know each other better and everybody knows more of the world situation."

In response to a query as to whether any definite agreements had been reached, Sir Henry said: "There is nothing signed forming a trust or combine to allocate territories for export of oil and its products. There are no agreements for allocation of world markets or maintenance of prices—none whatever."

Replying to a question as to the agreement reached by British oil marketing companies with the Russian Soviets, Sir Henry stated: "The agreement with the Soviets was to raise prices to a level based on the cost of replacement. Previously anybody who bought oil in America and sold it in England could make no profit.

"The agreement did not cover the confiscated oil properties in Russia. The statement was made in Moscow that I had abandoned any claim to these confiscated properties, but that is not true. The gentleman who made that statement knew as well as I that there had never been any question of abandoning that claim. The fact is this: A discount of 5 per cent from the wholesale market price was allowed in that contract, and Moscow knew what was going to be done with that discount. Of course there is no expectation that this allowance will be sufficient to cover the full amount of the claims of former owners of oil properties in Russia. It simply means that the principle that you cannot confiscate without compensation has been admitted.

"This allowance, however, does not affect the validity of the claim. In the event the Soviet Government should in the future recognize the claims of former owners, it is expected that the amounts realized from this 5 per cent allowance will be deducted from the amount allowed by the Soviet Government in settlement of those claims."

Regarding arrangements for limiting Venezuelan oil output, Sir Henry stated: "No agreement has been made with regard to curtailment of Venezuelan production."

Asked when he next expected to visit the United States, Sir Henry stated: "The American Petroleum Institute directors have asked me if I would return at the end of the year, when the annual meeting of the Institute will be held, which I shall endeavor to do."

I can't conceive of why he is talking about the same thing that Sir John Cadman was talking about.

Now there has been an effort on the part of the Standard Oil Company and Dutch Shell and others in

the United States to work out a proposition to break down the anti-trust laws of the different states of the country, and for the purpose of building up what they call proration. Now I say this advisedly, because the records will show the facts that I am going to tell you, that Walter Veasey, of the Carter Oil Company of Oklahoma, which is a subsidiary of the Standard of New Jersey, took up this matter of oil proration with the American Bar Association, the association of the legal fraternity of America, and wrote what he called the Veasey bill, and clothed it in the swaddling clothes of the American Bar Association. Following that, there was propaganda and yet more propaganda; every press and every oil journal in this country carried articles by Mr. Farish of the Humble Oil & Refining Company, and other people, hollering for proration and curtailment. Following that, in our own State and in the other oil-producing States of this country, they sought in 1929 to put this Veasey bill over on the people in the different States. That was brought about, and I meant to bring in a while ago—that following this Sir Henri Deterding leaving here, that they then appointed a committee of the American Petroleum Institute, of which Mr. Holmes was the chairman, and undertook to deal, through the American Institute, with the Federal Conservation Board, in order to secure, if they could, through the Government of the United States, an opinion from the Attorney General of the United States that they could go in and make these agreements, and that it would not be a violation of the anti-trust law. They had their secret meeting in Houston, in the Texas Company's office. The press of this State shows that it was secret; that they did not invite the press people to come in, but afterwards gave out a statement. They went to the Federal Conservation Board and asked for an opinion of Mr. Mitchell, the United States Attorney General, and then when Mr. Mitchell saw what was happening, I think it would be well to read what he said: He says in a letter dated March 29, 1929, addressed to the Hon. Ray Lyman Wilbur, Secretary of the Interior:

MID-CONTINENT BULLETIN.

April, 1929.

Letter of Attorney General in answer to inquiry by Ray Lyman Wilbur, chairman of the Federal Oil Conservation Board, relative to proposed agreement to limit production of oil.

Office of the Attorney General,
Washington, D. C.
March 29, 1929.

Honorable Ray Lyman Wilbur,
Secretary of the Interior,
Washington, D. C.

My Dear Mr. Secretary:

I have the letter of March 20th, written by you as Chairman of the Federal Oil Conservation Board, enclosing a copy of a resolution adopted by a committee of the American Petroleum Institute at Houston, Texas, on March 16, 1929, proposing that those engaged in the production of petroleum agree to limit production in certain areas in 1929 to the amount produced in 1928 provided that such action be first approved by the Federal Oil Conservation Board and by the authorities in the states affected.

The questions you submit for my opinion are whether the Federal Oil Conservation Board has power to approve the proposed agreement and what, if any, effect such approval might have in relieving the parties to the proposed agreement from the operation of Acts of Congress forbidding agreements in restraint of interstate commerce. You also inquire whether the proposed agreement would violate the anti-trust laws of the United States.

The Federal Oil Conservation Board was constituted December 19, 1924, by an Executive Order naming the Secretaries of War, Navy, Interior, and Commerce. There was no Act of Congress then in force defining the duties or powers of the Board and there has been no legislation since, dealing with the Board, excepting appropriation acts, commencing with the Act of January 20th, 1925, appropriating funds for the expenses of the Board.

It is clear that Congress has not given the Board any power to grant to any persons immunity from the operation of Acts of Congress prohibiting agreements in restraint of interstate commerce and that the Board has no authority to approve any action which is contrary to an Act of Congress or to the anti-trust laws of any state; and that no action taken by the Board would have the effect of relieving parties to such an agree-

ment from the operation of the anti-trust laws of the United States and of the states. The proceedings of the American Petroleum Institute indicate that the purpose of submitting the proposed agreement to the Federal Oil Conservation Board for approval is to obtain a sanction from the Federal Government which may operate to make the parties to the agreement immune from the operation of anti-trust laws. For the Federal Conservation Board to grant approval under such circumstances would be assuming authority which it does not have.

The Board's only duties are to investigate and study for the purpose of recommending methods of conservation, and not with the intent that its action in approving or disproving any plan would have any legal effect on the validity of the plan proposed. As the powers of the Board are limited in this way, the question whether the proposed agreement would violate the anti-trust laws of the United States is apparently not a question arising in one of the Executive Departments on which the Attorney General is authorized by law to give an opinion. Furthermore, it is not the practice of Attorneys General to give opinions as to whether proposed action by private persons would violate the laws of the United States.

The proceedings of the Petroleum Institute make it clear that its members already realize that under existing laws such an agreement could not safely be made without the sanction of some officials of the United States authorized to give it and, as I have already pointed out, no such authority exists.

Respectfully yours,

WILLIAM D. MITCHELL,
Attorney General.

They first went to the Conservation Board and undertook to get an opinion from the Attorney General saying they could make these agreements in violation of the anti-trust law. Following that, Mr. Farish, in Oklahoma and in a number of other places and a number of these other fellows, started out the proposition of what is called the Permissive Bill, that they undertook to put over in Texas.

Now, I want to say to you people right now that if somebody would walk into that room and say that the Supreme Court of this State has held that the anti-trust laws of Texas are of no further force and effect in Texas, these boys would all go home, because that's what they are seeking to do, and you have had it hinted in the last recent decision by Judge Hutcheson, in which he said—I will read what he says with reference to it; this is just a portion of his opinion:

"This policy of the artificial forcing of prices by governmental action in co-operation with those in the oil industry, interested in raising prices by either stimulating demand or keeping supply down, has never been attempted in this State by the Legislature itself. On the contrary, it has heretofore not only not established such policy, but has forbidden by positive penal laws the application of such artificial stimuli through private concert and agreement."

They tried the Permissive Bill, but first they took the Veasey Bill, scrambled it up and brought it down to Austin and had it introduced in the Legislature as House bill No. 388 in the 1929 Legislature, and we labored long and vigorously down here and finally the bill was killed, and during that time there was argued the proposition of economic waste and physical waste and conservation and proration, pro and con. The result of it was that Mr. Gilmore, who was then the Chairman of the Railroad Commission, said that they were not interested in economic waste, so we said all right, let's write it in the bill, then, and so it was written in that bill that it shall not apply to economic waste. But bless your heart, they immediately took it and undertook to prorate them; proration or conservation, everything that they have had, they undertook to prorate on it. They came down here and passed what they called the Common Purchaser Bill, and immediately issued an order and undertook to prorate on it, and then at the Special Session of the Legislature, through the Mid-Continent Oil and Gas Association, there was a hand-picked committee which sat down by the Governor of this State, asking him to submit what was called the Permissive Bill, which gave them the right to make agreements and be free from the clutches of the anti-trust laws. The Governor of Texas, upon investigation, refused to submit that bill and, on the contrary, said that it was the most dangerous piece of legislation that had been undertaken to be

perpetrated upon the people of this State.

They then passed the Common Purchaser Law, as I said. They have constantly, from the time that their meeting happened in Scotland, on down through the American Petroleum Institute, which is only a clearing house for the majors to thresh out their own troubles, and through the Mid-Continent Association, they have attempted by every device and means to put proration in effect, in contravention of the statutes that said they couldn't do it.

Mr. Holmes even said that, regardless of what the Attorney General of the United States said, he thought they ought to go ahead, but his lawyer, Mr. Ames, said it could not be done. But they kept up the grind. They have, by their influence over the Railroad Commission of Texas, taken the law and undertaken to write into the law of this State a proposition repealing the law of supply and demand.

I don't think that you can do anything about this bill. The oil business is in a bad fix; there's no question about it, but if there is any business in Texas or any business in this Nation that is not suffering from the same effect, I don't know what it would be, and then when you stop to think, you will see that all this hullabaloo and all this row that has been raised has been brought about by people engaged in making money in the oil business. How many of you people, and I wonder how many telegrams the Governor of this State got from the common people of Texas, from the farmers, from the laboring men, from the mechanic, from the merchants, and from the common herd of Texas, asking him to call this Legislature together to help the oil business in Texas? Gentlemen, I don't see that there is anything other than the law of supply and demand, the old, familiar law of supply and demand, and I still believe in the law of averages; I still believe if I walk off that porch, I will fall; and I still believe that the law of supply and demand is going to control, and, God bless your soul, they have tried since 1100 years before Christ to repeal that law, and they have slap-dab down every time they have tried.

I have an article in the Nation's Business; this Nation's Business is a magazine that is sponsored by the United States Chamber of Commerce. Here's an article in the September number, 1930, by Herbert Corey. I'll give you this magazine. He says that during the last quarter of a century governments and bankers have been demonstrating an interesting theory; a selfish one, perhaps. Old fogies said it was not sound, but it worked as they worked it. They proved that it is possible to repeal the ancient law of supply and demand. Only it will not stay repealed. Let us look at the layout.

"The British government boosted the price of rubber higher than the gallows of Haman. Today rubber is on the bottom. Tomorrow's rubber may be even cheaper. The planters who were not of the monopoly will be selling the cheap rubber at a profit."

Then he goes on to say where the Brazilian government tries to stabilize the price of coffee; but it didn't stay fixed. Where Japan tries to stabilize the price of camphor gum, and about the time they thought they had it stabilized, some bird came along and made some synthetic camphor and knocked it in the branch. I don't know about this article, but it's been in other articles and other magazines, that they tried it on tin, and copper, and they are natural resources. They have tried it on sugar. And the farmer of this country has been fixed up already. They have tried it on cotton, and they have tried it on wheat.

Following this article is an article which was written by Mary G. Lacy in the same issue. She goes back 1122 years before Christ and brings it on down as a matter of history, and shows where they have failed every time that an effort has been made to stabilize the price of any commodity. Ages ago one of those birds back there even tried to fix the wages that teachers were paid. That was 389 years before Christ. They tried to fix the wages of bricklayers, tailors, weavers and physicians, and every one of them failed, and the law had to be repealed, and it was impotent to correct the abuses against which it was designed, and old Diocletian had to resign and get out of the country.

I have also an article in which Mr. Irving Fisher, professor of economics of Yale University, says that "Price Fixers' Efforts Meet with Failures"; that the normal play of supply and demand defeats their aims.

Dallas Morning News.
Monday, September 1, 1930.

Price Fixers Efforts Meet With Failures.

Normal Play of Supply and Demand Defeats Their Aims.

Gold is Exception.

Present Control Inadequate to Stabilize General Level.

By Irving Fisher, Professor of Economics, Yale University.

New Haven, Conn., August 31.—While uneconomic and mostly futile, the efforts to "peg" prices of individual commodities during a world-wide business decline continue unabated. Chairman Legge of the Farm Board had hardly announced the failure of the United States Government in upholding the prices of grains by its purchase plan than the nitrogen interests signed a scheme in Paris to "stabilize" the world price of nitrates for fertilizers.

Like all such schemes, for fixing the prices of individual commodities, such as coffee, rubber, steel, tin, copper and sugar, the nitrate control plan is not watertight. The new agreement sets up control of production, distribution and prices of nitrogen in every important producing country in the world except the United States.

Sherman Act in Way.

Here the Sherman Anti-Trust Law stands in the way. Of what avail is the agreement between Chile and Germany, largest producers of natural and synthetic nitrogen, respectively, even if they bring into the agreement, France, Holland, England, Belgium, Italy, Norway, Poland, Czechoslovakia and Ireland, when they leave out the United States? How can the price of nitrates remain fixed when we already produce 13 per cent of the world production, with the probability, according to the statement of the Department of Commerce, that the present year will see an increase in this percentage?

It was only last September that the Cuban Single Sales Sugar Agency was formed to handle all the sales of sugar from Cuba. Cuba had already restricted the size of the crop in 1927, with the result that other countries promptly increased their production. The slight increase in prices was too small to compensate the Cuban growers for restriction in output.

The agency, likewise, was unable to maintain the price of sugar, so that the deliveries for this September have been carried to new lows. Yet renewed efforts are being made in Cuba to limit the size of the world crop and the Cubans are negotiating toward this end with Java. Javan producers, however, seem unwilling to make concessions.

In like manner the artificial control of tin and copper prices has failed. In vain has the Tin Producers' Association attempted to consolidate the mining companies of the Malay States, Bolivia and the Dutch East Indies that supply nearly three-quarters of the world's output. Nevertheless, tin prices have been failing steadily since the beginning of 1927, while the world's visible supply has been rapidly increasing. The attempt to observe a two-month holiday in tin mining has been followed by actual production of more tin by the Federated Malay States, apparently in an endeavor to make up for low prices by larger production. Also the "holiday" enabled the higher cost producers to continue work, for these are outside the combine.

Copper's Melancholy State.

Newsprint paper furnishes another example. The Canadian Provincial Governments are being besought to increase the price of all newsprint to a minimum of $60 per ton. The result would be only to transfer production to clients on the American side of the border, so that with higher prices in Canada, Canadian operating percentage would be even lower than at present.

Then there is the failure of the Sao Paulo Government's attempts at coffee valorization, with current prices of coffee the lowest since 1921 and within a small fraction of the lowest in thirty years. The melancholy state of the copper market, below, 11 cents a pound for this September's deliveries, has followed the attempts of the copper chieftains to peg the price of copper at 18 cents last year, and begin at 14 cents in the spring of 1930.

Foreign Steel Price Cuts.

Again, reports come from Frankfort on the Main that the International Crude Steel Cartel is finding itself in a critical situation. Its minimum price schedule, formed last February for the most important rolled products, has failed in a storm of price cutting. This originally took the indirect form of granting special rebates in overseas markets, upon concurrent orders of products not controlled by the syndicate.

All these efforts to fix prices for individual commodities have yielded in the normal play of supply and demand, which, in the long run, if not interfered with, is usually salutary in its effects. There are times, of course, when the public needs protection against extortion through monopoly, by fixation of rates, and some price fixing may be allowable in the emergency of war. But in normal times the only exception admissible is that of the fixing of the price of gold, with the idea of affording a standard by means of which the prices of all other commodities may be expressed.

Gold Fixing Exception.

The price of gold has been fixed by law since 1837 at $20.67 an ounce of pure gold, which is merely another way of saying that the weight of pure gold in a dollar is 23.22 grains.

Thus while price control of an individual commodity is, as a rule, wrong, control of the general price level is right; because that is needed to control the standard by which every individual price is fixed. The present gold control is, however, inadequate; for we need a more stable standard than a mere fixation of gold price can give. In order to stabilize the general price level, the Federal Reserve Board has done yeoman service through its open-market policy of buying and selling Government securities and control over the rediscount rate. This has in a measure regulated the purchasing power of gold. The effect has been to give a fair field for the market fixation of individual prices in the free play of competition.

Then he goes on and recites the different commodities and shows that there is only one exception, and that is the price of gold, and that is the medium of your exchange.

Now, gentlemen, I don't see how in the world you are going to stabilize the oil business any more than you have already stabilized the cotton business, and I think that if this Legislature undertakes to fix the price of oil, there is no question—Judge Hutcheson says you can take judicial cognizance of the fact that they are trying to fix prices, and this Legislature obviously by reason of all that they have heard in the past four years, certainly should take legislative cognizance of the fact that the only thing they are trying to do is fix the prices.

They say the little man is gone. God bless your soul, he is about already gone, and then they say it will be a long time before you get a dollar oil. If that's true, he is already gone. There's no use in dodging the issue, as I see it. If you undertake to say that the marginal wells in this country have got to be protected—I would like to see those fellows protected, but to show you my convictions about the law of supply and demand, I am not talking one thing and doing another; I got rid of my Salt Flat property, because it was losing money, Jim Abercrombie and I did, and I am not going to let those wells pull me under, and I told this industry two years ago in this very same Capitol that the law of supply and demand was going to control and we are going to have hard times and you had better go home and get your house in shape, but I am going to confess that getting my house in shape, I didn't figure it was going to be as bad as it was. But we have shut down our Orange property, and shut down our South Liberty property, and got rid of our Salt Flat property and our Albercas field property, and we made 3 cents a barrel on our Marcom oil last month, and I think it will go. We have other properties we are keeping because it has potential value, but those that have bene drilled up, I can't see any reasons for me to set here and undertake to stand the loss on those things, when I know they are not going to be able to survive. Now it's hard; there's no question, there's no argument but what it's a hard proposition, but what about this little fellow up here in Middle Texas, planting his wheat with a mule. Hadn't you better say to the West Texas operators, who says he can make money planting wheat at 50 cents a bushel, you ought to stop him

from using this advanced machinery he has, because he is putting this fellow out of business in Middle Texas, because he is just planting his forty acres with a mule. Why don't you say the same thing to the cotton farmer, and I say to the Legislature that if you try to stabilize the price of oil, you ought to have nerve enough to write a cotton and wheat bill. And when you start out, you will get some telegrams from home, because the farmer knows it can't be done.

Gentlemen, as I said, and I will repeat it; I don't think there is anything you can do about it. It's a hard problem, but I don't see how in the name of God that you are going to pass a law doing away with the law of supply and demand. And I don't see that the oil business of this country is entitled to any more consideration than the cattle man and any other man of this country that needs help. Now working on this price of oil isn't going to get us anywhere; it's just like the old well bucket, you know, up and down. I know what caused it to go down. Of course, I heard Mr. Farish ask the question here—Did you cut the price of oil to speed up legislation? Now any fool in the world would know what he would say to that; when he was asked that he didn't have but one answer, and he said it was preposterous. But there was a remarkable thing that happened about that. It was rather amusing to me, in a way. The day this thing was announced.

Mr. Hardy: What do you mean by "this thing"?

A. This proposition of calling the Legislature together.

Mr. Hardy: All right.

A. I don't know whether the setup man on the Houston Post is a humorist or whether what happened is just really a coincidence. The headline on July 8 says, "The Humble Cuts Crude Price." Right over, just a little above that, it says, "Sterling To Call Extra Term Soon," and to the right of that, there's a picture of "Rockefeller at 92," that's right in the shadow of Rockefeller's picture. I looked at that thing, and I decided, you know I laid this proration business on Walter Teagle, but I decided after thinking about it that old John D. himself must have taken Walter out and told him about it, because it's such a childish thing, it's what you might expect at the age of 92, wouldn't anybody else think of such a thing, come to think about it. But there's a remarkable thing about this cutting the price of oil. Oh, it just had to be done, but it was the most terribly drastic thing that has ever happened in the history of this industry. What surprised me was that Wall Street didn't just fall all over itself, knocking these stocks down, but it didn't do it. Then I got to thinking; I have been to most of these proration hearings here, in the Capitol, and I have seen more hypocrites assembled in a proration meeting in the Senate than have ever before been assembled in the Capitol at any one time.

I spent two or three hunderd dollars one day to just take some of the dope down over there, because I have had a good deal of trouble with proration, and I want to make this statement: Up to the time I tied in with this proration business, I don't think any man in Texas ever took any oil out from under my land, but I kind of believe they are putting it to me now; because down here at Darst Creek, Jim Abercrombie and I had a piece of property, twenty acres of it right on the crest of that thing; you know, the old independent menace to the industry. We went in there and drilled a well after they offset us; we didn't go in until we had to, but they moved up there and made us drill five wells in order to offset them, and they got out this Veasey plan, and they came down there and says, now you've got this twenty acres up here, and five wells on it, and we will take the potential here and divide it by five, and the fact that you spent this other $80,000 for these other wells don't make any difference, and out of 7500 barrels a day, you will have an outlet of 140 barrels a day. Well, I cried and I tried, but they said that was just too bad, and there was a fellow across the line that was taking 4500 barrels a day. I went around and tried every way in the world to sell some of that oil and get a little relief, but they said they couldn't do anything about it. My partner went over to see the Texas Company—they are always fair—and he said now we have gone down to the ship channel here and leased from a blind man 160,000 barrels of storage, and your line is right here across the street from us, and we are being ruined out there, and we want you to help us get this load off our backs,

and if you will run through your line this oil to storage, we don't ask you to buy it, and we will pay you the regular price for running it down there ratably, the amount of oil the men are taking off this adjoining property and we will be mighty happy; and he looked out the window and said: "We can't do it."

Well, I thought about this proposition of a common carrier business. Well, I had been up against that, and I knew this common carrier business didn't work. This common carrier, the pipe line clothed as a common carrier is a proposition of condemning your land and mine, and getting the pipe line across. The independent can't get any oil run through it; he has no place to put it, and we have no facilities to handle it, so we can't do it. So I thought about that, and I figured by the time we got in court and messing around trying to get some oil run through this pipe line, it will be too late, and so I bought four eighty-thousand barrel tanks the next day, and that got out, and they called me up and said, "You are going to ruin the industry." And I said I don't give a damn if I do, or you either; I am sick and tired of this business. So we built a pipe line, and while we were doing that, these glad-hand fellows up here got an order issued which said it was waste to put any oil in storage, although the big companies had 650,000,000 barrels in storage then.

That was the order of the Railroad Commission; so I went up here and got me an injunction before old Judge Calhoun. I talked to him about it, and he said: "Those birds can't do you that way, and I will just give you an injunction;" and so we started out running the oil in our tanks over there and then they came around, and said: "What do you want, Jim?"

Mr. Hardy: Who do you mean by they?

A. Some of these companies; I think Mr. Farish was the one that come to Jim, and said what do you want to do. He said: "What do you want?" He was over here at the proration meeting. Jim said, I want to sell some oil, and we wasn't selling this oil; we were putting it over there in storage, you know; and he says, "How much?" and we said, 1750 barrels a day; and I'll be darned if he didn't go out and write an order and allow us 1750 barrels a day; and they prorated the rest of the fellows, but we got our 1750 barrels and we still had our injunction, and just dismissed it about two weeks ago.

Q. Who wrote that order; the Railroad Commission?

A. Well, I think it was written in Houston. (Laughter). Anyhow, that's my experience with this proration business. They decided we were entitled to 1750 barrels, where they had been giving us 148 barrels, I believe it was.

But I was fixing to say awhile ago, about the cutting of this price of oil. They had this meeting over there you know, and a lot of fellows got up and talked and said a lot of fine things, and you know they had a row-roo, over in California, just about like this thing we are having here now, and they passed a law over there and were having a lot of trouble getting it to stick. It didn't seem to work. Mr. Farish was up here at one of these meetings; and this is what the stenographer said he said:

"California passed a new law, known as the gas conservation law, which law was designed primarily to prevent the unpardonable waste of gas" (they are mighty interested in this gas waste)—"They have got into mighty big difficulty in trying to interpret the law, but the Legislature and the public of California said the gas waste must be stopped and they passed this law trying to stop it and they had public opinion behind them and the Legislature saw the necessity for this conservation of oil and gas, and by cutting the price of crude and handling only a certain amount of oil offered them, have brought this situation into hand" . . . in other words, they intimidated them . . . "and today California is in balance as against 1926, so much in fact that they are actually taking oil out of storage under the enforced program of proration."

They took out the big stick in California and by price cutting, said, "get in line," and popped the whip and they have succeeded in doing it. After they had done that, they have held out on a pole the bait that they raised the price in California after they had whipped them in line, but according to their own statement, at the same time, they also raised to the consumer of California the price of gasoline 5 cents a barrel, and according to the testimony here it shows that that should have amounted to a raise in

crude of $1.20 a barrel, and they raised it as I understand, 40 cents a barrel.

Q. Mr. Beck: Five cents a gallon, you mean?

A. Yes, 5 cents a gallon. I don't think there's any question in this world—I know Bill Farish wouldn't admit it, but there was only one purpose in mind when they made this cut the day this Legislature was called into session, and it was to intimidate the people of this State, and to intimidate this Legislature and the oil producers of this State into coming down here and knuckling down and begging the Legislature to do their will, and give them the monopoly they have so earnestly sought since their meeting over there in Scotland in 1920.

This is my opinion, gentlemen, based on these things that I have seen and based upon these facts. I know it's not a very diplomatic proposition for a man to say; in other words, I am not expecting Hoover to send for me and send me to a foreign country as a diplomat, but I think the time has arrived in Texas that people had better begin to call a spade a spade, and I think the common people of this State should rise up and put down the monopolies that they are undertaking to build up in this country.

If you will stop and think, my friends; you have heard lots of talk about Russia. All the difference in Russia and this country today, is the fact that they are taking the people of Russia and working them, and the Government is reaping the harvest; but in the United States, with our constant building up of bureaus after bureaus of Government, they are attempting today to turn over the big business of this country through the agencies of this Government, to the major interests in this country, instead of turning it over to the Government.

Now there's been a lot said about the Railroad Commission: I have had a good deal of trouble with the Railroad Commission, and in fact, they wouldn't hardly speak to me for a while after the 1929 Legislature. But I am not mad at them. I think they are good men, but they have been misled. These birds have come down here and told them to come on in, the water's fine; and they got in and the water was so hot it set the hair on them. But I think they are going to be all right. I think they have learned their lesson—I hope so. Of course, Pat, he got mad and jumped up and said a lot of things, but Pat is just as bad as any of them. He wrote one of them orders at Darst Creek on me, and signed it. He said he didn't know any better, or I understand he said that; I don't want to be understood as saying that, but it was reported to me. I don't think they did know any better, and when you stop to think about it, how can you blame them? They don't know anything about the fact that any body you get here will be dominated by somebody who is constantly up here holding their hand. Us independents have got to work; we don't have time to stay here and pat 'em on the back. But I think the Commission is all right; I think they have found out what the law is. Some fellow said Pat had been mighty busy, writing his book, and I think if the rest of them had been reading the book, Judge Hutcheson wouldn't have had to tell them what the law is. I think the present Commission is all right, and I don't see how you can do a thing in the world about this business.

They say you can't do anything unless you have the supply and the demand for it together, and the Governor says he won't do that, but my lawyer says the bill you have in there now, it's in there all right, but you have an overcoat on it.

Q. Mr. Hardy: Somebody sent up this question to ask you. Are you in favor of, or against the creation of a new Commission, and why?

A. I am opposed to it, because I don't think it's good business policy. And I am not going to say this in any spirit of criticism, when I say it, but I say that this same bunch that has already misled the Commission of this State, the present Railroad Commission, has also misled the Governor of this State into calling the Legislature together, and that is my candid opinion; and I just don't think that the fact that there is so much difference is just my view point. There is so much difference between my business interests and that of the Humble Oil Company that I just don't want Governor Sterling to appoint any Commission, and I am not saying that from the standpoint of criticism, but I do say this: That it is a fact that he was the builder up of the Humble Oil Company; his brother, Frank Sterling, is still in there, one of the

heads of the departments, and I understand he has the major portion of his wealth tied up in it. At one time his other brothers and his sisters, as I understand, were considerably interested in the Humble Oil Company. I don't know whether they are now or not, but the evidence shows now that the Humble Oil Company, in these parlous times, loaned him $300,000, and I just don't believe it would be good policy, from my standpoint, to have him appoint a commission to regulate me. I say that for this reason: If I owned a corporation—I will put it to you this way—and I got in a law suit with some fellow and we decided to arbitrate it, and in my absence the board of direc- fellow I had the row with to arbitrate it, I would fire them before they made the report and could do it.

I don't think, gentlemen, as I said, that there is anything that can be done about this business, because it will be governed by the law of supply and demand, and I think if we had not monkeyed with it, today, the oil business would be on its way to recovery and we would today be in a position to absorb the production of the East Texas oil field. I don't think that they have treated East Texas fair. I heard a geologist say out there in the Senate some week or two ago, that there was more oil land in the East Texas oil field than all the rest of Texas together. And I say yet they want to limit them to 160,000 barrels production, and I don't think it's fair. East Texas is situated closer to the markets than these other places, and I don't see why she should be made to pay the penalty any more than a man who has ten thousand acres of timber land forty miles away from the railroad would have the right to have the Legislature say that this man who was on the railroad would have to divide up his market with him. I don't think they have been fair with East Texas, and I know one thing, that these potential productions that have been constantly held over the oil industry in Texas has kept us in a constant turmoil; we were threatened with the Yates pool producing four or five million barrels a day. We will be threatened with ten years potential production, if they are allowed to do what they are undertaking to do in East Texas. Let the law of supply and demand control, as it has always done and I believe that the best interest of the most people of Texas will be served. I can't understand why we oil fellows, say a half a million of us in Texas, directly and indirectly interested in making money out of the oil business, should have the right to say to the five and a half million people in Texas that you are entitled to buy cheap gasoline and cheap lubricating oil, and in that connection—your price of lubricating oil is what it was when oil was three dollars a barrel. I understand Mr. Farish says that's service. Well, the same fellow that gives me the lubricating oil is the same fellow that gives me the gasoline, and you can't walk around the corner at one of these filling stations, but what the fellow will change your oil, if you don't watch him. They are getting about ten times as much for a gallon of it, as they are paying you for a barrel of crude oil in East Texas. I don't know what you are going to do about it, but I think that this Legislature should not undertake, as I said, to repeal the law of supply and demand. I thank you, gentlemen, for your attention.

Examination by Mr. Hardy:

Q. I have been requested to ask you two questions, Mr. Harrison. You are opposed to the Legislature doing anything about the matter?

A. I am. I don't see anything you can do about it.

Q. If they don't do anything, do you think the independent is now in position to take care of himself under the present laws?

A. I think he would be in just as good a position as he would otherwise.

Q. What would be the eventual outcome of the oil situation if no legislation is passed?

A. Well, I think we will have some distressing times here for a while and in six months we will begin to get well; you have already seen the effect of the recent withdrawals of oil in the past few years, in the recent price changes; that's the only reason they can give, that I know of.

Examination by Mr. Beck:

Q. Mr. Harrison, do you think this Legislature should pass a law forbidding the major companies to own and control pipe lines?

A. I don't think so.

Q. Do you think they should pass a law forbidding the major companies

from having their own retail stations, as an outlet for gasoline and lubricating oil?

A. To be frank with you, I don't know. It might help.

Q. You are not opposed then, to these vertical set-ups in the big companies?

A. What's that?

Q. You are not opposed to these vertical set-ups, whereby they produce, transport, refine, and market the oil products?

A. It puts us fellows at a pretty big disadvantage; I will say that.

Q. Who is the Abercrombie Drilling Company?

A. J. S. Abercrombie Company is the company.

Q. Are you interested in that company?

A. No, sir; I am not interested in that company, but that company and my company own a lot of joint properties.

Q. What is the relation between that company and the Gulf Company?

A. No relation at all.

Q. They do considerable business together?

A. I don't think they do any business together. Oh, they maybe sell the Gulf a little oil at one or two places.

Q. Do you happen to be—I am asking this as the result of some information sent to me while ago, and I don't know whether it is true or not. Do you happen to be a stockholder in the Gulf Production Company, or the Gulf Company?

A. I am. Also a stockholder in the Humble and the Texas Company.

Q. Are you a considerable stockholder in the Gulf Company?

A. I wouldn't call it a considerable amount.

Q. How many shares do you own of the Gulf Company?

A. I think I have about 3,300 shares.

Q. What is the value of them?

A. Well, I think, recently, about $56.00 or $57.00.

Q. The Gulf Company has consistently opposed the conservation program of the State, have they not?

A. Well, I don't know. I saw a statement of Judge Batts here the other day that kind of indicated that they were for this, and I understand Mr. Nazro is in the Senate now, but I don't know what he is saying.

Q. You and Mr. Nazro have talked this over a good many times, haven't you?

A. I have talked it over with everybody who would talk to me; the Humble, the Texas, and the Gulf, and General Wolter's lawyer and in fact, I have talked to just anybody about it that would talk to me.

Q. But the Gulf Company has taken a consistent attitude, opposed to the conservation program, haven't they?

A. No; I heard Mr. Nazro, before some of these meetings, say he was for conservation but he was against proration.

Q. Have you any way of suggesting conservation without proration?

A. Well, I don't know. They have—my experience has been that they have tried to prorate on every conservation measure.

Q. You say you are going through your first experience now, where the other fellow got any of your oil; did you say that?

A. Yes, in the last year or two. Since I got messed up in this proration.

Q. Prior to that, your policy was to get to the sand first, was it not?

A. I got there just about as quick as any of them when I was around there. These big companies didn't get much edge on me.

Q. You usually got your share, anyway?

A. I did my best, yes.

Q. How much stock do you own in the Humble Company?

A. I think I have 300 shares.

Q. How much in the Texas Company?

A. 250, I believe.

Q. Are there any other companies that you have shares in?

A. Yes, the Harrison Oil Company stock is my main stock.

Q. What is the capital stock?

A. $250,000.

Q. You are the principal owner?

A. Me and my wife and a young man working for me have all the stock.

Q. Have you any production in East Texas?

A. Yes.

Q. Are you abiding by the proration orders there?

A. Well, I have never been able to do otherwise, I don't think. I have been up here about a week or two. When I was up there last, the Texas Company was running a few

hundred barrels every other day, but since that time, I understand part of our property has been connected with the Liberty Pipe Line, and I believe we are running about 1,800 barrels.

Q. Is that your allowable?

A. I don't know what my allowable is.

Q. Have you an injunction?

A. No, sir.

Q. You are just running all you can sell?

A. I have a permit from the Railroad Commission. I have a permit to protect myself against the adjoining property owners there, who have been running a lot of oil there. I have sixty acres over there, Abercrombie and I together.

Q. Who is your adjoining owner?

A. Hunter Production Company, I believe.

Q. Has he got an injunction?

A. I believe he did have, but I don't know whether he has now or not.

Q. But you are running all the oil you can produce now; is that right?

A. We are running 1,800 barrels every day.

Q. That's all.

A. I guess we have about 100,000 barrels production there, in potential.

Examination by Mr. Hardy:

Q. How many wells do you have on your acreage?

A. We have five wells.

Q. How much acreage does this man Hunter have, or the Hunter Oil Company, whatever it is?

A. Ten acres, I believe.

Q. How much is their production?

A. Well, I don't know. I never could find out. The boys inquired around and figured he was running about 10,000 barrels, judging from the way he was pumping. I understood later, he claimed he was running about 4,500.

Q. You don't have any figures on it?

A. No, sir. I don't have any figures on it.

Q. Are there any other questions by anyone.

Examination by Mr. Gordon Burns:

Q. Mr. Harrison, I have asked this question of all the other witnesses, and I want to ask you this same question, you being an independent oil man and having observed the proration orders of the Railroad Commission, isn't it a fact that every time they issue an order to you, your price of crude oil drops?

A. Since they started this proration business, it has been generally going down, about like the cotton business and the wheat business did when the government stabilized it.

Q. Isn't it a fact that every time the government messes with the old law of supply and demand, prices hit the bottom?

A. That is what history records.

Q. Mr. Harrison, if we here at this session of the Legislature write a bill and pass it prorating the oil fields of this State, don't you believe that the price of gasolene will go up to those five million people in Texas that are not interested in the oil business?

A. I think it will result in the price of gasolene going up, yes, sir.

Q. Do you believe that will be fair to the people of the State of Texas to put the price of gasolene up at this time?

A. I don't think they are entitled to monkey with it any more than they are with cotton and wheat prices.

Q. Mr. Harrison, don't you believe that if the Attorney General of this State would enforce the anti-trust laws and bust the Standard Oil up once in a while like R. B. Davidson did, that we would have a different condition in the oil business?

A. We have had more trouble since the Standard got back into Texas than we had before.

Q. That is right.

A. I will answer that that way.

Q. That is all I want to ask.

Mr. Hardy: Any other questions?

The Witness: There is one other thing I wanted to refer to here, to what Mr. Farish said in one of these hearings over here, a barrel of oil was a barrel of oil, it does not make any difference where it was. This same meeting that I read from a while ago, this report of a proration meeting that was taken down by an official court reporter, Mr. Farish said, "As far as gasolene production was concerned, the refineries today look at a barrel of oil as a barrel of oil, whether it comes from Mexico or the Gulf Coast, or where." It occurred to me why was the difference then in the prices in East

Texas over there and all this other stuff around over the balance of the portion of Texas.

Mr. Nicholson: Mr. Harrison, from your theory of the condition that should exist to permit business to go on and work out a healthy economic life, your personal view is toward just as little regulation on the part of the State and as few commissions as possible?

A. Yes, sir, I understand you have got about ninety some odd in Texas today, government agencies and bureaus, and I am opposed to nearly all of them, and every Governor of this State, I want to say in response to that, that every Governor of Texas that I remember has always been going to consolidate a lot of them. By George, he nearly always creates some more.

Mr. Hardy: Any other questions? All right, Mr. Harrison, much obliged to you.

The following data was submitted to the Committee of the Whole House in connection with the testimony by Mr. Dow Harrison:

The Oil Weekly.

December 7, 1928.

A. P. I. MAKES CONSTRUCTIVE ORGANIZATION PLANS.

The meeting officially opened at the first general session held in the Stevens Hotel here Tuesday afternoon. Axtel J. Byles, president of the Tidewater Associated Oil Company presided in the absence of E. W. Clark, president of the Institute, who was unable to attend the meeting. There were three speakers on the program at the opening and all touched upon the vital problem of bringing about an effective and immediate means of cooperation for the curtailment of excess production, the ever-present evil of the industry. Axtell Byles struck the keynote of the meeting in his paper rationalizing the oil business. He told the gathering that uneconomic competition and the increase of production to the maximum capacity, of which wells in this country are capable, would wreck the oil industry. He urged that the industry declare peace with itself. "The oil industry can not be profitable if it continues in alternate periods of overproduction and threats of undersupply without cooperation from within or control from without," Mr. Byles said. Declaring that any tariff on imported crude would be objectionable, he proposed the formation of an American export association to bring about harmonized national and international cooperation in the industry.

The Oil Weekly.

December 7, 1928.

PETROLEUM PROBLEMS OUTSIDE THE UNITED STATES.

By Sir John Cadman, K.C.M.G., D.Sc.

Sir John Cadman, chairman of the board of directors of the Anglo-Persian Oil Company, on his arrival at Chicago to speak before the American Petroleum Institute, gave out the following statement: As a visitor to the United States, I can not claim to be an exception to the rule. Like most of my fellows I invariably find in such a visit a stimulus and a refreshment in the western hemisphere. It is our constant endeavor not to be parochial; not to be merely national; not, indeed, to be purely hemispheric in our outlook; as best we can we try to remember that there was a world before there were countries. But sometimes it is difficult, and a visit to our friends in the United States is like the opening of many windows to restore the slightly oppressed atmosphere of a fine and stately old mansion.

Among friends one should never hesitate to talk frankly about one's own difficulties, therefore I have come to discuss some of our Petroleum Problems Outside the United States.

What is the real place of nationalism in the realm of petroleum? When great potential production is found in country after country which has no great local market and is therefore in no way comparable with the United States, how far is it possible to make readjustments for the benefit of all parties—in fact for the benefit of the entire population of the globe?

It is possible that individual organization in the oil industry has overreached itself and that we are now suffering from sheer overorganization with a resulting loss of efficiency?

What real justification, if any, is there for perforating the surface of the world with wells and peppering

it with tanks and refineries in order to fill them with oil not immediately required for consumption, which could far more safely and far more cheaply remain underground?

What lessons are to be learned from that most fortifying spectacle of international cooperation, namely Iraq, where representatives of the United States, of France, of the Royal Dutch Shell group and of the Anglo-Persian Company are for this purpose now constituted one body?

Without promising to answer all these questions, I offer them to you as indicating considerations that must be present in my mind when I respond to the invitation to address the American Petroleum Institute on "Petroleum Problems Outside the United States."

* * *

It is now nearly seven years since last I had the pleasure of addressing you. As we all know it is the thing done, not the thing said, that avails.

In venturing, therefore, to offer you a few observations upon "Petroleum Problems Outside the United States," I must begin by referring to something that is a problem no longer, and in respect to which I hope I may claim that it now falls into the category of things done, and done with once and for all. I revert to a topic which claimed a good deal of attention eight years ago. For purposes of convenience I will call it "The Open-Door" question; although that name now sounds strangely out of date, and for the very good reason that so soon as a door is discovered not to have been locked, it immediately seems to lose its power to interest and excite.

In the general confusion of thought—touching every phase of national and international intercourse—which succeeded the Great War, national opinions and ambitions were for a time almost impossible to reconcile. In fact, I sometimes tremble even now to think what might have happened if the difficulties of 1919 and 1920 had been allowed to harden, and if the statesmanship of 1920 and 1921 had never been permitted full play. In fact, I can not tell you with what delight I am able to stand here now and write the word 'Finis' on that chapter of misunderstanding and potential divergence whose name is Iraq—but once was Mesopotamia—that blessed word which so comforted the old lady when she heard it in a sermon, but which for a time acquired a significance anything but blessed for the British and American peoples. Mesopotamia has now given place to Iraq—a symbol of union and not of division.

Iraq.

For the first time in history you now find the world-representatives of a very great industry standing side by side and aiding a country's development; and that a country (I mean Iraq), in which agreement among the stimulating influences of the West is somehow the very last thing you might expect. The United States is now in with the others, and for good. We offer them an unaffectedly hearty welcome.

For this result we have many people to thank. Forgetting for a moment my executive responsibility for the Anglo-Persian Oil Company—and thinking with that responsible aloofness which invested the official position I occupied immediately after the Great War—I feel bound to give a special word of praise to those who have been responsible for the policy of the Anglo-Persian Oil Company from the very inception of the Iraq question until the recent entry of the United States to its place in the Iraq petroleum company. The Anglo-Persian had special claims, and its shareholders undeniable rights; and in fairness to the board of that company let us recognize that in this matter they have not stopped short at talking about Britain's "open-door" policy; in so far as a commercial concern can help to give a signal demonstration of it, they have done so.

Leaving this subject, let me just emphasize two facts. One is that no single event has caused me higher gratification from a personal point of view than the successful outcome of such efforts as I was able to make—over a good many years—towards smoothing the path for that community of interest now represented in the Iraq petroleum company. The other is that for the message I am anxious to deliver tonight I claim, without any hesitation, all the force that is added by reason of the fact that in some measure I am your own spokesman—since I act as chairman of a great corporation in which the United States is very substantially interested.

I am aware that in certain secondary matters and in other geo-

graphical areas there may still be different points of view requiring adjustment; but, regarded as a paramount issue, the "open-door" question though once it may have presented something extraordinarily like a problem, most certainly does so no longer. You will believe that I for one take leave of it without tears.

And now I proceed at once to dismiss the greatest of our extra-U. S. problems—one having its origin within the United States itself. I speak, of course, of that United States whose boundaries elude the cartographer because they extend as far as any barrel of U. S. oil is transported for distribution today. In 1922, if statistics can be relied upon, the United States of America absorbed her own entire production, partly by consuming it within her own borders and partly by adding to her stocks. Moreover, to the extent of tens of millions of barrels, she imported more than she actually exported. By 1927 she had not only forgotten to be, on balance, an importer, but the excess of her exports over imports equaled almost exactly one-quarter of the production of the rest of the entire world—and that, mark you, in a year when as producers such countries as Russia and those of the South American continent had outrun all previous bounds.

Here let me make one reference of a quite personal nature. I have never echoed the prophecies of doom that were so fashionable, just after the Great War, in relation to adequacy of reserves within the United States and elsewhere. On the contrary, I did not hesitate to run the risk of forfeiting any reputation as technologist I may have had, by pronouncing plainly in the other direction. That was the best part of a decade ago—and now events have superseded prophecy, and with such a result that I feel rather like the farmer who, after praying for rain and getting a deluge, looked up toward the heaven and simply said, "This is ridiculous."

The Future.

As to the future, on the one hand, we have it on record that in the years 1920 to 1922, among technical and geological opinion in the United States many voices were raised in warnings of a virtual exhaustion of the United States' resources within the comparative brief period of 20 or 30 years. On the other hand, an eminent authority (he may be present tonight), whose opinion was received with great respect at the fuel and power conferences held two months ago in London, estimating the number of years upon which the world can rely for its gasoline, has pitched his figure as high as 3,000. So various can be the rewards of searchers after truth.

When I was last in America, I made the two following statements:

"The petroleum industry has learned its responsibility to the public. Its members must get together to promote its welfare." Again I said this: "The economic laws which control supply and demand are incontrovertible, and any attempt to interfere with them would undoubtedly lead to chaos and inefficiency." The truth of these statements is not perhaps self-evident at first sight. The laws of supply and demand, it may be suggested, are inexorable—and scarcely likely to submit to the corporate will of the oil interests, however resolute, however altruistic, and however highly informed that will may be. I must ask you to bear with me while I probe to the heart of the matter.

The commoner applications of the laws of supply and demand are as familiar to us as the dark and the daylight. Taking as an instance the basic necessaries of life, the total food requirements of a given community can easily be calculated by reference to racial history; to an occupational census; to current social and physical conditions; and to the prevailing climate. Variation there undoubtedly is, within limits. But, beyond a certain point, produce or import as much food as you will, consumption will not increase. Of clothing the same thing may be said; and as to houses, after supplying the needs of the multitudes now inadequately housed, mere cheapness of production could do little to raise the total number of houses occupied.

Rates of Expansion.

In relation to the commodities with which we are most familiar, therefore, an expansion of supply accompanied by a fall in price may be said to have this effect: in regions of consumption where requirements are already substantially met, absorption may be stimulated to a reasonable degree; where deficiency has prevailed, it may be ameliorated and

possibly abolished. But beyond the ratio of expansion which I have suggested, increase in supply remains quite powerless to enhance demand. Save for the glutton, the mere existence of a plethora of food will tempt few of us to a sixth or seventh meal per day. Except for the aboriginal denizen of Africa, the number of suits of clothes which any one mortal can becomingly wear at any given moment is relatively small — if for the purpose of this illustration I may exclude beads from that category. You will, I am sure, forgive me if I forbear to expound or even touch upon the incident (if any) of these laws upon mere matters of drink.

I would point out, also, the relationship which exists in some degree between the value to the user of the thing produced and the expenditure of human energy demanded by its production. Surely, from earliest ages, the tilling of the soil; sowing and the reaping of the harvest; the shearing of the sheep; the winnowing of the corn, have been proverbial symbols of the unremitting toil without which not one loaf and not one garment can be added to the store of human apparel or the sum of human sustenance.

This fact, therefore—I mean the regular amount of added human effort needed in increase the sum of production — exercises an effect almost equal to that which, as I earlier suggested, restricts fluctuations in demand. In short, the supply of these things involves a fairly regular cost, whether the unit taken be the hundredth or the billionth; any significant increase in demand is of slow growth, and upon real overproduction a prompt check is imposed.

So much for the commoner things of daily life.

The dawn of the oil era seems to me to have inaugurated a group of new conditions. Its influence is not simple; it is complex. Oil has quickly thrust itself forward not only into the front rank, but through and beyond the front rank, of world commodities. Epitomizing the necessaries of life, we employ neither fancy nor humor if nowadays our symbols are a sheltering roof, a bowl of wine; a loaf of bread, and a gasoline pump. Of these four, each of the first three represents a definite number of units of human energy spent in the construction of production of its every particle.

But of the spirit in the gasoline pump and all its connotes, what shall we say? As a measure of the human vitality that is sometimes sufficient to produce it, we might refer to the words used by the then chairman of the corporation which owns one of the richest single fields in the world. He explained that, in that particular oil field, in order "to secure the production of crude required for export, all that has to be done now is to open the necessary number of valves by means of which the production of crude can from day to day or from hour to hour be regulated to our requirements to a nicety, just as regularly and as accurately as when one turns on the water for one's bath." So, since we always seek to symbolize these things, the proper symbols of the toil involved in winning from reluctant Nature the necessaries of human life are the ploughshare, the sickle—and the bath-tap.

Limits of Utility.

Gentlemen, it is a fact of the first importance that the face of the globe is now drenched with a commodity which, although necessary to life, involves but an irregular and sometimes meager expenditure of life in its primary production. New uses for it spring up overnight. No man can foresee the ultimate limits of its utility. The ancient sources of light and heat, for example, coal, have had to take account of it, and may well have to come to terms with it.

Here is one of the essentials of life, therefore, of which it can be said that it betrays an economic characteristic that is novel, almost unique. In short, the supply not only stimulates the demand; within limits, it creates it. In large measure, accessibility and cheapness of supply stimulate consumption with a directness for which no precedent can be found in the entire history of industry. But, none the less, there are limits, and there is a penalty for exceeding them. The checks imposed upon excess, although far from automatic in their incidence, are frequently not so much corrective as punitive in their effect. The limits of economic operation are hard to trace and impossible to fix with permanence. Many operators are therefore tempted blindly to ignore

them, although to overrun them is to invoke Nemesis.

To the confusion of thought which I have described is directly due the possibility of "overproduction" with all its attendant evils. I expect that whenever you hear that word it induces in you a sense of fatigue, and I shall be as brief as possible in dealing with it. Nevertheless, there is no escape from it; because, beyond as well as within the United States, it is one of the most urgent, although not in fact the most vexatious, of all our problems. Given a proper appreciation of the laws to which I have referred, it ought never to have arisen. I suppose, however, it is not really surprising that many minds should have been mesmerized by the idea that the greatest and quickest production of this marvelous new commodity must somehow be the best thing for mankind as a whole; so resilient appears to be the demand, so far remote the industrial saturation point. But it is high time for us to seek and to spread some enlightenment on this subject.

In the light of all these considerations, let us examine the statistics of the last few years.

Production Increases.

Among producing countries other than the United States, there are several to which a special importance attaches by virtue of their production and distribution. During the last six years, only one of these countries, namely, Mexico, has not shown an increasing output. In 1922 Mexico produced some 27 million tons of crude, and ranked second among the world's producers; by 1927 her production had fallen to nine million—an almost phenomenal decrease of 18 millions. Nevertheless, Mexico still remains an exporter of oil and a considerable factor in the world's petroleum affairs. To the extent to which production exceeds consumption, however, it finds a natural export market. On the other hand, great productivity, both actual and potential, was revealed elsewhere. In Iraq high possibility developed into definite potentiality, a fact of which in due course we shall all have to take account.

In six actual producing countries, a survey of the years 1922 to 1927, shows the very opposite of that which has occurred in Mexico. In 1922, Venezuela and Colombia together produced less than 400,000 tons of crude. By 1927 production had risen to over 11 million, and they had become exporters, sending their produce chiefly to other countries in America and to Europe.

In Roumania, during the period, production has nearly trebled, the figure for 1927 being over 3½ million, of which about two-thirds were exported to Europe and Africa.

The production of Russia, also, has grown during these six years, thus in some measure recovering the pre-war dimensions. Its output of crude in 1922—4½ millions—was more than doubled in 1927, and the exportable surplus of Russia's products—like that of Roumania—also found its principal outlets in Europe and Northern Africa.

The Dutch East Indies an old established and stable producer is less remarkable than some in its recent fluctuations. Production there has increased only one-third, to 3½ million tons; but the ultimate distribution of oil from these islands, although mainly concentrated in Asia, reaches also to the extreme points of England and Australia.

In Persia a country of whose petroleum affairs I can speak with a measure of authority production has risen from 2¾ to 5¼ millions, a rise strictly regulated in terms of the internal consumption, which is low, and of the steadily increasing export demand, which is far from low.

Exports From Persia.

One-half of the quantity exported from Persia is consumed in Europe. The more adjacent markets of Asia and Africa absorb 30 per cent; and fractions of the remainder are widely distributed about the globe, some to Iceland and some past the Dutch East Indies to Australia—a dispersal which I for one would be pleased to see undergo some concentration.

The seven countries I have mentioned are—after the United States—the principal producers of the world. Taking them as a whole and setting off the decreased production in Mexico against the increases elsewhere in 1927 as compared with 1922 there was a net increase in production of about five million tons. Moreover, in all the producing countries of the world, other than the United States, production has increased to the relatively small extent of some seven and one-half millions in the space of six

years; whereas the increase in the United States is no less than 47 million tons.

I revert for a moment to Persia, where a useful illustration of my argument may be found. I can assure you in all seriousness that in that country, where the ultimate resources are far richer than it would be proper for me to indicate to you, exhaustion of an economic if not of a material character would have been reached in a comparatively small number of years if, unfortunately, Persia had become a focus of just such economic conditions as have prevailed in certain other countries.

Compare with that the picture of the results of offsetting say in Roumania, or in Venezuela. Looked at in world terms, the thing is an economic scandal.

To this audience, fresh from the experiences of the last few years, I suppose it is scarcely necessary to suggest—as I have done from another platform—that in the long run "it profits nobody that there should be alternate waves of overproduction and underproduction, of high prices and low prices, of big profits and of little or no profits."

I can speak feelingly when I say that particularly in that part of the extra-U. S. world which still suffers from the Great War and its aftermath, these conditions of instability are most deeply to be deplored. I would address myself now, not only to this audience, but to any other listeners whom my words may ultimately reach. Surely the present generation will realize that oil is no longer to be regarded as a new, potent and a fascinating toy. Are we not—and I refer particularly to those of us who have some pretensions to scientific knowledge—are we not, in our generation, the trustees and storekeepers for posterity? I do not hesitate to say that the effect of the methods adopted in recent years in certain centers of spendthrift production amounts to a robbing of the birthright of future generations. Gentlemen, we must realize that in dissipating natural resources in this way, we are not only squandering the revenues of our contemporaries, we are, in fact, destroying for all time one of the most precious capital assets of Mother Earth.

In violent contrast with these "methods of barbarism," what a relief it is to think for a moment of the sanity and sense to be brought permanently to bear on the oil problems of Iraq. Breadth of outlook and unity of aim will, of course, be invaluable when that country becomes a substantial producer. In terms of present indications, it is feasible to contemplate a volume of production amounting to some millions of tons in the relatively near future—say four or five years hence. If and when that comes about, there is no doubt that the office of trust accepted by all those nations interested in the development of Iraq will require that an outlet, and a permanent outlet, be found for Iraq's production. This problem is one in which we are all interested, and not only the primary problem, but all its consequential issues will have to be taken into account by the principal parties.

With the agreeable thought of Mesopotamian cooperation uppermost in our minds, I now, with your permission, take leave of the vexed question of world production—although only a few minutes.

Storage Facilities.

A factor of increasing menace outside the United States is the absence, so far, of any recognizable policy governing the extent of storage facilities. Up to date, the number of tanks for example, has always been settled in a manner purely arbitrary, by reference sometimes solely to potential production; sometimes to distribution; and on other occasions without reference to any ascertainable principle whatever. All this was understandable during the period of the industry's economic minority, so to speak; but when, as now, it has attained to years of discretion as a world industry, something a little more rational would be only decent. Without attempting to dogmatize, in a Parliament of Oil, I would gladly suggest as the starting point for debate this motion:

"Resolved, that we keep in view as a guiding principle one dominating factor, namely, the desirability of conserving deposits, once discovered, not in imperfect containers constructed on the surface of the earth, but so far as practicable, in that great and perfect reservoir which Nature herself has provided."

Some weeks ago, when addressing the shareholders of the Anglo-Persian Oil Company, I took the oppor-

tunity of indicating another factor whose growth has caused the utmost concern to those of us who are apostles of conservation and not of waste—I mean the absolutely unlimited multiplication of facilities for the so-called "service" of the motorist. At times one begins to wonder whether there is supposed to be some obscure virtue in piling up the number of pumps, of rail and road wagons, and of service stations. If there is, I confess that all the thought I have devoted to the subject has failed to show me what it is. This is an evil with which you are doubtless familiar here, and I am not in a position to say whose form of it is the the more virulent. Be that as it may, for more than one reason the time has come to call a halt. I assure you that I for one shall not rest content until we have abated the nuisance of excess, and attained to some sane equilibrium as between service and supply.

Transportation by Sea.

I now approach one of the greatest of our problems—or, rather, of our possibilities. It relates to the realm of transportation by sea. There, economies which are significant, if not vast, can undoubtedly be effected. It is a direction to which the minds of the more thoughtful among us frequently turn, and toward which, during the Great War, we were remorselessly impelled. Can it be seriously contended—if we think for a moment in terms of the world—that, as a matter of permanent procedure, American oil should find its way to India, or Persian oil to Iceland? In countless similar instances which will occur to you, you will find a clear waste of strength, a perpetual straining against the facts of geography, a lamentable lack of coordination. But these things happen, and must continue to happen, so long as those of us who are convinced, in theory, of the need for larger views, and for world-wide surveys, find no opportunity of turning theory, by coordinated effort, into effectual practice; and so the world expects and condones these anomalies. In recent years many unprejudiced thinkers have reached the opinion that a better way is both possible and attainable. The subject is, of course, one which calls for the highest skill and the ripest experience to be found within the respective organizations. But, given that, I know the problem can quite definitely be solved.

I speak with all the greater confidence because I can remember so well the ingenuity and devotion that were brought to bear upon a similar task ten or eleven years ago—at a time of acutest crisis during the Great War—for achieving the greatest attainable measure of conomy in the use of all the tank steamers plying the waters of the world. Then, so far as carriage by sea was concerned this particular problem was absolutely solved.

I shall only touch upon a profoundly important topic to which the subject of sea transportation naturally leads us. Even before we attain a sane "economic" of the sea, we must consider how far it might prove feasible to relate the consuming areas of the world to the respective production centers with which Nature would seem to have linked them in traceable affinity. Why should we not address ourselves to the task of finding for every market the "nearest source of supply"—that is to say, the nearest, taking account of all relevant economic considerations? If that task should prove feasible—and I, for one, do not shrink from it—and we can reconcile vested interests to take real account of it, we shall indeed deserve well of our contemporaries and do something to earn the gratitude of posterity.

Gentlemen, from what I have said you will understand that our problems outside the United States are to be found at every stage, from oil winning, through sea transportation— and land distribution, until the consumer is reached. If I were asked to say which are the most vexatious, I think I would give my vote to those of sea transport and land service.

The Consumer.

Nor do they stop at distribution. The state of mind of the consumer is an important factor. But who am I to speak of that? Gentlemen, in this particular matter the interests of the seller and of the purchaser are most certainly comparable even if they are not quite identical. That is a bold statement—one which provokes query and excites ridicule, but will, I think, sustain inquiry. Even the most elementary considerations of business prudence dictate a policy by which the interests of the consumer must in the long run be reconciled

with the interests of the supplier. That is true of every commodity. It is particularly true of a commodity which in many of its grades competes with alternative commodities and within whose grades competition rages as between the lower-priced and the higher-priced. I raise that point, therefore, only in order to clear the ground by dismissing it.

I do not know whether the term "problem" correctly describes that group of complex movements having their origin in the vivid sense of nationalism which during the last ten years has acquired acuteness and strength in many countries. Certainly its application to many of the phenomena of industrial life produces quite a crop of problems. I may therefore say a word or two about its fundamental justification; and also about the inherent peril of overindulgence and misapplication.

Now that oil as a bulwark of civilization is everywhere recognized, it is understandable and natural that the discovery of petroleum deposits within any country should stir the imagination of that country's citizens; and to some extent should preoccupy their minds with the thought of the rights and advantages which such geographical custody ought to bring. Moreover, the coming of the oil era has been relatively so sudden that some disturbance of mental poise and muddling of economic thought are for a time, at any rate, to be excused, if not condoned. Or shall I say they could well be pardoned in the years when the subject of oil as a comprehensive world influence, as distinct from oil technology, was very scantily dealt with in works of reference or in the pages of enlightened journalism? What are the merits of this matter? Let me try to appraise them.

For a country to possess potential oil supplies of a quantity far in excess of anything its own population can ever consume, is obviously an economic fact of the utmost importance. The Great War demonstrated that it can also be a political fact of great significance—although, I confess, the more striking truth that the means of technical development, of transport, storage, and organized distribution, are of still greater value seems to have escaped the attention it deserves. Anyhow, we can start by suggesting that so soon as a nation's oil resources are discovered, their forces tamed and harnessed, and the process of extraction reduced to a matter of routine, that nation is within her rights in conserving an ample measure of these resources for the greater safety of her realm.

National Security.

And that brings me straight to the next point. Except in countries so equipped financially and technically as, say, the United States or Great Britain (and the title of my speech compels me to get away from the former now and then) it is always extremely difficult and often quite impossible for that minimum national security to be attained without first invoking the aid—in three dimensions, so to speak—of foreign nationals. Finance; experienced mechanical skill; and some form of adjustment of marketing conditions in relation to former imports and to possible exports—all of these are essential prerequisites. Without them the dream even of a self-supporting indigenous oil supply is vain. Why, the value of no commodity can ever be judged apart from the entire economic structure of which it is the foundation; and although the foundation stone is important, it is not the whole building. Moreover, I am reminded of the gap that separates the value of sweet water in the Egyptian irrigation areas from, say, the value of brine in mid-Atlantic. Again, need I mention the gold that can undoubtedly be won from some of the remote mountain streams of Scotland, but remains there undisturbed because of the prohibitive cost of extraction?

I really must apologize for laboring so elementary; but I do want to illustrate, as simply and forcibly as I can, the fundamental fact that in a country of small consumptive power the mere possession of natural oil is of itself an asset only in so far as a whole complex of external conditions make it so. Without hundreds of investors willing to lose four times out of five in the hope that at the fifth they will make good their losses; without the instruction of a whole faculty of technical resource, founded and developed in other countries—or, it may be, in another hemisphere; without an army of pioneers who have adjusted the needs of man to the character of the product and vice versa; without a network of distributive systems having been tracted upon the face of the globe—without

every one of these things, the oil deposits, priceless as they are potentially, might just as well have been deeply buried in the moon.

Gentlemen, it is not for me to strike a balance as between these things. In this matter no dogma is sound, nor is it needed.

Sane Nationalism.

Nevertheless, I plead, in quite general terms, for a sane nationalism; regarding oil neither as a heady intoxicant for oneself nor as a deadly drug for one's political competitors, but rather as a store of energy to be conserved, released, and applied as part of a concerted operation owing its inception to more than one nation, and therefore yielding its tribute to more than one treasury.

As I have said, I think that conception of nationalism is coming; I think we have passed the peak of expropriatory legislation and of penal ordinance. But if more enlightened ideas are to become permanently established, we must all do our share toward promoting a policy of sane and honest inter-nationalism in industry. To sink identity and to start a communistic or syndicalistic system of oil utilization is, however, the very last thing I would advocate. Stereotyped forms of cooperation, nationally and internationally, would be stupid, even if they were not absurd. But cooperation between national and international forces there must be, in some form or other, if we are not to squander, the world's heritage. What we want here is something elastic, a basis of common effort that yet takes account of difference in status and difference in capacity, excluding no one merely because he is small and vilifying no one merely because he may be big.

Gentlemen, if you expected me to speak of difficult and pressing problems, I am sure you have not been altogether disappointed.

If my observation about the operation of economic law have any truth in them at all, I think no room is left for doubt as to what are the solvents of our problems—"Economic cooperation" and "the nearest source of supply." Interpret these guiding principles broadly enough, gentlemen, and our problems are gone.

There is only one place where all these problems can be assembled, comprehended, and effectively tackled—and that is round a table. Well, already some of us have sat round a table in order to discuss them, and I hope we shall do the same thing again and as often as may be necessary. But let me make it clear that that table is not a small one; nor are all its places filled.

As we approach a solution to our problem, let us never forget what we owe to the nations within whose boundaries we may be called upon to operate. Between them and us, good will, and nothing but good will, can avail us. And, I would assure you, good will is attainable. I think of Persia, a nation of immense antiquity and—so one might think—of obscure psychology; and I tell you it is a real pleasure to encounter the opinions and to accept the contribution to thought that the Anglo-Persian Oil Company receives continually from the enlightened representatives of that nation, a contribution which in intelligence and pertinence would stand comparison with that from any western nation.

Gentlemen, we must go on, undeterred by calumny, unaffected by misrepresentation, fortified by good will. I hope you are all with me on the principle of this all-important matter. The task needs good will everywhere. In the East, I assure you, we are doing what we can. As showing the efforts we are making toward a solution of our own problems, I need only mention recent developments—of which doubtless you have heard—affecting India, Africa, and adjacent markets.

The Oil Weekly.

December 10, 1926.

1. Modification of anti-trust laws considered by A. P. I.

Move started to ask Congress permit joint action as conservation means—standardization progress reported.

By SPENCER W. ROBINSON,
Editor of the Oil Weekly.

2. A. P. I. Directors. Tula Directors re-elected to the board of the Institute are:

L. P. St. Clair, Los Angeles.

F. F. Hillman, Standard Oil Company of California, San Francisco.

Dave S. Ewing, Ethel D. Company, San Francisco.

W. S. Farish, Humble Oil & Refining Company, Houston.

H. R. Gallagher, Shell Company of California, San Francisco.

Roy B. Jones, Panhandle Refining Company, Wichita Falls.

R. D. Benson, Standard Oil Company of New Jersey, New York.

Edward Prizer, Vacuum Oil Company, New York.

K. R. Kingsbury, Standard Oil Company of California, San Francisco.

Robert W. Stewart, Standard Oil Company of Indiana, Chicago.

Amos L. Beaty, The Texas Company of New York.

J. Howard Pew, Sun Oil Company, Philadelphia.

F. B. Henderson, Associated Oil Company, San Francisco.

W. G. Skelly, Skelly Oil Company, Tulsa.

E. W. Marland, Marland Oil Company, Ponca City.

Directors elected but never serving before are:

Arthur F. Corwin, Standard Oil Company of New York, N. Y.

Frank B. Fretter, National Refining Company, Cleveland.

S. C. Colling, Marland Refining Company, Ponca City.

C. H. Kountz, Prairie Pipe Line Company, Independence.

John Reid, Joseph Reid Gas Engine Company, Oil City.

S. A. Guiberson, Guiberson Corporation, Los Angeles.

A motion was carried to increase the number of at-large directors from 15 to 20, the board having authority to fill the vacancies.

3. That definite steps might be taken to present to Congress a measure that would modify the Sherman Anti-Trust Laws was indicated at the opening of the seventh annual meeting of the American Petroleum Institute here Tuesday. The idea prompting such action, of course, beginning to make it possible for a closer cooperation within the industry at times of overproduction.

Considerable discussion has been given over to this subject by members of the Institute and both President Farish and C. C. Herndon touched upon it in their speeches before the general session Tuesday afternoon. It was suggested that the feasibility of such a move would be given further consideration by the board of directors and might be brought before a subsequent general session.

In his speech of welcome C. C. Herndon referred to a recent statement made by Secretary Hoover in Tulsa in which the President's cabinet member said that he believed that the industry would be able to formulate some plan modifying the Sherman Anti-Trust Law as applied to drilling flush fields which when presented would be given favorable action at the hands of Congress.

Standardization of oil field equipment, often classed as the most important single effort of the organization, moved several steps toward accomplishment. Some of the standardization committees have their work at the point of final submission to the board of directors. As the work of standardization progresses, it becomes apparent that the effort is one not likely to see final completion for several years. This is not an indication of lack of progress, but rather an indication that new efforts are sure to be put into the program as present ones are completed.

Begin Monday.

The work of the committee on standardization began Monday, the day before the Institute meetings began. Some were carried over into Tuesday, so reports could be inserted in accomplishments of the meeting.

One phase of the session in Tulsa differing from past meetings was the cooperative work of other organizations in some of the group sessions. One group session was devoted to safety in the oil industry. This program had the support and effort of the National Safety Council and the Petroleum Safety Council of the Mid-Continent Oil and Gas Association. The second annual first-aid contest of this last organization was held in connection with the Institute session.

The Mid-Continent Oil and Gas Association, the Chamber of Mines and Oil and The Rocky Mountain Oil and Gas Association had part in the group session of Wednesday night, the general topic being oil production problems.

Both the National Petroleum Association and the Western Petroleum Association cooperated with the Institute in the group session Thursday morning, devoted to petroleum refining and its problems.

The symposium on corrosion had the support of the Mid-Continent sec-

tion of the American Society of Mechanical Engineers Thursday afternoon.

President's Address.

Only one general session of the Institute was held Tuesday afternoon. This was the occasion for the annual address of the Institute President, W. S. Farish.

Speaking before the opening session of the American Petroleum Institute in its seventh annual meeting, Tuesday, W. S. Farish, president, summarized in detail accomplishments of the Institute during the past year. In bold strokes he set forth the ideals and hopes of the organization by telling what it is actually doing.

Throughout the address there was a plea for cooperation among the people making up the oil industry in working out their problems. Quoting verbatim from Mr. Farish, he said, "It is my firm conviction and belief that our problems are so general, so widespread, and so numerous that we have everything to gain by cooperation. We should each keep with us always the fact that we owe something in the way of help and counsel to bring about that unity of thought and action that can only be had through the individual contribution of each member to the common cause."

In the first part of his address the speaker outlined the purpose, organization, and method of operation of the American Petroleum Institute. Then he devoted himself to its projects.

Conservation.

Chief among these is conservation. It was pointed out that the Institute is in full sympathy with efforts of the Federal Oil Conservation Board. The speaker noted that "Throughout the report of the Conservation Board runs the thread that cooperation between producers in separate pools or fields should be permitted."

Mr. Farish's own opinions in this connection were given in his statement that "The owners of an oil pool have individual interests, and they have some interests in common. A rational plan to permit them to safeguard their common interests by cooperation involves merely the removal of a threat of prosecution, rather than an exemption but for which the prosecution would result in conviction. Oil producers should not have to turn to experts in legal armament every time they attempt to cooperate with a neighboring owner of common pool. They should be able to concentrate their energies upon a businesslike and scientific development of the pool.

Anti-Trust Regulations.

"Now if the legislative authorities can not be convinced of the soundness of these simple proposals, it would seem to be a fruitless undertaking to ask them to go further. So far as the Federal Government is concerned, therefore, the question is whether Congress would be willing to state plainly that agreements between producers of oil in single pools and fields not in violation of state anti-trust acts are not within the scope of the federal anti-trust laws. The net effect of such a clarification of the law would be to permit producers to cooperate to the fullest extent possible with the state boards and commissions charged with the duty of enforcing not merely penal statutes, but conservation as well. Producers would still be liable under the provisions of the state anti-trust acts, but the states have not only prosecuting attorneys but also conservation officers. The producer must deal with both. People on the ground familiar with every operation, and cooperating in most instances, can discern whether an agreement seeks restraint, or conservation."

Fire Prevention.

The speaker emphasized efforts of the Institute in connection with fire prevention and stated that the general committee on fire prevention has studied two good-practice statements being prepared by the National Fire Protection Association, and has made recommendations regarding them.

Attention given by the Institute to motor fuel research according to the speaker, has consisted largely of investigations on motor starting and acceleration.

Research.

The National Research Council of the Institute, through the Central Petroleum Committee, has recommended thirty-one projects in research, of which seventeen have been approved, and fourteen are being considered for action by appropriate committees of the Institute. Work on the approved projects has been started.

Public Relations.

Mr. Farish stressed the importance of the public relations program of the Institute. He urged that the industry co-operate to its problems and stated that the industry ought to let the public know the facts. He said: "We have believed that the welfare of the industry and the concern of the public alike require policies based on such knowledge. We have been confident that its wide dissemination would lead to adjustments and accommodations that would promote the common interest—it is our duty to ourselves, to the industry, to our hundreds of thousands of investory, to the public which we serve and which sustains us, to make sure that the facts shall be established in the minds of the community. To that end has been directed the efforts of our public relations service."

Taxation and Accounting.

It was called to the attention of members of the Institute that the taxation and accounting departments have for their purposes to assist in tax and valuation problems. In the words of the speaker it is the intention of the Institute, through its accounting division, to go eventually into many of the special accounting problems confronting the industry and to endeavor to work out for each and every one of them a uniform method of handling.

Standardization

Standardization took up a major part of the president's address. He outlined in detail the different items on which tentative specifications are available.

The committee on belting is now carrying on extensive research work, particular emphasis being placed upon fatigue tests, for the purpose of determing final specifications.

The committee on boilers has adopted the A. S. M. E. code throughout on chemical and physical properties and tests.

Eleven standard sizes of cable tool joints have been adopted.

Specifications in the new handbook are complete on casing, tubing and drill pipe.

Rig iron specifications provide for three standard sizes for rig irons and five sizes of sand reels.

Derrick specifications take care of heights, bases, openings through the water table, and the various dimensions of standard rig parts, such as band wheels, bull and calf wheels, etc.

Due to the rapid growth in the use of the rotary method in drilling, standards on transmission are now complete and provide for basic sizes of shafting, keys chain and sprocket-tooth form, rotary line shafts have also been standardized.

Exhaustive tests have been made during the past two years on the form of thread for tapered joints, and it was decided at the Colorado Springs meeting, to adopt the standard "V" thread for all threaded connections from the swivel to the fishtail bit. The Committee at a present meeting is now drafting the necessary specifications for the various sizes of drill pipe, and it is hoped that final specifications will be available early in the coming year.

Tentative specifications are available on wire rope and Manila cordage. This Committee has also paid particular attention to the question of proper care and use of these materials in the field and has incorporated definite recommendations thereon in the specifications. Definite recommendations have also been made on the form of grove for sheaves, as well as other recommendations to equipment manufacturers, to prolong the life of wire rope and cordage.

Standard dimensional specifications are practically completed on working barrels and sucker rods. The Committee is now completing the sections on gages and gaging practices.

The speaker mentioned the nationwide canvass now being made by the Committee on tanks embracing all of the various oil producing districts to ascertain the requirements on large steel storage tanks. Tentative specifications are now being drawn up.

A part of the Institute program for the coming year, as mentioned by Mr. Farish includes research on the proper care and use of equipment in the fields. This is essential in connection with standardized articles. If full benefits are to be acquired from standardization efforts, the standardized material should be properly applied and cared for.

Mr. Farish praised heartily the work of the many Institute Committees, calling special attention to the highly technical work involved in bringing together specifications. He also commended the work of the Institute staff and stressed the growth

of the organization under men with such broad grasp of the problems of the industry.

Address on Co-operation

This meeting was addressed by C. C. Herndon, vice-president of the Skelly Oil Company, whose subject was, "Co-operative in the Oil Industry." He traced the growth of this tendency of the industry through the war period into the formation of the American Petroleum Institute. Co-operative activities now being fostered by the Institute he listed as the scientific research as provided in the donation from John D. Rockefeller, standardization of oil field equipment, conservation of petroleum resources through the harmonious working of the Federal Oil Conservation Board and the Institute, and the recent development agreement on the Seminole City pool in Oklahoma.

Regarding the efforts of the Institute to foster better public esteem for the petroleum industry he said:

"If I were required to name the major project of the Institute which most strongly engages my personal interest, I would probably answer, the public relations movement. The reason lies in my conviction that without sound understanding between our industry and the public, we shall build upon a foundation of sand and our works, however worthy, will fail of just appreciation. What is the public relations movement and what can it accomplish? The answer to that is a subject itself, as I learned a year ago when I prepared a paper for the meeting of the Institute."

The speaker then quoted from his address in Los Angeles a year ago and quoted also from statements of Herbert Hoover, Secretary of Commerce, concerning support of the public relations movement, he said:

"I invoke your continued support of the work. It needs your moral support and your financial support. Give your public relations direct all the aid you can in every possible way. There is work for everybody in this field of public relations. The ground has been prepared for an expanding activity and you will be called upon for co-operation in one way or another as the new year unfolds. No other branch of our co-operative effort will bring regrets in such intangible forms as the public relations work, but none will bring rewards more surely."

Legislation.

Next he took up legislation as a co-operative effort, calling attention to the recent successful effort of the Mid-Continent Oil and Gas Association in defeating proposed tax legislation in Oklahoma. "It," he added, "was local to one State, but if need should arise the Institute could mobilize the same kind of co-operative effort on a national scale, because its relation to the industry as a whole does not differ essentially from the relations of the Mid-Continent Oil and Gas Association to the Industry in Oklahoma."

Concerning prospects for next year he said: "Although prophecy is dangerous, I hazard the prediction that we shall have a satisfactory and profitable year. I think the preponderance of evidence supports that opinion. The burdens that bore upon industry and others as an aftermath of the war are lifting, notably the burden of Federal taxes.

"The oil industry is not in perfect balance. It is doubtful whether it should be. The constant change of positions and conditions, the rising and falling of production and prices, the actions and reactions among the branches of an integrated industry are marks of growth and vigor and will be tempered by the co-operative contacts made possible through the facilities of which this institute is the conspicuous example."

Monday's Business.

The day previous to the official opening of the American Petroleum Institute, which was on Tuesday, was given over to committee meetings Then ten A. P. I. Committees on the standardization of oil field equipment met during the day. These meetings were well attended both by committeemen and other members of the Institute who arrived before the official opening. The discussions of proposed standards were very freely entered in by users and manufacturers, and in every case much headway toward a thorough going program of standardization was made.

Each Chairman of the several standardization committees reported very definite progress with the work attempted.

The Committee of the standardization of rotary drilling equipment either approved or rejected all pro-

posed standards of rotary equipment during the meeting. The taper and thread for rotary drilling joints was selected. The committee reports that the specifications for transmission members have been approved and are ready for further action.

The Committee on the standardization of rig irons virtually completed their work at this meeting. Progress with standardization of rig iron has reached the point where it is not likely that a session of this Committee will be held at the time the others meet again some time during the midsummer.

A few changes were made in A. P. I. Standards, No. 6 Second Edition, October, 1926, dealing with rig irons. Since the meeting of the rig iron Committee in Colorado Springs last June, most of the work has had to do with tolerances. In several instances tolerances were increased slightly, because it was felt there is not available to the manufacturers of rig iron outfits at this time machine tools that will manufacture in commerce quantities all of the items within the tolerances that had been originally recommended. On the other hand it was reported that most of the items are being successfully manufactured to present A. P. I. specifications.

Additions to the present tentative standards will be a calf wheel clutch sprocket with eighteen teeth and an alternate six-inch flange.

The joint meeting of the Institute's Committee on testing methods was devoted to a consideration of the proposed revision of the Federal specifications for petroleum products and lubricants.

At the meeting of the general Committee on fire prevention discussion was made of the good practice statements on gasoline tank trucks and marine oil terminals, now being prepared by the National Fire Protection Association.

A program for the coming year was adopted by the Committe on uniform methods of oil accounting. The general balance sheet and text has already been approved tentatively.

The general Committee on railroad transportation and its several subcommittees met to discuss and take action upon the problems associated with the transportation of petroleum products by railroads.

We would like to have Mr. J. Malcolm Crim.

Thereupon J. Malcolm Crim was called as a witness and, being duly sworn by the Chair, testified as follows, on examination by Mr. Beck:

Q. Mr. Crim, will you state your name, residence, and the nature of your business?
A. Malcolm Crim, Kilgore, Texas.
Q. What is your business, Mr. Crim?
A. Mayor of Kilgore.
Q. Mayor of Kilgore?
A. Yes, sir.
Q. Do you know anything about the oil business?
A. No, sir.
Q. You don't even pretend to know anything about the oil business, do you?
A. No, sir.
Q. Do you know anything about East Texas?
A. Yes, sir.
Q. How long have you lived there?
A. All my life.
Q. How long has your family resided in East Texas?
A. All their lives.
Q. Well, from what date?
A. It goes away back; I don't know just the exact date; away back in the '70s.
Q. Do you own some property in East Texas?
A. Yes, sir.
Q. How long has that property been in the Crim family?
A. Well, it has been in the family all their lives, that is, my mother's lifetime and my own and my father's and grandfather's, back in the '70s.
Q. And some of that property now is now in proven territory?
A. Yes, sir.
Q. To whom have you leased your lands?
A. Well, the Humble Oil Company, Magnolia, Houston Oil, Ed Jones, John Olvey, Gulf, Atlas Pipe Line, I believe. That is all I can recall right now.
Q. You have leased to majors and independents?
A. Yes, sir.
Q. No particular class of operators?
A. No, sir.
Q. Are you satisfied with oil production conditions in East Texas?
A. No, sir.
Q. Are your neighbors satisfied?
A. No, sir.

Q. Have you organized any group of land owners over in that country to express the viewpoint of those royalty owners and land owners?

A. Well, there are quite a number that have sent me down here, or they asked me to come down to represent them; that is, the land owners in Kilgore territory; I presume that it is approximately 10,000 acres in the Kilgore territory.

Q. Have you a list of the people who have authorized you to represent them?

A. Yes, sir.

Q. What percentage of the land in that area does your list represent?

A. About 90 per cent of Kilgore territory.

Q. Are you guessing at that, or have you computed it?

A. No, I haven't added up the exact acreage on it, but I presume that that would cover it.

Q. Well, does it represent 90 per cent of the acreage or 90 per cent of the individuals?

A. Acreage, also individuals.

Q. About the same percentage of the individuals in that area?

A. Yes, sir.

Q. You heard all of the testimony since this hearing began and know the wishes of your people. What recommendations have you to make as to conservation legislation?

A. Well, my story would be short. All we want is a better price for this oil or let it stay in the ground.

Q. You don't want your lessees to be forced by competitive drilling to bring the oil to the surface on the present market?

A. No, sir, we haven't any storage tanks up there.

Q. Under present conditions, the royalty owner must either take 15 cents a barrel for his one-eighth or take it in oil and store it above ground for a better price?

A. That is correct.

Q. And are your people able to erect the storage?

A. No, sir.

Q. And carry the oil?

A. No, sir.

Q. You said you have a list of all the property owners?

A. Yes, sir.

Q. Will you tell us how many names are on that?

A. I haven't added up the number of names; I have three petitions here, three different parties went out and got them; I never did add the list of names up; I can do that, though.

Q. Will you read that petition to the Committee?

A. (Reading) "This is to certify that we, the undersigned land owners of Gregg and Rusk counties, have appointed J. Malcolm Crim to represent our interests in all legislative matters now pending before the Texas Legislature pertaining to oil conservation and proration. Mr. Crim is our sole authorized representative for this purpose and will speak for us on our behalf before your body. We commend ourselves as being in favor of reasonable and constructive legislation to enforce conservation of natural resources and designed to protect and stabilize the market price of all oil products."

Q. Are all of these petitions just alike?

A. That is, the reading is, but the signatures are not the same.

Q. Yes, sir. Are all the signers of these petitions familiar with the attempts at proration which have been made in the East Texas field?

A. I think so.

Q. In your meetings, have you discussed the general question of proration?

A. Well, I haven't at a meeting of the land owners; we had a meeting a short time ago of some of the land owners, but not all of them that is on this list here.

Q. Well, at such meetings as you have had have you discussed the general question of proration?

A. Yes, sir.

Q. Is it a principle of conservation that they regard as necessary and desirable?

A. Yes, sir.

Q. Do they feel like it is an attempt to steal their oil or an attempt to conserve their oil?

A. Well, they feel like they are stealing it.

Q. At the present time?

A. Yes, sir.

Q. Do they feel like the attempt to bring about proration is an attempt to do an injustice to them or to the small operators?

A. Well, to them, that is—I beg your pardon; I didn't catch that question.

Q. I say, do they feel like this attempt to bring about proration which is being made by some is an attempt

to take advantage of them or to help them?

A. Well, it will help them, by proration.

Mr. Hardy: Mr. Crim, you named Olvey as one of the parties that have taken your lease, didn't you?

A. Yes, twenty acres, yes, sir.

Q. Are those people producing more than the allowable by the Railroad Commission, or not?

A. I understand so, yes, sir.

Q. Are you getting a part of the royalties for that?

A. Yes, sir, getting it all.

Q. How about Eddie Jones?

A. The same way.

Q. Is he producing more than the prorated part?

A. Yes, sir.

Q. How about the Houston Oil Company?

A. The same thing.

Q. How about the Atlas?

A. The same thing.

Q. How about the Humble?

A. I think they are prorating according to my July run tickets.

Q. Aren't they taking more than their allowable?

A. I don't think so; I wouldn't say that.

Q. How about the Magnolia?

A. Well, I don't really know about the Magnolia, because, to be frank with you, I don't know how many wells they have; they have fifty acres.

Q. Do you know whether the Humble and the Magnolia are taking more than their allowable and basing that on the fact that others on offsetting leases are taking theirs?

A. I couldn't say only a comparison I have of Eddie Jones, who only has four wells and the Humble has twenty-eight, I believe, or twenty-nine.

Q. Where is the Eddie Jones lease relative to the Humble lease?

A. South.

Q. Does it offset it?

A. Yes, sir.

Q. And Eddie Jones is taking more than his allowable, isn't he?

A. I think so.

Q. Where is the Magnolia lease relative to the Humble lease?

A. It is southwest.

Q. Where is it relative to the Cordova lease?

A. I think it is north; I am not sure about that, now; I don't know what lease that is.

Q, You didn't lease the Cordova lease?

A. No, sir.

Q. Do you know whether or not that Cordova lease is just immediately west of the Eddie Jones lease and south?

A. I think that is about a six- or twelve-acre wedge that jammed in between the Magnolia and the Eddie Jones; I am not sure about that; if I knew who the lessor was, I could tell you. I think it comes from Christian, a little wedge-shaped.

Q. Do you represent the party that made the lease to the Cordova?

A. No, sir.

Q. He isn't on this list?

A. No, sir, I don't see him.

Q. Who else have you got leases with in that East Texas pool besides those that I have named?

A. Well, the Atlas pipe line.

Q. Well, how about the Atlas? Are they overproducing or not?

A. I think so.

Q. Who else have you got?

A. Well, I named a few minutes ago the Gulf; the Gulf isn't—I haven't gotten any oil from them.

Q. Are they drilling on your land, the Gulf?

A. Yes, sir.

Q. You don't know—

A. (Interrupting)—What they are doing? No, sir, I haven't been able to get a division order from them yet.

Q. How many acres do you own over there, Mr. Crim?

A. Well, our family all together, something around 1500 to 2000 acres.

Q. Did you get any bonuses for those leases?

A. Yes, sir.

Q. From which companies did you get bonuses when you made your leases?

A. Well, I got a bonus from—

Q. (Interrupting) Did you get a bonus from Eddie Jones?

A. Yes, sir—No, I didn't lease to Eddie Jones; I leased to another party and they immediately leased to Eddie Jones about the time the well came in.

Q. Did you get a bonus from this other party that you leased it to before he leased it to Eddie Jones?

A. Yes, sir.

Q. Did you get a bonus from the Olvey lease?

A. I don't know exactly what you mean by "bonus" there.

Q. Well, you said just now you got a bonus—

A. (Interrupting) Well, I leased this land after I leased to the Humble—that is, I didn't lease to the Humble, I leased to Bateman and Bateman leased to the Humble.

Q. Well, without going too much into your personal business, what did these leases call for, a dollar per acre and an eighth royalty?

A. No, sir, the Humble lease, we gave that to Bateman to drill the discovery well.

Q. Yes.

A. And then the lease went to Eddie Jones, we got a thousand dollars for that ten acres and the twenty acres that went to Olvey I believe that was, if I recall, $20,000, a thousand dollars an acre.

Q. Go ahead.

A. And the same thing with the Atlas pipe line.

Q. Was that a thousand dollars an acre?

A. Yes, sir.

Q. How about the Magnolia?

A. The Magnolia, I sold them ninety acres before the well came at $6500 for that ninety acres, before the discovery well came in.

Q. You mean you sold them both—did you sell the fee to them?

A. How is that?

Q. Did you sell the fee to them or just the lease?

A. No, no, all that is lease, no royalty; haven't sold any royalty at all.

Q. All right. Now, then, the Humble Oil & Refining Company is drilling some inner wells on your lease, are they not?

A. Nine.

Q. Now?

A. I have been told they are drilling nine inside wells.

Q. You don't know of your own personal knowledge?

A. No, sir, I haven't been out to the field in sixty days, I guess.

Q. You haven't been out to the field in sixty days?

A. No, sir.

Q. Are they drilling these wells at your request?

A. No, sir.

Q. Are they drilling these wells at the request of any of your family, that you know of?

A. No, sir.

Q. Do you want to continue the drilling of these inner wells?

A. No, sir.

Q. Do you think it is necessary to drill these wells in order to get your proper proportion of the oil at this time?

A. I don't think so.

Q. Would you rather they did not drill these wells?

A. I would at the present price of oil.

Q. Then, if the statement has been made here that they were drilling them in order to protect the land owners in getting their proportion, you could not agree with that statement then?

A. No, I guess not.

Q. All right. Who drew up these certificates or petitions that you have here, whatever you want to call them?

A. An attorney, a lawyer there in my office.

Q. Your attorney?

A. Yes, sir.

Q. When was the last time you had one of these meetings of the landowners over there?

A. I don't know; we have had little short meetings there, just around on the streets, you know; I don't know when we have had, except we had a banquet about two weeks ago, something like that.

Q. Had a what?

A. A banquet.

Q. Had a banquet about two or three months ago?

A. No, weeks.

Q. Oh, two or three weeks ago?

A. Yes.

Q. Were these petitions signed at that banquet?

A. No, sir, that petition was signed last week.

Q. Who circulated the petition?

A. Well, I don't recall just who they were, two or three parties there in town; I think Ben Laird had one of them, S. S. Laird had one, and Johnnie Peterson had the other.

Q. Is Ben Laird any kin to you?

A. My second cousin.

Q. Is S. S. Laird any kin to you?

A. Second cousin.

Q. How about Peterson?

A. No relation.

Q. Do they have the same attorney that you have?

A. Well, I wouldn't say that; well, they use him a good deal, I don't know whether—

Q. (Interrupting) These petitions, then, were drawn up by your attorney in his office at your request, were they not?

A. Yes, sir.

Q. You have had these boys circulate them around to get the names on them, have you not?

A. Yes, sir.

Q. How many names are on that statement you have there?

A. Eleven.

Q. How many on that one (handing petition to witness)?

A. Ten I count.

Q. How many on this one (handing petition to witness)?

A. Nine.

Q. Eleven and nine is twenty and ten is thirty; thirty, I believe, is that true?

A. I will take your word for it.

Q. Is your name on there?

A. No, sir.

Q. What percentage did I understand you to say this represented of the individuals in this proven territory?

A. I assume about 90 per cent.

Q. You mean that thirty persons represent 90 per cent?

A. Well, they are the biggest landowners there.

Q. Well, I am not talking about acreage; I am talking about individuals who own acreage in this proven territory; what percentage of the individuals who own acreage in this proven territory does that amount to?

A. Well, I don't know that I had ever thought about that part of it; I don't recall; I hadn't thought about that.

Q. How much acreage does it represent?

A. That is what I read down here, approximately 10,000 acres; it is on this list here as eight thousand and some odd acres.

Q. How much acreage in that pool?

A. I don't know.

Q. Some hundred thousand?

A. I wouldn't say, because I don't know.

Q. But what you represent is approximately 10,000 acres?

A. Yes, sir.

Q. Of that 10,000 acres, how many acres do you and your immediate family own?

A. Between 1500 and 2000 acres.

Q. At this banquet, name some of these people that were there.

A. Well—

Q. (Interrupting) Were all these people that signed this there?

A. No, sir; Ben Laird, I think, was the only one at this meeting that is on this list.

Q. What was the purpose of this banquet and meeting?

A. The purpose of it was to try to get together in some way and see if we couldn't save our oil.

Q. Save your oil?

A. Yes, sir.

Q. Was Mr. Suman there?

A. No, sir.

Q. Was there any representatives of the Railroad Commission there?

A. No, sir I don't think so.

Q. Was there any representative of any of the major companies there?

A. No, sir.

Q. Was that the only meeting you have ever held?

A. Well, I don't recall any other meeting; probably we have had some other, but I don't recall; we have had other meetings, but I don't think I have been present at any other meetings we have had there; we have had several other meetings here.

Q. And your whole story is that you want a better price for your oil or leave it in the ground; is that correct?

A. That is correct.

Q. It doesn't make any difference to you whether we prorate it or whether we stop it altogether, or create a new commission or what, so long as you get a good price for your oil or leave it in the ground?

A. Well, whatever is reasonable that it would take to do that; of course, we wouldn't want to ask anything that is not fair; we want to be reasonable about it.

Q. Well, I mean, though, that any kind of particular bill that you are for or against? The main object you have in mind is the fact that you want to either leave it there or get a better price for it?

A. That is the thing in a nutshell.

Q. You don't care if it is necessary to do that, whether it is necessary to create a new commission or leave the old commission or put in

market demand or not; isn't that true?

A. Whichever one will carry that out.

Mr. Burns: Q. Mr. Crim, of the thirty on that list there, how many of those people are there that the major oil companies have refused to pay them royalty or they haven't been paid royalty, if any?

A. I don't think any of them have ever refused to pay them royalty.

Q. Is anyone around Kilgore not being paid their royalties?

A. Well, there are some around there that are not being paid their royalties on account of titles, is all.

Q. Titles?

A. I think so.

Q. Isn't it a fact, Mr. Crim, that numbers and numbers of people over in East Texas oil fields that the companies have never paid them any royalty, the major oil companies are holding them up for eight months; they have said the titles were not good and they are still taking the oil and haven't paid them any royalty?

A. Well, I have had a little trouble myself getting some, but I don't know whether the others have.

Q. What did you say?

A. I said I have had a little trouble myself getting some, but I don't know whether the others have.

Q. What company did you have trouble with, Mr. Crim?

A. It came out of the John Olvey; it is twenty acres I sold to Jake Hammond; I have forgotten the name of the oil company he sold to.

Q. This banquet that you had in Kilgore, wasn't the purpose of that banquet to raise money for you to come to Austin as a lobbyist for them?

A. No, sir.

Q. Did they raise any money there?

A. No, sir.

Q. Did they raise any money to pay Louis Thompson?

A. No, sir, not that I heard of.

Q. If they have, you haven't heard of it?

A. No, sir.

Q. Was Louis Thompson present?

A. Yes, sir.

Q. Did the Humble Company ever pay you to come down and fight for this proration bill?

A. No, sir.

Q. Have you ever talked to the officials of the Humble Company about it?

A. No, sir.

Q. Have you talked to the Humble about it?

A. No, sir—about this bill?

Q. Yes, sir.

A. No, sir, I come down on my own expense.

Q. You had the right when you had that 2000 acres of land there, you could have written into the contract there that they didn't have to drill that—

A. I beg your pardon.

Q. You could have drawed those leases so that if you didn't want to bring the oil in—

A. (Interrupting) Before I leased it I could, yes.

Q. Yes, but you didn't do that, did you?

A. No, I leased it.

Q. And you got the money for it, and after you got the money—

A. (Interrupting) I haven't got it all yet, no.

Q. Sir?

A. I haven't got all the money yet, some of that oil is now under the ground; I haven't got that.

Q. But you got the lease money?

A. Yes, some; under the Humble tract I didn't get the money.

Q. The Humble didn't pay you any?

A. No.

Q. Why didn't the Humble pay you?

A. Why, we gave that for the discovery well.

Q. You gave it to the Humble?

A. We gave it to Bateman.

Q. You know the Humble Company is down here sponsoring this bill?

A. Well, I don't know they are.

Q. You read the papers, don't you?

A. I don't read the papers very much.

Q. Do you read?

A. Yes, I read. But I didn't read where the Humble was down here sponsoring this, no, sir.

Q. Didn't you read Mr. Farish's testimony, the president of the Humble Company?

A. I heard it.

Q. You heard it; you were present here and heard that testimony?

A. Yes, but I didn't read it in the paper.

Q. You took it from his testimony that he was favoring that bill, didn't you?

A. Well, I would think so.

Examination by Mr. Farmer:

Q. Mr. Crim, one question. When you made these contracts over there with these companies to drill your land or to lease your land you had lawyers over there to pass on those contracts, didn't you?

A. Well, in some cases I did, and in some I didn't.

Q. Well, you had the opportunity to provide that they should not drill your land and take the oil out unless it was at a certain price per barrel?

A. I didn't see that in the contract, that they would pay me any certain price for oil when I leased the land to them.

Q. I say you could have provided in your contract that you wouldn't permit them to drill the land and produce oil unless it was a certain price per barrel, couldn't you?

A. I probably could have done that if I had been smart enough to fix the paper up, or had some smart lawyer do that for me, but I didn't have.

Q. Then the trouble is that because you aren't getting the price for the oil that you wanted to get is because you were not smart enough to put into your contract that provision?

A. Correct.

Mr. Hardy: Any more questions? That is all, Mr. Crim, I am much obliged to you.

Thereupon, C. L. Brachfield was called as a witness, and being duly sworn by the Chair, testified as follows, on examination by Mr. Beck:

Q. What are your initials?

A. C. L. Brachfield.

Q. Where do you live, Mr. Brachfield?

A. I live at Henderson, Texas.

Q. Are you the representative of any group or organization of land owners in that area?

A I am the president of the East Texas Land & Royalty Owners Association.

Q. Is that the organization in which Mr. Carl Estes has been prominent?

A. Yes, sir. He is the secretary of that organization.

Q. Is Mr. Estes available in the State, or has he been in the last week to testify before this Committee?

A. No, sir, he has become ill, and it was necessary to perform an operation, so I have been informed, and he is on the way to Mayo's at Rochester, Minn.

Q. We wired Mayo's Hospital and are unable to locate him there.

A. That is all I have heard, just rumors I have heard.

Q. He just can not be located while this investigation is on?

A. No, sir.

Q. He is always pretty easily located when the Railroad Commission has a proration order, isn't he?

A. My information from the people of Tyler is that he is really sick, I haven't seen him myself.

Q. Am I correct in believing that your organization has worked closely with Mr. Tom Cranfill?

A. No, sir, I have never had any connections with Mr. Cranfill at all in our association. He has spoken to them once, I believe, or twice, but his association that got up the Cranfill Plan had nothing to do with the East Texas Lease & Royalty Owners'; a lot of them were in sympathy with it.

Q. How many have you in your East Texas Lease & Royalty Owners' Association?

A. I don't think it is a very large group of people.

Q. Have you a list of the members with you?

A. No, sir, I have not.

Q. Can you tell us how many men are members of that?

A. I think it is less than a hundred, but I am not sure about it.

Q. What are the totals of the funds that have been raised by that organization to participate—

A. (Interrupting) I know nothing about the finances; I have handled none of it.

Q. Who is handling the finances?

A. Mr. Estes has handled the finances and I understand Mr. Alford, of our town, John Alford, is the treasurer.

Q. You have no knowledge of their finances?

A. None at all, I haven't seen a dollar of it, and I haven't received a dollar of it.

Q. You have received no fees?

A. None at all.

Q. Did you come to Austin on your own expense?

A. Upon my own expense.

Q. You were called to come before the Committee, were you?

A. Yes, sir.

Q. This question is asked, based upon information that has been given me, concerning the truth of which I profess to know nothing myself: Do you have among your clients any of the major oil companies?

A. Yes, sir.

Q. What companies are they?

A. In an advisory capacity I have been advising with the Gulf.

Q. With the Gulf Company?

A. Yes, sir.

Q. Is it a fact that your retainer is $750 a month from the Gulf Company?

Mr. Hardy: You don't need to answer that. Mr. Chairman, I am going to object to that at this time. The gentleman asking the question was the very one that objected to asking Mr. Holmes what his salary was, and I think if this was unimportant to know what his salary was, I think it is unimportant to know what Judge Brachfield's is.

A. I will say that the salary is satisfactory.

The Chair: The Chairman will concur in the objection of the Chairman of the Steering Committee.

Mr. Beck: I raised no objection to inquiring into the salary of Mr. Holmes, and I would like for the record to so show. If that was admissible when it was asked, very certainly, this is admissible, because I make the statement now that the East Texas Lease & Royalty Owners' Association has been an organization that has come to Austin whenever a matter was up of a judicial nature before the Railroad Commission of Texas, that they have held mass meetings for the purpose of persuading—

A Member: A point of order. Who is testifying down there? Who are the gentlemen?

Mr. Beck: I am arguing this objection and my remarks are addressed to the Chair on the question of admissibility.

The Chair: The Chair will hold that the question of the salary of the witness is not admissible and is not in line with this investigation.

Mr. Beck: Are you receiving a retainer from any other major oil company?

A. No, sir.

Q. The Gulf only?

A. Or any other independent company.

Q. The Gulf Company has consistently fought any scheme of conservation or proration, have they not?

A. I don't know. I told them what my opinion was about it and they said there was no reason for me to change my opinion.

Q. Regardless of the fact that you were representing them. You are opposed to proration?

A. I don't know that I am.

Q. What is your attitude?

A. I am opposed to certain principles of this law contained in a bill that I have made a study of as a country lawyer representing these royalty owners and lease owners in East Texas. I am not a practical oil man, I don't know what the effect would be, and therefore I give no opinion as to whether proration ought to be or ought not to be.

Q. Your main concern is in increasing the allowable for the East Texas Field?

A. No, that is not my purpose. My purpose in advising with them and as their officer is only to see that they get fair treatment, and their rights, if they have any rights, should be protected. I have heard of no one, as far as I know, that has appeared for the land owners or the royalty owners of my immediate section.

Q. Have you a list of those whom you represent in this capacity?

A. No, sir. I do not. I have told you I don't know the personnel of the membership.

Q. How long would it take to supply the Committee with a list of those?

A. I couldn't do that unless I could get hold of the books.

Q. And Mr. Estes has the books?

A. Yes, sir.

Q. And he is not available at this time in the State of Texas?

A. No, sir, not to me.

Q. I thank you.

Examination by Mr. Hardy:

Q. Judge Brachfield, you know Carl Estes, do you not?

A. I do. Very well, yes, sir.

Q. Tell this Committee whether he is the type of man that is meek and timid, or not?

A. I have never known him to be that way; always aggressive.

Q. It has been insinuated that Carl Estes has left the State of

Texas to keep from appearing before this Committee. Do you know whether or not Carl Estes would appear before this Committee?

A. Knowing the man as I do I would say not.

Q. You would say that he would not appear before the Committee?

A. He would appear before the Committee. He would not run from it, I mean.

Q. Has he been running from anybody in this East Texas fight during the whole time?

A. I never heard of it.

Q. Judge Brachfield, the people that you represent, do they want either a better price for their oil or the oil left in storage?

A. Well, of course, they would like a better price for their oil, but they think, as I gather from them, that if the Legislature passes the law that their interests ought to be conserved in the law; in other words I could go through this law with you and show you what objections I found to it, that they think that if you are going to curtail production that it ought to be in that pool, and in accordance with the wells in that pool. As I gather from them, and it is my opinion, and I think possibly that I am in accord with them in their belief, that you ought not to make them suffer in that part of the country because somebody else would have to suffer somewhere else. In other words, they feel like they ought to have a better price for that oil.

Q. Do you know what their attitude is as to the drawing of an equitable and fair proration law? Do you know whether or not they would be opposed to any such law?

A. I don't think they would.

Mr. Burns of Walker:

Q. From your knowledge over there, Judge, as an attorney in Rusk County, do you know of any land owners or royalty owners over there that the major companies are not paying the royalty to?

A. I don't know whether they are major companies or not, but there have been lots of complaints, lots going through my office that have not received any royalties as yet.

Q. Haven't received one dime, have they, Judge?

A. Not one dime, not one cent.

Q. And they are taking their oil, and robbing those poor devils over there, aren't they?

A. Well, I won't say that, I am under oath. I don't know they are doing that to them, but I know there is a good deal of complaint.

Q. You know they are not paying them, don't you, Judge?

A. That is what they say, they tell me they are not paying them. I know one party, of course, a client, and I could not divulge his name—I suppose he would be willing to tell you if you wanted him to—he told me that he thought they owed him between five and six thousand dollars and it has been running for sixty days or more, and he hasn't got a thin dime out of it yet.

Mr. Hardy:

Q. Judge, do you know whether or not there are any of these companies taking more oil from the leases than they are paying the lessors for?

A. Well, only as an attorney. Might I just answer that generally? Yes, I have heard of instances of that kind.

Q. Any further questions?

Mr. Farmer: Yes.

Q. Judge Brachfield, your association is concerned about getting as much oil, and as much money for their oil as they can, is it not?

A. Yes, sir. That, and then they feel like if there is a law passed they ought to be protected if they want to protest or contest any part of that law.

Q. Now, Judge, you are a lawyer of long years' experience, are you not?

A. Yes, sir, I threaten to practice.

Q. I want to ask you would a law passed by this Legislature providing that the ratable taking from the ground by leaseholders shall be only that amount that might scientifically be calculated as being their part, and prohibiting any adjoining leaseholder from taking more than his part in such a way that it would rob his neighbor, if that would aid the situation there in East Texas?

A. I don't know, as far as what you are talking about, whether somebody makes the market demand for it—

Q. (Interrupting) No, let me be specific, and short, then, Mr. Brachfield; we have got Rule 37 which is a regulation of the Railroad Commission providing that a well shall

not be drilled closer than 150 feet of the line, haven't we?

A. Yes, sir.

Q. That rule has been upheld by the Circuit Court of Appeals, and a writ of certiorari denied by the Supreme Court?

A. Yes, sir.

Q. As being a valid regulation?

A. Yes, sir.

Q. To protect adjoining property owners?

A. Yes, sir.

Q. Now, if we can go further and enact a law that will provide the machinery, either through the Railroad Commission or statute, for the ascertaining of what each man's share of the pool is, beneath his acreage, and forbid any man from taking any more than his amount, would that help the situation in East Texas?

A. I don't think so.

Q. Why not?

A. Well, of course, if you could determine just how much oil is under each tract of land, or each well, that is drilled in the area that it would draw oil from, perhaps that would be a fair way, but we feel that certain portions of that field are more fortunate than other portions, and are entitled to more oil, because they are situated more fortunately. Unfortunately for me, the only interest that I have is in a well on the eastern edge of that field, that only has come to fifty barrels a day under the pump, never has flowed, and therefore, I feel that I am just not fortunately situated, and therefore not entitled to as much oil as the party who has acreage or a well in the center of the field, or in some other portion of it.

Q. Haven't geologists determined with a fair degree of accuracy the amount of oil beneath the acreage within certain circumscribed lines?

A. Well, they differ, you know I don't know much about geology, and I never had thought much about a fellow finding 3,600 feet under the ground, just what there was there; I think he is guessing just like the balance of us.

Q. Yes, but then if it can be satisfactorily determined as to the amount of oil per acre beneath the pool, do you think that we might pass a law that would help the situation over there, forbidding a man from taking more than his pro rata part?

A. Well, you may be correct about that, but I would not want to pass judgment on that.

Q. Well, then, if we are correct about it, wouldn't that help you East Texas people to keep your oil in storage that don't want to sell it now at the price?

A. Possibly so.

Q. Then, if we go further and provide in that law that anyone who took more than his pro rata part of the oil out of the pool beneath his acreage that he should answer for damages to his adjoining owners, just as in the case of Rule 37, if that wouldn't help the situation?

A. That might help it, if this other fellow wasn't broke when you got the judgment against him.

Q. Thank you, Judge.

Mr. Cunningham: Judge, I want to ask you a question or two, please, sir, about these oil royalties. I live over in West Texas, but I have been down in East Texas three or four or five weeks.

A. I have been to all of these meetings, I was at that meeting at Kilgore that Mr. Crim just spoke about.

Q. Well, I have been over there studying the situation. There is one thing I want to ask you about that was discussed that I heard frequently and you mentioned here in your testimony, but I don't believe you offered any remedy, and that was this: Where these oil runs are being made and these royalty owners and land owners are not getting their royalty. Can you give us any idea of what you think ought to be done in that respect toward a proper gauge of these oil runs?

A. Well, the proper gauging of them, I think they are gauged properly, possibly, but there is nobody that has access to the record of the gauging of it. You could possibly fix that so that the land owner would have the right, or the royalty owner would have the right to inspect daily or at times, the oil runs and make it a penalty for anyone to make false entries about how much oil he is running.

Q. Yes, sir. That has been my idea about it to that extent, but in some cases the land owners are not probably able to hire a gauger themselves. Some association of persons might do that, but is there any remedy aside from that that you suggest?

A. I was talking about the man who is pumping the well or taking the run of the well, making it a penalty for him to make false entries in his books about how much was run, and then give the land owner the right to go and look at the books, he wouldn't have to be an expert gauger to see the figures in the books.

Q. Don't you think that in addition to that that report ought to be made at frequent intervals and sworn to?

A. Yes, I should think so, I thought they had to do that anyway to the Railroad Commission, at least.

Q. Well, they may do that, but I am talking about—

A. (Interrupting) They have to do that to pay their taxes too, I think, the severance tax.

Q. I am talking about the copy that is furnished to the land owner, sworn to, to the land owner or the royalty owner?

A. Yes, sir.

Q. All right. Thank you.

Mr. Hardy: No other questions?

The Chair: Does any member of the Committee desire to ask any questions? If not, the witness is excused. Who will the Committee have next?

Mr. Hardy: Honorable J. Lewis Thompson.

Thereupon, J. Lewis Thompson was called as a witness, and being duly sworn by the Chair, testified as follows:

Examination by Mr. Beck:

Q. Colonel Thompson, it has been charged that you have been formerly a member of the Legislature?

A. That is true, thank God.

Q. Of what Legislatures have you been a member?

A. I served in the 36th, the 37th, and the 41st.

Q. In the 41st Legislature, or at the time of the 41st Legislature did you have any interest in the oil business?

A. I did not.

Q. Directly or indirectly?

A. O. K., neither.

Q. Did you at that time support the conservation measures which were passed by that Legislature?

A. I have supported all conservation measures at all times.

Q. Now, Colonel, it is rumored here around town that upon coming to Austin for this session of the Legislature you elected to leave home with two members of the Legislature?

A. That is true.

Q. Well, do you take any undue pride in that?

A. I certainly do, because I feel like it is an honor to be associated with my friends.

Q. Well, who are your associates in the home?

A. I beg your pardon?

Q. Who are your associates in your Austin home?

A Member: Mr. Chairman, that is incriminating on the witness.

The Chair: For what purpose does the member arise?

A Member: Mr. Beck has directed a question to the witness that is incriminating and I just wanted to protect him.

The Chair: The Chair rules that the objection raised by the gentleman from Dallas is irrelevant.

Mr. Beck: Well, go ahead, Colonel, and tell us who are your home mates here in Austin?

A. I am staying with Charlie McCombs of Dallas, and Walter Beck of Fort Worth. And I will say this, it is designedly so. When I found out that this session would be called I called up Charlie McCombs at Dallas and Walter Beck in Fort Worth and Emmett Morse of Houston, and requested that I might have the honor of staying with them and enjoying their company while I was down here.

Q. Colonel, a question asked one of the witnesses a few minutes ago indicated that you were here and that some funds had been raised to send you to Austin for the purpose of representing the land owners of your district. Is that true?

A. That is not true, I am down here representing my own interest and that of my sister, who has a large interest in this discovery field at Kilgore.

Q. You have some land in that area?

A. My family has, my sister and her sons and my cousins.

Q. What acreage, Colonel?

A. Oh, I would say that my family in there has something like three or four thousand acres altogether.

Q. How much of it is in the oil field?

A. All of it.

Q. And you have most of it leased out?

A. It is all leased out. I will tell you my connection with this field. My grandfather came to Texas in 1840; he bought ten thousand acres in that immediate section up there, and it so happens that all of this ten thousand acres practically comprises the major part of the Kilgore pool. On account of the lack of business experience of my nephews and the love I have for my sister I went up there when the well was brought in on the 28th day of December and I have been up there ever since trying to help them work these problems out. They have not always agreed with me on the best policy, because if they had we might not be down here now, or we might be, I couldn't say about that, but I felt that there was a heritage there that our family was entitled to receive the benefits of. Directly I own no interest, but indirectly I have a big interest. My interest, of course, has always been in East Texas. I am an East Texan by birth. I am a conservationist by inclination and by education and by long experience in the lumber business. I believe in the conservation of the oil. I believe in the conservation of the human race, I believe in the conservation of timber; I believe in the conservation of our game, and our fish. I believe in the conservation of our waters. I mention this at this time because conservation has been discussed here so much and nothing has been said about the conservation of humanity. They are burning people to death up there in that field and I think carelessness of operation—I have been a sawmill operator all my life, and I know from my knowledge of machinery—I am not an oil man—I never brought in a well in my life—I never worked on a rig in my life, but I do know a lot about machines, and I know that most of the lives that have been burned to death up there in that oil field could have been avoided if the proper method of bringing these wells in had been looked after. I think that that is demonstrated by the fact that if you look over the wells that have caused these fires, and caused these deaths and the pipe lines that have broken and caused deaths from the burning of gas, or the oil, you will see in each case that it was operators that did not know the business, with the exception, possibly, of the Sinclair fire, which was the largest loss of lives there, and I have understood that some carelessness took place there; that I don't know, that is hearsay. I believe that this Legislature should do something about that phase of it, because the ruthless destruction of life up there could have been avoided and the ruthless destruction of oil ought to be stopped.

Q. Colonel, in the days when you were cutting timber, were you or were you not active in attempting to bring about the timber resources of this State. While I was one of the youngest mill managers in East Texas I advocated the first conservation law that was ever put on the statute books of this State, and came down here and worked for it, and I have had the honor of having the author to give me the pen that signed the bill because of my activity in the matter, and I turned to my good friend, Goodrich Jones, and I said, "Jones, you can take the pen, because I am satisfied with the bill."

Q. Was that statute passed in time to bring about effective conservation in our timber lands?

A. It was brought with a view of beginning to that end, Mr. Beck.

Q. But after very much wastage already occurred?

A. Oh, there had been ruthless destruction of the timber of East Texas; that is history now, people know all about it, and while we have received a great many benefits, there are a great many benefits that posterity will not receive. That, however went on all over the South; at one time I was president of the Southern Pine Association, and that practice prevailed all over the South.

Q. Do you see any analogy in the case of timber and in the case of oil, another natural resource?

A. At the first meeting that they had in East Texas, in Tyler, I was called on the matter of proration, and I got up there and told them that I did not know what they meant by proration, but if they meant curtailment, then I was entirely in favor of it, because I knew what the lack of curtailment had cost the lumber industry of East Texas and the people of East Texas, and the counties of East Texas, which some of them now,

since the timber has all been destroyed, can not pay the taxes over there, or take care of their taxes.

Q. And you consider it no great stretch of the imagination to expect the same results in the oil industry if there is not adequate conservation?

A. Oh, I can see this; I can see that those folks up there in East Texas, the lease owners who lived there before there was an oil field, and who will live there after the oil is dissipated, and they will be sitting around there as these timber men are today, saying then and looking at the tumbled down derricks and the grass covered slush pit, and the land that has been destroyed, the terraces all gone, and they will have the same trouble in that country in restoring the land to cultivation as France did at the war front when the Germans got through with that.

Q. Have you any other statement that you would like to make at this time?

A. No, I believe not.

Mr. Hardy: Mr. Thompson, did I understand you to say that you thought the majority of these fires and the losses by reason thereof were because the operators did not know their business?

A. Carelessness and the lack of knowledge, yes sir, I think all of them have been caused from carelessness and lack of knowledge.

Q. What would you suggest that this Legislature do to change the human trait of carelessness?

A. Well, I don't know, but I believe that there ought to be some method of bringing in these wells; the companies up there, both the large companies and the independents, or so-called independents, who are good operators, are not having this trouble, and they are careful about when they bring in the well.

Q. Of these losses, has any one company had more than one loss in the East Texas field?

A. Well, I wouldn't know about that.

Q. You said these good operators were not having these losses; I just wondered if any one of them is having a continuity of these losses?

A. Well, the poor boy oil company there in Kilgore, that is what we call it, I don't know what the name of it was, but they just had a small lease, Mr. Hardy, and they brought in a well, and of course they were anxious to bring it in and they didn't have the proper equipment and brought it in along about 6 o'clock in the evening, and I think that had something to do with it, I think they might have waited until the next day, they might not have had that accident.

Q. What would you suggest that should be written in the law to stop these fires and losses by fires?

A. Well, I dont' believe that I could make that— well, I would be glad to meet with the Committee and sit down and write out a suggestion; I could not just think off-hand about it.

Q. Well, would you mind thinking some time when it is not off-hand and let us have the benefit of that suggestion?

A. I would be glad to, yes, sir.

Q. All right. Do you think that proration would avoid the loss of these lives?

A. I think, in a measure, Mr. Hardy, it will avoid the loss of the lives? That proration will?

Q. Yes.

A. Was that the question?

Q. Yes.

A. Will avoid? Well, I think any measure that will be enforced would tend to; in other words, I believe from what I understand about the orders issued by the Railroad Commission, if they were enforced, that some of these fires might not have occurred; that it is lack of enforcement of their orders that have caused some of the fires.

Q. Well, as I understand from your statement in your direct testimony, it was that the main thing you were worried about was the loss of these lives and the loss of property by reason of these fires, and the improper way of bringing them in?

A. Well, that is one of the main things, yes. The other thing is that I am worried about East Texas itself; I want the whole of East Texas to receive the benefit of this heritage that is rightfully theirs.

Q. How about the whole State of Texas?

A. Well, I am for that, too.

Q. Or are you just interested in East Texas?

A. Anything that would be equitable for East Texas would be equitable for West Texas, and I don't want any law that is enforceable in East Texas that is not enforceable in West

Texas; I want it to be equitable; that is the kind of law I want all over the State; we don't want any advantage over there, I can tell you that.

Q. All right. I will now ask you the question that caused you to be put on the stand. Did you receive any money from any one to come to this Legislature and lobby for any bills?

A. No, sir.

Q. Have you been attending any of these meetings?

A. Well, now, wait a moment, from anyone? I am down here; of course, I have got to get money from some source, but then I am getting it from a legitimate source, yes.

Q. Well, from whom are you getting it?

A. Well, I get it from my business and my sister's business.

Q. Well, outside of your own money?

A. No, no.

Q. And outside of drawing your money from your bank, is anyone paying a part of your expenses down here?

A. No, sir.

Q. Do you know of any association that has made up any money to pay your expenses down here?

A. No, sir. There hasn't been any.

Q. Has the East Texas Association paid any of your expenses?

A. No, sir.

Q. Has your sister paid any portion of your expenses?

A. Yes, sir.

Q. Your family has contributed to it?

A. Yes, sir.

Q. And you are down here lobbying for what?

A. I am down here trying to get a bill passed that is equitable to that situation up there.

Q. Have you in mind any particular bill?

A. Well, yes, I have. The bill that you offered here, the Wagstaff Bill, would be all right.

Q. Is that the bill that you are lobbying for?

A. I don't believe that I have asked you or any other member of this House to vote for any one of them.

Q. You haven't asked me. I will be perfectly frank with you. I don't know whether you have asked anybody else or not. I am asking the question now.

A. No, I never asked any member to vote for any bill yet.

Q. Well, you are down here for the purpose of trying to get a bill through this Legislature?

A. Yes, sir.

Q. What bill is it you are trying to get through this Legislature?

A. The Wagstaff Bill would be acceptable to me.

Q. Is there any other bill among the bills that have been introduced?

A. That is the only one I know about.

Q. You haven't read any of the others?

A. No, sir.

Q. You haven't heard of any of the others?

A. I haven't read any of them, I didn't know any others had been introduced?

Q. What particular features of the Wagstaff Bill is it that appeals to you as being to the best interest of East Texas?

A. Well, I would say that the enforcement features of it.

Q. How is the bill to be enforced?

A. I beg your pardon?

Q. Did you say the enforcement features?

A. Yes, sir.

Q. How is the law to be enforced?

A. Well, it is to be enforced by a commission, as I understand it.

Q. Oh, you are in favor, then, of the new commission, that is the feature that you like?

A. Well, I would think that would be an improvement over the present situation, yes.

Q. Well, is that all the part of the bill that you are in favor of?

A. Well, I believe, if I was to say, I haven't the bill before me, Mr. Hardy.

Q. You are familiar with its contents, are you not, Mr. Thompson?

A. Yes, sir. I have read it.

Q. It is satisfactory to you, is it not?

A. Yes, sir, I believe it is satisfactory.

Q. Well, I want to know what features you particularly like?

A. Well, just to satisfy that question I would say, all of it.

Q. All of it?

A. Yes, sir.

Q. You believe that the price of oil should be based on the reasonable market demand?

A. I beg your pardon?

Q. You believe that that bill should state that the price of oil should be based on the reasonable market demand?

A. Well, I don't think that I would object to that feature of it if you wanted to put that in.

Q. Do you think that oil should be produced then, not beyond a reasonable demand.

A. Yes, I believe that.

Q. Not beyond a reasonable market demand?

A. Yes, sir.

Q. Is that in the Wagstaff Bill?

A. How is that?

Q. Is that feature in the Wagstaff Bill?

A. I don't think it is.

Q. What other feature of the Wagstaff Bill do you like particularly?

A. I told you I liked the entire bill.

Q. The entire bill?

A. Yes, sir.

Q. That is all.

Examination by Mr. Farmer:

Q. Do you know why Carl Estes is not down here?

A. I do not.

Q. Do you know, Mr. Thompson, of any agreement among the independent people lately to lay off of this thing and not fight this bill?

A. I haven't heard of any.

Q. Do you know of the majors promising these independents that if they would lay off and not fight this bill they would raise the price of oil after this bill is passed?

A. I never heard of that before.

Q. Your grandfather bought ten thousand acres over there in 1840, and you have now got about four thousand acres left of that. Don't you think, Mr. Thompson, that you and your sister and nephews get enough out of that four thousand acres to live liberally the balance of your days at the present price of oil?

A. In answer to that, Mr. Farmer, I will say that we have lived to the present time without any oil at all, and I think we will continue to live without oil; I don't think that has anything to do with this at all.

Q. Well, do you think, Mr. Thompson, that the balance of the people of the State of Texas especially the one hundred and eighty-two counties that have got no oil, who have raised 25 cent wheat, 6 cent cotton to feed and clothe these people, that they should be forced to pay a price of $2 per barred for oil when they are receiving such prices for their products?

A. I think this, that the farmer, that our prosperity has always been at the time of high prices of all commodities and I believe in the high price of commodities; when we can pay our labor their just due, when we can take care of them—you see, I am a farmer more than I am anything else. I am just an oil man by force of circumstances. We are running a little farm over there in East Texas and raise a few chickens, and I think, as I understand, we are suffering along with the other farmers.

Q. Now, Mr. Thompson, do you think it is fair for these five million, five hundred thousand people in Texas who have no interest in oil, that they should be forced by a matter of legislation to pay more for their gasoline and refined products?

A. In think it is fair for all these five million people and all the hundred or so million of people we have got in the United States to pay any price for anything that will create prosperity for the balance of the nation.

Q. You think this would bring prosperity to the balance of the nation?

A. I don't know what you are talking about, but I was just trying to answer your question.

Q. Mr. Thompson, didn't you have the right, as a freeborn American citizen, owning that land there—

A. (Interrupting) I didn't own it Mr. Farmer.

Q. Oh, I see.

A. My sister owns it.

Q. Your sister owns it, and you are acting for her. Well, she had the right to contract and enter into such contracts of lease by which she could provide that these major companies and their leases should not develop that land and sell the oil at a price less than a certain amount?

A. Well, if she had known that the oil was there, Mr. Farmer, she probably would have exercised such right because she is a very smart woman and she knows a darn sight more than a lot of the lawyers about such things, and I think that if she had

known that she had oil, but you see, she didn't know it, and this fellow Bateman comes along and says: "I think you have got some oil and if you will let me have your land I will bore a well on it." And he did, and he found it, but it was too late then for her to exercise that right.

Q. I see. Then you are down here at this Legislature wanting this Legislature to help you out of a bad contract?

A. No, we are not. We don't want the Legislature to pull any coals of ours out of the fire. What we want the Legislature to do is to get a law there that is enforceable and make everybody do the same thing and quit stealing our oil.

Q. I see, and you want us to pass a law to help you keep it in storage in the ground over against your bad contract?

A. Well, I want an enforceable measure, whether you can draw one that way or not I couldn't tell you.

Q. Well, it is a good thing, Mr. Thompson, that she did make that mistake in drawing that contract, so that in these times of depression the common people are getting gasoline.

A. I don't think so, thank you.

Mr. Hardy: Any further questions? If not, Mr. Thompson, you will be excused. Much obliged to you.

Mr. Chairman, at this time I would like to call Mr. Robert E. Hardwicke.

Thereupon, Robert E. Hardwicke, was called as a witness, and being duly sworn by the Chair, testified as follows; examination by Mr. Hardy:

Q. Please state to the Committe your name, occupation, and address.

A. Robert E. Hardwicke, Fort Worth, Texas, lawyer.

Q. Mr. Hardwicke, you are the Robert Hardwicke and Bob Hardwicke, that has been referred to during this investigation as having had something to do with the last proration order for East Texas, are you not?

A. Yes, sir.

Q. Do you have any statement you would like to make at this time?

A. Yes, sir.

Q. All right, you might proceed.

A. In fairness to the Railroad Commission and to the Attorney General's department, I think a statement should be made because there are some insinuations from the testimony that has heretofore been given, that I think ought to be cleared up. The facts about the matter are that Mr. Marion Church and myself are attorneys for the Central Proration Committee, we are paid by them for the work we do. You have had testimony as to what that Committee is, and I shall not repeat it. This Committee has information which may be helpful for the enforcement of the conservation laws. At these hearings they simply present this information as they see it, by witnesses. As every one knows who has attended those hearings, the Railroad Commission asks for any other witnesses by any other party or any other statement. That is the extent that this committee has gone, as far as I know, in influencing the Railroad Commission in its judgment. After the last hearing —perhaps I better say, however, that we have been, oh, for four or five months, and in a way are reasonably familiar with the problem, both practical and legal. After the last hearing, as I went out the door with Mr. Church, Mr. Parker asked would we assist in the drawing of the order. We said we would. We went into the office and sat there probably an hour and Mr. Terrell called us into his office. He said: "I want an order drawn which has substantially the following fundamental principles; to make it a little clearer," he said, "I want to follow as closely as possible the Cranfill Plan, with one exception. I think there ought to be a top allowable for the field, and not leave it wide open." He didn't even say what that figure should be. He outlined rather specifically what he thought should go in the order in addition to saying that it should follow rather closely the Cranfill Plan. I may add, just here, that the order which the proration Committee wanted did not even approximate the Cranfill Plan, or any modification thereof. The Central Proration Committee put on its testimony to show and undertake to prove by witnesses that potentials should be taken into consideration in dividing the production among the various wells and leases. The Cranfill Plan contemplated a flat rate for each well, irrespective of its capacity. The ideas of the Central Proration Committee and its witnesses were absolutely directly in conflict with the Cranfill Plan, and with the order which Mr. Terrell said he wished drawn.

I think Mr. Upchurch, the Assistant Attorney General, was in the office part of the time while we were waiting for a conference with Mr. Terrell, but had to go off on other business. Nothing was done that night. The next morning—

Q. What day was that, Mr. Hardwicke?

A. Tuesday afternoon, I don't remember the date. The hearing started on Monday and finished Tuesday afternoon. Nothing was done that afternoon as it was rather late and we were tired. The next morning Mr. Parker and myself, and I think, Mr. Todd, of Dallas, and perhaps, Mr. E. Vincent Foran, the technical adviser for the proration Committee, met in Mr. Parker's office and drew a rough draft of an order which we considered fairly represented the ideas that Mr. Terrell wanted put into an order. After that was typed, Mr. Upchurch, the Assistant Attorney General, Mr. Tood, I believe, I think Mr. Foran, Mr. Parker and myself, went into Mr. Terrell's office with copies of this preliminary draft. Mr. Smith was there at the time. He had been absent the day previously, having been in St. Louis. The order was discussed only partially in the presence of the men whom I have named. It was at that time, I think, but I do not now remember,—Anyhow, several suggestions were made by Mr. Terrell for additional changes, and during all this time the allowable was left blank; no human being knew at that time what it was going to be. I think some additional changes were made in accordance with Mr. Terrell's and Mr. Smith's directions, and the order was re-written. I never saw it after it was written at that time. I left that night. Two days later—

Q. What night was that?

A. Wednesday night.

Q. All right.

A. And when these copies were handed to Mr. Terrell, Mr. Smith, and Mr. Upchurch, the statement was made, "We will take these home and study them and confer about them tomorrow." I left that night and do not know what happened after that except this, that the order was finally issued two days after I left and was materially changed as originally drawn under Mr. Terrell's instructions. That is all I know about the order.

Q. You were requested by Mr. Terrell to draw an order based upon the Cranfill Plan?

A. He put it this way, as I remember, "I want it as close to the Cranfill Plan as you can get it, except that it should have a top allowable, or at least some allowable."

You remember the Cranfill Plan contemplated so many barrels per well, and that amount would increase indefinitely dependent on the number of wells which were drilled. Under that plan the production could have gone up to two million barrels. Mr. Terrell had the idea that there ought to be some limit on the production.

Q. Was there a limit put in the final order?

A. Yes, sir. Two hundred and fifty thousand barrels. I never heard what the volume was until I read it in the paper. All orders that I had anything to do with left that blank.

Q. Did you have a copy of the order as drawn by you before you left the city?

A. No, sir, I have not, and it has gone in the waste basket as far as I know—I haven't got a copy; Mr. Parker may have.

Q. Was Mr. Cranfill present at the drawing of this order?

A. No, sir. Captain Lucy, however, was. He was a witness, and was something like about an hour and a half in Mr. Terrell's office before I saw him, and that was the reason of the delay in my getting in there, to find out what we were going to do.

Q. Have you heretofore been drawing the orders with Mr. Parker—for the Railroad Commission proration orders?

A. My recollection is I have had something to do with the January order, I am not quite sure about that; but I have something to do with the one in April, about the same manner of connection as with the last.

Q. Did you represent the State of Texas in the case of the State of Texas versus Joe Danciger?

A. Yes.

Q. By whom were you employed in representing the State in that case?

A. The Central Proration Committee employed me to assist the Attorney General in the trying of that case, if the Attorney General was agreeable to that; the Attorney General, who was Mr. Bobbitt, at that time, said he was glad to have all

the help he could get to assist him in that case. I helped under the directions of the Attorney General, and the same way in the MacMillan case, and the actual trial of the Danciger, both of which took place under the administration of Mr. Allred; but in both of those cases I was simply pig-tailing for the Attorney General, doing what he said he wanted, we had no control of the direction of the litigation, and he can kick us out whenever he wants to.

Q. Without stating the amount of your fees, state whether or not your fees are based upon a separate matter, or whether you are retained on a retainer by the Proration Committee?

A. Up to June 15th of this year, it has simply been based on this plan: When they came up, I think it was in October last year, they said, "we can't pay you much of a fee, but will you help us in this case; or can you give us any indication of what your fee shall be?" I said, "you fix the fee yourself." And they did fix it on June 15th. I am perfectly willing to tell you what the amount of it is if you want it.

Q. Does that fee represent all the work you have done for them, or does it only represent the fee simply in the Danciger case and the MacMillan?

A. It represents all the time which I put in on this case and the Railroad Commission, and any other work that I have done representing them from October down to the 15th of June, six months' actual work, approximately my entire time has been representing them from October down to the 15th of June, six months' actual work, and I am getting rather tired of it, and I cannot attend to business any more.

Q. Mr. Hardwicke, did you ever represent a major oil company in the State of Texas?

A. Yes, sir, several of them.

Q. What companies have you represented?

A. Years ago, in Beaumont, our firm represented the Sun Company, along with thirty or forty independents—operators; and then I went with the Gulf Production Company, was with the Gulf Production Company in the State of Texas about five years; I was then transferred to Venezuela, living at Caracas, having charge of the work in that office, and having assistance in Maracarbo, for a few years. I resigned in 1929 and opened up an office for myself in Fort Worth, practicing by myself, and I have been ever since.

Q. Since that time, have you been representing any major oil company?

A. Yes, sir.

Q. In or out of the State of Texas?

A. Yes, sir.

A. What company?

A. I did work for the Stanolind Company, which is a subsidiary of the Standard of Indiana; I did work for the Gulf Production Company; I did work for the Cosden Company; I did work for the Sinclair Oil and Gas Company.

Q. And your fee has been upon a fee basis and not upon retainers?

A. Yes, sir.

Q. Are you now upon a retainer from any major oil company?

A. No, sir.

Q. Have you ever represented the Humble Oil Company?

A. Never in my life.

Q. Have you ever represented the Standard of New Jersey?

A. Never in my life.

Q. Have you ever represented the Standard of New York?

A. No, sir.

Q. Have you ever represented any of the Standard companies, other than the Stanolind, which is a subsidiary of the Standard of Indiana?

A. No, sir.

Q. This question has been sent up: Do you represent any independent operators?

A. Yes, sir.

Q. Whom do you represent, if you don't mind telling?

A. Mr. Brown, H. L. Brown, friend of Mr. Roeser, but in connection with his own attorneys. As a matter of fact, all of my time has been taken up for the last five months, I haven't represented anybody except these I have named, and several other independents, I don't now remember.

Q. Have you been employed, or were you employed to assist in the drawing of House Bill No. 1052, of the Regular Session?

A. That is the Howsley Bill?

Q. That is the Howsley Bill.

A. Yes, sir, I drew that.

Q. In order to clear Mr. Howsley of a charge which he seems to take offense at, did the other day rather—did Mr. Howsley have anything to do with the drawing of that bill?

A. I don't believe he did—I don't remember, I am not sure. I think we conferred with him, but actually I don't remember but very little about it—the—I don't remember that he had anything to do with the actual drawing of the bill.

Q. All right, I wanted to get that straight, because there has been some insinuations about Mr. Farish here in regard to that.

A. Mr.—who?

Q. Mr. Farish, there was some talk about Mr. Farish having helped about the bill when it was drawn, House Bill 1052. Where was House Bill No. 1052 drawn?

A. There in Fort Worth, originally, or part of it was, and part here—I don't recall.

Q. Whom were you representing when you drew it?

A. Well, I don't know—I guess it was some committee, I didn't pay much attention—I presumed it was for the Central Proration Committee.

Q. Well, how came you to have anything to do with it?

A. I beg your pardon?

Q. How came you to have anything to do with it?

A. They requested me to.

Q. Who did?

A. Either Mr. Penn, or Mr. Church or Mr. Landreth or Mr. Roeser.

Q. You don't remember who?

A. No, sir.

Q. Are all these gentlemen members of the Central Proration Committee?

A. I believe not.

Q. Is Mr. Landreth a member?

A. No, sir, he is not? I think Mr. Rosen and Mr. Penn are the only two members of the Committee that had anything to do with that, as far as I know.

Q. If they requested you to have something to do with the drawing of that bill, were you looking to the Central Proration Committee for your orders, then?

A. I wouldn't take orders. If they asked me to draw what I thought was a good bill, I would be glad to draw it.

Q. Well, I don't mean orders, in the sense of orders—like an army officer—. Would you take suggestions from them?

A. Certainly, anybody.

Q. Did you take suggestions from the Central Proration Committee in the drawing of that bill?

A. Yes, sir—anybody.

Q. Who else assisted in the preparation of that bill?

A. Marion Church, of Dallas, George Kilgore, of Wichita Falls, and I think at one conference, part of the time, Hines Baker, the Humble attorney was there—I am sure he was there when we had a conference in my office in Fort Worth.

Q. How long was that before the Howsley Bill was introduced?

A. I don't know, I do not remember.

Q. Did you have anything to do with the preparation or drawing of a bill commonly referred to as the Texas Emergency Committee Bill?

A. Yes, sir.

Q. Is that bill now in the House?

A. As far as I know it is not in here?

Q. All right. Who employed you to help prepare that bill?

A. The Texas Emergency Committee.

Q. Did the Central Proration Committee have anything to do with that?

A. No, sir. Not with me.

Q. Who of the Texas Emergency Committee requested you to prepare that bill?

A. A committee was appointed at open meeting, some five or six lawyers and five or ten operators were appointed in drawing what would be a suggestive bill.

Q. Is that bill in any way similar to the Howsley Bill?

A. Yes, sir.

Q. What feature does it contain that is kin to the Howsley Bill?

A. I would say roughly, something like 85% the same, except for matters of commission.

Q. Matters of what?

A. Commission.

Q. Does that bill provide for a new commission?

A. No, sir, it doesn't say anything about a commission.

Q. That question has been sent up—this question, Mr. Hardwicke—

A. You mean the emergency bill—in the last question? I mean the emergency bill has nothing about a commission, it is not mentioned.

Q. You didn't have anything to do with drawing the last draft of that bill, did you?

A. I never saw it until I saw it in the Legislature, it was handed to me.

Q. Do you know who is author of the statement reported to have been made by Commissioner Smith and typewritten and submitted to this Committee, and also laid on the desk of the House members.

A. I don't understand the question?

Q. Apparently a statement has been made, purporting to have been issued by Commissioner Lon Smith, and it seems to have been typewritten and laid on the desks of the members. The question is, do you know who was the author of that statement?

A. No, I have not seen it yet.

Questions by Mr. Howsley:

Q. Mr. Hardwicke, in order that we may get before the House the correct advice on House Bill 1052, do you recall, Mr. Hardwicke, in the preparation of House Bill 1052, the one that you brought down from Fort Worth, that there were several material changes made in that bill after consultation with the oil men from Wichita Falls and other places, and myself and you gentlemen?

A. Probably it was re-written six or eight times.

Q. Then the original bill as brought by you from Fort Worth was changed here after we got into conference, wasn't it?

A. Absolutely.

Q. During all that time, Mr. Hardwicke, in order that I might keep myself in the clear, on this thing, so far as the record is concerned,—during all the time I talked to you and Mr. Landreth, and Mr. Flynn, and those other gentlemen, did you ever see me in conversation with Mr. Baker, or anybody else of the Standard Oil Company about this bill. Were they ever in this conference?

A. I don't remember seeing you talk with or in conversation with them—I don't remember seeing them.

Q. Well, they were not in the conference down here, were they?

A. As I say, I think Mr. Baker was in Fort Worth, at least part of one day. I might make this further explanation, that Mr. Baker, attorney for the Humble Oil Company, was up there for the Humble Pipe Line Company, he is thoroughly familiar with those laws in respect to these orders and conservation generally, usually I would like to confer with him. I have seen him a half dozen times since that visit.

Questions by Mr. Hardy:

Q. He is an excellent man and a fine gentleman?

A. Yes, sir.

Questions by Mr. Farmer:

Q. Mr. Hardwicke, you are in favor of proration, aren't you?

A. Yes, sir.

Q. How are you going to cure that decision just rendered in the State?

A. That is a very particular question, that is up to the Attorney General.

Q. You say it is up to the Attorney General to draw a law to cure that?

A. Yes, sir, it is up to him to decide whether to appeal it or not.

Q. Well, suppose he doesn't appeal it, how are you going to cure the situation of big production?

A. I would put it this way, I think the court misunderstood the facts, which were found, and when the facts are shown, your law is wholly immaterial as set forth in that opinion. If you want us to assume that the finding of facts of that court is correct, I would like to say my opinion on the matter.

Q. Mr. Hardwicke, has the Supreme Court of the United States ever upheld any decision by the State court that oil or its refined products are affected by the public necessities?

A. Only to this extent, oil and gas are natural resources, which give the State the right by the exercise of police power to prevent their waste, if that constitutes a menace to the public interest, and I can make a good argument that it does, it is a menace to the public interest. The direct question, though, has not been decided.

Q. Mr. Hardwicke, you can control the price of a commodity by naming a minimum price at which it can be sold and a maximum price at which it can be sold, can you not, in the matter of public utility.

A. If a business were affecting the public interests—and I use that phrase because it is one that is used in the oil business—you may regu-

late that interest or business even to the extent of fixing a price.

Q. Hasn't the Supreme Court of the United States already ruled on a case that went from Tennessee that you cannot set a price on gasoline, that it is not affected by public interest, as ordinary commodity, like meat and bread, and other things?

A. Yes, sir, but in the Williams' case against the Standard Oil, the Supreme Court held that the retail sale of gasoline was not of itself affecting the public interest, and therefore the court could not set a price.

Q. If you cannot set the price directly, can you set it indirectly by limited production?

A. If you are still talking about gasoline, yes sir.

Q. You think then proration would be a method or a nice scheme to set the price of oil at a higher price, do you not?

A. No, sir.

Q. Well, I say, how do you explain it if it is not setting the price?

A. I am going to make the effort now. A State has control by police power over its natural resources, which include oil and gas. The State may issue an order for the conservation of oil and gas, and certainly for the prevention of physical waste of those products. If the State, in controlling the production of oil and gas, prevents waste, with the law regulating it, I think it has incidentally the—an effect upon the price. To put the matter in another form—that has been argued on this floor—if you stop drilling wells in Texas from which gas was escaping and not being used, you would automatically reduce the production, it is conceivable that production would go down to a few hundred thousand barrels a day. And if that course were taken—

(The testimony of the witness was at this point interrupted by the Chairman inquiring as to the materiality of the testimony.)

Mr. Hardy: Mr. Chairman, the gentleman says he has just three more questions.

The Chairman: The Chair hears no objection and it is so ordered—

A. Shall I finish the answer, please?

Q. Don't be too long.

A. You want an explanation, I don't know how to make it any other way. If a law was passed regulating the production of oil in this State, and keeping it down to a limited production, when you do that the price of oil in this State would probably go to $1.50 or $2.00, and would affect the price, at the same time conserving your gas, therefore, by regulating the physical waste, you have had some effect on price; you don't consider it to fix the price, but it just naturally happens.

Q. Now, Mr. Hardwicke, you couldn't cut a man off by proration injunction if he is entitled to it, could you?

A. No, sir.

Q. Mr. Hardwicke, are the people of the State of Texas responsible for the bad contracts the Committee made in their leases whereby they neglected to provide for the keeping of their oil in storage until they could get a good price for it?

A. I don't know anything about any relationship which provides for keeeping oil in storage.

Q. Then this last question, Mr. Hardwicke: Can't the people of Eastern Texas, who own these lands, who have leased these lands to the major companies and independents, can they by agreement revise their contracts and keep that oil in storage there in the ground in Eastern Texas?

A. They may revise their contracts as they please—but—

Q. And it is not fair to the rest of the people of Texas who produce no oil to advance the price of oil, for them, when they can provide for the charity themselves, is it?

A. I don't know how to pass on that question.

Q. Thank you sir.

Witness excused.

Mr. Hardy: I would like to call Mr. Landreth at this time.

Thereupon: E. A. Landreth was called as a witness, and having been duly sworn, testified as follows:

Questions by Mr. Hardy.

Q. Please state to the Committee your name, occupation and residence, Mr. Landreth.

A. E. A. Landreth, Fort Worth, Texas. I am an independent oil operator.

Q. How long have you been in the oil business, Mr. Landreth?

A. Twelve years.

Q. Has most of that time been confined to Texas?

A. All of my oil experience has been in Texas.

Q. Mr. Landreth, are you familiar with the conditions in East Texas in the oil situation?

A. I am fairly familiar, with them, Mr. Hardy.

Q. Are you familiar with the proration in the Yates pool and in West Texas?

A. I am very fairly familiar with it.

Q. Are you a member of the Central Proration Board?

A. I am not a member. I am Chairman of West Texas, under the Central Proration Committee.

Q. By that you mean—what? You are a member of the Advisory Committee of West Texas?

A. No, I am working under the Central Proration Committee, as Chairman of West Texas.

Q. Are you familiar, or were you familiar with the Howsley Bill, or any bill now before the Legislature?

A. Very familiar with that bill, yes, sir.

Q. Do you have any statement you would like to make at this time?

A. Yes, I would like to make this statement, Mr. Hardy:

Q. I wish you would use about twenty minutes of your time, Mr. Landreth, and leave a little bit for questions.

A. My experience as an independent oil operator began twelve years ago, in Breckenridge, Texas, and several wells were drilled by my company in that field, and we went from that field, drilling several hundred wells, until I entered West Texas, four years ago. The first field that I entered in that area was Crane county, and at that time a flush field came in, making several hundred thousand barrels a day, and pipe line companies were unable to take our production. We were forced to build large amounts of storage to take care of this oil, and by then there was an offset on one side by the Gulf Production Company that forced us to drill unnecessary wells, and inasmuch as we were only a few independent companies in that field, we could not secure an outlet for our production; we were forced to build storage. The Gulf Production Company had made the statement, through the president this afternoon on the stand in the Senate, he made the statement that they never drilled unnecessary wells. I want to make this statement, that overnight they moved in four rigs against our small company, and in less than eight months had forty-eight wells offsetting us, trying to drain our property; and in this situation we were forced to go into a large storage campaign. From that field we went into the Winkler county pool. We made arrangements at that time with the Southern Pool Company, which is a subsidiary of the Standard Oil Company, to run our oil. After we had brought in one or two wells, they advised me that due to their having large production of their own, they were sorry but they couldn't handle our oil, that again forced us to go into large storage campaigns. I had to build a pipe line to the railroad tracks to dispose of our crude oil.

At that time, proration began in West Texas. The Yates pool had voluntarily gone into proration a few months prior to this, and our company was one of the first to take the lead in orderly drilling, wide spacing of wells, and an orderly program of producing oil in that area. Proration meetings were held and after so long a time an order was issued by the Railroad Commission. They waited, though, until we had built up a production of 350,000 barrels a day before proration was placed into effect. We had three or four individuals in that field that fought proration, and it was due to those individuals that, in my estimation, caused a waste of over 200,000,000 barrels of oil in the Winkler County pool. That field today, gentlemen, is producing twenty-five barrels of water to every barrel of oil, due to the coming of wells, brought about by wide open production. In other words, the gas pressures were not controlled, the gas was blown wildly into the air and it drew water into the wells, and at this time that field has lost at least 200,000,000 barrels of its production that it should have gotten if it had been orderly developed and regulated properly.

Since that time, our company has gone into three other different pools in West Texas. The Ector County pool was brought in over fifteen months ago, and we immediately entered into an orderly drilling program and proration plan. The Railroad Commission entered an order in

that field, and today it is one of the best regulated fields in West Texas.

Mr. Hardy: What pool was that, Mr. Landreth?

A. The Penn Pool in Ector County. We have also, properties in Lee County, New Mexico, that is under an orderly drilling program and is being prorated through the laws of New Mexico, and we were able to drill one well only to the forty acres, and that is very economical operation and very sane operation, and we feel that one well will get the oil from a forty-acre tract that Oklahoma City, the same type pool only deeper, is drilling four wells to the forty-acre tract, and my experience in the oil business, gentlemen, absolutely has made me a firm believer in proration. In other words, I contend this: That proration has many advantages. First, it is the regulation of many oil fields. It is primarily for the purpose of conserving both oil and gas. Under our fields in West Texas that are now under proration, I can see right now from my past experience, that my ultimate production will be at least twice what it has been in the past, and my operating expense will be from one-third to one-half what it has cost to lift a barrel of oil, and the life of the field, gentlemen, will be from four to five times longer. In other words, the average life of an ordinary flowing field is about one year, and I believe that the Ector pool and the Hobbs pool in Lee County, New Mexico, will flow from five to ten years under its natural gas pressure.

You will conserve your gas, which is your energy which brings the oil to the surface and will give you an ultimate recovery, as I stated before, approximately double what you would get under the competitive drilling and dog-eat-dog basis. Gentlemen, I would like to make this further statement:

That East Texas has built up their daily production to approximately 600,000 barrels at this time. The consumption in Texas has been allotted on the basis of 880,000 barrels a day. It means this—that if East Texas continues its present unorderly development program, it will absorb the entire market that has been allotted to the State of Texas, and it will mean this—that many wells in North and West Texas, and other parts of Texas, will have to be abandoned, and that is very serious. In other words, I know this: In Stephens County, the county I originated in my oil activities, one major company has pulled all their wells but three; they have abandoned over 100 wells, due to the fact that the production has gotten so low that under these prices they can not continue to operate, and in six months, I predict that twenty-five per cent of the wells in the Wichita Falls district will be plugged and abandoned. There are wells being plugged now in Crane-Upton, and abandoned. The price we have been under in West Texas is ten cents recently, and we have had a raise in price to twenty-five cents, but your costs in that country, gentlemen, are much greater than that. That would take up the lifting cost only, let alone interest on the investment, and depreciation and so on.

I feel something must be done to protect the individual, and when I say that, I am an independent operator and have been and always intend to be and if I can survive in this industry, gentlemen, along with thousands of other independents, you must give them protection in ratable takings in all the fields.

In other words, first of all, your Common Purchaser Pipe Line Bill, which was passed last year and has not been enforced, is protection that we must have, and several other features that must be done at this time which will not only protect the natural resources of this State, which must be done and done quickly to give us the relief we are entitled to.

Examination by Mr. Hardy.

Q. You stated, Mr. Landreth, that in the Ector County pool, the Penn pool, you came to a voluntary agreement, I believe, as to how it should be prorated?

A. That was discussed at that time in several meetings, and then we asked the Railroad Commission to meet with us, and we agreed on a state-wide proration plan.

Q. Did the Railroad Commission enter an order in accordance with your agreement and understanding?

A. No, the Railroad Commission—there was a regular hearing held and the Railroad Commission entered an order on the basis of nominations, and the discussion at the

time was that the field should have been prorated to the extent of about 15,000 barrels, and the Railroad Commission entered an order of 12,000 barrels, and the pipe lines nominated 7000.

Q. Have you found the Railroad Commission to be diligent on its job?

A. I find this; that Mr. Parker of the Railroad Commission has been very efficient and as far as I know has been on the job and been diligent about it.

Q. You have stated that your operating expense was less, considering that you would take out less oil at a time?

A. What was that again?

Q. You have stated that your operating expense would be less under proration, considering the fact that your oil would come out in slower drips and over a longer period of time. In counting that, do you count your overhead and tanks?

A. No, sir.

Q. You mean by operating expenses, only the actual lifting—

A. The actual labor in the field, Mr. Hardy. The slowness that you refer to is that the gas energy is doing the work, instead of pumping.

Q. That is just actual operation expense?

A. Yes, in the field.

Q. Considering the fact under proration you have a lease which will produce 1000 barrels a day, and you are only allowed to produce 250 barrels a day, and considering further your operating expense, your maintenance, employees and so forth, is proration in that way a saving to you and a profit to you?

A. Mr. Hardy, I might answer this question by saying that up until six months ago, our average price of oil last year in West Texas was around 67 cents a barrel—

Q. You mean the lifting cost?

A. No, I say the average price.

Q. The posted price?

A. Yes, 67 cents a barrel on the average, and in West Texas, under the present proration plans, that's been a fair price. We think we are entitled to a dollar or a dollar and a quarter for our production, but 67 cents has taken care of the overhead, lease and other departments.

Q. Under proration, how long have you had that 67 cents price?

A. We have had that 67 cents price, Mr. Hardy, for the past year.

Q. What is the posted price of oil now in the Yates pool, Mr. Landreth?

A. Twenty-five cents a barrel.

Q. What is the posted price in the Winkler pool?

A. All the West Texas pools, it's 25 cents now.

Q. In Wichita Falls also?

A. No, sir; it's of a higher value there, and has a 40 cents rate.

Q. How about the Gulf Coast?

A. The Gulf Coast is higher.

Q. Do you know what it is?

A. No, sir, not offhand.

Q. Is there a shortage of oil in any pool in Texas that you know of now?

A. No, there is no oil shortage now, anywhere.

Q. Is there an overproduction now, except in East Texas?

A. No, East Texas is the only pool, in my estimation, which is not regulated.

Q. Then you attribute to the East Texas pool the decline in the prices of oil through West Texas and North Texas and so on?

A. The present price is absolutely attributable to the East Texas situation.

Q. When you were storing your oil and it was necessary to do so, and later were selling to the Southern Crude, I believe you were offset, you said, by the Gulf?

A. Yes.

Q. To whom was the Gulf running oil then?

A. To their own system.

Q. Were they taking it out of Texas?

A. I don't know. I think they were putting it in their tank farm, at Midland, and shipping to the Gulf Coast.

Q. You believe in ratable takings, Mr. Landreth?

A. Absolutely.

Q. You believe that the fields should not be produced beyond the reasonable market demand?

A. Absolutely.

Q. Do you think both of those principles should be included in any bill passed by the Legislature?

A. Absolutely.

Q. Do you believe it is necessary to have a new Commission?

A. I believe this: That if our present commission is given the powers and they know that there is a law that can be enforced, I believe with efficient engineering department, that they can give us the results we need.

Q. What would you suggest, along the line of an engineering department?

A. That they put an engineer in charge of that department and with technical assistance (or assistants) there, and under the supervision of their present Mr. Parker, I believe we would get some real results.

Q. Do you know of any bill now pending before this Legislature which contains such features?

A. The only bill I am really familiar with, Mr. Hardy, at this time, is the Wagstaff Bill.

Q. Are you an advocate of that bill, Mr. Landreth?

A. I am for the Wagstaff Bill in this respect; that first I believe that the market demand should be added to that bill, reasonable market demand; it was in Paragraph G and it was taken out. And I believe this, as I have stated before, that if there are objections to the other parts of the bill, that it is a very fair bill.

Q. Are you a member of the Texas Emergency Oil Committee?

A. I am.

Q. Did they have a bill prepared and drawn?

A. We had a bill in its rough form, which was brought down as a suggestion at the opening of this session.

Q. Did it contain any provision for a new Commission?

A. No, sir.

Q. Did it have in it Market Demand?

A. It did.

Q. Who is paying the expenses of the Texas Oil Emergency Committee?

A. The Texas Oil Emergency Committee has been formed, Mr. Hardy; we have some seventy members.

Q. Some what?

A. Some seventy members, and that the membership of that organization had a membership fee of $25, and several individuals have made additional contributions.

Q. Has the Central Proration Committee contributed anything at all to that expense?

A. Not to the Texas Oil Emergency Committee.

Q. Have they contributed to your knowledge, in the securing of or passage of any bill?

A. The Texas Oil Emergency Committee was formed about June 8th to 10th, somewhere, and since the 15th of June, no expense, or practically since the inception of the Texas Oil Emergency Committee, nobody has paid those expenses at all outside of the own funds of the Committee.

Q. Are you secretary-treasurer of that Committee?

A. Yes.

Q. Do you have a list of your contributors?

A. I do.

Q. Would you be willing to file that with the Committee?

A. I will be very glad to.

Q. You have that prepared?

A. Yes.

Q. Do you think the umpires or supervisors should be paid by the oil interests of the State, or by the State of Texas?

A. I do not.

Q. You don't what?

A. I don't think they should be paid by the operators of the State of Texas.

Q. There were two questions, in one, Mr. Landreth; I said—paid by the State of Texas or by the operators?

A. I think they should be paid by the State of Texas.

Q. Then you do not believe in this theory that is now being promulgated of letting the operators pay for the umpire and for these advisory committees and so forth?

A. I should like to make this explanation of that, Mr. Hardy; that the Railroad Commission has told us they did not have funds, and that's been the only way we could finance that procedure.

Q. Do you know of any reason why those deputy supervisors can not handle the work of the umpires?

A. Well, I—

Q. What particular qualifications is there of an umpire that is not required of the supervisors?

A. I believe you would have no trouble in obtaining a deputy supervisor that would have the qualifications of handling his supervising work and also taking charge of any prorated field or that was under the order of the Railroad Commission.

Q. You think that could be done?

A. Absolutely.

Q. And you advocate it?

A. Absolutely.

Q. Did your Texas Oil Emergency Committe—someone sent this question up to ask you: Did they pay

the expenses of going about the State and endeavoring to have a Special Session of the Legislature called?

A. What do you mean; did they go about the State?

Q. Did they send out any ambassadors or any agents to work up the spirit of unrest among the independent oil operators or anyone else, and request the Governor to secure or to call a Special Session of the Legislature?

A. Mr. Hardy—Mr. Charles Roeser and Mr. Collett and myself have been the leading spirits of working out some conservation law which would give us some results.

Q. Have you three gentlemen, Mr. Landreth, been interested in having this Special Session of the Legislature called for that purpose?

A. Yes.

Q. You have gone about the State in an effort to do that?

A. Absolutely, Mr. Hardy.

Examination by Mr. Gordon Burns:

Q. Ed. who paid you to come down here and put through the Howsley Bill?

A. Who paid me, Mr. Burns?

Q. Yes.

A. Nobody paid me.

Q. You haven't got a dime for coming down here during the Regular Session, and for carrying on a campaign for a Special Session?

A. No, sir.

Q. Who contributed to the Texas Oil Emergency Committee?

A. Seventy members.

Q. Does the Humble Oil Company contribute anything?

A. No, sir.

Q. Not a dime?

A. No, sir.

Q. Has any other major oil company in Texas contributed to it?

A. No, sir.

Q. Isn't it a fact that before you brought the Howsley Bill down here, you and Hines Baker of the Humble and some others had a conference in Houston?

A. No, sir.

Q. You didn't have that conference in Houston?

A. No, sir.

Q. Did you ever have a conference with Hines Baker about the Howsley Bill?

A. The only time I ever had a conference with Mr. Baker, the Howsley Bill was not named at that time. It was a meeting we had at Mr. Hardwicke's office.

Q. You all were discussing a bill to curb East Texas weren't you?

A. Not only in East Texas, but the State of Texas.

Q. Isn't it a fact that proration will not affect those pumper wells in East Texas, because the Marginal Well Bill will take care of them?

A. Which pumper wells in East Texas?

Q. I mean in West Texas?

A. We need a bill to protect not only West Texas, but the entire State.

Q. Up around Wichita Falls, the average production of each of those wells is two barrels a day, isn't it?

A. No, they are much larger than that.

Q. They aren't over ten barrels a day; that would be the average, wouldn't it?

A. I think that would probably be the average.

Q. They will not be prorated, under any kind of bill will they?

A. They would.

Q. They won't be now though.

A. They will if this overproduction continues.

Q. Did you make the statement that you wanted to curb East Texas, and not let them produce any oil, and that you and your crowd arbitrarily put a limit of 50,000 barrels on East Texas so you could produce oil in West Texas?

A. Mr. Burns, when the 50,000 barrels was suggested for Texas, you had a production there of less than 200,000 barrels a day . . . potential production; that is, all the oil the wells would flow, and my statements were to the effect that if you would give East Texas 50,000 barrels at that time, regulated, you were getting 25 per cent of your production, or 50 per cent more than I was getting in West Texas. I had production of 20,000 barrels of oil a day in West Texas, and I am selling approximately 1600 barrels a day. That's about 8 per cent.

Q. Mr. Nazro testified in the Senate this morning, Ed, that you came to him and wanted either $12,000 or the Central Proration Committee. What were you going to do with all that money?

A. Mr. Burns, I want to read you just two letters, while I explain that. I should have read these letters when

Mr. Landreth turned in the Central Proration Committee's expenses, the embursements and the receipts, and I think it is very important that you should hear these letters. This first letter was written July 23, 1930, over a year ago.

Mr. Beck: Is that a cricular letter?

A. Yes, this is a letter which was sent to one hundred and fifty producers, majors, minors and all, and the reason it is not addressed, is that everybody got copies of it; this is one of the regular letters that was sent out, and came from my files. It is signed E. A. Landreth.

(Here copy letter of above date.)

Q. Just file that other letter with the clerk. Isn't it a fact, Ed, that you sold out your interests to the Humble Oil Company?

A. I want to read this letter; I think it should be read to all of you. This next letter was dated August 26, 1930, and is also signed E. A. Landreth.

(Here copy letter August 26, 1930.)

Now, Mr. Burns, in answer to your question, I want to say that every oil company, major company and indepent company, that you have seen the list that was furnished by Mr. Penn several days ago—in other words, there were some hundred and fifty different contributors to that, and I want to say this: that every company has contributed to this program with the exception of the Gulf Production Company and the Sinclair Oil Company, and those two companies have been against any curtailment plan in the State of Texas. The Gulf Production Company has declined making contributions on the basis that they produce their own oil; they are not in the market to buy anybody's oil, and they are out for all the production they can get, and let the independent take his own chances, whether he gets along or goes under or not.

Q. Ed, have you sold any of your properties to the Humble Oil Company?

A. Yes.

Q. What property did you sell to the Humble Oil Company?

A. I sold them the Hay lease, sold that to the Humble Oil Company eleven years ago.

Q. What did you get for that lease?

A. Twenty-five thousand dollars, and it was five years before they would speak to me again after I sold it to them.

Q. Now Ed, have you anywhere in the State of Texas, or Hobbs, New Mexico, executed a deed of trust to any major oil company for borrowed money?

A. I have never executed a deed of trust to anybody for borrowed money in the oil business.

Q. Did you give any security for any loans that you made from any oil company?

A. I never made any loan from any oil company.

Q. Have you ever gotten any advance royalties?

A. No, sir.

Q. Now, Ed, you had a publicity agent in that Texas Oil Emergency Committee, didn't you?

A. Yes.

Q. And his duty was to drum up interest in this Special Session?

A. His duty was to help us get some needed legislation to stabilize the oil industry of Texas.

Q. You and Mr. Collett and Mr. Roeser objected to the Cranfill Plan in East Texas didn't you?

A. You are wrong about that. I was not over there and neither was Mr. Collett, and Mr. Roeser made a statement at that meeting and told Mr. Cranfill, or Mr. Lucey, that he would go along with them for fifteen days to try it out.

Q. You were not in sympathy with that plan?

A. Because I knew it would not work.

Q. You never had tried it, had you?

A. I knew it wouldn't work, and why it wouldn't work.

Q. Have you any producing wells in East Texas?

A. No, sir.

Q. Has Mr. Roeser?

A. Yes, several of them.

Q. Do you know of anybody over in East Texas that is not being paid their royalties?

A. Yes, there are a great many individuals that are selling oil for five and ten cents a barrel that have been forced to use that money for other operations, and can't pay the royalties.

Q. And the property owners are being defrauded out of their money?

A. Absolutely.

Q. You don't think the Standard Oil Company thinks very much of those little fellows, do they?

A. The oil industry, Mr. Burns, needs them, needs the Standard Companies and major companies.

Q. That's all.

Examination by Mr. McGill:

Q. You are not a lawyer?

A. No, sir.

Q. You stated you had a draft of the bill prepared by this Committee which you represent?

A. Yes.

Q. Which included Paragraph G, basing the production on the market demand?

A. Yes.

Q. Who prepared that bill?

A. We had a legal committee, Mr. Rhodes Baker of Dallas, was the chairman of that committee; Mr. John Kilgore of Wichita Falls, an attorney; Mr. Robert Hardwicke of Fort Worth; Mr. Ike Chapman of San Antonio, and Mr. Beeman Strong of Beaumont, were the legal committee, with ten operators selected from all parts of Texas, East Texas, West Texas, North Texas, and all over the State.

Q. Now in that particular section of that bill, do you know whether or not those lawyers in drafting that and considering it, discussed the possibility of its constitutionality or unconstitutionality and to what extent they investigated that question?

A. I am sure they discussed that very thoroughly, for this reason: That has been the outstanding part of our bill, particularly in the opinion of the producers, for this reason—I would just like to make this illustration: That if you have a market for 800,000 barrels of oil in the State of Texas, and you produce a million barrels as we are now, 200,000 barrels of that must necessarily go into storage; in other words, that is 200,000 barrels more than the market can absorb, and 200,000 of it must go into storage, and on that basis that paragraph was to correct and prevent waste; in other words, any oil you put in storage, there is absolutely physical waste, and I think that in curtailing the production of the State of Texas and stabilizing it, you must do it on the market demand.

Q. Of course, not being a lawyer, I don't want to ask you any legal questions, but that question has been bothering me in all this discussion, and since the Supreme Court of the United States has held that you can not pass any law, directly or indirectly, to regulate prices, as a layman what do you think of that—basing the production on the market demand?

A. Personally, I am like you—I am not a lawyer; I am a practical oil operator.

(Much laughter.)

Q. I am a lawyer.

(More laughter.)

A. I beg your pardon; I thought you said you were not. The statement I made, that is my practical explanation of that. I know this: That you have production in your State more than the demand, all you produce over your market, it would affect your market and that is waste, and we are certainly all interested in the price for our oil.

Q. The point I want to get out of you is that that question was seriously considered by those attorneys, and they decided it was constitutional?

A. Absolutely, and I believe that the best legal minds in the oil fraternity worked on that, and they all believed it would be constitutional.

Q. Do you know whether or not they consulted the Attorney General's office?

A. I don't believe so.

Q. You don't believe they did. That's all.

Examination by Mr. Beck:

Q. Mr. Landreth, as to these small wells that Mr. Burns was asking about awhile ago that you would like to see protected in the face of the production from these very large wells, is it a fact that there are 34,500 wells producing in Texas less than 100 barrels each?

A. Mr. Beck, my understanding is that every well in the State of Texas, the average production on them is only twenty-seven barrels.

Q. Now I have here a table from the Oil Weekly of July 17th; Producing Wells in the United States, is the title of the table, and it says—is that a reliable table?

A. Absolutely. Yes, it is recognized by the industry.

Q. It shows that there are in Texas 34,509 oil wells that produce less than 100 barrels per day. It shows that there are only 1912 wells in the State of Texas that produce more than 100 barrels per day. Would you call those figures correct?

A. I believe so, yes.

Q. It shows further that 66 per cent of all the oil produced in this State is produced from wells yielding less than 100 barrels a day; would you consider that a correct figure?

A. Yes.

Q. Now, in asking—not having an interest in these small wells, the 34,000 wells—you don't own all of them, do you?

A. My interest are in about 300 wells, Mr. Beck.

Q. This table further shows that of those 1912 wells producing more than 100 barrels a day, 915 of them are in the Eastern Texas area?

A. Yes. Mr. Beck I should like to make this further short statement here. As I understand, the average well in the United States today is about seven and a half barrels, and your East Texas field, gentlemen, in the next ten years if it is not regulated now, they will be down to seven and a half barrels and we will have to protect those wells; and that is why it is to the interests of every part of Texas. Just because I don't have any wells over there today, I might have in the future, or in some new pool, and I believe each pool should be protected in Texas, without any discrimination between the pools.

Q. If you get any wells in East Texas, you are willing to abide by strict conservation measures, as well as in West Texas?

A. Absolutely. That is the only intelligent way to produce oil.

Q. That's all.

Mr. Hardy: Kindly state how many were present at the time the Texas Oil Emergency Committee was created?

A. Five hundred independent operators.

Q. That's all.

Mr. Hardy: Are there any other questions of Mr. Landreth. Then I believe that is all, Mr. Landreth; much obliged to you.

(Witness excused.)

Wednesday, July 29, 1931.

Pursuant to adjournment the Committee as a Whole met at 9 o'clock, a. m., Wednesday, July 29, 1931.

Honorable C. V. Terrell, was recalled to the witness stand and further testified as follows:

Questions by Mr. Satterwhite:

Q. Mr. Terrell, we have already had you on the stand once—in fact, I believe we have had you twice, in regard to this investigation. As Chairman of the Railroad Commission, have you been keeping up pretty closely with the testimony that has been put in the records?

A. Part of it—most of it.

Q. The Committee understands that possibly you desire to come back on the stand for the purpose of making a further statement of some nature with reference to your connection with the Railroad Commission and the enforcement of the Conservation Laws as now written in the statute?

A. Yes, sir.

Q. If you have any further statements you would like to make along that line, you may now proceed.

A. Yes, sir, I have. First, I want to thank the Legislature for granting me the privilege of coming back on the stand and making a statement defending the Railroad Commission against the charges made by Mr. Neff, a member or an associate of the Commission, and in doing so, I want to assure the House that I shall try to keep out of politics and I shall endeavor to state facts and deal only in facts. I am not an orator, I am not a gifted speaker, I can not handle the English language as beautifully as probably I would like to; I can not sway this House with my beautiful terms, but I do know facts and I expect to deal with plain facts in this matter. Now, then, I want to state, in addition to that, that I hold no malice against any man; I have long since banished venom and vengeance from my heart; I want to do justice to every man, and especially to my colleagues and associates and on the Raailroad Commission.

The Texas Railroad Commission has been in existence for 40 years, and this is the first time that a member of the Commission has ever, in

the newspapers or in public assembly,—so far as I know, attacked his associates. The past of the Railroad Commission has stood the test of time, and no man has ever assailed the integrity or honor or ability of this State Commission before; and I lament the fact—

(The speaker was interrupted by an objection by Mr. Keller of Dallas, on the point of the testimony not being relevant. The Chair held that the testimony was relevant and requested the witness to proceed with the statement.)

A. (Witness resuming) I don't want to say that that I should not say, but I do want to say that one of the members, Mr. Neff, has made charges against this Commission, the other two members, and against the Department, that I feel like, in justice to my oath, I should have the right to reply to it. If this House feels otherwise about it, I submit to their ruling.

Now, then, I said I lament the fact and regret exceedingly that it has become necessary for me or any of the Commissioners to defend the Railroad Commission of Texas. I really think if the facts were known and the truth were known, that there would be no necessity of anyone defending the Commission. But we have been charged with not having an intelligent gesture to enforce the law. If that is true, gentlemen, you ought to know it; and Mr. Neff says it is true. He says that we are guilty of physical inactivity. Why, that is laziness. He says we are guilty of mental inertia. That is no sense. He says that we desired to work along the lines of least resistance. That is more laziness. Do you think that, as honorable men and officers of the great State of Texas, that those charges should remain on the statute books, and we not be given an apportunity to say something about it? I want to say this, that for the past two years, I have only taken about eight or nine days vacation. When not engaged in hearings away from Austin, I have been in my office at work, receiving the humblest citizens as they come, and giving him the hearing that I should give him, and I care not where he is from, my doors are open, unless I might be engaged in private consultation, trying to discharge the duties of my office, administer the duties of office, not behind closed doors, but all people are permitted to come into my office. Now, gentlemen, how well we have discharged our duties, that is for the public to determine. As to how much sense I have, that is for you. He says that if another commission is created, Mr. Neff says that if another commission is created, there wants to be three men on that commission—meaning that in the present commission there is only one—and that is he. Now, I am not going to brag on myself, because you all know that self-praise is part scandal, I believe it goes, and whenever you find a man with a placard on his back, stating that he is honest, that he is wise,—that fellow had better be watched.

Now, my friends, I want to get down to the subject. He says we have not made an intelligent gesture for enforcing oil and gas ratio law. If he or any other man can point to any law giving the Railroad Commission, or any other body in Texas, the power or the right to fix a ratio between oil and gas, I would like for him to show it. Two years ago, during Governor Moody's administration, we thought that the oil and gas ratio on Texas should be controlled.

Mr. Tarwater: If it is in order, I make this motion, because I doubt the wisdom and advisability of this House, now engaged in an investigation of the oil industry, going into the facts of the service of the Railroad Commission, and I move that this line of testimony be discontinued.

Mr. Davis, of Brown County, moved to table the motion of Mr. Tarwater, of Hale, which motion was carried by the vote of the House.

(Witness resumes testimony):

A. Two years ago, during Governor Moody's administration, Chairman Gillmore, Commissioner Smith, Mr. Parker, and myself, prepared a bill and presented it to the Legislature. It was introduced. The Committee met in the committee room and discussed it for five days, and after having discussed the question of gas ratio, the oil operators came and objected to it, almost unanimously, and the Legislature struck the clause out of the bill before they passed it. Now, then, the Legisla-

ture thought that we didn't have any law on that question, the Attorney General has ruled that we didn't have any law upon that question, and it is generally known by all men, both lawyers and operators in Texas, that we have no law, any law to give us the power to control the gas and oil ratio in Texas. Now, then, Mr. Neff charges that we have not made an intelligent gesture in enforcing the ratable taking law, and the common purchaser's law. I will state for your information that in that very order we have introduced and passed bearing on proration in Texas in every field, is a provision providing for ratable takings, and enforcement of the Common Purchasers' Act. I want to read to you briefly in an order executed by the Texas Railroad Commission on August 15, 1930, in the Van Field, which has this provision in it, and I want you to listen to it:

"Rule 4. It is recognized that pipe lines affiliated with purchasers of oil in said field, where more or more of said pipe lines serving the field are not connected with wells or units or fractional units in said field, and that it would be very expensive and would occasion serious inconvenience both to the producers, and to the purchasers, for each purchaser to be required to make pipe line connections with all wells and units and fractional units in the field, and to take oil ratably from each producer or the units in the field belonging to each purchaser. In order to occasion the least possible inconvenience and expense, the umpire provided for under Rule 8, hereof, shall confer with the purchasers and producers of oil in said field, and with the advisory committee, if any constituted, as provided under Rule 8, hereof, and shall determine the leases or units, or fractional units to be served by the producers or purchasers, so as to give to each its ratable share in market outlets from the field, as provided under Rule 3, and to supply each purchaser with the amount of its nominations during each proration period hereunder. Such determination by the umpire shall be subject to approval and change by the Commission."

Now, that is an order issued by the Railroad Commission of Texas. Is that an intelligent gesture. That order, made in August, was signed, Pat M. Neff, Chairman; C. V. Terrell, Lon A. Smith, Commissioners.

I can read to you from practically every order issued, bearing out the same testimony and the same conditions in regard to limitations and to the enforcement of the Common Purchaser Act. You remember, gentlemen, that when the Common Purchaser Act was enacted, the Legislature gave us ample funds to employ men to put that law into full force and effect, but the Governor saw fit to veto all the appropriations in regard to it. Now, then, here is an order issued December 13, 1930. This order was issued, signed by C. V. Terrell, Commissioner, and Lon A. Smith, Commissioner:

"Notice is further given to such common carriers of crude oil by pipe lines that for the purpose of facilitating the carrying out of such order and the enforcement of the Act of the Legislature effective June 19, 1930, known as Senate Bill No. 800, and the establishment of the ratable takings of oil by purchasers from different properties within any given oil field or district in the State of Texas, the Commission will expect and especially direct such common carrier pipe lines to refuse to accept tenders of crude oil for transportation in excess of the allowable production of crude oil allotted according to schedule of allowable production fixed by the umpire in each field or district. Failure to comply with the directions hereby given shall be deemed waste as prohibited by Article 6015 of the Revised Statutes of 1925."

I want to read you another one, here is an order issued November 24, 1930, and this is the last one on that line I shall read:

"It further appearing that it is essential to the prevention of waste and the conservation of oil and gas in particular fields in this State, that restriction upon production should be uniformly applied within the various fields and that the production and consequent outlet to market should be upon a fair and rateable basis, and that the purchase of oil by any purchasers taking oil from particular fields or districts, should be upon a fair and rateable basis, and that necessary arrangements should be made by purchasers and transporters of oil. Working in co-operation with the Railroad Commssion of Texas, and its

agents and employes and the various advisory committee or the executive committees of such advisory committees, created in the several fields or districts, with a view to securing such fair and equitable takings."

"Section 5. Common carrier pipe lines are especially authorized and empowered to make such sales lines and facilities in equipment for oil that may be necessary for the carrying out of the provisions of this order, and of accommodating the proportionate taking of oil from the various properties within any given field. In this connection, the Railroad Commission fully recognizes its powers and duties even under the Acts of the Legislature of June 15, 1930, and for the purpose of facilitating the carrying out of this order and the enforcement of said Act and secure rateable takings by purchasers."

That order was signed by Pat M. Neff, Chairman, C. V. Terrell, Lon A. Smith, Commissioners. The order is signed by Mr. Neff as Chairman of the Railroad Commission. These are matters of record. His signature stands upon all of them. "The moving finger writes, and having writ, moves on, and all your piety and wit, cannot change a line of it."

The statement was made that we have not made an intelligent gesture for enforcement of that law, and those laws. I am not going to say that Mr. Neff was malicious in it, because I don't think he was—I am going to be charitable towards him—that he just must have forgotten.

Now then, there is another thing I want to discuss briefly, and only briefly, which is in regard to the umpire. When the first order was made at the Winkler field, putting on proration, Clarence E. Gilmore, was Chairman of the Texas Railroad Commission. We heard the testimony and entered the order. Under that order, we called to the attention of the operators who were urging the passage of the order, the enactment of the order, we told them we had no money to enforce the law, that the Legislature had not provided us with funds sufficient to do so. The operators stated that they would pay the umpire. I objected to that; I do not believe that it is good public policy, I so stated to Mr. Neff, and told him about it, and I am the first one that raised the question in regard to that; I raised it before the Commission when Clarence Gilmore was Chairman; but it meant that if we did not permit the operators to pay these umpires, we would have no proration, and the result would be as we thought, and as the testimony showed, waste in those oil fields, and at last we decided, in order to secure the proration of the production of oil in Texas, that would some day—or might some day be so precious to the people of Texas, that we would sign the orders and permit the operators to pay for the umpires. Now, then, I want to call your attention and I believe I will file it in the records, if you will permit me, to an item, to an article addressed to the Governor of Texas. We wanted to address the Legislature, and inasmuch as we had no power to address the Legislature on any subject, we felt like it was our duty to call the attention of the Governor to the condition, and we called his attention to the fact that if the umpires were paid by the operators, and we did not think that it was good public policy, and we asked to have the Legislature make an appropriation, so that these umpires could be paid by the people instead of by the operators; and I will file this, if you will permit me, in the records. At that time there was a publication in the newspapers that the Railroad Commission, C. V. Terrell and Lon A. Smith, signed a communication to the Governor, pointing out that while a pipe line law was enacted a year ago, no appropriation was made for the Commission to enforce it; and the umpire on proration is paid now by funds raised by subscription from all operators in fields, and asking the proper appropriation to be made. Several Representatives and Senators, who were my friends, I called their attention to this fact, and some of them agreed to correct it and have an appropriation made. We prepared a bill at their instance, and when it was delivered to them, it happened to have the word "proration" in it, and they refused to introduce it. So that I still object, I do not think it is good sound public policy for the umpires to be paid by the oil operators of Texas, the men that they control and regulate.

But that question has been decided in the District Court in the Danciger case, and the District Judge that tried it ruled that it was sound public policy. That case is pending in the Civil Court of Appeals, and you will have to wait until the Supreme Court

of Texas passes upon that question. I think that the policy pursued in the Game, Fish and Oyster Department, and a number of other departments relate to sound public policy.

Now, then, let's see, Mr. Neff, as Chairman of the Texas Railroad Commission, and I will go back, Mr. Neff went on the stand and testified that he objected to this policy, and that he opposed the appointing of these umpires, and took Mr. Ray Richmond to task because he had once worked for the Humble Oil Company. Now, I have no grief for Mr. Richmond; I think he is a good man. A man to be qualified as an umpire, must have worked for somebody, and if he is honest, he could have worked for the Gulf, or the Humble or any major company, or any independent company, and still made a good umpire. I have inquired in regard to Mr. Richmond. He was raised and lived at Corsicana, and I understand he is a man of the highest type of character and integrity, and ability. But, if he is such a bad man, and if these umpires are all bad, how came them to be appointed? Who did it? The order of August 26, 1930, No. 112. Order appointing umpire for Crane-Upton field. In accordance with Rule 6, of the Rules and Regulations of this State, adopted to cover proration in the Crane-Upton field, Mr. R. N. Richmond is hereby appointed umpire. Signed, Pat M. Neff, Chairman, C. V. Terrell, Lon A. Smith, Commissioners. It seems that Mr. Neff, as Chairman, made the order, and induced us by his signature and good judgment—and great judgment, to follow him, and we signed the order. If we are responsible for the appointment of Mr. Richmond, isn't he much more responsible, because he signed the order first? Let us go a little further—and I file with you a copy of that order that was made, to go into the records to keep your records straight. August 26—here is another order, I will not read it—appointing W. H. Dyer, of Graham, Texas, umpire, signed Pat M. Neff, Chairman, C. V. Terrell, Commissioners; Lon A. Smith didn't sign the order. Now, I think that Lon is entitled to a—well, I will not say, but he didn't sign that order, and I file with you a copy of that order, so you may know who appointed that umpire. September 22, 1930, J. D. Moncrief, was appointed umpire of the Bee county pool. The order is signed, Pat M. Neff, Chairman, C. V. Terrell, Lon A. Smith, Commissioners. I file with you a copy of that order, that the record may show who appointed these umpires and who is responsible for them. July 18, 1930, H. H. Fitzpatrick was appointed umpire by the Railroad Commission, and the order is signed, Pat M. Neff, Chairman, C. V. Terrell, Lon A. Smith, Commissioners. I desire to file that copy for your future reference. The order of September 3, A. D. Capers, was appointed umpire. The order was signed by Pat M. Neff, Chairman, and Lon A. Smith, Commissioners. I didn't sign it; I would have signed it had I not been away on other duties pertinent to the State. I filed that order with you, that you may know who appointed these umpires. The order of September 1, the Van field, R. E. Andrews was appointed umpire, Pat M. Neff, Chairman, C. V. Terrell, Commissioners, appointed him. I filed that with you. There is one more, and that is the appointment of H. J. Cochran, signed by Pat M. Neff, C. V. Terrell, Lon A. Smith did not sign it. I file that with you, so that you may know who it was that appointed these men umpires.

Now, gentlemen, I feel like, as a Commissioner, and as Chairman, that I am accountable to the people of Texas and you, for the discharge of the duties of my office. Mr. Neff was elected Chairman of the Railroad Commission during the unexpired term of Chairman Gilmore, after his death. He held the office for about a year and six months, when I have only held it six months. If the Commission has been derelict in duties, he ought to be responsible for two-thirds of it, because he held the office three times as long as I did as Chairman. But we are all responsible for the discharge of the duties of this office. I challenge this statement, and I make this statement, that no order has ever been made, prepared and presented by Mr. Neff to this Commission, over his signature, that looked to the enforcement of the conservation of oil and gas, that we haven't signed; and if we haven't discharged our duty, he is, as one of the members of the Commission, as responsible as either of the others.

Now, my friends, I have not time nor the opportunity to indulge on your patience. I thank you for your courtesy in extending me the opportunity to say these words, and I want to say this, that the Texas Commission has

been operated for six years and a half, since I have been on the Commission, we have had many intricate and difficult problems to solve; during that time we have tried, in all the cases, more than 11,000 cases, and issued that many orders. Anyone who is dissatisfied with the orders that we have issued has the right, and it is his duty, to appeal to the courts of the country. Many have appealed, but of all those that have appealed, only two reversals by the high courts have been made against our decision—one of those was the gas case that was heard in Fort Worth, Mr. Beck. They affirmed 80 per cent of that opinion, and reversed 20 per cent of it, so as a matter of fact, it was really affirmed instead of being reversed. The other case is the Red River rate case, that they reversed, and it happened to be my good fortune, probably, that the case was tried before I came on the Commission. Dr. Strawn, and Mr. Neff tried the case. The Supreme Court of Texas reversed the case—and I don't believe that opinion would hold me responsible for that.

Now, I don't claim the credit for all this. As Chairman, Clarence Gilmore was one of the hardest workers, one of the ablest Railroad Commissioners the State of Texas has ever had; he worked day and night, serving the people of Texas, and sacrificed all of his life for the people of Texas, and his memory should be held sacred and we should revere it as long as time shall last.

There is Commissioner Smith, who has worked day and night discharging his duties, and I want to say this in his behalf, he has never flinched when the discharge of duty came to him, and to show you that I think he is all right, and the people of Texas think he is all right, when they attempted to beat him four years ago, he carried every county in Texas. My friends, the Commission is not entitled to all the praise for this. There is Mr. Parker, head of the Oil and Gas Division, who has been in a matter of distress because of Mr. Neff's attitude. He has been another member of the Commission, as far as oil and gas is concerned. And then again there is Mr. Marshall, who has helped us with trucks and buses. There is Mr. Leslie McKay, and Mr. Ed Dougherty, in the oil and gas division; there is Cliff Stone. Judge Stone assisted us in the case at Fort Worth, and ably assisted us and helped us. And there is Hudnall, who has been on the Commission thirty-six years, was there as stenographer, too, and has rendered us perfect help.

Gentlemen, I am going to conclude, and the only way that you can judge of a commission, and the—of a Railroad Commission—is by their acts; the only way that you can judge of a hunter is by the coon skins that he has tacked up on his barn. I have endeavored to work for the people of Texas that I love so well. I have no animosity, as I said, in my heart. I leave the people of Texas to judge who is right and who is wrong, and I will say this, in conclusion: That, as I said, I don't claim all of the glory, and honor, for the work done by the Commission, but it is charged by some that we ought to have a new Commission because we are not functioning right. Who is responsible for that? Five times two of the members have been assailed in the newspapers, and we have not resented it. I do not resent the charges made by Mr. Neff now, and I am not going to attempt to answer the abusive language that he used. But I feel that Texas, the members of this House and the Senate of Texas, as patriotic citizens, ought to give justice and due credit to those who have handled the Commission and who have worked hard there for six years, since I went into office, too hard, for any man to point to one order or one word that we have enacted that has been wrong. But, my friends, we make mistakes. Did you ever see a man that didn't? If he doesn't he is perfect. I am willing to be judged from the records, and I will say this in conclusion; that while I don't claim the credit, as I said, these other men are entitled to credit, the same as I; and it is not the captain of the vessel that drives it across the sea, but the captain is entitled to just praise if he makes the best of her tremendous power, if he reads right the currents of the wind and the lessons of the stars.

Mr. Graves: Mr. Terrell, I will ask you some questions and I will endeavor not to show partisanship, for I honor you, but I will ask some questions that will endeavor to bring out before the House as nearly as I can any shortcomings, not only in the law, but in your actions, if I think there are such, and I want you to understand that it is without any partisanship, because you know yourself as I say I respect you.

A. Yes, sir.

Q. Now, in the beginning, what have you done relative to the stoppage of the waste of natural gas in Texas?

A. What have we done?

Q. Yes, sir. How many orders have you promulgated under Article 6014 that gives you that power?

A. We issued one order in the Reagan county gas field; that is about all that I know of that we have done.

Q. Why did you issue that order?

A. We issued that order with the view of trying to stop the waste of gas in that field.

Q. In order to be fair to the Reagan county people, the record shows at that time that they were using 11,000 cubic feet to lift a barrel of oil. At the present time they have killed four of those quarter-million dollar wells and they are using an average of 3300 feet to lift a barrel of oil and they have therefore saved about 7700 cubic feet with every barrel of oil?

A. Yes, sir.

Q. Why haven't you done that in other fields in Texas?

A. The other fields? We had a waste of gas, I believe it was, in the Pettus field. Commissioner Smith and, I believe Mr. McKay, went down there and held a hearing and we made some kind of an order, but I don't remember just exactly what it was, curtailing the waste of gas in that field. In the Pampa field or in the Panhandle field there was a more excessive waste of gas than any field in Texas. We called the attention of Attorney General Bobbitt, I believe it was or Pollard, I forget which, to that waste of gas, and the Attorney General and his Assistant, Dewie Lawrence, with our Deputy Oil & Gas Supervisors, went up there to make an investigation and try to stop that waste. While we were up there the Diehl Company case was filed in the District Court, or immediately after they returned and before anything could be done, and by an agreement made with the attorneys the Diehl people by the Attorney General, we were enjoined on about a dozen other wells up there from interfering with the production of oil in that field—gas in that field. That case was filed December 10th, I believe, 1930, and is still on the docket and yet has not been tried.

Q. Have you asked and requested that that case be disposed of so that you could proceed with the powers?

A. Yes, sir, we have asked that several times.

Q. You heard Governor Neff make the statement relative to a well that had been running wide open with gas for two years trying to blow itself in with oil in the Panhandle district; that was true, wasn't it?

A. No, sir, I didn't hear him make the statement.

Q. Was that true?

A. I wasn't here when he testified.

Q. Is that true?

A. No, I don't know whether it is true or not.

Q. Do you keep yourself informed relative to the gas wastage of Texas?

A. Yes, sir, I try to.

Q. Is it or is it not a fact that the casinghead gas is being utilized in the Panhandle district and that the residue of the gas is being wasted and burned into the air now?

A. I understand it is and those are the cases that we attempted to have the Attorney General to stop.

Q. Well, since you were enjoined, then, in 1930, you haven't made any effort to stop that; is that right?

A. No, we have, we have called the attention of the Attorney General to the waste of gas there and asked that something be done; in some way the case has been postponed and nothing can be done until that case is decided; we are enjoined from acting in it.

Q. Have you passed any order relative to wastage of gas in the East Texas field?

A. No, sir, I don't think there is any unnecessary or unusual waste of gas in the East Texas field; I think the testimony will show that.

Q. That is your judgment now, is it?

A. Yes, sir.

Q. You make that statement now?

A. It is less than 300 cubic feet to the barrel of oil; the testimony of the experts in the trial of several of our proration cases was that 5000 cubic feet of gas was not too much for a barrel of oil.

Q. Well, that might be true, not too much to lift a barrel of oil, but would you throw that 5000 cubic feet away?

A. They said it wasn't waste.

Q. After it has raised the oil then that 5000 cubic feet has a commercial

value, has it not? Has it not a fair commercial value at least? Would you throw that away?

A. No, I wouldn't throw that away, but that was the testimony of the experts; I am just telling you the testimony.

Q. That may be true, but still I am getting down to the proposition; here is the statute relative to that matter: "Waste shall include escape of natural gas in commercial quantities into the open air from a stratum recognized as a natural gas stratum."

A. Yes, sir.

Q. That would be in natural gas waste. "But this is not intended to have application to gas pockets in high points in strata recognized as oil strata; drowning with water of a gas stratum capable of producing gas in commercail quantities." That has been so all over Texas in every field, has it not, as the age of the field increases, the gas drowns out?

A. The question, as I understand it, is whether it is a gas or an oil well; if it is producing oil under Article 6008, we cannot interfere with production of the gas, and the Attorney General has so ruled.

Q. Then under Article 6014 it says: "The permitting of any natural gas well to wastefully burn." Now, I don't know how you can do it, but here is the law that tells you you can do it.

A. Well, the Attorney General has given us a ruling on it.

Q. When did he do that?

A. I can get that for you; I haven't got it with me.

Q. That you have no right to stop these enormous flambeau lights that are burning throughout Texas now? The Attorney General has so ruled?

A. The burning of oil in flambeaus is for the purpose of keeping down fire.

Q. I know it is for the purpose of burning up the gas, isn't it?

A. And getting it out of the air, to keep it from settling in the earth and catching fire and burning people and destroying fields.

Q. All right. Section F of the same law: "Burning flambeau lights except when casinghead gas is used in same," is waste; the law says if you burn a flambeau light except with casinghead gas—

A. (Interrupting) In answering that question I will just ask what can be done with it?

Q. Well, I am asking you, that is your business, I think.

A. Well, I say nothing can be done with it and that the testimony of the witnesses on the stand here has shown that conclusively.

Q. Well, then, I will suggest a little. Don't you think then that that gas could be utilized for the purpose of illumination throughout the State of Texas and if a man hasn't connection with it, let him make the connection?

A. That could be done, if it could be done economically, but the operators and oil men tell me and I think they have so testified, I don't remember who it was, that that could not be done in East Texas; that the gas in East Texas is less than 300 cubic feet to the barrel of oil. The rock pressure is something like 280, I believe it is, whatever it is. Now, then, that gas before it can be placed in a pipe line to be used for industries and for the homes of Texas must go through a compression plant; first, the gasolene must be extracted from it, and then it must be placed in a compression plant and put into the gas pipe lines at something like a 400-pound pressure. I am informed by those who I have confidence in and those who know that it will cost in the neighborhood of 4 or 6 cents a thousand cubic feet to have it compressed and placed into the pipe lines. That being true, they are unable to sell gas at the pipe lines for more than 3 or 4 cents, therefore they can not do it as an economic proposition.

Q. Now, I was starting out, I wasn't talking about East Texas gas; I was talking about Texas gas, anywhere in Texas.

A. Well, you asked me—

Q. (Interrupting) East Texas has a low gas pressure?

A. Yes, sir, very low.

Q. North Texas has an enormously high gas pressure?

A. Yes, sir.

Q. West Texas has an enormously high gas pressure?

A. Yes, sir.

Q. And you have remedied the situation in Reagan County by an active cooperation upon the part of the Reagan County people by putting that gas then back into the strata of oil and re-enervating the stratum, have you not?

A. In the Reagan County Feld?

Q. Yes, sir.

A. That we have done that?

Q. Yes, sir, you just said you entered an order to that effect and I read you about where they had done that.

A. Why, no, I don't know that we had done it.

Q. Don't you know that you entered an order demanding that the Reagan County do that and don't you know that they did kill a million dollars worth of wells?

A. I know this: We have shut in four wells.

Q. Killed them?

A. Yes, shut them in and killed them.

Q. Yes.

A. Probably forever.

Q. Yes, and that they used tubing to try at first—

A. Yes.

Q. Take tubing and put the gas down into the pockets in which it came and that wasn't satisfactory, so eventually they killed four wells and drilled the other wells deeper and that cut it out?

A. If I recollect our order, I haven't seen it since it was issued, we ordered them to tube those wells and reduce the waste of gas or to kill them. They have killed four of them. They have tubed several of them. They sent to Pennsylvania and bought the tubing and shipped it from there to California and had it properly capped or properly made and then shipped it back to the Reagan Field to re-tube those wells.

Q. Yes, that is what I was talking about a while ago.

A. Yes, I didn't understand, and that the re-pressure of the gas in the wells, as I understand it, proved a failure; that is the reason I said it had not been done.

Q. Well, all right.

A. Had not been done successfully, I will put it that way.

Q. Well, you mean successfully?

A. Yes, sir.

Q. Instead of that it has not been done?

A. Yes.

Q. Now, why didn't you do that in other fields in Texas?

A. As I said, the other fields, we have handled the Pettus Field all right, so far as I know.

Q. Well, take the Panhandle Field.

A. The Panhandle Field, as I said, when we attempted to do that they brought this Diehl case and enjoined us and under an agreement—now listen to this—under an agreement with the Attorney General's Department I understand there are 10 or 12 other wells there that are going to abide by the result of this suit and we expect this suit to be tried and decide the question as to whether or not we have the power to close them in or the power to curb that waste of gas.

Q. You haven't made any effort, then, since that agreement in 1930 to stop any gas wastage in Texas; is that right?

A. Haven't done what?

Q. Haven't made any effort since the 1930 agreement by the Attorney General binding you, you have made no effort to stop the gas wastage in Texas until that matter is settled?

A. Yes, I have discussed the matter with the Assistant Attorney General, Mr. Upchurch, and called his attention to it and we have written; my recollection is that we called their attention to it by letter trying to get a decision on this case so that we could have the power to prevent the waste of gas.

Q. I didn't hear that last.

A. So that we would have the power, I say—to get this case decided as quickly as possible so that we would know whether we had the power to prevent the waste of gas or not. I don't believe that we have got any power to control the waste of gas in an oil well under the law and the lawyers of Texas don't believe that we have any power.

Q. The article that I was examining you relative to was amended in 1929 to allow the privilege of escape of gas in the operation of a well, in the necessary drilling and operation of a well, otherwise the wastage, I think, is as I have read to you from Article 6014, which is the general statute. Underground waste, though, nobody knows what that is hardly.

A. I don't know.

Q. Though you have the power to do that, you don't know what that is and I don't and the other man don't until it evidences itself and then it is usually too late. It will drown a well with water if you permit a well to run wide open, will it not?

A. Yes, sir.

Q. More early, in a lesser time, than if you don't permit that?

A. Yes, sir.

Q. Have you issued any orders relative to the running of wells wide open, so that they would not be drowned with water?

A. Every one of our orders on proration provided for that and that is the cause of proration, to prevent waste and to prevent the trapping off of oil by the water.

Q. Prior to these proration orders did you make any endeavor of that kind?

A. I don't remember about that.

Q. Outside of your proration orders?

A. I think the proration orders were the first attempt we made to control—in fact, I will state this, that, so far as the petroleum engineers and the expert operators knew three years ago, they had never testified at least, and none of us knew that it really produced waste until the trial of this case.

Q. Just found that out about two years ago?

A. Yes, sir, about three years ago.

Q. About three years ago. Why didn't you then issue the orders?

A. Of course, they might have known it was waste, but it was questionable as to whether or not it amounted to such a waste that we could handle, and that was the decision of Judge Bell when he was on the Commission and Chairman Gilmore and Doctor Splawn and all those Commissioners.

Q. That was just their general horseback opinion, is that right?

A. That was the general opinion prevalent throughout the oil industry in Texas.

Q. And if you didn't know until three years ago that letting a well run wide open would let the water run in and push the petroleum away from the hole—

A. (Interrupting) Well, it had never been testified before the Commission; of course, I had discussed along about that time when we held that hearing.

Q. But since you found that out you have issued no order?

A. Yes, sir, we have issued an order.

Q. Excepting the proration orders?

A. Well, that provides for the proration.

Q. The proration order?

A. Yes, sir.

Q. And they are not, of course, observed, as you well know?

A. They are observed in every pool in Texas except East Texas; I think I can say that they are strictly observed.

Q. How many wells are running wide open in East Texas at this time, if you know?

A. I couldn't tell you.

Q. About how many?

A. I just don't know that; I have an idea there are several hundred, because they are violating the law with impunity and violating our orders with impunity.

Q. Several hundred running wide open?

A. Yes, sir.

Q. And according to what you have learned, then, within the last three years that is tearing that field all to pieces?

A. Yes, sir, I think it is; my opinion is that if proration or some kind of regulation and orderly production is not put on and enforced in the East Texas Field, that in the course of a short time they will lose probably 30 or 40 per cent of the oil in that field, and that is the reason that the Governor has called this Special Session of the Legislature, and that is one of the duties and one of the burdensome duties that falls upon the great patriotic statesmen in this House and Senate.

Q. Suppose you go in there and pick up a couple of men and say under this Section B of Article 6014 you are violating that statute and I will prosecute you or punish you or enforce a penalty against you, don't you think that would help a little bit?

A. What is that you ask?

Q. That 6014 that I read you a while ago that says that drowning with water of any stratum capable of producing oil or gas or both oil and gas in paying quantities, don't you think that if you would go in there with rather a harsh hand, because it necessitates a harsh hand—

A. (Interrupting) No, sir, I think not; in fact, I know not; I know they won't, because they are violating the proration orders which has that provision in there which prevents them from wasting gas by open flow; they are violating that order with impunity; they have enjoined us and there is no possible showing for us to force them to do it, and if we issued the order, the District Court would fine us and put us in jail for contempt and every lawyer knows that in Texas.

Q. Outside of any proration order, that is not the only power you have, Mr. Terrell?

A. Yes, sir.

Q. You have other powers, you have this enourmous amount of power that Articles 6008, 6014, and the remaining articles give you?

A. Yes, sir, we have issued the order of proration preventing them from open flow of the wells and they have enjoined us from enforcing that order, and if we were to issue another order independent of the proration order requiring them to close the wells, those injunction orders provide that we shall not interfere in any way with the production and with the marketing and with the sale of that oil, and we are bound by it or we go to jail or are fined for contempt of court, and that is the trouble with the law, and there is the duty, I think, if you will permit me to say so, that devolves upon this Legislature to pass a law that the Attorney General can enforce.

Q. How are we going to pass it; you can not pass any law in the world that somebody can not enjoin you from enforcing, can you?

A. I have heard lawyers differ on that question.

Q. Well, you say you couldn't enforce it?

A. I say I think it is a very doubtful proposition and I have said before that it was doubtful, and I don't know what the answer is. It is a problem that presents itself to the able statesmen in this House as to what to do. I have heard good lawyers, able lawyers, say that it can be done, and have heard other lawyers say that you could pass a direct statute on it and provide that no well should flow more than three or five hundred barrels and fix a penalty; I have heard other lawyers say that you could fix a tax on it and prevent it. I don't know what ought to be done; that is a problem that confronts the Texas Legislature.

Q. All right. We have given you another article; we have given you Article 6016 that says: "Whenever natural gas in such quantities, in a gas-bearing stratum known to contain natural gas in such quantities, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste and all such strata shall be adequately protected from infiltrating waters." Have you tried to do that?

A. Yes, sir; every deputy oil and gas supervisor in Texas is furnished with that law and with our rules and they are instructed to prevent the waste of gas from a separate stratum from the oil, and I take it that that law is being enforced. If it isn't, I don't know of any instance where it isn't. Our attention has not been called to it, if it is being violated.

Q. It is the duty of any district or county attorney in Texas or the Attorney General to bring suit to recover $5,000 for every day that such as that has occured?

A. Yes, sir.

Q. That is the law in Texas, isn't it?

A. That is the statute that we desire the Attorney General to invoke, and that is the statute that we have been enjoined from enforcing?

Q. Now, your Gas Utilities Division?

A. Yes, sir.

Q. The Gas Utilities Division, how many meetings have you had in two years with the Gas Utilities Division?

A. I don't know; we have had one or two; I just don't remember the particular cases; we had one or two cases filed and I have forgotten the towns, but before we set the case down for hearing they withdrew their application and no hearing has been had since the Fort Worth hearing.

Q. You had only one, then, in two years?

A. Yes, sir, one in two years, the Fort Worth hearing lasted about three weeks, and I understand it cost the people of Fort Worth probably $170,000 or $200,000, and other cities, knowing the cost that they had to go into in order to reduce the rates or prevent a raising of the rates, they withdrew their suits, I suppose, and haven't filed any, and I will state this, too, that in the Fort Worth case that they were unable to go into the cost of production of the parent pipe line and to ascertain the fair return on investment to that company because of the great loss that it would incur and the Texas Legislature in a recent bill has given the Texas Railroad Commission an addi-

tional $50,000 to the $20,000 it has already given us to make an investigation and find out whether or not the parent company is charging the distributing company an excessive rate, so that that could be adjusted in the trial of these cases, and that will be adjusted and we will make that investigation after the first of September.

Q. The truth, however, remains a bad, bald-faced fact that you tried one case in two years in the Gas Utilities?

A. Yes, sir, that is true; that is not all that has been done in that department.

Q. Don't you think it could be consolidated with some other of your activities and we could save about $70,000 from what you are figuring on?

A. No, sir, I do not. I will state this, gentlemen, that the Texas Railroad Commission was first created as a rate-making body for the railroads. They added on the pipe lines, then they added on the trucks and the buses, then they added on the Gas Utility Department. In every state in the Union, so far as I know, the Public Utility Commission and the Railroad Commission, which are rate-making bodies which fix valuations and fix rates, are confined to one body, one rate-making body. In the Gas Utility Department it is the duty of the Commission on appeal to hear cases that may be filed and determine what rate shall be charged; that may be a field to the courts of the country for any redress.

Q. In other words, our Railroad Commission is a sort of patchwork; we have piled up everything on the Railroad Commission. The reason I am asking you that, don't you think maybe you have all that you can attend to without going into a gas utility fight or going into an oil and gas ratio regulation, or whatever it may be?

A. I expressed myself when I was on the stand before that we had been and would continue and are able to continue to discharge the duties of the department.

Q. I suggested to you a while ago that the penalty for the violation of this natural gas waste law was $5,000 for each day. It is 1,000 instead of 5,000. There is a new penalty?

A. Yes, sir.

Q. One thousand dollars a day and many other matters that would be suffered in the event of a conviction. Now, getting down to another proposition, we have laid on our desks a statement here of Commissioner Smith. Is that your statement or just his by himself?

A. I never saw it until I read it in the Austin Statesman.

Q. You had nothing to do with it?

A. Not a thing in the world.

Q. Now, at the bottom of it he says—

A. (Interrupting) Wait a moment, I want to state this, that I have never yet condemned my associates or either of them and I don't think that it is proper for me to do so, and I shall not if I can prevent it.

Q. I have no criticism relative to it, except some portions of it that I will now call your attention to.

A. I had nothing to do with it, and am not responsible for it.

Q. Right at the bottom of the page it is said that: "Mr. Neff would have the people believe from his spirited declarations before the Committee, Saturday, that the Commission gave him but little consideration as a member of the board. Since he came on the Commission October 12th, 1929, there have been 15 people appointed to positions. Neff has named 7 of this number, Terrell 3, and I have named 5. One-third of all employees were allocated to him when he came on the Commission." Do you mean to say, or is that true that you allocate out appointments and that appointees are your appointees and Neff's appointees or Smith's appointees, or are they appointees of the Commission itself?

A. They are appointees of all the Commissioners.

Q. Do you peddle them out or farm them out among each other?

A. No, sir; I think that that statement is somewhat inaccurate.

Q. Do you make friendly agreements and say: "I will appoint this man and you appoint that man?"

A. That is exactly what we do.

Q. Don't you think that any man—Mr. Parker, whose appointee is he?

A. I nominated him.

Q. Well, would you claim him, then?

A. How is that?

Q. Would you claim him, then, as yours?

A. Oh, no, no, no. (Laughter.) Wait a moment, I don't mean by that that I don't endorse his work, for I think he is an able man and I will state this: That I think he knows more about the oil business in every phase of it than any man in Texas.

Q. Well, now, let me see; I don't know anybody else hardly; Mr. Marshall, is he yours or Mr. Neff's or Mr. Smith's?

A. I happened to nominate him.

Q. Did you? Well, you have got another good one, haven't you?

A. I think we have.

Q. You have got a good one.

A. I am proud of both of them.

Q. What I am trying to prove up, do you think it is a poor public policy, if Mr. Smith's statement is true, it is conducive at least to criticism, it is poor public policy that you take one and he takes one; it looks like they ought to be appointees of the whole Commission.

A. That is not accurately true. With regard to the Deputy Oil & Gas Supervisors, when Smith and I came on the Commission about the same time we had no appointments on the Commission and out of courtesy to the incoming Commissioners we were given, when vacancies occurred, a courtesy to suggest someone for the place and if that party suggested was capable, qualified, and neither of the Commissioners had any personal objection to it, we usually appointed that party as an accommodation to the new member. Now, then, in doing that it soon adjusted itself so that with the 15 Deputy Oil & Gas Supervisors, Commissioner Gilmore giving us or allowing us to appoint time about—I don't say "appoint," I mean to suggest or recommend or to nominate—we soon had each one of us five of the supervisors that we nominated and suggested and that is the way that is handled. Now, then, when Governor Neff came on he had no employees in the department; naturally he would want some; he would want to nominate them. He had heard of this business of nominating them and that five of them would belong to Chairman Gilmore, or, rather, five of them had been nominated by him and five by me and five by Commissioner Smith, and he felt like he ought to have Chairman Gilmore's right to place those men in nomination when a vacancy occurred. I told him I thought so, too. Smith agreed to it. When the question came of appointing Supervisors for the Bus and Truck Division we distributed it around, that is to say, I nominated one, Smith one, Mr. Neff one, and then, if they were satisfactory, we all joined in and elected them. Now, that is the way they are selected. Now, then, we had a vacancy on one of the Deputy Oil & Gas Supervisors. Mr. Neff came to me and told me he was in a pickle, or words to that effect, that he had two good men that he wanted to appoint, and he didn't know what to do about it, on the Supervisor of the Busses and Trucks. Desiring to be fair, I remembered this vacancy on the Deputy Oil & Gas Supervisor and said, "Well, I will tell you, Governor, we can fix that so you can accommodate both of your men." He told me who they were. I thought they were both good men. I said, "You can appoint one of them Supervisor of Busses, Inspector of Busses and Trucks, and the other you can put on the Oil & Gas Division." One of them had had experience in the oil field at Amarillo and under the law was qualified, and we elected Mr. Barton, General Barton, who had had about two years experience in the oil fields at Amarillo, we elected him at the instance of Governor Neff and we elected the other man that he suggested as inspector. Now, that is the way they have been handled.

Q. When you say election do you mean that all three men voted either yes or no?

A. Yes, we all three elected, agreed to it in conference.

Q. And all would have something—you wouldn't just go in and say, "I put this man in?"

A. Oh, no, no.

Q. That is what I was driving at. Now, do you ever turn anybody down for each other and say: "No, I won't stand for that; I won't vote for him?"

A. Well, no, I think not, not that I know of, not that I can now remember, I will put it that way.

Q. Do you subscribe to the doctrine or statement in Mr. Neff's statement, "Governor Sterling, the bosom friend and associate of both of them, does not like us, as the representative of the people in oil and gas matters?"

A. What?

Q. You don't subscribe to that portion of it?

A. I didn't hear it, Judge, pardon me.

Q. Referring to Farish and Holmes, Mr. Smith says that: "Governor Sterling, the bosom friend and associate of both of them, that is Farish and Holmes, doesn't like us as the representative of the people in oil and gas matters." Do you subscribe to that statement?

A. I don't know whether they like me or not; if there is any cause for it—

Q. (Interrupting) He is talking about the Governor now.

A. Oh, the Governor?

Q. Who is a friend of Farish and Holmes, Mr. Smith says that the Governor don't like you and himself.

A. Well, I don't know whether Governor Sterling likes me or not; I rather think he does; I like him.

Q. You don't subscribe to that, then?

A. I like him; in fact, I am at peace with the world, but I don't love my neighbor quite as well as myself.

Mr. Satterwhite: Mr. Terrell, a little more about this Panhandle wastage of gas?

A. Yes, sir.

Q. I want to ask you—

A. (Interrupting) Mr. Satterwhite, I want to make one statement.

Mr. Satterwhite: All right.

A. That the detail of the working of the Gas & Oil Department has always fallen on Mr. Parker. The technical work has always fallen on Mr. Les McKay, who is a practical operator and they now are more familiar with that branch of the work than I am.

Q. Well, Mr. Parker is sitting there convenient and if you want him to advise you as to that, why, it will be perfectly all right.

A. I think it would be much better if you want to ask on that question just to let him answer you, if there is no objection, or I will go ahead with the question.

Q. I will be glad to ask these questions of Mr. Parker, if there would be no objection on the part of the Committee to Mr. Parker coming to the stand at this time. But let me ask you in the first place, may I read a paragraph in this letter which is from the owners of these wells?

A. Yes, sir.

Q. That is, they own the lands on which these wells are located.

A. Yes, sir.

Q. "We would like to call your attention to the wastage of natural resources in the Panhandle of Texas, especially the casinghead plants operating in the Panhandle of Texas and utilizing and wasting dry gas to the extent of billions of feet of this gas per annum, having lowered the rock pressure approximately 35 per cent from this area to the extent that the potential purchasers of this gas for commercial use to be delivered by them to their lines to the domestic consumers of the entire country refused to consider the purchase of said gas or properties on account of the lowering of this rock pressure." You understand they have out there in that Panhandle Field now gas lines laid in all directions?

A. Yes, sir.

Q. Even as far as Chicago?

A. Yes, sir.

Q. "This matter having been called to the attention of the Attorney General of the State of Texas for investigation made by him through his personal representatives over one year ago, and having been reported by the Deputy Oil & Gas Commissioner to the Railroad Commission and in turn to the Attorney General, so far as the information we have been able to acquire, the Attorney General's Department has an agreement with the operating interests that are carrying on the wastage of this gas to bring a friendly suit without penalties in September of this year," meaning this year, 1931. "We would like to ascertain by what authority contrary to the law the Attorney General has for permitting of wasting of billions of feet of this gas with the value running into millions of dollars which by inherent right belongs to the land owners, royalty owners, and the people of Texas as a whole. As a specific instance, there being located on the ranch of J. M. Sanford in Hutchinson County, Texas, two of these casinghead plants running approximately 130,000,000 feet of gas per day through their plants, extracting a small per cent of gasolene and burning approximately out of the 130,000,000 cubic feet per day 8,000,000 feet of the residue gas into carbon black, showing a net loss of approximately 122,000,000 feet of this natural resource being wasted forever to ourselves and the generations to come, we might say that the greater portion of this gas being what is known generally as sweet gas."

Now, Mr. Graves has already asked you in part about that. Now, are you familiar with the facts as to why this delay of prosecuting this case, if this dry gas is being burned up there in order to get just a small per cent of casinghead gas and the residue from that going into carbon black, why that has been permitted? In other words, as I understand it, casinghead gas should be extracted from that gas which comes from the oil, that is, in lifting oil from the well, whatever might be the surplus in that, that really is the character—

A. (Interrupting) If it is a wet gas, it should be.

Q. That is the kind that the casinghead gas plants should be permitted to extract casinghead gas from and burn the residue in carbon black, and, as I recall it, that was the Commission's order; they granted that permit. Now, have you permitted them to burn—have you in that permit that you granted to burn this oil and extract the casinghead gas and then convert the residue into carbon black, did that also include dry gas?

A. No, sir.

Q. Then it is clearly a violation of the law for these casinghead plants up there to use this immense amount of dry gas in extracting casinghead gas and burning the residue into carbon black or manufacturing the residue into carbon black?

A. I don't think there is any question about it being a violation of the law.

Q. Then, you have done your duty, as you see it, so far as you are concerned, and now it is up to the Attorney General to bring a suit and prosecute these plants for using dry gas contrary to the law?

A. That is right.

Q. That is all I want.

A. And I don't know—now, I don't want to say, because I don't know why it has not been done.

Mr. Beck: Mr. Terrell, you read all of this statement that Mr. Smith issued since its publication?

A. I read it just casually.

Q. In this question he undertakes, apparently, to speak for both you and himself, and one paragraph reads as follows, signed by Mr. Smith, he says: "Mr. Terrell and I are fully aware of this insidious propaganda that is going the rounds of this Capitol while the Legislature is in session charging that we are not faithful to our duties as Railroad Commissioners. This propaganda is the basis for the demand for the creation of a new separate Oil & Gas Commission to be appointed by the Governor." Mr. Smith tells the public that you and he are both aware of this insidious propaganda. Will you explain to us what that means?

A. I don't know what Mr. Smith had in his mind when he used that language. Of course, I have heard remarks.

Q. Well, I want to ask you this question for the record: Do you think there is any insidious propaganda to that effect and for that purpose?

A. I didn't catch the question.

Q. Do you think there is any insidious propaganda, bearing in mind the meaning of "insidious," going the rounds of this Capitol for the effect and purpose indicated in this statement by Mr. Smith?

A. I don't know whether it is insidious or not; I know that there have been remarks made, both in the newspapers, and on the streets, and in the Capitol by various people that I think the purpose of it is to break down the Railroad Commission and thereby have a conservation commission appointed.

Q. Mr. Smith's statement conveys the idea that all of these criticisms have come from major oil companies and that none of them have come from independent oil companies; is that true?

A. I don't know; my opinion is that there are men belonging to the major companies, connected with them, that have criticized us, as well as some of the independents. My thought is that both—not all, but the criticisms have emanated from each of these groups.

Q. Who is the "Gulf Standard Oil Company?"

A. Who is the "Gulf?"

Q. "Gulf Standard Oil Company."

A. My understanding is the Gulf Oil Company is not connected with the Standard.

Q. That is mine, too. Who is the "Texas Standard Oil Company?"

A. The what?

Q. The "Texas Standard Oil Company?"

A. I don't think the Texas is connected with any major group, major company.

Q. Any Standard group, you mean?

A. Yes, Standard.

Q. Who is the "Humble Standard Oil Company?"

A. The Standard of New Jersey, it is a subsidiary of it, is my understanding.

Q. Is that the name of the company, the Humble Standard Oil Company?

A. The Humble Oil & Refining Company, I think it is.

Q. Now, Mr. Smith in this statement says: "But it seems that we are in bad with W. S. Farish, president of the Humble Standard Oil Company. We are in bad with Mr. Holmes, president of the Texas Standard Oil Company," and he says that he charges certain statements to Judge R. L. Batts, of the Gulf Standard Oil Company. You don't think it is likely that that word, "Standard Oil" is injected into those names for purposes of developing political prejudice, do you?

A. I don't know.

Q. Don't you think it would have that effect?

A. It might have; I have an idea he just had in mind that they were major companies and classed them with the Standard, I don't know.

Q. This statement further says: "Then to cap the whole scheme they turn loose Pat Neff with a flow of words and a display of tragedy on us, his official associate, in a venomous attack on our official record." Now, what is meant by "they turn loose Pat Neff?"

A. I don't know what he meant. This House heard his testimony and, of course, you are the judges.

Q. I would say that everyone in Austin who favors a separate commission comes under the criticisms leveled by Mr. Smith's statement?

A. I haven't read it carefully with that end in view, but whether it does or does not, I don't agree with him, if it conveys that idea, because I have the very highest regard for those who differ with me and those who agree with me.

Q. Don't you think that a statement of this kind containing so much prejudicial language is likely to have an undue and improper effect upon legislation now pending before this body?

A. I don't know.

Q. Wouldn't that be your assumption?

A. I never indulge in strong or vicious language, and I really don't know what the effect of it will be.

Q. You have been more closely in touch with oil development in Texas than any other man, being Chairman of the Commission; are you aware—

A. (Interrupting) Well, I think not; I will say not.

Q. Well, your department is?

A. Yes, our department, of course.

Q. Are you aware of any insidious schemes or concerted plans to do anything to this Legislature or to the people of Texas that is unfair to them?

A. That is unfair to who?

Q. To the people of Texas.

A. Nothing that I know of.

Q. Then to the extent that this statement conveys that impression to the people of Texas, you can not concur in the statement?

A. I don't know what he had in view; he might have information that I do not have; I will not say that he is right or wrong; I just don't know.

Q. But you do think that legislation by this session of the Legislature is necessary to bring about a proper and effective conservation of oil and gas in this State?

A. I don't think there is any question in the world about it; that is the reason the Legislature was called together, and I think that that is what should be done.

Q. Well, Mr. Smith, in this statement, has made Standard Companies out of everybody and has put them all in the same boat as to legislation, but do you not know, as a matter of fact, that whereas the Texas Company and the Humble Company seem favorable to conservation, that the Gulf Company is strongly opposed to any legislation at this time?

A. Yes, sir, I know that to be a fact.

Q. Then it would not be fair for anybody to inform the people of Texas or to create the impression with the people of Texas that all of the oil companies were lined up—all of the major oil companies were lined up to put something over on the State of Texas, would it?

A. I think not; under the testimony of Underwood Nazro, of the Gulf, I understood that he said they did not need proration or any further laws. Of course, I think he is wrong in the latter part of his statement.

Mr. Petsch: Mr. Terrell, when Mr. Satterwhite read to you from a

letter awhile ago while he was questioning you which was written by the Antelope Creek Oil & Gas Company, of Amarillo, Texas; in that letter it was suggested that friendly suit was to be brought by the Attorney General in September of this year to test the right of those companies to waste the gas or to use the gas in the manufacturing of casinghead gas and carbon black. Now, as a matter of fairness to you and to the Attorney General, state whether or not the bringing of that kind of a friendly suit has ever been discussed between you.

A. Not with me; that is, I have never discussed it with the Attorney General or any of the Assistants in the Attorney General's Office.

Q. And you don't know of any friendly suit being contemplated for the purpose of testing the validity of these statutes?

A. No, sir, unless you are calling the Diehl case a friendly suit, and I don't suppose it is.

Q. Well, who brought the suit in the Diehl case? Was that brought by the present Attorney General or by a former Attorney General?

A. It was brought by the gas operators.

Q. Against the Railroad Commission?

A. Yes, sir, that is what I mean, Diehl; but the particular case, if I understand it right, was to enjoin us from interfering with the waste of gas.

Q. When was that suit filed?

A. December 10th.

Q. Of last year?

A. Of last year, yes, sir, '30.

Q. Now, in connection with that suit there hasn't been any discussion between you and the Attorney General's Department relating to a friendly determination?

A. Not relating to a friendly determination, no, sir.

Q. Yes, sir, all right.

A. But to a determination of the suit.

Q. Yes, sir. You have insisted on the suit being prosecuted, I believe you testified to?

A. Well, in a nice way, of course.

Q. Yes, certainly.

A. We called attention to it and I think the present Attorney General has done all he could in regard to it; that is my opinion.

Q. Yes, sir.

A. But I might be wrong.

Q. Now, Mr. Terrell, Mr. Graves asked you concerning this particular matter a while ago, but I don't remember whether he made the question plain. In reference to the waste which occurs by reason of wells being permitted to run wide open, I believe you stated that three years ago testimony was produced before the Railroad Commission which affirmatively established that such practice would constitute waste?

A. Yes, sir.

Q. Now, then, I believe you also stated that you sought to prevent this occurring and you sought to prevent this practice from being continued by virtue of the proration orders which you have issued heretofore?

A. Yes, sir.

Q. From time to time?

A. Yes, sir.

Q. Now, it is true, is it not, that your proration orders also cover many other propositions, for instance, the one in the Macmillan case was based upon economic waste or has that element in it?

A. You say that it should do that?

Q. I say, no, it was based upon economic waste in connection with other matters which were recited in the order?

A. I really don't understand your question; I will be glad for you to repeat it.

Q. Yes, sir. Well, now, I will make it a general question. A proration order covers many circumstances and many facts; it covers the situation as a general proposition, does it not?

A. Yes, sir.

Q. For instance, a proration order relative to the East Texas Field would cover the conditions in other fields in Texas and would take into consideration the general situation in regard to the oil business?

A. Yes, sir.

Q. Now, then, Mr. Terrell, you also have the express authority under Section B of Article 6014 to issue an order specifically preventing wells from running wide open, do you not?

A. Yes, sir.

Q. In order to prevent waste?

A. Yes, sir.

Q. And I believe you stated that no such order has ever been issued in any instance except in connection with your general proration orders?

A. Proration orders in each field?

Q. Yes, sir.

A. Yes, sir.

Q. But you have not made any effort to apply this statute specifically toward ordering these wells which you say in the East Texas Fields there are some two or three hundred of them probably, you haven't made any specific order as to any one or all of these wells requesting or ordering these wells to be cut down in order to prevent waste?

A. The order, if I understand it right, the order putting in proration in East Texas provides that they shall be cut down, each well.

Q. I understand, that is correct. That is your general proration order?

A. Yes, sir, that is the general proration order, that is what it is for.

Q. But you haven't made any specific order, the object of which is solely to prevent physical waste and the object of which is to prevent the violation of Section B of Article 6014?

A. Proration is based on that proposition and that is the reason we issued the order.

Q. That is all.

Mr. Farmer: Mr. Terrell, I am not particularly concerned about the unfortunate circumstances existing in the Railroad Commission between its different members, but I, as a member of this House, am vitally concerned about the wasting of natural gas that we need to warm in the winter time the children of Fort Worth, Dallas, and elsewhere, all of the years to come, and I want to ask you, sir, some questions for light to this Legislature that we may enact a statute that will bring about the result for the conservation of that gas. It has been testified heretofore that the law at the present time is not such that you are able to do it. Now I want to ask you if you didn't have Mr. Parker consult the Attorney General under date of December 6, 1929, and he rendered you an opinion, the Attorney General then being Mr. Bobbitt, that because of Article 6008 you could not stop the gas escaping from a well that was operated for the purpose of producing oil?

A. That is true.

Q. I ask you further if he didn't tell you in that opinion that you could prevent the escape of gas into the open air, provided it complied with the conditions in Article 6014?

A. I think that is correct.

Q. Isn't it a fact that eminent lawyers of this State, because of the conflict between Article 6008 and Article 6014, believe that it is impossible for the Railroad Commission in the present condition of the law to effectively stop the waste of gas?

A. I think that is true.

Q. Then, Mr. Terrell, is it not the duty of this House of Representatives and this Senate that we should harmonize this law and repeal those parts that tend to interfere with the Railroad Commission in effectively preventing the waste of gas?

A. As far as I am concerned, I feel that it is the duty of the Legislature to pass some kind of a law that can be enforced that will prevent the waste of gas and oil in Texas.

Q. And we know, Mr. Terrell, that the Supreme Court of the United States has affirmed the right of the States under the Fourteenth Amendment to the Constitution of the United States, that they have the right to absolutely stop the waste of their gas or their oil when it is not being used for commercial purposes?

A. I think that is true.

Q. And then this Legislature undoubtedly has the right to pass an effective statute which will give the Railroad Commission the power to stop the waste?

A. I think so.

Q. All right. Now, Mr. Terrell, Article 6008 was passed by the Legislature in 1913. They then, in 1919, passed Article 6014, that contains this paragraph: "The escape of natural gas in commercial quantities into the open air from a stratum recognized as a natural gas stratum," is called waste. But then they added this: "But this is not intended to have application to gas pockets in high points in strata recognized as oil strata." Didn't that Article recognizing it as oil strata and this Article 6008 saying that it should not apply to a well operated for oil, wasn't that what prevented you from effectively doing this work?

A. I think so.

Q. And wasn't that what the District Court in Amarillo did, basing it upon this conflict and this lack of power, that they rendered the injunction and that the Attorney General, knowing the law was in that shape, could not effectively proceed with this suit?

A. The suit was filed in the Travis County District Court.

A. Now, I will not censure the Legislature; I am hoping you won't—this Legislature, the Forty-second Legislature, is the Legislature that is to blame, because it has not effectively passed a law?

Q. All right, you need not answer that, Mr. Terrell. Then, Mr. Terrell, isn't it a fact that the 41st Legislature passed a law amending Article 6014, but nowhere mentioned Article 6008, and that in Article 6014 as amended the 41st Legislature said: "Escape into the open air of natural gas is waste," but added this: "Except as may be necessary in the drilling or operation of a well?"

A. Yes, sir.

Q. Mr. Terrell, had the 41st Legislature said: "Escape into the open air of natural gas is waste," and stopped there, wouldn't you have had the power to stop it?

A. We probably would.

Q. Then isn't it up to us in the 42d to give you a law to do it?

A. And I will state this, that is the law passed by the Legislature where it struck out the clause in it giving us power to say what the oil and gas ratio should be in various fields in Texas; they struck that out and refused to give us the power or anybody else the power to say what the ratio should be.

Q. Then, neither you nor Mr. Smith nor Governor Neff are to blame for this extraordinary waste of gas in Texas, but it rests upon the Legislature?

A. I know we are not.

Q. Thank you.

Mr. Davis: Mr. Terrell, I believe you stated on your direct examination some days ago that no effort had been made by the Railroad Commission to enforce the Common Purchaser Law forcing the purchasers who own pipe lines to take oil ratably; is that right?

A. No, I don't think I said that.

Q. Well, that is true, isn't it?

A. No, it is not true. In every order that I know of we have issued since the pipe line law has been in effect we have provided that they should take the oil ratably and that the Common Purchaser Act should be applied and that is the clause I read to you.

Q. Mr. Terrell, you can issue an order and enforce your orders on ratable production and ratable transportation and it will be effective as to the major oil companies who produce, transport, manufacture, and merchandise any oil, but, unless the law providing for ratable purchase is enforced equally with the law providing for ratable production and ratable transportation, the independent oil operator who deals only in production is at the mercy of the large companies, isn't that right?

A. I think that is true.

Q. Then, if we pass laws here strengthening the law on ratable production and ratable transportation, don't you think it is equally incumbent upon the Legislature to strengthen the law enforcing the ratable taking or purchase of oil?

A. Yes, sir, I do.

Q. Mr. Terrel, are you familiar with the retail price of oil in the countries where it is controlled exclusively by the major companies?

A. I am not familiar with the price of oil; I haven't made a study of that question, for the reason that I haven't given it the attention probably that I should, because in putting on our proration orders and enforcing the laws we base it solely on account of actual waste and in our hearings I have stated at the beginning of the trial that we would not take into consideration economic waste or the prices of oil.

Q. Mr. Terrell, you have been informed that the retail price of gasoline in Venezuela, from which country they ship vast quantities of oil here, is 56 cents?

A. I have heard something about it; I don't remember the exact figures.

Q. You have heard of various prices, the minimum of which is 40 cents, in all countries where the major companies have exclusive control, haven't you?

A. Yes, sir, I have heard something about it, but I could not give you accurately the figures.

Q. Well, don't you think any legislation that is passed here should protect the independent operator as completely as it does the major companies in order that we may have that competition that independent operation brings about?

A. I think that all laws should be equitable, fair, and just, both to the independent and to the major company.

Mr. Terrell, do you know when your first proration order was issued in East Texas?

A. I don't remember the exact date.

Q. About when?

A. The first of April.

Q. Do you know when that field was first discovered and the development commenced, I mean the field other than the Van?

A. Mr. Parker tells me it is the latter part of 1930.

Q. The latter part of 1930?

A. Yes, sir.

Q. Don't you think the Railroad Commission was a little slow in issuing proration orders there?

A. Well, I don't know; it seems that even after we did make the order, it didn't have any effect, so I suppose, if it had been issued sooner, it would have been the same trouble, and I will state this: I believe if we had issued orders a month sooner, I don't believe that anybody would have followed them over there; very few people would have followed them, and I doubt seriously, on account of public sentiment, whether they would have permitted them to have been followed.

Mr. Hardy: I have one further question that has been sent up, Mr. Terrell. As we understand Governor Neff's testimony, he said that the other Commissioners did not consult him or advise with him as to any action to be taken by the Railroad Commission. Is this true or not?

A. Not true.

Mr. Henderson: Mr. Terrell, it is reported that the pipe lines when they get oil out of other states, run it through the State of Texas at less than what they will take it out of the State of Texas for. Have you any control over that?

A. No, that is interstate commerce.

Q. Interstate commerce. Now, do they run into those same lines from lines within the State here and take oil out of the State in the same lines?

A. I think so.

Q. Well, now, I noticed the other day that it took over sixty million barrels of oil to fill the lines; do they consider that in storage or not?

A. That is in transit; it is not in storage until it is put into a tank.

Q. Is it in transit?

A. Yes, sir.

Q. Although it is in the pipe line still?

A. Yes, sir.

Mr. Hardy: That is all, Mr. Terrell. Much obliged to you.

Thereupon, Fred Upchurch was called as a witness, and without being sworn, was examined by Mr. Hardy.

Q. Please state to the Committee your name, any official position you happen to hold, and your residence, at this time.

A. My name is Fred Upchurch, I live in Austin, and am at present Assistant Attorney General.

Q. As Assistant Attorney General do you have under your supervision those matters pertaining to oil and gas in the State of Texas?

A. Largely so, yes, sir.

Q. Have you heard the reference made to a certain suit pending in West Texas, or a suit brought by agreement, or a friendly suit?

A. Yes, sir.

Q. Will you explain to the Committee the position of the Attorney General relative to that matter?

A. After we came into the Attorney General's Office on the first of the year, we ascertained that a suit had been brought by T. M. Diehl Oil and Gas of Amarillo, by Julius Dorenfield, and his firm of Amarillo.

Q. Mr. Upchurch, were you sworn?

A. No, sir. I was not.

Q. Some one requested that you be sworn. Mr. Chairman, I would like to have the witness sworn.

The witness was thereupon sworn.

A. I made some investigation of this matter, and ascertained that there was considerable discussion last year while General Bobbitt was in office of the situation that they claimed prevailed in that field. That perhaps that some member of the Attorney General's Office and some member of the Railroad Commission Office went to West Texas and investigated; that it was first discussed that the Railroad Commission would bring a penalty suit against the T. M. Diehl Company in Amarillo, or in the county where the violation was occuring. It was later, I understood, decided, that the company bring the suit against the Railroad Commission in Travis county. I further ascertained by talking with the former Assist-

ant Attorney General and with the Chief Deputy Supervisor of the Railroad Commission and with the attorneys for the plaintiff that the plaintiff insisted at the time he filed the suit upon his right to have an injunction granted enjoining and restraining the Commission from filing any character of suit against it, while this litigation was pending, and that the Commission and Attorney General's Office agreed that if the court would not grant the restraining order that they would desist from filing suits of any character while this particular case was going through the channels of the courts. Some time later I heard that there were other violators in practically the same position as the T. M. Diehl Oil and Gas Co. That was here some months ago. I immediately began thinking about bringing suits in behalf of the Commission, in the county where the violation occurred. I thereupon was informed that as a part of the agreement made for the former Attorney General, and the oil company, or rather Mr. Dorenfield, representing them, it seems that he represented these other people also, who were furnishing gas to the Henderson Gas Plant. I ascertained that the agreement went further than the T. M. Diehl case, and that they agreed further not to bring suit against these other violators in the same vicinity furnishing gas to the same plant, and that those parties would abide by the final decision of the Supreme Court in the Diehl case. I want to make one correction, Mr. Parker says that the Commission was not a party to that agreement made by the former Attorney General's Department. I perhaps was in error about that. With reference to the letter that Mr. Satterwhite read a few moments ago from Mr. Sanford, of the Panhandle, I will state that he is the owner, so I understand, of the land on which the T. M. Diehl Oil Co. is taking the gas. Some time ago he, through his attorneys, Underwood, Johnson, Dooley and some one of Amarillo, filed a damage suit against the T. M. Diehl Oil and Gas Company, and asked for a restraining order restraining them from producing this gas further. They asked us then to intervene in this suit in trying to get an injunction against this party. But we took it that it was a direct violation of an agreement made by our predecessors in office with a citizen of this State, and that it should not be breached; and furthermore, if it were not for the agreement, that the State of Texas ought not to get mixed up in private damage suits between two individuals. Therefore, this agreement that was made has prevented the further suits against those operators from being filed until the present suit is terminated. I might state in this connection that the owner of this land upon which this gas is being produced has the same right under the law that the State and the Railroad Commission has to file suit and have an injunction granted. Why they have not used their own right that the statute has given them I don't know, unless it be for the fact that they want this State to appear and ask for the injunction there so that they will not have to make an injunction bond.

That case was not tried during the last administration. When we came into office the first of January the Danciger Oil and Refining case, which was a test case on the proration orders, was then set for the latter part of January. It took all of my time trying to get ready to try that case. It finally went to trial in February and consumed some two or three weeks, and about that time Van, the East Texas situation opened up, and we have been filing suits and having suits filed against us constantly ever since, and it has so happened that we have not been able to try that particular case to the present date. It has been set, but has been crowded out, swamped by other cases, and had to be deferred one time because we were haled into the Federal Court at Houston on the Macmillan case. It was again tentatively set for last week in the district court here, but was impossible to reach it. We now have an agreement, however, with the attorneys to try it in vacation time, that is, during the month of August, if we can get one of the courts here to try it. I believe that is all the explanation I have to make concerning that particular matter.

With reference to the Common Purchaser Law, as it is commonly known, I have been asked to make some comment on that. I desire to say only this, that under the Common Purchaser Law, the way it is written, it is not self-enforceable. It takes an order of the Railroad Commission of Texas to put it into operation, and when a purchasing com-

pany fails or refuses to make connection, and purchased an individual's oil before the Railroad Commission could do anything or give notice of a hearing; that notice must be ten days; after the hearing, if the common purchaser is not satisfied with the ruling of the Board, it has the same right to walk down to the district court and file what we call a review suit, just like the producers do; and when they have done that, then under the decisions of the United States Supreme Court the Railroad Commission and the State of Texas cannot bother them for penalties while that suit is pending. So if that were done, and they filed the review suit, then the purchasing company could, if it saw fit, cut loose from every producer that they were taking oil from other than their own and refuse to purchase that oil, and they could not be penalized by the State of Texas as long as their case was pending in the courts. So it has occurred to me if the Legislature could revamp the Common Purchaser Law and make it capable of self-enforcement, so that it would not be dependent upon an order of the Railroad Commission, then suits could be brought direct by the Attorney General's Department when they failed or refused to make connection, and would not entail the ten days' delay for the hearing and then would not be susceptible to these decisions of the Supreme Court of evading penalty after they filed the review suit. There is one other situation that I have been asked about, and that is about the jurisdiction of these penalty suits against both violators of the Common Purchaser Act and the so-called proration orders. Under the present law the State of Texas has to go to the counties where the violations occur to bring the suits of any character. The Amarillo field, or what is commonly known as the Panhandle field, as all of you know, is over 600 miles from Austin; the East Texas field is approximately 300 miles from Austin, and you know there are a number of fields scattered all over Texas. It is almost a physical impossibility to get around to all of these courts with these cases in that way. We now have pending suits that have been filed against the Railroad Commission, suits that the Railroad Commission has filed against violators, approximately sixty that have been filed since the first of January. They are scattered all over the State of Texas and, as you lawyer members of the House know, you frequently have to make two or three trips to court before you ever get to trial. That entails lots of time of the Attorney General's Department and lots of expense to the State of Texas, so if the question of jurisdiction ends and the Railroad Commission's suits for penalties were put back in the Travis county courts, it would enable the Department to try five or six cases while they are running around over the State trying to answer appearance dockets and trying to take care of their docket when it is so badly scattered. I believe that is all the voluntary suggestions I have to make, Mr. Chairman.

Mr. Hardy:

Q. Mr. Upchurch, has the Department which you represent endeavored at all times, when called upon by the Railroad Commission, to uphold its orders?

A. We have done our very best, Mr. Hardy.

Q. Have you been called upon to attend any hearing provided by any order under the Common Purchaser Act since it went into effect and since you have been in office?

A. You mean the general proration hearings?

Q. No, I mean—yes, I will take it first that way; take the general proration hearings?

A. Yes, I remember the first proration hearing that was had on the 22d of January of this year; I was asked to attend, and I did attend.

Q. Did you assist in the preparation of any orders there?

A. No, I did not.

Q. Were you called at any other time to sit in on any of the other hearings?

A. I don't recall. I don't think that I have been specifically requested to be present at any other hearing; however, I have attended most of them.

Q. Have you been called upon at any time to help prepare any of the orders of the Railroad Commission relative to proration?

A. Not until the last order.

Q. When was that?

A. That was following the hearing of June 29th, 1931.

Q. Did you not assist in the preparation of that order?

A. Well, the order was already prepared before I was asked about it, or before I was talked to about it.

Q. Did you read the order?

A. Yes, I read the order.

Q. Did you consult with the Commission relative to that order?

A. I was in conference with them a few moments the late afternoon of the day it was prepared, and Senator Terrell asked that it be studied that night and have a conference the next morning, and I was in conference with Commissioners Terrell and Smith the next morning for a while.

Q. Did they suggest to you any changes in that order?

A. Well, it was a sort of round-table discussion there, of what changes, if any, they thought would be wise. I participated in that discussion.

Q. Do you know whether or not those changes were made?

A. A part of them were, and some of them were not.

Q. Relative to the requirements under the Common Purchaser Bill, which provides for a hearing before you can issue an order that a pipe line company shall take from any particular well, do you know of any such hearings having been had in such orders?

A. Personally, I do not know of any hearings.

Q. You were not called upon to be present at any such hearings?

A. I don't recall any now, no, sir.

Q. Do you know of any orders which have been issued under that Common Purchaser Act?

A. As Senator Terrell explained this morning, I think practically all of the orders, as I now recall, have had a provision in there with reference to the Common Purchaser Act.

Q. What I am getting at, though, is a minute ago you explained that these orders would have to be set down for a ten-day hearing?

A. I meant this, Mr. Hardy: When the Railroad Commission passes an order such as they have in connection with the proration orders, of course, they could pass them in connection with proration orders or separately, but they have passed them with the proration orders. I mean this, that if a purchasing company refused to abide by that order, then any citizen, and producer in the State, has a right to make a complaint to the Railroad Commission if the common purchaser has refused to obey the order.

Q. All right.

A. And then the Commission must give ten days' notice and have a hearing on it before they can go further.

Q. Do you know of any such complaints or any such hearings?

A. No, I do not. I have heard Mr. Parker say several times that he had obtained very good results by taking the complaints up direct with the nearest purchasing company and succeeding in getting them to make the connection; I understand there were some 160 wells in the East Texas field that did not have connection the first of July, and I understand from him that he has succeeded in getting connections to all of them except some thirty of them.

Mr. Hardy: Any other questions? It has been suggested that I ask you whether or not the Attorney General's Department has been making any investigation as to whether any of the purchasing companies have been violating any of the anti-trust laws?

A. Yes, sir, the Department has, almost from the day we came into office.

Q. Does the information that you now have consist of such that you would care to disclose it, or not?

A. I think it would be detrimental to the State to expose it now publicly, until we have completed the investigation.

Mr. Petsch: Mr. Upchurch, in reference to this friendly suit agreement, of course, you know that it is a law or statute of Texas, which affirmatively produces that any agreement made by the Attorney General which is prejudicial to the State of Texas is not binding on the State. You are familiar with that, are you not?

A. Yes, sir.

Q. Therefore, in view of that suit, you, of course, would have been at perfect liberty, as a matter of fact, it would have been your duty to have disregarded that agreement, if such agreement was, as a matter of fact, made. The article which I refer to is Article 4411.

A. I am familiar with the article.

Q. Now, Mr. Upchurch, as a matter of fact, the reason you haven't brought the suit for penalties is this: that the Supreme Court of the United States has repeatedly held—held in two separate cases—that the State of

Texas, nor any other State, has the right to bring suit for penalties during such period of time as the constitutionality of a law is under attack? You are familiar with those decisions, aren't you?

A. I am familiar with them, yes, sir.

Q. And that is probably the reason you have not brought any of these suits for penalties, is it not?

A. You evidently misunderstood me, Mr. Petsch. That is the reason, of course, why suit was not brought for penalties against T. M. Diehl Oil and Gas Company.

Q. To begin with—

A. To begin with, or even now; we could not do it under the law.

Q. Yes, sir.

A. But the other party similarly situated that was included on the same agreement, that is the case that I have reference to when I said that we had not brought those suits.

Q. In other words, suits for penalties under any of these statutes only begin to mature and the penalties only mature after the constitutionality of the statute has been finally determined by the courts?

A. Providing a man has availed himself of his legal rights to file a review suit.

Q. Yes, sir. And if that has not been done, the penalties are not collectable?

A. That is true.

Q. Yes, sir.

A. In other words, in this particular matter, had it not been for the agreement that was made in the beginning the attorneys for these other companies like Diehl—would have—they would have, and I assume they would have, brought suit for them at the same time they brought the Diehl suit, and then the Railroad Commission would have been tied just the same.

Q. Yes, sir. And even if you would bring the suit for penalties now, they would bring that identical suit, and that would hold up the whole transaction just the same?

A. That is largely true, yes, sir.

Q. Yes, sir.

A. We have brought a number of penalty suits in East Texas for violation of the proration orders, and in practically every instance the defendant in the suit that we brought came to Austin on the next train, or shortly thereafter, and filed a review suit such as they had the right to do under the statute, and evaded penalty suits that we had filed there, consequently we are standing there with our hands tied.

Q. Now, Mr. Upchurch, just one more question: From your knowledge of the law pertaining to the regulation of pipe line rates, would you say that the Railroad Commission has sufficient authority and sufficient power to regulate the rates of the pipe lines?

A. Well, I have never been called upon to investigate that particular matter, or look into it. It has been my general understanding that they perhaps could; the pipe line companies, as I understand, file their schedules with their rates, then the Railroad Commission has the authority to go into them, and if they think they are too high they call a hearing on them and have an investigation and order a reduction.

Q. As far as you know, all the pipe line companies who are acting as common carriers, that is, all common carrier pipe line companies, have submitted willingly to regulation of rates by the Railroad Commission?

A. Have done what?

Q. Have submitted willingly to the regulation of their rates by the Railroad Commission.

A. About that I could not say, Mr. Petsch, because I have never had a conference with the Commission or any member thereof about that phase of it.

Q. Mr. McGill wants to know how long these companies that might be involved have a right to file the review suit after the order of the Commission has been entered?

A. So far as I have been able to find, I have never found a case which has determined that question. However, I believe, from the decisions I have found, that a man would have to bring a review suit within a reasonable length of time after the order was promulgated by the Railroad Commission; I don't believe he could sit down and wait two or three years and then bring it.

Q. Now, Mr. Upchurch, as a matter of remedying that situation, would you say that the only effective way of keeping the hands of the Railroad Commission and of the State from being tied by means of these review suits, would he by the statute prescribing that the Railroad Commission could go into court and secure

an injunction commanding the performance of its order?

A. I don't know, and I doubt seriously whether it could be done then.

Q. Well, do you know of any other way in which it could be done?

A. I do not. Very frankly, I don't know of any way of legislating around the decision of the United States Supreme Court, a lone line of decisions. Frankly, I don't.

Q. If it cannot be done that way, it cannot be done at all?

A. I doubt it seriously.

Q. Of course, the decision of the Supreme Court of the United States was based upon the proposition that no man shall be penalized before his rights have been adjudicated in court; in other words, every man is entitled to a day in court. Now, when you provide by law that the Railroad Commission shall have the right of an injunction commanding the obeyance of the law, or their order, whatever it may be, that gives to the man a day in court, does it not?

A. I don't know whether just the injunction feature of it would or not, when he has a right to appeal to have the validity of the order tested in court. My candid opinion of it is that if the Commission succeeded in getting an injunction that it would be abated by the court where the review suit was filed. However, I am not positive about that because that has never been passed upon.

Q. One other question: The statute expressly provides, Article 6014, Section B, expressly provides that it shall be unlawful to commit waste by means of flooding oil structures or structures which contain oil with water?

A. Yes, sir.

Q. Now then, if the conditions exist where that is done, the most effective way of preventing that would be by the Railroad Commission issuing an order expressly commanding the parties violating that statute to desist?

A. I don't think, Mr. Petsch, that it would be necessary for the Railroad Commission to pass an order to that effect. I think if the man has brought himself within the purview of Article 6014, that suits could be brought direct, that if you could make out a case under that statute. We have undertaken to do it, we have filed for the Railroad Commission several suits already, where they were brought directly on Article 6014 of Revised Statutes without reference to any of the orders of the Railroad Commission. However, it is going to be very difficult to make out the cases under that.

Q. You filed several of those suits?

A. Yes, sir, there are several pending now.

Q. Just one additional question: Do you feel that it would be within the power of this Legislature to pass a law which would prevent one man from taking the oil out from under the land of his neighbor, or the adjoining lease holder?

A. Frankly, I would not undertake to answer that without making some study of it, Mr. Petsch.

Q. That is all.

Mr. Greathouse:

Q. Mr. Upchurch, are you of the opinion that our statutes are sufficient to establish the fact that pipe lines are common carriers?

A. That pipe lines are common carriers?

Q. Yes, and subject like railroads to the orders and tariffs to be established by the Railroad Commission?

A. I don't think you can classify an ordinary pipe line as an ordinary common carrier, unless it comes clearly within the purview of the statute. Or, in other words, unless they have exercised the right of eminent domain in getting their line, their right of way.

Q. Well, you are familiar, no doubt, with Article 6018 to Article 6037, which deal with that subject, wherein the power of eminent domain is conferred upon pipe line companies. Also, specifically, Article 6022, which declares that "every person, firm, corporation, etc., or association of any kind whatsoever, owning, operating or managing any pipe line, or any part of any pipe line, within this State, for the transportation of crude petroleum, that is declared by this title to be a common carrier, shall have the right and power of eminent domain." And prior to that, in a certain section, the power of eminent domain is conferred upon them. Now, with reference to that, is it not a fact that most of the big pipe line companies within the purview of that statute, are common carriers?

A. Yes, sir, because I do not know of any major company that

has a pipe line that has not exercised a right of eminent domain.

Q. Then it is further declared by Article 6019 that the operation of common carrier pipe lines is a business in which the public is interested and is subject to regulation by law?

A. Yes, sir.

Q. Have you any doubt as to the provisions of that law effectively bringing the major pipe line companies into the same class that railroads are in with reference to their being common carriers?

A. That is a question that has been cussed and discussed by lawyers all over Texas; they are very muchly divided. Personally, I think if they have exercised the right of eminent domain as given them by the statute, that they can be regulated.

Q. Well, don't you think they are a public utility in fact by virtue of these statutes, and are subject to be regulated by the Railroad Commission, and that they should file tariffs and have them approved by the Railroad Commission, just like the railroads do?

A. Yes, sir, those that come under that class.

Q. You are also familiar with Article 6037, which declares that "the Commission shall establish rates of charges and regulations for gathering, transporting and loading and delivering crude petroleum by such common carriers in this State." You are familiar with that?

A. Yes, sir.

Q. Is it your opinion that that is valid?

A. My offhand opinion is that it would stand up; however, I may say that I have never made a close study of that particular feature of it.

Q. Isn't it a fact that the Railroad Commission has never taken the initiative in this State like they have with other public utilities and railroad companies, especially an established pipe line rates and tariffs?

A. I don't know what has been since prior to the first of January.

Q. Well, it is admitted by one of the Railroad Commissioners at this hearing that the Railroad Commission had never taken the initiative and that in effect the law was a dead-letter, and that the big companies, the major pipe line companies, those who are vested with the public interests, are now charging rates which are supervised in no manner by the Railroad Commission of this State. Aren't you familiar with that fact as it exists, without reference to being a member of the Attorney General's Department? Don't you know that that is common knowledge?

A. I have never heard of any legislation or orders along that line.

Q. Well, you have got the legislation.

A. Well, I should have made it "orders."

Q. Along that line?

A. I think that is true, so far as I know, since I have been here there has been nothing done.

Q. In other words, the pipe line companies are being allowed in this State at this time to fix their own tariffs and rates and go unchallenged by the Railroad Commission or anybody else but the individuals who are affected by them?

A. As I understand, they make their schedules and file them with the Railroad Commission, and the Commission has the power, if they think they are excessive, to conduct hearings and probably reduce them.

Q. Have you ever heard of a pipe line tariff in this State being approved by this Railroad Commission, or even being set by the Railroad Commission?

A. No, I don't believe that I recall it.

Q. Do you believe it is the duty of the Railroad Commission to take the initiative in fixing the rates and tariffs of pipe lines in this State, in view of the fact that they are a public utility, with the right of eminent domain and affected with a public interest?

A. I do.

Mr. Hardy: I have three questions which were sent up to be asked you.

Q. Does the Attorney General take an oath of office to enforce the laws?

A. How is that, sir?

Q. Does the Attorney General take an oath of office to enforce the laws?

A. I have never heard of an Attorney General yet that hasn't.

Q. Is it customary for the Attorney General to enter into compromises and permit law violations?

A. I have never heard of that custom.

Q. If someone would attack the Dean Act, would the Attorney General enter into agreements with all the other bootleggers operating in the same district not to prosecute?

A. I will say the present Attorney General would not. And I could not speak for any others.

Q. That is all, Mr. Upchurch. Much obliged to you.

Mr. Hardy: Mr. Chairman and members of the Committee, the steering committee has completed all of the witnesses that it has on its list now to call.

We have left the names of Mr. Cranfill, who has said he could not be here until today. We have Mr. Harry Sinclair, who said he could not be here until tomorrow. We have Mr. Carl Estes, who seems to be in Mayo Brothers' Clinic at Rochester, Minn.; and outside of that we have completed all the names subpoenaed or called, except the Hon. R. S. Sterling, Governor of the State. When I called upon the Governor I asked him when it would be convenient for him to come before this House and give his statement. It was not convenient that day, and I understood the Governor to say he would let me know when it would be convenient. I understand this morning that the Governor said he thought I was going to call upon him. So there seems to be some misunderstanding, and not as an action of the Committee, but as my personal opinion, I feel that the Governor of the State ought to be given an opportunity to come before the Committee and state his views. That is my personal opinion, and not the action of the committee. The steering committee has completed its labors.

Mr. Farmer: Mr. Hardy, don't you think that it is fair to the Governor of Texas that he should be allowed—

The Chair: Is there any objection to the Committee standing at ease until 2 o'clock? The Chair hears no objection, and the Committee will stand at ease until 2 o'clock.

The Committee of the Whole House met at 2 o'clock p. m., Wednesday, July 29, 1931.

Mr. Hardy announced to the Committee that the steering committee had completed its examination of all witnesses that they had a list of and who were available, with the exception of the Governor of Texas.

Mr. Hardy: The Governor has already been before the Senate. I understand now that he wants to appear before the House. If the House wants to hear him, that is entirely up to the Committee of the Whole, and not up to the steering committee.

Upon motion of Mr. Forbes of Parker county the Committee of the Whole House voted to invite Governor Sterling to make a statement if he desired to do so.

Thereupon the Chair appointed Mr. Hardy and other members of the steering committee, and Mr. Petsch, to call upon the Governor and invite him to appear before the Committee.

Governor R. S. Sterling appeared before the Committee and, having been first duly sworn by the Chair, testified as follows, questions by Mr. Hardy:

Q. Governor Sterling, we are about to complete an investigation in accordance with the resolution to investigate the reasons why conservation measures have not been enforced and other matters pertaining to the oil industry. During that investigation, certain acquisitions have arisen relative to some of your transactions with some of the oil companies. Do you desire at this time to make a statement to the House relative to what legislation ought to be passed, or your ideas upon conservation, or upon these acquisitions?

A. I think it might be well to explain to your Honorable Body in reference to certain testimony that has been given here, and certain allegations in reference to transactions of mine with certain oil companies. One of these transactions was in the nature of a lease that was made to the Humble Oil Company, I think in 1926. This, I believe, was testified to by Mr. Farish, the president of the Humble Oil and Refining Company. I understand somebody got the impression, or the statement was made, that a loan was made to me. That is erroneous, because there was no such transaction, no loan was made to me. I sold to the Humble Oil and Refining Company a lease on something over 1500 acres—that is, I and associates—this particular tract of land is now owned in its entirety by me, but two other gentlemen own a quarter interest in it. The price paid for this lease in cash was $175,000 and it was an ordinary commercial lease, five-year lease, known as a commercial lease, and a rental of $3 or

$4 per acre per annum was to be paid. After holding this lease for several years—two or three years—the company started to develop it. The lease provided further that $135,000 be paid out of the first oil produced. On January 3, or perhaps January 1, I am not sure as to the exact date, 1930, the company drilled a well on this tract of land. Immediately they called on me and asked what I would charge them to close this well and not develop, begin to develop it, for a year. After certain negotiations, we agreed on a price—the price was $225,000 advance royalty—that is, they figured that there would be about that much coming from this particular well, or others that they might drill during the year. They were to pay, and did pay me, $175,000 that was to be taken out of oil, and $225,000 for advance royalties. This contract provided that if they did not produce oil sufficient to pay this amount, that there was no obligation upon my part, or upon our part, to the company; in other words, it was a closed transaction, so far as we were concerned, and the company would have to produce oil in order to get this money in the way of advanced royalties. I think that is the only transaction that was referring to me in the testimony before your body.

Q. The same statement you have just made to us, Governor, was made by you in the Senate, wasn't it?

A. Yes, sir, substantially the same —not, of course—I couldn't repeat it verbatim, but I believe you have the contract in the record, copy of this contract that was made with them, I understand it has been introduced in the evidence.

Q. Yes, sir, we have that in evidence.

A. It is a matter of record, any way, in the deed records of Liberty county.

Q. What I mean, was your statement that you have just made to this House, if it had heretofore been made to the Senate, if they have it in the Senate Journal?

A. Yes, sir.

Q. Please explain, Governor, what a bonus is, when you speak of a bonus?

A. Well, that is the purchase price of a lease, when you buy a lease, the money you pay for it is bonus for the lease.

Q. The lease provides for a certain amount of money to be paid then, for rentals, and then during the time it is not drilling, and then a certain percentage of oil after the well is drilled in and oil is discovered, isn't it?

A. Yes, sir.

Q. And that portion of the lease which pays you a cash dividend, you might say, at the time of making the lease, is called bonus?

A. I am referring to bonus as the amount paid for the lease, part of it by cash and the other part to be paid out of oil which they paid for as a consideration for developing for one year.

Q. The bonus, then, is in addition to rentals?

A. No, that is, yes, the bonus is the amount of money paid for the lease, Mr. Hardy, and the rental is for continuation each year—there is usually an amount paid each year as renewal or rental on the lease.

Q. I am familiar with that, Governor, I am just trying to get it to the Committee.

A. Yes, sir.

Q. Then, in addition to the bonus and rental, then there is a royalty on the oil if oil is discovered on your land, is there not?

A. Yes, sir.

Q. Now, Governor, there has been some vague insinuations, or some language, I don't know whether it is in the records, about a loan or bond issue of $65,000 on the Houston Dispatch, or some of your properties in Houston, which I don't believe you have given us any information on.

A. Well, I explained that situation to the Senate Committee yesterday afternoon. I am not an officer in the Houston Printing Company; however, I am a stockholder. In the latter part of 1930, the officers of that company negotiated and sold a bond issue, which was not completed until this year. This bond issue was sold to two banks in Dallas and one bank in Houston, the amount of $65,000. Those bonds were advertised and sold throughout the State.

Q. There have been some insinuations that the Humble Oil & Refining Company helped to float that loan, or in some way purchased those bonds. Is that true?

A. To my knowledge it is not—that is, I haven't knowledge of any oil company buying any of the bonds. All negotiations were with those three

banks, two in Dallas and one in Houston. I have no knowledge of who bought the bonds, I understand they were sold in various sections of the State.

Q. Do you know whether or not any one particular company was handling the deal through those banks?

A. I don't understand.

Q. Do you know whether or not any particular financial company or investment company handled the deals through those banks, or was that done with the paper itself?

A. The negotiations in the handling of the transaction were with the bank; I don't know about anything else.

Q. The records from the newspapers, then?

A. Yes, from the officers of the newspapers.

Q. Governor, please state to the Committee whether you own any and if any, how much stock, in the Humble Oil and Refining Company, directly or indirectly?

A. I don't own any stock in the Humble Oil and Refining Company, directly. I think there are a few shares, that are in trust, less than 100 shares that somebody—well, I don't think there is anything standing in my name, but a year ago I think there were 75 shares of stock for another party that stood in my name, that—or that had not been transferred. But I don't own any stock whatever in the Humble Oil and Refining Company.

Q. There is no stock held by anyone for you?

A. No, sir.

Q. In the Humble Oil and Refining Company?

A. Nor held in the name of another for me.

Q. Governor, there has been some information spread on the floor of the House that in December, 1930, there was—that the Humble Oil and Refining Company filed an application in the State of Mississippi to do business, and gave your name as one of the directors or officers in the company at that time. Do you know anything about that?

A. I saw a circular that was distributed in East Texas showing my name as a director of the Humble Oil and Refining Company. It showed the names of all those who were members of the directory, the first directory, when the Humble Oil and Refining Company was organized. I have no connection, I have not been connected with the Humble Oil and Refining Company since 1925, in February. This list of names on there were names of those who were the first directors of the Humble Oil and Refining Company in the reorganization, or the incorporation of what is known as the Humble Oil and Refining Company.

Q. Were there any names on that list besides your name who were not directors or officers?

A. Now?

Q. Yes, sir.

A. I think there were two parties' names on there that are not connected with the Humble Oil and Refining Company now—or one at least.

Q. You severed your relationship as president of the Humble Oil and Refining Company in 1925, did you not?

A. Yes, sir.

Q. When did you dispose of your stock in that company?

A. Well, I disposed of the bulk of it in 1925, and 1926, and the remainder of it in 1928; and a few shares were disposed of in 1929.

Q. At the time you were making the campaign for the Governor of the State of Texas, you were not the owner, directly or indirectly, of any shares of stock in the Humble Company, or any producing company in Texas?

A. Well, I had a few shares of stock in some little company, but I owned nothing in the Humble Company for at least a couple of years—I say there were 75 shares that were held in my name that belonged to another party.

Q. Governor, is it usual and customary for these companies to advance royalties to keep from having to drill wells on leased acreage?

A. Yes, that is done very frequently.

Mr. Hardy: Governor, practically all of this information you have given just now is also in the Senate records, isn't it?

A. Yes, sir.

Mr. Beck: Governor, when these contracts were made with the Humble Company, wasn't it necessary for them to be filed of public record in Liberty county?

A. I didn't catch the first of your question.

Q. These contracts that were

signed with the Humble Oil Company, wasn't it necessary for them to be filed with the public records of Liberty county?

A. Yes, sir.

Q. And they were so filed?

A. Yes, sir.

Q. When were they filed?

A. I don't know the date of the filing—Mr. Hardy, I understood they were filed.

Q. The contracts were made of record before you became a candidate for Governor, weren't they?

A. Yes, sir.

Q. There was no secret about that?

A. Not a bit, no.

Q. Now, in order to explain some of the things that seem to occasion questions—did you retain a royalty interest in this line upon which you sold a lease to the Humble Oil Company for $175,000?

A. A royalty for one-sixth of the oil.

Q. You retained that royalty?

A. Yes, sir. And, of course, I didn't sell off the land; I still own the land, and own the royalties.

Q. I believe the courts of this State held in, what is known as the Waggoner-Seigler case, that the owner of royalties can compel the lessee to rapidly develop the acreage lease to it. Either that or answer in damages for not having developed it?

A. Yes, sir. Mv lease called for reasonable development.

Q. Do you recall that after this Waggoner-Siegler case was adjudged by the courts, that all over the State of Texas, land owners who were not satisfied with the number of wells that the companies had put down, started a regular campaign requiring those companies to pay upon damages or drill more wells?

A. Yes, sir, I heard of such a situation.

Q. And in fact, it was very frequently done all over the State?

A. Yes, sir.

Q. Now, you had the Humble in that same position? Didn't you?

A. When I was head of the Humble Company, we made various contracts in order to adjust our leases, make them workable, yes.

Q. Well, what I mean—when you sold this lease to the Humble Company, and kept the royalties, you had them in the position where you could either make them drill more wells, and get your oil for you, or make them pay off for not drilling it?

A. Yes, sir, the lease called for reasonable development, and of course that is one of the leases that the oil men hate—reasonable development—they would rather have it fixed in so many wells, than to have "reasonable development."

Q. But if they haven't drilled these wells, as you wanted them to do, you could go into court and collect damages from them, couldn't you,?

A. Yes, sir, I think so, if they have not been developing in a reasonable manner.

Q. But instead of trying to settle that in the courts, you and the Humble Company simply reached an agreement as to the amount of money that they ought to advance to you for not completing the drilling in that field?

A. Yes, sir. In other words, it was paid as royalty for not developing—that is, as royalty on oil that they might have produced over a length of time.

Q. You were in a position to demand of them either so much money or so much oil?

A. Yes, sir.

Q. And the money was better to have, wasn't it?

A. I don't know, it may have been a very bad trade, because oil is worth a great deal less now than it was then, and it takes a great many more barrels of oil to get a dollar than it did then.

Q. What was the reason that the Humble Oil Company assigned to you for not wanting to drill any more wells at that time?

A. They didn't want the expense of building a pipe line into this particular area, and they said they had all the leases they could really very well develop, and they were willing to pay for the postponement of the development of this lease.

Q. And then, too, they were faced with an era of overproduction and knew it?

A. Yes, sir.

Q. And they didn't want to further glut the market with their own oil?

A. In substance, I think that was the main reason, that they had all the oil they wanted.

Q. Now, you sold this 1500-acre lease for $175,000, which was a very good price. Was it developed terri-

tory, or proven territory, or territory of special geology, or what?

A. Two of the major companies thought it was oil land and were bidding against each other. I failed to say in answer to a question awhile ago, that this price was paid by competitive bid; the Gulf Company bid $165,000 in cash, and $165,000 to be paid out of the first oil, and the Humble Company bid $175,000 and $175,000 in oil; naturally, the Humble Company got the lease.

Q. And a good well was found on this land when the discovery well was brought in — that is, the first well drilled by the Humble Company was brought in?

A. The well was never allowed to produce at any length of time; it was reported to be from 1,000 to 1,500-barrel well, but it was choked in, and I don't think any one knew just what it would have made had it been left open like some wells are being left open.

Q. But it was a good enough well to insure that there was a very good oil section in that land.

A. That is my opinion, yes, sir; and, as a matter of fact, the well, after being closed up for a little over a year, is still flowing, of course, not flowing a great deal of oil.

Q. For what length of time were they willing to postpone drilling?

A. One year.

Q. One year? Has that year expired?

A. Yes, sir, that year expired about the middle of January, or the first part of January of this year.

Q. Has it been extended?

A. No, sir. They have tried, they are now drilling a well, have drilled one well and are starting another.

Q. But you are not requiring them to drill wells under the present conditions?

A. I am requiring them to keep the lease in effect—in fact, go on and develop; if they stop developing, why, naturally, I would want them to go on.

Q. If they stopped under the standard commercial lease that you sold them on this property, aren't the terms of that lease such that if they did not develop that, you would get it back, including the wells drilled on it?

A. Yes, sir, that is a condition of all leases, either get it all back or a small amount is held for drilling a well on it, and the rest of the land is released. There are various leases and various forms under which they work.

Q. Is there another well close to this?

A. Well, there is one about three miles, across Turkey Bayou.

Q. Is there any drilling here in this particular field?

A. Yes, sir, maybe adjoining this, supposed to be on the same dome.

Q. Has it been developed?

A. The Gulf has some development on the adjoining tract.

Q. Have they drilled offset wells down the line?

A. Well, there are two offset wells, but I don't know whether they are drilling any there now or not, I haven't been there personally and haven't had any report on it.

Q. Do you require the Humble Oil Company to offset wells drilled by the Gulf Company?

A. Well, as a matter of fact, the Gulf offset the Humble wells.

Q. The Humble drilled first in this case?

A. Yes, sir.

Q. Now, the $225,000 which was to prevent a drilling campaign, has that been liquidated?

A. No, sir, not by a very small amount of it. But I haven't received any statement from them, and I don't know just how much oil that they have produced since they opened the well.

Q. And as the oil now comes up out of the ground, one-sixth of it goes to pay the Humble back its $225,000?

A. Yes, sir.

Q. And you don't get any of that?

A. No, I wouldn't get anything of it until that was replaced.

Q. Until the $225,000 was returned to them?

A. Yes, sir, I wouldn't get any of the royalties.

Q. Yes, not any of the royalties. After that $225,000 has been repaid to them, unless you sell your interest in the meantime, you will begin to get the royalty again?

A. Yes, sir.

Q. And you can either take it in cash or you can take it in oil?

A. I think the lease provides that; you can elect to take it either way you want—you can take your oil and you can take the posted price for it.

Q. You don't even have to sell that oil of yours to the Humble Com-

pany unless you want to, would you?

A. I wouldn't, no, sir.

Q. You can sell it to anybody you want to sell it to.

A. Yes, sir.

Q. And at any price you can get for it?

A. Yes.

Q. It appears from this document that your contract with the Humble Company was signed on the 10th day of January, 1930—is that correct?

A. Yes, sir—I don't remember the date without looking at it; but the well, to the best of my recollection, came in about the 3rd of January, and they immediately negotiated this trade.

Q. The kind of contract that you made is the kind of contract that occure every day in an oil company's office, although in amounts not as large, is that correct?

A. They are frequently entered into, contracts along these lines, I understand, yes, sir.

Questions by Mr. Hardy:

Q. Governor Sterling, I want to get this in the record, in order that it might show: You were invited before today to appear before the Committee?

A. Yes, sir, I was invited by yourself — in fact, you asked me if I wanted to appear, and I told you I would be glad to come when you folks wanted me. I couldn't come the morning you asked me on account of having extradition hearing; I told you I would be glad any time you folks wanted me to come; that is my understanding of it.

Q. This money that was advanced to you as advance royalty was advanced without interest, wasn't it?

A. Yes, sir. There is no obligation on my part to return the money. Of course, I haven't read this contract since the day I signed it, but that is my recollection of it, Mr. Hardy. I don't know that I could repeat every line of it.

Q. I understand that. Governor, has there been enough oil produced from that well yet to repay the Humble the $225,000 that was advanced?

A. I don't think so, I don't think anything like enough has been produced yet, because they only opened it up in the middle of January, and it flowed—when they opened it up something like 400 or 500 barrels.

Q. You mean January, when? This year?

A. January, 1931, yes, sir.

Q. In other words, they didn't open it up for a year after this contract?

A. It stayed tapped, yes, for over a year. Of course, ordinarily any well would go dead in a year's time, you know. Of course, it is still producing.

Q. That was part of the contract —part of the reason you got your $225,000, was in order that they would not have to drill any further wells until the end of the year?

A. Yes, sir.

Q. At the end of that time, they would continue as provided in the lease?

A. Yes, sir.

Q. Was this lease a regular 88-Form lease, Governor, that they had?

A. No, sir.

Q. It doesn't say anything about drilling when there is a sufficient amount of oil in paid quantities, then?

A. No. The property was to be developed in a reasonable manner, reasonably developed. The lease was prepared by my own attorneys.

Q. How much acreage was in this lease, Governor?

A. Something around—less than 1600 acres—1500-some-odd acres.

Q. From your experience as long-time head of the Humble Company, what would you say would be a reasonable development of that acreage?

A. Well, I would think that they should have from one to three rigs running on a lease of that size.

Q. During the year or a given period, or how?

A. Well, you mean during the year? If the entire lease was productive, in order to develop it by reasonable development, they would have to have perhaps five wells drilling; it is owing to how you require them, you might make them put it up a little faster, it is owing to the production, you know, that is on the lease, the rate at which they develop one well might be enough to satisfy you, if you got a well. You understand that, you used to live out in the oil country?

A. Yes, sir, I understand it.

Q. What I am trying to get in the record is for the others to understand. Well, in this particular instance, Governor, what would you have set as reasonable development,

considering the amount of oil produced in this first well?

A. Well, that would depend on what the conditions were; I think you would have to take into consideration the conditions, price, etc., of oil.

Q. Suppose the price would have been low?

A. Well, I wouldn't have been so anxious for it to come out to be produced.

Q. The price has been relatively low, hasn't it?

A. Yes, sir.

Q. Then, as a matter of fact, you were advanced $225,000 not to drill any additional wells for the purpose of not drilling additional wells, when, in accordance with the price conditions prevailing, you would'nt have wanted any additional wells drilled any way, isn't that true?

A. No, that is not true. I wanted the property developed at that time, and they paid the money to keep from developing it.

Q. What was the price of oil at that time, January — whenever this contract was made?

A. I think the price was around about $1.00 a barrel, I think, at that time—I am not sure; the records—posted price records, will show, but I think it was around about $1.00 a barrel.

Q. It was somewhere around a dollar?

A. Well, I don't know exactly, but I think it was about a dollar a barrel, may have been a little above a dollar a barrel.

Q. And you wanted the lease at that time developed, did you not?

A. Yes, sir.

Q. Then, at that time, how many wells did you think should have been drilled in order to develop the lease?

A. Well, I never—I never went into that detail, Mr. Hardy, but a lease of that size, as I said before, it is owing to conditions, owing to who is there alongside of you, what you have got to offset, and so forth.

Q. Well, this contract did not relieve them of any rights to drill offsets, did it?

A. No, sir; they would have to drill offsets if the other fellow drilled in the field, for the protection of the lease; if someone would drill an offset, why, naturally they would have to go and protect the lease from offsets.

Q. Then, what other conditions besides price conditions should be taken into consideration as to the number of wells to be drilled?

A. I didn't get your question, Mr. Hardy.

Q. What other conditions besides the price of oil—the price of oil would necessarily have to be taken into consideration—as to the number of wells that should be drilled to properly develop the lease?

A. Well, you would have to take into consideration the offsets.

Q. All right. They have to drill the offsets any way, do they not?

A. Yes. But you asked as to what number of wells would be drilled, and it all depends upon how the other fellow develops alongside of you.

Q. Well, what I am trying to get at, Governor, is, what was refrained from by reason of execution of this contract, and the transfer—or the advance to you of $225,000 in royalties, what did the Humble Oil and Refining Company actually refrain from having to do that the lease otherwise required them to do?

A. Well, they didn't have to do any drilling unless it was to protect offsets, I think that is provided in the lease.

Q. Yes, sir, that is in it, in the lease, that they have to protect the lease from offset.

A. They would pay me the amount of money that they would have paid me under development of the lease, had they gone on and developed it.

Q. Then if you were getting the same amount of money as if the well had been developed, the only benefit to be derived was to the company itself, was it?

A. Well, I think that they wouldn't have paid that amount of money if they didn't think they were getting the benefit of it, Mr. Hardy.

Q. Well, I understand that, I think everyone who makes a trade endeavors to satisfy himself or get the best he can, Governor; there is no criticism on that.

A. I certainly wouldn't have accepted it if I hadn't been satisfied with it.

Q. The point I am trying to get, Governor, is, that you received the sum of $225,000 as advance royalty and that was given to you because the company thought that by advancing it to you there and not having to drill any further wells they would be benefited in that amount?

A. Well, I presume that is what they thought. I wasn't running their end of it.

Q. Well, I understood that to be your statement a minute ago?

A. Yes, sir.

Q. And you are and have been for many years a practical oil man. Now, then, what I want to know is, the drilling of how many wells was saved by virtue of this contract, one well or ten wells?

A. Well, you cannot determine that, Mr. Hardy, because when you have one well on a tract of land you don't always know that every foot on that land is productive; you cannot tell how many wells; it might have been that they would never have drilled more than ten wells altogether on the tract of land. You know about oil pools, sometimes they are there and sometimes some part of the land has no wells on it, you know.

Q. That is true, Governor, but you have stated to this Committee that at the time you made this contract you were insisting upon their developing the lease and that they paid you this consideration in order not to have to develop it further. Now, I am trying to find out what you were insisting on being done; how many wells were you endeavoring to have drilled, and how many did the company save by advancing you this money?

A. I don't think the number of wells were taken into consideration at all, Mr. Hardy, in the contract.

Q. This contract further provides that any time after the period of one year, in case you decide to repay any portion of that $225,000 that has not been credited to your account by reason of oil royalties, you could pay that to the Humble Company and thereby they would retransfer to you your royalty interest, is that not correct?

A. Well, I haven't read the contract, since January, 1930, and, consequently, it is not as fresh in my mind.

Q. Glance over paragraph seven, Governor, please.

(Handing paper to witness.)

A. Yes, sir, that is in there.

Q. All right. Now, then, under that contract and in paragraph seven you are given the right at any time after the expiration of a year to repay the Humble Company any portion of the $225,000 that has been credited to your account by reason of royalties, and have retransferred to you your mineral and royalty interests in this property. Is that not correct?

A. That was put in there. Yes. Because I might want to sell the entire royalty, and for that reason we could pay it off and sell it, you know, to someone else.

Q. All right. Now, paragraph three says "second party, referring to the Humble Oil Company, has this day loaned or advanced to first parties the further sum of $225,000 in cash." Is that correct?

A. I didn't read that clause there, but there is no obligation to pay this money back, Mr. Hardy.

Q. I understand that.

A. Which paragraph did you say?

Q. Paragraph three, Governor, up at the top of the next page. Do you find it?

A. Paragraph three? Yes. It says in this paragraph, or a portion of it, "first parties shall be under no obligation to repay this sum."

Q. I understand that. Now, read that first part of it, Governor, please, sir.

A. How is that?

Q. Read that first part of it.

A. Well, yes. I admit the first part of it, yes.

Q. What I first read to you, then, is correct, is it not?

A. Yes. And what I read to you is correct, Mr. Hardy.

Q. Yes, sir, no question about that, Governor. Then, according to this contract, you have $225,000 advanced from the Humble Oil Company which you may either let them pay themselves by taking the royalties for that amount as it accrues, or you can keep that $225,000 for any period and return any portion of it without interest?

A. No, sir, it does not provide that. It provides that there is no obligation to return any part of it. It is advance royalty, but the clause was put in there on account of, perhaps, in the course of events, I might have sold this royalty, don't you see?

Q. There is nothing in this contract that says that in order to take advantage of that provision you would have to sell it, is there, Governor?

A. No, sir.

Q. Then, under this contract, you could, at end of the expiration of a

year, repay them any difference from the $225,000, less than the amount of the royalties that accrued to your account, you could repay them that and obtain the leases, isn't that true?

A. Well, I certainly wouldn't do it unless I had made a trade that would be more beneficial, Mr. Hardy.

Q. Well, I am asking you, Governor, whether or not you could do that under this contract?

A. Why, the contract speaks for itself; it says that you could do it, yes.

Q. All right; that is all I want to know. Then it can be either a loan or advance royalty, under that contract, can it not?

A. No, sir, I think not.

Q. The contract calls it a loan, does it not?

A. Well, still there is no obligation to return it; a loan carries an obligation to return.

Q. I didn't say it had to be a loan, I said it could either be an advance royalty or it could be a loan. You can use it the same as a loan, can you not, Governor?

(Upon objection, the question was withdrawn.)

Q. Governor, here are some questions that have been sent up. Before I get to them I want to go back to one phase of this. I believe you stated a few minutes ago—someone for the Humble Company—stated to you that the reason they didn't want to develop this lease was because they had all the leases at that time that they could thoroughly develop. Is that correct?

A. I think that goes without saying, Mr. Hardy, or they wouldn't have advanced this money; they wouldn't have paid this advance royalty had they wanted to go ahead and develop.

Q. I understood you said someone told you that and I wanted to find out who it was?

A. I would not pretend to tell you that I remember all the conversations that were entered into in negotiating this contract, Mr. Hardy.

Q. The Humble Company, you don't know whether they have any more leases than that now?

A. Don't know what?

Q. You don't know whether they now have more leases than they made this contract with you, do you?

A. Why, I imagine they have a whole lot more leases now than they had when they made that contract.

Q. Do you know whether or not they are making any more of these advance royalties?

A. I am not conversant with their management of their business, I have nothing to do with their affairs, at all, Mr. Hardy; so I am not in a position to say.

Q. I appreciate that, Governor. This question has been sent up: "When you sold your stock in the Humble Company did you sell it to the Standard Oil Company?"

A. Well, I don't know. I sold some to several different people, and it was sold through brokers, and I don't know who got it, or where it went to.

Q. "When was the sale made to them?"

A. What do you mean "when was the sale made to them?"

Q. Well, I presume that he thought you were going to answer the question that you sold it to the Standard Oil Company, I don't know.

A. Why, the sale of the stock is usually handled through brokers, and the man selling very seldom keeps track of where it went to, in fact I don't know who it went to.

Q. All right. Here is another one: "Did you receive any stock in the Standard Oil Company for this stock in the Humble Company?"

A. I never owned any stock in the Standard Oil Company.

Q. Well, the next question is answered. He asks: "Did you later sell the Standard Oil stock, or do you still have the Standard stock?"

A. I might wish to have a whole lot of stock.

Q. Well, I don't ask all these questions; some of them are sent up just like this one is.

A. Well, you are asking me, aren't you?

Q. Well, I am asking them for whoever sent it up; yes, sir, I will assume that responsibility. "Does your sister or your wife or your brother or any of your children own any stock in the Humble Oil and Refining Company?"

Mr. Greathouse: I object to that; nobody has made any charges that there was any improper conduct by our Governor, and I object to any such line of questions by any man

sitting here in the hearing of my voice. He ought to have the courage to get up here and make a charge against the Governor, instead of sending up a question and not putting his name on it.

Mr. Hardy: Objection sustained, if you like.

(Applause.)

Mr. Hardy: Here is another one, Governor, that has been sent up.

Mr. Satterwhite: He didn't sign it?

Mr. Hardy: No, sir.

Mr. Satterwhite: I am going to object to it if it isn't signed.

The Governor: The question may be from some party in the gallery, or somewhere else. If you are going to carry on a questioning bee here, the Governor has lots of work down in his office, gentlemen.

Mr. Hardy: All right.

Mr. Beck: Governor, it seems that this last transaction with the Humble Company is not understood in just exactly its right light. As a matter of fact, all that it amounted to was that you sold to the Humble Company $225,000 worth of oil underground. Isn't that what it amounted to?

A. Yes, and they would have to take their chance of getting it.

Q. And they would have to take their chance of getting it. You just sold them that much oil underground?

A. That is the substance of it.

Q. And it wasn't a question of them paying you $225,000 per year's delay. All they were out on it was the year's interest on the amount until they took the oil out from under the ground?

A. Well, the amount was paid for the consideration of non-development for the year.

Q. Governor, I have here a copy of the Oil and Gas Journal for January, 1930. It refers to the Moss Bluff Dome.

A. That is this, yes, sir.

Q. Is that the property?

A. Yes, sir.

Q. And this journal says that the dome is not only one of the oldest geophysical discoveries, but is said to be one of the largest known on the coast. Is that the same?

A. That is the same dome, yes, sir.

Q. And the test well drilled on that was known as Humble's Sterling No. 6.

A. Yes, sir.

Q. Is that the well?

A. Yes, sir.

Q. There was no question about—not much question about that much oil being down under the surface, was there?

A. No, and I don't think there is much question yet about what is under the surface.

Q. Now, on January 16, you made this contract on January 10, now I have the Oil and Gas Journal for January 16, 1930, and on a report of operations in Southeast Texas the report shows on page 56 that the Moss Bluff area is shut in. Is that correct?

A. Yes, sir, that is correct.

Q. In other words, the records of the oil industry confirm the statements that you have made to us today?

A. Yes, sir.

Mr. Kayton: Governor Sterling, would you mind answering a few questions that would help the Legislature? I don't think we were very much interested in the statements brought out here, because everybody that has read your testimony in the Senate knew what your answers were then, but I would like to ask a few questions about the problem we have before us, if you would not mind answering them.

A. I will do my best.

Q. Why do you advocate a separate commission to handle these oil matters rather than the Railroad Commission?

A. Because I think the duties of the Railroad Commission that have been imposed upon them are about all that they can handle, the added duties of regulating trucks and busses and their railroad duties, and I believe that this conservation of natural resources of the State is of such magnitude that it would take the time of three of our best men in Texas to handle it.

Q. Then following on that line, do you believe that this so-called Estill plan, of a five-man commission, to represent fairly—

A. (Interrupting) What plan?

Q. I believe it is called the Estill plan; we can have as many men on a commission as we want to put on a commission.

A. I think three would be sufficient on any commission of that nature.

Q. As I understand this plan, it is for a geographical selection of the various commissioners, with the Governor appointing one man. Do you think that would be right or wrong?

A. I think it is entirely contrary to our Constitution.

Q. Well, going right ahead on that being contrary to the Constitution, I am glad you answered in that way, because that is just why I am asking these questions; why shouldn't this new commission, though, be representative of the people, and be elected like the Railroad Commission, rather than be appointed like the Highway Commission?

A. I believe that an appointive commission would function much better than an elective commission; I believe that you can secure better men that are better qualified by appointment that you could by election.

Q. Well, I will ask the question: You believe that the people can be trusted to show the proper wisdom at the polls and put a body like the Railroad Commission over us, but that the Governor can put a much better body of men, like the Highway Commission, to govern us, that is your principle?

A. I believe the men that could be selected could handle such propositions by the Senate of Texas and the Governor of Texas; you could select better men than you could by the elective method.

Q. Is it true that this bill that is now before the House that is called the Wagstaff bill, I think he introduced it, and a bunch of others, has that had your sanction and approval, or have you seen that bill yet?

A. Yes, I have seen that bill.

Q. That has your sanction and approval?

A. I favor that better than any I have seen.

Q. Then, Governor, why is it that the clauses—I understand that some of that was taken out of the bill prepared by the so-called independent oil men, the emergency oil relief committee, or something like that, and why was the clause that they had in there on market demand eliminated and this vague definition of the word "waste" instituted therefor?

A. Well, it was eliminated by Mr. Wagstaff, and when they consulted me on this question they showed me the bill, I think, that was written by the emergency committee. I objected to the clause in there of marketed demand.

Q. And why?

A. Because I felt that we didn't want anything that would be in the nature of price fixing.

Q. I see. This is just rumor that is going around the Capitol, and I think it would be a good time to spike it now. Is it true that Dan Moody would be placed in this new conservation commission if the Legislature creates that commission? Just answer that "yes" or "no," to suit yourself, but that rumor is all over.

A Member: Mr. Chairman, I object to any such question as that being asked; if we are going to pass this law and leave it up to the Governor, it is his job to select the men; if we are not going to do so, it is up to the people; and these kind of questions are certainly out of place at this time to embarrass the Governor.

Mr. Kayton: Did the Governor object to that, or did Mr. Albritton object to answering that? If the Governor objects I will pass it, but it is the fact that the rumor has gone over here that that is the reason that they want another commission so that Dan Moody could be the head of it, and that would have a great deal of influence on this bill. If the Governor cares to answer it, all right; if he doesn't it doesn't make any difference.

A. I don't want to be in the attitude of criticising the Committee, but I believe if they would pay more attention to things other than rumors that we would—

(Cheers and applause.)

Q. Well, you know, Governor, I agree with you thoroughly, and that is why I have been against this whole investigation, because the whole thing has been nothing but a bunch of back kitchen rumors.

A. Well, I don't agree with you there, because I believe it has been helpful to the people.

Mr. Farmer: Governor Sterling, I have just a few questions here that I would like to ask that the situation may be cleared up. Governor, in the

House, when Mr. Farish was testifying, there was brought before this body a paper showing $10,000,000 worth of loans. Listed there under January 1, 1930, was a loan of $300,000 to R. S. Sterling. I don't propose to sit in this House as a member of this body without protesting and allowing to go by a situation that is unclarified and permit the name of a good man to be smeared. Three hundred thousand dollars, they have said, and $100,000, and $225,000, makes $700,000. Now, Governor, explain in your own way just what is meant by the $300,000 in connection with the $175,000 and the $225,000.

A. I know nothing about your proposed loans, or what is on the Humble Company's books, but I owe them no $300,000.

Mr. Davis: Mr. Chairman, this question has been thoroughly gone into and the Governor has thoroughly explained the whole transaction, and it has been read into the minutes and record here, and I object to asking the Governor to go back over and explain all these various money transactions.

Mr. Farmer: Now, Mr. Chairman, there has gone into the record of this House that the Governor of the State of Texas was loaned $300,000 on January 1, 1930, by the Humble Oil and Refining Company.

A. I wasn't Governor then.

Mr. Farmer: It has just now gone into the record that the Governor was paid $175,000 for a 1,500-acre lease, which is less than $12 an acre. It has just gone into the record that the Governor was paid $225,000 in advance royalties. That is less than 1,400,000 barrels of oil at a dollar a barrel, and certainly in justice to the Governor of the great State of Texas, he is entitled to tell this House and the world that the $300,000 was no part of any such matter as that and he did not receive any such loan as $300,000, and this has not been explained to the people of Texas and explained to this House, and he ought to be permitted to answer that question.

Mr. Beck: Mr. Chairman, I would just like to correct Mr. Farmer to just this extent. It is not in the record that the Humble Oil and Refining Company made a loan of $300,000 to Ross S. Sterling, or R. S. Sterling; it is in the record that the Humble Oil and Refining Company have submitted a list of loans and advances on oil and oil properties, a list containing every such transaction that they have made. I have that list here now and it reads: "Loans and Advances on Oil and Oil Properties, January 1, 1921, through and including June 30, 1931." There is nothing to indicate here whether it was a loan or an advance on royalty, and in view of the Governor's testimony and statement I submit that we must accept his statement that it was an advance on royalties, and I object to further questioning.

Mr. Farmer: Now, Mr. Chairman, I still insist in fairness to the Governor and to this House, that this record down here is on a different page than Mr. Beck was reading from—

The Chair (interrupting): Of course it is unnecessary to have the Governor explain again and again the same transaction, but if there is anything about the transaction that he can shed further light on by further interrogation, the Chair would see no objection to that, Mr. Farmer.

Mr. Farmer: That is exactly it, because I don't want it to go out in this State that the Governor got $700,000 in these different ways; I want him to have a chance to explain it.

The Chair: Go ahead and don't repeat.

Mr. Farmer: All right. Now, Governor, you may explain.

A. Mr. Farmer, if you will permit, I think I can, in a very few words, tell you just what it is, if you don't understand it. I think I can tell you so you can.

Q. Not only I, but others, Governor; go ahead.

A. On January 3rd the Humble Oil Company brought in a well on this lease that had been sold to them some two or three years previous. They did not want to develop this property as I wanted it developed. They negotiated a trade with me as to what I would take and allow the property to go undeveloped for one year. There was an amount due me on the payment of this lease of $175,000, that is, when the well was brought in, an amount to be paid out of the first oil. They proposed to pay this $175,000 and $225,000 as advance royalties, none of this money to be

repaid by me. Understand, the other parties owned a portion of this lease; one-fourth of this lease belonged to Ross & Wood, in Houston, and one-fourth of this $225,000 and one-fourth of this $175,000, which amounted to $100,000, was paid to them as the $300,000 was paid to me. Do you understand it.

Q. Yes. Then Governor, it is clear; I understand; there is no misunderstanding on my part and I want the record to explain that.

A. If there is anyone in the House that does not understand it I would be glad to repeat it again.

Q. Now, Governor, was there any effort on your part or anything done by you at any time to help the Standard Oil Company of New Jersey to own 65 per cent in the Humble Oil and Refining Company?

A. Will you state that question again?

Q. Was there any work done by you or any effort made by you or anything in any way that enabled the Standard Oil Company of New Jersey to acquire 65 per cent of the stock of the Humble Oil and Refining Company?

A. Yes, back in 1918, or the latter part of 1917, I think it was 1918, I negotiated a trade with the Standard Oil Company of New Jersey, whereby I sold them one-half of the capital stock, or they paid for one-half of the capital stock of the Humble Oil and Refining Company, which was an eight million corporation at that time, they putting $17,000,000 in the treasury of the Humble Oil and Refining Company. That is a matter of record, it is a matter that was taken up with the Secretary of State and the Attorney General before such contract was made, and they said that it was legal. I think that is history.

So that is how they come to own one-half of the stock of the Humble Oil and Refining Company away back in 1918. So later on they have acquired more stock, and I don't know what percentage of the stock they own now.

Q. Governor, do you think this Legislature ought to pass legislation that will cause the production in Texas in crude oil to be decreased so that the price of it will increase to a dollar per barrel?

A. I think that most every citizen in Texas would like to see the price of crude oil at one dollar a barrel and cotton at 15 or 20 cents a pound, and wheat at $1.00 a bushel.

(Applause.)

Q. Then, Governor—

A. (Interrupting) Hold on a minute; if by proper conservation methods and by the acts of this Legislature they could bring that about I think you would go down in history as the greatest Legislature that was ever convened in the State of Texas.

(Applause.)

Q. Then, Governor, do you think that the masses of the people of Texas, in the 182 counties that don't have any oil, should continue to furnish wheat at 25 cents a bushel, to feed folks, and furnish cotton at 6 and 8 cents a pound to clothe them, while this price of oil is enhanced so they will have to pay more for their gasoline?

A. I don't think that the people of Texas that raise wheat should sell their wheat at 24 or 22 cents a bushel any more than the oil man that is producing his oil should sell it for 10 cents, or two and a half cents a barrel, which I understand some of it is being sold for.

Q. Well, Governor, as long as wheat is 22 cents a bushel, and cotton 6 or 8 cents a pound, don't you think that we ought to have gasoline at 8 or 10 cents a gallon?

A. I don't think that the farmers should have gasoline at 8 cents a gallon any more than that he should get 25 cents a bushel for his wheat; I think he should have at least a dollar a bushel for his wheat, and the oil man should have at least a dollar a barrel for his oil, and of course, if he had that, we would all be able to buy more gasoline, and wouldn't care much about what the price was.

Q. Then, Governor, have you a method by which this Legislature could raise the price of wheat up to that dollar a bushel, and raise cotton up to 18 cents?

A. If I could put such a method in effect, Mr. Farmer, I would be one great man, indeed.

Q. Yes. Well, we are called here to use methods to bring the oil up to a dollar a barrel, and since the call is on the broad basis of the conservation of the soil, Governor, I am anxious to have the farmers and laborers and cotton producers and wheat producers get some of this, too, but if they cannot get some of this —

A. (Interrupting) What a moment; I beg to differ with you about what you were called here for. The message to this body was to pass a conservation law dealing with other things than oil.

Q. Well, that is what I am saying, Governor.

A. You said you were called here to put this at a dollar a barrel.

Q. Yes, that is what I think is the breadth of your message. Now, I am wanting to know if the Governor has a method—we have got Wagstaff on the oil business, now I want to know if the Governor has got a method by which we can raise the price of wheat and cotton for the farmer, because I don't want to vote to raise the price of oil on him for his gasoline-driven truck; I want to vote to raise his price so he can buy some of this. Now, Governor, I am not joking about this matter. I am after something in earnest. I want to know if you, as Governor of Texas, have got a method by which we can help the farmer in this conservation gathering of this House?

A. That is what the people are paying the members of the Legislature for.

(Applause.)

Q. Then you have no method, Governor, at the present time?

A. You have been called here and given a message which gives you the authority to pass laws that would bring about proper conservation, not only in oil and gas, but in soils and waters and all the natural resources of this State.

Q. All right. Thank you, Governor.

Mr. Hardy: Governor, I have one further question. Before you called this session of the Legislature, the newspapers reported that you said it was too bad that East Texas could not get together and form one large corporation and thereby save their oil and increase the price. Did you make that statement, or any part of it?

A. I don't think, Mr. Hardy, that I made any such statement. Of course, if you are going to deal in rumors we will ask the newspapers here and see what they have said about it. I feel that by proper conservation methods, and I believe that this Legislature has it in its power to bring those methods about, that you will relieve to a great degree the distress that is in the oil business, as well as perhaps help some of the agricultural end of it.

Q. I just want an answer "yes" or "no," Governor. Did you state that the State could be better served if all East Texas oil owners would get together and form one large corporation?

A. Perhaps I did say that it would be a fine thing if they could all get together there and form one unit operation whereby they could conserve their gas and produce the oil as it ought to be produced, and that would be one of the best methods of conservation. I also said that I thought that would be an impossibility, that it would be impossible on account of the magnitude, and the number of people that were interested in all that 180,000 acres of land; that it would be impossible to have them come to one common understanding.

Q. Do you think that would be a good way, if possible?

A. I think that the development by unit system would be a really ideal method, though I don't believe we would be able to put it into effect.

Q. Governor, I don't think there are any more questions, and we thank you very much for coming up, and for your testimony.

A. All right, thank you.

(Applause.)

State of Texas, County of Travis:

I, H. D. Mahaffey, do hereby certify that I was duly appointed as official Shorthand Reporter to report and have reported under my direction, the investigation of the oil industry of the State of Texas, conducted by the House of Representatives of the State Legislature; that under such appointment, I and my assistants reported and had transcribed under our direction the foregoing 1,509 pages, including pages a, b, c, and d, following page 919, of the testimony and proceedings of said investigation, and I do hereby certify that said transcript is a full, true and correct report of the testimony adduced and proceedings had in connection therewith at said investigation.

Witness my hand at Austin, Texas, this July 30, 1931.

(Signed) H. D. MAHAFFEY.

APPENDIX B

TO THE

JOURNAL OF THE HOUSE OF REPRESENTATIVES

OF THE

FIRST CALLED SESSION

OF THE FORTY-SECOND LEGISLATURE

Proceedings of Investigating Committee of the Whole House of Representatives in the Matter of Impeachment Charges Preferred in the House of Representatives of the State of Texas, Against the Hon. J. B. Price, District Judge of the Twenty-first Judicial District of the State of Texas.

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APPENDIX.

Proceedings of Committee of the Whole House in the Matter of Impeachment Charges Preferred in the House of Representatives of the State of Texas, Against Hon. J. B. Price, District Judge of the Twenty-first Judicial District of the State of Texas.

REPORT OF COMMITTEE TO INVESTIGATE CERTAIN OFFICERS.

Committee Room,
Austin, Texas, July 30, 1931.

Hon. Fred H. Minor, Speaker of the House of Representatives, Austin, Texas.

Sir: Pursuant to House concurrent resolution No. 58, adopted at the Regular Session of the Forty-second Legislature, we, the following members appointed to a committee by the Speaker of the House and by the President of the Senate, beg leave to make this report to the Honorable House of Representatives concerning our findings with reference to the matters hereinafter set forth, the personnel of your said committee being Grady Woodruff and Carl C. Hardin, on the part of the Senate, and Harry N. Graves, Phil L. Sanders and J. Turney Terrell, on the part of the House. Having been previously organized, this committee has met on numerous occasions with the committee organized and acting by virtue of Senate simple resolution No. 123, adopted by the Senate of Texas at the Regular Session of the Forty-second Legislature, said two committees working jointly in pursuance of their several duties. Among other matters inquired into, we have considered the enormous sums of money that have been and are being paid out of the Treasury of the State of Texas to various departments, agencies and officials of this State. The State Auditor, the Attorney General, the Adjutant General, and the Comptroller, through their various departmental machinery, have co-operated with your committee in their examination of certain claims paid out of the State Treasury upon the approval of sheriff's accounts to the elected and acting sheriffs of certain counties comprising part of the Twenty-first Judicial District, of which J. B. Price is the presiding judge, and which sheriff's accounts so paid out of the State Treasury were approved by the said J. B. Price, and in this connection we desire to direct your attention to Sections 3 and 4, Article 1036, of the Code of Criminal Procedure of the State of Texas, which sections read as follows:

"Section 3. Before the close of each term of the district court, the witness shall make affidavit stating the number of miles he will have traveled going to and returning from the court, by the nearest practical conveyance, and the number of days he will have been necessarily absent going to and returning from the place of trial, which affidavit shall be filed with the papers of the case. No witness shall receive pay for his services as a witness in more than one case at any one term of court. Fees shall not be allowed to more than two witnesses to the same fact, unless the judge before whom the cause is tried shall, after such case has been disposed of, certify that such witnesses were necessary in the cause; nor shall any witness recognized or attached for the purpose of proving the general character of the defendant, be entitled to the benefits hereof."

"Section 4. The district or criminal judge, when any such bill is presented to him, shall examine the same carefully and inquire into the correctness thereof and approve the same, in whole or in part, or disapprove the entire bill, as the facts and law may require; and said bill with the action of the judge thereon, shall be entered on the minutes of the said court; and immediately on the rising of said court, the clerk thereof shall make a certified copy from the minutes of said court of said bill, and the action of the judge thereon, and send the same by registered letter to the Comptroller, for which service the

clerk shall be entitled to a fee of 25 cents, to be paid by the witness."

This committee finds that the said J. B. Price, while presiding as the judge of Judicial District No. 21, has, through his negligence and/or incompetence and/or official misconduct, failed to comply with the terms and provisions of the above sections of Article 1036 of the Code of Criminal Procedure of the State of Texas, in that he has not and did not examine and inquire carefully into the correctness of the various accounts presented to him for his official approval or disapproval by the sheriffs of Burleson, Lee and Bastrop counties, respectively, said counties constituting a part of the Twenty-first Judicial District of Texas. The committee finds to the contrary that said J. B. Price, as district judge, has knowingly, intentionally and unlawfully approved accounts of the aforesaid sheriffs, when said accounts and the said approval of them were so made and so approved purportedly in compliance with the laws of this State, but which accounts were demands upon the State of Texas for fees for service purported to have been performed, which in truth and in fact were never performed, and which fees were far in excess of those allowed by law for such services had they been rendered as represented in said accounts.

This committee further finds that the said J. B. Price, through his official misconduct, has omitted and committed certained acts as hereinafter set forth in violation of Article 1036 of the Code of Criminal Procedure, which article in substance provides "that there shall be no witness fees paid to any witness out of the State Treasury of this State unless said witnesses reside out of and beyond the limits of the county in which there is tried a felony case in this State, and until after either the county or district attorney, or the defendant or his counselor, has made sworn application in writing to the district clerk that the testimony of the witness is material. And the law further provides that before the close of each term of the district court the witness or witnesses residing out of the county where said cause is tried, after being subpoenaed to appear as a witness, and after appearing in obedience to said subpoena, shall make affidavit stating the number of miles he will have traveled going to and returning from the court by the nearest practical conveyance, and the number of days he will have been necessarily absent going to and returning from the place of trial, which affidavit shall be filed with the papers in the case. The law further provides that no witness shall receive pay for his services as a witness in more than one case at any one term of court. The law further provides that fees shall not be allowed to more than two witnesses to the same fact unless the judge before whom the cause is tried shall, after such case has been disposed of, certify that such witnesses were necessary in the cause; nor shall any witness recognized or attached for the purpose of approving the general character of the defendant be entitled to the benefit of any fee."

This committee finds further that the said J. B. Price violated the terms and provisions of Section 4 of Article 1036, of the Code of Criminal Procedure of Texas, by negligently and/or carelessly and/or unlawfullly signing and approving and affixing his signature thereto, in blank witness accounts and certificates used and to be used in Lee county. This committee finds that before any witnesses in causes pending in said Twenty-first Judicial District, and while the said J. B. Price was acting as district judge, had been applied on sworn application of the county or district attorney, or by a defendant or his attorney, and before any subpoena or process had been issued by the district clerk of Lee county, and without any witnesses having appeared, either by subpoena or attachment, and without any witnesses having been recognized by said court, the said J. B. Price affixed his signature to a certificate, the form of which complies with Article 1036, Code of Criminal Procedure, and which said form had been in continuous use in said district during the years of 1927 to 1930, inclusive, and that by reason thereof said J. B. Price signed many witness certificates in blank, thereby certifying that said witnesses had appeared and been recognized, when the facts are that there had been no such witnesses recognized, the said J. B. Price thereby certifying to facts, matters, circumstances and conditions which did not exist. Such action and conduct on the part of said J. B. Price is contrary to and in violation of the laws of this State.

This committee further finds that the said J. B. Price, while acting in his official capacity as district judge of the Twenty-first Judicial District of Texas, through his negligence and/or incompetence and/or official misconduct, wrongfully approved and caused his official signature to be affixed to accounts presented to him by the several clerks and sheriffs within said Twenty-first Judicial District, which said accounts were in violation of law and were prohibited by the Constitution of this State, and in particular in his approval of a certain account presented to him by the sheriff of Burleson county, Texas, for fees purported to be due him for the transportation of a certain six prisoners from Dallas county, Texas, to the county jail at Caldwell, Burleson county, Texas, when in fact the said sheriff of Burleson county, Texas, arrested and so transported only two such prisoners, notwithstanding which fact approved the account of the said sheriff of Burleson county, Texas, for the arrest and transportation of six such prisoners, when he, the said J. B. Price, knew or should have known that said account was a fraudulent and unlawful demand upon the Treasury of the State of Texas.

This committee further finds that at various times the said J. B. Price, acting as judge of said Judicial District, has recognized witnesses who had been theretofore subpoenaed to be and appear as such in criminal causes pending in said court. After having so recognized said witnesses in open court, said J. B. Price, acting as district judge, has charged said witnesses with the duty of informing themselves of the date when said causes, or any of them, in which said witnesses had been subpoenaed to appear, would be called for trial, and that it would be the duty of said witnesses to appear on said date without being resubpoenaed for such purpose, and that thereafter the said J. B. Price has approved the sheriff's account for fees purported to be due to him by the State for services of additional process on each of said witnesses issued by the district clerk, which purported services were never performed by said sheriff and the claims of said sheriff for a fee therefor were fraudulently made, and the said J. B. Price knew or by the use of ordinary care and diligence could have known said claims were fraudulent.

This committee further finds that the said J. B. Price negligently and wrongfully approved a certain account of the sheriff of Burleson county, Texas, for fees claimed by said sheriff for having traveled 1600 miles on two consecutive days in making each of three arrests and taking into custody each of three separate prisoners, which said claim was for fees for a total mileage of 4800 miles purported to have been traveled by said sheriff in said two days. This committee finds that said three arrests were made in the same place on the same day, and said three persons so arrested were transported to the Burleson county jail in the same car, and the said J. B. Price approved the said accounts of the sheriff for said services in an amount of $1550 in excess of the amount allowed by law, and this committee says that the said J. B. Price knew or by the use of ordinary care and diligence could have known that said account so approved by him was unlawful and a fraud upon the State of Texas.

This committee finds that the specific instances of the negligence and/or official misconduct of the said J. B. Price as herein set forth are typical of numerous other similar instances so numerous as to indicate a common practice and system of the fraudulent collection from the State of fees by the several sheriffs of Burleson, Lee and Bastrop counties, and that the State has thereby been defrauded of thousands of dollars paid out of its Treasury upon accounts negligently and wrongfully approved by the said J. B. Price, all of which facts and circumstances were known, or by his use of ordinary care and diligence could have been known, to the said J. B. Price.

This report is being made to your Honorable House of Representatives for such action as it may, in its wisdom, deem proper, on this the 30th day of July, A. D. 1931.

GRAVES,
Chairman;
SANDERS,
Secretary;
TERRELL,
HARDIN,
WOODRUFF.

Thereupon on Wednesday afternoon, August 12th, 1931, the following resolution, after having previously been introduced in the House and printed in the Journal, was again of-

fered to be read in evidence, but on motion made that the same be not again read, the question was put and the motion prevailed and the charges were not again read, but are here incorporated in the record, as follows, to-wit:

Whereas, We, H. N. Graves, Phil L. Sanders, and J. Turney Terrell, Representatives duly elected, qualified and acting in the Forty-second Legislature, First Called Session, 1931, are informed and believe, and under the solemnity of our respective oaths of office do hereby present and charge:

1. That J. B. Price, duly elected and acting district judge of the Twenty-first Judicial District of Texas, comprising four counties, to-wit: Lee, Burleson, Washington and Bastrop, is guilty of gross neglect of the duties enjoined upon him as such district judge in the performance of his official acts in this, to-wit: That he has from time to time covering a period from January 1st, 1929, up to and including June 30th, 1931, in disregard of the laws of this State, approved accounts for the sheriffs of various counties within his judicial district and certified that said accounts were correct and that the amounts claimed by said officers as a demand upon the State were correctly stated, when in truth and in fact, some of said accounts so certified to by said judge were wholly incorrect and constituted an endorsement for the demand of fees of office where the services were not performed and where the account as approved by said judge was for duplication of purported fees of office.

In connection with the first and foregoing charge, we further allege and charge that the said J. B. Price, acting as said district judge, approved the account of John T. Carlisle, sheriff of Lee county, for the October, 1925, and April 1926, terms of the district court in Lee county, for the sums of $6,317.25 and $12,023.80, respectively, when in truth and in fact, said certificate of the court was grossly erroneous and authorized a demand to be made upon the State by Sheriff Carlisle for said sums of money that were not due to said Carlisle, as provided for by law.

2. That said J. B. Price thereafter, on or about November 30th, 1930, called on the Comptroller of the State of Texas and insisted that the above-mentioned accounts for Sheriff John T. Carlisle of Lee county be approved and that he be paid the sum of $12,000, when in truth and in fact, the said J. B. Price knew, or should have known with the use of ordinary diligence, that said amount should not be paid out of the State Treasury of this State and that said amount was not due Sheriff Carlisle as claimed by Judge Price.

3. That the said J. B. Price is and has been continuously since his election, guilty of gross neglect of his duty as such judge in this, to-wit: That he has not complied with Article 1036 of the Code of Criminal Procedure of the State of Texas, wherein it is provided that the district or criminal judge, when said sheriff's bill is presented him, shall examine the same carefully and inquire into the correctness thereof and approve the same, in whole or in part, or disapprove the entire bill, as the facts and the law may require.

4. That in Burleson county, same being one of the counties in the said J. B. Price's judicial district, said J. B. Price approved the account of the said sheriff for the May, 1930, term of the district court, wherein it was claimed by said sheriff that he traveled 1600 miles in arresting one person on two consecutive days and, likewise, 1600 miles in arresting two other named defendants, a total distance of 4800 miles claimed to have been traveled by the sheriff on two consecutive days, to-wit: June 10th and June 11th, 1930, when in truth and in fact these three defendants were arrested and conveyed to the Burleson county jail on one trip, at the same time and on one day, traveling a total distance of only 210 miles, and in approving said account the said J. B. Price aided and assisted the sheriff of Burleson county to make a demand on the State of Texas for the sum of $1551.25 more than was allowed by law and, in connection herewith, we aver that should the said Judge Price have exercised the use of ordinary care and diligence as provided by law, said demand as made in said sheriff's account would have been disallowed by him, instead of approved by him.

5. That the said J. B. Price certified to and approved an account of Clint D. Lewis, sheriff of Burleson county, for the November, 1930, term of court, wherein it was claimed by said Lewis that he was entitled to a fee of 15 cents per mile going to and 30 cents returning from arresting

W. M. Hill one time in Dallas, Dallas county, Texas, on 6-28-30, traveling 400 miles to make said arrest, and making a demand upon the State for the sum of $93, also certifying to and approving said Clint D. Lewis' account for the same term of court for services rendered by him in arresting a defendant by the name of J. H. Smith twice in Dallas, Dallas county, Texas, on 6-27-30, traveling a total distance of 800 miles and charging a fee of 15 cents for going to and 30 cents for returning from Dallas, Dallas county, Texas, returning the said Smith to Caldwell in Burleson county, Texas, allowing a charge to be made against the State for the sum of $186 for said purported service, and that said J. B. Price certified to and approved the said Clint D. Lewis' account for the November, 1930, term of court in Burleson county, Texas, for arresting a defendant by the name of A. J. Rogers once on 6-26-30 and again on 6-27-30, and also arresting a defendant by the name of A. J. Rayford on 6-26-30 in Dallas, Dallas county, Texas, and allowed a fee of 15 cents per mile for each arrest in going to Dallas and 30 cents per mile on each arrest for returning from Dallas, Dallas county, Texas, to Caldwell in Burleson county, Texas, thereby allowing the said sheriff to collect from the State of Texas the sum of $279 for such purported service.

In connection with the allegations made in Paragraph 5 with reference to the arrest of Hill, Smith, Rogers and Rayford, it is alleged that in truth and in fact there were only two men transported from Dallas, Dallas county, Texas, to Caldwell in Burleson county, Texas, and these two men were arrested by Detective C. R. Wood, a city detective living in Dallas, Texas, and they were turned over to S. S. Wood, who was then constable of Precinct No. 1, Burleson county, Texas, and that thereafter the said constable conveyed the two men at the same time and on the same day and in the same car to Caldwell in Burleson county, Texas, conveying said prisoners in T. K. Irwin's car, said T. K. Irwin being attorney for each of the defendants, and that by reason of said J. B. Price's certificate and approval of said sheriff's account, the sheriff was paid the sum of $558, when in truth and in fact he was to demand and receive from the State the sum of only $120, and that by reason of said conduct the sheriff received $438 more than was allowed by law, and that by the use of ordinary care and diligence in compliance with the law required of said judge, the true and correct facts as herein charged could have been easily ascertained by him.

6. That the said J. B. Price, while acting as judge of the Twenty-first Judicial District, certified to and approved the account of Clint D. Lewis, sheriff of Burleson county, Texas, for the November, 1930, term of court, for subpoenas upon four different men to testify as witnesses against two defendants, and said witnesses' names, together with the dates it is claimed said sheriff that they were actually summoned, will respectfully appear as follows: Herman Opperman, Jr., six times, November 20th, 1930, traveling a total distance on the one date of 180 miles in serving a subpoena upon the same men in the same county by purporting to be in six cases. The next witness was Ed Sabotik. It was claimed by said sheriff and certified to by the court as being correct, that he subpoenaed by personal service six different times on November 20th, 1930, by traveling 180 miles. The next witness purported to have been summoned six times was Will Opperman, claimed to have been personally served on November 21st six different times by traveling a total of 180 miles, and the next witness was Gus Jahns, purported to have been summoned, as shown by the sheriff's account and as approved by the said J. B. Price on November 22nd, 1930, six different times, traveling 180 miles, when in truth and in fact, the sheriff, as well as the judge, knew, or should have known by the use of ordinary diligence, that said witnesses were not summoned six different times on the same date, and that a distance of 30 miles was traveled by the sheriff in serving the subpoenas on said witnesses six different times on the dates claimed in said sheriff's account, and it is here and now charged and alleged that said witnesses were not served with process as claimed in said account and that they were only subpoenaed to appear one time by the sheriff of Burleson county.

7. That said judge, in violation of the Constitution and laws of this State, in careless disregard of the duties imposed upon him as such judge, certified to and approved the account of Sheriff Clint D. Lewis of Burleson

county, Texas, at the November, 1930, term of court, amounting to $51 for services claimed to have been performed by said sheriff in arresting a defendant by the name of Otis DeHart in Bryan, Texas, twice on June 6th, 1930, and transferring him to Caldwell in Burleson county, Texas, traveling 50 miles going to and 50 miles returning from Bryan, Texas, and collecting a fee for said purported service in the sum of $60, when in truth and in fact, the said Otis DeHart was not arrested by the said Clint D. Lewis, or any of his deputies, in Bryan, Texas, on said dates, and was not transferred to Caldwell in Burleson county as claimed on said date, and in connection therewith we allege that said Otis DeHart was never at any time placed in the Burleson county jail, as claimed in said sheriff's account. A charge exactly similiar to the one set out with reference to Otis DeHart was made by the said sheriff with reference to a man by the name of Harold White on July 6th, 1930, in two cases wherein the sheriff collected from the State of Texas the sum of $51, for purported service in arresting said White in Bryan, Texas, and in transporting him from Bryan to Caldwell in Burleson county, Texas, when in truth and in fact, said services were not performed by said sheriff, or any of his deputies, and the said Harold White was never on any date at any time placed in the Burleson county jail, and the said J. B. Price could have known, by the exercise of ordinary diligence, that said purported claim as made by the sheriff was not correct and that same should have been disallowed.

8. It is alleged that the said J. B. Price certified to and approved the account of Clint D. Lewis, sheriff of Burleson county, Texas, as presented to him for the November, 1928, term of court for services claimed to have been performed by said officer in arresting within said county a lady defendant by the name of Bessie Norcross seven different times on December 22nd, 1920, purporting to have traveled 20 miles in going to the place of arrest and 20 miles in returning from the place of arrest with said defendant, demanding and collecting a total of $84 from the State of Texas for said purported service, when in truth and in fact, said defendant was not arrested as claimed by said sheriff, and that said mileage claimed to have been traveled by him because said defendant came to the sheriff's office, surrendered herself voluntarily and entered under a bond which was approved by the sheriff's department, and she was at that time released.

In this connection, we here charge and allege that this lady defendant resided in Burleson county, Texas, and that by the exercise of the legal duties enjoined upon the said J. B. Price by the Constitution and laws of this State, the said Judge Price could have known that said services were not in truth and in fact performed as was claimed by said sheriff in his account, and should the judge have complied with the law relating thereto, said account would have been disallowed and same would not have been paid out of the State Treasury.

9. That the said J. B. Price, while acting as district judge, as aforesaid, carelessly, knowingly and unlawfully certified to and approved the account of John J. Burtschell, sheriff of Lee county, for the spring, 1931, term of court, said county being within the Twenty-first Judicial District of Texas; that in approving said account said judge certified that the account as stated by the sheriff was correct and that he would approve the same for $1,705.45, because said account shows that the sheriff claimed to have traveled 18,918 miles in eleven days, on the respective dates as follows: from April 22nd to May 2nd, 1931, and subpoenaing 800 witnesses; that Lee county had a population in 1930 of 13,390, as shown by the 1930 Federal census, and the certificate of the tax collector of Lee county shows that there were only 3,046 poll tax receipts issued in the county for the year 1930 to both men and women; that most of the process that was issued demanding the sheriff to summon witnesses in the spring term of court in said county was done by the district clerk signing the process book in blank and turning it over to the sheriff of said county in order that he might place the names of such people as he might see proper in said process, and we affirmatively aver that the sheriff did not summon 800 witnesses as aforesaid, and did not travel 18,918 miles as aforesaid, and that said sheriff's account for said claim against the State should have been disallowed by Judge J. B. Price, and we allege that should the court have exercised the use of ordinary care and diligence in the discharge of

his duties imposed upon him by law, he could easily have ascertained the correctness and truthfulness of this account but, to the contrary, said account was signed and approved by said court on May 8th, 1931, thereby permitting and assisting the sheriff to make extorsive demands upon the State Treasury for services that were not performed by said sheriff.

In connection with the above account, it is shown by said account that the court approved the sheriff's claim for having summoned 151 witnesses in the Rafael Carvantes cause, when in truth and in fact, there was no legal application made with the district clerk as required by law, asking that said witnesses be subpoenaed to testify in said cause. However, the sheriff claims to have subpoenaed 151 witnesses, making a demand upon the State for the sum of $262.60, when in truth and in fact, nearly all of the witnesses that were subpoenaed by the sheriff knew nothing about the facts in this case and were not material witnesses, and the way they were subpoenaed was by the sheriff going to the jail where Carvantes was held and asking him to think up names of all the people that he knew, and the sheriff had him sign a paper in blank, purporting to be an application for material witnesses in his cause, and the names of the witnesses that Carvantes wanted subpoenaed were written by him on a piece of paper and handed to the sheriff. He did not know how many witnesses the sheriff had subpoenaed for him, and did not authorize him to subpoena 151 witnesses; that all of these facts could have been known by the judge approving this account by the use of ordinary care and diligence and by the exercise of his lawful duties as enjoined upon him by the laws of this State.

10. We further allege and charge that said judge was careless and negligent in the discharge of his duty in this, to-wit: that he allowed, certified to and approved the account of John J. Burtschell, sheriff of Lee county, for the spring, 1931, term of court, wherein it was claimed by said sheriff that he had subpoenaed sixty witnesses to appear and testify in Cause No. 2249, State of Texas vs. John Johnson, charged with burglary and theft, when in truth and in fact the same practice as heretofore alleged was used by the sheriff in being able to subpoena a long list of witnesses in order to make demands upon the State for collection of his fees as allowed by law. We allege that the sheriff asked the defendant, John Johnson, to make up a list of all the people that he knew in Lee county so that the sheriff might have them all subpoenaed. The defendant did not have any lawyer, but gave the sheriff the names of six witnesses who did not live in Lee county, but who resided in Waco, McLennan county, Texas. This man was not represented by counsel and made no sworn application for witnesses in his cause, and the six witnesses that he had requested out-of-county subpoenas for were not subpoenaed. In truth and in fact, most of the witnesses alleged to have been subpoenaed by said sheriff are persons who are unknown, who cannot be located, and who are fictitious persons for the practice and custom as hereinabove detailed with reference to the process for witnesses in Lee county has been continuously practiced by the sheriff, and that by reason thereof there has been demands made upon the State Treasury for thousands of dollars that are not provided for by law, and we further allege that Judge Price either did know, or could have known by the exercise of ordinary care and diligence, or by the exercise of the power vested in him as district judge, that said amount should not have been approved, but should have been disallowed by him.

11. We further allege and charge that the said J. B. Price approved and certified to as correct the account of Woody Townsend, sheriff of Bastrop county, Texas, said county being within the Twenty-first Judicial District, for the sum of $4499.20 for the January, 1931, term of said court, and that there had been pending in his said court Cause No. 2961, State of Texas vs. Mack Matthews, charged with murder, and in the June, 1928, term of said court in Bastrop county said sheriff claimed to have subpoenaed 236 witnesses and that said demand was made for the sheriff's account upon the State for such service, with a certificate and approval by Judge Price, and that thereafter, in the January, 1929, term of court, there was another account and claim made by the sheriff for subpoenaing 235 witnesses in the same cause, which was certified to and approved by Judge Price and paid by the State;

that again, in the June, 1929, term of the Bastrop county district court, it is claimed that the sheriff subpoenaed 230 witnesses, which account was approved as correct by said Judge Price, and then again in the January, 1931, term in the same cause there were again 189 witnesses subpoenaed. In other words, this judge permitted the sheriff to claim fees for subpoenaing all of these witnesses at four terms of court to testify in this one cause, which was purely and strictly a duplication of miles and a duplication of fees, which are prohibited and unauthorized by the laws of this State allowing the sheriff of Bastrop county to make demand upon and collect from the State Treasury the sum total of $2397.70, when in truth and in fact there should have been only one subpoena issued for such witness applied for in said cause, and that upon said witnesses' failure to appear the court might have issued attachments for those failing to appear at the instance and upon the sworn application of either the State or the defendant.

We further allege and charge that the judge himself, after each one of the terms of court herein above named, excused this large number of witnesses, stating to them from the bench that they would be resubpoenaed to again appear and testify in this cause, and that in compliance with that statement, said judge did permit the sheriff to collect in four different accounts fees for subpoenaing the same people four different times in the same cause.

All of this conduct is contrary to the Constitution and laws of this State, and the court so well knew, or could have known by the exercise of ordinary care and diligence, that these fees above mentioned were unauthorized by law and this sum of money would not have been paid out of the State Treasury if the said J. B. Price had complied with the law relating thereto and had complied with his oath of office as prescribed by law. We further aver that the account of the sheriff herein above mentioned should have been disallowed for every term of court wherein fees were collected, except for the June, 1928, term when process was first issued for these witnesses.

12. We further allege and charge that the said J. B. Price approved and certified to the account of Woody Townsend, sheriff of Bastrop county, in Cause No. 2997, pending in the district court of Bastrop county, the defendant's name being Murray Henderson, for services alleged and claimed to have been performed by said sheriff in serving process upon certain witnesses in the January, 1929, June, 1929, and January, 1930, terms of court, and we attach thereto and make a part hereof, Exhibit "A" showing the names of certain witnesses, the dates it was claimed by said sheriff that said witnesses were subpoenaed and showing that said sheriff was allowed to collect for subpoenaing these witnesses at three separate and distinct terms of court by traveling all the way from 10 miles to 52 miles in serving said process, and we further allege that said witnesses in truth and in fact, did not live at the time process was served upon them, over 10 miles from the Bastrop county courthouse, and that the miles claimed to have been traveled by said sherff were not actually traveled, and that there should not have been claim made upon the State for the payment of this service, when in truth and in fact, it was not performed. We further allege that the said J. B. Price could have known by the exercise of ordinary care and diligence that the mileage claimed by the sheriff in subpoenaing these witnesses at three different terms of court was not authorized by law and that said sheriff was not entitled to any fees for resubpoenaing the same witnesses in the same cause, except where he would be allowed a fee for serving attachment on witnesses who had failed to appear as commanded in the original process.

13. We further allege and charge that the said J. B. Price, while acting as district judge in Lee county, said county being within his judicial district, did carelessly, knowingly and unlawfully sign in blank and affix his signature to the witness fee account and certificates used by said county for the year 1930, and that said judge did sign and affix his signature to the certificates kept by the clerk of said court, as provided for in Article 1036 of the Code of Criminal Procedure of the State of Texas, and that in said article it is provided that before the close of each term of the district court witnesses who live out of the county where any felony case is pending shall, before they are entitled to receive any fees as such witnesses, make affidavit stat-

ing the number of miles they will have traveled in going to and returning from the court by the nearest practical conveyance and the number of days they will necessarily have been absent going to and returning from the place of trial, which affidavit shall be filed with the papers in the cause, and said article further provides that: No witness shall receive pay for his services as a witness in more than one cause at any one term of the court. Fees shall not be allowed to more than two witnesses to the same fact unless the judge before whom the case is tried shall, after such case has been disposed of, certify that such witnesses are necessary in the cause; nor shall any witness recognize or attach for the purpose of proving the general character of the defendant, be entitled to the benefits hereof.

Article 1036 of the Code of Criminal Procedure, Section 4, provides that the district or criminal district judge, when any such witness' bill is presented to him, shall examine the same carefully, and inquire into the correctness thereof and approve the same, in whole or in part, or disapprove the entire bill, as the facts and law may require, and we allege that the signing of the blank witness certificates showed an utter disregard on the part of the said J. B. Price in complying with the law hereinabove mentioned, and that it is very obvious that said judge could not have inquired into the correctness of the claim or certificate of the witnesses when no witnesses names appeared on said certificate at the time his signature was affixed thereto, but that said conduct was of such a nature that said blank certificate could have been filled out by the district clerk or any other person at the will of any other person, and create a demand against the State for fees that were not allowed by law; that all of the conduct of the said J. B. Price, as hereinabove set out, plainly shows that he is guilty of gross neglect of duty, official misconduct and gross carelessness in the performance of his duties as district judge.

Now, therefore, we, as Legislators of the Forty-second Legislature, do hereby present these charges, with a request that they be adopted by the House of Representatives, First Called Session of the Forty-second Legislature, 1931, as impeachment charges against the said J. B. Price, district judge of the Twenty-first Judicial District of Texas.

H. N. GRAVES,
Member House of Representatives.

PHIL L. SANDERS,
Member House of Representatives.

J. TURNEY TERRELL,
Member House of Representatives.

Sworn to and subscribed before me, this 30th day of July, A. D. 1931.

EFFIE WILSON WALDRON,
Notary Public in and for Travis County, Texas.

Thereupon the answer of the respondent, J. B. Price, was read to the Committee of the Whole and is as follows:

Comes J. B. Price, respondent, and answering the charges pending herein, says:

1.

He demurs generally to said charges and says that they are insufficient to form the reason or basis for impeachment.

2.

He specially excepts to the pleadings wherein such charges are made, and for special exception says:

a. Article 15, Section 1 of the Constitution of Texas is not self-executing and said section has not been followed by any character of legislation defining the offense for which an impeachment may be had.

b. Impeachment under the Constitution of Texas may not be predicated except upon an indictable offense.

c. The said charges do not set forth either an indictable offense or an offense involving dishonesty or corruption, and cannot be made the basis therefore of an impeachment.

d. The Constitution contemplates that the impeachment shall be of such offenses only as are punishable as crimes and misdemeanors, and provides that in cases where impeachment may be had that there shall also be trial and conviction of the penal offense committed.

e. The charges made do not go beyond "wilful neglect of duty and in-

competency," and therefore not the subject matter of impeachment but at most ought to be met by address or removal by the Supreme Court under terms of Section 6, Article 15, or Section 8, Article 15, of the Constitution.

f. Article 15, Section 8, providing for address distinctly negatives the proposition that impeachment may be had for wilful neglect of duty or incompetency, and distinctly names these offenses as offenses which shall not be sufficient ground for impeachment.

g. The charges cover a period of time antecedent to the election of respondent in November, 1928, and a removal from public office and especially impeachment may not be predicated of conduct prior to the election under which respondent is holding office.

h. The charges are predicated upon approval of sheriffs' accounts whereby such sheriffs might be able to secure illegally, money from the Treasury of the State. The law required that no sheriffs' accounts should be paid until approved by the Comptroller, and the approval of the respondent to the accounts referred to in the charges was in form and in legal effect a conditional approval, not authorizing the sheriffs to collect money on such accounts until such accounts had also been approved by the Comptroller.

i. The approval by respondent of accounts of sheriffs were either judicial acts, as held by the Supreme Court of Texas in the case of..... vs....., 77 S. W. 160, and Rochelle vs. State, — S. W., —; or as a ministerial act as is held by the Supreme Court in the case of Bigham vs. Jones, 291 S. W. 842. If said approval is a judicial act, then such judgment cannot be reviewed by this body, sitting in a judicial capacity. If such approval is a ministerial act, then it is the duty which cannot be imposed upon a district judge and his action with reference thereto is void.

j. Whether the approval of the accounts of sheriffs is a judicial act as held by the Supreme Court, or a ministerial act as held by the Supreme Court, in either event no payments can be made from the appropriations for the payment of sheriffs' accounts during the period covered by the charges against respondent because the appropriations made therefor provide that payments shall not be made from such appropriations until the accounts shall have been approved by the Comptroller.

k. Under the principles underlying the laws of Texas no person can be punished for any offense not specifically defined by law; respondent is not charged with any high crime or misdemeanor, nor with any matter or thing constituting violation of the Penal Code of the State, nor with any corrupt or dishonorable act or practice, but is charged with carelessness in the discharge of his duties, not defined as an offense in the Penal Code or elsewhere in the laws of Texas, and involving the exercise by him of the discretion of judgment imposed upon him by law, and any conclusion of the Legislature to the contrary would be a review by the legislative department of the decree of the judicial department, and could not constitute an offense for which impeachment could lie or any other character of procedure had against the respondent.

Respondent asks for a judgment upon these special exceptions:

3.

Further answering the several charges, respondent denies that he is incompetent and says that his competency is evidenced by the fact that he has been elected and re-elected by the people of his district, that all of the lawyers who practice in his district court are satisfied with the results of his judicial labors, and that he is capable of properly discharging the duties of his position. He says that during the previous term of his office that he had the misfortune of being so stricken that he was for a time seriously crippled physically but that his condition has improved physically and that he has not at any time been mentally afflicted by his physical misfortune. That after the misfortune referred to he was re-elected by the people of his district with the knoweldge not alone of his official conduct but of his physical condition, and that he is at the present time in better physical condition than at the time of his re-election. He states that he has complied with the several articles of the Code of Criminal Procedure designed to protect the people of the

State against improper charges of office, in accord with the settled practice in the administration of this part of the law. That it is not practicable to determine absolutely the truth of all the statements included in a sheriff's account. That if an effort should be made to make a conclusive inquiry into all of the matters involved in such accounts that it would require more time than the discharge of his judicial duties, and the expense of making the inquiry would exceed the expense incident to the payment of the account. That he has assumed that the officers, elected by the people and who had taken the oath of office and given the bond required and who had sworn to the accounts under investigation, had properly set forth therein the services by them performed. That he is not an auditor and did not and does not believe that the duties of his office require that a trial of issue should be made with reference to each of the statements contained in a sheriff's account. That as to all of the accounts which have been approved by him and which are the subject matter of the charges herein, the approval made by him is made subject to the approval of the Comptroller, who is provided with auditors and clerks and was in a position to ascertain and detect any errors that might arise.

4.

Respondent says that he has not been negligent nor incompetent, and that if any account has been approved that ought not to have been approved it was unintentional and involved neither official misconduct nor a wilful violation of the law.

5.

Respondent says that a number of statements are made in the charges with reference to accounts of sheriffs of certain counties in his district of which he had no knowledge. He says that he was compelled to rely upon the honesty and integrity of the officers of his court and that if they have made mistakes or have unintentionally or wilfully subpoenaed or served subpoenaes in violation of the law, or have received pay for mileage in excess of mileage actually travelled, that all of these things were done without his knoweldge and that he ought not to be held responsible therefor.

By reason of the premises respondent says that these proceedings should be dismissed.

J. B. PRICE,
District Judge.

By DAN MOODY,
PAUL D. PAGE,
ED R. SINKS,
E. B. COOPWOOD,
R. S. BOWERS,
W. W. SEARCY,
R. L. BATTS,

Attorneys who voluntarily appear in his behalf.

Thereupon the supplemental answer of the respondent, J. B. Price, was read into the record and is as follows:

Since the filing of the charges herein respondent has carefully examined the records with reference to the matters involved therein, and he believes that in so far as the facts are represented by the accounts the charges are substantially true. At the time said accounts were approved respondent was heavily burdened with physical infirmities and his duties as district judge; he acknowledges that he approved accounts as set forth in the charges. Respondent says that in making these approvals he relied upon the affidavits of the officers of his court (in whom he had complete confidence), and was guilty of negligence in not making further investigation as to the truth of the matters covered by these affidavits. If this constitutes dereliction of duty, he very much regrets that which he has done, and will in the future exercise the greatest care in the discharging of the duties imposed upon him by law with reference to these matters.

DAN MOODY,
PAUL D. PAGE,
ED R. SINKS,
E. R. COOPWOOD,
R. S. BOWERS,
W. W. SEARCY,
R. L. BATTS,
Attorneys for J. B. Price.

Thereupon the following simple resolution was offered by Mathis, Gilbert, McGregor, J. O. Smith of Bastrop. Fuchs, Weinert, Morse, Adams of Harris, McDougald:

Whereas, there is now pending in the House of Representatives certain written charges filed against Judge J. B. Price of the Twenty-

first Judicial District of Texas, charging him with official misconduct and negligence in the discharge of his official duties, and that he has negligently approved certain accounts presented by certain sheriffs of his district, which said accounts were erroneous; and,

Whereas, Judge Price has filed his answer in said cause admitting the substantial truth of the allegations against him; and,

Whereas, This Special Session of the Legislature constitutionally expires on this date, and in order to investigate the charges filed in this House it will be necessary for this Legislature to remain in session indefinitely at a probable expense of some twenty-five thousand dollars to the taxpayers of Texas; and,

Whereas, The charges filed against said district judge acquit him of any moral turpitude in connection with the approval of said accounts and there is no charge of official corruption presented against him. Therefore, be it

Resolved by the House of Representatives, That the action of said district judge in approving said accounts is hereby deplored and condemned, and it is the sense of this House that Judge Price be brought before the bar of the House of Representatives and reprimanded by the Speaker, and that further proceeings in this matter be dispensed with.

Mr. John M. Mathis, Sr., addressed the Committee of the Whole in support of the resolution offered by him in behalf of Judge Price.

Mr. Homer DeWolfe, of Mills county, replied to Mr. Mathis in behalf of the prosecution.

Dr. J. H. Dodd, of Bowie county, addressed the Committee, urging that the Committee go into this matter and bring out all the facts.

Mr. Hardy, of Breckenridge, moved that the Committee rise, report progress, and adjourn until 9 o'clock tomorrow morning; which motion was put by the Speaker and prevailed.

Thereupon, the Committee of the Whole House adjourned at 6:20 o'clock p. m., to reconvene the following (Thursday) morning, August 13th, 1931, at 9 o'clock.

Thursday, August 13, 1931.

Pursuant to adjournment, the Committee of the Whole House met at 9 o'clock a. m.

Mr. DeWolfe offered a substitute resolution for the Mathis resolution, which was read by the Clerk, as follows, to-wit:

"Whereas, There is now pending in the House of Representatives certain charges filed against Judge J. B. Price of the Twenty-first Judicial District of Texas, charging him with official misconduct and negligence in the discharge of his official duties, and that he has negligently approved certain accounts which were erroneous; and

"Whereas, Judge Price has filed his answer in said cause, admitting the substantial truth of the allegations against him; and

"Whereas, This Special Session of the Legislature has constitutionally expired for legislative matters and, in order to investigate the charges filed in this House it will be necessary for this Legislature to remain in session indefinitely at a probable expense of some several thousand dollars to the taxpayers of Texas; therefore, be it

"Resolved by the House of Representatives, That the action of said district judge in approving said accounts is hereby deplored and condemned, that that it is the sense of this House that further proceedings be dispensed with in the event said District Judge Price immediately file his written resignation with the Chairman of the Whole House; otherwise, impeachment proceedings proceed.

"(Signed)
"DeWOLFE,
"SAVAGE,
"BURNS of McCulloch."

Mr. McGregor of Travis addressed the House, detailing impeachable offenses and reciting the different ways in which a district judge could be removed and urging the adoption of the Mathis resolution.

Mr. DeWolfe moved that the House hear from Mr. Grady Sturgeon of the Attorney General's Office, who has been appointed by the House as one of its attorneys, for him to explain to the members of the House in regard to the legal authority of the House to carry on the impeachment.

The Chairman put the question, and there being no objections Mr. Sturgeon addressed the House on the powers and authority of the House on impeachment proceedings.

Judge Batts replied to the remarks of Mr. Sturgeon.

After general extended discussion, the Chair said:

The Chair: The question is on the adoption of the substitute resolution offered by the gentleman from Mills. The gentleman from Harris, Mr. Mathis, has offered before the Committee a resolution which provides for a dismissal of the charges and a public reprimand of Judge Price. The gentleman from Mills has offered as a substitute that the charges be dismissed only in the event of the filing of his written resignation by Judge Price.

(The addresses and arguments continued until 12 o'clock m., at which time Mr. Petsch moved that the Committee stand at ease until 2 o'clock p. m., which motion prevailed, and the Committee thereupon recessed from 12 o'clock m. until 2 o'clock p. m. the same day.)

Thursday, August 13, 1931.

The Committee of the Whole House met at 2 o'clock p. m. the same day.

Judge Ed Sinks addressed the Committee on the behalf of the defendant, Judge Price.

Mr. Clarence E. Farmer of Tarrant next addressed the Committee, urging a thorough investigation of the charges.

Mr. DeWolfe again addressed the Committee in behalf of his substitute motion.

Mr. John M. Mathis, Sr., addressed the Committee in reply to Mr. DeWolfe.

The Chair: The question now is, or the question before the Committee of the Whole House, that the substitute resolution be adopted. Those in favor of the adoption of the substitute resolution offered by the gentleman from Mills, Mr. DeWolfe, will vote "yea," those opposed "nay." Have all members voted? There are 85 yeas and 30 nays. The substitute resolution is adopted.

The official vote was as follows:

Yeas.

Adams of Jasper.
Adamson.
Akin.
Albritton.
Alsup.
Baker.
Barron.
Bounds.
Boyd.
Brice.
Brooks.
Burns of Walker.
Burns of McCulloch.
Carpenter.
Caven.
Claunch.
Cox of Lamar.
Cox of Limestone.
Cunningham.
Daniel.
DeWolfe.
Dodd.
Donnell.
Dowell.
Engelhard.
Farmer.
Forbes.
Giles.
Graves.
Grogan.
Hanson.
Hatchitt.
Herzik.
Hill.
Hines.
Holder.
Holloway.
Hoskins.
Howsley.
Hubbard.
Johnson of Dallam.
Johnson of Dimmit.
Johnson of Morris.
Jones of Shelby.
Justiss.
Kennedy.
Laird.
Lasseter.
Lee.
Lemens.
Leonard.
Lilley.
Lockhart.
McCombs.
McGill.
Magee.
Metcalfe.
Moffett.
O'Quinn.
Petsch.
Ray.
Richardson.
Rogers.
Rountree.
Savage.
Scott.
Sherrill.
Smith of Wood.
Sparkman.
Stephens.
Steward.
Strong.
Sullivant.
Tarwater.
Terrell of Cherokee.
Terrell of Val Verde.
Vaughan.
Veatch.
Wagstaff.
Warwick.
West of Coryell.
West of Cameron.
Wiggs.
Wyatt.
Young.

Nays.

Adams of Harris.
Adkins.
Dwyer.
Elliott.
Ford.
Gilbert.
Goodman.
Hardy.
Harman.
Harrison of El Paso.
Harrison of Waller.
Hefley.
Holland.
Hughes.
Jackson.
Keller.
Long.
McDougald.
McGregor.
Mathis.
Mehl.
Morse.
Munson.
Ramsey.
Ratliff.
Shelton.
Smith of Bastrop.
Van Zandt.
Walker.
Westbrook.

Present—Not Voting.

Dunlap. Sanders.
Reader.

Absent.

Anderson. Fuchs.
Beck. Kayton.
Bedford. Martin.
Bond. Murphy.
Bryant. Nicholson.
Dale. Olsen.
Duvall. Pope.
Farrar. Satterwhite.
Ferguson. Towery.
Finn. Turner.
Fisher. Weinert.

Absent—Excused.

Bradley. Jones of Atascosa.
Coltrin. Moore.
Coombes. Patterson.
Davis. Stevenson.
Greathouse.

In the votes on the adoption of the substitute resolution, the following reasons were filed for votes:

Reasons for Votes.

Revelations made during the Reglar Session charging that gross irregularities on the part of many public officials in the matter of the issuance of fees and cost accounts caused the House to appoint a committee to investigate such allegations. This committee having filed the pending charges, based on the strength of their findings, feeling that the committee has not hastily filed charges against the district judge, and being of the opinion that justice to the accused, justice to the committee, justice to the House of Representatives, and above all a proper regard for the interests of the public, demands an investigation; therefore, I vote "yea" on the DeWolfe substitute motion.

HOSKINS.

I voted "nay" on the DeWolfe substitute because I do not believe in compromising with a defendant in any proceeding of a quasi-criminal nature. I would not be willing to excuse this defendant, if guilty, even if he resigned—a resignation would be merely an attempt to defeat the legal proceedings and effects. Under the charges, I think the defendant should be tried and, if guilty, barred forever from holding office; and if not guilty, defendant should be exonerated.

HARDY.

Paired.

Keller, absent, votes "nay."
McCombs, present, votes "yea."

McCOMBS.

Mr. Graves: Point of opinion, Mr. Chairman: This automatically does away with the motion of Mr. Mathis from Harris, does it?

The Chair: Yes, sir.

Mr. Hardy: Mr. Speaker, point of inquiry: We merely substitute the DeWolfe resolution for the Mathis resolution, do we not? We have not as yet adopted any resolution, is that correct?

The Chair: The Committee here has recommended to the House that the House adopt the substitute.

Mr. Graves: I move that.

The Chair: In order to meet any technical objection, those favoring the adoption of the motion for the adoption of the substitute in place of the original resolution will now vote "yea." We will vote on the adoption of the substitute, the substitute has not been adopted. Have all voted? Eighty-five (85) yeas, thirty-one (31) nays. The resolution as substituted is adopted.

The official vote is as follows:

Yeas.

Adams of Jasper. Grogan.
Adamson. Hanson.
Akin. Hardy.
Albritton. Hatchitt.
Alsup. Herzik.
Baker. Hill.
Barron. Hines.
Bounds. Holder.
Boyd. Holloway.
Brice. Hoskins.
Brooks. Howsley.
Burns of McCulloch. Hubbard.
Carpenter. Johnson of Dallam.
Caven. Johnson of Dimmit.
Claunch. Johnson of Morris.
Cox of Lamar. Jones of Shelby.
Cox of Limestone. Kennedy.
Dale. Laird.
Daniel. Lasseter.
DeWolfe. Lee.
Dodd. Lemens.
Donnell. Leonard.
Dowell. Lilley.
Engelhard. Lockhart.
Farmer. McCombs.
Forbes. McGill.
Gilbert. Magee.
Giles. Metcalfe.
Graves.

Moffett.
Olsen.
O'Quinn.
Petsch.
Ray.
Richardson.
Rogers.
Rountree.
Sanders.
Savage.
Scott.
Sherrill.
Smith of Wood.
Sparkman.
Stephens.
Steward.
Strong.
Sullivant.
Tarwater.
Terrell of Cherokee.
Terrell of Val Verde.
Vaughan.
Veatch.
Warwick.
West of Coryell.
West of Cameron.
Wiggs.
Wyatt.

Nays.

Adams of Harris.
Adkins.
Burns of Walker.
Dwyer.
Elliott.
Ford.
Goodman.
Harman.
Harrison of El Paso.
Harrison of Waller.
Hefley.
Holland.
Hughes.
Jackson.
Justiss.
Keller.
Long.
McDougald.
McGregor.
Munson.
Mathis.
Mehl.
Murphy.
Morse.
Ramsey.
Ratliff.
Shelton.
Smith of Bastrop.
Van Zandt.
Walker.
Westbrook.

Absent.

Anderson.
Beck.
Bedford.
Bond.
Bryant.
Cunningham.
Dunlap.
Duvall.
Farrar.
Ferguson.
Finn.
Fisher.
Fuchs.
Kayton.
Martin.
Nicholson.
Pope.
Reader.
Satterwhite.
Towery.
Turner.
Wagstaff.
Weinert.
Westbrook.
Young.

Absent—Excused.

Bradley.
Coltrin.
Coombes.
Davis.
Greathouse.
Jones of Atascosa.
Moore.
Patterson.
Stevenson.

Mr. Lockhart offered the following motion, which was read by the clerk:

"We move, Mr. Chairman, that the Committee of the Whole do recommend to the House that the House do instruct its attorneys to immediately prepare charges of impeachment against J. B. Price, embodying the articles of impeachment charges preferred and printed in the House Journal of July 31st, 1931, First Called Session of the Forty-second Legislature.

Mr. Petsch: Ladies and gentlemen of the House, as one of the attorneys for the House, I join the other attorneys and also the Assistant Attorney General of Texas, in recommending the adoption of the motion made by Mr. Lockhart.

(Mr. Petsch then stated at length his reasons for recommending the adoption of the motion.)

To a parliamentary inquiry by Mr. Burns of Walker as to whether Judge Batts or one of the attorneys would get up before the microphone and acknowledge they didn't want any more testimony, Judge Batts replied:

Judge Batts: Ladies and gentlemen of the Legislature, the situation is this: That upon the assumption that an agreement had been reached in reference to this matter, we prepared a supplemental pleading, which acknowledged upon the part of Judge Price, relying upon his confidence in those people who put in these reports that he had signed these accounts stated in the petition. We have made no character of agreement to the effect that any one of these charges that had been made against him is correct or true. On the contrary, we deny that that is the case. We have in this pleading, made this statement, and I want you to see just what it is.

"Since the filing of the charges herein, respondent has carefully examined the records with reference to the matters involved herein, and he believes that in so far as the facts are represented by the accounts the charges are substantially true."

You will recall that reference was made to the account here which showed 4000 miles traveled in two consecutive days. We say that the account does show that. There was in another account where the account shows the travel ran up into some thousands of dollars. The account does show that. We say that we signed these reports, and we did sign these reports. We put in this document primarily that we had approved these accounts subject to the approval of the Comptroller, but counsel representing the State objected to that, and we eliminated it. We did

approve these accounts, that is the condition in reference to it.

Now, you asked me whether, without any evidence at all, you should impeach a man and assume that I am going to agree that you should impeach a man against whom you have no evidence.

Mr. Howsley: Mr. Batts, will you answer this question? I believe you stated that at the time you filed this pleading, that you thought at that time that the procedure as outlined by the Mathis resolution would be followed, did you not?

Judge Batts: That was the assumption, of course.

Mr. Howsley: Now, listen. If it was not followed, and it has not been, is it the desire of the respondent to withdraw that plea?

Judge Batts: No, sir, I don't withdraw it, because it is true. It doesn't carry any quality of guilt under these charges, and doesn't carry anything except what we are willing to say. Judge Price has done like everybody else has done, and acted upon his faith in the officers chosen by the people, and therefore he is not guilty of negligence. No, sir, we don't care to withdraw it. It would be a very unfair thing to say we pleaded guilty to those charges as based upon the pleadings.

Mr. Howsley: Then, do you want to hear testimony

Judge Batts: If you are going to impeach this man, you cannot do it without hearing evidence.

Mr. Petsch: We are not going to impeach him here. Mr. Speaker, to end this argument, we will withdraw that resolution and get into the record right now.

Mr. Lockhart: Mr. Chairman, I ask to withdraw my motion.

The Chair: You have the right to. Will the gentlemen of the Committee permit the Chair to make this statement? The adoption of the DeWolfe resolution by the Committee as a Whole, is nothing more than a recommendation to the House or the Committee, both being the same body, it is tantamount to adoption by the House. It occurs to the Chair that it is not necessary to rise and report progress and go into the House for the purpose of action on the motion, in view of the fact that the action of the House, would, of course, be the same as the action by the Committee. And the Chair will ask Judge Batts at this time to make a statement as to whether or not Judge Price will accede to the demand made in the resolution.

Judge Batts: Mr. Speaker, Ladies and Gentlemen of the House: The opportunity for Judge Price to resign has been given him repeatedly within the last 15 or 20 days. There are those of us who are so much interested in him and the people that have gone before him, and those that will come after him that we feel that it would be a thing untrue to himself, to his ancestors and to his children, to acknowledge the existence of a cause for his removal, involving, as it necessarily would, pleas that he is incompetent, that he is corrupt, that he has wilfully done something detrimental to the people of this State. He knows that he has not done it, and we know that he has not done it, and I would much prefer impeachment by this House and impeachment by the Senate, with the knowledge on his part that he is not a corrupt man, that he is not incompetent, that he has not wilfully done something detrimental to the people of this State. Therefore, I say to you that he will not resign.

I have merely to ask this other thing of you; in view of the fact that conditions have risen here since we filed the answer in this case, that we be given an opportunity of filing an amended answer herein. I understand that it is the desire of the prosecutors to immediately go into this matter. I want to call your attention to the fact that until right now we haven't been in a position to get any character of persons for witnesses in order to make any character of defense for our client. It would be improper, inequitable, and unjust to him and to everybody to force us into trial without an opportunity to prepare our defense in this matter. We are not asking for a long delay, but we do ask for an opportunity to get our witnesses here, and amend our pleadings in regard to matters that we could not put into the original answer.

Appeal has been made here this morning to the rule in the first case. The rule in the first case was to the effect that on account of the fact that the only way it could be done was to have the Legislature meet in ex-

traordinary session for necessary work to secure the Governor's impeachment, and manifestly the Governor would not call upon the Legislature to hold a Special Session to impeach him. The holding there was to the effect that you had the right to come together in any event and proceed with the impeachment. No such condition as that existed or exists at the present time. If there are sufficient reasons here for action on this district judge, or any other district judge, there is the Governor who may call the session together. Our position is, and we desire to put this in our answer for whatever action you may take or the courts may take in reference to it, that this session has expired in its term, and there has been no call by which he could probably justify his procedure. I say again, I am not asking for anything now except we are ready, with the exception indicated, to go into this matter.

Mr. Graves stated that he would like to renew the motion offered by Mr. Lockhart, and asked for permission to argue the matter before the House for a few moments.

After further discussion and argument, the Chair said:

The Chair: The question is on the motion to table the motion offered by the gentleman from Lubbock, and renewed by the gentleman from Williamson. The motion that the gentleman from Lubbock offered is to the effect that the Committee of the Whole recommends to the House that the attorneys should prepare the impeachment charges made upon the articles heretofore filed, and printed in the Journal. The gentleman from Tarrant, Mr. Farmer, has moved to table the motion. The question is on the motion to table. All in favor of the motion to table will vote "yea." Those opposed will vote "no." Have all the members voted? There are 45 yeas and 64 nays. The motion to table is lost.

The official vote on the motion to table is as follows:

Yeas.

Adams of Jasper.
Adkins.
Cox of Lamar.
Cunningham.
Dale.
Dwyer.
Elliott.
Engelhard.
Farmer.
Forbes.
Ford.
Gilbert.
Goodman.
Grogan.
Hardy.
Hatchitt.
Hefley.
Hill.
Hines.
Holloway.
Hoskins.
Howsley.
Johnson of Dimmit.
Jones of Shelby.
Justiss.
Laird.
Lasseter.
Leonard.
Lilley.
Long.
McDougald.
McGill.
McGregor.
Mehl.
Morse.
Murphy.
O'Quinn.
Ramsey.
Shelton.
Smith of Bastrop.
Smith of Wood.
Sparkman.
Van Zandt.
Veatch.
Wyatt.

Nays.

Adams of Harris.
Adamson.
Akin.
Albritton.
Alsup.
Baker.
Bounds.
Boyd.
Brice.
Brooks.
Burns of Walker.
Burns of McCulloch.
Carpenter.
Caven.
Cox of Limestone.
Daniel.
DeWolfe.
Dodd.
Donnell.
Dowell.
Giles.
Graves.
Hanson.
Harman.
Harrison of El Paso.
Herzik.
Holder.
Holland.
Hubbard.
Hughes.
Jackson.
Johnson of Dallam.
Johnson of Morris.
Kennedy.
Lee.
Lemens.
Lockhart.
Magee.
Mathis.
Metcalfe.
Moffett.
Olsen.
Petsch.
Ratliff.
Ray.
Richardson.
Rogers.
Rountree.
Sanders.
Savage.
Sherrill.
Stephens.
Steward.
Strong.
Sullivant.
Tarwater.
Terrellof Val Verde.
Towery.
Walker.
Warwick.
West of Coryell.
West of Cameron.
Wiggs.
Young.

Absent.

Anderson.
Barron.
Beck.
Bedford.
Bond.
Bryant.
Claunch.
Dunlap.
Duvall.
Farrar.
Ferguson.
Finn.
Fisher.
Fuchs.
Harrison of Waller.
Kayton.
Keller.
McCombs.
Martin.
Munson.
Nicholson.
Pope.
Reader.

Satterwhite.
Scott.
Terrell of Cherokee.
Turner.
Vaughan.
Wagstaff.
Weinert.
Westbrook.

Absent—Excused.

Bradley.
Coltrin.
Coombes.
Davis.
Greathouse.
Jones of Atascosa.
Moore.
Patterson.
Stevenson.

The Chair: The question is on the adoption of the motion offered by the gentleman from Williamson.

(Mr. Howsley spoke at length on the motion, and during most of the address, yielded to Mr. Graves, who said:)

Mr. Graves: On condition that we will proceed right now, rather than have you mill around like this, I will withdraw this motion right now. I withdraw the motion. Call the witness, Grady Chandler.

Judge Batts: Mr. Speaker, as I understand it, without giving us any opportunity of getting our witnesses, as I understand what is going on here at the present time, without giving us any opportunity of amending our pleadings, to meet the new conditions that have arisen by virtue of circumstances, without giving us any character of opportunity for consultation as to witnesses, or for getting witnesses, they propose, without any further delay whatever, to get into the trial of this case. Now, primarily it was bad enough, but to come here now without giving us any opportunity to get ready for this trial—

Mr. Burns: Didn't you gentlemen know when this trial was going to be?

Judge Batts: No, I didn't know it was going to be at all. This matter came up before the House to dispense with it.

Mr. Burns: Didn't you know we were going to be here at 9 o'clock?

Judge Batts: No, I do know we couldn't have been ready here at 9 o'clock with our witnesses, I know that we couldn't have process until impeachment proceedings had started.

Mr. Hardy: How long do you think it will take to get your witnesses here?

Judge Batts: I think it will take two or three days.

Mr. Hardy: Don't you imagine it will take two or three days to get through with the evidence of the State?

Judge Batts: I don't know how long it will take the State. If you are going to have ex parte proceedings, go ahead with it, if you are not going to give us an opportunity of procuring witnesses, I am certain you are inviting us to get out of here.

(After further argument, and being asked what he would suggest as a matter of fairness, Judge Batts said:)

Judge Batts: What I am suggesting is that we be given an opportunity to file an answer, and that we be given an opportunity to get our witnesses here, and any other character of procedure would necessarily be entirely in conflict with the practice not alone of this body, but with any procedure that is ever, at any time, held in this State. We don't want any more time than is absolutely necessary for us, but I should imagine maybe two or three days would be sufficient.

Mr. Graves: Judge Batts, I want to ask you a question. We are in this position, we have one witness, Grady Chandler, who leaves for Mexico in the morning; we want to put Grady Chandler on so he can go to Mexico in the morning, and have his vacation, whatever it is, and then, so far as I am concerned, the House can give you all the time the House sees fit to prepare your side of the case.

Judge Batts: I am very glad, Mr. Graves, you are willing that we are to have this time. I understand that it is your purpose to absolutely disregard all precedent and all law and, of course, so far as we are concerned, we will be glad to have that done that way. We are not here undertaking to be technical about these matters, we are here to defend an innocent man, and if we can not establish that innocence, then, if you want to impeach him, you can do it. We are not here to practice any technicalities in trying to secure any delay.

Judge Batts, I then make this proposition to you—if agreeable to the House, we will put Grady Chandler on the stand and recess until Monday morning.

(Cries of "No.")

Judge Batts: I will say that so far as I am concerned, it is all right, if the House will accept that.

(Cries of "No.").

Mr. Harrison of El Paso: Mr. Chairman, I want to renew the Lockhart motion.

Mr. Chairman: The Clerk will read the motion.

(The Clerk again read the motion as follows, to-wit):

"We move, Mr. Chairman, that the Committee as a Whole do recommend to the House that the House do instruct its attorneys to immediately prepare charges of impeachment against J. B. Price, embodying the articles of impeachment charges preferred and printed in the House Journal of July 31, 1931, First Called Session of the Forty-second Legislature.

The Chair: The question is on the adoption of the motion offered by the gentleman from El Paso. The motion offered by Mr. Lockhart is renewed.

(After further discussion, the Chair said:)

The Chair: The gentleman from El' Paso has renewed the motion heretofore offered by Mr. Graves and Mr. Lockhart, and the gentleman from Mills has moved to table the motion. The question is on the motion to table. Those favoring the motion will vote "yea." Those opposed, "no." There are 90 yeas and 17 nays. The motion to table prevails.

Yeas.

Adamson.
Adkins.
Akin.
Albritton.
Baker.
Barron.
Boyd.
Brice.
Brooks.
Burns of Walker.
Burns of McCulloch.
Caven.
Claunch.
Cox of Lamar.
Cox of Limestone.
Cunningham.
Dale.
Daniel.
DeWolfe.
Dodd.
Donnell.
Dowell.
Dwyer.
Elliott.
Engelhard.
Farmer.
Forbes.
Ford.
Gilbert.
Giles.
Goodman.
Grogan.
Hanson.
Hardy.
Hatchitt.
Hefley.
Herzik.
Hill.
Hines.
Holder.
Holloway.
Hoskins.
Howsley.
Jackson.
Johnson of Dimmit.
Johnson of Morris.
Jones of Shelby.
Justiss.
Laird.
Lasseter.
Lee.
Lemens.
Leonard.
Lilley.
Lockhart.
McDougald.
McGill.
McGregor.
Magee.
Mehl.
Metcalfe.
Moffett.
Morse.
Munson.
Murphy.
Olsen.
O'Quinn.
Petsch.
Ramsey.
Ratliff.
Ray.
Richardson.
Rogers.
Rountree.
Savage.
Shelton.
Sherrill.
Smith of Bastrop.
Smith of Wood.
Sparkman.
Strong.
Sullivant.
Tarwater.
Terrell of Val Verde.
Van Zandt.
Veatch.
West of Coryell.
West of Cameron.
Wiggs.
Young.

Nays.

Adams of Harris.
Alsup.
Bounds.
Carpenter.
Duvall.
Finn.
Harman.
Harrison of El Paso.
Holland.
Hubbard.
Hughes.
Kennedy.
McCombs.
Mathis.
Stephens.
Steward.
Walker.

Absent.

Adams of Jasper.
Anderson.
Beck.
Bedford.
Bond.
Bryant.
Dunlap.
Farrar.
Ferguson.
Fisher.
Fuchs.
Graves.
Harrison of Waller.
Johnson of Dallam.
Kayton.
Keller.
Long.
Martin.
Nicholson.
Pope.
Reader.
Sanders.
Satterwhite.
Scott.
Terrell of Cherokee.
Towery.
Turner.
Vaughan.
Wagstaff.
Warwick.
Weinert.
Westbrook.
Wyatt.

Absent—Excused.

Bradley.
Coltrin.
Coombes.
Davis.
Greathouse.
Jones of Atascosa.
Moore.
Patterson.
Stevenson.

Judge Batts: I make a further appeal to this House to give us an opportunity of filing an answer to the charges made.

Mr. Graves: You have two answers filed now. You can have another one, for all you want—you can have all you want.

Judge Batts: That is exactly what you stated before.

Mr. Graves: Yes, sir. All right; I say it again.

Judge Batts: Are the other members willing to accord me the time, Mr. Graves did?

Mr. Graves: State your time.

Judge Batts: Are you willing to give me an opportunity to get my witnesses here?

Mr. Graves: Can we use Grady Chandler now and then let him go?

Judge Batts: I am not objecting to it, I don't know what he is going to testify about.

Mr. Graves: Well, how much further time do you think would be utilized by you in preparing your answer?

Judge Batts: Why, Judge, you know I haven't had any opportunity to discuss this matter with my associates, or with my client.

Mr. Graves: Well, would it be one day or two days?

Judge Batts: It seems to me maybe two or three days would give me an opportunity to prepare. I think, so far as the matter of the amendment is concerned, you can have it by tomorrow morning. We have no desire for delay or anything of that kind, we simply want an opportunity to properly present the case of our client.

Mr. Petsch: Mr. Speaker, I move that the defendant be granted until tomorrow morning at 9 o'clock to file this additional answer.

The Chair: Is there any objection? Judge Batts has requested that the Committee give the attorneys for Judge Price until 9 o'clock tomorrow morning to file an additional answer. Is there any objection?

Mr. Sherrill: Mr. Speaker, is he going to file a different answer to what he did and plead not guilty?

Judge Batts: I haven't plead guilty, I don't expect to plead guilty. I am going to plead what is there; what is there is there because it is true. I stated those accounts had been approved by the district judge, and whatever is in those accounts is in those accounts. That is the extent of the pleadings. There are a dozen things covered here that are not covered by that special answer.

Mr. Petsch: Mr. Speaker, I would like to be heard, on my motion.

Mr. Chairman: I would ask that those representing the Committee and those representing Judge Price retire to the Appropriations Room and try to reach some agreement.

(Thereupon counsel for the House and counsel for the defendant retired to the Appropriations Room at 5:25 o'clock p. m., and on returning to the House at 5:35 p. m., the proceedings were resumed, as follows:)

Mr. Graves: Mr. Chairman, the Committee would like to call Grady Chandler to the stand.

The Chair: The Committee will please be in order. Did you reach some understanding as to the procedure?

Mr. Graves: We think we better probably utilize the witness first and go into that matter.

Thereupon the proponents called Grady Chandler, who was first duly sworn by the Chair, testified as follows:

Direct Examination.

Questions by Mr. Graves:

Q. Mr. Chandler, have you been sworn?

A. Yes, sir.

Q. Your name is H. Grady Chandler?

A. Yes, sir.

Q. Mr. Chandler, for how many years were you Assistant Attorney General under Claude Pollard?

A. Under Claude Pollard for nearly three years. About two years and ten months, I believe.

Q. After that time were you Assistant Attorney General under any other Attorney General of this State?

A. Yes, sir, Mr. Robert Lee Bobbit.

Q. As such Assistant Attorney General, in 1925, or soon after, sometime thereafter, did you have a conversation with Judge J. B. Price of Bastrop county?

A. In 1927, along in the spring of 1927.

Q. In the spring of 1927. With reference to what matter was that conversation?

A. With reference to an account by the sheriff of Lee county for fees.

Judge Batts: I want to make an objection. Mr. Speaker, we have not been furnished with anything indicating the court's procedure, but am I correct in assuming you will pass upon the admissibility of the evidence?

The Chairman: The resolution so provides, that the Chairman of the Committee will pass upon the admissibility of the testimony.

Judge Batts: I desire to make this objection to the evidence, that the witness is being interrogated with reference to a matter that took place prior to the last election of Judge Price under which he is now holding office, and under the definite rulings of the Supreme Court of Texas, the evidence is not admissible.

Mr. Graves: Mr. Speaker, in answer to the objections that the gentleman has just made, I will state that this is offered first for the purpose of showing knowledge upon the part of Judge Price of matters that the officials performed, and that I will back it up with acts performed by Judge Price, the culmination of that act being on December 11th, 1930, long after he had been elected, or after he had been elected to this term of office.

The Chair: The objection will be overruled if that is the purpose.

Judge Batts: I am quite sure that Your Honor is not familiar with the rulings that have been made by the Supreme Court, or else Your Honor's ruling would not be made. It is definitely declared by the Supreme Court of Texas that with reference to offenses that are of the same character preceding the time of re-election, the introduction of evidence with reference to it is sufficient ground for reversal of the case. I am quite sure as to what has been held by the Supreme Court, and I am also pretty sure that the Speaker would desire to follow the Supreme Court of Texas, which decisions I could show you in a few minutes.

The Chairman: Judge Batts, we cannot observe as closely the rules of evidence in an inquiry of this kind as we would undertake to do if we really had Judge Price on trial, as the Senate will do in event impeachment charges have been preferred.

Judge Batts: May I have an understanding about this matter; I don't want to take up time unnecessarily to make objections, of course, if the ordinary rules of evidence are not going to be observed, I shall not make any objections at all.

The Chair: As long as the line of inquiry is relevant, or at least pretends to be relevant, the Chair will allow that line of inquiry, because I cannot strictly enforce the rules of evidence in this investigation, that is all there is about it.

Q. I believe you stated that you made a trip to Bastrop some time in 1927 to see Judge Price?

A. Yes, sir.

Q. What conversation, if any, did you have with Judge Price?

A. Mr. Goodfellow, who at that time was an employe in the Comptroller's Department, came to the Attorney General's Office to ask his opinion with reference to two accounts, I believe he said made by Mr. Carlisle, who was sheriff of Lee county. Do you want me to go into what Mr. Goodfellow said?

Q. Yes, sir.

Judge Batts: I would again, if I were in court, object to hearsay evidence. But is that also to be included?

Mr. Graves: We are not asking for hearsay evidence.

Q. If you will just tell us the conversation you had with Judge Price and what it was about—

Judge Batts: That is not what you called for, it was conversation with someone else.

Mr. Graves: I didn't intend to do so, sir.

A. All right. Mr. Goodfellow and I went to Bastrop and talked to Judge Price in the presence of Mr. Goodfellow, Hon. Quintus U. Watson of Harris, Mr. Simmang, an attorney of Giddings, Texas, I believe Mr. Carlisle, sheriff of Lee county was also present. The purpose of the visit was to see if we could have Judge Price to withdraw his approval of the two accounts.

Q. Now, just a moment — right there. Do you recognize these accounts; look at them and see? (Showing papers to witness.)

A. I couldn't recognize the ac-

counts except in a general way, Mr. Graves. I know these two accounts represented something like $18,000, approximately $18,000.

Q. Does that look like it? Look at the recapitulation on the back.

A. Yes, sir, that looks like the same account.

Q. In your best judgment, is that one of the accounts?

A. Yes, sir.

Q. What is that Mr. Sturgeon has just handed you? (Indicating paper).

A. Yes, sir, that looks like the same account.

Q. How much does those two accounts total?

A. Well, I will have to testify from my recollection; it is something between $18,000 and $19,000.

Q. What did you say to Judge Price relative to those two accounts that totaled between $18,000 and $19,000?

A. I told Judge Price that Mr. Goodfellow of the Comptroller's Department had shown me those accounts and I had gone over them hurriedly and he pointed out a great many items—that many items showed on the face, many witnesses had been summoned, several times in the same cases, and I advised Mr. Goodfellow that the sheriff was not entitled to pay for summoning those witnesses, and those items ought to be stricken out from the accounts. I also told him it appeared from the accounts that mileage had ben dupliceted in many instances, that he would serve many witnesses, the same witness in several different cases and charged the fee, he would have about twenty witnesses in different cases and would show a charge of mileage for each witness summoned, and that, in my opinion, was not correct, and these accounts should be stricken out. And I called attention to the fact that a short time prior to that the Court of Civil Appeals—I forget which court it was, I think it was the Austin Court of Civil Appeals—had held that the sheriff was entitled to duplicate mileage, but since the Supreme Court had reversed that case and held otherwise he was not entitled to duplicate mileage. At that time the opinion had not been printed, as far as I know, but I had along with me a copy of that opinion which I had secured from the clerk of the Supreme Court, and I showed him that opinion, told him in view of that I thought he ought to strike that out, and Mr. Goodfellow told me he had examined the account and that a very small amount of it should be approved only.

Q. How much?

A. I don't recall exactly; it occurs to me $200 or $300, I don't recall the exact amount—I know it was a very small amount compared with $18,000.

Q. For how many terms of court were those two accounts?

A. I really do not recall, Mr. Graves.

Mr. Graves: All right, the records will show that. Now, continue with your conversation.

A. I talked with Judge Price some time about it; I told him that I realized his approval of these accounts was in the nature of a judgment, in view of the old decision of the Supreme Court in the case of Rochelle vs. Lane, we didn't think the claims ought to be paid and, therefore, thought he ought to withdraw his approval of the entire account and let the sheriff make out a new account and put in only those items which Mr. Goodfellow thought were correct and, if necessary, I would be willing to take any procedure in order to get it before the courts for a hearing, if necessary. He told me he didn't think that would be necessary; he had approved the account, that it ought to stand, that at the time he approved the account the Court of Civil Appeals said that duplicate mileage was all right; it made no difference, but since that time the ruling of the Court of Civil Appeals had been overturned by the Supreme Court; I told him that since that time the Supreme Court had reversed that and the Comptroller had not paid it, but I thought he ought to withdraw his approval, and he refused to do so. That was about the substance of that conversation.

Q. It is a fact, is it not, in order that you might refresh your memory —and if I am wrong, why, say so— that you had two accounts with you, one for the 1925 term of court and one for the 1926 term of court?

A. Yes, sir.

Q. These accounts were pending in 1927, when you were there, because the Comptroller had refused to pay them?

A. Yes, sir.

Q. Do you know of your own knowledge whether those accounts were finally paid by the State of Texas?

A. Not of my own knowledge, only by hearsay, just a few weeks ago, when I heard they were paid—that is, part of them were paid.

Q. Part of them were paid?

A. I advised the Comptroller's Department not to pay a nickel of it.

Judge Batts: Your honor, I suppose it will not be of any service to me to object to what he understands about these things. Of course, if it has been done, it is evidence of it.

Mr. Graves: Well, we asked him if he knew, and he said he didn't know, he said he understood.

Judge Batts: I want to know whether we are going to try this matter upon somebody's understanding as to the facts or upon something in the principles of the rules of evidence.

The Chair: Try to confine it to what the witness knows.

Q. Who was John T. Carlisle, if you know?

A. All I know is from hearsay.

Q. Well, what is the common report? The fact that he was sheriff of Lee county, is that right?

A. Yes, sir.

Q. Mr. Page: Well, do you know he was sheriff? The account that you testified about, whose account was that?

A. Mr. Carlisle's, the sheriff of Lee county.

Q. Did it have on it the approval of the district judge?

A. Yes, sir.

Q. Who was that district judge?

A. Judge J. B. Price, I believe it is—he was judge of that district in which Lee county was situated.

Q. All right, sir. Mr. Graves (counsel for defendant) you can take the witness.

Cross-examination. Questions by Mr. Paul Page, Sr.:

Q. Mr. Chandler, how did you come to go to Bastrop?

A. How did I come to go there?

Q. How did you come to go to Bastrop, why did you go there? What was the occasion of your going there?

A. Mr. Goodfellow and I discussed the matter in the Attorney General's office, and I suggested I would go to see Judge Price and see if I couldn't get him to change his account—his approval, and he suggested that I go with him, he thought probably I could talk better about the matter than he could, so I consented and went with him.

Q. Who was there when you arrived, or who was with you when you went to see Judge Price?

A. Mr. Goodfellow and I went alone.

Q. Whom did you find with Judge Price when you got there?

A. We found Quintus U. Watson, Mr. Chimmang, and, I believe, Mr. Carlisle was present, or one of his deputies—a third man was there.

Q. The sheriff or one of his deputies was present at the time, then?

A. Yes, sir, in the courtroom when we arrived.

Q. Did you understand that Judge Price had approved these accounts under the authority of the case of Bigham vs. State, decided by the Supreme Court of this State in a decision by Judge Blair?

A. I don't know by what authority—it had been approved, by the signature shown on the accounts it was approved.

Q. Did you examine those accounts?

A. Not altogether; Mr. Goodfellow just pointed out a good many items to me, which showed only in some particulars, the sheriff had summoned several witnesses in the same case, and charged a fee for each.

Q. Isn't it a fact that under that ruling in Bigham vs. State, it was held that the sheriff was entitled to mileage, and even for mileage for summoning several witnesses although they were summoned at the same time.

A. I remember that his approval had some interlineations in print, sir.

Q. I don't refer to any interlineations, but wasn't the statement of the Comptroller attached to that account which contained a statement that under that ruling in Bigham vs. State, the sheriff was entitled to mileage and even for mileage for summoning several witnesses although they were summoned at the same time?

A. I really don't remember, what was attached, I think there was something to it.

Q. Well, I hand this statement to you, which I have obtained from the attorneys, and it was right there. (Handing paper to witness).

A. It is in this statement, yes, sir. I don't recall everything in that statement.

Q. Do you not know that this statement was taken from the ac-

counts by the attorneys here and handed to me just a few minutes ago?

A. It wasn't the part shown me, I don't know whether it was or not.

Q. Did you examine the account?

A. I just looked at those approvals—those approval sheets, that is all I looked at.

Q. You did not examine the account in full?

A. No, sir.

Q. Not at the time Mr. Goodfellow came to you?

A. No, sir, I just looked at it for the items Mr. Goodfellow pointed out. He said he had examined it.

Q. Didn't you look at the statement, didn't you examine the account to see that the statement was made there that the account was approved under authority of the ruling in Bigham vs. the State, a statement like that I showed you?

A. I say I don't recall seeing that statement at all, but he said he approved it under authority of that.

Q. Yes, all right, go ahead. You discussed the Bigham case, and Judge Price said he approved the account under the authority of that case?

A. Yes, sir. When I saw the Supreme Court opinion—

Q. Didn't Judge Price tell you, as you have stated, he was approving this account under authority of the Bigham case, with which case you were familiar?

A. Yes, sir, with respect to that duplication of mileage, yes, sir; but not other items in there.

Q. Isn't that entire account a duplicate of mileage accounts?

A. No, sir. Mr. Goodfellow pointed out items there which showed—

Q. I didn't ask what Mr. Goodfellow pointed out. I asked you—and ask you again if that wasn't a duplicate account altogether?

A. I think it was.

Q. Didn't you know and don't you know now, that under the authority of the Bigham vs. State the account was properly approved—I mean the decision of the Court of Civil Appeals?

A. I couldn't say about that duplicate mileage, I think it was, yes, sir.

Q. Well, then, it was his duty to approve that under authority of that case, and he attached the record there showing that account was approved under authority of that decision, isn't that a fact?

A. Well, I couldn't say it was a fact, Mr. Page.

Q. Well, there—I am presenting it to you.

A. Well, that speaks for itself.

Q. That speaks for itself, that came from the account, didn't it?

A. I don't know whether it came from the account or not. I say, I didn't see it, Mr. Page.

Q. Don't you think when you were down there trying to get the district judge to withdraw his approval of the account that it was your duty to examine the account carefully, and especially when he told you he was relying upon the ruling in this decision, naming the decision to you?

A. I told you I was relying upon the items mentioned by Mr. Goodfellow.

Q. You did not examine the statement then if it was attached to the account?

A. No, sir, I didn't—I don't recall seeing it.

Q. But Judge Price had told you that that was the case which he relied upon in approving the account?

A. Yes, sir, upon these items.

Q. Now, then, Mr. Chandler, I want you to refresh your memory—I know you want to testify to the exact facts, I think that you want to do so, I know that you want to do that—but didn't you carry a copy of the opinion in the Bigham vs. State case, and in a later case decided by the Supreme Court, with you down there?

A. Yes, sir.

Q. When was that decision rendered—or written, with reference to the time you went down to Bastrop?

A. I don't remember exactly, Mr. Page, but it occurs to me that it was something like two or three months prior to the time I went there.

Q. It had not been published at that time, had it?

A. I don't think it had.

Q. You had a typewritten copy of it, didn't you?

A. I had a typewritten copy of it, yes, sir.

Q. Where did you get it?

A. From the clerk of the Supreme Court?

Q. Well, you went to the clerk of the Supreme Court, and you had to go there to get it, because it had not been printed, I suppose, is that right?

A. Well, really, I got it before that, Mr. Page, because at the time

I was in the Attorney General's office, Mr. Weaver Moore had been handling that case and they put me in charge after I came there, and a motion for re-hearing was pending at the time and so when the court overruled it—overruled the motion for re-hearing, I was furnished a copy of the opinion and kept it in my files in my office.

Q. How long was it before you went to Bastrop that the opinion was overruled by the court?

A. I think about two months.

Q. And the decision had never been published at that time?

A. No, sir.

Q. Well, Judge Price had no access to that opinion, unless it had been published, had he—or any lawyer?

A. I don't suppose he had, unless he secured a copy somewhere, like I had.

Q. Well, Mr. Watson was there representing the sheriff, you say?

A. Yes, sir.

Q. Isn't it a fact you had that opinion with you at the time?

A. At the time I went to Bastrop?

Q. Yes, sir.

A. Yes, sir, I had it with me on the trip.

Q. And now are you sure you took it out and showed it to the lawyers there? Isn't it a fact that you did not take it out and show it, but told Judge Price later that you had that opinion with you but didn't show it at that time, but was keeping that opinion to overthrow Watson at a later date?

A. No, sir, that is not a fact?

Q. Did you say anything of that sort?

A. No, sir. I told Judge Price—I had it in my hand, as well as I remember, and offered it to him, I don't remember whether he read it or not. I know I offered it to him.

Q. Did you read the opinion to him?

A. No, sir, I didn't read the opinion to him.

Q. Don't you think when you offer an opinion to the court that overturns a doctrine laid down by the Court of Civil Appeals, you would ask them to read that opinion by the court and ask him to revise his judgment?

A. Judge Price wasn't in any mood to read it to him, he was just sitting in the courtroom, no court was in session, it was just a conversation had in the courtroom.

Q. Yes, sir, just a conversation you were having. But you had in your possession the decision of the Supreme Court, and you were trying to get him to change his approval on the accounts. Why, then, did you not read that decision to that judge and call his attention to the fact that that overturned that doctrine in the Bigham case that he relied upon?

A. I did tell him it overturned that Court of Appeals opinion, and offered it to him.

Q. Well, did you read it to him?

A. No, sir.

Q. Did anybody read it to him?

A. No, sir. I don't think so while I was there.

Q. Don't you think most lawyers, in bringing a matter to the court, that overturned a decision on a question he had made a ruling on under that decision, that they would have read the decision to him so he would have known he was in error about the matter?

A. In the first place, I didn't think it necessary to read it, because he didn't dispute the fact that the Supreme Court had reversed the opinion.

Q. Did he know anything about the Supreme Court opinion at that time?

A. I don't recall.

Q. Don't you know he hadn't heard it?

A. I don't recall whether he said he had or not.

Q. You did not read the opinion to him?

A. No, sir.

Q. Did you read it to Judge Watson?

A. I didn't read it to anyone, I don't think.

Q. Didn't you keep it in your pocket and didn't show it to Judge Price at all?

A. I had it in my pocket, and I told him I had the opinion.

Q. You told him that in the presence of the other attorneys?

A. Well, we were all there.

Q. Did you make a statement before the investigating committee about the matter in which you are now testifying?

A. Yes, sir.

Q. Did you state at that time that you didn't show the opinion at all?

A. I don't recall making any such statement.

Q. Are you sure you didn't make any such statement?

A. Yes, sir, I am sure I did not.

Q. You are positive now, that in your testimony before this Committee here — Judge Graves — that you didn't make any statement that you did not take that opinion out of your pocket at that time—you are positive of that?

A. I don't recall even being asked about that in that investigation.

Q. Well, you won't say you did not make that statement to the investigating committee?

A. I don't recall.

Q. Well, do you remember whether you did or not?

A. Well, I don't think I did.

Q. You don't think you did? Will you say you did not?

A. Well, I have answered the question, I think.

Q. Well, will you say you did not make it?

A. I will say I don't think I made that statement.

Q. You don't think you did?

A. Yes, sir.

Q. All right. Mr. Page: At this point we offer in evidence in connection with the cross-examination of this witness, this statement, and I would like for the clerk to read it—just the top portion there.

Mr. Graves: If the Chairman, please, all right, we want him to do that, but these are our records, we don't want to lose them, in this matter and other matters.

Mr. Page: I think that is entirely proper. We just want to get the statement in here, and in the records.

(The clerk thereupon read the statement, as follows, to-wit:)

"To the Comptroller: The enclosed account of John T. Carlisle, sheriff of Lee county, has been prepared in conformity with the rules laid down in Bigham vs. State, 275 S. W. Rep., page 147, holding that the sheriff is entitled to mileage in going to serve each warrant of arrest; also mileage in each case in summoning witnesses, even though summoned at the same time. This account was examined and approved by the Hon. J. B. Price, judge of the Twenty-first Judicial District of Texas, and in accordance with the rule laid down in Rochelle vs. Lane, Comptroller, 148 S. W. 556. The State is not subject to review by the Comptroller, but must be paid. The Supreme Court said: 'The Comptroller has not connection with the claim until it has been adjudicated by the court and is furnished no copy except the copy of the judgment, he has no power to secure evidence. It cannot be denied that his means of examination is confined to a copy of the records, therefore his examination must be confined to that as a report. The correctness which has to be ascertained must be of that record, and extends only to the manner in which a clerk has performed his duty. In these, as we have seen, the Comptroller has no facts nor power to obtain such upon which to act otherwise than to pass the work of the clerk. The extraordinary assertion is made that an account which has been approved and adjudged in a court to be correct may be set aside by the Comptroller upon his own instinct of right without evidence. Such a claim is too absurd for discussion. If the Legislature intended to confer such power upon the Comptroller, it would have violated Section 1, Article 2, of the Constitution, which reads: "The power of the government of the State of Texas shall be divided into three distinct departments, each of which shall be controlled by a separate body of magistratry, to-wit: Those which are legislative to one, those which are executive to another, and those which are judicial to another, and no person or collection of persons being of one of these departments, shall exercise any power properly attached to either of the others, except where specially permitted." The Comptroller is an executive officer, and cannot exercise judicial power. The judgment being a judicial act, cannot be reviewed by an executive officer'."

Mr: Page: I only offered in evidence that portion of the statement which is at the top of this, which winds up, "even though summoned at the same time." That is all we care to offer, but the clerk inadvertently read it all; but we offered that down to "summon at the same time."

Mr. Graves: We offer the balance, just leave the balance in.

Mr. Page: That is all right, if these gentlemen offer it, but we don't care to offer it at this time.

Q. Did you and Senator Watson engage in an argument as to the law in this case there in the presence of the judge?

A. Yes, sir.

Q. Senator Watson contended that the account was a proper account and should have been approved under the authority of this case we are discussing here, did he not?

A. He argued it should be approved under the authority of the case of Rochelle vs. Lane.

Q. Didn't he also argue it should be approved under the ruling in Bigham vs. State, just read here?

A. Yes, sir.

Q. Are you familiar with the Bigham case reported in the 275 S. W., page 147, in reference to these matters?

A. I haven't read the case for over four years.

Q. But you were familiar with it at that time?

A. Yes, sir.

Q. And didn't Judge Blair hold in that case, and didn't all the judges concur in his holding; they held here that: "The sheriff is entitled to mileage in going to serve each warrant; also mileage in each case in summoning witnesses, even though summoned at the same time." Wasn't that the holding in the Bigham case?

A. I think in substance that is what it was, yes, sir.

Q. Well, when Judge Price approved this account, he approved that in accordance with the ruling of Judge Blair of the Court of Civil Appeals, in concurrence with all the judges?

A. I don't know whether all the judges concurred in that.

Q. Well, was there a dissenting opinion?

A. I don't know.

Q. Well, don't you know there wasn't any dissent?

A. I don't know. I just read the opinion at the time.

Q. You have read that opinion, and testify here you don't know whether there was any dissenting or not?

A. I don't know. I don't recall any dissent.

Q. Well, you don't recall any dissent?

A. No, sir, I don't recall it.

Q. It was a unanimous opinion?

A. As far as I recall.

Q. Senator Watson contended the account was legal and ought to be approved, did he not?

A. Yes, sir. But he argued from the case of Rochelle vs. Lane.

Q. But that is along a different line of other cases, Bigham vs. State —that is, I am not now referring to that, but didn't Senator Watson contend that the later case of Bigham vs. State authorized this duplication of witnesses by the sheriff?

A. I don't remember he said that was there, but I remember Judge Price said that was the law at the time he approved the accounts, and he didn't think he ought to change it even though the Supreme Court reversed the case.

Q. You said Judge Price said that was the law at the time he approved the accounts?

A. Yes, sir.

Q. And he didn't think he ought to change it for that reason?

A. Yes, sir.

Q. Mr. Chandler, it will be of interest, probably, for me to ask you a question about the statements you made before the Senate Finance Committee. I will ask you if you were not sworn before the Senate Finance Committee, in the presence of Senator Purl, Senator Beck, Senator Hornsby, Senator Gainer, Senator Parrish, the State Auditor, and possibly the Assistant State Auditor, and Mr. Sparks being also there, in the presence of all those gentlemen, if you didn't state that — and it was taken down by a court stenographer —that you had in your pocket at the time you discussed this matter with Judge Price, the opinion of the Supreme Court which overruled the doctrine laid by the Court of Civil Appeals, but you didn't take it out of your pocket and show it to the judge, or show it to the lawyers because you were laying for Senator Watson, that you had it and wanted to overturn him with it, didn't you say that to all of those gentlemen?

A. No, sir. I will tell you what I did say.

Q. All right, say it.

A. I told Mr. Goodfellow I thought I had studied the appropriation bill, that would overcome the effects of the case of Rochelle vs. Lane, that after that decision the Comptroller wouldn't pay these fees until he got orders, or words to that effect, and I believed that the claims were overcome by that decision of Rochelle vs. Lane, and I therefore advised him not to pay it. That is what I told them about it. I didn't mention that to Judge Price. But as far as having

it in my pocket, I don't recall whether I had it in my pocket or carried it in a brief case or in a file or where it was, I don't remember being asked by the Committee about having shown it to Judge Price, I don't recall—and as I said, I say now—I don't recall Judge Price looking at the opinion, but I had the opinion down there in my possession, and as far as I recall, Senator Watson looked at the opinion there and read it.

Q. But you don't know whether the court read that opinion or not?

A. I don't think he read it at all, no, sir.

Q. Why didn't you insist that he read the opinion of the Supreme Court upon the matter that you were trying to get him to rule upon?

A. Well, Judge Price seemed to take the attitude he believed what I was telling him about the opinion. Many courts, many judges do, if you tell them about a case—I have had that happen lots of times—

Q. Yes, that is very true, but did you tell Judge Price there that opinion delivered by the Supreme Court, and of which you had a copy, overruled the Civil Court of Appeals' opinion under which he had approved this account?

A. Yes, sir, I did.

Q. You did do that?

A. Yes, sir.

Q. You said something about the appropriation bill attaching certain stipulations that those accounts must be approved by the Comptroller before they would be paid?

A. Words to that effect, Mr. Page —I don't remember the exact words, but I told Mr. Goodfellow I thought that would be a good thing to hang on to.

Q. This account had on it that it was approved by the district judge, subject to the approval of the Comptroller, did it not?

A. I don't remmember that, no, sir—I don't remember it.

Q. Well, didn't you say awhile ago that it had?

A. Subject to the approval of the Comptroller?

Q. Yes.

A. No, I don't remember being asked anything about it.

Q. I thought you said awhile ago that the appropriation bills contained a provision that these sheriffs' accounts would not be paid until they were approved by the Comptroller?

A. I said they contained a provision in substance that the Comptroller should audit the accounts before he paid them, or words to that effect, I don't know what it was exactly.

Q. Well, but under the law at that time, this bill wouldn't be, I think, over there, for the Comptroller to approve until approved by Judge Price.

A. I told him that that wasn't enough, he might secure mandamus from the Supreme Court.

Q. But you told him that that account approved by him was subject to approval by the Comptroller?

A. I think I did.

Q. Well, that was the case?

A. I don't know.

Q. You say you don't know that contained the provision?

A. It contained the provision in substance to that, the general statutes, too, and in the Rochelle vs. Lane case—

Q. Well, I haven't said anything about the case of Rochelle vs. Lane. What I am asking you is did this appropriation bill under which this account was approved, doesn't contain in substance that it would not be paid by the Comptroller until audited by his department?

A. That is my construction.

Q. You were one of the law officers of the State of Texas?

A. Yes, sir, Assistant Attorney General.

Q. And you told this district judge that was a provision of the law at that time when you discussed it with him?

A. That was the provision in the appropriation bill, yes, sir, but there was no point of law in reference to it.

Q. No, but the appropriation bill did contain the provision you were speaking about, and you mentioned it to Judge Price?

A. Not to Judge Price, no; but I told Mr. Goodfellow.

Q. That was then to Mr. Goodfellow, that it would have to be audited by the Comptroller's Department before it was paid?

A. I told him under that law I thought it was strong enough to overcome—overcome the decision or overcome the doctrine laid down in Rochelle vs. Lane, and we went to see Judge Price to get his withdrawal of the approval of the accounts, so there wouldn't be any question.

Q. You know that neither of these accounts have ever been paid?

A. I understand that something like seven or eight thousand dollars have been paid, about last December.

Q. Your understanding is that some of the money has been paid, on deficiency warrants, was it?

A. Deficiency warrants were issued for it, but the warrants have been sold to the bank.

Q. Well, has that warrant been paid?

A. I don't know.

Q. You have heard it wasn't paid, haven't you? Don't you know it wasn't paid?

A. Well, I know when it was before the committee as to whether there was going to be any recommendation as to money to be appropriated to pay this deficiency warrant, but I really never have heard whether it was.

Q. Why were you there before the committee that day?

A. They asked me to be there at that time, asked me to come that night.

Q. Well, didn't they approve this claim and put in the accounts at the Regular Session of the Legislature?

A. I don't know when they quit there, we heard they had just adjourned.

Q. Well, don't you know, Mr. Chandler, that claim was approved by that committee and that was put in the claims bill and approved by both committees of the Legislature for payment at the last session of the Legislature, and the only reason it was not paid was because it was vetoed by Governor Sterling—the entire bill?

A. No, sir, I don't know.

Q. You know it now, don't you?

A. No, sir, I don't, Mr. Page—just as I have heard about it.

Q. What was the date of your trip to Bastrop?

A. I don't remember, but I do remember it was sometime in the spring of 1927.

Q. In the spring of 1927?

A. Yes, sir.

Q. Was court in session there?

A. Well, I think he had—I don't remember whether he had a term of court or not at that time.

Q. Well, wasn't this several years after the approval of the original account?

A. Well, it was about a year and a half or two years, I think.

Q. Well, it was long after the expiration of the term of court at which the service was rendered, when you were there, wasn't it?

A. Yes, sir.

Q. Do you think he would have the right at that time to change his approval of an act he had done—do you as a lawyer, do you think he had the right to change his approval?

A. Well, I don't know—but I think he would have, yes, sir, if he would have a hearing on the matter.

Q. You say you don't know? Did you not investigate the law as to that before you tried to get him to change his opinion about it?

A. No, I didn't have time, because Mr. Goodfellow was in the office one day and we left the next morning and went down there.

Q. Did you try to get a hearing on it?

A. Yes, sir. He told us there wasn't any use to have a hearing on it, he wouldn't change his approval of it. He said two or three times that at the time he approved that account he relied upon that Court of Civil Appeals opinion.

Q. Did you file with Judge Price any paper of any kind asking him to change his mind about changing this account?

A. No, sir, I did not.

Q. Don't you think, as a representative of the Attorney General's Department, that an account to the amount of eighteen or nineteen thousand dollars, don't you think there ought to be something of record attached to that account or filed with that account to show you had asked him to change that opinion and on what authority you had based your request to change it?

A. He told me—

Q. I didn't ask you that, I ask you that—if you didn't think you ought to have done something of that sort?

A. Not under the circumstances, no, sir.

Q. What circumstances?

A. Because he told me he wouldn't change, and I didn't see any use wasting time. He had an opportunity to test the matter in the Supreme Court, but he just held out and I let him get something as he could.

Q. Did you test it in the Supreme Court?

A. No, sir, I was going to let him do it, I said we could have a test of it he would file a mandamus suit, but he never did it.

Q. Didn't you think it was worth while to file a mandamus where there were eighteen or nineteen thousand dollars involved?

A. I told the Comptroller not to do it.

Q. Did you file any opinion with the Comptroller setting out your views, showing authorities, or anything of that sort?

A. No, no written statement, no, sir.

Q. All these proceedings were just verbal, now, everything you had with the Comptroller, and everything you had with Judge Price, no record was made of it, and you were representing the Attorney General and never filed any written statements in connection with this matter at all?

A. No, sir, I didn't see any necessity for it.

Q. I understand you didn't. As a lawyer and representative of the Attorney General, you saw no necessity for filing any motion with the district judge in connection with the matter involving about $19,000 against the State? Well, don't you think you were careless in not doing something of that sort, Mr. Chandler?

Mr. Sturgeon: We would like to note this objection at this time, Your Honor. That this same question, identical in its phraseology and terms, has been asked this same witness to my personal knowledge, four different times. I want to object further, because the nature of the question is argumentative, and could not establish any issue of facts by reason of this inquiry, and it is simply a consumption of time and an effort to get this witness to admit that he has done something carelessly.

Mr. Page: This is the first time I have interrogated the witness about this, and this is the first time I have said anything about this. Now, the Chair has stated to Judge Batts that these hearings were informal, to the extent that testimony was being looked into here that would not be admitted in court, and I contend, with reference to this Assistant Attorney General, who is charged with duties under the law as much as Judge Price is charged with duties under the law, that that crime for which Judge Price is attempted to be impeached was committed by this man with this statement, for its effect upon this House.

The Chair: The Chair doesn't know whether the question is a repetition or not, but counsel should avoid all repetition possible and avoid all argument as much as possible with the witness.

Mr. Page: I shall endeavor to comply with the rulings of the Speaker, and I think the Speaker is entirely correct about it. But I will state this is the first time I have interrogated the witness about it.

I believe that those are all the questions we desire to ask the witness at this time.

Re-direct Examination.

Questions by Mr. Graves:

Q. Now, relative to the matters that were in dispute down there, now, but without connection with any of the decisions in Bigham vs. State, was there anything except duplicate mileage in the account in question during the discussion?

A. I don't think so.

Q. Was there anything else in the discussion except duplicate mileage?

A. No, sir, that is all.

Q. You don't know, then, how much was in there besides duplicate mileage, which was in dispute?

A. Well, as to the amount, Mr. Graves, I don't recall; in fact, I don't have any idea as to that, but I remember Mr. Goodfellow pointed out a good many items where there were summoned several witnesses in the same date.

Q. Was it hundreds of dollars or thousands of dollars?

Judge Batts: I object to this. Whatever is there is represented by this account, there is one way to determine it, and only one way, proper way, to determine it; and I asked the Court to instruct counsel where facts can be obtained, not to indulge in speculation of that kind.

Q. All right; I will read this: "December 10, 1930. These two accounts, $7,912.10, this adjustment caused by mileage duplication being taken out previous endorsement brought about by mileage being taken out. J. B. Price, judge, Twenty-first Judicial District." Now this might be a little tiresome but I will get through it as rapidly as I can. Now the Rochelle vs. Lane case practically

held this—as set out by somebody—it practically held that whenever a district judge put his signature upon the minutes of the court approving the account of the sheriff, that was a judgment against the State of Texas and the Comptroller had to pay it whether he wanted to or not. In other words, the judicial act of the Comptroller could not offset it?

A. Yes, that's right.

Q. Then there was put in the appropriation bill, prior to—about the time you went down there, an effort at least to stop the payment of such matters, by saying it must be approved by the Comptroller; is that right?

A. That was my construction of that provision, yes.

Q. As a lawyer, didn't you know that an appropriation bill could not repeal any statutory enactment that had been enacted?

A. As a lawyer, I think the Legislature has the right to put any provision in an appropriation bill, regulating the expenditure of any money. I thought it was valid.

Q. Then if you said anything to Quintus Watson, it was a fact that you were not telling Quintus Watson that there was a rider in the appropriation bill that might stop his account?

A. That day, I did not, no.

Q. Now relative to that—whether you had that opinion in your pocket or not, did you tell Judge Price that the opinion was overruled in Bigham vs. State?

A. Yes, as well as I remember, Mr. Watson read it while I was there.

Q. And those are the facts about it?

A. Yes.

Q. After you had been told that, he then told you that he approved this account for $12,028.30?

A. Well, there were two accounts there.

Q. He approved both of them?

A. Yes, totalling $18,000 and something.

Q. Both accounts were approximately $18,000?

A. Yes.

Q. Then after that, telling you he would not retract his statement, or retract from his position, you came back to Austin, and the Comptroller had the money and if it was anybody's business to bring suit to get the money, it was his business?

A. Yes.

Q. Were you trying to hide anything?

A. No, sir.

Q. Were you trying to slip up on anybody?

A. No, sir. The only reason I did not mention that provision of the appropriation bill was because I wanted to study it first and see whether it was legal or not.

Q. Then was this opinion published between then and December 10, 1930?

A. Yes, the opinion was published just a short time after I was down at Bastrop, in 1927.

Q. That's all.

A. As I understand, I may leave and not be back until next Wednesday?

Q. When?

A. I expect to be back next Wednesday.

Q. All right. This witness is excused.

(Witness excused.)

Mr. Graves: Now, Mr. Chairman, the committee of lawyers have agreed that so far as we are concerned, that both the defendant—both the respondent and the State are in need of some amount of time in which to arrange the presentation of this matter before the House, and I move you, sir, that the Committee of the Whole arise and report to the House, and ask permission to recess until 9 o'clock Monday morning.

Mr. Hubbard: I desire to offer an amendment to the motion, that the Committee rise and report progress, and ask leave to sit again tomorrow morning at 9 o'clock.

Upon a vote, the motion of Mr. Hubbard prevailed, whereupon the Committee of the Whole recessed at 6:40 p. m., August 13, 1931, until 9 a. m., August 14, 1931.

Friday, August 14, 1931.

The House met Friday morning, August 14, 1931, at 9:17 o'clock, pursuant to adjournment on Thursday, August 13, whereupon the following proceedings were had:

The Speaker: The House will please be in order.

Mr. Graves: I now move that the

House resolve itself into a Committee of the Whole House for the purpose of proceeding with the investigation.

The Chair: There being no objection, it is so ordered. The Committee will please be in order. Now, gentlemen of the Committee, in the conduct of this hearing, it will greatly help those in charge of it, and the gentlemen who are familiar with it and the evidence that they are undertaking to produce here, if you will permit the gentlemen who are conducting the hearing to finish with the questions they have to ask before you interfere with the proceedings by suggesting questions, and then at the conclusion of the examination, if you have any questions that you desire to be asked submit them to the men in charge of the investigation and it will be done.

Mr. Graves: Shall we now proceed, Mr. Chairman?

The Chair: You may now proceed.

Mr. Sturgeon: We would like to have Mr. Markham sworn, Mr. Chairman.

Thereupon, T. M. Markham, being duly sworn by the Chairman, testified as follows, on examination by Mr. Sturgeon.

Q. What is your name, please?
A. T. M. Markham.
Q. Where do you live?
A. Austin, Texas.
Q. What occupation are you engaged in, or what business are you in?
A. Assistant State Auditor.
Q. You work for the State?
A. Yes, sir.
Q. Who is the State Auditor at the present time?
A. Moore Lynn.
Q. How long have you been working as Assistant State Auditor?
A. Since the last week in June, 1930.
Q. Ever since 1930?
A. Yes, sir.
Q. How long have you been an auditor?
A. Something like—I have been in the public accounting business something like eight years before I came here.
Q. As such Assistant State Auditor state to the Committee, whether or not, in line with your duties, you have examined or audited some of the sheriff's accounts that have been sent to the Comptroller's office from the Twenty-first Judicial District of Texas.
A. I have.
Q. Do you, or not, know Judge J. D. Price?
A. I know Judge Price.
Q. Have you, or not, audited Sheriff Carlisle's accounts from Lee county that was sent to the Comptroller's office for the October term of 1925, and the April term of the same court of 1926, from Lee county, Texas?
A. I have.
Q. Have you that account here now?
A. I do.
Q. I wish you would get it please.
A. Yes, sir.

Judge Batts: Counsel for the respondent believes that notwithstanding the ruling has already been made by the Speaker, they should make demurrer as to this proceeding at the present time, as to inquiring into any of the matters prior to the date of Judge Price's election, and we would therefore like to have our exception to this testimony.

Mr. Sturgeon: I will state to the Chair that this account, that these accounts prior to this last election are being gone into for the purpose of shedding light and circumstances on the entire charges as presented by the Committee.

The Chair: Proceed.

Q. Mr. Markham, I wish you would see if you have there an account of Sheriff Carlisle from Lee county while he was sheriff there, and which was approved by Judge Price for the October term, 1925, of the district court of that county.
A. I have it.
Q. Please tell the Committee what is the total amount of the recapitulation of the demand made on the State in that account?
A. Six thousand eight hundred forty-eight dollars and eighty-five cents.
Q. Can you tell the Committee when that account was presented to the State Comptroller of this State?
A. The records show that it was filed December 4, 1925.
Q. I will ask you, bearing in mind, that same account, if you have an account for the April term of court for 1926, from Lee county, also?
A. I do.

Q. I will get you to look at the recapitulation sheet just above the signature of the sheriff of Lee county, and the district judge's signature, and tell the Committee, what is the total amount of the demand on the State in that account?

A. Eight thousand eighty-eight dollars and ninety-five cents.

Q. Do you know of your own personal knowledge whether or not the two accounts were paid?

A. I do.

Q. How were they paid?

A. They were paid by warrants numbers 54289 and 20450.

Judge Batts: Mr. Chairman, reference is here made to an account not included in or referred to in the charges, and it seems to me that it would be improper to investigate any matters other than those that are included in the charges.

Mr. Sturgeon: We have the general allegation in the charges with reference to the conduct in approval of accounts of this judge, and there may not be any specific allegations in here as to the eight thousand and eighty-eight dollars and ninety-five cents account, but I will state to the Chair that we expect to show that that account was paid from that district as approved by that court, and later on, some amounts that were included in that were likewise included in another account and approved by this court, and that is the purpose of that testimony at this time.

Judge Batts: We take the position that these accounts are not proper evidence to go before the Committee at this time, and we have had no opportunity to investigate these accounts, and did not know that they were under investigation.

Mr. Graves: We do not intend to go into the eight thousand dollar account, but merely to show the general course of conduct leading up from time to time relative to the status of this judge which charges that he did not know what the accounts were for at the time he signed them. We just want to show the general conduct and course of conduct relative to these matters.

The Chair: The Chair will overrule the objection.

Mr. Sturgeon: I believe that the last question that I asked you was as to these two accounts that were testified about, as to whether or not they have been paid?

A. Yes, sir, they were paid by warrants numbers 54289 and 20450.

Q. Was that a warrant on the State Treasurer of this State?

A. It was.

Q. I will ask you if you have examined an account made by this Sheriff Carlisle and approved by Judge Price which was filed on November 13, 1925?

A. I have.

Q. When was that account filed with the Comptroller?

A. This account shows to have been filed and sworn to on November 14, 1925, and the records of the Comptroller's office show that it was filed on December 11, 1930.

Q. What term of court does that purport to be for?

A. For the October, 1925, term.

Q. For the October, 1925, term?

A. Yes, sir.

Q. You have just testified to an account that was filed, approved, and paid by warrant number 20450 for the sum of six thousand seven hundred fifty-seven dollars and sixty-seven cents. Is that true?

A. Yes, sir.

Q. You have also testified to an account likewise approved and filed for the April term, 1926, for eight thousand eighty-eight dollars and ninety-five cents—is that true?

A. It is.

Q. The amount that you are now testifying about is the account that was filed with the Comptroller for the same term of court in 1925, that is, the October term, 1925, that you have now testified about?

A. Yes, sir.

Q. What was the demand made, what was the amount of money that was demanded in that account that was last filed and the account you are now testifying about?

A. The one that I have just testified to?

Q. Yes.

A. Six thousand three hundred seventeen dollars and twenty-five cents.

Q. Can you tell the Committee when that account was signed by the sheriff and approved by the court—

Judge Batts: So far as we can see, the witness is testifying merely to those matters that appear of record, and it would appear to us that under the ordinary rules of evidence that those instruments should be introduced here—

Mr. Sturgeon: We understand

that, but I am asking now that we be permitted to put on our testimony—

Judge Batts: We have had no opportunity to examine them because they have been in the possession of the prosecution in this case, and I know that the proper way of introducing evidence, and the right way to establish those matters, and the course that should be followed in establishing these, is by introducing the original instruments. His references with respect to these matters can not be testified to. The instruments themselves are the best evidence of what they show. I take it that the members of this House would like to see the original instruments in order that they may know what they show. Of course, we are laboring under great difficulties because we are familiar only with the rules of evidence as announced by the courts to the extent to which they have been, and to the extent to which they are to be deviated from, we, of course, have no knowledge.

The Chair: I think you are right as to the general purpose, but some of these matters have got to be brought to the attention of the House as a whole, and it would certainly be proper to have the witness testify from the account, and it is necessary that the members have some information in regard to this matter.

Mr. Sturgeon: I merely asked this question for the purpose of the witness showing the figures as shown on them.

The Chair: Objection will be overruled.

Q. I believe that I was asking you, Mr. Markham, to tell the Committee what is the date shown on the account from Lee county of Sheriff Carlisle, showing when the sheriff presented the account, and when Judge Price approved the account that has a total of six thousand three hundred seventeen dollars and twenty-five cents?

A. November 13, 1925.

Q. I will get you to state to the Committee whether or not you have audited that account, together with the former account for the October term, 1925, for the district court of that county, and which was approved by that court?

A. I have.

Q. What is the difference in the amounts of those two accounts—can you give the amount, or rather, an estimate of it? What is the difference? I believe one account was for sixty-seven fifty-seven sixty-five, which was the one that was presented in December, 1925, as I understand it, and was filed on November 13, 1925, and the one that was filed on November 13, 1925.

A. The one that was paid was for mileage that is the first account, for arresting and subpoenaeing witnesses and fees therefor. The one for six thousand three hundred and seventeen dollars and twenty-five cents was for multiple mileage. In other words—

Judge Batts: We object to that. We object to this witness testifying as to what his opinion is about that and from drawing his conclusions and making remarks about this matter. We believe that the document will speak for itself, and is the proper record evidence. I say again, we do not know, of course, any way we make these objections, but certainly it is a fact that if the documents themselves are to be superseded by the testimony of the witness, and he is permitted to give his inferences from these documents they certainly are not properly admissible in evidence.

Mr. Sturgeon: This witness is just simply testifying from these documents and also testifying as an expert auditor qualified as one, and is now acting as Assistant State Auditor of this State. He has audited these accounts, and his deductions, as shown from those accounts, is surely admissible in anybody's courthouse.

The Chairman: The objection will be overruled.

Q. Mr. Markham, I believe I was asking you to give the approximate difference in the account that was filed in December, 1925, for the October term, of Lee county District Court, and the one that was filed on November 13, 1925, for the same term of court for Lee county.

A. The one for six thousand three hunderd seventeen dollars and twenty-five cents, I think, the demand was for multiple mileage only, and not fees.

Q. Now, I want you to explain to the Committee what you mean by multiple mileage, in order that the House may understand what you are talking about.

A. To use a concrete example, if

I had five cases against a defendant, and the fees and mileage had been paid in the other account, but in this account they make another claim for mileage for these other four cases, as though he had actually made five trips and arrested and served the subpoenaes in five different cases.

Q. I do not know whether I am clear on the matter or whether the Committee is. You speak of multiple of mileage. When you speak of multiple mileage do you mean that that account that you have last testified about contains a claim for services for subpoenaeing witnesses or arresting different defendants in which there had already been a warrant issued on the Comptroller of this State?

A. Yes, sir.

Q. I will get you to state to the Committee whether or not in May, on May 7, 1926, there was a demand made by the sheriff filing an account with the Comptroller of this State, and being approved, and bearing the approval of the district judge for the April term of Court, 1926?

A. There was.

Judge Batts: I assume that all of these objections will likely be overruled, but it seems proper to me that this the proper thing to be done, and I am going to make the objection to this as a deviation from the general practice. Counsel has a way of leading the witnesses and asking him about these matters and as to what the demand was which was made by the sheriff of Lee county and asking the witness as to his conclusions about these matters, and we take the position that the written documents with reference to such matters would be the best evidence, and not what somebody might say about them. The witness does not know what the sheriff of Lee county did and can not testify to that matter. The witness was not present at the time he made the demand. He was not present at the time he signed it, that is, the document that was filed in the Comptroller's office as an account against this State, and the witness does not show to have been present at that time. I object in the first place to counsel doing the testifying, and I object in the second place, to the witness testifying to matters about which he can not have any direct information.

The Chair: I do not think counsel should ask leading questions, but I do not know of any way by which we are going to be able to get this information before this Committee by following the strict rules of evidence.

Judge Batts: As to getting this matter before the Committee as has been stated by Speaker Minor, I do not think that we should be confined to the strict rules of evidence. However, I do not think that the witness should draw his conclusions, but only give such testimony as to what the records show.

Mr. Sturgeon: We will try to obey the ruling of the Chair.

Q. Please state to the Committee, Mr. Markham, what the amount as shown by the recapitulation on the account of John Carlisle, sheriff of Lee county, which was signed and approved by Judge Price, and which has been filed with the Comptroller of this State for the April term, 1926—I am speaking of the two accounts.

A. The amount of twelve thousand twenty-three dollars and eighty cents, and bears the signature of Judge Price, judge of the Twenty-first Judicial District. There is the signature of John T. Carlisle, sheriff of Lee county, and shows to have been sworn to before the clerk of Lee county.

Q. Now, state to the Committee if that account, if the records show that the account was filed with the Comptroller of this State?

A. Yes, sir, it shows to have been filed on December 11, 1930.

Q. And that was for what term of court? In 1926—speaking from the record itself?

A. May term, 1926.

Q. And you say it was filed on December 11, 1930, for the sum of twelve thousand twenty-three dollars and eighty cents?

A. That is correct.

Q. Did you, or not, audit that account, together with the accounts that you have just testified about?

A. I did.

Q. State to the Committee whether or not that account was approved and has been paid?

A. Whether it had been paid or not?

Q. Yes, sir.

A. It has not.

Q. What has been done with reference to it?

A. Both of the accounts, that is, the account wherein the demand was

made for twelve thousand thirty-eight dollars and eighty cents, and the account for six thousand three hundred seventeen dollars twenty-five cents, and the amount of six thousand three hundred seventeen dollars was cut to seven thousand nine hundred twelve dollars and ten cents, against which a deficiency warrant, being No. 2816, was issued.

Q. You mean by that, that deficiency warrant No. 2816 was issued?

A. Yes, sir.

Q. I will get you to state what was the difference between those two amounts.

A. Seven thousand nine hundred and twelve dollars and ten cents.

Q. From your audit of the accounts that you have testified to, the same being these two accounts having been filed in December, 1925, one for the October term of the court of 1925, and one for the April term of the court of 1926, and the other account that was filed on December 11, for the April term of court, 1926, the first bearing the date of November 13, 1925, for the October term of court, 1925, tell the Committee from your audit, and from your experience as an auditor what these four accounts about which you have testified—for what kind of service these accounts were rendered, and what kind of service was performed as a basis for filing those accounts?

A. The two accounts that were actually paid for the sum of eight thousand eighty-eight dollars and ninety-five cents, and for six thousand seven hundred fifty-seven dollars and sixty-five cents, total fourteen thousand eight hundred forty-six dollars and sixty cents for those two accounts; then at a later date the other account of twelve thousand twenty-three dollars and eighty cents, and the six thousand three hundred seventeen dollar account aggregate eighteen thousand three hundred forty-one dollars and five cents, was for multiple mileage of those two accounts after the accounts had already been paid.

Q. The last two accounts that you testified to there was a deficiency warrant issued for what amount?

A. Seven thousand nine hundred twelve dollars and ten cents.

Q. Could you tell me when that deficiency warrant was issued?

A. I do not know when the deficiency warrant was issued, but the records of the Comptroller's Department show that it was issued on December 11, 1930.

Q. Do you know whether or not the deficiency warrant has been paid?

A. It has not.

Q. That was the warrant that you testified—that was the warrant that was testified to on yesterday by Judge Grady Chandler on cross-examination that Sam Sparks had bought. Is that correct?

A. I was present in the Senate Finance Committee room when Mr. Sparks and some other parties came there and tried to get them to pay it. They had cut that out of the appropriation when it was allowed for the claim, but the appropriation was vetoed by the Governor.

Q. I will ask you if before the deficiency warrant that you have just testified about that was purchased by Mr. Sam Sparks, before that time, if you had occasion to see Judge Price or Sheriff Carlisle here in Austin and have a conversation with them in the committee room with reference to these last two accounts that you have testified about?

A. I have never seen Sheriff Carlisle, but I have seen Judge Price on two different occasions.

Q. State when these two occasions were and what the circumstances were.

A. I will say that about three or four weeks before the Forty-second Legislature adjourned Judge Price came into the committee room. There was some misunderstanding because they did not get—

Q. (Interrupting) When was it, if you know?

A. It was on Friday night—we met in the State Auditor's office and I told them after a little bit, I told them I could not recommend that the account be paid.

Q. What were you talking about?

A. We were talking about this deficiency warrant. At that time I told Judge Price that I could not approve it and showed him why it could not be paid and told him exactly how I felt about it.

Q. When was the other time?

A. It was in the Senate Finance Committee Room and the argument was taken down and transcribed.

Q. I will ask you to state to the Committee if you can, just what Judge Price said with reference to these accounts, if you remember?

A. Judge Price told me that he understood my position all right, but

the State still owed Mr. Carlisle some money, and that it should be paid.

Q. Who was that statement made to?

A. It was made to me in the State Auditor's office.

Q. At what time was that made? What month, please?

A. It must have been along some time in April, 1931.

Q. Did you state to Judge Price the reason why you could not approve that at the time—as to why you could not approve the account of Mr. Carlisle?

A. I did.

Q. I wish you would please total the amount of fees which are shown in all of the four accounts that purported to cover services rendered for the two terms of court, beginning with the October term, 1925, and ending with the April term, 1926.

A. The total amount of fees was thirty-three thousand one hundred eighty-seven dollars and sixty-five cents.

Q. That is for two terms of the district court of Lee county, Texas?

A. The records show that is what it was.

Q. Mr. Markham, have you examined any almanac, the Federal census, or the Texas Almanac to be able to tell us what the Federal census was in Lee county in 1925?

A. There was no census shown in 1925. In 1920, it was 14,014; and in 1930 it was 13,309.

Q. That is the Federal census for 1930?

A. The Texas Almanac shows that it is.

Q. I will get you to state to the Committee what the total amount of money was that was actually paid by warrant drawn on the State Treasury, and signed by the Comptroller, for those two terms of court?

A. $14,846.60.

Q. Now then, I will get you to total that, and add to that figure the amount of money as shown by the deficiency warrant later on issued, covering those two same terms of court.

A. $22,758.70.

Q. How much? I didn't understand you.

A. $22,758.70.

Q. Are you sure you added that right; isn't that $23,000?

A. No, it's $22,000.

Q. All right; I will take your figures. I want you to tell the Committee, as an auditor, how you arrived at the fact that the last two accounts that you presented, that you testified about in November and May, should not have been paid, and how you arrived at the fact that they were duplication charges?

Senator Page: I wonder if we might be permitted, your honor—this gentleman is not a lawyer, but an auditor. He is asking his opinion, why these accounts should not be paid. Is it possible that that is permissible in any sort of case?

Chairman: If he knows, he could state that.

Q. I wanted him to state his conclusion as to how he arrived at that fact.

Judge Batts: Do I understand these inferences of a witness from the competent evidence that goes before the House is a proper matter for testimony? Whatever he knows about this matter is to be inferred from the instruments themselves?

Chairman: I think so.

Judge Batts: I take it the House is neither calling upon the State to introduce evidence of the law or evidence of the inferences to be drawn from the legal evidence.

The Chairman: I think the witness should testify from the record and not from his conclusions. He should have the right, however, to compare the records and state what is shown by the records.

Judge Batts: The records show what is shown by the records.

Q. Here is my position about it: This witness is an expert witness and, so long as I understand the rules of law, as he stays within the realm of his own knowledge and experience, he has a right to give his deductions and how he arrives at them from the facts before him.

The Chairman: That is the ruling of the Chair.

Q. I will repeat the question. I want to obey the ruling of the Chair. I believe I asked you, Mr. Markham, to tell the Committee—you have already stated to them that the last two accounts from the audit that you made from the four accounts for the two terms of court, the last two accounts were duplications; you said that, already?

A. Yes.

Q. I want you to tell the Commit-

tee why you made that statement and from what figures and upon what facts you base that?

A. I took the two accounts that had been paid for the October, 1925, term and the April, 1926, term, and then the two that the deficiency had been issued on; I listed all of the cases by case number and defendant's name—

Q. That is, you mean the names of the parties who had cases pending in that court?

A. The names that appear on the sheriff's expense account.

Q. All right.

A. And I listed the amount of money that was paid against each case and each defendant, and the amount that was claimed, and from that I derive my opinion.

Q. In those sheriff's accounts, as I understand it, on various sheets or different sheets in that account, there is an itemized statement of the services purported to have been performed by the sheriff?

A. There is.

Q. Both for the arrest of men who have cases pending in that court and for witnesses who are subpoenaed to appear and testify in those respective cases?

A. Yes.

Q. I wish you would give the Committee an example of one of those sheets; just tell what is on one of those sheets.

A. At the top it has the sheriff's name, J. T. Carlisle, sheriff of Lee county. To fees in felony cases tried and otherwise disposed of at the April term of the district court in Lee county, and no appeal taken except as herein specified. It gives the case number; the State of Texas against ....., defendant; the charge in the case, and the disposition of the case. You have then the arrest, the place and date he was arrested, and the amount of fee for the arrest, the number of miles in going to the arrest at 15 cents a mile; the number of miles returning with prisoner at 30 cents a mile, and when by railroad 30 cents a mile and 10 cents per mile for each additional prisoner, by railroad or otherwise. To ..... miles, removing the prisoner from place to place; then you come on down and have the names of the witnesses, which is in detail, showing the amount of fees, number of miles, and the distance in miles.

Q. I will get you to get the recapitulation sheet. Which account do you have there that is the easiest to get? Do you have the October term, 1925?

A. I have both.

Q. All right. Now, I want you to take the sheet that was signed by the sheriff and also the court, certified to by the clerk, or with his certificate on it.

A. This sheet was recorded in Lee county. At the top it shows the number of the case, name of defendant, charge and amount:

2096—Lee Colvin, violating liquor law	$128.50
2099—Lee Colvin, violating liquor law	128.50
2100—Lee Colvin, violating liquor law	128.50
2102—Ollie Henigan, violating liquor law.....	227.80
2103—Ollie Henigan, violating liquor law.....	227.80
2104—Ollie Henigan, violating liquor law	227.80
2105—Ollie Henigan, violating liquor law	227.80
2106—Ollie Henigan, violating liquor law	227.80
2107—Ollie Henigan, violating liquor law	227.80
2108—Ollie Henigan, violating liquor law	227.80
2109—Ollie Henigan, violating liquor law	227.80
2110—Ollie Henigan, violating liquor law	227.80
2119—Hugh Wilson, violating liquor law	161.70
2120—Hugh Wilson, violating liquor law	161.70
2124—John Bobot, violating liquor law	114.70
2125—John Bobot, violating liquor law	114.70
And shows a total of.....	$12,023.80

Q. That is the account, as I understand it, that you testified to a moment ago, that was filed with the Comptroller, December 11, 1930, for the October term of court in 1926?

A. No, as to the May term, 1926.

Q. All right; May term, 1926?

A. Yes.

Q. All right; I wish you would get the sheet I asked you about a minute ago, that bears the signature of the sheriff and the district judge—that is, Judge Price, on the opposite side. Please read to the Committee, or we will get the reader to read that, if we have him here. I believe he is more familiar, knows more about that

telephone than you do. I wish you would read all that you find on that sheet except that in blue pencil.

Mr. Dunn: "I do solemnly swear that the above and foregoing account is just, true, correct and unpaid, and that the miles charged for were actually traveled as stated in the execution of process of the district court, and that in charging mileage, where the witnesses were served on the same trip, mileage has not been charged for each witness served to and from the county seat, but only the actual number of miles traveled on the trip has been charged for in each cases, and that only at the time service was perfected; and when more than one prisoner has been removed at the same time only ..... cents per mile has been charged for removing each additional prisoner; that no mileage is duplicated in said account, save as shown, but that the provisions of the law now in force have been performed since the last term of the district court of Lee county, adjourned on the 7th day of May, A. D. 1926. Signed Jno. T. Carlisle, sheriff, Lee county.

"Sworn to and subscribed before me this the 7th day of May, A. D. 1926. Signed, E. H. Moellenberndt, clerk district court.

"Note—In charging mileage, sheriffs must comply with the law now in force, and district judges are respectfully requested to see that this has been done before approving the account.

"I, J. B. Price, judge of the district court of the Twenty-first Judicial District of the State of Texas, hereby certify that I have examined and approved in open court the foregoing account of John T. Carlisle, as sheriff of Lee county, for fees in felony cases, tried or otherwise disposed of at the April term, A. D. 1926, of said court; that the same is for all fees accrued in the cases therein mentioned since the adjournment of the last term of said court; that the account is correctly stated, and I approve the same for the sum of $12,023.80.

"Done at Giddings this the 7th day of May, A. D. 1926. Signed, J. B. Price, judge Twenty-first Judicial District.

"The State of Texas,

"County of Lee.

"I do hereby certify that the account of John T. Carlisle, sheriff of Lee county, for the above sum of $12,023.80 (and the figures are scratched out) against the State of Texas for fees in felony cases in the district court of Lee county, Texas, is a true and correct copy of said account, and all certificates thereto and endorsements thereon, as it appears in the minutes of said court, in my office, in page 1 to 351, Book No. 3, also copies of returns made on the process on which such officer is claiming fees corresponding to the amount claimed in his account.

"In testimony of which I hereunto sign my name and affix the seal of said court, at office in Giddings, Texas, this the 7th day of May, 1926. Signed, J. E. Moellenberndt, district clerk, Lee county, Texas.

"These two accounts of $7912.10—this adjustment caused by mileage by duplicate being taken out; previous endorsement brought about by mileare being taken out. J. B. Price, judge of Twenty-first District.

"I, E. H. Moellenberndt, clerk of the district court of Lee county, Texas, do hereby certify that the above and foregoing account of John T. Carlisle, sheriff, against the State of Texas, and containing 351 pages, is the original account executed by said sheriff in accordance with Article 1029, Code of Criminal Procedure of 1925 of Texas, together with all the original endorsements thereon. And I do further certify that the same is likewise a duplicate and a copy of the said original account, which has been recorded in Volume 3, pages 1 to 351, Minutes of Sheriffs' Accounts of Lee County, Texas, and is a true copy of said account recorded in the above volume and pages, as required by Article 1034, Code of Criminal Procedure of Texas.

"Given under my hand and seal of office this 7th day of May, A. D. 1926. (Signed) E. H. Moellenberndt, clerk of the district court of Lee county, Texas."

Judge Batts: May I see that—you seemed to have some difficulty in reading it.

Q. Mr. Markham, that account that was just read, or paper that was just read from, is the certificate of the sheriff and the court as shown by the Comptroller's records, for May term, 1926; is that correct?

A. I don't have the paper.

Q. Do you have the original account there? What does it say on the first sheet of the account; what does the account say it is for?

A. April term of the district court.

Q. That's right. April term of the district court, of what year?

A. These expense accounts do not show it.

Q. What is that?

A. The detailed expense account does not show that.

Q. Is that the account that there was a deficiency warrant for, for some $7000, issued for?

A. No, it's an account that some $12,000 was claimed, and a deficiency warrant for $7900 was issued.

Q. Is that the account that has just been read?

A. It is.

Q. That is the $12,023.80 account, that a $7900 deficiency warrant was issued for?

A. On it, and the other.

Q. Sir?

A. The $7000 deficiency warrant was issued for this and also the $6000 account. It was issued for the two accounts, aggregating $18,341.05.

Q. I want you to get the last sheet bearing the certificate of Judge Price and the signature of the sheriff on the other accounts you have testified about. Do you have it before you?

A. I do.

Q. I wish you would tell the Committee what that is that the reader is fixing to read now.

A. On the back is a recapitulation of the detail of the original claim.

Q. That is for what term of court?

A. For the November, 1925, term. It shows on the recap, but on the detail it shows October, 1925, term.

Q. All right; read that, please, Mr. Dunn.

Mr. Dunn: "I do solemnly swear that the above and foregoing account is just, true, correct and unpaid, and that the miles charged for were actually traveled as stated in the execution of process of the district court, and that in charging mileage, where the witnesses were served on the same trip, mileage has not been charged for each witness served to and from the county seat, but only the actual number of miles traveled on the trip has been charged for in each case, and that only at the time service was perfected; and when more than one prisoner has been removed at the same time, only ..... cents per mile has been charged for removing each additional prisoner; that no mileage is duplicated in said account, save as shown, but that the provisions of the law now in force have been strictly complied with in charging mileage in this account; and further, that all mileage and other service charged for have been performed since the last term of the district court of Lee county, adjourned on the 13th day of November, A. D. 1925.

"(Signed) JNO. T. CARLISLE,
"Sheriff, Lee County.

"Sworn to and subscribed before me this the 13th day of November, A. D. 1925.

"(Signed)
"E. H. MOELLENBERNDT,
"Clerk, District Court.

"Note—In charging mileage, sheriffs must comply strictly with the law now in force, and district judges are respectfully requested to see that this has been done before approving the account.

"I, J. B. Price, judge of the district court of the Twenty-first Judicial District of the State of Texas, hereby certify that I have examined and approved in open court the foregoing account of John T. Carlisle, as sheriff of Lee county, for fees in felony cases, tried or otherwise disposed of at the November term, A. D. 1925, of said court; that the same is for all fees accrued in the cases therein mentioned since the adjournment of the last term of said court; that the account is correctly stated, and I approve the same for the sum of $8,317.25.

"Done at Giddings this the 13th day of November, A. D. 1925.

(Signed) "J. B. PRICE,
"Judge 21st Judicial District."

"The State of Texas,
"County of Lee.

"I do hereby certify that the account of John T. Carlisle, sheriff of Lee county, for the sum of $6317.25, against the State of Texas for fees in felony cases in the district court of Lee county, Texas, is a true and correct copy of said account, and all certificates thereto and endorsements thereon, as it appears in the minutes of said court, in my office, in pages 1 to 262, Book No. 3, also copies of returns made on the process for which such officer is claiming fees corresponding to the amount claimed in his account.

"In testimony of which, I hereunto sign my name and affix the seal of

said court at office in Giddings, Texas, this the 13th day of November, 1925.

"(Signed)

"E. H. MOELLENBERNDT,

"District Clerk, Lee County, Texas.

"The State of Texas,

"County of Lee.

"I, E. H. Moellenberndt, clerk of the district court of Lee county, Texas, do hereby certify that the above and foregoing account of John T. Carlisle, sheriff, against the State of Texas, and containing 262 pages, is the original account executed by said sheriff in accordance with Article 1029, Code of Criminal Procedure of 1925 of Texas, together with all the original endorsements thereon. And I do further certify that the same is likewise a duplicate and a copy of the said original account, which has been recorded in Volume 3, pages 1 to 262, Minutes of Sheriffs' Accounts of Lee County, Texas, and is a true copy of said account recorded in the above volume and pages, as required by Article 1036, Code of Criminal Procedure of Texas.

"Given under my hand and seal of office this 13th day of November, A. D. 1925.

"(Signed)

"E. H. MOELLENBERNDT,

"Clerk of the District Court of Lee County, Texas."

Q. While you are there, Mr. Dunn, read the other side of that sheet, please sir. That's been testified to as a recapitulation.

Mr. Dunn:

Recapitulation.

No. Case. Name. Charge.	Amount.
2021—Galibez Gonzales, violating liquor law	$ 36.00
2035—Ollie Donevan, violating liquor law	126.00
2036—Ollie Donevan, violating liquor law	124.00
2037—Ollie Donevan, violating liquor law	133.00
2038—Ollie Donevan, violating liquor law	124.00
2039—Ollie Donevan, violating liquor law	128.05
2040—Ollie Donevan, violating liquor law	127.55
2041—Ollie Donevan, violating liquor law	121.75
2079—Bud Lacy, violating liquor law	171.50
2080—Bud Lacy, violating liquor law	165.80
2081—Bud Lacy, violating liquor law	169.90
2086—Rance Simpson, violating liquor law	197.65
2087—Rance Simpson, violating liquor law	209.55
2088—Rance Simpson, violating liquor law	211.85
2089—Rance Simpson, violating liquor law	221.95
2090—Rance Simpson, violating liquor law	199.85
2091—Rance Simpson, violating liquor law	198.65
2092—Rance Simpson, violating liquor law	198.65
2093—Rance Simpson, violating liquor law	200.55
2094—Rance Simpson, violating liquor law	200.55
2095—Lee Colvin, violating liquor law	163.10
2096—Lee Colvin, violating liquor law	163.10
2097—Lee Colvin, violating liquor law	170.00
2098—Lee Colvin, violating liquor law	170.00
2099—Lee Colvin, violating liquor law	169.70
2100—Lee Colvin, violating liquor law	169.70
2111—Rance Simpson, violating liquor law	190.35
2112—Rance Simpson, violating liquor law	190.35
2113—Rance Simpson, violating liquor law	186.95
2114—Rance Simpson, violating liquor law	186.95
2115—Rance Simpson, violating liquor law	183.75
2116—Rance Simpson, violating liquor law	183.75
2119—Hugh Wilson, violating liquor law	201.35
2120—Hugh Wilson, violating liquor law	202.95
2121—Hugh Wilson, violating liquor law	202.95
2124—John Bohot, violating liquor law	154.80
2125—John Bohot, violating liquor law	158.30
Total	$6,317.25

Q. (Mr. Sturgeon): All right; thank you.

Now, Mr. Markham, that tabulation sheet that was just read there, that is for the account that was totaled together—in other words, it was sent in there with the $12,000 account, for which there was a settlement made, paying the sum of seven thousand and a few odd dollars?

A. There was a settlement made in which a deficiency warrant was issued for $7,912.10.

Q. That's what I wanted. There are two accounts that the recapitulation has been read for, October term, 1925, and April term, 1926.

A. That was part of the account.

Q. Now, then, I want the recapitulation on the other two accounts filed for the same terms of court.

A. Those that were paid?

Q. Yes.

A. I have it here.

Q. Mr. Dunn, do you mind reading that?

Mr. Dunn: Yes; this is not typewritten. I will do the best I can.

Recapitulation.

No. Case. Name. Charge.	Amount.
1950—Matthew Thomas, rape	$ 131.00
1984—Lonnie Jones, forgery	52.00
1985—Lonnie Jones, forgery	20.00
1986—Lonnie Jones, forgery	20.00
1987—Lonnie Jones, forgery	20.00
2005—Paul Vegas, assault to murder	47.80
2012—Chas. Dears, assault to murder	125.90
2013—Chas. Dears, assault to murder	30.50
2020—Galabia Gonzales, selling intoxicating liquor	44.00
2021—Galabia Gonzales, selling intoxicating liquor	22.00
2028—Hardney Kelly, rape	109.60
2029—Buck Hooper, rape	79.00
2030—Ted Donevan, manufacturing intoxicating liquor	399.90
2036—Ollie Donevan, selling intoxicating liquor	178.20
2037—Ollie Donevan, selling intoxicating liquor	61.00
2038—Ollie Donevan, possessing intoxicating liquor	60.50
2040—Ollie Donevan, manufacturing intoxicating liquor	61.00
2041—Ollie Donevan, selling intoxicating liquor	61.00
2042—Ted Donevan, selling intoxicating liquor	91.00
2043—Ted Donevan, selling intoxicating liquor	93.00
2044—Ted Donevan, selling intoxicating liquor	91.00
2045—Ted Donevan, selling intoxicating liquor	91.00
2046—Ted Donevan, selling intoxicating liquor	91.00
2047—Ted Donevan, selling intoxicating liquor	91.00
2048—Ted Donevan, selling intoxicating liquor	93.00
2049—Ted Donevan, selling intoxicating liquor	90.00
2050—Ted Donevan, selling intoxicating liquor	90.00
2051—Ted Donevan, selling intoxicating liquor	90.00
2052—Ted Donevan, selling intoxicating liquor	90.00
2053—Ted Donevan, selling intoxicating liquor	90.00
2054—Ted Donevan, selling intoxicating liquor	90.00
2055—Ted Donevan, selling intoxicating liquor	90.00
2056—Ted Donevan, selling intoxicating liquor	90.00
2057—Ted Donevan, selling intoxicating liquor	90.00
2058—Ted Donevan, possessing intoxicating liquor	90.00
2059—Ted Donevan, possessing intoxicating liquor	90.00
2060—Ted Donevan, possessing intoxicating liquor	90.00
2061—Ted Donevan, possessing intoxicating liquor	90.00
2062—Ted Donevan, possessing intoxicating liquor	90.00
2063—Ted Donevan, possessing intoxicating liquor	90.00
2064—Ted Donevan, possessing intoxicating liquor	90.00
2065—Ted Donevan, possessing intoxicating liquor	90.00
2066—Ted Donevan, possessing intoxicating liquor	90.00
2067—Ted Donevan, possessing intoxicating liquor	90.00
Total	$3,875.00

On the next page:

Recapitulation.

No. Case.	Name.	Charge.	Amount.
	Forward		$3,875.00
2068	Ted Donevan	possessing intoxicating liquor	90.00
2069	Ted Donevan	manufacturing intoxicating liquor	90.00
2070	Ted Donevan	manufacturing intoxicating liquor	90.00
2071	Ted Donevan	manufacturing intoxicating liquor	90.00
2072	Ted Donevan	manufacturing intoxicating liquor	90.00
2073	Ted Donevan	manufacturing intoxicating liquor	90.00
2074	Ted Donevan	manufacturing intoxicating liquor	90.00
2075	Ted Donevan	manufacturing intoxicating liquor	90.00
2076	Ted Donevan	manufacturing intoxicating liquor	90.00
2077	Ted Donevan	manufacturing intoxicating liquor	90.00
2078	Bud Lacy	selling intoxicating liquor	238.50
2079	Bud Lacy	selling intoxicating liquor	75.50
2080	Bud Lacy	manufacturing intoxicating liquor	75.50
2081	Bud Lacy	possessing intoxicating liquor	75.50
2085	Rance Simpson	transporting intoxicating liquor	240.60
2095	Lee Colvin	possessing intoxicating liquor	196.60
2096	Lee Colvin	selling intoxicating liquor	69.00
2099	Lee Colvin	selling intoxicating liquor	69.00
2100	Lee Colvin	selling intoxicating liquor	69.00
2101	Ollie Hengan	manufacturing intoxicating liquor	435.30
2102	Ollie Hengan	manufacturing intoxicating liquor	87.50
2103	Ollie Hengan	manufacturing intoxicating liquor	87.50
2104	Ollie Hengan	manufacturing intoxicating liquor	87.50
2105	Ollie Hengan	manufacturing intoxicating liquor	87.50
2106	Ollie Hengan	manufacturing intoxicating liquor	87.50
2107	Ollie Hengan	manufacturing intoxicating liquor	87.50
2108	Ollie Hengan	manufacturing intoxicating liquor	87.50
2109	Ollie Hengan	manufacturing intoxicating liquor	87.50
2110	Ollie Hengan	manufacturing intoxicating liquor	87.50
2117	Hugh Wilson	manufacturing intoxicating liquor	247.70
2119	Hugh Wilson	manufacturing intoxicating liquor	83.50
2120	Hugh Wilson	manufacturing intoxicating liquor	83.50
2122	Ted Donevan	possessing intoxicating liquor	90.00
2123	John Bohot	selling intoxicating liquor	185.60
2124	John Bohot	selling intoxicating liquor	72.50
2125	John Bohot	selling intoxicating liquor	72.50
2130	Gunie Joiner	theft of hogs	104.25
2131	Lonnie Jones	forgery	20.00
2132	C. H. Pulliam	forgery	14.40
2134	Billie Brown	driving auto intoxicated	4.00
2135	Billie Brown	transporting intoxicating liquor	4.00
	Total		$8,088.95

Q. Now, Mr. Markham, that account that was just read by Mr. Dunn is one of the accounts that you state was paid, for the October term, 1926?

A. No, the April term, 1926, in the amount of $8,088.95.

Q. All right; that's all right—did you say April term?

A. Yes.

Q. I will get you to get that other recapitulation sheet for that other account, please, sir.

A. Yes, sir.

Q. Mr. Markham, tell the Committee what that paper is that you have there?

A. This is the sheriff's expense account for the October, 1925, term of court. Aggregating $6,848.85. It was paid in the amount of $6,757.65.

Q. Mr. Dunn, I will get you to read that account, as you have read the others, please, sir.

Mr. Dunn:

Recapitulation.

No. Case. Name. Charge.	Amount.
2014—Milburn Carter, assault to rape	$ 134.90
2018—Bill Schneider, abandonment after marriage and seduction	104.40
596—Matthew Craft, kidnaping	19.75
597—Matthew Craft, rape	9.25
2020—Galibez Gonzales, possessing intoxicating liquor	98.60
2021—Galibez Gonzales, selling intoxicating liquor	18.00
2028—Hardney Kelly, rape	372.75
2029—Buck Hooper, rape	508.80
2034—Ollie Donevan, possessing intoxicating liquor	309.25
2035—Ollie Donevan, possessing intox. liquor for purposes of sale	68.25
2036—Ollie Donevan, selling intoxicating liquor	67.25
2037—Ollie Donevan, selling intoxicating liquor	67.25
2038—Ollie Donevan, possessing intoxicating liquor	66.75
2039—Ollie Donevan, possessing intoxicating liquor	67.25
2040—Ollie Donevan, manufacturing intoxicating liquor	67.25
2041—Ollie Donevan, selling intoxicating liquor	67.25
2078—Bud Lacy, selling intoxicating liquor	425.70
2079—Bud Lacy, selling intoxicating liquor	84.20
2080—Bud Lacy, manufacturing intoxicating liquor	84.70
2081—Bud Lacy, possessing intoxicating liquor	84.20
2082—Ambhurt Cain, rape	26.00
2085—Rance Simpson, transporting intoxicating liquor	495.45
2086—Rance Simpson, transportign intoxicating liquor	87.75
2087—Rance Simpson, transporting intoxicating liquor	88.25
2088—Rance Simpson, transporting intoxicating liquor	88.25
2089—Rance Simpson, transporting intoxicating liquor	88.25
2090—Rance Simpson, transporting intoxicating liquor	88.25
2091—Rance Simpson, transporting intoxicating liquor	87.75
2092—Rance Simpson, transporting intoxicating liquor	89.25
2093—Rance Simpson, possessing intoxicating liquor	87.25
2094—Rance Simpson, possessing intoxicating liquor	88.25
2095—Lee Colvin, possessing intoxicating liquor	508.10
2096—Lee Colvin, selling intoxicating liquor	89.50
2097—Lee Colvin, possessing intoxicating liquor	89.50
2098—Lee Colvin, possessing intoxicating liquor	89.00
2099—Lee Colvin, selling intoxicating liquor	89.50
2100—Lee Colvin, selling intoxicating liquor	89.50
2111—Rance Simpson, possessing intoxicating liquor	87.75
2112—Rance Simpson, transporting intoxicating liquor	88.25
2113—Rance Simpson, possessing intoxicating liquor	88.25
2114—Rance Simpson, possessing intoxicating liquor	88.25
2115—Rance Simpson, possessing intoxicating liquor	87.75
2116—Rance Simpson, possessing intoxicating liquor	88.25
2117—Hugh Wilson, manufacturing intoxicating liquor	509.25
2118—H. F. Knettle, murder	17.00
Total	$6,020.30
Forward	$6,020.30

No. Case. Name. Charge.	Amount.
2119—Hugh Wilson, manufacturing intoxicating liquor	86.75
2120—Hugh Wilson, manufacturing intoxicating liquor	87.25
2121—Hugh Wilson, manufacturing intoxicating liquor	86.75
2125—John Bohot, selling intoxicating liquor	398.00
2124—John Bohot, selling intoxicating liquor	84.90
2125—John Bohot, selling intoxicating liquor	84.90
Total	$6,848.85

Mr. Sturgeon: Read the certificate, please, Mr. Dunn.

Mr. Dunn: "I do solemnly swear that the above and foregoing account is just, true, correct and unpaid, and that the miles charged for were actually traveled as stated in the execution of process of the district court, and that in charging mileage, where the witnesses were served on the same trip, mileage has not been charged for each witness served to and from the county seat, but only the actual number of miles traveled on the trip has been charged for, and that only at the time service was perfected, and when more than one prisoner has been removed at the same time, only..... cents per mile has been charged for removing each additional prisoner; that no mileage is duplicated in said account, but that the provisions of the law now in force have been strictly complied with, in charging mileage in this account; and, further, that all mileage and other service charged for have been performed since the last term of the district court of Lee county, adjourned on the 13th day of November, A. D. 1925.

(Signed) "JOHN T. CARLISLE, Sheriff, Lee County.

"Sworn to and subscribed before me, this the 13th day of Nov., A. D. 1925.

(Signed) "E. H. MOELLENBERNDT, Clerk, District Court.

"Note: In charging mileage, sheriffs must comply strictly with the law now in force, and district judges are respectfully requested to see that this has been done before approving the account.

"I, J. B. Price, Judge of the District Court of the Twenty-first Judicial District of the State of Texas, hereby certify that I have examined and approved in open court the foregoing account of Jno. T. Carlisle, as Sheriff of Lee county, for fees in felony cases tried, or otherwise disposed of at the October Term, A. D. 1925, of said court; that the same is for all fees accrued in the cases therein mentioned since the adjournment of the last term of said court; that the account is correctly stated and I approve the same for the sum of $6,848.85.

"Done at Giddings, this the 13th day of November, A. D. 1925.

(Signed) "J. B. PRICE, Judge, 21st Judicial District."

"The State of Texas—County of Lee.

"I do hereby certify, that the account of Jno. T. Carlisle, sheriff of Lee county, for the above sum of $6,848.85 against the State of Texas for fees in felony cases in the District Court of Lee county, Texas, is a true and correct copy of said account, and all certificates thereto and endorsements thereon, as it appears in the minutes of said court, in my office, in page 1-325, Book 2.

"In testimony of which, I hereunto sign my name and affix the seal of said court at office in Giddings, this the 13th day of Nov., 1925.

(Signed) "E. H. MOELLENBERNDT, District Clerk, Lee County, Texas."

Mr. Sturgeon: Thank you, Mr. Dunn.

Mr. Sturgeon: Mr. Speaker, there is a gentleman here now by the name of McKnight, from the Treasury Department, and I would like to have him sworn.

The respondents called T. S. McKnight, who was first duly sworn by the Chair, and who testified as follows:

Direct Examination.

Questions by Mr. Sturgeon:

Q. Mr. McKnight, have you been sworn?

A. Yes, sir.

Q. Give your initials and name to the Committee, please, sir.

A. T. S. McKnight.

Q. Where do you live?

A. 705 West Eleventh street, Austin, Texas.

Q. Do you hold any official position here, or are you connected with any office here in the State?

A. I am in the State Treasury Department.

Q. State Treasury?

A. Yes, sir.

Q. How long have you been in the State Treasury, Mr. McKnight?

A. Two years, practically.

Q. Two years? You have some warrants there in your hand, do you not?

A. Yes, sir.

Q. Please tell the Committee what those warrants are, if you know, or tell what they say themselves.

A. Stamped No. 20450 is a treasury warrant drawn on the Treasury of the State of Texas to the order of John T. Carlisle, Giddings, for $6,757.65.

Q. Just read the warrant, please, sir.

A. (Reading) "The Treasurer of the State of Texas will pay to the order of John T. Carlisle of Giddings, $6757.65 out of any money appropriated by the Act of the Texas State Legislature in the year A. D. 1925, Appropriation Number H-1132, account of sheriff, L. C., being for Lee county." Signed by W. Gregory Hatcher, State Treasurer; S. H. Terrell, Comptroller.

Q. Does that warrant bear any endorsements?

A. Yes, sir, it does.

Q. Read the endorsements on it, please, sir.

A. John T. Carlisle; and bank endorsement, First National Bank of Giddings, Austin National Bank of Austin, and Texas Bank and Trust Company of Austin.

Q. Does that warrant have any stencil marks or writing showing it has been paid?

A. It does.

Q. What date does it show to have been paid?

A. The stencil of the Treasurer does not show clearly about that, but this shows first and seventh, 1926.

Q. 1926?

A. January 7th, 1926.

Q. Do you know of your own personal knowledge whether that warrant has been paid out of the State Treasury?

A. Yes, sir, it was, and it was marked on the record.

Q. I will ask you to look at the other warrant you have, Mr. McKnight, please, sir.

A. Shall I read it?

Q. Yes, sir.

A. "Warrant No. 54289, Treasury Warrant of the Comptroller's Office, Austin, Texas. The Treasurer of the State of Texas will pay to the order of John T. Carlisle, Giddings, $8,088.95 out of any money appropriated by an Act of the Texas State Legislature in the year A. D. 1925, Appropriation Number H-1132, account Sheriff L. C., being for Lee county. Signed W. Gregory Hatcher, State Treasurer; S. H. Terrell, Comptroller. Dated May 1st, 1926."

Q. Does that bear any endorsement?

A. Yes, sir, the endorsement of John T. Carlisle, and also the endorsement of the First National Bank of Giddings and the Austin National Bank of Austin, and was paid May 11th, 1926.

Q. May 11th, 1926?

A. Yes, sir, and so shows on the record in the State Treasurer's Department.

Q. All right, Mr. McKnight, that is all.

(No cross-examination, and the witness was excused.)

Thereupon the respondents recalled T. M. Markham, who further testified as follows:

Re-Direct Examination.

Questions by Mr. Sturgeon:

Q. I want to ask you a question, Mr. Markham, if you have your file—if you have a pencil up there. Tell the Committee what the sum total of the four accounts that have been testified to and identified by you, read the total sum of those four accounts for the two terms of court, what the total sum is.

Judge Batts: This is not only illegal, but I do not see any necessity for getting it in twice illegally, because the matter has already been testified to and is illegal.

Mr. Graves: I want to make objection to Judge Batts making a statement that this is being gotten in twice illegally, or once illegally, and I believe we are entitled to courtesy from Judge Batts or anybody else; and I believe I will ask the Speaker to admonish him to treat us with courtesy, and we will treat him in the same manner.

Judge Batts: It is no reflection upon you at all, and it was ruled against me, and certainly I am privileged to say I don't like it, and it is certainly illegal.

The Chairman: I think the Judge is entitled to his opinion. The Chair has admitted it, whether properly or not. I think the Committee is entitled to add all these matters up.

Q. Do you remember the question?

A. Yes, sir. The total amount of the four accounts were, running from

April, 1926, and October 25th, aggregated $31,187.65.

Q. All right. Now, I want you to tell the Committee the amount of money that was paid—actually paid —for those two terms of court—

A. The money actually paid was—

Mr. Page: We would like to know whether he knows that or not.

The Chairman: I understand he is testifying from the record.

Mr. Page: We would like to know from what record he is testifying.

The Chair: Go ahead and make the statement.

A. Well, I have examined the warrants, and that is what they show.

Q. Mr. Markham, just identify the two and the amount paid.

A. $14,846.51 was paid.

Q. That last, or 14,000-some-odd dollars, does that include the warrant of $7,917.10 deficiency warrant?

A. It does not.

Q. It does not? You say that is for the two terms of court you testified to?

A. Yes, sir.

Mr. Sturgeon: Mr. Chairman, there are several of these accounts as set out in the articles filed here, and if it is satisfactory with counsel representing the respondents, we will be glad if they will cross-examine witness at this time with reference to these accounts; we have them here before us now, and with the permission to put him back on and examine him and have these other accounts where he can get to them—where he can explain them. With that understanding, we are through with Mr. Markham for the time being with reference to his examination on the four counts that he has just testified to.

Cross-Examination.

Questions by Mr. Page:

Q. Mr. Markham—

A. Yes, sir.

Q. Will you get the recaps of these accounts that you testified to and endorsement of the Comptroller upon those accounts and let me have them?

A. Now, sir?

Q. Right now, yes, sir.

(Witness referred to his file and handed the papers to counsel.)

Q. I don't see here the endorsement of the Comptroller's Department upon these accounts. I have seen these recaps before, but what I want is the endorsement of the Comptroller's Department upon these various accounts.

A. I don't know what you are talking about, but those are the papers that I have.

Q. Don't you know, as an auditor, that the amount of these accounts of these sheriffs' could not be paid without the approval of the Auditor?

A. That is a question of law that has been discussed, and I am not a lawyer, to answer, Judge.

Q. No, sir, but you are testifying to some legal matters here.

A. I am not.

Q. Don't you know there is a statute in this State that the appropriation bills require approval of the Comptroller before any of these accounts can be paid?

A. I don't know anything about the statutes.

Q. You never heard of it, never heard about that?

A. It has been my understanding all along that the Comptroller, under the Rochelle case, could not have any approval over the accounts. Now, as to whether that is true or not, I am not a lawyer, I don't know.

Q. I haven't asked anything about the Rochelle case, Mr. Markham, I am just asking you if you don't know?—

A. I don't know.

Q. Just a minute, you don't know what I am going to ask you. You don't know that the appropriation bills passed by this Legislature specially provide that this character of account shall not be paid unless the Comptroller approves them?

A. I know that the bill for the deficiency appropriation stated it should not be paid unless approved by the Comptroller and the State Auditor.

Q. And the State Auditor, also?

A. Yes, sir.

Q. And these accounts you have testified about here were sworn to by the sheriff of Lee county, are they not?

A. Apparently so, I don't know the sheriff's signature, but they are purported to be sworn to by him.

Q. Well, the testimony was that the accounts were sworn to by the sheriff of Lee county, haven't you testified here for the lawyers for the Legislature?

A. I beg your pardon, what is the question?

Q. Didn't you testify that they were sworn to by the sheriff?

A. No, sir.

Q. Well, they are sworn by him, according to the papers here.

A. According to the papers they are.

Q. Well, those are the things they are interested in, these papers. Do you know whether the Comptroller approved these accounts that have been paid?

A. Those that have been paid, he did.

Q. He did approve them?

A. Yes.

Q. Well, these accounts were not only sworn to by the sheriff but were approved by the district judge, and they are approved by the Comptroller of this State before they were paid, weren't they? I want to ask you that question, if you know.

A. I don't know whether they were approved by the Comptroller.

Q. Well, didn't you find in your inspection of these accounts that they show they were approved by the Comptroller before they were paid?

A. I know they were not issued by the Comptroller.

Q. Well, don't you know they were approved by him?

A. I do not.

Q. You testify now you examined all these papers, been through all these accounts, know these accounts were approved by the Comptroller, and have nothing in your mind from the papers that were not approved at all, is that your testimony here?

A. That is not my testimony.

Q. What is your testimony?

A. If you want that particular endorsement—

Q. I don't want that particular endorsement. You have been testifying about approval here, I want you to testify whether each and every one of these accounts was not approved by the Comptroller of Texas before any of them were paid?

A. I haven't sworn that.

Q. Do you know whether they were or not, I ask you if you don't know, in view of your inspection of these papers, that the Comptroller approved these accounts before they were paid?

A. I don't know that.

Q. You don't know that?

A. No, sir.

Q. You have no idea about that at all?

A. No, sir.

Q. Do you know that this $7,900 account you have testified about, that that account was not approved by the Comptroller for the sum of $12,000 as originally made out.

A. I know that no record of a warrant was ever made for it.

Q. You keep referring to warrants, I am asking about the action of the Comptroller as to approving these accounts.

A. If you will allow me, I don't know what action of the Comptroller—what his action was—only what is on the accounts.

Q. You do not know from your examination of any of these accounts whether the Comptroller approved any of them?

A. All I know is the notation on the accounts.

Q. Do you find on them that he has approved them?

A. You have them there, read them.

Q. I don't want to read them, I want you to state from your recollection, if you know from your examination of these accounts, whether the Comptroller approved any of them?

A. I don't know.

Q. You don't know? And that is your testimony, after examining all of these accounts, you don't know whether the Comptroller approved them or not?

A. No, sir, I don't.

Q. And you have no conclusion to state from your examination of that record?

A. No, sir.

Q. Were you present in the Finance Committee when this account for $7,900 was under consideration by that Committee?

A. I was.

Q. Was that account approved by that Committee?

A. It was not.

Q. Are you aware of the fact that that $7,900 claim for that deficiency account was inserted in a bill that the Legislature passed, approved by the Committee of Claims and Accounts, by both the House and the Senate?

A. Sure, I saw a photostatic copy of the bill.

Q. Well, then, both the Committees of the House and the Senate approved the account for $7,900, which you state was all duplicates, and then the Legislature, the Senate and

House both, passed a bill allowing that claim for $7,900, didn't they?

A. Not in the appropriation bill, no, sir.

Q. Sir?

A. They allowed it in the claim.

Q. That is what I asked you, if it was not approved by both the House and Senate, it was approved by them, and both houses passed the bill that that be paid?

A. I can not swear to that.

Q. Don't you know it to be a fact that that happened?

A. I wasn't present, no sir, when it passed.

Q. I didn't ask you if you were present, I just asked you if you were present, I just asked you if you didn't know that to be a fact?

A. No, sir, I couldn't swear to it.

Q. You do not know it to be a fact from hearsay or otherwise?

A. Yes, I know it to be a fact from hearsay.

Q. Well, you have been testifying from hearsay all the way through. Now, I will ask you if you don't know from hearsay that account has been paid by the Legislature?

A. I do.

Q. You say it was all duplicates?

A. I said multiple mileage.

Q. Sir?

A. Multiple mileage.

Q. Well, multiple mileage is not collectible under the law, is it?

A. I don't know, I am not a lawyer.

Q. You have been testifying about these things, and you state you don't know?

A. I haven't said that.

Q. Well, is multiple mileage collectible under the laws of this State?

A. I don't know, sir.

Q. Don't you know, as an auditor, whether it is or not?

A. I don't know; I passed it up myself, and left it to the lawyers to fight it out.

Q. You say you are an auditor for the State; why didn't you testify, or report — an auditor is supposed to know about those things?

A. No, sir, I am not a lawyer.

Q. I didn't say lawyer; but you are an auditor?

A. Yes, sir.

Q. Isn't an auditor supposed to know something about the legality of these matters?

A. We refer to the Attorney General's Department as to the facts in the case.

Q. Well, did you refer this to the Attorney General's Department?

A. I did not.

Q. You instructed him to pay it, didn't you?

A. I said it ought not to be paid.

Q. How did you know it ought not to be paid?

A. Because it is wrong.

Q. Don't you know it is a fact that multiple mileage ought not to be paid?

A. That is my understanding.

Q. That is your understanding, that is what I asked you. Now, then, this multiple mileage was approved by both houses and an act was passed by the Legislature ordering it paid, wasn't it?

A. It was.

Q. And that would have been paid but for the fact that Governor Sterling vetoed it?

A. Yes, sir.

Dr. Sherrill: I maintain that the Committee is not getting any facts out of this witness, and I don't see any use of the continuation of any such argument between these two people, and I object to this manner and style of examination. This examination cannot be carried on as though before a jury and furthermore, Mr. Page, you are just trying to get the witness to impeach himself, and we don't care anything about that.

Mr. Page: I will state Mr. Chairman, my purpose is not to do what these gentlemen contend we are trying to do. We are defending a district judge here who approved an account amounting to $7,900. We want to show that district judge not alone approved that account, but the Attorney General of this State approved that account, and both branches of the Legislature, by their committees, approved it. The purpose was to show that men sometimes make mistakes, and a mistake was made right here; we deny that purpose in the cross-examination, and the method I am using, I am trying to use such methods as are legal. I disclaim any intention of being discourteous, and my purpose, just as stated, is to show the Legislature that this district judge made a mistake in approving some of these accounts, and these gentlemen here made the same mistake, that is the object of my question.

Mr. DeWolfe: Mr. Chairman, permit me to say this: If the gentlemen

on the other side will ask the witness questions and permit this information to be brought out before the House and not reiterate or argue with the witness, it will be of more benefit to the House. All this House wants is information here; we are not sitting as a jury in this case in a sense that we can do more than vote an indictment—and I feel like it will facilitate matters and create better feeling here, both between the counsel and the House. Now, I know counsel did not have any intention of misleading the witness; he didn't testify that the Comptroller approved these accounts; he just simply testified as to what the record showed, and counsel on the other side is trying to get him to testify that he knows, of his own knowledge, that the Comptroller did approve this claim.

Mr. Page: I think that what the Representative said is entirely correct, we should proceed in a courteous manner, and I have no intention of attempting to take advantage of that witness—I have no such intention, but we want to show what the records show; these records show that the Comptroller approved these accounts; otherwise, they wouldn't have paid the account.

Mr. DeWolfe: I suggest he ask what the records show and not reflect what he knows of his own knowledge—let him testify from the records.

Mr. Page: That is exactly what I have tried to ask him.

The Chair: The Chair could hardly control the line of cross-examination, but it does appear to the Chair that the questions should be directed to what the records show and not to what the acts of some other officer might have been, or what the witness personally knows about it. The only testimony that the witness is undertaking to give in this matter is purely from the records and his knowledge of the records.

Mr. Page: I will state to the Chair that that is the proposition that we contended to you here, that those records speak for themselves, and when this witness took the stand we objected to the witness testifying about it, and the Chair overruled that point, but we will conform to the opinion by the Chair, and I think we can get along all right.

Mr. Adams: Mr. Speaker.

The Chair: The gentleman from Jasper.

Mr. Adams: Mr. Chairman, point of inquiry: Is this Committee a trial committee or is it an investigating committee?

The Chair: It is purely an investigating committee, nobody is on trial.

Mr. Adams: Well, I do not see the necessity of the Committee — of all this cross-examination. All the Committee wants is enough information, given here under oath, to enable us to determine whether or not we will vote to confirm the charges as brought here.

The Chairman: I think you are right.

Mr. Adams: Now, if we are acting as a grand jury, and the Senate is a body to try him, I do not see any necessity for any cross-examination at all. Now, if I am wrong I would like to be put right.

The Chairman: I think, under the resolution passed by the House, the defendant's counsel has the right of cross-examining the witness. But I would ask Mr. Page to please refrain from discussion or carrying on discussion with the witness.

Mr. Page: I was endeavoring to confine myself to the ruling of the Chair and to treat the witness in a perfectly respectful way, and I would like the Committee to understand I have no desire to be discourteous to this witness or to bring out anything except legal testimony. I stated that my object was to show that the district judge, in approving these accounts, had done the same thing the Legislature had done, that they had overlooked the matter as well as he had, just to show he had done no more than other men had done.

The Chair: All right.

Q. You have stated, then—is there anything at all in the record of this matter you have examined to show the approval of the accounts by the Comptroller?

A. If you will let me have it, I will read the endorsement showing what the Comptroller did.

Q. All right, sir (handing papers to witness).

A. There is one endorsement in blue pencil that says, "in previous accounts by duplicate, with an excep-

tion," it looks like signed by Goodfellow.

Q. Who is Mr. Goodfellow?

A. Mr. Goodfellow was at the head of the sheriff's division in the Comptroller's Department up until recently.

Q. Are there any endorsements on any of those others there, showing anything?

A. There is an endorsement in blue pencil that says, "refuse payment in full," with the letter "G" signed. Another endorsement in red pencil, "above accounts approved by the judge," signed "Goodfellow." Another endorsement in ink says, "this has been paid, see previous accounts. Goodfellow."

Q. The warrants were issued by the Comptroller, weren't they?

A. No.

Q. They would show his approval of the accounts before he issued that warrant, wouldn't they, wouldn't the act of issuing the warrant show he approved the account?

A. Judge, let me tell you, if you will excuse this, this is hearsay only, I have asked that in the Comptroller's Department, they didn't pay this account, they told me that the Rochelle case did not allow it. You can get that information from them.

Q. Yes, sir. but the question I asked was this, isn't it a fact that the Comptroller wouldn't issue a warrant for accounts unless he first approved it, couldn't issue it?

A. I don't know that, Judge, I cannot know it, because they explained to me the judiciary they had no power over but had to depend upon the judge's signature.

Q. Well, is that a matter that the State Auditor, employed by the State to look into these things, to know that a warrant would not be issued without the Comptroller approved the account first.

A. I have asked the Comptroller's Department that same question; I believe if you will get them up here you will get that information direct.

Q. Yes, sir, we will have them up here later. But I ask you, as Auditor of the State, if you don't know that the Comptroller wouldn't issue a warrant unless it was approved by the Comptroller first?

A. Not under the judiciary appropriation, because it is claimed—just as I said before—I don't know what the law is on it, that has to be fought out by you lawyers.

Q. Yes, sir, I understand. That will be all.

Mr. Sturgeon: Mr. Chairman, we desire to introduce at this time the four accounts in evidence that have been testified to by the Auditor, in order to get them in the record. I believe that in offering that testimony, at the suggestion of counsel, all that will be necessary to offer and put in the record, will be a recapitulation sheet, the sheet that bears the signature of the sheriff and the district judge, in reference to these four accounts; they are very voluminous, and it will save a lot of expense—unless the other gentlemen care to offer it, we don't care for anything except those in that account.

Mr. DeWolfe: And, Mr. Chairman, we answer here, that the other sheets of the accounts will be available to anyone who wants to go into them. But this is for the purpose of saving expense.

Mr. Page: We think that is o. k., and we would like to know if we shall have the privilege of examining all of these accounts?

Mr. Sturgeon: Yes, sir, certainly.

Judge Batts: We want it understood that in acquiescing in this, we are not acquiescing in the propriety of putting in previous accounts. I make that objection.

Mr. DeWolfe: Mr. Chairman, in regard to the examination of these accounts by opposing counsel, we have, of course, no objection to their examining them, but we would like to make a suggestion that they be left in the custody of the Auditor, or where they are at the present time.

Mr. Page: We don't want to have the custody; let them remain where they are.

(Witness excused.)

Thereupon, the respondents recalled F. M. Markham, who further testified as follows:

Re-direct Examination.

Questions by Mr. Sturgeon:

Q. Mr. Markham, do you have here now the accounts for the May term of 1930—wait just a minute—Burleson county?

A. No, sir, I can get it.

Mr. Sturgeon: Well, Mr. Chairman, we will have to ask these gentlemen to cross-examine this man at this time. These records are voluminous, and we cannot bring them up here—all at one time. And in view of the hour—it is at this time twenty-five minutes till twelve, according to my Ingersoll—I think we will conserve time to adjourn, and we will try to have these records here right after lunch.

The Chairman: You have no further testimony here that you can introduce now, from now until 12 o'clock?

Mr. Sturgeon: No, sir, we do not right at present.

Mr. Graves: We have one witness we could use for just a few moments, to take up the time.

The Chair: All right, let's have the testimony of that witness.

Mr. Graves: Counsel would like to adjourn at this time.

Mr. Sturgeon: One of the counsel for the defense asks to be excused, as he has an important meeting, and we ask that we adjourn at this time and resume the proceedings at 1 o'clock.

The Chair: One o'clock?

Mr. Sturgeon: Whatever might suit the Chair.

Mr. Graves: Whatever time suits the House.

Mr. Page: Two o'clock, we would like to have, sir.

Mr. Van Zandt moved that the Committee stand at ease until 2 o'clock, which motion was put by the Chair and prevailed.

(Whereupon the Committee of the Whole House recessed at 11:40 o'clock a. m. until 2 o'clock p. m. of the same day.)

Afternoon Session, August 14, 1931.

Mr. Graves: Mr. Chairman, shall we proceed?

The Chair: Yes, sir.

Thereupon, Sam Sparks, being duly sworn by the Chairman, testified as follows, on examination by Mr. Graves:

Q. Please state your name to the Committee.

A. My name is Sam Sparks.

Q. You are a banker and live in Austin?

A. Yes, sir.

Q. And you have been Treasurer of the State of Texas, have you not? You are the owner of a warrant which on its face value is for $7,914 and was issued against John T. Carlisle's account for witness fees?

A. The bank owns that.

Q. The amount of that warrant is $7,912.10?

A. Yes, sir, I think that is the amount.

Q. Please give us a history, as near as you can, of your purchase of that State warrant.

A. Mr. Black, who was formerly deputy sheriff of Lee county came to the bank one afternoon in December of last year, December 11, I believe, and had this certificate, this deficiency certificate, and asked if the bank was handling deficiency certificates. I told him that we had not bought any deficiency certificates, and he said that Mr. Goodfellow in the Comptroller's office had suggested that if we did not handle them that we might be able to place him in touch with someone who did. He had the certificate with him at the time. I called up Mr. Parrish of the University Bank and asked him if he was buying these certificates and at what discount. He informed me that he was buying them and could handle this certificate at a 5 per cent discount. That was in December. Mr. Black asked me if we wanted to handle it on that basis and we took the certificate and discounted it 5 per cent.

Q. Do you have the amount that you paid for it?

A. We paid him this amount less 5 per cent.

Q. Did you communicate with any member of the Comptroller's Department prior to the time you purchased this certificate?

A. Yes, sir.

Q. What was said—who was that member in the Comptroller's office, if you know?

A. Bob Goodfellow.

Q. What did he say to you?

A. He said that Mr. Carlisle, who was, that Mrs. Carlisle, who was the widow of the old sheriff was in need of some funds and if we could handle this certificate she would be very glad for us to do so. If we could not he would like for us to put Mr.

Black in touch with someone who could. A little later on I discussed this matter with—this matter of buying this certificate with the officers of the bank, and called him back and asked him if he had a power of attorney in his file which would authorize Mr. Black to endorse this certificate. He said that he did have such power of attorney with the papers and his endorsement would be all right.

Q. Mr. Black was the brother of Mrs. Carlisle?

A. Yes, sir.

Q. Is that certificate in your possession?

A. Yes, sir. This certificate No. 2816 in the amount of $7,912.10.

Q. Will you read that, please? To the Committee?

A. Yes, sir. This is certificate No. 2816 in the amount of $7,912.10, dated Austin, Texas, December 11, 1930, this certificate that G. W. Black, Jr., has filed a claim in this office services, fees, felony cases, as sheriff of Lee county, for $7,912.10. The appropriation being exhausted no warrant can issue. This certificate is issued in accordance with Article 1134, Code Crim. Proc. of 1920. Then there is a pencil notation—certificate issued in full payment of all claims by John T. Carlisle, estate. Signed George H. Sheppard, appropriation No. G-241, this deficiency certificate can not be paid until the Legislature makes appropriation for same.

Q. You purchased that and paid for it?

A. Yes, sir.

Q. Do you, or did you know, that there was anything wrong with that at the time?

A. No, sir.

Q. Did you think that it was good or bad?

A. I thought that it was good. I never heard the account questioned and did not know there was any controversy or ever had been any controversy about this account.

Q. Afterwards, did you appear before the Appropriation Committee of this House?

A. No, sir. Of the Senate.

Q. And that account was allowed in the sum—

A. Yes.

Q. (Interrupting) But this appropriation was vetoed by the Governor.

Senator Page: Mr. Chairman, before cross-examination of this witness I would like to have opportunity of talking with the witness as we understand there are some matters which we would like to bring out and we can not do that unless we have an opportunity to talk to this witness, and with the indulgence of the Committee I would like to ask a few questions of this witness before we go into the cross-examination.

The Chair: I am sure there is no objection to this.

Cross-examination by Senator Page:

Q. Mr. Sparks, in your testimony, you have stated that you purchased from Mr. Black, the representative of Mr. Carlisle, this certificate No. 2816 for $7,912.10. I believe that you stated on your direct examination that Mr. Black brought this certificate to you and wanted to sell it to you and then you called up Mr. Goodfellow of the Comptroller's Department and asked him about the validity of this certificate and about buying it?

A. Yes, sir.

Q. What did Mr. Goodfellow tell you about that certificate?

A. Mr. Black said that Mr. Goodfellow asked him to call—asked me to call you up or call on you and when I got down to the bank—when he got down to the bank, to have me or have the bank call the Department and he would give them the information about it that I have already stated to the Committee. After Mr. Black came down to the bank I had a conversation with Mr. Goodfellow and he gave me the information that I have already given to the Committee relative to this conversation. I did not question the validity of that certificate at all. The only question I had in my mind was whether or not Mr. Black had the right to indorse the certificate and I asked Mr. Goodfellow about that and he told me that he had a power of attorney which would give him the right to indorse that certificate and I did not then question the legality of the endorsement, and felt that it was a legitimate claim against the State.

Q. Mr. Goodfellow was the clerk in the department who passed on the sheriffs' accounts at that time, was he not?

A. Yes, sir.

Q. And Mr. Black told you that Mr. Goodfellow had sent him to you for the purpose of buying this warrant, or this deficiency warrant, or that you might put him in touch with some one who would buy it?

A. That is right.

Q. Then, after that, you called Mr. Goodfellow up and talked to him about this matter?

A. Yes, sir.

Q. There was nothing said about any controversy about this account at the time?

A. No, sir, it was not touched on.

Q. Did you not question the validity of that at that time at all?

A. No, sir.

Q. The only conversation you had with him at that time was about the validity of the endorsement and as to whether or not he had a power of attorney authorizing him to endorse that certificate?

A. That is all.

Q. What did Mr. Sheppard tell you about that certificate, about the statement that Mr. Goodfellow had made to you, if anything?

A. Mr. Sheppard told me that the account had been in the office for some time and had been reduced several hundred dollars and that the amount that had been written into the deficiency warrant was, he thought, that Mr. Goodfellow had made a good settlement with the estate in allowing that account for $7,900.

Q. Mr. Sheppard said that in allowing this account for $7,912.10 that he thought that Mr. Goodfellow had made a good settlement with the estate?

A. Yes, sir.

Q. That is, the Comptroller who told you that?

A. Yes, sir.

Re-direct examination by Mr. Graves:

Q. Mr. Sparks, the claim allowed by the Claims Committee of the Senate was not in the full amount of that certificate, was it?

A. Yes, sir, it was allowed for that amount.

Q. For $7,912.10?

A. Yes, sir.

Q. Did you impound a portion of the fund—what was done?

A. Five thousand dollars was placed to the credit of Mr. Carlisle, and the balance of the money was credited to the account of Mr. Black —afterwards—

Q. (Interrupting) Did not you impound some of those funds when you found this matter was in controversy?

A. It was all drawn out before we ever got to it.

Q. And then they allowed your certificate for the full amount of $7,912.10?

A. Yes, sir.

Whereupon the witness was excused.

Mr. Graves: We will take Mr. Van Zandt.

The Chair: Come around, Mr. Van Zandt.

Thereupon, Olan R. Van Zandt, of Grayson county, a member of the House, being duly sworn by the Chairman, testified as follows on direct examination by Mr. Graves:

Q. Mr. Van Zandt, you were a member of the free conference committee on the claims and accounts of the Forty-second Regular Session of the Legislature.

A. I was.

Q. As such, did you have presented before you the question of allowing this account in the amount of $7,912.10 for a deficiency warrant issued to John T. Carlisle, sheriff account?

A. We did.

Q. What did you allow that account for—why did you allow that account?

A. Because it was agreed in that Committee that Mr. Sparks, who was holding that warrant, and it was represented—I might state it this way. The House bill did not have it in it. It went over to the Senate and it was placed in the Senate bill and when we came to this particular amount inquiry was made as to why it had not been paid by the Comptroller. And it was stated that Mr. Sparks had paid out this money and was an innocent purchaser and was without knowledge and the full amount of the claim was allowed.

Q. You, therefore, agreed among others that it should be placed in the claims account bill, and it was placed in same?

A. Yes, sir, it was so stated, and it was agreed for the House that that bill be placed in the Senate bill, and as I remember, it was stated in the Committee that it was allowed only for the actual amount of money

that Mr. Sparks had been out, and we told the Committee and the bill showed it was for the sum of $5,000 as I recall it. Anyway, it was reduced to an amount less than the face value of the deficiency warrant. The records, however, will show the correct amount.

Thereupon, the witness was excused.

The witness, Mr. T. M. Markham, being recalled, testified as follows on examination by Mr. Graves:

Q. Mr. Markham, I want to ask you next about the account from Burleson county, approved by Judge J. B. Price for the May term, 1930.

A. Yes, sir.

Q. You have that account before you?

A. Yes, sir, I have that account for Burleson county for the May term, 1930, on which deficiency warrant No. 2824 has been issued.

Q. I wish you would open that account, please. Can you tell me the date on which that account was filed with the Comptroller of this State?

A. December 30, 1930.

Q. Have you, or not, audited that account?

A. I have.

Q. It is alleged here in these articles of impeachment, or charges filed here, in the fourth paragraph thereof that it is claimed by the sheriff that he traveled a distance of 1,600 miles in arresting one person on two consecutive days. Likewise, 1,600 miles in arresting two other named defendants, a total distance of 4,800 miles claimed to have been traveled by the sheriff on two consecutive days, to-wit: June 10 and June 11, 1930. Can you turn to that report where reference is made to that?

A. Yes, sir. In this expense account in cause No. 3949, L. C. Davila charged with burglary the claim shows that he was arrested in Wharton, Texas, on June 11, 1930, showing that he traveled 400 miles going to and arresting this party at Wharton for which he charged $60 and 400 miles returning from Wharton to Caldwell, for which he charged $120.

Q. What is the name of that defendant again, please?

A. L. C. Davila.

Q. And what is the charge against him?

A. Burglary. Then I have another account against the same man in cause No. 3948 in which he was reported to have been arrested in Wharton on June 10, 1930, showing 400 miles going to and arresting this party, for which he charged $60 and 400 returning, with this party, for which he charged $120.

Q. Is that the same man you have just testified about?

A. Yes, sir, the same defendant.

Q. Does that report that you have there show the number of cases?

A. It just shows the case number and the amount that was charged against these particular cases.

Q. Will you read it again, please.

A. In the first instance, it was cause No. 3949, and in the second case it was cause No. 3948.

Q. Does that purport to be two cases against that one man?

A. Yes, sir.

Q. What is the total distance of mileage charged in going and arresting this man and returning him from Wharton?

A. It would be 1,600 miles.

Q. What is the total charge for that service, that is, going to and returning that defendant?

A. It would be $180 in each case, or three hundred and sixty dollars.

Q. And I believe you said that report shows that this man was arrested in Wharton on two different occasions, and transferred where—does that record that you have there show that? I believe you stated it does not give the mileage?

A. No, it is supposed to be a recapitulation, it shows the arrest at Wharton on the 10th day of June, 1930, in Wharton county, which is in a southwesterly direction from the county seat, it being 400 miles distant from the county seat.

Q. Caldwell is the county seat of Burleson county, is it not?

A. Yes, sir.

Q. I believe that you stated that the total claim as filed by the sheriff was 1,600 miles in arresting that man on two separate occasions as shown by that account?

A. Yes, sir.

Q. Does that service show to have been performed on the same day, or two different days?

A. Two different days.

Q. Give those dates again, please?

A. June 10, 1930, and June 11, 1930.

Q. Is that the man you have the affidavit from, or statement?

A. It is an affidavit.

Q. Leaving that just for a moment and going to the allegations here with reference to the two other defendants in which he seems to have traveled 4,800 miles on the same days, June 10, 1930, and June 11, 1930. What is that defendant's name as reflected by that report?

A. Albert Rivas, in cause No. 3952, charged with burglary and arrested at LaGrange, Texas on June 11, 1930, being in Fayette county, and for which the wtness fees claimed by the sheriff shows that he traveled 400 miles going for which he charged $60 and 400 miles returning for which he charged $120.

Q. Were there two cases purported to be against that same man?

A. There was.

Q. Was there a similar charge made for a similar service on the following day, that is, June 11, 1930?

A. I have just read the June 11 account.

Q. Well, turn to June 10.

A. It shows Albert Rivas arrested at LaGrange on June 11, 1930, for which 400 miles was traveled and a charge of $60 made for that in going and 400 miles returning at $120.

Q. That is the same man, but in a different numbered cause?

A. Yes, sir, the same man.

Q. Your statement then, as I understand it, is from what the records reveal, this man was arrested on June 10th by traveling a distance of 400 miles from the county seat of Burleson county for which he charged $60 in going and for traveling 400 miles in returning, for which a charge of $120 was made, or a total charge of $180 made.

A. $180 in each instance.

Q. I am speaking about for that arrest on June 10th?

A. For the mileage on the arrest on June 10th, $180 total was charged.

Q. I am asking you if that account you have just testified about reflects that this man was in a different numbered case, was arrested on June 11, 400 miles from Burleson and transferred to such county seat, for which arrest he makes a charge of $180 for that service?

A. That is my testimony.

Q. Is there another defendant that is claimed to have been arrested on the 400-mile trip?

A. Yes, sir.

Q. Will you please find out what the name of that man who was claimed to have been arrested?

A. The name of that defendant was Joe Silva, in cause No. 3954, charged with burglary. It shows he was arrested in Wharton on June 11, 1930, for which a charge of 400 miles going at $60, and 400 miles returning at $120.

Q. Now, what day does it show that arrest was made in that particular case?

A. On June 11, 1930.

Q. Now, in that case was Joe Silva charged and arrested in two cases, or not, or was he just arrested in one case?

A. This report shows that this was in two cases.

Q. I wish you would read to the Committee what the report says about the service in those cases.

A. It shows in cause No. 3955, Joe Silva, in which he was arrested at Wharton, Texas, on June 10, 1930, for which 400 miles was charged in going after this defendant, at $60 and 400 miles returning at $120.

Q. Now, as I understand you, Joe Silva, according to your testimony from that report made by the sheriff, that the sheriff claimed to have traveled on June 10th, 400 miles to arrest Joe Silva, and again, in going to Wharton after this defendant from Burleson county jail and returning him?

A. Yes, sir, 400 miles going and 400 miles returning.

Q. And that is a total of 800 miles?

A. Yes, sir.

Q. I will ask you if the report shows on the next day that is, June 11, 1930, that a charge was made in that report for the same service, the same charge, the same identical mileage, and the same identical costs made for that mileage?

A. The account shows that the same number of miles were charged for arresting Joe Silva in going after him and returning him on the next day from the same place in Fayette county and returning him to Burleson county.

Q. In other words, the account shows that Joe Silva was arrested on two different days, one immediately

following the other, and there was a total charge of $360 made for that service?

A. That is right.

Q. I wish you would tell us in these three cases that you have testified about, what the total number of miles is that were charged against the State of Texas by the sheriff as claimed to have been traveled in arresting these three different parties on these three different dates.

A. Forty-eight hundred miles.

Q. That is, as I understand it, on June 10 and June 11, 1930?

A. Yes, sir.

Q. Now, I will get you to look at the back part of that report and tell use whose signatures appear on that report.

A. It has the name Clint D. Lewis, sheriff of Burleson county, Texas, sworn to on June 13, 1930—

Q. Interrupting) All right.

A. (Interrupting) It has the name of J. D. Price, judge Twenty-first Judicial District, and shows to have been signed at Caldwell on the 13th day of June, 1930.

Q. Is the district clerk's signature attached to that?

A. It is.

Q. I wish you would read the district clerk's signature and certificate to that account.

A. "The State of Texas, County of Burleson; I do hereby certify that the account of Clint D. Lewis, sheriff of Burleson county, for the sum of $3028, against the State of Texas, for fees in felony cases in the district court of Burleson county, Texas, is a true and correct copy of said account, and all certificates thereto and indorsements thereon as it appears in the minutes of said court in my office on page 1, book 120-154.

"In testimony of which I hereunto sign my name and affix the seal of said court at the office in Caldwell, Texas, this the 13th day of June, 1930. Signed, F. A. Ellis, district clerk, Burleson county, Texas, by ....., deputy."

Q. Will you give that to Mr. Dunn so that he can read the recapitulation on that report?

A. Yes, sir.

Q. Will you read that for us, Mr. Dunn; will you read the recapitulation on the back of that claim account?

Mr. Dunn: Yes, sir.

Whereupon the Reading Clerk of the House read recapitulation on the back of the account, which is as follows:

Recapitulation.

No. Case. Name. Charge.	Amount.
3923—Howard McNeil, felony theft	$ 65.00
3424—Raymon Gonzilas, forgery	68.00
3881—Y. N. Barron, asst. mur.	108.00
3910—Valentine Alvrez, felony theft	104.00
3909—Juan Chappa, felony theft	127.50
3908—Isaiah Henry, felony theft	99.50
3926—Daniel Brenckman, assault murder	43.00
3933—Albert Fleckenstein, child desertion	94.00
3939—Walter Gaines, murder	103.00
3942—Johnny Gordon, burglary	8.75
3941—Henry Hewett, burglary	89.00
3943—Irvin Randel, burglary	88.25
3940—Thomas Hackett Wormley, burglary	85.75
3944—Frank Waters, forgery	18.25
3914—L. L. Tyce, asst. murder	135.50
3915—Frank Blabaj, burglary	142.50
3929—Walter Baker, theft	72.50
3952—Albert Rivas, burglary	258.50
3949—L. C. Davila, burglary	256.50
3954—Joe Silva, burglary	258.50
3953—Albert Rivers, felony theft	258.50
3955—Joe Silva, felony theft	258.50
3948—L. C. Davila, felony theft	258.50
3947—Turner Walton, felony theft	26.50

Then appears in handwriting on the recapitulation the corrected account of the May term of district court of Burleson county, Texas, term ending June 13, 1930, old account, less correct, $750, corrected account, total $2,278.

Q. I believe I asked you just a moment ago whether or not that report shows that it was approved by Judge J. B. Price?

A. It shows J. B. Price, the certificate.

Q. What is the date of that signature?

A. June 13, 1930.

Q. Do you know of your own knowledge whether or not that account was paid, or whether there was a deficiency warrant issued for it for the amount claimed in the report?

A. No, sir. The amount claimed was $3,028, and the deficiency certificate No. 2824 was issued for $2,278.

Q. The deficiency outstanding of $2,278 for that account?

A. Yes, sir, there is.

Q. Did you audit that account?

A. I had it done by one of my assistants and I checked the figures.

Q. Do you mean by that that you are in position to testify as to the facts that it reflects?

A. Yes, sir, I am.

Q. Could you tell this Committee what items that account contains that were not paid for the full amount as claimed in the account?

A. Originally, before this one was issued, there was $750 cut out by the Comptroller and in re-auditing the account we cut out $1,551.25, which was multiple mileage, as you have just heard it read, and which I can give you the totals of. There are now additional amounts which the audit shows ought to be cut out since the amounts indicated were cut out some time ago. New evidence has been developed in connection with this case, and we have cut out some more, but as it stands now, there are some items in the L. C. Devilo case which ought to be cut out and further reduce the account $135.

Q. Now, about that Devilo account, you say how much was cut out?

A. Out of one of the L. C. Devilo cases in cause No. 3914 we had to cut out $135.

Q. Tell the Committee what the items were that you cut out of the account, or whether the Comptroller failed to issue warrants for it?

A. Well, in making this audit and checking up the mileage, the multiple mileage, we found that it was, instead of 400 miles, it could not have been over 100 miles to Wharton.

Q. You mean from where to Wharton?

A. I mean from Caldwell, the county seat of Burleson county.

Q. Do you know what county Wharton is in?

A. Yes, sir, Wharton county.

Q. And you say in figuring out the distance from Wharton to Caldwell the nearest practicable route, it would not be over 100 miles?

A. That was the basis we used.

Q. And for that reason you cut out $135 out of the total claimed in fees for that service?

A. Yes, sir.

Q. In other words, you approved the account for his services rendered by the sheriff in arresting this man and transferring him from Wharton to Caldwell at a distance of 200 miles instead of the 800 miles as claimed by the report?

A. In working out this basis we used 100 miles. Before this deficiency warrant is delivered there ought to be cut out more, for since that time the Committee has received information, several affidavits, to the effect that all three of these men were taken from the same place and on the same date, and in figuring it on this basis the account should be considerably reduced instead of as the account was put in which shows that separate trips were made for each of these men.

Q. That is what I am trying to get at. In that report it shows that the sheriff made six trips for these three men. That is the six trips were made for these men instead of one trip, as is claimed by you in your audit, and according to those figures which you have this account should be reduced that much?

A. Yes, sir.

Mr. Chairman: Right at this point I want to make this observation and this suggestion. In connection with this testimony right here, and with the testimony that will follow of the same kind and character as set out in these charges I will state that this Committee, that I have been working

with has been assembling this data that will be presented to the Committee and we have received from most of these parties affidavits and statements from them which have been reduced to writing. Some of them have been sworn to and some have not, but each of them has been witnessed by the party who took the statement, and the statements were reduced to writing and they were present at the time it was made and it can be produced here now.

I realize the fact that this would not be admissible, and will not be in compliance with the strict rules of evidence, and possibly these statements would not be admissible otherwise, because they are ex parte statements, made in the absence of the defendant but in the light of the fact that this is an examination in the nature of an examining trial, and in furtherance of the ruling of the Chair in the past, I think it would be in the interest of the members of the House and for their information to get this information before the Committee and that we at this time be permitted to present these affidavits. I am making these statements because I want to be perfectly plain and clear and fair with the Committee and I want this to be understood. Strictly speaking, under the strict rulings of law, this would not be admissible as testimony because that would not be proper, but in the light of the circumstances and facts that it will shed light on this matter, I believe that this Committee should have the information, and for that reason this has been assembled and can be produced and I think should be placed before this Committee. That is my position with reference to this testimony being presented to the Committee at this time.

Senator Page: We will state, Mr. Chairman, after conference with counsel, that this—as stated by counsel for the Committee, under ordinary circumstances, ex parte affidavits would not be admissible in evidance, but, as has been stated here, this being largely in the nature of an examining court or somewhat similar to a grand jury proceeding, we are willing for the truth of these matters to be developed here, and have no desire to be technical about it and have not intended to be technical from the very beginning, and we see no reason why—of course, we cannot pass upon these affidavits until they are presented, but now, we see no reason to object to the introduction of those documents and are inclined at this time to concede that they may be admitted. We would like to see those accounts, however.

Mr. Sturgeon: Surely. You may cross-examine the witness.

Cross-Examination.

Questions by Senator Page:

Q. Mr. Markham, I notice here that Cause No. 3933, the case of the State of Texas vs. Albert Fleckenstein, charged with child desertion. I will ask you to take this statement and read this affidavit here, or have the clerk to read it. Mr. Dunn may read it.

Mr. Dunn: "The State of Texas, County of Burleson: Before me, the undersigned, a notary public in and for Burleson county, Texas, on this day personally appeared Otto Wendorf, known to me to be a credible person, who, after being by me duly sworn, upon his oath deposes and says:

"1. That his name is Otto Wendorf, and that he is the identical person commissioned by Clint D. Lewis, sheriff of Burleson county, Texas, to find and apprehend one Albert Fleckenstein, who was charged with wife and child desertion, and whose whereabouts were alleged to have been either in Galveston, Galveston county, Texas, or Houston, Harris county, Texas;

"2. That in pursuance of his duties as a citizen, and in accordance with the instructions received from Sheriff Clint D. Lewis, he actually went to Galveston, Texas, from Caldwell, Burleson county, Texas, and he actually went from there to Houston, Texas, acting as a special deputy of Sheriff Clint D. Lewis, in an attempt to find and apprehend the said Albert Fleckenstein;

"3. That on his said trip to Galveston and Houston, Texas, he was in possession of a legal warrant commanding the sheriff or any constable of Burleson county, Texas, to take and keep the body of the said Albert Fleckenstein, said warrant being returnable to the district court of Burleson county, Texas, before which court the said Albert Fleckenstein stands charged by indictment with the offense of wife and child desertion aforesaid;

"4. That your affiant actually and necessarily traveled 400 miles in his attempt to execute said warrant;

"5. That the said Albert Fleckenstein could not be found by affiant in either Galveston or Houston, Texas; but he was arrested in Burleson county, Texas, after affiant made the trip as aforesaid.

"Witness my hand this 24th day of December, 1930.

"(Signed) OTTO WENDORF,
"Affiant.

"Subscribed and sworn to before me this 24th day of December, A. D. 1930.

"(Signed) R. J. ALEXANDER,
"Notary Public, Burleson County, Texas."

Q. Thank you, Mr. Dunn. Will you take the stand again now, Mr. Markham, please. You have heard that affidavit read?

A. Yes, sir.

Q. You would understand that to be an explanation of why the sheriff traveled that number of miles in that particular case?

A. Yes, I would.

Q. I will ask you to turn to the latter portion of the account, where the full amount of the account is shown, and the deduction by the Comptroller, please, sir.

A. Yes, sir.

Q. Do you find there the full amount of the account, as Sheriff Lewis originally presented it to the judge?

A. I do.

Q. How much is that?

A. $3028.

Q. Now, how much of that amount did the Comptroller's Department cut out, according to the figures before you?

A. $750.

Q. $750?

A. Yes.

Q. Then you, or somebody in your department, audited that account later on?

A. Yes.

Q. How much did you cut out when you audited it?

A. $1040.25 additional.

Q. The Comptroller first cut out $750?

A. Yes.

Q. And then after he had approved the report, your department cut out a thousand dollars more?

A. Yes.

Q. Read the certificate of the Comptroller, signed by Mr. Robert Goodfellow, or whoever it is signed by. No, that's not it, it's a typewritten letter attached to the latter part of the account.

Mr. Dunn:

"December 11, 1930.

"To Whom It May Concern:

"I, Robert Goodfellow, Chief of the Sheriffs' Division of the Comptroller's Department, approve the Clint D. Lewis account, for the sum of $2,278, the same being a reduction from $3,028 to the above amount on the account of duplicate mileage, which was in various cases marked in blue pencil, which Sheriff Lewis accepts as a reduction. Respectfully yours,

"GEO. H. SHEPPARD.

"Comptroller of Public Accounts.
"By Robert Goodfellow, Chief, Sheriffs' Division."

Q. Thank you, Mr. Dunn. All right, Mr. Markham. Now, after the Comptroller approved that, as indicated there, then later your department audited that account further?

A. Yes, I did.

Q. Why did you do that?

A. Because the bill that went through the House and Senate and was signed by the Governor for the deficiency appropriation had a rider attached to it that all accounts should be approved by the State Auditor and the State Comptroller before being paid.

Q. I see. The bill provided for these payments and carried that rider?

A. Yes.

Q. Then, under that, it was the duty of the Comptroller to approve that account, and that after that, it was still further your duty to approve it before it could be paid?

A. So far as the Comptroller was concerned, that was his bill, but we will not approve any bill unless satisfied in our own minds as to the account.

Q. I was asking you why you examined it at all, after the Comptroller had approved it?

A. Because that article had the provision in it that the State Auditor should approve it.

Q. That's the point exactly. You examined that because that bill provided it should be audited by the Comptroller and then by the Auditor's Department before it could be paid?

A. Yes.

Q. That's what I think. No money has been paid out, however, under that bill, has it?

A. No, sir.

Q. And the State has lost no money under that transaction up to this time, has it?

A. No, sir.

Q. Nothing has been paid at all?

A. No, sir.

Q. No. Now, when the Comptroller audited the account, he evidently made a mistake of about a thousand dollars, didn't he, according to your figures?

A. In working up this account, we were not able to tell the exact amounts that made up the total of $750 that Mr. Goodfellow cut out so as to cut out that much even money, so we approved it—that is, let me get that—

Q. What I mean to say is that Mr. Goodfellow cut out $750 and then you cut out an additional thousand dollars?

A. About $800 more. He cut out $750, and we cut out, with his amount, a total of $1,551.25. That includes his.

Q. Mr. Goodfellow approved that account for about $800 too much, according to your figures?

A. Yes.

Q. He had all the facts and figures before him, had the account before him, and he has auditors in his department by which to look into those things?

A. At that time, he had himself and two assistants.

Q. Himself and two assistants. I believe that's what you say?

A. I believe that's right.

Q. He took out $750, and when you got to it, you found out he lacked $800 of having taken out enough money, according to your figures?

A. Yes, according to these figures. But since this, other evidence has developed, there would be more cut out by the State Auditor; he would not approve it.

Q. Then the position of the State Auditor is that before he would approve it, still more would be taken out?

A. Yes.

Q. That even his report is too much; there should be still more taken out?

A. Yes.

Q. Then first the Comptroller's Department examined that account, and he had two assistants to help him and his office force, and they took out $750, and then you examined it, and took out $750 more?

A. I beg your pardon, but the Comptroller had examined the account again and agreed to these figures.

Q. You discovered the error, didn't you?

A. Yes.

Q. What I was going to say—first, the Comptroller took out $750, and then you examined the account, and found out that something like $750 more should be taken out?

A. About that.

Q. And then, after you had audited it, and he had audited it, you have discovered that still more should come out?

A. Yes.

Q. Then it's quite a good deal of trouble to examine these accounts, and get them right, isnt' it; quite a lot of labor?

A. It is here, for the simple reason we know nothing about the cases. We simply have to take the accounts and look for duplications as nearly as possible, and the date, and then sometimes, if we still feel it is wrong, we send someone to interview them and find out about it and look at the records filed in the district court.

Q. Could you give us any idea about how much time your department has spent on this particular account—your force?

A. No, I don't remember exactly how much time we have spent on this; I imagine, however, about three days.

Q. It took your department about three days to make that audit?

A. I suppose so, from the way the other accounts were worked out.

Q. That is your judgment about it?

A. Yes.

Q. Well, it would not have been out of order, probably, for the Comptroller to have devoted about the same time, three days, with himself and his force, to the examination of the accounts?

A. That might be a difference of opinion.

Q. I want your opinion. It would take about the same time, wouldn't it, for experts to do that?

A. I would think so.

Q. That would be my judgment. Now, I would like for the clerk to read the sheriff's oath that is attached to that account; the oath of Sheriff Clint D. Lewis, so we may see what it is.

Mr. Dunn: "I do solemnly swear that the above and foregoing account is just, true, correct and unpaid, and that the miles charged for were actually traveled as stated in the execution of process in the district court, and that in charging mileage, where the witnesses were served on the same trip, mileage has not been charged for each witness served to and from the county seat, but only the actual number of miles traveled on the trip has been charged for, and that only at the time service was perfected; and when more than one prisoner has been removed at the same time, only eight cents per mile has been charged for removing each additional prisoner; that no mileage is duplicated in said account, but that the provisions of the law now in force have been strictly complied with, in charging mileage in this account; and, further, that all mileage and other service charged for have been performed since the last term of the District Court of Burleson county, adjourned on the.....day of June, A. D. 1930.

(Signed) "CLINT D. LEWIS,
"Sheriff, Burleson County.

"Sworn to and subscribed before me, this the 13th day of June, A. D. 1930.

(Signed) "F. A. ELLIS,
"Clerk, District Court."

Q. All right. Now, Mr. Markham, I don't wish to be tedious, but it is the suggestion of counsel, in order to bring out a point more clearly. You testified about the appropriation bill for the deficiency. You have read that bill and are familiar with its terms?

A. Yes, I have read it.

Q. I believe you stated that bill said that before any account should be paid, that they not only should have the approval of the district judge, but also have the approval of the Comptroller's Department and of the State Auditor's Department?

A. The bill itself, as I remember, did not mention the district judge. It said it should be approved and used the word "approved."

Q. The law provides for the approval by the district judge, but this appropriation bill provided also that the Comptroller must approve it and also that the Auditor must approve it?

A. It provides that the Comptroller and the Auditor must approve it.

Q. Do you know why that provision was in the bill?

A. I do.

Q. Why was it in the bill?

A. At the time, we had run on to some witness fee forgeries, and this trouble came up over the Sparks warrant, so that the Finance Committee in the Senate said they were going to put that on, and they did.

Q. They put that on for the protection of the State?

A. I suppose that's why. They didn't say.

Q. We wouldn't differ about that; of course that's why they did it. And no accounts could now be paid without not only the approval of the district judge, but under that act, it required the approval of these other officials also?

A. I don't know about that. Some of them have said they will mandamus us to force us to pay them. I don't care what the Comptroller does, but the Auditor won't approve them unless it is examined and approved by him.

Q. The State Auditor believes that that is a valid provision and one which he must follow?

A. He says he will not approve the accounts. Whether they are paid or not is not under his jurisdiction.

Q. In other words, he is following the terms of that act itself, that we have been talking about?

A. Yes.

Q. In spite of the decisions of the courts we have been speaking of here?

A. That's correct. He feels he should not and will not approve them unless he believes they are correct.

Q. We think he is correct about that, if our opinion is worth anything. Do you know anything about the general appropriation bills that the Legislature has passed — you spoke of the deficiency appropriation only?

A. No, sir; I have not looked at the general appropriation.

Q. You don't know, then, as a matter of fact, this same provision is carried into the general appropriation bill, as well as the deficiency appropriation?

A. No, sir; I don't know.

Q. All right. I don't know whether it is or not, but I think it is. That's all.

Re-direct Examination.

Questions by Mr. Sturgeon:

Q. You were asked, Mr. Markham, if this account you have been testifying about, if about $750 of it was cut out by Mr. Bob Goodfellow, have you not?

A. Yes.

Q. And that later on, the Auditing Department, the State Auditing Department, the department of which you are a member, audited this account and cut out some more?

A. Yes.

Q. Making a total deduction out of that account, as sent in by the sheriff and approved by Judge Price, of the sum of $1551.25?

A. That's correct.

Q. All right. Now, that is the amount that the State Auditor's Department, as auditors acting under the law of this State, feels like that account makes a demand for that much more money than it should?

A. At that time, it was but a few days ago that was our opinion, but since that time there has been other evidence developed from which we have found that these three men were transported in the same car on the same day and, therefore, this would be refigured and a little more cut out.

Q. In other words, I will ask you if it takes an auditor, or a lawyer even, to observe that account and detect from the items set out in there the number of the case and the defendants named and the charge that was made there with reference to those three men that you have testified about traveling a total distance of 4800 miles in two days, according to that account, if it would take an auditor to tell from the very face of the account that there was a mistake there, and an overcharge in it?

A. I think I can explain that.

Q. I wish you would; that's what I want you to do.

A. The first thing was, I saw on the recap. that those six accounts, two of them were the same men, and then we turned and saw that 400 miles from Caldwell to Wharton, that we knew was wrong, and that is what led to examining the account as closely as we did.

Q. Judge Price was the district judge in this district?

A. Yes.

Q. And the account must be approved by him?

A. Yes.

Q. All right; then you were asked a good deal about Mr. Goodfellow's action in the matter in taking $750 off of that account. I will ask you if you know of your own personal knowledge whether or not Mr. Goodfellow is now connected with the Comptroller's Department, or has resigned?

A. He is not connected with them at present.

Q. He has resigned since his action on that account and several others you will be asked about?

A. I don't know whether he resigned or not. He told me he was not working there now.

Q. As a matter of fact, you know he was invited to resign?

Judge Batts: That is an unfair statement of counsel, and we have no way to meet such a statement. It's irrelevant and immaterial here, and such a statement of counsel could not be proper in this matter.

Mr. Sturgeon: I simply asked this witness about Mr. Bob Goodfellow. There's been some reflection cast on the Comptroller's office about this matter wherein Mr. Goodfellow cut out $750 from this account, and it was the duty of the Auditor's Department to examine it and was necessary to take out some more, aggregating some $1550. I think the Committee is entitled to know that if Mr. Goodfellow made a mistake, that they have turned him loose on account of it; they got him out of that office.

Judge Batts: If counsel is correct about it and wants to make a statement, he should go on oath like other witnesses do and let the presiding officer tell whether or not that is a proper matter to go in here. It is certainly not proper for counsel to make such a statement.

The Chairman: I don't think the Comptroller's Department is under investigation at this time. Of course, the witness would have a right to tes-

tify as to his knowledge of whether or not the man is still working for that department.

Senator Page: Mr. Chairman, we desire to state this: It was stated by counsel for the Committee that we were reflecting upon the Comptroller's Department. We are not seeking to do so at all. We have here a district judge, charged here with negligently and willfully approving an account that was incorrect, and we simply desire to show that the Comptroller, with his two auditors at his command, simply made a mistake of some $750 in examining the account. That is no reflection, because this auditor here says he himself made a mistake of some $750 when he examined it.

Mr. Sturgeon: I didn't care to cast any reflection upon anybody, but I simply wanted to show who made the mistake. All right. Now, Mr. Markham, do you have there the statements of those three men in that account?

A. I have one affidavit, from L. C. Davila.

Q. You didn't take those statements yourself?

A. No, sir; Mr. Nichols took them.

Q. Come around, Mr. Nichols.

Whereupon the witness, R. V. Nichols, being by the Chair duly sworn to tell the truth, the whole truth and nothing but the truth, testified:

Direct Examination.

Questions by Mr. Sturgeon:

Q. Your name is R. V. Nichols?

A. Yes.

Q. Where do you live, Mr. Nichols?

A. Austin.

Q. How long have you lived in Austin?

A. About twenty years.

Q. What has been your occupation, and what is your occupation now?

A. For about fourteen years I was in the Attorney General's Department as an investigator, and I hold the title of tax supervisor in the Comptroller's office.

Q. You were connected with the Attorney General's office for about fourteen years as an investigator?

A. All told, about fourteen years.

Q. You are now working with the Comptroller's Department?

A. Yes.

Q. All right. Now what are some of your duties, that you have been performing in connection with your employment for the last three or four months?

A. Something like three months ago, I was assigned by the Comptroller to the Senate Investigating Committee.

Q. To the Senate Investigating Committee. Since you have been working with the Senate Investigating Committee, I wish you would state what you have been doing.

A. I have been following leads and taking affidavits from witnesses and statements, furnished to me by the Chairman of the Senate Investigating Committee.

Q. Who, Senator Beck?

A. Yes.

Q. Did you or not take the statement of these three men Mr. Markham just testified about, or of any of them?

A. Yes, I got a sworn statement from L. C. Davila, and a written statement from Albert Rivas.

Q. Mr. Dunn, will you read that affidavit, please sir?

Mr. Dunn:

"Blue Ridge Farm No. 2.
"June 16th, 1931.

"State of Texas,
"County of Fort Bend.

"Before me, the undersigned authority, a notary public in and for Fort Bend county, Texas, on this day personally appeared L. C. Davila, who after being by me duly sworn, upon his oath deposes and says:

"My name is L. C. Davila. I am a convict on the Blue Ridge State Farm No. 2. On or about January 12th, 1930, I was arrested in Houston by a detective (his name I do not know). At the same time of my arrest, the same detective arrested Joe Silva and placed us both in the Harris county, or city jail in Houston. On the next morning, the sheriff of LaGrange, Louis Lucine (I believe was his name) came to Houston and got Joe Silva, two other prisoners, and myself, and drove us to LaGrange. We did not go in an automobile—we went on the train. Joe Silva, myself, and the other two prisoners were then placed in the county jail at LaGrange. Joe Silva and I stayed in the LaGrange jail four or five months. We were then

tried and both convicted of burglary. I employed a lawyer at LaGrange by the name of Lee Mac (I think his name was). He was a man about 40 to 45 years of age. I did not have any witnesses and did not make any application for any and neither did I sign any papers. My lawyer came to me before the trial and told me to plead guilty. My brother-in-law paid the lawyer. Joe Silva also plead guilty. He had no lawyer. We were both indicted on the same charge. He had no witnesses either.

"About six or eight days after we were tried in LaGrange, the sheriff or deputy sheriff of Wharton county came to LaGrange and got Joe Silva and myself and drove us to Wharton, where we both were placed in the Wharton county jail. I do not remember the officer's name that came after us, but remember that he had a colored man driving the car. We stayed in the Wharton county jail just one night. The next morning, the jailer carried both Joe Silva and myself into the courtroom where we both plead guilty to burglary charges. Neither one of us had a lawyer and neither one of us had any witnesses, and did not talk to any one about having any witnesses. As stated we were there only one night and day.

"The next day after we were tried in Wharton, a deputy sheriff of Burleson county came to Wharton and picked up Joe Silva and myself and drove us to Caldwell, Burleson county. On our way to Caldwell, the sheriff or deputy stopped at the Bellville jail in Austin county, and got Albert Rivas, then he drove us three prisoners in the same car and all together from Bellville to Caldwell. We were all three placed in jail and the next morning we were all three taken to the courthouse where we were tried for burglary and all three plead guilty. At the time I was tried, there was only one witness that went on the stand. I did not employ a lawyer, and neither did I have a single witness and never at any time asked for any, and neither did Joe Silva or Albert Rivas.

"After our conviction in Burleson county, Joe Silva and I stayed in the Burleson county jail until August 22, 1930, when we were taken to Huntsville. Albert Rivas was taken to Livingston for trial, where he was charged with burglary in Liberty county.

"The above statement covers the facts so far as I can now recall, all of which I swear to.

(Signed) "L. C. DAVILA,
"Convict No. 64565.

"Subscribed and sworn to before me a notary public on this the 16th day of June, A. D. 1931.

(Signed) "CARL C. LAVERY,
"Notary Public in and for Fort Bend
(Seal) County, Texas."

Mr. Sturgeon: All right, thank you, Mr. Dunn. We will call Mr. Harvey Belcher.

Whereupon, witness Harvey Belcher, being first duly sworn, testified:

Direct examination by Mr. Sturgeon:

Q. Your name is Harvey Belcher?
A. Yes.
Q. Mr. Belcher, where do you live?
A. Stephenville.
Q. You are temporarily in Austin?
A. Yes.
Q. How long have you been in Austin?
A. Some six or seven months.
Q. What is your business now?
A. I have been connected with the Senate Investigating Committee.
Q. You are an investigator for that Committee?
A. Yes.
Q. Detail to this Committee some of your duties that you have been performing for the Senate Investigating Committee?
A. I have been following up leads, and taking affidavits. I have been connected with Mr. Nichols at times.
Q. You and Mr. Nichols have worked together in assembling testimony with reference to various accounts and claims made against the State?
A. Yes.
Q. I will get you to look at those statements there in front of you, and tell the Committee whether or not you and Mr. Nichols took those two statements attached to the affidavit just read?
A. We did.
Q. Who's statement is that you have before you now?
A. Albert Rivas.
Q. Do you remember, independent of the statement, where you secured that statement—where he was when you saw him and where you were?

A. Yes, we were in the hospital on the Ramsey State Farm No. 4.

Q. Can you read your own handwriting?

A. Yes.

Q. All right; read that statement.

A. "June 19, 1931,
"Ramsey State Farm No. 4.

"My name is Albert Rivas. I am a convict at the Ramsey State Farm No. 4. I had been in jail at Bellville about four or five days when the sheriff's two deputies from Caldwell, Burleson county, came by the jail and picked me up to take me to Caldwell. Joe Silva, L. C. Davila was in the car when the deputy sheriff brought me out of the jail. We, L. C. Davila, Joe Silva and myself and the two deputy sheriffs in the same car then drove to Caldwell that night, arriving there about 8:30 o'clock. He then placed us three in the Burleson county jail. We were tried the next morning and convicted of burglary. I, Albert Rivas, plead guilty, and was sentenced two years in one case and five in the other; I did not have any witnesses; neither did I make application for any witnesses. The sheriff did not ask me if I wanted any witnesses. I did not sign any papers there. I did not have any lawyer. The sheriff of Caldwell did not arrest me at Wharton but picked me up on his way back from Wharton where he had been to get Joe Silva and L. C. Davila; the distance between Caldwell and Bellville is about 50 miles.

(Signed) "ALBERTO RIVAS."

"Witness: Harvey Belcher."

Q. Now, that other statement you have there—pardon me—that statement you have just read—is that in your handwriting?

A. It is.

Q. I believe you said you secured it in the hospital ward of the Ramsey Farm of the State Penitentiary?

A. Yes.

Q. Did he make that statement to you then?

A. Yes.

Q. You witnessed it at that time?

A. Yes.

Q. What is that other statement you have there?

A. It is the statement of L. C. Davila.

Q. That's all right; read the third statement that you have there—there have been two read.

A. There isn't a third one here.

Q. Oh, yes; he is an escaped convict, I am informed. He got away. Mr. Nichols was with you at the time you secured those statements?

A. He was.

Q. That's all.

(Witness excused.)

Q. Now, Mr. Markham, get back up there, please. Mr. Markham, that affidavit and that statement that has just been read by Mr. Dunn and Mr. Belcher are statements having been made, or purporting to be made, by the men of the same name as appearing in the accounts you have just testified to?

A. Yes.

Q. And they are the same men that the sheriff claimed to have traveled 4,800 miles in arresting on two consecutive days?

A. Here it shows he was supposed to have traveled 4800 miles in two consecutive days to arrest them.

Q. You mean 4800 miles.

A. Sixteen hundred miles for each man on the two consecutive days.

Q. Have you examined the district clerk's records or not, or do you have them before you.

A. I do not have the district clerk's records before me.

Q. Have you examined them, and are you in position to state to this Committee that the same numbers that appear in that report appear on the district court records for those cases?

A. I have not examined the district court's records in this case, but I have a list of all felony cases, over the signature of the clerk, showing the disposition of the cases for the past five years, or something like that.

Q. In that county?

A. Yes.

Q. What is that paper you have there?

A. A transcript of the criminal docket for indictments brought in Burleson county from September 1, 1925, up to and including June 5, 1931, from the district clerk at Caldwell, Texas.

Q. Where did you get that report?

A. At the beginning of the Senate Finance Investigating Committee we sent out letters to the district clerks of every district in Texas, and it was mailed in from Caldwell.

Q. You got that in the mail?

A. Yes.

Q. As the record of the criminal court docket there?

A. Yes.

Q. Will you see whether that bears the names of these three Mexicans or Italians, or whatever they are, as appear upon the sheriff's account that have been testified to and the one the statements have been read about?

A. It does.

Q. What is the number of those cases, as shown by the district clerk's record there, taken from the docket of that court? I will ask you this question first, and probably save you having to go into those records—as a matter of fact, the *"clerk's" account there, sworn to by him and approved by Judge Price, bear the same court numbers as the district clerk's record shows with reference to those three men?

A. Yes, it shows the same names and the same numbers to correspond with the same names of defendants as shown by the sheriff's expense account and the transcript sent in by the different district clerks.

Q. All right. Do you know, Mr. Markham—have you made any investigation of how far it is from Lagrange to Caldwell, in Burleson county?

A. I took a State Highway map that I got from the State Highway Department, and the scale there shows Caldwell to Wharton approximately 58 miles, I believe it is. I can get the record on that and show you for sure.

Q. About 58 miles?

A. No, wait a minute. I believe that's a mistake.

Q. All right.

A. It's something in the neighborhood of 100 miles.

Q. Something in the neighborhood of 100 miles?

A. Yes.

Q. And what does that report show that he traveled in arresting those people?

A. 4,800 miles.

Q. Well, I am not asking about the total miles now.

A. 400 miles.

Q. The sheriff's account shows that he traveled 400 miles to arrest Albert Rivas in Lagrange, showing in truth and in fact, it is only 200 miles, as I understand it; the charge he makes there is for one trip, one way isn't it?

A. I will explain that to you.

Q. I would be glad for you to.

A. The sheriff's report shows, and this paper in my own handwriting checks up on it—it shows he arrested L. C. Davila, and Joe Silva in Wharton on June 10th and June 11th, showing he traveled 400 miles, going, and 400 miles returning, in each instance, and shows he arrested Albert Rivas in LaGrange, showing it twice, on the 10th and 11th, and that he traveled 400 miles going and 400 miles returning, in each instance.

Q. When in truth and in fact, it is only 100 miles.

A. It is approximately 100 miles, and Bellville is in between; I checked that, too.

Q. And he would be entitled to 100 miles going and 100 miles returning, which would make a 200-mile charge?

A. Approximately.

Q. That won't miss it far, will it?

A. No, sir.

Q. That's all.

Cross-Examination.

Questions by Senator Page:

Q. I just wanted to ask you, in those cases you are speaking about, was there more than one case in Burleson county against these defendants?

A. More than one case against which defendant?

Q. Two cases against each defendant?

A. Yes.

Q. Then on that mileage, he charged for two trips, didn't he?

A. Double mileage, you say?

Q. Yes, that would be your idea about it?

A. Yes.

Q. And then if his contention was correct, that he was entitled to double, or duplicate mileage, he was entitled to 400 miles, instead of 200?

A. We would have approved that, if he had stated that he had one trip going to Wharton at 15 cents a mile, and in bringing one of them back, 30 cents a mile, together with the return fee on the other two.

Q. If the sheriff himself claimed, not what you agreed to, but if he claimed that he was entitled to duplicate mileage, the correct figures would have been 200 miles for going, and 200 miles coming back, which would have been 800, wouldn't it?

Note: * (Examiner probably meant "sheriff's account.)

A. If he actually made the trip.

Q. No, sir; what I am trying to bring out is that the sheriff, if he was entitled to duplicate mileage in each case, then he would have been entitled to 400 miles.

A. If he had been entitled to multiple mileage.

Q. That's what I am trying to bring out. From his standpoint, he would have doubled his mileage?

A. Yes.

Q. Now, Mr. Markham, this Committee you speak of, has been making quite a sweeping investigation in Texas?

A. Yes.

Q. I understood you to say while ago you sent out letters to every district clerk in Texas for a list of cases on his docket since 1925?

A. Yes.

Q. Do you remember about how many district clerks it was that you wrote to?

A. I don't remember how many there are, but we wrote to every one of them.

Q. There are something over 100, aren't there?

A. Yes.

Q. And you wrote to every one of them?

A. Yes.

Q. I will ask you if it is not a fact—we are charging Judge Price here with neglect of his duty in approving these sheriffs' accounts. Now admitting there are 100 judicial districts, and I think there are more, haven't you found that about half of the district judges in Texas have been guilty of the same practice?

A. No, sir.

Mr. DeWolfe: We object to that; we can't see that that is relevant to this matter. As I understand it, that's not material or relevant here.

Senator Page: As I understand the ruling of the Chair this morning, this is in the nature of an examining court, and we think we would be entitled to show that there were many other district judges in Texas that had been negligent in these matters, as well as Judge Price, and that no articles of impeachment had been filed against them.

Mr. Sturgeon: That's true, your honor.

The Chairman: As to what might be done by other district judges would not be a matter of inquiry at this time.

Q. I don't know whether you know anything about this or not, Mr. Markham, but the sheriff of Burleson county—have you any explanation from him, or do you know of any explanation from him as to his charges in the cases you read, as to why there's so much mileage there; has he explained that to you or to anybody you know of?

A. Not that I know of.

Q. You don't know about that?

A. Mr. Nichols had been over there making that investigation and he might have seen the sheriff; I don't know.

Q. You don't know, yourself, about that?

A. No, sir; I don't.

Q. Do you know whether or not the sheriff of Burleson county in making the arrest of Silva and Rivas and this other man, Davila, whether or not he made more than one trip to Bellville or to Wharton, in the arrest of those prisoners?

A. I do not. All I know is from reading these affidavits and statements.

Q. Your knowledge is purely from the affidavits?

A. Yes.

Q. You have no outside knowledge?

A. No, sir.

Q. I believe that's all.

Re-direct Examination.

Questions by Mr. Sturgeon:

Q. You are basing your statement on what the sheriff's account shows, and what the men have testified to that were arrested by the sheriff?

A. Yes, documentary evidence.

Q. All right, Mr. Markham, I am through with you on that point. You may put that report up. Now I want next to ask you about Section 5, as shown in the charges filed here against Judge Price, the same having reference to Clint D. Lewis, account Burleson county, November term, A. D. 1930. As stated before, I want to ask you and for the members of the Committee, the testimony next offered will be with reference to Sheriff Clint D. Lewis' account of Burleson county, of Judge Price's district, for the November term, 1930, shown by paragraph 5 in the charges. Mr. Markham, do you have this account with you, or the bill of costs?

A. I have the sheriff's expense account.

Q. When you speak of the expense account, that means the account that the sheriff is required to bill, that he is required to make out at the end of each term, to be made out by himself and signed by himself and by the judge, for services rendered in that term of court?

A. Yes, sir.

Q. Can you tell us when that report was signed by Sheriff Clint D. Lewis and approved by Judge Price?

A. It shows to have been signed December 12, 1930, by Clint D. Lewis, subscribed and sworn to before the district clerk on December 23, 1930, No, I beg your pardon—No, I am wrong, it is shown to be subscribed and sworn to on December 23, 1930.

Q. Is that the date that the judge's certificate appears to have been placed on there?

A. No, it shows the judge's certificate as of December 26, 1930.

Q. December 26, 1930?

A. Yes.

Q. I wish you would look at that account and see if it has the name of W. M. Hill, and a party by the name of J. A. Smith, claimed to have been arrested in Dallas, Dallas county, Texas?

A. Yes. I checked this sheet against the expense account.

Q. All right.

A. It shows in Cause No. 3956, W. M. Hill, charged with theft, and arrested in Dallas on June 28, 1930; 200 miles at 15 cents going and 200 miles returning at 30 cents, a total of $90.

Q. All right. Now, then, do you have a man on there by the name of J. A. Smith?

A. Cause No. 3957, J. A. Smith, for felony theft, arrested in Dallas June 27, 1930; 200 miles going at 15 cents and 30 cents returning, 200 miles, a total of $90 for mileage; and also in Cause No. 3958, J. A. Smith, charged with felony theft, arrested in Dallas June 27, 1930, 200 miles at 15 cents going and 200 miles at 30 cents returning, a total of $90.

Q. Do you have A. J. Rayford?

A. Case No. 3960, A. J. Rayford, arrested in Dallas June 26, 1930, 200 miles at 15 cents going and 200 miles at 30 cents returning, a total of $90 for mileage.

Q. What is the total charge in that bill for the arrest of these men on these dates in Dallas, and transferring them to Caldwell in Burleson county?

A. There is one case against W. M. Hill, two cases against J. A. Smith, two cases against Rogers and one against Rayford, which makes six trips at $90 each, or a total of $540 that's just for the mileage.

Q. That's for the mileage charged by the sheriff ?

A. Yes.

Q. Can you tell us from that account what those men were charged with?

A. Felony theft.

Q. Do you have any statement from these men, or other evidence of the truthfulness about it?

A. I do not have from these men. I have an affidavit or statement, I forget which, from the deputy that went to Dallas after them, and from the attorney for the defense that brought the two men back, and also from a detective in Dallas that made the arrests.

Q. All right. I wish you would lay your hands on those. Before you get to them, from that sheriff's account or bill, as approved by the judge, how many trips is it claimed that the sheriff made to Dallas for these three men, and how many separate charges were made for services in making those arrests?

A. The charges were made for going to and returning from Dallas six different times to arrest them, which actually turned out to be two individuals.

Q. Which finally, on investigation, you found to be just two men?

A. Yes, and I also have an affidavit from W. M. Hall, who is in the penitentiary.

Q. Now, I will get you to read those. Get them ready for Mr. Dunn so he can read them. Mr. Stenographer, we want to introduce in evidence, I want to have it understood, Mr. Speaker, that these statements that are being offered here in evidence are the statements that have been taken by the Committee.

Thereupon the statement of W. M. Hall was read into the record, and is as follows, to-wit:

"Huntsville State Prison,
"Huntsville, Texas, July 3, 1931.

"Voluntary statement made by 67,-162, W. M. Hall, an inmate of the Texas Prison System, and now located at Huntsville, Texas.

"On June 28, 1930, I was arrested

by City Detective Wood of Dallas, Texas, and at that time A. J. Rogers, alias A. J. Rayford, was arrested. We were placed in the Dallas jail and I understood that I was charged with swindling and cow theft. I think that Rayford, or Rogers, was similarly charged. We were released on the same day, June 28, 1930, to Deputy Sheriff Wood of Burleson county. We were both transferred from the Dallas county jail on the same day and at the same time to Caldwell, Burleson county jail. I was released to Sheriff Tom Sikes, of Smith county, about the 30th day of June or the first of July, and was transferred by him to the Smith county jail at Tyler. I was the only prisoner transferred by Sheriff Sikes at that time. I was tried in Smith county and plead guilty to a charge of forgery and received two years in the State penitentiary. I was transferred from Tyler, Smith county, to the Prison System. On June 4, 1931, I was released on a bench warrant from the Central State Prison Farm, Sugarland, Texas, to Sheriff Lewis of Burleson county, and on the same day and at the same time a negro prisoner, I do not know his name, also an inmate of the Central State Farm, was delivered on bench warrant to Sheriff Lewis, of Burleson county. We were transferred at the same time, on the same day, and in the same car, to the Burleson county jail at Caldwell, Texas. I was tried on June 8, 1931, on two counts, one for forgery and one for cow theft. I plead guilty to these charges and was assessed two years in each case. I did not have any witnesses summoned to testify in my behalf in these cases. I was returned to Burleson county by the sheriff at my request to the Huntsville Prison on June 16, 1931.

"T. K. Irwin, of Dallas, Texas, was counsellor for A. J. Rogers, alias A. J. Rayford, and procured his release from the Burleson county jail on June 29, 1930, on bond, and he also procured his release from Smith county jail on bond. Of my own knowledge, I do not know the whereabouts of the said Rogers, alias Rayford, but have been informed that he is now an inmate of some Federal penitentiary.

(Signed) "W. M. Hall.

"Before me, a notary public in and for Walker county, Texas, appeared the above W. M. Hall, known to me to be the man whose name is subscribed to the foregoing statement and he deposes and says that the statement is true to the best of his knowledge and belief.

"Signed, T. L. Moore, Notary Public in and for Walker county, Texas."

Q. Now, do you have Mr. Irwin's statement, or any of those other statements there. I will get you to read the statement, Mr. Dunn.

Thereupon, the Reading Clerk of the House read the following statement from T. K. Irwin, which is as follows:

"Dallas, Texas, July 3, 1931.

"Hon. John P. Huddleston, State Ranger, Austin, Texas. Dear Sir: Answering your inquiry of July 2d in reference to the matters in connection with one A. J. Rayford, and one Hill, alias Smith, please be advised that some time last summer, I believe the latter part of June, while in the practice of law, I was employed by A. J. Rayford to represent him in some felony cases at Caldwell, Texas.

"Mr. Rayford was arrested in Dallas and as I recall, by Mr. Cleve Wood, of the Dallas detective department. He later arrested Hill, alias Smith. As I recall, the prisoners were delivered to Mr. S. Wood, a constable of Caldwell, Texas, by his brother, Cleve Wood.

"Only Mr. Wood and his two prisoners accompanied me in my automobile to Caldwell, Texas, we arriving at about 4 o'clock in the morning, and I was present when Mr. S. Wood delivered his prisoners to the county jail in Caldwell, Texas.

"Trusting this is the information desired, I am, Yours very truly,

(Signed) "T. K. IRWIN."

Question by Mr. Sturgeon:

Q. Now, Mr. Markham, what is the next statement that you have there?

A. The statement of C. R. Wood, city detective of Dallas, Texas.

Q. That is the man who made the arrest of these two men in Dallas?

A. Yes, sir.

Thereupon, the Reading Clerk of the House read the statement of C. R. Wood, which is as follows, to-wit:

"Dallas, Texas, July 3, 1931. State of Texas, county of Dallas.

"Before me, the undersigned au-

thority on this 3d day of July, 1931, personally appeared C. R. Wood, who after being by me duly sworn deposes and says: My name is C. R. Wood. I reside at No. 5431 Melrose street, Dallas, Texas. I am employed as a detective by the city of Dallas. Have been in this position about eleven years. On or about January 27, 1930, I received information from my brother, S. S. Wood, constable at Caldwell, Burleson county, Texas, that he held warrant for J. C. Rayford, alias Rogers, J. H. Smith, alias Hall or Hill, and requested me to locate, apprehend, and hold these men and notify him and he would come up after them. I apprehended these men and placed them in the Dallas city jail and notified my brother and he came to Dallas next day after them and I turned these men over to them and he left Dallas with them for Caldwell, Texas. They left Dallas in the auto of T. K. Irwin, an attorney of Dallas. There was no one in the auto except Mr. Irwin, my brother, S. S. Wood, and the two prisoners. I am sure Clint Lewis, sheriff of Burleson county was not with S. S. Wood on this trip.

(Signed) "C. R. WOOD.

Sworn to and subscribed before me, a notary public in and for Dallas county, Texas, this 3d day of July, A. D., 1931.

(Signed) "HARRY T. RIDDELL,
(Seal affixed) "Notary Public."

Mr. Sturgeon: We offer in evidence, Mr. Chairman, the statements and affidavits as read to the Committee.

I want to state to the Chair that just in a moment we will have here another statement of the transcribed testimony that will be here in just a moment, as the young man has gone after it.

The respondent called H. D. Mahaffey, who was first duly sworn by the Chair, and testified as follows:

Direct Examination.

Questions by Mr. Sturgeon:

Q. Mr. Mahaffey, what are your initials, please?
A. H. D.
Q. Where do you live?
A. I live in Austin.
Q. What business are you engaged in?
A. I am official Court Reporter of the Thirty-third Judicial District of Texas.
Q. You are official Court Reporter and are Official Reporter of the proceedings of this hearing?
A. Yes, sir.
Q. Did you or not report the proceedings of the grand jury session which was held here in Austin in reference to the examination of these officers?
A. I did.
Q. And did you reduce that testimoney to writing?
A. In narrative form?
Q. Narrative form?
A. Yes, sir.
Q. Were you sworn at the time you took the testimony?
A. I was.
Q. And do you have the testimony that the witness by the name of C. R. Wood, constable of Burleson county, before you there?
A. Yes.
Q. What are his initials? I might be mistaken.
A. I have the testimony here of S. S. Wood, of Burleson county, Texas.
Q. All right.
A. Who was supposed to have been a deputy sheriff and also formerly a constable of that county.
Q. Mr. Mahaffey, I don't know whether you want to use that statement or can read it or not.
A. I will be glad to read it if you want me to.
Q. Well, Mr. Dunn can read it there and save you that trouble; I am sure you are tired.

(Witness excused.)

Thereupon the statement of S. S. Wood, taken before the grand jury of Travis county, was read into the record by the Reading Clerk of the House, and is as follows, to-wit:

"My name is S. S. Wood. I live in Burleson county, Texas, and have lived there all of my life. I am deputy sheriff and have been constable. I was a constable from 1924 up until 1930. I was a deputy sheriff from 1922 up until 1924. I know Mr. Lewis, the sheriff of Burleson county, and worked under him. I know a man by the name of Smith, or Rogers, or Smith and Rogers, whom I went to Dallas after. There were two of these men. The right name of one of them was Rayford and the

other was Hall, but the grand jury indicted them under the names that you have called. That is, under the names of Rogers and Smith. These men were arrested on June 28, 1930, at Dallas, Texas. I arrested one of them and the officers in Dallas arrested the other. They were, after their arrest, only put in jail for a short time. They were merely placed in the jail there for safe-keeping until we were ready to bring them back, and these men were only arrested one time. These men were arrested on a charge in connection with a cattle deal wherein some men had lost some cattle and they had gotten away with the money. I had an arrangement with the men who had lost these cattle that they would give one-third of the amount of money that was recovered, that is, the money that they had been swindled out of. I think it was $500 or $600. There were three different people that they bought cattle from and they had agreed to pay this amount for getting these men back and the recovery of their money. After these men were brought back from Dallas they were placed in the Burleson county jail. They were not arrested until after the grand jury had indicted them and then I brought them back to Burleson county. These men were tried and Hall is now in the penitentiary. He is the man who was indicted under the name of Smith. The other man is supposed to be Rayford. Mr. Lewis gave me $25 apiece for bringing these men back from Dallas. I went to Dallas on the train after these men and came back in an automobile. We returned to Burleson county in Mr. T. K. Irwin's car. He brought us back in order to try to make bond for these men at Caldwell. I do not know anything about whether or not those men were ever arrested again in Dallas. When they brought those fellows back to Caldwell they had a forgery case against Hall in Tyler, and the sheriff went from Caldwell over to the penitentiary after him when they got ready to try him. The sheriff went from Caldwell to Huntsville after this man when they were ready to try him as he was then in the penitentiary. When I brought these two men back from Dallas I brought them back in the same car and on the same trip. The man Rayford made bond in Caldwell, but Smith never did make bond. He was carried from Caldwell to Tyler. What I got out of going after these two prisoners was $50, and I paid my own expenses. My brother's initials, the brother who is on the police force in Dallas, are C. R.—C. R. Wood. I went after these men in the latter part of June. I do not know the exact date. That was in 1930. I never testified as a witness in these cases, and did not know anything about the cases other than what I have stated. They had me summoned as a witness, but I was never used. The fellow plead guilty.

"These two prisoners were actually brought back in the same car at the same time from Dallas and placed in the jail at Caldwell. Mr. T. K. Irwin was in the car and he is a lawyer who lives in Dallas. One of them made bond in Caldwell, but the other never did make bond. They recovered all of that $560. I got one-third of that; my deputy sheriff and constable's commission expired in 1930. There was another fellow elected."

Thereupon T. M. Markham was recalled and testified on direct examination by Mr. Sturgeon:

Q. Now, Mr. Markham, referring to this statement that has just been read relative to these men that were arrested by this constable, as the statement has just been read, I want you to refer to the sheriff's account upon that issue and see what the total amount of charges was made by the sheriff for arresting these men in Dallas and transferring them to Caldwell in Burleson county, Texas.

A. This account shows that there were six trips made to Dallas, 200 miles going and 200 miles returning each way, in each of the six cases, three men were charged—in each of the six cases $3 was charged for arresting, traveling 200 miles at 15 cents per mile, $60, going, and for traveling 200 miles at 30 cents coming back, a total in each of the three cases of $93 each, which aggregates a total of $558.

Q. Now, after the account was audited and after you discovered that there were only two named defendants and that they were in truth and fact brought back in an attorney's car from Dallas by the constable of Burleson county and delivered to the sheriff, what was the discrepancy with reference to the charges made by the sheriff in his account and which was approved by Judge Price?

A. Figuring the mileage one way

at 15 cents per mile and returning with one prisoner at 30 cents per mile would be $60, and with each additional prisoner an extra allowance of 8 cents per mile would be 16 cents per mile and would make a total of $106, granting that there were all of them brought back at the same time, as disclosed by the testimony, it would make a total of $124. He charged for that service $558, which would have been $434 discrepancy, or overcharge.

Q. Has this account been paid to the sheriff of Burleson county

A. It has.

Q. It is the same account as presented to the Comptroller for the November term of court, 1930?

A. It is.

Q. And in this account a warrant was drawn against the Treasurer of this State for payment of this account by the State Comptroller for that amount?

A. Yes, sir.

Q. What is that you have in your hand?

A. A photostatic copy of Warrant No. 41290 in the amount of $2140.25, payable to Clint D. Lewis, Caldwell, Texas, and the records of the Treasury Department show that it was paid on January 30, 1931.

Q. Is the check indorsed by Sheriff Clint D. Lewis?

A. I shows to have been indorsed by Clint D. Lewis and paid to the Caldwell National Bank.

Q. I do not care about the bank indorsement. Does it appear to have the indorsement of Clint D. Lewis?

A. It has.

Q. Has the photostatic copy of the check—does it show to have been paid by the State Treasurer?

A. Yes, sir.

Q. There was no deficiency warrant issued for it at the time it was paid?

A. It was paid on a regular appropriation.

Q. Then, as I understand your testimony, the sheriff collected and received on the services purported to have been rendered in arresting, in making the arrests, in six cases, these two men, in which he was paid $434 more than he was entitled to under the law?

A. That is the way I figure it.

Q. Mr. Markham, I believe that is all I care to ask you.

Cross-Examination.

Questions by Mr. Page:

Q. Mr. Markham, this account that you speak of for going to Dallas after these witnesses. I notice there is one here that states in the sheriff's claim that he traveled 200 miles going to and returning from Dallas and at 15 cents a mile that would be $30. It is about 200 miles from Caldwell to Dallas?

A. To tell you the truth, I did not check the miles because in my mind the figure shown in the mileage was about correct. It would not run very much over that or very much under it.

Q. In your judgment, then, 200 miles is about right?

A. Yes, sir.

Q. There was nothing on the face of that account to call your attention or to call the attention of the district judge to the fact that he did not travel that 200 miles going after those prisoners, and that that was not right?

A. There was nothing in that one item alone to call to my attention or to the attention of anyone else, I would say, that that was not correct.

Q. Then there was nothing on the face of that claim, on that particular claim, that called the attention of the district judge to the fact that that was not correct and that he did not travel 200 miles in going after those prisoners?

A. I do not know. I did not try that case. I was not present at the trial of the case, did not try the case and I, if you want me to, would give you my opinion on that.

Q. I would like for you to do so.

A. I do not believe I could give you an opinion on it.

Q. Could not you say whether or not there was anything there to call your attention to any irregularity or not?

A. I could not tell you —

Q. (Interrupting) Just a minute, please. We are trying to understand each other. I am not trying to confuse you. I am not trying to get you into any trouble. What I want to ask you—what I am trying to get at is whether or not there was anything on the face of this statement that the sheriff of Burleson county traveled 200 miles going to Dallas and returning from Dallas which a man would question. As an auditor, and I understand you are one, would

you say that there was anything on the face of that statement that would indicate that he did not travel 200 miles in going to Dallas and in returning from Dallas in making that arrest?

A. If he had just that one account before him, if he had just that one sheet before him, and did not have any other, and did not know any other facts in connection with the case, I do not know that a man would be likely to notice a thing of that kind or that there was anything that would cause him to look a second time.

Q. That is the question I was going to ask you. Now, another thing, in the account showing the arrest of A. J. Rayford on the 24th day of January, 1930, in which the sheriff says he traveled 200 miles to Dallas and 200 miles back, there would be nothing in that statement, taken by itself, to call anything irregular to the attention of anyone?

A. If he had only that one sheet before him I would say no. But there were two sheets in that expense account for traveling to Dallas and back for the same parties.

Q. But there would be nothing in that particular sheet, just that one sheet alone, to call any irregularity to anyone's mind?

A. No, sir.

Q. Now then, in the case of W. M. Hill, or Hall, I believe you say, it is Hall, the sheriff's claim shows that he traveled 200 miles going to Dallas and 200 miles returning, there would be nothing in that one sheet to indicate any irregularity, would there?

A. No, sir, not on that one sheet alone.

Q. Now then, we have another sheet that shows the sheriff claims that he traveled to Dallas and arrested this defendant on a different day, that is, arrested J. H. Smith, and in doing so he traveled 200 miles going and 200 miles coming back, that would be in the same category that we have been talking about, would it not?

A. Yes, sir. If he had only the one sheet before him, but he had the whole account before him and if I had had the whole account before me I could not have done otherwise than to have noticed the discrepancy.

Q. I am not asking anything about that.

A. If I had that one sheet I could not see that there was anything that I would question as far as the arrest.

Q. And the mileage is approximately correct?

A. I think so.

Q. Have you examined the law to ascertain whether or not if the sheriff went from Caldwell in Burleson county to Dallas, Dallas county, and returned a prisoner by private conveyance whether or not he would be entitled to his mileage just the same as if he traveled by train and returned the prisoner?

A. I may say that we are approving the account, or rather the State Auditor is approving the account when the trips are made by private conveyance he would be allowed 15 cents per mile going and 30 cents per mile returning one prisoner, and 8 cents per mile each for every other prisoner he might have returned in the car at the same time.

Q. What would he have been entitled to if he had returned them on the train?

A. I forget now.

Q. It would be practically the same, would it not?

A. I believe it is. It is 20 cents a mile for returning prisoners on railroad and 10 cents a mile for each additional prisoner.

Q. That is your understanding about it?

A. Yes, sir.

Thereupon, the cross-examination was closed.

Re-direct examination by Mr. Sturgeon:

Q. You could not, if you had had just one sheet before you, as an auditor, with one man's name on it, showing that the sheriff had traveled so many miles, with the statement that he had necessarily traveled that day to make an arrest, swear to it, as has been done in this case, is that the way I understand your testimony, and your statement of it?

A. If I had only that one account before me and had not had any other account, I judge I would have approved the account in that way.

Q. You could not have discovered that without investigation?

A. No, sir, I do not believe I could. If I had that account in connection with the other portions of the account before me I believe that I could.

Q. How would you have been able to have done that?

A. I would have been able to have discovered that by looking at the recapitulation.

Re-cross examination by Mr. Page:

Q. Since you have been questioned by Mr. Sturgeon on that matter, I wish to ask you one more question, please?

A. Yes, sir.

Q. I believe that you have stated that warrant No. 41290 was issued to Clint D. Lewis for $2,120.45 and I wish to ask you now whether or not that has been paid?

A. Yes, sir. It shows to have been paid on January 30, 1931.

Q. I want to read you the law pertaining to this item as passed by the Forty-first Legislature covering appropriations for the Comptroller's Department, judiciary, as found on page 495 of the Acts of the Forty-first Legislature, Third Called Session, which is as follows: "Provided that no account against the aforesaid items of witness fees, county attorney, justice of the peace, and sheriffs and constables, fees and costs of sheriff, attorneys, and clerks in felony cases, shall be binding as an obligation against the State of Texas until after such account has been examined, audited, and approved by the State Comptroller, and no such account shall be paid by the State Treasurer until the same has been so approved by the Comptroller." Now did this account of Sheriff Lewis that has been brought into question here, did that account show to have been approved or disapproved by the Comptroller, or any portion of that account?

A. No, sir, there is nothing that shows that this account was disapproved in any way.

Q. Then, according to the record, there is nothing to show that there was any disapproval of any item in that account?

A. He issued a warrant for it.

Q. The warrant that I have in my hand is a photostatic copy of it?

A. Yes, sir.

Q. Who is it signed by?

A. There is the signature of W. Gregory Hatcher, I do not know whether it is the signature, but it is signed by W. Gregory Hatcher, and it is also signed by George H. Sheppard.

Q. Read the balance of Mr. Sheppard's signature.

A. State Comptroller of Public Accounts, below.

Q. And does that check show the indorsement—does that warrant show that it was paid on this account, according to the records?

A. I cannot interpret that law. You will have to interpret that law. That may be some general law covering that matter.

Q. If there is no additional law on that matter, then I take it that that would be a fact?

A. If that was put up to me I would go to see a lawyer and see what he thought about it, and I would take his advice.

Q. You know that the Legislature has the perfect right to make such limitations on these appropriations that it makes that it sees fit. You know that, don't you?

A. I do not know. I know that a deficiency—I know that the deficiency warrant which you are talking about and which was issued by the Comptroller, shows that on its face that there has not been any appropriation made by the Legislature to cover that particular item, and that deficiency warrant cannot be paid until the Legislature makes appropriation for the same.

Q. Nevertheless, as far as this record is concerned, that has been submitted to you, the warrant was issued by the Comptroller, and there is nothing in that record that shows that they disapproved any of the accounts?

A. You are correct.

Re-direct Examination.

Questions by Mr. Sturgeon:

Q. But the account that is signed by the Comptroller, and which you have been testifying about, that is, this deficiency warrant, was signed by the Comptroller and the account on which that deficiency warrant was issued was approved by the district judge, was it not?

A. The name of J. B. Price appears on the accounts.

Q. What the law is with reference to that matter you have had no concern about and paid no attention to it?

A. No, sir.

Q. Mr. Markham, I next want to take up and go into the matter that is shown by Charge No. 6, wherein it is charged that the said J. B. Price, while acting as judge of the Twenty-first Judicial District, certi-

fied to and approved the account of Clint D. Lewis, sheriff of Burleson county, Texas, for the November, 1930, term of court for subpoenas on four different men to testify as witnesses against two defendants, and said witnesses named, together with the dates it is claimed by this sheriff that they were actually summoned will respectively appear as follows:

Herman Opperman, Jr., six times, November 20, 1930, traveling a total distance on one date of 180 miles in serving subpoenas on this same man in the same county purported to be in six cases.

The next witness was Ed Sabotik. It was claimed by said sheriff, and certified to by the court as being correct, that he subpoenaed by personal service six different times on November 20, 1930, by traveling 180 miles.

The next witness purported to have been summoned six times was Will Opperman, claimed to have been personally served on November 21 six different times by traveling a total of 180 miles and the next witness was Gus Jahns, purported to have been summoned, as shown by the sheriff's account and as approved by the said J. B. Price, on November 22, 1930, at six different times, traveling 180 miles, in serving that witness.

Does that report reflect that the service was performed?

A. Those are the facts as you have read them and as shown by the sheriff's expense account.

Q. It is true, then, that those accounts, as rendered by the sheriff, were approved by Judge J. B. Price for the November term of the Burleson county district court?

A. Yes, sir.

Q. I wish you would turn to the back of that account and see what the indorsement is made on the back of this return, or fee account, and show by whom it is purported to have been signed.

A. I have the figures here that were taken off in my handwriting and the figures have been checked.

Q. Do you have—have you checked those figures yourself?

A. I have checked them and can swear to these figures.

Q. Have you a statement from these witnesses, or not?

A. Yes, sir.

Q. You have those statements?

A. Yes, sir.

Thereupon R. V. Nichols, being duly sworn by the Chair, testified as follows:

Examination by Mr. Sturgeon:

Q. Your name is R. V. Nichols?

A. Yes, sir.

Q. And I believe that you have testified that you were assisting in the examination made before the Senate Finance Investigating Committee?

A. Yes, sir.

Q. And were also assisting the Comptroller's office?

A. Yes, sir.

Q. I want to ask you if you made any investigation and went into the matter and saw some people who lived in Burleson county, Texas, purporting to have been witnesses in such cases, and to having been subpoenaed as witnesses on six different times in one day?

A. I did.

Q. Have you those statements reduced to writing?

A. I have.

Q. I will get Mr. Dunn to read those statements into the record, and you can show him about each one of these statements as they appear.

Thereupon the Reading Clerk of the House read into the record the following statement of Gus Jahns, to-wit:

"June 29, 1931. Verbal statement of Gus Jahns, P. O. Lyons, Route 1. My name is Gus Jahns. I live about four miles west of Lyons in Burleson county. I have lived in this county thirty-five years.

"On or about November 22, 1930, a deputy sheriff by the name of Bates came to my house and told me that he had a subpoena for me as a witness in the A. J. Rogers case. This was the only time that any officer said anything to me about appearing as a witness in any case. I was never subpoenaed but the one time and in the one case. I am positive about this.

"Mr. H. Opperman, Sr., H. Opperman, Jr., Will Opperman and Edmund Sabotik, all sold J. H. Smith some cattle. Smith gave us checks on a Houston bank which were turned down. Later, A. J. Rogers and Smith were indicted by a Burleson county grand jury. S. S. Wood, constable of Caldwell, told us that he would collect our money for one-third the amount Smith and Rogers owed us.

Woods told us that he arrested Smith and Rogers at Dallas and brought them back to Caldwell, in Burleson county. When their cases were called at Caldwell, A. J. Rogers paid back all the money that the checks had been given on back to the district attorney and he in turn paid us our money, and we in turn paid S. S. Woods, constable, one-third of the amount received. The case was then dismissed.

"I want to say again that I was never subpoenaed but one time and in only one case and that was in the A. J. Rogers case, all of which I will swear to before any court of inquiry or grand jury.

(Signed) "GUS JAHNS.

"Signed in the presence of R. V. Nichols, J. P. Huddleston."

Thereupon the verbal statement of Herman Opperman, Jr., P. O. address, Lyons, Texas, was read into the record by the Reading Clerk of the House, same being dated June 29, 1931.

"My name is Herman Opperman. I live about seven miles west of Lyons, Burleson county, Texas. I am 44 years of age and lived in Burleson county 29 years.

"On or about November 20, 1930, a deputy sheriff by the name of Bates came to my home late in the afternoon and said he had a summons for me to appear as a witness in the A. J. Rogers and J. H. Smith cases at Caldwell. This is the only time any officer of any kind has subpoenaed me in any such cases. I have read the statement made by Mr. Gus Jahns and can truthfully state to the best of my recollection he stated the facts with reference to our agreement with S. S. Wood, constable of Caldwell, and also as to my understanding with reference to Wood going to Dallas and bringing Smith and Rogers back to Caldwell.

(Signed) "H. OPPERMANN, JR.

"Signed in the presence of R. V. Nichols, J. P. Huddleton."

Thereupon, T. M. Markham, being recalled, testified as follows:

Examination by Mr. Sturgeon:

Q. Mr. Markham, I want to ask you in reference to that account, again, please, in reference to these witnesses, and in reference to the statement that was just read into the record. Please state to the Committee what it showed as to the number of times Mr. Oppermann was subpoenaed and as to the number of times Gus Jahns was subpoenaed and the number of miles traveled in performing that service.

A. Yes, sir, the account shows that on November 20, Herman Oppermann, Jr., was subpoenaed six times in those six cases, which have just been mentioned, and charged in each instance traveling 30 miles, or a total of 180 miles.

Q. What is the total charge for that service that he performed on that day?

A. In cause No. 3956 it shows that on November 20, 1930, H. Oppermann, Jr., a charge of 50 cents for service, traveled 30 miles in a southwest direction from the courthouse, and his charge for that service was $3.

Q. How many times does that account show that he was subpoenaed on the same day?

A. Six times.

Q. What is the total number of miles that he had charged in his account for the service of that—for the performance of that service?

A. 180 miles.

Q. Of course, you are talking about a man who lived in the county of Burleson, and who was subpoenaed to testify in those two cases?

A. Yes, sir.

Q. Please state whether or not those are the same men, that is, the defendants in the case, wherein they were arrested in Dallas and brought back to Burleson county by Constable S. S. Wood.

A. They are.

Q. You have on that account the name of Herman or Henry Oppermann?

A. That is the man that I have testified about, Herman Oppermann, Jr.

Q. I want to know how many times the record of the sheriff shows he was subpoenaed, and the number of miles that the sheriff claims to have traveled in performing that service?

A. That is the same man that I have just testified about. Here is one here, for subpoenaing Herman Oppermann, Jr. It shows he was subpoenaed six times on November 20, 1930, traveling 30 miles in each instance, with a total charge of 180 miles.

Q. I wish you would look at the name of Gus Jahns.

A. Yes, sir, I have that before me.

Q. Tell the Committee how many times that account shows he was subpoenaed in Burleson county, the number of miles traveled, and the date that service shows to have been performed on that party.

A. November 20, 1930, he shows to have been subpoenaed six times, traveling 30 miles in each instance, and a total of 180 miles.

Q. All of this testimony you are giving to the Committee is with reference to the account signed by the sheriff and approved by the district judge for the November term of court of Burleson county for the year 1930?

A. Yes, sir, it is.

Q. Then, as I understand it, your testimony has reflected from that report that I have been asking you about the sheriff claims to have traveled or made six trips on one day, and to the same community, and to have summoned the same men six different times, or in six different cases?

A. That is what it shows, that is what the record shows.

Q. When, in truth and in fact, there were only two men involved in these cases that—wherein they were subpoenaed as witnesses?

A. Yes, sir, that is correct.

Q. Could you tell us from that report what the total amount of money was demanded for the purported service of the sheriff in subpoenaing these six men six different time on this date?

A. It would aggregate $18 against each of the men.

Q. In other words, it would be an $18 charge for subpoenaing each of those witnesses?

A. Yes, sir.

Q. The fact is, that that is what the sheriff was paid for?

A. Yes, sir, it is.

Q. Now, then, I want to ask you, Mr. Markham, if you have read the charges here shown in Charge No. 7 with reference to the sheriff's account for Burleson county, for the November term, for services claimed to have been performed for arresting a defendant by the name of Odies DeHart in Bryan, Texas. I will get you to look at this account and see what charge was made by the sheriff in arresting the defendant by the name of Odies DeHart in Bryan, Texas, and when he was arrested in 1930?

A. The expense statement shows for the November term, 1930, in Cause No. 3962, Odies DeHart, charged with robbery, arrested in Bryan, Texas, on June 30, in which a total charge of 50 miles going and 50 miles returning from Bryan, the 50 miles going being at 15 cents per mile and the 50 miles returning at 30 cents a mile, or a total of $22.50 for mileage. In Cause No. 3963, Otis DeHart, charged with robbery, on June 6, 1930, 50 miles going at 15 cents per mile and 50 miles returning at 30 cents per mile, making a total of $22.50.

Q. Well, as I understand the account, it is that DeHart was arrested twice on June 6th in Bryan, and transferred from Bryan to Caldwell, in Burleson county?

A. Yes, sir.

Q. And there was a claim made for that service and that claim was paid?

A. Yes, sir.

Q. I will ask you if you have any statement or any testimony in addition to your personal knowledge with reference to Odies DeHart, in reference to this service?

A. I do—just a moment; I have an affidavit from Odies DeHart and Harold White.

Q. All right. Is Harold White—where does the account show he was purported to have been arrested?

A. It shows case 3964, Harold White, arrested in Bryan, June 15th, 1930, 50 miles at 15c, and 30c return, $22.50. Case No. 2355, Harold White, Bryan, Texas, June 6th, 1930, 50 miles at 15c going, returning 30c, total $22.50.

Q. In other words, the sheriff's account shows these two men were arrested on June 6th, the same year, in Bryan, and were transferred from Bryan to Caldwell, in Burleson county?

A. Yes, sir.

Q. And they are all separate charges for four arrests, as I understand it?

A. Yes, sir.

Q. Do you have DeHart's statement here?

A. I have both DeHart and White's statements, the jail records of Brazos county, in which they were at the time of that purported arrest.

Q. All right. Just a minute, I will ask you about that jail record.

Bryan is the county seat of Brazos county, isn't it?

A. Personally, I don't remember—I can tell in a minute.

Mr. Page: Yes, Bryan is the county seat.

Q. Well, I understand it is. Yes, here is the sheriff's letter here, which shows.

Q. All right, give those things to Mr. Dunn. (To Mr. Dunn): You will read it, please.

The clerk thereupon read the paper as follows, to-wit:

"The State of Texas, County of Bell.

"Before me, the undersigned authority, a notary public in and for Bell county, Texas, on this day personally appeared Odies DeHart and Harold White, who after being by me duly sworn, upon their oath deposes and says:

"Our names are Odies De Hart and Harold White, and are now confined in the Bell county jail at Belton, Texas; our homes are at Bryan, Texas, and Bryan, Texas, respectively.

"We were in the Brazos county jail on May 5th, 1930, and remained there until we were transferred to Cherokee county, where we stayed a short time; then we were transferred back to the Brazos county jail, where we stayed for some time, when we were transferred to the Wise county jail, where we were convicted in January, 1931.

"At no time were we ever in a Burleson county jail, and at no time were we ever arrested by a Burleson county officer of any kind, and at no time were we ever transferred by any officer from Bryan, Texas, or any other place, to Caldwell in Burleson county. All of which we swear to.

"(Signed) ODIES DeHART.
ODIES DeHART.

"(Signed) HAROLD WHITE.
HAROLD WHITE.

"Subscribed and sworn to before me, a notary public, on this the 1st day of July, A. D. 1931.

"(Signed) ALBERT McKAY, Jr.,
"Notary Public in and for Bell County, Texas.

"(Seal)

....."

The clerk read the following letter:

"J. H. Reed,
Sheriff Brazos County,
Bryan, Texas.

June 30, 1931.

"Hon. J. W. E. H. Beck, Chairman, Senate Investigating Committee, Forty-second Legislature, Austin, Texas.

"Dear Sir: In accordance with your request of June 27 by letter, and the visit here today of your Messrs. R. V. Nichols and J. P. Huddleston, I am furnishing you the following information taken from the jail record book of Brazos county, Texas, with reference to two prisoners, Odies DeHart and Harold White:

"Both Odies DeHart and Harold White arrested by my office on Brazos county warrants and jailed in Bryan, in the Brazos county jail on May 5, 1930. Remained in jail until July 18, 1930, when they were both delivered to officers of Cherokee county, Texas, on bench warrants issued from Rusk.

"On October 21, 1930, on bench warrants from Brazos county, sheriff of Brazos county went to Rusk, Cherokee county, Texas, and returned both of these prisoners to Bryan, Brazos county, Texas, and lodged them in the Brazos county jail, where they remained until October 23, 1930, as below.

"On October 23, 1930, both of these prisoners were turned over to officers from Wise county (Decatur) and were taken from Bryan to Decatur, where they both were given penitentiary sentences. I understand they were shipped directly to Huntsville from Decatur, but have no formal record of this later transfer.

"This is a complete statement of the record of the above-named prisoners; they were never turned over to any other officers, and were not arrested by any other officers since our first arrest of them, more than is stated above.

"I officially certify to the correctness of the above and foregoing statements at my office in Bryan, Brazos county, Texas, this 30th day of June, A. D. 1931.

(Signed) "J. H. REED,
"Sheriff, Brazos County, Texas."

The clerk thereupon read the following affidavit:

"The State of Texas,
"County of Brazos.

"I, Jess B. McGee, Clerk of the County Court in and for Brazos county, Texas, do hereby certify that the commissioners court record shows that the board bill of Odis DeHart and Harold White was paid to J. H. Reed, sheriff of Brazos county, Texas, for feeding said prisoners in the Brazos county jail, from May 30, 1930, to July 18, 1930, inclusive.

"Witness my hand and seal of office this the 30th day of June, A. D. 1931.

JESS B. McGEE,
"Clerk, County Court, Brazos County, Texas.

"By (Signed) Mrs. L. P. Newton.
(Seal.) "Deputy."

Mr. Sturgeon: Let me have that last statement you just read, please, sir, and get that warrant, Mr. Markham, up there.

Q. I want you to refer to that account and see if that shows the services rendered by the sheriff with reference to Odies and see what date it is claimed that Odies DeHart was transported from Bryan to Caldwell in Burleson county?

A. June 6, in each instance.

Q. As I understand it, this statement from the county clerk of Brazos county shows that the man was in the Brazos county jail from May 30, 1930, until July 18, 1930?

A. Yes, sir.

Q. I want to ask you to state to the Committee what the account of the sheriff shows with reference to the date that Odies DeHart was transferred from Bryan, Texas, to Caldwell, in Burleson county, Texas.

A. June 6th, 1930.

Q. All right. Now, then, what statement is that I just handed to you there?

A. There is a statement of Jesse B. McGee, clerk of the county court of Brazos county, as taken from the commissioners court record of said county.

Q. All right; read it, please.

A. (Reading):

"The State of Texas,
"County of Brazos.

"I, Jess B. McGee, clerk of the county court in and for Brazos county, Texas, etc."

Q. All right. Now, I will ask you, taking the sheriff's account on that that you have before you—that affidavit—the county clerk's affidavit of Brazos county, shows that Odies DeHart was in the Brazos county jail and remained there until in July, when it is claimed by the sheriff, Clint D. Lewis, that he arrested him in Bryan and transferred him to Caldwell in Burleson county on June 6th?

A. Yes, sir.

Q. I believe that is all.

Cross-Examination.

Questions by Mr. Page:

Q. Mr. Markham, these sheriffs' claims for subpoenaing this witness which you have been reading statements about and transferring prisoners, they are all embraced in accounts which this warrant was executed in payment for, aren't they?

A. Yes, sir, the last two were.

Q. All right; that is all, I think.

(Witness excused.)

Mr. Graves: Mr. Chairman, I move that the Committee rise and report progress and ask permission to recess until 9 o'clock tomorrow morning.

(The motion prevailed, and the Committee of the Whole House adjourned at 5 o'clock p. m. until the following Saturday morning, August 15, 1931, at 9 o'clock.)

Saturday, August 15, 1931.

The Committee of the Whole House met at 9:15 o'clock a. m., Saturday, August 15, 1931, pursuant to adjournment on yesterday at 5:50 o'clock p. m.

The Chair: The Committee will please be in order.

The following 24 pages of recapitulation were introduced in evidence to be incorporated in the record.

RECAPITULATION.

No. Case	Name	Charge	Amount
2021	Galibez Gonzales	Violating Liquor Law	$ 36 torn
2035	Ollie Donevan	Violating Liquor Law	126 torn
2036	Ollie Donevan	Violating Liquor Law	12– torn
2037	Ollie Donevan	Violating Liquor Law	133 torn
2038	Ollie Donevan	Violating Liquor Law	124 torn
2039	Ollie Donevan	Violating Liquor Law	128 05
2040	Ollie Donevan	Violating Liquor Law	127 55
2041	Ollie Donevan	Violating Liquor Law	121 75
2079	Bud Lacy	Violating Liquor Law	171 50
2080	Bud Lacy	Violating Liquor Law	165 80
2081	Bud Lacy	Violating Liquor Law	169 90
2086	Rance Simpson	Violating Liquor Law	197 65
2087	Rance Simpson	Violating Liquor Law	209 55
2088	Rance Simpson	Violating Liquor Law	211 85
2089	Rance Simpson	Violating Liquor Law	221 95
2090	Rance Simpson	Violating Liquor Law	199 85
2091	Rance Simpson	Violating Liquor Law	198 65
2092	Rance Simpson	Violating Liquor Law	198 65
2093	Rance Simpson	Violating Liquor Law	200 55
2094	Rance Simpson	Violating Liquor Law	200 55
2095	Lee Colvin	Violating Liquor Law	163 10
2096	Lee Colvin	Violating Liquor Law	163 10
2097	Lee Colvin	Violating Liquor Law	170 00
2098	Lee Colvin	Violating Liquor Law	170 00
2099	Lee Colvin	Violating Liquor Law	169 70
2100	Lee Colvin	Violating Liquor Law	169 70
2111	Rance Simpson	Violating Liquor Law	190 35
2112	Rance Simpson	Violating Liquor Law	190 35
2113	Rance Simpson	Violating Liquor Law	186 95
2114	Rance Simpson	Violating Liquor Law	186 95
2115	Rance Simpson	Violating Liquor Law	183 75
2116	Rance Simpson	Violating Liquor Law	183 75
2119	Hugh Wilson	Violating Liquor Law	201 35
2120	Hugh Wilson	Violating Liquor Law	202 95
2121	Hugh Wilson	Violating Liquor Law	202 95
2124	John Bohot	Violating Liquor Law	154 80
2125	John Bohot	Violating Liquor Law	158 30
	Total 262		$ 6,317.25

I do solemnly swear that the above and foregoing account is just, true, correct and unpaid, and that the miles charged for were actually traveled as stated in the execution of process of the District Court, and that in charging mileage, where the witnesses were served on the same trip, mileage has not been charged for each witness served to and from the County Seat, but only the actual number of miles traveled on the trip has been charged for in each case and that only at the time service was perfected; and when more than one prisoner has been removed at the same time, only ..... cents per mile has been charged for removing each additional prisoner; that no mileage is duplicated in said account save as shown, but that the provisions of the law now in force have been strictly complied with, in charging mileage in this account; and, further, that all mileage and other service charged for have been performed since the last term of the District Court of...Lee County

adjourned on the 13th day of November, A. D. 1925.

(Signed) John T. Carlisle,
Sheriff, Lee County.

By.....Deputy.

Sworn to and subscribed before me, this the 13th day of November, A. D. 1925.

(Signed) E. H. Moellenberndt,
Clerk District Court.

By.....Deputy.

NOTE—In charging mileage, sheriffs must comply strictly with the law now in force, and District Judges are respectfully requested to see that this has been done before approving the Account.

I,...J. B. Price...., Judge of the District Court of the 21st...Judicial District of the State of Texas, hereby certify that I have examined and approved in open Court the foregoing account of....John T. Carlisle....as Sheriff of Lee County for fees in felony cases, tried or otherwise disposed of at the November Term, A. D. 1925, of said Court, that the same is for all fees accrued in the cases therein mentioned since the adjournment of the last term of said Court; that the account is correctly stated, and I approve the same for the sum of $6,317.25....

Done at....Giddings...this the 13th day of November, A. D. 1925.

(signed) J. B. Price.....
Judge..21st..Judicial District.

THE STATE OF TEXAS }
COUNTY OF LEE }

I DO HEREBY CERTIFY, That the account of....John T. Carlisle... Sheriff of Lee County, for the above sum of $6,317.25....against the State of Texas for fees in felony cases in the District Court of....Lee....County, Texas, is a true and correct copy of said account, and all certificates thereto and endorsements thereon, as it appears in the minutes of said Court, in my office, in pages 1 to 262...Book...No. 3....(inserted with pen) also copies of returns made on the process for which such officer is claiming fees corresponding to the amount claimed in his account.

IN TESTIMONY OF WHICH, I hereunto sign my name and affix the seal of said Court, at office in..Giddings...Texas....this the 13 day of Nov. 1925.

(Signed) E. H. Moellenberndt,
District Clerk..Lee..County, Texas.

THE STATE OF TEXAS }
COUNTY OF LEE }

I, E. H. Moellenberndt, Clerk of the District Court of Lee County, Texas, do hereby certify that the above and foregoing account of John T. Carlisle, Sheriff against the State of Texas, and containing 262 pages is the original account executed by said sheriff in accordance with Article 1029 Code of Criminal Procedure of 1925 of Texas, together with all the original endorsements thereon. And I do further certify that the same is likewise a duplicate and a copy of the said original account, which has been recorded in Volume 3 pages 1 to 262 Minutes of Sheriffs accounts of Lee County, Texas, and is a true copy of said account recorded in the above volume and pages, as required by (torn)—Code of Criminal Procedure of Texas. ..torn.. under my hand and seal of office this 13 day of November, A. D.

E. H. Moellenberndt,
Clerk of the District Court of
Lee County, Texas.

(Seal)

(Under County)
SHERIFF'S FEE BILL
ACCOUNT OF
Jno. T. Carlisle.....

AMOUNT..... $.....
.....
Filed.....192....
.....
.....
..torn...Comptroller will pay the within to.....
.....
..... Sheriff
Lee County, Texas.

Initial

.....	.....
Audited.....	.....
Funds Available.....	.....
No Funds Available.....	.....
Appropriation No.....	.....
Warrant No.....	.....
Date of Warrant.....	.....
Warrent Prepared by....	.....
....torn.....	.....

torn
torn

2478B RECAPITULATION.

No. Case	Name	Charge	Amount
	Dismissed April Term		$ 602030
2119	Hugh Wilson.....	Mfg. Intox. Lqur.....	86.75
	Dismissed April Term		
2120	Hugh Wilson.....	Mfg. Intox. Lqur.....	87.25
2121	Hugh Wilson.....	Mfg. Intox. Lqur.....	86.75
2123	John Bohot.....	Selling Intox. Lqur.....	398.00
2124	John Bohot.....	Selling Intox. Lqur.....	84.90
2125	John Bohot.....	Selling Intox. Lqur.....	84.90
6	Total.....	.....	$ 6848.85

I do solemnly swear that the above and foregoing account is just, true, correct and unpaid, and that the miles charged for were actually traveled as stated in the execution of process of the District Court, and that in charging mileage, where the witnesses were served on the same trip, mileage has not been charged for each witness served to and from the county seat, but only the actual number of miles traveled on the trip has been charged for, and that only at the time service was perfected; and when more than one prisoner has been removed at the same time, only..... cents per mile has been charged for removing each additional prisoner; that no mileage is duplicated in said account, but that the provisions of the law now in force have been strictly complied with, in charging mileage in this account; and, further, that all mileage and other service charged for have been performed since the last term of the District Court of ...Lee....County, adjourned on the ...13th... day of ...Nov...A. D. '25.

Jno. T. Carlisle,
Sheriff...Lee...County.
By.....Deputy.

Sworn to and subscribed before me this the...13th...day of....Nov.... A. D. 1925.

E. H. Moellenberndt,
Clerk District Court.
By.....Deputy.

NOTE—In charging mileage, Sheriffs must comply strictly with the law now in force, and District Judges are respectfully requested to see that this has been done before approving the account.

I, ...J. B. Price.....Judge of the District Court of the...21st..Judicial District of the State of Texas, hereby certify that I have examined and approved in open Court the foregoing account of...Jno. T. Carlisle.... as sheriff of...Lee...County, for fees in felony cases, tried or otherwise disposed of at the...October... Term, A. D. 1925, of said Court; that the same is for all fees accrued in the cases therein mentioned since the adjournment of the last term of said Court; that the account is correctly stated, and I approve the same for the sum of ...$6848.85....

Done at...Giddings... this the... 13th...day of November, A. D. 1925.

(signed) J. B. Price,
Judge..21st..Judicial District.

THE STATE OF TEXAS }
County of.....Lee..... }

I DO HEREBY CERTIFY, That the account of...Jno. T. Carlisle.... Sheriff of...Lee....County, for the above sum of $6848.85...against the State of Texas for fees in felony cases in the District Court of.....Lee.... County, Texas, is a true and correct copy of said account, and all certificates thereto, and endorsements thereon, as it appears in the minutes of said Court, in my office, in.....page 1–325.... Book...2...

IN TESTIMONY OF WHICH, I hereunto sign my name and affix the seal of said Court, at office in.... Giddings...this the...13th...day of ...Nov...1925.

E. H. Moellenberndt,
District Clerk..Lee..County, Texas.
By.....Deputy.
(in pencil) 325

SHERIFF'S FEE BILL
ACCOUNT OF

.....
Sheriff of.....County.
Amount..... $.....
Filed.....19....
.....
.....
The Comptroller will pay the within
to.....
.....
.....
.....Sheriff,

.....County, Texas.
To be filled by Comptroller only:

	Initial
Audited	
Funds Available	
No Funds Available	
Appropriation No	
Warrant No	
Date of Warrant	
Warrant Prepared by	
torn	
Compared	

RECAPITULATION.

No. Case	Name	Charge	Amount
2042	Ted Donevan	Violating Liquor Law	$ 218 55
2043	Ted Donevan	Violating Liquor Law	218 55
2044	Ted Donevan	Violating Liquor Law	218 55
2045	Ted Donevan	Violating Liquor Law	218 55
2046	Ted Donevan	Violating Liquor Law	218 55
2047	Ted Donevan	Violating Liquor Law	218 55
2048	Ted Donevan	Violating Liquor Law	218 55
2049	Ted Donevan	Violating Liquor Law	218 55
2050	Ted Donevan	Violating Liquor Law	218 55
2051	Ted Donevan	Violating Liquor Law	218 55
2052	Ted Donevan	Violating Liquor Law	218 55
2053	Ted Donevan	Violating Liquor Law	218 55
2054	Ted Donevan	Violating Liquor Law	218 55
2055	Ted Donevan	Violating Liquor Law	218 55
2056	Ted Donevan	Violating Liquor Law	218 55
2057	Ted Donevan	Violating Liquor Law	218 55
2058	Ted Donevan	Violating Liquor Law	218 55
2059	Ted Donevan	Violating Liquor Law	218 55
2060	Ted Donevan	Violating Liquor Law	218 55
2061	Ted Donevan	Violating Liquor Law	218 55
2062	Ted Donevan	Violating Liquor Law	218 55
2063	Ted Donevan	Violating Liquor Law	218 55
2064	Ted Donevan	Violating Liquor Law	218 55
2065	Ted Donevan	Violating Liquor Law	218 55
2066	Ted Donevan	Violating Liquor Law	218 55
2067	Ted Donevan	Violating Liquor Law	218 55
2068	Ted Donevan	Violating Liquor Law	218 55
2069	Ted Donevan	Violating Liquor Law	218 55
2070	Ted Donevan	Violating Liquor Law	218 55
2071	Ted Donevan	Violating Liquor Law	218 55
2072	Ted Donevan	Violating Liquor Law	218 55
2073	Ted Donevan	Violating Liquor Law	218 55
2074	Ted Donevan	Violating Liquor Law	218 55
2075	Ted Donevan	Violating Liquor Law	218 55
2076	Ted Donevan	Violating Liquor Law	218 55
2077	Ted Donevan	Violating Liquor Law	218 55
2122	Ted Donevan	Violating Liquor Law	218 55
2037	Ollie Donevan	Violating Liquor Law	118 20
2038	Ollie Donevan	Violating Liquor Law	118 20
2040	Ollie Donevan	Violating Liquor Law	118 20
2041	Ollie Donevan	Violating Liquor Law	118 20
2078	Bud Lacy	Violating Liquor Law	162 05
2080	Bud Lacy	Violating Liquor Law	162 05
2081	Bud Lacy	Violating Liquor Law	162 05
	350	Total	$ 9,035 30
	(352)		

RECAPITULATION.

		Forward	$ 9,035.30
2096	Lee Colvin	Violating Liquor Law	$ 128 50
2099	Lee Colvin	Violating Liquor Law	128 50
2100	Lee Colvin	Violating Liquor Law	128 50
2102	Ollie Henigan	Violating Liquor Law	227 80
2103	Ollie Henigan	Violating Liquor Law	227 80
2104	Ollie Henigan	Violating Liquor Law	227 80
2105	Ollie Henigan	Violating Liquor Law	227 80
2106	Ollie Henigan	Violating Liquor Law	227 80
2107	Ollie Henigan	Violating Liquor Law	227 80
2108	Ollie Henigan	Violating Liquor Law	227 80
2109	Ollie Henigan	Violating Liquor Law	227 80
2110	Ollie Henigan	Violating Liquor Law	227 80
2119	Hugh Wilson	Violating Liquor Law	161 70
2120	Hugh Wilson	Violating Liquor Law	161 70
2124	John Bohot	Violating Liquor Law	114 70
2125	John Bohot	Violating Liquor Law	114 70
351	Total		$ 12,023 80

(Reverse side of Recapitulation) As follows:

I do solemnly swear that the above and foregoing account is just, true, correct and unpaid, and that the miles charged for were actually traveled as stated in the execution of process of the District Court, and that in charging mileage, where the witnesses were served on the same trip, mileage has not been charged for each witness served to and from the county seat, but only the actual number of miles traveled on the trip has been charged for, and that only at the time service was perfected; and when more than one prisoner has been removed at the same time, only ..... cents per mile has been charged for removing each additional prisoner; that no mileage is duplicated in said account, but that the provisions of the law now in force have been strictly complied with, in charging mileage in this account; and, further, that all mileage and other service charged for have been performed since the last term of the District Court of....Lee... County, adjourned on the....13th.... day of...May...A. D. '26....

Jno. T. Carlisle,
Sheriff, Lee County.

By.....Deputy.

Sworn to and subscribed before me, this the ...7...day of May....A. D. 1926.

E. H. Moellenberndt,
Clerk District Court.

NOTE—In charging mileage, Sheriffs must comply strictly with the law now in force, and District Judges are respectfully requested to see that this has been done before approving the account.

I, ...J. B. Price..., Judge of the District Court of the 21st Judicial District of the State of Texas, hereby certify that I have examined and approved in open Court the foregoing account of...John T. Carlisle.... as Sheriff of Lee County, for fees in felony cases, tried or otherwise disposed of at the April...Term, A. D. 1926, of said Court, that the same is for all fees accrued in the cases therein mentioned since the adjournment of the last term of said Court; that the account is correctly stated, and I approve the same for the sum of $..2,023.80.

Done at...Giddings..., this the 7th day of...May..., A. D. 1926.

(Signed) J. B. Price,
Judge...21st...Judicial District.

THE STATE OF TEXAS }
COUNTY OF LEE }

I DO HEREBY CERTIFY, That the account of...John T. Carlisle...., Sheriff of Lee County, for the above sum of $12,023.80 (Amt. marked thru with red pencil) against the State of Texas for fees in felony cases in the District Court of

....Lee....County, Texas, is a true and correct copy of said account, and all certificates thereto and endorsements thereon, as it appears in the

minutes of said account, and all certificates thereto and endorsements thereon, as it appears in the minutes of said Court, in my office, in page 1–Tr 351...Book No. 3...also copies of returns made on the process on which such officer is claiming fees corresponding to the amount claimed in his account.

IN TESTIMONY OF WHICH, I hereunto sign my name and affix the seal of said Court, at office in.... Giddings, Texas...this the 7th.... day of....May, 1926.

E. H. Moellenberndt,
District Clerk..Lee..County, Texas.

THE STATE OF TEXAS }
COUNTY OF LEE }

(Interlined in ink:)—"These two accounts $7,912.10 This adjustment covered by mileage by duplicate being taken out. Previous endorsements brought about by mileage being taken out.

(Signed) J. B. Price,
Judge of 21st Judicial District.

I, E. H. Moellenberndt, Clerk of the District Court of Lee County, Texas, do hereby certify that the above and foregoing account of John T. Carlisle Sheriff against the State of Texas, and containing 351 pages is the original account executed by said sheriff in accordance with Article 1029 Code of Criminal Procedure of 1925 of Texas, together with all the original endorsements thereon. And I do further certify that the same is likewise a duplicate and a copy of the said original account, which has been recorded in Volume 3, pages 1 to 351 Minutes of sheriffs' accounts of Lee County, Texas, and is a true copy of said account recorded in the above volume and pages, as required by Art. 1034 Code of Criminal Procedure of Texas.

Given under my hand and seal of office this 7th day of May, A. D. 1926.

E. H. Moellenberndt,
Clerk of the District Court of
Lee County, Texas.
(Seal)

(Endorsements across page in blue pencil: "Paid in previous acct. All duplicates with full exceptions.")
(signed) "Goodfellow"

RECAPITULATION

No. Case	Name	Charge	Amount
		For'd.....	387500
2068	Ted Donevan.....	Possessing Intox. Lqr.....	$ 90 00
2069	Ted Donevan.....	Mfg. Intox. Lqr.....	90 00
2070	Ted Donevan.....	" " "	90 00
2071	Ted Donevan.....	" " "	90 00
2072	Ted Donevan.....	" " "	90 00
2073	Ted Donevan.....	" " "	90 00
2074	Ted Donevan.....	" " "	90 00
2075	Ted Donevan.....	" " "	90 00
2076	Ted Donevan.....	" " "	90 00
2077	Ted Donevan.....	" " "	90 00
2078	Bud Lacy.....	Selling Intox. Lqur.....	238 50
2079	Bud Lacy.....	" " "	75 50
2080	Bud Lacy.....	Mfg. Intox. Lqr.....	75 50
2081	Bud Lacy.....	Possessing Intox. Lqr.....	75 50
2085	Rance Simpson.....	Transporting Intox. Lqr...	240 60
2095	Lee Colvin.....	Possessing Intox. Lqr.....	196 60
2096	Lee Colvin.....	Selling Intox. Lqr.....	69 00
2099	Lee Colvin.....	" " "	69 00
2100	Lee Colvin.....	" " "	69 00
2101	Ollie Hengan.....	Mfg. Intox. Lqur.....	435 30
2102	Ollie Hengan.....	Mfg. Intox. Lqur.....	87 50
2103	Ollie Hengan.....	" " "	87 50
2104	Ollie Hengan.....	" " "	87 50
2105	Ollie Hengan.....	" " "	87 50
2106	Ollie Hengan.....	" " "	87 50

No. Case	Name	Charge	Amount
2107	Ollie Hengan	Mfg. Intox. Lqrs	87.50
2108	Ollie Hengan	" " "	87 50
2109	Ollie Hengan	" " "	87 50
2110	Ollie Hengan	" " "	87 50
2117	Hugh Wilson	" " "	247 70
2119	Hugh Wilson	" " "	83 50
2120	Hugh Wilson	" " "	83 50
2122	Ted Donevan	Possessing Intox. Lqr	90 00
2123	John Bohot	Selling Intox. Lqrs	185 60
2124	John Bohot	" " "	72 50
2125	John Bohot	" " "	72 50
2130	Grance Joiner	Theft of Hogs	104 25
2131	Lonnie Jones	Forgery	20 00
2132	Ed Pulliam	Forgery	14 40
2134	Billie Brown	Driving auto intoxicated	4 00
2135	Billie Brown	Transporting Intox. Lqr	4 00
	Total		$ 8,088 95

(The following is copy of printed form on reverse side of above figures:)

"I do solemnly swear that the above and foregoing is just, true, correct and unpaid, and that the miles charged for were actually traveled as stated in the execution of process of the District Court, and that in charging mileage, where the witnesses were served on the same trip, mileage has not been charged for each witness served to and from the County Seat, but only the actual number of miles traveled on the trip has been charged for, and that only at the time service was perfected; and when more than one prisoner has been removed at the same time, only..... cents per mile has been charged for removing each additional prisoner; that no mileage is duplicated in said account, but that the provisions of the law now in force have been strictly complied with, in charging mileage in this account; and, further, that all mileage and other service charged for have been performed since the last term of the District Court of...Lee... County, adjourned on the...7th...day of...May...A. D. 1926.

(Signed) Jno. T. Carlisle,
Sheriff, Lee County.
By.....Deputy.

NOTE—In charging mileage, Sheriffs must comply strictly with the law now in force, and District Judges are respectfully requested to see that this has been done before approving the account.

I, J. B. Price..., Judge of the District Court of the...21st...Judicial District of the State of Texas, hereby certify that I have examined and approved in open Court the foregoing account of ....Jno. T. Carlisle, as Sheriff of Lee County, for fees in felony cases, tried or otherwise disposed of at the ...April term, A. D. 1926, of said Court, that the same is for all fees accrued in the cases therein mentioned since the adjournment of the last term of said Court; that the account is correctly stated, and I approve the same for the sum of $8,088.95.

Done at...Giddings...this the.... 7th....day of May...A. D. 1926.

....J. B. Price....
Judge..21st..Judicial District.

THE STATE OF TEXAS }
COUNTY OF LEE. }

I DO HEREBY CERTIFY, That the account of...Jno. T. Carlisle... Sheriff of Lee County, for the above sum of $..... against the State of Texas for fees in felony cases in the District Court of

...Lee...County, Texas, is a true and correct copy of said account, and all certificates thereto and endorsements thereon, as it appears in the minutes of said Court, in my office, in pages 1 to 482..Book..3.....

IN TESTIMONY OF WHICH, I hereunto sign my name and affix the seal of said Court, at office in.... Giddings... this the...7th...day of May, 1926.

E. H. Moellenberndt,
District Clerk...Lee...County, Texas.
By.....Deputy.

UNDER COUNTY
SHERIFF'S FEE BILL
ACCOUNT OF
.....
SHERIFF OF LEE COUNTY
Amount..... $.....

Filed..... .....
.....
The Comptroller will pay the within
to.....
..... Sheriff.
Lee County, Texas.
To be filled in by Comptroller only:

RECAPITULATION

No. Case	Name	Charge	Amount
1950	Matthew Thomas	Rape	$ 131 00
1984	Lonnie Jones	Forgery	52 60
1985	Lonnie Jones	"	20 00
1986	Lonnie Jones	"	20 00
1987	Lonnie Jones	"	20 00
2005	Paul Vegas	Asst to murder	47 80
2012	Chas. Dears	" " "	125 90
2013	Chas. Dears	" " "	30 50
2020	Galabia Gonzales	Selling Intox Lqur	44 00
2021	Galabia Gonzales	" " "	22 00
2028	Harding Kelly	Rape	109 60
2029	Buck Hooper	Rape	79 00
2030	Ted Donevan	Mfg. Intox. Lqur	399 90
2036	Ollie Donevan	Selling Intox. Lqur	178 20
2037	Ollie Donevan	" " "	61 00
2038	Ollie Donevan	Possessing Intox. Lqur	60 50
2040	Ollie Donevan	Mfg. Intox. Lqur	61 00
2041	Ollie Donevan	Selling Intox. Lqur	61 00
2042	Ted Donevan	Selling Intox. Lqr	91 00
2043	Ted Donevan	" " "	93 00
2044	Ted Donevan	" " "	91 00
2045	Ted Donevan	" " "	91 00
2046	Ted Donevan	" " "	91 00
2047	Ted Donevan	" " "	91 00
2048	Ted Donevan	" " "	93 00
2049	Ted Donevan	" " "	90 00
2050	Ted Donevan	Selling Intox. Lqur	90 00
2051	Ted Donevan	" " "	90 00
2052	Ted Donevan	" " "	90 00
2053	Ted Donevan	" " "	90 00
2054	Ted Donevan	" " "	90 00
2055	Ted Donevan	" " "	90 00
2056	Ted Donevan	" " "	90 00
2057	Ted Donevan	" " "	90 00
2058	Ted Donevan	" " "	90 00
2059	Ted Donevan	" " "	90 00
2060	Ted Donevan	" " "	90 00
2061	Ted Donevan	" " "	90 00
2062	Ted Donevan	" " "	90 00
2063	Ted Donevan	" " "	90 00
2064	Ted Donevan	" " "	90 00
2065	Ted Donevan	" " "	90 00
2066	Ted Donevan	" " "	90 00
2067	Ted Donevan	" " "	90 00
(481)	Total		$ 3875 00

RECAPITULATION

No. Case	Name	Charge	Amount
2014	Milbreyn	Asst to Rape	$ 134 90
2018	Bill Schruder	Abandonment upon marriage in seduction	104 40
596	Matthew Craft	Kidnapping	19 75
597	Matthew Craft	Rape	9 25
2020	Galibey Gonzales (dismissed in April)	Possessing Intox Lqr	68 60
2021	1 Galiney Gonzales	Selling Intox. Lqr	18 00
2028	Harding Kelly	Rape	377 75
2029	Buck Hooper	Rape	508 80
2034	Ollie Donevan	Possessing Intox. Lqr	309 25
2035	Ollie Donevan	" Intox. Lqr for purpose of selling	68 25
2036	Ollie Donevan	Selling Intox Lqr	67 25
2037	Ollie Donevan	" " "	67 25
2038	Ollie Donevan	Possessing " "	66 75
2039	Ollie Donevan	" "	67 25
2040	Ollie Donevan	Mfg. Intox. Lqr	67 25
2041	Ollie Donevan	Selling Intox. Lqur	67 25
2078	Bud Lacy	" " "	425 70
2079	Bud Lacy	" " "	84 20
2080	Bud Lacy	Mfg. Intox. Lqur	84 70
2081	Bud Lacy	Possessing Intox. Lqr	84 20
2082	Aubhurt Cain	Rape	26 00
2085	Rance Simpson	Trans. Intox. Lqur	495 45
2086	Rance Simpson	" " "	87 75
2087	Rance Simpson	" " "	88 25
2088	Rance Simpson	" " "	88 25
2089	Rance Simpson	" " "	88 25
2090	Rance Simpson	" " "	88 25
2091	Rance Simpson	" " "	87 75
2092	Rance Simpson	" " "	89 25
2093	Rance Simpson	Possessing Intox. Lqur	87 25
2094	Rance Simpson	" " "	88 25
2095	Lee Colvin	" " "	508 10
2096	" "	Selling Intox. Lqurs	89 50
2097	" "	Possessing Intox Lqurs	89 50
2098	" "	" " "	89 00
2099	" "	Selling Intox. Lqur	89 50
2100	" "	" " "	89 50
2111	Rance Simpson	Possessing Intox. Lqur	87 75
2112	Rance Simpson	Transpt. Intox. Lqrs	88 25
2113	" "	Possessing Intox. Lqrs	88 25
2114	" "	" " "	88 25
2115	" "	" " "	87 75
2116	" "	" " "	88 25
2117	Hugh Wilson	Mfg. Intox. Lqrs	509 25
2118	H. F. Knuttle	Murder	17 00
(324)	Total		$ 6020 30

Thereupon T. M. Markham, being recalled, testified as follows on direct examination by Mr. Sturgeon:

Q. Your name is T. M. Markham?
A. Yes, sir.

Q. And you are the same Markham who has previously testified in this hearing?
A. I am.

Q. Mr. Markham, I want you to refer again to the recapitulation sheet of Lee county, I believe it is on the four different accounts that was testified to here previously in this matter; I will ask you if that sheet shows a case against a man by the name of Ted Donovan?
A. It does.

Q. I wish you would please tell the Committee in what report, or on what fee bills or accounts of the sheriff from that county, which one has the name of Ted Donovan on it, or on which one of those accounts does it appear?
A. On the fee bill account for April, 1925, term of the court.

Q. Are you in a position to tell this Committee what was done with that case at the preceding term of that court?
A. The sheriff's report shows that it started in the district court in the April term, 1926. I do not find it as appearing in the October, 1925, term of that court.

Q. He makes the claim for services rendered in connection with that case in the April term, 1926, of that court?
A. Yes, sir.

Q. Is it carried forward to any other term of court, or do you find it appearing on the sheriff's account at subsequent dates?
A. It is carried forward in the deficiency account we had discussed.

Q. What I am trying to get now is whether the defendant, Ted Donovan—I want to know how many accounts are filed by the sheriff of Lee county and approved by Judge Price—and thereafter filed with the Comptroller—do you have that account appearing here?
A. I have not checked the account forward after this account; therefore, I do not know whether it is continued further or not.

Q. How many times does his name appear in the four accounts that you have testified about?
A. Do you mean the number of cases?

Q. What I am trying to arrive at—what I am trying to get—is the different times his—is a definite statement as to whether it appeared in more than one account.
A. It appears thirty-eight times. It is shown here to have been in thirty-eight cases.

Q. You do not, I believe, understand me yet. What I am trying to get at is this: You have testified about four accounts that were signed by the sheriff of that county, approved by the district judge of that court, and subsequently sent to the Comptroller's Department for those two terms of court. What the Committee wants to know, and what I want to know, is whether or not any claim was made for services performed in that particular case for more than one term of court?
A. These four accounts show it appeared in the October, 1926, term, and it is also in the other account in which multiple mileage was claimed.

Q. Then, as I understand your testimony, this particular case has appeared in two different accounts?
A. It has.

Q. In one of those accounts, I believe, your testimony is that the services performed in connection with this party, that the sheriff has filed his account, which was properly approved by J. B. Price, and subsequently sent to the State Comptroller, and the sheriff has been paid for such services?
A. He has.

Q. And the other was a deficiency account for which a deficiency warrant was issued, is it not?
A. It is.

Q. I wish you would tell the Committee what the recapitulation sheet shows that this party was charged with.
A. Violating the liquor law.

Q. How many cases does it show, or how many cases are there appearing on that account in the first place that he made a claim for services, that is, that the sheriff made a claim for services and filed his account which has been approved by J. B. Price as district judge, and subsequently sent to the office of the Comptroller?
A. Thirty-eight times.
Q. I beg your pardon?
A. Thirty-eight cases.
Q. Against the same man?
A. Against Ted Donovan.

Q. All of those cases on liquor charges, or does the record show?

A. The sheriff's account shows a charge of violating the liquor law in all thirty-eight of those cases.

Q. Now, referring to the recapitulation sheet, for each term of the court, where was it that that man's name appeared first? Was it in the October, 1925, term of the district court of that county, or in the April, 1926, term of that court?

A. In the April term, 1926.

Q. Then you say that the first account that was filed for that man, or in connection with that defendant was paid by the Comptroller's Department on warrant properly issued?

A. It was.

Q. And the items formerly paid for were subsequently placed in a claim against the State in the sheriff's account, and for which a deficiency warrant was issued?

A. That is correct.

Q. I wish you would from the sheriff's account, after looking at it, give me the number, the first number that was assigned to this man in that account, and then the last number.

A. In Causes No. 2030 to—and inclusive of 2077, and also Cause No. 3122.

Q. Those cases were all against the same party?

A. Yes, sir.

Q. Now, do you have another one against another party showing a similar condition?

A. I have one against Ollie Donovan.

Q. How many cases appear there?

A. It shows eight cases appearing in both terms of the court.

Q. You have a man's name appearing there on that account by the name of Rance Simpson?

A. I do.

Q. I wish you would please count the number of cases that appear on that account against that party.

A. Sixteen.

Q. How many cases did you say were against Ollie Donovan?

A. Eight.

Cross-examination by Judge Batts:

Q. Mr. Markham, did you examine to see whether or not indictments had been returned in those cases?

A. Whether or not indictments had been returned?

Q. Yes.

A. I did not. I examined the sheriff's account only.

Q. Was there anything in that to indicate that the indictments were not returned?

A. There was no information to that effect.

Q. Did you make any examination of the indictments at all?

A. I did not.

Q. Your testimony here is as to what the sheet on the recapitulation sheet alone shows, and we have no desire to put a lot of matter that could be of no service into the record, but can you indicate in any particular manner the number of items that had to be examined in order to pass upon these accounts?

A. I do not know whether I understand you. If I had this whole account audited, or in this instance, the audit we made is what we call or term a special audit. I did not check any of the court records in the county, but I went—

Q. (Interrupting) You did not then make a thorough examination of this account?

A. I have made a special audit of that account.

Q. With reference to ascertaining certain things?

A. Yes, sir.

Q. And not generally?

A. No, sir.

Q. How long did it take you to examine those accounts with reference to which—with reference to each item—

A. (Interrupting) To examine the accounts properly I would have to go to Lee county in order to know the status of, and the condition of the records of the courthouse, and I could not make an estimate of the length of time it would require.

Q. You do not know how long it would take you to do that? To determine the correctness of this account?

A. No, sir; I do not.

Q. Do you know how many items were on this account?

A. I can tell you in just a few minutes. It shows 112 accounts.

Q. You do not know the number of defendants? I am asking about the items of the account of the sheriff.

A. In which account?

Q. In the entire account. How many items in the entire account?

A. Judge, I do not know whether I get you clearly or not. I can tell you the number of expense—

Q. (Interrupting) What I want to know is the number of items on the account.

A. The number of accounts against each defendant—what is it that you want?

Q. As I understand you, these accounts come in covering services performed for serving process against a specific witness, and that is itemized?

A. Yes, sir, I can give you the number of witnesses subpoenaed. I can—

Q. (Interrupting) I am not asking you to do that. I do not want to encumber this record unnecessarily, but I do desire to get from you the information relative to the specific items in these various accounts.

A. I do not know just what you mean, Judge.

Mr. Sturgeon: Mr. Chairman, the question that was asked by Judge Batts has been propounded to this witness, asking him to tell the Committee how many items appear on this account. Now, I admit that I am a little thick-headed about some things, and I know that auditors are just like lawyers, and I do not know what Judge Batts means, but I think in fairness to this witness and in order for the witness to explain in his way just what he means, I think the question should be put a little more clearly. I do not understand just what Judge Batts is driving at myself.

Judge Batts: I am not trying to mix up this witness, and there is no purpose on my part in trying to take advantage of the witness. I rather thought that everybody knew what an item was. If not, then I will try and undertake to explain. In this expense account that you have been referring to, is it not a fact that there are thousands of individual items that would have to be passed on, that the district judge would have to pass on, in the course of the discharge of his official duties?

Mr. Sturgeon: You say, Judge Batts, that that is the purpose of this. It looks to me like that that is a matter of argument, and is not an issue that can be established by this witness.

Judge Batts: Mr. Chairman, if we can demonstrate that it is impossible any time in the course of the court for these items to be carefully examined by the court, I think it is a matter of importance, and I am not asking that these items be incorporated in the record, I am asking merely for the number of items.

The Chair: You desire to show or have the witness show the number of items that account has in it?

Judge Batts: Yes.

A. I am sorry, Judge Batts, I cannot do that. I can probably work it up for you in a few minutes.

Q. Let me ask you how long it would take you to do that?

A. If you mean I go down to Lee county and go into the clerk's office there and figure it up it would be a matter, perhaps, of one or two or three days.

Q. Do you think it would be a more difficult matter for the district judge to do than an experienced auditor, as you are?

A. Judge, I can run down one of the books, and I can get this for you, and will get this for you as quickly as I can.

Q. You cannot state, then, with reference to either one of these accounts, the number of items that it would be necessary to go over in order to determine the accuracy or correctness of the account?

A. I cannot do so. Anyway, I would not check them by the items themselves.

Q. As an auditor, is it not a part of the ordinary proceedings of an auditor to examine every item in an account when he is checking it?

A. Yes, sir, that is correct in certain kinds of auditing.

Q. Now, with reference to this particular matter, if you were to audit each of those particular items you would call for the subpoena which is the basis for that charge?

A. Yes, sir, if I was making a detailed audit and not just a specific audit as I have mentioned, I would call for the subpoena and would call for the application of the attorney, and would go out and see a number of the men that had been subpoenaed to see whether or not that service had been performed, and see whether or not they lived the distance from the courthouse where they were supposed to have been subpoenaed.

Q. Is there anything in the record to show that the district judge knew where these parties lived?

A. No, sir, there is not.

Q. I would like to ask you how long it would take on one of the shortest accounts like you have there to audit it by items?

A. Well, to satisfy myself, I could go through it and go through it in a little while, and would be fairly well satisfied by methods of tests. Even though I did not know the facts of the case. However, if I was the judge trying the case, I would know the number of witnesses who were called in the trial; I would know something about those who were called and placed on the stand.

Q. Now, you have done quite a lot of work on these accounts, haven't you?

A. Yes, sir, I have.

Q. And you have not made a thorough audit of any one of the accounts?

A. No, sir, I have not.

Q. Have you made a detail of any of the accounts?

A. No, sir.

Q. Then you are not in position to state whether or not the items—those items that are on that claim, are not correct, or whether they are correct?

A. As to whether they are correct, or incorrect?

Q. Yes, sir.

A. I can say that there is multiple mileage that had been paid for before.

Q. Mr. Markham, I hope you will not understand that I am trying to get you mixed up, or trying to get you to tell anything other than the real facts in connection with this—to answer the question. You have not examined each of the items in any one of these accounts, have you?

A. I have, in a certain way. I have set them out and then taken the account and show that the account has been paid once.

Q. You have done that—all that you have done is that you assume that there is duplication of the mileage?

A. Yes, sir.

Q. Which fact is not indicated on the record there, is it?

A. No, sir.

Q. And with reference to undertaking to audit the thousands of items you have made no specific investigation at all?

A. I have not, as I stated before. I have checked them simply on the theory that there was duplicate or multiple mileage charged into the account.

Q. And you have put in a good portion of time, even on that. But you have not gone over and checked these accounts item by item to determine their correctness or incorrectness?

A. No, sir, I have not.

Q. How long would it take you to do that?

A. Well, now, sir, that is hard to estimate.

Q. It would take you perhaps a week, would it not?

A. I can not tell you because I do not know just what you mean.

Q. Well, I will give you plenty of time, could you do it in two weeks?

A. If I could go into Lee county and find the conditions in the courthouse and use the people there I could make the estimate in a very short time.

Q. Can you even state at the present time that you could do that work within two weeks?

A. No, sir, I can not state whether I could do that in two days, two weeks or two months.

Q. Do you know how long the terms of court are in that county?

A. I do not know that.

Q. You do not know anything about that?

A. No, sir.

Q. In the matter of the audit that you have made is it not a fact that you have consulted with the Comptroller with reference to these accounts?

A. I—some of them, I have. And in some I have not.

Q. Which ones have you consulted with him about?

A. Right offhand, I could not tell you, sir, if you will ask me about any particular accounts I might be able—

Q. (Interrupting) You do not know which of these you have consulted him about?

A. Certainly not, offhand.

Q. Do you know whether those have been checked off, whether they were right or wrong?

A. You mean by the Comptroller?

Q. Yes.

A. Well, I do not know about that.

Q. You do not know about that either, do you?

A. No, sir.

Q. You do not know any more about how long it would take the Comptroller to do that than it would require you to do the same work?

A. No, sir, I do not.

Q. So there are a very great number of items in these accounts that you found as being entirely correct?

A. I would not say that they were correct, and I would not say that they were incorrect. There are, however, a lot of items in here—

Q. (Interrupting) So far as you know there is nothing the matter with thousands of items in these accounts?

A. You mean in this specific account?

Q. Yes.

A. There may be those that are correct and those that are incorrect.

Q. So far as you know, there are thousands of those items that are correct?

A. So far as I know, there may be.

Re-direct Examination.

Questions by Mr. Sturgeon:

Q. As I understand you, Mr. Markham, you made what you call a special audit of those four accounts?

A. I did.

Q. You did not have to go to Lee county, and did not have to be in Lee county courthouse, or where the witnesses lived, and where the defendants lived, in order to make an audit such as you have made?

A. No, sir, I did not.

Q. But by the audit that you did make, you did find a duplication of mileage or a claim for multiple mileage charged in these sheriff's accounts, for services that they claimed to have performed, did you not?

A. I did.

Q. You were asked about how much time it would take you to make a detailed examination of those accounts. In order to do that, in order to determine whether a charge for summoning so many witnesses six different times on the same day in the same case, and in different cases, in order to find out whether that was true or not, you could on the face of those accounts know whether it was in violation of the law for the sheriff to say that he summoned a particular person six times on any one particular day—you could easily determine that without the necessity of going to the county seat, could you not?

A. If there was nothing on the face of the subpoenaes to indicate anything of that kind, it would be necessary to contact each of those witnesses.

Q. And it would be necessary for you to take these various items and go to each of these parties and talk to them about it, would it not?

A. It would.

Q. Now, as an auditor, and an accountant, if an account was presented to you, now, I assume that your knowledge of the law is limited about some things, but assuming that you, as an auditor, had an account presented to you that bore the name of one man as a defendant in some twenty-five cases, and that a number of witnesses appeared to have been summoned in each of those cases, against the same man, you understand me, don't you, and that they were all summoned against the same man, in the same term of court, and on the same day of that court, for that term of court, now, in looking at that account, and the account alone, would you, or not, at once known that there was a duplication in the charge made in serving that, that the law did not provide for?

A. I would think so; therefore, I would not approve it until I had seen the witnesses and verified the account.

Q. You were asked about the number of items in that account, if there were not thousands of items. As I understand it, there can be several different definitions of "items." We know that it includes names, we know that it includes figures, and all the circumstances and statements that might appear in that account. Is that your understanding about it?

A. I have heard the word "item" used in speaking of figures, speaking of facts, and in almost any other way.

Q. Then, when you say there were perhaps thousands of items that you did not specifically run down, that was where they had made a charge for making an arrest of, say, John Doe, northwest portion of the county, and summoned ten to fifteen witnesses, and matters of that kind, you mean by your testimony to say that you had not run down each one of those particular items?

A. No, sir, I have not.

Q. But you merely took the account as sworn to by the sheriff and signed by Judge J. B. Price, and taking the whole amount that they had charged, and taking these accounts into consideration alone, without any further inquiry, you have been able to know that there was duplicate charges, or charges made for fees that were not allowed under the law?

A. In my own mind, that is true.

Q. I will ask you if you would be in any better position to audit the sheriff's accounts if you were to make, so to speak, an examination of the docket, of the criminl docket, of the criminal district court, where most of these cases were tried, and most of these cases which appeared on that docket?

Judge Batts: If the Chair please, we object to any such questioning as this. This certainly is just a means of getting the idea of the witness. The question is argumentative, and it calls for an opinion that this witness can not properly testify about.

Mr. Sturgeon: I am asking this question, Mr. Chairman, for the same reason that Judge Batts asked it—that Judge Batts asked this witness how much time it would take to audit these accounts if he were going to make a general audit, and in order to examine this witness along this line he asked him to estimate the length of time that it would take to make that kind of an audit. Now, in asking this question, if you were district judge, or you were an auditor attempting to audit the accounts, or anyone else that were not an auditor, is it not a fact that it could be easily audited if he was on the ground, and was the maker of the records that bears the names of the defendants, and was in the courtroom and saw the witnesses when they came on the stand, and had access to the process that was issued for each of these witnesses, would it not be an easy matter for these matters to be called to the attention of the person approving the account—

Judge Batts: We object to that, Mr. Chairman; the State's counsel has made that argument twice; this is not a matter in which expert testimony can be given one way or the other. It is simply an effort on the part of the State's counsel in undertaking to get these facts before the House. And to make an effort for them to pass upon the facts as they exist. Now, I know of no way how arguments of this kind can be placed before this House which will in any way throw any light on the issues involved.

Mr. Sturgeon: We will abide by the ruling of the Chair, and I will ask this question.

Q. Then, as I understand your testimony, you have testified, that to the extent of these accounts, the statement that you have made in reference to these accounts, are based upon the sworn statements of the sheriff, and on the statements, on the approved statements made by the district judge, certified to by the district clerk, and as being filed in the clerk's office?

A. Yes, sir, they are.

Re-cross Examination.

Questions by Judge Batts:

Q. Mr. Markham, I believe that you have stated that in order to get accurately at these facts it would be necessary for you to get to the witnesses in order to establish those facts? Did you not?

A. Well, let me explain it.

Q. Now, Mr. Markham, I am not asking you to answer this yes, or no. I want the facts about it, and I want to treat you—and I want you to treat me just as you have treated the State's counsel, and answer my questions exactly as you have answered the questions propounded to you by the State's counsel.

A. I will do that, Judge.

Q. You made the statement, I believe, to the effect that, any process served in the way of a subpoena would be evidence that the sheriff had served such subpoena. Now, what I want to know is whether or not you would require outside evidence to verify that account?

A. If I said that, Judge, I did not mean it. I was trying to convey this idea to you. I have followed public accounting in towns where I met people, and where I knew facts and circumstances that existed. I can make an audit there a lot quicker than I can where I attempt to make an audit in some place where I know none of the parties, and do not know the circumstances and conditions existing there. As far as that is concerned, in making an audit of the account I

would not have to go and look the witnesses up. I would look at the account first, if I understood the situation, and I would put them together, and I would make certain tests, then I would look around, and in going through my work and in working up the data, if I became distrustful, then I would then satisfy myself by going outside of the information that was placed before me in determining the truth or falsity of whether or not the men who were claimed to have been subpoenaed had really been subpoenaed.

Q. As I understood you, and as I understand you now, you are able to make certain inferences from these accounts, and you stand upon that. If there was issued process in that case you could find out who served the subpoena and how many times that process was served, and whether it was served by the sheriff himself, or whether he had deputies to serve that process, there would be times when, perhaps, the sheriff would serve a man with process, and then one of his deputies would serve it, could not that occur? Did not you make that statement?

A. It might be possible that the sheriff would serve a subpoena and then some of his deputies would serve that same man. I would say this further, that if there was any question that came up about the account they would have to convince me as to the correctness of the account before I would approve it.

Q. Now, if you have confidence in the person furnishing you with that information, are you acting upon the assumption that it was correct?

A. I would not, altogether.

Q. Well, what would you do under those circumstances?

A. If the account came to me here, and with a man with so many cases against him like the defendant in that case, and showing that they had gone to subpoena a certain witness so many times within a short length of time, regardless of whether it was my own brother that brought that to me, that brought an account of that kind to me, I would have to be satisfied as to the correctness of the account.

Q. Well, what would you do?

A. I would let the circumstances dictate that to me. I might go and look at the return on the subpoena, and if I was not satisfied I would probably go and ask somebody around there for additional information. Then if I caught an error in that account there would be a lot of further circumstances that I would take into consideration before I would approve the account.

Q. Now, do you know of any simpler way to do that than in the manner you have just indicated?

A. No, sir, I do not.

Q. Now, do you regard that data from which you are testifying there as giving full information?

A. No, sir, I do not.

Q. Now, you spoke of the number of indictments against one defendant in the case of violations of the liquor laws.

A. Yes, sir.

Q. Now, you have no reason for assuming that those witnesses were not subpoenaed, have you?

A. No, sir, I have not.

Q. You assume that they have been summoned. The criminal business in the county could not be regarded—

A. (Interrupting) I have not assumed anything in regard to that. All I have done is I have taken these particular accounts and where there was multiple mileage on account. In these accounts which were made out by the sheriff and sworn to by the sheriff, and approved by the judge these accounts had previously been paid through the Comptroller's Department. Then I went down and told them that it was multiple mileage, and showed where those same things had actually been paid one time, and the sheriff had been paid for that service before in the expense account that he had previously sent in.

Q. Now, with reference to these matters that are not shown in the account, coming up before a man who is not an expert auditor as you are, what way would there be of getting at those facts except by the examination of the witnesses to find out what those figures were? I am asking you with particular reference to this matter if you had no other information to go by?

A. You mean what I would do if it came to me—if that account had come to me to be audited? What I would do?

Q. What I am trying to get out is whether or not anybody who is not a skilled auditor, and if an account of that kind finds its way to

him for his approval, in what way would he be able to get at whether or not that data on that account was true or not, without ascertaining this from the witnesses?

A. You mean, if there was only one of those sheets placed before me, regardless of what was attached to it?

Q. Whether the man had the skill to audit it or not?

A. Yes, sir.

Q. Well, where could he do that?

A. Why, for this reason, he knows the attorneys in that case, he knows whether he is Ollie Donovan or any other party. He would know how many witnesses came to the court and were sworn in, especially if that man were present there in the court during the trial of the case, or had been connected with that case in any way. He would have all of those facts to show in connection with that.

Q. Do you assume that the district judge can keep in mind, or could tell who had testified at court, do you assume that he could keep a record of the thousands of items that come before him and keep a memorandum of that—I am just trying to get at the facts of the matter.

A. I am not trying to pass upon the ability of any one. One man might have the ability to do that and another might not. Naturally, one man would have more ability than another along that line, yes, sir, that would be possible. But in checking these accounts it would not be hard to see that John Jones had been subpoenaed six times in several different cases on the same day, a certain distance from the courthouse and in a certain direction, and it would occur to me that in looking over an account of that kind that anybody should be able to detect such a discrepancy.

Q. Would there be any facts or any data on that particular sheet that would in your opinion suggest to anybody that there was anything wrong with that one sheet, taking it alone?

A. I was speaking of those cases generally, and not any particular case. Not as a general rule, I would say it would not, taking just one sheet alone.

Q. I am not speaking of the general rule.

A. I was merely trying to get your idea.

Q. Well, you are making certain insinuations here and certain charges against the district judge, based on what kind of a audit—against this account?

A. If you will ask me about what item it is I will be glad to answer you, but, Judge, I had rather you would be specific.

Q. I am asking you for specific facts and information in reference to this account—I am asking you again if it would be possible where there were a great number of witnesses, say twenty-five or thirty witnesses, called during a day in case of that kind for the judge trying that case for him to know specifically about these matters—I will ask you if he could, in your opinion, know about those things—whether or not he would be in position to know the facts in connection with that, or would it be necessary for him to rely upon the information that was furnished to him by the other officers of the court?

A. I take it that it would be physically impossible.

Q. Do you predicate guilt upon circumstances of that kind—that a wrong has been done? Now, this further question: If, under conditions like that, the question should arise, would not it be necessary for whoever investigated it to have still another subpoena for any person brought before him for investigation?

A. That is according to the conditions. If the matter was put up to me, and I was handed an account of that kind, I would refuse that account. At least, until I could find out something about it. Especially in view of the fact that the whole account was or should have been before the judge at the time.

Q. Now, as I understand you, your suggestion is that the district judge would have these accounts before him and that he should know more about that situation than any person who is not there, but, nevertheless, if those questions arise, he would have to have some character of process issued to find out about that, or he would have to have somebody else find out about that for him?

A. Judge, you are trying to get me to pass an opinion on the district judge.

Q. I am not trying to get you mixed up in any way. I am just attempting to develop the facts in connection with this case.

A. I am trying to answer you to the best of my ability.

Mr. Sturgeon: If the Chair please I think this witness is trying to answer Judge Batts' question. He has had a great many hypothetical questions put to him, and I contend he has been fair to counsel for the respondent, and has been just as fair to the counsel for respondent as he has been to counsel for the State. We have no objection whatever to him asking witness any question that he desires while he is on the witness stand, but we do not think that he should say that this witness has been unfair to the attorneys for the respondent—

Judge Batts (Interrupting): There is no use in me asking the witness any further question.

Mr. DeWolfe: I think the Chair ought to ask the distinguished counsel for the respondent to retract his remark made in regard to counsel for the State—

Mr. Sturgeon: Just let it go at that. Mr. Markham, in your questions to Judge Batts, state whether or not you have given him, when answering his questions, state whether or not you have answered him just as fully as you could, as you understood his questions?

A. Yes, sir, I have tried to.

Q. You have no prejudice against Judge Price, and you have no interest whatever in this case, have you?

A. I have not, except as an auditor for the State.

Q. And in the testimony which you have given it has been arrived at from the examination of these accounts and that only?

A. Yes, sir, it has.

(Witness excused.)

Thereupon, F. A. Hester, district clerk of Lee county, Texas, being duly sworn by the Chair, testified as follows, on direct examination by Mr. Sturgeon:

Q. Please state your name to the Committee.

A. F. A. Hester.

Q. What position, if any, do you hold, do you hold the position of district clerk of Lee county, Texas, at this time?

A. Yes, sir.

Q. In what judicial district is that located?

A. It is located in the Twenty-first Judicial District.

Q. How long have you been such district clerk?

A. Since the first of January, 1931.

Q. You mean, the first of January of this year?

A. Yes, sir.

Q. Prior to the time that you were inducted into office did you or not work in the district clerk's office?

A. Yes, sir, I worked there some.

Q. Did you work as a deputy under the former district clerk?

A. I did.

Q. Who was the district clerk that preceded you?

A. N. D. Beeman.

Q. And he went out of office last December?

A. Yes, sir, he was defeated.

Q. How long were you deputy district clerk—about how long?

A. I do not know exactly, I was deputy district clerk under Mr. Jones, back in 1920, or 1922, or somewhere around there.

Q. Would you give us a rough estimate of the number of years you have been connected with the district court or the district clerk's office in Lee county?

A. Well, probably two or three years.

Q. Are you fairly familiar with the records that are kept in the district clerk's office bearing upon the criminal matters in that county?

A. I am.

Q. What book is that you have in front of you there?

A. That is Book E, Criminal Minutes of District Court of Lee County.

Q. Who is the district judge that presides over the district court of Lee county at this time?

A. Hon. J. B. Price.

Q. Who has presided as district judge in your county for the last four or five years?

A. Hon. J. B. Price.

Q. I believe that you stated that that book that you have before you is the minutes of the criminal district court of that county?

A. Yes, sir.

Q. That book shows what has happened in reference to every criminal case, that is, the criminal cases that have been filed?

A. Yes, sir, it does.

Q. I will get you to look at that book, please, and tell if you find in the minutes that there was—if you find in the minutes if they were signed up by the district judge, J. B. Price, and also if you find the name of Ted Donovan listed as one of the defendants—I believe that you stated that that was Book E of the minutes of the criminal docket of Lee county—

A. I did.

Q. Does that book contain the minutes that were entered during the year 1926 in that county?

A. Yes, sir.

Q. What page are you looking at now, or reading from?

A. Page 371, October term, 1925.

Q. Do you find now, there, the name of Ted Donovan? On that page?

A. I do.

Q. I want you to just take a pencil and just count the number of cases, put the number of cases you find against that man in the minutes of that court. Have you figured that out, Mr. Hester?

A. I find thirty-seven cases, if I have not overlooked any.

Q. Do you have that figure, Mr. Hester?

A. I have 37 cases.

Q. You have 37 cases?

A. I think I have it correctly.

Q. I think probably there's another case in there; I think there's 38 cases, to be exact.

A. It may be.

Q. All right; now I want you to turn now to the minutes of the October term of court. The cases that first appear there on that book, in those minutes, appear in the October term, 1925, is that correct?

A. Yes.

Q. That is where you have counted the 37 cases against the one man?

A. What?

Q. I say that's where you have counted them?

A. Yes.

Q. All right. Now, then, I wish you would read the minutes for that term of court, and let us know whether or not the minutes indicate anything with reference to those cases; that is, for that present term of court?

A. What do you mean—to read all the cases?

Q. No, sir; I don't care for you to read all the cases, Mr. Hester. Just what disposition was made of them; were they carried forward or what became of the cases at that term of court, October, 1925?

A. Here is No. 2082, the State of Texas vs. Andreis Kaye, I believe it is, continued by agreement for the term.

Q. Mr. Hester, you don't find anything in the minutes there of October, 1925, with reference to the disposition of those cases? I take it they were carried forward in the next term of court, or will appear in the next minutes?

A. What cases do you have reference to?

Q. Ted Donovan.

A. I don't find them.

Q. Do you find where the district judge, J. B. Price, signed up the minutes for that term of court?

A. Yes, I do.

Q. Does it show the date that those minutes were signed?

A. The 13th day of November, A. D. 1925.

Q. All right; take your next term of court that appears in the minutes, and see if you find the name of Ted Donevan; the term following the October term, 1925?

A. What was the question, please, sir.

Q. Read the question, Mr. Reporter.

(Reporter reads the question.)

A. I do.

Q. What term of court is that, Mr. Hester?

A. April term, A. D. 1926.

Q. April, 1926?

A. Yes.

Q. How many times do you find Ted Donevan's name on there in those minutes? Do you find those cases?

A. Yes.

Q. How many of them are there?

A. I find Ted Donevan's name entered twice.

Q. I wish you would read the last entry there in those minutes, with reference to those cases.

A. "The State of Texas vs. Ted Donevan. In all cases pending in this court against the defendant, Ted Donevan, No. 2030, 2042, 2044 to 2077 and 2122, inclusive, it is now ordered by the court that the defendant be granted bail in the sum of $140 in each case, and upon furnishing bail in the above amount, conditioned as required by law and approved by the sheriff,

it is ordered that defendant, Ted Donevan, be released from custody to await the action of this court."

Q. That was for your April term, 1926?

A. Yes.

Q. Now, then, I wish you would turn to your next term of court.

A. October term, A. D. 1926.

Q. All right. See if you find his name in there?

A. I do.

Q. All right, sir; how many is shown in the minutes of that term of court against this same man, Ted Donevan?

A. I find it one time.

Q. You find it one time?

A. Yes.

Q. It took you a long time to find that one case. What is the entry in that case? Read it.

A. "It is ordered by the court that the clerk of the court duplicate all process and reissue all subpoenas, both for the State and the defense, returnable on the day for which the cases are set, in the following cases, to-wit: No. 2005, The State of Texas vs. Apolonio Vega; No. 2030, The State of Texas vs. Ted Donovan; No. 2036, The State of Texas vs. Ollie Donovan, and No. 2028, The State of Texas vs. Hardney Kelly."

Q. Were the minutes of that term, October, 1926, signed up by District Judge Price?

A. They were.

Q. All right; now, I wish you would look at your next term of court, wherever that was, following that, and find the name of Ted Donovan.

A. April term, A. D., 1927?

Q. April, 1927?

A. Yes.

Q. Do you find his name on there, entered in the minutes of that term of court?

A. I do.

Q. What are the entries with reference to him there?

A. "State of Texas vs. Ted Donevan, No. 2030, 2042, 2043, to 2077, and No. 2122. On this the 5th day of May, 1927, the court having heard the motion of the State filed herein to dismiss this cause, and it appearing to the court that said motion is good and ought to be granted, it is therefore, ordered, adjudged, and decreed by the court that this cause be and the same is hereby ordered dismissed."

Q. All right. Now that includes—does the minutes of the court there show that that involves these 37 cases that had been carried in the minutes of the court from October, 1925, against Ted Donevan?

A. According to these figures, I believe that is what it means.

Q. In there it has the docket numbers opposite the motion entry which includes the 37 cases against Ted Donevan?

A. I believe so.

Q. I will get you to see if the minutes which you have just read were signed up by the court?

A. They have.

Q. All right. What is the date that Judge Price signed those minutes?

A. Do you want me to read it?

Q. Just read the date; I don't care about all that; just give the Committee the date.

A. I think; I don't think it gives any date.

Q. But as I understand it, it was for the April term, 1927?

A. Yes.

Q. All right; you say it doesn't have any date, but you find the signature of the court?

A. Yes.

Q. Do you know, Mr. Hester, of your own personal knowledge whether Ted Donevan is a white man, a Mexican, or a negro or what he is?

A. He's a nigger.

Q. All those charges against him, as shown by the minutes, were charges against him for violating the liquor law?

A. Yes.

Q. Do you know a party out there in your county that appears in the minutes of that court, by the name of Ollie Donevan?

A. I don't know him.

Q. Is that a woman, or a man—Ollie Donevan?

A. I rather think it's a negro man, but I don't know him personally.

Q. I will not go to the trouble to have you follow all those cases up, but I will get you to refer back to the minutes of the October term, 1925, and look for the name of Ollie Donevan. Do you find that name?

A. I do.

Q. How many cases appear there in the October term, 1925, against

Ollie Donevan? You can count the numbers, Mr. Hester, and get at them that way.

A. I believe I find eight.

Q. I beg your pardon?

A. Eight.

Q. Eight cases?

A. Yes.

Q. All right, without consuming any more time than is necessary, I wish you would follow those cases into the minutes of the April term, 1926, the October term, 1926, and the April term, 1927. In case you find where those cases have been disposed of before you get to the last named term, please indicate it to us, please, sir. I want to know what the minutes say with reference to those cases for the following term, after October, 1926, which would be April, 1926?

A. October, A. D. 1925—Cause No. 2034, State of Texas vs. Ollie Donevan. Do you want me to read it?

Q. Yes.

A. "On this the 9th day of October, 1925, the court having heard the motion of the State filed herein to dismiss this cause, and it appearing to the court that said motion is good and ought to be granted, it is therefore, ordered, adjudged, and decreed by the court that this cause be and the same is hereby ordered dismissed."

Q. All right, sir. That ends those. No, counsel just suggested, Mr. Hester, that the minutes you just read, had reference to only one case.

A. Yes, No. 2034.

Q. There's no order with reference to the other cases?

A. No, sir; there is not.

Q. All right then, follow those other cases into the next term of court, for April, 1926.

A. October term, A. D., 1925. It gives No. 2034 again, and No. 2039.

Q. What does it say?

A. "State of Texas vs. Ollie Donevan. In this the first day of November, A. D. 1925, the court having heard the motion of the State filed herein to dismiss this cause, and it appearing to the court that said motion is good and ought to be granted, it is, therefore, ordered, adjudged, and decreed by the court that this cause be and the same is hereby ordered dismissed."

Q. As I understand it, that order has reference to two of those cases. Is that correct?

A. Yes, No. 2034 and 2039.

Q. All right. Follow that same party into the next term of court, which would be April, 1926. Have you found that yet, Mr. Hester?

A. Yes.

Q. What term of court is that?

A. October term, A. D., 1926.

Q. All right. What's the minutes say with reference to Ollie Donevan?

A. Cause No. 2036, No. 2038, and 2040 and 2041, I believe it is. "The State of Texas vs. Ollie Donevan. On this the fourth day of November, 1926, the court having heard the motion of the State to dismiss this cause, and it appearing to the court that said motion is good and ought to be granted, it is, therefore, ordered, adjudged, and decreed by the court that these causes be and the same are hereby ordered dismissed."

Q. All right. Now, that is—does that finally dispose of all those cases?

A. I don't know. I will look further to see.

Q. Look at April, 1927, please, sir.

A. All right.

Q. Do you find that name?

A. I do.

Q. Is that for the April term, 1927?

A. It is.

Q. I wish you would read that minute entry, please, sir.

A. "Cause No. 2037—The State of Texas vs. Ollie Donevan. On this the 5th day of May, 1927, the court having heard the motion of the State to dismiss this cause, and it appearing to the court that said motion is good and ought to be granted, it is, therefore, ordered, adjudged and decreed by the court that this cause be and the same is hereby ordered dismissed."

Q. All right. That's all I care for from that book right now, Mr. Hester. I want to ask you some other questions. I am going to get you to look at that book you have in front of you now, Mr. Hester, and tell the Committee what that book is.

A. This book is the subpoena witness certificates.

Q. It's the what?

A. Subpoena witness accounts and certificates.

Q. Subpoena witness account and certificates?

A. Yes.

Q. Is that from the county of Lee?

A. It is.

Q. And what is contained in that book? That is, what entries are made in it, and what is the purpose of it—what is it used for?

A. Well, we use these certificates for the out-of-county witnesses that are paid for their employment.

Q. In other words, I will ask you if that is not the book that the witnesses who are subpoenaed to come to Lee county, in a felony case, that the blanks in that book are used for the purpose of the out-of-county witnesses making a claim for their attendance, showing the mileage they travel, the number of days they were necessarily away from home, and bearing the affidavit of the witness, together with the approval of the district judge?

A. It is.

Q. I wish you would look at the front part of that book, please, sir, and give us the dates of some of the first blanks that were filled out.

A. The first two are for the third day of November, 1927.

Q. Is that the first sheet that you have there in that book?

A. The first that I find, yes.

Q. Repeat that date again, please, sir.

A. The third day of November, 1927.

Q. Third day of November, 1927?

A. Yes.

Q. All right; in making up that book, or filling out those blanks, I will ask you if this practice is not followed: That you have what is called an original sheet and you place a carbon copy in there and all that is entered on the original claim either by the witness or the clerk of the court is transferred by carbon to a copy sheet, which is left in the book?

A. It is.

Q. And the original claim made by the witness, and the bill made by him, signed by him, and approved by the court, is torn out of the book and given to the witness, whoever it might be?

A. It is.

Q. And the original claim made by the witness, the carbon, is left in the book?

A. It is.

Q. You say that was back in 1927, the first entry?

A. Yes.

Q. I wish you would now turn to the last ten or fifteen pages, in the book, please, sir.

A. Yes, sir.

Q. I want you to please turn to the first page in the back of that book that is signed by the district judge, J. B. Price, in blank.

A. The last page.

Q. The first page in the back of the book?

A. It is.

Q. I want the first page that is signed in the last page of the book—Mr. Hester, I will ask you if you are familiar with the handwriting of Judge J. B. Price?

A. I am.

Q. Are those pages numbered in that book—do they have a number on them?

A. I don't think they have.

Q. They are not numbered then?

A. If they are, I haven't found it.

Q. That's all right; they may not be. Now that page that you have before you there; what does it say—that is, what entries are on that page—what do you find written in there on the blanks as set out in that affidavit or that claim?

A. Not anything.

Q. Well, do you find anybody's name signed to it?

A. J. B. Price.

Q. Is that J. B. Price's signature?

A. It is.

Q. I wish you would turn now to those pages; I don't care for you to give me the number of carbon copies that are supposed to stay in the book, but I do want to know the number of pages, original pages, in that book, that bear the signature of the court—that have been signed in blank.

A. There's seven.

Q. Seven pages?

A. Yes.

Q. Those are originals that are signed there. Do they—is there a place on each one of those pages for the district judge to sign, in more than one place, or just one place?

A. Just one place.

Q. Just one place?

A. Yes.

Q. Those seven that you are testifying about are the originals that are to be torn out of that book and delivered to whatever witness might make a claim?

A. They are.

Q. All right. However, they were signed—I haven't asked you that yet.

I will ask you if all seven of those pages, the original sheets thereof, have been signed by Judge Price?

A. They are.

Q. All right. However, both the original sheets and the copy of his signature, the copy sheets, bear his signature, in blank, do they not?

A. They do.

Q. Thereby making fourteen pages of witness scrip claims for out-of-county witnesses in that book that have been signed in blank?

A. It does.

Q. Seven by the original signature, and seven by the impression made by the carbon on the copy sheet?

A. It does.

Q. I will get you to look at that book, beginning there at that first page out of the seven you have testified about, and tell us what is the date of the last claim that was made there, or the last time any blank was filled out by any witness, and signed by the court.

A. November 3, 1930.

Q. November 3, 1930?

A. Yes.

Q. Now, where is Mr. Dunn. Mr. Dunn, we have a job for you here.

Mr. Dunn: All right.

Q. Mr. Dunn, I want you, please, sir, if you will, to read from the first page that is signed in blank by Judge J. B. Price, judge of the Twenty-first Judicial District, to read from the original sheet there, all that you find on that sheet that bears the signature of Judge Price. Of course, it is in blank, but I want you to read the blanks.

Mr. Dunn: Yes, sir.

"To.....witness in the following styled cause. State of Texas vs..... No..... Charged with..... To.... miles going to and returning from .....where I was summoned to..... by the nearest practicable conveyance, at 3 cents per mile..... $..... To.....days necessary absence from home in attendance on court in the above cause, at $1 per day at the .....term..... $..... $..... By amount furnished me by..... sheriff of.....County $.....
Balance due $.....

"I do solemnly swear that the above account is just, true and correct, and that the services were performed as therein stated; that the miles charged for will have been actually traveled; and that no part of the same has heretofore been paid, except as shown above; that I was subpoenaed in..... county and am under bond (and have made affidavit of my inability from lack of funds to appear), and that all additional trips were made under the direction of the court.

".....Witness.

"Subscribed and sworn to before me, this.....day of..... 192.....

".....

"By.....Deputy.

".....County, Texas.

"I hereby certify that the papers on file in this cause show that the law now in force was complied with before the subpoena for this witness was issued.

".....

"Clerk District Court,

".....County, Texas.

"I, ... judge of the district court of the ..... judicial district, do hereby certify that the foregoing account and accompanying certificate of ..... as witness, for the net sum of $..... is correct, and approve the same; and I further certify that fees have not been allowed in this case to more than two witnesses testifying to the same fact (been allowed to more than two witnesses testifying to the same fact, this witness being necessary to the cause) nor was this witness subpoenaed for the purpose of proving the general character of the defendant, nor has the witness been allowed fees in any other case at this term of the court, and that where more than one trip has been made by the witness, the same was made under the direction of the court. The case being set for the ..... day of ..... 192.... and was continued to the ..... day of ..... 192...., the same being a later date in the same term.

"(Signed) J. B. PRICE,

"Judge, Twenty-first Judicial District."

"This is to certify that ..... the above-named witness is entitled, in accordance with the above account, to receive the sum of ..... dollars.

".....,

"Dist. Clerk of ..... County, Texas."

"The State of Texas,
"County of .....

"I hereby certify that the foregoing account and certificate of ....., witness in the case herein stated, is recorded in my office in Book ...., Page .....

"Witness my hand and seal of office, at ..... this ..... day of ..... 192.....

".....,
"Clerk, Dist. Court, ...
County, Texas.

"By ..... Deputy."

"Erase that part that does not fit the case.

"Note:—Mileage will be allowed from and to the place of service only."

Q. All right, thank you, Mr. Dunn. All right, Mr. Hester, take the stand again. Now, you say that there's seven sheets in that book that have those blanks, that Mr. Dunn just read, and those provisions that Mr. Dunn just read, without any other signature or certificate appearing on it, except the signature of the district judge, J. B. Price?

A. I think so.

Q. Don't you know so.

A. I do.

Q. Now then, can you tell this Committee what the custom has been in that court, with Judge Price, with reference to that fee book, that witness claim fee book?

A. Well—

Q. I believe you made a statement, did you not, to the State Investigating Committee?

A. As well as I remember—

Q. That's what I am asking you about; just what you remember about these things.

A. Well, what question was that?

Q. Can you tell the Committee how that was signed up in blank before any witness signed it, or anything of the kind, if you know?

A. Yes.

Q. All right.

A. We took the book in there to the judge before he would get into trying a case and get him to sign a few ahead, in order to offset the rush; these witnesses are excused and want to go home and we have a few ahead in order to run us, and don't like to rush on it. That was one reason, I'm sure.

Q. Well, you are sure that's the reason?

A. That's one reason.

Q. And that could be the reason in some of the cases, whether in all of them or not?

A. I couldn't say about all of them.

Q. You couldn't say?

A. No, sir.

Q. Has it been the custom—I will ask you again, has it been the custom of the court to sign it up in blank, sign seven or eight pages ahead of time, and to leave it with you or any other clerk?

A. It hasn't been done with me that way, that is, the witness fee book, since I have been clerk.

Q. Repeat that please; I didn't hear you.

A. I say the out-of-county witness account or certificate book, since I have been clerk—

Q. It has not been signed up in blank?

A. Since I have been clerk—no, sir.

Q. Well, you have not had such a rush since you have been clerk out there, that it was necessary to sign up several pages ahead of time?

A. No, sir.

Q. I will ask you what has been your custom out there in that county with reference to your witness book; that is, the book that is kept there by you for the purpose of subpoenaing witnesses to appear there in various felony cases?

A. You mean this book?

Q. No, sir; that witness book for your in-county witnesses. Your in-county subpoena book that you keep, in other words, I come into your office and say I represent Ted Donevan, and want to make application for some witnesses. What do you do with that book?

A. Since I have been clerk, I keep the book in the district clerk's office.

Q. You do?

A. Yes.

Q. When did you start that; you started that on the first of January of this year, did you?

A. Well, about the time the last spring term of court started.

Q. About the time the last spring term started?

A. Yes.

Q. I will ask you, Mr. Hester, if you have deviated any from that rule of keeping that book for in-county

witnesses in your office—if you have made any exceptions to that rule?

A. Well, not since I have had the books in there.

Q. You are a little too close to that "mike," Mr. Hester; pardon me, but I can't hear you myself. What was your answer to that question?

A. I believe I testified to that before.

Q. Yes.

A. To something like that.

Q. I will ask you if you have not stated before—I want to ask you this question, Mr. Hester—do you know Mr. R. V. Nichols—in other words, this gentleman over here?

A. Yes.

Q. You have seen him before today, haven't you?

A. Yes, I have.

Q. Haven't you seen him at home, and in your office?

A. I have.

Q. Now, I want to ask you some more questions with reference to the witness book; that is, the book that is kept there in your office, wherein the names of witnesses are filled in the blank, something like that book there, for the witnesses to be summoned by the sheriff in your county to testify in criminal cases. What has been your custom with reference to that book, and with reference to filling out the blanks for it?

A. When I was the deputy for Mr. Beaman, it was kept down in the sheriff's office.

Q. All right. That is the book that is something like that book; it's got the blanks on it as provided by law, and then the names of the witnesses that are to be subpoenaed by the sheriff are written in those blanks; is that true?

A. Yes.

Q. That's the book you are talking about?

A. Yes.

Q. Who did you say was clerk?

A. N. D. Beaman.

Q. In other words, that is the man you worked for, as deputy clerk?

A. Yes.

Q. When he was district clerk, which was just before you went into office, the witness book was kept down in the sheriff's office?

A. It was.

Q. Now, who filled in the names of the witnesses to be summoned by the sheriffs for various cases, filled in the blanks in this book?

A. In what term of court?

Q. Who filled them in at any term? I want to know whether the sheriff or the clerk, or who did fill them out?

A. I couldn't tell you. I don't know who filled them out.

Q. You are deputy district clerk there now and you said you had been around that district clerk's office for several years, and your county isn't a very big county, is it?

A. No, sir; not very big.

Q. About 13,000, something like that, isn't it?

A. I think so.

Q. How big is your county seat—what is the population of your county seat?

A. Something like 1800, I believe.

Q. 1800 people?

A. Yes.

Q. You would be apt to remember about what was done with reference to what was done about subpoenaing the witnesses, specially those that lived in that county, wouldn't you, and what was done with reference to the book that had to be used in getting those witnesses to the court?

A. Well—

Q. I am not trying to confuse you.

A. No, I understand. I guess I could state what I saw?

Q. All right; yes, you can do that. That's what I am asking you for.

A. I could answer the question in that way.

Q. All right; I will put it this way, maybe it will be easier. I will ask you if it is not a fact that the witness book to be kept by the district clerk, that is printed in blank for the witnesses to be summoned by the sheriff to appear in felony cases, in that court, if that book was not turned over in blank to the sheriff for him to fill in the number of witnesses and the names of the witnesses that he might see fit?

A. What term of court do you have reference to?

Q. I don't know about your terms, all of them, Mr. Hester. Did it happen in any of the terms?

A. Well, as I stated, the subpoena books were in the sheriff's office—

Q. When were they in the sheriff's office? I don't know, myself, and that's why I am asking you.

A. Well, up to when I went in office, and I told the sheriff the books belonged at the clerk's office.

Q. That's what I am trying to get at, and we understand each other all right. Now, then, when you went into the district clerk's office, on January first, the witness book for in-county witnesses was down in the sheriff's office. Now, I want to ask you if you don't know that the sheriff, prior to your induction into office, filled in the names and number of witnesses he subpoenaed and made his return on the back, down there in the sheriff's office?

A. I am pretty sure that some of them were made in the sheriff's office.

Q. It would have no other reason for being in the sheriff's office, would it, Mr. Hester?

A. I believe what started that, the former district clerk assisted the sheriff and just kept the witness book down there in the sheriff's office for their convenience.

Q. All right; that's your statement of it?

A. Yes.

Q. Now, then, when Mr. Nichols was out there, looking for that witness book, since you were out there in office, where did he find that book? I will ask you if he wasn't out there just recently, not very long ago?

Senate Page: What was the question—we didn't get it?

Q. I asked him if the witness book that he has been testifying about wasn't found by Mr. Nichols about two months ago in the sheriff's office, since he has been district clerk. That was in June, June 9, 1931.

A. June 9, 1931.

Q. Yes.

A. Not the witness subpoena book that was used at the 1931 term of court, but there was some other book out there that I got later.

Q. There were some books down there that had been left over there before you went into office?

A. Yes.

Q. These witness books, though, were signed, and those blanks were signed by you, weren't they?

A. What blanks?

Q. The ones that you found in the sheriff's office, some of them?

A. Some of them were signed by the deputy, I presume.

Q. I will ask you—I am asking you if you know whether or not you signed some witness subpoenas in blank, yourself, F. A. Hester, and that they were in the sheriff's office in June of this year?

A. Well, what do you mean, when you say signed in blank?

Q. I am talking about a subpoena; Mr. Graves will show you there. I am talking about a subpoena to be torn out of a witness book.

Judge Batts: Your Honor, it seems there is a difference of opinion, or a misunderstanding, between the witness and counsel for the State. In view of that fact, and in view of the fact that he is talking about what some book shows, perhaps the book itself would be the best evidence.

The Chairman: Of course, the book would be the best evidence of what it shows.

Mr. Sturgeon: I am not asking this man to testify about any entries in any book. I am just asking him what he did himself with reference to certain books that this Committee should know, as part of this inquiry right now; this man's actions as district clerk—that's the purpose of it. I don't care to go into a lot of details as to what was in the book, but I think I am entitled to show, and this Committee is entitled to know, what has been the custom out there with reference to witness subpoenas, and the way they were filled out with reference to both the in-county and the out-of-county witnesses.

The Chairman: All right; proceed along that line.

Q. I want to ask you again, Mr. Hester, and as I stated to you in the outset, I am not trying to confuse you, and there is no controversy between us. I wish you would tell us, if you will—maybe we can get at it better this way—tell us how witnesses are brought to your courthouse to testify in felony cases. What do you have to do to get a witness in to testify in your court?

A. Well, I would like for you to repeat the first question, if you will.

Q. You mean the first question I asked?

A. Yes.

Q. All right; I will kill this last question, and ask you this one, and try to ask it like I did before. I will ask you if the witness book for the in-county subpoenas, that is the book something like that—I don't know what it looks like, I haven't seen it; where you tear the subpoenas out of the book and leave the stub in the book, if you have signed up

that book in blank and turned it over to the sheriff?

A. You mean the book signed in blank, with Judge Price's signature?

Q. Yes.

A. Not at any time.

Q. Not at any time, you say?

A. No, sir.

Q. That's all right, then. As I understand it, your statement is that you are positive that you have not signed, as district clerk, any witness blanks that could be filled in by anyone else in the witness subpoenas?

A. I absolutely deny that I ever did it.

Q. Did you ever sign any as a deputy while you worked for the other man?

A. No, sir.

Q. Has it been the custom to do this, either in your administration or the other administrations, for this subpoena book to be left down there with the sheriff, and not signed in blank, but that the sheriff fills in the names and everything of the kind and brings it back to the district clerk for his signature?

A. Well, I believe that the sheriff and the deputy, while they had the books in the sheriff's office, that was the custom, I believe, in order to save time, because the docket was crowded and it saved considerable time, and they just didn't have time to subpoena them off the list, you know.

Q. You speak of your docket being crowded, Mr. Hester. When was your last term of court?

A. The April term, 1931?

Q. April term, 1931?

A. Yes.

Q. This last April?

A. Yes.

Q. Could you give us off-handed, about the number of felony cases in your court in that term?

A. No, sir; I don't believe so. What I mean by being crowded, a crowded docket, is that several cases set for the same day, you know.

Q. Several set the same day?

A. Yes.

Q. How many weeks does your term of court last?

A. Well, the first week has usually been grand jury week, and they have been excusing the jury after the first week, and then three weeks of court, and sometimes four.

Q. Then your grand jury recesses and comes back?

A. Yes, sir.

Q. Now, I want to ask you one or two more questions, and then I am through with reference to that book right there in front of you. Can you tell us, or do you know when Judge Price affixed his signature to those sheets that you see there in that book?

A. Well, the best of my knowledge, it must have been the same date these were signed here. He signed up enough to catch them for some time ahead.

Q. There is nothing in that book to indicate that?

A. No, sir.

Q. There is nothing in the book or on those pages to show that date is there?

A. No, sir.

Q. And you have no personal knowledge of that?

A. Yes.

Q. You were not there, were you?

A. Absolutely, I was.

Q. You were there and saw him sign those blanks?

A. Absolutely. I handed him the book and he put it in his lap and I saw him sign it.

Q. Where was that and when?

A. I just don't remember whether the book was in the courtroom or in the office, or where.

Q. You don't remember but you even remember he had the book in his lap when he signed them?

A. Yes.

Q. Was it on his lap or on the desk?

A. I believe it was in his lap.

Q. You don't remember where it was, however?

A. No, sir.

Q. You took the book to him to sign; you are the man that did that?

A. I usually do. This time, I may have called him into the office, or carried the book to him; I don't remember exactly.

Q. That's what I asked you awhile ago. Do you have any independent recollection of where that book was signed in blank that you are looking at right there, and why it was signed in blank; do you have any independent recollection of that?

A. Well, it was signed in blank simply—he simply signed what was left in the book, and he says, I guess that will run you awhile. You see, sometimes, the out-of-town witnesses don't appear—

Q. Some of them don't appear sometimes?

A. Yes.

Q. I'm sure of that.

A. Yes, sir.

Q. But you state now that the court said to you when he signed those pages in blank, he guessed that would run you for awhile?

A. He often says that. Often he signs up some of them and he says, I guess that will run you for awhile. He just signs several of them, and says something to that effect in the general conversation. I just don't remember just what was said and all about it, but that's about it.

Q. I don't expect you to have an independent recollection of all of it, but you are testifying and have testified that that book was signed, and you think you took it to him. That is true, isn't it?

A. I don't remember whether I took it to him or he came into the office. I wouldn't be positive about that.

Q. You wouldn't be positive about it?

A. No, sir.

Q. I believe you stated that you thought he signed it while he had the book in his lap. Did you make that statement, or not?

A. That could be true, and it could be possible that it was on the desk or the table. I just don't remember the details at this time.

Q. That's what I am trying to get at. You don't remember, and you don't know where the book was signed, and you are not positive that you were even there—whether you were there or not when it was signed, do you?

A. Right at this time, I don't remember.

Q. Do you know of anything at all that you could do that would remind you or refresh your memory of how that book was signed? Is there any way you could get any more light on that subject?

A. I could swear the judge signed it, is all.

Q. Yes, we know that. Now you made some statement while ago with reference to what your judgment was about when it was signed. I believe you said you guessed it was signed along about the time the others were signed?

A. I imagine it was. I could not swear positively; I don't remember, right now.

Q. You don't remember; all right.

A. No, sir. I want to be fair about it.

Q. That's all I want you to do; just what you do remember. That book there that you have, even with the court's signature on it, must have the affidavit of the witness, and have the certificate of the clerk having sworn the witness to it, before it could be negotiable?

A. I think so.

Q. After it does have the name of the witness placed on it and the certificate of the district clerk or the deputy, and then the judge's signature and is torn out of that book, it then constitutes a negotiable instrument, or makes a demand on the State, doesnt' it?

A. I think so.

Q. Mr. Hester, I have some subpoenas that appear to have been issued by you as district clerk for your county out there in different causes. I am going to hand you these subpoenas, and these are in-county subpoenas in felony cases; one here is for four or five different witnesses to appear in Giddings on the 29th, Monday, in April—the 29th Monday in April, this one says, and then and there to testify as a witness in behalf of somebody, in defense of somebody. I am going to hand you these subpoenas, and am going to ask you something about the signatures on these subpoenas—who filled in the body, and who signed them and if you signed them, and who made the return on them, if you know.

Q. Now, then, Mr. Hester, I don't care for you to look at all of the subpoenas. I just want you to look at some of them. You have got some subpoenas there, now, haven't you, that were torn out of these subpoena books of your county, is that right?

A. I have.

Q. Those subpoenas have the name or bear the name of F. A. Hester, clerk of the district court of Lee county. Did you affix your signature to those subpoenas?

A. I did.

Q. And that is your handwriting, is it?

A. It certainly is—yes, sir.

Q. All right. I will ask you to state to the Committee what subpoena that is you have right there in front

of you—that is, just read it—"to the sheriff or any constable of Lee county," just read that.

A. Sir?

Q. Just read the subpoena, "State of Texas, to the sheriff or any constable of Lee county," and so on.

A. It says: "To the sheriff or any constable of Lee county, Greeting: You are hereby commanded to summons John Carothers, Bill Symank, Ed McGregor, Chas. Balcar, to be and appear before the honorable district court of Lee county, Texas, to be held at the courthouse in said county in Giddings, on the 29th Monday in April, 1931, to then and there testify as a witness in behalf of the defendant, in a criminal action pending in the said court, wherein the State of Texas is plaintiff and Pete Ribra, defendant * * *."

Q. All right. Now, that is all you need to read of it, Mr. Hester. Now, then, the other subpoena you have in your hand, does it bear your signature, or did you affix your signature to that subpoena as district clerk?

A. I did.

Q. Now, then, the names that appear to be of the witnesses so subpoenaed, is that in your handwriting?

A. It is not.

Q. Do you know in whose handwriting it is?

A. I certainly do.

Q. All right, who did it?

A. The young lady by the name of Miss Pruesser—Mildred Pruesser.

Q. Was she your deputy?

A. She was working for me, and did some work in the sheriff's office.

Q. All right. Then the way that was done, she filled out the subpoenas and then you came along and signed them?

A. Yes, sir.

Q. Now, then, I will get you to look at the return on that subpoena, please, sir, and tell us if you know in whose handwriting that return is made on there?

A. Well, that could be her handwriting.

Q. Yes, sir. All right. Whose name is signed to that as an officer?

A. John J. Burtschell, sheriff.

Q. Do you recognize Mr. Burtschell's signature well enough to say that that is his signature?

A. I believe it is.

Q. All right. Now, then, let's see if we can find out something definite about the returns. Are you willing to say that your office girl made out that return, or was it made out by somebody else?

A. How is that?

Q. Are you willing to say that the handwriting on the return on that subpoena was made out by your office girl, or was made out by someone else?

A. Well, I believe I would be almost willing to swear that she made this one out, right in my presence.

Q. Right in your presence?

A. Of course, I couldn't swear that she made this one out, but I could almost swear it was her handwriting.

Q. What would be the purpose of making the return for the officer?

A. Well, the sheriff wanted her to help him.

Q. Sir?

A. I couldn't swear to the handwriting; it looks very much like her handwriting.

Q. The truth about it is, she works for the sheriff, too, doesn't she?

A. Well, she done some work for the sheriff.

Q. Now, are those returns that you have there on that subpoena, that particular one I am asking you about, we will take it for granted that she did make the return on it, I believe you stated you have independent recollection that she made that return in your presence?

A. Well, I wouldn't swear she did; it looks very much like her handwriting.

Q. I understand, that is right, you wouldn't swear that she did or did not?

A. No, sir.

Q. Therefore, you don't know whether she did or did not? Now, then, what makes you say you think you recollected or remembered she did it in your presence?

A. Well, she filled in the body of these things in my presence, most of them.

Q. Well, for that reason—you don't make a return on a subpoena at the same time you fill in the names of witnesses that are to be summoned, do you?

A. I don't do it, no, sir.

Q. Well, she doesn't, either, does she?

A. Well, I don't know whether they put the returns on there at that time or not.

Q. Well, you would not permit your deputy—a girl who worked in

your office—to fill out a subpoena for witnesses to be summoned, and you would sign it, and then let her turn the subpoena and make returns before the sheriff ever had anything to do with it, would you?

A. She wasn't my deputy.

Q. Whose deputy was she?

A. She worked for me and for the sheriff.

Q. In other words, she worked for both of you? Now, the question I am asking you, that I asked you a moment ago was, you said something about having a recollection of her making a return on this subpoena, on that particular warrant. Now, what I want to know is how it was done—it was done in your presence, and from what it was done, did she go on some information the sheriff had given her, or how was it done?

A. Well, you mean the issuance of these subpoenas?

Q. No, sir; I am talking about the return of the sheriff's.

A. About how these returns were made?

Q. Yes, sir; I am asking about that one subpoena that you testified about just a moment ago.

A. Well, I couldn't answer the question, I couldn't swear positively to that, Mr. Sturgeon.

Q. In that case, you don't know now that she made the return?

A. That she did make the return?

Q. I asked you, do you know now whether she did make it or not?

A. I couldn't swear positively to it, no, sir.

Q. All right. But you do think that is her handwriting?

A. It looks like it.

Q. It looks like it? Now, she was working for you in the district clerk's office at the time she was working for the sheriff, Mr. Burtschell?

A. Well, she does work for me, and she said the sheriff had something for her to do, and came up to that office and they worked there together.

Q. How did you all pay her—did you pay her so much and the sheriff so much, or how was that?

Mr. Page: Mr. Speaker, we don't like to object, but we do not see how our district judge, being tried here, had anything to do with the controversy as to the name of the young lady working up there; it seems like it is just taking up time. Mr. —

Mr. Sturgeon: Here is the purpose of the testimony—I am not going to go very far with it; but I asked the clerk how he filled out these subpoenas; I ask him if he signed them in blank and delivered his book to the sheriff, and he said he did not; and I am asking him now about some of these subpoenas here that were signed in his own handwriting and the witnesses' names were written in in a different handwriting from his. I am trying to find out who wrote those names in there and who made, also, the returns on the subpoenas. It all sheds light on this inquiry, as I understand.

The Chair: Go ahead.

Q. Well, I will ask you this other question, Mr. Hester, about that, and that is all I care to know about it. I will get you to look at this subpoena right here, look at the return on that (handing subpoena to witness)—now, I just want you to look at the returns on that subpoena and tell us if you know in whose handwriting that return is?

A. I couldn't swear to it, no, sir.

Q. The subpoena bears the signature of the sheriff, does it not?

A. I think it does.

Q. You do not know who made the return on it?

A. No, sir.

Q. Now, look at the body of the subpoena, on the other side of it. Now, you signed that subpoena as district clerk, did you not?

A. I did.

Q. Tell, if you know, now, who filled in the names—do you recognize the signature there of those names that are written in there?

A. Well, it looks like the little Preusser girl's handwriting?

Q. Looks like the little girl's handwriting?

A. Yes, sir.

Q. That you have just testified about?

A. Yes, sir.

Q. Now, one of the gentlemen has suggested, Mr. Hester, that I ask you positively and definitely about that witness book—

A. Yes, sir.

Q. In other words, there seems to be some misunderstanding about what your testimony is about it, and I want to get it straight in the record.

A. I think there is, yes, sir.

Q. All right. Now, then, I want to ask you this positive question, if you will swear now that that book you have testified about containing seven pages signed in blank by Judge Price, in that book—now, I want to ask you if you are now testifying that you saw Judge Price affix his signature to those pages, and that he did it at your request, are you swearing to that?

A. Well, I will swear that he signed these pages, and he signed some more here at my request, all at the same time, and he signed the unfinished ones, what few there were left, there were just a few left.

Q. All right. Then you are stating to this Committee that he signed those papers that you see in blank there, at your request?

A. Well, I don't say that he signed all of them at my request, but there were a few left in here, he signed all of them, and as well as I remember there was a remark made, he says, "that ought to run you," or something like that, as to the number of witnesses, the best I remember, right at this time.

Q. All right. Now, then, did he sign some of those others, over there that had been filled out at the same time he signed those that had not been filled out?

A. I don't remember.

Q. You don't remember? Then, the truth about it is, Mr. Hester—I want you to listen to this—the truth about it is you do not have any independent recollection about how those were signed, who—except you do know that Judge Price signed them, and you have in times gone by, asked him to sign them—that is about the truth?

A. They were signed and I turned the pages, and on account of the condition of them, removed the carbon; we always did assist him.

Q. Now, then, I am going to have to ask you some more questions about it. The last ones that were signed in that book that have been filled out by witnesses, and the witnesses have sworn to them, do they bear your name?

A. My handwriting.

Q. They have your name, is your name on there, those that have been filled out, originals, delivered to the witnesses?

A. My name is on there as deputy.

Q. As deputy clerk?

A. Yes, sir.

Q. All right. Now, then, for what term of court were those blanks filled out—just give the date of them, I don't care about the term of court—what does the date show you affixed your signature?

A. The third day of November, 1930.

Q. The third day of November, 1930? All right. Now, then, weren't you acting as district clerk there under appointment—I believe you said you went into office January 1?

A. Well, I was appointed a little bit before that, sometime in December.

Q. Well, all right. But you were a deputy there when that was done?

A. Yes, sir.

Q. In November?

A. Yes, sir.

Q. That was just a few months, or two months, before you went into office—no, that would be about a year ago—that is, the rest of November, 1930, that is right, that was two months before you went into office. Now, then, that hasn't been so long ago, has it?

A. Well—

Q. Well, all right. Now, I want to get, just as nearly as I can, definitely, about what happened about these blanks, it seems that you were the man that had been accustomed to taking them to him, and if you have any independent recollection now of taking that book to Judge Price, I want you to tell us when it was and where it was, and under what condition it was.

A. That particular book?

Q. Yes, sir, where they are signed in blank.

A. I don't remember about this book, no, sir.

Q. You don't remember about this book?

A. Whether it was in the clerk's office or in the court room, or just where it was.

Q. I am going to ask you just one more time the positive question, and I ask you to listen to it: Did you or not take that book to Judge Price and get him to affix his signature to those pages that you have been testifying about that are signed in blank?

A. I did.

Q. You are positive of that? Sir?
A. I am.
Q. All right. That is all. It has been suggested that I ask you who was paying that girl that worked for you and the sheriff?
A. Well, I paid her when she worked for me, and I guess the sheriff paid her when she worked for him. I guess he has.
Q. And another one: Was this young lady deputized by you that was working for you?
A. She was not.
Q. Did she have power to sign your name?
A. She did not.
Q. Did she have power to sign the sheriff's name, so far as you know?
A. She did not.
Q. That is all.

Mr. Page: Mr. Speaker, these records have been in the possession of the Committee here for some time, we haven't had an opportunity to examine them. It now lacks a few minutes of 12 o'clock. I haven't seen this judgment record, nor has Judge Batts, or any of us here, nor have we seen this witness book until now. It would take us a few minutes to look over these things, so as to cross-examine this witness, and I suggest it is a few minutes to 12 o'clock, and we would like to have the privilege of looking over these things during the lunch hour.

The Chairman: That is satisfactory.

Mr. Graves: Mr. Chairman, I move that the Committee rise, and report progress to the House, and adjourn until 1:30 this afternoon.

The Chairman: 1:30, did you say?

Mr. Graves: Yes, sir, stand at ease until 1:30 would be all right.

Mr. Metcalfe: Mr. Chairman, I just want to make an inquiry as to how many witnesses they have to put on this afternoon. If they have many witnesses, why I would suggest that we adjourn until Monday morning at 9 o'clock.

Mr. Page: That would suit us mighty well.

(Cries of "No.")

Mr. DeWolfe: Mr. Chairman, I would like to make this suggestion: In the event that the House determines that it doesn't care to work this afternoon, I suggest that the Chair be requested to rule all their members to be here, if possible, Monday and for the first few days of next week, in order that we may have a quorum to work with.

The Chairman: There is a resolution on the desk to that effect. The witness now on the stand stated to the Chairman he would like very much for the Committee to conclude with him today in order that he might not have to return.

Mr. Page: I will just state, Mr. Chairman, he will have to return any way, when it comes our time to introduce our testimony. Of course, we are going to cross-examine him, but we want him back when we introduce our testimony, so I do not see that anything could be saved by that, because he is one of our witnesses also.

Mr. Metcalfe: I make this motion, that the Committee rise, report progress and adjourn until 9 o'clock Monday morning. It is very evident we are going to be here one or two or three days next week anyhow.

Mr. DeWolfe: If the Chair will permit me, I will state on behalf of the attorneys for the House, I think it will be perfectly satisfactory to them, as well as to Judge Price's counsel, to stand adjourned or at ease until 9 o'clock Monday. We are willing, however, to leave that to the pleasure of the House.

Mr. Howsley: Mr. Speaker, have you anything you can do if we stay here?

Mr. Metcalfe: I think that perhaps we haven't finished with the charges yet; we can continue that.

Judge Batts: Mr. Speaker, may I make a statement? I want to make a statement to this effect, that these matters have been coming on us so fast that we haven't been able to ascertain with reference to the number of witnesses that we have, whether we can secure their attendance here without process; it is our hope that most of the witnesses will come without being put under subpoena, but we haven't had an opportunity of checking over the witnesses or ascertaining what can be done. Now, so far as the matter of saving time and expense is concerned, it is my judgment that both of those things will be conserved by giving us a little oppor-

tunity to go over our witnesses. The suggestion that we want to delay is, of course, entirely without any merit. My friend, Hubbard, the other day made the suggestion that we were undertaking to delay this matter, when the agreement we had entered into with the State had been suggested by Mr. Graves. Now, of course, we can go ahead with this matter if you desire, but I do believe that time will be conserved by giving us a little opportunity to find out what we have to do in the matter of subpoenaing witnesses.

Mr. Hanson: Mr. Chairman, I think it would be a good idea to go ahead, that this is a pretty good time, for the witnesses might get away or die, or something of that kind.

Judge Batts: Well, we are willing to go on right now.

The Chairman: Mr. Metcalfe made an amendment to Mr. Graves' motion that the Committee rise, report progress and ask permission of the House to meet again at 9 o'clock a. m. on Monday.

Mr. Metcalfe: Division—

The Chairman: Now, those who favor standing at ease until 1:30 o'clock will say "yea," those opposed "nay." This is for the purpose of division. Those who favor standing at ease until 1:30, vote "yea," those opposed "nay." The "yeas" have it, and the Committee will rise, report progress and ask leave to meet at 1:30 o'clock.

(The Committee of the Whole House thereupon recessed at 11:55 o'clock a. m. until 2 o'clock p. m. of the same day.)

Whereupon, the Committee reconvening at 1:30 o'clock p. m., August 15, 1931, the following proceedings were had:

Mr. Spurgeon: I understand the witness who was on the stand, that is, the district clerk, is now with the respondent in the case.

The chairman: Do you want the same witness back on the stand?

Mr. Spurgeon: I don't know what they want.

Cross-examination by Senator Page:

Q. Mr. Hester, you have testified that you are the district clerk of Lee county, Texas?

A. Yes.

Q. When were you appointed district clerk?

A. Why, as well as I remember, it was some time in December, 1930.

Q. 1930?

A. Sometime in December, 1930, I believe it was.

Q. What occasioned the vacancy in the office of district clerk?

A. The clerk died. Norman D. Beauman was clerk.

Q. He died and you were appointed?

A. Yes.

Q. And you had been connected with the clerk's office at some time previous to that, I believe you said?

A. During his term pretty regular.

Q. You were deputy during the term of the deceased clerk pretty much?

A. Yes, sir.

Q. You were asked this morning by the prosecution about the cases against Ted Donevan. How many cases did the grand jury for the October term, 1925, return against Ted Donevan? Look at the book before you, in answering the question.

A. Thirty-seven is what I find. It seems 37 that they returned.

Q. With what was the defendant charged?

A. Well, they are all liquor cases—selling, manufacturing, and so forth.

Q. They were all cases for violation of the prohibition laws?

A. Yes.

Q. Did you know Donevan?

A. I knew him when I saw him.

Q. You have stated that he was a negro?

A. Yes.

Q. Turn to the book before you and read the report of the grand jury, in which these indictments are found.

A. "On this the 26th day of October, 1925, came into open court the grand jury of Lee county, Texas, who had been duly empanelled at a former day of the term, and asked permission of the court to recess until Friday, October 30, 1925, and it appearing to the court that the court will still be in session on said date, it was the opinion of the court that said request will be granted. It is, therefore, ordered by the court that said grand jury be and are granted

permission to recess until Friday, October 30, 1925, and wherein said date they will reconvene without further order of the court, is directed to make record of this said permission in the criminal minutes of said court."

Q. Read the report in which they returned the indictment against Donevan.

A. "On this the 30th day of October, A. D. 1925, came into open court the grand jury, and through their foreman, reported to the judge that they have no further business to transact, whereupon, they were discharged by the court for the term, and warrants ordered drawn by the judge for the grand jury for seven days each."

Q. Don't you find, Mr. Hester, where the grand jury indicted a number of persons, including Ted Donevan, and if so, kindly read that to the Committee?

A. "On this, the 26th day of October, A. D. 1925, came into open court the grand jury, a quorum being present, and through their foreman in due form of law presented to the judge of this court the following bills of indictments, which was by the court received and thereupon ordered by the court to be filed, as follows, to-wit:"

Q. Among the list of indictments, there were 37 bills of indictment against Ted Donevan, were there not?

A. I think so, yes.

Q. Who was the foreman of that grand jury; do you know?

A. Elmo Heck.

Q. Do you know Mr. Heck?

A. Yes.

Q. Is he a reputable citizen of Lee county?

A. I think so, yes.

Q. Then there were 37 legitimate bills of indictment returned against Ted Donevan, and in each of those indictments, he was charged with some infraction of the liquor laws?

A. Yes.

Q. Then turn to see what disposition was made of the cases against him at that term, or the following term of court, whenever any disposition was made.

A. I don't find any.

Q. Then go to the next mention of his name at any term, and see what was done with the cases against him. Have you found an entry with regard to the Donevan case?

A. Yes.

Q. Read what you find.

A. "Cause No. 2040, State of Texas vs. Ted Donevan. May 6th. Jury having failed to reach a verdict, they came into open court and reported to the court that they were unable to agree and the State and the defendant in open court agreed to discharge of the jury, and it further appearing to the court the jury has been kept together a sufficient length of time, said jury is discharged. Said case continued to the next term of court."

Q. At that term of court then, the case was tried before a jury for violating the prohibition laws, and the jury did not agree on a verdict and so the case resulted in a mistrial, as shown by the minutes?

A. Yes, sir; that's what it shows here.

Q. You were not clerk at that time, but you were connected with the clerk's office, were you not?

A. No, sir; not as I know at that time. Mr. Moellenberndt was clerk, and he appointed me as deputy clerk when he went to the hospital.

Q. You were deputy at that time, were you not?

A. Not at that time, as I remember.

Q. I will ask you if you know, from your own personal knowledge, from being around there, or what you have heard, that after this case was tried, the negro forfeited his bond and ran away and went to Michigan?

A. I don't know when it was, but he did go up into Michigan, or somewhere; I don't know myself where it was, but it was reported he went there.

Q. It was reported so, and you understood he went to Michigan. He ran away?

A. It was so understood, yes.

Q. Do you know how long it was before the sheriff captured him in Michigan?

A. No, sir, I do not.

Q. It was quite a while, wasn't it?

A. I expect it was, yes.

Q. Well, as clerk of the court now, you know this fact: That this negro, if he was a fugitive from justice, and ran away and was up in Michigan, it would have been impossible for the court to have set his case down for

trial in any certain term of court, wouldn't it, Mr. Clerk?

A. Well, I don't hardly know.

Q. You know that if the defendant was not under bond, and had run away and gone up to Michigan, if his case was set for trial on a certain day, he likely would not be there?

A. I am pretty sure he wouldn't.

Q. Do you recall anything about the sheriff going to Michigan and getting that negro and bringing him back?

A. I heard that he did.

Q. It is your information that the sheriff went to Michigan in pursuit of this negro and brought him back to Giddings for trial?

A. That's what I understand.

Q. Do you recall that after he brought him back for trial, Judge Price exchanged benches with Judge Jeffrey, who resides at Caldwell, and they tried each other's cases?

A. I don't remember the time exactly.

Q. Don't you remember the time this negro, Ted Donevan, got his arm cut off in an accident in a gin, after he got back from Michigan?

A. I recall he got one of his hands cut off.

Q. Wasn't that after he came back from Michigan, or was brought back?

A. I believe so.

Q. Didn't that accident happen to that negro on a Saturday before his case was called on the following Monday?

A. I don't recall as to that.

Q. You do recall the time he got his hand cut off in an accident in the gin?

A. I recall that he lost a hand; but I don't recall just how it happened.

Q. Turn to the next entry you have there, as to the negro, Ted Donevan.

A. It just says: "The State of Texas vs. Ted Donevan—In all cases pending in the court—"

Q. That is not the order I referred to. I mean turn to the order of dismissal that you find there, where the case was finally dismissed.

A. "April term, A. D. 1927. Case No. 2030, 2042, 2043 to 2077 and 2122, the State of Texas vs. Ted Donevan: On this the 5th day of May, 1927, the court having heard the motion of the State filed herein to dismiss this cause, and it appearing to the court that said motion is good and ought to be granted, it is, therefore, ordered, adjudged and decreed by the court that this cause be, and the same is hereby, ordered dismissed."

Q. At that term of the court, then, which was after this negro had lost part of his arm in an accident in a gin, the State of Texas moved to dismiss that case, according to that order, and the court acceded to that motion and dismissed that cause, according to that record; isn't that correct, Mr. Clerk?

A. Yes.

Q. I believe that's all about that book now. Kindly turn to those blank witness matters that you read about here this morning.

A. Yes, sir.

Q. You have testified to this Committee that those blanks were signed by the district judge as a matter of convenience to you and him and to the witnesses, as I understood you this morning?

A. I guess that's about right, yes.

Q. Was there any intention on your part, when you got the district judge to sign those witness fee blanks, to defraud the State of Texas out of any money by paying or causing the payment of unjust witness fees?

A. No, sir, absolutely not.

Q. Has the State of Texas been defrauded out of any money by the signing of those seven blanks by Judge Price?

A. Absolutely not.

Q. Has the State of Texas been defrauded out of any money, as far as you know and to your knowledge?

A. I can only speak for myself, and as far as I know I don't know of any, no, sir.

Q. Did you collude with the sheriff of Lee county to put your subpoena book in his office to allow him to subpoena witnesses, unlawfully, and to collect witness fees unlawfully?

A. No, sir.

Q. Did you ever enter into any such agreement with either Sheriff Carlisle or with Sheriff Burttschell, the present sheriff?

A. No, sir, absolutely not.

Q. You know Judge Price, do you?

A. Yes, sir.

Q. During the time that you have been in his court, as deputy clerk and as clerk of his court, has he portrayed himself as a gentlemanly lawyer,

courteous and capable in the conduct of his office?

A. I believe so.

Q. Has he been courteous upon the bench and capable in his administration of justice?

Mr. Sturgeon: Now, just a minute. We object to that, Your Honor, because that is an evasion of the very matters this Committee has to pass upon. That is an opinion which cannot be an expert opinion, but simply a layman's opinion—asking him if he administered the law correctly.

Senator Page: I am only asking him this: This district judge is charged with corruption, and his removal is sought by impeachment, and I don't believe the Legislature should object to a question to this clerk of that court as to whether or not this clerk knew whether the judge has been courteous and efficient and capable in carrying out his duties, and I will say that I am really amazed that counsel should interpose such an objection to that question.

The Chairman: It seems to me that would be a conclusion upon the part of this witness.

Senator Page: I think it would be, Mr. Speaker, and we have been dealing in conclusions all along, and it has been ruled that conclusions are admissible. That this is an examining court, and we would be allowed to go into the facts fully, as a grand jury would do, and I am not attempting to take the position of arguing with the Chair, but I believe I should insist that the witness should be permitted to answer this question. This judge is charged with negligence, and what amounts practically to malfeasance in office, and with all respect to counsel, we think the witness should be permitted to answer.

The Chairman: I think the witness will be permitted to answer.

Senator Page: He stated that, as far as you know, the judge was courteous and capable. I believe he has answered the question as best he knew.

A. As far as my knowledge goes, he has been, yes.

Senator Page: That's all I wanted. I think that is all we have at this time, Mr. Chairman.

Re-direct Examination.

Questions by Mr. Graves:

Q. Mr. Hess, Mr. Page asked you if it was not a fact that you had heard—and they allowed it to be unanswered—that you had heard that Sheriff Carlisle went to Michigan for this negro, Donevan?

A. Yes.

Q. You said you had heard that?

A. Yes.

Q. Did you hear he went after him thirty-eight times—or thirty-seven times?

A. No, sir.

Q. Did you hear that he went to Texarkana after him thirty-seven times?

A. No, sir.

Q. You did hear that he charged 1600-and-some-odd dollars for going up to Texarkana after him?

A. No, sir.

Q. Did you see the account the sheriff made on that?

A. Not the whole amount, no, sir.

Q. You were not working there then?

A. No, sir; not all the time.

Q. That is filed in your office, in the minutes of your report right there. I believe I will get you to do this: Is it recorded in that book? No, that other book there. Haven't you seen his account in your office?

A. I have seen part of his accounts, but I don't recall just what I have seen. I don't recall just what account it was I saw.

Q. That's all.

Examination by Mr. Sturgeon:

Q. Mr. Hester, I want to ask you one question about this party you just testified about; you were talking about Ted Donevan that the sheriff went to Michigan after, and went to Texarkana after?

A. Yes.

Q. Now are you in a position to tell this Committee whether or not, after this negro was first arrested on these thirty-seven charges, whether or not he was arrested and put in jail after he was indicted, or some time after that?

A. I can't answer that question.

Q. You can't answer it?

A. No, sir.

Q. Are you in position to tell us whether or not after he was arrested after indictment on these charges, whether or not he made a bond and was released on bond?

A. I couldn't tell you.

Q. I notice that you read an order there, where the bonds were fixed at $140 in each case?

A. That's all I know about it.

Q. That's all you know about it?
A. Yes.
Q. Then all you know is that he was habeas corpused by somebody, in the district court, and his bond was fixed at $140 in each case?
A. That is what the record shows.
Q. You don't know whether he escaped or forfeited those bonds and it was necessary to go to Michigan after him, or not?
A. No, sir, I can't say.
Q. Now, then, did he get his arm cut off before he went to Michigan, or after he was brought back by the sheriff; do you know that?
A. Well, I rather think it was after he was brought back.
Q. Then evidently, if it was after he was brought back from Michigan, he didn't get his arm cut off in jail, did he—or do you know where he got it cut off?
A. No, sir; I don't know positively.
Q. Don't know positively?
A. No, sir; but I know he just has one hand.
Q. In other words, you do state positively that he must have gotten his arm cut off, after he came back from Michigan?
A. To the best of my recollection, it was afterwards, yes.
Q. That's all we want, just what you remember about it. Then, evidently, he must have been out on bond after he got his arm cut off.
A. Very likely.

Senator Page: That's a conclusion, if you want to talk about conclusions.

Q. All right. Counsel suggested Mr. Hester, that Senator Page asked you if these bonds were not forfeited, and I believe you stated that they were.
A. I don't know.
Q. You don't know whether they were or not?
A. No, sir, I don't remember anything about that.
Q. I see; then you don't know. Did they go to Michigan after the darkey before they went to Texarkana after him or not?
A. I don't know about that.
Q. You don't know?
A. No, sir.
Q. Then you don't know when he got his arm cut off?
A. No, sir, I can't state positively.
Q. All right.

Re-cross Examination.

Questions by Senator Page:

Q. You have stated, in answer to counsel's question, that his bond was fixed at $140 in each case, and that there were thirty-seven cases against him?
A. That's what the record shows.
Q. Donevan was not a negro of any means, was he—just an itinerant negro, wasn't he.
A. I don't know what he has.
Q. Take your pencil there and figure out what that bond would be at $140 in each of the thirty-seven cases. Multiply $140 by thirty-seven, and see how much it amounts to—see how much his bond was fixed at by the court.
A. It figures $5180, I have it.
Q. The district judge fixed this negro's bond at $5180 for his appearance at the next term of court?
A. Yes, sir.
Q. That's all.

Examination by Mr. Graves:

Q. Did you find any record of any payment, or collection, of the bonds, or any forfeiture or anything of the kind, by the State of Texas, for this money?
A. Nothing whatsoever, no, sir.
Q. It is not in those accounts or books?
A. No, sir.
Q. You have read what is in the minutes twice, haven't you?
A. Yes, for the October, 1927, term.
Q. Once for us and once for counsel for the defendant, and it is not in there?
A. No, sir.
Q. That's all. We are through with the witness.

Senator Page: That's all.

(Witness excused.)

Mr. Sturgeon: There was a question sent down here by a member for me to ask Mr. Hester. Mr. Hester, will you come back for just one other question, please, sir.

(Witness F. A. Hester Recalled.)

Mr. Sturgeon: Mr. Hester, there has been some member of this Committee sent down this question here to be asked you: How long have you known this Ted Donevan, and did you know him before he got his hand cut off?
A. Yes, I had seen him.

Q. How long had you known him?
A. I can't state positively just how many years.

Mr. Sturgeon: Was it several years —five or ten years?
A. At least one year.

Mr. Sturgeon: Did you know Ollie Donevan?
A. No, sir.

Mr. Sturgeon: Didn't know him at all?
A. No, sir.

Mr. Sturgeon: That's all.

Senator Page: There's one other question that suggested itself to my mind in connection with that witness book that Judge Price signed up. In addition to the signature of the judge, it has to be signed several times and certified by you before any witness can collect any fees?
A. Yes, sir.

Senator Page: That's all.

(Witness excused.)

Mr. Sturgeon: I want to ask Mr. Markham a few questions about the allegations in Charge No. 9.

(Witness Markham recalled.)

Examination by Mr. Sturgeon:

Q. Mr. Markham, you were testifying here before in this matter. I want to ask you about an account approved by Judge Price for John J. Burttschell, sheriff of Lee county, for the spring term of court, 1931. Do you have that account?
A. I do.
Q. I wish you would tell the Committee what the total amount of that account was, as shown by the recapitulation.
A. $1705.45.
Q. All right; now, with reference to the witness fees that are claimed in there, or that is, fees claimed by the sheriff for summoning different witnesses, I will get you to refer to that account and give us the benefit of your audit with reference to the charges made there for summoning witnesses.
A. Mr. Sturgeon, that recapitulation was made by Mr. Nichols, and I have not checked that. You had better have him on that.

Mr. Sturgeon: All right. We will recall Mr. Nichols.

(Witness Nichols recalled.)

Questions by Mr. Sturgeon:

Q. Your name is R. V. Nichols?
A. Yes, sir.
Q. Mr. Nichols, you, I believe, have testified formerly in this hearing?
A. I have.
Q. And that you are connected now with the Comptroller's Department, and have been assigned recently to assist the Senate Investigating Committee in investigating fees of office?
A. Yes.
Q. Do you know where Lee county is?
A. Yes.
Q. Do you know where Giddings, the county seat of Lee county, is?
A. Yes.
Q. I will ask you if you have been to Lee county in the course of your investigation and making an investigation with reference to John J. Burttschell, sheriff of Lee county, for the spring term of court, 1931?
A. I have.
Q. Do you have that account in front of you?
A. I have.
Q. From that account, without going into every sheet of it, have you made a recapitulation yourself, showing the number of witnesses summoned on certain dates, and the distances alleged to have been traveled by the sheriff, and the charge made for that service?
A. I have.
Q. I will get you to look at that recapitulation and tell us what the sheriff's account shows for that term of court with reference to the number of witnesses summoned by him on April 22, 1931?
A. On April 22, 1931, it shows that he subpoenaed fifty witnesses, and traveled 670 miles.
Q. That was all on that date?
A. Yes.
Q. Now, Mr. Nichols, is there anything there, indicating in what cases those witnesses were subpoenaed in your recapitulation there?
A. No, sir, on April 22nd — that would be distributed through all the cases for that term of court.
Q. That is for different witnesses?
A. Yes.
Q. Give us the number again, for the date of April 22, 1931.
A. Fifty witnesses, and he traveled 670 miles.

Q. 670 miles?
A. Yes.
Q. Now, then, take the following day and give us the number of witnesses that were subpoenaed.
A. April 23rd, number of witnesses subpoenaed, 94. Number of miles traveled, 1140.
Q. All right.
A. April 24th, number of witnesses subpoenaed, 87; number of miles traveled, 1244.
Q. All right. Just take the dates on down.
A. April 25th, number of witnesses subpoenaed, 137. Number of miles traveled was 1326.
Q. All right.
A. April 26th, which was Sunday —number of witnesses subpoenaed, 22. Number of miles traveled, 434.
Q. All right.
A. April 27th; number of witnesses subpoenaed, 135. Number of miles traveled, 1290.
Q. All right, sir.
A. April—
Q. What's the matter? Have you lost something?
A. What was the last one?
Q. April 27th.
A. April 28th — number of witnesses subpoenaed, 134. Number of miles traveled, 642.
Q. All right, sir.
A. April 29th — number of witnesses subpoenaed, 56. Number of miles traveled, 810.
Q. All right.
A. April 30—number of witnesses subpoenaed, 30. Number of miles traveled, 540.
Q. Go right ahead.
A. May 1st—number of witnesses subpoenaed, 39. Number of miles traveled, 670.
Q. All right.
A. May 2nd—number of witnesses subpoenaed, 16. Number of miles traveled, 262.
Q. All right.
A. Total number of witnesses subpoenaed, 800.
Q. All right.
A. Total number of miles traveled—
Q. There was an error in that addition at first; it's 10,000 and something, instead of 18,000.
A. 10,018, I have the correct tabulation there.
Q. Now the testimony that you have just given is taken from the account filed by the sheriff, John J. Burtschell, and approved by Judge J. B. Price, for the May term of the district court, 1931, in Lee county. The testimony you have just given is from that?
A. Yes, from this account here.
Q. Now, then, it shows that there were 800 witnesses summoned by the sheriff, for which a fee charge was made, between the dates of April 22nd and May 2nd?
A. Yes.
Q. And that a total distance of 10,018 miles was traveled?
A. That's right.
Q. Now those witnesses I am interrogating you about now, and the claim made for them, are people who live or are alleged to have lived within the County of Lee?
A. That is correct.
Q. That has nothing to do with the foreign witnesses, or out-of-county witnesses?
A. That is correct.
Q. Do you have any statement from any of those witnesses?
A. I have.
Q. I am going to ask you, Mr. Nichols, to look at this paper I hand you and identify it, please, sir.
A. Yes, sir.
Q. What is that paper you have there now, Mr. Nichols?
A. That is a map that I made, drawn from the State Highway map of Lee county.
Q. What does that map show?
A. The purpose of that map — I was trying to locate from the witness list before me, the direction of certain witnesses as appeared on this list, so I could go out and interview them.
Q. In other words, if a witness' name appeared in the account as sworn to by the sheriff there, as living thirty miles northwest of Giddings, the county seat, you made that map for the purpose of trying to arrive at the town or in what location the witness could be found?
A. That's correct.
Q. Can you tell the Committee now the number of witnesses that the account shows were subpoenaed in any one individual community in that county, where there was far in excess—I mean, where there was an excess charge for mileage? In other words, you understand what I am talking about, I guess?

Senator Page: Well, we don't.

Q. All right. I will make it clear then. I will try to make it clear so everybody will understand it. We haven't got two maps, have we? Give me another map. All right, now for instance, here on this map you have got Giddings. From the map, taking the top of it to be north, Giddings is in the south part of the county, or below the south central part of the County of Lee, is that right?

A. That's right.

Q. Now I see here that there is a witness by the name of John Lewis, Horace Moore, Ida Williams, Estelle Miller, Harvey Lewis, and Tom Givens, that it is claimed that the sheriff subpoenaed, northwest of Giddings. Now do you have any statement from those people or any other people with reference to where they live or where they were subpoenaed?

A. I have a verbal statement from Mr. Clinton and Mr. Reamers.

Senator Page: We don't think any verbal statements should be introduced.

A. I have some written statements from some others.

Q. We are trying to locate some written statements, Mr. Chairman, which seem to have been misplaced with reference to this matter, that is what is taking so much time. Now, Mr. Nichols, you have the account there that I just asked you about, for the spring term of 1931, do you not, from Lee county?

A. Yes.

Q. That is the sheriff's account?

A. Yes.

Q. You have a case on there—does that account show there was a case against a man by the name of John Johnson?

A. Yes, No. 2249, the State of Texas vs. John Johnson.

Q. I wish you would just read that sheet there, and read the names of the witnesses. Read everything on that sheet with reference to the witnesses. I want it all read, the whole page there.

A. The top of it, too?

Q. Yes.

A. "Sheriff's fee bill in felony cases. The State of Texas, to John J. Burtschell, sheriff of Lee county, Dr. To fees in felony cases, tried and otherwise disposed of at the spring, 1931, term of the district court of Lee county, and no appeal taken except as herein specified:

"No. 2249. The State of Texas vs. John Johnson, charged with offense of burglary and theft. Disposition of case—five years in penitentiary. To his arrest at Taylor, Texas, on 23rd day of April, 1931, in Williamson county, in a northwest direction from county seat, same being 60 miles distant from the county seat of Lee county, or $3 each; total, $3.

"To 60 miles, going to arrest at 15 cents per mile in a northwest direction from county seat, $9.

"To 60 miles returning with prisoner by private conveyance at 30 cents per mile, $18.

"Date—Name of Witness Summoned. Amount—Mileage.

"423-31—Louis Vincent Falke, 50 cents; traveled 10 miles in southeast direction from county seat at 10 cents per mile, $1.50.

"4-23-31—John J. Burttschell, 50 cents; 50 cents.

"4-23-31—H. H. Jones, 50 cents; traveled 2 miles in east direction from county seat at 10 cents per mile, 50 cents.

"4-23-31—Sarah Falke, 50 cents; traveled 12 miles in northeast direction from county seat at 10 cents per mile, $1.70.

"4-23-31—James Wormley, 50 cents; traveled 10 miles in north direction from county seat at 10 cents per mile, $1.50.

"4-23-31—Hamp Mays, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

"4-23-31—John Lewis, 50 cents; traveled 12 miles in northwest direction from county seat at 10 cents per mile, $1.70.

"4-23-31—Jacey Truitt, 50 cents; traveled 8 miles in east direction from county seat at 10 cents per mile, $1.30.

"4-23-31—Roy Shields, 50 cents; traveled 8 miles in south direction from county seat at 10 cents per mile, $1.30.

"4-23-31—Will Lewis, 50 cents; traveled 14 miles in north direction from county seat at 10 cents per mile, $1.90.

"4-23-31—Mack Truitt, 50 cents; traveled 10 miles in east direction from county seat at 10 cents per mile, $1.50.

"4-23-31—Horace Moore, 50 cents;

traveled 18 miles in west direction from county seat at 10 cents per mile, $2.30.

"4-23-31—Jack Fillmore, 50 cents; traveled 12 miles in north direction from county seat at 10 cents per mile, $1.70.

"4-23-31—Ray McCoy, 50 cents; traveled 8 miles in east direction from county seat at 10 cents per mile, $1.30.

"4-23-31—F. H. Ruffin, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents."

Q. Now, just give us the totals at the bottom of each page. We won't read all that.

A. At the bottom of the first page, $67.50. Then it seems to be carried forward on each page. At the bottom of the second page, page No. 34, $110.20. At the bottom of page 35, $124.

Q. Now, you have a written sworn statement there from John Johnson, mentioned in that account?

A. Yes.

Q. I will get you to read that statement.

A. "John Johnson, convicted of burglary and theft. Prison No. 68986.

"State of Texas,

"County of Brazoria.

"Before me, the undersigned authority, on this day personally appeared John Johnson, a convict now confined at the Darrington State Farm, who after being by me duly sworn upon his oath deposes and says:

"My name is John Johnson. I formerly lived in Lee county, Texas. On or about the 14th day of February, 1931, I was arrested near Thrall, in Williamson county, Texas, by a deputy sheriff by the name of Kuykendall. He took me to the jail at Taylor and I remained in jail there until Saturday, or one day and night, and then Mr. John Burttschell, high sheriff of Lee county, came after me and took me to Giddings and placed me in jail and kept me in jail until my case was tried some time in May, when I was convicted and sent to the penitentiary.

"I did not employ a lawyer. I asked the court to appoint me a lawyer but he said he could not do it. He could only appoint a lawyer in case of rape and murder.

"While I was in jail at Giddings, Mr. Burttschell, the high sheriff, came down to the jail and told me to make up a list of all the people that I knew in Lee county and he would have them all subpoenaed. I made out a list. I made out a list of twenty-one witnesses that I thought could be of help to me. I have checked over the witness list that has been shown to me as made out by Mr. Burttschell, high sheriff, and find thirty-five witnesses on the list whose names I do not know and never heard of. At the time the list of witnesses were being made out the high sheriff told Marshall Loving, who was also a prisoner in jail, to make out a list for me and he said that the high sheriff told him to make up a list of one hundred witnesses for me. I told Marshall Loving that I did not know the people that he had placed on the list and he said: 'Well, Mr. Burttschell said he wanted one hundred names.'

"I want to correct a statement above. That is to say, where I stated that I made out a list of twenty-one witnesses. What I intended to say was that I know twenty-one of the people whose names appear on the list. I only asked that six witnesses be subpoenaed for me. These witnesses all lived in Waco. Their names were Dora Leech, Bertha Grahams, Mrs. L. A. James, Jewell Leech, Fonzy Johnson and Minnie Johnson. I wanted to prove by them that I was in Waco on the day or night of the robbery and theft; that I was innocent of the crime and knew nothing on earth about it. The sheriff never did have my own witnesses summoned, and when my case was called, they were not there. The burglary was supposed to have taken place on the 12th of January. On the 13th of January, about 2 p. m., I left Waco, and arrived at Giddings about 7 p. m. On my way to Giddings, I met up with two white boys between McDade and Page. The boys told me that they were on their way to Oklahoma and broke and had to have some money. One of the boys said he had a pistol and watch that he would sell cheap. I asked him to let me see it. He showed me the watch and pistol and I asked them what they would take for them both. They said they just had to have some money and would take $5.00 for them both. I went on to Giddings and felt proud of my purchase. Louis Vincent Falke and Sarah Falke were at my house and I showed them the watch and pis-

tol. During the trial of my case these two witnesses for the State testified that Mr. Burttschell paid them $10 each for turning me in. Mr. Burttschell came to the jail and wanted me to sign a statement that I was guilty and I told him that I would not do it; that I was not guilty and would not sign such a statement. He said, 'Well, I am going to send you to the penitentiary or go broke trying.'

"(Signed) JOHN JOHNSON.

"Subscribed and sworn to before me, a notary public in and for Brazoria county, Texas, this the 17th day of June, 1931.

"(Signed) M. B. SHIREY,

"Notary Public in and for Brazoria County, Texas."

Mr. Sturgeon: Mr. Speaker, there have been some statements here with reference to some allegation in this charge here and they have been misplaced somewhere — they are in the files, I am sure, either in the Senate Finance Room, or in somebody's possession. Now, we have one other account in this charge that we are going to have to find some more statements with reference to, and as it is going to be necessary for us to be here again Monday morning, if it is satisfactory with the Chair and the other members of the Committee, I feel certain that I can assure the Committee and the Chair that the Committee can close this matter in probably an hour's time Monday, and I think it will be a conservation of time to tender a motion to recess until that time, until we can get all this data together so we can present it without loss of time. We have got one other matter that we want to present, but as I stated before, I don't think it will take but 30 or 40 minutes to present it.

Mr. McGill: Mr. President, Mr. Chairman—I move that the Committee rise, report progress, and recess until 9 o'clock Monday.

Mr. Sturgeon: Now, as stated before, Mr. Chairman, I believe it will be a conservation of time for us to recess because practically all that we expect to introduce would be probably a couple or more accounts and some statements with reference to them.

The Chairman: The gentleman from El Paso, Mr. McGill, has moved that the Committee do now rise, report progress, and ask leave of the House to sit again Monday morning at 9 o'clock. You have heard the statement of Mr. Sturgeon, to the effect that the Committee will close the testimony early Monday morning. Is there any objection to the motion made by the gentleman from El Paso?

The Chair hears no objection.

(The Committee of the Whole, thereupon adjourned at 3 o'clock p. m., until the following Monday morning, August 17th, 1931, at 9 o'clock.)

Monday, August 17th, 1931.

Pursuant to adjournment, the House met at 9 o'clock a. m., and on motion of Mr. Graves resolved itself into a Committee of the Whole House. Whereupon the proceedings were resumed before the Committee of the Whole House, as follows, to-wit:

The proponents recalled T. M. Markham, who furthher testified as follows:

Mr. Sturgeon: Mr. Speaker, I think it is not necessary to have this witness re-sworn again.

The Chairman: No.

Re-direct Examination.

Q. Your name is T. M. Markham?

A. Yes, sir.

Q. I believe you testified previously that you are Assistant State Auditor.

A. I am.

Q. That you work with Mr. Moore Lynn, who is now State Auditor of this State?

A. I do.

Q. You are the same Mr. Markham that has previously sworn in this case and previously testified with reference to various accounts of sheriffs of the Twenty-first Judicial District of Texas?

A. Yes, sir.

Q. Mr. Markham, I will ask you to please turn to the account of John Burttschell, sheriff of Lee county, for the spring term of 1931?

A. I have it.

Q. You have that account before you?

A. Yes, sir.

Q. I will ask you this question, because of the fact that some of the Committee were not here Saturday when we concluded: The accounts that you have there before you—just

explain to them what it is, and what it contains.

A. This is the sheriff's account, sheriff of Lee county, for the spring term, 1931. It shows—

Q. Now, is that—go ahead.

A. It shows — signed John J. Burttschell, sheriff of Lee county, sworn to May 8th, 1931, approved, J. B. Price, May 8th, 1931, and signed F. A. Hester, district clerk, of May 8th, 1931. Total amount of the account is $1705.41.

Q. That is the total amount of the account for the spring term?

A. It is.

Q. Of the Lee county district court in felony cases?

A. Yes, sir.

Q. I think you stated that was signed and sworn to by the sheriff on May 8th, 1931?

A. Yes, sir.

Q. And was, on the same day, approved by Judge J. B. Price, judge of that court?

A. It is.

Q. And that it is also certified to by the district clerk, Mr. Hester, who was on the witness stand Saturday, on that same day?

A. It was.

Q. I wish you would look through that report, please, sir, and tell the Committee whether or not there appears a case in that report against a man by the name of Rafael Cergantez?

A. There is; Case No. 2236.

Q. Case No. 2236? Is that the district court number of that case?

A. It is.

Q. Now, refer to that account and tell the Committee how many witnesses were summoned or purported to have been subpoenaed by the sheriff's report in that case.

A. 151.

Q. 151 witnesses?

A. Yes, sir.

Q. All right.

Mr. Sturgeon: Mr. Dunn, would you please read that? Would you please let Mr. Dunn have the sheet or sheets that shows the names of the witnesses that the sheriff claims to have subpoenaed in that case, also showing the number of miles that he claims to have traveled, and the charge made for that service?

Mr. Sturgeon: Mr. Dunn, would you mind reading right across the line for us? Now, these are the witnesses in the Rafael Cergantez case, as it appears in John J. Burttschell's account in the district court of Lee county.

(Mr. Dunn thereupon read the paper, as follows, to-wit:)

Date, month, day, year. Names of witnesses summoned. Amount, dollars and cents. Mileage.

4-22-31—H. H. Jones, 50 cents; traveled 2 miles in east direction from county seat at 10 cents per mile, 70 cents.

4-22-31—H. Marburger, Jr., 50 cents; traveled 40 miles in northeast direction from county seat at 10 cents per mile, $4.50.

4-22-31—John J. Burttschell, 50 cents; traveled .. miles in .. direction from county seat at 10 cents per mile, 50 cents.

4-23-31—E. Marburger, 50 cents; traveled 40 miles in northeast direction from county seat at 10 cents per mile, $4.50.

4-23-31—Adolph Haverland, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-23-31—Dr. H. G. Hertel, 50 cents; traveled 2 miles in southeast direction from county seat at 10 cents per mile, 70 cents.

4-24-31—L. J. Docurek, 50 cents; traveled 40 miles in north direction from county seat at 10 cents per mile, $4.50.

4-24-31—C. W. Krauss, 50 cents; traveled 2 miles in east direction from county seat at 10 cents per mile, 70 cents.

4-24-31—Monk Frazier, 50 cents; traveled 2 miles in southwest direction from county seat at 10 cents per mile, 70 cents.

4-25-31—Joe Spacek, Jr., 50 cents; traveled 40 miles in east direction from county seat at 10 cents per mile, $4.50.

4-25-31—R. H. Bolsins, 50 cents; traveled 2 miles in northwest direction from county seat at 10 cents per mile, 70 cents.

4-25-31—Trinidad Vallejo, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-27-31—Joe Green, 50 cents; traveled 30 miles in north direction from county seat at 10 cents per mile, $3.50.

4-27-31—Santiago Lara, 50 cents; traveled 2 miles in northwest direction from county seat at 10 cents per mile, 70 cents.

4-27-31—Gordon Frazier, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-27-31—Dr. W. E. York, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-27-31—Scott Phoenix, 50 cents; traveled 28 miles in north direction from county seat at 10 cents per mile, $3.30.

4-27-31—J. N. Storey, 50 cents; traveled 2 miles in north direction from county seat at 10 cents per mile, 70 cents.

4-27-31—Fred Krauss, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-27-31—Dan Griffith, 50 cents; traveled 2 miles in east direction from county seat at 10 cents per mile, 70 cents.

4-22-31—J. S. Hickey, 50 cents; traveled 4 miles in east direction from county seat at 10 cents per mile, 90 cents.

4-22-31—Joung Elder, 50 cents; traveled 2 miles in northwest direction from county seat at 10 cents per mile, 70 cents.

4-22-31—Richard Cox, 50 cents; traveled 20 miles in north direction from county seat at 10 cents per mile, $2.50.

4-22-31—Albert Wilson, 50 cents; traveled 2 miles in northwest direction from county seat at 10 cents per mile, 70 cents.

4-22-31—William Nunn, 50 cents; traveled 2 miles in north direction from county seat at 10 cents per mile, 70 cents.

Total, $42.90; forward, $42.90.

4-22-31—Newt Wilson, 50 cents; traveled 12 miles in northwest direction from county seat at 10 cents per mile, 70 cents.

4-23-31—Mack Anderson, 50 cents; traveled 2 miles in south direction from county seat at 10 cents per mile, 70 cents.

4-22-31—William Baage, 50 cents; traveled 16 miles in northeast direction from county seat at 10 cents per mile, $2.10.

4-22-31—Ernest Kessel, 50 cents; traveled 12 miles in northwest direction from county seat at 10 cents per mile, $1.00.

4-22-31—Ben Schroeder, 50 cents; traveled 2 miles in southwest direction from county seat at 10 cents per mile, 70 cents.

4-22-31—H. Schatte, 50 cents; traveled 8 miles in south direction from county seat at 10 cents per mile, $1.30.

4-22-31—Frank Wilson, 50 cents; traveled 2 miles in south direction from county seat at 10 cents per mile, 70 cents.

4-23-31—Fritz Schroeder, 50 cents; traveled 15 miles in north direction from county seat at 10 cents per mile, $2.10.

4-23-31—Fritz Schroeder, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-23-31—Albert Shine, 50 cents; traveled 6 miles in northeast direction from county seat at 10 cents per mile, $1.10.

4-23-31—Sam York, 50 cents; traveled 2 miles in southwest direction from county seat at 10 cents per mile, 70 cents.

4-23-31—Joe Tolbert, 50 cents; traveled 18 miles in west direction from county seat at 10 cents per mile, $2.30.

4-23-31—William Mueller, 50 cents; traveled 2 miles in southeast direction from county seat at 10 cents per mile, 70 cents.

4-23-31—T. L. Clinton, 50 cents; traveled 2 miles in south direction from county seat at 10 cents per mile, 70 cents.

4-23-31—Buck Moss, 50 cents; traveled 8 miles in northwest direction from county seat at 10 cents per mile, $1.30.

4-23-31—Fannie Betts, 50 cents; traveled 20 miles in west direction from county seat at 10 cents per mile, $2.50.

4-23-31—Tom Elliott, 50 cents; traveled 2 miles in northwest direction from county seat at 10 cents per mile, 70 cents.

4-23-31—Ed Albert, 50 cents; traveled 16 miles in northeast direction from county seat at 10 cents per mile, $2.10.

4-23-31—R. D. Heck, 50 cents; traveled 2 miles in east direction from county seat at 10 cents per mile, 70 cents.

4-23-31—Sophie Elliott, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-23-31—T. Alexander, 50 cents; traveled 2 miles in northeast direction from county seat at 10 cents per mile, 70 cents.

4-23-31—Goldie Moss, 50 cents; traveled 4 miles in east direction from county seat at 10 cents per mile, 90 cents.

4-23-31—Ollie York, 50 cents; traveled 2 miles in southeast direction from county seat at 10 cents per mile, 70 cents.

4-24-31—Manuel Pascal, 50 cents; traveled 10 miles in west direction from county seat at 10 cents per mile, $1.50.

4-24-31—Dandy Wilson, 50 cents; traveled 2 miles in south direction from county seat at 10 cents per mile, 70 cents.

Total, $71.60; forward, $71.60.

4-24-31—Mitch Elder, 50 cents; traveled 2 miles in northwest direction from county seat at 10 cents per mile, 70 cents.

4-24-31—Joe Seale, 50 cents; traveled 20 miles in east direction from county seat at 10 cents per mile, $2.50.

4-24-31—August Baacke, 50 cents; traveled 18 miles in northeast direction from county seat at 10 cents per mile, $2.30.

4-24-31—Angel Martinez, 50 cents; traveled 6 miles in west direction from county seat at 10 cents per mile, $1.10.

4-24-31—Manuel Garcia, 50 cents; traveled 2 miles in north direction from county seat at 10 cents per mile, 70 cents.

4-24-31—Leslie Heck, 50 cents; traveled 2 miles in south direction from county seat at 10 cents per mile, 70 cents.

4-24-31—Bud Lacey, 50 cents; traveled 26 miles in east direction from county seat at 10 cents per mile, $3.10.

4-24-31—Dick Anderson, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-24-31—John White, 50 cents; traveled 2 miles in northwest direction from county seat at 10 cents per mile, 70 cents.

4-24-31—Dawsey Elder, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-24-31—Lycey Daniels, 50 cents; traveled 36 miles in east direction from county seat at 10 cents per mile, $4.10.

4-24-31—John Zimmerman, 50 cents; traveled 20 miles in northwest direction from county seat at 10 cents per mile, $2.50.

4-24 31—Mary Martinez, 50 cents; traveled 6 miles in west direction from county seat at 10 cents per mile, $1.10.

4-24-31—D. D. Holman, 50 cents; traveled 2 miles in north direction from county seat at 10 cents per mile, 70 cents.

4-25-31—Narvin Folkes, 50 cents; traveled 2 miles in south direction from county seat at 10 cents per mile, 70 cents.

4-25-31—Ernest Schkade, 50 cents; traveled 2 miles in east direction from county seat at 10 cents per mile, 70 cents.

4-25-31—Frank Rangel, 50 cents; traveled 6 miles in west direction from county seat at 10 cents per mile, $1.10.

4-25-31—Refugio Avilla, 50 cents; traveled 2 miles in northwest direction from county seat at 10 cents per mile, 70 cents.

4-25-31—Henry Schkade, 50 cents; traveled 30 miles in north direction from county seat at 10 cents per mile, $3.50.

4-25-31—Hosea Rangel, 50 cents; traveled 6 miles in west direction from county seat at 10 cents per mile, $1.10.

4-25-31—Andres Cantu, 50 cents; traveled 6 miles in northwest direction from county seat at 10 cents per mile, $1.10.

4-25-31—Joe Garcis, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-25-31—Henry Kruse, 50 cents; traveled 30 miles in north direction from county seat at 10 cents per mile, $3.50.

4-25-31—Herman Hillsberg, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-25-31—Beno Holman, 50 cents; traveled 2 miles in north direction from county seat at 10 cents per mile, 70 cents.

Total, $107.70; forward, $107.70.

4-25-31—John Denmon, 50 cents; traveled 2 miles in northwest direction from county seat at 10 cents per mile, 70 cents.

4-25-31—Sam Peebles, 50 cents; traveled 40 miles in north direction from county seat at 10 cents per mile, $4.50.

4-25-31—Louis Schroeder, 50 cents; traveled 2 miles in northeast direction from county seat at 10 cents per mile, 70 cents.

4-25-31—Maud Denmon, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-25-31—Amanda Crenshaw, 50 cents; traveled 2 miles in northwest direction from county seat at 10 cents per mile, 70 cents.

4-27-31—Lee Colvin, 50 cents; traveled 44 miles in east direction from county seat at 10 cents per mile, $4.90.

4-27-31—Tom Pohrelsky, 50 cents; traveled 2 miles in south direction from county seat at 10 cents per mile, 70 cents.

4-27-31—Morris Krauss, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-27-31—Henry Witte, 50 cents; traveled 2 miles in north direction from county seat at 10 cents per mile, 70 cents.

4-27-31—Newt Alexander, 50 cents; traveled 2 miles in northeast direction from county seat at 10 cents per mile, 70 cents.

4-27-31—E. Mutschink, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-27-31—J. E. Huettig, 50 cents; traveled 2 miles in east direction from county seat at 10 cents per mile, 70 cents.

4-27-31—John Harris, 50 cents; traveled 40 miles in northeast direction from county seat at 10 cents per mile, $4.50.

4-27-31—Emil Hillsberg, 50 cents; traveled 2 miles in east direction from county seat at 10 cents per mile, 70 cents.

4-27-31—Sarita Garcia, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-27-31—Dora Hernandez, 50 cents; traveled 8 miles in south direction from county seat at 10 cents per mile, $1.30.

4-27-31—Matilda Munz, 50 cents; traveled 10 miles in southeast direction from county seat at 10 cents per mile, $1.50.

4-28-31—Aug Keng, 50 cents; traveled 10 miles in northeast direction from county seat at 10 cents per mile, $1.50.

4-28-31—Henry Clemons, 50 cents; traveled 40 miles in east direction from county seat at 10 cents per mile, $4.50.

4-28-31—Frank Keng, 50 cents; traveled 2 miles in north direction from county seat at 10 cents per mile, 70 cents.

4-28-31—Velma Wilson, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-28-31—Lula Cervantes, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-28-31—Otis Dodson, 50 cents; traveled 16 miles in northwest direction from county seat at 10 cents per mile, $2.10.

4-28-31—Peter Webb, 50 cents; traveled 2 miles in north direction from county seat at 10 cents per mile, 70 cents.

4-28-31—Fritz Baage, 50 cents; traveled 2 miles in northeast direction from county seat at 10 cents per mile, 70 cents.

Total, $144.40; forward, $144.40.

4-28-31—Harriet Wilson, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-28-31—Aug Schkade, 50 cents; traveled 24 miles in northwest direction from county seat at 10 cents per mile, $2.90.

4-28-31—Ben Bohot, 50 cents; traveled 16 miles in east direction from county seat at 10 cents per mile, $2.10.

4-28-31—Mrs. Tom Pohrelsky, 50 cents; traveled 2 miles in south direction from county seat at 10 cents per mile, 70 cents.

4-29-31—Saral Availa, 50 cents; traveled 2 miles in northwest direction from county seat at 10 cents per mile, 70 cents.

4-29-31—E. Hoffman, 50 cents; traveled 16 miles in north direction from county seat at 10 cents per mile, $2.10.

4-29-31—E. Kriegel, 50 cents; traveled 2 miles in east direction from county seat at 10 cents per mile, 70 cents.

4-29-31—T. H. Klemons, 50 cents; traveled 44 miles in east direction from county seat at 10 cents per mile, $4.90.

4-29-31—Claude McIntosh, 50 cents; traveled 2 miles in east direction from county seat at 10 cents per mile, 70 cents.

4-29-31—Will Clemons, 50 cents; traveled 42 miles in northeast direction from county seat at 10 cents per mile, $4.70.

4-29-31—Sallie Dodson, 50 cents; traveled 20 miles in west direction from county seat at 10 cents per mile, $2.50.

4-29-31—Alvin Bohot, 50 cents; traveled 2 miles in south direction from county seat at 10 cents per mile, 70 cents.

4-29-31—Jim Mitchell, 50 cents; traveled 24 miles in north direction from county seat at 10 cents per mile, $2.90.

4-29-31—Harold Wilson, 50 cents; traveled 2 miles in west direction from county seat at 10 cents per mile, 70 cents.

4-29-31—Mack Clemons, 50 cents; traveled 30 miles in northeast direction from county seat at 10 cents per mile, $3.80.

4-29-31—John Bohot, 50 cents; traveled 10 miles in south direction from county seat at 10 cents per mile, $1.50.

4-30-31—John Carmean, 50 cents; traveled 2 miles in east direction from county seat at 10 cents per mile, 70 cents.

4-30-31—Wade Mitchell, 50 cents; traveled 20 miles in west direction from county seat at 10 cents per mile, $2.50.

4-30-31—Alvin Forrester, 50 cents; traveled 18 miles in northwest direction from county seat at 10 cents per mile, $2.30.

4-30-31—G. H. Moore, 50 cents; traveled 46 miles in east direction from county seat at 10 cents per mile, $5.10.

4-30-31—Louis Winter, 50 cents; traveled 2 miles in south direction from county seat at 10 cents per mile, 70 cents.

4-30-31—Will Dawson, 50 cents; traveled 40 miles in northeast direction from county seat at 10 cents per mile, $4.50.

4-30-31—Robert Dodson, 50 cents; traveled 10 miles in northwest direction from county seat at 10 cents per mile, $1.50.

4-30-31—General Collins, 50 cents; traveled 42 miles in northeast direction from county seat at 10 cents per mile, $4.70.

4-30-31—Will Dodson, 50 cents; traveled 20 miles in northwest direction from county seat at 10 cents per mile, $2.50

Total, $201.20; forward, $201.20.

4-30-31—Tom Washington, 50 cents; traveled 18 miles in east direction from county seat at 10 cents per mile, $2.30.

4-30-31—Horace Mitchell, 50 cents; traveled 20 miles in north direction from county seat at 10 cents per mile, $2.50.

5-1-31—Herbert Alexander, 50 cents; traveled 2 miles in northeast direction from county seat at 10 cents per mile, 70 cents.

5-1-31—Peter Hill, 50 cents; traveled 20 miles in northwest direction from county seat at 10 cents per mile, $2.50.

5-1-31—Hence Dawson, 50 cents; traveled 40 miles in east direction from county seat at 10 cents per mile, $4.50.

5-1-31—Harvey Mitchell, 50 cents; traveled 40 miles in west direction from county seat at 10 cents per mile, $4.50.

5-1-31—Mack Dodson, 50 cents; traveled 20 miles in north direction from county seat at 10 cents per mile, $2.50.

5-1-31—Willie Baage, 50 cents; traveled 30 miles in east direction from county seat at 10 cents per mile, $3.50.

5-1-31—Henry Foster, 50 cents; traveled 7 miles in south direction from county seat at 10 cents per mile, $1.30.

5-1-31—D. F. Stamps, 50 cents; traveled 42 miles in north direction from county seat at 10 cents per mile, $4.70.

5-1-31—Hiram Wilson, 50 cents; traveled 30 miles in east direction from county seat at 10 cents per mile, $3.50.

5-1-31—Ed Baacke, 50 cents; traveled 12 miles in north direction from county seat at 10 cents per mile, $1.70.

5-1-31—Cornelius Halloway, 50 cents; traveled 40 miles in northeast direction from county seat at 10 cents per mile, $4.50.

5-1-31—Frank Rodriguez, 50 cents; traveled 4 miles in south direction from county seat at 10 cents per mile, 90 cents.

5-2-31—Julia Pohrelsky, 50 cents; traveled 2 miles in south direction from county seat at 10 cents per mile, 70 cents.

5-2-31—Tom Mirchell, 50 cents; traveled 30 miles in west direction from county seat at 10 cents per mile, $3.50.

5-2-31—Ernest Kasper, 50 cents; traveled 28 miles in north direction from county seat at 10 cents per mile, $3.30.

5-2-31—Raymond Martinez, 50 cents; traveled 2 miles in northwest direction from county seat at 10 cents per mile, 70 cents.

5-2-31—Adolph Swernemann, 50 cents; traveled 20 miles in north direction from county seat at 10 cents per mile, $2.50.

5-2-31—Red Mundine, 50 cents; traveled 22 miles in east direction from county seat at 10 cents per mile, $2.70.

5-2-31—Modesta DeGarcia, 50 cents; traveled 8 miles in west direction from county seat at 10 cents per mile, $1.30.

5-2-31—Dr. I. N. Mayfield, 50 cents; traveled 2 miles in southwest direction from county seat at 10 cents per mile, 70 cents.

5-2-31—Robert Els, 50 cents; traveled 10 miles in northeast direction from county seat at 10 cents per mile, $1.50.

5-2-31—Alvin Kieschnik, 50 cents; traveled 24 miles in north direction from county seat at 10 cents per mile, $2.90.

5-2-31—Mattie Mitchell, 50 cents; traveled 38 miles in northwest direction from county seat at 10 cents per mile, $4.30.

5-2-31—Bill Schneider, 50 cents; traveled 2 miles in southeast direction from county seat at 10 cents per mile, 70 cents.

To summoning jury, when actually sworn in, $2.00.

Total, $267.60.

Q. That account that Mr. Dunn has just read, I will ask you if it does not show a total number of witnesses of 150?

A. 151, I believe.

Q. 151? And those are in-county witnesses?

A. Yes, sir.

Q. The names and claims that were read by Mr. Dunn do not include any witnesses or claims for fees for witnesses that were outside of Lee county?

A. It does not.

Q. I believe that is all I care to ask you.

Cross-examination.

Questions by Mr. Page:

Q. You have been testifying here, Mr. Markham, about the case, Cause No. 2236, the State of Texas vs Rafael Cergantez, have you not?

A. Yes, sir.

Q. Look at the paper that I am handing you there, and see what it is?

A. It is an indictment.

Q. An indictment against whom and in what case?

A. Against Rafael Cergantez, on December 7th, 1930.

Q. I will ask you Mr. Dunn to read that indictment, if you will, please.

(Mr. Dunn thereupon read the indictment, as follows, to-wit:)

"In the name and by the authority of the State of Texas:

"The grand jurors for the county of Lee, State aforesaid, duly organized as such at the April term, A. D. 1931, of the district court of said county, upon their oaths in said court present that Rafael Cervantes on or about the 7th day of December, A. D. one thousand nine hundred and thirty, and anterior to the presentment of this indictment, in the county of Lee and State of Texas, did then and there unlawfully and voluntarily and with malice aforethought kill Silverio Vallejo by cutting and chopping him with an ax, against the peace and dignity of the State.

(Signed) "J. W. TATE,
"Foreman of the Grand Jury."

Mr. Page: That is all, it is not necessary to read the endorsements.

Q. (To Mr. Markham) I will ask you to examine the paper which I hand you and tell us what it is, what it seems to be.

A. It is defendant's application for witnesses.

Mr. Page: I will ask Mr. Dunn to kindly read the defendant's application for witnesses:

(Mr. Dunn thereupon read the paper, as follows, to-wit:)

"The State of Texas vs. Rafael Cervantes.—In the District Court of Lee County, Texas, April term, 1931.

"Herein comes now Rafael Cervantez, defendant in the above styled and numbered cause and makes oath and says that the following witnesses are believed by him to be material for his defense. Name—vocation—location—"

Mr. Page: You need not read the names of the witnesses now, just turn and read the close of that, the signatures, and so forth at the bottom.

(Mr. Dunn thereupon read from the paper as follows:)

"Wherefore he prays that subpoenas do issue for said witnesses to be and appear on the trial hereof.

(Signed) "RAFAEL CERVANTES.

"Sworn to and subscribed before me this April 23rd, 1931.

(Signed) "A. H. KARTHER,
"Notary public in and for Lee county, Texas."
(Seal.)

Q. Now, Mr. Markham, if you will take the stand, please? Take that paper and count the number of witnesses which appear to have been applied for under oath for Rafael Cervantez in that case, and give us the number of witnesses.

A. 152.

Q. 152 witnesses, then?

A. Yes, sir.

Q. According to the application that you have?

A. Yes, sir.

Q. That application shows it is sworn to by Rafael Cervantez, and he applied to the district clerk of that county to issue subpoenas for the 152 witnesses material in his behalf, from what he says there?

A. Yes, sir.

Mr. Page: I understand that it will be admitted by counsel for the committee that the names in the application of the defendant there for witnesses are the same names that Mr. Dunn has read, that the sheriff has charged in his account?

Mr. Sturgeon: Yes.

Mr. Page: This is done for the purpose of simplifying the record. The reporter will note that admission.

Q. Examine the paper that I have handed you, Mr. Markham, and let us know what it is, please, sir. You need not read it, I will ask Mr. Dunn to do it, but just examine it and see what it purports to be. Doesn't it appear to be an affidavit signed by John Simmang, the attorney for Rafael Cervantez? I will lead you just to shorten the matter.

Mr. Sturgeon: What was it, Senator?

Mr. Page: An affidavit of the attorney for the defendant, Rafael Cervantes.

A. This is an application for defendant's witnesses, signed by John S. Simmang, who was attorney for defendant, before a notary public—sworn to before a notary public.

Mr. Page: I will ask Mr. Dunn to kindly read the affidavit.

(Thereupon Mr. Dunn read affidavit as follows, to-wit:)

"The State of Texas)
"County of Lee)

"Before me, the undersigned authority, a notary public in and for the county and State aforesaid, on this day personally appeared John S. Simmang, known to me to be the person whose name is subscribed hereto, and after first being by me duly sworn, upon oath deposes and says:

"My name is John S. Simmang. I am an attorney at law at Giddings, Lee county, Texas. During the April, 1931, term of the district court of Lee county, my father, E. T. Simmang, and myself represented one Rafael Cervantez, who was charged by indictment with the murder of a Mexican by the name of Vallejo. On the 23rd day of April, 1931, at the request of the defendant, Rafael Cervantez, I prepared an application for witnesses in his behalf from a list that he gave me, after he told me that all of the witnesses on the list were material and necessary for his defense. The following is a true and correct copy of that application, made from my office copy, the original of which was duly filed by the clerk of the district court of Lee county, Texas, and was used by me to call the names of said witnesses at Giddings on the day of the trial. To the best of my recollection, the majority if not all of them answered as their names were called by me on said day."

"The State of Texas)
vs.)
"Rafael Cervantez)

"In the District Court of Lee County, Texas. April term, 1931.

"Herein comes now Rafael Cervantez, defendant in the above styled and numbered cause and makes oath and says that the following witnesses are believed by him to be material for his defense."

Do you want the names?

Mr. Page: You can omit the names at this time, but read the close.

(Thereupon, Mr. Dunn read the following, to-wit:)

"Wherefore, he prays that subpoenas do issue for said witnesses to be and appear on the trial hereof.

".....

"Sworn to and subscribed before me, this April 23rd, 1931.

".....

"In and for Lee county, Texas."

"Deponent says further that as the trial progressed the testimony showed that all of these Mexicans were on the prairie the night of the homicide, apparently in an intoxicated condition, which contention was strictly denied by the State and to prove defendant's contention additional witnesses were summoned at the request of the defendant who saw these parties there that night, and to the best of his knowledge these names were written in the original application of the defendant for witnesses, no new application being made. I think that before the trial started there was another application for witnesses for the defendant filed. I did not prepare that application but unless I am badly mistaken I also called the witnesses' names from this supplemental application on the day of trial.

"And further deponent sayeth naught.

(Signed) "JOHN S. SIMMANG,
"Deponent.

"Address: Giddings, Texas."

"Sworn to and subscribed before me, this the 11th day of August, 1931, A. D.

(Signed) "C. C. BOBO.

"Notary public, Lee county, Texas."

Mr. Page. Thank you, Mr. Dunn. All right, Mr. Markham. It is admitted by counsel for the Legislature or for the prosecution, that the names of the witnesses in the affidavit are the same as those appearing in the original application and—

Q. Now, as an auditor, you know from those papers that I have offered you there and that Mr. Dunn has read, that the defendant applied for those witnesses, according to the papers, and that he applied for the same witnesses—the same number of witnesses, with some more, probably, that the sheriff summoned, according to his statement you read in his account, isn't it a fact?

A. Yes, sir.

Q. Did you check those names up against the subpoenas that he issued when you audited this account?

A. No, sir.

Q. You did not do that?

A. No, sir.

Q. I believe that is all, Mr. Markham. Mr. Markham, I am handing you the bill of indictment in the State of Texas vs. Rafael Cervantez. Would you please read what is written on the back of it in pencil?

A. (Reading) "We, the jury, find the defendant guilty as charged in the indictment and assess his punishment at five years' confinement in the State penitentiary.

(Signed) "E. W. HICK,
"Foreman."

Q. That is all.

Re-direct Examination.

Questions by Mr. Sturgeon:

Q. Mr. Markham, I believe you have testified previously that you know Judge Price and I believe saw him here in the city of Austin?

A. Yes.

Q. Did you testify as to what date it was previous to seeing him here before the Committee?

A. I am testifying it was along, I think, possibly three weeks before the close of the Regular Session of the Forty-second Legislature.

Q. And this account that you have just testified to, was approved, according to the date—was it after he was down here or before, do you know?

A. It was approved on May 8th, 1931.

Q. Well, do you have any inde-

pendent recollection whether or not Judge Price was down here with reference to this and the other four accounts before or after that account was approved?

A. I will have to look that up.

Q. Now, I wish you would please get that account; do you have the original sheriff's account there, bearing the approval of the district judge and certified to by the clerk?

A. I do.

Q. I will get you to state whether or not that account was with reference to John Johnson, a defendant?

A. Yes, sir, in cause No. 2249, State of Texas vs. John Johnson.

Q. Please read that again.

A. Cause No. 2249, State of Texas vs. John Johnson, for burglary and theft, and shows a penalty to have been assessed in the case of five years in the penitentiary.

Q. I wish you would look at that account and see how many witnesses were subpoenaed in that case, and see how many witnesses' names appear on the sheriff's account as claimed to have been subpoenaed in that case, which account was approved by the judge.

A. Sixty.

Mr. Sturgeon: Now then, there has been a question sent down here in reference to this account, and I will state that just a little later on I will go into that. Mr. Brown has asked that question be propounded, and I want to state now that I will ask that question in just a little while.

Q. Did you say there was sixty witnesses subpoenaed in that case?

A. Yes, sir.

Q. I believe I will get you to look at that list of witnesses claimed to have been subpoenaed by the sheriff and see if you can find the following names; I expect I had better hand you this list and let you look at it as you go down the list—

I believe I will call upon Mr. Nichols to the stand right now and ask him two or three questions.

Thereupon, R. V. Nichols, being called to the stand, testified as follows on examination by Mr. Sturgeon.

Q. You have heretofore been sworn, have you not, Mr. Nichols?

A. Yes, sir.

Q. And you name is R. V. Nichols?

A. Yes, sir.

Q. And you are the party that has previously testified in this case several times?

A. Yes, sir.

Q. I believe that you stated that you have been working for the last several months with the Senate Finance Investigating Committee in regard to these fee matters?

A. I have.

Q. And you have before you there a map of Lee county showing the approximate location where certain people live and the witnesses whose names appear in the sheriff's witness account?

A. I have.

Q. I will get you to look at that map and will ask you to state whether or not you have examined the account for the spring term, 1931, of John Burttschell as approved by the district judge for that term of court of Lee county.

A. I have.

Q. Now then, do the names that appear on that list and on that map, are they included in that account?

A. They are.

Q. Now, on that map you have listed the names of several witnesses, some three or four witnesses, north, some southwest, some south, and in other directions, have you not?

A. Yes, sir.

Q. And those names that appear on there, they have been taken from the sheriff's account as filed and approved by the district judge himself, have they not?

A. Yes, sir.

Q. I believe you have been in Lee county several times, have you not?

A. I have.

Q. Did you, or not, notice your speedometer going to the different places in different directions from Giddings in Lee county, as to how far these different places were, or could you give an estimate as to the number of miles that these various locations are from the county seat in that county. Or, have you interviewed people that have told you what distance it is, or with reference to the number of miles from Giddings, the county seat of Lee county, as to what those various distances those places are from the county seat at Giddings?

A. I cannot testify as to the number of miles from the county seat, or the number of miles from Giddings, because I have been going in

there, and then would go in different directions through the county and never did go straight across the county in the course of this investigation.

Q. I will ask you, Mr. Nichols, if you have procured from any of the citizens and merchants of Lee county who live in the outlying territory around Giddings, statements in reference to the witnesses appearing in the sheriff's account as having been served to testify in the John Johnson case?

A. I have.

Senator Page: Mr. Speaker, this witness who is on the stand now, it appears that he did not go into Lee county to serve notices and to secure certain statements from several business men to testify in regard to the residences of several witnesses. It appears that he is undertaking to show that the sheriff has made his returns and the court has approved that account, and that he did not in fact travel the number of miles as shown on his return, and as indicated by that account. We have permitted a number of statements to go into the record without objection, but we think this is going a little too far. Lee county is not far from Austin, as suggested by counsel, and we stated that we admitted a number of these statements heretofore that had been sworn to by the parties making them. It appears now that Mr. Nichols, or through Mr. Nichols, they propose to introduce statements from Lee county about certain witnesses, and we do not want to be technical at all, but that is something that would not be admissible in any trial, and we think it is going just a little too far.

Mr. Sturgeon: Mr. Speaker, I think possibly, the Senator thinks that—the Senator perhaps is not advised as to what we are expecting to do. The matter about which we are making this inquiry is contained in the allegations and charges that certain witnesses appear on the list of the claims made by the sheriff, which he claims to have been provided for a certain defendant, by the name of John Johnson in that case, and that these parties were not called for by the defendant in this case, and by the statements that we propose to introduce we propose to show that in a number of cases these witnesses who appear in the sheriff's account there can not be located. In other words, we take the position that we should be permitted to offer this evidence at this time to show that there were no such witnesses residing in the county. We expect to show by these parties that the witnesses named in the sheriff's account did not live in the communities where they are claimed to have been subpoenaed and never were heard of there.

The Chair: You may proceed.

Q. Did you make a search in Lee county, together with some other parties, out of the Comptroller's office, for these witnesses whose names appear on that list?

A. I did.

Q. Did you make a search for a man by the name of John Lewis?

A. I did.

Q. Did you make a search for Horace Moore?

A. I did.

Q. And Ida Williams?

A. I did.

Q. And Estelle Miller?

A. Yes, sir.

Q. And Harvey Lewis?

A. Yes, sir.

Q. And Tom Givens?

A. Yes, sir.

Q. It is claimed that in this account that they lived northwest of Giddings, and the sheriff claims in his account that he subpoenaed these witnesses in the John Johnson case.

Mr. Sturgeon: Mr. Speaker, I merely have given this information to show what I am trying to do.

The Chair: I understand that the purpose of showing this information is that these witnesses have been searched for by this witness, these witnesses who were supposed to have been subpoenaed. The return shows that they were subpoenaed and this witness' testimony proposes to show that they were not located in these cases.

Mr. Sturgeon: I expect to show by the witness here that they have not—that there have been no such parties in that territory, that they have not lived there and never have been in those particular communities.

The Chair: Mr. Sturgeon, I think that would be permissible. I think it would be permissible for this wit-

ness to state that he has tried to find these parties, and has failed to do so.

Judge Batts: We have no objection to that.

Questions by Mr. Sturgeon:

Q. Without trying to call the entire list off, Mr. Nichols, these witnesses making up some of the sixty witnesses who were subpoenaed in the John Johnson case; I will ask you if that map which you have before you there, and about which I am questioning you, shows a number of names of witnesses whom you tried to locate in those different parts of the county, or where you tried to locate some of them?

A. Yes, sir, in the northwest I located John Lewis.

Q. In the southwest part did you locate anybody?

A. No, sir, I did not.

Q. Could you locate anybody in a southern direction as shown by the witness claim account? Did you locate anyone besides Shipman, Tom Shipman?

A. I located three.

Q. Did you make a diligent search for the others?

A. Yes, sir.

Q. Did you make inquiry to determine whether or not they have ever lived in that community?

A. I did.

Q. Now, then, in the east, did you find Josie Truett, and Matt Truett?

A. I did.

Q. Now, in the northern section, did you locate anyone there?

A. I found one.

Q. Did you make diligent search for the others? And try to determine whether or not they have ever lived there?

A. I did.

Q. Now then, I notice here in the north you have a list of a good many witnesses, James Wormerly, John Lewis, Dan Larkins, Jack Filmore, John Filmore, Della Horace, Robert Thomas, Harvey Lewis? Did you find any of them?

A. I did.

Q. How many of them did you find?

A. I did not find any of them except John Lewis, and he lived in the northwest portion of the county.

Q. In other words, a witness appearing in that sheriff's account, the witness whose name you have just testified about in that sheriff's account, is one of the witnesses here, which shows to have been subpoenaed in the northwestern portion of the county, and you found that he lived in the southwestern portion of the county at an entirely different place?

A. I made a notation to see if they were in the same or if they were at the same location as they were shown to have been in the sheriff's account, and tried to get a statement from some merchant or someone who lived in that community or who knew the people generally in that community, as to whether or not they had lived there.

Q. Now, I will ask you if you took any statements from any of these parties that you have heretofore testified about, from any of these merchants and business men, as to the location of these witnesses, and if you have those statements now there before you?

A. I did and I do.

(Thereupon, at the request of Mr. Sturgeon, Mr. Dunn, the Reading Clerk of the House, read into the record the following statement:)

"State of Texas)
"County of Lee)

"Statement of Tom Shipman:

"My name is Tom Shipman. I live about 12 miles east of Giddings in Lee county. On or about the 26th day of April, 1931, a deputy sheriff came to my house and said he had a subpoena for me and my wife, Josie, to appear as witnesses in the John Johnson case. I asked the officer who John Johnson was and he said he didn't know, only he was charged with robbery and theft. I told him I didn't know John Johnson, never heard of him, and knew nothing about the case. My wife Josie told him the same thing. The officer then said, 'that's funny, I have subpoenaed six or seven this morning and they all said they knew nothing about the case.' Wife and I both went to Giddings and I had to hire a man to carry us up there. Wife and I spent the whole day there but was never called as a witness and was never sworn in. I saw one man while in Giddings who said he was subpoenaed. His name is Harry Blue. He said he knew John Johnson but knew nothing about his case. I live on Robert Harzke's farm

and I asked him if I could be made to attend court as a witness when I didn't even know nor ever heard of the defendant. He said he didn't know but suggested that I had better go. So that's all I know, and my wife will tell you the same.

(Signed) "TOM SHIPMAN.
(Signed) "JOSIE SHIPMAN.

"Witness: R. V. Nichols."

"State of Texas)
"County of Lee)

"Statement of Roy Shields.

"My name is Roy Shields. I live about 7 miles east of Giddings. I own my own farm and have lived on it 8 years. I am pretty well acquainted with the colored people in my territory. On or about the 25th of April, 1931, a deputy sheriff came out to my place and said he had a subpoena for me. I asked him, 'What for?' He said I was wanted in the John Johnson case. I said, 'I don't know anything about the John Johnson case.' He said, 'Well, you had better be at the courthouse in the morning about nine o'clock or you will be subject to a fine.' I told him that I did not want to pay any fine, but that I didn't know a thing about the case. The deputy sheriff first came to my neighbor's house, George Jones, and subpoenaed him and then came on to my house. I mention this for the reason that I see on the list that I was subpoenaed on the 23rd of April and George Jones on the 25th, when in fact, George Jones and I were subpoenaed on the same day. I talked to several people who were at the courthouse in the Johnson case and they all said that they knew nothing about the case and wondered why they were subpoenaed up there. I was up there two days and I was never sworn in and my name was never called, and no other witnesses' names were called, so far as I know.

(Signed) "ROY SHIELDS.

"Signed in the presence of R. V. Nichols and Tom Shipman."

"State of Texas)
"County of Lee)

"Statement of Adolph Wachsman, Manheim, Lee County, Texas.

"My name is Adolph Wachsman. I am a merchant, farmer, ginner, and have lived all my life at Manheim. My place of business is located about 7 miles N.W. of Giddings. My farming interest extends all the way to a radius of four miles from my place of business. I work some colored people on my farms. I have examined the sheriff's witness list in the John Johnson case. There appear to be six witnesses on said list in this territory that were subpoenaed in this case. I do not know, nor did I ever, of but one witness whose name appears on the list and that is the name of John Lewis. John Lewis works on one of my farms but I don't think he was a witness in the John Johnson case. I will get in the car and go with you to see him and see if he knows any of the witnesses which shows to live in this territory because I don't, and don't believe they are living in this territory.

(Signed) "AD. WACHSMAN.

"Signed in the presence of R. V. Nichols, Ray Lowry."

"State of Texas)
"County of Lee)

"Statement of A. Maurbe, Serbin, Lee county, Texas.

"My name is A. Maurbe. I live and operate a general mercantile store at Serbin. I have lived here more than forty years. I am well acquainted with the colored population of my trade territory. Serbin is located six miles a little southwest of Giddings, Lee county. I have examined the sheriff's witness list in the John Johnson case which shows that some ten witnesses were subpoenaed within a radius of six to ten miles west of Giddings which would put them in my trade territory. I have examined the list carefully and I do not recognize a single name as living in this part of the county. If they did, I believe I would know them.

(Signed) "A. MAURBE.

"Signed in the presence of R. V. Nichols, Ray Lowry."

"State of Texas)
"County of Lee)

"Statement of Chas. Tschatschula, Northup, Lee county, Texas.

"My name is Chas. Tschaschula. I am a merchant at Northup about 7 miles south of a little southeast of Giddings in Lee county. I am 38 years of age and have lived here all my life. I am well acquainted with

the colored population in my trade territory. I have examined the sheriff's witness list in the John Johnson case who was tried for theft in May, 1931, in Lee county and I do not know a single witness on the list. Certainly, none of them live in my trade territory, if they did, I would know them.

(Signed)

"CHAS. TSCHATSCHULA.

"Signed in the presence of R. V. Nichols, Ray Lowry."

"State of Texas)
"County of Lee)

"Statement of G. H. Reimers.

"My name is G. H. Reimers. I own and operate a general mercantile store about 6½ miles west of Giddings in Lee county. I have lived here at Hills about four years and am pretty well acquainted with the colored population in my trade territory. I have examined the sheriff's witness list in the John Johnson case who was tried for theft during the May term of court in Lee county, 1931, and I do not recognize the name of a single person listed as witnesses who are shown to have been summoned in my territory. In fact, I dont' recall knowing any person by name on the list. I talked to A. R. Krempin, who is a large land owner in Lee county and has lived in Lee county forty years or more and he told me that he did not know a single witness as appears in the John Johnson case.

(Signed) "G. H. REIMERS.

"Witnesses to signature: R. V. Nichols, Ray Lowry."

"State of Texas)
"County of Lee)

"Statement of John Lewis (col.).

"My name is John Lewis. I live on one of Adolph Wachsman's farms about 11 miles northwest of Giddings. I came home one afternoon and my wife told me that two men came out that day and said that they wanted me to come to Giddings to court as a witness in the Rafael Cervantes murder case. The next day I went to Giddings and talked to Mr. Simmang and he asked me if I was a character witness in the murder case. I said, 'Yes, sir, I guess so.' I told him I didn't know anything about the killing but did know the Mexican. I never was subpoenaed in the John Johnson case and no one ever mentioned to me or asked me to be a witness in this case. I happened to be in Giddings on the murder case and heard afterward that John Johnson was convicted, but I knew nothing about his case. I did not see nor did I talk to a single person while in Giddings that said he was a witness in the John Johnson case. I don't think he had but two or three witnesses. I was not a witness for him nor was I ever subpoenaed in any case except the Mexican murder case, and the only thing I knew about it was what my wife told me. I know of no one else in this country that was a witness in the Johnson case.

(Signed) "JOHN LEWIS.

"Witnesses of signature: Ad Wachsman, R. V. Nichols."

Mr. Dunn, you have read from the typewritten copies attached to the original copies, have you not?

A. Yes, sir.

Q. I want to get you, now, Mr. Dunn, to read the affidavit from John Johnson, who was charged with burglary, and convicted of burglary and theft, if you will, please?

A. All right, sir.

(Thereupon, the Reading Clerk of the House read into the record the following statement from John Johnson, convicted of burglary and theft, same being prison No. 66966:)

"Re—Sheriff, Lee County — John Johnson, convicted of burglary and theft, Prison No. 66966.

"State of Texas)
"County of Brazoria)

"Before me, the undersigned authority, on this day personally appeared John Johnson, a convict now confined at the Darrington State Farm, who, after being by me duly sworn upon his oath, deposes and says:

"My name is John Johnson. I formerly lived in Lee county, Texas. On or about the 14th day of February, 1931, I was arrested near Thrall in Williamson county, Texas, by a deputy sheriff by the name of Kuykendall. He took me to the jail at Taylor, and I remained in jail there until Saturday, or one day and night, then Mr. John Burttschell, high sheriff of Lee county, came after me and took me to Giddings and placed me in jail and kept me in jail until my case was

tried some time in May, when I was convicted and sent to the penitentiary.

"I did not employ a lawyer. I asked the court to appoint me a lawyer but he said he could not do it. He could only appoint a lawyer in case of rape and murder. While I was in the jail at Giddings, Mr. Burttschell, the high sheriff, came down to the jail and told me to make up a list of all the people that I knew in Lee county and he would have them all subpoenaed. I made out a list. I made out a list of twenty-one witnesses that I thought could be of help to me. I have checked over the witness list that has been shown to me as made out by Mr. Burttschell, high sheriff, and I find thirty-five witnesses on the list whose names I do not know and never heard of. At the time the list of witnesses were being made out the high sheriff told Marshall Loving who was also a prisoner in jail to make out a list for me and he said that the high sheriff told him to make up a list of one hundred witnesses for me. I told Marshall Loving that I did not know the people that he had placed on the list and he said well Mr. Burttschell said he wanted one hundred names. I want to correct a statement above. That is to say where I stated that I made out a list of twenty-one witnesses. What I intended to say was that I know twenty-one of the people whose names appear on the list. I only asked that six witnesses be subpoenaed for me. These witnesses all lived in Waco. Their names were Dora Leech, Bertha Grahams, Mrs. L. A. James, Jewell Leech, Fonzy Johnson and Minnie Johnson. I wanted to prove by them that I was in Waco on the day or night of the robbery and theft; that I was innocent of the crime and knew nothing on earth about it. The sheriff never did have my own witnesses summoned and when my case was called they were not there. The burglary was supposed to take place on the 12th of January. On the 13th of January, about 2 p. m., I left Waco and arrived at Giddings about 7 p. m. On my way to Giddings I met up with two white boys between McDade and Page. The boys told me that they were on their way to Oklahoma and broke and had to have some money. One of the boys said he had a pistol and watch that he would sell cheap. I asked him to let me see it. He showed me the watch and pistol and I asked them what they would take for them both. They said they just had to have some money and would take $5.00 for them both. I went on to Giddings and felt proud of my purchase. Louis Vincent Falke and Sarah Falke were at my house and I showed them the watch and pistol. During the trial of my case these two witnesses for the State testified that Mr. Burttschell paid them $10.00 each for turning me in. Mr. Burttschell came to the jail and wanted me to sign a statement that I was guilty and I told him that I would not do it; that I was not guilty and would not sign such a statement. He said, 'Well, I am going to send you to the penitentiary or go broke trying.'

(Signed) "JOHN JOHNSON."
(Seal.)

"Subscribed and sworn to before me a notary public in and for Brazoria county, Texas, this the 17th day of June, 1921.

(Signed) "M. B. SHIREY,
"Notary public in and for Brazoria, County, Texas."

Mr. Sturgeon: Thank you, Mr. Dunn.

R. V. Nichols being recalled, testified as follows, on examination by Mr. Sturgeon:

Q. Now, then, Mr. Nichols, I will get you to state whether or not you have heard the statements just read, by Mr. Dunn, which were signed by Mr. Shipman, Roy Shields, Adolph Waschsman, A. Maurbe, Chas. Tschatschula, G. H. Reimers, and John Lewis?

A. Yes, sir, I have heard those statements read.

Q. Will you please state to the Committee the residence and location in the county and how far from the county seat of Lee county those different parties reside?

A. Mr. G. H. Reimers, whose statement has just been read, lived west of Giddings about six and a half miles. Mr. Maurbe, whose statement has just been read, lived at Serbin and runs a mercantile establishment there.

Q. Where did you say he lives?

A. He lives at Serbin.

Q. How far is that from Giddings, the county seat of Lee county?

A. I really do not recall. I think it is about seven miles.

Q. All right. Now, in regard to the statement of Mr. Charles Tschatschula, where does he reside, and what is his business?

A. Mr. Charles Tschatschula runs a mercantile establishment at Northup, a little southeast of Giddings, about six miles. Mr. Adolph Waschsman, who lives at Manheim, owns and operates the mercantile establishment there, gin, and large farming interests about seven miles north or northwest of Giddings. Roy Shields, I figure, lives about seven miles northeast, or more east, of Giddings, and Tom Shipman, I figure lives about ten miles or a little, and a little southeast of Giddings.

Q. As stated before, I believe you say that you took this statement from the merchants in these different localities who were in your opinion familiar with the conditions existing there in order to ascertain approximately the number of miles and the number of witnesses that were covered by the sheriff's account?

A. That is correct.

Q. And as you stated, you can not locate some of those witnesses, but you got as close to it as you could by pursuing the methods which you followed?

A. That is right.

Cross-examination by Senator Page:

Q. Mr. Nichols, I have known you for a great many years and have known of your work for which I have the highest regard, and I am going to ask you some direct questions in order to develop the facts in this case; I am sure you will take no exception to them, but I must interrogate you about some of these matters in order to develop the facts in this case. You heard read the statement of John Johnson?

A. Yes, sir.

Q. Does that statement show where he was at the time he made that statement?

A. Yes, sir.

Q. What does it show as to what he was doing and where he was at the time that affidavit was made by him? That I may lead you in this, does it not show that when that statement was taken that he was a convict in the penitentiary?

A. Yes, sir.

Q. As a matter of common knowledge, do you think a convict who is in the penitentiary who had been tried and convicted as a result of the efforts of the sheriff of the county from which he was convicted, do you think that the average criminal would feel kindly or unkindly toward the man who was in a sense responsible for sending him to the penitentiary?

A. I can not answer that.

Q. Had you ever been in Lee county before you made this trip down there the first time to investigate this matter?

A. Had I been in Lee county.

Q. Yes, sir.

A. For what purpose?

Q. Say, for any purpose.

A. Yes.

Q. You had been in Lee county, then, a good many times?

A. Yes, sir.

Q. About how long did it take you in the matter of this investigation of the John Johnson case to find out what distance these different witnesses lived from the county seat—how long did it take you to do that—about how long did it take you to do that?

A. I was down there two or three days.

Q. Then it took you several days to do that—admitting the fact—was this — were these statements taken from negroes or white men?

A. I understood they were negroes.

Q. About how far were they supposed—about how far was that neighborhood that you examined, about, from the county seat?

A. Senator, I could not tell you; the only thing I had to go by were the sheriff's witness list, and I went through the list and put all the witnesses on a list within a radius of eight or ten miles, some west, some north, or whichever way they were from town, and I could not tell you the distance those various localities were from the county seat.

Q. Then according to the information that you had, the witnesses that you were inquiring about were supposed to live something like about eight or ten miles from Giddings?

A. That is according to the witness fees claimed by the sheriff, and they were in different localities, either north, east, south or west of the county seat.

Q. About how far were those mercantile establishments from the town of Giddings?

A. They would average about seven, or fourteen miles, coming back.

Q. You say some lived seven and some lived as far as fourteen miles?

A. No. I said they would average about seven miles from Giddings out, and then coming back would make about fourteen miles for the round trip.

Q. Were all of those statements taken in the John Johnson case—were those witnesses all supposed to be north?

A. No, sir. Some of them were north of Giddings, and south and some southwest.

Q. Well, can you state the distance they were from Giddings?

A. I just took their own statements. I do not know just how far they live from Giddings, the county seat.

Q. You do not know how far it was from Giddings out there, then?

A. Mr. Adolph Wachsman, who owns and operates a store at Manheim, stated he lived about seven miles northwest of Giddings. G. H. Reimers, if I remember correctly, stated he lived about six and a half miles west of Giddings. Mr. Maurbe stated he lived about seven miles west, or a little southwest of Giddings. Mr. Charles Tschatschula, who owns the store at Northup, stated that he lives about six miles south and a little southeast of Giddings. Mr. Roy Shields, who is a farmer, lived a little northeast of Giddings, about seven miles. Tom Shipman, if I remember correctly, stated that he lives something like ten miles southeast of Giddings. I am quoting this information from memory.

Q. Is that about all of them?

A. Yes, sir.

Q. Now, Mr. Nichols, I am going to ask you this question: The district judge, admitting that the law is that he must either approve or disapprove the sheriff's account during the term of court at which it is rendered; if the sheriff's account was handed to the district judge either just before, and as you know, these accounts are always presented to the district judge just before the adjournment of court, if he did not know the exact location of these various witnesses would it be possible for the district judge before approving or disapproving those accounts to have investigated the location of these various witnesses? What would be your opinion in that matter?

A. I do not think so.

Q. You do not think so?

A. No, sir.

Q. I am handing you what purports to be the application by John Johnson for witnesses in his case. Please examine that application and see if you find in the application filed by the defendant for these witnesses the name of all of these persons that you have stated that you were unable to find, or that you stated you could get no information about them having lived there? Do you find all of those witnesses listed there over the signature of the defendant under oath?

A. I think they are all here, because I have checked the records in the district clerk's office.

Q. You have testified then that the records which you examined in the district clerk's office, then show that the defendant made application for these witnesses under oath, and the return as shown on the various subpoenas shows that it was charged for by the sheriff according to the record?

A. That is what it seems to be; that seems to be true.

Q. You checked the subpoenas also, did you not?

A. Yes, sir.

Q. And the subpoenas were compared with the other papers and the subpoenas comported with the other papers, did they not?

A. Yes, sir, they did.

Q. The sheriff's subpoenas each show that he served these witnesses—that is, it was shown on his return that way, was it not?

A. Yes, sir, his return showed that.

Q. And that is what the district judge—and that is what would have been before the district judge and what he would have been handed at the time he allowed the account or approved or disapproved the account of the sheriff, and that is all that he would have had before him at the time he approved or disapproved the sheriff's account, was it not?

A. I do not know just what method the district judge used in approving these accounts. I do not know anything of how they go into that

matter. I do not know what their practice is in regard to that.

Q. But you did go into the records and the records showed that that service had been rendered by the sheriff?

A. Yes, sir.

Q. That is all.

A. All right.

Senator Page: I believe that is all.

Re-direct Examination.

By Mr. Sturgeon:

Q. Mr. Nichols, you stated that in some instances, you stated, that these witnesses that you tried to locate—taking the sheriff's account as a basis, and as showing where they lived and where they were subpoenaed on a general average, they lived all seven or eight miles from the county seat?

A. That is correct.

Q. I wish you would just tell this Committee about what distance—how many miles, was shown on the sheriff's account as the distance these witnesses lived from the county seat? You can kind of make a rough estimate of that, as to the number of miles charged by the sheriff for subpoenaing those men in that county. Just strike a medium. Of course, there is some difference in the distance those witnesses live from the county seat.

A. They run all the way from two to twenty-four miles.

Q. Now there is another thing that I want to ask you about. Those statements that were read by Mr. Dunn; you stated this morning that one of these witnesses was a negro, I believe. Now, I will ask you to state whether or not they are statements from negroes or white men—I mean the statements that you have brought in here, the affidavits?

A. No, sir, they are white men.

Q. Did you find the name of Tom Shipman on that list on the account of the sheriff?

A. I do.

Q. According to the sheriff's account, where does that account show that Tom Shipman lived?

A. The account shows that Tom Shipman lives 16 miles southeast of Giddings, and that Josia Shipman lives 18 miles east from the county seat.

Q. I believe they have already read Tom Shipman's statement?

A. Yes, sir.

Q. Now, then, in your investigation, where did you find that Tom Shipman lived?

A. He lived about ten miles east of Giddings.

Q. Ten miles east of Giddings?

A. Yes, sir.

Q. And Josia Shipman is his wife and lives with him?

A. Yes, sir.

Q. Does it show on that list that they were subpoenaed at the same place?

A. It shows that Josia Shipman was subpoenaed 18 miles east and Tom Shipman 16 miles southeast from Giddings.

Q. What does the subpoena show? (Just cut that, Mr. Reporter.)

Mr. Sturgeon: Now, then, Mr. Chairman, we want to introduce that map showing the location of Giddings and these various other little towns around in that territory. We can give that to the reporter if there is no objection to that. Now then, this question that was sent down here a while ago with reference to the witness who was subpoenaed four times west and the same witness was subpoenaed southeast and the same witness was subpoenaed northwest.

Q. You do not know how far it is from the east line to west line of the county, striking a line across the county, that would go through the county seat of Giddings, do you?

A. No, sir, I do not.

Senator Page: I just want to ask you a few questions about where these witnesses live—you have the paper there, have you?

A. Yes, sir, I do.

Q. I want to ask you a few questions about that map. It was necessary for you in checking up these matters, for you to go to the trouble of making that map?

A. Senator Page, that is just a map that I prepared for my own benefit in trying to locate the places in the county.

Q. It was necessary in your investigation — in the investigation which you conducted for you to make this map, or you would not have pursued that character of investigation?

A. I thought so.

Q. Then you drew this map to give you the locations of places where these witnesses were located in order that you could check this matter up, did you not, and put on there the names of those witnesses?

A. Yes, sir. I did that, and it took a little time to do it, yes, sir.

Q. And it took you some time to do that, did it not?

A. Yes, sir.

Q. (Interrupting) To make that map so you would have it for your own convenience?

A. Yes, sir. It took some time to do that.

T. M. Markham, being recalled, testified as follows on examination by Mr. Sturgeon:

Q. Mr. Markham, I believe I asked you before if you remembered if Judge Price was in Austin in April before the Committee in reference to the account of the sheriff of that county, and I do not know just what statement you made in reference to that as to what the date was. Have you refreshed your memory by any account or record that you have so that you could now give me that information?

A. I have by referring to the minutes of the Finance Committee which shows that he was present on April 22, 1931.

Q. Now, that was the date that Judge Price was down here and before the Investigating Committee?

A. Before the Finance Committee.

Q. And what was the date there?

A. April 22, 1931.

Q. Now, what was the date that this account here that we have been talking about was approved by the district judge?

A. May 8, 1931.

Q. Now then, Mr. Markham, I wish you would get, please, the account of Woody Townsend, sheriff of Bastrop county for the June term, 1928, and see if you find there the case of the State of Texas vs. Mack Williams?

A. Yes, sir, I find it here.

Mr. Sturgeon: The Senator may want to ask you about that other account.

Re-cross examination.

By Senator Page:

Q. Mr. Markham, you have been testifying as to the sheriff's account in Cause No. 2249, the State of Texas vs. John Johnson, have you not?

A. Yes.

Q. I am handing you an instrument here. I wish you would look at that and see what it is and let us know.

A. That is an indictment in Cause No. 2249, State of Texas vs. John Johnson, for burglary and theft.

Q. We would like to have Mr. Dunn read the indictment to the Committee.

Mr. Dunn:

"In the name and by the authority of the State of Texas:

"The grand jurors, for the County of Lee, State aforesaid, duly organized as such at the April term, A. D. 1931, of the district court for said county, upon their oaths in said court present that John Johnson, on or about the 12th day of January, A. D. 1931, and anterior to the presentment of this indictment, in the County of Lee, and State of Texas, did then and there unlawfully break and enter a house by force then and there occupied and controlled by H. H. Jones, with the intent then and there to fraudulently take therefrom corporeal personal property therein being and then and there belonging to the said H. H. Jones, from the possession of the said H. H. Jones without the consent of the said H. H. Jones, and with the intent then and there to deprive the said H. H. Jones of the value of the same and to appropriate it to the use and benefit of the said John Johnson;

"And the grand jurors aforesaid, upon their oaths aforesaid, in and to said court do further present that John Johnson on or about the 12th day of January, A. D. 1931, and anterior to the presentment of this indictment in the County of Lee and State of Texas, did then and there unlawfully by force, threats and fraud, and at night, enter a house there situated the same then and there being the private residence of H. H. Jones and being then and there occupied and actually used by the said H. H. Jones as a place of residence, with the intent then and there to fraudulently take therefrom corporeal personal property then and there therein and belonging to the said H. H. Jones, from the possession of the said H. H. Jones, without the consent of the said H. H. Jones, and with the intent then and there to deprive the said H. H. Jones of the value of the same and to appropriate the said property to the use and benefit of him the said John Johnson;

"And the grand jurors aforesaid, upon their oaths aforesaid, in and to

said court do further present that John Johnson, on or about the 12th day of January, A. D. 1931, and anterior to the presentment of this indictment in the County of Lee and State of Texas, did then and there unlawfully and fraudulently take one pistol and one watch, of the value of the following, to-wit: Pistol of the value of $35 and said watch of the value of $35, the said property being of the total value of $70, the same then and there being the corporeal personal property of and belonging to Louis Neumann, from the possession of the said Louis Neumann, without the consent of the said Louis Neumann, and with the intent then and there to deprive the said Louis Neumann of the value of the same, and to appropriate the said property to the use and benefit of him, the said John Johnson, against the peace and dignity of the State.

(Signed) "J. W. TATE,
"Foreman of the Grand Jury."

Q. Read the penciled verdict on the back of the indictment.

Mr. Dunn: Names of witnesses—

Q. No, the verdict is what I want —in pencil.

Mr. Dunn: "We, the jury, find the defendant guilty as charged in the third count of the indictment, and assess his punishment at five years' confinement in the State penitentiary.

(Signed) "E. W. HECK,
"Foreman."

Q. All right, Mr. Dunn, thank you, sir. Wait a minute we will want you again. Now will you take these two documents, Mr. Markham, and let us know what they purport to be, please?

A. I have here the State's application for subpoenas.

Q. What does the other one appear to be, Mr. Markham; is it the defendant's application for witnesses?

A. It is.

Q. I will ask Mr. Dunn to read these two documents, please, beginning with the State's application, and then going to the defendant's application.

Mr. Dunn: "No. 2249—The State of Texas vs. John Johnson. In District Court of April Term, 1931, Lee County, Texas.

"To the clerk of said court:

"Comes now the State, by her district attorney, and makes application for the issuance of subpoena for the following named persons to compel their attendance as witnesses for the State; place of residence, exact location and avocation of said witnesses (where known), appears opposite the respective names, as follows, to-wit:

"John J. Burttschell.
"H. H. Jones.
"Sarah Falke.
"Louis Vincent Falke.

"Witnesses out-of-county and residence:

"L. W. Neumann, Austin.
"Ad Barnhart, Thrall.
"M— Barnhart, Thrall.
"J. S. Kuykendall, Taylor, constable.

"Said persons, witnesses in behalf of the State in the above entitled and numbered felony case, and it is believed by the district attorney that the testimony of said witnesses is material for the State on the trial of said case.

"Applicant prays that the said subpoenas be made returnable on the 29th day of April, A. D. 1931.

(Signed) "MERTON L. HARRIS,
"District Attorney.

"The State of Texas)
"County of Lee)

"Before me, the undersigned authority, on this day personally appeared M. L. Harris, attorney of 21st Judicial District of Texas, representing the State in the within styled and numbered cause, to me well known, who being by me duly sworn, upon his oath deposes and says that the matters and things set forth in the foregoing application for subpoena are true and correct to the best of his knowledge and belief.

"Witness my hand and seal of office, this 22nd day of April, 1931.

(Signed) "F. A. HESTER,
"District Clerk, Lee County, Texas."

"The defendant's application reads as follows:

"File No. 2249—State of Texas vs. John Johnson.

"Herein comes now the defendant and makes oath and says that the following named witnesses are believed by him to be material for his defense—"

Q. You need not read the names. Just read the close of it.

Mr. Dunn: "Wherefore, he prays that subpoenas be issued for said witnesses.

(Signed) "JOHN JOHNSON,
"Defendant.

"Sworn to and subscribed before me this the 25th day of April, 1931.

(Signed) "A. H. KARCHER,
"Notary Public, State of Texas, County of Lee."

Q. Thank you, Mr. Dunn. All right, Mr. Markham.

Mr. Markham, kindly turn to the sheriff's account now, that we have been speaking about in the cause of The State of Texas vs. John Johnson.

A. Yes, sir.

Q. Take that account and find out the number of witnesses that the sheriff has charged the State for in that account?

A. Sixty.

Q. Take the application signed by the State's attorney and by the defendant's attorney, asking for witnesses, and see how many there are in those two applications.

A. The defense has 69 in-county, and the State has four.

Q. That's all. I don't care about the out-of-county witnesses. Then, according to that, how many witnesses did the sheriff summon, less than the amount applied for by the State and the defendant—just as a matter of calculation?

A. Thirteen.

Q. Then the State and the defendant applied for thirteen more witnesses than the sheriff charged for in his return?

A. That's true.

Q. I think that's all, Mr. Markham; thank you.

Re-direct Examination.

Questions by Mr. Sturgeon:

Q. Do you have the 1928 account before you, I asked you about while ago?

A. Yes.

Q. Mr. Markham, I want to ask you about the June account, for the June term, 1928, in Bastrop county.

A. All right.

Q. Could you give us the total amount of that account?

A. $3,959.05.

Q. You say that is the account for the June term in Bastrop county for the year 1928?

A. It is.

Q. Who signed that account as sheriff, and who approved it as district judge?

A. Woody Townsend, as sheriff. Sworn to on the 27th day of July, 1928. Signed by J. B. Price, Judge Twenty-first Judicial District, July 2, 1928. Hartford Jenkins, District Clerk of Bastrop county, July 27, 1928.

Q. All right, I wish you would look in that account, and see if you find a defendant by the name of Mack Matthews, charged with murder?

A. Cause No. 2961, Mack Matthews, charged with murder. Cause No. 2962, Mack Matthews, murder.

Q. All right; have you audited that account or been over that account?

A. I have.

Q. Can you state offhand how many witnesses were subpoenaed for the June term of 1928 as claimed by the sheriff, in that case?

A. I will have to count them.

Q. I thought maybe you had them already counted.

A I did. I gave you the number that went in the indictment.

Q. Were there 236 witnesses subpoenaed in that case? That is what is alleged here.

A. There was.

Q. For the June term, 1928?

A. Yes.

Q. All right. Can you give us the total amount charged for subpoenaing witnesses for these 236 witnesses in that case?

A. On those two cases there was $648.20 paid for subpoenaing witnesses, which consists of mileage and fees.

Q. For subpoenaing witnesses in those two cases?

A. Yes, in county witnesses.

Q. In county witnesses?

A. Yes.

Q. I will get you to look at that recapitulation sheet you testified about a while ago?

A. Yes.

Q. I will ask you again to give the Committee the date that is shown that the sheriff signed and swore to that account?

A. July 27, 1928.

Q. Now give the date that the district judge approved that account.

A. July 2, 1928.

Q. That account shows it was approved some 25 days, by the district

judge, before it was signed and sworn to by the sheriff?

A. That's what it shows.

Q. Yes. Was the sheriff sworn to that account. That is, does it show he was sworn to it by the district clerk?

A. It shows he was sworn by Hartford Jenkins, the district clerk.

Q. And the certificate of the court, according to the account as filed with the Comptroller, itself shows that it was signed July 27th, and approved July 2nd by the judge?

A. It does.

Q. Will you give me the total amount of that? What was the total amount of figures paid out for serving in-county witnesses?

A. $648.20.

Q. $648.20?

A. Yes.

Q. You are speaking of the June, 1928, term of court?

A. Yes.

Q. In Bastrop county?

A. Yes.

Q. All right, sir, I wish you would now get me the January term of court for 1929, from that same county by the same sheriff and in Judge Price's district?

A. All right.

Q. Do you have the account for the June term of 1929 from Bastrop county?

A. Yes.

Q. I wish you would see if the same case appeared in that account, against Mack Matthews, as appeared in the other account. Do you have that?

A. I do.

Q. I believe that case number is 2961, the district court number?

A. 2961 and 2962.

Q. All right; 2962. What term of court is that for?

A. January, 1929.

Q. I wish you would please tell us if you don't find in that sheriff's account, as approved by the district judge, where 235 witnesses were subpoenaed in those cases for that term of court, where it is claimed, rather, they were subpoenaed?

A. I do.

Q. Now give us the total amount of charges made for subpoenaing witnesses for the January term of court, 1929, in that same case that appeared in the June term, 1928.

A. $810.10.

Q. Has that account been paid?

A. It has.

Q. Has the one I interrogated you about while ago been paid?

A. It has. This was paid by warrant number—

Q. I don't care anything about the warrant number; I don't care anything about that. Now then, following that same man, Mack Matthews, and those same numbered cases, I wish you would look now at your June term of court, 1929, in the same county and the same sheriff and all. Do you have that information?

A. Yes.

Q. Do you find those same cases in that term of court?

A. I do.

Q. That is the June term, 1929?

A. I have it.

Q. All right. I will ask you if there was not a claim made by the sheriff in those same two cases at that term of court for serving process on 230 witnesses?

A. It was.

Q. When was that account sworn to by the sheriff and approved by the judge?

A. Signed, Woody Townsend, sheriff of Bastrop county, on February 23, 1929; and signed J. B. Price, judge, Twenty-first Judicial District, on February 23, 1929, in the amount of $3,665.80.

Q. Now then, tell us if you will, what was the amount of charge made for subpoenaing the witnesses in that same case at that term of court. Do you have, from your work sheet there, Mr. Markham, anything showing the number of miles he claimed in that term of court?

A. No, sir.

Q. All right.

A. $804.

Q. $804 for subpoenaing the witnesses?

A. Yes.

Q. All right, now that's for the January term, 1929?

A. June term, 1929.

Q. I mean June term. That's right, you have already testified about the January term. Now then, follow that same case and same number into the January term, 1931.

A. All right.

Q. Tell us when that account was signed by the sheriff and approved by the district judge.

A. It was signed by the sheriff on February 21, 1931, and signed, J. B. Price, on February 26, 1931.

Q. All right; now with reference

to—you are still talking about the Mack Matthews cases?

A. Yes.

Q. I will ask you if the sheriff's account and claim for services doesn't show that there was 189 witnesses subpoenaed for that term of court in those cases?

A. 189 is correct.

Q. Give us the total amount of charge made by the sheriff for the service in subpoenaing those 189 witnesses in that case, please.

A. $588.90.

Q. Now, then, I wish you would take the total amount of money, beginning with the June term, 1928, which you said was $648.20; the January term, 1929, which you said was $810.10; and the June term, 1929, which you stated was $804; and the January term, 1930, which you stated was $598.90; and tell us what the total amount of those figures is.

A. $2851.20.

Q. All right. That was the total amount of fees.

A. For subpoenaing witnesses?

Q. For subpoenaing witnesses.

A. Yes.

Q. In the two cases against the party by the name of Mack Matthews?

A. Yes.

Q. Now, I will get you to refer to all of those accounts, and tell this Committee whether or not the services claimed to have been performed in subpoenaing these witnesses, beginning at the June term, 1928, and ending at the January term, 1931, if they are the same witnesses, and if the same names and witnesses appear in each of these accounts?

Senator Page: To save time, we will admit it.

Q. All right; Senator Page says in order to save time he will admit they are the same witnesses. I understand this case was appealed. Do you know anything about that?

A. I have a copy of the criminal docket.

Q. When does the docket show the case was tried?

A. Do you want me to read the whole docket, or have it read?

Q. I don't know. Let me look at it. Let me ask Mr. Nichols a question about it.

(R. V. Nichols resumes stand.)

Q. Mr. Nichols, look at that paper there and tell us what it is, please, sir.

A. It is the copy of the criminal docket.

Q. Of what county?

A. Bastrop.

Q. Where did you get that—who gave it to you? Did you get it from the district clerk?

A. The district clerk made it up and gave it to me.

Q. The district clerk made up that sheet and gave it to you?

A. Yes.

Q. What does it show about the Matthews case?

A. "2961—State of Texas vs. Mack Matthews."

Q. All right; let Mr. Dunn read that, please.

Mr. Dunn: "Copy of original criminal docket. Number of case, 2961. The State of Texas vs. Mack Matthews. Attorneys: Merton L. Harris, W. H. Murchison, and Page and Powell. Offense: Murder. Date of filing—June 25, 1928. On appeal—reversed and remanded.

"July 17, 1928. Continued by defendant.

"January 22, 1929. Set for February 18, 1929, and on motion of district attorney, a venire of 50 jurors ordered.

"June 18, 1929. Set for July 1, 1929, and on motion of the district attorney, a venire of 60 men ordered.

"July 1, 1929, the regular special venire of 60 having been exhausted before a jury was selected and the defendant's attorney before said regular venire was exhausted made motion to have additional jurors summoned, drawn from the special venire list. Said motion granted and 60 additional jurors ordered drawn and summoned from said special venire list and ordered to report at 9 o'clock, July 2, 1929.

"July 5, 1929. Verdict of guilty—and punishment assessed at five years in the penitentiary.

"July 6, 1929. Defendant's motion for new trial overruled, to which action of the court the defendant in open court excepted and gave notice of appeal to the Court of Criminal Appeals of the State of Texas, and 80 days allowed to make up statement of facts and bills of exceptions.

"July 6, 1929. Sentence pronounced.

"January 23, 1931. Set for February 12, 1931.

"February 9, 1931. Verdict of

jury—guilty, and punishment assessed at five years in penitentiary and sentence suspended by verdict of jury, and suspended."

Q. All right; thank you Mr. Dunn. We offer in evidence that copy of that document (State's exhibit No...)

Q. I believe that docket showed, Mr. Markham, that the State was represented in this case by Mr. Harris, as district attorney, and by Mr. W. H. Murchison and Senator Page and Judge Powell as attorneys for the defendant. Now with reference to the witnesses that were subpoenaed and shown to be subpoenaed, by the reports you have just read for the four terms of court in that case in Bastrop county, I will ask you if you have any affidavits and statements from any of those witnesses?

A. I do.

Q. Mr. Dunn, will you read some of these statements, please?

Mr. Dunn: Yes, sir.

Q. Now, Mr. Dunn, you will notice that some of those have the originals that have been written in hand, and the copies are right under them, and I take it it will be all right to read the copies, because it will be easier to read. Go ahead.

Mr. Dunn: "Bastrop County, Texas, August 6th, 1931 — Statement of Champ White:

"I was a witness in the Mack Matthews case. I live just about a half mile from the courthouse of Bastrop county on the Hills Prairie road.

"At the term of court when Mack Matthews was convicted, that is, June, 1929, the officers came to my house for me, but I was finally located by them in town and they took me to court where I testified in the trial. No subpoena had been served on me before this.

"Then, in the January term of court, 1931, Dave Eskew came to my house and subpoenaed me. I have lived in the same place three years, and was never subpoenaed anywhere else in this case.

"I note on the sheriff's witness list that on July 3rd, 1928, I was subpoenaed 30 miles S.E. from Bastrop. This is all wrong—I was not. I also note on the sheriff's witness list that I was subpoenaed 24 miles W. of Bastrop on the 2nd day of July, 1929. This is wrong, because the officers found me in town at this time and took me directly to the courthouse.

(Signed) "CHAMP WHITE,
"LULU B. WHITE.

"(Signed by wife.)

"Signed in the presence of: Ray Lowry, Tommye Faye Nichols."

Q. All right.

Mr. Dunn: "Bastrop County, Texas, August 6th, 1931—Statement of Henry Keys:

"I was a witness in the Mack Matthews case. I lived at the time of the killing on the Sam Higgins place which is about one and one-half miles from the courthouse. I have been subpoenaed twice in this case, both times by Dave Eskew, and each time I was about two miles from the courthouse. The first time, I was working in the field close to where I lived, and the other time on the Buchannan place, which is on the Austin highway. I never was subpoenaed anywhere else.

(Signed) "HENRY (X) KEYS.
His
Mark

"Signed in the presence of: Ray Lowry, Tommye Faye Nichols."

Q. All right. Now wait just a minute. Get that account, now, Mr. Markham, and show where the account claims that man was served or any of those papers you have there from your audit.

Mr. Markham: It shows, Henry Keys, served 14 miles west.

Q. Fourteen miles west. That was the claim. Now where does the statement show he was summoned?

A. He says, about one mile and a half from the courthouse.

Q. All right, Mr. Dunn, take the next statement.

Mr. Dunn: "Bastrop county, Texas, August 6th, 1931—Statement of Tom Craney:

"I was a witness in the Mack Matthews case. I live about seven miles south from Bastrop on the Hills Prairie road. Just after the killing, Dave Eskew came out here and said that he had a subpoena for me, but since I wasn't there, he told Daisy Martin, a neighbor, to tell me to appear in court. Daisy told my wife and my wife told me. I did not go to court this time.

"Some time in 1929, Dave Eskew came out while I was over at a neigh-

bor's house which is about a hundred yards from my house, and served a subpoena on me. Then another time, Dave Eskew came out to the house and subpoenaed me and other witnesses who were there, that is, my wife, Annie, my two daughters, Mamie and Bessie, and my son, Collis. I think this was in 1929.

"So, I have been subpoenaed two times in the case. Also, my wife has been subpoenaed two times and no more. My family was living with me all the time this case was in court. My son, Jim Craney, lives about two and one-half miles from my home, and is about nine miles south from Bastrop. His wife, Mabel, has been living with him all the time this case was in court.

(Signed) "TOM CRANEY.

"Signed in the presence of: Alex Horns, Ray Lowry."

Q. What does the report show on that, Mr. Markham?

A. Served February 3, 1931, Tom Craney, 28 miles south.

Q. All right, Mr. Dunn.

Mr. Dunn: "Bastrop County, Texas, August 4, 1931—Statement of George Matthews:

"I was a witness in the Mack Matthews case. I was subpoenaed the first time in this case just before the case was called for trial the first time, which was some time in the summer of 1928. Then, I was not subpoenaed any more until January, 1931. I live on the Jones Trigg farm about six miles south from Bastrop on the Hills Prairie road. I note on the sheriff's witness list the names Lorenzo Kello and Lorenzo Wyatt. I know that these names refer to one and the same person, whose correct name is Lorenzo Wyatt. I also note on the same list the names Israel Hodge and Israel King. I know that these names refer to one and the same person, whose correct name is Israel King. I also note the names Milton Hodge and Milton King. I know that these names refer to one and the same person, whose correct name is Milton King.

"I note on the various lists for the different terms of court that my name appears as being subpoenaed six times and also that my wife, Jane Matthews, was subpoenaed six times. In one instance the list shows that I was subpoenaed 20 miles from Bastrop and my wife 30 miles from Bastrop. This is all wrong, because both times that my wife and I were subpoenaed we were at home and my home is only six miles from Bastrop.

"These are the facts in the case to the best of my knowledge and recollection.

(Signed) "GEORGE MATTHEWS.

"Signed by Lorenzo Wyatt.

"Signed in the presence of: R. V. Nichols, Ray Lowry."

Q. Mr. Markham, do you have the account there with reference to that matter?

A. I'll see.

Q. Let's go ahead, Mr. Dunn, and read another one of those statements while we look up that account.

Mr. Dunn: "Bastrop county, Texas, August 5, 1931—Statement of Tom Kellough:

"I was a witness in the Mack Matthews case. I was subpoenaed two times in this case, once by Dave Eskew before the case was called the first time, and once for the January term of court, 1931, also by Dave Eskew. Both times I was at home when I was subpoenaed, and I live on the Kello plantation which is about six miles south from Bastrop on the Hills Prairie road.

(Signed) "TOMIE KELLOUGH.

"Signed in the presence of: Ray Lowry, R. V. Nichols."

Q. Do you have his name here in the account, Mr. Markham. What does that account show about where he was subpoenaed and how far the sheriff traveled?

A. I have two of them here. June 29, 1929, Tom Kellough, 40 miles south. February 4, 1931, 44 miles south.

Q. Is that all, Mr. Dunn?

Mr. Dunn: No, sir; there's another one.

Q. All right. Read that.

Mr. Dunn: "Bastrop county, Texas, August 5, 1931—Statement of Lorenzo Wyatt:

"I was a witness in the Mack Matthews case. I live about six miles south from Bastrop on the Hills Prairie road.

"I was summoned the first time in this case by Gus Wallace while I was digging a grave in the graveyard,

which is about 300 yards from my home. Ras Kell, Sam Kello, Tom Kello, and quite a few other witnesses were there with me and we were all summoned at the same time. That was a few days after the killing. This was for the grand jury investigation. I went to Bastrop and appeared before the grand jury and was asked a few questions and then I came back home. Then, a short time afterward, Dave Eskew came out here and subpoenaed me for that term of court.

"Then, the only other time I was subpoenaed was in January, 1931, when Dave Eskew came out here and subpoenaed me.

"I note on the list that the name of Lorenzo Kello appears, also the name of Lorenzo Wyatt. I am sure that the former refers to me, and my correct name is Lorenzo Wyatt.

"These are the facts in the case to the best of my knowledge and recollection.

(Signed) "LORENZO WYATT.

"Signed in the presence of Ray Lowry, R. V. Nichols."

Q. All right, Mr. Dunn, I will get you to read this statement?

Mr. Dunn: "Statement of Nelson Trigg—Austin, Texas, August 4th, 1931.

"My name is Nelson Trigg. I am a barber and work in P. C. Rambo's Barber Shop on East Sixth Street, Austin, Texas. I have been working in the same place since November, 1927.

"I worked for Judge Page in Bastrop, Bastrop county, from 1923, until 1926. Then I was in Fort Worth for a while and then went back to Bastrop and from there came to Austin.

"I went back to Bastrop county to Hills Prairie to a celebration on June 19th, 1928. I knew Mack Matthews and practically every one else at the celebration. I was not on the grounds when the shooting occurred, but was about four miles up the road toward Bastrop. Therefore, I knew very little about the case.

"I note on the sheriff's witness list for the Matthews case for the January term, 1931, that my name appears as being subpoenaed 24 miles south of Bastrop on February 5th, 1931. I positively was not subpoenaed at that time, for I was in Austin.

"I have been subpoenaed one time in this case and that was for the January term of court, 1929, by a deputy sheriff of Travis county, who came here to the barber shop and told me that I was wanted as a witness in the Mack Matthews trial in Bastrop county. I went to the trial but was not put on the stand. I was paid for this trip. I absolutely was not subpoenaed before or after this one time.

(Signed) "NELSON TRIGG.

"Sworn to and subscribed before me, a notary public in and for Travis county, Texas, this 4th day of August, 1931.

(Signed)

"EFFIE WILSON-WALDRON,

"Notary public."

(Seal.)

Q. All right, Mr. Markham: Where does the sheriff's account show he was summoned?

A. February 5, 1931; Nelson Trigg, 24 miles south.

Q. Now, Mr. Nichols. Does your work sheet show the number of witnesses, and the number of miles traveled for any one term of court in that county, taken from these reports?

Mr. Nichols: The sheet that I hold in my hand represents the number of miles traveled for the January term, 1931, in Bastrop county, in subpoenaing witnesses.

Q. It shows the number of miles as taken from the sheriff's account that he claimed to have traveled in the January term, 1931, in Bastrop county?

A. Yes.

Q. Give us the total number of miles he claimed to have traveled as approved by the district judge?

A. After being checked and rechecked, the tabulation shows on the adding machine, 26,000 miles.

Q. What is the distance claimed to have been traveled in this Mack Matthews case?

A. In the January term, 1931, it shows he traveled 3984 miles.

Q. For subpoenaeing these witnesses?

A. Yes.

Q. Does that report there show the number of witnesses?

A. No, sir; it does not.

Q. That's all, Mr. Nichols.

(Witness R. V. Nichols excused.)

Mr. Sturgeon: Mr. Speaker, I have one other question I want to ask Mr. Markham before we close.

The witness, Markham, resumes the stand for questions by Mr. Sturgeon:

Q. Mr. Markham, I want you to refer to that June account in Bastrop county, 1928, the recapitulation sheet for the June term, 1928. Get that recapitulation sheet, Mr. Markham?

A. All right.

Q. I wish you would look at that sheet where it is signed by the sheriff, the district judge and the district clerk, and please tell us the date that it shows the sheriff signed that account?

A. It shows the sheriff signed it July 27, 1928.

Q. Now, then, please tell us when it shows the sheriff was sworn to that account?

A. It's the same—July 27, 1928.

Q. I believe you stated previously that it shows the sheriff signed and swore to that account on the 27th day of July, 1928, and the district judge approved it on the second day of July, 1928?

A. Yes.

Q. That's all I wanted to ask you.

Mr. DeWolfe: Mr. Chairman, I ask the unanimous consent that the Committee arise and report progress, and ask leave of the House to sit again at 1:30 o'clock p. m.

The Chairman: The gentleman from Mills asks the unanimous consent of the Committee that the Committee arise and report progress, and to ask leave of the House to sit again at 1:30 o'clock p. m. Is there any objection. The Chair hears none, and it is so ordered.

(Committee arose to report progress at 12 o'clock noon, August 17, 1931.)

Monday, August 17, 1931.
(Afternoon Session.)

On motion of Mr. Graves of Williamson, the House resolved itself into a Committee of the Whole House at 1:30 o'clock p. m., and proceeded with the hearing, as follows:

Mr. Sturgeon: We will call Mr. Nichols, Mr. Speaker.

R. V. Nichols was recalled to the witness stand, and further testified, as follows:

Re-direct Examination.

Questions by Mr. Sturgeon:

Q. Mr. Nichols, from the accounts that you have just testified about this morning, from Bastrop county, I will ask you to state to the Committee whether or not you made a recapitulation of the sheet there in condensed form, showing certain witnesses who were subpoenaed, and where they were subpoenaed, and the dates they were subpoenaed on, in the Mack Matthews case?

A. I have.

Mr. Sturgeon: Mr. Dunn, will you please read this? Just a moment, before you read it.

Q. This schedule, or this list of witnesses that will be read now, and the dates showing the time that they were claimed to have been subpoenaed by the sheriff, was taken from the account of the sheriff filed with the Comptroller?

A. Yes, sir, it is headed "names of witnesses subpoenaed, with dates, mileage, direction and amount charged in each of the four times this case was called, Cause 2961, Mack Matthews.

Q. All right. Now, all those witnesses were subpoenaed in the four different terms of court in the Mack Matthews case?

A. They were.

Q. And they show the names of the same parties whom statements have been read from this morning in reference to where they were summoned, and so on.

A. They do.

Mr. Sturgeon: All right, Mr. Dunn.

(Mr. Dunn thereupon read the list as follows, to-wit:)

"Bastrop County, Cause 2961, Mack Matthews.

"Names of witnesses subpoenaed, with dates, mileage, direction and amount charged, in each of the four times this case was called.

Milton Hodge (?King)*		
7-2-28		.50
2-12-29	36 NE	4.10*
6-24-29	24 SW	2.90*
1-25-31	24 S	2.90
Augusta Hodge		
7-2-28	52 N	5.70

2-3-29	30 W	3.50
6-24-29	60 NE	6.50
2-3-31	4 SW	.90

Pleas Hodge

7-2-28	20 S	2.50
1-24-29	20 S	2.50
8-30-29	24 W	2.90
2-4-31	20 SW	2.50

Tom Kello

6-28-28	20 E	2.50
7-3-29		.50
2-15-29		.50
6-29-29	40 A	4.50
1-24-31	24 S	2.90
7-6-29		.50
2-4-31	44 S	4.90

Ras Kello (Rasberry)

7-3-28		.50
7-3-28		.50
6-29-28	16 W	2.10
2-15-29		.50
6-25-29	24 NE	2.90
1-27-31	30 N	2.50
2-2-31	20 W	2.50

Tom Lee Hornsby

7-1-28	44 W	4.90
7-2-28	48 SW	5.30
7-2-28	34 W	3.90
2-15-29		.50
2-1-29	48 SW	5.30
6-24-29	20 SE	2.50
6-26-29	46 SW	5.10
1-30-31	40 E	4.50
2-3-31	30 W	3.50

Charleston Hodge

7-3-28		.50
2-11-29	52 N	5.70
6-30-29	20 N	2.50
2-1-31	30 W	3.50

Lorenzo Kello (Wyatt)*

6-27-28	28 E	3.30*
7-4-28	30 SE	3.50
2-15-29		.50
1-23-31	20 SW	2.50
6-27-29	48 S	5.30*
7-1-28	30 SW	3.50*

Elizabeth Kello

7-2-28		.50
1-27-29	50 NW	5.50
6-24-29	24 S	2.90
2-4-31	28 E	3.30

Mandy Kello

7-1-28	32 N	3.70
2-3-29	30 SW	3.50
6-2-29	16 S	2.10
2-6-31	20 E	2.50

Mildred Kello

7-1-28	34 W	3.90
2-15-29		.50
6-30-29	50 SW	5.50
1-30-31	24 S	2.90

George Waites

7-6-28		.50
7-2-28	36 S	4.10
2-15-29		.50
6-26-29	42 W	4.70
1-25-31	24 N	2.90
1-27-31	6 S	1.10

Ben Houston

7-4-28		.50
2-9-29	44 NW	4.90
6-26-29	10 E	1.50
2-5-31	28 NW	3.30

Lace Houston

7-6-28	34 W	3.90
2-4-29	34 SE	3.90
6-26-29	28 S	3.30
2-5-31	6 NW	1.10

Henry Jackson

7-8-28	44 SE	4.90
2-14-29	42 W	4.70
6-28-29	44 NW	4.90
2-6-31	34 N	3.90

W. S. Dunbar

7-3-28	50 N	5.50
6-30-28	50 N	5.50
2-15-29	44 N	4.90
6-29-29	50 NW	5.50

Nelson Trigg

7-2-28	14 NE	1.90
2-5-31	24 S	2.90

(See Affidavit.)

Mr. Sturgeon: Thank you, Mr. Dunn.

Q. That schedule that was just read by Mr. Dunn shows the names of the witnesses and the dates by calling the month, the day of the month, and the year?

A. That is correct.

Q. Is that correct? Also shows the number of miles that is claimed to have been traveled by the sheriff in subpoenaing those named parties, for that certain day in that same case?

A. That is correct.

Q. And in that same county of Bastrop?

A. That is correct.

Q. It also shows the charge made for that service, same to have been performed, is that right?

A. That is right?

Q. And that is taken by you, or was taken by you from the reports of the sheriff, as approved by Judge Price in Bastrop county?

A. Yes, sir.

Q. With reference to that Mack Matthews case?

A. It also shows the direction from the courthouse the witness came.

Q. That is what I mean, shows the direction the sheriff claims to have traveled, and the number of miles he traveled in performing the service?

A. Yes, sir.

Q. That he traveled in subpoenaing these witnesses?

A. Yes, sir.

Mr. Sturgeon: We offer in evidence, Mr. Speaker, that racapitulation.

Mr. Page: Just a moment.

Cross-examination.

Questions by Mr. Page:

Q. I haven't fully understood what the schedule you have read from there, Mr. Nichols, is. Will you kindly tell us what it is?

A. The schedule that I hold in my hand is a list of the witnesses whose names are here on the—whose names appear on the sheriff's list of witnesses—beginning with 1928, and ending with 1931, four terms of court, Bastrop county.

Q. Is there a list of the witnesses, you say?

A. A partial list, yes sir.

Q. Well, what more does it show besides being a list of witnesses?

A. It doesn't show anything except—I prepared this list from the original sheriff's list.

Q. I understand you did, but what does that purport to be that you have there—you prepared a certain schedule—resume of some kind—what is that?

A. It is nothing more than the list which is taken from the sheriff's list of Bastrop county.

Q. Yes, shows the list of witnesses. But what more does it show besides the list of witnesses?

A. It shows the date they were subpoenaed, shows the amount of miles from the courthouse, shows what direction they lived, shows the amount of mileage.

Q. Yes, this is a summary, then, that you have made from the sheriff's account?

A. Yes, sir.

Q. All right, sir, I understand. The dates that you have there, are those the dates of the sheriff's return, the date on which the service is alleged to have been performed?

A. The date on here is taken off of the sheriff's account.

Q. Yes, but does it show the date he served the process, or the date that you made the return? I just don't understand.

Mr. Sturgeon: I can tell you, Judge—it shows that date he claims to have performed the service.

Q. Well, would it be shown by the returns? That is the only way that it could be.

Mr. Sturgeon: We do not have the original returns, what we have is what he says there himself.

Re-direct Examination.

Questions by Mr. Sturgeon:

Q. Mr. Nichols, that schedule you have been reading from there was copied from the sheriff's accounts, signed by himself and approved by the district judge?

A. Yes, that is correct.

Q. In other words, that schedule that you have there shows the dates that the sheriff claims he performed this service, in his own accounts?

A. Yes, sir, just a list of that account.

Q. All right. Now, when he performed or whether he ever performed it, you don't know?

A. No, sir.

Q. But you got it from his own accounts filed with the Comptroller?

A. That is correct.

Re-cross Examination.

Questions by Mr. Page:

Q. That statement that you have there, then, was merely a mathematical calculation that you made on the four accounts?

A. Yes, sir, the number of witnesses shown from the record, yes, sir.

Q. I say, you have just made a summary of the four cases, showing the things you have read from the schedule?

A. Yes, sir.

Re-direct Examination.

Questions by Mr. Sturgeon:

Q. Now that summary that you have there only deals with what case? It only applies to one case?

A. Only one case.

Q. It has nothing to do with anything else except the Mack Matthews case?

A. Absolutely none.

Q. And this shows the sheriff has collected for subpoenas for four different terms of court those same witnesses as given in that schedule?

A. Yes, sir, that is a fact.

Q. I will ask you now if you find the name of Nelson Trigg on there?

A. I do.

Q. It is claimed by the sheriff's report, or account, that he had been subpoenaed twice in Bastrop county. What is the date the sheriff claims he subpoenaed Nelson Trigg in Bastrop county?

A. July 2, 1928, 14 miles N.E., $1.90.

Q. All right.

A. On February 5, 1931, 24 miles S., $2.90.

Q. And Nelson Trigg—the truth about it is, and you know from his affidavit, that he lived in Travis county, and lives here now?

A. He made affidavit to that.

Re-cross Examination.

Questions by Mr. Page:

Q. Do you not know the fact to be that Nelson Trigg is a negro that lives about half the time in Bastrop county and half the time in Travis county; you don't know that, do you?

A. I don't know anything about it, nothing only his affidavit.

Q. Yes. You see, we know that negro very well down there. That is all, thank you.

(Witness excused.)

Thereupon the proponents recalled P. M. Markham who further testified as follows:

Re-direct Examination.

Questions by Mr. Sturgeon:

Q. Mr. Markham, I will ask you to take this. All right. From the records on file in the Comptroller's office and from your examination of the accounts of the sheriff from Burleson county, beginning in 1928 and concluding the following terms up until 1930, I wish, if you have the figures at hand there, you would tell the Committee what the account on each term of court—what the sheriff's account was for each term of court, and the amount of it as approved by the district judge.

A. June, 1928, $3959.05; January, 1929, $3665.80; June, 1929, $3221.00; January, 1930, $3178.15; June, 1930, $2219.20; January, 1931, $4449.20.

Q. You don't have the last one?

A. No, sir, the last one was the summer term.

Re-cross Examination.

Questions by Mr. Page:

Q. Mr. Markham, tell us, from the record that you have there how many of these sheriffs' accounts are paid from Bastrop county, that you have been testifying about, and how many never have been paid up to this time?

A. All that I have just got through reading have been paid except June, 1929—except a deficiency warrant of June, 1930, $2,219.20, that account has not been paid.

Q. The June account, 1930, has not been paid?

A. Yes, sir.

Q. Is that the only one that has not been paid?

A. That is the only one I have listed.

Q. You have testified up to June, 1931—those are all the terms of court. Are you confident you are right?

A. That is all on file in the Comptroller's office.

Q. Yes, sir. Has June account, 1931, been paid?

A. No, sir, it has not.

Q. I thought you said it had been?

A. All that have been filed in the Comptroller's office.

Q. You mean all the sheriff's accounts filed in the Comptroller's office have been paid except one?

A. For this period.

Q. What is "this period?"

A. From June, 1928—I will read them again—

Q. You have testified all have been paid including the June term, 1931?

A. No, sir, I have not.

Q. You have not?

A. No, sir.

Q. You have not testified about the last account that Sheriff Townsend brought in here in June, 1931?

A. No, sir, the last one on file, June, 1931, had been returned for correction. I didn't see it myself.

Q. Oh, it has been returned to him for correction?

A. Yes, sir.

Q. As a matter of fact, it has not been paid?

A. No, sir.

Q. What other account there from Bastrop county that has not been paid to June term, 1930? That is, what other account has not been paid in addition to June, 1931?

A. June term, 1930.

Q. June term, 1930?

A. Yes, sir.

Q. Has the January term been paid?

A. Yes, sir, I know the January term, 1931, has been paid—yes, sir.

Q. Is that a deficiency warrant?

A. No, sir, a regular warrant.

Q. Now, all the accounts have been paid except two?

A. Except one. I didn't see the other account.

Q. Well, it hasn't been paid?

A. Well, I didn't read it.

Q. Well, didn't you say it had been returned to the sheriff — to Sheriff Townsend for correction?

A. Yes, sir.

Q. It hasn't been paid, then?

A. I said the accounts I had read had been paid, but one account.

Q. Yes, but I asked you if Sheriff Townsend's account, including the June term, 1931, had been paid, and I understood you to say that it had been returned to him, and for the other a deficiency warrant had been issued.

A. The one I am speaking of.

Q. Then two have not been paid.

A. I can't swear to it. I have been told that the June, 1931, term has been returned.

Q. Did you examine the records in the Comptroller's office and find that the June term, 1931, had not been paid?

A. My testimony is not that; I was told—the other man in the Comptroller's office then—

Q. You mean the other man in the Comptroller's office told you this warrant had not been paid, but the account had been returned to Sheriff Townsend for correction?

A. Yes, sir.

Q. Then, the facts are two accounts have not been paid?

A. Well, if his statement is true, they are not.

Q. Well, you don't doubt his statement, do you?

A. I do not.

Q. Examine that paper and see what it is, Mr. Markham (passing paper to witness)?

A. Indictment in Cause 2961, State vs. Mack Matthews.

Q. This is the cause you have just been testifying about?

A. Yes, sir.

Mr. Page: We will ask Mr. Dunn to read the indictment.

(Thereupon Mr. Dunn read the indictment, as follows, to-wit:)

"In the name and by the authority of the State of Texas:

"The grand jurors, for the County of Bastrop, State aforesaid, duly organized as such at the June term, A. D. 1928, of the district court for said county, upon their oaths in said court present that Mack Matthews on or about the 19th day of June, A. D. 1928, and anterior to the presentment of this indictment, in the County of Bastrop and State of Texas, did then and there unlawfully and voluntarily kill Floyd Clark by shooting him with a gun;

"And the grand jurors aforesaid, upon their oaths aforesaid, in and to said court do further present that Mack Matthews on or about the 19th day of June, A. D. 1928, and anterior to the presentment of this indictment in the County of Bastrop and State of Texas, did then and there unlawfully and voluntarily and with malice aforethought, kill Floyd Clark by shooting him with a gun, against the peace and dignity of the State.

(Signed) "CHAS. E. RAGSDALE,
"Foreman of the Grand Jury."

Q. You will find upon the back of that indictment two verdicts written in pencil. I wish you would read them both, please, sir.

(Mr. Dunn thereupon read the verdicts upon the back of the indictment, as follows, to-wit:

"We, the jury, find the defendant guilty, as charged in the second count of the indictment and assess his punishment and confinement in State penitentiary for a term of five years. We further find that he has not heretofore been convicted of a felony in this or any other State and we hereby recommend a suspended sentence.

(Signed) "J. D. BOZARTH,
"Foreman."

"We, the jury, find the defendant, Mack Matthews, guilty, as charged in second count in indictment and as-

sess his punishment at five (5) years in the State penitentiary.

(Signed) "W. E. FERGUSON,
"Foreman."

Mr. Page: Thank you, Mr. Dunn.

Q. All right, Mr. Markham. Mr. Dunn has read from the back of that indictment the verdict of two juries, Mr. Markham. That would indicate to your mind that the case was tried twice, wouldn't it?

A. Yes, sir.

Q. Yes, sir. I will call your attention, Mr. Markham, to these applications for subpoenas, that I am going to examine you on, with two cases here, and the first two cases refer to one case and the next two to the other, so we only care for the first case to be read in each case. Examine these, Mr. Markham, and let us know what they appear to be from their face, please, sir.

A. State's application for witnesses.

Q. State's application for witnesses?

A. Yes, sir, in the case of Mack Matthews, No. 2961, and 2962.

Q. Mr. Page, we have asked Mr. Dunn just to read the first two cases, not the second two.

(The Clerk, thereupon, read as follows, to-wit:)

"No. 2962 and 2961.

"The State of Texas)
"vs.)
"Mack Matthews)

"In the District Court of Bastrop county, Texas, June term, 1928.

"To the clerk of said court:

"Comes now the State by her district attorney and makes application for the issuance of subpoena for the following-named person ..... (non-resident of this county), to compel h.... attendance as witness for the State; place of residence, exact location and avocation of said witness (where known), appears opposite the respective names, as follows, to-wit: Mildred Killough—

Q. You needn't read the names of the witnesses, I don't care for all that.

(The Clerk resumed reading:)

"Said person, witness in behalf of the State in the above entitled and numbered felony case, and it is believed by the district attorney that the testimony of said witness is maaterial for the State on the trial of said case.

"Applicant prays that the said subpoena be made returnable on the ..... day of ....., A. D., 19.....

(Signed) "MERTON L. HARRIS,
"District Attorney."

(The clerk read the following:)

"No. 2961 & 2.

"The State of Texas)
vs.)
"Mack Matthews)

"In District Court of Bastrop County, Texas, June term, 1, 1928.

"To the Clerk of said Court:

"Comes now the State by her District Attorney and makes application for the issuance of subpoena for the following named person (non-resident of this county), to compel h.. attendance as witness for the State; place of residence, exact location and avocation of said witness (where known) appears opposite the respective names as follows, to-wit:

"Said person, witness in behalf of the State in the above entitled and numbered felony case, and it is believed by the district attorney that the testimony of said witness is material for the state on the trial of said case. Applicant prays that the said subpoena be made returnable on the....day of....., A. D. 19.....

(Signed) "MERTON L. HARRIS,
"District Attorney."

Mr. Page: Mr. Speaker, at the suggestion of the Assistant Attorney General, it will be admitted by him that applications were filed by the district attorney for the State, and by the attorneys representing the defendant for all of the witnesses that were summoned by the sheriff as shown by his account at each respective term of the court; in other words, the district attorney applied for his witnesses and the attorney for the defendant for theirs, and that that list they sent in checked with the list of the sheriff's according to his account here. That will be admitted to save time.

Q. Now, Mr. Markham, I want to ask you some questions you will have to answer as auditor—you have qualified as State Auditor, and I believe you are qualified, and I have no in-

tention of getting you mislead or anything, I just want to get your opinion about a few matters as Auditor. Now, if an account was presented to you from this county and it said upon the account that Nelson Trigg, a witness for the State of Texas, was summoned 14 miles from Bastrop, wouldn't there be anything in that indicating in your mind that the sheriff did not summon that witness at all, if the sheriff's returns show he did?

A. No, sir.

Q. Now, there is a witness, Rasberry Kello, who the sheriff said in his return, he summoned, say 12 miles south of Bastrop — would there be anything in that to show that the sheriff did not summon this witness from Bastrop, if you were going by the sheriff's return?

A. No, sir.

Q. Wouldn't that be the case or the way there of any term of court— I am talking about any term of court, Nelson Trigg, 6 miles east, Sam Smith, 2 miles south, Paul Page, 2 miles east, would there be anything in that to indicate to you that the sheriff did not summons those witnesses?

A. No, sir.

Re-direct Examination.

Questions by Mr. Sturgeon:

Q. It would indicate to you that there was nothing wrong if the account was claiming for four different cases and the sheriff summoned them four different times in the same case, sometimes living 50 miles south, sometimes 50 miles north, and sometimes 50 miles west, there would be something wrong in that account to call your attention to it as Auditor?

A. Yes, sir.

Q. And that is one of the things that called your attention to it, when you were not familiar with the counties, didn't know how big it was, and didn't know any of the parties living in it?

A. No, sir, but these witnesses, we found one man had been subpoenaed in one section of the country at one time, and then in another section at another time, and that caused our curiosity to be raised as to the accounts.

Q. All right. Now, you were asked by Senator Page as to the accounts that had been paid. You were asked to read off some figures there a while ago, the various amounts of money the sheriff claimed to be due and were approved by the district judge. I believe you said all that you read had been paid except one, and a deficiency warrant had been issued for that?

A. Yes, sir, all I read had been paid except one, and a deficiency issued for that.

Q. And it is now outstanding against the State of Texas?

A. Yes, sir.

Q. What has been the average for those terms of court you have there, that the sheriff's account ran for each term of court, first?

A. The smallest $2200, the largest $4400.

Q. Now, what is the last term of court you read there?

A. January, 1931.

Q. Then there has been a very marked change in the Bastrop account since January, 1931, hasn't there?

A. Yes, sir.

Q. Then an account, you understand has been sent in and sent back for correction?

A. I was told it was.

Q. You didn't audit that account, or didn't see that account?

A. No, sir.

Q. That is all.

Recross Examination.

Questions by Mr. Page:

Q. There is one other question that occurs to me, I should have asked you before. These accounts that you say were paid there were paid by warrant, weren't they?

A. Yes, sir.

Q. By whom were the warrants issued?

A. Issued by the Comptroller.

Q. Well, the issuance of the warrants by the Comptroller would, in your mind, as Auditor, indicate that he had approved those accounts, wouldn't it?

A. That is the same question you propounded to me before. In my mind, and as to the, I had that explained to me, it does not; but to your mind, you may interpret the law as different, and it would be a difference of opinion. But my mind is not trained along those lines, to form an opinion on it.

Q. Well, let's suppose, for instance, that you, as Auditor, have the approval of that account, that approval was required before it would

be paid—do you think you would issue a warrant for the account before you approved it?

A. I would not.

Q. Do you think the Comptroller would?

A. That is for the Comptroller, his business.

Q. I see, but isn't it a fact that every man here knows that the Comptroller wouldn't issue a warrant until he approved the account?

A. That is the same question.

Q. Isn't it a fact that a man would not issue a warrant to pay an account unless he approved that account?

A. Unless he had jurisdiction.

Q. He has jurisdiction?

A. I don't know; it is claimed he has not.

Q. Well, it shows his approval of it, whether he has jurisdiction or not, doesn't it? If he issued a warrant? Well, never mind, Mr. Markham, we don't care anything about it.

(Witness excused.)

The proponents called W. O. Beall who was first duly sworn by the Chair, and who testified as follows:

Direct Examination.

Questions by Mr. Sturgeon:

Q. Mr. Beall, what are your initials, please, sir.

A. W. O. Beall.

Q. W. O. Beall?

A. Yes, sir.

Q. Where do you live, Mr. Beall?

A. Austin, Texas.

Q. How long have you lived in Austin?

A. Since January 1st, 1931.

Q. Are you connected with the Comptroller's Department of this State?

A. I am.

Q. In what capacity?

A. As chief clerk in the Sheriff's Division.

Q. As such chief clerk, do you or not have sheriffs' accounts, various sheriffs' accounts sent to your desk for inspection?

A. I do.

Q. I will ask you if, since you have been in that office, since January 1st, 1931, you have received an account from Sheriff Woody Townsend, sheriff of Bastrop county?

A. I have.

Q. Did you examine that account, or look at the account?

A. Now, just which account do you refer to?

Q. I am talking about the one, I mean the one you sent back to him?

A. Oh, yes.

Q. Do you remember for what term of court the account was for?

A. I understand it was for June, 1931.

Q. June, 1931, term? And was that account approved and paid by your department?

A. It was not.

Q. Was the account sent back to the sheriff of Bastrop county?

A. It was.

Q. Why was it sent back?

A. It was sent back for certain corrections.

Q. For certain corrections? Can you tell the Committee what the amount of that account was for—that is, what the demand was for?

A. It was for $290.80.

Q. For $290.80? That was for the June term, 1931?

A. It was.

Q. All right. Now, then, did you write Mr. Townsend a letter about that account when you sent it back to him?

A. I did.

Q. All right.

Mr. Sturgeon: Would you mind, Mr. Dunn, reading that letter, please sir?

(The clerk thereupon read the letter, as follows, to-wit:)

"July 29, 1931.

"Mr. Woody Townsend, Sheriff,
"Bastrop, Texas.

"Dear Sir:

"We are returning herewith your account for $290.80 and wish to call your attention to a few items which it will be necessary to correct.

"In case No. 3129 we notice that each of the witnesses summoned have been previously summoned in your former account. The same thing appears in several other cases, and I have made note of the date of the previous summons.

"According to a ruling from the Attorney General's Department, a district judge has no authority to issue a subpoena for a witness who has already been subpoenaed, and that such subpoena is issued without the authority of law and a sheriff or other officer who executed such a subpoena can not be compensated by the State of Texas. It will, therefore, be necessary to deduct the fee for

summoning those witnesses from the account.

"I wish to call your attention to the mileage charged for summoning the following witnesses. In Cases No. 3196 and 3199 you show to have summoned two witnesses on June 24, and traveled 18 and 36 miles northeast. In case No. 3189, you show to have summoned two witnesses on July 3 and traveled 12 miles and 18 miles southwest, and in the same case and on the same date you summoned two witnesses and traveled 15 miles and 11 miles north.

"We will ask you to recheck your account and advise whether or not each of these trips were actually made. If it is found that one or more witnesses were summoned on the same trip, and through error duplicate mileage has been charged, kindly make proper corrections and return same to this office for our consideration.

"Your very truly,
"STATE COMPTROLLER
OF PUBLIC ACCOUNTS.
"B-ko Incl."

Q. Now, Mr. Beall, did you write that letter to Mr. Townsend?

A. Yes, sir.

Q. That is a copy of the letter you wrote?

A. Yes, sir, that is a copy.

Q. Did you get a response to that letter?

A. No, sir, didn't get any response.

Q. What was the date that letter was written?

A. July 29th, 1931.

Q. And you say that the claim made in that account for that sheriff from the Twenty-first Judicial District was for one term of court in the sum of $290—and a few odd cents?

A. It was.

Re-cross Examination.

Questions by Mr. Page:

Q. I didn't get your name just exactly—was it Beall?

A. That is it, Beall.

Q. Mr. Beall, I notice in this letter of yours of July 29th, 1931, the third section of it says, "according to a ruling from the Attorney General's Department, a district judge has no authority to issue a subpoena for a witness, who has already been subpoenaed, and that such subpoena is issued without the authority of law, and the sheriff or other officer who executed such a subpoena cannot be compensated by the State of Texas." You mean district clerk, did you not—the district judge issues no subpoenas?

A. Well, a subpoena has been issued, whether—

Q. Yes, but you did not mean the district judge issued subpoenas?

A. No, sir, but he orders it issued.

Q. I understand, that is correct. Now, you say you are what—sheriff's clerk—or sheriffs' account clerk, or something of that sort?

A. Chief clerk of the sheriffs' division.

Q. Chief clerk of the sheriffs' division? Yes, sir. Now, as chief clerk of the sheriffs' division in the Comptroller's Department, of the State of Texas, what are your duties?

A. To audit the accounts of court officials, sheriffs, clerks, and so forth.

Q. Audit accounts of sheriffs and court attaches who are entitled to claims and credits for their services?

A. Yes, sir.

Q. Now, when these accounts are sent to the Comptroller's office, they are referred to your desk then, for the purpose of auditing?

A. Yes, sir.

Q. You audit each and every one of them?

A. I do, or my assistant.

Q. Well, when you audit them and find they are correct, what do you do with them?

A. We pass them for warrants, or deficiency certificates.

Q. Well, when they pass out of your desk for warrant or deficiency certificates, then it is an approval of that account?

A. Yes, sir.

Q. Then no warrant or deficiency certificate is issued by the Comptroller's office until your desk has approved the account?

A. No, sir.

Q. I understand from what I have heard here in this case you succeeded Mr. Goodfellow in that place?

A. Yes, sir.

Q. About when did that occur? About when did your employment begin?

A. On January 1st, but then I did not succeed him until about, oh, some time in April, or the first of May.

Q. But you were connected with his desk from January 1st?

A. Yes, sir.

Q. You mean of this year—1931?
A. 1931.

Q. Well, prior to the time that you went there, when you were connected with Mr. Goodfellow's desk, the practice of the one in charge of that department, as just indicated in your testimony, should have been that sheriffs' accounts should have been approved before warrant was issued from it?
A. Yes, sir.

Q. In other words, the Comptroller would not issue a warrant until Mr. Goodfellow's desk or the one in charge, had approved the accounts?
A. Yes, sir.

Q. Then warrants issued by that department were approved by that desk or the party in charge of it, were they, before the warrants were issued to anybody?
A. Yes, sir.

Q. Examine the marked paragraph of the appropriation bill that I hand you there, Mr. Beall, please sir—you see there where we have marked the paragraph?
A. Yes, sir.

Q. Will you read it, read that paragraph please.
A. Provided that no account against the aforesaid items of witness fees, county attorneys, justices of peace, sheriffs and constables, fees and costs of sheriffs, attorneys and clerks in felony cases, shall be binding as an obligation against the State of Texas, until after such account has been examined and approved by the State Comptroller—

Q. Turn over to the next page where you will also find a paragraph marked.
A. (Reading) "Provided that all accounts under this section which requires the approval of any district judge, shall be examined by the Comptroller, and if correct, he shall issue his warrant therefor, but if he shall find same incorrect in whole or in part, he shall cause an audit of same to be made before warrant is issued."

Q. Examine the book and see whether you are reading from one of the special appropriation bills passed by the Legislature of this State?
A. Passed by the Forty-first Legislature. Yes, I think it is correct.

Q. Now, what is your construction, as auditor in the Comproller's Department, what is your construction of that last paragraph you read —what is the meaning of it?

Mr. Sturgeon: We object to that, Your Honor, because that calls for a legal conclusion on this man's part. He has asked him now to read from a law book and says read some law as passed by the Legislature, now he is asking him to put his interpretation on what that book says; and I think that is truly beyond his realm, purely beyond his power. He may be classed as an expert auditor, but he is not to interpret the law as to his work in the office there.

Mr. Page: Let's see, this gentleman is auditor's clerk in the Comptroller's Department. It is the contention of the respondent in this matter that the approval of the district judge is subject to the approval of the Comptroller's Department before any warrants can be issued or any warrants can be paid. He has read the law there, passed by the appropriations committee of this Legislature, in connection with the Legislature. It says "no account if approved by the district judge shall be paid until approved by the Comptroller." We want to show by him the construction placed by the department upon that law. He has already testified that no accounts would be or should be paid by the Comptroller's Department unless approved by him or the desk over which he presides. Now, we think as auditor he has a right to say whether that law passed by you here is—

The Chairman: Is the interpretation which the Comptroller's Department placed upon that involved in the letter which Mr. Beall wrote?

Mr. Page: I think it is—the letter is here.

The Chairman: That is all. Go ahead.

Q. All that I mean to imply, Mr. Beall, is that in performing the duties of your desk, you are following the appropriation bill as laid down by the Legislature?
A. Yes, sir.
Q. Examine Page 148, please, Mr. Beall and read that marked portion of the law that is on that page.
A. You mean the two paragraphs?
Q. Yes, sir, those two that are pencilled.
A. (Reading) "Provided that all accounts under this section, which re-

quire the approval of any district judge, shall be examined by the Comptroller, and, if correct, he shall issue his warrant therefor, but if he shall find same incorrect, in whole or in part, he may cause an audit of same to be made before warrant is issued.

"Provided that no account against the aforesaid items of witness fees, county attorneys, justices of peace, sheriffs and constables, fees and costs of sheriffs, attorneys and clerks in felony cases, shall be binding as an obligation against the State of Texas until after such account has been examined, audited, and approved by the State Comptroller, and no such accounts shall be paid by the State Treasurer until the same has been so approved by the Comptroller."

Mr. Page: As suggested by Judge Batts, the gentleman does not read very loudly, and we will ask Mr. Dunn to read that.

(Mr. Dunn thereupon read the paragraphs just above quoted.)

Q. When you make audits of accounts, Mr. Beall, or your desk makes audits of accounts, are you furnished assistants for that purpose?
A. I am.
Q. Who are the assistants?
A. Mr. House.
Q. Who else?
A. Just Mr. House.
Q. Just one?
A. Yes, sir.
Q. Have you any—I don't know what you call them—the office Mr. Nichols occupies there—supervisors, or men you send out into the field to find out the true facts?
A. Mr. Nichols is an assistant.
Q. Then if you had investigated the account of the sheriff, you probably would have sent Mr. Nichols down there to investigate it, wouldn't you?
A. I wouldn't say we would.
Q. Well, if you would find anything in any account that indicated to your mind anything wrong—seriously wrong in the accounts—you would—what would you do about it?
A. Well, we would just send it back for correction, point out the items necessary for correction, and undertake to correct them by correspondence, or endeavor to correct them by correspondence.
Q. They send them back to the sheriff for correction? Well, if you wanted a correction and wanted to verify your suspicions about the correctness of an account, how would you proceed?
A. I don't know what to say about that.
Q. Well, don't you know what you would do if you wanted to correct an account and the sheriff wouldn't correct it, how would you get the facts to prove it—you would investigate, wouldn't you?
A. Yes, sir.
Q. Well, if not corrected, you would then issue a warrant for it?
A. No, sir, we would not issue a warrant for it if uncorrect.
Q. You heard the testimony of Mr. Markham about these accounts a few minutes ago, in which he stated only one of these accounts was not paid? The fact that all the others were paid shows they must have been approved by the Comptroller's Department before the warrants were issued.
A. It seems they would have been.
Q. All these accounts were issued by your desk, and your desk approved them—now, they were approved by the Comptroller's office and have been paid.
A. Yes, sir.

Re-direct Examination.

Questions by Mr. Sturgeon:

Q. There is a whole lot of difference between the different accounts since you took the desk over from what it was before you took the desk over?
A. Yes, sir.
Q. In fact, it dropped from $2,500 for the court term down to $290, didn't it, for the first year?

Mr. Page: We just merely object to the testimony of the Assistant Attorney General. If he thinks he wants to testify, he has a perfect right to be sworn, but I don't think he ought to testify now.

Mr. Sturgeon: I don't think I ought to be sworn now, Mr. Page.

Mr. Chairman: Just stay somewhere within the rules.

Mr. Sturgeon: All right. That is all, Mr. Beall.

(Witness excused.)

Thereupon the proponents recalled T. M. Markham, who further testified, as follows:

Direct Examination.

Questions by Mr. Sturgeon:

Q. Mr. Markham, I wish you would get the account of Mr. Woody Townsend, sheriff of Bastrop county, for the January term, 1930—wait a minute—for the January term, 1929, June term, 1929, and January term, 1930. All right.

A. Which one do you want first?

Q. I want the January, 1929; I will get you to look at that account and see if you find in that account Cause No. 2997, State of Texas vs. a defendant by the name of Murray Henderson. Do you find that case?

A. I do.

Q. What is that man charged with?

A. The account shows he was charged with murder.

Q. That is, Murray Henderson, the January term, 1929, is that right?

A. It is.

Q. Have you audited that account?

A. We have.

Q. All right. I want to ask you if you can state off-hand how many terms of court that account was carried in that court out there, and what amount of witness process was issued for witnesses in that cause?

A. The account, the sheriff claims fees for subpoenaing those witnesses —just a moment—I will have to refer to my report (referring to paper); three terms of court, this shows.

Q. I will get you to look at that account there and see — but I will hand it to you—I will ask you if that schedule there has a list of the witnesses and of the dates that they were to appear or summoned, the number of miles traveled and the three accounts of Woody Townsend as approved by Judge Price for the January term, 1929, the June, 1929, and January, 1930, term of court in that one case of the State of Texas vs. Murray Henderson?

A. They are.

Q. Now, then, I will ask you if you find the name of Lee Powell appearing in the Murray Henderson case in Bastrop county?

A. I do.

Q. Will you please tell the Committee how many times the sheriff claimed that he subpoenaed Lee Powell in the Murray Henderson case, and tell the Committee the date on which he was subpoenaed, the number of miles from the county seat and the direction and the amount he charged for subpoenaing that witness in each case?

A. Lee Powell appears to have been subpoenaed on February 14, 1929, 20 miles south, and the charge is $2.50. On May 22, 1929, 28 miles east, and charged $3.20. On May 22, 1929, 44 miles southwest, and charged $4.90. February 1, 1930, 28 miles west, charged $3.30. February 4, 1930, no mileage, but a fee of 50c is charged.

Q. Now, then, I will ask you if it does not show in the same sheriff's account that the witness, Lee Powell, was summoned in the Murray Henderson case on February 14, 1929, 20 miles south, on May 22, 28 miles east, on May 22, 1929, 44 miles southwest, which was on the same day and in the same case?

A. It does. That date—

Q. Does the name of Johnnie Mae Powell appear there?

A. It does.

Q. I will ask you if the name of Johnnie Mae Powell appears there, as you say it does, if you will tell this Committee what the sheriff's report shows as to the times he subpoenaed Johnnie Mae Powell, the distance from the county seat, the charge and the direction from the county seat, and the charge he made for each service in each case?

A. The sheriff's account shows that Johnnie Mae Powell was subpoenaed three times, February 14, 1928, 36 miles east of the county seat, and the charge for that service was $4.10; July 2, 1929, 24 miles southeast, with a charge of $2.90; February 6, 1930, 24 miles west with a charge of $2.90.

Q. Have you the name of Annie Powell there as a witness in that case?

A. Yes, sir, I have.

Q. Please tell the Committee how many times she shows to have been subpoenaed, the date on which she was subpoenaed, the number of miles, distance from the county seat, and the direction and the charge made for that service, in each instance?

A. He shows to have been subpoenaed three times, February 14, 1929, 34 miles south, for which a charge of $3.90 was made; June 20, 1929, 34 miles west, for which a charge of $3.90 was made, and Jan-

uary 28, 1930, 32 miles east for which a charge of $3.70 was made.

Q. Do you have also have the name on that account of Lee Allen Powell?

A. Yes, sir.

Q. Will you please give the same information in regard to that?

A. Yes, sir. Lee Allen Powell shows to have been subpoenaed according to the sheriff's account on February 15, 1929, 34 miles south for which a charge of $3.90 was made; again on June 27, 1929, 24 miles southeast, for which a charge of $2.90 was made, and again on January 31, 1930, 46 miles south for which a charge of $5.10 was made.

Q. Now then do you have Gentry Lee Powell on that list, and in the sheriff's account there?

A. Yes, sir.

Q. Will you please give the Committee the same information in connection with that?

A. Yes, sir, the sheriff's account shows that Gentry Lee Powell was summoned on January 30, 1929, 28 miles southeast of the county seat, for which a charge of $3.30 was made; again on June 26, 1929, 40 miles southeast for which a charge of $4.50 was made, and again on February 9, 1930, 52 miles west, for which a charge of $5.70 was made.

Q. All right. Now then do you have Ruben Powell on the sheriff's account there?

A. Yes, sir.

Q. How many times does he appear to have been subpoenaed?

A. Three times.

Q. Will you please give the same information in regard to that witness?

A. Yes, sir. He appears to have been subpoenaed on February 19, 1929, 32 miles southeast for which a charge of $3.70 was made, again on June 29, 1929, 20 miles south, for which a charge of $2.50 was made, and again on February 9, 1930, 34 miles east for which a charge of $3.90 was made.

Q. Now then, Mr. Markham, do you have on that sheriff's account a witness by the name of George B. Powell?

A. Yes, sir.

Q. How many times does he appear to have been subpoenaed according to the sheriff's account?

A. Three times.

Q. Will you please give the dates, the number of miles distant from the county seat and the direction and the amount charged in each case in that instance?

A. Yes, sir. He appeared to have been subpoenaed on January 31, 1929, 30 miles north, for which a charge of $3.50 was made; again on June 19, 1929, 30 miles southeast, for which a charge of $3.50 was made, and again on February 7, 1930, 40 miles west, for which a charge of $4.50 was made.

Q. Do you have on that report the name of Alberta Wilson?

A. Yes, sir.

Q. How many times does the sheriff's account show that witness to have been subpoenaed?

A. Three times, first on February 15, 1929, 16 miles east for which a charge of $2.10 was made; again on June 29, 1929, 32 miles east, for which a charge of $3.70 was made, and again on February 3, 1930, 32 miles north, for which a charge of $3.70 was made.

Q. Does the name of Doc Wilson appear on that account?

A. Yes, sir.

Q. How many times?

A. Five times.

Q. Will you kindly give us the information heretofore requested in regard to Doc Wilson?

A. Yes, sir. He appears to have been summoned on January 25, 1929, 30 miles east of Giddings, for which a charge of $3.50 was made, again on July 4, 1929, 32 miles north, for which a charge of $3.70 was made, again on February 9, 1930, 44 miles northeast for which a charge of $4.90 was made; again on February 8, 1929, 30 miles east for which a charge of $3.50 was made, and again on June 26, 1929, 32 miles west for which a charge of $3.70 was made.

Q. Do you have a witness there by the name of Johnson Cobb?

A. I do not.

Mr. Sturgeon: It is my understanding, Mr. Chairman, that Senator Page agrees that these witnesses were subpoenaed three different times for three different terms of court and we do not care to read off every one of them except for the purpose of showing that practically every one of them were subpoenaed by the sheriff all the way from three to six times, in this one case. And they purported to have lived, from the sheriff's account, sometimes east, sometimes west, sometimes north, and

sometimes in other directions. It is very tedious, I know, to have to go into all of these different items. It might be entirely all right, and would expedite matters if we could agree with counsel that each of these witnesses have been subpoenaed at least three different times for the three different terms of court, otherwise, if they will not admit that we will have to go into the record and prove that these accounts have been approved by the district judge and by the Comptroller.

Senator Page: We will admit that and agree that that go into the record that the accounts have been approved by the district judge and also by the Comptroller.

Q. Mr. Markham, I will get you to refer to that record and see if you can find the name of Johnson Cobb there?

A. Yes, sir, I do.

Q. Does it show that he was a witness in this case, and if so, how many times does it show that he was subpoenaed?

A. It does show that he was subpoenaed seven times.

Q. Give the dates, please.

A. He shows to have been subpoenaed on February 8, 1929, 30 miles north, for which a charge of $3.50 was made, again on January 25, 1929, 36 miles east, for which a charge of $4.10 was made; again on June 28, 20 miles south, for which a charge of $2.50 was made; again on June 20, 1929, again on February 2, 1929, 40 miles east, for which a charge of $4.10 was made; again on February 8, 28 miles east, for which a charge of $3.30 was made; again on February 8, no mileage charged, but a fee of 50c only is charged.

Q. And the name of that witness was Johnson Cobb?

A. Yes, sir.

Q. Have you another on the same subpoena that has been subpoenaed?

A. Yes, sir. Will Leonard, who shows to have been subpoenaed, 44 miles for which a charge of $4.90 was made, 28 miles northeast for which a charge of $3.80 was made, June 30, no mileage charged, but a fee of 50c was charged; again on June 25, 30 miles west, for which a charge of $3.30 was made; and again on February 1, 44 miles south, for which a charge of $4.90 was made.

Mr. Sturgeon: Mr. Speaker, I will get Mr. Dunn now to please read this statement. I will state that this is a statement signed by Johnson Cobb.

(Thereupon the Reading Clerk of the House read the following statement of Johnson Cobb:)

"Statement of Johnson Cobb, who lives on the Higgins farm. July 22, 1931. I was a witness in the Murray Henderson case; I live on the Higgins place, which is about eight miles from Bastrop, in a southeast direction.

"Deputy Sheriff Soto came out here before the case was called the first time and subpoenaed me.

"Then some deputy sheriff came out here for another time the case was called, but I was fishing, and the deputy sheriff did not subpoena me, but left word for me to appear in court.

"I went to court two times.

"I was not summoned personally but the one time.

"To the best of my knowledge these are the facts in the case.

(Signed) "JOHNSON COBB.

"Signed in the presence of W. T. Higgins and R. V. Nichols."

Note: You will note on the sheriff's witness list that Johnson Cobb is shown to have been subpoenaed three times for the January, 1930, term of court. In one instance, 20 miles east from Bastrop. In another instance, 40 miles northwest from Bastrop. In the other instance, mileage was not charged. This boy lives on the Higgins farm, which is about eight miles from Bastrop in a southeast direction.

Q. Mr. Dunn, now then, I will ask you to read the statement of L. C. Wyatt and Andrew Lee Wilson, in the Murray Henderson case.

(Thereupon the Reading Clerk of the House read the statement of Andrew Lee Wilson and L. C. Wyatt, which is as follows, to-wit:)

"Statement of Andrew Lee Wilson and L. C. Wyatt; July 22nd, 1931.

"We were witnesses in the Murray Henderson case. We live on the Higgins farm, which is about eight miles southeast from Bastrop.

"We have been subpoenaed only one time in this case, and that was one

afternoon soon after the killing as we were coming home from school. Constable Dave Eskew met us as we were walking along the road opposite Tom Royston's farm, which was about eight miles southeast from Bastrop.

"We went to court in Bastrop only one time and that was for the date called for on the subpoena.

"To the best of our knowledge, these are the facts in the matter.

(Signed)
"ANDREW LEE WILSON.
L. C. WYATT.

"Signed in the presence of W. T. Higgins, Ray Lowry."

Note: You will note on the sheriff's witness list that Andrew Lee Wilson was subpoenaed 48 miles north of Bastrop. You will also note that L. C. Wyatt was subpoenaed 44 miles east from Bastrop. At the time these boys were subpoenaed, they lived on the Higgins farm, which is about 8 miles southeast from Bastrop. The Royston farm, in the vicinity of which the subpoenas were served, is in the same neighborhood and is also about eight miles from Bastrop.

Mr. Sturgeon: Now, Mr. Dunn, will you kindly read the next statement?

(Thereupon the statement of Hosea Wilson was read into the record by the Reading Clerk of the House, and is as follows:)

"Statement of Hosea Wilson, July 22, 1931.

"I live on the Higgins farm, which is about eight miles southeast from Bastrop.

"Soon after the killing, Dave Eskew, who is a constable, came out here and talked to me. He said that he had the name Hosea on his list, but he did not know whether the subpoena was for me or for Hosea Henderson. So he did not serve a subpoena on me.

"When the case was called, I went to town, because I was interested in the case. I asked Morton Harris if I was supposed to be a witness and he told me that I was not. So I did not go back to court again.

"I was not subpoenaed in this case at all.

"These are the facts in the case, to the best of my knowledge.

(Signed) "HOSEA WILSON.

"Signed in the presence of W. T. Higgins, Ray Lowry."

Note: Hosea Wilson is shown to have been subpoenaed for the January term of court, 1930, 50 miles south of Bastrop. The Higgins farm on which he lives is about eight miles southeast from Bastrop.

Mr. Sturgeon: We now offer in evidence the names of witnesses, the number of times they have been subpoenaed, as shown by the sheriff's return, the distance from the county seat, the direction from the county seat, and the amount charged in each instance, without the necessity of reading these into the record, but all of them are in the Murray Henderson case in Bastrop, Texas:

Sam Jack Wilson — January 31, 1929, 40 miles south, $4.50; June 21, 1929, 28 miles east, charge $3.30; February 2, 1930, 48 miles west, charge $5.30.

Eli Wilson—January 26, 1929, 16 miles east, charge $2.10; June 22, 1929, 22 miles east, charge $2.70; January 31, 1930, 40 miles northeast, charge $4.50.

Woody Wilson—February 9, 1929, 44 miles west, $4.90; June 24, 1929, 36 miles northwest, $4.10; January 29, 1930, 40 miles north, $4.50.

Andrew Lee Wilson—February 12, 1929, 44 miles northeast, charge $4.90; June 28, 1929, 42 miles southeast, charge $4.70; February 4, 1930, 48 miles north, charge $5.30.

Hosea Wilson—February 20, 1929, 44 miles north, charge $4.90; June 24, 1929, 30 miles southeast, $3.50; February 6, 1930, 50 miles north, charge $5.50; January 25, 1929, 44 miles northwest, charge $4.90.

George Wilson—February 9, 1929, 36 miles west, charge $4.10; June 24, 1929, 36 miles north, charge $4.10; February 8, 1930, charge 50c.

Julia James—February 3, 1929, 14 miles west, charge $1.90; July 2, 1929, 30 miles south, charge $3.50; February 6, 1930, 36 miles south, charge $4.10.

Wade James—January 29, 1929, 32 miles west, charge $3.70; June 20, 1929, 34 miles southwest, charge $3.90; February 5, 1930, 34 miles east, charge $3.90.

Charlie James—February 14, 1929, 36 miles east, charge $4.10; June 22,

1929, 32 miles southwest, charge $3.70; February 3, 1930, 32 miles east, charge $3.70.

Frank James—February 9, 1929, 32 miles west, charge $3.70; June 22, 1929, 16 miles south, charge $2.10; February 8, 1930, 48 miles northeast, charge $5.30.

Ida Mae James—January 26, 1929, 30 miles north, charge $3.50; June 21, 1929, 24 miles east, charge $2.90; January 30, 1930, 24 miles southeast, charge $2.90.

Yancey Jackson—February 2, 1929, 28 miles south, charge $3.30; June 20, 1929, 40 miles east, charge $4.50; June 29, 1929, 20 miles south, charge $2.50; February 4, 1930, 44 miles south, charge $4.90; February 9, 1930, 50 miles southwest, $5.50.

Sam Jackson—January 30, 1929, 36 miles east, charge $4.10; June 24, 1929, 28 miles east, charge $3.30; February 7, 1930, 46 miles northwest, $5.10.

Carey Jackson—February 4, 1929, 44 miles south, charge $4.90; June 20, 1929, 36 miles south, charge $4.10; February 6, 1930, 32 miles west, charge $3.70.

Isaac Jackson—February 18, 1929, 40 miles east, charge $4.50; June 29, 1929, 44 miles south, $4.90; February 4, 1930, 44 miles west, charge $4.90.

Balaam Jackson—January 30, 1929, 32 miles northwest, $3.70; June 19, 1929, 44 miles northeast, charge $4.90; February 9, 1930, 30 miles north, charge $3.50.

Questions by Mr. Sturgeon:

Q. Now then, Mr. Markham, I want to ask you if in these three accounts it shows that these witnesses were summoned the number of times and the sheriff claimed the number of miles as testified to about for the January term, 1929, the June term, 1929, and the January term, 1930; and further, I want to ask you whether or not this claim as filed by the sheriff was approved by Judge J. B. Price?

A. They were.

Cross-examination by Senator Page:

Q. Now, Mr. Markham, from the records that you have there it would show plainly that these cases were called at three different terms of the district court of Bastrop county, would it not?

A. Yes, sir.

Q. Do you know of your own knowledge how many witnesses were subpoenaed three times?

A. I do not.

Q. And you do not know whether or not Judge Price would know anything about that, do you?

A. No, sir.

Q. Please examine the instrument that I have handed you and state what it is.

"Agreement.

"It is agreed by counsel for both sides that Murray Henderson was regularly indicted by the grand jury of Bastrop county, and the record shows that he was convicted and sentenced to five years' confinement in the penitentiary, and it is agreed that the application was made by the district attorney and by the attorney for the defendant for the witnesses as shown by the record as shown by the sheriff's account, and the account shows that that is admitted in order to save time."

Mr. Sturgeon: We admit everything in reference to what the records show in this matter; we admit that the records show this and the sheriff's account shows that. We do not admit that they were subpoenaed or that the sheriff traveled the distance in subpoenaing the witnesses as called for by the sheriff's account.

Mr. Sturgeon: I want to ask you about one more transaction, Mr. Markham, and I will state to the Committee that after the conclusion of this testimony we expect to rest. In the account of Clint D. Lewis, sheriff of Burleson county, Texas, one of the accounts from that sheriff for the November term, 1928, I will ask you if in that account you find a woman by the name of Bessie Norcross?

A. I do.

Q. I will ask you how many times it appears from the sheriff's account as approved by the district judge this woman was claimed to have been arrested?

A. Seven times.

Q. I will ask you if you can from an examination of the record, or from any other records that you may have tell what the charge was which was filed against her?

A. Forgery.

Q. Will you please give the date that it is claimed that she—the sher-

iff served this woman with a warrant of arrest?

A. All on December 22, 1928.

Q. Can you tell this Committee what the charge was made for this service by Sheriff Clint D. Lewis for arresting this one defendant seven times on that day?

A. Twenty miles in each case.

Q. What was the number of dollars charged for the service in that case by the sheriff?

A. Eighty-four dollars.

Q. How many miles in each arrest?

A. Three dollars for arresting and nine dollars mileage, which would make a total of eighty-four dollars.

Q. You still do not seem to understand my question. What is the charge for arresting this woman in each case?

A. Twelve dollars.

Q. Then in the seven cases that makes a total of eighty-four dollars?

A. It does.

Q. How many times does it appear from the sheriff's account that one woman was arrested in one day?

A. Seven times.

Q. Seven times in one day?

A. Yes, sir.

Q. And that was all filed in one account?

A. Yes, sir.

Q. And on the same day?

A. Yes, sir.

Q. Do you have this woman's statement?

A. I do.

Q. I wish you would produce it, please.

A. All right.

Q. I will ask you first what you have in your hand?

A. It is an affidavit.

Q. And who is that affidavit from?

A. It is signed by Mrs. Bessie Norcross.

Mr. Sturgeon: Mr. Dunn, I will get you to read that into the record.

Mr. Dunn: All right.

Thereupon, the affidavit of Bessie Norcross was read into the record and is as follows:

"Houston, Texas.
"July 10, 1931.

"Voluntary statement of Mrs. Bessie Norcross, P. O. Dayton, Texas, Box 553.

"I was never arrested by the sheriff of Burleson county, Texas, nor any of his deputies but I was notified by the bank to come in and settle a matter regarding checks that I had given to various persons in the town of Burleson and had no funds in the bank to cover. Then I consulted my lawyer, Mr. Hillard, who was my counselor. Along about the first of June, I had an examining trial before a justice of the peace and was bound over to await the action of the grand jury. The sheriff provided me with seven bonds. I carried these bonds to my friends, who signed them, returning the bonds to the sheriff and they were approved by him. The sheriff did not come to my house and read a warrant to me or place me under arrest or transport me in his car or any of his deputies from my home to Caldwell, the county seat of Burleson county, and it was ten miles from my home to the county seat. When the grand jury met and considered my case, seven indictments were returned against me for forgery. I then gave bond again and about December 1, 1928, I went to trial and was tried on one case and was found guilty on one case on a plea of guilty and was given a suspended sentence of five years. My counselor, Mr. Hillard, represented me at this trial and I gave him the names of about ten witnesses to testify in my behalf and he had them summoned. None of the witnesses I had summoned were used in my behalf.

(Signed)
"MRS. BESSIE NORCROSS.

"Sworn to and subscribed before me this the 10th day of July, A. D., 1931.

"ADICE C. SMITH,
"Notary public in and for Harris county, Texas."

(Seal.)

Mr. Sturgeon: Of course, we offer the account of Clint D. Lewis, sheriff of Burleson county, in connection with this affidavit, in which he claims he arrested Mrs. Bessie Norcross on seven different times on December 22, 1928, driving 20 miles in making such arrest, and charging $84 for that service. With that, Mr. Speaker, we close our case, except for such rebuttal testimony as we desire to put on.

Cross-examination.

Questions by Senator Page:

Q. Mr. Markham, in stating the mileage of the sheriff, of course, I understand that milesage shows going and coming, does it not?

A. Yes, sir; twenty miles going and twenty miles returning.

Q. The amount of mileage charged shows the total amount of mileage charged for making the arrests, does it?

A. It would be forty miles, twenty miles going and twenty miles coming.

(Thereupon the witness was excused.)

Mr. Sturgeon: Mr. Speaker, I do not know whether you understood me awhile ago, that we now rest our case except for rebuttal.

The Chair: I understood that a moment ago, and I further understood that the attorneys representing the respondent wanted to confer for a few minutes. I understood from Judge Batts that the gentlemen representing Judge Price have asked for a few minutes to confer with respect to the order of placing their testimony before the Committee. We will now take a recess for ten minutes.

The Chairman: The Committee will be in order, please.

Senator Page: Mr. Speaker, we will have Judge M. C. Jeffrey of Lockhart. He is here now.

Whereupon, the witness, M. C. Jeffrey, being first duly sworn, upon oath testified:

Direct Examination.

Questions by Senator Page:

Q. State your name.

Mr. Long: I would like to know about how long it will take the gentlemen to find their testimony?

Senator Page: I didn't hear the question.

Mr. Chairman: The inquiry was as to whether or not you would have any idea as to the approximate time you would require to put in your testimony.

Senator Page: As the Speaker knows, we have had very little time with our witnesses in this matter, and many of them have come here from many different counties and we have not had opportunity to talk with them. We have put the State to just as little expense as possible in the case. I think we have only something like twelve witnesses, or maybe fourteen, that will have to be paid by the State for their attendance, and all the balance that we are using, outside of those, are witnesses who have come here voluntarily and at their own expense. We have here a few of the clerks of the courts, and some of the attorneys from that district, including the district attorney, and it was our idea that we would put on these district judges and officials here this afternoon—their courts are in session, and they have cases to be tried, and it was our idea to put on as much of our character witnesses and as much of our testimony of that character as possible this afternoon, and when we have finished with them, to ask the House to give us a reasonable time until tomorrow to prepare our case further for presentation. Our idea, and of course it is only an idea with us, is that we can possibly finish our case tomorrow. Naturally, we don't know how long the cross-examination of our witnesses may be, and we may drag along until Wednesday, but that is the best we can say about it now.

The Chairman: Very well.

Q. (Senator Page) State your name, please.

A. M. C. Jeffrey.

Q. What is your occupation?

A. I am district judge of the Twenty-second Judicial District.

Q. What counties are embraced in that district?

A. Comal, Hays, Caldwell, Fayette and Austin.

Q. Where do you make your home?

A. At Lockhart.

Q. How long have you lived there at Lockhart?

A. I have lived in the county all my life, and have lived in Lockhart for forty years.

Q. How long have you been presiding judge of that district?

A. Thirteen years, eleven months and nineteen days.

Q. Do you know Judge J. B. Price, the respondent in this matter?

A. Yes, I do.

Q. How long have you known him?

A. I would say some twenty-five or thirty years.

Q. Do you know where he lives?
A. Yes.
Q. Where does he live?
A. At Bastrop.
Q. Does Bastrop adjoin your county?
A. It does.
Q. Have you ever had occasion, I will say during the past seven or eight years, to exchange benches with Judge Price at any time, or at different times, when you might be disqualified to try a case in your district, or he might be disqualified in his district?
A. I have.
Q. Have you done that tolerably often?
A. Two or three times, or I will say three or four times, possibly.
Q. Where would Judge Price preside for you at those times?
A. At Lockhart.
Q. I will ask you if you know, whether or not Judge Price's services as judge when he presides over your district, if his services as district judge there were satisfactory to the bar, to the people, and to yourself?
A. They were.
Q. I will ask you if you ever heard anything to the contrary?
A. I never did.
Q. You know Judge Price, well, do you?
A. Yes, I do.
Q. You would not exchange benches with anyone, would you, that you did not believe to be fully competent to try cases in your district?
A. No, sir; I would not.
Q. Do you believe that at the time you did so exchange benches with Judge Price, that he was fully competent to try those cases justly and fairly to the State and to the defendant?
A. I did.
Q. I will ask you if, on one occasion, you exchanged benches with Judge Price, some several years ago, on which occasion you went to Lee county in his district, to try cases for him?
A. Yes, I have done that on several occasions.
Q. You have done so on several occasions?
A. Two or three times, I would say.
Q. On one occasion, particularly, did you go over there when there were a number of cases pending in that district against various defendants for violations of the prohibition laws of the State?
A. I think so, at one time.
Q. Do you remember on that occasion, whether or not there was a defendant there, a negro, who was injured before his trial came up; a defendant by the name of Ted Donevan?
A. I don't remember his name. But I do recall the occasion however, when a man had his arm taken off on a Saturday before his case was called for trial on the Monday following.
Q. You remember when a defendant had his arm taken off on Saturday before his case was called on Monday?
A. Yes, sir.
Q. What did you do about that case, when you found out that this man had had his arm cut off in an accident at the gin?
A. It was reported to me that the man was badly hurt and in a very critical condition, and not likely to live, and the case was continued.
Q. The man being reported to you as being in a very critical condition, and as not likely to live, you did not set his case down again for any particular time in the following term, did you?
A. No, sir; I did not set it down.
Q. It is suggested by counsel that at the time you continued this case, you did not instruct the witnesses to report back at any particular time in the next term of court.
A. I do not recall, as to that.
Q. You have approved, as district judge in your time, various sheriffs' accounts, have you not?
A. Yes, I have.
Q. I will ask you whether or not sheriffs' accounts are multifarious, and contain a great many items?
A. Quite frequently, yes.
Q. Frequently?
A. Yes.
Q. I will ask you if it is not a fact that these accounts are usually presented to the district judge of the district for his approval at or during the last days of the term?
A. Yes, that is correct.
Q. Usually, the sheriff will bring his account to the judge to approve on the last day of the term?
A. Usually that is the case, yes.

Q. It is a fact, isn't it, that if the sheriff's account is approved at all, it must be approved in that term of court, in order for it to be a valid transaction?

A. Yes.

Q. If it was presented to the judge on the last day of the term, isn't it a fact that the judge would have very little time in which to examine the account and in which to approve it or disapprove it, if he expected to take valid action in that term?

A. Very likely, yes.

Q. Very likely. I will ask you if you know the reputation of Judge Price in his district, and in the county in which he lives, as to whether or not he is a high-class, courageous, Christian gentleman, and a competent judge, who does his duty under the law as he sees it?

A. I think he is.

Q. You think he is what I stated?

A. Yes.

Q. Do you think he is the type of man that would knowingly approve a sheriff's account in order to defraud the State of Texas out of money?

Mr. Sturgeon: Now, before you answer that: We object to that question. We have not objected thus far to all these conclusions by this judge as to this man's character and reputation, but to go so far as to ask this judge to read a verdict for the Committee and for the House of Representatives in this matter, and say, do you think the man is such a man as would do the things he is charged here with doing, would be invading the very province of this Committee and of this House, and that's the very thing we are here to determine.

The Chairman: I think probably the question would be somewhat improper.

Senator Page: We submit to the Chair that the hearing has been very informal. We are not trying and do not certainly desire to invade the province of the Committee and simply desire to get all the facts possible before the Committee.

The Chairman: We realize that, Senator, but I believe that question perhaps would not be quite proper here.

Senator Page: No, no; as I stated, I am not seeking to dispute the matter with the Chair, but it is simply our position to bring out all the truth and all the facts in the matter. That's all we have with you, Judge.

Cross-examination by Mr. Sturgeon:

Q. I believe you stated that you were the district judge of the Twenty-second Judicial District?

A. Yes, sir.

Q. I did not catch your name, Judge.

A. M. C. Jeffrey.

Q. Judge Jeffrey, I believe you stated you had been on the bench out there for, about how many years?

A. About fourteen years, lacking just a few days.

Q. Now, as I catch your testimony, of course, you district judges in Texas have what you call a presiding judge, who is over a certain number of judges?

A. Yes.

Q. And you various judges are sent from time to time to exchange and swap benches with other judges?

A. Yes, sir.

Q. For instance, if your neighbor is behind with his work, or if he is sick or is disqualified in some case, the presiding judge can go over and get some outside judge to come and try those cases for him?

A. Yes.

Q. And that is why you were in Judge Price's district to try cases for him?

A. No, sir.

Q. Then, why were you over there?

A. It was just by mutual exchange.

Q. All right; I am sure you can do that under the law, and that is why you did it. Now, so far as Judge Price approving the sheriff's accounts in his district, you don't know anything about that, do you?

A. No, sir.

Q. You don't know yourself of your own knowledge whether or not Judge Price might have insisted on the sheriff putting in his accounts certain items of duplicate mileage or a duplication of certain fees, do you?

A. No, sir, I don't.

Q. All you know about Judge Price is that he is your friend and you are his friend?

A. Yes.

Q. And so far as you know, he is a good man, held in esteem by those who know him?

A. Yes, I think so.

Q. But as to whether or not he has acted negligently and carelessly or indiscreetly in the functions of his office, and in carrying out his duties, you don't know?

A. No, sir.

Q. That's all.

(Witness excused.)

Whereupon, the witness, R. E. Pennington, being first duly sworn, upon oath testified:

Direct Examination.

Questions by Senator Page:

Q. State your name, please.

A. R. E. Pennington.

Q. Where do you live?

A. Brenham.

Q. How long have you lived at Brenham?

A. All my life.

Q. What is your business there?

A. I am a lawyer.

Q. Do you know Judge J. B. Price?

A. I do.

Q. He is the presiding judge of the district in which you live, is he not?

A. Yes, sir.

Q. I will ask you whether or not you have been practicing law in his court for a good many years?

A. Yes, I have.

Q. In your practice of law in that district, you have appeared before him in a good many cases?

A. Yes.

Q. Do you know his reputation in the Twenty-first Judicial District as to whether he is a high-minded, courageous and Christian gentleman, or to the contrary?

A. I do know his reputation, and it is good.

Q. It is good, for all the things that I have mentioned?

A. Yes.

Q. Have you ever known during the course of any trial you have had before Judge Price, of any unfair decision he has rendered either to the State or to the defendant in criminal cases?

A. Never, sir.

Q. Do you know of any conspiracy that he has ever entered into with any sheriff, or with anyone else, in an attempt to defraud the State of Texas out of any money?

A. No, sir.

Q. You never heard of any such?

A. Never, until this thing came up, and nothing like that has happened in our county that I know of.

Q. Have you confidence in the ability and competency of Judge Price to perform his duties?

A. Yes, sir.

Q. Is he satisfactory to you as a district judge?

A. Yes, sir.

Q. I will ask you, in so far as you know, whether or not he is satisfactory to every lawyer you know in Washington county that practices before him?

A. Yes, so far as I know.

Q. What is his general reputation in the district, and in the county in which he lives for honesty and integrity? Is his reputation for such good or bad?

A. It is good.

Q. It is good?

A. Yes.

Q. In so far as you know, is he a man of good reputation along all lines?

A. Yes, so far as I know.

Q. You have been acquainted with him for a good long while, have you not?

A. Yes, a good many years.

Q. And you know his reputation?

A. Yes.

Q. I believe that's all, Judge Pennington.

Cross-examination.

Questions by Mr. Sturgeon:

Q. I believe you stated you lived in Brenham, Judge?

A. Yes.

Q. That is in the Twenty-first Judicial District, is it?

A. Yes.

Q. How long have you been practicing law, Judge?

A. Forty years, and a little longer.

Q. Does your practice consist generally of civil or criminal practice?

A. Just general practice. Once in a while I have had a criminal case, but not often, and I have not had a very active practice of recent years.

Q. Then most of your practice has been in dealing with the judge and the district clerk in civil matters?
A. Yes.

Q. Are you related to Judge Price by blood or marriage?
A. What did you say?

Q. Are you related to Judge Price in any way?
A. No, sir.

Q. What county do you live in?
A. Washington.

Q. You live in Washington county?
A. Yes.

Q. Who is your sheriff in that county?
A. Huggman Reese.

Q. He is not under investigation here?
A. No, sir.

Q. Of course, your county is all right, so far as you know?
A. Yes.

Q. Of course, since it has started, you have heard what this investigation is about, have you not?
A. Yes.

Q. With reference to the matter of fees not authorized by law, and collected by various sheriffs?
A. Yes, sir.

Q. But so far as the approval by Judge Price of various sheriffs' accounts, you know nothing about that?
A. No, sir.

Q. And you really know nothing about the facts in this case, do you?
A. Nothing except what is published in the papers.

Q. And that is mighty little. The thing about it is, that you are Judge Price's friend, and you know him, and as far as you know, he has acted all right on the bench, and you are satisfied with him?
A. Yes. I know his reputation, and he is a good man.

Q. Yes, sir, and he carries your county when he runs for office, doesn't he?
A. Yes.
Q. That's all.

Re-direct Examination.

Questions by Senator Page:

Q. And he not only carries your county, but he has a good reputation there for honesty and integrity and for ability?
A. Yes.

Q. You are acquainted with a good many of the lawyers in that whole district, are you not?
A. Yes.

Q. And as a matter of fact, you have been in Bastrop at various times, to practice law?
A. At times I have, yes.

Q. Now, as a matter of fact you really know what the lawyers all over that district think of him, don't you, Judge?

A. I couldn't answer that, Senator. The only thing I know is what happens in my county. I haven't been in the other counties so much, and I can really only answer as to my county.

Q. Thank you, Judge; that's all.

Re-cross Examination.

Questions by Mr. Sturgeon:

Q. If you didn't know Judge Price, Judge Pennington, and you heard that any district judge, in any district, whether it was Judge Price or was anybody else, had approved accounts for a little county like Lee county, with only about 13,000 population, for only two terms of court, of about $40,000 you just wouldn't understand that, would you?

Senator Page: Just a minute, Judge. Mr. Speaker, a hypothetical question is now asked this witness: If you knew that this district judge had approved certain sheriff's accounts for $42,000 for two terms of court, what would you think about it. He is asking his opinion on a hypothetical matter. We are not permitted, I think, to go that far here, and I don't think really that the attorney for the Committee should attempt even to go that far.

Mr. Sturgeon: He has already testified that he knew Judge Price, and he knew his reputation, and that it was good. I want to find out what he does know about it, and how he knows that, and that is the purpose of this question, to test his knowledge. Now, you just don't know anything about Lee county at all?

A. No, sir; I only know what has been published by the newspapers about this thing, and I don't know anything about it, otherwise.

Q. I think I understand you, Judge, and I think you are trying to answer just exactly the truth about it. But your testimony is that you

don't know anything about the conduct of Judge Price and about these other three sheriffs in that district, do you?

A. No, sir.

Q. And that all you know about it, is just what you have seen in the papers, and you don't really know whether that is true or not?

A. No, sir.

Q. And all you really know is that Judge Price is a good man, and you believe he has made you a good district judge?

A. Yes.

Q. That's all.

(Witness excused.)

Whereupon, the witness, W. W. Searcy, being first duly sworn, upon oath testified:

Direct Examination.

Questions by Senator Page:

Q. State your name, please.

A. W. W. Searcy.

Q. Where do you live?

A. At Brenham, in Washington county.

Q. How long have you lived there?

A. I have lived there for fifty-four years, and practiced law all the time.

Q. You have practiced law there for fifty-four years?

A. Yes. I went there in 1877.

Q. You know Judge J. B. Price?

A. Yes.

Q. How long have you known him?

A. Some twelve or fifteen years.

Q. Judge, you practice in all the courts in the Twenty-first Judicial District at times, don't you?

A. Yes, I have practiced in all the courts of that district, both on the criminal and civil side of the docket.

Q. Do you know Judge Price well?

A. Yes.

Q. Do you regard Judge Price as a competent, fair judge, for the State and for the defense in criminal matters, and in matters involving civil rights, do you regard him as a fair, square judge, and a man competent to try cases?

A. Yes, sir.

Q. Have you known anything to his discredit during the years you have tried cases before him?

A. No, sir; everything is to his credit, and nothing to his discredit. Everybody in our county has the highest esteem of him.

Q. How about the bar of Washington county—what do they think of him?

A. The bar thinks very highly of him, and they are all here now to testify for him.

Q. How about the lawyers over the district?

A. The same way; he is held in the highest regard by all of them.

Q. What is his reputation in the district as to whether or not he is a high-class, courageous, Christian gentleman, or the contrary?

A. It is good.

Q. You know his reputation?

A. Yes, and it is good. Now, one suggestion. Just before Governor Sayers died, I was in Austin and made a call on him at his office here, and he asked me, "Buck, how is Joe Price getting along?" and I said, "All right," and he said, "God A'mighty never made a better or a more honest man."

Q. Governor Joe Sayers said that to you?

A. Yes.

Q. Do you know his reputation as to integrity and honesty now?

A. Yes, I do.

Q. Is it good or bad?

A. It is good.

Q. When he comes to Brenham to preside over terms of court there, does he give the matters which he must hear his full attention as a judge?

A. Yes, and everybody is satisfied with the manner in which he conducts his court.

Q. Do you know anything about how he is regarded by the bar over the district generally?

A. Yes. I have talked to the lawyers all over the district, and they all esteem him both as a man and as a judge.

Q. Do you know of a single lawyer in that whole district who is at all dissatisfied with him as a district judge?

A. No, sir; on the contrary, every one is entirely satisfied with him.

Q. Do you know any of the citizens in that district who are dissatisfied with him as a district judge?

A. No, sir; I do not.

Q. I believe that's all for our side, Judge.

Cross-examination.

Questions by Mr. Sturgeon:

Q. Judge Searcy, I wanted to get your initials?

A. W. W.

Senator Page: W. W. Searcy, S-e-a-r-c-y.

Q. All right; I had that wrong, W. W. Searcy. And you are a practicing attorney at Brenham?

A. Yes, sir.

Q. Now, what was it about Governor Sayers, and this talk you had with him? How long was that ago?

A. That was a short while after Judge Price was elected district judge. I happened to be in Austin—Governor Sayers served us in our congressional district for over ten years, and whenever he was in Brenham, he always visited me in my home, and we were glad to have him, and whenever I came to Austin, I always went in to see him if I had the time. And I dropped into his office and he inquired how Judge Price was getting along, and I said, all right, and he remarked, "God A'mighty never made a better or a more honest man."

Q. That is what he thought about it, and that is what you think about it?

A. Yes, sir.

Q. You have been here during this proceeding, and have heard this testimony, haven't you?

A. Yes.

Q. All right; what do you think about it now?

A. My mind about Judge Price has not changed, sir. I tell you this, that I have seen the time, in my practice of the law, when, if the district judge were to intimate to the sheriff that he thought he was guilty of a wrong in presenting his bills and so forth, that there would be a row on hand, right now.

Q. You don't think that's the kind of a district judge that we need?

A. I mean the sheriff would be the man to raise the row.

Q. All right; then the sheriffs over in that Twenty-first Judicial District they are particularly proud of Judge Price, because he has never raised any row with them?

A. You don't have the kind of men living in Texas that we used to have, sir. Their honor was above everything, and when any man resented their integrity, they resented it.

Q. Yes, sir, and it's too bad, I would say, that it is not that way now. Do you know Mr. Clint D. Lewis?

A. Yes, sir.

Q. Are you his lawyer?

A. No, sir; I am not.

Q. Do you know Mr. Woody Townsend?

A. I don't personally know him; I know him by reputation.

Q. Do you know Mr. Burttschell?

A. No, sir; not personally, I don't.

Q. Did you know Mr. John T. Carlisle, who is now deceased?

A. No, sir; I never did.

Q. I thought you practiced in those courts?

A. Yes, I used to practice when Judge Sinks was on the bench in Lee county, and I practiced when Judge Bryan was on the bench in Lee county, and when Judge Alexander was on the bench, and when Judge Price was on the bench. I have practiced all over that district.

Q. You did not have anything to do or know anything about the approving of these accounts?

A. No, sir; that was none of my business.

Q. And since it was none of your business, you just paid no attention to it?

A. No, sir.

Q. And you knew nothing about it at all until this matter got started here?

A. No, sir. And I want to say to you, this: That I do not believe that Judge Price ever profited a nickel from any of those accounts. If they were wrong, and he approved them, he just simply accepted the word of those sheriffs as being the truth about them, and he did what the other district judges of Texas have done, and accepted the accounts.

Q. All right, sir; since you have volunteered that information, I will ask you if you don't think the sheriffs have imposed on Judge Price out there—you have heard this testimony here?

A. I do believe so, yes.

Q. You don't really believe that these sheriffs' accounts are correct, do you, that Judge Price approved?

A. I don't know anything about it, but if there is anything wrong about it, it was not the fault of Judge Price, but it was simply the trust he placed in those sheriffs.

Q. You are a lawyer, and a citizen of Texas—you are a taxpayer?

A. Yes.

Q. As a citizen and as a lawyer, I will ask you if you don't think that the district judge, under the Code of Criminal Procedure, which says that he must carefully inquire into and examine those accounts — that that is a good law, and should be followed?

A. It is my understanding of it, that the approval of the district judge on these accounts creates no liability against the State until the Comptroller approves them.

Q. Being a lawyer and familiar with the Code of Criminal Procedure, under Article 1034 and Article 1036 of the Code of Criminal Procedure of Texas, don't you know that that article says that the district judge is required to carefully inquire into and examine the accounts of the sheriff, and of the county attorney and of the district attorney and district clerk before they are approved and before they are even sent to the Comptroller; don't you know that is the law?

A. Yes, but when the district judge approves that account on the say-so of the sheriff, he knows that it is not a liability against the State of Texas. He has no auditor to go through these things like the Comptroller has. I will tell you another thing, as testified to by Judge Jeffrey. These accounts are brought in on the last day of the term of court, and the district judge has no time to examine them. They must be approved and put into the minutes of the court, and he has not the time to do it and get through in time. All he can do—the people of the counties have elected these sheriffs, and when they do they give to them their certificate that they are men to be trusted—

Q. Now, just a minute. You will have plenty of time later on to make your speech about this; all I want is just to ask you a question or two. You can save your speech.

Senator Page: I don't want to interfere, but Judge Searcy is an old and honored lawyer of Texas, and is a past president of the Texas Bar Association, and I think my young friend from the Attorney General's Department should be somewhat more careful in his remarks to this gentleman and not heckle him—

Mr. Sturgeon: Now, wait there—

A. That's all right; let him peck on me as a young man.

Q. I am not pecking on you. Now, I just want to reiterate what I have already said, and I have no apologies for saying it. I am asking you now to please refrain from making a speech in the case at this time, and we will get along a lot better. We are not going to have any trouble.

A. I am not going to have any trouble with you about it. When we have that, we will go outside the Representatives hall, my friend.

Q. All right, sure, we'll do that. Now, I want to ask one more question: If you don't believe that the provisions of Article 1034 and Article 1036 of the Code of Criminal Procedure of Texas, that requires that district judges should carefully inquire into and examine the accounts of sheriffs before they are approved, is a good law. Do you believe it is a good law, or not?

A. Yes, I do.

Q. Don't you think every district judge in Texas should comply with it?

A. I do, and yet I understand that there are fifty-two of them today that are in the same condition that Judge Price is in.

Q. All right; if you will give us their names, and testimony in those cases, we will try to do the very same thing that we are doing here. That's all.

Senator Page: That's all, Judge. Thank you.

(Witness excused.)

Whereupon, the witness, Walter Dibrell, being first duly sworn, upon oath testified:

Direct Examination.

Questions by Senator Page:

Q. State your name, please.

A. Walter Dibrell.

Q. Where were you born, Brother Dibrell?

A. Seguin, Texas.

Q. Who was your father?

A. J. B. Dibrell.

Q. Did you ever attend the University of Texas?

A. Yes.

Q. In what department were you, at the University of Texas?

A. In the law department.

Q. Were you educated there as a lawyer?
A. Yes.
Q. Was your father a lawyer?
A. Yes.
Q. Is your father the same George Dibrell, a member of the State Senate, and later a member of the Supreme Court of Texas?
A. Yes.
Q. And is now practicing law?
A. Yes.
Q. And you have practiced law yourself?
A. Yes.
Q. What is your business now?
A. I am a Methodist minister.
Q. How long have you been a minister?
A. For sixteen years.
Q. Where do you live now?
A. At Bastrop.
Q. How long have you lived at Bastrop?
A. Four years, lacking two months.
Q. What is your business there?
A. I am the pastor of the Methodist Episcopal Church, South.
Q. Do you know Judge J. B. Price of Bastrop?
A. Yes.
Q. When you came to Bastrop to take charge of that church, was Judge Price a member of your official board?
A. Yes.
Q. And has he been a member of the board since that time?
A. Yes, sir.
Q. How do you regard Judge Price, as a man?
A. I have never seen a higher type of Christian man since I have been a minister.
Q. You have never seen a higher type of Christian gentleman, since being a minister.
A. That's right.
Q. Have you been present in his court at times, during the trial of cases?
A. Yes.
Q. How does he preside, in your opinion—with grace and dignity befitting his position?
A. Yes. He has had my admiration as a judge, since first I saw him.
Q. How is he regarded by the people of Bastrop as a man, personally, and as a judge?
A. I have never heard one word against him, either as a judge or as a man.
Q. You have lived there about four years, you say?
A. Yes, sir.
Q. And during that time, you have never heard anybody say anything against him?
A. No, sir, I have not.
Q. Either as a judge or as a man?
A. No, sir.
Q. Isn't he about the most highly regarded man that lives in Bastrop?
A. I know of no man there who is more highly regarded than is Judge Price.
Q. That's all we have.

Cross-examination.

Questions by Mr. Sturgeon:
Q. Brother Dibrell, I didn't get your initials.
A. Walter Dibrell.
Q. I believe you said you had lived at Bastrop for about four years?
A. Yes.
Q. And how long did you practice law?
A. Only a few months.
Q. Only a few months, and then you were ordained as a minister?
A. Yes.
Q. Your experience, of course, around the criminal courts, is very limited, isn't it, and has been in recent years?
A. Every opportunity I have, I attend court.
Q. You mean that you go as a spectator?
A. Yes.
Q. Did you know Ted Donevan in Lee county?
A. No, sir.
Q. Don't know him. Do you know Woody Townsend, sheriff of Bastrop county?
A. Yes.
Q. Are you and he good friends?
A. Yes, sir.
Q. Does he belong to your church?
A. Yes.
Q. He and Judge Price both do?
A. Yes.
Q. About the sheriffs' accounts that were turned in by the sheriff, and were approved by Judge Price—you don't know anything about them?
A. No, sir.
Q. And what has been going on inside the courthouse, except in a general way as a spectator, seeing just what goes on from the bench,

you say you don't know anything about that?

A. I don't know about any spectator. I was born in the courtroom, practically, and I believe I know a little more than an average spectator would.

Q. I am sure of that, but what I mean to ask you is, that you pay no attention to the details, such as the making out and approving of these accounts?

A. No, sir.

Q. You don't know what the sheriff does, night and day, and you don't know what the district clerk does all the time, and the district judge, with reference to the approval of these accounts, because it is not in your line of duty?

A. No, it is not in my line of duty.

Q. All you know about Judge Price is that he is a member of your church, and in your opinion you believe he is a good man and as far as you know, he makes a good judge? As far as you know?

A. Yes.

Q. That's all.

Senator Page: And you do know, too, don't you, Brother Dibrell?

A. Yes, I think I know.

Senator Page: Do you regard Judge Price as the type or the character of man that would collude with the sheriff of his county, or with anyone else, to defraud the State of Texas out of one penny?

A. I don't believe he would.

Senator Page: That's all, thank you.

(Witness excused.)

Whereupon, the witness, J. P. Buchanan, being first duly sworn, upon oath testified:

Direct Examination.

Questions by Senator Page:

Q. State your name, please.

A. J. P. Buchanan.

Q. Where do you live, Mr. Buchanan?

A. At Brenham, Texas.

Q. How long have you lived at Brenham?

A. Since 1892.

Q. Have you held any official position in Washington county at any time?

A. Several.

Q. What were they?

A. First, justice of the peace for two years. Then, county attorney for seven years. District attorney, next, for seven years, of the Twenty-first Judicial District. Then in the Legislature, having been elected for six years, and serving five years. And then, next March, I will be twenty years in Congress.

Q. You were district attorney there how long?

A. Seven years.

Q. What counties were embraced in that district?

A. Four.

Q. Name them.

A. Bastrop, Burleson, Lee, and Washington.

Q. Your duties there in that district, as the district attorney, frequently led you to go from one county to the other, with the various terms of court, did they not?

A. Yes.

Q. And into Bastrop county, as well?

A. We held two terms of court there each year, during the seven years.

Q. Do you know Judge J. B. Price, of Bastrop?

A. Yes.

Q. How long have you known him?

A. Some thirty or forty years.

Q. Do you know his reputation in Bastrop county?

A. Yes.

Q. And in that district, generally, as to whether he is a courageous, high-class Christian gentleman, or to the contrary?

A. I do know his reputation, and it is most excellent. He is held in the highest regard and esteem by every one who knows him.

Q. In your opinion and from what you know of him and your acquaintance with him, do you believe that he is the type of a man that would collude with the sheriff, or with anyone else, in order to defraud the State of Texas out of any money?

A. He is not.

Q. Is it not a fact that you are more or less familiar with the practice in that district, and were, as district attorney?

A. Yes, sir.

Q. Isn't it a fact that often, duplicate process has to be issued in criminal cases for witnesses in order to carry out and fulfil the purpose and intent of the law?

A. Absolutely, and when they prevent such a practice, the administration of the criminal law will fail.

Q. Have you, yourself, had occasion at times to ask for such duplicate process, in order that the law might be carried out?

A. Many times, and I might state in that connection that if you simply instruct a witness to be back, the probabilities are that he will not be back, claiming that they forgot or having some other such excuse, and you will have to continue your cases, and especially in hard cases, where the lawyers for the defense are seeking to avoid a trial.

Q. State whether or not it is a fact that cases are sometimes continued by agreement between counsel, when it is found to be impossible to try the case, on account of sickness or the absence on account of business of attorney or some other reason?

A. It often happened during my term as district attorney. It would be found that counsel for the defense could not be there, for one reason or another, and an agreement would be made before the date for which the case was set arrived, and the case would be continued and the witnesses sent word not to come.

Q. And under those circumstances, process would have to be reissued?

A. Reissued, and the witnesses sent for.

Q. Are you familiar with the fact that criminal cases are not set for trial during the first part of the term, the first week, I will say, in that district?

A. The grand jury, of course, convenes on the first day of court, and the court enters on the trial of its civil business during the term of the grand jury, and then it is generally a criminal court, and the criminal docket is taken up. Even the murder cases can not be set during the sitting of the grand jury, because the district attorney has to be present at the grand jury.

Q. The sheriff's accounts can not be made up until the close of the term, usually?

A. Usually it is the last day or the last two or three days, when I was district attorney, because his account was made out, because he had not finished process, some of them.

Q. Then that account, as you may know, having to be entered of record by the district clerk in that term, is it possible that the district judge could give it the time and attention he would if he had more time?

A. In my opinion, it would be utterly impossible to conduct the character of investigation which the law requires of the judge on sheriff's accounts. First, because he has not the time, and second, because he does not have the assistance, or the help, to do it. You must remember too, that the sheriff is the only officer of court upon whom the district judge can depend, in conducting such an investigation, to aid him in that investigation, and on the face of it it would be a farce to have the sheriff investigate as to whether he, himself, had returned duplicate mileage, and therefore, unless the State furnished him with auditors, who would be both auditors and investigators to ascertain how far the witnesses lived from the courthouse, and whether in the same community or not and served on the same trip, it would be impossible for the judge to conduct the investigation contemplated by that law.

Q. Are you acquainted with the various members of the bar at Bastrop and at Giddings, and Caldwell, and Brenham, in that district?

A. All of them.

Q. Do you know them well?

A. Well, and long.

Q. Do you know of a single lawyer in all of the bar of that district that is dissatisfied with Judge Price, as their district judge?

A. Not a single one.

Q. Do you know of a single lawyer in that district that does not endorse him here today as district judge to this Legislature?

A. I do not.

Q. I believe that is all, Mr. Buchanan, thank you, sir.

Cross-examination.

Questions by Mr. Sturgeon:

Q. Mr. Buchanan, I believe you have already stated that it would be a hard job for the district judge to comply with the law in making these investigations of the sheriff's accounts, because of the fact that he would have to call on the sheriff to assist him?

A. I have.

Q. You are familiar with the fact, however, that the law does pro-

vide that the district judge is required to carefully inquire into and examine these accounts?

A. The law so provides.

Q. How long has it been since you lived in that district and practiced before Judge Price?

A. Well, I have not practiced law since I have been in Congress, and next March a year, it will be twenty years.

Q. Of course, you know Judge Price, and have practiced in his court, but he was not district judge in that district when you were district attorney?

A. No, sir.

Q. He was just a lawyer in that district?

A. Judge Sinks over there was my judge.

Q. All right. Then, your testimony is that you know Judge Price, and that his reputation as a man and as a judge, so far as you know, is good?

A. Yes, sir; and I know that reputation.

Q. I am sure you do. You don't know all the facts in this case, do you?

A. I don't know any of the facts, except what I have heard and read here. I was up here the other day and heard part of the proceedings, and I read something of it in the papers, and in fact, made a little investigation myself.

Q. What would you think about an account presented to you, if you were a district judge, for your approval, where the same man was summoned as a witness, in the same account, in the same case, three times in one day?

A. I would think it to be an error in that account, if I noticed that item.

Q. Do you believe it would be trouble for you to notice that item, if you were district judge?

A. If you were to get an account on the last day of the court, with possibly a thousand items in it, this thick (indicating), you just simply don't have the time to go over it, and it is my impression that only a casual examination can possibly be made by any district judge, and it is my further conviction that if you will change the law, and put the sheriffs on a salary, we will avoid this trouble.

Q. I agree with you on that; I agree with you. But the question I wanted to ask you, is this: You understand, if a witness has been subpoenaed in a case, and application made for him either by the State or by the defendant, and if he does not appear after subpoena has been served on him, the party applying for that man's attendance, can then apply for an attachment to require the attendance of that witness?

A. Certainly. You can go out and arrest him, and bring him in.

Q. And you know that that is the law in Texas now, do you not?

A. It was, when I was practicing as district attorney.

Q. And the party who asked to have him subpoenaed might have him put under bond, to insure his appearance when the case was called and make him testify?

A. Yes.

Q. And I will ask you further if it is not a fact that the subpoena, when it is read to him, requires him to attend the court on a certain day, and then to remain in attendance on the court from day to day, and from term to term, until he is finally discharged by the court?

A. Yes, and I know, too—

Q. And you know that if that rule was complied with strictly this witness would be brought up before the bar and be admonished by the judge, and they could be kept in attendance without issuing more process?

A. That law is very good in theory, but if you were a district attorney, prosecuting cases before the court, you would understand that no district judge would require people to leave their homes and their farms and their businesses, and to stay in attendance from day to day and from term to term. It would inconvenience those people too much; he wouldn't do it.

Q. I will state to you that I know of a number of districts where that is done.

A. I sympathize with those people.

Q. That is what the law provides?

A. Yes, the law so provides, but it is a harsh law, and is rarely complied with.

Q. I believe you said it had been about twenty years since you have practiced in Judge Price's court?

A. I have not practiced since I have been in Congress, and next March it will be 20 years.

Q. That's all.

Re-direct Examination.

Questions by Senator Page:

Q. Mr. Buchanan, a while ago you testified that it was usually about the last day of court before the sheriff's account was presented to the district judge?

A. Necessarily so.

Q. And on that day, doesn't the district judge have to consider a good many motions for new trials, and matters of that kind which on that day come before him to be disposed of?

A. That is a fact.

Q. Counties like Bastrop county, Lee county, Washington county, and Burleson county have a very large negro population, do they not?

A. Yes.

Q. You know all about the negro character, don't you?

A. I think I do.

Q. Isn't it a fact that unless the negro is re-summoned, that if he is simply told to come back, he just simply doesn't know enough to do it?

A. That is true in lots of cases. If they want to stay away, they will stay away.

Q. And the only way to get them to court is to send the sheriff after them, to tell them to come.

A. That's true.

Q. That's all.

(Witness excused.)

Whereupon, the witness, T. W. Gregory, being first duly sworn, upon oath testified:

Direct Examination.

Questions by Senator Page:

Q. State your name, please?

A. T. W. Gregory.

Q. Where do you live, Judge?

A. Houston.

Q. How long have you lived in Texas?

A. Forty-seven years.

Q. Where have you lived during that time, in the State?

A. Thirty years in Austin. Ten years, I will say, in Washington; and then six years in Texas.

Q. Have you held any official position, in or out of Texas?

A. Yes, I was regent of the University for eight years, and was Assistant Attorney General of the United States for one year, and was Attorney General of the United States for about five years.

Q. Do you know Judge J. B. Price, who lives at Bastrop?

A. I do.

Q. How long have you known him?

A. Forty-five years.

Q. Where did you first know him?

A. I roomed with him in Austin, when he was a law student in the University.

Q. Have you known him ever since?

A. Oh, yes.

Q. What do you know about his reputation, as to whether or not he is a high-class, courageous, Christian gentleman, or what his reputation is as a lawyer in Texas?

A. I never heard it questioned, and I have heard it highly spoken of a number of times.

Q. Have you—then you do know what his reputation is in Texas, from what you have heard said about him?

A. I think I do in this section of the State—Bastrop and Travis, you know.

Q. Well, what is his reputation?

A. I know his reputation, I think, in Bastrop county, where he lives.

Q. Well, what is it?

A. Good.

Q. Have you ever heard anything derogatory to him in your life? As a loyal, a man, from any human being?

A. I never heard anything derogatory to him until this matter came up.

Q. Do you believe he is the type of man, from what you know of him, who would collude with the sheriff or anybody else to defraud the State of Texas out of money?

A. I would mighty near swear he would not.

Q. You would mighty near swear he would not?

A. From what I know of him.

Q. That is all, I believe, General.

Cross-examination.

Questions by Mr. Graves:

Q. General, you don't know anything about him in the last eight years, as to how he conducted his court, do you? You have never been in his court?

A. I never saw him on the bench in my life.

Q. Never in your life? Relative to his competency, you don't know anything about it, do you?
A. Not from my personal knowledge.

Q. Not from your personal knowledge?
A. Only from what I have heard lawyers in the district say about him.

Mr. Page: Well, state that.

Q. Well, his reputation, what you have heard lawyers in the district say about it, is all you have based your statement on as to his reputation—is that right?
A. That is right.
Q. Did anyone ever tell you that he had approved accounts for two terms of court by the sheriff of Lee county, Texas, for $42,000—they didn't tell you that, did they?

Mr. Page: That is not a fact, Judge. It is $13,000.

Q. Did anyone ever tell you that he had approved an account for a negro, a one-armed negro, for $7,022.-50, and also $11,827.25—they never told you that, did they?
A. Would you mind my getting down there? (Witness stepped down to a position near the lawyers).

Q. I was just trying to find out what your knowledge was as to his reputation—his reputation is what people say, how much is found out. Have they ever told you that he had approved an account relative to a negro, Pat Donevan, for $7,827.25?
A. Nobody ever told me that.

Q. Yes, nobody ever told you that. Then you don't know anything about the matters we are inquiring about, do you?
A. I don't claim to know anything about them.

Q. If reputation means what they tell you, they didn't tell you about those, did they?
A. Never told me about it all.

Q. They didn't tell you what? That is all.

(Witness excused.)

Thereupon, the respondents called General A. S. Burleson, who testified as follows:

Direct Examination.

Questions by Mr. Page:

Q. State your name, please.
A. A. S. Burleson.

Q. General, don't get so close to the microphone.

Mr. Graves: We would like to have the General sworn.

(Thereupon the witness was sworn by the Chair.)

Q. I thought you had been sworn, General. I will ask you now to please state your name?
A. A. S. Burleson.
Q. Where do you live, Mr. Burleson?
A. Austin, Texas.
Q. How long have you lived here?
A. Fifty-four years.
Q. Have you held any official positions in Travis county?
A. I have.
Q. What was that, General?
A. Do you want them all?

Q. Yes, sir, I want them all.
A. Well, I was for five years assistant corporation counsel of Austin; I was for eight years, district attorney of this judicial district; I was eight times elected to Congress from this district; and I served eight years in the Cabinet of President Wilson.

Q. Do you know Judge J. B. Price, of Bastrop?
A. I do.

Q. How long have you known him, General?
A. Well, before I make a statement of my knowledge of Judge Price, I think it is fair to the Committee, in order that they may weigh my testimony, that I state to them that I have known him many, many years, he has always been my friend, I have always been his friend, his forebears and mine fought together for the independence of Texas against Mexico. I have always felt very kindly—very kindly toward him. I don't know exactly how many years I have known him—I have known him all my life. I have known him—I have known him at least 40 years.

Q. During that time what has been his reputation as a man, as a lawyer, and as a gentleman, in the districts surrounding Austin, where you have known him?
A. Judge Price was born in Bastrop county. He has lived a blameless life, he enjoys the esteem and the affection of every man, woman, and child, black or white, who know him down there.

Q. General, when you were district attorney, you were, of course,

familiar with the practice in the criminal courts in Travis county?

A. I certainly was.

Q. Is it a fact, General, that at times, in order that the ends of the law may be carried out, that often the district judges are forced to ask that duplicate process be issued for witnesses?

A. It is. When I came to this country I was 26 years old, I was poor, I wanted to make out of the office every dollar that I legitimately could, and I did make every dollar out of it that I legitimately could, and I tried to protect the interests of the State as far as I could in the issuance of duplicate process, especially in behalf of the defendant. I made several efforts when I first took charge of our affairs along that line, and I found it was wholly impracticable and I abandoned it.

Q. You found that it was impracticable to undertake to control that situation?

A. Absolutely.

Q. And that duplicate process had to be issued?

A. Yes, sir.

Q. When the ends of the law might—in order that the ends of the law might be met and carried out?

A. Yes, sir.

Q. Do you know anything about the time the sheriffs' accounts are generally presented to the district judge? At the close of the term, for his approval?

A. Oh, they are presented all the time; I served under, I think it was, six different judges, men of high character, men of unquestioned integrity—W. M. Key was one of them, Tom Cochran was one of them, R. E. Brooks was one of them, James H. Robertson was one of them, F. G. Morris was one of them, and I think I served awhile under Judge J. S. Walker, a famous judge; and Judge Key became one of the justices of our Court of Civil Appeals. As I told you, I was district attorney for eight years. I saw many sheriffs' accounts presented, I never saw one contested in my life. From my knowledge of sheriffs' accounts, I believe it would be wholly impracticable for a judge to attempt to audit a sheriffs' account, or review it. How does he know how far a sheriff travels? Now, I have read in the newspapers something about Judge Price's approving accounts for the arrest of a single individual in a number of cases. I understand that case—that approval was under a decision of one of the judges of the Court of Civil Appeals—of course, I don't know, but they are submitted all the time, sometimes they are put in within an hour or a half hour or fifteen minutes of the time the court is to adjourn.

Q. Well, General, isn't it usual that in the latter part of the term these sheriffs' accounts are presented?

A. Necessarily—necessarily.

Q. Well, at that time, isn't it a fact that the court has very material matters before him, such as the overruling of motions, and the hearings of motions for new trials, and so forth?

A. Yes, sir.

Q. And it is a very busy time for the court?

A. Yes, sir.

Q. Isn't it practically impossible for him to audit a sheriff's account at that time before he signs it?

A. Yes, sir.

Q. Isn't it an indictment, General, of the system, than of the judge's, isn't it a fact that Texas now has a system that is bad. and must be gotten rid of before this thing could be remedied, don't you think?

A. Why, Senator Page, there is a natural resentment among the friends of Judge Price, bordering on horror, that he should have been made the victim of this prosecution. I heard the question my friend, Mr. Graves, asked General Gregory, if he had ever heard of the approval of so many accounts, aggregating thirty-three or forty-three thousand dollars. If Judge Price ever approved such an account—and I don't doubt it from his question—he did it because it was his duty to do it, he didn't do it for the purpose of defrauding the State out of a cent of money.

Q. General, is he the type of man, from what you know of him, that would collude with a sheriff to defraud the State of Texas out of any money?

A. It would take divine revelation to make me believe it.

Q. I believe that is all, thank you, General.

Cross-examination.

Questions by Mr. Graves:

Q. General, with all due respect to you, sir, because I have known

you since I was a child—you don't know very much about Judge Price in the last twenty-odd years, do you?

A. From time to time I have seen him, I have heard of him—I live in an adjoining county, I have heard of him from friends, mutual friends; but of course, I saw comparatively little of Judge Price; I hadn't seen him since he was stricken until I shook hands with him a moment ago. And right on that point, Judge Price was stricken, the same character of attack that Woodrow Wilson had. The question was raised by one man in Washington that his mental faculties had been impaired. It was said that this man declared in the club room of the Senate, if he was given the opportunity he would pull the sheet off of him and see just exactly what his condition was. This man visited the room, appointed by the Senate, a member of the committee, to investigate the illness. He did not pull off any sheet, he had an interview with Woodrow Wilson there, though, and at the end of it he declared that Woodrow Wilson was mentally fit.

Q. General, if you will excuse me, I don't think you are quite fair in making an argument relative to Woodrow Wilson. I have not asked you anything about him, but I asked you to answer only the questions I am asking you.

A. I beg your pardon, Mr. Graves, but you spoke about this man's physical condition.

Q. I didn't say that, you said that.

A. Well, it occurred to me—it occurred to me. I state frankly to you, Mr. Graves, I stated to you right at the beginning, I have a feeling of kindness in my heart for him.

Q. I know that, sir.

A. And I stated it to this Committee, in order that they may know just exactly the way my testimony is. I am not trying to add one—

Mr. Graves: If your Honor, please —I believe I will ask the Chair to have the witness answer my questions that I want to ask him, to save time.

A. I beg your pardon.

Q. Be fair to me, sir, and I will be fair to you.

A. I just wanted to explain the situation.

Q. All right. The question I asked you, have you ever in your life—you have never in your life, probably, been in Judge Price's district court, have you?

A. No, sir, I have not.

Q. You do not know that Judge Price approved in 1929 and 1928—twenty-nine and thirty — $20,902.40 worth of those accounts for the sheriff of Bastrop county, do you?

A. They seem to be exorbitant accounts.

Q. They seem to be exorbitant accounts, don't you think?

A. If he approved them, he was honest in doing so.

Q. I know, sir—we do not say that he was not, and never have said he was not. We are asking as to his competency or incompetency in his approval of those accounts?

A. And that is the very point I was detailing about.

Q. We don't care about that. Now, I will ask you the question. You don't know that in 37 cases against a one-armed negro, Judge Price approved $18,849.75 against the State of Texas, in just 37 cases against a one-armed negro, you don't know that, do you?

A. That is an outrageous account, ought not to be paid, and the sheriff that presented it ought to be indicted. But if Judge Price approved it, he thought he was doing his duty.

Q. All right, if he approved it he thought he was doing his duty, but it was an outrageous account on its face?

A. Yes, sir, it was an outrageous account on its face.

Q. You can see that from here?

A. I understand there was a decision of the Court of Civil Appeals that guided him, and I understand it was not a question of full discretion on his part, he was guided by the decision of his superiors in the matter.

Q. That is true, but that decision of the Court of Civil Appeals was soon thereafter overruled by the Supreme Court, many years ago, and yet, on December 30th, 1930, Judge Price insisted on this man's receiving $7,902.80 out of that account?

A. Yes, Mr. Graves, and I was informed that the decision of the Supreme Court reversing Judge Blair's decision, was concealed from Judge Price at the time that matter was taken up with him. Well, of course, that was denied by the Assistant Attorney General.

Q. But at any rate it has not been concealed for about four years; it is public now.

A. I wouldn't argue that with you, because you have the last say before this Committee; but I will be very glad to argue it with you if I could have the last say before the Committee.

Q. Well, we will read them all before the Committee, General.

Re-direct Examination.

Questions by Mr. Page:

Q. General, Mr. Graves said something about thirty-seven cases involving a one-armed negro. The law would be just the same if it was a one-armed negro or the highest citizen of this land?

A. I think it would.

Q. Then, why the citation of the one-armed negro?

A. Oh, that is just a little latitude given the questioner. I don't object.

Q. General Burleson, with reference to this case of Ted Donevan, who, I understand, was the one-armed negro; I will state that the grand jury returned thirty-seven indictments and this account Judge Price approved was approved under the doctrine laid down by Judge Blair in the case of Bigham vs. State—

A. So I am told.

Q. —and in that opinion the sheriff arresting this negro was allowed to charge mileage in each case, and allowed to charge for subpoenas, and Judge Blair and all of that Court of Civil Appeals handed down that opinion, it was approved in Bigham vs. State. Now, General, don't you think the district judge was correct in approving the accounts after the law of the land had ruled in his favor, at the time he did approve it?

A. Yes, sir.

Q. And before this $7,900 was paid, before that—Mr. Graves told you it was paid, it was approved by the Comptroller?

A. They have an auditing department, the Comptroller has.

Q. Yes, sir, he approved it for $7,900 and a warrant was issued for that amount, then don't you think any one district judge should not be subjected to such censure as Judge Graves says he should be under such circumstances as those?

A. Why, Mr. Page, I don't see any reason for criticising anybody.

Mr. DeWolfe: Mr. Speaker, it seems to me the matter has been gone into, to the fullest extent proper under the circumstances, and certainly it can be argued out before this Committee, as a matter of argument.

Mr. Justiss: Mr. Chairman, I want to hear the testimony, I ask that as a privilege.

Mr. Page: The questions I was asking, Mr. Speaker, were simply in reply to the questions developed by Judge Graves, and I was just suggesting to General Burleson those accounts were approved under authority of Bigham vs. the State, and was explaining to him Judge Price's actions, that he may know, and further, that the accounts before they were paid, were approved by the Comptroller, were sheriffs' accounts, of this State, and approved by the Comptroller himself, and, under those circumstances, is it so reprehensible for Judge Price to affix his signature to an account that was approved by the Comptroller, himself?

The Chair: Well, go ahead.

A. Mr. Page, I have no disposition to criticise anybody, far be it from me to criticise Mr. Graves, because I have respect for him; but, Mr. Page, as I see it, it is little less than brutality and a hardship to subject this man to this ordeal, I wouldn't want the responsibility on my shoulders for what may result therefrom.

Q. Just a moment, there, General. General Burleson, I believe I know that you, to some extent, are a student of history, especially parliamentary history. I will ask you if ever within the parliamentary history of the United States, before any legislature — any body — any district judge has ever been impeached for a judicial act unless that act involved some character of moral turpitude?

A. I don't think any district judge should be impeached when he has been elected by the people for acts that did not involve moral turpitude. I will go a little further, I don't think a district judge should be impeached—

Mr. Graves: Wait a moment, gentlemen. Mr. Speaker, I think the gentleman is going out of his province. He is arguing what he thinks a dis-

trict judge should be impeached for. I think that is the prerogative of the members of the House itself, the very thing we are trying at the present time to determine.

Mr. Chairman: I think that is going too far.

Q. All right, General Burleson, that will be all, I think.

Re-cross Examination.

Questions by Mr. Graves:

Q. General, relative to my connections and your criticism upon them, that is your business—

A. I don't understand.

Q. I say, relative to my connections and your criticism upon them, that is your business.

A. I beg your pardon, sir, I didn't criticise you.

Q. I might, if I were called upon to apologize to you, I might say the same duties are upon my shoulders as were upon your shoulders when I was a child and saw you as a prosecuting officer of Williamson county—

Mr. Page: Now, your Honor, how far is this going?

Q. That is all, General.

(Witness excused.)

The respondents called T. A. Low, who was first duly sworn by the Chair, and who testified, as follows:

Mr. Graves: Mr. Speaker, we havn't objected up to this time, but do now object to the introduction of any further character witnesses. They have had five character witnesses, as provided for in the resolution. We will admit that Judge Price's reputation is good as to his being a courageous, honorable, upright, Christian gentleman, and whatever question they may ask or that they can prove by a cloud of witnesses, as they see fit; but we think, in the interest of time, we ought to be allowed to pass from this point to other testimony.

Mr. Page: Now, then, the witnesses that have been brought here as character witnesses have been brought without the slightest expense to the State. The matter here is of grave importance to the respondent. This is equivalent to a death sentence, if impeachment is to be passed upon the head of a man they admit to be a high-minded man, a Christian gentleman, and a district judge, we think the House ought to be lenient with us, we think we ought to bring from the country Judge Price comes from, witnesses, that this Committee may have the opportunity of hearing these people who have known him all their lives, we think we ought to be allowed to bring these lawyers and witnesses here to show his record, and we appeal to the House to let us bring our witnesses. We think we can close our case tomorrow afternoon. We haven't taken up near as much time as the prosecution, and we think we ought to be permitted to bring our witnesses here.

Mr. Farmer: I move that the House hear these witnesses.

The Chairman: The gentleman from Tarrant hasn't given me time to rule. Of course, as to the number of witnesses, in the final analysis, that will be up to the Committee to determine as to the number of witnesses on a particular subject. As I understand it, you are not bringing these witnesses here at the expense of the State. You are limited to the number under agreement with the Committee.

Mr. Page: I will state that these witnesses have not been brought here at the expense of the State.

Direct Examination.

Questions by Mr. Page:

Q. State your name.

A. T. A. Low.

Q. Where do you live, Mr. Low?

A. Brenham.

Q. How long have you lived at Brenham?

A. Fifty-five years—all my life.

Q. What was your father's name, Mr. Low?

A. T. A. Low.

Q. Did he ever hold any official position in Washington county or in the State of Texas?

A. He was a member of this Legislature—or of the Legislature.

Q. He was a member of this House?

A. Yes, sir.

Q. How many terms was he a member of this House?

A. Two or three.

Q. Two or three terms? Do you hold any position of any kind or position of trust in Washington county?

A. I am mayor and city manager of Brenham.

Q. Have you any connection with any corporations in Brenham?

A. I am president of the First National Bank.

Q. Your father before you was president of the same bank, wasn't he?

A. Yes, sir.

Q. You have lived there about 55 years, haven't you?

A. Yes, sir.

Q. Do you know Judge J. B. Price?

A. Yes, sir.

Q. How long have you known him, if you do?

A. About twenty years.

Q. Do you know what his reputation is in the Twenty-first Judicial District, where he presides, and in the town of Brenham, as to whether he is regarded as a high-class, courteous, Christian gentleman, and a good judge, or to the contrary?

A. Yes, sir.

Q. Well, state what his reputation is, if you do know.

A. We think he is a good, safe, sound man—that is, we have a very high opinion of him.

Q. Do you know anybody in the town of Brenham that has anything except the highest opinion of Judge Price?

A. I do not.

Q. Do you, personally, have a high opinion of him?

A. Absolutely.

Q. Do you know him well?

A. Yes, sir, very intimately for eight years.

Q. Have you heard any criticism of his acts as district judge in the town of Brenham from anybody of any prominence?

A. No, no one, no, sir.

Q. Or anybody else?

A. No, sir.

Q. In your opinion, is Judge Price an honest, capable judge?

A. Absolutely.

Q. I believe that is all, Theodore.

Cross-examination.

Questions by Mr. Graves:

Q. Mr. Low, do you know anything about his approval of sheriff's accounts, or have you paid any attention to that?

A. No, sir, only what I have read in the papers and just in general.

Q. I mean before this, before this was published, you didn't know anything about it, did you?

A. No, sir.

Q. You didn't know anything about it, the entire question?

A. No, sir.

Q. You have not paid any attention to that?

A. No, sir; only that we consider him honest, and consider that he wanted to do what is right.

Q. That is all.

(Witness excused.)

Thereupon the respondents called S. L. Staples, who was first duly sworn by the Chairman, and who testified, as follows:

Direct Examination.

Questions by Mr. Page:

Q. State your name, please.

A. S. L. Staples.

Q. Where do you live, Mr. Staples?

A. I live in Austin.

Q. How long have you lived in Austin?

A. I think about eleven years.

Q. Where did you live before you came to Austin?

A. Bastrop—Smithville, in Bastrop county.

Q. How long did you live at Smithville, in Bastrop county?

A. Well, I located there in 1895, and lived there until I came here.

Q. What State were you originally from?

A. From Kentucky.

Q. From Kentucky?

A. Boone county, Kentucky.

Q. And you settled in Smithville in what year?

A. 1895.

Q. You lived there, then, until you moved to Austin?

A. Yes, sir.

Q. Did you ever hold any official position in Bastrop county, or over there?

A. If you want to know it all, I can tell you.

Q. Yes, sir.

A. I was city attorney for a number of years in Smithville, county school trustee for about ten years, maybe eight years, chairman of the Democratic party for about eight or ten years—not that long, quite; mem-

ber of the House here for four years, member of the State Senate, and Secretary of State.

Q. Do you know Judge Joe Price of Bastrop?

A. Yes, sir.

Q. How long have you known him?

A. I have known him since 1895.

Q. What official position did he hold in Bastrop county, if any, when you knew him first?

A. I believe as county judge; I am not sure.

Q. Do you know how long he held the office as county judge?

A. I think approximately 18 or 20 years, maybe, from first to last.

Q. Did you practice law in his court? While he was county judge?

A. Well, not to an alarming extent.

Q. But as a practicing lawyer at that bar, you frequently had business in the county court?

A. Yes, sir.

Q. During the time you practiced before him as county judge, was he a competent judge who declared the law and did what you think a judge ought to do, or not?

A. I think he was a splendid judge, yes—both county and district judge.

Q. Do you know what his reputation is in the county of Bastrop, as to whether he is a high-minded Christian gentleman, or just what type or manner of man he is?

A. Well, I think no one in Bastrop county enjoys better confidence, he has enjoyed it more than anybody for more than thirty years. I would like to ask this, that as to his ability, I have tried a number of cases before him, and I was in a case before him not long ago, and we tried a rather complicated insurance case down there before him, and appealed the case, and got it up before the Court of Appeals, and they said then there was not a single exception to his charges in the entire case, and it was the first time, the judge of the Court of Appeals said, in his life, that had ever occurred—and that occurred in the Court of Civil Appeals and a Supreme Court, not an exception to his ruling, and we had a trial for several days.

Q. When was that case tried?

A. It was tried just recently, was handed down about a month ago—it was tried a little over a year ago.

Q. A little over a year ago? I believe that is all. Thank you, Judge.

Cross-examination.

Questions by Mr. Graves:

Q. Judge, you don't know anything about his actions in approving or disapproving sheriffs' accounts in the criminal portion of his court, do you?

A. No, sir, I do not. I don't know.

Q. You don't know a thing in the world about that, do you?

A. No, sir.

Q. All you know is what you have heard during this trial, isn't it, about that?

A. That is all.

Re-direct Examination.

Questions by Mr. Page:

Q. Do you think that Judge Price is the kind or character of man that would collude with the sheriff or anybody else to default the State of Texas out of one cent?

A. No, sir, I do not. I have been associated with him for thirty years, and have a very high regard for him; he enjoys the confidence and esteem of the bar implicitly.

Re-cross Examination.

Questions by Mr. Graves:

Q. Relative to collusion with the sheriff, nothing was said with reference to that. But you do believe now, don't you, he approved some accounts that are abnormally large?

A. Well, I believe what he says there in his answer is true, whatever the facts are.

Q. Yes, sir; that is all.

(Witness excused.)

Thereupon the respondent called Judge W. C. Davis, who was first duly sworn by the Chair, and who testified, as follows:

Direct Examination.

Questions by Mr. Page:

Q. State your name, please, Judge.

A. W. C. Davis.

Q. Where do you live, Judge?

A. In Bryan, Texas.

Q. How long have you lived at Bryan?

A. Thirty years.

Q. Have you held any official position there?

A. Yes, sir.

Q. State what it was and is.

A. I was a member of the Texas Legislature during Governor Campbell's administration, 1907 to 1909; was elected district attorney in 1910 for the Twentieth Judicial District, composed of Brazos, Robertson and Milam, and I served for eight years as district attorney; I was elected district judge in 1918, and am now serving my fourth term as district judge of the Eighty-fifth Judicial District, composed of Brazos and Robertson counties.

Q. Do you know Judge J. B. Price of Bastrop?

A. I do.

Q. How long have you known him?

A. Some eight or ten years, I would say.

Q. We have a new law now, a law that was passed, I believe, about four years ago, providing for a chairman among the district judges, regulating the interchange of benches—I have forgotten what they call that law, but you probably remember.

A. A new law was passed, dividing the State into administration districts. I was appointed by Governor Moody as presiding judge of the second administrating district, comprising thirty-three counties, which included the Twenty-third District of Texas. Judge Price was in my district—the Twenty-first District is a part of the thirty-third administrative district. I will state that part of Judge Price's district, Burleson county, joins my judicial district, being the Eighty-fifth District, Burleson and Brazos being adjacent counties, one on each side of the Brazos River.

Q. From what you have heard, and what you believe, as to him, do you know the reputation of Judge Price, as to whether he is a good judge, and presides over his court in a manner that carries dignity, and as being a high-minded, Christian gentleman, or what do you know to the contrary?

A. Of course, I have not heard a great deal about Judge Price presiding in court until this matter was up, but since that time lawyers in my district and the adjoining districts who have practiced before my court are unanimously of the opinion that Judge Price is a man of strict integrity, a good judge, and presides, of course, with dignity, over his court. I might add, too, if there is no objection, that I have called Judge Price two or three times to exchange benches with other judges, and hold special terms of court, and when he has been physically able to do so, he has willingly served and has given universal satisfaction to the courts to which he has been assigned by me.

Q. All right, thank you, Judge.

Mr. Sturgeon: No questions.

(Cross - examination waived and witness excused.)

The respondents called Mrs. C. W. Webb, who was first duly sworn by the Chairman, and who testified, as follows:

Direct Examination.

Questions by Mr. Page:

Q. Will you state your name, please, ma'am?

A. Mrs. Amy S. Webb.

Q. Where do you reside, Mrs. Webb?

A. At Elgin, Texas.

Q. How long have you lived at Elgin?

A. Fourteen years.

Q. Where did you live before you removed to Elgin?

A. Austin.

Q. How long did you live in Austin?

A. About fifteen years.

Q. Are you married?

A. I am.

Q. Who is your husband?

A. C. W. Webb, of Elgin.

Q. What is his business?

A. A lawyer.

Q. Have you also been admitted to the bar?

A. I have, in 1923.

Q. In '23? Are you engaged with your husband in the practice of law in Elgin?

A. I am.

Q. Do you know Judge J. B. Price?

A. I know him well.

Q. Did you know him before he was elected district judge?

A. Yes, sir, by reputation; I didn't know him personally.

Q. You have known him since he has been district judge?

A. I have.

Q. Have you and your husband practiced in his court?

A. Frequently.

Q. Do you know his reputation among the people in which he lives in Bastrop, Smithville, Elgin—and in Bastrop county, as to whether he is a high-minded, courageous, Christian gentleman, a good lawyer, and a good judge—or to the contrary?

A. I know Judge Price's reputation has been above reproach; I have never heard man, woman or child—I won't say child, because a child would not understand—but I never heard a man or a woman or any of the people with whom I have come in contact, who know Judge Price, say anything but that he is honest, in every respect.

Q. Do you think he is the type of man that would collude with a sheriff to defraud the State of Texas, or an individual out of any money?

A. Not for a moment.

Q. I believe that is all.

Mr. Sturgeon: We have no questions.

(Cross-examination was waived and the witness was excused.)

Thereupon the respondents called I. N. Jett, who was first duly sworn by the Chairman, and who testified, as follows:

Direct Examination.

Questions by Mr. Page:

Q. State your name.

A. I. N. Jett.

Q. Where do you reside?

A. Smithville, Texas.

Q. How long have you lived there?

A. Three years.

Q. Where did you live before you came to Smithville?

A. I came from Georgetown.

Q. From Georgetown?

A. Yes, sir.

Q. What is your occupation?

A. I am pastor of the First Christian Church, among other things.

Q. Pastor of the First Christian Church at Smithville?

A. Yes, sir.

Q. Have you also been admitted to the bar?

A. Yes, sir.

Q. You live at Smithville?

A. Yes, sir.

Q. And that is where your pastorate is?

A. Yes, sir.

Q. Do you know Judge J. B. Price of Bastrop?

A. I do.

Q. Do you know his reputation in Bastrop county, among the people with whom he comes in contact, as to whether he is a high-minded, Christian gentleman, a good judge, of rectitude, or to the contrary—state to this Committee what you know?

A. I especially knew him in Smithville and Bastrop. I was pastor of a church in Bastrop seven or eight years, and I have known him by reputation practically seven years, and that reputation is very high. I have heard him especially discussed since this matter came out, and the discussions that I have heard among our business men have all been expressions of entire confidence in his integrity, his honesty, and his ability as well.

Q. That is all. Thank you, Brother Jett.

Cross-examination.

Questions by Mr. Sturgeon:

Q. Brother Jett, you are not familiar, you do not attempt to say, that you are familiar with what goes on in the courthouse, are you—that is, with reference to the approval of sheriffs' accounts, and things of that kind, you do not bother yourself with looking into those matters, do you?

A. I do not, no sir.

Q. And whether or not the judge has carelessly or negligently let flow out of the State Treasury thousands of dollars, you don't know anything about that, no?

A. I wouldn't accuse a man of negligence who was required to do a thing on the last day of court that is humanly impossible.

Q. Well, you wouldn't defy the law if the law provided for that?

A. Well, I know laws are not perfect.

Q. I understand that. Men are not perfect, either, are they?

A. No, sir.

Q. But if it was the law, and it would take more days than one to do it, do you think he would have the right to do that, that he could take as long as he wanted to, to look into the account, and make such investigation as he wanted to make, if the

law provided that, why, you would think that would be the proper thing to do, wouldn't you?

A. Yes, sir, if the law provided it.

Q. Yes, sir.

A. And if the law did not provide that, it ought to provide sufficient time for him to do it.

Q. Yes, sir. That is all.

(Witness excused.)

The respondent called Mrs. Annie E. Alexander, who was first duly sworn by the Chairman, and who testified, as follows:

Cross-examination.

Questions by Mr. Page:

Q. Will you state your name, please, ma'am?

A. Mrs. Annie E. Alexander.

Q. Where do you live, Mrs. Alexander?

A. Bastrop.

Q. How long have you lived at Bastrop?

A. Since 1907.

Q. Where did you live before you lived at Bastrop?

A. At Elgin.

Q. How long did you live there?

A. Three years.

Q. Have you been married?

A. Yes.

Q. Who was your husband?

A. Henry H. Alexander.

Q. Did he hold any official position in Bastrop county?

A. County clerk.

Q. County clerk?

A. Yes, sir.

Q. Was he holding that position at the time of his decease?

A. Yes, sir.

Q. Were your ever county clerk?

A. Yes, sir.

Q. Did you succeed your husband as county clerk?

A. I did.

Q. What is your business now?

A. Deputy county clerk.

Q. Do you hold membership in any church at Bastrop?

A. Methodist.

Q. The Methodist Church? How long have you been a member of that church?

A. Since I was a very small child.

Q. Since you were a very small child?

A. Yes, sir.

Q. Are you a member of any social organizations in Bastrop — just state your connections that you have there, please?

A. Well, I am a member of the Literary Society — Ladies' Literary Society.

Q. You are now deputy county clerk?

A. Yes, sir.

Q. How long have you been deputy county clerk?

A. Since January 1, 1931.

Q. Prior to that you were the clerk yourself?

A. Yes, sir.

Q. Do you know Judge J. B. Price?

A. I do.

Q. How long have you known him?

A. Since 1907, when I went to Bastrop.

Q. What official position, if any, did Judge Price hold at that time?

A. County judge.

Q. How long was he county judge, about?

A. Well, I would say 20 years, Judge, just a rough estimate.

Q. You have also known him since he has been district judge?

A. Yes, sir.

Q. During the time he was county judge were you in the courthouse quite a good deal in connection with your duties there?

A. Yes, yes, I was socially associated with the judge.

Q. He was the judge and you were the clerk?

A. Yes, sir.

Q. And before you were clerk, your husband was clerk?

A. Yes, sir.

Q. And since that time, you have been deputy clerk?

A. Yes, sir.

Q. I will ask you what is the type of man Judge Price is—what type of man is he? What do you know about him?

A. Well, I would have to think long, Judge, if I would name one who has been a greater friend to our county and community than Judge Price has. He is an exceptionally fine man —a fine man, of exalted character, and the fact that he has been elected judge is a mark of the high esteem in which our county holds him; and I would like to say this, too, from the bottom of my heart, he has proven

worthy of every confidence imposed in him, a nobler soul does not live than Judge Price.

Q. During his term as county judge, how was he regarded by the lawyers who practiced before him, as to being competent?

A. Exceedingly competent.

Q. How is he regarded by lawyers you come in contact with there in the courthouse, as district judge?

A. They speak of him in the very highest terms; I never heard him criticised—and I would hear it, because they talk.

Q. Is he the type or character of man that would collude with the sheriff or anybody else to defraud the State of Texas?

A. Oh, no, sir, he wouldn't defraud anybody.

Q. Isn't he held in the highest regard and esteem by all of our people?

A. Yes, sir, by all of them. I cannot conceive of a nobler man in life.

Q. That is all. You will be excused.

(Cross-examination waived and witness excused.)

Mr. Page: Mr. Speaker, we have been now constantly engaged since 1:30, and I am admitting to a degree of wearisomeness. I don't know how the Chair and these other gentlemen feel about it, but I will be very glad if we could have a little time now, until tomorrow morning; it would probably save time, in which we could get our witnesses.

(Mr. Graves thereupon moved that the Committee now rise, report progress, and ask leave to sit again at 9 o'clock tomorrow, to which there was no objection, and the motion prevailed. Thereupon, the Committee adjourned at 5:20 o'clock p. m. until the following Tuesday morning, August 18th, 1931, at 9 o'clock.)

Tuesday, August 18, 1931.

The Committee of the Whole met at 9 o'clock a. m. on Tuesday morning, August 18, 1931, and proceeded with the matter of investigating the charges preferred by the House against Judge J. B. Price.

Senator Page: Mr. Chairman, shall we proceed?

The Chair: All right, go ahead.

Thereupon, T. R. Bain, being duly sworn by the Chair, testified as follows on direct examination by Senator Page:

Q. Will you please state your name?

A. T. R. Bain.

Q. Where do you live, Mr. Bain?

A. I live at Smithville.

Q. How long have you lived there?

A. On the 15th day of September—I have lived there since the 15th day of September, 1894.

Q. What is your business or profession?

A. I have been an employe of the M. K. & T. Railroad since the 5th day of October, 1886.

Q. That would be practically, or by mathematical calculation, something like forty-five years?

A. Forty-five years and six months.

Q. In what capacities have you served the M. K. & T. Railroad Company during that time?

A. I served as locomotive wiper, mechanical helper, stationary engineer, fireman's apprentice, fireman, freight engineer, passenger engineer, assistant chief locomotive inspector for the M. K. & T. Lines, road foreman of the engines, and trainmaster.

Q. Do you know Judge J. B. Price of Bastrop?

A. I do.

Q. How long have you known him?

A. I have known the family for forty years, and I have known Judge Price personally for thirty-seven years.

Q. What are your affiliations as to the various labor organizations of the railroad company at Smithville, if any?

A. None whatever.

Q. I mean by that, have you ever been a member of those?

A. I am a member of the Brotherhood of Locomotive Engineers at this time.

Q. That is the question I wanted an answer to.

A. I am a member of the Brotherhood of Locomotive Engineers.

Q. How long have you been a member of that organization?

A. Since the 20th day of October, 1922.

Q. You have stated that you knew Judge Price, and that you have

known him for about thirty-seven years?

A. Yes, sir.

Q. Did you know him when he was county judge of Bastrop county?

A. Yes, sir, and I voted for him.

Q. How well do you know him?

A. I know him very well. He was a young lawyer and we had an old soldiers' reunion at Smithville and Judge Price made a speech there and my father had been a Confederate soldier under Old Forrest, and I went down there for that purpose.

Q. You mean a Confederate reunion?

A. Yes, sir.

Q. You said that Judge Price made a speech there at that time?

A. Yes, sir, and it impressed me very much.

Q. And you have been friendly with him since that time, have you?

A. Yes, sir, I have been very friendly with him since that time.

Q. Have you followed his career since he has been district judge?

A. Yes, sir, I have.

Q. I will ask you this, as a railroad man, have you or not been in the court a great deal, or been around the court—the district court—at Bastrop, as a witness in a great many cases?

A. Yes, sir, I have been a witness in a number of cases.

Q. And you have had occasion to observe Judge Price on the bench and to know the type and character of judge he seems to have made?

A. I have.

Q. From your observation in the courtroom, do you regard him as an upright judge, and as a man who had the confidence of the people of his district?

A. I consider Judge Price very highly and consider him to be a man of the very highest character I have ever known.

Q. What do the people in your county and in that district think of his integrity? How do they regard him, Judge Price, as to whether or not he would collude with the sheriff and clerk of that county and district in an effort to defraud the State of Texas out of money?

A. He is very highly regarded and I do not believe there is a man in the county who believes that he would defraud the county or the State of Texas out of a dime.

Q. You have stated, I believe that you have been a member of the Brotherhood of Locomotive Engineers? I will ask you if you know how Judge Price is regarded by the lawyers, by the people generally, and by the railroad people, and the people generally in regard to whether he is regarded as a man of honesty and integrity, or not?

A. He is regarded in the very highest terms as a judge and as a Christian gentleman.

Q. I will ask you if in your long acquaintance with Judge Price you have ever known or heard anything derogatory at all to him in any way?

A. No, sir, not a thing.

Cross-examination.

Questions by Mr. Graves:

Q. You do not know anything of the workings of his court, or in regard to these matters of approving the sheriff's accounts, do you?

A. I do not.

Q. You have given him a very high reputation for honesty and integrity, and you did not know anything about his practice in approving these accounts, did you?

A. No, sir, I did not.

(Witness excused.)

Thereupon, Hon. Barry Miller, being first duly sworn by the Chair, testified as follows on direct examination by Senator Page:

Q. Governor, it is hardly necessary for you to state your name to this body but I will ask you to do it anyway.

A. Barry Miller.

Q. Where do you reside, Governor?

A. Well, I live out in the country, I practice law in Dallas.

Q. How long have you lived in Dallas county?

A. Since 1882.

Q. State the various positions of trust you have held in the city of Dallas and in the State of Texas.

A. I started out as assistant county attorney in justice court. For four years I was chief assistant county attorney. I served in the State Senate, I served as district judge, I served three terms as a member of the House, and four terms as Lieutenant Governor.

Q. I will ask you how long you were district judge of Dallas county?

A. I do not know exactly; I was appointed district judge by Governor

Colquitt and that was immediately after the Regular Session of the Legislature had adjourned. I served then until the next election and was elected district judge and served one month and resigned that term.

Q. You served, then, several years?

A. Yes, sir.

Q. Are you familiar with the law, Governor, this provision under our law that at the close of the term of court the sheriff makes out his account and swears to it before the clerk and the clerk files same and it is then approved by the district judge and entered in the minutes of the court, or rather is approved or disapproved by the district judge?

A. Yes, sir.

Q. I will ask you, is it not the custom for those accounts to be presented by the sheriff at the close of the term of court?

A. Yes, sir.

Q. Is it not a fact that it is required by the law they be presented to the district judge after the district clerk and sheriff have made these accounts out, and that they be approved or disapproved by the district judge?

A. Yes, sir.

Q. Whether they are approved or disapproved by the district judge it is required that the district clerk sign same and make his certificate to that before it is presented to the district judge?

A. I think so.

Q. And that is done right at the close of the term of court, is it not?

A. Yes, sir. I have had to hold my court open to get these minutes signed on different occasions.

Q. I am asking you now if it is practicable or possible for the district judge of a district court in Texas to audit the sheriff's account in—when it is made out covering these witness fees and witness accounts at the end of the term of court?

A. I do not think that it is physically possible to do so, and if he did so the judge would have to take about as much time in going over and auditing these witness accounts as would take for an auditor and there are very few of them, who, in my opinion, would have the ability to audit those accounts, but he could not do so under any circumstances unless he kept open his court for some time.

Q. Then it is not the custom to audit these accounts where they are presented to him, but it would be practically impossible for him to do this, and as a result of that the district judge relies upon the integrity and honesty of the sheriff and the district clerk when he approves these accounts without going into the details himself?

A. I always did that.

Q. Now, in doing that did you have any intention of defrauding the State of Texas or the county where you were presiding?

A. No, sir, I never did, and if I had the slightest question as to the honesty or integrity of my sheriff and clerk I would not approve the account.

Q. And from your knowledge of the practice over the State, that is what most of the district judges followed, is it not?

A. So far as I know, and so far as I have talked to them.

Q. Are you acquainted with the respondent in this matter?

A. Yes, but only in a very casual way.

Q. You do not know him very well?

A. No, sir.

Q. In your political campaigns you have visited in the counties of his district?

A. Yes, sir.

Q. I will ask you if in those various counties where he has been district judge and where you have been at the time you have made your various campaigns over the State, I will ask you if you have ever heard anything derogatory from any of the people in that district?

A. Not a word. I have always heard the judge spoken of in the very highest terms.

Q. Then, the report that you have had from his district and from what you have heard, he has always been regarded in the very highest terms?

A. Yes, sir.

Cross-examination.

Questions by Mr. Graves:

Q. Governor, I believe you stated that you have served four terms as Lieutenant Governor?

A. I have only served three terms.

Q. But you did say four terms?

A. Yes, sir, but three terms is what I meant.

Q. Now, Governor, you stated that if you had the slightest sus-

picion that a sheriff was mistreating you, you would not approve his account.

A. I would not let him be sheriff very long.

Q. Well, suppose the Attorney General had come to you four or five years ago and stated to you that the sheriff of your county was abusing your confidence?

A. I did not have a sheriff four or five years ago.

Q. Would you have continued to approve that sheriff's accounts without looking at them when he presented them to you and let them continue to come through without making some investigation as to their correctness?

A. If the Attorney General had come to me and told me that my sheriff was abusing my confidence I would have found out what was the matter with that account and would have audited any account that he presented to me. And if I had found anything wrong with that account that sheriff would not have presented any other accounts to me.

Q. Now, on direct examination you said something about the sheriff's accounts being presented to the judge just at the close of the term of court. Of course, you know that the term of court can be extended from day to day and from week to week, do you not?

A. Yes, sir. But you are more familiar with that than I am, but that was not the law when I was on the bench back in 1912.

Q. Then I gather from your statement that if it was necessary and incumbent upon the presiding judge to approve the account before it was paid, if you were district judge and an account was presented to you for approval, you would know that it was correct before it received your approval, would you not?

A. Yes, sir, if it had to be approved by me as district judge, I would.

Q. But so far as you are concerned, relative to the legal end of the matter, you are not now familiar with the law in that respect?

A. No, sir, not in that or any other respect.

(Thereupon, the witness was excused.)

Thereupon, Judge E. A. Berry, being duly sworn by the Chair, testified as follows, on direct examination by Senator Page:

Q. Will you please state your name?

A. E. A. Berry.

Q. Where do you live?

A. Houston.

Q. How long have you lived in Houston?

A. Eleven years.

Q. Where did you live before you moved to Houston?

A. Madisonville.

Q. How long did you live in Madisonville before you moved to Houston?

A. All of my life.

Q. Will you state to the Committee the positions of trust which you have held in various counties of this State and in the State since you began the practice of law?

A. I was district attorney of the Twelfth District for four years and four months; I was district judge for a little over a year; I was Assistant Attorney General, and was Chairman of the Industrial Accident Board; I was chairman of the Democratic Executive Committee; I was a member of the Commission of Appeals of the Court of Criminal Appeals of Texas, and I resigned the last five positions.

Q. I believe you stated that you were district attorney for about four years?

A. Yes, sir.

Q. I will ask you whether or not you are familiar with the practice of district judges in this State as to the approval of sheriffs' accounts?

A. Yes, sir, I am familiar with the practice in such courts in Texas.

Q. I will ask you if it is not necessary in the trial of criminal cases, and in the interests and administration of justice—I will ask you if there are not a number of duplications of process issued for witnesses?

A. I do not think you can get a trial without it, ordinarily.

Q. It is a custom to do that and necessarily so? Is it not?

A. Absolutely, yes.

Q. And it is often necessary?

A. Yes, sir, it is necessary almost all the time. It is a very unusual case where you do not have a duplication of process.

Q. As district judge it was your custom under the law to approve the sheriff's accounts?

A. Yes.

Q. I will ask you at what time during the term of court it is usually customary for the sheriffs' accounts to be presented?

A. Well, in the country districts it is usually while the automobile is waiting to take you home. The last thing that we do, as a rule.

Q. I will ask you if you had a great deal of time to investigate or undertake to audit these accounts while you were district judge?

A. I did not take a great deal of time for it.

Q. I will ask you if you at the time—did you ever audit those accounts before you signed them?

A. No, sir, I did not.

Q. Well, in signing them were you relying upon the affidavit of the sheriff and his integrity and honesty, and upon that reliance, did you affix your signature to those sheriffs' accounts when they were presented to you?

A. Absolutely.

Q. I will ask you if you are acquainted with Judge J. B. Price, who is the judge of the Twenty-first Judicial District of Texas, and who is the respondent here?

A. Yes, sir, I know him.

Q. Have you ever tried any cases before him?

A. Yes, sir, at Brenham.

Q. What case was it you tried at that time?

A. It was in the case where Judge Harper of the Twelfth Judicial District was charged with murder.

Q. Judge Price presided over the trial of that case?

A. Yes, sir.

Q. At that time were you in position to observe Judge Price upon the bench, the kind and character of judge he was, as to him being a competent and intelligent judge upon the bench?

A. I was.

Q. I will ask you what impression you got from that case—what impression you received in the trial of that case as to Judge Price's capability and integrity?

A. I was very much impressed with his fairness, and with his integrity as a judge.

Cross-examination.

Questions by Mr. Graves:

Q. I believe that you stated that a country district judge usually approved his sheriff's accounts while the automobile is waiting for him to be taken home?

A. Yes, sir.

Q. From that I understand then that he has just a few minutes to approve those?

A. Yes, sir.

Q. Would the approval of those accounts involving thousands of dollars—it would require just two or three minutes for a cursory examination of that account?

A. In my approval of those accounts I relied on the affidavits that the sheriff made before the district clerk in my district, that is the fact of the business.

Q. How long were you district judge?

A. A little over a year. I resigned when I had two more years to serve, right after I was elected.

Q. You are pretty good at resigning. You have resigned five different offices?

A. Yes, sir, I have resigned five different offices.

Q. Now getting back to the proposition, suppose you had had a little trouble with your sheriff's accounts, and they had been called to your attention and had been held up about five years because it was thought they were incorrect, would not you as a district judge have paid a little more attention to detail, and would not you have examined these sheriff's accounts a little more closely the next time?

A. I do not know, Judge Graves. I know the same people elected the sheriff and elected the clerk and elected the district judge, and the people would have had confidence in them or they never would have elected them, and I do not know that the mere suspicion would have caused me to have—

Q. (Interrupting) The fact that for five years these accounts had been held up, totaling thirty three thousand dollars, had been held up for five years, would not that in itself create a suspicion in your mind?

A. If the account had been held up for five years, I would have been suspicious of the Comptroller who held it up.

Q. Would not you have been suspicious of the sheriff if you were suspicious of anybody?

A. No, sir, I would have been suspicious of the Comptroller or whoever

it was that had charge of the sheriffs' accounts.

Q. Then you think it would have been the Comptroller that your suspicion would have fallen on?

A. I do not know about the individual case. That is a hypothetical question that I can not answer. I do not know what I would have done under those circumstances. I do not have those circumstances—I did not have those circumstances to arrive.

Q. Now you would have been a little suspicious if you had been communicated—that if it had been communicated to you that the sheriff had gone to Texarkana and returned a witness and charged thirty-seven trips for the same man, wouldn't you?

A. How was that?

Q. If the sheriff had gone to Texarkana and brought a man back from Texarkana and charged $1,620 for having gone to Texarkana and returned that man, you would have been a little suspicious about that, wouldn't you?

A. Now, to be perfectly frank with you, I do not think that I would have ever seen that in the sheriff's account.

Q. Well, why wouldn't you have seen it?

A. I do not think I would have gone over the sheriff's account in detail.

Q. Even though it was a duty imposed on you by the law that you approve or disapprove that account?

A. If it was my duty to do that, but to approve or disapprove an account I always left that to the man who swore to it, and I believed him.

Q. You would not have looked at that. I believe that you stated that you would not have noticed that in looking over the account?

A. I do not know whether I would have looked at it or not. I can not remember the details about that.

Re-direct Examination.

Questions by Senator Page:

Q. I will ask you this. Admitting that the sheriff had presented you an account and in that account he had the charge for thirty-seven trips for going after and returning this prisoner, and there had been a court decision of the highest court in your judicial district, stating that the sheriff had been correct in making those charges, and was entitled to them under the decision of that court, would not you have approved that account under those circumstances and all of those facts?

A. I think so. If the court held that I could do it.

Cross-examination.

Questions by Mr. Sturgeon:

Q. But if the Supreme Court had held in that case that he was not entitled to those fees, would you have insisted upon the payment of that account after the Supreme Court had held to the contrary?

A. Of course, I would have tried to follow the ruling of the court.

Re-direct Examination.

Questions by Senator Page:

Q. But if the sheriff had done the work in the light of the decision of the Court of Civil Appeals, and you believed that he had done the work in the light of the decision of the Court of Civil Appeals, then when this account was presented to you, you would have approved that account, and felt that you were within your authority when you were doing that inasmuch as the sheriff had claimed that he had done the work at the time?

A. Yes, sir.

Senator Page: Mr. Speaker, I think we have a great many witnesses in the gallery and I would like to have them come down on the floor. I see some of them up in the gallery now that we desire to use here.

The Chair: Those witnesses in the gallery will please come down onto the floor of the House.

Mr. Hardy: Mr. Chairman, I would like to suggest that these witnesses be kept in one place. Let's put them in one corner of this room.

Senator Page: We would like to have Mr. J. H. Jones.

Thereupon, J. H. Jones, being duly sworn by the Chair, testified as follows, on direct examination by Mr. Page:

Mr. Hardy: Mr. Chairman, before we get started on this I am going to ask that the rule be invoked and only those be entitled to the privilege of the floor be allowed on the floor. I

think that the Sergeant-at-Arms should be instructed to keep everybody off the floor except the witnesses and that they be placed in one corner of the room and kept together.

The Chair: Those who are not entitled to the privilege of the floor will kindly retire; the Sergeant-at-Arms will provide space for the witness.

Senator Page: Mr. Jones, please state your name to the Committee.

A. Jimmie Jones.

Q. Where do you live?

A. I live at Bastrop, and Smithville, Texas.

Q. How long have you lived there?

A. All of my life.

Q. Do you hold any official position in Bastrop county?

A. Yes, sir.

Q. What is that?

A. Assessor of taxes.

Q. How long have you been assessor of taxes in Bastrop county?

A. This term will make my twenty-eighth year.

Q. Are you acquainted with the respondent, Judge J. B. Price, in this case?

A. Yes, sir.

Q. What position has he held in Bastrop county since you have known him?

A. He has held several positions. He was county attorney, county judge, and district judge. As far as I recall that is practically all of the offices that I recall that he has held.

Q. Being a county official you know practically all of the people in your county?

A. Yes, sir.

Q. You have held office over there a good long time?

A. Yes, sir.

Q. I will ask you if you know what Judge Price's reputation is among the lawyers of Bastrop and Smithville and with the people generally as to this, whether he is a man of integrity or a man who would enter into a collusion with the sheriff and district clerk to defraud the people of this State and of that county out of any of its money?

A. No man ever had any better reputation.

Cross-examination.

By Mr. Graves:

Q. You say you are tax assessor of Bastrop county?

A. Yes, sir.

Q. What population did the 1930 census give Bastrop county?

A. What is that?

Q. What is the population of Bastrop county?

A. Slightly under twenty-five thousand, I think.

Q. What is the taxable value of that county?

A. Somewhere around twelve and a half million dollars.

Q. Approximately how much taxes does the people of Bastrop county pay to the State and county?

A. I could not tell you.

Q. Can you approximate it?

A. No, sir, I cannot.

Q. How many poll taxes are paid in Bastrop county?

A. I think something like four thousand and maybe forty-five hundred. I do not remember that exactly.

Q. You cannot give me an estimate as to the number of poll taxes?

A. No, sir.

(Thereupon, the witness was excused.)

Senator Page: We would like at this time to call Mr. P. C. Maynard.

Thereupon P. C. Maynard, being duly sworn by the Chairman, testified as follows on direct examination by Senator Page.

Q. Please state your name to the Committee.

A. P. C. Maynard.

Q. Where do you reside?

A. Bastrop, Texas.

Q. How long have you lived there?

A. Forty-seven years.

Q. That is about as long as you have lived anywhere, isn't it?

A. Yes, sir.

Q. What is your business?

A. I am a lawyer.

Q. What was your father's name?

A. W. E. Maynard.

Q. What was his profession?

A. He was a lawyer.

Q. Is he still living?

A. No, sir, he is dead.

Q. What office, if any, did your father hold in Bastrop county?

A. My father was city attorney, county attorney, district attorney of the Twenty-first Judicial District of Texas.

Q. Do you know how long he was district attorney?

A. Yes, sir, he was district attorney about sixteen years.

Q. Have you held any office of trust in Bastrop county?

A. Yes, sir, I have been county attorney.

Q. Are you engaged in the active practice of law there now?

A. I am.

Q. How long have you been in the practice of law in that county?

A. Twenty-one years.

Q. Are you acquainted with Judge J. B. Price, the respondent in this case?

A. Yes, sir, I know him well.

Q. What office has he held that you know of in that county?

A. Judge Price has been county attorney of Bastrop county, county judge, and is at present district judge of the Twenty-first Judicial District.

Q. Did you practice before him when he was county judge?

A. I did.

Q. Have you practiced before him since he has been district judge?

A. I have.

Q. I will ask you if in practicing before Judge Price, if you are in or about the court room every day or two and whether or not you have observed his manner and demeanor on the bench?

A. I have.

Q. Are you acquainted with the reputation of Judge Price among the lawyers of the county and of the district as to Judge Price's reputation as to integrity and honesty as a judge?

A. I am. Judge Price bears a most enviable reputation.

Q. Have you ever heard anything in your life derogatory to his character, either as a man or as a judge?

A. No, sir, I have not.

Q. Do you believe he is the type and character of a judge who would enter into collusion with the sheriff and district clerk of that county for the purpose of defrauding the people of the State out of any money?

A. I will say positively that he is not.

Q. Do you not know anything about the sheriff's account being approved or disapproved by the district judge?

A. I do. I have investigated them for the entire judicial district since this investigation came up.

Q. You have investigated all of them?

A. Yes, sir.

Q. And have audited the whole transaction, but I have not seen the original accounts.

Q. You have investigated all of these matters that have been brought out in this investigation here?

A. Yes, sir.

Q. They are all true, are they not? Is that testimony which has been given here, and introduced in evidence, is that testimony correct?

A. No. What has been said reflects the record.

Q. That is what I mean—the testimony reflects the record, does it?

A. Yes, sir. That reflects the record.

Q. Then that is true, isn't it, that the testimony which has been given?

A. The record is correct as you have it.

Q. How long does a term of court last in Bastrop?

A. From five to six weeks.

Q. You mean by that that the term can be extended but cannot exceed six weeks?

A. Yes, sir, six weeks is the limit under the present law.

Q. But it can run three weeks or four weeks or five weeks?

A. That is correct.

Q. Well, how long does it ordinarily run?

A. Judge Price attempts to force us lawyers to so conduct our business that we can close the term within five weeks.

Q. Does he do so, or not?

A. No, sir, it is not usually closed within the five weeks, due to the fault of the lawyers there, not to Judge Price.

Q. The lawyers, then, force him to run generally the entire six weeks?

A. Yes, sir. We practically force him to do that.

Q. How long has—how long does it take to try criminal cases in that court?

A. Mr. Graves, I can not answer that.

Q. How many weeks of criminal court do you usually have?

A. We usually have two weeks of criminal court.

Q. What weeks are they?

A. They are usually the third and fourth weeks.

Q. Then, when you run two weeks, if you do not get through you run two weeks more?

A. Yes, sir. Those cases are passed from time to time and the cases that are set for the third week sometimes go over to the fifth week.

Q. But they will be tried, then, on the fifth week?

A. Oftentimes, and again they will be continued.

Re-direct Examination.

Questions by Senator Page:

Q. I will ask you if it is not a fact that there have been times there when a railroad case and sometimes a criminal case that one case alone would take a whole week of that court?

A. That is at times the case.

Q. I will ask you if in the last two or three years if we have not had some important cases to try there that will take a week or ten days to dispose of?

A. That is correct.

(Thereupon, the witness was excused.)

Senator Page: Mr. Chairman, we would like to have Mr. Audley Harris.

Thereupon, Audley Harris, being duly sworn by the Chairman, testified as follows on direct examination by Senator Page:

Q. Please state your name to the Committee?

A. Audley Harris.

Q. Where do you live, Mr. Harris?

A. I live at Austin.

Q. How long have you lived here?

A. Nearly eight years.

Q. Where did you live before you came here?

A. In Nacogdoches.

Q. How long did you live there?

A. All of my life up until November, 1923.

Q. What is your profession?

A. I am a lawyer.

Q. Are you engaged in the active practice of law here at Austin?

A. Yes, sir.

Q. I will ask you if your practice extends to the county of Bastrop, in the Twenty-first Judicial District?

A. Yes, sir, I have tried a number of cases at Bastrop.

Q. You have tried a number of cases at Bastrop?

A. Yes, sir.

Q. Who was the judge before whom those cases were tried?

A. Judge J. B. Price.

Q. You know Judge J. B. Price, then?

A. Yes, sir, very well.

Q. I presume that you have tried a number of cases before Judge Price?

A. Yes, sir.

Q. I will ask you if you have tried both a number of civil and criminal cases there?

A. Yes, sir, in November, 1920, I tried a criminal case there that took us something like ten days, and there was another case in which I was associated that took almost two weeks, and I assisted in the trial of several cases that took about a week to try them.

Q. Have you observed Judge Price's demeanor and conduct on the bench as a judge during the time he was trying the cases?

A. I have.

Q. Will you state the result of your observation?

A. I consider him a first-class, honorable, conscientious, splendid judge, and a man of unreproachable reputation and integrity.

Cross-examination.

Questions by Mr. Graves:

Q. Mr. Harris, you do not know anything about the approval or disapproval of sheriffs' accounts, do you?

A. No, sir.

Q. Never had anything to do with them or never heard anything about them, did you?

A. No, sir.

(Thereupon, the witness was excused.)

Senator Page: Mr. Chairman, we would like to have Judge G. W. Grant.

The Chair: Come around, Mr. Grant.

Thereupon, Judge G. W. Grant, being duly sworn by the Chair, testified as follows, on direct examination by Senator Page:

Q. Please state your name.

A. G. W. Grant.

Q. Where do you live?

A. Caldwell, in Burleson county.

Q. How long have you lived at Caldwell?

A. All of my life.

Q. Where did you live before you moved out there as a child?

A. I was born and raised in the county, I have been there—

Q. (Interrupting) Have you held any official position in Burleson county?

A. I was district clerk for 27 years of Burleson county.

Q. Who were the district judges you worked under during that time?

A. Judge Sinks and Judge Alexander.

Q. Do you hold any official position in Burleson county at this time?

A. Yes, sir, I am county judge.

Q. How long have you been county judge?

A. Since 1925.

Q. You are familiar with the work of the court in the approval and disapproval of the sheriff's accounts at the end of the court terms there, are you not?

A. Yes, sir.

Q. I will ask you about the sheriff's account,—is it not customary for those accounts to be presented to the district judge for approval at the end of the term of court?

A. I can only speak with reference to what was done under Judge Sinks and Judge Alexander, and those accounts were generally approved right at the end of the term, but sometimes the minutes would not be up and the account would be put off for about three or four days, and the judge would leave town and we would go on over to where the judge was at the next court and get him to approve the account there.

A. I know of three or four instances in which that was done.

Q. At that time the account was approved at Giddings, was it not?

A. Yes, sir.

Q. That was under Judge Sinks?

A. Yes, sir.

Q. I will ask you from your experience as a district clerk if the judge would have an opportunity to have audited those accounts?

A. I would not think so, it would take a week or ten days or maybe longer. Judge Alexander lived at Caldwell and, of course, the sheriff's accounts were approved by him right after court adjourned.

Q. You being county judge, you are more or less about the courthouse during the term of court, are you not?

A. Yes, sir, more or less.

Q. You know Judge Price, do you?

A. Yes, sir, I know him well.

Q. I will ask you if you know how he is regarded by the people of Burleson county, as to whether he is a man of integrity and is a capable judge, and whether or not he has the confidence of the people of that county?

A. As to his reputation, he is one of nature's noblemen and a man of the highest honor and integrity.

Cross-examination.

Questions by Mr. Graves:

Q. Judge, you say that you are county judge there now?

A. Yes, sir.

Q. And you have been district clerk?

A. Yes, sir.

Q. How far is it from Caldwell in Burleson county to Wharton in Wharton county?

A. I could not tell you, about 50 or 60 miles, I suppose.

Q. Well, we will raise it to a hundred. It is not 400 miles, is it?

A. I would not think so.

Q. Do you think if a sheriff was to offer an account for 4,800 miles going June 10 and 11, 1930, going from Caldwell in Burleson county to Wharton in Wharton county, on two successive days, charging 4,800 miles for that service in going from Caldwell in Burleson county to Wharton county on two successive days, would you have approved that account?

A. I believe I would.

(Thereupon the witness was excused.)

Senator Page: Mr. Chairman, we would like to have Mr. Jenkins Alexander.

The Chair: Come around, Mr. Alexander.

Thereupon, Mr. Jenkins Alexander, being duly sworn by the Chair, testified on direct examination by Senator Page:

Q. Will you state your name, please?

A. My name is W. J. Alexander.

Q. Where do you live?

A. I live in Caldwell, Texas.

Q. How long have you lived in Caldwell?

A. All of my life.
Q. What was your father's name?
A. R. J. Alexander.
Q. Where does he live?
A. In Caldwell.
Q. Has he held any official position in that county?
A. Yes, sir, he was county attorney for seven years, county judge for fourteen years, and district judge for eight years, of the Twenty-first Judicial District of Texas.
Q. Do you hold any official position in Burleson county?
A. I am county attorney.
Q. Do you know Judge J. B. Price?
A. Yes, sir.
Q. Do you practice law in his court at Caldwell?
A. Yes, sir.
Q. How long have you known him?
A. I have known him ever since he has been on the bench.
Q. Are you fairly well acquainted in Burleson county?
A. Yes, sir.
Q. You know practically. everybody in the county, don't you?
A. Yes, sir.
Q. What is the reputation of Judge Price among the lawyers of Caldwell and in Burleson county, and among the people of that county generally? Just state what that reputation is?
A. His reputation is good among the lawyers, both as a judge and as a gentleman, and is good generally among the people.
Q. Do you believe that Judge Price is the type and character of a man who would collude with the sheriff of any county and with the district clerk to defraud the State of any money?
A. I know he is not that kind of a man.

Cross-examination.

Questions by Mr. Graves:

Q. How far is it from Caldwell to Wharton?
A. I do not know.
Q. Well, approximately how far is it?
A. I do not know. I do not know where Wharton county is.
Q. About how many people live in Burleson county, or how many did live there according to the 1930 census?
A. Approximately 17,000.
Q. What is the taxable value of Burleson county?
A. About nine million dollars.
Q. What are the poll tax payments, approximately?
A. I can not say.
Q. Do not you have any idea?
A. No, sir, I do not.
Q. You run for office and never kept up with that?
A. I was appointed and have not had an opponent. I do not know what it is.
Q. Do you know the amount of taxes that are paid into the Treasury of the State of Texas by the people of Burleson county?
A. No, sir, I do not.

(Thereupon, the witness was excused.)

Senator Page: We would like to have Judge C. W. Webb.

The Chair: Mr. Webb, will you come around, please?

Thereupon, Judge C. W. Webb, being duly sworn by the Chair, testified as follows, on direct examination by Senator Page:

Q. Please state your name to the Committee.
A. C. W. Webb.
Q. Where do you reside, Judge?
A. At Elgin, Bastrop county, Texas.
Q. How long have you lived there?
A. Thirty-two years.
Q. What is your profession?
A. I am a practicing lawyer.
Q. How long have you been practicing law?
A. Thirty-two years.
Q. Do you know Judge J. B. Price, the respondent in this case?
A. I do.
Q. What official position does he hold?
A. District judge of the Twenty-first Judicial District.
Q. What official position has he had other than that of being district judge?
A. County judge.
Q. Do you know how many years he was county judge?
A. About sixteen years, I think.
Q. Do you practice any in the court of Judge Price?
A. Yes, sir.
Q. Did you practice in his court during the time he was county judge?
A. Yes, sir.

Q. And you have also practiced before him since he has been district judge?

A. Yes, sir.

Q. Is it not a fact that you have tried many cases before Judge Price, both as county and district judge?

A. Yes, sir. I have been associated with him for over forty years as county judge and district judge in the practice of law.

Q. You know him well, do you?

A. Yes, sir.

Q. Do you know the reputation Judge Price bears with the people at Bastrop and with the attorneys at Bastrop and throughout the county, as to his integrity and honesty?

A. He is a high-type Christian gentleman.

Q. How does he stand among the lawyers, as to being capable, and as to his fairness in the conduct of cases?

A. He has a reputation of being an honorable, fair, courageous, and able judge.

Q. Have you ever heard anything derogatory to Judge Price?

A. I have never heard the slightest criticism until this matter came up before the Legislature.

Q. I will ask you if you did not serve as special district judge at one term of the district court in Bastrop county?

A. I did.

Q. You know that it is a fact that the sheriff's account is usually presented to the district judge just at the close of the term of court, do you not?

A. Necessarily, they have to be.

Q. When these voluminous accounts are presented to the district judge for approval on the last day of the term of court, would he have time to, in your opinion, audit that account if he were capable of doing so?

A. I do not think so.

Cross-examination.

Questions by Mr. Graves:

Q. You do not know anything about these accounts, do you?

A. No, sir, I do not.

Q. In your county, how long does the district court usually hear criminal matters?

A. About two weeks.

Q. Then, if the sheriff's account is for $4,000 that would be about $2,000 per week, would it not?

A. Yes, sir.

Re-direct Examination.

Questions by Senator Page:

Q. The fact that the court was only two weeks in trying the criminal cases, you do not mean, by that, to state, that it would take the sheriff only two weeks to serve the process and perform the service that is covered by that account, do you?

A. No, sir, I do not mean that.

Re-cross Examination.

Questions by Mr. Graves:

Q. But these witnesses that are utilized as a result of the process would be used during that two weeks term?

A. I do not know whether I get your question.

(Thereupon, the witness was excused.)

Senator Page: Mr. Chairman, we would like to have Mrs. Annie May Birmingham as our next witness.

The Chair: All right.

Thereupon, Mrs. Annie May Birmingham, being duly sworn by the Chair, testified as follows on direct examination by Senator Page:

Q. Will you please state your name?

A. Annie May Birmingham.

Q. Where do you reside, Mrs. Birmingham?

A. I reside at Bastrop.

Q. How long have you lived there?

A. All my life, with the exception of about five years when I lived in Fort Worth.

Q. Are you acquainted with Hon. J. B. Price, the district judge of that district?

A. I am. I think I would tell how old I am but that would be hardly a fair question.

Q. I believe that I would agree with you on that, though I think you could afford to. Mrs. Birmingham, do you know the reputation of Judge Price among his neighbors and among the people in Bastrop as to his honesty and integrity?

A. I know him so well that I am sure that none of these fine men, who know him as well as I do but would quit this business and go home if they knew Judge Price as well as I do.

Cross-examination.

Questions by Mr. Graves:

Q. Mrs. Birmingham, I see no good reason why you should not give your age—anyone who holds that age as well as you. They ought to be proud of it.

A. I thank you.

(Thereupon, the witness was excused.)

The respondent called C. R. Branton, who was first duly sworn by the Chair, and who testified as follows:

Direct Examination.

Questions by Mr. Page:

Q. State your name, please.
A. C. R. Branton.
Q. Commonly called "Nick?"
A. Yes, sir.
Q. Where do you live, Nick?
A. I live near Elgin.
Q. In what county?
A. Bastrop county.
Q. What is your avocation?
A. Farmer.
Q. How long have you been farming there?
A. Fifty-one years.
Q. I will ask you if you know the respondent, Judge J. B. Price, here?
A. I do.
Q. How long have you known him?
A. About forty years.
Q. About forty years?
A. Yes, sir.
Q. I will ask you if you know what his reputation is among the people, the farming people that you are associated with, and the other people in that section of Bastrop county?
A. His reputation is good.
Q. Is he regarded by the people as the type and character of man that would collude with the sheriff or any peace officer to defraud his State out of any money?
A. No, sir.
Q. You do not believe he would do that, do you, Nick?
A. No, sir.

Cross-examination.

Questions by Mr. Graves:

Q. You don't know anything about his accounts, sheriffs' accounts, do you, Mr. Branton?
A. No, sir.

Re-direct Examination.

Questions by Mr. Page:

Q. You know he would not approve any he did not believe would be right, do you?
A. That would be my belief, I don't believe it.

(Witness excused.)

Thereupon, the respondent called Perry Winston, who was first duly sworn by the Chairman, and who testified as follows:

Direct Examination.

Questions by Mr. Page:

Q. State your name, please.
A. Perry Winston.
Q. Try to speak out as plain as you can, Judge.
A. All right.
Q. Where do you live?
A. I live near Smithville, Bastrop county.
Q. How long have you lived there?
A. I have lived near Smithville since 1877.
Q. Where did you live before?
A. Well, I lived a short ways above there, on Elm Creek, I have been in Bastrop county since 1873.
Q. Where did you live before you came to Texas?
A. I was born in Virginia.
Q. Do you know Judge Joe Price?
A. Yes, sir.
Q. How long have you known him, Perry?
A. I have known him 50 years, I reckon, maybe—maybe longer.
Q. In your community there, have you held any official position of authority?
A. Who?
Q. You.
A. Yes, sir.
Q. What were they?
A. I have been in the constable's office, and justice of the peace.
Q. How long were you constable there?
A. Nine years.
Q. How long have you been justice of the peace?
A. For 31 years.

Q. Are you justice of the peace there now?

A. Yes, sir.

Q. You have stated you have known Judge Price 51 years. How well have you known him?

A. I have known him well, I have known him very well—

Q. In your position as constable and justice of the peace have you had occasion a good many times to be in Judge Price's court in Bastrop county?

A. I have, yes, sir.

Q. What is Judge Price's reputation in Bastrop county, in the community in which he lives, and is he known in the community as a high-class, Christian gentleman, or to the contrary—just state what you think about it, and what the people say about it?

A. Well, it is good, just as good as anybody's.

Q. Do you believe him to be the type and character of man that would collude with the sheriff or anybody else to defraud his State out of any sum of money?

A. I know he would not.

Cross-examination.

Questions by Mr. Graves:

Q. Judge, you don't know about the sheriff's accounts—not a thing in the world, do you?

A. No, sir, I never had anything to do with them.

Q. That is all.

(Witness excused.)

Mr. Page: If the Speaker would indulge us just a few moments, we think that exhausts our character witnesses, but we have one or two witnesses we would like to talk to.

The Chairman: If there is no objection, the Committee will stand at ease until 10:15.

(The Committee, thereupon, stood at ease, to accommodate counsel for the respondent.)

(The Committee as a Whole resumed the hearing at 10:35 o'clock a. m., as follows, to-wit:)

Mr. Page: Mr. Speaker, we have one more character witness who has come in that we want to use, and then we will put in the other testimony. We would like to have Mr. Dade Coke.

Thereupon the respondent called W. D. Coke, who was first duly sworn by the Chairman, and who testified as follows:

Direct Examination.

Questions by Mr. Page:

Q. State your name, please.

A. W. D. Coke.

Q. And where do you reside, Mr. Coke?

A. I reside at Levelland, Hockley county.

Q. Where did you live in the early part of your life, Mr. Coke?

A. I was born and raised in Bastrop county.

Q. How long did you live in that county?

A. I lived in that county 26 years.

Q. When you left Bastrop county, where did you go then to make your residence?

A. At Bastrop, Polk, McDade, and Elgin.

Q. Well, I say, after you left Bastrop county, where did you go then?

A. To Childress.

Q. How long did you live in Childress?

A. I was in Childress county until 1917.

Q. How long did you live there?

A. From nineteen—seventeen years.

Q. Seventeen years? Did you hold any official position in that county while you lived there?

A. I served three terms in the Legislature from Childress county.

Q. In this House?

A. In this House.

Q. Aside from service in the House, did you hold any other official position in the State?

A. I was Adjutant General of the State during the Hogg administration.

Q. How long were you Adjutant General, Mr. Coke—several years?

A. Several years.

Q. Do you know Judge Joe Price of Bastrop?

A. I do.

Q. During the time that you lived in Bastrop county, and since then by meeting people from there, do you know what the reputation of Judge Price in that county is, as to whether he is a man of integrity or whether he is to the contrary?

A. Answering that question, I don't believe, Judge, there is a man

of my acquaintance over the entire State that I hold in higher—that I hold any higher in integrity and courage than I do Judge Price of Bastrop county.

Q. I believe that is all, Mr. Coke.

Cross-examination.

Questions by Mr. Sturgeon:

Q. Mr. Coke, I believe you stated that you were raised in Bastrop county?

A. Yes, I was born in the town of Bastrop, and then lived on a farm at Oak Hill, 14 miles from Bastrop, and later on at Elgin, in the county.

Q. How long did you live in Bastrop before you moved away?

A. I was in Bastrop the last time, the town of Bastrop, about six years, when I was reading law; Judge Price was county judge at the time I was reading law at Bastrop.

Q. I believe you stated that you do not live in the Twenty-first Judicial District now, do you?

A. I do not.

Q. How long has it been since you lived in the Twenty-first Judicial District—about how long, you don't need to be exact?

A. Well, I would have to get that —about 30 years.

Q. It has been about 30 years since you lived in the Twenty-first Judicial District? You understand that that is the district that Judge Price is district judge of, now?

A. Yes, sir.

Q. Could you tell how many miles, do you know how many miles it is from a point on the west side of the county, to the east side of the county, about how far it is across the county of Bastrop?

A. I don't know, I couldn't say.

Q. Can you give us any estimate of it?

A. No, because Bastrop is not a square county; I don't know just how far.

Q. You don't know how far?

A. No, sir.

Q. Are you acquainted with Lee county pretty well?

A. Fairly; I was two years in school at Giddings, the county seat, and I know that county, and have been over that county quite a lot myself.

Q. That is the county seat?

A. Giddings is the county seat.

Q. Now, Lee county is a small county, isn't it?

A. Compared to Bastrop, yes.

Q. Now, tell us, Mr. Coke, about how far it is across Lee county, say taking a parallel line drawn through Giddings, running from the east side of the county to the west side of the county,—approximately how far?

A. On a direct line, I wouldn't know, but on the traveled line, it would be a question of the sand hills in there as to how far you would have to travel.

Q. Yes. Well, give us the nearest and most practical way that you would travel.

A. Well, I am not familiar with the acreage of that county, or the square miles of that county, I wouldn't attempt it.

Q. Well, how is Giddings located in the county with reference to being further north or further south, of an equator drawn squarely over that county, east-west, — it is further south, isn't it?

A. Well, that is another county that is not square.

Q. Well, I know that, but you understand what I'm after.

A. Yes, sir.

Q. Well, take it that the county is square, for the purpose of this illustration, and that Giddings is also in the county; is it south, below a line drawn square across the county, or is it north?

A. I am not familiar enough with the boundaries of that county to say, I don't know.

Q. Now, Mr. Coke, you have testified here that Judge Price's reputation for integrity, and so on, is good. You are not familiar with the law, or the duties imposed upon a district judge, are you, at this time?

A. Yes, sir.

Q. Are you?

A. In a way, yes.

Q. Are you familiar with Article 1033 and Article 1036 and Article 1029, of the Code of Criminal Procedure, which provides that each district judge in Texas shall carefully inquire into and examine bills and accounts of sheriffs, justices of the peace, district attorneys, district clerks, and so on—you know that is the law?

A. I know—I understand that is the law.

Q. Yes, and has been for a long time, hasn't it?

A. It has been a law for a long

time, but custom has been different for a long time.

Q. Sir?

A. The custom has been different.

Q. Well, I am sure it is violation of law to kill a man, but it has been the custom where there have been lots of killings. The point I am getting at, you recognize as a fact, this law has been in existence for a long time. Now, whether Judge Price has complied with the law or made a special effort to comply with it or not, you don't know?

A. No, sir, I am not familiar with that.

Q. You are not familiar with that? Are you acquainted with any of the sheriffs in the district?

A. I am not.

Q. Are you interested in any of them?

A. I beg your pardon?

Q. Are you interested in any of them, do you represent any of them?

A. I have no interest whatever in that matter—no personal interest.

Q. And what has occurred between Judge Price and the sheriff and Comptroller, and the Treasury Department of this State, you don't know the details of it, and are not familiar with it?

A. I am not familiar with it.

Q. You are not familiar with it? You are Judge Price's friend, and are doing what you can for him?

A. Oh, in a general way, I am familiar with the conditions that exist.

Q. I am sure of that.

Mr. Page: I believe that is all, Mr. Coke.

(Witness excused.)

Thereupon, the respondent called Hartford Jenkins, who was first duly sworn by the Chairman, and who testified as follows:

Direct Examination.

Questions by Mr. Page:

Q. State your name, please.

A. Hartford Jenkins.

Q. Where do you live, Mr. Jenkins?

A. Bastrop, Texas.

Q. How long have you resided there?

A. All my life—51 years.

Q. Do you hold any official position in Bastrop county?

A. Clerk of the district court.

Q. How long have you been clerk of the district court?

A. About thirteen and one-half years.

Q. You know the district judge, of course—Judge Price, the respondent in this matter?

A. I do.

Q. You have been clerk of the court during the entire time that Judge Price has been district judge, have you not?

A. I have.

Q. I will ask you if you know what Judge Price's course has been as judge of that court, with regard to conserving the interest of the State of Texas, in financial matters; if you know anything about that, please state it?

A. Judge Price has in every way tried to save the interest of this State in his county in financial matters, I know, from the very fact that he has arranged his docket in a manner in which very little of the funds of the county are used; for instance, in one of our last courts, he stayed all day long, and as the defendants were ascertained, what defendants would plead guilty, he placed all of them on the docket, the same day and he sat there all day and tried them, and saved hundreds of dollars that way. As the result of that, the jury fund of Bastrop county has increased, and if that, under the law, be transferred to the general fund, then the taxes of our county can be reduced by reason of that saving.

Q. What has been the course of Judge Price, in your observation, with regard to conserving the funds of the State in all cases that came under his jurisdiction there?

A. I think Judge Price has exercised every power that he has had to conserve the funds of this State.

Q. I will ask you if it is not a fact that during the administration of the previous judges under whom you served before Judge Price, that it was the custom for attorneys, both for the State and for the defense, to see—to issue duplicate process for their witnesses?

A. That has always been the custom since I have been there.

Q. That custom, then, was not inaugurated by Judge Price, it has al-

ways been the custom so far as you know?

A. Yes, sir.

Q. I will ask you, in a county of the character of Bastrop, if there are not a great many darkies there, and itinerant negroes, who live in different portions of the country?

A. That is true.

Q. Isn't is a fact that unless the sheriff goes to those people at the terms of court and tells them to come to court, very likely any admonition given them by the court to be present at this term would be disregarded and the case would have to be continued for that reason?

A. That is true, too.

Q. I call attention to the case of the State of Texas against one Mack Matthews. Do you recall that case?

A. I do.

Q. Do you remember the date of the indictment in that case, when it is alleged the crime occurred?

A. I can refer to the notes that I have made here and give you those dates.

Q. All right, yes, sir, just refresh your memory there.

A. The crime was committed on the 18th day of June, 1928, and on June 25th, the grand jury returned two bills of indictment against Mack Matthews.

Q. What I mean, isn't it a fact fact the killing with which Mack Matthews was charged occurred on the 19th day of June at a negroes' celebration?

A. It occurred on the 19th day of June.

Q. And it developed at the trial of that case that a great many negroes were engaged in the celebration of June 19th at the time the killing occurred?

A. Yes, sir, from all over the county and from out of the county.

Q. How many were killed there at that time?

A. Two negroes.

Q. And Mack Matthews was charged with the killings and there were two bills of indictment against him for killing those two negroes there?

A. Yes, sir.

Q. Now, do you recall when the case was first called, from your data there or from your recollection, what disposition was made of the case of Mack Matthews, at the first term of court after his indictment?

A. That case was continued at the first term of court until the 17th of July, 1928.

Q. Isn't it a fact that it was continued after it was reached on the docket on the date of trial?

A. It was, yes, sir.

Q. Were the witnesses there present in court at that time when the case was continued?

A. Not at that particular time.

Q. Well, did they ever come there, the large number of witnesses in this case?

A. A few of those witnesses draggled in there on the day set for trial.

Q. Then, as district clerk, it was necessary to issue duplicate process for those witnesses to be brought to the trial at the next term of the court?

A. Absolutely, yes.

Q. What disposition was made of the case, State of Texas vs. Mack Matthews, at the next term of court, according to your data?

A. On the 4th day of June, 1929, the case was continued again, I believe that is correct.

Q. On whose motion — does it show? In order to refresh your memory, I will ask you—

A. Let me see, Judge (referring to paper).

Q. Yes,—

A. This is the first copy that I made and I got some of them out of here. If you have the original copy there, I can get the date of the trial.

Q. I don't have it. But in order to refresh your memory, I will ask you if you do not remember that the case was continued on account of the fact that my firm was employed in a case and was busy here in Austin and could not be there at the time?

A. Yes, sir.

Q. It was continued on our application?

A. Yes, sir.

Q. And, now, then, wasn't it necessary, that the ends of justice might be met, then for those witnesses to be resummoned back there at the next term of court, in your opinion, as clerk?

A. It was.

Q. What disposition was made of the case at the next term?

A. Well, at the next term of the court—that is the third time you are speaking of?

Q. Yes, sir.

A. The case was tried, then.

Q. The case was tried before a jury?

A. Yes, sir.

Q. What was the result of the trial?

A. He was convicted, and the case was appealed.

Q. The case was appealed?

A. Yes, sir.

Q. The negro was convicted by the jury, and we appealed his case to the Court of Criminal Appeals here at Austin?

A. Yes, sir.

Q. What was the result of the appeal?

A. The Court of Criminal Appeals reversed and remanded the case.

Q. Then, before that case could be tried again, after the case had been appealed, and pending in the Court of Criminal Appeals, then, as a matter of necessity, the witnesses necessarily would have to be summoned for the next term in order that the trial could be had.

A. They did have to be.

Q. No witness could know what the Court of Criminal Appeals was going to do, and none of the officers could know?

Q. What disposition was made of the Matthews case when it was finally tried again, the fourth time?

A. My recollection is he entered a plea of guilty and took a two-year sentence, maybe five, I don't remember about that.

Q. He made a plea of guilty and took a two-year sentence, that is your recollection?

A. Yes, sir.

Q. It is admitted here, or was admitted yesterday that the witnesses issued for in the Mack Matthews case were applied for respectively by the State and the defendants. Is it your practice to issue subpoenas only on application of the lawyers for the State and defendants?

A. I never issue a subpoena unless I have an application. I will qualify that: Sometimes my friend, Page—or Webb and Phelps, may phone me to issue for them and I will put it on an application blank on my desk and have them sign this application. That may not be regular, but I have done it.

Q. In other words, the lawyer at Elgin phones you he wants a certain witness in a case, and you enter it on that application, and when he comes down to Bastrop county, he signs it?

A. Yes, sir.

Q. Did you ever collude with the sheriff of Bastrop county or any county in Texas, to subpoena witnesses in a case in order that the State of Texas might be defaulted out of any money?

A. No, sir.

Q. You are there as clerk of the court, all the time—have you noticed anything that caused you to think that Judge Price colluded with the sheriff to defraud the Treasury of the State of Texas out of any money by issuing duplicate process?

A. No, sir, he has not.

Q. An account was mentioned here yesterday, of Sheriff Townsend, I think for the January term, 1931, term of court, which amounted to something over $4,000. Do you recall that account?

A. I do.

Q. How many different cases were embraced in that account of $4,000?

A. My recollection is there were 57 cases covered in that account, if I am not mistaken.

Q. Well, where there are 57 cases in a sheriff's account, isn't it a fact that those are exorbitant charges?

A. I wouldn't think so where there are four or five deputies who are doing that work.

Q. I am going to ask you about that. The sheriff of Bastrop county, he can not travel all the distances to summon all the witnesses himself?

A. No, sir.

Q. He has to send four or five deputies, going over all the county, to summon witnesses?

A. That is true.

Q. Are you familiar with the manner in which these accounts are presented to Judge Price, and other district judges, after they are served, for approval or disapproval?

A. I am.

Q. About what time are those accounts usually brought in?

A. Usually the last few days.

Q. At the close of a term of court, is there a good deal of detail

business that the judge has to attend to, such as the hearing of motions and overruling motions, granting new trials, and isn't it a right busy time with the clerk and the sheriff?

A. That is a very busy time. I haven't any disposition to criticize the lawyers, but they will always wait as long as they can to present their motions, when the judge is very busy, the last few days of court.

Q. What other business have you besides that of being district clerk?

A. I am in the abstract business, manager of an abstract company.

Q. Have you been in that business a good many years?

A. Since 1911.

Q. You are familiar, then, with the handling of papers—deeds, other papers of different kinds, and making up abstracts, detail work of that kind?

A. I am familiar with detail work, and also in business—I run a gin.

Q. Do you believe it is true—we will take an account of 57 items, on 57 different cases, presented to the district judge on the last day of the term of his court, do you think it is practicable that that district judge, or even three, could go into that account and audit it properly, as it should be done by an auditor?

A. I believe it would be impossible, it would take two or three weeks.

Q. It would take two or three weeks to audit an account of that sort?

A. That is my opinion.

Q. I believe that is all, Mr. Jenkins.

Cross-examination.

Questions by Mr. Sturgeon:

Q. Mr. Jenkins, I understand you stated that you have been a district clerk about 13 years?

A. Yes, sir.

Q. Will you tell us about what the population of your county is?

A. Why, it is right around 25,000—I don't think the census taker got it correct—maybe about 25,000.

Q. All right. Judge Price has been district judge for about 7 years, hasn't he?

A. Yes, sir.

Q. Something like that. I believe you stated when you first knew him he was county judge, or used to be your county judge?

A. I didn't state that, but he was, yes, sir.

Q. He was? All right. Now, did you hold any official position there at the time he was county judge?

A. I was county superintendent of school four years, and I believe I officed with—well, I don't know, I believe Judge Price had gone out then.

Q. All right. Now, you also testified that Judge Price was very cautious and careful in regard to protecting the finances of the county while he was county judge?

A. Yes, sir, I did.

Q. I believe you stated that?

A. Yes, sir.

Q. Now, since you have been district clerk, of course, you are familiar with the duties incumbent upon the district clerk—you have familiarized yourself with the duties incumbent upon your office?

A. Yes, sir.

Q. Of course, you are familiar with the statute, Article 1033, of the Code of Criminal Procedure, which provides that, "before the close of each term of the district court, the district or county attorney, sheriff and clerk of said court, shall each make out of a bill of costs, claimed to be due them by the State, respectively, in felony cases tried at that term." And then it goes on and states what the bill shall show. You recognize that as the law, do you not?

A. Yes, sir, I am familiar with that law.

Q. And you complied with that law?—You comply with it at all times?

A. I try to, yes, sir.

Q. Well, that is what I mean; in other words, you make out your bill, present it to Judge Price before the term expires?

A. Yes, sir.

Q. All right. Now, then, I will just hand you this book (passing book to witness). I believe you have there the civil statutes, which include the Penal Code and Code of Criminal Procedure, there before you, do you not?

A. Yes, sir.

Q. Well, that is what it is. Now, that Article 1033, you have there, a portion of which I have just read to you, I wish you would finish reading the balance of it, leaving out the items that the statute says that this bill shall show, that the various officers shall take out. Read the import of Article 1033.

A. Do you want paragraph 8, or which paragraph do you want?

Q. Yes, I think that is the paragraph (indicating)—six, starting at Section 6, of that law.

A. (Reading): "Where each defendant was arrested or witness served, stating the county in which the service was made, giving distance and direction from county seat of county in which the process is served,

"Paragraph 7. The court shall inquire whether there has been several prosecutions for a transaction that is but one offense in law. If there is more than one prosecution for the same transaction, or a portion thereof, that could have been combined in one indictment against the same defendant, the judge shall allow fees, to sheriffs, clerks and district and county attorneys, in but one prosecution.

"Paragraph 8. Where the defendants in a case have severed on the trial, the judge shall not allow the charges for service of process and mileage to be duplicated in each case tried; but that additional fees shall be allowed as are caused by the severance."

Q. As caused by the severance? Now, that article—that Article is 1033, isn't it?

A. Yes, sir.

Q. Now, I wish you would please read Article 1034 of the Code of Criminal Procedure?

A. (Reading): "The district judge, when any such bill is presented to him, shall examine the same carefully and inquire into the correctness thereof, and approve the same, in whole or in part, or disapprove the entire bill as law may require; and such bill, with the action of the judge thereon, shall be entered on the minutes of said court; and immediately on the rising of said court, the clerk thereof shall make a certified copy for the minutes of said court of said bill, and the action of the judge thereon, and send the same by registered letter to the Comptroller.

"Fees due district clerk for recording sheriff's accounts, shall be paid at the end of said term; and all fees due district clerk for making transcripts on change of venue and on appeal, shall be paid as soon as the service is performed; and the clerk's bill for such fees shall not be required to show that the case has been finally disposed of.

"Bills for fees for such transcript, shall be approved by the district judge, and when approved, shall be recorded as part of the minutes of the last preceding term of the court."

Q. All right, right ahead. Now, that requires, of course, that the sheriff's bill as made out shall be filed in your office?

A. That is true.

Q. After approved by the court?

A. Yes, sir.

Q. Of course, that has been done in your county?

A. It has been done, yes, sir.

Q. That is, where the sheriff presented his bill for his services, services that he performed, at the close of the term of court, after the judge places his O. K. on it, his approval on it, then it became a matter of record in your office, and you filed it there?

A. Yes, sir.

Q. Now, then, I want to ask you this question, Mr. Jenkins: You testified about the Mack Matthews' case a moment ago, about that negro charged with murder for killing two other darkies at a Juneteenth celebration out there somewhere. Now, from your experience and knowledge as district clerk, in connection with the statement that you made, that you knew that that case on the first day, after the witnesses had all been subpoenaed, and process had been issued, and they had been subpoenaed, that the case was continued, then before the day set for trial?

A. That is true.

Q. That is true? That was either done at the instance of the State or the defendant?

A. It was charged to the defendant.

Q. Charged to the defendant? All right, possibly to accommodate the defense lawyer, or by reason of sentiment or business, something of that kind. Now, then, in point of good business judgment, I am asking you as district clerk, that, rather than to not notify those witnesses, rather than to have the court have to sit there on his bench, for the district judge to wait until that case was set, and to have been there on the bench on the day it was set for trial, and recognize those witnesses as witnesses in that case, and inform them they were under process of the court and they were to remain in attendance upon the court from day to

day, and from term to term until finally discharged, and they would have to watch the papers and stay in touch with the lawyers and district attorney, so that they might appear in court and testify when the case was next set for trial. Don't you think that would have been a good, safe, and good business proposition, at least, for the district judge to perform, in which to save money for the State? And not take it out of the State Treasury?

A. That would be a good proposition, but that is an unworkable law.

Q. That is your opinion about it?

A. Absolutely.

Q. I will ask you if the majority of district judges of Texas don't do that? And have witnesses subpoenaed one time, regardless of whether the case is continued, the district judge can get it set for trial, recognize these witnesses, and leave it up to the witnesses to find out when it is set for trial?

A. This judge here, has done that same thing, called his witnesses before the bar, and instructed them to be back when they could determine what day they could try that case.

Q. All right. But you say that in the Mack Matthews' case, that the case was continued on a day before it was set for trial, and that some of the witnesses draggled in, if I may use your—or if I am using your correct word?

A. That is true.

Q. All right. You don't know whether the district judge was on the bench there to instruct them what to do that day, do you?

A. The district judge was sitting on the bench in the trial of some other case, and his attention was called to the fact—now, that is the way I remember it—a few of those negroes had come in, 20—maybe—the district attorney just stated to them that that case had been continued, that they would have to be resummoned.

Q. All right. Now, then, at the next term of court, when that case was called up for trial, it was continued again, wasn't it?

A. It was.

Q. And you issued duplication process for those witnesses, did you not?

A. I did.

Q. All right. Now, that makes the second process that has been issued in the Mack Matthews' case. Now, then, I believe you stated that when it was set down for trial, the third time—in your court—it was finally tried, and there was a conviction, of course?

A. That is true.

Q. You issued process for that term of court, did you?

A. Yes, sir.

Q. All right. Now, then, the case left your court by conviction and came to the Court of Criminal Appeals in Austin?

A. That is true.

Q. It was later on reversed and came back to your court?

A. That is true.

Q. And having it in your court again, you issued process again, for the witnesses?

A. I did.

Q. Now, then, you know—don't you know as a matter of personal knowledge, that the services claimed to have been performed by the sheriff was included in all these four accounts that were approved by the district judge?

A. It was filed with each term of court.

Q. You have an attachment book, don't you?

A. Yes, sir, I have.

Q. Do you show many attachments for witnesses?

A. Not very many.

Q. I will ask you if you do not know that it is now the law in Texas, that when a witness is subpoenaed to testify in a case, he has to remain in attendance upon the court, to be only discharged by the court, and that if he fails to appear in answer to the process served by the sheriff, that the proper method to get him in court and keep him in court until that cause is disposed of, is for the State or the defense to have an attachment issued for that witness?

A. I understand that that is the law.

Q. Yes, sir.

(Witness excused.)

Re-cross Examination.

Questions By Mr. Sturgeon:

Q. Of course, where there has ever been any applications made to

you for witnesses to be attached, you have gotten out the attachment?

A. I have.

Q. Could you tell us, Mr. Jenkins, about how far it is in point of miles across your county, from the west side to the east side, taking a parallel line running through the center of your county?

A. I judge from Bastrop to the west side of the Trigg Ranch is about 23 or 24 miles.

Q. About 23 or 24 miles?

A. Maybe 25.

Q. All right, that's your estimate of it?

A. I know the ground pretty well.

Q. All right, let's draw a line parallel, straight up and down, and see. . . .

Senator Page: You only got half the distance across it.

Q. Senator Page suggested probably you didn't understand my question, or I didn't understand you. What I asked you, you understand, is how far your county extends from east to west?

A. You started another question before I got through with the first one.

Q. All right, I beg your pardon.

A. From Bastrop to a little place called Sand, in the east part of the county, is fully 25 miles.

Q. On the other side of Bastrop?

A. From 23 to 25 miles. It's about 50 miles across the county.

Q. All right; how far would it be from the north to the south line of your county?

A. I think Jeddo, right in the south corner, is about 30 miles from Bastrop, and from Bastrop to Elgin is 24 miles, and it's three more to the edge of the county, and that would be twenty-seven miles.

Q. So your county, just roughly estimating it, is about fifty miles each way?

A. Yes.

Q. Giving just a rough estimate of it?

A. Yes.

Q. You spoke of a sheriff often having deputies to serve process. How many deputies does the sheriff usually employ in your county?

A. It's according to the amount of work he has to do. He has been keeping about three deputies in order to give sufficient service.

Q. And, of course, the sheriff serves process, as well as the deputies?

A. Yes, and sometimes he has more than that.

Q. That is all, Mr. Jenkins.

Redirect Examination.

Questions by Mr. Page:

Q. Mr. Jenkins, I am sorry I neglected to bring you over one matter, I only brought you over the Mack Matthews case, and I'm sorry I overlooked this other case; there is another charge here, the Murray Henderson case—I am sorry I overlooked that a minute ago. Are you familiar with the Murray Henderson case, Mr. Jenkins?

A. I am.

Q. Have you any data there with you to refresh your memory as to that case?

A. No, sir, I have not. I have only this old sheet here that I just happened to pick up.

Q. That negro was indicted for murder, wasn't he?

A. Yes.

Q. Do you remember the disposition of the case at the first term of court after he was indicted?

A. It was continued until the next term of court.

Q. Continued until the next term of court?

A. Yes.

Q. In the section of that county where that murder occurred, it is inhabited very largely by negro population, isn't it?

A. Almost exclusively a negro colony; there are only two or three families of whites.

Q. Mr. Sturgeon asked you if the witnesses could not keep up with the progress of the cases by reading the newspapers, and I want to ask you how many of those negroes in that section of county do you suppose take the paper or ever see a newspaper?

A. Not very many. I don't think so.

Q. The Murray Henderson case was called for trial a second time; what happened to it then?

A. I believe it was continued until the third term of court.

Q. Continued until the third term?

A. Yes.

Q. What was done with it at the third term?

A. He entered a plea of guilty and was sentenced to the penitentiary.

Q. Sentenced to two years?

A. Two years.

Q. When you issued process in that case, you did so at the request of the attorneys on both sides, didn't you?

A. Yes, sir.

Q. And you issued those process and the sheriff did the work in accordance with the process you issued?

A. Yes, sir.

Q. You don't know anything about the correctness of his returns but you do know the witnesses were issued for at each term I have mentioned?

A. Yes.

Q. That's all, Mr. Jenkins.

Re-cross Examination.

Questions by Mr. Sturgeon:

Q. Mr. Jenkins, do you know a family of darkeys in your county by the name of Kello?

A. I do.

Q. There's quite a bunch of those Kello's, aren't there?

A. A lot of them, yea.

Q. They live in the neighborhood where this other darkey was killed?

A. Yes.

Q. How far is that from Bastrop, where Raz Kello lives?

A. About seven or eight miles.

Q. Has it been the custom in your county, when you have a nice, juicy murder case, to continue it several times so the sheriff could make some money out of it?

A. I don't believe that's been the case.

Q. I notice these cases were continued two or three times, I believe charged to the defendant, and that process was issued each time?

A. Yes.

Q. And so far as you know the sheriff was paid for that service in serving those witnesses each term?

A. So far as I know, yes.

Q. Are most of your cases continued over there the first time, the first two or three times, or do you try a good many the first time they appear on the docket?

A. I think we try most of them the first time. When it's a hard-fought case, I think they are continued, because it is my understanding of the law in Texas that you can hardly defeat a first continuance.

Q. I think you are right about it. That's all.

Re-direct Examination.

Questions by Senator Page:

Q. The Assistant Attorney General over here asked you had it been the custom among your lawyers to continue a nice, juicy murder case—

Mr. Sturgeon: I didn't say anything like that; I didn't say anything about the lawyers.

Q. We will see what the record shows; read his question to us, Mr. Reporter.

(Reporter reads question.)

Q. That's what the question was; he asked you if it had been the custom to continue a nice, juicy murder case, so the sheriff could make some money out of it. Now, in order for that to be done, wouldn't it be necessary for the sheriff, and the district attorney and the district clerk to all get together on that so the sheriff could make any money out of it. Wouldn't that be the inference?

A. That is the inference.

Q. Does that sort of thing go on down there?

A. No, sir.

Q. The lawyers practicing there are supposed to be reputable men in that court?

A. I regard them so.

Q. In your opinion, is the district attorney in that district a reputable officer who is trying to do his duty under the law as he sees it?

A. I believe he is.

Q. That's all.

Mr. Sturgeon: That's all.

(Witness excused.)

Whereupon, the witness, W. H. Murchison, being first duly sworn, upon oath testified:

Direct Examination.

Questions by Senator Page:

Q. State your name, please.

A. W. H. Murchison.

Q. Where do you live, Mr. Murchison?

A. Haskell, Texas.

Q. How long have you lived at Haskell?

A. Twenty-five years.

Q. Where did you live before you removed to Haskell?

A. In Bastrop county.

Q. How long did you live in Bastrop county?
A. Twenty—thirty years.
Q. Were you born in Bastrop county?
A. I was.
Q. What is your occupation or profession, Mr. Murchison?
A. Lawyer.
Q. Do you own any land in Bastrop county, you or your family?
A. My wife and my aunt own some.
Q. Where is that farm located?
A. About six miles south of Bastrop in the Hills Prairie community.
Q. Do you know a negro by the name of Mack Matthews?
A. Very well.
Q. Does he live on this farm?
A. He does.
Q. You have heard this testimony here in which it has been testified that he was charged with murder several years ago. Do you recall the occasion of that?
A. Yes.
Q. How many indictments for murder were found against him?
A. Two.
Q. Who represeuted him at the first trial of that case, after he was indicted by the grand jury?
A. I did.
Q. Did you apply for process for the witnesses in the case for the defendant at that time?
A. I did.
Q. Do you recall the date of that killing?
A. It was the 19th of June, but I do not recall the year.
Q. The 19th of June?
A. Yes.
Q. Did it occur at a negro celebration which was held on the 19th of June?
A. Yes.
Q. Were there many or few people present at that celebration?
A. Yes, hundreds of negroes and quite a few white folks.
Q. How many witnesses did you issue for, for the defendant, at that time?
A. I think about 129 or 130.
Q. What was your object in issuing process for so large a number of witnesses?
A. Because all of those witnesses, as I recall it now, were present at that celebration, and either saw the killing or heard the shots, and both issues were material in the case.
Q. Did the district attorney also issue for a large number of witnesses in that case?
A. I think nearly as many.
Q. Nearly as many?
A. Yes.
Q. Before the case was called at the first term of court, what disposition was made of it?
A. Continued, on my application.
Q. Was that done before the case was reached on the docket, or afterward?
A. Before.
Q. Before?
A. Yes.
Q. Did the witnesses come to court on that day?
A. I don't think they did, because I notified them it would be continued.
Q. You notified them that the case was continued?
A. Yes.
Q. Now, before the case was next reached, at the next term of the court, were there any other lawyers that participated with you in the defense?
A. Yes.
Q. Who was that?
A. Page and Powell, of Bastrop.
Q. That's a firm composed of myself, and Mr. J. H. Powell of Bastrop?
A. Yes.
Q. What disposition was made of the case at the next term of court?
A. My recollection is that I told Judge Harris and Judge Price that we had a good application for a continuance, and he required us to reduce it to writing, and we did so and presented it on the Saturday, I believe it was, before the case was called on Monday, and Judge Harris studied it and said it was good, and Judge Price said he would grant the motion, but he wanted us to notify the witnesses, and the veniremen not to come.
Q. The veniremen are entitled to collect money for coming to court away from their homes for the trial of a case, whether it is tried or not?
A. Yes.
Q. And they were notified not to come at Judge Price's demand?
A. Yes.
Q. The object being to save the State and county money?
A. That's it.
Q. What disposition of that case was made at the next term of court?
A. I think it was tried.

Q. It was tried. What was the result of that trial?

A. He was convicted.

Q. Do you know Judge Price?

A. Ever since I have known any man.

Q. Do you know him well?

A. Yes.

Q. You have practiced law in his court, both before leaving and after leaving Bastrop, have you not?

A. Yes.

Q. How is he regarded among the people in that county and that district, among the people in general where he lives and the lawyers in the court and the other people in the court, as to whether he is a man of high type, or the contrary? Tell us your opinion about it, or what you find from the facts.

A. I think he is regarded by all the people, and I know by myself, as a man of very high standing and integrity.

Q. In the conduct of the Mack Matthews case, and the issuance of process, were you actuated by any desire to make any money for the sheriff of that county, or to protect and preserve the rights of your clients under the law?

A. No, sir; I wasn't trying to help the sheriff make any money; the sheriff was trying to convict my man.

Q. Don't you know if a man applies for a number of witnesses, it doesn't matter how many it is, if the district court denies him process for that number of witnesses, every one of them, the case would be reversed by the Court of Criminal Appeals and would have to be retried?

A. That is my understanding.

Q. Do you believe that Judge Price is the type of man to collude with anybody, with the sheriff or any other person, to defraud the State of Texas out of any money?

A. No, sir.

Q. That's all.

Cross-examination.

Questions by Mr. Sturgeon:

Q. I want to ask you about that last law you were questioned about. You were asked if you didn't know that if you asked for defense witnesses, and the court refused to allow the process to issue, then if the man was convicted, the case would be reversed. You don't mean that duplication of process must be allowed, do you? You don't mean if witnesses have already been under process of the court in that case and have already been served, and then the lawyer for the defense applies for that same process again on the same witnesses at the resetting of the case at the next term of court, that if the clerk refused, or the court refused to let the clerk issue process again, that it would be reversed?

A. I can't answer that.

Q. I just wanted to see that authority, Mr. Murchison. I might want to use it.

Senator Page: I had no intention of insinuating that.

Q. I believe these cases against this darkey you were asked about by Senator Page—you were employed at the outset to represent him?

A. Yes.

Q. And you went out on the first setting of the case and got some 125 or 130 witnesses?

A. Yes.

Q. And then you stated that the case was continued, before it was called for trial?

A. Yes.

Q. And you notified the witnesses not to be there?

A. That is my recollection.

Q. That is your recollection about it?

A. Yes.

Q. Did you tell them to come back the next term of court, or tell them that they would be resubpoenaed?

A. I did not inform them as to that.

Q. You didn't inform them as to that?

A. No, sir.

Q. Do you have a relationship in that county by the name of Homer Murchison?

A. Yes.

Q. What relation is he?

A. He is my brother.

Q. Your brother?

A. Yes.

Q. What kin is Homer Murchison to Woody Townsend, the sheriff of Bastrop?

A. None whatever.

Q. But Homer Murchison was a witness in this case?

A. Yes, he was an eye-witness to it.

Q. An eye-witness?

A. Yes.

Q. How many applications, Judge, did you make for witnesses in that

Mack Matthews case, do you remember?

A. No, sir. But the record shows that; I made all the applications, or caused it to be done.

Q. Where does your brother live?

A. He lives at Hills Prairie, about nine miles from Bastrop.

Q. Did this killing occur on the land that you own, or your people own?

A. No, sir.

Q. Where did most of these darkeys live that did the killing—that were connected with it?

A. They lived on the farm in Hills Prairie.

Q. On the farm at Hills Prairie?

A. That is, the one that did the killing.

Q. That is Mack Matthews?

A. Yes.

Q. How far is that from Bastrop?

A. Five or six miles, or seven.

Q. Did you know a darkey in that county by the name of Johnnie May Powell?

A. I know some Powells.

Q. Johnnie May Powell; I don't know whether it's a man or a woman.

A. I don't know whether I do or not.

Q. I see among these names here, Annie Powell, Lee Allen Powell, Gentry Lee Powell, Ruben Powell and George B. Powell. Do you know that family of darkeys?

A. Yes.

Q. Could you tell us where they live?

A. No, sir.

Q. You don't know where they live, or you don't know exactly where they live?

A. I think they live south of Bastrop, but I don't know whether they live at Upton, or Snake Prairie, or where.

Q. Do you know a darkey over there by the name of Dock Wilson?

A. I don't recall.

Q. Do you know Andrew Jackson, do you know Andy Jackson?

A. I don't think I do.

Q. Do you know a darkey over in there by the name of Will Leonard?

A. I have heard of such a name.

Q. I believe I asked you this—do you know where these Kello darkeys live?

A. Yes.

Q. Where do they live?

A. At the Hills Prairie Community.

Q. How far is that from Bastrop?

A. Seven to nine or ten miles.

Q. I notice here that Will Leonard—I asked you about him; did you know him?

A. I don't recall, Judge.

Q. Do you know Hosie Henderson?

A. I have heard the name.

Q. There's another case; did you represent Murray Henderson?

A. No, sir.

Q. You are pretty well acquainted with some of those darkeys in that county?

A. I was raised down there, but I just know these darkeys as a bunch.

Q. Did you know a family of darkeys by the name of Craney?

A. No, sir; I don't believe I do. If I did, it was a long time ago.

Q. Do you know the Haywoods?

A. Yes.

Q. Where do they live?

A. I think in different parts of the county.

Q. Several of them live at Hills Prairie, don't they?

A. I don't know.

Q. I think that's all.

Senator Page: I believe that's all, Mr. Murchison; thank you.

(Witness excused.)

Senator Page: We will have Mr. Merton L. Harris.

Whereupon, the witness, Merton L. Harris, being first duly sworn, upon oath testified:

Direct Examination.

Questions by Senator Page:

Q. State your name, please.

A. Merton L. Harris.

Q. Where do you live, Judge Harris?

A. My home is in Smithville, Bastrop county.

Q. How long have you lived there?

A. Approximately ten years.

Q. Where did you live before you came to Smithville?

A. In Comanche county.

Q. How long did you live there in Comanche county?

A. I was born in Comanche county.

Q. You are a native Texan, born in Comanche county, and lived there until you removed to Bastrop county?

A. That is correct.

Q. What is your vocation or profession?

A. I am an attorney at law.

Q. Did you practice in Comanche county?

A. I did.

Q. How long did you practice there?

A. Nine or ten years.

Q. Did you hold any official position in Comanche county?

A. I did.

Q. State what it was.

A. I was county attorney and county judge of Comanche county.

Q. About how long did you hold those offices?

A. County attorney four years, and county judge only a short time.

Q. Do you hold any official position now, in Bastrop county or in that district?

A. I do.

Q. State what it is.

A. District attorney of the Twenty-first Judicial District.

Q. Who is the district judge?

A. J. B. Price.

Q. How long have you been district attorney?

A. Approximately seven years.

Q. You went in as district attorney at the same term that Judge Price went in as district judge?

A. Yes.

Q. Then you have worked with Judge Price ever since he has been district judge?

A. For seven years, approximately.

Q. Seven years?

A. Yes.

Q. I direct your attention to Lee county. Lee county is in that judicial district, is it?

A. It is.

Q. I will ask you if you recall the term of court in Lee county, which was in 1925, at which a large number of indictments were found by the grand jury, there in Lee county, a greater number than usual?

A. I don't remember the year, but I think that is correct.

Q. Who was the sheriff of Lee county then?

A. John T. Carlisle.

Q. Were you present when the grand jury met at that term of court?

A. I was.

Q. State what happened as to Sheriff Carlisle and yourself and the grand jury, at the incipiency of its meeting?

A. After the grand jury was organized, Mr. Carlisle came before the grand jury with the grand jury docket already prepared, as is the custom usually in most of the counties, in which he had a great many cases which embraced the violation of the liquor traffic, and he had an extended talk with the grand jury in which he said that he had heretofore been severely criticized for the non-enforcement of the liquor law in Lee county, and that he wanted the grand jury, I think his words were, to stay with him in this grand jury in regard to the liquor traffic, and he requested them to vote a bill against every man in every case that showed they were guilty of violating the liquor traffic.

Q. That sheriff then stated that his object was to bill every man in Lee county that the grand jury could find that had violated any of the laws against the liquor traffic?

A. That is correct.

Q. Did you and the grand jury proceed to do that?

A. The grand jury proceeded to do that.

Q. I meant to say, you were present, and advising them?

A. Not at the time they voted on the bill.

Q. But you were with them during the investigation, and advising them?

A. Yes, I advised them it was not a good policy to return the number of bills against Ted Donevan which they brought.

Q. But, in spite of that, they did return the bills?

A. Yes, they did.

Q. How many—do you recall?

A. Something like thirty or forty bills.

Q. That is, against the one defendant?

A. Yes.

Q. How many were found as a whole?

A. Something over ninety bills, including all the Federal cases for that term of court.

Q. Practically all of them were for the liquor law violations?

A. Yes.

Q. Do you recall the Ted Donevan case?

A. Yes.

Q. What happened after the negro was indicted?

A. The negro fled from Lee county and from the State of Texas,

and Mr. Carlisle, the sheriff, went into Michigan—I think it was Michigan, after Donevan, and brought him back to Texas and Lee county.

Q. After he was brought back to Lee county, what was done as to the matter of trial against him?

A. He was tried. The first time he was tried, as I remember, he had a hung jury. Then there was a second trial, and he was acquitted. The third time his case was called for trial, Judge Jeffrey of the Twenty-second Judicial District, had exchanged benches with Judge Price, and he was on the bench at that time, and when the case was called on Monday morning, as I remember it it was Monday, his attorney appeared and stated that Donevan on the Saturday night before had gotten his arm cut off in a gin, and that he was at the point of death and that the case could not be tried. The case was continued, and at the next term of court, due to the fact that I had had one acquittal and one hung jury, and that he had lost his arm in the meantime, a number of the leading citizens said that it was impossible to get a conviction in the case, and the case was dismissed.

Q. That was done upon your motion as district attorney?

A. That is correct.

Q. Was it your object, in prosecuting Donevan under these indictments, to make money for the sheriff of Lee county, or were you trying to enforce the laws of the State of Texas against the liquor traffic?

A. It was not my object to make money for the sheriff, and on the contrary, it was my obpect to endeavor to enforce the law in Lee county.

Q. Especially against the liquor traffic?

A. Yes.

Q. When process was issued for the witnesses summoned by the State in that case, was it issued for the purpose of the enforcement of the law, and in an attempt to secure a conviction in that case?

A. That is correct.

Q. Was that your object in getting out those process in that case, Judge?

A. That was my only object.

Q. Now, I direct your attention to another case that came up about that time, against a man called John Johnson. Do you recall that case?

A. I do.

Q. What was Johnson charged with?

A. As I remember, there were three counts in the indictment, as I remember. One, for general burglary—for breaking and entering and the other count was burglary of a private residence at night, and the third was for felony theft; all in the same indictment.

Q. Was he a white man, or a negro?

A. A negro.

Q. What was the result of his trial?

A. He was given five years in the penitentiary.

Q. And you say those were the charges against him?

A. Yes.

Q. One of them, was the burglary of a private residence at night in the count?

A. Yes.

Q. In the prosecution of the case against John Johnson, did you proceed with the idea of vindicating the laws of the State of Texas, and convicting the man?

A. I did.

Q. You had no other object in that case?

A. No, sir.

Q. You had no other idea or object except to vindicate the laws of the State of Texas?

A. No, sir; I never have.

Q. I now direct your attention to a case, The State of Texas vs. Mack Matthews, in Bastrop county. Do you recall that particular case?

A. I do.

Q. With what was the defendant charged in that case?

A. Murder, in two indictments.

Q. Do you recall the day of the month—I won't ask you for the year—but do you recall the day of the month that killing was alleged to have occurred?

A. Oh, yes.

Q. What date was that?

A. On the 19th day of June. I don't remember the year.

Q. Was it at some celebration held by the darkeys in honor of the 19th of June, or something of the kind?

A. There was a general celebration, covering the entire county and other counties around, and a very large crowd of negroes that attended the celebration; I think from the evidence it would run up into the thousands.

Q. Do you recall, of your own recollection, about how many witnesses the State summoned in that case?

A. I have no independent recollection of it; but I looked at the record this morning.

Q. All right, from that?

A. There were around 100 witnesses.

Q. In summoning 100 witnesses, were you actuated by your idea as district attorney to carry out the law of the State, and to convict the defendant?

A. That was my only object, Senator Page.

Q. When that case was first reached for trial, what disposition was made of it, according to your recollection?

A. As I remember, Mr. Murchison of Haskell, was defending that case, and I think in fact this particular defendant lived on the Murchison farm, as I recall it, and some three or four days or a week before the case was called for trial—it had already been set down—Mr. Murchison got in touch with me and wanted the case continued, due to the fact that he was engaged in the trial of some other case, and knowing the difficulty of contesting the first application for a continuance—in fact, I think it is almost impossible, where they make the first application, to contest it successfully—I agreed with Mr. Murchison to continue the case, and the case was continued and charged to the defendant.

Q. Then the case was continued until another term of court?

A. That is correct.

Q. Were the witnesses present so they could be notified to come back, or did you have duplicate process issued?

A. There was duplicate process issued in the case.

Q. Did you consider that that was necessary, in order to serve the ends of the law?

A. I did.

Q. I will ask you what disposition was made of the case at the next term of court?

A. After the adjournment of the first term of court, at which time this case was called, you, Senator Page, and Jack Powell were employed to aid Mr. Murchison in the defense of the case, and you, at the next term of court, were engaged up here in Austin before the Legislature, and made an application in writing for another continuance in the case, and the continuance was granted upon your application.

Q. That was the second continuance?

A. That was the second continuance in that case.

Q. Then what was done at the third term of court with reference to this case?

A. The case was tried at the third term of court.

Q. What was the result of that trial?

A. A conviction was secured, with a penalty of five years in the penitentiary.

Q. What was then done, with regard to the further disposition of the case?

A. A motion was filed for a new trial, and that motion was overruled, and then notice was given of appeal to the Court of Criminal Appeals here at Austin, and the case was appealed.

Q. What was the result of the hearing and the trial before the Court of Criminal Appeals?

A. The case was reversed and remanded for a new trial.

Q. The mandate was then returned to Bastrop county?

A. It was.

Q. Was it possible, while that case was pending in the Court of Criminal Appeals, to find out what the action of that court would be and when, or was it necessary to again issue duplicate process for the witnesses at the next term?

A. It was impossible to anticipate the action of the Court of Criminal Appeals, of course, and it was necessary, after the case was reversed, for the witnesses to be resummoned.

Q. I will ask you if it is not a fact that in that opinion of the Court of Criminal Appeals, they did not practically emasculate your case, and in that opinion held, practically speaking, that you just had no case?

A. That was my opinion after reading the opinion of the court, and after a thorough study of the opinion, I agreed to a five-year suspended sentence in the case.

Q. And the defendant took that sentence and is now under it?

A. Yes.

Q. I now direct your attention to the case, The State of Texas vs. Mur-

ray Henderson, another negro. Do you remember that case?

A. Yes.

Q. With what was he charged?

A. Murder, if I remember.

Q. Was that at some negro supper or celebration, where a large number of people were supposed to be present?

A. That's correct.

Q. Were the people that you summoned in that case as witnesses summoned in order to help the sheriff make some money, or for any improper purpose—

A. They were not summoned for improper purposes.

Q. Or were they summoned that you might carry out the law, and to serve the ends of the law?

A. They were summoned only for the purpose that justice might be done.

Q. What disposition was made of that case after the negro was indicted, at the first term of court?

A. It was continued upon the application of the defendant.

Q. You have stated that under the laws of the State of Texas, and I believe the Attorney General here agrees with you, that it is almost impossible to defeat a first application for continuance, under our laws, isn't it?

A. I have found that to be correct, Senator Page.

Q. And don't you find that the ends of justice are probably attained more speedily by agreeing to the continuance, by agreeing to it rather than resisting it?

A. I think where there has been a proper application for a first continance, it would be folly for the trial judge to refuse to grant it. It would only result in a reversal in the higher court and additional expense and an additional handicap upon the State of Texas.

Q. What was done at the following term?

A. Another application for continuance was made and granted.

Q. The case was then continued a second time?

A. Upon application of the defendant.

Q. A written application filed there?

A. A written application, filed regularly and properly, as I remember.

Q. Then at the third term of court, was there a trial had?

A. There was.

Q. What was the result of that trial?

A. He was convicted and given a two-year sentence in the State penitentiary.

Q. Convicted, and the negro was given a two years' sentence in the penitentiary?

A. Yes.

Q. Then you secured in both of those cases a conviction; and in one of them, by reason of the opinion and decision of the Court of Criminal Appeals which in effect emasculated your case, it was a five years' suspended sentence, and in the other, the defendant received a two years' sentence in the penitentiary?

A. Yes.

Q. The district attorney has asked this question of a witness upon the stand; he asked the clerk, I believe it was, when you had a nice, juicy murder case down there, with a large number of witnesses, if the custom was to continue that case from term to term so the sheriff could make some money out of it. Is any such practice as that going on in any district or court where you practice?

A. Absolutely not.

Q. Would you permit such a thing?

A. I would not.

Q. Did you ever collude with the sheriff in any court or district to make him any money?

A. Absolutely not.

Q. Or have you been, on the contrary, actuated entirely by an earnest desire to enforce the laws of the State of Texas?

A. I have only been actuated by a desire to uphold the best interests of the State of Texas.

Q. Have you found the district judge, J. B. Price, has seconded your efforts in that regard, or has he handicapped you in any way by continuing cases over your protest?

A. I have found him filled with a sense of justice in all matters which have come before him. Of course, we have disagreed at times, about what ought to be done.

Q. Naturally.

A. But I am sure that his motives were pure in the matter.

Q. Well, you go from Bastrop possibly to Giddings, and possibly to Brenham, and other places around. Do you know what opinion is held by

lawyers and the people in general of that district about J. B. Price, the district judge under whom you serve?

A. Yes. I feel I know Judge Price as well as, or better than, any man I have ever known. I have been associated with him every week since I have been district attorney, in such a way and manner that I feel I absolutely know Judge Price.

Q. What is your opinion of him?

A. I think he is one of the finest gentlemen that I have ever met.

Q. What about him as a lawyer and a judge?

A. I think he is a competent lawyer, and a good judge.

Q. Is it the opinion of the lawyers over the district; is that their opinion?

A. It is.

Q. Is that the unanimous opinion, without any single dissent in that district?

A. I think it is perfectly safe to say that it is.

Q. You know something about sheriff's accounts, I assume, by being district attorney, and being about the courts where those accounts are presented. You have seen those accounts?

A. Senator Page, I know very little about those sheriff's accounts.

Q. You just know the general custom about those accounts?

A. In a general way, I do.

Q. As a rule, those matters, those accounts are presented, necessarily, at the close of the court, to the judge?

A. That is necessarily so.

Q. I will ask you if the district judge, in your opinion, has the time to make a careful examination of all those accounts at the close of each term of court?

A. I think it would be impossible, where a big record was presented to him, for him to properly audit the account.

Q. You have four counties in that district?

A. Four counties, yes.

Q. Isn't it a fact that just as soon as your court is over in one county, it is time to go to another county, and so on all the way through?

A. That is approximately correct. I can give you the dates, if you care for me to.

Q. That is not necessary, but the fact is that you have very little time intervening, except one time in summer time?

A. There is one time, after the June term in Bastrop county, which goes generally into July, and then there is about four weeks' intermission between that court and the next court, which meets in Washington county. That is the only intermission in that district.

Q. You have prosecuted faithfully, during your tenure as district attorney, such bills as have been found by the grand jury, and you have tried faithfully to vindicate the law?

A. That is true. I have been elected four times to the office and have never had opposition to the office.

Q. You have stated that you have been district attorney, and Judge Price been district judge, going into office at the same time, and working together ever since. I assume you have been present at every term of the district court since you went into office?

A. Yes, except for one term when I was sick in bed, in Washington county.

Q. Have you ever observed anything on the part of Judge Price or his conduct, that would carry to your mind any idea that he was guilty of any official misconduct of any kind in his office?

A. Absolutely not.

Q. Do you believe that his intent has been, as has yours, to carry into effect the indictments which grand jurors return, and to carry out the provisions of the law to the best of his ability?

A. I believe so; I feel absolutely certain of it.

Q. That's all.

Mr. Sturgeon: Does the Chair desire to conclude with this witness before lunch? It's twelve o'clock now; it doesn't make a particle of difference to me.

Mr. Graves: I think the best thing would be to adjourn. I move that the House give unanimous consent to the Committee to stand at ease until 1:30.

The Chairman: The gentleman moves that the committee be given unanimous consent to stand at ease until 1:30 this afternoon. Is there any objection? The Chair hears no objection and it is so ordered.

August 18, 1931—1:45 o'Clock p. m.

The Chairman: The Committee will please be in order. The witness will please resume the stand.

The witness, Merton L. Harris, resumed the stand.

Cross-examination.

Questions by Mr. Sturgeon:

Q. Mr. Harris, I believe you are the same person that testified this morning?

A. I am.

Q. I understand you to say you are now the district attorney of the Twenty-first Judicial District of Texas?

A. Yes, that is true.

Q. How long have you been such district attorney?

A. Approximately seven years.

Q. Approximately seven years?

A. Yes.

Q. Has Judge Price been district judge of that district ever since you have been district attorney?

A. We took the oath of office at the same time.

Q. At the same time?

A. Yes.

Q. Then your terms of office for which you were elected the last time expire, as I understand it, on January 1, 1932?

A. I believe that is correct, yes. He has been elected twice as judge, I believe for four years' terms.

Q. Each one of his terms are four-year terms?

A. Yes.

Q. And yours are two-year terms?

A. Yes.

Q. How many counties do you have in the Twenty-first Judicial District?

A. Four counties.

Q. How many terms of court each year do you have in each one of those counties?

A. Two terms per county.

Q. I believe your testimony was this morning that you have—making a sum total of your testimony—thirty-two weeks of court in those four counties per year; did I understand you correctly in that?

A. I haven't figured it from that basis.

Q. How many terms of court, a year do you have in Bastrop county?

A. Two terms.

Q. What length are those terms?

A. Six weeks each.

Q. How many terms of court each year do you have in Washington county?

A. Two terms at six weeks each.

Q. You are sure that each term is for six weeks each?

A. Under the statute, that is correct.

Q. That's Bastrop and Washington county. How many terms do you have in Lee county?

A. Two terms.

Q. At six weeks each?

A. No, sir; four weeks each.

Q. That's eight weeks. How many terms do you have in Burleson county?

A. Two terms.

Q. At how many weeks?

A. Five weeks each.

Q. Five weeks each would be ten weeks in a year's time?

A. That is the statutory provision, Mr. Sturgeon.

Q. Yes; well, of course, you all hold the court according to the statute?

A. Sometimes the court adjourns a few days sooner than the statute provides.

Q. You can convene as the statute provides?

A. Yes.

Q. Then you have forty-two weeks of court each year?

A. Whatever that figures, I haven't figured it.

Q. I assure you that is what it totals.

A. Yes.

Q. With fifty-two weeks in the year then, you have ten weeks intervening somewhere between your terms, out of the year, basing fifty-two weeks as constituting the year. Is that true?

A. Yes. I may, since I have thought about it, I may have made a little mistake in my direct examination this morning. There is a little intermission between the November term in Burleson county, and the next term, during the Christmas holidays. There is a week or two there under the statute, not covered by the court work.

Q. Taking it that you hold district court in that court as you have stated, and assuming that you fill out or round out all the weeks as provided by law, you would have in all probability, have court 42 weeks.

A. If that adds that way, it would be correct.

Q. Of course, sometimes your court does not run that long, and sometimes the court extends the term?

A. I think maybe we have extended it.

Q. Yes, sir. Now you have a great deal of civil business in that district, do you not?

A. Yes.

Q. That the court is required to hear and determine?

A. Yes, about the usual run of civil business in country practice.

Q. About the usual run in country districts.

A. There is no big towns; Brenham is the biggest town in the district.

Q. What is the average number of indictments returned by your grand jury at each term in Bastrop county, Judge, just striking a general average?

A. Mr. Sturgeon, that would be mighty hard for me to answer, offhand.

Q. Well, I am not trying to tie you down to any figures. I just want you to give us a general estimate; do you have 35 or 40? Sometimes you have more and sometimes less?

A. I remember one time we had running up into 65 or 70, and another time we had 57, and this last term of court, as I remember, there were 16 felonies; I think that's correct.

Q. Sixteen felonies?

A. Yes.

Q. Washington county is the largest county in point of population in that district, isn't it?

A. Well, perhaps that's correct. I think that is correct.

Q. And Washington county, does it have less or more criminal business than the other counties in the district?

A. Less criminal business than any other county in the district, I believe.

Q. Could you tell us why that is, Mr. Harris?

A. No, sir; I don't know that I can.

Q. What is the largest town in Washington county?

A. Brenham.

Q. That's the county seat?

A. Yes.

Q. About what is the population of the county seat of Washington county?

A. This is entirely guesswork with me; I think it's around six thousand population.

Q. And you hold two 6-week terms of court in Washington county?

A. The statute provides for two 6-week terms.

Q. That's what I was asking you about. You stated this morning on direct examination, of course, we realize and know that you are Judge Price's friend, and naturally so?

A. I am.

Q. We don't fall out with you about that.

A. I am.

Q. You stated this morning that you, as district attorney of that district, have made it a practice of issuing subpoenas or making applications, rather, for the issuance of subpoenas for witnesses in cases sometimes in duplication; I believe you stated that, didn't you?

A. Sometimes we have done that, yes.

Q. What I mean by that is, for instance, in the Ted Donevan case or cases, that you were interrogated about, where there were 37 indictments against one defendant. Did you make application to the district clerk for 37 different applications or subpoenas for witnesses, to be subpoenaed 37 different times in those cases?

A. The record, of course, would show. I don't have any independent recollection of that, but I take it I did.

Q. I have not examined the record; I don't know. I thought probably you would remember something about it.

A. Yes.

Q. Then, if the record shows that in the 37 cases pending against this Ted Donevan, that you made application for 37 times for witnesses to be subpoenaed in that case at the various terms of court that that case appeared on the docket for trial—if the record shows that—

A. If the record shows it, it would be correct.

Q. Do you have any independent recollection of how many witnesses you made application for? In any one term of court in those cases?

A. No, sir, I do not.

Q. Do you know whether those records are here or not?

A. Part of them are; I don't know about all of them.

Q. You were asked about the Mack Matthews case in Bastrop county, weren't you?

A. Yes.

Q. I believe you also stated to Senator Page that you had paid very little attention to the sheriff's accounts?

A. I had no occasion to pay any attention to them, Mr. Sturgeon.

Q. That's true, I am sure, because it is not in line with your duty.

A. It was not in line with my duty.

Q. Then, you know very little about them, except what you have heard?

A. That's all.

Q. Then, there were a very large number of witnesses summoned in the Mack Matthews case, wasn't there?

A. Yes.

Q. Was it your practice in that case, as in others, to make applications the second, third, or fourth time for the same witnesses in the same case at various terms of court?

A. I think that is true in that case. It is not always true.

Q. Did you make an application, or do you have any recollection of it, and if you do not, I will appreciate it if you will look at the papers—I see the clerk is here from that county, and find out if he has the papers here that contains the application made by you and the defense for witnesses, and tell us whether or not you made an application twice for a witness by the name of Tommie Lee Hornsby at the same term of court in 1928 in the Matthews case.

A. I have no independent recollection of that matter.

Q. I notice here, the reason I asked that question, I notice from the sheriff's account, as approved by Judge Price, that there is a witness by the name of Tommie Lee Hornsby, who shows to have been summoned on July 1, 1928, by going 44 miles west, and also on July 2, by going 48 miles southwest, in the same case, on two consecutive days. Do you remember whether you made application for such subpoenas?

A. I don't know.

Q. You would not make application to the clerk twice to summon the same witness, twice in the same term of court, would you?

A. Not unless I made a clerical error in the first application.

Q. I notice a witness by the name of George Waites, who shows to have been subpoenaed July 6, 1928, and then July 2, 1928, by traveling a certain distance, in the same case, in the same term of court. You didn't make such application for him, unless it was an error?

A. If I did, it would have been a clerical error.

Q. In performing your duties, under your oath as district attorney in that district, I will ask you if it is not a fact that most of your grand juries, empanelled in that district—you work with them, of course?

A. Yes, I have no assistant in my district. Of course, the county attorneys assist me when I call on them.

Q. Sure, but I will ask you if it is not a fact that your grand juries in voting on the various complaints lodged with them, and the various indictments that they are considering, if it has not been your custom and is not your practice, to advise your grand jury as the law requires, with reference to the number of indictments they might return.

A. I have never made a practice of dictating to my grand jury as to the number of bills to return.

Q. I am not asking you that. I am asking you—the law requires you to advise your grand jury, and to work with them.

A. I have done that.

Q. I am asking you if it has been your advice to your grand jury, which constitute the average laymen in your county, do they not?

A. Yes, I would think so.

Q. Picked out of your best citizenship?

A. Yes, usually they are high-class men.

Q. Your commissioners are appointed for the preceding term to elect a grand jury for the succeeding term for the court?

A. That's right.

Q. And I will ask you if the personnel of your grand juries are not men who are good business men and good farmers, and most of the time, good men?

A. I think that is correct.

Q. That's correct. Now, I will ask you if, in working with those

grand jurors, if they have not advised with you and counseled with you about what your ideas were and your thoughts were with reference to the number of indictments that would be returned against any one individual?

A. Very often they do that.

Q. Very often. Did they do that in the Ted Donevan case?

A. They did not.

Q. They didn't. Could you tell the Committee why it was they made an exception in his case?

A. No, sir; I know of no reason, unless the fact that the sheriff appeared before the grand jury and injected his personality into the matter.

Q. I believe you stated that the sheriff told the grand jury he wanted them to assist him in enforcing the law against the liquor traffic?

A. That's correct.

Q. That's correct; your sheriff did that?

A. Yes.

Q. Your sheriff, of course, is the man who makes the arrests of men charged with crime in your county?

A. That's right.

Q. And he is the man who serves the process upon witnesses who appear and testify, both for the State, and the defense?

A. Yes, that's correct, and another thing, in our judicial district, and I think most of the ordinary districts of Texas, the district attorney has no special investigators, and the district attorney has to rely upon the sheriff for his investigations and his information as to the cases pending.

Q. That's true. But I will ask you, Mr. Harris—you stated this morning you had made a special effort to try to comply with your oath as district attorney and you had made a special effort to assist the officers of your district in enforcing whatever laws were violated?

A. I did not mean to imply that I had done any more than any other good district attorney had tried to do, but just as any other district attorney would try to do.

Q. I didn't try to infer that, but you did try to do your duty as laid down by the law?

A. That is correct.

Q. These 37 indictments that were returned against Ted Donevan, in which witnesses were summoned several times, and he was arrested several different times; I will ask you if all of these cases were not for violations of the liquor law?

A. Against Ted Donevan?

Q. Yes.

A. I think that is correct.

Q. You, of course, are familiar with some of the provisions of the Code of Criminal Procedure and the Penal Code of our State?

A. Well, sometimes we think we are, but we don't always know.

Q. About like all us lawyers, you don't know it all, and some of it, there don't any of us know?

A. That's right.

Q. But I am asking you if, in line with your duty as district attorney, and in enforcing the law or attempting to do so, it is finally left to a jury in the district court?

A. That's correct.

Q. But I will ask you this question, Mr. Harris—I don't believe it has been asked of you—

A. I think in this last Legislature, you have provided for a waiver of the jury in felony cases where they plead guilty.

Q. Well, I have my doubts about that law, but that's not up here. Mr. Harris, are you paid by salary, or on a fee basis?

A. I am paid by salary.

Q. I will not ask you what that is, but your salary is fixed?

A. Fixed, and paid by the months now.

Q. Paid by months?

A. Yes.

Q. Are you familiar with Article 63 of the Penal Code of the State of Texas? I will show it to you, and get you to look at that statute there.

A. Yes, I have read that provision before.

Q. Would you mind reading that provision to the Committee?

A. "Whoever shall have been three times convicted of a felony, less than capital, shall on such third conviction be imprisoned for life in the penitentiary."

Q. All right. Now Ted Donevan and several others whose names I will not call, as appearing in the sheriff's accounts, it shows they had 37 indictments, some of them ten and some fifteen cases against them, for the same kind of felony. I will ask you if you don't think that it would have been a great saving to the State of Texas if you would have advised your grand jury and if they had re-

turned four or five or six indictments against Ted Donevan, or any other man, for the same character of felony, and if you tried him three times and convicted him three times where you could place him in the penitentiary for life—don't you think that would have been a big saving to the State of Texas, instead of indicting the man thirty or forty times for the same kind of felony?

A. I think so, Mr. Sturgeon. I might state to you again—I would think that the indictment would have to specifically state that he had heretofore been convicted.

Q. Yes, the third one—there's no question about that.

A. And at the time I approved these indictments, I could not have said that, and it would have been impossible to have drawn that indictment under that law.

Q. Yes, but your grand jury generally meets the first part of the term and recesses and meets back again?

A. Hardly ever in Lee county.

Q. But you could have had him indicted five or six times only and you could have done so and tried him, and then at a later term, indicted him for the third offense, and stated that he had been theretofore convicted?

A. If the grand jury had followed my instructions, I could have done that, but they didn't do it in returning these indictments.

Q. All right. Now I will ask you, Mr. Harris—I believe I asked you while ago if you were acquainted with the population in Bastrop county.

A. No, you didn't ask me that.

Q. What do you think the population of Bastrop county is?

A. Around 25,000, I think.

Q. If the Federal census shows it, for 1930, to be 23,888, and of Burleson county, 19,848, and Lee county, 13,390, and Washington county, which I believe you stated and which is the largest county in your district?

A. I think that was correct.

Q. Has 25,395 people.

A. All right.

Q. Then in so far as the sheriff's accounts are concerned, that have been approved by District Judge Price, and sworn to by the sheriff, you have not bothered yourself with making an examination of them, and don't know anything about them?

A. I have no knowledge of it, except from hearsay.

Q. Except from hearsay?

A. That's all.

Q. It has been the practice and custom, since you have been the district attorney, to have duplication of process issued for all of the witnesses in all of the cases for each term of court?

A. I don't know whether you call it a custom or not. I have done that at times.

Q. I am talking about the cases that are continued or for any reason are not tried?

A. Yes.

Q. Have you done that at the direction of the district judge?

A. Well, I don't believe that I could say that I did.

Q. Well, then, you did that either, at your own initiative, or because it had become a custom.

A. I did that because I thought it was to the best interests of my cases.

Q. Do you cause many attachments to issue in your district?

A. Occasionally.

Q. Occasionally. Has it been your practice out there, where a witness has been served to appear at a certain time and place, and fails to appear, that you have attachment issued for him?

A. I have done that on numerous occasions.

Q.. You have done that?

A. Yes.

Q. I believe you stated you tried Ted Donevan once and had a hung jury?

A. That's correct, Judge.

Q. And then?

A. We tried him again, and he was acquitted.

Q. In another case?

A. Yes.

Q. And that left 35 cases on the docket?

A. I believe that is correct.

Q. Yes, there was 37 indictments against him?

A. Yes.

Q. And that left 35 cases on the docket?

A. Yes, that's correct.

Q. And I believe you stated some of the business men told you you couldn't convict him?

A. Not only the business men, but I am sure Judge Sinks would not object to me saying this; that I advised with him about it.

Q. What did the sheriff think about it?

A. I don't remember his advice about it.

Q. Did you have colored witnesses or white witnesses?

A. Principally colored witnesses.

Q. Were most of these cases for selling liquor, transportation of it, or what?

A. The record will show, manufacturing, selling, transportation, and possession.

Q. Where does Ted Donevan live now, if you know?

A. I don't know, Mr. Sturgeon.

Q. Do you know whether or not his arm was cut off after the sheriff went to Texarkana, or Michigan, or wherever it was, or before?

A. It was after.

Q. After?

A. It was after his two trials. I think I am correct about that.

Q. I think you are.

A. I think I am. It was after the trial where he was acquitted and also after the trial, with the hung jury.

Q. All right. He has habeas-corpused in all those records, it shows?

A. Yes.

Q. And his bond was fixed at $140 in each case.

A. I don't know what the record shows on that.

Q. Aggregating five thousand dollars, and something?

A. I don't know.

Q. Do you know whether or not he forfeited those bonds?

Senator Page: He ran away before he was put under bond; I just wanted you to know the facts.

Q. Senator Page suggested to me a fact that I didn't know. Do you know whether this darkey ran away before he was put under bond, or afterwards?

A. I feel sure it was before he was placed under bond.

Q. Before he was placed under bond.

A. Yes.

Q. And then he was brought back, and then you had him put under bond?

A. I am sure that is correct.

Q. Yes. Well, he was out on bond at the time he got his arm cut off?

A. Yes.

Q. And he was out on bond, wasn't he, at the time the cases were dismissed against him?

A. Yes.

Q. Have you been on a salary all the time since you have been district attorney?

A. When I went in I believe it was on a per diem basis.

Q. Just so much a day?

A. Yes.

Q. Did you receive any fees of office?

A. Never have since I have been in office.

Q. I believe your per diem was $15 a day?

A. No, it was $20, I think.

Q. All right. Do you have a county attorney in these counties?

A. Yes.

Q. How much are they paid, if you know?

A. They are paid on the fee system.

Q. On the fee system?

A. Yes.

Q. Do you hear most of the habeas corpus hearings that's heard in your district, or not?

A. No, when I am in the county I oftentimes do, but when I am away, the county attorneys hear them.

Q. And when the county attorneys hear them, the law provides he is entitled to that fee?

A. Yes, he is entitled to it. I don't know what the fee is.

Q. $10. He is entitled to a fee of $10. Can you, in a rough way, tell us about how many habeas corpus hearings you have attended, and represented the State, in the last year—just a rough estimate of it?

A. We have had very few habeas corpus proceedings in our court in the past year; only one or two, I believe.

Q. Only one or two?

A. I may be wrong about that.

Q. Of course, the county attorney's reports will show that?

A. Yes. I want to make this statement, too, Mr. Sturgeon—that very often, and I think you will find by looking at the record that that is generally true, that when I am involved in the matter that I waive the proposition and don't have any; just set the bond by agreement, without any habeas corpus.

Q. And unless it is a capital case, you hardly ever take any testimony?

A. Yes, and oftentimes, in the capital cases, where we feel the death penalty should not be inflicted, where it is available, we agree upon a bond without habeas corpus proceedings; that is often done.

Q. And the truth about it is, that often even in cases where applications for writs of habeas corpus have been sued out, an agreement is taken by counsel?

A. That is often true.

Q. And you hardly ever take any testimony in an application for habeas corpus, unless it's a rape case or murder?

A. Not very often.

Q. Counsel suggested that I ask you about the Ollie Donevan matter; do you remember the case of that name?

A. I think we had two Donevans connected with the same grand jury. I believe that is the given name of the other Donevan.

Q. Was that a woman, or a man—do you know?

A. It's a man.

Q. All right.

A. I say that only from the remembrance that there was no woman indicted among this particular bunch of defendants.

Q. Do you remember off-handed what became of the eight cases against that party?

A. They were dismissed.

Q. Do you remember how many times they appeared on the district court docket, as having been set for trial?

A. No, I do not.

Q. Of course, as I asked you before, you are closely aligned and closely connected with Judge Price in that court, and with him as a man?

A. Naturally so, being district attorney. I think I know Judge Price better than any other human that lives; I feel that way about it.

Q. Yes, sir. Did he ever come to you and discuss with you about the sheriffs' accounts; these big accounts that the sheriffs filed with him?

A. He has not—never.

Q. He has not. You and he have roomed together, have you not, when he was holding court?

A. No, I have never roomed with him.

Q. But you were with him for days and weeks?

A. Wait, now; I will qualify that in this: In Caldwell, in Burleson county, we stay at the same hotel, but not the same room.

Q. That's all right. You say Judge Price has not talked with you about these various accounts?

A. He has not.

Q. That's all.

Senator Page: I believe that is all at this time with Judge Harris.

(Witness excused.)

Senator Page: We now want to offer in evidence the court decision in the case of Bingham vs. State, which is reported in 275 S. W., page 147. We will offer that in evidence, and we will ask the reading clerk to read the marked portion of that decision.

Mr. Sturgeon: We will certainly object, Mr. Chairman, to offering the ruling of the court in evidence, not because we are afraid of it, but because we do not want to have the record burdened with that decision.

These gentlemen will have an opportunity to use that in their argument, and this is bound in the law books, and we are going to object to this going into this record and encumbering the record with that, and besides that, this Committee, which has outlined these articles that have been heard here, have gone into that matter, and furthermore, if this is offered in evidence it will be necessary for us to offer in evidence the decision handed down by the Supreme Court of this State.

We do not see any occasion for burdening the record with that at this time, and taking up the time of this Committee with the reading of this long decision, when that is a matter that can be argued to this Committee, and should be presented to the Committee in the nature of argument.

Senator Page: Mr. Speaker, we do not propose offering all of it—

Mr. Sturgeon: Just a little further, please, and then you can answer this. It will put the State to all the expense of having that incorporated in the record, not only the time that it will take to do that, but it will be necessary to have all of that transcribed into the record, and we do not see any necessity of encumbering the record with all of that matter. This House, which will have to pass on this matter, can hear argument covering that, and it can be disposed of as

fully and the whole matter can be read into the record at the time the argument is made, if that is deemed necessary.

It is true that some of these witnesses have been interrogated about this particular law. They have been asked about the wording of the appropriation bill, and the provisions of the appropriation bill relative to the payment of these accounts, but those are all simply matters of argument that ought to be brought and may be brought out before the Committee at the time the argument in this matter is reached, but to permit this to be read into this record at this time, these decisions, and briefs of the lawyers, seems to me to be preposterous.

Senator Page: Mr. Speaker, if you will recall, the account which they object to having—the acts which they object to having been followed by the Comptroller, that that account was approved under the authority of Bingham against the State, and also of the case of Rochelle vs. Lane. That account has been introduced by the proponents of this investigation. We merely desire to introduce into the record part of that decision that deals with that account and which shows it was approved under this decision and we want this Committee to understand that Judge Price in approving that account, proceeded under the decision handed down in that case, and there is indorsed on the account that it was approved under that decision. Certainly, there is no desire on the part of the respondent or his attorneys to place any undue burden upon the State of Texas. A large portion of the record covering that account has been offered in evidence by the proponents and we desire the testimony offered now in the matter of this decision to go into the record. We think the testimony offered by us will compare very favorably with the evidence offered by the proponents of this matter in the matter of expense. We have, in fact, tried to save the State as much expense as possible in this matter, and we do not think that we should be cut off from offering this at this time, especially in view of the fact that the district judge at the time he approved this account placed a notation on the expense account showing that it was approved in accordance with that decision.

The Chair: Do you not think that that ought to be used in the way of argument, at the time this case is argued?

Senator Page: Mr. Speaker, we could perhaps do that, but you will recall that in going into this matter that evidence has been offered—you will recall, I am sure, that this matter was gone into by the State and we believe that this matter should go before the Committee and that the Committee should have the benefit of this decision which was the authority for Judge Price in approving this account at the time he did.

Mr. Sturgeon: (Interrupting) Mr. Chairman, I am objecting to this only because if this decision goes in there here at this time we feel that it will be necessary for us to put in a lot of other court decisions because there is an issue which is sharply drawn with reference to the construction placed on this ruling of the court. That is a matter surely that should be argued. That is a matter that should be argued before this House, and is a matter which we propose to argue. If this matter goes into the record at this time, it will mean an endless amount of testimony. If this is permitted to go in it will mean that there are four opinions that will have to go in the record here. One of these opinions that the Court of Civil Appeals handed down contained something like forty-five pages of printed matter, and would be an undue burden upon the State to place that in this record, and we believe that that is a matter that should be argued rather than placed in the way of evidence, and in that way this record would not be encumbered with all of that.

The Chair: I think that is the proper procedure.

Judge Batts: Let me make this remark, please, Mr. Chairman: It is charged in these charges that these accounts were wilfully approved and improperly approved. We want to say that the most considerable account here was approved when this opinion was immediately before the court. It is properly a matter of evidence. Whether it is correct, whether it was correct law or not—it was the law at the time Judge Price approved these accounts. It is further indicated here by the testimony of Mr. Chandler that a subsequent ruling ought to have changed the ruling of Judge

Price. We want to show that under the ruling in the Rochelle case he has no authority to make any change in the approval he had made of this account, and we think this ought to be admissible for that purpose.

This is not a question to be argued, but is one of those matters which appertain to the good faith of the respondent.

Counsel suggests that there is some forty-five pages of this matter that would be read into the record. What we are going to introduce here will, of course, not cover that much, as only certain portions of the opinion handed down in that case that we desire to offer at this time in this connection, and we are not undertaking to argue the question at this time. We take the position that in view of the decision of the court before Judge Price at the time this matter came up, he acted in his approval of that account in the light of the law which he had before him at that time, and in his approval of this account he applied the law of the land at the time, as it was then.

The Chair: We have gone very far afield in the introduction of testimony and there has been read into this record excerpts from the statutes, but it just occurs to the Chair that certainly to go further and read into the record long court decisions would be going beyond all bounds of reason.

If you gentlemen desire to use this in the way of argument, I think that is the proper place to do it. But I do not believe that we should encumber the record which we are having transcribed at great expense to the State, by putting into it long court decisions.

I am going to sustain the objection that has been made.

Senator Page: I would like to state in deference to the ruling of the Chair, that all we intended to do was read brief excerpts from this decision in order to show that Judge Price in approving this account acted in accordance with this decision. That is all we ever intended to offer. I will state now that we are now about ready to close our testimony with the exception of the testimony of Judge Price, and we would like to have a few minutes at this time to go over the case with him, but we want to state now, that with his testimony our case will be closed.

Thereupon, a recess was taken for purpose of permitting counsel for the respondent to confer with the respondent.

Thereupon, Judge J. B. Price, being duly sworn by the Chair, testified as follows, on direct examination by Senator Page:

Q. Judge Price, about three or four years ago you suffered a slight paralytic stroke, something of that kind, did you not?

A. Yes, sir.

Q. I know that stroke has impaired your voice to some extent, and I will ask you to be careful in trying to answer these questions so that the Committee members may be advised as to your testimony, and would be glad for the members of the Committee to listen as carefully as possible so that they may get his answers.

Q. Your name is J. B. Price?

A. Yes, sir.

Q. Where do you live, Judge?

A. I live at Bastrop.

Q. How long have you lived there?

A. All of my life, born, and raised in the county.

Q. What was your father's name?

A. R. J. Price.

Q. Was he ever a member of the State Legislature?

A. Yes, sir. He was a member of the Fourteenth Legislature of the State of Texas.

Q. He was a member of this House in the Fourteenth Legislature?

A. Yes, sir.

Q. How long have you been a practicing lawyer?

A. About forty years.

Q. What offices of trust have you ever held in Bastrop county and in the Twenty-first Judicial District?

A. County attorney, county judge, and district judge of the Twenty-first Judicial District.

Q. How long were you county attorney?

A. Four years.

Q. How long were you county judge?

A. Twenty-six years.

Q. How long have you been district judge?

A. Practically seven years.

Q. When you first became a candidate for district judge did you have any opponent?

A. I did.

Q. By what majority were you elected to the office of district judge at that time?

A. About thirty-four hundred votes, practically.

Q. At the second time you offered for the office of district judge, did you have any opponent?

A. I did not.

Q. These are charges here which have been preferred against you by some of the members of the Legislature touching your judicial conduct while district judge of the Twenty-first Judicial District of Texas. I will read you the first charge, "That J. B. Price, an acting district judge of the Twenty-first Judicial District of Texas, comprising four counties, to-wit: Lee, Burleson, Washington, and Bastrop, is guilty of gross neglect of the duties enjoined upon him as such district judge in the performance of his official acts, to-wit: That he has from time to time, covering a period from January 1, 1929, up to and including June 30, 1931, in disregard of the laws of this State, approved accounts for the sheriffs in various counties in his judicial district and certified that said accounts were correct and that the amounts claimed by the said officers as demanded from the State were correctly stated, when in truth and fact, some of said accounts so certified to by said judge were wholly incorrect and constituted an indorsement for the demand of fees of office where the services were not performed and where the account as approved by the said judge was for duplication of purported fees of office." Judge, when were you last elected district judge?

A. In 1928.

Q. The charges as complained of in this first charge are alleged to have been made after you were elected to office the second time?

A. Yes, sir.

Q. When were the sheriffs' accounts generally presented to you—at what portion of the term of court?

A. Usually on the last day of the term.

Q. I will ask you if at that time there are not a great many matters that have to be attended to by the district judge, the district clerk, and the district attorney, and everybody around the district court?

A. There is always lots of business, lots of things have to be attended to on that day.

Q. When the sheriff's account is presented to you do you consider that you have the time to make a complete audit of that account?

A. It would be impossible for me to do so.

Q. Have you an auditor down there who could perform that service for you?

A. No, sir.

Q. If you were to check those sheriffs' accounts, how long would it take you to check the average sheriff's account that is presented to you?

A. I know that it would take a long time, Judge Page, if I could do it at all. It would take a week or two.

Q. You have no auditor at your command there, have you?

A. No, sir, the county is not large enough to have a county auditor, and we have no county auditor there.

Q. Then, in approving those accounts you have been forced to rely upon the sworn affidavits of the officials presenting those accounts?

A. Yes, sir, practically rely entirely upon that.

Q. I call your attention now to Articles 1034 and 1035 of the Code of Criminal Procedure of this State. I am reading from a memoranda that I have prepared here as to the provisions of Articles 1033 and 1034. Article 1033 provides, and Article 1034 provides the manner of approval of sheriffs' accounts, and states what must be done in connection therewith. Now, I will read you from the article. "Article 1035 of the Code of Criminal Procedure," speaking of the approval of sheriffs' accounts, reads as follows:

"The Comptroller, upon the receipt of such claims, and said certified copy of the minutes of said court, shall closely and carefully examine the same and then if correct, draw a warrant on the State Treasurer for the amount due, and in favor of the officer entitled to the same. If the appropriation for paying such account is exhausted, the Comptroller shall file the same away, if correct, and issue a certificate in the name of the officer entitled to the same, stating therein the amount of the claim and character of the service performed. All such claims or accounts not sent to or placed on

file in the office of the Comptroller within 12 months from the date of the final disposition of the case in which the services were rendered shall be forever barred."

Q. Were you aware of that statute at the time you approved this sheriff's account?

A. Yes, sir.

Q. Did you think at the time you approved this sheriff's account, Judge, did you think that the Comptroller of this State would draw that warrant, or issue that warrant, unless the account was correct? Did you think that this account rendered by the sheriff would be approved and a warrant issued thereon by the Comptroller unless the account was correct?

A. I did not have any reason to suppose that he would do so.

Q. The Comptroller has sufficient men to audit the accounts and do the necessary investigation in connection with this matter?

A. Yes, sir.

Q. And you did not?

A. No, sir.

Q. I will ask you, Judge Price, I will ask you if at the time these accounts were approved by you, if you were cognizant of the fact that the Legislature here which passed the appropriation bill for that purpose, for the purpose of paying these witness and sheriff's accounts, had the following provision in it:

"Provided, that no account against the aforesaid items of witness fees, county attorneys, justices of the peace, sheriffs, and constables, fees and costs of sheriffs, attorneys and clerks in felony case, shall be binding as an obligation against the State of Texas until after such account has been examined, audited and approved by the State Comptroller, and no account shall be paid by the State Treasurer until the same has been so approved by the Comptroller."

A. Yes, sir, I was, I tried to follow the law.

Q. And also of the following provision: "Provided, that all accounts under this section, which require the approval of any district judge, shall be examined by the Comptroller, and if correct, he shall issue his warrant therefor, but if he shall find same incorrect, in whole or in part, he may cause an audit of same to be made before warrant is issued."

A. Yes, sir, I was aware of that.

Q. Then, Judge Price, if you approved the account and made a mistake in the approval of the account, and as a result of the approval of those accounts, if any money had been lost by the State of Texas, as a result of your approval of those accounts, it has not been by reason of the fact that you have approved those accounts?

A. No, sir.

Q. Now, I will read you another portion of charge number one. "In connection with the first and foregoing charge we further allege and charge that the said J. B. Price, acting as district judge, approved the account of John T. Carlisle, the sheriff of Lee county, for the October, 1925, and the April, 1926, terms of the district court in Lee county, for the sum of $6,317.25 and $12,023.80, respectively, when in truth and in fact, said certificate of the court was grossly erroneous, and authorized demand to be made upon the State by Sheriff Carlisle for said sums of money that were not due said Carlisle as provided by law." Now, I will ask you about that first account. The account of $6,317.25, which is here alleged was for the October, 1925, term of your court. Did he collect that account?

A. Yes, sir.

Q. Was that account presented to you by Sheriff Carlisle for services rendered during that term of the court?

A. Yes, sir.

Q. Did you examine that account carefully?

A. I examined the account, and in a way I sought to discover any gross errors in it.

Q. You examined that account to the best of your ability then?

A. Yes, sir.

Q. From your examination of that account did you notice any gross irregularities in it?

A. No, sir.

Q. In your approval of that account did you depend and rely in your approval of that account upon the honesty and integrity of the sheriff, and the affidavit which he had made covering that account?

A. I relied entirely upon it.

Q. If you made any error in the approval of that account, you are very sorry that you did, are you not?

A. Certainly.

Q. You had no intention, you certainly had no intention in approving that account, to defraud the State of Texas, or the people of the State of Texas out of any money, did you?

A. None whatever.

Q. You knew as a matter of fact that the Comptroller was required to audit and examine these accounts of the sheriffs before they were paid, did you not?

A. Yes, sir.

Q. Now, then, the latter part of that charge, made by the members of the House of Representatives, which I have read to you, shows that you approved an account of $12,023.80. Do you recall that account?

A. Yes, sir.

Q. Was that account presented to you?

A. Yes, sir.

Q. When was that account presented to you?

A. I think that was when I was over at Caldwell.

Q. Caldwell is in Burleson county, is it not?

A. Yes, sir.

Q. Who brought that account over there to you?

A. I think that Mr. Carlisle brought that to me.

Q. Did you examine the account at the time it was presented to you?

A. Yes, sir.

Q. And that account purported to be for the April term, 1926, of the district court in Lee county, and I believe that you approved that account under the authority of the decision of the Court of Civil Appeals of this district?

A. Yes, sir.

Q. Now, in that account, Judge Price, there was several duplicated mileage charges, was there not?

A. Yes, sir.

Q. And multiple mileage, as we will call it?

A. Yes, sir.

Q. Were you familiar at that time with the case of Bigham vs. State, decided in July, 1925?

A. Yes, sir.

Q. I will ask you now, whether or not, in that first decision in that case, that the sheriff was entitled to duplicate mileage in each case, as you have heard testified here about that Ted Donovan case, I will ask you if under the decision in that case, you did not believe that the sheriff was entitled or would be entitled to 37 writs of arrest, and that he charged for same, and for mileage in each and every one of them, and that there was no decision upon the appeal from the Court of Civil Appeals on the part of the Supreme Court at that time, and I will ask you further if that was not the law at the time you approved this account?

A. Yes, sir.

Q. What did you say to Sheriff Carlisle at the time you approved that account?

A. I suggested to Mr. Carlisle that the matter was not possibly finally settled.

Q. (Interrupting) Not what?

A. I suggested to him that the matter had not been finally settled. It was still on appeal, or was going to be appealed, and that if he presented it to the Comptroller, the Comptroller ought to be advised of the fact that he had better let that account—and that he had better leave that account until the final decision of the Supreme Court on the subject.

Q. You told the sheriff, you say, that the Comptroller had to approve that account? You knew that there had been a decision in the Blair case and possibly a writ of error had been taken, or would be taken, to the Supreme Court and that the Comptroller, there being a contest, and the Supreme Court not having acted on it at that time, and the Comptroller possibly would not issue a warrant on that account until the case had been finally decided by the Supreme Court?

A. Yes, sir, that is what I did, and in the meantime, that they would probably hold the account up.

Q. And was the account held up at the time?

A. Yes, sir.

Q. Both of those accounts were held up, were they not?

A. Yes, sir.

Q. Now, that was while you were holding district court in Caldwell?

A. Yes, sir.

Q. When did you next hear that this account of Mr. Carlisle—when did you next hear from that account of Mr. Carlisle—when was it next brought to your attention?

A. I was in the town of Bastrop holding court there sometime in the latter part of June, or July, when Mr. Grady Chandler and Quintus Watson and Mr. Simmang and Sheriff Carlisle came out to see me about the

matter; they all talked and argued about the matter, and finally, I said to Mr. Chandler, "Until the Supreme Court has settled the matter—I do not think—I do not see, any reason for changing my approval of it." I did not see any reason for holding the matter up until the Supreme Court decision came out. Nothing was said to me at that time about the Supreme Court decision.

Q. At that time you were not aware of the Supreme Court decision?

A. No, sir.

Q. And you told Mr. Chandler that you did not see any reason for changing your approval of the account, it having been approved under the decision of the Court of Civil Appeals in the Bigham case?

A. Yes, sir.

Q. Was there a brief filed with you or a citation of the appellate court given you at the time you were requested to change your approval of the sheriff's account at that time?

A. No, sir, not a thing.

Q. Was there anything in writing or typewritten filed with you, or left with you, later on or at that time?

A. No, sir.

Q. Was there a motion made to you either by Mr. Chandler or by anyone representing the Attorney General's Department or Comptroller's Department, requesting that this account of Sheriff Carlisle be revised at the time?

A. No, sir, none at all.

Q. I understand you to say that you had not seen the opinion of the Supreme Court?

A. I heard it said that it came out that day. That is the same day they came down there—

Q. (Interrupting) Then, at that time, when they came down to see you at Bastrop, Senator Watson and Mr. Simmang were representing Sheriff Carlisle, were they not?

A. That was my understanding.

Q. In your approval of the sheriff's account, were you actuated by what you believed to be the law of the land, when you declined to rescind your approval of the sheriff's account?

A. I certainly did.

Q. When was the next time that you heard anything about that account, after that transaction that you have detailed? There in the town of Bastrop?

A. About this proposition?

Q. Yes, when was the next time that you heard anything about that account?

A. I was over at Caldwell holding court. Mr. Pat Black, who was a brother of Mrs. Carlisle, called me up over the phone and stated that a representative of the Comptroller's Department was there to see about an adjustment of Mr. Carlisle's account, and asked me if I could come over there. He stated that they were very anxious to have me come over there and see if I agreed with them on the matter, and if I did, it would be settled according to the figures. I had a civil case on call for that day and told Mr. Black unless the lawyers could arrange for a resetting of the case that I could not come, and he said that it was very important and that they wanted to get that matter settled, that Mrs. Carlisle and Mr. Goodfellow had settled the whole proposition and wanted the court to give his approval of the amount they had settled for. I then went to the courthouse and found out that the civil matter that was to come up the next day—that it would be agreeable to reset that, and then I called Mr. Black on the phone and told him that I would come on the Dalsa train and get there about night, but it was two hours late. Mr. Black informed me that he had made a contract with the Comptroller's Department, and that he would meet the train and come right on over to Austin. When we got to Austin, Mr. Sheppard met us at the office and we stayed there a few minutes and they said that they wanted to verify some matters that they had made and wanted to work on the typewriter and then Mr. Sheppard walked into the room where we were sitting. Directly, Mr. Goodfellow says, "Well, we have finished up the items all right. The figures were exactly right." I think I asked him what the figures were and what they amounted to, and he said they had agreed—that they had all agreed and it was $7,913.80. Mr. Goodfellow stated that time that that was exactly that amount, and that they had taken out all the duplications that the Attorney General had objected to, and the approval was for the correct amount. Mr. Sheppard, at that

time, asked me to approve it and that all duplications had been taken out of the account and all objections in the account had been removed and it was approved for that amount of money.

Q. That was done in the office of the Comptroller here at Austin?

A. Yes, sir.

Q. And when he walked back in there, he said, "I am awfully glad to get it all settled. It has been worrying me ever since I have been in office." I believe that you stated, now, that Mr. Pat Black called you up and told you that Mr. Sheppard was—wanted you to come to Austin. That they had agreed on a settlement of his sister's account, and they wanted you to approve it and wanted you to come over to Austin. You stated that you did not know for sure whether or not you could come, but if you could come you would come over on the Dalsa. That is the name of a train that runs up through there, is it not?

A. Yes, sir.

Q. And you went over there?

A. Yes, sir.

Q. But your train was about two hours late?

A. Yes, sir.

Q. And then you came on over to Austin?

A. Yes, sir.

Q. And went to the Comptroller's office?

A. Yes, sir.

Q. And when you got to Mr. Sheppard's office they informed you that they had already figured out the account and merely wanted to verify some figures and you approved the account there?

A. Yes, sir.

Q. And at that time Mr. Goodfellow informed you that all the matters that had been objected to by the Attorney General on account of duplicate mileage had been taken out at that time to the satisfaction of the Attorney General and you approved the account at that time for $7,913.80 and it was represented to you by the Comptroller at that time that he was glad that the matter was finally settled because he had been worrying over it ever since he had been in office?

A. Yes, sir.

Q. Did you know anything about the fact that there had been some controversy with the Comptroller in connection with some portions of this account? Did you know anything about that?

A. Mr. Black had told me that he had made a settlement of the account.

Q. He told you that they had agreed upon a settlement?

A. No.

Q. And when you finally approved that account it was done there in the Comptroller's office and at the time that you did approve it you were informed by Mr. Goodfellow that he had checked all of the figures and that the amount was correct as you approved it?

A. Yes, sir.

Q. Now, is that the only time you were ever in the Comptroller's office about that account?

A. I think it is.

Q. Now then, Section 2 of this charge which has been filed against you, reads as follows: "That the said J. B. Price thereafter on or about November 30, 1930, called on the Comptroller of the State of Texas and insisted that the above-mentioned account for Sheriff John T. Carlisle of Lee county be approved and that he be paid the sum of $12.000, when in truth and in fact, the said J. B. Price knew or should have known with the use of ordinary diligence, that said amount should not be paid out of the State Treasury of this State, and that said amount was not due Sheriff Carlisle as claimed by Judge Price." Now, is that a fact?

A. I do not know anything of that at all.

Q. I believe that you stated that was the only time you were ever in the Comptroller's office, and that you came there then at the request, as you understood it, of the Comptroller, and that at that time, a complete settlement of this account was had?

A. Yes, sir.

Q. And at the time you came up here to Austin and met in the Comptroller's office, on that date, they admitted owing Sheriff Carlisle that amount?

A. That is right. They stated to me that they had already settled it.

Q. Now, Judge Price, in Section No. 4, Section No. 5 and Section No. 6 and Section No. 7 of the charges against you, it is alleged here by the proponents of these charges that you approved certain accounts of Sheriff Clint D. Lewis, sheriff of Burleson

county—Clint D. Lewis was sheriff there at that time, was he not?

A. Yes, sir.

Q. Now, then, at the time Clint D. Lewis presented that account to you, you had concluded your term of court there, and I will ask you whether or not you had time to go into those accounts and examine them carefully before your term of court was over to ascertain whether or not they were correct before you approved them?

A. No, sir, I did not have time to examine them carefully. He had sworn to them and I presumed that they were correct.

Q. Did you have the time or opportunity of auditing that account of Mr. Lewis at the time he presented same to you to ascertain whether or not he had charged more in the way of fees upon that account than he was entitled to under the law? Did you know anything about that?

A. Not a thing in the world.

Q. Did you—if you had known that there was anything wrong with the account or any item in that account that was not a proper charge under the law, would you have approved that account?

A. No, sir, I would have cut it out, of course.

Q. Did you ever have any reason to suspect that the sheriff was not making out his accounts in proper manner? Or that he was not entitled to the fees which he had placed in that account?

A. No, sir.

Q. He has been elected several times by the people of that county?

A. Yes, sir. He was elected the year before I was elected. He has been about eight years sheriff of that county.

Q. There was nothing that you knew of that would cause you to be suspicious of this man and his account?

A. Not a thing in the world.

Q. When you approved that account of the sheriff, state whether or not you were under the impression and believed that before that account could be finally paid it would be necessary for it to be audited and approved by the Comptroller, and was that fact not taken into consideration at the time you approved that account?

A. Yes, sir.

Q. Now, going back for a moment to Lee county at the term of court at which Sheriff Carlisle undertook to collect that large bill. You had a large number of indictments at that term of court, did you not?

A. Over thirty-six.

Q. There were ninety some-odd, were there not?

A. There were ninety-six indictments all together.

Q. Those indictments were largely for violations of the liquor law?

A. I think the whole ninety-six were. I think there were ninety-six indictments in all. I think there were ninety-six indictments and most of them were violations of the liquor law.

Q. Did you have anything to do with the filing of those indictments more than to receive them from the grand jury and have them entered upon the docket of the court?

A. Not a thing in the world.

Q. Do you know whether or not the grand jury was specially investigating the liquor law violations at that time?

A. No, sir, I do not.

Q. All you know is that the grand jury found those bills of indictment and they were working under the direction of the district attorney, and the only connection you had with the grand jury at that time was to give them your charge at the beginning of court, and then to receive these indictments from the grand jury and then have them filed by the clerk?

A. That is all I know about it.

Q. Now, I believe there is one man who was indicted thirty-six times by that grand jury?

A. Yes, sir.

Q. Was this a negro or a white man?

A. A negro.

Q. What became of him after he was indicted?

A. He fled the country, I have been told, and went to Michigan and afterwards he was apprehended there and brought back by the sheriff on requisition by the Governor.

Q. This defendant, Ted Donevan, ran away and went to Michigan and was brought back by the sheriff?

A. Yes, sir.

Q. After he came back did he give bond?

A. At that time?

Q. After he was brought back, what was done with him?

A. I think that a writ of habeas corpus was sued out and he gave bond.

Q. What hapepned to that case at the following term of court after he was returned from Michigan?

A. I think in that case there was a hung jury.

Q. When you tried the case there the first time you had a hung jury, then of course, he was tried at the next term of court?

A. Yes, sir.

Q. What was done at the next term of court?

A. When he was tried at the next term of court he was acquitted.

Q. After that was done, there was still another term of court. Did you exchange benches with anybody at that time?

A. Yes, sir, I exchanged benches with Judge Jeffrey of Lockhart.

Q. Did he come over to try the Donevan case, and other cases?

A. Yes, sir, I set the Donevan case and a whole raft of other negro cases we had for, commencing the Monday he was to be there, for the week he was going to be there; and I went over to his court, to Caldwell—and Lockhart, and I understand that—I know he heard Saturday that the negro on Saturday—the court was to open on Monday morning—had lost his arm, and Judge Jeffrey continued that case.

Q. When it was continued by Judge Jeffrey at that time on account of the negro having received this serious injury, he did not set it then for another term?

A. No, sir, he didn't set it.

Q. It was necessary, then, wasn't it, to issue process, duplicate process for witnesses to be there at the new term?

A. Yes, sir.

Q. And that was done, I suppose?

A. Yes, sir.

Q. What was done with the case at the next term of court?

A. The district attorney made a motion to dismiss it.

Q. The district attorney came into open court and made a motion to dismiss, and this dismissal merely being the indictment of which we have spoken?

A. Yes, sir.

Q. And you did feel that the district attorney had good reasons to make such motion?

A. Yes, sir, I believed it.

Q. And you granted the motion of the district attorney to dismiss the case?

A. Yes, sir.

Q. Did you have any reason to suspect anything corrupt in the district attorney's wanting to dismiss this case?

A. Nothing in this world.

Q. Isn't it a fact that when the district attorney comes into open court and moves to dismiss a case, you generally rely upon his integrity to carry on the duties of his office properly?

A. I always do.

Q. Have you ever issued any process in a case unless you believed that issuance for that process was necessary in order that the ends of justice could be meted out to the defendants on there?

A. Never have.

Q. Did you ever collude with any sheriff anywhere to issue any process for any witness, in order that the sheriff might enrich himself, at the expense of the State?

A. No, sir, I never did.

Q. Would you do anything of that sort?

A. Most certainly not, Judge.

Q. Now, we find in charge number 10 an allegation that for the spring term of court of 1931, of the district court of Lee county, that you have approved the account of John J. Burttschell, the sheriff of that county, for a certain amount of money, which was not given in the charge that I read here. It is charged in substance that you approved Sheriff's Burttschell's accounts for that term?

A. Yes, sir.

Q. Do you regard Sheriff John J. Burttschell, of Lee county—did you regard him then as an honest, upright man?

A. Yes, sir.

Q. Has he ever acted in any way down there, that you had reason to suspect he would be guilty of any fraudulent conduct?

A. No, sir.

Q. Did you know at that time, if it be a fact, that he had padded his mileage, and had put in a claim for summoning fictitious witnesses, or anything of that kind?

A. I didn't know it, no, sir.

Q. If you had known that the sheriff had returned an account to you and had charged for fictitious witnesses, whom he hadn't in fact

summoned, and padded his mileage, would you have taken action against the sheriff?

A. Certainly I would.

Q. Now, we find in charge number 11 that you approved one of the accounts of Woody Townsend, sheriff of Bastrop county, for services rendered in the January, 1931, term of court, in the case of the State of Texas against Mack Matthews, for various sums of money. Do you recall the case of Mack Matthews?

A. Yes, sir.

Q. What was the defendant charged with?

A. Murder.

Q. I call your attention to Article 539, of the Court of Crminal Procedure, which is as follows:

"A criminal action may be continued by consent of the parties thereto, in open court, at any time." Now, is it a fact or not that the Mack Matthews' case was continued by agreement of the parties at the first term at which it was called?

A. Yes, sir.

Q. And acting under this statute, you agreed to it?

A. Yes, sir.

Q. And the witnesses in the Matthews case were all negroes, weren't they?

A. Yes, sir.

Q. Isn't it very difficult to get negroes to return to court for a case against one of their race, without being resummoned?

A. Yes, sir, that is my experience.

Q. Isn't it a fact that the district attorney of that district made application to the clerk for the resummoning of the witnesses in this case, at the following term?

A. Yes, sir.

Q. And the record so shows?

A. Yes, sir.

Q. At the next term of court, what was done with Mack Matthews?

A. I think that was the term at which he was tried, I am not sure.

Q. Sir?

A. I think that was the term at which he was tried—I am not sure.

Q. No, sir, that case was continued, it is on—this case was continued twice, I think, according to the records—the second time?

A. By agreement of counsel.

Q. Now, the third time the case was tried?

A. Yes, sir.

Q. What was the result of the trial?

A. He was convicted and given five years in the penitentiary.

Q. What then was done with the case?

A. He made a motion for a new trial, which was overruled, and gave notice of appeal, and appealed the case to the Court of Criminal Appeals.

Q. What did the Court of Criminal Appeals do about it?

A. Reversed and remanded and sent it back for trial.

Q. After the case was reversed and remanded and sent back for trial, did the district attorney apply for process for his witnesses for the following term, that the case might be tried?

A. He did.

Q. Was it possible for him to get his witnesses any other way?

A. I don't believe so.

Q. Was it possble to apprehend that the court would reverse that case, and that another trial would be necessary?

A. No, sir.

Q. After they reversed it, of course, the witnesses had to be summoned another time?

A. Yes, sir.

Q. Did you in that case or any other case, issue any process for any witnesses unless you felt that it was necessary in order that the ends of justice might be met, you had to do it?

A. No, sir, I never did.

Q. Now, we find in the same charge, going to the next charge, a charge against you, with reference to a case against a negro by the name of Murray Henderson. Do you recall that case?

A. Yes, sir.

Q. Who represented the defendant in the Murray Henderson case? What firm of lawyers?

A. Mr. Jack Powell and yourself.

Q. The firm of Page & Powell, composed of myself and Mr. Powell. Do you remember what disposition was made of the case at the first call after he was indicted?

A. It was continued.

Q. It was continued?

A. On motion of the defendant, by agreement.

Q. The district attorney then agreed that the case might be con-

tinued and charged to the account of defendant?

A. Yes, sir.

Q. And that was done?

A. Yes, sir.

Q. Was there a large number of negroes' witnesses in that case?

A. Yes, sir.

Q. Was it necessary to resummon those witnesses for another term of court, in order to be sure that they would be present.

A. Yes, sir.

Q. Was that done on the application of the district attorney?

A. Yes, sir.

Q. He made application for it, and you made no objection?

A. No, sir.

Q. There was not, in fact, an order of duplicate process?

A. No, sir, nothing on my docket to show.

Q. Is there anything in the minutes of that court or your docket to show you ordered duplicate process in either one of the cases I am talking about?

A. No, sir, and the fact is that was done on motion of the district attorney.

Q. There is nothing on the docket or in the minutes to show you issued duplicate process in any case, is there, Judge?

A. No, sir.

Q. Well, then, the case of Murray Henderson was called a third time, wasn't it?

A. Yes, sir.

Q. What was done with it at that time?

A. He pleaded guilty and was convicted.

Q. The plea of guilty and convicted? In both of those cases, then, the defendant was finally convicted?

A. Yes, sir.

Q. Now, Judge, it is alleged here in one of these accounts that in the district court of Lee county, you signed your name a number of times, I believe the proof shows, several times, to summon witnesses, out-of-county witnesses. Would you tell these gentlemen why you did that, and how you came to do it?

A. Well, the out-of-county witnesses lots of times, in these cases, as soon as the testimony is over, they crowd around the district clerk to get their scrip and go home—to catch their bus, train, automobiles, and things to go home, and the clerk comes and asks me to sign it; he brings one and I sign it, or several at a time, and then I sign three or four at a time. I just committed an error when I signed those; I realize that fact now, and of course, it will never occur again, if I may be allowed to preside in my court again; that was an error I committed when I did that, but I have done it to try to accommodate the witnesses.

Q. The facts are that those witness certificates had to be first approved by you, and then had to be approved about two or three times by the district clerk?

A. He signs them two or three times, the district clerk, and then his seal is put on them.

Q. The clerk brought those things to you and suggested to you, as a matter of convenience, you sign some of them so you would not be disturbed on the bench in the trial of cases, when witnesses wanted to receive their scrip and go back to their residences?

A. Yes, sir.

Q. You did it, and now realize it was a mistake to do so?

A. Yes, sir.

Q. And did the State of Texas ever lose any money on that account?

A. Not one penny.

Q. Not one penny? And while you made an error there, nobody has ever suffered from it?

A. No, sir.

Q. The State nor anybody else?

A. No, sir.

Q. Judge Price, after due reflection, you realize, do you now, that possibly you might have devoted more attention to the approval of some of these sheriffs' accounts than you did?

A. Yes, sir, I realize that fact now.

Q. You did the best that you could, though, did you not, with the means at your command—at your hands?

A. Yes, sir, I did the best I could.

Q. I will ask you if it is your intention in the future, if you are permitted to preside over your court, to do everything that is humanly possible to see that no further errors, if errors have crept into those accounts —to see that errors are not committed.

A. They certainly will not be if I am allowed to preside in my court.

Q. You will see to it that no accounts are approved by you unless

those accounts are correct, if you can find them to be from investigation at your hands?

A. Yes, sir.

Q. It appears from the testimony here that you have lived a long and honorable life in the community in which you now reside, that you have been elected by the people to offices of trust in that county from time to time, and it is shown that they have great confidence in you. I will ask you if you will try in the future to justify that confidence if this Legislature will exercise leniency in dealing with the matter that is now in hand?

A. I certainly would, of course.

Q. Judge Price, acting here several days ago, possibly a week ago, Judge Batts and myself and other counsel representing you here, made certain admissions in this matter, that you had been guilty of negligence and that some of the charges brought, as charged against you, were substantially true. That was done with your knowledge and consent, wasn't it?

A. Yes, sir.

Q. I will ask you if you did not suffer an illness—I believe I have drawn out from you that you haven't been very strong physically for three or four years, have you?

A. No, I haven't, Judge, I am weak physically.

Q. Your mind, however, is perfectly clear, Judge, isn't it? It must be apparent to others?

A. Yes, sir.

Q. Have you ever had any complaint in any way, by hearsay or otherwise, from any lawyer or citizen that had a case in any court over which you presided, about the rectitude of your conduct, or your fairness or impartiality in any trial over which you presided?

A. No, sir. Judge Graves has been in my court in a murder case since I have been stricken, and I heard no complaint from him about it.

Q. No, sir, nor have you heard a complaint from anyone else, from anyone?

A. No, sir, from no one.

Q. It is a fact, isn't it, that when you were re-elected to the office that you now hold, in 1928, you were then in a worse physical condition than you are now?

A. Yes, sir, I was worse then than I am now.

Q. You have improved a good deal since then, haven't you?

A. Yes, sir, steadily improved several times.

Q. Have you, during the time of your incapacity of recent years practically always been at every term of your court, and every day, despite your condition?

A. Yes, sir.

Q. Questions were asked here by the State seeking to show you held your court over longer than necessary. Isn't it a fact that you always tried to conserve the interest of the State of Texas, by closing your court at as early a date as possible?

A. I certainly have.

Q. I believe, Judge Price, that that will be all at this time.

Cross-examination.

Questions by Mr. Sturgeon:

Q. Judge Price, I believe you stated to Senator Page on direct examination that you were familiar with Article 1035 of the Code of Criminal Procedure, which provides that after these accounts of the sheriffs have been signed and sworn to by them, and approved by you, that the Auditor shall make an examination of them, and if he finds them correct—

Mr. Page: Comptroller.

Q. He shall issue a warrant for them—I mean Comptroller?

A. Yes, sir.

Q. I believe you stated that?

A. Yes, sir.

Q. You are likewise familiar with the Article of the Code of Criminal Procedure just ahead of that one, which is Article 1034, that provides that the district judges of this State shall carefully inquire into and examine into the correctness of the various sheriffs' accounts that are presented to them?

A. Yes, sir.

Q. You are familiar with that, are you, Judge Price?

A. Yes, sir.

Q. Now, in one of these large accounts,—you also stated in your examination that you approved these accounts, knowing these provisions of Article 1035 was with reference to the Comptroller, I believe you stated, did you not?

A. I don't remember.

Q. Well, I will refresh your memory, and I think the record will show that, just what I have quoted to you, that you said that when you approved these accounts you did so knowing that the provisions of Article 1035 of the Code of Criminal Procedure provided for examination and audit by the Comptroller when filed?

A. Yes, sir.

Q. You did so with that in your mind, and relied on the Comptroller to take care of any discrepancies,—that is the substance of it, that is what you meant by it?

A. Yes, sir, to some extent, and it has been shown that the Comptroller and myself, both make mistakes.

Q. Yes, sir. Well, Judge, when you approved these accounts, you relied, did you not, on the authority and opinion of the court as laid down in the Rochelle case—you were familiar with that case, weren't you?

A. Yes, sir.

Q. In fact, one of these large accounts that was sent down here by Carlisle, as sheriff, out there, signed up on the 7th day of May, 1926, it is shown by the testimony, that you took this account, when the Comptroller was holding up the account—in fact, Senator Page proved by summons in this case and had this read as a record, I will ask you if you do not know that in getting the Comptroller to approve one of these accounts, that this was stated and you attached it to the account—I am going to read this to you (reading): "The enclosed account of John T. Carlisle, sheriff of Lee county, has been prepared in conformity with the rules laid down in Bigham vs. State, 275 S. W. Rep., page 147." Now, that is the case—a case that you are familiar with with reference to fees, isn't it, Judge Price?

A. Yes, sir.

Q. (Reading): "Holding that the sheriff is entitled to mileage in going to serve each warrant of arrest; also mileage in each case in summoning witnesses, even though summoned at the same time. This account was examined and approved by the Honorable J. B. Price, Judge of the Twenty-first Judicial District of Texas, and in accordance with the rules laid down in Rochelle vs. Lane case, 148 S. W., 556, the same is not subject to review by the Comptroller, but must be paid." And in that account was quoted exactly what the Supreme Court said in that case. Did you know that was put in that account or did you have anything to do with putting that in that account?

A. Someone else wrote that in there.

Q. Someone else wrote it in there? Who, do you know?

A. No, I don't .

Q. But you do know that you approved the account?

A. Yes, sir.

Q. And you do know that the law, or the opinion, is quoted in this thing I have just read—I didn't give all the opinion; but you do know what was held in the case of Rochelle vs. Lane, do you not?

A. Yes, sir.

Q. You know that they held in that case that after the district judge had approved the sheriff's account, that his act could not be questioned by the Comptroller, didn't you know that?

A. Yes, sir; but they had agreed on this account; after they agreed I changed my approval of it—they agreed on a settlement of it.

Q. Yes, I understand that is one of the accounts, but there had been two previous to them, Judge Price, in which the same items were set out. The fact about it is, Judge Price, you have, as stated before, practically relied on the integrity of the men that brought you these accounts, haven't you?

A. Yes, sir, I have.

Q. And you never have, yet, since you have been district judge cut out a single item in any sheriff's account that has ever been brought to you, have you?

A. I don't remember whether I have or not.

Q. You don't remember? Now, then, since you have sat here in this court room, so to speak, and heard the testimony that has been adduced in the trial of this case, I want to ask you if you can say now that you have the same confidence in men, in the men you have been dealing with as sheriffs, as you had at the time you signed those accounts?

A. Well, Mr. Sturgeon, I have no reason to be shaken in my confidence in them, I don't know anything about it.

Q. Do you mean to tell this Committee th—

A. They will be looked into more carefully, I will tell you that.

Q. Well, I understand that. Don't you think—I am asking you as district judge and as a man who is, you may say, upon trial—I am asking you if you don't think that John Carlisle, Woody Townsend, Burttschell, and these other men—and Clint Lewis—that if they put accounts before you, and signed them, the four of them over there, since the Supreme Court of the State laid down the decision in the Bigham case, that even up to 1930 and 1931, they did that, don't you think they perpetrated a fraud on you and the people of this State?

A. Well, if they perpetrated a fraud upon me, I didn't know it.

Q. Yes, sir, and they did it on Texas, too. Did you take this account where the sheriff claims to have traveled from Wharton to Caldwell and set out in his account it was 400 miles, did you notice that in that account, Judge Price?

A. No, sir.

Q. Well, you knew of your own personal knowledge that wasn't true, didn't you?

A. I couldn't say I did, no, sir.

Q. Well, don't you know this, that it is not 400 miles from Wharton to Caldwell—you know that?

A. Going and coming it may be, I couldn't say.

Q. You don't know? That is your judgment about it? You live over there in that district, and Wharton, the proof in this case shows, is about 100 miles from Caldwell, and you tell them you don't know how far it is from Wharton to Caldwell?

A. No, sir, I don't tell them—I don't know; I would just have to guess at it, make an estimate of it; I know Wharton is down among some of the counties down on the bay there, somewhere, I don't know.

Q. Well, at any rate the account got by you and you made no investigation of it?

A. Well, that is true.

Q. That is true—that is true? And did you notice the sheriff's account when he claimed to have traveled 4800 miles in two days to arrest two men; did you notice that item, Judge Price?

A. As I stated before, it was sent to the Comptroller, and it looked like he could have seen it just as well as I could.

Q. I understand that, Judge Price, and I appreciate your predicament in the matter. And then, as I understand your testimony, you really, in approving those things, relied more on the Comptroller to look after those accounts than you did yourself, that is true, isn't it?

A. Yes, sir. As I said, I did the best I could; I didn't physically look after them as I ought to have looked after them—I did the best I could, and I thought if I didn't find they were not correct, the Comptroller would.

Q. Now, Judge Price, don't you feel like that if you had any suspicion about any of your sheriffs that were bringing you these accounts, and making exorbitant and extortionate charges, that if you had any suspicions about it, and you being there on the job, where you could get the facts, where you could get it direct and check them, don't you think that if you had known they were perpetrating a fraud on you, that you could have discovered it yourself, right there in that courthouse?

A. I don't know if I could discover it or not, for lack of time, have to have those things to attend to.

Q. Now, did you mention lack of time, Judge Price—do you know any law on earth that requires you to approve any of these accounts in any length of time, except that they be filed with the Comptroller in a year—do you know any law?

A. The law requires that they must be filed and recorded before the court adjournment, that is all I know.

Q. Well, they must be filed with the clerk; but don't you know that those accounts of the sheriffs do not appear in the minutes of the district court?

A. They appear in the district court minutes.

Q. I understand, they are copied in the docket, but they don't appear in the minutes you sign up as district judge. You stated a moment ago, Judge Price, and I don't mean to try to tangle you up, or anything of the kind, I believe you stated a moment ago—or possibly I didn't understand your testimony—that you had approved that account after you had already left that court and gone over to Caldwell, is that true?

A. I think so, yes.

Q. All right. Now, was there any trouble with the Comptroller about it because you had not approved it be-

fore adjournment of court and went to an adjoining county?

A. There was no trouble about that—I don't know anything about it—if there was I don't know anything about it.

Q. One of the members suggests that I ask you, Judge Price, if you had ever been up here to see the Comptroller about other accounts, and if so, how many times?

A. I don't think I was ever here in my life to see the Comptroller about an account, except—

Q. Did the Comptroller ever come to see you about them?

A. No, sir.

Q. Are you telling this Committee now—do you tell this Committee now, that in substance Mr. Grady Chandler was incorrect, that he was wrong when he testified he came down there to see you about this account, and you all discussed it, in the presence of Senator Watson, and that Grady Chandler—you deny that he said to you that the Supreme Court had just decided that question, and settled all of that, that there could not be duplication of mileage, and you deny that Grady Chandler showed you that authority, or had anything to say about it?

A. No, sir, I don't deny that at all. If he showed me the authority I don't know it, I don't remember it.

Q. Well, then, you don't deny and you don't admit it?

A. No, sir.

Q. Neither one?

A. No, sir—I don't deny and I don't remember it.

Q. Judge Price, did I understand you to say awhile ago, in answer to Senator Page's question, that you never did order any duplicate process, that it was just upon the application of the district attorney or the defense counsel?

A. That is my recollection.

Q. Well, I believe you stated a moment ago as a positive fact, that you didn't do that, never ordered any duplicate process?

A. I didn't state anything as positive, I know if I signed it I didn't know—don't know anything about it.

Q. I will ask you, when this matter came up, if you refused the minutes of your court or looked at them, or if counsel looked over them with you?

A. No, sir.

Q. You have not?

A. No, sir.

Q. I will ask you, as a matter of fact, if the minutes of your court do not show a number of cases, where cases were continued, that you made an order for duplication of process, if that is not shown?

A. No, sir, I don't know that it shows.

Q. Well, your recollection is, you don't know anything about it?

A. I don't think the record shows that.

Q. Well, what was your method, Judge Price, whenever witnesses in a case,—in reference to witnesses in a case—where you had a case pending against the defendant, and he came up there before you, the witnesses were all subpoenaed, and the sheriff's returns show that they had all been served, what was your method of recognizing them—did you ever tell the witnesses to come back to the next term, that they wouldn't be summoned any more, or what did you tell them?

A. I told them, a hundred times; but if the case was continued by the district attorney before the date is set, I had no opportunity to call them up; but if the case was called for trial, I had them called up to the railing of the bar, and instructed them, instructions were given them to come back, that the case was continued.

Q. Have you ever stopped to think, Judge Price, has anybody ever talked to you about the amount of money that has been paid sheriffs in the three counties in your district, as compared with other counties in the State, have you ever figured on that?

A. No, sir.

Q. You never have? Can you assign any reason, can you give this Committee any reason why it is that the accounts as signed by the sheriffs, and approved by you, in practically all of those accounts except Washington, they range in the neighborhood of four and two and six thousand dollars after each term of court, over a period of a few years, but in Washington county, they range around $200 and all the way from $250 up to $300?

A. Well, the docket is lighter in

Washington than in some of the others. You take in Burleson county, the docket is always very heavy, it is pretty heavy in Bastrop, heavy in Lee county at times. Take the time we have been talking about—

Q. Judge Price, these are the minutes of your court (handing minute book to witness), I take it, from Lee county. I think Mr. Hester is the district clerk of Lee county, isn't he?

A. Yes.

Q. That is the minute book, Judge Price, from Lee county that has been identified here and testified to by Mr. Hester. I will ask you if that book there showed—what is the date shown in the top of the page there?

A. April term, 1926.

Q. That shows to be the April term, 1926?

A. Yes, sir.

Q. I will ask you if the minutes on all that page there—what is the number of that page, please, sir, if the page is numbered, I would like to get the number of that page?

A. 382.

Q. You say it is 382?

A. Yes, sir.

Q. All right. Now, Judge Price, I will ask you to look in that minute entry there and see if there is any order made there by you specifically directing that duplicate process issue for all witnesses in about 25 cases?

A. Yes, sir, that is true.

Q. All right, then, if that book is the minutes and is kept there in the district clerk's office, why, of course, you made that entry?

A. Yes, sir, I made that entry.

Q. All right. Now, Judge Price, I want to ask you one or two questions and then I am through. Can you tell this Committee why it is that the accounts from the Bastrop county sheriff, for the December term of 1930, came in here as approved by you for $4400, filed with the Comptroller, and that since this investigation started there has been an account that has come in from the same county, from the same sheriff, for the June term, 1931, for the sum of $290?

A. I couldn't tell you, Mr. Sturgeon.

Q. You don't know, do you, Judge?

A. The clerk says it was 57 cases —tried there a year ago; and I don't know anything about the account now.

Q. But that is the big difference, Judge, you will admit that, won't you—that it is a big difference from December to June, in the same account, in the same district, to have him come down from $4400 to $290 for sheriffs' accounts—that is true, isn't it, Judge?

A. I don't know what the sheriff did, I don't know anything about it.

Q. Well, you approved the $290 account, did you not?

A. Yes, sir.

Q. And in truth and in fact, that account has been sent back for correction?

A. I don't know anything about it, Judge.

Q. Well, you heard that testified to here in the trial of this case?

A. Yes, sir, I heard it.

Q. What is your age, Judge Price?

A. I am 66 years old.

Q. 66 years old?

A. I was born on the 2nd day of July, 1865, the year the Civil War closed.

Redirect Examination.

Questions by Mr. Page:

Q. Judge, I will just ask you this question: Isn't it a fact that the last term of the district court of Bastrop county, they had the lightest criminal docket that you have had for 25 years?

A. Yes, sir, a very light docket.

Q. And for that reason, the sheriff's account was necessarily very light?

A. Yes, sir.

Q. Now, the county of Burleson is on the Brazos River, isn't it?

A. Yes, sir.

Q. The Brazos river is largely inhabited by negroes, isn't it?

A. Yes, sir.

Q. Well, aren't those negroes there always in court, and doesn't that make the court docket of Burleson county very heavy?

A. Every time they have a supper or any kind of celebration, there is usually a killing?

Q. Something has been said about Washington. Isn't it a fact that Washington is largely inhabited by German people, who are peaceful, law-abiding people, and you have very little time in that county?

A. Yes, sir, that is true.

Q. Again, Bastrop county is on the Brazos River, and they have a very large number of negroes there, and at times, have a large docket?

A. Yes, sir.

Q. They have got a lot of negroes on the Brazos and the Wahoo, and in other parts of that county?

A. Yes, sir.

Q. But Washington county has the smallest docket on account of having the best people, law-abiding people?

A. Yes, sir.

Re-cross Examination.

Questions by Mr. Graves:

Q. Have you any recollection of how many criminal cases there were on the Bastrop county docket, this last term?

A. I believe there are about 15 or 16, something like that.

Q. Fifteen or 16?

A. Yes, sir.

Q. Do you remember how much the account was for the last term of court from Bastrop county?

A. No, sir, I do not.

Q. Do you remember how much it was this last term?

A. Only from what you said.

Q. Only from what we have said, it was $290. Do you remember the accounts you had—the last accounts that you had in Burleson county?

A. No, sir, I don't remember the amount—no, sir.

Q. All right, that is all.

Mr. Page: That is all.

(Witness excused.)

Mr. Page: Mr. Speaker, the respondents will here rest.

Mr. Sturgeon: Mr. Speaker, we want to introduce in evidence the supplemental answer of respondent, signed by his counsel.

(Supplemental Answer of Respondent is as follows, to-wit:)

(In writing across top of page appears the following: "Aug. 12, 1931. Filed in the office of the Chief Clerk, Aug. 12, 1931."

(Signed)
LOUISE SNOW PHINNEY.

SUPPLEMENTAL ANSWER OF RESPONDENT.

"Since the filing of the charges herein, respondent has carefully examined the records with reference to the matters involved herein, and he believes that in so far as the facts are represented by the accounts the charges are substantially true. At the time said accounts were approved, respondent was heavily burdened with physical infirmities and his duties as district judge; he acknowledges that he approved accounts as set forth in the charges. Respondent says that in making these approvals he relied upon the affidavits of the officers of his court (in whom he had complete confidence), and was guilty of negligence in not making further investigations as to the truth of the matters covered by these affidavits. If this constitutes dereliction of duty, he very much regrets that which he has done, and will in the future exercise the greatest care in the discharging of the duties imposed upon him by law with reference to these matters.

(Signed) DAN MOODY,
PAUL D. PAGE,
ED R. SINKS,
E. R. COOPWOOD,
R. S. BOWERS,
W. W. SEARCY,
R. L. BATTS,
Attorneys for J. B. Price.

Mr. Sturgeon: Mr. Speaker, we want Judge Calhoun next, isn't he here?

Thereupon the proponents called Hon. George Calhoun, who was first duly sworn by the Chair, and who testified, as follows:

Direct Examination.

Questions by Mr. Graves:

Q. What is your name?

A. George Calhoun.

Q. You are a resident of Austin?

A. Resident of Austin, Texas.

Q. How long have you resided in Austin?

A. Fifty-five years.

Q. You are a lawyer by profession?

A. Yes, sir.

Q. How long have you been district judge of the Fifty-third Judicial District of Texas?

A. Well, last January I had been 27 years district judge of the Fifty-third Judicial District.

Q. What are you doing at the present time?

A. Well, I have been appointed to the Commission of Appeals for the Criminal Court.

Q. At the present time you are on the Commission of Appeals for the Court of Criminal Appeals?

A. Yes, sir.

Q. Up to that time you had held many offices—county attorney—

A. County judge.

Q. County judge, district attorney?

A. Yes, sir.

Q. Have you tried many cases or a few cases in your lifetime, Judge?

A. What kind of cases?

Q. All kinds, every kind and description?

A. Yes, sir, I have tried a good many.

Q. Both civil and criminal?

A. Yes, sir.

Q. You have tried lots of criminal cases?

A. Judge Graves, I want to say this, in regard to the criminal part of it: For the first 10 years that I went on the bench, I, of course, did try criminal cases; they then created the Court of Criminal Appeals, and for 12 or 15 years I didn't try any criminal cases, unless the criminal district judge was disqualified, or I tried it in exchange with some other district judge in some other district; therefore, the last two years is all I have tried regularly.

Q. Yes, sir, you have been trying criminal cases in the last two years?

A. Yes, sir.

Q. Relative to sheriff's accounts, what was your practice during your career as district judge, as to whether or not you examined the sheriff's accounts that were handed to you?

A. Well, whether I examined them or not, may be a question, may be a relative matter; I can say what I did do.

Q. All right, sir.

A. When the account was presented to me by the sheriff—and I have heard it stated here, too, that they had a habit of presenting them on the last day—I would require him to present his account, of course, file the account, and also he would file a copy of all duplicate process he was charging for: I required him to furnish me with the original papers, with his original warrant or original subpoenas, and I examined those to see whether those were in accordance with what he presented his account for. If there was anything in his account that I did not think the law allowed, I would strike it out; if there was anything in there that I was in doubt about, mileage or things of that kind, why, I had him come up there and explain it, if he could, why he thought he was entitled to it—what he had done, in other words, if a man lived here in Austin, and the sheriff had 10 or 12 miles, I wanted to know whether—why he had not summoned the man here, and if he said the man was out here 10 or 12 miles and he actually traveled the number of miles set out in his account, of course, I had to rely a great deal, Judge Graves, on the sheriff.

Q. Did you ever in your life approve one of those accounts without looking at them or examining them?

A. Well, I never approved any, no, sir.

Q. All right.

A. That is, as I have explained—I don't want to be misunderstood, gentlemen, and I will state this: Of course, the district judge has to rely a great deal upon the issuance of process—the district clerk should not issue process in any criminal case of the amount of felony, unless it is applied for—now, the district judge, of course, must have sufficient confidence in the district clerk to know that it is issued; but what I examined principally was the original warrant and returns, when issued and when returned, also the subpoenas, to see that they were not duplicated, and it took me several hours to do that, but I did it; I required the sheriff to present his account in time that I could examine it, otherwise I told him I wouldn't.

Examination by Senator Page:

Q. Judge Calhoun, your court here was in session pretty well all of the time, wasn't it?

A. The court I had, yes; had four terms. One term, except for Christmas week, expired on Saturday, and the next term began on Monday. I had ten continuous months of court during the year.

Q. You went from one term almost right into the other?

A. We adjourned Saturday night, and the next term opened Monday morning.

Q. And you examined your sheriff's accounts to the best of your ability, but you state, necessarily, the district judge has to rely to a great extent upon the integrity of his district clerk, and a great deal in the sheriff?

A. I had confidence enough to know that the clerk of this court would not disobey my instructions. I may not have examined all applications to see that they were properly made, but I examined the account enough to know that the clerk was responsible for the subpoenas and the names that appeared thereon. If there were names that appeared thereon that were not put on by the clerk, I struck them off.

Q. That would be a matter that the district clerk would be responsible for?

A. Yes, and if I called upon the sheriff to explain part of his account, I relied upon what he stated as a fact.

Q. It would be a fact that if the clerk did issue this process upon the application of both sides, and the sheriff did the work, he would be entitled to be paid for it, wouldn't he?

A. Well, gentlemen, one of the troubles is the law, if you want me to answer that question.

Q. Yes, that is what we want you to do, Judge.

A. One of the troubles is the law. The law provides that either the district attorney, or the county attorney, if there is no district attorney, or the defendant himself, may apply for witnesses. Now he may apply for whom he pleases, and the clerk is required by law to issue that process. Now it does put a judge in an embarrassing position, if the formalities of the law have been carried out, to absolutely say to a sheriff, "Here, notwithstanding this process was issued by the clerk and you had the right to and were compelled by law to perform service, still I cannot allow these fees." It's the same way in examining witnesses; for instance, the law says you shan't allow fees for character witnesses; and it embarrasses the judge very much to say to a man who has come from his work upon subpoena to testify in the case, "Here, I can't allow you a fee; I didn't know it, but you are a character witness, and I can't allow your fee." But every judge, to a certain extent, has to rely, to a limited extent, anyway, upon the honesty of the clerk. Now some of them make honest mistakes. I never had an account presented to me in my life that did not have something wrong, that I didn't find some mistakes in it, but most of them are honest.

Q. Judge Calhoun, the indictment is rather of the law, than of persons, don't you think; it is the law that should be changed in order to cut out these improper accounts; so we should have the law changed?

A. Do you mean to do away with indictments?

Q. I mean to do away with the fee system, entirely.

A. Well, if you want me to publicly express my opinion about it.

Q. I would be glad if you would.

A. I think the fee system is the curse of this country. I think it causes men who are elected to office, who are naturally honest, to become dishonest. I think it is an inducement to do it. They soon arrive at the conclusion that anything on earth that they can get and can pass it by, they are entitled to it. Now, I want to say this, gentlemen, of course the trouble is and always will be, as long as a man's living depends upon his fees of office; is not satisfied with a living, but wants all he can get besides, and therefore, I say, the fee system is the curse of the country.

Q. I heartily agree with you, Judge. Do you know Judge Price?

A. I have known Judge Price for many, many years. I knew Judge Price in the University, and I have known of him from that time to this.

Q. Do you know his reputation among the people he associates with, as to whether he is a man of high character, or to the contrary?

A. Gentlemen, the things I have been saying with regard to Judge Price's reputation is this: If he has not the reputation of being an honest, conscientious man, it has never come to my knowledge, directly or indirectly. So far as I know, he has always had a most enviable reputation.

Q. That's all, Judge, thank you.

Mr. Sturgeon: That's all.

(Witness excused.)

Mr. DeWolfe: Mr. Chairman, we have a couple of witnesses that we have sent for, and we would like to have a minute to talk to them.

Mr. Graves: We call the witness, James R. Hamilton, and ask that he be sworn.

Whereupon, the witness, James R. Hamilton, being first duly sworn, upon oath testified:

Direct Examination.

Questions by Mr. Graves:

Q. The witness' name is James R. Hamilton?

A. Yes.

Q. Judge Hamilton, you are a resident of Austin?

A. Yes, I am.

Q. And have been for how long?

A. About forty-four or forty-five years.

Q. Have you held any official positions in Travis county?

A. Well, I have held a great many positions. I was city judge here for four years, and assistant district attorney for three or four years, and then I was county judge, and then district attorney for ten years, and then district judge for twelve years.

Q. As district judge, you were district judge of the criminal district court of Travis and Williamson counties?

A. Yes.

Q. And you are at present on the Board of Pardons?

A. Yes, I am.

Q. As an appointee of Governor Moody?

A. I am.

Q. As district judge, do you have any transactions with your sheriff, relative to their accounts at the end of your terms of court?

A. I did.

Q. What would be your procedure relative to these accounts, and how they would be examined, if at all?

A. Well, I saw that the sheriff had made out his account at least not later than the last week, and he would bring it up to me in my office, with his vouchers, and he and I would go over it with the vouchers and check it up, and at the same time, I would submit it to the district clerk, who is an accountant; and I am a good mathematician myself, but I hardly ever get it right.

Q. Would you ever sign any of these accounts of the sheriff without an examination?

A. I never did.

Q. That's all.

Cross-examination.

Questions by Senator Page:

Q. Judge, you recognize the fact that there are times when it would be extremely difficult to make a proper examination of a very large sheriff's account, if the judge had only a limited time at his disposal?

A. Yes.

Q. Your court was in session here rather constantly, wasn't it—one term right into another?

A. Well, I had two counties, and it was in session most of the time. I had plenty to do.

Q. That's all; thank you, Judge.

Mr. Graves: That's all, thank you, Judge, that's all.

(Witness excused.)

Mr. Graves: Mr. Chairman, the State rests at this time.

Senator Page: I believe we have nothing further to submit, Mr. Speaker, in the way of testimony.

Mr. Graves: If the Chairman will give us a few minutes, we will retire to the ante-room, and see if we can't make some suggestions which might expedite matters quite a bit.

The Chairman: Very well.

Mr. Graves: Mr. Chairman, after a conference of the attorneys, we have come back to request that the Committee allow us to adjourn until tomorrow morning at 9 o'clock, and that two hours and a half be alloted to each side, and the attorneys for the respondent, and the proponents through the managers in this House make the argument, making five hours total for argument.

Mr. Gilbert: I move, Mr. Chairman, that each side be allowed two hours and a half for oral argument, and that the attorneys only be permitted to argue the case.

Mr. McGregor: I would like for this Committee to enter a session of the House. A great many of the members of the House are not here, and I would like to put a motion that we require them to come in; I should

probably make that motion to the Committee instead of the House, and I move the Chair that the Committee require the attendance of members. In view of the request for oral argument which has been made here, we will probably be through with this tomorrow, and we are liable to show up to vote on this question, without a quorum.

The Chairman: We have had a check made of those members who are in the city. There are 129 members within the city of Austin. Out of those who are absent, two or three, to the knowledge of the Chair, are expected to be here tonight. From among the remaining number, two or three cannot come, by reason of illness or pressing business; Mr. Bradley, Mr. Mehl and Mr. Dale cannot be here. I thought I would give you the information, that we have checked 129 who are within the city.

Mr. Sherrill: Is that merely a request of the managers and the respondents, for the time for argument?

The Chairman: That is the suggestion upon the part of those who have conducted the investigation; that the Committee arise and ask leave to sit again tomorrow morning at 9 o'clock, and that an agreement has been reached and the suggestion is now made by these gentlemen that the argument be limited to two hours and thirty minutes on each side.

Mr. Sherrill: The House will have to accept that suggestion, will it?

Mr. Gilbert: I move that the argument be limited to the counsel in the case, and no one else.

The Chairman: The gentleman from Callahan moves that the recommendation made by counsel be adopted and that the argument be limited to counsel on each side.

Mr. Hatchitt: I would like to offer an amendment; I would like the motion to be amended in such a way as to not exclude Mr. Farmer.

The Chairman: Is there any objection to the motion made by the gentleman from Callahan?

Mr. Hanson: A point of inquiry.

The Chairman: State your inquiry.

Mr. Hanson: In case one of us wants to ask one of those fellows a question, will he be so permitted?

The Chairman: He will be permitted to answer the question. Is there any objection to the adoption of the motion made by Mr. Gilbert? The Chair hears no objection, and it is so ordered.

Mr. Howsley: Is that in the Committee, or the House, or how is that?

The Chairman: We are in the Committee until the Committee takes some action on it.

Mr. Howsley: Does that have to be acted on by the House, or not?

The Chairman: That suggestion, so far as the argument is concerned, does not have to be acted on by the House, because we are operating in the Committee and will be until some motion is made of some character to carry some suggestion back to the House.

Mr. Johnson: I move the Committee now rise and report progress and ask leave to sit again at 9 o'clock in the morning.

The Chairman: The gentleman from Dimmit has asked that we now rise and report progress and sit again at 9 o'clock in the morning.

May I request that all of you who know any of those members who are in the city now, to please request those gentlemen in the city to be here tomorrow morning. We want them here tomorrow morning.

Is there any objection to the motion to rise and report progress? The Chair hears none, and it is so ordered.

5:15 p. m.

Wednesday, August 19, 1931.

On Wednesday morning, August 19, 1931, the Committee met pursuant to adjournment on Tuesday afternoon, and the following proceedings were had:

The Chairman: The Committee will please be in order.

Mr. Graves: Mr. Chairman, I now move that the House resolve itself into a Committee of the Whole House, for the purpose of hearing arguments.

The Chair: There being no objection, the Committee of the Whole will —the House will resolve itself into the Committee of the Whole.

The Committee will please be in order.

Thereupon, Mr. DeWolfe of Mills county opened the argument for the proponents, as follows:

Mr. DeWolfe: Mr. Chairman—.

The Chair: The gentleman from Mills will open the argument.

Mr. DeWolfe: Mr. Chairman, Ladies and Gentlemen of the Committee: I assure you that I have no personal feeling in this matter, and I only desire to present to you to the best of my ability the argument in this case in compliance with your instructions when you appointed me along with the others as attorney to represent the House of Representatives.

In the beginning I want to say there does not seem to be any great amount of conflict as to what the facts here are. There does, however, seem to be a little controversy as to the law. If you will permit me, I am going to briefly go over with you some of the cases that are involved here, leaving to other counsel the matter of a fuller discussion along these lines.

But it seems to me to discuss this matter intelligently and to understand a discussion of that matter here, that it would be necessary to know something about the law which is involved.

The duties that were imposed upon Judge Price, in his official capacity as judge, have been given here, and have been gone into in the testimony, and I am not going to discuss that with you. We have heard much here about the case of Bigham vs. State. The case was decided by the Court of Civil Appeals on June 10, 1925. That case, if I understand it correctly, held that where a man had been indicted in a number of cases that the sheriff would be entitled to mileage for summoning witnesses for those cases for each time that he served them, even though there be fifteen or twenty cases, and regardless of whether or not he made a separate trip to serve that witness in each case.

But further, if I understand the law, and the holding of the court in that case, it also says and uses this language, which I will read to you in a moment, that where the sheriff had arrested a party who had been indicted more than one time, that he was only entitled to the mileage that he actually traveled for serving the one capias, and in that respect the court uses this language: "Under the Code of Criminal Procedure, 1911, Article 1122, subdivision 5, the sheriff is entitled only to actual mileage for each person brought in, irrespective of the number of cases against that prisoner, in each of which sheriff may have served capias, prisoner being unit for purpose of computing compensation."

Now, I say to you that even under this case which the judge is relying on, that in the Donevan case, that the sheriff would not have been entitled to mileage for arresting that defendant on thirty-seven different charges. So far as this case is concerned, gentlemen, that never was the law. It shows on its face that it was not the law, because it shows plainly and is printed on the bottom of the page in which this case is reported, that a writ of error had been granted on November 18, 1925. Now, so much for that. The case was appealed to the Supreme Court and decided on March 10, 1926, by Section A of the Commission of Appeals, in which Judge Bishop reversed and remanded the decision of the court in the Bigham case. That case was appealed to the Supreme Court, and they reversed that case, because they stated that the Court of Civil Appeals had no jurisdiction in the matter.

Then what happened? Then Bigham, who was sheriff of Bell county, went back and sued out a writ of mandamus against Judge Louis Jones, who was district judge of that district, to compel him to approve his account in this case.

That case was decided on February 23, 1927, by Section A of the Commission of Appeals of the Supreme Court, and they directly passed upon the question of whether the sheriff was entitled to duplicate or multiple mileage, both as to subpoenaing witnesses and to an arrest of an individual.

In that case, and in that account there were certain parties in Bell county who had been indicted from six to thirteen times, and the sheriff of Bell county subpoenaed witnesses in all of those cases, and the court used this language in the syllabi: "Sheriff who conveyed three prisoners to county seat, two of them he conveyed together, one of them being indicted for burglary in thirteen cases,

and the other being indicted for forgery in six cases, he could not recover fees for mileage in each separate case, but only for miles actually traveled, being entitled to 14 cents for each mile actually traveled in moving each prisoner, except that in case of transporting extra prisoner, only 8 cents per mile for extra prisoner should be allowed under Code Criminal Procedure, 1911, Article 1122, as amended by Acts Thirty-eighth Legislature, 1923. Paragraph 4, providing sheriffs shall be allowed 14 cents for each mile going and coming in removing or conveying prisoners, with 8 cents additional per mile for each prisoner."

Now, the next syllabi in the case passes upon the question of mileage, the court saying: "That sheriffs serving subpoenas on witnesses in numerous cases against the same defendant could not recover said mileage on basis of each case, recovery being limited to miles actually and necessarily traveled, under Code Criminal Procedure, 1911, Article 1122, as amended by the Acts Thirty-eighth Legislature, 1923, Chapter 181, paragraph 4, which gives officers 5 cents per mile for travel in summoning or attaching witnesses, but provides officer shall not be allowed to duplicate mileage and shall serve process on witnesses in same neighborhood or vicinity during same trip, charging only one mileage, with additional mileage only for actual and necessary travel."

Now, we find in the outset of this case, we find Grady Chandler, Assistant Attorney General of this State, under a former Attorney General, in connection with one of the members of the Comptroller's Department, going down to Judge Price's district and requesting him to withdraw his approval which he had made to the expense account down there in 1925, and 1926 terms of his court. The October term of court for which this account of the sheriff alone, which mind you, had been approved by this judge, for the sum of more than $33,000 in a little county having less than 14,000 population. That is what happened, and it actually cost the State of Texas in the wind-up, approximately $18,000 in these cases because of the payment of the two claims of $18,000. And something like $7,000 in another case. A negro down there cost the State of Texas more than $7,000 for which the sheriff's account was approved by Judge Price, for $18,000, and we find his attitude to be at that time that he had approved it under what? Under this old decision as stated by him, which on its face showed that it was not the law, and at that time there was a more recent decision passing on this question in which the Supreme Court said what the law was, and which Judge Price stated that Grady Chandler did not present to him when he was down there.

Oh, you can shake your head, Senator Page, but Mr. Chandler testified that he did call Judge Price's attention to this matter at the time that he was down there—you say he did not remember it. Those are the facts in this case. As to it being called to his attention, he refused to withdraw his approval because he said that his approval was under the old decision which he should have known was not the law and which had been reversed by the Supreme Court.

It was after that, ladies and gentlemen of the Committee, we find by Judge Price's own testimony, from his own testimony after this account was questioned, that he then closed his eyes, if you please, and signed sheriffs' accounts totaling thousands of dollars without examining them.

I am sure that you noticed the Senator in all of his questions—all of the questions that he asked here of this witness—he asked them—he asked him—he asked Judge Price—if he could have audited those accounts; the statute did not require him to audit those accounts, but the statutes do require him to carefully examine the same. If you will go back to these charges and to his own testimony you will find that even after this matter had been called to his attention, after it had been discussed with him by the Attorney General and by a representative of the Comptroller's Department, he was still willing to permit the sheriff down there to make out his own bills, and he approved them without examination.

Oh, you say he was relying upon the Comptroller of this State. That if they were not correct the Comptroller would find it. But when he was asked if he was familiar with the case of Rochelle vs. Lane he replied in the affirmative. And in that case it was held that the statute which required the approval of the Comptroller, it held in this case which

was decided by the Supreme Court of Texas: "The State Comptroller has no power to review accounts of prosecuting attorneys, sheriffs and clerks in felony cases approved by the district judge under the Code of Criminal Procedure, 1911, Arts. 1132, 1133; the judge's approval being a judicial and not a ministerial act."

Then he comes back and tells you through his counsel that there is a provision in the appropriation bill passed by the Forty-first Legislature which required the Comptroller to approve these accounts before they would be a valid claim against the State.

I have my serious doubts as to whether it is possible for the Legislature in an appropriation bill to do that, but do you think for a moment that this judge who comes before you and tells you that he did not examine those accounts, do you think for a moment that he went to the trouble of reading the appropriation bill of the Forty-first Legislature which has that provision in it? It is ridiculous to think of him burdening himself with reading the appropriation bill when he was so negligent down there as to not even look at the sheriffs' accounts. It is preposterous.

Now, let's go back. Let's examine the charges that were filed here by your Committee, beginning at the first one. You will recall on yesterday when Senator Page was questioning Judge Price he started out at the beginning of these charges and I thought, of course, that he was going all the way through. But when he got to the first question, when he got through with the first question, what did he do? He jumped over to about charge number ten. No questions whatever about the others, and the only question about the first was that there was an old decision up there which Judge Price should have known was not the law, and he should have known—he should have been more careful and held up the approval of those accounts.

Now, down to the fourth charge. Charge number four. The evidence which has been presented in this case in regard to that particular charge shows that Judge Price approved accounts of the sheriffs down there for traveling 4800 miles in two days. He authorized a payment on a charge of 400 miles for going from Burleson county to Wharton county and as a matter of fact it is approximately 100 miles; in other words, the sheriff of that county traveled less than 210 miles by the uncontroverted testimony and facts in this case, and Judge Price approved his claim for 4800 miles. I say to you, ladies and gentlemen of this Committee, that Judge Price did not need an auditor to know that it was not four hundred miles from Caldwell to Wharton. He did not need an auditor to tell him that. Any man with half good judgment could have looked at that account and read the figures on the outside and known that something was wrong with that account, and certainly if he had opened the pages of the various accounts and they showed on their face that the sheriff down there was taking from the State thousands and thousands of dollars to which he was not entitled, certainly he should have held the account up and made some examination of it as provided by law before he ever approved it. I think the best illustration of that is to take that one of the sheriff where the account for the December term, 1930, was over forty-four hundred dollars for that term, and his accounts for the June term, 1931, of that court was $290—that shows what was happening down there.

Now, go to the fifth charge. In this charge it shows that he permitted the sheriff of Burleson county to charge for six trips to Dallas on the same day, 400 miles going and coming, I believe it was, when the testimony undisputed here shows that he made only one trip on the same day, and on the return trip from Dallas to Caldwell these prisoners were brought back by a deputy sheriff and in the car of one of the counsel of one of the defendants, instead of bringing back these prisoners three times as alleged, and instead of bringing back three prisoners as is alleged and claimed in the account, he only brought back two. Can you think of anyone in better position to know these facts than the district judge of the court who tried the case? It just merely goes to show that he was not looking after the interest of the State or the interests of the people at the time. And then he comes in here and states that he left that up to the Comptroller. He left that up entirely to the Comptroller, who has 250 odd of these accounts to look after.

Now, going back further to the sixth charge, permitting the approval of the claim of the sheriff of Burleson county for the November term, 1925, for subpoenas upon four different men who testified as witnesses against two different defendants showing that each man was subpoenaed six times in each case on the same day, and that a charge of 160 miles was made for each of these witnesses. I say to you, ladies and gentlemen of the House, that if you can read the English language, that you could have opened this account and within a period of five minutes known that there was something the matter with it—your intuition would have told you from the figures on the outside of that account that there was something wrong.

That is not all. In the seventh charge here, as set out, he approved the claim of the sheriff of Burleson county for the purported arrest of Otis DeHart and Harold White at Bryan, Texas, twice on June 6, 1930, and by the approval of that account, and the arrest of each of those individuals twice on the same day in Bryan, and transporting them to Caldwell in Burleson county. That is not all, the evidence shows beyond any dispute that these two men were never carried to Burleson county, and that the records of Brazos county show that they were there all the time and that they were never at any time placed in the Burleson county jail. Now, in the eighth charge he approves sheriff's fees for the arrest of one Bessie Norcross seven times multiple mileage, and the testimony in this case shows that, and it is undisputed, that this woman was never arrested. That she came into the courthouse and made bond and was never arrested.

I understand that some of Judge Price's friends are circulating a petition in this House right now to the effect—the effect of which would be to go back down there and sit on the bench. I have no disposition or inclination to criticize them for that, but I do not feel that under the circumstances that it is showing a proper attitude for those who have put forth the best efforts they have in representing the House of Representatives in this matter. I want to give you this thought. By the action of this Legislature, you have appointed a Committee to go out here and investigate; to bring back to this House a report; that Committee, relying upon the authority you gave them, and in response to the responsibility that you placed in them, have brought back before you charges which this respondent has come in and said are substantially true, and which the testimony shows are true. Now, under those circumstances, how can you do less than vote the charges which have been presented here? I say to you, in all seriousness, that in my opinion, that if you are willing to chuck this whole report of this Committee, if you are willing to throw these charges out the window after the State's money has been spent, if you are willing to do that, I feel that we are more guilty than this district judge was in approving the accounts down there without looking at them.

Ladies and gentlemen of the House, this House has a responsibility placed upon it. We are not alone trying Judge Price. Or Judge Price alone is not being tried and weighed in the balance. It goes further than that. The whole judicial system of this State is involved. The confidence of the people of this State in this Legislature is involved. And for that reason I say to you that if this House does not sustain these charges in the face of the evidence which has been presented here, then everything that this House, and everything that this Committee has done will go for naught. Not only that, but you will tie the hands of this Committee which has gone out and made these investigations. Are you going to set down a precedent here that there is nothing that the House of Representatives can do? Are you going to set down a precedent here that ties the hands of the House of Representatives? I say to you that if you permit this judge to go back down to the Twenty-first Judicial District and sit upon the bench there, then what are we going to do the next time? This responsibility is upon you, and it is upon every member of this House. It is a serious responsibility and I have no doubt but what you are going to live up to that responsibility and fulfill it as it should be.

You know, it just occurred to me this morning that during the first part of the Forty-second Legislature, my friend, Governor Moody, sent up to this House a message in which he called the attention of this House to

certain acts of Judge Brucks down at Hondo, the last paragraph of which I will read to you:

"In the belief that it was necessary in the maintenance of the dignity of the judiciary of the State, these facts are called to your attention to the end that you may investigate them, after according Judge Brucks a hearing, whether or not he should be removed by the Governor after address by the legislative bodies of this State, under the terms of Article 5964, R. C. S., 1925."

That judge was forced by the Committee through—who were appointed by this House, to resign his office, and then you find Governor Moody up here asking that you permit this judge to go back and sit on the bench. Oh, you will say that the criminal laws of the State, the criminal laws of the State of Texas had been violated in that case. I want to say to you now that the criminal laws of this State have been violated in this case, according to my interpretation of the law. Article 414, of the Criminal Code provides that if any officer of the law shall wilfully or negligently fail to perform any duty imposed on him by the Penal Code or Code of Criminal Procedure, he shall, when the act or omission is not otherwise defined, be punished as prescribed in the succeeding article.

Now, there has been a violation of the Penal Code of this State and no one can gainsay that these acts were not either wilful or negligently done. Oh, they come here before you with witnesses; they bring General Burleson here, formerly Postmaster General of the United States, and Governor Moody, and these other gentlemen who have been charged with the enforcement of the laws of this State. I do not blame them for this, they all have a bunch of friends in this House, and they are here trying to get you members of this House to show a little of the milk of human kindness. I want to tell you all here and now, that you should, and that you deserve to show the milk of human kindness to others than this judge. The taxpayers of this State deserve to be considered. This is a grand old State that we live in, and it should be considered. The judicial districts of this State should be considered, in order that we have a government of law and not of men. The responsibility of the members of this House of Representatives to the people of the State of Texas should be considered. Under all of these circumstances, ladies and gentlemen of the House, I say to you, that we can do no other thing than to accept and vote these charges.

I want to call your attention to this further fact. I understand that there is a resolution being circulated in this House, I do not know whether it will be offered or not, that—had you ever thought of this fact—that this Legislature, this House of Representatives has no authority whatever to visit any punishment upon anyone. That is for the Senate of the State of Texas to do. I understand that the insinuation has been made here that the Senate was already fixed. It is not our place or our duty to visit any punishment on this judge. He has my sympathy. I feel very sorry for him. I would give another one of my fingers on this hand if this could be undone, but you gentlemen are sitting here as a grand jury to vote on whether or not these charges should be sustained, and not for the purpose of meting out punishment. When this goes to the Senate of Texas and they have gone into all this evidence and they do not decide to sustain the charges that have been voted by this House, if they want, and can in good conscience do that, that is their business. But I say to you when you have voted these charges you have voted to fulfill your responsibility, you have fulfilled the responsibility placed on you, you have fulfilled the responsibility that has been placed on your shoulders, and there is only one of two things that you can do in this matter. You can either vote the charges and sustain the charges that have been presented to you by the Committee, or you can throw them out the window. You have but two choices in the matter. There is certainly no authority that I know of, that I have been able to find that would give this House the right to reprimand Judge Price and send him back to his district to hold court. The best illustration that I have of that, the best illustration that I have seen, and I say that in all respect to Judge Price, that he is incompetent to go down there and sit upon the bench. The best illustration that I can give you as to his competence was his testimony while he was on the witness stand. I say that with all

respect to him. Oh. Senator Page is a clever attorney. He has had years of experience, and I want to call your attention to the fact that every question practically that Judge Price answered here was framed in such a way that it could be answered either yes or no.

Ladies and gentlemen of the House, the subject here is one that could perhaps be discussed for several hours and yet not cover the facts as they have been presented. My time has about expired, and I certainly appreciate the courteous attention which you have given me. I want to say to you again, that I have no personal animosity to Judge Price. My feeling to him personally is only one of kindness and sorrow. But even though that be true, and I think I showed that was the way I felt about it when at the outset of this investigation here I presented a resolution attempting to give Judge Price the opportunity to resign the office in order that this House would not have to vote these charges. He has declined to do that. He has declined that opportunity. Some of his friends in this House have discussed the fact that he should be removed by address. Now, ladies and gentlemen of the House, you know that that is impossible. That the same testimony would be required in that case. He has declined every opportunity that has been given him to resign, and it is now up to you members of this House of Representatives to do your duty as you see it, to either adopt or reject the charges which have been filed herein, to which Judge Price — and which Judge Price has informed you through his attorneys, are substantially true.

Oh, they thought they had this matter stopped. I happened to get hold of the reprimand that had been placed on the Speaker's stand by Judge Price. I did not know that the matter had gone that far. I understand that Judge Graves wrote it. I did not write it. I did not know who had prepared it.

The Chairman tells me that my time has expired. I want to thank you again for your courteous attention. In closing, I want to say that I have no personal animosity to Judge Price. He and he alone is responsible for the condition in which he is placed, and I want to urge you again as members of this House, to fulfill your responsibility that you owe to the State of Texas, and to the judicial districts of the State of Texas, and to the members of the House of Representatives of the State of Texas.

Ladies and gentlemen of the House, I again thank you.

August 19, 1931—10:05 o'clock a. m.

Argument of Senator Paul D. Page, for the respondent:

Senator Page: Mr. Speaker, Gentlemen of the Committee:

I trust that this Committee will give me their attention, while I discuss before them, very briefly, this highly important matter to the Twenty-first Judicial District and to the State of Texas as well.

It has been my good fortune, or bad fortune, to present to the juries of this country many important cases, involving the life, the liberty, and the property of the individual, but I approach this case with a much graver sense of responsibility than any matter that I have ever presented to the Legislature or to the courts of this State in the course of my life, which has been now for some years spent in that line of business.

Gentlemen, let me entreat you in the beginning, as you have a right to do, to consider the kind and character of man that you are trying. Gentlemen of this Committee, you are trying no ordinary criminal here. It is evident from this testimony, and it has been admitted by counsel for the proponents of these charges, that no higher type of man exists in the State of Texas, than the respondent in this cause. It was not necessary for the Committee to make such an admission. We have brought before you men from every walk of life, and the best women that live in this country, to prove by them, as stated by one of them, that "no nobler soul ever lived than the soul of Judge J. B. Price." We have brought you two members of the Cabinet of the lamented Woodrow Wilson, Mr. T. W. Gregory, and Albert Burleson.

Those men have testified before you upon their oaths that no man of their acquaintance enjoyed a higher degree of confidence than the respondent in this cause. And I invite your special attention to the remarks of General Burleson. General

Burleson has grown old in the cause of the people of Travis county, of this judicial district, of the State of Texas and of this country that we all love so well. General Burleson has said to you that he has known the respondent in this cause for more than forty years. He has said to you that before he would believe that this man would be guilty of the acts here charged to him, that it would take Divine revelation to cause him to believe it. What higher testimony can come to you? We have put on his own friends from the town where he has lived so long. We have put on his friends from the Twenty-first Judicial District. We have put on the first men and the first women of the State of Texas to give this House the benefit of what they know about this respondent. Therefore, I say to you members of the Committee that no man of higher type exists and lives in Texas today than J. B. Price, the respondent in this cause.

Not only that, but he comes of a long and honored family. Many years ago, his father and his forebears fought in the Mexican war in order that the ruthless Mexican might be driven from the Texas borders. His father, Robert J. Price, when I was a straggling boy, was a member of the Fourteenth Legislature of this State. I tell you his forebears are as honorable as himself. The name, Price, in that county of Bastrop, is synonymous with the higher type of people in this State. He comes before you without a smirch against his character and good name, and with nothing alleged against him except what is alleged in the charges here.

Before I overlook it, I want to say something in reply to the speaker who preceded me. He said something of a petition which was being circulated in this Legislature to reprimand this district judge and let him return to his bench. I want to say that we have nothing to do with that. We are not in control of the members of this Committee and have no authority over the members of this House, and if they desire to circulate such a petition, certainly you gentlemen understand whether or not it is within their authority and whether or not they have a right to do this thing. The attorneys for the respondent have nothing to do with a matter of this kind.

It was further stated by the speaker that preceded me that this House had no authority to reprimand this district judge. I believe that when he found out that the resolution of reprimand was written by the chief proponent of these charges, he withdrew his criticism of that matter.

Now, let me call your attention briefly to some of the charges against Judge Price. I have not the time to go into this matter fully, and neither have you gentlemen the time to listen to me. But I want to call your attention to Charge No. 1 against him, the charges which I regard as the most serious of all the charges here made. It has been charged that he approved an account for the sheriff of Lee county in the sum of eighteen thousand and some odd dollars. That, gentlemen, is true. He did approve the account. Under what circumstances did he approve it?—That account was presented to him, and at the time the account was presented to him, there was a decision by the Court of Civil Appeals of this district, presided over by Judge Blair, or the opinion being rendered by Judge Blair, and concurred in by Judge McClendon, the presiding judge, and by Judge Baugh, the associate judge, holding this account was a valid account and the sheriffs had the right to make the charges that they did under such circumstances.

Reference has been made by counsel for the proponents to the disposition made of that case. I mildly attempted to correct him when he made what I thought to be an error in his statement. That matter came before the Court of Civil Appeals on appeal from Bell county. Judge Louis Jones, of Bell county, had refused to approve the account of the sheriff of that county for certain sums of duplicate mileage. That matter was fully presented to the Court of Civil Appeals and fully considered by them, and after mature consideration, that Court of Civil Appeals handed down an opinion, holding that this account that Judge Price approved should have been approved by him, under the law, and that he had no right to do otherwise than to approve it. Let's consider it further: That case went to the Supreme Court of Texas on writ of error, and the gentleman said that case was never the law. I want to call his attention and your attention

to the fact that the decision of a Court of Civil Appeals of a given district, not concurred in by the Supreme Court, is the law of the land until that decision is set aside by the Supreme Court.

It is evident that when that decision reached the Supreme Court, they were conscious of the extreme importance of it, and instead of deciding the matter, they held that the matter was not one which could be appealed from, and waived the case aside on the ground that they had no jurisdiction of it.

At the time this large account was presented to Judge Price, there was attached thereto when he approved it the following statement to the Comptroller, showing that Judge Price was passing this matter up to the Comptroller for his decision. It has been read to you, but I will advert to it. Attached to this claim is now the following:

"To the Comptroller: Enclosed account of John T. Carlisle, sheriff of Lee county, has been prepared in conformity with the rules laid down in Bigham vs. State, 275 S. W. 147, holding that the sheriff is entitled to mileage in going to serve each warrant of arrest and also mileage in each case in summoning witnesses, even though summoned at the same time."

What was Judge Price's testimony about that account? He said the sheriff of Lee county brought that account to him in Burleson county, and he examined the account and examined the decision and approved the account under the authority of that decision, and what more did he do? He told the sheriff at that time to take that account to the Comptroller and tell him to examine it carefully; that he thought no money should be paid out under that account until the Supreme Court of Texas had passed upon the validity of it. Is there anything wrong about that? The Comptroller, under the law, must examine these accounts. It was conceded in the beginning by counsel for the proponents that there was a valid article here in our statutes providing that the Comptroller should examine these accounts, but we have produced that authority and have it here before us—that it is incumbent upon the Comptroller, just as it is upon the district judge, to audit and examine those accounts, before they shall be paid. That account was then brought to the Comptroller, and Judge Price tells you that he knew nothing more about this account until the Assistant Attorney General of Texas, for whom I have the greatest respect; I have nothing but the highest respect for Grady Chandler, and in fact my own son has worked with him, but I feel that when he came down to Bastrop urging the district judge to withdraw his approval of an account, it would have been much better to have filed a brief with that judge, setting up the decision, and if the decision in Bigham vs. State had then been reversed, and he had filed such a written brief showing that this decision had been overruled, it would have been much better; and Mr. Chandler told you himself that he went down with the attorneys for the sheriff before Judge Price, and he seemed to be in some doubt of what took place there, and naturally so; his memory probably did not serve him as well as it should. He told you he wasn't sure, but he did not think he presented this decision —which he had in his pocket—to the judge, but that Senator Watson, who was present, did read the decision. Mr. Chandler said he was not sure, but he thought he told the Judge about it. Later, when asked about it before the Committee of this House, he stated that he had not tried to keep the decision back on that occasion to use it against Senator Watson later on, and you may refer to the record and find out those are the facts.

What happened at that time? Judge Price told Mr. Chandler that having affixed his approval to the account under the case of Bigham vs. State, and the sheriff having done the work under that authority, he felt he had no authority to remove his approval at that time. So what happened? That account was then returned to the Comptroller of Texas. Now let me call your attention to something here: The proponents of these charges are responsible for what is prepared in these charges, and I feel sure when they prepared the charges, they felt they could present evidence to sustain them. Nevertheless, in this particular matter, when I first went over the matter with Judge Price, I told him and I told Judge Batts and others that, in my opinion, the most serious charge made in these charges against the integrity of that judge, was that

he came to the Comptroller of Texas and insisted that this account should be paid. Charge No. 2—let me direct your attention to it:

"That said J. B. Price thereafter, on or about November 30th, 1930, called on the Comptroller of the State of Texas and insisted that the above-mentioned accounts for Sheriff John T. Carlisle of Lee county be approved and that he be paid the sum of $12,000, when in truth and in fact, the said J. B. Price knew, or should have known with the use of ordinary diligence, that said amount should not be paid out of the State Treasury of this State and that said amount was not due Sheriff Carlisle as claimed by Judge Price."

In fairness to the Committee, what proof has been produced here of that charge? He had gone upon the witness stand and testified that Judge Price went to the Comptroller and asked him to pay that account. The Comptroller, Mr. Sheppard, is down in the office, and I assume the clerk who worked for him is in the city of Austin—of course, I don't know—but they have not introduced a scintilla of evidence here showing that he went to that Comptroller and insisted upon anything of the kind. The only testimony produced along that line was produced by the attorneys for the respondent, and what was that? Judge Price testified to you that while he was discharging his official duties in the town of Caldwell, that a man named Pat Black, the brother-in-law of Sheriff Carlisle, called him on the telephone, and said that Comptroller Sheppard had come to an agreement with him—Black—as to the amount to be paid to Sheriff Carlisle, or his widow, Mrs. Carlisle, under that account. He told you that he was informed they had reached an agreement already. Who had? The representatives of the deceased sheriff, and the Comptroller of this State had reached an agreement, independent of Judge Price. He said that he told Mr. Black he wasn't sure he could come to Austin, as he was trying cases in Caldwell, but if he could get away from the court, he would get on the train and come to Giddings and meet Mr. Black there. And he said that he got rid of the case and got on the train and went to Giddings, but that his train was two hours late, and when he went there he met Mr. Black, and on account of the lateness of the hour when they could have expected to reach Austin, they didn't know whether the Comptroller would still be in his office. But what happened then; he went to Austin with Mr. Black and to the Comptroller's office. He said Mr. Sheppard was present, and his clerk, Mr. Goodfellow, was present, and he had a young man engaged in another room in adding up the account. That he had a seat there and in a few minutes the clerk came in and said, "I am right about this, and the account was $7,900 and some-odd dollars, and that is just the amount we have agreed on." He said he was then requested by the Comptroller to affix his approval to the account in accordance with the agreement of the State of Texas, entered into by the Comptroller, with the man representing the lady that owned this account. Is there anything, ladies and gentlemen, wrong about that?

The Comptroller told him he had made a good settlement, and it is in evidence in this case that he thought he had made a good settlement and that he was glad to get the matter off his desk. Now who is to blame about that? At the time Judge Price approved these accounts for $18,000, he told them not to get any money on them until the Comptroller had examined them. What man could be fairer than that? He felt he must approve them under the decision of that case but he felt they should not be collected until the Supreme Court of Texas had confirmed that decision.

Mr. Chandler must have told the Comptroller that the decision in Bigham vs. State had been overruled by the Supreme Court of Texas, but yet, in the face of that, the Comptroller approved that account; he approved that account for $7,980, and requested the respondent to affix his signature to that account, and I maintain he could do nothing else. Now is that a breaking down of that judge? And I regard that as the most serious charge made against the respondent here. The records show that not a scintilla of testimony has been introduced here by the proponents of that charge to sustain it before this Committee. Am I not correct about that? I feel the Committee knows I am.

Now, gentlemen of the Committee, I pass to what I consider the next most serious charge against the respondent in this matter. I will not

have the time to go over all of them, but I want to call your attention to the next charge, which I consider to be very serious in this case. That charge is the charge that in the District Court of Lee County—I believe it is the final charge here—that the district judge of Lee county, or the respondent here, affixed his signature to a number of blanks; witness certificate blanks for out-of-county witnesses, and that those blanks were not made out and he left them in the office of the district clerk in blank. Now, I consider that that should not have been done. Judge Price has admitted upon the stand that he likely did wrong in doing that, and he did, of course, but nevertheless, the testimony in this case shows why he did that. You all know, in the trial of an important case, the district judge must necessarily be upon the bench at all times, and it has been held by the Court of Civil Appeals that if he vacates his bench and removes his control for however short a time, that is ground for reversal, and I have reversed a case upon my friend, the district attorney over there, on that very ground.

You all know that witnesses from Fort Worth or Dallas, or from anywhere, that when they finish their testimony in Bastrop county, they want to leave and go home as quickly as possible, and it is right to allow them to do that. Therefore, whenever a witness is there and has testified and is ready to leave, it is necessary for the certificate to be made out by the clerk, and then it is necessary for the district judge to then sign that certificate, but after that, there are three endorsements that must be placed thereon before it can be paid by the Treasurer of the State.

Now, Judge Price and the clerk of the court testified that the certificates were signed under the following circumstances. That a trial was in progress, in a session of the court, and the clerk testified that he carried the docket or the book over to Judge Price and he put it in his lap, on his knee, and he signed those certificates and he said, "Well, Hester, I suppose those will run you for the balance of this court." That was done for the convenience of the witnesses, and for the convenience of the clerk of the court. Was there any ulterior motive upon the part of the judge in doing that? If so, who profited thereby? All seven of those certificates that he signed are still in the book, and not one of them has ever been paid out and they are still there. Not one of them has ever been used, and no money has ever been paid out on any of them. Now, who has been hurt by that?

Now, for these charges: First, that the judge—that he came to the State Comptroller and asked, and insisted that this large account be paid; but I have shown that charge to be incorrect. They have not introduced a bit of testimony substantiating that charge, and I think the Committee should very seriously consider that. I have attempted to show and I think I have shown to your satisfaction that in signing these witness certificates this district judge had no intention of violating any law, and while he was probably a little out of order in signing those certificates, no injury has accrued to a human being or to the State of Texas thereby.

It is in evidence here by the district clerk of Bastrop county—and you must have known, in looking at that man, that you were looking at a man of the highest type; a man of great integrity, and you didn't have to have witnesses to prove that; you could tell it by looking into his face; his honest character shows in the very face of that district clerk, Jenkins. He has testified to you that Judge Price conserved the money and served the best interests of the county in every way. He undertook to shape up his jury and to shape up his docket, and worked very hard to see that the Bastrop county funds were conserved, so that later on, if it was not all spent, it might be transferred into the general fund, possibly helping out the general deficiency in all the State of Texas at this time.

Now, a word as to the Lee county cases. It is in evidence that there were ninety-odd bills of indictment returned, out of which this large sheriff's account was made up. Does the district judge have anything to do with that? The district attorney —and no better man lives in Texas— the district attorney has appeared before you here and explained that. He said that Sheriff Carlisle came before that grand jury and stated to them that he had been criticised on account of the fact that the liquor

laws were being openly violated in his county, and he wanted to stop that, just as I suppose he wanted to stop the violation of all other laws in that county, and the grand jury, acting at the behest of the sheriff, returned all these bills of indictment.

Something has been said about the continuances in the Donevan case. There was a negro, Tom Donevan, that violated the liquor laws and at the request of the sheriff, the grand jury returned a great number of indictments against him. The testimony shows that the sheriff pursued that defendant relentlessly. The negro ran away and went to Michigan to escape punishment for his violation of that law, and I want to state to you, in behalf of Sheriff Carlisle, that most sheriffs would not have shown such determination to bring a defendant to justice, would not have pursued this darkey to Michigan and brought him back to Texas for trial, but he was so relentless and so desirous of upholding the law, that he went all the way to Michigan and brought the negro back for trial.

Something was said about the amount of bond in that case. The testimony shows that he fled the country before he was ever apprehended and placed under bond. And after he was brought back to Lee county, he was put under bond of $140 in each of thirty-seven cases, which amounted to an aggregate bond of $5,180. What happened at the next term of court? The negro was tried at the very next term of court, and the district attorney tells you that he had a hung jury in that case. Was Judge Price responsible for that? Could he help the fact that the jury did not agree upon the case?

Let's go to the next term of court. In the meantime, Judge Price exchanged benches with Judge Jeffrey, and went over there to Caldwell to try cases for him, and Judge Jeffrey came over to try this case for Judge Price. He came over there, and he was there and testified to it, that on the Saturday before this case was called on Monday, this defendant had his arm cut off in a gin; that he was represented to be in a very serious condition and that it was thought he would die, and under those circumstances, there was no setting made of the case, and I want to tell you there is not a district judge in Texas that would have set the case for trial at the next term of court where it was thought that the defendant was in such condition that he would die; and in fact, a man did die under such circumstances. The case was continued, and at the next term of court the district attorney of that district presented motions to that court, to the respondent in this case, that the case be dismissed; that was the action of the district attorney, and there is not a district judge in this State but who acts upon the advice of the district attorney in these matters. The district attorney had tried this negro twice, resulting in one acquittal and one hung jury, and he told you that he had consulted with the business men and with various of the leading citizens, and was told by them that he could not hope to get a conviction in the case, and so he dropped those cases to save the State any further expense.

I want to call your attention now to the fact that we have allowed affidavits to be introduced here, and nearly every one of them came from a convict serving in the State penitentiary at the time he made the affidavit, and you know a convict, convicted by the district judge and district attorney and the sheriff of that county, he would sign anything if he thought he would get those officials in trouble.

A member of this Committee spoke to me and asked me why they were admitted, since they were not proper evidence, and I said to him that this was in the nature of an open hearing, somewhat of an examining trial. For many reasons, of course, those affidavits would not be admitted in an ordinary court, and could not be, but we did not care to put the State of Texas to the expense of bringing those witnesses from Huntsville and from Brazoria and other places, to appear before this House so that they might consider their testimony, and I call your attention to the fact that you must receive the testimony of those negroes with a degree of suspicion, at least.

You gentlemen must recognize that my time is limited here, and I cannot go over these matters in detail. The Speaker has admonished me that I have only ten minutes left in which to conclude this case. I want to state this to you; that you must understand and I want you to understand, that in the matter of these charges against

the sheriff of Burleson county, and against the sheriff of Lee county, and against the sheriff of Bastrop county, we have no right whatever to put those sheriffs on the stand here. The records will show that we have asked for process to be issued for the sheriff of Lee county and for Sheriff Lewis of Burleson county. We wanted them to come here and explain these matters to you; to explain this duplicate mileage and these trips that they made, and we were informed by the attorneys for these sheriffs that they would not take the stand in this matter, and as you know, we could not compel them to come and testify under such circumstances; we could not compel them to do so if they did not wish to do so. We don't know whether they have done anything wrong or not, but the proponents of these charges before this Committee say that they have commited flagrant violations of the law, and so we tried to bring them up here to explain these matters, and I want the House and this Committee to understand why we could not do it.

Now, in conclusion, let me say this to the House: Something has been said here by the gentleman who preceded me about admonishing this man and returning him to sit upon the bench in Bastrop county. My friends, the hand of the Almighty has been heavily laid upon this respondent. Not only is he burdened with the cares and labors of many years, but the hand of the Almighty has laid an infirmity upon him. I want to say to you that Judge Price will never become a candidate for office again; he has some fifteen months to serve in this term, but he will not be a candidate for office any more, as he would like to do if it were not for his physical condition. He has only fifteen months to serve in this term; think of that, my friends—that's all we are asking you for! He does not expect to become a burden upon the State of Texas and will not do so. We, his friends, will not permit him to become a burden upon the State of Texas. We have given freely of our time, and I may state, of our money and of everything we possess to come here for our friend and present these facts to this Legislature. The bar of that district has assumed every expense in this matter, and I wanted to state that, that you may know the regard in which he is held.

Members of the Legislature, finally, I want to say to you that you have been eminently fair in this matter, and have listened with the greatest patience to this testimony. No man has ever heard me criticize the State Legislature of this State of Texas. For eight years, I had the honor to be a member of the State Senate of Texas. I have said always, whenever this Legislature has been criticized within my hearing, "Gentlemen, those men are patriots, and they are good men." I call a spade a spade, and when I meet a man, I call him a man, and if he is a puppy, I tell him so. I have always defended the honor and the integrity of this House, and I think it is the mainstay of the people of this State. I think you are doing your full duty, and I have no criticism of you.

I appeal to you now, in the name of this respondent; in the name of the people of that district who honor and love him; in the memory of his honored father, once a member of this House; and in the name of common humanity, that this matter be proceeded with no further. Everything has been accomplished that could be accomplished and further action could do no more. I am with you in the abolition of the fee system; I think it's all wrong. I stand ready to take the stump in my district and tell my people, as Judge Calhoun stated here yesterday, that the fee system is the curse of Texas. Your indictment, gentlemen of the Committee, is and must be against the system, rather than against individuals. I agree with you, that great good will come out of the investigation; I agree with you that great wrong has probably been done the State of Texas. I believe you have entered upon the right proceeding in this matter, except this: that I believe, gentlemen, that the indictment should not lie against this respondent here, but against the system of which he is the victim; misled by the officials serving under him; betrayed by his faith in his fellow man.

Finally, my friends, I appeal to you in behalf of the womanhood of the Twenty-first Judicial District, who have appeared here before you and pleaded for this man. One of them said that no nobler soul ever lived, than that of J. B. Price, and

you must know it is true. And I appeal to you finally—for my friend.

He is my friend, and faithful and just to me; he has been faithful to his trust, so far as he can. He has admitted to some indiscretion; and, why not? The perfect man was never here but once, and He was crucified. We all know what the Master said to the woman at the well. He turned to those who would have stoned her, and he said, "Let him that is without sin, cast the first stone." No man raised his voice against the woman, but they turned, and went away. And the Master said, "Neither will I condemn thee. Go hence, and sin no more."

Gentlemen, this is a case where mercy can be exercised. Something has been said about the "pound of flesh." I believe possibly the Legislature has secured the pound of flesh. But let it not be followed with one single drop of gentle Christian blood that flows from the heart of this man sitting before you.

The quality of mercy is not strained. It droppeth as the gentle rain from heaven; it is twice blessed. It blesses him that gives, and him that receives. It is mightiest in the mightiest. It becomes the throned monarch better than his crown. His scepter shows the force of temporal power, but mercy is above his sceptered sway, and earthly power seems likest most to God's, when mercy seasons justice.

Governor Dan Moody: Mr. Chairman, Ladies and Gentlemen of the Committee: The time allotted to me for the argument in this case is limited, I will not detain you long. I appear here not as a paid attorney, but I appear here in the interest of a man who befriended me in years gone by, and, to adopt the expression of General Burleson, he has been my friend, and I am his. I am impressed, ladies and gentlemen, with the conviction that the testimony which has been introduced before you shows, under the law, no impeachable offense in Judge Price. You are, under the Constitution of this State, his trial court, and you are not only to be the judges of the facts, but you are to be the judges of the law, and whether or not the facts meet the requirements of the law to show an impeachable offense. I am conscious of the fact, ladies and gentlemen, that there are in this Committee, men who are lawyers of years of experience, and I am also aware of the fact, as should be the case, that those who have been elected to enact our laws, which we live by, are not all lawyers, but many come from other avocations and professions of life. However, in this case, you assume the rather burdensome labor, whether you be lawyer or layman, of passing upon, not only questions of fact involved in this hearing, but also questions of law.

I desire to discuss before you the question as to whether or not, under the law, Judge Price is charged in this proceeding with an offense which is impeachable under our Constitution, and whether or not the facts that have been introduced in evidence against him are sufficient to make out a case of impeachment, which would justify, therefore, a finding upon your part that he should be charged before the Senate of this State with an impeachable offense. We are not without authority from the courts of this State, and the courts of other states of the United States, and the Congress of the United States and the Parliament of England, from all of these sources you have authorities on these points, and you are to determine, I take it, that will be the first question that you will determine, as to whether or not the evidence offered in this proceeding shows an impeachable offense. I do not want to burden you long with citations of authority, but I know no way that a lawyer can establish his points of law except by decided cases, legal treaties, and principles of law that have been announced by the courts, and have been written by the law writers.

In the case of Maddox versus Ferguson, which has been already heretofore cited in this proceeding, the Supreme Court of Texas gives an impeachable offense the charge of felony, and said, speaking on that subject:

"While impeachable offenses are not defined in the Constitution, they are very clearly designated and pointed out by the term 'impeachment,' which contains connotes of offense to be considered and the procedure for the trial thereof."

I concede, ladies and gentlemen, that it is within your power to conclude that any offense, however triv-

ial, is impeachable, because you are the final judges of this question, as to whether or not a man shall be impeached—not the question as to whether or not a man shall be impeached—not the question as to whether he shall be convicted on an article, but you might impeach a man for any offense, as I take it; but I know you will endeavor to follow the law, and you must find the offense to be impeachable—to be an impeachable offense, unless there is authority under the precedent of the English and American Parliaments, since they are our parliaments, from which we get our reasons for impeachment at the present time.

"Impeachment. Impeachment at the time of the adoption of the Constitution was an established and well understood procedure in English and American parliamentary law, and it has been resorted to from time to time in the former country, for more than 500 years. It was designated primarily to reach those in high places, guilty of official delinquencies or mal-administration. It was settled that the wrongs justifying impeachment need not be statutory offenses or common-law offenses, or even offenses against any positive law. Generally speaking, they were designated as high crimes and misdemeanors, which, in effect, meant nothing more than grave official wrongs. In the nature of things, these offenses can not be defined except in the most general way. A definition can at least do little more than state the principle upon which the offense rests. Consequently, no attempt was ever made to define impeachable offenses, and the futility, as well as the unwisdom, of attempting to do so has been commented upon. In the Constitution of the United States, impeachable offenses are designated as 'treason, bribery, or other high kinds of misdemeanor.' Substantially the same language is used as used in many of the state constitutions. In others, 'misdemeanors in office,' 'mal-administration,' 'oppression in office,' and the like are declared to be impeachable offenses. When the Constitution of the State of Texas was adopted, it was done in the light of and with full knowledge and understanding of the principles of impeachment as theretofore established in English and American parliamentary procedure. The Constitution in this matter of impeachment created nothing new. By it something existing and well understood was simply adopted, and power granted to the House to impeach and the Senate to try, impeachment carries with it by inevitable implication the power to the one to prefer and to the other to try charges for such delinquencies, wrongs, or mal-feasances, as justify impeachment, according to the principles established by the common law and the practice of the English Parliament, and the parliamentary bodies in America. The grant of the general power of impeachment properly and sufficiently indicates the cause for its exercise."

So the Supreme Court of our State has said that under our Constitution, our Constitution was adopted in the light of the proceedings of the English and American parliaments; and they looked to them for our present precedent. The greatest common law writer, I take it, is Blackstone, and Blackstone gave a definition of high crimes and misdemeanors. I read from a speech made in the impeachment of President Andrew Johnson, made by Mr. Boutwell (reading):

"If the position I take is sound, that the meaning of the phrase 'high crimes and misdemeanors,' is to be ascertained by reference to the principles of the English Common Law of Crimes, Blackstone's definition that 'a crime or misdemeanor is an act committed or omitted in violation of a public law either forbidding or commanding it,' becomes important. I stand upon this definition of the great writer upon English law, as the connecting link between the theory of the law that I maintain, and the facts which in this case are proved. It is to be observed in connection with Blackstone's definition that in our systems the Constitution and the statutes are the 'public law' of which he speaks, and any act done by the President which is forbidden by the law or by the Constitution or the omission by him to do what is by the law or the Constitution demanded, is a 'high crime and misdemeanor,' and renders him liable to impeachment and removal from office. He is amenable to the House and Senate in accordance with the great principles of public law, of which the Constitution of the United States is the foundation. And it is true in the entire and

better sense than it is true of the statutes that the President of the United States is bound to support the Constitution, the vital part of which in reference to the public affairs of the country, is that he shall take care that the laws be faithfully executed, and he violates that great provision of the Constitution, especially when he, himself, disregards the law, either by doing that which is forbidden, or neglecting that which he is commanded to do."

Blackstone defines it, "a crime or misdemeanor is an act committed or omitted in violation of a public law either forbidding or commanding it."

From the Supreme Court of Connecticut, decided in 1827—a common law State—a State that adopted the Common Law of England, the same as the State of Texas has adopted it:

"High crimes and misdemeanors are such immoral and unlawful acts as are nearly allied and equal in guilt to a felony, yet, owing to some technical circumstance, don't fall within the definition of felony." 1st Russell on Crime, page 61.

"The idea of felony," says Mr. William Blackstone, "is indeed so generally connected with that of capital punishment that we find it hard to separate them, and to this usage the interpretations of the law do not now conform."

The authority, I take it, is sufficient to justify the statement that our Constitution contemplates that a man cannot be impeached for any offense except offenses coming within the class of high crimes and misdemeanors, and I take it that since our Supreme Court has held that in adopting this provision of the Constitution, they adopted it in the light of the common law, and in the proceedings of the English and American parliaments, that the definition of a common law as found from learned common law writers, is that a high crime and misdemeanor is an offense or an unlawful act, that is nearly allied with and equal in guilt to a felony, yet, owing to some technical circumstance, doesn't fall within the definition f a felony. Now, then, the most serious charge, so far as the criminal law is concerned, that these gentlemen have brought against respondent, is a misdemeanor, punishable by fine not exceeding $200. Mr. DeWolfe, today, and the Assistant Attorney General, Mr. Sturgeon, a day or two ago, read to this House Article 414 of the Penal Code of this State. I don't think they read Article 415, fixing the punishment. Article 414 reads: "If any officer of the law shall wilfully or negligently fail to perform any duty imposed upon him by the Penal Code or Code of Criminal Procedure he shall, when the act or omission is not otherwise defined, be punished as prescribed in the succeeding article."

That is the part of the article that they read to you. I would like to have every member of this Legislature hear this article again, because you are to pass upon this case, and upon questions of law the same as questions of fact.

(Reading): "If any officer of the law shall wilfully or negligently fail to perform any duty imposed upon him by the Penal Code or Code of Criminal Procedure, he shall, when the act or omission is not otherwise defined, be punished as prescribed in the succeeding article."

The succeeding article, ladies and gentlemen, is: "Whenever in the Penal Code or Code of Criminal Procedure it is declared that an officer is guilty of an offense on account of any particular act or omission, and there is not in the Penal Code any punishment assigned for the same, such officer shall be fined not exceeding two hundred dollars."

Now, ladies and gentlemen of the House, assuming for the purpose of argument, which I think is something that is upon a serious question as a proposition of law, let us assume for the sake of argument that the article, 414, read by counsel for the House, defines the offense that they charge against Judge Price—and that is the article of the Penal Code to which they did resort to convince you that he has committed a crime—and then read the succeeding article that has described the punishment, and we find that the Legislature of this State has said that the punishment shall be by fine not exceeding $200.

Ladies and gentlemen, they ask at your hands articles of impeachment against this man, for an offense for which the Legislature of this State, assuming their propositions to be correct, has fixed a fine as punishment not exceeding $200. A mere $200—compared with Mr. Blackstone's defintion of crimes and misdemeanors. A mere $200 compared with the rulings of the Supreme Court of the State of

Connecticut. A mere $200, compared with Mr. Russell's definition of high crimes and misdemeanors, a crime amounting to a felony, but which for some technical reason does not come within the definition of felony.

In other words, ladies and gentlemen of this House, you are asked to impose that which, in my judgment, is the severest penalty known to the law—that of impeachment against this man for the commission of an act which, according to his prosecutors, means nothing more than a misdemeanor, which demands a fine of not more than $200.

Mr. Hanson: Mr. Speaker, does that come within the province of the Chair—the jury, those articles, or is that left to the court?

Governor Moody: I think, sir, you are sitting here as legislators and as a committee and as a House of Representatives, to determine whether or not articles of impeachment shall be preferred; I think you should consult the Supreme Court of Texas, as you are performing not a legislative, but a judicial function—I think you have been referred to as grand jurors. That doesn't exactly construe my idea. I think you are sitting as a court, to pass upon questions of law, and questions of fact, and your Chairman rules upon the admissibility of evidence. I think it is a question for the Legislature. I state, ladies and gentlemen, that your acts may inflict upon this man, a penalty which, to my judgment, is the highest known to law. The infliction of the death penalty for murder, or the penalty for arson, for which it would be less, is the infliction of purely physical punishment. I think the impeachment of a man in public office is a solemn declaration that the party is guilty of dishonesty, betrayed the public trust, placing not only upon him physical punishment, but also a stigma that he and his children shall wear a long time. To my way of thinking, capital punishment, that may be enforced for murder or treason, or any other offense, is a punishment not nearly so severe as the tortuous punishment of impeachment from a public trust; and I appeal to the opinion of the Supreme Court of our State, I appeal to the decisions of other common law states, I appeal to the definition of the law writers, what is an impeachment offense? And then I appeal to you, as I know you will undertake to perform your solemn duty in this case, to weigh these propositions of law. I do not think, gentlemen, the law representatives of this House, and I do not believe that the men of this House who are not lawyers, will conclude under the law, the offense charged here is impeachable, or one in which impeachable proceedings will lie.

I have another proposition which I will present why I do not think it is an impeachable offense under the law. I have here my message to the Legislature in the Judge Brucks' case. There is a familiar rule of law, a well known maxim of law that every lawyer in this House is well acquainted with: "expressio unius est exclusio alterius.' We had the right to appeal to that maxim of law, which, perhaps, has been pleaded as frequently as any other principle of law, not only by the courts of this State, but by the courts of every State that has adopted the common law of England. Article 15 of the Constitution says:

"The power of impeachment shall be vested in the House of Representatives."

"Impeachment of the Governor, Lieutenant Governor, Attorney General, Treasurer, Commissioner of the General Land Office, Comptroller, and the judges of the Supreme Court, Court of Appeals and District Courts, shall be tried by the Senate."

"When the Senate is sitting as a Court of Impeachment the Senators shall be on oath, or affirmation, impartially to try the party impeached; and no person shall be convicted without the concurrence of two-thirds of the Senators present."

"Judgment in cases of impeachment shall extend only to removal from office, and disqualifications from holding any office of honor, trust or profit under this State. A party convicted on impeachment shall also be subject to indictment, trial and punishment, according to law."

The inference is clearly that the adopters of the Constitution had in mind that impeachable offenses should be offenses for which the court might try and punish under the penal laws of this State,—going back to the definition of high crimes and misdemeanors, and, ladies and gentlemen, a felony. Evidently the Constitution

had in mind that only criminal offenses would be the basis of charges of impeachment.

Now, further going on, it provides for the suspension of all officers against whom articles of impeachment may be preferred.

And, then, Section 6, of Article 15, of the Constitution, provides for the removal of a district judge by the Supreme Court, and says:

"Any judge of the district courts of the State who is incompetent to discharge the duties of his office, or who shall be guilty of partiality, or oppression, or other official misconducts, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge, or who shall fail to execute in a reasonable measure, the business in his courts, may be removed by the Supreme Court. The Supreme Court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing upon the oaths, taken before some judges of a court of record of not less than ten lawyers, practicing in the courts held by such judge, and licensed to practice in the Supreme Court; said presentment to be founded either upon the knowledge of the persons making it or upon the written oaths as to the facts of credible witnesses. The Supreme Court may issue all needful process and prescribe all needful rules to give effect to this section. Causes of this kind shall have precedence and be tried as soon as practicable."

Now, then, if impeachment was meant to apply to the negligent failure to perform the duties, if impeachment was meant to apply to acts of oppression, if impeachment was meant to apply to partiality, there was no occasion for the framers of the Constitution to place that provision in the Constitution.

There is one other thing I wish to read to you:

"The judges of the Supreme Court, Courts of Appeals, and district courts, shall be removed by the Governor on the address of two-thirds of each House of the Legislature, for willful neglect of duty, incompetency, habitual drunkenness, oppression in office, or other reasonable cause which shall not be sufficient ground for impeachment; provided, however, that the cause or causes for which such removal shall be required, shall be stated at length in such address and entered on the journals of each house; and provided, further, that the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defense before any vote for such address shall pass; and, in all such cases, the vote shall be taken by yeas and nays, and entered on the journals of each house respectively."

Incompetency, neglect of duty, habitual drunkenness, oppression in office, or other reasonable cause, which would not be sufficient grounds for impeachment. That is done after a vote by two-thirds of the members of each house of the Legislature.

Mr. DeWolfe, in his argument, has seen fit to refer to the message that I sent to this Legislature, apparently with the view of leaving me before the Legislature in a contradictory position. That message is only three paragraphs long, and I desire to read it to you now, that you may see that the construction that I placed upon the Constitution on January 19th, 1931, is the same construction which I placed upon the Constitution now. (Reading):

"Executive Office,
January 19, 1931.

"To the Forty-second Legislature:

"Your attention is directed to the fact that recently Honorable L. J. Brucks, Judge of the Thirty-eighth Judicial District, was indicted by a grand jury, organized and impaneled in the district court for the Thirty-eighth Judicial District, on a charge of operating a motor vehicle while intoxicated, a violation of the penal laws of this State.

"The indictment in this case was quashed and the issue of facts were not submitted to a jury. Subsequently he was tried and convicted in a justice of the peace court of Bandera county on a charge of drunkenness, and has appealed from this conviction.

"In the belief that it is necessary in the maintenance of the dignity of the judiciary of this State, these facts are called to your attention to the end that you may investigate them and determine, after according Judge Brucks a hearing, whether or not he should be removed by the Gov-

ernor after address by the legislative bodies of this State under the terms of Article 5964, Revised Civil Statutes, 1925.

"Respectfully submitted,

"DAN MOODY."

Ladies and gentlemen, Section 8 of Article 15 of the Constitution, and Article 6954, of the Revised Civil Statutes of Texas, passed pursuant to that article, or section, provides for the removal of judges for habitual drunkenness, oppression in office, incompetency, or other reasonable causes, which are not sufficient grounds for impeachment, by address of the Legislature, and when I presented Judge Brucks' case to you for your consideration, I presented it to you not as a case for impeachment, because of its not being within the class of high crimes and misdemeanors contemplated by the articles on impeachment, but as being one provided for by the other section of the Constitution, a case of drunkenness in office, and being subject to removal by the address of two-thirds of the members of the Legislature. That is the position I took in January, the same position I take now, and that is that the expression on the provision of the Constitution, the expression of one way to remove a district judge for incompetency, habitual drunkenness, or willful neglect of duty, is exclusive of the other, and impeachment does not lie for this offense, mentioned in Section 8, Article 15, of the Constitution.

There is no contention made here by the prosecutors in this case that the things they charge against Judge Price do not, just the same as charged against Judge Brucks, come within the offenses defined in Section 8, of Article 15, which provides for removal by an address of the Legislature.

I claim, ladies and gentlemen, to have the highest respect for the character and integrity that should attach to a public office holder in this State, as high as anyone else in this country. I held public office for some time, and I never failed to go after the man that I thought had stolen public money, I never failed to seek the removal of a man where stolen public money was involved. I never sought the removal of a man who had not stolen public money unless there was some expressed law he had violated and where he had violated an expressed provision in the law, which would justify his removal. There is no contention before this body that there is a definition of the things that Judge Price has done except in Section 8, of Article 15, of the Constitution, and Article 414 of the Penal Code, misdemeanors; they do not contain any high crimes and misdemeanors except as I have read to you from this law book.

I have three minutes, ladies and gentlemen. Let us see whether or not Judge Price had the right to act as he did. I want to read you Article 1033, of the Code of Criminal Procedure of this State, which provides that the Comptroller shall check these accounts and audit them after they have been approved by the district judge. I want to read to you your own expressions from the appropriation bill, out of which those accounts shall be paid, Acts of the Legislature, passed in 1925 (reading):

"Provided all accounts under this section which require the approval of any district judge shall be examined by the Comptroller, and, if correct, he shall issue his warrants therefor, but if he shall find same incorrect, in whole or in part, he may cause an audit of same to be made before warrant be issued."

Now, in this case, Judge Price is not accused of dishonesty or corruption—only neglect of duty. The assertion has been made before this body that we could not amend the general statute by an appropriation bill. Nobody will controvert that, and Mr. Chandler correctly stated the rule of law, as a witness, by saying while you can not amend the statutes by an appropriation bill, you could place any restriction you wanted to on the expenditure of money by the appropriation bill; and you provided that a warrant can not be issued to pay an account until the Comptroller has checked and audited it. What did Judge Price say? Judge Price's testimony is uncontroverted. Judge Price says, ladies and gentlemen, that he told the sheriff not to draw any money on that until the case had been decided, and he assumed that the sheriff did not draw any money on it until after the Comptroller and the sheriff or representatives of the sheriff had agreed on the amount—far from Judge Price undertaking to bring about payment

of this account. They have charged that Judge Price came to the Comptroller, in Count 2, in the charges, and sought to bring about the approval of this account. They brought not a word of testimony on that. But Judge Price testified to that condition, that when he came they had agreed upon it, and after these parties had agreed upon it, he approved these accounts—that this Comptroller and the representatives of the sheriff had agreed to the amount to be paid. And they seek to impeach him for that offense!

Ladies and gentlemen, Senator Page, Judge Batts, Judge Sinks, will further argue this case with you. I don't want to trespass upon their time or yours; but I want to say this to you, upon the authority of Judge Cooley's work on Constitutional Limitations, that this is the third time in the history of American parliamentary proceedings that the impeachment and removal of a judge has been sought for acts not involving moral turpitude, dishonesty, or corruption. In 1786, Rhode Island sought the impeachment of a judge because he had held an act of the Legislature unconstitutional. The effort to impeach him was unsuccessful. In 1908, in Ohio, they sought the impeachment—

The Chairman: The time limit—

Governor Moody: May I have one minute, further, Judge Batts?—sought the impeachment of Justices Todd and Peas, for holding an act of the legislature unconstitutional, but it was sustained. And in this case, without one word against the integrity or the honor of this man, they seek to impeach him for negligence and mistake. He admits the mistake, but, ladies and gentlemen, of this House, that is not an impeachable offense under the laws of this State.

Speech of Hon. Grady Sturgeon for the proponent.

Mr. Speaker, Ladies and Gentlemen of the Committee: I feel that it would be fulsome if I did not at this time, before I attempt to discuss the issues involved in these matters before you, say to you, as a citizen of this State, and not as an official, I want to take this occasion in the Texas Legislature, to pay tribute to the Senate Finance Investigating Committee that has been responsible for some of the facts that have been placed before you. That committee, my friends, was headed by a man I consider to be one of the best statesmen you have in Texas today. And that is my friend, Senator Beck. However, five or six other Senators have labored with him, and they have endeavored to bring before this Legislature, as a result of the resolution passed by this Legislature that authorized them to inquire into the accounts, and inquire into matters and facts that will stop the things that cause so much money to be paid out of the State Treasury.

I want to say to you at the beginning that my only motive in this matter is to be absolutely right, and to do what I believe to be my duty!

I have no feeling whatsoever in this matter; and if I had my own personal feelings to consult, I would, if it were possible, give part of the years off of my life if I could undo and set aside the things that the proof in this case shows that Judge J. B. Price has done.

This is not the first time, even though my hair has not turned white yet, this is not the first time in my life that I have seen men in the courthouse who have tried to wring a verdict of not guilty where a man had violated the law by the use of influence. I have seen in the courthouses of Texas, Oklahoma and Arkansas, a number of times, men go free and men be criticised by reason of the fact that there was assembled around them men of power and influence and by reason of that the men who were trying those men and passing upon the issues at hand, turned guilty men loose.

As stated to you before, my friends, I have no purpose in this matter whatsoever except to bring to you, as I understand it, my understanding of the laws of this land, and what the facts are that have been introduced here under the sanctity of the oaths these witnesses have taken. At the outset, I want to say there has been a very peculiar air in this matter. There were charges preferred here in this House to the number of thirteen, signed and sworn to by members of this body. They put Judge Price and his counsel on positive notice of what was charged against him. He has surrounded himself with an array of counsel second to none in this State, and men who are honorable gentle-

men who have advised with him as to the conduct of this case, but even though that be true, this is the first time I have ever heard, or that I have ever seen in the years of my practice, a plea that we would term in civil law, a plea of confession and avoidance.

There has been a written plea filed in this matter, signed by counsel representing this man, and in which they admit that the charges as set out in these charges are true. I want to say to you as I stand here this morning, having represented men and women in this State and in other States for fifteen years, in the practice of law, that this is the first time that I have ever seen that practice resorted to.

As I said before, I am extremely sorry that it happened to be Judge Price, and to show you that I have no personal feelings whatever in this matter, I never saw him in my life and while I was working away with this Senate Finance Investigating Committee, and assembling these facts and bringing them before you in an attempt to show you where your tax money was going—I did not even know where Bastrop was except on the map. I did not even know Judge Price, and I did not know any of the sheriffs in his counties. I am indeed sorry to know that at the end of this rope as it was unwound, to find out who was drawing this money from the citizens of Texas—that we found at the end of that rope this old gentleman with physical infirmities. I had much rather known that at the end of our efforts and in the finding of these charges which have been presented here, that there would be a young man who was able to stand the gaff. If I had my preference in the matter, I would rather place a white rose of purity and shed a tear of sympathy for the Lone Star Flag of Texas, than to stand here and perform this bitter duty. But as I said to you a moment ago, I have a duty to perform in this matter. I have nothing to do but to do my duty as I understand it to be to the officers of this Committee and of this House, and when I have performed that work to the best of my ability I hope it will be said of me, "Well done, good and faithful servant."

These gentlemen first came in here and told you that the Supreme Court decision from which the Governor read was not the law. They made fun of the members of the Supreme Court who were especially appointed to try Governor Ferguson. They claimed that it was not only a special court, but that it was a political court. I want to tell you that they came back after they had time to digest that authority, and I want to say to you as a young man, that that case rings in my mind and will ring in the minds of Texans all down through the pages of history as true, and there has never been anyone any more emphatic of the declarations of the principles set out in that decision than was Governor Moody. What is the matter with that authority? You do not have to charge a man with getting out on the sidewalk and robbing somebody for it to be an impeachable offense. As I see it, the entire thing is to try to wring from your hands the kind of verdict that you know deep down in your hearts is not in keeping with the proof that has been offered here on these articles and charges presented by this Committee. Consistency, consistency, oh, thou art a jewel. How many times have I heard Governor Moody read and reiterate the matter set out in that opinion in his campaign when he was talking about the impeachment of Governor Ferguson? No man ever returned an indictment against him. No man ever filed any misdemeanor charges against him. But the Supreme Court said something about the authority of a Texas Legislature; that where an officer, and they do not declare it necessary for him to be a district judge,—that where his conduct has not been such that he has done anything that he should not do, without defining those things, and where there is no penalty prescribed specifically for that offense, that the Legislature has the right to inquire into it, either by a committee, or otherwise, and make their recommendations to the Senate of this State.

I want you to know, my friends, that I have great confidence in the members of the Legislature. I am not one of those young men who take pleasure in saying that everybody is dishonest and nobody can be trusted. I know lots of good people, and I want you to know that if I followed the dictates of my heart, that I would get no pleasure out of the prosecution of anybody, but I have sat here in this Legislature and looked on while

you have tried to find a way in order to place revenue in your State Treasury, while these enormous sums have been drawn illegally out of the State Treasury by the approval of these accounts which were not authorized under the law. I want to say to you now, and I want the press to get what I say so they can carry this to the people of the State of Texas, that if this body will stop these excess and illegal fees that are being paid out in Texas today for which warrants have been drawn, you will not then be troubled so much with trying to determine ways of raising more revenue.

As I said a moment ago, these gentlemen did not like the Supreme Court authority, and I want to say to you now that if you have any doubt about what is the law in Texas in reference to this matter, if you will go to Chief Justice Cureton on the Supreme Court bench or to any reputable lawyer in Texas that is not in this case one way or the other, and ask him if the authority laid down by the Supreme Court of Texas in the Two Hundred Sixty-third Southwestern, page 88, is not still the law in Texas with reference to impeachment, and if he tells you that it is not the law, then I will walk down from here and take back every word that I have had to say. There are three ways or methods of removing district judges. There is no question about that. Whether we will get this Legislature to sustain these charges, that is a matter for you gentlemen to decide. It might be that these gentlemen who represent the respondent would rather require that you have a two-thirds vote instead of a majority. You gentlemen of this Legislature. can do what you want to do, and when you have done that, you have fulfilled your duty. Going back for five hundred years, we have had impeachments. I could tell you of the rulings of the courts in the days gone by, and it seems to me that they ought to be the law now, but sometimes they are not carried forward. I wish sometimes that I could go back into those days where we could have full and implicit confidence in those we dealt with; I wish sometimes I could go back to the old authorities like Judge Gaines has written. I wish sometimes we could go back and read the old authorities like Judge Davidson has written. I wish sometimes they were still the law. But parties differ, and times have changed. There is no question in my mind at all but that you have the right to proceed as you are proceeding, and I want to discuss with you just for a few mintes the facts in this case.

What are the facts? What are the facts? I won't attempt to take up your time, you have been sitting here a long time, and I am sure you are tired, you have read in the Journal that is gotten out about the long list of evidence, but I am going to say just this to you: that you do not need anybody else's testimony. You do not need an expert auditor to understand what this testimony is. You do not need the sheriff's accounts that have been filed with the Comptroller. You do not need the warrants that have been issued by the Comptroller. You do not need any of those figures or documentary evidence. You do not have to go over six or eight—you do not need to go over six or eight miles of Bastrop and six or eight miles of Burleson county to see people who are there in order to reach a decision in this matter. You do not have to do that in order for it to appear to any man that they are not correct. You can take Judge Price's testimony, you can take his own testimony, and you can take what he said and what he felt, and the testimony that fell from his lips, and I believe you will do no violence to your conscience, and I believe I do no violence to my conscience when I say to you that you can take his testimony and have sufficient evidence on which to sustain these charges. Judge Price told you from this witness stand, and I want you to remember it, if I quote any of this testimony—if I misquote any of this testimony—I want to be corrected. I want to be fair. I do not want to misquote any of this testimony, but Judge Price told you that he had never turned down a single sheriff's account. Didn't he tell you that? I want you to remember this, didn't I ask Judge Price if he knew of any law that required him to approve these accounts in an hour or in fifteen minutes, or in any other length of time. And he answered that he did not. I challenge the gentleman to read to me out of any law book in Texas any law that says these accounts must be approved in a day, or that they must be O. K.'d within a hour. I tell you that the law on the statute books of this State

has taken many people from within the law. But I want to say to you that even though the sheriff came in, knowing the kind of man that Judge Price was, that they treated him wrong and perpetrated a fraud on him, and it seems to me it would have been a performance of his duty under the Constitution if he would have said to Mr. Sheriff: "Well, I will not approve this account. I am going to look over it and lay it aside and see about it later." The bad thing about all of this is that after all of the wrong that had been perpetrated against Judge Price by these sheriffs, that after the Bigham case had been decided, that after the trip down to Austin, and after the visit to Mr. Grady Chandler, who was the Assistant Attorney General at that time, and after all of that, after all of that, he has still been approving the sheriffs' accounts. Then, in the face of all of that, Judge Price comes on the stand here and says that he has never had any trouble with any of his sheriffs, that he has approved these accounts without looking them over. I want to tell you, my friends, that there is not a member of this House, who, if he was placed in a position, if he saw an entry of one man or one woman a dozen times in the same account, living in the same community, and a duplicate charge being made by the sheriff for summoning that witness and for performing that purported service but what would have seen that there was something wrong. It does not take an auditor to see that. It does not take an expert accountant to see that. Certainly, a sixteen-year-old boy, any sixteen-year-old boy in Texas who knows anything at all about what his duty is, about what the law is, but what could discover that there was something wrong.

Your Constitution provides that the power of impeachment shall be vested in the House of Representatives.

Impeachment of the Governor, Lieutenant Governor, Attorney General, Treasurer, Commissioner of the General Land Office, Comptroller and the Judges of the Supreme Court, Court of Civil Appeals and district courts shall be tried by the Senate.

When the Senate is sitting as a court of impeachment, Senators shall be on oath, or affirmation, impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the Senators present.

Now, listen to this Section 6 of the Constitution. Any judge of the district courts of the State who is incompetent to discharge the duties of his office, or who shall be guilty of partiality, or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge; or who shall fail to execute in a reasonable measure the business in his court, may be removed by the Supreme Court. The Supreme Court shall have original jurisdiction to hear and determine causes aforesaid when presented in writing upon the oaths taken before some judge of a court of record of not less than ten lawyers, practicing in the court held by such judge, and licensed to practice in the Supreme Court. Said presentment to be founded either on the knowledge of the persons making it, or upon the written oaths as to facts of credible witnesses. The Supreme Court may issue all needful process and prescribe all needful rules to give effect to this section. Causes of this kind shall have precedence and tried as soon as practicable. Now, then, if you will notice over here in Section 2 of your Constitution, you will see that the impeachment of the Governor, Lieutenant Governor, Attorney General, Treasurer, Commissioner of the General Land Office, Comptroller, Judges of the Supreme Court, Judges of the Court of Appeals, and the District Judges may be impeached. That is what the Constitution says, and your Supreme Court says, following that, that you do not have to have a positive law violation. You do not have to have a positive penalty fixed. I just want to answer briefly the statement that Governor Moody quoted here in Article 414 of the Penal Code in his argument. He states that this district judge has not committed a misdemeanor. I grant you that there is no criminal statute that says a judge in Texas that approves a sheriff's account for more money than he should is guilty of a misdemeanor or a felony. It does not say that. He did not go quite far enough in quoting from the Code of Criminal Procedure. Article 414 provides, "If any officer of the law shall wilfully

or negligently fail to perform any duty imposed on him by the Penal Code or Code of Criminal Procedure, he shall, when the act or omission is not otherwise defined, be punished as prescribed in the succeeding article."

Now then, Article 415 provides: "Whenever in the Penal Code or Code of Criminal Procedure it is declared that an officer is guilty of an offense on account of any particular act or omission and there is not in the Penal Code any punishment assigned for the same, such officer shall be fined not exceeding two hundred dollars."

He says that the Code provides that that constitutes a misdemeanor. It would be foolish to go over into Bastrop county or into Burleson county or into Lee county and attempt to get any justice of the peace in the territory to accept a complaint against the district judge of that district, because I think you can very clearly see from the testimony that has been given in this case that it would be absolutely foolhardy to do such a thing. I might say in this connection that down in the Twenty-first Judicial District with many good people in it, there are many there who have no respect as far as some of the sheriffs are concerned, for the taxpayers of the State of Texas, but down in Washington, so far as the Comptroller's office is concerned, they have had a very high regard for the taxpayers of this State. With the largest population of any county in the district the expenses in Washington county are far away below half as much as we find in these other counties. Just why I do not know. You are to determine the facts in this case, and this circumstance will speak for itself.

Now, let's see just a moment. I can see that old one-armed negro bootlegger that they say they had to go to Michigan after. That the grand jury returned thirty-seven bills of indictment against. I can see him as he is brought up before the court. Think about it, gentlemen. I am glad the responsibility is on you and not on me. To decide whether or not you will place the stamp of approval on the conduct that you have had aired here before you, or whether you will say to the people of Texas, go back home to your people, and say, because Governor Moody, because Judge Batts, and because the newspapers and other people have said it shall not happen, you would refuse to vote for these charges. I want to ask you to ask yourselves this question. Do you believe that in a little county of thirteen thousand people that the sheriff of that county should by law, or otherwise, be paid out of your State Treasury the sum of $42,000 for two terms of court? This is your responsibility, you may say to Mr. Harris, the district attorney of that county that you have attempted to do your duty, and that you have worked with the grand jury, as the law requires that you advise with them and counsel with them and you are their lawyer. I say to you, could not you have gotten those twelve men representing the good citizens of that county and indicted this man under Article 63 of the Penal Code, and have gotten the same results?

Do not you think that instead of making the taxpayers pay thirty-seven bills for the pistol-toters of that county, that the State would have been better, society would have been better, certainly the State Treasury would have been better off, if you had filed about four cases against that darky and put him in the pen for the balance of his life, instead of filing thirty-seven indictments and having thirty-seven times the costs piled up that was necessary in that matter?

I want to tell you, gentlemen of the Committee, that in this matter of fee grabbing somebody has got to come to the rescue of the people of Texas. I do not know whether you have the nerve or not. It is a bitter load to carry, and it has been the hardest position that I have ever had to occupy in my life. I have been looking and watching and waiting to see if there was going to be a single one-gallused farmer or a single young man that would be brought here and placed on this witness stand to tell you that he believed that it would be right to send this man back down to the Twenty-first Judicial District and permit him to go ahead with this kind of work—of approving these sheriffs' accounts for such great sums of money. Of the great array of witnesses that have been brought here in this case there has not been a man who has been placed on this witness stand but who has been receiving his pay out of this State Treasury of this State. (A voice): "Pour it on, pour it on." Cries of "Amen.")

I do not know that all of the men, women and children may be for Judge

Price, they may be, but I would like to hear their voices, I would like to look at some of them, we have seen men here testifying in behalf of Judge Price, all the way from those who have been members of the President's Cabinet, and coming down to the justices of the peace. They have all been drawing fees and free pie from the State all the way from fifty years down to five years. They believe it is all right, and I do not blame them. But they do not have to carry the load, that has to be carried to keep these electric fans running and keep the flag on top of this mannificent building. I say, you do not have to look at the record for anything except Judge Price's own testimony, and then counsel with your own conscience about what you want to do about this matter. The Senate will sit as a court of impeachment; I do not know what they will do. I have tried to do to the best of my ability what I was appointed to do in this matter. I want to say this to you, that this man is not being tried on account of his power, he is not being tried on account of his influence, and if you vote these charges it will be in the nature of a bill of indictment.

Ladies and gentlemen, I would like to draw apart the veil that separates me from the men and women and the boys and girls of Lamar county, the county from whence I came, and talk to them awhile about this matter. They are the ones that will be forced to pick cotton this fall in the cotton fields for 35 cents a hundred. Then I would like to turn and talk to the boys and girls and the men and women of the Twenty-first Judicial District that will be forced to pick cotton in the cotton fields this fall for 35 cents a hundred. Then again, I would like to know how they would feel about this judge who has approved these sheriffs' accounts, and permitted the sheriffs of his district to take their money from the State Treasury unlawfully and without any authority of law. They, my friends, should be considered as much so as these men who have testified in this matter, and as much so as these men who have been on the payroll of the taxpayers all of their lives.

There is one other thing I would like to call your attention to. If this were a poor boy or a young man here before you today, he would not be surrounded by the influence and the lawyers that this man is now surrounded by. He would possibly have to put in his time serving a term in the penitentiary for the rest of his life. But I say to you again, that this is a matter upon which you are going to have to pass. I believe that you will do what you should do about it. But be consistent. I want to say to you in conclusion that there is no question in my mind but that you have the right, the perfect right to, under the Constitution of this State, to do what you may elect to do in this case. There is no question in my mind about that. We have tried to develop these matters as they have come to us. We have secured these statements from people who live there. We have brought you all the necessary facts that you need. And now, it is up to you as to what shall be done. I do not know what you are going to do in this matter.

In conclusion, I want to say to you, "Acquit yourselves like men, because ye are the salt of the earth."

Thereupon, Judge Ed R. Sinks spoke in behalf of the respondent, as follows:

Judge Sinks: Mr. Chairman—

The Chair: Judge Sinks.

Judge Sinks: Mr. Chairman, ladies and gentlemen of the House: My time is only twenty minutes and those of you who know me and who knew of me here in the Legislature know that I never did take over twenty minutes before this House to make a speech. What I have to say is going to be said very briefly.

I am not going to go into a discussion of the facts. I have heard this young man that just spoke to you, and it is one of those kind of speeches that is thought to arouse the prejudices of this House and its membership. It was a speech that sought to arouse it. I want to say to you that we did not introduce a single witness here who was obtaining his fees from the State Treasury of the State of Texas. We have introduced the district attorney and he gets his pay from the State of Texas. We had to introduce Judge Price, who gets his pay from the State of Texas, but neither of those gentlemen draws any fees from the State

of Texas, but they get their pay per diem. I say they receive their pay per diem, and do not receive any fees for their services. In a deliberative body like this, whether you are in favor of the good citizen who is involved in this matter, I would be ashamed to respond to an appeal such as has been made by the gentleman who has just preceded me, as when I heard someone back there, some of you men back there say, "Amen." You should, gentlemen, sit here—not as Representatives—not as members of this Committee, but as representatives of the people to hear these charges that have been brought before you. I have nothing to say against those gentlemen, and I was surprised when I heard them say it. There is no word in my mouth against them in any way. The gentlemen who have brought these charges in and have sworn to them against Judge Price have done what they considered to be their duties. I am talking to you now and doing what I consider to be my duty, and the duty of all of us, and I hate to see something like this brought into this at this late hour here. I can say for myself and for the other attorneys who represent the respondent, Judge Price, in this case, that we are here at our own expense, and we are not hired attorneys in this case.

Now, gentlemen, what about all of this hurrah about why you should stand by this Committee? I want to discuss with you for just a moment, for I have not the time to go into this matter fully with you, but I want to talk to this House as I have before on constitutional questions, and say that while the expression of one thing is to the exclusion of others, at the same time, the remedy for negligence of a district judge is provided in the Constitution. It excludes all other methods for that kind of thing, of negligence or, but of course, gentlemen, you have got here the right of impeachment. This provision of the Constitution that has been presented to you has reference to corruption in office, and if that is the fact in the case of Judge Price, he should be not only discharged from the position, if he is guilty, but he should be prosecuted in the courts of the country. There is nothing here to show, and they have not undertaken to show that Judge Price is a criminal nor could they. He is a man of high reputation, a man of high morals, a man who stands well in his whole judicial district where he has lived all of his life. Now, the point is, they did not want to follow the plan laid down in the Constitution to make an address to the Governor to remove this man from office because that would require a two-thirds vote, and because they did not feel they could do that they have brought in a complaint against him here for negligence for some offense, because they knew that would not require a two-thirds vote. Well, if the Constitution requires that a two-thirds vote of the Legislature be necessary, then let us have a two-thirds vote. They did not want to bring that kind of a proceeding. But on the other hand, they brought an impeachment. I would rather have closed around me the shadows of the evening of life if I were a district judge, than to have the House of Representatives impeach me from office. It is more severe punishment, I think. It is a death sentence to an honorable man, because the finger of scorn is pointed at that man, I do not care where he goes. They will say, "There goes a corrupt man." They will say, "There goes a corrupt man who is not entitled to hold any office of honor, trust or profit in the State of Texas." That is what it is, and they will add to that that he is incompetent to discharge the duties of his office, and should be discharged from office. That is the difference. But that is impeachment, and it is the most severe punishment that there is. I am not thinking that this man has not been negligent in some particulars, he has not used all the care that he should have used, and even though he has done that, after he has reached the age that he has, and after he has come up and admitted that he had been negligent in the performance of his duties, are you going to brand this man as a criminal and say that this man has been corrupt in office? That is the way the world will look at it. Now he is an old gentleman, and he has not many years before him, but to have this thing happen would blast what little life there is left in him. It would cause the finger of scorn to be pointed at him the few remaining years that he has to live. For what? For violating the laws? That he was corrupt? No! But because he was negligent in the performance of some of the duties of his office.

Gentlemen, I ask you, I ask you in all fairness, to look at this thing just as brothers, not as an opportunity to put upon this old man the stigma of disgrace, and I am sure when you go home your work will be commended by your fellow citizens. I was very much surprised at the argument of the gentlemen here when they plead with you not to go back on the work that the Committee had done. All such things as that, do not allow these things, do not allow such things as that to swerve you from your duties. I will tell you, gentlemen, a man's duty in the performance of a duty in an official capacity, that alone is a great responsibility—a great and grave responsibility. I have held the office of district judge for twenty-three years, and over, and I deeply felt the grave responsibility that devolved upon me in that position. I always felt that everybody who came before me was entitled to have a fair chance, and to be properly represented whether he be a negro or a white man. Be he influential or poor. That is all I ask of you gentlemen, and I have confidence in what you will do as a jury because it is a great responsibility, and that responsibility is upon you. I ask you not to be carried away with this procedure. By these appeals that are made to you about this drain on the Treasury, about the hard-working man paying the taxes and all such things as that. Those things are out of this case. But look at this matter in a fair way. Shall this man because he has not performed this duty just as he should have, be sent out by you men here, disgraced and dishonored by being impeached by the Legislature of the State of Texas?

Gentlemen, I do not believe that you will do it. Nothing that has been brought here would justify the members of this House in voting impeachment charges. As Judge Page has told you, he has only a few more months to serve in the capacity of judge. His health is getting bad. He realizes that he is getting old and by the time his present term of office expires he will retire because he is feeble, and because he has already been stricken on one time. But at the same time he has done no wrong, and Judge Price, who is getting old, if he had to go out now, would die within a very short time, and I do not believe that you members of this House of Representatives are going to vote these charges to impeach this man who has served the people of the Twenty-first Judicial District so long.

Argument of Judge R. L. Batts, for the respondent, 1:30 p. m.

The Chairman: Judge Batts will address the Committee at this time, and will be followed by Mr. Graves. Please let us have order.

Judge Batts: Mr. Speaker, Ladies and Gentlemen of the Committee: Years ago, I occupied the seat as a member of this body, now occupied by Mr. Veatch. In the intervening years, there has come to me some smack of age; "some relish of the softness of time," as Falstaff puts it; but nevertheless, there is something of the blood of youth that flows in my veins, and if, therefore, up to this time, or in the course of this speech I should say something which I ought not to say, I hope that my sins will not be visited upon my friend here on trial.

It was suggested to me after a previous effort of mine in this behalf, that I had spoken with undue harshness. I apologize for it, if that be true. I had only the feeling that something unjust was being done, when the suggestion was made that Joe Price be impeached with the evidence being heard by you. During these years that have intervened, I have doubtless done many things that I ought not to have done, and I am claiming no peculiar powers. I have been doing those things that red-blooded men have been doing all the years of all time.

This much I want to say to you: That I had that training under my father and under the father of Joe Price, under those men who fought for the Confederacy, under those men who undertook to maintain civil life in times of reconstruction, that gave me high ideals of my duty to the public, and before God, I believe I can say that in all the intervening years I have done no act that could be construed against the people or the State of Texas.

And now here, today, I believe I can say that I am undertaking to do that which is for the highest interests of the State of Texas. It cannot be other than right for those people that

there should be no injustice done to any human. That is why the Bill of Rights is placed in this book, to accomplish this end. All of this vast mass of law has been enacted for that purpose, and I feel, and I have felt from the beginning of this matter, that never before has a man been placed in the same position that Judge Price has been by virtue of one of those things of which no man in this House can claim that he is guiltless.

I have been somewhat intimately connected with this Legislature. I have known of what it has done. I approach a consideration of it with a knowledge of what legislators ought to be; with a knowledge of my own limitations, when I undertook to discharge the duties of that office. I can look upon it in a different way, perhaps, from most of the people of the State. My own observation is to the effect that a very large per cent, almost all of the members of the Legislature, come here and do the best they can, animated by a desire to serve the people of Texas. I therefore have nothing of criticism for anything you have done, because I think it has been done with a proper motive.

I do want you to consider that in the discharge of your duties here today, you are acting in a judicial capacity. I hope you will realize that you are invested with the functions either of a jury or of a judge. I do hope that you will realize that no prejudice ought to get into your minds in disposing of this case. I think certainly that when some of you spoke of "pouring it on" you forgot the functions you are discharging here today. I am not expecting, however, any man to keep from committing mistakes; as I have stated, I don't believe that within the sound of my voice there is any man who has not been negligent at times; who has not been careless at times; who has not done those things which he ought not to have done. And I want to state this to you, and I believe it with all my heart — that however blameless your life may have been; however great your efforts may have been to keep your mind and your body clean and free; however you may have been animated by your desire to serve your Maker; that no one of you here present has lived a cleaner life, a gentler life, a purer life, a life that will receive from the hands of whoever passes in finality upon all things, a better record than that which has been made by my friend. Don't take this as merely the calculated statement of a lawyer. Take it as from a man desirous to do that which is right, and doing that which he knows is right, and knowing of which he speaks; animated by as pure a motive as any man in this House.

I listened to the impassioned speech of Mr. Sturgeon. Is it indeed true that a speech of that character is going to influence you in your vote in this matter? Am I right in assuming that Mr. Sturgeon was correct when he assumed that you could be influenced by matters that he would appeal to in a trial in a justice court? Am I right in assuming that he was correct in knowing that an appeal of that kind, an appeal to your prejudices, would influence you in disposing of the life of one of your fellow men? I don't believe it! I believe you sit here now with a knowledge of the fact that you are here in a judicial capacity; with a knowledge of the fact that you will not be influenced by anything except the law in this matter; the facts of the matter, and your conception of what is good for the people of Texas.

The people of Texas, as early as 1856, adopted a penal code in this State. They started out with the distinct proposition that all of those offenses for which a man could be punished were put into this code, and a distinct and definite indication of the punishment that was to be assessed in the case of a violation of that code. We have indeed adopted the common law of England as our only diversion; we are willing to go back to the ancestors of most of us for the course which would indicate our course of conduct, but we have laid down one fundamental principle; that unless that which we have defined as an offense can be brought up against a man, that he shall not be punished for the doing of that which he may have done, conscious of the fact, of course, that the Legislature met every two years that any deficiency could be covered, and conscious also of the fact that after all, the great court of appeals of Texas, the people, must pass upon all these things and that whenever anybody elected to an office shall improperly discharge the duties of that office, he could be removed at the next election. In the disposition of this

case, we have not undertaken to be technical. I want to say to you right now that, if, under the merits of this case, you could not vote against this impeachment, then we want you to vote for the impeachment upon the merits of the case.

I believe that our disposition has been amply indicated by our course of conduct. There has been introduced here very much more evidence than could have been introduced in a court of law, with our concurrence after making merely a formal protest. It is of course true that even before you, you would have excluded if we had desired it, the statements of those persons who have been and are now convicts. It is of course true that under the law that which is charged as constituting the most serious offense was at a time antecedent to the time when the people of the Twenty-first Judicial District said this is the man we want to preside over our most important business.

Of course, upon a trial such as would be given in the Senate, if the matter should be passed to the Senate, this would necessarily—all of this illegal evidence, would necessarily be excluded. We have made no appeal to you to exclude these things, because we wanted you to know the truth about this matter. We are here to defend this man upon the proposition that we know he has been guilty of no improper conduct, knowingly and wilfully.

Counsel has made the statement this morning that we are in the extraordinary situation of having filed a plea here of confession and avoidance. Gentlemen, you recall the circumstances under which the plea was filed, and you recall the further circumstance that when some one of the House suggested I might withdraw this plea if I chose, I made the statement that we did not desire to withdraw the plea, because, as we understood it, that constitutes the facts. You of course know the circumstances under which the plea was filed. We do not in any kind of way criticize anyone, but you realize of course the plea was filed as the result of an agreement between representatives of the State and representatives of this respondent to the effect that a resolution should be introduced here and the State would not oppose it. I am not undertaking in any way to reflect upon counsel. I have observed the conduct of Mr. Graves during his career as an officer of the State and I want to state to you that in my judgment there have been few men that have been as serviceable to the State as Mr. Graves. I merely mention this as indicating the circumstances under which that appeal was filed, and now I say to you that that indicates the truth, and if upon that, as we have placed it here, you desire to impeach a man there, and if that is evidence sufficient for it, then you have evidence sufficient for it.

As a matter of fact, the case does not and could not go beyond that which we have stated in that plea. If we had been undertaking here to defend this man as lawyers defend a criminal, we would not, of course, have put in a statement of the facts, but those are the facts and we are willing to rest upon it. What does it state? Merely this: That the facts as represented by the accounts here are substantially true. Why, there are the accounts; there's no question about it. We have never raised any issue about it, and the facts are that when we looked into these accounts, as Judge Price doubtless ought to have done, as the Comptroller ought to have done, we are not in a position to defend the accounts; and we do not undertake to do so.

We merely state this: That under the circumstances under which he labored; under the circumstance of the great physical calamity; under an absence of time; and under a knowledge of the fact that these matters could be investigated by an officer of the law equipped to get at the truth, he approved those accounts, upon his faith in the officers elected by the people of those counties, as to their integrity.

Who does not do it? And who is it among you that does not, if you have any business of any importance; if you are among those men such as I believe you to be, many of you? Who is it among you that can conduct your own affairs without depending upon the integrity of somebody? It is my fortune to represent one of the important branches of this government. I do the best I can with reference to the duties that come to me. I spend, as Judge Graves has spent, in the public service, much of my time. I have to sign, every day, documents that it is impossible

for me to read. I have to depend upon the integrity of somebody. I do the very best I can with reference to it, and fortunately it seems no mistake has been made up to this time.

The Governor of this State—I saw piled upon his desk the other day, documents as high as a chair there, for his signature. He is going to sign them, but he is not going to read them, because it is impossible for him to do so in the time he has. I have had much to do with the courts of this State, and I have had much business in my time before the Supreme Court of this State. I know, and every lawyer in this House knows, that case after case, and record after record, goes before that court and is disposed of by the court without any possibility or any opportunity of reading the record. It is not physically possible for Judge Cureton or Judge Greenwood or any of those judges on the Commission of Appeals to read all the papers that come before them. Why, they make mistakes there; and you make mistakes here! They make mistakes there, evidenced by the fact that repeatedly they have reversed themselves. Repeatedly they grant a new hearing. Repeatedly, they stated, we were mistaken about this. I recall, in the past year or two, an instance like this: Where the Supreme Court in two cases held they would not grant the writ of mandamus in a case where the patent had issued, the question being title as emanating directly from the State. Within two weeks after that, they granted mandamus in two other cases of that very same kind that they had refused to grant just before and it was only by going to them and speaking to them personally that they were able to correct the mistake they had made.

Now, do you make mistakes? I don't know, but I know this: That you frequently repeal your own laws. I know this, whether you acknowledge to make mistakes or not. One of the courts has, since you have sat here in Regular Session, held that one of the laws you passed here was unconstitutional. And in your own affairs—now, as far as I am concerned, individually, I make no protestations to be just the kind of a man that I ought to be. I know that some of you are just the kind of men that you ought to be. If there are any of you who have not made any mistakes in this life, you should vote against Judge Price; perhaps you ought to do so. If you have demonstrated with your own that a life can go along like that, with no mistakes at all made by you, then probably you should vote against us. But, if you are like the balance of us, if you are human like we are, if you are human like everybody is supposed to be, and like Jesus Christ himself was, and like all the people sought to be protected by these very statutes, then you should not inflict this extraordinary punishment upon a man for having made a mistake.

And how far has he gone in the matter of making mistakes? Nobody is here questioning any decision that he ever rendered while he was on the bench. Nobody is here to suggest that he has not properly discharged his judicial duties. Counsel this morning suggested in his impassioned appeal to your prejudices that there was nobody here representing or giving voice to the views of the people of his district, with reference to him, except those who had been recipients of the favors of the State. Of course, as you know, this is not true. Of course, as you know, there was nobody brought here to testify with reference to him who is a recipient of the bounty of the State except those persons who came to testify with regard to the procedure in the District Court and with regard to the specific matters that we had here before us to consider.

Is it any reflection upon a man that he is receiving compensation from the State for his services? Do you feel that you ought to be criticized for accepting the salary which the State says you ought to have. I wonder—there being that so reprehensible about taking money from the State—whether or not Mr. Sturgeon himself is being paid? Is he here representing the State of Texas without any character of compensation? And again I go back to the question: What is there disreputable about taking that which the people of the State of Texas say that they want to give to you? Albert Burleson is not taking money from the State of Texas. He is paying money, just like I am, in the way of taxes for the support of the State government. He is interested, just as I am, as much as any-

body else, in trying to keep an economical and proper administration of governmental affairs.

What about T. W. Gregory? Wherein has he ever taken money from the State of Texas except upon one occasion, when as an officer of this House, he received three dollars a day, and I am sure he earned it.

Speaking about the matter of persons who are in the public crib, what about Annie May Trigg Birmingham, testifying here the other day? Who sat upon the knees of this man when she was a child; who knew him as I knew him. When has she gotten her fingers into the public treasury? He tells you that no one of the men was here who worked in the field. What's the matter with Lee Brandon, who came up here the other day and testified for him? A man who scratches dirt for his living. I could go over the whole list of witnesses, but why should I, when you realize, as I do, that counsel was not undertaking to get the facts before you, but simply undertaking to stir up your prejudice. I ask you again if he was warranted in his assumption by believing he could dispose of a great case by making an appeal to your prejudices, to the prejudices of you men, who ought to be far beyond the influence of prejudice.

Now, ladies and gentlemen, let me discuss just a little the merits of this case. I can't go over it, of course, any more than anybody else has been able to. If all the members had been present during this whole procedure, I would not undertake to do it at all, but necessarily, I presume, some of you have been absent, and necessarily some of you know but little about the case. I want to call your attention primarily to the proposition that counsel who is to follow me has, before this House, acknowledged that this is a man of high moral character, in addition to the circumstance that we have proven. He sugested to us that he would acknowledge that his reputation was beyond reproach. We did not desire to do this, because it is a fact that many men can establish in a general kind of a way, a reputation of that kind. We wanted to do that which we have done. To establish that during a long life, running over a period of sixty-six years, no person had been able to find any one thing, until this matter arose, with reference to which this man could be criticized. How many people can you put in that category? Are you ready to step into it yourself?

You heard those witnesses testify. You heard them state what they knew. They were not content to say the reputation of this man is good; they said: This man is good. They testified not alone to his reputation; they testified to his character. You heard some of them, in the answers to the questions; is this the kind of a man that would collude with sheriffs in order to take money improperly from the State; and you heard their answer. You heard them state, He would not do it! Every one of them so spoke.

Counsel asked us why we didn't bring the farmers, and so forth, here to testify. I make this proposition to counsel. That if he will extend the time until 9 o'clock in the morning, I will have a thousand farmers here in this hall to testify to his character; not as a matter of reputation, don't you get to know a thing after a while? When you see a man for years act as county attorney; for years act as county judge; for years act as a district judge, then do you have to depend upon his reputation? Can't you know, as well as you can know anything, that the conclusion which you have reached is a conclusion of the truth?

They are like I am. Pardon me for speaking every now and then in my personal capacity; what I say, I know; and I would as soon say it under oath as any other way. I know that this is as good a man, as gentle a man, as considerate a man, as pure a man as God Almighty ever made.

I say that we will get at the facts in the matter; the fundamental fact is that there is no guilt here. I have used that language which spoke of him, as being guilty of negligence. Is that a thing on which you predicate real guilt? It is merely the use of language which we use in all of our relations in life. You are "guilty" of forgetting a thing; you are "guilty" of not having remembered an engagement, and that is the sense in which this man is guilty. He did that which was negligent—and he says so to you. Are you going to crucify him under the suggestion of counsel for the State here, because he has come before you and been honest and frank about this matter? How else would he have been? What did you expect him to do? Did you expect him to

twist and squirm about this matter here, and try to excuse himself? He isn't that kind of a man. If he has done something wrong (and I am sure he has had few opportunities in life to exercise this virtue), if he has done anything wrong, he will promptly admit it.

Now what has he done? He has relied upon the fidelity and integrity and honesty of the men whom the people of those counties have elected to office. Counsel has been making some suggestions here about changes in character and so forth, of the people of this State. I have lived exactly the same time Judge Price has lived. In my youth I knew many men of high character. I want to state to you that in my age I know many men of high character. There were patriots and honest men in my early years. There are patriots and honest men in these, my early years. People speak about giants in those days. There are giants in these days. They speak about the high ideals of those times. There are high ideals in these times. Possibly then, as now, men were so foolish as to rely upon what is stated to them by others. So far as I am concerned, I had rather be imposed upon occasionally than to assume that every person I come in contact with is a crook. I take their word, at least the first time, and that is what this man has been guilty of—assuming that the men who had been underwritten by the people of those counties intended to tell him the truth and have told him the truth.

You had upon the stand here yesterday Judge Calhoun, who has made a reputation such as few men have upon the district bench. You have heard what he stated and what he did. You realize the fact, as he did, that the entire twelve months was at his command to do whatever he thought was the right thing to do. That in addition, there was a county auditor, and that there was in addition a district clerk in whom he had confidence, and who had capacity for handling matters in the way of an audit. And what did he tell you?

That "after all, I had to depend upon the sheriff." Is there any reason, ladies and gentlemen, to assume that that which a sheriff states to you when he is privately interrogated, would be any more truthful than when he puts it down upon paper and swears to it? Where would we get in making these investigations that have been suggested? How long would it take you?

Let's go a little into the very matter we have here before us. The evidence is to the effect that, with one exception perhaps, the terms of the district court of the Twenty-first Judicial District, go from one right into the other. That the time is taken up and sometimes it is impossible to dispose of all the business. Upon the last week there is very much business to be disposed of by the district judge. One of the witnesses suggested that the lawyers are largely responsible for this. Well, there are plenty of you in here, and I guess you know how it is. At least, so far as I am individually concerned, I am not going to say anything about that, and am not going to make any admissions of any kind with regard to it; but the testimony is to the effect that there is much to do upon these last few days of the court. That during these times, these accounts are presented, and the law says that they must be approved during the term of court and must be entered on the minutes. Now there is no kind of an argument that can get around that. It is entirely impossible for the judge to go into it in those circumstances like an auditor would.

Moreover, isn't it a fact that the district judges of Texas are chosen because of their legal learning, and not because they have the C. P. A. after their names? There is nothing in the law either, to suggest they must be also auditors. It is an imposition of a function upon them that is not judicial in its character, but clerical in its character, and which they are not properly equipped in any way to discharge. Counsel was telling you how, if he had made the comparisons between these names at these different terms, and at the different times in all these accounts, and checked up on the distance and the direction, and so forth, he would have detected it. Maybe he would. I had the accounts before me for several days and I didn't detect it. It was only after these matters were called to my attention that I found it was there. Of course, it might be detected by an auditor; that's the kind of business he is in. He is a kind of detective inside of books, and I don't know how to go about it myself, and it would doubtless have escaped you,

just as it did the Comptroller and his auditor. If, however, you go into the matter here, with the expectation and hope of finding something wrong about it, and take plenty of time to do it, I think it not at all improbable that every account that has been made since we established the judiciary might disclose some errors.

Your attention has been called to all these facts. I know that counsel, in the final conclusion of this case is probably going to refer to the case of Rochelle vs. State, in which Judge Brown speaks of this as a judicial function, ignoring entirely (and it was probably not called to his attention) the fact that it was made not only the duty of the district judge to look into this matter, but in the very next paragraph it was made the duty of the Comptroller of Public Accounts.

Now let me make this suggestion to you—let me make this suggestion to you: That whether this be a judicial function or a ministerial function or a clerical function, or whatever you may want to call it, that the Legislature of the State of Texas has the right to place in its appropriation bills a detail of those things which are essential before the money of the people of Texas can be taken out of the Treasury. The proposition that you cannot incorporate into an appropriation bill a piece of general legislation, Mr. Chandler states is the law. To the best of my knowledge and belief, the Congress of the United States passes much of its general legislation in its appropriation bill. There may be something in the Constitution of the State of Texas which prohibits this. We have read it over; I have read it very many times, and I have tried to become familiar with these statutes, but of course I make no pretensions as to being able to state what the law may be that comes up every day in the year. It may be that you can have no general legislation in these appropriation bills, but I get back to the proposition again that you can lay down the circumstances under which the money shall be paid out of the Treasury of the State of Texas. And in every appropriation bill covered in the period under investigation here, there was not only a general statute which made it the duty of the Comptroller to investigate these matters, but there was in each of these appropriation bills a distinct statement to the effect that this account must be audited by the Comptroller and in most of these appropriation bills there is a further expression, that until this shall have been done, the account shall not constitute any character of liability against the State of Texas.

Counsel, in the presentation of this matter, appealing to his peculiar patriotism, suggests that he is sorry this investigation led up to an old and crippled man. This investigation did not lead up alone to an old and crippled man. All of you who are here present know from what has been said in the trial of this case, that most of the district judges in Texas, or many of the district judges in Texas, do that which has been done by this respondent, and rely primarily upon the integrity of the officer, and secondarily upon the efficiency and capacity of the Comptroller and the people whom you put at his command for the purpose of auditing these accounts. He knows also that it has led much further than this. That it has led past these people, who have merely been negligent, and has gone to persons who have raided or undertaken to raid the Treasury of the State. I asked the other day, and I ask you again: Why, at least, can't you defer an effort to destroy an old and crippled man, until you have found out all of the facts with reference to these matters? Why is it necessary to impeach Judge Price before the guilt of these sheriffs shall have been established?

I asked him if it was not the theory upon which he was proceeding that this Legislature could be brought together at any time for the impeachment of a State officer, and I assume certainly that this is the basis upon which this impeachment proceeding is now had. Possibly I am wrong about that. In the Ferguson case, it is indeed true that the convocation of the Legislature was based upon the fact that it was necessary in case of dereliction and misconduct of the Governor, that the Legislature do so, but that is, of course, not true with reference to any other officer, and in so far as that opinion makes the suggestion that this Legislature can get together at any time for judicial functions, it must necessarily be obiter, because it was not involved in that case. But I am not under-

taking to take advantage of any technical point whatever. As I stated primarily, we want the truth developed here, and if, after the truth is developed, you can make up your mind that a person must be impeached for merely being negligent, then, of course, there is no use in saying any thing further about the matter.

Counsel for the respondent have already brought to your attention the law of this matter of impeachment. I have undertaken to do so formerly, and I see no particular good to be accomplished by reiterating what has been said. But I do want to make this suggestion to you: That never in the history of jurisprudence, leaving out those times in the history of England when bills of attainder and impeachment were used for the purpose of changing the policy of the country or securing political revenge, has there ever been a time when an impeachment—which did not involve an indictable offense and which did not involve corruption—never has there been a time when it has been sustained.

Counsel this morning stated that in the Ferguson matter there had been no indictment, but he is mistaken about that. There was an indictment. In the Andy Jackson case, there was, of course, no indictable offense; that was not done, however, for the purpose of vindicating the law, but for the purpose of oppressing your fathers and mothers. In all history there has been no other case in which a conviction has been had, except upon an offense which is both indictable and corrupt.

In these matters involved in this case, the most serious matters which have been under consideration took place before the people of the Twenty-first Judicial District re-elected this man. Re-elected him with the knowledge of the fact that he had been stricken. Re-elected him with the knowledge of the fact that he possibly could not serve out his term on account of his physical condition. Most of those matters, as I say, took place prior to this election, and all of those matters have about them not one element of that which is corrupt or even improper.

When we read over these charges against Judge Price, the thing which disturbed us was that Judge Price was charged with having gone to the Comptroller and with having tried to get these accounts paid, and we asked him about it; and he said that nothing of the kind had taken place. During all these days that have intervened, all kinds of testimony has been put in here. Unproved records; statements of convicts; hearsay evidence, word after word of it, but not one particular to suggest the truth of that statement. The only testimony there was with reference to it was produced by us, and I do believe that there is no man here present who believes that this district judge would lie, in order to prevent you from passing this impeachment. I know he would not. I know a person could not go sixty-six years without lying, and then come to it for anything whatever. He told you the circumstances connected with that matter. You would be, I think, not well informed with reference to this man, if you did not realize that he is more than a good man; if you did not realize that he is a kindly man, a gentle man, a tender man; a man that men love and women respect highly. The circumstances under which he came to the Comptroller's office have been detailed; he came here at the request of the Comptroller of the State of Texas; he came here in order to serve a widow. When would it be that in addition to punishing men for little acts of negligence, you are going one step further over, and punish them for undertaking to do what can be done for the widows and orphans of this country?

He came here, I say, at the request of Mrs. Carlisle, or her representative, and at the request of the Comptroller of the State of Texas, to straighten out an account which had been passed upon by the Attorney General and which had been passed upon by the Comptroller's office, and which had the approval of the Comptroller after that audit which the law provides, in order that that might be paid, showing how and why it was done, and discharging the duty which any good man ought to discharge for the benefit of persons afflicted as this woman was.

That is the most serious of these offenses. Predicated upon an opinion of the Third Court of Civil Appeals; predicated upon the approval by the Comptroller, whose duty it

was to approve it after audit; made after a submission of this matter to the Attorney General of the State of Texas.

Now, then, another matter. It is stated here that after having gone to the Comptroller's office, Judge Price approved another account after that time, which was incorrect. It was developed here, upon the trial of this case, that that account approved by Judge Price, was also approved by the Comptroller of the State of Texas, and every item of it, as he approved it.

The statement is made there about duplicate witnesses; about duplicate mileage. The statement is made to the effect that anybody, by spending a certain amount of time, could have ascertained that fact. Is there any greater degree of culpability upon the part of a district judge, who is not equipped to do this work, than upon the part of the Comptroller, who was equipped for doing this work? The very account that he is criticized here for, went before the Comptroller of the State of Texas, went before his auditors, and was in exactly the same language that it was when it left Judge Price, and it was approved in everything by the Comptroller.

These facts were known to this Committee when these proceedings were charged against Judge Price. Now I am not suggesting that the Comptroller has done anything wrong. I don't know what the circumstances were there. We are told that formerly he had some employes that have been since discharged, and it was said in this case, I believe, that those discharges took place before these accounts were approved, and all of that. I call your attention to the fact that you are here undertaking to take away the life; the political life of this man, for an offense which has been committed by the sheriffs in the first place; and by the Comptroller in the second; and certainly in the latter instance, not involving any greater degree of negligence than exercised by Joe Price.

I want to call your attention further, gentlemen, to this fact; that there have been some matters criticized here, and my own investigation of them leads me to believe that the accounts are improper. I make no contention to the contrary. I make no attempt to pass upon them at all, but so far as I can say, that is the truth; but I want to call your attention to the fact that there have been thousands and thousands of items that have not in any sense been criticized. There are thousands of items.

Why, you speak about the time that is required to go over these accounts. I undertook to get from the witness, to get him to state how many items there were, and the witness evidently did not understand the question; or did not say what an item was. I think you understand that testimony; the name of the witness, the mileage he has traveled, the time he has been in attendance, and the amount of the fee due him, and so on; that would account or constitute an item. You will recall that one of these accounts ran over 351 pages of the record. On each one of those pages there was a large number of items. That characterized all of the accounts that have been brought here. I say that there has been an infinitesimally small percentage of that which has been done which has been criticized.

I am admonished by the Speaker that the time has come when I must close. I regret that I have to close, not because I want to speak, but because I am not sure that all of these matters have gotten properly before the members of the Committee. I regret it because perhaps this will be the last time I will have the opportunity of serving my friend and serving the ends of justice. Long ago, I had assumed that my duties in these respects had been accomplished; that I could spend these latter days of my life as I might please, but here I see that always there must be somebody ready to stand between the powers that sometimes get to be cruel and unkind, and that individual justice that is due to each man.

I want further to state to you this: that it would be a proud moment in my life, if I could go down to my grave with the suggestion: that that man has done nothing wrong in his life, except to make two or three mistakes, depending upon persons who were elected by the people and who were improper in the conduct of the business of their office.

Mr. H. N. Graves: Mr. Speaker, ladies and gentlemen of the House: I am aware of the fact that I have come before an august assembly of lawyers in an attempt to argue a legal question.

Mr. Sanders: I move, Mr. Chairman and members of the Committee, I move a call of the Committee until this matter is disposed of.

The Chairman: Is the call seconded? The call is seconded. The call is in order—the call is ordered. The gentleman from Nacogdoches moves that the Sergeant-at-Arms be instructed to bring in all members who are absent, who are in the city and not ill. If there is no objection, it is so ordered. The members present will please register. Have all registered? Have all members registered? The Committee will please be in order. The gentleman from Williamson?

Mr. Graves (resuming): Mr. Speaker, and ladies and gentlemen: As I told you before, I feel my weakness and inadequacy to meet the sharp rapier of the gentleman who has just preceded me on these legal propositions. I also know that others who have preceded me have been more skilful in arguing the facts that have been presented to this Committee than I can be. This, I also know, and for which I apologize in the beginning, that which I am, nature made me, because after all I can not change the nature God gave me at my birth. I want you to believe that I will do the best I can. I have done what I thought was right in rather a momentous occasion in my life. Nobody wanted to bring those proceedings against Judge Price. I didn't want to put my name to impeachment proceedings against any human being on earth. I have reached that stage in my life now, where I know that it will be at best, but a few more years for me here, and I would not willingly bring sorrow upon the head of anyone. It hurts me and has hurt me, and stings me now, when one whom I have revered all my life, whom my father revered, to have him call this prosecution one of brutality. It hurts me when—it hurts me when Albert Burleson said that, and it will hurt me when I close my eyes in my last, long sleep. I have done the best I could, I don't feel like apologizing. I am a country lawyer that came from a country town. I gave up what I thought at least was a fair activity in life in order to come down here and serve the people of Texas at $5 a day, and I was satisfied with the $5, and when they saw fit to change it to $10 I was satisfied with that. Though it might be there are but a few years left me and I have finished my race, I shall always be proud of the years I have spent—eight years that I have spent in the Texas Legislature, as proud of that fact as is Albert Burleson of the eight years he spent in President Woodrow Wilson's Cabinet. No matter how that may be, no matter how long the span of life may be stretched out before me, I believe my life has been enriched and ennobled while I sat here with you, John Veatch, and you, Brother Forbes, and I am proud that I have been associated with you, Judge Allbritton. If tomorrow your career were to close, I would drop a tear to your memory, because I think you have enriched my life. We look with respect to those who sit in the seats of the mighty. But yet you sit in the seats of the mighty. You know you can tell the man who sits in the Governor's chair he has been there long enough. But he can't do you that way—no, he can't do you that way. You are the only men who can say to the Governor of Texas, "You have been unfaithful to your trust." So, I say to you, you sit in the seats of the mighty. You may come from a little humble cottage back yonder on the hillside, or you may come from a city or large town—at the present time you are the most powerful men in Texas.

They also brought down here Dan Moody, and it hurts me again, because I took his part and traveled up and down the great roads of Texas and told the people to vote for this young man for Governor. I told them for 40 days and 40 nights, honesty in government, was his watch-word, honesty in government—if you put Dan Moody in there, honesty in government will prevail. And yet, I find his argument here before you; it is not an impeachable offense, he tells you, but it is an impeachable offense, and I will prove it to you out of the very thing he read, and out of his own mouth. Not only that—I appreciate that condition—at the same time, I might add that Judge Batts himself, who has sat in the seats of the mighty, whom I have honored and will honor for years to come, will continue to honor, I feel sure, until his last time has come, they brought him here for the

purpose of telling you people what a wonderful man Judge Price is—which we freely admit—I wouldn't destroy his character; he will tell you and his own attorneys will tell you, I pleaded on bended knees to let us pass this thing away from him. I said, "Judge Price, you committed a mistake, in your heart there was no guile." In your heart now, I say, Judge Price, there is no guile, but your day has come, you have ended your day of usefulness to the State of Texas, and you can not keep up with those men who are fooling you now, and who have been fooling you heretofore. For the last five or six years you have been allowing this tax burden to be placed on the people of Texas, you have been letting this money go out of its Treasury and go to the accounts of the sheriffs of Burleson, Lee, and Bastrop counties. My heart wasn't so awful hard, there was some little kindness in it at least, General Burleson, when I offered before this House that if you saw fit to tell him to go and sin no more, it was all right with me. Still, at least, there was a streak of human kindness in me, when I got up here and agreed that he could go home if he would but resign. And that is the time I told him to, wasn't it?

We told him that if he would just go home, that we had no malice, no guile in our hearts, if he would just go home we would just say he had reached an age where he could not attend to business, just go home and give us back this commission, hand it to you, unsullied. But instead of that, day after day, night after night, morning after morning, as we met, and day after day, as we poured money out of the Treasury of Texas, like the officers of Burleson, Bastrop and Lee have been pouring it out, day after day they came back and said they would not quit. They told us today they would quit in fifteen months, and at the end of the fifteen months they did not intend to run any more. What would it cost? About $50,000 a year. That would mean expenses of thirty, sixty, ninety, a hundred thousand dollars—God knows how much, I don't, in order that the salaries might continue to come. And the gentleman who preceded me here tells us we have no right to try this case! Carry it throughout the confines of Texas, from the Red River to the South, from El Paso to Texarkana, from the Red River to the sea, so that you may tell all the people you must give an honest day's work for an honest dollar. What did he say about the $33,000-odd dollars for a month's work put in by John T. Carlisle here in Lee county? What do you say and what does he say about the 4800 miles that was traveled in two days, going from Burleson to Caldwell, to Wharton, when it wasn't but 60 miles one witness said, and 100 miles another witness said? Counsel tells you that the Constitution of the State of Texas says you cannot impeach a man for aught save high crimes and misdemeanors. Listen and see whether that is what it says or not (reading): "The power of impeachment shall be fixed in the House of Representatives." Period, and the end of that section, and that is as far as it goes. From beginning to end you may search the Constitution, and not another word will you find there about impeachment. All right. Then he goes to a speech in an impeachment trial, including the Andrew Johnson trial, a very well known authority, known to the common law, and listen to what he says: "High crimes and misdemeanors may be ascertained by reference to the principles of the English Common Law." Blackstone's definition is: "A crime or misdemeanor is an act committed or omitted in violation of a public law either forbidding or commanding it." And they told you time after time, they read you that there was an omission and a commission in violation of a public law, not a public felony statute, not a public misdemeanor statute, but I feel sure no one will deny that the statutes read to you by the two gentlemen represents our public laws. All right. How do you construe what impeachment meant? The only one that I know of in the State of Texas, you have heard it referred to, is that Ferguson vs. Maddox case. Let's see what they say. The Governor read this to you, and he went on rather rapidly, and did not seem to emphasize the portion of it "where impeachable offenses are not defined in the Constitution, they are very clearly designated and pointed out by the terms 'impeachment,' which contains connotes of offenses to be considered and the procedure for the trial thereof. Impeachment at the time of the adoption of the Constitution was an

established and well understood procedure in English and American parliamentary law, and it has been resorted to from time to time in the former country for more than 500 years. It was designated primarily to reach those in high places, guilty of official delinquencies or maladministration."

You would call offenses like we find here resulting like I say, in that golden flood, you would call it mal, or evil, or bad administration, it looks like to me, or it would come in the category of both offenses. All right. Now,—

"It was settled that the wrongs justifying impeachment need not be statutory offenses or common law offenses—"

And yet the Governor tried to tell you that they had to be. This is a decision of the Supreme Court of Texas, regardless of what Governor Moody or anybody else might think of the common law, the common law becomes silent when you listen to the Supreme Court of the State of Texas.

"—Common law of Texas—" What could be plainer than that? What else could you say, to save your life, Governor, of the Constitution, except what has been said therein?

"—Or even offenses against any positive law."

Not satisfied with a statutory law, not satisfied with a common law, it even says there that it need not even be an offense against the positive law.

"Generally speaking, they were designated as high crimes and misdemeanors, which, in effect, meant nothing more than grave official wrongs."

Has Judge Price committed a grave official wrong? They say that he has, he says that he has. I tell you that he did. What other testimony could you want than that? And yet, Governor Moody would have you believe that he is not impeachable unless it be for a statutory felony offense, he would have you believe that you have got to put him in the penitentiary before you could try him in a higher court of impeachment. That is not what the Supreme Court of Texas says. After all, I feel sure, I know that Senator Page and Judge Batts, and I feel sure that Governor Moody, too, will finally have to bow to the Supreme Court of Texas, when they tell you for what offense a man might be impeached. It seems to me like it is so plain that he who runs might read through all the pages that he doesn't have to be guilty of an indictable offense in order to be impeached by the Legislature of the State of Texas. You have got your rights, after all, to do what you please, and I tell you that the Constitution has elevated you above the Governor, the executive power of this State. They cannot remove you from office. You may go to the Supreme Court of Texas and let them sit in all their majesty in their court up there, and listen to the pleadings, and when they get through they won't have the power to put their hands on this Legislature. You only have the power to say whether this man has committed an offense for which he can be impeached from office. I think I have gone into that far enough. If not, I will repeat it again. "Or even an offense against any positive law." All right. Whether I have argued that satisfactorily or not, I don't know, but that is the law, and will remain the law until the Supreme Court of Texas has changed it.

Now, there are other matters that have arisen here relative to the other charges, the third charge being the most serious, I will argue that a little carefully with you. You have heard the meaning of the statutes, you have heard the plea they have put up before you, that it was the duty of the Comptroller to attend to this matter—and I might say, in passing, that one Comptroller was presented before this House two years ago for grave official wrongs, and that Comptroller resigned when he saw the inevitability of his impeachment. We put a new Comptroller in there, and if it had not been for him, we would not have known about this golden flood that was pouring out of the State Treasury. But he told us—he told us at least—the pitiful, sordid story about how this money was pouring out. He did the best he could. Day in and day out his men worked on this matter, day in and day out as he faithfully slaved. It was the best law ever passed by any Legislature, and it was the best appointment Dan Moody ever made, when he appointed Moore Lynn as State Auditor, and he has been working and has done his duty the best he knew how; day in and day out has he worked in order that the evidence might be presented before you. Prior to that time, the District Judges of

Texas had tied the Comptroller's hands, under the ruling in Rochelle vs. Lane case; and Judge Price saw that record on one of his bills, you have it right there—on one of these bills for settlement, they told the Comptroller that we have got your hands tied, whenever the judge of the District Court of the Twenty-first Judicial District of Texas, signs a sheriff's bill, you have got it to pay whether you want to pay it or not, you have got no power to go behind it, because the Supreme Court said so. And they wrote a fine opinion—I think Judge Brown wrote this opinion when he, also had reached the age of incompetency! Now, listen to it, and see whether it says what I say it does:

"The State Comptroller has no power to review accounts of prosecuting attorneys, sheriffs, and clerks, in felony cases, approved by the district judge under Code of Criminal Procedure, 1911, Articles 1132, 1133; the judge's approval being a judicial and not a ministerial act." Here is what Judge Brown wrote in the twilight of his youthfulness:

"The fact that 1700 witnesses were summoned in 17 cases is not evidence of fraud on the part of the sheriff and judge. The law permitted the parties to sue out the process, and the sheriffs were compelled by law to serve it. However zealous for the public good the respondent may be, he has no right to arbitrarily refuse a warrant for such a claim as this. He must confine his actions to the limits prescribed for him by law."

That was the law since 1912, and it cost us ten million dollars—ten million dollars came from somewhere —part of it came from my pocket, part of it from yours. Too much money! Too much to be taken out of our Treasury. That was the law until the district judge over here in Bell county had another similar matter come before him. He had the heart in him, he had the nerve in him, he had the strength of character in him to withstand the pleas of the sheriff. He refused to pay it. And that was the case of Bigham against the State, 275 S. W., where John R. Bigham, who was sheriff now of Bell county, tried to mandamus the Comptroller and make him pay an outrageous account like that; and Judge Blair, misled as Judge Blair was—misled by something, I don't know what it was—wrote another decision that continued the golden flood that was pouring out of the Treasury of the great State of Texas. He held that miserable idea, that foolish idea that has been promulgated for years and years, that we all know was wrong. That judge says that whenever a district judge had signed his name to an account, it had to be paid, regardless of its incorrectness. And this was on July 6, 1925. And then on November 18th, immediately thereafter, the Supreme Court took steps to correct this, and then it was when the law was changed to what it is now. It was only the law from July 6th to November 18th, it was only a law three or four short months, and the Supreme Court got hold of it, in its October term, and held he had no right in law to mandamus the control of it, he had no rights against him, and dismissed the case for want of jurisdiction, meaning thereby he did not get the money,—meaning thereby that Judge Jones' order up there in Bell county still held good. He did not get those outrageous fees, that General Burleson himself said were outrageous. He did not get those outrageous fees, and we cannot allow you to get these outrageous fees, and then the Supreme Court took hold of it in March, 1926; they withdrew the bill, and Dan Moody was Attorney General at the time and his name was signed as representative of the great State of Texas, to stop this great flood of gold out of the State of Texas, and it stopped. Not satisfied with that—and not satisfied with that, the sheriff had fed upon such meat that he grew extra strong, stronger than any sheriff in the State of Texas, he comes back, goes to the district judge —the same district judge, Lewis Stone, that had the nerve back in Bell county to refuse to sign for the payment of these matters, like Judge Price's duty had been, to refuse to pay these enormous mileages—he came back at him, and the Supreme Court very promptly refused a writ of mandamus against Judge Jones; but left, however, untouched the case of Rochelle vs. Lane, and that is the plain proposition that you couldn't go behind the judge's approval of the sheriff's account, and that you had to pay it when the judge signed his name on the dotted line. We find ourselves again in the same position,

but we had a bill in this last Legislature—I wrote it and I am proud of it, House bill 550—and if it does the things I hope it will do, it will save $500,000 a year, long after I am dead and gone.

Now, I will revert to some of the argument of the men who have preceded me. And I remember the papers on this account—I remember the judge said he saw that—I might be wrong about that—it was on there just the same, marked "duplicate." The Attorney General has advised in this case all the time, and has been doing a great deal of work on it. The quotation from Rochelle vs. Lane that I just read you, says in effect, in its entirety, whenever District Judge Price signs his name to this bill, it has got to be paid—it has got to be paid. He didn't say anything about the Comptroller, he didn't try to throw the burden upon the Comptroller, he didn't say, "Lo, you fooled me, Mr. Sheriff, even as you fooled the judge." It is not the same. He didn't say, "And, Mr. Judge, you have fully the power to go down to the Comptroller and tell him, 'you catch it—I didn't catch it, but you catch it; and when the district judge signs it, that is the end of it, it is a judgment against the State of Texas and must be paid, the Comptroller has nothing to do with it.' And he has nothing to do with it now. We have discussed this from time to time, time after time, four years I spent on the Appropriation Committee, we have done our best to take this money down and keep it from getting away from us. Time after time we put that on there, "this money shall not go out until the Comptroller approves the account." And then in lieu of that quotation, was written on the bottom the quotation from Rochelle vs. Lane. We knew it would not repeal that law, we knew it was still the law, but we did our dead level best to hold up this golden stream that was being taken from us day after day.

And I remember, I believe, what Senator Page also said about Grady Chandler. We say that he told the judge about that opinion that he had in his pocket. I read from Grady Chandler's testimony (reading): "And I called attention to the fact that a short time prior to that the Court of Civil Appeals—I forget which court it was, I think it was the Austin Court of Civil Appeals—had held that the sheriff was entitled to duplicate mileage, but since the Supreme Court had reversed that case and held otherwise, he was not entitled to duplicate mileage."

Again: "We didn't think the claims ought to be paid, and, therefore, thought he ought to withdraw his approval of the entire accounts and let the sheriff make out a new account and put in only those items which Mr. Goodfellow thought were correct, and, if necessary, I would be willing to take any procedure in order to get it before the courts for a hearing, if necessary. He told me he didn't think that would be necessary; he had approved the account, that it ought to stand, that at the time he approved the account the Court of Civil Appeals said that duplicate mileage was all right; it made no difference, but since that time the ruling of the Court of Civil Appeals had been overturned by the Supreme Court; I told him that since that time the Supreme Court had reversed that and the Comptroller had not paid it, but I thought he ought to withdraw his approval, and he refused to do so. That was about the substance of that conversation."

He was telling him and begging him not to approve the accounts, telling him to take it back, for he had approved it wrongly, giving him another chance, where $12,000 or $18,000 was going out of the Treasury, for the purpose of paying these ill-gotten accounts that were filched from the people's pockets. And after he had done all that, until December, 1930, five long years, court term after court term, with the decision of the Supreme Court reverberating in his ears, time after time had he told him, year after year, asked him to take his approval back, he refused until the last minute and the last hour, and it took $7,912.10 to get him then to change his approval.

Listen again: "No, sir, I told Judge Price—I had it in my hand, as well as I remember, and offered it to him, I don't remember whether he read it or not. I know I offered it to him." "Did you read the opinion to him?" "No, sir, I didn't read the opinion to him." . . . "Don't you think when you offer an opinion to the court that overturns a doctrine laid down by the Court of Civil Appeals, you would ask them to read that opinion by the court and ask him to revise his judg-

ment?" "Judge Price wasn't in any mood to read it to him, he was just sitting in the courtroom, no court was in session, it was a conversation had in the courtroom."

We sent the Attorney General down there, we sent the Comptroller down there, we have been down there, we sent investigators down there, we sent auditors down there, we sent the rangers down there, we sent every constable, anything that belonged to the State of Texas down there, but he still continued on in his attitude.

Also, Judge Page spoke in the highest terms eulogistically, of Judge Price's efforts to save costs in Bastrop county. Yes, he wanted to save about $72 on that bunch of witnesses. He brought them back again at the expense of $16,000, $18,000, $11,000, $7,000, brought them back again. Time after time he let them go home in order to save that $72 and would have them resummoned and have them appear back again in court. Day after day would he plunder the State of Texas that appointed him, the State of Texas that he represented, the State of Texas that always paid him his stipend, week in and week out for year in and year out, had the people been taxed in order that he might have what was coming to him.

I didn't want to do this, you know I didn't want to do this. I was doing what I thought was right. I knew him in the palmier days of his life, and I may have something inside of me that made this duty distasteful. I wanted him to keep whatever few days or years he might have in peace and quiet. But I realize that thirty thousand, sixty thousand, or ninety thousand dollars a year was flowing from the Treasury of the State of Texas. If I had my way about it, I would be willing, for the few more years he has, if I had the chance, to let him go home. We only expected to say, "Judge Price, you have reached the end of your usefulness, you are just too old to attend to a job like that, incompetency comes with the years, incompetency comes now hand in hand with honor. We know that your ancestors fought at the Battle of San Jacinto, whether our ancestors did or not. That matters not. If you love your country like you ought to love it, if you and your friends love your country like you ought to love it, don't you think it is time that you retired in the twilight of your days to your home?"

Judge Page stated also that so relentless was this judge in seeing that crime was punished, that he duplicated mileage to bring back this relentless negro. I say this sheriff was more relentless in the pursuit of fees than he was in the pursuit of the negro, so relentless in the pursuit of fees, that he charged $1606 to bring him back from Texarkana to Giddings; he was so relentless that they charged $218.05 for thirty-seven witnesses in order that somebody might be there to testify against this negro. So relentless was he, and the district attorney, that when they tried him one time and had a hung jury, they turned him loose—possibly gave him a chromo for aught I know, and they gave us a bill for $18,000.

Judge Page also made the statement that the bar has provided Judge Price's expenses in this matter. That is truly a compliment; I am glad of that. The State of Texas has assumed all of our expenses, and our expenses will reach much higher than Judge Price's expenses will, and our expense accounts come out of the people's backs.

Judge Batts said that neither of the accounts could be justified. I believe him. They cannot be justified. And yet, when they, without inquiry, were approved, when presented here, the only man who could stop it is the man who should not have any more power to inquire into or approve any more accounts. He also stated the fact that we were all imperfect, and had no right to sit in judgment on our fellowman. There has been but one perfect man—that was the lowly Nazarene, who walked and talked beside the Galilean Sea. No other perfect man has been since the creation of time, and no other man will be perfect until time shall cease to be. Yes, we have committed some errors, we groan beneath them, and he says we have no right to sit in judgment on the wrongs of our fellowman. Many a poor man who is languishing in the penitentiary of the State of Texas, has heard from this stern judge that he must be confined in the State penitentiary; and I wonder now if he feels that he has no right to sit in judgment on his fellowman. And yet, he would come before you and ask you not to judge him. Oh, he sits in the

seat of the mighty, and that makes it unfair that he be judged by us at the present time. No man ever lived, no man was ever tried—in my presence, at least—who had more people come and testify to his wonderful character than has this man. This, I will say, in the beginning they established a sort of hysterical standard, and as one witness would get on the stand he would try to go a little higher than the witness before him, it became hysterical, and they would get him higher and higher, to where you would think he was equal to the man who was crucified on Calvary, the two thieves, you would think he had usurped the place of the Master Himself. He was the greatest man they ever knew. They have told you that every man, woman and child in those counties would testify to his integrity and his wonderful reputation. They told us he was too good. I never saw one yet that was too good. They even referred to the Savior Himself. They spat upon Him as He passed through Gethsemane, they spat upon Him as He hung on the cross on Calvary, and they are spitting on Him yet throughout the great confines of this country, throughout the great nations of this world, carrying Him down from the high standard where you and I have placed Him, and placing Him beyond the teachings of civilization and denying that He was ever the Son of the Great Master of the Universe. I say it became an element of hysteria among them, when one would get up there and tell what a wonderful man he was, another would go up a little higher, and the next one would go him a little better, trying to do his level best to spread himself. And the major portion of them that were there depend upon the taxes of the great State of Texas for the salaries that they receive—I don't say all of them there, I don't say the beautiful, attractive women that were on this stand did so, I say many of the men did—many, many. And they are mighty kindly people in their hearts. Some of them have been there thirty years, some twenty-odd years—my own Congressman has been there thirty-six years, and Judge Price has been there twenty-seven years, and you know from a mercenary standpoint that they stood by, each of them, that each of them might follow out the precedent and ride upon, travel along the road they have gone for years, and let the people of Texas still continue to hand them out the gold on a golden platter. He says they were "dirt scratchers." I don't call them that. Where I come from we look upon them with respect, we must look upon them with respect. No matter how great your educational advantages might become, no matter how strong your people might be, when you take the men who are "dirt scratchers," the men who toil day after day with horny hands, who bring from the soil the very substance from which we live, when you take them away from the government, that government must perish.

Now, the main contention that they bring before you in refutation of these charges is the fact that Judge Price relied upon the Comptroller to catch the incorrectness of the sheriff's accounts. But, after all, my friends, if it had not been for his signature—his signature alone—there would not have been a penny paid out of the Treasury of the great State of Texas, there would not have been a charge for 4800 miles traveled in two days. He didn't even know it had been done, he didn't know that nearly $800—4800 miles of travel, for which he charged $720, he didn't even know it was on there. All he needed to have done was to look at it and he could have told that it was an outrageous charge. He didn't even know the fact that he had charged $180 six times in one case. He didn't even know a single charge in this and other accounts he approved here, because the infirmities of age had a grip on him, the shadows of tomorrow were just beyond him. He didn't know about the Mack Matthews matter until we called it to his attention; he didn't know about the Bastrop matter, Murray Henderson, until we called it to his attention. He didn't know that Lee Powell was summoned twice on the same day, at the same term of court until we called it to his attention. He didn't know it cost us 22 miles east one day and another day 44 miles west, to catch Lee Powell, he didn't know it until we called it to his attention; through infirmity, incompetency, these matters were passed by.

Now, I don't want you to do anything you ought not to do. I do want you to stand true, because after all, this is a question of facts for your

consideration, in connection with one whose back is rolling with honors upon the part of the people of Texas —no matter if he did come from a great tribe; no matter if he brought the former Postmaster General and former member of Woodrow Wilson's cabinet down here to tell us what to do; no matter if Albert Burleson, whom I worshiped in my childhood, tells you how true he was, and they bring him down here from the seats of the mighty to tell us what to do—after all, it is just you and me. We will never reach the gilded heights from which these men have descended; we will never be able to write our names in prominent letters with the famous in the history of America; we will never be able to say we sat in Woodrow Wilson's cabinet — but after all, you and I, as representatives of the people of this State, are nearer the level of life of our people, and it is the duty of you and of me to let the people of the State of Texas know whether we haven't tried to protect their interests or whether we have so far forgotten ourselves as to let the plea of sympathy warp our judgment, and carry us away on account of the fact that they say his impeachment means the death penalty. We don't say it would mean the death penalty. It is not our fault when men fail to do their duty, it is not our fault, my friends, that we stand here today, with such wide publicity on us that all the people of Texas are looking this way. It is not our fault that we have been brought into this situation; it is his fault that he allowed these outrageous matters to occur over his signature—it is his fault and he cannot deny it, because the facts substantiate it; it is his fault; we didn't write this pleading, whatever it may be; he wrote it; his attorneys wrote it, and he admits it is true. Now, it is six long years since Quintus Watson and these men started this raid on the Treasury, and since this great amount of money has come out of the Treasury to Bastrop, Lee and Burleson. You and I didn't do that—we didn't do that; we didn't offer these accounts and offer these matters for payment here. So, after all, when the time comes to make up your verdict, it is you—just you, and your conscience and your God, whatever you may believe in—it is you. I am here to do as best I know how—with a little money, at least, in a small way—giving you the best I have in me, the best I have had in me; and, please God, if I have brought about some benefits—I hope it will, at least—that it will relieve the burden on the backs of the men out yonder, and I think I have the right to state to him—because he is the man that sent me here, the man that is toiling now for 5-cent cotton, and picking cotton at 35 cents a pound—I have the right to say to him that I have done the best I could, and if I can stop the payment of the outrageous amount of money that has been taken by these officers from the State of Texas, I will be satisfied.

As far as I am concerned, I will be satisfied if Judge Price will just resign and go home. I will say to him in order that I may not do him an injustice, I think you did the best you could with the men you had, but I think when the infirmity came upon you with the years you were unable to attend to the duties. I think you should find peace and quiet in retirement and may you live long—it may be you will live longer than I—may you live long with your people—may you take your hand out of the Treasury of the State of Texas.

I have done the best I could. You can do the best you can do. Remember, that there is somebody—there are some people back of you who are looking to you as their Representatives, remember they are not drawing the salary that he is drawing—and you and I will have the bills to pay. You may not reach the Gates of Paradise as the sun sets low and the world is folded in shadows, but we shall be judged by what we try to do, not what we did.

Gentlemen, do the best you can. I thank you for your kind and courteous attention. (Applause).

Following the conclusion of the argument for the proponent and for the respondent in the House of Representatives, in the Committee as a Whole, Mr. DeWolfe offered the following resolution:

"Be it resolved by the Commiteee of the Whole House, That this Committee now rise and report back to the House that it has heard evidence relating to the charges which have been preferred against Judge J. B. Price, Judge of the Twenty-first Judicial District of Texas, and it is the

opinion of the Committee of the Whole House that the charges preferred against him have been sufficiently proven to warrant the preferring of impeachment charges against him in the Senate of Texas; and be it further

"Resolved, That the Committee of the Whole suggest to the House that the Speaker be empowered and instructed to appoint a committee of five members of the House to act as a board of managers to prepare the articles of impeachment, to present them to the House for its approval, and, if adopted, present them to the Senate of Texas. This board of managers, with the assistance of the Attorney General's Department and the State Auditor's Department, shall present before the Senate the evidence to support the articles of impeachment adopted pursuant to this resolution.

DeWOLFE,
GRAVES.

Following the reading of the foregoing resolution, Mr. Morse offered the following substitute for the resolution.

"Whereas, The testimony given and the evidence introduced in the hearing of the impeachment charges against Judge Price fails to prove the commission of an impeachable act by Judge Price, but merely shows that the respondent has not been as diligent as he should have been in the approval of the sheriffs' accounts in his district; and

"Whereas, It is the belief of the House of Representatives that this failure to show such diligence was a mistake on the part of Judge Price in the discharge of his official duties; and

"Whereas, It is the further belief of the House of Representatives that this mistake was a mistake of the head and not of the heart; and

"Whereas, It is the desire of the House of Representatives, without reflecting on the honesty and integrity of the respondent, to caution the respondent that he should be more diligent in the examination and approval of sheriff's accounts; now, therefore, be it

"Resolved, That the respondent be brought before the bar of this House and the Speaker reprimand him for his actions in approving said accounts and that he be advised of the attitude of the House of Representatives on these matters, and that said reprimand be reduced to writing and printed in the Journal and that a copy of these proceedings be mailed to each district judge in Texas for his information as to the attitude of the House of Representatives concerning the approval by them of such accounts as must be approved by them.

(Signed)—"Adams of Harris, Gilbert, Jackson, Reader, Murphy, Harman, Justiss, Daniel, Adkins, Hanson, McGregor, Farmer, Smith of Bastrop, Ford, Weinert, Dwyer, Walker, Hughes, Ramsey, Mathis, Morse, Turner, Howsley, Hefley, O'Quinn, Harrison of Waller, Keller, Coombes, Bond, Elliott, Martin, Duvall, Beck, Westbrook."

After reading the above substitute resolution, Mr. Moffett moved to reconsider the vote by which the previous question was ordered.

The motion to reconsider was lost by the following vote:

Yeas—59.

Adams of Harris.	Lasseter.
Adkins.	Keller.
Beck.	Laird.
Bond.	Lemens.
Burns of Walker.	Leonard.
Carpenter.	Long.
Daniel.	McGregor.
Donnell.	Martin.
Dwyer.	Mathis.
Elliott.	Metcalfe.
Engelhard.	Moffett.
Farmer.	Morse.
Finn.	Munson.
Forbes.	Murphy.
Ford.	Nicholson.
Fuchs.	O'Quinn.
Goodman.	Ramsey.
Hardy.	Ratliff.
Harman.	Ray.
Hatchitt.	Rountree.
Hefley.	Shelton.
Hoskins.	Smith of Bastrop.
Howsley.	Sparkman.
Hubbard.	Stevenson.
Hughes.	Turner.
Johnson of Dallam.	Wagstaff.
	Walker.
Johnson of Dimmit.	West of Coryell.
	Westbrook.
Jones of Shelby.	Wiggs.
Justiss.	

Nays—62.

Adams of Jasper.
Adamson.
Akin.
Alsup.
Albritton.
Baker.
Barron.
Bounds.
Boyd.
Brice.
Brooks.
Burns of McCulloch.
Caven.
Claunch.
Coltrin.
Coombes.
Cox of Lamar.
Dale.
DeWolfe.
Dodd.
Dowell.
Ferguson.
Gilbert.
Giles.
Greathouse.
Hanson.
Harrison of Waller.
Herzik.
Hill.
Holder.
Holland.
Jackson.
Johnson of Morris.
Jones of Atascosa.
Kennedy.
Lee.
Lilley.
Lockhart.
McCombs.
McGill.
Magee.
Olsen.
Reader.
Richardson.
Rogers.
Sanders.
Savage.
Scott.
Sherrill.
Smith of Wood.
Strong.
Sullivant.
Terrell of Val Verde.
Towery.
Van Zandt.
Vaughan.
Veatch.
Warwick.
Weinert.
West of Cameron.
Wyatt.
Young.

The question then recurring on the resolution by Mr. Morse, yeas and nays were demanded, and the resolution was lost by the following vote:

Yeas—53.

Adams of Harris.
Adkins.
Alsup.
Beck.
Bond.
Bounds.
Burns of Walker.
Coombes.
Daniel.
Duvall.
Dwyer.
Elliott.
Farmer.
Finn.
Ford.
Gilbert.
Goodman.
Harman.
Harrison of Waller.
Hefley.
Holland.
Howsley.
Hubbard.
Hughes.
Jackson.
Johnson of Dallam.
Johnson of Dimmit.
Justiss.
Keller.
Long.
McCombs.
McGregor.
Martin.
Mathis.
Morse.
Munson.
Murphy.
O'Quinn.
Ramsey.
Ratliff.
Ray.
Reader.
Rountree.
Smith of Bastrop.
Sparkman.
Stevenson.
Turner.
Van Zandt.
Wagstaff.
Walker.
Weinert.
Westbrook.

Nays—73.

Adamson.
Akin.
Albritton.
Baker.
Barron.
Boyd.
Brice.
Brooks.
Burns of McCulloch.
Carpenter.
Caven.
Claunch.
Coltrin.
Cox of Lamar.
Cox of Limestone.
Dale.
DeWolfe.
Dodd.
Donnell.
Dowell.
Engelhard.
Ferguson.
Forbes.
Fuchs.
Giles.
Graves.
Greathouse.
Hanson.
Hardy.
Hatchitt.
Herzik.
Hill.
Holder.
Hoskins.
Johnson of Morris.
Jones of Shelby.
Jones of Atascosa.
Kennedy.
Laird.
Lasseter.
Lee.
Lemens.
Leonard.
Lilley.
Lockhart.
McGill.
Magee.
Metcalfe.
Moffett.
Nicholson.
Olsen.
Richardson.
Rogers.
Sanders.
Savage.
Scott.
Shelton.
Sherrill.
Smith of Wood.
Stephens.
Strong.
Sullivant.
Terrell of Val Verde.
Vaughan.
Veatch.
Warwick.
West of Coryell.
West of Cameron.
Wiggs.
Wyatt.
Young.

The following votes were paired:

Mr. Adams of Jasper (present), who would vote "nay," with Mr. Harrison of El Paso (absent), who would vote "yea."

Thereupon Mr. Keller moved that Section 8 of Rule 14, which relates to the previous question, be suspended.

The motion was lost by the following vote:

Yeas—58.

Adamson.
Adkins.
Bond.
Burns of Walker.
Coombes.
Daniel.
Donnell.
Dunlap.
Dwyer.
Elliott.
Engelhard.
Farmer.
Finn.
Ford.
Gilbert.
Goodman.

Greathouse.
Harman.
Harrison of Waller.
Hatchitt.
Hefley.
Holland.
Howsley.
Hughes.
Johnson of Dallam.
Johnson of Dimmit.
Justiss.
Keller.
Laird.
Leonard.
Long.
McCombs.
McGregor.
Martin.
Mathis.
Metcalfe.
Moffett.
Morse.
Munson.
Murphy.
Nicholson.
O'Quinn.
Ramsey.
Ratliff.
Ray.
Reader.
Smith of Bastrop.
Sparkman.
Stevenson.
Turner.
Van Zandt.
Wagstaff.
Walker.
Warwick.
Weinert.
Westbrook.
Wiggs.

Nays—65.

Adams of Jasper.
Akin.
Albritton.
Alsup.
Baker.
Barron.
Bounds.
Boyd.
Brice.
Brooks.
Burns of McCulloch.
Carpenter.
Caven.
Claunch.
Coltrin.
Cox of Lamar.
Cox of Limestone.
Dale.
DeWolfe.
Dodd.
Dowell.
Ferguson.
Forbes.
Fuchs.
Giles.
Graves.
Hanson.
Hardy.
Herzik.
Hill.
Holder.
Hoskins.
Hubbard.
Jackson.
Johnson of Morris.
Jones of Shelby.
Jones of Atascosa.
Kennedy.
Lasseter.
Lee.
Lemens.
Lilley.
Lockhart.
McGill.
Magee.
Olsen.
Richardson.
Rogers.
Rountree.
Sanders.
Savage.
Scott.
Shelton.
Sherrill.
Smith of Wood.
Stephens.
Strong.
Sullivant.
Terrell of Val Verde.
Towery.
Vaughan.
Veatch.
West of Coryell.
West of Cameron.
Wyatt.
Young.

The question then recurring on the resolution by Mr. DeWolfe, the yeas and nays were demanded, and the resolution was adopted by the following vote:

Yeas—69.

Adamson.
Akin.
Albritton.
Baker.
Barron.
Bounds.
Boyd.
Brice.
Brooks.
Burns of McCulloch
Carpenter.
Caven.
Claunch.
Coltrin.
Cox of Lamar.
Cox of Limestone.
Dale.
DeWolfe.
Dodd.
Donnell.
Dowell.
Engelhard.
Ferguson.
Forbes.
Giles.
Graves.
Hanson.
Hardy.
Hatchitt.
Herzik.
Hill.
Holder.
Hoskins.
Johnson of Dallam.
Johnson of Morris.
Jones of Shelby.
Jones of Atascosa.
Justiss.
Kennedy.
Laird.
Lasseter.
Lee.
Lemens.
Leonard.
Lockhart.
Magee.
Metcalfe.
Nicholson.
Olsen.
Richardson.
Rogers.
Sanders.
Savage.
Scott.
Shelton.
Sherrill.
Smith of Wood.
Stephens.
Strong.
Sullivant.
Terrell of Val Verde.
Towery.
Vaughan.
Veatch.
West of Coryell.
West of Cameron.
Wiggs.
Wyatt.

Nays—49.

Adams of Harris.
Adkins.
Alsup.
Beck.
Bond.
Burns of Walker.
Coombes.
Daniel.
Duvall.
Dwyer.
Elliott.
Farmer.
Fuchs
Gilbert.
Goodman.
Greathouse.
Harrison of Waller.
Hefley.
Holland.
Howsley.
Hughes.
Jackson.
Johnson of Dimmit.
Keller.
Lilley.
Long.
McCombs.
McGill.
McGregor.
Martin.
Mathis.
Moffett.
Morse.
Munson.
Murphy.
O'Quinn.
Ramsey.
Ratliff.
Ray.
Reader.
Rountree:
Smith of Bastrop.
Sparkman.
Stevenson.
Turner.
Van Zandt.
Wagstaff.
Walker.
Warwick.
Weinert.
Westbrook.
Young.

The following votes were paired:

Mr. Adams of Jasper (present), who would vote "yea," with Mr. Har-

rison of El Paso (absent), who would vote "nay."

Mr. Finn (present), who would vote "yea," with Mr. Mehl (absent), who would vote "nay."

Mr. Harman (present), who would vote "nay," with Mr. Farrar (absent), who would vote "yea."

Following the adoption of the resolution, Mr. DeWolfe moved that the Committee now rise and report progress.

Speaker Minor in the chair, when the Committee resolved itself into the House of Representatives again, the following resolution was offered by Mr. Nicholson:

"Whereas, The evidence submitted in pursuance of the charges now pending against Judge Price show, conclusively, that he has, to an extent, failed in the matters of diligence and dependability in the discharge of the duties of his office; and

"Whereas, Such lack of diligence and reliability are regarded as of such dimensions as to be intolerable under reasonable expectancy as applied to the tenure of his office; and

"Whereas, The House of Representatives regrets and declines to accept such lack of diligence and dependability on the part of any of the officeholders of the State of Texas; and

"Whereas, It is the belief of the House of Representatives, that this lack of diligence and dependability on the part of respondent was due to the influence of a generally prevalent fee system administrative custom and/or physical incapacity, and/or other inability to properly administer the duties of the office, rather than to dishonesty or corrupt intentions; and

"Whereas, The House of Representatives does not wish to condone or tolerate the possibility of a continuance of such lack of diligence and dependability; now, therefore, be it

"Resolved, tempered by the circumstances, That the charges against the respondent be, at this time, dismissed and that the pending impeachment proceedings cease, and further move that the respondent be requested, at the earliest possible moment consistent with getting his official affairs in shape, to relinquish his office in the interest of the welfare of the State.

"NICHOLSON."

This resolution was offered as a substitute for the DeWolfe resolution.

The Speaker: The question is on the adoption of the Nicholson resolution. Those who favor the adoption of the Nicholson resolution will vote "yea," and those opposed will vote "nay."

Thereupon the vote was taken, and there being 39 "yeas" and 80 "nays," the resolution was lost.

The Speaker: The question is now on the adoption of the Committee report, which is known as the DeWolfe resolution. Those favoring its adoption will vote "yea," and those opposing it will vote "nay."

Thereupon the vote was taken, and there being 72 "yeas" and 49 "nays," the report was adopted.

Thereupon the Speaker announced the appointment of the following Board of Managers, which committee is to act as a Board of Managers and to prepare and present articles of impeachment to the Senate. The following members of the House were named on this committee:

Messrs. Graves, DeWolfe, Petsch, Lockhart, and Vaughan.

Thereupon the following report of the committee to prepare articles of impeachment was brought into the House and read, same being as follows:

REPORT OF THE COMMITTEE TO PREPARE ARTICLES OF IMPEACHMENT.

Committee Room,
Austin, Texas, August 19, 1931.

To the Hon. Fred H. Minor, Speaker of the House of Representatives.

Sir: We, your Board of Managers appointed to prosecute the case of the House of Representatives against J. B. Price, district judge of the Twenty-first Judicial District, beg leave to submit the following articles of impeachment against said J. B. Price, with the recommendation that said articles of impeachment be adopted by this House and preferred to the Senate.

GRAVES,
DeWOLFE,
PETSCH,
LOCKHART,
VAUGHAN.

August 19, 1931.

Adopted by a vote of 72 "yeas," 42 "nays," and 2 present and not voting.

LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Articles of Impeachment.

Articles adopted and exhibited by the House of Representatives in their name and in the name of the people of the State of Texas, against J. B. Price, district judge in and for the Twenty-first Judicial District of Texas in maintenance and support of their impeachment against him, and in accordance with a resolution adopted by the Committee of the Whole House, which resolution was reported to the House of Representatives and by it adopted.

Article 1. That J. B. Price, duly elected and acting district judge of the Twenty-first Judicial District of Texas, comprising four counties, to-wit: Lee, Burleson, Washington, and Bastrop, is guilty of gross neglect of the duties enjoined upon him as such district judge in the performance of his official acts in this, to-wit: That he has from time to time covering a period from January 1, 1929, up to and including June 30, 1931, in disregard of the laws of this State, approved accounts for the sheriffs of various counties within his judicial district and certified that said accounts were correct and that the amounts claimed by said officers as a demand upon the State were correctly stated, when in truth and in fact, some of said accounts so certified to by said judge were wholly incorrect and constituted an endorsement for the demand of fees of office where the services were not performed, and where the account as approved by said judge was for duplication of purported fees of office.

Further, that the said J. B. Price, acting as said district judge, approved the account of John T. Carlisle, sheriff of Lee county, for the October, 1925, and April, 1926, terms of the district court in Lee county, for the sums of $6,317.25 and $12,023.80, respectively, when in truth and in fact, said certificate of the court was grossly erroneous and authorized a demand to be made upon the State by Sheriff Carlisle for said sums of money that were not due to said Carlisle, as provided by law.

Art. 2. That the said J. B. Price is and has been continuously since his election, guilty of gross neglect of his duty as such judge in this, to-wit: That he has not complied with Article 1036 of the Code of Criminal Procedure of the State of Texas, wherein it is provided that the district or criminal judge, when said sheriff's bill is presented him, shall examine the same carefully and inquire into the correctness thereof and approve the same, in whole or in part, or disapprove the entire bill, as the facts and the law may require.

Art. 3. That in Burleson county, same being one of the counties in the said J. B. Price's Judicial District, said J. B. Price approved the account of the said sheriff for the May, 1930, term of the district court, wherein it was claimed by said sheriff that he traveled 1,600 miles in arresting one person on two consecutive days, and, likewise, 1,600 miles in arresting two other named defendants, a total distance of 4,800 miles claimed to have been traveled by the sheriff on two consecutive days, to-wit: June 10, and June 11, 1930, when in truth and in fact these three defendants were arrested and conveyed to the Burleson county jail on one trip, at the same time, and on one day, traveling a total distance of only 210 miles, and in approving said account the said J. B. Price, aided and assisted the sheriff of Burleson county to make a demand on the State of Texas for the sum of $1,551.25 more than was allowed by law, and,

Further that should the said Judge Price have exercised the use of ordinary care and diligence as provided by law, said demand as made in said sheriff's account would have been disallowed by him, instead of approved by him.

Art. 4. That the said J. B. Price certified to and approved an account of Clint D. Lewis, sheriff of Burleson county, for the November, 1930, term of court, wherein it was claimed by said Lewis that he was entitled to a fee of fifteen cents (15 cents) per mile going to and thirty (30 cents) cents returning from arresting W. M. Hill one time in Dallas, Dallas county, Texas, on 6-38-30, traveling four hundred (400) miles to make said arrest, and making a demand upon the State for the sum of $93, also certifying to and

approving said Clint D. Lewis' account for the same term of court for services rendered by him in arresting a defendant by the name of J. H. Smith twice in Dallas, Dallas county, Texas, on 6-27-30, traveling a total distance of 800 miles and charging a fee of 15 cents for going to and 30 cents for returning from Dallas, Dallas county, Texas, returning the said Smith to Caldwell in Burleson county, Texas, allowing a charge to be made against the State for the sum of $186 for said purported service, and that said J. B. Price certified to and approved the said Clint D. Lewis' account for the November, 1930, term of court in Burleson county, Texas, for arresting a defendant by the name of A. J. Rogers once on 6-26-30, and again on 6-27-30, and also arresting a defendant by the name of A. J. Rayford on 6-26-30 in Dallas, Dallas county, Texas, and allowed a fee of 15 cents per mile for each arrest in going to Dallas, and 30 cents per mile on each arrest for returning from Dallas, Dallas county, Texas, to Caldwell in Burleson county, Texas, thereby allowing the said sheriff to collect from the State of Texas the sum of $279 for such purported service.

That in connection with the allegations made in paragraph 4 with reference to the arrest of Hill, Smith, Rogers and Rayford, in truth and in fact there were only two men transported from Dallas, Dallas county, Texas, to Caldwell in Burleson county, Texas, and these two were arrested by Detective C. R. Wood, a city detective living in Dallas, Texas, and they were turned over to S. S. Wood, who was then constable of Precinct No. 1, Burleson county, Texas, and that thereafter the said constable conveyed the two men at the same time and on the same day and in the same car to Caldwell in Burleson county, Texas, conveying said prisoners in T. K. Irwin's car, said T. K. Irwin being attorney for each of the defendants, and that by reason of said J. B. Price's certificate and approval of said sheriff's account, the sheriff was paid the sum of $558, when in truth and in fact he was to demand and receive from the State the sum of only $120, and that by reason of said conduct the sheriff received $438 more than was allowed by law, and that by the use of ordinary care and diligence in compliance with the law required of said judge, the true and correct facts as herein charged could have been easily ascertained by him.

Art. 5. That the said J. B. Price, while acting as judge of the Twenty-first Judicial District, certified to and approved the account of Clint D. Lewis, sheriff of Burleson county, Texas, for the November, 1930, term of court, for subpoenas upon four different men to testify as witnesses against two defendants, and said witnesses' names, together with the dates it is claimed by said sheriff that they were actually summoned, will respectively appear as follows: Herman Opperman, Jr., six times, November 20, 1930, traveling a total distance on the one date of 180 miles in serving a subpoena upon the same men in the same county by purporting to be in six cases. The next witness was Ed Sabotik. It was claimed by said sheriff and certified to by the court as being correct, that he subpoenaed by personal service six different times on November 20, 1930, by traveling 180 miles. The next witness purported to have been summoned six times was Will Opperman, claimed to have been personally served on November 21 six different times by traveling a total of 180 miles, and the next witness was Gus Jahns, purported to have been summoned, as shown by the sheriff's account and as approved by the said J. B. Price on November 22, 1930, six different times, traveling 180 miles, when in truth and in fact, the sheriff, as well as the judge, knew, or should have known by the use of ordinary diligence, that said witnesses were not summoned six different times on the same date, and that a distance of 30 miles was traveled by the sheriff in serving the subpoenas on said witnesses six different times on the dates claimed in said sheriff's account, and it is here and now shown that said witnesses were not served with process as claimed in said account and that they were only subpoenaed to appear one time by the sheriff of Burleson county.

Art. 6. That said judge, in violation of the Constitution and laws of this State, in careless disregard of the duties imposed upon him as such judge, certified to and approved the account of Sheriff Clint D. Lewis of Burleson county, Texas, at the

November, 1930, term of court, amounting to $51 for services claimed to have been performed by said sheriff in arresting a defendant by the name of Otis DeHart in Bryan, Texas, twice on June 6, 1930, and transferring him to Caldwell in Burleson county, Texas, traveling 50 miles going to and 50 miles returning from Bryan, Texas, and collecting a fee for said purported service in the sum of $60, when in truth and in fact, the said Otis DeHart, was not arrested by the said Clint D. Lewis, or any of his deputies, in Bryan, Texas, on said dates, and was not transferred to Caldwell in Burleson county as claimed on said date, and in connection therewith it is shown that said Otis DeHart was never at any time placed in the Burleson county jail, as claimed in said sheriff's account. A charge exactly similar to the one set out with reference to a man by the name of Harold White on July 6, 1930, in two cases wherein the sheriff collected from the State of Texas the sum of $51 for the purported service in arresting said White in Bryan, Texas, and in transporting him from Bryan to Caldwell in Burleson county, Texas, when in truth and in fact, said services were not performed by said sheriff, or any of his deputies, and the said Harold White was never on any date at any time placed in the Burleson county jail, and the said J. B. Price could have known by the exercise of ordinary diligence, that said purported claim as made by the sheriff was not correct and that same should have been disallowed.

Art. 7. That the said J. B. Price certified to and approved the account of Clint D. Lewis, sheriff of Burleson county, Texas, as presented to him for the November, 1928, term of court for services claimed to have been performed by said officer in arresting within said county a lady defendant by the name of Bessie Norcross seven different times on December 22, 1928, purporting to have traveled 20 miles in going to the place of arrest and 20 miles in returning from the place of arrest with said defendant, demanding and collecting a total sum of $84 from the State of Texas for said purported service, when in truth and in fact, said defendant was not arrested as claimed by said sheriff, and that said mileage claimed to have been traveled by him because said defendant came to the sheriff's office, surrendered herself voluntarily and entered under a bond which was approved by the sheriff's department, and she was at that time released.

In this connection, we here show that this lady defendant resided in Burleson county, Texas, and that by the exercise of the legal duties enjoined upon the said J. B. Price by the Constitution and laws of this State, the said Judge Price could have known that said services were not in truth and in fact performed as was claimed by said sheriff in his account, and should the judge have complied with the law relating thereto, said account would have been disallowed and the same would not have been paid out of the State Treasury.

Art. 8. That the said J. B. Price, while acting as district judge, as aforesaid, carelessly, knowingly and unlawfully certified to and approved the account of John J. Burttschell, sheriff of Lee county, for the spring, 1931, term of court, said county being within the Twenty-first Judicial District of Texas, that in approving said account said judge certified that the account as stated by the sheriff was correct and that he would approve the same for $1,705.45, because said account shows that the sheriff claimed to have traveled 10,918 miles in eleven days, on the respective dates as follows: from April 22nd to May 2nd, 1931, and subpoenaing 800 witnesses; that Lee county had a population in 1930 of 13,390, as shown by the 1930 Federal census, and the certificate of the tax collector of Lee county shows that there were only 3046 poll tax receipts issued in the county for the year 1930 to both men and women; that most of the process that was issued demanding the sheriff to summon witnesses in the spring terms of court in said county was done by the district clerk signing the process book in blank and turning it over to the sheriff of said county in order that he might place the names of such people as he might see proper in said process, and we affirmatively show that the sheriff did not summon 800 witnesses as aforesaid, and did not travel 10,918 miles as aforesaid, and that said sheriff's account for said claim against the State should have been disallowed by Judge J. B. Price, as we show that should the court have exercised the use of ordinary care

and diligence in the discharge of his duties imposed upon him by law, he could easily have ascertained the correctness and truthfulness of this account but, to the contrary, said account was signed and approved by said court on May 8th, 1931, thereby permitting and assisting the sheriff to make extortive demands upon the State Treasurer for services that were not performed by said sheriff.

In connection with the above account, it is shown by said account that the court approved the sheriff's claim for having summoned 151 witnesses in the Rafael Carvantes cause, when in truth and in fact, there was no legal application made with the district clerk as required by law, asking that said witnesses be subpoenaed to testify in said cause. However, the sheriff claims to have subpoenaed 151 witnesses, making a demand upon the State for the sum of $262.60, when in truth and in fact, nearly all of the witnesses that were subpoenaed by the sheriff knew nothing about the facts in this case and were not material witnesses, and the way they were subpoenaed was by the sheriff going to the jail where Carvantes was held and asking him to think up names of all the people that he knew, and the sheriff had him sign a paper in blank, purporting to be an application for material witnesses in his cause, and the names of the witnesses that Carvantes wanted subpoenaed were written by him on a piece of paper and handed to the sheriff. He did not know how many witnesses the sheriff had subpoenaed for him, and did not authorize him to subpoena 151 witnesses; that all of these facts could have been known by the judge approving this account by the use of ordinary care and diligence and by the exercise of his lawful duties as enjoined upon him by the laws of this State.

Art. 9. That said judge was careless and negligent in the discharge of his duty in this, to-wit: that he allowed, certified to and approved the account of John J. Burttschell, sheriff of Lee county, for the spring, 1931, term of court, wherein it was claimed by said sheriff that he had subpoenaed 60 witnesses to appear and testify in Cause No. 2249, State of Texas vs. John Johnson, charged with burglary and theft, when in truth and in fact, the same practice as heretofore stated was used by the sheriff in being able to subpoena a long list of witnesses in order to make demands upon the State for collection of his fees as allowed by law. We show that the sheriff asked the defendant, John Johnson, to make up a list of all the people that he knew in Lee county so that the sheriff might have them all subpoenaed. The defendant did not have any lawyer, but gave the sheriff the names of six witnesses who did not live in Lee county, but who reside in Waco, McLennan county, Texas. This man was not represented by counsel and made no sworn application for witnesses in his cause, and the six witnesses that he had requested out-of-county subpoenas for were not subpoenaed. In truth and in fact, most of the witnesses alleged by the sheriff to have been subpoenaed are persons who are unknown, who cannot be located and who are fictitious persons for the practice and custom as hereinabove detailed with reference to the process for witnesses in Lee county has been continuously practiced by the sheriff, and that by reason thereof there has been demands made upon the State Treasury for thousands of dollars that are not provided for by law, and we further show that Judge Price either did know, or could have by the exercise of ordinary care and diligence, or by the exercise of the power vested in him as district judge, that said account should not have been approved, but should have been disallowed by him.

Art. 10. That the said J. B. Price approved and certified to as correct the account of Woody Townsend, sheriff of Bastrop county, Texas, said county being within the Twenty-first Judicial District, for the sum of $4,449.20 for the January term, 1931, of said court, and that there had been pending in his said court Causes Nos. 2961 and 2962, State of Texas vs. Mack Matthews, charged with murder, and in the June, 1928, term of said court in Bastrop county said sheriff claimed to have subpoenaed 236 witnesses and that said demand was made for the sheriff's account upon the State for such service with a certificate and approval by Judge Price, and that thereafter in the January, 1929, term of court there was another account and claim made by the sheriff for subpoenaing 235 witnesses in the same cause which was certified to

and approved by Judge Price and paid by the State; that again in the June term, 1929, of the Bastrop county district court it is claimed that the sheriff summoned 230 witnesses, which account was approved as correct by said Judge Price, and then again in the January, 1931, term in the same cause there was again 189 witnesses subpoenaed. In other words, this judge permitted the sheriff to claim fees for subpoenaing all of these witneses at four terms of court to testify in this one cause, which was purely and strictly a duplication of miles and a duplication of fees, which are prohibited and unauthorized by the laws of this State, allowing the sheriff of Bastrop county to make demand upon and collect from the State Treasury the sum total of $2,397.70, when in truth and in fact, there should have been only one subpoena issued for each witness applied for in said cause, and that upon said witness' failure to appear in court might have issued attachments for those failing to appear at the instance and upon the sworn application of either the State or the defendant.

That the judge himself, after each one of the terms of court hereinabove named, excused this large number of witnesses, stating to them from the bench that they would be resubpoenaed to again appear and testify in this cause, and that in compliance with that statement, said judge did permit the sheriff to collect in four different accounts fees for subpoenaing the same people four different times in the same cause.

All of this conduct is contrary to the Constitution and laws of this State, and the court so well knew, or could have known by the exercise of ordinary care and diligence, that these fees above mentioned were unauthorized by law and this sum of money would not have been paid out of the State Treasury if the said J. B. Price had complied with the law relating thereto and had complied with his oath of office as prescribed by law. We further show that the account of the sheriff hereinabove mentioned should have been disallowed for every term of court wherein fees were collected, except for the June, 1928, term, when process was first issued for these witnesses.

Art. 11. That the said J. B. Price approved and certified to the account of Woody Townsend, sheriff of Bastrop county, in Cause No. 2997, pending in the district court of Bastrop county, the defendant's name being Murray Henderson, for services alleged and claimed to have been performed by said sheriff in serving process upon certain witnesses in the January term, 1929, June, 1929, and January, 1930, terms of court, and we attach hereto and make a part hereof, Exhibit A showing the names of certain witnesses, the dates it was claimed by said sheriff that said witnesses were subpoenaed and showing that said sheriff was allowed to collect for subpoenaing these witnesses at three separate and distinct terms of court by traveling all the way from 10 miles to 52 miles in serving said process, and we further show that said witnesses in truth and in fact, did not live at the time process was served upon them over ten miles from the Bastrop county courthouse, and that the miles claimed to have been traveled by said sheriff were not actually traveled and that there should not have been claim made upon the State for the payment of this service, when in truth and in fact, it was not performed. We further show that the said J. B. Price could have known by the exercise of ordinary care and diligence that the mileage claimed by the sheriff in subpoenaing these witnesses at three different terms of court was not authorized by law and that said sheriff was not entitled to any fees for resubpoenaing the same witnesses in the same cause, except where he would be allowed a fee for serving attachment on witnesses who had failed to appear as commanded in the original process.

Art. 12. That the said J. B. Price, while acting as district judge in Lee county, said county being within his judicial district, did carelessly, knowingly, and unlawfully, sign in blank and affix his signature to the witness fee account and certificates used by said county for the year 1930, and that said judge did sign and affix his signature to the certificates kept by the clerk of said court, as provided for in Article 1036 of the Code of Criminal Procedure of the State of Texas, and that in said article it is provided that before the close of each term of the district court witnesses who live out of the county where any felony case is pending shall, before they are entitled to receive any fees

as such witnesses, make affidavit stating the number of miles they will have traveled in going to and returning from the court by the nearest practical conveyance and the number of days they will necessarily have been absent going to and returning from the place of trial, which affidavit shall be filed with the papers in the cause, and said article further provides that: No witness shall receive pay for his services as a witness in more than one cause at any one term of the court. Fees shall not be allowed to more than two witnesses to the same fact unless the judge before whom the case is tried shall, after such case is disposed of, certify that such witnesses are necessary in the cause; nor shall any witness recognized or attached for the purpose of proving the general character of the defendant, be entitled to the benefits thereof.

Article 1036 of the Code of Criminal Procedure, Section 4, provides that the district or criminal district judge, when any such witness' bill is presented to him, shall examine the same carefully, and inquire into the correctness thereof and approve the same, in whole or in part, or disapprove the entire bill, as the facts and law may require, and that the signing of the blank witness certificates showed an utter disregard on the part of the said J. B. Price in complying with the law hereinabove mentioned, and that it is very obvious that said judge could not have inquired into the correctness of the claim or certificate of the witnesses when no witnesses' names appeared on said certificate at the time his signature was affixed thereto, but that said conduct was of such a nature that said blank certificate could have been filled out by the district clerk or any other person at the will of any other person, and create a demand against the State for fees that were not allowed by law; that all of the conduct of the said J. B. Price, as hereinabove set out, plainly shows that he is guilty of gross neglect of duty, official misconduct and gross carelessness in the performance of his duties as district judge.

The Speaker: Those who are in favor of the articles of impeachment which have been presented and read before the House, Nos. 1 to 12, respectively, will vote "yea" and those opposed will vote "nay."

Thereupon the vote was taken, and there being 72 "yeas" and 46 "nays," the resolution was adopted.

The State of Texas,)
County of Travis.)

I, H. D. Mahaffey, a shorthand reporter, having heretofore been employed as the official reporter of the House of Representatives, to take down in shorthand and transcribe the proceedings in connection with charges filed against J. B. Price, Judge of the Twenty-first Judicial District of Texas, hereby certify that the above and foregoing 934 pages of typewritten matter is a full and complete, fair and impartial, true and correct transcript of the testimony adduced, as shown by the shorthand notes taken by me and under my direction during the progress of this investigation.

I further certify that the votes shown preceding the several roll calls copied into this record are the votes as announced by the Speaker at the time such votes were taken, and there is attached to the original copy of this record photostatic copies of the votes as shown by the voting machine, and delivered to me subsequent to the announcement of the vote by the Speaker, and from which I have made the tabulations of votes incorporated in this record.

Witness my hand at Austin, Texas, on this the 21st day of August, A. D. 1931.

.....
Official Shorthand Reporter.