PROCEEDINGS OF SENATE
SITTING AS
COMMITTEE OF THE WHOLE
November 4-9, 1932

IN THE COMMITTEE OF THE WHOLE.

By Purl.

Senate Resolution No. 1.

Resolved, That the Chairman of the Committee of the Whole of the Fourth Called Session of the Forty-second Legislature be, and it is hereby authorized and empowered in all respects granted the right to summon any and all witnesses to appear before the Committee in Austin, Texas, at such time as the Committee may direct to the end that a full and complete discussion and investigation may be had by said Committee with respect to the measure now before said Committee, known as Senate Bill No. 1; be it further

Resolved, That each Member of the Committee of the Whole be privileged to interrogate any witness appearing before said Committee and that such Members be privileged to file the name or names of parties to be summoned as witnesses; provided no person shall be summoned, save and except on a majority vote of the Committee; be it further

Resolved, That said Committee shall hold its hearings in the Senate Chamber in the Capitol at Austin, Texas, and that all hearings shall be public; provided further that the Committee shall close its hearings, on or before November 9, 1932, at twelve o'clock noon; be it further

Resolved, That the Chairman of the Committee shall have the power to administer the oath to witnesses, the same as that administered to witnesses in the District Courts of this State.

That said Committee through its Chairman be authorized to employ and compensate all court reporters necessary to take down and transcribe all testimony directed by said Committee and said testimony shall be reduced to writing and printed in the Journal of the Senate.

That hearings be held from day to day until a majority of the Committee of the Whole direct otherwise.

That the Senate be requested to authorize payment of all necessary expenses incident to the above hearings out of the Contingent Fund.

PURL.

I hereby certify that Senate Resolution No. 1 was adopted November 4, 1932.

BOB BARKER,
Secretary of the Senate.

Committee of the Whole
Senate
Forty-second Legislature
Fourth Called Session

November 4th, 1932.
7:30 P. M.

Mr. Rawlings, Chairman: The members of the Committee will please come to order. I wish the members of the Senate would find seats around the table. Will the Senators please find seats around the table so we might start the hearing? The Secretary will call the roll.

Beck.	Oneal.
Berkeley.	Parr.
Cousins.	Poage.
Cunningham.	Pollard.
DeBerry.	Purl.
Gainer.	Rawlings.
Greer.	Small.
Hardin.	Stevenson.
Holbrook.	Williamson.
Hornsby.	Woodruff.
Martin.	Woodul.
Neal.	Witt, Lieutenant-Governor.

Absent.

Hopkins.	Patton.
Moore.	Russek.
Parrish.	Thomason.

After a quorum was obtained, the hearing proceeded.

Mr. Rawlings: Let's proceed with the hearing. There was a committee on procedure appointed; and, that is Senators Purl, Small and Woodul.

Mr. Woodul: I suppose I am the only one of them here. To get things linked up we have asked the Railroad Commissioner to be present to follow up Mr. Kilgore who discussed the legal phases of this bill and expect to have, by the time we get through with them, another practical oil man of twenty years experience.

Mr. Rawlings: Are the sponsors of the bill ready to proceed?

Mr. Woodul: Yes.

Mr. Rawlings: Does it meet the pleasure of the Committee to proceed with the witnesses on behalf of the sponsors of the bill at this time? Who do you have first, Senator Woodul?

Mr. Woodul: Commissioner Terrell.

Mr. Rawlings: Commissioner Terrell is here. Will you come around to the head of the table, please?

Mr. Woodul: I understand that Commissioner Thompson will be here presently.

Mr. Rawlings: Members of the Committee, I suggest that the witness use this seat here. Will you please find seats around the table so the Senators will all be together, please. Senator Terrell, is that seat all right?

Mr. Terrell: Yes.

Mr. Woodul: May I make this suggestion or recommendation for the Committee, that each party will take the stand and be permitted to make their statement without any interruption and then afterwards any questioning that arises upon recognition by the chair or presiding officer only can anybody ask questions; that will prevent interruption and confusion.

Mr. Rawlings: All right. Mr. Terrell is a witness here before us upon the invitation of this Senate. Mr. Terrell, you may make any statement you wish to before the Senate sitting as the Committee of the Whole.

Mr. Terrell: Is the Committee desirous of fixing a limit on the time I am to talk?

Mr. Rawlings: So far no limit has been fixed.

Mr. Terrell: Mr. Chairman of the Committee, and members of the Committee—

Mr. Rawlings: Speak a little louder, please, Judge, so they may all hear.

Mr. Terrell: I will try to raise my voice. I don't know that I have anything to say especially. I have been introduced as sponsoring this bill, which I deny.

Mr. Rawlings: I want to correct that.

Mr. Terrell: Besides, I was invited to come here and would not have been here unless I was invited because I have never appeared before any Senate committee before, never voluntarily unless I was asked to. I feel that it is the province of the Legislature to pass laws to be proved or disproved by the Governor and it is the province of State officials to accept those laws they may have passed. I don't want to be placed in the attitude of coming here voluntarily and giving you my advice upon this question because I am sure that many of you are wiser than I and know more about this bill perhaps and the oil industry than I do. It has happened that I have been on the Railroad Commission for eight years. I have given more of my time to the study of the oil industry and conservation of oil and gas than to any other department of our Railroad Commission. There are a great many things that I don't know about the oil business; I am not a practical oil operator and never had an interest in an oil well of any kind in my life. I am not a petroleum engineer or geologist and all I know is what I have learned from coming in contact with men who are familiar with the business and do know. In April, 1925, no, in April, 1928, the Texas Railroad Commission issued its first order on proration. Since then I have signed every order that has been issued by the Railroad Commission under proration. The people of Texas and those that have followed the industry are perfectly familiar with the work that has been done by the Railroad Commission in its orders on conservation and proration. That you might know, it is generally conceded by those who are informed that in the Burkburnett oil field and in the Brecken-

ridge field, Ranger and those fields in that section of the State, they got only 26% of the oil; only 26% of the oil in those pools has ever been recovered. The rest of it is lost, and lost forever. Now, that is waste. The State Constitution of 1876 charges the Legislature with the duty of passing laws on conservation of natural resources. I am going to make just this statement. When I was a boy, I was in the West and I saw the carcasses of perhaps millions of buffalos that had been killed by buffalo hunters for hides at $1.00 each. The finest meat in the world. That was waste of natural resources of this great State and ought not to have been permitted. I mention that as one of the instances; I could mention more such instances. Since 1928 when we put out our first order in Texas, we have saved by reason of those orders . . . we have conserved and saved in oil valued at $1.00 a barrel more than a billion dollars to the operators and land owners and royalty owners in Texas. So I say that being true, how can any man say that proration ought not to be permitted in Texas? Now if we are going into price fixing and the raising of price, you members of the Senate remember that we were getting reasonably good prices for oil when the injunction suits were filed against the Railroad Commission and they tore up the orders of the Commission for the reason that we could not disobey those injunctions because we would go to jail and our force were not permitted to bear arms and we could not handle it by force, so the only thing to be done was to obey the injunction of the Court. We were enjoined and the East Texas oil field went to pieces. They began open flow all over the field. The pressure went down; the price went down to 10c; and I say to you, my friends, that that is waste of oil to permit it to sell at 10c in Texas—that great natural resource of ours. Now then, you know the history of oil in Texas. The Legislature was called together and for a month made a careful investigation of the oil conditions in Texas and passed a law that I am sure the most of you thought would heal the matter. When it was passed, I had serious doubts about it and so expressed myself to my associates; that I was fearful that it was not as good a law as the old law. But we held our hearings, took testimony, heard the arguments of counsel, and passed our orders and by the help of the State troops—we had nothing to do with calling them out—with their help and with the assistance later of the State Attorney General in having injunctions issued against those that violated our laws, we have been able to hold the field down and conserve the oil and gas as our orders directed in East Texas. Immediately when we got control again, the price of oil went up; it went up to 98c and now to $1.10. Now then if the oil is not properly conserved and prorated—not only in East Texas but in the Conroe field and every other field in Texas—they will go just exactly like Burkburnett went and they will only receive a small amount of the oil under the ground. I would go into detail and explain to you how that worked but I take it you are all familiar with it and it is unnecessary for me to do so. In other words, the slower, the more evenly you produce oil in an oil field and permit the water to have time to go under the oil and push out all of the oil in the sand—the hard portions of the sand as well as the loose sand,—you obtain the maximum amount of oil in that field. Now then by having proration orders and holding the production down to as low as we can under all the circumstances, it enables the operator to recover the maximum amount of oil in the field and, in my opinion, and it is the opinion of many, that 50% probably to 80% or 90% of all of the oil in East Texas field will be recovered. That is true in the Van field and also in the Yates field, which are both properly conserved and handled with proration orders. Now then we are not in here to fix price of oil; that is not our duty. But how can any man close his eyes to the question of price is more than I can understand. Just let me make this short statement. Any production that is produced in Texas, a majority—a large majority of this production is shipped out of the State and the money comes into the State for the sale of that production and we need a reasonably good price for that production. Now as in cot-

ton, if we can get 20c or 30c for cotton, we can afford to pay 10c for one thing and $1.00 for our overalls; that money comes into the State, scatters over the State, and benefits the State of Texas and the people of Texas. As a citizen of Texas and as a member of the Railroad Commission, I am interested in the prosperity of the State and I could not, if I wanted to, close my eyes to conditions that would benefit Texas or to conditions that would ruin the State or seriously injure it. There are other sides to this question. If the East Texas pool, which is the greatest oil pool in the world, both in production and area, if that oil pool is turned loose at open flow as it will be if this Legislature doesn't take some action to prevent it as the Three Judge Federal Court have torn proration orders to pieces, that field will be dissipated and waste and ruin follow, and it will not last over a year and a half or two years and the people of Texas will lose the land owners of Texas and operators will lose over a billion barrels of oil forever. Is that not a situation in which the Legislature should seriously consider and attempt at least to use its every effort to pass a law that would cure the remedy? Now then, Mr. Chairman, the Three Judge Court—they are, I think, wrong but it isn't in me to criticize them—and aside from that, the Three Judge Court has decided that under the present law the Texas Railroad Commission has no power to prorate or control that field. That is the substance of it. In prorating and trying to conserve that oil and gas in that field, we have had to exert our authority under the law as given to us by the Legislature and we have fixed prices and followed the market demand. Of course, I could tell you truthfully that at that very time they said we were following the market demand, there were more than—probably 250 wells in East Texas that were disconnected and if we followed the market demand, you can easily see that those wells would have been connected up and would have been selling their oil. Now a bill has been introduced. I don't know who wrote it and don't care—it doesn't make any difference; the bill is either right or wrong. It is the duty, I think, of the Legislature to scrutinize that measure carefully and know what they are doing and if it is not a good measure, it ought to be amended so as to meet the demand, because the demand is serious. Why, then, there are many in East Texas who know from experience that oil will drop to 10c. What are they going to do in the Vann field, Breckenridge, Albany, Ranger, and all over Texas where they have those small wells, those marginal wells, that you gentlemen a short time ago tried to help and did help a great deal and did a great piece of work in passing that marginal well bill and any man in Texas that knows anything about it should applaud the Legislature for it; otherwise they would produce what oil they could at 10c and 25c and when that was produced, the rest would be gone forever. Should we close our eyes, should you close your eyes, to a condition of that kind? And that is true in the Gulf Coast Field; many of the wells there will have to be plugged and closed down. Now then as to the remedy. I have read this bill carefully; I believe that it will meet the objections made by the Three Judge Court. You have got market demand in the bill. You don't force us to follow that market demand. It is one of the wastes defined in the bill just like storage, just like this underground waste that I have been telling you about. You will have economic waste in there and will define it and it is the duty of the Texas Railroad Commission to consider market demand, economic waste, actual waste, open storage, up-ground storage and everything else that pertains to waste in passing upon these questions and in issuing our orders. We are no more required to follow the market demand and issue an order in conformity with it than we are to follow the question of price or an economic question that might enter into it. Now then I will go a little farther. Take East Texas and the operators there, our independent operators—and for them I am intensley interested and have been ever since I have been on the Commission. The big boys are usually able to take care of themselves. But a public official under oath cannot be unmindful of his duty to all and all

alike. Take those independent operators not only in that field but everywhere. They borrowed money —they will tell you before this matter is closed, most of them have borrowed money from the various banks in Texas. They paid for their land or leases; they borrowed money to pay for their leases and for the drilling of the wells at from $15,000 to $20,000 per well. They are producing this oil and in Tyler the other night they met and almost all of those operators were satisfied with the conditions although they were only getting 40 barrels to the well and they urged this Legislature to protect them and relieve them. Now then let this oil proration order be torn in two, let the oil be produced at will—open flow, if you please—in addition to the fact that that oil field will not last a year and a half, oil, as I said will go down to 10c—then how can that independent oil operator survive? It is just a matter of impossibility. He will be crushed out of existence and the oil business in Texas will fall into the hands of the major companies and then you citizens, you members of the Legislature, if you please— if you don't live in territory where there are oil wells, you will have to pay for your gas and pay high. I want to call your attention to one thing that I remember when I was a boy, and it is well enough for you to remember those things because they help to solve the problem before you. We had flour mills in our section of the country and we boys would hitch up the team or get on the old gray mule with a sack of wheat and go to that mill where they would grind it and we would bring back part of the flour and pay them part of the flour as the toll to the miller and the people were happy and prosperous people then. Where are they now? I am condemning nobody but I want to say this. When the Interstate Commerce Commission forced the Railroad Commission to give stoppage to mills and transferred all wheat to those particular mills with money, they broke every independent mill and you cannot find one today hardly in this country and that is the result. They now make you pay whatever they want you to pay for your wheat and I sold wheat this year for 24c. That will happen to the oil industry in Texas if you permit the orders of the Texas Railroad Commission conserving the oil and gas to be torn up. The independent operator, as I said, will be crushed and it will be in the hands of the big boys. And then, as I said, like wheat—like we sell our wheat now, you will pay for the gasoline you get. Now, my friends, I must not talk much longer but I will say this after examining this bill. If I read it correctly and understand it correctly, it means that the Texas Railroad Commission that you erected and that you elected at the polls, that is responsible to you, will fix the allowable, will fix the orders on conservation and proration upon hearing after all the testimony has been adduced. I want to assure you that I feel like this Railroad Commission is going to act in the interest of all the people of Texas and in interest of the people of Texas alone. So far as I am concerned and I speak, I think, for my associates in whom I have the utmost confidence in their integrity and ability and judgment—we will make the orders without shutting our eyes to conditions that exist either in East Texas, West Texas, or South Texas or North Texas. We will take into consideration the crushing out of these little independent operators; we will take into consideration the importation of oil from foreign countries into the United States, that, I think, should be stopped. We will take into consideration all of the elements such as open storage, upground storage, everything that pertains to waste and then do the thing under the law and the testimony that will inure to the benefit of the people of Texas. Now that is my position, and that is about all I care to say and I want to thank you for giving me this privilege, for it is a privilge to talk to you this evening upon a question that is so vital to the people of Texas. If proration orders are annulled, in my opinion in the East Texas oil field alone they will lose more than a billion barrels of oil that can never be recovered, that could be recovered if it is recovered properly, orderly and in the proper way. I think it is worth the convening of the Legislature; I think it is worth the serious consideration of every citizen of Texas and

especially you statesmen who have been selected by the people of Texas to solve these great problems. It isn't for me to say what kind of a bill you should pass but I do say that I think that the Texas Railroad Commission should be permitted to consider everything that bears upon the question and pass upon it in a way that will finally result in benefit to the great people of Texas. I believe that is all I care to say, Mr. Chairman.

Mr. Woodul: Mr. Chairman?

Mr. Rawlings: Senator Woodul.

Mr. Woodul: I have one question with reference to these people who will be hurt by the price of oil going down. Do you know whether or not it is a fact that there are a great many more of the banks in the State of Texas made on oil and depending on oil conditions being stablized like they have been?

Mr. Terrell: Of course, I know of this from hearsay but I hear it on every side and almost from every man that comes into my office that is an operator and tells me the condition he is in and what he has done and how he is in debt and how it will ruin him if proration is not sustained.

Mr. Woodul: If the price goes down to 10c, what effect will that have on the banks?

Mr. Terrell: My opinion is that a great many banks will go down with it. A great many. It is a great natural resource. Just like it was in the west and north when the farmers there lost their holdings and were unable to pay the banks and the banks failed and the merchants.

Mr. Woodul: Just one other question. We had the low price oil first and from the orders of the Commission the oil has begun a long climb to stabilization until this last Three Judge Court decision; it has been most evident in the last ten or twelve months in the taking over of new land and exploration and things beneficial to the land owner and farmer over the territory in the way of possibility of development of their lands also?

Mr. Terrell: Yes, sir, I am sure that is true; I know it is.

Mr. Woodul: If this field is opened up wide and we do nothing about it, would you hazard an opinion as to what would be the outlook for development for any reasonable length of time in the State?

Mr. Terrell: My opinion is that if the proration orders are set aside for any cause and you have open flow of oil in Texas, the price will go down to 10c and maybe lower and I am sure there will not be any incentive for any one to make any effort to drill more wells in Texas and develop land.

Mr. Woodul: That will be all.

Mr. Berkeley: Mr. Chairman?

Mr. Rawlings: Senator Berkeley will be the next to interrogate the witness.

Mr. Berkeley: Mr. Terrell, if the orderly withdrawal of the oil is defeated, proration orders upset and the wells thrown wide open, which you state and almost everybody else states would cause the field to be exhausted in a comparatively short length of time, and if at the same time the price of oil would go down to, we will say, 10c, who would be benefited under the wide open plan?

Mr. Terrell: I don't think anybody would. It is possible that some man who had a well that he could have flow wide open and be able to sell his oil quickly, he might get money quickly, but I think finally he would be a loser. That is my opinion. He would be a loser, I think, because by orderly production he would get more oil and get a fair price for it. I think he would be mistaken in wanting to do that, to have open flow. I know orderly production would help the people of Texas.

Mr. Rawlings: Senator Berkeley, are you through with your question?

Mr. Berkeley: Yes.

Mr. Rawlings: The Senator from Red River will be recognized.

Mr. DeBerry: Mr. Terrell, I understand from your testimony that you said that if we would not pass a bill in which we make economic waste a factor and market demand a factor. the result would be open flow in the fields of Texas. Is that your testimony?

Mr. Terrell: I think that would be the result.

Mr. DeBerry: Do you mean to say that the Decision of the Three Judge Court, when they said that your order under which you were operating was founded on the market demand and not on the bill, does that decision say that this bill which we have

already passed is inadequate and would not allow you to issue any proration orders at all; does it?

Mr. Terrell: I don't know—No, so that we could issue proration orders, but I don't think the ingenuity of man could word an order so that it would stand up with that court under the present law, that would conserve the oil and gas in East Texas and in Texas. They say, Senator, in that opinion that they ought to take a test of every well; a test of 8700 wells for 24 hours would flood that country with oil. What would they do with it? They don't have a place to store it and if you give one man a test, you must give each of them a test. Just that kind a test, in my opinion, would break the proration order.

Mr. DeBerry: That is not what I was trying to develop. If the decision was hinged chiefly on this order you are now operating under and also curtailed the flow to the extent that it would prove that you were actuated by market demand and the price proposition, to your mind should it do that and not make it so rigid so that the bill would then have some virtue?

Mr. Terrell: You could not meet the demands of the decision of the Three Judge Court without at least giving them under the oil and gas ratio that they demand, in my opinion, anywhere between—I will say as much as 500 barrels of oil; 500 barrels of oil for 8700 wells would be over 4,000,000 barrels a day. You know that it would break the price.

Mr. DeBerry: We will leave that and get back to the price fixing proposition. I understand from your testimony that you think this is not a price fixing bill.

Mr. Terrell: You mean the one introduced here?

Mr. DeBerry: Yes, the one we have been discussing here.

Mr. Terrell: No, I don't think it is a price fixing bill. I will say this. Under the present law and under this bill introduced, if it becomes a law, fixing a low allowable will necessarily tend to strengthen or raise the price while a high allowable has a reverse effect and tends to reduce the price.

Mr. DeBerry: I understand that you testified that you think this bill will be better because the bill includes market demand and economic waste?

Mr. Terrell: Yes, that is so.

Mr. DeBerry: What is economic waste?

Mr. Terrell: I don't know that I can define it.

Mr. DeBerry: You will have to define it if we give you the authority to consider it because it isn't defined in the bill.

Mr. Terrell: There are many things that make economic waste. I think anything that pertains to the economic situation does. I would make— For instance we will take the price. That is an economic question. That is what I am driving at. There is no operator that can produce oil at 10c a barrel.

Mr. DeBerry: What price can he produce it at?

Mr. Terrell: I don't know; I have never looked into that.

Mr. DeBerry: You will have to look into it if we give you the authority.

Mr. Terrell: You may be right. We will have to consider everything.

Mr. DeBerry: If this bill gives you the right to take market demand and economic waste into consideration, there is no yard stick in the bill. I am sure that you are intelligent enough and want to test it here— We are fixed with intelligence and give you the authority, then I want you to tell me if you can at what price level economic waste begins?

Mr. Terrell: I cannot tell you that.

Mr. DeBerry: Then who can?

Mr. Terrell: I don't know if anybody can do it. It would be just guess work for me to say and I don't want to guess.

DeBerry: Then can you tell me about what the price of crude oil would be taking all those things into consideration?

Terrell: I don't know, I haven't studied it.

DeBerry: When it becomes necessary for you to decide whether economic waste exists at 64 cents or $1.00, or what the price might be, what are some of the factors that the Commission will take into consideration that has a bearing specifically on economic waste?

Terrell: Those things will have to be studied—

DeBerry: What would you do about imported oil?

Terrell: I would like for it to be stopped.

DeBerry: You cannot do that—

Terrell: I know—

DeBerry: What assurance would you give—when economic waste began in crude oil would you take into consideration the price at which refined products were being sold?

Terrell: That is one thing to be considered, the price of crude oil. When you raise the allowable you lower the price—my opinion is that economic waste ought to be placed in the bill and we ought not to be forced to shut our eyes to that condition.

DeBerry: In arriving at what might be economic waste will you take into consideration the price the refined products are being sold?

Terrell: You could not control it under this bill. My idea is that if under the orders of the Railroad Commission on proration the crude oil should advance that would be an incident that would follow.

DeBerry: How is that?

Terrell: My idea is that if under the orders of the Railroad Commission on proration, crude oil should be affected to such an extent that it would be oppressive to the people, then I think we ought to raise the allowable all right.

DeBerry: Why, then, you did take it into consideration.

Terrell: We did not take into consideration the price of crude oil—

DeBerry: Why is gasoline 19c while wheat is just worth about 45c, hogs $1.00, cotton 7c, and so on?

Terrell: It is pretty hard to get at—

DeBerry: You don't pay much for what you get for this day and time. I ask, is 19c oppressive?

Terrell: I don't know whether 19c is too high or not. I just don't know. I have not made any study of it and have not figured on it and don't know anything about crude oil or refined oil—

DeBerry: You go back to whether it would be oppressive to the man producing it. I asked if it is oppressive to me when I use it.

Terrell: I said it is hard to buy the oil at that price.

DeBerry: It is prohibitive, isn't it?

Terrell: It is pretty hard. It is not prohibitive but it is hard for a man to buy it.

DeBerry: Now don't you think that I, representing a district in which we have not a fractional part of one per cent of the production of oil ourselves and having to pay the price that we do for crude oil, wouldn't I be interested in the price of the refined product? Wouldn't I be interested in the price?

Terrell: Sure you would.

DeBerry: Then what is your suggestion as to what to do about it?

Terrell: My suggestion is just what I said a while ago. If this oil is wasted—

DeBerry: Now are you going to tell how to help those poor people are to benefit?

Terrell: Yes, that is why I made the illustration that I did. If this oil is wasted, as it will be if something is not done by the Legislature passing this law, oil will drop to 10c. Perhaps a billion barrels of that oil in East Texas will be wasted and when that oil is gone and it will go inside of a year or two years and all those little operators that are a blessing to the people of Texas, the independent operators, when they are crushed out and the banks that loaned them money are crushed out and it falls into the hands of the major companies, then you will not pay only 19c for your oil but you will pay a good deal higher; so it is best to conserve that oil as the Constitution requires, as it has charged the Legislature with the duty of doing, passing laws to conserve it. It is best to conserve it to have it in the future. Suppose a war should come and we found our natural resources of oil gone and dissipated and wasted and other nations were wiser than we and they had this motive power, it would be the greatest tragedy that ever befell this country. Now then the thing to do is to protect the people in the future, to do the thing which is in the best interests of the people of the State.

DeBerry: Now you have never mentioned doing any good for anybody except the oil operators and the men interested in a high price structure for crude. I am trying to get you to describe by answering questions how this will benefit my people.

Terrell: I have tried to show you that when this oil is dissipated, your gasoline price will have to go up to

30c or 40c and you cannot help it.

DeBerry: If we passed a law giving a governmental agency the power to restrict the production of a natural resource because an economic waste exists and the price is too low, where does the money come from to raise that price? Does it come from the Railroad Commission, the bill itself, or the purchasing public?

Terrell: Of course, it comes from the purchasing public.

DeBerry: All right. If it comes from the purchasing public and 90% of the purchasing public get no immediate relief from the increased price of crude, is that equal rights for all and special privileges for none?

Terrell: I think it would be. Yes, as I said awhile ago.

DeBerry: If he lives until you get around to him, it might be all right. Won't it naturally follow under a government for equal rights to all and special privileges to none, that the wheat man will want protection from a governmental agency —the cotton bill is an example— would it not follow that it would be asked for?

Terrell: I don't think so.

DeBerry: With oil selling at 10c a barrel—

Terrell: It isn't the 10c oil so much that we are trying to handle but it is the conservation of this oil. It is preventing it from being wasted, and that is the only way to prevent it, to hold production down and have it produced ratably.

DeBerry: Who pays the bill, Mr. Terrell?

Terrell: What are you talking about?

DeBerry: The increased price structure that all this argument is over.

Terrell: Why, of course, the parties that buy the gasoline or buy the petroleum products. You are right about that. They pay for that.

DeBerry: From your answers am I to understand that a government should protect him to enable him to make a profit?

Terrell: The way I see it, if the Legislature or any member of the Legislature feels like that oil ought to be permitted to be wasted, why, he ought to take the view you take of it and vote against any measure on proration and conservation; you will have wasted oil and wasted gasoline; no doubt of that; but when it is gone, where will you be?

DeBerry: I asked you—

Terrell: I think a man ought to look a little further than 1½ or 2 years and should look to the future. I am not trying to argue with you; just giving my ideas.

DeBerry: You have already said that you could not see how anybody could see it any way but the way you see it.

Terrell: Yes, but I am not condemning you; I don't want to.

DeBerry: You are talking about the Railroad Commission being elected by the people. Speaking of the people, when we voted on a bill, which I did not vote for, which raised the gasoline price in my district from 11c to 19c, was that playing fair with the voter?

Terrell: I think you were fair if you voted your conviction.

DeBerry: Would he think so?

Terrell: Who?

DeBerry: The man who votes?

Terrell: I could not tell you that because I don't know him.

DeBerry: That is all.

Woodward: Mr. Terrell, Senator DeBerry was asking you to give some definition of economic waste—

DeBerry: He said he couldn't do it.

Terrell: I am not a linguist.

Woodward: Mr. Terrell, may I ask this question?

Terrell: I think everybody ought to know about what it is.

Woodward: Senator DeBerry asked you to give him some definition of economic waste. I will ask you to listen to this short definition and see if you don't think it is a fairly clearcut definition of economic waste as it applies to this particular subject. "Any fact or condition which in fact wastes or destroys a useful natural resource which is of beneficial use to the people and which also reduces the price of the undestroyed or recovered natural resource below a reasonable price, would amount to and be considered as economic waste."

Terrell: That is a better definition probably than I would give to it, but I would not call that a perfect definition, but I think though it is a good one.

Woodward: As a matter of fact, any conditions which might exist in

East Texas oil field that would waste or destroy the natural resources and at the same time reduce the saved or recovered natural resource which wasn't destroyed, reduce the price to where it would be unreasonably low, would in fact be an economic waste, wouldn't it?

Terrell: Yes, I think that is true?

Woodward: Now, Mr. Terrell, my questions to you are not to be regarded as cross examination; I don't mean it that way but I do want some information.

Terrell: I may not be able to give it to you as I am just an ordinary lawyer.

Woodward: I have heretofore expressed objections to the market demand provision being included in the bill at this time; I am not wedded to it. I am trying to keep an open mind, however, in the light of recent events and I want information. I was interested when you said that the federal court, the Three Judge Court, had held, according to my understanding of your testimony, that under existing statutes the Railroad Commission had no right or power to prorate or control the East Texas oil field. Am I correct in quoting you?

Terrell: Yes, sir.

Woodward: Is it your interpretation of their decision that they have held that the Railroad Commission has no right or power under existing laws to prorate or control the East Texas oil field?

Terrell: That is my understanding.

Woodward: I mean—

Terrell: I have read it several times and that is my construction.

Woodward: It is a fact, Mr. Terrell, that the Three Judge Court upheld as valid our present conservation statute?

Terrell: Yes, sir.

Woodward: Which was enacted at the Second Called Session?

Terrell: Yes, sir, they upheld it.

Woodward: Then—

Rawlings: At the First Called Session.

Woodward: At the First Called Session, yes. Is it your understanding that this Three Judge Court in striking down the orders of the Commission did so by reason of any invalid statute?

Terrell: No, sir, they did not.

Woodward: Isn't it your understanding that the Three Judge Court struck down the orders of the Commission because that court held from the evidence they had heard and which they considered showed to them that the Commission had gone beyond the authority conferred upon them by the conservation statute and was governed by economic waste?

Terrell: Yes, sir. In fixing market demand. I think they are wrong in that.

Woodward: I want to say in connection with my question, Mr. Terrell, that I think they were wrong also. Mr. Terrell, did the Three Judge Court hear substantially the same testimony that was heard by the Commission?

Terrell: I did not attend the hearing. I am under the impression though that they received additional testimony to that given in the hearing before the Railroad Commission. Is that right, Mr. Parker?

Parker: That is correct.

Woodward: The Three Judge Court in effect found the facts one way and the Commission had found them another way?

Terrell: That is correct. I think the Three Judge Court—this is just my opinion—substituted themselves for the Railroad Commission.

Woodward: In other words, the Three Judge Court constituted themselves a jury?

Terrell: Yes, sir, and passed on the facts.

Woodward: To make it a little more specific and to put it in my words—I am not charging you with the words—the Railroad Commission found the defendants guilty and the Three Judge Court found them not guilty?

Terrell: Yes, that is about it.

Woodward: Now, Mr. Terrell, you said that you had expressed your doubts to your associate as to the strength of the present proration statute or conservation statute at the time we enacted those statutes. I believe you said you expressed the opinion to them that probably the new statute wasn't as strong or would not give the Commission as much power as the old act. I am interested in that statement because I want to know from you in what respect does the present conservation statute withdraw from the Commission any power or authority

which it enjoyed under the previous law.

Terrell: Well, I don't know that I could go into that and give you just those points. At the time that the bill was passed, I compared them and made a study of them. I am impressed with one thing: it does say we could not consider economic waste.

Woodward: You could not do that under the old statute.

Terrell: And market demand. I don't think that we were prohibited from it.

Woodward: Under the McMillan case the court held that you were.

Terrell: I don't know about that; I don't remember. There was nothing said in the old law about market demand and in the new statute we were prohibited from considering it.

Woodward: Is it your opinion now that because the old statute did not prohibit you from taking into consideration economic waste and market demand and in view of the fact that the present statute expressly withholds from you that right, the new statute is thereby less effective than the old one?

Terrell: That is my idea.

Woodward: You don't recall the extent of the holdings in the McMillan case?

Terrell: No, I don't.

Woodward: You don't know why it was that they struck down the orders of the Commission in that particular case?

Terrell: No, I don't remember. I never did make a close study of it and I am not really as familiar with it as I should be.

Woodward: It is my understanding and I am sure it was the understanding of the majority of the House and Senate that we were enlarging the power of the Commission.

Terrell: I think both houses thought they were. In some respects I think you did, I am sure.

Woodward: We were undertaking to give you almost plenary authority to handle the situation.

Terrell: I think it is a good deal better bill with regard to injunctions.

Woodward: I repeat; we were of the opinion, we thought, that we were giving the Commission rather extensive authority and power and authorizing you to handle that situation in almost any way they choose except that they could not consider economic waste and market demand?

Terrell: Yes, sir.

Woodward: I thought from your question, Mr. Terrell, that this particular bill has your endorsement.

Terrell: I have read the bill several times and I am unable to find anything in it that should be stricken out.

Woodward: I mean the bill—

Terrell: Yes, sir.

Woodward: The bill you endorse is a good law?

Terrell: The Supreme Court has upheld the Oklahoma measure, and this bill is practically the Oklahoma bill.

Woodward: In other words, Mr. Terrell, as a member of the State Railroad Commission, whose duty it is to handle this situation, I feel that you have given it lots of thought

Terrell: Not as much as I would like to as I have been too busy on other matters.

Woodward: Is it your present opinion that the Commission should be given the authority if it cares to exercise it to take into consideration in preventing waste of oil or gas economic waste and reasonable market demand as we understand those terms?

Terrell: Yes, sir, I think so. I don't think there is anything that we ought to be forced to shut our eyes to what ought to be considered, that should be considered, in passing on these questions.

Woodward: In other words, it is your opinion as one who has to deal directly with the subject that you should be permitted to take into consideration each and every legitimate subject or account or conduct or condition that does or might bring about a waste of natural resources?

Terrell: Yes, sir. That is my opinion. I think this bill does that so far as I can tell.

Woodward: This bill would give you that authority?

Terrell: Yes.

Woodward: Is it your understanding that the Supreme Court of the United States in the Champlin case, or the Oklahoma Commission case, held that the Oklahoma Statute which permits the consideration of market demand—that they upheld

it and held as valid that particular section that deals with market demand—

Terrell: No, sir. They upheld the statute but my understanding is, my recollection is—it has been several days since I read it—that they did not pass directly on this particular question of market demand. That is my recollection.

Woodward: Is it not a fact that the court expressly declined to pass on that and held that that section was not before the court?

Terrell:: Yes, sir.

Woodul: Just to keep the record straight, wasn't that the price fixing Section 2 which allowed them to fix price and figure the value at which they could do that?

Woodward: I would like to get through with my questions.

Rawlings: I believe it was understood that the witness and interrogator would not be interrupted.

Woodward: Is it your understanding, Mr. Terrell, that the Supreme Court of the United States in the Oklahoma case upheld as valid that section of the Oklahoma act which authorized the Oklahoma Commission to take into consideration market demand or is it your understanding that they did not pass on that question?

Terrell: My understanding is that they declined to pass on that question, but I am going by memory and could be mistaken. I have not read the bill in ten days.

Woodward: Is it your understanding that the Supreme Court of the United States in that case held that the orders of the Corporation Commission under the evidence which they had heard did not amount to a price fixing order?

Terrell: I think they decided that it did not.

Woodward: Is it your understanding that in that case the court held that the Corporation Commission, from the evidence which they reviewed, did not take into consideration economic demand?

Terrell: That is my understanding.

Woodward: This particular bill that we are now considering in your opinion would kind of knock the props out from under this Three Judge Federal Court and probably save the situation?

Terrell: That is my opinion.

Woodward: I believe that is all, Mr. Chairman.

Rawlings: Does anyone else desire to ask questions? Do you, Senator Stevenson?

Stevenson: This question does not pertain to the entire bill, but it is a phase I am interested in. Suppose your Commission found that there was waste due to market demand under the terms of the bill relating to Section 1; you are obliged, it is mandatory on the Commission to consider that. If you found a waste due to market demand, in what way would you reduce the production of oil in relation to the different pools? That is, would you take the East Texas territory, and the West Texas territory and all the different pools in the State, would you feel it your duty to reduce them in order to meet this waste due to market demand, to reduce production ratably as to each well or would you take other things in to consideration?

Terrell: I think you would take other things into consideration. It is possible if the testimony shows that in some cases curtailment of a well would close it—a well that is in the sand—some of those wells on the Gulf Coast the testimony of experts shows that if you attempt to curtail those wells to this amount or that, you will kill the wells. That ought not to be allowed.

Stevenson: That is the thing I had in mind.

Terrell: Yes, sir.

Stevenson: Now I want to ask just one other question.

Terrell: Wait a minute. That same thing is true in the Big Lake field where they have the deepest well in the world, 9000 feet and over. You have to be cautious in tampering with them as you will kill a well and it costs $150,000 or $155,000 to drill a well like that.

Stevenson: The wells like that cost considerably more, maybe twice as much as wells in East Texas or other fields; would the cost of production be taken into consideration by the Commission?

Terrell: I am inclined to think that it would undoubtedly consider the question.

Stevenson: You are just answering off-hand?

Terrell: Yes, I am inclined to think it would because it is an economic proposition.

Stevenson: There has been some discussion as to whether this bill should be mandatory on the Commission or give the Commission discretionary power. Of course, the Commission has discretionary power to a large extent but the bill is mandatory in its form. It says economic waste must be considered along with other waste. Do you think it is advisable to leave it mandatory or make it discretionary?

Terrell: I think that everything that should be considered by the Railroad Commission ought to be required of the Commission but I don't think that any one waste should be considered above another. I think it should be considered as a whole.

Stevenson: I believe you will find that the bill no doubt makes it mandatory on the Commission to consider that waste and prevent the same.

Terrell: Well, I don't think that it is the intention of the bill—at least, it isn't my construction that it— It might be they make it mandatory to consider the waste, but I don't think it is mandatory for us to prevent that particular waste if we are preventing another waste—

Stevenson: You might be right.

Purl: I make the motion that we recess for about five minutes on behalf of the young ladies who must be tired. Let's take a five minute recess.

Rawlings: We will recess for five minutes and Mr. Purl will have the floor when we convene.

(Recess.)

Rawlings: The Committee will please come to order and visitors find seats. I will ask the Senators to reassemble around the table. Senator Purl?

Purl: Yes?

Rawlings: Do you desire to ask the witness some questions?

Purl: Yes.

Rawlings: You may proceed.

Purl: Judge Terrell, for the purposes of the record, if it isn't already in there, you are chairman of the Railroad Commission at this time?

Terrell: Yes.

Paul: Once upon a time you were a State Senator, weren't you? How long ago was that?

Terrell: Twice upon a time. Twice I served as State Senator.

Purl: You served for eight years?

Terrell: Yes. I was in the 25th and 26th Senate and the 31st and 32nd Legislatures too. There was a gap in between times.

Purl: Then you are familiar with our procedure and what we are about in going into this discussion of the bill as a Committee of the Whole?

Terrell: Yes.

Purl: Senator Terrell, you were Chairman of the Railroad Commission at the time we had what was known as the Oil Session last summer, in 1931?

Terrell: Yes.

Purl: Did you appear before either the House or the Senate or both?

Terrell: I appeared before the House.

Purl: You did not appear before the Senate?

Terrell: No.

Purl: I am not familiar with the House Journal recording your testimony and I want to ask a question. Did you testify before the House in behalf of the pending Woodward-Wagstaff bill, so called, which Wagstaff introduced in the House and Woodward introduced practically the same bill in the Senate?

Terrell: I don't think I did. I testified in the House but not in behalf of any bill.

Purl: You testified while the Woodward-Wagstaff bill was pending?

Terrell: I am not sure whether it was introduced then or not.

Purl: Did you testify during the oil session?

Terrell: Yes.

Purl: Did you testify in either House—that is now part of the record—that you favored market demand?

Terrell: I don't remember what I did say.

Purl: Do you recall that you testified against it?

Terrell: I was against it.

Purl: At that time you were opposed to market demand?

Terrell: Yes.

Purl: I believe you told Senator DeBerry that perhaps you were not able to define market demand because you were not a linguist.

Terrell: That was one of the reasons, but I think I understand what it is.

Purl: You testified tonight that Senator Woodward's definition was a fairly good definition but there might be a better one?

Terrell: I don't have any in mind now. It is a pretty good definition but I haven't studied it out. I don't oppose the other. I have an idea that would be a question for the Commission to decide but my impression is that it would be— I think they would get the amount of oil that could be sold or consumed by the people.

Purl: All right. The people means the people of the United States?

Terrell: Well, of course, that would enter into it probably.

Purl: Well, would you confine it to the people of America?

Terrell: The market demand in Texas— We would just be dealing with Texas and I think it would just be the market demand in Texas.

Purl: Would you have any objection to us putting in the statute the amount of oil to be consumed by the people of Texas or would you leave it out?

Terrell: I don't know what would be the proper thing, Senator

Purl: Yes, sir. You testified that you have read this bill?

Terrell: Yes, I have read the bill.

Purl: You just testified you think the matter of market demand should be left to the interpretation of the Commission.

Terrell: I think the bill provided that it would be left to the Commission.

Purl: You think we should leave it to the Commission?

Terrell: I do.

Purl: You state you cannot define what market demand means?

Terrell: I tried to define it for you.

Purl: Are you satisfied with that definition?

Terrell: I think it is not a perfect definition but it is my conception now of what market demand is, the demand that may be made for oil.

Purl: As a former Senator charged with the duty of passing laws, would you advocate as a firm belief and not as a matter of expediency that this Senate should pass a measure leaving it to the Railroad Commission what is market demand or should we specifically agree upon what is market demand?

Terrell: I think it would be all right for the Legislature to fix what the market demand is if they could or want to. If you don't think they would, then I think it should be passed on by the Legislature itself.

Purl: You mean the Commission?

Terrell: Yes, I mean the Commission.

Purl: It should be passed on by the Commission?

Terrell: Yes.

Purl: Do you think it is good public policy for the Senate of Texas to pass a bill leaving it to a Commission that is elected politically when we don't know who will be the Commission and not define what market demand is?

Terrell: I don't know whether it would be good public policy or not.

Purl: Then should we pass a bill if you don't agree on whether it is good public policy or not?

Terrell: I think that is a question for the Senate and House to decide, what kind of a bill they want to pass. If they feel that they want to define market demand more particularly that it is, then it is all right to do it.

Purl: As a former Senator, not knowing who is going to be on the Railroad Commission in the future, as a Senator, would you vote to leave the definition of market demand out, as a Senator who is not a member of the Commission?

Terrell: Yes, sir, I would.

Purl: You would?

Terrell: Yes.

Purl: All right. The Three Judge Court, statutory commission, that ruled on this matter that we are now discussing— In other words, the last law we passed, they did not hold that this bill was not valid, did they?

Terrell: You mean the Federal Judges held that it was valid?

Purl: They held it was valid?

Terrell: Yes.

Purl: They did hold that your rule was invalid?

Terrell: They held that we exceeded the authority given us in the bill or that we attempted to fix price in accordance with market demand.

Purl: And they held that you exceeded your authority?

Terrell: That is right.

Purl: Now then, the Legislature is called into session to pass a law to correct a rule of the Commission and not to correct an enactment of the Legislature; is that right?

Terrell: No.

Pollard: I object.

Purl: I will object also to this—

Rawlings: Just a minute. It is

our rule that the Senator is permitted to interrogate without interruption.

Terrell: I have not read the call but of course, I have an idea—

Purl: I will repeat it and if Senator Pollard objects, we will strike it out. I said the Three Judge Court held that the law was invalid but that you exceeded your authority in this rule?

Terrell: That is correct.

Purl: Then we were called down here by virtue of the Three Judge Court's ruling.

Terrell: That is my understanding.

Purl: If we are called by virtue of the Three Judge Ruling, we are called not to correct a statute but a rule of the Commission. Is your answer yes or no?

Terrell: No. I don't understand that it was called here to correct a rule of the Commission. Wait a minute. You were called here for the purpose of enacting a law that the Railroad Commission could conserve the oil and gas in East Texas, and it would be legal to do it and that we should take into consideration market demand and economic waste and every other kind of waste, and I think that is what you are going to do—

Purl: The Commission was created to carry out and see that the proper regulations on wells that the Legislature made was passed; is that true?

Terrell: Yes.

Purl: Then after the bill is passed by the Senate and House, you will pass rules in conformity with the law, or the Commission will?

Terrell: Senator, I think that everybody understands and I feel sure that you do that what you were called here for, the court held that we exceeded our authority in fixing price in addition to considering market demand.

Purl: Yes—

Terrell: And the statute and the law you passed said we could not consider that. Now then the Legislature was called together for the purpose of amending that law so that we could consider those questions and prorate and conserve the oil and gas in Texas. Is that clear? I think that it is—

Purl: Are we passing a law in conformity with the Commission's rules or does the Commission execute rules in conformity with our laws?

Terrell: I don't know what you are going to do. I think you should pass a law and fix it in keeping with—

Purl: In keeping with the Railroad Commission's rules heretofore, using that as a guide?

Terrell: I don't think we need a guide; I think the Three Judge Court show us the way. We did not follow market demand because at that very time there were over 360 wells in East Texas not connected. If it had been market demand we considered, those wells would have been connected up. That shows we did not follow market demand and I think the Three Judge Court was wrong about it.

Purl: The effect of the ruling of the Three Judge Court would merely have permitted the production of more oil in East Texas? Is that your opinion or is it not?

Terrell: That is one of the effects.

Purl: Not keeping to the limit of 800,000 barrels of oil set by the Oil States Advisory Committee?

Terrell: The Three Judge Court?

Purl: Yes.

Terrell: No.

Purl: What was the amount of limit that the Oil States Advisory Committee suggested as the proper amount for Texas?

Terrell: I don't know.

Purl: Isn't it 800,000 barrels?

Terrell: I don't know.

Purl: Would you think that the Railroad Commission could take into consideration in market demand the stock of oil in storage containers where there was no physical waste; would that enter into it?

Terrell: I don't get the question.

Purl: In considering market demand would you take into consideration the stock of oil in steel containers where there was practically no physical waste.

Terrell: Under this bill I think it is our duty to consider that I don't know whether it would come under the head of market demand.

Purl: You would consider the storage of oil in steel containers: I assume that that is the best kind of containers; you would consider the storing of oil?

Terrell: Yes, I think the storing of oil—Testimony has long shown it is wasteful. I think the testimony shows that about 3% is evaporated and insurance about 2%.

Purl: In considering market demand, would you take into consideration the amount of oil that purchasers could purchase and also storage?

Terrell: My idea is that the market demand ought to be based on consumption.

Purl: Would you take into consideration if someone wanted to purchase oil for storage? Would that enter into the market demand?

Terrell: I think that would be left to the Commission to decide as to whether that would be part of the demand or not.

Purl: You think it should be left to the Commission?

Terrell: Yes, I do, for the reason that storage of oil in any kind of container is waste.

Purl: I did not get that.

Terrell: The storage of oil in any kind of container is waste.

Purl: Large or small?

Terrell: Either kind.

Purl: I don't mean what kind of container, large or small, but would there be a good deal of waste or little?

Terrell: It is comparatively small. As I said, the testimony showed 3% of evaporation a year and then you have to pay insurance as economic waste. The other is actual waste. And the cost of the container and cost of tanks; that is another economic waste.

Purl: You mentioned awhile ago in your discussion about the flour mills and prices.

Terrell: That was just illustrating.

Purl: Used merely for illustration?

Terrell: That is right.

Purl: You don't undertake then to say that the Legislature should control the market demand of wheat, should it?

Terrell: No. Senator, wheat and cotton and those things are one year products and can be produced every year but when oil and gas are gone, they are gone forever.

Purl: I understand that; you meant that natural resources are gone but everything like that replenishes itself.

Terrell: The Constitution charges the Legislature with the duty of conserving oil and gas; it doesn't say oil and gas but natural resources; when they are gone, they cannot be replenished.

Purl: The soil necessary to produce cotton is a natural resource.

Terrell: Yes, it ought to be conserved.

Purl: Without going into the nature of the proposition, cotton—

Pollard: I raise the objection that—

Purl: I have not asked the question yet. Wait and see. Without going into the proposition of control of cotton acreage—I don't want to go into that—but the same situation that we now face in conserving oil as was alleged and stated on the floor of the Senate, we have considered the proposition of control of cotton acreage under the same section of the Constitution.

Terrell: I understand that was stated; I read it in the papers.

Purl: Your whole idea on this oil situation is that it is a natural resource and—

Terrell: Yes, and cannot be replaced.

Purl: Regarding natural resources, you would have considered sulphur as a natural resource in Texas?

Terrell: Yes.

Purl: Did you advocate that the Legislature regulate production of sulphur on the basis of market demand or have you given it thought?

Terrell: I have not given it thought but I believe there is no physical waste attached to the mining of sulphur.

Purl: But you do think oil and gas should be considered?

Terrell: I think they should be considered.

Purl: Should the Legislature pass any law—or the Railroad Commission take into consideration all consumption of natural gas, the amount of natural gas used by what is known as industrial plants of this State as compared to the amount of gas used by the consumers for heating their firesides?

Terrell: I don't understand.

Purl: Let me make myself clear. If a cement company or oil refining company or hotel or office building

or factory are using the natural gas of this State in what is known as industrial gas and then the average home owner is using gas to heat his house for his food and comfort of his family, do you think the Legislature should take into consideration the market demand or ultimate waste of that gas, the comparison of consumers' use and industrial use of it.

Terrell: I don't know just what the Legislature should do in regard to that but they do need some regulation in conservation of gas for industrial uses—

Purl: Now then if the Legislature can pass a bill based on market demand and authorize the Railroad Commission to consider that in oil, couldn't the Legislature pass a bill based on market demand and ultimate use of natural gas?

Terrell: I think so.

Purl: All right. You stated a while ago, Mr. Terrell, I didn't quite understand you and you will pardon me if I mistake it—

Terrell: Yes—

Purl: About testing each well; that it would not be practical to test each well. Did you say something about that?

Terrell: Yes.

Purl: Did you say it wouldn't be practical?

Terrell: Yes.

Purl: Isn't it a fact that you would get a report on it within twenty-four hours and test it as to its ultimate or full recovery?

Terrell: No.

Purl: You don't have to make a report on it at all?

Terrell: They may make reports but they don't have to test it. As soon as a well cleans itself, it ought to be closed down.

Purl: Cullen F. Thomas of Dallas—do you know if he is on the Oil States Advisory Committee?

Terrell: I understand that he is. He used to be—

Purl: How many from each state are on the Committee?

Terrell: I don't know.

Purl: Are there one from each state or two?

Terrell: I don't know. I never had anything to do with the Advisory Committee. Someone told me that I was put on it but I never met with them.

Purl: It is your understanding that Cullen F. Thomas is on it?

Terrell: It is my understanding he is, with several men in Oklahoma.

Purl: Mr. Fred Florence, President of the Republic Bank in Dallas, is on some kind of committee, appointed by the President?

Terrell: He is chairman of some committee appointed by the President; I could not tell you what committee that is.

Purl: I want to know the name of it.

Terrell: I cannot tell you; I ought to know but I don't.

Rawlings: Does any other Senator desire to ask the witness questions?

Woodruff: Judge Terrell, in making the proration orders that have been entered heretofore with reference to East Texas, haven't you opened your eyes to every consideration in connection with making that order, including the effect that the order would be going to have on the price structure in making that order?

Terrell: Well, we were charged in the law not to consider that and we gave it out in the beginning of the hearings that we would not consider economic waste or price fixing or market demand. We announced that in practically every hearing we held. I state only for myself that I tried not to let that come in in passing on the question. However, I am human and it might have influenced me a little in issuing the orders because I don't think a man really ought to be confined to shutting his eyes to conditions that exist that he ought to see.

Woodruff: Then the holding of the Three Judge Federal Court was striking pretty close to the facts when they said that the Railroad Commission had considered the economic features in making its orders?

Terrell: No, I don't think so. In the first place, they said that we were doing that simply because the falling of the price of oil would naturally be incidental to raising the allowable and the reverse, if we reduce the allowable, it would necessarily raise the price of oil. The price of oil would be incidental and natural result of our orders, and because it did result, they claimed that we were fixing price and claimed

that we were following market demand. They were in error about the market demand for the reason that the demand was not as great as the allowable because there were about 260 wells in East Texas disconnected at the time they entered the order.

Woodruff: The Commission has made several orders under the conservation act of 1931?

Terrell: Yes.

Woodruff: And partly with reference to East Texas you fixed the allowable for the entire field at 325,000 barrels for the field?

Terrell: Yes.

Woodruff: Regardless of the number of wells. Was the opinion of the Commission based on the evidence at the hearings that 325,000 barrels of oil per day was all of the oil that could be produced in the East Texas pool without physical waste?

Terrell: No. I speak for myself because I don't know what the other two Commissioners had in mind, but I took the view of it that 325,000 barrels was about the proper amount in East Texas so as to produce the least waste and at the same time permit the operators to live and survive.

Woodruff: Then in permitting the operators to live and survive you were taking into consideration the economic features?

Terrell: Well, they entered into it, of course. I don't think we could or possibly ought to shut our eyes to a condition that exists; if we knew that 2,000,000 barrels would ruin the industry and ruin the operators; I don't see how a man, a public servant, could afford to shut his eyes to it.

Woodruff: Well, the law, I understand from sober reading of the conservation act passed at the special session last year, has been construed to be weak in some vital points—

Terrell: I rather think it is.

Woodruff: When the Railroad Commission was expressly prohibited from taking into consideration economic waste in any orders it entered, they ran square into a conflict with other provisions contained in the bill?

Terrell: Yes, sir, I think that is true .

Woodruff: And you could not enter an effective order under the act of last year without taking into consideration the economic features?

Terrell: We could not do it without considering the question of economic matters. If we raised the allowable, we caused more waste: the lower the allowable would be in the field, why, I think the least waste there would be; I think the testimony showed that clearly in all the cases we tried, but we could not afford to cut it so low the industry could not survive.

Woodruff: But if we write the market demand into the law or bill that is pending and it becomes the law, how could the Railroad Commission arrive at what the demand for oil is?

Terrell: I think we would have to take the amount that the various purchasing companies desired; they would come in and testify before the Commission at the hearings after giving ten days notice; they would testify that they could take a certain amount of oil in Texas. Each company would, and from that we would decide how much the market demand was for oil; how much they could consume and that would be one of the ways of determining what the market demand was.

Woodruff: So far as the world oil market is concerned, aren't there large groups that practically control our demand, the world market, don't they?

Terrell: Yes, I understand there are two groups; the Shell—

Woodruff: And the Standard?

Terrell: Standard; yes.

Woodruff: Then the Railroad Commission in seeking evidence upon which to predicate a proration order in conformity with market demand would have to seek out evidence from the world marketer, wouldn't they?

Terrell: We should have to find out not only what those two companies want to purchase in the State but all of the other companies who purchase oil, including the independent refineries.

Woodruff: But the Standard and Shell Corporations are the only two major world-wide producers and marketers of oil, aren't they or do you know?

Terrell: I don't know just what is included in the Shell Corporation. So far as this is concerned, merely

what the major companies, both producing and purchasing oil—

Woodruff: But the point I am getting at, what I am just trying to find out—

Terrell: There is a lot I don't know and I might not be able to answer your questions.

Woodruff: By virtue of your position, you have more information infinitely on the subject than I but if the Shell and Standard Corporations constitute the only two world-wide operators in oil—

Terrell: I don't know whether that is true or not.

Woodruff: —and the Texas market demand is dependent on world market demand for oil, would the Railroad Commission not have to depend upon the evidence and the testimony of the representatives of these two major corporations to ascertain what the market demand would be at a given time?

Terrell: They would have to ascertain how much oil they wanted in Texas, but they are not the only purchasing companies in Texas. There are other companies who come in and purchase oil and there are a lot of independent purchasers, refiners, who purchase oil in Texas and refine it and you would have to take into consideration what all of those companies wanted to use, how much each one wanted to use.

Woodruff: Will the combined activities of the independents in Texas have any very large effect on the world market for oil?

Terrell: I think not.

Woodruff: By and large the world market is made and controlled largely by the two major corporations, Dutch Shell and Standard?

Terrell: I think that is true.

Woodruff: The Railroad Commission in arriving at what would be the market demand for oil in Texas would have to take into consideration the world market demand, wouldn't it?

Terrell: I suppose we would. We would have to consider it and I think we ought to consider it probably. I think those are questions that would have to be worked out by the Commission.

Woodruff: Don't you think they have to be worked here? To decide whether it is wise to pass this act?

Terrell: I will state that under this bill, if I understand it correctly, we are not bound to follow market demand—

Woodruff: No—

Terrell: Which is an element of waste just like economic waste and underground waste and we ought to and should, I think, and under this bill we are required to take it into consideration. My thought is if those large companies that you speak of probably import a good deal of oil into the United States, if they want to cut the allowable down to 304,000 barrels of oil a day, I think it would be the duty of the Commission to see that it is the reasonable market demand, not what they want, but try to protect the industry.

Woodruff: If they are the determining factor in the world demand for oil, as a natural consequence, they would be the determining factor in arriving at what the market demand would be.

Terrell: Yes, but we would permit it to be stored and try to protect the industry. Now just in answer to that question, I will—. I don't mean to ask questions myself but to illustrate, suppose that we did not follow the market demand in our order and suppose we made the allowable a good deal more than market demand, it therefore would be stored if they could not consume it.

Woodruff: Yes.

Terrell: It might be possible in some instances to store that oil and then cut the allowable down to the amount they wanted it. But the question arises now how long could they know what to do with the oil; it goes back to the idea of consumption and demand. You cannot make a company take oil unless it wants to.

Woodruff: That is true.

Terrell: But I don't think this bill binds us to market demand; I think it is just one of the elements that enter into it and we must consider it as a waste.

Woodruff: You say the Railroad Commission even though expressly forbidden to consider economic waste under the old act subconsciously and unconsciously might have taken it into consideration or probably did take it into consideration if that is true.

Terrell: Of course, no man—at least, I would not—. I thought about those things but in passing upon it I tried not to consider it.

Woodruff: But if—. When the Commission was inhibited from taking it into consideration, if that inhibition be removed, then possibly, naturally, the Commission would be influenced by the economic considerations in making an order?

Terrell: Sure. To some extent, of course.

Woodruff: Now in another case there is something I want to inquire about. Is it possible or practicable to, in this bill, for the Railroad Commission to take into consideration the potential production of the several pools in Texas and prorate all of them on an ultimate basis of their respective potentialities rather than to let West Texas and Northwest Texas and Southwest Texas produce 900, 800, 400 barrels per well, as has been done heretofore and hold East Texas to 40 and 50 barrels per well.

Terrell: I don't think it is possible for the Texas Railroad Commission to take the potentials of the wells in East Texas without flooding the country with oil. You have to take a test of each well in that district and there are 7000 or 8700 wells and to let them flow twenty-four hours would flood that country with oil and there is no place for it. What would you do with it? And in addition how could we, with the limited number of men we have, test those wells in twenty-four hours and if you don't turn them all on at the same time, you have no correct test. And probably, in my opinion, the potential production of a well is no test of what it will actually produce. If the drill should happen to penetrate a hard sand or doesn't go deep into the sand, the flow will be light. If he penetrates a porous sand and goes deep into the sand, his flow will be heavy. Yet the oil under his land may not be any more in one case than in the other. I don't think that is a fair test.

Woodruff: A man in West Texas has a well that may produce 900 barrels a day without physical waste and a man in East Texas has a well that would produce 25,000 barrels per day without physical waste; is it equitable to close the wells in East Texas down to about 40 barrels per day for his oil and let the wells of the Panhandle man have 900 barrels of his oil per well per day?

Terrell: I am inclined to think that the production for this State should be prorated equally. I think that wells in some sections of the State—I don't know—wells in some sections should be permitted to produce more than other sections if it could be handled without waste but there are some sections of the State where they could not close in the wells at all.

Woodruff: They cannot close in those wells?

Terrell: No. They blow out a crater and lose the well and we cannot afford to make them do that.

Woodruff: Do they run open flow?

Terrell: No. They had them timbered in; they had to send to Pennsylvania for pipe and then send it to California to be properly connected and then ship it back to Texas. We made them do that at an enormous cost. You take the wells in the Gulf Coast field; the testimony of all petroleum engineers show that to choke those wells would ruin them. That ought not to be. You see, there are so many elements entering into the question that it would be difficult to prorate the wells equally all over the State and probably we would not have the authority to do it under the present law as it says the several pools shall be prorated and not the State.

Woodruff: That is the point I am trying to get at. In this new law—

Terrell: Yes, sir.

Woodruff: Whether or not it should be contemplated—We will need that information as this Legislature is about to restrict the production of oil in Texas to the market demand and close those wells conformable to the market demand for oil in the world market. Should the Legislature not take into consideration the requirement that the Railroad Commission should keep the market open equally to all producers in Texas, whether North, West, or East, and not keep the East Texas man with one well over there tied down to 40 barrels a day to sell in the market and let the South Texas man

run 1000 barrels a day from his well and stay in the market?

Terrell: I think that is correct, but in some instances I say you cannot do that and therefore it would be impossible to do it. We could not afford, I don't think we could, that is my view—to kill those deep wells like the Reagan well.

Woodruff: Has the Railroad Commission independent sources of testimony as to whether or not the South Texas wells can be cut down or the West Texas well can be cut down?

Terrell: Yes, we have petroleum engineers that work in those fields all the time and give information in addition to the information introduced at the trials.

Woodruff: You don't have to rely soley on geologists and producers themselves who come in and say "My well cannot be cut down" and an East Texas man that his well cannot be cut down. You send your own experts down to investigate the case and say that East Texas can be cut down to 40 barrels and South Texas cannot be cut at all.

Terrell: Yes. There is the piercement type dome in the Gulf Coast field that cannot be cut down.

Woodruff: That is all, thank you

Rawlings: The Senator from Hill County will be recognized.

Martin: Before entering an order of proration in East Texas does your Commission first enter some fact finding before you enter how much they shall be permitted to run?

Terrell: Yes.

Martin: After you hear the testimony you make some order with reference to finding of the facts, then you base your decision on the facts?

Terrell: Yes.

Martin: Then you have done that with reference to the case carried up to the Supreme Court?

Terrell: Yes.

Martin: Your department does not have any attorney?

Terrell: No.

Martin: Does the attorney general represent you?

Terrell: Yes.

Martin: Who was the attorney?

Terrell: Mr. Upchurch and Mr. Cheek.

Martin: Did your department send any witnesses up there?

Terrell: Yes.

Martin: Did you have your order?

Terrell: Yes.

Martin: You undertook to make your order stand up in the court?

Terrell: I didn't attend the trial, Mr. Parker was there.

Martin: He has entire charge of the Oil and Gas Division?

Terrell: Yes.

Martin: And you had him go there?

Terrell: Yes.

Martin: And after your finding you then set the allowable?

Terrell: Yes.

Martin: But they held you didn't do that?

Terrell: Yes.

Martin: Did you anywhere in your order or in your finding of fact make any reference to market demand?

Terrell: No.

Martin: You don't think you could take into consideration the price of gasoline at any time? Wouldn't the Railroad Commission make an order something like this? If you would make the allowable be proportionate to the price of the manufactured product, either directly or inversely —when gasoline is ten cents per gallon you would let the allowable be governed by the price of gasoline and if it is 12 cents the allowable would be a little more?

Terrell: You ask if we could do it?

Martin: Yes, don't you think this Legislature could define economic waste in this matter?

Terrell: I think under this bill you probably could.

Martin: You are trying to be fair to the consumer as well as fair to the producer?

Terrell: Yes, I think that it would be true, the price of crude controls the price of refined products and in fixing prices that would be too high, it would necessarily put the burden on the purchaser of the refined product and that, of course, ought not to be.

Martin: Do you know very many oil operators in Texas?

Terrell: No.

Martin: Do you have a record of them in your office?

Terrell: No, we have a record of those asking for permits to drill wells.

Martin: In East Texas how do you get your orders enforced?

Terrell: We have supervisors—umpires.

Martin: Like serving a person to get into court, do you have to notify every one of them?

Terrell: We mail out notices to each party in every field of hearings.

Martin: Do you think it would be possible to frame a bill in some way to determine every producer who gets crude oil, whether stored or not from any other states, and thereby curtail the importation of oil or stop the major companies from importing it?

Terrell: Repeat that question, please.

Martin: Do you think it would be possible for the Commission knowing the names of all the operators over there to limit the amount of production from their individual properties in keeping with the amount they now have in storage or the amount they are importing from some other country, would you stop that importation or cut them off in East Texas?

Terrell: I am inclined to think the courts would say we were discriminating against operators.

Martin: If you could get around the discrimination idea it would be all right?

Terrell: It probably would. I think the importation of oil should be stopped some way.

Martin: In other words, it is not fair for a man to be confined to 40 barrels of oil while another company gets a million barrels?

Terrell: That's right.

Small: Mr. Terrell, under the provisions of this new bill do you see any danger of any one being deprived of all the oil that he could use in refining and in the oil trade?

Terrell: I do not.

Small: Complaint has been made to me that if this bill be put in operation that it will deprive some of the small refiners of crude oil to refine. Could you conceive of any situation where they would be deprived under the provisions of this bill?

Terrell: I think they would get all the oil they could use.

Small: Now with reference to the natural gas features of this bill do you understand this new bill to put any restrictions on the manufacturers of carbon black?

Terrell: I do not think so.

Small: Do you think it would curtail the activities of the stripping plants or the manufacturers of gasoline?

Terrell: My recollection is there is a provision regarding that; it would not affect it but I may be wrong.

Small: In other words, the present set up with reference to carbon black and casinghead gasoline would be the same that we now have in the Panhandle section?

Terrell: I think so, but I am not sure.

Small: At least you would not have—

Terrell: I assume it would be but I have not carefully considered the gas question because I had on my mind the oil situation in East Texas.

Small: At this time have you any kind of control of this activity?

Terrell: No.

Pollard: There is a special provision that will permit you to control that?

Terrell: I believe it was in the bill.

Gainer: I want to ask you in your opinion if there is a possibility or probability of the Commission controlling the production of oil in this State by raising or lowering the allowable to in any wise control the market against importation of oil. Can you supply the users and producers of oil in this nation in any way without affecting or reducing the price that would prevent the importation of oil?

Terrell: I am not familiar with the cost of importing oil into the United States and Texas. This is just an idea of mine, and I could be wrong, that if the allowable was cut so low that the price would go high that would have a tendency to cause importers to import oil into the United States and Texas. It is reasonable to conclude that the cost of producing it in foreign countries and shipping it here if it was a good deal lower than the amount they could sell there would be a tendency to ship it, into this country.

Greer: Mr. Terrell, since this is an economic question, wouldn't it be better to limit the number of wells drilled rather than to restrict the amount produced from each well.

Terrell: I think the number of wells should be restricted. We have restricted them in East Texas to one

well to twenty acres and that probably is about as close as we could do it.

Greer: Did the ruling overturn that decision?

Terrell: No. I don't much think it would affect this question as it is a question of conservation and not a question of proration.

Rawlings: Are you through, Senator Greer?

Greer: Yes.

Pollard: Is there any way now under the present law that the Railroad Commission can assist a small refinery in getting more oil when you have your proration over the wells if they are not getting a sufficient number of wells to meet the demand and have no connections to other wells— There is nothing you can do now to assist them in getting that additional oil?

Terrell: Nothing in the world.

Pollard: This new bill gives you a better opportunity than the old bill?

Terrell: Yes.

Woodward: Mr. Terrell, I intended to ask this a while ago but forgot.

Terrell: Go ahead.

Woodward: At the time of the McMillan decision or rather as a result of the McMillan decision the Commission, in respect to handling the oil situation, was pretty much in the same condition, that is, the same condition, it is now in?

Terrell: Very much,

Woodward: Following the McMillan decision martial law was declared?

Terrell: Yes.

Woodward: Isn't it a fact that in your opinion without martial law having been declared and having taken charge of the oil field that oil would have been produced there in wasteful quantities?

Terrell: Yes, sir.

Woodward: There wasn't anything to restrict it?

Terrell: No.

Woodward: In your opinion, as a result of martial law not only was oil conserved but the price was kept from going down to a low level?

Terrell: That is true.

Woodward: That is all.

Purl: Just one question. In keeping with Senator Woodward's question when he asked Mr. Terrell concerning the ruling of the Supreme Court regarding Sections 2 and 3 herein were not passed upon and you stated that that it wasn't. You stated that they were not passed on in that ruling?

Terrell: That is my recollection.

Purl: I am through but I just want it in the record so that there will be no argument later on.

Terrell: Those questions have to be looked up carefully and I don't say definitely.

Purl: Just so there will be no argument on the record, it is page 733 and 734 of Advance Sheet No. 13; it states exactly what Senator Terrell has stated. It is his opinion and it is a fact that they ruled that way.

Woodul: I wish you would read the paragraph.

Purl: 733 down to—

Terrell: I am just going from— I only read the opinion one time about ten days ago and I don't want to say that I know but I am just stating my recollection.

Rawlings: The opinion speaks for itself. Does anyone else desire to ask Judge Terrell any questions? Senator DeBerry will be recognized as the final—

DeBerry: Mr. Terrell, we are getting along peacefully and nice, and I don't want to bring up anything unpleasant at all. A while ago you said you were being harangued and harassed; it wasn't one of my questions—

Terrell: No, I don't think so. Your questions were all right. I am inclined to think the little unpleasantness that happened ought not to have happened. I invited Mr. Parker to be present and Mr. Parker, being head of the division, is naturally familiar with details that I wasn't and I didn't think anybody would object to his being here.

Rawlings: Do you have any further questions, Mr. DeBerry?

DeBerry: Yes, sir.

Rawlings: Proceed.

DeBerry: In the discussions regarding the importation of oil you testified that you thought that if the price of crude oil went up by virtue of the flow it would necessarily encourage the importation of oil?

Terrell: That is my view. If it went up high, it would pay them to import—the importers to bring in oil rather than produce it.

DeBerry: They would naturally, in arriving at market demand—those

companies that could avail themselves of that would naturally avail themselves of the lower oil?

Terrell: I think so.

DeBerry: Since the price of crude has gone up, do you know whether it is or isn't a fact that importation has increased also?

Terrell: I am not ready on that question, but I rather think that it has increased but I might be wrong.

DeBerry: That can be ascertained as a matter of record, but I was just asking you.

Terrell: I am not sure.

DeBerry: In asking my question and asking you to define your theory in taking into consideration market demand and economic waste, those definitions you gave me I understand that—

Terrell: I did not give you any definitions. There are so many things entering into it that it would take a good deal of time and thought to arrive at a description. In a great many things that are economic waste—

DeBerry: Was the gist of Senator Woodward's definition that economic waste came in when oil began to sell at a price that was unfairly low or so low that it wasn't fair price to those that were producing it?

Terrell: That was a substance, I think, of his definition.

DeBerry: What is a fair price?

Terrell: I don't know.

DeBerry: Sir?

Terrell: I don't know.

DeBerry: How far have you got with his definition? If you don't know what a fair price is, how far have you gone with a definition?

Terrell: You gentlemen will have to fight that out in the Senate and decide if this is good or bad. I suppose you could look the matter up and get a good definition of economic waste.

DeBerry: Senator Terrell, you seem to misunderstand my question?

Terrell: I may.

DeBerry: Because the bill as now written would give you and would invest you with the ability and give you the authority to arrive at it—to take into consideration market demand and economic loss and economic waste and the reason I ask you this question I want to test your information and the sources from which you secured that information. It isn't defined in the bill; yet you ask me to give you the tools and I ask you if you say that economic waste exists when oil sells at an unfairly low price— I ask what is an unfairly low price and you don't seem to know—

Terrell: My thought is that economic waste would be when oil sells so low that a man cannot afford to produce it.

DeBerry: How much per barrel?

Terrell: I am not in a position to answer; we are not allowed to go into that in the other bill and I have made no study of it and have no testimony on it. We would have testimony on it if this bill passes.

DeBerry: In going into a fair price for crude oil, if this guarantees a fair wage scale for those producing the oil and you take the wage scale of those producers, of oil, the producers would be the men who do the dirty work?

Terrell: What do you mean by dirty work?

DeBerry: The hard work.

Terrell: I think everything should be considered.

DeBerry: Don't you think that the wage scale should be kept high enough that the man who worked could have a fair wage scale, a fair wage for living conditions?

Terrell: Yes, sir.

DeBerry: What is the difference between— I have no idea or intention of getting into politics—what is the difference between this and the Republican idea? The idea often criticized by the Democrats like you and I, a protective tariff to guarantee fair returns and fair wage scale—What is the difference between that and a bill by the Legislature that guarantees a fair return and fair wage for those interested in the production of oil? What is the economic difference?

Terrell: I could not tell you.

DeBerry: There is no practical difference between them, is there?

Terrell: I don't suppose there is but I just don't know; I never thought about the question.

DeBerry: Senator Martin asked you a question—

Terrell: Before you get to that I want to change my testimony to say this. When you asked the question, I had my mind on the price of crude and necessarily the price of crude would affect the price of the refined product. I think it would be our

duty to take into consideration the price of crude as well as the refined product in passing our order because that is an element that ought to be considered in the matter of passing the order.

DeBerry: I am glad to hear that. My people of the Eighth District buy the refined product and sell no crude. In Senator Martin's questions you answered that you would take it into consideration that when the price gets prohibitively high, you would take it into consideration. How high does it have to get before it gets burdensome?

Terrell: I think that question would have to be connected up with the question of economic waste in producing oil and all the elements that enter into it. I think the Commission would have to go into the whole thing and all the testimony and facts before them and decide.

DeBerry: My people are interested in the price and not theory, because when I pay for gasoline and my people pay for it, would they get it cheaper if you were to try to arrive at whether that price, the average price of gasoline is too high, would you take into consideration the purchasing power of my people? They don't have crude to sell but sell those other low priced commodities.

Terrell: I think they should consider the purchasing power over all the State and not just in your district. It should be taken into consideration probably. Your district like mine, my old district, is in bad shape and is probably in worse shape to buy the refined products than the rest of the State but we would have to take into consideration the rest of the State and not any particular senatorial district.

DeBerry: Shouldn't there be—The people in my district and in most of these fellow's districts—should there be a set of conditions existing under a scale of fair returns that they would buy mighty cheap gasoline when they pay for it with 20c wheat—with dollars they obtained from selling their commodities at a very low price? Shouldn't gasoline be pretty low to be fair to him?

Terrell: I think so. I would like to see gasoline very cheap myself.

DeBerry: What part would you have—

Terrell: It would be a blessing for the people of Texas to get cheap gasoline.

DeBerry: What chance is there in that bill that my people would be protected and not have to pay a prohibitive price?

Terrell: It would depend on the testimony introduced at the trials and we would have to take into consideration all these questions but I think the Railroad Commission could pass on it fairly and equitably.

DeBerry: Doesn't the Oklahoma—Have you read the Oklahoma law?

Terrell: No, sir, I have not.

DeBerry: I was going to ask wouldn't it give its Corporation Commission the power—doesn't it include and require that they take into consideration a fair price of gasoline before they can make an order.

Terrell: As I said, I have not read that law carefully; I have read extracts from it. I am inclined to think that it is about like that.

Woodul: I make a motion that we adjourn.

Rawlings: Any further questions.

Purl: I want to ask the Chairman—

Rawlings: Are there any further questions of the witness? If not, Judge Terrell, you are excused and you have the thanks of the Committee for appearing here.

Terrell: I wish to thank the Committee also.

Purl: When are we supposed to turn in the list of witnesses to appear?

Rawlings: It is late and for the present I will leave it to the sponsors of the bill, Senators Woodul and Pollard, to have their witnesses here in the morning and inform them what time we meet in the morning for our next hearing.

Pollard: I want to suggest that we don't expect to have all those other people here and if Senator Purl there wants to have somebody here, that they have them here in the morning because we will probably not have many and if we meet at 9 we will be through by 10:30.

Purl: I understood you had to get the approval of the Committee of the Whole to get witnesses to come.

Rawlings: I will make this statement. Senator Purl if you have witnesses available at 10:30 or about that time we can get in touch with

them and we will recess in accordance with Senator Woodul's motion until 9 in the morning and the next thing will be the witnesses for the proponents. Then we can work out the future procedure from there on. All in favor of recessing until in the morning at 9 say yea. The yeas have it.

(Meeting Recessed.)

Committee Meeting at 9:10 A. M. November 5, 1932.

Senator Rawlings as Chairman:

Committee will please come to order. Please call the roll.

Roll call:

Beck.	Parrish.
Berkeley.	Patton.
Cousins.	Poage.
Cunningham.	Pollard.
DeBerry.	Purl.
Gainer.	Rawlings.
Greer.	Small.
Hardin.	Stevenson.
Holbrook.	Thomason.
Hornsby.	Williamson.
Martin.	Woodruff.
Neal.	Woodul.
Oneal.	Woodward.
Parr.	

Witt, Lieutenant-Governor.

Absent.

Hopkins.	Russek.
Moore.	

Rawlings: Col. Thompson will make his own statement. You will proceed with your testimony, Col. Thompson.

Purl: There are going to be some other witnesses to testify but as far as I am concerned we will waive swearing Col. Thompson.

Col. Thompson: As you all know there was recently a decision handed down by a Three Judge Federal Court that the Railroad Commission of Texas had exceeded its authority and considered price fixing and market demand in its hearings and orders. I served on that Commission and did not know that we ever considered market demand or price fixing. As a matter of fact, any hearing where I was present, and I was present at most of them as well as Chairman Terrell, Commissioner Smith and myself always admonished everybody and told them that anything that savored of market demand and price fixing could not be considered. It was stressed so much that it is inconceivable that any one could say that we did consider market demand and price fixing, but that court has found that we did. The court in making its findings says that it has only one inquiry to make, whether the orders of the Commission were forbidden by the statute.

I am not criticising the court, I am simply giving that preface to show what this is all about. Since the court considered market demand and price fixing had been considered by us and we were forbidden from so doing by statute in the opinion of the court, certain people in East Texas threw their wells wide open. The first knowledge I had of that was when Mr. Homer Pierson, who is one of the best deputy supervisors in the employ of the Commission, telephoned me that twenty-three wells had been thrown wide open and wanted to know what to do about it. I told him to go back and close the wells if they had run their allowable, and we permitted them to run their allowable as fixed by the Commission as the court's decision had not come down and they were premature to say the least. He called me back and said that he had sealed these wells and these people had broken the seals. I then told him that since martial law was in effect in the field to go see Col. Davidson and to get one of our men to put the seals back on and Col. Davidson could keep them from being opened. He did that and those wells were closed. I was not present at the meetings held in East Texas then, as I said before, I was in El Paso and then in Pampa holding hearings, but I am familiar with the facts that we have had a great deal of trouble in keeping oil from being taken in addition to the allowable in East Texas, but I have here something that will show you an example of what has been going on down there. This magazine is called "The Fortress of Gladewater." (Exhibits magazine.) It is a German pill box built around an oil well. The rules of the Commission are that you should have wells open, but the report is this party had a five-way valve in there, and if we closed one well he would close his valves in in concrete so the Commission could not get to

it and I simply show it to you and mention it as an example. All the testimony I have heard at various meetings leads me to believe that the wells in East Texas, if produced scientifically will be producing wells fifteen or twenty years, whereas if opened wide will soon cease to flow, with no proration order. This is best proven by the fact that when the shut down came in and closed them down wells which had been on the pump came back to flowing wells.

We have gone to great trouble with no end of bother to find out what in our opinion were the proper methods of producing that oil, and our opinion has been affirmed by experts. I recall distinctly one hearing in this room when the only witnesses were some witnesses brought by some interested companies by one side, and on my own motion we recessed until we could hire petroleum engineers to go into that field and find out the facts and give unbiased opinion. There were some wells down there producing 1100 barrels, around that figure, and it seemed desirable from the testimony that had been introduced and developed that around 240 barrels per day was the top allowable those wells should produce and still have proper gas pressure. There was much objection to that and we sent men down there and found out from the opinion of these experts it could be done. To further demonstrate that 240 barrels would be top in that particular field there was a great complaint from 11 or 12 wells, and we said, all right we will hold the order in abeyance on each well until our expert can go in there and cut them down, and I remember distinctly one well belonging to Gulf, that well was shut down from 1000 to 240 barrels, and conditions improved and everybody satisfied and happy.

Stevenson: What well, do you remember?

Col. Thompson: In the Rabbs Ridge field—those fields are not distinct in my mind there are so many of them. It does conserve the resources of the State as we are charged to do under the Constitution and statute to develop these wells scientifically and we will recover much more oil than if we ran them wide open. The Three Judge Court decided we had exceeded our authority and had considered that we considered market demand and price fixing, so the Commission had a meeting set for Thursday, November 3rd, to see what we could do about it, we had to get busy and try to work out something else, some other way. There are two parts to the Three Judge Court decision, one we considered market demand, and second said orders would be void anyhow even if we had not considered market demand because there was price fixing. I know we had this hearing set on Thursday; in the meantime the Governor had called this special session, so on Thursday morning, instead of having that hearing we recessed that hearing and as soon as the Legislature is through, whether they act or not, then we are in position to go ahead and do the best we can. If the proposed law, which is not the Railroad Commission's law at all—if that law is passed it will greatly help us, because we can consider market demand and economic waste.

There has been a case decided in the U. S. Supreme Court where independent operators who have pipe lines, oil wells and little refineries where they have sale without interference from anybody. The Champlin case went up to the Supreme Court and was decided on May 16, of this year. The point I want to call attention to, this case decided very emphatically and distinctly that market demand was before the court and was sustained. Section 2 relates to price fixing and it was not before the court and therefore the court did not pass on price fixing but market demand is all through the decision and market demand is especially fixed. I have the whole decision here, Senator.

Purl: I have the whole decision, but I have it marked and want to find it.

Col. Thompson: Instead of the Commission's orders having been made to boost prices—. It has had that effect. When the first order was made the price was more than $2.00 per barrel but it thereafter declined and continued to decline until it is only 35 cents. It has never entered any order under Section 2 of the act. Quoting from the decision: "None of the Commission's orders has been made for the pur-

pose of fixing the price of crude oil or has had that effect. When the first order was made the price was more than $2.00 per barrel but it declined until at the time of the trial it was only 35 cents. In each case the Commission has allowed to be produced the full amount of the market demand for each pool. It has never entered any order under Section 2 of the act. It was not shown that the Commission intended to limit the amount of oil entering interstate commerce for the purpose of controlling the price of crude oil or its products or of eliminating plaintiff or any producer or refiner from competition or that there was any combination among plaintiff's competitors for the purpose of restricting interstate commerce in crude oil or its products or that any operator's committee made up of plaintiff's competition formulated the proration orders." So Section 2 was not before the court and they did not decide anything about the price fixing. It further says: "We put aside plaintiff's contentions resting upon the claim that Section 2 or Section 3 authorizes or contemplates directly or indirectly regulation of prices of crude oil. The Commission has never made an order under Section 2. The court found that none of the proration orders here involved were made for the purpose of fixing prices. The fact that the Commission never limited production below market demand and the great and long continued downward trend of prices contemporaneously with the enforcement of proration strongly support the finding that the orders assailed have not had that effect. And if Section 2 were to be held unconstitutional, the provisions of which the orders rest would remain in force."

Purl: In interrupting the gentleman and in asking my question, let me say that I have tried to have Mr. Terrell read that section to the Senate; he said that the decision was there and would speak for itself and I was not permitted to go into it. I am not trying to interfere, but I would like to ask that this be inserted and let it speak for itself now.

Woodul: The Senator from Dallas got up and wanted the witness to agree that they did not pass on market demand and we could not agree on that but it was agreeable that he refer to a certain part of the section and if he wants the rest of that section to go in, I am agreeable to that.

Purl: I want to ask that the opinion of court be printed in full right along with this part.

Rawlings: In this part of the record?

Purl: Yes, in connection with this testimony. The United States Supreme Court on the Champlin Case.

Rawlings: Will you give the reference to the decision, please?

Purl: Yes. Champlin Refining Company vs. Corporation Commission of Oklahoma, 76th Law Edition, Page 725, Advance Sheet No. 13, dated May 16th.

Woodward: It might be well to put in another citation as it is published in different volumes. This is one that most lawyers get. Published in Volume 52, No. 14, of the Southwestern Supreme Court Reporter of June 1, 1932, beginning at Page 559.

Rawlings: I understand that you want the entire decision copied in the Senate Journal.

Woodward: I understood the request was that it be printed in full and not transcribed in this record.

Rawlings: I understand. We will have it printed in the Senate Journal of this date.

Woodul: You don't mean by that to curtail the discussion?

Purl: No.

Rawlings: No. Colonel Thompson, will you go forward with your statement?

Thompson: We have found that the United States Supreme Court is favorable and has upheld the Oklahoma law which permits them to consider market demand and economic waste. Then the Commission is willing—or rather, I am willing, speaking for myself, to proceed and try to carry out a law including market demand and economic waste in its provisions if the Legislature sees fit to put it in, of course, and since the Supreme Court has shown the way, it seemed to us that it would be a good thing to try to meet the objections of the Three Judge Court so far as economic waste and market demand was concerned and so a bill has been written. I saw it first night before last. It was shown

to me by Mr. Pollard and Mr. Elkins, and we discussed it in the Commission's offices with a half dozen different operators all together and went over the bill idea by idea and then we read the bill and started out and tracked it with the old law by words and paragraphs and discovered them to be almost the same except just where it says economic waste and market demand can not be considered and that is stricken out and where the wording is limited only to actual physical waste, that is changed, and made waste so it can include all economic waste and market demand. We traced it along very well and followed ideas until we got down to Section K, on page 2, and if you don't have a marked copy of the bill before you, Section K reads as follows:

"The production of crude petroleum oil or of natural gas, where such gas is produced from wells producing gas only in excess of transportation or market facilities or reasonable market demand as determined by the Railroad Commission."

It is just about the same as the only change that amounted to anything is this except just for English, not anything affecting the law. "The production of crude petroleum oil"—and so on. It stops there and there is no definition of waste.

Woodward: It is the identical wording of the Oklahoma act.

Thompson: I make this suggestion, and the Commission concurs in it, that it be put in the bill as I have read it: "reasonable market demand as determined by the Railroad Commission of Texas" because, gentlemen, we do not want to sit on the Railroad Commission and have someone tell us what the market demand was when the United States mining reports are available to everybody, showing how much oil was produced last week, and how much was run in pipes and how much gasoline was used and how much was in storage and how much oil imported, and anyone of us could sit down and decide what the reasonable market demand was as determined by the Railroad Commission of Texas. Those last six words were not put in the new bill originally. I cannot sit on the Commission very happily and have someone from New York wire me what the market demand was going to be down here. So that is the suggestion of the Commission as determined by the Railroad Commission of Texas down here. That does not give us any more power—we sit here all the time, make orders, and when they begin telling us how little we can allow to meet market demand I am sure the Legislature wants the Commission to do so and not some one on the outside. Now then the rest of the bill goes along, we get down in Section 7, second line from bottom of page 3, the bill said we shall allocate the market demand and we suggest they change that from market demand to allowable production. Other than that the Commission had no changes to suggest and said nothing about economic waste or the inhibition of economic waste in the first part of the bill, but the Commission suggested that the term "waste" shall include economic waste, underground waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demand as determined by the Railroad Commission of Texas.

Thompson: I was anxious that this market demand be kept in control of some one at home.

Purl: Repeat that please slowly so that we may get it—

Thompson: "The term waste shall include economic waste, underground waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demand, as determined by the Railroad Commission of Texas." I am anxious that this market demand proposition should be considered and controlled by someone at home.

Pollard: Don't you think that "as determined—

Thompson: That is the wording: "as determined." That is the bill as it stands, gentlemen, and the only changes that are made in the present law is that it gives us the right to consider market demand and economic waste. It applies to oil and gas just like the old bill did and I think it would be very helpful if you gentlemen see fit to put it in the bill. I don't think there is any-

thing further that I have as a statement.

Rawlings: If you have concluded your statement, Col. Thompson, I think we will start in order to save confusion and go around the table this way. I believe that it would be better perhaps to accord the privilege to the proponents of the bill first though.

Pollard: We are satisfied.

Rawlings: It is agreeable to you to go around the table?

Pollard: Yes.

Rawlings: Senator Small, you may proceed.

Small: I have no questions now.

Woodul: If the proponents do not want to interrogate him, why not let the other side interrogate him first before—

Rawlings: I think we could get it better this way. Senator Woodward, do you care to interrogate him?

Woodward: I don't have any questions to ask now; I had rather wait.

Rawlings: Senator Poage?

Poage: Colonel Thompson, I want to ask a few questions, and the statement you just now made is the information I wanted to base my questions on, which are brief. What is your opinion in regard to adding the balance of that Oklahoma statute in regard to market demand or wording similar to the Oklahoma statute which defines market demand as being the actual value that will prevent the production of crude oil or petroleum when it is more than the market demand for it at a price according to the actual value of the refined product of the crude petroleum as determined by the average retail price over the United States of such refined product less the cost of refining and marketing? What do you think about adding something like that to this bill?

Thompson: I think that anything like that would bring on trouble; that is the reason I don't believe it is best.

Poage: If we are going to give this Commission the power of judging economic waste and market demand by statutory law, what do you think of taking care of Senator DeBerry's proposition as well as this?

Thompson: It will automatically take care of itself. I think it is a good bill but it is not my bill. We are trying to proceed with the orders on the basis of which the field has been going for the past seven or eight months. The chaotic conditions that have prevailed in East Texas have quieted down; the people or 98 or 99 per cent of them are satisfied with the law as it is being administered and the stealing of oil has been stamped out and things are in good condition, until this thing, and all that I think should be done, if you will allow me to say so, is just enough to satisfy the Three Judge Court so that we can go ahead and keep East Texas stabilized without mentioning price fixing because the Supreme Court in this decision says that price fixing was not considered in this Oklahoma case and if we began talking about price, we might enter into the dangerous ground of price fixing and if we don't mention it and just say market demand and economic waste is to be considered, I believe that we will have a better statute.

Poage: You say that we ought not to go into the price fixing but the only purpose of any additional changes in the law now is to keep the price up isn't it?

Thompson: No. I think it is to maintain law and order. I tell you honestly that it has never mattered to me about the price.

Poage: Law and order would be maintained if this law passed?

Thompson: It would. That is right. It would be a resultant cause or an effect from that cause.

Poage: The whole fundamental thing they are trying to do is to keep the price up.

Thompson: If we had no money, we would all get to work as we would not have to worry about money. I guess you are right about it.

Poage: If we keep the price up for oil, the rest of these people can demand that we take care of them?

Thompson: That is right.

Poage: Then the purpose of this bill is fundamentally to keep the price up in order that it may do these things for the general good. I do not dispute that they will accomplish good results.

Thompson: Yes.

Poage: You said that if we passed this bill, the price of other things

would automatically be taken care of. Tell us how that would come.

Thompson: I can tell you that. In the first instance, five cents of this price is taxes. Gasoline today, say, is 19c and 5c off of 19c is 14c. If crude oil goes up 15c or 20c, that only means 1c on gasoline because there are 42 to 43 gallons of gasoline to each barrel of oil and the fear of gasoline going up if oil goes up 10c or 15c is ungrounded and unfounded. It will go up a little but the thing that results is that so much more than that comes in. We keep this money all at home and 85% more is brought in and only 15% of all the crude oil refined in Texas, 15% of all the products we refine in Texas are sold to our people and 85% are sent to other States and as long as we get back 85% out of each $1.00 we spent 15c and 85c comes in. As long as that keeps on, we will grow rich and Texas will grow and prosper on that sort of business. Some of our people may have to pay maybe 1c more than now; oil is now up to $1.10 and if oil goes up 15c, gasoline will probably go up 1c; if oil goes down 15c, gas would come down 1c. 85% of the money for the petroleum comes into Texas from outside while 15% only is spent here, and the percentage is 85 against 15.

Poage: It raises a very interesting question, if you know—I don't know—how does the amount of money spent in this State for gasoline or lubricating oils compare with the value of the crude petroleum produced in the State.

Thompson: I have not gone into that.

Poage: It would be considerably more than 15%, we know that?

Thompson: Yes. I don't know exactly what it is.

Rawlings: The time has come for the Senate to convene. Will you please hold your questions?

(Recess.)

Rawlings: Members of the Committee, come to order and proceed with the witness. I would like to make this one suggestion to the Committee to help expedite this thing. The question of conservation, etc., covers a wide area; it occurs to me that there are only about one or two issues at this time and if we will keep our discussion to that, we will shorten the labor. The only new thing is market demand and if we confine our discussion to that, we will stay within the relevant matters before us. It is the only new thing before us at this time pertaining to market demand and personally I think that only one thing concerns the Legislature, and it is market demand and the effect on the purchasing public. Mr. Poage, it is your turn.

Poage: I will yield my turn to Senator Williamson.

Williamson: Mr. Poage is trying to bring out whether or not it is advisable—The price of gasoline increases about 1c for an increase in oil of 15c or 20c. Is that right?

Thompson: That is correct.

Williamson: My question is this. Why then if that is the increase, the proper increase, why would gasoline increase from 11c to 19c for an increase of oil of approximately 80c; instead of it being two to one it is four to one.

Thompson: Oil increased from what, 80c to $1.00?

Williamson: It was around 20c and gas was 11c at the time.

Thompson: Around 20c a barrell?

Williamson: Yes, and it went to 19c a gallon for gas and oil went to $1.00 a barrel.

Thompson: When oil was down to 20c a barrel, there was no stability whatever.

Williamson: Should not that relationship be the same regardless of the price of oil according to your statement? I am not trying to tangle you up but just want to get to the bottom of the thing.

Thompson: I feel sure that none of you would want oil at 15c or 20c as long as 50c a barrel would be a practical possibility.

Williamson: I am not referring to that. I was just—

Thompson: I cannot give you exactly the figures, but they would have to get it, to take it around the range, of course, of production, which is around 50c, about the average, I believe, around 50c before that would apply.

Williamson: Can you tell us where that range starts?

Thompson: 50c would be the beginning of the range.

Williamson: From that on you maintain that gasoline should increase 1c per gallon for every 15c or 20c increase per barrel in oil?

Thompson: Yes, that is about right. That is my understanding. I am not an expert on the refining process.

Rawlings: Senator Poage, you may proceed with your questioning if Senator Williamson is through.

Williamson: I am through.

Poage: Take that thought of Senator Williamson, if the price of oil should drop from $1.10 to 50 cents, the price of gasoline should drop about three cents per gallon. Now do you have any idea how much saving that would be—I will change my question, do you have any idea what that would cost the little operator?

Thompson: Do you mean that if the oil should drop to fifty cents?

Poage: How much loss?

Thompson: About twelve million a month loss—it is the biggest thing bringing money to this State.

Poage: That is true, the biggest cash crop, our gasoline is our biggest cash outlay.

Thompson: I am not in that business.

Poage: If the Legislature should adjourn without any legislation do you anticipate oil will be cut to fifty cents?

Thompson: If you allow the field to open up.

Poage: Will you do that?

Thompson: We will do the best we can, but we are doing it now at the point of bayonets.

Poage: If you could keep the production down to no physical waste where would price of oil set or level off?

Thompson: Depends. If we were to open up now we could supply the whole United States.

Poage: Could you do it without physical waste?

Thompson: We have it now at 800,000 barrels.

Poage: And price of oil $1.10, based upon greatest possible production without physical waste?

Thompson: But that changes from time to time.

Poage: But under present conditions we can anticipate the largest possible production 800,000 barrels and price of $1.10 so if price went down to 50 cents there would be physical waste?

Thompson: Yes.

Poage: If we can pass a bill to prevent physical waste—could crude price be kept at $1.10.

Thompson: I don't know how you could get an order to pass the court. We have done what you said, still the court says we have exceeded market demand. I thought I had better line myself up with the court. It is futile to cut it and make orders and use our best efforts and have this sort of decision come to us.

Poage: Even though the Supreme Court reverses that decision—

Thompson: I cannot conceive how this economic waste and market demand will change our procedure, it is not in my contemplation to raise the price of gasoline.

Poage: If it does not change your procedure does it not change government?

Thompson: We are changing government all the time, but you can fight all you like—I don't like income tax and we have it.

(Recess.)

Rawlings: Committee will please come to order. Mr. Poage you may continue with your questioning.

Poage: I want to get clear in my mind, I thought I understood you to say not to change proration orders but you thought the present set up would be satisfactory if this bill was passed.

Thompson: Subject to hearing, we will have a hearing regardless of this session. The hearing is recessed now.

Woodward: Col. Thompson, I will ask you if it is a fact that you draw a distinction between what we refer to as price fixing and market demand.

Thompson: Absolutely.

Woodward: In other words the Commission according to your idea might take into consideration the reasonable market demand for crude oil with the view of recovering the allowable in order to prevent waste of the oil?

Thompson: Correct.

Woodward: Now then the price that might follow as the result of your order up or down is an incident to that pool?

Thompson: And not within our discretion, we are not fixing it. In

the Oklahoma statute there are two sections, one has to do with the right and power of the corporation commission to take into consideration market demand and the other price fixing.

Woodward: From your investigation of these matters what would be the result or what would be the holding of the court if it were determined that the Commission did attempt to fix the price in connection with the orders reducing allowable?

Thompson: I think it would be held void.

Woodward: In reference to the price of crude oil I will ask you if your idea is that if the increased price in crude oil necessarily results in the increased price of the refined products or by-products?

Thompson: Certainly.

Woodward: Do you know what is the per day income now to the State from the gross production of crude oil?

Thompson: No.

Woodward: I understand it is about $16,000.00. Then if oil were to reduce itself in price to ten cents per barrel, it now is $1.10, our State's income would drop to approximately $1600.00 per day instead of $16,000.00.

Thompson: If the allowable stays the same, yes, that is right.

Woodward: I believe that is all.

Rawlings: Senator Oneal, do you desire to interrogate the witness?

Oneal: Yes.

Rawlings: You may proceed.

Oneal: In the long run, either the production stays the same or the State will lose?

Thompson: Absolutely.

Oneal: There is so much oil—

Thompson: Bringing in so much money.

Oneal: —to be produced and whether it is all produced now or through a series of years, the amount of taxes the State will get if the 2% stays on gross production will depend on the price at which it is sold all throughout the years?

Thompson: Yes.

Oneal: The greater amount of oil sold at a good price, the greater the amount the State will get from its natural resources?

Thompson: Yes. The greater the natural resources.

Oneal: The longer that it will stay there, the more it will bring to the State?

Thompson: Yes.

Oneal: In that way at least a part of the increase in the price of gasoline comes back to the people then?

Thompson: Yes, it does.

Oneal: Now, as I understand from your statement, you are satisfied and the Commission is satisfied that you took into consideration only physical waste?

Thompson: Yes.

Oneal: The trouble is that the three Federal Judges did not believe that way?

Thompson: That is correct.

Oneal: And found that you had—

Thompson: I wish to say that we were not witnesses before the court.

Oneal: I understand, but they had your order before them—

Thompson: I don't know if they took the order or not. They invested themselves and constituted themselves as a Railroad Commission.

Oneal: By the expression "with an evil eye" do they refer to you and what did they mean?

Thompson: Yes. They said "With an eye to evil." They said we were doing the thing we were inhibited from doing. I don't think they meant we were evil; I did not take it personally.

Oneal: Yes. Just that you were not doing what what you should by the means set up for you?

Thompson: Yes.

Oneal: I have heard the statement made here that the retail price of gasoline was 19c. All the way from Wichita Falls and Fort Worth, it was 17c.

Thompson: They are just using 19c; I think you can buy it for 11c at Amarillo.

Oneal: The general price is 17c, isn't it? It may be 19c here, but I bought it three times yesterday and it was 17c.

Thompson: It was 17c in Amarillo last week.

Oneal: Of that amount 5c is the Federal and State tax?

Thompson: Yes, 5c. 4c to the State and 1c to the Federal Government.

Oneal: Yes, leaving 12c for the producer of the gasoline.

Thompson: Yes, if it is 17c, it would leave 12c.

Oneal: The cost of that—there is

a fixed cost of manufacturing regardless of what the cost of crude oil is?

Thompson: The refining cost is fixed, the same all the time whether the price of crude is high or low.

Oneal: The price of crude oil was so low at one time that it was hardly taken into consideration?

Thompson: That is right, just the manufacturing cost.

Oneal: As I understand it, the position of the Railroad Commission is that if the proper gas-oil ratio can be maintained, the cost of producing oil will be less, will it not?

Thompson: That is right. That is correct.

Oneal: Taking it through a series of years, the production may fall?

Thompson: That is right. The long range will be kept down to the lowest possible figure for the long range time. That is correct.

Oneal: Yes and and at least part of the low price of crude depends on the cost of production as in every other field?

Thompson: That is right.

Oneal: And the cheaper through the regulations of the Railroad Commission that oil can be produced, the cheaper it may be sold and the lower and still make a profit for the operator?

Thompson: Incidental to our conservation measures. For a time they might open up a well and produce it very cheap, but in the long run it will be very expensive.

Oneal: From the standpoint of physical waste, at least?

Thompson: That is correct.

Oneal: If it is left under the Railroad Commission's control and even based on physical waste alone, the ultimate cost will be cheaper than if it is all thrown on its own?

Thompson: That is correct.

Oneal: If the cost of production has anything to do with the price, then the oil can be marketed cheaper and with a greater profit to the producer?

Thompson: That is correct.

Oneal: If the oil is marketed cheaper and if gasoline depends on the price of oil, then gasoline in the long run will be cheaper?

Thompson: It probably would.

Oneal: It would be cheaper for the people to buy?

Thompson: That is correct.

Oneal: If the problem were handled as the Commission desires to handle it, will it ultimately make for the user a cheaper price in the long run?

Thompson: That is correct.

Oneal: That has been the position of the Railroad Commission?

Thompson: Yes.

Oneal: That is your position today?

Thompson: Yes, it still is.

Oneal: The only desire the Railroad Commission has for market demand in the bill is to get around the decision of the federal court?

Thompson: Nothing more.

Oneal: In other words, you would follow the same process you have followed heretofore to try to get the oil, you don't consider the price of production of wells and if the producer would make a profit?

Thompson: That is correct.

Oneal: I want to ask you a question with reference to Section 3. In the bill there it will be Section 5 of this typewritten copy I have. "The Commission shall have the power, and it shall be its duty, from time to time, to inquire into the production, storage or transportation of crude petroleum oil, and of natural gas, and the market demand therefor, all in order to determine whether or not waste exists or is imminent." In other words, it says it shall be the duty of the Commission to inquire into market demand therefor. Now, I don't know and am asking for information. If they insist on making it "shall be the duty," it would authorize you to consider it. You insist on saying that it shall not be "shall" but "may"?

Thompson: We would much prefer it that way: "may" instead of "must." It would be much better.

Oneal: Is there not danger in that provision. If, as some fear, some monopoly may absolutely control the oil business and production of oil and some super-organization get control of it, and they decided that they wanted you to put the amount produced in Texas very low and you entered an order and did not want to do that and you entered an order and they could charge that you did not take it into consideration—the market demand— then a federal court, believing that you did not take into consideration market

demand as they fixed it, might it not be a danger of having that order set aside again?

Thompson: Correct.

Oneal: Wouldn't it be better for the Commission not to be tied down so that they can consider one way or the other?

Thompson: Much better. "May" instead of "must."

Oneal: So that this provision should read this way "The Commission shall have power, and it shall be its duty, from time to time, to inquire into the production, storage or transportation of crude petroleum oil and of natural gas, and the market demand therefor"—to make it "may" inquire into the market demand therefor, all in order to determine whether or not waste exists or is imminent.

Thompson: Much better. It meets the courts' objection just the same but doesn't make us do it.

Oneal: They cannot commence running you into an alley if you failed to do it.

Thompson: No. The court would say that we had a right to and whether or not we did, they could not inquire.

Oneal: I am asking you your opinion.

Thompson: That is correct. Much better for it to be "may."

Oneal: Now—

Thompson: They could not force us down that road unless the Commission wanted to go that way.

Oneal: You need the leeway?

Thompson: Yes, we need it. Everything the Commission does, someone objects to it. We get enjoined every fifteen minutes of the day.

Oneal: You are frequently enjoined?

Thompson: Yes. Every fellow says we did something we shouldn't or didn't do something that we should.

Oneal: Do you know the position of the other members?

Thompson: They want it "may" instead of "must." Mr. Terrell stated that last night. We just overlooked it. We discussed it among ourselves. We just failed to make all the changes there.

Oneal: Leaving out price fixing, from your study of the opinion and contact with this matter, do you think the federal court could disturb you if you had that power, leaving out price fixing?

Thompson: Not at all. I think that will fix it all right and I think they would feel that we would have met their objections.

Oneal: That is all.

Rawlings: Senator Small wishes to leave and we will give him the privilege of interrogating the witness now.

Small: Do you think, Col. Thompson, that the natural gas should be carried along with this oil bill?

Thompson: I do—we have a situation in West Texas with gas similar to that with oil in East Texas.

Small: With reference to oil do you want authority to permit an allowable of production of oil so as to bring the value of the oil up to a reasonable profit before production? Now applying that said principle to natural gas do you think the Commission would be justified in taking any position with reference to the production of natural gas in Panhandle where they are getting two cents for it?

Thompson: I will tell you what I think about that gas situation as I am permitted in an indirect way.

(Senator Margie Neal asks Senator Small to repeat question).

Small: You have stated in your testimony, and I think you are correct, if proration of oil in East Texas breaks down the price of oil to 50 cents, which is nothing more than the cost of production allowing no profit for those engaged in the industry. At the present time the Panhandle of Texas is getting two cents for natural gas in many places, which to my way of thinking is about on the same plane with 50 cent oil. Under the set up in this bill we have been wondering whether or not the Commission will be empowered to regulate the production of natural gas in the Panhandle so we might have a little revenue out there and not have our property confiscated with gas at 2 cents per 1000 cubic feet, do you think the Commission would be allowed under this bill to do that?

Thompson: I think you are mistaken, they are getting one-tenth of one cent instead of two cents.

Small: I am interested in seeing the oil industry profitable and I am

also interested in seeing natural gas profitable, if oil is produced at 50 cents I want to know about natural gas at 2 cents per 1000 cubic feet. and I want to know if this bill is so drawn to offer some relief to the people up there.

Thompson: It is so drawn and that is the purpose.

Small: Do you think we could reach this situation under this bill?

Thompson: I certainly do, and it will be our effort to do so. If we don't, Chicago will be warming itself at the expense of Texas and we will be out of fuel to run our State on.

Small: Have you given the same thought to the natural gas side of this that you have to the oil?

Thompson: Yes.

Small: I am vitally concerned in raising the price, and I would like to know if you have your plans formulated how you would raise your price to those fixed out there?

Thompson: We are going to raise the market demand so that all those wells—that can be arranged.

Small: Well, how would you determine market demand?

Thompson: We have certain pipe lines going out of the field for those lines—we can find out very easily what the consumption is and how much is being taken out and prescribe that as market demand.

Small: Then under the provisions of this bill do you think you could give a ratable taking for those who have natural gas out there?

Thompson: Yes.

Small: Now, this bill in section 7 the terms are rather generous, and I will read a little below the middle of the page: "In the event any rule, regulation or order which the Commission may adopt shall require the limitation or fixing of the production of crude petroleum oil or natural gas in any common pool or portion thereof, the Commission shall justly and equitably distribute, prorate, or otherwise apportion or allocate the allowable production, as in its judgment the facts may justly and equitably require." That language is very fine I think, but don't you believe that some yard stick or some measurement should be applied right there for the Commission to take into consideration just how this allocation and proration should be made to the allowable of the wells, potentials, drainage, etc., similar to the Oklahoma case?

Thompson: Those are the features we would consider.

Small: I think this Commission would feel it should. Do you think it safer to put in the face of the bill?

Thompson: You overlooked one thing, it is better this way, but if you can think of some better clause it will sure be a help. Don't you think it better to leave those features out of the bill? You can't tell which road you are going to take then and you don't have to tell them.

Pollard: What percentage of the production of natural gas in the Panhandle field is consumed in Texas and what portion of it goes to other parts of the United States?

Thompson: Texas gets about four or five per cent of it.

Pollard: Texas consumes about four or five per cent?

Thompson: Yes, in fuel and light. Of course, these carbon black plants burn a lot of it.

Pollard: What portion goes to other states?

Thompson: It is less than 15% We have gas wells so big in the Panhandle that it is hard to get the percentage because it is absurd for wells that are able to produce 200 or 300 million cubic feet an hour—Some fellows have figured it out as 3 trillion feet. That is just too many figures. We got worried about when the gas was going to run out in our town and had an expert from Washington down and he said that if Amarillo got as big as Chicago, we had 350 years supply. So I was worried about the last 50 years—

Witt: What was that?

Thompson: We got worried when the smelter was put in and got three men down from Washington to make a survey of how long the gas was going to last. We wanted to give a franchise and we did not want that field to run out before the thirty years of the franchise was up. They figured that it would last 350 years even if Amarillo were to become as large as Chicago.

Rawlings: Any further questions, Governor Witt?

Witt: No.

Pollard: Colonel Thompson, under the present law, if an independent

refinery does not have sufficient connections in East Texas at this time to permit them to get the amount they need to refine, is there anything in the present law that would enable you to have more wells connected to that refinery?

Thompson: There certainly is.

Pollard: There is now?

Thompson: In the present proration law.

Pollard: In this law?

Thompson: In this law here, no. There are 160 unconnected wells now in East Texas and if anybody wants wells, we can get them for them. We had 100 of them connected up just yesterday; there were 260 unconnected. The pipe line companies agreed to take over 100 of them. We had to meet with them and beg them to take it because nobody wants that oil but we did get 100 connected.

Rawlings: Any further questions, Senator Pollard?

Pollard: No.

Neal: I want to ask Colonel Thompson what the Railroad Commission is doing now toward conservation of this gas. It seems to me that it would not be necessary to have much conservation law if gas is so plentiful in the Amarillo field and in my town it is plentiful around Panola. What are you doing to keep its price up like the price of oil?

Thompson: We are not allowing them to burn it, let it go out into the air. We are requiring that oil shall be produced so that the gas-oil ratio shall be kept as low—for instance, in some fields it is 300 cubic feet per barrel of oil. That is a very low gas-oil ratio and in the Panhandle field we don't allow this dry gas to be used under the subterfuge of it being wet gas for making natural gas out of wet gas. We have cut off millions and millions of cubic feet that would have been wasted by the Railroad Commission's order and under our direction it is being conserved carefully..

Neal: You say that this gas should sell at about 3½c per thousand cubic feet and yet it is selling for a fraction of a cent. What can we do to conserve or to boost the price to where it should be?

Thompson: We can handle that under this bill very nicely.

Neal: You can?

Thompson: Yes.

Neal: I think I could have been mistaken in thinking that you said a moment ago that the Railroad Commission would follow its usual course if this bill is passed?

Thompson: Except that we will follow the instructions to inquire into the market demand according to the reports of the Bureau of Mines and other available sources of information we may consider.

Neal: You will also consider matters of waste?

Thompson: The additional matter of waste would be allowing us to look into market demand to be produced. That is one definition of waste. That would be the only additional one together with economic waste.

Neal: We would be safe in assuming that you three Commissioners, being elected by the people of Texas, would certainly not be so negligent of your duty that you would fail to do the things that are for the best interests of all the people of the State. You would not be the tools of the oil companies.

Thompson: We took an oath of office to serve all the people of Texas.

Neal: That is the thing that we have to pray and hope for at this time.

Thompson: All my fight has been on that side for these same people and I would like to have a chance to make these oil companies I have fought give them, the people, a fair deal

Neal: Then you will follow the same course?

Thompson: Yes. Except that we will have these inhibitions taken from over us, the restriction taken away.

Rawlings: Any further questions, Senator Neal?

Neal: No. That is all.

Woodul: It was my idea that market demand so far as illustration was really in the interest of conservation and cutting out waste. Now in the Champlin case they state that if you do not keep it to market demand that is the end of the oil business, it had to go to storage and if carried on indefinitely it returned to storage, and there is no price fixing in it?

Thompson: Well—

Woodul: Of course, if this Commission or anybody should reduce the allowable below market demand they would get all the criticism.

Thompson: This talk about gasoline is beside the question.

Woodul: One of my brother Senators is fussing at me because in the new bill we leave out of Section 7 "The Commission shall not restrict the production of oil until such production aggregates 10,000 barrels per day unless such restriction is dealing with the methods or manner of producing or concerning transportation." It is my contention that the section does not change the power of the Commission a bit if there is no waste.

Thompson: That language is superfluous.

Woodul: I am vitally interested in a place down in South Texas I want to talk about, where they tell me they would make 10,000 barrels, if you can stop this waste—

Thompson: A man might have a 10,000 barrel allowable—he could keep it down to 9999 and keep out of all regulations.

Woodul: I have two little matters here that I will refer to in the argument when this bill comes up. They were given to me as authentic. One is the oil production per acre in the East Texas oil field from its inception of the field to July 1, 1932, inclusive, by operators producing oil legally per Texas Railroad Commission's order. The figures were complied from oil runs and reports to pipe line scouts in the East Texas field. Can such figures be properly considered? Is there a method of getting these figures properly—

Thompson: They are authentic.

Woodul: Then I have another here which producers, who are vitally opposed to this bill have gone out and taken advantage of the price structure and by the injunction route are getting more oil and this purports to be the amount of oil that they have run and the acreage of their leases, etc. That can be considered as authentic too, can it not?

Thompson: It can.

Woodul: Yes, sir. You know of your own actual knowledge, don't you, that some of these people over there have by the injunction route got 25,000 per acre recovered when the average recoverable of the whole East Texas field has been around 1500 barrels per acre?

Thompson: That is right.

Woodul: Don't some of them put it over 100,000?

Thompson: Yes and some make it three times that.

Rawlings: Any further questions, Senator Woodul?

Woodul: That is all.

Rawlings: Any questions, Senator Beck?

Beck: No.

Rawlings: Senator Cunningham?

Cunningham: No.

Thomason: I have a few questions to ask. Col. Thompson, approximately about how many wells are there in that East Texas field?

Col. Thompson: 8700 wells.

Thomason: What is the approximate area, that is, the width and and length approximately of that field?

Thompson: 55 miles length and 2.1 miles wide.

Thomason: That is about right—very large field?

Thompson: 8700 wells drilled or drilling now.

Thomason: From the report of geologists we had here at the last session before,—I ask is that considered the largest or one of the largest fields in the world?

Thompson: Yes.

Thomason: From the various reports of geologists and the geologists we had here during the special session of the oil session what would be the supposed result if all of those 8700 wells were to be let loose at once as they will be if there is not some restriction brought about after this court's decision as to salt water intrusion?

Thompson: The field would be ruined in 60 days, and there would be millions and millions of barrels of oil thrown upon the market.

Thomason: And the result of that?

Thompson: Oil would go down as low as before and possibly lower and the result would be the big companies would fill up their storage tanks.

Thomason: I have found the masses of the people over Texas do not understand proration, do not understand the results that come from

it, but now what I want to get to is the condition over in that special section of the State, over the whole State generally, and that is what will be the result among those people over there, the land owner that gets nothing for his land, the lease owner who gets nothing out of his leases, the small operator who gets nothing out of his well, who cannot pay expenses for operating, cannot pay his men, cannot keep going, have you found out from your investigation what has been the tendency of those people among themselves in regard to law and order?

Thompson: You would have a chaotic condition; people are going broke and woe and want and misery and dejection will prevail.

Thomason: Dejection and worry and want and misery, and it verges on revolution?

Thompson: Yes.

Thomason: Is that—haven't we been on the verge of that as it goes hand in hand with a situation like that?

Thompson: You were not very far from it a week ago—

Thomason: I want to get to that.

Thompson: —but for the fortitude of the people.

Thomason: And if it wasn't for the fact just mentioned—

Thompson: They had that very situation incipient; had it not been for the cool-headed and sober people of East Texas having that meeting of 1600 operators and saying "We will have this thing worked out some way and have order prevail." If it had not been for that situation prevailing, you would have already have had trouble.

Thomason: That is one of the very things that I want to get before this committee and before the Senate and before the State of Texas, that the State of Texas and its people don't understand, they cannot realize, and criticize the Commission and everybody that has anything to do with it over there. They are honest about it, I think, but they just don't know.

Thompson: Senator, if those soldiers had not been there, when Homer Pierson telephoned us that 28 wells had been opened up wide and we told him to put a soldier there at each well after he had sealed them, and he did put the seal on them and the soldiers were there as martial law had been in effect, and if martial law had not been in effect, it would not have been possible to have them shut down so quickly and so simply and so effectively. Martial law happened to be in effect right then.

Thomason: Then you think that the passage of this bill into a law so that the Commission can put into force and effect its regulations and rules and orders as it has heretofore and that it will do away with the tendency to lead the people into that kind of chaotic conditions that would verge upon and will go into revolution? Absolute revolution?

Thompson: I do, Senator. I think that that bill will make order and peace and happiness down there and the people will combine with the Commission and the soldiers to keep order. If you don't pass it and they open up wells, it will take a soldier for every well. The determination of some people to open up these wells if they find out that market demand cannot be considered is so strong that they would open up their wells and those not so inclined would have to open up their wells in retaliation.

Thomason: If it isn't passed or something else of this kind put in force and effect, don't you believe that the ultimate result will be just merely the survival of the fittest and that the little fellow, the farmers and land owners and royalty owners and small operators will go down in ruin and disaster?

Thompson: Yes. I would like to state that two weeks or three weeks ago the situation was very bad. Fellows were taking over their allowable and we had to put 64 men there to stop it and we have it stopped now but this law will quiet it even more.

Thomason: That is all.

Rawlings: Senator Purl, you may interrogate the witness.

Purl: Colonel Thompson, I believe I want to ask you whether or not there has been any resolution passed by the Railroad Commission asking the Governor to call this session?

Thompson: Resolution?

Purl: Yes, sir, on the minutes or books of the Commission.

Thompson: I don't know whether they passed any resolution or not. I don't know because I was at Pampa at a hearing and then at El Paso but I wired Mr. Terrell, the Chairman, and told him that I thought it

would be very helpful if the Governor could be asked to call a special session and if he agreed with me, that telegram would be his authority to sign my name to his request.

Purl: Did you discuss with the Governor the advisability of calling the session?

Thompson: No, I did not discuss it with him. I sent him a telegram saying it would be advisable. I have it in my pocket if you want it.

Purl: You can put it in the record, if you please.

Thompson: Here is what I wired the Governor. "It is highly important that a special session of the Legislature be called immediately in order that proration of oil and gas in Texas may be sustained. The law of Oklahoma permits the Commission to consider market demand and economic waste in addition to physical waste. That law has been sustained by the Supreme Court of the United States in a unanimous decision, and I thought the Oklahoma part was important from the lawyer's viewpoint. We should adopt a statute which would give our Railroad Commission these same powers so our now stable conditions in the oil industry may be maintained. The people at this time generally appreciate that upon the stability of oil business depends very largely the early return of better conditions in all lines of business in Texas. It is our second largest industry and brings more ready money to our people right now than any other industry. We cannot see it so when the remedy is so simple, namely, amendment of the statute so as to meet the objections of the Federal court."

Purl: What is the date of the telegram, please. Approximately.

Thompson: Friday. We were holding the Lone Star Gas case Thursday or Friday in Fort Worth. No I guess it was Monday. This Monday. We were holding the Lone Star case in Fort Worth when I sent it.

Purl: I am asking this in all sincerity. You say this is not the Railroad Commission's bill, but I understand you approve it as being the most desirable?

Thompson: It was brought into the Railroad Commission's office and we discussed it. It was brought in by Mr. Hardin and Mr. Elkins.

Purl: Is there anything not included in this bill?

Thompson: I would trust Mr. Hardin and Mr. Elkins both to write anything for me. The whole Commission went over it with them.

Purl: Is there anything not in this bill that should be in it?

Thompson: I think that "May" instead "Must" down there where it says it "Shall be" the duty, and we think it should say we "may." Make it "may" instead of "must" so that you give us latitude so that they could not run us down some alley and say we did not consider market demand, or if we did, where did we consider it.

Purl: Did you hear Judge Terrell testify last night?

Thompson: I was in and out.

Purl: I thouht maybe to save time maybe his opinion generally was the same as yours and you would accept that as yours and we would not have to go over some of the questions. What do you want to do?

Thompson: In what particular?

Purl: I will not try to connect it up that way then. There has been a good deal said here, Colonel Thompson, about the State losing revenue by virtue of the way oil is being produced?

Thompson: Yes.

Purl: You know as a matter of fact, don't you, that we tax gasoline four cents per gallon regardless of the selling price?

Thompson: Yes.

Purl: We tax sulphur 75c per ton?

Thompson: It isn't enough; it should be more.

Purl: We tax cigarettes 3 cents a package generally, regardless of its price.

Thompson: Yes.

Purl: All right then. We tax oil at 2%, is that not true?

Thompson: That is ture.

Purl: Then if the Legislature has adopted the policy on those three goods, gasoline, sulphur, and cigarettes per unit.—that is, sulphur per ton, gasoline per gallon, and cigarettes per twenty—don't you think we would raise more revenue for the State if we would put a tax of 2c on oil regardless of its price?

Thompson: Yes, I think it would. 800,000 barrels at 2c would be $16,000.00. As it is now, 2% is just about the same as 2c. No, slightly more. If you get it above $1.00, you will get more than you would the

other way. If it goes below $1.00, you would get more on the 2c tax. It is just about an even break—a stand-off.

Purl: If you have not already stated, can you tell just about how many gallons of gasoline can be obtained out of a barrel of oil?

Thompson: Do you mean by efficient or inefficient methods? About 42.

Purl: Sir?

Thompson: 42.

Purl: By efficient methods?

Thompson: Yes, the most efficient methods.

Purl: How about the average? Is it around 28 barrels—I mean 28 gallons to a barrel?

Thompson: Yes, that is about right.

Purl: I asked Judge Terrell last night and want to ask you—

Thompson: There are some stills that have mercury in them around the boiler that do it very economically or 100% and get all of it. They turn a barrel of oil into a barrel of gasolene almost.

Purl: Since the discovery of oil in Texas there has been considerable increase in the efficiency in the refining of gasoline, hasn't there?

Thompson: Yes, sir.

Purl: Is it possible for an interior refining company away from a port that they can undertake to build small refineries and operate at a cheaper cost than the antiquated methods in the larger refineries at the port?

Thompson: Yes.

Purl: I asked Judge Terrell last night and ask you the same question. In considering market demand without attempting to define it at this time, would you take into consideration the available supply of crude oil in Texas or in the United States or in the world? From all available sources?

Thompson: The world supply. The world demand is what you want when you take market demand.

Purl: Then market demand would depend on the available supply from all sources?

Thompson: Yes.

Purl: Sir?

Thompson: What is that?

Purl: Market demand would control, would it not; at least you would consider, as I understand you to say, the available supply of oil from all sources—the world?

Thompson: We were not talking about supply but market demand.

Purl: That is want I meant.

Thompson: What can be used; that is demand, and supply doesn't have anything to do with it.

Purl: Doesn't have anything to do with it?

Thompson: No.

Purl: Supply has nothing to do with the law of supply and demand?

Thompson: Not market demand.

Purl: Supply would have something to do with it.

Thompson: No. There can be a big demand but no supply.

Purl: And likewise a big supply and no demand.

Thompson: That is right.

Purl: I am wanting to know whether or not I understand. About 65,000 barrels of oil is considered a cargo for shipping into America. When those ships put up in port, the average cargo is considered 65,000 barrels. I want to know if the Commission would take into consideration for the operation of this bill the supply on these ships tied up there, that is, the bringing in of foreign oil or if it would be just the demand in Texas.

Thompson: I think any company trying to sell oil in Texas and importing oil into the United States should be marked off the list.

Purl: There are such companies?

Thompson: Yes. And I would have them marked off.

Purl: You have no way to do that?

Thompson: Yes, I rather think we have.

Purl: How, please?

Thompson: Under this bill.

Purl: This bill will mark off the importation of oil into Texas?

Thompson: No, I think we can go a long way toward that. The bill is a very poverful bill.

Purl: How would it work out that way?

Thompson: We would get these reports of who is importing the oil. It is very simple to find out what is going on and if someone is doing that, I think we could work on the pool in which they are interested.

Purl: Under the present law you can handle that situation?

Thompson: Yes and there would be a good way of carrying them out.

Purl: And the Commission is not now permitted to do that?

Thompson: That is right.

Purl: This bill will permit you to mark them off that way?

Thompson: I didn't say that but—

Purl: Just how would you go about that?

Rawlings: I don't want to curtail in any manner the questioning, but I think if we could confine the investigation to the terms of the bill rather than the policy of the Railroad Commission, it might expedite matters a little.

Purl: I am very vitally interested in that part and admit that it is a little away from it but I don't want to take up the time of the Senate.

Rawlings: Proceed with your questioning.

Parrish: He is getting into something that is good to me.

Purl: Colonel Thompson, if I may make the assumption, as I see it, and you will help me out, and if it is not pertinent, tell me and I will appreciate it—

Thompson: Yes, sir.

Purl: If a man has an oil field over here in East Texas with several wells on it and another company right adjoining him has the same available supply and same kind of wells and also owns a field in Venezuela and can import it from there; you know it isn't any farther from Venezuela to the Atlantic Seaboard than it is from East Texas and doesn't cost any more, that man or company with a field in Venezuela can bring in his oil when he can't produce it profitably in East Texas and this man who doesn't own a field in Venezuela, I want to know if the Texas citizen, this man, doesn't have a disadvantage that the Commission cannot help him about?

Thompson: You are correct.

Purl: Then I understand that you favor this bill? Or would this permit the Railroad Commission to help this man who doesn't own any foreign oil?

Thompson: That is right.

Purl: How will this bill authorize or permit the Railroad Commission to take into consideration this imported oil tied up at the docks compared with Texas oil?

Thompson: Here is the very important fact. The Railroad Commission will have a report as soon as this has been received. A good many wells were unconnected in East Texas recently, a good many of them, and the companies who had pipe lines would connect their own wells and not the other fellows, so we have entered an order, which is held up by the Three Judge Court decision, as the wells are brought in, they must be connected without regard to ownership. If you had a well, Senator, the pipe line would refuse to take your oil and then when they brought in their own well, they would take theirs and not take yours. We have made a rule that they must connect your well before they can connect theirs in order to maintain ratable taking and production in the oil fields.

Purl: But the Railroad Commission cannot keep them from turning on the faucets on the ships?

Thompson: No, we cannot keep them from importing oil.

Purl: Then if they have no available storage facilities, they can refuse to take this man's oil as they have no place to put it.

Thompson: We will have that condition changed shortly because we will have a Democratic president and stop the importation of oil. That should not be permitted; foreign oil should not be permitted to come into this country so long as we have oil to spare. You wouldn't have any more ships coming into dock with oil. We would have someone to look after us, and Garner will do it.

Purl: I understand. You know, however, that some of those that want to pass this bill letting the Railroad Commission consider market demand are also the ones fighting the restriction of oil?

Thompson: That may be, but we will get some benefit that will offset that and stop the importation that we always had before. If the president had any spunk, he would stop importation by embargo.

Purl: Don't you think, Colonel, it would be best to adjourn—that the Senate adjourn and go home and elect that president and then come back and take this up?

Thompson: No, I think we will elect him anyhow.

Purl: All right. About the price of crude oil, is it not a fact that the larger companies that own refineries and one man does not own a refinery are not equal; that the man who owns a little refinery and the big company that owns a big refin-

ery—could they not raise the price of oil until it would be so high that that man could not afford to buy it and sell it as gasoline and then if they could break him, it would be a monopoly. That is what I am afraid of.

Thompson: Raise the price of oil?

Purl: Make the price of oil so high that the little refinery could not afford to buy and sell at a profit.

Thompson: You want my position as a Railroad Commissioner?

Purl: We would be glad to know, but I particularly want to know could that not be possible?

Thompson: This is the answer. This would call for a hearing; we would call a hearing when the complaining refineries or citizens brought that condition to our attention. We would call a hearing at once and in that hearing, if that was proven, we would raise the allowable so as to give the little refinery all he needs and that would bring the price right down. The Commission can absolutely control so as to take care of the little fellows.

Purl: Do you agree that this bill should be passed as a matter of expediency with conditions as they are or do you agree on it as a broad general American principle that we should have market demand in our law? As a fundamental principle of our government?

Thompson: Here is the answer to that. If it were a new thing tried in Texas for the first time, I would approach it with alarm, as you indicate, but Oklahoma has already gone before us and the United States Supreme Court has found in a unanimous decision that it is all right, and I think we would be just lagging behind if we did not go along with them in the condition we find ourselves in.

Purl: At the time of the called session in the summer of 1931, then oil was selling at five and less cents per barrel?

Thompson: Yes.

Purl: And market demand was advocated by many opponents of the bill. I think it got three votes in the Senate and thirty in the House. With oil at $1.00 a barrel we are now asked to put market demand into the bill. When did you become convinced that this sort of law should be passed?

Thompson: When did I?

Purl: When did you become convinced?

Thompson: All along since I have been on the Commission.

Purl: Prior to that time had you given it any thought in the oil fields of Amarillo?

Thompson: I cannot say that I had.

Purl: Did you follow it closely or were you here interested in it?

Thompson: No, I wasn't here; I wasn't interested in it.

Purl: I want to know when you were converted to the idea of market demand.

Thompson: No, I cannot— I don't say that I was ever converted; I cannot say that I am any mourner at the bench now.

Purl: I want to know how long you have believed in it.

Thompson: Every time we have a hearing this question comes up, but it did not concern me because we could not consider it. I guess I was converted the day the court made its decision.

Purl: Don't you think when we start the policy of putting market demand into one of our laws, can you think of any precedent that might be started that would make us go into other phases of market demand?

Thompson: I expect it would. I think we will be passing laws in the future that we would not believe possible now.

Purl: Can you think of any evil that might come from that precedent?

Thompson: The only evil that I can see would be the danger of not passing it.

Rawlings: Is that all, Senator Purl?

Purl: No, one other question here. You do state and it is your opinion from having read the Supreme Court opinion here that they have ruled that market demand is not price fixing?

Thompson: That is right.

Purl: You said—

Thompson: They did not pass on the price fixing feature.

Purl: They say that they pass up— "We put aside plaintiff's contentions resting upon the claim that

Section 2 or Section 3 authorizes or contemplates directly or indirectly regulation of prices of crude oil—"

Thompson: That is right.

Purl: They state that they put aside that. Where else in that opinion you have before you do they say that market demand is not price fixing?

Thompson: They upheld the law and say in the front of the opinion there in the very beginning that they considered market demand and upheld it.

Purl: Is there anywhere in the opinion where the Supreme Court says that market demand is not price fixing?

Thompson: Not in those words.

Witt: I would like to ask a question if the Senator will permit.

Purl: I will yield to Governor Witt.

Witt: As a matter of opinion, don't you know that they specifically say that the Oklahoma Commission, in making its order, did not use the law under which they were operating as a price fixing basis?

Thompson: That is right, Governor.

Witt: Do you think from your knowledge and consideration of this matter that if they had used the law as a price fixing proposition—what is your judgment as to whether or not the court would have upheld it?

Thompson: It would have been held void.

Witt: Don't you think we might run into a dangerous proposition?

Thompson: I would hate to see you do it.

Witt: In putting this in our law?

Thompson: In putting price in there but you are safe on market demand because you have a Supreme Court ruling on it. We have left that out of this.

Purl: Leaving the Supreme Court opinion and taking the three judge statutory court's opinion, you do agree that the three judge commission did rule that the law we passed was valid in all respects?

Thompson: They ruled that your rule was not in keeping with the law.

Thompson: They turned our order down.

Purl: They struck down your rule but held valid the law, is that not true?

Thompson: They said the Legislature could pass the law all right, but the Commission had looked the wrong way in making the orders and had looked to evil.

Purl: They held the Legislature's law was valid?

Thompson: They did not show us how to make a valid order.

Purl: Then we are called back down here—and I am not criticizing anybody—but they have called us to correct the Commission's rule rather than to correct the law?

Thompson: Not at all. No, sir. We did not ask you to come down here in order to correct the rule at all but market demand was found to be very objectionable by the three judge court and we simply ask authority to consider market demand.

Purl: We have not been called down here to consider a law that the courts have held unconstitutional.

Thompson: You have come here to have your attention called to the fact that the court said that we considered market demand when in fact I don't think we did, and we ask permission to be allowed to consider market demand to meet the objections of that court.

Purl: That is all now.

Rawlings: Senator Stevenson, any questions?

Stevenson: Yes.

Rawlings: You may proceed.

Stevenson: Referring to this 10,000 barrel proposition in a new field. I did not understand all the facts. The argument is that it would enable a well operator to go into a new territory and possibly get oil where possibly they would not otherwise get it and when they got 10,000 barrels, they would probably get pipe line connections where they couldn't otherwise. You say now that it is unnecessary?

Thompson: So far as prevention of waste is concerned.

Stevenson: It becomes unnecessary now that you are taking into account waste due to market demand for the reason that if there is waste due to market demand, the Commission may see fit to cut down the production of each well in the State not simply in East Texas but in South Texas, West Texas, and every part. Would it not thereefore be necessary to have something to encourage well carriers to operate? A new field like East Texas will not last forever.

Thompson: Yes, Senator. We have them at the 240 barrels allowable.

That is sufficient incentive to drill a well.

Stevenson: You have prescribed that but it isn't a law and can be changed.

Thompson: Yes, it can be changed.

Stevenson: Would it not be your policy, if there is waste, to cut down the allowable in other pools per unit in ratio to the cut you would make in East Texas?

Thompson: You mean apply an even ratio throughout?

Stevenson: It would be more in East Texas, but take the wells as a unit and not prorate each well but take the number of wells in each pool and make a cut in the pool, using the ratio of the well per unit?

Thompson: You say to do it so as to allow a certain amount to each pool and then divide it by the number of wells in the pool? That is the way it is done.

Stevenson: What would you do with South Texas in that case? Would you cut it down?

Thompson: Just like now.

Stevenson: Yes, but you don't have waste through market demand yet. Suppose you had that and it is compulsory and not discretionary?

Thompson: Not "may?"

Stevenson: If you get "may" in, it is all right?

Thompson: I hope to get "may" in.

Stevenson: I will vote to put it in.

Thompson: I hope you will not pass it without putting "may" in it.

Stevenson: This is very important for me in my territory.

Thompson: I know it.

Stevenson: If we have this 10,000 barrel allowable, of course, that doesn't mean that any waste shall be permitted but it will permit them to have sufficient production to get transportation through a pipe line; is there any hazard to the State in that?

Thompson: No, there is none.

Stevenson: Then why was it stricken out?

Thompson: We did not strike it out. I just said that if we had found that waste could have been prevented from some one well, it was unnecessary for it to be in.

Stevenson: One well is only allowed 240 barrels?

Thompson: Yes.

Stevenson: When a man has one well, he has to get enough wells, four or more, to get his 10,000 barrels?

Thompson: Four wells would be about 1000; 40 would be necessary.

Stevenson: Suppose he got a 10,000 barrel well; should he not be permitted to use this 10,000 while exploring to get more oil?

Thompson: It is an incentive but there is too much oil in East Texas now.

Stevenson: If you are going to put it on the basis of limiting it in East Texas, it will not be passed through the Legslature.

Thompson: It will not result that way; it is not our intention.

Take the bill as it is; it is "shall" and not "may."

Thompson: You say you prefer—

Stevenson: No, I prefer "may", but take the bill as it is now.

Thompson: Yes.

Stevenson: You have gone on record as opposing the 10,000 barrel proposition.

Thompson: I hope I did not say I was opposed to it.

Stevenson: I may have misunderstood you.

Thompson: I did not say that at all but just that we did not consider it necessary from the waste standpoint.

Stevenson: I beg your pardon. It is only Senator Woodul that is opposed?

Thompson: Yes, I am not opposed to it.

Rawlings: Any further questions, Senator Stevenson?

Stevenson: No.

DeBerry: Mr. Thompson, in that bill how many definitions does it have there that pertain to physical waste?

Thompson: The same ones.

DeBerry: Is physical waste economic waste?

Thompson: Economic waste goes much further—

DeBerry: The question I ask may sound out of line—I am talking about the buying public, the questions I shall ask to help along that idea.

Thompson: I have always had in mind the consumers.

DeBerry: I don't want to argue—this price influencing resulting from market demand would be price fixing?

Thompson: It is price fixing.

DeBerry: The Supreme Court notwithstanding?

Thompson: That is what I was going to base it on.

DeBerry: Not price fixing but price influencing.

Thompson: Yes.

DeBerry: If crude oil is selling for $1.10 a barrel is that not itself economic waste? Is that a wasteful price?

Thompson: No, it isn't.

DeBerry: $1.10 a barrel a wasteful price?

Thompson: Yes.

DeBerry: Is $1.15 too high or too low?

Thompson: It depends on conditions.

DeBerry: With conditions as they are?

Thompson: I think $1.15 is about right.

DeBerry: But which is the highest, $1.00 crude oil to the people who produce it, the land owner, the royalty owner, the lease owner, which is the highest, that or wheat selling like it is around Amarillo?

Thompson: Oil is the highest.

DeBerry: About how many times higher?

Thompson: Four times. With $1.00 wheat as a basis.

DeBerry: Do you think this bill will result in raising the status of the wheat farmer four times—?

Thompson: It will help.

DeBerry: Four times?

Thompson: It will help to the extent that it will help to bring him back good times; I don't say that it will bring him back four times. I cannot define just exactly how much it will help.

DeBerry: Will it help him four times?

Thompson: I could not say.

DeBerry: Would it approach four times?

Thompson: It will help; I cannot say how much.

DeBerry: How will it help?

Thompson: It will bring in money so that people can buy some flour to make bread with.

DeBerry: The general condition—Did general conditions in the wheat business improve since proration started in East Texas or not? Have wheat and cotton conditions or the wheat and cotton farmer improved since we passed the proration bill?

Thompson: Of course, the wheat farmers have had the threat of the wheat stored in Chicago. That did it.

DeBerry: I am not interested in what did it.

Thompson: It was a very different thing that did it; it was over-storage of wheat.

DeBerry: What hurt the hog farmers?

Thompson: Lack of buying power.

DeBerry: We are chasing ourselves around in a circle. The hog farmers—have their condition improved since proration started in East Texas in making gasoline jump from 11c to 19c? Did that improve the hog farmers' condition and economic status?

Thompson: You mean as he did not have any oil to sell?

DeBerry: Yes, if the hog farmer did not have any oil to sell but wanted to buy some.

Thompson: I don't see the connection.

DeBerry: You don't see the connection? I am representing my own people here. My people all buy the refined product and sell no crude. Would it help them?

Thompson: Yes, it would after a while but not directly, no.

DeBerry: Undoubtedly it wouldn't.

Thompson: Yes but it would help the State and would eventually help them.

DeBerry: Would he get more meat and molasses to eat by virtue of it?

Thompson: He might get more than he would have otherwise. I really think it is a good thing.

DeBerry: Has the economic condition of the cotton farmer improved since we passed the proration statute a year ago.

Thompson: Yes, I think we have gotten nearer the end of the panic than we were a year ago.

DeBerry: Which end?

Thompson: The way out. The last end.

DeBerry: The little end or the big end?

Thompson: Whichever way we get out.

DeBerry: It is just around the corner?

Thompson: No, Senator, but I think we have just about reached the end of the depression.

DeBerry: What is the difference between a Democrat in Texas interested in the price of crude oil asking for a law to protect his crude oil and get high prices for it and a Republican

asking the National Government to keep up high tariffs to protect industries in which he is interested?

Thompson: What is the difference? They are both looking after their people.

DeBerry: Who is left out then, Colonel?

Thompson: Nobody.

DeBerry: You ought to be speaking for the Republican ticket today.

Thompson: I sure believe in protection of that kind. I don't believe in free hides and protected shoes. They both ought to be free or both ought to be protected.

DeBerry: When are you going to get to the cotton farmer?

Thompson: As soon as we get the Democrats in.

DeBerry: How.

Thompson: A way will be found. We will have people in office to think about the folks and not the interests.

DeBerry: Do you mean to say that you think the way to get to them is the direct proposition of improving the oil industry and letting it sift through and get to him?

Thompson: It is one way, yes.

DeBerry: What is the difference between that and the Republican policy of high tariff?

Thompson: There are 100 people in Texas interested in the production of oil who are not interested in the ownership of a company to one that is interested in the ownership of a company; 100 to 1; and if the oil business is good, those people are employed at good salaries, and if the oil business is bad, they have no salaries at all.

DeBerry: What percentage of the people in the State, compared to the whole population, are interested in high prices for crude oil as compared to those people interested in cheap refined products?

Thompson: You mean fair price for oil, about $1.00?

DeBerry: That is what you call a fair price but it is an exorbitant price, I say.

Thompson: I think the products are too cheap myself—

DeBerry: How are you going to get to them?

Thompson: One at a time. Oil will help it to come and does not stop it. If you start in playing ten pins to knock each one down, the way to get one does not depend on knocking another down.

DeBerry: If you had a grassy field that needed cutting and your neighbor had one, how long would you help the other fellow? Not long.

Thompson: If he would help me, I would help him. I wouldn't throw rocks at him.

DeBerry: But you are asking me for something I am not getting from him. What I am trying to say is that this will be on the same principle of a see-saw, and to see if you can tell me how the people in the eighth district selling their unprotected products at exorbitantly low prices can afford to buy higher priced oil, to pay higher prices for oil. Tell me specifically.

Thompson: I will tell you. Unless one industry can lead the way out of the depression we are not going to come out of it, and as things are, oil seems to be pointing the way out. If we are going to pull the price of oil down to 17c, say, if we are going to pull the oil fellow down, we will never be able to get a fresh start and pull ourselves out by pulling together. I think the best way to do is let the industries that can help themselves get along and directly we will all get back to where we were.

DeBerry: Is that not the argument always made by those favoring protective tariff?

Thompson: I think the others should be protected also and brought up to the same level and not bring these down to their level.

DeBerry: When I came here to the proration session, I paid 11c a gallon for good Gulf gasoline; in less than four months later I paid 19c. My people did the same. Do you think that that is conducive to making them favor proration or market demand or price fixing?

Thompson: Yes, I do for the reason that I have already given, but permit me to state—May I, Mr. Chairman?

Rawlings: Go ahead. Yes.

Thompson: For the reason that the price of 11c, with a tax of 5c on each gallon, leaves 6c for the gasoline itself; gasoline is too low then.

DeBerry: Possibly so. Is 19c too high.

Thompson: About right, I think. But you ought also to get $1.00 for

wheat and it will come if you will just track along with the others.

DeBerry: As soon as the oil bill is passed?

Thompson: No. But soon we will have it. If we had not had this storage of wheat the Government bought in, we would have it now. The difference between the two cases is that the oil can be kept in the ground and brought out as it is needed.

DeBerry: No doubt, but how can you do it?.

Thompson: Oil can do it.

DeBerry: Who would pay the bill?

Thompson: The consumers. We are all in the same boat together.

DeBerry. The consumers where I live pay for it out of cheap cattle and wheat and cheap hogs and cheap cotton, if they pay for it at all, don't they?

Thompson: Yes. It is too bad.

DeBerry. Is that equal rights to all and special privileges to none?

Thompson: Yes, perhaps we could bring them up together and not tear them down.

DeBerry: You cannot blame other industries for tearing the oil industry down.

Thompson: I am not blaming anybody.

DeBerry: You made the argument that we are tearing it down.

Thompson: No. These fellows are getting along very well; they don't want any special privileges to help themselves along. We have more operators now in East Texas than we had in all Texas before.

DeBerry: He is interested in the price of crude?

Thompson: Yes.

DeBerry: Or in keeping the State taxes paid up?

Thompson: Yes.

DeBerry: Which is he interested in?

Thompson: In the price of crude and also in helping the State.

DeBerry: Would he be down here talking conservation if it wasn't for the price of crude?

Thompson: If he was interested in his country and had the interest of the country at heart, he would. And the time and money.

DeBerry: How many were hollering for it when Burkburnett did that way?

Thompson: They had never heard of it then and the field produced about twenty per cent of what could have been got out under the present methods.

DeBerry: Is that your opinion?

Thompson: It is the best testimony we could get by the experts that came before us.

DeBerry: How authentic is that?

Thompson: Science is very authentic and definite.

DeBerry: They are the very group that said they could all be hard up under physical waste?

Thompson: The Supreme Court said they were wrong.

DeBerry: I don't think so; they said that you exceeded your authority.

Thompson: We did not do what they said we did. We tried carefully not to do that. We tried to avoid that; we steadily tried to keep from considering price or market demand.

DeBerry: Is there not a possibility that a rule could be worked out some sort of order that might not be as stringent as the one they issued that would meet their decision, or might not the decision be reversed by some other guessers?

Thompson: What do you mean, guessers?

DeBerry: The last guess stands in court cases.

Thompson: I thought you meant we were guessing. That is why I asked. I tell you the trouble comes from fellows that want to produce wide open and have the other fellows held in.

DeBerry: I understand that has been discussed here.

Thompson: One fellow wants to run wide open and the other fellow held in. If everybody came down together, he would be against that too.

DeBerry: If this bill were also to rehabilitate the other industries and put it so that cotton would be commensurate with $1.00 crude, which would be about 20c or 25c a pound, there would not be an oil man down here plugging for that bill.

Thompson: I think so.

DeBerry: I know there wouldn't be.

Thompson: I am not experienced but I think they would want the con-

sumer of oil to be helped so they could buy oil.

DeBerry: Were you here at the session about proration?

Thompson: Yes, I was.

Rawlings: Have you concluded, Senator DeBerry?

DeBerry: No. I have some more questions.

Martin: I want to make a suggestion. I want to ask the Commissioner a few questions and Senator Pollard wants to ask some. I think it is lunch time and suggest that we recess until 1:30.

Motion carried.

The Committee of the Whole was called to order by Chairman Rawlings at 1:30 but as there was not a quorum present, they again recessed until 2:10 when there was a quorum.

Rawlings: Senator DeBerry, you may proceed.

DeBerry: Colonel Thompson, about what is the allowable number of barrels that is supposed to be taken from the East Texas field under the present conditions?

Thompson: 335,000 barrels.

DeBerry: If they were allowed to produce more than that, do you think that physical waste would result?

Thompson: Yes, Senator, under the facts as presented at the last hearing.

DeBerry: Well, if it could be shown that much more oil than that could be produced without physcial waste, wouldn't it be advisable to change your orders and let the flow increase?

Thompson: You mean if this bill were passed?

DeBerry: Yes.

Thompson: We would have to take all the then presented facts into consideration, Senator.

DeBerry: I understand that, but if in the next hearing it could be shown that East Texas could run away over—what is it now, about 300,000?

Thompson: 335,000.

DeBerry: If the evidence would show that they could run 500,000 barrels without physical waste, don't you think it would be advisable for the Commission to allow that?

Thompson: Do you mean with all the evidence before us, then what you have just said?

DeBerry: With all the evidence you might desire or care to gather and go into, then if the evidence showed that it would not cause physical waste to allow 500,000 barrels, would you advise allowing it?

Thompson: We would have to hear the rest of the evidence.

DeBerry: What evidence?

Thompson: Market demand, economic waste, if this bill is passed. If we were presented with all these facts, and the Commission found through its individual investigations which our agents would have made for that purpose and are presented with testimony on the stand that 500,000 barrels could be produced without actual physical waste and there was no other testimony or evidence that would show it would be a bad thing to do, then we would make an order for 500,000.

DeBerry: Suppose that the result of it was to make oil come down to 70c or 65c?

Thompson: We would not consider price.

DeBerry: But supposing it is incidental to the order, that it would develop in your next hearing that this would be introduced as evidence that it would be incidental?

Thompson: You mean so as to cause economic waste?

DeBerry: Yes.

Thompson: It could be argued and we would sit on it and decide then what to do about it. We would not pre-judge the thing at all.

DeBerry: The only way that—Have you pre-judged the effect of this bill?

Thompson: Yes, but I don't have to pre-judge any thing about what we would have to do if you told us to go ahead and we did.

DeBerry: I think you testified this morning that something like $1.00 a barrel for crude is what you think is a pretty fair price to all parties concerned at this time?

Thompson: Yes, Senator.

DeBerry: In arriving at that conclusion have you taken into consideration the purchasing power of the dollar as applied to those that buy the finished product?

Thompson: Yes.

DeBerry: Did you take into consideration the price at which refined products were selling in arriving at that?

Thompson: Refined products?

DeBerry: Yes.

Thompson: I don't think refined products come within our scope; the bill especially refers to market demand and economic waste, not refined products; it says we cannot consider that.

DeBerry: That is a different subject. What I am trying to bring out is in arriving at a fair price, which is bound to be involved in a definition of economic waste because when you define economic waste, you would immediately run into what fair price was, wouldn't you?

Thompson: Yes.

DeBerry: Then if a fair price is something like $1.00, I want to know what equation you used in arriving at a fair price and I asked would that price that the refined products were selling at, would they be a factor in the fair price for crude?

Thompson: I think it would.

DeBerry: Senator Poage read us that in consideration of the Oklahoma law it was to protect the buyer as well as the seller.

Thompson: It would be incidental though.

DeBerry: Mr. Thompson, I don't— You know whether it is price influencing or price fixing— I will go a little farther and ask this. If you saw a man reach in his pocket and take out a bottle of liquor and take a drink and see his face light up with pleasure, would you say he took a drink or say that it was just the fact of going down his throat that was just the incentive to holding the bottle up there. Just connected with the law of gravitation in being in that position. Or take it this way. If I were to bend over and put my arm around a sack of flour and put it on my shoulder, would you say that I put the sack on my shoulder or would it be by the fact of putting my arm around it and lifting up that the flour was on my shoulder immeditely following that?

Thompson: I would say that you put it on your shoulder.

DeBerry: You keep dodging— Senator Woodul this morning proved by questioning that it was resultant and you did not show—

Thompson: I did not intend to dodge. I have not tried to dodge at all.

DeBerry: Jumping behind the mere incidentals, I think is, but that is all right. Now this morning, Senator Thomason asked you that if the price structure was maintained in East Texas—or that is, if certain conditions arose over there in which the price structure broke down and the field was wide open or partially open—and you say it will go wide open—and you say it would cause chaos in that area over there?

Thompson: In my opinion.

DeBerry: Would they be any worse off economically than my eighth district is at this time?

Thompson: Immeasurably so.

DeBerry: Why?

Thompson: Because they have right in their grasp, by the turning on of a valve, great resources of this State upon which they hope to make a lot of money immediately. You cannot do that with cotton and wheat and cattle but by the simple turning of a valve—8700 of them—they could have a flood of liquid gold flooding that country which would bring destruction on them with everyone trying to get all he could and get to market first; it would bring about all kinds of strife like gold does.

DeBerry: I want you to understand from my question that it wasn't that I am not glad that they have that. I am glad they do have it and want them to take their share of it as long as I am getting my share when I pay the bill. I want to know if that is equal rights to all and special priviges to none.

Thompson: May I answer that by stating that I have a peculiar notion that every man, woman and child in Texas has an interest in that oil although it is under some farmer's land in Smith County and I believe he is not entitled to get it out in a wasteful manner. It was put there not by the efforts of this farmer but by the God Almighty to be a benefit to mankind through the years and we are charged with the duty of conserving the resources of the State and looking after the interests of the greatest number.

DeBerry: That is very good.

Thompson: That is my theory and what I intend to be guided by.

DeBerry: The point I am working out is to see, if I can, as I have not been able to see it yet, if the purchaser is taken care of by the Leg-

islature that stabilizes or increases the price structure of a commodity when he is not directly interested in it but benefits in proportion to his contribution.

Thompson: I can explain that to you. Before oil was struck in Smith County— There is a lady in this room now who, before oil was struck in Smith County, paid State and county taxes amounting to $102.00. This year they are paying county and city taxes on that same building of over $10,000. I never saw her before now but she told me about it as I came into the room. The tax burden of the State will be light by the increased part that will be born by those taxpayers over there where the oil is.

DeBerry: Proration increased the tax burden of every man that owned property in Red River County if he owned an automobile.

Thompson: You mean if he used that automobile a good deal on the roads. He did not have to use it at all and it would not have increased his taxes a cent.

DeBerry: Certainly not but I am taking it for granted that the people where I live have as much right to a car and its use as everybody else.

Thompson: I did not take my car at all; I did not pay the license for the last year but left it in the barn all this year. It would cost too much. It is a hard year with me.

DeBerry: However, you said you were going to show me how the people of my district were benefited by proration. Then if I could show you that that it is not my duty to increase my taxes rather than lower them, would you still think we are getting a fair break?

Thompson: Do you mean ad valorem taxes?

DeBerry: Yes.

Thompson: It would have been more except for the fact that these people are paying more.

DeBerry: It could not be much more as it is right up close to the limit now. It is 77c, I think.

Thompson: That would be the only thing that would save you.

DeBerry: Gasoline taxes went up—

Thompson: That is not a uniform tax but a privilege for using the highways of the State and not strictly a tax.

DeBerry: Any increase in the price of any commodity in the world is more or less of a tax on the person that buys it.

Thompson: It might be but it would not be a regular tax. It might be evaded by just foregoing the pleasure.

DeBerry: Yes, that is true if it is carried out to the finish so that nobody would do anything for pleasure but we think we are entitled to such things. It might be justified—

Thompson: Yes, that is right.

DeBerry: This is more or less repetition, going over what I said this morning but it is very serious to me and it will be a lot more vital to a lot of people here if they live long enough because I don't see how you can in good conscience argue that if you stabilize one industry at the expense of an unprotected industry, those latter people will get as much benefit as the others do.

Thompson: I think I can illustrate it to you if you will let me.

DeBerry: Yes.

Thompson: You and myself and three or four others are starving to death in a helpless condition, let us say, and one of us began to get a little strength back by getting hold of something to eat.

DeBerry: From the others?

Thompson: No, not from the others.

DeBerry: That is what you are asking me for.

Thompson: I would like to state it if you will give me the privilege.—By getting a little additional strength he can pull the others along and help all of them, should we divide it up and not help any?

DeBerry: Where would they get that additional strength?

Thompson: The Lord put it there, didn't he?

DeBerry: Yes, I appreciate what the Lord is doing, but you are not talking to him now but are asking me for help.

Thompson: You are the medium through which he is acting. This is a very serious business.

DeBerry: I wish you really knew my stand on this kind of a question.

Thompson: I appreciate it fully.

DeBerry: Now, Colonel Thompson, this talk about the Democrats and Hoover and the Republicans, it doesn't mean anything.

Thompson: I believe in my party more than that.

DeBerry: How could they do it? How could they help?

Thompson: We have been saying that they could and have been making speeches around over the country about it.

DeBerry: I enjoy very much more, and think I am profiting myself and it might profit others when I am concerned with a question involving the purchaser more than I am when I am concerned with the seller. It is obvious that Senator Woodul is concerned with the seller of oil. The fellow that could not see that is blinder than I am and I have one glass eye. Nothing has been said in here with respect to the purchaser.

Thompson: Our Commission is charged with the duty of protecting all the people and so much has been said about price fixing and asking if this is price fixing, I cannot see that you would be the loser by having the Commission fix the price on gasoline in every city in Texas. You charge us with fixing the price of freight and all bus rides and we will fix price if that be continued.

DeBerry: And when you fix a price, you set the rate he can charge for his stuff?

Thompson: Yes.

DeBerry: And you declare it a public utility. Are you doing that in this bill?

Thompson: I am not writing the bill.

DeBerry: Is it being done by this bill?

Thompson: Yes, I think so.

DeBerry: Do you mean the result of this bill declares that the dealing in oil is a public utility and the Legislature shall have the right not only to control the supply but can also control the price of that finished product. Do you mean the bill will give you that power?

Thompson: The only theory you can act on is that the natural resources belong to all the people and we have the right to conserve them. The right of eminent domain is used in other cases, and this is very similar.

DeBerry: You don't mean that you would construe this bill as analogus to a statute placing the railroads under the Railroad Commission and setting their rates or allowing them to set a rate that would pay a fair return?

Thompson: It is very close to it.

DeBerry: How much does it lack? The thing it lacks is that you would not protect the purchaser and in the railroad question the man that has the freight hauled is protected. In this bill he has no protection, has he?

Thompson: He has the Railroad Commission there to regulate this market demand, which is the crux of the whole thing.

DeBerry: I am talking about the purchaser of the refined product.

Thompson: Sure, and the price of the refined product depends on the price of crude. It follows just as naturally as the night the day.

DeBerry: That is exactly what I am fussing about. If you raise the price of crude, you raise the price of the refined product and we pay the bill.

Thompson: Yes, and that is right.

DeBerry: I strenuously object.

Thompson: It would be true if you raised cotton to 20c a pound and a man would have to pay more for his shirt. Wouldn't he?

DeBerry: Certainly.

Thompson: What is the matter with that?

DeBerry: This is the wrong end of it.

Thompson: I can't argue with you about that; we are both right.

DeBerry: Then, when are you going to get to me? The Federal Government did at least get close to us with the cotton subsidy act.

Thompson: You have not put cotton under the Railroad Commission.

DeBerry: Since we have had this contact with the Railroad Commission I think we have made a serious mistake; I think they could get the price of cotton right up.

Thompson: I did not write the law. I am just doing my best under it.

Rawlings: Any further questions, Senator DeBerry?

DeBerry: No.

Rawlings: Senator Martin, you may proceed.

Martin: One point, Col. Thompson, in speaking of the price of sulphur or taxes on sulphur when it was 75 cents per ton, you made the statement it ought to be higher?

Thompson: In my judgment.

Martin: We have a great monopoly on sulphur is my understanding?

Thompson: Except, of course, they

get a large per cent of it and we ought to get a good part of it.

Martin: Now, the subject, Mr. DeBerry was on—he didn't go on when gasoline was raised from 11 cents to 19 cents the purchaser had to pay that difference?

Thompson: Yes.

Martin: Did not he state that he came down here on Gulf Gasoline at 11 cents and it is now 19 cents?

Thompson: There were times when crude was going for nothing.

Martin: Now then whenever we permit the price of gasoline to go up does not that create economic waste?

Thompson: Economic waste is something of value that goes out without getting any returns.

Martin: Then the public in buying the manufactured product would be the one who would have to stand the loss in raising the price of the manufactured product?

Thompson: There would be benefits flowing from that—that would not be waste. The very people who benefitted from the higher price would be buying cotton, that would not be waste, would not be throwing a bucket of milk over the fence.

Martin: The people of the State of Texas generally are interested in the oil business only in the amount of taxes they get out of it?

Thompson: No, I don't think that is a fair statement.

Martin: Why not?

Thompson: No, I don't think that Texans are interested only in the amount of taxes they get out of it. No one part of the state, county or city can be prosperous without all the rest being benefitted and neither can one part be extremely poor and not prosperous without the rest suffering from it.

Martin: Then what the Legislature is called upon to face is to protect is the people themselves—it is not right, because we are telling those people that we are not letting oil be wasted.

Thompson: We won't let them waste a bit of it as long as we are getting our taxes on a gross production plan as we are—

Martin: You say everything under the land belongs to him?

Thompson: No, sir.

Martin: When you take under the ground were it not for pressure you could not get this oil out—is it not done for the purpose of preventing Jim Jones getting oil out from under Bill Brown's land?

Thompson: The whole pool is affected, not just the particular land. Gas is necessary for the production of oil.

Martin: Can you think of waste over there--

Thompson: He could sit there and other people get his oil.

Martin: Move out from his line at a certain distance?

Thompson: Yes.

Martin: You could not put him far enough back?

Thompson: The trouble of it is you would not have enough land.

Martin: If he has—he has a vested right to drill a well even a town lot?

Thompson: The one who gets the first well—no way of holding all the oil.

Martin: At forty barrels a day?

Thompson: At least if we were to place a tax on this product as it comes from the ground so much per barrel that would to a large extent save the situation.

Martin: Do you see any way in the oil field by the price setting whims of the major companies?

Thompson: I don't know about the price setting whims—

Martin: We could knock out a great deal of it at least by paying the State of Texas two cents a barrel as long as you don't commit physical waste.

Thompson: You mean open wide?

Martin: I don't mean upon the field, just don't commit physical waste.

Thompson: That is what we thought we were doing and the court said we were considering market demand and price fixing.

Martin: If your orders you pass are sufficient to prevent physical waste as an actual fact, I am presuming that the facts you have before you in this hearing show how much oil you could secure from a well without injuring the field?

Thompson: That is exactly what we did.

Martin: And you never considered economic waste?

Thompson: Not for a second or market demand either, and we cautioned everybody not to do it. That is the very crux of this whole question and that court said we did and—

Martin: How did you arrive at the allowable of 40 barrels?

Thompson: 40 barrels?

Martin: Yes, or 50 barrels.

Thompson: We had witness after witness to testify to what they thought was the proper amount to withdraw. They said water encroachment would come in. I guess there were 50 witnesses.

Martin: Then if oil, crude oil, would go up to 50c a barrel, wouldn't they come back and say you can let them have 100 barrels a day just as well?

Thompson: If they did we would fire them as they are our own employees.

Martin: Those are the only ones you used?

Thompson: No, but we had our own witnesses. I see what you are driving at. I would not permit—

Martin: It could be so considered if it was in the bill.

Thompson: I do not have any idea of considering that at all.

Martin: You may not have but you don't know what the other gentlemen will consider. And you may not be on the Railroad Commission always and you don't know what the other gentlemen will do.

Thompson: No.

Martin: In whatever direction we approach governmental affairs it is a dangerous affair, isn't it?

Thompson: Yes.

Martin: Do you think this is a dangerous direction?

Thompson: No, I don't.

Martin: Don't you think this would lead up to price setting agency on all natural resources such as salt, gasoline, sulphur, coal, etc?

Thompson: No, you can reach it through taxation just as well.

Martin: Then if you can reach it as surely through taxes, then why not do this and not fix price?

Thompson: You are talking about price fixing. We were not going to fix price.

Berkeley: Col. Thompson, you stated early in the day that you all were getting along satisfactorily under existing proration laws. The upset that occurred was due to findings of the United States Supreme Court that you had included in your orders or had taken into consideration in that order according to their opinion the question of market demand.

Thompson: That is correct.

Berkeley: Now, Colonel, I think you rather stated or intimated that even though the pending bill finally became a law that you would likely adhere to about the same policy that has been adopted for the past several months?

Thompson: No, the facts as would be introduced at each hearing; we could not say what we would do because we take the evidence as presented.

Berkeley: The point I am leading up to, I think you stated that the oil was at a maximum in the field, that physical waste was at its minimum, hence were running along fine, and if you could continue just as you are now the oil industry in your opinion would be in good shape?

Thompson: Yes.

Berkeley: Now, suppose that the pending bill is finally enacted into a law and the same troubled conditions obtain that exist now, and later on there is a fall in the price of crude oil, we will say to 30 cents, which I believe would probably be below what ought to be a reasonable price for that product—I think you said 50 cents?

Thompson: The very lowest production, top 50 cents.

Berkeley: Suppose it should fall to 30 cents and physical waste is at its minimum, all the other elements in good shape, in your judgment what action would the Commission take under the provisions of the new bill?

Thompson: You say physical waste would be at its lowest point in those considerations?

Berkeley: I am saying physical waste just as it is now.

Thompson: You are making a hypothetical case out of it.

Berkeley: Say they are favorable —then the only thing in bad shape is the price structure.

Thompson: If people quit using gasoline I could see where the price might get down to 10 cents for crude. The theory seems to have been advanced by some a benefit accrues to a certain group under certain conditions, some say to the major companies, some say to the smaller companies.

Berkeley: If anything is favorable save and except price structure, and you are attempting to approach the question purely and simply on that basis, let us say the allowable is just as it is in Texas today, the price structure is down to 30 cents but trying to restore it would it be a further reduction of the allowable, if so would it be essential to existing conditions?

Thompson: Market demand is different from price structure.

Berkeley: It amounts to about the same thing in the end. If oil goes to 30 cents what are you going to do about it?

Thompson: Nothing, if oil is down to 30 cents the price is not going to alarm the Commission. This is not a price fixing measure, I won't be a party to a price fixing measure; I am as sincere as I ever was in my life. I don't believe in price fixing at all.

Stevenson: If there should be a waste due to market demand there undoubtedly would be a waste in production due to market demand following the exact language of the bill.

Thompson: How could you have a waste?

Stevenson: The language of the bill is due to market demand, should there be a waste in production due to market demand, how would you cut it down?

Thompson: I don't know just the yard stick to use, it would be discretionary—

Stevenson: I guess that is all.

Neal: May I ask Colonel Thompson a question? In the event of the passage of this bill would the tendency be to encourage or discourage further development and exploration for gas and oil?

Thompson: We would not affect that at all. That is normal and natural pursuit of happiness that we could not interfere with.

Rawlings: Any further questions, Senator Neal?

Neal: No.

Pollard: I want to ask Colonel Thompson if it isn't a fact that under this bill the Railroad Commission could take into consideration the cost of the drilling of these wells?

Thompson: Yes, I intended to say that, Senator, just now. Yes, sir. We can.

Pollard: It is so drawn that you can?

Thompson: Yes.

Martin: Just one other question, please. The Commission held a hearing in August of this year, didn't you?

Thompson: Yes.

Martin: When you allowed the production to go up to 375,000 barrels in East Texas?

Thompson: Yes.

Martin: You heard considerable testimony at that time?

Thompson: Yes.

Martin: You held another hearing in September, didn't you?

Thompson: I believe so.

Martin: How long were you in session at that time?

Thompson: I don't remember. In September?

Martin: Yes.

Thompson: Half a day perhaps; maybe longer.

Martin: You adopted the testimony that had developed in August, didn't you?

Thompson: In each of these hearings all the accumulated testimony was brought forward.

Martin: In September you reduced it to what?

Thompson: 335,000.

Martin: 335,000. Had conditions become such that it was necessary to prevent physical waste? Did you reduce it on the same testimony you had before?

Thompson: No. We had testimony at that hearing that showed that it was proper to reduce it to that figure, that reduction. There was very serious water encroachment in the field.

Martin: You got that additional testimony?

Thompson: Yes, from several witnesses.

Martin: And you determined then it was necessary to reduce it?

Thompson: We had raised it too high. They were hollering for an increase first and the same ones that were hollering for an increase came back and asked for a decrease and showed by witnesses that they were hurting their wells by running that much oil. That is often the case.

Martin: Then it was on the testimony of the people over there rather that the testimony of your witnesses?

Thompson: No. Our own witnesses right in the field.

Martin: You said they were hollering that they wanted more money over there.

Thompson: I did not say that.

Martin: Well, an increase then.

Thompson: Please—I did say that.

Martin: Now, they were hollering they wanted more rentals?

Thompson: No.

Martin: What was it?

Thompson: To produce more oil, claiming that they could produce more without waste.

Martin: Then who was hollering?

Thompson: The geologist and engineers. You see, we have not only our own engineers there but many others—

Martin: In other words, it was the geologist and engineers of the oil companies.

Thompson: Some of them and some of them for property owners and groups of property owners who engaged these geologists and engineers.

Martin: Then the Commission was acting at that time upon the testimony of the geologist and experts of the oil companies?

Thompson: We had considerable of their testimony before us. They bring maps that extend to the ceiling and great stacks of papers and we have to go through it all and give it a close, hard hearing.

Martin: You had others at the hearing?

Thompson: Yes and if you had heard the comments, I think you would have agreed with the Commission.

Martin: I wish that I could have been there. That is all.

Rawlings: Senator Purl.

Purl: At the time of the hearing Senator Martin was speaking about you set the allowable at a certain amount and then a few days later decided to lower it. How long afterwards?

Thompson: At another hearing.

Purl: About how long afterwards?

Thompson: I don't remember; about three or four weeks.

Purl: In the meantime pending the Railroad Commission did take that into consideration, there was a tale going over the State that if they did put it at that amount, it would lower the price. Wasn't that correct, Colonel?

Thompson: No, sir. Nobody threatened me with the price.

Purl: I understood—

Thompson: We made the decision—

Purl: Pending the time it was understood that you would have that amount and before you put it into proper form, the papers were full of it that if it did go into effect, it would lower the price. That was in the papers.

Thompson: They were talking about it.

Purl: In the bill that was the law prior to the time we met in July, 1931, there was a statute concerning marginal wells, what we called the old law; is that true?

Thompson: Yes.

Purl: Then when we passed the Wagstaff-Woodward bill, it specifically said that we should not take into consideration marginal wells, just to be doubly safe about it?

Thompson: There were 40 barrels for pumping wells—

Purl: While there is an article pending—for they don't seek to amend that article; they don't mention marginal wells.

Thompson: No.

Purl: It is your opinion that if it isn't in this bill, it will still be cared for by virtue of the fact that it is in a bill, in the statutes?

Thompson: Yes.

Purl: It just wasn't necessary?

Thompson: That is right.

Purl: Then we did put in this Wagstaff-Woodward bill that they should not take into consideraiton marginal wells. Do you see any objection to just keeping this in this bill?

Thompson: The statute says we could not cut pumping wells less than 40 barrels.

Purl: I understand and it said that before the Wagstaff-Woodward bill—Just to be doubly sure they put it in and just kind of fixed it to be sure to satisfy everybody and it is included in this proposed bill. Do you see any objection to putting it in there?

Thompson: It would not affect the article. The article stands as it is. You could say provided that such and such numbered marginal

well article is not repealed; that would cover it.

Purl: It might not do any good but you don't see any harm in putting that in there?

Thompson: I do not.

Purl: You don't think the marginal wells would be affected either way, do you or don't you, unless we specifically repeal that article?

Thompson: No. I don't think marginal wells will be included; it was intended to take them out.

Purl: I want your opinion on that—

Thompson: I have not heard anybody say they wanted to take that out.

Purl: Now after one of the Commission's hearings at which the Railroad Commission set the allowable in Texas, some oil company in the world undertook to bring in oil into the United States and did, and that prompted you to send some sort of telegram of protest to the president of the United States?

Thompson: Yes.

Purl: Did you really—What was it that prompted you to send a telegram to Hoover? Was it the importation of oil into Texas?

Thompson: Not into Texas but into the United States.

Purl: What prompted you?

Thompson: Simply this. We were doing our best to limit production under the law we had to the point where waste would not occur and we had limited ours to 131 barrels and I noticed that 132,000 barrels was imported and I just wired the president and asked him if he could not issue an executive order making an embargo, a presidential embargo on importing oil.

Purl: Yes.

Thompson: Of course, I did not get any answer from it.

Purl: I am not trying to be factitious but prior to the time we elect the Democratic president, what assurance do you have that if you do put market demand into the law, what assurance do you have that the same company or another company will not bring into this country an equivalent amount or more of imported oil that you are making them cut down in Texas?

Thompson: None.

Purl: So far, then, as this bill is concerned, it affects the market demand on the available supply so far as the Railroad Commission has control of it in the boundaries of Texas?

Thompson: That is right. I think you are understating the power of the Railroad Commission because Texas has a large part of the total oil.

Purl: All right—

Thompson: Out of 2,000,000 barrels, in Texas we produce 800,000.

Purl: I have two more questions and I don't want to repeat. For the purpose of the record, without enumerating the names of the fields, how many fields does the Railroad Commission consider are in Texas now? Without naming them. Are there 10 or 12?

Thompson. There are more than that. Twenty-odd.

Purl: Twenty-odd fields?

Thompson: Yes, maybe more; I don't know.

Purl: And each field—

Thompson: There is a large number of them.

Purl: Do you consider your rulings based upon each field on its own merits or do you take into consideration the whole oil field of Texas?

Thompson: Each field on its merits.

Purl: One of the biggest problems concerning the East Texas field is that it is a large field, an enormous field, rather than scattered over the expanse of Texas, isn't it?

Thompson: You would have the same collective problems if it were divided into several fields.

Purl: If it were divided over the State, would you have the same problems that you now have?

Thompson: Yes.

Purl: You would?

Thompson: Yes.

Purl: We have already passed a law which puts into the Railroad Commission's power physical waste. Now then we are going to put in another "Katzenjammer Twin" called market demand and that will give you these two known as market demand and physical waste. Then you will have to consider both physical waste and market demand.

Thompson: And economic waste.

Purl: Well, I will just call it market demand and economic waste. Would you consider those three?

Thompson: Yes. They are close together but three things.

Purl: Without going into what is covered by market demand, if you were satisfied that the reasonable market demand was 300,000 and you were also satisfied that they could produce 500,000 without having physical waste but the market demand was only 350,000, say, instead of 300,000, there would be 150,000 that you have left over; what would you do?

Thompson: We would lop it off and apportion it.

Purl: The 350,000?

Thompson: Just the market demand— You said nothing about price?

Purl: No, nothing about the price.

Thompson: Just lop off 150,000.

Purl: You would add the 150,000 to the 350,000?

Thompson: You said market demand would be less than the oil you have.

Purl: No, for that happens to be true. The market demand is 350,000; the law says you can take oil out as long as it isn't physical waste. If there is 150,000 barrels no one wants, it would necessitate physical waste. Yet if you brought it to the top of the ground, it would be waste too.

Thompson: We would keep it in the ground.

Purl: What about that 150,000? Would you make it stay in the wells?

Thompson: You mean your demand is less than your production?

Purl: The demand is less than 350,000 and they could convince you that 500,000 could be produced without physical waste and if they left that 150,000 in the ground it would choke down the wells.

Thompson: We would cut it down to the demand.

Purl: Then what about the physical waste if you were satisfied that 150,000 remaining there would necessitate waste?

Thompson: Taking all into consideration, the market demand would govern.

Purl: Can you picture where there might be a situation where the market demand would be a certain amount and the physical waste—if you did not take the oil, it would necessitate a physical waste of available supply?

Thompson: Then we would not ever cause physical waste. We should never commit physical waste. If we can accomodate market demand and prevent physical waste, then we would accommodate market demand but never at the expense of physical waste.

Purl: You said something to Senator Martin about milk and bread and wheat. Milk and wheat are more the staff of life and more necessary to live on.

Thompson: Lots of people sell groceries for gasoline.

Purl: If you could think of a situation whereby, when we passed this market demand and economic waste of oil bill whereby— Not long ago the papers said they were turning milk on the streets in Houston and Dallas in the milk war because farmers could not get enough to pay for bringing it to them and they decided to throw it away rather than let the middlemen get it. Can you figure a situation where the Legislature might be called on to regulate the price of milk and bread?

Thompson: Yes, you might be called on to do that.

Purl: That is all.

Woodul: Mr. Chairman, they want Colonel Thompson in the House of Representatives when we get through with him here.

DeBerry: If I remember correctly, in your testimony this morning or sometime during the day, you said that it was your information that only about 20% of the oil recoverable was taken out in some of the West Texas fields, didn't you?

Thompson: Yes. Ranger for one.

DeBerry: Well, if those figures be correct, is that other 80% waste?

Thompson: It is non-recoverable because of wasteful methods in letting the gas escape and the oil pressure go off; it fixed it so it is impossible to ever bring it to the surface.

DeBerry: Why do you say it is impossible to get that oil?

Thompson: In the light of our increasingly scientific methods there may be some new method worked out. There may be some new invention to show us how but in the light of science as we have it today, it is impossible. The scientists say that is true.

DeBerry: It depends on those saying it— Do they all?

Thompson: I should say many.

DeBerry: Many disinterested geologist say that nature will take care of the future—that it has taken care of the situation now and will do the same thing again in time.

Thompson: Yes, in a million years perhaps.

DeBerry: They are not hired by oil companies. But not twenty or twenty-five years ago about what depth was it thought possible to go after oil successfully?

Thompson: About 2500 or 3000.

DeBerry: They can go much deeper successfully now, can't they?

Thompson: They have been able to do that for a number of years.

DeBerry: They have gradually gotten so they could go much deeper successfully due to more information and knowledge?

Thompson: Not perceptibly.

DeBerry: You don't mean to say that they cannot go deeper perceptibly than they could twenty or thirty years ago?

Thompson: No, I don't mean that. They have better drilling tools and equipment but you get below 5000 feet and you have to have high grade oil and lots of it for it to pay.

DeBerry: Yes, I understand that. Due to our present type of machinery don't we have various fields or pools that were exhausted and due to science we have been able to go to a deeper strata that is as good or better than the original field?

Thompson: I don't know about that. We have gone deeper.

DeBerry: I don't want to be technical—Is it not probable that they may be able to do that?

Thompson: Not for the age we are in.

DeBerry: We will bore deeper and probably we will find another reservoir of oil; is that highly probable?

Thompson: It is possible; I don't know about the probability.

DeBerry: Just as probable that we found one under the other this time, wouldn't it be?

Thompson: I think we have already found that reservoir. Nothing is as probable as a certainty.

DeBerry: If during the course of time nature in its work reassembles this 80% of the oil so it can be gotton out and man in time develops dfiferent types of machinery and got it, would that be waste?

Thompson: It would be lost to us today, Senator.

DeBerry: The reason I was asking that question is because I have read a little bit of it and studied geology a little when I went to school. So many do not think it was unrecoverable just because we did not catch it then. Other kinds of machinery might get it. That is the reason I brought that testimony out, because I don't think it is gone.

Thompson: I hope it isn't.

DeBerry: I don't think it is nearly as lost as such things as timber or soil we have let get away and not more so—I think less of it will get away than any other one thing—Now I am going back to my other argument a little while. If we could pass a statute that incidental to its operation cotton prices could be stabilized at 20c, do you think these people owning interests in oil would be satisfied to go out into a cut throat condition of supply and demand and depend on us cotton fellows to let enough sift through of our 20c cotton so that they would be just as well off as we?

Thompson: That is a pretty hard question to answer.

DeBerry: It sure is.

Thompson: I don't know what they would do. I would like to see 20c cotton.

DeBerry: You argue that if oil is helped, we people that raise cotton will get enough help due to the increased price of crude oil to pay us for what we are out.

Thompson: No, I said that unless those industries can be helped one by one, none ever will recover.

DeBerry: Until the cotton industry does recover, doesn't it pay out more that it gets in contributing to keeping the price of oil up?

Thompson: I suppose that is true.

DeBerry: Without a doubt. Did you ever consider about how many employees would be on the public payroll if we controlled the price of crude and the price of gasoline and controlled the supply of wheat and price of bread and the supply of cotton and the price of its products?

Thompson: About half of them. That would cut down production and the other half could raise enough to make money out of it.

DeBerry: You are proving to your satisfaction that you can lift yourself up by your own boot straps.

Thompson: Yes, if you have somebody to help you and he will help hard enough.

DeBerry: Could he lift you very far and lift himself at the same time?

Rawlings: Those are extraneous matters; let's get back and stay with the bill, please.

DeBerry: That is all.

Rawlings: Anybody else want to ask questions?

DeBerry: Mr. Chairman, I don't want to be in the light of taking up too much time and want to apologize to the Committee. There is a lot more in the bill than taking care of those interested in crude oil and I don't particularly appreciate being told I am off the subject.

Rawlings: Would you care to ask any further questions at this time?

DeBerry: No, I don't care to.

Purl: I think I can ask one question that will save bringing in a witness later on.

Rawlings: All right.

Purl: Since the Three Judge Court has ruled that this bill or this law is valid, has the Railroad Commission held any hearing and taken any action pertaining to the bill?

Thompson: We called a hearing immediately, Senator, for Thursday morning.

Purl: How soon after the Three Judge Court ruling?

Thompson: The very day we heard the news because we knew we would have to take some action.

Purl: You called a meeting right away?

Thompson: Yes.

Purl: What happened?

Thompson: I delineated that in the beginning. We called the meeting and recessed it pending the pleasure of the Legislature. We have the meeting on tap to do what you tell us to do.

Purl: If this Legislature should strike out market demand, is there anything else in the bill that should be passed—or if the Legislature, in its foolishness or wisdom should strike out economic waste and market demand is there anything else that should be passed?

Thompson: That is the only thing in our way.

Purl: There is nothing else in the bill except that?

Thompson: That is all.

Stevenson: You have no objection to the restoration of the 100,000 barrel proposition?

Thompson: No, I have no objection.

Stevenson: In the last session or the regular session of the Legislature, an effort was made to create a new Railroad Commission and the argument was made that the Railroad Commission, by virtue of the duties now on them had all they could do and we needed a separate Commission. Regardless of the bill we pass, do you see anything by virtue in leaving market demand in this bill as an added duty that would cause you to think that we should have a separate Commission?

Thompson: It isn't an added duty.

Stevenson: Well, if it was.

Thompson: There is no need for an additional Commission. We would have less instead of more to handle.

Rawlings: Is that all?

Stevenson: Yes.

Rawlings: The law that we passed in the last special oil session was based entirely on actual physical waste. Now then if every well in the East Texas field is permitted to produce to the point they can without any physical waste, some of them might produce more than 1000 or 2000 barrels and not risk the safety of that well; is that not true? Disregarding any market demand or economic waste.

Thompson: We have not considered market demand.

Rawlings: We will leave that out. If it was possible and you had the time to test every well, some would produce various amounts according to their respective abilities?

Thompson: You understand that they must all be opened up simultaneously?

Rawlings: No, I am not including that in my question.

Thompson: But you must to make it clearly cognizant of the fact that a test must be a test on the pool and let them all run at one time; otherwise they affect each other.

Rawlings: Assuming that the test has been made simultaneously or otherwise and the maximum production of that well has been allowed without any physical waste as defined by this statute, then what would be the effect on the pool in East Texas of letting them each produce their respective amount?

Thompson: Well I don't know. It would have to be done before anyone could tell.

Rawlings: Is it not a fact that one well may have the advantage of being in a bigger pool and another in a smaller?

Thompson: No, it is all one field, or pool.

Rawlings: Do you mean to say that every well in East Texas has the ability to produce the same amount of oil?

Thompson: I mean this; if you let the East Texas field produce at an even amount, some of those wells, which if allowed to be opened up would be killed in two weeks time, will be kept producing for a long, long time and will not hurt the others.

Rawlings: Is it not a fact that some of the wells over there are capable of producing more than others without committing any form of waste as defined in the present law?

Thompson: I think not.

Rawlings: You think every well has the same ability and every well must be held down to 40 or 50 barrels or whatever figure you arrive at and that most of them can produce in excess of that without committing waste?

Thompson: I will explain that by this. The water comes in, and these wells situated nearest the water are the first to die out and those that could produce more are fartherest from the water and as the water encroachment drives to the west, as that water approaches, it will drown out the least desirable wells. Those that will get the greatest production will have it under this plan just the same and the last well would be the one fartherest away from the water and will be producing years after the others are gone.

Rawlings: In what direction is the water pressure driven?

Thompson: I think it is east to west.

Rawlings: It is west to east, isn't it?

Thompson: I could tell you from a map.

Rawlings: It is driven from west to east. The water is behind this oil and is pushing it toward the other extreme of the field?

Thompson: It is water driven.

Rawlings: That is what I say. As it goes on, the wells on the western edge of the pool give out first?

Thompson: Yes.

Rawlings: The wells sitting on the eastern side, which would be a shallow pool, will continue to produce for a long time at 40 barrels a well while the wells in the deep part of the pool are getting salt water?

Thompson: I don't believe I quite understand. I would rather you get a technical man on the stand.

Rawlings: By holding everybody down to 40 barrels a well you deprive a man of the natural advantage, if he would ordinarily have a gusher, and he takes out 40 barrels and the marginal wells take out 40 barrels and as the water drowns out the gusher, the marginal well continue to take out 40 barrels a day while the man with the gusher—

Thompson: You disregard the reservoir pressure. The gusher of one man makes the well of the other possible.

Rawlings: Do you say that it is impractical or impossible?

Thompson: It is not practical. It is very hard to understand all those technical points of it, but you can't let one well produce three times as much as the other without affecting the other.

Rawlings: It comes to my mind frequently that if we add to the physical waste with the feature of market demand limiting production that that is the end of the independent oil men and they cannot get enough oil to operate refineries even.

Thompson: I do not think that is true; because under the present condition as I outlined it a while ago or under the present condition the major companies would not benefit—they would fill their storage tanks and the best of storage shows from 3 to 5 per cent depreciation, the first year. At best storage is wasteful. The little fellow would never have a market to sell what oil he has and this bill protects the indenpendent oil man.

Rawlings: In your opinion under this bill the Railroad Commission will have the authority to protect the small producers?

Thompson: Yes.

Rawlings: Do you think that the adding of the market demand that bill will inure to the benefit of the independent as well as the major company?

Thompson: I think independent operator more than larger; as it is now we are solely at the mercy of the big company.

Purl: You think that will help the little man permanently or temporarily.

Thompson: Permanently.

Purl: Do you think it will increase oil refineries all over Texas as a permanent proposition?

Senator Rawlings: Colonel Thompson, you will now be excused and we want to thank you very much for your time and patience in appearing before this Committee and testifying.

Colonel Thompson: I consider it a rare privilege to come and talk to you.

Woodul: In my mind the greatest trouble we could have here is delay in passing this bill and we are sure willing to stay tonight and get through with this hearing.

Purl: I am willing to stay here tonight but it seems that since we worked last night and there will be one or two witnesses that will be here voluntarily Monday—it was impossible to get them on the phone and the Chairman assured me that if they would be here Monday, they would be heard.

Pollard: We agreed last night that—

Purl: It was understood that we would hold it until Saturday—

Rawlings: That is right.

Purl: I haven't run off and have been here the whole time. I don't want to take the responsibility of having them drive all night to get here. We have one here now and we can start to work right now.

Rawlings: I think your position is reasonable as we had no reason to assume that we would work all night and all day and arrange to stay here until Monday. I don't want anyone to be deprived of their right to appear here. We will recess for a few moments and then Mr. W. B. Harrell of Dallas will testify.

Mr. W. B. Harrell, representing the Associated Gasoline Consumers, testified:

Mr. Rawlings: Will you just make a statement, Mr. Harrell?

Mr. Harrell: Mr. Chairman, Members of the Committee, I am here representing an organization known as the Associated Gasoline Consumers. These gentlemen are farmers, merchants, businessmen in some ten or twelve counties in the State, none of them own any oil properties, none of them are producers or refiners, or distributors of gasoline. The association was organized some two months ago by a group of citizens who were neighbors and became interested in it and asked other friends and neighbors to come in, and they asked me to come before the Railroad Commission and represent them, as they never had been. This organization is not for the purpose of this Legislature—as far as I am concerned. I do not represent any oil companies, refineries or oil station people. I have never appeared before the Railroad Commission for any purpose. I have never been in court where orders or rules of this like was in question. I am here, as I stated, in behalf of this organization and for every one who buys and consumes gasoline. In studying the thing to discuss with you, and I realize I am talking to lawyers and am not going to get out of my place, and if I should I would appreciate you calling my attention to it. We have, of course, a law with reference to the conservation of natural resources. Fundamentally I do not believe any man is in favor of the government taking over and running his business. The people who have bought the lands or who own the lands in the beginning are entitled to this oil that is under it. That is their property and if a man has gone and invested his money in that property he is entitled to the benefits derived from the products both to himself and to leave to his children. The public gets an interest in it I understand because the Constitution says that the State has the right to conserve its natural resources. With that power given by the Constitution the Legislature enacted our conservation law with reference to oil and gas and other minerals. That law says in substance that oil shall not be produced so as to commit waste, and that the agent of the State, for the purpose of enforcing this law, should be the Railroad Commission, and they should have the right to enact rules and regulations for the purpose of preventing physical waste, and they shall not

limit production to equal market demand. I call your particular attention to this because I want to refer to it again in consideration of the court's opinion.

Production shall not be limited to equal market demand. No law shall prevent the storage of gasoline except to prevent waste. Now, we thought to start with, doesn't the Railroad Commission have sufficient power to protect the public in this man's private property? They have the right to say they shall not waste it. They have the right under the law as I read it to consider demand, if you will permit me to change the word "demand" or "market demand" and use the word "public necessity," then they have the right to consider demand. They cannot prevent storage, and Judge Terrell told you here last night in speaking of some man's definition of what would be market demand under the new law he understood that some man said that amount of production which would be sufficient to satisfy consumption plus a reasonable amount in storage to meet the consumption. If that is true, it is market demand—they have all that power now under the present Legislature. They shall not consider production equal to market demand.

Now, I think the decision of the Three Judge Court, which seems to have started all this trouble, has been very badly misinterpreted, it is very badly misunderstood, and if you will permit me to take some of the excerpts along with you, perhaps you have not had it all called to your attention. I am reading now from the opinion of the three Judges, Hutcheson, Grubb and Bryant, in the case pending in the District Court of the United States for the Eastern District of Texas, styled Peoples Petroleum Producers, Inc., Lon A. Smith and other cases, being Nos. 386, 392, 393, 394, 395, 408 and 432, and states that others were considered along with it on the same record. The court said:

"The allowable for East Texas is arbitrarily apportioned as before equally per well among the more than eight thousand producing wells in that field, in entire disregard of the differences as to each well, in productive capacity, situation on the structure, thickness and character as to richness and yield of the underlying and proximity to water."

As I understand it a man does not have to be a geologist or an expert to know that in any oil field the size of East Texas from 3½ to 5 miles wide and 40 miles long that every man on the surface of that pool cannot have the same amount of oil under his land. It is an early principle, and we all believe in it I am sure, that the man who owns land is entitled to the land and all that is beneath it and above it; he is entitled to bore on his land to discover oil, if he finds oil he is entitled to take it out. Now 40 barrels per day for 8000 wells in that field is not equal.

I will read you again from the opinion:

"Amended complaints were filed against the orders, in which persisting in the claim made on the former hearing that by fixing a top allowable apportioning it equally on a per well basis, in disregard of the differences in capacity and in field location of the wells, and of the grossly inequitable result of such apportionment, they neither are nor were intended to be conservation orders to prevent physical waste of natural resources, but economic-orders to keep the supply of Texas crude oil within the compass of the existing demand for it, plaintiffs again asserted them to be invalid, as an exertion of power forbidden by statute to the Commission, or, if generally within the authorization as such an excessive and unreasonable exercise of the power they purport to execute, that transcending public necessity, they assume the character of a mere arbitrary fiat."

The contention of the plaintiffs named was among others, but in this paragraph I have just read these rules were not conservation rules in that they transcended public necessity.

I will read you further:

"Upon the issues thus joined, plaintiffs and defendants offered a mass of testimony, both fact and opinion, as to the nature, character and extent of the field; of the oil bearing sands, the edge and bottom water; the gas free and in solution; whether the oil comes to the wells water driven or gas borne; the reservoir content; its possible and probable yield, and the best methods to obtain the largest yield; the causes of waste, and methods to prevent it,

and how those are affected by present and proposed methods of regulation; as to field conditions generally and as regards plaintiffs' wells; the relation between plaintiffs' wells and other wells in the field; and the relation which the Commission's orders bear to the prevention of waste in and ultimate recovery from the field generally and from plaintiff's wells."

That was the issue and that was the testimony, considering the location of the wells and all the circumstances surrounding location of field, character of sand, and all the other issues that were made to determine whether or not the rules and regulations were equitable and within the power that had been given the commission by the law. Now they say, in discussing this opinion— I have heard it said and heard it here, that we now have a proration laws, that the thing is just wide open. If the Railroad Commission has no right any longer to prorate, I say to you, and want to impress it upon you if you will in reading this opinion bear in mind: that the court has not disturbed the law, the court has not disturbed the power of the Railroad Commission, but enacted rules and regulations to permit each man to take what he is entitled to so long only as it does not waste the field. They can permit it to be taken and stored. The court says:

"We have repeatedly, and without varying, held that the State may, in the interest of the conservation of its natural resources provide by legislation within constitutional limits for the regulation of the drilling for, the production and the marketing of, oil to prevent waste; that it may constitute the Commission statutory agent of the State, and may delegate to it authority to make within the limits of the grant of power just and equitable rules and regulations to effect these ends (citing some authorities), we carefully examined the statutory provisions against waste contained in the present Statutes, which are set out in a note to that opinion, and found nothing in them which contemplated, required or permitted either unreasonable or unjust restrictions upon production. We found upon the contrary that while allowing the Commission to make orders prorating production from a pool if necessary to prevent waste, they in terms required the apportionment to be made among the wells as the facts justly and equitably required. We accordingly found the Statutes valid against attack. It remains only to inquire whether, tested by the principles announced in those cases, and particularly in the last case referred to, a case is made out here entitling plaintiffs to relief on the ground that the orders are not within the powers granted to the Commission, because contrary to the statutory prohibition, they are designed and effective to prevent economic waste by limiting the production of oil to equal the existing market demand, or though designed to prevent physical waste they operate unjustly and inequitably, because discriminatory or excessively, because beyond what the public necessity requires."

Harrell: As I understand it, also the Railroad Commission has that power and it also says they have the power to regulate production from the East Texas field and all fields provided its rules and regulations are equitable and fair and permit each man to get what he is justly, ratably, and equitably entitled to and he can take so long as he does not, under those restrictions, commit waste and he can take so long as the public necessity requires it to be taken. But the Railroad Commission limit it to equal market demand. I cannot see a clear distinction between taking as public necessity demands and taking equally and ratably and equitably from taking to equal market demand. My interest in this case now— Gentlemen, I am not giving you my opinion but what the facts were or what I think the evidence established. The Railroad Commission was a party to this suit; the Railroad Commission was represented by its capable attorneys and had its experts. Those same men that went out into the field and came before the Railroad Commission and told the Railroad Commission what they thought was waste were before this court and testified. Now this court says: "All agree that close spacing of wells and some system of ratable production which will best utilize the propulsive and lifting energy stored there will give the greatest yield." There is no question that they all agreed to that. "All agree that the

rules enforced by the Commission require wide spacing, prevent ratable taking, and have the immediate, obvious and plaintiffs say the sole tendency and effect of restricting production in that field." Here I will read you again. "The potential capacity of the eight thousand or more wells in the field varies from two hundred barrels and less per day in some to thirty thousand barrels in others. The wells having the largest potential capacity will naturally, if left alone produce the greatest amount of oil. If the field is produced in an orderly manner, and as near ratably as may be, each person withdrawing the oil underlying his land, and that which can be brought to his wells by proper production methods, each well will produce in accordance with the advantage of its situation. Whereas, if the present condition is maintained plaintiffs will lose oil to which they are entitled to the wells on the east and long prior to the exhaustion of the oil and gas in the reservoir, the rise in the water will saturate plaintiffs wells, drowning them out, and the sands underlying to the east will produce the oil which has been driven from plaintiffs, lands to them. The evidence is conclusive—" Here the Railroad Commission had its witnesses and lawyers—" the evidence is conclusive that the Commission has never made experiments, tests or inquiries to ascertain the greatest amount of oil which each producer may take from his wells without injury to the field, and that it has never encouraged nor indeed permitted such inquiry or test as, in carrying out the legislative policy of supervising production to prevent physical waste, it ought to have done. On the contrary, it has prevented such tests." Now the Railroad Commission tell you gentlemen that everything is in an awful turmoil down there. That the people are mad and just about to go into a riot, and that something had to be done. Suppose you had your property to which you were justly and equitably entitled to and the Railroad Commission was put over your property and as the court finds in this case, they ignored your rights and confiscated your property, you would be disturbed too and this oil belongs to those people and the Railroad Commission only has the right to see that they don't waste it. And they must see that each man—they should see that each man gets what he is justly and equitably entitled to. Quoting again: "It is further conclusive that the allowable has always been fixed, either finally or tentatively, at the figure which will keep production in Texas within the amount fixed by agreement of the Oil States Advisory Committee and those working with it—" The law said they shall fix the allowable to prevent waste. . . "or as one of the witnesses, Roeser, put it 'the amount the market can absorb,' and it has been only to support this fixation that opinion evidence has been marshalled post hoc in support of the claim that the allowable as fixed, will prevent waste. This evidence in the form of speculative theories changing from time to time, and vigorously challenged as unsound, does not in our opinion give the claim even the appearance of verisimilitude."

Gentlemen, I have read enough of this thing, I think, with possibly one exception, to carry to you the thought that this opinion does not disrupt proration. This opinion does not prevent the Railroad Commission from passing rules and regulations to prevent waste. This opinion does not prevent the Railroad Commission from considering the necessity of the people. Because the market demand or economic waste are not in, they have the right to consider the necessities of the people because the necessities of the people are the things that give the government the right to lay its hand on these people's business. I think the opinion gives the Railroad Commission all the power that they ought to have. I think that it upholds the right to prorate and the right to consider everything that the people and the government ought to have considered, that of physical waste and the necessities of the people. When you get beyond that, then the government is taking charge of that business and they ought not to do that any more than they should take charge of your business. Other people have to work out their troubles and problems; why should the government be asked to come and lend its aid and arm that the oil business might have a monopoly, and I will talk about the monoply in a minute.

Now they want a new law, they want the legal right now to consider market demand. They do not ask that market demand and necessities be considered, but they ask that market demand control the production.

Now, what is market demand? Is that the amount of oil that the people need plus the reasonable amount in storage to take care of any emergency or necessity that might commonly arise? If that is all market demand is we need no more law, we have it, and we have the court's opinion saying it is the law and what the Railroad Commission can do under it. What protects the gasoline user from a monopoly and a trust? It is the independent oil men, the independent refiner, the independent gas station. If you take competition out of it it is a trust, if you destroy the independent producer and the small refiner and the independent station men you have then created a trust. Suppose you have this law they are now asking you to pass, and suppose the Shell and Standard fix the price in East Texas of crude at $1.10 as it is today, the oil industry or the people who engage in it, who have production, refinery and the gasoline station man takes care of himself any way it goes, if the price of the crude is high he gets it on increase in refined product. He protects himself either way it goes, up or down, but what is the independent man to do, he does not have station, he may not have production, if so, small amount, suppose he is running a refinery in East Texas and the situation happens like this law, and the price of crude is fixed in East Texas at $1.10; prior to the East Texas field they were importing from the Venezuela field 300,000 barrels of crude oil per day, and you know I suppose it is not farther from Venezuela to the Atlantic Seaboard than to Houston. I get this from the people in the industry. I ask them how much it cost to produce oil, they said about 12 cents per barrel. Let's allow him 14 cents. These gentlemen said it would take 20 cents to transport it to the Atlantic Seaport, 21 cents tariff and 14 cents— for 60 cents the people who own the foreign oil can put crude oil at the Atlantic Seaport. They put the price at $1.10 in East Texas. They imported when the East Texas field came in and was opened, they reduced their imports down to about 35,000 barrels per day, and now they are importing about 150,000 barrels per day. Now this law goes into effect; they post the price in East Texas at $1.10. They import 300,000 barrels or more per day and it reaches the Atlantic seaport at 60 cents. What do they do? They refine their 60 cent oil and put a price on gasoline in keeping with $1.10 oil. What becomes of the independent producer? He cannot find a market for his oil because the market is $1.10 in East Texas and they say we don't need it, we have all we need, we don't need the $1.10 oil. The independent producer sits there with no market for his oil. Can the independent operator make the quotation for the price of gasoline? He has no oil and sits there. He calls on the Railroad Commission and what do they do? They say we are limited to the production to meet market demand and there is not any market demand; they say they have all the gasoline—the price is $1.10, there is no market, therefore, you cannot produce it. What becomes of the independent producer? Suppose that condition did exist, and suppose I was an independent producer and suppose you had an independent refinery and suppose you didn't want to pay the $1.10 for the oil and suppose you came to me and asked me what I would sell him oil for and I said I would be glad to get 60 cents for it. All right you cannot produce it unless there is a market for it. Here is a man wants to buy it. You pay him $1.10 or you cannot produce it. Now then will that happen or not? I say to you it will destroy the independent producer. And what becomes of the independent refiner? He has no storage, no production. He is getting foreign oil to manufacture gasoline, they are importing it at 60 cents. That is what is to become of the independent refiner—he is gone.

Gentlemen, in my judgment this thing should be left open as near as it can so that the man who owns the property over there whether he is individual or independent, so he can get the benefit of his property just like you would like to do if it was yours. This is the only way I know of that the gasoline consumer will have the privilege of buying his gasoline upon quotation market. You are lawyers, you will be able to say whether this law will be constitutional. I don't believe with our constitutional provisions with reference to trusts and monopolies that the law will ever stand because certainly if they are permitted to legislate so as to effect the supply necessarily it does not take an economist. Gentlemen, I thank you.

Poage: I have a gentleman from

Baylor University here who cannot be here again and would like for him to appear.

Rawlings: If it suits your pleasure, we will ask this witness (Mr. Harrell) to step aside and accommodate this other witness.

Harrell: Yes, I can be here Monday.

Mr. T. E. McDonald, professor, Baylor Law School testified as follows:

Rawlings: You may make any such statement as you desire to make. Use your own words and make your statement informally.

McDonald: Gentlemen of the Senate, the Republicans started, I think, the habit of artificial price stimulation upon the request and by the advice of certain groups. That is the basis of the protective tariff system. To my mind, it has tendencies that are dangerous as one industrial group may have the price of its commodity stimulated by some sort of artificial means, by those means whatever they may, and the rank and file do not have that advantage; that is a special privilege. Now this is what I mean. If the price of oil and gasoline and petroleum products are out of proportion to the price of other things, we have a situation that should not exist. I believe, my lawyer friends and gentlemen of the Senate, that there is a case decided by the Supreme Court of the United States—I don't have a citation to it—it construed a statute passed by the Legislature of Tennessee to the effect that the state was without power actually to fix the price of commodities. So there is no top limit to this price. Any artificial boosting would have, it seems to me, or will create or grant a special privilege. It will be stepping beyond the legislative function of the Legislature of this State. I have just read, Gentlemen of the Senate, or have partially read a book written by the Honorable James M. Beck, former Postmaster General of the United States, entitled "Our Wonderland of Bureaus." He points out the present tendency by which step by step we have traveled in the direction of bureaucracy, the main evidence being that when we turn over a function to a bureau, regardless of the personnel of that bureau, regardless of how well trained or how wise or how good the personnel of that bureau in question may be, the tendency is to unite legislative, executive and judicial or at least judicial and executive functions in the same board or body. And that, according to the concepts of our fathers, was a violation of the spirit of liberty. Now this would be just, it seems to be, just adding just a little additional power in that direction. I should like to make this observation if I may, that there is a tendency for special groups to meet, to have mass meetings to pass resolutions, to memorialize the Legislature. And the great body of our ordinary citizens, unorganized, do not express themselves. My friends, I don't represent anybody. I just decided about fifteen minutes before I left that I was coming here. I had thought last week of coming but am just appearing in the capacity of a plain, ordinary citizen, to say this; that this Legislation is of interest and of vital importance not only to the oil industry but to the entire citizenry of this State. And I would like to point out the fact that in a sense it is economic waste of a vicious kind. To take out of the pocket of the plain, ordinary citizens by any sort of artificial stimulation and put it into the pockets of the special groups. I think that is economic waste too. I think we have some economic waste too when cotton is at about 7c or about 5½ or 6c, and that situation has come to exist because of this very tendency I think. I believe we can learn a great deal from a thing that took place in Russia when fighting in the World War. What is the Soviet? Nothing more than an industrial group, a labor group. We have the soviet tendency in this country without realizing it insofar as we have a tendency to turn over to these groups the function of legislation. An organization can create the impression that there is a demand for a special type of legislation, so I believe that the Railroad Commission has ample power, has ample authority to do all things necessary and proper to protect, to give reasonable protection to the oil industry in this State. He takes advantage of the first fair weather to see how he has drifted from his course. This Legislature is rather illustrative.

You lawyers are familiar with those cases which hold that in the absence of legislation each individual may let his own property waste. Now, of course, where there is a property that has certain elements of ownership in common with others a slightly different principle prevails as to the prevention of physical waste.

You will also note the different conceptions of ownership. There is one, I believe it was the Pennsylvania case that made the statement that oils and gas will bear a certain relationship. There are different exceptions of ownerships. I believe it is true that in this State, in the Daugherty case, in 105 Texas, the Supreme Court holds more or less to absolute ownership of oil and gas, at least it was owned in place. Being vested with that conception of absolute ownership in this State we have already deviated for enough from the course. There is the difficulty of definition, the difficulty of making application by defining market demand, the proceeding varies—I call your attention to the fact that it has a tendency to breed monopoly, I certainly think that is true, that it certainly has a tendency in that direction, and is, therefore, contrary to the spirit of our State constitution, which declares that monopoly is contrary to the principles of a free people.

We hear a great deal about the great pool in East Texas. If it were really a pool the law of gravitation would cause the production in each well to be approxmately the same unless I am misinformed. It is certainly not the fact down there, the potential production in each well is not the same.

In order to protect property rights the present law I think goes as far in my judgment as is warranted. This proposed measure would be just one more step in the direction of bureauracy; one more step in the direction of legal representation by organized groups; it would be one more step in the direction of inequality in the distribution of wealth because undoubtedly it would have a tendency to stimulate the price. It is just my opinion that it is a step in the wrong direction.

I appreciate having the opportunity to make these remarks, they have been wholly extraneous and I just spoke out of my heart.

Woodward: You said that if oil and gas prices are out of proportion to the prices of cotton, that a condition exists that should not exist?

McDonald: That is true.

Woodward: Well, to remedy that condition would you have the price of oil go down or the price of cotton go up?

McDonald: I would have the price of cotton go up but, Senator, I know that that last will go up only when the purchasing power of the people is increased and there will not—. The general purchasing power of the public will not be increased so long as the unequal distribution of wealth continues so anything that would have a tendency to create or enhance the unequal distribution of wealth just continues the steps in the wrong direction.

Woodward: Wouldn't it be your belief that in the present oil price there is an unequal distribution of wealth?

McDonald: Undoubtedly there is an unequal distribution in this sense; that the producer of oil gets a larger percentage of the net profit than he is entitled to—. I am basing my statement there upon the holding of the Three Judge Federal Court, which stated that prices had been boosted in a way, I believe, and therefore if they have been boosted, there is an artificial stimulation and I don't know of any artificial stimulation in the price of cotton. The protective tariff has operated in the opposite direction. They are operating in favor of low price cotton, and under the Three Judge Court, we have a situation that is operating in favor of higher priced oil.

Woodward: I want to ask this. Assuming as a fact that we have an East Texas oil field that could produce a million barrels of oil per day if unrestrained—

McDonald: Yes.

Woodward: The result of which would bring the price of oil to 10c per barrel. Assuming that under present conditions that field is controlled in such a way so that the price now is $1.00 per barrel, from which the State is receiving $16,000 per day as a tax, one-fourth of which goes to the public free schools of this State, now assuming that flush pro-

duction would reduce the price of oil to 10c a barrel and would reduce the State's revenue to $1600 a day, what would be your suggestion for the State of Texas, through its Legislature, to do in order to prevent the loss of revenue which would result, assuming that I have stated a true state of facts?

McDonald: I think that is a good question, Senator. I would suggest a change in the basis of taxation. From the percentage basis to the per barrel basis and I would suggest also that some incentive be supplied to the people of East Texas to help conserve their own oil by making this tax reasonably graduated; that is, make it 2c a barrel for the first 15 or 20 barrels and above that a certain additional amount and above that an additional amount, etc. In that case the more that was produced, the more revenue the State would get rather than less.

Woodward: Now your answer is not in response to my hypothesis or hypothetical case that assumed that oil would go to 10c a barrel.

McDonald: That was in response to that question, of course—

Woodward: Assuming for another hypothetical case that when oil goes to 10c a barrel that the independent producer, as we understand the term, could not profitably produce and distribute the product. Would you still say raise the tax?

McDonald: I would suggest, in the first place, in considering the problem that we view the industry as a whole and not just from the viewpoint of the producer. Let's consider the independent refiner as well as the independent producer. The basis of my thought a moment ago when I said that this law would have a tendency to encourage monopoly was only because it would tend to dry up the source of the independent refiners source of supply so I think when we consider that during this flush period more and more oil—. The independent refiner himself would be pretty pushed to take it all. It was my thought, Senator, if you will pardon this repetition, that they would be—. Of course, your question was originally based on loss of revenue to the State of Texas. I think it would answer that question all right to say that it would also supply the incentive for those people to get together and do something for themselves rather than depend on the government altogether. When we step into the position of balancing the scales of exact justice further than that, of course, we would have a problem but certainly it would not lower the revenue of the State and I think that it would be a benefit to the independent refiner and at this time would discourage monopoly rather than encourage it and have a tendency toward conservation.

Woodward: You don't propose as a governmental function or governmental policy the regulation of the production of oil so as to prevent physical waste?

McDonald: No, I don't oppose this function when limited to a commodity of fugitive nature.

Woodward: Such as oil is?

McDonald: Such as oil and gas, but by physical waste I mean just that; I can grasp and understand any physical waste which will not be too theoretical to be employed; real physical waste partly, I think, is within the proper governmental function. And of course you may have in mind the storage problem. That would be a good question to follow up.

Woodward: I had in mind the theory advanced by some geologists that flush production would bring about water encroachment and thereby destroy the ultimate recovery or full recovery of oil. I don't know whether that is a good theory or not.

McDonald: I have attempted, Senator, to teach the course in oil and gas law at Baylor University the last five years and have done my best to find out the facts concerning that.

Woodward: Do you subscribe to that theory?

McDonald: Generally, I do not, Senator, because of the fact that proration is a thing of comparatively recent invention and began with the Tampico field, and I don't think the geologists are in full agreement with reference to that. We have had some splendid fields, with no trouble, long before proration was thought of. Take the example of the Pennsylvania fields which have been producing for fifty years and have not been pumped dry. To be

sure, they may have a certain geological formation that except in such fields that would not be true. But I think we have to consider this, that in the East Texas field the geologists were unable to tell you that there was oil there; that it was a wildcat operator, I believe, who discovered the oil and yet when the proration law came up, they seemed perfectly competent to tell you the lay of the geological formations underground.

Woodward: You know it is said that someone asked the question what was the difference between a geologist and an atheist. He said the atheist believed there was no such thing as God and that God believed there was no such thing as a geologist.

McDonald: Yes.

Woodward: One more question, and I am through. Do I understand it to be your theory of government that governmental agencies should not deal with a matter of price fixing or regulating price?

McDonald: Senator, of course, as a lawyer you are very familiar with the public utility concept. The public utility concept, of course, is that certain industries do become charged with a public interest and that after becoming charged with such public interest, they then become the duty of the officials to use with discretion and duty to save for reasonable competition. That is a concept from the common law.

Woodward: I think that except for—

McDonald: With that exception; I of course see that there might be a little danger—With that exception I would say that price fixing in a purely private industry is beyond the scope of government.

Woodward: When a business gets power enough where it is about as powerful as the government, it is about time for the government to get it under control.

McDonald: It is certainly a point of view. It is a good argument for the proposal that the oil industry has become charged with a public interest but the Supreme Court has held that it has not become so charged with public interest so that the public utility concept would not apply. Therefore we cannot fix the top limit to which the prices will soar but the oil industry is now asking for you to boost it from below even though we are unable to pull it from above.

Woodward: That is all.

Rawlings: Senator Oneal, do you have any questions?

Oneal: Yes, I do.

Rawlings: You may proceed.

Oneal: Mr. McDonald, I understood from your statement to Senator Woodward earlier in his argument that you were somewhat afraid for the independent refineries by reason of the operation of this law?

McDonald: Only Senator from certain observations I have made.

Oneal: This heavy tax, what will be the result of that upon the independent producer? You have to have the independent producer before you can have your independent refineries?

McDonald: Independent producer is a necessity, yes.

Oneal: In order to have an independent refinery?

McDonald: Yes.

Oneal: If you tax an industry which is already hard pressed the tendency will be to drive him out of business and concentrate the oil production into the hands of the larger companies?

McDonald: It has proven true, Senator, that the benefit is to the larger person, but it happens at present that most of the independent supplies are in the hands of the majors. There is just a little oil in East Texas of which it is not true. Of course, this tax would have something to do in that direction, but the tax would be imposed upon all equally.

Oneal: What do you mean by all equally?

McDonald: I mean the same rate per barrel—might make it higher tax in the hope that would discourage production. This suggestion would operate in connection also with the power of the Railroad Commission as at present not to permit actual physical waste.

Oneal: While the Railroad Commission and the Federal Court do not agree what physical waste is—but coming back to the tax, what would you suggest as your idea of the tax on the minimum production?

McDonald: On the commercial basis of this proposition I am unable

to give any suggestion. What is the present tax?

Oneal: Two cents per barrel.

McDonald: I would say two cents up to 50 cents and then you would graduate. This is only general suggestion, between 50 cents and $1.00 I would say.

Oneal: Now would you put it by the well or by the lease or how?

McDonald: That, of course, is a problem. We would have to follow out some method; we would take the Federal Court's decision, however.

Oneal: The Federal Court's decision has nothing to do with taxes.

McDonald: I understand that the present potential should be considered, the capacity of each well, whatever that system should be, and you understand I am not a geologist and when we get into the actual ground work with respect to that conception of private property it would not tend to delay the whole field.

Oneal: I understand you would let it on the production of each producer?

McDonald: Each producer probably.

Oneal: For instance, the Texas Company, its production in Texas is 2 cents for first 50 barrels and on up to its entire production.

McDonald: Give it first a minimum of 50 barrels—I would have a fair method of drilling.

Oneal: Mr. McDonald, in view of the fact that the Governor once or twice sent up requests that the tax be raised on oil produced in this State—I would like to have your ideas as to this. Just give us your method.

McDonald: Of course, when we get to the details of working that out I have had in mind that we could have a certain minimum per well provided that not more than a certain amount could be produced in a given area.

Oneal: What do you mean by area? Large or small?

McDonald: Generally speaking the acreage basis.

Oneal: Acreage basis for wells or for taxation purposes?

McDonald: For production. Producing it would be so much per well provided that not more than a certain amount is produced from a given area, then some additional tax.

Oneal: Well, suppose that area is owned by different operators and other companies producing large amount would you estimate it higher?

McDonald: You would have to consider well spacing—

Oneal: Whether the spacing was by different operators—

McDonald: I believe there is some rule of the Railroad Commission as to spacing wells. I suppose that rule will take care of that situation.

Oneal: You don't give much credence to testimony of geologists?

McDonald: I don't pass judgment on geologists. Senator Woodward asked this theory, with reference to salt water, I said that I didn't believe that that was thoroughly established to justify our tampering with it, because of the fact there seems to be no evidence of any such a thing in Pennsylvania wells, in Long Beach fields near California, the Spindletop, and I did make this remark, I did not intend to be unkind to geologists, but I did call attention to the fact that they did not seem to know oil in East Texas and that led me to think as I did.

Oneal: Do you think now that 8000 barrels of oil scattered over that area —the geologists tell about structure underneath.

McDonald: Per cent of oil but not salt water. I understand that geologists are not the same kind of folks. I understand there are two schools, each teaching different methods. It is the general observation that the wells that have not been prorated seem to get along as well as those that have, with one exception, the Tampico Well. Was the first proration order before or after Dr. Geo. E. Burk— I want to know whether it is existing and know that we are providing a germane idea generally speaking upon an American institution— it is contrary to the spirit of the thing. I believe that the idea of price fixing has been back of this idea all the time of proration, and we are venturing into a thing in which the evidence, the testimony will be given by experts in the employ of people who are able to pay them. In other words, this testimony of market demand— it is a thing almost impossible to define and will be defined on the testimony of individual experts largely in the employ of the larger companies.

Oneal: Do you believe in the Rail-

road Commission for the regulating of railroad rates and truck rates?

McDonald: The Railroad Commission renders definite a certain rate—

Oneal: Originally it was an experiment in government was it not?

McDonald: Yes, but it was only for the better provisions of a rule of civil law that had been known— I am not arguing against progress. It is just a question of what is progress? It is conceived on the idea of protecting the public and enforcing a well known right which the public had heard; before; Blackstone tells us about that right, it was well known.

Oneal: Did you hear Col. Thompson?

McDonald: I did not have the benefit of his testimony, I was here a short time before he finished. He assured us that he and the other members of the Railroad Commission had no idea of fixing price in any way and the Railroad Commission were not ever given authority to fix price or attempt to fix price.

Oneal: We all know Col. Thompson, we know that is true, but should we pass the law on the assurance of the personnel that that authority should be exercised? In other words, what would be the idea unless we expected it to be exercised?

McDonald: It is price abusing rather than price fixing.

Oneal: What is your present theory about it?

McDonald: This tax theory is receiving a great deal more emphasis than I intended.

Oneal: I can tell you why; there was a bill introduced here at the other session to have a graduated tax.

DeBerry: I raise the point of order that we are not discussing the tax bill.

Rawlings: I will say this. I think personally that we have spent enough time on that angle and it would be better to pass to the other features of the bill as it is more a matter of repetition of other evidence which I did permit over the objection of Senator Purl.

Oneal: One more question, please. Didn't your tax theory tend to boost the price?

McDonald: It would tend to boost the price just as a sales tax would tend to boost the price but here is the difference. The profit will go to the Federal Treasury rather than into the pockets of the oil companies. That is the difference between a sales tax and a tariff. It is time the American people saw the difference between paying out something and letting that money go into the State Treasury and paying it out to some special group that will tend to increase the unequal distribution of wealth. I believe, Senator, that it is true that many taxes will tend to increase the price under our present system of taxation. I think it is usually passed on to the consumer. That is perfectly true. But it is one thing to raise the price when it will go into the Public Treasury and it is another to raise the price that will go into the coffers of a combination.

Rawlings: Any other questions?

Berkeley: One brief question. Mr. McDonald, do you approve of the present law, the existing proration law under which we are now operating?

McDonald: Senator, I do. After some hesitation I have come to the conclusion that the present law is perhaps a wise and justified one.

Berkeley: This one question and I am through. It is your opinion then that the existing law is sufficient to properly protect the industry and the best interests of the people of Texas as it is now on the statute?

McDonald: That is my opinion.

Rawlings: Senator Poage, any questions?

Poage: Just this one. Is it your opinion that the present law is sufficient to protect the people and that the proposed law would have a practical effect of raising the price of the commodity which a majority of our people pay?

McDonald: That is true.

Poage: And beyond the practical effect that the working of the law would be subject to improper influences necessarily in that it would of necessity be administered through the testimony of interested parties?

McDonald: It would of necessity be administered through the testimony of interested parties and therefore would be objectionable for that reason.

Poage: And then finally and more important, that it would be objectionable because it would be protecting one group at the expense of other

groups and would be repugnant to all the principles of free government.

McDonald: It would be protecting a small well-organized interested group at the expense of the general consuming public, unorganized and without any means really of expressing themselves. Yes, sir.

Poage: That is all.

Rawlings: Any questions, Senator Pollard?

Pollard: No, sir.

Rawlings: Senator Beck?

Beck: Mr. McDonald, have you had any practical experience in drilling oil wells?

McDonald: No, sir, I have not except just a very little.

Rawlings: Senator Martin?

Martin: Just one question. You answered Senator Berkeley's question and made the statement that you thought our present proration laws were sufficient to protect the interested people and the industry. You really have in mind to protect the interests of the people and let the industry take care of itself?

McDonald: I really meant that I had in mind what I consider to be the legislative function of government.

Martin: That is all.

Purl: I want to ask one question. Don't you think that a member of the Senate could with the same clearness and same logic introduce a bill to regulate the supply of milk and bread to market demand as he could oil and if we pass this oil bill on market demand, don't you think there would be a tendency to bring other matters of alleged importance here for us to legislate on?

McDonald: Yes. In general that would be true, Senator. There might be a slight difference between the regulation of fugacious oil and gas because of fugacious character, and therefore the different adjoining owners have some common interest, but it would be just as logical—it would be stretching the Constitution in that direction, so to speak, and it would be just a step, just one more step not only in the direction of bureaucracy but in the direction of state socialism.

Purl: Is it your opinion that if you start passing laws of this kind and character, that we will open up a broad matter and everyone that feels the weight of the merchandising hazards or anything else will want us to pass some law to save them?

McDonald: It is my opinion that it will have that tendency.

Purl: That is one reason you object to this bill?

McDonald: Yes.

DeBerry: The question has been asked several times trying to compare this situation with legislation to regulate railroads?

McDonald: Yes.

DeBerry: Was the demand that came in Texas for the regulation of railroads—did it come from the railroads or the people?

McDonald: It came from the people and not from the railroads.

DeBerry: Is the demand as you visualize it here by this bill from those interested peculiarly in the price of crude oil or from the general rank and file of the people?

McDonald: It is my opinion, Senator, that the demand came not from the rank and file of the people but from those interested in the price.

DeBerry: There were hundreds of men here interested directly and indirectly in the price of crude oil and scarcely any came here of the rank and file that is selling in an unprotected market, the wheat men, the cotton farmer, the stock raiser and why weren't they here? Wouldn't that indicate to you that this bill was passed by the special groups over the rank and file?

McDonald: It would indicate that it was being sponsored, at least, by the special groups to give what seems to me to be special privileges.

DeBerry: That seems to be too plain, as plain as can be. You stated in your testimony what this meant with respect to protective tariffs?

McDonald: Yes.

DeBerry: Do you think that protective tariff, carried to the point it is now carried, is fundamentally sound at this time?

McDonald: No, I don't think it is fundamentally sound. I think it causes reactions that are detrimental to the general public.

DeBerry: Don't you think the same thing or almost will result in boosting the price of crude oil and the refined product?

McDonald: The same thing would occur, in my opinion, because it is a closer analogy between the principle

of protective tariff and between this price boosting than would appear on the surface. They are both demands for the protection of special groups and have for their purpose the boosting of the price above what the normal rule of supply and demand would give at the expense of the purchasing public.

DeBerry: The law would increase the price of crude and affect the industry, but the money comes from the purchasers in the State, doesn't it?

McDonald: Yes. And in my opinion, the purchasing power will not be increased. I think the dollar of the consumer will purchase as much as the coffers of the oil companies.

DeBerry: Senator Purl asked if you did not think that it would encourage the producer and those interested in the wheat industry to ask for legislation of this type and your answer was yes. Wouldn't it naturally follow that it would?

McDonald: That was my answer and that is my opinion; that it would be just one more step toward that type of legislation.

DeBerry: Wouldn't it—

McDonald: It would tend to.

DeBerry: Wouldn't it necessarily force the wheat farmer to ask for help?

McDonald: He would make the argument and so would the cotton farmer. They would think that a special privilege has been given to the oil industry and therefore it is but fair and fitting and proper that we should have this and they would come back and the Legislature would see the fairness of that contention and would take the additional step.

DeBerry: Which we did here a short time back. If we had succeeded in boosting the price of cotton by the cotton acreage law, the wheat man would have had the right to ask the same kind of law and the livestock man too for a boost so that they would all get boosts all around.

McDonald: There would not be any boost.

DeBerry: If that got started, wouldn't you have quite a large public payroll?

McDonald: You would have a large public payroll.

DeBerry: At whose expense?

McDonald: At the public expense.

DeBeerry: That is all.

Rawlings: Senator Woodruff, did you wish to question the witness?

Woodruff: Yes.

Rawlings: You may proceed.

Woodruff: Mr. McDonald, I believe it is estimated that the shoe manufacturers of the country have an output per year of nine million pair of shoes, with the nation as a consumer of three million pair of shoes per year. Every year or two you hear of a new shoe manufacturer going into business. Is there any difference in the principle of prohibiting the production of oil to equal the market demand then to prohibit the manufacture of shoes to equal the market demand?

McDonald: There is no difference in my opinion so far as the logic is concerned. So far as the authority of this Legislature to act, of course, we have the historical background. We are dealing here with physical waste but it seems to me the logic is the same.

Woodruff: What was it in the Oklahoma case—discussed it?

McDonald: I have not studied the Oklahoma case as carefully as I always like to before I express a legal opinion. I read the case and know in general what it is, but I have not given it careful attention. There are some points that would have a tendency to make a similar law in this State unconstitutional when such a law in Oklahoma might be constitutional.

Woodruff: Are you aware that the American Bar Association has attacked the legality of the Sherman Anti-trust act?

McDonald: I believe that is true. They also attack the legality of a lot of other things. I do not think that just a convention such as that is calculated necessarily to express the most deliberate opinion of the bar, though I think it is true that they have done that.

Woodruff: Do you know also that the United States Chamber of Commerce is on record as favoring all of the legality of the Anti-trust Statutes so as to throw competition wide open in this country?

McDonald: I believe that is true, but I do not subscribe to the view. Chamber of Commerce resolutions are the easiest things in the world to get, and I would not admit that Chamber of Commerce resolutions

would necesarily be the soundest fundamentally.

Woodruff: Are you familiar with the theory under which the Soviet in Russia is operating?

McDonald: It is difficult to tell on just what theory it is operating. I have read most of the books of Maurice Hindus, who is an authority on the subject.

Woodruff: It is a collectivism is it not, pure and simple?

McDonald: It is collectivism as an organization and administered through labor groups controlled by the atheist party.

Woodruff: Is there any distinction in your mind between this bill and collectivism as practiced in Russia?

McDonald: I would say there is some difference, yes, but I would say it has a tendency toward collectivism.

Woodruff: Have you read the old conservation act of last year?

McDonald: Yes, I have read it—would have to refresh my mind.

Woodruff: Do you consider it possible for the Railroad Commission under the Act which is now in force and effect to write a workable practical order that would actually restrain or prevent physical waste?

McDonald: I think it is possible to write such an order, I don't think it possible to write an order that will be thoroughly satisfactory to the oil industry.

Woodruff: Have you read this bill pending?

McDonald: No—

Woodruff: As you understand the principles in this bill if the Railroad Commission cannot write an order that will prevent actual physical waste under the terms of the present law could they write one that would include market demand?

McDonald: The substance of your question is that if they cannot write an order that will prevent physical waste under the new law how can they control market demand. If they cannot prevent physical waste then how could they do the other, which is more difficult to define.

Rawlings: Any further questions by the members of the Committee? If not, Mr. McDonald you are excused and have the thanks of the Committee for appearing.

Pollard: Now, Mr. Chairman, I want to suggest that Judge Harrell is a very busy and capable lawyer, and is present now, and if any one wants to ask any questions, let them ask him so he won't have to stay over.

Rawlings: I think we decided awhile ago that after this witness finished we would recess until nine o'clock Monday morning, and I don't have the authority to change that arrangement.

By unanimous consent of the Committee the meeting was recessed until nine o'clock Monday morning.

State of Texas.
County of Travis.

We, Louise Kirk and Effie Redmond, reporting, do each hereby certify that the above and foregoing is a true and correct transcript of our notes made at the hearing held in Austin, Texas, by the Committee of the Whole, Senate, Forty-second Legislature, Fourth Called Session, commencing November 4, 1932 at 7:30 p. m., and ending November 5th at 6 p. m., said transcript being to the best of our skill and ability.

Witness our hands, at Austin, Texas, this the 23rd day of September, 1932.

LOUISE KIRK,
EFFIE REDMOND.

Subscribed and sworn to before me, a Notary Public in and for Travis County, Texas, on this the 23rd day of November, 1932.

ROSE MODROLL,
Notary Public in and for Travis County, Texas.

CHAMPLIN REFINING CO. V. CORPORATION COMMISSION OF STATE OF OKLAHOMA ET AL.

286 U. S. 210.

(Supreme Court Reporter, Vol. 52, page 559 ff.)

Mr. Justice Butler, delivered the opinion of the court.

The refining company by this suit seeks to enjoin the commission, Attorney General, and other state officers from enforcing certain provisions of chapter 25 of the Laws of Oklahoma enacted February 11, 1915, and certain orders of the

commission, on the ground that they are repugnant to the due process and equal protection clauses of the Fourteenth Amendment and the commerce clause. The District Court consisting of three judges, 28 U. S. C. No. 380 (28 USCA No. 380), denied plaintiff's application for a temporary injunction and No. 122 is plaintiff's appeal from such refusal. As final judgment has been entered, this appeal will be dismissed. The final decree sustains certain regulatory provisions of the act, but declares invalid some of its penal clauses. 51 F. (2d) 823. No. 485 is plaintiff's appeal from the first mentioned portion of the decree, and No. 486 is defendant's appeal from the other part.

The act prohibits the production of petroleum in such a manner or under such conditions as to constitute waste. Section 1. Section 3 defines waste to include, in addition to its ordinary meaning, economic, underground, and surface waste, and waste incident to production in excess of transportation or marketing facilities or reasonable market demands, and empowers the Commission to make rules and regulations for the prevention of such wastes. Whenever full production from any common source can only be obtained under conditions constituting waste, one having the right to produce oil from such source may take only such proportion of all that may be produced therefrom without waste as the production of his wells bears to the total. The Commission is authorized to regulate the taking of oil from common sources so as to prevent unreasonable discrimination in favor of one source as against others. Section 4. Gauges are to be taken for the purpose of determining production of wells. And the Commission is directed to promulgate rules and regulations and to appoint such agents as may be necessary to enforce the act. Section 5. Since the passage of the act, the Commission has from time to time made "proration orders."

The court made its findings which, so far as need be given here, are indicated below:

Plaintiff is engaged in Oklahoma in the business of producing and refining crude oil and transporting and marketing it and its products in intrastate and interstate commerce. It has oil and gas leases in both the Greater Seminole and the Oklahoma City fields. In each field it has nine wells. It owns a refinery having a daily capacity of 15,000 barrels of crude, and there produces gasoline and other products. It has approximately 735 tank cars, operates about 470 miles of pipe line, including adequate facilities for the transportation of crude oil from the fields to its refinery, and has about 256 wholesale and 263 retail gasoline stations in Oklahoma and other states which are supplied from its refinery. At the refinery it has gas-tight steel storage tanks with a total capacity of about 645,000 barrels. It does not use earthen storage or permit its crude to run at large, or waste any oil produced at its wells. All that it can produce will be utilized for commercial purposes. It also purchases much oil.

The Greater Seminole area covers a territory fifteen to twenty by eight to ten miles, and has eight or more distinct pools in formations which do not overlie each other. The first pool was discovered in 1925, and by June 15, 1931, there were 2,141 producing wells having potential production of 564,908 barrels per day. The wells are separately owned and operated by 80 lessees. About three-fourths of them, owning wells with 40 per cent of the total potential capacity of the field, have no pipe lines or refineries, and are entirely dependent for an outlet for their crude upon others who purchase and transport oil. Five companies, owning wells with about 13 per cent of the potential production, have pipe lines or refinery connections affording a partial outlet for their production. Nineteen other companies own or control pipe lines extending into this area having a daily capacity of 468,200 barrels, and most of them from time to time purchase oil from other producers in the field.

The Oklahoma City field, about 65 miles west of the Seminole, is about six by three miles, and part of it has been divided into small lots. All of plaintiff's leases are in that portion of the field. Oil was discovered there in December, 1928, and is being produced from four

different formations more than 6,000 feet below the surface. In some parts of the area two or more overlie each other, and at many points the wells penetrate all overlying formations and are capable of producing from all of them. The field is not yet fully developed. June 15, 1931, there were 746 producing wells having an estimated potential of 2,987,993 barrels per day. These wells are owned by 53 different lessees. Thirty-six of them are wholly, and eight are partially, nonintegrated; they operate wells having about 90 per cent of total potential production. The ten producing companies control pipe lines extending into this area with a carrying capacity of only 316,000 barrels per day. Most of them from time to time purchase oil from other producers there.

Crude oil and natural gas occur together or in close proximity to each other, and the gas in a pool moves the contents toward the point of least resistance. When wells are drilled into a pool, the oil and gas move from place to place. If some of the wells are permitted to produce a greater proportion of their capacity than others, drainage occurs from the less active to the more active. There is a heavy gas pressure in the Oklahoma City field. Where proportional taking from the wells in flush pools is not enforced, operators who do not have physical or market outlets are forced to produce to capacity in order to prevent drainage to others having adequate outlets. In Oklahoma prior to the passage of the act, large quantities of oil produced in excess of transportation facilities or demand therefor were stored in surface tanks, and, by reason of seepage, rain, fire, and evaporation, enormous waste occurred. Uncontrolled flow of flush or semiflush wells for any considerable period exhausts an excessive amount of pressure, wastefully uses the gas, and greatly lessens ultimate recovery. Appropriate utilization of gas energy is especially important in the Oklahoma City field where, because of the great depth of the wells, the cost of artificially recovering the oil would be very high.

The first of the present series of proration orders took effect August 1, 1927, and applied to the then flush and semiflush pools in the Seminole. Similar orders have been in effect almost continuously since that time. Soon after the discovery of oil in the Oklahoma City field, production exceeded market demand there. The first proration order applicable to that field took effect October 15, 1929, Such orders usually covered short terms because of rapidly changing potential production and market demand from each of the pools.

All the proration orders attacked by plaintiff were made pursuant to sections 1, 3, 4, 5, and 6 of the act. Each, and the findings that it contained, were made after notice to all interested persons and were based upon evidence adduced at the hearings. The allegations of the complaint that the orders were made by the Commission without having heard the testimony of witnesses under oath or any legal evidence were not sustained before the court.

The Commission construes the act as intended to empower it to limit production to the amount of the reasonable daily market demand and to require ratable production by all taking from the common source. In current orders it has found that waste of oil will result in the prorated areas unless production is limited to such demand. In order No. 5189, June 30, 1930, it found that the potential production in the United States was approximately 4,730,000 barrels per day, and that imports amounted to about 300,000 barrels, creating a supply of over 5,000,000 barrels as against an estimated domestic and export demand of 2,800,000 barrels. And it found that the existing stocks of crude in storage exceeded the needs of the industry, and that purchasers were unwilling to buy in Oklahoma for storage in any amount sufficient to take the surplus of potential production in that state. Similar findings are contained in the Commission's subsequent orders.

Based on findings of the daily potential of the Oklahoma City field and the amount of the market outlet for oil there, that is, the amount that could be produced without waste as defined by the act, plaintiff at the time of the trial was limited by the proration orders to about 6 per cent, of the total pro-

duction of its wells in that field. And the orders also operated to restrict plaintiff to much less than the potential production of its nine wells in the Seminole pools.

The court found that at all times covered by orders involved there was a serious potential overproduction throughout the United States and particularly in the flush and semiflush pools in the Seminole and Oklahoma City fields; that, if no curtailment were applied, crude oil for lack of market demand and adequate storage tanks would inevitably go into earthen storage and be wasted; that the full potential production exceeded all transportation and marketing facilities and market demands; that accordingly it was necessary, in order to prevent waste, that production of flush and semiflush pools should be restricted as directed by the proration orders, and that to enforce such curtailment, with equity and justice to the several producers in each pool, it was necessary to enforce proportional taking from each well and lease therein, and that, upon the testimony of operators and others, a comprehensive plan of curtailment and proration conforming to the rules prescribed in the act was adopted by the Commission and was set forth in its orders.

The Commission, acting under section 5 of the act and with the consent of the Governor of the state, appointed one Collins as its umpire and agent, and constituted certain producers in each pool an operating committee to assist him in administering the prescribed rules and regulations. Later on, Bradford was appointed assistant umpire and agent. He spent all his time in the Oklahoma City field, leaving Collins to serve in the other prorated areas. They supervised the taking of gauges, ascertained daily production of prorated wells, checked the same against quantities transported, and kept complete records, to the end that wells in each pool should be operated in accordance with the Commission's rules, and that violations be detected and reported. No appropriation had been made for the payment of umpires or agents. The Commission did not have sufficient regular help for the administration of the proration orders. Members of operators' committees served without pay. Collins' salary and expenses have been paid by voluntary contributions of certain producers in the Seminole field, and Bradford's by voluntary contribution of producers in the Oklahoma City field. In each field a great majority of the producers joined to raise such funds, and contributions were prorated on the basis of production. This method of paying for such help has been followed since 1927, and at all times has been known to the Commission, the Governor, and the public. In that period there have been two sessions of the Legislature, and it has not forbidden the practice or provided funds to pay for the work. Neither the umpire nor the members of the committee are public officers; they are mere agents or employees of the Commission. The evidence does not establish that they have been guilty of favoritism or dishonesty, or that the Commission has acted arbitrarily or discriminated in favor of the groups paying such agents, or that the plaintiff has suffered any injury by reason thereof.

The Commission has not discriminated against the Oklahoma City field or any other prorated area, nor in favor of the Seminole. The relation between potential production of each pool and the amount of crude oil that without waste could be produced therefrom was not the same in all prorated pools, and therefore the applicable percentages of curtailment varied. The same pipe lines and purchasers did not serve or take oil from all the pools, and in some the reasonable market demand was greater in proportion to potential production than in others. Some were prorated longer and had purchasers whose facilities do not extend to others. When oil was discovered in the Oklahoma City field the pools in the Seminole area were quite fully developed, and some had passed flush production. The later is a more favored location in respect of trunk pipe lines and has a larger market demand, although the daily production of the former is greater. The constant bringing in of new wells in the Oklahoma City field has resulted in a continuous and rapid increase in the potential production of that field,

whereas market demand for oil there has increased very slowly.

None of the Commission's orders has been made for the purpose of fixing the price of crude oil, or has had that effect. When the first order was made the price was more than two dollars per barrel, but it declined until at the time of the trial it was only thirty-five cents. In each case the Commission has allowed to be produced the full amount of the market demand for each pool. It has never entered any order under section 2 of the act.

It was not shown that the Commission intended to limit the amount of oil entering interstate commerce for the purpose of controlling the price of crude oil or its products, or of eliminating plaintiff or any producer or refiner from competition, or that there was any combination among plaintiff's competitors for the purpose of restricting interstate commerce in crude oil or its products, or that any operators' committee made up of plaintiff's competitors formulated the proration orders.

The evidence before the trial court undoubtedly sustains the findings above referred to, and they are adopted here.

Plaintiff here insists that the act is repugnant to the due process and equal protection clauses of the Fourteenth Amendment.

We need not consider its suggestion that the business of production and sale of crude oil is not a public service, and that it does not devote its property to the public use. The proration orders do not purport to have been made, and in fact were not made, in respect of services or charges of any calling so affected with a public interest as to be subject to regulation as to rates or prices.

Plaintiff insists that it has a vested right to drill wells upon the lands covered by its leases and to take all the natural flow of oil and gas therefrom so long as it does so without physical waste and devotes the production to commercial uses. But if plaintiff should take all the flow of its wells, there would inevitably result great physical waste even if its entire production should be devoted to useful purposes. The improvident use of natural gas pressure inevitably attending such operations would cause great diminution in the quantity of crude oil ultimately to be recovered from the pool. Other lessees and owners of land above the pool would be compelled, for self-protection against plaintiff's taking, also to draw from the common source, and so to add to the wasteful use of lifting pressure. And because of the lack, especially on the part of the nonintegrated operators, of means of transportation or appropriate storage and of market demand, the contest would, as is made plain by the evidence and findings, result in surface waste of large quantities of crude oil.

In Oklahoma, as generally elsewhere, landowners do not have absolute title to the gas and oil that may permeate below the surface. These minerals, differing from solids in place such as coal and iron, are fugacious and of uncertain movement within the limits of the pool. Every person has the right to drill wells on his own land and take from the pools below all the gas and oil that he may be able to reduce to possession including that coming from land belonging to others, but the right to take and thus to acquire ownership is subject to the reasonable exertion of the power of the state to prevent unnecessary loss, destruction, or waste. And that power extends to the taker's unreasonable and wasteful use of natural gas pressure available for lifting the oil to the surface, and the unreasonable and wasteful depletion of a common supply of gas and oil to the injury of others entitled to resort to and take from the same pool. Ohio Oil Co. v. Indiana, 177 U. S. 190, 20 S. Ct. 576, 44 L. Ed. 729; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 77, 31 S. Ct. 337, 55 L. Ed. 369, Ann. Cas. 1912C, 160; Bandini Co. v. Superior Court, Los Angeles County, Cal., 284 U. S. 8, 19 et seq., 52 S. Ct. 103, 76 L. Ed. 136; Brown v. Spilman, 155 U. S. 665, 669, 15 S. Ct. 245, 39 L. Ed. 304; Walls v. Midland Carbon Co. 254 U. S. 300, 323, 41 S. Ct. 118, 65 L. Ed. 276; Rich v. Doneghey, 71 Okl. 204, 177 P. 86, 3 A. L. R. 352; People v. Associated

Oil Co., 211 Cal. 93, 100 et seq., 294 P. 717.

It is not shown that the rule for proration prescribed in section 4 or any other provision here involved amounts to or authorizes arbitrary interference with private business or plaintiff's property rights, or that such statutory rule is not reasonably calculated to prevent the wastes specified in section 3.

We put aside plaintiff's contentions resting upon the claim that section 2 or section 3 authorizes or contemplates directly or indirectly regulation of prices of crude oil. The Commission has never made an order under section 2. The court found that none of the proration orders here involved were made for the purpose of fixing prices. The fact that the Commission never limited production below market demand and the great and long continued downward trend of prices contemporaneously with the enforcement of proration strongly support the finding that the orders assailed have not had that effect. And if section 2 were to be held unconstitutional, the provisions on which the orders rest would remain in force. The unconstitutionality of a part of an act does not necessarily defeat or affect the validity of its remaining provisions. Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law. Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 565, 22 S. Ct. 431, 46 L. Ed. 679; Pollock v. Farmers' Loan and Trust Co., 158 U. S. 601, 635, 15 S. Ct. 912, 39 L. Ed. 1108; Reagan v. Farmers' Loan & Trust Co., 154 U. S. 362, 395, 396, 14 S. Ct. 1047, 38 L. Ed. 1014; Field v. Clark, 143 U. S. 649, 695, 696, 12 S. Ct. 495, 36 L. Ed. 294. Section 10 declares that the invalidity of any part of the act shall not in any manner affect the remaining portions. That discloses an intention to make the act divisible, and creates a presumption that, eliminating invalid parts, the Legislature would have been satisfied with what remained, and that the scheme or regulation derivable from the other provisions would have been enacted without regard to section 2. Williams v. Standard Oil Co., 278 U. S. 235, 242, 49 S. Ct. 115, 73 L. Ed. 287, 60 A. L. R. 596; Crowell v. Benson, 285 U. S. 22, 52 S. Ct. 285, 76 L. Ed.—; Utah Power & Light Co., v. Pfost, 286 U. S. 165, 52 S. Ct. 548, 76 L. Ed.—. The orders involved here were made under other sections which provide a complete scheme for carrying into effect, through action of the Commission, the general rules laid down in sections 3 and 4 for the prevention of waste. See Julian Oil & Royalties Co. v. Capshaw, 145 Okl. 237, 243, 292 P. 841. The validity of section 2 need not be considered.

Plaintiff contends that the act and proration orders operate to burden interstate commerce in crude oil and its products in violation of the commerce clause. Const. U. S. art. 1, section 8, clause 3. It is clear that the regulations prescribed and authorized by the act and the proration established by the Commission apply only to production and not to sales or transportation of crude oil its products. Such production is essentially a mining operation, and therefore is not a part of interstate commerce, even though the product obtained is intended to be and in fact is immediately shipped in such commerce. Oliver Iron Co., v. Lord, 262 U. S. 172, 178, 43 S. Ct. 526, 67 L. Ed. 929; Hope Gas Co. v. Hall, 274 U. S. 284, 288, 47 S. Ct. 639, 71 L. Ed. 1049; Foster-Fountain Packing Co., v. Haydel, 278 U. S. 1, 10, 49 S. Ct. 1, 73 L. Ed. 147; Utah Power & Light Co., v. Pfost, supra. No violation of the commerce clause is shown.

Plaintiff assails the proration orders as unauthorized, lacking basis in fact, and arbitrary. But it failed to show that the orders were not based upon just and reasonable determinations of the governing facts; namely, that proportion of all crude oil, which may be produced from a common source without waste, that the production of plaintiff's wells bears to the total production from such source. Guages were taken to determine the potential production of each well under rules and regulations prescribed by the Commission and not shown to be inappropriate or liable to produce arbitrary or discriminatory results. It does

not appear that the agents, umpires and committees, employed by the Commission with the consent of the Governor, to enforce the provisions of the act, did more than to make investigations necessary to secure for the Commission data required to make the proration directed by section 4, or that they acted otherwise than as faithful subordinates. Plaintiff has not shown that any act or omission of these agents subjected it to any disadvantage, or that the prorations were arbitrary or discriminatory in any respect. Obviously the Commission, without agents and employees, could not make or enforce proration as directed by the act. The plaintiff is not entitled to have the Commission's orders set at naught and the purposes of the act thwarted merely because, in the absence of legislative appropriations therefor, the salaries and expenses of agents or employees were paid out of funds raised by operators interested in having proration established under the statutory rule.

Proration, required to prevent waste defined in section 3 and to give effect to the rule prescribed by section 4, changes according to conditions existing from time to time and percentages valid at one time may be inapplicable, unjust, and arbitrary at another, Bluefield Co. v. Public Service Comm., 262 U. S. 679, 693, 43 S. Ct. 675, 67 L. Ed. 1176; Knoxville v. Water Co., 212 U. S. 1, 19, 29 S. Ct. 148, 53 L. Ed. 371. As plaintiff has failed to prove that any order in force at the time of the trial was not in accordance with the rule prescribed by section 4 or otherwise invalid, the part of the decree from which it appealed will be affirmed. But such affirmance will not prevent it in an appropriate suit, a different state of facts being shown to exist, from having an injunction to restrain the enforcement of any order proved to be not authorized by the act or unjust and arbitrary and to operate to plaintiff's prejudice. Cf. Village of Euclid, Ohio, v. Ambler Co., 272 U. S. 365, 395, 47 S. Ct. 114, 71 L. Ed. 303, 54 A. L. R. 1016.

This is defendant's appeal from that part of the final decree that declares that sections 8 and 9 are not valid, and enjoins the Attorney General and county attorney from enforcing them. In its conclusions of law the court below declares that these sections in terms impose penalties for violation of the act, and not for violation of the orders of the Commission; that sections 1, 3, 4, 5, and 6 are too indefinite and uncertain to warrant the imposition of the prescribed penalties, and that therefore both sections are invalid. The opinion points out that the act is a penal statute and also a regulatory measure to be supplemented by rules, regulations, and orders of the Commission. It suggests that an operator or producer of oil from a common pool should not be required at the peril of severe penalties to determine whether in the operation of his oil well he is committing "economic waste" or producing in excess of the "reasonable market demands," because these terms are not defined in the act and are of uncertain and doubtful meaning.

Defendants insist that no question concerning the validity of section 8 was before the court.

We do not find any direct or definite allegation in the record that defendants have threatened or are about to cause plaintiff to be prosecuted under section 8. The court found that no prosecution had been commenced against plaintiff, its officers, or employees, under that section. There is no finding, or evidence sufficient to require one, that any such prosecution was imminent or contemplated. And the opinion states, in substance, that section 9 was the only provision of the act as a penal statute that was before the court.

Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution whenever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such a case a person, who as an officer of the state is clothed with the duty of enforcing its laws and who threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a Federal court of equity. Terrace v.

Thompson, 263, U. S. 197, 214, 44 S. Ct. 15, 68 L. Ed. 255, and cases cited. The burden was upon plaintiff seeking to invoke that rule definitely to show that, in order to protect its property rights, it was necessary to restrain defendants from enforcing section 8. Indeed the record before us indicates that plaintiff did not show that its rights were directly affected by any danger of prosecution under section 8, and therefore had no standing to invoke equity jurisdiction against its enforcement. Oliver Iron Co. v. Lord, supra, 262 U. S. 180, 181 43 S. Ct. 526, 67 L. Ed. 929; Massachusetts v. Mellon, 262 U. S. 447, 488, 43 S. Ct. 597, 67 L. Ed. 1078; Aetna Insurance Co., v. Hyde, 275 U. S. 440, 446 et seq., S. Ct. 174, 72 L. Ed. 357. Undoubtedly section 8, if invalid, may be severed from other parts of the act without affecting the provisions under which the prorations were made. Ohio Tax Cases, 232 U. S. 576, 594, 34 S. Ct. 372, 58 L. Ed. 737. It follows that the lower court erred in passing upon the validity of that section, and the decree will be mollified to declare that no question as to section 8 was before the court.

Defendants also maintain that no question as to the validity of section 9 was before the court.

The record shows that plaintiff having taken crude oil in excess of the quantities allowed by the orders, the Attorney General, May 28, 1931, brought suit under section 9 in a state court to have a receiver appointed for its wells. And he procured that court to issue a temporary injunction restraining plaintiff from producing oil or violating the act or proration orders pending the appointment of a receiver. On the next day, plaintiff filed an amended and supplemental bill applying for a stay of enforcement of the proration orders pending the determination of the appeal, No. 122, to this court.

June 13 the lower court, upon plaintiff's application and affidavits submitted by the parties, found that plaintiff would suffer irreparable loss and injury unless the stay be granted. And it entered an order restraining the Commission from instituting proceedings under section 6 of the act; restraining the Attorney General and county attorney from prosecuting under section 9 receivership proceedings against plaintiff; allowing plaintiff, on conditions which need not be stated here, to produce up to 10,000 barrels daily; and requiring the Attorney General immediately to have the state court injunction dissolved.

It is clear, if section 9 is invalid, that the enforcement of its provisions pending the trial of this case would, as plaintiff claimed and the lower court found, have inflicted irreparable loss and damage upon the plaintiff. Defendants do not show or claim that the evidence does not establish that finding. The lower court had authority to stay the enforcement of the assailed orders pending the determination of plaintiff's appeal from the denial of its motion for temporary injunction. Hovey v. McDonald, 109 U. S. 150, 161, 3 S. Ct. 136, 27 L. Ed. 888; Cotting v. Kansas City Stock-Yards Co., (C. C.) 82 F. 839, 857; Cumberland Tel. Co. v. Public Service Comm., 260 U. S. 212, 43 S. Ct. 75, 67 L. Ed. 217; Virginian Ry. Co., v. United States, 272 U. S. 658, 669 et seq., 47 S. Ct. 222, 71 L. Ed. 463. The jurisdiction of the court was properly invoked to determine whether plaintiff was entitled to portection against the shutting down and seizure of its wells and the sale of its oil pending the Federal court's final decision.

The Attorney General, though not required so to do, dismissed the suit in the state court, and here insists that, as no proceeding for a receiver was pending, the court erred in construing or passing on the validity of section 9. But, when regard is had to the facts and circumstances, it is clear that such dismissal did not require the court to hold that thereby the purpose of the Attorney General and county attorney had changed or that prosecution under that section was no longer imminent. The court was therefore properly called upon to pass upon its validity.

Section 9 provides: "That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent

jurisdiction, at the suit of the State through the Attorney General, or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act." The language used applies to violations of the act, and does not extend to violations of orders of the Commission. It is plain and leaves no room for construction. A direct and unambiguous expression would be required to warrant an inference that the State Legislature intended to authorize the seizure of producers' wells and the sale of their oil for a mere violation of an order.

The context and language used unmistakably show that the section imposes a penalty and is not a measure in the nature of, or in aid of remedy by, injunction to prevent future violations. By section 6 the Commission, which in respect of such matters is a court of record (State Constitution, art. 9, sec. 19), is empowered to punish as for contempt violation of the Commission's orders by fines up to $500 per day during continuance of such violation. Sections 3498, 3499, C. O. S. 1921; Planters' Cotton & Ginning Co. v. West Bros. 82 Okla. 145, 147, 198 P. 855. And section 8 declares that, "in addition to any penalty" that may be imposed by the Commission for contempt, one directly or indirectly "violating the provisions of this act" shall be guilty of a misdemeanor and be punished by fine or imprisonment. And similarly the liability under section 9 is for "violating the provisions of this act" and is "in addition to any penalty" imposed by section 8. Both deal with an act already committed. Moreover, liability under section 9 is not limited to seizure and operation of the offender's wells, but extends to the marketing of his oil. Absolute liability arises from a single transgression, and prosecution therefor may be had after all occasion for restraint of production has ceased. There is nothing in the act by which the duration of the receivership may be determined. An owner whose wells are so seized may not, as of right, have production reduced or withheld to await a better demand or have any voice as to quantities to be produced, or continue to have his oil transported by means of his own pipelines or other facilities, or have it sent to his own refinery or delivered in fulfillment of his contracts. Plainly such a taking deprives the owner of property without compensation, even if the moneys received for oil sold less expenses are accounted for by the receiver. The suit is prosecuted by the State to redress a public wrong denounced as crime. The provisions of section 9 are not consistent with any purpose other than to inflict punishment for violation of the act, and they must be deemed as intended to impose additional penalties upon offenders having oil producing wells. Boyd v. United States, 116 U. S. 616, 634, 6 S. Ct. 524, 29 L. Ed. 746; United States v. Reisinger, 128 U. S. 398, 402, 9 S. Ct. 99, 32 L. Ed. 480; Huntington v. Attrill, 146 U. S. 657, 667, 668, 13 S. Ct. 224, 36 L. Ed. 1123.

As section 9 declares that one "violating the provisions of this act, shall be subject" to the prescribed penalties, it is necessary to refer to the regulatory provisions here involved. Section 1 prohibits "production of crude oil * * * in such manner and under such conditions as to constitute waste." Section 3 declares that, " in addition to its ordinary meaning," "waste" shall include "economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands." Section 4 provides that whenever full production from any common source can only be obtained "under conditions constituting waste," then one having the right to produce from such source may take therefrom only such proportion "that may be produced therefrom, without waste, as the production of the well or wells" of such taker "bears to the total production of such common source of supply."

There is nothing to support defendants' suggestion that the regulatory provisions of the act do not become operative until the Commission has defined permissible production. As shown above, section 9 does not cover violations of orders of the Commission. The validity of its provisions must be tested on the

basis of the terms employed. In Connally v. General Construction Co., 269 U. S. 385, 391, 46 S. Ct. 126, 127, 70 L. Ed. 322, this court has laid down the rule that governs here: "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first esential of due process of law."

The general expressions employed here are not known to the common law or shown to have any meaning in the oil industry sufficiently definite to enable those familiar with the operation of oil wells to apply them with any reasonable degree of certainty. The meaning of the word "waste" necessarily depends upon many factors subject to frequent changes. No act or definite course of conduct is specified as controlling, and, upon the trial of one charged with committing waste in violation of the act, the court could not foresee or prescribe the scope of the inquiry that reasonably might have a bearing or be necessary in determining whether in fact there had been waste. It is no more definite than would be a mere command that wells shall not be operated in any way that is detrimental to the public interest in respect of the production of crude oil. And the ascertainment of the facts necessary for the application of the rule of proportionate production laid down in section 4 would require regular gauging of all producing wells in each field; a work far beyond anything that reasonably may be required of a producer in order to determine whether in the operation of his wells he is committing an offense against the act.

In the light of our decisions, it appears upon a mere inspection that these general words and phrases are so vague and indefinite that any penalty prescribed for their violation constitutes a denial of due process of law. It is not the penalty itself that is invalid, but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all. United States v. L. Cohen Grocery, 255 U. S. 81, 89, 41 S. Ct. 298, 65 L. Ed. 516, 14 A. L. R. 1045; Small Co. v. Am. Sugar Ref. Co., 267 U. S. 233, 239, 45 S. Ct. 295, 69 L. Ed. 589; Connally v. General Construction Co., supra; Cline v. Frink Dairy Co., 274 U. S. 445, 454, 47 S. Ct. 681, 71 L. Ed. 1146; Smith v. Cahoon, 283 U. S. 553, 564, 51 S. Ct. 582, 75 L. Ed. 1264.

No. 122, dismissed; No. 485, affirmed; No. 486, modified, and, as modified, affirmed.

HEARING RESUMED.

Monday, November 7, 9:30 A. M.

Rawlings: The Committee will please come to order and we will proceed.

W. B. Harrell resuming testimony, testified as follows:

Senator Purl:

Q. Judge Harrell, you went to some extent in analyzing, from your viewpoint at least, the three judge decision on the law as well as on the ruling of the Commission.

A. Yes.

Q. Did you state that the three judge court held the law invalid?

A. Yes.

Q. And what did they hold concerning the rules or orders of the Railroad Commission?

A. They held their rules were inequitable, did not permit or allow the producer to take ratably and equitably from the field.

Q. Did they hold that this rule was discriminatory?

A. Yes.

Q. And confiscatory?

A. Yes, that is what the court said.

Q. Do you know whether or not the Railroad Commission has made any order since the rule of the three judge court?

A. I noticed they had called a meeting for the same day the Legislature met and it was stated it was for the purpose of meeting or attempting to meet the decision of the Three Judge Court. They met and adjourned or recessed.

Q. Now if the Legislature should pass a law that had in it market demand since there are 8700 wells

in East Texas, how would they go about it in order to do justice to all concerned? Would they have to take each well as an individual proposition or take the whole field?

A. Said they would apply certain tests and experiments to each well and that anything short of that would not be fair and equitable and would not permit each man to take what he was justly entitled to.

Q. Then state from the constitutionality of the measure if you do not care to go into arguing that the law would be constitutional if we would pass as a practical proposition what do you say the hazards would be if we would go into issuing an order?

A. I do not know that I can tell you all of them, I can tell you some of them. In the first place the bill that is offered provides for the regulation or control of production so as to define physical waste the same as the law under which we are operating. By operating I mean by which the State is operating. I am not operating an oil well, so the Railroad Commission would still have to pro rate, they would have to as I understand it still make the tests and experiments in order to determine the location, situation, surroundings, amount of sand and the location, on the outside or inside, the gas pressure, the potential pressure and those things that the three judge opinion said that they had not done, but had prevented from being done. They would have to do those things in order to determine how much the producer was equitably, ratably and justly entitled to, then that burden is on the Railroad Commission. Now this bill that is here puts another burden on them; they must first make the tests, then they must apply them to reasonable market demand.

Q. Now then as a practical proposition, assuming that the Legislature should pass this measure by 21 votes in the Senate and 100 votes in the House, signed by the Governor to go into immediate effect, in your opinion—I realize you are not in the oil business— but if the bill should pass as a practical proposition if they should make a test of each well, how long would it take the Railroad Commission before they could issue another order?

A. I do not know. They testified here Friday and Saturday they had experts, geologists, etc., in the field, kept them there all the time, depends on how many people they put there. It would depend on these experts, they might take certain area and that group all operated alike, and possibly would not have to test each individual well, but would also depend on how many men and would suit themselves as to what was a sufficient test.

Q. Now when we had the bill up for hearing last Summer about the East Texas field each time they had maps, charts, of all kinds, will they have to go into all that question?

A. I do not know. I do not know how that would be.

Q. Getting off of that, there is something in this bill—and I want to be corrected if I am wrong—that the Railroad Commission, in making this order of market demand they would take into consideration transportation facilities. Just what do they mean by that?

A. I do not know what all they had in mind to do about it.

Q. It means the existing transportation facilities, pipe lines, etc.

A. Some fields have greater transportation facilities than others and I suppose they would have to take into consideration the pipe line facilities in the different fields.

Q. I just want to ask you one question in addition to other matters that the Commission was now charged with regulating the price to the gas company for gas in every city in Texas, for instance the City of Dallas?

A. Yes.

Q. The Railroad Commission does not directly as such control price of gas in Dallas?

A. It is my understanding—

Q. But they do control the price of gas with the lines put to the gates?

A. I understand they regulate the amount and the price of gas that was delivered to the city company—I would say the company has the franchise to operate in the city.

Q. What company or organization did you say you were representing?

A. Associated Gasoline Consumers.

Q. Have you studied the price of gasoline to the consumers in the last year or two?

A. Yes.

Q. Will you give us your ideas whether or not the gasoline is going up to the consumer?

A. I can give you a few of the things—I would not take your time and burden you here as to the way I look at it. The people who owned the land in East Texas, the original land owner, before oil and gas was found there, were depending upon the raising of hogs, farming, truck growing, something growing on the surface. He had to meet his problems then with other people in the same character of business. He met competition and he solved his problems. When the oil field was discovered this additional product did not as I understand it become entitled to any more consideration from the government than what he was growing on top of the ground. The people who went in there bought the land, or bought the minerals or took a lease, made their investment. They knew what they were doing, just like the man who bought a farm and paid $250.00 an acre for it and cotton was 40 cents a pound. That didn't last long and his farm is now worth $50.00 an acre. He just goes wrong, and made a mistake, as I understand he is not entitled to come here and ask you to give him relief. I know people who went to Dallas and elsewhere, had a little money in 1921 and 1922, to buy suburban lots, soon be building and worth a lot of money and get a good price for the lots. I did myself, I paid a price for some suburban lots at that time, about $48,000.00, about $10,000.00 against them. I became the owner of them—and there has not been a time I could sell them for the loan. That is my own trouble. I have no right to ask you gentlemen, you are not responsible for conditions. These people went there and bought these oil lands, they made their investment, they have to sell what they get from underground on the market demand and they ought not to ask the government to stimulate their business. I have to stand and take it and work out my difficulties with people similarly situated. But I have to take the money I make out of oil and buy gasoline—they are asking you gentlemen to stimulate the price. If there is plenty of this product in East Texas, and they talk about what would happen if the flush production was open, that the supply would be ruined. They cannot waste, they cannot turn it loose and permit this great flow.

A. I know that before they had the proration order gasoline was 8c a gallon. I know that anything that tends to control the supply affects the price. If it doesn't control it it affects it. They ask you to control the supply then if you don't control it you affect the price. Well, if you don't have any right, as I understand it, as representatives of the Government, you don't have any right to say to that man how much he will produce or how little he will produce except to say the people and the public demand of you that you don't waste it. Now, waste they can have experts to define to you, but certainly waste doesn't mean that they must not handle it so that they will produce just what the market demand is, because, as I used the illustration to you Saturday—if you will permit me again —suppose you say that we will permit the Railroad Commission to limit the amount of production to the market demand. All right, the oil companies that own the oil in the foreign fields own all of it. They can import to the Atlantic seacoast at the cost of production, transportation and the tariff, and deliver it, so I am informed, at a cost of 55c per barrel. All right, you by this bill say that the Railroad Commission can regulate or control the supply to meet the market demand; that means of course the amount that is needed and for the price that is fixed. They put this in East Texas at $1.10 a barrel for this oil. These companies that own the foreign oil bring in three or four hundred thousand barrels from that source at 55c. They say to the independent producer in East Texas, "We don't need your oil. We can't use it at the market demand, at the price; we don't need it," so the independent producer gets no market for his oil. But suppose I am an independent refiner—and in speaking to you I am talking about the independent whether individual or company, I am talking about the man that makes competition for the major companies, that is the only man or the only association that can affect the price of production is the man who makes competition. The independent producer goes to an independent refiner and says to the independent refiner, "You can't afford to pay $1.10

for crude because the major companies are using 55c crude and have reduced the price of gasoline down on a 55c basis, and you can't manufacture $1.10 crude to meet that price"—say I can produce it without waste—"I will sell it to you for 50c a barrel and be glad to get it." You say, "I will buy it," but we come here to see the Railroad Commission. You say "Here's Mr. Harrell who's got plenty of oil and wants to sell it to me. I want to buy it." They say "Very well, what is the market, what are you going to pay for it?" I say "50c." They say "No, the price is $1.10." "Well," you say, "I can't buy it at $1.10," and they say to you "You can't sell it to him," though you have the oil and want to sell it to him. Gentlemen, you understand I don't propose to tell you what to do. I am not assuming to do that; I am just reasoning wiht you if I may, and be of any help. The public, which they say is entitled to have some voice in what this man does with his property, that doesn't represent just the people in East Texas; you are not dealing with just a problem in East Texas. It is a problem of everybody in the United States and elsewhere, because they burn gasoline. The people that burn gasoline are millions of people; the people sitting over there with the production are just hundreds of people. Now, they went there and made their investment, and are you going to permit the Railroad Commission to stimulate their business, their investment, their judgment, just for the benefit of two or three hundred people, and let the other millions of people pay the money that gives them the benefit of their investment? I don't want to say what I think you will do; that is not my business.

Senator Purl:

Q. Mr. Harrell, was there a bill passed in California known as the Sharkey Bill concerning oil? Anyway I want to ask you whether or not there was a bill passed in California that was taken to the people under referendum and the people refuted the bill; without going into the bill did it have market demand in it?

A. I don't know.

A. If you will consider this bill just a minute please: the law under which we are now operating says—I don't know whether it means anything or not, and it is significant to me—the present law says "and the Commission shall not have power to attempt by order or otherwise, directly or indirectly, to limit the production of oil to equal the existing market demand." That is the present law. I may be right or wrong about this; I offer it for your consideration. They say the Railroad Commission cannot consider market demand. This law says that they can't limit the production to equal market demand; it doesn't say they can't consider it; it says the Railroad Commission shall never be permitted to limit the production of oil to equal market demand, that they "shall not have power to attempt by order or otherwise, directly or indirectly, to limit the production of oil to equal the existing market demand for oil, and that power is expressly withheld from the Commission." Now this opinion of the Three-Judge Court doesn't say they could not consider that, but it does say that the Railroad Commission can never balance production to equal market demand. In other words, the Railroad Commission can't permit more production than might be the daily market demand because they might say that we believe more than the daily consumption of crude is necessary or reasonable to be produced for a reasonable amount of storage to provide for any necessity that might arise in the future, and they might permit a production of crude more than the market demand because it might be produced without physical waste, but they can never equalize the two; they can never balance the two, and that is the limitation that is put by the old law on the Commission, and the Three-Judge Court said that is what they were trying to do because they said they had attempted to limit the amount of production to equal this Oil States Committee's recommendation for Texas. Now, gentlemen, lets read the present law that is offered in that particular. "The production of crude petroleum oil or of natural gas, where such gas is produced from wells producing gas only in excess of transportation or market facilities or reasonable market demand" is waste. Now, under the old law the Railroad Commission might permit

the production of more than was the reasonable market demand if it did not cause physical waste, but now they ask you to say that the Railroad Commission shall not permit the production of more than the market demand, and that more than the market demand is physical waste. It looks to me like they are asking to say to the East Texas field that you will not permit more to be produced over there than they can sell, if I can understand the reading of the English language.

Senator Purl:

Q. Do you believe that the enactment of this law will tend to increase the number of independent refineries in this State or will it ultimately have the effect of decreasing the number of refineries?

A. The only way I can answer that question of yours is to give you my opinion about it based upon some incidents ,that have happened. I know that before proration was in effect we were buying 8c gasoline, after proration went into effect we were paying 15c per gallon. Now whether proration caused it or not I don't know, but the condition and situation and the hurt from it is just the same. I know that since proration has gone into effect there have been a great number—I don't know how many—but there have been a great number of independent refiners that have quit business.

Q. Do you know whether or not it is generally recognized and considered by the public, as well as information from literature we receive, that filling stations generally are operated at a loss by the major companies?

A. I don't know, that is what they say.

Q. Now then I believe you said you know nothing at all about this California bill?

A. No.

Q. Do you know whether or not there is any such move to conserve the oil in foreign countries, or, to put it another way, those companies that are fortunate enough to have oil in foreign countries, are they restricted in any way in the amount they can bring out?

A. None at all, as I understand it, the only restriction is the amount of the tariff and the cost of transporting it.

Q. Do you know which of the foreign fields is considered to be the largest?

A. I understand it is the Venezuela field.

Q. It is your understanding then if we pass this law that those companies which have holdings in Venezuela as well as in East Texas, while we might stop them from taking it out of Texas, there is no control in the United States that would prevent them from flooding oil into this country?

A. There is no restriction, as I understand it, to prevent them from bringing all the oil into the United States that the whole United States might use.

Q. Well then that means that the independent refiner's situation in Texas is at the mercy of the supply of Texas, while the company that owns oil in both places can make it up over there?

A. That is my understanding.

Q. The Railroad Commission certainly could not take into consideration the foreign oil coming in because they couldn't do anything about it?

A. No.

Q. Other governments such as England attempted to control the price of rubber and made a failure of it. If England has tried to control the price of rubber, and South America the price of coffee and Japan the price of silk, and if all these governments, and the United States has tried to control the price of wheat and cotton, it is generally understood that every time the government steps in and tries to control a product, regardless of patriotism, they make a failure of it?

A. I just have to give you my personal opinion about that.

Q. Who are the Oil States Advisory Committee, just what is it?

A. I gather from the testimony that was introduced before the Three Judge Court that some representatives of different oil states, or some persons presuming to act for the different oil states, had a meeting in which they considered the amount of oil that their respective states could produce or ought to be allowed to produce or contri-

bute to the entire production of the United States, and they had a general agreement and drafted some character of written contract, which was introduced at that trial, which presumed to limit the State of Texas to 900,000 barrels.

Q. Wasn't it 800,000?

A. Well whatever it was, you may be right.

Q. The amount they recommended and the amount the Commission arrived at through their own process was about the same, wasn't it?

A. The court says it was the same, and that in the enforcement by the Railroad Commission of its present rules and regulations it appeared to be an attempt to meet this Oil States Advisory Committee's agreement.

Q. Then citizens who live in other States on this Oil States Advisory Committee would indirectly, if they followed out their plans, help to control the price of oil in other States?

A. If the Railroad Commission observed that agreement, yes sir.

Q. Now then, I want to ask you this last question: if this Legislature passes this kind and character of measure, either as expedient or as a matter of public policy, is it your opinion that it will be opening up the flood gates, and that we will have similar bills to control similar commodities in this State?

A. I hope you don't do it.

Q. I say logically wouldn't other people who have felt the pinch of this depression, wouldn't they have the same sort of logical reason to believe that if the Legislature is going into this sort of work, that they can come down here and ask us to pass a bill for them?

A. I might then come down and say to you "I bought $250.00 land and it is down now to $50.00."

Q. Well, we would pass such a measure in the guise of soil conservation, when it was generally conceded by nearly everyone that it was to fix the price.

A. Yes.

Q. I believe that is all the qusetions as far as I am concerned.

Senator Martin:

Q. Mr. Harrell, you have studied this proposed bill pretty close haven't you?

A. Well, I think so, Senator; I had a copy of it as soon as it was laid on the desk.

Q. Did you find anything in there that would serve as a yardstick in any manner whatever with reference to market demand and economic waste?

A. I did not.

Q. In other words, if we were to pass this bill in its present form we would permit the Railroad Commission to become a price setting agency, and set it just whatever might be in their mind, which we don't know anything about nor we don't know what they will take into consideration in setting it?

A. Except that you would assure them that they will never permit more than meets the market demand; you say to them that it shall not exceed it, not only control but force it, I think.

Q. What would be your understanding of market demand?

A. Well, I don't know. I heard a definition suggested here the other night which was discussed a little bit. I don't know what it is, but whatever it is it would have to fluctuate.

Q. Well, who sets the price of oil today?

A. I don't know anything about that; I would have to give you the answer that Senator F— gave the other night; the Shell and the Standard Oil Company.

Q. Whenever we hear of the price of oil, they say they post the price; what do you mean by that?

A. Mr. Struth, an economist of Houston, Texas, testified before the three judge court that a posted price was recognized and quoted as an official posted price when one of the major companies says 'we will pay $1.10 for oil,' and then within a reasonable time two or three major companies post the same price it then became what was termed an official posted price.

Q. Whenever they have posted that price in the field, say $1.10, and some individual over there has oil that he wants to sell if you can't find a market, somebody who takes it for $1.10, under the law as is proposed here you wouldn't be permitted to sell it for 50c a barrel?

A. That is the way I understand it; though he may want to sell it

for 50c and there may be a purchaser who wants to buy it for 50c, yet the Railroad Commission say 'No, you can't produce it because that is not the market demand.'

Q. There is nothing in the bill that would inhibit the Railroad Commission from so holding?

A. As I understand it, there is not. I am giving you, Senator, what I understand it to be; you are a lawyer and you are able to reach a competent opinion.

Q. I have studied it pretty close and I am trying to get at the thing the best I know how.

A. That is my understanding of the law.

Q. The whole gist of the thing is hinged around economic waste and economic demand, now, these two things in there permitting the Railroad Commisson to take those two things into consideration, would that give the Railroad Commission any more power to prevent physical waste than what there is in the law at the present time?

A. No sir, they must at all times have uppermost the prevention of physical waste; they still have to determine how much can be produced without physical waste, then having determined that they must then say how much of this we will permit to be produced to meet the demand.

Q. If a man had a well over there that was capable of producing 500 barrels a day and have no physical waste at all; if they took into consideration economic waste and market demand I couldn't turn that loose and get any more than what they say I can take out, that is, 40 or 50 barrels a day?

A. That is right; allow the companies to import anything they want in here, and then determine how much they would permit to be produced here.

Q. Can you suggest any yardstick or measuring stick that we might write into this law that would tell the Railroad Commission how to act with reference to the determination of market or economic waste or market demand? We go on here and define the law what is waste, we tell them what waste is; can you think of some way we would not delegate to them all the power but we ourselves would be suggesting to them what they could consider?

A. I think the only thing that you ought to write into the law—this is my opinion—would be that the public, the people of today, not future generations, this thing is a necessity to us today, this gasoline, we need it in our lives and business, it is a necessity of today; we are the public, we are entitled to that today and we are entitled to so much of it as can be produced and used, that will not be a physical waste of it, and the Government has the right only to say that the man who has it shall not waste it, and if we, the public, get it cheaply or not the producer makes or loses on his investment just like the man who grows cotton.

Q. To make an illustration here—it may be that I can understand it if a man owns a house out here or a farm that he wants to sell; if he owns a house the law is such that he can't burn or destroy the house, but as it is here it would go further and say 'you can't sell it unless you get a certain amount for it.'

A. Yes sir, that is exactly right.

Senator DeBerry:

Q. Senator Martin asked you a question with respect to market demand and economic waste, he asked you to define market demand. If I understand your answer was that it was so elusive that you didn't think you could define it by one sentence or set of words, but they had given a definition of it the other night?

A. Yes, that is right.

Q. When that definition was given and using that definition they ran into the stump of what a fair price is, and isn't that just as elusive as market demand?

A. Yes sir.

Q. Can market demand be analyzed without taking in the price factor?

A. I don't see how it could be. If you have a high priced oil you use less of it; if you have a cheap oil you will use more of it, so the market demand necessarily would be controlled by price.

Q. In other words, doesn't that prove conclusively that when you say market demand that you have not completed the sentence until you say market demand at a certain price; in other words isn't there a different market demand for oil at 5c than there is at $1.50?

A. Yes sir.

Q. Has there ever been a time in the oil industry that there was not a market demand at a price?

A. No.

Q. Well then, doesn't it naturally follow that when you talk about market demand you have got to add a tail to it known as price?

A. Yes sir.

Q. Absolutely. It is utterly obvious isn't it that any physical waste is a type of economic waste, it comes under economic waste, doesn't it?

A. Yes, that is, it affects it or tends to influence it.

Q. I say any physical waste would be an economic waste?

A. Yes sir.

Q. If it is a physical waste to throw sweet milk over the fence that is an economic waste, isn't it?

A. Yes.

Q. But doesn't economic waste go much further than physical waste?

A. Yes, it takes into consideration more than is necessary to be considered to determine what would be physical waste.

Q. After you leave the field of physical waste in its relation to economic waste then the price structure immediately sets in, when you say that it is an economic waste to produce oil at a price, and the price factor comes in?

A. Absolutely. When the man who owns the field can produce the oil so as not to physically waste it it then becomes a commodity and the Government ought not to have any more control over it, because it then becomes a thing in the market to be met by similiar things on the market and to take its place in competition as other commodities do, because he has produced it in such a way that there was no physical waste.

Q. I agree with you heartily. Now, if the Railroad Commission with the bill before them that has a number of specific definitions defining physical waste, erred as much as the court thinks they erred, wouldn't they be likely to err as much when they chased the elusive phantom of market demand and economic waste?

A. Senator, of course I say this kindly; I have no feelings about it; but it would look like that after you had told the Railroad Commission all of the things or the many things that they might consider in determining physical waste, and then they undertook to operate here for a year and a half, and when they went before a court with their experts and their lawyers, and the court said 'you have not obeyed a single direction,' that then they would be rather lost if you turn them afield without anything to guide them as to what may be economic waste or market demand.

Q. The reason I am asking these questions is along the same line as Senator Martin's, to get at the practical application of this bill. If you admit that economic waste and physical waste or market demand are as elusive as you admit they are, they would hardly know what to do other than as suggested by a set of statistics as compiled by somebody as to what might constitute market demand or a fair price, would they?

A. No, and they don't ask you to give them any standard to go by.

Q. Another question that I want to ask; this is on a different line with respect to the people that you are here to serve rather than the producer, I am talking about the consumer. Mr. Thompson testified, as I remember, that 19c retail price for the average white gasoline today was a fair price; do you think so, to all concerned?

A. I think this: that if you are going to legislate so as to give the producer of crude oil $1.10 for his product it may be that 19c would be the proper price of gasoline manufactured from $1.10 oil, but when you have millions of barrels to be made into gasoline, and it can be made into gasoline without physical waste of the crude, then I think the people are entitled to have it produced so as not to cause waste and to be manufactured into gasoline that we buy and pay for like we are paying on the market for everything else we buy and like a dollar is worth; house rent is cheaper, clothes are cheaper, property is cheaper, cotton, corn and everything is cheaper, yet gasoline is high because they say, and the testimony before the Three-judge Court, was that the price is an artificial one.

Q. In short, 19c gasoline for the average grade of gasoline is too high now, don't you think?

A. It is entirely too high, because before you had proration we were buying it for 8c; it was there,

they were producing it, it was being manufactured into gasoline, and the people—I am talking about the millions of people, 98% of the people—got the benefit of this thing in their everyday business. Now they want to stimulate it for the benefit of two hundred people.

Q. In other words, isn't it utterly obvious to anyone that 19c for a gallon of gasoline is higher than cotton at 5½c a pound?

A. I don't think there is any argument to that.

Q. It is higher that 20c corn, in fact, it is higher than practically any or all commodities today?

A. It is, and Senator when the proration law was passed cotton, corn and other products were about like they are now; we were paying 8c a gallon for gasoline; wheat and hogs and cotton about the same as now; now you pay more than twice as much for your gasoline as a result of the proration law and as a result of what they have done to the market.

Q. Now this argument that the rank and file will uphold the hands of the oil producer and the oil industry, and that it in turn will let seep through the cracks enough to elevate the rank and file to where they are, hasn't worked so well since the last proration bill was passed, has it?

A. No sir.

Q. In other words, all commodities haven't gone up in proportion have they?

A. They have gone down.

Q. And when men take the stand and persist that years ago we sinned against future generations because we killed all the buffalo, do you know of any way that we could have preserved those buffalo and it would be the sensible thing to do?

A. No sir.

Q. In fact, don't you think a buffalo's days are numbered regardless of whether they shot him for his hide or not?

A. Yes, of course he would have to go.

Q. In other words, can you point out many of Nature's gifts to man that he has so treated as to utterly destroy them so that future generations never got them, outside of the dodo and the buffalo?

A. You are not destroying this crude; you are permitting it to be made into products which are necessary like bread and meat to be used by the people today, and putting it at such a place that they can take their dollar and buy it.

Q. So long as we take care of physical waste.

A. Certainly, especially when you are under oath to legislate with equal rights to all; that makes it more binding.

Q. Well, I don't know whether it makes it any more binding or not If a man is here asking that his industry be protected, an oil man, he has some reason to argue his side of the case and let somebody else take care of the other, more than I would in my capacity.

A. Certainly.

Q. I don't critize him at all; I call him wide-awake. But back to the loss of natural resources— I don't want it to appear that you and I disregarded our obligation to posterity with respect to natural resources—but don't you think it is much overdone, this idea that one generation always spoils things for the next one, in that we can't point out very many things that the other generation had that we can't get today?

A. No, I think this proposition of preservation and conservation and future resources is a little overworked.

Q. Without a shadow of a doubt. In other words, so far as conservation is concerned, don't you think that the deterioration in soil erosion and things of that kind today are playing as much or more havoc with Nature than we have ever done in the oil fields?

A. Senator, yes; I can plant cotton on a few acres, continue year after year, and it destroys the soil and it begins to die in spots, the Legislature has the right to say that I must take care of this farm so that my children will have the benefit of it, or somebody's else children; that I am merely a trustee for the use of it for them, and you can come and tell me that I must rotate my crop.

Q. Don't you think the court was eminently correct when it said that the Commission erred when it said that to prevent physical waste in the

East Texas field it became necessary that something like eight thousand plus wells had to run on forty barrels flat per day, don't you think the Commission went far afield?

A. I don't think a man has to be an expert to know that under a field three and a half to five miles wide and forty miles long that the oil under that ground isn't the same, that is, it is not like a concrete vat that you dig down forty feet and fill full of oil; it has edges, it has thin places, it has much gas and little gas, it has much sand and little sand; then when you know it is not equal under the ground then how is it fair to get on top of the ground and say 'we will make a fixed rule that governs all alike'?

Q. That is with reference to one well as against another well, but why forty barrels rather than sixty?

A. They said, of course, that they had testimony that more than forty barrels would be waste; the court said they had never made any tests to determine whether it would or not.

Q. Had there been twice as many wells should it have been twenty or forty?

A. I am not expert enough to tell you that.

Q. Do you think they are?

A. No, I don't think they are.

Q. I don't either. I heard testimony here on the other hearing that wells could be operated at different rates in the same field and not have physical waste. Their own experts testified that last year.

Q. If others agree as you and I do that legislation should not go further than physical waste, and if the definitions in the present bill are not clear enough for the Commission to operate only so as to prorate according to physical waste, then we ought to either fix the definition or enlighten the Commission, shouldn't we?

A. Yes sir, you should do one of the two, or not pass it.

Q. Isn't it your idea that if the Commission's understanding of physical waste were such that they could apply the rule and not go further than physical waste that we have got a good bill already?

A. I think you have that bill now, and I know that the court has said that your bill is a good one, a just and equitable one, if the men who are enforcing it would apply it equitably and ratably.

Q. Don't you think it is absolutely unfair for anyone to make the statement that the present law doesn't allow the Commission to issue any proration orders at all, or that the result of it will mean a wide open field; don't you think that is a very unfair statement to make?

A. Well, I wouldn't want to get into an argument; I will just say that if he will read the opinion he would not make the statement.

Senator Pollard:

Q. If I understood you you stated that the law as it now stands permits the Railroad Commission to take into consideration market demand and enter an order on market demand provided they did not equal the market demand—

A. I say that is the way I read it, that they can consider—

Q. And that is the way you understand the Three Judge Court opinion; I would just like to know where you get that?

A. Well, I read the present statute a few minutes ago, and it says there that either natural gas or crude oil shall not be produced, stored or used in such a manner or under such conditions as to constitute waste, provided, however, that this shall not be construed to mean economic waste, and that the Commission should not have the power to attempt to by order or otherwise, directly or indirectly, limit the production of oil to equal the existing market demand for oil. That is the part of the opinion that gave me my suggestion that you could consider market demand. I think the statute permits you to do that and permits the Railroad Commission to do that, and inhibits and prohibits only the balancing of production and market demand; they can't make them equal. In other words, they could not let market demand control it so as to just furnish enough for market demand, to limit it to meet or equal market demand. Here is what the court said—it took up all the different testimony and arguments all about it—and said:

"It is further conclusive that the allowable has always been fixed, either finally or tentatively, at the figure which will keep production in

Texas within the amount fixed by agreement of the Oil States Advisory Committee and those working with it, or as one of the witnesses, Roeser, put it 'the amount the market can absorb,' and it has been only to support this fixation that opinion evidence has been marshalled post hoc fn support of the claim that the allowable as fixed, will prevent waste."

Q. I would like for you to explain just what that means.

A. It doesn't prohibit the consideration of it, but they must not limit it so as to keep it within or equal to what the market can absorb.

Q. Do you understand, Judge, if the market demand was 800,000 barrels and the Railroad Commission had made it 900,000 and considered market demand as a reason for doing that and entered the order, would that be a valid order?

A. If the production of 900,000 barrels would not be physical waste.

Q. Make it one barrel more than 800,000.

A. Well, of course, if you can stop a man from killing you then you can stop him from thinking about shooting at you.

Q. Under this law as we now have it could you make it 700,000 barrels? If it wasn't physical waste?

A. That would be a matter the courts would have to pass upon.

Q. If, under that Three-Judge court opinion, the Commission took into consideration market demand, which in Texas would be, say, 800,000 barrels, could the Commission then enter an order, considering market demand and physical waste, for 700,000 barrels, a valid order?

A. That kind of case has never been presented to the courts, but in my opinion they could enter such an order.

Q. Now, Mr. Harrell, if that is true under the old bill, and the new bill has the same effect, that is, the intention of the new bill is merely to permit the Railroad Commission to take into consideration market demand along with all other elements of waste, and provided that they can consider the amendment which has been placed in the House Bill and which we are going to offer here—Let me read that to you; this amendment I think will meet your objections: "The term waste shall include economic waste, underground waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demand as determined by the Commission, and the Railroad Commission is expressly authorized to consider any or all forms of waste in fixing its rules, regulations and orders for the conservation of oil and gas."

Senator DeBerry:

Q. If I understood Senator Pollard's question was that if the Commission found a 700,000 barrel allowable through going into economic waste and physical waste both, that they could go that low.

A. If it didn't cause physical waste, they could consider what they would allow to be produced, so that it would not cause or permit physical waste, and even though it was 800,000 barrels they could if they liked reduce it to 700,000 barrels.

Q. But physical waste would be the controlling factor.

A. It should be, because that is the thing they should have in mind in enacting their order, and not the market demand. The physical waste should be the controlling thing.

Q. In other words, doesn't this decision say that so long as the Commission stayed equal or within the market demand it would be conclusive that they were not following physical waste?

A. That is what it said, that if they held it within the market demand that they were then not considering physical waste or letting physical waste be the controlling thing but were letting market demand control them in their rulings.

Senator Pollard:

Q. A few moments ago you stated that under the decision of the Three Judge Court that the Commission, even though they found 800,000 barrels to be the market demand, could also enter a valid order allowing 900,000 barrels.

A. I think that is right. They shall not limit it to equal the market demand.

Q. As long as it is under the market demand or exceeds the market

demand it can be a valid order, if there is no waste?

A. I said they could, but I said the court didn't say that it would be a good order; it said that they should not make one limited to equal market demand.

Q. That is it.

A. And it would seem to be that anything that equalled or was below that they would be permitting market demand to control.

Q. If they have authority to enter an order below the market demand, now—

A. No, I don't think they have authority to do that.

Q. I thought you said they could enter a 700,000 barrel order.

A. They could. I think then if they limited it to a lesser number that it would not be a valid order. You asked me if they could do it, but I said as I understood the court to say if they did make such an order that it would be limiting it to equal the market demand and would not be a valid order.

Q. It must be above the market demand?

A. Yes, some figure above it provided it is not physical waste. Physical waste is the primary thing to be considered, and then when you consider physical waste, all right, you shall not permit to be produced an amount less than or equal to the market demand.

Q. "Less than," isn't there.

A. No, sir, it says limited to equal market demand; in order for it to be valid it would have to be above the market demand. If they limit it to equal then I think they have prohibited them from making anything below the market demand or limited to equal the market demand, but if the production of more than the market demand is not physical waste they can permit that amount of production.

Q. Then that word "equal" means anything up to or equal to?

A. Yes, sir, shall not be limited to that.

Q. Judge, the main thing we are all interested in is getting an order entered that will be valid and prevent the East Texas field from being dissipated. This (indicating) is going to be offered as an amendment known as Paragraph L: "The term waste shall include economic waste, underground waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demand as determined by the Commission, and the Railroad Commission is expressly authorized to consider any or all forms of waste in fixing its rules, regulations or orders for the conservation of oil and gas." Now, what would be the effect of the bill that we are proposing with that amendment in it?

A. Here is the way I understand it; as I understand the present bill it is the primary object of the Commission to consider physical waste; now it specifies that it shall not prevent the storing of oil except to prevent physical waste; then they may not only produce what the market might need, but they could permit the production of a reasonable amount of storage to meet the market demand provided it did not permit physical waste, but they shall never limit the production of crude oil to equal market demand, that is, you shall not hold it below market demand, you shall not get it just up to market demand, but you shall permit so much of it to be produced as is not physical waste, and you may permit more than market demand and put it in storage if that is not physical waste. Now, this amendment you offer it occurs to me, if you will permit, that it is rather vicious.

Q. In what way?

A. It says here that physical waste is the production of petroleum in excess of market demand. In other words, you are not going to let them produce more than is a reasonable market demand. "The term waste shall include economic waste, underground waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demand * * *." You are not going to let them produce more than is a reasonable market demand.

Q. That is not the purpose of that amendment. Here is the purpose of this amendment: We want this amendment to provide that the Railroad Commission may take all ele-

ments of waste into consideration. The market demand will be an incidental part of that. That is my viewpoint.

A. I think you have it now, and the court said that you have it.

Q. That is where we all disagree.

A. The closing part of this opinion reads: "Further, if we disregard the statutory prohibition against restricting supply to 'equal existing market demand' we think it equally plain that plaintiffs are entitled to relief;" and they have just before said in the opinion that it is conclusive that the rules and regulations were passed having in mind the agreement of the Oil States Advisory Committee to hold production to that amount that the market would absorb. Now it says: bearing in mind the statutory prohibition that they cannot hold production to equal the existing market demand, "we think it equally plain that plaintiffs are entitled to relief. For, enacted not with an eye single to fairly exert admitted constitutional power to regulate the use of private property while it permits the full use consistent with such regulation, but with an eye evil, because it has looked too much on the forbidden thing, keeping supply within demand." Now that is what you propose here by this amendment, to say that it shall not be in excess of it. " * * * the rules have been entered and are being enforced in such fashion as to subject plaintiffs' property to a confiscatory control, which transcending public necessity, has exerted the power granted beyond the necessities of the case, both in that it has arbitrarily and without adequate grounds limited the total production of the field far below any amount which the evidence fairly shows the interest of the owners, consistent with public necessity, permits; and particularly in that in direct contravention of the statute * * * ." That is, you haven't considered physical waste, but you have limited the amount of production so that it does not exceed or so that it is equal to market demand only, and that has been the thing that controlled you, and that is the thing that is prohibited by the statute. The statute permits you to permit production, allowable production, if it does not cause physical waste, more than the market demand and in such reasonable amount as is consistent with public necessity, and permits you to store that if it doesn't cause physical waste. That is what I understand that this opinion says.

Q. Suppose that under that opinion that a new order was entered for 50 barrels per well and the Three-Judge Court should determine that the East Texas field should produce 200 barrels per well—that would give us practically the entire supply of crude oil for all the markets in the United States—what would be the result in that field as well as in the markets of other oil fields of the State, and what would be the result as to physical waste and economic waste?

A. I don't think you have any right to consider what would be the result on the market in other fields. I don't think you should have or delegate the power to consider the market demand in any other field, but if these people in East Texas have the oil, and it can be produced without physical waste, and the Railroad Commission has the power and the Legislature has the right to delegate to them the power to prohibit production only when it does cause waste, then regardless of what the market might be they should only determine how much can be produced and not cause physical waste, and in determining that you can consider what the market demand might be and whether or not you can store it or use it as public necessity might require or demand if the further storage and use of it is not physical waste. Now, this amendment proposed, and the bill offered in addition, said that you are going to give them the power to limit the amount of production so that it will not be in excess of the market demand, and that, I say, is a very vicious provision in the law. It certainly would not only tend to influence but, in my judgment, would absolutely control the price.

Q. That market demand would be determined, however, by the Railroad Commission.

A. Certainly, that would be one of the things they would pass on.

Q. Now, do you believe it would be good public policy to open up the East Texas oil field, flood the market with oil and destroy all mar-

ginal wells which naturally could not produce if the price of oil was down to 25c a barrel, to cause wells to be plugged in West Texas and other parts of the State; do you think that is an element of waste that the Railroad Commission should take into consideration in entering an order?

A. I don't think anybody would contend for a minute that the field should be opened up, because I imagine to open up would mean to turn them all loose, and if you do that necessarily there would be waste because the market could not absorb it, neither could the storage except for a short time. But I think this: that if the oil is over there in the quantity that it is, the man who owns it owns a commodity that ought to go on the market in competition just exactly like all other products go on the market, and if he wins or loses on his investment he wins or loses like the man who bought a 250 acre farm.

Q. Do you mean it all ought to go on the market if he sees fit to put it on?

A. If he sees fit to put it on it ought to go on in competition, and he will win or lose as the circumstances and conditions of supply and demand dictate, but certainly he should not be confined to some theory, something that has no foundation in fact but is a theory such as to influence and stimulate the price of his commodity on the market, but the people who buy gasoline have a right to expect that crude oil will go on the market so as to prevent waste, and such an amount of it go on the market as competition and trade may need in the business.

Q. At the present rate of drilling over there we will have about ten thousand wells there in the next sixty to ninety days.

A. I don't know, Senator.

Q. At 200 barrels a well that would be two million barrels, that is practically the amount being produced at the time oil went to 10c in East Texas.

A. That is my information.

Q. At that time the markets were so flooded that the marginal wells in West Texas were about to be plugged; you wouldn't advocate that as a matter of public policy?

A. No, I think your question assumes that you are going to destroy a man's property who is equally entitled to a lot more than the situation of his well entitles him to. If he happened unfortunately to be on the side or edge he can't expect to get any more oil than he is entitled to under his land, and because he is on the edge he ought not to ask the Legislature to come in and stimulate the price so that he will get more than the market ought to pay him under supply and demand, and ask the people who burn gasoline to pay him that stimulated price to make good his investment that he went over there and took a chance on. Just like the man who bought his farm after the war when cotton was 40c a pound and he bought 250 acres of land and now he can't pay for it and cotton isn't worth 40c; he just made a bad guess on his investment. These people who bought that land knew it was an oil field, they knew it was subject to many things, that it might be or not profitable; they ought not to come and ask you to stimulate the thing some way so that they can get an artificial price for their stuff instead of meeting it on supply and demand in the market and trading like the farmer puts his cotton on the market. We ought to have, the user of the goods ought to have, the benefit of whatever can be produced over there without causing physical waste, and if it raises or lowers the price of crude oil that is a matter that everybody else takes care of in his business affairs; if it raises or lowers the price of gasoline we ought to have the benefit of it, but certainly you ought not to stimulate his business and give him the advantage of legislation and control which every man in his business does not have.

Q. I am sure you are like me; you don't agree that in order to set the price, the retail price of gasoline, we should permit a few fellows to evade the payment of the 5c gasoline tax in order to set a lower price on the market, that is, if that is being done as charged in East Texas now; that some who are not paying the gasoline tax are selling gasoline wholesale to the market 5c a gallon cheaper than the fellows who are paying the 5c tax; that ought to be stopped.

A. That is a matter of the violation of another law which could take care of itself.

Senator Martin:

Q. Mr. Harrell, back with reference to the question about this Advisory Committee or State's Advisory Board or whatever you call it, I believe you said that they had advised that the market could fairly take care of 800,000 barrels a day?

A. I thought it was 900,000.

Q. All right. I understood you to say that that opinion held that the Railroad Commission could take into consideration market demand, just so it did not take into consideration or make the allowable equal the market demand.

A. That is what it says, shall not limit it to equal market demand.

Q. Now, we will say the market demand is for 800,000 barrels, and Texas oil fields or the oil fields of the world could not produce over 200,000 barrels without causing physical waste, would they have a right to go ahead under this law and permit physical waste and raise that to 800,000 barrels?

A. No, it says that they shall not commit physical waste.

Q. Regardless of how small the amount was, there might be a demand for 800,000 barrels and all the wells only produce 100,000 barrels, it would not be within the power of the Commission to let it go ahead and produce with physical waste?

A. That is right.

Q. Oil sold during the war for $3.50 a barrel, crude oil?

A. Yes sir.

Q. It shot down as low as 10c a barrel?

A. Yes.

Q. Did you hear of any proration order being demanded anywhere on earth when oil was selling for $3.50?

A. There was a law passed I think back in 1919, first, with reference to physical waste.

Q. Proposing to take into consideration market demand?

A. No one offered any suggestion about controlling the production of oil with reference to market demand, no sir.

Q. All right, we know that even in the natural course of events that the East Texas oil field is going to ultimately play out, according to the laws of Nature it will play out. Suppose we don't have any other oil field and there becomes such a great demand that oil goes up to $3.50 a barrel, wouldn't it be right then for the Legislature to come back and say to these people 'we protected you when you could not get a living price for your stuff, now you must cut the price down and give the world in general the benefit of this stuff over there that is not costing you a dollar more to produce?'

A. Looks like you would have the same right, Senator, if you are going to take market demand or price into consideration and fix production, then you ought to have the right if it becomes necessary to reverse the situation.

Q. Either way you put it it becomes confiscatory.

A. Yes sir, I think so, it's beyond the powers of the Government. If you are going to control production with reference to price then I don't see any reason why you could not fix price with reference to production. If you save it for him now when he gets $1.10, and then it goes up to $3.50 then you ought to tell him what to do with it at that time.

Q. Below a certain price it is our duty as a legislature to protect the public by saying it can't go higher than a certain price?

A. In other words, you would say to the producer that we protected you with reference to production so that you got $1.10 a barrel for your crude, we did that for you and disregarded the rights of the public; now we are going to say to you that we will not let you charge the public more than $1.10 for it though you might be able to get $3.50.

Senator Woodul:

Q. With reference to the price of gasoline in Texas markets I want to read the elements of cost of producing a gallon of gasoline as given by the testimony in a former hearing and see if you agree.

Senator Purl:

I object to that. I don't think that it is right.

Senator Woodul:

Q. I am just asking you. The sworn testimony on a former hearing was that the actual refining cost of refining a gallon of gasoline was 4 to 4½c a gallon. Now the freight on a gallon of gasoline distributed in Texas, the testimony was that it ran from 2

to 3c, so let's assume the minimum of 2c, that is the freight on a gallon of gasoline. The tank wagon charge in Texas at that time was 2c a gallon. Now then, we have a State tax of 4c that must be paid; we have a Federal tax of 1c that must be paid, and the testimony was that the practice in Texas was to allow the retail man 3c. Those different elements amount to 16c regardless of what the price of crude oil is or any profit to the refiner. On that basis would you say that a 19c price on $1.10 crude is an exorbitant price?

A. If your assumptions there are correct, no.

Q. I am just stating that that is the testimony given by men under oath that had all the refining costs, and without question on the former hearing.

A. Yes sir.

Q. Then it wouldn't be unreasonable on $1.10 crude?

A. If you are going to fix that then you ought—

Q. My question was, those are fixed charges in the State of Texas on $1.10 oil, 42 gallons to the barrel, then a 19c price would not be unreasonable?

A. If it costs him 16c to make it, no.

Senator DeBerry:

Who says those figures are not questioned?

Senator Woodul:

I have never heard them questioned. Do you question them?

Senator DeBerry:

Yes sir. Can you prove it?

Senator Woodul:

Well, I am taking the minimum, I am not taking the 4½c, but the minimum.

Senator DeBerry:

I will ask you did you say the retailer gets 3c?

Senator Woodul:

I said that was the testimony on the stand before.

Senator DeBerry:

I said I question it.

Senator Rawlings:

Let's argue that a little later. Let the record show that Senator DeBerry questions the accuracy of the figures.

Mr. Harrell (resuming):

A. I have heard different ones testify in cases in which they stated that the cost of refining the product, of course, would depend on what character of machinery he had. He couldn't get the amount of gasoline out of a barrel of oil that a more modern and better equipped one could. So those things would all have to be taken into consideration. I don't know whether the figures are right or not. Of course, a man ought to have some profit, and if it costs him that much to make it he is entitled to have a reasonable profit; but if he can't manufacture it and meet competition supply and demand would again assert itself and would solve itself without any stimulation of legislation.

Senator Poage:

Q. What Senator Martin was questioning you on there about would it not be fair if we guarantee a profitable price to the producer at this time for his oil for us at the same time to guarantee that in the future the consumer would get the refined products based upon that same price of crude oil, would not you say, as one of the witnesses said Saturday, that this law is not a price fixing law but is a price boosting law?

A. No, there is no top limit, that is, you can't tell what would be the reaction of the control of the supply.

Q. It does boost the price and artificially holds it to a higher level, but it does not limit it at the top?

A. No.

Q. Any control of the supply necessarily affects, either boosts or lowers, the price?

A. Yes.

Q. And this differs from the control of public utilities by the Government?

A. Oh, yes.

Q. In that it doesn't work for but one end. In the case of the public utilities the public is protected the same as the producer, but the public receives no such protection under this?

A. Absolutely none.

Q. Under the Oklahoma statute there was an attempt made to protect the public, wasn't there?

A. Well, I don't know.

Q. There was a provision in there?

A. Yes.

Q. That was put in there in an attempt to protect the public?

A. Yes, sir.

Q. There is no such provision in this law, is there?

A. No, sir.

Q. But at least in Oklahoma they made an attempt to protect the consumer, and we are not making any attempt to?

A. No.

Q. Do you see anything in this law that would protect the consumer in its present form?

A. I don't think you provide any aid or comfort to him, but make it possible for him to continue to drive into the gasoline station and take his dollar that was made out of cheap products and buy high priced gasoline.

Q. He comes in and takes his dollar that he secured by the sale of cheap products, 6c cotton, and buys 20c gasoline. You said that assuming what Senator Woodul said about the cost of manufacturing gasoline is correct that possibly a 19c price for gasoline would be a reasonable price. Do you consider that there is anything that goes into the reasonableness of the price other than the cost of production?

A. Oh, yes, the character of refinery he had and so forth.

Q. Does the ability of the purchaser have anything to do with the reasonableness of the cost?

A. Certainly. If his money is cheap he can pay more.

Q. It is hard now, isn't it?

A. Yes sir.

Senator Small:

Q. Are you for or against the tariff on oil?

A. Well that involves a lot of things; just answering generally I would say I was for it.

Q. You would like to protect the home production of oil; that is the idea of a tariff?

A. Yes sir.

Q. Then so far as the tariff is concerned your position with reference to producing cheap oil for the public falls down there, does it not?

A. Well, I don't know that it does.

Q. You say that they can bring in foreign oil now and pay a tariff and put it in competition with our oil at about 55c?

A. Yes, those were figures that were given me which I understand are substantially correct.

Q. Then, taking the broad, humanitarian premise that you have assumed here you would naturally oppose a tariff on oil because it would raise the price of oil to this mass of consumers that you are talking about?

A. No, we ought to have the benefit of that produced at home.

Q. Then, so far as your premise here is concerned you would favor a tariff on oil?

A. Yes sir.

Q. And if that tariff raised the price of oil to the multitude you would justify it in your desire to protect an industry that is peculiarly profitable to Texas?

A. It is peculiarly profitable to Texas but it is also profitable to everybody in the United States.

Q. Well now, it has been stated here that about 85c of the dollar that is spent for crude oil comes from without Texas, and that 15% of our production is consumed in Texas. According to your theory you think it would be better to drive the price of oil down and curtail the amount of this 85c that comes from without, so that those of us who spent the 15% would get the benefit of it?

A. No. This 85c doesn't come from without, it goes to the major oil companies which own the crude; that is the price they get for their crude oil and it doesn't come in here. The land owner and the people here own very little and get only their one-eighth of it, but the other goes back into the treasuries of the major oil companies and not to Texas.

Q. Then so far as the major oil companies are concerned you don't take them into consideration as a citizen or as a legal entity here in Texas that should be protected by legislation?

A. I do, and I say that when they go into East Texas and buy their land that they make an investment there, and that they are not entitled to any more protection because they are in the oil business than the farmer who when down here and bought a farm.

Q. All right, now do you put the production of oil on the same basis as the production of cotton and wheat?

A. Certainly.

Q. Governed by the same economic laws?

A. Ought to be.

Q. And the same consideration of public policy should govern both?

A. I think so.

Q. Regardless of the fact that one is a natural resource and regardless of the fact that the other is a recurring crop and can be produced indefinitely?

A. Senator, they used to tell us that we had to find something that would take the place of coal, then oil come along and they said we will use oil instead of coal. We don't know how long it will last; when we get through with oil we can go back and use the coal.

Q. Now, you are against physical waste?

A. Yes.

Q. Now if production of oil beyond the market demand results in waste you would be against that excess production, wouldn't you?

A. Yes, sir.

Q. I take it that you think the Legislature should pass a law that would prohibit physical waste, then I ask the question that if the production of oil beyond market demand results in physical waste what you would think about the passage of law restricting the production of oil to market demand?

A. That would be a thing that would have to be solved. If there was but a little over there it would recconcile itself to the situation.

Q. But assuming that there is plenty of it over there, and taking the premise that the production of oil beyond the market demand is physical waste, would you have any objection to putting that feature in the bill?

A. Yes, sir.

Q. Then that form of physical waste you would want to continue?

A. No, sir, I would not want it to continue.

Q. You wouldn't want the Legislature to curtail that form of physical waste?

A. No, sir.

Q. That is one form of physical waste then that you are in favor of?

A. That is not, as I understand it, physical waste, because there may be a reasonable amount of it placed in storage, there may be a reasonable amount of it that should be provided in some way to meet the necessities other than the market demand, and that would not be physical waste.

Q. If the production of oil beyond the ability to store and beyond the ability of the market to consume is physical waste then do you think that the Legislature should curtail it?

A. Well you are getting too—

Senator Martin:

I object to the question because it assumes something as a basis here that has not been established.

Senator Small:

Q. Do you understand that the decision of the United States Supreme Court upheld the market demand feature in the Oklahoma bill?

A. I do not understand that it did.

Q. You don't construe that opinion then as specifically upholding the curtailment of oil to the market demand where the production beyond market demand results in physical waste?

A. I understand the court did not pass on that question.

Q. Now then, your idea is, if I have oil property in East Texas from which I can produce 100,000 barrels of oil a day without committing physical waste so far as that property is concerned that there should be no legislative restraint on my desire to produce 100,000 barrels a day regardless of what havoc that production might work in other sections of the State?

A. It would not work any havoc if you were not committing physical waste, because you would have to sell it or dispose of it so that it would be consumed, and if you could not sell it to realize a reasonable profit you would quit producing it, just like the man on the farm, he has to store it or he quits raising cotton.

Q. Suppose that I had a situation that belonged to me where I could produce for a very small price, and with that production I could drive everybody in other oil fields in Texas out of existence because I could produce so much cheaper than they could, and destroy this natural resource in every section of the State, do you think that the Legislature should hands off me and give me free rein to destroy these others?

A. I don't think you should go to the Legislature and ask them to fix it so it would be possible to destroy them.

Q. Don't you think the Legislature should come to me and say 'we must as a public policy take into consideration these other resources of the State; as against the peculiarly fortunate situation that I might have?'

A. That would be protecting the lit-

tle man and not protecting you. I think you are protecting the big man and not the little man. Here you are coming in with your monopoly and control and asking the Legislature, not to help the little man get in competition with you, but to permit you to absolutely destroy the little man.

Q. The picture I drew you was East Texas against the Panhandle field. Now if the East Texas situation is analogous in some respects to the South American situation I told you about, and if with the East Texas oil field they can destroy my oil fields out in the Panhandle—and I want you to know that they are little out there—do you think that that situation over there should be used to destroy that resource out in the Panhandle?

A. Why certainly I don't think it should be used to do it, but if your people just don't have as valuable an oil field as East Texas so as to enter into the market in competition with them you will just have to quit producing up there until such time as you can.

Q. If then to quit producing out there would destroy that field then you are in favor of a policy that would destroy that field?

A. No, I think those things solve themselves, if you let them alone, they solve themselves in business, merchants solve them, farmers solve them.

Q. And you put all of those things on the same plane that you would handle a natural resource?

A. Yes.

Q. What is the nature of the organization you represent?

A. It is the Associated Gasoline Consumers, a group of neighbors that originally started in Crandall.

Q. Are they selling gasoline?

A. No, sir, they are merchants and clerks and lawyers and cotton buyers and people of that kind who drive automobiles and buy gasoline. None of them have any interest in any oil field or refinery or filling station as far as I know.

Q. And of course they want to hold the price of gasoline down?

A. They want it to be retailed to them without any legislative influence to stimulate the price of it, and let them buy it just like they have to go buy their clothes and pay house-rent.

Q. Well, you are particularly happy I suppose in the fact that we are getting 25c for wheat because the by-products are cheaper?

A. Well, I don't know; I don't like to buy a cheap loaf of bread and have to spend high priced gasoline to go down and get it with, when my salary is low and my house-rent is low.

Q. In other words, your theory is to hold everybody down just simply because your industry happens to be suffering from a low price?

A. I don't want to see anybody suffer, and I think the people at the head of the oil industry are as capable of solving their difficulties as the farmer is able to meet his, and I don't see any reason why the oil man should ask the Legislature to stimulate his business.

Q. If it was possible for us to pass some legislation that would bring a better price for wheat and cotton, would you be against it?

A. I would.

Senator Berkeley:

Q. I just have one question to ask you. I want to refer to the situation of that little refiner. Under the provision of the market demand phase of the bill you stated that a situation like this might arise: that a little producer over here—we will grant now that market demand has been met and it is $1.10—this little producer over here has some oil that he is ready to sell for a lower price than that, but the Commission rules that $1.10 is the price; now I understand you to say that the major companies would have the upper hand of the situation under those conditions by reason of the fact that they have large oil holdings in Venezuela and other foreign sections, and when it came to the refined products in order to strangle the little man that the major companies would manufacture their gasoline out of oil that was brought to the Atlantic seaboard for around 55c per barrel; now, Judge, under those circumstances, if that be a true picture of the situation, what would be the ultimate end of the little refiner?

A. Senator, under those conditions, as I understand it, the first man that would fall would be the

little producer; the little producer would fall first because they would say to him 'We don't want your oil at all because there is no market for it, we have all we want, all we can use,' and the little producer would go to the Commission to get a permit to sell it to the man who wanted it but had to pay a small price for it, and he couldn't sell it to him, so he is immediately choked to death. The little refiner is paying $1.10 a barrel for crude oil, that is the price they fixed for it, then the major companies are manufacturing their gasoline out of 55 to 60c cost of production and importation; they manufacture their gasoline out of 55c crude and put the price of 12c per gallon on gasoline. The little refiner pays $1.10 for his crude and has to sell his gasoline in competition with the 12c gasoline, so necessarily he can't live long. Both the independent producer and independent refiner will be gone and they are the people who make what little competition there is and give my people and others similarly situated the benefit of a little competition in the price of gasoline.

Q. Provided that they should go, would it be your judgment that gasoline would be higher?

A. There would be nothing to prevent them from making it anything they choose.

Senator Parrish:

Q. Under this bill we find in there physical waste, economic waste and market demand, do you understand that under the bill that the Railroad Commission in determining the amount of production can or may take into consideration the three mentioned there?

A. Under the new bill? Yes.

Q. Now could they under this law take into consideration the physical waste and not economic waste or market demand?

A. Under the new law, yes, I understand that they may consider it.

Q. That would mean that they can take into consideration economic waste and not take into consideration physical waste or market demand; they would have authority to do that?

A. Yes.

Q. The point I am getting at is this: you understand under the bill that the Railroad Commission of Texas could close the door and place the supply that they are going to permit to be produced at such amount as they may see fit; they would have that authority?

A. Yes.

Q. Say they are permitted today 800,000 barrels. they could raise that one-third if they wanted to and no court could stop them?

A. If they could justify the raising of it as within the limitations of their power.

Q. I am talking about the power under this law.

A. Yes sir.

Q. Under this bill we have under consideration they would have the authority to permit twice the amount of production, wouldn't they?

A. If it was in keeping with the facts of the testimony of their experts.

Q. Now, the other question: In what way will they arrive at the market demand?

A. I suppose they will have to consult some financial journals or experts or something in conjunction with the amount of gasoline consumed, and so forth, to find out what the market demand is.

Q. You understand under this bill we have under consideration that the Railroad Commission could permit even more than they are allowing now, and that would indirectly control the price?

A. Under the bill we now have, why certainly.

Q. Is there any curb on the Railroad Commission as to what they will permit to be produced?

A. Nothing, except they shall not permit physical waste; they may permit it to be produced and store it provided it does not commit physical waste.

Senator Woodruff:

Q. Following out the question that Senator Pollard asked you a minute ago, isn't demand for crude oil controlled by the price of crude oil?

A. The demand for it?

Q. Controlled by the price of it?

A. Well it is influenced by it of course, because if it is high people won't want as much.

Q. Well, the plight of the coal business at this time is brought about

largely by the competition of cheap crude oil?

A. I imagine so, yes, sir.

Q. Well, if the demand for crude oil is controlled by the price let's turn it around and say the price is determined by the demand for it.

A. Well that is true, yes.

Q. The demand is controlled by the price and the price is controlled by the demand, so you get into an economic circle, and the only way that the Railroad Commission could arrive at a market demand would be an arbitrary arrival.

A. Yes, and they ask you to grab the leg of demand and don't bother with the price.

Q. So there is no conceivable set of facts or testimony that the Railroad Commission could seize upon upon which to predicate an order limiting to the market demand except an arbitrary one?

A. That is right; as you say the demand fixes the price and the price fixes the demand. They want you to fix the demand or the supply, they will fix the price; they want you to control the supply but they want you to hands off the price.

Q. Now this question: is it your opinion that the Railroad Commission could introduce testimony and make a record under the present law upon which they could predicate a workable, effective proration order restricting physical waste?

A. I am sure they can. The court says they have never tried to do it.

Q. Do you think if you were on the Commission and charged with the responsibility that you could bring in the evidence and the testimony upon which to predicate such an order?

A. Well, I don't want to get in competition for the job, but certainly if experts can testify as to what is physical waste as to how much the gas pressure is, the water pressure, the potential production and the thickness of the sand, then certainly they can on that testimony make tests to determine how much that man is equitably and ratably entitled to to get his part over a field and not affect or destroy or injure the field, certainly that can be done.

Q. Assuming though that it is impractical for the Railroad Commission to write an order under the present Act that would be workable and effective because of the complicated situation in East Texas, by the same force of argument wouldn't it be impossible for them to write a workable order as to market demand?

A. It would be just three times as hard. You require them to prevent physical waste; they have still got to find out what is physical waste, and apply that to economic waste and take both of them in conjunction with market demand.

Q. Then if they ran afoul of the Federal Court in trying to prevent physical waste under the present law, don't you think it would be three times as likely that they would run afoul of the Federal Court in trying to apply an order based on economic waste and physical waste combined?

A. Yes.

Senator Woodward:

Q. Judge, assuming that under the present conditions the market will reasonably absorb 800,000 barrels of oil per day produced in Texas, and assuming that a million and a half barrels of oil could be taken from the East Texas field without producing physical waste, would it be your idea that they should be permitted to take the million and a half barrels of oil which would be, 700,000 barrels more than the market would absorb?

A. I certainly think so, Senator, if it doesn't permit physical waste.

Q. In other words, your idea is that notwithstanding what the market absorbs if they can produce more without producing or bringing about physical waste, it is your idea that the policy of the Government should be to permit them to produce it?

A. Yes, just so, just exactly so.

Q. Do you believe that the production of 700,000 barrels over and above the daily absorption would bring about an economic waste?

A. Well, I don't see how it would, because that would just take its place then like all other commodities and all other businesses take their place in the structure of the Government.

Q. Now, Judge,—a little of this is of course based upon assumption—now then, assuming as a hypothetical case that the market will

absorb under present conditions approximately 800,000 barrels of oil per day and the production is restricted to what the market will reasonably absorb, and the result is that oil is a dollar a barrel, from which the State receives in revenue by way of a tax $16,000 a day. Now assume that by reason of permitting a million and a half barrels of oil to be produced, which is, say, 700,000 over and above what the market will absorb, that it would result in oil going to 10c a barrel and the State receive $1,600 a day instead of $16,000 a day, and if that would result in the destruction of the independent operator, and you believed those conditions existed, what would you do as a member of the Senate of Texas?

A. In the first place, I think if you put back the 700,000 barrels more subject to be used that then the price of gasoline will get cheap and we will burn more gasoline and the State will get the 4c tax and that would probably equalize the situation.

Q. Let me go back and repeat again—

A. I am not going to say to you what I would do if I were a member of this Legislature.

Q. I probably shouldn't have put it that way; however, that is what we are trying to find out, what we should do. Assuming that the overproduction of oil to the extent I have mentioned would bring about a condition whereby the State would lose the difference between $1,600 a day and $16,000 a day by the decrease in the price of oil, and assuming that the over-production of oil to the extent I have mentioned or larger would result in the destruction of the independent operator, do you believe it would be good governmental policy to sit by and not prevent that?

A. Well, I don't agree with you that it would do that.

Q. Assume that.

A. At the same time I will go this far with you, that if the things that you stated were conditions, assuming they were true, and I don't agree with you that they would be true, I would say to you this: that first I would think the State should keep its hands off the situation even though it brought what destruction it may, because I think that the Government should not put its hands upon anybody's business, either to save it or wreck it, but his business should be his own and we should have the right to choose or select our associates, our business, our investment, like a free people should, and the Government should not say that we will legislate one way or the other whether it wrecks or ruins a business, because a business is the individual's responsibility and he should meet it with those that are in the same kind of business, and either stand or fall.

Q. Summing up all that you have said, I gather from your testimony that it is your idea that the State should only see that physical waste does not occur?

A. That is right.

Q. And if the production of oil in excess of the reasonable market demand does not bring about physical waste, then let them produce it whether it is a million above the market demand or 500 above the market demand?

A. Just exactly.

Senator Woodruff:

Q. Then Mr. Harrell, you would say that inasmuch as the State tax is minor compared to the other interests involved the Legislature ought not to go afield and violate sound principles of public policy in order to save its own little stack of taxes?

A. Of course; I think you would profit more by your tax if it was so that there could be cheap gasoline and people could burn it and ride in their cars more.

Q. Then whether the State stands to win or lose $16,000 or $1,600 isn't properly a consideration to be injected into this mater?

A. It should not be, in my judgment, because the proposition has to be either right or wrong.

Senator Martin:

Q. Mr. Harrell, with reference to the amount of taxes the State would get from the oil that is produced, if the State of Texas were to enact a law which would say that the producer shall pay to the State 2c a barrel on every barrel that comes out of the ground, whether oil sells at 10c or $5.00, Texas couldn't lose on it?

A. No, you can take care of your taxes, Senator.

Senator DeBerry:

Q. Right along that line—Senator Martin practically brought it out—if crude oil industry of this State should pay the State of Texas $16,000 a day, the Legislature ought to have sense enough to graduate a tax to get that much regardless of whether they flow 600,000 barrels a day or a million and a half.

A. Certainly you should, Senator, and in addition we know that if this 700,000 barrels was put back on the market we would have cheap gasoline and the people would burn more gasoline in their cars, and you get 4c tax, so whether you get it out of the crude or the gasoline it is taxed just the same.

Q. During the last oil conservation session the Governor sent up a bill for 2c per barrel, and these boys that passed the conservation bill lost it and couldn't find it, but if they had passed that bill at that time there would not be any argument now about whether we get $16,000 a day or less or whether the field is partially opened or wide open.

A. No.

Q. If we pass this law and put into it the right to consider market demand, don't we infer that the Commission when they go to interpret market demand interpret market demand at what they might consider a fair price?

A. And such evidence as was brought before them that they were willing to believe.

Q. That is, in construing market demand they will have to consider the price?

A. Yes.

Q. Isn't it a fact that there is a market demand so long as people will walk up and offer 5c per barrel, there is a market demand isn't there?

A. Yes, sir.

Q. In other words, when you put market demand in there it is meaningless unless you attach to it some price, isn't it?

A. Yes sir, it is left floating about.

Q. One more question, with reference to the question that Senator Small asked you; he says you are not in favor of a law to help the condition of the wheat farmer or the cotton farmer; you meant by that answer that you were not in favor of passing a law to boost a price at the expense of somebody else, that is what you meant, wasn't it?

A. I don't think the government ought to pass any law to boost or affect or control the supply or the price except so far as is necessary to prevent waste.

Q. You don't want your testimony to appear that you would not be in favor of a bill that would help their condition if it didn't do it at the expense of someone else?

A. I don't think there ought to be any legislation about people's business except to see that the natural resources of the State are not injured.

Q. Your opposition to passing a bill to boost the price of cotton produced at the expense of the cotton consumer is founded on the same opposition that you are opposing this bill?

A. Yes sir.

Q. I am going to ask you this question, if you can answer it in three or four minutes; if you can't we will just leave it off. Your interpretation of the Supreme Court opinion is very, very different and much more satisfactory to me than is presented by these other fellows, and I believe the same thing would hold good in that they have told me that the Supreme Court unqualifiedly justified market demand in the Oklahoma statute, and when Senator Small asked you if you understood that the decision did uphold the demand feature you answered "No," and he dropped the subject. I would like to take that up.

A. You understand there would be a difference of opinion as to the interpretation in the reading of that opinion. I am not a lawyer.

Q. I understand.

A. I just say this, that in a discussion of that you would have to read the different provisions of the opinion.

Q. I will not ask you to go into that now. It will last, and I am sure that they will argue that out before it is over with. I only get one side of it; they told me the decision unqualifiedly upheld the market demand feature of the Oklahoma statute, you say it does not.

A. I say in my opinion it does not.

A. "Section 3 defines waste to include—in addition to its ordinary meaning—economic, underground and surface waste, and waste incident to production in excess of transportation

facilities or marketing facilities or reasonable market demand, and empowers the Commission to make rules and regulations for the prevention of such wastes." That is the definition of Section 3. Section 2, as I understand it, is with reference to price fixing.

"None of the Commission's orders has been made for the purpose of fixing the price of crude oil or has had that effect. When the first order was made the price was more than two dollars per barrel but it declined until at the time of the trial it was only 35c"—* * * "It has never entered any order under Section 2 of the Act."

Q. Doesn't the court say right there that the Oklahoma Commission never passed an order that had an effect on the price.?

A. That is what it says. Now Section 3 is with reference to taking into consideration the market demand. "We put aside plaintiff's contention resting upon the claim that Section 2 or Section 3 authorizes or contemplates directly or indirectly regulation of prices of crude oil. The Commission has never made an order under Section 2. The court found that none of the proration orders here involved were made for the purpose of fixing prices."

Senator Woodruff:

Q. You understand that the Common Purchaser Act is now under attack in the Federal Court?

A. I don't know, Senator, I just don't know.

Q. Well, as a matter of fact it is being assailed; now if the Common Purchaser Act is held to be invalid and void the purchasers of crude oil in quantities make the market demand for it do they not?

A. Well, I don't know about in quantities, the purchaser of the crude oil makes the demand for crude oil.

Q. If the major purchasers of crude oil in the nation and in the world also are the major producers in Texas they conceivably might arrive at the point where they would not be in the market for anybody's oil except that produced on their own property?

A. Certainly, that is where it is going very strong in East Texas. There is about 73% of it owned by major companies.

Q. If the Common Purchaser Act is invalid and the major purchasers are the major producers, and they go out of the market for the oil produced by the little man, then there is no market demand for that oil, is there?

A. No.

Q. And the Railroad Commission would have to so find?

A. If there was none, yes. They would be using their own products and not purchasing anybody's.

Q. That would leave the independent producer over there without a market then?

A. Yes sir, that is my judgment about it.

Recess noon Monday until two o'clock p. m.

Mr. Underwood Nazro, being called as a witness, testified as follows:

My name is Underwood Nazro. I am Vice President of the Gulf Production Company.

At the outset, I desire to make my position here as a witness clear. I am here at the request of a member of the Senate to state the views of myself and my associates with respect to the new conservation bill that is now being considered by the Legislature. I am not here as an advocate of any program, nor am I here asking the Legislature to take any action for the benefit of the Gulf Companies or the oil industry.

Some of you will recall that I appeared before the Senate as a witness at the Special Session of the Legislature which enacted the present Conservation Law. At that time I stated certain conclusions that had been reached by myself and my associates with regard to the attitude of the Gulf Companies toward oil conservation legislation. I stated then:

"My associates and I, after managing and superintending the activities of the Gulf Production Company as a producer of oil for approximately the past thirty years, under the various temporary conditions of oversupply and undersupply, of low price and high price, of great demand and small demand, that have existed from time to time during that period, have reached the conclusion that a producer of oil, large or small, can only prosper and do justice to and make the maximum money for himself and his royalty owners by accepting as a fact that the value of oil, just as the value of other commodities, is fixed and determined, whether we like it or not, by certain economic laws. We are convinced

that any attempt to circumvent or to deny the existence of these economic laws merely delays the ultimate adjustment that they make inevitable, and increases the financial hardships of producer and royalty owner alike. These experiences have instilled in us certain convictions. We, therefore, have no hesitancy in stating the following general policies that we have agreed upon to govern Gulf Production Company's attitude toward conservation and so-called proration:

1. To support the doctrine of true conservation by eliminating waste in our own production of oil, and by encouraging and initiating scientific research into the problems connected with its discovery and production.

2. We are not in favor of schemes, whether voluntary or compulsory, will have the effect of restricting or controlling bargaining and the free operation of the economic laws of supply and demand, or that will destroy competition.

3. We favor laws necessary to prevent physical waste, but we believe the Legislature should insist on a definition of waste that accords strictly with the known facts and is applicable to specific properties, and that excludes the idea of interfering with the laws of supply and demand under the guise of preventing waste.

4. It has long been the established law in Texas that the owner of a particular tract of land owns all the oil and gas therein and has the right to produce it. Many citizens of Texas, both producers and royalty owners, have developed and acquired properties in reliance on this rule of law. Accordingly, we believe any attempt to substitute for this established law a theory that there is a common ownership of an oil pool, would disturb, if not destroy, property rights and would result in confusion and injustice to landowners."

My associates and I are still convinced that those general policies are sound, and the attitude of the Gulf Companies has not changed. It follows, of course, that we are opposed to the "market demand" bill now being considered by you.

As I understand the matter, you are being asked to pass legislation which will authorize the Railroad Commission to consider economic waste and to consider the reasonable market demand for oil in determining how much oil each pool in the State, and all pools in the State together, shall produce. You are being asked, also, to authorize the Railroad Commission to determine what is the reasonable market demand for oil produced in Texas and to decide how much of that market demand shall be allocated to each pool in the State. Oil is a commodity that is in use throughout the civilized world for many different purposes, and is a convenient and ready substitute for many other sources of power and other kinds of fuel. Obviously, more of it will be used if it can be obtained at a cheap price than if the price is high. It is obvious too that if the price is low for a considerable length of time, new uses will be found for it. Consequently, it is impossible to say that the market demand for oil is any definite number of barrels per day or month or year, unless you also state the price at which oil can be obtained. The Railroad Commission cannot determine what the market demand for oil is except at some certain price. Consequently, if the Railroad Commission is to fix the amount of oil that can be produced from any pool or from all the pools in the State together, at some figure which in the minds of the members of the Commission represents the reasonable market demand for oil, then the Commission must also inevitably determine what is a reasonable price for oil or what is a proper price for oil. That, of course, is nothing more or less than price fixing by a governmental agency, and we are convinced that governmental price fixing is wrong as a matter of government policy and futile as a matter of economics. The tendency on the part of the Commission will be to keep the price of oil as high as possible, at least for the present, because that seems to be the thing that will temporarily benefit the people of the State who are intimately connected with the oil business. By doing that, the inevitable result will be an encouragement to wildcatting, both in Texas and in other states and in other countries, and the definite encouragement to prospecting in the states which are not now producing oil at all. It seems to us that the whole

net result of that policy will be the bringing in of a number of new fields and new production in old fields, both in Texas and out of Texas, which will mean an ever-decreasing return on invested capital, and this must inevitably lead to a collapse of the artificial price structure.

In the last few years we have seen a number of attempts by the Federal Government to stabilize and keep up the price of various commodities. You all know how disastrous the results of those efforts have been to the producers of those commodities. Why should we believe that any more success will attend an effort to keep up the price of oil by governmental regulation? We want a high price for oil but we do not believe the way to achieve it is to stimulate artificially the search for new supplies.

You already know that if you pass this proposed bill it will be attacked by somebody immediately in the courts. I say this because someone will certainly question the constitutionality of the market demand feature of the new bill and also because it will be a most difficult bill for the Railroad Commission to administer without discrimination. Inevitably the charge will be made, and probably sustained, that the Railroad Commission has been unfair or arbitrary in determining the market demand for oil in the whole state and in distributing that market demand among the various pools in the State.

Being practical men of experience in business and governmental affairs, you will readily realize how difficult it will be for the Commission to reconcile and give proper weight to the very technical evidence that will be produced by the various conflicting interests, each of which will be seeking selfish advantage for their own particular group or locality. We have been authoritatively told by the recent opinion of the Three Judge Federal Court that the Commission has not dealt fairly and properly with the respective rights of the producers in East Texas. To require the Commission to fix the market demand for Texas oil and to distribute that demand fairly among the various pools in the State, bearing in mind the difficulty in determining the refining and marketing value of the numerous types of oil produced in Texas and the great variance in the distances of the various pools from the marketing centers, is to push the Conservation Laws further into the maze of legal contentions and conflicting rights.

The present agitation for this new law, and the Governor's action in calling you together in special session, resulted from the opinion by the Three-Judge Federal Court which declared the Commission's order in East Texas to be invalid. The opinion in that case upheld the constitutionality of the present law. This is a point gained which should not be thrown away. The court upset the Commission's order because in the opinion of the court the Commission had not followed the will of the Legislature as expressed in the present conservation law. Before we enact new legislation, the constitutionality of which all will admit is doubtful, why not give our present law a fair trial? The Commission should investigate the facts in the East Texas field and enter an order designed to prevent physical waste alone, without regard to so-called market demand or economic waste. The Commission should then, following the legislative mandate in the present law, enforce their orders without attempting to add to or take from the present statute. It seems wise to us, at least, to have that done once and see what will happen before reaching the conclusion that any new legislation whatever is needed. Certainly it will be difficult, if not impossible, for the Commission to determine what the market demand for oil is and to determine how much of that market demand should be allocated to the East Texas field, or to any other field, and to each of the producers in the various fields, because of the lack of uniformity in the prices offered by purchasers. It is obviously difficult to determine what is fair participation for each producer in the market demand when the various producers are not offered the same price for their oil. It is also obvious that different prices will be offered by the purchasers, because the Anti-Trust statute prevents the purchasers from getting together and offering the same price. We all know there is a substantial difference in the prices

being paid for East Texas oil today.

It seems to us that the question before you gentlemen resolves itself into this: Do you want to conserve the natural resources of the State in the sense of preventing the physical waste of those resources, or do you want to attempt to get the producers of oil in Texas a high price for their product? If your desire is to conserve the natural resources, you have a law already under which the Commission can do everything necessary to that end; if you want to try to get the producers of oil in Texas a high price for their product, you should realize that you are attempting to fix an artificial price for a commodity and that recent attempts by our Federal Government and by other governments to fix the prices of other commodities have all failed with absolute disastrous results to the producers of such commodities.

Senator Purl:

I want to explain to the Committee that I sent telegrams to Mr. Nazro, Mr. John E. Green and Mr. Ben Belt, which read as follows:

"YOU ARE HEREBY RESPECTFULLY REQUESTED TO BE PRESENT AT THE SENATE CHAMBER AT AUSTIN TEXAS MONDAY NOVEMBER SEVENTH TO GIVE YOUR VIEWS AND SUCH INFORMATION AS MAY BE REQUESTED OF YOU CONCERNING THE ENACTMENT OF SENATE BILL NUMBER ONE NOW BEFORE THE COMMITTEE OF THE WHOLE SENATE FOR CONSIDERATION STOP NO MONEY IS APPROPRIATED FOR YOUR EXPENSES INCIDENT TO ATTENDING THIS HEARING STOP ANSWER COLLECT STATING WHETHER OR NOT YOU WILL ACCEPT THIS INVITATION TO BE PRESENT IN LIEU OF A SUBPOENA WHICH WOULD HAVE TO BE ORDERED BY THE COMMITTEE OF THE WHOLE AND I HAVE NOT AT THIS TIME MADE SUCH A MOTION BELIEVING YOU WILL BE GLAD TO GIVE US THE BENEFIT OF YOUR OPINION. (Signed) GEORGE C. PURL STATE SENATOR."

Senator Rawlings:

Now that you have completed your formal statement, do you desire to make any further statement?

Mr. Nazro:

No, if anybody wants to ask me a question I will be glad to answer it if I can.

Senator Woodward:

Q. I would like to have Mr. Nazro, if he will, give this Committee such information as he can with reference to the element of cost which goes to make up the final or retail price of gasoline.

A. Senator, the final or retail price of gasoline is not governed by cost. The price of no commodity is entirely governed by cost; it is governed by what you may get for it in competition with other sellers.

Q. Well, in that I think you are probably correct, but in establishing the cost of putting that product on the market what elements of cost are taken into consideration?

A. I think that every refiner, if he keeps his books properly, the same as any other manufacturer, must figure his cost; if he doesn't he is going on the rocks.

Q. Now then, in figuring that cost what are the elements of cost which enter into it?

A. What he has to pay for his raw materials first, then the transporting of the raw materials to the plant, then the manufacturing cost, that is, the cost of processing the material, the overhead charges or fixed charges on his plant, interest, depreciation and all those matters we call fixed charges; all of those things enter into the cost of his product.

Q. Well, now at the present time what is the cost of these various elements that you mention, approximately?

A. I am not a refiner, and I don't think that the costs of one refiner will correspond closely with the cost of another refiner. There is also a large difference in the crude oil which they refine or process and the amount of recovery, but as what you might call an average for our cost, it runs very close ot 4c a gallon; that is, our refining department tells me that.

Q. In other words, you figure 4c per gallon as the cost?

A. That is what my refining department tells me, including fixed charges.

Q. What you mean, if I understand you, is that 4c per gallon is

the cost up to the time you put it into tank cars for distribution.

A. Yes.

Q. Now ,from that time on what are the fixed charges?

A. They will be your transportation charges.

Q. How much is that?

A. That depends on where you ship it to.

Q. I mean the average?

A. I am not in the refining end of the business, Senator, and my answer would be largely guess. I don't know and I would rather not tell you something I can't tell you definitely.

Q. Then I won't press you for an answer. I thought you were acquainted with the reports of the business to such an extent—

A. No, not the details; my job is producing and transporting crude.

Q. If you can't give us those figures— my recollection was that on the former hearing you gave us each of those figures.

A. I tried to.

Q. Could you now.

A. I don't know what they are now.

Senator Woodul:

Q. Of course, the Gulf Company never has been in the courts trying to set aside any of the Commission's decisions; have you complied?

A. Oh, yes, we are good boys no matter who makes the laws.

Q. I just want to ask you this one question: Have you been satisfied with the general situation in the petroleum industry, as far as the producing end, in Texas under these Commission orders up to the time that the three judge court knocked it into a cocked hat?

A. I have been very dissatisfied with them because I thought they were unsound, unsound economically and fundamentally, neither good business nor good government.

Senator Beck:

Q. Mr. Nazro, what is the Gulf's daily production in Texas now?

A. About 70,000 or 71,000 barrels.

Senator Woodruff:

Q. Mr. Nazro, what percent of the East Texas production is controlled now by the so called major operators, if you know?

A. I don't know what you mean by "major." Some mean one thing and some another.

Q. Well, put it this way: the Standard and its subsidiaries and the Shell and its subsidiaries—

A. I understand your meaning. I have not the definite figures on that, but I should think approximately 70%, maybe more.

Q. You mean approximately 70% of the production in East Texas?

A. They have approximately 70% of the acreage.

Q. You mean by that—

A. Production acreage.

Q. What effect do you think market demand as an element of waste, in the statute as proposed, would have on the little fellow who has five or six wells' production only?

A. The term "market demand," it seems to me, is under a great deal of controversy. My meaning of market demand may be entirely different from other people. I might read their order differently. This morning while the discussion was going on here the question came up, "what is the market demand," " what was the market demand," "what will be the market demand," and I tried to think what was market demand and make a definition for it, so I wrote out on this little piece of paper: "The amount of market demand of any commodity is that amount of that commodity that may be sold at some designated price." That is my meaning of "market demand," how much you can sell of the commodity at some designated price.

Q. Then with a fluctuating price you would have a fluctuating term?

A. Necessarily so.

Q. I asked the witness this morning whether or not it is a sound economic theory that price makes the demand.

A. The supply and the demand make the price. If there is a low supply and a strong demand you have a high price. Obviously, the reverse is true and you have a low price.

Q. If there is an adequate supply and an arbitrary high price is there a commensurate demand?

A. If there is an arbitrary—

Q. Yes, an arbitrarily fixed high price?

A. Then you are dealing in monopoly, aren't you?

Q. Are we?

A. I think so. If you have an arbitrary high price that means that you can control it, and doesn't that mean a monopoly when you can control price?

Q. That is right. Well, the relatively low price of crude, and the residue after you refine it, in recent years has put petroleum oil in competition with coal and natural gas as a fuel?

A. Yes, it is expanding the uses of oil as a fuel and decreasing the use of coal as a fuel and wood as a fuel.

Q. Isn't it possible then for the price to be so placed as that it would eliminate petroleum oil as a competitor in the fuel field with coal and gas?

A. It would all depend, to my mind, on the supply, the quantity. I do not believe that any law fixing a price will stand.

Q. Well, but we had an inadequate supply of petroleum a few years ago and it was $3.00 and $3.50 a barrel.

A. No, we had a very strong demand. The supplies were diminishing, the prospective supplies which we have since found were not then in sight; we didn't know where we were going to find a supply; the consumers, the manufacturers and the producers were apprehensive that they were going to have a very hard time finding an adequate supply of oil; the supplies were being drawn off and therefore the price mounted; then when new supplies came in naturally the price declined.

Q. Let's go back to the original question; as you understand the definition, a fair and proper definition of market demand written into this bill, what effect would that have on the small producer if put into force and effect?

A. Do you mean that the Railroad Commission could arbitrarily say what the demand is? The demand necessarily must be at a price since it cannot be otherwise. "Market" itself indicates price.

Q. It seems that the general conversation has been in the last twelve to fourteen months that $1.00 a barrel should be a minimum price in Texas.

A. It is a desirable price. There is a tremendous amount being produced in Texas at a very less cost than $1.00 a barrel.

Q. Has the order of the Railroad Commission fixing the allowable for East Texas at 325,000, and the others, per day resulted in the current price of $1.00 and $1.10 a barrel.

A. It had something to do with it.

Q. If those orders had not been entered do you think oil would have been $1.00 a barrel?

A. No, sir.

Q. Then at least as one consequence of those orders the price has gone up?

A. Yes, sir.

Q. Then if the Railroad Commission should adopt $1.00 a barrel as an arbitrary, minimum low price, minimum fair price, for crude oil, and should continue to enter its orders shaping that figure to equal the market demand, and as a result of that hold the price of $1.00 a barrel or better, what effect would that have on the little man in East Texas?

A. If the Railroad Commission could curtail production to such figure that oil could be sold for $1.00 a barrel continuously for any length of time?

Q. Yes.

A. Of course, it is rather difficult to say what will happen in the future, but I think it would restrict competition. I think the first man to suffer would be the independent refiner who had built a refinery equipped to manufacture a certain grade of oil, when that supply of oil was decreased to him he couldn't get it. What will he do? He would have to go to some distance to get some other supply. It will make it more difficult for him to get his supply, and naturally in the course of events he is the first one to be put out of business. Frankly, I think it would help our company for a time because we can get a supply from so very many fields, not only in Texas but in Kansas, Oklahoma, Arkansas, New Mexico, Louisiana, and if we are short we can get them somewhere else. So it would help us for a time. Then the next man to go out of the picture I think would be the independent producer because he would not be able to produce enough oil to pay his overhead, his investment costs and his operating costs; you would hold him down. The natural process of a well is to gradually decline; now you hold that down, the production of the whole field to some

arbitrary figure and you will gradually encourage wildcatting, and every time you bring in a new field the old field would have to push over in the bed to allow this new stranger to come in.

Q. You are connected with the Gulf Production Company; is that purely a Texas corporation, operating in Texas?

A. Yes sir.

Q. And that is an affiliate of a group of companies?

A. Yes sir.

Q. And the Gulf branch operates in Venezuela?

A. Yes sir.

Q. And if the Gulf is unduly restricted in Texas it can get its supply in Oklahoma; it can go to Venezuela?

A. We would go over East of the Sabine where "there ain't no Ten Commandments."

Q. But, if necessary, you could go to Venezuela?

A. Yes sir, could go to Mexico and get a little.

Q. If you know, Mr. Nazro, how much oil is Gulf importing monthly at this time?

A. They are not importing any into Texas.

Q. Into the United States?

A. I think right close to 600,000 barrels a month, about 20,000 to 25,000 barrels a day.

Q. Do you happen to know what the potential daily production Gulf has in Venezuela?

A. About 80,000 barrels a day, with no trouble.

Q. Well, would that 80,000 barrels a day, together with possible production under any conceivable order in Texas and the other States in the United States, supply your needs for crude?

A. No, we have to have much more than that.

Q. Then you say for a time this proposed legislation might be beneficial to your company?

A. Sure, it would cut off the little independent refiner, reduce competition.

Q. Ultimately you would be in the same predicament?

A. Well, I don't know whether we would or not. I think there would be two of us left and I would like to be one of them.

Q. Well, you implied by your statement a moment ago that for a time it would be beneficial, that ultimately it might be detrimental to your business.

A. Yes, sir.

Q. Would that detriment arise out of the fact that you might have an inadequate source of crude?

A. No, we would have to continue to try to get a supply of crude for ourselves as we always have, and not rely on the other man to furnish it for us. We try to produce our own supply, but I think it would be detrimental because any policy which is so unsound somewhere down the line is going to be detrimental. We would have probably a lot of litigation, public opinion against us and the Lord knows what all; it would cost us a great deal more.

Q. Can you be more specific in your anticipation of the result as it would affect your company?

A. I think in the next year, if this law should go into effect today, and the Railroad Commission should reduce the amount of oil and try to allocate that production among the various fields, I think first it would practically annihilate the small refiner who hasn't enough capital to go to other fields than the one in which he is now located. He has probably built his plant to take care of a certain grade of oil in some certain field and built up a market for that grade of oil. Obviously, if he cannot get his supply he will lose it, he will lose his business; he can't take care of his customers, and the other companies who have a widespread acreage, that is, property in other fields, and pipe line gathering systems will be able to get their supply, and the oil will go to the company which has the larger or more extensive pipeline system or which is able to produce it adjacent to the pipeline system, that is, the strong financial outfit will get the advantage. Probably it would show up by the first of the year, because by April we would probably have a larger gallonage particularly along the eastern seaboard, and in Texas we would be getting a higher price for our refined products because we would not have the competition. The other man would not have it to sell. That would go on for a time, then I think that the small producer would be out of business, gradually pushed out, because we are not particularly active as buyers; we have our own production, we would not care par-

ticularly to buy his oil and therefore we would not pay him much of a price for it. If the market gets into the hands of one or two concerns the small producer will then have a very difficult time; that would be my guess. Of course, we are going on just guess as to what will happen in the future; I may be all wrong.

Q. Do you know that the Common Purchaser Act has been recently attacked in the courts?

A. I have heard so.

Q. Do you recall whether or not that was a direct or collateral attack?

A. I really don't know, Senator.

Q. Does the law affect your company?

A. I expect; every law in regard to the oil situation will affect us somewhere along the line.

Q. If the Common Purchaser Act should be held to be invalid—

A. I really cannot discuss the Common Purchaser Act because I don't know what it is, except you don't have to buy if you don't want to buy; they can't make you buy something you don't want.

Q. That is what I am getting at. As the law now operates your company can purchase oil or not as it chooses, but if it purchases in a given area you are required to purchase ratably among the offerings of oil for sale in that area. Is that the law?

A. As I understand it.

Q. Is that your understanding?

A. I really haven't gone into the law close enough to say.

Q. Well if that is the concept and meaning of the Purchaser Law and it is held to be invalid, and this bill becomes law here, you say a company may purchase or not as it chooses, is that right?

A. Yes, sir.

Q. Then if the Gulf and the Standard subsidiaries and the Shell group could get control of 80% of the production in Texas, and Texas can go way over the needs of oil to be produced, there would not be any market at all for the remaining 20%, would there?

A. There would not be a very good one. Not a satisfactory one to the independent producer.

Q. If Texas can produce to equal the market demand only 50% of its total potential, and the major group, as heretofore defined, has control of 75% of the production of the State, and the Common Purchaser Act is invalid, they don't have to buy any oil from anybody at any price.

A. You are asking me something about the law, Senator, and I haven't studied the law. I really don't like to pass on something I don't know anything about.

Q. Well, have you read the Conservation Act passed here last year?

A. Yes.

Q. Is it your opinion that it would be possible for the Railroad Commission to write an order, predicated on legal evidence and testimony under that Act, that would be a valid and enforceable order?

A. Why, I think so.

Q. Then, when they tell you that it is impossible to write an effective order under the present law to prevent physical waste, as contemplated in that bill, you differ with them?

A. I don't know how hard they have tried.

Q. If they say they can't do it, there is a difference of opinion between you?

A. Senator, if they can't do a simple problem in arithmetic are you going to turn over and ask them to do a problem in calculus?

Q. Is your answer made in the light of the fact that there are 8700 producing wells in East Texas, and that the structure and gas pressure and depth of sand, producing sand, varies almost with each individual well?

A. No, I don't think it does; there my be some slight variation, but there are certain general characteristics in wide areas in that field. It may divided up into two, three or four zones where the general characteristics on the east side we find the sand thin, on the west side we find it clogged with water, in the interior we may find it thick, with a high saturation, and it is a little different in the north than it is in the south, but there are quite wide areas there that have very general characteristics, and the amount of discrimination within those areas, within each particular area, would be very slight, in my opinion.

Q. Would it be practicable to put a test on each well?

A. I don't think that would be necessary.

Q. You mean the zoning idea would group the wells so as to make it unnecessary to put a test on each well?

A. I think so, but some petroleum engineers might differ.

Q. You are familiar with the general production conditions of the various pools in the State, I take it?

A. With quite a number.

Q. If the maximum, efficient production of a well in the Panhandle is 900 barrels and it runs 900 barrels today, do you understand that it would be possible to pinch that down any without injuring the well and resulting in physical waste in the Panhandle area?

A. Some wells could be. If you do not cause discrimination in doing so, I think it probably could be done.

Q. Can the deep wells in Reagan County be pinched in without injuring the wells?

A. Our company has no property in the deep territory in Reagan County. I have never seen what you might call an engineer's report as to the details of tests which have been made.

Q. Are you familiar with the Gulf Coast area?

A. Yes, sir.

Q. Can those wells be pinched down lower than their maximum production without resulting in injury?

A. Since the Gulf Coast area is composed of many fields there are no two of them exactly alike. They are each a problem, and oftentimes in some of the fields there are several different sands; some of them covering a very small area, some of them the sand seems to be very steep, if you know what I mean, lying against the salt dome. So each field and each part of the field in the Coast territory, around the Coastal salt dome, presents a separate and distinct engineering problem as to how best to treat those wells in those fields.

Q. Well, within your knowledge, is there any field in the Gulf Coast area at the present time where they are holding the well down under order of the Railroad Commission to less than their maximum potential production?

A. Yes, several.

Q. That leads up to this further question: Now, conceding that we write this new bill into the statute and include market demand. You own a well in East Texas that has a potential daily production of 25,000 barrels a day without physical waste. I own a well in the Panhandle that has a daily potential production of 900 barrels a day. Is it or not your opinion that in writing an order to conform to the market demand that the wells should be operated on some equitable prorata basis?

A. As between fields?

Q. As between a well in the Panhandle and a well in East Texas.

A. Why no, they are several hundred miles apart.

Q. Well, is there any reason why your well in East Texas with a potential daily production of 25,000 barrels without physical waste should be pinched in to 40 barrels a day when I have a well in the Panhandle with a potential daily production of 900 barrels running wide open?

A. Your well in the Panhandle has nothing whatever to do with my well in East Texas.

Q. All right, if the market demand is a consideration and you are restricted from marketing all you can produce, would it be right, would it be equitable for the Railroad Commission to permit you to produce only 40 barrels out of a potential of 25,000 barrels and to permit me to produce 900 barrels of marketable oil out of a potential of 900?

A. Neither one of them is correct; neither rule is correct. They have nothing to do with each other.

Q. So far as the physical facts are concerned there is no relation between them, but when you are talking about market demand ought each man not have his share of the available market?

A. I think he has a right to any part of the market that he can get as long as he does not commit physical waste and as long as he does not hurt his neighbor.

Q. That is true, but supposing we had already written the market demand feature into the law and we are trying to abide by that statute—

A. Senator, the thing to me is so unsound that I think you would have a number of injunctions, you would have the matter, I think, entirely thrown out by the courts, but just

as a layman looks at the proposition that you make as being one of fairness and equity, I expect I am too much of an Individualist rather than a Socialist or Communist.

Senator Stevenson:

Q. What production per well in East Texas would be permitted the average, take the average of these different zones, what average would be permitted without there being physical waste?

A. I think a proper study should be made by competent engineers.

Q. Would you be willing to make an estimate?

A. No, there are too many wells and I wouldn't know just exactly where to draw the zones.

Q. It would be more than 40 barrels?

A. Yes.

Senator Oneal:

Q. Mr. Nazro, last summer when the first oil session was called, I believe you told the Committee at that time that your theory was that any man that had a piece of oil property had a right to get all he could?

A. No, as long as he didn't commit waste or take the production from his neighbor.

Q. Did you add that last summer?

A. That is what I have always thought.

Q. What do you mean by not taking it from his neighbor? I understood you to say if his neighbor could get in and get his that it was not the fault of the man who was operating on his own land.

A. I think it is the fault of the neighbor if he doesn't get a part of it.

Q. A man on his own land ought not to be interfered with?

A. But he should not produce his well to such an extent that would damage his neighbor's property, and that could be readily determined by bottom hole pressure. Now, some engineers disagree with me on that, but the amount of difference in the amount of production to the various properties would be so slight that I doubt if anyone would be seriously hurt.

Q. You think the Commission should be authorized to go to the extent of investigating that particular of oil production?

A. Senator, they were instructed to over a year ago.

Q. Well, do you agree?

A. Yes, sir.

Q. You think they should have that authority?

A. They should have done so; they were ordered by the Legislature to do so.

Q. You favored that legislation?

A. Yes, sir.

Senator Neal:

Q. Mr. Nazro, according to your statement that you read you said that the ruling of this Three Judge Court did not knock the conservation into a cocked hat.

A. Let me see that paper.

Q. That the law still stood; that the Railroad Commission had exceeded its authority in making up their allowable.

A. I think I said this in one place: "We have been authoritatively told by the recent opinion of the Three Judge Federal Court that the Commission has not dealt fairly and properly with the respective rights of the producers in East Texas." Then I said: "The present agitation for this new law, and the Governor's action in calling you together in special session, resulted from the opinion by the Three Judge Federal Court which declared the Commission's order in East Texas to be invalid. The opinion in that case upheld the constitutionality of the present law. That is a point gained which should not be thrown away."

Q. Do you consider that in making up their allowable that the Railroad Commission equitably prorated those wells?

A. They probably did what they thought was the best for the moment until they could make a more scientific and proper study so as to do it more fairly, and they probably also did it because of the pressure of great numbers of individuals who owned a small tract of land and who had drilled a great number of wells.

Q. As a producer would you say that the allowable should be based on the potential of the individual well or that an arbitrary allowable should be set.

A. I would say neither. I think it should be based on the potentiality of the well and the acreage.

Q. You said you had not been satisfied with the Railroad Commis-

sion's rulings or I will say their allowable for the last year or so; now just in what way have you not been satisfied?

A. Because I did not think it was on a sound basis. Recently we had an order from the Railroad Commission instructing us to reduce production in various fields in the Coast country by ten percent. There was no reason given for it or that these fields were producing in a wasteful manner, it just said to reduce it ten percent—old fields like Goose Creek, Batson and Saratoga covering five little wells producing 49 barrels, and to cut that down to 45. Those wells are, I think they must be, 20 years old. I don't think they created any waste or were being operated in a wasteful manner.

Q. The statement was made here the other day by one of the Railroad Commissioners that you couldn't pinch down a well in the Gulf Coast area as well as you could, say, an East Texas well because of the encroachment of water; do you think that?

A. It depends on which field it was in and the kind of well it was; I don't think, Senator, that you can make one rule that will fit all the various Coastal fields; I think it is impossible. I think each Coastal field will first have to be considered by itself and then each part of that particular Coastal field.

Q. Your company is a producer of gas?

A. Yes, incidental to production.

Q. If market demand is placed in the conservation law doesn't it naturally follow that the gas people would want a market demand and conservation law for gas?

A. I don't know. We are not in the gas producing business as a business, just incidental to the oil. I had rather not testify as to something that is not in my business.

Q. Let me ask you this: I understood you to say that, in your statement that you read, didn't you say that that if market demand is placed in this conservation law that it will have a tendency to encourage further exploration and development of fields?

A. Certainly.

Q. Don't you think that is what we need?

A. The last thing we need right now. We don't want any more new fields if we can help it.

Q. I know you don't but don't you think it would be to the interest of the public?

A. The more new fields we get the lower the price for a time. The best way to stop production is to stop drilling, just as the way to curtail cotton production is not to plant it.

Senator Thomason:

Q. Mr. Nazro, in the first place I misunderstood your statement when you were before us before. I understood you just like the other gentleman here. I want to apologize here and now for that. In your opinion—I am asking these questions for information because that is what we need here, you know the oil business and I don't—what, in your opinion, was the cause of the slump in the price of crude oil after the opening up of the East Texas field, which fell from $1.50 down to 10c and in other cases less?

A. Senator, all of the oil in that field was not being sold at ten cents.

Q. Well, that was the market.

A. I know they say that was the market. There wasn't any fixed market. The seller of oil will fall over himself trying to sell. Whenever you have that sort of situation the buyer is not anxious to buy. For instance, I am a seller and I say "Senator Thomason, I have a well out here making a lot of oil, what will you give me for it," and you look at me and you see I am so anxious that I will take almost anything.

Q. That is a fact, but 10c was the set price; what I want to get at is your opinion as to the cause of that slump after the East Texas field came in.

A. So much of it being offered at one time to so few buyers; just the same as the stock market, Senator, if you have a lot of Gulf stock and tell four or five brokers to sell it in one day it will drop off quickly.

Q. You and I agree on that. Now, you made the statement a while ago to Senator Woodward that the cost of manufacturing gasoline does not determine the price or the selling price of it.

A. Oh, it will in the long run, but the selling price from day to day is governed entirely, as any other

commodity, by what you can get for it, and that is governed by what competitors will sell it for.

Q. As was stated by some of your associates before, the price varies in accordance with the demand?

A. Certainly.

Q. You were taking the position then that there was not any fixed agreement between you people but that you just got what people would pay or what the public would pay, and there were times when conditions arose in the market when they would pay more and at other times they would pay less, and that is your opinion?

A. Yes, sir, with any commodity.

Q. If that is a fact, the statement made by the gentleman this morning, who seemed to be so well versed on the oil question and was representing the consumers, the people, and he said that the reason that they wanted this oil turned loose was that the more they got the cheaper the crude would be and the cheaper gasoline would be, and the public would thereby be benefited, was he wrong about that?

A. That is from his standpoint, that is his desire.

Q. But you take the position that that is not what determines?

A. I think that would probably occur for a time.

Q. We have heard a lot about fixing the price; who, in your estimation, should fix the price, you?

A. The purchaser fixes it whether I want him to or not.

Q. Who?

A. The purchaser.

Q. The purchaser?

A. Yes, he purchases in competition; he fixes the price.

Q. Well, who sets the price?

A. He is the man who sets it.

Q. Don't you set the price?

A. Oh, we post a price openly of what we will pay for any oil we buy.

Q. I understand the price for crude was fixed at one time at ten cents, somebody fixed that price.

A. I don't think the price was fixed at ten cents. I know of no posting at ten cents a barrel; some oil was sold at that.

Q. I spent a week in that field before the last session because I—

A. Senator, our company posts a price that it will pay for oil we may buy—we buy a little—and it also posts at the filling station the price at which it sells its oil.

Q. Now then, you take the position that the government has no right to interfere with the fixing of the price, though you are a part of the government, the State is made up of individuals; you fix the price but you say that the State, that is made up of all of us, has no right, though the State gets a prorata share of that under the law in effect, and therefore has no right to have anything to say about the fixing of price?

A. I think that is correct. I do not think it is the province of the government to do a great many things which it does do now. It is entering into a kind of business. Really the province of the government is to protect our lives, liberty and the pursuit of happiness and to only levy such taxes as may be necessary for those purposes, but we have gotten into business; our State is in business, our government is in business. It is a distressing situation.

Q. You stated to Senator Woodward also that the present law you thought was sufficient and no necessity existed to pass this law.

A. I did.

Q. You were against the present law, however, in its passage were you not?

A. I was against the first proposed law, but when they put an amendment to it eliminating any question of market demand or economic waste then I was in favor of it.

Q. You were in favor of it then?

A. Yes, sir.

Q. Though it has been unsatisfactory for the past year?

A. Oh, yes.

Q. Just one more question; I just want to get your idea on this: There are 8700 wells in the East Texas field. Now, we saw what the result was, as you said, on account of putting so much oil upon the market all at once as it does on any other market, it reduced the price. We saw when it had been developed to where it was shown to be the largest field in the world that oil went down from $1.00 or $1.50 to, lots of it being sold for 10c and some below and some above; that was the result then. Now, what, in your opinion, will be the result if we take 8700 wells and open them up, and we will say that they will average 500 barrels to the well, though they run from 200 barrels to 30,000 barrels if

they were turned loose; now, that would make 4,350,000 barrels per day within 60 days or two months to throw upon the market; 8700 wells averaging 500 barrels in 60 days would put 261,000,000 barrels of oil upon the market. If we would raise that and say that they would average 1,000 barrels, which possibly they would and possibly they would not because of releasing some gas and the intrusion of salt water, but if they were that would put upon the market 522,000,000 barrels within 60 days; what would be the result?

A. You would probably have a low price, but that much oil would not be on the market; you would not find buyers for it.

Q. Well, do you have any idea what the capacity for tankage, I mean storage capacity there is in Texas? No. possibly you don't except your company. Do you know for the various major companies?

A. No, I don't know how much empty storage there is, but I do not know of anyone that wants to put any into storage. Storage above ground isn't necessary.

Q. Would it be cheaper to get oil at ten cents a barrel and put it in storage than to exploit a new field and run the risk?

A. I don't believe so.

Q. You don't?

A. No.

Q. You are the Vice-President of the Gulf Production Company in Texas?

A. Yes, sir.

Q. And the Gulf Production Company only operates in Texas?

A. Only in Texas.

Q. Is there a President of the Gulf Production Company in Texas?

A. No, sir. It has one but his home is in Pittsburg. He is Mr. F. A. Leovy.

Q. Who is the President of the allied Gulf Companies?

A. Which one particularly, Senator, there are a lot of them. I am Vice-President of the Gulf Pipe Line Company. The Presidents of most of the Gulf companies live in Pittsburg, and in most of the States in which we operate there is an operating Vice-President, and I am Vice-President of the Gulf Production Company in Texas and the Gulf Pipe Line Company in Texas and the Gulf Refining Company of Louisiana, which is a producing and pipe line company, and of the Mexican Gulf Oil Company which operates in Mexico.

Q. It has a Vice-President down there?

A. No, that's my job.

Q. You are Vice-President under who?

A. Under Mr. Leovy.

Q. How many other Presidents have the Gulf allied interests?

A. Of the Gulf Oil Corporation, which is the holding company, J. F. Drake is the President; of the Gulf Refining Company, which is the refining and marketing company, Mr. G. R. Nutting is President; of the Gulf Refining Company of Louisiana, which is a producing and transportation company, Mr. F. A. Leovy is Presdent and I am Vice-President; and of the Gulf Pipe Line Company Mr. Leovy is President and I am Vice-President.

Senator Rawlings:

Do you expect to develop that as to each of those companies, Senator; the list is pretty long.

Senator Thomason:

Q. What relation have the Mellon brothers?

A. They have no relation with our company.

Q. Never have had?

A. No, they might be stockholders of the Gulf Oil Corporation, but pay no attention to our company; haven't for years.

Q. Big stockholders?

A. I don't know who the stockholders are.

Senator Purl:

Q. Mr. Nazro, you stated a while ago in response to some question that perhaps you might go into Louisiana and get your oil; that causes me to ask you, suppose for the sake of argument that we should pass this measure now pending authorizing the Railroad Commission to take on these new duties, in addition to the physical waste, and they should hit another East Texas field where you said "there ain't no proration," what would be the effect if they should hit the field.

A. It would be just too bad. Oh, you would rescind the law the next day; even if the law is valid you would rescind it the next day, call a special session.

Q. We speak of oil, is there such a thing as a grade or quality of oil as of cotton, in like comparison,

some oil fields produce better oil than other fields?

A. That largely depends on what you mean by "better."

Q. I will ask you whether or not there is such a thing as a better quality of oil, more recovery of gasoline, in one field than another.

A. I think in Texas there are about fourteen different grades or classes of oil which are processed through refineries by different processes. A refinery is a manufacturing plant. Now you might have a sawmill to cut long-leaf yellow pine and you would have a kind of sawmill to cut hardwood. They would both be sawmills but their uses would be different. Now in Texas we have about 14 different classes of oil. There are several grades on the Coast; there are several grades in Central Texas and several grades out in West Texas. A refinery is built to process or manufacture the products of a particular grade of oil. If it is a large enough refinery and the refiner has several grades of oil which he wants to process then he builds his refinery in units or sections, as you might say; one section will be used for coastal oil, another for West Texas oil, another for East Texas oil, and you make different things out of it. It is like grain. Now, grain will cover wheat and rice and corn and oats and barley, but they are used for different purposes.

Q. What I want to ask you is whether or not, with the number of oil fields in Texas, in addition to the problem that confronts the Commission because of the largeness of this State, would not they also have the problem as to the grade of oil and whether or not a man would want a special kind of oil and a special exception in his case, all of which would tend to complicate the situation that these three men would have to solve?

A. I think it would.

Q. Now then, we speak of cotton where a man can hedge on the price; is there such a thing as gasoline being on the market in Chicago; do they buy and trade in gasoline?

A. No, not in that way, not on margin.

Q. How is gasoline traded in, where a man will sell gasoline in the future?

A. By contract.

Q. Does that have anything to do with the price?

A. When you make a contract to sell something you generally stipulate a price.

Q. What I want to know is, is gasoline posted like cotton?

A. No, sir.

Q. I see, just current postings.

A. What you might call "spot."

Q. All right, ordinarily speaking, fifty gallons is considered a barrel in nearly every commodity except oil.

A. Fifty gallons is considered a barrel in refined oil.

Q. What is considered the number of gallons in crude oil?

A. Forty-two gallons.

Q. And fifty gallons of refined oil?

A. Yes, sir.

Q. Now, I want to ask you about the public policy of the Legislature passing measures of this kind—and let me make this statement: as a matter of expediency I can well see that if perhaps we do pass this bill it might save the situation or it might tend to do some good right at this particular moment—but as to the public policy of passing a measure of this kind do you not agree that when we start in to pass measures, even concerning oil, that it will be an impetus or inducement for people to come down and ask us to pass similar measures on other commodities?

A. If you pass one on oil, why shouldn't you pass on other commodities? If you regulate the price fixing of crude oil what in the world is to keep you from fixing the price of refined products? You will be in business from now on. There will be no private business; the Government will be running everything. They do that in Russia, and we don't want it here.

Q. How long have you been in the oil business, 25 years?

A. Now you are asking me how old I am. I don't mind telling you—38 years.

Q. You have been in this sort of business for 38 years?

A. Yes, sir.

Q. Now, this idea of market demand, if you know, where did it come from and when did it start? In the Breckenridge field? Was

there any talk of price fixing out there?

A. No, I don't remember it starting there.

Q. In all seriousness, where did it come from? Who originated it? Is it something new in this country or ten or fifteen or twenty years old?

A. Why it is the same theory that has sprung up from time to time in the history of the world. the fixing the price of a commodity, from time to time for a great many hundreds of years.

Q. Outside of Oklahoma what other States have any sort of similar bill?

A. I think they have some sort of regulatory measure in Kansas and in California.

Q. Senator Woodruff asked you about the Common Purchaser Law and you said you knew nothing about the law itself.

A. I am not familiar with it.

Q. You did give what you understood it to be.

A. What he told me.

Q. When they go into a field and start buying oil they have to take from all those who want to sell it up to the amount they want to buy?

A. If they are a purchaser in that field, to purchase ratably.

Q. What kind of situation would Texas be in if we should pass this sort of measure and the Common Purchaser Act should be invalid, will it then be necessary for us to come down and pass another law, or what would the situation be without a Common Purchaser Act?

A. You would have a funny sort of situation.

Q. If we pass a bill telling a man how much oil he can take out of the ground and then tell him how much he can get for it shouldn't we pass some kind of bill to require somebody to take it? What kind of stimulation are we going to have to give to get somebody to take it?

A. You mean to pass a law telling you and me that I have to buy somebody's products? Where is my money going to come from? Who is going to furnish the money to do that?

Q. That is what I want to know. We have already passed a statute concerning physical waste, and the Three Judge Court has held it valid, and now we are asked to pass a bill taking into consideration economic waste and market demand. Are they synonomous or two separate things? It that three subjects or two— physical waste, economic waste and market demand?

A. I think that is three.

Senator Martin:

Q. Mr. Nazro, did your company send any representative to that conference that was held immediately after Hoover went into office, in Colorado?

A. Not that I know of; the Gulf Production Company didn't. I read about it in the trade journals.

Q. There was prepared up there an agreement which the Attorney Generals of the various states were called upon to sign, and our Attorney General refused to sign it.

A. I think so.

Q. And that agreement was that he would waive all anti-trust laws and let them ride as they saw fit, that is correct isn't it?

A. I don't remember that, but I don't think that our Attorney General signed that.

Q. And immediately after he didn't sign it the Legislature was called together in the State of Texas.

A. I really don't remember.

Q. You do remember though that the first bill introduced here last year carried with it economic waste and market demand, and after we got that cut out and passed this other bill everything moved along until the Three Judge decision recently. Now you said something about a trust awhile ago; or a monopoly, what is it?

A. I would say that it was an industry that was dominated or controlled.

Q. All right, if all the oil companies of this country got together to control the industry the Attorney General would be bound to prosecute them, wouldn't he?

A. I think so.

Q. If they can come here and through their Advisory Committee do the same thing with the Railroad Commission they escape prosecution, don't they?

A. I don't know about that.

Q. Well, if the Railroad Commission after advising with these various agencies, all these companies come to a conclusion that is satis-

factory to them, they haven't violated any law?

A. Senator, I am not going to discuss legal questions; that is up to the attorneys; you ask the Attorney General. Our company has had no part in any of those agreements nor will it ever have.

Q. I know it hasn't but I think we are kind of flirting with ourselves; we are trying to do something here under the guise of legislation at this time which can't be done by the companies themselves without this legislation. We are trying to get around the anti-trust laws; doesn't it appear to you that way?

A. I think it is a very foolish move.

Q. If this bill is passed here the same thing would be accomplished through legislation as the companies would undertake to accomplish if they went into an agreement.

A. I think I might say right frankly that our company will not enter into any agreement or any compact, and if this law is passed and if the Railroad Commission passes some rule or regulation as will be arbitrary or will be confiscatory of our property we will naturally have to fight it. I think I might as well say that frankly.

Q. I appreciate that.

A. We cannot have our property taken away from us without trying to save it.

Q. Mr. Purl asked you something about where this proration idea originated; do you know what individual originated it?

A. No.

Q. Who was the head man of the Carter Company in Oklahoma?

A. You mean the head attorney?

Q. Who was Mr. Vesey?

A. Oh, he is an attorney.

Q. He is the man that originated that, isn't he?

A. The Tri-State Compact? I don't know whether that was his thought or not.

Q. But that company belongs to the Standard of New Jersey?

A. Yes, I think the Standard of New Jersey owns practically all the stock.

Q. After all, the Standard of New Jersey is the one pushing this—

A. I think they are very much in favor of it. I would prefer that you ask them what their views are.

Senator Purl:

Q. A while ago you stated—and I am not criticizing you for stating it—that if it should resolve itself down to be controlled by two companies you said your company would try to be one of those two.

A. We are going to try to live as long as we can.

Q. I want to ask you what would be the effect on the general public where it was eliminated down to two; who would have the fall?

A. The weaker.

Q. Then if this bill is passed will it have the effect of encouraging more independent refineries or discouraging the construction of new ones and the elimination of the present ones?

A. It would discourage them; it will certainly do that.

Q. New refineries?

A. Certainly.

Q. Will it have a tendency to eliminate the present independent refineries?

A. I think so.

Senator Hopkins:

Q. You spoke a while ago of knowing that other states had proration statutes, you spoke of California and Kansas and Oklahoma, does the Gulf Company operate in those three states?

A. We operate in Kansas and Oklahoma and also in California, but I am not in charge of those States.

Q. Does your company adopt the same attitude in objecting to a market demand feature in those States as it does here?

A. Yes sir, that is a creed with us.

Q. The position of the Gulf companies, so far as opposing market demand statute enactment, is the same on all fronts?

A. Yes sir, we don't think that you can have a market demand without price, that the word "market" itself indicates price.

Q. This question, Mr. Nazro, is your company, the Gulf Company, actively affiliated with the American Petroleum Institute?

A. Yes sir, we have membership in it. I am a member; pay them $10.00 a year.

Q. As I understand, the A. P. I. has a general program or is generally supposed to be an active fostering

agency of these proration laws, is that right?

A. I don't think that you can hardly say that. I think that the A. P. I. does favor proration for conservation, but for market demand—I don't know. The A. P. I. is really an institute and if members, that is if individuals of that institute wish to favor something I would hardly say that that is the act of the institute as a body.

Q. That answers the question. I mean if they did act as a general fostering agency then your company disagrees with them?

A. Yes sir, if they do that then we disagree with them.

Q. One or two general questions that probably might be a little—

A. May I finish my thought?

Q. Yes.

A. My viewpoint of the A. P. I. is that it should continue to be an institute and not a political or economic body, that is, it should go into all phases of scientific research; it should furnish the members of the Institute with all the statistics in regard to scientific research in the business, keep them advised as much as possible of the amount of oil being produced the world over, of market demand, that is, the trend of the market, keep them advised as to any new processes of refining that are not patented and things of that kind. That is an industrial institute; that is the conception that I have of the duties of the A. P. I., and that they should not diverge from that.

Q. This final question: If the A. P. I. should foster any legislation looking to political manipulation of the industry in any given section, it would not meet with your approval?

A. It would not. I think it is none of their business.

Q. Now, Mr. Nazro, several questions have been asked during this hearing which bring into the discussion the matter of the lack of revenue to the State; I want to ask you this question: Is it your theory of government that the State should by statutory enactment or by rule or regulation so protect or manipulate a given industry as to calculate an increased or decreased revenue in the shape of taxes to the State?

A. I don't think so.

Q. I heartily agree with you.

A. I think that the State should conduct its operations as a business concern conducts its operations.

Q. Wouldn't you agree that it would be rather impertinent to the subject to bring in as attempted cogency the matter of decreased revenue to the State?

A. I think so; I don't see what it has to do with it.

Q. The general power in the State for a State administrative board to prescribe oil withdrawals based on physical and economic waste and the power to prescribe market demand in your opinion would lead to what conclusion?

A. A sort of dictatorship, if you want to call it that. Did you ever hear of a bureau or commission giving up any of the authority or power which they had reached out and got?

Q. I never have, Mr. Nazro, and that is the reason I want to ask would it not further, in your opinion, lead unquestionably to an arbitrary price fixing agency?

A. All the way along the line, from the producer to the customer.

Q. And as a natural result of that the only appeal from it would be one of litigation?

A. Certainly.

Q. In your opinion has the day come, politically speaking or financially speaking, when it is necessary for the government to thus attempt to regulate an industry?

A. Far from it. I do not think that we are ready for a Communistic form of government or a Socialistic form of government or a dictatorship.

Q. What in your opinion, just briefly then in the light of your opinion just expressed, would be the ultimate working effect of such a governmental policy from the standpoint of the welfare of the oil industry—good, bad or indifferent?

A. It would take the industry from its owners. They would have no control over it. The people who had invested their money and property and the men who had worked for it and had incidentally built up a lot of resources for the State through their own initiative and the money that they had saved, all of that would be taken away from them; they would have no control of their property.

Q. Would that not even lead to complete government ownership and control, both in the State and Nation?

A. Certainly.

Q. Then I ask, wouldn't it be your opinion that, generally speaking, it would be detrimental to the best interests of the people as a whole?

A. Absolutely.

Senator DeBerry:

Q. Mr. Nazro, I understand from answers given by you that you don't think the word 'market demand' in this bill is complete unless we attach to that some price, is that right?

A. Yes, you cannot speak or think of market demand without speaking or thinking of some designated price.

Q. Well, if the Commission has the authority to restrict the flow of oil on the basis of market demand, then it will naturally follow that they will have to put some price to shoot at?

A. Certainly, market demand at what price?

Q. In other words, if they were to decide ten cents a barrel was a fair price to everybody concerned then the market demand would be how much the trade or anybody that wants oil for ten cents would take; that would be market demand?

A. If they decided it—

Q. If they decided ten cents was a fair and reasonable price then the market demand would be how much oil would be taken at ten cents a barrel?

A. The fact that they decided it wouldn't change it. It would be perfectly futile. Whatever the Commission does isn't going to change the market demand. If they make a decision to say that the market demand for 800,000 barrels of oil in Texas is $1.00 a barrel, does that make it so?

Q. But isn't there a demand for more oil at 25c than there is at $1.10 a barrel?

A. Obviously.

Q. Well, when the term "reasonable market demand" is used and you go hunting for what "reasonable" means, isn't that rather elusive?

A. The word "reasonable" carries a pretty wide latitude.

Q. In other words, the only sensible thing they could do—with justice to all—if they were going to talk about market demand would be at a fair price?

A. Market demand for any commodity cannot be anything but at a price, at some designated price. You might say the market demand at $1.00 a barrel is so many barrels, the market demand for oil at $2.00 a barrel is a less number of barrels, the market for oil at 50c would be a greater number of barrels.

Q. In other words, they would be forced to try to find out what a fair price was, wouldn't they?

A. They would be forced really to try to determine what the oil could be sold for.

Q. If we have already agreed that market demand means at some certain price then the Commission wouldn't want to let enough flow to allow oil to go to ten cents a barrel, would they?

A. They would try not to, Senator, but the Farm Board tried to fix the price of cotton at 30c, didn't they?

Q. Yes.

A. They said the market demand for cotton was 30c and what did they do to the cotton producer? Stimulated the production of cotton all over the country, and cotton went down to 5c or 6c a pound.

Q. What I am trying to bring out is as to how elusive the term "market demand" and "economic waste" is with respect to the power of this Commission or any other Commission to ever intelligently adduce an order from any formula.

A. It does not start on an intelligent basis.

Q. Therefore, you could come to no conclusion because you are dealing with an elusive and uncertain thing when you talk about market demand and economic waste?

A. I may be prejudiced, Senator, but I think it is a hypercritical assumption.

Q. But as to how it would work when this Commission sat down and tried to decide what market demand was—

A. I don't think that they could decide except at a price.

Q. Certainly to be fair they would say that they were shooting at a fair price?

A. They would try to shoot at as high a price as they could.

Q. Who will come before the Commission and insist that the price be high?

A. I don't think anybody would come before them.

Q. You don't think any oil com-

panies would be here wanting them to let it run wide open?

A. I think they would go to the courthouse.

Q. Possibly so; I don't see any use when you can get a Commission to cut it down to 50 barrels a well under the guise of physical waste. The point I am trying to make is, when the Commission tries to get testimony to decide what the market demand is and what a fair price is there will be more people here saying that the price of crude ought to be high than that it ought to be low.

A. Surely, there are more people that want the price high.

Q. The rank and file that don't want crude high at the expense of high refined products, they are not coming down here before the Commission, they haven't got the time or money?

A. No, but someone will sometime.

Q. Oh yes, history told me that when it went far enough the rank and file took a club and pulled the whole works down.

A. The Commission can do something.

Q. Under the present law?

A. Under the present law.

Q. I think you testified that if they were given the right to use economic waste and market demand in fixing their proration orders that there would be more testimony, under the way the thing goes now, that would want that held down low so the price would be high than there would from the rank and file asking that it be high with a low price. Do you think the Federal Court erred when it said that the Commission—I have nothing against the Commission—but don't you think the Court was right when it said 40 barrels a day was all that could be produced in East Texas and not have physical waste; don't you think the Court was right?

A. Certainly it was right, but the 40 barrels in some wells might be all they could produce, it might be higher in others.

Q. Might be higher on another?

A. Isn't that what the Court said?

Q. That is right.

A. That they made their orders discriminatory.

Q. Well, doesn't the Commission insist, this order that the Court set aside, that they were not looking toward economic waste and market demand, but looking purely at physical waste?

A. I believe that was mentioned in the decision.

Q. Under the old statute the law said the Commission shouldn't look at or consider market demand, didn't it?

A. Yes, sir.

Q. Therefore, the order set up must have been set up—if they obeyed the law—they certainly passed that order looking at the physical waste yardstick?

A. Yes, sir.

Q. Don't you think there were more people here trying to show them by expert testimony that they would have to make an allowable as low as 40 barrels per well in East Texas to avoid physical waste, don't you think there are more people pushing on that pedal than there would have been wanting it put way high? Wasn't the preponderance of testimony that it took that kind of order to prohibit physical waste?

A. I wasn't at those meetings.

Q. Their action indicated it.

A. Yes, sir.

Q. What the actual working result will be after we operate under it and get the light from what they have already done—now don't you think there are a number of people in the employ of companies that wanted the allowable cut down, that were a number of experts and would-be experts that have testified with respect to this elusive part of physical waste to where they put more credence on that?

A. I think that a great many people would testify the way they think because of the way they want to think; they really believe what they say, but they want to believe that way so badly that their opinion is sometimes warped.

Q. For instance, I have cotton to sell and raise cotton, and I suspect if you ask me what the price should be, it would be higher than some other fellow would put it; that doesn't necessarily mean that I am crooked or wrong?

A. Not a bit.

Q. If you adduce testimony in regard to physical waste, those who want the flow restricted or go to

bear down hard on these different provisions in this bill regarding physical waste—

A. But, Senator, I think that that physical waste can be determined almost mathematically; it is not a question of opinion but a question of mathematics or engineering by mathematics. I think probably the Commission believed they were right—

Q. I don't question that at all. Now, right along that line, if the preponderance of testimony before a bureau, when you are protecting a special group or special interest the preponderance of testimony is in favor of the special group that wants to maintain that in status quo.

A. Certainly.

Q. I think you have already testified that you think the present law is adequate?

A. Yes.

Q. And you think that the Commission honestly exceeded its authority?

A. I think so; I don't think that they intended to.

Q. I said "honestly exceeded." Now do you think it sound policy for us to give them such an elusive tool and dangereous tool, fundamentally and practically, as market demand and economic waste to try to prohibit physical waste; do you think that is sound?

A. I think it is unsound for you to do it.

Q. I think so too. The mere fact that one court has said they exceeded their authority in one order and in the same breath said "you have a good Statute and it is constitutional," do you think that justifies this Legislature in reversing ourselves this time even at the shrine of expediency?

A. No sir, I do not think you should do the expedient thing at any time that is violative of a principle.

Q. And don't you think that the mere fact that in one order they seem to have overstepped that is no reason for the Legislature to get in a panic?

A. I don't think so.

Q. They can adduce another order for physical waste, and if it be not defined they can ask us to define it or clarify it.

A. Yes, but it is defined.

Q. I think so; but if they have an eye singled on physical waste why put economic waste in the bill?

A. Can they have an eye singled on physical waste and put economic waste and market demand in a bill?

Q. Certainly not, but the point I am making is: there is a great deal of argument that they knocked the whole law into a cocked hat. I say it didn't; and I say if the Statute be not clear with respect to physical waste they should ask us to clarify it, and not ask for such an unworkable thing from a practical standpoint.

A. I agree with you, Senator.

Q. I think so. One more question: Someone asked you that if Louisiana were to discover a new field, that if we pass this bill—that very likely we would repeal—don't you think there are quite a number of men in Austin today asking us to pass it who would be back down here asking us to repeal it?

A. No, they would be over in Louisiana trying to get a foot-hold in that field.

Q. You don't think they would be here then saying that is the thing to do because the State Treasury is in bad shape and needs the money?

A. No, they would be over in Louisiana.

Senator Woodward:

Q. You have been interrogated quite a bit by some of the Senators in reference to the price fixing feature of this bill. The questions have been asked you and your answers in respect to those questions would indicate that this bill will in effect—or maybe does—give the Railroad Commission the power to fix the price of crude oil. Is it your understanding that this bill gives the Commission the right or authority to name the price of crude oil?

A. By controlling the production they will therefore control the price.

Q. Then there would be a distinction between fixing the price and controlling the price, would there?

A. Yes.

Q. In other words, your theory or your idea is that the Railroad Commission in fixing the allowable so as not to permit the production of oil in excess of what the market would absorb would take into consideration the current market price for that

production; that would be before them necessarily?

A. Yes sir.

Q. Whether it was $1.00 a barrel or 50c a barrel?

A. For instance, Senator, today there are about 930,000 barrels a day being produced in Texas and going to market at various prices; now if you reduce the production to 800,000 barrels a day isn't that an effort to raise the price?

Q. Well, suppose we say "would that not have the result?"

A. Isn't that the result that is being sought?

Q. Well, now then if the Commission were to determine today, assuming that this law was enforceable, that the production of crude oil over and above what the market is absorbing would bring about an economic waste, then it is your opinion that they would in effect be maintaining the present price of crude oil?

A. The question is a little bit complicated.

Q. I say, assuming that the Commission were today, if this law were enforceable, determine that the production of crude oil over and above what the market is absorbing is economic waste, then is it your opinion that such an order would in effect be an effort to result in maintaining the present price of crude oil?

A. I think that is true.

Q. And to that extent would in effect be a price fixing measure?

A. Yes sir. For instance, there are about 930,000 barrels a day going to market at some price; that is the market demand for oil at these prices. The State of Texas can produce more; our company can produce more if we could sell it; even if we could sell it for a less price we might be tempted to do so. In fact, I would like to sell some oil today at a less price than the posted price.

Q. Why can't you do that?

A. Because I can't find the buyer.

Q. You mean you can't find a purchaser?

A. I can't find a purchaser.

Q. At a little less price? You couldn't find a purchaser of that oil at 50c?

A. Oh yes, I might.

Q. Or at 75c?

A. Or at 75c. I haven't tried down that low yet.

Q. You are horse-trading with them?

A. Sure.

Senator Small:

Q. Mr. Nazro, I believe I understood you to say that in your opinion you could zone the East Texas field into about four zones so that there would be a uniform production from each well having the same amount of acreage in those zones?

A. Yes. That is, a relatively same amount of acreage.

Q. Yes.

A. So that each man would get his fair share without discrimination. I think such a rule could be passed, and I think that the Commission could frame a pretty good rule.

Q. I ask you that question because, as I read the opinion, I thought that if it was necessary to put everything on a different basis it might make it impossible to work the situation out.

A. I don't think so. I think that could be classified. We have rated other fields; of course, the question is so large—the East Texas field is tremendous—but other fields have been rated and rated fairly and a scientific, mathematically correct rating made so that there is no physical waste, and every owner of every property is being equitably, so far as I know, and ratably served.

Q. Do you know what percent of the flowing wells in Texas are over in East Texas?

A. Not off hand,— far and away the majority.

Q. I have some figures here that are supposed to be correct: The flowing wells in East Texas are 8576, Gulf Coast 371, Central Texas 78, Panhandle 300, and West Texas 430. That is what these figures indicate.

Senator Martin:

Q. Is that flowing wells or wells producing?

Senator Small:

A. Flowing.

Q. There are 33,429 pumping wells in Texas and 9855 flowing wells.

A. Yes.

Q. The flowing wells produce 383,000 barrels of oil; the pumpers will produce 451,000 barrels of oil,

and there are 8576 of these 9855 flowing wells in East Texas.

A. Yes, sir.

Q. Now then, if you cut this thing loose in East Texas, with that large number of flowing wells over there, and let every fellow scramble for his part of the market what will happen to the pumper in West Texas and other sections?

A. They will have a pretty hard time. I am sorry to say that we have a lot of those little pumping wells.

Q. Well, wouldn't they be practically destroyed?

A. Well, they have had their day. They produced in Ranger, Burkburnett and Wichita; they sold a lot of oil for $3.00 and $3.50. I sold oil from some of those wells for $3.80; sold one competitor about a half-million barrels at that price.

Q. In other words, if a person has had his day, you would put him out of existence?

A. No, he just goes out.

Q. Don't you think he has been a little cheated by reason of the fact that there wasn't anything out there to curtail their production, but it was the man with the longest pole that prevailed?

A. No, those wells were bunched in there; really, they drilled too many of them and too close together; they didn't prevent physical waste. That was the trouble with those wells in Wichita Falls, Burkburnett and Ranger district, we didn't know enough about the business then.

Q. Then the Railroad Commission is discharging some useful function?

A. Certainly it is, and they probably justify their existence even if they have violated a principle of government.

Q. I haven't asked for them to be discharged. This place where "there ain't no ten commandments," you have production down there?

A. Yes.

Q. What are the production rules and regulations down in that country where " there ain't no Ten Commandments?"

A. In Venezuela?

Q. Yes.

A. There are very few operators down there. Most of the companies who operate there have quite competent petroleum engineers who are trying to operate those wells so as to secure the greatest ultimate amount of oil at the least cost. Now, I don't mean the greatest ultimate each day, but over the life of the field.

Q. Those companies operating in that field are the biggest of the big, aren't they?

A. They are pretty good size.

Q. They are the ones who would be apt to be in this picture at the finish?

A. I think so.

Q. And the little man down there in that field, he isn't in the picture at all?

A. I don't think he is there.

Q. It is the big type of operator that has made those things possible down there?

A. It was a very expensive undertaking in the first place; a long way from home, under difficult conditions, took a lot of cash money to get in—a lot of money—, you had to deal with the Columbian government or the Venezuelan government one or the other. It took lots of money and hard work. Now our company went down there with the playing out of the Ranger field; Mexico was going off the map, that is, it was declining very rapidly; and bear in mind it was before the Powell-Mexia discovery, before Oklahoma City, before the Seminole discovery, it was before the East Texas field, it was before quite a number of fields had been brought in. We had to have oil to compete with these other companies: the Shell and the Jersey Company. There was one place if we could acquire property we could produce it. We had refining interests, we had filling stations we had to supply. We built this business up, and we thought we must have a supply of crude, so we went down there and made the best trade we could. It was pretty expensive.

Q. But even as expensive as it was, you produce oil down there at a very small cost?

A. At a small lifting cost, small producing cost, but it isn't as low as oil is being produced in this country.

Q. In Texas?

A. We are producing oil cheaper in Texas today in some fields than in any part of the world, I believe,

unless it may be Iraq, and I think we are producing oil cheaper in the Yates pool than in Iraq.

Q. There is no governmental interference down there?

A. There is governmental supervision, yes.

Q. The supervision is, though, from the royalty standpoint and not from a conservation standpoint?

A. No, from a conservation standpoint; they want that oil to last as long as possible and to get as many barrels, ultimately, not today but over the years to come; they have seen what we have done in this country, how we have butchered fields all the way from Oil Creek until the last few years, when we began to take some recognition of scientific methods of producing oil.

Q. Now, they look after physical waste down there?

A. Yes.

Q. And you look after market demand?

A. Yes.

Q. You don't produce beyond market demand down there?

A. No, you never produce beyond market demand at some price.

Q. A price that would make it profitable to bring it to America?

A. We are meeting Venezuela oil in competition, it is going abroad; our shipments abroad have been curtailed on the account of the tariff in this country, and Venezuela oil, a lot of it, is going in competition with oil we used to ship from this country.

Q. What I was getting at, the governmental supervision down there as you say, is strictly in accordance with physical waste; your production methods there are restricted to market demand at a price?

A. Physical waste first; that is the big thing with us in every field in which we operate, we look to the prevention of physical waste.

Q. You and the government together down there, the combined restrictions that you both impose, are something in the nature of the bill that we are trying to pass here at this time?

A. Not at all.

Q. What is the distinction?

A. They only look to physical waste, and their rules were suggested by our oil engineers very much the same as our physical waste rules here were suggested by our own oil people.

Q. Down there with just a few operators in the field you wouldn't produce oil that you had no use for?

A. We try not to.

Q. But anyway, your production methods down there are ideal from the standpoint of physical waste?

A. Not quite; they are more ideal in the Yates pool here than any place I know of. The Yates pool, and I will say the Sugarland pool, are almost ideal in their operations, as nearly ideal as engineering ability has been able to accomplish thus far. We hope to accomplish the same thing in the Thompson field which we are now developing.

Q. Well, in handling those fields would you go ahead and produce oil down there knowingly when you think it would depress the price of oil?

A. If there is a profit in it.

Q. Where the profit stops then in fields that are ideally handled, and where there is not a crowd of little producers, and where only a few of the larger producers handle it, you stop your production down to where it seems to be profitable?

A. If the profit stops in any business, Senator, you are going to quit that business; sooner or later you must quit it, not of your own volition but by the force of necessity. When you quit profiting you have quit business, sooner or later.

Q. Now if the reasonable market demand for oil can really be determined, and if production beyond what that market demand really is and beyond the point where oil can be stored without waste—production beyond that is waste—then the fact that you call it market demand would not not necessarily condemn this bill, would it?

A. Evidently you and I, when we speak of market demand, are talking a different language; to me market demand can't be anything else but—

Q. What caused the difference between ten cents and now—it sold here about thirty days for a very low price.

A. That is enough time to get new uses started. Here's an example: the only way that oil was sold to railroads was to show them a supply at a low price. They didn't go to coke until they were assured of an ample supply at a lower price than coal. The only way that ocean vessels were

transformed from coal burning to oil burning was by the assurance that they would be able to get an ample supply over a long period of time at a lower price than they were paying for coal. That is the way the uses of oil have spread, through lower prices. That is true of every commodity.

Q. Well, they didn't change from coal, the railroads and the steamship companies didn't change from coal when oil was down at this very low price.

A. No, they had changed—

Q. They had changed when oil was at a fairly decent level, when they were assured a lower price than coal, and the price was more about that time than now.

A. That started in with Spindletop. The average price is pretty good now. If I could be assured of producing oil at the present price of oil I would be awfully well satisfied.

Q. Don't you think it would be more profitable to you to curtail your production of oil than to produce it without any restrictions and take your chance on price; your margin of profit would be larger and the conservation of that resource would be greater and the life of the fields would be prolonged?

A. Senator, a monopolistic form of business would be perfectly delightful if I were running the monopoly. It would be delightful to me if I were the monopoly, and if I could get away with it.

Q. You said you thought that the large companies would be the last ones to go and the small ones first; now with the market set-up that you have now throughout the country, if the restrictions were taken off of the production of oil, with every man compelled to hunt his own market and operate at a loss or with a very small margin of profit, don't you think your company could last longer than most of the operators in Texas on that basis?

A. We might; we would try; it is open competition.

Q. Don't you think that the little man would be the first one to go, with ruinous competition, cheap oil, lack of market and lack of transportation facilities that the small company and the small operator have, don't you think that the excess production would hurt him first?

A. The so-called little man is not regularly in the oil business. Ninety per cent of them are in today and out tomorrow. They get a lease somewhere, try to get as much oil out of it as they can, more of a game than a business. They haven't a lot of employees or a lot of money, they have no great investment. They would like to drill one, two, three or four wells on a small tract of land.

Q. In other words, he is the type of man that has gone into East Texas and bought one acre of land and produced 95,000 barrels of oil?

A. He is the type.

Q. Do you think it is best to legislate so that fellow can come in, or to legislate with a view to having the stable end of the business protected?

A. You have already legislated last year when you passed this law preventing waste; you have already done that. Enforce those laws that you have; you have some pretty good ones.

Q. Well do you think that for the benefit of the operator that expects to make a science of producing and refining oil—leaving this fly-by-night fellow out of the picture—do you think that for the real benefit of that type of operator that we are producing too little oil in Texas now?

A. No, temporarily we are producing more than we should because we are not making enough profit out of it; but that thing won't last. East Texas isn't going on forever; it is going to be the same story as in other fields, except I hope that the Railroad Commission, with its rules and regulations for the prevention of waste, will prevent the catastrophe that we have had in Burkburnett, Mexia, Powell, Ranger and numerous fields until the last few years.

Q. They are doing that.

A. I think we are making lots of progress.

Q. And if we zone that field over there and take into consideration the features you testified to a minute ago, and make an equitable distribution of that oil and hold it within bounds which seem to be meeting a reasonable market demand, we will get along very well.

A. I don't know if we hold it within the bounds we have now, but if in the bounds of the prevention of any real physical waste and treat every property on an equitable basis.

whether it be under this zoning system or some other system that the engineers might have and believe can be worked out, then I think we will have a good situation. We worked out one in the Yates pool, we worked out one at Ector, one at Humble, worked out one at Sugarland, we are trying to work one out with the Humble, we are trying to work out one at Moore field and another one in Louisiana. That is the tendency of the times, to try to utilize the scientific knowlege on the production of oil and on the mining industry.

Q. And not to produce oil that doesn't find an economic use in the country?

A. Not to produce it wastefully. Whenever they try to "rib" the market they always go on the rocks. The copper industry showed it in the last two or three years; they pushed the price up to 18c, and look at it now—5 or 6c a pound. It is the same old story.

Q. Don't you think the oil business is in much better shape than it was when we met before?

A. I think it is better all the time.

Q. Don't you think that the Railroad Commission has really been trying to prorate this field on market demand and economic waste?

A. I think they have been trying to do both.

Q. The oil situation has been getting better, hasn't it?

A. I think the whole country is getting better, and I think the more scientific, accurate knowledge we have of any mining or any industrial business the better that business will become.

Q. But the practice that this Three Judge Court down here condemned as regulating to market demand and economic waste has really been beneficial to the oil industry in the country?

A. I think so.

Q. And beneficial to the general public, the producer and all of those and beneficial to the State?

A. I think that the Railroad Commission has been of a lot of benefit to the State.

Q. I will state frankly that I think they have been prorating on market demand, and I thought that was what they intended to do when we passed this other bill.

A. Senator, they haven't been prorating in every field on market demand.

Q. But don't you think that has been the guiding impulse over in East Texas?

A. Yes; in some fields it hasn't. I think Mr. Parker agreed with me sometime ago—I didn't have the accurate knowledge then that we have now,—but I took the position that regardless of money or market I wouldn't produce over 65,000 barrels a day from that pool if I owned it myself, regardless of the market. Now other companies are trying to do the same thing in other pools, and that should be the purpose; find out what is the proper rate that a pool should produce with the least waste then that pool may produce that oil and the owners of that oil may find whatever market as best they can.

Q. Do you think East Texas is held down too low now?

A. I don't really want to say; I haven't the accurate knowledge as to the physical features of the field.

Q. If the court was correct in saying that the Railroad Commission has lost sight of physical waste and has been looking on economic waste and market demand, then we can say that under that type of regulation conditions have improved thoughout the State generally so far as the oil business is concerned?

A. I think so. The majority of the operators in the East Texas field realize that it is a losing gamble to produce too much oil at one time. They all look back and see the disastrous results in other fields and see what is being accomplished in fields where proper engineering practices are observed, see the advantages of it, see the lower cost of producing, and while you may get a lower price for your oil the spread between the cost of your producing and what you get for the oil will be more if you use proper practices.

Q. No doubt that has been a very fine thing, but at the same time their disposition to curtail down to market demand hasn't hurt the situation?

A. Not materially.

Senator Rawlings:

Q. Are there wells in the East Texas pool that are capable of pro-

ducing, without waste, more than other wells?

A. I think so.

Q. Could you give us any idea of the range of production that some groups of wells might produce?

A. I think that by oil ratio tests some wells showed that they could produce 600 or 700 barrels a day without waste; other wells have shown that they couldn't produce so much and others still lower.

Q. Could you give us an approximation; what would you say would be the minimum some of the lesser wells could produce without waste; I am talking about waste now.

A. You mean the minimum?

Q. No, I mean the minimum and maximum; if the larger wells will produce 600 barrels without waste there are other wells that will necessarily produce a smaller amount without waste. Could you give us the range on that?

A. No, I really don't know what that range is, but I am sure that some wells are located so they wouldn't be allowed to produce more than a hundred or so barrels.

Q. Then from 100 to 600 barrels. What would be the effect if an arbitrary amount is fixed, we will say 50 barrels per well or 40 barrels, suppose that the East Texas field is exhausted over a period of years, each well producing 40 barrels per day, would anyone suffer any loss or gain any advantage?

A. Yes, it will be discriminating.

Q. In what way?

A. Because the man who has a good lease on account of the thickness of the sand and the local position will not be allowed to produce as much oil as his property is entitled to.

Q. Over a period of years, suppose they all run until exhausted all drawing 40 barrels, would there be any injury resulting?

A. Yes.

Q. By reason of what?

A. By reason of the fact that a man who has a lease or owns a tract of land with a very thick sand, highly saturated, a large body of oil under his property, is only allowed to produce 40 barrels, while another with property not so well located would be producing 40 barrels also.

Q. Well isn't it a fact that wells of smaller producing capacity, say the 100 barrel well, wouldn't his production play out before the well with the 600 barrel capacity, and he would keep on producing at 40 barrels?

A. No—

Q. Do you think that under any proration scheme or prevention of waste that if there is an allowable fixed in any particular pool, say of 300 barrels a day, that that amount should be prorated according to the ability of the well to produce and the position it occupies on the structure, without waste?

A. The ability of the well to produce, and I think there should be a proven acreage factor. I do not believe that a man who has a five acre tract with one well should be allowed to produce as much oil as a man who has a twenty acre tract with one well on it. I don't think it quite fair; I don't think it quite equitable; but that is only an individual view.

Q. Do you think any injustice results to the property owner and producer from such a policy?

A. Oftentimes.

Q. In other words, to simplify it, assuming there are ten wells in the pool operating and no two of them have the same capacity, and we are allowed to produce a thousand barrels a day if the structure and other physical surroundings justify, my well might be producing 50 barrels, the other one more, until the thousand is reached.

A. That is exactly what is being practiced in the Yates pool.

Q. A man that has a gusher gets the benefit of the natural advantages that nature put there for him.

A. Certainly.

Q. Now, using that same illustration of the ten wells in the pool, if they were permitted to produce 100 barrels that would be the thousand allowed, then the man who has the larger will suffer at the expense of the other?

A. I think so.

Q. If market demand is added to this law in addition to the physical waste the East Texas pool, if time was taken to test the wells and zone them, could be permitted to produce a certain amount of oil without waste.

A. Yes sir.

Q. And this market demand is a kind of cap to put on that. If the

wells in East Texas are now permitted to produce up to their capacity without waste, if they exceed the 300,000 barrels allowed, what would be the result from that, what would be the effect?

A. It would be discriminating under the present scheme.

Q. I don't believe you get my question. The amount that East Texas can produce now is 335,000 barrels a day.

A. Yes, that is what is permitted.

Q. If it should be determined that those wells can actually produce more than 300,000 barrels, yet not commit any waste, what would that result in?

A. Why shouldn't they be allowed to?

Q. What would be the effect of it?

A. They would produce it.

Q. What would be the effect on the oil situation, the condition in the oil fraternity?

A. It would probably decline.

Q. Would it cause any disorder in the field or any form of waste in connection with the handling of the oil or storing it?

A. Not if properly administered.

Q. Let's say that the field has a capacity to produce, without waste, 600,000 barrels a day, but the amount has been fixed at 300,000 barrels a day by the Railroad Commission arbitrarily, now then if they let it go up to its capacity of 600,000 barrels, with no waste committed, what will become of the rest of that oil?

A. But there is a market for more of that oil at a lower price.

Q. You think the effect would be to bring the price down?

A. Certainly, I think so.

Q. How does your company compare with other major companies on the volume of your importations from foreign fields?

A. Less.

Q. What company in Texas would you say is the largest importer?

A. I don't think any of them are bringing any oil into Texas.

Q. Well, the United States?

A. I really don't know how much the Shell is bringing in, but we had to reduce our imports because we couldn't sell it.

Q. Do you have any idea what the potential capacity for importation of crude oil is at this time?

A. You mean shipping?

Q. Yes sir.

A. Oh, it must be tremendous.

Q. And the oil is available?

A. Yes sir—no, I wouldn't say it is all available because it would be bad engineering practice to produce so much at one time; it would be bad for the field, just like it would be bad for the Yates field to open up.

Q. If something should happen over-night to our oil, is there an available supply from foreign markets that could be shipped in here and supply what we are now furnishing?

A. No.

Q. How close would it approach it?

A. We are furnishing now about 930,000 barrels a day. I really don't know how much could be shipped from Russia or Rumania or Persia, because I don't know what the conditions are over there; but even those people are beginning to practice physical conservation, even as unenlightened people as the Russians are practicing the prevention of physical waste.

Q. If 800,000 barrels is fixed as the top allowable in Texas, based on the market demand or what not, what is to keep foreign companies from importing half of that or all of it and destroying our local market with the cheaper oil?

A. Because it would ruin their properties to produce them so heavily. Let me make a comparison: You have a good horse with a natural life of twelve to fifteen years, but if you drive him too hard you will break him, won't you, and he won't last any length of time at all; and the same way in any business, any producing business, there is a limit to which you should go for your own advantage, and it is much more advantageous to take the oil out of any property using all the natural elements that you can; if you utilize them and don't waste them it will last much longer and you will get a better price because the cost of your production will be much lower.

Q. A million barrels of oil could be imported in the United States daily without running the horse too fast, couldn't it?

A. No.

Q. How much?

A. I don't think over 400,000 or 500,000 barrels.

Q. You think 400,000 or 500,000 barrels could be imported with an orderly development?

A. Yes.

Q. And that amount, if this field is limited to an arbitrary amount, there is nothing to keep that foreign oil from coming in at a cheap price and supplanting the local oil in that market, is there?

A. Nothing, if you mean Venezuela, nothing except the ability of that field to produce properly.

Q. How much can you produce and import properly—we will say Texas' top allowable is 800,000 barrels a day, what portion of that could you import from Venezuela and still carry on an orderly development?

A. I don't believe you could import any and make any money out of it.

Q. It is testified here that your total cost of lifting, transportation and import duty is around 55c a barrel.

A. Well, the cost of your own oil in this State isn't much more than that right now. Our cost of production is under 65c.

Q. It is good business practice if you didn't have enough production of your own and you can ship in Venezuelan oil at 55c, and the market is stimulated here to $1.10. if you had to buy it from another producer, you would use all your production here and ship in the rest of it from Venezuela because it costs you 55c.

A. We are not buying very much oil from others.

Q. When I say 'you' I mean other people similarly situated with you.

A. Well, I don't know that anybody has the same problem as I have.

Q. Suppose that certain regulations are put on our own production, it is curtailed to market demand and the price is thereby maintained at a high level; that foreign oil will come in at a lower price thereby defeating the object of the people that have this program to keep the oil there; is there any danger in that situation?

A. We ship more oil than we consume in Texas; that foreign oil would come in competition with oil which we ship. Louisana oil would come in competition with Texas oil, Arkansas oil would come in competition with it, the wildcat prospector might go over into Mississippi —we have found some oil over there, some indications—you simply increase the search for oil not only in Texas but in other States, and then your artificial structure is bound to break down.

Senator DeBerry:

Q. I think a while ago someone asked you the question: didn't oil drop from somewhere around $1.50 a barrel down to 10c in East Texas, and if that wasn't caused altogether by discovery of oil in East Texas and the placing of distressed oil on the market.

A. It was largely caused by the discovery of oil in East Texas as well as the big production at Oklahoma City.

Q. Isn't it a fact that the price of crude oil was due to take some slump on account of the difference in the purchasing power of the dollar and the economic condition of the world and the lack of ability of the public to buy the refined products?

A. Certainly, the consumption of oil has declined the same as other products, not to such a great degree, but the consumption has declined.

Q. So far as the general economic situation has depressed the price of crude oil they are no worse off than I am with my cotton?

A. Better off, natural conditions are better. Consumption of oil has not declined in as great degree as the consumption of cotton.

Senator Woodruff:

Q. Mr. Nazro, is it your opinion that the Conservation Act of 1931 strengthened the conservation laws that were theretofore in force and effect in Texas?

A. I think so.

Q. Now if I invade the province of your personal business in such a way as might embarrass you to answer these questions—

A. Not at all.

Q. Is it your opinion that the East Texas field could produce more than 325,000 barrels of oil per day without physical waste?

A. I think personally that it could, just how much I am really not in position to say at this time because we haven't enough information about it. It might be 600,000, it might be 800,000, but I don't believe it would go much higher than 600,000 or possibly 700,000. I think that as soon as you start opening up these wells the physical waste will be demonstrated.

Q. You are familiar with the fact that the Oil States Advisory Committee has made its recommendation with reference to the amount of oil allowable in the State of Texas from time to time?

A. Yes.

Q You are also familiar with the fact that in the Three Judge Federal Court opinion, that apparently strangely coincident with the recommendation of the Oil States Advisory Committee the Railroad Commission orders paralleled their recommendation just about?

A. Senator, let's say that was a coincident.

Q. Then in effect the Railroad Commission orders have responded to and been centered on the question of market demand or economic waste?

A. I think so. We had a recent experience of that in an order last month or month before instructing us to reduce the production in some old coastal fields ten percent. There was no demonstration of waste, the engineers of the Railroad Commission said that there was no waste.

Q. Theretofore you had been producing in those coastal areas at just about what the well would stand?

A. Yes.

Q. This was an arbitrary reduction of ten per cent?

A. Yes, sir.

Q. Considering that the Railroad Commission's orders for the State of Texas had been responsive to the question of market demand, was there or not, in your opinion, discrimination against East Texas in favor of the Coastal area for some months prior to that order reducing the Coastal area well ten per cent?

A. What do you mean by discrimination in favor of East Texas?

Q. Has the East Texas potential, without physical waste, had full access to the market for crude oil on a basis commensurate with the Coastal area wells that were not reduced for some months?

A. Well, the Coastal wells were not reduced for many months, never until recently: East Texas had been.

Q. Well, the Coastal wells before that reduction were enjoying the market to the fullest extent and the East Texas wells were not enjoying the market to the fullest extent of their capacity; then there was discrimination in favor of the Coastal wells, wasn't there?

A. If you pinch down East Texas —but you must bear in mind that they are different grades of oil, used for different purposes to a very large extent.

Q. I understand, but taking into consideration those differences, isn't it a fact that East Texas was denied a market that was not denied to the other producers in Texas for some months?

A. If you mean that East Texas was allowed a market of 325,000 barrels and the Coastal fields allowed whatever market they might secure, you are correct.

Q. All right. Now that leads up to this question here: If you are going to write market demand into the law should you not go one step further and require the Railroad Commission to make the market available to all producers in Texas alike on a prorated basis, taking their potential production into consideration?

A. No, because in the first place you shouldn't make market demand without reference to the price. Even if you do that you would have to take into consideration the kind and quality of the 14 different kinds of oil, you would have to take into consideration the accessibility of the market, you would have to take into consideration that a man might have built a refinery in the Panhandle or down in the Southwest Texas area, and developed a market for his product; he might be producing that oil without waste from wholly owned property; what has the State to do with that? As a hypothetical illustration, suppose you have a ranch down in Southwest Texas somewhere or in the Coastal area; on that ranch you find an oil field; you drill your wells, produce those wells, build a refinery, produce those wells without waste, is it any of the State's bus-

iness to say how much you may sell that oil for or how many barrels you may sell? I say no.

Q. Well, we won't argue that question.

A. I am trying to make my point clear by a hypothetical case.

Q. The fact that I see East Texas down there held to 40 barrels per well when my firm belief and conviction is that they can produce much more oil than that without physical waste; I see down on the Gulf Coast other wells producing a thousand barrels a day without question, with or without physical waste; my thought is that that is a manifest injustice to the producer in East Texas in favor of the producer in South Texas.

A. The Coast shouldn't produce oil in a wasteful manner any more than at any other point.

Q. A while ago we assumed that we had written into the law market demand, and that we were requiring the Railroad Commission to limit the production to equal the level of market demand in Texas; should we who are not in that same bill apportion that market to all producers alike throughout the State?

A. If you are going to fix the price of crude oil fixing the market demand then you can apportion the amount that goes to each producer, then you can fix the price that he will sell it for, you can do whatever you may please if your courts don't stop you. If you start on that course you may go a very long way or you may be checked immediately through the courts.

Q. How would you go about making the purchaser buy the oil?

A. The first thing he would ask you is "Who is going to furnish the money" and then "After I buy it where am I going to put it?" He will ask you lots of questions; but first "Whose money is going to pay for it—yours or mine?"

On motion by Senator Martin, the Committee recessed until Wednesday morning at 9 o'clock.

I hereby certify that the foregoing 153 pages constitute a full, true and correct copy of the testimony heard before the Committee of the Whole, State Senate, on November 7th, 1932.

(Signed) C. A. LEDDY, JR.

(And at the hour of 9 o'clock a. m., on November 9th, 1932, the Committee was called to order by Chairman Rawlings, and the following proceedings were had):

R. D. Parker,

being first duly sworn, testified as follows:

Senator Rawlings: Mr. Parker, Senator DeBerry has requested your presence that he may have the opportunity of asking you some questions about the terms of this bill and its effect. Senator DeBerry, you may proceed with your examination.

Examination by Mr. DeBerry.

Q. What position do you hold with the State of Texas?

A. Chief Supervisor for the Oil and Gas Division of the Texas Railroad Commission.

Q. How long have you held that position?

A. About 8 years.

Q. What technical training have you had, in the field of oil—the oil business, or gas business, have you had any technical instruction along that line?

A. No.

Q. You are not a geologist?

A. No, I am a civil engineer, graduate of the University of Texas.

Q. You understand reasonably well, do you not, the provisions of the Acts which were passed about a year ago, under which we have been operating about a year?

A. Yes.

Q. Do you think the order promulgated by the Commission—do you think that order that the Three-Judge Court set aside, was said was not properly promulgated—do you think that it is within the bounds of "physical waste?"

A. Yes, the testimony before the Commission and the testimony before the Court was conclusive on the question of waste, in my judgment.

Q. In other words, you think the bill that is on the Statutes now so closely defines "wastes" that you can write an order and still stay within the bounds of "physical waste?"

A. I think so. We would still be faced with the prohibitions that are in the Statute now in regard to "physical waste" and "market demand." The Commission, and the

Three-Judge Court acted on the prohibition in the Statute instead of directing their attention to the question of waste.

Q. Did the court set aside the order or did they attack the law?

A. The Three-Judge Court declared the Commission's order invalid.

Q. But did they say that the bill, so far as they went into it, it was all right, is that right?

A. Yes, substantially so.

Q. Is that court a court of last resort?

A. No.

Q. If this case was to go up—the higher courts were to decide that this court was wrong in finding that you had erred, which you think they would, if they go into the facts, wouldn't you think we would still have a good bill?

A. We would have a law which the court said is valid, but we would be faced with the prohibition and the possibility of another decision by the same court on an order drawn somewhat differently.

Q. The prohibition in the Statute that you should not take into consideration "market demand." Why would that limit you when you said you passed it without taking that into consideration?

A. It does not necessarily affect the order but it affects the administration of it. If we get injunctions on it, our hands are tied.

Q. You don't mean to testify that there won't be injunctions gotten out under the new bill?

A. I hope there won't be,

Q. Have not you heard that some men have said that as soon as we put it on the statute books they were going to fight it?

A. That may be true.

Q. You don't advise that because someone has an opinion that somebody exceeded their authority that the way to do is to extend the authority—would you say that is a good public policy?

A. Not generally, but I think the situation facing us now can be taken care of by this Legislature—by the Senate and the House.

Q. If we should pass another law, and some court should decide that the Railroad Commission overstepped its authority, and the Commission thought that the court had not construed it correctly, would you think it would be a good idea to continually bring the Legislature down here, when you always insist you have a good law, to follow the ideas of a lower court and pass new laws to give the Commission authority to get around a court decision?

A. No, not under your premise, but I think we have a situation confronting us that justified the calling of this Legislature, and we have a need for legislation, before we can take care of the situation.

Q. You have got authority to do what you have done, you say, what do you need with more authority?

A. We have got to go around this court decision before we can do anything over there.

Q. Suppose we would pass this bill that is proposed and the Court would say you did not construe "market demand" as you should, and that you discriminated, then what would you ask the Legislature to do?

A. We would possibly have to put a different construction on "market demand" to suit the Court.

Q. And possibly if you should put a different construction on "physical waste" you might get by it?

A. Do you mean to say that we can consider "market demand" in connection with "physical waste"?

Q. No.

A. The prohibition is against "market demand" in the statute now, and we want it out.

Q. You don't want it out to use it?

A. Yes.

Q. You have got a good order under the bill as it is and you did not use it?

A. The Court said it was not good.

Q. Could not you carry the case up?

A. I think so.

Q. Under the new bill, if this same Court should rule that you men did not construe "economic waste" or "market demand" right, wouldn't you be back right where you are now?

A. I don't know as we would, but we are all down here for the purpose of passing a statute, and why not pass it.

Q. I am not down here for the

purpose of passing a statute. I am down here trying to kill it if I can.

A. At least, we are here to pass upon this legislation.

Q. What does "market demand" mean?

A. In my judgment, and the Commission has construed it to mean, I think it means the amount of oil that is necessary for current use for refining, to take care of the current demand for refined products.

Q. The current demand for crude oil at 10c a barrel or at $1.00 a barrel?

A. I am talking about the demand for use.

Q. Isn't there more demand for cheap oil than high oil?

A. That might be some incentive to purchase it.

Q. Is it possible in the mind of any human being to interpret "market demand" without having the oil fixed at a price?

A. I think the price affects it unquestionably. There is no doubt about it in my mind or in yours.

Q. Will you construe "market demand" at 10c or at $1.10—are you going to look at a high or a low price, and is it high or low by virtue of what?

A. I don't understand your question.

Q. If I give you an authority to pro rate the production of oil in a Texas field on "market demand"—I want to know when you look at "market demand" are you looking at it at a cheap price, which will mean a greater demand, or are you looking at it at a higher price which will mean a lesser demand?

A. I think we have different prices at different places. I don't know what the Commission will consider. At the time we come to hear the case will have to hear the evidence on "market demand" and make an order based on the evidence submitted, and possibly the Commission will have to make some additional investigation on "market demand."

We have never considered "market demand" as a basis of our proration orders and gone into a study of it. We would naturally do that if the law were changed.

Q. "Market demand" is a pretty big question to decide, what it is?

A. Yes.

Q. And "market demand" would be a pretty big question to decide what it is at figures of 25c a barrel, wouldn't it?

A. Yes.

Q. And it would be a pretty big question to decide what it is at figures of $1.25 a barrel, wouldn't it?

A. Yes.

Q. "Market demand" for $1.25 would not be as great as "market demand" for 25c, would it?

A. No.

Q. Which one are you going to consider when we put it in the bill? You say if we were to get together on the fundamentals of the bill, which we never will—I am discussing it with respect to its application. If we give you the authority, what would you do about it?

A. I can't give you all the details at this time.

Q. Mr. Parker, can "market demand" be considered without considering the price factor?

A. I think it has an influence upon it unquestionably. Any order the Commission would enter probably would have an effect on the price.

Q. I would like for you to answer this question. Can you consider "Market Demand" at all without considering the price?

A. I think price is one of the factors in it, yes.

Q. That is right, one of the factors. If there are a certain number of citizens in this State interested in low priced oil, or low priced refinery products, coming from crude oil, and a number of people in the State are interested in high priced crude oil, then the Commission, when it considers the price factor, or "Economic Waste," have got two types of people to please, haven't they?

A. Yes, I think that is true.

Q. Then considering "Market Demand," would influence the price, wouldn't it?

A. Well, any order the Commission would enter would naturally, I think, have an effect on price. The parties that wanted to buy oil at 10c could come in and nominate the amount of oil they wanted for their use just the same as the man that wanted to buy oil at $1.00 could come in and nominate the oil he

wanted, and the Commission would consider both.

Q. You mean any consideration of "Market Demand," in your hearing, the matter of price would enter into it?

A. If the Commission has up for consideration the amount of low oil that is produced in Texas during a certain time, all parties who are interested in the purchase of oil at that price can come in and nominate the price of it and the quantity is what we are interested in and not the price. We have oil at different prices over Texas now, and it is produced in given quantities.

Now, there is no reason any person can't come in and say how much oil they want. They can come in to the Commission and nominate to purchase the oil at a given quantity.

Q. At a given price?

A. If they want to put the price on it, but we consider the quantity and not the price.

Q. Don't you think there would be more people come in there and ask for nominations at 10c a barrel than at $1.10?

A. I don't know. There is more purchased at $1.10 now that there is at any other price. I can not anticipate what the condition will be at the time the Commission undertakes to pass an order under this bill and I don't think the Commission can do it.

Q. I have got to anticipate that because if it affects the price to the disadvantage to my constituents, they will say that I should have anticipated it?

A. I don't think anybody can anticipate the price. You can't say what it will be this time next year.

Q. I am asking you, wouldn't there be a larger demand at 10c a barrel than there would be at $1.10?

A. I can't tell you whether there would or not. I don't think there would.

Q. You don't think there would be a greater demand at 10c a barrel than at $1.10 a barrel, is that your answer?

A. This 10c oil is created by flooding oil on the market.

Q. I didn't ask you what created it. I asked you if you thought there would be a larger demand at 10c a barrel than at $1.10?

A. There might be. There is not now, though.

Q. You don't think it would be certain that there would be?

A. There is not a demand for it now at 10c a barrel.

Q. How can you testify there is no demand for 10c oil—because there is none selling at that price —I might want to buy some myself, you could not say, that, could you?

A. Oh, well, that is quibbling, I think.

Q. It may be quibbling and it may not be. If the price factor is going to be considered, are you going to pass orders to allow such an amount as taken at a high price or at a low price?

A. I think I have indicated already that the Commission is concerned with the quantities, and all parties desiring to purchase oil at the time we have the matter up for consideration. When we have the matter up for consideration, they can come in and nominate the quantity they want to purchase.

Q. And the price?

A. I don't think we will have to consider the price. He might want to fix the price as between buyer and seller, but the Commission don't fix the price.

Q. The nominations say nothing about the price at all?

A. I don't think we need to consider it, and if you are a refiner, and say your needs are so much per day over a definite period. The Commission can take that as a demand on your part for oil and supply it without creating waste from the fields that you want to purchase it.

Q. In considering "market demand," you want to present "economic waste" as well as "physical waste," don't you?

A. I don't think you can escape dealing with "economic waste," in any event.

Q. All "physical waste" is "economic waste," isn't it?

A. Yes, that is the reason you want to take the prohibition out of the law.

Q. All "economic waste is "physical waste?"

A. "Physical waste" is "economic waste."

Q. "Economic waste" is a much broader term than "physical waste," isn't it?

Q. Yes.

Q. Oil could be produced at an "economic waste" and not be a "physical waste," couldn't it?

A. Yes.

Q. At what price today would oil be produced at an "economic waste?"

A. I mean pumping wells out in the North Texas district, producing oil below thirty cents would be "economic waste" because it would cost approximately that much to pump it.

Q. If oil goes below thirty cents, it is "economic waste?"

A. That would be in that particular well.

Q. There would be in that particular well, but of course, the other costs that go into it would probably raise the figure. What are the other costs?

A. Taxes and pumping and cost of operating the lease and all other expenses that go into the production of the oil. It would probably run about thirty cents a barrel.

Q. At what price today could crude oil sell in Texas and not be an economic waste, save and aside from the question of physical waste?

A. It would be different in the different fields, depending upon the geographical location of the property and the cost of operation and the other costs that enter into it.

Q. About what price could oil be produced in East Texas today and not be economic waste?

A. I have not worked out that method.

Q. Would you have to work out the price schedule if you use economic waste in your equation?

A. I think not on the basis of handling the matter as I stated a while ago.

Q. If you issued an order that you thought was following the statute with reference to "Physical Waste," and you had looked at "economic waste," and the oil went down to 10c a barrel, it would be an abnormal waste set up, wouldn't it?

A. How is that?

Q. If you issued an order that you thought was following the statute with reference to "physical waste," and you had looked at "economic waste," and the oil went down to 10c a barrel, it would be an abnormal waste set up, wouldn't it?

A. Probably both.

Q. You would have to pinch him down to boost the price, wouldn't you?

A. No, you would have to pinch it down to prevent waste in some instances, because the lower the price is the more the tendency to be careless in operating, and in that way waste would be created, I think.

Q. If the price was to go down, and you were not violating the "physical waste" features of the bill, "economic waste" would set up, wouldn't it?

A. Yes.

Q. How high would you have to boost it back until it would not be "economic waste?"

A. How far do you have to boost what and where?

Q. If producing oil at 10c a barrel is economic waste, is 20c oil economic waste?

A. It might be.

Q. If you are going to take an obligation on you to see that you will have no economic waste, you will have to get good at that, so you will know—

A. I think we ought to undertake to be good at what we set out to do anyway—do the best job we can.

Q. I think so. I want to be in position to tell my people and to tell myself whether I am doing my best.

A. You can tell them I am doing my best down here.

Q. I am sure of that, and I don't think you know what "economic waste" and "market demand" is, and I don't think anybody else does, because every man that has been on the stand here has testified that he doesn't know—that he is going to study it. Is that all a man should take into consideration in determining the market demand, the nomination?

A. No, I think you should look into some of them to see if they were bona fide. If they—say a refiner, had a refinery with ten thousand barrels a day capacity, and if he nominated 25,000 barrels, I think you should cut it back to 10,000 barrels.

Q. Would you take into consideration the imports in arriving at "market demand?"

A. I don't think you could avoid considering it in arriving at the supply.

Q. When you are trying to decide what market demand for crude was, would you consider the price at which the refined products were selling?

A. You might do that.

Q. Well, would you do it?

A. I don't know. I can not anticipate what we would do in every respect and in the utmost detail. The Commission has to pass upon those questions. I don't pass on that. I advise with them of course.

Q. That is my purpose in asking you. They said they were going to study it.

A. And they will.

Q. I thought maybe some of you men in asking us to turn over to you the right to use your judgment in determining "economic waste" and "market demand," I thought I should see what you know about it.

A. We can always learn. I have not made sufficient investigation to answer all of these detailed questions you have asked here as to price and so on.

Q. If there was such an amount of oil being produced as that the refined products were getting so high that the general public thought it was "economic waste" for them to pay it, do you think we ought to change it?

A. I think they ought to change it as the demand gets lower, of course .

Q. Do you think a state agency should so regulate any commodity as to make the vendor of that commodity know that he will be able to sell his stuff?

A. No, I don't think this is a price fixing arrangement. Our duty is to prevent waste, and this matter of "economic waste," and the "market demand," the prohibitions we have agreed now, if removed, we will have more latitude in dealing with the question of waste.

Q. If restricting the flow of oil on the basis of "economic waste," and not "physical waste," and "market demand," if they restrict it to where gas goes up to where it is out of line with 5c eggs and 5c cotton, is that "economic waste" to the egg producer and the cotton producer, if he is forced to pay it?

A. How is that?

Q. Is it economic waste if you are to sell cotton for 5 cents a pound and pay a posted price too high for gasoline caused by the flow being restricted by virtue of economic waste?

A. I don't think that it is.

Q. You don't?

A. No.

Q. Why wouldn't it be as much waste to force a man to pay more for it than it would be to let the other man sell it for less than it cost him to produce it?

A. Of course, your ability to purchase is based on what you get for commodities you have to sell.

Q. By virtue of what right has the government to boost the price of what I have got to buy?

A. We don't intend to engage in price fixing and place burdens on anybody. I don't think it possible to adjust the price of one commodity based on the price of another at all. How could you do that? You want us to fix the price of oil to suit the price of other commodities. I don't see how we can do that.

Q. I don't want you to do that.

A. That was the effect of your question as I understand it.

Q. That will be the effect of it if you restrict the flow of crude oil so it will not be an economic waste, of course, that will go into the price schedule. Why you men evade it, I can't understand. If that results in boosting the price, and the price gets up to where it is out of line with the stuff I sell, is that treating me fair?

A. Do you want to fix the price of all commodities?

Q. No. That is the reason I object to this bill. Do you think these men are down here actuated by the control of a price schedule or conservation for future years?

A. I think they should be here for conservation.

Q. And not with respect to price schedule?

A. No.

Q. Were they down here when oil was high?

A. What do you mean?

Q. The oil men, who profit by the sale of crude oil, were they acting for conservation in the Ranger field?

A. We had a conservation statute in Texas in 1919, created evidently as a result of a demand for it and it has been on the statute books ever since.

Q. Physical waste or economic waste and market demand?

A. We did not have any demand for proration until about 1928 except in given fields where the facilities for handling the oil were limited, and then we had to prorate the production between the different leases to fit the capacity of the transportation agencies. But the proration that I suppose you have in mind is a new thing, or at least it was new in 1928?

Q. If you have got a law that will take care of physical waste, that is conservation, as I see it?

A. Yes.

Q. Don't you think the price schedule has caused these men to come here and ask me to give you the power to define "economic waste"?

A. Probably some of them did. I do not want to pass on their motive. Probably that is true. Probably some of them are down here to affect the price or maybe all of them are. We are looking at the subject through the standpoint of conservation and whatever law you will place in our hands to administer that is what will control us.

Q. Don't you think cheap oil encourages the use of oil to where it burdens the field and increases demand?

A. To some extent, yes, up to the saturation point, and what that is I don't know.

Q. No one else does. The order that you entered and the court stated that you had exceeded your authority, you insist that that order was within the statutes, and only took into consideration physical waste.

A. Do I think the Commission did?

Q. Yes.

A. Yes.

Q. They took into consideration nothing but physical waste?

A. Yes, that is the testimony and there was no testimony on anything else, and the order was based on the testimony. They did not go outside of the record.

Q. In a hearing that you all conduct along this line, do your engineers say that to relieve physical waste requires a blanket order in East Texas of 40 barrels to a well?

A. I think there could probably be a more equitable formula than the per-well basis. We have a situation over there that is not entirely equitable. The production is not distributed in the way that I think it ought to be, but it was rather the expedient thing to do to adopt the order the Commission did adopt.

Q. Do you think there is such a thing as one man having a well running 50 barrels a day in one field and another man have a well running 500 barrels a day in the same field and not produce physical waste?

A. The testimony of the engineers is that we should have a ratable taking in the field and uniform withdrawal spread over the entire field as near as may be.

Q. As I remember the testimony of the experts, they testified that you could have wells in the same field flowing at a different number of barrels per day and not produce physical waste.

A. I think that is true, but I think your figure of 50 barrels and 500 barrels is too wide a spread.

Q. You admit that there could be considerable difference?

A. Yes, I said so.

Q. Your order did not say that, did it?

A. No, I said I thought it was a better basis than the per-well basis, but the Commission thought the expedient thing to do at the time they entered that order was to put it on a per-well basis. I am not questioning the motives of the Commission. I think they did what they thought they ought to do under the circumstances.

Q. I am not questioning their motive either.

A. I don't think you are either.

Q. Didn't the court say you erred because you ordered it 40 barrels all around, and some ought to have been some higher and some lower?

A. That was one of the principal reasons. One was the basis of distribution and the other was what

they said we considered market demand on.

Q. Was the law wrong or the Commission in entering that order?

A. The court said the law was wrong.

Q. I am not asking you that.

A. You want to know what I think?

Q. Yes.

A. I think the law was all right in some respects and the Commission was 100% right. I think they entered the best order they could under the circumstances.

Q. Did you testify that wells could be allowed to flow in East Texas at different barrels per day and not produce physical waste?

A. Yes.

Q. Was the order that sort of an order or not?

A. No.

Q. Was the order right or wrong?

A. It was wrong in that respect, I think.

Q. Was the Court right or wrong when it said they were wrong when they did it—what do you think?

A. No, I said they were not. I think that there is a better way but the Commission selected that method, based on the circumstances at the time.

Q. If the Court said the Commission erred when it said all wells in the East Texas field should be put to 40 barrels, was the Court right, or was the Commission right?

A. I think I have said several times there is a better basis.

Q. In other words, then, the Court is right?

A. Yes.

Q. Should we pass the law to correct that or should the Commission get right?

A. I don't think the basis of distribution has anything to do with it. They had the question up here. We have the authority now, I think, to prorate on the basis of physical waste with the prohibitions in the law, that we can consider market demand and provide against economic waste.

Q. And the prohibition against—

A. The law does not say we should adopt any other particular basis.

Q. If we were to give you the market demand feature and the economic waste feature, and you would go back and pass an order thereafter regarding those things that will be taken into consideration, you intend to limit the production in East Texas to 50 barrels per well per day, would the Court set it aside or uphold it?

A. They would set it aside just like this one. I assume they would unless they change their mind.

Q. Have you got an engineer that will testify that the East Texas field should be prorated to 40 barrels per day to prevent physical waste?

A. They have done it.

Q. What engineer in your employ will take the stand this morning before this Committee and testify to that?

A. Well, the 40 barrel figure came about in this way. The Commission put a top limit of production for the field as a whole, and the testimony was on that amount and not on the 40 barrels per well. The 40 barrels per well came about through dividing the number of wells in the field into the top allowable.

Q. Who recommended the use of division to arrive at it?

A. The Commission itself adopted that.

Q. Who recommended it?

A. I don't know. A number of different people thought the per well basis was the proper basis. Most of the smaller producers over there that had a small well or small tracts wanted it on the well basis because they considered it to their advantage to have it that way.

Q. Does it make any difference in reality, if you observe the law in respect to prevention of physical waste, does it make any difference over there, whether one man gets ten and another man gets four hundred?

A. I think the essential feature is to limit the production of the field as a whole and limit that as best you can over the whole field. Nobody will come in here and testify that forty barrels is the amount necessary to prevent waste. It is the total amount that the field is authorized to produce, is the controlling factor. The amount that one well is authorized to produce is an incident. Whatever the allocation as between wells or leases might be, the total amount to be produced in a field would be the controlling factor.

Q. If a property owner over there thought his well could produce more than fifty barrels a day and not produce physical waste, wouldn't he want to produce more?

A. I should think he would want to.

Q. Wouldn't he have a right to have it, if his well would produce more than another man's wells and not produce physical waste, wouldn't he have a right to it?

A. Yes.

Q. And shouldn't he have it?

A. Yes.

Q. Should not he object to it?

A. Yes, under the present condition.

Q. This top allowable for the whole field, who decided that?

A. The Commission decided it on testimony heard at a hearing.

Q. Whose testimony?

A. Different engineers.

Q. Those engineers are your own engineers?

A. Yes.

Q. How did they arrive at the figures at which they arrived?

A. They did not arrive at the figures. The Commission arrived at the figures in their order. They gave certain limits beyond which the Commission could not go in their judgment.

Q. Has the Commission in making its order of top allowables always followed the suggestion or advice of the Commission's engineers?

A. Fairly closely, yes. They may have varied from it some, but they considered the testimony that they heard in every case.

Examination by Senator Woodward.

Q. I will ask you if it is your belief that the overproduction of any commodity, whether it be a natural resource, or some other product which might be replenished by man year after year, doesn't have the effect of reducing the reasonable or fair market value of that product?

A. Yes.

Q. Do you believe that the overproduction of oil beyond what would be considered a reasonable market demand for it would have the tendency of reducing the market value of that oil?

A. Yes.

Q. In applying this Statute, in the event we should pass it, and not attempting to commit you to any fixed policy—that is not may object—I will ask you if it is not a fact that, now, assuming that the law is enforced, and assuming that the Commission can take into consideration the reasonable market demand for oil—should not the Commission fix the allowable of production in Texas just as effectively, even though you did not know or were not informed as to what the price oil was selling for?

A. I think so.

Q. In other words, would it not be probably the policy of the Commission, if this law were enforced, to have a hearing and ascertain from the facts and most reliable sources possible what will be the demand for oil of all classes and grades for the next thirty or sixty days or six months or whatever period you might fix?

A. Yes.

Q. Regardless of whether that oil was selling for 10c or 15c or $2.00?

A. Yes.

Q. The policy of the Commission would be to ascertain the amount of oil which might be reasonably consumed in so far as Texas' production is concerned during that given period?

A. Yes.

Q. You could fix that amount of allowable just as effectively regardless of the price of that oil?

A. Yes, the price would be fixed between the buyer and the seller.

Q. And the Commission would have nothing to do with whether or not the oil was 10c a barrel or 50c a barrel or $1.00 a barrel?

A. No.

Q. In other words, Mr. Parker, is it your idea that if this law were enforced, that on a hearing you would ascertain as best you could and from the most reliable sources, and from the most reliable information, how many barrels of oil of certain grades will be necessary to meet the market demand whatever that market demand is—regardless of what that price is at for the next sixty days or whatever the period is?

A. Yes, sir.

Q. Suppose the proof before the Commission would indicate to the satisfaction of the Commission that

during that period of time there would be a demand—that the market would need—absorb fifty thousand barrels a day of a certain grade of oil, it would absorb 125,000 barrels a day of another grade of oil, and so on until it appeared to the Commission that during that period of time the per day demand would approximate three or four hundred thousand barrels, if it did not prevent physical waste to meet that demand, the Commission necessarily would allow the production of whatever appeared from the testimony to be the amount of oil that would be necessary to meet the demand during that given period regardless of what the price was.

A. Yes, that is what I said. You stated it better than I did.

Q. In other words, the Commission, if this law were effective, would, or should, permit the production of all of the oil of the different grades that would be necessary to supply the reasonable demand for oil during that period, so long as it did not bring about physical waste?

A. Yes.

Q. That would be true regardless of what the oil was selling for?

A. Yes.

Q. Senator DeBerry was inquiring of you with reference to whether the orders were founded on whatever the law says, has been held invalid. You answered that the court had held that the orders were invalid because they had exceeded the authority permitted under the bill?

A. Yes.

Q. It is your understanding that under the Three Judge Court's opinion that they evidently held that, notwithstanding the testimony before the Commission, and regardless of the findings of the Commission with reference to that, is it a fact that they have in effect held that it was impossible, although there was testimony to that effect, that it is impossible for the Commission to fix the allowable in the East Texas field without taking into consideration market demand?

A. That was the effect of it, I think.

Q. The Federal Court, in effect said that we as men have reached the conclusion that it is impossible for the Commission to fix this allowable without taking into consideration market demand, isn't that the effect of their holding?

A. Yes.

Q. I ask you if as a result of that Court's finding which of course must be obeyed by the Commission —isn't it necessary to amend this statute in your opinion so as to permit you to do the things that they said you necessarily had to do in order to fix this allowable?

A. Yes.

Senator Moore:

Q. Did you mean to ask if we had to amend this law to meet the opinion written by the Three Judge Court?

Senator Woodward:

A. The effect of it was this: that the Federal Court having set aside the orders of the Commission, they have in effect held that notwithstanding the testimony that was before the Commission and notwithstanding the findings of the Commission, that necessarily in fixing this allowable you have to take in, as a human being, the question of market demand, and if that is true, then in order to enable the Commission to effectively prorate or control production or allocate the production, the Legislature must of necessity authorize the Commission to do that which we think is unnecessary but which the Court says is necessary. In other words, our backs are to the wall. I was asking him if that was his interpretation of that decision, and if that was what he believed brings about the necessity for this Legislature.

Senator Poage:

Q. Mr. Parker, in testifying just a minute ago, Senator Woodward asked you about the market value of oil. Did you mean in applying to that—did you mean the same thing by market value as market price?

A. I think the price would fix the value.

Q. I think so. Do you need any testimony to fix the price?

A. No, I don't think so.

Q. The value is just what the oil was selling for?

A. Yes.

Q. That is true of any product?

A. Yes.

Q. Senator DeBerry questioned you about the possibility of a change in the market demand, and you said there would be a different demand at a different price, but that on the whole the Commission would seek to determine just how much oil the country would need during a period of time?

A. Yes.

Q. Isn't it true of any commodity that enters into the general economic life of our people that the lower the price is the greater the demand is?

A. Yes, I think that follows.

Q. And does not a continued low price increase the uses that a commodity is put to?

A. Yes, the commodity has a limited use.

Q. But a commodity like crude petroleum will at a low figure be used for a number of purposes for which it would not be used at a higher price?

A. Yes.

Q. At a low price, crude petroleum will become a competitor of many of the low priced fuels?

A. Yes.

Q. And if you run the price of that crude petroleum up it will cease to be a competitor with other low priced fuels?

A. Yes.

Q. The same thing is true for some other products. Won't you sell more crude petroleum for oiling roads if the price is lower, will you not?

A. Yes, you can use it if the price is low for that purpose—that is if the price is higher you would be prohibited from using it.

Q. The price has been so high most of the time that it has been practically prohibitive to use it?

A. Yes, but I think in many instances you ought to prefer uses of one commodity as against another depending on the price. For instance, you can create new crops from year to year, but the supply of oil is limited because there is just so much of it that can be produced.

Q. Nobody knows just how much oil is in the ground?

A. No.

Q. And we could not very well guess on it, could we?

A. No, the probability is that it has not been discovered yet, but at the same time we know that those we have discovered are being used very rapidly.

Q. We have been told a few years ago that in 1932 that we would be faced with an oil shortage in the United States.

A. They thought so at that time.

Q. And we have just as much right to think that we will discover new oil in the future as they had at that time?

A. We can indulge that hope, I think.

Q. Has there ever been a major natural resource that has depleted so that we now don't have it available to mankind?

A. No, none that I can recall right at this time.

Senator Woodruff:

Q. Are you in favor of taking into consideration economic waste in addition to physical waste as provided under the statute now?

A. I am in favor of removing the prohibition against the consideration of economic waste because I think there is economic aspect to every order we issue.

Q. Of course, there is a natural relationship between economic and physical waste, because one may be a result of the other?

A. Yes.

Q. But do you think it within the province of the State to take into consideration the profitableness or the unprofitableness of the production of crude oil in the State?

A. You mean in entering its orders?

A. Yes.

A. I don't think it should be a primary consideration, but I don't think the Commission should destroy any industry or any part of it.

Q. Then, do you think the Railroad Commission has been mindful of that fact in the orders it has heretofore entered under the proration laws of the State?

A. No, we have been limited to a consideration of waste only.

Q. Indirectly, is it possible that the Commission were conscious of the economic result of the matter?

A. I can't say. I don't know what was in the Commission's mind.

Q. Was it discussed in your hearing in the Commission prior to the making of an order?

A. Not as a controlling factor. I think it has been discussed. Of course, finally we do discuss all these matters—the effect of them. I don't know what controlled the Commission in forming that judgment.

Q. I asked you if the Commission had in mind—not that it controlled them—but if they kept that in sight when they were preparing to write an order?

A. You mean they kept this economic consideration in mind?

Q. Yes.

A. I don't know. I hate to speak for them.

Q. If the Railroad Commission was prohibited from considering economic waste in the preparation and promulgation of an order, why was it necessary for them to discuss economic waste in connection with the preparation of an order?

A. We discussed it just like we are discussing it here this morning.

Q. Do you think it possible for the Commission to develop from competent testimony a state of facts under the present law upon which they could promulgate an effective workable enforceable order?

A. I think so, with reasonable accuracy, yes. We might not find the exact point but we can correct it on the basis of trial and error.

Q. Then you are saying that if physical waste is the thing that the State is looking for, we have a workable statute for that purpose at this time.

A. We have a statute that we are trying to work under, but there are certain prohibitions in it that ought to be removed. Not on the question of economic waste and market demand, but some provisions that negative each other.

Q. You say it is possible to write an effective order prohibiting physical waste as outlined under the present law?

A. Is it possible to issue that kind of an order?

Q. Yes.

A. I think any order we entered would involve economic waste and that prohibition certainly ought to be removed and I think we ought to have the market demand prohibition removed. We can enter a waste order now possibly.

Q. Economic factors would be incidental too, and flow from, as a consequence of any prohibition order that you might make?

A. I think so, yes.

Q. But you are not seeking under the present law to bring about such a result. In order to get your statement clearly in the record, I am going to ask you once more, if it is possible for the Railroad Commission to develop a state of facts from the testimony upon which to predicate a workable enforceable order under the present law?

A. I don't think so with the Court of a mind they are now, I question whether we can.

Q. If the Legislature passes the pending legislation and duly authorizes the Railroad Commission to consider the economic factor and market demand in promulgating an order—that means that the market is going to be closed to somebody some of the time, doesn't it?

A. We would endeavor not to do so certainly. That is if we could do it without providing waste, and I think under present conditions we can with the reserve we have.

Q. Do you think it possible under present conditions for there to be produced in Texas more oil than the market would absorb without creating physical waste?

A. I think so, yes.

Q. Do you think the Railroad Commission should under the pending legislation restrict the market—I mean restrict the production to the market?

A. Yes.

Q. What do you think the Railroad Commission's answer should be if under the present law the Railroad Commission says that there is no market demand for more than 325,000 barrels of East Texas oil per day, and the purchaser comes in and finds a buyer, a producer or a group of producers in East Texas and says to them that for the next thirty days he will take 100,000 barrels a day in addition to what they are producing, but that he will pay them 25c a barrel for it and they are agreeable to the price and they come to the Railroad Commission and ask permission for the Commission to produce in addition to the 325,000 barrels that the Railroad Commission has found to be marketable—that 100,000 bar-

rels at 25c. The first question the Railroad Commission probably would want to know would be, "Can it be possible without physical waste?" If that question were answered in the affirmative, what ought they to say with reference to permitting the oil to come on the market at 25c per barrel?

A. If it should be produced?

Q. Yes.

A. I think if there was a demand for it, they ought to let them have it under the circumstances.

Q. Regardless of the price there?

A. Yes.

Q. Then, if that is your attitude it, why should you have market demand in the law?

A. Well, it is in there now. We can't escape it. It is in there as a prohibition against the Commission considering it.

Q. You are forbidden at this time under the present law to take into consideration the question of market demand. Under the pending litigation, you are authorized to take it into consideration. If you do take it into consideration, after eliminating the question of physical waste, then are you going to permit East Texas oil to be sold to any purchaser who is willing to buy it at whatever price he will offer to pay?

A. Yes, I think you would have to meet the demand.

Q. Then let me repeat my question.

A. You would have to consider other producing areas in this State, I think, under the proposed plan in this bill, which I think is correct.

Q. What would that be?

A. In other words, that all of the oil should not be produced from that area alone.

Q. What would be the other consideration?

A. The maintenance of the industry in other parts of the State. If you abandon the oil in some parts of Texas, you would create physical waste in that way.

Q. The Railroad Commission could take into consideration when this purchaser comes in and offers to purchase 100,000 barrels a day for 30 days out of the East Texas field, the Railroad Commission should first answer the question—would that close the market to other areas in Texas?

A. Yes, I think so.

Q. But suppose the purchaser says, "I don't want Gulf Coast oil and I don't want Panhandle oil. I want East Texas oil," what should the Commission say about that?

A. Well, he would have some selfish reason perhaps. But he should get the grade he wants, I think.

Q. Do you say that in any other field in Texas, there is an exact East Texas grade on it?

A. Oh, yes, the grades are exchangeable in different parts of the State for refining purposes.

In that connection, if you write market demand into the law and the potential production per well in East Texas without creating physical waste is not 40 barrels a day, but 500 barrels a day and the potential production in the Panhandle is 1000 barrels per day, do you think that the Railroad Commission should make the market available to each producer both in the Panhandle and in the East Texas area on a pro rata basis of their potential production without waste considered?

A. Yes, I think so.

Q. Is that being done at the present time?

A. Under the present statute we have to consider every field separate and we have held separate hearings on every field and varied our orders based on the hearings on individual fields. We have not been able to consider the State as a whole. We have been limited under the law to a consideration of individual areas.

Q. It has been suggested that we put the question before the Committee for consideration whether or not variables in the cost of production from field to field should be considered in fixing the amount of oil that would be allowed to be produced in a given period in a given area. In other words, oil can be produced much cheaper per barrel in East Texas than it can in Reagan County, is that true?

A. Yes, very much cheaper. That is the original drilling cost is more.

Q. Should that factor have consideration in any order the Railroad Commission might fix for the allowable on the two fields under market demand?

A. That might have some effect on the demand, yes. It would indi-

rectly affect the Commission's order. We started out on the theory that we would ascertain the demand in quantity, not necessarily at a given price, and fix out orders based on the quantity of oil as required by different parties for refining purposes or other purposes.

Q. You stated a while ago in substance that the market demand for oil should be determined by the amount of oil that was required to meet human needs over a given period?

A. Yes.

Q. What percentage of oil produced in Texas is marketed outside of Texas?

A. About 85% of it.

Q. Then you would have to look outside of the State's borders for testimony as to what the market demand for oil might be at a stated time?

A. Yes, but the oil is bought in Texas that is exported. The transaction takes place in this State. Where the oil goes to after it is purchased here is another matter.

Q. As a practical matter—in considering market demand for oil, the Railroad Commission would have to consider the testimony of some such agency or agencies as the Assisting Committee known as the Oil States Advisory Committee?

A. You mean some outside agency?

Q. Yes, would have to come before the Railroad Commission and tell them what the market demand for oil from Texas might be at a stated time.

A. I think we would go to all sources, not necessarily an advisory committee such as you described.

Q. Some agency outside of the borders of Texas?

A. All of the oil that is produced in Texas is bought here and delivered here.

Q. But if you are considering the demand and the market for oil, you have got to consider the world-wide market for oil, haven't you?

A. Insofar as it affects Texas, yes.

Q. You would have to depend on testimony from outside the State as to the world market demand at a stated time?

A. I think we ought to take testimony from all informed sources, yes.

Q. Then, as a practical matter, the Railroad Commission would be placing beyond the jurisdiction of Texas the control of the rate of production of oil within Texas?

A. Not necessarily. We don't surrender any jurisdiction when we hear testimony from any source.

Q. But you stated that the Railroad Commission would have to rely for its testimony as to the state of the market on agencies from outside the State of Texas.

A. I stated that we ought to consider testimony from all sources. I did not restrict it to any particular group or particular plan. How would you escape the fact that the market demand for oil is made by the world demand for oil?

Q. You can not escape the fact that the world supply of oil affects the world market. Of course, and as Texas products go into the world market, they will be affected by it.

Q. How would you arrive at what a fair proportion of the world market for oil Texas producers were entitled to?

A. That might be difficult, but I think the experience in the past would be a guide as to what it might be in the future.

Q. What has been the experience in the past?

A. We have not dealt in market demand in the past. Our authority has been restricted to consideration of waste and as I have said before, we did not consider it.

Q. Senator DeBerry asked you a while ago in another form, and I will ask you again, whether or not you can restrict the production of oil in Texas to equal the market demand for oil without taking into consideration an arbitrary price at which the market will be.

A. Repeat the question, please.

Q. Senator DeBerry asked you a while ago in another form, and I will ask you again, whether or not you can restrict the production of oil in Texas to equal the market demand for oil without taking into consideration an arbitrary price at which the market will be—is there a market demand for oil determinable in any terms in the absence of a stipulated price?

A. Well, I think price is one of the factors. It affects demand, of course, but the quantity of production that is available affects the price.

Q. When you answered a while ago that if the Railroad Commission has an application from the purchaser to purchase 100,000 barrels of oil per day in excess of any existing allowable, and that the Railroad Commission ought to let the purchaser have the oil regardless of the price?

A. Yes, I think so.

Q. Then you abrogate market demand by your answer, don't you?

A. I don't think so.

Q. Well, you said in one reply that you could not have market demand without a consideration of the price, then you said the Railroad Commission ought not to consider the price?

A. I said that price was probably a factor in market demand. It need not necessarily be controlling.

Q. How important, in your judgment, would the price factor be?

A. I could not undertake to say right now.

Q. Would you say it would be a minor factor or a major factor?

A. You are asking me if price is a major factor in demand?

Q. In your opinion.

A. I don't know that I have given the matter complete study. I think it is rather an important factor, of course.

Q. In point of fact, it would be a major factor in arriving at what the market demand for oil might be at a stated time—one of the major factors. Can't we agree on that?

A. Yes, I think so.

Q. Then, if price is a major factor in determining a market demand, and you are recommending to the Railroad Commission, as the chief supervisor in charge of that work, that the Railroad Commission limit a purchaser who proposes to take one hundred thousand barrels of oil per day in excess of an existing allowable for the State—you are recommending to the Railroad Commission that he be permitted to buy that oil regardless of price?

A. I said a while ago that the Commission in fixing the allowable at any given term would look into the quantity of oil that is demanded by different parties irrespective of the price; they might be willing to pay one price here and another in another place, but they can be in the market for a given quantity of oil over a given period. They might be disposed to buy oil cheaply to put it in storage. I don't think that should be permitted because it would be waste. I would not recommend to the Commission that they be controlled by price at all.

Q. How is the storage of oil wasteful?

A. Because of the evaporation of lighter fractions?

Q. Is that a major loss or a minor loss?

A. It is rather a natural loss.

Q. What should the Texas Railroad Commission do if Mr. Sinclair came to them as it has been reported that he has done in Oklahoma where the corporation Commissioner of that state under a market demand of the statute was attempting to hold the price at $1.00, a barrel, Mr. Sinclair offered to take a large quantity of oil and he had sellers who would sell that quantity at 67c, should the Texas Railroad Commission in a situation like that allow the transaction to be made?

A. I don't know. I would not know what all the circumstances surrounding the condition might be.

Q. What circumstances could arise that would justify the Railroad Commission in refusing to permit the sale to be made on that basis?

A. You mean if he would come and ask for a given quantity of oil in a given field?

Q. Yes.

A. I stated a while ago that I thought the market ought to be distributed wherever it is possible throughout the State in order to maintain the production of different fields and not destroy them. In that case, if it is fair to let him take all the oil out of the East Texas field, and he could do it without creating waste, I think it ought to be done, otherwise I think it should be distributed in other parts of the State.

Q. Have you had occasion to review the testimony before the Railroad Commission upon each field in Texas with reference to whether or not there is being created physcial waste in that field?

A. You mean of each field separately?

Q. Yes.

A. Yes, we agents that are constantly engaged in conservation work in the different areas in those fields where we have orders in effect, I don't think it existed except in individual cases which arose from time to time which we corrected or attempted to correct.

Q. There is testimony in the record to the effect that sometime ago the Railroad Commission for the first time promulgated an order restricting the amount of production in certain Gulf costal fields, do you recall that particular order?

A. We have issued several orders in the Gulf coast. The first one I think we had a year or two ago. What order do you have in mind?

A. Do you recall a particular order wherein a flat reduction of 10% was made on a field or group of fields in the Gulf Coast?

A. Yes.

Q. What fields did that order apply to?

A. It applied to all fields that were not covered by individual orders. We have individual orders upon a number of fields in the Gulf coast area and placed a 10% reduction order on all of the balance of them.

Q. On those fields affected by the 10% reduction, do you recall the testimony so as to tell the Committee whether or not that 10% was the greatest reduction that those wells could take without resulting physical waste?

A. We started on that basis and intended to make further investigation of the necessary changes from time to time. We have engineers down there studying that now.

Q. So you don't know?

A. No, I don't know exactly. The 10% was not perfect. It was merely a trial and a start toward what we thought would lead to final proper results.

Q. Then the Commission made that order reducing the production in those particular fields and started at 10% without having first established the facts with reference to those fields?

A. No, that is not entirely so. We had some testimony on that and as I said however we selected that basis more or less as a trial.

Q. In other words, you fixed an arbitrary reduction of 10%?

A. Yes.

Q. Why, if you know, did the Railroad Commission arbitrarily reduce the production in those wells 10%?

A. Because they did not know what the perfect amount was and started at that amount to work to what would be the proper amount.

Q. Was there evidence of physical waste in those fields?

A. We had engineers down there for a month before the hearing and they recommended it and so testified before the hearing, that we start on that reduction.

Q. Was that reduction based on that finding of physical waste down there?

A. It was based on the result of their study of that field. We have the report on file and I would be glad to put it in the record if you would like to have it in the record.

Q. I am just asking you whether or not you know that your own engineer stayed a month down there and came back up here and recommended a reduction of 10%, whether or not that recommendation was made in the light of existing physical waste down there, or whether or not it was made for some other consideration, or for no consideration?

A. It was based on consideration of the physical waste that was the limit of our authority at that time.

Q. Then, the engineers told the Commission that there was existing physical waste in those Gulf Coast areas?

A. Yes, they testified, as I recall it, or indicated in their reports that there were conditions down there that should be corrected and we put that at 10% more or less as a trial or beginning point. They are still down there working. We have promulgated individual orders on some of the fields that are now in effect, that are more definite than that. We have physical waste in mind at all times. At least I did, and the engineers did.

Q. That was the plan you were working on in making the survey, to ascertain whether or not there was physical waste existing there?

A. Yes, we had in mind then making individual orders on individual fields or refusing that order if it was necessary, and making a study as to how best to perfect means of preventing physical waste.

Q. If you know off hand what area, or what field in Texas, is producing the highest barrelage per day of oil?

A. The East Texas field.

Q. At this time?

A. Yes.

Q. Do you mean that the 40 barrel a day allowable in East Texas is the highest per well production in East Texas?

A. No, I misunderstood you. The Reagan County field is producing the highest per well average.

Q. What is the rate of production there?

A. I don't remember definitely.

Q. Could you approximate it off hand?

A. No, I hate to guess at it. I have it on the record and I would rather supply it than trust my memory at this time.

Q. Is it as much as 1000 barrels?

A. Yes, it is over that.

Q. Have your engineers investigated and made a survey of Reagan County to ascertain whether or not there is physical waste there?

A. They are constantly in touch with that field. Our chief petroleum engineer makes a trip out there every now and then.

Q. Have the engineers made a report upon whether or not it would be possible to reduce the rate of production per well?

A. We are working on that very thing right now.

Q. But you have not that information now?

A. No, not complete.

Q. If you know, why did the Railroad Commission make an order restricting the individual well in East Texas to 40 barrels a day when there were other wells in Texas producing 1,000 barrels a day?

A. I would rather have the Commission answer that. They entered the order.

Q. What was your recommendation to the Commission with reference to that order?

A. Well, I think I have stated here this morning and have heretofore stated, that I thought the well basis is not the proper basis, notwithstanding the Commission adopted it. I am sorry that you asked me that question, because I hate to testify against the action of the Commission.

Q. I am just in search of information. There are some questions along that line that seem to be pertinent.

A. I think there is possible a more perfect basis of distribution of the oil in that field than the per well basis, but I think the Commission adopted, so far as I know, about what was in their mind, adopted it because they thought it was the expedient thing to do at that particular time, and it was very difficult to apply some of the ratios of distribution we have in effect, as for instance the acre-foot basis in the Van field. That is where the field has been drilled sufficiently to know the outline of the productive area, and the land features and so on. It is very difficult to work out the potential in East Texas when the field has 8700 wells in it. There are many ways that are considered more ideal to distribute the production in East Texas than the per well basis.

Q. In the East Texas field, there is a variable potential rate of production from well to well?

A. Yes.

Q. And any order that is based on the well rate is not equitable between the individual wells in East Texas?

A. I think so.

Q. If all the wells in Texas were permitted to produce oil per day at the highest rate that they may produce it, or can produce it, without physical waste, what quantity of oil would be produced in Texas approximately in your judgment?

A. I would not have an opinion on that.

Q. Would it be considerably more than is being produced in Texas at this time?

A. I don't know how it would be, I think it would be more than is produced now.

Q. Do you understand that the Oil States Advisory Committee has

recommended to Texas to decrease orders eight or nine hundred thousand barrels a day?

A. They did, I understand, about two years ago, but the Commission did not follow it, and none of its orders were based on it.

Q. Isn't it quite likely that East Texas alone could produce that much oil a day without physical waste?

A. Our engineers testify that it can't, and others testify that it can't.

Q. There is a difference of opinion on it?

A. I think there is conclusive testimony before the Commission and before the Court in Houston that it could not produce that such.

Examination by Senator Berkeley.

Q. Assuming that market demand should be included in the law, I am interested in knowing every possible chance that might occur, that might be adverse to the best interest of the small producer and the little refiner. Do you say that if market demand is included that there would be no possibility whatever that his best interest would be adversely affected?

A. I don't think so.

Q. There is another question. Assuming that a few of the major companies have a very large import power from fields of their own, and that the prevailing price of oil is $1.10 a barrel, and that these major companies out of their own fields in foreign counties can import oil and lay it down on the Atlantic seaboard at probably somewhere under sixty cents, and the small producer over here, without being accused of physical waste, has some oil that he would be willing to sell for less than the prevailing price of $1.10, let us say that he had oil at 50c. Do you say that the Railroad Commission would grant him the right and privilege to sell the oil at that price although the prevailing price was $1.10?

A. Yes, he could nominate the purchase of the given quantity of oil and fix his price to sell to a producer of a quantity of oil, and if he could produce it ratably and did not commit physical waste, I think he should be permitted to do it. The small refiner would not be denied a market under this Statute. He could come in and nominate to purchase a given amount of oil, whatever may be needed over a given period, and if it could be given to him at the point where he wanted to buy it, and he wanted to buy it ratably, and it could be produced without waste, I think that he would be entitled to it.

Q. It is my understanding that a good many of the small producers and refiners foresee a possible danger upon the inclusion of market demand. What in your opinion prompts them in the belief that their business might be injured or possibly destroyed?

A. I don't know what they have in mind.

Q. I am trying to find out.

A. I assumed that they had expressed themselves before you on that, or their witnesses would be here to give their reasons for objecting.

Q. I want to get your idea.

A. I don't know what they have in mind.

Q. So you, as the chief supervisor of the Oil and Gas Division of the Railroad Commission would say that in your judgment if such an exigency arose, the price being $1.10, and the market demand already having been met, the situation complete—the only ones that would have recourse to cheaper oil would be a few of the larger companies that have recourse to import powers. Then in your judgment the Commission would permit that oil to come on the same basis as that imported oil, provided they wanted to sell it?

A. The purchaser and the producer would have their place, of course, in our schedule.

Examination by Senator Stevenson.

Q. Presuming that physical waste be entirely protected, and there is only the question of waste due to market demand, would the Commission be justified in taking into consideration the possible production, for instance, a well in some part of the State may cost twice as much to produce oil—would the Commission be justified in taking that into consideration in fixing the ratio of production in that area—East Texas only producing 40 barrels per day per well, and the coastal country producing 260 barrels per

day, if the question alone of waste due to market demand were involved, would East Texas be justified in demanding that the coastal country reduce its production before it would have any further reduction of its own?

A. Yes, I think so. I think the Commission ought to take into consideration the different producing areas in the State and the distribution of oil according to its grade and according to the different people who nominate the purchase, where they may be.

Q. You differ with Commissioner Terrell and Commissioner Thompson in that feature.

A. That may be true. I heard Mr. Terrell testify, but I don't recall what he testified off hand.

Q. They both said that the cost of production should be taken into account if that situation came about, that is that there was nothing to be taken into account except waste due to market demand; they said in that event the cost of production should be taken into account.

A. Your question is rather involved.

Q. If a well in the coastal area cost twice as much to drill as it does in East Texas, now if there was no other element considered except waste due to market demand—

A. But that isn't true; there are other reasons.

Q. But suppose the other reasons were met, and the only element left was waste due to market demand. Then, I want to know whether that reduction due to market demand would be prorated with the field as a unit, so much per acre or each well, whether the Commission could also take into account, under your construction of the bill now pending, the cost of production?

A. I think they could possibly take into account the cost of production, but that is a matter between the buyer and the seller, in fixing the price. I think the Commission ought to take the cost of production into account to the extent that they would not permit the destruction of oil reserves in different parts of the State.

Q. Don't you see the possibility of the situation of this kind arising, that the cost of production in the cheaper fields of production would result, if the element due to market demand came to the front, would result in exploration in other fields?

A. It could happen, yes.

Q. Would it be a dangerous situation for the State?

A. Yes, I said if the Commission could supply the demand of one grade and kind of oil in the different parts of the State, that they could consider the cost of production and leave the oil in areas where there would be destruction if they did not have a market.

Whereupon, the hearing was adjourned until the hour of 2:30 p. m., upon the same date when the following proceedings were had:

Senator Rawlings: I will now recognize Mr. C. C. Barksdale of Overton, Texas.

Mr. Barksdale: Mr. Chairman and Senators: I am a land owner from East Texas in the oil field, and we want a law passed that will take care of our oil and prevent any waste, and we have been satisfied with the way the Railroad Commission has handled it, and are willing for them to handle it. I thank you.

Senator Rawlings: We thank you also. I will recognize Mr. J. M. Shaw, of Overton, Texas.

Mr. Shaw: Mr. Chairman and Senators: I have not any big speech here to make, but I am one of the land owners there in the field in East Texas and I would like to say a few words in behalf of this bill.

I don't know that I understand the bill thoroughly, but as the Commission has made a statement that they are totally unable to handle the situation as it exists, and that this bill is the only thing that has been offered that will remedy the situation—and on account of the confidence that we have in the Railroad Commission and the people supporting the bill, the land owners as a whole are in favor of the bill.

I don't think that it is class legislation, and the oil industry is second only to agriculture in Texas and pays fifty per cent of the taxes of the State of Texas, I am told, and it seems as though here in the Senate there is a little misunderstanding here among people who are out of the oil field, thinking it would run up the price of products on the consumer.

When oil was selling in the field for 10c, the price of gasoline was 12 cents. At present it is about twice that much, and on top of that our crude prices have increased to 100%.

I am told that only 15% of the products of the crude production is consumed in Texas, and yet the oil industry is paying 56% of the taxes.

Now, if you destroy the oil industry and if the field is thrown open, it will destroy the little man. It will destroy the wells that are pumping and also wells that are on the pump pumping 400,000 barrels of oil per day.

The president of the Gulf made light of it and said they had served their time and it was all right to junk wells producing 400,000 barrels a day, and still he says he is in favor of conserving the industry, and the natural resources of the State, and in the next breath, he said he was willing to junk wells producing $146,000,000 worth of oil per year.

The land owners there in the field together hold more than any of the larger companies. I don't think this is class legislation at all. We don't want any advantage over any other part of the State, but I think they should consider the fact that only 15% of the oil and its by-products are consumed in the tSate, and the oil industry is paying 56% of the taxes.

Senator Purl: You asked all those who wanted to be heard to stand and I asked Judge Luther Nickels to stand in order that he may be permitted to testify. He stated that he was not here insisting upon being heard, but some Senators had given him the benefit of the invitation, and I want to state that he is not here asking to be heard, but he is available if we want him.

Senator Rawlings: I will take his name from the list. Now I will recognize Mr. Joe Danciger of Fort Worth, Texas.

Mr. Danciger: Mr. Chairman and Senators: I have but 15 minutes of the time allotted to me, and it is a very short time to cover the ground which I have in mind.

With reference to the gentleman who just spoke, I want to say that there is no more sincere man anywhere than that man who talked to you. He is stating his problem, and it is all right. He sees his problem as it is there, and he presents it to you as he sees it, but he has not had 20 years' experience in the oil business, and furthermore, he is confined to his own line of business.

Possibly, he has not had as much business experience as you gentlemen have and he may think and express his problems, but there is a grave question whether he does or not.

For instance, he said that the opening up of the East Texas field, or the restricting of that field under the Railroad Commission's orders—and they have a right to prorate in order to prevent waste. He says that will destroy all the small wells in Texas.

Now, gentlemen, you can see that that man is sincere, but he don't understand his problem. It will not do that.

Now, it is up to you folks to figure out his problem, as well as mine, and every body else.

He says it will hurt the little man. Yes, and it will hurt me and it will hurt the man with the small wells. Our contention is that it will hurt us if we defeat the bill, but we won't be destroyed.

If the bill is passed, we are destroyed and I have enough literature around this Senate and in the House of Representatives, that if you gentlemen will read part of it, I think you will be convinced with reference to my views.

For instance, he says that 85% of the oil produced in Texas is shipped out. That is right, but what we want is for a decent share of that 85% to be manufactured in Texas. We want the privilege of manufacturing and distributing and shipping the oil all over the world.

I have nothing against the Railroad Commission. I think that Mr. Terrell and Mr. Smith and Mr. Thompson are good men, but they are trying to go outside of the law to help the independent producers as well as the industry. Now, you gentlemen pass a law and then they do something that they think ought to be the law. They assume that legislative function.

Now, if in the passage of this law. they did not follow it, and violated it—I don't say they committed any wrong in doing it. They were administering the law the way they thought it should be administered, but if you lay down laws here, and they administer them the way they think it is best for the people, why should you pass laws?

We are afraid that if you pass a market demand law, and they do things under it—that it is impossible of intelligent administration. Then what we are afraid of is that in the administration of that law it will cramp us in different places in our business so as to absolutely eliminate us.

Here is my position—they propose prorating oil. That means lessening the supply of oil. When they do that we can not make sufficient money producing oil when they do that.

There is no telling what the big fellows will pay us for it. We are bound down to produce on a certain amount and they are the fellows who tell us how much we can get for it. You can not do business that way.

When they prorate the supply of oil that automatically eliminates the independent refiner. He can not take oil under the law. They say, "We will take care of him, if he nominates." They suggest that we leave everything to them. But we can't do that. We have to have laws to be governed by.

Now, in prorating you limit the amount of oil on the buyer. When I tell you I will not pay the cost of production and won't take enough from your well to live on, you are out of business. Then what will this man do, that was up here talking to you? Where is his lease value? Where is royalty value? Where is his rental value on the land that he might have? All those values are destroyed along with my values. I am automatically kicked out of the business as an independent refiner.

I believe you will admit that if I am a buyer and can tell you what I will pay you, and if I can restrict the amount of oil you can produce, I have got you by the throat.

They say that the Railroad Commission is between me and the wolf. That is our position now. The wolf already has us by one of our legs, you know, in the Panhandle for instance.

Here is our position up there. We had forty or fifty wells producing. The Humble Company cut us off a couple of years ago—said they did not want any of our oil. Their man had said that they would take it right on.

That was their business, but I ran a little pipeline to the railroad and loaded my oil and sold it 15c under the posted price. I did not like to do that. Then I built a refinery in order to save that 15c.

Then after I built the refinery and had my investment in and thought I was going to get along pretty good. Then they came along and said, "You built your refinery and you have got your own production, and now we will prorate you, and you can not run your oil to that refinery."

How can any business exist on that basis? Then I went into Court and they gave me an injunction. I made an agreement with the Railroad Commission attorneys that we would operate our wells. We were not committing any waste.

It has been stated that the Panhandle was prorated on market demand and not on waste. I had two hundred locations that I could have drilled, and drilled very little of them. I did not commit any waste.

I provided competitive gasoline to the land owners in the Panhandle and we shipped out quite a bit all over the country. If I had not gotten the injunction, I would have been in a serious financial difficulty for no reason at all. I would have been in a bad fix.

If that applies to me, that way, it applies to the others the same way. We are all in the same boat. Anybody that is in my position, it will affect the same way.

Now, in regard to the history of proration. I have not time to tell you about the history, but I have distributed a pamphlet that will show the sinister influence back of this proration. Please remember the word "sinister." Although it is not a nice word and I don't like to use it.

The pamphlet shows that these companies have got enough oil of their own and do not need the independent producers so that the sooner

they can kick the independent producer and the independent refiners out of business the better they will like it.

And when they get him out of business, then what are you going to pay for gasoline? You will pay plenty. After they form a monopoly of that kind nobody will go back in the business.

They have a monopoly in Mexico at this time and I understand that they are paying 50c a gallon for gasoline there now.

Here is something else. You say you gentlemen have been down here three times considering this matter. Now, evidently the oil producers rushed to the capitol to make the legislature pass laws against them to make them prevent waste.

Don't that seem strange, that they would be running up here to get you to pass laws to make them do something that they should not do?

This time, they say that they were just kidding you before, and what we want you to do is to pass a law to control the oil business and fix it so that we can fix the price. Those laws that you passed the last two times did not hurt anybody because you left out the market demand and economic waste, so that they could not run away with everything.

If you pass this bill with economic waste and market demand, they will run away with everything. It seems when you give a Commission too much power, it is not a good thing.

I do not know why they want to go way beyond the law and authorize something in direct violation of the law, but they do it.

Now, there is just one more point. These little fellows don't exactly understand their position, and I will admit that if this thing is opened the price of oil will go down for a while but under competitive conditions, don't you worry. That price will come back.

In Seminole, we had as much oil as in East Texas and one independent pipeline was running that field, and oil dropped from 20c to $1.00 a barrel.

That shows what competition will do. When we built pipelines, storage tanks, it don't commit waste.

Don't you worry about the price of oil, because it will seek its own level.

Senator Rawlings: Your time is up, Mr. Danciger.

Mr. Danciger: Well, I am sorry, gentlemen, that I do not have more time. I had a number of other things that I would like to have discussed with you if I had had the time.

Senator Rawlings: I will now recognize Honorable Steve Pinckney of Houston, Texas.

Mr. Pinckney: Gentlemen of the Committee, being here as a matter of right, as well as at the invitation of some of your committee, I am feeling that I can not intelligently deal with the subject in hand in the limited time prescribed, and that a too limited discussion will only tend to confuse, and with full knowledge that there are other forums where I can be fully heard without imposing upon you, I will leave the subject with you.

Senator Stevenson: I would like to ask how much time Mr. Pinckney would need to explain his views.

Mr. Pinckney: I don't know, but I couldn't cover it in 15 or 20 or 30 or 40 minutes.

Senator Stevenson: I think he should be heard, but I am not willing to move to reconsider.

Senator Rawlings: I will recognize Mrs. Lou Emma Cooledge of Overton, Texas.

Mrs. Cooledge: Gentlemen of the Committee: I am here as a native of East Texas and especially interested in the East Texas oil field, being a land and royalty owner there.

I have several affidavits from land owners and royalty owners in the East Texas oil field, as well as some telegrams which I would like to read, if I have time.

We have a good field of which we are very proud and we are proud of the law and the protection you have thrown around us, but we know that the law should go further and stop these injunction suits which create chaos, and misunderstanding in our oil field and we heartily are in approval of conservation of the East Texas oil field.

I think with conservation we have a field that will last 15 to 25 years, and the ultimate recovery will be greater if the field is conserved, but if the field is opened up, I don't think it would last six months, and

we are appealing to this law making body that they give us deep consideration right now. We need some action and we need it right now.

Of course, I don't know what to suggest. I am only saying the opinion of those of us who are land and royalty owners in East Texas. Some of our families have held land 75 years in that section and naturally we feel intensely interested and ask for your protection, that you give us this protection.

We have had a lot of discord and misunderstanding and we have had a lot of good people to deal with, but there are just a few that just simply can't stay hitched, and we want a law passed that will take care of our oil in a real way.

And for conservation we stand, and we need to go a little further and give us a law that is a little more workable.

At this time I would like to read some affidavits to the Committee.

Rawlings: You may read them, Mrs. Cooledge.

(Whereupon Mrs. Cooledge read the following affidavits into the record).

Henderson, Texas,
November 7, 1932.

To whom it may concern:

This is to certify that H. P. Leverett, Overton, Texas, is the fee owner of 280 acres in the J. Lindley McCobe, Sims, Snow surveys, Rusk County, Texas, and also owns 7-8ths of the royalty under 280 acres of the various surveys, all being in the producing area of Rusk County, Texas.

(Signed) H. P. LEVERETT,

J. C. HALE, Tax Assessor, Rusk County, Texas.

Henderson, Texas,
November 7, 1932.

To whom it may concern:

This is to certify that F. F. Wooster, Overton, Texas, is the fee owner of 61 acres in the Bran and Cordova surveys, Rusk County, Texas, and also owns 3-5ths of the royalty under 61 acres of the Bran and Cordova survey, all being in the producing area of Rusk County, Texas

J. C. HALE, Tax Assessor, Rusk County, Texas.

I am in favor of a bill that will conserve the East Texas oil field.

(Signed) F. F. Wooster.

Henderson, Texas,
November 7, 1932.

To whom it may concern:

This is to certify that W. P. Moore, Overton, Texas, is the fee owner of 973½ acres in the Martin, Ellington, Prue, Wiggins, Pena, Womach, Tutt surveys, Rusk County, Texas, and also owns 3-4ths of the royalty under 973½ acres of the above surveys, all being in the producing area of Rusk County, Texas.

J. C. HALE, Tax Assessor, Rusk County, Texas.

I am in favor of a law that will protect proration and conserve the East Texas oil field.

(Signed) W. P. Moore.

Henderson, Texas,
November 7, 1932.

To whom it may concern:

This is to certify that Mattie Wooster, Overton, Texas, is the fee owner of 74 acres in the Bears surveys, Rusk County, Texas, and also owns one-half of the royalty under 74 acres of the Bears survey, all being in the producing area of Rusk County, Texas.

J. C. HALE, Tax Assessor, Rusk County, Texas.

I want the East Texas oil field taken care of.

(Signed) MATTIE WOOSTER.

Mrs. Cooledge: I also have a telegram to Senator Neal that I would like to read.

Rawlings: You may read the same.

(Whereupon Mrs. Cooledge read the following telegram.)

HS 146 35DL-Overton Tex 9 1155A
Senator Margie Neal,
Austin, Texas.

I own two hundred acres oil and gas producing land in East Texas oil field. Believe we are urgently in need of conservation law. I am asking you to support the conservation bill.

J. H. SILVEY.

Mrs. Cooledge: We have a good field of which we are proud, and we are proud of the law and the protection you have thrown around us, but we know that the law should go further and stop these injunction suits which create chaos and misunderstanding in our oil field.

We own about 475 acres in the heart of this field—have a wonder-

ful faith in and it is going to be taken care of if we take action now.

I would rather have the fields produce 25 years than to open them up and let them get through in six months.

I think it would be profitable in the final analysis, and we are asking this law-making body to stay back of us over there, which you have done; but we need the law to go a little further.

We have already had all kinds of shyster lawyers who have come to East Texas trying to cloud our titles. We would like for it to stop. I do stand for the people of my community who are land and royalty owners and they are strongly and heartily in favor of conservation, and of passing a law that will protect our East Texas oil field.

I believe that is all I have to say and I thank the gentlemen of the committee.

Senator Rawlings: We thank you, Mrs. Cooledge. I will now recognize Mr. Harry Pennington of San Antonio.

Mr. Pennington: Mr. Chairman, members of the Committee, ladies and gentlemen: The matter you are dealing with now involves properties which have been variously estimated at an average value of eleven billion dollars—the oil that will be produced in Texas, if we never drill another well. It is a very serious matter.

We have five hundred thousand home owners in Texas. We have eight hundred thousand who own land in Texas.

97½% of that land is classed as potential oil land, yet we are being rushed through this hearing here in such a way that I don't believe any man in this room has had time enough to study the fundamentals of what you are trying to do.

The matter of property rights—and I have studied the matter for a good many years. It came up probably as the first case involving property rights in oil and gas.

I was instructed within a few days after the Commission was placed in charge of conservation to close in my wells for five years with no reason for it. I was running the oil, selling it, getting the market price, not wasting anything.

Yet they said, "Close those wells down or we will fine you five thousand dollars a day."

I did not believe that the Commission had any such authority. I believed I had a right to run the oil. I think the State of Texas should protect the producer of oil.

And I thought that those rights were exercised by a deputy supervisor that they brought in here from Oklahoma.

I went in and got an injunction enjoining such a violation of my property rights before that order was issued against me, and it settled the matter.

I produced over a million barrels out of those wells and made all of our people more comfortable, which is the idea of conservation.

Where do we get the property right to run oil and gas? Our Courts say we don't own the oil in place, but have the right to produce it.

Beginning at that time, 13 years ago, and various times since then, I have read books to find out where that right came from. I find this—that as far back as written history goes, the right of a man to take water or minerals like oil has been an accompanying, inheritance, inalienable right. Hereoditus mentions it, Gricola mentions it, and Justinian mentions it.

They all stated that a man has a right to take oil from his land, even though it injuries his neighbor, if he don't do it maliciously, he has a right to do it. Blackstone mentions it.

I want to say to you that I am giving to you the basis of our property law under which we have acquired property in Texas. I think it is inviolate.

Justice White declared very clearly, and in Texas it was stated again very clearly by Justice Phillips that it is inviolate.

I have had many opinions from my attorneys on the question—"What are my property rights? How do I get them?"

Back through all that written history, I have certain rights that have been sanctioned by the law and by usage, and have been sanctioned by the decision of our courts, and we have here in Texas a tendency to subject private property rights to invasion.

From one day until the next there is no man living that can tell you what an oil property is worth under this law. It would be subject to the order of someone else. You would not know how much you could produce, and the difference between an individual producer and the corporation is this: That the corporation lives only by the individual practices—only the individual must realize necessarily within a reasonable time.

With those fundamentals in mind, I don't think the Legislature has the intention to place any limitation or restraint upon property rights, save in a proper method in accordance with our Constitution and that of the United States.

It seems like in studying the matter of how to produce oil more cheaply, and in facing the methods whereby we can discover how we could do it, and avoiding a great deal of mistake in promoting those conditions—I have spent many hours in the field and elsewhere.

It seems that wherever the Standard Oil Company is concerned, it has let loose a Pandora's box, or a Frankenstein—because this proposition of market demand originated 4 years ago with the Standard Oil Company.

The land owners of Texas, if they knew what they were doing, would be here protesting against curtailment of their rights.

They have been deceived into the idea that this market demand is a mild coated pill, when it has strychnine in it. It is turning around and going away from our property rights.

But no land owner in Texas wants to waste. We want to get as much oil as we can and we want to get as much money as we can, and I know that by flooding the market with the commodity we will not do that.

I will say this, that if you pass this bill, they say, "Do you want to open up East Texas wide open?" No. It has been contended that we do that to create waste. I think everyone in my hearing is in favor of producing oil in an orderly way with due regard for the rights of all, as a matter of public policy. Sometimes it may be to our interest to regard public policy, and some people are selfish enough not to do that, and those who are so unselfish need a law to restrain them.

There has never yet been a rule applied to the present law which would tend to conserve oil, and I think we want to produce oil in an orderly way.

In reading this decision, of the Court, how are we going to produce oil under the present law or any law?

The Federal Court held in line with the Common Law and all the decisions that my attorneys can find that these orders of the Commission had taken away from owners on the structure, and had given to others not so well situated, and for that reason the plaintiff is entitled to relief.

Under that decision, you will be unable to establish any well allowable, and you will be unable to establish any acreage allowable.

I mean to say that if we produce under this law which has been held invalid, all Texas can be produced inequitably, but if you pass this pending law, it will be thrown down again. We will have no law.

If the present law is superseded by another one and the other one is thrown down, where do we get off? You have nothing.

In any event, any law that deals with so much property—with the happiness of our people, must be not for today only, but for all times.

I don't think that any legislative body dealing with so many people at once — practically everyone in Texas has some interest in it of some kind or another—come here and in less than a week pass a law to subject their property to the order of a Commission of just three little men, controlling the property of eight hundred thousand that would be workable.

On the proposition of market demand when you start to enact a criminal law, you define a crime by metes and bounds, and then say, "If you commit that crime, you will be liable." Under this law, there is not even the slightest definition of market demand attempted. You are attempting to substitute for demand the wishes of somebody.

To illustrate that. I have sold a great quantity of gasoline for tractor use. When it is too high the farmer don't buy it. He uses horses and mules. Take a power plant. Many

power plants are built with gasoline, fuel oil, or coal equipment, governed by the price. If oil is too high, it is not used. In the Houston district alone gas has replaced seventy-five thousand barrels of fuel oil.

If you are going to prescribe a law, I should ask you to lay down this law in such a way that we can know what it is, and if we violate it, we will know we are violating it. And I would further ask that whatever property rights are given to us by our Constitution be reserved for land owners, and I thank God that we have a Constitution and a Court that interprets it fearlessly.

Senator Rawlings: I will now recognize Mr. W. E. Gates.

Mr. Gates: Mr. Chairman and gentlemen of the Committee:

I am only appearing here in the interest of consumers of gas and oil in Texas. I represent a constituency of many operators who at the present time are operating five hundred pieces of equipment over the highways of Texas for hire, and in addition to that, we also operate a number of passenger cars in traveling to and from different points in the State, and we are particularly interested in this proposition from the standpoint of the consumer, as self-preservation is the first law of nature.

You gentlemen are familiar with the fact that motor operators for hire in this State, now are under the law required, and can not transport over seven thousand pounds. Naturally, in order to exist, we have to cut our expenses in transporting property over the highways. We have been practically forced in a measure to buy our gasoline and oils from the independent operator, who is in position, it appears, to sell us those things at a lesser price than we would probably have to pay the major companies.

It is our interpretation of this law briefly stated that it means fixing the price, and if you fix the price on crude oil, it appears to us that it is our interpretation that you will have to consider world wide factors in arriving at these figures of the price of crude oil.

And in view of that fact, we feel that the Commission will be required, and will get information from possibly two world wide factors.

In other words, the Dutch Shell and the Standard Oil Company, and they will determine the price of crude oil, and in that way, eliminate the independent operators. Therefore, you will eliminate considerable traffic over the highways.

There will also be an elimination of traffic over the highways for hire.

If that is the purpose, then it is well and just, but if you feel as we do that traffic over the highways for hire has any right in Texas, then, gentlemen, I say to you in all seriousness that this is a very dangerous proposition that is before you.

It is our opinion that you will be doing wrong if you give the Railroad Commission this authority asked for.

I mean, if you place in this law the proposition of market demand and economic waste, giving this Commission authority to fix the price, you will be doing wrong. It is a step, it appears to me, in the wrong direction. I thank you for the opportunity of appearing before you.

Senator Rawlings: I will now recognize Mr. C. F. Roeser of Fort Worth.

Mr. Roeser: Mr. Chairman and members of the Committee:

I have been an independent oil producer for 25 years, never at any time having any connection with any major company.

I look at this matter of market demand in the production of oil more or less from a practical standpoint. In doing that, I think it is necessary to give to you gentlemen a clear picture of the progress of the oil industry in Texas since its inception in 1901.

When the Spindle Top pool was opened in 1899—from then to 1921 a major pool was brought in every five to seven years. That included the Texas and Oklahoma pools.

At that time, it was an easy matter for the oil industry to absorb an overproduction of one to two hundred million barrels, and up until 1924, a recoverable amount of oil of three hundred million barrels was the largest pool we had. That was absorbed by companies who were adequately financed to buy the oil on a reduced price.

Then the drilling was stopped and the market was stablized and the price increased and the oil absorbed

at a much higher price. That was the old law of supply and demand.

With the discovery of the Yates pool in 1924, with a recoverable amount of oil amounting to six or seven hundred million barrels I claim the old law of supply and demand became obsolete. On top of the Yates pool were discovered Oklahoma City. Kettleman Hill, Vann, Hobbs, and Seminole, and various pools on the Gulf coast and East Texas all within a period of four years.

The overproduction could not be overcome. Back in 1926, we started on proration in endeavoring to conserve the industry.

In 1929, the Conservation Act was passed which your Legislature and your Senate recognized the equity of ratable taking of oil. That is, that any producer in the State of Texas, shall be accorded a fair and equitable portion of the outlet of your pool and pools through the State. That was laid down by this Senate and this Legislature.

The Railroad Commission a year ago were given a law under which they attempted to function and enforce ratable taking in this State.

I had the opportunity to attend every hearing the past year that was held under your waste statute.

The Railroad Commission with the vehicle they had, attempted to allocate equitably between the producer of Texas the amount of oil they were entitled to under the law.

I am not a lawyer, but I only need to refer you to the two decisions by the same court to show you that they attempted to accomplish an impossibility.

A year ago last July when the allowable in the East Texas field was six hundred barrels to the well, a Three-Judge Court at Houston cut down those orders making the necessity of the special call of July that year.

During the past year they attempted from time to time to base orders on physical waste until we got down to the basis of 40 barrels.

I think the Commission found waste at that figure, but your law was again struck down at 40 barrels.

Now you have had an order of 600 barrels per well, and another order of 40 barrels per well both declared invalid, and for the same reason that while the Legislature had the right to vest in the Commission the power to write their orders under some other feature than market demand, it had not been accorded to them. Let us say that the Railroad Commission could find waste orders that were waste orders, and they found that Texas under the law and under the waste orders could produce a million barrels a day. And you had a consumption requirement of eight hundred thousand barrels a day, and that two hundred thousand barrels of additional oil would go to storage. Also that your storage above ground from the standpoint of the State of Texas is just as wasteful as that underground waste.

Your Federal Government on its public domain since 1915 have a regulation prohibiting the storing above ground of government oil. They have found that your average evaporation in oil during that period is something like five per cent a year the first year and 3 or 4% a year thereafter.

In addition to that, your storage above ground, in building steel tanks your first year and the cost is about 30c a barrel and after that 15c. Your storage of oil above the ground is passed on to the consumer.

Therefore, if we can find a method of producing the oil in the State of Texas, according to current consumption requirement without harm to the public and without harm to the industry, it would seem to me that that would be a practical solution of the problem we have ahead of us.

We must recognize that Texas develops three and a half billion barrels of oil without opening up a new pool.

In spite of all you can do, you can not stimulate the market demand of Texas at this time over two or three or five per cent.

Shall Texas take this increase and let it be produced to the extent that it becomes burdensome to the point where it is hurting an industry and have a bearing on the University's fund?

The University of Texas is one of the largest producers in Texas. It means four thousand barrels of oil a day, or one hundred and twenty

thousand dollars a month to your university.

Last year when the price was so low you had twelve thousand dollars a month, which makes a difference to the University of over a million dollars a year.

Your public school fund has at this time an income of twenty or thirty thousand dollars a month. If your crude price goes down, the public school fund suffers.

The workings of this market demand are not complicated. There is nothing to be afraid of. It will help our Commission come to the will of the people. If the Commission should attempt at any time to fix the price of oil against the public interest, you know what would happen.

It can be done. And the same men here that are behind your market demand bill will be the first ones down here. Ninety per cent of the industry today, large and small, are for the market demand feature.

I have never been in the refining business, but I will say that if I wanted to make an investment in the refining end of the business today, I would feel safer under the market demand than I would under this violent fluctuation that has been occurring for fifteen or twenty years.

I feel that this is a constructive piece of legislation—as constructive as any that has come before this house. I do not know of anything that can benefit the State of Texas as a whole at this time as much as the stabilizing of oil.

It is nothing to be afraid of. It is a new line of thought, but new lines of thought is what has caused our progress. I think this bill is for the best interest of the State of Texas and for the industry.

Rawlings: I recognize Mr. Carl Estes of Tyler.

Estes: Gentlemen of the Committee:

I am not going to burden you with a long tirade about this proposition. I feel like you have had enough of that.

I simply want to give you the benefit of a country boy's observation during the past 22 months of the oil situation as applied particularly to the section that I know best. I don't know anything of the oil industry beyond its workings in East Texas in the past 22 months. But during that time, I have a pretty good idea of what is going on over there. I have been on both sides of this question.

Eighteen months ago I came here and asked you gentlemen to defeat the same bill in substance that today I ask you to pass.

I will tell you why and what has been taking place over there. When they discovered oil in East Texas, I laid down the proposition that every man that had an acre of ground was entitled to know what was beneath his soil.

I reasoned it out this way, that if we did not give the independent, who had that field who had bought up the acreage after the majors had said, "There is nothing here,"—all the smart boys with big maps had said it wasn't there.

The independent bought it and the majors were caught flat footed. It suddenly dawned on them that the greatest oil field in the world was there in East Texas.

Accordingly they were caught with millions and millions of barrels of crude oil that they had placed in storage over a long period of years.

They immediately had to do something to hold us down so they came to the Legislature and hollered for conservation of the natural resources and so forth. There were some independents who were of the same opinion, but the major companies had these millions of barrels of oil in storage.

East Texas came in and they said, "We have got to do something. These men can put this oil on the seacoast cheaper." I am a more firm believer in proration fundamentally that I ever was. I have come to look upon it as an expert doctor to the oil industry.

What were they doing when they told us to hold it in the ground? I I don't know much about any kind of oil except castor oil and croton oil, but I do know this much; that they started running this oil into the refineries making it into gasoline and feeding it into the market channels of the country while we were holding it back. I was against proration.

Now, this will explain to you why the Gulf is here fighting this Bill. While they were holding us back with an army they have got seventy or eighty-five million barrels of oil in storage. They wanted to fill the storage up on ten cent oil.

They know under this Federal Court decision that unless you gentlemen pass legislation that they will be able to break down this whole thing and go back and fill up again —that they shall have taken this oil from East Texas, and they will have it because they have got the storage facilities and the little man doesn't have it.

You hear people say, "Won't this raise the price of gasoline?" What if it does for six months?

The minute you get this oil out of the ground and get it into storage they will charge you forty cents a gallon for it if they want to.

This is what I am here asking you to do. Give them a dose of underground conservation. Let's don't let them run oil into storage at low prices and sell it at high prices.

I have no argument with my own friend Joe Danciger nor with Clint Murchison and the others. I don't blame Joe Danciger for urging you to defeat this Bill, because as long as Joe can sell his oil to major companies in East Texas at a given price and buy four barrels of distressed oil for the same price he sells one barrel, I don't blame him. He is my friend and he is a smart man.

He went to the Panhandle and took more oil than any of his neighbors because he knew how to get an injunction. I don't blame him, but it is not fair.

At a mass meeting the other night in Tyler they endorsed this market demand bill. They say like I do, "If we produce this oil according to market demand, we will keep these men from filling up their storage at 10c a barrel."

I saw our people go to their knees before and I am sorry to say that I helped to put them there. I am telling you gentlemen that if you pass this bill and stabilize the oil industry, you will save this State millions of dollars.

I think the State of Texas alone owns 21 wells in the Sabine oil field. If you pass this bill, you will have 100 oil wells in that river by the 15th of March. That money will go into the treasury of this State and it will reduce taxes on the poor citizens proportionately.

The State Railroad Commission, the oil governing body of this State, has come before you and told you that the minute Randolph Bryant signed the decree—and begged him not to do so—that their hands were tied.

This industry is bigger than one man. Gentlemen, it is a problem for the people of Texas and I am here pleading with you to pass legislation, not to strangle the little man, because you all know that I pour it on the major companies every twelve hours. No man can say that I am under obligations to them.

I am asking you for the people of all Texas that we adopt a policy here of conservation, that if we do not adopt, we are all stuck.

We are looking to the future. Now, gentlemen, 98% of the independent oil operators and royalty owners of East Texas are in favor of this bill. Two per cent who want to operate on cheaper oil while they sell their own for $1.10 are opposed to it. I do not think that they are smart enough to put it over on you.

I have said about all that I had to say. I hope that you will not fall into the same trap that I fell into, and that you will pass this bill in the interest of all the people of Texas to the end that the second largest industry in this State may stay out of the pit of despair.

Senator Rawlings: I believe that is all of the witnesses that asked to be heard and we will now stand adjourned for ten minutes.

NOTARIES PUBLIC.

The Secretary of the Senate reported to the Journal Clerk that the following nominations of the Governor to be Notaries Public of and for the various counties for the term beginning June 1, 1931, and ending June 1, 1933, had been confirmed by the Senate in Executive Session:

FOR THE FULL TERM BEGINNING JUNE 1, 1931, AND ENDING JUNE 1, 1933.

FIRST DISTRICT.

Bowie County.

Holden, H. F. ..... Texarkana
McCartney, W. A. ..... Texarkana
McCartney, W. A., Sr. ..... Texarkana
Cooper, Miss Alta Elaine ..... Texarkana
Holden, H. F., Jr. ..... Texarkana

Marion County.

Alley, H. P. ..... Jefferson

SECOND DISTRICT.

Gregg County.

Ames, E. L. ..... Gladewater
Bell, J. H. ..... Longview
Cabbiness, Mrs. Ida ..... Longview
Chamness, Connie ..... Longview
Davis, W. M. ..... Box 1101, Kilgore
Echols, Paul ..... Longview
Flanagan, Elizabeth ..... Longview
Powell, Mrs. Ardath H. ..... Longview
Rabb, Sadie ..... Longview
Reynolds, Jemmie Mae ..... Longview
Starnes, R. W. ..... Gladewater
Wallace, Willie ..... Gladewater

Harrison County.

Young, Mrs. Frank B. ..... Marshall

Rusk County.

Broome, W. V. ..... Henderson
Cannon, T. P. ..... Henderson
Fite, Hallye ..... Henderson

Shelby County.

Champion, Mrs. Lacie ..... Center

THIRD DISTRICT.

Angelina County.

Baker, Mattie ..... Lufkin

Jasper County.

Lazenby, Ona ..... Jasper

Nacogdoches County.

Johnson, John P. ..... Nacogdoches
Burns, Miss Irene ..... Nacogdoches

Sabine County.

DuBose, Pratt ..... Brookland

San Augustine County.

Dubose, Pratt ..... Brookland

Tyler County.

Barnes, W. A. ..... Woodville

FOURTH DISTRICT.

Jefferson County.

Donohue, E. F. ..... Beaumont
Nall, Miss Agnes ..... Beaumont
Stephens, Carl J. ..... Beaumont

Liberty County.

Swift, J. F. ..... Liberty

FIFTH DISTRICT.

Houston County.

Patton, Jack S. ..... Crockett
McLemore, E. E. ..... Crockett
Buller, Herman ..... Crockett

Montgomery County.

Deax, H. W. ..... Magnolia

Polk County.

Hickman, M. F., Jr. ..... Corrigan
Gay, Clarence ..... Livingston
Freeman, J. R. ..... Leggett
Barrington, F. H. ..... Livingston
Rozell, Annie ..... Knight
Craig, J. E. ..... Goodrich
Galloway, L. D. ..... Goodrich
Cochran, E. E. ..... Livingston
Cochran, W. S. ..... Livingston
Ehrlich, J. T. ..... Livingston
Holder, E. H. ..... Livingston
Stewart, Mary Lee ..... Livingston
Penick, E. C., Jr. ..... Livingston
Brock, Lanora Garvey ..... Livingston
Jones, A. S. ..... Livingston
Munson, Oscar ..... Livingston

Hill, Effie ..... Livingston
Jones, Roy M. ..... Livingston
Jones, C. H. ..... Livingston
Campbell, Nan Amerine ..... Livingston
Wiggins, J. E. ..... Ace
Henson, L., Jr. ..... Leggett
Galloway, Lewis ..... Leggett
Bulay, Pearl Bates ..... Barnum
Close, W. S. ..... Livingston
Wright, B. M. ..... Livingston
Coleman, Tom ..... Livingston
Feagan, Mrs. M. M. ..... Livingston
Marsh, C. B. ..... Livingston
Barfield, Claudia ..... Livingston
Carlisle, Carrie ..... Livingston
Galloway, Louis ..... Livingston

San Jacinto County.

McElroy, Billie ..... Shepherd

Walker County.

McMeans, Roy E. ..... Huntsville
Smither, Wilbur L. ..... Huntsville

SIXTH DISTRICT.

Anderson County.

Green, Edith ..... Palestine
Lewis, H. G. ..... Elkhart

Freestone County.

Everett, Mrs. Kathleen ..... Teague
Mingus, J. L. ..... Teague
Haston, Mrs. Emily B. ..... Wortham

Henderson County.

Ayres, Fred F. ..... LaRue
Barton, A. M. ..... Brownsboro
Boyd, A. D. ..... Brownsboro
Chance, Truda ..... Athens
Chapman, J. F. ..... Ben Wheeler
Griffin, H. H. ..... Athens
Hall, Irma ..... Athens
Ingram, J. C. ..... Brownsboro
Loftis, A. L. ..... Brownsboro
Owen, Sam R. ..... Brownsboro
Payne, Ann ..... Athens
Porter, W. M. ..... Brownsboro
Tompkins, G. L. ..... Brownsboro
Hines, J. B., Jr. ..... Athens
Caldwell, J. W. ..... Athens
Morton, R. R. ..... Athens
Dennis, H. C. ..... Athens

Kaufman County.

Bond, Jack P. ..... Terrell
Hopkins, Adele ..... Terrell
Maxwell, Jane ..... Terrell

SEVENTH DISTRICT.

Smith County.

Cooper, Lola Fae ..... Box 647, Tyler
Darden, J. W. ..... Tyler
Bolding, Louise ..... Tyler
Kenney, Grace ..... Tyler
McDonald, Warren ..... Tyler
Mardock, Lucille ..... Tyler
Reaves, J. G. ..... Tyler

Upshur County.

Gilstrap, L. O. ..... Gilmer

Wood County.

Britton, Jimmie ..... Quitman
Brown, L. D. ..... Quitman

EIGHTH DISTRICT.

Franklin County.

Ham, R. W. ..... Mount Vernon
Grimes, H. H. ..... Mount Vernon
Teague, Mrs. Margaret Clinton ..... Mount Vernon

Hopkins County.

Nunn, Paul Y. ..... Sulphur Springs

Lamar County.

Coleman, R. G. ..... Paris
Hammack, R. V. ..... Paris

NINTH DISTRICT.

Cooke County.

Atchison, John A., Jr. ..... Gainesville

Fannin County.

Wakefield, Miss Audra ..... Bonham

Grayson County.

Varner, F. D. ..... Sherman

ELEVENTH DISTRICT.

Dallas County.

Browning, L. M. ..... 2208 Live Oak St.
Bazar, Virginia ..... 1604 Rep. Bk. Bld.
Bass, Miss Lucile ..... 409-11 Southwestern Life Bldg.
Biesel, Mrs. Lucile ..... 3226 Park Row
Cunningham, Joe L. ..... 1101-2 Republic Bank Bldg.
Crain, Lacy E. ..... 403 Melba Bldg.
Clement, Ruth ..... 4407 Hartford St.
Caffey, Tula ..... 122 So. Rosemont Ave.

Dugan, A. H...care W. A. Brooks, Jr.
Fredde, Ruth A.....
.....522 W. Jefferson Ave.
Giles, Griffith..care Westinghouse
Elec. Sup. Co., 409 Browder St.
Giles, J. F., Jr.....
.....135 N. Lancaster Ave.
Hickerson, James H. .....
.....2208 Live Oak St.
Hatzenbushler, Clara.....
.....1906 N. Garret Ave.
Howard, H. C.....923 Santa Fe Bldg.
Jack, V. P.....821 Rep. Bk. Bldg.
Kelley, Mae M.....923 Santa Fe Bldg.
Long, A. A. .....1604 Rep. Bk. Bldg.
Madderra, S. W.....1016 Commerce
McKinley, Eratha.....care Texas
Ref. Co., Tower Petroleum Bldg.
Mann, Betty .....320 Merc. Bldg.
Naylor, Christine .....1204 Main St.
Noe, Miss Hazel....care Baker Hotel
Stiles, Griffith.....409 Browder St.
Webster, John L., Jr.....
.....1033 Young St.
Yowell, Mason .....Whol. Mer. Bldg.

TWELFTH DISTRICT.

Ellis County.

McFarland, S. F.....Waxahachie
Craig, Ollie .....Italy
Goodwyn, Mildred.....Waxahachie
Gooch, Thelma.....Ennis
Latham, M. E.....Ennis
Miller, Osie E. .....Waxahachie
Skaines, J. A.....Ennis
Washington, R. D.....Ennis

THIRTEENTH DISTRICT.

Falls County.

Coleman, Frank .....Rosebud
Coleman, Mrs. Helen.....Rosebud
Lay, John M.....Rosebud

McLennan County.

Dowis, Miss Juanita.....Waco
Zachery, W. M.....Waco

FOURTEENTH DISTRICT.

Bastrop County.

Jenkins, Howard .....Bastrop

Brazos County.

Hensley .....Steele's Store

Colorado County.

Seymour, Sam K., Jr.....Columbus
Anders, F. F.....Weimar
Wegenheft, Miss Vera Jewel.....
.....Columbus

Lee County.

Peter, Miss Louise.....Giddings

Robertson County.

Rhode, Henry .....Hearne
Lomax, Lee S.....Franklin

SIXTEENTH DISTRICT.

Harris County.

Ball, David .....Houston
Baker, J. W.....723 M. & M. Bldg.
Bibens, W. W.....2705 Main St.
Bonsall, C. A.....
..... care I. & G. N. Roundhouse
Bramlett, B. A.....409 Zindler Bldg.
Canino, Miss Petrina M .....
.....422 Marine Bk. Bldg.
Carver, J. A. .....1107 Paschall St.
Castleberry, R. W...1106 Rutland St.
Dreyling, Mrs. Ethel .....care Reg.
Agr. Credit Corp., Bkrs. Mtg. Bldg.
Gammage, Earl W.....
..... 408 San Jacinto Trust Bldg.
Glass, Joe B.....
..... 408 San Jacinto Trust Bldg.
Graves, Selma .....113 York St.
Holland, C. M. .....Houston
Leitch, B. Bryan..2nd Nat. Bk. Bldg.
McCreary, R. A. ..1517 Austin St.
McKnight, Miss Dorthy .....
.....600-2 Fannin Bldg.
Merchant, Mrs. Ruth .....
.....Box 1115, Goose Creek
Nelson, Mrs. Alice.....5105 Jef. Ave.
Parker, Lois .....Houston
Page, Beverly W. .....care Reg.
Agr. Credit Corp., Bkrs. Mtg. Bldg.
Pechanec, Blanche ....424 West Bldg.
Phillips, Lolita....2nd Nat. Bk. Bldg.
Pritchard, Charles T., Jr.....
.....408 San Jacinto Trust Bldg.
Raibon, J. H.....care Fairchild
Undertaking Co., 1015 Dowling St.
Van Dobson, Z. .....7830 Arbury St.
Wood, Chas. L.....2316 Jackson St.
Workman, Mrs. Clara B.....
.....Watchtower Mutual
Life Ins. Co., 222 W. Dallas Ave.
Zax, Mrs. Grace.....
.....3212 Harrisburg Boulevard

SEVENTEENTH DISTRICT.

Galveston County.

Cordray, Florence A. .....Galveston

Wharton County.

Burger, Lillian ..... Wharton
Emory, T. M. ..... Wharton

EIGHTEENTH DISTRICT.

Atascosa County.

Martin, C. W. ..... Christine

Victoria County.

Stevenson, J. W. ..... Victoria

TWENTIETH DISTRICT.

Travis County.

Bobbitt, Miss Billie .....
..... State Fire Insurance Com.
Jones, Mrs. I. L. ..... 1806 Brazos St.
Giles, C. B. ..... Austin
Schmitt, Tinnie .....
..... Box V, Capitol Station
Kerbow, F. D. ..... Austin
Wilkerson, Sudie Louise .....
..... care Bothager Motor Co.
Armstrong, Alfred C. .....
..... 1702½ S. Cong. Ave.
Brannon, Sibyl ..... Driskill Hotel
Waters, Fleming A. .....
..... 1206 Norwood Bldg.

TWENTY-SECOND DISTRICT.

Denton County.

Akni, Nell ..... Denton

Palo Pinto County.

McKenzie, Miss Merceed .....
..... Mineral Wells
Hines, N. P. ..... Mineral Wells
L. D. Shive ..... Mineral Wells

TWENTY-THIRD DISTRICT.

Foard County.

Atcheson, J. E. ..... Crowell

Hardeman County.

Brazil, Jack ..... Quanah

Wichita County.

Bell, Jennie May ..... Wichita Falls
Henderson, Claude ..... Wichita Falls
Lowrance, Mary Anna ..... Iowa Park
Ross, Nellie M. ..... Wichita Falls

Young County.

Campbell, Marguerite ..... Graham
Cook, C. E. ..... Graham

TWENTY-FOURTH DISTRICT.

Callahan County.

Massa, Mary ..... Cross Plains
Bryant, R. Elliott ..... Cross Plains

Eastland County.

Davenport, Orlena ..... Eastland
Williams, Earl T. ..... Eastland

Fisher County.

Carothers, Jennie ..... Sylvester
Duff, H. C. ..... Sylvester

Scurry County.

Cleckler, B. J. ..... Inadale
Ward, E. S. ..... Inadale

Taylor County.

Boles, Miss Susie ..... Abilene

TWENTY-FIFTH DISTRICT.

Kimble County.

Stephenson, Katherine ..... Junction

Tom Green County.

Jordan, Jack ..... San Angelo
Shklar, Harry M. ..... San Angelo

TWENTY-SIXTH DISTRICT.

Bexar County.

Kirk, Jule M. .....
..... Room 346 Gunter Hotel
Bowling, W. A. ..... 234-244 Flores St.
Brenner, Milton C. .....
..... 744 W. Commerce St.
Campbell, M. E. ..... 1725 E. Hous. St.
Cartwright, Joe R. ..... 629 Dolorosa St.
Earnest E. ..... P. O. Box 1144
National Real Estate Clear. House
Gordon, Dorothy .....
..... 1106 Alamo National Bldg.
Humphrey, Alice .....
..... 1106 Alamo National Bldg.
Huth, Patricia .....
..... 1018 Alamo National Bldg.
Sprinkle, Walter C. .....
..... Western National Bldg.
Scharff, A. F. ..... Rm. 221, Fed. Bldg.
Doom, Elaine R. ..... Rm. 221 Fed. Bldg.

Kerr County.

Jones, W. D. C. ..... Kerrville

TWENTY-SEVENTH DISTRICT.

Cameron County.

Aull, V. E. .....Brownsville

Frio County.

Beever, Charles A.....Pearsall
Sutton, Frankie .....Pearsall

Hidalgo County.

Duensing, E. C.....Mission
Mallett, Miss K.....Weslaco

Nueces County.

Hightower, J. E.....Robstown
Searcy, Albert W..... Corpus Christi

TWENTY-EIGHTH DISTRICT.

Tarrant County.

Anklele, Juanita M.....
.....1101 Medical Arts Bldg.
Antwell, Ida .....505 Lamar St.
Barbee, Jack .....716 Jennings Ave.
Barnes, Blanche .....Fort Worth
Becker, S. M.....care Lone
Star Finance Corp., 809 Lamar St.
Bloore, Eva ...409 W. T. Wag. Bldg.
Casstevens, Mrs. Katie .....
.....2521 Rogers Ave.
Davis, E. P....1514 Med. Arts Bldg.
Houtchens, Lorena .....Fort Worth
Jenkins, E. T. .....Fort Worth
Jenkins, Miss Ruth.....
.....913 First Nat. Bk. Bldg.
Pampell, Evelyn ...Dan Wag. Bldg.
Peters, C. C., Jr.....Dan Wag. Bldg.
Prewitt, W. C..... 109½ Main St.
Bronquist, Adrian .....Fort Worth

TWENTY-NINTH DISTRICT.

Medina County.

Seekatz, Ed. H.....Mico

Midland County.

Wilson, Walter K.....Midland

Real County.

Powers, Ross.....Camp Wood

Winkler County.

Deck, George.....Box 25, Kermit

THIRTIETH DISTRICT.

Crosby County.

Haney, John .....Crosbyton

Howard County.

Payne, J. E.....Big Spring
Rogers, A. L.....Big Spring

Lubbock County.

Adams, Charles, Jr.....Lubbock

THIRTY-FIRST DISTRICT.

Castro County.

Burt, Carl .....Hart
Huckaboy, S. C.....Dimmitt
Noble, Mary L.....Dimmitt

Childress County.

Hughes, W. I.....Childress
Murphy, Edgar.....Childress
Teague, Irby .....Childress
Teague, Paul .....Childress

Dallam County.

Gordon, A. M.....Dalhart
Johnson, A. C.....Dalhart

Hartley County.

Beecroft, S. R.....Dalhart
McLaughlin, R. E.....Channing

Potter County.

Boger, A. C., Jr.....———
Bryce, A. T.....———